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4 **UNITED STATES DISTRICT COURT**  
5 **NORTHERN DISTRICT OF CALIFORNIA**  
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7 **SPRAWLDEF, ET AL.,**

8 Petitioners,

9 vs.

10 **CITY OF RICHMOND, ET AL.,**

11 Respondents.

CASE NO. 18-cv-03918-YGR

**ORDER DENYING STIPULATED REQUEST  
FOR EXTENSION OF TIME; VACATING  
BRIEFING AND HEARING SCHEDULE ON  
MOTION FOR JUDGMENT ON THE  
PLEADINGS; AND DIRECTING PARTIES TO  
FILE STATEMENTS AS TO EFFECT OF  
PENDENCY OF APPEAL**

Dkt. No. 91

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13 The Stipulated Request for Extension of Time on the Briefing Schedule for the Motion for  
14 Judgment on the Pleadings (Dkt. No. 91) is **DENIED WITHOUT PREJUDICE**, and the briefing and  
15 hearing schedule on the Motion for Judgment on the Pleadings (Dkt. No. 87) is **VACATED**. The  
16 Court seeks clarification on the parties' positions as to the effect of the pending appeal on the  
17 Court's jurisdiction to hear the motion, for the reasons set forth more fully herein.

18 **I. PROCEDURAL HISTORY**

19 The petition in this matter was removed from state court on June 29, 2018, by Respondents  
20 Mayor Tom Butt, City of Richmond, Richmond City Council ("the City"). The petition seeks to  
21 challenge the April 12, 2018 entry of a stipulated judgment between the City and Upstream Point  
22 Molate, LLC ('Upstream') and the Guidiville Rancheria of California ('the Tribe') in *Guidiville*  
23 *Rancheria of California et al v. United States of America et al*, Northern District of California  
24 Case No. 4:12-cv-01326. The City moved to dismiss the petition shortly after removal on the  
25 grounds that no claim was stated under the Brown Act. With the Court poised to deny the motion  
26 on the record at September 11, 2018 hearing, the City withdrew the motion to dismiss, opting  
27 instead to file an answer on September 24, 2018. (Dkt. No. 23.)

28 On October 2, 2018, the Court issued a schedule for briefing on the merits of the petition

1 and on a schedule for petitioners to file a motion to amend the petition to name “Upstream Point  
2 Molate, LLC [‘Upstream’] and the Guidiville Rancheria of California [‘the Tribe’] as interested  
3 parties, without conceding that they are necessary parties or that the Tribe retains sovereign  
4 immunity.” (Dkt. No. 26.) On October 18, 2018, the Court granted the administrative motion to  
5 amend the petition and add Upstream and the Tribe as respondents. (Dkt. No. 28.)

6 On January 9, 2019, the Tribe filed a motion to dismiss the petition on grounds of  
7 sovereign immunity of the Tribe and the Court’s inability to proceed on the remainder of the  
8 litigation without the Tribe as a party. (Dkt. No. 45.) On January 16, 2019, the Tribe filed a  
9 motion to stay briefing on the petition on the merits pending the Court’s decision on the Tribe’s  
10 motion to dismiss. (Dkt. No. 49.)

11 Thereafter, on January 29, 2019, Court denied the Tribe’s motion to stay the action  
12 pending disposition of the Tribe’s motion to dismiss. (Dkt. No. 54). After having duly considered  
13 the parties papers in support of and in opposition to the Tribe’s motion to dismiss, on June 19,  
14 2019, the Court issued its order denying the motion on the grounds that the Tribe had waived its  
15 tribal sovereign immunity. (Dkt. No. 58.) With the pleading motions concluded, the Court also  
16 directed the parties to meet and confer on a proposed schedule for completing their briefing on the  
17 merits of the petition, since the Tribe and Upstream had not yet filed a response on the merits.  
18 (Dkt. No. 59.)

19 Five days later, on June 24, 2019, the Tribe filed a Notice of Appeal of the Court’s order  
20 denying its motion to dismiss. (Dkt. No. 60.) In a status report filed June 27, 2019, the Tribe  
21 asserted that the appeal divested the Court of jurisdiction to proceed on the merits. (Dkt. No. 61.)  
22 Petitioners took no position on the effect of the appeal. (*Id.*) Consistent with the Tribe’s position  
23 in the status report and Ninth Circuit authority on the matter, the Court concluded that it was  
24 without jurisdiction to proceed on the merits of the petition and did not set a briefing schedule on  
25 the merits of the petition. *See Pistor v. Garcia*, 791 F3d 1104, 1110 (9th Cir. 2015) (order  
26 denying tribal sovereign immunity is immediately appealable under the collateral order doctrine);  
27 *Burlington Northern & Santa Fe Ry. Co. v. Vaughn*, 509 F3d 1085, 1089 (9th Cir. 2007)  
28 (generally “[a] district court’s denial of a motion to dismiss is not a final decision within the

1 meaning of 28 U.S.C. § 1291, [but] . . . an adverse decision . . . denying tribal sovereign immunity  
2 as a complete defense to proceeding with the litigation” is considered a final decision for purposes  
3 of appellate jurisdiction).

4 On July 30, 2019, petitioners filed a motion for preliminary injunction, seeking an order  
5 “to preserve the status quo,” meaning to stay implementation of the underlying stipulated  
6 judgment in the *Guidiville Rancheria* case until the appeal and the petition could be resolved.  
7 (Dkt. No. 64.)

8 The City then filed an administrative motion on August 2, 2019 (Dkt. No. 69), seeking a  
9 stay of the action until the Ninth Circuit issued an order on the Tribe’s pending appeal, arguing  
10 that “the Court is divested of jurisdiction” due to the appeal. In the alternative, the City sought an  
11 extension of time to respond to the preliminary injunction motion. (*Id.* at 1.) Petitioners opposed  
12 the administrative motion on the grounds that, even though the Court was without jurisdiction to  
13 consider the merits of the petition pending the Tribe’s appeal, “[t]he principal of exclusive  
14 appellate jurisdiction is not absolute and the lower court’s jurisdiction to preserve the status quo  
15 on appeal is well established,” citing *Natural Resources Defense Council, Inc. v. Southwest*  
16 *Marine Inc.* (9th Cir. 2001) 242 F.3d 1163, 1166.

17 Agreeing with the petitioners on this point, the Court issued an order on August 8, 2019,  
18 denying the motion as follows:

19 The Court having duly considered the administrative motion (Dkt. No. 69)  
20 and opposition thereto, the administrative motion of respondents City of  
21 Richmond, *et al.*, to stay further briefing or consideration of petitioners’ pending  
22 motion for preliminary injunction (Dkt. No. 64) is **DENIED**.

23 The request, in the alternative, to delay filing of the City’s response to the  
24 motion for preliminary injunction until September 17, 2019, is **DENIED**. The  
25 City has not offered facts sufficient to establish good cause for a delay of this  
26 length.

27 (Dkt. No. 74, emphasis supplied.)<sup>1</sup> The Court also adjusted the briefing and hearing schedule on  
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26 <sup>1</sup> The City’s motion for judgment on the pleadings incorrectly suggests that the City  
27 requested a stay immediately after the Tribe filed its notice of appeal, rather than in direct  
28 response to petitioners’ motion for preliminary injunction. (Dkt. No. 87 at ECF 7-8.) The Court’s  
order denying the City’s motion was limited to the City’s request “to stay further briefing or  
consideration of petitioners’ pending motion for preliminary injunction,” (Dkt. No. 74.) since  
consideration of that injunctive relief was unaffected by the pendency of the appeal.

1 the pending motion for preliminary injunction. (*Id.*) The Court held a hearing on the motion for  
2 preliminary injunction on September 10, 2019, at which time the petitioners agreed to withdraw  
3 the motion without prejudice to re-setting it for a hearing after having an opportunity to participate  
4 in a settlement conference with Magistrate Judge Joseph C. Spero. (Dkt. No. 78.)

5 In the related *Guidiville Rancheria* action, on November 12, 2019, the City, the Tribe, and  
6 Upstream submitted a revised proposed judgment, which the Court has now entered. (*See*  
7 *Guidiville Rancheria of California et al v. United States of America et al*, Northern District of  
8 California Case No. 4:12-cv-01326, at Dkt. No. 410.)

9 **II. THE CITY’S PENDING MOTION FOR JUDGMENT ON THE PLEADINGS**

10 On November 15, 2019, the City filed a motion for judgment on the pleadings, arguing that  
11 the petition is resolved by the amended judgment in the *Guidiville Rancheria* action, and the  
12 public hearing and open session vote of the City Council in which the revised settlement  
13 agreement and proposed judgment was approved (Dkt. No. 87.) Respondent Upstream filed a  
14 joinder in the motion. (Dkt. No. 89, 90.)


15 It appears to the Court, given the pendency of the Tribe’s appeal, that it lacks jurisdiction  
16 to rule on the merits of the petition, including a motion for judgment on the pleadings.

17 The City, Upstream, the petitioners, and specially appearing respondent the Tribe are  
18 directed to file brief statements of **no more than 5 pages each by November 26, 2019**, setting  
19 forth their respective positions on the effect of the Tribe’s pending appeal on the Court’s ability to  
20 rule on the pending motion for judgment on the pleadings.

21 This terminates Docket No. 91.

22 **IT IS SO ORDERED.**

23 Dated: November 21, 2019

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25 YVONNE GONZALEZ ROGERS  
26 UNITED STATES DISTRICT COURT JUDGE  
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