

**ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR**

STAND UP FOR CALIFORNIA!, PATTY JOHNSON, JOE TEIXEIRA, and LYNN WHEAT,)
)
<i>Appellants,</i>)
)
v.)
)
PRINCIPAL DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS and BUREAU OF INDIAN AFFAIRS,)
)
<i>Appellees.</i>)

Order Dismissing Administrative Appeal

In 2013, the Wilton Rancheria (Tribe) submitted an application to the Bureau of Indian Affairs (BIA) requesting that the Secretary of the Interior acquire approximately 282 +/- acres of land in trust near Galt, Sacramento County, California, for gaming and other purposes. The Draft Environmental Impact Statement (DEIS) identified a site near Galt as the proposed action that would allow for the development of the Tribe’s proposed casino/hotel project.

Assistant Secretary – Indian Affairs (AS-IA) Kevin Washburn resigned from office effective midnight on December 31, 2015, while the Tribe’s application was still pending. As a result, Principal Deputy Assistant Secretary – Indian Affairs (PDAS) Lawrence S. Roberts, as the designated “first assistant” to the AS-IA, automatically became Acting AS-IA under the Federal Vacancies Reform Act (FVRA).¹ After Mr. Roberts served as Acting AS-IA for the maximum allowable period under the FVRA, he reverted to his position as PDAS.

In December 2016, after evaluating all alternatives in the DEIS, BIA instead selected an approximately 35.92 acre site in the City of Elk Grove, Sacramento County, California (Elk Grove Site). The Elk Grove Site was identified as Alternative F in the DEIS as its preferred alternative to allow for the Tribe’s proposed project.

On January 11, 2017, Stand Up For California!, Patty Johnson, Joe Teixeira, and Lynn Wheat (collectively Appellants or Stand Up) filed suit in the United States District Court for the District of Columbia against then-Secretary of the Interior Sally Jewell and Mr. Roberts, among others. Stand Up challenged the Department of the Interior’s (Department) regulation governing notice of fee-to-trust provisions, 25 C.F.R. § 151.12, and sought a temporary restraining order to enjoin the Department from acquiring trust title to the Elk Grove Site. The court denied Stand Up’s

¹ 5 U.S.C. §§ 3345 – 3349d.

motion, finding that there was no emergency basis for the relief sought.² Stand Up opted to not further pursue a preliminary injunction and instead asked the Department for a self-stay pursuant to 5 U.S.C. § 705.

On January 19, 2017, Mr. Roberts issued a decision to acquire in trust the Elk Grove Site for the Tribe (Decision), pursuant to his delegated authority while the office of the AS-IA remained vacant. On February 10, 2017, I denied Stand Up's request pursuant to 5 U.S.C. § 705, exercising the authority vested in me by the Acting Secretary of the Interior,³ and BIA acquired title to the Elk Grove Site in trust.⁴

Stand Up then sought review of the Decision in the Interior Board of Indian Appeals (IBIA), arguing it was not final for the Department.⁵ The basis of their assertion is that Mr. Roberts did not have the authority to issue a final decision for the Department under 25 C.F.R. Part 151, as that authority rests with the AS-IA.⁶ Relatedly, Stand Up argues that BIA violated Agency regulations by acquiring the Elk Grove Site in trust on February 10, 2017.⁷ Stand Up additionally challenges my authority to sign the February 10, 2017 denial letter.⁸

On March 7, 2017, I assumed jurisdiction over Stand Up's appeal under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b).⁹ On March 8, 2017, IBIA transferred all documents related to Stand Up's

² Minute Order, *Stand Up For California! et al. v. U.S. Department of the Interior, et al.*, No. 1:17-cv-00058-RDM (D.D.C.) (January 13, 2017).

³ President of the United States, Memorandum for Kevin Jack Haugrud, Deputy Solicitor – Mineral Resources (Jan. 17, 2017) (designating Mr. Haugrud as Acting Secretary effective January 20, 2017); Acting Secretary of the Interior, Order No. 3345, Amendment No. 1, Temporary Redelegation of Authority for Certain Vacant Non-Career Senate-confirmed Positions (Jan. 20, 2017) (Order No. 3345) (delegating the non-exclusive functions and duties of the AS-IA to Michael Black).

⁴ Stand Up claims that they could neither appeal the denial of the 5 U.S.C. § 705 request, nor seek emergency relief from the court pursuant to that same statute because the Department acquired title at the same time that it denied the request for a self-stay. *See* Plaintiffs' Motion To Hold Case In Abeyance Pending Board Of Indian Appeals Proceedings And Memorandum In Support, *Stand Up For California! et al. v. U.S. Department of the Interior, et al.*, No. 1:17-cv-00058-RDM (D.D.C.) (filed February 24, 2017) at 4. However, Stand Up received a copy of the Decision on the day it was issued on January 19, 2017. Between January 19 and February 10, a period of twenty-two days, Stand Up took no action to amend its complaint to include claims actually challenging the January 19, 2017 ROD and took no further steps to pursue emergency relief from the court.

⁵ Pre-Docketing Notice and Order for Briefing on Jurisdiction, *Stand Up For California!, Patty Johnson, Joe Teixeira, and Lynn Wheat v. Principal Deputy Assistant Secretary – Indian Affairs and Bureau of Indian Affairs* (IBIA) (Feb. 24, 2017).

⁶ *Id.* at 1; Petition for Preliminary Relief of an Expedited Basis and Statement of Reasons, *Stand Up For California!, Patty Johnson, Joe Teixeira, and Lynn Wheat v. Principal Deputy Assistant Secretary – Indian Affairs and Bureau of Indian Affairs* (IBIA) (filed Feb. 21, 2017) at 2-4 (Pet. for Preliminary Relief); *See* Plaintiffs' Motion To Hold Case In Abeyance Pending Board Of Indian Appeals Proceedings And Memorandum In Support, *Stand Up For California! et al. v. U.S. Department of the Interior, et al.*, No. 1:17-cv-00058-RDM (D.D.C.) (filed February 24, 2017).

⁷ Pet. for Preliminary Relief at 4-5.

⁸ *Id.* at 8. Stand Up further makes arguments challenging the merits of the Decision, but because this Order dismisses the appeal, those points are moot.

⁹ *See* "Assumption of Jurisdiction of *Stand Up For California! v. Principal Deputy Assistant Secretary – Indian Affairs*," Memorandum from Acting AS-IA Michael S. Black to Hon. Thomas A. Blaser, Chief Judge, IBIA (Mar. 7, 2017).

appeal to my office.¹⁰ Stand Up filed an objection to my assumption of jurisdiction with the IBIA on March 15, 2017.¹¹ The IBIA has not responded to Stand Up’s request to reconsider its surrender of jurisdiction.

For the reasons explained below, Mr. Roberts was properly delegated the authority of the AS-IA and properly exercised it when he issued the Decision. Accordingly, the Decision was final for the Department, and Stand Up’s appeal is hereby dismissed.

Discussion

A. The Federal Vacancies Reform Act (FRVA) Permits Delegation Of The Non-Exclusive Functions And Duties Of The AS-IA

The Appointments Clause of the Constitution vests the President with the authority to appoint Officers of the United States subject to the advice and consent of the Senate (PAS position).¹² The Office of the AS-IA is a PAS position.¹³ With a few exceptions not relevant here, the FVRA is the exclusive means for temporarily authorizing an acting official to perform the functions or duties of a PAS position.¹⁴ The FVRA states that when a PAS official “dies, resigns, or is otherwise unable to perform the functions and duties of the office . . . the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity” unless the President has designated a person in one of the other two eligible categories to do so.¹⁵ The FVRA further establishes limits on the time a person may serve in this acting capacity.¹⁶ Accordingly, when a vacancy arises the “first assistant” will automatically assume the role of “acting” for the statutorily permissible period of 210 days.¹⁷

During the 210-day period set forth in the FVRA, the “first assistant” is authorized to perform all functions and duties of the PAS position. Following the expiration of this 210-day period, the FVRA requires that a vacant PAS position shall remain vacant and only the head of the agency shall perform the “functions and duties” assigned to that vacant position.¹⁸ However Congress also recognized that requiring the agency head to perform all the functions and duties of a vacant PAS position could impair the business of government.¹⁹ To ease the burdens on the agency

¹⁰ Notice of Assumption of Jurisdiction Over the Appeal by the Assistant Secretary – Indian Affairs and Order Vacating Board’s Order for Briefing on Jurisdiction, *Stand Up For California! et al. v. Prin. Dep. Asst. Secy. – Indian Affairs and Bureau of Indian Affairs* (IBIA) (Mar. 8, 2017).

¹¹ Objection to Mr. Black’s Assumption of Jurisdiction and Request for Reconsideration, *Stand Up For California!, Patty Johnson, Joe Teixeira, and Lynn Wheat v. Principal Deputy Assistant Secretary – Indian Affairs and Bureau of Indian Affairs* (IBIA) (filed Mar. 15, 2017) (Objection to Assumption of Jurisdiction).

¹² U.S. Const., Art. II, § 2, cl. 2; see also *Edmond v. United States*, 520 U.S. 651, 659 (1997) (finding Appointments Clause a significant structural safeguard of the constitutional scheme).

¹³ 43 U.S.C. §§ 1453, 1453a, 1454; Reorg. Plan of 1950 § 2, 64 Stat. 1262; 42 Fed. Reg. 53,682 (Oct. 3, 1977).

¹⁴ 5 U.S.C. § 3347(a).

¹⁵ 5 U.S.C. § 3345.

¹⁶ 5 U.S.C. § 3346.

¹⁷ The “first assistant” is automatically authorized to serve in this acting capacity unless another person has been designated by the President, in accordance with the FVRA, to do so.

¹⁸ See 5 U.S.C. § 3348. Congress also provided that actions taken in violation of the FVRA shall have no force and effect. 5 U.S.C. § 3348(d).

¹⁹ See S. Rep. 105-250, at 30-31 (Additional Views) (1998).

head this might create,²⁰ Congress in the FVRA limited the “functions or duties” that must be performed by an agency head to those that a statute or regulation specifically requires be exclusively performed by the official occupying the PAS position and that official alone.²¹ This limitation has the practical effect of enabling an agency to allow other agency officials to perform the authorized functions and duties assigned to a particular PAS that are not required by statute or regulation to be exclusively performed by the PAS (hereafter, “non-exclusive functions or duties”).²² Accordingly, agencies may delegate the authority to perform the non-exclusive functions and duties of the PAS position to other officials. This allows the agency to continue to operate effectively in the absence of a confirmed PAS.

B. The Departmental Manual Confirms PDAS Roberts’ Authority To Continue To Exercise The Non-Exclusive Functions And Duties Of AS-IA Upon Expiration Of His Service As Acting AS-IA

Whether Mr. Roberts could exercise the non-exclusive functions and duties of the AS-IA depends on whether the Secretary has delegated such authority. The Secretary has broad power to delegate authority to subordinate positions in the Department²³ and most delegations are communicated throughout the Department, and documented, in the Departmental Manual (DM).²⁴

To ensure the continuity of Departmental operations in the event of a vacancy, 302 DM 2 requires that PAS officials prepare succession orders listing those officials who are delegated the authority to perform the non-exclusive functions and duties of that PAS position in the event that the PAS official is unavailable or unable to do so. The succession order is intended to effect the continued delegation of those authorities that are not exclusive “functions and duties” subject to the FVRA limitation when a vacancy runs past 210 days and an official may no longer serve as Acting.

Pursuant to 302 DM 2, former AS-IA Kevin Washburn issued a succession order in June 2013 that identified Mr. Roberts, then Deputy Assistant Secretary - Policy and Economic Development (DAS-PED), as the “first assistant” to the AS-IA. Several weeks after the issuance of the June 2013 succession order, Mr. Roberts assumed the position of PDAS,²⁵ a position defined as serving as the “first assistant” to the AS-IA and as having full authority to act on

²⁰ *Id.* (clarifying that non-delegable functions and duties include only those expressly vested by law or regulation exclusively in the vacant PAS position).

²¹ *Schaghticoke Tribal Nation v. Kempthorne*, 587 F.Supp.2d 389, 420 (D. Conn. 2008), *aff’d*, 587 F.3d 132 (2d Cir. 2009) (per curiam), citing 5 U.S.C. § 3348(a)(2).

²² *Id.*; See also U.S. Dept. of Justice, Office of Legal Counsel, *Guidance on Application of Federal Vacancies Reform Act of 1998* (Mar. 22, 1990), Question 48 (most responsibilities performed by a PAS officer will not be exclusive and FVRA permits non-exclusive responsibilities to be delegated to other appropriate officers and employees in the Agency).

²³ 200 DM 1.2 (citing 5 U.S.C. § 302, Reorganization Plan No. 3 of 1950, etc.). See also *Choctaw Nation of Florida v. Director, Office of Fed. Acknowledgment*, 50 IBIA 335, 337 (2009) (noting Secretary’s broad power to delegate to subordinate officials).

²⁴ See 011 DM 1.2; 200 DM 1.3. The DM is available online at <http://elips.doi.gov/elips/browse.aspx>.

²⁵ See Biographical Statement of Lawrence S. Roberts, Principal Deputy Assistant Secretary – Indian Affairs U.S. Department of the Interior, available at <https://bia.gov/cs/groups/xopa/documents/text/idc1-033489.pdf>.

behalf of or in the absence of the AS-IA.²⁶ Subsequent DM revisions (including 110 DM 8) also reflected that PDAS, rather than DAS-PED, was the “first assistant” to AS-IA.²⁷ Mr. Roberts continued to occupy the position of PDAS through Mr. Washburn’s December 2015 resignation. Accordingly, when the AS-IA position became vacant, Mr. Roberts automatically became Acting AS-IA, authorized to perform all of the functions and duties of the AS-IA during the 210-day period.

As appropriately stated by Stand Up, Mr. Roberts’ authority as Acting AS-IA terminated after the 210-day period.²⁸ On July 29, 2016, Mr. Roberts resumed his position as PDAS. Mr. Roberts’ delegated authority is set forth in Part 209 of the DM.²⁹ Subject to limitations not relevant here, Section 8.1 authorizes the AS-IA to exercise all of the authority of the Secretary.³⁰ Section 8.4 provides that in the absence of the AS-IA, PDAS may exercise the authority delegated to the AS-IA in 209 DM 8.1.³¹ Contrary to Stand Up’s assertions, Mr. Roberts had the authority to issue final agency action as PDAS, because he was properly delegated the authority to perform the non-exclusive functions and duties of the AS-IA. As confirmed by the DM, authorized by the FVRA, and intended by the Department, Mr. Roberts, after the expiration of the 210-day Acting period, properly exercised the non-exclusive functions and duties of AS-IA. Additionally, the Deputy Secretary – who, “with the exception of certain matters specifically reserved to the Secretary, . . . has the full authority of the Secretary” under 109 DM 1.2.B – confirmed the Department’s intent that Mr. Roberts would continue to exercise the function and duties of the AS-IA that are not required by statute or regulation to be performed by the AS-IA.³²

C. Mr. Roberts Issued The Decision As An Exercise Of The Non-Exclusive Functions And Duties Of The AS-IA In Accordance With The Department’s Intent

The FVRA prohibits the re-delegation of only those functions and duties assigned by statute or regulation exclusively to a PAS position. The authority to issue a decision to acquire land in trust is not a function or duty assigned by statute or regulation exclusively to the AS-IA. The general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108. The regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5. A review of the statutory and regulatory provisions reveals that neither

²⁶ U.S. Office of Personnel Management, Position Description, Principal Deputy Assistant Secretary – Indian Affairs ES-301 (July 14, 2013).

²⁷ 110 DM 8.2 (effective May 5, 2015). *See also* U.S. Dept. of the Interior, Departmental Manual Release No. 4019 (May 5, 2015).

²⁸ *See* Pet. for Preliminary Relief at 3.

²⁹ 209 DM 8.

³⁰ 209 DM 8.1. The AS-IA may re-delegate general administrative authority and those program authorities specifically related to the functions and responsibilities assigned to the AS-IA by 109 DM 8. 209 DM 8.3. Any re-delegation of authority made by the AS-IA must be in the form of a DM release. Under the DM, PDAS is delegated all program and administrative authorities of AS-IA necessary to fulfill the responsibilities identified in 110 DM 8.2. 209 DM 8.4.A.

³¹ 209 DM 8.4.B.

³² Memorandum from Deputy Secretary of the Interior Michael L. Connor to Principal Deputy Assistant Secretary Lawrence S. Roberts (Jan. 19, 2017).

the function of acquiring land in trust nor issuing final agency actions on fee-to-trust applications is assigned “only,” “exclusively,” or “solely” to the AS-IA.

Section 5 of the IRA authorizes “the Secretary of the Interior,” in his discretion, to acquire land in trust “for the purpose of providing land for Indians.” Nothing in the statute provides that this function is to be performed only or exclusively by the Secretary, and this authority has been exercised by other Departmental official for decades.³³ Under the Department’s fee-to-trust regulations, the Secretary, or the AS-IA, pursuant to delegated authority, may issue a final decision to acquire land into trust, but nothing in the regulations refers to this being “only” or “solely” with those two officials.³⁴ Additionally, BIA officials are authorized by delegation to make the decision to acquire land into trust, although such decisions are subject to administrative appeal.³⁵ The fee-to-trust regulations never indicate that land acquisitions are a function or duty assigned “only,” “exclusively,” or “solely” to the AS-IA, nor that the authority to issue final agency action rests exclusively with the Secretary or the AS-IA. In fact, the regulation explicitly makes final land acquisition determinations a function that may be delegated when it defines the term Secretary to include “Secretary of the Interior *or* authorized representative.”³⁶ Thus, the AS-IA’s functions and duties under 25 C.F.R. 151.12 are non-exclusive, and consistent with the FVRA, the authority to perform them may be delegated to other appropriate officers and employees in the Department.³⁷

Stand Up argues that the decision was not final for the Department, and that it was signed by a BIA official rather than the AS-IA. However, Mr. Roberts continued to hold the delegated authority to perform the duties and responsibilities – or, as the Department generally states it, to “exercise the non-exclusive functions and duties” – of the AS-IA after his 210-day service as Acting AS-IA due to a continued vacancy in that position. He thereby held the authority under 25 C.F.R. Part 151 to issue a final decision to acquire land in trust for the Tribe for gaming and other purposes. The Decision was therefore final for the Department, effective immediately under 25 C.F.R. § 2.6, and subject to judicial review under 5 U.S.C. § 704. Consequently, BIA properly took the land into trust in accordance with 25 C.F.R. § 151.12 (c)(2)(iii), which requires the Department to immediately place land in trust once the agency makes a final decision to take the land into trust, and upon fulfillment of title review.

³³ Compare 25 U.S.C. § 2103(d) (authority to disapprove certain mineral agreements may “only be delegated” to AS-IA).

³⁴ 25 C.F.R. § 151.12(c).

³⁵ *Id.*, § 151.12(d). A decision by a BIA official is not considered final agency action of the Department under 5 U.S.C. 704 until administrative remedies are exhausted or until the time for filing a notice of appeal has expired and no administrative appeal has been filed. *Id.*

³⁶ *Id.*, § 151.2(a) (emphasis added).

³⁷ The Department of the Interior’s Office of the Solicitor has reviewed the functions and duties of the AS-IA to determine the duties that are required to be performed only by the AS-IA. *Schaghticoke Tribal Nation v. Kempthorne*, 587 F.Supp.2d 389, 421 (D. Conn. 2008), *aff’d*, 587 F.3d 132 (2d Cir. 2009) (per curiam), referencing “Redelegation of Duties of the Assistant Secretary – Indian Affairs,” Memorandum from Solicitor to the Secretary of the Interior (Jan. 28, 2005). The Solicitor identified no regulations at all that assigned duties or functions exclusively to the AS-IA. *Id.* The Solicitor identified three statutory “exclusive” AS-IA functions and duties that cannot be delegated under the VRA: disapproval of mineral agreements, certain Indian preference determinations, and functions related to Indian education.

D. The Non-Exclusive Functions And Duties Of The AS-IA Were Properly Delegated To Me By The Acting Secretary Of The Interior, Kevin Jack Haugrud

On January 19, 2017, then-Secretary of the Interior Sally Jewell delegated to me all functions, duties, and responsibilities of the AS-IA that are not required by statute or regulation to be performed only by the AS-IA, effective on January 20, 2017 at 12:00 p.m. Eastern Standard Time. On January 20, 2017, Acting Secretary Kevin Jack Haugrud signed Amended Secretarial Order 3345, conferring on me the non-exclusive authorities of the AS-IA.³⁸

Amended Secretarial Order 3345 states that it “. . . is issued under the authority of Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and in compliance with the Vacancies Reform Act.” Stand Up argues that Amended Secretarial Order 3345 does not suffice, as Section 2 of the Reorganization Plan No. 3 of 1950, 64 Stat. 1262, is a statute of general statutory authorization.³⁹ Appellants assert that the FVRA does not permit the head of an agency to rely on a statutory provision providing general authority to delegate certain responsibilities under 5 U.S.C. § 3347(b).⁴⁰ However, that provision expressly pertains to “functions and duties” as defined by the FVRA, while at issue here are the non-exclusive functions and duties of the AS-IA. Section 3347 of the FVRA refers to the authorization of an acting official to exercise the full functions and duties of any office of an Executive Agency, including the exclusive duties required by statute or regulation. Amended Secretarial Order 3345 delegated solely those functions or duties that are not required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. Mr. Kevin Jack Haugrud was directed to perform the duties of the office of the Secretary of the Interior, effective January 20, 2017, by Presidential Memorandum. Mr. Kevin Jack Haugrud then properly delegated the non-exclusive functions and duties of the AS-IA to me in Amended Secretarial Order 3345. On May 19, 2017, Secretary Zinke extended my delegation in Order No. 3345, Amendment 5.⁴¹ As such, I remain authorized to exercise non-exclusive AS-IA duties.

Stand Up questions my ability to respond to their request pursuant to 5 U.S.C. § 705 and to assume jurisdiction over the IBIA appeal under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b).⁴² However, neither function has been assigned “only” or “exclusively” or “solely” to the AS-IA.⁴³ Section 705 of the Administrative Procedures Act provides, in relevant part, that “[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it,

³⁸ President of the United States, Memorandum for Kevin Jack Haugrud, Deputy Solicitor – Mineral Resources (Jan. 17, 2017) (designating Mr. Haugrud as Acting Secretary effective January 20, 2017); Acting Secretary of the Interior, Order No. 3345, Amendment No. 1, Temporary Redefinition of Authority for Certain Vacant Non-Career Senate-confirmed Positions (Jan. 20, 2017) (Order No. 3345) (delegating the non-exclusive functions and duties of the AS-IA to Michael Black).

³⁹ Pet. For Preliminary Relief at 8-9; Objection to Assumption of Jurisdiction at 3.

⁴⁰ *Id.*

⁴¹ Secretary of the Interior, Order No. 3345, Amendment No. 5, Temporary Redefinition of Authority for Certain Vacant Non-Career Senate-confirmed Positions (May 19, 2017) (Order No. 3345) (delegating the non-exclusive functions and duties of the AS-IA to Michael Black).

⁴² *Id.*

⁴³ See *supra* note 37.

pending judicial review.”⁴⁴ As this provision refers to the authority of the agency generally, it is clearly a non-exclusive function.

The BIA’s administrative appeal regulations allow officials other than the AS-IA to decide appeals.⁴⁵ Far from requiring the AS-IA to review an appeal, the regulations merely provide the AS-IA with discretion to do so.⁴⁶ Further, where the AS-IA assumes jurisdiction over an appeal, the regulations permit subordinate officials to issue the decision.⁴⁷ Nor is the authority to issue a final decision in an appeal an exclusive function or duty of the AS-IA. Decisions by IBIA are final for the Department and must be given final effect.⁴⁸ The AS-IA’s functions and duties under 5 U.S.C. § 705 and 25 C.F.R. Part 2 are thus non-exclusive and, consistent with the FVRA, the authority to perform them may be re-delegated to other appropriate officers and employees in the Department.

For the reasons stated above, and pursuant to the authority delegated to me to exercise all non-exclusive functions, duties, and responsibilities of the Assistant Secretary – Indian Affairs,⁴⁹ I hereby dismiss Stand Up’s appeal.

Dated: JUL 13 2017



Michael S. Black
Acting Assistant Secretary – Indian Affairs

⁴⁴ 5 U.S.C. § 705.

⁴⁵ *See, e.g.*, 25 C.F.R. § 2.4 (officials who “may” decide appeals).

⁴⁶ 25 C.F.R. § 2.20(c).

⁴⁷ *Id.*

⁴⁸ *See* 43 C.F.R. § 4.312.

⁴⁹ *See* Temporary Redefinition of Authority for Certain Vacant Non-Career Senate-confirmed Positions, Secretary of the Interior, Order No. 3345 (Jan. 19, 2017); Acting Secretary of the Interior, Order No. 3345, Amendment No. 1 (Jan. 20, 2017) (same).

CERTIFICATE OF SERVICE

I certify that on the 14th day of July 2017, I delivered a true and correct copy of the foregoing Order Dismissing Administrative Appeal to each of the persons below by depositing an appropriately addressed copy in the United States mail.

Jena A. MacLean, Esq.
Odin A. Smith, Esq.
For Appellant
Perkins Coie LLP
700 13th Street, NW, Suite 600
Washington, DC 20005

Raymond Hitchcock, Chairman
Wilton Rancheria
9728 Kent Street
Elk Grove, CA 95624

Laura Gill, City Manager
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

Leighann Moffitt, Planning Director
Sacramento County
827 7th Street, Room 225
Sacramento, CA 95814

Sara Drake, Deputy Attorney General
State of California, Department of Justice
PO Box 944255
Sacramento, CA 94244-2550

Angela Tsubera
9422 Rhone Valley Way
Elk Grove, CA 95624

Carolyn Soares
100080 Pleasant Grove School Road
Elk Grove, CA 95624

Larry Greene, Executive Director
Sacramento Air Quality Mgt. District
777 12th Street, 3rd floor
Sacramento, CA 95814
Eugene Palazzo, City Manager

City of Galt
380 Civic Drive
Galt, CA 95632


Nicholas Fonseca, Chairman
Shingle Springs Band of Miwok Indians
5168 Honpie Road
Placerville, CA 95667

Kathleen Martyn Goforth, Manager
Environmental Review Section
Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Eric Fredericks, Chief
Office of Transportation Planning
California Dept. of Transportation
Dist. 3 – Sacramento Office
2379 Gateway Oaks Drive, Suite 150-MS 19
Sacramento, CA 95833

Associate Solicitor – Indian Affairs
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, NW MS 6513 – MIB
Washington, DC 20240

Thomas A. Blaser
Chief Administrative Judge
Interior Board of Indian Appeals
Office of Hearings and Appeal
U.S. Department of the Interior
801 N Quincy Street, Suite 300
Arlington, VA 2220



Miles Janssen,
Counselor to the Office of the
Assistant-Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W.
MS-3642-MIB
Washington, D.C. 20240
(202) 208-7352
Miles.Janssen@bia.gov