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OF POMO INDIANS OF CALIFORNIA; JAVIER
7 MARTINEZ; SARAH GOODWIN; LENETTE
LAIWA-BROWN; GERAD SANTANA; JOHN TRIPPO;
8 and COMMITTEE TO ORGANIZE THE CLOVERDALE
RANCHERIA GOVERNMENT

9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 CLOVERDALE RANCHERIA OF POMO
INDIANS OF CALIFORNIA, a federally-
13 recognized Indian Tribe; JAVIER MARTINEZ;
SARAH GOODWIN; LENETTE LAIWA-
14 BROWN; GERAD SANTANA and JOHN
TRIPPO, in their official capacities as
15 members of the Cloverdale Rancheria of
Pomo Indians of California Tribal Council; and
16 COMMITTEE TO ORGANIZE THE
17 CLOVERDALE RANCHERIA GOVERNMENT,
an unincorporated association,

18
19 Plaintiffs,

20 v.

21 KENNETH L. SALAZAR, Secretary of the
Interior; LARRY ECHO HAWK, Assistant
Secretary of the Interior for Indian Affairs;
22 MICHAEL S. BLACK, Acting Director of the
Bureau of Indian Affairs; MICHAEL R. SMITH,
23 Deputy Director of the Bureau of Indian Affairs
for Field Operations; DALE RISLING, Acting
24 Regional Director of the Pacific Regional
Office of the Bureau of Indian Affairs; TROY
25 BURDICK, Superintendent of the Central
California Agency of the Bureau of Indian
26 Affairs; and UNITED STATES DEPARTMENT
OF THE INTERIOR,

27
28 Defendants.

Case No. CV-10-1605 RS
FIRST AMENDED COMPLAINT

INTRODUCTION

1
2 1. This is a civil action against the United States Department of the Interior and its
3 officials (collectively, the "Department" or "Defendants") under the Administrative Procedure
4 Act, 5 U.S.C. §§ 551, *et seq.*, and 701, *et seq.*, seeking declaratory and related relief
5 compelling agency action unlawfully withheld or unreasonably delayed, to perform and fulfill
6 the Department's nondiscretionary legal obligation to take action to provide necessary and
7 appropriate assistance in efforts to timely, successfully, effectively and lawfully organize the
8 Cloverdale Rancheria government and to recognize the results of such efforts to organize the
9 Cloverdale Rancheria government in the ongoing exercise of the Federal government's
10 government-to-government relationship with the Cloverdale Rancheria.

11 2. The Department's legal obligation to take such action is grounded in the
12 Stipulated Judgment in *Hardwick v. United States*, No. C-79-1710 (N.D. Cal.) (Stipulated
13 Judgment entered Dec. 22, 1983) ("*Tillie Hardwick* Stipulated Judgment"), which Plaintiffs
14 seek to enforce in this action, as well as more generally in federal statutory and common law
15 governing the Department's responsibilities to Indian tribes in the ongoing exercise of the
16 Federal government's government-to-government relationship with the Indian tribes.

17 3. In addition, because the Department took action to perform and fulfill its legal
18 duty to provide necessary and appropriate assistance in efforts to timely, successfully,
19 effectively and lawfully organize to recognize the results of such efforts to organize each of
20 the sixteen other Indian tribes that were restored to federally-recognized status under the
21 *Tillie Hardwick* Stipulated Judgment, the Department's failure and refusal and/or
22 unreasonable delay in doing the same for Plaintiffs constitutes a denial of equal protection of
23 the law in violation of the Fifth Amendment to the United States Constitution.

24 4. As part of the Department's performance and fulfillment of that nondiscretionary
25 legal duty Plaintiffs seek to compel, Plaintiffs seek to compel the Department to recognize the
26 results of the efforts in 2008 and January 2009 to organize the Cloverdale Rancheria
27 government by the Committee to Organize the Cloverdale Rancheria Government in the
28 ongoing exercise of the Federal government's government-to-government relationship with

1 the Cloverdale Rancheria. The Cloverdale Rancheria governmental organization was
2 conducted pursuant to and in accordance with the *Tillie Hardwick* Stipulated Judgment and
3 the decisions of the Interior Board of Indian Appeals in *Alan-Wilson v. Sacramento Area*
4 *Director*, 30 IBIA 241 (1997) and *Alan-Wilson v. Acting Sacramento Area Director*, 33 IBIA 55
5 (1998). The governmental organization includes the results of the election duly conducted on
6 December 16, 2008, adopting the Constitution of the Cloverdale Rancheria of Pomo Indians
7 of California ("Cloverdale Constitution") and the Cloverdale Rancheria of Pomo Indians of
8 California Interim Elections Ordinance ("Cloverdale Interim Elections Ordinance"), and the
9 subsequent election duly conducted on January 13, 2009, of members of the Tribal Council of
10 the Cloverdale Rancheria of Pomo Indians of California ("Cloverdale Tribal Council"),
11 pursuant to and in accordance with the Cloverdale Constitution and Cloverdale Interim
12 Elections Ordinance. Plaintiffs seek to compel Defendants to comply with the
13 nondiscretionary legal duty of the Department to recognize the duly authorized governmental
14 organization of the Cloverdale Rancheria, including the Cloverdale Constitution, the
15 Cloverdale Interim Elections Ordinance, the Cloverdale Tribal Council, the governing body of
16 the Cloverdale Rancheria under the Cloverdale Constitution, and the duly elected members of
17 the Cloverdale Tribal Council, in the ongoing exercise of the Federal government's
18 government-to-government relationship with the Cloverdale Rancheria. Defendants have
19 failed and refused to comply and/or have unreasonably delayed in complying with such legal
20 duty and have acted and continue to act in contravention of such legal duty.

21 JURISDICTION

22 5. This Court has jurisdiction over the subject matter of this action pursuant to 28
23 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), and 1361 (mandamus
24 against federal official), as hereinafter more fully appears.

25 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, in that this is a civil
26 action arising under the Constitution and laws of the United States, including but not
27 necessarily limited to the following provisions: U.S. Const. Art. I, § 8, cl. 3 (Indian commerce
28 clause); U.S. Const. Amend. V (due process clause); the Administrative Procedure Act, 5

1 U.S.C. § 551 *et seq.* and § 701 *et seq.*; 28 U.S.C. §§ 2201 and 2202 (declaratory judgments);
2 the All Writs Act, 28 U.S.C. § 1651; the Indian Reorganization Act, 25 U.S.C. § 461 *et seq.*;
3 43 U.S.C. § 1451 *et seq.* (establishment and responsibilities of the Department of the
4 Interior); and the Federal common law.

5 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1346(a)(2), in that this is a
6 civil action against the United States, not exceeding \$10,000 in amount, founded upon the
7 Constitution, Acts of Congress and regulations of an executive department, including but not
8 necessarily limited to the provisions previously described.

9 8. This Court has jurisdiction pursuant to 28 U.S.C. § 1361, in that this is a civil
10 action in the nature of mandamus seeking to compel an officer or employee of the United
11 States or an agency thereof to perform a duty owed to the Plaintiffs, which duty arises under
12 the Constitution and laws of the United States, including but not necessarily limited to the
13 provisions previously described.

14 9. The sovereign immunity of the United States has been waived with respect to the
15 subject matter of this action and the relief requested herein by the Administrative Procedure
16 Act, 5 U.S.C. § 702.

17 VENUE

18 10. Venue in this action lies in this Court pursuant to 28 U.S.C. §§ 84(a) and
19 1391(e), in that this is a civil action against the United States, an agency of the United States
20 and officials and employees of the United States and an agency thereof, each acting in his or
21 her official capacity or under color of legal authority, a substantial part of the events or
22 omissions giving rise to the claims herein occurred, and one or more Plaintiffs each reside,
23 within the judicial district of the United States Northern District of California, and no real
24 property is involved in the action.

25 INTRADISTRICT ASSIGNMENT

26 11. This action arises within Sonoma County within the meaning of Civil L.R. 3.2(c),
27 in that a substantial part of the events or omissions giving rise to the claims herein occurred
28 therein. This action is related to *Hardwick v. United States*, No. C-79-1710 (N.D. Cal.), which

1 is assigned to United States District Judge Jeremy F. Fogel, who presides in the San Jose
2 Division of the Northern District of California.

3 PARTIES

4 12. Plaintiff Cloverdale Rancheria of Pomo Indians of California ("Cloverdale
5 Rancheria") is a federally-recognized Indian tribe and is the democratically-elected
6 government of the Cloverdale Pomo Indian people.

7 13. Plaintiffs Javier Martinez, Sarah Goodwin, Lenette Laiwa-Brown, Gerad Santana
8 and John Trippo are duly elected members of the Tribal Council of the Cloverdale Rancheria
9 of Pomo Indians of California ("Cloverdale Tribal Council"), having been duly elected by the
10 members of the Tillie Hardwick Class, which are those persons that have been determined by
11 the United States Department of the Interior to be the class of persons legally authorized to
12 organize the Cloverdale Rancheria government, as set forth more fully below in this
13 Complaint, and bring this action in their official capacities. Plaintiff Gerad Santana resides at
14 Cloverdale, Sonoma County, California. Plaintiff John Trippo resides at Santa Rosa, Sonoma
15 County, California.

16 14. Plaintiff Committee to Organize the Cloverdale Rancheria Government is an
17 unincorporated association comprised of members of the "Tillie Hardwick Class," those
18 persons who are the distributees, dependent members or lineal descendants of the
19 distributees under the "Plan to Distribute the Assets of the Cloverdale Rancheria," approved
20 August 13, 1959, see 30 Fed. Reg. 16274 (Dec. 30, 1965), pursuant to the California Indian
21 Rancheria Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended.

22 15. Defendant Kenneth L. Salazar is the Secretary of the United States Department
23 of the Interior ("Secretary"), with offices located at 1849 C Street, N.W., Washington, D.C.
24 20240, and is sued here in his official capacity. The Secretary is the chief executive officer of
25 the United States Department of the Interior, to whom all functions of other officers, agencies
26 and employees of the Department of the Interior, with certain exceptions not relevant hereto,
27 have been transferred, with power to delegate, pursuant to Reorganization Plan No. 3, §§ 1
28 and 2, 43 U.S.C. § 1451. Secretary Salazar took office on or about January 20, 2008. As the

1 context may require, all references herein to the Secretary prior to that date refer to Secretary
2 Salazar's predecessors in office, in their official capacities.

3 16. Defendant Larry Echo Hawk is the Assistant Secretary of the United States
4 Department of the Interior for Indian Affairs ("Assistant Secretary – Indian Affairs"), with
5 offices located at 1849 C Street, N.W., Washington, D.C. 20240, and is sued here in his
6 official capacity. By the Department of the Interior Department Manual, 209 DM 8.1, subject
7 to certain limitations not relevant hereto, the Assistant Secretary – Indian Affairs is authorized
8 to exercise all of the authority of the Secretary with respect to Indian Affairs. Assistant
9 Secretary Echo Hawk took office on or about May 22, 2009. As the context may require, all
10 references herein to the Assistant Secretary – Indian Affairs prior to that date refer to
11 Assistant Secretary Echo Hawk's predecessors in office, in their official capacities.

12 17. Defendant Michael S. Black is the Acting Director of the Bureau of Indian Affairs
13 of the United States Department of the Interior ("BIA Director"), with offices located at 1849 C
14 Street, N.W., Room Number 4611-MIB, MS-4004-MIB, Washington, D.C. 20240, and is sued
15 here in his official capacity. By the Department of the Interior Departmental Manual, the BIA
16 Director is charged with the duties of administering all laws governing non-education portions
17 of Indian Affairs; and with providing leadership and direction for the Bureau of Indian Affairs,
18 specifically providing technical oversight and monitoring for headquarters organization and
19 field activities of the Bureau of Indian Affairs. As the context may require, all references
20 herein to the BIA Director prior to the date Acting Director Black took office refer to his
21 predecessors in office, in their official capacities.

22 18. Defendant Michael R. Smith is the Deputy Director of the Bureau of Indian Affairs
23 for Field Operations ("Deputy Director – Field Operations"), with offices located at 1849 C
24 Street, N.W., Room Number 4606-MIB, MS-4004-MIB, Washington, D.C. 20240, and is sued
25 here in his official capacity. Per Department of the Interior Departmental Manual, dated
26 August 29, 2006, the BIA Deputy Director – Field Operations is charged with the duties of
27 reporting to the Director of the Bureau of Indian Affairs; monitoring and evaluating the
28 performance of regional and field offices of the Bureau of Indian Affairs; conducting

1 periodic/specific program reviews of field operations; and providing specialized and
2 programmatic technical assistance to field offices and tribes. As the context may require, all
3 references herein to the Deputy Director – Field Operations prior to the date Deputy Director
4 Smith took office refer to Deputy Director Smith’s predecessors in office, in their official
5 capacities.

6 19. Defendant Dale Risling is the Acting Regional Director for the Pacific Regional
7 Office of the Bureau of Indian Affairs (“Pacific Regional Director”), with offices located at 2800
8 Cottage Way, Sacramento, California 95825, and is sued here in his official capacity. By the
9 Department of the Interior Departmental Manual, the Pacific Regional Director is charged with
10 the duties of representing the Bureau of Indian Affairs in interactions with tribal, State, and
11 local governments, other Federal agencies, and the public; directing and assisting in the
12 application and implementation of overall policies and programs by agency and field offices
13 within the Pacific Region; providing technical advice and review, evaluating performance, and
14 coordinating those features of Bureau of Indian Affairs programs within the Pacific Region that
15 extend beyond the jurisdiction of a single agency or field office. As the context may require,
16 all references herein to the Pacific Regional Director prior to the date Acting Regional Director
17 Risling took office refer to Acting Regional Director Risling’s predecessors in office, in their
18 official capacities.

19 20. Defendant Troy Burdick is the Superintendent of the Central California Agency of
20 the Pacific Regional Office of the Bureau of Indian Affairs (“Central California Agency
21 Superintendent”), with offices located at 650 Capitol Mall, Suite 8-500, Sacramento, California
22 95814, and is sued here in his official capacity. By the Department of the Interior
23 Departmental Manual, the Central California Agency Superintendent is charged with the
24 duties of representing the Bureau of Indian Affairs in interactions within the Central California
25 Agency with local tribal governing bodies, municipal and county governments, and other
26 Federal agencies, and with the general public; directing and supervising the operation of
27 programs administered by the Bureau of Indian Affairs within the Central California Agency,
28 and monitoring, supporting and providing technical assistances to tribal governments within

1 the Central California Agency when an agency program or programs are administered under
2 self-determination awards. As the context may require, all references herein to the Central
3 California Agency Superintendent prior to the date Superintendent Burdick took office refer to
4 Superintendent Burdick's predecessors in office, in their official capacities.

5 21. Defendant the United States Department of the Interior is an executive agency of
6 the United States government, established and organized pursuant to 43 U.S.C. § 1451 *et*
7 *seq.*, with offices located at 1849 C Street, N.W., Washington, D.C. 20240.

8 GENERAL ALLEGATIONS

9 22. The members of the Cloverdale Rancheria, or Cloverdale Pomo Indians, are
10 southern Pomo Indians who have lived in or about a village on the east fork of the Russian
11 River and its environs near the present-day town of Cloverdale, California since time
12 immemorial.

13 23. The territory of the Cloverdale Rancheria is comprised of 27.5 acres of land,
14 more or less, which was purchased by the United States for the use of the Cloverdale Pomo
15 Indians on or about March 11, 1921, pursuant to the Act of March 3, 1921, c. 119, § 3, 41
16 Stat. 1225.

17 24. On or about June 18, 1934, Congress enacted the Indian Reorganization Act
18 ("IRA"), Act of June 18, 1934, c. 576, 48 Stat. 988, as amended, 25 U.S.C. § 461 *et seq.*
19 Section 18 of the IRA, 25 U.S.C. § 478, provided that the Act would "not apply to any
20 reservation where a majority of the adult Indians, voting a special election duly called by the
21 Secretary of the Interior, shall vote against its application."

22 25. On or about June 11, 1935, the adult Indians of the Cloverdale Rancheria voted
23 not to reject application of the IRA in an election duly held pursuant to section 18 of the IRA.
24 However, the Cloverdale Pomo Indians never voted to organize and adopt a constitution and
25 bylaws or to receive a corporate charter pursuant to sections 16 and 17 of the IRA, 25 U.S.C.
26 §§ 476 and 477.

27 26. On or about August 18, 1958, Congress enacted the California Indian Rancheria
28 Act ("California Rancheria Act"), Act of August 18, 1958, P.L. 85-671, 72 Stat. 619. As

1 amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390, the California Rancheria
2 Act provided, *inter alia*, that the lands and other assets of certain specified Indian Rancherias
3 in the State of California, including the Cloverdale Rancheria, were to be distributed to the
4 Indians of each respective Indian Rancheria in accordance with an approved Distribution
5 Plan. The California Rancheria Act further provided that after such distribution of assets, and
6 subject to certain conditions precedent, the Federal trust relationship with the Indians of each
7 respective Indian Rancheria and the dependent members of their immediate families would
8 be terminated.

9 27. By Notice published in the Federal Register on or about December 30, 1965, 30
10 Fed. Reg. 16274, the Secretary of the Interior gave notice pursuant to the California
11 Rancheria Act that title to the land of the Cloverdale Rancheria had passed under a
12 Distribution Plan approved August 13, 1959, and that Federal supervision over such land and
13 the named Cloverdale Pomo Indian individuals and dependent members of their immediate
14 families was terminated.

15 28. On or about July 12, 1979, suit was filed against the United States and others on
16 behalf of a class comprised of all distributees, any heirs or legatees of distributees and any
17 Indian successors in interest to lands of seventeen Indian Rancherias terminated under the
18 California Rancheria Act, including those of the Cloverdale Rancheria, in the U.S. District
19 Court for the Northern District of California, entitled *Tillie Hardwick v. United States*, No. C-79-
20 1710-SW (N.D. Cal.) ("*Tillie Hardwick* litigation"). The complaint alleged, *inter alia*, that the
21 termination of the seventeen Indian Rancherias and the distribution of their land and other
22 assets, including the Cloverdale Rancheria, had not been done in accordance with the
23 provisions of the California Rancheria Act and therefore were legally ineffective.

24 29. On or about December 22, 1983, a Stipulated Judgment was entered in the *Tillie*
25 *Hardwick* litigation ("*Tillie Hardwick* Stipulated Judgment"). Paragraphs 2 through 4 of that
26 Stipulated Judgment provided in relevant part that:

27 2. The Court shall certify a class consisting of all those persons who received any
28 of the assets of the rancherias listed and described in paragraph 1 pursuant to the
California Rancheria Act [which expressly named and described the Cloverdale

1 Rancheria] and any Indian heirs, legatees or successors in interest of such persons .

2 . . .

3 3. The status of the named individual plaintiffs and other class members of the
4 seventeen rancherias named and described in paragraph 1 as Indians under the
5 laws of the United States shall be restored and confirmed. . . .

6 4. The Secretary of the Interior shall recognize the Indian Tribes, Bands,
7 Communities or groups of the seventeen rancherias listed in paragraph 1 as Indian
8 entities with the same status as they possessed prior to distribution of the assets of
9 these Rancherias under the California Rancheria Act, and said Tribes, Bands
10 Communities and groups shall be included on the Bureau of Indian Affairs' Federal
11 Register list of recognized tribal entities

12 (Footnote with citation omitted.)

13 30. In accordance with the *Tillie Hardwick* Stipulated Judgment, Notice of
14 Restoration of Federal Status of the seventeen California Rancherias, including the
15 Cloverdale Rancheria, was published in the Federal Register, 49 Fed. Reg. 24084 (June 11,
16 1984) and the Cloverdale Rancheria was listed in the next Federal Register list of federally
17 recognized Indian tribes, 50 Fed. Reg. 6055 (February 13, 1985). The Cloverdale Rancheria
18 remains a federally recognized Indian tribe, and has been listed in each published list of
19 federally recognized Indian tribes since 1985, including the most recent published list. See 74
20 Fed. Reg. 40218, 40219 (Aug. 11, 2009).

21 31. From and after the *Tillie Hardwick* Stipulated Judgment, the Department
22 uniformly has acted in accordance with its duties with regard to each of the other Tillie
23 Hardwick tribes, but has failed and refused to fulfill and/or has unreasonably delayed fulfilling
24 its duty to the Cloverdale Rancheria. A 1997 report prepared by BIA Tribal Operations Officer
25 Dorson Zunie (the "Zunie Report") documented in detail how the Department, through the BIA
26 Northern and Central California Agencies, undertook "the duty of carrying out the Bureau's
27 responsibilities as set forth in the Hardwick decision." See Zunie Report at p. 1, a true and
28 copy of which is attached hereto as Exhibit 4-J.¹ The Zunie Report documents that the

¹ The exhibits attached to this Complaint are designated by ordinal numerals, e.g., 1, 2, 3, etc. Two of these exhibits, Exhibits 1 and 4, themselves have exhibits attached to them that are designated by letters in alphabetical order, e.g., A, B, C, etc. Documents that are lettered exhibits attached to numbered exhibits to this Complaint are designated by reference to the

1 Department's efforts to that point had contributed to the organization of 13 of the 17 Tillie
2 Hardwick tribes, each of which adopted a constitution acknowledged by the BIA. See Zunie
3 Report at pp. 2-5.

4 32. For example, in a memorandum dated February 25, 1985, regarding the
5 Greenville Rancheria, the Department recognized its duty to take action to identify and locate
6 a distributee to appropriately determine the disposition of the distributee's land. See Exhibit
7 2-B to the Zunie Report. The Department also undertook to fulfill its duty to the Greenville
8 Rancheria by providing the Tribe with a significant number of recommendations in response
9 to the submission of a tribal Constitution. See Letter of Superintendent Michael Smith to
10 Chairman Percy Tejada, Oct. 14, 1988, Exhibit 12 to the Zunie Report.

11 33. As another example, in a letter to Congressman Charles Pashayan dated
12 October 14, 1987, regarding the Picayune Rancheria of Chukchansi Indians, Area
13 Superintendent Michael Smith stated: "One of the primary responsibilities of the Bureau of
14 Indian Affairs . . . is to provide technical assistance to those federally recognized Indian
15 Communities, Reservations, Pueblos, Bands, or groups who wish to have governing
16 documents. There must be assurance that these documents have been approved by the
17 people who will be served by the document(s), that the representative governing body has
18 taken action on them and that any approval by the federal government will be on behalf of the
19 group with whom we will have a 'government to government' relationship." Ex. 3 to Zunie
20 Report, at p. 1.

21 34. Superintendent Smith's letter to the Congressman also detailed six requirements
22 the "Agency has been following in determining whether the actions of a General Council are
23 valid," which included the appropriate participation, adequate notice, opportunity, the
24 recording of meetings and actions, use of parliamentary procedure, and proper delegations of
25 authority. Ex. 3 to the Zunie Report, at p. 2.

26
27
28 Exhibit number followed by the Exhibit letter. For example, Exhibit 1-D is Exhibit D to Exhibit 1
of this Complaint.

1 35. Another example of the Department's execution of its legal duty to the Tillie
2 Hardwick tribes is also evidenced in Superintendent Harold Brafford's July 11, 1997 letter to
3 Chairperson Shirley Smith of the Potter Valley Rancheria, in which he advised her that "in
4 order for the tribe to formally organize, the distributes, dependent members and direct lineal
5 descendents thereof who have reached an age of majority by election day, would be the only
6 individuals eligible to vote in this organization effort by the tribe." Ex. 5 to the Zunie Report, at
7 pp. 1-2.

8 36. These examples demonstrate that, as early as 1985 and continuing through
9 1997, the Department recognized and acted upon its duty to assist the Tillie Hardwick tribes
10 in organizing. Its actions and procedures included inquiring into the mechanics of tribal
11 actions before acknowledging such actions, actively seeking out distributees for inclusion in
12 government organizational efforts, and providing advice to tribes as to who can and cannot
13 participate in organizational efforts.

14 37. After the *Tillie Hardwick* Stipulated Judgment had been entered, disagreement
15 among the members of the Cloverdale Rancheria ensued as to who was entitled to organize
16 the Cloverdale Rancheria government. On June 1, 1996, an election for an Interim Tribal
17 Council was conducted and supervised by the BIA, in which only members of the Tillie
18 Hardwick Class participated. The purpose and result of the June 1, 1996 election was to
19 create an Interim Tribal Council in order to facilitate the organization of the Cloverdale
20 Rancheria government by the Tillie Hardwick Class (i.e., adoption of a tribal constitution or
21 other governing document), and to identify those persons eligible to receive benefits and
22 services by and through the BIA. See Declaration of Ronald Jaeger, then-Sacramento Area
23 Director (predecessor to the Pacific Regional Director), a true and complete copy of which is
24 attached hereto as Exhibit 1-D.

25 38. As a result of the dispute regarding who could participate in the organization of
26 the Cloverdale Rancheria government, litigation ensued following the election of the June 1
27 Interim Tribal Council before the Interior Board of Indian Appeals and the United States
28 District Court for the Northern District of California.

1 39. On or about December 27, 1997, the Acting Sacramento Area Director issued a
2 decision recognizing the June 1 Interim Tribal Council. By Order dated October 14, 1998, the
3 Interior Board of Indian Appeals ("IBIA") upheld the December 27, 1997 decision of the Acting
4 Sacramento Area Director. *Alan-Wilson v. Acting Sacramento Area Director*, 33 IBIA 55
5 (1998) ("*Alan-Wilson I*"). A subsequent challenge to the decision was dismissed by the U.S.
6 District Court for the Northern District of California in *Alan-Wilson v. United States*, No. C-96-
7 1037 CW (N.D. Cal.) (Judgment Sept. 16, 1999), *aff'd sub nom. Cloverdale Rancheria of*
8 *Pomo Indians of California v. United States*, 23 Fed.Appx. 819 (9th Cir. 2001). In earlier
9 proceedings in the case, the IBIA had found reasonable and therefore had upheld the
10 Sacramento Area Director's interpretation of the *Tillie Hardwick* Stipulated Judgment and
11 consequent determination that the individuals entitled to participate in organization of the
12 Cloverdale Rancheria government were the members of the Tillie Hardwick Class, i.e., "the
13 rancheria's distributives, dependent members and lineal descendents." *Alan-Wilson v.*
14 *Sacramento Area Director*, 30 IBIA 241, 254 (1997) ("*Alan-Wilson I*"). See also *Alan-Wilson*
15 *II*, 33 IBIA 55 at **1-**2.

16 40. Beginning during or about 2000, the elected members of the June 1 Interim
17 Tribal Council went rogue, usurping authority and taking actions without the authorization or
18 approbation of the members of the Tillie Hardwick Class.

19 41. During or about April 2000, the June 1 Interim Tribal Council conducted a
20 purported election of the members of the Tillie Hardwick Class and procured a purported
21 resolution numbered 2000-04-38, and captioned "Resolution Delegating Authority to the Tribal
22 Council to Develop and Implement Tribal Government Programs." This resolution was
23 purportedly approved by the Cloverdale Rancheria "General Council," i.e., the members of the
24 Tillie Hardwick Class, but in fact was approved by only 26 voters from an eligible voter list of
25 124 individuals, far less than a majority. The June 1 Interim Tribal Council later inaccurately
26 cited to and relied upon this resolution as having delegated authority from the "General
27 Council" to the June 1 Interim Tribal Council to implement tribal governing procedures. See
28 Memorandum from Interior Department Pacific Regional Solicitor Daniel G. Shillito to the BIA

1 Central California Agency Superintendent, dated June 12, 2008, a true and complete copy of
2 which is attached hereto as Exhibit 1-J, at p. 4.

3 42. On or about April 5, 2003, the June 1 Interim Tribal Council conducted an
4 purported election to consider possible adoption of a resolution by members of the Tillie
5 Hardwick Class to enlarge the class of persons authorized to participate in organization of the
6 Cloverdale Rancheria government. Neither actual nor constructive notice of the election was
7 given to all members of the Tillie Hardwick Class. Of 109 adult members that comprised the
8 Tillie Hardwick Class on or about April 5, 2003, only 31 adult members of the Tillie Hardwick
9 Class were physically present at the April 5, 2003 election and only 6 other adult members of
10 the Tillie Hardwick Class returned absentee ballots. Of these 37 out of a total of 109 adult
11 members of the Tillie Hardwick Class, 26 voted in favor of the resolution and 11 voted against
12 the resolution. Nevertheless, the Chairperson and Secretary of the June 1 Interim Tribal
13 Council certified and attested to the adoption of the resolution, Resolution No. 2003-04-70. A
14 true and complete copy of the resolution, including certification and attestation, together with
15 a list of the 109 eligible voters and record of attendance and absentee balloting is attached
16 hereto as Exhibit 2.

17 43. Thereafter, during or about May 2003, the June 1 Interim Tribal Council
18 published what purported to be a list of 227 adult members of Cloverdale Rancheria (the
19 "Expanded Membership"), the majority of which Expanded Membership was not comprised of
20 members of the Tillie Hardwick Class. On or about August 9, 2003, the June 1 Interim Tribal
21 Council conducted a meeting of the Expanded Membership "General Council" during which
22 those present among the Expanded Membership purported to adopt "Interim Governing
23 Procedures – Election Procedures." Neither a majority of the members of the Tillie Hardwick
24 Class nor a majority of the Expanded Membership attended the August 9, 2003 meeting or
25 voted on the purported adoption of Interim Governing Procedures – Election Procedures.
26 True and correct copies of the Expanded Membership list and the Interim Governing
27 Procedures – Election Procedures are attached hereto as Exhibits 3 and 1-K, respectively.
28

1 44. Thereafter, on or about November 22, 2003, the June 1 Interim Tribal Council
2 conducted another meeting of the Expanded Membership "General Council" during which
3 those present among the Expanded Membership purported to remove two members of the
4 June 1 Interim Tribal Council and elect two persons who are not members of the Tillie
5 Hardwick Class to the June 1 Interim Tribal Council in their place under the purported
6 authority of the "Interim Governing Procedures – Election Procedures." Neither a majority of
7 the members of the Tillie Hardwick Class nor a majority of the Expanded Membership
8 attended the November 22, 2003 meeting or voted on the purported removal and replacement
9 of two members of the June 1, Interim Tribal Council.

10 45. As a result, since on or about November 22, 2003, what at one time had been
11 the June 1 Interim Tribal Council ceased to exist. Since that time, the successor to what had
12 been the June 1 Interim Tribal Council ("Successor Tribal Council") has not been and no
13 longer is comprised solely of members of the Tillie Hardwick Class, has ceased to accept
14 direction from the members of the Tillie Hardwick Class, has instead taken direction from an
15 expanded class of persons of which a majority are not members of the Tillie Hardwick Class,
16 all without authorization of the members of the Tillie Hardwick Class, and accordingly has not
17 been and no longer is authorized to act in accordance with the sole purpose for which it was
18 created, i.e., to facilitate the organization of the Cloverdale Rancheria government by the Tillie
19 Hardwick Class and to identify those persons eligible to receive benefits and services by and
20 through the Department, or any other lawful purpose.

21 46. Since at least during or prior to 2008, Defendants have been aware that the
22 Successor Tribal Council has included individuals who are not members of the Tillie Hardwick
23 Class, and has taken direction from the Expanded Membership "General Council," the
24 majority of which are not members of the Tillie Hardwick Class, all without authorization or
25 approbation of the members of the Tillie Hardwick Class.

26 47. On or about February 21, 2008, the Successor Tribal Council submitted to the
27 Defendants a purported tribal constitution purportedly approved by a vote of the General
28 Council on December 1, 2007. See Letter from Patricia Hermosillo to Superintendent Troy

1 Burdick dated February 21, 2008, a true and complete copy of which is attached hereto as
2 Exhibit 5.

3 48. On or about March 12, 2008, Defendants declined to approve such purported
4 constitution because, according to BIA Central Agency Superintendent Troy Burdick, "the
5 Bureau can only, for formal organizational purposes, reorganize [*sic*, recognize] an
6 organizational document adopted under the provisions of 25 CFR Part 81 and by that class of
7 individuals identified in the Tillie Hardwick Decision." See Letter from Superintendent Troy
8 Burdick to Patricia Hermosillo dated March 12, 2008, a true and correct copy of which is
9 attached hereto as Exhibit 6.

10 49. In a memorandum from Interior Department Pacific Regional Solicitor Daniel G.
11 Shillito to the Central California Agency Superintendent, dated June 12, 2008 (the "Shillito
12 Memorandum"), the Regional Solicitor recommended that the Defendants refuse to approve
13 such purported constitution. With respect to the election that took place in 2000, at which the
14 "General Council purportedly approved Resolution 2000-04-38, described as a "Resolution
15 Delegating Authority to the Tribal Council to Develop and Implement Tribal Government
16 Programs [,]" the Regional Solicitor noted that out of 124 tribal members identified at the time,
17 "only 33 voters were present for a General Council vote on Resolution 2000-04-38, which was
18 approved by 26 of the voters in attendance. Therefore, there is no evidence that General
19 Council Resolution 2000-04-38 was adopted by the Tillie Hardwick class" Shillito
20 Memorandum at p. 4, attached hereto as Exhibit 1-J.

21 50. With respect to the April 5, 2003 vote that resulted in the purported expansion of
22 tribal membership, the Regional Solicitor noted that, "of 109 individuals listed as eligible to
23 vote, only 37 ballots were counted and only 26 individuals voted in favor of expanding tribal
24 membership. It does not appear the resolution to expand Tribal membership was adopted in
25 conformance with a Tribal organizing document, or by a vote of the Hardwick class." Shillito
26 Memorandum at p. 4.

1 51. On or about January 1, 2008, Defendants entered into a self-determination
2 contract with the Cloverdale Rancheria pursuant to Public Law 93-638, 25 U.S.C. § 450 *et*
3 *seq.*, which currently is in effect and is due to expire on or about December 31, 2010.

4 52. Notwithstanding that Defendants are aware that the Successor Tribal Council is
5 no longer acting with the authorization or approbation of the members of the Tillie Hardwick
6 Class and accordingly is without authority to conduct Tribal affairs, Defendants continue to
7 engage in a government-to-government relationship with the Successor Tribal Council as if it
8 were the duly elected government of the Cloverdale Rancheria, through such actions as
9 entering into and maintaining the Cloverdale Rancheria's self-determination contract.

10 53. On or about March 2, 2004, Congress amended section 16 of the IRA to provide
11 in part:

12 Notwithstanding any other provision of this Act--

13 (1) each Indian tribe shall retain inherent sovereign power to adopt governing
14 documents under procedures other than those specified in this section; and

15 (2) nothing in this Act invalidates any constitution or other governing document
16 adopted by an Indian tribe after June 18, 1934, in accordance with authority
described in paragraph (1).

17 Act of March 2, 2004, P.L. 108-204, § 103, 118 Stat. 543, 25 U.S.C. § 476(h)

18 54. Senate Report 108-49, which accompanied the bill that became P.L. 108-204,
19 explained that the amendment to section 16 of the IRA "clarifies that Indian tribes that
20 accepted the Indian Reorganization Act (IRA), 25 U.S.C. 476 are not required to adopt
21 constitutions pursuant to the IRA and remain free to organize their governing bodies pursuant
22 to organizational governing documents they determine." Sen. Rep. 108-49 (May 15, 2003) at
23 2.

24 55. Prior to 2007 the members of the Tillie Hardwick Class had never organized the
25 Cloverdale Rancheria government. During or about 2007, the members of the Tillie Hardwick
26 Class created the Committee to Organize the Cloverdale Rancheria Government ("Cloverdale
27 Committee to Organize") for the purpose of organizing the Cloverdale Rancheria government
28 pursuant to and in accordance with the provisions of the *Tillie Hardwick Stipulated Judgment*

1 and the decisions of the Sacramento Area Director upheld by the IBIA in *Alan-Wilson I* and
2 *Alan-Wilson II*.

3 56. The Cloverdale Committee to Organize is comprised of the members of the Tillie
4 Hardwick Class. As provided by the *Tillie Hardwick Stipulated Judgment* and as determined
5 by *Alan-Wilson I* and *II*, members of the Tillie Hardwick Class are the only persons legally
6 authorized to organize the Cloverdale Rancheria government. As further provided by the
7 *Tillie Hardwick Stipulated Judgment* and *Alan-Wilson I* and *II*, the Tillie Hardwick Class is
8 comprised of those persons who are the distributees, dependent members or lineal
9 descendents of the distributees under the "Plan to Distribute the Assets of the Cloverdale
10 Rancheria," approved August 13, 1959, pursuant to the California Rancheria Act.

11 57. By letter dated September 19, 2007, Central California Agency Superintendent
12 Burdick informed Legal Counsel for the Cloverdale Committee to Organize that the BIA had
13 never held a Secretarial election for the ratification of a constitution for the Cloverdale
14 Rancheria under the Indian Reorganization Act, 25 U.S.C. § 476, and the implementing
15 regulations at 25 C.F.R. Part 81, nor had the BIA ever otherwise recognized a formal
16 organization of the Cloverdale Rancheria government. A true and complete copy of the
17 September 19, 2007 letter is attached hereto as Exhibit 4-L.

18 58. During or about November 2007, the Cloverdale Committee to Organize
19 contracted with Indian Dispute Resolution Services, Inc. ("IDRS") to administer and certify an
20 election for adoption of a Constitution and an Interim Elections Ordinance for the Cloverdale
21 Rancheria, as well as a subsequent election for membership of the Cloverdale Tribal Council
22 in the event the Cloverdale Constitution and Interim Elections Ordinance were adopted.

23 59. During or about early 2008, the Cloverdale Committee to Organize worked
24 together with officials and staff of the BIA Central California Agency to identify and compile a
25 complete and accurate list on April 8, 2008 of members of the Tillie Hardwick Class eligible to
26 participate in such elections. A true and complete copy of the April 8, 2008 list, compiled by
27 the BIA Central California Agency and entitled "'Tillie Hardwick Class – Eligible Voters List[,]'"
28 is attached hereto as Exhibit 7.

1 60. By memorandum dated November 6, 2008, IDRS duly notified members of the
2 Tillie Hardwick Class of the upcoming scheduled elections. The memorandum set forth the
3 deadlines for the required procedural steps leading up to the elections, including completed
4 voter registration and absentee ballot forms for both elections, and declarations of candidacy
5 for the Tribal Council election. A true and complete copy of the November 6, 2008
6 Memorandum is attached hereto as Exhibit 1-A.

7 61. Absentee ballots for the Cloverdale Constitutional election and Cloverdale
8 Interim Election Ordinance election were submitted to IDRS on or before December 15, 2008.
9 An election for adoption of the Cloverdale Constitution and for adoption of the Cloverdale
10 Interim Election Ordinance was conducted by IDRS on or about December 16, 2008, from
11 8:00 a.m. until 7:00 p.m., at the polling location of Cloverdale Citrus Fairgrounds, Cloverdale,
12 California.

13 62. By memorandum dated January 12, 200[9], IDRS certified the election results of
14 the Constitutional and Interim Election Ordinance elections of December 16, 2008, and
15 reported that both had passed. IDRS reported that there were a total of 180 members of the
16 Tillie Hardwick Class, of which IDRS had current contact information for 135 members. IDRS
17 advised that IDRS that it had provided reasonable constructive notice to the remaining
18 members of the Tillie Hardwick Class. IDRS reported that 98 members of the Tillie Hardwick
19 Class had registered for the elections. IDRS further reported that the Cloverdale Constitution
20 passed by a vote of 76 in favor and 0 against, and that the Cloverdale Interim Election
21 Ordinance passed by a vote of 72 in favor and 1 against. IDRS also reported that no appeals
22 of the Constitutional Interim Election Ordinance elections had been filed. A true and complete
23 copy of the January 12, 200[9] Memorandum is attached hereto as Exhibit 1-B.

24 63. On or about January 13, 2009, an election for the Cloverdale Tribal Council was
25 conducted by IDRS at the polling location of Cloverdale Citrus Fairgrounds, Cloverdale,
26 California. Absentee ballots for this election were submitted to IDRS by the close of the
27 polling location on January 13, 2009. By memorandum dated January 23, 2009, IDRS
28 reported that 78 votes were submitted for the Cloverdale Tribal Council election, of which 1

1 was disqualified. IDRS certified the results of the Cloverdale Tribal Council election as
2 follows: Javier Martinez was elected as Chairperson, Sarah Goodwin was elected as Vice-
3 Chairperson, Lenette Laiwa-Brown was elected as Secretary, Gerad Santana was elected as
4 Treasurer, and John Trippo was elected as General Representative. A true and complete
5 copy of the January 23, 2009 Memorandum is attached hereto as Exhibit 1-C.

6 64. On or about March 25, 2009, the Cloverdale Committee to Organize, by and
7 through its legal counsel, made a formal request of the Defendants, by letter to the BIA
8 Central California Agency Superintendent, to recognize the formal organization of the
9 Cloverdale Rancheria government ("March 25, 2009 Organization Recognition Request"),
10 including the December 16, 2008 elections adopting the Cloverdale Constitution and
11 Cloverdale Interim Election Ordinance and the January 13, 2009 election of the Cloverdale
12 Tribal Council. A true and complete copy of the March 25, 2009 letter is attached hereto as
13 Exhibit 1.

14 65. On or about April 2, 2009, in response to a request made by Defendant Central
15 California Agency Superintendent Burdick, the Cloverdale Committee to Organize, by and
16 through its legal counsel, submitted a letter to Defendant Superintendent Burdick clarifying
17 the March 25, 2009 Organization Recognition Request and the legal basis for the Request. A
18 true and complete copy of the April 2, 2009, letter is attached hereto as Exhibit 4-B.

19 66. By letter dated June 19, 2009, Defendant Superintendent Burdick issued a
20 decision ("Superintendent Burdick's June 19, 2009 Decision") denying the March 25, 2009
21 Organization Recognition Request. A true and complete copy of the June 19, 2009 letter is
22 attached hereto as Exhibit 4-C.

23 67. On or about July 15, 2009, the Cloverdale Committee to Organize and the
24 members of the Cloverdale Tribal Council duly filed and served a Notice of Appeal of
25 Defendant Superintendent Burdick's June 19, 2009 Decision, seeking reversal of that
26 Decision. A true and complete copy of the July 15, 2009 Notice of Appeal is attached hereto
27 as Exhibit 4-D.
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1 68. As applicable to the appeal made by the Cloverdale Committee to Organize and
2 the members of the Cloverdale Tribal Council, regulations of the Department of the Interior,
3 25 C.F.R. § 2.19, required that a written decision on the aforesaid appeal was to have been
4 made on or about December 1, 2009..

5 69. Nevertheless, and despite repeated representations by Defendants that a
6 decision would be forthcoming soon and/or by certain dates, the appeal remained pending
7 and undecided before the Acting Regional Director for the Pacific Regional Office of the
8 Bureau of Indian Affairs on or about April 14, 2010, when the Plaintiffs filed this action
9 seeking, *inter alia*, an order compelling Defendant Regional Director to issue a decision with
10 respect to the appeal.

11 70. On or about June 3, 2010, Defendant Regional Director Risling issued a letter
12 responding to the appeal by the Cloverdale Committee to Organize and the members of the
13 Cloverdale Tribal Council ("Regional Director Risling's June 3, 2010 Decision"). Regional
14 Director Risling's June 3, 2010 Decision upheld Superintendent Burdick's July 19, 2009
15 Decision, and gave two reasons for doing so. First, Regional Director Risling correctly noted
16 that only members of the "Hardwick Class are eligible to participate in the organization of the
17 Tribe's government" He then asserted that Appellants did not provide supporting
18 documentation to establish that the individuals who voted were of the Hardwick Class.
19 Second, he asserted that there was no "evidence that a Federal action required a
20 determination regarding the Appellants' request for recognition of their efforts to organize the
21 Tribe." Therefore, he concluded, "it was not necessary or appropriate for the BIA to
22 determine whether or not to recognize the Appellants' actions." Regional Director Risling
23 closed by stating that "the BIA since 1998 continues the government-to-government
24 relationship with the June 1st Tribal Council headed by Patricia Hermosillo as Chairperson."
25 A true and complete copy of Regional Director Risling's June 3, 2010 Decision is attached
26 hereto as Exhibit 8.

27 71. On or about July 6, 2010, the Cloverdale Committee to Organize and the
28 members of the Cloverdale Tribal Council duly appealed Regional Director Risling's June 3,

1 2010 Decision to the Interior Board of Indian Appeals. A true and complete copy of the Notice
2 of Appeal, dated July 6, 2010, is attached hereto as Exhibit 9.

3 72. Of the 17 California Indian tribes that were restored to federal status pursuant to
4 the *Tillie Hardwick* Stipulated Judgment, Plaintiff Cloverdale Rancheria is the only Indian tribe
5 for whom Defendants have not recognized the formal organization or reorganization of its
6 Indian tribal government.

7 73. Requiring the Defendants to take action to perform and fulfill their duties as
8 alleged herein will have minimal effect on Defendants' ability to complete other activities for
9 which Defendants are responsible. Defendants will not consume significantly more time or
10 resources by taking such action than Defendants would consume in continuing to fail and
11 refuse to perform and fulfill their duties and/or continuing to unreasonably delay doing so.
12 Indeed, Defendants are likely to conserve time and resources if they act expeditiously to
13 perform and fulfill their duties as alleged herein.

14 74. Plaintiffs, the members of the Tillie Hardwick Class and the members of the
15 Cloverdale Rancheria have suffered and continue to suffer substantial and irreparable harm
16 as a direct and proximate result of Defendants' failure and refusal to take action and/or
17 unreasonable delay in taking action to perform and fulfill their duties as alleged herein. Such
18 harm includes, but is not limited to, harm to the general welfare of the Cloverdale Rancheria
19 and its members, harm to their legitimate and substantial interests in being governed by a
20 duly constituted tribal government duly chosen consistent with the will of the Cloverdale Pomo
21 Indian people and the principles of tribal sovereignty, harm to their legitimate and substantial
22 interests in receiving benefits from the Cloverdale Rancheria government and the United
23 States and California State governments for which they are eligible and entitled and would
24 otherwise receive but for Defendants' actions and inactions as alleged herein, and other
25 substantial and irreparable harm.

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3 **A FIRST CLAIM FOR RELIEF**
4 **Review of Final Agency Action**
5 **Agency Action Unlawfully Withheld or Unreasonably Delayed**

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75. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 74 of this Complaint.

76. Defendants are charged by law with the nondiscretionary legal duty to engage in a government-to-government relationship with each and every federally recognized Indian tribe, including the Plaintiff Cloverdale Rancheria.

77. In engaging in such government-to-government relationship with a federally recognized Indian tribe, Defendants are charged by law with the nondiscretionary legal duty to recognize the duly constituted tribal government of such Indian tribe.

78. In engaging in such government-to-government relationship with a federally recognized Indian tribe, Defendants are charged by law with the nondiscretionary legal duty to ensure that such Indian tribe makes its own determination about its tribal government consistent with the will of the Indian tribe and the principles of tribal sovereignty.

79. In engaging in such government-to-government relationship with a federally recognized Indian tribe, Defendants are charged by law with the nondiscretionary legal duty to engage in such relationship solely by and through the duly constituted governing body of such Indian tribe and its duly authorized elected officials, employees and agents.

80. Under the Stipulated Judgment in *Hardwick v. United States*, No. C-79-1710 (N.D. Cal.) (Stipulated Judgment entered Dec. 22, 1983), Defendants are charged with the nondiscretionary legal duty to provide necessary and appropriate assistance in efforts to timely, successfully, effectively and lawfully organize the Cloverdale Rancheria government in the aftermath of the *Tillie Hardwick* litigation and Stipulated Judgment, and to recognize the results of such efforts in the ongoing exercise of the Federal government's government-to-government relationship with the Cloverdale Rancheria.

1 81. For more than twenty-six years, Defendants have failed and refused and
2 continue to fail and refuse to perform and fulfill these duties and/or have unreasonably
3 delayed and continue to unreasonably delay doing so.

4 82. Defendants' failure and refusal to do so and/or unreasonable delay in doing so is
5 final agency action for which there is no other adequate remedy in a court, reviewable in
6 accordance with 5 U.S.C. §§ 704 and 706, and Plaintiffs have exhausted all administrative
7 remedies.

8 83. Defendants' failure and refusal to do so and/or unreasonable delay in doing so is
9 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and is in
10 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

11 84. The relief requested in this First Claim for Relief also is necessary and
12 appropriate in aid of the jurisdiction of this honorable Court and is agreeable to usages and
13 principles of law, within the meaning of 28 U.S.C. §1651.

14 **SECOND CLAIM FOR RELIEF**
15 **Review of Final Agency Action**
16 **Agency Action Unlawfully Withheld or Unreasonably Delayed**

17 85. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
18 through 84 of this Complaint.

19 86. Defendants are charged by law with the nondiscretionary legal duty to engage in
20 a government-to-government relationship with each and every federally recognized Indian
21 tribe, including the Plaintiff Cloverdale Rancheria.

22 87. In engaging in such government-to-government relationship with a federally
23 recognized Indian tribe, Defendants are charged by law with the nondiscretionary legal duty to
24 recognize the duly constituted tribal government of such Indian tribe.

25 88. In engaging in such government-to-government relationship with a federally
26 recognized Indian tribe, Defendants are charged by law with the nondiscretionary legal duty to
27 ensure that such Indian tribe makes its own determination about its tribal government
28 consistent with the will of the Indian tribe and the principles of tribal sovereignty.

1 89. In engaging in such government-to-government relationship with a federally
2 recognized Indian tribe, Defendants are charged by law with the nondiscretionary legal duty to
3 engage in such relationship solely by and through the duly constituted governing body of such
4 Indian tribe and its duly authorized elected officials, employees and agents.

5 90. Under the Stipulated Judgment in *Hardwick v. United States*, No. C-79-1710
6 (N.D. Cal.) (Stipulated Judgment entered Dec. 22, 1983), Defendants are charged with the
7 nondiscretionary legal duty to provide necessary and appropriate assistance in efforts to
8 timely, successfully, effectively and lawfully organize the Cloverdale Rancheria government in
9 the aftermath of the Tillie Hardick litigation and Stipulated Judgment, and to recognize the
10 results of such efforts in the ongoing exercise of the Federal government's government-to-
11 government relationship with the Cloverdale Rancheria.

12 91. For more than twenty-six years, Defendants have failed and refused and
13 continue to fail and refuse to perform and fulfill these duties and/or have unreasonably
14 delayed and continue to unreasonably delay doing so.

15 92. The 2008-2009 organization of the Cloverdale Rancheria government was in full
16 and strict compliance with the dictates of the *Tillie Hardwick* Stipulated Judgment and the
17 decisions of the Interior Board of Indian Appeals in *Alan-Wilson v. Sacramento Area Director*,
18 30 IBIA 241 (1997) and *Alan-Wilson v. Acting Sacramento Area Director*, 33 IBIA 55 (1998).

19 93. Defendants are obligated under the Stipulated Judgment, and are otherwise
20 charged by law, to recognize the duly authorized governmental organization of the Cloverdale
21 Rancheria, including the Cloverdale Constitution, the Cloverdale Interim Elections Ordinance,
22 the Cloverdale Tribal Council, the governing body of the Cloverdale Rancheria under the
23 Cloverdale Constitution, and the duly elected members of the Cloverdale Tribal Council, in the
24 ongoing exercise of the Federal government's government-to-government relationship with
25 the Cloverdale Rancheria.

26 94. Defendants have failed and refused and continue to fail and refuse to perform
27 and fulfill these duties and/or have unreasonably delayed and continued to unreasonably
28 delay doing so.

1 95. Defendants' failure and refusal to do so and/or unreasonable delay in doing so is
2 final agency action for which there is no other adequate remedy in a court, reviewable in
3 accordance with 5 U.S.C. §§ 704 and 706, and Plaintiffs have exhausted all administrative
4 remedies.

5 96. Defendants' failure and refusal to do so and/or unreasonable delay in doing so is
6 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and is in
7 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

8 97. The relief requested in this Second Claim for Relief also is necessary and
9 appropriate in aid of the jurisdiction of this honorable Court and is agreeable to usages and
10 principles of law, within the meaning of 28 U.S.C. §1651.

11 **THIRD CLAIM FOR RELIEF**
12 **Review of Final Agency Action**
13 **Denial of Equal Protection**

14 98. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
15 through 97 of this Complaint.

16 99. Plaintiffs are similarly situated as is relevant hereto to each of the sixteen other
17 sets of plaintiff class members in the *Tillie Hardwick* litigation and sixteen other Indian tribes
18 that were restored to federally-recognized status under the *Tillie Hardwick* Stipulated
19 Judgment.

20 100. The Department is charged by law with the duty to provide similar
21 treatment to Plaintiffs as it has to the other similarly situated sixteen sets of plaintiff class
22 members in the *Tillie Hardwick* litigation and sixteen other Indian tribes restored to federally-
23 recognized status under the *Tillie Hardwick* Stipulated Judgment.

24 101. For more than sixteen years, Defendants have failed and refused and
25 continue to fail and refuse to perform and fulfill this duty and/or have unreasonably delayed
26 and continue to unreasonably delay doing so

27 102. The Department's failure and refusal to do so and/or unreasonable delay
28 in doing so is final agency action for which there is no other adequate remedy in a court,

1 reviewable in accordance with 5 U.S.C. §§ 704 and 706, and the Plaintiffs have exhausted all
2 administrative remedies.

3 103. The Department's failure and refusal to do so and/or unreasonable delay
4 in doing so constitutes a denial of the equal protection of the law in violation of the guarantee
5 of equal protection of the law incorporated into the Due Process Clause of the Fifth
6 Amendment.

7 104. The Department's failure and refusal to do so and/or unreasonable delay
8 in doing so is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
9 law, and is in excess of statutory jurisdiction, authority, or limitations, or short of statutory
10 right.

11 105. The relief requested in this Third Claim for Relief also is necessary and
12 appropriate in aid of the jurisdiction of this honorable Court and is agreeable to usages and
13 principles of law, within the meaning of 28 U.S.C. §1651.

14 **REQUEST FOR RELIEF**

15 WHEREFORE, Plaintiffs pray that this honorable Court grant the following relief:

16 1. Declaratory relief and relief in the nature of mandamus and a mandatory
17 injunction compelling Defendants to perform and fulfill their nondiscretionary legal duty to
18 provide necessary and appropriate assistance in efforts to timely, successfully, effectively and
19 lawfully organize the Cloverdale Rancheria government in the aftermath of the Tillie Hardwick
20 litigation and Stipulated Judgment, and to recognize the results of such efforts in the ongoing
21 exercise of the Federal government's government-to-government relationship with the
22 Cloverdale Rancheria;

23 2. Declaratory relief and relief in the nature of mandamus and a mandatory
24 injunction compelling Defendants to perform and fulfill their nondiscretionary legal duty to
25 recognize the duly authorized governmental organization of the Cloverdale Rancheria,
26 including the Cloverdale Constitution, the Cloverdale Interim Elections Ordinance, the
27 Cloverdale Tribal Council, the governing body of the Cloverdale Rancheria under the
28 Cloverdale Constitution, and the duly elected members of the Cloverdale Tribal Council, in the

1 ongoing exercise of the Federal government's government-to-government relationship with
2 the Cloverdale Rancheria;

3 3. Costs, fees and expenses, and reasonable attorneys' fees and expenses,
4 pursuant to and in accordance with the Equal Access to Justice Act, 28 U.S.C. § 2412; and

5 4. Such other and further relief as this honorable Court may deem just and proper.

6 Respectfully submitted this 9th day of July, 2010.

7 FREDERICKS PEEBLES & MORGAN LLP
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13 By: 
14 _____
15 Steven J. Bloxham, Esq.

16 Attorneys for Plaintiffs CLOVERDALE RANCHERIA
17 OF POMO INDIANS OF CALIFORNIA; THE
18 COMMITTEE TO ORGANIZE THE CLOVERDALE
19 RANCHERIA GOVERNMENT; JAVIER MARTINEZ;
20 SARAH GOODWIN; LENETTE LAIWA-BROWN;
21 GERAD SANTANA and JOHN TRIPPO
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APPENDIX OF EXHIBITS

Exhibit #	Description
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Exhibit 1: March 25, 2009 Request

Exhibits to March 25, 2009 Request

- Exhibit A: IDRS Memorandum, dated November 6, 2008
- Exhibit B: IDRS Memorandum, dated January 12, 200[9]
- Exhibit C: IDRS Memorandum, dated January 23, 2009
- Exhibit D: Declaration of Ronald Jaeger, dated March 24, 2009
- Exhibit E: Resolution 2003-04-70, dated April 5, 2003 (purportedly expanding membership)
- Exhibit F: Declaration of Antoinette Miller, dated March 24, 2009
- Exhibit G: Special Election Notice, dated February 26, 2003
- Exhibit H: Declarations of Tillie Hardwick Class members (approx. 35)
- Exhibit I: Constitution Election Notice, January 10, 2003
- Exhibit J: Regional Solicitor, Pacific Southwest Regional Office
Memorandum to Superintendent, Bureau of Indian Affairs,
Central California Agency, dated June 12, 2008
- Exhibit K: Interim Governing Procedures – Election Procedures, dated
February 18, 2003
- Exhibit L: Registration for Special Election of April 5, 2003 (Received by the
BIA, Central California Agency February 22, 2008)
- Exhibit M: Eligible Voters Registrar for Tribal Election-December 1, 2007
(Received by BIA, Central California Agency February 22, 2008)

Exhibit N: Letter dated November 30, 2007 from James F. Martini to 'To Whom It May Concern' Regarding the Opening of a locked box containing absentee ballots for the April 5, 2003 election

Exhibit O: Declarations of Anna Ramsey and Angela May, dated approximately March of 2009

Exhibit P: Declaration of Patty Bird, dated March 23, 2009

Exhibit Q: Declaration of Lanette Laiwa-Brown

Exhibit 2: Resolution No. 2003-04-70 (Purportedly expanding membership); List of 109 Eligible Voters; and Record of Attendance, dated on or about April 5, 2003

Exhibit 3: Expanded Membership List, dated May of 2003

Exhibit 4: Statement of Reasons, dated August 13, 2009

Exhibits to August 13, 2009 Statement of Reasons

Exhibit A: March 25, 2009 Request (Intentionally omitted, please refer to **Exhibit 1**)

Exhibit B: Letter from John M. Peebles, Esq., to Superintendent Burdick, dated April 2, 2009

Exhibit C: Letter from Superintendent Burdick to John M. Peebles, Esq., dated June 19, 2009

Exhibit D: Notice of Appeal, dated July 15, 2009

Exhibit E: Request for Official Action, dated July 15, 2009

Exhibit F: Letter from Superintendent Burdick to John M. Peebles, Esq. dated July 27, 2009

Exhibit G: Notice of Appeal, dated August 4, 2009

Exhibit H: Stipulation for Entry of Judgment, dated July 19, 1983, entered December 22, 1983; and Order Approving Entry of Final Judgment in Action, dated December 27, 1983

Exhibit I: *Alan-Wilson v. Bureau of Indian Affairs*, 33 IBIA 55 (1998)

Exhibit J: Federal Defendants' Status Report on BIA Past Practices and Recent meeting of General Council Members, dated November 19, 1997; Declaration of Dorson Zunie In Support of Federal Defendants' Status Report, dated November 19, 1997; and Information Concerning Initial Organization of the Hardwick Rancherías (e.g., the "Zunie Report")

Exhibit K: Ten Years of Tribal Government Under I.R.A., by Theodore H. Haas, dated 1947

Exhibit L: Letter from Superintendent Burdick to Mark A. Levitan, Esq., dated September 19, 2007

Exhibit M: Order Vacating Decision and Dismissing Appeal, dated February 29, 2009

Exhibit N: Defendants' Motion to Dismiss, dated August 5, 2005 and Proposed Order

Exhibit 5: Patricia Hermosillo to Troy Burdick re Tribal Constitution Election, dated February 21, 2008

Exhibit 6: Troy Burdick to Patricia Hermosillo re acknowledge receipt of correspondence dated February 21, 2008, dated March 12, 2008

Exhibit 7: Tillie Hardwick Class – Eligible Voters List (Compiled by BIA, Central California Agency, April 8, 2008)

Exhibit 8: Dale Risling to John Peebles re Response to Notice of Appeals (Appeal) dated July 15, 2009 and August 4, 2009, dated June 3, 2010

Exhibit 9: Steven Bloxham to IBIA re Notice of Appeal, dated July 6, 2010