Case No. S238544

IN THE SUPREME COURT OF CALIFORNIA

UNITED AUBURN INDIAN COMMUNITY OF THE AUBURN RANCHERIA,
Plaintiff and Appellant,

v.

EDMUND G. BROWN JR., as Governor,
Defendant and Respondent.

On Review of a Decision of the Third Appellate District,
Case No. C075126
Affirming a Judgment of the Sacramento County Superior Court,
Case No. 34-2013-80001412CUWMGDS, Hon. Eugene Balonon

NORTH FORK RANCHERIA OF MONO INDIANS' APPLICATION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* AND BRIEF AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-RESPONDENT EDMUND G. BROWN JR.

MAIER PFEFFER KIM
GEARY & COHEN LLP
John A. Maier (#191416)
1970 Broadway, Suite 825
Oakland, CA 94612
Telephone: 510.835.3020
Facsimile: 510.835.3040
jmaier@jmandmplaw.com

WILMER CUTLER PICKERING
HALE AND DORR LLP
Danielle Spinelli (*pro hac vice* filed)
*Christopher E. Babbitt (#225813)
Counsel of Record
Jonathan A. Bressler (*pro hac vice* filed)
Claire Chung (*pro hac vice* filed)
1875 Pennsylvania Ave., NW
Washington, DC 20006
Telephone: 202.663.6000
Facsimile: 202.663.6363
christopher.babbitt@wilmerhale.com

Attorneys for *Amicus Curiae* North Fork Rancheria of Mono Indians

NORTH FORK RANCHERIA OF MONO INDIANS' APPLICATION FOR LEAVE TO FILE A BRIEF OF *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-RESPONDENT EDMUND G. BROWN JR.

TO THE CHIEF JUSTICE OF THE SUPREME COURT:

The North Fork Rancheria of Mono Indians ("North Fork") respectfully applies for leave to file the attached brief as *amicus curiae* in support of defendant-respondent Edmund G. Brown Jr.

North Fork is the intervenor-respondent in the related case *Stand Up for California! v. State of California*, petn. granted March 22, 2017, S239630. This Court granted North Fork's petition for review in that case and deferred further action pending the disposition of this case.

North Fork is a federally recognized Indian tribe in California with more than 2,000 citizens. In 2011, the Secretary of the Interior ("Secretary") determined that a gaming project that North Fork had proposed on land in Madera County is "'in the best interest of the tribe of the [North Fork] Tribe and its citizens,' and 'would not result in detrimental impact on the surrounding community.'" The federal Indian Gaming Regulatory Act ("IGRA") required the Governor's concurrence in that two-part determination to make the land, if placed in trust, eligible for gaming. In 2012, Governor Brown concurred in the Secretary's determination. The Secretary subsequently acquired the land in trust for North Fork. North

Fork thus has a strong interest in vindicating the Governor of California's state-law authority to concur in a two-part determination under IGRA.

North Fork's proposed brief as *amicus curiae* addresses why the Third District correctly held that such a gubernatorial concurrence "is in the nature of an executive act because it involves the implementation of California's existing Indian gaming policy" and thus falls within the Governor's executive authority (Opn. 17.)

First, the proposed brief explains that the Governor's concurrence power is consistent with California's Indian gaming policy, which permits gaming on Indian lands acquired after IGRA was enacted in 1988. United Auburn's contrary position in this Court is demonstrably wrong. As set out in the proposed brief, at least 17 of California's 110 federally recognized tribes (15%) have been authorized to conduct gaming on post-1988 Indian lands, including at least 10 of the 72 tribes (14%) with state-ratified gaming compacts. This Court's ruling could thus have serious and potentially damaging implications for many California tribes, including tribes currently gaming.

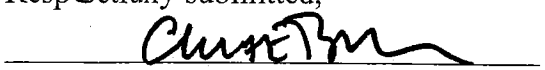
Second, the proposed brief explains the other federal requirements that must be satisfied for tribes to acquire Indian lands that are gaming-eligible under a two-part determination. The Governor's concurrence fulfills only one of those requirements, and its effect is thus merely to waive one among many federal restrictions on gaming on Indian lands.

Third, the proposed brief explains that IGRA is one among many examples of federal legislation that conditions a federal requirement or prohibition on a determination by a State's governor. This Court's decision could thus have manifold consequences for California and the federal government, and for the broader enterprise of cooperative federalism. North Fork's proposed brief also shows that other states treat the gubernatorial concurrence as a lawful exercise of executive authority. This Court should reach the same conclusion here.

North Fork believes that its analysis of these issues will assist the Court in deciding the pending case and thus asks that the Court grant leave to file the accompanying amicus brief. No party or counsel for a party in the pending case authored the brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief.

DATED: September 22, 2017

Respectfully submitted,



Christopher E. Babbitt (#225813)
WILMER CUTLER PICKERING
Danielle Spinelli (*pro hac vice* filed)
*Christopher E. Babbitt (#225813)
Counsel of Record
Jonathan A. Bressler (*pro hac vice* filed)
Claire Chung (*pro hac vice* filed)
1875 Pennsylvania Ave., NW
Washington, DC 20006
Telephone: 202.663.6000
Facsimile: 202.663.6363
christopher.babbitt@wilmerhale.com

Attorneys for *Amicus Curiae*
North Fork Rancheria of Mono Indians

MAIER PFEFFER KIM
GEARY & COHEN LLP
John A. Maier (#191416)
1970 Broadway, Suite 825
Oakland, CA 94612
Telephone: 510.835.3020
Facsimile: 510.835.3040
jmaier@jmandmplwa.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

DOCKETED CASES

CONSTITUTIONAL AND STATUTORY PROVISIONS

OTHER AUTHORITIES

California Gambling Control Commission, Ratified Tribal-State Gaming Compacts <http://www.cgcc.ca.gov/?pageID=compacts> 30

Final Environmental Impact Statement: North Fork Rancheria of Mono Indians Fee-to-Trust and Casino/Hotel Project (Feb. 2009) http://www.northforkeis.com/documents/final_eis/report.htm 45

Governor Announces Signing of Two Tribal Gaming Compacts (Apr. 28, 2008) <https://www.gov.ca.gov/news.php?id=9440> 17, 39

Governor Spitzer Grants Concurrence for St. Regis Mohawk Casino, Business Wire (Feb. 20, 2007) <http://www.businesswire.com/news/home/20070220005365/en/Governor-Spitzer-Grants-Concurrence-St.-Regis-Mohawk> 54

Generic Tribal-State Gaming Compact (1999) <http://www.cgcc.ca.gov/documents/enabling/tsc.pdf> 30, 38

Governor Brown to Kenneth L. Salazar, Secretary, United States Department of Interior (Aug. 30, 2012) <https://www.gov.ca.gov/news.php?id=17700> 39, 45

Mink, Gwendolyn & Rickie Solinger, eds., *Welfare: A Documentary History of U.S. Policy and Politics*, (2003) 48

National Indian Gaming Commission, Indian Lands Determination for Karuk Tribe of California (Apr. 9, 2012) <https://www.nigc.gov/images/uploads/indianlands/Karuk4912.pdf> 34

National Indian Gaming Commission, Indian Lands Opinion for Bear River Band of Rohnerville Rancheria (Aug. 5, 2002) <https://www.nigc.gov/images/uploads/indianlands/2002.08.05%20Bear%20River%20Band%20ILO.pdf> 26

National Indian Gaming Commission, Indian Lands Opinion for Habematolel Pomo of Upper Lake Indians (Nov. 21, 2007) <https://www.nigc.gov/images/uploads/indianlands/landopinion%2011.21.07.pdf> 33

National Indian Gaming Commission,), Indian Lands Opinion for Mooretown Rancheria Restored Lands, (Oct. 18, 2007) <https://www.nigc.gov/images/uploads/indianlands/mooretownfnl.pdf>..... 25

National Indian Gaming Commission, Indian Lands Opinion for Table Mountain Rancheria (Jan. 10, 2014) <https://www.nigc.gov/images/uploads/indianlands/2014.01.10%20Letter%20to%20Tribe%20fr%20OGC%20re%20Indian%20lands%20opinion%20-%2060%20acre%20parcel.pdf 32

Office of Indian Gaming, The Latest Decisions on Indian Gaming at Indian Affairs <https://www.bia.gov/as-ia/oig/content>..... 44

Office of the Solicitor, United States Department of Interior, Indian Lands Opinion for United Auburn Indian Community (Jan. 18, 2000) <https://www.nigc.gov/images/uploads/indianlands/53_unitedauburnindiancomnityresultantparcelb.pdf> 26, 36

Office of the Solicitor, United States Department of Interior, Indian Lands Opinion for Paskenta Band of Nomlaki Indians (Apr. 18, 2000) <https://www.nigc.gov/images/uploads/indianlands/37_paskentabndofnomlakiindns.pdf> 27

Office of Inspector General, United States Department of Interior, Evaluation Report: Process Used to Assess Applications to Take Land into Trust for Gaming Purposes (2005) <https://www.gpo.gov/fdsys/pkg/GPO-DOI-IGREPORTS-2005-g-0030/pdf/GPO-DOI-IGREPORTS-2005-g-0030.pdf>..... 29, 42

Simmons, Charlene Wear, *Gambling in the Golden State: 1998 Forward* (May 2006) <https://oag.ca.gov/sites/all/files/agweb/pdfs/gambling/GS98.pdf> 44

Statement of Kevin Gover, Assistant Secretary, United States Department of Interior Before United States Senate Committee on Indian Affairs (May 12, 1998) <https://govinfo.library.unt.edu/ngisc/meetings/jul3098/anderson.pdf>..... 29

Statement of Alex Skibine, Professor, University of Utah S.J. Quinney College of Law, Before United States House of Representatives Subcommittee on Indian and Alaska Native Affairs (Sept. 19, 2013) <http://docs.house.gov/meetings/ii/ii24/20130919/101312/hhrg-113-ii24-wstate-skibinea-20130919.pdf> 47

Sturtevant, William, ed., *Handbook of North American Indians* (2008) 36

Testimony of Kevin K. Washburn, Assistant Secretary for Indian Affairs, United States Department of Interior, before United States Senate Committee on Indian Affairs (July 23, 2014) <https://www.doi.gov/ocl/hearings/113/indiangaming_072314> 41, 42, 44

The American Indian Digest, app. D <https://www.fs.fed.us/people/tribal/tribexd.pdf> 38

United States Department of Interior, Final Environmental Impact Statement: Soboba Band of Luiseno Indians Horseshoe Grande Fee-to-Trust Project (Sept. 2013) <https://www.soboba-nsn.gov/sites/default/files/eis/SobobaFinalEIS.pdf> 31

Tribal-State Compact Between the State of California and the Federated Indians of Graton Rancheria <http://www.cgcc.ca.gov/documents/compacts/original_compacts/Federated_Compact.pdf> 33

Tribal-State Compact Between the State of California and the Habematolel Pomo of Upper Lake <http://www.cgcc.ca.gov/documents/compacts/original_compacts/Habematolel_Compact.pdf> 33

Tribal-State Compact Between the State of California and the Karuk Tribe <http://www.cgcc.ca.gov/documents/compacts/original_compacts/Karuk_Compact.pdf> 34

National Resources Council of Maine, *Public Land Ownership by State* (2000) <https://www.nrcm.org/documents/publiclandownership.pdf>. 37

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The North Fork Rancheria of Mono Indians ("North Fork") is the intervenor-respondent in the related case *Stand Up for California! v. State of California*, petn. granted March 22, 2017, S239630. This Court granted North Fork's petition for review in that case and deferred further action pending the disposition of this case.

North Fork is a federally recognized Indian tribe with more than 2,000 citizens, making it one of California's largest tribes. Its citizens are the descendants of Mono Indians who used and occupied lands in the Sierra foothills and the San Joaquin Valley in what is now Madera County for countless generations. (See *Stand Up for Cal.! v. U.S. Dept. of Interior* (D.D.C. 2016) 204 F.Supp.3d 212, 228.)

In the 1850s, the United States military drove North Fork and other Indian tribes out of their homes in the Sierra foothills, which were rich in resources and could be mined for gold. (*Stand Up*, *supra*, 204 F.Supp.3d at p. 228.) North Fork Indians scattered and hid as soldiers burned their settlements until the soldiers signed a treaty with "friendly" Indians. (*Id.* at pp. 228-229.) The treaty purported to establish a reservation in the San Joaquin Valley for North Fork and other tribes, but the Senate refused to ratify it. (*Id.* at p. 229.) Congress instead passed a statute extinguishing Indian title to land in California, leaving North Fork and other Indians in

California landless—without legal rights to their homelands and without formal reservations. (*Ibid.*)

In 1916, the federal government acquired the North Fork Rancheria—80 acres of land near the town of North Fork—for North Fork Indians. (*Stand Up*, *supra*, 204 F.Supp.3d at p. 229.) "The land was "'poorly located[,]'" "'absolutely worthless as a place to build homes on,'" and "essentially uninhabitable." (*Ibid.*)

In 1958, Congress passed the California Rancheria Act, which, in keeping with the federal government's then-prevalent assimilation policy, authorized the Secretary of the Interior ("Secretary") to terminate the federal trust relationship with North Fork and about 40 other tribes in California and to transfer tribal lands from federal trust ownership to individual fee ownership. (*Stand Up*, *supra*, 204 F.Supp.3d at p. 229.) In 1983, after litigation, the federal government agreed to restore the federally recognized status of North Fork and 16 other tribes. (*Id.* at pp. 229-230.)

Today, most of North Fork's citizens live below the poverty line, and more than 16% are unemployed. (*Stand Up*, *supra*, 204 F.Supp.3d at p. 230.) Most of them are highly reliant on the federal and state governments for social services and welfare. (*Id.* at pp. 230-231.) Apart from its plans for the gaming project at issue in the *Stand Up* case, North Fork has no economic development activities or revenue source other than government grants. (*Id.* at p. 231.)

North Fork lacks any land suitable for gaming other than the land at issue in *Stand Up*. (*Stand Up*, *supra*, 204 F.Supp.3d at p. 231.) The North Fork Rancheria is located on environmentally sensitive land within the Sierra National Forest that is difficult to access and mostly undeveloped except for a few rural residences. (*Ibid.*) The federal government holds it in trust for several individual tribal citizens, not for North Fork as a tribe. (*Ibid.*) In 2002, the federal government placed a 61.5-acre parcel on a steep hillside in the small town of North Fork into trust for the tribe, to be used for low-income housing, a tribal community center, and an endangered species conservation reserve. (*Ibid.*) That land is not eligible for gaming under federal law.

In 2011, after more than five years of federal review, the Secretary determined that a gaming project that North Fork had proposed on land in Madera County is "'in the best interest of the tribe of the [North Fork] Tribe and its citizens,' and 'would not result in detrimental impact on the surrounding community.'" (*Stand Up*, *supra*, 204 F.Supp.3d at p. 233.) Governor Brown concurred in the Secretary's determination in 2012, and the Secretary subsequently acquired the land in trust for North Fork. (*Id.* at pp. 233-234.) North Fork's gaming project—endorsed by the Secretary, Governor Brown, former Governor Schwarzenegger,[1] and Madera

[1] In 2008, then-Governor Schwarzenegger signed a compact with North Fork for gaming on the Madera County land and announced that he

County—is essential to bring its citizens out of poverty; to provide necessary health, education, and social services to its members; and to achieve tribal self-determination.

INTRODUCTION

The Third District correctly held that the Governor's concurrence in a two-part determination "is in the nature of an executive act because it involves the implementation of California's existing Indian gaming policy" and thus falls within the Governor's executive authority. (Opn. 17.) United Auburn's contrary argument rests on its contention that state policy does not allow gaming on Indian lands acquired after 1988. As its opening brief summarizes: "That's all UAIC is arguing here—that the Governor's executive power is to act consistent with, not contrary to, California's expressed public policy on Indian gaming. And that policy prohibits gaming except on pre-1988 reservation lands." (AOBOM 30.) Its reply brief reiterates that premise, arguing that the concurrence is unlawful because the concurrence "has the legal effect of authorizing gaming where the Constitution otherwise prohibits it." (ARBOM 27.) United Auburn's description of California gaming policy, however, is wrong.

---

signed the compact "to highlight the strong public policy rationale and the significant financial and other state interests behind his anticipated concurrence" in the event that the Secretary issued a favorable two-part determination. (Governor Announces Signing of Two Tribal Gaming Compacts (Apr. 28, 2008) <https://www.gov.ca.gov/news.php?id=9440>.)

California has an established policy and history of permitting gaming on post-1988 Indian lands. Indeed, United Auburn itself is conducting gaming on post-1988 Indian land under its state-ratified compact. Nor is United Auburn an outlier. As described below, at least 17 of California's 110 federally recognized tribes (15%) have been authorized to conduct gaming on post-1988 Indian lands, including at least 10 of the 72 tribes (14%) with state-ratified gaming compacts.[2] The Governor's concurrence power implements precisely what California's existing Indian gaming policy permits tribes to do: to conduct gaming on Indian lands in California in accordance with federal law.

Tribes may conduct gaming on post-1988 Indian lands only where the Secretary of the Interior finds that they meet stringent federal requirements that ensure such gaming occurs only in limited circumstances. On average, only two or three tribes across the entire country acquire new lands for gaming purposes each year, taking into account the full set of

---

[2] The 10 tribes with state-ratified gaming compacts are discussed below in Sections I.C. and I.D. They are the Mooretown Rancheria of Maidu Indians, Bear River Band of Rohnerville Rancheria, United Auburn Indian Community, Paskenta Band of Nomlaki Indians, Soboba Band of Luiseno Indians, Elk Valley Rancheria, Table Mountain Rancheria, Habematolel Pomo of Upper Lake Indians, Federated Indians of Graton Rancheria, and Karuk Tribe. The other seven tribes that also have been authorized to conduct gaming on post-1988 Indian lands are noted below in Section I.D. They are the Enterprise Rancheria of Maidu Indians, North Fork Rancheria of Mono Indians, Lytton Band of Pomo Indians, Ione Band of Miwok Indians, Mechoopda Indian Tribe of the Chico Rancheria, Cloverdale Rancheria of Pomo Indians, and Wilton Rancheria.

exceptions allowing gaming on post-1988 Indian lands under the Indian Gaming Regulatory Act ("IGRA"). Far fewer meet the additional federal requirements necessary for the Secretary to make a two-part determination that would trigger the Secretary's request for the Governor's concurrence.

When the Secretary requests the Governor's concurrence, the Secretary is asking the Governor to agree that a federal statutory restriction on Indian gaming should not be applied to the specific Indian lands at issue. The legal effect of the Governor's concurrence is to waive a *federal* restriction on Indian gaming that Congress imposed in IGRA. The Governor's concurrence thus does not involve state regulatory authority, let alone usurp a state legislative function.

The gubernatorial concurrence provision in IGRA is one among many federal statutes conditioning the application of federal law on a decision by a state's governor. When Congress or federal regulations so provide, the Governor of California routinely decides whether federal requirements or prohibitions should apply in California. In this case, nothing in California law bars the Governor from agreeing with the Secretary's determination that federal law should not prohibit an Indian tribe from gaming on particular Indian lands. Such a concurrence power falls well within the Governor's executive authority.

ARGUMENT

I. THE CONCURRENCE POWER IS CONSISTENT WITH CALIFORNIA'S INDIAN GAMING POLICY

California state policy allows gaming on Indian lands eligible for gaming under IGRA. Since well before the adoption of Proposition 1A in 2000, state policy has permitted gaming on Indian lands acquired after 1988 when IGRA authorizes such gaming. Proposition 1A reinforced that policy and expanded it to allow certain class III gaming. Several state statutes enacted since 2000 have also reinforced that policy by ratifying compacts for class III gaming on post-1988 Indian lands.

As described below, at least six tribes—including United Auburn—currently game on post-1988 Indian lands in California pursuant to a state-ratified compact[3]; at least four other tribes have entered into a state-ratified compact authorizing gaming on their post-1988 Indian lands, even though the tribes are not currently gaming on them[4]; and at least seven additional

---

[3] These tribes are discussed below in Sections I.C. and I.D. They are the Mooretown Rancheria of Maidu Indians, Bear River Band of Rohnerville Rancheria, United Auburn Indian Community, Paskenta Band of Nomlaki Indians, Habematolel Pomo of Upper Lake Indians, and Federated Indians of Graton Rancheria. (See Cal. Gambling Control Com. (CGCC), Tribal Casino Locations, pp. 1-4 (Apr. 24, 2017) <http://www.cgcc.ca.gov/documents/Tribal/2017/List_of_Casinos_alpha_by_casino_name_4-24-17.pdf>.)

[4] These tribes are discussed below in Sections I.C and I.D. They are the Soboba Band of Luiseno Indians, Elk Valley Rancheria, Table Mountain Rancheria, and Karuk Tribe.

tribes have acquired post-1988 Indian lands that are gaming-eligible, even though they do not have state-ratified compacts for class III gaming.[5]

The Governor's concurrence power is thus consistent with and implements California's Indian gaming policy for the reasons explained by the Third District (Opn. 17-19). United Auburn's contrary argument is demonstrably false.

A. California's Indian Gaming Policy Allows Gaming On Indian Lands Under *Cabazon* And IGRA

Indian gaming has an established history in California, which began long before Proposition 1A. California tribes began engaging in significant gaming operations in the 1980s when several tribes opened casinos with card games and bingo. (*Flynt v. Cal. Gambling Control Com.* (2002) 104 Cal.App.4th 1125, 1132-1133.) Those operations became a major source of employment for tribal members, and the profits were the tribes' sole source of income. (*California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, 205.)

In 1987, the U.S. Supreme Court held in *Cabazon* that California had no authority over tribal gaming. (*Supra*, 480 U.S. at p. 222.) The Court explained that "tribal sovereignty is dependent on, and subordinate

---

[5] These tribes are noted below in Section I.D. They are the Enterprise Rancheria of Maidu Indians, North Fork Rancheria of Mono Indians, Lytton Band of Pomo Indians, Ione Band of Miwok Indians, Mechoopda Indian Tribe of the Chico Rancheria, Cloverdale Rancheria of Pomo Indians, and Wilton Rancheria.

to, only the Federal Government, not the States," such that state laws may be applied to Indian lands only "if Congress has expressly so provided." (*Id.* at p. 207 [internal quotation marks omitted].) It determined that Congress had authorized states to apply their gaming laws to Indian lands only if the conduct at issue violated the state's public policy. (*Id.* at pp. 207-210.) And the Court concluded that the gaming did not violate California's public policy because California regulated—rather than prohibited—gaming, as demonstrated by California's authorization of card rooms, bingo, horse-race betting, and a lottery. (*Id.* at p. 211; see *Hotel Emps. & Restaurant Emps. Internat. Union v. Davis* (1999) 21 Cal.4th 585, 594-595.) *Cabazon* made clear that California had no authority to prohibit or regulate tribal gaming on any Indian lands, regardless of when the lands were acquired.

"In 1988, in the wake of *Cabazon*, Congress enacted IGRA with the declared purpose to 'provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments' while at the same time providing a basis for regulation of Indian gaming." (*Hotel Emps.*, *supra*, 21 Cal.4th, at p. 595 [quoting 25 U.S.C. § 2702(1); citations omitted].) Consistent with *Cabazon*, Congress tied the types of gaming that tribes may conduct on their Indian lands to their home state's general gaming policy. Specifically, IGRA permits tribes to conduct class II gaming activities, such

as bingo and unbanked card games, on Indian lands unless their home state prohibits those games everywhere in the state. (25 U.S.C. § 2710(b)(1).) IGRA likewise permits tribes to conduct class III gaming activities, which include slot machines, lottery games, and banked and percentage card games, unless their home state prohibits those games everywhere, but it requires the tribe either to negotiate a class III gaming compact with the state or, failing that, to obtain an alternative federal remedy before conducting such gaming. (*Id.* § 2710(d)(1), (7).) "In other words, a state need only allow Indian tribes to operate games that others can operate, but need not give tribes what others cannot have." (*Rumsey Indian Rancheria of Wintun Indians v. Wilson* (9th Cir. 1994) 64 F.3d 1250, 1258.)

Under *Cabazon* and IGRA, therefore, a state's Indian gaming policy is an extension of its policy with respect to gaming generally. More specifically, because Congress has allowed tribes to conduct gaming whenever their home state has not altogether prohibited it, a state's policy not "to criminalize all gambling" demonstrates the state's "amenability to Indian gaming" under IGRA. (*Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. United States* (7th Cir. 2004) 367 F.3d 650, 664.[6])

---

[6] United Auburn asserts—incorrectly and without explanation—that "*Lac Courte Oreilles*' apprehension of California's policy was repudiated in *Rumsey*." (ARBOM 39.) *Rumsey*—which was decided before Proposition 1A authorized additional class III gaming activities—addressed only whether certain types of class III games were then permitted in California. (See *Hotel Emps.*, *supra*, 21 Cal.4th at p. 597 [*Rumsey* held that

When a state's gaming policy permits Indian gaming, IGRA governs the Indian lands on which that gaming may occur. IGRA defines "Indian lands" to include lands over which an Indian tribe or the federal government has acquired jurisdiction, without regard to when the lands are acquired. (25 U.S.C. § 2703(4).) Although IGRA generally prohibits gaming on Indian lands acquired after its enactment in 1988, it permits such gaming when one of several exceptions is met. (*Id.* § 2719.) Those exceptions include Indian lands acquired after 1988 that are (1) contiguous to pre-1988 Indian land, (2) part of a land-claim settlement, (3) a tribe's initial reservation, (4) restored to a tribe, or (5) eligible for gaming under the two-part determination process. (*Id.*, § 2719(a)(1), (b)(1).) Importantly, whether particular post-1988 Indian lands are eligible for gaming is entirely a function of *federal* law, not state law. Once a state has permitted Indian gaming by authorizing others to engage in gaming, federal law alone governs the Indian lands on which gaming may be conducted.

California's public policy has permitted certain gaming on Indian lands since the 1980s, because California has authorized others to engage in such gaming. (See *Cabazon*, *supra*, 480 U.S. at p. 211; *Hotel Emps.*, *supra*,

---

"because California prohibited anyone in the state to engage in banked or percentage card games or operation of slot machines ..., IGRA did not require the state to negotiate a compact allowing those activities to be conducted in tribal gaming facilities."].) *Rumsey* recognized that California's Indian gaming policy authorizes tribes to engage in the types of gaming activities that are not generally prohibited by state law.

21 Cal.4th at pp. 593-595.) Although the scope of authorized gaming activities has grown since the 1980s, neither then nor now has California had the power to regulate *where* on Indian lands tribes may conduct such gaming. Rather, tribes may engage in any type of gaming activity generally permitted under state law, on the full array of Indian lands eligible for gaming under IGRA.

B. Tribes In California Have Acquired Post-1988 Indian Lands For Gaming Since Before Proposition 1A

Consistent with IGRA and California state policy, tribes in California have acquired post-1988 Indian lands for gaming under IGRA's exceptions since before Proposition 1A. In particular:

- ***Mooretown Rancheria of Maidu Indians***. In 1994, the federal government took land in Butte County into trust for the Mooretown Rancheria of Maidu Indians 15 miles from the tribe's rancheria.[7] The tribe began conducting gaming on that land in a temporary structure in 1996, opened a permanent gaming facility there in 1998, and has continued to conduct gaming there since then.[8]

---

[7] See National Indian Gaming Com. (NIGC), Indian Lands Opinion for Mooretown Rancheria Restored Lands, p. 2 (Oct. 18, 2007) <https://www.nigc.gov/images/uploads/indianlands/mooretownfnl.pdf>.

[8] *Id.* at pp. 2, 4, 10.

- ***Bear River Band of Rohnerville Rancheria.*** Also in 1994, the federal government took land in Humboldt County into trust for the Bear River Band of Rohnerville Rancheria six miles from the tribe's rancheria.[9] The tribe applied for federal approval to conduct gaming on that land in 1996, which it received before its gaming operation began.[10]

Other tribes in California were in the process of acquiring new lands for gaming under IGRA's exceptions before Proposition 1A. In particular:

- ***United Auburn Indian Community.*** In 1999, United Auburn asked the federal government to determine that land it was seeking to acquire in Placer County would be gaming-eligible under IGRA's restored-lands exception. The federal government issued the determination in January 2000 and took the land into trust for United Auburn in 2002.[11]
- ***Paskenta Band of Nomlaki Indians.*** Also in 1999, the Paskenta Band of Nomlaki Indians asked for a similar

---

[9] See NIGC, Indian Lands Opinion for Bear River Band of Rohnerville Rancheria, p. 2 (Aug. 5, 2002) <https://www.nigc.gov/images/uploads/indianlands/2002.08.05%20Bear%20River%20Band%20ILO.pdf>.

[10] See *ibid.*

[11] See Office of the Solicitor, U.S. Dept. of Interior, Indian Lands Opinion for United Auburn Indian Community, p. 1 (Jan. 18, 2000) <https://www.nigc.gov/images/uploads/indianlands/53_unitedauburnindiancomnityresultantparcelb.pdf>; 67 Fed. Reg. 11,706 (Mar. 15, 2002).

determination for land it was seeking to acquire in Tehama County, which the federal government issued in April 2000 before taking the land into trust later that year.[12]

Mooretown, Bear River, United Auburn, and Paskenta continue to conduct gaming on their post-1988 Indian lands today.[13] California's Indian gaming policy does not prohibit them from doing so.

C. Proposition 1A Reinforces That California's Indian Gaming Policy Allows Gaming On Post-1988 Indian Lands

Proposition 1A did not narrow California's Indian gaming policy. To the contrary, it expanded the types of games that California tribes could conduct on Indian lands—and specifically approved class III gaming on Indian lands acquired after 1988.

By the time Proposition 1A was put to voters in 2000, about 40 tribes were conducting gaming on Indian lands in California. (See United Auburn's Request for Judicial Notice, Ex. A, Voter Information Guide (VIG), Analysis by the Legislative Analyst, p. 4). Notably, those lands included lands acquired after 1988. (See *supra*, Section I.B.) Legal conflicts arose between tribes and the State—but over the types of class III

---

[12] See Office of the Solicitor, U.S. Dept. of Interior, Indian Lands Opinion for Paskenta Band of Nomlaki Indians, pp. 1-2 (Apr. 18, 2000) <https://www.nigc.gov/images/uploads/indianlands/37_paskentabndofnomlakiindns.pdf>; 65 Fed. Reg. 76,275 (Dec. 6, 2000).

[13] See Tribal Casino Locations, *supra*, pp. 1-4.

gaming activities allowed, not the location of the gaming. (See *Hotel Emps.*, *supra*, 21 Cal.4th at pp. 596-598.)

California voters resolved those conflicts by approving Proposition 1A, which "amend[ed] the State Constitution to permit Indian tribes to conduct and operate slot machines, lottery games, and banked and percentage card games on Indian land." (VIG, Analysis by the Legislative Analyst, p. 5; see Cal. Const., art. IV, § 19(f) [authorizing those games by "Indian tribes on Indian lands in California in accordance with federal law"].) Proposition 1A addressed only *whether* those class III games would be permitted (and answered that question affirmatively); it did not purport to limit such gaming to pre-1988 Indian lands. To the contrary, the Legislative Analyst informed voters that those games would be permitted on "Indian land," which under federal law includes post-1988 land (see 25 U.S.C. § 2703(4)). Likewise, Proposition 1A's proponents informed voters that Proposition 1A provides "clear legal authority for Indian Tribes to conduct specified gaming activities on tribal lands," without excluding any tribal lands or otherwise distinguishing among tribal lands based on when they were acquired. (VIG, Argument in Favor of Proposition 1A, p. 6.)

Proposition 1A's opponents responded by informing voters that tribes were acquiring new lands on which they could conduct gaming. (See VIG, Argument Against Proposition 1A, p. 7.) Between 1988 and 2000, more than 30 tribes nationwide—including United Auburn and other tribes

in California—applied to have lands taken into trust for gaming under IGRA's exceptions for post-1988 Indian lands, and the federal government had approved 18 such trust acquisitions by 2000.[14] By then, tribes in Washington and Wisconsin were already conducting gaming on post-1988 Indian lands under IGRA's two-part determination exception,[15] and at least a half-dozen others had applied to have lands taken into trust for gaming under that exception but been rejected.[16] Against that backdrop, "the overwhelming majority of California voters passed Proposition 1A." (*Flynt*, *supra*, 104 Cal.App.4th at p. 1128.)

Indeed, Proposition 1A itself specifically authorized class III gaming on post-1988 Indian lands. The Legislative Analyst informed voters that the Legislature had ratified "virtually identical tribal-state compacts with 57 Indian tribes in California," which "will become effective only if ... this proposition is approved" and they receive federal approval. (VIG, Analysis by the Legislative Analyst, p. 5.) Proposition 1A "in effect ratified the

---

[14] See Office of Inspector General (OIG), U.S. Dept. of Interior, Evaluation Report: Process Used to Assess Applications to Take Land into Trust for Gaming Purposes, pp. 12-13 (2005) <https://www.gpo.gov/fdsys/pkg/GPO-DOI-IGREPORTS-2005-g-0030/pdf/GPO-DOI-IGREPORTS-2005-g-0030.pdf>.

[15] Virginia Boylan, *Reflections on IGRA 20 Years After Enactment* (2010) 42 Ariz. St. L.J. 1, 11, fn. 50; e.g., Forest County Potawatomi Cmty. v. Doyle (W.D. Wis. 1992) 803 F.Supp. 1526, 1530-1532.

[16] See Statement of Kevin Gover, Asst. Sect., U.S. Dept. of Interior Before U.S. Senate Com. on Indian Affairs, pp. 2-3 (May 12, 1998) <https://govinfo.library.unt.edu/ngisc/meetings/jul3098/anderson.pdf>.

compacts." (*Hollywood Park Land Co. v. Golden State Transp. Financing Corp.* (2009) 178 Cal.App.4th 924, 929.) Four of those compacts approved class III gaming specifically on post-1988 Indian lands. In particular:

- ***Mooretown and Bear River.*** Two of those compacts approved class III gaming by Mooretown and the Bear River Band of Rohnerville Rancheria on the post-1988 Indian lands that the tribes had already acquired. (See Gov. Code, § 12012.25(a)(28), (38), *supra*, Section I.B.)
- ***United Auburn and Paskenta.*** Two of those compacts approved class III gaming by United Auburn and Paskenta on the post-1988 Indian lands that the tribes were already in the process of acquiring. (See Gov. Code, § 12012.25(a)(30), (55); *supra*, Section I.B.)

Moreover, the compacts that Proposition 1A ratified expressly permit class III gaming "on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act."[17] The federal government has thus authorized tribes with Proposition 1A-ratified

[17] Generic Tribal-State Gaming Compact § 4.2 (1999) <http://www.cgcc.ca.gov/documents/enabling/tsc.pdf>; see also Cal. Gambling Control Com., Ratified Tribal-State Gaming Compacts <http://www.cgcc.ca.gov/?pageID=compacts> (providing specific compacts).

compacts to conduct gaming on Indian lands that the tribes acquired after Proposition 1A and that are eligible for gaming under IGRA. In particular:

- ***Soboba Band of Luiseno Indians.*** When the Soboba Band of Luiseno Indians, which has a Proposition 1A-ratified compact (see Gov. Code, § 12012.25(a)(46)[18]), sought new land in Riverside County to move its casino to a larger facility, the federal government concluded that the new land would be gaming-eligible under IGRA's contiguous-land exception[19] and that "no changes to the compact [would] be necessary" for the tribe to conduct class III gaming on that land.[20] The federal government acquired the land in trust in 2015.[21]
- ***Elk Valley Rancheria and Table Mountain Rancheria.*** Two other tribes with Proposition 1A-ratified compacts, Elk Valley Rancheria and Table Mountain Rancheria (see Gov.

---

[18] The tribe was formerly known as the Soboba Band of Luiseno Mission Indians of the Soboba Reservation when its compact was ratified. (See 67 Fed. Reg. 46,328, 46,331 (July 12, 2002).)

[19] See U.S. Dept. of Interior, Record of Decision: Trust Acquisition of the Horseshoe Grande Site, pp. 7-8, 40-42, 62 (May 2015) <https://www.bia.gov/sites/bia.gov/files/assets/public/oig/pdf/idc1-030437.pdf>.

[20] U.S. Dept. of Interior, Final Environmental Impact Statement: Soboba Band of Luiseno Indians Horseshoe Grande Fee-to-Trust Project, p. 2:25 (Sept. 2013) <https://www.soboba-nsn.gov/sites/default/files/eis/SobobaFinalEIS.pdf>.

[21] See 80 Fed. Reg. 31,613 (June 3, 2015).

Code, § 12012.25(a)(17), (49)), have similarly received federal approval to conduct gaming on Indian lands that the tribes acquired after Proposition 1A.[22]

Proposition 1A does not prohibit these tribes from gaming on their post-1988 Indian lands, and their Proposition 1A-ratified compacts permit them to conduct class III gaming on those lands.

D. California's Indian Gaming Policy Has Continued To Allow Gaming On Post-1988 Indian Lands Since Proposition 1A

California's Indian gaming policy has remained consistent after Proposition 1A's adoption. The State has continued to enter into compacts that specifically authorize class III gaming on post-1988 Indian lands.

Like the seven Proposition 1A tribes discussed above (see *supra*, Section I.C), at least 10 other tribes have acquired post-1988 Indian lands in California that are eligible for gaming under IGRA's exceptions. The State has entered into compacts with at least three expressly approving class III gaming on those lands. In particular:

---

[22] For Elk Valley, see 73 Fed. Reg. 7,758 (Feb. 11, 2008) (Elk Valley land-acquisition decision); U.S. Dept. of Interior, Indian Lands Determination for Elk Valley Rancheria, p. 1 (July 13, 2007) <https://www.nigc.gov/images/uploads/indianlands/071307ElkValleyLandOp.pdf>. For Table Mountain, see NIGC, Indian Lands Opinion for Table Mountain Rancheria, p. 1 (Jan. 10, 2014) <https://www.nigc.gov/images/uploads/indianlands/2014.01.10%20Letter%20to%20Tribe%20fr%20OGC%20re%20Indian%20lands%20opinion%20-%2060%20acre%20parcel.pdf>.

- ***Habematolel Pomo of Upper Lake Indians.*** In 2008, the Habematolel Pomo of Upper Lake Indians acquired land in Lake County that the federal government had determined would be eligible for gaming under IGRA.[23] In 2011, the State entered into a compact with the tribe to authorize gaming on the Indian land acquired "on November 13, 2008."[24] (See Gov. Code, § 12012.54.)
- ***Federated Indians of Graton Rancheria.*** In 2012, the State entered into a compact with the Federated Indians of Graton Rancheria to authorize gaming on gaming-eligible Indian land in Sonoma County that the tribe acquired "in October 2010."[25] (See Gov. Code, § 12012.56.)
- ***Karuk Tribe.*** In 2014, the State similarly entered into a compact with the Karuk Tribe to authorize gaming on Indian

---

[23] See 73 Fed. Reg. 58,617 (Oct. 7, 2008); U.S. Dept. of Interior, Office of the Solicitor, Indian Lands Opinion for Habematolel Pomo of Upper Lake Indians, p. 1 (Nov. 21, 2007) <https://www.nigc.gov/images/uploads/indianlands/landopinion%2011.21.07.pdf>.

[24] Tribal-State Compact Between the State of California and the Habematolel Pomo of Upper Lake, p. 2 <http://www.cgcc.ca.gov/documents/compacts/original_compacts/Habematolel_Compact.pdf>; see Gov. Code, § 12012.54.

[25] Tribal-State Compact Between the State of California and the Federated Indians of Graton Rancheria, p. 2 <http://www.cgcc.ca.gov/documents/compacts/original_compacts/Federated_Compact.pdf>; see Gov. Code, § 12012.56.

land in Siskiyou County "accepted into trust on March 27, 2001"[26] (see Gov. Code, § 12012.62), which the federal government had determined is gaming-eligible under IGRA.[27]

Those compacts illustrate that California's gaming policy continues to permit gaming on post-1988 Indian lands. As the First District explained in rejecting an attempt to invalidate Graton's compact, because Graton acquired jurisdiction over its post-1988 Indian land in conformity with federal law such that IGRA authorized gaming, "the compact between California and the Graton Tribe was 'in accordance with federal law' and consistent with article 4, section 19, subdivision (f) of the California Constitution." (*Stop the Casino 101 Coalition v. Brown* (2014) 230 Cal.App.4th 280, 291, petn. review den. Jan. 14, 2015, S222518, cert. den. May 26, 2015, 135 S.Ct. 2364.) Graton currently games on that land.[28]

Meanwhile, other tribes have also acquired post-1988 trust lands for gaming purposes, even though they are not yet conducting class III gaming. For example, the Lytton Band of Pomo Indians has been conducting class II gaming—which does not require a compact—on land in Contra Costa

---

[26] Tribal-State Compact Between the State of California and the Karuk Tribe, p. 9, § 2.31 <http://www.cgcc.ca.gov/documents/compacts/original_compacts/Karuk_Compact.pdf>.

[27] See NIGC, Indian Lands Determination for Karuk Tribe of California, p. 1 (Apr. 9, 2012) <https://www.nigc.gov/images/uploads/indianlands/Karuk4912.pdf>.

[28] See CGCC, Tribal Casino Locations, *supra*, p. 2.

County that was taken into trust for the tribe in 2003. (See *Neighbors of Casino San Pablo v. Salazar* (D.D.C. 2011) 773 F.Supp.2d 141, 144, affd. (D.C. Cir. 2011) 442 F.App'x 579.) In addition, the federal government recently has taken land into trust for at least six other California tribes—the Ione Band of Miwok Indians, Mechoopda Indian Tribe of the Chico Rancheria, Cloverdale Rancheria of Pomo Indians, and Wilton Rancheria, along with North Fork and Enterprise—specifically for gaming purposes.[29] California policy does not prohibit tribes from conducting gaming on those post-1988 Indian lands in accordance with IGRA.

E. United Auburn's Argument Contravenes California's Indian Gaming Policy

For the reasons above, the essential premise of United Auburn's position—that California's Indian gaming policy prohibits gaming on post-1988 Indian lands (see AOBOM 30; ARBOM 27)—is false. Moreover, even after the Governor's brief explained that United Auburn *and several other tribes* in California have acquired post-1988 Indian lands for gaming (RABOM 35-37), United Auburn's response addressed only its own gaming (see ARBOM 32-33), without even attempting to confront the reality of other tribes' gaming in the State on post-1988 Indian lands.

---

[29] See 77 Fed. Reg. 31,871 (May 30, 2012) (Ione); 79 Fed. Reg. 11,122 (Feb. 27, 2014) (Mechoopda); 81 Fed. Reg. 31,656 (May 19, 2016) (Cloverdale); U.S. Dept. of Interior, Notice of Decision for Wilton Rancheria (Jan. 19, 2017) <http://www.wiltoneis.com/wp-content/uploads/2017/01/Notice-of-Decision.pdf>.

United Auburn notes that Congress enacted a statute in 1994 to restore it to federal recognition, but fails to explain why that statute is relevant to whether California's Indian gaming policy permits gaming on post-1988 Indian land. (See ARBOM 32-33.) United Auburn does not dispute that the Indian land on which it is conducting gaming is, in fact, post-1988 Indian land. But the reason United Auburn's post-1998 land is gaming-eligible is because it fits within one of IGRA's exceptions (25 U.S.C. § 2719(b)(1)(B)(iii)), not because of the 1994 statute itself.[30] That is what California's Indian gaming policy requires: that the gaming occur on Indian land that is gaming-eligible under IGRA.

Even if the United Auburn statute were determinative of the gaming eligibility of United Auburn's land, it would have little bearing on California's Indian gaming policy more generally. Only three of the 10 tribes with state-ratified compacts that are eligible to conduct class III gaming on post-1988 Indian lands were restored through legislation—United Auburn, Paskenta, and Graton.[31] No such legislation exists for Mooretown, Bear River, Soboba, Elk Valley, Table Mountain, Habematolel, or Karuk, whose post-1988 lands are equally gaming-eligible.

---

[30] See NIGC, Indian Lands Opinion for United Auburn Indian Community, *supra*, p. 1.

[31] See William Sturtevant, ed., *Handbook of North American Indians*, p. 109 (2008).

Nor does United Auburn show why it is relevant that its lands are gaming-eligible under IGRA's restored-lands exception, rather than another IGRA exception. Other tribes in California, including Soboba and Table Mountain, have post-1988 Indian lands that are gaming-eligible under other IGRA exceptions.[32]

United Auburn emphasizes the restored-lands exception's purpose, but that does not distinguish the exception from the others: All of IGRA's exceptions are placed in the same provision (25 U.S.C. § 2719) and share IGRA's overarching purpose. "Congress's overarching intent was in large part to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." (*Citizens Exposing Truth About Casinos v. Kempthorne* (D.C. Cir. 2007) 492 F.3d 460, 468 [internal quotation marks omitted].). Congress provided IGRA's exceptions because it recognized that some tribes were landless in 1988 or lacked lands usable for economic development—a particular problem in California.[33] IGRA's exceptions are

---

[32] See U.S. Dept. of Interior, Record of Decision: Trust Acquisition of the Horseshoe Grande Site, *supra*, pp. 40-41, 62 (May 2015); NIGC, Indian Lands Opinion for Table Mountain Rancheria, *supra*, p. 1.

[33] Although California has the nation's largest Indian population, the percentage of its land that is Indian land is less than one-third of the national average. (See U.S. Census Bureau, *The American Indian and Alaska Native Population: 2010*, pp. 6-7 (Jan. 2012) <https://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>; National Resources Council of Maine, *Public Land Ownership by State* (2000)

needed to effectuate IGRA's purpose for those tribes, addressing the varied circumstances that left them without pre-1988 lands suitable for gaming. Thus, "IGRA was intended to allow Indian tribes like the North Fork to engage in gaming on par with other tribes." (*Stand Up for Cal.! v. U.S. Dept. of Interior* (D.D.C. 2013) 919 F.Supp.2d 51, 77 [internal quotation marks omitted]; see also *Stand Up*, *supra*, 204 F.Supp.3d at p. 263.)

In any event, California's Indian gaming policy does not distinguish among IGRA's exceptions. It allows gaming generally on Indian lands under *Cabazon* and IGRA. (See *supra*, Section I.A.) Proposition 1A approved class III gaming on "Indian lands in California in accordance with federal law." (Cal. Const., art. IV, § 19(f).) The State has enacted legislation entering into compacts that authorize gaming "on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act."[34] (See Gov. Code, § 12012.25(a).) Gaming may lawfully be conducted in accordance with federal law on post-1988 Indian lands under all of IGRA's exceptions, including the two-part determination. Accordingly, the Governor's concurrence is consistent with and

---

<https://www.nrcm.org/documents/publiclandownership.pdf>.) In 1990, only 0.6% of land in California was Indian land. (See *The American Indian Digest*, app. D, tlb. D.2 <https://www.fs.fed.us/people/tribal/tribexd.pdf>.)

[34] Generic Tribal-State Gaming Compact, *supra*, § 4.2.

implements California's Indian gaming policy, as both Governor Brown and Governor Schwarzenegger have recognized.[35]

II. RIGOROUS FEDERAL REQUIREMENTS ENSURE THAT TRIBES MAY ACQUIRE LANDS FOR GAMING PURSUANT TO A TWO-PART DETERMINATION ONLY IN LIMITED CIRCUMSTANCES

Although tribes in California may conduct gaming on post-1988 Indian lands in certain circumstances, federal law imposes two sets of requirements before they can acquire such lands for gaming. The federal prerequisites for conducting gaming pursuant to a two-part determination are especially demanding and ensure that state governors will be asked to concur only in limited circumstances. Governor Brown's concurrences for North Fork and Enterprise noted his expectation that "few requests from other tribes" would "present the same kind of exceptional circumstances to support a similar expansion of tribal gaming land."[36] The federal regulatory requirements—and federal practice over the past three decades—validate that expectation.

---

[35] When then-Governor Schwarzenegger signed a compact with North Fork in 2008 for gaming on the Madera County land, he announced that he signed the compact "to highlight *the strong public policy rationale* and the significant financial and other state interests *behind his anticipated concurrence*" in the event that the Secretary issued a favorable two-part determination for gaming on that land. (Governor Announces Signing of Two Tribal Gaming Compacts, *supra* [italics added].)

[36] Governor Brown to Kenneth L. Salazar, Secretary, U.S. Dept. of Interior (Aug. 30, 2012) <https://www.gov.ca.gov/news.php?id=17700> [North Fork]; Governor Brown to Kenneth L. Salazar, Secretary, U.S. Dept. of Interior (Aug. 30, 2012) <https://www.gov.ca.gov/news.php?id=17699> [Enterprise].

A. The Indian Reorganization Act Requires The Secretary To Consider Rigorous Criteria Before Acquiring New Lands For Indian Tribes For Gaming Purposes

Congress has the sole power to acquire land in trust for Indian tribes. (See *Confederated Tribes of Siletz Indians v. United States* (9th Cir. 1997) 110 F.3d 688, 694.) Congress can enact legislation on behalf of a tribe either directly transferring land into trust or requiring the Secretary to take land into trust. In addition, under the Indian Reorganization Act ("IRA"), Congress has delegated authority to "the Secretary to choose which land is to be taken into trust but only within the guidelines expressed by Congress." (*Ibid.*) Federal regulations at 25 C.F.R. Part 151 set forth the administrative procedures that govern the Secretary's discretionary acquisition of land for Indian tribes under the IRA, including when the acquisition is for gaming purposes. Those regulations permit the Secretary to acquire land only after considering stringent criteria concerning the acquisition's impact on both the tribe and the affected community.

As a threshold matter, the Secretary must determine that the acquisition of the land is necessary to facilitate tribal self-determination or economic development, after considering the tribe's need for additional land, the purposes for which the land will be used, the anticipated economic benefits of the proposed use, and the location of the land relative to the boundaries of the tribe's reservations. (25 C.F.R. §§ 151.3(a)(3), 151.10(b)-(c), 151.11(a)-(c). The Secretary must also consider certain

impacts on the affected state and its political subdivisions, potential jurisdictional problems and conflicts of land use, and environmental effects. (*Id.* §§ 151.10(e)-(f), (h), 151.11(a).) The Secretary must consult with state and local governments in considering these impacts. (*Id.* §§ 151.10(e)-(f), 151.11(d).) Moreover, "as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" and "shall give greater weight" to the state and local governments' comments. (*Id.* § 151.11(b), (d).)

The Secretary ultimately approves discretionary trust acquisitions of Indian lands for gaming purposes only in limited circumstances, given these requirements under the IRA and the additional requirements that must be met for the land to become gaming-eligible under IGRA (discussed below). The Assistant Secretary of the Interior for Indian Affairs recently testified that "it is not uncommon for a decade of thoughtful deliberation to pass between the time a tribe applies for land into trust for gaming and the [Interior] Department decides on the application and, if successful, takes the land into trust."[37] Considering all tribal applications nationwide for such acquisitions in which the land would be gaming-eligible under any of

[37] Testimony of Kevin K. Washburn, Asst. Secy. for Indian Affairs, U.S. Dept. of Interior, Before U.S. Senate Com. on Indian Affairs (July 23, 2014) <https://www.doi.gov/ocl/hearings/113/indiangaming_072314>.

IGRA's exceptions, the Secretary approved fewer than 30 between 1988 and 2003[38] and fewer than 15 between 2009 and 2014.[39] Thus, on average only two or three tribes across the country have lands taken into trust for gaming purposes each year.

B. IGRA Authorizes The Secretary To Seek A Governor's Concurrence Only After Finding Additional Federal Requirements Satisfied

When a tribe seeks new land for gaming that would be eligible specifically under a two-part determination, the Secretary must determine that additional federal requirements at 25 C.F.R. Part 292 are satisfied before approving the tribe's application—or even involving the governor in the decision. Those regulations require the Secretary first to make a favorable two-part determination—concluding that the gaming establishment is in a tribe's best interest and would not be detrimental to the surrounding community—before a governor's concurrence can be requested. (25 C.F.R. § 292.22(c).)

The prerequisites for a favorable two-part determination are especially rigorous. The Secretary must evaluate detailed criteria pertaining to the tribe, including its historical connections to the land, its tribal employment, its proposed uses of gaming income, and the

---

[38] See OIG, Evaluation Report, *supra*, p. 12.

[39] See Testimony of Washburn, *supra*. North Fork is not aware of a reliable source of statistics for the intervening years (2004-2008).

"[p]rojected benefits to the relationship between the tribe and non-Indian communities." (25 C.F.R. §§ 292.17(b)-(e), (i), 292.21(a).) The Secretary must also evaluate detailed criteria pertaining to the effects of the proposed establishment on the surrounding community, including impacts on its environment, social structure, infrastructure, services, housing, character, land use patterns, economic development, income, and employment. (*Id.* §§ 292.18(a)-(g), 292.21(a).) The Secretary must consult with and consider the views of state, local, and nearby tribal officials in making the determination whether the establishment would or would not be detrimental to the surrounding community. (*Id.* § 292.19-20, 292.21(a).)

The Secretary must specifically consult with and consider the effects of the proposed establishment on "nearby Indian tribes," and those tribes are expressly included within the meaning of the "surrounding community." (25 C.F.R. § 292.2, 292.19(a)(2), 292.21(a).) The Secretary's examination of detrimental effects on the surrounding community includes detrimental financial effects on them. (73 Fed. Reg. 29,354, 29,371 (May 20, 2008).) The Secretary is also permitted to consult with tribes that are located beyond the surrounding community if they can establish that their governmental functions, infrastructure, or services will be directly, immediately, and significantly impacted. (25 C.F.R. § 292.2.) Thus, the federal regulations provide a mechanism under federal law to

address other tribes' claims that they may be aggrieved by a two-part determination for another tribe.

Few tribes have satisfied the onerous federal requirements in the Part 292 regulations. Since IGRA was enacted 29 years ago, the Secretary has sought a governor's concurrence for only 16 applications nationwide, of which governors concurred in 10.[40] Most applications for two-part determinations are not approved by the Secretary. For example, when North Fork submitted its application in 2006, 15 tribes in California had applications for a two-part determination pending before the Secretary.[41] The Secretary sought the Governor's concurrence for only three of them—for the Fort Mojave Indian Community in 2008,[42] and for North Fork and Enterprise in 2011.

North Fork's application illustrates the rigorousness of the federal process. The federal government engaged in years of consultations with

---

[40] See *id.* at p. 2 (noting 15 approvals and 9 concurrences as of 2013); Office of Indian Gaming, The Latest Decisions on Indian Gaming at Indian Affairs (noting additional approval in 2015 for Spokane Tribe) <https://www.bia.gov/as-ia/oig/content>.

[41] See Charlene Wear Simmons, *Gambling in the Golden State: 1998 Forward*, pp. 27-28 (May 2006) <https://oag.ca.gov/sites/all/files/agweb/pdfs/gambling/GS98.pdf>.

[42] For text of Governor Schwarzenegger's concurrence for the Fort Mojave Indian Tribe, see Carole Bacon, *Governor issues letter of concurrence for tribal casino*, Needles Desert Star (Dec. 24, 2008) <http://www.mohavedailynews.com/needles_desert_star/news/local_news/governor-issues-letter-of-concurrence-for-tribal-casino/article_a65b4b8c-3ec0-5267-aed1-af6994a5f624.html>.

state, local, and tribal officials; reviewed hundreds of public comments; and prepared a 911-page environmental impact statement, which included over 5,500 pages of appendices.[43] In 2011, after five years of federal review, the Secretary issued a favorable two-part determination, supported by an 89-page explanation that analyzed "the factors laid out in 25 C.F.R. Part 292, which the Secretary is required to consider (e.g., economic impacts of development, impacts on the surrounding community, historical connection to the land); and the mitigation measures that would be taken to lessen any potential negative impacts on the surrounding community and others outside that community." (*Stand Up*, *supra*, 204 F.Supp.3d at p. 233.) Only then was Governor Brown asked to concur. Indeed, Governor Brown's concurrence recognized that "[t]he federal administrative process giving rise to [the two-part] determination was extremely thorough" and "included numerous hearings, considered hundreds of comments, and generated thousands of pages of administrative records."[44]

---

[43] See Final Environmental Impact Statement: North Fork Rancheria of Mono Indians Fee-to-Trust and Casino/Hotel Project (Feb. 2009) <http://www.northforkeis.com/documents/final_eis/report.htm>.

[44] Governor Brown to Kenneth L. Salazar, Secretary, U.S. Dept. of Interior (Aug. 30, 2012) <https://www.gov.ca.gov/news.php?id=17700>.

C. Even After A Governor's Concurrence, The Secretary Must Still Exercise Discretion To Acquire New Land For Gaming Purposes

A governor's concurrence in a two-part determination does not itself take the land into trust or require the Secretary to do so. As the Seventh Circuit has explained, IGRA's "gubernatorial concurrence provision does not require or even permit any governor to ... take[] land into trust for the benefit of Indians." (*Lac Courte Oreilles*, *supra*, 367 F.3d at p. 658.) Tribes that receive a gubernatorial concurrence must also satisfy the IRA's regulations for discretionary trust acquisitions. (See *Sokaogon Chippewa Cmty. v. Babbitt* (W.D. Wis. 1996) 929 F.Supp. 1165, 1170 ["Even if ... the governor concurs in [the two-part] determination, the secretary must decide whether to exercise his discretion to acquire the land in trust."]; accord *Stand Up*, *supra*, 919 F.Supp.2d at p. 71.)

Moreover, a governor's concurrence does not guarantee that the Secretary will exercise discretionary authority to acquire the land. "[T]he primary responsibility of choosing land to be taken in trust still lies with Congress" and, under the IRA, with the Secretary. (*Confederated Tribes*, *supra*, 110 F.3d at p. 698.) To illustrate the point: At least one tribe in New York received both a favorable two-part determination under IGRA and a gubernatorial concurrence, but the Secretary nonetheless decided that

the acquisition was not warranted under the IRA's regulations.[45] In North Fork's case, after Governor Brown had concurred in August 2012, the Secretary issued a 69-page analysis in November 2012 explaining his decision to acquire the land under the IRA. (See *Stand Up*, *supra*, 204 F.Supp.3d at p. 234.) IGRA's and the IRA's stringent requirements ensure that tribes will acquire new land for gaming purposes only in limited circumstances.

III. THE CONCURRENCE POWER IS CONSISTENT WITH THE GOVERNOR'S ROLE IN OUR FEDERAL SYSTEM

IGRA's gubernatorial concurrence provision "is an example of contingent legislation, wherein Congress restricted the authority to execute federal legislation contingent on the approval of an actor external to the federal Executive Branch." (*Lac Courte Oreilles*, *supra*, 367 F.3d at p. 656 [citing *Confederated Tribes*, *supra*, 110 F.3d at pp. 694-695].) It is but one of many federal laws under which a federal agency must "consult with the chosen representative of the citizens of the States before executing the law." (*Id.* at p. 662.) The Governor of California's role under IGRA and other such contingent federal laws is consistent with the Governor's authority under state law.

---

[45] See Statement of Alex Skibine, Professor, University of Utah S.J. Quinney College of Law, Before U.S. House of Representatives Subcom. on Indian and Alaska Native Affairs, p. 4 (Sept. 19, 2013) <http://docs.house.gov/meetings/ii/ii24/20130919/101312/hhrg-113-ii24-wstate-skibinea-20130919.pdf>.

A. IGRA's Gubernatorial Concurrence Provision Is An Example Of Federal Laws That Condition Their Application On The Views Of State Governors

The Governor's brief cites several examples of the numerous federal laws that condition a federal agency's authority to act on the consent or concurrence of a state's governor. (See RABOM 41.) Many of these laws allow a governor to exempt conduct within the state from a federal prohibition or requirement.

The Governor of California routinely participates in these federal regimes. For example, a Temporary Assistance for Needy Families (TANF) provision prohibits unemployed parents not participating in community service from receiving more than two months of aid "unless the chief executive officer of the State opts out of this provision." (42 U.S.C. § 602(a)(1)(B)(iv).) Governor Wilson opted out.[46] Similarly, a federal Medicare reimbursement regulation allows governors to opt out of a requirement that physicians supervise nurse anesthetists. (See *Cal. Soc'y of Anesthesiologists v. Superior Ct.* (2012) 204 Cal.App.4th 390, 394-395), petn. review den. June 13, 2012, S201990.) The First Appellate District held that Governor Schwarzenegger properly "exercised his discretion under federal law and opted California out of the federal physician supervision Medicare reimbursement requirement"—without even

---

[46] See Gwendolyn Mink & Rickie Solinger, eds., *Welfare: A Documentary History of U.S. Policy and Politics*, p. 717 (2003).

questioning whether he had the underlying state-law authority to do so. (*Id.* at p. 395.)

The Governor's actions under these federal regimes do not violate state law. When the Governor acts pursuant to a federal law that instructs a federal agency to consider the Governor's view or to follow the Governor's decision in executing the federal law, the Governor's act does not usurp state legislative authority. Instead, the Governor's act affects only how the federal government applies *federal* regulatory authority.

IGRA is thus an example of federal legislation that makes the scope of federal regulatory authority contingent upon the Governor's view, allowing the Governor to exempt certain Indian lands in California from an otherwise applicable federal restriction on gaming. When the Governor decides whether to concur in a two-part determination, he acts as a "spokesperson of the object of regulation—the land—... empowered to invite, or refuse, *federal* regulation." (*Lac Courte Oreilles*, *supra*, 367 F.3d at p. 657 [italics added].) The gubernatorial concurrence "merely waives one legislatively enacted restriction on gaming" that *Congress* has imposed. (*Id.* at p. 659.) As the Ninth Circuit has explained, "[i]f the Governor concurs, or refuses to concur, it is as a State executive, under the authority of state law," but "[t]he concurrence (or lack thereof) is given effect under *federal* law." (*Confederated Tribes*, *supra*, 110 F.3d at p. 697 [italics added].) That is, *Congress* exercised the pertinent regulatory authority and

simply made that federal authority contingent on the Governor's decision. (See *id.* at p. 695 ["By requiring [gubernatorial] approval, Congress is exercising its legislative authority by providing what conditions must be met before a statutory provision goes into effect."].)

B. United Auburn Fails To Distinguish IGRA's Gubernatorial Concurrence Provision From Other Contingent Federal Legislation

United Auburn recognizes that some "federal statutes require the Governor's input or concurrence before certain federal actions can occur." (ARBOM 27.) Its arguments fail to distinguish IGRA from those statutes.

United Auburn first argues that the gubernatorial concurrence provision is different because the concurrence "has a significant legal effect." (ARBOM 26.) But as explained above, the legal effect is a federal one, not a state one; the legal effect of the Governor's concurrence is that the specific Indian lands at issue are exempted from IGRA's otherwise applicable *federal* prohibition on Indian gaming. (See 25 U.S.C. § 2719(a), (b)(1)(A).) IGRA is no different from other federal laws that require a federal agency to follow the Governor's view and to give it legal effect under federal law—all of which have "significant legal effect." The Governor's decisions to opt out of the TANF and Medicare requirements above, for example, determined what conduct was federally required to receive federal funds. Similarly, the concurrences in the statutes that the Governor's brief cites were necessary to authorize the federal agency to

take action, such as acquiring federal land (42 U.S.C. § 7916; 54 U.S.C. § 101501(c)(2)) or deferring federal requirements (42 U.S.C. § 9620(h)(3)(C)(i)). (See RABOM 41.) Nor does United Auburn distinguish the IGRA concurrence by arguing that its legal effect "authorize[s] conduct that the Constitution otherwise expressly prohibits." (ARBOM 27.) The Constitution does not prohibit gaming on Indian lands, including on post-1988 Indian lands, for the reasons above. (See *supra*, Section I.)

United Auburn also argues that "absent some specific legal authority, the Governor cannot take an action that has the legal effect of binding the state to a contract." (ARBOM 26.) That is a red herring: The concurrence does not bind the State to a contract or to anything at all; its legal effect merely is to remove a federal restriction on gaming. The concurrence power thus differs from the Governor's power to negotiate and execute tribal-state compacts for class III gaming, which are subject to legislative ratification. (See Cal. Const., art. IV, § 19(f).) A class III gaming compact imposes contractual obligations on the State. If approved by the federal government, the compact will bind the State to the compact's terms and will authorize the State to exercise regulatory authority over the Indian gaming that Congress and the tribe have delegated to the State. (See 25 U.S.C. § 2710(d)(3).) In contrast, the Governor's concurrence does not commit the State to regulate or to refrain from regulating anything.

IGRA accordingly distinguishes between "the State" entering into a class III compact and "the Governor of a State" concurring in a two-part determination. It provides that "[a]ny *State* and any Indian tribe may enter into a Tribal-State compact" but that the concurrence is by "*the Governor of the State* in which the gaming activity is to be conducted." (25 U.S.C. §§ 2710(d)(3)(B), 2719(b)(1)(A) [italics added]; see 73 Fed. Reg. at p. 29,371 [rejecting recommendation that state legislature must also concur in the governor's decision, "because IGRA specifically identifies the Governor and not the State; this provision is distinguished from other sections of IGRA that specifically mention the State"].) Similarly, California law requires legislative ratification for the *State* to enter into a class III compact, but it does not prevent *the Governor* from concurring in a two-part determination.

C. Other States Treat The Concurrence Power As An Exercise Of Executive Authority Under State Law

Finally, United Auburn argues that the Governor lacks executive authority to concur by pointing to other states, asserting that "courts in other states have concluded that power over gaming is presumptively legislative." (AOBOM 28; see also ARBOM 36-37 [asserting "these cases are further evidence ... that control over gaming is legislative"].) But the Governor's argument does not depend on whether power over *gaming generally* is legislative or executive. In California, the Legislature—and

the electorate—have set the State's gaming policy by authorizing certain gaming activities generally and additional class III gaming activities specifically on Indian lands. The Governor's concurrence implements that legislatively established policy, as the Third Appellate District correctly explained. (Opn. 18-19.)

The cases on which United Auburn relies are about states' authority to enter into a class III gaming compact—not about a governor's authority to concur. (See AOBOM 28, fn. 5.) They hold simply that their states' laws require legislative approval of compacts, just as California law does. They do not, however, go further to hold that the concurrence power also is a legislative power—quite the contrary.

United Auburn notes that the New York Court of Appeals has held that the state constitution prohibits the governor from entering into a class III compact without legislative ratification. (AOBOM 28, fn. 5 [citing *Saratoga County Chamber of Commerce, Inc. v. Pataki* (N.Y. 2003) 798 N.E.2d 1047].) But United Auburn fails to note that the New York Court of Appeals has separately held that the governor has authority to concur in a two-part determination, even though there is no state law expressly authorizing a concurrence. In *Dalton v. Pataki* (N.Y. 2005) 835 N.E.2d 1180, that court rejected the argument that the state constitution and "New York's public policy against commercial gambling prevent the Governor" from concurring in a two-part determination. (*Id.* at p. 1191.) "The

Constitution plainly does not prevent the Governor from determining that there would be no detrimental effect on a particular community." (*Ibid.*) Thus, in 2007, the New York governor concurred in a two-part determination for the Saint Regis Mohawk.[47]

Similarly, United Auburn notes that the Wisconsin Supreme Court has held that the state legislature must approve class III compacts. (AOBOM 28 fn. 5 [citing *Panzer v. Doyle* (Wis. 2004) 680 N.W.2d 666, abrogated on other grounds by *Dairyland Greyhound Park, Inc. v. Doyle* (Wis. 2006) 719 N.W.2d 408].) It also suggests that, under *Lac Courte Oreilles*, "the state legislature's preexisting policy" requires the Wisconsin governor "not to concur" in a two-part determination. (AOBOM 29.) Not so. In 1990, the Wisconsin governor concurred in a two-part determination for the Forest County Potawatomi Community, which entered into a class III compact with the State of Wisconsin and began conducting gaming on the land soon afterward. (See *Forest County Potawatomi Cmty. v. Doyle* (W.D. Wis. 1992) 803 F.Supp. 1526, 1530-1532.) In *Lac Courte Oreilles*, the Wisconsin governor made the discretionary policy decision not to concur in a different two-part determination, but he had authority to do so, as the earlier concurrence illustrates. The Seventh Circuit concluded that

---

[47] See *Governor Spitzer Grants Concurrence for St. Regis Mohawk Casino*, Business Wire (Feb. 20, 2007) <http://www.businesswire.com/news/home/20070220005365/en/Governor-Spitzer-Grants-Concurrence-St.-Regis-Mohawk>.

the governor's decision whether to concur is "not inconsistent with the Wisconsin Constitution, which vests 'the executive power ... in a governor.'" (*Lac Courte Oreilles*, *supra*, 367 F.3d at pp. 664-665.)

United Auburn likewise contends that the Michigan Supreme Court has held that the state legislature must approve class III compacts. (AOBOM 28 fn. 5 [citing *Taxpayers of Mich. Against Casinos v. State of Mich.* (Mich. 2007) 732 N.W.2d 487)].) But the Michigan governor has exercised unilateral authority to concur in a two-part determination, for the Keweenaw Bay Indian Community in 2000.[48] In an earlier case about whether that tribe needed a two-part determination when it already had a class III compact, the Sixth Circuit held that it did, explaining that IGRA specifically requires a concurrence by the governor, even though a state's means of entering into a compact is "varied and dependent on the relevant state's laws," which may not involve the governor. (*Keweenaw Bay Indian Cmty. v. United States* (6th Cir. 1998) 136 F.3d 469, 477.)[49]

United Auburn is asking this Court to be the first high court in the country to hold that its state's laws prevent its governor from exercising the role Congress that provided under IGRA—without regard to the destructive

---

[48] See Boylan, *supra*, p. 11, fn. 50.

[49] The Secretary of the Interior has never asked the governor to concur in any of the other states United Auburn discusses.

consequences of such a ruling for the broader enterprise of cooperative federalism. This Court should reject United Auburn's invitation to do so.

CONCLUSION

For the foregoing reasons, the Court should affirm.

DATED: September 22, 2017

Respectfully submitted,

Christopher E. Babbitt (#225813)

WILMER CUTLER PICKERING
HALE AND DORR LLP
Danielle Spinelli (*pro hac vice* filed)
*Christopher E. Babbitt (#225813)
Counsel of Record
Jonathan A. Bressler (*pro hac vice* filed)
Claire Chung (*pro hac vice* filed)
1875 Pennsylvania Ave., NW
Washington, DC 20006
Telephone: 202.663.6000
Facsimile: 202.663.6363
christopher.babbitt@wilmerhale.com

MAIER PFEFFER KIM
GEARY & COHEN LLP
John A. Maier (#191416)
1970 Broadway, Suite 825
Oakland, CA 94612
Telephone: 510.835.3020
Facsimile: 510.835.3040
jmaier@jmandmplwa.com

Attorneys for *Amicus Curiae*
North Fork Rancheria of Mono Indians

CERTIFICATE OF WORD COUNT

I hereby certify that, including footnotes, the foregoing brief contains 9,476 words. The undersigned has relied on the word count feature of Microsoft Word 2010, the computer program used to prepare this brief, in preparing this certificate.

DATED: September 22, 2017

Respectfully submitted,

Christopher E. Babbitt (#225813)

WILMER CUTLER PICKERING
HALE AND DORR LLP

Attorney for *Amicus Curiae*
North Fork Rancheria
of Mono Indians

CERTIFICATE OF SERVICE

United Auburn Indian Community of the Auburn Rancheria. v. Edmund G. Brown Jr.,.
California Court of Appeal, Third Appellate District, Case No. C075126
Sacramento County Superior Court, Case No. 34-2013-80001412CUWMGDS

I, the undersigned, declare:

I am employed in Washington, DC. I am over the age of 18 and not a party to the within action. My business address is 1875 Pennsylvania Avenue NW, Washington, DC 20006.

On September 22, 2017, I served the foregoing documents described as:

NORTH FORK RANCHERIA OF MONO INDIANS' APPLICATION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* AND BRIEF AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-RESPONDENT EDMUND G. BROWN JR.

On the interested parties in this action as follows:

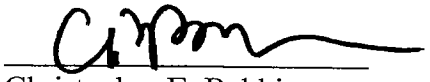
SEE ATTACHED SERVICE LIST

By causing the document listed above to be served on the parties by:

☒ **Federal Express (FedEx)**: By putting a true and correct copy thereof, together with a signed copy of this declaration in a sealed envelope with postage thereon fully prepaid, in FedEx at Washington, DC, addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for FedEx mailing. It is deposited with FedEx each day and that practice was followed in the ordinary course of business for the service herein attested to.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 22, 2017, at Washington, DC.



Christopher E. Babbitt

SERVICE LIST

United Auburn Indian Community of the Auburn Rancheria. v. Edmund G. Brown Jr.,.
California Court of Appeal, Third Appellate District, Case No. C075126
Sacramento County Superior Court, Case No. 34-2013-80001412CUWMGDS

Michael J. Mongan Office of the Attorney General 455 Golden Gate Avenue Suite 11000 San Francisco, CA 94102-7004 Michael.Mongan@doj.ca.gov	Attorney for Defendant and Respondent Edmund G. Brown Jr.
Thomas F. Gede Morgan, Lewis & Bockius LLP One Market Street, Spear Tower San Francisco, CA 94105	Attorney for Plaintiff and Appellant United Auburn Indian Community of the Auburn Rancheria.