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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 CAPAY VALLEY COALITION, an)
11 unincorporated association;)
12 Plaintiff,)
13 v.)
14 SALLY JEWELL, in her official capacity)
15 as Secretary of the Interior; KEVIN K.)
16 WASHBURN, in his official capacity as)
the Assistant Secretary of Indian Affairs)
17 of the United States Department of)
Interior; AMY DEUTSCHKE, in her)
18 official capacity as Pacific Regional)
Director, Bureau of Indian Affairs;)
19 BUREAU OF INDIAN AFFAIRS; and)
DOES 1 through 100, inclusive.)
20 Defendants)

CASE NO.

**COMPLAINT FOR VIOLATION OF
THE ADMINISTRATIVE PROCEDURE;
DECLARATORY AND INJUNCTIVE
RELIEF**

21
22 **Plaintiff Capay Valley Coalition alleges as follows:**

23 **INTRODUCTION**

24 1. This is an action challenging a decision from the federal government to take land
25 into trust for the benefit of a federally recognized Indian Tribe. As discussed below,
26 Defendants have articulated no defensible rationale for taking the subject project into trust land
27 and have misapplied the factors contained in 25 Code of Federal Regulations section 151.10
28

1 and 151.11 for off-reservation acquisitions and have misstated facts and/or failed to respond to
2 arguments raised.

3 **PARTIES**

4 2. Plaintiff is located in the County of Yolo, California. Capay Valley Coalition
5 (“CVC”) is a mutual benefit, non-profit corporation, whose members consists of residents,
6 citizens and farmers in the Capay Valley working to protect and improve the environmental
7 quality of the Capay Valley and its adjoining ecosystems. CVC exists for the purpose of
8 preserving agricultural and natural resources and quality of life in the Capay Valley. To that
9 end, it is involved in efforts to protect the resources of the Capay Valley, including air and
10 water quality and the preservation of agricultural land. The environment and residents of the
11 Capay Valley will be directly affected by the impacts of the Project. CVC’s members, and
12 members of the coalition live, work, travel and enjoy recreational activities in Yolo County,
13 and in particular, the Capay Valley. These members have a particular interest in the protection
14 of the environment of the Capay Valley, and are increasingly concerned about worsening
15 environmental and land use conditions that detrimentally affect their well-being and that of
16 other residents and visitors of the Capay Valley. CVC is composed of persons whose
17 economic, personal, aesthetic, and property interests will be severely injured if the approval of
18 the trust application is not set aside pending full compliance with the Administrative Procedure
19 Act. CVC brings this Complaint on behalf of all others similarly situated who are too
20 numerous to be named and brought before this court as plaintiffs. As a group composed of
21 residents and property owners within the Capay Valley, CVC is within the class of persons
22 beneficially interested in, and aggrieved by, the acts of Defendants as alleged below. CVC
23 participated in the administrative processes herein, and exhausted its remedies. Accordingly,
24 CVC has standing to sue.

25 3. Defendant SALLY JEWELL is the Secretary of the United States Department of
26 Interior and is named herein in her official capacity.

27 4. Defendant KEVIN K. WASHBURN is the Assistant Secretary for Indian Affairs
28 of the United States Department of Interior and is named herein in his official capacity.

1 5. Defendant Amy Deutschke is the Pacific Regional Director, Bureau of Indian
2 Affairs and is name herein in her official capacity. Defendant SALLY JEWEL, Defendant
3 KEVIN K. WASHBURN, and Defendant AMY DEUTSCHKE are collectively referred to as
4 “Defendants”.

5 6. Defendant the BUREAU OF INDIAN AFFAIRS (“BIA”) is an agency of the
6 federal government acting as trustee of the welfare of the federally recognized tribes of Native
7 Americans. In that role, the BIA proposes to take the subject property into trust for a certain
8 Native American Tribe, Yocha Dehe Wintun Nation (“Tribe”). In doing so, the BIA
9 maintains the BIA Title Plant. “Title Plant” is a term used to identify any one of the BIA’s
10 Land Titles and Records Offices located throughout the country. Each such Title Plant has
11 responsibility for Indian lands located within a particular geographic region. 25 U.S.C. section
12 5 provides that the Commissioner of Indian Affairs is “empowered and directed to continue to
13 make and keep a record of every deed executed by any Indian which may require the approval
14 of the Secretary of the Interior, whenever such approval shall have been given.” 25 Code of
15 Federal Regulations section 150.1 states that the BIA is to “set forth authorities, policy and
16 procedures governing the recording, custody, maintenance, use and certification of title
17 documents, and the issuance of title status reports for Indian land.” Section 150.6 mandates
18 that “[a]ll title documents shall be submitted to the appropriate Land Titles and Records Office
19 for recording immediately after final approval, issuance, or acceptance.” (25 C.F.R. § 150.6.)
20 Recording in the BIA Title Plant allows the BIA to exercise its fiduciary obligations to
21 maintain accurate records of the status of title to Indian land. (See *McDonald v. Means*, 309
22 F.3d 530, 538 (9th Cir. 2002) (BIA has fiduciary obligations in its management of tribal rights-
23 of-way held in trust by government); *cf. Inter Tribal Council of Ariz., Inc. v. Babbitt*, 51 F.3d
24 199, 203 (9th Cir. 1995) (government incurs fiduciary duties toward Indian tribes when it
25 manages or operates Indian lands).

26 7. Defendants are officers or employees of the United States and have direct or
27 delegated statutory duties in carrying out the provisions of the Indian Reorganization Act,
28 codified at 25 U.S.C. section 465, as amended and Code of Federal Regulations, Title 25, Part

1 151, as amended, in taking land into trust for the benefit of a Native American Tribe.

2 8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
3 DOES 1 through 100, inclusive, and therefore sues these Defendants by these fictitious names.
4 Plaintiff will amend or seek leave of this Court to amend the Complaint when those names and
5 capacities are ascertained.

6 **JURISDICTION AND VENUE**

7 9. Venue lies in the Eastern District of California by virtue of 28 U.S.C. section
8 1391(e) because the events or emissions giving rise to the claim arise, and Plaintiff is located, in
9 this district. In addition, the 853 acres of property that is the subject of this dispute is located in
10 this district.

11 10. This Court has jurisdiction pursuant to 28 U.S.C. section 1331, as this action arises
12 under the laws of the United States. The requested declaratory and injunctive relief is authorized
13 by 28 U.S.C. sections 2201-2202. Judicial review of the agency actions is authorized by 5
14 U.S.C. sections 702, 704, and 706.

15 11. All challenged agency actions and determinations are final agency actions pursuant
16 to the Administrative Procedures Act (5 U.S.C. sections 701 *et seq.*) (“APA”). As set forth in
17 greater detail below, on or about April 28, 2014, the BIA issued a Notice of Decision (“NOD”)
18 to take title to the Property in trust for the benefit of the Tribe. On May 28, 2014, Plaintiff
19 timely appealed the NOD to the BIA’s Board of Indian Appeals. On June 19, 2014, the Board of
20 Indian Appeals transferred the appeal to the Assistant Secretary of Indian Affairs. On August
21 14, 2015, Defendant Kevin K. Washburn, Assistant Secretary for Indian Affairs, issued a
22 Decision denying Plaintiff’s appeal and affirming the Regional Director’s NOD. Through such
23 denial of the appeal, the NOD is final as applied to the Plaintiff and no further exhaustion of
24 administrative remedies is necessary or possible.

25 **BACKGROUND ALLEGATIONS**

26 12. On June 20, 2011, the Tribe submitted an application with the Bureau of Indian
27 Affairs to have transferred from fee simple into trust 15 parcels of land totaling approximately
28 853 acres owned by the Tribe in the unincorporated area of Yolo County.

1 13. The subject property subject is located in the Capay Valley and surrounded by
2 undeveloped, open space and agricultural lands. Cache Creek runs along a portion of the eastern
3 boundary of the property, State Route 16 traverses the property in a north/south direction.

4 14. Tribal member housing and the Tribe's community center and recreation area are
5 located adjacent to the property on the Tribe's trust lands. Most of the property is currently in
6 agricultural production and 13 of the 15 parcels are subject to the California Land Conservation
7 Act of 1965 (Williamson Act), California Public Resources Code, section 51200 *et seq.* Notices
8 of non-renewal of the Williamson Act contract have been filed for each of the 13 parcels.

9 15. The property contains 5 single family homes owned by the Tribe. Four of the
10 homes are unoccupied and the fifth houses the Tribe's Cultural Department. The Tribe has
11 stated its intention to develop portions of 6 parcels for agricultural purposes, which would
12 constitute 753.90 acres of the 852.9 acres (88 percent of the property).

13 16. The Tribe states that it has no current plans to change the agricultural use of these
14 753.90 acres. The Tribe, however, conditions this plan by stating that:

15 The parcels will continue to be used consistent with the Williamson Act's
16 requirements, for at least as long as the remaining term of any Williamson Act
17 contract that presently exists with respect to any particular parcel, and such would
18 be consistent with permitted and conditionally permitted uses identified in Yolo
19 County's Agricultural Preserve zoning.

20 17. The Tribe states that it intends to use the remaining 99 acres to develop 25
21 residential housing units, a Tribal school, cultural and educational facilities, and a wastewater
22 treatment system.

23 18. After reviewing the Tribe's application and preparing an Environmental
24 Assessment ("EA"), required under the National Environmental Policy Act ("NEPA"), 42 U.S.C.
25 § 4321, the Pacific Regional Director of the BIA issued a Finding of No Significant Impact
26 ("FONSI") in October of 2012.

27 19. On April 28, 2014, the Pacific Regional Director issued the NOD and approved the
28 Tribe's application.

20. On May 28, 2014, Plaintiff Capay Valley Coalition timely filed a Notice of Appeal
of the Regional Director's NOD, arguing that the Regional Director's approval was in error, was

1 arbitrary and capricious, represented an abuse of discretion, or was otherwise rendered not in
2 accordance with the law, as it: (1) failed to properly consider all of the required elements under
3 25 CFR § 151.10; and (2) failed to comply with NEPA.

4 21. The Assistant Secretary for Indian Affairs, Kevin K. Washburn exercised his
5 authority under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b) to assume jurisdiction over
6 Plaintiff's appeal to Board of Indian Appeals.

7 22. On June 19, 2014, the Board of Indian Appeals transferred the appeal to the
8 Assistant Secretary for Indian Affairs.

9 23. On August 14, 2015, Assistant Secretary of Indian Affairs, Kevin K. Washburn,
10 issued a Decision affirming the Regional Director's April 28, 2014 decision to acquire
11 approximately 853 acres in trust for the Tribe.

12 24. In addition to the reasons stated herein, the NOD is legally deficient in that the
13 criteria contained in 25 CFR sections 150.10 and 150.11 have not been satisfied, due to factual
14 mischaracterizations and the failure to apply the statutory standards for taking land into trust.

15 25. The Indian Reorganization Act ("IRA") authorizes the Secretary of the Interior, in
16 her discretion, to acquire land and hold it in trust "for the purpose of providing land for Indians."
17 25 U.S.C. § 465. In approving the IRA, Congress sought "to conserve and develop Indian lands
18 and resources," and "Congress believed that additional land was essential for the economic
19 advancement and self-support of the Indian communities." *South Dakota v. U.S. Department of*
20 *Interior*, 487 F.3d 548, 552 (8th Cir.2007) (quoting *South Dakota v. U.S. Department of Interior*,
21 423 F.3d 798, 798 (8th Cir.2005) (internal quotation marks omitted).

22 26. The Secretary may acquire land already owned by a tribe. See *Chase v. McCasters*,
23 573 F.2d 1011, 1016 (8th Cir.1978). "When the Secretary takes land into trust on behalf of a
24 tribe pursuant to the IRA, several important consequences follow." *Conn. Ex rel. Blumenthal v.*
25 *U.S. Dep't of Interior*, 228 F.3d 82, 85 (2d Cir.2000). "Land held in trust is generally not subject
26 to (1) state or local taxation; (2) local zoning and regulatory requirements; or, (3) state criminal
27 and civil jurisdiction, unless the tribe consents to such jurisdiction." *Id.* at 85-86 (citing 25
28 U.S.C. § 465; 25 C.F.R. § 1.4(a); 25 U.S.C. §§ 1321(a), 1322(a) (citations omitted).

1 27. Title 25, Code Federal Regulations, section 151.10 sets forth the criteria the
2 Secretary shall consider in evaluating requests for the acquisition of land in trust status when the
3 land is located within or contiguous to an Indian reservation, and the acquisition is not mandated.
4 Those criteria that are applicable to the Tribe's application consist of the following: the tribe's
5 need for additional land; the purposes for which the land will be used; the impact on the State
6 and its political subdivisions resulting from the removal of the land from the tax rolls;
7 jurisdictional problems and potential conflicts of land use which may arise; and if the land to be
8 acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the
9 additional responsibilities resulting from the acquisition of the land in trust status. 25 CFR §
10 151.10(b), (c), (e), & (f).

11 28. The NOD failed to properly consider the criteria required under section 151.10.
12 The administrative record does not support the Regional Director's decision regarding the
13 applicable criteria. For example, the NOD fails to demonstrate the existence of Tribal need for
14 the land to be placed in trust. 25 C.F.R. § 151.10(b). The NOD failed to sufficiently consider
15 potential jurisdictional problems associated with the transfer. *Id.*, § 151.10(f). The NOD failed
16 to sufficiently consider potential land use conflicts that may arise due to the transfer. *Id.*

17 29. The NOD failed to demonstrate the Tribe's need for 853± acres to be placed in
18 trust. One of the criteria to be considered is the Tribe's need for the additional land. 25 C.F.R. §
19 151.10(c). The Tribe must establish a need for the amount of land sought to be transferred from
20 fee to trust. 25 C.F.R. § 151.10(a)(3). Under 25 C.F.R. § 151.10(a)(3) the BIA must determine
21 that the land to be acquired is "necessary" to facilitate tribal self-determination, economic
22 development, or Indian housing. See *City of Lincoln City v. U.S. Department of Interior*, 229
23 F.Supp.2d 1109, 1124 (D.Or.2002).

24 30. The administrative record demonstrates that the project proposed by the Tribe for
25 development on the 853± acres approved for transfer into trust status only requires
26 approximately 99 acres. With a transfer of 99 acres into trust, the Tribe would be able to achieve
27 its development goal on these acres of trust land and achieve its goal of maintaining agricultural
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1 operations under full Tribal governance on its remaining more than 11,000 acres of agricultural
2 land held in fee simple.

3 31. The NOD contains an incomplete assessment of the facts. The NOD does not
4 establish clearly the existing trust acreage held for the Tribe. The NOD fails to discuss or
5 identify the Tribal plans for extensive additional development on existing trust acres. The NOD
6 failed to evaluate the entirety of existing trust acreage and evaluated alternatives that considered
7 the transfer of 99 acres to trust or some other number less than 853 acres to meet the Tribe's
8 proposed development. The failure to do so underlies the NOD's failure to adequately
9 demonstrate the Tribe's need for the transfer of 853± acres.

10 32. The Tribe asserts that it needs the additional acreage to grow and strengthen its
11 agricultural operation. The NOD fails to state how the Tribe is hindered from expanding its
12 agricultural operations with the lands remaining in fee. The zoning and other legal mechanisms
13 provide the Tribe the authority and ability to achieve its purported goal of protecting agricultural
14 lands within the Capay Valley.

15 33. The NOD decision regarding the Tribe's need for the additional land simply quotes
16 directly from the Tribe's June 2011 Application to conclude there is a need for additional land.
17 Thus, the NOD relies upon a bare assertion without evidentiary support in the administrative
18 record.

19 34. The NOD failed to sufficiently consider potential jurisdictional conflicts that would
20 arise should the Tribe pursue more intensive development on trust lands. The NOD simply
21 restates that the Tribe's assertions that the Tribe does not anticipate any jurisdictional conflicts as
22 a result of the transfer of property into trust. The record, however, indicates that the County of
23 Yolo identified significant concerns regarding jurisdictional conflicts. The County raised
24 concerns that if a deed restriction is not put into place, the County could be faced with an intense
25 commercial use of this property in an otherwise protected agricultural valley. The NOD ignored
26 the County's public interest concerns to limit or restrict intense commercial development in
27 otherwise protected agricultural valley.

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1 42. Plaintiff has performed all obligations under the relevant statutes and codes
2 identified above, except for those obligations that because of the BIA/Defendants' failure to
3 *fulfill applicable statutory obligations, Plaintiff has been excused from performing.* Plaintiff
4 has no readily available remedy at law.

5 43. BIA and/or Defendants' acts are arbitrary, capricious, an abuse of discretion, or
6 otherwise not in accordance with law.

7 **PRAYER**

8 **WHEREFORE**, the Capay Valley Coalition prays for judgment against Defendants as
9 follows:

10 1. For a judgment declaring that Defendants, in issuing the NOD, failed to adhere to
11 the APA and as a result, the Property may not be taken into trust for the benefit of the Tribe;

12 2. For a judgment declaring that Defendants violated the APA by acting arbitrarily and
13 capriciously, in an abuse of discretion, not in accordance with the law and/or without observance
14 of the procedures required by law;

15 3. For a judgment declaring and ordering Defendants to set aside the illegally adopted
16 NOD for taking Property into trust;

17 4. For a judgment declaring that BIA/Defendants violated the APA by acting
18 arbitrarily and capriciously, in an abuse of discretion, not in accordance with the law and/or
19 without observance of procedures required by law by misapplying the factors contained in 25
20 CFR sections 151.10 and 151.11 for off-reservation acquisitions;

21 5. For an order preliminarily and permanently enjoining Defendants from seeking to
22 have the Property taken into trust, including the prohibition against filing any and all necessary
23 documentation with the BIA Title Plant, unless and until Defendants comply with the APA
24 and/or requiring that if such Property be in held in trust by the time judgment issues, to file the
25 necessary documentation with the BIA Title Plant to have the Property taken out of trust unless
26 and until Defendants comply with the APA;

27 6. For an order preliminarily and permanently enjoining Defendants from seeking to
28 have the Property taken into trust, including the prohibition against filing any an all necessary

1 documentation with the Recorder's Office, unless and until Defendants comply with the APA
2 and/or requiring that if such Property be in held in trust by the time judgment issues, to file the
3 necessary documentation with the Recorder's Office to have the Property taken out of trust
4 unless and until Defendants comply with the APA;

5 7. For a judgment and order for costs of suit herein, including reasonable attorneys'
6 fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 or other applicable authority;
7 and

8 8. Such other and further relief as the Court deems just and proper.

9 Dated: December 11, 2015

Respectfully submitted,

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LAW OFFICES OF DONALD B. MOONEY

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By /s/ Donald B. Mooney, Esquire

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Donald B. Mooney

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Attorneys for Plaintiff

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Capay Valley Coalition

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