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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 CHEMEHUEVI INDIAN TRIBE,

13 Plaintiff,

14 vs.

15 KEN SALAZAR, Secretary of the Interior;
16 BOB ABBEY, Director, Bureau of Land
17 Management; JIM ABBOTT, Acting State
18 Director and Associate State Director,
19 California Bureau of Land Management;
20 and DEBRA McBRIDE, Acting Western
21 Regional Director, Bureau of Indian
22 Affairs,

23 Defendants.

Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

24 INTRODUCTION

25 1. This is an action brought by the Chemehuevi Indian Tribe (“Tribe”), a federally
26 recognized Indian tribe, against the Secretary of the Interior (“Secretary”) and various high
27 ranking officials of the Department of the Interior, for violations of the Mission Indian Relief
28 Act, 26 Stat. 712, and the Administrative Procedure Act, 5 U.S.C. § 701, et seq., for agency
action unreasonably delayed. In 1907, the Mission Indian Relief Act required the Secretary to
issue a deed or trust patent (“Patent”) to the Tribe for its Chemehuevi Indian Reservation
 (“Reservation”) when, by order of the Secretary, the Secretary created the Tribe’s Reservation.
The Secretary, by administrative oversight, failed to issue the Patent. In 1993, when the Tribe

1 discovered that it had not been issued its Patent, it requested the Secretary to do so. The
2 Regional Director of the Bureau of Indian Affairs agreed and requested that the California
3 State Director of the Bureau of Land Management issue the Patent. Although he agreed, no
4 Patent has been issued because the Bureau of Land Management (“BLM”) claims that for the
5 last two years, the Bureau of Indian Affairs (“BIA”) has failed to provide it with the
6 Reservation title documents necessary to issue the Patent. The BIA claims it has provided the
7 BLM with all of the documents necessary to issue the Patent not once, not twice, but three
8 times. The Tribe seeks an order from this Court declaring that the defendants have
9 unreasonably delayed the issuance of the Patent and ordering: (1) the BIA to provide the BLM
10 with the documents it needs to issue the Patent, and (2) the BLM to issue the Patent if it has all
11 of the documents necessary to do so.

12 JURISDICTION

13 2. The Court’s jurisdiction over the Tribe’s claims is based upon the following:

14 (a) The Fifth Amendment to the United States Constitution, in that the
15 Tribe asserts that defendants’ actions are arbitrary and capricious;

16 (b) 28 U.S.C. § 1331, in that this action arises under federal law,
17 specifically, the Mission Indian Relief Act and the amendments thereto, and seeks to compel
18 agency action unreasonably delayed, pursuant to the Administrative Procedure Act (“APA”), 5
19 U.S.C. § 701, et seq.;

20 (c) 28 U.S.C. § 1337, in that this action arises out of Acts of Congress
21 regulating commerce with Indian tribes pursuant to the Indian Commerce Clause, Article 1,
22 Section 8, cl. 3; and

23 (d) 28 U.S.C. § 1362, in that the Tribe is a federally recognized Indian tribe
24 which asserts that defendants’ actions are inconsistent with the Constitution and laws of the
25 United States.

26 VENUE

27 3. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391, in that the
28 defendants reside or are subject to suit in said District and the Tribe’s claims arose within said

1 District.

2 EXHAUSTION OF ADMINISTRATIVE REMEDIES

3 4. The BLM has promulgated regulations providing an administrative remedy for
4 persons “adversely affected by a decision of an officer of the” BLM. 43 C.F.R. 4.410(a). The
5 BLM has not established any administrative remedy for persons aggrieved by agency action
6 unreasonably delayed. The Tribe, therefore, has no adequate administrative remedy available
7 at law to exhaust, making this lawsuit ripe for adjudication.

8 PARTIES

9 5. The Chemehuevi Indian Tribe (“Tribe”) is a federally recognized Indian Tribe
10 organized under the provisions of the Indian Reorganization Act, 25 U.S.C. § 476, under a
11 written Constitution that has been approved by the Secretary.

12 6. Defendant, Ken Salazar, is the Secretary of the United States Department of the
13 Interior (“DOI”). Salazar is sued in his official capacity as the Secretary of the DOI.

14 7. Defendant, Bob Abbey (“Director”), is the Director of the BLM. Abbey is sued
15 in his official capacity as the Director of the BLM.

16 8. Defendant, Jim Abbott (“Abbott”) is the Acting State Director and the
17 Associate State Director for BLM in California. Abbott is sued in his official capacity as the
18 Acting State Director and the California Associate State Director for the BLM.

19 9. Defendant, Debra McBride, is the Western Regional Director of the BIA.
20 McBride is sued in her official capacity as the Acting Regional Director of the BIA.

21 10. The defendants are all officers or employees of the DOI who have direct or
22 delegated statutory duties or responsibilities for issuing patents to Indian tribes for their
23 respective reservations, carrying out the provisions of the Mission Indian Relief Act, and for
24 fulfilling the United States of America’s trust responsibilities owed to the Tribe.

25 GENERAL ALLEGATIONS

26 11. The Tribe is the beneficial owner of the Chemehuevi Indian Reservation, which
27 is comprised of approximately 32,000 acres of land located in San Bernardino County,
28 California, along the shores of the Colorado River and Lake Havasu. Title to all of the Tribe’s

1 Reservation lands is owned by the United States of America in trust for the Tribe.

2 12. On or about March 3, 1905, C. E. Kelsey, a San Jose attorney and officer of the
3 Northern California Indian Association, was appointed special agent to the Commissioner of
4 Indian Affairs for the purpose of reporting to the Commissioner on the condition of the Indians
5 within the State of California.

6 13. On December 27, 1906, and January 31, 1907, Special Agent Kelsey issued his
7 reports on the condition of the Chemehuevi Indian Tribe, which resided in the Chemehuevi
8 Valley along the Colorado River. In these reports, Kelsey recommended that the lands
9 occupied by the Tribe be added to the Colorado River Indian Reservation, or, in the alternative,
10 be set aside and proclaimed as a separate reservation for the Tribe upon passage of a bill
11 amending the Mission Indian Relief Act of 1891.

12 14. On January 31, 1907, pursuant to Kelsey's reports, the Acting Commissioner of
13 Indian Affairs wrote a letter to the Secretary of the Interior requesting that he withdraw certain
14 lands from settlement and entry for the use and occupancy of twelve (12) separate bands of
15 Mission Indians, including the Chemehuevi Indian Tribe. In his letter, the Commissioner
16 wrote:

17 Referring to office letter of January 28, transmitting reports of Special Agent C.
18 E. Kelsey on the condition of the Mission Indian Reservations in California, and
19 the draft of a proposed bill for the betterment of their condition [i.e., Act of
20 March 1, 1907 "An Act Amending Section 3 of the Act of January 12, 1891, An
21 Act for the Relief of the Mission Indians in the State of California"], I have the
22 honor to transmit herewith certain descriptions of lands which he recommends
23 be withdrawn from all forms of settlement and entry pending action by
24 Congress whereby they may be added to several reservations. The proposed
25 additions are as follows:

* * *

22 Chemehuevi Valley. Fractional townships 4 N., R. 25 E., T. 4 N., R 26 E., T. 5
23 N., 25 E., 6 N., 25 E.; the E/2 of 5 N., R. 24 E., and Secs. 25, 26, 35 and 36, T.
24 6 N., R. 24 E, S.B.M.

24 A true and correct copy of the Acting Commissioner of Indian Affairs letter to the Secretary of
25 the Interior dated January 31, 1907, is hereby incorporated by this reference and attached
26 hereto as **Exhibit A**.

27 15. On February 2, 1907, the Secretary of the Interior, pursuant to the
28 Commissioner's recommendation, issued an order to the general land office directing that the

1 lands be withdrawn from settlement and entry. In his order, the Secretary stated:

2 In view of the recommendation of the Indian office, I have to direct that the
3 lands referred to be withdrawn from all form of settlement or entry until further
4 notice, also that the local land officers of the District in which the said lands are
5 located, be advised of such withdrawal. In this connection you are advised that
6 the Department on the 31st ultimo forwarded to Congress, with favorable
7 recommendation, the draft of a bill to authorize the addition of certain lands to
8 the Mission Indian Reservation.

9 A true and correct copy of the February 2, 1907, Order of the Secretary of the Interior creating
10 the Chemehuevi Indian Reservation is hereby incorporated by this reference as if set forth here
11 in full and attached hereto as **Exhibit B**.

12 16. On March 1, 1907, Congress passed an "Act Making Appropriations For The
13 Current And Contingent Expenses Of The Indian Department, For Fulfilling Treaty
14 Stipulations With Various Indian Tribes, And For Other Purposes, For The Fiscal Year Ending
15 June 13, 1908." The Act provided in part that:

16 . . . Section 3 of the Act approved January 12, 1891, entitled "An Act for the
17 Relief of the Mission Indians in the State of California," be, and the same is
18 hereby, so amended as to authorize the Secretary of the Interior to select, set
19 apart, and cause to be patented to the Mission Indians such tracts of the public
20 lands of the United States, in the State of California, as he shall find upon
21 investigation to have been in the occupation and possession of the several bands
22 or villages of Mission Indians, and are required and needed by them, and which
23 were not selected for them by the Commissioner as contemplated by Section 2
24 of said Act, . . . (Emphasis added.)

25 17. The Reservation, therefore, was created by order of the Secretary of the Interior
26 on February 2, 1907, pursuant to the provisions of the Mission Indian Relief Act, 26 Stat. 712
27 (January 12, 1891), and the Congressional Appropriations Act of March 1, 1907, 34 Stat. 1015
28 ("Amendment").

18 18. The Mission Indian Relief Act ("Act") and the Amendment thereto required the
19 DOI to issue a trust patent for each of the Reservations created under that statute. Sections 2
20 and 3 of the Act provide:

21 Sec. 2. That it shall be the duty of said commissioners to select a reservation for
22 each band or village of the Mission Indians residing within said State, which
23 reservation shall include, as far as practicable, the lands and villages which have
24 been in the actual occupation and possession of said Indians, and which shall be
25 sufficient in extent to meet their just requirements, which selection shall be
26 valid when approved by the President and Secretary of the Interior. * * *

1 Roger West, Assistant United States Attorney, the Tribe requested that the BIA delay issuance
2 of a Trust Patent until a final judgment was entered in the case of *United States v. Jorgensen,*
3 *et al.*, United States District Court, Central District of California, Case Nos. CV 92-3809 - CV
4 92-3819, Mr. James Wesley Abbott, Deputy State Director for the BLM, responded to the
5 Tribal Attorney's letter of July 27, 2005, to then Assistant Secretary Watson and then Acting
6 Assistant Secretary Cason, stating: "[s]ince the responsibility to issue a trust patent resides
7 with this office, the proposed action will be processed here in California, involving all of the
8 interested agencies and parties." In that letter, Abbott also stated that his office "would prepare
9 a draft trust patent for review and comment by the Office of the Solicitor, Bureau of Indian
10 Affairs, Bureau of Reclamation, and U.S. Fish and Wildlife Service before the end of the
11 calendar year," and that after "they have completed their review and comment and we have
12 made any necessary revisions, we intend to offer interested parties an opportunity to review
13 and comment on the draft trust patent." A true and correct copy of the letter dated November
14 29, 2005, is hereby incorporated by this reference as if set forth here in full and attached hereto
15 as **Exhibit E**.

16 25. On April 17, 2006, Mr. Howard Stark, Chief, Branch of Lands Management,
17 BLM California State Office, sent a memorandum, the subject of which was "Review of Draft
18 Chemehuevi Indian Trust Patent," to the BIA, the Bureau of Reclamation, and the U.S. Fish
19 and Wildlife Service. In the memorandum, Mr. Stark asked each agency to review and
20 comment "not later than June 2, 2006, if possible" on the draft patent. Attached to the
21 memorandum was a draft patent and a briefing paper. A true and correct copy of the April 17,
22 2006, memorandum is hereby incorporated by this reference as if set forth here in full and
23 attached hereto as **Exhibit F**.

24 26. In a memorandum dated May 19, 2006, the Phoenix Office of the Solicitor
25 responded to the memorandum of April 17, 2006, providing comments on the draft patent. A
26 true and correct copy of the memorandum dated May 19, 2006 is hereby incorporated by this
27 reference as if set forth here in full and attached hereto as **Exhibit G**.

28 27. In a letter dated May 28, 2008, Lester Marston, attorney for the Tribe, sent a

1 letter to Stan Webb, Realty Officer for the BIA Western Regional Office, in which he listed
2 several exceptions that should be removed from the draft patent, as well as two items that
3 should be added. Attached to the memorandum were several documents, and a draft patent. A
4 true and correct copy of the May 28, 2008, letter and exhibits thereto are hereby incorporated
5 by this reference as if set forth here in full and attached hereto as **Exhibit H**.

6 28. On November 13, 2008, William W. Quinn (“Quinn”), Field Solicitor, Phoenix
7 Field Office, transmitted a “Corrected Chemehuevi Trust Patent” to Lester Marston, Counsel
8 for the Chemehuevi Indian Tribe, Dan Shillito, Regional Solicitor, Pacific Southwest Region,
9 and Stan Webb, Western Regional Realty Officer, Western Region, Bureau of Indian Affairs.
10 In that memorandum, Quinn stated, “We believe that the corrected trust patent enclosed
11 herewith amounts to a final version that is ready for publication by the Bureau of Land
12 Management (“BLM”), California State Office, in the *Federal Register*.” A true and correct
13 copy of the November 13, 2008, memorandum and accompanying draft patent are hereby
14 incorporated by this reference as if set forth here in full and attached hereto as **Exhibit I**.

15 29. In a letter dated November 17, 2008, from tribal attorney Lester Marston to Dan
16 Shillito, Regional Solicitor, Mr. Marston advised Mr. Shillito “[w]ith the additions and
17 deletions requested by Field Solicitor Quinn, the draft of the Trust Patent is now in a final form
18 for issuance by the State Director.” A true and correct copy of the letter dated November 17,
19 2008, is hereby incorporated by this reference as if set forth here in full and attached hereto as
20 **Exhibit J**.

21 30. Despite the fact that by November 17, 2008, the Field Solicitor for the Phoenix
22 Field Office, on behalf of the BIA and the Tribe, had completed their reviews of the draft
23 patent and found that the draft patent was ready for issuance, the BLM has not issued the
24 Patent.

25 31. On December 7, 2009, Mr. Marston wrote to Mr. Jim Abbott, Mr. Allen
26 Anspach, then BIA Regional Director for the Western Region, Mr. Dan Shillito, Esq, Regional
27 Solicitor for the Pacific Southwest Regional Office, Mr. William Quinn, Esq., Field Solicitor
28 for the Phoenix Field Office, and Ms. Erica Niebauer, Esq., Assistant Regional Solicitor, to

1 demand a face-to-face meeting between officials and staff of the Bureau of Land Management
2 (“BLM”), the Bureau of Indian Affairs (“BIA”), the Office of the Solicitor, and the Tribe to try
3 to resolve any remaining issues necessary in order for the BLM to issue the Patent. A true and
4 correct copy of the letter dated December 7, 2009, is hereby incorporated by this reference as if
5 set forth here in full and attached hereto as **Exhibit K**.

6 32. On December 30, 2009, Mr. Marston contacted Mr. Jim Abbott, Associate State
7 Director of the BLM, to find out why the BLM had not issued the Patent and inquired when
8 Mr. Abbott anticipated that the Patent would be issued. In the conversation, Mr. Abbott
9 advised that the BLM could not issue the Patent until it received certain title documents
10 pertaining to the Reservation, which BLM had requested from the BIA Western Regional
11 Office but had not yet received.

12 33. After speaking to Mr. Abbott, Mr. Marston telephoned and spoke with Stan
13 Webb, Realty Specialist with the Western Regional Office of the BIA. In that conversation,
14 Mr. Marston asked Mr. Webb why the BIA had not provided the BLM with the documents that
15 the BLM had requested and which were necessary for the BLM to issue the Patent. Mr. Webb
16 advised Mr. Marston that he had been advised by the BIA Real Property Officer for the BIA
17 Colorado River Agency that the BIA had provided the BLM with all of the documents that the
18 BLM had requested. Mr. Webb further stated that Mr. Marston could contact the Colorado
19 River Agency’s Realty Specialist and confirm this fact.

20 34. After speaking with Mr. Webb, Mr. Marston telephoned and spoke with Ms.
21 Davetta Hill-Ben, the Realty Specialist for the Colorado River Agency of the BIA. Mr.
22 Marston asked Ms. Hill-Ben if the agency office had sent BLM the documents that they had
23 requested. Ms. Hill-Ben stated that she had sent all the documents requested by the BLM to
24 the BLM. She further stated that the BIA had received a second request from the BLM for the
25 same documents and that the BIA sent the documents a second time to the BLM, certified
26 mail, return receipt requested, and that she had a receipt signed by the BLM proving that the
27 documents had been received by the BLM office. Mr. Marston then informed Ms. Hill-Ben
28 that Mr. Abbott had stated that the BLM had not received the documents. Ms. Hill-Ben stated

1 that she had sent the documents requested to the BLM twice, but would do it again by certified
2 mail, return receipt requested. In addition, Ms. Hill-Ben stated that she would follow up by
3 calling BLM to confirm that they had in fact received the documents.

4 35. On or about January 19, 2010, Mr. Marston placed a telephone call to Mr.
5 Abbott, in which he left a message with Mr. Abbott's secretary about setting up an interagency
6 meeting between the BLM, BIA, and the Tribe to resolve the document request issue.

7 36. On January 25, 2010, Ms. Janie Sheppard, an attorney in the offices of Rapport
8 & Marston, spoke with Mr. Abbott when he returned the previous phone call from Mr.
9 Marston. In that conversation, Mr. Abbott informed Ms. Sheppard that he did not think a
10 meeting was necessary. A true and correct copy of Ms. Sheppard's contemporaneous note to
11 Mr. Marston concerning the content of that conversation is hereby incorporated by this
12 reference and attached hereto as **Exhibit L**. Mr. Abbott also agreed to send Ms. Sheppard a
13 copy of a October 1, 2009, memorandum from Deputy State Director, Natural Resources,
14 BLM, to Western Regional Officer of the BIA, in which the BLM asked for various documents
15 relevant to the Trust Patent. A true and correct copy of the October 1, 2009, memorandum is
16 hereby incorporated by this reference and attached hereto as **Exhibit M**.

17 37. Stan Webb of the BIA claims that the BIA has provided the BLM with all of the
18 Reservation title documents necessary to issue the Patent. Jim Abbott of the BLM claims that
19 the BIA has not provided the BLM with all of the Reservation title documents necessary for
20 the BLM to issue the Patent. No Patent has been issued by the BLM for the Reservation.

21
22 FIRST CAUSE OF ACTION
(Violation of Administrative Procedures Act, 5 U.S.C. § 701, et seq.)

23 38. The Tribe realleges each of the allegations set forth in Paragraphs 1-37 above,
24 and by this reference incorporates such allegations herein as if set forth in full.

25 39. In delaying the issuance of the Trust Patent, the defendants are in direct
26 violation of the Mission Indian Relief Act and the Administrative Procedure Act, 5 U.S.C. §
27 701, et seq., which requires the Secretary to issue the Patent and which prohibits agency action
28 unreasonably delayed.

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1. That the Court declare that the defendants acted contrary to the law, in violation of the Mission Indian Relief Act and the Administrative Procedure Act, by failing to act within a reasonable time to issue the Patent.

2. That this Court order the BIA defendants to provide the BLM with documents necessary to issue the Patent and order the BLM defendants, after receiving the documents necessary to issue the Patent, to issue the Patent for the Reservation within a specified period of time.

3. That the Court award reasonable attorneys' fees, expenses, and costs to the Tribe, pursuant to 28 U.S.C. § 2412, and grant such other relief as the Court may deem appropriate.

Dated: March 10, 2010

RAPPORT AND MARSTON



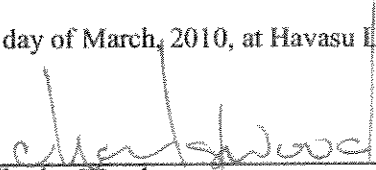
By: _____
LESTER J. MARSTON
Attorneys for Plaintiff
Chemehuevi Indian Tribe

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VERIFICATION

I, Charles Wood, am the Tribal Chairman of the Chemehuevi Indian Tribe, the plaintiff in the above-entitled action. I have read the foregoing Complaint for Declaratory and Injunctive Relief and know the contents thereof. The same is true of my own knowledge except as to the matters as therein stated on my information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on this 17 day of March, 2010, at Havasu Lake, California.


Charles Wood