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7 Attorneys for Plaintiff

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. 2:12-CV-03021-JAM-AC

**DECLARATION OF GEORGE
FORMAN RE: NOTICE OF MOTION
FOR TRO/OSC**

20 George Forman declares as follows:

21 1. I am a member in good standing of the Bars of the Supreme Court of California and this
22 Court, am the attorney of record for Plaintiff in this action, and make this declaration on the basis of
23 my personal knowledge.

24 2. It has been my past experience with at least two other clients that the Department of the
25 Interior/Bureau of Indian Affairs has had a long-standing formal policy and practice that if a decision
26 to accept land into trust is subjected to judicial challenge, the decision would not be implemented
27 until the conclusion of the litigation.

28

1 3. On December 13, 2012, Plaintiff sent a letter to defendant Assistant Secretary – Indian
2 Affairs Kevin Washburn informing Mr. Washburn about the harm that would befall Plaintiff from
3 acceptance of the Enterprise Rancheria's proposed Yuba County casino site into trust, and thus that
4 Plaintiff was left with no choice but to seek judicial review of the proposed action. Plaintiff
5 requested either that the decision to accept the land into trust for a casino be reconsidered, or that the
6 Department of the Interior commit to adhering to its former policy of deferring acceptance of the
7 land into trust pending the resolution of Colusa's impending lawsuit, provided that the suit is filed
8 within 30 days after the December 3, 2012 Federal Register notice of the intent to accept the land
9 into trust. A true copy of that letter is attached to my declaration as Exhibit 1.

10 4. Plaintiff's action was filed on December 14, 2012.

11 5. In a letter dated December 18, 2012, Michael Berrigan, Associate Solicitor – Indian
12 Affairs, advised Craig Alexander, Chief, Indian Resources Section, Environmental and Natural
13 Resources Division, U.S. Department of Justice, that,

14 The Interior Department has made the decision to self-stay in the face of legal
15 challenges to a number of prior decisions to take land into trust on a case-by-case basis.
16 However, the principal reason that Interior chose to self-stay in prior cases is no longer
17 extant. As you know, the United States' position had been that once the Secretary took land
18 into trust, the federal courts would lose jurisdiction to adjudicate any challenges to that
19 decision because of the retention of sovereign immunity in the Quiet Title Act ("QTA"), 28
U.S.C. § 2409a. Earlier this year, however, the Supreme Court, in *Patchak v. Salazar*, 132
S.Ct. 2199 (2012), held that a potentially similarly situated plaintiff could rely on the
sovereign immunity waiver in the Administrative Procedure Act (APA). As a result, the
district court in a challenge to the Assistant Secretary's decision to take land into trust likely
would not lose jurisdiction to adjudicate the APA claims once the land is acquired in trust.

20 Interior is willing to delay taking the land into trust for the Tribe for a temporary
21 period of time *in order to allow an orderly process for a district court to adjudicate a motion*
22 *for preliminary injunction. In that regard, we are willing to delay the transfer of the land*
23 *into trust for the Tribe until February 1, 2013, if a plaintiff in a challenge to the land-into-*
trust decision files a preliminary injunction motion on or before January 2, 2013, and the
United States has at least a week following January 2 to oppose the motion. This should give
the district court sufficient time to adjudicate requests for preliminary relief. [Italics added].

24 A true copy of this letter, as filed as Exhibit 6 to Plaintiff's Request for Judicial Notice Re: Motion
25 for Preliminary Injunction, ECF No.10-7, in this Court, is attached hereto as Exhibit 2.

26 6. On December 19, 2012, I inquired of the U.S. Attorney's office in Sacramento about who
27 in that office would be assigned to Plaintiff's lawsuit, so that I could discuss the need for provisional
28 relief and scheduling of any necessary motions. I was informed by Sylvia Quast that the action

1 would be handled out of Washington, D.C., and I reached Justice Department attorney Peter Dykema
2 that same day. Mr. Dykema confirmed that his client(s) would not voluntarily stay accepting the
3 land at issue into trust beyond February 1, 2013, but that if Plaintiff's motion for preliminary
4 injunction were filed by January 2, 2013, his client(s) would not oppose Plaintiff's request for an
5 Order Shortening Time allowing the motion to be heard on January 23, 2013.

6 7. On December 21, 2012, I filed Plaintiff's request for an Order Shortening Time to allow
7 Plaintiff's motion for preliminary injunction to be heard on January 23, 2013.

8 8. Plaintiff's motion for preliminary injunction was filed on December 28, 2012, noticed for
9 hearing on January 23, 2013. Copies of the moving papers were e-mailed directly to Mr. Dykema.

10 9. On January 3, 2013, the Court denied Plaintiff's request for an Order Shortening Time,
11 and on January 7, 2013 I filed an amended Notice of Hearing setting the hearing on Plaintiff's motion
12 for Preliminary Injunction for March 20, 2013, which Courtroom Clerk Vine informed me was the
13 first available law and motion date.

14 10. On Wednesday, January 9, 2013, at approximately 11:08 a.m. PST, I telephoned Peter
15 Dykema, but was routed to his voicemail. I left him a message to the effect that we would be filing
16 Plaintiff's motion for a temporary restraining order within the next few days, depending on when the
17 Eastern District receives two cases also challenging Federal Defendants' decision to accept land into
18 trust for the Enterprise Rancheria that originally were filed in the District Court for the District of
19 Columbia but are being transferred to the Eastern District of California in Sacramento. I followed my
20 call with an e-mail to the same effect, a true and correct copy of which is attached hereto as Exhibit
21 3.

22 I declare under penalty of perjury that the foregoing is true and correct of my own knowledge,
23 and that this declaration was executed at San Rafael, California on January 9, 2013.

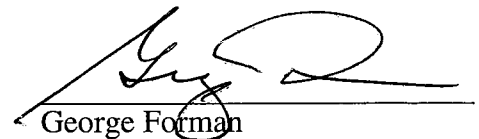
24
25 
26 George Forman

EXHIBIT 1



CACHIL DEHE BAND OF WINTUN INDIANS

December 13, 2012

Kevin Washburn
Assistant Secretary-Indian Affairs
MS-4141-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Re: Acceptance of off-Reservation land into trust for gaming for the Estom Yumeka Maidu Tribe of the Enterprise Rancheria

Dear Mr. Washburn:

On December 3, 2012, the BIA published a notice in the Federal Register that,

The Assistant Secretary -- Indian Affairs made a final agency determination to acquire approximately 40 acres of land in trust for gaming purposes for the Enterprise Rancheria of Maidu Indians of California on November 21, 2012.

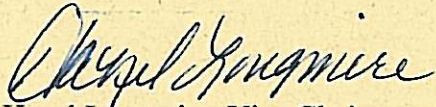
Because this decision was set in motion prior to your becoming Assistant Secretary -- Indian Affairs, you may not be aware that Colusa never was consulted in connection with the proposed acquisition, and that the Environmental Impact Study prepared in connection with the proposed acquisition, using hopelessly out-dated and/or totally unfounded information and assumptions, grossly and inaccurately, underestimated the severe negative impacts that the development of the casino proposed for the lands to be acquired would have not only on our own Tribe's modest gaming operation, but also on our tribal government's ability to provide needed services and programs to our Reservation community, as well as on surrounding non-tribal communities that now benefit from our Tribe's economic activity. Attached for your reference are copies of the September 7, 2010 letter submitted to Central California Agency Superintendent Dale Risling setting forth our comments and objections to the Draft EIS, and former Governor Schwarzenegger's January 30, 2009 letter opposing the acquisition based upon, among other reasons, the fact that a majority of Yuba County's voters had voted against allowing a casino to be developed on or near the proposed site.

Because our Tribe will suffer such severe economic devastation from the large-scale interdiction of both our gaming customers and employees, we are left with no choice but to seek judicial review of your decision. We understand that in the past, when litigation is filed to challenge a proposed trust acquisition, the BIA has agreed to postpone the acquisition pending the outcome of the litigation, but that the BIA is considering not doing so in connection with this acquisition. If, in fact, the BIA intends to deviate from its past practice, this would force our Tribe to incur the additional expense and effort of seeking an injunction against the acquisition pending the outcome of the litigation, thus adding to the injury that the acquisition will cause.

Therefore, on behalf of the Colusa Indian Community Council, I request two things of you at this time: 1) that you reconsider the intent to proceed with the above-described acquisition; and 2) if you intend to proceed with the acquisition, that you commit to staying the acquisition pending the conclusion of litigation challenging the decision set forth in the above-referenced December 3, 2012 Federal Register Notice, provided that such litigation is filed within 30 days after publication of that notice.

Because time is so short, the Colusa Indian Community Council would deeply appreciate your prompt response to this request.

Respectfully,

A handwritten signature in cursive script, appearing to read "Hazel Longmire".

Hazel Longmire, Vice Chairwoman
Colusa Indian Community Council

EXHIBIT 2



United States Department of the Interior

OFFICE OF THE SOLICITOR

1849 C STREET N.W., MS-6554

WASHINGTON, DC 20240

Craig Alexander
Chief, Indian Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
601 D Street, NW
Washington, DC 20004

DEC 18 2012

Re: Requested Stay of Transfers of Land into Trust for the Enterprise Rancheria of Maidu Indians

Dear Mr. Alexander,

This is in response to several requests the Department of the Interior has received to stay the transfer of land into trust for the Enterprise Rancheria of Maidu Indians. The Assistant Secretary – Indian Affairs published notice of his November 21, 2012 decision to acquire land in trust for gaming purposes for Enterprise Rancheria in the Federal Register on December 3, 2012.

The Interior Department has made the decision to self-stay in the face of legal challenges to a number of prior decisions to take land into trust on a case-by-case basis. However, the principal reason that Interior chose to self-stay in prior cases is no longer extant. As you know, the United States' position had been that once the Secretary took land into trust, the federal courts would lose jurisdiction to adjudicate any challenges to that decision because of the retention of sovereign immunity in the Quiet Title Act ("QTA"), 28 U.S.C. § 2409a. Earlier this year, however, the Supreme Court, in *Patchak v. Salazar*, 132 S.Ct. 2199 (2012), held that a potentially similarly situated plaintiff could rely on the sovereign immunity waiver in the Administrative Procedure Act (APA). As a result, the district court in a challenge to the Assistant Secretary's decision to take land into trust likely would not lose jurisdiction to adjudicate the APA claims once the land is acquired in trust.

Interior is willing to delay taking the land into trust for the Tribe for a temporary period of time in order to allow an orderly process for a district court to adjudicate a motion for preliminary injunction. In that regard, we are willing to delay the transfer of the land into trust for the Tribe until February 1, 2013, if a plaintiff in a challenge to the land-into-trust decision files a preliminary injunction motion on or before January 2, 2013, and the United States has at least a week following January 2 to oppose the motion. This should give the district court sufficient time to adjudicate requests for preliminary relief.

Please contact me if you have any further questions.

Sincerely yours,

Michael J. Berrigan
Associate Solicitor – Indian Affairs

EXHIBIT 3

Ann Allen

From: George [george@gformanlaw.com]
Sent: Wednesday, January 09, 2013 11:27 AM
To: peter.dykema@usdoj.gov
Cc: gina.allery@usdoj.gov
Subject: Cachil Dehe et al. v. Salazar, et al.

Peter/Gina:

When I phoned you earlier today (11:08 a.m., PST), I got your voicemail, and left you a message that Colusa's motion for TRO/OSC would be filed within the next few days, likely by the end of the week, to avoid duplication of effort if the cases being transferred to DC end up being assigned to Judge Mendez. We will be relying on the same MPA as submitted in support of our motion for preliminary injunction, and will e-mail our moving papers to you as soon as they've been filed with the Court.

George

George Forman
FORMAN & ASSOCIATES
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Please note our new suite number!

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