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Attorney for Plaintiffs
No Casino in Plymouth and Citizens Equal Rights Alliance

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

NO CASINO IN PLYMOUTH and CITIZENS EQUAL RIGHTS ALLIANCE, Plaintiffs, v. KENNETH L. SALAZAR, in his official capacity as Secretary of the U.S. Department of the Interior, DONALD E. LAVERDURE, in his official capacity as Acting Assistant Secretary of the U.S Department of Interior, JOHN RYDZIK, Chief, Division of Environmental, Cultural Resources Management and Safety of the Bureau of Indian Affairs, California Regional Office, and THE UNITED STATES DEPARTMENT OF INTERIOR Defendants.	Case No. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, No Casino In Plymouth and the Citizens Equal Rights Alliance, both non-profit public interests groups, file this complaint against Defendants and allege as follows:

NATURE OF THE ACTION

1. Plaintiffs request that the Court review and vacate of the final Record of Decision (ROD) of the Bureau of Indian Affairs (BIA) through an Acting Assistant Secretary (Secretary) of the Department of the Interior (DOI), issued on May 24, 2012 and published in the Federal Register on May 30, 2012 (77 Fed. Reg. 31871-31872, May 30, 2012) The ROD is to place 228.04 acres of land (Parcel) in Plymouth, California owned in fee simple by private non-Indian landowners into federal trust on behalf of the Ione Band of Miwok Indians (Band) pursuant to the Indian Reorganization Act of 1934 (IRA; 25 U.S.C. §465, et seq.) This action proposed by the Secretary is a final agency action pursuant to 25 C.F.R. §2.6 and 5 U.S.C. §704. The Court should vacate the Secretary's decision for several reasons.

2. The Secretary lacks statutory authority to take title in trust to the Parcel. The IRA authorizes the Secretary of Interior (not an Acting Assistant Secretary) to take land in trust for members of "any recognized Indian tribe now under Federal jurisdiction." The Supreme Court made clear that the term "now under federal jurisdiction" refers to tribes that were "under Federal jurisdiction" when the statute was enacted in 1934. *Carcieri v. Salazar,* 555 U.S. 379 (2009). The Band was not in existence, much less federally recognized or under "federal jurisdiction", in 1934. The Secretary's determination in the ROD that the Band was "under federal jurisdiction" in 1934, lacks substantial justification and is inconsistent with the facts and prior positions of the DOI. It was an abuse of discretion and is arbitrary, capricious and contrary to the law. It should be vacated by this Court.

3. The trust acquisition proposed by the Secretary in the ROD is intended to facilitate the construction of a major gambling casino, hotel and related facilities on the Parcel. But the Parcel is not eligible for Indian gaming. The Indian Gaming Regulatory Act (IGRA) prohibits Indian

gaming on land acquired after 1988 unless one of the statute's narrow exceptions applies. (29 U.S.C. §§ 2701-2721.) Since the Parcel would be acquired in trust for the Band after 1988, gaming is prohibited on the Parcel unless one of the IGRA exceptions applies. The IGRA exceptions do not apply. The Secretary's determination in the ROD that the Parcel qualified as Indian lands eligible for gaming under IGRA's "restored lands for a restored tribe" exception lacks substantial justification and is inconsistent with the facts and prior positions of the DOI. It was an abuse of discretion and is arbitrary, capricious and contrary to the law. It should be vacated by this Court.

4. The Secretary failed to take a "hard look" at the environmental and socio-economic impacts of his proposed action as required by the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 et seq). The proposed action in the ROD is contrary to law and its implementation would cause permanent and irreparable harm to the environment, including the human environment as defined in NEPA); would create a permanent and perpetual jurisdictional and tax revenue problems for the state and local governments, and would contribute to the ongoing economic destruction of the state and local economies. The DOI failed to apply a fair and unbiased analysis of the jurisdictional and human impacts caused by the ROD as required by NEPA and the DOI, in the Final Environmental Impact Statement (FEIS) wrongfully assumed that non-Indian interests did not require equal consideration against the interests of the Band. The Secretary failed to fully consider or adequately address the traffic, water quality and air quality impacts of the proposed casino and related facilities.

5. Based on the United States Constitution, Art. IV, Sec. 3, Cl.2, and the recent decisions of *Carcieri v. Salazar* and *Hawaii v. Office of Hawaiian Affairs,* 129 S Ct. 1436 (2009) and the previous cases of *City of Sherrill v. Oneida Indian Nation*, 544 U. S. 197 (2005) and *Cayuga Indian Nation v. Pataki*, 413 F. 3d 266 (2nd Cir. 2005), *cert. denied,* 2006 U.S. LEXIS 3949

(U.S., May 15, 2006), that the Defendants have no authority to create federal public domain land or federal Indian land in the State of California, a sovereign state, which has retained its rights to all lands not specifically retained or reserved as public domain land of the United States within its exterior boundaries. The holdings in *Carcieri v. Salazar* and *Hawaii v. Office of Hawaiian Affairs* prohibit the Defendants from accepting any lands into federal trust status pursuant to 25 U.S.C. § 465 for the Band.

6. Any claim in the ROD that aboriginal Indian title still exists in the Band is without merit. After a reasonable claims period expired, any aboriginal Indian title was ceded "permanently and forever" to the sovereign state of California upon statehood in 1850 when the United States Congress placed no restrictions on the lands transferred to, and under the jurisdiction of, the new State - which entered the Union on an equal footing with all other States. In *Sherrill*, the United States Supreme Court held, "the Tribe cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue. The Band, if it ever existed as a separate governmental entity, long ago relinquished the reins of government and cannot regain them now through open-market purchases from current titleholders. *Sherrill* at 198.

7. The Part 151 regulations (25 CFR 151) promulgated by the Secretary of the Interior, and used as a basis for the ROD, are beyond his statutory authority. The asserted authority of the Secretary that he can convert fee lands under state jurisdiction into federal Indian territorial lands under exclusive federal jurisdiction to remove the state process and civil rights of all non-Indian citizens is based on the unification theory (the unification theory allowed the Secretary to "restore" to any Indian tribe a land base and sovereign status) that was specifically rejected in *Sherrill.* The ROD is an overreach of the power Congress gave to the Secretary under the IRA. The Secretary is acting outside of the scope of his authority and beyond his discretion by claiming he has the authority to take fee lands into trust in California.

8. Furthermore, the DOI failed to comply with Part 151 when it reviewed and approved the ROD. The notice of the ROD was published in the Federal Register on May 30, 2012 just six days after it was signed by the Secretary. (77 Fed.Reg. 31871-31872.). The ROD and the notice of publication are incomplete and premature because they failed to include the required Title Examination for public review and comment. (25 C.F.R. §§ 150.11, 151.12(b), 151.13 and 151.15.) The Defendants further violated the regulations by delegating this important decision to an Acting Assistant Secretary. The Acting Assistant Secretary is not the Secretary and is not authorized to accept or transfer the Parcel into trust outside the State's jurisdiction. The ROD should be vacated unless and until full notice, including the title document, is provided for public review and scrutiny, and it is evaluated by the Secretary of Interior

9. For the forgoing reasons the ROD should be vacated. The Secretary's approval of the ROD is: arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to the constitutional right, power and privilege or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without observance of procedure required by law and all other relevant provisions of 5 USC § 706 of the Administrative Procedures Act ("APA"). The ROD is also in violation of 42 U.S.C. § 4321, et seq, and in violation of the relevant statute and regulations governing land into trust under 25 U.S.C. § 465 and 25 C.F.R. § 151 et seq. Accordingly, the ROD is unlawful and it should be set aside, as provided for under 5 U.S.C. § 706.

JURISDICTION AND VENUE

10. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 5 U.S.C. § 701-706 et seq., 28 U.S.C. §§ 2201 and 2202. The United States waives sovereign immunity from suit under 5 U.S.C. §702 and 28 U.S.C. §2209(a). There is an actual controversy between the parties that evokes the jurisdiction of this Court regarding decisions and actions by DOI and

the Secretary that is subject to review by this court. All federal administrative remedies are exhausted as required by 5 U.S.C. §704. This case is ready for judicial review.

11. Venue is proper in United States District Court for the Eastern District of California under 28 U.S.C. §§ 1391(b) (2) and 1391(e), 5 U.S.C. § 703. The Parcel that is the subject of this fee to trust decision is located in this judicial district and members of the plaintiff citizen groups reside in the district.

PARTIES

12. Plaintiff, No Casino in Plymouth (NCIP), is a non-profit 501 (c) (4) corporation incorporated under the laws of the State of California and has members who own homes and operate businesses in and around the areas that are included in the ROD.

13. Plaintiff, Citizens Equal Rights Alliance (CERA), is a non-profit 501 (c) (4) Corporation incorporated in South Dakota. CERA has members in 22 states including members throughout California and in an around the areas included in the ROD. One CERA board member owns property in California. One board member resides in Amador County near the Parcel to be taken into trust by the ROD.

14. The individual Defendants are the Secretary of the Interior, Kenneth L. Salazar; the Acting Assistant Secretary of the Interior, Donald E. Laverdure; and Chief, Division of Environmental, Cultural Resources Management and Safety, John Rydzik, of the Bureau of Indian Affairs, California Regional Office. All are being sued in their official capacity and are named defendants as a result of the actions and decisions of the DOI for which they bear the responsibility.

15. Defendant Department of Interior is a cabinet level agency of the United State and is the agency responsible for managing the affairs of Indian tribes through the BIA. The DOI is also responsible for promulgating and insuring compliance with its regulations.

STATEMENT OF FACTS

16. In April 2003 the Band announced that, pursuant to IGRA, it would seek to establish a major Class III gambling casino, hotel and related facilities in the City of Plymouth in Amador County, California. 73% of Plymouth voters said NO to a casino in a City administered poll. NCIP was formed as a group at that time.

17. In February 2004 the Plymouth City Council entered into a Municipal Service Agreement (MSA) with the Band. Amador County and the NCIP successfully sued the City and the MSA was set aside. And the City of Plymouth withdrew its support for the project.

18. In the fall of 2004 the Band requested a restored lands opinion from the National Indian Gaming Commission (NIGC). The Band also filed a Fee to Trust Application with the DOI Bureau of Indian Affairs (BIA).

19. In April 2005 Amador County filed an opposition to the Band's request for a restored land opinion.

20. In May 2006 the NIGC and the DOI entered into a Memorandum of Agreement (MOA) which provided that when a tribe requested an Indian lands determination it would first be determined by DOI's Office of the Solicitor, Division of Indian Affairs and then NIGC .

21. Also in May 2006, Amador County sent a letter to the NIGC with an extensive report on the history of the Band

22. On September 19, 2006 DOI Associate Solicitor Carl J. Artman rendered an opinion that the Plymouth Parcels are Indian Land relying on the "restored tribe" exception.

23. The Artman opinion was immediately challenged in the IBIA by Amador County, the City of Plymouth and NCIP. The appeal, and a subsequent lawsuit by Amador County, was dismissed because the opinion did not constitute a final agency action.

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24. In April 2008 the BIA/DOI published a notice in the Federal Register for the Draft Environmental Impact Statement (DEIS) for the proposed Fee to Trust transfer. The DEIS was made available to the public for a 75 day comment period

25. On or about January 16, 2009, DOI Solicitor David L. Bernhardt withdrew the September 19, 2006 Artman opinion because it was wrong; Mr. Bernhardt concludes that the Band is not a "restored tribe." Mr. Bernhardt reached this conclusion while he was in the process of reviewing the DEIS. Mr. Barnhardt's decision was, in effect, was a rejection of the adequacy of the DEIS and denial of the proposed Fee to Trust Transfer and casino project studied in DEIS.

26. On May 24, 2012 the Secretary issued the ROD. A notice of final agency action was published in the Federal Register on May 30, 2012. The Secretary reversed the Bernhardt 2009 decision and reinstated the Artman 2006 Opinion and approved the fee-to-trust transfer. It does not appear that the revived Artman opinion has been approved by NIGC as required by the MOA. The Secretary also revived and approved the DEIS rejected by Barnhardt in support of the project. Specifically; the ROD adopts Alternative A, designated as the Preferred Alternative in the DEIS, to accept 228.04 acres into trust status for the Band.

27. The ROD states, in Section 1.4, that the authority for its actions are Section 5 of the IRA (25 U.S.C. § 465) and 25 C.F.R. Part 151 (ROD at 8).

28. The ROD also asserts that the parcels of land to be acquired in trust were subject to previous attempts to be placed into trust status implying that the land was subject to federal jurisdiction when in fact this was always private property subject to state jurisdiction. Failed attempts to purchase land for the Band does not create federal tribal recognition.

29. The ROD, in Section 1.3 states, "the purpose of the Proposed Action is to help address the Band's need for political self-determination, self-sufficiency and economic growth by preserving a tribal land base and homeland."

FIRST CLAIM FOR RELIEF

The Record of Decision is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law because it fails to adequately assess the environmental impacts in accordance with the National Environmental Policy Act (NEPA)

30. Plaintiffs repeat and re-allege paragraphs 1 through 29 inclusive, of this Complaint as if fully set forth herein.

31. NEPA requires that "all agencies of the Federal Government shall…include in every recommendation or report on…major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official." 42 U.S.C. § 4332(2)(c). When enacting NEPA, Congress:

> "recogniz(ed) the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognize(ed) further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, (and) declare(d) that it is the continuing policy of the Federal Government, in cooperation with the State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4331(a).

32. Plaintiffs' interest in the environmental and economic well-being of Plymouth, Amador County and the State of California are among the interests to be considered under 25 C.F.R. § 151.10(f), 151.10 (h) before land is placed into trust. *See, e.g.*, TOMAC v. Norton, 193 F. Supp. 2d 182 (D.D.C. 2002) *aff'd*, 433 F.3d 852 (D.C.Cir. 2006) (holding that a community group had standing to challenge the BIA's decision to take land into trust for the construction of a casino under the Indian Gaming Regulatory Act) and 25 C.F.R. § 151.10 (f), (h); *see also Citizens Exposing Truth About Casinos v. Norton,* 2004 U.S. Dist. LEXIS 27498, at *6 & n.3 (D.D.C.

Apr. 23, 2004) (holding that a citizen's group had standing under the Indian Reorganization Act, found at 25 U.S. C. § 461-475, to challenge a trust acquisition because the Act's implementing regulations provide for consideration of land use conflicts and NEPA requirements).

33. The proposed casino project approved as part of the ROD has many inherent well documented impacts that threaten a small community with among other things: increase in traffic congestion and safety concerns on rural roads in the area, increase in air pollution, increase in water pollution, overuse of limited water resources used by all residents in the area for drinking water and irrigation. Some of these impacts were identified in the EIS; none were adequately mitigated or resolved.

34. The Secretary was required to take a "hard look" at the environmental consequences of the proposed action in the ROD. This required the Secretary to: (1) make a good faith effort to take environmental values into account; (2) to provide an environmental full disclosure to the members of the public and (3) protect the integrity of the decision making process by insuring that problems are not ignored.

35. The BIA only represents the interests of the Indian tribe as defined by the Tribe submitting the fee to trust application. Despite this fact, under the Departmental Manual of the BIA for the application of NEPA in the fee to trust process, the BIA allows the tribes making the fee to trust applications to act as "lead agency" for the completion of the NEPA documentation. This presents an inherent conflict of interest in terms of producing a fair and unbiased report which takes into consideration the needs of the surrounding communities.

36. This position of the BIA on NEPA is based on federal common law district court rulings that held that the state and local governments did not have standing to sue against the fee to trust applications of Indian tribes because they were not within the "zone of interests" to be protected by the IRA and 25 U.S.C. § 465 Because non-Indians were consistently denied

prudential standing in federal court to question actions taken by the Secretary on behalf of Indian tribes, the BIA did not apply its own NEPA regulations or the Part 151 regulations to assess any of the jurisdictional or economic impacts on the non-Indian human environment in the FEIS or the ROD as required by statute. ROD p. 25, Footnote 4.

37. The regulatory and cumulative jurisdictional impacts of removing hundreds of acres from the sovereign control of state and local governments have not been adequately addressed in the FEIS. The FEIS also fails to provide support for the ROD's conclusion that 228.04 acres in trust is necessary to satisfy the tribe's goal of self-determination and other similar needs of the tribe. And the FEIS fails to adequately assess the impact this determination has on the local communities which is required by 25 C.F.R. 151.10 (e) and the NEPA analysis.

38. The FEIS fails to adequately address the concerns of the local communities. The ROD does not adequately address the Ione Band's application in terms of the factors deemed part of the "justifiable expectations" of the local non-Indian residents or state and local governments identified in the *Sherrill* decision as disruptive.

39. The failure of the Secretary to take a "hard" look at, and adequately address, the adverse environmental and socio-economic impacts of all the anticipated impact of the project approved in the ROD is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. Furthermore, the Secretary's decision to change his position by approving an EIS and project that he previously rejected in 2009 is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

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SECOND CLAIM FOR RELIEF

The Record of Decision violates the Administrative Procedures Act, 5 U.S.C. § 706, by concluding that the Indian Reorganization Act of 1934 ("IRA") is applicable in California for the Ione Band of Miwok Indians.

40. Plaintiffs repeat and re-allege paragraphs 1 through 39 inclusive, of this Complaint as if fully set forth herein.

41. Defendants cite Section 5 of the IRA (25 U.S.C. § 465) and 25 C.F.R. part 151 for their authority to take these fee owned lands into trust for the Ione Band.

42. As held in *Carcieri v. Salazar*, Congress intended to limit the application of the IRA by defining "Indian" and "Indian tribe" in Section 479 of the IRA to only those Indian tribes that were "now under federal jurisdiction" in 1934.

43. The Band was not "now under federal jurisdiction" in 1934. Nor is there sufficient evidence in the ROD to support that the claim that Band was a recognized tribe "now under federal jurisdiction" at the time of the enactment of the IRA in 1934.

44 The Secretary in the ROD admits that the Ione Band has not had any land under its sovereignty since the United States established its sovereignty over California.

45. The United States Supreme Court in *Carcieri v. Salazar* completely rejected the "contemporaneously recognized" argument of the Secretary. *Carcieri* at 1061-64.

46. The Band is not eligible to have lands placed into trust status pursuant to Section 465 because it was not an Indian tribe "now under federal jurisdiction" in 1934 as required by Section 479, rendering the ROD arbitrary, capricious and an abuse of discretion that is not in accordance with law.

47. There is no other act, statute or regulation in existence that authorizes the Secretary to take the 228.04 acres of land that is the subject of this ROD into trust on behalf of the Band.

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48. The failure of the Secretary to correct this erroneous and unsubstantiated action by the Acting Assistant Secretary is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

THIRD CLAIM FOR RELIEF

The Part 151 Regulations promulgated by the Secretary of the Interior in 2004 exceed his statutory authority under 25 U.S.C. § 465 and § 479 and are ultra vires as applied to this ROD for the Ione Band under 5 U.S.C. § 706.

49. Plaintiffs repeat and re-allege paragraphs 1 through 48 inclusive, of this Complaint as if fully set forth herein.

49. As currently defined, the federal regulation that asserts the discretion of the Secretary of the Interior to accept lands owned in fee by the Tribe into federal trust status is 25 C.F.R.§ 151.3:

> "Land acquisition policy. Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status shall be valid unless the acquisition is approved by the Secretary. (A) Subject to the provisions contained in the acts of Congress which authorize land acquisition, land may be acquired for a tribe in trust status: (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or (2) When the tribe already owns an interest in the land; or (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing."

50. Before approving an acquisition, the Secretary must consider, among other things, 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; and jurisdictional problems and potential conflicts of land use which may arise. Citing 25 C.F.R. § 151.10 (2004). *Sherrill* at 221.

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51. Without the Indian definition from Section 479 restricting Section 5 of the IRA, the asserted authority of the Secretary of the Interior to accept lands into federal trust status as currently defined in 25 C.F.R. § 151.3 is unlimited.

52. The Secretary of the Interior in 1980 unilaterally promulgated new regulations reinterpreting Section 465 to allow fee lands into trust status for any "recognized" Indian tribe. 25 C.F.R. §120a.

53. In fact, these unilaterally expanded regulations that included accepting fee land of the tribes into federal trust status, were declared unconstitutional in *South Dakota v. Babbitt*, 519 U.S. 919 (1996).

54. The new regulations for 25 U.S.C. § 465 were promulgated in 2004.

54. 25 C.F.R. §151.3 requires that land may be taken into trust only when the acquisition is authorized by Congress.

55. The *Sherrill* decision cites explicitly to 25 U.S.C. § 465 as "Recognizing these practical concerns, Congress has provided a mechanism for the acquisition of lands for tribal communities that take account of the interests of others with stake in the area's governance and well-being." *Sherrill* at 220.

56. The *Sherrill* Court expressly cites to the 2004 regulations implementing § 465 as "sensitive to the complex inter-jurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory." *Sherrill* at 220-221.

57. Before approving an acquisition, the Secretary must consider, among other things, 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; and jurisdictional problems and potential conflicts of land use which may arise. Citing 25 C.F.R. § 151.10 (2004). *Sherrill* at 221.

58. These jurisdictional concerns are not addressed by the defendant's limited FEIS, nor are they addressed in the ROD as explained in the previous section of this complaint.

59. In the case of *Hawaii v. Office of Hawaiian Affairs*, 129 S Ct. 1436 (2009) a unanimous Supreme Court concluded that federal public lands once they pass to a State cannot be restored to federal jurisdiction by a federal act that purports to change the nature of the original grant to the state.

60. This limitation protects the sovereignty of the state over the ceded lands from federal encroachment.

61. The same limitation protects the lands that have always been under state jurisdiction by preventing the Secretary from claiming a federal statute can allow him to encroach or attempt to remove the land from state jurisdiction.

62. As Justice Alito opined "it would raise grave constitutional concerns" if Congress sought to "cloud Hawaii's title to its sovereign lands" after it had joined the Union. "We have emphasized that Congress cannot, after statehood, reserve or convey…lands that have already been bestowed upon a state…" *Hawaii v. Office of Hawaiian Affairs*, 129 S Ct. 1436, -- (2009). Quote from March 31, 2009 article "Court rules against claim to Hawaiian Lands" in L.A. Times, by David G. Savage.

63. The Secretary's assumption that fee lands under state jurisdiction can be conveyed into federal trust status and made back into "Indian country" under the Part 151 regulations for the Band is arbitrary, capricious and not in accordance with law.

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FOURTH CLAIM FOR RELIEF

The Secretary's determination that the Parcels constitute "Indian lands" on which gaming can be conducted constitutes an abuse of discretion and is arbitrary and capricious and contrary to law

64. Plaintiffs repeat and re-allege paragraphs 1 through 63 inclusive, of this Complaint as if fully set forth herein.

65. The DOI's determination in the ROD that the Parcel is restored Indian Lands for gaming purposes is contrary to the facts and IGRA and it is contrary to previous DOI opinions.

66. Based on this illegal determination the Secretary approved the fee to trust transfer of the Parcel.

67. As a result of this unlawful determination, if the Secretary's approval is not vacated, the Band intends to build a Class III casino on the Parcel which will cause major environmental impacts in and around the City of Plymouth.

68. The Secretary's determination that the Parcel is restored Indian land available for gaming is arbitrary, capricious and not in accordance with law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against the Defendants as follows:

A. Declaring that the Defendants are without authority to take any lands into federal trust status for the Ione Band and that such actions as challenged herein, are unconstitutional, illegal, arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law;

B. Declaring that the Secretary is required under NEPA to assess the jurisdictional issues and the disruptive impacts that acquiring fee lands into federal trust would cause on the state and local communities;

C. Declaring that the Final EIS is insufficient to meet the requirements of NEPA;

D. Declaring that the Secretary of Interior has no authority to take fee lands into trust status in the State of California for the private interest of Indian Tribes if such act disrupts the state and local governance for the overwhelming majority of the People of California;

E. Enjoining Defendants, their agents, employees, successors and assigns in office from taking any action to effectuate or implement the Record of Decision of May 2012 and published on May 30, 2012 taking 228.04 acres into trust;

F. Awarding Plaintiffs' costs and reasonable attorney's fees to the extent permitted by law including, but not limited to the Equal Access to Justice Act; and

G. Granting such other and further relief as to the court deems just and proper.

Dated: June 29, 2012

Respectfully submitted,

/s/

KENNETH R. WILLIAMS
Attorney for Plaintiffs
No Casino In Plymouth and
Citizens Equal Rights Alliance

New Case Credit Card Payment

2:12-at-00919 v. Salazar

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Williams, Kenneth on 6/29/2012 at 4:30 PM PDT and filed on 6/29/2012

Case Name: v. Salazar
Case Number: 2:12-at-00919
Filer:
Document Number: No document attached

Docket Text:
SUBMISSION of CREDIT CARD INFORMATION for Civil Complaint Filing Fee in the amount of $350.00;
Type of Credit Card: Mastercard
Name as it appears on Credit Card: Kenneth R, Williams
Contact Telephone Number: 916-543-2918
Street: 4695 Window Lane
Zip code: 95658
Credit Card Number: xxxx-xxxx-xxxx-xxxx
Expiration Date: xx/xx
Security Code: xxx
(Williams, Kenneth)

No public notice (electronic or otherwise) sent because the entry is private