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12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 MISHEWAL WAPPO TRIBE OF ALEXANDER
VALLEY,

17 Plaintiff,

18 v.
19

20 KEN SALAZAR,

21 Defendant.
22

No. 5:09-cv-02502-JW

ANSWER TO THE COMPLAINT

Date: N/A

Time: N/A

Courtroom No. N/A

Hon. James Ware
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1 Defendant Kenneth Salazar, by and through his undersigned counsel, hereby asserts defenses to
2 the Complaint dated June 2, 2009, of Mishewal Wappo Tribe of Alexander Valley ("Plaintiff") and an-
3 swers each numbered paragraph as follows. Except as expressly admitted, all allegations are denied.

4 1. Paragraph 1 of the Complaint sets forth the nature of Plaintiff's action and requires no re-
5 sponse; to the extent that a further response is necessary, Defendant denies that Plaintiff is entitled to
6 any relief in this action.

7 JURISDICTION AND VENUE

8 2. The allegations contained in this paragraph set forth the nature of Plaintiff's action and
9 constitute a legal conclusion to which no response is required.

10 3. The allegations contained in this paragraph set forth the nature of Plaintiff's action and
11 constitute a legal conclusion to which no response is required. To the extent a response is required, De-
12 fendant denies that Plaintiff is entitled to any relief in this action under 28 U.S.C § 1361 or otherwise.

13 4. The allegations contained in this paragraph constitute a legal conclusion to which no re-
14 sponse is required. To the extent a response is required, Defendant denies that the Secretary of the Inte-
15 rior resides in this judicial district and further denies the factual basis for any acts or omissions pled in
16 support of venue in this district.

17 PARTIES

18 5. The Defendant is without knowledge or information as to the truth or falsity of the allega-
19 tions contained in this paragraph.

20 6. Admit.

21 STATEMENT OF FACTS

22 Establishment of the Mishewal Wappo Tribe of Alexander Valley

23 7. Admit.

24 8. The Defendant admits that BIA acquired two tracts of land equaling 54 acres in Sonoma
25 County, California for the benefit of Indians of Alexander Valley Rancheria, but otherwise denies the
26 allegations of this paragraph.

1 16. The allegations contained in this paragraph constitute Plaintiff's characterization of the
2 California Rancheria Act. Defendant avers the Act speaks for itself and is the best evidence of its con-
3 tents. To the extent a response is required, Defendant denies any allegation not consistent with the doc-
4 ument cited.

5 17. The allegations contained in this paragraph constitute a legal conclusion to which no re-
6 sponse is required. To the extent that they characterize the California Rancheria Act, Defendant avers
7 the Act speaks for itself and is the best evidence of its contents and denies any allegation not consistent
8 with the document cited.

9 **The Mishewal Wappo Tribe of Alexander Valley Distribution Plan**

10 18. The Defendant admits that the Secretary, acting through his subordinates in the BIA, pre-
11 pared a proposed distribution plan for Alexander Valley Rancheria, but otherwise denies the allegations
12 of the first sentence of this paragraph. The second sentence of this paragraph characterizes the Distribu-
13 tion Plan. Defendant avers that the Distribution Plan speaks for itself and is the best evidence of its con-
14 tent. To the extent a response is required, Defendant denies any allegation not consistent with the doc-
15 ument cited.

16 19. The allegations contained in this paragraph constitute Plaintiff's characterization of the
17 Distribution Plan. Defendant avers that the Distribution Plan speaks for itself and is the best evidence of
18 its content. To the extent a response is required, Defendant denies any allegation not consistent with the
19 document cited.

20 20. Defendant admits that on July 6, 1959, the Secretary of the Interior accepted the proposed
21 Alexander Valley Rancheria Distribution Plan, but otherwise denies the allegations of this paragraph.

22 21. Defendant lacks information sufficient to be able to admit or deny the allegations con-
23 tained in this paragraph.

24 **Failure to Execute the Mishewal Wappo Tribe of Alexander Valley Distribution Plan:**

25 **County Road Standards and Subdivision Requirements**

26 22. The allegations contained in this paragraph constitute Plaintiff's characterization of the
27 Distribution Plan. Defendant avers that the Distribution Plan speaks for itself and is the best evidence of

1 its content. To the extent a response is required, Defendant denies any allegation not consistent with the
2 document cited.

3 23. The allegations contained in this paragraph constitute legal conclusions to which no re-
4 sponse is required. To the extent a response is required, Defendant lacks information sufficient to be
5 able to admit or deny the allegations of this paragraph.

6 24. The allegations contained in this paragraph constitute Plaintiff's characterization of the
7 California Rancheria Act. Defendant avers the Act speaks for itself and is the best evidence of its con-
8 tents. To the extent a response is required, Defendant denies any allegation not consistent with the doc-
9 ument cited.

10 25. Deny.

11 26. Defendant lacks information sufficient to be able to admit or deny the allegations of this
12 paragraph.

13 27. This paragraph sets forth a statement of opinion, to which no response is required. To the
14 extent a response is required, Defendant denies the allegations of this paragraph.

15 **Failure to Execute the Mishewal Wappo Tribe of Alexander Valley Distribution Plan:**

16 **Water and Sanitation Systems**

17 28. The allegations contained in this paragraph constitute legal conclusions to which no re-
18 sponse is required. To the extent a response is required, Defendant lacks information sufficient to be
19 able to admit or deny the allegations of this paragraph.

20 29. The allegations contained in this paragraph constitute Plaintiff's characterization of the
21 Distribution Plan. Defendant avers that the Distribution Plan speaks for itself and is the best evidence of
22 its content. To the extent a response is required, Defendant denies any allegation not consistent with the
23 document cited.

24 30. Defendant admits that a BIA survey revealed limited water supplies but otherwise lacks
25 information sufficient to be able to admit or deny the remaining allegations of this paragraph.

26 31. Defendant admits that it did not install sanitation equipment on the Rancheria's water
27 system; the remaining allegations of this paragraph constitute legal conclusions to which no further re-

1 sponse is required. To the extent a further response is required, Defendant lacks information sufficient
2 to be able to admit or deny the remaining allegations of this paragraph.

3 32. Defendant lacks information sufficient to be able to admit or deny the allegations of this
4 paragraph.

5 **Failure to Execute the Mishewal Wappo Tribe of Alexander Valley Distribution Plan:**

6 **Provision of Educational and Vocational Training**

7 33. The allegations contained in this paragraph constitute Plaintiff's characterization of the
8 California Rancheria Act. Defendant avers the Act speaks for itself and is the best evidence of its con-
9 tents. To the extent a response is required, Defendant denies any allegation not consistent with the doc-
10 ument cited.

11 34. Defendant lacks information sufficient to be able to admit or deny the allegations of this
12 paragraph.

13 35. Defendant lacks information sufficient to be able to admit or deny the allegations of this
14 paragraph.

15 36. Defendant lacks information sufficient to be able to admit or deny the allegations of this
16 paragraph.

17 **Purported Termination of the Mishewal Wappo Tribe of Alexander Valley**

18 37. Defendant admits that the BIA declared the Rancheria infrastructure satisfactory and
19 sought to complete the termination process, but otherwise denies the allegations of this paragraph.

20 38. Defendant lacks information sufficient to be able to admit or deny the allegations of this
21 paragraph.

22 39. Defendant admits that the BIA issued its Completion Statement for termination of Alex-
23 ander Valley Rancheria and finalized the Distribution Plan on September 25, 1959, but otherwise denies
24 the allegations of this paragraph.

25 40. Admit.

Duties of the Secretary of the Interior

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2 41. Defendant lacks information sufficient to be able to admit or deny the allegations con-
3 tained in the first sentence of this paragraph. The allegations of the second sentence of this paragraph
4 set forth Plaintiff's characterization of Section 8 of the California Rancheria Act. Defendant avers the
5 Act speaks for itself and is the best evidence of its contents, but deny any allegation not consistent with
6 the document cited.

7 42. Defendant lacks information sufficient to be able to admit or deny the allegations of this
8 paragraph.

9 43. The allegations of this paragraph constitute a legal conclusion to which no response is re-
10 quired.

11 44. The allegations of this paragraph constitute a legal conclusion to which no response is re-
12 quired.

13 45. The first sentence of this paragraph constitutes a legal conclusion to which no response is
14 required. To the extent a response is required, Defendant lacks information sufficient to be able to admit
15 or deny those allegations. The second sentence of this paragraph quotes *Seminole Nation v. United*
16 *States*, 316 U.S. 286, 297 (1942). Defendant avers the case speaks for itself and is the best evidence of
17 its contents.

18 46. The allegations contained this paragraph constitute legal conclusions to which no re-
19 sponse is required. To the extent a response is required, Defendant denies each and every allegation
20 contained therein.

21 47. The allegations contained in this paragraph constitute legal conclusions to which no re-
22 sponse is required. To the extent a response is required, Defendant denies each and every allegation
23 contained therein.

24 48. The allegations contained in this paragraph constitute legal conclusions to which no re-
25 sponse is required. To the extent a response is required, Defendant denies each and every allegation
26 contained therein.

1 63. Defendant admits the allegations contained in the first sentence of this paragraph. The
2 remainder of the paragraph quotes the Tribe List Act. Defendant avers that the Act speaks for itself and
3 is the best evidence of its contents and denies any allegation not consistent with the document cited.

4 64. The allegations in this paragraph constitute Plaintiff's characterization of the Tribe List
5 Act. Defendant avers that the Act speaks for itself and is the best evidence of its contents and denies
6 any allegation not consistent with the document cited.

7 65. This allegations of this constitute a legal conclusion to which no response is required. To
8 the extent a response is required, Defendant admits that the last Tribe List was published on November
9 25, 2005, but otherwise denies the allegations of this paragraph.

10 66. Defendant admits the first sentence of this paragraph. The second sentence of this para-
11 graph contains a legal conclusion to which no response is required.

12 67. The allegations of this paragraph constitute a legal conclusion to which no response is re-
13 quired. To the extent that a response is required, Defendant lacks information sufficient to be able to
14 admit or deny the allegations of this paragraph and await Plaintiff's proof of same.

15 68. The allegations contained in this paragraph constitute Plaintiff's characterization of tes-
16 timony of then Assistant Secretary for Indian Affairs Kevin Gover. Defendant avers that the testimony
17 speaks for itself and is the best evidence of its contents and denies any allegation not consistent with that
18 testimony. Defendant admits the allegations of the last sentence of this paragraph.

19 69. Defendant denies the allegations contained in the first sentence of this paragraph. The
20 second sentence of this paragraph quotes a memorandum from Acting Regional Director Dale Risling.
21 Defendant avers that the memorandum speaks for itself and is the best evidence of its contents and de-
22 nies any allegation not consistent with the document cited.

23 70. Defendant denies the allegations contained in the first sentence of this paragraph. The
24 second sentence of this paragraph quotes a memorandum from BIA Area Director Maurice W. Babby to
25 the Assistant Secretary for Indian Affairs. Defendant avers that the memorandum speaks for itself and is
26 the best evidence of its contents and denies any allegation not consistent with the document cited.

1 78. The allegations contained in this paragraph constitute legal conclusions to which no re-
2 sponse is required. Defendant further avers that the cited statutes speak for themselves and are the best
3 evidence of their contents and denies any allegation not consistent with those statutes.

4 79. The allegations contained in this paragraph constitute a legal conclusion to which no re-
5 sponse is required. To the extent a response is required, Defendant denies each and every allegation
6 therein.

7 80. The allegations contained in this paragraph constitute a legal conclusion to which no re-
8 sponse is required. To the extent a response is required, Defendant denies each and every allegation
9 therein.

10 81. The allegations contained in this paragraph constitute a legal conclusion to which no re-
11 sponse is required. To the extent a response is required, Defendant denies each and every allegation
12 therein.

13 82. The allegations contained in this paragraph constitute a legal conclusion to which no re-
14 sponse is required. To the extent a response is required, Defendant denies each and every allegation
15 therein.

16 83. The allegations contained in this paragraph constitute a legal conclusion to which no re-
17 sponse is required. To the extent a response is required, Defendant denies each and every allegation
18 therein.

19 84. The allegations contained in this paragraph constitute a legal conclusion to which no re-
20 sponse is required. To the extent a response is required, Defendant admits that the Tribe may be ineligi-
21 ble for services that are available to other tribes because it is not on the list of federally recognized tri-
22 bes, but otherwise denies the allegations of this paragraph.

23 85. The allegations contained in this paragraph constitute a legal conclusion to which no re-
24 sponse is required. To the extent a response is required, Defendant denies each and every allegation
25 therein.

26 86. The allegations contained in this paragraph constitute a legal conclusion to which no re-
27 sponse is required. To the extent a response is required, Defendant admits that the Tribe may be ineligi-

1 ble for services that are available to other tribes because it is not on the list of federally recognized tri-
2 bes, but otherwise denies the allegations of this paragraph. Defendant denies that Plaintiff is entitled to
3 any relief on the basis of this Cause of Action.

4 **SECOND CAUSE OF ACTION**
5 **(Agency Action Unlawfully Withheld or Unreasonably Delayed)**

6 87. Defendant incorporates its responses to Paragraphs 1 through 74 of the complaint as in-
7 corporated by reference in this paragraph.

8 88. The allegations contained in this paragraph constitute a legal conclusion and Plaintiff's
9 characterization of the Administrative Procedure Act ("APA"), to which no response is required. To the
10 extent that a response is required, Defendant avers that the APA speaks for itself and is the best evidence
11 of its contents.

12 89. The allegations contained in this paragraph constitute legal conclusions and Plaintiff's
13 characterization of the APA, to which no response is required. To the extent that a response is required,
14 Defendant avers that the APA speaks for itself and is the best evidence of its contents.

15 90. The allegations contained in this paragraph constitute a legal conclusion to which no re-
16 sponse is required. To the extent a response is required, Defendant denies the allegation of this para-
17 graph.

18 91. Deny.

19 92. The allegations contained in this paragraph constitute a legal conclusion to which no re-
20 sponse is required. To the extent a response is required, Defendant admits that the Tribe may be ineligi-
21 ble for services that are available to other tribes because it is not on the list of federally recognized tri-
22 bes, but otherwise denies the allegations of this paragraph. Defendant denies that Plaintiff is entitled to
23 any relief on the basis of this Cause of Action.

24 **THIRD CAUSE OF ACTION**
25 **(Failure to Conclude a Matter Within a Reasonable Time)**

26 93. Defendant incorporates its responses to Paragraphs 1 through 74 of the complaint as in-
27 corporated by reference in this paragraph.

1 sponse is required. To the extent a response is required, Defendant admits that the Tribe may be ineligi-
2 ble for services that are available to other tribes because it is not on the list of federally recognized tri-
3 bes, but otherwise denies the allegations of this paragraph. Defendant denies that Plaintiff is entitled to
4 any relief on the basis of this Cause of Action.

5 **RESPONSE TO PRAYER FOR RELIEF**

6 The remaining paragraphs of Plaintiff's complaint set forth Plaintiff's request for relief and do
7 not require a response; to the extent that a further response is necessary, Defendant denies that Plaintiff
8 is entitled to any relief.

9 **GENERAL DENIAL**

10 Defendant denies any allegations of the complaint, express or implied, that are not expressly ad-
11 mitted, denied, or qualified herein.

12 **DEFENSES**

13 **First Defense**

14 The Court lacks jurisdiction over some or all of Plaintiff's claims.

15 **Second Defense**

16 Some or all of Plaintiff's claims are barred by sovereign immunity.

17 **Third Defenses**

18 Some or all of Plaintiff's claims fail to state a claim upon which relief may be granted.

19 **Fourth Defense**

20 Some or all of Plaintiff's claims are barred by the applicable statutes of limitations.

21 **Fifth Defense**

22 Some or all of Plaintiff's claims are barred by laches.

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24 / / /

25 / / /

26 / / /

1 WHEREFORE, Defendant requests that the Court dismiss Plaintiff's Complaint or enter judgment in favor of the United States and grant such other relief as may be appropriate.
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5 DATED: January 15, 2010

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division

/s/ David B. Glazer
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Attorneys for Defendant Kenneth Salazar

CERTIFICATE OF SERVICE

I, David B. Glazer, hereby certify that, on January 15, 2010, I caused the foregoing to be served upon counsel of record through the Court's electronic service system and upon additional counsel at the address below by U.S. Mail:

Kelly F. Ryan, Esq.
Susan X. Romero, Esq.
The Ryan Law Firm
80 South Lake Avenue, Ste. 500
Pasadena, California 91101

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 15, 2010

/s/ David B. Glazer
David B. Glazer