

No. C064919

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**In the Court of Appeal  
of the  
State of California**

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**Third Appellate District**

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**DIAMOND SPRINGS/EL DORADO FIRE PROTECTION DISTRICT  
AND JACKYE PHILLIPS,**

*Petitioners and Appellants*

v.

EL DORADO COUNTY FIRE PROTECTION DISTRICT, et. al.,

*Respondents, and Appellees*

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**MOTION TO FILE *AMICUS CURIAE* AND BRIEF OF *AMICUS  
CURIAE* HISTORIC SHINGLE SPRINGS MIWOK IN SUPPORT  
OF PETITIONERS**

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**MOTION OF CESAR CABALLERO FOR  
LEAVE TO FILE BRIEF AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONERS**

Pursuant to Rule 37 of the rules of this Court, Cesar Caballero respectfully requests leave to file the accompanying brief as *amicus curiae*. The Petitioners have consented to the Historic Shingle Springs Miwok Tribe participation in this matter. A letter attesting to their consent has been submitted to this Court.

The El Dorado Superior Court held that the Casino Indians had to be joined as a party to this case. The Historic Shingle Springs Miwok Tribe has an interest in this issue as the respondents have claimed that the Casino Indians are a federally recognized tribe and therefore have sovereign immunity. The Casino Indians claim to be the “Shingle Springs Band of Miwoks”. The Historic Shingle Springs Miwok tribe disputes this claim.

The issues raised go well beyond the miniscule or mundane political predominance, but to the identity of Native Americans and the preservation of those same identities and cultures.

The Historic Shingle Springs Miwok share an interest in the outcome of this litigation with Petitioners and Appellants, by showing that the Casino Indians are not a federally recognized tribe and therefore do not possess sovereign immunity. Therefore accordingly, we respectfully submit this *amicus* brief.

Respectfully submitted,

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**INTEREST OF *AMICUS CURIAE* AND  
STATEMENT OF IDENTITY<sup>1</sup>**

The Historic Shingle Springs Miwok<sup>2</sup> has a similar interest to the petitioners as it benefits both to have the Casino Indians recognized by the court as a non-sovereign, non-federally recognized tribe. The Historic Shingle Springs Miwok Tribe can make the court aware of the facts of the identity dispute thereby aiding the court in its decision whether or not the Casino Indians must be joined in the instant suit.

The Historic Miwok Tribe is an aboriginal tribe of El Dorado County, California. They lived on lands of the Sierra Nevada Mountains, and in particular the Cosumnes River Valley, which became exploited during the Gold Rush era of 1849. With the Gold Rush and California's entry into the Union in 1850, Governor Peter Hardeman Burnett, declared "open season" on California Indians: "That a war of extermination will continue to be waged between the two races until the Indian race becomes extinct..."<sup>3</sup> The devastation of violence, disease, and death

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<sup>1</sup> The parties were notified ten days prior to the due date of this brief of the intention to file. Petitioners have consented to the filing of this brief.

No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

<sup>2</sup> The "Historic Shingle Springs Miwok Tribe" describes the group of families who are the lineal descendants of the Native Americans identified as the Miwok who lived within the area known as the Cosumnes River Valley. These families had signed the Cosumnes River Valley Treaty in 1852. There is a present dispute between the Historic Shingle Springs Tribe and others (i.e., Verona Band of Homeless Indians (Casino Indians)) who are alleged to have usurped the "Federal status" and identity of the Historic Shingle Springs Miwok descendants. This is an on-going dispute that illustrates the interests for the filing of the instant *amicus* brief.

<sup>3</sup> Burnett was elected California's first governor before statehood in 1850 and resigned in 1851.

resulted in decimation of the California Indians from an estimated 1848 population of 150,000 to 30,000 by 1870.<sup>4</sup>

In 1852, the Historic Shingle Springs Miwok, seeking protection of the federal government, entered the Cosumnes River Treaty. The treaty relinquished the Cosumnes River Valley lands to the United States. It would also identify the Miwok through a census. The treaty was never ratified. California Senators lobbied the U.S. Senate successfully resulting in the denial to ratify the Cosumnes River Treaty as well as seventeen other treaties affecting California Native Americans. The eighteen treaties were together known as the “Barbour Treaties.” The Senate took steps to remove the treaties from the public record and precluded Senate hearings. Removing the treaties from public record left the California Indians without land, legal recognition, or protection; while being subjected to the discrimination from the California population.

Between the Cosumnes River Treaty in 1852 and 1916, the Historic Shingle Springs Miwok went without lands or a reservation for 53 years.<sup>5</sup> In 1916, the United States appropriated land known as the El Dorado Rancheria and the Shingle Springs Rancheria. The adjacent combined parcels were for the specific use of the Miwok aboriginal to El Dorado County, and were listed in many Federal and State documents as a proposed reservation: “Shingle Springs Reservation.” Tribal identities were recorded in a census. Family members were recorded in an 1870 census and later in the 1890 El Dorado County census. Then the thirty or more surviving Miwok tribal families were detailed in C.E. Kelsey’s “1905-06 Census of Non-reservation California Indians” which is referenced by

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<sup>4</sup> Continued discrimination against California Indians during this same period was demonstrated through the 1850 California “Act for the Government and Protection of Indians.” Despite its title, the Act prohibited, among other things, Indians from testifying against whites: “in no case [could] a white man be convicted of any offense upon the testimony of an Indian or Indians.”

<sup>5</sup> The Barbour Treaties were “rediscovered” in 1905.

the BIA in the original 1916 deed of the Shingle Springs and El Dorado Rancherias. Again those same El Dorado Miwok families are referenced in the Census of California Indians Jurisdiction Act of 1928.

At about the same time of the land purchases, a Bureau of Indians Affairs Field Agent, John Terrell, identified a group of homeless people over 75 miles away in Sutter County. He referred to them as the Sacramento-Verona Band of Homeless Indians. He noted these homeless people were mostly of “Hawaiian and Maidu” descent and that they “looked Indian”. BIA documents showed the Secretary of the Interior argued with Terrell about including them. Still, Terrell invited them to live on the Historic Miwok’s land. They never did until 1980; ten years after members of the five “Hawaiian and Maidu” families requested the BIA sell the Shingle Springs Rancheria and divide up the proceeds amongst them.

In 1928, as a result of the Senate’s actions for failing to ratify and “sealing” the Barbour Treaties, Congress passed an act allowing the California Attorney General to sue the United States in the Federal Court of Claims on behalf of all California Native Americans. In 1942, after a fourteen year lull, the California Attorney General filed a complaint with the Court of Claims. In *The Indians of California v. The U.S.*, 98 Ct.Cl. 583 (1942), the court held that Congress failed to fulfill its promise to ratify the Barbour Treaties. In recognition of that failure, and the losses by California Indians, Congress sought to make restitutions converting the loss into an equitable claim. The court eventually ascertained the monetary damages to the California Indians. *Id.*

In a subsequent judgment, the court awarded the California Indians \$17,053,941.98. Taking into account what the United States would have supplied to the Native Americans had the treaties been ratified, over the twenty five year period “specific appropriations for the support, education, health, and civilization of Indians in California” and other general disbursements, a final net sum of

\$5,024,842.34 would be awarded. *The Indians of California v. the U.S.*, 102 Ct.Cl. 837 (1944). Nevertheless, the claims and agreement have not affected future disputes. Meanwhile, the United States passed the 1934 Indian Reorganization Act. Importantly, the Historic Shingle Springs Miwok Tribe was identified as a 1934 Indian Reorganization Act tribe<sup>6</sup>, while the Sacramento-Verona Band were never identified as a tribe or otherwise verified as California Native Americans. Though, the Historic Shingle Springs Miwok participated in the 1934 IRA and should have filed a Constitution, the Secretary of Interior did not assist them to file a “Constitution” as he did the Verona band in 1976.

For over sixty years the Historic Shingle Springs Miwok Tribe occupied their lands in El Dorado County. Then, with a scribbled note, a group of individuals purporting to be the five families of the Sacramento-Verona Band of Homeless Indians asked the BIA to sell the Shingle Springs Rancheria. In 1974, the BIA assembled a list of beneficiaries of the sale of Shingle Springs Rancheria which included the Historic Shingle Springs Miwok. The Verona’s struck the 30 Miwok families from the distribution list only leaving their family members.

Then according to BIA records, in 1976, during a “tribal” meeting, the Sacramento-Verona Band of Homeless “Hawaiians and Maidus” voted themselves “Miwok” and changed their name to the “Shingle Springs Band of Miwok Indians.” The BIA allowed the Sacramento-Verona Band take the identity, the heritage and the Federal Recognition status of the Shingle Springs Miwok Tribe of El Dorado County because only a Federally Recognized, tribe could legally enter gaming compacts.

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<sup>6</sup> Published in Theodore Haas’ 1947 “Ten Years of Tribal Government under the I.R.A.”



The Historic Shingle Springs Miwok Tribe have repeatedly taken exception to the BIA's actions and that of the Sacramento-Verona Band, believing the Sacramento-Verona Band usurped the Historic Shingle Springs Miwok Tribe's Federal status, aboriginal lands, and thus the cultural identity of the Historic Shingle Springs Miwok Tribe.

The Historic Shingle Springs Miwok Tribe's interest in this case arises from the respondents' assertion that the Casino Indians have sovereign immunity as a Federally Recognized tribe. The Historic Shingle Springs Miwok Tribe disputes that assertion.

## **ARGUMENT**

### **I. THE VERONA BAND OF HOMELESS INDIANS (CASINO INDIANS) ARE NOT IMMUNE TO LAW SUITS**

#### **A. THE CASINO INDIANS ARE NOT A FEDERALLY RECOGNIZED TRIBE**

A Federally Recognized Tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 USCS §§ 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

There is much confusion over Federal "Acknowledgment" and "Recognition" since Indian groups of both natures appear on the Federal Register. The two words are incorrectly used interchangeably by both Indians and non-Indians alike. The Department of Interior can "Acknowledge" an Indian group for

the purpose of fulfilling congressional allocations...such as John Terrell's inviting the Sacramento-Verona Band of Homeless Indians to live on the aboriginal Shingle Springs Miwoks land appropriation, the Shingle Springs Rancheria. Only Congress has the ability to federally "Recognize" an Indian group as a "Sovereign Nation" such as the Historic Miwok of the Shingle Springs Rancheria. Voting in the 1934 IRA is the record of that Federal Recognition according to *Carcieri v. Salazar*, 129 S.Ct. 1058 (2009).

There is also similar confusion between the terms "Rancheria" and "Reservation". In 1865 Congress approved four Reservations in the State of California, Hoopa Valley, Round Valley, Smith River, and Tule River. All other lands appropriated for Indians are "Rancherias". In California, all Rancherias are available to Homeless Indians. The Rancherias were given names for administrative purposes. Many times those names did not reflect the tribe's identity but instead the location of the land, such as "Sheep Ranch" or "Shingle Springs". In this day, groups of Indians settling the land will often take on the administrative identification of the land...such as "Shingle Springs Rancheria". Often within the deed description the field agent would refer to a census or some other notation describing the Indians who were promised the Rancheria. In correspondence with the Department of Interior, Field Agent, John Terrell, envisioned the combined parcels of the Shingle Springs Rancheria and the El Dorado Rancheria would someday be a lively Indian village benefiting both the Miwoks of El Dorado and the Homeless Indians of Sacramento and Sutter Counties. Today the Sacramento-Verona Band, the "Casino Indians" is the only Indian group benefitting from the Shingle Springs Rancheria.

Between 1906 and 1910 a series of appropriations were passed that provided funds to purchase small tracts of land in central and northern California

for landless Indians of those areas. The land acquisitions resulted in what has been referred to as the Rancheria System in California.

Only some California Indians on Rancherias can claim sovereignty. In 1934, with the passage of the Indian Reorganization Act (IRA), the reconstituting of tribal governments included the BIA's supervision of elections among California tribes, including most of the Rancheria groups. In *Carcieri*, the court interpreted "Indian Tribes now under Federal jurisdiction" to be only those tribes who participated in the 1934 I.R.A. *Id.*

The Sacramento-Verona Band of Homeless Indians (Casino Indians) was not under Federal jurisdiction at the time of the 1934 I.R.A. The Historic Shingle Springs Miwok Tribe was under Federal Jurisdiction and is on the rolls as having three representatives voting in 1934 I.R.A.

#### **B. THE CASINO INDIANS DO NOT POSSESS SOVEREIGN IMMUNITY**

The BIA inexplicably has acknowledged the Casino Indians and has allowed the Casino Indians to seize the name of the historic tribe so they can "legally" run a casino. The Casino Indians cannot trace their lineage to any of the original Federally Recognized Shingle Springs Miwok 1934 I.R.A. voters, nor do they comply with any of the paths the BIA uses to recognize a sovereign tribe. BIA Solicitor William Wirtzs' declaration of 2003, explains the Casino Indians (ie, The Shingle Springs Band) ancestry is "mostly Hawaiian." He further declares that:

The Shingle Springs Band was not federally recognized as an Indian Tribe during the time of my employment (1971-1999) with the Office of the Regional Solicitor by any of the three methods noted above. Moreover, since there was no policy and practice of federally recognizing Indian tribes by "course of dealings" or "pattern of practice" during the time of my employment with the Office of the

Regional Solicitor, the Shingle Springs Band was not federally recognized simply because Congress has never delegated the authority and power to an Area Director during my employment to federally recognize an Indian tribe.

*Shingle Springs Band of Miwok Indians v. Voices for Rural Living*, Case Number PC20080398 (*not published*).

According to the *Carcieri* decision, even to this day, Congress has not ceded their authority to the Department of Interior to give Federal Treaty recognition to random groups of Indians. *Id.* Therefore if the BIA were to enforce the *Carcieri* decision, the Casino Indians would have no sovereignty and therefore no immunity to lawsuits as themselves. *Id.* Usurping the Historic Miwok's identity was a calculated move in anticipation of pending legislation allowing for the potential of Indian gaming. Continuing to confuse the public that they are the Miwok is the Casino Indians attempt to protect the casino that they have already built.

Therefore, the Casino Indians cannot claim sovereign immunity to avoid a lawsuit with the Diamond Springs/El Dorado Fire District.

**C. THE CASINO INDIANS ARE NOT MIWOK AND CHANGED THEIR IDENTITY IN ORDER TO ENTER INTO CONTRACTS AS A FEDERALLY RECOGNIZED TRIBE WITH SOVEREIGN POWERS**

El Dorado County's history is stained with the blood of the Miwok's near extinction. Knowing this, El Dorado County citizens are proud to still have their own surviving Miwoks. And like the Diamond Springs Fire District are often surprised and appalled when they find out that the people running the Redhawk Casino are imposters posing as the county's surviving Miwoks, taking their

Federal benefits and continuing to starve them into extinction by even denying them food from the El Dorado Food Bank.

The burden of services provided by the county and its residents are instead supporting an outside group of “Hawaiian and Maidu” people known in BIA records as the Sacramento-Verona Band of Homeless Indians. Those Hawaiian and Maidu people trace their ancestry to 5 families.

The leaders of the Casino Indians are trying to conceal their non-Miwok origins by propagating the myth throughout El Dorado County, advertising themselves as “The Shingle Springs Band of Miwok Indians” and even filing a “corporations” lawsuit in Federal Court against the Historic Miwok’s Chief to prevent him and the Historic Tribe from calling themselves “Shingle Springs Miwoks” and finalize their obliteration of the aboriginal Miwok.

In spite of this, a position statement from the County Planning office tells the truth to all who will listen, “Records from the Bureau of Indian Affairs disclose that the two unrelated groups of Indians from the Sutter and Sacramento Counties, jointly referred to as that time as the “Sacramento-Verona Band of Homeless Indians” for administrative convenience have never functioned historically as a tribe, never historically had a relationship with El Dorado County, and were never formally or properly “recognized” by the Federal Government as

an Indian Tribe”. Further when looking at the Deed to the Shingle Springs Rancheria, it states that “On or about June 19, 1976 the Sacramento Verona Band changed their name to “The Shingle Springs Band of Miwok Indians”.

The Casino Indians sometimes identify themselves as Sacramento Verona Band and at other times use the Miwok name. They interchange names as it suits them. The Petitioners in this case were surprised to learn that the tribe they entered into a contract with were in fact not the aboriginal Miwok tribe. El Dorado Local Agency Formation Commission (LAFCO) in a 2008 letter to the Miwok Chief, Cesar Caballero, clarifying documents on file for the Shingle Springs Rancheria:

As LAFCO understands it, the name of the Tribe at the time of the 1987 application was, “Sacramento Verona Band of Homeless Indians.” This name is corroborated by El Dorado County Assessor’s records. Please note that the official name of the Tribe has been subsequently changed by the Bureau of Indian Affairs or by the Tribe itself.

In 1976 the Casino Indians voted to change their name to the Shingle Springs Band of Miwoks, yet in a 1987 LAFCO application they utilized the Sacramento Verona Band of Homeless Indians. Meanwhile, other Casino tribes’ people explain publicly to a Sacramento Bee Newspaper reporter, that they are indeed “Hawaiian and Maidu” and would gladly turn over the casino to the Miwok and go back to Hawaii once native tribes are recognized by the Federal Government in the State of Hawaii.

The Casino Indians would have you believe that they are a poor suffering Indian tribe that “white man” should feel guilt over and give the federal benefit of sovereign protection. Instead they are an aggressive corporation, engaging in and breaking contracts for their financial benefit while propagating the veil of lies that privileges them while taking advantage of the citizens of El Dorado County and oppressing the aboriginal Miwoks of Shingle Springs, El Dorado County.

### **CONCLUSION**

The aboriginal Miwoks of Shingle Springs, El Dorado County, were almost wiped out by violent prejudice. The Casino Indians are now trying to finish off the aboriginal Miwoks by usurping their identity and leaving the Historic Shingle Springs Miwok with no rights and no recognition.

The Casino Indians are not of Miwok ancestry and not a federally recognized tribe. They are instead an “acknowledged tribe” as the Sacramento-Verona Band of Homeless Indians and more or less a “created tribe” as the Shingle Springs Band of Miwoks. As LAFCO pointed out the Casino Indians change their names when it’s most advantageous to them, being both the Sacramento-Verona Band of Homeless Indians on some contracts and the Shingle Springs Miwoks on others, at the same time.

Therefore, the Casino Indians have no sovereign immunity from law suits. The Casino Indians have been entering contracts under the name of another tribe, the Shingle Springs Miwoks, whose identity they have appropriated. This name

change that the Casino Indians did in 1976 has led to much confusion among not only businesses and public utilities contracting with the tribe, but also the citizens of El Dorado County.



I, Sarah White, Amicus Counsel for Cesar Caballero, certify that the preceding Amicus Brief is 3,269 words.

Sarah White  
Counsel for Amicus Curiae