

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LOUIS B. GREEN – State Bar No. 057157
County Counsel
EDWARD L. KNAPP – State Bar No. 071520
Chief Assistant County Counsel
COUNTY OF EL DORADO
330 Fairlane Court
Placerville, California 95667
Telephone: (530) 621-5770
Facsimile: (530) 621-2937

MARK D. HARRISON – State Bar No. 142958
MICHAEL V. BRADY – State Bar No. 146370
MICHAEL E. VINDING – State Bar No. 178359
THE DIEPENBROCK LAW FIRM
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,

Plaintiff,

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.

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

DECLARATION OF WILLIAM
MILES WIRTZ

Date: January 12, 2004
Time: 9:00 a.m.
Place: Courtroom 10
Hon. Garland E. Burrell, Jr.

Trial Date: None

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

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

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

7 3. In that capacity I rendered services to the Bureau of Indian Affairs ("BIA"),
8 United States Department of the Interior ("Interior"), one of the clients to which I was assigned.
9

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

13 5. In that capacity, I was aware of the BIA policy for the Sacramento Area Office
14 and the BIA's Washington office regarding California Indian groups and the California
15 Rancherias, including the Shingle Springs Rancheria. I was also aware that the Shingle Springs
16 Band ("Band") attempted to organize as a group in 1979.
17

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 In that capacity, I had access to various public records, historical documents and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

21 7. During my employment at the Solicitor's Office it was part of the course and
22 scope of my duties to understand and articulate the policies and procedures of the BIA,
23 including the process by which the federal government officially recognized Indian tribes.
24

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

1 **FEDERAL POLICY REGARDING TRIBAL RECOGNITION AND GAMING**

2 9. Federal recognition enables Indian tribes to participate in federal assistance
3 programs and can result in the granting of significant rights as sovereign entities—including
4 exemptions from state and local civil jurisdiction. Federal recognition is also one of the
5 requirements for legal casino gaming under the Indian Gaming Regulatory Act ("IGRA").
6

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

11 11. The term "Indian tribe" encompasses within its meaning all Indian tribes, bands,
12 villages, groups, and pueblos as well as Eskimos and Aleuts. Before 1871, tribes could receive
13 federal recognition through treaties. 25 USC section 71 (Exhibit 1). In the modern era, federal
14 recognition of a tribe may be conferred only through one of three mechanisms -- by an Act of
15 Congress, by judicial means, or since 1978 through acknowledgment by the Interior pursuant to
16 the Acknowledgment Regulations adopted by the BIA ("Acknowledgment Regulations"), *see*
17 25 C.F.R. part 83.
18

19 12. During my tenure the acknowledgment committee within the Washington D.C.,
20 BIA office reviewed all applications for federal tribal recognition based on criteria similar to
21 the Acknowledgment Regulations noted below. In the mid 1970's Interior determined that it
22 needed a uniform approach to evaluate these requests. Although the BIA already had a
23 procedure for recognition it was not set forth in regulation form. When the BIA adopted the
24 Acknowledgment Regulations in 25 C.F.R. Part 83 (effective October 1978 at 25 C.F.R. Part
25 54, *see* 42 Fed.Reg. 39361 (September 5, 1978), renumbered 25 C.F.R. Part 83 in 1982), the
26 BIA was formally adopting the federal acknowledgment procedures and policies that had been
27 in place. At all times during my tenure with the Regional Solicitor's Office, one of the BIA's
28

1 primary requirements for federal tribal recognition (both before and after the adoption of the
2 Acknowledgment Regulations) was that the Indian group demonstrate a continuous political
3 existence since historical times (i.e. existence prior to the non-Indians coming to North
4 America up to the date of recognition).

5
6 13. After the Acknowledgment Regulations were adopted in 1978, federal recognition
7 could only legally occur by an Act of Congress, through judicial means or by following the
8 Acknowledgment Regulations.

9 14. The seven mandatory criteria for recognition under Acknowledgment Regulations
10 are:

- 11 a. The petitioner has been identified as an American Indian entity on a
12 substantially continuous basis since 1900.
- 13 b. A predominant portion of the petitioning group comprises a distinct
14 community and has existed as a community from historical times until the
15 present.
- 16 c. The petitioner has maintained political influence or authority over its
17 members as an autonomous entity from historical times until the present.
- 18 d. The group must provide a copy of its present governing documents and
19 membership criteria.
- 20 e. The petitioner's membership consists of individuals who descend from a
21 historical Indian tribe or tribes, which combined and functioned as a single
22 autonomous political entity.
- 23 f. The membership of the petitioning group is composed principally of persons
24 who are not members of any acknowledged North American Indian tribe.
- 25 g. Neither the petitioner nor its members are the subject of congressional
26 legislation that has expressly terminated or forbidden recognition.
- 27
28

1 15. The essential requirement for acknowledgment as an Indian tribe is that the group
2 has existed continuously as a community with retained political powers. The mandatory criteria
3 in the regulations all focus on establishing this continuous existence - the continuation of the
4 political entity. The underlying premise of this requirement - to demonstrate continuous tribal
5 existence of the group - is that a tribe is a political, not a racial, classification. *Morton v.*
6 *Mancari* (1974) 417 US 535, 554, n. 24. Thus, under the Acknowledgment Regulations, a tribe
7 is not a collection of persons of Indian ancestry unless those persons and their ancestors are part
8 of a continuously existing political entity. 25 C.F.R. 83.3(a). This distinction is the premise
9 underlying the succinct statement that "miscellaneous Indians do not make a tribe." *United*
10 *Houma Nation v Babbitt* (D.D.C. 1997) 1997 WL 403425 at 7. As stated in the preamble to the
11 1978 regulations: "Although petitioners must be American Indians, groups of descendants will
12 not be acknowledged solely on a racial basis. Maintenance of tribal relations - a political
13 relationship - is indispensable." 43 Fed. Reg. 39361 (September 5, 1978) (Exhibit 2).

14
15
16 16. The acknowledgment process begins when a group submits a letter of intent
17 requesting recognition. A petitioner then must provide documentation that addresses seven
18 criteria (noted below) that, in general, demonstrates continuous existence as a political and
19 social community that is descended from a historic tribe. The technical staff within BIA's
20 Branch of Acknowledgment and Research ("BAR") reviews the submitted documentation,
21 provides technical review and assistance, and determines, with the petitioner's concurrence,
22 when the petition is ready for active consideration. Once the petition enters active
23 consideration, the BAR staff reviews the documented petition and makes recommendations on
24 a proposed finding either for or against recognition. Staff recommendations are subject to
25 review by the Department's Office of the Solicitor and by senior officials within BIA,
26 culminating with action (denial or approval) by the Assistant Secretary - Indian Affairs. After a
27 proposed finding is approved by the Assistant Secretary, it is published in the Federal Register
28

1 and a period of further comment, document submission, and response is allowed. The
2 publication is made to satisfy federal constitutional due process requirements and the APA.
3 The BAR staff reviews comments, documentation, and responses and makes recommendations
4 for a final determination that is subject to the same levels of review as a proposed finding. The
5 process culminates in a final determination by the Assistant Secretary that, depending on the
6 nature of further evidence submitted, may or may not be the same as the proposed finding.
7

8 17. Requests for reconsideration may be filed with the Interior Board of Indian
9 Appeals within 90 days after the final determination. This review process can result in
10 affirmation of the Assistant Secretary's decision or direction to the Assistant Secretary to issue
11 a reconsidered determination.

12 18. Indian gaming, a relatively new phenomenon, started in the late 1970s when a
13 number of Indian tribes began to establish bingo operations as a supplemental means of
14 funding tribal operations. However, state governments began to question whether tribes
15 possessed the authority to conduct gambling independently of state regulation. Although many
16 lower courts upheld the tribal position, the matter was not resolved until 1987 when the U. S.
17 Supreme Court issued its decision in *California v. Cabazon Band of Mission Indians*, 480 U. S.
18 202 (1987).
19

20 19. Congress passed IGRA in 1988, establishing a regulatory framework to govern
21 Indian gambling operations. Under IGRA only federally recognized Indian tribes may engage
22 in gambling.
23

24 TRIBAL ORGANIZATION IN CALIFORNIA

25 20. In the early 1900's public attention began to focus upon the destitute state of the
26 landless Indians located in California. As a result Congress, in the Act of March 3, 1905,
27 33 Stat. 1048, 1058, authorized an investigation of the existing conditions of California Indians
28 and directed a report be made to Congress on "some plan to improve the same." The report

1 was prepared by C.E. Kelsey, a San Jose attorney and officer of the Northern California Indian
2 Association. In his report he recommended, among other things, that lands be purchased for
3 the landless California Indians in Northern California (Exhibit 3).

4 21. Through various appropriations statutes in the early 1900s, Congress provided
5 funds for the acquisition of land for "homeless California Indians." Those appropriations were
6 for the benefit of groups of individual Indians, not for the benefit of organized tribes.
7

8 22. With those funds in hand, the United States Indian Service ("Indian Service"),
9 [predecessor of the BIA], through Indian Agent John J. Terrell ("Terrell") among others, began
10 looking for property to acquire.

11 23. As relevant to El Dorado County, the federal government acquired eighty (80)
12 acres of land for the use of Indians then resident in the County by deed dated December 16,
13 1915 (Exhibit 4). That property became known as the Dorado, or El Dorado, Rancheria. It
14 was occupied sporadically by members of a family surnamed "Padilla." By the 1960s, the
15 surviving members of the Padilla family elected to have the property deeded to them in fee.
16 That transfer occurred on March 31, 1966 (Exhibit 5), and the Dorado Rancheria was removed
17 from BIA's property-holding records pursuant to the California Rancheria Act.
18

19 24. Also in the 1915 time frame, Terrell contacted one Mike C. Murray ("Murray"),
20 an Indian residing in the Nicolaus area of Sutter County, California, near the Sacramento River
21 regarding the purchase of another piece of property for other homeless individual Indians. One
22 of the earliest governmental public records pertaining to a 160-acre parcel of land within El
23 Dorado County, commonly referred to as the "Verona Tract," is a January 4, 1916 letter
24 (Exhibit 6) from Terrell to the Commissioner of Indian Affairs, enclosing a "Census" of thirty-
25 four (34) named individuals living in Sutter and Sacramento Counties ("1916 Census"). That
26 1916 Census disclosed that some of the persons it identified were actually native Hawaiians.
27 Murray was established as Terrell's contact-person because, although only three other persons
28

1 named in the 1916 Census resided near Murray in Nicolaus, Murray nevertheless "enjoy[ed]
2 the respect of his neighbors." Terrell made a "suggestion to move and colonize this band of
3 Indians," to the foothills with the understanding that "they could still at proper season return to
4 the valleys and secure the usual employment, returning to their mountain home for the winters"
5 (Exhibit 6).

6
7 25. Murray also advised Terrell of "another band of Indians at present living from 25
8 to 30 miles to the south from Sacramento and Sacramento County, very similar situated to
9 those of his band," which Murray thought would "be glad to join them" (Exhibit 6).

10 26. The Chief Clerk of the Indian Service responded by indicating that his office
11 "favors the purchase of a small tract of land for the *combined bands* of Verona and Sacramento
12 Indians, *provided* the two bands are willing to *consolidate for the purpose of receiving this*
13 *benefit.*" (Emphasis added.) He also advised Terrell, however, that "the statement of 'Mike'
14 alone should not be taken as conclusive evidence of" such willingness (Exhibit 7).

15
16 27. On February 10, 1916, Terrell responded to Murray's letter of January 25
17 (Exhibit 8) by referring to "people at Nicolaus, Verona and those in the Sacramento Valley" as
18 being "combined bands." Terrell suggested "the combining of your several small bands,
19 aggregating about 70 Indians." He also referred to "the many bands and remnant [sic] bands of
20 needy and homeless Indians" (Exhibit 9).

21 28. On April 5, 1916, Terrell wrote to Murray about his general report concerning his
22 effort to secure suitable land for "you[] *and the homeless-landless Indians in the Sacramento*
23 *Valley below Sacramento.*" (Emphasis added.) He stated his expectation that Murray had
24 "taken the matter up with a number of the leaders of the landless" (Exhibit 10).

25
26 29. This point was reaffirmed in Terrell's letter to Murray dated April 21, 1916, in
27 which he made specific reference to having located the 160 acres which ultimately became
28 known as the Verona Rancheria. He stated that he would be urging approval for the purchase

1 of the 160 acres for "the remnant bands of Verona, Nicolaus, Sacramento and the Sacramento
2 Indians, according to the census between 70 and 75 Indians." He asked Murray "to take this up
3 with Chief Alex Blue, Bill Joe and the Adams Indians at Sacramento" (Exhibit 11).

4 30. On November 18, 1916, Terrell wrote to the Commissioner, stating that he had
5 obtained agreement for the sale and purchase of the 160 acres "to be considered in connection
6 for a permanent home for the above named landless Indians [referring to 'Verona - Sacramento
7 River - Indians'], *as well as other small bands and families hereinafter mentioned.*" (Emphasis
8 added.) He referred not only to the 1916 Census of 34 Indians, but also to the "Alex Blue" and
9 "Old Joe" remnant bands, to an Indian named B.J. Frost and his *family* who "desire[d] to join
10 the Verona, Nicolaus, Sacramento Indians," and to "remnant bands of Indians at Aukum,
11 Camino, Diamond Springs, Fairplay, Indian Diggins and Nashville in El Dorado County and
12 Plymouth and Oleta in Amador County," opining that most of them would join the "above
13 named Indians" in the event of a purchase. He referred to them as "nearby scattering remnant
14 bands," and stated that it would take some time and effort "to eventually colonize the greater
15 portion of all the above named Indians on this land, in the event of its purchase" (Exhibit 12).

16 31. By letter dated December 4, 1916, the Chief Clerk of the Indian Service wrote to
17 Terrell concerning the proposed purchase of the 160 acres "for the benefit of the Verona -
18 Sacramento River Indians, *and possibly for other bands* which you state it is likely may be
19 persuaded to join these Indians." (Emphasis added.) The Clerk noted that his office believed
20 that the purchase should be effected, to "make a home for practically all the Indians in that
21 vicinity," but that before that was done, Terrell should

22 . . . show why you have included in the census submitted with your letter of
23 January 4, 1916, some Hawaiians. These are not Indians, and the fund for
24 the purchase of California lands could not properly be expended on them
25 unless by reason of affiliation or adoption into the band they have become a
26 part of it. Apparently some of the Indians in this band are living in
27 Sacramento, California, and if they have adopted the habits of civilized life,
28 please justify further your recommendation that land be purchased for them.

1 (Emphasis added) (Exhibit 13).

2 32. Terrell, by letter dated December 30, 1916, responded that he had been under the
3 impression that the Hawaiians might be considered "by reason of intermarriages and affiliation
4 with the native Indians" (Exhibit 14).

5 33. On September 9, 1917, Terrell wrote to the Commissioner with a monetary
6 estimate for the costs of land purchases for landless Indians throughout Northern California,
7 stating that the suggested purchase of 160 acres for \$1,400 "will reasonably take care of the
8 few scattering [sic] landless Indian *families* of Sacramento, Sutter and Yolo Counties"

9 (Emphasis added) (Exhibit 15).

10 34. Terrell wrote to the Commissioner on December 3, 1917, with a listing of twenty-
11 four (24) named Indians. As to the Hawaiians, he stated that

12
13 ... it is not likely that these Hawaiian Indians or their families will desire to
14 join in this proposed new home, at least [sic] for a number of years yet. [¶]
15 My information is that these Hawaiian's [sic] who married the native
16 California Indian women, mostly full bloods, are very much attached to their
17 women and children, therefore, will not likely desert them.

18 * * * * *

19 The probabilities are that sooner or later most, if not all the Indians of these
20 Hawaiian Indians, will desire to go upon this home. At least after their
21 deaths, as will be noted from census they are growing old, their families will
22 surely desire to identify themselves with these, or rather, reidentify
23 themselves with these two remnant bands.

24 * * * * *

25 In my opinion there will be from time to time landless Indians of small
26 remnant bands now scattered in the counties of Eldorado [sic] and adjoining
27 to the south and west who will desire to take refuge in this proposed home.

28 (Exhibit 16.)

35. The Indian Service Chief Clerk, by letter dated January 12, 1918, responded that
Terrell was "requested to consummate [sic] the purchase . . . for the Sacramento-Verona bands of
Indians." The Clerk noted specifically, however, that

1 . . . the purchase should be made for the 'landless Indians of California' and
2 not for 'Hawaiian Indians' who may have intermarried with the California
3 Indians. If any of this class of intermarried Indians desire to join the bands
4 for whom the land is purchased, the Office will consider each particular case
5 on its merits.

6 (Emphasis added) (Exhibit 17).

7 36. The following month, by letter dated February 13, 1918, Terrell wrote to the
8 seller, one Meldrum, noting that the 160 acres of property was "desired as the village home for
9 the Sacramento, Verona and other landless Indians of California" (Emphasis added)
10 (Exhibit 18). On September 19, 1918, however, Terrell advised the Commissioner that he had
11 requested Meldrum to issue a deed to the United States "for the use and occupation of the
12 Sacramento-Verona Band of Indians, Eldorado [sic] County, California." No reference was
13 made to the "other landless Indians" (Exhibit 19).

14 37. On March 11, 1920 a deed was issued to the United States "for the use and
15 occupation of the Sacramento-Verona Band of Indians, Eldorado [sic] County, California"
16 (Exhibit 20).

17 **THE SHINGLE SPRINGS BAND AND THE SHINGLE SPRINGS RANCHERIA**

18 38. It was the policy and position of the BIA during my employment that the term
19 "Shingle Springs Rancheria" specifically referred to the land only and not the Band. The term
20 "Shingle Springs Rancheria" could not refer to the Shingle Springs Band which was not
21 created until 1979, at earliest. Moreover, the Shingle Springs Rancheria is not held in trust, as
22 noted in the documents evidencing title to the property, but is owned in fee by the United
23 States "for the use and occupation of the Sacramento-Verona Band of Indians, Eldorado [sic]
24 County, California" (Exhibit 20).

25 39. A 1970 memorandum from the Sacramento Area Director, Bureau of Indian
26 Affairs ("BIA"); to the Commissioner of Indian Affairs ("Commissioner") describes the
27 relationship of California Indians to the Rancherias acquired for them, including a specific
28

1 reference to the Shingle Springs Rancheria:

2 An example: [¶] In March 1920 the Shingle Springs Rancheria, containing
3 160 acres, was purchased for the use and occupancy of four Indian families
4 totaling 19 individuals, living in or near Verona in Sutter County, California,
5 and three Indian families totaling 15 individuals living in Sacramento. Of
6 the total, five were non-Indian spouses. The known descendants of these
7 folk, today living, total 22 family units comprising 54 individuals. Of this
8 group, 29 live in the metropolitan area of Sacramento; 13 live within a 45
9 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.

10 (Emphasis added) (Exhibit 21).

11 40. On January 31, 1979 the Shingle Springs Rancheria, but not the Band, was
12 identified in the Federal Register as the "Shingle Springs Rancheria (Verona Tract) of Miwok
13 Indians, California." 44 Fed. Reg. 7235, 7236 (Exhibit 22).

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

24 42. Based upon investigation, federal officials including William Finale of the BIA
25 held the position that the Rancheria property had never been occupied, except by squatters,
26 from the time of its purchase in 1920 until approximately 1980.
27
28

1 43. The BIA was not listing a group of persons but rather the Rancheria property
2 itself. This fact is supported by a document by BIA entitled "American Indians and Their
3 Federal Relationship," published in March 1972, which identifies "Shingle Springs Rancheria
4 (Verona Tract) (3) (unoccupied)" (Exhibit 23). This reference is plainly to the property itself
5 and not any type of political or tribal entity because of the reference to the fact that it is
6 "unoccupied." In short, as early as 1972 the BIA was identifying the bare Rancheria property
7 as some type of Indian land base, not as a tribal entity.
8

9 44. This practice was replicated in subsequent BIA administrative lists. In March
10 1978, the BIA prepared a list of "Traditional Indian Organizations (Recognition Without
11 Formal Federal Approval of Organizational Structure)" (Exhibit 24). Identified on that list was
12 the "Shingle Springs Rancheria (Verona)." *Id.* On February 6, 1979, the BIA published in the
13 Federal Register a list entitled, "Indian Tribal Entities That Have A Government-To-
14 Government Relationship With the United States." 44 Fed. Reg. 7235. Included in that list
15 was an entry for the "Shingle Springs Rancheria (Verona Tract) of Miwok Indians, California."
16 *Id.* at 7236. Just as with the 1972 and 1978 lists, the 1979 list identified the Rancheria and not
17 a group of persons.
18

19 45. It is not until July 8, 1981, well after the effective date of the Acknowledgment
20 Regulations, that the BIA identified the Shingle Springs Band, in addition to, the Rancheria as
21 the relevant "tribal entity." 46 Fed. Reg. 35360. The 1981 list as well as subsequent BIA lists
22 identifies the "Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona
23 Tract), California." *Id.*
24

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

1 47. The facts establish that from 1916 until 1979 no entity -- sociological, political,
2 economic or otherwise -- existed on the Rancheria or anywhere else that could have been
3 recognized by the federal government as an Indian tribe. While efforts to organize a group
4 occurred from 1970 until 1979, it is plain that these efforts were focused on receiving and
5 managing property without any specific intent concerning recognition of tribal status of an
6 *historical group* on the part of the BIA.
7

8 48. I have reviewed the transcript (Exhibit 25) of the hearing on September 8, 2003
9 regarding the Rule 12 Motions filed by the Shingle Springs Band and the federal defendants in
10 this action. During my tenure with the Regional Solicitor's Office the BIA's position was
11 exactly as stated by Judith Rabinowitz, counsel for the federal government: "That recognition
12 [of the Shingle Springs Band] was not pursuant to administrative procedures..." Exhibit 25,
13 26:14-15.
14

15 49. Ms. Rabinowitz asserted to the Court that the Shingle Springs Band was recognized
16 by a "course of dealings" (Exhibit 25, 26:17; 27:17-25; 29:2-4, 21-25; 30-31:1-25, 1).
17 Mr. Cohen, counsel for the Band, did likewise and further admitted that there are no known cases
18 purporting or supporting the "course of dealings" argument proffered at the hearing (Exhibit 25,
19 36:9-12).
20

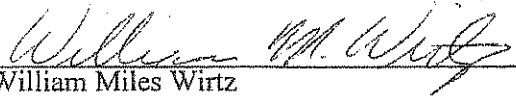
21 50. At no time during my employment did the BIA or Interior have a "course of
22 dealing" or "pattern and practice" of recognizing individual Indians or Indian groups as federally
23 recognized Indian tribes outside of the Acknowledgment Regulations found at 25 C.F.R. part 83
24 or the case-by-case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

26 51. The Shingle Springs Band was not federally recognized as an Indian tribe during
27 the time of my employment with the Office of the Regional Solicitor by any of the three
28 methods noted above. 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Office of the Regional Solicitor. The Shingle Springs Band was not federally recognized by
Finale's listing of the parcel of land.

Executed this 17th day of December, 2003, at Sacramento, Sacramento County,
California.



William Miles Wirtz