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

10 CACHIL DEHE BAND OF WINTUN INDIANS)
OF THE COLUSA INDIAN COMMUNITY, a)
11 federally recognized Indian Tribe,)

12 Plaintiff,)

13 vs.)

14 KENNETH SALAZAR, Secretary of the Interior;)
KEVIN WASHBURN, Assistant Secretary of the)
15 Interior – Indian Affairs; MICHAEL BLACK,)
Director, United States Bureau of Indian Affairs;)
16 and AMY DUTSCHKE, Director, Pacific Region,)
Bureau of Indian Affairs,)

17 Defendants)
18)
19 _____)

CASE NO. 12-1604

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

20 Plaintiff, the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community
21 (hereinafter "Colusa" or "CICC"), hereby complains and alleges as follows:

22 **JURISDICTION**

23 1. This Court has original jurisdiction over this action pursuant to 5 U.S.C.A. § 701 *et*
24 *seq.*, 25 U.S.C.A. § 2710(d)(7)(A)(ii), 28 U.S.C. §§ 1331, 1362, 28 U.S.C. § 2201, in that Colusa
25 seeks judicial review of two final agency actions by defendants Salazar, Washburn, Black and
26 Dutschke: (1) the decision to accept into federal trust status for the benefit of the Estom Yumeka
27 Maidu Tribe of the Enterprise Rancheria ("Enterprise") title to certain lands located in Yuba County,
28 California ("the planned Casino site") under the authority purportedly granted under 25 U.S.C. § 475;

1 and (2) to authorize Enterprise to conduct gaming on said lands purportedly pursuant to the Indian
2 Gaming Regulatory Act, 25 U.S.C.A. § 2701, *et seq.* ("IGRA"), in violation of, *inter alia*, 25
3 U.S.C.A. § 2719(b)(1)(A), 42 U.S.C.A. § 4321 ("NEPA"), and applicable departmental/agency
4 regulations and procedures. The United States has waived its sovereign immunity from suit under 5
5 U.S.C. § 702 and 28 U.S.C. § 2409a. There is an actual controversy between the parties within the
6 jurisdiction of this Court in that Colusa contends that defendants' final agency actions were taken in
7 violation of the aforementioned laws, regulations and departmental policies and procedures, while
8 defendants contend that their actions, which are final for the agency under 25 C.F.R. §§ 2.6(c) and
9 151.12(b), were taken in compliance with all applicable laws, regulations, policies and procedures.

10 VENUE

11 Venue is proper in the Eastern District of California, Sacramento Division, because plaintiff
12 Colusa is the beneficial owner of and exercises jurisdiction over the trust lands of the Colusa Indian
13 Reservation in Colusa County, California, within the Eastern District of California, Sacramento
14 Division; Enterprise and the real property that defendants intend to take into federal trust status for
15 Enterprise are located in Butte and Yuba Counties, California, respectively, both within the Eastern
16 District of California, Sacramento Division; defendants maintain an office and defendant Dutschke
17 resides within the Eastern District of California, Sacramento Division; at least several of the material
18 acts or omissions of which complaint is made occurred within the Eastern District of California,
19 Sacramento Division; and litigation of Colusa's claims in the Eastern District of California would be
20 the least costly and burdensome for Colusa.

21 PARTIES

22 2. Plaintiff, the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community
23 ("Colusa" or "Tribe") is an American Indian Tribe recognized by the Secretary of the Interior as
24 maintaining government-to-government relations with the United States, and exercises governmental
25 authority over the lands within the boundaries of the Colusa Indian Reservation ("Reservation"),
26 legal title to which is held by the United States in trust for Colusa.

27 3. Defendant Kenneth Salazar ("Salazar" or "Secretary") is the Secretary of the Interior
28 of the United States, and is sued in that official capacity. In his capacity as Secretary, defendant

1 Salazar exercises ultimate authority, supervision and control over defendants Washburn and
2 Dutschke and their subordinates within the United States Bureau of Indian Affairs ("BIA"), a bureau
3 within the Department of the Interior. Defendant Salazar has delegated to defendant Washburn the
4 authority to make decisions concerning the acceptance of land into trust for Indian Tribes.

5 4. Defendant Kevin Washburn ("Washburn") is the Assistant Secretary – Indian Affairs
6 ("AS-IA"), United States Department of the Interior, and is sued in that official capacity. In his
7 capacity as AS-IA, defendant Washburn exercises supervisory authority and control over the Bureau
8 of Indian Affairs, including defendants Black, Dutschke and their respective subordinates.

9 5. Defendant Michael Black ("Black") is the Director of the United States Bureau of
10 Indian Affairs ("BIA Director"), and is sued in that official capacity. In his capacity as BIA Director,
11 defendant Black exercises direct supervisory authority and control over defendant Dutschke and her
12 subordinates.

13 6. Defendant Amy Dutschke is the Director of the Pacific Regional Office of the BIA
14 ("Regional Director"), and is sued in that official capacity. As Regional Director, defendant
15 Dutschke exercises direct supervisory authority and control over the BIA's Pacific Region, which
16 covers the State of California and oversees the operation not only of the Regional Office, but also
17 four BIA Agencies, including the Central California Agency, within the jurisdiction of which are
18 located both the Colusa Reservation and the land that defendants intend to take into trust for
19 Enterprise.

20 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

21 **FACTS RELEVANT TO COLUSA'S INTEREST IN THE PROPOSED ACQUISITION**

22 7. Colusa already was under federal jurisdiction on June 18, 1934, when Colusa voted to
23 accept and subsequently organized under the Indian Reorganization Act, 25 U.S.C. § 476. The
24 Colusa Indian Reservation (also referred to as the Colusa Rancheria) ("Reservation") consists of two
25 non-contiguous parcels of land totaling 290 acres located in Colusa County, California. The original
26 80-acre parcel of Colusa's Reservation is located approximately seven miles north of the City of
27 Colusa; the other 210-acre parcel of Colusa's Reservation is located approximately three miles north
28 of the City of Colusa. The lands of the Colusa Indian Reservation are held in trust for Colusa by the

1 United States of America, and, having been so held since prior to October 17, 1988, constitute
2 "Indian lands" within the meaning of 25 U.S.C.A. §2703(4). Colusa's Casino is located
3 approximately 39 miles from the planned Casino Site. The planned Casino Site is in the heart of the
4 Colusa Casino's closest major market area. The main highway connection between the City of
5 Colusa and Yuba City is California Highway 20, and the lands through which Highway 20 passes
6 between those two cities is largely unpopulated, being almost entirely devoted to agriculture.

7 8. Under IGRA, 25 U.S.C.A. § 2719(a), gaming is prohibited on lands acquired by the
8 Secretary in trust for the benefit of an Indian Tribe after October 17, 1988, unless, among relevant
9 exceptions, such lands are located within or contiguous to the boundaries of the reservation of the
10 Indian tribe on October 17, 1988, such lands are located in a State other than Oklahoma and are
11 within the Indian Tribe's last recognized reservation within the State or States within which such
12 Indian Tribe is presently located, or, under 25 U.S.C.A. §2719(b)(1)(A), when the Secretary, after
13 consultation with the Indian tribe and appropriate State and local officials, including officials of
14 other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be
15 in the best interest of the Indian tribe and its members, and would not be detrimental to the
16 surrounding community, but then only if the Governor of the State in which the gaming activity is to
17 be conducted concurs in the Secretary's determination.

18 9. Under IGRA, 25 U.S.C.A. §2710(d)(1)(C), "Class III" gaming is lawful on Indian
19 lands only if (among other requirements) located in a State that permits such gaming for any purpose
20 by any person, organization, or entity, and conducted in conformance with a Tribal-State compact
21 that has been entered into by the Indian tribe and the State, approved by the Secretary of the Interior,
22 and is in effect.

23 10. Since approximately 1984, Colusa has operated a tribal government gaming facility
24 ("Colusa Casino") on the 210-acre parcel of its existing Reservation trust lands in Colusa County.
25 Initially, Colusa offered only Class II bingo games at its gaming facility, but entered into a Class III
26 gaming compact with the State of California that took effect on May 16, 2000 ("Colusa Compact")
27 and now offers not only Class II gaming in a 700-seat bingo hall five days per week, but also 1,273
28 slot machines and 10 table games. Unless renewed, extended, replaced or terminated sooner, the

1 Colusa Compact will expire on December 31, 2020, unless extended until June 30, 2022 if
2 negotiations have been commenced but not yet consummated by December 31, 2020.

3 11. Under the Colusa Compact, Colusa may operate 523 Class III slot machines without
4 having to obtain licenses for those devices, and may acquire additional slot machine licenses by
5 drawing licenses from a statewide pool of licenses established by its Compact. The maximum
6 number of slot machines that Colusa may operate is 2,000, but until Colusa won a judgment against
7 the State in November, 2009, the State unlawfully prevented Colusa from obtaining as many
8 additional slot machine licenses as Colusa was entitled to acquire, irrevocably depriving Colusa of
9 millions of dollars of governmental gaming revenues that Colusa would have been derived from
10 operating additional slot machines, and seriously impairing Colusa's ability to maintain its share of
11 the southern Sacramento Valley gaming market in the face of competition from several other tribes
12 located closer to major markets, particularly after the State agreed to permit the United Auburn
13 Indian Community, located near Lincoln in Placer County, and the Yocha Dehe Wintun Nation,
14 located near Brooks in Yolo County, to greatly expand their existing gaming facilities and operate
15 unlimited numbers of gaming devices.

16 12. Colusa first proposed to expand its original gaming facility and add a hotel in or about
17 2003. At that time, it studied, among other things, the competition it was likely to face from other
18 tribes that already were operating gaming facilities, or reasonably might be expected to do so in the
19 future. The Enterprise Rancheria, occupying trust lands eligible for gaming near Oroville in Butte
20 County, California, was among the tribes considered as potential future competitors for market share,
21 but Colusa determined that a casino operated on the Enterprise Rancheria's existing trust lands near
22 Oroville would not pose a material competitive threat to Colusa's casino, and thus would not affect
23 the viability of Colusa's expansion plans.

24 13. When the Colusa Compact took effect in May, 2000, the United Auburn Indian
25 Community ("UAIC") had not yet opened its Thunder Valley casino near Lincoln, California, about
26 59 highway miles from Colusa's casino and located in a much more densely populated area from
27 which Colusa already was drawing customers. After UAIC opened its Thunder Valley Casino in
28 June, 2003, Colusa's casino experienced an immediate drop in revenue and patronage, Colusa lost

1 about 7% of its workforce, and Colusa was forced to scale back its previous expansion plans as no
2 longer financially viable. In late 2004, UAIC entered into an amended Class III gaming compact that
3 permitted the operation of an unlimited number of slot machines, and after UAIC expanded its
4 casino, Colusa experienced another decline in gaming revenue, patronage and workforce; the
5 combined reductions in patronage and revenue following the opening and expansion of the Thunder
6 Valley Casino was more than 45%, and Colusa's casino had to spend an average of more than \$4,000
7 to train each replacement employee. After Colusa was able to obtain additional slot machine
8 licenses, Colusa was able to partially recover from these declines in patronage and revenue, but
9 Colusa's revenues and patronage still lag far below what they would be had the Thunder Valley
10 Casino not absorbed such a large portion of Colusa's patrons from the Sacramento area.
11 Nonetheless, Colusa has incurred substantial debt to upgrade its facilities in an ongoing effort to
12 remain competitive in an increasingly competitive market, and introduction of further unanticipated
13 competition within the Colusa Casino's market area could threaten Colusa's ability to meet its debt
14 service obligations while still providing essential governmental services and programs to its
15 Reservation community, and would significantly impair Colusa's ability to obtain additional long-
16 term financing for the further upgrades and improvements to its existing facilities that will be needed
17 to continue to be a viable competitor in the Sacramento Valley gaming market.

18 14. Because Colusa is located in a lightly-populated rural area, its casino must draw
19 patrons from areas far from the Colusa Reservation. For that reason, the Colusa Casino's market area
20 has always included the greater Sacramento area, the Marysville-Yuba City area in which
21 Enterprise's planned Casino Site is located, and also other more distant cities and communities. In an
22 ongoing effort to attract patrons to its casino from distant communities, Colusa's casino advertises in
23 broadcast, print, roadside billboard and on-line media, and also has an active program to attract
24 patrons to Colusa's casino on buses chartered by independent "bus coordinators." Colusa's casino
25 markets to and regularly receives charter bus patrons from communities such as Rancho Cordova,
26 North Sacramento, Sacramento itself, Roseville, Wheatland, Linda, Marysville, Yuba City, Elk
27 Grove, Woodland, San Francisco, South San Francisco, Daly City, Colma, San Bruno, San Mateo,
28 Union City, Emeryville, Richmond, Vallejo, Fairfield, Vacaville, Hayward, Alameda, Tracy,

1 Lathrop, Stockton, East Palo Alto, Santa Clara, San Jose, Pleasanton, Pleasant Hill, Redding,
2 Anderson, Cottonwood, Red Bluff, Los Molinos, Chico and Gridley. Every one of the foregoing
3 cities and communities is well beyond 25 miles from Colusa's casino.

4 15. Because Colusa County is so rural, Colusa's casino must look far beyond its
5 immediate area to find sufficient qualified employees. More than 150 of the Colusa Casino's 444
6 current employees live closer to the planned Casino Site than to the Colusa Casino, and of those,
7 more than 140 live within about ten miles of the planned Casino Site. If Enterprise is permitted to
8 open its casino on the planned Casino Site, Colusa anticipates that many of its own casino employees
9 will leave their jobs for employment with the Enterprise casino, not only giving Enterprise the
10 windfall of a pre-trained workforce, but also requiring Colusa to spend substantial amounts to train
11 replacement workers, if it is even able to find them in its own area.

12 16. Had Colusa known or reasonably been able to anticipate that defendants would permit
13 Enterprise or any other tribe that did not then have trust lands in Yuba County to leapfrog over
14 Colusa and have lands in that County taken into trust for gaming purposes, Colusa would not have
15 incurred the substantial initial debt required to finance the original expansion of the Colusa Casino
16 and its appurtenant facilities, or the debt with which Colusa has funded the subsequent remodeling
17 and improvement of its facilities needed to remain a viable competitor in the Sacramento Valley
18 gaming market.

19 17. Under the Colusa Compact and other similar compacts, tribes that operate fewer than
20 350 slot machines are entitled to receive up to \$1,100,000 per year from the Indian Gaming Revenue
21 Sharing Trust Fund ("RSTF") in the State Treasury. Colusa has paid \$1,135,808 into the Indian
22 Gaming Revenue Sharing Trust Fund in the State Treasury since 2009, the first year in which Colusa
23 obtained enough slot machine licenses to become obligated to pay into that fund. The Enterprise
24 Rancheria has received more than \$10,000,000 from the RSTF since 2000.

25 18. Under the Colusa Compact, Colusa pays a percentage of the net win from a portion of
26 its slot machines into the Indian Gaming Special Distribution Fund in the State Treasury, from which
27 the Legislature appropriates money to reimburse the State for expenses incurred in connection with
28 regulation of tribal government gaming, to fund gambling-addiction programs, to make up chronic

1 shortfalls in the RSTF and to return money to counties in which tribal government gaming facilities
2 are located for the purpose of making grants to local governments to mitigate impacts from tribal
3 government gaming. Colusa has paid about \$10,000,000 into the SDF, of which an average of more
4 than \$625,000 per year has been returned to Colusa's Individual Tribal Casino Account, and from
5 which the Colusa County Local Community Benefit Committee has made grants to Colusa County,
6 the City of Colusa, the City of Williams, the City of Maxell and various special districts in Colusa
7 County to mitigate the off-Reservation impacts of Colusa's Casino and otherwise to benefit the
8 general citizenry of Colusa County.

9 19. If defendants accept the planned Casino Site into trust for gaming and thereafter
10 Enterprise opens its casino as proposed, Colusa will suffer at least the following severe adverse
11 impacts, for which money damages would not be available as a remedy:

12 (a) Colusa's Casino revenues likely will decline by more than 40%;

13 (b) At least 30% of the Colusa Casino's existing employees are likely to leave the
14 Colusa Casino and seek work at the new Enterprise Casino;

15 (c) The Colusa Casino may have to lay off as many as 100 of its existing
16 employees, and due to normal employee turnover, will have great difficulty recruiting an adequate
17 number of suitable replacement employees from the thinly-populated rural area in which Colusa is
18 located, at an average training cost of about \$5,000 per new employee;

19 (d) Colusa's tribal government is likely to receive as much as 50% less in Casino
20 revenues with which to fund tribal governmental programs and services that are essential to the
21 health, safety and welfare of Colusa's tribal members and others residing or working on or visiting
22 Colusa's trust lands;

23 (e) If patronage declines as projected, Colusa may have to return some of its slot
24 machine licenses to the statewide gaming device license pool, reducing receipts by the Revenue
25 Sharing Trust Fund from which funds are disbursed to tribes without any gaming or operating fewer
26 than 350 slot machines;

27 (f) Colusa's payments into the Special Distribution Fund likely will decline by at
28 least 40%, thereby reducing the amount available to reimburse the State of California for its tribal

1 gaming regulatory costs and treatment of gambling addiction, and reducing disbursements from the
2 Special Distribution Fund to Colusa's Individual Tribal Casino Account by at least that percentage,
3 thereby reducing by an equivalent percentage the amount available for grants to local non-tribal
4 governments on which those governments depend in part to provide services and programs to better
5 serve their respective constituent communities and protect the public health, safety and welfare.

6 THE FINAL AGENCY ACTIONS THAT WILL ADVERSELY AFFECT COLUSA

7 20. On or about June 26, 2002, an entity purporting to be the Estom Yumeka Maidu Tribe
8 of the Enterprise Rancheria ("Enterprise") resolved to submit a request to the BIA to acquire 40 acres
9 of land in trust in Yuba County, California (the planned Casino Site), and submitted the request to
10 the BIA on or about August 13, 2002. Colusa is informed and believes, and on that basis alleges that
11 the United States already holds title to two parcels of land in trust for Enterprise in Butte County,
12 approximately 36 miles away from the planned Casino Site, and that gaming lawfully may be
13 conducted on either of said parcels of trust land because they were held in trust for Enterprise prior to
14 October 17, 1988 and thus are "Indian lands" within the meaning of 25 U.S.C.A. § 2703(4).

15 21. Enterprise's request to the BIA described the planned Casino Site as follows:

16 That parcel of land lying within the northeast quarter of Section 22, T.
17 14 N., R. 4 E., M.D.B.&M. in Yuba County, California and being
described as follows:

18 Commence at the quarter section corner common to said Section 22
19 and Section 15, T. 14 N., R. 4 E., M.D.B.&M. and being marked by a
20 brass monument stamped LS3341 in a monument well as shown on
21 Record of Survey No. 2000-15, filed in Book 72 of Maps, page 34,
22 Yuba County Records; thence South 0E 28' 11" East, along the line
23 dividing said Section 22 into east and west halves, 2650.73 feet to a
24 brass monument stamped LS3341 in a monument well as shown on
25 said Record of Survey No. 2000-15 and marking the center of said
26 Section 22; thence North 89E 31' 24" East, 65.00 feet to a point on the
27 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.

28 22. Because the planned Casino Site is neither within nor contiguous to the boundaries of

1 Enterprise's existing trust land base, defendants treated the application as being for an off-reservation
2 acquisition.

3 23. Because Enterprise proposed to construct and operate a 170-room resort hotel and
4 casino with 1,700 slot machines on the planned Casino Site, Enterprise also requested that
5 defendants determine that the planned Casino Site be eligible for gaming pursuant to 25 U.S.C.A. §
6 2719(b)(1)(A), and on or about April 13, 2006, Enterprise submitted a formal request for what is
7 generally referred to as a "two-part determination" by defendant Secretary and the other defendants
8 that a gaming establishment on newly acquired lands would be in the "best interests" of the applying
9 tribe and would not be detrimental to the surrounding community.

10 24. On or about May 20, 2008, defendant Secretary issued new regulations governing
11 applications for "two-part determinations" under 25 U.S.C.A. § 2719(b)(1)(A). These regulations
12 are codified at 25 C.F.R. §§ 292.16-19.

13 25. On or about March 17, 2009, Enterprise submitted an amended and restated request
14 for a two-part determination to conform with requirements found in 25 C.F.R. §§ 292.16-19.

15 26. 25 C.F.R. § 292.19(a) requires that in event that a tribe requests that lands be taken
16 into trust for gaming purposes outside the requesting tribe's existing trust lands, the Director of the
17 BIA's Regional Office in which the lands requested to be taken into trust is required to solicit
18 comments from, among others, "[o]fficials of nearby Indian tribes" regarding applications submitted
19 under 25 U.S.C.A. § 2719(b)(1)(A).

20 27. Because a significant percentage of the patrons and employees of Colusa's casino
21 reside in Marysville, Yuba City and other areas farther from Colusa than the planned Casino Site,
22 operation of a casino on the planned Casino Site would attract and intercept a significant percentage
23 of Colusa's existing patrons and employees, directly and severely adversely impacting Colusa,
24 requiring defendants to treat Colusa as a "nearby Indian tribe" within the meaning of 25 U.S.C.A. §
25 2719(b)(1)(A).

26 28. On January 16, 2009, defendants solicited comments on Enterprise's land-into-trust
27 application from neighboring tribes and other community members. Colusa was not included on the
28 distribution list for the BIA's January 16, 2009 letter, nor did defendants ever contact or consult with

1 Colusa concerning the proposed acquisition, or conduct any inquiry into the impacts that the
2 proposed acquisition likely would have on Colusa and its surrounding non-tribal community.

3 29. Colusa, other Indian tribes, the Governor of California and numerous other
4 individuals and organizations informed defendants of their respective opposition to Enterprise's
5 proposed acquisition of the planned Casino Site on various environmental, legal, socio-economic,
6 historical, cultural and commercial grounds. These comments were submitted in response to, *inter*
7 *alia*, a draft Environmental Impact Statement that was prepared by Analytical Environmental
8 Services ("AES"), a private company that Colusa is informed and believes, and on that basis alleges,
9 was under contract to Enterprise.

10 30. In an advisory vote conducted in Yuba County in November, 2005, 52.1% of the
11 voters of Yuba County voted against Enterprise's planned Casino project.

12 31. Defendants knew, or reasonably should have known, that Enterprise's construction of
13 a casino on the planned Casino Site will cannibalize a significant portion of the Colusa Casino's
14 existing market and employees, causing a significant decline in the Colusa Casino's revenues and an
15 equivalent reduction in the funds available to Colusa's government for the delivery of essential
16 governmental services to Colusa tribal members and their families, a substantial reduction in funds
17 available from the SDF for grants to local non-tribal governments and a reduction in funds available
18 to the RSTF for distribution to tribes with no or small gaming operations. Due to those foreseeable
19 impacts, defendants knew or reasonably should have known or considered Colusa to be a "nearby
20 tribe" within the meaning of 25 U.S.C.A. § 2719(b)(1)(A).

21 32. At no time during AES's study or defendants' consideration of the environmental or
22 other impacts of accepting the planned Casino Site into federal trust status, whether for gaming or for
23 any other purpose, did either any of the defendants ever consult with Colusa about the impacts of
24 such a decision on Colusa and/or its surrounding communities, conduct any investigation into the
25 likelihood and magnitude of such impacts, or even respond to the comments and objections that
26 Colusa submitted concerning the impacts that the proposed acquisition would have on Colusa and/or
27 its surrounding communities.

28 33. Despite the opposition to the Enterprise acquisition expressed by Colusa and other

1 tribes, other governments and communities, defendants issued a Record of Decision ("ROD") on
2 September 1, 2011, determining that gaming on the planned Casino Site would not be detrimental to
3 the surrounding community or other tribes.

4 34. On August 31, 2012, Governor Jerry Brown, without first having complied with the
5 California Environmental Quality Act, issued his concurrence with defendants' two-part
6 determination and announced that he had already negotiated a Class III gaming compact with
7 Enterprise.

8 35. On or about November 30, 2012, defendants filed a Notice of Intent to take what the
9 Notice of Intent purported to describe as the planned Casino Site into trust; said Notice was
10 published December 3, 2012, and thus, under 25 C.F.R. Part 151, § 151.12(b), title to the planned
11 Casino Site may transfer, and the land may be taken into trust by the United States, on January 2,
12 2013.

13 36. The legal description of the land set forth in the above-described November 30, 2012
14 Notice of Intent materially differs from the legal description of the land set forth in Enterprise's
15 application to have land taken into trust. The November 30, 2012 Notice of Intent describes the land
16 to be taken into trust as follows:

17 The 40 acres are located approximately 4 miles southeast of the
18 community of Olivehurst, near the intersection of Forty Mile Road and
19 State Route 65 in Yuba County, California, described as: A portion of
20 the East half of Section 22, Township 14 North, Range 4 East, 2
21 M.D.B.&M., described as follows: Commence at the North quarter
22 corner of said Section 22 and being marked by 2 brass monument
23 stamped LS3341 in a monument well as shown on Record of Survey
24 No. 2000-15 filed in Book 72 of Maps, Page 34, County Records;
25 thence South 0° 28' 11" East along the line dividing said Section 22
26 into East and West halves 2650.73 feet to a brass monument stamped
27 LS3341 in a monument well as shown on said Record of Survey No.
28 2000-15 and marking the center of said Section 22; thence North 89°
31' 24" East 65.00 feet to a point on the East right-of-way line of Forty
Mile Road; thence North 0° 28' 11" West along said East right-of-way
line of Forty Mile Road 45.53 feet to a ½ inch rebar with LS3751
marking 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 0°28' 11" West 1133.70 feet;
thence North 5° 14' 27" East 50.25 feet; thence North 0° 28' 31" West
750.00 to a ½ inch rebar with LS3751; thence leaving said East right-
of-way line of Forty Mile Road run North 88° 00' 51" East 1860.00
feet to a ½ inch with LS3751; thence South 0° 28'11" East 1932.66
feet to a ½ inch rebar with LS3751; thence South 87° 59'10" West

1 1865.03 feet to the point of beginning Said land is also shown as
2 Parcel "C" on Certificate of Lot Line Adjustment. [¶] 2002-07
recorded June 26, 2002, Instrument No. 2002-08119.

3 37. Assuming that Enterprise has a gaming ordinance that has been approved by the
4 Chairman of the National Indian Gaming Commission, Enterprise may commence what IGRA
5 defines as "Class II" gaming, including electronically aided bingo games and non-banking card
6 games, on the planned Casino Site as soon as defendants accept title to the land in trust for
7 Enterprise.

8 **FIRST CLAIM FOR RELIEF**
9 **Violation of 42 U.S.C.A. § 4321, et seq. (NEPA)**

10 38. Plaintiff realleges each of the allegations set forth in Paragraphs 1-37 above, and by
11 this reference incorporates each such reference as if set forth in full herein.

12 39. Defendants approval of the EIS and their decisions pursuant to 25 C.F.R. Parts 151
13 and 292 violated National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, et seq., CEQ's
14 implementing regulations, 40 C.F.R. Part 1500, DOI's implementing regulations, 43 C.F.R. Part 46,
15 and long-established federal policies under NEPA.

16 40. NEPA required defendants to choose a reasonable range of alternatives to study,
17 including reasonable alternatives that may be outside of defendants' jurisdiction. Defendants failed
18 to choose a reasonable range of alternatives, however, accepting the artificially limited purpose and
19 need statement and alternatives prepared by Enterprise, and thus eviscerating the "heart of the
20 environmental impact statement." 40 C.F.R. § 1502.14; 42 U.S.C. § 4332(2)(E).

21 41. The purpose and need statement of the EIS was tailored so as to ensure that only a
22 large casino close to a major metropolitan area could satisfy the purported purpose and need of the
23 federal project. The EIS did not consider an adequate range of alternatives, negating NEPA's
24 action-forcing function.

25 42. The EIS does not take the requisite "hard look" at the negative environmental impacts
26 of Enterprise's preferred alternative on and around the planned Casino Site. It overlooked or
27 improperly minimized many of the significant, adverse environmental impacts of a large casino. 42
28 U.S.C. § 4321, et seq.; 40 C.F.R. § 1508.8.

1 43. The impacts improperly minimized include the potential impacts on species listed
2 under the federal and state Endangered Species Acts, the impacts on water quality of the construction
3 and operation of the casino, and the air quality impacts of construction and of a casino attracting
4 thousands of cars.

5 44. The EIS improperly minimizes the negative impacts on the environment of
6 surrounding governmental entities and, particularly, on other Indian tribes caused by a large casino in
7 Yuba County, placed in order to intercept all traffic from metropolitan areas to other casinos.

8 45. The EIS found that many of the environmental impacts would be mitigated by the
9 revenue sharing deals that Enterprise negotiated with the City of Marysville and the County of Yuba.
10 The main purpose of those agreements is not to mitigate the environmental impacts, but to fill the
11 coffers of those local governments in order to obtain their support for an Enterprise casino.

12 46. The EIS failed to consider the environmental impacts of what Enterprise's own
13 contractor characterized as "cannibalizing" other tribal casinos. The EIS relied upon studies that
14 were out-of-date and conducted without access to empirical evidence concerning the neighboring
15 casinos. The analysis of those effects did not consider in any way the environmental impacts on the
16 tribal members and reservations whose casinos will be "cannibalized" by the proposed Enterprise
17 casino.

18 47. Based on empirical evidence from other casinos that have opened in plaintiff's
19 market, the Colusa tribal government will lose approximately half of its revenues. The decline in
20 revenue will lead to massive layoffs and declines in tribal governmental and tribal member incomes.
21 It will also lead to a diminishment of services provided by the tribal, city, and county governments to
22 their citizens' health, welfare, and education. Those services include a dialysis center constructed for
23 tribal members, who suffer from diabetes at a much higher rate than the general population and
24 environmental protection and restoration efforts.

25 48. Defendants are required by NEPA to consider the environmental impacts of their
26 proposed action not just on the immediate community, but those reasonably foreseeable negative
27 impacts on surrounding areas, including communities more than 25 miles from the planned Casino
28 Site.

1 49. NEPA, the regulations enacted under NEPA by CEQ and DOI, and well established
2 DOI and BIA policy require that BIA choose its contractor to prepare an EIS, particularly if the
3 contractor is paid by the project proponent, to avoid conflicts of interest. 40 C.F.R. § 1506.5(c).

4 50. Plaintiff is informed and believes, and on that basis alleges, that Enterprise chose and
5 hired its own environmental contractor, Analytical Environmental Services ("AES"), rather than
6 giving BIA the choice.

7 51. Disregarding its duty to review skeptically all assertions by project proponents, BIA
8 exercised little independent oversight over AES as it drafted the DEIS and FEIS, "rubber-stamping"
9 the conclusions rather than making its own independent judgments.

10 **SECOND CLAIM FOR RELIEF**
11 **Violation of 25 U.S.C.A. § 2701, et seq. (IGRA)**

12 52. Plaintiff realleges each of the allegations set forth in Paragraphs 1-51 above, and by
13 this reference incorporates each such reference as if set forth in full herein.

14 53. Defendants are required by the Indian Gaming Regulatory Act, the Indian
15 Reorganization Act, their implementing regulations, and their fiduciary responsibilities to all Indian
16 tribes equally, to consider the impacts of their impacts on the well-being of Indian tribes and their
17 members. 25 U.S.C. §§ 2719 & 465; 25 C.F.R. Parts 151 & 292.

18 54. The EIS and the September 1, 2011 and November 21, 2012 Records of Decision
19 ("RODs") fail to adequately consider the environmental, social, and economic impacts of a large
20 casino in Yuba on the surrounding Indian tribes.

21 55. Pursuant to their congressionally mandated trust responsibilities, defendants were
22 required to analyze not just the positive economic impacts on Enterprise of allowing it to leapfrog
23 over other tribes to give it land for a casino close to Sacramento, but also the negative economic and
24 other impacts on the other tribes under their jurisdiction. Defendants, however, elevated the positive
25 benefits to one tribe, Enterprise, of intercepting the customers of other tribes, over the negative
26 impacts of losing those customers on those tribes.

27 56. Defendants' decisions will severely impact plaintiff's and its members' primary source
28 of income, and put in jeopardy the hard-fought economic, social, health, and other gains plaintiff has

1 made over the last decade for its members and the surrounding community.

2 57. As detailed above in Paragraph 19, Colusa will suffer massive declines in revenue
3 from its casino and corresponding cuts in governmental services due to defendants' decisions.

4 58. The EIS and RODs fail to consider skeptically whether Enterprise had demonstrated a
5 need for land in Yuba, rather than just a desire for it because of its commercially advantageous
6 location. Defendants did not examine critically Enterprise's claims that its current land base was
7 inadequate, but just accepted them on face value.

8 59. Defendants' decision to interpret the meaning of the term "nearby" in IGRA is
9 arbitrary and capricious because the impacts of a large casino in Yuba would ripple outward for
10 scores or hundreds of miles. It is unreasonable for an agency with fiduciary responsibilities to Indian
11 tribes to limit its consultation so severely, and thus violates IGRA and the APA.

12 WHEREFORE, Colusa prays as follows:

13 Pursuant to its First Claim for Relief:

14 1. That the Court declare that defendants, and each of them, have violated 42 U.S.C.A. §
15 4321 *et seq.*, and its implementing regulations at 40 C.F.R. Part 1500 and 43 C.F.R. Part 46, by
16 failing adequately to consider the environmental impacts of accepting the planned Casino Site into
17 trust for the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, including failing to consult
18 with and consider the potential impacts upon the Cachil Dehe Band of Wintun Indians of the Colusa
19 Rancheria of said acceptance;

20 2. That the Court vacate the November 30, 2012 Notice of Intent to accept the planned
21 Casino Site into federal trust for the Estom Yumeka Maidu Tribe of the Enterprise Rancheria;

22 3. That the Court vacate defendants' September 1, 2011 Record of Decision determining
23 that accepting the planned Casino Site into federal trust status for the Estom Yumeka Maidu Tribe of
24 the Enterprise Rancheria and authorizing gaming thereon would not be detrimental to the
25 surrounding community or other nearby Indian tribes;

26 4. That the Court temporarily restrain and preliminarily and permanently enjoin
27 defendants, and each of them, from accepting into federal trust status for the Estom Yumeka Maidu
28 Tribe of the Enterprise Rancheria the lands described in the November 30, 2012 Notice of Intent to

1 accept lands into trust.

2 Pursuant to its Second Claim for Relief:

3 1. That the Court declare that defendants, and each of them, have violated 25 U.S.C.A.
4 §2719(b)(1)(A), and 25 C.F.R. Parts 292 and 151, by failing to consult with and consider the
5 potential impacts of accepting the planned Casino Site into trust for the Estom Yumeka Maidu Tribe
6 of the Enterprise Rancheria upon the Cachil Dehe Band of Wintun Indians of the Colusa Rancheria;

7 2. That the Court vacate the November 30, 2012 Notice of Intent to accept the planned
8 Casino Site into federal trust for the Estom Yumeka Maidu Tribe of the Enterprise Rancheria;

9 3. That the Court vacate defendants' September 1, 2011 Record of Decision determining
10 that accepting the planned Casino Site into federal trust status for the Estom Yumeka Maidu Tribe of
11 the Enterprise Rancheria and authorizing gaming thereon would not be detrimental to the
12 surrounding community or other nearby Indian tribes;

13 4. That the Court temporarily restrain and preliminarily and permanently enjoin
14 defendants, and each of them, from accepting into federal trust status for the Estom Yumeka Maidu
15 Tribe of the Enterprise Rancheria the lands described in the November 30, 2012 Notice of Intent to
16 accept lands into trust.

17 Pursuant to all Claims for Relief:

18 1. For an award of reasonable attorneys' fees and costs of suit, to the extent that such
19 relief is available under applicable law;

20 2. For such other and further relief as the Court may deem appropriate.

21
22 Dated: December 14, 2012

FORMAN & ASSOCIATES

23
24 By: /s/ George Forman
George Forman
25 Attorneys for Plaintiff
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