No. 09-5324

ORAL ARGUMENT HAS NOT BEEN SCHEDULED

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DAVID PATCHAK,
Plaintiff-Appellant,

-v.-

KENNETH LEE SALAZAR, in his official capacity as Secretary of the United States Department of the Interior; LARRY ECHO HAWK, in his official capacity as Assistant Secretary of the United States Department of the Interior, Bureau of Indian Affairs,
Defendants-Appellees,

MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS,
Intervenor Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ANSWERING BRIEF OF DEFENDANTS-APPELLEES (INITIAL BRIEF)

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(a) Parties and Amici:

Plaintiff-Appellant is David Patchak.

Defendants-Appellees are Kenneth Lee Salazar, in his official capacity as Secretary of the United States Department of the Interior, and Larry Echo Hawk, in his official capacity as Assistant Secretary -- Indian Affairs of the United States Department of the Interior (Mr. Echo Hawk's title in the official caption is incorrect).

Intervenor Defendant-Appellee is Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians.

There were no amici in the district court.

(B) Rulings Under Review: August 20, 2009 Memorandum Opinion (reported at 646 F. Supp. 2d 72 (D.D.C.)) and Order (not reported), Hon. Richard J. Leon.

(C) Related Cases: This case has not been before this Court previously. The trust acquisition that is the subject of Plaintiff's lawsuit was previously before this Court in *Michigan Gambling*

Opposition v. Kempthorne, D.C. Cir. No. 07-5092, 525 F.3d 23 (D.C. Cir. 2008).

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10 May 2010

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Br.	Appellant's Brief
Gun Lake Band or the Band	Intervenor Defendant-Appellee Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
Interior	Department of the Interior, and, collectively, Defendants-Appellees Kenneth Lee Salazar, in his official capacity as Secretary of the United States Department of the Interior, and Larry Echo Hawk, in his official capacity as Assistant Secretary -- Indian Affairs of the United States Department of the Interior
JA	Joint Appendix
MichGO	Michigan Gambling Opposition
Patchak	Plaintiff-Appellant David Patchak

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STATEMENT OF JURISDICTION

Plaintiff-Appellant David Patchak filed a complaint in the United States District Court for the District of Columbia naming as defendants the Secretary of the Department of the Interior and the Assistant Secretary -- Indian Affairs, both in their official capacities (collectively, Interior). JA__ (docket entry 1, at 2). The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, often referred to as the Gun Lake Band (also called the Band in this brief) intervened as a defendant. JA__ (Aug. 28, 2008 Minute Order). Patchak sought to invoke the court's jurisdiction pursuant to 28 U.S.C. § 1331. JA__ (docket entry 1, at 2). For the reasons explained in this brief, the district court lacked jurisdiction.

On August 20, 2009, the district court filed a memorandum opinion and order dismissing Patchak's complaint. JA__ (docket entries 56 & 57). Patchak timely filed a notice of appeal on September 15, 2009. JA__ (docket entry 58); 28 U.S.C. § 2107(b). This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

In a May 13, 2005 Federal Register notice, Interior announced its decision to accept the so-called "Bradley property" in trust for the Band pursuant to Interior's authority under the Indian Reorganization Act of 1934, 25 U.S.C. § 465. *See* 70 Fed. Reg. 25,596, 25,596-97 (2005). On January 30, 2009, Interior accepted title to the Bradley property in trust for the Band. JA__ (docket entry 49). More than three years after Interior announced its decision in 2005, Patchak filed suit alleging that Interior lacked authority under 25 U.S.C. § 465 to accept the land in trust for the Band. The district court dismissed for lack of jurisdiction. The issues on appeal are:

1. Whether Patchak's asserted injuries are within the "zone of interests" of the Indian Reorganization Act provision that he invokes as the basis of his lawsuit.

2. Whether, if Patchak has prudential standing, the district court nonetheless lacked jurisdiction because the United States has not waived its sovereign immunity to a lawsuit such as Patchak's that challenges the United States' title to trust or restricted Indian lands.

3. Whether, if this Court concludes the district court erred by dismissing Patchak's complaint, this Court should remand to the district court for further proceedings or instead proceed to address the merits of Patchak's claim.

STATUTES AND REGULATIONS

The relevant statutory and regulatory provisions are set forth in this brief's Addendum.

STATEMENT OF THE CASE

In 1999, Interior acknowledged the Band pursuant to the federal acknowledgment process in 25 C.F.R. Part 83. 63 Fed. Reg. 56,936, 56,936-38 (1998). In August 2001, the Band submitted an application for the United States to acquire two parcels of land in trust for the Band pursuant to the Indian Reorganization Act. *See* JA__ (AR1984). The land consists of about 148 acres in Wayland Township, Allegan County, Michigan and is commonly referred to as the "Bradley property." 70 Fed. Reg. at 25,596-97. By notice published in the Federal Register, Interior announced its final determination to accept the Bradley property in trust for the Band. *Id.* The notice explained that 30 days later the United States would accept the land into trust, and that the purpose of the notice was to afford an opportunity to seek judicial

review of the administrative decision to accept the land in trust before the transfer of title occurred. *Id.* at 25,596.

Within that 30 day period, Michigan Gambling Opposition, which refers to itself as MichGO, a non-profit membership organization, filed suit arguing that Interior's decision violated the National Environmental Policy Act and the Indian Gaming Regulatory Act, and that the Indian Reorganization Act provision pursuant to which Interior was accepting the land in trust was unconstitutional. The district court rejected MichGO's challenge, and this Court affirmed. *Mich. Gambling Opposition v. Kempthorne*, 525 F.3d 23 (D.C. Cir. 2008) (per curiam).

Only after this Court denied rehearing *en banc* in *Michigan Gambling Opposition*, and more than three years after Interior announced its decision to accept the Bradley property in trust for the Band, did Patchak file this lawsuit. The Bradley property had not been accepted in trust when Patchak filed his lawsuit because Interior voluntarily agreed not to take the land into trust during the pendency of MichGO's district court litigation and the district court entered a stay pending MichGO's appeal. Patchak's complaint alleges that the Band was not a federally recognized Indian tribe in 1934 and Interior

therefore could not acquire land in trust for the Band pursuant to the Indian Reorganization Act, 25 U.S.C. §§ 465, 479. JA__ (docket entry 1, at 8).

FACTUAL BACKGROUND

I. HISTORICAL BACKGROUND OF THE GUN LAKE BAND

The Gun Lake Band descends from a Band of Pottawatomi Indians led by Chief Match-E-Be-Nash-She-Wish which resided near present-day Kalamazoo, Michigan. Under the terms of the 1821 Treaty of Chicago, signed by Chief Match-E-Be-Nash-She-Wish, the Band reserved a three square mile tract of land at Kalamazoo, Michigan. Treaty of Chicago, August 29, 1821, 7 Stat. 219; JA__ (AR2033). The Treaty of 1827, 7 Stat. 305, which was signed by Chief Match-E-Be-Nash-She-Wish, ceded that parcel to the United States in exchange for enlargement of one of the reserves of the Pottawatomi bands (the Nottawaseppi Reserve). JA__ (AR2033). Pursuant to the 1833 Treaty of Chicago and the Ottawa Treaty of 1836, to which the Band was not a signatory, all of the Pottawatomi's land was ceded to the United States, leaving the Pottawatomi bands, and the Gun Lake Band in particular, landless. Treaty of Chicago, September 26, 1833, 7 Stat. 431; Ottawa

Treaty, September 20, 1836, 7 Stat. 513; JA__ (AR1985-86); JA__ (AR2033).

From 1828 to 1838, the Band moved north of the Kalamazoo River. JA__ (AR1988). In 1839, as part of its effort to avoid being forcibly removed west of the Mississippi, the Band placed itself under the protection of an Episcopalian Mission, funded under the Treaty of 1836, in Allegan County, Michigan. *Id.* In 1894, the mission land was divided into parcels and deeded to nineteen descendants of the original Band, but within a few years all of that land was lost through tax foreclosures. JA__ (AR1989).

Despite the loss of the land, a majority of the Band's members remained in Allegan County. *Id.* Nonetheless, the Band was ineligible to organize under the Indian Reorganization Act in 1934 because it had no commonly owned reservation land. JA__ (AR2028). In 1940, Commissioner of Indian Affairs John Collier issued a policy limiting further extension of Bureau of Indian Affairs Services to the Indians of Michigan's lower peninsula. JA__ (AR1988-89); JA__ (AR2012); JA__ (AR2028).

In June 1992, the Band began to pursue federal acknowledgment by submitting to the BIA's Branch of Acknowledgment and Research a letter of intent requesting acknowledgment that it exists as an Indian tribe, in accordance with 25 C.F.R. Part 83. JA__ (AR2012-13). The Band then submitted a documented petition for federal acknowledgment on May 14, 1994. JA__ (AR2013). On July 16, 1997, Interior published notice of its proposed finding acknowledging that the Band exists as an Indian tribe within the meaning of federal law, thereby reestablishing the government-to-government relationship between the United States and the Band. 62 Fed. Reg. 38,113 (1997). After receiving, considering, and responding to comments on the proposed finding, Interior published a notice of the final determination to acknowledge the Band on October 23, 1998. *See* 63 Fed. Reg. 56,936 (1998); s*ee In re Acknowledgment of Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan*, 33 IBIA 291, 292 (1999). The final determination became effective on August 23, 1999.

II. INTERIOR'S TRUST ACQUISITION OF THE BRADLEY PROPERTY

The Bradley property is located in Wayland Township, Allegan County, Michigan. 70 Fed. Reg. at 25,596-97. The Band has been

centered around the town of Bradley in Allegan County since 1838 and has long historical, geographical, and cultural ties to the area in which the property is located. JA__ (AR1261). The western boundary of the Bradley property is United States Highway 131, and the eastern boundary is the Norfolk Southern railroad tracks. JA__ (AR1439). Wooded land and the Rhino Seed & Landscape Supply facility are east of the railroad tracks. *Id.* The northern boundary is 130th Avenue, a gravel road, with farmland and a residence north of 130th Avenue. *Id.* The property's southern boundary is 129th Avenue. *Id.* Vacant land, RCT Transportation Services, Inc., and a small lumber company are south of 129th Avenue. *Id.* The property is zoned light industrial. *Id.* The southeast portion of the property is developed and supports an industrial building associated with the past operation of Ampro Industries, Inc. *Id.* Ampro manufactured lawn products, such as mulch and hyrdoseed mix. *Id.* A farmhouse and barn that were used to support agricultural operations are located in the southeast corner of the site. *Id.*

In August 2001, the Band submitted to Interior its fee-to-trust application for the Bradley property. JA__ (AR1984). The Band

requested that the land be acquired in trust so that it could conduct Class II and Class III gaming on the property to "generate revenue necessary to promote tribal economic development, self-sufficiency and a strong tribal government capable of providing its members with sorely needed social and educational programs." JA__ (AR1985); *see also* JA__ (AR1264).

The Associate Deputy Secretary adopted the recommendations of the Acting Deputy Assistant Secretary -- Policy and Economic Development, the Office of Indian Gaming Management and the Midwest Regional Office of the Bureau of Indian Affairs, and, exercising his delegated authority, decided to acquire the Bradley property in trust for the Band. In so doing, he concluded that the acquisition complied with the Indian Reorganization Act, the Indian Gaming Regulatory Act, and the trust acquisition regulations set forth in 25 C.F.R. Part 151. *See* JA__ (AR1254-67); JA__ (AR1438-52). On May 13, 2005, Interior published notice of that decision in the Federal Register. 70 Fed. Reg. at 25,596-97. On January 30, 2009, Interior formally accepted title to the Bradley property in trust for the Band. JA__ (docket entry 49, at 1-2).

LEGAL BACKGROUND

I. INDIAN REORGANIZATION ACT

The Indian Reorganization Act authorizes the Secretary of the Interior to acquire lands for the purpose of providing land for Indians. 25 U.S.C. § 465. Title to such lands is "taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired." *Id.* Through the Indian Reorganization Act, Congress created a framework designed to fulfill its "overriding goal of encouraging tribal self-sufficiency and economic development." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335 (1983) (internal quotation marks and citation omitted). Interior has promulgated regulations implementing its authority to acquire land in trust for Indians under the Indian Reorganization Act. *See* 25 C.F.R. Part 151. Those regulations "set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes." 25 C.F.R. § 151.1.

II. THE QUIET TITLE ACT AND THE INDIAN LANDS EXCEPTION

Under the doctrine of federal sovereign immunity, the United States is immune from suit except to the extent Congress expressly waives that immunity. *See Lane v. Pena*, 518 U.S. 187, 192 (1996);

Lehman v. Nakshian, 453 U.S. 156, 160 (1981); *United States v. Sherwood*, 312 U.S. 584, 586 (1941). Before the Quiet Title Act's enactment in 1972, the United States had not waived its immunity with respect to suits involving title to land. *Block v. North Dakota*, 461 U.S. 273, 280 (1983). As a result, prior to the Quiet Title Act, those asserting title to land claimed by the United States had limited means of obtaining a resolution of the title dispute. *Id.* Those adverse claimants could try to induce the United States to file a quiet title action against them or they could petition Congress or the Executive Branch for discretionary relief. *Id.* Those willing to settle for monetary compensation (instead of title to the disputed property) could sue and attempt to establish a constitutional claim for just compensation. *Id.* at 280-81. (The just compensation route became available after the passage of the Tucker Act in 1887. *Id.* at 280.) Others tried to institute so-called "officer's suits," proceeding against the federal official charged with supervision of the relevant land instead of the United States. *Id.* at 281. Such suits proved unsuccessful in circumventing federal sovereign immunity. *Id.* at 281-82.

Against that backdrop, Congress passed the Quiet Title Act in 1972. In the Quiet Title Act, Congress, for the first time, enacted a limited waiver of sovereign immunity allowing parties claiming title to real property adverse to the United States to bring certain quiet title actions against the United States. *Id.* at 280, 284-85. "Congress intended the [Quiet Title Act] to provide the exclusive means by which adverse claimants [may] challenge the United States' title to real property." *Id.* at 286.

In the Quiet Title Act's exclusive mechanism for challenging the United States' title, Congress included "carefully crafted provisions . . . deemed necessary for the protection of the national public interest." *Id.* at 284-85; *see also Warren v. United States*, 234 F.3d 1331, 1335 (D.C. Cir. 2000) (Quiet Title Act's waiver of sovereign immunity is limited in scope). Thus, several types of challenges were excluded from the Act's waiver of sovereign immunity, including legal challenges that seek to divest, or have the effect of divesting, the United States of its title to "trust or restricted Indian lands." 28 U.S.C. § 2409a(a); s*ee United States v. Mottaz*, 476 U.S. 834, 842 (1986); *Neighbors for Rational Dev.,*

Inc. v. Norton, 379 F.3d 956, 961-66 (10th Cir. 2004). The Quiet Title Act provides in relevant part:

> The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. *This section does not apply to trust or restricted Indian lands* . . . .

28 U.S.C. § 2409a(a) (emphasis added). Courts therefore have recognized that "when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the [Quiet Title Act] does not waive the Government's immunity." *Mottaz*, 476 U.S. at 843.

The Quiet Title Act's legislative history explains Congress's rationale for preserving the United States' immunity to suit over trust or restricted Indian lands.

> The Federal Government's trust responsibility for Indian lands is the result of solemn obligations entered into by the United States Government. The Federal Government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements. The Indians, for their part, have often surrendered claims to vast tracts of land. President Nixon has pledged the administration against abridging the historic relationship between the Federal Government and the Indians without the consent of the Indians.

H.R. Rep. No. 92-1559, at 13 (1972). "By forbidding actions to quiet title when the land in question is reserved or trust Indian land, Congress sought to prohibit third parties from interfering with the responsibility of the United States to hold lands in trust for Indian tribes." *Florida v. U.S. Dep't of the Interior*, 768 F.2d 1248, 1254-55 (11th Cir. 1985). Accordingly, the United States' sovereign immunity precludes a lawsuit seeking relief that divests or has the effect of divesting the United States' title to Indian trust lands.

Because once title to land is conveyed to the United States in trust for an Indian tribe pursuant to the Indian Reorganization Act the United States' sovereign immunity prohibits judicial review, Interior has established a mechanism by which judicial review of an Interior decision to accept land in trust may be obtained. *See generally* 61 Fed. Reg. 18,082, 18,082-83 (1996). Interior provides notice (through the Federal Register or a newspaper of general circulation) "that a final agency determination to take land in trust has been made and that [Interior] shall acquire title in the name of the United States no sooner than 30 days after the notice is published." 25 C.F.R. § 151.12(b). That 30-day period provides an opportunity for the filing by those having

standing of a judicial challenge to Interior's decision that is not barred by the Quiet Title Act because the United States does not yet claim title. *Id.*; *see also* 61 Fed. Reg. at 18,082. If a lawsuit is filed and the 30-day period has expired, Interior may take the land into trust unless Interior voluntarily forebears from doing so or a court issues a preliminary injunction on a showing by the plaintiff of a substantial likelihood of success on the merits of its claims, a likelihood of irreparable harm without an injunction, and an overall equitable balance that favors preliminary injunctive relief. *See Winter v. Natural Res. Def. Council*, 129 S. Ct. 365, 374 (2008) (requirements for preliminary injunctive relief). Absent preliminary injunctive relief, however, after 30 days, the regulation authorizes Interior to take the land into trust, thereafter precluding any further judicial review of Interior's land into trust decision. *See* 61 Fed. Reg. at 18,082 ("The Quiet Title Act . . . precludes judicial review after the United States acquires title."). The regulation, therefore, "ensures that review is available before formal conveyance of title to land to the United States, when the [Quiet Title Act's] bar to judicial review becomes operative." *Id.*

PROCEDURAL BACKGROUND

I. PRIOR JUDICIAL CHALLENGE TO INTERIOR'S DECISION TO ACCEPT THE BRADLEY PROPERTY IN TRUST FOR THE BAND

Within 30 days of Interior's notice of its decision to accept the Bradley property in trust for the Band, MichGO filed suit. That group's lawsuit alleged that Interior's decision violated the Indian Gaming Regulatory Act as well as the National Environmental Policy Act, and that Section 5 of the Indian Reorganization Act (25 U.S.C. § 465) is an unconstitutional delegation of legislative authority to the Executive Branch. The complaint did *not* include any claim that Interior lacked statutory authority to accept the property in trust for the Band because the Band was not under federal jurisdiction in 1934. The district court rejected all of MichGO's claims. *Mich. Gambling Opposition v. Norton*, 477 F. Supp. 2d 1 (D.D.C. 2007).

MichGO appealed to this Court. On appeal, the group abandoned its claims under the Indian Gaming Regulatory Act and pursued only its National Environmental Policy Act and non-delegation claims. About four months after the appellate oral argument (and over two and a half years into the litigation), MichGO moved to supplement the issues on appeal with a claim that Interior lacked authority under 25

U.S.C. § 465 because, according to the group, the Band was not recognized and under federal jurisdiction in 1934. This Court denied the motion to supplement the issues on appeal, *Mich. Gambling Opposition v. Kempthorne*, D.C. Cir. No. 07-5092, March 19, 2008 Order (JA__ (docket entry 48, exh. 2)), and then affirmed the district court's decision, *Mich. Gambling Opposition v. Kempthorne*, 525 F.3d 23 (D.C. Cir. 2008) (per curiam).

MichGO sought rehearing en banc, which this Court denied. *Mich. Gambling Opposition v. Kempthorne*, D.C. Cir. No. 07-5092, July 25, 2008 Order. The group then filed a petition for writ of certiorari in the Supreme Court. The Supreme Court denied that petition on January 21, 2009. *Mich. Gambling Opposition v. Kempthorne*, 129 S. Ct. 1002 (2009).

II. PATCHAK'S LAWSUIT

On August 1, 2008, over three years after Interior provided notice of its decision to accept the Bradley property in trust for the Band and about a week after this Court denied rehearing en banc in *Michigan Gambling Opposition*, Patchak filed this lawsuit. Patchak's complaint sets forth a single cause of action -- that Interior lacked the authority to

acquire the Bradley property in trust pursuant to the Indian Reorganization Act, 25 U.S.C. § 465, because the Band was not a federally recognized tribe in June 1934. JA__ (docket entry 1, at 7-9). Patchak asserts he is injured by Interior's action because the gaming facility that the Band plans to build on the Bradley property "would detract from the quiet, family atmosphere of the surrounding rural area." JA__ (docket entry 1, at 3). It is the alleged "negative effects of building and operating the anticipated casino in Mr. Patchak's community" that form the basis of Patchak's alleged injury. *Id.* Patchak also averred in the complaint that his claim would "be irrevocably lost if an injunction is not issued to prevent the [Bradley property] from being taken into trust pending the outcome" of his lawsuit. JA__ (docket entry 1, at 5). Interior moved to dismiss and the Band (after being granted leave to intervene) moved for judgment on the pleadings because Patchak lacks prudential standing.

When Patchak filed his lawsuit, title to the Bradley property had not been transferred to the United States in trust for the Band because the district court in MichGO's lawsuit had entered a stay pending appeal, and then this Court stayed issuance of its mandate pending

MichGO's petition for certiorari. Interior informed Patchak's counsel that Interior planned to accept the land in trust when this Court's mandate issued in *Michigan Gambling Opposition v. Kempthorne*. JA__ (docket entry 33, exhs. 7 & 9).

On October 17, 2009, Patchak filed what he called a "motion for administrative stay of proceedings." JA__ (docket entry 23). In that motion, Patchak asked the district court to enter an administrative stay "of this matter," including a provision prohibiting Interior from accepting the Bradley property in trust pending the Supreme Court's decision in *Carcieri v. Kempthorne*, S. Ct. No. 07-526, 552 U.S. 1229 (2008). The district court denied Patchak's motion for administrative stay on November 13, 2008. JA___ (Nov. 13, 2008 Minute Order).

Patchak then filed an "emergency motion for temporary restraining order/preliminary injunction" in the district court on January 8, 2009 (apparently because the Supreme Court was set to consider MichGO's certiorari petition on January 9, 2009). JA__ (docket entry 36). Through a series of events not relevant here, Interior had not accepted the Bradley property in trust for the Band when the district

court denied Patchak's request for a temporary restraining order. JA__ (January 26, 2009 Minute Order).

On January 30, 2009, there being no legal impediment to Interior accepting the Bradley property in trust, the agency did so. JA__ (docket entry 49). The district court thereafter ordered the parties to address whether the court continued to have jurisdiction in light of the Quiet Title Act. JA__ (docket entry 50).

III. THE DISTRICT COURT'S ORDER

The district court ultimately dismissed Patchak's lawsuit. JA__ (docket entries 56 & 57); 646 F. Supp. 2d 72. The court held that Patchak lacks prudential standing because his alleged injury does not fall within the zone of interests protected by the statutory provision he invokes in his suit. 646 F. Supp. 2d at 76-78. The court recognized that while the prudential standing requirement is not meant to be especially demanding, it excludes those plaintiffs whose interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to allow the suit. *Id.* at 77 (quoting *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399-400 (1987)).

The district court found that Patchak "without a doubt" is not an intended beneficiary of the Indian Reorganization Act, the purpose and intent of which is to enable tribal self-determination, self-government, and self-sufficiency. *Id.* The court also explained that Patchak sought to vindicate only "his own environmental and private economic interests." *Id.* (citing complaint). Patchak, however, had failed to "point to any explicit, or implicit, indication in the [Indian Reorganization Act] or its legislative history that the statute is intended to protect, or benefit, an individual in [Patchak's] position." *Id.* The court rejected Patchak's effort to "sidestep" that failure, *id.* at 77-78, by alleging "a generalized interest in ensuring that only qualified tribes receive benefits under the [Indian Reorganization Act]," *id.* at 78. The court explained that, accepting that interest as true, it is indistinguishable from the general interest of every citizen or taxpayer in seeing the government comply with the law and would make a "mockery" of the prudential standing doctrine. *Id.* The district court therefore concluded that Patchak "does not fall within the group of those who in practice can be expected to police the interests protected by the [Indian Reorganization Act], but rather is one whose suit is more

likely to frustrate than to further statutory objectives." *Id.* at 77 (internal quotation marks, alterations, and citations omitted). Accordingly, the district court concluded that Patchak lacked prudential standing.

The district court also observed that its continuing subject matter jurisdiction was "seriously in doubt" because Interior had accepted the land in trust on January 30, 2009, and the United States' waiver of sovereign immunity in the Quiet Title Act does not apply to trust or restricted Indian lands. *Id.* at 78 n.12 (citing *Governor of Kansas v. Kempthorne*, 516 F.3d 833, 843-44 (10th Cir. 2008)).

Patchak then noted this appeal.

STANDARD OF REVIEW

This Court reviews de novo a district court's dismissal for lack of jurisdiction. *Am. Fed'n of Gov't Employees v. Rumsfeld*, 321 F.3d 139, 142 (D.C. Cir. 2003); *Ryan v. Reno*, 168 F.3d 520, 521 (D.C. Cir. 1999).

SUMMARY OF ARGUMENT

The district court correctly held that Patchak does not have prudential standing to bring his claim that Interior lacks authority under the Indian Reorganization Act to accept the Bradley property in trust for the Band because, according to Patchak, the Band was not

under federal jurisdiction in 1934. Patchak's asserted interest is based on alleged environmental and economic harm from a gaming facility that the Band plans to operate on the Bradley property. Such harm is not within the zone of interests of the Indian Reorganization Act provision that Patchak seeks to enforce. The Indian Reorganization Act is concerned with promoting Indian sovereignty and self-government, and facilitating restoration of a tribe's land base. Congress did not intend Patchak to be a beneficiary of the legislation, nor can he be deemed to have more than a marginal relationship to the statutory purposes. He therefore lacks prudential standing.

Even if Patchak satisfies prudential standing requirements, the district court lacked jurisdiction because the Quiet Title Act bars Patchak's lawsuit. The United States' sovereign immunity, as preserved in the Quiet Title Act, bars challenges to the United States' title to land held in trust for Indians. It is undisputed that the United States now holds the Bradley property in trust for the Band. Patchak seeks to set aside Interior's trust acquisition, and, therefore, he challenges the United States' title to property held in trust for Indians. The United States' sovereign immunity precludes Patchak's lawsuit.

While Patchak tries to invoke the Administrative Procedure Act as a basis for his lawsuit, that statute does not help him. The Administrative Procedure Act does not "confer[] authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. The Quiet Title Act forbids the relief sought, so the Administrative Procedure Act is unavailable. Equally without merit is Patchak's reliance on the so-called time-of-filing rule, which, in certain circumstances, assesses jurisdiction based upon facts in existence at the time a plaintiff's complaint is filed. Time-of-filing rules generally are only applicable in federal diversity of citizenship cases, and Patchak does not assert jurisdiction on that basis. In any event, the United States' sovereign immunity trumps any application of a time-of-filing rule.

Finally, if this Court concludes that Patchak satisfies prudential standing requirements and the Quiet Title Act does not bar his suit, the merits of Patchak's claims are not before this Court and the case should be remanded to the district court for further proceedings. There is no basis for this Court to proceed to the merits of Patchak's claim. Other issues may require resolution before any court needs to address the

merits of Patchak's claim at all. In addition, even on appeal Patchak is attempting to submit new evidence to support his claim on the merits; material that neither the agency nor the district court has had the opportunity to consider. That further demonstrates this Court should not, in the first instance, address the merits of Patchak's claim. In sum, should this Court conclude that the district court erred in dismissing for lack of jurisdiction, the matter should be remanded to the district court for further proceedings.

ARGUMENT

Patchak's lead argument on appeal is the merits of his claim, i.e., that Interior could not accept the Bradley property in trust for the Band pursuant to 25 U.S.C. § 465 because the Band was not under federal jurisdiction in 1934. That merits question, however, is not properly before this Court. We therefore first address the two jurisdictional problems that prevent any court from reaching the merits of Patchak's claim. In the event the Court disagrees with us on those two issues (which it shouldn't), we then address the proper way forward with respect to this case.

I. PATCHAK LACKS PRUDENTIAL STANDING

A. Standing Doctrine

The jurisdiction of federal courts is limited to "cases" and "controversies." U.S. Const., Art. III, § 2. No case or controversy exists where a plaintiff lacks standing to make the claims asserted. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To establish standing, at a minimum a plaintiff must show: an "injury in fact" -- an invasion of a legally protected interest which is concrete and particularized and actual or imminent (not conjectural or hypothetical); a causal connection between the injury and the conduct complained of -- the injury must be fairly traceable to the action of the defendant and not the result of some action of a third party; and that it is likely the injury will be redressed by a favorable decision. *Id.* at 560-61.

In addition to those "immutable requirements of Article III," the federal courts have imposed prudential requirements that also bear on the question of standing. *Bennett v. Spear*, 520 U.S. 154, 162 (1997) (quotation marks and citation omitted). For example, a plaintiff must establish that the injury complained of falls within the "zone of interests" protected by the statutory provision or constitutional guarantee whose violation forms the basis of the suit. *See Lujan v.*

Nat'l Wildlife Fed'n, 497 U.S. 871, 883 (1990); *Bennett*, 520 U.S. at 162, 175-76. The zone-of-interests test "denies a right of review if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399 (1987). Essentially, *Clarke* requires a plaintiff to demonstrate less than a congressional intent to benefit the plaintiff, but more than a marginal relationship to the statutory purposes to satisfy the zone-of-interests requirement of prudential standing. *Haz. Waste Treatment Council v. U.S. Envtl. Prot. Agency*, 861 F.2d 277, 283 (D.C. Cir. 1988). Where there is congressional intent to benefit the plaintiff, there is a presumption of standing that may be overcome, for example, where allowing the plaintiff's suit to proceed would severely disrupt a complex and delicate administrative scheme. *Id.* Where there is no congressional intent to benefit the would-be plaintiff, there may still be prudential standing if there is some indicator that the plaintiff is a "peculiarly suitable challenger of administrative neglect" supporting an inference Congress intended the plaintiff to be eligible to bring suit. *Id.*

Patchak's only claim is that Interior lacked authority under the Indian Reorganization Act, 25 U.S.C. § 465, to acquire land in trust for the Band because, according to Patchak, the Band was not under federal jurisdiction in 1934. The only interest that Patchak asserts as the basis of that claim, however, is the "negative effects of building and operating the anticipated casino" on the Bradley property. JA__ (docket entry 1, at 3). The district court correctly concluded that Patchak's interest is not within the zone of interests of the statutory provision he seeks to enforce.

B. The Purposes Of The Indian Reorganization Act And 25 U.S.C. § 465

Congress enacted the Indian Reorganization Act in 1934. The Act repudiated the previous land policies of the General Allotment Act -- it prohibited any further allotment of reservation lands, 25 U.S.C. § 461; extended indefinitely the periods of trust or restrictions on alienation of Indian lands, 25 U.S.C. § 462; provided for the restoration of surplus unallotted lands to tribal ownership, 25 U.S.C. § 463; and prohibited any transfer of Indian lands (other than to the tribe or by inheritance) except exchanges authorized by the Secretary as "beneficial for or

compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations," 25 U.S.C. § 464.

The "overriding purpose" of the Indian Reorganization Act, however, was broader and more prospective than remedying the negative effects of the General Allotment Act. *Morton v. Mancari*, 417 U.S. 535, 542 (1974). Congress sought to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." *Id.* Congress thus authorized Indian tribes to adopt their own constitutions and bylaws, 25 U.S.C. § 476, and to incorporate, 25 U.S.C. § 477. Congress also authorized or required the Secretary to take specified steps to improve the economic and social conditions of Indians, including: adopting regulations for forestry and livestock grazing on Indian units, 25 U.S.C. § 466; assisting financially in the creation of Indian-chartered corporations, 25 U.S.C. § 469; making loans to Indian-chartered corporations out of a designated revolving fund "for the purpose of promoting the economic development" of tribes, 25 U.S.C. § 470; paying tuition and other expenses for Indian students at vocational schools, 25

U.S.C. § 471; and giving preference to Indians for employment in positions relating to Indian affairs, 25 U.S.C. § 472a.

Of particular relevance here, the Indian Reorganization Act authorizes the Secretary of the Interior "in his discretion, to acquire . . . any interest in lands . . . within or without existing reservations, . . . for the purpose of providing land for Indians." 25 U.S.C. § 465. The acquired lands "shall be taken in the name of the United States in trust for the Indian tribe or individual Indian." *Id.* "Indian" is defined to "include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction." 25 U.S.C. § 479. Also included within the examples of "Indian" are "all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation," and "all other persons of one-half or more Indian blood." *Id.* The Indian Reorganization Act also provides that the term "tribe" shall be "construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." *Id.*

Quite simply, Congress passed the Indian Reorganization Act to encourage tribes "to revitalize their self-government," to take control of

their "business and economic affairs," and to assure a solid territorial base by "put[ting] a halt to the loss of tribal lands through allotment." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 151 (1973). That "sweeping" legislation, *Morton*, 417 U.S. at 542, manifested a sharp change of direction in federal policy toward Indians. It replaced the assimilationist policy at the time of the General Allotment Act, which had been designed to "put an end to tribal organization" and to "dealings with Indians . . . as tribes." *United States v. Celestine*, 215 U.S. 278, 290 (1909). As discussed next, the Act therefore is not concerned with the interests that Patchak asserts in this litigation.

C. Patchak's Interests Are Not Within The Indian Reorganization Act's Zone Of Interests And Therefore He Lacks Prudential Standing

Patchak clearly is not among the individuals that Congress intended to benefit in passing the Indian Reorganization Act, nor 25 U.S.C. § 465 in particular. *See Haz. Waste Treatment Council*, 861 F.2d at 283. In addition, his asserted interests are not even "marginally related" to the Indian Reorganization Act's purposes. *Id.* Patchak's interest is his concern that the gaming facility that the Band plans to build on the Bradley property "would detract from the quiet, family

atmosphere of the surrounding rural area." JA__ (docket entry 1, at 3). It is the alleged "negative effects of building and operating the anticipated casino in Mr. Patchak's community" that form the basis of Patchak's alleged injury. *Id.* More specifically, Patchak alleges the gaming facility's effects that he is concerned about include:

> (a) an irreversible change in the rural character of the area; (b) loss of enjoyment of the aesthetic and environmental qualities of the agricultural land surrounding the casino site; (c) increased traffic; (d) increased light, noise, air, and storm water pollution; (e) increased crime; (f) diversion of police, fire, and emergency medical resources; (g) decreased property values; (h) increased property taxes; (i) diversion of community resources to the treatment of gambling addiction; (j) weakening of the family atmosphere of the community; and (k) other aesthetic, socioeconomic, and environmental problems associated with a gambling casino.

JA__ (docket entry 1, at 3). Patchak's vague and generalized grievances have nothing to do with the purposes for which Congress enacted 25 U.S.C. § 465. And the Indian Reorganization Act does not require Interior to balance the interests such as the ones Patchak asserts when making a trust acquisition decision. Moreover, Patchak identifies no case where a private citizen has been found to have prudential standing to bring a claim alleging non-compliance with the Indian Reorganization Act based on similar alleged interests. It is

unsurprising that he has failed to do so: Patchak's argument, if adopted, could lead to an eruption of litigation challenging trust acquisitions for tribes, thus negating the purposes of the prudential standing requirement and contradicting Congress's intent in enacting the Indian Reorganization Act. The Indian Reorganization Act's purpose is to promote Indian sovereignty and self-government, and to facilitate restoration of a tribe's land base. Its purpose is not the protection of individual non-Indian environmental and economic interests such as Patchak's. Indeed, if Patchak's vague and unrelated assertions of harm are sufficient to allow his challenge to proceed, the separate requirement that a challenge to agency action be brought only by one within the statute's zone of interests would be vitiated. As this Court has recognized, "a rule that gave [a plaintiff] standing merely because it happened to be disadvantaged by a particular agency decision would destroy the requirement of prudential standing; any party with constitutional standing could sue." *Haz. Waste Treatment Council*, 861 F.2d at 283.

In contending otherwise, Patchak relies (Appellant's Brief (Br.) 28-29) on this Court's decision in *Citizens Exposing Truth About*

Casinos v. Kempthorne, 492 F.3d 460 (D.C. Cir. 2007). In that case, this Court held that a non-profit group of local citizens had prudential standing to bring an Indian Gaming Regulatory Act challenge to a decision by Interior to take land into trust as a tribe's "initial reservation." *Id.* at 464. Under the Indian Gaming Regulatory Act, gaming regulated under the statute generally cannot be conducted on land (like that acquired for the tribe in *Citizens Exposing Truth About Casinos*) acquired in trust after October 1988. *Id.* at 462; 25 U.S.C. § 2719(a). There are, however, exceptions to that prohibition. One such exception is trust land that is a tribe's "initial reservation." 25 U.S.C. § 2719(b)(1)(B)(ii). Gaming may also occur on trust lands acquired after October 1988 if "the Secretary [of the Interior], after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, *and would not be detrimental to the surrounding community*, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination." *Id.* § 2719(b)(1)(A) (emphasis added). It is that

provision that this Court concluded demonstrated the prudential standing of the plaintiff in *Citizens Exposing Truth About Casinos*. The plaintiff, by challenging Interior's determination that the land was eligible for gaming as the tribe's "initial reservation," sought "to enforce the provision that Congress included regarding affected communities" and therefore the plaintiff's claim was "sufficiently congruent with congressional purposes" to satisfy prudential standing requirements. *Citizens Exposing Truth About Casinos*, 492 F.3d at 463, 464. Here, however, Patchak identifies no similar provision in the Indian Reorganization Act suggesting that his environmental and economic interests are at all congruent with Congress's purpose of "providing land for Indians," 25 U.S.C. § 465. Congress did not intend Patchak to be a "beneficiary" of the legislation, nor can he be deemed to have "more than a marginal relationship to the statutory purposes" and therefore he lacks prudential standing. *Fed'n for Am. Immigration Reform v. Reno*, 93 F.3d 897, 900 (D.C. Cir. 1999) (quoting *Clarke*, 479 U.S. at 399).

Patchak nonetheless relies (Br. 27-28, 29-30) on this Court's statement that the prudential standing "analysis focuses, not on those

who Congress intended to benefit, but on those who in practice can be expected to police the interests that the statute protects." *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1075 (D.C. Cir. 1998). This Court, however, has also explained that "[a]s a general matter, there are two types of parties with the right incentives to police an agency's enforcement of the laws it administers." *Haz. Waste Treatment Council v. Thomas*, 885 F.2d 918, 922 (D.C. Cir. 1989). The first type is those whom the agency regulates -- that is, a party that "is regulated by the particular regulatory action being challenged" -- because they have an incentive to guard against administrative attempts to impose a greater restriction than Congress intended. *Id.* (quotation marks and citation omitted). The second type is "those whom the agency was supposed to protect," because "they have the incentive to ensure the agency protects them to the fullest extent intended by Congress." *Id.* Patchak falls into neither category. His interests clearly fail to "coincide" with the "protected interests" identified by Congress. *Id.* And while Patchak asserts (Br. 29) that he "and similarly situated persons are the only persons who can be expected to police this statutory limit," that simply is not the case. The proper entity to "police" Interior's decision to

acquire land in trust for a tribe is the State in which the land is located, for it is the State that is akin to the regulated entity, because it stands to lose some of its regulatory authority as a result of Interior's trust acquisition.[1] *See Nevada v. Hicks*, 533 U.S. 353, 361-62 (2001). In fact, the case that forms the centerpiece of Patchak's merits argument -- *Carcieri v. Salazar*, 129 S. Ct. 1058 (2009) -- was a lawsuit brought by "the State, its Governor [in his official capacity], and the town of Charlestown." *Carcieri v. Kempthorne*, 497 F.3d 15, 21 (1st Cir. 2007) (en banc).

Unable to find anything in the statutory text, Patchak resorts (Br. 30) to Interior's Indian Reorganization Act regulations to argue that the regulations "acknowledge the interests of local municipalities and citizens in preventing [Interior] trust acquisitions." Patchak's argument is misplaced for a number of reasons. First, as even Patchak's own recitation (Br. 30-31) of the regulatory provisions demonstrates, at most they are concerned with the interests of state and local municipalities. The regulations are not concerned with the

[1] Tellingly, the State of Michigan has not filed suit and has entered into a Class III gaming compact with the Band. *See* 74 Fed. Reg. 18,397, 18,397-98 (2009).

interests of individual citizens who generally claim injury based on potential environmental and economic impacts of a use to which trust land may ultimately be put. Second, Patchak does not seek to enforce those regulatory provisions in his lawsuit. And even if he did seek to enforce them, only "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action *within the meaning of a relevant statute*" may proceed under the Administrative Procedure Act. 5 U.S.C. § 702 (emphasis added). This Court has therefore held that "instructions, directives, and regulations . . . are not statutes, and thus cannot confer standing" in an Administrative Procedure Act lawsuit. *Am. Fed'n of Gov't Employees*, 321 F.3d at 145.

In sum, Patchak's concerns are not within the zone of interests of the Indian Reorganization Act and he therefore lacks prudential standing.

II. EVEN IF PATCHAK HAS PRUDENTIAL STANDING, THE QUIET TITLE ACT BARS HIS LAWSUIT

A. The Quiet Title Act's Limited Waiver of Sovereign Immunity Precludes Judicial Review Here And Patchak Cannot Use The Administrative Procedure Act To Circumvent That Limitation On Judicial Review

It is axiomatic that "[t]he United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *Sherwood*, 312 U.S. at 586 (citations omitted). Such consent to suit must be unequivocally expressed in statutory text and must be strictly construed in the sovereign's favor as to its scope. *Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999); *Lane*, 518 U.S. at 192. It is a plaintiff's burden to establish an applicable waiver of sovereign immunity. *Tri-State Hospital Supply Corp. v. United States*, 341 F.3d 571, 575 (D.C. Cir. 2003). Even if Patchak has prudential standing, he fails to demonstrate that the United States, by a clear and unequivocal act of Congress, waived its sovereign immunity to allow him to maintain this lawsuit. The relief Patchak seeks would require the United States to relinquish title to land it holds in trust for the benefit of an Indian tribe.

Not only is there no express waiver for that relief, the provisions of the Quiet Title Act expressly preclude it. Its limited waiver of sovereign immunity "does not apply to trust or restricted Indian lands." 28 U.S.C. § 2409a(a). Because the Quiet Title Act provides the "exclusive means" for challenging the United States' title to real property, *see Governor of Kansas*, 516 F.3d at 841, Congress's preservation of sovereign immunity in the Quiet Title Act forecloses all legal challenges that seek to divest, or have the effect of divesting, the United States of its title to "trust or restricted Indian lands." *See Mottaz*, 476 U.S. at 842; *Shivwits Band of Paiute Indians v. Utah*, 428 F.3d 966, 974-78 (10th Cir. 2005); *Neighbors*, 379 F.3d at 961-66; *Florida*, 768 F.2d at 1254-55. "Thus, when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the [Quiet Title Act] does not waive the Government's immunity." *Mottaz*, 476 U.S. at 843. Congress, in short, has never consented to a lawsuit that seeks to challenge the United States' title to "trust or restricted Indian lands."

Those principles compel the conclusion that the district court lacks jurisdiction over Patchak's lawsuit. Patchak seeks to reverse

Interior's acquisition of the Bradley property as trust lands for the Band. JA__ (docket entry 1, at 9). And it is of no significance that Patchak's complaint talks in terms of challenging Interior's "decision" to accept the Bradley property in trust for the Band. To obtain any meaningful relief in this case, Patchak needs the courts to set aside Interior's land-into-trust decision, thus requiring the United States to relinquish its title to the Bradley property. Indeed, on appeal Patchak describes the relief he seeks (Br. 26) as including a direction to the district court "to order the Bradley Tract taken out of trust." But because the United States unconditionally holds that land in trust for the benefit of the Band, the Quiet Title Act expressly preserves the United States' immunity to such a challenge. The district court therefore lacked jurisdiction on this ground too.

Patchak maintains (Br. 35-37) that the Quiet Title Act is irrelevant because he brings his action pursuant to the Administrative Procedure Act and the Quiet Title Act is only the "exclusive means" for *"adverse claimants"* to challenge the United States' title, but he is not an adverse claimant because he does not assert any property interest in the Bradley property. That argument lacks merit.

As other courts have repeatedly concluded, a plaintiff cannot avoid the Quiet Title Act's Indian trust lands exception by seeking judicial review under the Administrative Procedure Act. *See Block*, 461 U.S. at 278-86 & n.22; *Governor of Kansas*, 516 F.3d at 842-43; *Neighbors*, 379 F.3d at 964-65; *Shivwits Band*, 428 F.3d at 975; *Florida*, 768 F.2d at 1253-55. The Administrative Procedure Act states that its provisions do not "confer[] authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. Where the Quiet Title Act explicitly forbids the relief that Patchak seeks -- i.e., revoking the Bradley property's trust status -- the Administrative Procedure Act's limited waiver of sovereign immunity does not apply.

Moreover, that Patchak does not seek to quiet his own title to the Bradley property (i.e., he is not an "adverse claimant") does not allow him to avoid the Quiet Title Act's limitations. Again, courts have correctly recognized that

> [i]f Congress was unwilling to allow a plaintiff claiming title to land to challenge the United States' title to trust land it was highly unlikely Congress intended to allow a plaintiff with no claimed property rights to challenge the United States title to trust land.

Shivwits Band, 428 F.3d at 975 (quotation marks omitted); *see also Neighbors*, 379 F.3d at 962; *Florida*, 768 F.2d at 1254-55.

Patchak invokes (Br. 36) Interior's Indian Reorganization Act regulations for the proposition that they "are designed to allow review of [Interior] trust decisions." When Interior promulgated those regulations, however, it specifically noted that they give 30-days notice of a trust acquisition decision before the actual transfer of title because the Quiet Title Act bars judicial review once the land is transferred. 61 Fed. Reg. at 18,082. Of course, rather than file his lawsuit within 30 days of the notice published in the Federal Register, Patchak waited over three years to pursue his claim. In any event, the regulations specifically recognize that transfer of title to the United States will preclude judicial review (the situation here). They do not support Patchak's apparent suggestion that the intent of the regulations is to provide an unlimited opportunity for judicial review irrespective of the Quiet Title Act. And even if that was the intent (which it was not), only Congress can waive the United States' sovereign immunity; an agency by regulation cannot subject the United States to suit where Congress

has provided otherwise. *See Lane*, 518 U.S. at 192 (waiver of sovereign immunity "must be unequivocally expressed in statutory text").

There is no doubt that Patchak seeks to divest the United States of its title to the Bradley property, as he disputes that the United States holds rightful title to the property, and asks the courts to adjudicate that dispute. His lawsuit is therefore among the types of actions that fall within the Quiet Title Act and, because the property undisputedly is held in trust for Indians, it is also expressly precluded by the Act. That is another reason the district court lacks jurisdiction.

B. The Time-Of-Filing Rule Does Not Apply Here

Patchak also asserts (Br. 38-41) that the Quiet Title Act does not bar his suit because Interior had not accepted the Bradley property in trust for the Band when he filed his complaint, and federal court jurisdiction is determined at the time the complaint is filed. Boiled-down to its essence, Patchak's argument is that federal court jurisdiction is determined, and forever set, by facts established at the time of a complaint's filing. Quite to the contrary of Patchak's position on appeal, his verified complaint plainly took the position that Interior's acceptance of the Bradley property in trust after the filing of his

complaint would prevent a court from reaching the merits of his claims. JA__ (docket entry 1, at 5) ("Plaintiffs' [sic] claim . . . will be irrevocably lost if an injunction is not issued to prevent the land from being taken into trust if an injunction is not issued to prevent the land from being taken into trust pending the outcome of the litigation.").[2] Even if that representation in Patchak's complaint does not prevent him from now asserting his time-of-filing argument, the contention lacks merit. Time-of-filing rules generally are applicable only in federal diversity of citizenship cases. Jurisdiction in this case has never been alleged to be based on diversity of citizenship. And unlike ordinary defendants, the United States is absolutely immune from any lawsuit unless Congress explicitly authorizes the courts to grant the relief that a plaintiff seeks in that lawsuit. The United States' sovereign immunity thus would trump any application of a time-of-filing rule.

[2] Here, of course, Interior accepted the Bradley property in trust only after the district court denied Patchak's motions for an administrative stay, JA__ (Nov. 13, 2008 Minute Order), and for a temporary restraining order, JA__ (Jan. 26, 2009 Minute Entry).

1. The Time-Of-Filing Rule Does Not Apply To Federal Question Cases

One reason a time-of-filing rule does not assist Patchak is that time-of-filing rules do not apply to cases where the court's jurisdiction is based upon a federal question. Rather, the time-of-filing rule finds its origin in federal diversity of citizenship cases. *See Connectu LLC v. Zuckerberg*, 522 F.3d 82, 92 (1st Cir. 2008) (*citing Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539 (1824)). Courts have extended that rule to other situations where concerns of forum shopping and strategic behavior offer special justifications for it. *Id.* But while outliers exist, courts have been careful not to extend the rules to federal question cases like this. *Id.* at 92 & n.8. Numerous examples exist where courts have refused to apply time-of-filing rules: when a sovereign restricts its sovereign immunity, *Beers v. Arkansas*, 61 U.S. (20 How.) 527, 529 (1857); when a case becomes moot, *Cardinal Chem. Co. v. Morton Int'l., Inc.*, 508 U.S. 83, 97 (1993); when a case or controversy dissolves, *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975); when the parties lose standing, *Gollust v. Mendell*, 501 U.S. 115, 126 (1991); and when one party removes a case from a state court, 28 U.S.C. § 1446(d). Indeed, for purposes of Article III jurisdiction, it is well-established that "'[a]n

actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.'" *Columbian Rope Co. v. West*, 142 F.3d 1313, 1316 (D.C. Cir. 1998) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997)). Thus, Patchak's reliance (Br. 38) on *Freeport-McMoRan, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991), is misplaced. That is a diversity of citizenship case, which provide no assistance where, as here, jurisdiction is not based on diversity.

2. Sovereign Immunity Trumps Time-Of-Filing Rules

Even if time-of-filing rules were extended to federal question cases, the United States' sovereign immunity would trump these "judge-made construct[s]." *Connectu*, 522 F.3d at 93. The Supreme Court long ago resolved any would-be conflict between sovereign immunity and time-of-filing rules in *Beers v. Arkansas*. In *Beers*, the plaintiff brought a suit upon State bonds under an Arkansas law that allowed the State to be sued. 61 U.S. (20 How.) at 528. While the suit was ongoing, the Arkansas legislature amended the law "requiring the bonds to be filed in court, or the suit to be dismissed." *Id.* When the plaintiff subsequently refused to file the bonds, the state court dismissed the lawsuit and the Supreme Court affirmed that dismissal on sovereign

immunity grounds. *Id.* at 528-29. The Supreme Court noted that a "sovereign cannot be sued in its own courts, or in any other, without its consent and permission" and if the sovereign consents to be sued it "may withdraw its consent whenever it may suppose justice to the public requires it." *Id.* at 529. Thus, even though a waiver of sovereign immunity existed at the time of filing, the Supreme Court held that Arkansas's unilateral act of withdrawing its consent to be sued divested the court of jurisdiction over the lawsuit. *Id.* at 529-30.

Here, just as in *Beers*, even if a waiver of sovereign immunity existed at the time of filing, that waiver no longer applied once Patchak's lawsuit sought revocation of the United States' title to Indian trust lands. By providing that the Quiet Title Act's waiver of sovereign immunity "does not apply to trust or restricted Indian lands," Congress has made it abundantly clear that the United States does not consent to lawsuits where plaintiffs request such relief. 28 U.S.C. § 2409a(a).

If there were any doubt on this point, established principles for interpreting waivers of sovereign immunity compel that Patchak's time-of-filing rule be rejected. "The basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of

Congress." *Block*, 461 U.S. at 287. When interpreting waivers of sovereign immunity, a waiver must be construed strictly in favor of the sovereign and not enlarged beyond what its language requires. *Blue Fox*, 525 U.S. at 261; *Lane*, 518 U.S. at 192. "A necessary corollary of this rule is that when Congress attaches conditions to the legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied." *Block*, 461 U.S. at 287.

Patchak asks this Court to imply an exception to the express preservation of sovereign immunity for lawsuits involving title to "trust or restricted Indian lands" to allow challenges to the government's title if a complaint is filed before the land is acquired. Patchak, however, identifies nothing in the Quiet Title Act's text (as he must) that provides consent to lawsuits seeking to encumber the United States' title to "trust or restricted Indian lands" as long as a complaint is filed before the land is taken into trust. *See Webman v. Fed. Bureau of Prisons*, 441 F.3d 1022, 1025 (D.C. Cir. 2006). Nor can such consent be implied. *Id.* Thus, because the Quiet Title Act does not explicitly allow for challenges to the United States' title where a party files a complaint

before land is taken into trust irrespective of what occurs after the complaint's filing, this Court cannot infer such a waiver.

Even if there were ambiguity in the Quiet Title Act as to whether the United States consents to lawsuits seeking to divest it of title to "trust or restricted Indian lands" whenever a complaint is filed before the land is taken into trust and regardless what may occur after the complaint's filing, the Court must resolve the ambiguity in favor of the government. *Galvan v. Fed. Prison Indus., Inc.*, 199 F.3d 461, 464 (D.C. Cir. 1999). Accordingly, the existence of a complaint before the taking of the Bradley property into trust cannot confer post-acquisition jurisdiction on a court because there is no unequivocal waiver of sovereign immunity. To imply an exception to the Indian trust lands exception by allowing challenges to those trust lands where a party files a complaint before Interior accepts the land in trust could open a gaping hole in that exception (contrary to congressional intent) and should be rejected.

In support of his time-of-filing argument, Patchak cites two cases involving the Quiet Title Act -- *Delta Savings & Loan Ass'n v. I.R.S.*, 847 F.2d 248 (5th Cir. 1988) and *Bank of Hemet v. United States*, 643

F.2d 661 (9th Cir. 1981). Neither of those cases, however, addresses the Quiet Title Act's Indian lands exception. And *Bank of Hemet* (on which *Delta Savings* relies for its conclusion, 847 F.2d at 249 n.1) bases its holding at least in part on a crabbed view of sovereignty immunity and a rule of construction that is at odds with the requirement that waivers be narrowly construed in favor of the sovereign. *Bank of Hemet*, 643 F.2d at 665 ("The time is long past when the bar of sovereign immunity should be preserved through strained and hyper-technical interpretations of the relevant acts of Congress.").[3]

Finally, Patchak's suggestion (Br. 40-41) that Interior "should not, through post-complaint maneuvering, be allowed to defeat judicial review of its actions" is irrelevant. First, such policy considerations have no place where the question is whether there is an applicable waiver of the government's sovereign immunity. *See Keene Corp. v. United States*, 508 U.S. 200, 207, 213, 217 (1993) (limits upon federal jurisdiction cannot be disregarded even though those limits may deprive plaintiffs of an opportunity to assert rights). Second, Patchak's apparent suggestion that Interior engaged in some sort of illegitimate

[3] Notably, *Bank of Hemet* was decided about two years *before* the Supreme Court's *Block* decision.

"maneuvering" to defeat judicial review is meritless. Patchak had the opportunity to, and did, seek judicial intervention to prevent Interior from accepting the Bradley property in trust. The district court refused his requests. *See supra* note 2. There was nothing untoward about Interior's decision to proceed with the trust acquisition it had decided to make over three and a half years earlier.

In sum, even if Patchak may have prudential standing, the Quiet Title Act provides an independent basis for concluding that the district court lacks jurisdiction over his complaint.

III. THE MERITS OF PATCHAK'S LAWSUIT ARE NOT PROPERLY BEFORE THIS COURT

Patchak's lead argument on appeal (Br. 22-26) is his merits contention -- that Interior lacked authority to acquire the Bradley property in trust for the Band because the Band was not under federal jurisdiction in 1934. Patchak bases that argument on the Supreme Court's recent decision in *Carcieri v. Salazar*, 129 S. Ct. 1058 (2009) (a decision rendered after both Interior's decision to accept title to the Bradley property in trust and Interior's actual acceptance of the land in trust for the Band). *Carcieri* addressed Interior's authority under the Indian Reorganization Act to acquire land and hold it in trust "for the

purpose of providing land for Indians." *Id.* at 1060 (quoting 25 U.S.C. § 465). In *Carcieri*, the Supreme Court had occasion to address only one of the three classes under the definition of "Indian" in 25 U.S.C. § 479. *See also supra* at 30 (discussing definition of Indian). The Court concluded that the Indian Reorganization Act's definition of "Indian" as including "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction," "limits the Secretary's authority to taking land into trust for the purpose of providing land to members of a tribe that was under federal jurisdiction when the [Indian Reorganization Act] was enacted in June 1934." *Id.* at 1060-61 (quoting 25 U.S.C. § 479). Because none of the parties had argued that the Narragansett Tribe (the tribe for which Interior had acquired land in trust in *Carcieri*) was "under federal jurisdiction" in 1934, the Supreme Court held that Interior lacked authority under 25 U.S.C. § 465 to acquire the land in trust for that tribe, and had no occasion to address the meaning of the term "under federal jurisdiction." *Carcieri*, 129 S. Ct. at 1068.

The merits of Patchak's claim based on *Carcieri* are not before the Court. First, as set forth in Parts I and II, there are two jurisdictional

problems that prevent the courts from addressing the merits of his claim. Only if Patchak has standing and only further if the Quiet Title Act does not bar his lawsuit, may the merits of his claim even possibly be reached. Second, even if this Court were to conclude that Patchak clears those jurisdictional hurdles, the proper course is for this Court to remand to the district court for further proceedings, and not to address the merits of Patchak's claim.

This appeal comes to the Court on the grant of Interior's motion to dismiss and the Band's motion for judgment on the pleadings. While Patchak filed a motion for summary judgment (docket entry 52), the district court stayed briefing on that motion JA__ (April 9, 2009 Minute Order), and briefing was never completed because of the district court's disposition of Interior's and the Band's motion.[4] Given that procedural posture, if this Court were to conclude that the district court erred in

[4] While it is true this Court may affirm a district court's judgment on a ground not relied on by the district court so long as it finds a basis in the record on appeal, *see, e.g.*, *Nelson v. United States*, 838 F.2d 1280, 1285 (D.C. Cir. 1988), that principle does not help Patchak. Because the district court dismissed Patchak's case, Patchak obviously cannot characterize his merits arguments as an alternative basis for affirming the judgment below. And because motions for summary judgment were never fully briefed, Patchak's merits arguments cannot be properly understood to find a sufficient basis in the record on appeal.

dismissing for lack of jurisdiction, the proper course is to remand this matter for further proceedings. There is no basis for this Court to proceed to the merits of Patchak's claim. Other issues may require resolution (for example, in the district court the Tribe raised a laches argument, in which Interior concurred) before any court needs to address the merits of Patchak's claim at all. Thus, should this Court conclude that the district court erred in dismissing for lack of jurisdiction, the matter should be remanded to the district court for further proceedings.

In a footnote, Patchak asserts (Br. 26 n.7) that "[t]his Court has the power to decide a case on grounds the trial court did not rule upon where the question is one of law." Neither of the cases that Patchak cites, however, stand for the extraordinary proposition that Patchak asserts here -- that this Court has the power to resolve the merits of a plaintiff's claim in the first instance, where the order on appeal is a dismissal for lack of jurisdiction based on a motion to dismiss and motion for judgment on the pleadings. *See also supra* note 4.

Remand to the district court for further proceedings is also the proper course because this issue is not as straightforward as Patchak

suggests. Indeed, at the appellate stage of this litigation, Patchak is submitting new documentary evidence (e.g., Exhibits A and B to his opening brief) to this Court in the first instance. In a traditional dispute between private parties it generally would be inappropriate for this Court to evaluate new evidence on appeal; it is even more inappropriate in the context of judicial review of agency action. *E.g. Morgan v. Fed. Home Loan Mortgage Corp.*, 328 F.3d 647, 654 n.8 (D.C. Cir. 2003). What is more, the nature of those new documents only underscores why it is not appropriate for this Court to address the issue in the first instance. For example, Patchak refers (Br. 25) to Exhibit B for the proposition that the Band was not on a 1937 "list of tribes who were under federal jurisdiction in 1934, and so eligible for [Indian Reorganization Act] benefits." That 1937 list that Patchak includes[5] purports only to be a "List of Indian tribes under the Indian Reorganization Act." Nothing in the document suggests that is related in any way to determining whether the Band was "under federal jurisdiction" in 1934. The historical context or legal significance of the

[5] Exhibit B is one of six lists (Patchak doesn't include the other five) that Commissioner Collier sent to a Senator in response to the Senator's inquiry (Patchak doesn't include the Senator's request either).

document is not described, nor does Patchak explain why it should be given apparently dispositive weight. This Court need not, and should not, be the first to address the merits of Patchak's claim -- one which neither the agency nor the district court has had an opportunity to examine -- much less to address it on the basis of evidence whose relevance to the issue is entirely obscure.

Even as to the existing administrative record, Patchak misunderstands the evidence. For example, he cites (Br. 23) Interior's proposed finding for federal acknowledgement of the Band for the proposition that Interior has acknowledged that 1870 was the end of the Band's federal recognition and therefore the Band "was not federally recognized in 1934." Contrary to Patchak's contention, Interior did not determine that the Band's federal recognition ceased in 1870. As stated in the final determination of acknowledgment, 1870 was the date of the Band's final annuity payment under the 1855 Treaty of Detroit, 63 Fed. Reg. at 56,936, and that date was used solely to allow the Band to proceed under 25 C.F.R. § 83.8 as it modifies the criteria of 25 C.F.R. § 83.7(a)-(g) for purposes of Interior's regulatory acknowledgement

process. Interior, however, made no finding that federal recognition ceased in 1870. *See* 63 Fed. Reg. at 56,936; 62 Fed. Reg. at 38,113.

In sum, if this Court were to conclude that Patchak has prudential standing and that the Quiet Title Act does not bar his lawsuit, this case should be remanded to the district court for further proceedings.

CONCLUSION

For the foregoing reasons, the district court's order should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE VOLUME LIMITATION

I certify that this brief complies with the type volume limitation set forth in Fed. R. App. P. 32(a)(7)(C) and D.C. Circuit Rule 32(a). The brief contains 11,562 words.

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ADDENDUM

ADDENDUM CONTENTS

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 7. Judicial Review (Refs & Annos)
§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub.L. 94-574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)
§ 461. Allotment of land on Indian reservations

On and after June 18, 1934, no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

CREDIT(S)

(June 18, 1934, c. 576, § 1, 48 Stat. 984.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)
§ 462. Existing periods of trust and restrictions on alienation extended

The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are extended and continued until otherwise directed by Congress.

CREDIT(S)

(June 18, 1934, c. 576, § 2, 48 Stat. 984.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)
§ 463. Restoration of lands to tribal ownership

(a) Protection of existing rights

The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: *Provided further,* That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation.

(b) Papago Indians; permits for easements, etc.

(1), (2) Repealed. May 27, 1955, c. 106, § 1, 69 Stat. 67.

(3) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of this Act, except under permit from the Secretary of the Interior approved by the Papago Indian Council: *Provided*, That nothing herein shall be construed as interfering with or affecting the validity of the water rights of the Indians of this reservation: *Provided further*, That the appropriation of living water heretofore or hereafter affected, by the Papago Indians is recognized and validated subject to all the laws applicable thereto.

(4) Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes.

CREDIT(S)

(June 18, 1934, c. 576, § 3, 48 Stat. 984; Aug. 28, 1937, c. 866, 50 Stat. 862; May 27, 1955, c. 106, § 1, 69 Stat. 67.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

C

Effective:[See Notes]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

§ 464. Transfer and exchange of restricted Indian lands and shares of Indian tribes and corporations

Except as provided in this Act, no sale, devise, gift, exchange, or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized under this Act shall be made or approved: *Provided*, That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived, or to a successor corporation: *Provided further*, That, subject to section 8(b) of the American Indian Probate Reform Act of 2004 (Public Law 108-374; 25 U.S.C. 2201 note), lands and shares described in the preceding proviso shall descend or be devised to any member of an Indian tribe or corporation described in that proviso or to an heir or lineal descendant of such a member in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), including a tribal probate code approved, or regulations promulgated under, that Act: *Provided further*, That the Secretary of the Interior may authorize any voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in the judgment of the Secretary, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

CREDIT(S)

(June 18, 1934, c. 576, § 4, 48 Stat. 985; Sept. 26, 1980, Pub.L. 96-363, § 1, 94 Stat. 2007; Nov. 7, 2000, Pub.L. 106-462, Title I, § 106(c), 114 Stat. 1991; Oct. 27, 2004, Pub.L. 108-374, § 6(d), 118 Stat. 1805; Dec. 30, 2005, Pub.L. 109-157, § 8(b), 119 Stat. 2952; May 12, 2006, Pub.L. 109-221, Title V, § 501(b)(1), 120 Stat. 343.)

2006 Acts. Amendments by Pub.L. 109-221 to this section effective as if included in the American Indian Probate Reform Act of 2004, Pub.L. 108-374, see Pub.L. 109-221, § 501(c), set out as a note under 25 U.S.C.A. § 348.

2005 Acts. Pub.L. 109-157, § 9, Dec. 30, 2005, 119 Stat. 2953, provided that: "The amendments made by this Act [amending this section and 25 U.S.C.A. §§ 2204, 2205, 2206, 2212, 2214 and 2216, and amending provisions set out as a note under 25 U.S.C.A. § 2201] shall be effective as if included in the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108-374) [sic; Probably means Pub.L. 108-374, § 8, Oct. 27, 2004, 118 Stat. 1809, which is set out as an Effective and Applicability Provision 2004 Acts note under 25 U.S.C.A. § 2201].".

2004 Acts. Except as otherwise provided, amendments by Pub.L. 108-374, apply on and after the date that is 1 year after the date on which the Secretary makes required certifications under Pub.L. 108-374, § 8(a)(4). For exceptions, see Pub.L. 108-374, § 8(b)(2), as amended by Pub.L. 109-221, § 501(b)(3), set out as an Effective and Applicability Provisions note under 25 U.S.C.A. § 2201.

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

§ 465. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

CREDIT(S)

(June 18, 1934, c. 576, § 5, 48 Stat. 985; Nov. 1, 1988, Pub.L. 100-581, Title II, § 214, 102 Stat. 2941.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)
§ 466. Indian forestry units; rules and regulations

The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.

CREDIT(S)

(June 18, 1934, c. 576, § 6, 48 Stat. 986.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)
§ 469. Indian corporations; appropriation for organizing

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed $250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

CREDIT(S)

(June 18, 1934, c. 576, § 9, 48 Stat. 986.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)
§ 470. Revolving fund; appropriation for loans

There is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $20,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established.

CREDIT(S)

(June 18, 1934, c. 576, § 10, 48 Stat. 986; June 29, 1960, Pub.L. 86-533, § 1(16), 74 Stat. 248; Sept. 15, 1961, Pub.L. 87-250, 75 Stat. 520.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

§ 471. Vocational and trade schools; appropriation for tuition

There is authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided*, That not more than $50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

CREDIT(S)

(June 18, 1934, c. 576, § 11, 48 Stat. 986.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective: November 10, 1998

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

§ 472a. Indian preference laws applicable to Bureau of Indian Affairs and Indian Health Service positions

(a) Establishment of retention categories for purposes of reduction-in-force procedures

For purposes of applying reduction-in-force procedures under subsection (a) of section 3502 of Title 5 with respect to positions within the Bureau of Indian Affairs and the Indian Health Service, the competitive and excepted service retention registers shall be combined, and any employee entitled to Indian preference who is within a retention category established under regulations prescribed under such subsection to provide due effect to military preference shall be entitled to be retained in preference to other employees not entitled to Indian preference who are within such retention category.

(b) Reassignment of employees other than to positions in higher grades; authority to make determinations respecting

(1) The Indian preference laws shall not apply in the case of any reassignment within the Bureau of Indian Affairs or within the Indian Health Service (other than to a position in a higher grade) of an employee not entitled to Indian preference if it is determined that under the circumstances such reassignment is necessary--

(A) to assure the health or safety of the employee or of any member of the employee's household;

(B) in the course of a reduction in force; or

(C) because the employee's working relationship with a tribe has so deteriorated that the employee cannot provide effective service for such tribe or the Federal Government.

(2) The authority to make any determination under subparagraph (A), (B), or (C) of paragraph (1) is vested in the Secretary of the Interior with respect to the Bureau of Indian Affairs and the Secretary of Health and Human Services with respect to the Indian Health Service, and, notwithstanding any other provision of law, the Secretary involved may not delegate such authority to any individual other than a Deputy Secretary or Assistant Secretary of the respective department.

(c) Waiver of applicability in personnel actions; scope, procedures, etc.

(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action respecting an applicant or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action.

(2) The provisions of section 8336(j) of Title 5 shall not apply to any individual who has accepted a waiver with respect to a personnel action pursuant to paragraph (1) of this subsection or to section 2011(f) of this title.

(d) Placement of non-Indian employees in other Federal positions; assistance of Office of Personnel Management; cooperation of other Federal agencies

The Office of Personnel Management shall provide all appropriate assistance to the Bureau of Indian Affairs and the Indian Health Service in placing non-Indian employees of such agencies in other Federal positions. All other Federal agencies shall cooperate to the fullest extent possible in such placement efforts.

(e) Definitions

For purposes of this section--

(1) The term "tribal organization" means--

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of Title 43); or

(B) in connection with any personnel action referred to in subsection (c)(1) of this section, any legally established organization of Indians which is controlled, sanctioned, or chartered by a governing body referred to in subparagraph (A) of this paragraph and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(2) The term "Indian preference laws" means section 472 of this title or any other provision of law granting a preference to Indians in promotions and other personnel actions.

(3) The term "Bureau of Indian Affairs" means (A) the Bureau of Indian Affairs and (B) all other organizational units in the Department of the Interior directly and primarily related to providing services to Indians and in which positions are filled in accordance with the Indian preference laws.

CREDIT(S)

(Pub.L. 96-135, § 2, Dec. 5, 1979, 93 Stat. 1057; Pub.L. 96-88, Title V, § 509(b), Oct. 17, 1979, 94 Stat. 695; Pub.L. 100-581, Title II, § 205, Nov. 1, 1988, 102 Stat. 2940; Pub.L. 101-509, Title V, § 529 [Title I, § 112(c)],

Nov. 5, 1990, 104 Stat. 1454; Pub.L. 105-362, Title VIII, § 801(e), Title XIII, § 1302(d), Nov. 10,1998, 112 Stat. 3288, 3293.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective: March 2, 2004

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)

§ 476. Organization of Indian tribes; constitution and bylaws and amendment thereof; special election

(a) Adoption; effective date

Any Indian tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when--

(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and

(2) approved by the Secretary pursuant to subsection (d) of this section.

(b) Revocation

Any constitution or bylaws ratified and approved by the Secretary shall be revocable by an election open to the same voters and conducted in the same manner as provided in subsection (a) of this section for the adoption of a constitution or bylaws.

(c) Election procedure; technical assistance; review of proposals; notification of contrary-to-applicable law findings

(1) The Secretary shall call and hold an election as required by subsection (a) of this section--

(A) within one hundred and eighty days after the receipt of a tribal request for an election to ratify a proposed constitution and bylaws, or to revoke such constitution and bylaws; or

(B) within ninety days after receipt of a tribal request for election to ratify an amendment to the constitution and bylaws.

(2) During the time periods established by paragraph (1), the Secretary shall--

(A) provide such technical advice and assistance as may be requested by the tribe or as the Secretary determines may be needed; and

(B) review the final draft of the constitution and bylaws, or amendments thereto to determine if any provision therein is contrary to applicable laws.

(3) After the review provided in paragraph (2) and at least thirty days prior to the calling of the election, the Secretary shall notify the tribe, in writing, whether and in what manner the Secretary has found the proposed constitution and bylaws or amendments thereto to be contrary to applicable laws.

(d) Approval or disapproval by Secretary; enforcement

(1) If an election called under subsection (a) of this section results in the adoption by the tribe of the proposed constitution and bylaws or amendments thereto, the Secretary shall approve the constitution and bylaws or amendments thereto within forty-five days after the election unless the Secretary finds that the proposed constitution and bylaws or any amendments are contrary to applicable laws.

(2) If the Secretary does not approve or disapprove the constitution and bylaws or amendments within the forty-five days, the Secretary's approval shall be considered as given. Actions to enforce the provisions of this section may be brought in the appropriate Federal district court.

(e) Vested rights and powers; advisement of presubmitted budget estimates

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments. The Secretary shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Office of Management and Budget and the Congress.

(f) Privileges and immunities of Indian tribes; prohibition on new regulations

Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

(g) Privileges and immunities of Indian tribes; existing regulations

Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on May 31, 1994, and that classifies, enhances, or diminishes the privileges and immunit-

ies available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.

(h) Tribal sovereignty

Notwithstanding any other provision of this Act--

(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).

CREDIT(S)

(June 18, 1934, c. 576, § 16, 48 Stat. 987; 1970 Reorg.Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Nov. 1, 1988, Pub.L. 100-581, Title I, § 101, 102 Stat. 2938; May 31, 1994, Pub.L. 103-263, § 5(b), 108 Stat. 709; Mar. 14, 2000, Pub.L. 106-179, § 3, 114 Stat. 47; Mar. 2, 2004, Pub.L. 108-204, Title I, § 103, 118 Stat. 543.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)
§ 477. Incorporation of Indian tribes; charter; ratification by election

The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: *Provided,* That such charter shall not become operative until ratified by the governing body of such tribe. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding twenty-five years any trust or restricted lands included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

CREDIT(S)

(June 18, 1934, c. 576, § 17, 48 Stat. 988; May 24, 1990, Pub.L. 101-301, § 3(c), 104 Stat. 207.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 14. Miscellaneous
Subchapter V. Protection of Indians and Conservation of Resources (Refs & Annos)
§ 479. Definitions

The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

CREDIT(S)

(June 18, 1934, c. 576, § 19, 48 Stat. 988.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness

Title 25. Indians

Chapter 29. Indian Gaming Regulation (Refs & Annos)

§ 2719. Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless--

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and--

(A) such lands are located in Oklahoma and--

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when--

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of--

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to--

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of Title 26

(1) The provisions of Title 26 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

CREDIT(S)

(Pub.L. 100-497, § 20, Oct. 17, 1988, 102 Stat. 2485.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

C

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part VI. Particular Proceedings
Chapter 161. United States as Party Generally (Refs & Annos)
§ 2409a. Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(f) A civil action against the United States under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on

the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be--

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(l) For purposes of this section, the term “tide or submerged lands” means “lands beneath navigable waters” as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States based upon adverse pos-

session.

CREDIT(S)

(Added Pub.L. 92-562, § 3(a), Oct. 25, 1972, 86 Stat. 1176, and amended Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 99-598, Nov. 4, 1986, 100 Stat. 3351.)

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Effective:[See Text Amendments]

Code of Federal Regulations Currentness
Title 25. Indians
Chapter I. Bureau of Indian Affairs, Department of the Interior
Subchapter H. Land and Water
Part 151. Land Acquisitions (Refs & Annos)

§ 151.12 Action on requests.

(a) The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision. The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision. If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to part 2 of this title.

(b) Following completion of the Title Examination provided in § 151.13 of this part and the exhaustion of any administrative remedies, the Secretary shall publish in the Federal Register, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part. The notice will state that a final agency determination to take land in trust has been made and that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published.

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995, as amended at 61 FR 18083, April 24, 1996]

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, March 30, 1982; 66 FR 3458, Jan. 16, 2001; 66 FR 8899, Feb. 5, 2001; 66 FR 10816, Feb. 20, 2001; 66 FR 31976, June 13, 2001, 66 FR 42415, Aug. 13, 2001; 66 FR 56608, Nov. 9, 2001, unless otherwise noted.

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

25 C. F. R. § 151.12, 25 CFR § 151.12

Current through April 29, 2010; 75 FR 22539

DESIGNATION OF MATERIALS FOR JOINT APPENDIX

Docket Entry No.	**Date**	**Materials**
--	--	Docket Sheet
1	8/1/08	Complaint
22	10/6/08	Administrative Record Pages: 1254-67, 1264, 1438-52, 1984-89, 2012-13, 2028, 2033
23	10/17/08	Motion and Memorandum
33	11/6/08	Exhs. 7 & 9
36	1/8/09	Motion pages 1-2
48	1/23/09	Exh. 2
49	1/30/09	Notice
50	3/2/09	Order
56	8/20/09	Memorandum Opinion
57	8/20/09	Order
58	9/15/09	Notice of Appeal

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(c), D.C. Circuit Rule 25(c), and this Court's May 15, 2009 Administrative Order, I hereby certify that on this date, May 10, 2010, I caused the foregoing Answering Brief of Defendants-Appellees (Initial Brief) to be filed upon the Court through the use of the D.C. Circuit CM/ECF electronic filing system, and thus also served counsel of record. The resulting service by e-mail is consistent with the preferences articulated by counsel of record in the Service Preference Report. I have also served two copies by U.S. Mail to the following address:

David Patchak
2721 6th Street
Shelbyville, MI 49344

As required by the rules, I have also caused five paper copies of this brief to filed with the Court.

s/Aaron P. Avila

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