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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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FRIENDS OF AMADOR COUNTY, BEA  
CRABTREE, JUNE GEARY,

NO. CIV. 2:10-348 WBS CKD

Plaintiffs,

MEMORANDUM AND ORDER RE:  
MOTION TO DISMISS

v.

KENNETH SALAZAR, SECRETARY OF  
THE UNITED STATES DEPARTMENT  
OF INTERIOR, United States  
Department of Interior, THE  
NATIONAL INDIAN GAMING  
COMMISSION, GEORGE SKIBINE,  
Acting Chairman of the  
National Indian Gaming  
Commission, THE STATE OF  
CALIFORNIA, Arnold  
Schwarzenegger Governor of the  
State of California,

Defendants.

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Plaintiffs Friends of Amador County, Bea Crabtree, and  
June Geary brought this action against defendants Kenneth Salazar  
in his capacity as the Secretary of the United States Department  
of Interior ("Secretary"), the National Indian Gaming Commission

1 ("NIGC"), and George Skibine (collectively the "Federal  
2 Defendants"), as well as the State of California ("State") and  
3 Governor Arnold Schwarzenegger ("Governor," collectively the  
4 "State Defendants") arising out of plaintiffs' objections to a  
5 tribal-state compact allowing the construction of a casino by the  
6 Buena Vista Rancheria of Me-Wuk Indians ("Tribe") in Amador  
7 County. The State Defendants have previously been dismissed from  
8 the suit. Presently before the court is the Tribe's special  
9 appearance as a non-party to present a motion to dismiss the  
10 Complaint for failure to join the Tribe and State as necessary  
11 parties under Federal Rule of Civil Procedure 19.

12 I. Factual and Procedural Background

13 In 1999, then-California Governor Gray Davis entered  
14 into a series of tribal-state compacts with fifty-nine different  
15 Indian tribes, including the Tribe, allowing class III gaming<sup>1</sup> on  
16 tribal land pursuant to the compacting requirements of the Indian  
17 Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721. (Compl.  
18 ¶ 22.) These compacts were subsequently ratified by the  
19 California legislature. (Id.) In August 2004, the Tribe and the  
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21 <sup>1</sup> Three classes of gaming are subject to regulation under  
22 IGRA. Class I gaming includes "social games solely for prizes of  
23 minimal value or traditional forms of Indian gaming," 25 U.S.C. §  
24 2703(6), and is subject to solely tribal regulation. Id. §  
25 2710(a)(1). Class II gaming is regulated through joint federal-  
26 tribal regulation, id. § 2710(a)(2), and includes games such as  
27 bingo and card games that are "explicitly authorized" or "are not  
28 explicitly prohibited by laws of the State . . . but only if such  
card games are played in conformity" with the state's laws and  
regulations. Id. § 2703(7). Class III gaming includes "all  
forms of gaming that are not class I gaming or class II gaming,"  
such as casino games, slot machines, and lotteries, id. §  
2703(8), and can only be authorized through a tribal-state  
compact, subject to federal approval and oversight. Id. §  
2710(d)(1).

1 Governor negotiated and completed an amended compact (the  
2 "Compact"), which was ratified by the California legislature and  
3 submitted to the Secretary as required by IGRA in September 2004.  
4 See Cal. Gov't Code § 12012.45. The Secretary then approved the  
5 Compact, which became effective as a matter of law. Notice of  
6 Approved Tribal-State Class III Gaming Compact, 69 Fed. Reg.  
7 76004-01 (Dec. 20, 2004).

8 Plaintiffs allege that the Compact between the State  
9 and the Tribe is illegal under IGRA. The Complaint alleges that  
10 the Tribe's land is not eligible for class III gaming because it  
11 is owned in fee simple, not in trust by the federal government,  
12 and accordingly is not "Indian land" as required under the  
13 statute. (Compl. ¶¶ 8-9.) The Complaint further claims that the  
14 Tribe's federal recognition is invalid because it was established  
15 by individuals who were not true descendants of the Buena Vista  
16 Rancheria of Me-Wuk Indians and that plaintiffs Crabtree and  
17 Geary are true descendants of the peoples who lived on the Buena  
18 Vista Rancheria land. (Id. ¶¶ 16-18.) Plaintiffs accordingly  
19 allege that the Federal Defendants' approval of class III gaming  
20 on the Tribe's land was arbitrary, capricious, and contrary to  
21 IGRA and that the State Defendants acted unlawfully when they  
22 determined that the Tribe was eligible for class III gaming and  
23 entered into the Compact. (Id. ¶¶ 10, 22-27.)

24 Following the court's dismissal of the State  
25 Defendants, the Complaint retains two causes of action. The  
26 first claim alleges that the Federal Defendants violated IGRA by  
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1 approving class III gaming on ineligible lands.<sup>2</sup> (Id. ¶ 34.)  
2 Plaintiffs' second claim alleges that the approval of the Tribe's  
3 gaming ordinance and the Compact violated the Administrative  
4 Procedure Act ("APA"), 5 U.S.C. §§ 500-596, because such approval  
5 was arbitrary and capricious and in violation of IGRA. (Compl. ¶  
6 42.) The Complaint requests the court to declare that the  
7 Tribe's land is not eligible for gaming under IGRA, that the  
8 Compact is invalid under IGRA and APA, and that the environmental  
9 assessment of the land was inadequate. The Complaint also asks  
10 the court to enjoin the Tribe from further pursuit of class III  
11 gaming on its land and to create a constructive trust over funds  
12 currently being paid to the Tribe. The Tribe now moves to  
13 dismiss the Complaint pursuant to Rule 19.

## 14 II. Discussion

### 15 A. Motion to Dismiss

16 On a motion to dismiss, the court must accept the  
17 allegations in the complaint as true and draw all reasonable  
18 inferences in favor of the plaintiff. Scheuer v. Rhodes, 416  
19 U.S. 232, 236 (1974), overruled on other grounds by Davis v.  
20 Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319, 322  
21 (1972). To survive a motion to dismiss, a plaintiff must plead  
22 "only enough facts to state a claim to relief that is plausible  
23 on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570  
24 (2007). This "plausibility standard," however, "asks for more  
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26 <sup>2</sup> The court previously dismissed this cause of action  
27 against the State Defendants because it found that IGRA does not  
28 provide a cause of action for third parties. (Docket No. 13)  
The Federal Defendants did not join in the prior motion and  
therefore the claim remains against them.

1 than a sheer possibility that a defendant has acted unlawfully,"  
2 Ashcroft v. Iqbal, --- U.S. ----, ----, 129 S. Ct. 1937, 1949  
3 (2009), and "[w]here a complaint pleads facts that are 'merely  
4 consistent with' a defendant's liability, it 'stops short of the  
5 line between possibility and plausibility of entitlement to  
6 relief.'" Id. (quoting Twombly, 550 U.S. at 557).

7 Federal Rule of Civil Procedure 19 governs the joinder  
8 of persons necessary for a suit's just adjudication. Under Rule  
9 19, a court must dismiss an action if: (1) an absent party is  
10 required, (2) it is not feasible to join the absent party and (3)  
11 it is determined "in equity and good conscience" that the action  
12 should not proceed among the existing parties.<sup>1</sup> Republic of  
13 Philippines v. Pimentel, 553 U.S. 851, ---, 128 S. Ct. 2180, 2188  
14 (2008); Confederated Tribes of Chehalis Indian Reservation v.  
15 Lujan, 928 F.2d 1496, 1498 (9th Cir. 1991).

16 1. Rule 19(a) - Required Party

17 A person is a required party under Rule 19(a)(1) if (A)  
18 in that person's absence, the court cannot accord complete relief  
19 among existing parties; or (B), the person claims an interest  
20 relating to the subject of the action and is so situated that  
21 disposing of the action in the person's absence may: (i) as a  
22 practical matter impair or impede the person's ability to protect  
23 the interest, or (ii) leave an existing party subject to a  
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25 <sup>1</sup> When Rule 19 was amended in 2007, the word "necessary"  
26 was replaced by "required" and the word "indispensable" was  
27 removed. The changes were intended to be "stylistic only" and  
28 "the substance and operation of the Rule both pre- and post-2007  
are unchanged." Republic of Philippines v. Pimentel, 553 U.S.  
851, ---, 128 S. Ct. 2180, 2184 (2008) (quoting the Rules  
Committee).

1 substantial risk of incurring double, multiple, or otherwise  
2 inconsistent obligations because of the interest. Fed. R. Civ.  
3 P. 19(a)(1). If the Tribe satisfies either test, it is a  
4 required party under Rule 19.

5 First, the court cannot provide the litigation parties  
6 complete relief where the requested remedy, if granted, would  
7 fail to bind all absent parties who are in a position to act in  
8 direct contravention of that remedy. In Dawavendewa v. Salt  
9 River Project Agricultural Improvement & Power District, 276 F.3d  
10 1150 (9th Cir. 2002), the Ninth Circuit upheld the dismissal of a  
11 suit because the absent Navajo Nation was a necessary and  
12 indispensable party where an applicant for employment at a non-  
13 Indian-operated power facility located on the Navajo Nation  
14 reservation challenged an employment preference contained in the  
15 operator's lease with the Nation. The plaintiff requested  
16 injunctive relief as to the lease provision at issue, and the  
17 Ninth Circuit held that complete relief could not be afforded  
18 because the absent Navajo Nation would not be bound by such  
19 relief and could still attempt to enforce the lease provision.  
20 Id. at 1155.

21 Similarly, in Pit River Home & Agricultural Cooperative  
22 Ass'n v. United States, 30 F.3d 1088 (9th Cir. 1994), a group of  
23 Indians sued the United States to challenge Pit River Council's  
24 beneficial ownership of Indian lands. The Ninth Circuit upheld  
25 the dismissal of suit and held that the absent Pit River Council  
26 was a necessary and indispensable party because "even if the  
27 Association obtained its requested relief in this action, it  
28 would not have complete relief, since judgment against the

1 government would not bind the Council, which could assert its  
2 right to possess the Ranch." Id. at 1099.

3 In this case, the Tribe is not a party to the lawsuit,  
4 so it would not be bound by any judgment in favor of plaintiffs.  
5 See E.E.O.C. v. Peabody W. Coal Co., 400 F.3d 774, 780 (9th Cir.  
6 2005) ("The [proposed] judgment will not bind the Navajo Nation  
7 in the sense that it will directly order the Nation to perform,  
8 or refrain from performing, certain acts."). The Tribe could  
9 therefore act contrary to the judgment, preventing the court from  
10 according complete relief to plaintiffs.

11 Second, a person is a required party if the suit  
12 impairs or impedes its legally protected interests. Fed. R. Civ.  
13 P. 19(a)(1)(B)(I). Under Rule 19(a)(1)(B), a party need only  
14 "claim" an interest, not establish it with certainty. The court  
15 may only exclude claims of interest that are patently frivolous.  
16 See Shermoen v. United States, 982 F.2d 1312, 1317 (9th Cir.  
17 1992). This suit implicates several of the Tribe's legally  
18 protected interests that will be impaired or impeded if the suit  
19 continues.

20 Plaintiffs seek to invalidate the Compact and enjoin  
21 the Tribe from engaging in class III gaming. This impairs the  
22 Tribe's substantial gaming-related interests, including its right  
23 under federal law to engage in class III gaming. See Am.  
24 Greyhound Racing, Inc. v. Hull, 305 F.3d 1015, 1023 (9th Cir.  
25 2002) (holding that "[t]he interests of the tribes in their  
26 compacts are impaired and, not being parties, the tribes cannot  
27 defend those interests"); Dawavendewa, 276 F.3d at 1156 ("[N]o  
28 procedural principal is more deeply-imbedded in the common law

1 than that, in an action to set aside a lease or a contract, all  
2 parties who may be affected by the determination of the action  
3 are indispensable." (quoting Lomayaktewa v. Hathaway, 520 F.2d  
4 1324, 1325 (9th Cir. 1975))). Plaintiffs argue that the Tribe  
5 does not have a legally protected interest because it only has an  
6 economic interest stemming from the approval of the Compact.  
7 Unlike cases in which non-parties have indirect economic  
8 interests that do not qualify as "legally protected interests,"  
9 the Tribe is a party to the Compact and has a direct, and legally  
10 protected, interest in its approval.

11           The Tribe also has a substantial interest in the  
12 already-determined "Indian lands" status of its Rancheria, its  
13 ability to govern that land, its ability to enforce its laws, its  
14 status as a federally-recognized Indian tribe, the two stipulated  
15 judgments that restored the Tribe and Rancheria, and its  
16 sovereign immunity not to have its interests adjudicated without  
17 its consent. See Shermoen, 982 F.2d at 1317 ("[A]bsent tribes  
18 have an interest in preserving their own sovereign immunity, with  
19 its concomitant 'right not to have [their] legal duties  
20 judicially determined without consent.'" (quoting Enter. Mgmt.  
21 Consultants v. U.S. ex rel. Hodel, 883 F.2d 890, 894 (10th Cir.  
22 1989))). The Tribe's ability to protect these legal interests  
23 would be impeded and impaired if this action continues.

24           "Impairment may be minimized if the absent party is  
25 adequately represented in the suit. The United States may  
26 adequately represent an Indian tribe unless there is a conflict  
27 of interest between the United States and the tribe." Makah  
28 Indian Tribe v. Verity, 910 F.2d 555, 558 (9th Cir. 1990)



1 (citations omitted). Plaintiffs argue that there is no conflict  
2 of interest between the United States and the Tribe, and  
3 therefore the suit for declaratory relief should proceed. From  
4 her response to the court's questions at the hearing on this  
5 motion, the attorney for the United States clearly does not  
6 agree. The Federal Defendants' litigation policy in this case  
7 appears to favor judicial review and to avoid taking positions  
8 that may conflict with its national Indian policy. Their failure  
9 to move this court to dismiss this case and their refusal to take  
10 a position on this motion<sup>2</sup> appears to conflict with the Tribe's  
11 interest in protecting their tribal status and not having their  
12 interests litigated in their absence. See Citizen Potawatomi  
13 Nation v. Norton, 248 F.3d 993, 1000, modified on reh'g, 257 F.3d  
14 1158 (10th Cir. 2001) ("In this case, [United States] Defendants  
15 have a duty to implement national Native American policy. The  
16 Shawnee, on the other hand, have an interest in receiving the  
17 funds at issue in this case. The two interests are not  
18 necessarily the same.").

19           When asked if the United States represents the  
20 interests of the Tribe, counsel responded that "[i]t depends on  
21 what claims are being asserted" and that "the United States is in  
22 the position of having to balance" the interests. (Rep.'s Tr. of  
23 Hr'g, Def.'s Mot. to Dismiss, Oct. 12, 2010, at 10:13-20.) This  
24 balancing presents a conflict of interest with the Tribe and  
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26           <sup>2</sup> The Federal Defendants' counsel was questioned at  
27 length during oral arguments regarding the United States'  
28 position on the Tribe's Rule 19 motion. Her only position was  
that the United States has no position on the outcome of this  
motion.

1 suggests that its legal interests may not adequately be protected  
2 if it remains an absent party. Accordingly, the Tribe is a  
3 required party in this suit.

4 2. Rule 19(b) - Proceeding with Existing Parties

5 Indian tribes possess the common-law immunity from suit  
6 traditionally enjoyed by sovereign powers. Bassett v.  
7 Mashantucket Pequot Tribe, 204 F.3d 343, 356 (2d Cir. 2000). In  
8 order to qualify for sovereign immunity, a tribe must be  
9 federally recognized. See Pit River Home & Agric. Coop. Ass'n,  
10 30 F.3d at 1100. Immunity may be waived by either Congress or  
11 the tribe itself, but only if done in an unequivocal manner. C&L  
12 Enters., Inc. v. Citizen Band Potawatomi Indian Tribe, 532 U.S.  
13 411, 417 (2001). The Tribe is federally recognized, and neither  
14 the Tribe nor Congress has consented to its being in this action,  
15 therefore the Tribe cannot be joined because it is immune from  
16 civil suit.

17 When a required person cannot be joined in the suit,  
18 the court must determine whether, "in equity and good conscience,  
19 the action should proceed among the existing parties or should be  
20 dismissed." Fed. R. Civ. P. 19(b). Rule 19(b) outlines four  
21 factors for courts to consider in making this determination: (1)  
22 the extent to which judgment rendered in the person's absence  
23 might prejudice that person; (2) the extent to which the  
24 prejudice could be lessened or avoided by protective provisions,  
25 shaping the relief, or other measures; (3) whether judgment in  
26 the person's absence would be adequate; and (4) whether the  
27 plaintiff would have an adequate remedy if the action were  
28 dismissed for nonjoinder. Id. Because the Tribe has sovereign

1 immunity, little balancing of these factors is required. See  
2 Kescoli v. Babbitt, 101 F.3d 1304, 1311 (9th Cir. 1996) ("If the  
3 necessary party is immune from suit, there may be 'very little  
4 need for balancing Rule 19(b) factors because immunity itself may  
5 be viewed as the compelling factor.'" (quoting Confederated  
6 Tribes of the Chehalis Indian Reservation, 928 F.2d at 1499)).  
7 Moreover, the factors, taken together, weigh in favor of finding  
8 that the Tribe is an indispensable party.

9           The first factor in the Rule 19(b) analysis is  
10 essentially the same as the legal interest test in the "necessary  
11 party" analysis. See, e.g., Quileute Indian Tribe v. Babbitt, 18  
12 F.3d 1456, 1460 (9th Cir. 1994). Accordingly, the prejudice  
13 prong is met here as the Tribe's absence might prejudice several  
14 of its legally protected interests. The potential prejudice to  
15 the Tribe cannot be effectively minimized under the second factor  
16 of Rule 19(b) because no adequate relief for plaintiffs can be  
17 shaped such that the Tribe would not be prejudiced. Any  
18 adjudication of the Federal Defendants' review of the Compact or  
19 the Tribe's federal status would prejudice the Tribe's interests.  
20 The consideration of the final two prongs is not necessary where  
21 the Tribe will be prejudiced by a judgment rendered in its  
22 absence and there is no way the court can avoid the prejudice.  
23 See Kickapoo Tribe of Indians v. Babbitt, 43 F.3d 1491, 1498  
24 (D.C. Cir. 1995). Accordingly, the court cannot proceed in  
25 equity and good conscience with the existing parties.<sup>3</sup>

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27 <sup>3</sup> Because the Complaint is dismissed for failure to join  
28 the Tribe as a required party under Rule 19, the court will not  
address the Tribe's argument that the State was also an  
indispensable party.

1           B.    Sanctions

2           Plaintiffs filed their papers in opposition to the  
3 Tribe's motion to dismiss on September 16, 2011. According to  
4 Local Rule 230(c), opposition to the granting of a motion must be  
5 filed and served not less than fourteen days preceding the  
6 noticed hearing date. As the hearing for this matter was set for  
7 September 26, 2011, plaintiffs filed their papers four days late.

8           Local Rule 230(c) provides that, "No party will be  
9 entitled to be heard in opposition to a motion at oral arguments  
10 if opposition to the motion has not been timely filed by that  
11 party." Because it is more important that the court reach the  
12 correct decision on a dispositive motion than to enforce  
13 technical sanctions, the court chose to hear counsel at oral  
14 argument, and instead to impose financial sanctions under Local  
15 Rule 110, for failure to comply with the Local Rules. Therefore,  
16 the court will sanction plaintiffs' counsel, James E. Marino,  
17 \$100.00 payable to the Clerk of the Court within ten days from  
18 the date of this Order, unless he shows good cause for his  
19 failure to comply with the Local Rules.

20           IT IS THEREFORE ORDERED that this action be, and the  
21 same hereby is, DISMISSED.

22           IT IS FURTHER ORDERED that within ten days of this  
23 Order James E. Marino shall either (1) pay sanctions of \$100.00

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1 to the Clerk of the Court, or (2) submit a statement of good  
2 cause explaining his failure to comply with Local Rule 230(c).

3 DATED: September 29, 2011

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WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE

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