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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS, a federally recognized Indian tribe,

Plaintiff,

v.

THE CHAIR OF THE NATIONAL INDIAN GAMING COMMISSION; UNITED STATES NATIONAL INDIAN GAMING COMMISSION; NORTH FORK RANCHERIA OF MONO INDIANS, a federally recognized Indian tribe; and DOES 1-10,

Defendants.

STATION CASINOS LLC, a Nevada limited liability corporation; RED ROCK RESORTS, INC., a Delaware corporation; and SC MADERA MANAGEMENT, LLC, a California corporation,

Nominal Defendants.

Case No. 1:26-cv-04343-KES-SAB

DEFENDANT NORTH FORK RANCHERIA OF MONO INDIANS' REPLY IN SUPPORT OF MOTION TO DISMISS

Date:	October 8, 2026
Time:	1:30 p.m.
Place:	Courtroom 6, 7th floor
Judge:	Hon. Kirk E. Sherriff

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INTRODUCTION

Picayune seeks to prevent North Fork from gaming (i) on tribal land the Secretary of the Interior took in trust for that very purpose in 2013, and (ii) pursuant to Secretarial Procedures the Secretary prescribed in 2016, which by their terms set forth "the full and complete authorization by the Secretary … for the Tribe to conduct class III gaming on its Indian lands pursuant to IGRA." Multiple federal courts have upheld those actions against Picayune's prior APA challenges. The D.C. Circuit held that the Secretary properly took the Madera Site in trust for North Fork as gaming-eligible land under IGRA, and that Picayune had "abandoned" its concurrence-based claim in district court and "forfeited" it on appeal. *Stand Up for California! v. United States Dep't of the Interior*, 879 F.3d 1177, 1186 (D.C. Cir. 2018). And in this district, Judge Ishii held that "[t]he Secretary did not err by prescribing procedures under which North Fork could conduct class III gaming at the Madera Site." *Picayune Rancheria of Chukchansi Indians v. United States Dep't of the Interior*, 2017 WL 3581735, at *13 (E.D. Cal. Aug. 18, 2017).

Picayune cannot evade that history. Elevating form over substance, it argues that it "seeks to *enforce* those procedures, not attack them" (ECF No. 45 ("Opp.") at 2), and that the Court may issue "a judicial declaration to the effect that in the absence of a valid Governor's concurrence, the Madera Parcel does not qualify for [gaming under IGRA]" (ECF No. 28 ("FAC") at 19) without disturbing the Secretary's prior decisions. That is patently untenable. Elevating state law over federal law, it seeks to convert the California Court of Appeal's 2021 and 2025 decisions on the retroactive status of the Governor's concurrence *under state law* into a basis *under federal law* to undermine federal actions taken in reliance on the concurrence long beforehand. Neither the APA nor IGRA permit such alchemy. Picayune has already lost its prior challenges to the Secretary's decisions, and it cannot fault the NIGC for adhering to them.

Picayune's case is flawed in multiple respects, any one of which provides an independent basis for dismissal. But the simplest basis is the threshold one—one supported by a "wall of circuit authority" and on which even the United States agrees—that Rule 19 requires dismissal because North Fork is a necessary party and is protected from suit by sovereign immunity. As explained by the Department of Justice: The Ninth Circuit's opinions in *Diné Citizens Against Ruining Our*

Environment v. Bureau of Indian Affairs, 932 F.3d 843 (9th Cir. 2019), and *Maverick Gaming LLC v. United States*, 123 F.4th 960 (9th Cir. 2024), "are controlling authority in this case and therefore support granting North Fork's motion to dismiss." ECF No. 44 at 7. The Court should grant the motion on that basis, or on the others set forth below.

ARGUMENT

I. RULE 19 REQUIRES DISMISSAL OF BOTH CLAIMS BECAUSE NORTH FORK CANNOT BE PROPERLY JOINED AS A PARTY

This case should be dismissed under Rule 19 for the reasons stated in North Fork's motion (ECF No. 36-1 at 9-15). Picayune cannot overcome the "'wall of circuit authority' in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity." *Maverick Gaming*, 123 F.4th at 981. North Fork has not waived its sovereign immunity, and Congress has not abrogated it. Picayune's invocation of the "public rights" exception to Rule 19 is foreclosed by Ninth Circuit precedent. And its procedural arguments are easily refuted.

A. North Fork Has Sovereign Immunity To Picayune's Suit

"Tribal sovereign immunity protects Indian tribes from suit absent express authorization by Congress or clear waiver by the tribe." *Diné Citizens*, 932 F.3d at 856. Picayune does not argue that North Fork has waived immunity to this suit and has thus forfeited any such argument. *See United States ex rel. Hong v. Newport Sensors, Inc.*, 728 F. App'x 660, 662 (9th Cir. 2018). Its only argument (Opp. 8-11) is that Congress abrogated tribal sovereign immunity as to two distinct categories of litigation by statute, 25 U.S.C. § 2710(d)(7)(A)(ii) & (iii), and that those categories should be combined to extend to suits like this one, which indisputably falls outside the plain text of either category standing alone. The only support Picayune offers for its contra-textual argument, however, comes from two cases having *nothing to do with tribal sovereign immunity*.

Picayune's first case, *Stand Up for California v. U.S. Department of the Interior*, 959 F.3d 1154 (9th Cir. 2020), held that Indian tribes may game under Secretarial Procedures without violating the Johnson Act. The court reasoned that failing to treat Secretarial Procedures as "functionally equivalent" to tribal-state gaming compacts for purposes of IGRA's Johnson Act exemption, 25 U.S.C. § 2710(d)(6), would "rob[] IGRA's remedial scheme … of its force," and make Secretarial Procedures a "useless act" (as gaming authorized by Secretarial Procedures

would be foreclosed by the Johnson Act), violating basic principles of statutory construction. 959 F.3d at 1160, 1161. Its second case, *Blue Lake Rancheria v. Kalshi, Inc.*, 2026 WL 2728466 (9th Cir. Sept. 16, 2026), held that Indian tribes gaming under Secretarial Procedures have their own cause of action under IGRA. "The issue on which this appeal centers," the Ninth Circuit explained, is "whether IGRA provides [such] Tribes with a cause of action against Kalshi. We conclude that it does." *Id*. at *7. The court reasoned that failing to treat Secretarial Procedures as "functionally equivalent" to compacts for that purpose would disadvantage tribes gaming under Secretarial Procedures relative to tribes gaming under compacts by depriving the former of a cause of action to enforce their own gaming ordinances against violators like Kalshi. *Id.*

Critically, neither case even *mentioned* tribal sovereign immunity, let alone upset that bedrock principle. And while Picayune repeats its preferred language from those decisions—using the phrase "equivalent" or "functionally equivalent" seven times in just over two pages—the repetition does nothing under the settled framework for determining whether Congress has abrogated tribal sovereign immunity. To abrogate tribal sovereign immunity, "Congress must ***unequivocally express*** [its] purpose to subject ***a tribe*** to litigation." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 794 (2014) (emphases added). Ninth Circuit decisions exempting tribes from Johnson Act liability (*Stand Up*) or providing tribes a cause of action against Kalshi (*Blue Lake Rancheria*) do not satisfy that standard. Picayune thus invites this Court to be the first to hold that Congress "unequivocally expressed" its intent for a tribe like Picayune (gaming under a tribal-state compact) to sue a competing tribe like North Fork (gaming under Secretarial Procedures) to "enforce" those procedures, even though the statute provides only "the Secretary" with a cause of action to do so, 25 U.S.C. § 2710(d)(7)(A)(iii). Supreme Court precedent requires the Court to decline. Where, as here, "there is a plausible interpretation of the statute that preserves sovereign immunity, Congress has not unambiguously expressed the requisite intent." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 388 (2023).[1]

[1] Here, it is "plausible" (at a minimum) to interpret IGRA to allow tribes to enforce *their own* Secretarial Procedures against non-tribal violators like Kalshi, without allowing tribes gaming under compacts to enforce *another tribe's* Secretarial Procedures *against that tribe* for their own

B. The Rule 19 Factors Require Dismissal

Picayune offers two principal arguments for why North Fork is not a required party, but each fails. ***First***, it argues (Opp. 11) that North Fork lacks a "legally protected interest in the subject matter" of this case, because "there is no legally protected interest in particular agency procedures" (quoting *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990)). But that grossly misstates "the subject matter" of Picayune's case, which does not concern *the procedures* the Interior Department followed in authorizing North Fork's gaming project, but *the substance* of the authorizations themselves. As to the substance, Picayune argues (Opp. 11) its APA claim concerns "whether a necessary condition for gaming under California law (as incorporated into IGRA) exists," and since that question of California law has been decided, North Fork no longer has a "legally protected" interest in the dispute. Again, that misstates Picayune's APA claim, which expressly challenges North Fork's federal authorization to game. North Fork's interest is not in the status of the Governor's concurrence *under California law*, but in the *federal* authorizations Picayune attacks. Picayune's first argument fails on its own terms.[2]

If more were needed, Picayune's cited cases directly refute its position. In *Welsh v. Loudbear*, 178 F.4th 484, 490 (9th Cir. 2026), the Ninth Circuit reiterated that "'a party to a contract is necessary, and if not susceptible to joinder, indispensable to litigation seeking to decimate that contract.'" That is precisely what Picayune seeks to do here: its First Amended Complaint seeks "an order directing the NIGC and the Chair to set aside the Chair's approval of [North Fork's] Management Contract." ECF No. 28 at 19. And in *Makah Indian Tribe*, the Ninth

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commercial advantage when IGRA authorizes "the Secretary" (who has a trust obligation to all tribes) to bring any required enforcement actions. Indeed, a contrary ruling would open the door not only to vexatious litigation by competing tribes, but also by states under § 2710(d)(7)(A), despite their refusal to negotiate in good faith with the tribes in the first instance—distorting a key incentive under IGRA's remedial scheme.

[2] Picayune does not even argue its IGRA claim could proceed in North Fork's absence and has thus forfeited any such argument. Even if the argument were preserved, it would fail—for two reasons. First, it concerns Secretarial Procedures *prescribed expressly for North Fork's benefit* to effectuate an E.D. Cal. judgment in North Fork's favor, so it is untenable to argue that North Fork lacks a "legally protected interest" in them. Second, Picayune's First Amended Complaint limits its IGRA claim to North Fork, so there *is* no other party against which to litigate the claim.

Circuit affirmed the Rule 19 dismissal of the substantive claims in the litigation, ruling that the absent tribes (who could not be joined because of their sovereign immunity) had the requisite legal interest in the dispute, because a ruling in favor of the plaintiff tribe would have adversely affected the fishing rights of the absent tribes. There is no dispute here that North Fork would be adversely affected by a ruling in Picayune's favor.

Second, Picayune argues (Opp. 11-12) that "North Fork's interests will be adequately represented by the NIGC and Red Rock." The Ninth Circuit has repeatedly rejected such arguments. In *Diné Citizens*, for example, the plaintiffs argued that the Navajo Nation's tribal interests (in the continued operation of a tribal coal mine to supply a power plant) were adequately represented by the tribe's private-sector commercial partner in the plant (APS), which shared an interest in continuing the coal supply. In rejecting the argument, the court explained: "APS does not share the Navajo Nation's *sovereign* interest in controlling its own resources, and in the continued operation of the Mine and Power Plant and the financial support that such operation provides. The Navajo Nation's interest is tied to its very ability to govern itself [and] sustain itself financially[.]" 932 F.3d at 856. Likewise, in *Maverick Gaming*, 123 F.4th at 973-974, the plaintiff argued that the federal defendants could adequately represent the tribe's interests, as they shared the same interest in the ultimate outcome of the case—making the same argument that Picayune makes here, i.e., that the "NIGC has the incentive and the ability to make the same arguments as North Fork" (Opp. 12). The Ninth Circuit squarely rejected it: "Whereas the Federal Defendants' 'interests in this litigation begin and end with' defending the [challenged agency action], 'for the Tribe, the stakes of this litigation … implicate sovereign interests in self-governance,'" which made the tribe's interests "meaningfully distinct" under Rule 19. *Id.* at 975.

More broadly, Picayune has no response to the "wall of circuit authority" cited in North Fork's motion, which refutes Picayune's contention (Opp. 12-13) that considerations of "equity and good conscience" weigh against dismissal. In particular, the Ninth Circuit has explained that "[t]he balancing of equitable factors under Rule 19(b) almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity." *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021) (quoting *Jamul Action Comm. v. Simermeyer*, 974 F.3d

984, 998 (9th Cir. 2020)). Indeed, "virtually all the cases to consider the question appear to dismiss under Rule 19 … if the absent parties are Indian tribes invested with sovereign immunity." *Diné Citizens*, 932 F.3d at 857; *see generally* ECF No. 36-1 at 15 & n.6 (collecting cases). Picayune cites no circuit authority to the contrary.

C. The Public Rights Exception Does Not Apply

"The public rights exception" to Rule 19, the Ninth Circuit has explained, "is reserved for litigation that 'transcend[s] the private interests of the litigants and seek[s] to vindicate a public right.'" *Diné Citizens*, 932 F.3d at 858. The exception is not available where the litigation "*threatens* to destroy an absent party's legal entitlements." *Id.* at 860. Picayune's invocation of the exception thus fails twice over. ***First,*** this litigation is about Picayune's parochial interest in avoiding "substantial reductions in gaming revenues at the Chukchansi Gold Resort and Casino" (FAC ¶ 30), not about any transcendent public right. The Ninth Circuit has rejected efforts by commercially motivated plaintiffs to wrap themselves in the public interest to avoid the requirements of Rule 19—in remarkably similar circumstances. In *American Greyhound Racing Inc. v. Hull*, 305 F.3d 1015 (9th Cir. 2002), racetrack owners sued Arizona's governor to enjoin her from negotiating tribal gaming compacts to allow tribes to compete with the racetracks, alleging the governor's actions violated Arizona separation-of-powers principles. Applying Rule 19, the Ninth Circuit held the litigation could not proceed without joining the compacting tribes (whose sovereign immunity precluded joinder). In rejecting the plaintiffs' invocation of the public rights exception, the court explained: "[Plaintiffs'] interest is in freeing themselves from the competition of Indian gaming, not in establishing for all the principle of separation of powers." 305 F.3d at 1026. ***Second***, the litigation plainly does "*threaten[]* to destroy" North Fork's legal entitlement to game at the Madera Site. Indeed, that is Picayune's stated purpose: It seeks an outcome in which "North Fork will not be able to … offer gaming." Opp. 17.

The only authority Picayune cites to apply the exception (Opp. 14) illuminates the contrast with this case. In *Federated Indians of Graton Rancheria v. U.S. Department of the Interior*, 2025 WL 2096171, at *8 (N.D. Cal. July 18, 2025), the court applied the exception because that lawsuit (which concerned compliance with the National Historic Preservation Act and the National

Environmental Policy Act in connection with a land-into-trust decision) "vindicate[d] a broader public interest in the application of laws seeking to preserve historical resources and safeguard the environment." The court also found the litigation would not destroy the absent (Koi) tribe's interests, as "Koi [was] still in the process of pursuing its class III gaming authorization," and the tribe had not developed class I and II gaming in the interim. *Id.* at *9. Here, North Fork has been authorized to conduct class III gaming since 2016, is on the eve of opening its long-planned casino, and Picayune seeks to destroy North Fork's entitlement to game entirely.

The other case Picayune cites, *Kescoli v. Babbitt*, 101 F.3d 1304 (9th Cir. 1996), likewise confirms the exception's inapplicability here. There, an individual Navajo plaintiff challenged a settlement among the federal government, a coal company, the Navajo Nation, and the Hopi Tribe, alleging the settlement was insufficiently protective of sacred burial sites. The Ninth Circuit held that the Navajo Nation and Hopi Tribe were indispensable and that the litigation could not proceed without them. It rejected the invocation of the public rights exception because of the "essentially private nature" of the plaintiff's interests "and the significant threat to the Navajo Nation's and Hopi Tribe's interests" that litigation in their absence would entail. *Id*. at 1312. Other Ninth Circuit decisions are in accord. *See, e.g., American Greyhound Racing*, 305 F.3d at 1026 (discussed above); *Diné Citizens*, 932 F.3d at 860 (public rights exception not available where plaintiff sought to vacate agency decision permitting mining activity, threatening tribal corporation's associated legal rights under that decision).

D. Picayune's Procedural Arguments Fail

Picayune's two procedural arguments against Rule 19 dismissal are easily refuted. ***First,*** it complains that "North Fork offered no evidence in support of its motion," and that the Court may deny the motion based on this "evidentiary default." Opp. 8. The argument relies entirely on *Lennar Mare Island, LLC v. Steadfast Ins. Co.*, 139 F. Supp. 3d 1141, 1151 (E.D. Cal. 2015), where the court observed that "it *may* be necessary to review evidence beyond the pleadings" under Rule 12(b)(7), *id.* at 1150 (emphasis added). That is unnecessary here, where North Fork's interest is apparent from the FAC and the relevant issues turn entirely on public law (not the terms of

extrinsic contractual relationships, as in *Lennar*). Indeed, Picayune identifies no issues on which extrinsic "evidence" is required.

Second, it complains (Opp. 8 n.1) that "North Fork's motion is procedurally flawed twice over" because (i) North Fork "*is* a party to this suit, so there is no party that needs to be joined," and (ii) "the Ninth Circuit has confirmed the 'appropriate manner' for asserting such arguments is … 'a Rule 12(b)(1) motion to dismiss.'" As to the first point, North Fork's sovereign immunity disposes of it: North Fork has not waived its sovereign immunity, and Congress has not abrogated it; Picayune cannot overcome that state of affairs through the self-help of naming the tribe in its lawsuit. North Fork "*is*" a party to this suit unlawfully, over its objection. As to the second, what the Ninth Circuit has actually confirmed is that "Rule 12(b)(1) is … ***a*** proper vehicle for invoking sovereign immunity from suit," not that it is "the" only one. *Welsh*, 178 F.4th at 487 n.4 (emphasis added). Moreover, casting sovereign immunity in purely jurisdictional terms does not help Picayune, because subject-matter jurisdiction defects cannot be waived and courts have an "independent obligation" to address them. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 501 (2006).

II. RULE 19 INDEPENDENTLY REQUIRES DISMISSAL OF THE IGRA CLAIM, WHICH CANNOT PROCEED IN THE SECRETARY'S ABSENCE

Picayune's omission of the Secretary as a party provides an independent basis for dismissing its IGRA claim for the reasons stated in North Fork's motion (ECF No. 36-1 at 15-16). Picayune's response (Opp. 15) is that: (i) the Secretary has no interest in the IGRA claim because Picayune does not "challenge" any action by the Secretary, and (ii) if he does have an interest, just join him. Both arguments fail. The Secretary has an interest in this litigation because the relief sought would undermine Secretarial Procedures issued for the sole purpose of authorizing North Fork to game at the Madera Site. That is plainly sufficient under Rule 19. And the Secretary's joinder is not feasible under 5 U.S.C. § 702 because § 702 waives sovereign immunity only for direct APA challenges to the Secretary's actions, all of which are now time-barred. *See Big Lagoon Rancheria v. California*, 789 F.3d 947, 954 (9th Cir. 2015) (en banc).

Picayune's cited cases do not overcome these problems. In *EEOC v. Peabody Western Coal Co.*, the Ninth Circuit concluded the Secretary could *not* be joined. 610 F.3d 1070, 1083 (9th

Cir. 2010) ("[W]e conclude that EEOC cannot join the Secretary as a defendant."). And *Armstrong v. Exceptional Child Center, Inc.* holds that plaintiffs "cannot, by invoking [courts'] equitable powers, circumvent Congress's exclusion of private enforcement" in statutory remedial provisions. 575 U.S. 320, 328 (2015).

III. PICAYUNE FAILS TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED

A. Under *Big Lagoon*, Picayune's APA And IGRA Claims Are Impermissible Collateral Attacks On The Secretary's 2012 And 2016 Actions

Picayune's argument for why its case does not present an impermissible collateral attack barred under *Big Lagoon* elevates form over substance. It states:

> Picayune … challenges *neither* the issuance of Secretarial Procedures *nor* the … decision to take the Madera Parcel into trust. Rather, Picayune alleges here that: (1) the NIGC should not have approved [North Fork's] Management Contract …. because gaming on the Madera Parcel cannot occur under IGRA, and (2) North Fork's … gaming … runs afoul of the *terms* of the Secretarial Procedures, which allow for gaming on "eligible" lands, which the Madera Parcel is not.

Opp. 15. In another formulation, it states: "Picayune's goal is to *enforce* the procedures, not to 'nullify' them." *Id.* at 16 n.6 (emphasis added). These are not viable distinctions. The Secretary took the Madera Site into trust as gaming-eligible land under IGRA and issued Secretarial Procedures expressly to authorize North Fork to conduct class III gaming at the Madera Site. *See* Secretarial Procedures for the North Fork Rancheria of Mono Indians §§ 4.2, 18.2, Appendix A ("Map and Description of Proposed Class III Gaming Site"). The gaming eligibility of the Madera Site was an essential element of each decision.

Picayune cannot evade *Big Lagoon* by arguing that it does not formally "challenge" the 2012 or 2016 decisions or request their formal vacatur. *Big Lagoon* itself illustrates that the analysis is functional, not formal. California in that case did not seek any affirmative relief whatsoever—indeed, the State was *the defendant*, and the impermissible collateral attack came in the form of arguments California raised in defense of its refusal to negotiate a compact with the tribe. *See* 789 F.3d at 952. The collateral attack here is more direct, as Picayune *does* seek affirmative relief that would undermine the prior decisions.

B. Picayune's APA Claim Fails Because The NIGC And Its Chair Have No Statutory Authority To Revisit Or Reject The Secretary's Prior Actions

Picayune has no plausible claim that the NIGC violated either IGRA or the APA because the NIGC, as a federal agency, "literally has no power to act[] … unless and until Congress confers power upon it." *Louisiana Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 357 (1986). Congress authorized "the Secretary" to determine whether land like the Madera Site is eligible for gaming under 25 U.S.C. § 2719(b)(1)(A), without giving any reviewing authority to the NIGC. As a result, neither the NIGC nor its Chairman have any "authority to override the Secretary's decision." *Frank's Landing Indian Cmty. v. Nat'l Indian Gaming Comm'n*, 202 F. Supp. 3d 1204, 1208 (W.D. Wash. 2016). Put differently, the NIGC cannot "'be held accountable for the effects of actions it has no discretion not to take.'" *Id.* at 1208.

Picayune's argument that *Frank's Landing* "has no relevance here" because the case "did not involve a management contract" (Opp. 19 n.7) misses the point entirely. The court there dismissed a claim that the NIGC violated IGRA and the APA by following, rather than rejecting, the Secretary's determination on a threshold issue Congress had delegated to the Secretary (i.e., whether the tribe would be federally recognized). *See* 202 F. Supp. 3d at 1204. The court's reasoning is directly applicable here. Just as "Congress did not delegate authority to the [NIGC] to override decisions of the Secretary as to whether a community is an 'Indian tribe,'" *id.* at 1209, Congress has not authorized the NIGC to override the Secretary's determination as to whether land is eligible for gaming or the decision to authorize gaming on that land via Secretarial Procedures.

Picayune cannot fill the statutory gap in the NIGC's authority by selectively quoting NIGC regulations (Opp. 18-19). As an initial matter, the NIGC cannot arrogate to itself authority that Congress has assigned the Secretary, and agency regulations cannot be interpreted "in a way that contravenes a statute." *League of Wilderness Defs. v. Forsgren*, 309 F.3d 1181, 1190 (9th Cir. 2002). In any event, the regulations Picayune cites do not even *purport* to expand the NIGC's authority so as to authorize the Chair to depart from the Secretary's prior determinations. Rather, 25 C.F.R. § 531.1(a) merely requires that a management contract "[p]rovide that all gaming covered by the contract will be conducted in accordance with" IGRA. And 25 C.F.R. § 533.6 authorizes the Chair to "disapprov[e]" a management contract that does not so state.

Nor can Picayune fill that statutory gap by asserting (Opp. 18) that the Ninth Circuit has already addressed "this precise question" in *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899 (9th Cir. 2002). As explained in North Fork's motion (ECF No. 36-1 at 20 n.8), the issue before the NIGC in that case concerned a novel tribal lottery arrangement the Secretary had not yet evaluated. The case was not an APA case at all, and the "precise question" before the court was whether the affected tribe could continue operating its lottery based on the NIGC's approval "until the NIGC's decision is overturned by means of a proper challenge[.]" 295 F.3d at 909. The Ninth Circuit allowed the lottery to continue its operations, while leaving open the possibility of a proper APA challenge. *See id.* at 910 n.12 ("This Court draws no conclusions as to how the Lottery might fare when properly challenged[.]"). Here, unlike in *AT&T*, the Secretary has already made the relevant determination (twice).

Picayune objects (Opp. 18) that Congress could not have assigned the NIGC "such a meaningless and perfunctory role." The NIGC's role is neither. To the contrary, Congress authorized the NIGC to play the critical role of ensuring that management contracts protect the interests of signatory tribes. *See* 25 U.S.C. § 2711. But the NIGC is indisputably a subordinate agency "*within* the Department of the Interior," 25 U.S.C. § 2704 (emphasis added), not an independent body outside of it. Picayune does not point to a single case in which a subordinate agency within any federal department has been held to have *violated the APA* by relying upon predicate determinations made by more senior officials. The *AT&T* case does not speak to the issue. The district court's decision in *Frank's Landing*, however, speaks to it directly—and fully supports dismissal here. As in *Frank's Landing*, Picayune's "dispute is with the Secretary and not the NIGC," 202 F. Supp. 3d at 1208. As a result, Picayune "has failed to state a legally cognizable claim against the [NIGC]," *id.*, and its APA claim should be dismissed on that basis.

C. Picayune's IGRA Claim Fails Because IGRA Provides No Cause Of Action For *Picayune* To "Enforce" *North Fork's* Secretarial Procedures

North Fork's motion (ECF No. 36-1 at 21) explains why Picayune has no cause of action here under the plain terms of IGRA, 25 U.S.C. § 2710(d)(7)(A), and why dismissal under Rule 12(b)(6) is therefore warranted. In particular, § 2710(d)(7)(A)(ii) permits suits "initiated by a State

or Indian tribe" to "enjoin a class III gaming activity … conducted in violation of any Tribal-State compact," and § 2710(d)(7)(A)(iii) separately permits suits "initiated by the Secretary to enforce [Secretarial Procedures]." There is no dispute that this case falls outside the plain terms of each category. Instead, Picayune urges (Opp. 8-11) the Court to treat compacts and Secretarial Procedures as "functionally equivalent" for these purposes, because the Ninth Circuit has done so for other purposes. This Court, however, would be the first to so hold—and it should decline the invitation.

"Where a statute creates a comprehensive regulatory scheme and provides for particular remedies, courts should not expand the coverage of the statute." *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000). The particular remedies IGRA provides reflect the distinct status of tribes gaming under tribal-state gaming compacts (which may be enforced by either "a State or Indian tribe" under § 2710(d)(7)(A)(ii)), and tribes gaming under Secretarial Procedures imposed after a State's refusal to negotiate with a tribe in good faith (which may be enforced only by "the Secretary" under § 2710(d)(7)(A)(iii)). This distinction is critical, as it avoids rewarding States that refuse to negotiate in good faith with tribes in the first instance with the ability to usurp the Secretary's role by later bringing their own "enforcement" actions against tribes that proceed to game under Secretarial Procedures.

The Ninth Circuit's recent decision in *Blue Lake Rancheria* is not to the contrary. The court there held that the plaintiff tribes could sue nontribal entities (*i.e.*, Kalshi) to enforce *their own* Secretarial Procedures to enjoin "unlawful class III gaming activity that violates the secretarially approved regime *on their [own] lands*." 2026 WL 2728466, at *11 (emphasis added). This case differs in every respect. Picayune seeks to "enforce" *North Fork's* procedures *against North Fork* for gaming activities conducted *on North Fork's tribal land*. There is no sound reason in law or policy to open the door to such interference by competing tribes (or hostile States), and this Court should not be the first to do so.

D. Picayune's Case Fails Under Basic Principles Of Federalism And Administrative Law

Picayune's efforts to rehabilitate its case against the principles of federalism and administrative law set forth in North Fork's motion (ECF No. 36-1 at 22-25) ignore the force of

those principles and the cases that articulate them.

First, as noted, "[i]t is black-letter administrative law that in an [APA] case, a reviewing court should have before it neither more nor less information than did the agency when it made its decision." *CTS Corp. v. EPA*, 759 F.3d 52, 64 (D.C. Cir. 2014) (internal quotation marks omitted); *see also Asarco v. EPA*, 616 F.2d 1153, 1159 (9th Cir. 1980) ("The focal point for judicial review [under the APA] is the administrative record already in existence, 'not some new record made initially in the reviewing court.'") (quoting *Camp v. Pitts*, 411 U.S. 138, 142 (1973)). This bedrock principle is fatal to Picayune's case—and Picayune's response seems to recognize as much. Because it cannot plausibly argue that the NIGC, when approving North Fork's management contract in January 2024, had before it the California Court of Appeal's December 2025 decision in *Picayune Rancheria*, Picayune altogether abandons any reliance on that decision. Instead, it argues only that "at the time the NIGC made that decision, *Stand Up II* had already held [in 2021] that the People of California 'annul[led] Governor Brown's concurrence[.]'" Opp. 20. In other words, the 2025 decision has become entirely irrelevant to its APA claim.

Second, Picayune's exposition on federalism (Opp. 20-22) fails to distinguish *Leser v. Garnett*, 258 U.S. 130 (1922), and the so-called "retrocession cases" that North Fork addressed at length in its motion. Picayune argues (Opp. 22) that *Leser* involved a "unique situation" in which state legislatures were "playing a 'ratifying function rather than engaging in traditional lawmaking,'" but the distinction fails twice over. First, the state process on which Picayune relies here was itself the exercise of a "ratifying function." *See* Opp. 21 ("[T]he role that IGRA gives to States is 'a veto or approval' in the form of a gubernatorial concurrence."); *see also id.* 3-4 (discussing the state ratification process culminating in Proposition 48). Second, *Leser* articulates a broader principle that applies outside the amendment-ratification process, as the retrocession cases reflect. Picayune seeks to diminish those as "a handful of cases" in which "[s]ome courts" held that "an acceptance of retrocession by the Secretary made that retrocession effective, regardless of whether that retrocession was effective under state law." Opp. 22. That is, indeed,

what those courts held—and they did so in circumstances analogous to those presented here. *See generally United States v. Lawrence*, 595 F.2d 1149, 1151 (9th Cir. 1979).[3]

Picayune objects to this line of authority on the ground that it is inconsistent with any system of "cooperative federalism" that "seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme." Opp. 21 (quoting *Pauma Band of Luiseno Mission Indians of Pauma & Yuima Rsrv. v. California*, 813 F.3d 1155, 1160 (9th Cir. 2015)). But there is no inconsistency. For any such system to function—*i.e.*, to "balance the competing interests" and give each sovereign a role to play—the system must have both a hierarchy and an order of operations. What these cases reflect is that the federal government's sovereignty is superior to that of States and tribes, and that once a State has formally acted, federal officials may thereafter rely on those actions to carry out their assigned functions. Justice Brandeis explained the point more than a century ago: A state's notification to the U.S. Secretary of State that it had ratified the Nineteenth Amendment was "conclusive upon him, and, being certified to by his proclamation, is conclusive upon the courts." *Leser*, 258 U.S. at 137. So too in the retrocession cases, where the Ninth Circuit explained that "acceptance of the retrocession by the Secretary … made the retrocession effective, whether or not the Governor's proclamation was valid under [state] law." *Lawrence*, 595 F.2d at 1151 (internal quotation marks omitted).

The Ninth Circuit's decision in *Confederated Tribes of Siletz Indians v. United States*, 110 F.3d 688 (9th Cir. 1997), is consistent with that framework. The court there explained that "[t]he concurrence (or lack thereof) is given effect under federal law, but the authority to act is provided by state law." *Id*. at 697. In other words, when governors concur, they do so "under the authority of state law," *id.*, but under IGRA's system of cooperative federalism, *the effect* of a concurrence is determined "under federal law." In 2018, earlier in this long saga, the D.C. Circuit made clear that "[i]n this case, the Department made the required determinations, and [the] California governor concurred." *Stand Up*, 879 F.3d at 1186. Picayune's case depends on re-writing that

[3] Picayune's reference to "[s]ome courts" should not be read to imply a split of authority, as Picayune cites not a single case to have come out the other way.

history to elevate subsequent state-court developments over the long-settled decisions of federal officials and federal courts. Neither the APA nor principles of federalism permit doing so.

Picayune is entirely wrong (Opp. 23) that, under *Picayune Rancheria*, "North Fork is precluded from arguing here that the state-law status of the Governor's concurrence is irrelevant to North Fork's ability to offer gaming under federal law." The court in that case expressly *declined* to rule on North Fork's ability to game under federal law, recognizing that the issue turned on questions of federal law it could not answer: "What effect, ***if any***, California voters' annulment of the concurrence will have on North Fork's ability to operate a casino on the Madera Site presents questions of federal law for which there is no direct precedent. We cannot answer those questions[.]" *Picayune Rancheria of Chukchansi Indians v. North Fork Rancheria of Mono Indians*, 340 Cal. Rptr. 3d 219, 231 (Cal. Ct. App. 2025).[4]

Respectfully, the emphasized language above forecloses even the most charitable reading of Picayune's argument, which is that it would be somehow improper for the Court of Appeal's nullification decision *under California law* to not result in a parallel nullification *under federal law*. But the Court of Appeal itself recognized that possibility—and left that "question[] of federal law" for the federal courts to decide. Under the APA and IGRA (and basic principles of federalism), the answer is that Picayune cannot unwind the prior federal decisions. Having previously "abandoned" and "forfeited" its claims, *Stand Up*, 879 F.3d at 1186, Picayune cannot resurrect them now.

CONCLUSION

The Court should dismiss Picayune's First Amended Complaint with prejudice.

[4] Picayune faults North Fork for having fought its state-court claims "tooth and nail" (Opp. 17), but it was important for North Fork to ensure that any state-court ruling would be narrowly confined to questions of state law (as it ultimately was), given Picayune's attempts to extend it.

Dated: September 24, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2026, I electronically filed the above document with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to all registered counsel.

Dated: September 24, 2026

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