

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBINSON RANCHERIA OF POMO)	Case No. 12-cv-04885-SC
INDIANS,)	
)	ORDER GRANTING DEFENDANTS'
Plaintiff,)	<u>MOTION TO DISMISS</u>
)	
v.)	
)	
KENNETH SALAZAR, in his official)	
capacity as Secretary of the)	
United States Department of the)	
Interior; AMY DUTSCHKE, in her)	
official capacity as Pacific)	
Regional Director for the Bureau)	
of Indian Affairs,)	
)	
Defendants.)	

I. INTRODUCTION

This matter arises out of a request by the Robinson Rancheria of Pomo Indians (the "Tribe") to the Bureau of Indian Affairs ("BIA") to call a "Secretarial election" to approve proposed amendments to the Tribe's constitution. The Tribe alleges that the Secretary of the United States Department of the Interior (the "Secretary") and the Regional Director of BIA (collectively, "Defendants") violated the Indian Reorganization Act ("IRA"), 25

1 U.S.C. § 476, by failing to call and conduct an election within
2 ninety days of the receipt of the Tribe's request. ECF No. 1
3 ("Compl.") ¶¶ 17-18. Defendants now move to dismiss for lack of
4 subject matter jurisdiction pursuant to Federal Rule of Civil
5 Procedure 12(b)(1). ECF No. 7 ("MTD"). The Motion to Dismiss is
6 fully briefed, ECF Nos. 9 ("Opp'n"), 10 ("Reply"), and appropriate
7 for determination without oral argument. The Court finds that the
8 Tribe's claims are now moot and, therefore, GRANTS Defendants'
9 Motion to Dismiss.¹

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11 **II. BACKGROUND**

12 On April 3, 2012, the Robinson Rancheria Business Council (the
13 "Council"), the Tribe's governing body, adopted a resolution
14 requesting that the Secretary call and conduct an election among
15 the eligible voters of the Tribe to amend the Tribe's Constitution
16 (hereinafter, the "Resolution"). Compl. ¶¶ 5, 10, Ex. A. On the
17 same day, the Council sent the Resolution to Troy Burdick, the
18 Superintendent of BIA. Id. ¶ 11, Ex. B. The Resolution identified
19 the provisions of the constitution that the Council sought to amend
20 and provided the text of the proposed amendments. Id. Ex. A.

21 On June 11, 2012, Mr. Burdick sent a letter to the Tribe's
22 chairperson, stating that, although the proposed amendments were in
23 compliance with federal law and acceptable to BIA, the Secretarial
24 election process was "stopped" because the Council's request did
25 not comply with 25 C.F.R. Part 81. Id. Ex. C. Specifically, BIA
26 claimed that the Council's request, as set forth in the Resolution,
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¹ Also pending before the Court is the Tribe's motion for summary judgment. ECF No. 12. That motion is DENIED as moot.

1 was improper because: (1) a copy of the text of the proposed
2 amendments was contained in the body of the Resolution rather than
3 on a separate piece of paper, and (2) the text of the proposed
4 amendments was numbered, rather than labeled alphabetically. Id.
5 The letter concluded: "Upon receipt of the proposed amendments in
6 its proper format, [BIA] will continue the process to request an
7 authorization to conduct the Secretarial election." Id.

8 On July 5, 2012, the Tribe's attorney sent a letter to Mr.
9 Burdick, stating that BIA's position was unfounded, the Tribe's
10 request was proper, and the Secretary had a mandatory duty to call
11 an election within ninety days of receipt of the Resolution.
12 Compl. Ex. E. The letter also stated that if BIA failed to respond
13 within seven business days or refused to call and conduct the
14 Tribe's election, the Tribe might bring an action in federal court.
15 Id.

16 After receiving the July 5 letter, BIA apparently reversed
17 course on the Tribe's election request. On July 17, 2012, Mr.
18 Burdick submitted the Tribe's request to the BIA Regional Director
19 for review and authorization to call a Secretarial election. ECF
20 No. 8 ("Burdick Decl.") ¶ 6, Ex. E. On August 15, 2012, BIA's
21 Regional Director authorized a Secretarial election on the Tribe's
22 proposed constitutional amendments. Id. ¶ 7, Ex. G. On November
23 13, 2012, BIA mailed an election notice packet to all of the
24 Tribe's eligible voters, informing them that an election on the
25 proposed amendments to the Tribe's constitution would be held on
26 February 9, 2013. Id. ¶ 11, Ex. J.

27 On September 18, 2012, before the election notice was mailed,
28 the Tribe filed the instant action. The Tribe's Complaint asserts

1 three causes of action: (1) violation of the IRA, (2) breach of
2 trust, and (3) violation of the Administrative Procedure Act
3 ("APA"). Compl. ¶¶ 16-30. All three causes of action are
4 predicated on Defendants' alleged failure to call and conduct a
5 tribal election. See id. ¶¶ 17-18, 23, 27-28. The Tribe prays for
6 the Court to enjoin Defendants from refusing to call and conduct
7 the requested election and to declare that Defendants violated the
8 IRA, the APA, and their trust obligations in failing to call and
9 conduct the election. Id. at 8-9.

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11 **III. DISCUSSION**

12 Defendants move to dismiss for lack of subject matter
13 jurisdiction on the grounds that: (1) Congress has not waived
14 sovereign immunity over the Tribe's claims; (2) the Tribe has
15 failed to exhaust its administrative remedies and, thus, cannot
16 state a claim under the APA; and (3) the Tribe's claims are moot.²
17 MTD at 3. The Court finds that the Tribe's claims are moot and,
18 thus, need not and does not address Defendants' other arguments.

19 The instant action arose out of a controversy between BIA and
20 the Tribe concerning the format of Tribe's request for a
21 Secretarial election. See Compl. ¶¶ 17-18, 23, 27-28. That
22 controversy was rendered moot when BIA decided to abandon its
23 objections to the format of the Tribe's request and the Secretary
24 authorized the Tribe's requested election. See Burdick Decl. Exs.
25 E, G, J. As a result of the decision to authorize the election,
26 any judgment on the merits of the case would not affect the rights

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28 ² Defendants also move dismiss for failure to state a claim under
Federal Rule of Civil Procedure 12(b)(6) on the ground that the
Tribe cannot state a claim for breach of trust. MTD at 3.

1 of the parties. Accordingly, the Court cannot properly exercise
2 jurisdiction over this matter. Article III of the United States
3 Constitution, which provides that the exercise of judicial power
4 depends upon the existence of a case or controversy, U.S. Const.
5 art. III, § 2, bars federal courts from hearing moot cases. Env'tl.
6 Prot. Info. Ctr., Inc. v. Pac. Lumber Co., 257 F.3d 1071, 1076 (9th
7 Cir. 2001).

8 The Tribe concedes that its request for injunctive relief is
9 now moot, but argues that its request for declaratory relief
10 continues to present a live case or controversy. Opp'n at 8. The
11 Tribe reasons that Defendants violated § 476 by failing to call an
12 election within ninety days of their request and that the violation
13 was not rendered moot by Defendants' later actions. Id. The Tribe
14 further argues that "if the defendants can avoid even a declaration
15 that they have failed to meet the requirements of [§] 476, the time
16 limits set forth in [§] 476 are meaningless." Id.

17 This line of argument is unavailing. "When a plaintiff seeks
18 declaratory relief, as here, the test for mootness . . . is whether
19 the facts alleged, under all the circumstances, show that there is
20 a substantial controversy, between parties having adverse legal
21 interests, of sufficient immediacy and reality to warrant the
22 issuance of a declaratory judgment." Ctr. For Biological Diversity
23 v. Lohn, 511 F.3d 960, 963 (9th Cir. 2007) (quotations omitted).
24 In other words, "the central question" is "whether changes in
25 circumstances . . . have forestalled any occasion for meaningful
26 relief." Id. (quotations omitted). Here, a judicial declaration
27 that BIA violated § 476 would have no meaningful effect on the
28 rights of Tribe or the obligations of BIA. In fact, it would

1 amount to nothing more than an advisory opinion on § 476 and a slap
2 on the wrist for BIA. Further, contrary to the Tribe's argument, a
3 finding of mootness does not render § 476 meaningless. Nothing in
4 this Order precludes the Tribe or others similarly situated from
5 moving for injunctive relief to enforce the ninety-day time limit
6 set forth in § 476 if BIA refuses to call and conduct a Secretarial
7 election in the future.

8 The Tribe also implies that the "voluntary cessation"
9 exception to the mootness doctrine applies here, arguing that "[i]f
10 this Court does not declare that the defendants failed to meet
11 their statutory duty to timely call the election, BIA officials
12 will have no incentive to comply [with their duties] until tribes
13 file suit." Opp'n at 9. Under the voluntary cessation exception,
14 "th[e] voluntary cessation of allegedly illegal conduct does not
15 deprive the [court] of power to hear and determine the case, i.e.,
16 does not make the case moot, unless there is no reasonable
17 expectation that the wrong will be repeated." Pub. Utils. Comm'n
18 of Cal. v. Fed. Energy Regulatory Comm'n, 100 F.3d 1451, 1460 (9th
19 Cir. 1996) (quotations omitted). In this case, the Tribe has not
20 pointed to any evidence suggesting that the alleged wrong will be
21 repeated. Defendants withdrew their objections to the format of
22 the Tribe's request less than two weeks after they were contacted
23 by the Tribe's lawyer and several weeks before the Tribe filed
24 suit. See id. ("[W]e have previously implied that, in order for
25 this exception to apply, the defendant's voluntary cessation must
26 have arisen because of the litigation."). There is also no
27 indication that Defendants have a regular practice of denying
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1 requests for Secretarial elections based on the specific technical
2 objections described in the Complaint.

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4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court finds that this action is
6 moot and declines to exercise subject matter jurisdiction.

7 Defendants Kenneth Salazar and Amy Dutschke's Motion to Dismiss is
8 GRANTED.

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10 IT IS SO ORDERED.

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12 Dated: January 14, 2013


UNITED STATES DISTRICT JUDGE

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