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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CACHIL DEHE BAND OF WINTUN
INDIANS OF THE COLUSA INDIAN
COMMUNITY, a federally recognized Indian
Tribe,
Plaintiff,
v.
S.M.R. JEWELL, Secretary of the Interior, *et*
al.,
Defendants.

CASE NO. 2:12-CV-03021-TLN-AC
**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR AN EXTENSION OF THE
DEADLINE TO FILE FOR A
PRELIMINARY INJUNCTION AND
MOTION FOR A STATUS CONFERENCE
REGARDING INJUNCTIVE RELIEF**

Date:
Time:
Courtroom: 2, 15th Floor
Hon. Troy L. Nunley

1 UNITED AUBURN INDIAN COMMUNITY
2 OF THE AUBURN RANCHERIA,

3 *Plaintiff,*

4 v.

5 S.M.R. JEWELL, Secretary of the Interior, *et*
6 *al.*,

7 *Defendants.*

8 CITIZENS FOR A BETTER WAY, *et al.*,

9 *Plaintiffs,*

10 v.

11 UNITED STATES DEPARTMENT OF THE
12 INTERIOR, *et al.*,

13 *Defendants.*

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21 TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE that on such date at such time as may be ordered by the
23 Honorable Troy L. Nunley, Plaintiffs Citizens for a Better Way, Stand Up For California!, Grass
24 Valley Neighbors, William F. Connelly, James M. Gallagher, Andy Vasquez, Dan Logue, Robert
25 Edwards, and Roberto's Restaurant, and United Auburn Indian Community of the Auburn
26 Rancheria, and Cachil Dehe Band of Wintun Indians of the Colusa Indian Community
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1 (“Plaintiffs”) will, and hereby do, move the Court, pursuant to Fed. R. Civ. P. 16 and Local Rule
2 240 to set a status conference to discuss possible injunctive relief in the above-captioned action,
3 and for an extension of the deadline to file for a preliminary injunction.

4 This case involves allegations that Defendants acted arbitrarily and capriciously, in
5 violation of the Indian Reorganization Act (“IRA”), the Indian Gaming Regulatory Act
6 (“IGRA”), the National Environmental Policy Act (“NEPA”), the Clean Air Act (“CAA”), and
7 the Administrative Procedure Act (“APA”) when they acquired land in trust (the “Yuba Site”) for
8 the Estom Yumeka Maidu Tribe of the Enterprise Rancheria (“Enterprise”), and approved
9 Enterprise’s plans to develop a casino and hotel project on the Site. *See* Complaint (Doc. #1).

10 In January 2013, Plaintiffs moved for a temporary restraining order barring the Secretary
11 from acquiring land in trust and Enterprise from beginning construction activity on the Site. *See*
12 Doc. #18. The court denied the motion with respect to the transfer of land into trust; however, it
13 required Enterprise to provide 30 days’ notice before commencing construction activity, so that
14 the court could “revisit the harm caused by the activity at the site without issuing a TRO” at that
15 time. *See* Order at 9 (Doc. #57). Following the order, the parties entered (and the court
16 approved) a stipulation requiring Enterprise to notify Plaintiffs no less than 60 days prior to
17 commencing construction activity at the Site. *See* Stipulation and Order Governing Further
18 Proceedings, at ¶ 2 (Doc. #69). The stipulation also required Plaintiffs to file any motion for
19 injunctive relief within 15 days after receipt of such notice of construction. *Id.*

20 In 2014, the parties all filed summary judgment motions relating to the merits of
21 Defendants’ land acquisition and approval of the gaming facility. *See* Doc. ## 9, 102, 116, 119.

22 On June 15, 2015, Enterprise’s counsel wrote to inform Plaintiffs of Enterprise’s plans to
23 initiate construction of a “small, temporary Class II gaming facility on the Site,” a project
24 substantially different from the one Defendants approved and regarding which summary
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1 judgment motions were filed. *See* Exh. A (Letter from M. Adams (June 15, 2015, misdated as
2 2014) (the “June 2015 Letter”). After reviewing the June 2015 Letter, Plaintiffs agreed not to
3 file a motion for injunctive relief relating to the construction activities described in the June 2015
4 Letter. *See* Doc. #160. Enterprise agreed to provide at least 60 days’ notice of any activity that
5 “goes beyond the scope of” the construction activities described in the June 2015 Letter. *Id.* The
6 Court modified the parties’ prior stipulation. *See* Order Amending Stipulation and Order for
7 Further Proceedings (Doc. #161).

9 Enterprise never began construction on the gaming facility described in its June 2015
10 Letter. Instead, on August 31, 2015, Enterprise’s counsel wrote to inform Plaintiffs that the Tribe
11 now “plans to construct a permanent facility” at the Site. *See* Exh. B (Letter from M. Adams
12 (Aug. 31, 2015, misdated as 2014) (the “August 2015 Letter”). This is yet a third project, and
13 again different than the one the Defendants approved and concerning which summary judgment
14 motions were filed. The August 2015 Letter provided scant information about Enterprise’s
15 construction plans—three short paragraphs of narrative description and a one-page diagram. *Id.*

17 After receipt of the August 2015 Letter, in an attempt to understand exactly what would
18 be involved in Enterprise’s construction activities—and to avoid burdening this Court with a
19 potentially unnecessary motion for injunctive relief—Plaintiffs sought additional information
20 from Enterprise regarding its construction plans. *See* Exh. C (Letter from J. MacLean (Sept. 8,
21 2015)). Plaintiffs asked Enterprise if its new project would entail connections to an expanded
22 wastewater treatment plant (which would encroach on County land), whether Enterprise has
23 submitted a notice of intent for coverage under Clean Water Act storm water permits, and for
24 details on whether Enterprise has (or plans to obtain) a permit to discharge into wetlands located
25 on the Site. All of this information would assist Plaintiffs in determining whether construction at
26 the Site was actually imminent, a requisite element for injunctive relief. *See Caribbean Marine*
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1 *Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (explaining that “a plaintiff must
2 demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief”).

3 But in a response email on September 9, 2015, Enterprise’s counsel refused to provide
4 answers to Plaintiffs’ questions about Enterprise’s specific proposed construction activity,
5 asserting that “the Tribe has already given Plaintiffs a detailed description of its proposed
6 development, a site plan identifying the development’s features, and a written assurance that
7 construction will comply with all applicable mitigation measures set forth in the ROD.” *See* Exh.
8 D (Email from M. Adams (Sept. 9, 2015)). And even though the project described in the August
9 2015 letter is different than both the project described in the June 2015 Letter and the project that
10 Defendants approved, counsel further asserted that that material, “along with the thousands of
11 pages of environmental analysis found in the Department of the Interior’s Environmental Impact
12 Statement, provides more than enough information for all parties to evaluate the Tribe’s planned
13 construction.”¹ *Id.* Finally, Counsel added that Enterprise “anticipated that ground-disturbing
14 activities, including grading, will begin in early November.” *Id.*

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17 Currently, Plaintiffs are required to move for injunctive relief within 15 days of
18 Enterprise’s notice of construction, which would fall on September 15, 2015. Because Enterprise
19 has refused to provide details about its planned project, absent additional clarification, Plaintiffs
20 have a very limited ability to assess whether they need to seek injunctive relief from this Court.²
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23 ¹ Plaintiffs requested additional information regarding when Enterprise planned to
24 commence construction, in light of the “conditional” financing Enterprise referenced in its August
25 2015 Letter and that it had not yet closed on financing for construction of the permanent facility.
26 Under the terms of the Memorandum of Understanding with Yuba County—the agreement that
27 provides the basis for the Secretary’s finding of no detriment that Plaintiffs have challenged in
28 their summary judgment briefing—Enterprise is required to pay Yuba County a sum of
\$697,120.00 prior to commencing construction activities, including grading. It is Plaintiffs’
understanding that that payment has not yet been made, which also raised concerns regarding the
imminence of construction activities.

² Enterprise makes the assertion that the information in Defendants’ Environmental Impact
Statement (“EIS”) is sufficient, but that EIS relates to a project different than the project about which

1 Accordingly, Plaintiffs respectfully request that this Court hold a status conference. The
 2 parties' motions for summary judgment are fully briefed, and Plaintiffs do not want to burden the
 3 Court with a motion for injunctive relief if the Court soon plans to rule on the pending summary
 4 judgment motions. Through a status conference, the Court could instruct the parties on: (1)
 5 whether it would assist the Court to brief injunctive relief while the summary judgment motions
 6 are pending; and, (2) if the court desires briefing on injunctive relief, the information that
 7 Enterprise should be required to share regarding its plans for construction of a project different
 8 than the project approved by Defendants. By scheduling a status conference to instruct the parties
 9 how to proceed with respect to potential injunctive relief, this Court will ensure that Plaintiffs can
 10 fairly and adequately seek equitable relief.
 11

12 Additionally, Plaintiffs respectfully request that this Court extend the deadline for filing
 13 for a preliminary injunction—at least until the Court schedules the requested status conference—
 14 but in any event to give Plaintiffs enough time to obtain clarification with respect to Enterprise's
 15 newly proposed project, and, as necessary, file a fully informed motion for injunctive relief with
 16 this Court.
 17

18 **CONCLUSION**

19 For the foregoing reasons, Plaintiffs respectfully request that the Court hold a status
 20 conference to instruct the parties with respect to potential injunctive relief. Plaintiffs also
 21 respectfully request the Court to extend the September 15, 2015 deadline until a Court-scheduled
 22 status conference, and/or to give Plaintiffs enough time to obtain clarification with respect to
 23 Enterprise's newly proposed project.
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 28 Enterprise has given notice, and is thus only of very limited utility to Plaintiffs in assessing the necessity
 of injunctive relief.

1 Dated: September 11, 2015

Respectfully submitted,

2
3 /s/ James O. Bickford

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19 /s/ Thomas F. Gede

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/s/ George Forman

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th of September 2015, I electronically filed the foregoing PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN EXTENSION OF THE DEADLINE TO FILE FOR A PRELIMINARY INJUNCTION AND MOTION FOR A STATUS CONFERENCE REGARDING INJUNCTIVE RELIEF with the Clerk of the Court using the CM/ECF system which will send notification of such to counsel of record.

DATED: September 11, 2015

Respectfully submitted,

/s/ James O. Bickford

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