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THE ESTOM YUMEKA MAIDU TRIBE OF THE
13 ENTERPRISE RANCHERIA, CALIFORNIA

14
15 **UNITED STATES DISTRICT COURT**
16 **EASTERN DISTRICT OF CALIFORNIA**
17 **SACRAMENTO DIVISION**

18 UNITED AUBURN INDIAN
19 COMMUNITY OF THE AUBURN
RANCHERIA

20 Plaintiff.

21 vs.

22 KENNETH LEE SALAZAR, et al
Defendants, and
23 THE ESTOM YUMEKA MAIDU TRIBE
24 OF THE ENTERPRISE RANCHERIA,
CALIFORNIA,

25 Intervenor Defendant.
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27
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CASE NO. 12-CV-03021-TLN-AC

(Consolidated Cases)

**INTERVENOR-DEFENDANT'S
60-DAY NOTICE OF CONSTRUCTION
ACTIVITIES**

1 CITIZENS FOR A BETTER WAY, et al.
2 Plaintiffs.

3 vs.

4 UNITED STATES DEPARTMENT OF
5 INTERIOR, et al.,

6 Defendants, and

7 THE ESTOM YUMEKA MAIDU TRIBE
8 OF THE ENTERPRISE RANCHERIA,
9 CALIFORNIA,

10 Intervenor Defendant.

11 CACHIL DEHE BAND OF WINTUN
12 INDIANS OF THE COLUSA INDIAN
13 COMMUNITY, a federally recognized
14 Indian Tribe,

15 Plaintiff,

16 vs.

17 S.M.R. JEWELL, Secretary of the Interior,
18 et al.,

19 Defendants, and

20 THE ESTOM YUMEKA MAIDU TRIBE
21 OF THE ENTERPRISE RANCHERIA,
22 CALIFORNIA,

23 Intervenor Defendant.

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1 Pursuant to the Court's March 4, 2013 Order Governing Further Proceedings (ECF 69),
2 Intervenor-Defendant the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, California
3 (the "Tribe") respectfully submits this 60-Day Notice of Construction Activities planned for land
4 held in trust for the Tribe near Olivehurst, California (the "Yuba Site").

5 **I. BRIEF SUMMARY OF RELEVANT BACKGROUND**

6 **A. The Tribe**

7 In 1965, the United States transferred the Tribe's only usable reservation land to the State
8 of California for the State's construction of Oroville Dam. The United States provided a small
9 reimbursement to four tribal members, but never offered compensation or replacement land to
10 the Tribe or to the remainder of the Tribe's membership.

11 For nearly 50 years, this taking left the Tribe without the land base necessary for housing,
12 economic development, or any real prospect for self-sufficiency. As a result, the Tribe's 900
13 members have had few educational opportunities, suffer high rates of unemployment and
14 poverty, and are disproportionately dependent on state and federal assistance programs.

15 **B. The Approved Project**

16 In an effort to remedy this situation, the United States Department of the Interior and the
17 Bureau of Indian Affairs (together, "Interior") have (1) acquired the Yuba Site in trust for the
18 Tribe pursuant to the Indian Reorganization Act ("IRA") and (2) approved the Tribe's proposal
19 to develop a Class III casino¹ and resort project at the Yuba Site (the "Approved Project")
20 pursuant to the Indian Gaming Regulatory Act ("IGRA").

21 Interior made those decisions on the basis of a careful, decade-long environmental
22 review process conducted pursuant to the National Environmental Policy Act ("NEPA"). The
23 NEPA process was memorialized in an Environmental Impact Statement ("EIS") that included
24 nearly 500 pages of environmental analysis and an additional 2,888 pages of expert technical
25 _____

26 ¹ IGRA divides casino gaming into three Classes: Class I gaming generally consists of social or
27 traditional games played for prizes of minimal value; Class II gaming generally consists of
28 bingo, pull-tabs, and other similar games; and Class III gaming includes all other gaming
activities, such as casino games (blackjack, baccarat, etc.) and slot machines. See 25 U.S.C. §
2703(6)-(8).

1 reports. The EIS demonstrates that the Approved Project, with the implementation of
2 recommended mitigation measures, will not have any significant impact on the environment.

3 **C. Prior Preliminary Injunctive Relief Proceedings**

4 In December, 2012 and January, 2013, Plaintiffs sought preliminary injunctive relief
5 barring all construction at the Yuba Site. Tribal Chairwoman Glenda Nelson submitted a
6 Declaration stating that construction was not imminent and committing the Tribe to provide at
7 least 30 days' notice before beginning any construction activities. *See* Declaration of Glenda
8 Nelson in Support of Motion to Intervene (ECF 13-3) at 5.

9 The Court's March 4, 2013 Order Governing Further Proceedings took Plaintiffs'
10 preliminary injunction motions off calendar, extended the Tribe's 30-day notice period to 60
11 days, and specified procedures and deadlines for any future requests for preliminary injunctive
12 relief. *See* Stipulation and Order Governing Further Proceedings (ECF 69) at 2.

13 **D. Class III Gaming Compact Negotiations**

14 Among other things, IGRA requires that all tribes seeking to conduct Class III gaming
15 activities "request the State in which [tribal] lands are located to enter into negotiations for the
16 purpose of entering into a Tribal-State compact governing the conduct of gaming activities." 25
17 U.S.C. § 2710(d)(3)(A). IGRA further mandates that all states enter and conduct such
18 negotiations in good faith. 25 U.S.C. § 2710(d)(7)(A). A state's failure to negotiate in good
19 faith triggers certain dispute-resolution processes pursuant to which a Class III gaming compact
20 may be prescribed, after a period of several months, by a mediator or by the Secretary of the
21 Interior. *See* 25 U.S.C. §§ 2710(d)(7)(B). Class II gaming activities do not require a tribal-state
22 compact. 25 U.S.C. §§ 2710(a)-(c).

23 The Tribe and the Governor of California successfully negotiated and executed a Class
24 III gaming compact in August, 2012. The compact was then transmitted to the California
25 Legislature for ratification. The Legislature took no action: It failed to ratify the compact, to
26 identify concerns about the compact, or to propose new compact terms that would allow the
27 Tribe and the Governor to address any such concerns.

28 On August 20, 2014, the Tribe filed suit against the State of California for failing to

1 negotiate in good faith. That related case (No. 2:14-cv-01939-TLN-CKD) is currently pending
2 before the Court.

3 **II. NOTICE OF CONSTRUCTION ACTIVITIES**

4 The above-described compact dispute is likely to delay full build-out of the Tribe's Class
5 III Approved Project for a substantial period of time. That delay, in turn, will impose substantial
6 additional costs on the Tribe and will prevent the Tribe and the surrounding community from
7 realizing the benefits of the Approved Project.

8 To mitigate those harms, the Tribe now plans to initiate construction of a small,
9 temporary Class II gaming facility at the Yuba Site (the "Temporary Facility"). The Temporary
10 Facility will be strictly limited to Class II gaming, and therefore will not require a tribal-state
11 compact.

12 The Temporary Facility will include a small gaming floor, office space, and modest
13 "back-of-house" facilities. It will not have permanent water and wastewater connections;
14 instead, water will be trucked in and wastewater trucked out.

15 In total, the Temporary Facility will be approximately 10,000 square feet. By way of
16 comparison, the Approved Project would cover 317,885 square feet.

17 The Temporary Facility will be designed and implemented so as to avoid any portion of
18 the Yuba Site identified as garter snake habitat, a potential wetland, or within the 100-year flood
19 plain. It will also comply with all applicable mitigation measures set forth in Interior's EIS and
20 Record of Decision. An initial draft site plan is attached for reference (*see* Exhibit 1).

21 **III. BRIEFING SCHEDULE**

22 The Court's March 4, 2013 Order Governing Further Proceedings requires any Plaintiff
23 seeking preliminary injunctive relief to file a motion within 15 days of receiving this Notice. To
24 obtain a preliminary injunction, a Plaintiff "must establish that he is likely to succeed on the
25 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
26 balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v.*
27 *Nat'l Res. Def. Council*, 555 U.S. 7, 20 (2008).

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1 Unlike a typical case where a motion for preliminary injunctive relief precedes briefing
2 of the merits, in this case the merits have already been fully briefed and submitted for the Court's
3 decision. Accordingly, further briefing on Plaintiffs' likelihood of success on the merits would
4 be redundant and risks wasting the resources of the parties and the Court. With that
5 consideration in mind, the Tribe recognizes that the Court may wish to order that further
6 briefing, if needed, be limited to the remaining elements of the four-factor standard for
7 preliminary injunctive relief: the likelihood of irreparable harm, the balance of the equities, and
8 the public interest.

9 The Tribe has separately communicated notice of its planned construction activities to
10 counsel for all parties in this matter (*see* Exhibit 2).

11
12 Dated: June 15, 2015

Respectfully Submitted,

13
14 DENTONS US LLP

15 By /s/ Matthew G. Adams
16 NICHOLAS C. YOST
17 MATTHEW G. ADAMS
18 JESSICA L. DUGGAN

19 Attorneys for Intervenor-Defendant
20 THE ESTOM YUMEKA MAIDU TRIBE OF
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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2015, true and correct copies of **INTERVENOR-DEFENDANT'S 60-DAY NOTICE** were served electronically on all parties for which attorneys to be noticed have been designated, via the CM/ECF system for the U.S. District Court for the Eastern District of California.

Respectfully submitted,

Dated: June 15, 2015

DENTONS US LLP

By: /s/ Matthew Adams

MATTHEW G. ADAMS

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THE ESTOM YUMEKA MAIDU
TRIBE OF THE ENTERPRISE
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