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Attorney for Appellant
Capay Valley Coalition

UNITED STATES DEPARTMENT OF INTERIOR

INTERIOR BOARD OF INDIAN APPEAL

CAPAY VALLEY COALITION

Appellant

v.

PACIFIC REGIONAL DIRECTOR, BUREAU
OF INDIAN AFFAIRS

Appellee

NOTICE OF APPEAL

Pursuant to 43 Code of Federal Regulations (CFR) section 4.310-4.340, Appellant Capay Valley Coalition, a non- profit organization, appeals the April 28, 2014 Notice of Decision of the Pacific Regional Director of the Bureau of Indian Affairs (BIA) to the Interior Board of Indian Appeals to accept 853 acres of land in the Capay Valley into trust for the Yocha DeHe Wintun Nation, California. A copy of the April 28, 2014 Notice of Decision is attached as Exhibit A to this Notice of Appeal.

A. DECISION BEING APPEALED

Appellant appeals the April 28, 2014, Notice of Decision for the application of the Yocha DeHe Wintun Nation to have 15 parcels totaling 853 acres more or less accepted by the United States of America in trust for the Yocha DeHe Wintun Nation, California. The property is commonly referred to as Assessor's Parcel Numbers 060-030-16; 060-030-17 (Chalom); 060-

030-001; 060-030-008; 060-030-009; 060-020-018; 060-020-019 (Sekarrobeh Leyo); 060-020-020; 048-230-001; 047-020-001; 060-010-001; 060-013-001; 060-014-001; 060-020-011; and 060-020-014 (Kisi). The property is contiguous to the northern, western and southern boundaries of the Nation. The subject property is located within an unincorporated area of Yolo County, California.

B. BASIS FOR THE APPEAL

1. THE DECISION FAILED TO COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

The BIA decision to acquire this property in trust was in error because it was based on an inadequate Environmental Assessment (EA) and failed to comply with the National Environmental Policy Act (NEPA). The EA and Findings of No Significant Impact (FONSI) fail to acknowledge the potential development and conversion of agricultural lands that are acquired in trust. The EA fails to address the future changes to land use in the Capay Valley associated with placing so many acres in trust. Moreover, the EA fails to indicate why or how the parcels must be placed in trust. The EA also fails to address environmental issues such as water since trust status removes oversight on water use on the parcels that are placed into trust.

2. THE BIA FAILED TO CONSIDER ALL FACTS UNDER 25 CFR § 151.10.

The BIA decision to acquire 853 acres parcel in trust was in error because the BIA failed to consider properly all factors required under 25 C.F.R. § 151.10. While the decision purports to consider all the factors in that regulation, a review of the BIA's analysis reveals that it failed to consider important information related to those factors. The regulation requires that the BIA consider tribal need for additional lands; jurisdictional problems; potential conflicts of land use which may arise; and the extent to which the Tribe has provided information that allows the Secretary to comply with NEPA and the regulations adopted by the Department of Interior and BIA related to NEPA.

The BIA failed to consider available information with respect to the factors in section 151.10. For example, the BIA failed to properly assess the Tribe's need to have the 853 acres of land taken into trust; whether the Tribe could fulfill all of its objectives with respect to the 853

1 acres without having the land placed into trust or without a portion of the land placed into trust;
2 the conflict between the proposed development and local land use regulations; and the impact
3 loss over the land will have on the local community.

4 Additionally, the Notice of Decision contains factual determinations that are not supported
5 by the evidence. Additionally, the trust taking has a high probability of creating significant land
6 use conflicts within the Capay Valley, a predominately agricultural area based upon the Yolo
7 County General Plan and land use regulations.

8 Also acquiring 853 acres in trust at this time is quite different than the Tribe's previous
9 trust applications. Circumstances have significantly changed in that the Tribe does not need the
10 trust land for economic stability as the Tribe has a wealthy operation on additional trust land in
11 the Capay Valley.

12 **3. THE BIA DECISION WAS ARBITRARY AND CAPRICIOUS**

13 The BIA's Notice of Decision to acquire the 853 acres in trust was in error because it was
14 arbitrary and capricious. The failure to properly consider each of the required elements under 25
15 CFR Part 151 renders the decision arbitrary and capricious, an abuse of discretion, or otherwise
16 not in accordance with the law. Additionally, the BIA acted in an arbitrary and capricious
17 manner by taking this land into trust in the absence of a rational basis for doing so.

18 **C. RELIEF REQUESTED**

19 Appellant requests that the Board vacate the BIA decision to acquire the 853 acres of land
20 into trust and remand it to the Pacific Regional Director for consideration of additional
21 information and a reasonable determination based upon the record.

22 **D. INTERESTED PARTIES**

23 Pursuant to 43 CFR section 4.332(c) Appellants identify the names and addresses of all
24 additional interested parties, Indian tribes, tribal corporations or groups having rights or
25 privileges which may be affected by a change in the decision.

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1 Marshall McKay, Chairman
2 Yocha DeHe Wintun Nation
3 P.O. Box 18
4 Brooks, CA 95606
5
6 California State Clearing House
7 Office of Planning & Research
8 P.O. Box 3044
9 Sacramento, 95814
10
11 Mr. Daniel Powell
12 Legal Affairs Secretary
13 Office of the Governor
14 State Capitol Building
15 Sacramento, CA 95814
16
17 Sara Drake
18 Deputy Attorney General
19 State of California
20 Department of Justice
21 P.O. Box 944255
22 Sacramento, CA 94244-2550
23
24 U.S. Senator Diane Feinstein
25 331 Hart Senate Office Building
26 Washington DC 20510
27
28 Capay Valley Coalition
P.O. 894
Esparto, CA 95627

Yolo County Assessor
625 Court Street, Room 104
Woodland, CA 95695

Yolo County Treasure/Tax Collector
625 Court Street, Room 102
Woodland, CA 95695

Yolo County Board of Supervisors
Julie Dachter, Deputy Clerk of the Board
625 Court Street, Room 204
Woodland, CA 95695

Yolo County Sheriff's Department
140 Tony Diaz Drive
Woodland, CA 95776

1 Yolo County Department of Planning and Public Works
2 292 West Beamer Street
3 Woodland, CA 95695

4 Stand Up for California
5 Cheryl Schmit, Director
6 P.O. Box 355
7 Penryn, CA 95663

8 Superintendent, Central California Agency – BIA
9 650 Capitol Mal, Suite 8-500
10 Sacramento, CA 95814

11 Jim Eldon & Julie Rose
12 Tierra Rica
13 18265 County Road 70
14 Brooks, CA 95606

15 Joseph V. Costello, Jr
16 St Francis Land & Cattle LLC
17 1880 Lombard St, San Francisco Ca 94123

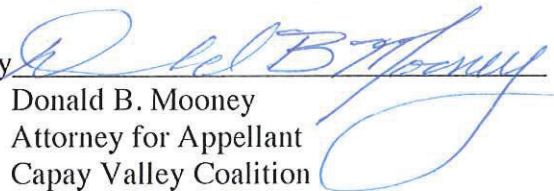
18 Donna & Larry Farnham
19 P.O. Box 141
20 Brooks, CA 95606

21 Charles M. Gordon, Jr.
22 Gordon Farms, Inc.
23 19341 County Road 76
24 Brooks, Ca 95606

25 Respectfully submitted,

26 LAW OFFICE OF DONALD B. MOONEY

27 By

28 
Donald B. Mooney
Attorney for Appellant
Capay Valley Coalition

1 **CERTIFICATE OF FILING AND SERVICE**

2 Pursuant to 43 CFR § 4.332(a) and § 4.333, I certify that a true and correct copy of this
3 Notice of Appeal, including Exhibit A, was mailed to, and thus filed with the Interior Board of
4 Indian Appeals, by first class mail, postage prepaid, on May 28, 2014, addressed to:

5 Interior Board of Indian Appeals
6 U.S. Department of the Interior
7 801 N. Quincy Street, Suite 300
8 Arlington, VA 22203

9 Pursuant to 43 CFR § 4.332(a) and § 4.333, I certify that a true and correct copy of this
10 Notice of Appeal, including Exhibit A, was mailed to the Regional Director of the Bureau of
11 Indian Affairs (BIA), from whose April 28, 2014 decision this appeal is taken, by first class
12 mail, postage prepaid, on May 28, 2014

13 Amy Deutschke, Regional Director
14 Bureau of Indian Affairs
15 United States Department of Interior
16 Pacific Regional Office
17 2800 Cottage Way
18 Sacramento, CA 95825

19 Pursuant to 43 CFR § 4.332(a) and § 4.333, Capay Valley Coalition has identified the
20 following interested parties/party representatives in this action based upon the notice list of the
21 BIA decision and commenters to the Environmental Assessment, and has served upon them a
22 true and correct copy of this Notice of Appeal, including Exhibit A, by first class mail, postage
23 prepaid, on May 28, 2104:

24 Assistant Secretary of Indian Affairs
25 U.S. Department of Interior
26 1849 C Street, N.W.
27 MS-3701-MIB
28 Washington DC 20240

Marshall McKay, Chairman
Yocha DeHe Wintun Nation
P.O. Box 18
Brooks, CA 95606

California State Clearing House
Office of Planning & Research
P.O. Box 3044
Sacramento, 95814

1 Mr. Daniel Powell
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3 Office of the Governor
4 State Capitol Building
5 Sacramento, CA 95814

6 Sara Drake
7 Deputy Attorney General
8 State of California
9 Department of Justice
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13 331 Hart Senate Office Building
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24 Yolo County Board of Supervisors
25 Julie Dachter, Deputy Clerk of the Board
26 625 Court Street, Room 204
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292 West Beamer Street
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Stand Up for California
Cheryl Schmit, Director
P.O. Box 355
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3 650 Capitol Mal, Suite 8-500
4 Sacramento, CA 95814

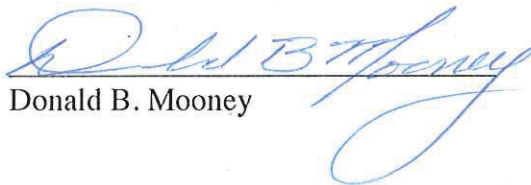
5 Capay Valley Coalition has identified the following interested parties/party representatives
6 that own property adjacent to the property acquired in trust, and has served upon them a true and
7 correct copy of this Notice of Appeal, including Exhibit A, by first class mail, postage prepaid,
8 on May 28, 2104:

9 Jim Eldon & Julie Rose
10 Tierra Rica
11 18265 County Road 70
12 Brooks, CA 95606

13 Joseph V. Costello, Jr.
14 St Francis Land & Cattle LLC
15 1880 Lombard Street
16 San Francisco CA 94123

17 Donna & Larry Farnham
18 P.O. Box 141
19 Brooks, CA 95606

20 Charles M. Gordon, Jr.
21 Gordon Farms, Inc.
22 19341 County Road 76
23 Brooks, CA 95606

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