IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STAND UP FOR CALIFORNIA!, PATTY JOHNSON, JOE TEIXEIRA, and LYNN WHEAT,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF INTERIOR, RYAN ZINKE, in his official capacity as Secretary of the Interior, BUREAU OF INDIAN AFFAIRS, and MICHAEL BLACK, in his official capacity as Acting Assistant Secretary-Indian Affairs,

Defendants,

and

WILTON RANCHERIA, CALIFORNIA,

Intervenor-Defendant.

Civil Action No. 1:17-cv-00058-TNM

Oral Argument Requested

FEDERAL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGEMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT

Defendants United States Department of the Interior ("Interior" or "Department"); Ryan Zinke, in his official capacity as Secretary of the Interior ("Secretary"); the Bureau of Indian Affairs ("BIA"); and Michael Black, in his official capacity as Acting Assistant Secretary–Indian Affairs[1] (collectively, "Federal Defendants"), through undersigned counsel, hereby respond to Plaintiffs' Motion for Summary Judgment on Counts I and II of Plaintiffs' Amended Complaint (ECF No. 26) and cross-move for summary judgment on those counts (ECF No. 33).

[1] Pursuant to Federal Rule of Civil Procedure 25(d), John Tahsuda III should replace Michael Black as the officer delegated all nonexclusive functions, duties, and responsibilities of the Assistant Secretary—Indian Affairs.

DATED: November 6, 2017

Respectfully submitted,

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Oral Argument Requested

STATEMENT OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF FEDERAL DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

In 2013, the Wilton Rancheria, California ("Wilton Rancheria" or "Tribe") requested that the Department acquire land into trust for the Tribe. After more than four years of review, the Department approved the Wilton Rancheria's request. Counts I and II of Plaintiffs' Amended Complaint do not challenge the merits of that decision but raise a legal question as to the authority of the officers who made it. As this statement of points and authorities explains, however, both officers properly held redelegated authority from the Secretary to take the actions they took. Those redelegations were essential for the Department to function and consistent with the Department's governing regulations. Summary judgment therefore should be granted to Federal Defendants on Counts I and II, and Plaintiffs' motion should be denied.

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I. INTRODUCTION

Congress vests in the Secretary broad power to delegate or redelegate authority to subordinate officers. Pursuant to that power, the Secretary has delegated the Office of the Assistant Secretary—Indian Affairs's ("AS-IA") authority to administer the laws governing Indian affairs. So that the Department can continue to administer those laws, the Secretary redelegates the AS-IA's authority to others when the Office of the AS-IA is vacant. Here, an officer exercising the redelegated authority of the AS-IA reviewed and decided to approve the Wilton Rancheria's request to take land into trust for the Tribe. Plaintiffs' challenge that decision by disputing the extent of authority that the Secretary could properly have redelegated and intended to redelegate.

Plaintiffs' first and second arguments are based on the Federal Vacancies Reform Act of 1998 ("FVRA"), 5 U.S.C. § 3345 *et seq.*, and 25 C.F.R Part 151, respectively. The FVRA limits the length of time an "acting officer" may undertake the exclusive "functions and duties" of a vacant office that is subject to appointment by the President with the advice and consent of the Senate. 5 U.S.C. § 3345. Such exclusive functions in this context are those functions "established by regulation" and that are "required by such regulation to be performed by the applicable officer (and only that officer)." *Id*. § 3348(a)(2)(B)(i). Both of Plaintiffs' arguments turn on a single issue: whether the Secretary delegated exclusive authority to take land into trust for Indians to the AS-IA and only the AS-IA in Part 151, precluding redelegation of that authority under the FVRA. The answer to that pivotal question is that the Secretary did not, as is evident from the plain language of Part 151. To avoid that obvious conclusion, Plaintiffs offer ever-narrowing definitions of the authority in question by focusing on the finality and then the implementation of the decision. But Plaintiffs' flawed construction does not change the answer to the pivotal question: neither authority to make *final* fee-to-trust decisions nor authority to *implement* those decisions are

exclusive to the AS-IA under the plain language of Part 151, as interpreted by the Department. The Department's interpretation, which is reasonable and consistent with Part 151's language and history, is bolstered by the substantial deference the Court must give it. As a result, Plaintiffs' FVRA and Part 151 arguments fail.

Plaintiffs' third and fourth arguments also fail. Plaintiffs argue that the Appointments Clause of the U.S. Constitution bars delegation of authority to make fee-to-trust decisions to "inferior officers." But the Appointments Clause allows both "principal" and "inferior officers" to exercise significant authority. *Edmond v. United States*, 520 U.S. 651, 662-63 (1997) (citing *Freytag v. Comm'r of Internal Revenue*, 501 U.S. 868, 881-82 (1991)). Plaintiffs also argue that authority to assume jurisdiction over administrative appeals is exclusive to the AS-IA under 25 C.F.R. § 2.20(c). But that question is moot if the AS-IA's authority to make fee-to-trust decisions may be redelegated—a question properly before this Court. Regardless, Plaintiffs' construction must again give way to the Department's reasonable and consistent interpretation of § 2.20(c) that authority to assume jurisdiction is not exclusive to the AS-IA.

The Court should deny Plaintiffs' Motion for Summary Judgment and grant Federal Defendants' Cross-Motion for Summary Judgment on Counts I and II.

II. STATEMENT OF FACTS

In December 2013, the BIA, on behalf of the Secretary, began reviewing the Wilton Rancheria's request to acquire into trust approximately 282 acres of land near the City of Galt, Sacramento County, California for gaming and other purposes. 78 Fed. Reg. 72,928-01 (Dec. 4, 2013). On December 29, 2015, after two years of BIA review, a Draft Environmental Impact Statement ("EIS") identified alternative sites for the Tribe's proposed project. 80 Fed. Reg. 81,352 (Dec. 29, 2015).

The Tribe's application remained pending when Kevin Washburn resigned as the AS-IA, effective at midnight on December 31, 2015. ECF No. 33-1 at 33, Order Dismissing Administrative Appeal at 1 (July 13, 2017). Under the FVRA, Principal Deputy Assistant Secretary–Indian Affairs ("PDAS") Lawrence S. Roberts, as the designated "first assistant" to the AS-IA, automatically became Acting AS-IA and assumed authority to perform all of the AS-IA's "functions and duties," exclusive or nonexclusive, for 210 days. *County of Amador v. U.S. Dep't of Interior*, 872 F.3d 1012, 1019 n.5 (9th Cir. 2017) (citing *Schaghticoke Tribal Nation*, 587 F.3d at 135; *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 557 (9th Cir. 2016)). After Mr. Roberts's 210-day term as Acting AS-IA expired, the Secretary redelegated to Mr. Roberts all authority of the AS-IA not required by statute or regulation to be performed by the AS-IA (and only the AS-IA). *See* ECF No. 33-1 at 36-37, Order Dismissing Administrative Appeal at 4-5.

In the Final EIS published December 14, 2016, the BIA Regional Director selected a site in the City of Elk Grove, Sacramento County, California ("Elk Grove Site"), termed "Alternative F," after reviewing all alternatives in the Draft EIS, as well as the Tribe's announced preference. 81 Fed. Reg. 90,379 (Dec. 14, 2016). The Final EIS was available for public review and comment until January 17, 2017, 81 Fed. Reg. 91,169 (Dec. 16, 2016), after which a final decision on the Tribe's request could be made.

On January 11, 2017, Plaintiffs filed the present action, seeking a temporary restraining order ("TRO") from the Court. The Court denied the TRO, Minute Order (Jan. 17, 2017), and Plaintiffs opted not to pursue further preliminary relief from the Court. Plaintiffs instead asked the Department to stay its acquisition into trust of the Elk Grove Site pursuant to 5 U.S.C. § 705. ECF No. 33-1 at 33-34, Order Dismissing Administrative Appeal at 1-2. On January 17, while Plaintiffs' stay request remained pending before the Department, the parties agreed that "Plaintiffs

will review any final decisions and confer with Defendants at that time as to the necessity of and timing for seeking emergency and/or preliminary relief." ECF No. 6, at 2.

On January 19, exercising the AS-IA's nonexclusive, redelegated authority to review and decide requests to take land into trust for Indians, Mr. Roberts issued a final decision to acquire the Elk Grove Site into trust for the Wilton Rancheria. ECF No. 33-1 at 37-38, Order Dismissing Administrative Appeal at 5-6. Plaintiffs received notice of Mr. Roberts's decision that same day.[2] *See* ECF No. 33 at 12, Pls.' Mot. for Summ. J. at 5. After Mr. Roberts's decision, the Secretary redelegated the AS-IA's nonexclusive authority to Special Assistant to the Director of the BIA Michael Black. *Id.* at 39, Order at 7. On February 10, twenty-two days after Mr. Roberts's decision, Mr. Black denied Plaintiffs' stay request, and the BIA acquired title to the Elk Grove Site. *Id.* at 34, Order at 2.

On February 21, Plaintiffs sought review of Mr. Roberts's decision in the Interior Board of Indian Appeals ("IBIA"). *Id.* They argued, as they do here, that Mr. Roberts lacked authority to issue a final decision for the Department under the FVRA and 25 C.F.R. Part 151. This Court, by minute order dated March 6, held this case in abeyance pending the Department's resolution of the question whether an administrative appeal of the decision may properly be brought.

On March 7, in a separate exercise of the AS-IA's nonexclusive, redelegated authority, Mr. Black assumed jurisdiction over Plaintiffs' administrative appeal under 25 C.F.R. § 2.20. ECF No. 33-1 at 34-35, Order Dismissing Administrative Appeal at 2-3. Mr. Black interpreted the FVRA, Part 151, and Interior's Departmental Manual ("DM") to conclude that both he and Mr.

[2] On January 20, 2017, the first day of the Trump Administration, Interior's Office of Executive Secretariat and Regulatory Affairs issued a memorandum requiring that all Federal Register notices be put on hold until reviewed by that office. *See* Decl. of Cody McBride, Ex. 1, Mem. from Dir., Office of Exec. Secretariat and Regulatory Affairs, to Chiefs of Staff, Bureaus and Offices (Jan. 20, 2017).

Roberts had been properly redelegated all the AS-IA's nonexclusive authority, including authority to review and decide requests to take land into trust for Indians and to assume jurisdiction over administrative appeals to the IBIA. *Id.* at 35, 40, Order at 3, 8. Mr. Black dismissed Plaintiffs' appeal on July 13. *Id.* at 40, Order at 8.

Plaintiffs subsequently filed their Amended Complaint and moved for summary judgment on Counts I and II. In Count I, Plaintiffs allege that, under the FVRA and Part 151, Mr. Roberts lacked authority to make the January 19, 2017 decision. In Count II, Plaintiffs allege that, under the FVRA and Part 151, Mr. Black lacked authority to acquire title to the land on February 10, 2017 and to assume jurisdiction over Plaintiffs' administrative appeal on March 7, 2017. Because the Secretary properly redelegated to Mr. Roberts and Mr. Black all the AS-IA's nonexclusive authority, including authority to review and decide requests to take land into trust for Indians and to assume jurisdiction over administrative appeals, Federal Defendants respond to Plaintiffs' Motion for Summary Judgment by cross-moving for summary judgment on Counts I and II.[3]

III. LEGAL STANDARD

Summary judgment should be granted only if the moving party has shown that there is no genuine dispute of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Johnson v. Perez*, 823 F.3d 701, 705 (D.C. Cir. 2016). The Court should view the evidence in favor of the

[3] The Court granted Federal Defendants' motion for leave to file cross-motions for summary judgment and for relief from the requirement to produce an administrative record on Counts I and II "because the parties are in agreement that the administrative record is unnecessary for resolving" the first two counts, covering January 20 to July 13, 2017. Minute Order (Oct. 17, 2017). The remaining counts of Plaintiffs' Amended Complaint challenge the merits of Mr. Roberts's January 19, 2017 decision. On October 17, 2017, Federal Defendants served the Administrative Record for the January 19, 2017 decision. ECF No. 37.

nonmoving party and draw all reasonable inferences in favor of the moving party when making credibility determinations or weighing evidence. *Id.*

IV. ARGUMENT

Plaintiffs allege in Counts I and II that Mr. Roberts and Mr. Black lacked authority to acquire land into trust for the Wilton Rancheria under 25 C.F.R. Part 151 and that Mr. Black lacked authority to assume jurisdiction over Plaintiffs' administrative appeal under 25 C.F.R. § 2.20. Those regulations provide no support for Plaintiffs' theory that such authority is exclusive to the AS-IA and thus not delegable under the FVRA. Mr. Roberts and then Mr. Black held all nonexclusive authority of the AS-IA, including the authority to review and decide requests to take land into trust for Indians (Part IV.A) and to assume jurisdiction over administrative appeals, although that question is moot (Part IV.B). Moreover, in addition to the substantial deference owed to the Department's reasonable and consistent interpretation of its regulations (Part IV.C), courts give broad latitude to agency delegations through the doctrine of ratification (Part IV.D). That doctrine recognizes that in order to function effectively, the Department must be able to delegate freely.

A. The Secretary Redelegated the AS-IA's Authority to Review and Decide the Wilton Rancheria's Request to Take Land into Trust.

Plaintiffs argue that Mr. Roberts, who signed the January 19, 2017 decision to acquire land into trust for the Wilton Rancheria, and Mr. Black, who directed the BIA to acquire title to the land on February 10, 2017, lacked authority to do so under the FVRA, 25 C.F.R. Part 151, and the Appointments Clause. Plaintiffs are wrong on all counts. Pursuant to proper redelegations, Mr. Roberts possessed the AS-IA's authority to acquire land into trust for Indians on January 19, 2017, and Mr. Black possessed that authority on February 10, 2017. That power, among others held by the AS-IA, is nonexclusive and delegable.

1. The Secretary properly redelegated all the AS-IA's nonexclusive authority.

Federal agencies must have the flexibility to delegate and redelegate authority within the agency. As courts routinely recognize, "[t]he complexities and magnitude of governmental activity have become so great that there must of necessity be a delegation and redelegation of authority as to many functions." *Barr v. Mateo*, 360 U.S. 564, 573 (1959); *see also Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 122 (1947) (holding that "the magnitude of the task" assigned to an agency head should make a court "hesitate to conclude that all the various functions granted the [agency head] need be performed personally by him or under his personal direction"); *Rodriguez v. Compass Shipping* Co., 617 F.2d 955, 958 (2d Cir. 1980) ("Without the power to delegate the director . . . of large divisions of a government department would be hampered in the performance of his multifarious duties."), *aff'd*, 451 U.S. 596 (1981); *United States v. Mango*, 199 F.3d 85, 91 (2d Cir. 1999) ("[T]he magnitude of the task of issuing [permits under the clean water act] suggests that Congress intended to allow subordinate [Army Corps of Engineers] officials to issue permits and specify permit conditions.").

Plaintiffs nonetheless argue that the FVRA precludes the Secretary's redelegations to Mr. Roberts and Mr. Black. In the FVRA, Congress addressed one of the inevitable problems that arise when accommodating the dictates of the Appointments Clause and "the realities of practical governance": "vacancies can occur unexpectedly . . . and the confirmation process takes time." *SW Gen., Inc. v. Nat'l Labor Relations Bd.*, 796 F.3d 67, 69 (D.C. Cir. 2015). "Since the beginning of the nation," Congress has engaged in this balancing act by passing vacancy statutes "[t]o keep the federal bureaucracy humming." *Id.*; *see also* S. Rep. No. 105-250, at 4 (1998). The most recent iteration provides the primary mechanism by which the "functions and duties" of an officer who, like the AS-IA, is presidentially appointed and Senate-confirmed ("PAS officers") may be

temporarily performed by another officer. 5 U.S.C. § 3347(a). The Secretary followed that mechanism when the Office of the AS-IA became vacant.

Generally, when a PAS officer "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 designates another person who is eligible to do so under the FVRA. *Id.* § 3345(a)(1). The FVRA authorizes an acting officer to perform the "functions and duties" of the vacant office for up to 210 days. *Id.* § 3346, 3348(a). After 210 days, only the head of the agency may perform the "functions and duties" of the vacant office until the President appoints and the Senate confirms a new person to the PAS office. *Id.* § 3348(b).

Congress recognized, however, that requiring an agency head to exercise all the responsibilities of a vacant PAS office would prove unworkable. Accordingly, the FVRA defines the "functions and duties" that cannot be redelegated as only those required by statute or regulation "to be performed by the applicable officer (and only that officer)." 5 U.S.C. § 3348(a)(2)(A)(ii); *see also* S. Rep. 105-250, at 30-31 (1998) (Additional Views) ("We must be sure that [the FVRA] does not cause an unintended shutdown of the Federal agency within which the vacancy exists due to administrative paralysis . . . ."); 144 Cong. Rec. 26414 (1998) (Sen. Thompson introducing the bill) (noting "it is important to establish a process that permits the routine operation of the government to continue"). In other words, the FVRA permits the agency head to reassign nonexclusive authority to other officials within the agency, as allowed by Congress under normal circumstances. *See Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389, 420 (D. Conn. 2008) (noting that Congress defined "functions and duties" narrowly "[t]o ease the burden on the agency head" and, thus, authority not exclusive to the PAS office "may be reassigned to

another official within the agency or department"), *aff'd*, 587 F.3d 132 (2d Cir. 2009) (per curiam); S. Rep. 105-250, at 18 (1998) ("Delegable functions of the office could still be performed by other officers or employees . . . .").

In recognition of the practical demands on federal agencies, particularly during periods of transition, Congress has granted the Secretary broad authority to delegate. Through Reorganization Plan No. 3 of 1950, Congress transferred all functions of the Interior Department to the Secretary of the Interior and provided that the Secretary "may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of the Interior of any function of the Secretary." Reorganization Plan No. 3 of 1950, secs. 1(a), 2, 64 Stat. 1262, 1262 (1949). Several years earlier, Congress had authorized the Secretary to delegate the power and duties under the laws governing Indian affairs to the Commissioner of Indian Affairs (now known as the AS-IA). 25 U.S.C. § 1a. The Secretary communicates and documents delegations and redelegations in the "delegation series" of Interior's DM and through Secretarial Orders.[4]

As authorized by Congress, the Secretary redelegated the authority not assigned by statute or regulation exclusively to the Office of the AS-IA to Mr. Roberts and then Mr. Black. After Mr. Roberts's 210 days as Acting AS-IA, he resumed his position as PDAS and, pursuant to Interior's 209 DM 8, continued to exercise all of the AS-IA's *nonexclusive* authority while the Office of the AS-IA remained vacant. Specifically, 209 DM 8.4.B provides that, "[i]n the absence of, and under

[4] *See* ECF No. 33-1 at 51, 011 DM 1.2 ("The DM . . . documents delegations of the Secretary's authority . . . ."); *id.* at 68, 200 DM 1.3 ("The appropriate medium for issuing delegations is in the Delegation Series of the Departmental Manual . . . . A temporary delegation, however, may be issued as a Secretary's Order . . . ."); *id.*, 200 DM 1.4 ("The Delegation (200) Series of the Departmental Manual contains and documents delegations of authority made by the Secretary, and Assistant Secretaries."). All DM provisions cited herein are attached to ECF No. 33-1, and the DM is available online at http://elips.doi.gov/elips/browse.aspx.

conditions specified by the [AS-IA], the [PDAS] may exercise the authority delegated in 209 DM 8.1." ECF No. 33-1 at 71-72. Subject to limitations in 200 DM 1 that track Congress' definition of "functions and duties" in the FVRA, 209 DM 8.1 delegates to the AS-IA "all of the authority of the Secretary," *id.* at 71, which includes the authority to take land into trust for Indians, 25 U.S.C. § 5108.

On January 19, 2017, before Mr. Roberts's decision, the Deputy Secretary confirmed the Department's redelegation to Mr. Roberts, as expressed through the DM.[5] *See* ECF No. 33-1 at 79-80, Mem. from Deputy Sec'y of the Interior Michael L. Connor to Principal Deputy Assistant Sec'y Lawrence S. Roberts (Jan. 19, 2017) (confirming that Mr. Roberts held "authority to exercise the functions and duties of the AS-IA that are not required by law or regulation to be performed by the AS-IA, including the authority to issue final agency decisions"). Secretary Sally Jewell then redelegated the AS-IA's nonexclusive authority to Mr. Black in Secretarial Order No. 3345, effective at noon on January 20, 2017.[6] Also on January 20, Acting Secretary Kevin Haugrud extended Mr. Black's redelegation,[7] under which Mr. Black held the AS-IA's nonexclusive authority when the BIA acquired land into trust for the Tribe on February 10, 2017.[8]

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[5] With certain exceptions not relevant here, the Deputy Secretary "has the full authority of the Secretary" under 209 DM 1.2.B. ECF No. 33-1 at 37, Order Dismissing Administrative Appeal at 5.

[6] ECF No. 33-1 at 44-45, Sec'y of the Interior, Order No. 3345, Temporary Redelegation of Authority for Certain Vacant Non-Career Senate-confirmed Positions (Jan. 19, 2017) (redelegating the AS-IA's nonexclusive authority to Michael Black effective January 20, 2017 at 12:00 p.m. Eastern Standard Time).

[7] ECF No. 33-1 at 46-47, Acting Sec'y of the Interior, Order No. 3345, Amendment No. 1, Temporary Redelegation of Authority for Certain Vacant Non-Career Senate-confirmed Positions (Jan. 20, 2017) (extending redelegation of the AS-IA's nonexclusive authority to Michael Black).

[8] *See* ECF No. 33-1 at 48-49, Sec'y of the Interior, Order No. 3345, Amendment No. 5, Temporary Redelegation of Authority for Certain Vacant Non-Career Senate-confirmed Positions (May 19, 2017) (extending redelegation again).

Plaintiffs attempt to manufacture two purported irregularities regarding the redelegations at issue. Plaintiffs point out that 209 DM 8.3 (ECF No. 33-1 at 71) requires a redelegation to be published in the delegation series of the DM. ECF No. 33 at 23-24 n.7, Pls.' Mot. for Summ. J. at 16-17 n.7. That requirement applies only to "redelegations of authority made by the [AS-IA]," however. It does not apply to redelegation of authority by the Secretary to take effect "[i]n the absence of" the AS-IA, as provided for in 209 DM 8.4.B. Plaintiffs further argue that the redelegations here are limited by 302 DM 2.5 (ECF No. 33-1 at 76) to instances "where immediate action is required." ECF No. 33, at 24 n.9, Pls.' Mot. for Summ. J. at 17 n.7. But that DM provision, titled "Designation of Successors for Presidentially-Appointed, Senate-Confirmed Positions," applies only to an officer who is acting as an "automatic successor" to perform the *exclusive* "functions and duties" of a PAS office while the PAS officer is "otherwise unable to perform them," as FVRA allows. 5 U.S.C. § 3345(a)(1). It does not apply to officers who have been redelegated a vacant office's nonexclusive authority.

But even if there were some ambiguity in the DM provisions, this Court has recognized the need for flexibility in agency delegations: such delegations need *not* be "clear and explicit . . . in all instances, as such a standard could hamper the functionality of federal agencies as they carry out their duties." *League of Women Voters of U.S. v. Newby*, 238 F. Supp. 3d 6, 12 n.3 (D.D.C. 2017). Therefore, to the extent Plaintiffs challenge the general effectiveness of the redelegations here, they are wrong. In any event, the Deputy Secretary's January 19, 2017 memorandum affirming the redelegation to Mr. Roberts (before his decision to take land into trust for the Tribe) and General Order No. 3345's redelegation to Mr. Black are inarguably clear and explicit.

2. Authority to review and decide requests to take land into trust for Indians is not exclusive to the AS-IA.

Faced with the Secretary's proper redelegations of all the AS-IA's nonexclusive authority, Plaintiffs are left to argue that the authority to review and decide requests to take land into trust is exclusive to the AS-IA and thus not delegable. In so arguing, Plaintiffs make false assumptions regarding how to interpret a regulation (IV.A.2.a) in order to offer a flawed construction of 25 C.F.R. Part 151 that is contrary to its plain text (IV.A.2.b). Plaintiffs' construction fails because Part 151 neither assigns authority to review and decide requests to take land into trust for Indians exclusively to the AS-IA nor excludes delegation or redelegation of that authority to others. To the contrary, the plain language of Part 151 explicitly assigns that authority to multiple officers.

To begin, an overarching problem with Plaintiffs' construction is that it ignores the presumption of validity accorded to an agency's internal delegations. As the D.C. Circuit and other courts have held regarding statutory challenges to internal delegations, delegations are valid "absent affirmative evidence of a contrary congressional intent." *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565 (D.C. Cir. 2004); *see also, e.g.*, *Fleming*, 331 U.S. at 121-22; *Loma Linda Univ. v. Schweiker*, 705 F.2d 1123, 1128 (9th Cir. 1983) (holding "[e]xpress statutory authority for delegation is not required, and Congress did not specifically prohibit delegation under this statute."). Applying the presumption of validity to the instant case requires Plaintiffs to provide affirmative evidence that the Secretary intended to prohibit redelegations of the AS-IA's authority to review and decide requests to take land into trust for Indians. Plaintiffs have not provided and cannot provide such evidence.

a. *Plaintiffs' construction of Part 151 depends on false assumptions regarding how regulations should be interpreted.*

Instead of affirmative evidence of a contrary intent, Plaintiffs offer a flawed construction of 25 C.F.R. § 151.12 that rests on at least two false assumptions regarding how the regulation

should be interpreted. First, Plaintiffs incorrectly assume that other evidence of the Secretary's intent cannot inform the Court's interpretation of the regulation. Plaintiffs point to no decision adopting the restrictive standard that a regulation that does not address delegations or redelegations, like § 151.12, is the final word on whether the Secretary intended to allow them. Plaintiffs treat the regulation as a statute, interpreting it as flatly prohibiting redelegation of trust acquisition authority. Section 151.12, however, is a regulation that Interior promulgated and has applied. As such, it must be interpreted in harmony with other evidence of the Secretary's intent, including the rest of Part 151 and documents like the DM that communicate the Secretary's delegations. In addition, where other evidence of the Secretary's intent amounts to the Department's interpretation of its regulation, as several pieces of evidence do here, the Court must give that interpretation "substantial deference," as explained in IV.C. *Auer v. Robbins*, 519 U.S. 452, 461 (1997).

Even without other evidence of the Secretary's intent to allow redelegation, Plaintiffs cannot overcome their second incorrect assumption: that a regulation naming certain officers as possessing particular authority is affirmative evidence of intent to preclude delegation or redelegation of that authority to all others. That assumption is wrong even in the statutory context, as the Second Circuit explains well: "Congress may mention a specific official only to make it clear that this official has a particular power rather than to exclude delegation to other officials." *Mango*, 199 F.3d at 90. The Supreme Court and D.C. Circuit have recognized the same. *See, e.g.*, *United States v. Giordano*, 416 U.S. 505, 512-14 (1974) (stating it is "unexceptional" to conclude that "vesting a duty in the Attorney General . . . evinces no intention whatsoever to preclude delegation to other officers in the Department of Justice"); *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 132 F.3d 775, 782 (D.C. Cir. 1998) ("Sometimes

Congress drafts statutory provisions that appear preclusive of other unmentioned possibilities—just as it sometimes drafts provisions that appear duplicative of others—simply, in Macbeth's words, 'to make assurance double sure.' That is, Congress means to clarify what might be doubtful—that the mentioned item is covered—without meaning to exclude the unmentioned ones.").

In *Mango*, for example, the Second Circuit found that Congress did not intend to exclude further delegation in a statute because, as with Part 151, it did "not address delegation directly" but merely stated the office that "may issue permits." 199 F.3d at 90. The Department reasonably and consistently adheres to that principle. *See Forest Cty. Potawatomi Cmty. v. Deputy Assistant Sec'y–Indian Affairs*, 48 IBIA 259, 270 (2009) ("A specific delegation of authority is not the same as a delegation of *exclusive* authority."). For example, the Department's Office of the Solicitor reviewed all statutes and regulations for terms such as "only," "exclusively," or "solely" to indicate an intent that authority be assigned exclusively for FVRA purposes. Decl. of Cody McBride, Ex. 2, Mem. from Solicitor to Sec'y of the Interior (Jan. 28, 2005); *see, e.g.*, 25 U.S.C. § 2103(d) ("The authority to disapprove [minerals] agreements under this section may only be delegated to the [AS-IA]."); *id.* § 5117(b)(2) (providing that the Secretary "may not delegate" authority to demote certain individuals in the BIA "to any individual other than a Deputy Secretary or Assistant Secretary"); *see also* ECF No. 33-1 at 38 n.37, Order Dismissing Administrative Appeal at 6 n.37 (noting that the Solicitor identified only three statutes assigning exclusive authority to the AS-IA). Authority to take land into trust was not among those identified as assigning exclusive authority to the AS-IA.

That is not surprising. Unlike the statute in *Mango* and the statutes identified by the Solicitor, Part 151 neither addresses delegation or redelegation directly nor uses terms indicating

an intent to preclude them. Plaintiffs ask the Court to import into Part 151 the words "only," "exclusively," or "solely" to create a prohibition that is not there and that is contrary to the Department's interpretation and redelegations. Courts lack authority to add such restrictive terms where drafters chose not to. *Overseas Educ. Ass'n, Inc. v. Federal Labor Relations Auth.*, 876 F.2d 960, 975 (D.C. Cir. 1989) (Buckley, J., concurring).

b. *Part 151's plain language shows that the AS-IA's authority to review and decide requests to take land into trust for Indians is both nonexclusive and redelegable.*

In addition to and because of the false assumptions just described, Plaintiffs' construction is contrary to the plain language of Part 151. Congress vested authority to review and decide requests to take land into trust for Indians in the Secretary, 25 U.S.C. § 5108, who has not delegated that authority exclusively to the AS-IA—in Part 151 or any other statute or regulation. That is evident from the plain text of 25 C.F.R. § 151.12 itself, which states that fee-to-trust decisions can be made by the Secretary, the AS-IA, *or* BIA officials. 25 C.F.R. § 151.12(c)-(d). Plaintiffs admit as much. *See, e.g.*, Dkt. 33 at 10 ("Section 151.12 . . . authorizes only the Secretary, the Assistant Secretary, and BIA officials . . . to decide trust requests.").

Disregarding the text of Part 151, Plaintiffs attempt to salvage their construction by offering ever-narrowing definitions of the authority in question. Plaintiffs first define the authority in question as the power to make *final* fee-to-trust decisions, which they incorrectly claim is exclusive to PAS officers (the Secretary and the AS-IA) under Part 151 and thus not delegable under the FVRA. Once again Plaintiffs misunderstand how the FVRA works and misread Part 151.

The FVRA, in defining the "functions and duties" of a vacant office, does not look to PAS officers generally but to the vacant office specifically. 5 U.S.C. § 3348(a)(2) (defining "function or duty" as "any function or duty of the applicable office" that is required by statute or regulation

"to be performed by the applicable officer (and only that officer)"). For FVRA purposes, then, the only relevant question is whether Part 151 assigns the authority to review and decide requests to take land into trust for Indians to the AS-IA and to the AS-IA alone. As already demonstrated, it does not. And whether that decision is final is beside the point. Finality simply goes to whether a decision, once made, is appealable to the IBIA—not who can render such decisions in the first place. Because finality is irrelevant to the question at hand, so are Plaintiffs' remaining arguments. But even if finality were relevant and Congress had chosen to define "functions and duties" as those exclusive to PAS officers, Part 151 authorizes non-PAS BIA officials to make fee-to-trust decisions that become final after "the time for filing a notice of appeal has expired and no administrative appeal has been taken" or after the IBIA affirms the BIA official's decision. *See* 25 C.F.R. § 151.12(d) (fee-to-trust decisions made by BIA officials can be administratively appealed to IBIA); 43 C.F.R. § 4.312 (IBIA decisions are final for the Department).

Plaintiffs' construction also requires the Court to ignore affirmative evidence that the Secretary intended the authority to be redelegable: Part 151 defines "Secretary" as "the Secretary of the Interior *or* authorized representative." 25 C.F.R. § 151.2(a) (emphasis added). Plaintiffs mistakenly contend that Part 151's definition of "Secretary" should be ignored because it makes § 151.12(c)'s "Secretary, or the [AS-IA] pursuant to delegated authority" superfluous. But it does not. When properly read together as "Secretary [or authorized representative], or the [AS-IA] pursuant to delegated authority," the two portions of Part 151 work in conjunction to clarify that final fee-to-trust decisions may be made by the Secretary; by the AS-IA who has been delegated that authority; or by other authorized representatives who may be delegated or redelegated that authority, which is exactly what the Secretary did here. *See Schaghticoke Tribal Nation*, 587 F.3d at 135 (concluding that the Secretary may authorize a non-PAS officer to make acknowledgment

decisions while the Office of the AS-IA was vacant because the controlling regulation allowed such decisions to be made by the AS-IA "or that officer's authorized representative"); *Forest Cty. Potawatomi Cmty.*, 48 IBIA at 270 (holding that decisions by officers acting pursuant to redelegated authority of the AS-IA become final and effective immediately because AS-IA's decisions do so).

In fact, Plaintiffs have it backwards: their interpretation that the AS-IA is the *only* possible "authorized representative" renders Part 151's definition of "Secretary" superfluous. Plaintiffs cannot explain why the definition includes "or authorized representative" if § 151.12(c) named the only possible authorized representative who can make final fee-to-trust decisions. They also fail to explain why, if Interior had intended to change the definition of "Secretary" by adopting the current version of § 151.12(c), as they suggest, Interior opted not to revise the definition itself as well. The answer is that Interior did not revise the definition because the Secretary never intended to prevent redelegations. Instead, the Secretary intended to clarify when a fee-to-trust decision is final under existing delegations.

Plaintiffs raise two additional arguments related to Part 151's definition of "Secretary." First, Plaintiffs argue that, in keeping the definition, the Department clarified that a decision by an officer "below" the AS-IA is not final. ECF No. 33 at 19 n.4, Pls.' Mot. for Summ. J. at 12 n.4 (citing 60 Fed. Reg. 32,874, 32,878 (June 23, 1995)). In the 1995 rulemaking to which Plaintiffs refer, the Department responded to comments regarding who should make final decisions during revisions to 25 C.F.R. § 151.11, which like § 151.12 does not directly address delegation or redelegation. The Department explained that the AS-IA's authority to review and decide requests to take land into trust for Indians was final and that all references to the AS-IA were changed to the Secretary (defined to include authorized representatives) to "ensure that all actions will be

taken by an authorized official." 60 Fed. Reg. at 32,878. In context, then, the notice merely confirms what Part 151 already shows: that authority to review and decide requests to take land into trust for Indians is not exclusive to the AS-IA and may be redelegated to other authorized representatives of the Secretary.

Second, Plaintiffs argue that the redelegation to Mr. Roberts came from the AS-IA contrary to § 151.12(c), which states that the AS-IA's decisions are made "pursuant to delegated authority." ECF No. 33 at 20 n.5, Pls.' Mot. for Summ. J. at 13 n.5. But Plaintiffs get the facts wrong again. It was the Secretary, not the AS-IA, who redelegated the AS-IA's authority to Mr. Roberts and Mr. Black. The Office of the AS-IA was vacant at the time of the redelegations. In any event, where the Secretary intends to disallow redelegations, he does so explicitly, as courts require. *See* 43 C.F.R. § 3191.2(b) (providing that "[a]uthority delegated to a State under this subpart shall not be redelegated"); *id.* § 20.202(b)(1) (providing that authority of an ethics officer to impose disciplinary or remedial action "may not be redelegated"); *see also Overseas Educ. Ass'n, Inc.*, 876 F.2d at 975 (Buckley, J., concurring). Use of the phrase "pursuant to delegated authority," on the other hand, only corroborates that the AS-IA's authority to take land into trust is delegated; it says nothing about whether AS-IA's authority to do so can be redelegated.

Plaintiffs' next move is to define the challenged authority even more narrowly, this time as the authority to *implement* a final decision to review and decide requests to take land into trust for Indians. Plaintiffs claim that authority to implement a final decision is exclusive to the AS-IA because § 151.12(c)(2) names only the AS-IA when explaining how a final fee-to-trust decision made by the Secretary, the AS-IA, or another authorized representative must be implemented. Once again, commenting on the AS-IA's authority does not necessarily exclude other delegations or redelegations of that authority. *See supra* at Part IV.A.3.a. Aside from that principle, Part 151

plainly provides BIA officials authority to implement final fee-to-trust decisions. *See* 25 C.F.R. § 151.12(d) (directing BIA officials to implement their own decisions to take land into trust when they become final). As a practical matter, Plaintiffs' construction makes no sense as it would prevent the Secretary from implementing his own decisions. That clearly was not the Department's intent, as it contradicts § 151.12's direction that land "shall" be taken into trust "[i]mmediately . . . on or after the date such decision is issued"—a ministerial function that must be performed. 25 C.F.R. § 151.12(c)(iii). Therefore, authority to implement is redelegable.

Lastly, the purpose behind Part 151 must be added to the other evidence that the AS-IA's authority is redelegable. As identified by the Department, the purpose of recent revisions of 25 C.F.R. § 151.12 was simply to "[p]rovide clarification and transparency to the process for issuing decisions by the Department" by "[e]nsur[ing] notice of a BIA official decision to acquire land into trust, and the right, if any, to file an administrative appeal of such decision." 78 Fed. Reg. 67,928 (Nov. 13, 2013). Nothing in the identified purpose or explanation of the final rule signals that the Secretary intended to thwart his own ability to delegate or redelegate final decisionmaking authority elsewhere when necessary.

Plaintiffs contend that further delegations or redelegations counteract the clarity and transparency the Department intended to provide because § 151.12 neither names all officers who may be delegated or redelegated authority nor explains the procedures that unnamed officers would follow. Naming the multitude of officers to whom the Secretary may delegate or redelegate authority in one regulation would both undermine the Secretary's broad authority to delegate and be impractical. It is also unnecessary: when a redelegation of the AS-IA's nonexclusive authority occurs, it is clearly and transparently explained by the DM or relevant Secretarial Orders, as in the redelegations here. And an officer exercising the Office of the AS-IA's nonexclusive authority

pursuant to such a redelegation is simply placed in the shoes of the AS-IA, so that the procedures to be followed remain the same. Clarity and transparency is not lost under the Department's interpretation.

3. Delegation of significant authority to inferior officers does not raise constitutional questions under the Appointments Clause.

Plaintiffs' last argument is that the redelegations of authority to review and decide requests to take land into trust for Indians "raises constitutional questions" because such authority is a "significant exercise of federal power" that may not "be vested in an inferior officer" under the Appointments Clause. ECF No. 33 at 21-23, Pls.' Mot. for Summ. J. at 14-16. Contrary to Plaintiffs' argument, there is no question that the redelegations here pass constitutional muster.

The Appointments Clause requires certain "Officers of the United States" to be nominated by the President "by and with the Advice and Consent of the Senate." U.S. Const. art. II, § 2, cl. 2. Officers who must receive Senate confirmation under the Appointments Clause are "principal officers." *Edmond*, 520 U.S. at 659-60. Although that is the "default manner of appointment for inferior officers" as well, Congress may choose to vest appointment of "inferior officers" "in the President alone, in the Courts of Law, or in the Heads of Departments." U.S. Const. art. II, § 2, cl. 2; *see Edmond*, 520 U.S. at 660. There are no constitutional requirements for appointments of nonofficers. *Ass'n of Am. Railroads v. U.S. Dep't of Transp.*, 821 F.3d 19, 38-39 (D.C. Cir. 2016) (citing *Edmond*, 520 U.S. at 662).

Plaintiffs' argument fails because both principal and inferior officers may exercise significant authority on behalf of the United States.[9] *Edmond*, 520 U.S. at 662-63 (citing *Freytag*,

[9] The constitutional distinction between principal and inferior officers is separate and apart from the practical distinction between PAS and non-PAS officers. The Appointments Clause requires principal officers to be PAS, but Congress may make an inferior officer non-PAS.

501 U.S. at 881-82). An officer is "inferior" if "directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate." *Edmond*, 520 U.S. at 662-63. Accordingly, the AS-IA, the PDAS, and the Special Assistant to the Director of the BIA—all of whom are directed and supervised at some level by the Secretary—are inferior officers who may exercise significant authority. Plaintiffs' argument that inferior officers may not exercise significant authority "confuses a question of supervision for one of authority": "the degree of an individual's authority is relevant in marking the line between officer and nonofficer, not between principal and inferior officer." *Ass'n of Am. Railroads*, 821 F.3d at 37-39 (citing *Edmond*, 520 U.S. at 662).

B. The Secretary Redelegated the AS-IA's Authority to Assume Jurisdiction Over Administrative Appeals.

Plaintiffs devote a single sentence to argue that Mr. Black lacked authority to assume jurisdiction of their administrative appeal to the IBIA. ECF No. 33 at 26, Pls.' Mot. for Summ. J. at 19. The basis of Plaintiffs' administrative appeal was that Mr. Roberts did not have authority to issue a final fee-to-trust decision for the Department under 25 C.F.R. Part 151. Because, as explained above, Mr. Roberts held the AS-IA's nonexclusive authority to review and decide requests to take land into trust for Indians, and because that is a question that all parties agree is now properly before this Court, whether Mr. Black lacked authority to assume jurisdiction of Plaintiffs' administrative appeal is moot. *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) ("Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969))).

Even if not moot, Mr. Black held redelegated authority to assume jurisdiction over Plaintiffs' administrative appeal. That authority, like authority to review and decide requests to

take land into trust for Indians, is not exclusive to the AS-IA and thus is redelegable under the FVRA. *See* 43 C.F.R. § 4.5(a)(1) (reserving Secretary's "authority to take jurisdiction at any stage of any case before any employee or employees of the Department . . . and render the final decision in the matter after holding such hearing as may be required by law"); *see also* 25 C.F.R. § 2.4 (listing officials who "may" decide appeals); 25 C.F.R. § 2.20(c) (giving the AS-IA discretion to decide appeals and permitting subordinate officials to issue the decision). The Solicitor accordingly did not consider it exclusive to the AS-IA. Decl. of Cody McBride, Ex. 2, Mem. from Solicitor to Sec'y.

To argue that authority to assume jurisdiction over administrative appeals is exclusive to the AS-IA, Plaintiffs cite the preamble to the Final Rule that promulgated 43 C.F.R. § 4.332(b). But the preamble's use of "exclusive authority" is in reference to the AS-IA's sole discretion to assume jurisdiction, which clarified that the parties were not being given a choice of forum. 54 Fed. Reg. 6478, 6479 (Feb. 19, 1989). Regardless, the preamble could not have repealed the Secretary's authority to assume jurisdiction over administrative appeals, which he specifically reserved in 43 C.F.R. § 4.5, so it is not exclusive; at most, the preamble simply confirms that only officers exercising the delegated or redelegated authority of the AS-IA may assume jurisdiction. *See* 54 Fed. Reg. at 6478 ("This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the [AS-IA] by 209 DM 8."). Mr. Black held that authority when he assumed jurisdiction over Plaintiffs' administrative appeal on March 7, 2017.

C. The Court Must Defer to the Department's Interpretation of 25 C.F.R. Part 151 and 25 C.F.R. § 2.20.

Courts "must give substantial deference to an agency's interpretation of its own regulations . . . unless it is plainly erroneous or inconsistent with the regulation" such that "an alternative reading is compelled by the regulation's plain language or by other indications of the Secretary's

intent at the time of the regulation's promulgation." *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994) (internal quotation marks omitted); *see also Auer*, 519 U.S. at 461. As the D.C. Circuit has explained, "[a] challenge to an agency's interpretation of its own regulation . . . turns not on whether the *challenger* has articulated a rationale to support its interpretation, but on whether the *agency* has offered an explanation that is reasonable and consistent with the regulation's language and history." *Trinity Broadcasting of Fla., Inc. v. FCC*, 211 F.3d 618, 627 (D.C. Cir. 2000).

The Department has reasonably and consistently interpreted both 25 C.F.R. Part 151 and 25 C.F.R. § 2.20 as not assigning exclusive authority to the AS-IA. That is shown through the Office of the Solicitor's finding that no regulation assigned exclusive authority to the AS-IA,[10] the Secretary's redelegation of authority to Mr. Roberts and then to Mr. Black, and Mr. Black's decision dismissing Plaintiffs' administrative appeal. As explained above, the Department's interpretation is reasonable and consistent with the regulations' language and history, and nothing compels the Plaintiffs' alternative reading. Therefore, this Court must apply the D.C. Circuit's "exceedingly deferential standard of review" to reject Plaintiffs' challenge to the Department's interpretation of its regulations. *Trinity Broadcasting of Fla., Inc.*, 211 F.3d at 625; *see also Buffalo Crushed Stone, Inc. v. Surface Transp. Bd.*, 194 F.3d 125, 128 (D.C. Cir. 1999); *FEC v. Nat'l Rifle Ass'n of Am.*, 254 F.3d 173, 182 (D.C. Cir. 2001); *Buchanan v. FEC*, 112 F. Supp. 2d 58, 70 (D.D.C. 2000). Plaintiffs' only response is that the Supreme Court wrongly decided *Auer*, but they nevertheless concede that this Court is bound by that decision.

[10] Although the Solicitor's memorandum predates the current iterations of Part 151 and § 2.20, the reasoning applied by the Solicitor to all Interior regulations then would produce the same result when applied to Part 151 and § 2.20 now, as demonstrated in Part IV.A and B. That is because neither regulation uses terms indicating an intent of exclusivity. Decl. of Cody McBride, Ex. 2, Mem. from Solicitor to Sec'y.

D. The Department Ratified the Decision to Take Land into Trust for the Tribe.

On top of the deference due here, a variety of other doctrines require courts to give broad latitude to internal delegations. One such doctrine is ratification. The D.C. Circuit recognizes that a decision made by an individual without proper authority is nonetheless valid if later ratified by someone with authority to do so, even in cases where the ratification was "nothing more than a 'rubberstamp.'" *See, e.g.*, *FEC v. Legi-Tech, Inc.*, 75 F.3d 704, 709 (D.C. Cir. 1996); *Doolin Security Savings Bank, F.S.B. v. Office of Thrift Supervision*, 139 F.3d 203, 212-14 (D.C. Cir. 1998). This Court in particular has applied the doctrine of ratification expansively. *See, e.g.*, *State Nat'l Bank of Big Spring v. Lew*, 197 F. Supp. 3d 177, 179-180 (D.D.C. 2016); *Huntco Pawn Holdings, LLC v. U.S. Dep't of Defense*, 240 F. Supp. 3d 206, 232 (D.D.C. 2016) (rejecting lack-of-authority argument after agency submitted signed letter to court from properly appointed official that "affirmed and ratified" the rule, which settled "any serious dispute that the Final Rule, as published, reflects the decisions of the agency with authority to promulgate it); *Alfa Int'l Seafood v. Ross*, No. 1:17-cv-00031, 2017 WL 3726984, at *12 (D.D.C. Aug. 28, 2017) (inviting agency "to have the current Secretary of Commerce, Wilbur Ross, ratify" challenged rule and holding that Secretary Ross's sworn affidavit doing so "cures any potential Appointments Clause defects in its promulgation").

Under controlling precedent, then, the January 19, 2017 decision to take land into trust for the Wilton Rancheria has been ratified. Mr. Black's denial of Plaintiffs' stay request on February 10, 2017 and his decision dismissing Plaintiffs' administrative appeal on July 13, 2017 ratify Mr. Roberts's decision to take land into trust for the Wilton Rancheria. *See Doolin Sec. Savings Bank, F.S.B.*, 139 F.3d at 213 (recognizing that ratification may occur where an officer who can ratify continues to implement the challenged decision "even though [the ratifying officer] did not formally invoke the term").

V. CONCLUSION

The Secretary properly redelegated to Mr. Roberts and then Mr. Black all the nonexclusive authority of the AS-IA, including the authority to review and decide requests to take land into trust for Indians and to assume jurisdiction over administrative appeals. Accordingly, Federal Defendants respectfully request that the Court deny Plaintiffs' Motion for Summary Judgment and grant Federal Defendants' Cross-Motion for Summary Judgment on Counts I and II.

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Respectfully submitted,

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