RALPH R. LePERA, Bar No. 063913
LAW OFFICES OF RALPH LePERA
219 East Line Street
Post Office Box 1819
Bishop, CA 93515-1819
Telephone: 760.872.2048

ANNA S. KIMBER, Bar No. 190699
LITTLER MENDELSON
A Professional Corporation
701 "B" Street, 13th Floor
San Diego, CA 92101.8194
Telephone: 619.232.0441

Attorneys for Appellants
BISHOP PAIUTE TRIBE and BISHOP PAIUTE
GAMING CORPORATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BISHOP PAIUTE TRIBE, in its official capacity and as a representative of its Tribal members; BISHOP PAIUTE GAMING CORPORATION, d.b.a. the PAIUTE PALACE CASINO,

Plaintiffs-Appellants,

v.

COUNTY OF INYO; PHILLIP MCDOWELL, individually and in his official capacity as District Attorney of the County of Inyo; DANIEL LUCAS, individually and in his official capacity as Sheriff of the County of Inyo,

Defendants-Appellees.

Case No. 01-15007
Case No. CV-F-00-6153 REC LJO
(Eastern District of California)

APPELLANTS' REPLY TO APPELLEES AND RESPONSE TO AMICUS CURIAE BRIEF OF CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

TABLE OF CONTENTS
(CONTINUED)

PAGE

I. INTRODUCTION 1

II. ARGUMENT 2

A. Tribe's Sovereign Immunity Was Not Waived By P.L. 280 2

1. Tribe's Participation In The State of California's Unemployment And Disability Programs Does Not Constitute A Waiver Of Tribe's Immunity 5

2. Pursuant To James, The United States Statutory Delegation Of Criminal Jurisdiction Via P.L. 280 Includes The Limitations Of Jurisdiction 6

B. Both County And Amici Fail To Address Tribe's Argument That The District Court Erroneously Employed A Balancing Test 8

C. Tribe's Inherent Right To Create Policies Related To Protection Of Tribal Records Has Not Been "Lost By Implication" 11

D. In The Absence Of Jurisdiction, County Is Required To Negotiate With Tribe In Order To Obtain Information Sought 14

E. DA Amici's Interpretation Of The Civil/Regulatory Argument Raised Is Improper 15

F. Assumption Of Criminal Jurisdiction Amounts To An Assumption Of A Comprehensive Federal Scheme In Contravention Of The Tenth Amendment 17

G. District Attorney And Sheriff Were County Officials Here 18

H. The District Court Did Not Find The District Attorney And Sheriff To Be Protected By Eleventh Amendment Immunity 21

I. The District Attorney And Sheriff Are Not Entitled To Qualified Immunity 23

TABLE OF CONTENTS
(CONTINUED)

PAGE

1. District Attorney And Sheriff's Interpretation Of P.L. 280 Was Not Reasonable 24

2. As To The Lack Of Probable Cause 25

3. The Execution Of The Search Warrant Was Overbroad 25

4. Failure To Provide Magistrate With Critical Information Precludes A Finding Of Qualified Immunity 27

J. Motions To Dismiss Are Improper Where Questions Of Fact Exist 29

III. CONCLUSION 29

TABLE OF AUTHORITIES (CONTINUED)

PAGE(S)

Cases

Agua Caliente Band of Cahuilla Indians v. Hardin,
223 F.3d 1041 (9th Cir. 2000) 30

Anderson v. Creighton,
483 U.S. 635 (1987) 23

Atkinson Trading Co., Inc. v. Shirley,
___ U.S. ___, 121 S. Ct. 1825 (2001) 12

Bryan v. Itasca County,
426 U.S. 373, 388 (1976) 3, 5, 7, 8

California v. Cabazon Band of Mission Indians,
480 U.S. 202 (1987) 13, 16

California v. Quechan Tribe of Indians,
595 F.2d 1153, 1156 (9th Cir. 1979) 3, 5

Cotton Petroleum Corp. v. New Mexico,
490 U.S. 163 (1989) 9

County of Los Angeles v. Superior Court (Peters),
68 Cal. App. 4th 1166 (1998) 22

Gilligan v. Jamco Development Corp.,
108 F.3d 246 (9th Cir. 1997) 29

Harlow v. Fitzgerald,
457 U.S. 800 (1982) 23

Hill v. National Collegiate Athletic Assn.,
7 Cal. 4th 1 (1994) 26

In re Blue Lake Forest Prod. v. Hong Kong and Shanghai Banking Corp.,
30 F.3d 1138 (9th Cir. 1994) 12

Katz v. United States,
389 U.S. 347 (1967) 26

TABLE OF AUTHORITIES (CONTINUED)

PAGE(S)

King v. United States,
426 F.2d 278 (9th Cir. 1970) 28

Kiowa Tribe of Okla. v. Mfg. Technologies, Inc.,
523 U.S. 751 (1998) 6

Malley v. Briggs,
475 U.S. 335 (1986) 28

McMillian v. Monroe County,
520 U.S. 781 (1997) 22

Monell v. Dep't of Social Serv. of the City of New York,
436 U.S. 658 (1978) 20

Montana v. United States,
450 U.S. 544 (1981) 11

Nevada v. Hicks,
___ U.S. ___, 2001 U.S. Lexis 4669 (2001) 4, 9, 11, 14

Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe,
498 U.S. 505 (1991) 3, 4, 6

Oklahoma Tax Comm'n. v. Chickasaw Nation,
515 U.S. 450 (1995) 8

Oliphant v. Suquamish Indian Tribe,
435 U.S. 191 (1978) 11, 12

Organized Village of Kake v. Egan,
396 U.S. 60 (1962) 11

Pembaur v. City of Cincinnati,
475 U.S. 469 (1986) 20, 21

Pitts v. County of Kern,
17 Cal. 4th 340 (1997) 20, 22

Poway Unified School Dist. v. Superior Court (Copley Press),
62 Cal. App. 4th 1496 (1998) 26

Reich v. Great Lakes Indian Fish & Wildlife Comm'n,
4 F.3d 490 (10th Cir. 1993) 15

PAGE(S)

Roe v. County of Lake,
107 F. Supp. 2d 1146 (N.D. Cal. 2000) 20, 21

Salinero v. Pon,
124 Cal. App. 3d 120 (1981) 28

Santa Clara Pueblo v. Martinez,
436 U.S. 49 (1978) 6

Saucier v. Katz,
___U.S. ___, 121 S. Ct. 2151 (2001) 23, 24, 25

Seminole Tribe v. Florida,
517 U.S. 44 (1996) 3

State v. Stone,
572 N.W. 2d 725 (Minn. Sup. Ct. 1997) 16, 17

Strait v. A-1 Contractors,
520 U.S. 438 (1997) 9

Streit v. County of Los Angeles,
236 F.3d 552 (9th Cir. 2001) 19, 22, 23

Sycuan Band of Mission Indians v. Roache,
788 F. Supp. 1498 (S.D. Cal. 1992),
aff'd., 38 F.3d 402 (9th Cir. 1994) 4, 5

Three Affiliated Tribes of the Fort Berthold Reservation
v. Wold Eng'g.,
476 U.S. 877 (1986) 14

United States Dept. of State v. Ray,
502 U.S. 164 (1991) 26

United States v. Baker,
894 F.2d 1144 (10th Cir. 1990) 27

United States v. James,
980 F.2d 1314 (9th Cir. 1992),
cert. denied, 510 U.S. 838 (1993) .... *passim*

United States v. Wheeler,
435 U.S. 313 (1978) 12

PAGE(S)

White Mountain Apache v. Bracker,
448 U.S. 136 (1980) 12

Will v. Michigan Dept. of State Police,
491 U.S. 58 (1989). 22

Williams v. Lee,
358 U.S. 217 (1959) 14

Statutes

18 U.S.C.
Section 1152 (General Crimes Act) 6

18 U.S.C.
Section 1153 (Major Crimes Act) 6

18 U.S.C.
Section 1162 (Public Law 280) 2, 3, 7, 9

42 U.S.C.
Section 1983 .... *passim*

5 U.S.C.
Section 552 *et seq.* (Freedom of Information Act) 10

5 U.S.C.
Section 552(a) 26

California Constitution
Article I, Section 1 26
Article V, Section 13 20

California Evidence Code
Section 451(f) 28
Section 453 28

California Government Code
Section 6250 *et seq.* (California Public Records Act) 10, 26
Section 6255 10

PAGE(S)

California Welfare & Institutions Code
Section 10850 14
Section 10850(b) 15
Section 10850.3 10

United States Constitution
Amendment X 18

Other Authorities

Opinion of Attorney General,
57 Op. Att'y Gen. 362 (1974) 15

Varon, Searches, Seizure and Immunities,
p. 408 (2d 1974) ("Varon") 5

Witkin, California Criminal Law, Jurisdiction and Venue,
§ 1828 (2d ed. 1996) 4

Rules

Federal Rules of Civil Procedure
Section 12(b)(6) 29

I.
INTRODUCTION

Appellant Bishop Paiute Tribe *et al.* ("Tribe") hereby file this Reply to the Response submitted on behalf of County of Inyo ("County"), District Attorney Phillip McDowell ("District Attorney"), and Inyo County Sheriff Daniel Lucas ("Sheriff") filed on June 21, 2001. Tribe requested and received a fourteen-day extension in order to file this Reply. Additionally, Tribe incorporates into this Reply its Response to the Amicus Curiae brief submitted by the California District Attorneys Association in support of Defendants-Appellees ("Amici").

As an initial comment, Tribe must address both County's and Amici's portrayal of Tribe's position. County contends that Tribe is advocating that it has the right to thwart criminal investigations for crimes such as murder by precluding law enforcement personnel from executing warrants on a reservation "if the evidence of that murder (*i.e.*, the body), or evidence identifying the person who committed the murder, was located upon the reservation." County's Response, p. 34.

Tribe must question aloud where County could extract this theory of lawlessness from Tribe's position. Tribe has never argued that location of the tribal records where seized is dispositive. Tribe's position is two-fold. First,

because Public Law 280, 18 U.S.C. section 1162 ("P.L. 280") did not waive Tribe's sovereign immunity, it is not subject to the adjudicatory jurisdiction of state courts. Second, because Tribe has in place a reasonable policy that does not allow for the release of the records demanded by County unless certain guidelines are met, County's actions taken in derogation of that policy constitutes an unlawful intrusion upon Tribe's inherent tribal sovereignty to make its own laws and be governed by them.

County's Response unnecessarily confuses two distinct doctrines of Indian law: sovereign immunity and inherent tribal sovereignty. As will be discussed below, while the common law defense of sovereign immunity addresses the limitations of state and federal adjudicatory jurisdiction over tribal governments, inherent tribal sovereignty addresses the limitation of tribal governments over the actions of non-members of Tribe, both on and off non-tribal lands.

II.
ARGUMENT

A. Tribe's Sovereign Immunity Was Not Waived By P.L. 280

The district court recognized that Tribe's sovereign immunity was not waived by P.L. 280, but chose to balance the state's interest of executing search warrant with Tribe's inherent right to self-governance, concluding: "the Tribe's sovereign immunity does not prohibit the execution of the search warrant against the Tribe and its property." ER. p. 221. Tribe believes the lack of a waiver of

sovereign immunity acts as a jurisdictional bar, and Tribe is not subject to the process of the state courts. County's Response completely fails to address this argument and furthermore fails to support the district court's erroneous "balancing" test which has no support in either the statute or legislative history of P.L. 280, its interpretive case law, or any corollary laws.

Court decisions too numerous to list here have held that tribal sovereign immunity acts as a complete defense to any imposition of state adjudicatory jurisdiction over a tribe. *See* Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe, 498 U.S. 505, 509 (1991); Bryan v. Itasca County, 426 U.S. 373, 388 (1976). Specifically as to the criminal grant of jurisdiction pursuant to P.L. 280: "Neither the express terms of 18 U.S.C. § 1162, nor the Congressional history of the statute, reveal any intention by Congress for it to serve as a waiver of a Tribe's sovereign immunity." California v. Quechan Tribe of Indians, 595 F.2d 1153, 1156 (9th Cir. 1979). As a corollary to this rule, tribes may not sue state governments unless there is an unequivocal waiver of sovereign immunity by a state government even in circumstances where the state has potentially violated federal laws. *See* Seminole Tribe v. Florida, 517 U.S. 44 (1996).

Both County and Amici recognize search warrants as a form of process "used by a court to acquire or exercise its jurisdiction over a person or over specific property." Amicus Brief, p. 9, *citing* Nevada v. Hicks, ___ U.S. ___, 2001

U.S. Lexis 4669, p. 20 (2001). Because the documents seized here are wholly owned and in the possession of Tribe, the sovereign immunity of Tribe extend to its property. Citizen Band of Potawatomi; United States v. James, 980 F.2d 1314 (9th Cir. 1992), *cert. denied*, 510 U.S. 838 (1993).

Even though a statute provides for jurisdiction in a general sense, unless expressly stated, this jurisdiction does not "automatically abrogate the Indian tribe's sovereign immunity." James, 980 F.2d at 1319. While P.L. 280 provided the State of California and its political subdivisions general criminal jurisdiction over individual Indians who committed or were victims of offenses arising within Indian country, Congress neither expressly nor impliedly waived the sovereign immunity of tribal governments, subjecting them to the jurisdiction of the courts of California.

Amici at page 8 distort the holding and reasoning of Sycuan Band of Mission Indians v. Roache, 788 F. Supp. 1498 (S.D. Cal. 1992), *aff'd.*, 38 F.3d 402 (9th Cir. 1994). Not only are search warrants an extension of the state court's jurisdiction, they are also limited by the state's jurisdiction. Witkin, California Criminal Law, Jurisdiction and Venue, § 1828 (2d ed. 1996). Sycuan Band held that general principles of search and seizure limit the extent of judicial authority to issue a search warrant within its lawful jurisdiction. Sycuan Band, 788 F. Supp. at 1507-1508, *citing* Varon, Searches, Seizure and Immunities, p. 408 (2d 1974)

("Varon"). "The lack of jurisdiction by the issuing authority to issue a search warrant is not to be considered a mere technicality." Id., *citing* Varon at 409. Here, the sovereign immunity of Tribe precludes the State of California and County from exerting jurisdiction directly over Tribe in the form of any type of process, including the execution of search warrants.

Tribe respectfully requests the Court to review the arguments raised in its Opening Brief, pages 10-15. It should be noted, however, that County failed to address, let alone distinguish, the holdings of James. California v. Quechan Tribe of Indians and Bryan, cases that Tribe believes support the position that, absent an express waiver by Congress or Tribe itself, P.L. 280 cannot be interpreted as providing states and their political subdivisions jurisdiction over sovereign tribal governments.[1]

1. Tribe's Participation In The State of California's Unemployment And Disability Programs Does Not Constitute A Waiver Of Tribe's Immunity

County asserts that Tribe's participation in the state unemployment and disability programs constitutes a waiver of its sovereign immunity as to all state and county agencies in the enforcement of all state laws. County's lack of citation to any supporting case law is telling. In fact, case law is to the contrary. Waivers

[1] Additional cases supporting this position are cited within the Amicus Brief submitted by National Congress of American Indians, page 7.

of sovereign immunity can only be waived by either Congress or Tribe itself, and such a waiver must be clear and unequivocal. Kiowa Tribe of Okla. v. Mfg. Technologies, Inc., 523 U.S. 751 (1998); Citizen Band of Potawatomi, 498 U.S. at 509; Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978).

Tribe's willingness to participate in the state's unemployment and disability plan, including a willingness to "consent to the jurisdiction of state agencies charged with the enforcement of Unemployment Insurance Code . . ." (ER 176; County's Response, p. 30) (emphasis added) must be read as not only an expansion of state jurisdiction over Tribe, but as a limitation as well. It is undisputed that here County officials were enforcing state laws related to service of process via a search warrant upon a tribal government enforcing the state's welfare laws, not the state's unemployment law. Under direction of County

Furthermore, since the tribal-state compact relied upon by County was not in effect until May 16, 2000, two months after the execution of the search warrant, the reliance by County upon this provision of the compact is erroneous.

2. Pursuant To James, The United States Statutory Delegation Of Criminal Jurisdiction Via P.L. 280 Includes The Limitations Of Jurisdiction

County and Amici claim that because P.L. 280 expressly repealed the General Crimes Act, 18 U.S.C. section 1152, and the Major Crimes Act, 18 U.S.C. section 1153, Tribe's assertion that P.L. 280 is limited only to offenses committed

by or against Indians in Indian country "is unsupported by law, and is untenable." (County's Response p. 13). Yet it is County's position that is untenable, since P.L. 280's express repeal of the Major Crimes Act provides evidence of Congress's intent to not only confer to states the criminal jurisdiction previously and exclusively held by the United States, but to also confer limitations of that jurisdiction.

It is true that P.L. 280 provided the "criminal laws of California shall have the same force and effect within Indian country as they have elsewhere in the State." 18 U.S.C. § 1162. However, nowhere within the State of California do the criminal laws of California have effect over Tribe. The impetus behind P.L. 280 was the problem of lawlessness on certain Indian reservations and the lack of tribal forums to address these issues, not a need to give states jurisdiction over tribal governments. Nowhere on the face of the statute or the legislative history is there evidence of Congress's intent to confer to states jurisdiction over the tribes themselves. *See* Bryan, 426 U.S. at 380-389.

Nowhere within County's response is an effort made to distinguish, let alone address James, which Tribe believes is controlling here. Tribe contends that the district court committed error when it distinguished the facts here from James. In James, the Ninth Circuit held that the Major Crimes Act did not provide the United States government jurisdiction over the Quinault Tribe to hail its officials and their

records into federal court pursuant to a subpoena duces tecum. James, 980 F.2d at 1319. Absent express congressional intent, states and their political subdivisions could not have obtained a greater degree of jurisdiction over tribal governments than the United States previously possessed. Tribe respectfully requests this Court to review the arguments raised by Tribe in its Opening Brief on pages 12-15.

B. Both County And Amici Fail To Address Tribe's Argument That The District Court Erroneously Employed A Balancing Test

Tribe's Opening Brief at pages 15 through 17 challenged the "balancing" test employed by the district court and argued that the application of such a balancing test under the present circumstances was clear error. The Supreme Court has ruled that when a state's actions are directed towards an Indian tribe rather than non-Indians engaged in activities on the reservation, the proper test is as follows: Absent cession of jurisdiction or other federal statute permitting states to assert jurisdiction, states are without power to assert jurisdiction over tribes. Oklahoma Tax Comm'n. v. Chickasaw Nation, 515 U.S. 450, 458 (1995), *citing* Bryan. Nowhere within County's or Amici's briefs is this proper legal framework addressed.

Execution of a search warrant on Tribe and seizing wholly tribal-owned records in derogation of a tribal procedure constitutes a diminishment of Tribe's right to be free from state intrusion into its affairs, as well as its inherent sovereign

right to make its own laws and be governed by them. County fails to identify a "clear and plain statement" that Congress intended to diminish a tribe's inherent right to be free of such intrusion with the passage of P.L. 280. *See* Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 177-78 (1989). Absent evidence of such an intent, County's assertion of criminal jurisdiction is limited by the terms of the statute: "over offenses committed by or against Indians in the areas of Indian country . . . to the same extent that such State . . . has jurisdiction over offenses committed elsewhere within the State. . . ." 18 U.S.C. § 1162.

Under County's theory of jurisdiction, the nature of the tribal-owned documents is irrelevant, for so long as County can allege that any tribal document constitutes "evidence" of a crime they are subject to seizure by states and their political subdivisions.[2] Courts are required to view each act of self-governance to ascertain the legitimacy of that act, against the backdrop of the holding that "Indians have 'the right . . . to make their own laws and be ruled by them.'" Nevada v. Hicks, ___ U.S. ___, 2001 U.S. Lexis 4669, p. 14, *citing* Strait v. A-1 Contractors, 520 U.S. 438, 459 (1997).

[2] County's assertion that the documents already in their possession would be "inadmissible hearsay" is contrary to California Evidence Code section 1521, which provides for the admission of secondary evidence when there is no genuine dispute regarding the material terms of the writing and admission of the secondary evidence would not be unfair. Furthermore, Tribe questions how the evidence seized would be admissible unless the business records are authenticated by tribal officials as required by California Evidence Code sections 1271 and 1401.

At page 26, County's Response takes issue with Tribe's assertion that the protection of tribal employees' personnel records is an act of self-governance. Protecting the privacy of tribal employment records is a legitimate governmental interest. Protection of governmental property is a necessary and inherent power of the right to self-governance. Evidence of the governmental nature of this protection can be found in the laws of the State of California and the United States. *See* 5 U.S.C. § 552 *et seq.* (Freedom of Information Act); Cal. Gov't Code § 6250 *et seq.* (California Public Records Act). All governments create procedures for the protection of certain records, as well as procedures for when certain records can be released and under what circumstances. *See* Cal. Gov't Code § 6255, (catch-all exemption, where a state agency can justify withholding of records when it can demonstrate "that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."); *see also* Welf. & Inst. Code § 10850.3 (County Department of Social Services is prohibited from releasing personal information of its welfare recipients to its own law enforcement personnel unless certain criteria are met).

When a tribe, in the course of its exercise of self-governance creates a valid law or procedure, founded upon reasonable principles, state action that undermines or is in derogation of the tribe's exercise cannot stand. Such are the principles of

inherent sovereignty. While states may have the right to exercise jurisdiction over Indian reservations, they cannot do so if "such application would interfere with reservation self-government or impair a right granted or reserved by federal law." Organized Village of Kake v. Egan, 396 U.S. 60, 75 (1962).

C. Tribe's Inherent Right To Create Policies Related To Protection Of Tribal Records Has Not Been "Lost By Implication"

The dicta gleaned by County and Amici from a line of cases that assert that a tribe's inherent sovereignty can be "lost by implication" is completely inapplicable to the facts here, since "the areas in which such implicit divestiture of sovereignty has been held to have occurred are those involving the relations between an Indian tribe and non-members of the tribe." Montana v. United States, 450 U.S. 544, 564 (1981). All cases relied upon by County discuss where tribes have lost some of their right to inherent sovereignty when the tribe has attempted to exert some form of jurisdiction over non-members, or have involved exertion of jurisdiction on non-tribal lands. *See* Montana, 450 U.S. 544 (1981) (holding that the Crow Tribe of Montana does not have the power, either under existing treaties or under the inherent power of Indian sovereignty, to regulate non-Indian fishing and hunting on reservation land owned in fee by non-members of the tribe.); *see also* Nevada v. Hicks, ___ U.S. ___, 2001 U.S. Lexis 4669 (2001); Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) (finding that tribal courts do not have inherent criminal

jurisdiction over non-Indians.); United States v. Wheeler, 435 U.S. 313 (1978) (holding that because a tribal court's power to punish tribal offenders is a part of a tribe's inherent sovereignty, dual prosecution by the federal government and a tribe does not constitute double jeopardy); Atkinson Trading Co., Inc. v. Shirley, ___ U.S. ___, 121 S. Ct. 1825 (2001) (the Navajo Nation's efforts to impose a tax upon a non-member guest of a hotel located on non-Indian fee lands do not fall within either of the exceptions identified in Montana).

Only when the on-reservation conduct at issue involve both Indians and non-Indians are courts to undertake "a particularized inquiry into the nature of the state, federal, and tribal interests at stake." In re Blue Lake Forest Prod. v. Hong Kong and Shanghai Banking Corp., 30 F.3d 1138, 1141-1142 (9th Cir. 1994) *citing* White Mountain Apache v. Bracker, 448 U.S. 136, 145 (1980). "In contrast, when on-reservation conduct involving only Indians is at issue, state law is generally inapplicable." *Id.*

What was involved here is the on-reservation conduct of Tribe in its efforts to protect tribal-owned records, not an attempt by Tribe to exert tribal authority over non-tribal members. Contrary to County's assertion, Tribe's inherent powers to make this type of law and be bound by it is not "inconsistent with their status" as dependent domestic sovereigns. *See* Oliphant, 435 U.S. at 208.

Furthermore, if maintaining the confidentiality of such tribal documents had been in conflict with its domestic dependent status, then the Ninth Circuit's decision in James would have been contrary. If the Tribe's authority to create procedures to protect tribal-owned records has been lost by virtue of its dependent status, then pursuant to the Major Crimes Act, the federal government would have had the authority to obtain the tribal-owned records pursuant to a subpoena duces tecum.

County and the district court have taken out of context the "inflexible per se rule" language within California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). The Supreme Court in Cabazon recognized the burden the State of California was attempting to impose upon the Cabazon Band was "in the context of their dealing with non-Indians, since the question was whether the State may prevent the Tribes from making available high stakes bingo games to non-Indians coming from outside the reservation." Cabazon, 480 U.S. at 216. Since the burden of complying with County demands for tribal-owned records is being directly imposed upon Tribe, rather than in the context of Tribe's dealing with non-Indians, Tribe's inherent sovereignty is not deemed to be "lost by implication."

Any jurisdiction possessed by County is lawful only to the extent that it is consistent with Indian tribal sovereignty and self-government. *See* Three

Affiliated Tribes of the Fort Berthold Reservation v. Wold Eng'g., 476 U.S. 877, 887 (1986), *citing* Williams v. Lee, 358 U.S. 217 (1959).

The Supreme Court's holding in Hicks addressed by Amici should be limited to its facts. The Supreme Court held that the Fallon Paiute Shoshone Tribal Court could not assert tribal jurisdiction via regulatory authority over non-members, in that case state officials. The Court addressed two issues: "whether the Tribal Court in and for the Fallon Paiute Shoshone Tribes has jurisdiction to adjudicate the alleged tortuous conduct of state wardens executing a search warrant for evidence of an off-reservation crime; . . . [and] whether the Tribal Court has jurisdiction over claims brought under 42 U.S.C. 1983." Hicks, ___ U.S. ___, 2001 U.S. Lexis 4669, at 8-9.

Here, Tribe is not attempting to assert jurisdiction over County, but instead is attempting to protect a tribal procedure created in order to protect private and privileged information concerning its tribal employees. It is County who has asserted jurisdiction over Tribe in total derogation of this express, well reasoned policy.

D. In The Absence Of Jurisdiction, County Is Required To Negotiate With Tribe In Order To Obtain Information Sought

County's reference to Welfare and Institutions Code section 10850 as precluding them from sharing the information requested by Tribe is unfounded,

since state law provides officials the authority to release information to others "to the extent required . . . for other purposes directly connected with the administration of public social services. . . ." Welf. & Inst. Code § 10850(b). A prosecution for welfare fraud is an action related to the administration of the public welfare system within the meaning of this section. *See* 57 Op. Att'y Gen. 362 (1974). Providing the limited information requested by Tribe for purposes of releasing the records would fall within this authority.

> [E]ven in circumstances where it has no constitutional backing, comity is a proper consideration in statutory interpretation. So the Supreme Court has held in insisting that if Congress wants to alter the traditional balance between the states and the federal government it make its intention unmistakable. . . . Indian tribes, like states, are quasi-sovereigns entitled to comity.

Reich v. Great Lakes Indian Fish & Wildlife Comm'n, 4 F.3d 490, 494-495 (10th Cir. 1993). Based upon these principles, in the absence of jurisdiction, County must work with Tribe on a government-to-government basis in order to obtain the information sought.

E. DA Amici's Interpretation Of The Civil/Regulatory Argument Raised Is Improper

DA Amici challenges arguments made concerning the civil/regulatory aspect of County's actions by claiming that the violation for which the search was authorized must be deemed criminal/prohibitory because if involves fraud and deceit, and hence "moral turpitude." Amicus Brief, p. 6. According to Amici, any

offense that entails the addition of fraud or deceit to an otherwise lawful act must necessarily be criminal/prohibitory. To claim otherwise would be to accept that rape by fraud and deceit is civil/regulatory since the underlying act of sexual intercourse is not unlawful. Amici claims that Tribe's argument is "tortured" when it contends that the crime of receiving welfare by means of a false statement is civil regulatory.

In fact, it is Amici's argument that is tortured. Amicus for Tribe do not argue that activities that are lawful in some circumstances are necessarily "regulated" rather than "prohibited" by the state when it is incorporated into an offense for purposes of P.L. 280. However, "the applicable state laws governing an activity must be examined in detail before they can be categorized as regulatory or prohibitory." Cabazon, 480 U.S. at 211. While it is true that obtaining welfare and having sex are both lawful acts in the absence of fraud and deceit, the introduction of fraud and deceit into these activities has different implications for characterizing these charges under P.L. 280. The most significant difference is that rape by fraud and deceit involves a serious invasion of the victim's body sanctity and security, while obtaining welfare does not.

According to the most thoughtful state authority on the subject of P.L. 280's regulatory/prohibitory distinction, State v. Stone, 572 N.W. 2d 725 (Minn. Sup. Ct. 1997), the court addressed Cabazon by focusing on whether the law in question

implicates "public criminal policy." "Public criminal policy goes beyond merely promoting the public welfare. It seeks to protect society from serious breaches in the social fabric which threaten grave harm to persons or property." Stone, 572 N.W. 2d at 730.

Rape by deceit clearly poses such a treat. Whether the offense that triggered the search in this case poses such a threat is doubtful. The issue should not be resolved on the basis of a motion to dismiss without any effort to determine relevant facts.

F. Assumption Of Criminal Jurisdiction Amounts To An Assumption Of A Comprehensive Federal Scheme In Contravention Of The Tenth Amendment

By County's own admission, P.L. 280 "divested the federal government of criminal jurisdiction within the Indian lands of California, and conferred such jurisdiction on California. The federal government was, and is, thus left without criminal jurisdiction under the General Crimes Act and Major Crimes Act." County's Response, p. 32. Aside from the arguments raised above, P.L. 280 expressly delegated to states that which was formally exclusive federal jurisdiction. By assuming this jurisdiction the state adopted an "exclusive federal scheme," wherein only the federal government had exclusive control over crimes committed by or against Indians that arose in Indian country. Thus, assumption of this

exclusive federal scheme contravenes the Tenth Amendment of the Unite Constitution. U.S. Const. Amend. X.

G. District Attorney And Sheriff Were County Officials Here

County contends that it has no liability for the acts of either District Attorney McDowell or Sheriff Lucas. Tribe respectfully disagrees. As discussed below, the District Attorney and Sheriff were acting in their official capacities as representatives of County and not the state.

Tribe in its Opening Brief contends the district court committed clear error with the following rulings:

1. Attorney General oversight of district attorneys and sheriffs renders them state officials for purposes of liability pursuant to 42 U.S.C. section 1983. ER. pp 208-210.
2. When sheriffs and district attorneys execute a search warrant in their law enforcement capacity, they "act at the bequest of the superior court, which issued the search warrant," thus making them actors of the state. ER p. 213.
3. Because the search warrant was obtained and executed in furtherance of state law to prevent welfare fraud, the actions of the District Attorney and Sheriff were as actors of the state. ER. p. 213.

4. Because the District Attorney obtained a search warrant in connection with the investigation of welfare fraud, he was acting in his official capacity as a state official. ER. p. 211.

County fails to respond to Tribe's challenges of the district court's decision, and instead claims that "there is no 42 U.S.C. section 1983 liability upon the County of Inyo for the acts of the District Attorney and Sheriff in the official performance of their prosecutorial, investigative and law enforcement duties in this regard, nor upon the District Attorney or Sheriff themselves." County's Response, p. 50. County ignores the two guiding principles of Streit v. County of Los Angeles, 236 F.3d 552 (9th Cir. 2001), requiring an inquiry as to "whether governmental officials are final policymakers for the local government in a particular area or on a particular issue" and a review of the actual governmental official's functions "under relevant state law." Streit, 236 F.3d at 559-560 (emphasis added).

Tribe respectfully refers this Court to review its Opening Brief, pages 26-35, which cites not only the numerous provisions of California constitutional and statutory law that identify district attorneys and sheriffs as county officials, but supporting case law that indicates under the circumstances here, District Attorney and Sheriff were acting in their capacity as County officials, and thus are subject to liability pursuant to 42 U.S.C. section 1983.

County candidly admits the functions here involved the investigation of possible overpayments to Hill and the Deweys regarding potential welfare fraud. County's Response at 7, 29, 49. As expressed in Tribe's Opening Brief, actions taken in the course of an investigation are actions taken by District Attorney and Sheriff in their role as county officials. *See* Pitts v. County of Kern, 17 Cal. 4th 340, 354 (1997); Roe v. County of Lake, 107 F. Supp. 2d 1146 (N.D. Cal. 2000).

The fact that District Attorney was furthering County's interest in the administration of its social welfare programs should be dispositive, for Monell v. Dep't of Social Serv. of the City of New York, 436 U.S. 658 (1978) purposes, that District Attorney was acting in his capacity as a County official. *See* Opening Brief at 33-34.

There is nothing within California law that precludes a determination that District Attorney and Sheriff are the final policy makers in the area of pre-filing criminal investigations. In fact, California law recognizes that both the district attorney and the county sheriff possess their own "respective offices" within any particular county. *See* Cal. Const. Art. V, § 13. Thus, each is a final policy maker for County within his respective sphere of authority. Further, in Pembaur v. City of Cincinnati, 475 U.S. 469 (1986), the Court of Appeals for the Sixth Circuit found that under Ohio law and appropriate circumstances, both the county sheriff and the county prosecutor could establish county policy. *Id.*, at 484. The Supreme

Court did not question that result. Pembaur, 475 U.S. 469 (1986). Nothing should prevent this court from making a similar finding.

County has yet to provide any evidence that District Attorney and Sheriff were acting at the direction of the Attorney General. Furthermore, Tribe in proceedings below provided numerous examples of how state officials have addressed jurisdictional disputes in a non-combative fashion, contrary to the manner in which County has acted here. ER pp. 97-98. This leads to the conclusion that District Attorney and Sheriff were acting in their capacity as policy makers for County, and not the State of California.

In short, under California law, the delegation of power to a district attorney and sheriff to conduct investigations prior to the filing of accusatory pleadings is "sufficiently complete such that a suit for abuse of that power is not a suit against the State." Roe, 107 F. Supp. 2d at 1151. Accordingly, the district court's contrary holding is erroneous and should be reversed.

H. The District Court Did Not Find The District Attorney And Sheriff To Be Protected By Eleventh Amendment Immunity

County, rather than addressing the two principles identified in Streit as to what constitutes a state actor, instead incorrectly asserted that the district court correctly found District Attorney and Sheriff to be "immune from suit under the Eleventh Amendment to the United States Constitution." County's Response, p. 46. This is erroneous. The district court found District Attorney and Sheriff to be

state actors, thus they are not persons for the purposes of section 1983 pursuant to Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). Whether a county is a "person" under section 1983, and whether the same county is protected by the Eleventh Amendment are separate legal issues. Will, 491 U.S. at 66. The district court never addressed the Eleventh Amendment in its decision.

County claims that under the teachings in McMillian v. Monroe County, 520 U.S. 781 (1997); Pitts; County of Los Angeles v. Superior Court (Peters), 68 Cal. App. 4th 1166 (1998); and Streit, they are entitled to claim such immunity. This argument does not stand up to scrutiny. Unless County officials are a "state" or an arm thereof, the Eleventh Amendment confers no immunity upon them.

Three of the cases cited by County, McMillian, Pitts, and County of Los Angeles (Peters), are not decisions addressing the Eleventh Amendment. To the contrary, each is a case that concluded that County therein was not a "person" under section 1983. Each was decided under the rule of law that

> States, and state officials sued in their official capacity, are not considered 'persons' who can be sued, either in state or federal court, for damages under section 1983.

County of Los Angeles (Peters), 68 Cal. App. 4th at 1171; *see* Pitts, 17 Cal. 4th at 345; McMillian, 520 U.S. at 793-795. Thus, none of those courts were required to address the applicability of the Eleventh Amendment.

Streit, is the only case on which County relies that contains an Eleventh Amendment holding. But the Ninth Circuit's reasoning in Streit is not helpful here to County, since the court in Streit concluded that the Los Angeles Sheriff's Department is a county actor when making policies for local jails, and ultimately held that the county was subject to liability under section 1983. In reaching this conclusion, the court in Streit answered that inquiry under a five-factor "arm of the state" test, and ultimately the claim of entitlement to Eleventh Amendment immunity. Streit, 236 F. 3d at 567.

Here, County engages in no such analysis. It simply makes the bare bones claim, citing without discussing Streit that, because District Attorney McDowell and Sheriff Lucas "were acting as State officers, [they] are immune from suit under the Eleventh Amendment." County's Brief, p. 51. Streit does not support this conclusion. As discussed above and in the Opening Brief, District Attorney McDowell and Sheriff Lucas was acting in their capacity as county, not state officials, and therefore are subject to liability pursuant to 42 U.S.C. section 1983.

I. The District Attorney And Sheriff Are Not Entitled To Qualified Immunity

In arguing that both District Attorney and Sheriff are entitled to qualified immunity, County relies principally on Harlow v. Fitzgerald, 457 U.S. 800 (1982), Anderson v. Creighton, 483 U.S. 635 (1987), and Saucier v. Katz, ___U.S. ___, 121 S. Ct. 2151 (2001). While Saucier has made quite specific the methodology

courts are to employ when analyzing a claim to qualified immunity from section 1983 liability, Saucier fails to support a finding that qualified immunity attaches to the actions of District Attorney and Sheriff here.

The Court in Saucier mandates a two-step methodology be applied to analyze a county official's claim of qualified immunity.

> The first inquiry must be whether a constitutional right would have been violated on the facts alleged; second, assuming the violation is established, the question whether the right was clearly established must be considered at a legally-appropriate level of specificity.

Saucier, ___U.S. ___, 121 S. Ct. at 2155-2156. Tribe believes that County's response fails to adequately rebut Tribe's argument that the district court committed error in finding District Attorney and Sheriff entitled to qualified immunity.

1. District Attorney And Sheriff's Interpretation Of P.L. 280 Was Not Reasonable

Tribe asserted that district court committed error in its determination that District Attorney and Sheriff were entitled to qualified immunity because "California's policy does not conflict with Public Law 280, which allows the state and thus the District Attorney to impose California criminal law on tribal lands." ER. p. 217. However, what is at issue here is not the application of the laws of the State of California on tribal lands, but applying the laws directly upon sovereign tribal governments. As discussed above, the district court's opinion has no support

within the plain text or legislative history of P.L. 280. The clearly settled principles discussed above serving as a backdrop support Tribe's position that states and their political subdivisions do not have jurisdiction over tribal governments in the course of prosecuting tribal members.

Because these principles are clearly established, the contours of Tribe's Fourth Amendment rights were sufficiently clear, and a reasonable official would understand that obtaining and executing a search warrant against Tribe violated those rights. Because the law clearly put County officials on notice that their conduct would be unlawful, they are not entitled to qualified immunity. Saucier, ___ U.S.___, 121 S. Ct. at 2156-2157.

2. As To The Lack Of Probable Cause

The court should reject County's argument that the court should not consider Tribe's probable cause argument because it is being raised on appeal for the first time. County's Response at 53. Tribe's Opposition to the Motion to Dismiss adequately challenged the sufficiency of the affidavit, and the complaint alleged that no sufficient probable cause supported the warrant. Compare Plaintiff's Response to Motion to Dismiss at 34-35 with Complaint ¶ 23.

3. The Execution Of The Search Warrant Was Overbroad

Tribe argued that the district court committed error in its determination that "execution of the search warrant was within the warrant's scope because each page

contained at least one reference to the employees that were under investigation." Opening Brief, pages 40-41. County responds by asserting that the district court was correct because the law does not permit either Tribe's employees or the officers to redact information relating to the other 78 employees. To the contrary, however, there are ample precedents under both state and federal law that would permit such redaction.

County's position implies that the other casino employees possess no rights to privacy, either under the United States or California Constitutions. Such a notion is plainly incorrect. The Supreme Court has held that the Fourth Amendment protects individual privacy against certain kinds of governmental intrusion. Katz v. United States, 389 U.S. 347, 350 (1967). The California Constitution also explicitly protects privacy rights as "inalienable rights." Calif. Const, Art. I, § 1. "Informational privacy is the core value" furthered by the California Constitution's privacy provision. Hill v. National Collegiate Athletic Assn., 7 Cal. 4th 1, 35 (1994). Under the Freedom of Information Act, 5 U.S.C. § 552(a), and the California Public Records Act, Government Code section 6250 *et seq.*, redaction of information in the interest of privacy is not only permissible, but also quite common. *See e.g.*, United States Dept. of State v. Ray, 502 U.S. 164, 173-174 (1991); Poway Unified School Dist. v. Superior Court (Copley Press), 62 Cal. App. 4th 1496, 1505-1506 (1998). Finally, redaction of documents at trial is a

common practice, whether done to protect the privacy of innocent persons, or to prevent unjustly prejudicial information reaching the jury. Any "disagreement, controversy and destruction of evidence," County's Response p. 41, that occurs because of redaction may be resolved as a matter of proof at trial and/or by proper instructions given by the court to the jury. Accordingly, County's argument is not well taken.

4. Failure To Provide Magistrate With Critical Information Precludes A Finding Of Qualified Immunity

County's argument that County officials were not required to advise the magistrate of the crucial jurisdictional facts is equally unpersuasive. County contends that the magistrate "had judicial notice" that the place to be searched was on tribal property. County's Response p. 42. That claim not only is unsupported in the record but also misses the point of Tribe's argument. It may be well-known that Indian tribes operate gaming casinos in California. It does not follow, however, that California law enforcement officials have jurisdiction to search tribal business operations, and nothing in the affidavit supports such an assertion.

The district court held that "the magistrate should have considered this when he issued the search warrant." ER. p. 217. But it was incumbent upon County officials to provide such information in order for him to do so. *Cf.* United States v. Baker, 894 F.2d 1144, 1148 (10th Cir. 1990). In a less than ideal system, it is

possible that a magistrate, working under docket pressures, will fail to perform as a magistrate should. As such, it is necessary for officials applying for a warrant to exercise reasonable professional judgment. Malley v. Briggs, 475 U.S. 335, 345-346 (1986).

County officials here did not exercise such judgment. Nothing of record shows that the magistrate *actually* considered the question of the authority of California law enforcement officers over Tribe's business operations.

County relies upon California judicial notice statute, Evidence Code section 451(f), as supporting its claim that the magistrate took judicial notice of the critical jurisdictional information. The record does not establish this, nor is their evidence that the magistrate was even aware of this potential jurisdictional issue. A party must request a judge take judicial notice and also must furnish "the court with sufficient information" for it to do so. Evid. Code § 453. Under California law, a judge need not take judicial notice where the party failed to comply with section 453. *See* Salinero v. Pon, 124 Cal. App. 3d 120, 133 (1981). And in both California and federal courts, absent some showing in the record, a reviewing court will not assume that a judicial officer (in this case, the magistrate) took judicial notice of the proffered matters. Id.; King v. United States, 426 F.2d 278, 279 (9th Cir. 1970).

The district court's conclusion that County's failure to inform the magistrate of these facts was "not troubling because the magistrate should have considered this" is erroneous and cannot be upheld on appeal.

J. <u>Motions To Dismiss Are Improper Where Questions Of Fact Exist</u>

County's Response indicates that a number of questions of fact exist (County's claim that Tribe would not cooperate with Social Services officials, *see* County's Response, p. 7; County's claim that Tribe's participation in State Unemployment Program constitutes a waiver of sovereign immunity, *see* County's Response p. 30; County's acknowledgement that it seized records already within County's possession calls into question the necessity of the warrant and the legal scope of the warrant, *see* County's Response p. 8).

Since Motions to Dismiss pursuant to Federal Rules of Civil Procedure section 12(b)(6) are disfavored and rarely granted, *see* <u>Gilligan v. Jamco Development Corp.</u>, 108 F.3d 246, 249 (9th Cir. 1997), Tribe believes that granting of County's Motion was premature. This Court should remand so that a complete factual record can be ascertained.

III. <u>CONCLUSION</u>

Rather than restate arguments previously made, Tribe respectfully refers the Court to its Opening Brief. Should this Court determine District Attorney

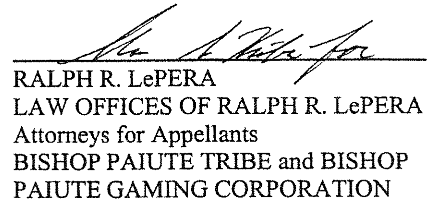
McDowell and Sheriff Lucas to be state officials, since Tribe's request for declaratory and injunctive relief is still a viable remedy, *see* <u>Agua Caliente Band of Cahuilla Indians v. Hardin</u>, 223 F.3d 1041, 1045 (9th Cir. 2000), Tribe respectfully requests that the matter be remanded and Tribe be given the opportunity to amend its complaint accordingly

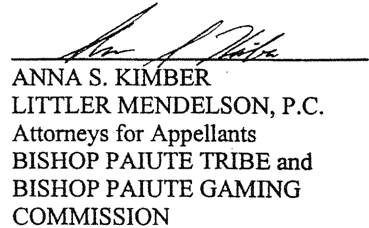
Tribe believes that the district court committed clear error on numerous issues that must be reversed. A determination that P.L. 280 gave states and their political subdivisions jurisdiction over tribal governments in derogation of tribal sovereign immunity and inherent tribal sovereignty finds no support on the face of the statute, its legislative history or interpretive case law. Furthermore, this holding violates the canons of statutory construction, where statutes created for the benefit of tribes are to be interpreted liberally in favor of the tribes. This Court should not strain to implement an assimilationist policy that has now been rejected by Congress.

If in fact an unintended jurisdictional void has been created with the passage of P.L. 280, then that is for Congress to act upon, not the courts. However, Tribe would rather work with County, on government-to-government basis, towards resolution of the conflicts that exist as a result of the inherent tension that exists as

separate sovereigns work towards protecting their inherent right to create their own laws and be governed by them.

Dated: July 23, 2001





RALPH R. LePERA
LAW OFFICES OF RALPH R. LePERA
Attorneys for Appellants
BISHOP PAIUTE TRIBE and BISHOP PAIUTE GAMING CORPORATION

ANNA S. KIMBER
LITTLER MENDELSON, P.C.
Attorneys for Appellants
BISHOP PAIUTE TRIBE and BISHOP PAIUTE GAMING COMMISSION

CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. P. 32(a)(7)(C) AND CIRCUIT RULE 32-1 FOR CASE NUMBER 01-15007

I certify that pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached opening brief complies with Fed. R. App. P. 32(a)(7)(B) because this brief complies with Fed. R. App. P. 32(a)(7)(A) and is a principal brief proportionately spaced, has a typeface of 14 points or more and contains 6988 words.

Dated: July 23, 2001

ANNA S. KIMBER

LITTLER MENDELSON®

A PROFESSIONAL CORPORATION

July 9, 2001

Anna S. Kimber
Direct: 619.515.1816
Direct Fax: 619.232.4302
akimber@littler.com

John Kirby
Office of County Counsel
County of Inyo
224 North Edwards Street
P.O. Box M
Independence, CA 93526

Re: Extension of Time to File Reply Brief
Bishop Paiute Tribe v. County of Inyo et al.
Ninth Circuit Case No. 01-15007

Dear Mr. Kirby:

Pursuant to our previous conversation, I have requested of the Ninth Circuit Court of Appeals a two-week extension of time to file our Reply to your Response in the above-referenced matter. You had indicated that you had no objection to this request. Our reply brief is now due July 23, 2001.

Please feel free to call if you have any questions.

Very truly yours,

Anna S. Kimber

ASK/ask

ARIZONA CALIFORNIA COLORADO DISTRICT OF COLUMBIA GEORGIA ILLINOIS MARYLAND MINNESOTA NEVADA NEW JERSEY NEW YORK OHIO TEXAS WASHINGTON

THE NATIONAL EMPLOYMENT & LABOR LAW FIRM™

PROOF OF SERVICE BY MAIL

I am employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 701 "B" Street, 13th Floor, San Diego, California 92101-8194. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On July 23, 2001, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s) (two copies):

APPELLANTS' REPLY TO APPELLEES AND RESPONSE TO AMICUS CURIAE BRIEF OF CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

in a sealed envelope, postage fully paid, addressed as follows:

Paul N. Bruce, Esq.
County of Inyo
Office of the County Counsel
Post Office Box M
Independence, CA 93526-0612

Attorneys for Appellees

John D. Kirby, Esq.
9747 Business Park Avenue
San Diego, CA 92131

Attorneys for Appellees

Ralph R. LePera, Esq. Law Offices of Ralph R. LePera Post Office Box 1819 Bishop, CA 93515-1819	<u>Attorneys for Appellants</u>
James K. Kawahara, Esq. Holland & Knight 633 W. Fifth Street, 21st Floor Los Angeles, CA 90071-2040	<u>Attorneys for Amicus Curiae</u> The San Manuel Band of Serrano Mission Indians
Carole Goldberg, Esq. UCLA School of Law Post Office Box 951476 Los Angeles, CA 90095-1476	<u>Attorneys for Amici Curiae</u> National Congress of American Indian and Southern California Tribal Chairmen's Association
Lawrence G. Brown George M. Palmer California District Attorneys Association 731 "K" Street, Third Floor Sacramento, CA 95814	<u>Attorneys for Amicus Curiae</u> California District Attorneys Association

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 23, 2001, at San Diego, California.

____

Rosa Dyer