

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN / SOUTHERN DIVISION

CHARLES E. BELANGER, Trustee,
and JUDITH A. BELANGER, Trustee;
CHARLES L. REYNOLDS and KAREN
S. REYNOLDS, husband and wife;
GARY E. COSTLEY and CHERYL J.
COSTLEY, Co-Trustees; JACK R. FAIRFIELD
and CATHERINE FAIRFIELD, Trustees;
GERALDINE K. TROPF, Trustee; and
NORTHWESTERN BANK, Trustee
(Keeler Trust),

Plaintiffs,

v

GERALD F. PARISH, Superintendent,
BUREAU OF INDIAN AFFAIRS,
MICHIGAN AGENCY,
2901.5 I-75 Business Spur
Sault Ste. Marie, MI 49783,

and

DIRK KEMPTHORNE, in his official
capacity as SECRETARY OF THE
UNITED STATES DEPARTMENT
OF THE INTERIOR, 1849 C Street, N.W.,
Washington, D.C. 20240,

and

CARL J. ARTMAN, in his official
capacity as ASSISTANT
SECRETARY OF THE UNITED STATES
DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
1849 C Street, N.W.,
Washington, D.C. 20240,

Defendants.

**VERIFIED
COMPLAINT**

Civil Action No. _____

1:08-cv-362
Richard Alan Enslin
US District Judge

William M. Davison (P12570)
Running, Wise & Ford, P.L.C.
Attorneys for Plaintiffs
326 E. State Street – P.O. Box 686
Traverse City, MI 49685-0686
Phone: (231) 946-2700

Plaintiffs bring this action under the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.* (“APA”), against Defendants, Gerald F. Parish, Superintendent of the Bureau Of Indian Affairs, Michigan Agency, Dirk Kempthorne, Secretary of the United States Department of the Interior, and Carl J. Artman, Assistant Secretary of the United States Department of the Interior, Bureau of Indian Affairs, and state as follows:

INTRODUCTION

1. The Bureau of Indian Affairs, Michigan Agency (“Michigan Agency”), The United States Department of the Interior (“DOI”) and the Bureau of Indian Affairs (“BIA”) (collectively, “Defendants”) have approved placing into trust 22.5 acres of land consisting of part of a former railroad corridor running from Traverse City to Northport, which 22.5 acres of land is hereinafter referred to herein as the “Land”, for use by the Grand Traverse Band of Ottawa and Chippewa Indians (“Grand Traverse Band”).
2. Part of the aforesaid Land is owned by Plaintiffs, and which part is hereinafter referred to as the “Corridor”.
3. Defendants’ decision was unlawful, arbitrary, capricious, and an abuse of discretion, because the Grand Traverse Band does not have title to all of the land Defendants now seeks to accept in trust for the Grand Traverse Band’s benefit.

4. Further, the IRA only permits land to be taken into trust for Indian tribes that were federally recognized as of June 1934, when the IRA was enacted. Upon information and belief, the Grand Traverse Band was not federally recognized in June 1934.
5. Substantial risk exists that, once the Land is placed in trust, Plaintiffs' Corridor may be irretrievably lost to them. Accordingly, Plaintiffs need to immediately secure a declaration of Plaintiffs' rightful title over their land, to reverse Defendants' arbitrary, capricious, and unlawful decision, and an injunction to prevent the placement of the Land into trust.

PARTIES AND JURISDICTION

6. Plaintiffs each own property in Suttons Bay Township, Leelanau County, Michigan, as indicated below:
 - A. Plaintiffs Belanger:

Property described in the Deed dated 10/20/06, recorded in Liber 921, Page 493. **(Exhibit A)**
 - B. Plaintiffs Reynolds:

Property described in the Deed dated 5/18/95, recorded in Liber 406, Page 386, and in the Deed dated 7/6/99, recorded in Liber 517, Page 213. **(Exhibit B)**
 - C. Plaintiffs Costley:

Property described in the Deed dated 9/2/05, recorded in Liber 870, Page 53. **(Exhibit C)**
 - D. Plaintiffs Fairfield:

Property described in the Deed dated 10/13/92, recorded in Liber 350, Page 820. **(Exhibit D)**

E. Plaintiff Tropic:

Property described in the Deed dated 8/15/07, recorded in Liber 950, Page 471. (**Exhibit E**)

F. Plaintiff Northwestern Bank, Trustee (Keeler):

Property described in the Deed dated 12/22/06, recorded in Liber 926, Page 427. (**Exhibit F**)

7. Defendant Gerald F. Parish is the Superintendent of the Bureau of Indian Affairs/Michigan Agency; Dirk Kempthorne is the Secretary of the United States Department of the Interior, Washington, D.C.; and Defendant Carl J. Artman is the Assistant Secretary of the United States Department of the Interior, Bureau of Indian Affairs, Washington, D.C.
8. Plaintiffs bring this action under the APA, 5 U.S.C. §§ 551 *et seq.* This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331, and may issue declaratory relief and reverse, delay, or postpone Defendants' actions or otherwise issue an injunction under 28 U.S.C. § 2201 and 5 U.S.C. §§ 702 & 705.
9. On March 20, 2008, Defendants published a notice in *The Leelanau Enterprise* ("Public Notice") that Defendants had, on March 7, 2008, made a "Final Agency Determination" to acquire the Land in trust for the Grand Traverse Band. (*See Exhibit G*).
10. As set forth in the IRA Regulations, 25 CFR 151.12(b) and acknowledged in Defendants' published notice, interested parties may seek judicial review of this land-in-trust determination within a period of thirty days from the date of publication. Plaintiffs are therefore filing this action for APA review within the thirty-day period.

GENERAL ALLEGATIONS

A. The Grand Traverse Band Does Not Have Full Legal Title to all of the Land that Defendants Intend to Transfer in Trust

11. The legal description of that portion of the Land passing through Plaintiffs' properties described at ¶6 (i.e., the Corridor) is legally described as follows:

Part of Lot 6, Block 6, Village of Peshawbestown, Government Lot 1 East and part of Lot 1, Block 7, Village of Peshawbestown, Government Lot 2 East, Section 10, Town 30 North, Range 11 West, Suttons Bay Township, Leelanau County, Michigan, and being that part of the following description lying between the Southwesterly bank of Belanger's Creek (formerly known as Kenosha Creek) and the Northeasterly line of said Lot 6 of Block 6:

A strip of land one hundred feet in width, the center line of which commences on the south line of lot two, block 7 of the Village of Peshawbatown, section 10, town 30 north, of range 11 west, at a point which is 263-1/2 feet east of the center of the Newaygo and Northport State Road, thence north 47 degrees 21-1/2 minutes east 168.4 feet, thence north easterly on a 2865 foot radius curve to the right 352-1/2 feet, thence north 54 degrees 24-1/2 minutes east 888 feet to a point on the north easterly line of lot six of block six of the Village of Peshawbatown, which is 168-1/2 feet south easterly from the center of Newaygo and Northport State Road.

12. The Public Notice acknowledged that the Grand Traverse Band originally acquired the Corridor from RLTD Railroad Corporation.
13. However, through *mesne* conveyances, title to the Land evolved as follows:
- A. Deeds to Antoine Manseau and Mary Manseau, dated 8/6/1868, 10/5/1875, and 8/19/1876, and recorded in Liber 3, Page 283, Liber 5, Page 570, and Liber 8, Page 301, respectively. **(Exhibit H)**
 - B. Antoine Manseau and Mary Manseau property taken by The Traverse City, Leelanau and Manistique Railroad Company, per Leelanau County Probate Court **condemnation proceedings** undertaken in 1902, recorded in Instruments #01 821/970-975, #01 821/976, and #01 821/977. **(Exhibit I)**
 - C. Traverse City, Leelanau and Manistique Railroad Company to Leelanau Transit Company, dated June 16, 1919, recorded in Liber 41, Page 424. **(Exhibit J)**

- E. Leelanau Transit Company to RLTD Railroad Corporation, dated March 15, 1994, recorded in Liber 384, Page 555. (**Exhibit K**)
 - F. RLTD Railroad Corporation to Grand Traverse Band of Ottawa and Chippewa Indians, dated March 15, 1994, recorded in Liber 384, Page 557 (**Exhibit L**), along with other land.
14. The Public Notice, while reciting title sequences of record, omitted reference to the condemnation proceedings undertaken in 1902.
 15. The Grand Traverse Band never operated a railroad.
 16. The relative locations of the properties referred to at paragraph 6 above, as well as in **Exhibit G**, are depicted, to scale, on the drawing attached as **Exhibit M**. A vicinity map, showing the relationship of the Corridor to the other Land described in **Exhibit G**, is attached as **Exhibit N**.
 17. Recent photographs attached as **Exhibit O** fairly depict the approximate location of the Corridor where it traverses the backyards of Plaintiffs' respective properties. The utility poles shown on the photos are located on, and along the west side of, the 100 foot-wide Corridor.
 18. Because the portion of the Land running through Plaintiffs' properties (i.e., the Corridor) was initially created by condemnation (*See* **Exhibit I**), the interest acquired by the railroad was, as a matter of law, an easement, not the fee title.
 19. The Corridor, as a former easement, has been abandoned by virtue of the following:
 - A. The rails and ties on each end of the Corridor have been removed and salvaged.
 - B. The continuity of the original railroad right-of-way was severed by the conveyance by RLTD to the Grand Traverse Band, a non-railroad entity, in 1994, as noted at paragraph 13(F) above, thus preventing railroad traffic across Plaintiffs' properties.
 - C. The continuity of the railroad right-of-way was further severed by the conveyance by Grand Traverse Band to Leelanau Land Preservation Company ("LLPC"), also a non railroad entity, per Deed dated 5/31/95, and recorded in Liber 404, Page 471. (**Exhibit P**)

D. Subsequent severances were created by conveyances from LLPC to adjoining property owners along portions of the original railroad right-of-way acquired by LLPC.

20. By virtue of the abandonment of the easement that constitutes the Corridor traversing Plaintiffs' properties, the easement is now extinguished, thus triggering a reversion of the Corridor to the Plaintiffs, who own the land from which the easement was carved.
21. In light of the foregoing, the titles to Plaintiffs' respective properties described in the deeds identified at paragraph 6 above are now relieved of the easement on the Corridor.
22. In addition to the fact that Plaintiffs now own the fee title to the Corridor by reason of the abandonment of the easement, Plaintiffs' separate portions of the Corridor have been occupied, landscaped, maintained and generally occupied exclusively by Plaintiffs and/or their predecessors, well in excess of 15 years, thus giving them title by adverse possession..

B. Upon Information and Belief, The Grand Traverse Band Was Not a Recognized Indian Tribe as of June 1934.

23. Upon information and belief, the Grand Traverse Band signed the Treaty of Detroit with the United States in 1855.
24. However, upon information and belief, the Department of the Interior ceased to recognize the Grand Traverse Band in 1872.
25. Upon information and belief, the Grand Traverse Band did not regain its status as a federally recognized tribe until 1980.
26. Therefore, upon information and belief, the Grand Traverse Band was not a federally recognized Indian tribe in June 1934, the effective date of the Indian Reorganization Act.

**COUNT I: Declaratory Judgment and Injunctive Relief Under the Administrative
Procedures Act, 5 U.S.C. § 702**

Defendants' Decision to Transfer Land in Trust to the Grand Traverse Band, When the Grand Traverse Band Does Not Have Full Legal Title to the Land, is Arbitrary, Capricious, an Abuse of Discretion, or Otherwise not in Accordance with Law.

27. Plaintiff incorporates by reference and realleges the preceding paragraphs as if fully set forth herein.
28. The Grand Traverse Band has no legal title in fee or easement to convey, nor the Defendants to accept in trust, the Corridor running through Plaintiffs' properties.
29. Further, 25 CFR § 151.13 requires the Secretary of the Interior to inspect the title of land subject to a potential transfer-in-trust:

If the Secretary determines that he will approve a request for the acquisition of land from unrestricted fee status to trust status, he shall acquire, or require the applicant to furnish, title evidence meeting the *Standards For The Preparation of Title Evidence In Land Acquisitions by the United States*, issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.

30. A person suffering a legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review under the APA. *See* 5 U.S.C. § 702. The APA provides the following standard of review for agency actions:

The reviewing court shall:

- (2) hold unlawful and set aside agency action, findings, and conclusions found to be:
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

* * *

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

* * *

5 U.S.C. § 706.

31. Defendants' decision to take the Land into trust for the benefit of the Grand Traverse Band violates the IRA and the above regulations, because the Grand Traverse Band does not have a full ownership interest in the Land being placed into trust. This decision would further cause irreparable harm to Plaintiffs.
32. Plaintiffs' remedies at law are inadequate. Injunctive relief – ex parte, preliminary and permanent – is necessary to prevent irreparable injury.

COUNT II: Declaratory Judgment and Injunctive Relief, 5 U.S.C. § 702

Defendants' Proposed Transfer Is Arbitrary, Capricious, an Abuse of Discretion, or Otherwise not in Accordance with Law for the Additional Reason that the Grand Traverse Band Was not a Recognized Indian Tribe in June 1934, and Is Therefore Ineligible for this Transfer.

33. Plaintiffs incorporate by reference and realleges the preceding paragraphs as if fully set forth herein.
34. The IRA empowers Defendants to take land into trust only for Indian tribes that were federally recognized in June 1934, when IRA was enacted. 25 U.S.C. §§ 465, 479.
35. One Federal Circuit Court, in *Carcieri v. Kempthorne*, 497 F.3d 15 (1st Cir. 2007), has held that the IRA does not necessarily prevent transfers-in-trust to Indian tribes not federally recognized by June 1934. However, the Supreme Court recently granted certiorari and will review that decision. *See* No. 07-526, 2008 WL 482033 (Feb. 25, 2008).

36. Therefore, Plaintiffs raise the issue of Defendants' authority to take the Land into trust based on the aforesaid issue currently before the Supreme Court.
37. Plaintiffs are entitled to judicial review of Defendants' unlawful actions under the APA. *See* 5 U.S.C. §§ 702 & 706.
38. Plaintiff's remedies at law are inadequate. Injunctive relief – ex parte, preliminary and permanent – is necessary to prevent irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant them the following relief:

- (A) That the Court find the action of Defendants unlawful and reverse the decision to take the land into trust for the Grand Traverse Band;
- (B) That the Court issue a declaratory judgment declaring that the Grand Traverse Band does not have full title to the Land that Defendants intend to transfer into trust for the Grand Traverse Band's benefit – in particular, the Grand Traverse Band does not have title to the Corridor running through Plaintiffs' properties – and that Defendants' decision to take this Land into trust notwithstanding this lack of title is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, including but not limited to the regulations promulgated pursuant to the Indian Reorganization Act, at 15 CFR §§ 151.2 & 151.13;
- (C) That the Court issue a declaratory judgment declaring that Defendants' decision to take the Land into trust is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, including but not limited to Sections 5 and 19 of the Indian Reorganization Act, 25 U.S.C. §§ 465 & 479;

- (D) That the Court issue an order staying the action of Defendants and/or issuing a ex parte temporary restraining order and, subsequently, a preliminary injunction prohibiting the acceptance or transfer of the Land into trust for the benefit of the Grand Traverse Band, effective immediately and pending litigation of the issues raised in this Verified Complaint.
- (E) That the Court issue a permanent injunction prohibiting Defendants from accepting or transferring the Land into trust for the benefit of the Grand Traverse Band;
- (E) That the Court award to Plaintiffs their costs and reasonable attorney fees; and
- (F) That the Court award such other relief as it deems proper to effectuate the purposes of this action.

RUNNING, WISE & FORD, P.L.C.

Dated: April 16, 2008

By: 

William M. Davison (P12570)

Attorneys for Plaintiffs

Business Address:

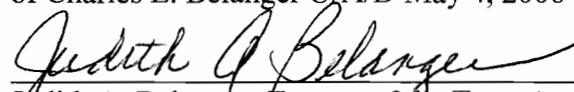
326 E. State St. – P.O. Box 686

Traverse City, MI 49685-0686

Phone: (231) 946-2700



Charles E. Belanger, Trustee of the Trust Agreement of Charles E. Belanger U/A/D May 4, 2006



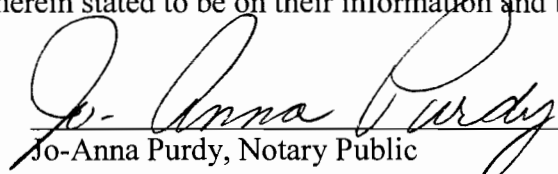
Judith A. Belanger, Trustee of the Trust Agreement of Judith A. Belanger U/A/D May 4, 2006

STATE OF MICHIGAN)

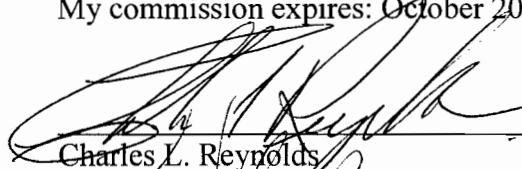
)ss.

COUNTY OF GRAND TRAVERSE)

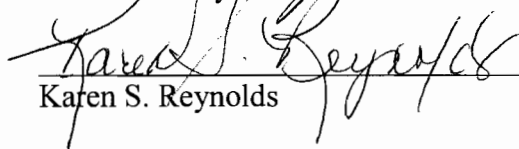
On this 11th day of April, 2008, before me, a Notary Public in and for said county and state, personally appeared CHARLES E. BELANGER, Trustee of the Trust Agreement of Charles E. Belanger U/A/D May 4, 2006, and JUDITH A. BELANGER, Trustee; of the Trust Agreement of Judith A. Belanger U/A/D May 4, 2006, the above-named Plaintiffs, and made oath that they have read the foregoing Complaint by them subscribed, and know the contents thereof, and that the same is true of their own knowledge, except as to those matters which are therein stated to be on their information and belief, and as to those matters they believes them to be true.



Jo-Anna Purdy, Notary Public
Grand Traverse County, Michigan
(acting in Grand Traverse County, Michigan)
My commission expires: October 20, 2010



Charles L. Reynolds



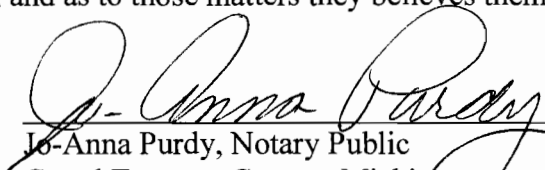
Karen S. Reynolds

STATE OF MICHIGAN)

)ss.

COUNTY OF GRAND TRAVERSE)

On this 11th day of April, 2008, before me, a Notary Public in and for said county and state, personally appeared CHARLES L. REYNOLDS and KAREN S. REYNOLDS, husband and wife, above-named Plaintiffs, and made oath that they have read the foregoing Complaint by them subscribed, and know the contents thereof, and that the same is true of their own knowledge, except as to those matters which are therein stated to be on their information and belief, and as to those matters they believes them to be true.




Jo-Anna Purdy, Notary Public
Grand Traverse County, Michigan
(acting in Grand Traverse County, Michigan)
My commission expires: October 20, 2010

Gary E. Costley
Gary E. Costley, Co-Trustee of the Cheryl J.
Costley Revocable Trust dated July 8, 1980

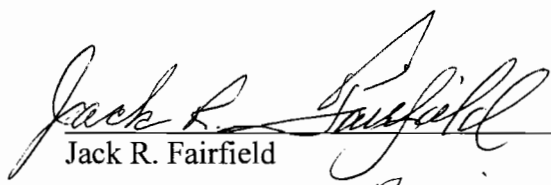
Cheryl J. Costley
Cheryl J. Costley, Co-Trustee of the Cheryl J.
Costley Revocable Trust dated July 8, 1980

STATE OF FLORIDA)
)ss.
COUNTY OF COLLIER)

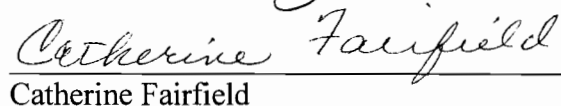
On this 15th day of April, 2008, before me, a Notary Public in and for said county and state, personally appeared GARY E. COSTLEY and CHERYL J. COSTLEY, Co-Trustees of the Cheryl J. Costley Revocable Trust dated July 8, 1980, the above-named Plaintiffs, and made oath that they have read the foregoing Complaint by them subscribed, and know the contents thereof, and that the same is true of their own knowledge, except as to those matters which are therein stated to be on their information and belief, and as to those matters they believes them to be true.

NOTARY PUBLIC - STATE OF FLORIDA
 Deanna M. Davidson
Commission #DD641748
Expires: APR. 03, 2011
BONDED THROUGH ATLANTIC BONDING CO., INC.

Deanna M. Davidson
Notary Public
Collier County, Florida
~~My commission expires~~ April 3, 2011
My commission expires:
(acting in Collier County)



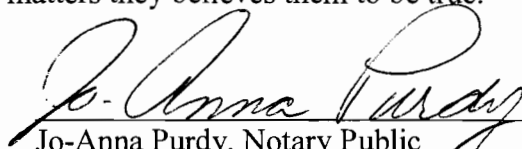
Jack R. Fairfield



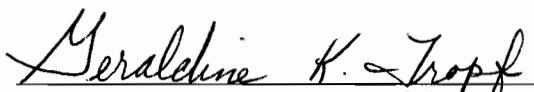
Catherine Fairfield

STATE OF MICHIGAN)
)ss.
COUNTY OF GRAND TRAVERSE)

On this 11th day of April, 2008, before me, a Notary Public in and for said county and state, personally appeared JACK R. FAIRFIELD and CATHERINE FAIRFIELD, the above-named Plaintiffs, and made oath that they have read the foregoing Complaint by them subscribed, and know the contents thereof, and that the same is true of their own knowledge, except as to those matters which are therein stated to be on their information and belief, and as to those matters they believes them to be true.



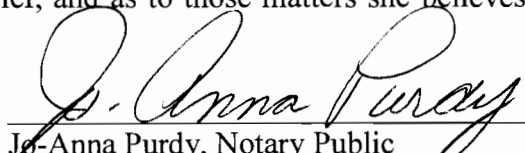
Jo-Anna Purdy, Notary Public
Grand Traverse County, Michigan
(acting in Grand Traverse County, Michigan)
My commission expires: October 20, 2010



Geraldine K. Trof, Trustee of the Geraldine
Trof Trust Dated August 15, 2007

STATE OF MICHIGAN)
)ss.
COUNTY OF GRAND TRAVERSE)

On this 11th day of April, 2008, before me, a Notary Public in and for said county and state, personally appeared Geraldine K. Trof, Trustee of the Geraldine Trof Trust Dated August 15, 2007, the above-named Plaintiff, and made oath that she has read the foregoing Complaint by her subscribed, and knows the contents thereof, and that the same is true of her own knowledge, except as to those matters which are therein stated to be on her information and belief, and as to those matters she believes them to be true.



Jo-Anna Purdy, Notary Public
Grand Traverse County, Michigan
(acting in Grand Traverse County, Michigan)
My commission expires: October 20, 2010

