

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KAWAIISU TRIBE OF TEJON, and
DAVID LAUGHING HORSE ROBINSON,
Chairman, Kawaiisu Tribe of Tejon

Case No.: 1:09 CV 01977 OWW SMS

Plaintiffs,

vs.

KEN SALAZAR, in his official capacity as
Secretary of the United States Department of
Interior, et. al.

Defendants

PLAINTIFF’S ORDER RE DEFENDANTS’
MOTIONS TO DISMISS (DOCS. 81, 83, 85,
100); AND PLAINTIFFS’ REQUEST FOR
LEAVE TO AMEND COMPLAINT (DOC.
100) AND FOR CERTIFICATION OF THE
ADMINISTRATIVE RECORD (DOC. 105)

Upon consideration of Defendant Salazar’s, Kern County’s, and Tejon Mountain Village LLC’s Motions to Dismiss and Plaintiffs’ Request for Leave to Voluntarily Dismiss Claims Against Defendant Salazar, and having heard and considered the arguments of counsel on January 24, 2011, and consistent with the memorandum decision dated February 4, 2011, IT IS HEREBY ORDERED that Defendants’ Motions to Dismiss Plaintiffs’ First Amended Complaint and Plaintiffs’ Request for Leave to Voluntarily Dismiss Claims are GRANTED, as set forth below:

(1) Plaintiffs’ request for voluntary dismissal of claims against Defendant Salazar is GRANTED and all claims against Defendant Salazar are DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of Civil Procedure 41(A)(i);

(2) Defendants Kern County’s and Tejon Mountain Village’s Motions to Dismiss:

(a) the NEPA and NHPA claims are GRANTED WITHOUT LEAVE TO

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1 AMEND and WITH PREJUDICE;

2 (b) the ARPA claim is GRANTED WITHOUT LEAVE TO AMEND but
3 WITHOUT PREJUDICE to the extent that the Bureau of Indian Affairs later grants
4 Plaintiffs federal recognition in accordance with the procedures for establishing that an
5 American Indian group exists as an Indian tribe set forth in 25 C.F.R. Part 83;

6 (c) the NAGPRA claim is GRANTED WITH LEAVE TO AMEND if
7 Plaintiffs can first establish a current possessory interest in the land in question through
8 some mechanism other than NAGPRA;

9 (3) Plaintiffs' unopposed request for leave to amend its 42 U.S.C. § 1983/equal
10 protection claim against NAHC is GRANTED and NAHC's motion to dismiss is DENIED as
11 MOOT;
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13 (4) There is no basis for the exercise of supplemental jurisdiction over Plaintiffs'
14 CEQA, California Public Resources Code section 5097.94, and SB 18 claims. Accordingly,
15 Kern County and Tejon Mountain Village's Motions to Dismiss are GRANTED WITH LEAVE
16 TO AMEND, subject to Plaintiffs' alleging a valid federal cause of action against Kern County
17 and Tejon Mountain Village that substantially relates to Plaintiffs' CEQA, California Public
18 Resources Code section 5097.94, and SB 18 claims;
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20 (5) Plaintiffs' request that the Court order Kern County to produce a CEQA
21 administrative record is DENIED;
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23 (6) Plaintiffs shall be afforded the opportunity to assert a land-based claim for
24 enforcement of aboriginal title in any amended complaint, subject to any defenses ; and
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26 (7) Plaintiffs shall have fifteen days from entry of this order to file an amended complaint
27 that complies with requirements set forth under *Iqbal* and *Twombly*.

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1 IT IS SO ORDERED.

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3 Date: February 22, 2011

4 By: /s/ OLIVER W. WANGER
5 Honorable Oliver W. Wanger
6 Judge of the United States District Court
7 Eastern District of California
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