

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

STAND UP FOR CALIFORNIA!; et al.,  
Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE  
INTERIOR, et al.,  
Defendants.

Civil Action No. 1:12-cv-02039-BAH

Consolidated with:  
Civil Action No. 1:12-cv-02071-BAH

PICAYUNE RANCHERIA OF THE  
CHUKCHANSI INDIANS,  
Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,  
Defendants.

**INTERVENOR THE NORTH FORK RANCHERIA OF MONO INDIANS’  
NOTICE OF PLANNED PRE-CONSTRUCTION ACTIVITIES ON THE MADERA SITE**

Intervenor the North Fork Rancheria of Mono Indians hereby provides the following Notice of Prospective Activities on the Madera Site pursuant to this Court’s January 29, 2013 Order requiring North Fork to provide all parties and the Court with at least 120 days’ notice prior to any physical alteration of the Madera Site (Dkt. No. 41).

1. On January 29, 2013, this Court ordered that North Fork “shall, during the pendency of this case, provide all parties and the Court with notice at least 120 days prior to any physical alteration of the Madera Site.” Dkt. No. 41, at 1-2. The Court defined the term

“physical alteration” to include “anything that could reasonably be considered construction activities, the breaking of any ground at the site, or the destruction of any structures that presently exist on the land.” Dkt. No. 42, at 50.

2. On February 5, 2013, the Secretary of the Interior took the Madera Site into trust for North Fork.

3. On March 17, 2015, North Fork filed an action in the Eastern District of California against the State of California pursuant to the remedial provision of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(7), seeking a declaration that the State failed to comply with IGRA’s requirement, *id.* § 2710(d)(3)(A), that the State negotiate in good faith with North Fork to enter into an enforceable tribal-state gaming compact, and an order directing the State to conclude an enforceable compact with North Fork within 60 days or submit to mediation, *see id.* § 2710(d)(7)(B)(iii)-(iv).

4. On November 13, 2015, the U.S. District Court for the Eastern District of California entered judgment in North Fork’s favor, finding that “the State failed to enter into negotiations with North Fork for the purpose of entering into a Tribal-State compact within the meaning of § 2710” and ordering the parties “to conclude a compact within 60 days of the date of this order.” *North Fork Rancheria of Mono Indians of California v. State of California*, No. 15-cv-419-AWI-SAB, Order on Cross-Motions for Judgment on the Pleadings, Dkt. No. 25, at 23 (E.D. Cal. Nov. 13, 2015) (*North Fork v. State*).

5. Pursuant to that order, North Fork and the State returned to the negotiating table in an effort to conclude a new tribal-state gaming compact for the Madera Site. They were unable to do so within the prescribed 60-day period, *see* 25 U.S.C. § 2710(d)(7)(B)(iii). Accordingly, on January 13, 2016, the U.S. District Court for the Eastern District of California

ordered North Fork and the State to show cause why the court should not require the parties to submit to mediation pursuant to IGRA, *id.* § 2710(d)(7)(B)(iv), for having failed to conclude a compact within the 60-day period that IGRA prescribes. *North Fork v. State*, Dkt. No. 26, at 1 (E.D. Cal. Jan. 13, 2016).

6. On January 19, 2016, the U.S. District Court for the Eastern District of California issued an order tentatively selecting Zela G. Claiborne as mediator. *North Fork v. State*, Dkt. No. 28, at 1 (E.D. Cal. Jan. 20, 2016). On January 26, 2016, the U.S. District Court for the Eastern District of California issued an order confirming Ms. Claiborne as mediator. *North Fork v. State*, Dkt. No. 30, at 1 (E.D. Cal. Jan. 26, 2016). That order required North Fork and the State each to submit to the mediator by February 5, 2016 “a proposed compact that represents their last best offer for a compact,” from which the mediator “shall select ... the one which best comports with the terms of [IGRA], ... any other applicable Federal law[,] and with the findings and order ... of th[is] court.” *Id.* (quoting 25 U.S.C. §2710(d)(7)(B)(iv)). The order also provides that once the mediator selects a compact as directed, the State shall have 60 days to consent to the selected compact, failing which the Secretary of the Interior shall prescribe procedures under which North Fork may conduct class III gaming. *Id.* at 1-2 (citing 25 U.S.C. § 2710(d)(7)(B)(v)-(vii)).

7. On February 5, 2016, the State and North Fork each submitted proposed compacts representing their last best offers to the mediator. On February 11, 2016, the mediator notified the parties that she had selected North Fork’s compact as the compact that best comports with the law and the orders of the court, giving the State until April 11, 2016, to give final and binding consent to the compact.

8. In light of these recent developments, North Fork plans to undertake four pre-construction activities, specified below, on the Madera Site so that it can obtain the information

necessary to move forward with the design of its proposed gaming facility and commence construction following such design activities and after this Court rules on the pending motions for summary judgment. In particular, North Fork plans to undertake the following four pre-construction activities:

A. Re-surveying the Madera Site to update the topographical map of the property, confirm grades of adjacent streets and other features, and generally determine whether there have been any physical changes to the Madera Site. Re-surveying the Madera Site will require a crew of two or three people to access various locations on the Madera Site using a four-wheel drive vehicle. Over a two-week period, the surveying crew will set up surveying equipment in each location in order to conduct the survey. No surveying equipment will remain on the property after the completion of the survey, and no lasting physical alteration of the Madera Site is expected from this activity.

B. Updating the biological constraints analysis and confirming the wetlands delineation to inform compliance with the mitigation measures for biological resources under Section 6.4 of the Record of Decision. Updating the biological constraints analysis and wetlands delineation will require a team of two or three biologists to access various locations on the Madera Site using a four-wheel drive vehicle and then walk the property in order to conduct a field survey to verify potential biological constraints and any changes in wetlands or other on-site waters. No lasting physical alteration of the Madera Site is expected from this activity.

C. Ground water monitoring and testing. Prior to commencement of construction on the Madera Site, a ground water monitoring plan must be implemented and the ground water must be tested pursuant to mitigation measures H and L for water resources under Section 6.2 of the Record of Decision. In order to start the ground water monitoring plan and test the ground water, a crew of three or four people will need to access several locations on the Madera Site, drill test wells of 6-8 inches in diameter using a mobile, vehicle-mounted drill rig, and install pipes and monitoring equipment at each location. These drilling activities could take several weeks and the ground water monitoring program will continue for as long as the wells are in service. If ordered to do so, the wells could be capped and the monitoring equipment removed following the completion of the monitoring.

D. Geotechnical soil sampling. In order to correctly design the foundations of the structures to be built on the Madera Site in conformity with the mitigation measure for geology and soils under Section 6.1 of the Record of Decision and other requirements, the types of soils that comprise the site must be tested and analyzed. Geotechnical soil testing will require a crew of three people to access six to eight locations on the Madera Site and take soil samples in each location using a mobile, vehicle-mounted drill rig. In order to obtain the necessary soil samples, borings approximately 6 inches in diameter and as much as 50 or 60 feet in depth will be made using the drill rig. These activities

will take approximately seven to ten days. No lasting physical alteration of the Madera Site is expected from this activity.

9. North Fork does not believe that these pre-construction activities fall within the scope of the Court's January 29, 2013 Order, but it is providing this notice out of an abundance of caution in the event that the Court or any other party disagrees. The Tribe is concurrently filing a Motion for Relief from the January 29, 2013 Order to seek permission to conduct the noticed activities prior to the expiration of the 120-day period, as well as a Motion for Relief from the Temporary Stay entered on September 30, 2015.

Dated: February 18, 2016

Respectfully submitted,

/s/ Christopher E. Babbitt

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*Counsel for North Fork Rancheria of Mono Indians*

**CERTIFICATE OF SERVICE**

I certify that on February 18, 2016, the foregoing Notice was filed electronically through the Court's ECF system, which distributes an electronic copy to all counsel of record.

Dated: February 18, 2016

/s/ Christopher E. Babbitt

Christopher E. Babbitt (D.C. Bar No. 982508)