IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR A BETTER WAY,
15 Pleasant Grove Road, Wheatland, CA 95692,

STAND UP FOR CALIFORNIA!,
7911 Logan Lane, Penryn, CA 95663,

GRASS VALLEY NEIGHBORS,
207 S. School St., Grass Valley, CA 95945,

WILLIAM F. CONNELLY, 5490 Debby Ave, Oroville, CA 95966,

JAMES M. GALLAGHER, 2175 Buck River St., Yuba City, CA 95991,

ANDY VASQUEZ, 1923 Pyramid Creek Dr, Marysville, CA 95901,

DAN LOGUE, 1550 Humboldt Rd. Ste. 4, Chico, CA 95928,

ROBERT EDWARDS, as Chairman, Indians of Enterprise No. 1, 3891 Pentz Rd, Paradise, CA 95967,

ROBERTO'S RESTAURANT, 200 D Street, Wheatland, CA 95692,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, 1849 C Street, N.W., Washington, DC 20240;

KENNETH SALAZAR, in his official capacity as Secretary, U.S. Department of the Interior, 1849 C Street, N.W., Washington, DC 20240;

BUREAU OF INDIAN AFFAIRS, U.S. Department of the Interior, 1849 C Street,

Civ. No. ___________________________

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

N.W., Washington, DC 20240;

KEVIN WASHBURN, in his official capacity as Assistant Secretary, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C Street, N.W., Washington, DC 20240,

Defendants.

INTRODUCTION

1. This dispute centers on the November 21, 2012, decision of the Department of the Interior ("DOI"), through Secretary Kenneth Salazar ("Secretary"), to acquire a 40-acre parcel of land located near rural Wheatland, California ("Yuba Site") in trust on behalf of group of Indians alleged to be the Enterprise Rancheria of Maidu Indians of California ("Enterprise") and the underlying September 2011 determination approving off-reservation gaming on the Site. The purpose of the acquisition is to allow Enterprise to develop an off-reservation casino-resort with 1,700 slot machines and 170-room hotel in the middle of a farming community in Yuba County. The Secretary published notice of the trust decision in the Federal Register on December 3, 2012. 77 Fed. Reg. 71,612-01 (Dec. 3, 2012). The Secretary did not publish notice of the underlying gaming determination, made in September 2011, in the Federal Register.

2. The vast majority of Californians oppose off-reservation gaming. With ***109*** federally recognized tribes in the State, California voters approved Proposition 1A in 2000, amending the California Constitution to authorize Indian gaming, only upon assurances that "Proposition 1A and federal law strictly limits Indian gaming to tribal land." A 2011 survey of California voters found that 72 percent of California voters continue to OPPOSE off-reservation casinos and say tribes should not be allowed to build away from their historic tribal lands. That survey also indicates that California voters believe that *they* should decide whether to change

Proposition 1A to allow off-reservation gaming – not have that decision dictated to them by federal fiat and the concurrence of a single state executive.

3. The Secretary, however, decided that he would authorize an off-reservation casino, regardless of the opposition of the vast majority of California voters; the majority of Yuba County voters; area tribes, including the United Auburn Indian Community, Mooretown Rancheria, Cachil Dehe Band of Wintun Indians of the Colusa Indian Community, and the Indians of Enterprise No. 1; the Yuba-Sutter Farm Bureau; the Sierra Club, and hundreds of area businesses and residents. Ignoring the views of the parties most affected by the casino, the Secretary determined that an off-reservation casino would not be detrimental to the community that opposes it, and to reach that conclusion, he disregarded comments from numerous opposing parties and relied on an outdated, biased and generally inadequate environmental impact statement ("EIS").

4. Plaintiffs Citizens for a Better Way ("Citizens"), Stand Up for California! ("Stand Up"), Grass Valley Neighbors ("Grass Valley"), William F. Connelly, James M. Gallagher, Andy Vasquez, Dan Logue, Robert Edwards, and Roberto's Restaurant (collectively, "Plaintiffs") herein challenge the Secretary's November 21, 2012, Record of Decision ("ROD") and the unpublished, underlying September 2011 ROD. In issuing the RODs, the Secretary exceeded his authority under the Indian Reorganization Act ("IRA"), violated the Indian Gaming Regulatory Act ("IGRA") and the trust regulations implementing the IRA, and the Administrative Procedure Act ("APA") in deciding to acquire the land in trust and concluding that gaming would be permissible on the Yuba Site. The Secretary violated the National Environmental Policy Act ("NEPA") and the APA by failing to take the "hard look" at impacts, ignored reasonable alternatives, did not adequately address comments, and relied on an

unsupervised, biased EIS. Finally, the Secretary violated the Clean Air Act, ("CAA"), 42 U.S.C. §7401 et. seq., by failing to comply with conformity requirements.

JURISDICTION

5. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 28 U.S.C. § 1331, 28 U.S.C. §§ 2201-02, and 5 U.S.C. § 706.

6. Venue lies in this district under 28 U.S.C. § 1391(b) and (e)(2). A substantial portion of the events or omissions giving rise to the claims stated herein occurred in this district.

7. The United States waived sovereign immunity from suit under 5 U.S.C. § 702. There is an actual controversy between the parties that evokes the jurisdiction of this Court regarding decisions by, and actions of, the Defendants that are subject to review by this Court. There has been a final agency action that is reviewable by this Court. 25 C.F.R. § 2.6(c); 25 C.F.R. § 151.12(b).

PARTIES

8. Plaintiff Citizens for a Better Way is organized as a 501(c) organization under the laws of the State of California. Citizens was formed in 2002, after a July 2, 2002, Yuba County Board of Supervisors Hearing, during which Enterprise proposed to build a casino at the Yuba Site. Citizens is composed of farmers, ranchers, local residents, business proprietors, pastors, school board members and elected officials at the local and state level, who recognize the profoundly negative impacts casino development would have on their respective interests and their general quality of life. Citizens' mission is to oppose the development of an off-reservation

casino for the Enterprise Tribe in Yuba County. Citizens and the farmers, ranchers, local residents, business proprietors, pastors, and school board members that support it, will be harmed by the transfer of the Yuba Site into trust and subsequent casino development by: a) increased risk of crime; b) increased traffic; c) increased noise and light pollution; d) increased demands on social services, including schools, police, emergency, and other services; and e) changes in quality of life through rapid urbanization. Defendants' decision to acquire land in trust for an off-reservation casino harms Citizens' interests.

9. Plaintiff Stand Up For California! ("Stand Up") is a non-profit 501(c) corporation organized under the laws of the State of California. Stand Up is a community watchdog group that focuses on gambling issues affecting California, including tribal gaming, card clubs, horse racing, satellite wagering, charitable gaming and the state lottery. Stand Up has supporters throughout the State of California and in the Wheatland community, including Citizens for a Better Way who, either themselves or through their supporters, live, do business, and own property near the Yuba Site. If the Yuba Site is acquired in trust and developed for gaming, Stand Up and its supporters will suffer environmental, social, aesthetic, and economic harm caused by: a) contravention of California's policy against off-reservation casino development; b) increased traffic; c) increased risk of crime; d) diminished property values; e) increased urbanization degrading the region's quality of life; f) increased air pollution resulting from emissions associated with casino traffic; g) degradation of water resources; and h) the loss of state and local regulatory controls, as well as the ability to enjoin or enforce against violations of such laws that might take place on the Yuba Site. As a result of the Secretary's action, Stand Up's supporters will suffer injury personally as the result of the increased risk of gambling,

alcohol, and other personal addictions in their community, and the financial strain on local government budgets by increasing demand for social services.

10. Grass Valley Neighbors is an environmental group located just “up the hill” from Yuba County in Grass Valley, California. Director Steve Enos formed the group, which consists of Grass Valley area residents who share a common interest in issues of land use, development and the environment that have the potential to impact residents of Grass Valley, Nevada County and the region. Grass Valley is especially concerned about air quality impacts. Grass Valley is designated “non-attainment” for ozone and most of Grass Valley’s ozone is “transported” from the northern Sacramento valley. In addition to ozone, particulate matter and other toxic air pollutants are transported from the Sacramento valley area. Ozone has many negative health impacts, including reducing lung elasticity, causing breathing problems, burning eyes, sore throats and headaches. Because nearly half of California’s ozone is from car and truck exhaust, increases in traffic that will result from casino development will harm Grass Valley and its members. As a result of the Secretary’s action, Grass Valley’s supporters will suffer injury personally as the result of the increased air pollution.

11. William F. Connelly is a member of the Butte County Board of Supervisors. He was elected in 2005 and re-elected in 2009. He has lived in Butte County most of his life and owns Connelly's Professional Services, a contracting company. He has been married for 38 years and raised his family in Butte County. Among other duties as a member of the Board of Supervisors, Connelly serves on the Indian Gaming Commission for Butte County. There are two tribes in Butte County that built and currently operate modest casinos on existing tribal lands, consistent with Proposition 1a. Those casinos have brought jobs and economic development to Butte County. Because the Yuba Site Enterprise wishes to develop is located in

a more accessible area to existing markets, the Butte County tribal casinos would be devastated by the proposed Enterprise casino. The shortfall that the Butte County casinos would feel as a result of development of the Enterprise casino will harm Butte County through the loss of the existing casino revenues, a portion of which is passed on the County to pay for services, including the Sherriff's Office and the Country district attorney. The detrimental impacts on Butte County casinos will result in economic harm to Butte County as a whole, the constituents that Connelly represents and Connelly himself. As a result of the Secretary's action, Connelly will suffer injury personally as the result of the loss of existing social and safety services through loss of revenues, and the financial strain on local government budgets.

12. James Gallagher resides in Yuba City, California, 15 miles north-west from the Yuba Site. Gallagher also represents the 5th District on the Sutter County Board of Supervisors. The 5th District is a largely rural, agricultural portion of south Sutter County, which lies directly west and south of the proposed casino site. Supervisor Gallagher and the constituents he represents are deeply concerned about the expansion of off-reservation gaming in violation of the promises made to voters that Indian gaming would remain on existing Indian lands. In particular, Supervisor Gallagher is concerned about the negative impacts the Enterprise casino would have on his rural district, the ability of Sutter County to provide services, particularly emergency and public safety services, in light of the additional demands the casino would place on the Sherriff's Department and the traffic impacts. 40 Mile Road – where the casino will be located – continues south into Sutter County where it becomes Pleasant Grove Road. Increasing traffic will be very dangerous, because casino traffic would be inconsistent with existing slow-moving agricultural traffic, and will likely create significant safety hazards for residents of Sutter County, including Gallagher. The safety and quality of life Gallagher and the constituents he

represents currently enjoy will be severely harmed by the Secretary's trust decision and approval of the Enterprise casino.

13. Andy Vasquez is the County Supervisor for District 1 for Yuba County. Vasquez has owned and operated an equipment repair business since 1984 and served as a Yuba County Reserve Deputy Sheriff from 2004 to April 2009. Vasquez and his family have resided in District One of Yuba County since 2005. In addition to being opposed to off-reservation gaming and the establishment of sovereign land in an area outside of that tribe's aboriginal territory, Vasquez is deeply concerned about the impacts of the casino on traffic, pollution, and the safety of the residents in District 1, his family and himself. The area is largely rural, and casino development will radically alter the amount of traffic, noise, water quality and the general quality of life in Yuba County. The Secretary's action will cause Vasquez to suffer injury personally as a result of the strain the casino would have on Yuba County and the existing quality of life Yuba County residents and Vasquez currently enjoy.

14. Dan Logue, a former Supervisor for Yuba County from 2002-2008, is an Assembly member of the California Legislature for the Third District and the owner of a realty firm, Logue Realty, located in Marysville, California. Logue was elected twice to the Yuba County Board of Supervisors. He is also the founder of the Flood Control of Yuba-Sutter Political Action Committee, which purpose is to obtain funds for various flood management programs to improve flood control system repairs and improvements, delta levee repairs and maintenance for Central Valley. Logue lives 15 miles north-east of Marysville, and as a business owner in Marysville, he has a long-standing interest in the environmental and socio-economic character of the region and in maintaining the area's quality-of-life. In particular, Logue maintains a business in Maryville and would be injured by the increase in traffic, noise and crime

in the region. In addition, negative impacts on property values associated with casino development would harm Logue's business, because as a realtor, decreases in property values results due to lower quality of life results in lower commissions and increased difficulty in selling property. As a result, Logue would be both personally injured by lowered quality of life and economically harmed by the negative effects the Enterprise casino would have on Yuba County.

15. Robert Edwards is the Chairman, of the Indians of Enterprise No. 1. Enterprise disenrolled Edwards as a result of his opposition to the manner in which the Tribal Council spent human services funding dollars. In fact, Enterprise disenrolled 70 members in November 2003 when they all voiced objections over the same issue. Since 1996, however, Edwards has raised issues with BIA regarding the history of Enterprise Indians and the improper action by BIA in recognizing as leaders of Enterprise, Indians over whom Congress had terminated supervisory authority decades before. The new leadership usurped the tribal status of Rancheria No. 1, in order to advance a proposal to develop a casino outside of Enteprise's aboriginal territory in Yuba County. Acquiring land in trust for Enterprise for on off-reservation casino perpetuates BIA's unlawful and improper recognition of Enterprise No. 2 Indians and would cause irreparable injury to Enterprise No. 1, which would not consider entering another Indian's territory, as Enterprise No. 2 has proposed here.

16. Roberto's Restaurant, located in Wheatland, California, is owned by Mr. and Mrs. Roberto Recendez. Over the course of the last 16 years during which they have operated Roberto's Restaurant, the Recendezes have developed close ties to the Wheatland community, which they view as "an ideal small town with rural roots." Wheatland is surrounded by beautiful ranches and lovely farms that the Recendezes enjoy as part of their everyday life. The

Recendezes believe that the development of a mega-casino within in 5 miles of the town will destroy their business and their quality of life because of the difficulties small business owners have in competing against tribal casino-resorts, including the simple challenge of navigating the traffic associated with casino development. The Recendezes believe that Yuba County was improperly pressured into entering into the 2002 Memorandum of Understanding ("MOU") with the County and that reliance on that MOU will result in their losing the quality of life. The Recendezes will suffer harm to their business and their quality of life if the Yuba Site is acquired in trust for Enterprise and a mega-casino is allowed on the Site.

17. Defendant U.S. Department of the Interior ("DOI") is an administrative agency of the United States.

18. Defendant Kenneth Salazar is the Secretary of the United States Department of the Interior (the "Secretary"), and is sued in his official capacity.

19. Defendant Bureau of Indian Affairs ("BIA"), an administrative agency within the DOI, is charged with overseeing Indian Affairs.

20. Defendant Kevin L. Washburn is the Assistant Secretary – Indian Affairs for the DOI and administers the BIA, and is sued in his official capacity.

STATUTORY FRAMEWORK

A. Trust Acquisition Under the Indian Reorganization Act

21. Section 5 of the Indian Reorganization Act ("IRA") authorizes the Secretary to acquire land and hold it in trust "for the purpose of providing land for Indians." Ch. 576, §5, 48

Stat. 985, 25 U.S.C. § 465. The Secretary's authority is limited to acquiring land in trust only for recognized tribes that were under federal jurisdiction in 1934. *Carcieri v. Salazar*, 555 U.S. 379 (2009). Before the Secretary can acquire land in trust for a tribe, it must first determine whether that tribe qualifies for trust acquisition under *Carcieri*.

22. Under 25 C.F.R. Part 151 – the regulations implementing Section 5 – the Secretary must consider a number of factors when reviewing a trust application, including the tribe's need for additional land; the purposes for which the land will be used; the impact on the state and its political subdivisions resulting from the removal of the land from the tax rolls; jurisdictional problems and potential conflicts of land use which may arise; and where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use. 25 C.F.R. §§ 151.10-11. In addition, as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition and greater weight to the potential impacts on regulatory jurisdiction, real property taxes and special assessments. *Id.* § 151.11(d).

23. The Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published. *Id.* § 151.12(b). "If an action is filed," as here, BIA is required by its own rules to "*take no further action until the judicial review process has been exhausted*." Bureau of Indian Affairs, Department of Interior, Fee-to-Trust Handbook, Version II, at 15 (issued July 13, 2011).

B. Section 20 of the Indian Gaming Regulatory Act

24. Under Section 20 of IGRA, 25 U.S.C. § 2719, tribes are prohibited from engaging in any gaming activities on land acquired after October 17, 1988, unless a specifically enumerated exception applies. In this case, Enterprise requested a gaming determination under the exception commonly referred to as the "Secretarial Determination" or "two-part determination," pursuant to which the Secretary must determine, prior to taking the land into trust for the Indian tribe, that: (1) it would be in the "best interest" of the tribe to establish gaming on such land, and (2) establishment of gaming on such land would not be detrimental to the surrounding community. *See* 25 U.S.C. § 2719(b)(1)(A); 25 C.F.R. §§ 292.2, 292(c).

25. A positive Secretarial determination is not sufficient. Section 20 further requires the governor of the affected state to "concur" with the Secretary's two-part determination. *See* 25 U.S.C. § 2719(b)(1)(A). In seeking the governor's concurrence, the regulations also require that the Secretary include the "entire application record." *See* 25 C.F.R. § 292.22(b).

C. The National Environmental Policy Act

26. NEPA is the "basic national charter for protection of the environment." 40 C.F.R. § 1500.1. Its purposes are to "help public officials make decisions that are based on understanding of environmental consequences, . . . to take actions that protect, restore, and enhance the environment," and to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." *Id.* § 1500.1(b)-(c).

27. An EIS is required for all "major federal actions significantly affecting the quality of the human environment," 42 U.S.C. § 4332(C). The EIS must describe (1) the "environmental

impact of the proposed action," (2) any "adverse environmental effects which cannot be avoided should the proposal be implemented," (3) "alternatives to the proposed action," (4) "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity," and (5) "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." 42 U.S.C. § 4332. Agencies "shall . . . study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." *Id*. § 4332(2)(E).

28. Agencies are required to oversee the NEPA process and to assume responsibility for the document. 40 C.F.R. § 1506.5. For an EIS, an agency often hires a third party contractor, and charges the applicant for the cost. The contractor must be selected by the federal action agency after the consideration of candidates and the contractor must assert that it is objective and has no interest in the outcome of the project.

29. Agencies must make "diligent efforts to involve the public in preparing and implementing their NEPA procedures," including providing public notice and soliciting public comment. *Id*. § 1506.6.

30. A supplemental EIS must be prepared if the agency makes "substantial changes in the proposed action that are relevant to environmental concerns" or if "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *Id*. § 1502.9(c).

D. The Clean Air Act

31. The CAA, 42 U.S.C. §7401 et seq., requires the Environmental Protection Agency ("EPA") to set national ambient air quality standards ("NAAQS") to protect public health and welfare. 42 USC § 7409. EPA has adopted a NAAQS for fine particulates, known as PM2.5. 40 C.F.R. § 50.13.

32. The CAA further requires each State to adopt and submit to EPA a plan (a "state implementation plan" or "SIP") to attain these standards in areas that do not meet them and to preserve attainment in areas that do meet them. 42 U.S.C. § 7410.

33. States may include in this plan "indirect source review" requirements that provide for the preconstruction review of "indirect sources that do not emit significant amounts of pollution themselves but that increase pollution by attracting mobile sources." 42 U.S.C. § 7410(a)(5).

34. The CAA forbids any federal agency from assisting, licensing or approving any construction project that does not "conform" to a SIP, as specifically defined in the statute. 42 U.S.C. § 7056(c).

35. Under EPA regulations, these conformity requirements apply to any project located in a non-attainment area that will have direct or indirect emissions that exceed certain specified thresholds. *See generally*, 40 C.F.R. Part 93.150-160. The regulations require determinations that a project conforms to a SIP to be made through a described process of public notice and comment.

FACTUAL BACKGROUND

A. Brief History of Enterprise Nos. 1 and 2

36. In 1915, DOI Special Indian Agent John Terrell, tasked with identifying groups of Indians in California and purchasing land for them to live on, took a census of Indians in and near Enterprise in Butte County, California. Mr. Terrell identified 51 Indians that he listed by name, family relationship, and age on a census of "Indians in and near Enterprise in Butte County, California" ("1915 Census").

37. Mr. Terrell purchased two 40-acre parcels in December 1915, pursuant to acts of Congress that authorized the Secretary to purchase land for Indians "now residing on reservations which do not contain land suitable for cultivation, and for Indians who are not now upon reservations in [California]." Act of June 21, 1906, Pub. L. No. 59-258, 34 Stat. 325, 333, renewed by the Act of April 30, 1908, Pub. L. No. 60-104, 30 Stat. 70, 76; Act of August 1, 1914, 38 Stat. 582, 589, as supplemented by a joint resolution of March 4, 1915, 38 Stat. 1228 (authorizing the Department to purchase lands for "homeless Indians" in California).

38. The two parcels of land are known as "Enterprise Rancheria No. 1" and "Enterprise Rancheria No. 2." Enterprise Rancheria No. 1, located approximately 11 miles northeast of Oroville, California, in Butte County, was purchased for Emma Walters and her family. Enterprise Rancheria No. 2, located near Oroville, California, was purchased for Nancy Martin and her family, who had been living on the land.

39. In 1935, BIA visited Enterprise to establish a list of voters and to conduct an election for the Indians, to determine whether the provisions of the IRA would apply to them. On May 27, 1935, BIA compiled a single "approved list of voters for the [IRA] on Enterprise

Rancheria," that included 29 Indians in the voting population, including descendants of both Emma Walters and Nancy Martin. A majority of voters rejected the application of the IRA.

40. On August 20, 1964, Congress authorized the sale of Enterprise Rancheria No. 2 in preparation for the construction of the Oroville Dam and Reservoir. Pub. L. No. 88-453, 78 Stat. 534 (Aug. 20, 1964). Under the terms of the Act, the Secretary sold Enterprise Rancheria No. 2 to the State of California and distributed the proceeds to four of Nancy Martin's grandchildren – Henry B. Martin, Stanley Martin, Ralph G. Martin, and Vera Martin Kiras.

41. The legislative history states that "[t]he *descendants* of the Indians for whom the Enterprise Rancheria was established have agreed to the proposed sale of the Rancheria and to distribution of the proceeds therefrom among the four named beneficiaries." S. Rep. No. 88-1357, at 2 (1964); H.R. Rep. No. 88-1569, at 2 (1964) (emphasis added). The legislative history also states that "[w]hen the land has been sold and the proceeds distributed, the Bureau of Indian Affairs will have terminated its supervisory responsibilities over Enterprise Rancheria No. 2 and its inhabitants." *Id.*

42. In 1979, BIA acknowledged Glen Walters, a descendant of Emma Walters of Enterprise Rancheria No. 1, as a spokesperson for the Tribe.

43. In 1994, six years after Congress passed IGRA to authorize gaming on tribal lands, Arthur Angle, a descendant of Enterprise Rancheria No. 2, met with BIA to attempt to organize all persons listed on, or descended from persons listed on, the 1915 Census, despite Congress's termination of Rancheria No. 2 in 1964 and BIA's acknowledgment of Glen Watson as the tribal spokesman.

44. Descendants of Rancheria No. 1 (John, Jim and Morgan Watson, descendants of Emma Watson) refused to participate with the reorganization of "Enterprise" after meeting with BIA to protest Angle's efforts.

45. BIA allowed Angle to proceed, notwithstanding the opposition of the descendants of Rancheria No. 1 (none of whom shared in the distribution from the termination of Rancheria No. 2) and in April 1995, BIA recognized the results of a September 11, 1994, tribal election, which resulted in the selection of a seven-member council. That council included: Lisa Angle, Arthur Angle, Rosalie Bertram, David Thompson, Franklin Martin, Clifford Angle, and Stanley Martin. All seven members of the council are the lineal descendants of Nancy Martin, associated with Enterprise Rancheria No. 2.

46. Pursuant to Enterprise's 2003 constitution, an earlier version of which was passed by the council established in 1995, all persons whose names appear on the 1915 Census, as well as their lineal descendants, are eligible for "Lineal Membership" in Enterprise. Any individual (or their direct descendants) listed on <u>any</u> United States Census of the Maidu Indians is eligible for "Non-Lineal Membership" in the Enterprise.

47. Non-Lineal Members are not afforded full privileges in Enterprise; they are not eligible to hold any elected or appointed offices of the Enterprise Rancheria, or to receive non-discretionary funds of the Enterprise.

B. Review of the Enterprise Off-Reservation Casino

48. On August 13, 2002, Enterprise filed a request to have the 40-acre Yuba Site acquired in trust. The stated purpose of the acquisition was to "right a historic wrong suffered by Enterprise Rancheria in 1965, when an equivalent amount of tribal land was sold by the United

States to the State of California to permit the construction of the Oroville Dam." The application states that the land would be used for "tribal economic development purposes" associated with gaming.

49. Enterprise described the Yuba Site in its 2002 applications as follows:

> That parcel of land lying within the northeast quarter of Section 22, T. 14 N., R. 4 E., M.D.B.&M. in Yuba County, California and being described as follows:
>
> Commence at the quarter section corner common to said Section 22 and Section 15, T. 14 N., R. 4 E., M.D.B.&M. and being marked by a brass monument stamped LS3341 in a monument well as shown on Record of Survey No. 2000-15, filed in Book 72 of Maps, page 34, Yuba County Records; thence South 0E 28' 11" East, along the line dividing said Section 22 into east and west halves, 2650.73 feet to a brass monument stamped LS3341 in a monument well as shown on said Record of Survey No. 2000-15 and marking the center of said Section 22; thence North 89E 31' 24" East, 65.00 feet to a point on the east right-of-way line of Forty Mile Road; thence North 0E 28' 11" West, along said east right-of-way line of Forty Mile Road, 45.53 feet to the POINT OF BEGINNING; thence from said point of beginning continue along said east right-of-way line of Forty Mile Road the following courses and distances: North 0E 28' 11" West, 1133.70 feet; thence North 5E 14' 27" East, 50.25 feet; thence North 0E 28' 11" West, 136.91 feet; thence leaving said east right-of-way line of Forty Mile Road run North 87E 59' 10" East, 1315.48 feet; thence South 0E 28' 11" East, 1320.48 feet; thence South 87E 59' 10" West, 1320.48 feet to the point of beginning and containing 40.00 acres more or less.

50. On or about 2002, Enterprise hired Analytic Environmental Services ("AES") to prepare an environmental assessment ("EA") for the proposed trust acquisition and casino project. NEPA regulations allow an applicant to prepare an EA independent of the action agency. 40 C.F.R. § 1506.5(b).

51. While AES and Enterprise prepared the EA, Yuba County entered into an MOU with Enterprise on December 17, 2002. The MOU provides that Enterprise will pay Yuba County a series of payments in exchange for the County's support for Enterprise's casino project and the provision of a number of services to Enterprise, including law enforcement and possibly fire and emergency medical services. Upon information and belief, Enterprise represented to

Yuba County that it was entitled to game on the Yuba Site under a different exception to Section 20 – the "restored lands" exception – and that refusing to enter into an MOU would leave Yuba County without mitigation for the impacts of its off-reservation casino.

52. During the same period Enterprise negotiated the MOU with Yuba County and prepared the EA, Enterprise spent more than $447,000.00 in political consultant fees to try to qualify for an exception to the Section 20 prohibition on gaming. Enterprise's efforts focused at that time on an ultimately failed legislative fix for their "section 20 issue" through Senator Ben Nighthorse Campbell from Colorado and on the special recall election to replace then-Governor Gray Davis.

53. On or about June of 2004, BIA circulated for public comment the EA prepared by Enterprise and AES.

54. Yuba County filed comments with BIA on July 28, 2004, objecting to the EA as inadequate, and on August 24, 2004, the County requested that BIA prepare an EIS for the casino.

55. On May 18, 2005, Governor Schwarzenegger issued a proclamation on tribal gaming that stated that the Governor would consider requests for a gubernatorial concurrence under section 20(b)(1)(A) only when: a) the land sought for class III gaming is not within any urbanized area; b) the local jurisdiction in which the tribe's proposed gaming project is located supports the project; c) the tribe and the local jurisdiction demonstrate that the affected local community supports the project, such as by a local advisory vote; and d) the project substantially serves a clear, independent public policy, separate and apart from any increased economic benefit or financial contribution to the State, community, or the Indian tribe that may arise from gaming.

56. BIA published a Notice of Intent ("NOI") to prepare an EIS for the Enterprise casino in the Federal Register on May 20, 2005. BIA held a scoping meeting for the EIS in Marysville, California on June 9, 2005, and in November, 2005, identified Enterprise as a cooperating agency in the EIS.

57. Documents produced under the Freedom of Information Act ("FOIA") and a Vaughn index of documents withheld produced in *Schmit v. Salazar*, Civ No. 12-0784 (filed May 15, 2012), indicate that BIA did not properly select AES as its third-party contractor, did not solicit a disclosure statement from AES, and did not properly supervise the EIS or ensure that Enterprise was properly insulated from the review process.

58. In August 2005, Enterprise entered into a MOU with the City of Marysville, which is located a few miles north of the Yuba Site. The MOU requires the City to support Enterprise's off-reservation casino in exchange for specified monetary contributions from Enterprise.

59. On April 13, 2006, Enterprise submitted a formal request with BIA to initiate the two-part determination set forth in IGRA Section 20(b)(1)(A), after Senator Campbell's efforts to obtain a legislative fix failed and Governor Schwarzenegger issued his tribal gaming proclamation.

60. BIA published a Notice of Availability ("NOA") of a draft EIS on March 21, 2008 and announced a public hearing for April 9, 2008. Based on documents produced under FOIA and Vaughn indexes provided by BIA and AES, the only edits or review provided by BIA appears to have taken place on October 2, 2006. The record does not memorialize any comments, meetings, phone calls, emails, or other correspondence between AES and BIA regarding the EIS.

61. On May 20, 2008, two decades after Congress passed IGRA, BIA promulgated regulations to implement Section 20 (25 C.F.R. part 292). On January 16, 2009, BIA sent a notice letter to the Governor's Office requesting information pursuant to regulations implementing the two-part determination process.

62. Two months later, Enterprise updated and revised its request to conform with requirements found in the new regulations, 25 C.F.R. §§ 292.16-19, on March 17, 2009. And more than a month later, Enterprise again supplemented the updated and amended request for a Secretarial determination. Upon information and belief, no further notice of those revisions was provided.

63. On August 10, 2010, BIA published notice of the final EIS in the Federal Register. Documents produced under FOIA and Vaughn indexes provided by BIA and AES do not evidence any discussion, supervision or oversight of the final EIS. The record does not memorialize any comments, meetings, phone calls, emails, or other correspondence between AES and BIA regarding the final EIS.

C. State and Local Opposition to Enterprise's Off-Reservation Casino

64. Plaintiffs and many others have opposed Enterprise's off-reservation casino proposal for more than a decade. Enterprise first announced its intent to develop the off-reservation casino in a July 2, 2002, Yuba County Board of Supervisors Hearing. Soon thereafter, parties began filing opposition comments with BIA.

65. On September 11, 2002, the Yuba County Board of Education passed a resolution "strenuously" opposing the development of an off-reservation casino in Yuba County. (Yuba Cnty. Bd. Educ. Resolution 2002-11).

66. On November 12, 2002, the Wheatland Union High School Board of Trustees passed a resolution opposing Enterprise's proposed casino because of concerns regarding the loss of jurisdiction over issues of traffic, public safety, environment, water and air quality and impacts of the casino affecting children, social policies and conditions, the economic well-being of taxpayers and business and political ramifications on all citizens of Yuba County. (Wheatland Union High School District Bd. Trustees Res. No. 02.36).

67. On May 10, 2005, in response to a letter sent by BIA, the Office of the Governor refused to commence negotiations with Enterprise because Enterprise lacked a compelling public policy reason to support concurrence under Section 20. A few weeks later, the Governor issued his tribal gaming proclamation described above.

68. BIA's publication of its NOI to prepare an EIS in on May 20, 2005 generated a large number of opposition letters. On June 17, 2005, then-Yuba County Supervisor Dan Logue wrote a letter to the Regional Office of BIA objecting to Enterprise's attempt to use the "restored lands" exception or another exception – the "settlement of a lands claim" – to section 20, and stated that Enterprise must go through the two-part determination process. In addition, Logue raised questions regarding the enforceability of the MOU between Yuba County and Enterprise.

69. Local opposition to the proposed casino prompted the Yuba County Board of Supervisors to call a Special Advisory Election on July 26, 2005, to present Measure G, which provides: "Should a destination resort/hotel and American Indian gaming casino be located within the sports/entertainment zone on Forty Mile Road in the County of Yuba?" On November 8, 2005, almost 52% of Yuba County voters voted against the casino.

70. During that same period, the Board of Directors of the Yuba-Sutter Farm Bureau passed on resolution on September 26, 2005, opposing Enterprise's off-reservation casino

because of its detrimental effects to agricultural operations in the area and the safety hazards posed by casino traffic.

71. BIA's circulation of the draft EIS on March 21, 2008 similarly resulted in wide-spread opposition. On May 5, 2008, the Governor's Office filed comments on the draft EIS with BIA, objecting that the draft EIS had "not thoroughly evaluated all of the project's potential environmental impacts, or considered effective mitigation measures."

72. Edwards, on behalf of Enterprise No. 1, also filed comments on April 25, 2008, opposing Enterprise's off-reservation casino because of membership irregularities and other improper conduct by BIA.

73. Numerous other commenters filed comments regarding the adequacy of the draft EIS, including comments regarding water and sewage-related issues from EPA, fire and emergency-related concerns from Wheatland Fire Authority, traffic concerns from the California Department of Transportation, impacts on infrastructure and growth-inducing effects from the City of Wheatland, opposition from the United Auburn Indian Community ("UAIC") and opposition from multiple parties regarding Enterprise and their inflated membership, social and economic impacts, safety and infrastructure impacts and flood plain concerns.

74. Comments filed in response to BIA's January 19, 2009 two-part consultation letter fared no better. On February 27, 2009, the California Tribal Business Alliance ("CTBA") submitted a letter to the BIA, stating that the Yuba Site "is not in the historical or cultural territory" of the Enterprise Tribe. The CTBA further noted that "[t]he Enterprise Rancheria already has land that is eligible for gaming" and "is not a landless tribe," but rather "is seeking additional trust land in a more marketable location" that is "in the historic territory of the Nisenan people," from whom many members of the UAIC are descended. The CTBA has stated

that the historical connection to the Yuba Site "belongs to the [UAIC]," and that a gaming establishment at the Yuba Site "would be detrimental to the government and members of the [UAIC]."

75. On March 6, 2009, Stand Up submitted a letter to BIA opposing Enterprise's casino, citing the State-wide policy as established through the electorate in approving Proposition A, problems regarding the MOU between Enterprise and Yuba County, including the enforceability of the document, and BIA's misapplication of the 1994 List Act and disenrollment controversies in Enterprise.

76. Three days later, California Assemblyman Logue registered his opposition to the casino, stating that consistent with Proposition 1A, gaming was restricted to "Indian Lands" and that "the mood of the State Legislature has not been favorable to reservation shopping, and there are real questions as to whether a tribal state compact would be ratified in this case."

77. On March 12, 2009, Edwards filed comments opposing the Enterprise casino, for among other reasons, traffic, commutability, lack of aboriginal connection and other improper activities. Similarly, the UAIC filed supplemental comments under section 20 and NEPA on May 11, 2009.

78. On March 13, 2009, Citizens for a Better Way filed comments opposing the casino, citing concerns regarding representations Enterprise made to Yuba County Supervisors as a means of coercing the County to enter into the 2002 MOU.

79. Despite these comments, on February 9, 2010, the Regional Office of BIA issued a memorandum to the Secretary finding that gaming would benefit Enterprise and would not be detrimental to the surrounding community. The memorandum also recommended that the land be acquired in trust on behalf of Enterprise.

80. The Regional Office's preliminary recommendation prompted another round of objections. On September 3, 2010, Stand Up filed comments with BIA challenging the adequacy of the final EIS, including among other things, that the document was out-of-date and did not reflect current conditions. Citizens also filed comments regarding the inadequacy of the final EIS, noting that the analyses in the final EIS were stale, that they did not reflect the economic changes in the region as a result of the economic downturn, and that analyses of traffic, water, floodplain and other resources were insufficient. Similarly, on September 6, 2010, UAIC submitted comments on the final EIS, including a peer review memorandum prepared by ESA – an environmental consulting group – identifying numerous problems with the final EIS. On September 7, 2010, the local chapter of the Sierra Club filed comments regarding, among other things, air attainment issues in Yuba County that are not adequately addressed in the final EIS.

E. Approval of the Enterprise Off-Reservation Casino

81. Despite the opposition to the Enterprise acquisition, the Regional Office issued a memorandum finding no detriment and recommending approval of Enterprise's trust request on February 9, 2010. The February 9, 2010 memorandum relied on the MOUs with Yuba County and Marysville for the no detriment finding.

82. No comments from prior to 2008 were included in or addressed by the Memorandum.

83. The land description in the Memorandum differs from that in Enterprise's application, is not identified with specificity, and/or is substantially larger than that contemplated or reviewed in the EIS:

Compare the 2002 Description:

North 0E 28' 11" West, 1133.70 feet; thence North 5E 14' 27" East, 50.25 feet; thence North 0E 28' 11" West, [1st] 136.91 feet; thence leaving said east right-of-way line of Forty Mile Road run North [2nd] 87E 59' 10" East, 1315.48 feet; thence South 0E 28'

> 11" East, 1320.48 feet; thence South 87E 59' 10" West, [3rd] 1320.48 feet to the point of beginning and [removed] containing 40.00 acres more or less.
>
> With the 2010 Description:
>
> North 0 28'11" West 1133.70 feet, thence North 5 14' 27" East, 50.25 feet; thence North 0 28' 31" West [1st] 750 feet to a ½ inch rebar with LS3751; thence leaving said East right-of-way line of Forty Mile Road run North [2nd] 88 00' 51" East 1860 feet to a ½ inch LS3751; thence South 0 28'11" East [3rd] 1932.66 feet to a ½ inch rebar with LS3751; thence South 87 59' 10" West 1865.03 feet to the point of beginning.

84. The Memorandum states that "[s]aid property contains forty acres."

85. Upon information and belief, the description of the property in the 2010 Memorandum is for approximately 82 acres, more or less.

86. The Secretary issued a ROD on September 1, 2011, determining that gaming on the Yuba Site would not be detrimental to the surrounding community. The Secretary only considered the comments provided by the government officials from whom he requested them. The only opposition addressed in the ROD is a reference to the advisory vote on the Yuba County ballot in November of 2005, referred to as "Measure G." The ROD does not explain why comments provided by Plaintiffs and others are not addressed (including the CTBA, Assemblyman Dan Logue, Yuba County Supervisor Roger Abe, Enterprise No. 1, citizens, Stand Up, Churches of God, Wheatland Community Fellowship), while various supporting comments from non-governmental entities that the law does not consider consulting parties are included in the section detailing support for the casino (including Yuba Sutter Chamber of Commerce, Marysville Business Improvement District, Olivehurst Public Utility District, and Yuba-Sutter Economic Development Corporation).

87. On August 31, 2012, Governor Jerry Brown concurred with the DOI determination. When Governor Brown announced his concurrence with the DOI decision, he announced that he had already negotiated a compact with Enterprise, which he submitted to the

California Legislature for ratification. The California Legislature has not yet ratified the compact.

88. On November 30, 2012, the Secretary filed a NOI to take the Yuba Site into trust (published December 3, 2012) and issued a ROD approving the acquisition of land in trust. As with the 2010 ROD, the land described in the NOI differs substantially from the land described in Enterprise's application, and is twice as large as the parcel identified generally throughout the decisions and in Enterprise's applications and/or is not identified with specificity. With respect to the Secretary's authority to acquire land in trust, the 2012 ROD does not address arguments made by a number of commentors, but rather states only that the calling of a Section 18 election by the Chief Counsel for the United States Indian Service "conclusively establishes that the Tribe was under federal jurisdiction for *Carcieri* purposes." The ROD also relies heavily on the EIS to address any comments opposing the Enterprise casino.

FIRST CLAIM

BIA Violated the Indian Reorganization Act of 1934 and the APA

89. The paragraphs set forth above are realleged and incorporated herein by reference.

90. Under the IRA, the Secretary has power to take land into trust only for Indian tribes that were federally recognized and under federal jurisdiction in June 1934, when the IRA was enacted. 25 U.S.C. §§ 465, 479.

91. Under the APA, an agency must "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Assn. of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "The agency 'must cogently explain why it has exercised its discretion in a given

manner,' and that explanation must be sufficient to enable the Court 'to conclude that the agency's action was the product of reasoned decision-making.'" *Id*. at 48, 52; *see also* 5 U.S.C. §§ 702, 704, 706.

92. In determining that he had the authority to acquire land on behalf of Enterprise, the Secretary only made the conclusory statement that voting in 1935 to reject organization under the IRA "conclusively establishes that the Tribe was under federal jurisdiction for *Carcieri* purposes." The Secretary did not explain the rationale behind that statement. Nor did BIA address numerous comments submitted by various parties regarding the history of Enterprise Nos. 1 and 2, its organization in 1994 or other questions regarding Enterprise's history.

93. Enterprise was neither federally recognized, nor under federal jurisdiction in June 1934. The Secretary therefore has no authority under 25 U.S.C. § 465 to acquire land in trust on behalf of Enterprise. The Secretary's failure to address the substantial controversy regarding the history of Enterprise does not meet basic APA requirements. *See Motor Vehicle Mfrs. Assn.*, 463 U.S. at 43.

94. In addition, the Secretary must consider, among other things, the impacts of the proposed acquisition on the State and its political subdivisions resulting from the removal of the land from the tax rolls and the jurisdictional problems and potential conflicts of land use which may arise. 25 C.F.R. §151.10(e) - (f). The Secretary is required to give greater scrutiny to Enterprise's justification of anticipated benefits from the acquisition as the distance from land increases and give greater weight to the concerns raised by the State and local governments. 25 C.F.R. §151.11.

95. The Secretary failed to adequately take into account the impacts of the proposed acquisition and off-reservation gaming. The Secretary did not accord the greater scrutiny to Enterprise's justification or give greater weight to concerns raised by state and local governments, properly consider the impacts of the trust acquisition and casino project on the surrounding community or adequately account for the jurisdictional problems and potential conflicts of land use which may arise. The notice was deficient.

96. Accordingly, Defendants' decision to acquire land in trust for Enterprise failed to adhere to the procedural and substantive requirements set forth in 25 C.F.R. Part 151 and is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary's authority under the IRA, and issued in a manner not in accordance with law. 5 U.S.C. §706 (2).

SECOND CLAIM

BIA Violated Section 20 of the IGRA and the APA

97. The paragraphs set forth above are realleged and incorporated herein by reference.

98. Section 20 prohibits gambling on land taken into trust after October 17, 1988, subject to certain exceptions. 25 U.S.C. § 2719. The Secretary relied upon the so-called "Secretarial Determination" or "two-part test" exception under 25 U.S.C. § 2719(b)(1)(A) in this case. Under that section, the gambling prohibition applicable to post-1988 land acquisitions does not apply when "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…." 25 U.S.C. §

2719(b)(1)(A). Section 20 regulations also authorize the Secretary to consider "[a]ny other information that may provide a basis for a Secretarial Determination whether the proposed gaming facility would or would not be detrimental to the surrounding community." 25 C.F.R. § 292.18(g).

99. In making his determination under section 2719(b)(1)(A), the Secretary failed to consider and address various detrimental impacts to the community, including the widespread and predominant opposition to the casino within the local community set forth in the numerous opposition letters submitted to BIA. In fact, many opposition letters do not appear to have been reviewed at all. In addition, the Secretary disregarded clear state policies opposing off-reservation gaming, local votes demonstrating that the majority of the community opposes the Enterprise casino, and concerns regarding the enforceability of the MOUs on which the Secretary almost exclusively relied. *See* 25 C.F.R. §§ 292.2, 292.19(g). The notice was deficient.

100. By failing to comply with the procedures set forth in 25 C.F.R. Part 292, the Secretary's actions were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of the APA. 5 U.S.C. §§ 702, 704, 706. The administrative record is insufficient to support the approval of the Enterprise's trust application or the Secretarial Determination to take the Yuba site into trust for gaming purposes.

THIRD CLAIM

Defendants' Violations of NEPA and the APA

101. The paragraphs set forth above are realleged and incorporated herein by reference.

102. The Secretary's approvals of the two-part determination and trust decision based on the EIS constitute violations of NEPA, 42 U.S.C. § 4321 et seq., and its implementing regulations, 40 C.F.R. 1500 *et seq.*

103. Without limitation, Defendants' actions violate NEPA and are therefore unlawful in the respects alleged below.

A. "Hard Look" at Environmental and Socio-Economic Impacts

104. The Secretary failed to take a "hard look" at the environmental impacts of proposed major actions raised by Plaintiffs as required by 40 C.F.R. § 1502. Taking a "hard look" "places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action." *Balt. Gas & Elec. Co. v. NRDC, Inc.*, 462 U.S. 87, 97 (1983) (citation and internal quotation marks omitted). The Secretary's failure includes, but is not limited to:

a. The Secretary failed to adequately assess and consider the social, economic, employment, and housing impacts of the proposed casino on the communities within Yuba County, as well as the effects on social services;

b. The Secretary's traffic analysis is inadequate, either omitting necessary data or relying on out-of-date information. The impacts in regard to transportation and level of service are not adequately analyzed;

c. The Secretary's assessment of indirect and growth-inducing effects and cumulative effects is inadequate, in violation of 40 C.F.R. § 1502.16 and the APA;

d. The Secretary's assessment of impacts on water resources is inadequate;

e. The Secretary's analysis of Endangered Species Act issues were incorrect;

f. The Secretary proposed inadequate mitigation and improperly deferred mitigation and failed to take a "hard look" at the environmental impact of the proposed mega-casino development. 42 U.S.C. § 4321 *et seq*.; 40 C.F.R. § 1508.8.

B. The Alternatives Analysis

105. The Secretary failed to adequately consider alternatives to taking the Yuba Site into trust for gaming purposes, as required by 40 C.F.R. § 1502.14. BIA is required to "[r]igorously explore and objectively evaluate all reasonable alternatives …." *Id*. The range of alternatives is not sufficient and is designed to result in the preferred alternative.

106. In addition, the Secretary violated Executive Order 11988 on Floodplains. A portion of the project will be located in the floodplain. Areas that qualify under Executive Order 11988 are subject to special public review procedures, practicable alternatives test, and mitigation. The Secretary did not properly address this issue in the EIS or conduct the required review of alternatives.

C. Undue Influence

107. Defendants failed to comply with 40 C.F.R. § 1506.5 when reviewing and approving the FEIS and RODs, in violation of the APA. 5 U.S.C. §§ 702, 704, 706.

108. Enterprise hired AES to prepare the EA in or around 2002. Upon information and belief, Defendants did not follow CEQ procedures for selecting AES as a third party consultant

to prepare the EIS, establish an MOU to ensure the integrity of the process, or supervise the process in a meaningful way. Further, at the time AES prepared the EIS, AES was working with and as a part of tribal consortiums and casino interests.

109. Defendants further failed to "furnish guidance and participate in the preparation and …. independently evaluate the [FEIS] prior to its approval," in violation of 40 C.F.R. § 1506. 40 C.F.R. § 1506.5(c). Documents produced by BIA and AES through the FOIA do not evidence adequate participation or oversight by BIA of the NEPA process.

110. Accordingly, the Secretary's decision to acquire land for off-reservation gaming on the basis of the EIS is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary's authority under the IRA, and issued in a manner not in accordance with law. 5 U.S.C. §706 (2).

FOURTH CLAIM

The Secretary Violated the Clean Air Act and the APA

111. The paragraphs set forth above are realleged and incorporated herein by reference.

112. The CAA, 42 U.S.C. § 7401 *et seq.*, requires EPA to set national ambient air quality standards ("NAAQS") to protect public health and welfare. 42 U.S.C. § 7409. EPA has adopted a NAAQS for fine particulates, known as PM2.5. 40 C.F.R. § 50.13.

113. The CAA further requires each state to adopt and submit to EPA a plan (a "state implementation plan" or "SIP") to attain NAAQS in areas that do not meet them and to preserve attainment in areas that do meet them. 42 U.S.C. § 7410. States may include in this plan

"indirect source review" requirements that provide for the preconstruction review of "indirect sources that do not emit significant amounts of pollution themselves but that increase pollution by attracting mobile sources." 42 U.S.C. § 7410(a)(5).

114. Federal agencies cannot assist, license or approve any construction project that does not "conform" to a SIP, as specifically defined in the statute. 42 U.S.C. § 7056(c). Conformity requirements apply to any project located in a non-attainment area that will have direct or indirect emissions that exceed certain specified thresholds. *See generally*, 40 C.F.R. Part 93.150-160.

115. Yuba County is classified as non-attainment for Federal PM2.5; therefore, conformity requirements apply. BIA was required to determine that the casino project would conform to a SIP through public notice and comment. BIA did not conduct that notice and comment period.

116. The Secretary failed to comply with the required procedures for making a federal conformity determination. Accordingly, the Secretary's decision to acquire land for off-reservation gaming without complying with the CAA is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, and not in accordance with law. 5 U.S.C. §706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

a. That the Court declare that the Secretary's decision to accept the Yuba Site in

trust for Enterprise was in excess of his authority under the IRA and implementing regulations, and order the Secretary to set aside his decision approving the trust acquisition, or alternatively, remand the decision to the Secretary for further consideration;

b. That the Court declare that the Yuba Site does not qualify under the Secretarial Determination exception under 25 U.S.C. § 2719(b)(1)(A) and permanently enjoin the Secretary from accepting the Yuba Site into trust to be used for gaming purposes;

c. That the Court declare that the Secretary's Determination under 25 U.S.C. § 2719(b)(1)(A) is arbitrary, capricious, an abuse of discretion, and issued in a manner not in accordance with law, and thereby set aside and vacate such determinations;

d. That the Court declare that Defendants acted in an arbitrary and capricious manner by certifying the FEIS for Enterprise's off-reservation casino and approving the trust acquisition because the final FEIS is legally inadequate under NEPA and the APA, and require Defendants to comply with NEPA by preparing a new or supplemental FEIS consistent with NEPA's requirements;

e. That the Court declare that Defendants acted in an arbitrary and capricious manner by approving the trust acquisition without complying with the CAA and require Defendants to comply with the CAA by undergoing the appropriate notice and comment and including enforceable mitigation;

f. That the Court issue a Temporary Restraining Order and a Preliminary Injunction enjoining a formalized acceptance of the transfer under 25 C.F.R. § 151.14, and ordering that no official of the United States take the Yuba Site into trust for Enterprise until final judgment has been entered and all appeals exhausted;

g. That this Court enter judgment and an order awarding Plaintiffs' costs and reasonable attorney's fees; and

h. That the Court award such other relief as it deems proper to effectuate the purposes of this action.

Respectfully Submitted,

Dated: December 20, 2012

By: /s/ Benjamin S. Sharp

PERKINS COIE, LLP
Benjamin S. Sharp (D.C. 211623)
Jennifer A. MacLean (D.C. 479910)
Perkins Coie LLP
700 Thirteenth Street, N.W. Suite 600
Washington, D.C. 20005-3960
Telephone: 202.654.6200
Facsimile: 202.654.6211

Attorneys for Plaintiffs
Citizens for a Better Way, Stand Up For California!, Grass Valley Neighbors, William F. Connelly, James M. Gallagher, Andy Vasquez, Dan Logue, Robert Edwards, as Chairman, Indians of Enterprise No. 1, and Roberto's Restaurant