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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NO CASINO IN PLYMOUTH, DUEWARD W. CRANFORD II, Dr. ELIDA A. MALICK, JON COLBURN, DAVID LOGAN, WILLIAM BRAUN and CATHERINE COULTER, Plaintiffs, **v.** NATIONAL INDIAN GAMING COMMISSION; JONODEV CHAUDHURI former NIGC Chairman; DEPARTMENT OF INTERIOR; RYAN ZINKE, Secretary of Interior; DAVID BERNHARDT, Deputy Secretary of the Interior and former Solicitor; DONALD E. LAVERDURE former DOI employee; and AMY DUTSCHKE, BIA Pacific Regional Director and member of the Ione Band, Defendants.	Case No. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, No Casino In Plymouth (NCIP), Dueward W. Cranford II, Dr. Elida A. Malick, Jon Colburn, David Logan, William Braun and Catherine Coulter file this complaint against Defendants: the National Indian Gaming Commission

(NIGC or Commission); Jonodev Chaudhuri, former Chairman of the NIGC; the Department of Interior (DOI); Ryan Zinke, Secretary of the Interior; David Bernhardt, Deputy Secretary of the Interior and former DOI Solicitor; Donald E. Laverdure, former DOI Employee; and Amy Dutschke, BIA Pacific Regional Director and member of the Ione Band and allege against each of them as follows:

INTRODUCTION

1. Plaintiffs request that the Court vacate Defendant Chaudhuri's March 6, 2018 approval the "Amended and Restated Tribal Gaming Ordinance, Res. No. 2018-4" submitted by an unrecognized group of Ione Indians with no "Indian land" eligible for Indian gambling under the Indian Gaming Regulatory Act (IGRA). Chaudhuri, the former NIGC Chairman, lacked the authority to approve the gaming ordinance or to allow a casino to be constructed by Ione Indians on non-Indian land in Plymouth, Amador County, California.

2. Plaintiffs also request that the Court vacate of the Record of Decision (ROD) issued by Defendant Laverdure, a former DOI employee, on May 24, 2012 and published on May 30, 2012. (77 Fed. Reg. 31871-31872.) The ROD purports to take 228.04 acres of privately owned land in Amador County into trust for of an unrecognized group of Indians. Laverdure lacked the authority to issue the ROD. The approval of the ROD by Laverdure, then a General Schedule (GS) federal employee, violates the Appointments Clause of the Constitution and the 1934 Indian Reorganization Act (IRA; copy attached).

3. Plaintiffs also seek declaratory and injunctive relief because no group of Ione Indians was a recognized tribe under federal jurisdiction in 1934 which is required to receive IRA fee-to-trust benefits. The DOI determined in 1933 that the Indians living near Ione in Amador County were not "wards" of the federal government. The DOI also concluded in 1934 that because the Ione Indians were "non-wards", and not a recognized tribe with a reservation, they were not entitled to participate in, or receive the benefits of, the IRA. These 1933-1934 DOI determinations were not challenged by the Ione Indians.

4. Plaintiffs also seek declaratory and injunctive relief because no group of Ione Indians has been federally recognized under 25 C.F.R. Part 83 and, therefore, no such group is entitled to benefits accorded only to federally recognized tribes under the IRA or IGRA. In 1992, this Court held, at the DOI's request, that Ione Indians were not a recognized tribe and that they failed to exhaust their administrative remedies under 25 CFR Part 83. *Ione Band v. Burris/DOI* (U.S. District Court, ED Cal. No. CIV-S-90-0993). This decision was confirmed by a judgment in 1996 which was not appealed by DOI or any Ione Indian. It is final and binding on the Defendants.

5. Plaintiffs also seek declaratory and injunctive relief against all Defendants on the basis that by approving and allowing the construction of a casino for a group of Indians which is not a Part 83 federally recognized tribe and which has no Indian land eligible for gaming is a violation of Plaintiffs' Equal Protection

rights which prohibits discrimination in favor of any individual or group based on race. The Ione Indians are a race-based group which, despite the directive of the district court in *Ione Band v. Burris/DOI,* has not petitioned for Part 83 federal recognition. Defendants' efforts to give IRA and IGRA benefits to the Ione Indians as though they were a federally recognized tribe violates equal protection and cannot withstand strict-scrutiny.

6. Plaintiffs also seek declaratory and injunctive relief against all Defendants on the basis that their actions also violate Plaintiffs' protection from abusive government under the constitutional principle of Federalism. The abuse in this case is being exercised by officials and employees of the DOI, BIA and NIGC – including Defendants Dutschke, Laverdure and Chaudhuri – who intentionally ignored and evaded the rules and the laws, including the mandates and requirements of the IRA and IGRA, to give benefits and preferences to an unrecognized group of Ione Indians with no Indian land.

7. Plaintiffs also seek declaratory and injunctive relief against all Defendants on the basis that the construction of the proposed casino on non-Indian land would violate California's Constitutional prohibitions of Indian gambling on non-Indian land and of the large Nevada style casinos in California. Also the construction of the proposed casino would be a public and private nuisance which is prohibited, and should be precluded and abated, under California law and, if necessary and appropriate, for which damages should be assessed.

JURISDICTION AND VENUE

8. The jurisdiction of this Court is invoked per 28 U.S.C. §§1331, 5 U.S.C. § 701-706 et seq., 28 U.S.C. §§ 2201 and 2202 and 25 USC §§ 2701 et seq.

9. The 2012 approval of the ROD by Laverdure is a final agency action reviewable under the Administrative Procedures Act (APA) and the IRA.

10. The 2018 approval of the gaming ordinance by Chaudhuri is a final agency action subject to judicial review under the APA and IGRA.

11. Venue is proper in United States District Court for the Eastern District of California under 28 U.S.C. §§ 1391(b) (2) and 1391(e), 5 U.S.C. § 703.

12. The 12 parcels, that are the subject of this lawsuit, are located in the Eastern District and all the Plaintiffs reside in the Eastern District of California.

STANDING

13. Plaintiffs have standing to bring this action because they will each suffer an injury in fact if the subject property is taken into trust and the proposed casino is constructed in Plymouth. Their injuries are actual and imminent, and not conjectural or hypothetical, especially given Defendant Laverdure's approval of the ROD and Defendant Chaudhuri's approval of the gaming ordinance both of which are procedural prerequisites to the construction of the casino. There is a direct causal connection between the proposed casino and the injuries that Plaintiffs will suffer if it is constructed in Plymouth including increased pollution, increased traffic, increased crime, and decrease in property values, an

irreversible change in the rural character of Plymouth, and other adverse aesthetic, socioeconomic, and environmental impacts. These injuries will be redressed by a court decision favorable to the Plaintiffs in this case which vacates the approval of the ROD by Defendant Laverdure and vacates the approval of the gaming ordinance by Defendant Chaudhuri and, therefore, precludes construction of the proposed casino.

14. Plaintiffs also have standing under the Equal Protection provisions of the constitution which prohibits discrimination and preferences of any kind – positive or negative - based on racial classifications. The Supreme Court has held that preferences given to tribes which have been federally recognized are political, not racial, in nature and therefore do not violate Equal Protection. *Morton v. Mancari,* 417 U.S. 535 (1974) But the Supreme Court has also held that preferences in favor of a group of Indians which is not a federally recognized tribe are racial preferences prohibited by the Equal Protection provisions of the Constitution. *Id.* The casino and gambling benefits and preferences that the Defendants proposed to give to an unrecognized group of Indians based on their race is a violation of Equal Protection and would be injurious and detrimental to Plaintiffs and others in the community who do not receive or enjoy such preferences including the exemptions from property and businesses taxes that would otherwise be used to benefit and improve Plymouth. Such tax exemptions will give the unrecognized group of Indians favored by the

Defendants an unfair competitive business advantage in a wide variety of business – not just gambling – including the hotels, restaurants, gas sales, wine sales, grape growing, RV parks etc. This unfair advantage will result in the loss of businesses in the Plymouth area who cannot reasonably compete with businesses which have no or low tax preferences. These potential injuries will be redressed by a court decision favorable to the Plaintiffs in this case which vacates the approval of the ROD by Defendant Laverdure and vacates the approval of the gaming ordinance by Defendant Chaudhuri and, therefore, precludes construction of the casino and insures that all individuals and all businesses are treated equally.

15. Plaintiffs also have standing under the principles of federalism inherent in the Constitutional structure of our government which divides authority between federal and state governments for the protection of individuals. The primary benefit of the federalist system is that it serves as a check on the abuses of government power by the ever growing administrative state including abuses by the staff and officials of the NIGC, DOI and BIA. The misuse and abuse of power by the federal officials in this case, including Defendants Laverdure, Dutschke and Chaudhuri (and other officials), were designed to give an unrecognized Indian group with no Indian land an illegal casino in Plymouth to the injury and detriment of NCIP and its members and community supporters. These injuries will be redressed by a court decision favorable to the Plaintiffs in

this case which vacates the approval of the ROD Defendant Laverdure and vacates the approval of the gaming ordinance by Defendant Chaudhuri and, therefore, precludes construction of the casino and restores Plaintiffs' federalist constitutional protections.

16. Plaintiffs, as residents of California and Amador County, also have standing to enforce the gambling and casino prohibitions in the California Constitution especially those adopted by public initiative. Plaintiffs, as residents of California and Amador County, also have standing to enforce California's nuisance laws and to preclude and abate the proposed casino and to recover damages that are caused by that nuisance. These injuries will be redressed by a court decision favorable to the Plaintiffs in this case which declares that the proposed casino is illegal and prohibited by California's Constitution and which declares the proposed casino would be a nuisance which should be precluded, enjoined and abated and for which damages should be assessed.

17. These facts, which establish the standing of NCIP on behalf of its members, supporters and the community, also apply to each and every individual Plaintiff as members and supporters of NCIP and as members of the Plymouth community. The individual Plaintiffs also reserve their right to assert their separate and specific claims, if necessary, for injuries caused by any entity or individual as a result of the proposed casino.

PARTIES

Plaintiffs

18. Plaintiff, No Casino in Plymouth (NCIP), is a representative citizens group and a non-profit corporation. NCIP members and supporters reside, own property and/or operate businesses in and around the Plymouth area that would be directly and adversely impacted by the construction of the proposed Ione Indian casino. NCIP was founded early in 2003 in response to the proposal by the Ione Indians to build a large Las Vegas style casino in their small, rural Plymouth community. NCIP was founded because the proposed casino will have direct adverse impacts on NCIP, its members and supporters and the community. NCIP has been active from 2003 to the filing of this lawsuit in an attempt to stop the construction of the proposed casino. NCIP requests a favorable decision in this case to prevent and redress the injuries that will be caused if the proposed casino is constructed in Plymouth.

19. Plaintiff, Dueward W. Cranford II (also known as Butch Cranford) is one of the founding members of NCIP and has been an active member of NCIP for since 2003. He is a longtime resident of the Plymouth area. His residence is within view of the proposed casino and he owns properties in Plymouth less than a half mile from the proposed casino. The value of his residence and properties would be adversely affected if the proposed casino were built in Plymouth. And the small-town, rural lifestyle enjoyed by him and his family,

would be negatively impacted, if not destroyed, if the proposed large Las Vegas style casino is built in the middle of Plymouth. These injuries would be redressed by decision favorable to the Plaintiffs in this case which precludes construction of the proposed casino.

20. Plaintiff, Dr. Elida Malick is a founding members of NCIP and has been an active member of NCIP for since 2003. She and her family have lived and worked in the Plymouth area since 2001. She established a small animal veterinary clinic and hospital just outside the City limits of Plymouth. The proposed casino would be built directly across the street from Dr. Malick's veterinary hospital. The documented negative impacts of increased drug use and crime surrounding Indian casinos is a real concern with respect to veterinary clinics. Veterinary hospitals are known targets for drug related break-ins and robberies. This risk of serious injury to Dr. Malick's veterinary business and hospital would be redressed by a decision favorable to the Plaintiffs in this case which precludes construction of the proposed casino.

21. Plaintiff, Jon Colburn is one of the founding members of NCIP and has been an active member of NCIP for since 2003. He is a longtime resident of, and owns properties in, the Plymouth area. He is the current mayor of the City of Plymouth and has been active in the community and governmental affairs of Plymouth for decades. The value of his properties would be adversely affected if the proposed casino were built in Plymouth. Also his rural and quiet lifestyle

would be negatively impacted by the casino. These injuries would be redressed by a decision favorable to the Plaintiffs in this case.

22. Plaintiff, David Logan is a longtime supporter of NCIP. He lives and works in the Plymouth area. He is a Rancher and owns Vineyard Property and other properties in the Plymouth area. He supports NCIP's efforts to protect the community by preventing the construction of a casino in Plymouth. The proposed casino, if built, will adversely impact his business and the value of his properties. A casino will also destroy the rural lifestyle that he and his family currently enjoy by increasing traffic, crime and drugs, and light and view pollution in the Plymouth area. These injuries will be avoided and will be redressed by a decision in favor of Plaintiffs in this case which precludes the possibility of a casino being constructed in Plymouth.

23. Plaintiffs, William Braun and Catherine Coulter are members and supporters of NCIP and have lived near Plymouth for 23 years. They reside off a small county road, near the proposed casino site, that is already heavily used by commuters and agricultural traffic going to and from Plymouth. The proposed casino will cause cumulative increases in traffic flow, congest traffic and jeopardize safe transportation to and from Plymouth. This increase in traffic will adversely affect their ability to safely access their property and the quiet enjoyment of their property and rural lifestyle. These injuries will be avoided and redressed by a decision favorable to the Plaintiffs in this case.

Defendants

24. Defendant, National Indian Gaming Commission (NIGC or Commission), is an "independent agency" within the DOI that is responsible for making Indian lands determinations before the NIGC Chairman approves gaming ordinances pursuant to IGRA. The NIGC has no authority to allow Indian gambling or an Indian casino on non-Indian land as defined by IGRA.

25. Defendant, Jonodev Chauduri, was the Chairman of the NIGC until April 2018, with delegated authority to approve gaming ordinances for recognized tribes conducting Indian gambling on Indian lands as defined by IGRA. Chairman Chaudhuri lacked the authority to approve the gaming ordinance on non-Indian land for an unrecognized group of Ione Indians. He is being sued in his prior official capacity and in his personal capacity.

26. Defendant, Department of Interior (DOI) is an agency of the United States and is responsible for managing the affairs of Indians and Indian tribes through the Bureau of Indian Affairs (BIA). The DOI is responsible for insuring that its employees at the DOI, BIA and NIGC comply with the law and that they do not abuse their authority.

27. Defendant, Ryan Zinke, is the current Secretary of Interior and oversees the DOI, BIA and NIGC. He was appointed and confirmed in 2017. He succeeded Secretary Sally Jewell who was in office in 2012 when the ROD was issued by Defendant Laverdure. He is being sued in his official capacity.

28. Defendant, David Bernhardt, is the Deputy Secretary of Interior. He was appointed by the President and confirmed by the Senate in 2017. He has delegated authority from Secretary Zinke to review and approve or deny fee-to-trust transfers for recognized tribes for gambling purposes. Mr. Bernhardt is also a former DOI Solicitor and, in that capacity, in 2009 determined that Ione Indians were not a "restored tribe" as that term is used in IGRA and that the subject property in this case was not Indian land eligible for gambling under IGRA. He is being sued in his former official capacity as DOI Solicitor and in his current official capacity as Deputy Secretary.

29. Defendant, Amy Dutschke, is the BIA Pacific Regional Director. Defendant Dutschke is also member of a group of the Indians claiming to be Ione Indians (Dutschke group), which she recently helped organize to the exclusion of some Ione Indians. Defendant Dutschke, and the recently enrolled members of her family and friends will benefit, if the subject property is taken into trust for a casino for the Ione Indians. Defendant Dutschke misused and abused her position of authority in the BIA to benefit herself, her family and her friends in the Dutschke group outside the Ione area to the detriment of the public and to the exclusion of Indians in the Ione area. She is being sued in her official capacity and her personal capacity.

30. Defendant, Donald E. Laverdure, was a DOI employee in 2012 who, without authority, issued the ROD purporting to take the subject property into trust for

gambling by an unrecognized group of Ione Indians. He was a deputy to Assistant Secretary for Indian Affairs Larry Echo Hawk. And when Assistant Secretary Echo Hawk resigned in April 2012 he supposedly designated Defendant Laverdure to serve as "acting assistant secretary" on an interim basis until a new Assistant Secretary was appointed by the President and confirmed by the Senate. Congress in the IRA gave exclusive authority to the Secretary of Interior to take land into trust for recognized tribes that were under federal jurisdiction in 1934. Defendant Laverdure was not the Secretary of Interior in 2012. He did not have authority to take land into trust for an unrecognized group of Indians that did not exist in 1934. Defendant Laverdure is being sued in his prior official and personal capacities.

FACTS

31. In 1934, Congress enacted the Indian Reorganization Act (IRA), also known as the Wheeler-Howard Act. (Copy attached.)

32. Section 5 of the IRA provides that "[t]he Secretary of Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to land . . . for the purpose of providing lands for Indians."

33. Section 19 of the IRA includes three definitions of "Indian" to include:

(a) "all persons of Indian descent who are members of any recognized tribe now [1934] under Federal jurisdiction," and

(b) "all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any reservation," and

(c) "shall further include all other persons of one-half or more Indian blood."

34. The Indians living near or in the Ione area were not residing on a reservation in 1934 and were not members of a federally recognized tribe in 1934.

35. On August 15, 1933, O.H. Lipps, Sacramento DOI Field Superintendent, in a letter to the Commissioner of Indian Affairs, John Collier, determined that the Indians living near or in Ione are "non-ward Indians" and "they are not members of any tribe having treaty relations with the Government, they do not live on an Indian reservation or rancheria, and none of them have allotments in their own right held in trust by the Government." (A copy Superintendent Lipps' 1933 letter to Commissioner Collier is attached.)

36. On August 21, 1933, John Collier, the Commissioner of Indian Affairs, wrote a letter to Frank B. Bell, an Ione Indian which confirmed that the Ione Indians were non-ward Indians and not a recognized tribe with a reservation. Commissioner Collier was responding to a letter dated July 29, 1933, signed by Mr. Bell "and several other Indians, regarding relief conditions among a group of Indians classed as non-wards in Amador County." Mr. Bell and the other Ione Indians asking whether financial aid may be given to the Ione Indians "from funds made available under the public works program." Commissioner Collier forwarded a copy of the Ione Indians' request to Superintendent Lipps the

Sacramento Field Office with a request that he respond to Mr. Bell's letter and noting that "[w]ards and non-wards re entitled to share equally in work and relief made available through the public works program." (A copy of Commissioner Collier's 1933 letter to Mr. Bell, the Ione Indian representative, confirming their non-ward status is attached.)

37. In 1934, the DOI had determined that the group of Indians living near Ione were not members of a federally recognize tribe, did not live on a reservation and were not "wards" of the federal government. Therefore, DOI did not invite the Ione Indians to organize as a tribe under Section 18 of the IRA.

38. The Ione Indians did not contest or appeal the 1933 and 1934 determinations by the DOI that they were non-ward Indians and were not entitled to organize under the IRA. Nor did they ever claim to be federal wards or a recognized tribe under federal jurisdiction in 1934 or to have a reservation in 1934.

39. Defendant Laverdure's 2012 approval of the ROD and Defendant Chaudhuri's 2018 approval of the Ione Indian gaming ordinance are contrary to, and unwarranted collateral attacks on, the 1933 determinations by Superintendent Lipps and Commissioner Collier and on the 1934 decision by the DOI that the Ione Indians were not entitled to organize under the IRA.

40. On August 24, 1978 the DOI published tribal acknowledgement regulations in the Federal Register which became effective October 2, 1978. 43 Fed. Reg. 39361; currently located at 25 C.F.R. Part 83 (Part 83).

41. Federal recognition under Part 83 is a prerequisite for any group of Indians to receive benefits, preferences or assistance from the federal government including IRA and IGRA benefits. 25 CFR 83.2.

42. In 1979, the Ione Indians were listed by the BIA as a group of Indians which, although not federally recognized, had a Part 83 petition "pending" with the BIA. But, although the "pending" petition was given priority by the BIA, the Ione Indians never completed or submitted a Part 83 petition.

43. The Ione Indians are not now – and never have been - a federally recognized tribe under Part 83. Nor could they meet the requirements of Part 83.

44. In 1988, Congress passed IGRA which allowed gambling on Indian lands by federally recognized tribes. 25 USC 2701 et seq. "Indian lands" is defined in IGRA as a reservation or trust land under tribal government control in 1988.

45. Under IGRA, the NIGC was given authority and jurisdiction over Indian gambling. NIGC has an obligation to insure that Indian gambling is only conducted on Indian lands eligible for gambling under IGRA. The NIGC has no authority to regulate or allow gambling on non-Indian land.

46. Under IGRA, the NIGC Chairman has the authority to approve gaming ordinances for Part 83 recognized tribes which the NIGC has determined have Indian land eligible for gaming under IGRA. The NIGC Chairman does not have the authority to make Indian lands determinations or to approve a gaming ordinance for an unrecognized Indian group with no Indian land.

47. In April 1989 Glenn A. Villa, Sr., "Chairman" of one faction of Ione Indians ("Villa Faction") asked the DOI "for Federal Recognition as an Indian Tribe and the establishment of an Indian Reservation."

48. In January 1990 Harold Burris, a representative of a different faction of Ione Indians ("Burris Faction") wrote a letter to the DOI opposing the Villa Faction's request for federal recognition and a reservation.

49. The DOI denied the request by the Villa Faction for federal recognition and recommended that they submit a Part 83 petition for recognition.

50. On August 1, 1990 the Villa Faction sued the Burris Faction and the DOI, on behalf of the Ione Band of Miwok Indians, seeking a declaration that the Ione Indians were a federally recognized tribe. *Ione Band et al. v. Harold Burris et al.* (USDC ED Cal. No. CIV-S-90-0993). (*Ione Band v. Burris/DOI*)

51. The DOI and the Burris Faction responded to the Villa Faction's lawsuit by arguing that Ione Indians were not a federally recognized tribe and they have abandoned and did not renew their petition for recognition under Part 83, the only administrative way for a tribe to obtain federal recognition. The Ione Band has never petitioned for or received Part 83 recognition.

52. And the DOI, in motions for summary judgment in *Ione Band v. Burris/DOI,* joined by the Burris Faction, asserted and reaffirmed that Part 83 was the only administrative way for a group of Indians to obtain federal recognition and that the Ione Indians had not sought or received Part 83 recognition.

53. On April 2, 1992 the federal district court for the Eastern District of California in *Ione Band v. Burris/DOI* ruled in favor of the DOI and Burris Faction. After summarizing all the alternative recognition mechanisms proposed by the Villa Faction, District Court Judge Karlton held that:

> "Plaintiffs' [Ione Band's] argument appears to be that these non-regulatory mechanisms for tribal recognition demonstrate that 'the Secretary may acknowledge tribal entities outside the regulatory process,' . . . and that the court, therefore, should accept jurisdiction over plaintiff' claims compelling such recognition. **I cannot agree.** Because plaintiffs cannot demonstrate that they are entitled to federal recognition by virtue of any of the above mechanisms, and because they have failed to exhaust administrative remedies by applying for recognition through the BIA [Part 83] acknowledgement process, the United States motion for summary judgment on these claims must be GRANTED." (Emphasis added.)

54. Thus the district court held that the Ione Indians cannot demonstrate that they are entitled to federal recognition because they failed to exhaust their administrative remedies by petitioning for recognition under Part 83. Despite this ruling, the Ione Indians have never petitioned for Part 83 recognition.

55. On February 25, 1994, the Part 83 regulations were revised to establish seven mandatory criteria necessary for a group of Indians to obtain federal recognition as a tribe. 25 CFR § 83.11. Failure to meet any one of these criteria means that the Indian group is not entitled to recognition or a government-to-government relationship with the U.S. 25 CFR § 83.5(a). The Ione Indians could not meet the seven criteria.

56. Furthermore Part 83 also mandates that the DOI "will not acknowledge . . . [a]n association, organization, or any entity of any character formed in recent times." 25 CFR § 83.4(a).The Ione Indians were only recently organized as an unrecognized group in 2002 and could not obtain Part 83 recognition now.

57. On November 2, 1994, Congress passed the Federally Recognized Indian List Act. ("1994 List Act".) Congress defined federally recognized tribes that could be included on the list to tribes: (1) recognized by Act of Congress, (2) recognized pursuant to Part 83, or (3) recognized by a federal court decision. The Ione Indians do not meet any of these three definitions.

58. A final judgment was entered in *Ione Band v. Burris/DOI* in September 1996 confirming the 1992 Order that the Ione Indians was not a Part 83 federally recognized tribe and that they had failed to exhaust their administrative remedies under Part 83. This 1996 final judgement was not appealed by the DOI or the Ione Indians and it is binding on the Defendants here.

59. Defendant Laverdure's 2012 approval of the ROD and Defendant Chaudhuri's 2018 approval of the Ione Indians' gaming ordinance are barred by, and are a collateral attack on, the 1992 Order and the 1996 final judgment in *Ione Band v. Burris/DOI* that the Ione Indians were not a Part 83 recognized tribe. They are also contrary to the 1994 List Act.

60. In 2002, six years after the judgement in *Ione Band v. Burris/DOI* a third group of Indians claiming to be Ione Indians, including Defendant Dutschke,

and many of her relatives and friends, combined to form a new group of Indians, called for the purpose of this complaint the Dutschke group. The Dutschke group which was authorized by the BIA Pacific Regional Office, with the assistance of Defendant Dutschke, to expand enrollment to include Dutschke herself, her relatives and other non-Ione Indians.

61. The Villa Faction opposed the formation of the Dutschke group and its attempted take-over and diffusion of the Ione Indian community by Defendant Dutschke and her relatives and friends from outside the Ione area.

62. In April 2003 the newly formed Dutschke group announced that, pursuant to IGRA, it would seek to establish a major gambling casino and related facilities in Plymouth – over 10 miles away from the City of Ione.

63. At the time of the announcement by the Ione Indians that they intended to construct a Las Vegas style casino in Plymouth, 73% of Plymouth voters said they opposed the construction of the proposed casino.

64. NCIP was formed as a citizens group in April 2003 to oppose the construction of the casino and the potential related adverse impacts to their community caused the Las Vegas style casino proposed by the Ione Indians.

65. Neither the Dutschke group of Indians, many of who reside outside of Amador County, nor any other group or faction of Ione Indians who reside in Amador County, has "Indian land" eligible for gaming under IGRA.

66. In 2003 Elida Malick, a founding member of the NCIP wrote a letter to the DOI objecting to the proposed casino. This letter was the first of many letters from NCIP and its members, especially from Plaintiff Dueward Cranford II, to the DOI, BIA and NIGC over the last 15 years objecting to the fee-to-trust transfer and to the proposed casino in Plymouth. NCIP's opposition to, and efforts to stop, the proposed casino continues to this day as evidenced by this timely filed complaint.

67. On September 3, 2004, the DOI adopted Chapter 3 (Secretarial Succession) Part 302 (Automatic Succession) of the Departmental Manual. (Copy attached.) Section 3.2 provides that Solicitor of the DOI, when directed by the Secretary, shall perform the duties of the Assistant Secretary in the event of the "death, resignation, absence or sickness" of the Assistant Secretary. 302 DM 3.2 did not allow or provide that a deputy to the Assistant Secretary can perform the duties of the Assistant Secretary in the event of the resignation of the Assistant Secretary. Nor did it give the Assistant Secretary the authority to designate a DOI employee as his successor upon resignation.

68. In the fall of 2004 the Ione Indians requested an Indian lands opinion from the NIGC that they were a tribe with Indian land eligible for gambling. The NIGC has not responded and has not issued or posted a decision that any of the twelve parcels are Indian land eligible for Indian gambling under IGRA.

69. On February 1, 2006, Penny Coleman, NIGC General Counsel, submitted testimony before the Senate Committee on Indian Affairs. As a part of her testimony she stated that the NIGC is required to make an Indian lands determination before approving a gaming ordinance. Ms. Coleman confirmed the NIGC had a pending Indian lands review for the Ione Indians.

70. On September 19, 2006, Carl J. Artman, DOI Associate Solicitor wrote a legal memorandum that opined that the Ione Indians were a "restored tribe" eligible for Indian gambling under IGRA. There was no legal or factual support for Artman's legal opinion. The Ione Indians were never recognized as a tribe by Congress. Thus they could not be, and have not been, "terminated" or "restored" as a tribe by Congress. In any event, Artman's opinion was later withdrawn by his Supervisor, Solicitor Bernhardt and it was not adopted by the NIGC as its final agency decision pursuant to IGRA.

71. On October 5, 2006, the BIA published proposed new rules that an Indian tribe must follow when seeking to conduct gaming on lands acquired after October 17, 1988. (71 Fed. Reg. 58769; 25 CFR Part 292.) To qualify for the restored tribe exception, the proposed regulations required that the tribe must demonstrate that it was once federally recognized and then was terminated and then, consistent with the 1994 List Act, it must demonstrate that it was restored to federal recognition by an Act of Congress, Part 83 recognition or a judicial determination involving the U.S. The Ione Indians were never recognized and,

therefore, could not be terminated. And, even if the Ione Band had been previously recognized and terminated, their recognition was never "restored" by Congress, Part 83 recognition or a judicial determination.

72. The Part 292 regulations as proposed in 2006 did not include Section 292.26. There was no public notice or chance to comment on Section 292.26.

73. In April 2008 the DOI published a notice for a Draft Environmental Impact Statement (DEIS) for a proposed fee-to-trust transfer of the12 parcels, and for the construction of a casino in Plymouth, for the Ione Indians.

74. On May 20, 2008, the BIA published the final rule for Gaming on Trust Lands Acquired After October 17, 1988 known as the Part 292 Regulations. (73 Fed. Reg. 29354.) The Part 292 regulations were effective June 19, 2008.

75. The final Part 292 Regulations included, for the first time, "Subpart D – Effect of the Regulations, Section 292.26." It was added after the fact and signed by Artman. It was specific regulation designed to protect the legal memorandum Artman wrote in 2006 even though it was contrary to Part 292.

76. Section 292.26 was added to the Part 292 regulations after the public circulation period in violation of the APA. Thus Section 292.26 is void.

77. On January 16, 2009, Defendant Bernhardt, then Solicitor of the DOI, issued a memorandum withdrawing Associate Solicitor Artman's 2006 legal opinion. While reviewing the DEIS, Solicitor Bernhardt reviewed Associate Solicitor Artman's 2006 opinion and "concluded that it was wrong." Solicitor Bernhardt

withdrew and reversed the Artman opinion stating that:

> It no longer represents the legal position of the Office of the Solicitor. The opinion of the Solicitor's Office is that the [Ione] Band is not a restored tribe within the meaning of IGRA.
>
> (A copy of Defendant Bernhardt's 2009 memorandum is attached.)

78. On February 24, 2009, the U.S. Supreme Court decided *Carcieri v. Salazar,* 555 U.S. 379. In that case, in a six-Justice majority opinion written by Justice Thomas, the Supreme Court held that Section 19 of the IRA was not ambiguous and that to qualify for IRA fee-to-trust benefits a tribe must have been federally recognized in1934. The Court held that: "Congress left no gap in [Section 19 of the IRA] for the agency to fill."

79. The Supreme Court in *Carcieri* also held that to qualify for IRA fee-to-trust benefits, a tribe must have been both federally recognized and under federal jurisdiction in 1934. The Supreme Court also acknowledged that a tribe must be federally recognized under Part 83 to receive IRA fee-to-trust benefits.

80. Justice Souter dissented in *Carcieri* arguing "that the two concepts, recognition and jurisdiction, may be given separate content." Souter felt that a tribe could be either "federally recognized" **or** "under federal jurisdiction" in 1934 to receive for IRA benefits. This view was inconsistent with Justice Thomas' majority opinion and is the reason that Justice Souter dissented.

81. On April 20, 2009, the President nominated Larry Echo Hawk as Assistant Secretary of Indian Affairs and he was later confirmed by the Senate.

82. On April 27, 2012, Assistant Secretary Echo Hawk resigned. The DOI Solicitor, as required by DOI Manual (302 DM Section 3.2), should have been named as his successor until a new Assistant Secretary was appointed by the President and confirmed by the Senate. But that did not happen.

83. Instead, Assistant Secretary Echo Hawk designated Defendant Laverdure to be an "acting" Assistant Secretary. Assistant Secretary Echo Hawk lacked the authority to designate his own successor when he resigned. No did have the authority to designate Laverdure, a GS federal employee, as "acting assistant secretary." Instead, if necessary, DOI Manual, Part 302, Section 3.2 (2004) (copy attached) allows the Secretary to designate the DOI Solicitor as the successor to the Assistant Secretary "in the event of death, resignation, absence, or sickness." Also the DOI Solicitor, like the Assistant Secretary, but unlike GS federal employee Laverdure, was appointed by the President and confirmed by the Senate as a principal official of the United States.

84. The Secretary of Interior (not an "acting" Assistant Secretary nor a deputy Assistant Secretary) has the exclusive authority under the IRA to accept lands in trust for tribes that were federally recognized in 1934. And Secretary of Interior Jewel had that exclusive authority and was in office during Laverdure's five month tenure and when he issued the illicit ROD.

85. On May 24, 2012, less than a month after he assumed his "acting" duties, Defendant Laverdure issued the ROD which purports to allow the 12 parcels to

be taken in trust for Ione Indians. By issuing the ROD Laverdure tried to usurp the authority that Congress gave exclusively to Secretary Jewel.

86. Laverdure discusses several letters that predate 1934 written in the early part of the last century outlining unsuccessful efforts to acquire land for homeless, non-ward Indian living near Ione. None of these letters were written to, or by, the Ione Indians as a group much less a tribal governmental entity. Even Defendant Laverdure concedes in the ROD that these early letters were not evidence that the Ione Indians were a recognized tribe.

87. Laverdure also references a "series of letters in 1933" by the DOI, including letters from Superintendent Lipps and Commissioner Collier. But Laverdure does not cite the August 1933 letters from Commissioner Collier and Superintendent Lipps which determined and confirmed that the Ione Indians were non-ward Indians and were not a federally recognized tribe and did not have a reservation in 1934. Nor does Laverdure mention that the Ione Indians were not invited by the Secretary to organize under the IRA in 1934.

88. Defendant Laverdure ignores the majority decision in *Carcieri* and the requirement that a tribe must have been both "federally recognized" and "under federal jurisdiction" in 1934 to qualify for a fee-to-trust transfer under the IRA. Laverdure also misinterprets Justice Breyer's concurring opinion.

89. Instead, consistent with Justice Souter's dissent, Laverdure splits the IRA phrase "recognized tribe now under federal jurisdiction" in two as though there

were two separate tests with two separates meanings. He then ignores the "recognized tribe" half of the test -implicitly conceding that the Ione Band was not a recognized tribe in 1934. Laverdure then focuses on the "under federal jurisdiction" half of the test - which he claims is ambiguous and subject his interpretation as the "acting" Assistant Secretary. Laverdure finally creates a confusing two part test to "interpret" the phrase "under federal jurisdiction" and contends this test is entitled to *Chevron* deference. Laverdure's analysis is contrary to law and *Carcieri* and the decision and judgment in *Ione Band v. Burris/DOI*; it should be rejected.

90. Laverdure also relies on the withdrawn Associate Solicitor Artman's 2006 opinion and the void Section 292.26 to support his claim that the Ione Indians are a "restored tribe" with "restored lands" and therefore eligible for Indian gambling under IGRA. The NIGC, not Defendant Laverdure, has the exclusive authority to make these determination. The NIGC has not decided that the Ione Indians are a restored tribe with restored lands. Laverdure claim that the Ione Indians is a restored tribe with restored land, like the Associate Solicitor Artman's opinion, is wrong. Laverdure's conclusion is also contrary to Solicitor Bernhardt's 2009 opinion. It is without authority and is null and void.

91. On March 6, 2018, NIGC Chairman, Defendant Chaudhuri, sent a letter approving the Ione Indians' gaming ordinance. (Copy attached.) The proposed gaming ordinance had been submitted to the NIGC for review on February 9,

2018, by Tracy Tripp and Sara Dutschke Setshwaelo – "elected officials" of the Dutschke group of Ione Indians. Contrary to the assertion of Chaudhuri, the gaming ordinance was not "consistent with the requirements of [IGRA] and NIGC regulations" because the Ione Indians are not a Part 83 recognized tribe with Indian land eligible for a gambling casino under IGRA.

92. Defendant Chaudhuri did not reference any Indian lands claimed by the Ione Indians that would be eligible for gambling IGRA in his cover letter approving the gaming ordinance. Nor has the NIGC ever determined that the Ione Indians have Indian land eligible for Indian gambling under IGRA.

93. Defendant Chaudhuri's approval of the Ione Indian gaming ordinance is directly contrary to the 2009 conclusion by Defendant, and then DOI Solicitor, David Bernhardt, stating that it's the Department's position that the Ione Indians are not a recognized or restored tribe and that they do not have Indian land or restored land eligible for Indian gambling or a casino under IGRA.

94. None of the 12 parcels referenced in the ROD has been transferred into trust for the Ione Indians and all of the parcels remain in private ownership.

95. IGRA prohibits gambling on lands acquired by the U.S. in trust for a tribe after October 17, 1988, unless one of several limited exceptions applies. None of the exceptions apply to the Ione Indians. Thus even if the 12 parcels were transferred into trust now, in 2018, they would be acquired 30 years after 1988 and, therefore, would not be eligible for Indian gambling under IGRA.

FIRST CLAIM FOR RELIEF
Indian Gaming Regulatory Act

96. Plaintiffs repeat and re-allege paragraphs 1 through 95 inclusive, and the following paragraphs, of this Complaint as if fully set forth herein.

97. Under IGRA, the three member NIGC has the exclusive authority and jurisdiction to determine whether or not a subject property, assuming it is taken into trust, is Indian land eligible for Indian gambling under IGRA.

98. The NIGC has no jurisdiction to approve Indian gambling or an Indian casino on non-Indian land or to approve Indian gambling by a group of Indians that has not been recognized Congress, Part 83, or a federal court decision.

99. In 2004, the Ione Indians asked the NIGC for a determination that the subject property, that they intend to ask be taken into trust, would qualify as Indian land eligible for gaming under IGRA. That 2004 request is still pending.

100. There has been no determination by the NIGC that the subject property is Indian land eligible for gaming or that the Ione Indians are a Part 83 federally recognized tribe eligible to operate a casino under IGRA.

101. Although they may express a legal opinion, neither a DOI Associate Solicitor, nor any other lawyer for the DOI or NIGC, has the authority to decide that a property is "Indian land" eligible for gaming under IGRA. Only the Commission has that authority.

/ / /

102. Defendant Chaudhuri lacked the authority or jurisdiction to approve the Ione Indian gaming ordinance on March 6, 2018 because the Commission has not, and could not, determine that the land on which the proposed casino is to be constructed is Indian land eligible for gaming under IGRA. The land remains in private ownership. It is not Indian land as defined by IGRA.

103. The approval of a site-specific gaming ordinance by the NIGC Chairman is not valid unless there has been an Indian lands determination by the Commission. The Commission has not made such a determination for any land owned or claimed by the Ione Indians.

104. Even if approved by the NIGC Chairman, an Indian gaming ordinance is not effective, and Indian gambling cannot be initiated, until it is published in the Federal Register. Chaudhuri's approval of the Ione Indian gaming ordinance, even if considered valid, has not been published in the Federal Register.

105. The Ione Indians are not a recognized tribe and they own no Indian land eligible for gaming under IGRA.

106. Defendant Chaudhuri's approval of the Ione Indian gaming ordinance has no support in the record or law. Defendant Chaudhuri's approval of the Ione Indian gaming ordinance was without authority and is contrary to law. It should be vacated and declared null and void.

107. There is an actual controversy among the parties, within the meaning of the federal Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding the

validity of the gaming ordinance approved by Defendant Chaudhuri for an unrecognized group of Indians with no Indian land eligible for Indian gambling under IGRA. A declaratory judgment in favor of Plaintiffs and against the Defendants on these issues is necessary and proper.

108. Plaintiffs' remedies at law are inadequate. Injunctive relief, both preliminary and permanent, is necessary to prevent irreparable injury to the Plaintiffs. In the absence of the injunctive relief requested in this action, an unlawful casino may be allowed by Defendants in the rural Plymouth community in Amador County. The Defendants should be enjoined from publishing or implementing the gaming ordinance or allowing the construction or operation of the proposed casino. Injunctive relief is necessary and proper.

SECOND CLAIM FOR RELIEF
Appointments Clause of the Constitution

109. Plaintiffs repeat and re-allege paragraphs 1 through 108 inclusive, and the following paragraphs, in this Complaint as if fully set forth here.

110. The Appointments Clause of the Constitution divides officers of the federal government into two classes: (1) Principal Officers selected by the President with the advice and consent of the Senate, and (2) Inferior Officers who may be appointed, without the advice and consent of the Senate, by the President, heads of departments, or the judiciary. US Const. Art. II, § 2, cl. 2.

111. A Principal Officer under the Appointments Clause of the Constitution is an appointee of the President, who is confirmed by the Senate, and who exercises "significant authority pursuant to the laws of the United States" or "performs significant government duty exercised pursuant to a public law."

112. The Secretary of Interior is the Principal Officer, appointed by the President and confirmed by the Senate, with the exclusive authority under the IRA to take land into trust for the benefit of Indian tribes that were federally recognized and under federal jurisdiction in 1934.

113. When deciding whether to take land into trust for a recognized Indian tribe, the Secretary of Interior is exercising significant authority on behalf, and pursuant to the laws, of the U.S. Taking land into trust is a significant governmental duty delegated by Congress only to the Secretary, in part, because it affects the governmental balance protected by our federal system.

114. Congress did not delegate, or authorize the Secretary of Interior to re-delegate, the authority to take land into trust for a recognized Indian tribe to Inferior Officers or DOI employees such as Defendant Laverdure.

115. Former Secretary of Interior Jewell was appointed by the President and confirmed by the Senate and was in office in 2012, with exclusive authority to review and approve fee-to-trust applications under the IRA, when Defendant Laverdure issued the ROD purporting to take the subject property in trust.

116. Defendant Laverdure was a DOI employee and, at most, an Inferior Officer

of the U.S. at the time he issued the ROD in 2012. He was not a Principal Officer appointed by the President and confirmed by the Senate.

117. Defendant Laverdure lacked the authority under the IRA to take land into trust for the Ione Indians or any faction of Indians or group of Indians. He also lacked the authority to issue the ROD.

118. The ROD issued by Defendant Laverdure in 2012 is unauthorized and contrary the Appointments Clause of the Constitution. The ROD also violates the exclusive authority delegated by Congress in the IRA to the Secretary of Interior to take land into trust for federally recognized tribes. The ROD is void and should be reversed and vacated.

119. There is an actual controversy among the parties, within the meaning of the federal Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding the authority of Defendant Laverdure to approve the ROD and the fact that Congress has given the Secretary the exclusive authority to take land into trust for federally recognized tribes. A declaratory judgment in Plaintiffs' favor and against the Defendants on these issues is necessary and proper.

120. Plaintiffs' remedies at law are inadequate. Injunctive relief is necessary to prevent irreparable injury to the Plaintiffs. In the absence of the injunctive relief, an unlawful casino may be built in the rural Plymouth community. Defendants should be enjoined from implementing ROD or allowing the construction of the proposed casino. Injunctive relief is necessary and proper.

THIRD CLAIM FOR RELIEF
Indian Reorganization Act

121. Plaintiffs repeat and re-allege paragraphs 1 through 120 inclusive, and the following paragraphs of this Complaint, as if fully set forth herein.

122. Congress limited the application of the IRA to only those Indian tribes that were federally recognized in 1934. The Ione Indians were not a federally recognized tribe in 1934.

123. As determined by Commissioner of Indian Affairs John Collier and Superintendent O.H. Lipps in 1933, the Ione Indians were not wards under federal jurisdiction or a federally recognized tribe in 1934. Nor did they have or live on a reservation in 1934.

124. In 1934, the Ione Indians were classified by DOI as "non-ward Indians" and, consequently, were not invited by the DOI to participate in the IRA. Nor were they included on the 1934 list of tribes covered by the IRA

125. No Ione Indian or group of Indians in the Ione area in 1934 was a recognized tribe under federal jurisdiction eligible for fee-to-trust benefits under Section 5 of the IRA.

126. Even if he had the authority to take land into trust (and he didn't), Laverdure's conclusions in the ROD that the Ione Indians are a federally recognized tribe entitled to fee-to-trust benefits under the IRA is wrong and is a collateral attack on the 1933-1934 determinations by Superintendent Lipps and

Commissioner Collier and the DOI that the Ione Indians were non-ward Indians and were not a federally recognized tribe with a reservation in 1934.

127. Thus, even if it is assumed that Laverdure had the authority to take land into trust, the Ione Indians were not a federally recognized tribe in 1934 as required by IRA. The Ione Indians did not participate in, and are not entitled to the benefits of the IRA. The ROD is not supported by the record or the law. The ROD is contrary to the Supreme Court's decision in *Carcieri.* It is void and should be reversed and vacated.

128. There is an actual controversy among the parties, within the meaning of the federal Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding the validity of the ROD and fee-to-trust transfer approved by Defendant Laverdure for an unrecognized group of Indians which were non-ward Indians and not a federally recognized tribe in 1934 as required by the IRA. A declaratory judgment in favor of Plaintiffs and against the Defendants on these issues is necessary and proper.

129. Plaintiffs' remedies at law are inadequate. Injunctive relief, both preliminary and permanent, is necessary to prevent irreparable injury to the Plaintiffs. In the absence of the injunctive relief requested in this action, the illicit ROD may be implemented and an unlawful casino may be allowed by Defendants in the rural Plymouth community in Amador County. The Defendants should be enjoined from implementing the ROD or allowing the

construction or operation of the proposed casino for the Ione Indians - an unrecognized group of Indians with no right to fee-to-trust benefits under the IRA of 1934. Injunctive relief is necessary and proper.

FOURTH CLAIM FOR RELIEF
25 CFR Part 83

130. Plaintiffs repeat and re-allege paragraphs 1 through 129 inclusive, and all the following paragraphs of this Complaint as if fully set forth herein.

131. To receive federal benefits and assistance, including fee-to-trust benefits under the IRA and the Indian gambling benefits under IGRA, a group like the Ione Indians must first petition for, and obtain, federal recognition under Part 83. 25 CFR § 83.2.

132. The Ninth Circuit has recently confirmed that: "Only [Part 83] federally recognized tribes may operate gambling facilities under [IGRA]." *Timbisha Shoshone Tribe v. DOI*, 824 F.3d 807, 809 (9th Cir. 2016).

133. In 1992, the U.S. District Court held in *Ione Band v. Burris/DOI* that the Ione Indians were not a federally recognized tribe and that they failed to exhaust their remedies under Part 83. This decision was confirmed by a final judgment in 1996 which was not appealed. It is binding on the Defendants.

134. No faction or group of Ione Indians since the 1992 decision and 1996 final judgment in *Ione Band v. Burris/DOI* has sought or obtained federal recognition under Part 83.

135. Defendants' attempts to provide IRA and IGRA benefits to any group or faction of the Ione Band before it obtains federal recognition under Part 83 is a violation of the procedures required by law.

136. The purported approval of the fee-to-trust transfer in the ROD and the purported approval of the gaming ordinance in favor of Ione Indians who do not have Part 83 recognition are void and should be reversed and vacated.

137. There is an actual controversy among the parties, within the meaning of the federal Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding whether an unrecognized group of Indians, which has not sought or obtained Part 83 federal recognition, is entitle to the benefits of the IRA and IGRA. A declaratory judgment in favor of Plaintiffs and against the Defendants on these issues is necessary and proper.

138. Plaintiffs' remedies at law are inadequate. Injunctive relief, both preliminary and permanent, is necessary to prevent irreparable injury to the Plaintiffs. In the absence of the injunctive relief requested in this action, an unlawful casino for a group of Indians who have not complied with Part 83 may be allowed by Defendants in the rural Plymouth community in Amador County. The Defendants should be enjoined from publishing or implementing the gaming ordinance or allowing the construction or operation of the proposed casino. Injunctive relief is necessary and proper.

FIFTH CLAIM FOR RELIEF
Equal Protection

139. Plaintiffs repeat and re-allege paragraphs 1 through 138 inclusive, and the following paragraphs, of this Complaint as if fully set forth herein.

140. Each Defendant has acted, or has threatened to act, under the color of governmental authority to allow the construction of the proposed casino by a group of Indians which has not obtained Part 83 federal recognition and which does not have lands eligible for gaming under the IRA or IGRA.

141. Defendants attempt to give the fee-to-trust and benefits in the IRA and the Indian gambling and casino benefits in IGRA to a group of Ione Indians, which is not a Part 83 recognized tribe, is based on a racial classification and is a violation of the Fifth Amendment and Equal Protection clause of the Constitution. *Adrand v. Pena,* 515 U.S. 200 (1995). "[A]ny person of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny." *Id*.

142. Discrimination in favor of a group of Indians that is not a federally recognized tribe violates the Equal Protection clause of the Constitution. *Morton v. Mancari,* 417 U.S. 535 (1974).

143. Defendants' discrimination in favor of the Ione Band, an unrecognized group of Indians, by approving the fee-to-trust transfer in the ROD and by

approving their proposed gaming ordinance and casino is a violation Plaintiffs' equal protection rights.

144. Plaintiffs and other non-Indian members of the community were not given the same opportunities and benefits and preferences given to the Ione Indians by the Defendants.

145. The approvals of the ROD and gaming ordinance and other actions by the Defendants giving benefits to an unrecognized group of Ione Indians based on their racial classification cannot withstand strict scrutiny and they should be reversed and vacated.

146. There is an actual controversy among the parties, within the meaning of the federal Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding whether the actions of Defendants allowing an unrecognized race-based group of Indians to receive benefit under the IRA and IGRA violate the Equal Protection clause of the Constitution. A declaratory judgment in favor of Plaintiffs and against the Defendants on these issues is necessary and proper to protect the Equal Protection rights of the Plaintiffs.

147. Plaintiffs' remedies at law are inadequate. Injunctive relief, both preliminary and permanent, is necessary to prevent irreparable injury to the Plaintiffs. In the absence of the injunctive relief requested in this action, an unlawful casino may be allowed by Defendants in the rural Plymouth community in Amador County in violation of the Equal Protection clause of the

United Sates Constitution. The Defendants should be enjoined from allowing the construction or operation of the proposed casino for a race-based unrecognized group of Indians to the detriment of Plaintiffs and the community. Injunctive relief is necessary and proper.

SIXTH CLAIM FOR RELIEF
Federalism

148. Plaintiffs repeat and re-allege paragraphs 1 through 147 inclusive, and the following paragraphs, of this Complaint as if fully set forth herein.

149. Each Defendant has acted, or has threatened to act, under the color of governmental authority to allow the construction of the proposed casino by a group of Indians which has not obtained Part 83 federal recognition and which does not have Indian land eligible for gaming under IGRA.

150. Defendants attempt to give the fee-to-trust benefits in the IRA and the Indian gambling and casino benefits in IGRA to a group of Ione Indians, and to exempt those Ione Indians from the application of State and local law, which is not a Part 83 recognized tribe, is an abuse of their authority and a violation of the federalism protections afforded to the Plaintiffs and all citizens of California and which is inherent in the dual government system created by the Constitution. *Bond v. United States,* 131 S.Ct. 2355 (2011).

151. "[T]he Constitution divides authority between federal and state governments for the protections of individuals [not states]." *New York v. United*

States, 505 U.S. 144 (1992). "[T]he principle benefit of the federalist system is a check on abuses of government poser." *Gregory v. Ashcroft, governor of Missouri,* 501 U.S. 452 (1991). The "danger posed by the growing power of the administrative state cannot be dismissed" - and should not be underestimated. *Arlington v. FCC,* 133 S.Ct. 1863 (2013). Defendants abused their authority by giving IRA and IGRA benefits to the Ione Indians and by exempting the Ione Indians from State and local laws and regulations.

152. Defendants do not have the authority to unilaterally declare that the Ione Band, which is not a Part 83 recognized tribe, is entitled to all the benefits of the IRA and IGRA available only to federally recognized tribes - including the right to have trust land held in its favor under the IRA and the right to conduct Indian gambling or construct a casino under IGRA. The principles of federalism should check this abuse of federal law and should preclude the construction of the proposed casino in violation of State law.

153. The approval of the ROD by Defendant Laverdure and the approval of gaming ordinance by Defendant Chaudhuri for an unrecognized group of Indians created by the BIA Pacific Regional Office, under the supervision and with the permission of Defendant Dutschke, and which has not been recognized under Part 83, violates the principle of federalism designed to protect Plaintiffs from such governmental abuses. The approval of the ROD and gaming ordinance should be reversed and vacated.

154. There is an actual controversy among the parties, within the meaning of the federal Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding whether the actions of Defendants allowing an unrecognized group of Indians to receive benefit under the IRA and IGRA violate the constitutional principles of Federalism. A declaratory judgment in favor of Plaintiffs and against the Defendants on these issues is necessary and proper.

155. Plaintiffs' remedies at law are inadequate. Injunctive relief, both preliminary and permanent, is necessary to prevent irreparable injury to the Plaintiffs. In the absence of the injunctive relief requested in this action, an unlawful casino may be allowed by Defendants in the rural Plymouth community in violation of the principles of federalism. Without an injunction, the abuse of power by Defendants to benefit the Ione Indians would be rewarded to the detriment of the public. Defendants should be enjoined from allowing the construction or operation of the proposed casino for an unrecognized group of Indians. Injunctive relief to prevent further abuses by the Defendants is necessary and proper.

SEVENTH CLAIM FOR RELIEF

Cal. Constitution, Art. 4, Sec. 19(e)&(f) and Cal. Penal Code Sec. 11225 et seq.

156. Plaintiffs repeat and re-allege paragraphs 1 through 155 inclusive, and the following paragraphs, of this Complaint as if fully set forth herein.

157. Plaintiffs seek for injunctive relief and damages, if appropriate and according to proof, against the Defendants for allowing the construction of an illegal gambling casino on the subject property and for creating a public nuisance in violation of federal and State law.

158. The California Constitution prohibits "casinos of the type currently operating in Nevada and New Jersey" from being authorized to open or operate in California. Cal. Const. Art. 4, Sec. 19(e).

159. The California Constitution limits Indian gambling in California to "federally recognized tribes on Indian lands in California in accordance with federal law." Cal. Const. Art. 4, Sec. 19(f).

160. The Ione Indians do not have Indian land in Amador County or elsewhere in California eligible for Indian gambling as defined by IGRA.

161. The Ione Indians are not a federally recognized tribe and have not petitioned to become a "federally recognized tribe" under Part 83.

162. The construction of a Nevada or New Jersey style casino by an unrecognized group of Indians on non-Indian land in Plymouth is prohibited by California's Constitution.

163. California Penal Code section 11225, provides that: "Every building or place used for the purpose of illegal gambling . . . is a nuisance which shall be enjoined, abated and prevented, and for which damages may be recovered, whether it is a public or private nuisance."

164. California Penal Code section 11226 provides that any resident of the County where the illegal gambling is occurring may sue to enjoin, abate and prevent a nuisance caused by illegal gambling and to perpetually enjoin the person conducting or maintaining the illegal gambling operation.

165. The construction of a casino by an unrecognized group of Indians on non-Indian land in Plymouth is a public and private nuisance and a violation of law that will cause significant harm to the Plaintiffs who live or have businesses or property near the proposed casino.

166. The negative effects of building and operating the proposed casino in Plymouth include: (a) an irreversible change in the rural character of the area; (b) loss of enjoyment of the aesthetic and environmental qualities of the land near the casino; (c) increased traffic; (d) increased light, noise, and air pollution; (e) increased crime; (f) diversion of police, fire, and emergency medical resources; (g) decreased property values; (h) increased property taxes; (i) diversion of resources to treat gambling addiction; (j) weakening of the family conducive atmosphere of the community; and (k) other aesthetic, socioeconomic, and environmental problems associated with gambling.

167. Plaintiffs' remedies at law are inadequate. Injunctive relief, both preliminary and permanent, against the Defendants, enjoining the construction and operation of the proposed casino is necessary to abate and prevent a public nuisance and to prevent irreparable injury to Plaintiffs.

168. Plaintiffs also seek damages, if appropriate and according to proof, for any injury that has been, or will be, caused, by the notice, construction or operation of the proposed casino and the illegal gambling operations allowed or approved by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against the Defendants as follows:

A. Declare and find that Defendant Chaudhuri's March 6, 2018 approval of the gaming ordinance violates IGRA and is without authority and void because the Ione Indians are not a federally recognized tribe with Indian land eligible for Indian gambling as defined by IGRA.

B. Declare and find that Defendant Laverdure, and the other Defendants, lacked authority to take land into federal trust status for the Ione Indians under IRA, IGRA or any other provision of law because the Ione Indians were non-ward Indians, and were not a federally recognized tribe in 1934.

C. Declare and find that none of the privately owned 12 parcels referenced in the ROD is Indian land eligible for Indian gambling under IGRA;

D. Declare and find that Ione Indians have not obtained federal recognition under Part 83 and therefore are not entitled to the benefits of IRA or IGRA,

E. Declare and find that the ROD is void and reverse and vacate the decisions

in the ROD to take land into trust under the IRA for a casino under IGRA;

F. Declare and find that the approval of the gaming ordinance is void and vacate all decisions by Defendants which allow Indian gambling or the proposed casino under the IRA or IGRA;

G. Enjoin Defendants, their agents, employees and successors from taking any action to implement the ROD or the Ione Indian gaming ordinance;

H. Find and declare the proposed casino, if allowed for an unrecognized group of Ione Indians, would violate the Equal Protection clause of the Constitution and constitutional principles of Federalism.

I. Find and declare the proposed casino, if constructed, would violate the prohibitions in California's Constitution and public and private nuisance laws which should be abated and for which damages should be assessed.

J. Award Plaintiffs' costs and attorney's fees to the extent permitted by law including, but not limited to, the Equal Access to Justice Act; and

K. Grant such other and further relief as to the court deems just and proper.

Dated: May 22, 2018

Respectfully submitted,

s/ *Kenneth R. Williams*

KENNETH R. WILLIAMS
Attorney for Plaintiffs

Wheeler-Howard Act, June 18, 1934
(Indian Reorganization Act)

Wheeler-Howard Act, June 18, 1934
(The Indian Reorganization Act)

--An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form bussiness and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes.

BE IT ENACTED *by the Senate and House of Representatives of the United States of America in Congress assembled*, That hereafter no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

Sec. 2. The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress.

Sec. 3. The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States; Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: Provided further, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation:*Provided further*, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation: *Provided further*, That the order of the Department of the interior signed, dated, and approved by Honorable Ray Lyman Wilbur, as Secretary of the Interior, on October 28, 1932, temporarily withdrawing lands of the Papago Indian Reservation in Arizona from all forms of mineral entry or claim under the public land mining laws is hereby revoked and rescinded, and the lands of the said Papago Indian Reservation are hereby restored to exploration and location, under the existing mining laws of the United States, in accordance with the express terms and provisions declared and set forth in the Executive orders establishing said Papago Indian Reservation: *Provided further*, That the damages shall be paid to the Papago Tribe for loss of any improvements of any land located for mining in such a sum as may be determined by the Secretary of the Interior but not exceed the cost of said improvements: *Provided further*, That a yearly rental not to exceed five cents per acre shall be paid to the Papago Indian Tribe: *Provided further*, That in the event that any person or persons, partnership, corporation, or association, desires a mineral patent, according to the mining laws of the United States, he or they shall first deposit in the treasury of the United States to the credit of the Papago Tribe the sum of $1.00 per acre in lieu of annual rental, as

hereinbefore provided, to compensate for the loss or occupancy of the lands withdrawn by the requirements of mining operations: *Provided further*, That patentee shall also pay into the Treasury of the United States to the credit of the Papago Tribe damages for the loss of improvements not heretofore said in such a sum as may be determined by the Secretary of the Interior, but not to exceed the cost thereof; the payment of $1.00 per acre for surface use to be refunded to patentee in the event that the patent is not required.

Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes; and nothing contained therein, except as expressly provided, shall be construed as authority by the Secretary of the Interior, or any other person, to issue or promulgate a rule or regulation in conflict with the Executive order of February 1, 1917, creating the Papago Indian Reservation in Arizona or the Act of February 21, 1931 (46 Stat. 1202).

Sec. 4. Except as herein provided, no sale, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: *Provided, however*, That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived or to a successor corporation; and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject matter of the corporation is located, to any member of such tribe or of such corporation or any heirs of such member: *Provided further*, That the Secretary of the Interior may authorize voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in his judgement, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

Sec. 5. The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing lands for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo

Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures how pending in congress and embodied in the bills (S. 2531 and H.R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H.R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico and for other purposes, or similar legislation, become law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

Sec. 6. The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.

Sec. 7. The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

Sec. 8. Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter.

Sec. 9. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed $250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

Sec. 10. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $10,000,000 to be established as a

revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. A report shall be made annually to Congress of transactions under this authorization.

Sec. 11. There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided*, That not more than $50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

Sec. 12. The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who maybe appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian office, in the administrations functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

Sec. 13. The provisions of this Act shall not apply to any of the Territories, colonies, or insular possessions of the United States, except that sections 9, 10, 11, 12, and 16 shall apply to the Territory of Alaska: *Provided*, That Sections 2, 4, 7, 16, 17, and 18 of this Act shall not apply to the following named Indian tribes, together with members of other tribes affiliated with such named located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 4 of this Act shall not apply to the indians of the Klamath Reservation in Oregon.

Sec. 14. The Secretary of the Interior is hereby directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (25 Stat.L. 891), or their commuted cash value under the Act of June 10, 1886 (29 Stat.L. 334), to all Sioux Indians who would be eligible, but for the provisions of this Act, to receive allotments of lands in severalty under section 19 of the Act of May 29, 1908 (25 (35) Stat.L. 451), or under any prior Act, and who have the prescribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent

appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allotee or the right shall lapse. Such benefits shall continue to be paid upon such reservation until such time as the lands available therein for allotment at the time of the passage of this Act would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land.

Sec. 15. Nothing in this Act shall be construed to impair or prejudice any claim or suit of any Indian tribe against the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

Sec. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

Sec. 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and

personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

Sec. 18. This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against it application. It shall be the duty of the Secretary of the Interior, within one year after the passage and approval of this Act, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

Sec. 19. The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all person who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

Letter from Office of Indian Affairs Superintendent O.H. Lipps
to Commissioner of Indian Affairs John Collier
August 15, 1933

UNITED STATES

DEPARTMENT OF THE INTERIOR

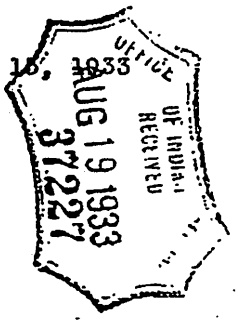
OFFICE OF INDIAN AFFAIRS

FIELD SERVICE

Sacramento Indian Agency

Sacramento, California

Aug. 16, 1933



The Honorable

Commissioner of Indian Affairs,

Washington, D. C.

Sir:

There was received at this office today copy of letter and enclosures sent to you under date of July 29, 1933, by a Committee of Citizens of Ione, California, reporting the condition of 93 Indians residing in Township No. 2, Amador County.

It is observed that this report fails to give sufficient information regarding the status of these Indians to enable the Office to determine what, if anything, the federal Government can do to assist the Committee in providing for their needs. Therefore the following facts are brought to the attention of the Office:

The situation of this group of Indians is similar to that of many others in this Central California area. They are classified as non-wards under the rulings of the Comptroller General because they are not members of any tribe having treaty relations with the Government, they do not live on an Indian reservation or rancheria, and none of them have allotments in their own right held in trust by the Government. They are living on a tract of land located on the outskirts of the town of Ione. This land, I am informed, is owned by a Chinaman and is about to be sold and the Indians fear they are going to be dispossessed, and they have no other place to which they can go.

About five years ago the Department approved the purchase of 70 acres of land in Amador County from Louis Alpers, at a cost of $3,000. (See Office file L-A, 45877-28; 49751-26, M.A.P., Sept. 28, 1928). This land is located a few miles from the town of Ione and there is only one old Indian living on it. None of the others have desired to make an effort to establish homes on this rancheria for the reason that they are too poor to do so. They have no funds with which to purchase materials to build houses, and the Government has never made any provisions for assisting the Indians to build houses, dig wells, fence and otherwise improve the lands purchased for homesites for them in this jurisdiction.

We now have several of these rancherias purchased at considerable cost to the Government on which no Indians are living, or have ever lived. These lands are unimproved, in many cases have no water, and the Indians are utterly unable to establish homes and live upon them.

There is no possible hope of permanently improving the condition of these homeless California Indians until a way can be found to finance the home improvement program which I have outlined to the Office in previous reports and correspondence and which was brought to the attention of the Senate Committee during their investigation of the condition of the Indians in this jurisdiction last year. It is hoped the Office may be able before the passing of another year to find some way of financing this home improvement program.

Very respectfully,

O. H. Lipps,
Superintendent

OHL:MH

Letter from Commissioner of Indian Affairs John Collier to
Richard Bell and other "Non-Ward" Ione Indians
August 21, 1933

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ACQ

3

AUG 21 1933

Mr. Frank B. Bell,
Ione, California.

Dear Sir:

We are in receipt of a letter dated July 29, signed by you and several other Indians, regarding relief conditions among a group of Indians classed as non-wards in Amador County, California, together with a report showing assistance furnished these Indians by the County and asking whether some aid may be given them by us from funds made available under the public works program.

We are forwarding your letter to the superintendent of the Sacramento Indian Agency, California, with the request that he look into the situation as it exists among this group of Indians and advise you direct what assistance can be given in the way of employment on road and building projects, etc., made available from funds received under the public works program.

Sincerely yours,

(Signed) John Collier

Commissioner.

6-CL-17

Carbon with original letter to Sacramento for appropriate action, advising Mr. Bell direct what assistance it will be possible for you to give these Indians. Ward and non-wards are entitled to share equally in work and relief made available through the public works program. Please return enclosures with copy of reply to Mr. Bell, to this Office.

C/A [illegible] for Indian Office

DOI Departmental Manual, Part 302, Section 3.2
Assistant Secretary of Interior Succession
Effective September 3, 2004

Department of the Interior
Departmental Manual

Effective Date: 9/3/04
Series: Departmental Management
Part 302: Automatic Succession
Chapter 3: Secretarial Succession

Originating Office: Office of Planning and Performance Management

302 DM 3

3.1 **Acting Secretary**. Automatic succession to the position of Secretary of the Interior is provided by Executive Order 11487, dated October 6, 1969 (Published in the Federal Register, October 8, 1969 - 34 FR 15593). Section 1 of the Order provides that: "During any period when by reason of absence, disability, or vacancy in office, neither the Secretary of the Interior nor the Under Secretary of the Interior is available to exercise the powers or perform the duties of the office of Secretary, an Assistant Secretary of the Interior or the Solicitor of the Department of the Interior, in such order as the Secretary of the Interior may from time to time prescribe, shall act as Secretary. If no such order of succession is in effect at that time, they shall act as Secretary in the order in which they shall have taken office as Assistant Secretaries or Solicitor."

A. Designation by the Secretary. In accordance with Executive Order 11487, when neither the Secretary nor the Under (Deputy) Secretary is available to exercise the power or perform the duties of the Secretary, the Departmental officials listed in the following order shall act as Secretary:

(1) Solicitor
(2) Assistant Secretary - Policy, Management and Budget
(3) Assistant Secretary - Land and Minerals Management
(4) Assistant Secretary - Water and Science
(5) Assistant Secretary for Fish and Wildlife and Parks
(6) Assistant Secretary - Indian Affairs

B. In emergency situations (when none of the officials listed in 302 DM 3.1A, above, are available to exercise the Secretary's authority) the following positions are delegated full authority of the Secretary in the order listed and until such time as one of the officials listed above him or her is available to exercise the Secretary's authority:

(1) Director, Security, Safety and Law Enforcement, Bureau of Reclamation
(2) Central Region Director, U.S. Geological Survey
(3) Intermountain Regional Director, National Park Service
(4) Region 6 Regional Director, U.S. Fish and Wildlife Service

(5) Colorado State Director, Bureau of Land Management
(6) Regional Solicitor, Rocky Mountain Region

3.2 **Acting Deputy Secretary or Assistant Secretary**. Succession to the position of Deputy Secretary or Assistant Secretary is provided by Executive Order 9794, dated October 26, 1946, which authorizes and designates the Solicitor of the Department of the Interior, when so directed by the Secretary of the Interior, to perform the duties of the Deputy Secretary of the Interior or of an Assistant Secretary of the Interior in the event of the death, resignation, absence, or sickness of the Deputy Secretary or of an Assistant Secretary of the Interior, respectively.

9/3/04 #3653
Replaces 1/18/01 #3357

Memorandum from DOI Solicitor David Bernhardt to
Acting Deputy Assistant Secretary George T. Skibine
(Ione Band Indian Lands Determination)
January 16, 2009

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

JAN 16 2009

MEMORANDUM

To: George T. Skibine
Acting Deputy Assistant Secretary for Policy and Economic Development

From: David L. Bernhardt
Solicitor

Subject: Ione Band Indian Lands Determination

On September 19, 2006, former Associate Solicitor Carl Artman issued a memorandum opinion to the Associate Deputy Secretary concluding that the Ione Band of Miwok Indians of California was a restored tribe within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA)(25 U.S.C. § 2719) and that certain lands the Band purposed to acquire within the boundaries of Plymouth, California, qualified as restored Indian lands within the meaning of IGRA. Based on the Associate Solicitor's conclusions that the Band was a restored tribe and the land being acquired qualified was restored Indian lands, the Band would be entitled to conduct gaming on the parcel once the land was acquired in trust.

We are now in the process of reviewing the preliminary draft Final Environmental Impact Statement for the Plymouth parcel. As a result, I determined to review the Associate Solicitor's 2006 Indian lands opinion and have concluded that it was wrong. I have withdrawn and am reversing that opinion. It no longer represents the legal position of the Office of the Solicitor. The opinion of the Solicitor's Office is that the Band is not a restored tribe within the meaning of IGRA.

In recognition of the recently executed Memorandum of Agreement with the Nation Indian Gaming Commission (NIGC), I have sent the Acting General Counsel of NIGC a copy of our draft opinion explaining the withdrawal and our contrary conclusion that the Ione Band is not a restored tribe and invited them to comment on it before we advise the tribe of our changed position.

If you have any questions, please don't hesitate to call me.

DRAFT

MEMORANDUM

To: George T. Skibine
Acting Deputy Assistant Secretary for Policy and Economic Development

From: David L. Bernhardt
Solicitor

Subject: Ione Band Indian Lands Determination

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Specifically, the Associate concluded that for the Ione Band to be a restored tribe "the Band must establish that it was once recognized by the Federal government, that Federal government subsequently did not recognize it and that, ultimately, the Federal government restored its recognition of the Band." The Associate Solicitor's 2006 opinion was prior to the Department's adoption in May 2008 of final regulations governing gaming on newly acquired lands. It was based instead on the court's opinion in *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the W. Dist. of Mich.* (*Grand Traverse III*), 369 F.3d 960 (6th Cir. 2004), *aff'g* 198 F. Supp. 920, 928 (W.D. Mich. 2002. To qualify as a restored tribe under *Grand Traverse III*, an Indian tribe must demonstrate: 1) a history of governmental recognition; 2) a withdrawal of recognition; and 3) reinstatement of recognition. *Id.* at 967.

Recognizing that the Band had a unique and complex relationship with the United States government dating back to at least 1916, the Associate concluded that former Commissioner of Indian Affairs Louis Bruce had in effect recognized the Band in October 1972 when the Commissioner sent a letter to the Band responding to its request that the United States accept a forty acre tract in trust for the Band. The Commissioner advised the Band that:

> Federal recognition was evidently extended to the Ione Band of Indians at the time that the Ione land purchase was contemplated . . . I am directing the Sacramento Area Office to assist in the preparation of a document containing a membership roll and governing papers which conform to the Indian Reorganization [sic].
>
> As the Commissioner of Indian Affairs, I therefore, hereby agree to accept by relinquishment or title or gift the following described parcel of land to be held in trust for the Ione Band of Miwok Indians . . .

The plain language of Commissioner Bruce's letter is far less than a clear and unambiguous statement of recognition. The letter reflects a modern conclusion as to what was "evidently extended" by a proposed purchase more than 50 years earlier. I understand that the Department only has authority to acquire land under the Indian Reorganization Act for Indian groups that are tribes, or collections of half-blood individual Indians, and I agree that the Commissioner's agreement to accept the land in trust is some evidence he believed he was dealing with a tribe. I disagree with the Associate's conclusion that the letter is an adequate "clear, unambiguous statement" of Federal recognition.

Moreover, in the years following the Commissioner's letter, the Department did not treat it as a statement of recognition. For reasons that are not entirely clear in the record, the Department never did accept the land in trust for the Band. Rather when the land claims and treaty fishing rights litigation of the mid-1970s led the Department to develop its acknowledgment regulations, the Department took the position that the Band was not yet recognized and had to proceed through the newly established acknowledgment process. The Department went so far as to place the Band on the list of pending petitioners by construing the 1916 request to acquire land in trust for the Band as the required letter of intent to petition for acknowledgment under the Department's regulations.

The Band sued the Department contending that it was already recognized and did not have to go through the acknowledgment process. The Department defended the litigation and prevailed. *See Ione Band of Miwok Indians v. Burris*, No. CIV. S-90-993 LKK (E. D. Calif. April 22, 1992). The Interior Board of Indian Appeal (IBIA) subsequently rejected similar claims by the group in an administrative appeal. *See Ione Band of Miwok Indians v. Scaramento Area Director*, 22 IBIA 194 (August 4, 1992). The Associate Solicitor viewed the Department's actions in insisting that the Band go though the acknowledgment process and denying its tribal

status in both judicial and administrative litigation as evidence that the Department had terminated the relationship Commissioner Bruce had recognized.

Contrary to the Associate's view, the Department's actions in placing the Band on the list of petitioners and insisting in litigation that the Band go through the regulatory acknowledgment process did not amount to termination. Those actions were merely evidence that the Department did not believe the Commissioner Bruce's 1972 letter was adequate unambiguous evidence of prior Federal acknowledgment.

In late 1993, Assistant Secretary Ada Deer met with representatives of the Band. She agreed to clarify the relationship between the United States and the Band. After reviewing the matter, she reaffirmed the conclusions of Commissioner Bruce's 1972 letter and agreed to accept in trust the specific parcel of land described in the Commissioner's letter. Subsequently, in a March 22, 1994 letter Assistant Secretary Deer advised the Band's representatives that she was directing the Bureau to deal with the Band as a tribe and to add the Band to the list of tribal entities published in the Federal Register.

Under the Department's acknowledgment regulations, the Department committed to publishing in the Federal Register within 90 days of the effective date of the regulations a list of all Indian tribes and to updating and publishing that list. *See* 25 C.F.R. § 54.6(b),[1] 43 Fed. Reg. 39,361, 39,362-63 (September 5, 1978). The Department also committed in the original regulations to make an effort to locate Indian groups not previously acknowledged and inform them of their right to petition. In addition the Department committed to publish in the Federal Register a list of groups deemed to have a petition or letter of intent to petition on file with the Bureau of Indian Affairs.[2] The Ione Band was not on the first Federal Register list of Indian tribal entities with a "government-to-government relationship with the United States." *See* 44 Fed. Reg. 7,235 (Feb. 6, 1979). It was on the list of Indian groups with letters of intent or petitions for acknowledgment on file. *See* 44 Fed. Reg. 116 (Jan. 2, 1979). The Band was, however, included on the first Federal Register list of tribal entities published after Assistant Secretary Deer's March 1994 letter to the Ione Band's representatives and every list published since then. *See* 60 Fed. Reg. 9,250, 9,252 (Feb. 16, 1995).

I believe the Department's treatment of the Band subsequent to Commissioner Bruce's 1972 letter is evidence not of termination but that the Commissioner's letter did not constitute adequate evidence of Federal recognition. The Band's recognition as an Indian tribe by the Federal government was not complete until Assistant Secretary Deer's letter of March 1994 and the subsequent inclusion on the Federal Register list of tribal entities.

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[1] The regulations were redesignated Part 83 in 1982. *See* 47 Fed. Reg. 13,327 (March 30, 1982). They were revised in 1994 and maintained the requirement to publish a list in the Federal Register of Indian tribes, although the publication no longer had to be annual. *See* 25 C.F.R. § 83.5 (a),. 59 Fed. Reg. 9,280, 9,294 (Feb. 25, 1994).

[2] *See* 25 C.F.R. §§ 54.6(a) and 54.8(b), 43 Fed. Reg. 39,362- 39,363.

I am aware that since Assistant Secretary Deer's action was taken outside the Department's regulatory acknowledgment process, it could be argued that even her actions and the subsequent listing in the Federal Register are insufficient to establish the Band's status as a federally recognized Indian tribe. I do not question the Band's status as a federally recognized Indian tribe. In November of 1994, Congress enacted the Federally Recognized Indian Tribe List Act of 1994 (List Act) that mandated that the Secretary publish in the Federal Register annually a list of all Indian tribes as a requirement of statutory law, not just Departmental regulation,. *See* 25 U.S.C. § 479a. The Band has been on every tribal list published pursuant to the List Act.

The Band's tribal status is beyond question at this time. The conclusion of this opinion is to clarify that the Band obtained that status for the first time in 1994 not in 1972. Since the Band did not obtain recognized status until 1994, the Associate Solicitor's opinion that the Band had been recognized previously, terminated and restored can't be supported and is reversed.

I am aware that the Band and its supporters have invested substantial effort in their application to have the Plymouth land acquired in trust and used for gaming to foster the Band's economic development. This opinion does not preclude that result but it does mean the Band will have to acquire a favorable two-part determination before the land can be used for gaming.

In May 2008, the Department adopted final regulations, 25 C.F.R. Part 292, interpreting Section 20 of IGRA governing the acquisition of lands in trust for gaming after October 17, 1988. Those regulations do not alter final agency decisions made pursuant to section 2719 prior to their enactment. However, there has been not final agency action on the land into trust request. Further, The regulations also provide that the Department retains full discretion to qualify, withdraw or modify such opinions even in those situations where the agency has previously relied on a legal opinion. *See* 25 C.F.R. § 292.26.

If you have any questions concerning this opinion, I would be glad to discuss them with you.

cc: Matthew Franklin, Chairman
Ione Band of Miwok Indians
14 West Main Street
P.O. Box 1190
Ione, CA 94640

Phil Hogen
Chairman, Nation Indian Gaming Commission

Penny J. Coleman, Esq.
Acting General Counsel, Nation Indian Gaming Commission

Letter from NIGC Chairman Jonodev O. Chaudhuri to
Tracy Tripp Chairperson of the Ione Band of Miwok Indians
(Approving the Ione Band Gaming Ordinance)

March 6, 2018

March 6, 2018

VIA FIRST CLASS MAIL

Tracy Tripp
Acting Tribal Chairperson
Ione Band of Miwok Indians
P.O. Box 699
Plymouth, CA 95669

Re: Amended and Restated Tribal Gaming Ordinance, Res. No. 2018-04

Dear Acting Chairperson Tripp:

This letter responds to your February 9, 2018 request on behalf of the Ione Band of Miwok Indians for the National Indian Gaming Commission Chairman to review and approve the Tribe's Amended and Restated Tribal Gaming Ordinance, Tribal Resolution No. 2018-04.

The gaming ordinance is approved as it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC regulations. We note that the ordinance permits Class III gaming. Before the Tribe may engage in Class III gaming, however, it must have an approved Tribal/State compact that is in effect, as required by 25 U.S.C. 2710(d)(1)(C), or Secretarial procedures pursuant to 25 U.S.C. 2710(d)(7)(B)(vii).

If you have any questions concerning this letter or the ordinance review process, please contact Tana Fitzpatrick, Staff Attorney, at (202) 632-7003.

Sincerely,

Jonodev O. Chaudhuri
Chairman

cc: Michael J. Anderson, Ione Band Legal Counsel (manderson@andersonindianlaw.com)