Stand Up for California! v. U.S. Dept. of Interior, 994 F.3d 616 (D.C. Cir. 2021)

- **Holdings:** Department of the Interior's final action taking land into trust for the Wilton Rancheria did not violate (1) the Federal Vacancies Reform Act, (2) authority redelegation procedures in the Interior departmental manual, (3) the 1958 California Rancheria Act, or (4) the National Environmental Policy Act.
- **Summary:** This is another challenge by Stand Up for California! and several individuals to an Interior determination to take a parcel of land into trust for gaming purposes. Involved here is a 282-acre plot (Elk Grove) as to which the Department issued a record of decision in 2017 to acquire for the Wilton Rancheria. Wilton is an outlier in the California rancheria termination process because, as resolved by a judicially confirmed settlement agreement in 2009, the Department failed to comply with the California Rancheria Act, Pub. L. No. 85–671, 72 Stat. 619 (1958), in purportedly terminating its federal recognition. The Government agreed not only to restore such recognition but also "to 'accept in trust certain lands formerly belonging to' Wilton." Stand Up sought judicial review of the ROD, alleging in relevant part that (1) the Department official (Roberts), in the course of exercising his "non-exclusive functions and duties of the [Assistance Secretary-Indian Affairs][,]" lacked authority to issue the ROD as a final agency action; (2) the Department lacked authority to take the land into trust under the Rancheria Act; and (3) the Department failed to comply with NEPA by not preparing a new or supplemental environmental impact statement after selecting the Elk Grove site for the proposed casino. The district court granted summary judgment to Defendants, and the D.C. Circuit affirmed on appeal.

  The departmental official authority-related issues turned on whether the Department possessed the power to redelegate the ROD issuance beyond the position of Assistant Secretary-Indian Affairs and, if so, whether the redelegation was proper. As to the redelegation power, the panel stated that "we must first assess whether the power is an exclusive function or duty of the Secretary or the AS–IA. The [Federal Vacancies Reform Act] forecloses the delegation of exclusive duties and authorities to a successor official after expiration of the statutorily authorized 210-day period of acting-capacity service." Here, the 270-day period had elapsed. Nevertheless, the panel held that 25 C.F.R. § 151.12, which provides "[a] decision made by the Secretary, or the Roberts pursuant to delegated authority, is a final agency action[,]" although "certainly contemplat[ing] that the actions of the Secretary and the AS–IA will constitute final agency action, when fairly read, ... does not foreclose redelegation of these duties." In reaching that conclusion, the panel cited circuit precedent for the principle that "'[w]hen a statute delegates authority to a federal officer or agency, subdelegation to a subordinate federal officer ... is presumptively permissible absent affirmative evidence of a contrary congressional intent.'" It dispensed with the challenge to the redelegation's propriety under the Interior department manual by deeming Stand Up's interpretation of the relevant section incorrect and, alternatively, by finding any absence of an automatic redelegation under the manual superseded by a memorandum issued by the Department's deputy secretary delegating the authority to Roberts.

  The panel characterized the Rancheria Act-based challenge as "specious." Stand Up asserted that "because the Department distributed assets to Wilton members pursuant to the Rancheria Act, Wilton members are no longer entitled to the federal government's services on account of their status as Indians." But, the panel pointed out, the 2009

district court-approved settlement "stated that Wilton 'was not lawfully terminated, and the Rancheria's assets were not distributed, in accordance with the" Rancheria Act. ... The court made clear that the Rancheria Act did not apply to Wilton because the Tribe's assets were not distributed pursuant to the law." Thus, it was "irrelevant that some Wilton members may have received assets because those assets were not distributed pursuant to the statute."

The NEPA claim rested on the fact that, in the draft EIS, the Department had not identified a preferred alternative among seven potential sites (including Elk Grove) for the proposed casino. Subsequently, however, it requested comments from interested parties, among whom was Stand Up, about locating the casino at Elk Grove and thereafter issued the final EIS identifying it as the preferred alternative. Stand Up "argue[d] that, at a minimum, the Department should have prepared either a supplemental EIS or a new EIS after it selected the Elk Grove location as the site for the casino." Not so held the panel:

> [N]othing prohibited the Department from buttressing its analysis between the draft EIS and the final EIS. In the final EIS, the agency must "respond to comments" and "discuss ... any responsible view which was not adequately addressed in the draft" EIS. 40 C.F.R. § 1502.9(b)[.] ... [¶] Nor did the Department's decision to select the Elk Grove location fail to properly notify the public of its plans. "Publication of an EIS, both in draft and final form, also serves a larger informational role" and "provides a springboard for public comment." ... As such, we must review "whether an EIS's deficiencies are significant enough to undermine informed public comment and informed decisionmaking." ... But the designation of the Elk Grove site as the preferred alternative did not deprive the public and interested parties of the opportunity to meaningfully comment on or evaluate the proposal. First, the Department listed the Elk Grove site as an alternative proposal. ... Second, the Department extensively analyzed the Elk Grove site in its draft EIS. ... The Department also published the draft EIS online and made it available in the Galt public library, which is only a few miles away from Elk Grove. ... Third, the Department's inclusion of the Elk Grove site triggered public comment, including by Stand Up and Lynn Wheat, two of the plaintiffs in this litigation."

- **Relevant (2020) Deskbook Sections:** 12:15 n.11; 12:20 n.21