

January 8, 2012

Cesar Caballero

6368 Pleasant Valley Road

El Dorado, CA 95623

El Dorado LAFCO
550 Main Street
Placerville, CA 95667

Subject: Reconsideration Request for the Shingle Springs Rancheria Reorganization (LAFCO Project No. 2012-14)

"LAFCOs were created by the Legislature for a special purpose: to discourage urban sprawl and to encourage the orderly formation and development of local governmental agencies; such a commission is the **"watchdog"** the Legislature established to guard against the wasteful duplication of services that results from indiscriminate formation of new local agencies or haphazard annexation of territory to existing local agencies." Fifth District: 274 Cal.App.2d 545. 1 July 1969 City of Ceres v. City of Modesto

With that said, the PEOPLE OF EL DORADO COUNTY, formally request that LAFCO protect the interests of the people in the matter of LAFCO Project #87-15 and 2012-14 by adhering to their own policies and procedures.

LAFCO is vacating the 1988 contract with the Shingle Springs Rancheria represented by an entity called "the Sacramento-Verona Band of Homeless Indians" and is replacing it with a new contract 2012-14 for a new entity called "Shingle Springs Band of Miwok Indians". This is a change in circumstances which necessitates the proper application of policies, procedures and due diligence to protect the American public.

We the people protest for the following reasons:

- 1) NO FEDERAL GOVERNMENT SIGN-OFF: It is a violation of Federal law for a State agency to assume jurisdiction of Federal land without the Federal Government's written release. Since 1988 EID (El Dorado Irrigation District) has been providing service without receiving authorization from the legal owners who are the People of the United States through the BIA (Bureau of Indian Affairs, Department of the Interior). The "tribe" is not the legal land holder of the Shingle Springs Rancheria and does not have standing to make the request.

We request that LAFCO provide full public disclosure and evidence that it has received the



proper authorizations from the Federal Government.

- 2) NO WAIVER OF SOVEREIGN IMMUNITY/ NEGATES LAFCO JURISDICTION: LAFCO required that the "tribe" waive sovereign immunity to receive services in order to protect the tax payers of the United States. The "tribe" has failed to waive sovereign immunity leaving the public and LAFCO with no recourse should the "tribe" breach the contract or another liability issue arises from the "tribe's" failure to prove their Miwok identity. The "tribe" has a history of bilking government agencies and private vendors resulting in tax payer losses in the hundreds of thousands of dollars. See Diamond Springs Fire District v. Shingle Springs Band of Miwok Indians case No. C064919, and Sharper Image v. Shingle Springs Band of Miwok Indians, case No. 2:10-cv-01396 FCD GGH

We request that LAFCO provide full public disclosure and evidence that it has received the proper waivers of sovereign immunity from the "tribe".

- 3) DECEMBER 2009 RULING AGAINST EID: EID was sued by Voices for Rural Living following its adoption of the MOU. Judge Melikian of El Dorado County Superior Court ruled against EID on two grounds 1) EID did not comply with CEQA when it adopted the MOU 2) **that EID did not have the authority to unilaterally invalidate the LAFCO conditions.** In other words, LAFCO conditions are mandatory to protect the public.
- 4) We request that LAFCO enforce policies, procedures and conditions on EID and the Shingle Springs Rancheria.
- 5) FAILING TO VERIFY THE LEGAL ENTITY DOING BUSINESS: The original annexation contract of 1988 was made with the Sacramento-Verona Band of Homeless Indians. The new 2012-14 LAFCO contract in dispute is with a new "tribe" "The Shingle Springs Band of Miwok Indians". The citizen tax payers requesting this reconsideration were required to provide legal identification to file this request yet the "tribe" receiving millions of dollars of government services has not been required to show proof of their legal, BIA sanctioned name and ethnicity change to "SHINGLE SPRINGS BAND OF MIWOK INDIANS". Legal entities of any sort are required by law to provide proper identification to receive government services and to protect the tax payers, particularly when there is a name change of the legal entities involved.

We request that LAFCO provide the public with the evidence of identification of the legal name change from Sacramento-Verona Band of Homeless Indians to Shingle Springs Band of Miwok Indians and its representatives.

Sincerely,



Cesar Caballero



Request for Reconsideration:

The concerned citizens of El Dorado County are submitting this request for reconsideration of LAFCO's approval for EID to supply water to the group of people on the Shingle Springs Rancheria who call themselves the Shingle Springs Band of Miwoks.

We would like to emphasize that the LAFCO and EID Board of Directors have willfully ignored their own procedures for due diligence and have, with malice aforethought, committed fraud. The documents submitted previously and accompanying this letter demonstrate that the BIA does not have the original MOU in its records because it would reflect that the Verona Band of Homeless Indians were not a federally recognized tribe and therefore could not enter into a contract on a rancheria. The BIA also revealed through testimony by its own legal staff that it had never recognized the Veronas as a federally recognized tribe. Also attached are excerpts from the litigation initiated by EL Dorado County in 2003 that describes in detail the group of people who call themselves the Shingle Springs Band of Miwoks are neither a federally recognized tribe, but, aren't even Indians. So far, not one of the people on the Rancheria, including the present Tribal Chairman, have produced an official BIA document verifying they are of Miwok descent.

We would like to point out to the individual members of the EID and El Dorado County Board of Directors that you can be held both in civil and criminal liability if this fraud is continued to be reinforced by your actions.

I, Cesar Caballero am the applicant requesting the reconsideration (LAFCO, Project No. 2012-14) Please carbon copy Kristen Mackey on all communication. Also, staff may communicate with her on any and all issues related to the reconsideration.

Sincerely, Cesar Caballero
Cesar Caballero (530) 303-8350 contact@miwoktribe.us
Kristen Mackey: 530.391.8681 Kristenmichel@yahoo.com





United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

IN REPLY REFER TO:

JUN 6 - 2008

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JUN 6 2008

EL DORADO LAFCO

CERTIFIED MAIL – 7006 3450 0002 4647 0884

FC 08583

Jose Henriquez
550 Main Street, Suite E
Placerville, CA 95667

Dear Mr. Henriquez:

We are in receipt of your Freedom of Information Act (FOIA) request dated May 19, 2008, regarding the Verona Band of Homeless Indians, El Dorado County APN No. 319-100-37. This request has been assigned FOIA No. 08583 for processing. Please cite this number in any future correspondence or communications with the Pacific Regional Office regarding your request.

You have requested the following:

Copies of any and all documents involving the Bureau of Indian Affairs (BIA) approval of conditions imposed by the El Dorado Local Agency Formation Commission (LAFCO). At the time the latter agency approved the annexation of the Shingle Springs Rancheria (assessor's parcel number 319-100-37) into the El Dorado Irrigation District (EID) for the provision of potable water. LAFCO conditionally approved the annexation on July 7, 1988 and the Certificate of completion, which technically finalizes the annexation, was filed and recorded on March 9, 1989. The time lines for LAFCO action were between 1987 to 1989, which BIA's consent would have been given at the latter end of that timeline.

We were unable to locate any responsive documents at this office for which you have requested. Please be advised that this is not a refusal to disclose documents but rather a notification that there are no documents to disclose. The records you are requesting may be in a system of records at the Central California Agency. The address for where you may submit your request is as follows:

Central California Agency
650 Capital Mall, Suite 8-500
Sacramento, California 95814

TAKE PRIDE
IN AMERICA 

The fee incurred in processing your request was under \$30.00, so you will not be charged a fee under 43 CFR 2.16 (a) 2.

Under law we are required to advise you of your appeal rights whenever informing you that we believe that we have no records responsive to your FOIA request. Therefore, if you have additional information (not provided in your request letter) that would lead you to believe that documents responsive to your request are, indeed, on file in files maintained by the Bureau of Indian Affairs, you may file a FOIA appeal by writing to

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U.S. Department of the Interior
Office of the Solicitor
1849 C Street, N.W., Mail Stop 6556-MIG
Washington D.C. 20240
Attn: FOIA Appeals Office

JUN 2 2008

EL DORADO LAFCO

Your appeal letter must be marked, both on its envelope and at the top of its first page, with the legend "FREEDOM OF INFORMATION APPEAL". Your appeal letter should be accompanied by a copy of your original FOIA request and an indication of where you believe responsive documents might be filed within the Bureau of Indian Affairs. Your appeal letter must be received by the FOIA Appeals officer no later than 30 workdays after the date of the final response letter.

Should you have any questions, please contact Lorrae Dietz, Alternate Freedom of Information Act Coordinator, at (916) 978-6071.

Sincerely,

Acting



Regional Director

cc: Freedom of Information Act Coordinator
Superintendent, Central California Agency

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

550 Main Street Suite E • Placerville, CA 95667

Phone: (530) 295-2707 • Fax: (530) 295-1208

lafco@co.el-dorado.ca.us

www.co.el-dorado.ca.us/lafco

May 19, 2008

Doug Garcia, FOIA Coordinator
United States Department of Interior
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way Room W-2820
Sacramento, CA 95825

Subject: **** FREEDOM OF INFORMATION ACT REQUEST ****
Land held by for the use and benefit of the Sacramento Verona Band of Homeless Indians, El Dorado County APN 319-100-37

Dear Mr. Garcia,

This is a request under the Freedom of Information Act. I request that a copy of the following documents containing the following information be provided to this agency:

Copies of any and all documents involving the Bureau of Indian Affairs (BIA) approval of the conditions imposed by the El Dorado Local Agency Formation Commission (LAFCO) at the time the latter agency approved the annexation of the Shingle Springs Rancheria (assessor's parcel number 319-100-37) into the El Dorado Irrigation District (EID) for the provision of potable water. LAFCO conditionally approved the annexation on July 7, 1988 and the Certificate of Completion, which technically finalizes the annexation, was filed and recorded on March 9, 1989. The timelines for the LAFCO action were between 1987 to 1989, which BIA's consent would have been given at the latter end of that timeline.

As I understand it, BIA consent is required before a tribe may enter into a legal agreement with a public or private entity. In addition, California State Law requires landowner consent to any LAFCO proceedings. Our records are missing the BIA consent of either the LAFCO proceedings or to the conditions this agency imposed on the annexation. This request was originally submitted to the Central California Agency and a member of its staff recommended that I submit this same request to the Pacific Region Office.

PLEASE NOTE: In 1987, the Shingle Springs Band of Miwok Indians (Tribe) entered into an agreement with EID, to which the BIA consented. We have that consent of file and a copy of the consent to that agreement would not satisfy this request. If BIA believes that it does, then LAFCO respectfully requests that BIA provide sufficient information and documentation to support that belief.

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COMMISSIONERS

Public Member: Francesca Loftis • Alternate Public Member: Norm Rowlett

City Members: Carl Hagen, Ted Long • Alternate City Member: Roberta Colvin

County Members: Ron Briggs, James R. Sweeney • Alternate County Member: Helen Baumann

Special District Members: Ken Humphreys, Harry J. Norris • Alternate Special District Member: Michael Cooper

STAFF

José C. Henríquez, Executive Officer • Erica Sanchez, Policy Analyst

Denise Tebaldi, Interim Commission Clerk • Andrew Morris, Commission Counsel

FOIA Request to BIA
May 19, 2008
Page 2 of 2

In order to help determine my status to assess fees, I am the Executive Officer of El Dorado LAFCO, a California State agency that governs the boundaries of local governments, with notable exceptions. This request is made for purposes of information gathering and not for commercial use.

As a fellow public agency, I request a waiver of all fees for this request. Disclosure of the requested information to LAFCO is in the public interest because it is likely to contribute significantly to the public understanding of the annexation proceedings from 20 years ago and is not primarily in my or my agency's commercial interest.

Thank you for your consideration of my request. Please call me at 530-295-2707 if you have any questions regarding this letter.

Regards,



José C. Henríquez
Executive Officer
550 Main Street, Suite E
Placerville, CA 95667
530-295-2707
www.co.el-dorado.ca.us/lafco



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

IN REPLY REFER TO:
Real Estate Services
08J51-FOIA013

JUN 13 2008

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JUN 13 2008
EL DORADO LAFCO

Mr. Jose' C. Hernandez, Executive Officer
El Dorado LAFCO (Local Agency Formation Commission)
550 Main Street, Suite E
Placerville, California 95667

Dear Mr. Hernandez:

This is in response to your Freedom of Information Act (FOIA) request control No. 08J51-FOIA013, dated May 16, 2008, and received in our office on June 5, 2008.

You requested "copies of any documentation involving the Bureau of Indian Affairs (BIA) approval of the conditions imposed by the El Dorado Local Agency Formation Commission (LAFCO) at the time the latter agency approved the annexation of the Shingle Springs Rancheria (assessor's parcel number 319-100-37) into the El Dorado Irrigation District (EID) for the provision of potable water. LAFCO conditionally approved the annexation on July 7, 1988 and the Certificate of Completion, which technically finalizes the annexation, was filed and recorded on March 9, 1989. The Timelines for the LAFCO action were between 1987 to 1989, which BIA's consent would have been given at the latter end of that timeline. PLEASE NOTE: In 1987, the Shingle Springs Band of Miwok Indians (Tribe) entered into an agreement with EID, to which the BIA consented. We have that consent of file and a copy of that consent would not satisfy this request. If BIA believes that it does, then LAFCO respectfully requests that BIA provide sufficient information and documentation to support that belief."

Upon staff review of our files for Shingle Springs Rancheria, we were not able to locate any documents per your request.

Under law, we are required to advise you of your appeal rights whenever informing you that we believe that we have no records responsive to your FOIA request. Therefore, if you have additional information (not provided in your request letter) that would lead you to believe that documents responsive to your request are indeed, on file in files maintained by the Department of the Interior, you may file a FOIA appeal by writing to the FOIA Appeals Officer, U.S. Department of the Interior, 1849 C Street, N.W., Mail Stop 6556-MIB, Washington, D.C. 20240. Your appeal letter must be marked, both on its envelope and at the top of its first page, with the legend "FREEDOM OF

INFORMATION APPEAL. Your appeal letter should be accompanied by a copy of your original letter FOIA request (a copy of which is enclosed with our response, for your convenience) and a indication of where you believe responsive documents might be filed within the Department of the Interior. Your appeal letter must be received by the FOIA Appeals Officer no later than 30 workdays after the date of the final response (this letter).

This concludes our response within the Department of the Interior.

If you have any questions, please contact either Ms. Teresa Lone Wolf, Realty Specialist, at (916) 930-3773 or Ms. Angela Pittman, FOIA Coordinator, at (916) 930-3766.

Sincerely,



Troy Burdick
Superintendent

Enclosures

bc: FOIA Coordinator, CCA

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JUN 14 2008

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LOCAL AGENCY FORMATION COMMISSION

550 Main Street Suite E • Placerville, CA 95667
Phone: (530) 295-2707 • Fax: (530) 295-1208
lafco@co.el-dorado.ca.us
www.co.el-dorado.ca.us/lafco

08 J51-FOIA 013
FREEDOM OF INFORMATION REQUEST
RECEIVED 5-16-2008
CREATION DUE 10-1-2008

May 16, 2008

VIA HAND DELIVERY

Angela Pittman, FOIA Coordinator
United States Department of Interior
Bureau of Indian Affairs, Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

Subject: ****** FREEDOM OF INFORMATION ACT REQUEST ******
Land held by for the use and benefit of the Sacramento Verona Band of Homeless Indians, El Dorado County APN 319-100-37

Dear Ms. Pittman,

This is a request under the Freedom of Information Act. I request that a copy of the following documents containing the following information be provided to this agency:

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PLEASE NOTE: In 1987, the Shingle Springs Band of Miwok Indians (Tribe) entered into an agreement with EID, to which the BIA consented. We have that consent of file and a copy of that consent would not satisfy this request. If BIA believes that it does, then LAFCO respectfully requests that BIA provide sufficient information and documentation to support that belief.

In order to help determine my status to assess fees, I am the Executive Officer of El Dorado LAFCO, a California State agency that governs the boundaries of local governments, with notable exceptions. This request is made for purposes of information gathering and not for commercial use.

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Denise Tebaldi, Interim Commission Clerk • Andrew Morris, Commission Counsel

ANGELA PITTMAN

FOIA Request to BIA
May 16, 2008
Page 2 of 2

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Thank you for your consideration of my request. Please call me at 530-295-2707 if you have any questions regarding this letter.

Regards,



José C. Henriquez
Executive Officer
550 Main Street, Suite E
Placerville, CA 95667
530-295-2707
www.co.el-dorado.ca.us/lafco

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October 21, 2008

Cesar Caballero
6368 Pleasant Valley Road
El Dorado, CA 95623

Subject: Tribal Name

Mr. Caballero,

Per your request, this letter intends to clarify the documents found on the file for the Shingle Springs Rancheria Annexation to EID (LAFCO #87-15) project. The application materials were signed by Chairman Anthony Fonseca on behalf of the Shingle Springs Rancheria. Almost all materials in that file reference either the parcel in question (APN 319-100-37) or the "Shingle Springs Rancheria." However, neither of these two descriptions references the name of the Native American Tribe that lives on the Rancheria. The Tribe's name is only mentioned in the 1987 file in three documents:

- The April 1988 Minutes
- The July 1988 motion recommending LAFCO approval
- On a handwritten note in the LAFCO files

As LAFCO understands it, the name of the Tribe at the time of the 1987 application was, "Sacramento Verona Band of Homeless Indians." This name is corroborated by the El Dorado County Assessor's records. Please note that there is a possibility that the official name of the Tribe has been subsequently changed by the Bureau of Indian Affairs or by the Tribe itself.

Please contact me at 530-295-2707 if you have any questions regarding this letter.

Regards,



José C. Henríquez
Executive Officer

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COMMISSIONERS

Public Member: Francesca Loftis • Alternate Public Member: Norm Rowett

City Members: Carl Hagen, Ted Long • Alternate City Member: Mark Acuna

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STAFF

José C. Henríquez, Executive Officer • Erica Sanchez, Policy Analyst

Denise Tebaldi, Interim Commission Clerk • Andrew Morris, Commission Counsel

3.

400 Capitol Mall, Suite 1800
Sacramento, CA 95814-4413
Telephone: (916) 446-4469
Facsimile: (916) 446-4535

Attorneys for Plaintiff
El Dorado County

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EL DORADO COUNTY, a Political Subdivision of
the State of California,

CASE NO. CIV.S-02-1818 GEB KJM

Plaintiff,

**DECLARATION OF WILLIAM
MILES WIRTZ**

v.

GALE A. NORTON, in her Capacity as Secretary of
the Interior; PHILIP N. HOGAN, in his Capacity as
Chairman of the National Indian Gaming
Commission; NATIONAL INDIAN GAMING
COMMISSION; AURENE MARTIN, in her
Capacity as Assistant Secretary of the Interior for
Indian Affairs; and BUREAU OF INDIAN
AFFAIRS,

Defendants.

SHINGLE SPRINGS BAND OF MIWOK
INDIANS,

Intervenor.

I, William Miles Wirtz hereby declare that I have first hand knowledge of the following and hereby swear thereto under penalty of perjury:

My California State Bar number is 37298. I was admitted to the California State Bar from June 14, 1965 until December 31, 1998 when I voluntarily chose to assume inactive status.

4

While admitted to the California Bar I was employed as an attorney with the United States Department of the Interior, Office of the Regional Solicitor. ("Regional Solicitor's Office") from 1971 to 1999.

In that capacity I rendered services to the Bureau of Indian Affairs ("BIA"), United States Department of the Interior ("Interior"), one of the clients to which I was assigned.

In that capacity, I was involved with the interpretation and application of BIA policy regarding Indian Rancherias and bands and groups of Indians and individual Indians as well as federally recognized Indian tribes and reservations and lands held in trust.

In that capacity, I was aware of the BIA policy for the Sacramento Area Office and the BIA's Washington office regarding California Indian groups and the California Rancherias, including the Shingle Springs Rancheria. I was also aware that the Shingle Springs Band attempted to organize as a group in 1979.

In that capacity, I had access to various public records, historical documents and statements of federal public policy relating to California Indian groups and California Rancherias.

During my employment at the Solicitor's Office it was part of the course and scope of my duties to understand and articulate the policies and procedures of the BIA, including the process by which the federal government officially recognized Indian tribes.

During my tenure with the BIA it was the policy of the BIA that while a reservation was necessarily held in trust for the benefit of a particular tribe, it was not necessarily true that a Rancheria legally constituted either an "Indian reservation" or "Indian country."

FEDERAL POLICY REGARDING TRIBAL RECOGNITION AND GAMING

Federal recognition enables Indian tribes to participate in federal assistance programs and can result in the granting of significant rights as sovereign entities—including exemptions from state and local civil jurisdiction. Federal recognition is also one of the requirements for legal casino gaming under the Indian Gaming Regulatory Act ("IGRA").

In 1978 the BIA established a regulatory process intended to provide a uniform and objective approach to recognizing tribes. This process requires groups that are petitioning for recognition to submit evidence that they meet certain criteria - - basically that the petitioner has continued to exist as a political and social community descended from a historic tribe.

The term "Indian tribe" encompasses within its meaning all Indian tribes, bands, villages, groups, and pueblos as well as Eskimos and Aleuts. Before 1871 tribes could receive federal recognition through treaties. 25 USC section 11. In the modern era federal recognition of a tribe may be conferred only through one of three mechanisms - by an Act of Congress, through acknowledgement by the Interior (pursuant to the Indian Reorganization Act of 1934 as amended and then in 1978 pursuant to the Acknowledgement Regulations, noted below in para. 13) or by judicial means.

During my tenure the acknowledgement committee within the Washington D.C., BIA office reviewed all applications for federal tribal recognition based on criteria similar to the acknowledgement regulations noted below. In the mid 1970's Interior determined that it needed a uniform approach to evaluate these requests, although the BIA already had a procedure for recognition it was not set forth in regulation form. When the BIA adopted the

relationship of California Indians to the Rancherias acquired for them, including a specific reference to the Shingle Springs Rancheria:

An example: [¶] In March 1920 the Shingle Springs Rancheria, containing 160 acres, was purchased for the use and occupancy of four Indian families totaling 19 individuals, living in or near Verona in Sutter County, California, and three Indian families totaling 15 individuals living in Sacramento. Of the total, five were non-Indian spouses. The known descendants of these folk, today living, total 22 family units comprising 54 individuals. Of this group, 29 live in the metropolitan area of Sacramento; 13 live within a 45 mile radius of Sacramento; one in Chicago, Illinois, and the remaining in eleven [sic] various parts of the State of California. None, at the moment, are living on trust lands, although several, having been advised on August 7, 1970 of their right to participate in the use and occupancy of this Rancheria have indicated an intention to apply for homesites there. Only a very few can be identified by ancestral tribal organizations.

(Emphasis added)

40. On January 31, 1979 the Shingle Springs Rancheria, but not the Band, was identified in the Federal Register as the "Shingle Springs Rancheria (Verona Tract) of Miwok Indians, California." 44 Fed. Reg. 7235, 7236.

41. I was specifically told by the Sacramento Area Director for the BIA, William Finale, in connection with unoccupied Rancherias that he proposed the Rancheria property for listing in the belief that by identifying the property, such identification would provide a basis for providing various government services and aid in the event that the Rancheria became occupied at some later time. I was specifically told by the Sacramento Area Director for the BIA that he did not believe that this action of identifying unoccupied lands under his jurisdiction would ultimately be taken as tribal recognition as he lacked the power and authority to federally recognize a group as a Tribe on behalf of the United States. As noted below, a group of Indians did in fact attempt to organize as the Shingle Springs Band in 1979 and began occupying the Rancheria a short time later.

42. Based upon investigation, federal officials including William Finale of the BIA held the position that the Rancheria property had never been occupied, except by squatters, from the time of its purchase in 1920 until approximately 1980.

43. The BIA was not listing a group of persons but rather the Rancheria property itself. This fact is supported by a document by BIA entitled "American Indians and Their Federal Relationship," published in March 1972, which identifies "Shingle Springs Rancheria (Verona Tract) (3) (unoccupied)." This reference is plainly to the property itself and not any type of political or tribal entity because of the reference to the fact that it is "unoccupied." In short, as early as 1972 the BIA was identifying the bare Rancheria property as some type of Indian land base, not as a tribal entity.

44. This practice was replicated in subsequent BIA administrative lists. In March 1978, the BIA prepared a list of "Traditional Indian Organizations (Recognition Without Formal Federal Approval of Organizational Structure)." [Cite.] Identified on that list was the "Shingle Springs Rancheria (Verona)." *Id.* On February 6, 1979, the BIA published in the Federal Register a list entitled, "Indian Tribal Entities That Have A Government-To-Government Relationship With the United States." 44 Fed. Reg. 7235. Included in that list

6.

was an entry for the "Shingle Springs Rancheria (Verona Tract) of Miwok Indians, California." *Id.* at 7236. Just as with the 1972 and 1978 lists, the 1979 list identified the Rancheria and not a group of persons.

45. It is not until July 8, 1981, well after the effective date of the Acknowledgment Regulations, that the BIA identified the Shingle Springs Band, in addition to, the Rancheria as the relevant "tribal entity." 46 Fed. Reg. 35360. The 1981 list as well as subsequent BIA lists identifies the "Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California." *Id.*

46. In short, the Rancheria's (and later the Band's) presence on BIA's lists of federally recognized Indian tribes is not dispositive on the question of whether the Band has ever been legally recognized by the federal government as an Indian tribe through the administrative process, by an Act of Congress or by judicial means.

47. The facts establish that from 1916 until 1979 no entity -- sociological, political, economic or otherwise -- existed on the Rancheria or anywhere else that could have been recognized by the federal government as an Indian tribe. While efforts to organize a group occurred from 1970 until 1979, it is plain that these efforts were focused on receiving and managing property without any specific intent concerning recognition of tribal status of an historical group on the part of the BIA.

48. I have reviewed the transcript (Exhibit ___) of the hearing on September 8, 2003 regarding the Rule 12 Motions filed by the Shingle Springs Band and the federal defendants in this action. During my tenure with the Regional Solicitor's Office the BIA's position was exactly as stated by Judith Rabinowitz, counsel for the federal government: "That recognition [of the Shingle Springs Band] was not pursuant to administrative procedures..." Exhibit ___, 26:14-15.

49. Ms. Rabinowitz asserted to the Court that the Shingle Springs Band was recognized by a "course of dealings" (Exhibit ___, 26:17; 27:17-25; 29:2-4, 21-25; 30-31:1-25, 1). Mr. Cohen did likewise and further admitted that there are no known cases purporting or supporting the "course of dealings" argument proffered at the hearing (Exhibit ___, 36:9-12).

50. At no time during my employment did the BIA or Interior have a "course of dealing" or "pattern and practice" of recognizing individual Indians or Indian groups as federally recognized Indian tribes outside of the acknowledgement regulations found at 25 C.F.R. part 83 or the case-by-case process described in paragraph 12 above.

51. The Shingle Springs Band was not federally recognized as an Indian tribe during the time of my employment with the Office of the Regional Solicitor by any of the three methods noted above. Moreover, since there was no policy and practice of federally recognizing Indian tribes by "course of dealings" or "pattern and practice" during the time of my employment with the Office of the Regional Solicitor, the Shingle Springs Band was not federally recognized simply because Congress has never delegated the authority and power to an Area Director during my employment to federally recognize an Indian tribe. A tribe could only be recognized by submission to Interior's regulatory process in place at that time. Executed this ___ day of December, 2003, at Sacramento, Sacramento County, California.

William Miles Wirtz

**ORIGINAL
FILED**

MAR - 8 2003

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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EL DORADO COUNTY

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15
16 EL DORADO COUNTY, a Political Subdivision
of the State of California,

17 Plaintiff

18 v.

19 GALE A. NORTON, in her Capacity as Secretary
20 of the Interior, PHILIP N. HOGAN, in his
21 Capacity as Chairman of the National Indian
22 Gaming Commission, NATIONAL INDIAN
23 GAMING COMMISSION, AURENE MARTIN,
in her Capacity as Assistant Secretary of the
24 Interior for Indian Affairs, and BUREAU OF
INDIAN AFFAIRS,

25 Defendants.

26 SHINGLE SPRINGS BAND OF MIWOK
27 INDIANS,

28 Intervenor.

CASE NO. CIV.S-02-1818 GEB DAD

**FIRST AMENDED AND
SUPPLEMENTAL COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 138. Thus, BIA's failure to publicly circulate all relevant supporting material effectively
2 frustrated the public review process that is a fundamental policy goal of NEPA. It also indicates
3 an attempt to "swe[ep] stubborn problems or serious criticism under the rug." *Oregon Natural*
4 *Resources Council v. Lowe*, 109 F.3d 521, 526-27 (9th Cir. 1997).

5 **TWELFTH CLAIM FOR RELIEF**

6 **Declaratory Relief that the Band's Articles of Association are not an Indian**
7 **Constitution Pursuant to the IRA**

8 139. The IRA was passed by the United States Congress in 1934 as a means of
9 redressing the detrimental effects on Indian tribes from the federal government's prior policy of
10 allotting Indian lands to individual Indians. The IRA allowed existing Indian tribes to
11 reorganize by adopting a Constitution. Adopting a Constitution conveyed specific and
12 enumerated powers to an Indian tribe including the power to prevent conveyance of Indian lands
13 to non-Indians, the power to hire legal counsel, and the power to negotiation with federal, state
14 and local governments.

15 140. The right to reorganize created by the IRA, by its express terms and as interpreted
16 by federal courts, is extended only to two classifications: (i) Indian tribes that were in existence
17 on January 1, 1934 or (ii) descendants of such Indian tribes living on Indian reservations. IRA
18 benefits were not extended to individual Indians. Nor was the IRA extended to groups of
19 Indians that organized after 1934.

20 141. The right to organize pursuant to the IRA does not extend to the Band. The Band
21 was not an Indian tribe in existence on January 1, 1934. None of the original persons from the
22 1916 Census were living on the Rancheria in 1934. Moreover, none of the Descendants were
23 living on an Indian reservation either when the IRA was effective on January 1, 1934 or when
24 they adopted the Band's Articles of Association in 1976. Lastly, the 1916 Census that serves as
25 the basis for membership in the Band included some persons who were not of Indian ancestry
26 but rather of native Hawaiian ancestry.

27 142. The law is settled that Articles of Association are not the same as an Indian
28 Constitution. *Pit River Home and Agricultural Cooperative Ass'n v. U.S.*, 30 F.3d 1088, (9th

1 Cir. 1994). In *Pit River*, the Ninth Circuit stated:

2 Although, as the Association points out, the Assistant Secretary did approve
3 the Association's original and amended Articles and By-laws, the approval
4 was in the context of approving the Association's capacity to accept the
5 Revocable Assignment of occupancy rights in the Ranch. Nothing indicates
6 the Assistant Secretary intended to approve the Articles and By-laws as the
7 constitution of a federally recognized tribe.

8 *Id.* at 1095.

9 143. An actual case or controversy has therefore arisen from the Commissioner's
10 conditional approval of the Band's Articles of Association with respect to:

11 (i) whether the Band's Articles of Association constitute an Indian tribal
12 Constitution, either pursuant to the IRA or otherwise;

13 (ii) whether the right to reorganize pursuant to the IRA extends to the Band
14 and authorizes the Commissioner to approve a tribal Constitution for the Band.

15 144. Plaintiff therefore seeks a declaratory judgment that:

16 (i) the Band's Articles of Association adopted in 1976 do not constitute an
17 Indian tribal Constitution; and

18 (ii) the right to organize created by the IRA does not extend to the Band.

19 **THIRTEENTH CLAIM FOR RELIEF**

20 **Violation of the Administrative Procedure Act for Unlawful Approval of Gaming**
21 **by a Non Indian tribe**

22 145. Plaintiff hereby realleges and incorporates by this reference paragraphs 1 through
23 144, above.

24 146. In response to the United State Supreme Court's decision in *California v. Cabazon*
25 *Band of Mission Indians*, which held that California's criminal laws on gaming would be treated
26 as regulations rather than penal laws and therefore were not enforceable on Indian reservations,
27 Congress on October 17, 1988 passed the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §
28 2701 *et seq.* Passed after lengthy debate and deliberation, IGRA struck a careful balance
between the rights of Indian tribes to conduct gaming operations on Indian lands in order to gain
self-sufficiency, the rights of states and local communities to limit and regulate the proliferation

10

1 following:

- 2 (i) The petitioner has been identified as an American Indian entity on a substantially
- 3 continuous basis since 1900;
- 4 (ii) A predominant portion of the petitioner comprises a distinct community and has
- 5 existed as a community from historical times until the present;
- 6 (iii) The petitioner has maintained political influence or authority over its members as
- 7 an autonomous entity from historical times until the present;
- 8 (iv) A copy of the group's present governing document including its membership
- 9 criteria. In the absence of a written document, the petitioner must provide a
- 10 statement describing in full its membership criteria and current governing
- 11 procedures;
- 12 (v) The petitioner's membership consists of individuals who descend from a
- 13 historical Indian tribe or from historical tribes that combined and functioned as a
- 14 single autonomous political entity;
- 15 (vi) The membership of the petitioning group is composed principally of persons who
- 16 are not members of any acknowledged North American Indian tribe;
- 17 (vii) Neither the petitioner nor its members are subject of congressional legislation that
- 18 has expressly terminated or forbidden the Federal relationship.

19 83 C.F.R. § 83.7.

20 151. The Band has not satisfied the above Mandatory Criteria for federal recognition
21 under the Acknowledgment Regulations.

22 152. The Acknowledgment Regulations include a "grandfathering" provision that
23 allows a petitioning Indian group to avoid complying with the Mandatory Criteria if the
24 petitioning group had received unambiguous federal acknowledgment before the effective date
25 of the Acknowledgment Regulations. 25 C.F.R. Part 83. However, the grandfathering
26 provision does not apply to the Band because the Band never received such unequivocal federal
27 recognition before October 2, 1978, the effective date of the Acknowledgment Regulations.

28 The conditional approval of the Band's Articles of Association by the Commissioner of Indian

1 Affairs in 1976 was not an act of federal recognition of the Band. On information and belief
2 there is no other affirmative act of approval by the BIA that can justify the Band's presence on
3 the Statutory List.

4 153. To the extent the Band received acknowledgment pursuant to some other unknown
5 federal process, such process was not appropriately adopted pursuant to the APA and constitutes
6 an underground regulation.

7 154. Because the Band never received federal recognition by act of Congress, court
8 decision or the BIA through its Acknowledgment Regulations, the BIA unlawfully included the
9 Band on its Administrative Lists and Statutory Lists. This violates U.S.C. section 706(2)
10 because it is arbitrary, capricious and contrary to law, in that no Act of Congress authorizes such
11 decision.

12 155. The NIGC's approval of the Development Component for the Casino Project is
13 based upon and applies the BIA's unlawful identification of the Band as an Indian tribe pursuant
14 to the List Act. The NIGC has no authority under IGRA to approve a casino development and
15 management contract for an entity that is not a federally recognized Indian tribe. Therefore,
16 NIGC's approval of the Development Component violates U.S.C. section 706(2) because it is
17 arbitrary, capricious and contrary to law, in that no Act of Congress authorizes such decision.

18 **FOURTEENTH CLAIM FOR RELIEF**

19 **Violation of the Administrative Procedure Act for Improper Use**
20 **of Non-Indian Lands for Gaming**

21 156. Plaintiff hereby realleges and incorporates by this reference paragraphs 1 through
22 155, above.

23 157. Under IGRA, Class II and Class III gaming may only be conducted on "Indian
24 lands." 25 U.S.C. § 2702.

25 158. The term "Indian lands" is defined to mean (i) lands within an Indian reservation,
26 (ii) lands as to which title is held in trust by the United States for tribes or individual Indians, or
27 (iii) land which are held by tribes or individual Indians subject to restrictions by the United
28 States against alienation and over which tribes exercise governmental power. 25 U.S.C.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

--o0o--

UNITED STATES OF AMERICA,)	Case No. 2:11-mj-00035-EFB
)	
Plaintiff,)	Sacramento, California
)	Tuesday, August 30, 2011
vs.)	10:04 A.M.
)	
CESAR CABALLERO,)	Court Trial.
)	
Defendant.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	DAVID STEVENS U.S. Attorney's Office 501 I Street, Suite 10-100 Sacramento, CA 95814 (916) 554-2700
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Transcription Service:	Petrilla Reporting & Transcription 5002 - 61st Street Sacramento, CA 95820 (916) 455-3887

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

Dickerson - Direct

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1 THE WITNESS: Rhondella Dickerson, D-i-c-k-e-r-s-o-n.

2 DIRECT EXAMINATION

3 BY MR. STEVENS:

4 Q. Ms. Dickerson, where do you work?

5 A. At Shingle Springs Rancheria.

6 Q. And how long have you been working there?

7 A. Twelve plus years.

8 Q. And over the 12 plus years, what jobs have you had there?

9 A. The community development officer, environmental director,
10 council member, administrative director, and tribal vice chair.

11 Q. No, you said council member. Council member of what?

12 A. Of the tribe.

13 Q. And this tribe would be?

14 A. Shingle Springs Band of Miwok Indians.

15 Q. And I'm sorry how long ago was that where you were a
16 council member?

17 A. I actually currently am a council member.

18 Q. And do you know who the other council members are?

19 A. Yes.

20 Q. And do you know who the council members have been for the
21 last 20 years, more or less?

22 A. More or less, some of them.

23 Q. Has Cesar Caballero ever been a council member?

24 A. No.

25 Q. Now, are you familiar with the Red Hawk Casino?

Stone - Cross

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1 THE COURT: I'm going to stop you. You seem to be
2 going a little afield of the question.

3 MR. WISEMAN: Okay.

4 THE COURT: The question was what did the documents
5 appear to be and you mentioned an identification. Were there
6 other documents besides the identification?

7 THE WITNESS: His driver's license with a photo.

8 MR. WISEMAN: Okay.

9 THE WITNESS: And that's basic name, address.

10 BY MR. WISEMAN:

11 Q. Okay. Now, in your -- I want you to recall the documents
12 that you looked at that day. Did any of the documents that you
13 were told that were provided by Mr. Fonseca, did they indicate
14 that he was a Miwok tribal member?

15 A. Not at all.

16 Q. Thank you.

17 MR. WISEMAN: No further question.

18 THE COURT: All right.

19 Cross examination, Mr. Stevens?

20 CROSS-EXAMINATION

21 BY MR. STEVENS:

22 Q. You got in trouble, didn't you? Didn't you?

23 A. Get in trouble?

24 Q. Yeah.

25 A. No, sir.

Dickerson - Direct

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1 THE COURT: All right. I'll remind you that
2 you're -- you remain under oath.

3 THE WITNESS: Yes.

4 THE COURT: All right. You may proceed, Mr. Wiseman.

5 MR. WISEMAN: Thank you.

6 RHONDELLA DICKERSON, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

7 DIRECT EXAMINATION

8 BY MR. WISEMAN:

9 Q. Ma'am, earlier you testified this morning about your
10 involvement with tribal government; correct?

11 A. Correct.

12 Q. Okay. Now, ma'am, the -- are you a member of a particular
13 tribe?

14 A. Yes. I'm --

15 Q. And what is your tribal affiliation?

16 A. I'm a member of the Shingle Springs Band of Miwok Indians.

17 Q. Okay. Now as a member of the Shingle Springs Band of
18 Miwok Indians, have you -- well, let me ask you this. Strike
19 that.

20 Let me ask you this first. Are you familiar with the
21 Bureau of Indian Affairs?

22 A. Yes, I am.

23 Q. And what is your understanding of what the Bureau of
24 Indian Affairs is?

25 A. They are to conduct the concerns of any tribe --

Dickerson - Direct

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1 Q. Right.

2 A. -- and they oversee those tribes.

3 Q. And you understand the Bureau of Indian Affairs is a
4 federal government agency, correct?

5 A. Yes. Yes.

6 Q. And the Bureau of Indian Affairs recognizes certain tribes
7 in the United States, correct?

8 A. Yes, correct.

9 Q. And do you, by the way, do you have identification -- do
10 you personally carry identification that identifies you as a
11 member of a particular tribe?

12 A. Yes.

13 Q. Okay. Is that identification that you carry, is that
14 identification issued by the Bureau of Indian Affairs?

15 A. No.

16 Q. Okay. Is it identification that your tribe has just
17 created and handed out to its members?

18 A. And the Bureau of Indian Affairs has that list.

19 Q. Right.

20 A. Yes.

21 Q. But the identification is not a identification that's
22 issued by the Bureau of Indian Affairs; correct?

23 A. Correct.

24 Q. Okay. And you testified earlier that you had several
25 positions with the tribe. Now, how long have you been an

BUREAU OF INDIAN AFFAIRS
INDEX TO INDIAN LAND RECORDS
PARSONS RESERVATION, El Dorado County, Calif.

SECTION 27
TOWNSHIP 10N
RANGE 10E

NE 1/4				NW 1/4				SE 1/4				SW 1/4				ALLOT OR TRACT NO.	ACRES	TYPE OF INSTR.	GRANTOR	GRANTEE	DATE APPD.	RECORDED		REMARKS
NE	NW	SE	SW							VOL.	PAGE													
												X	X			-	80.00	W.D.	Lucy H. Thomas	U. S.	12/6/15	6	447	6/20/13 (28 Stat. 26) lot of 4/30/08 (35 Stat. 70-76)
				X	X	X	X									-	160.00	W.D.	Blanche E. Hooper	" "	3/11/20	7	108	" " 5/25/19 (40 Stat. 570)
				X	X	X	X					X	X			-	200.00	lot	U. S.	Mr. Wm. Triba	5/24/11 9/2/88			Shingle Springs Rancheria

LEGEND

FR - FEE PATENT
RF - RESTRICTED FEE PATENT
TR - TRUST PATENT

OT - ORDER TRANSFERRING INHERITED INTERESTS
CC - CERTIFICATE OF COMPETENCY
OR - ORDER REMOVING RESTRICTIONS
RD - RESTRICTED DEED

T.D - TRUST DEED
W.D - WARRANTY DEED
R/W - RIGHT OF WAY

P - PROBATE NO.
X - REGULAR SUBDIVISION
NOS. REPRESENT LOTS

PREFIXED "G" TO TRACT NO. INDICATES GOVT.-OWNED LAND

PREFIXED "T" TO TRACT NO. INDICATES TRIBAL LAND