

1 JEAN E. WILLIAMS
Deputy Assistant Attorney General
2 DEVON LEHMAN MCCUNE, Trial Attorney
U.S. Department of Justice
3 Environment and Natural Resources Division
4 Natural Resources Section
999 18th Street, South Terrace Suite 370
5 Denver, CO 80202
Tel: (303) 844-1487
6 Fax: (303) 844-1350
7 Email: devon.mccune@usdoj.gov

8 Attorneys for Defendants

9
10 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11
12 TILLIE HARDWICK, et al.

Case No. 3:79-CV-1710-EMC

13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA, et al.,

16 Defendants.

UNITED STATES' OPPOSITION TO
THE BUENA VISTA RANCHERIA
OF ME-WUK INDIANS' MOTION TO
ENFORCE THE 1983 STIPULATED
JUDGMENT

17
18 **I. INTRODUCTION**

19 Defendant the United States of America submits this brief in opposition to the Buena Vista
20 Rancheria of Me-Wuk Indians' Motion to Enforce the 1983 Stipulated Judgment ("Motion to Enforce"),
ECF No. 364. The Buena Vista Rancheria of Me-Wuk Indians (the "Tribe") seeks to have this Court
21 enter an order requiring the Bureau of Indian Affairs ("BIA") take restored Rancheria lands into trust.
22 Mot. to Enforce at 5. The United States moved to stay its response to this motion, given that BIA has
23 not yet made a final decision on the Tribe's mandatory fee-to-trust application and intends to issue a
24 decision within thirty days. ECF No. 377 at ¶¶ 6–7. Should this Court determine to decide the merits of
25 the Tribe's motion without awaiting BIA's decision, the United States respectfully requests that this
26 Court deny the Tribe's motion.

1 The Tribe asserts that the Bureau of Indian Affairs (“BIA”) is required to take the lands into trust
 2 under the provisions of the 1983 Stipulated Settlement in this case. Mot. to Enforce. The Tribe,
 3 however, does not fall into any of the provisions that would give BIA a mandatory duty to take the land
 4 into trust. The Tribe is not a named plaintiff or a plaintiff class member and thus cannot rely on the
 5 Stipulated Judgment as authority for the mandatory fee-to-trust process. The Court should therefore
 6 deny the Tribe’s motion to enforce the judgment.

7 II. BACKGROUND

8 A. The fee-to-trust process

9 Statutory authority is required for the United States to accept real property into trust on behalf of
 10 Indian individuals or tribes. *See* 25 C.F.R. § 151.3. The Indian Reorganization Act (“IRA”), 25 U.S.C.
 11 §§ 5101–44, provides the Secretary with the discretion to acquire trust title to land or interests in land.
 12 *See* Dept. of the Interior, Bureau of Indian Affairs, Office of Trust Services, Division of Real Estate
 13 Services, *Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook)* at
 14 4, *available at* <https://www.bia.gov/node/4361/handbook/attachment/newest>, *last visited* September 22,
 15 2020. Trust acquisitions can be either mandatory or discretionary. A mandatory trust acquisition is “[a]
 16 trust acquisition directed by Congress or a judicial order that requires the Secretary to accept title to land
 17 into trust, or hold title to certain lands in trust by the United States, for an individual Indian or Tribe.”
Id. at 5.

18 With the exception of certain mandatory acquisitions, the Secretary bases the decision on
 19 whether to make a trust acquisition on criteria set forth in the regulations at 25 C.F.R. Part 151. The
 20 criteria include the tribe’s need for the land, “[t]he purposes for which the land will be used,” tax-related
 21 impacts to state and local governments, “[j]urisdictional problems and potential conflicts of land use,”
 22 “whether BIA is equipped to discharge any additional responsibilities resulting from” the trust status,
 23 and whether the tribe has submitted adequate information about environmental impacts. *See* 25 C.F.R. §
 24 151.10(b)-(d), (f)-(h). These discretionary factors do not apply to mandatory acquisitions, which are
 25 instead governed by the terms of the statutory or judicial mandate. In addition, environmental review
 26 requirements of the National Environmental Policy Act (“NEPA”) are not applicable to mandatory
 27 acquisitions. *See* Updated Guidance on Processing of Mandatory Trust Acquisitions, Mem. from Larry

1 Echo Hawk, Assistant Secretary – Indian Affairs to BIA Regional Directors and Superintendents (Apr.
2 6, 2012), found in Fee-to-Trust Handbook at 60 n.11 (citing *Sierra Club v. Babbitt*, 65 F.3d 1502 (9th
3 Cir. 1995) (NEPA applies only to discretionary agency actions)).

4 **B. General background of the Buena Vista Rancheria**

5 In 1906, Congress authorized BIA within the United States Department of the Interior
6 (“Interior”) to purchase land and water rights for the use of Indians in California who lived outside of
7 reservations or on reservations that did not contain land suitable for cultivation. Act of June 21, 1906,
8 Pub. L. No. 59-258, 34 Stat. 325. Parcels of land, called rancherias, were purchased under this
9 authority, with approximately eighty-two rancherias eventually established throughout California.

10 In 1958, Congress enacted the California Rancheria Act. AR 2–6 (Act of Aug. 18, 1958, Pub. L.
11 No. 85-671, 72 Stat. 619 (“Rancheria Act”), amended by the Act of Aug. 11, 1964, Pub. L. No. 88-419,
12 78 Stat. 390). The Act provided authority for the termination of rancherias, including the Buena Vista
13 Rancheria, and established a procedure for the termination and the distribution of the land and other
14 assets to eligible Indians in fee simple. *Id.* After termination, the lands would become subject to all
15 state and federal taxes and the distributees and their dependents would lose their special federal status as
16 Indians. *Id.*

17 In 1959, the United States distributed the land of the Buena Vista Rancheria in fee to two tribal
18 members, Louie and Anne Oliver, as joint tenants pursuant to a distribution plan. 26 Fed. Reg. 3073
19 (Apr. 11, 1961). The title was eventually transferred to the former Tribal Spokesman and then to the
20 Tribe by grant deed in 1996. Decl. of Buena Vista Rancheria Chairwoman in Supp. of Mot. to Enforce
21 J., ECF No. 364-1, ¶ 2 (“Pope Decl.”).

22 **C. Hardwick v. United States**

23 On July 12, 1979, individual distributees of terminated rancherias sought restoration of their
24 status as Indians and entitlement to federal benefits, as well as the right to reestablish their tribes as
25 recognized governmental entities. Compl. for Declaratory & Inj. Relief and Damages ¶ 1, ECF No. 1.
26 They brought the case on behalf of themselves and a class of similarly situated persons. Compl. ¶¶ 17–
27 18. The Court certified a plaintiff class of “all those persons who receive[d] any of the assets of [thirty-

four specified rancherias] pursuant to distribution plans purportedly prepared under the California Rancheria Act.” Order re: Class Certification, ECF No. 32 at 2.

On August 2, 1983, the parties filed a stipulation for entry of judgment (hereinafter “Stipulated Judgment”). ECF No. 364-1 at 142–54. The Stipulated Judgment asked the Court to “certify a class consisting of all those persons who received any of the assets of the rancherias listed and described in paragraph 1 pursuant to the California Rancheria Act and any Indian heirs, legatees or successors in interest of such persons with respect to any real property they received as a result of the implementation of the California Rancheria Act.” Stipulated J. at ¶ 2. The Stipulated Judgment settled the claims with respect to the members of seventeen rancherias, providing, *inter alia*, that (1) the individuals’ status “as Indians under the laws of the United States shall be restored and confirmed,” (2) Interior would recognize the restored rancherias “as Indian entities with the same status as they possessed prior to distribution of the assets of these Rancherias under the California Rancheria Act,” and (3) certain individuals holding former rancheria lands could reconvey the lands to the United States to be held in trust. *Id.* at ¶¶ 3, 4, 6.

Specifically, the Stipulated Judgment provides that:

Any named individual plaintiff or class member who received or presently owns fee title to an interest in any former trust allotment by reason of the distribution of the assets of any of the Rancherias listed in paragraph 1 shall be entitled to elect to restore any such interest to trust status, to be held by the United States for the benefit of such Indian person(s).

Id. ¶ 6. It also provides that:

Any named plaintiff or other class member herein may elect to convey to the United States any land for which the United States issued fee title in connection with or as the result of the distribution of assets of said rancherias to be held in trust for his/her individual benefit or the benefit of any other member or members of the rancheria

Id. ¶ 8. In addition, any federally-recognized tribe that received fee title to lands as part of the distribution of Rancheria assets could “arrange to convey to the United States all community-owned lands within their respective rancherias to which the United States issued fee title in connection with or as the result of the distribution of the assets of said rancherias” within two years of the notice of the Stipulated Judgment. *Id.* ¶ 7.

D. Buena Vista Rancheria's land ownership and fee-to-trust application.

The original owners of the Rancheria, Louie and Annie Oliver, died without conveying the Rancheria to the United States to be held in trust. In 1986, Lucille Lucero, the surviving child of the original Rancheria distributees, conveyed her interest in the property by grant deed to Donna Marie Potts, a tribal member. Ms. Potts later received the remaining interest in the property from another individual, John Fielder, and in August 1996, she conveyed the Rancheria to the Tribe by grant deed. The Tribe then submitted its first mandatory trust acquisition request for the Rancheria to BIA in 1996. Pope Decl. at ¶ 4.

BIA, however, declined to accept the grant deed, explaining the land could not be brought into trust through the mandatory acquisition process and citing the discretionary fee-to-trust regulations at 25 C.F.R. Part 151. *Id.* ¶ 6; ECF No. 364-1 at 40 (letter from BIA to County Clerk/Recorder). In 2004, BIA again informed the Tribe that the Buena Vista Rancheria was not held in trust and again referred the Tribe to the discretionary fee-to-trust process at 25 C.F.R. Part 151. Pope Decl. ¶ 7; ECF No. 364-1 at 42 (letter from BIA to Judith Albietz).

The Tribe orally informed BIA that it wished to have land taken into trust in 2010. Pope Decl. ¶ 16. In 2018, BIA notified the Tribe for the third time that “the subject property was not eligible to be brought into trust under the mandatory provisions [of the 1983 Stipulated Judgment] and will have to be resubmitted to be processed as a discretionary application.” Mot. to Enforce at 19; ECF No. 364-1 at 210 (letter from BIA to Chairperson). BIA returned the application to the Tribe and notified the Tribe that it could “submit a new complete application at any time in the future.” ECF No. 364-1 at 210. The Tribe filed a notice of appeal with the Interior Board of Indian Appeals (“IBIA”). The BIA Regional Solicitor filed a request for voluntary remand with the IBIA. *Id.* at 212 (IBIA Order Docketing Appeal, Vacating Decision, and Remanding). Consistent with its usual practice, on April 25, 2019, the IBIA granted the motion for a voluntary remand and vacated the underlying decision before sending it back to BIA for further consideration. *Id.*

The Tribe and BIA have met since that remand, and, according to the Tribe, BIA informed the Tribe that the letter issued by BIA in 2018 was not a final, appealable decision. Mot. to Enforce at 20. BIA expects to issue a final decision on the Tribe's fee-to-trust application within the next thirty days.

1 This decision will materially change the landscape of the Tribe's motion by providing a final decision
2 and the agency's rationale for that decision. *See* ECF No. 377.

3 The Tribe brought this action in July 2020, and served the United States on July 30, 2020. ECF
4 No. 371. The Tribe seeks to have this Court order BIA to accept title in trust to the Rancheria lands
5 under the 1983 Stipulated Judgment. Mot. to Enforce at 2. It argues that the mandatory provisions of
6 Paragraph 8 of the Stipulated Judgment apply here and that BIA does not have discretion to determine
7 that it will not take the land into trust, or to require the Tribe comply with the discretionary fee-to-trust
8 process set forth in 25 C.F.R. Part 151. *Id.* at 5.

9 **III. ARGUMENT**

10 BIA did not have authority to take the Buena Vista Rancheria land into trust as a mandatory
11 acquisition, as the agency has repeatedly stated, because the fee-to-trust application does not fall into
12 any of the categories in the Stipulated Judgment. The Stipulated Judgment gave tribes the option to
13 convey their land to the United States to be held in trust, so long as they did so within two years of the
14 1983 judgment. The Tribe's request here is far outside that timeframe. The Tribe is not "a named
15 plaintiff or other class member" such that it would fall within Paragraphs 6 or 8. These provisions were
16 intended to apply to individuals, not tribes. Because the acquisition does not fall within the categories
17 established in the Stipulated Judgment, BIA does not have authority to make a mandatory acquisition.

18 **A. Paragraph 8 applies to land owned by individuals, not tribes.**

19 Paragraph 7 provides that tribes could convey their land as a mandatory acquisition within two
20 years of notice of the Stipulated Settlement. The Tribe attempts to avoid the time limitation by arguing
21 that it is entitled to a mandatory acquisition under Paragraph 8, which states:

22 Any named plaintiff or other class member herein may elect to convey to the United
23 States any land for which the United States issued fee title in connection with or as the
24 result of the distribution of assets of said rancherias to be held in trust for his/her
25 individual benefit or the benefit of any other member or members of the rancheria

26 Stipulated Judgment ¶ 8; Mot. to Enforce at 22. According to the Tribe, "[t]he Rancheria was Tribal
27 trust land distributed to Buena Vista Indians in fee under the Termination Act and is indisputably
28 covered by paragraph 8." Mot. to Enforce at 22.

1 The Tribe, however, cannot fall under Paragraph 8 because it is not a “named plaintiff or other
 2 class member.” The Tribe is clearly not a named plaintiff. This case was originally brought by
 3 individual distributees who received title to former rancheria land after the purported termination of
 4 various rancherias. *See* Compl. ¶ 12–15; 1st Am. Compl. ¶ 11–15, ECF No. 81. The Second Amended
 5 Complaint, filed after the Stipulated Judgment, added several rancherias as plaintiffs, but Buena Vista
 6 Rancheria was not among those rancherias. 2d Am. Compl. ¶¶ 5–8, ECF No. 185. Thus, the Tribe is
 7 not a named plaintiff.

8 The Tribe is also not a member of the plaintiff class. The plaintiffs brought the action on their
 9 own behalf and on behalf of a class of similarly situated persons, which included “all distributees of the
 10 Rancherias listed” in the Complaint, and any “heirs or legatees of said distributees and any Indian
 11 successors in interest to such lands.” Compl. ¶ 17. The Stipulated Judgment provided that:

12 The Court shall certify a class consisting of all those persons who received any of the
 13 assets of the Rancherias listed and described in paragraph 1 pursuant to the California
 14 Rancheria Act and any Indian heirs, legatees or successors in interest of such persons
 with respect to any real property they received as a result of the implementation of the
 California Rancheria Act.

15 Stipulated J. ¶ 2. Buena Vista Rancheria is one of the Rancherias listed in Paragraph 1 of the Stipulated
 16 Judgment. *Id.* ¶ 1. The Tribe is not a “person who received any of the assets” of the Buena Vista
 17 Rancheria. Nor is the Tribe an “heir or legatee of said distributees,” as it did not inherit title to the land
 18 through a decedent; rather, it received the land through grant deed. *See* Pope Decl. ¶ 2; ECF No. 364-1
 at 24–25 (grant deed).

19 The Tribe also cannot be considered an Indian “successor in interest” of the distributees because
 20 “successor in interest” in this context refers to individuals, not tribes. The case was brought by
 21 individuals, not rancherias, and the class consists of “persons” and does not refer to rancherias as part of
 22 the class. As this Court has stated, “the class included all distributees of lands pursuant to the California
 23 Rancheria Act *and all individuals who inherited such lands from a distributee.*” *Hardwick v. United*
 24 *States*, No. 5:79-CV-1710-JF, 2012 WL 6524600, at *4 (N.D. Cal. Dec. 13, 2012). Further, Paragraph 8
 25 refers to the land being “held in trust for his/her *individual* benefit or the benefit of any other member or
 26 members of the Rancheria.” Stipulated Judgment ¶ 8 (emphasis added). It does not reference land held
 27

1 in trust for tribes or the Rancheria as a whole. In contrast, Paragraph 7 specifically applies to “Indian
2 Tribes, bands, Communities, or groups.” *Id.* ¶ 7. Thus, Paragraph 7 governs the matter at hand, and
3 because that paragraph included a two-year deadline to convey land into trust, BIA no longer has the
4 authority to take the land into trust through the mandatory process. Rather, the agency must follow the
5 more common, discretionary process, and it has repeatedly invited the Tribe to pursue that process.

6 This conclusion is supported by a comparison of Paragraphs 7 and 8. Paragraph 7, which applies
7 to tribes and “community-owned lands,” contains a two-year limitation on the conveyance of land to the
8 United States to be held in trust. Stipulated Judgment ¶ 7. Conversely, Paragraph 8, which applies to
9 individuals, does not contain a time limitation. *Id.* ¶ 8. If “class member” in Paragraph 8 is interpreted
10 to include tribes, tribes could apply for their land to be taken into trust either under Paragraph 7 with its
11 two-year limitation, or under Paragraph 8 with no time limitation at all. This result would make
12 Paragraph 7 meaningless, essentially writing the paragraph and its time limitation out of the Stipulated
13 Judgment.

14 The IBIA’s conclusion in *Santana v. Sacramento Area Director*, 33 IBIA 135, 141 (1999), is
15 consistent with this reading. In *Santana*, the plaintiffs were two individuals, one of whom was a
16 distributee of the Cloverdale Rancheria. These plaintiffs requested that BIA take three parcels of land
17 into trust and argued that the trust acquisition was mandatory under the *Hardwick* Stipulated Judgment.
18 *Id.* One of the parcels was community-owned at the time of the Stipulated Judgment and was later
19 transferred to individual ownership. The IBIA determined that the trust acquisition request for the
20 parcel was not mandatory because it was not made within two years of the Stipulated Judgment, holding
21 that “Paragraph 7 would be rendered a nullity” if tribes could transfer community-owned lands to
22 “individual ownership at any time, with BIA being required to treat those lands as then falling under
23 Paragraph 8 of the stipulated judgment.” *Id.* at 142–43.

24 And, as is the case here, the converse is also true. If individuals could transfer land to tribes, as
25 Ms. Potts did, and then require BIA to treat those lands as subject to mandatory acquisition under
26 Paragraph 8, it would render Paragraph 7 “a nullity” and circumvent the time limit agreed to in the
27 Stipulated Judgment. BIA agreed to accept land into trust for tribes as mandatory acquisitions for two

1 years after notice of the Stipulated Judgment. The Tribe cannot use Paragraph 8 as a work-around to
 2 avoid Paragraph 7's time limitation.

3 Thus, the Tribe's reliance on *Santana* here is misplaced. Mot. to Enforce at 23–24. It focuses on
 4 the lack of restrictions on transfers that properly fall under Paragraph 8, but fails to distinguish between
 5 the individually-owned parcels at issue in *Santana* and the tribally-owned parcel at issue here. Rather
 6 than supporting the Tribe's case here, *Santana* bolsters BIA's understanding that it does not have
 7 authority under Paragraph 8 to take the land into trust from a tribal applicant under the mandatory
 8 acquisition process.

9 **B. No other authority gives BIA the power to take the land into trust as a mandatory
 acquisition.**

10 The Tribe argues only that Paragraph 8 makes the transfer to trust status mandatory, so the Court
 11 need not consider whether other provisions of the Stipulated Judgment require BIA to take the land into
 12 trust as a mandatory acquisition. But even if the Court considers Paragraph 6 or 7, it should reach the
 13 same conclusion. Paragraph 6 contains the same limitations on transfers by a “named individual
 14 plaintiff or class member.” Stipulated Judgment ¶ 6. As the Tribe is neither a named plaintiff nor a
 15 class member, it does not fall within this provision. Paragraph 7 allows transfers by tribes, but only
 16 within two years of the Stipulated Judgment. *Id.* ¶ 7. Further, the parcels were not “community-owned”
 17 at the time of the Stipulated Judgment, and thus Paragraph 7 does not apply. *See Santana*, 33 IBIA at
 18 142–43.

19 The Tribe cites no other authority under which BIA has authority to take the land into trust
 20 without applying the discretionary provisions of 25 C.F.R. Part 151. Its Motion to Enforce, therefore,
 21 should be denied.

22 **C. The Tribe cannot enforce the Stipulated Judgment.**

23 Finally, given that the named plaintiffs and class members were individuals, the Tribe (which
 24 was neither a named party or class member) has not demonstrated that it is entitled to enforce the
 25 Stipulated Judgment. Its motion, therefore, should be denied for that reason alone.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

The Tribe's Motion to Enforce should be denied because the Tribe does not fall within the categories for mandatory acquisition in the Stipulated Judgment. BIA, therefore, lacks authority to take the land into trust as a mandatory acquisition. In addition, the Tribe is neither a class member nor a named plaintiff and cannot bring an action to enforce the Stipulated Judgment.

Respectfully submitted this 24th day of September, 2020.

JEAN E. WILLIAMS
Deputy Assistant Attorney General
Environment & Natural Resources Division

s/ Devon Lehman McCune
DEVON LEHMAN MCCUNE
U.S. Department of Justice
Environment & Natural Resources Division
Natural Resources Section
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
Telephone: (303) 844-1487
Fax: (303) 844-1350
devon.mccune@usdoj.gov
Attorneys for Defendants

OF COUNSEL:
Brandon D. Sousa
Office of the Solicitor
United States Department of the Interior