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October 5, 2017

SENT VIA ELECTRONIC MAIL

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Re: Attached (without exhibits) Complaint filed this day with the United States District Court, Geyser, Corlett, and Jett v. United States of America, *et al*

To Supervisors Hartmann, Adam, Lavagnino, Wolf and Williams,

I am writing this letter to you to assure that all of you and County Counsel are aware of the filing of this Complaint and the very fact that it calls into question the total failure of the County to defend the citizens of the County. The County Supervisors (and certain others) undertake in their Oath of Office to support and defend the Constitution of the United States and the Constitution of the State of California. When you made that pledge it assumes that you have read the documents involved. Your actions show that you have not.

Attached is a copy of the above referenced filed Complaint. Its essence is simple:

> The United States of America, the Executive Branch and the Congress have no right, power or authority to deprive the State of California of Exclusive Legislation in all cases whatsoever over sovereign state land unless there is "Consent of the Legislature of the State in which the Same shall be…" Article 1, Section 8, Clause 17 of the United States Constitution. Clause 17 has been interpreted by numerous Supreme Court decisions. Clause 17's breadth as set forth by these decisions is overwhelming and can be summed up by one quote: "the freedom of the state and its admitted authority to refuse or qualify cessions of jurisdiction...."

There is actually a federal statute which embodies and reflects that: 40 U.S.C. section 3112. The current attempt by Congress in HR1491 flies in the face of the constitutional provision evidenced by this Section and this complaint challenges that attempt.

There are several Supreme Court cases questioning the generality of the Indian Commerce Clause on specific issues, and it should be clear by now that the generality regarding Commerce, does not overcome the specifics of Clause 17, which by its words has been held to be virtually all inclusive.

The County has no right, power or authority to give away State sovereignty over land within the County. This specifically includes all of the proposed agreement with the Chumash Tribe as now set forth on the County website. There is no authority to grant, transfer and convey any real property interest unless the legislature specifically grants it. See for example Public Resources Code Section 8401. There is no authority to violate the County General Plan, and change State Zoning and California Environmental Quality requirements. To continue with any such agreement, in any format, except in absolute compliance with all such State law requirements is an illegal act by the County. The County cannot cede away State sovereignty.

I would expect that the many others challenging the County over Camp 4, would also recognize that it is time to challenge the County on these very grounds, recognizing at the same time, that such a challenge will effectively challenge every fee-to-trust that is pending, and even those that have occurred.

It is time for this County, and yes, this State Legislature, to recognize that there are State sovereign rights which cannot be taken away in whole, or even in part, without the State Legislature's permission, federally requested, and then legislatively granted. Until then, it is exactly as 40 U.S.C. section 3112(c) provides: "It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section." The current attempt by the Congress may well change 3112 but it cannot change Clause 17 which simply is reflected by 3112.

It is time for the County to reverse its rush to agreement, and understand that the law is simple: The only jurisdiction over land which a Tribe can attain is that which the State Legislature willingly chooses to grant. There is no reason to grant any. The Tribe's members are United States Citizens and Citizens of this State. They are now, and should remain in the future, exactly that: subject to the laws, rules and regulations of the area in which they choose to live. They are not separate and they should not and need not be treated as if they have any rights different or more powerful than the State's legislative jurisdiction provides to all its Citizens.

Very truly yours,

Lewis P. Geyser

This letter and its attachment is being emailed to County Counsel, and a courtesy copy has been emailed to certain people who have maintained a constant interest in the Appeals, Fee-to-Trust Decisions.

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And T. Lawrence Jett

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEWIS P. GEYSER, ROBERT B. CORLETT AND T. LAWRENCE JETT

Plaintiffs,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF THE INTERIOR; U.S. BUREAU OF INDIAN AFFAIRS, a division of the United States Department of the Interior; RYAN ZINKE, in his official capacity as Secretary of the Interior; MICHAEL S. BLACK, in his official capacity as Acting Assistant Secretary of Indian Affairs; AMY DUTSCHKE, in her official capacity as Director, Pacific Region, Bureau of Indian Affairs,

Defendants.

Case No.:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Lewis P. Geyser, Robert B. Corlett, and T. Lawrence Jett ("Plaintiffs") bring this Complaint against Defendants United States of America; U.S. Department of the Interior ("DOI"), an agency of the United States of America; the Bureau of Indian Affairs ("BIA"), a bureau of the DOI; Ryan Zinke, in his official capacity as Secretary of the Interior; Michael S. Black, in his official capacity as Acting Assistant Secretary of Indian Affairs; and Amy Dutschke, in her official capacity as Director, Pacific Region, Bureau of Indian Affairs. (collectively, "Defendants").

NATURE OF ACTION

1. This action asserts claims under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, and the United States Constitution to overturn the unlawful and unconstitutional decision (the "Decision") by the executive branch of the federal government to remove California's jurisdictional authority over 1,427 acres of its sovereign land ("Camp 4"). That Decision transfers land to federal trust, and asserts that as such an Indian tribe will regulate that land, together with the federal government, to the complete exclusion of State law. This exclusion extends to all matters of traditional State authority, including regulations striking at the heart of traditional State control. According to the Decision, there is no meaningful check—constitutional or statutory—on the ability of the federal government to establish federal or Indian enclaves on sovereign land that has always been governed and controlled by the State.

2. The Decision is wrong. It violates longstanding statutory and constitutional limits that require the State's explicit consent before the federal government may oust the State's jurisdiction in favor of its own exclusive jurisdiction. *First*, 40 U.S.C. § 3112 precludes the United States from accepting jurisdiction over State land unless it first obtains the State's "consent." *See* 40 U.S.C. 3112(b), (c) ("jurisdiction has not been accepted until the Government

accepts jurisdiction over land as provided in this section"). *Second*, Article I, Section 8, Clause 17 of the United States Constitution ("Clause 17") likewise conditions the federal government's power to "exercise exclusive Legislation" over State land on "the Consent of the Legislature of the State in which the same shall be." Clause 17 covers acquisitions by any means of title to any land within a State, and places constitutional constraints on the federal government's authority to take land into trust for an Indian tribe. *Third*, core attributes of State sovereignty embodied in the constitutional structure prohibit "Congress, after statehood, [from] reserv[ing] or convey[ing] . . . lands that 'have already been bestowed' upon a State." *Idaho v. United States*, 533 U.S. 262, 280 (2001). Yet that is precisely what the Decision purports to do—without the State's permission.

3. Under those statutory and constitutional principles, the Decision cannot stand, for it is undisputed that the United States did not obtain California's consent to exercise any jurisdiction over Camp 4. The Decision should accordingly be restricted, and the Court should enter declaratory and equitable relief as requested and discussed below.

PARTIES

4. Plaintiffs are Lewis P. Geyser, Robert B. Corlett and T. Lawrence Jett. Each Plaintiff owns property near Camp 4, resides within the Santa Ynez Valley, Santa Barbara County, California, and utilizes its roads, highways, and facilities, and relies on the police, safety, fire, and hospital services, and the zoning and building codes and restrictions of the Santa Barbara County government protecting the Valley. As a result of the Decision, Plaintiffs will suffer economic, environmental, and aesthetic harms, including those pertaining to traffic, policing, fire control, air quality, and pollution. They accordingly have

standing to challenge the decision. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012). They also have standing under *Bond v. United States*, 131 S. Ct. 2355 (2011), to enforce the federalism principles embodied by 40 U.S.C. § 3112, Clause 17, and the U.S. Constitution.

5. Defendants are the parties who have issued that certain decision contained in the Notice of Decision ("NOD") issued on December 24, 2014 ("the Decision", Exhibit "A" attached hereto) by the United States Department of the Interior ("DOI" herein), Bureau of Indian Affairs ("BIA" herein), Pacific Regional Office, by which approval was granted of the "application of the Santa Ynez Band of Chumash Mission Indians to have the … described property [land located in the Santa Ynez Valley, Santa Barbara County, California hereinafter referred to as Camp 4] accepted by the United States of America in trust for the Santa Ynez Band (referred to in the Decision and hereinafter as the "Tribe") of Chumash Indians of the Santa Ynez Reservation of California."

6. Defendant Ryan Zinke is the Secretary of the DOI and is named herein in his official capacity. In his capacity as Secretary, Defendant Zinke exercises ultimate authority, supervision and control over Defendants Michael Black and Amy Dutschke and their subordinates within the BIA, a bureau within the DOI.

7. Defendant Michael Black is the Acting Assistant Secretary – Indian Affairs ("Assistant Secretary"), and is named herein in his official capacity, and as successor to previous Acting Assistant Secretary Lawrence Roberts. Mr. Roberts continued in the role of Acting Assistant Secretary until July 28, 2016, on which date his service as the Acting Assistant Secretary ended. Thereafter, Mr. Roberts reverted back to his role as Principal Deputy. Upon information and belief, Mr. Roberts continued in the position of Principal Deputy until he left DOI, apparently on January 19 or 20, 2017, after he issued the Appeal Decision (para 20, *infra*.)

8. Defendant Amy Dutschke is the Director of BIA's Pacific Regional Office, and is named herein in her official capacity. Defendant Dutschke exercises direct supervisory authority and control over the BIA's Pacific Region, which covers the State of California, and oversees the operations of the Regional Office and its four BIA Agencies. Defendant Dutschke signed the NOD, and, on information and belief, she executed an acceptance in trust of the Grant Deed from the Tribe to the United States. Defendants Zinke, Black, and Dutschke are responsible officers or employees of the United States and have direct and/or delegated statutory duties in carrying out the provisions of the IRA, codified at 25 U.S.C. § 5101 *et seq*. and the Code of Federal Regulations ("C.F.R."), Title 25, Part 151, in taking land into trust for Native American Tribes.

9. Defendant BIA is a bureau of the DOI, and is an agency of the United States of America acting as trustee of the welfare of federally recognized tribes of Native Americans. In that role, BIA has confirmed the Decision to take Camp 4 into trust for the Tribe.

10. Defendant DOI is an agency of the United States of America having responsibility for the management of federal land and the administration of programs related to Native American Indians, including the fee-to-trust process for Native American Indians. The DOI oversees the BIA and the taking of Camp 4 into trust for the Tribe.

JURISDICTION AND VENUE

11. Plaintiffs bring this action under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. ("APA"). This Court has original jurisdiction over this action pursuant to 5 U.S.C. § 701 *et seq.* and 28 U.S.C. §§ 1331 and 1361 (federal question jurisdiction and suits to compel actions by federal agencies), and may issue injunctive and declaratory relief under 28 U.S.C. §§ 2201 and 2202.

12. An actual controversy currently exists between the parties.

13. Judicial review of the NOD, the Decision, the Appeal Decision, and the Defendants' acceptance of Camp 4 into trust is authorized by the APA. *See* 5 U.S.C. §§ 701-706. Defendants have stated that the Decision is a final decision of DOI and authorizes Defendants to accept Camp 4 into trust. On information and belief Defendants have acted on the NOD and Decision and accepted conveyance documents into trust. The United States has waived its sovereign immunity to suit under 5 U.S.C. § 702.

14. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1)(B) and 5 U.S.C. § 703 because a substantial part of the events or omissions giving rise to the claim occurred in this District, and the property that is the subject of the action is situated in this District.

BACKGROUND

Camp 4 Is California Sovereign Land Subject Only To The State's Jurisdictional Authority

15. Camp 4 is an approximately 1,427.78 acre parcel of real property located in the Santa Ynez Valley, Santa Barbara County, California. The Santa Ynez Valley encompasses several communities clustered closely together, within the boundaries of the County of Santa Barbara, with a population of about 20,000 residents. The Santa Ynez Valley is serviced by the Santa Barbara County Sheriff's Department, the Santa Barbara County Fire Department, the California Highway Patrol, by certain police departments, and for education by several lower and intermediate schools, as well as one public high school. There is one hospital located centrally in the Santa Ynez Valley.

16. There are only three highways leading into and out of the Santa Ynez Valley: Highway 101 (a 4 lane highway), Highway 154 (a mostly 2-lane mountain road from Santa Barbara city), and Highway 246 (a mostly-two lane road that joins 154 and 101). These highways are mainly used by traffic going north or

south through the Santa Ynez Valley which generates heavy traffic wholly separate from that traffic destined for the Santa Ynez Valley and within the Santa Ynez Valley to its local small communities. All decisions regarding the development of the Santa Ynez Valley are (and must be) constrained by the fact of its separate and geographically limited location and size. The only government that can satisfy this requirement and the only government having legal legislative jurisdiction is the State of California.

17. Under California Law, all Counties are required to prepare General Plans for the use and development of lands under their legislative jurisdiction. One such Plan, developed over several years, is a separate specific general plan for the Santa Ynez Valley (the "Santa Ynez Valley Community Plan" hereinafter the "SYVC Plan").[1] Camp 4 is a part of that SYVC Plan and has particular designations, uses, and limitations assigned to it. Camp 4 is at the intersection of Highway 154 and Highway 246. The SYVC Plan was required to and does take into account county-wide and local-community considerations regarding traffic, policing, fire control, air quality, pollution, water, sewage, utilities, road, and school capacities, including issues of public welfare and costs. The community sizes and capabilities have all been reviewed as part of the legislative jurisdiction controlled by California State Laws regarding jurisdiction, zoning, education, health, sewer, water, and safety. These plans and decisions are state-mandated

[1] Santa Ynez Valley Community Plan County of Santa Barbara Planning & Development Department Office of Long Range Planning Board of Supervisors Adopted October 6, 2009 http://longrange.sbcountyplanning.org/planareas/santaynez/documents/Board%20of%20Supervisors%20Adoption/Electronic%20Docket/Master%20Final%2010-15-09.pdf (last opened September 8,2017)

community decisions and are generated for the benefit and welfare of the community. Additionally, the SYVC Plan takes into account architectural planning, aesthetic requirements, density rules, and development regulations (including restriction on the amount, type and height of development) which are specifically tailored to several different parts of the Santa Ynez Valley.

18. Plaintiffs have resided in the Santa Ynez Valley for more than 10 years. All Plaintiffs have residences in close proximity to Camp 4. As such nearby property owners, Plaintiffs have prudential standing to challenge the Decision because they will suffer economic, environmental, aesthetic, safety and security harms, from the development of Camp 4 without being subject to the requirements of the SYVC Plan and the exclusive legislative oversight of the State. For example, it is clear that this small valley and its residents, including Plaintiffs, have limited educational, hospital, police, and road and transportation facilities. All three Plaintiffs (and the great majority of the Santa Ynez Valley population) are required to use Highways 154, 246, and 101 for ingress and egress into and out of the Santa Ynez Valley on almost a daily basis. All three Plaintiffs are adversely affected by unrestricted increased traffic patterns, increases in population density, and increased facility demand within the Santa Ynez Valley. The Plaintiffs are part of that community and they, and the community will be severely injured if the SYVC Plan could be simply ignored and overridden by an entity not subject to the legislative jurisdiction and supervision of, and control by, the State. *Patchak*, *supra*[2], leaves no doubt that neighbors to the trust land have

[2] Plaintiffs' allegations are materially indistinguishable from the challenger's in *Patchak*, who asserted that the "statutory violation will cause him economic, environmental, and aesthetic harm as a nearby property owner." 132 S. Ct. at 2210. As the Court found, those allegations easily satisfied the not "especially demanding" prudential-standing test:

"We apply the test in keeping with Congress's 'evident intent' when enacting the

standing under the APA and Article III; and *Bond v. United States*, 131 S. Ct. 2355 (2011), makes just as clear that an individual may enforce the federalism principles embodied by 40 U.S.C. § 3112, Clause 17, and the Tenth Amendment of the United States Constitution.[3]

The Decision Improperly Asserts Exclusive Federal/Tribal Jurisdiction Over Camp 4 To The Exclusion of California Authority

19. The Tribe purchased Camp 4 from its then-private owner (subject to recorded agreements with the State of California) and filed an application for the United States to take it into trust pursuant to "the Indian Land Consolidation Act of 1983 (25 U.S.C. Sec. 2202, and … applicable Code of Federal Regulations (CFR), Title 25, INDIAN, Part 151, as amended." (Decision p. 3).

20. The Decision was appealed by Plaintiffs Geyser and Corlett, and numerous individuals and groups representing other individuals residing in the Santa Ynez Valley, which resulted in another decision, by the Principal Deputy Assistant Secretary- Indian Affairs (the "Appeal Decision" attached hereto as Exhibit "B") issued on January 19, 2017, rejecting every appeal, and affirming the "Regional Director's December 14, 2014 decision." The Appeal Decision was

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APA 'to make agency action presumptively reviewable.'"
As the Court stated, those same allegations satisfied Article III standing.

[3] The Supreme Court has made clear that individuals can invoke the Tenth Amendment by "asserting injury from governmental action taken in excess of the authority that federalism defines. [Their] rights in this regard do not belong to a State." *Bond*, 131 S. Ct. at 2363-64. Rejecting the precise type of argument the Defendants made in the Appeal Decision, the Court explained: "State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power. . . ."

further appealed within the BIA Regulation structure by Plaintiffs Geyser and Corlett and certain of the others, resulting in the Order Denying Reconsideration (Exhibit "C" attached hereto) signed by Defendant Michael S. Black, on August 24, 2017 terminating appeals of the Decision, and thus making the Decision final as of that date. The Federal Government appears to have accepted the Camp 4 deed from the Tribe and created the typical Trust position for the benefit of the Tribe for Camp 4, incorporating the Decision.

21. Under the Decision, exclusive legislative jurisdiction over Camp 4 is transferred from California and assigned to the federal government and the Tribe, thus preempting all State control (traditional and otherwise) from this State sovereign territory. This staggering result is confirmed by multiple passages in the Decision. It says that the "trust lands" would not fall "under the County's jurisdiction" (at 17); the "Tribe ... would no longer be subject to State or local jurisdiction" (at 21); "placing the property into trust allows the Tribe to exercise its self-determination and sovereignty over the property *Ibid*.; and "[o]nce the lands are placed under the jurisdiction of the Federal and tribal governments, the tribal right to govern the lands becomes predominant" *Ibid*.

22. Indeed, the Decision itself confirms that it is necessary to remove the land from California's sovereign territory precisely to avoid State control: "If the land were to remain in fee status, tribal decisions concerning the use of the land would be subject to the authority of the State of California and the County of Santa Barbara, impairing the Tribe's ability to adopt and execute its own land use decisions and development goals." *Ibid.* In short, "in order to ensure the effective exercise of tribal sovereignty and development prerogatives with respect to the land" - and thus to ensure the complete displacement of local control – "trust status is essential." *Ibid*.

Defendants Did Not Obtain California's Consent

23. California did not consent, and has never consented, to the exercise of exclusive federal/tribal jurisdiction imposed by the Decision.

24. Nor was jurisdiction over Camp 4 reserved when California was admitted to the Union. California was admitted on September 9, 1850. Its act of admission provided that "the said state of California is admitted into the Union upon the express condition that the people of said state, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits." There is no exception for Indian Land or Indian Tribes. All of the lands in California, on admission to statehood, became subject to the State's sovereign authority. At the moment of California's admission, Congress and the President vested in California the accouterments of sovereignty, including title to all lands in the State not reserved to the United States in the Act of Admission.

25. If the United States wished to reserve certain California Republic lands for exclusive federal jurisdiction, it had to say so explicitly, and then, of course, retain the land. The Supreme Court explained this proposition in the context of Colorado's admission: "The Act of March 3, 1875, necessarily repeals the provisions of any prior statute or of any existing treaty which are clearly inconsistent therewith. Whenever, upon the admission of a state into the Union, Congress has intended to except out of it an Indian reservation or the sole and exclusive jurisdiction over that reservation, *it has done so by express words.*" *United States v. McBratney*, 104 U.S. 621, 623-24 (1881) (emphasis added; citation omitted); *see Draper v. United States*, 164 U.S. 240, 243-44 (1896); *see also Nevada v. Hicks*, 533 U.S. at 365 ("The States' inherent jurisdiction on reservations can of course be stripped by Congress," but only in the Act of Admission). Indeed, the Federal Government has done exactly that with other

Admission Acts. *See, e.g.*, 25 U.S. Statutes at Large, February 22,1889, c 180 at 676 ("That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, *and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.*") (emphasis added).

26. Here, by contrast, the Federal Government released all rights regarding Indian Lands in California by failing to reserve such rights in California's Act of Admission. As the Court said in *McBratney*, "the act contains no exception of the Ute Reservation or of jurisdiction over it." 104 U.S. at 623. Likewise, the California Admission Act reserves public lands without any exception for Indian lands or any provision that their jurisdiction and control remain vested in Congress. Therefore, all such lands are subject to State regulation unless the United States obtains the State's consent to cede jurisdiction.

By Exercising Exclusive Jurisdiction Without The State's Consent, The Decision Is Unlawful

27. The Decision's wholesale elimination of all State authority without the State's consent is incompatible with controlling law. This is not a typical situation of a State interfering with Tribal regulation on an established "State consented" or "admission reserved" tribal reservation. On the contrary, this is an attempt by the Tribe to purchase *private* land—subject to the State's ordinary and

sovereign authority[4]—and transfer that land to exclusive federal and Tribal control. The mechanism set up by the BIA flouts the State's role in regulating its own territory. Under a proper scheme, "the Indians' right to make their own laws and be governed by them *does not exclude* all state regulatory authority on the reservation." *Nevada v. Hicks*, 533 U.S. 353, 361 (2001) (emphasis added); *see ibid.* ("State sovereignty does not end at a reservation's border. Though tribes are often referred to as 'sovereign' entities, it was 'long ago' that 'the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries' [citations omitted]. 'Ordinarily', it is now clear, 'an Indian reservation is considered part of the territory of the State.'" (citations omitted)). The Supreme Court explained that when "state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land." *Id.* at 362. As noted above, there can be no question that the proposed development of Camp 4 will implicate significant "state interests outside the reservation." *Ibid.* The Decision itself says exactly that. For the Decision to be permissible at all, it must preserve traditional State control over this area. Contrary to the Decision's contention, Tribal authority and BIA decision-making are not adequate substitutes for State regulation. The Decision cannot supplant State power without satisfying constitutional and statutory requirements.

28. *First*, 40 U.S.C. § 3112 provides that the federal government may not obtain exclusive or concurrent jurisdiction over State land without obtaining the State's consent:

[4] The Decision itself acknowledges that the Tribe purchased Camp 4 from a private owner, and acknowledges that at the time of the Decision the Tribe's ownership was private and subject to California's sovereignty. See paragraph 22, *supra.*

> When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.

40 U.S.C. § 3112(b). Moreover, the government *must* satisfy § 3112(b) to establish its jurisdiction over the land: "It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section." *Id.* § 3112(c).[5] Section 3112's requirements apply to actions taken by the Federal Government pursuant to the Indian Reorganization Act ("IRA") (25 U.S.C. § 465) and the Indian Land Consolidation Act of 1983 (the "ILCA") (25 U.S.C. § 2202). Section 3112(b) thus has not been satisfied here because California did not give its consent to the Decision.

29. *Second*, independent of Section 3112, Clause 17 also requires the State's consent or cession. That clause gives the Federal government power to "exercise exclusive Legislation . . . over all Places purchased *by the Consent* of

[5] These requirements are consistent with a series of provisions designed to respect the horizontal separation of powers between the Federal Government and the States. *See, e.g.*, 4 U.S.C. § 103 ("The President of the United States is authorized to procure the *assent of the legislature of any State*, within which any purchase of land has been made for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, without such consent having been obtained.") (emphasis added).

the Legislature of the State in which the Same shall be, for the erection of . . . other needful Buildings" (emphasis added). The word "purchased" means an acquisition by any means, and the phrase "other needful Buildings" includes the underlying title to any land within a State. As the Supreme Court explained in *James v. Dravo Contracting Co*., 302 U.S. 134, 148 (1937): "Clause 17 contains no express stipulation that the consent of the state must be without reservations. We think that such a stipulation should not be implied. We are unable to reconcile such an implication with the freedom of the state and its admitted authority to refuse or qualify cessions of jurisdiction when purchases have been made without consent or property has been acquired by condemnation." *See also, e.g., Fort Leavenworth R. Co. v. Lowe*, 114 U.S. 525 (1885).

30. The Framers included Clause 17 to "assure[] that the rights of residents of federalized areas would be protected by appropriate reservations made by the States in granting their respective consents to federalization." The Jurisdictional Report[6] Part I, at 6; *see also* The Federalist No. 43, p. 276 ("All objections and scruples are here also obviated, by requiring the concurrence of the States concerned, in every such establishment."). Similarly, Justice Story, in Commentaries on the Constitution, Volume 3, Section 1219, explained that this exclusive authority to legislate "is wholly unexceptionable; since it can only be exercised at the will of the state; and therefore it is placed beyond all reasonable scruple." Justice Story thus concluded that "if there has been no cession by the

[6] This is a two volume Federal Government prepared report "Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas within the States 1956-57 ("Jurisdictional Report") http://www.supremelaw.org/rsrc/fedjur/fedjur1.htm and http://www.supremelaw.org/rsrc/fedjur/fedjur2.htm (last opened September 5, 2017.)

state of the place, although it has been constantly occupied and used, under purchase, or otherwise, by the United States for a fort, arsenal, or other constitutional purpose, *the state jurisdiction still remains complete and perfect*." *Id.* at § 1222 (emphasis added). According to the authoritative Jurisdictional Report, there is "*[n]o Federal legislative jurisdiction without consent, cession, or reservation.* It scarcely need to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the State, subject to non-interference by the State with Federal functions, and subject to the free exercise by the Federal Government of rights with respect to the use, protection, and disposition of its property." Part II, Chapter III, at 45. Because the Decision does not comply with Clause 17, it is unlawful.

31. *Third*, when California entered the Union, it entered on equal footing with the original states, and became vested with all "the accoutrements of sovereignty." *Idaho v. United States*, 533 U.S. 262, 282 (2001): "Congress cannot, after statehood, reserve or convey submerged lands that 'have already been bestowed' upon a State" at 281. The Supreme Court has made clear that "Congress cannot, after statehood, reserve or convey" lands that had become sovereign State property upon admission. *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163,--- (2009). That is, "[t]he consequences of admission are instantaneous." *Ibid.* Once land falls within a State's sovereign jurisdiction, it cannot be removed from that jurisdiction without the State's consent—any contrary conclusion would wrongly "diminish what has already been bestowed," and "that proposition applies *a fortiori* where virtually all of the State's public

lands—not just its submerged ones—are at stake." *Ibid.* Because Camp 4, as privately owned land sold by the private owner to the Tribe, it is clear that it became sovereign State property in accordance with the California Admission Act at some point in the past. As such it is far too late for the Decision to remove the property from California's jurisdiction.

32. The Indian Commerce Clause does not give Congress the right to exercise exclusive authority over state land without first obtaining the State's consent. The Indian Commerce Clause authorizes Congress to regulate commerce otherwise within its legislative authority.[7] It does not provide Congress the power to abrogate, after admission, the State's sovereign power over land within the State. That issue falls under the purview of Clause 17, and the two constitutional provisions must be read together. The Supreme Court has reaffirmed that the Indian Commerce Clause does not permit Congress to do through the backdoor what Clause 17 prohibits through the front: even when Congress expresses a "clear intent to abrogate the States' sovereign immunity, the Indian Commerce Clause does not grant Congress that power." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996). Clause 17's specific requirements overcome Congress's general authority under the Indian Commerce Clause. The former provides the exclusive means for Congress to obtain any jurisdiction over State lands. Indeed, the admission acts and the enactment of Section 3112 reflect the continuing necessity of the State's consent: Section 3112 precludes jurisdiction without such consent (precisely because the Constitution requires it), and the

[7] *Nevada v. Hicks, supra,* at 383: "We expressed skepticism that the Indian Commerce Clause could justify this assertion of authority in derogation of state jurisdiction" referencing *United States v. Kagama,* 118 U.S. 375 (1886).

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reason that other states' admission acts have provided such consent is to prequalify compliance with the Constitution (*see supra* ¶ 25).

First Claim for Relief

(The Defendants Have Violated 40 U.S.C. § 3112)

33. Plaintiffs repeat and reallege the allegations in paragraphs 1-32 above.

34. The Decision is contrary to the specific provisions of 40 U.S.C. § 3112, which provides that the United States may not accept jurisdiction without the State's "consent" or "cession."

35. The Decision purports to exercise exclusive jurisdiction over Camp 4. For instance, it states (at 17) that "the lands would be trust lands, and therefore not under the County's jurisdiction….the Tribe…would no longer be subject to State or local jurisdiction."

36. Defendants did not obtain consent from the State as required by Section 3112.

37. Land taken into trust without obtaining the required consent or cession from the State leaves all such land subject exclusively to State jurisdiction for all purposes. *See, e.g.*, 40 U.S.C. § 3112(c) ("It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.").

38. The Decision therefore violates Section 3112, and it is arbitrary, capricious, and contrary to law under 5 U.S.C. § 706.

Second Claim for Relief

(The Defendants Have Violated The United States Constitution Article I, Section 8, Clause 17)

39. Plaintiffs repeat and reallege the allegations in paragraphs 1-38 above.

40. Clause 17 of the Constitution prevents the United States from exercising exclusive or any lesser jurisdiction over Camp 4 without obtaining the State's consent.

41. The Decision makes clear that it purports to deprive California of its existing exclusive State jurisdiction over Camp 4: "…placing the property into trust allows the Tribe to exercise its self-determination and sovereignty over the property… If the land were to remain in fee status, tribal decisions concerning the use of the land would be subject to the authority of the State of California and the County of Santa Barbara, impairing the Tribe's ability to adopt and execute its own land use decisions and development goals." Decision p.21.

42. Defendants did not obtain the State's consent as required by Clause 17.

43. Without complying with Clause 17, Congress cannot authorize the taking of state land into trust for any reason, without the State's consent or cession, and California retains exclusive jurisdiction over such land.

44. Accordingly, the Decision violates the Constitution, and it is arbitrary, capricious, and contrary to law under 5 U.S.C. § 706.

Third Claim for Relief

(Defendants Have Violated California's Sovereignty Because Neither Congress Nor Any Agency of the Federal Government Can, After The Admission Of A State To The Union, Reserve Or Convey Lands That Have Been Bestowed Upon A State, As Once Bestowed The Ownership of Land Is An Incident Of State Sovereignty)

45. Plaintiffs repeat and reallege the allegations in paragraphs 1-44 above.

46. The United States Supreme Court has "emphasized that 'Congress cannot, after statehood, reserve or convey submerged lands that have already been bestowed upon a State'…(T)he consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event … to suggest that subsequent events somehow can diminish what has already been bestowed'… And that proposition applies *a fortiori* where virtually all of the State's public lands—*not just its submerged ones* are at stake." *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, --- (2009) (emphasis added).

47. As the Decision itself makes clear, before the Tribe purchased Camp 4 and before the Decision, Camp 4 was private property subject to California's sovereignty and laws.

48. Defendants did not obtain California's consent to exercise exclusive or any federal/tribal jurisdiction over Camp 4.

49. The Decision therefore improperly purports to exercise exclusive jurisdiction over State land already bestowed to California. *E.g.*, Decision p.3.

50. Accordingly, the Decision violates the Constitution and Supreme Court precedent, and it is arbitrary, capricious, and contrary to law under 5 U.S.C. §706.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in favor of Plaintiffs and against Defendants, granting the following relief:

a. Declaring that 40 U.S.C. §3112 is applicable to the actions of Defendants, thereby requiring compliance with the requirements of §3112(b) should the Defendants desire the Government to have jurisdiction; and that until such §3112(b) is complied with and a State Legislative determination regarding jurisdiction (granting exclusive, some or none at all) occurs, the State of California retains exclusive legislative jurisdiction over Camp 4;

b. Declaring that each and every portion of the Decision which gives or implies that the Defendants and/or the Tribe have any jurisdiction over Camp 4 is unenforceable;

c. Declaring the agency action with respect to declaring that jurisdiction has been transferred to, or can be transferred to the Defendant Agency, or the Tribe and eliminating the jurisdiction of the State of California is contrary to law within the meaning of 5 U.S.C. §706(2)(A).

d. Declaring the agency action to be contrary to the United States Constitution Article I, Section 8, Clause 17 and accordingly "contrary to constitutional right, power, privilege or immunity" as required by 5 U.S.C §706(2)(B), in that no consent or cession has been obtained from the Legislature of the State of California to the transfer to the Government of any jurisdiction.

e. Declaring that the United States Supreme Court case law interpreting Clause 17, and the history of the adoption of Clause 17 make clear that Clause 17

applies to this agency action, and that the consent of the Legislature of the State of California, if any, and to each and every limitation set by the Legislature in such consent is within the sovereign power of the Legislature of the State of California, including the right to impose the requirement that all of the legislation of the State apply to the Camp 4 Land, including the right of taxation of the real estate, in any such consent.

f. Declaring that Camp 4 is state sovereign land, made such by the Act of Admission of the State of California to the United States, that such sovereign right cannot be withdrawn by the Congress of the United States or any agency or agent of the United States from such state sovereignty without compliance with all of the requirements and limitations of Clause 17; that the failure to so comply with Clause 17 was "arbitrary, capricious, … and otherwise not in accordance with law".

g. Declaring that the Act of Admission of the State of California did not withhold jurisdiction over Indian land for the federal government, and such failure to do so ceded sovereign jurisdiction to the State of California, thereby making applicable the requirements of Clause 17.

h. Declaring that Congress cannot declare previously granted sovereign state land as no longer sovereign unless there is first compliance with Clause 17.

i. Declaring that the Indian Commerce Clause is limited by Clause 17, and therefore does not enable the Congress, in dealing with the Indian Tribes, to declare state sovereign land free and clear of Clause 17.

j. Declaring that 5 U.S.C. §706 applies to the Defendants and the agency action so that any portion of the Decision which removes jurisdiction from the State of California over Camp 4, and/or grants any jurisdiction to the Tribe is contrary to law and to the Constitution.

k. Awarding Plaintiffs their costs and disbursements, together with

reasonable attorney's fees to the extent permitted by law; and

l. Granting Plaintiffs such other and further relief as this Court deems just, equitable, and proper.

DATED: October 4, 2017 BY: _/S/_____

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