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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MADERA

11 PICAYUNE RANCHERIA OF THE
12 CHUKCHANSI INDIANS, a Federally-
recognized Indian tribe,

13 Plaintiff,

14 v.

15 EDMUND G. BROWN, JR., Governor of the
16 State of California,

17 Defendant.

Case No. *MCV072004*

COMPLAINT FOR DECLARATORY
RELIEF AND PETITION FOR WRIT
OF MANDATE

18 INTRODUCTION

19 1. This complaint challenges the August 30, 2012, action by the defendant Edmund G.
20 Brown, Jr., Governor of the State of California (the "Governor"), concurring in the determination by
21 the Secretary of the U.S. Department of the Interior (the "Secretary") that a 305-acre parcel of land in
22 Madera County (the "Madera Site") would qualify as "Indian lands" eligible for the North Fork
23 Rancheria Band of Mono Indians (the "North Fork Tribe") to conduct class III gaming pursuant to
24 the Indian Gaming Regulatory Act ("IGRA"), upon the site being taken into trust for the North Fork
25 Tribe.

26 2. Plaintiff Picayune Rancheria of the Chukchansi Indians (the "Picayune Tribe") files
27 this action to obtain a declaratory judgment that the Governor's concurrence is void and ineffective
28 under California law, on grounds that the concurrence lacks the legislative ratification required by the

FILED
MADERA SUPERIOR COURT

MAR 21 2016

BONNIE THOMAS CLERK

DEPUTY

1 California Constitution, article IV, section 19(f), ratification having been rejected by voter
2 referendum on November 4, 2014. The concurrence is void and ineffective on the additional grounds
3 that the concurrence was conditioned upon specific mitigation measures contained in the 2012
4 gaming compact between California and the North Fork Tribe, which compact by its own terms did
5 not take effect, legislative ratification of the compact having also been rejected by the 2014 voter
6 referendum. The Picayune Tribe also seeks a writ of mandate to vacate and set aside the Governor's
7 concurrence as ineffective under California law, and directing the Governor to promptly notify the
8 Secretary of the concurrence's status, so that the Secretary may proceed as required by federal law.

9 **PARTIES**

10 3. Plaintiff Picayune Tribe is an Indian tribe recognized by the federal government. The
11 Picayune Tribe is located in Coarsegold, Madera County, California. The Picayune Tribe owns and
12 operates the Chukchansi Gold Resort and Casino, a class III gaming facility, on its Rancheria lands,
13 approximately 26.4 miles from the site of the proposed North Fork casino/hotel resort. Ancestors of
14 the Picayune Tribe used and occupied lands in the vicinity of the proposed project and the Picayune
15 Tribe continues to have a cultural connection to the area. The majority of the Picayune Tribe's
16 members live in Madera County and pay taxes to both the County and State, and the Picayune Tribe
17 provides governmental services throughout the County. Several members of Picayune Tribe reside in
18 the vicinity of the proposed North Fork casino/hotel resort.

19 4. Defendant Edmund G. Brown, Jr., is Governor of the State of California. He is sued
20 in his official capacity.

21 **JURISDICTION AND VENUE**

22 5. This Court has jurisdiction over this action pursuant to its general subject matter
23 jurisdiction and under Code of Civil Procedure, sections 1060 and 1085.

24 6. Venue is proper in this Court under Code of Civil Procedure, section 393, subdivision
25 (b), because the cause, or some part of the cause, arose in Madera County. The Governor's
26 concurrence allowed the Secretary to take the Madera Site into trust for the North Fork Tribe for the
27 purpose of developing a class III gaming facility in violation of California law, and the effects of the
28 Governor's actions are felt, and will be felt, in Madera County.

1 12. Assistant Secretary – Indian Affairs Larry Echo Hawk issued a Record of Decision
2 making his two-part determination, favorable to the North Fork Tribe, on or about September 1,
3 2011, and requested Governor Brown’s concurrence in the two-part determination.

4 13. On or about August 30, 2012, Governor Brown issued a letter concurring in the two-
5 part determination. A copy of the Governor’s concurrence is attached as **Exhibit A**.

6 14. The State of California and the North Fork Tribe executed a tribal-state gaming
7 compact on or about August 31, 2012 (“2012 compact”). A copy of the 2012 compact is attached as
8 **Exhibit B**. Consistent with article IV, section 19(f), of the California Constitution, the compact
9 provided that it “shall not be effective unless and until all of the following have occurred: (a) The
10 Compact is ratified in accordance with State law....” 2012 Compact § 14.1(a), Exhibit B at 106.

11 15. Assistant Secretary – Indian Affairs Kevin Washburn issued a Record of Decision on
12 or about November 26, 2012, to accept the Madera Site into trust for the North Fork Tribe. (*See*
13 *Land Acquisitions; North Fork Rancheria of Mono Indians of California*, 77 Fed. Reg. 71611-02
14 (Dec. 3, 2012).) Bureau of Indian Affairs Pacific Regional Director Amy Dutschke accepted
15 conveyance of the Madera Site in trust for the North Fork Tribe on or about February 5, 2013.

16 16. The California legislature passed Assembly Bill No. 277 (“AB 277”) on or about June
17 27, 2013. AB 277 stated that it “ratified” the 2012 compact. The Governor signed AB 277 on or
18 about July 3, 2013.

19 17. Pursuant to the California Constitution, AB 277 would not take effect until January 1,
20 2014, unless a voter referendum on AB 277 qualified for the ballot, in which case AB 277 would not
21 take effect (if at all) until the day after the election. (Cal. Const., art. IV, § 8(c)(1) and art. II, §§ 9,
22 10.)

23 18. Notwithstanding that the compact was not yet effectively ratified in accordance with
24 State law, California Secretary of State Debra Bowen transmitted the compact to Paula Hart, Director
25 of the Office of Indian Gaming, U.S. Department of the Interior, on or about July 16, 2013, together
26 with a letter informing Ms. Hart that a referendum on AB 277 had been filed, and that if it qualified
27 for the ballot, “the part of the statute ratifying the compact will be stayed/suspended until the voters
28 have voted to either reject or adopt it.”

1 19. On October 22, 2013, Assistant Secretary – Indian Affairs Kevin Washburn published
2 notice of the 2012 compact taking effect. (Indian Gaming, 78 Fed. Reg. 62649-01 (Oct. 22, 2013).)
3 The notice states that because the Secretary did not affirmatively approve or disapprove the 2012
4 compact within 45 days of its submission by the Tribe and the State, “the compact is considered to
5 have been approved, but only to the extent that the Compact is consistent with IGRA.” (*Id.*)

6 20. On November 4, 2014, California voters voted on Proposition 48, the statewide
7 referendum on AB 277. Proposition 48 was defeated with 61% “No” votes. As a result, AB 277
8 never went into effect.

9 21. The Governor’s concurrence and the 2012 compact were closely connected and tied
10 together in a single package deal.

11 22. The concurrence identifies “several exceptional circumstances” which made the
12 Governor willing to concur with the Secretary’s two-part determination. At least three of the seven
13 bullet-pointed circumstances describe terms contained in the 2012 compact:

14 A large tribal population will directly benefit from the gaming facility. The North Fork
15 Mono’s compact guarantees that revenues from the gaming facility will be shared
16 directly with the Wiyot Tribe, which has agreed to forgo gaming on its own lands –
including environmentally sensitive areas.

17 Other tribes will indirectly benefit from the gaming facility. The North Fork Mono’s
18 compact provides assistance to other tribes by requiring substantial contributions to the
Revenue Sharing Trust Fund and the Tribal Nation Grant Fund.

19 The ability of other tribes to benefit from gaming will not be unduly harmed. The
20 North Fork Mono’s compact specifically provides mitigation for the only tribe likely to
be affected by the gaming facility, the Picayune Rancheria of the Chukchansi.

21 Exhibit A at 1-2.

22 23. The 2012 compact also states that the Governor was willing to concur in the
23 Secretary’s IGRA determination because the North Fork Tribe was willing to agree to the specific
24 terms of the 2012 compact. The 2012 compact’s preamble states in relevant part:

25 WHEREAS, in light of the Tribe’s willingness to locate its Gaming Facility on the 305-
26 Acre Parcel instead of an environmentally-sensitive area, to make revenue sharing
27 payments to the Wiyot Tribe to facilitate that tribe’s sovereign agreement with the State
to forgo gaming on environmentally sensitive land, to make revenue sharing payments
28 to the Chukchansi Indian Tribe to mitigate potential competitive impacts on that tribe,
and to mitigate project impacts on the local community and environment, and in light

1 of the County's support for the proposed Gaming Facility and the other covenants of
2 this Compact, the Governor will concur in the favorable determination by the Secretary
3 that the Gaming Facility would be in the best interests of the Tribe and its citizens and
not detrimental to the surrounding community ...

4 Exhibit B at 3-4.

5 24. The Governor's authority under state law to concur in in the Secretary's two-part
6 determination is ancillary and incidental to his authority "negotiate and conclude compacts." (Cal.
7 Const., art. IV, § 19(f).)

8 25. Madera County Superior Court Judge Michael J. Jurkovich held that the Governor's
9 authority under state law to concur in the Secretary's two-part determination is part of his power
10 under California Constitution article IV, section 19(f). (*Stand Up for California v. State of California*
11 (Super. Ct. Madera County, 2014, No. MCV062850) Ruling on Demurrers to First Amended
12 Complaint, Mar. 3, 2014 (F069302, app. pending).) Judge Jurkovich summarized his holding as
13 follows:

14 The language of the California Constitution is clear. Under California Constitution
15 article IV, section 19(f), the Governor has the power to "negotiate and conclude
16 compacts, subject to ratification by the Legislature, for [Class III gaming] by federally
17 recognized Indian tribes on Indian lands in California in accordance with federal
18 law..." Under the two part test of the IGRA (federal law), land can be taken into trust
19 by the federal government (to become Indian lands) subject to the concurrence of the
20 Governor. To the court, the plain meaning of section 19(f) is as follows: the Governor
21 may negotiate and conclude compacts on Indian lands – regardless of when those lands
22 become "Indian lands" – or whether they are "off-reservation" – so long as such actions
are in compliance with federal law (e.g. the IGRA). To hold otherwise would make the
phrase "negotiate and conclude compacts" meaningless, where concurrence is
necessary under, for example, the two part test of 25 U.S.C. section 2719(b)(1)(A)
(federal law). If the Governor cannot "concur" with the Secretary of the Interior in the
Secretary's decision to put the land into trust, how can he then "negotiate and
conclude" a compact that, to be enforceable, depends upon the concurrence?

23 (*Id.* at 7.)

24 26. The Governor's authority under the California Constitution, article IV, section 19(f), is
25 "subject to ratification by the Legislature." (Cal. Const., art. IV, § 19(f).)

26 27. With certain exceptions, under California law a statute is not effective until January 1,
27 following the 90 days after it is enacted. (Cal. Const., art. IV, § 8(c)(1).) If a referendum to approve
28

1 or reject a statute qualifies to be submitted to the electors, then the subject statute takes effect (if at
2 all) the day after the election. (Cal. Const., art. II, §§ 9, 10.)

3 28. Prior to the vote on Proposition 48, Judge Jurkovich held that AB 277 was “subject to
4 referendum under the State Constitution,” and that the North Fork Tribe’s other objections to the
5 validity of Proposition 48 were without merit. (*Stand Up for California v. State of California* (Super.
6 Ct. Madera County, 2014, No. MCV062850) Ruling on Demurrers to Cross-Complaint, June 26,
7 2014 (F070327, app. pending).)

8 29. The referendum on AB 277, Proposition 48, rejected AB 277. Therefore AB 277
9 never went into effect.

10 30. The Governor’s actions taken pursuant to the authority granted to him in article IV,
11 section 19(f), of the State Constitution are ineffective unless they are ratified by the legislature.

12 31. The 2012 compact did not take effect because the legislature’s ratification of the 2012
13 compact did not take effect.

14 32. The concurrence did not take effect because the concurrence was expressly
15 conditioned on the effectiveness of specified provisions of the 2012 compact.

16 33. Additionally, the concurrence did not take effect because the legislature’s ratification
17 of the concurrence did not take effect.

18 34. On information and belief, the Governor maintains that the concurrence was and is
19 effective, or he has failed and refused to acknowledge that the concurrence was and is ineffective.

20 35. The North Fork Tribe sued the State of California in the United States District Court
21 for the Eastern District of California, in Fresno, on or about March 17, 2015. (*North Fork Rancheria
22 of Mono Indians v. State of California* (E.D.Cal. No. 1:15-cv-00419-AWI-SAB).) The North Fork
23 Tribe claimed that the State, in violation of IGRA, failed to engage in good faith gaming compact
24 negotiations. On information and belief, the State did not assert the available defense that the
25 Governor’s concurrence was ineffective, and consequentially that the State had no duty under IGRA
26 to negotiate a compact for gaming at the Madera Site. On or about November 13, 2015, the court
27 found in favor of the North Fork Tribe and ordered the parties to engage in the remedial process
28 prescribed by IGRA, which involves either concluding a new gaming compact through negotiation or

1 mediation, or securing gaming procedures prescribed by the Secretary. (*See* 25 U.S.C. §
2 2710(d)(7)(B)(iii).) On information and belief, that process remains ongoing. On information and
3 belief, the gaming compact or gaming procedures which result from the process will not provide for
4 mitigation to the Picayune Tribe comparable to the mitigation measures provided in the 2012
5 compact. On or about the date of filing this Complaint, the Picayune Tribe moved or will move for
6 leave to intervene in that case.

7 36. The North Fork Tribe's proposed casino/hotel resort at the Madera Site will cause
8 significant financial harm to the Picayune Tribe's gaming facility, the Chukchansi Gold Resort and
9 Casino, because many of the people who would patronize the Chukchansi Gold Resort and Casino
10 will instead patronize the North Fork Tribe's proposed casino/hotel resort, as a result of the Madera
11 Site's location adjacent to State Route 99. The 2012 compact would have partially mitigated the
12 financial harm to the Chukchansi Gold Resort and Casino.

13 FIRST CAUSE OF ACTION

14 **Declaratory Relief: Effectiveness of the Concurrence**

15 37. Plaintiff re-alleges and incorporates by reference all allegations contained in the
16 preceding paragraphs.

17 38. An actual controversy has arisen and now exists between the Picayune Tribe and the
18 Governor concerning the effectiveness and legal status of the concurrence, including the parties'
19 rights and duties with respect thereto. As set forth more fully above, the Picayune Tribe contends
20 that the concurrence is ineffective. On information and belief, the Governor contends to the contrary.
21 A judicial determination and declaration as to the effectiveness and legal status of the concurrence is
22 therefore necessary and proper to determine the respective rights and duties of the parties.

23 SECOND CAUSE OF ACTION

24 **Writ of Mandate**

25 39. Plaintiff re-alleges and incorporates by reference all allegations contained in the
26 preceding paragraphs.

1 40. The Madera Site is not eligible for gaming regulated by IGRA without the Secretary's
2 two-part determination. Under federal law, the two-part determination is not valid without an
3 effective concurrence by the Governor.

4 41. A writ of mandate should issue directing the Governor to vacate and set aside the
5 concurrence as ineffective and, in order to allow the Secretary to ensure that gaming regulated by
6 IGRA is conducted only on Indian lands eligible for gaming, and that it does not occur at the Madera
7 Site in violation of state and federal law, directing the Governor to promptly notify the Secretary that
8 the concurrence was and is ineffective.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

11 1. That the Court enter judgment declaring that the Governor's concurrence did not take
12 effect and is not in effect;

13 2. That the Court issue a writ of mandate directing the Governor to vacate and set aside
14 the concurrence and to take all action as may be necessary to notify the Secretary that the
15 concurrence did not take effect and is not in effect;


16 3. That the Court enter judgment, as well as all appropriate provisional remedies,
17 granting temporary, preliminary, and permanent injunctive relief precluding the Governor from
18 taking any action predicated in whole or in part upon the effectiveness of the concurrence;

19 4. That the Court enter judgment awarding Plaintiff its costs of suit, including reasonable
20 attorneys' fees;

21 5. That the Court grant such other and further relief as it deems just and proper.

22 Dated: March 18, 2016

FREDERICKS PEEBLES & MORGAN LLP

23
24 By: 
25 Steven J. Bloxham
26 Attorneys for Plaintiff
27 Picayune Rancheria of the Chukchansi Indians


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VERIFICATION

I, Claudia Gonzales, am the Tribal Council Chairperson of the Picayune Rancheria of the Chukchansi Indians, the plaintiff in this proceeding. I have read the foregoing COMPLAINT FOR DECLARATORY RELIEF AND PETITION FOR WRIT OF MANDATE, and am informed and believe that the matters therein are true, and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on March 18, 2016, at Fresno, California.



Claudia Gonzales
Chairperson
Picayune Rancheria of the Chukchansi Indians
Tribal Council