NO. 15-15993

IN THE UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

THE MISHEWAL WAPPO TRIBE OF ALEXANDER VALLEY,

Plaintiff-Appellant,

v.

SALLY JEWELL, ET AL.

Defendants-Appellees.

On Appeal from the United States District Court
For the Northern District of California (No. 5:09-CV-02502-EJD)
Honorable Edward J. Davila, District Judge

BRIEF OF *AMICUS CURIAE* CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE OF THE DISTRICT COURT'S DECISION

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* the California State Association of Counties avers that it is a nonprofit mutual benefit corporation, which does not offer stock and which is not a subsidiary or affiliate of any publicly owned corporation.

RULE 29 STATEMENTS

This brief of *amicus curiae* is submitted under the Federal Rule of Appellate Procedure 29(a).

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), the California State Association of Counties states that no party's counsel has authored this *amicus curiae* brief in whole or in part; no party or party's counsel has contributed money intended to fund the preparation or submission of this brief; and no person or entity other than the *amicus curiae* and its counsel has contributed money intended to fund the preparation or submission of this brief.

IDENTITY AND INTERESTS OF *AMICUS CURIAE*

The California State Association of Counties ("CSAC" or "Counties") respectfully submits this *amicus curiae* brief in support of Defendant-Appellee Sally Jewell, in her official capacity as Secretary of the Interior.

CSAC is a nonprofit corporation with a membership consisting of 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsel's Association of California and overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that member counties have a substantial interest in this case.

Counties have long participated in the administrative processes that govern the complex determinations related to the federal recognition of a tribe and the taking of land into trust for the tribe. While Counties admit that the administrative processes do not always achieve their desired result, these processes are the only opportunity to ensure that the federal government formally consider local governmental interests and concerns.[1] A reversal of the district court's decision in

[1] CSAC is a leading advocate on the federal level for reforms to the Department of Interior's fee-to-trust process. *See, e.g.*, Letter from Matt Cate, CSAC Executive Director, to John Barrasso, Chairman, Senate Committee on Indian Affairs (July 28, 2015) (supporting the Interior Improvement Act (2015 S. 1879), available at

this case would open the floodgates in other jurisdictions throughout the state to disregard the long-established administrative processes and statutes of limitations preventing untimely claims against the Department of the Interior. Further, reversing the district court's decision and granting the broad remedies requested by Appellant would compromise Counties' ability to engage in long-standing government-to-government processes designed to consider and protect local governmental concerns and interests.

I. INTRODUCTION

All parties must be required to follow the carefully crafted regulatory framework to ensure federal acknowledgement and fee-to-trust decisions consider the important perspectives and concerns of local governments and other stakeholders, and to quiet claims that are time-barred. The Department of the Interior's acknowledgement and fee-to-trust administrative processes provide Counties the opportunity to articulate their unique interests. Further, these administrative processes reflect the proper division between the executive and judicial branches of government. The district court appropriately enforced the statute of limitations here, and refused to allow Appellant to go forward and evade the requisite administrative processes. Counties respectfully urge this Court to

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http://www.counties.org/sites/main/files/file-attachments/csac_letter_of_support_to_chairman_barrasso_-_s__1879.pdf.

affirm the district court's decision to grant the Secretary's Motion for Summary Judgment and to dismiss the Appellant's Motion for Summary Judgment.

II. BACKGROUND

A. A SIX YEAR STATUTE OF LIMITATIONS APPLIES TO APPELLANT'S CLAIMS

Appellant's action hinges on the Department of the Interior's termination of the Alexander Valley Rancheria in 1959, allegedly followed by a corresponding failure to have included the Mishewal Wappo Tribe on the list of federally recognized tribes. *See* Amended Complaint at pp. 1-2 (claiming the government formally recognized the Mishewal Wappo Tribe until 1959); p. 13 (claiming the 1959 termination was unlawful); p. 23 (claiming the tribe must be recognized because the termination was unlawful).

In 2009, Appellant filed its complaint in the district court for the Northern District of California seeking federal recognition of the Tribe and requesting the federal government take lands into trust on behalf of the Tribe.[2] Appellant's

[2] Notably, Appellant's complaint came 30 years after former members of terminated Rancherias, including the Alexander Valley Rancheria, challenged the Department of the Interior's actions in a 1979 complaint, claiming that the Department had not followed the requirements of the Termination Act. In *Hardwick v. United States* (No. 79-1710 (N.D. Cal.)), pursuant to a stipulated judgment (Dec. 23, 1985 Order) the Department recognized the tribes of 17 rancherias. The Alexander Valley Rancheria was not included in that remedy, and was dismissed without prejudice. Instead of refiling those claims, as provided by the stipulated judgment, in a letter to the Department, Appellant requested that its "relationship with the United States be re-established as [it] was before the

claims, however, have been foreclosed for decades, as they are governed by 28 U.S.C. § 2401(a), which provides that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." This six-year statute of limitations applies to Indian groups "in the same manner as against any other litigant seeking legal redress or relief from the government." *Hopland Band of Pomo Indians v. U.S.*, 855 F.2d 1573, 1576 (Fed. Cir. 1988).

The challenged termination was proposed, voted on, and announced in the Federal Register in 1961, 54 years ago. Appellant concedes that residents of the Rancheria voted for termination in 1959 (Amended Complaint, at p. 7, ¶ 21) and acknowledges the 1961 Federal Register proclamation (*Id*., at p. 11, ¶ 40). Appellant's action thus accrued in 1959, and certainly no later than 1961. *Hopland, supra*, 855 F.2d at 1577 ("[A] claim first accrues when all the events have occurred which fix the alleged liability of the defendant and entitle the Plaintiff to institute an action") (citations and internal quotes omitted). Although actual notice of government action is not required to trigger the statute of limitations; accrual also occurs upon publication of a notice in the Federal Register. *Shiny Rock Mining Corp. v. U.S.*, 906 F.2d 1362, 1364-65 (9th Cir. 1990). To the extent that equitable

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unlawful termination." *See* Appellee's Special Excerpts to the Record (SER) 29-31.

tolling of these claims is available here, Appellant has provided no evidence to meet its burden.

B. COUNTIES HAVE A LONG HISTORY OF ENGAGING WITH TRIBAL GOVERNMENTS IN THE ADMINISTRATIVE PROCESSES TO RECOGNIZE A TRIBE AND TO TAKE LAND INTO TRUST

1. THE FEDERAL ACKNOWLEDGEMENT PROCESS

Before a tribe qualifies for or enjoys the unique status resulting from Federal recognition, including sovereign immunity, protection of land held in trust for it by the federal government, certain tax exemptions, and the privilege of conducting on-reservation gaming, they must go through the federal administrative process administered by the Bureau of Indian Affairs (BIA), under the Department of the Interior. This acknowledgement process, also known as the Part 83 process, after the section of the Code of Federal Register that implements the *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*, sets forth how tribal groups are given federal recognition as an Indian tribe. *See* 25 C.F.R. § 83.7.

This administrative process begins when an Indian group first submits a petition to the Department of the Interior documenting the ways in which it meets seven criteria for federal acknowledgement. 25 C.F.R. § 83.7. The Assistant Secretary must then publish notice of the Department of the Interior's receipt of the Acknowledgement Petition in the Federal Register. *Id.* This notice announces the

opportunity for interested parties and informed parties to submit factual or legal arguments in response to the petitioner's request for acknowledgment and/or to request to be kept informed of general actions affecting the petition. *Id.* at subd. (a) and (c). The Assistant Secretary will also notify the governor and the attorney general of the state in which a petitioner is located, and any recognized tribe and other petitioner that appears to have a historical or present relationship with the petitioner or may otherwise have a potential interest in the acknowledgment determination.[3] *Id.* at subd. (e). Under the regulations, an "interested party" is any party that has a legal or property interest in the outcome of the acknowledgment determination. Local governments have long engaged in this process. For example, in 2005, the Connecticut Attorney General, under the Administrative Procedure Act, successfully appealed federal recognition of the Schaghticoke and Eastern Pequot groups.[4] Here, Appellant has never sought federal acknowledgment through the Part 83 process.

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[3] Neither the Appellant nor the Secretary notified potentially affected local governments of this lawsuit, even though it sought to immediately recognize Appellant as an Indian Tribe, remove County lands from County jurisdiction, place them in federal trust for the benefit of Appellant, and designate them "restored lands" eligible for full casino gaming.

[4] *See* press releases, briefs, and links to decisions of the Interior Board of Indian Appeals at: http://www.ct.gov/ag/cwp/browse.asp?A=2131&BMDRN=2000&BCOB=0&C=19283. The Second Circuit upheld that Secretary of the Interior's decision not to acknowledge the Schaghticoke Tribal Nation in *Schaghticoke Tribal Nation v. Kempthorne*, 587 F.3d 132 (2d Cir. 2009), and the Supreme Court denied certiorari in 131 S.Ct. 127. In 2012, the Eastern Pequot tribe

2. THE FEE TO TRUST PROCESS

In its original complaint, Appellant requested an order to transfer as trust "such lands owned and designated by the Tribe located within the Tribe's historically aboriginal land," and to treat these trust lands as "restored lands" as defined in 25 U.S.C. § 2719(b)(1)(B)(iii). Complaint, at p. 29, ¶ C. Appellant later amended its complaint to prevent the intervention by certain impacted counties, by instead seeking trust land acquisition of "all public lands held by the Department of the Interior which are not currently in use and are available for transfer that are within the Tribe's historically aboriginal land." Amended Complaint, pp. 31-32 ¶ D.[5] The Secretary of the Interior has statutory authority to acquire land in trust, but only for a federally acknowledged tribe, which Appellant, notably, is not.[6]

The Secretary's authority is contained in the Indian Reorganization Act (IRA), codified at 25 U.S.C. § 461 *et seq*. The Act provides the Secretary discretion to acquire "any interest in lands, water rights, or surface rights within or without existing Indian reservations . . . for the purpose of providing land for

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filed a federal suit challenging the BIA's revocation of its tribal status, which was dismissed in *Historic Eastern Pequots v. Salazar*, 934 F. Supp. 2d 272 (D.D.C. 2013).

[5] While this action is not currently at issue, as it is necessarily subsequent to the federal acknowledgement action, Counties address it herein, as it is an immediate consequence of acknowledgement.

[6] As noted in the Federal Appellee's Brief, "[t]he Mishewal Wappo is not, and has never been, included on Interior's official list of federally recognized Indian tribes." (Federal Appellee's Brief, at p. 16.)

Indians." *Id.* Alternatively, individual acts of Congress may authorize the discretionary or mandatory acceptance of land into trust by the Secretary. *See e.g.*, Public Law 106-568; Graton Rancheria Restoration Act (2000) (providing for mandatory acquisition for Federated Indian of Graton Rancheria in Sonoma County); 25 U.S.C. §13001-2 (providing for discretionary acquisition for Auburn Indian Tribe in Placer County).[7]

Jurisdiction over land is perhaps the primary means for a government, either tribal or county, to exercise its sovereignty. When land goes into trust, it moves outside the civil and land use jurisdiction of local government. Thus, local governments typically engage in every avenue for participation and consideration of their concerns in fee-to-trust applications by tribes. The regulatory framework for consideration of fee-to-trust applications (found in Title 25 of the Code of Federal Regulations, Part 151) requires that the Secretary consider the tax and land use consequences of acquisition. *See* 25 C.F.R. § 151.10(e) and (f).[8] Those

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[7] Tribes have also sought recognition and restored land determinations through litigation, settlements and/or court decisions, but, as presented here, that avenue is foreclosed for Appellant.

[8] In pertinent part, the regulations set forth that the Secretary shall consider the following factors: . . .

> (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
>
> (f) Jurisdictional problems and potential conflicts of land use which may arise; . . .

regulations "are sensitive to the complex interjurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory" and require the Secretary to consider, *inter alia*, "[j]urisdictional problems and potential conflicts of land use which may arise." *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197, 220-21 (2005). Counties have long taken positions on trust applications, as it is their key opportunity to affect the process or to begin negotiations to reach an agreement with a tribe to address county concerns. Counties' comments and positions may also then form part of the formal record of the matter.

III. ARGUMENT

Allowing Appellant to revive claims far outside the applicable statute of limitations would have significant impacts on Counties statewide. Counties have long engaged in the administrative processes that are required to federally acknowledge an Indian tribe and to take land into trust on behalf of a tribe. While other California tribes have successfully challenged alleged unlawful termination and distribution of rancheria lands, Appellant comes more than five decades too late. In that intervening time, Counties engaged in land use planning and exercised its local jurisdictional, taxing and regulatory authority over that distributed land. The district court was correct in finding that Appellant's claims are time-barred, or at best, unripe, as Appellant has also failed to exhaust its administrative remedies.

A. REVERSAL OF THE DISTRICT COURT'S DECISION WOULD DISRUPT THE LONG-STANDING LEGAL RELATIONS BETWEEN THE PARTIES

Appellant's requested relief would require the Court to combine a series of complex administrative determinations in one court order. Such relief is not only foreclosed by the statute of limitations, but would also seriously impair Counties' ability to engage in the administrative processes that govern both federal acknowledgement and taking land into trust for a tribe. Additionally, granting such relief would significantly impact a number of counties throughout the State who are similarly situated to the instant facts.

California tribes' unique history and experience with the 1958 California Rancheria Termination Act and a 1964 Amendment to the Act resulted in termination of approximately 46 Rancherias. Many tribes have sought restoration, through a combination of litigation, administrative, congressional action.[9] Still, of the approximately 46 terminated Rancherias, only 31 have been restored. In an attempt to understand the scope of the impact of this case, the undersigned conducted an informal literature and media review that found six Indian groups throughout California, including the Mishewal Wappo, are currently attempting to access the federal acknowledgment process and/or to seek restoration of their

[9] *See, e.g., Tillie Hardwick v. U.S.* (N.D. Cal. No. 79-1710); *San Joaquin or Big Sandy Band of Indians, et al. v. James Watt, et al.* (N.D. Cal. No. 80-3787); *Scotts Valley v. United States* (N.D. Cal. 86-3660); Public Law No. 10-454, 108 Stat. 4793 (restoring the Auburn Rancheria).

Rancherias.[10] Five Rancherias that were terminated have not yet attempted either federal acknowledgement or restoration of the Rancheria.[11]

Counties have engaged in productive government-to-government relationships with tribes, due in large part to the opportunity provided by the administrative processes that require local governments to identify and discuss their taxing, regulatory, economic and environmental concerns with federal acknowledgement and fee-to-trust decisions. Beginning with these processes, Counties work to implement their best practice of negotiating memoranda of agreement or understanding with local tribes to address the impacts related to tribal developments. A prime focus of County negotiations regarding fee-to-trust applications is to ensure that the off-reservation project impacts are fully mitigated and, in certain Counties, to limit gaming. For example, in Sonoma County, the Board of Supervisors has worked diligently to ensure that the impacts of proposed tribal developments – for all five of the federally recognized tribes in the County – are borne by the tribe. Because of the great importance in productive government-to-government relationships, Sonoma County has also consistently opposed trust applications where intergovernmental agreements are not reached.

[10] The unrecognized and landless rancherias identified who are seeking acknowledgment and restoration are Nevada City Ranchera, Strawberry Valley Rancheria, Mission Creek Rancheria, Colfax Rancheria, and Taylorsville Rancheria.

[11] The rancherias who have not yet sought acknowledgment or restoration are Cache Creek, Indian Ranch, Mark West, Ruffey's, and El Dorado.

Some California Indian groups have sought acknowledgment and land in trust so as to access the economic development opportunities provided by casino or other gaming development. Indeed, Counties' interests over tribal land use have come into sharpest relief in the area of Indian gaming, which is now a multi-billion dollar industry in California. The statutory framework established by Congress to both promote and control Indian casino development is the Indian Gaming Regulatory Act (IGRA).[12] IGRA provides for gaming only on "Indian lands," which generally means trust lands or reservation lands over which the tribal government exercises jurisdiction.[13] The Act further restricts gaming to lands acquired by a tribe prior to the date of IGRA's enactment on October 17, 1988. However, a number of exceptions to this restriction have arisen, and they are of special controversy in California where off-reservation gaming issues predominate.

Here, Appellant's requested relief that any land taken in trust as a result of their litigation be considered "restored lands" telegraphs an intention to move

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[12] 25 U.S.C. §§ 2701-2721, 18 U.S.C. § 1166.

[13] *See* 25 U.S.C. § 2703(4); *Kansas v. United States*, 249 F.3d 1213 (10th Cir. 2001). Note that IGRA's application does not depend upon whether the land at issue is "Indian country." Instead, Congress specifically used "Indian lands" as the criterion for IGRA's application. Furthermore, the National Indian Gaming Commission has issued an opinion that Rancheria land owned in fee is Indian Land eligible for gaming, because a Rancheria is the equivalent of a reservation; for this reason, fee land within the exterior boundaries of a Rancheria is eligible. *See* NIGC Buena Vista Rancheria of Me-Wuk Indians Land Determination, *available at* http://www.nigc.gov/Reading_Room/Indian_Land_Opinions/Buena_Vista_Rancheria_of_Me-Wuk_Indians.aspx.

towards casino development. Complaint, p. 29; Amended Complaint, pp. 31-32. Counties would be deeply impacted if such action is permitted to occur outside of the administrative processes designed to ensure these decisions benefit from public and local government participation. Counties have long raised environmental, public safety, and regulatory concerns about casino development within the borders of land otherwise under their jurisdiction. Courts have also recognized that the impacts of a trust acquisition are felt beyond the trust parcels themselves. *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, 921 F.2d 924 (9th Cir. 1990). Such longstanding land use planning goals should not be upended by half-century old claims through judicial action.

B. THE DISTRICT COURT CORRECTLY FOUND THAT APPELLANT'S CLAIMS ARE TIME-BARRED AND THAT EQUITABLE TOLLING IS INAPPROPRIATE

Counties have an interest in ensuring that the Appellant is held to the same statute of limitations that applies to all similarly situated Indian groups throughout the State. In the instant case, the record demonstrates that notice of the Rancheria's termination was published in the Federal Register on August 1, 1961. 26 Fed. Reg. at 6875. This event triggered the statute of limitations with regard to all of Appellant's claims – those regarding the breach of fiduciary duty as well as those claims re-styled and plead pursuant to the Administrative Procedures Act. *Wind River Mining Corp. v. U.S.*, 946 F.2d 710, 713 (9th Cir. 1991). The facts here are

analogous to other cases that have dismissed late claims brought by terminated Rancherias. *See Hopland, supra*, 855 F.2d at 1577. *Hopland* also concerned a 1961 termination of a California Rancheria under the California Rancheria Act. In 1976, the Hopland Band of Pomo Indians filed suit against the United States claiming, as here, that the government had unlawfully terminated the Rancheria and the Band's federal status. *Id.*, at p. 1576. The Federal Circuit rejected this claim, holding that "Congress has explicitly provided a plaintiff 6 years in which to file his action and no more." *Id.* at p.1577-78. The court held, as here, that the plaintiff's claims accrued in the 1960s, and that the court had been shown no valid reason why a suit could not have been brought immediately following the improper termination alleged in the 1976 suit. *Id.* at p. 1580. Similarly, in *Felter v. Kempthorne*, 473 F.3d 1255 (D.C. Cir. 2007), the court rejected a late suit, as well as plaintiff's attempt to "recharacterize [its] claim by asserting that Interior's failure to rectify its past illegal termination constitutes a current breach of trust." *Felter*, at p. 1259. The *Felter* court also rejected the application of the continuing violation doctrine, stating, "[a]s we have held, "[a] lingering effect of an unlawful act is not itself an unlawful act." *Id.* (citations omitted).

Appellant also urges that its claims are salvaged by the equitable tolling doctrine. To the extent that it applies here, [14] Appellant is required to have established "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way." *Wong v. Beebe*, 732 F.3d 1030, 1052 (9th Cir. 2013). Appellant has not met its burden here. The Ninth Circuit recognizes equitable tolling of deadlines only "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due

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[14] In *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130 (2008), the Supreme Court held that 28 U.S.C. § 2501, which provides that "[e]very claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues," is a jurisdictional statute of limitations. A statute of limitations is considered "jurisdictional" when it cannot be waived by a defendant and is not subject to equitable tolling by the courts.

The *John R. Sand* decision seemed to conflict with the Ninth Circuit's 1997 holding in *Cedars-Sinai Medical Center v. Shalala* that Section 2401(a) is not jurisdictional (which overturned prior decisions to the contrary). *Cedars-Sinai Med. Ctr. v. Shalala*, 125 F.3d 765 (9th Cir. 1997); *but see Big Spring v. U.S. Bureau of Indian Affairs*, 767 F.2d 614, 616 (9th Cir. 1985) ("Section 2401(a), if it applies, is jurisdictional." (citing *Loring v. United States*, 610 F.2d 649, 650 (9th Cir. 1979))). In another recent Ninth Circuit decision, *Wong v. Beebe*, the Court reversed its previous decision and instead held that section 2401(b) is *not* jurisdictional. 732 F.3d 1030 (9th Cir. 2013). The Supreme Court later affirmed the Ninth Circuit's decision in *Wong*. *United States v. Wong*, 135 S. Ct. 1625 (2015).

The circuit courts, however, are split 5-3 on whether section 2401(a) is a jurisdictional statute of limitations, with a majority finding that section 2401(a) is jurisdictional. *See Herr v. U.S. Forest Serv.*, No. 14-2381, 2015 U.S. App. LEXIS 17643, at *2 (6th Cir. Oct. 9, 2015) and *Cedars-Sinai*, *supra*, 125 F.3d at 770-771.

diligence in discovering the deception, fraud, or error." *Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003). Similarly, in *De La Torre v. United States*, No. C 02-1942 CRB, 2004 U.S. Dist. LEXIS 18500 at *40 (N.D. Cal. Sept. 10, 2004), the Court noted, in connection with a request for equitable tolling of the limitations period of 28 U.S.C. § 2401, that "plaintiff must establish that the United States' misconduct was in some way designed to prevent plaintiffs from meeting the filing deadline." Appellant fails to identify any wrongful act of the Department occurring during the six years following the accrual of its claim in August 1962, and instead relies on a series of documents beginning in 1987, none of which meets the standard required to equitably toll the statute, and all of which fall far after Appellant's statute expired. Appellant utterly fails to meet its burden to equitably toll its statute here.

C. EVEN IF THE COURT REACHES APPELLANT'S CLAIMS, APPELLANT'S CHALLENGE IS INVALID

Appellant argues, for the first time in this appeal, that its claims for relief – federal recognition, specifically – are an appropriate remedy for the Appellee's withdrawal of recognition, which is not tied to the termination of the Alexander Valley Rancheria in 1961. This argument allows Appellant to claim that no statute of limitation applies to this withdrawal of recognition, because the "designation has gone missing", and that the "United States seemed to no longer acknowledge the Wappo Tribe." Appellant's Opening Brief, at p. 5.

Appellant's claim here fails for two reasons: 1) it never raised this argument at any moment prior to its appeal and thus, it has waived it; and 2) it has failed to exhaust its administrative remedies with the Department of the Interior (in a Part 83 process, as described above, *supra* section B.1.). It is the second failure here that most concerns Counties herein. Whether the Mishewal Wappo are recognized by the federal government "should be made in the first instance by the Department of the Interior…", which provides for a full administrative process in which impacted counties may participate. Allowing Appellant to violate the basic principle of administrative exhaustion here will impact not only the affected counties in the instant case, but will be felt by many others throughout the State.

IV. CONCLUSION

Counties respectfully urge the Court to affirm the district court's decision in this matter.

Dated: November 30, 2015

Respectfully submitted,

BRUCE GOLDSTEIN
COUNTY COUNSEL

By: /s/ Alegría G. De La Cruz
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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Ninth Circuit Rules 32-1, this *amicus curiae* brief is proportionately spaced, has a typeface of 14 points, and contains approximately 4,282 words.

Dated: November 30, 2015

Respectfully submitted,
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By: /s/ Alegría G. De La Cruz

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 30, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Eileen Shired