

1 Sean M. Sherlock, SBN 161627
ssherlock@swlaw.com
2 SNELL & WILMER L.L.P.
600 Anton Blvd, Suite 1400
3 Costa Mesa, California 92626-7689
Telephone: 714.427.7000
4 Facsimile: 714.427.7799

5 Attorneys for Plaintiffs
STAND UP FOR CALIFORNIA!, Randall
6 Brannon, Madera Ministerial Association, Susan
Stjerne, First Assembly of God – Madera and
7 Dennis Sylvester

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 STAND UP FOR CALIFORNIA!,
12 7911 Logan Lane, Penryn, California 95663

13 RANDALL BRANNON, 26171 Valerie
14 Avenue, Madera, California 93638;

15 MADERA MINISTERIAL ASSOCIATION,
17 17755 Road 26, Madera, California 93638;

16 SUSAN STJERNE, 24349 Tropical Drive,
17 Madera, California 93638;

18 FIRST ASSEMBLY OF GOD – MADERA,
19 22444 Avenue 18 ½, Madera, California
20 93637; and

21 DENNIS SYLVESTER, 18355 Road 25,
22 Madera, California 93638,

23 Plaintiffs,

24 v.

25 UNITED STATES DEPARTMENT OF THE
26 INTERIOR, 1849 C Street, N.W., Washington,
27 D.C. 20240;

28 SARAH MARGARET ROFFEY JEWELL, in
her official capacity as Secretary, U.S.
Department of the Interior, 1849 C Street,
N.W., Washington, D.C. 20240;

Case No.

COMPLAINT

SNELL & WILMER
L.L.P.
600 ANTON BLVD, SUITE 1400
COSTA MESA, CALIFORNIA 92626-7689

1 BUREAU OF INDIAN AFFAIRS, U.S.
2 Department of the Interior, 1849 C Street,
3 N.W., Washington, D.C. 20240;

4 LAWRENCE ROBERTS, in his official
5 capacity as Principal Deputy Assistant
6 Secretary, Bureau of Indian
7 Affairs, U.S. Department of the Interior, 1849
8 C Street, N.W., Washington, D.C. 20240,

9 Defendants.

10 1. This case arises from the United States Secretary of the Interior’s decision to
11 prescribe gaming procedures under 25 U.S.C. § 2710(d)(7)(B) (the “Secretarial Procedures”) to
12 allow the North Fork Rancheria of Mono Indians (the “Tribe”) to conduct class III gaming on a
13 305.49 acre parcel of land off of the Tribe’s reservation (the “Casino Site”). These procedures
14 were prescribed in contravention of the will of the California people and in violation of federal
15 statutes. As further explained below, the Secretarial Procedures allow for the operation of gaming
16 devices, colloquially known as slot machines, in violation of the Johnson Act, 15 U.S.C. §§ 1171
17 *et seq.* The Secretary also prescribed the Secretarial Procedures without taking any look, much
18 less the required “hard look,” at the environmental consequences of the decision in violation of
19 the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”), and without
20 complying with the conformity requirements of the Clean Air Act, 42 U.S.C. §7506(c).

21 2. In an attempt to better understand how the Secretarial Procedures were prescribed,
22 plaintiff Stand Up For California! made separate requests to the Department of the Interior and
23 the Bureau of Indian Affairs for certain agency records under the Freedom of Information Act, 5
24 U.S.C. §§ 552 *et seq.* (“FOIA”). The Department of the Interior indicated that the requested
25 records would be found with the Bureau of Indian Affairs, but the Bureau of Indian Affairs failed
26 to substantively respond.

27 ///

28 ///

JURISDICTION AND VENUE

1
2 3. This Court has both subject matter jurisdiction over this action and personal
3 jurisdiction over the parties pursuant to 28 U.S.C. §§ 1331, 2201, 2202, 5 U.S.C. §§ 702, 706, and
4 5 U.S.C. § 552(a)(4)(B).

5 4. Venue lies in this district under 28 U.S.C. §§ 1391(b)(2), 1391(e)(1)(B), and 5
6 U.S.C. § 552(a)(4)(B). A substantial portion of the events or omissions giving rise to the claims
7 stated herein occurred in this district. The property that is the subject of this action is situated in
8 this district. Plaintiffs reside in this district.

9 5. To the extent that the United States has sovereign immunity, it has waived
10 sovereign immunity from suit under 5 U.S.C. § 702 where, as here, a person has been adversely
11 affected or aggrieved by agency action within the meaning of a relevant statute. There is an actual
12 controversy between the parties resulting from a final agency action that evokes the jurisdiction
13 of this Court regarding decisions by, and actions of, the Defendants that are subject to judicial
14 review.

PARTIES

15
16 6. Plaintiff Stand Up For California! is a non-profit 501(c)(4) corporation organized
17 under the laws of the State of California. Stand Up For California! is a community watchdog
18 group that focuses on gambling issues affecting California citizens, including tribal gaming, card
19 clubs, horse racing, satellite wagering, charitable gaming, and the state lottery. Stand Up For
20 California! has supporters throughout the State of California and in the City of Madera
21 community, including the Madera Ministerial Association which, either themselves or through
22 their members, live, do business, and own property in the City of Madera and within 5 miles or
23 closer of the Casino Site. Should the Secretarial Procedures be implemented to allow the Tribe to
24 conduct class III gaming at the Casino Site, Stand Up For California! and its supporters will
25 personally suffer environmental, aesthetic, and economic harm by, among other things, (a)
26 community water wells suffering from groundwater depletion and pollution adversely affecting
27 regional supplies, (b) adverse air pollution impacts, (c) traffic congestion, (d) significant impacts
28 on protected species and habitat in the community, (e) diminished property values, and (f)

SNELL & WILMER
L.L.P.
600 ANTON BLVD, SUITE 1400
COSTA MESA, CALIFORNIA 92626-7689

1 increased risk of crime. In addition, Stand Up For California!’s supporters will personally suffer
2 injury by the increased risk of gambling, alcohol, and other personal addictions in their
3 community, the financial strain on local government budgets by increasing demand for social
4 services, and job losses in existing Madera businesses.

5 7. Plaintiff Reverend Randall Brannon is the pastor at Grace Community Church in
6 Madera, California, which is located at 17755 Road 26, Madera, California, 93638. Since 1983,
7 Rev. Brannon has lived in the County of Madera at 26171 Valerie Avenue, Madera, California
8 93638, which is less than three miles (as the crow flies) from the Casino Site. He has raised his
9 family in Madera and, as a local pastor and through other community positions, is familiar with
10 his community’s opposition to the proposed casino and the harm presented to the community if it
11 goes forward. Since 2005, Rev. Brannon has publicly voiced strong concern against the proposed
12 casino project in the City of Madera by, among other things, submitting written comments and
13 letters of opposition to the Bureau of Indian Affairs, drafting opinion pieces for local newspapers,
14 and expressing his concern at public meetings and to elected officials. Should the Secretarial
15 Procedures be implemented to allow the Tribe to conduct class III gaming at the Casino Site, Rev.
16 Brannon will personally suffer environmental, aesthetic, and economic harm by, among other
17 things, (a) community water wells suffering from groundwater depletion and pollution adversely
18 affecting regional supplies, (b) adverse air pollution impacts, (c) traffic congestion, (d) significant
19 impacts on protected species and habitat in the community, (e) diminished property values, and
20 (f) increased risk of crime. In addition, Rev. Brannon will personally suffer injury by the
21 increased risk of gambling, alcohol, and other personal addictions in his community, the financial
22 strain on local government budgets by increasing demand for social services, and job losses in
23 existing Madera businesses.

24 8. Plaintiff Madera Ministerial Association is a 501(c)(3) organization located in
25 Madera County, California. The Madera Ministerial Association has members who serve as
26 pastors leading congregations and serving in other clergy-related positions throughout the City of
27 Madera and the County of Madera, including many churches that are located within five miles of
28 the proposed Casino Site. Should the Secretarial Procedures be implemented to allow the Tribe to

1 conduct class III gaming at the Casino Site, the Madera Ministerial Association and its members
2 will personally suffer environmental, aesthetic, and economic harm by, among other things, (a)
3 community water wells suffering from groundwater depletion and pollution adversely affecting
4 regional supplies, (b) adverse air pollution impacts, (c) traffic congestion, (d) significant impacts
5 on protected species and habitat in the community (e) diminished property values, and (f)
6 increased risk of crime. In addition, the Madera Ministerial Association's members will
7 personally suffer injury by the increased risk of gambling, alcohol, and other personal addictions
8 in their community, the financial strain on local government budgets by increasing demand for
9 social services, and job losses in existing Madera businesses.

10 9. Plaintiff Susan Stjerne is a resident of the City of Madera, California and lives at
11 24349 Tropical Drive, Madera, California 93638, which is approximately one mile (as the crow
12 flies) from the Casino Site. Ms. Stjerne has lived in the City of Madera since January, 1981 and
13 has raised three children in Madera, all of whom still live there. Ms. Stjerne has owned her home
14 on Tropical Drive for over 20 years. In addition, Ms. Stjerne has inherited her father's home
15 located across the street, and will receive legal title to that home upon distribution in a pending
16 probate court proceeding. She has been a member of plaintiff Brannon's congregation at Grace
17 Community Church for over 25 years. Ms. Stjerne and neighbors receive their water from wells
18 that draw from the ground water underneath her property and the Casino Site. Ms. Stjerne has
19 signed petitions opposing the casino project. Should the Secretarial Procedures be implemented to
20 allow the Tribe to conduct class III gaming at the Casino Site, Ms. Stjerne will personally suffer
21 environmental, aesthetic, and economic harm by, among other things, (a) community water wells
22 suffering from groundwater depletion and pollution adversely affecting regional supplies, (b)
23 adverse air pollution impacts, (c) traffic congestion, (d) significant impacts on protected species
24 and habitat in the community, (e) diminished property values, and (f) increased risk of crime. In
25 addition, Ms. Stjerne will personally suffer injury by the increased risk of gambling, alcohol, and
26 other personal addictions in her community, the financial strain on local government budgets by
27 increasing demand for social services, and job losses in existing Madera businesses.

28

1 10. Plaintiff First Assembly of God – Madera is a church located at 22444 Avenue 18
2 1/2, Madera, California 93637, which is approximately one half mile from the Casino Site. The
3 church obtain its water from wells on the church property that draws water from the ground water
4 underneath the church property and the Casino Site. The Casino Site is visible from the church
5 and both locations share the same roads. Should the Secretarial Procedures be implemented to
6 allow the Tribe to conduct class III gaming at the Casino Site, First Assembly of God – Madera,
7 including its congregants, will personally suffer environmental, aesthetic, and economic harm by,
8 among other things, (a) community water wells suffering from groundwater depletion and
9 pollution adversely affecting regional supplies, (b) adverse air pollution impacts, (c) traffic
10 congestion, (d) significant impacts on protected species and habitat in the community, (e)
11 diminished property values, and (f) increased risk of crime. In addition, First Assembly of God –
12 Madera’s congregants will personally suffer injury by the increased risk of gambling, alcohol, and
13 other personal addictions in their community, the financial strain on local government budgets by
14 increasing demand for social services, and job losses in existing Madera businesses. These
15 impacts will harm First Assembly of God – Madera by, among other things, resulting in
16 diminished affiliation in church membership.

17 11. Plaintiff Reverend Dennis Sylvester is the pastor at Plaintiff First Assembly of
18 God – Madera. Since 2000, Rev. Sylvester has lived in the County of Madera at 18355 Road 25,
19 Madera, California 93638, which is about 1.5 miles (as the crow flies) from the Casino Site. As a
20 local pastor and through other community positions, he is familiar with his community’s
21 opposition to the proposed casino and the harm presented to the community if it goes forward.
22 Rev. Sylvester has publicly voiced strong concern against the proposed casino project adjacent to
23 the City of Madera. Rev. Sylvester receives his water from wells that draw from the ground water
24 underneath his property and the Casino Site. Should the Secretarial Procedures be implemented to
25 allow the Tribe to conduct class III gaming at the Casino Site, Rev. Sylvester, in his capacity as a
26 resident of the County of Madera and as pastor at plaintiff First Assembly of God – Madera, will
27 personally suffer environmental, aesthetic, and economic harm by, among other things, (a)
28 community water wells suffering from groundwater depletion and pollution adversely affecting

1 regional supplies, (b) adverse air pollution impacts, (c) traffic congestion, (d) significant impacts
2 on protected species and habitat in the community, (e) diminished property values, and (f)
3 increased risk of crime. In addition, Rev. Sylvester will personally suffer injury by the increased
4 risk of gambling, alcohol, and other personal addictions in his community, the financial strain on
5 local government budgets by increasing demand for social services, and job losses in existing
6 Madera businesses.

7 12. Defendant United States Department of the Interior (the “DOI”) is an
8 administrative agency of the United States.

9 13. Defendant Sarah Margaret Roffey Jewell is the Secretary of the DOI (the
10 “Secretary”), and is sued in her official capacity.

11 14. Defendant Bureau of Indian Affairs (the “BIA”) is an administrative agency within
12 the DOI and is charged with overseeing Indian Affairs. The BIA is an agency within the meaning
13 of 5 U.S.C. § 552(f).

14 15. Defendant Lawrence Roberts is Principal Deputy Assistant Secretary of the BIA,
15 and is sued in his official capacity.

16 **BACKGROUND AND HISTORY**

17 16. An Indian tribe’s ability to conduct gambling on lands it acquired after October 17,
18 1988 is precluded under the Indian Gaming Regulatory Act (“IGRA”) unless a specific exception
19 applies. Under one such exception, the Secretary must make a two-part determination under 25
20 U.S.C. § 2719(b)(1)(A). This requires the Secretary to determine, prior to taking the land into
21 trust for the Indian tribe that: (1) gaming on such land will be in the “best interest” of the tribe;
22 and (2) gaming on such land will not be detrimental to the surrounding community. See 25 U.S.C.
23 § 2719(b)(1)(A); 25 C.F.R. §§ 292.2, 292.21(a), 292(c).

24 17. On March 5, 2005, the Tribe submitted a request to the DOI to acquire the Casino
25 Site for the purpose of establishing an off-reservation casino.

26 18. On October 27, 2004, the DOI commenced the required NEPA process by
27 publishing a notice of intent to prepare an environmental impact statement in the Federal
28 Register. The DOI issued a draft environmental impact statement in February, 2008, and later

1 issued a final environmental impact statement in February, 2009 (collectively, the “FEIS”). The
2 FEIS identified potentially significant environmental impacts that the proposed development and
3 operation of the casino complex could cause.

4 19. The FEIS noted that the Tribe had agreed, pursuant to memoranda of
5 understanding with the City of Madera and County of Madera, to provide certain funding to local
6 jurisdictions to help offset these potentially significant environmental impacts. The FEIS
7 recommended that the Tribe provide for additional funding to help fully mitigate the impacts on
8 governmental services.

9 20. Despite significant public opposition, the BIA issued a record of decision (“ROD”)
10 on September 1, 2011 that memorialized the secretarial determination for the Casino Site and
11 announced that “[t]he proposed Resort would not be detrimental to the surrounding community,
12 or the Picayune Reservation.”

13 21. On the same day, Larry Echo Hawk, then Assistant Secretary for Indian Affairs,
14 informed California Governor Edmund G. (Jerry) Brown, Jr. that he had made a favorable “two-
15 part determination,” on behalf of the Secretary pursuant to authority delegated to him, as required
16 by IGRA. Assistant Secretary Echo Hawk requested that Governor Brown approve, by his
17 concurrence, the siting and development of the proposed casino complex at the Casino Site.
18 Assistant Secretary Echo Hawk’s 2011 letter included findings purportedly supporting the two-
19 part determination.

20 22. Before the land can be taken into trust, the governor of the State where the land is
21 located must concur with the Secretary’s two-part determination. See 25 U.S.C. § 2719(b)(1)(A).
22 On August 31, 2012, Governor Brown concurred with the DOI determination. When Governor
23 Brown issued his concurrence, he also announced that he had already negotiated a class III tribal-
24 state gaming compact (“Negotiated Compact”) with the Tribe, which he would submit to the
25 California Legislature for ratification. If ratified, the Negotiated Compact would permit the Tribe
26 to conduct class III gaming at the Casino Site.

27 23. On November 26, 2012, the BIA completed a ROD which memorialized the
28 decision by the Secretary to approve the Tribe’s “fee-to-trust” application.

1 24. On December 3, 2012, the DOI published notice in the Federal Register of its
2 acceptance of the Casino Site into trust.

3 25. The Governor signed the Negotiated Compact in August, 2012, which the
4 California Legislature ratified by passing Assembly Bill 277 (“AB 277”), which was approved by
5 the Governor on July 3, 2013.

6 26. AB 277 never took effect, however, as the citizens of California voted against AB
7 277 in a referendum (Proposition 48) in the November, 2014, general election. As a result, the
8 Negotiated Compact was never entered into under state or federal law.

9 27. Once a tribe has jurisdiction over land upon which class III gaming can be
10 conducted, IGRA “imposes upon the States a duty to negotiate in good faith with an Indian tribe
11 toward the formation of a compact,” §2710(d)(3)(A), and authorizes a tribe to bring suit in federal
12 court to compel a State to fulfill that duty. § 2710(d)(7). In March, 2015, the Tribe filed a federal
13 lawsuit in the United States District Court for the Eastern District of California against the State
14 of California, alleging that the State had failed to negotiate a tribal-state gaming compact in good
15 faith. *North Fork Rancheria of Mono Indians of California v. California* 1:15-cv-00419 (E.D.
16 Cal. 2015).

17 28. On November 13, 2015, the District Court held that the State of California failed
18 to negotiate in good faith with the North Fork Tribe for a compact to govern class III gaming at
19 the Casino Site. The Court ordered the parties to conclude a compact within 60 days.

20 29. When the parties failed to conclude a compact within the prescribed time, the
21 Court appointed a mediator to select a proposed compact and facilitate additional procedures as
22 provided under § 2710(d)(7)(B).

23 30. The mediator selected the Tribe’s proposed compact. The State failed to give
24 consent to the selected compact. In April, 2016, the mediator notified the DOI that no agreement
25 was reached by the parties and sent the DOI the selected compact.

26 31. IGRA then required “the Secretary [to] prescribe, in consultation with the Indian
27 Tribe, procedures [(1)] which are consistent with the proposed compact selected by the mediator .
28 . . . , the provisions of [the IGRA], and the relevant provisions of the laws of the State, and [(2)]

1 under which class III gaming may be conducted on the Indian lands over which the Indian tribe
2 has jurisdiction.” 25 U.S.C. § 2710(d)(7)(B)(vii).

3 32. Three months later, on July 29, 2016, Lawrence Roberts, the Principal Deputy
4 Assistant Secretary of Indian Affairs who then held the title of “Acting Assistant Secretary,”
5 issued Secretarial Procedures that allowed the Tribe to conduct class III gaming at the Casino
6 Site.

7 33. Defendants did not provide any notice or opportunity for plaintiffs or the public to
8 comment upon or object to the Secretarial Procedures, and did not conduct any public meetings,
9 workshops, or hearings on the Secretarial Procedures. Plaintiffs have not, therefore, had any
10 opportunity to comment upon or object to defendants’ issuance of the Secretarial Procedures.

11 **FIRST CLAIM FOR RELIEF**

12 **Violation of the Johnson Act, IGRA, and Administrative Procedure Act**

13 34. The paragraphs set forth above are realleged and incorporated herein by reference.

14 35. 5 U.S.C. § 702 provides for judicial review of the Secretarial Procedures because
15 plaintiffs have been adversely affected by the prescription of the Secretarial Procedures. The
16 prescription of the Secretarial Procedures is a “final agency action for which there is no other
17 adequate remedy in a court” within the meaning of 5 U.S.C. § 704 and has an “actual or
18 immediately threatened effect.” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 894 (1990).

19 36. This court must set aside and hold unlawful any agency action that is, among other
20 things, “not in accordance with the law;” “in excess of statutory jurisdiction, authority, or
21 limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2).

22 37. The Secretarial Procedures, at section 4.1, authorizes the operation of 2,000
23 gaming devices in the first two years of activity and 2,500 gaming devices for the remainder of its
24 term. Section 2.9 defines “gaming device” to be “any slot machine within the meaning of article
25 IV, section 19, subdivision (f) of the California Constitution.”

26 38. Under the Johnson Act, “It shall be unlawful to manufacture, recondition, repair,
27 sell, transport, possess, or use any gambling device in the District of Columbia, in any possession
28 of the United States, within Indian country as defined in section 1151 of title 18 or within the

1 special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18,
2 including on a vessel documented under chapter 121 of title 46 or documented under the laws of a
3 foreign country.” 15 U.S.C. § 1175(a). The Johnson Act defines “gambling device” to include
4 “any so-called ‘slot machine.’” 15 U.S.C. § 1171(a)(1).

5 39. The Casino Site is Indian country, as defined in section 1151 of title 18 of the
6 United States Code.

7 40. IGRA exempts such gaming devices from the Johnson Act if the devices are
8 authorized by a tribal-state compact that is entered into by a State in which gambling devices are
9 legal, and is in effect. 25 U.S.C. § 2710(d)(6). But no such exemption applies where, as here, the
10 devices are authorized by Secretarial Procedures.

11 41. Accordingly, defendants’ prescription of the Secretarial Procedures was arbitrary,
12 capricious, an abuse of discretion, not in accordance with law, and in excess of their statutory
13 authority.

14 **SECOND CLAIM FOR RELIEF**

15 **Violation of the National Environmental Policy Act and the Administrative Procedure Act**

16 42. The paragraphs set forth above are realleged and incorporated herein by reference.

17 43. Defendants are one or more agencies of the federal government, subject to the
18 requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §4321 et seq.

19 44. The Secretarial Procedures constitute a major federal action significantly affecting
20 the quality of the human environment. The Secretarial Procedures are one of a series of approvals
21 by the federal government that are necessary to enable the Tribe to develop and construct a casino
22 for class III gaming at the Casino Site. Development, construction, and operation of the casino
23 will or may have significant effects on the human environment at and around the Casino Site,
24 including without limitation significant impacts on traffic, biological resources, crime, and
25 problem gambling. Without the Secretarial Procedures, the Tribe would not be allowed to conduct
26 class III gaming at the Casino Site, and would not develop and construct the casino facilities at
27 the Casino Site. The Secretary recognized that development, construction, and operation of a
28 casino is a major federal action by preparing the FEIS for her determination to take the Casino

1 Site into trust for the Tribe pursuant to Section 20 of IGRA (25 U.S.C. § 2719(b)(1)(A)), and by
2 preparing environmental impact statements in connection with other tribal gaming facility
3 projects.

4 45. Because the defendants' issuance of the Secretarial Procedures, which are new
5 procedures approved by a federal agency, constitutes a "major federal action," defendants must
6 comply with NEPA. 42 U.S.C. § 4332(2)(C). Pursuant to NEPA, before defendants may issue
7 gaming procedures, they must complete an environmental study and issue findings. In
8 circumstances where, as here, the proposed federal action has the potential to significantly affect
9 the quality of the human environment, defendants must prepare an environmental impact
10 statement *before* approving the federal action.

11 46. Here, defendants did not complete any environmental study or prepare an
12 environmental impact statement in connection with the Secretarial Procedures.

13 47. Nor did defendants purport to rely on the FEIS previously prepared in connection
14 with defendants' determination to take the Casino Site into trust for the Tribe pursuant to Section
15 20 of IGRA (25 U.S.C. § 2719(b)(1)(A)). The scope of the project approved under the Secretarial
16 Procedures is potentially much larger and different than the scope of the project for which the
17 FEIS was approved. Moreover, in issuing the Secretarial Procedures, defendants expressly
18 clarified that their action was "separate from the Departmental decision made years ago
19 requesting the Governor's concurrence to allow gaming on the subject parcel as well as the
20 subsequent decision made in 2012 to accept that parcel into trust."

21 48. Even if defendants had relied on the FEIS prepared in connection with defendants'
22 determination to take the Casino Site into trust for the Tribe pursuant to Section 20 of IGRA (25
23 U.S.C. § 2719(b)(1)(A)), such reliance would have been insufficient. Among other factors, the
24 FEIS relied on mitigation that was to be imposed under the terms of a tribal-state gaming compact
25 and various memoranda of understanding entered into between the Tribe and certain local
26 municipal agencies. The memoranda of understanding were expressly conditioned upon the
27 effectiveness of the tribal-state gaming compact, which did not become effective. Moreover, the
28 Secretarial Procedures do not require the mitigation relied upon in the FEIS. Under NEPA

1 regulations, “[m]itigation (§1505.2(c)) and other conditions established in the environmental
2 impact statement or during its review and committed as part of the decision shall be implemented
3 by the lead agency or other appropriate consenting agency.” 40 C.F.R. § 1505.3. Moreover, the
4 lead agency must “[i]nclude appropriate mitigation conditions in grants, permits or other
5 approvals.” 40 C.F.R. §1505.3(a). Because the mitigation measures relied upon in the earlier
6 FEIS are not effective, defendants’ failure to impose such mitigation measures in the Secretarial
7 Procedures forecloses any reliance on the earlier FEIS.

8 49. Nor did the DOI comply with the requirement that it prepare a legally adequate
9 record of its decision. 40 C.F.R. § 1505.2.

10 50. Such failures were arbitrary, capricious, abuses of discretion, without observance
11 of procedure required by law, and not in accordance with law. Accordingly, the Secretarial
12 Procedures must be held unlawful and set aside.

13 51. NEPA provides that, until an agency issues a legally sufficient record of decision,
14 no action concerning the proposal shall be taken which would have an adverse environmental
15 impact or limit the choice of reasonable alternatives. 40 C.F.R. §1506.1(a). Because defendants
16 have not issued a legally sufficient record of decision, defendants must be enjoined from taking
17 any action in furtherance of the development, construction, or operation of a casino for class III
18 gaming at the Casino Site.

19 **THIRD CLAIM FOR RELIEF**

20 **Violation of the Clean Air Act and the Administrative Procedure Act**

21 52. The paragraphs set forth above are realleged and incorporated herein by reference.

22 53. Section 176 of the Clean Air Act, 42 U.S.C. §7506(c), provides that no department,
23 agency, or instrumentality of the federal government shall engage in, support in any way or
24 provide financial assistance for, license or permit, or approve, any activity which does not
25 conform to an implementation plan after it has been approved or promulgated under section 7410
26 of the act. Assurance of conformity to such an implementation plan is an *affirmative*
27 *responsibility* of the head of such department, agency, or instrumentality.
28

1 54. The United States Environmental Protection Agency (“US EPA”) has promulgated
2 regulations to implement this mandate. 40 C.F.R. §§93.150-93.165; 42 U.S.C. §7506(c)(4)(A).

3 55. The issuance of the Secretarial Procedures constitutes the support and approval of
4 an activity by a department, agency, and instrumentality of the federal government, which is
5 subject to the conformity requirements of section 176. The Secretarial Procedures are one of a
6 series of approvals by the federal government that are necessary to enable the Tribe to develop
7 and construct a casino for class III gaming at the Casino Site. The Casino Site is located within
8 the San Joaquin Valley Air Basin, which is a nonattainment area to which section 176 and the
9 conformity determination requirements apply. Development, construction, and operation of the
10 casino will result in the emission of air pollutants for which the San Joaquin Air Basin is not in
11 attainment, and for which a conformity determination is required. Without the Secretarial
12 Procedures, the Tribe would not be allowed to conduct class III gaming at the Casino Site, and
13 would not develop and construct the casino facilities at the Casino Site. The Secretary recognized
14 that development, construction, and operation of a casino requires a conformity determination by
15 preparing a conformity determination for her determination to take the Casino Site into trust for
16 the Tribe pursuant to Section 20 of IGRA (25 U.S.C. § 2719(b)(1)(A)), and by preparing
17 conformity determinations in connection with other tribal gaming facility projects.

18 56. Here, defendants did not prepare a conformity determination or otherwise comply
19 with section 176 and the US EPA regulations promulgated thereunder in connection with the
20 Secretarial Procedures.

21 57. Nor did defendants purport to rely on the conformity determination previously
22 prepared in connection with defendants’ determination to take the Casino Site into trust for the
23 Tribe pursuant to Section 20 of IGRA (25 U.S.C. § 2719(b)(1)(A)). The scope of the project
24 approved under the Secretarial Procedures is potentially much larger and different than the scope
25 of the project for which the prior conformity determination was approved. Moreover, in issuing
26 the Secretarial Procedures, defendants expressly clarified that their action was “separate from the
27 Departmental decision made years ago requesting the Governor’s concurrence to allow gaming
28

1 on the subject parcel as well as the subsequent decision made in 2012 to accept that parcel into
2 trust.”

3 58. Even if defendants had relied on the conformity determination prepared in
4 connection with defendants’ determination to take the Casino Site into trust for the Tribe pursuant
5 to Section 20 of IGRA (25 U.S.C. § 2719(b)(1)(A)), such reliance would have been insufficient,
6 because the Secretarial Procedures permit the development, construction, and operation of a
7 larger gaming facility than that contemplated in the prior conformity determination. Moreover,
8 the prior conformity determination is out of date with the US EPA requirements for conformity
9 determinations made at the time of the Secretarial Procedures.

10 59. Such failures were arbitrary, capricious, abuses of discretion, without observance
11 of procedure required by law, and not in accordance with law. Accordingly, the Secretarial
12 Procedures must be held unlawful and set aside.

13 **FOURTH CLAIM FOR RELIEF**

14 **Violation of the Freedom of Information Act and the Administrative Procedure Act**

15 60. The paragraphs set forth above are realleged and incorporated herein by reference.

16 61. By separate letters to the DOI and BIA dated August 12, 2016, plaintiff Stand Up
17 for California! submitted FOIA requests for the following documents related to the Secretarial
18 Procedures:

19 “Copies of all communications to or from the North Fork
20 Rancheria of Mono Indians or its representatives relating to the
21 development of the Secretarial Procedures”

22 and

23 “Copies of all communications to or from the State of California or
24 its agencies or representatives relating to the development of the
25 Secretarial Procedures.”

26 62. On August 16, 2016, the DOI responded by letter, stating that it believed the
27 requested information would be found within the BIA, which would respond directly to Stand Up
28 for California!.

1 63. As of October 10, 2016, the BIA had failed to respond or produce any documents
2 in response to Stand Up for California!'s FOIA request. That day, Stand Up for California! sent a
3 follow up letter to the BIA, requesting an update as to the status of its August 12th FOIA request.

4 64. On October 21, 2016, the BIA responded by email, stating that the BIA FOIA
5 office had assigned Stand Up for California!'s request to its FOIA Coordinator.

6 65. To date, the BIA has not provided any records requested by Stand Up for
7 California! and has not stated whether it has or will produce any of the records requested,
8 notwithstanding FOIA's requirement that an agency respond within 20 business days.

9 66. Such failures were arbitrary, capricious, abuses of discretion, without observance
10 of procedure required by law, and not in accordance with law.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, plaintiffs respectfully request that this court grant the following relief:

14 A. Judgment holding unlawful and setting aside the Secretarial Procedures;

15 B. Judgment declaring that the Secretarial Procedures violate the Johnson Act by
16 providing for the operation of slot machines at the Casino Site;

17 C. Judgment declaring that defendants violated NEPA by failing to conduct an
18 environmental study and issue a report before issuing the Secretarial Procedures;

19 D. Judgment declaring that defendants violated section 176 of the Clean Air Act by
20 failing to prepare a conformity determination and otherwise failing to comply with the US EPA
21 conformity determination regulations, prior to issuing the Secretarial Procedures;

22 E. That this Court issue injunctive relief and any other orders necessary to postpone
23 the effective date of the Secretarial Procedures and to preserve the parties' status and rights
24 pending conclusion of these proceedings and any appeals that may follow;

25 F. That this Court issue temporary, preliminary, and permanent injunctive relief,
26 enjoining the development, construction, and operation of casino facilities at the Casino Site;

27 G. Judgment declaring that defendant BIA violated FOIA by failing to respond to
28 Stand Up for California's request for agency records;

1 H. That this Court issue injunctive relief and any other orders to require the BIA to
2 disclose the requested agency records in their entirety and make copies available to plaintiffs;

3 I. That this Court enter judgment and an order awarding plaintiffs' costs and
4 reasonable attorney's fees; and

5 J. That the Court award such other relief as it deems proper to effectuate the
6 purposes of this action.

7 Dated: November 11, 2016

SNELL & WILMER L.L.P.

9 By: /s/ Sean M. Sherlock
Sean M. Sherlock

10 Attorneys for Plaintiffs
11 **Stand Up For California!, Randall Brannon,**
12 **Madera Ministerial Association, Susan**
13 **Stjerne, First Assembly of God – Madera,**
14 **and Dennis Sylvester**

SNELL & WILMER

L.L.P.

600 ANTON BLVD, SUITE 1400
COSTA MESA, CALIFORNIA 92626-7689

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28