No Casino in Plymouth v. National Indian Gaming Comm'n, ___ F. Supp. 3d ___, 2022 WL 1489498 (E.D. Cal. May 11, 2022)

- **Holdings:** Multiple claims challenging approval of tribal gaming ordinance, land-into-trust determination and tribe's federally recognized status were dismissed on law-of-the-case and failure-to-state-a-claim grounds. The involved tribe's motion to intervene under Fed. R. Civ. P. 24(a) as a defendant was granted.
- **Summary:** In 2012, "then-Acting Assistant Secretary of Indian Affairs Donald Laverdure ("Laverdure") issued the ROD at issue that announced the DOI's taking of 228.04 acres of land in Amador County into trust for the [Ione Band of Miwok Indians]. ... The ROD also allowed the Band to construct a casino complex and conduct gaming once the land was taken into trust." Almost six years later, the NIGC chairman approved the Band's gaming ordinance. An organization and various individuals thereafter sued the NIGC and various federal officials, challenging "(1) the Tribe's gaming ordinance ...; (2) Laverdure's authority to approve the ROD under the Appointment Clause of the U.S. Constitution ...; (3) the Tribe's federally recognized status under the Indian Reorganization Act ...; [and] (4) the Tribe's federal recognition under 25 C.F.R. Part 83" and alleging "(5) Defendants' violation of Plaintiffs' Equal Protection rights by favoring the Tribe, a race-based group, through approval of the ROD and gaming ordinance ...; and (6) Defendants' violation of federalism protections." Federal Defendants moved for judgment on the pleadings, arguing that claims (1) through (4) were precluded on law-of-the-case grounds by *County of Amador v. U.S. Department of Interior*, 872 F.3d 1012 (9th Cir. 2017), and that claims (5) and (6) failed under Fed. R. Civ. P. 12(b)(6). The Band also requested intervention under Fed. R. Civ. P. 24(a) as a defendant. The district court granted both motions.

  The court began by addressing the motion to dismiss and held as to claims (1) through (4) that

  > [t]he Ninth Circuit resolved issues identical to those in the present case. ... The "law of the circuit doctrine" mandates that "a published decision of [a Ninth Circuit] court constitutes binding authority which must be followed unless and until overruled by a body competent to do so[.]" ... Thus, the Ninth Circuit's decision on the Tribe's federally recognized status and the Tribe's status in 1934 under the IRA are binding on this Court. Further, the Ninth Circuit clearly found Laverdure's actions within his powers. ... Accordingly, the Court finds *County of Amador* disposes of Plaintiffs' Claims One through Four on the following issues: (1) the Tribe's gaming ordinance; (2) Laverdure's authority to issue the ROD; and (3) the Tribe's federally recognized status under the IRA and Part 83.

  With respect to claims (5) and (6), not only had Plaintiffs neglected to respond to Defendants' arguments "in any meaningful way[,]" but "those arguments [were also] persuasive." On the latter score, the race-based equal protection and the federalism claims foundered, respectively, on the fact that "the tribe is not a distinct racial group but a separate, 'quasi-sovereign entity[]'" and on Congress' plenary authority under the Indian Commerce Clause.

  The court then turned to the Band's motion to intervene and concluded that Rule 24(a) intervention as a matter of right was appropriate. In so ruling, it accepted the Band's argument that "'Federal defendants would not adequately represent an absent tribe where their obligations to follow relevant [ ] laws were in tension with tribal interests'"

and that "the burden of showing inadequate representation is 'minimal' and Proposed Defendant Intervenor need only demonstrate 'that representation of its interests "may be" inadequate.'" The court additionally granted the Band's motion to take judicial notice of land grant deeds relevant to the land-into-trust issue.

- **Relevant (2021) Deskbook Sections:** 2:6 n.10; 2:7 n.20; 12:13 n.1; 12:18 n.8