

1 NIELSEN, MERKSAMER, PARRINELLO,
2 MUELLER & NAYLOR, LLP
3 JAMES R. PARRINELLO, ESQ. (S.B. NO. 63415)
4 CHRISTOPHER E. SKINNEL, ESQ. (S.B. NO. 227093)
5 2350 Kerner Boulevard, Suite 250
6 San Rafael, California 94941
7 Telephone: (415) 389-6800
8 Facsimile: (415) 388-6874

9 NIELSEN, MERKSAMER, PARRINELLO,
10 MUELLER & NAYLOR, LLP
11 CATHY A. CHRISTIAN, ESQ. (S.B. NO. 83196)
12 1415 L Street, Suite 1200
13 Sacramento, California 95814
14 Telephone: (916) 446-6752
15 Facsimile: (916) 446-6106

16 *Attorneys for Intervenor-Defendants*
17 COUNTY OF SACRAMENTO, CALIFORNIA
18 & CITY OF ELK GROVE, CALIFORNIA

19 IN THE UNITED STATES DISTRICT COURT
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA

21 WILTON MIWOK RANCHERIA, *et al.*,

22 *Plaintiffs,*

23 vs.

24 KENNETH L. SALAZAR, *et al.*,

25 *Defendants,*

26 COUNTY OF SACRAMENTO,
27 CALIFORNIA and CITY OF ELK
28 GROVE, CALIFORNIA,

Proposed Intervenors.

Case No. C-07-02681-JF-PVT

**[Proposed] ANSWER IN
INTERVENTION TO
COMPLAINT OF WILTON
MIWOK RANCHERIA, *et al.***

Case No. C-07-05706 (JF)

ME-WUK INDIAN COMMUNITY OF THE
WILTON RANCHERIA, *et al.*,

Plaintiffs,

vs.

KENNETH L. SALAZAR, *et al.*,

Defendants,

COUNTY OF SACRAMENTO,
CALIFORNIA and CITY OF ELK
GROVE, CALIFORNIA,

Proposed Intervenors

Defendants-in-Intervention COUNTY OF SACRAMENTO (“County”) and CITY OF ELK GROVE, CALIFORNIA (“City”), by and through their undersigned counsel, hereby assert defenses to the complaint of plaintiffs Wilton Miwok Rancheria, its members, and Dorothy Andrews (“Plaintiffs”), dated May 21, 2007, and answer each numbered paragraph as follows. Except as expressly admitted all allegations in the complaint are denied.

ANSWER TO NATURE OF THE ACTION

1. The allegations set forth in Paragraph 1 of Plaintiffs’ Complaint constitute characterizations of Plaintiffs’ action and claims for relief to which no response is required. To the extent that an answer is required, Defendants deny each and every allegation.

2. The allegations set forth in the first, second, third, and sixth sentences of Paragraph 2 of Plaintiffs’ Complaint constitute conclusions of law and characterizations of Plaintiffs’ claims for relief to which no response is required. To the extent that an answer is required, Defendants deny each and every allegation. The fourth sentence of Paragraph 2 references the Certificate of Counsel filed in *Tillie Hardwick, et al. v. United States of America, et al.*, No. C-79-1710 (N.D. Cal.)

1 (“*Hardwick*”) which has independent legal significance and speaks for itself and is
2 the best evidence of its contents. Defendant further denies the allegations set forth
3 in the fourth sentence of Paragraph 2 to the extent that they are incomplete or
4 inconsistent with the Certificate of Counsel. Defendant denies the allegations set
5 forth in the fifth sentence of Paragraph 2 except Defendants are without knowledge
6 or information sufficient to form a belief as to the truth or falsity of the allegation
7 that Plaintiff Dorothy Andrews was an original distributee of the Wilton Miwok
8 Rancheria, and therefore deny that allegation.

9 **ANSWER TO JURISDICTION**

10 3. The allegations set forth in Paragraph 3 constitute characterizations of
11 Plaintiffs’ statements of jurisdiction and conclusions of law to which no response is
12 required. To the extent that an answer is required, Defendants deny that this Court
13 has jurisdiction over Plaintiffs’ claims.

14 **ANSWER TO VENUE**

15 4. The allegations set forth in Paragraph 4 constitute characterizations of
16 Plaintiffs’ statements of venue and conclusions of law to which no response is
17 required.

18 **ANSWER TO PARTIES**

19 5. Defendants are without knowledge or information sufficient to form a
20 belief as to the truth or falsity of the allegations in Paragraph 5, and therefore deny
21 those allegations.

22 6. Defendants are without knowledge or information sufficient to form a
23 belief as to the truth or falsity of the allegations in Paragraph 6, and therefore deny
24 those allegations.

25 7. Defendants admit that as of the time the Complaint was filed Dirk A.
26 Kempthorne was the Secretary of the Department of Interior, but deny that Mr.
27 Kempthorne is currently the Secretary of the Department of Interior.

28 8. Defendants are without knowledge or information sufficient to form a

1 belief as to the truth or falsity of the allegations in Paragraph 8, and therefore deny
2 those allegations.

3 9. Defendants admit the allegations set forth in Paragraph 9.

4 10. Defendants admit that the allegations in Paragraph 10 were correct as
5 of the time that the Complaint was filed, but deny that the allegations remain true
6 as of the date of this Answer.

7 11. Defendants admit the allegations set forth in Paragraph 11.

8 12. The allegations set forth in Paragraph 12 of Plaintiffs' Complaint
9 constitute conclusions of law to which no response is required. To the extent that
10 an answer is required, Defendants deny each and every allegation.

11 **ANSWER TO FACTUAL ALLEGATIONS**

12 **A. Answer to Historical Background of the Wilton Miwok Rancheria.**

13 13. Defendants are without knowledge or information sufficient to form a
14 belief as to the truth or falsity of the allegations in Paragraph 13, and therefore
15 deny those allegations.

16 **B. Answer to Federal Termination Policy and the Rancheria Act.**

17 14. Defendants deny the allegations set forth in the first, third, fifth, and
18 sixth sentences of Paragraph 14. Defendants admit the allegations set forth in the
19 second sentence of Paragraph 14. The fourth sentence of Paragraph 14 references
20 the House Concurrent Resolution 108 ("HCR 108"), H.R. Con. Res 108, 83d Cong.,
21 1st Sess., 67 Stat. B132 (1953) which has independent legal significance and speaks
22 for itself and is the best evidence of its contents. Defendants further deny the
23 allegations set forth in the fourth sentence of Paragraph 14 to the extent that they
24 are incomplete or inconsistent with HCR 108.

25 15. Defendants admit that Congress enacted the California Rancheria Act
26 on August 18, 1958, but are otherwise without knowledge or information sufficient
27 to form a belief as to the truth or falsity of the allegations in the first sentence of
28 Paragraph 15, and therefore deny those allegations. The remainder of Paragraph 15

1 references and attempts to summarize portions of the California Rancheria Act
2 (“Rancheria Act”), P.L. 85-671, 72 Stat. 619, amended by the Act of Aug. 1, 1964,
3 P.L. 88-419, 78 Stat. 390 which has independent legal significance and speaks for
4 itself and is the best evidence of its contents. Defendants further deny the
5 allegations set forth in the remainder of Paragraph 15 to the extent that they are
6 incomplete or inconsistent with the Rancheria Act.

7 16. Paragraph 16 references and attempts to summarize portions of the
8 Rancheria Act, which has independent legal significance and speaks for itself and is
9 the best evidence of its contents. Defendants deny the allegations set forth in of
10 Paragraph 16 to the extent that they are incomplete or inconsistent with the
11 Rancheria Act.

12 17. Paragraph 17 references and attempts to summarize portions of the
13 Rancheria Act, which has independent legal significance and speaks for itself and is
14 the best evidence of its contents. Defendants deny the allegations set forth in of
15 Paragraph 17 to the extent that they are incomplete or inconsistent with the
16 Rancheria Act.

17 18. Paragraph 18 references and attempts to summarize portions of the
18 Rancheria Act, which has independent legal significance and speaks for itself and is
19 the best evidence of its contents. Defendants deny the allegations set forth in of
20 Paragraph 18 to the extent that they are incomplete or inconsistent with the
21 Rancheria Act.

22 19. Defendants admit the allegations set forth in the first sentence of
23 Paragraph 19. The allegations set forth in the second sentence of Paragraph 19
24 constitute conclusions of law to which no response is required; to the extent that an
25 answer is required, Defendant denies each and every allegation.

26 20. Paragraph 20 references and attempts to summarize portions of the
27 Rancheria Act, which has independent legal significance and speaks for itself and is
28 the best evidence of its contents. Defendants deny the allegations set forth in of

1 Paragraph 20 to the extent that they are incomplete or inconsistent with the
2 Rancheria Act.

3 **C. Answer to Purported Termination of Plaintiff Wilton Rancheria.**

4 21. Defendants are without knowledge or information sufficient to form a
5 belief as to the truth or falsity of the allegations in Paragraph 21, and therefore
6 deny those allegations.

7 22. The allegations set forth in Paragraph 22 constitute conclusions of law
8 to which no response is required; to the extent that an answer is required,
9 Defendant denies each and every allegation.

10 23. Defendants are without knowledge or information sufficient to form a
11 belief as to the truth or falsity of the allegations set forth in the first sentence of
12 Paragraph 23, and therefore deny those allegations. The second sentence of
13 Paragraph 23 references a letter from the California Indian Agency, dated 1949, to
14 the Acting Director of Irrigation, Office of Indian Affairs, which speaks for itself
15 and is the best evidence of its contents. Defendants deny the allegations set forth in
16 the second sentence of Paragraph 23 to the extent that they are incomplete or
17 inconsistent with the letter at issue.

18 24. Defendants are without knowledge or information sufficient to form a
19 belief as to the truth or falsity of the allegations set forth in Paragraph 24, and
20 therefore deny those allegations.

21 25. Defendants are without knowledge or information sufficient to form a
22 belief as to the truth or falsity of the allegations set forth in Paragraph 25, and
23 therefore deny those allegations.

24 26. Defendants are without knowledge or information sufficient to form a
25 belief as to the truth or falsity of the allegations set forth in Paragraph 26, and
26 therefore deny those allegations.

27 27. Defendants are without knowledge or information sufficient to form a
28 belief as to the truth or falsity of the allegations set forth in Paragraph 27, and

1 therefore deny those allegations.

2 28. Defendants admit the allegations set forth in Paragraph 28, however,
3 Defendants note that the names and addresses of the individuals included in the
4 Federal Register Proclamation followed the second paragraph of the block quote
5 contained in Paragraph 28.

6 29. The allegations set forth in Paragraph 29 constitute conclusions of law
7 to which no response is required; to the extent that an answer is required,
8 Defendants deny each and every allegation.

9 30. Defendants are without knowledge or information sufficient to form a
10 belief as to the truth or falsity of the allegations set forth in Paragraph 30, and
11 therefore deny those allegations.

12 31. Defendants are without knowledge or information sufficient to form a
13 belief as to the truth or falsity of the allegations set forth in Paragraph 31, and
14 therefore deny those allegations.

15 **D. Answer to the *Tillie Hardwick* Litigation.**

16 32. Paragraph 32 references and attempts to summarize the *Hardwick*
17 litigation; Defendants deny that the allegations contained in Paragraph 32 provide
18 an accurate and complete description of *Hardwick*. Defendants further contend
19 that the Complaint filed in the *Hardwick* litigation speaks for itself and is the best
20 evidence of the claims at issue in that matter.

21 33. Defendants are without knowledge or information sufficient to form a
22 belief as to the truth or falsity of the allegations set forth in Paragraph 33, and
23 therefore deny those allegations.

24 34. The first sentence of Paragraph 34 contains a mixed statement of
25 factual and legal conclusions. Defendants are without knowledge or information
26 sufficient to form a belief as to the truth or falsity of the factual allegations set forth
27 in the first sentence of Paragraph 34, and therefore deny those allegations. The
28 allegations set forth in the remainder of the first sentence of Paragraph 34

1 constitute conclusions of law to which no response is required; to the extent that an
2 answer is required, Defendants deny each and every allegation. The second
3 sentence of Paragraph 34 references and attempts to summarize the *Hardwick*
4 litigation, Defendants deny that the allegations contained in the second sentence of
5 Paragraph 34 provide an accurate and complete description of *Hardwick*.
6 Defendants further contend that the Complaint filed in the *Hardwick* litigation
7 speaks for itself and is the best evidence of the claims at issue in that matter.

8 35. Paragraph 35 references and attempts to summarize the *Hardwick*
9 litigation; Defendants deny that the allegations contained in the second sentence of
10 Paragraph 35 provide an accurate and complete description of *Hardwick*.
11 Defendants further contend that the Complaint filed in the *Hardwick* litigation
12 speaks for itself and is the best evidence of the claims at issue in that matter

13 36. Defendants are without knowledge or information sufficient to form a
14 belief as to the truth or falsity of the allegations set forth in Paragraph 36, and
15 therefore deny those allegations.

16 37. The allegations set forth in Paragraph 37 constitute conclusions of law
17 to which no response is required; to the extent that an answer is required,
18 Defendants deny each and every allegation.

19 38. Defendants are without knowledge or information sufficient to form a
20 belief as to the truth or falsity of the allegations set forth in Paragraph 36, and
21 therefore deny those allegations

22 39. Defendants deny the allegations contained in the first sentence of
23 Paragraph 39 except that Defendants admit that on July 15, 1983, a Stipulation for
24 Entry of Judgment in the *Hardwick* litigation was signed by an Assistant United
25 States Attorney and that on July 19, 1983, counsel for the remaining plaintiffs
26 signed the same stipulation. The second sentence of Paragraph 39 references the
27 Stipulation for Entry of Judgment, which has independent legal significance and
28 speaks for itself and is the best evidence of its contents. Defendants deny the

1 allegations set forth in the second sentence of Paragraph 39 to the extent that they
2 are incomplete or inconsistent with the Stipulation for Entry of Judgment.
3 Defendants are without knowledge or information sufficient to form a belief as to
4 the truth or falsity of the allegation that the Stipulation was submitted to the court
5 on August 8, 1983, and therefore deny those allegations. The allegations set forth in
6 the third sentence of Paragraph 39 constitute conclusions of law to which no
7 response is required; to the extent that an answer is required, Defendant denies
8 each and every allegation.

9 40. Defendants are without knowledge or information sufficient to form a
10 belief as to the truth or falsity of the allegations set forth in the first sentence of
11 Paragraph 40. The allegations set forth in the second sentence of Paragraph 40
12 constitute conclusions of law to which no response is required; to the extent that an
13 answer is required, Defendants deny each and every allegation.

14 **E. Answer to Wilton Rancheria Was Erroneously Omitted From the**
15 **Tillie Hardwick Restoration Judgment.**

16 41. Paragraph 41 references and attempts to summarize portions of the
17 Certificate of Counsel Re Hearing on Approval of Settlement of Class Actions (Nov.
18 16, 1983) and the Stipulation for Entry of Judgment (July 19, 1983) which have
19 independent legal significance and speak for themselves and are the best evidence
20 of their contents. Defendants further deny the allegations set forth in Paragraph 41
21 to the extent that they are incomplete or inconsistent with the documents at issue.

22 42. Defendants are without knowledge or information sufficient to form a
23 belief as to the truth or falsity of the allegations set forth in Paragraph 42, and
24 therefore deny those allegations.

25 43. Defendant is without knowledge or information sufficient to form a
26 belief as to the truth or falsity of the allegations set forth in the first and third
27 sentence of Paragraph 43, and therefore denies those allegations. The allegations
28 set forth in the second sentence of Paragraph 43 constitute conclusions of law to

1 which no response is required; to the extent that an answer is required, Defendant
2 denies each and every allegation.

3 **F. Answer to Wilton Rancheria Has Been Working for Many Years**
4 **To Restore Its Federal Recognition.**

5 44. Defendant is without knowledge or information sufficient to form a
6 belief as to the truth or falsity of the allegations set forth in Paragraph 44, and
7 therefore denies those allegations, except that Defendants contend that the Letters
8 from United States Department of the Interior, Bureau of Indian Affairs, dated
9 August 24, 2004, September 17, 2004, June 14, 2006, and September 12, 2006,
10 speak for themselves and are the best evidence of their contents.

11 45. The allegations set forth in the first sentence of Paragraph 45
12 constitute conclusions of law to which no response is required; to the extent that an
13 answer is required, Defendant denies each and every allegation. Defendant is
14 without knowledge or information sufficient to form a belief as to the truth or
15 falsity of the allegations set forth in the remainder of Paragraph 45, and therefore
16 denies those allegations.

17 46. Defendants are without knowledge or information sufficient to form a
18 belief as to the truth or falsity of the allegations set forth in the first sentence of
19 Paragraph 46, and therefore deny those allegations. Defendants admit that
20 Congress created the ACCIP in 1992. Otherwise, the second and third sentence of
21 Paragraph 46 reference and attempt to characterize congressional legislation
22 creating the ACCIP, which has independent legal effect and speaks for itself and is
23 the best evidence of its contents. Defendants deny the allegations set forth in the
24 second and third sentence of Paragraph 46 to the extent they are incomplete or are
25 inconsistent with the legislation cited. The fourth sentence of Paragraph 46
26 references and attempts to summarize a portion of the Advisory Council on
27 California Indian Policy ("ACCIP") Final Report and Recommendations to the
28 Congress of the United States, which speaks for itself and is the best evidence of its

1 contents. Defendants deny the allegations in the fourth sentence of Paragraph 46
2 to the extent that they are incomplete or inconsistent with the Report.

3 47. Defendants are without knowledge or information sufficient to form a
4 belief as to the truth or falsity of the allegations set forth in Paragraph 47, and
5 therefore deny those allegations except that Defendants contend that the
6 referenced letters from Superintendent Dale Risling, Sr., speak for themselves and
7 are the best evidence of their contents.

8 48. Defendants are without knowledge or information sufficient to form a
9 belief as to the truth or falsity of the allegations set forth in Paragraph 48, and
10 therefore deny those allegations.

11 49. Defendants deny the allegations set forth in the first sentence of
12 Paragraph 49. The second and third sentences of Paragraph 49 reference and
13 attempt to summarize a portion of the stipulated judgment in the *Hardwick*
14 litigation, which speaks for itself and is the best evidence of its contents.
15 Defendants further deny the allegations set forth in the second and third sentences
16 of Paragraph 49 to the extent that they are incomplete or inconsistent with the
17 stipulated judgment.

18 **ANSWER TO FIRST CLAIM FOR RELIEF**

19 50. Defendants incorporate and reassert their responses to the preceding
20 Paragraphs as if fully set forth herein.

21 51. The allegations set forth in Paragraph 51 constitute characterizations
22 of Plaintiffs' case and conclusions of law to which no response is required; to the
23 extent that an answer is required, Defendants deny each and every allegation.

24 52. Defendants are without knowledge or information sufficient to form a
25 belief as to the truth or falsity of the allegations set forth in Paragraph 52, and
26 therefore deny those allegations.

27 53. The allegations set forth in Paragraph 53 constitute characterizations
28 of Plaintiffs' case and conclusions of law to which no response is required; to the

1 extent that an answer is required, Defendants deny each and every allegation.

2 54. Defendants are without knowledge or information sufficient to form a
3 belief as to the truth or falsity of the allegations set forth in Paragraph 54, and
4 therefore deny those allegations.

5 **ANSWER TO SECOND CLAIM FOR RELIEF**

6 55. Defendants incorporate and reassert their responses to the preceding
7 Paragraphs as if fully set forth herein.

8 56. The allegations set forth in Paragraph 56 constitute characterizations
9 of Plaintiffs' case and conclusions of law to which no response is required; to the
10 extent that an answer is required, Defendants deny each and every allegation.

11 57. The allegations set forth in Paragraph 57 constitute characterizations
12 of Plaintiffs' case and conclusions of law to which no response is required; to the
13 extent that an answer is required, Defendants deny each and every allegation.

14 58. The allegations set forth in Paragraph 58 constitute characterizations
15 of Plaintiffs' case and conclusions of law to which no response is required; to the
16 extent that an answer is required, Defendants deny each and every allegation.

17 **ANSWER TO THIRD CLAIM FOR RELIEF**

18 59. Defendants incorporate and reassert their responses to the preceding
19 Paragraphs as if fully set forth herein.

20 60. The allegations set forth in Paragraph 60 constitute characterizations
21 of Plaintiffs' case and conclusions of law to which no response is required; to the
22 extent that an answer is required, Defendants deny each and every allegation.

23 61. The allegations set forth in Paragraph 61 constitute characterizations
24 of Plaintiffs' case and conclusions of law to which no response is required; to the
25 extent that an answer is required, Defendants deny each and every allegation.

26 **ANSWER TO PRAYER FOR RELIEF**

27 The remainder of the Complaint, including the WHEREFORE clause and the
28 four number paragraphs including sub-parts that follow it, contain Plaintiff's

1 requests for relief to which no responsive pleading is required. To the extent that
2 any response to those portions of the Complaint is deemed to be required,
3 Defendants deny all of the allegations set forth therein and denies that the
4 Plaintiffs are entitled to any of the relief requested, or to any other forms of relief.

5 **DEFENDANTS' AFFIRMATIVE DEFENSES**

6 **First Affirmative Defense**

7 Plaintiffs' claims are barred by the statute of limitations. 28 U.S.C. § 2401.
8 The statute of limitations is jurisdictional, meaning that this court lacks subject
9 matter jurisdiction over these actions. The law is settled that executive officers of
10 the United States may not waive the statute of limitations, and that the court must
11 consider the issue of its jurisdiction *sua sponte* or upon having the issue otherwise
12 brought to its attention, even if the existing parties decline to present the question.

13 **Second Affirmative Defense**

14 Pursuant to the United States Supreme Court's recent ruling in *Carcieri v.*
15 *Salazar*, 555 U.S. ___, 129 S. Ct. 1058, 172 L. Ed. 2d 791 (2009), the Secretary of
16 Interior, Defendant Kenneth Salazar, lacks the authority to take land into trust on
17 behalf of Plaintiffs as requested by Plaintiffs.

18 Dated: August 4, 2009

NIELSEN, MERKSAMER, PARRINELLO,
MUELLER & NAYLOR, LLP

19
20 By: /s/James R. Parrinello
James R. Parrinello

21
22 By: /s/Cathy A. Christian
Cathy A. Christian

23
24 By: /s/Christopher E. Skinnell
Christopher E. Skinnell

25
26 *Attorneys for Intervenor-Defendants*
SACRAMENTO COUNTY,
27 CALIFORNIA & CITY OF ELK
28 GROVE, CALIFORNIA