

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMADOR COUNTY, CALIFORNIA)	
)	
Plaintiff,)	
vs.)	Civil Action No. 1:05CV00658 (RWR)
)	
DIRK A. KEMPTHORNE, et al.,)	
)	
Defendants.)	
)	

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

NATURE OF THE ACTION

1. Pursuant to 28 U.S.C. §§ 2201 and 2202, plaintiff Amador County, California (“Amador County” or the “County”) seeks a declaratory and injunctive relief against the United States Department of the Interior (“Interior” or the “Department”), its Secretary Dirk A. Kempthorne, and its Acting Principal Deputy Assistant Secretary for Indian Affairs, Michael D. Olsen. Plaintiff challenges the Secretarial approval, pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* (“IGRA”), of an Amendment to the Tribal-State Compact between the Buena Vista Rancheria of Me-Wuk Indians and the State of California (the “Amended Compact”). The challenged action is final for the Department.

PARTIES

2. Plaintiff Amador County, a political subdivision of the State of California, is a body corporate and politic governed by its Board of Supervisors.
3. Sued in his official capacity, Dirk A. Kempthorne is Secretary of the United

States Department of the Interior.

4. Sued in his official capacity, Michael D. Olsen is Acting Principal Deputy Assistant Secretary for Indian Affairs, United States Department of the Interior.

5. The United States Department of the Interior is an executive department of the government of the United States of America.

JURISDICTION

6. This Court has jurisdiction under 28 U.S.C. § § 1331 and 2201 because this action presents questions arising under federal law. The United States has consented to this action under 5 U.S.C. § § 701-706.

VENUE

7. Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because the defendants reside and may be found here.

FACTUAL BACKGROUND

8. On October 17, 1988, Congress enacted IGRA for the purpose, *inter alia*, of providing statutory limitations on the operation of gaming facilities by Indian tribes on Indian lands through strictly limiting the locations on which Indian tribes may conduct gaming and requiring that the tribes enter into gaming compacts with the states before commencing certain gaming operations.

9. Subject to certain exceptions not relevant to this litigation, IGRA provides that the Buena Vista Rancheria of Me-Wuk Indians (the "Tribe") may operate a casino offering "Class III gaming" (as defined at IGRA Section 4(8), 25 U.S.C. § 2703(8)) only if the activity is conducted (a) on "Indian lands" and (b) in conformance with a Class III gaming compact between the Tribe and the state which has been approved by the

Secretary of the Interior.

10. IGRA became law on of October 17, 1988, and it narrowly defines “Indian lands” at Section 4(4), 25 U.S.C. § 2703(4), as those lands that as of October 17, 1988, were –

- (A) ... lands within the limits of any Indian reservation; and
- (B) ... lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

11. The Tribe is a federally recognized Indian tribe, which occupies the Buena Vista Rancheria in Amador County and proposes to conduct gaming on land within the Rancheria’s boundaries. The Buena Vista Rancheria is the only land in Amador County owned by, or associated with, the Tribe.

12. The Buena Vista Rancheria is not an Indian reservation.

13. The Buena Vista Rancheria is not comprised of land the title to which is held in trust by the United States for the benefit of the Tribe.

14. The Buena Vista Rancheria is not comprised of land held by the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental power.

15. The Buena Vista Rancheria is not owned by the United States; rather, it is fee land owned by the Tribe.

16. On or about October 8, 1999, the Governor of California approved a Class III Gaming Compact (“Original Buena Vista Compact”) executed by the Tribe and the State of California on September 10, 1999, which set forth the parameters for Indian gaming

activities agreed to by the Tribe and the State and restricted any Class III gaming to be conducted pursuant thereto to “Indian lands” as defined in IGRA.

17. The predecessor to the current Secretary of the Interior approved the Original Buena Vista Compact effective May 15, 2000.

18. The Amended Compact expanded the scope of Class III gaming to be conducted by the Tribe, and geographically limited any Tribe’s Class III gaming to the Buena Vista Rancheria while maintaining the “Indian lands” restrictions of IGRA and the Original Buena Vista Compact. The Amended Compact was signed by the Governor of California on August 23, 2004, approved by the California state legislature on August 27, 2004, chaptered pursuant to state law on September 29, 2004, and took effect on January 1, 2005.

19. The Tribe proposes to conduct Class III gaming at the Buena Vista Rancheria pursuant to the Amended Compact without invoking any of the exceptions to the “Indian lands” limitation set forth at IGRA Section 20, 25 U.S.C. § 2719.

20. Despite the fact that the Buena Vista Rancheria does not meet the requirements of “Indian land” under IGRA – which are incorporated in both the Original Buena Vista Compact and the Amended Compact – Interior Secretary Norton, acting through Acting Principal Deputy Assistant Secretary for Indian Affairs Olsen, approved the Amended Compact allowing Class III gaming on the Buena Vista Rancheria effective December 20, 2004.

21. Article IV of the California Constitution provides that actions of the state legislature “enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment....” Thus, the Amended Compact was not

effective until January 1, 2005.

22. Despite the fact that the Buena Vista Compact Amendment did not become effective as a matter of California law until January 1, 2005, former Interior Secretary Gale A. Norton, acting through Acting Principal Deputy Assistant Secretary for Indian Affairs Olsen, approved the Amended Compact effective some 11 days earlier.

23. As a political subdivision of the State of California, Amador County has jurisdiction over all lands within its borders that are neither federal lands nor “Indian lands” as defined by IGRA. Because the Buena Vista Rancheria is neither federal land nor “Indian land,” the Secretary’s approval of the Amended Compact directly and adversely affects the County’s lawful statutory rights and interests.

24. Amador County is significantly affected by the Secretary’s approval of the Amended Compact, for the approval constitutes federal authorization for the Tribe’s proposed Buena Vista Rancheria Casino project (the “Indian Casino”) to conduct Class III gaming on land which does not meet the requirements of IGRA and the Amended Compact.

25. The Secretary’s approval of the Amended Compact constitutes an unlawful authorization of land use for Class III gaming, because the proposed gaming lands at the Buena Vista Rancheria are under the County’s jurisdiction and are not “Indian lands” as required by IGRA and the Amended Compact.

26. If it is constructed and becomes operational, the Indian casino project sanctioned by the Secretary’s approval of the Amended Compact would have significant detrimental impacts on the County. Financial impacts would include, among others, increases in staffing, infrastructure, and related costs associated with: (i) the provision of

public safety – including Sheriff's Office services, County jail operations, emergency dispatch services, Sheriff's Office administration, District Attorney's Office services, Public Defender's services, volunteer first responder services, and social and public health services; (ii) the inevitable need for expansion of public education to meet the needs of new casino employees moving to the County; (iii) necessary road, interchange/intersection, bridge, and drainage improvements; and, (iv) remediation of environmental impacts. Preliminary estimates indicate that the initial cost to the County to address the financial impacts created by construction and operation of the Indian casino would be tens of millions of dollars, as well as subsequent additional annual expenses which cannot be estimated at this time.

27. In addition to causing substantial adverse financial impacts on the County, the Indian casino project authorized by the Secretary's approval of the Amended Compact would have significant irreparable adverse impacts on the County for which there would be no adequate compensation. Amador County is a small rural county with a population of approximately 35,100 residents. The anticipated vehicle traffic generated by the proposed casino – which will be served by a planned parking facility which will accommodate 3,500 to 4,000 vehicles – will be in excess of 20,000 new vehicle trips per day on narrow, rural County roads, a level of traffic which will overwhelm the County and its residents and cause numerous adverse quality-of-life impacts. These impacts will include a dramatic increase in crime, a wide variety of detrimental environmental impacts – including air and water quality degradation, and significant noise and light pollution – and traffic congestion on narrow local roads.

28. The Buena Vista Rancheria was created by purchase in federal fee by the United States of an irregularly-shaped tract of land in Amador County, California. The land was acquired for the specific purpose of providing a place for occupancy by homeless Indians living in the vicinity, pursuant to special Congressional appropriations.

29. On May 5, 1927, the United States concluded the purchase in federal fee from Louis and Marjory Alpers and obtained title to the following parcel which constitutes the Buena Vista Rancheria:

Commencing at the N. E. corner of Section 19, Township 5 North, Range 10 East, M.D.M., California, and thence running west along section line 578 feet; thence at right angles south 5,280 feet; thence at right angles east 578 feet; thence at right angles north 5,280 feet to place of beginning, containing approximately 67.47 acres.

30. Descendants of Louis and Annie Oliver today constitute the only membership of the Tribe.

31. Louis and Annie Oliver are the grandparents of Rhonda Morningstar Pope, the only person determined by the Bureau of Indian Affairs to qualify for membership in the Tribe as it exists today.

32. The BIA determined that Rhonda Morningstar Pope qualified as the only tribal member specifically because she is the only living person who can prove descendancy from Louis and Annie Oliver.

33. Between 1927 and 1930, there is no evidence that any Indians resided on the Buena Vista Rancheria.

34. Between 1927 and 1935, there is no evidence that Louis and Annie Oliver, or any member of their family, resided on the Buena Vista Rancheria.

35. Louis and Annie Oliver and their family did not reside in Amador County in 1930, but rather Louis and Annie Oliver and their three living children – Lucille (age 11), Elinor (age 9), and Enos (age 6) – lived in Township 2, Mokelumne East Precinct, Calaveras County, CA, a residency documented by federal census records.

36. In 1933, Annie Oliver and her children – Lucille (age 13), Elinor (age 10), and Enos (age 8) – were identified as living in Amador County in Township 2 in the vicinity of Ione, California, but not on the land constituting the Buena Vista Rancheria.

37. There is no evidence that Louie Oliver lived in Amador County in 1933.

38. The earliest record of any occupancy of the Buena Vista Rancheria by the Oliver family is dated June 4, 1935, in which O. H. Lipps, Superintendent of the Sacramento Indian Agency, identified the “Approved List of Voters for Indian Reorganization Act, Buena Vista Rancheria (Amador County) as consisting of four people” who recently had moved onto the land. Those four were identified as (1) Louie Oliver, (2) Annie Oliver, (3) Johnnie Oliver and (4) Josie Ray.

39. There is no evidence of any occupancy of the Buena Vista Rancheria by any person other than members of the Oliver family, and a stepson of Enos Oliver named John Louis Fielder, who lived on the land as a youth from 1946 to 1956.

40. There is no evidence that any tribe ever occupied the lands comprising the Buena Vista Rancheria.

41. There is no evidence that the Oliver family ever functioned as an Indian tribe including conducting any tribal meetings or other tribal activities.

42. None of the BIA records at the National Archives, San Bruno, California (“BIA San Bruno Records”) identifies a Buena Vista Tribe of Miwok Indians.

43. The BIA San Bruno Records identify the Buena Vista Rancheria as federal fee land and not as reservation land.

44. None of the BIA San Bruno Records document that the BIA ever designated the Buena Vista Rancheria as a reservation.

45. None of the BIA San Bruno Records document any measures of tribal presence on the Buena Vista Rancheria.

46. The BIA San Bruno Records do not contain a constitution, set of bylaws or governing document for a Buena Vista Tribe of Miwok Indians.

47. The BIA San Bruno Records do not contain minutes, lists of officers, committees, or submission of tribal data to the BIA for a Buena Vista Tribe of Miwok Indians.

48. The BIA San Bruno Records do not contain records of individual or family needs assessments, identification of health issues, review of educational needs, or delivery of social services for the Buena Vista Rancheria or a Buena Vista Tribe of Miwok Indians.

49. The BIA San Bruno Records do not contain any records during the Great Depression and following of BIA assistance in obtaining food, blankets, clothing, or other relief activity to anyone residing at the Buena Vista Rancheria.

50. The BIA San Bruno Records do not contain any record of the BIA providing housing assistance, housing improvement, fencing, or other improvements except for a rudimentary water system at the Buena Vista Rancheria.

51. The BIA San Bruno Records do not contain records of a Buena Vista Tribe of Miwok Indians seeking redress in county, state, or federal court for any matter of trespass, mineral rights, or water rights.

52. There is no record in the historical records of Amador County of the existence of or functioning of a Buena Vista Tribe of Miwok Indians.

53. The Buena Vista Rancheria never was occupied by a tribe for which there is evidence of a tribal organization.

54. Prior to the federal termination of the Buena Vista Rancheria, the Tribe was never organized under the Indian Reorganization Act and did not have a constitution or charter.

55. Casus (Jesus) Oliver, father of Louis Oliver, participated in interviews with Alfred Louis Kroeber, anthropologist of the University of California, Berkeley, in 1906. Kroeber ascertained that Casus Oliver was of the Chulemni, an extinct group from the Stockton, California, area, linguistically associated with Yokuts. Annie (Howdy) Oliver, wife of Louis Oliver, was documented as Miwok from the foothills of the Sierras. The linguistic and cultural descent of the Oliver family was thus both Yokut and Miwok with no clear confirmation of any tribal political connection or activity.

56. The Buena Vista Rancheria was only a place of residency for the Oliver family: parents, children, and a non-Indian step-grandson, but not for a tribe or band of Indians.

COUNT I

(Declaratory Judgment – Secretarial Approval Void *Ab Initio*)

57. Plaintiff realleges and incorporates by reference paragraphs 1-27 above.

58. Under California law, the Amended Compact did not become effective until

January 1, 2005.

59. The Secretary's decision to approve the Amended Compact before it was final as a matter of California law was arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary's authority under IGRA, and issued in a manner not in accordance with law.

60. Because the Secretary approved the Amended Compact prior to the date on which there was a legal compact to approve, plaintiff is entitled to a declaratory judgment that approval was void *ab initio*.

COUNT II

(Declaratory Judgment – Requisite “Indian lands” Determination”)

61. Plaintiff realleges and incorporates by reference paragraphs 1-27 and 58-59 above.

62. Congress authorized Class III gaming activities only on “Indian lands” as defined by IGRA. Accordingly, the Secretary and Department of the Interior cannot authorize Class III gaming activities on any land unless the Secretary first makes a determination that the site is “Indian land” within the meaning of IGRA.

63. In approving the Amended Compact, the Secretary did not reconcile her approval with the Buena Vista Rancheria's failure to satisfy IGRA's “Indian lands” requirement, making that approval arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary's authority under IGRA, and not in accordance with law.

64. Because the Secretary's approval of the Amended Compact was made without regard to the intended gaming lands' failure to qualify as “Indian lands” under

IGRA, plaintiff is entitled to a declaratory judgment that approval was unlawful and is of no force or effect.

COUNT III

(Declaratory Judgment – Amended Compact Approval)

65. Plaintiff realleges and incorporates by reference paragraphs 1-27, 58-59 and 62-63 above.

66. Congress authorized Class III gaming activities only on “Indian lands” as defined by IGRA. Accordingly, the Secretary could have approved the Amended Compact only if the proposed gaming site at the Buena Vista Rancheria was “Indian land” within the meaning of IGRA.

67. Because the lands comprising the Buena Vista Rancheria are not “Indian lands” as defined by the IGRA, the Secretary’s approval of the Amended Compact was arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary’s authority under IGRA, and issued in a manner not in accordance with law.

68. Plaintiff is entitled to a declaratory judgment that the Secretary’s approval of the Amended Compact is null and void and of no force or effect.

COUNT IV

(Declaratory Judgment – Rancheria is not “Indian land”)

69. Plaintiff realleges and incorporates by reference paragraphs 1-27, 58-59, 62-63 and 66-67 above.

70. IGRA authorized Class III gaming activities only on “Indian lands,” that is land which as of October 17, 1988, was (i) within an Indian reservation, (ii) in trust for the Tribe or (iii) in restricted fee and subject to the Tribe’s governmental power.

71. Because the Secretary approved the Amended Compact allowing Class III gaming on the Buena Vista Rancheria, plaintiff is entitled to a declaratory judgment that the Buena Vista Rancheria is not “Indian land” under IGRA so that the Secretary cannot authorize Class III gaming on the Buena Vista Rancheria.

COUNT V

(Mandatory Injunction – Revocation of Secretarial Approval)

72. Plaintiff realleges and incorporates by reference paragraphs 1-27, 58-59, 62-63, 66-67 and 70 above.

73. Congress authorized Class III gaming activities only on “Indian lands” as defined by IGRA. Accordingly, the Secretary could only have approved the Amended Compact only if the lands comprising the Buena Vista Rancheria were “Indian lands” within the meaning of IGRA.

74. Because the lands comprising the Buena Vista Rancheria are not “Indian lands” as defined by the IGRA, the Secretary’s approval of the Amended Compact was arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary’s authority under IGRA, and issued in a manner not in accordance with law.

75. The Class III Indian casino project allowed by the Secretary’s approval of the Amended Compact would cause the County to suffer irreparable harm for which there is no adequate remedy at law.

76. Plaintiff is entitled to a mandatory injunction directing the defendants to revoke and vacate the Secretary’s approval of the Amended Compact.

COUNT VI

(Mandatory Injunction – “Indian lands” Requirement)

77. Plaintiff realleges and incorporates by reference paragraphs 1-27, 58-59, 62-63, 66-67, 70 and 73-75 above.

78. Congress authorized Class III gaming activities only on “Indian lands” as defined by IGRA.

79. Because the lands comprising the Buena Vista Rancheria are not “Indian lands” as defined by the IGRA, any action by the Secretary which would allow the Tribe to conduct Class III gaming on the Buena Vista Rancheria, whether through approval of a tribal-state compact or otherwise, would be arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary’s authority under IGRA, and not in accordance with law.

80. The Secretary’s authorization of an illegal Class III Indian casino within Amador County, through compact approval or otherwise, will cause the County to suffer irreparable harm for which there is no adequate remedy at law.

81. Plaintiff is entitled to a mandatory injunction prohibiting the defendants from authorizing or sanctioning the conduct of Class III gaming activities on the Buena Vista Rancheria.

COUNT VII

(Declaratory Judgment – No Historic Tribal Presence)

81. Plaintiff realleges and incorporates by reference paragraphs 1-18 and 28-56 above.

82. IGRA requires that gaming can only be conducted by the Tribe on land which

is either in reservation status or held in trust by the United States for the Tribe.

83. Historically, there was no tribe at the Buena Vista Rancheria for which the land served as a tribal reservation.

84. The Buena Vista Rancheria land is not held in trust by the United States for any tribe.

85. Because there was no tribe for which the Buena Vista Rancheria was a reservation, nor is the Rancheria held in trust, the Amended Compact cannot authorize gaming for the Tribe on the Buena Vista Rancheria under IGRA.

86. Because the Secretary's approval of the Amended Compact was made without regard to the fact that the Buena Vista Rancheria is neither reservation nor in trust for the signatory Tribe, plaintiff is entitled to a Declaratory Judgment that approval was unlawful and is of no force or effect.

COUNT VIII

(Mandatory Injunction – Revocation of Secretarial Approval)

87. Plaintiff realleges and incorporates by reference paragraphs 1-18, 28-56 and 82-85 above.

88. Congress authorized Class III gaming activities only on “Indian lands” as defined by IGRA.

89. Because the lands comprising the Buena Vista Rancheria are not “Indian lands” as defined by IGRA, any action by the Secretary which would allow the Tribe to conduct Class III gaming on the Buena Vista Rancheria, whether through approval of a Tribal-State Compact or otherwise, would be arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary’s authority under IGRA, and not in accordance with law.

90. The Secretary's authorization of an illegal Class III Indian casino within Amador County, through compact approval or otherwise, will cause the County to suffer irreparable harm for which there is no adequate remedy at law.

91. Plaintiff is entitled to a mandatory injunction prohibiting the defendants from authorizing or sanctioning the conduct of Class III gaming activities on the Buena Vista Rancheria.

REQUESTED RELIEF

WHEREFORE, plaintiff respectfully requests that the Court enter an order as follows:

A. Declaring that the Secretary's purported approval of the Amended Compact, prior to the Amended Compact's effective date, was void *ab initio*.

B. Declaring that the Secretary cannot approve a tribal-state compact without first determining that the intended gaming activities will be conducted only on "Indian lands" as defined by IGRA.

C. Declaring that the Secretary's approval of the Amended Compact was unlawful, null and void, and of no force or effect.

D. Declaring that the Buena Vista Rancheria is not "Indian land" as defined by IGRA, and that Class III gaming activities cannot be authorized for, or conducted on, the Buena Vista Rancheria.

E. Directing the defendants to revoke and vacate the Secretary's approval of the Amended Compact.

F. Enjoining the defendants from authorizing or sanctioning the conduct of Class III gaming activities on the Buena Vista Rancheria.

G. Awarding plaintiff its costs, attorneys' fees, and all other expenses of this litigation.

H. Awarding plaintiff such other and further relief as the Court deems just and proper.

DATED this ____ day of _____ 2007.

AMADOR COUNTY, CALIFORNIA

By Counsel

/s/

Dennis J. Whittlesey (D.C. Bar No. 053322)
DICKINSON WRIGHT PLLC
1901 L Street, N.W. - Suite 800
Washington, D.C. 20036
Telephone: (202) 659-6928
Facsimile: (202) 659-1559

OF COUNSEL:

Martha J. Shaver, Esquire
County Counsel
AMADOR COUNTY
810 Court Street
Jackson, California 95642