IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STAND UP FOR CALIFORNIA!, et al.

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, et al.

Defendants.

Civil Action No. 1:12-cv-02039-BAH

(consolidated with Civil Action No. 12-2071)

PLAINTIFFS STAND UP FOR CALIFORNIA!, ET AL.'S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs Stand Up for California!, Randall Brannon, Madera Ministerial Association, Susan Stjerne, First Assembly of God – Madera, and Dennis Sylvester ("Plaintiffs") submit this Notice of Supplemental Authority that is pertinent to arguments advanced by Defendants during the January 25 hearing on Plaintiffs' Motion for Preliminary Injunction. Defendants argued that, of itself, the fact of an election under section 18 of the Indian Reorganization Act (the "IRA") was conclusive evidence that a tribe was under federal jurisdiction in 1934, and that since the IRA's definition of "tribe" includes "organized band, pueblo, or Indians residing on one reservation," the North Fork band was historically considered a tribe within the meaning of the Act.

Attached are three opinions of the Solicitor of the Department of the Interior that provide the formal view of the Department with respect to these issues raised by Defendants:

1. A contemporaneous opinion of the Solicitor discusses a series of questions involving the interpretation of the IRA. Opinion of the Solicitor, M-27810 (Dec. 13, 1934) (*attached hereto as* Exhibit A). Question 4 of this opinion interprets Section 16's definition of

"tribe" to encompass two types of organization, one based on tribal affiliation and one based on residency without regard to past tribal affiliation. The discussion concludes:

> In the latter situation, residence is a necessary condition of the right to vote, and tribal affiliation is not necessary. Tribal affiliation may still be *one* indication of the right to reside on a given reservation; but other proofs of such right are possible, e.g., the holding of restricted property upon the reservation, or the regular receipt of agency services. I am of the opinion that when the residents of a reservation are organized under section 16, the qualifications for voting upon the constitution of such organization will be identical with the qualifications for voting upon the referendum under section 18.

Exhibit A at 4 (emphasis in original).

2. A 1936 opinion of the Solicitor states that although Section 16 of the IRA uses the word "tribe" in connection with elections to organize under the IRA, that based on residency alone the Department permitted organization under section 16 of the IRA to groups of Indians that did not constitute tribes and consequently enjoyed lesser rights than did historical tribes. Opinions of the Solicitor (Apr. 15, 1936) (*attached hereto as* Exhibit B). Section 18 of the IRA does not use the defined term "tribe" in providing for referendum elections under the Act. *Carcieri v. Salazar*, 555 U.S. 379 (2009), establishes that in order to qualify for trust land, a tribe must satisfy the definition of "Indian" not "tribe," and the 1934 and 1936 opinions indicate that section 16 and 18 elections were at times offered to Indians based on residency, not tribal affiliation.

3. A 1960 opinion of the Solicitor interpreting the Rancheria Act of 1958 explains that the Indians of Central California – i.e., those for whom Rancherias were established – "had not at first been regarded as subject to Federal guardianship because they were not members of a tribe having treaty relations…, did not live on reservations, and held no restricted allotments." Opinions of the Solicitor at 1883 (Aug. 1, 1960) (*attached hereto as* Exhibit C). The opinion explains that references in the Act to trust lands "do not connote a trust in which the United

States holds merely legal title, with equitable ownership elsewhere, as in the case of Indian land generally," *id.* at 1884, and that the Rancheria "could be used for any landless California Indians, and not merely for the specific band for whom purchased, since neither the deed conveying the property to the United States nor the act appropriating the purchase money contained 'any limitation or provision as to what Indians should be settled thereon.'" *Id.*

Respectfully Submitted,

Dated: January 29, 2013

By:/s/ *Benjamin S. Sharp*

PERKINS COIE, LLP
Benjamin S. Sharp (D.C. 211623)
Perkins Coie LLP
700 Thirteenth Street, N.W. Suite 600
Washington, D.C. 20005-3960
Telephone: 202.654.6200
Facsimile: 202.654.6211
BSharp@perkinscoie.com

SNELL& WILMER, LLP
Heidi McNeil Staudenmaier (*admitted PHV*)
400 E. Van Buren Street
One Arizona Center
Phoenix, AZ 85004
Telephone: 602.382.6366
Facsimile: 602.382.6070
HStaudenmaier@swlaw.com

Sean M. Sherlock (*admitted PHV*)
Harsh P. Parikh (*admitted PHV*)
Plaza Tower
600 Anton Blvd.
Suite 1400
Cosa Mesa, CA 92626-7689
Telephone: 714.427.7036
Facsimile: 714.427.7799
SSherlock@swlaw.com
HParikh@swlaw.com

Attorneys for Plaintiffs
Stand Up for California!, Randall Brannon, Madera Ministerial Association, Susan Stjerne, First Assembly of God – Madera, and Dennis Sylvester

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2013, a copy of the foregoing Plaintiffs' Notice of Supplemental Authority was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

Dated: January 29, 2013

Respectfully submitted,

By: */s/ Benjamin S. Sharp*

Benjamin S. Sharp, D.C. Bar No. 211623
Perkins Coie LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: 202.654.6200
Facsimile: 202.654.6211
BSharp@perkinscoie.com

Attorney for Plaintiffs
Stand Up for California!, Randall Brannon, Madera Ministerial Association, Susan Stjerne, First Assembly of God – Madera, and Dennis Sylvester