

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REDDING RANCHERIA,	)	Case No. 11-1493 SC
	)	
Plaintiff,	)	ORDER RE: CROSS-MOTIONS FOR
	)	<u>SUMMARY JUDGMENT</u>
v.	)	
	)	
KENNETH SALAZAR, in his official	)	
capacity as the Secretary of the	)	
United States Department of the	)	
Interior, and LARRY ECHO HAWK,	)	
in his official capacity as the	)	
Assistant Secretary for Indian	)	
Affairs for the United States	)	
Department of the Interior,	)	
	)	
Defendants.	)	

I. INTRODUCTION

This case is about an Indian tribe's efforts to build a new casino. Plaintiff Redding Rancheria ("the Tribe") currently operates the Win-River Casino on its eight-and-a-half acre reservation in Shasta County. The Tribe seeks to expand its gaming operations by building a second casino on 230 acres of undeveloped riverfront lands. These lands, called the Strawberry Fields and the Adjacent 80 Acres (together, "Parcels"), are located a few miles outside the reservation. The Parcels were purchased by the Tribe in 2004 and 2010, respectively, and the Tribe still holds them in fee.

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1 The United States Department of the Interior is authorized to
2 take title to lands in trust for Indian tribes or individuals. It
3 is possible for tribes to conduct casino-style gaming on these
4 lands. In 2010, the Tribe asked Interior to determine whether the
5 Parcels would be eligible for gaming if Interior was to take them
6 into trust. Interior, acting through its Assistant Secretary for
7 Indian Affairs, Defendant Larry Echo Hawk, informed the Tribe that
8 they were not. To make this decision, Interior relied on
9 regulations promulgated by the Secretary of the Interior
10 ("Secretary"), Defendant Kenneth Salazar. In this lawsuit, the
11 Tribe challenges both the decision itself and the regulations on
12 which they were based. ECF No. 1 ("Compl.").

13 The Tribe has moved for summary judgment and Interior has
14 filed a cross-motion. ECF Nos. 17 ("Pl.'s MSJ"), 19 ("Defs.'
15 MSJ"). Both motions have been fully briefed. ECF Nos. 21 ("Defs.'
16 Opp'n"), 22 ("Pl.'s Opp'n"), 23 ("Pl.'s Reply"), 24 ("Defs.'
17 Reply"). Interior has filed a certified copy of the relevant
18 administrative record. ECF No. 14 ("AR").¹ Having considered the
19 briefs and the administrative record, the Court concludes that the
20 matter is appropriate for decision without oral argument. Civil
21 L.R. 7-1(b). As set forth below, the Court GRANTS Interior's
22 cross-motion for summary judgment.

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27 ¹ The Tribe stated in its Reply that it had filed a separate motion
28 to strike the administrative record. Pl.'s Reply at 2 n.1. That
motion does not in fact appear on this case's docket and therefore
the Court does not address it.

1 **II. BACKGROUND**

2 Several different statutes set out the framework governing the
3 United States' taking of land into trust for Indian gaming. In
4 light of this complexity, the Court first reviews the statutes
5 central to resolving this case before turning to Interior's
6 challenged decision and the underlying regulations.

7 **A. Legal Background**

8 On October 17, 1988, Congress passed the Indian Gaming
9 Regulatory Act, 25 U.S.C. §§ 2701 et seq. ("IGRA").² In doing so,
10 it sought "to provide a statutory basis for the operation of gaming
11 by Indian tribes as a means of promoting tribal economic
12 development, self-sufficiency, and strong tribal governments" while
13 at the same time "shield[ing] [Indian-operated gaming] from
14 organized crime and other corrupting influences, to ensure that the
15 Indian tribe is the primary beneficiary of the gaming operation,
16 and to assure that gaming is conducted fairly and honestly by both
17 the operator and players." § 2702.

18 IGRA both "regulates gaming on Indian lands and restricts the
19 lands upon which Indian tribes may conduct gaming." County of
20 Amador v. U.S. Dep't of Interior, No. CIV. S-07-527 LKK/GGH, 2007
21 WL 4390499, at *2 (E.D. Cal. Dec. 13, 2007). The regulation of
22 gaming operations on Indian lands falls to the National Indian
23 Gaming Commission ("NIGC"), an agency chartered by IGRA and "only
24 nominally part of [Interior]." Id. IGRA authorizes the NIGC to
25 monitor and oversee gaming conducted by Indians, including by
26 promulgating regulations. See § 2706(b)(10). IGRA also provides

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28 ² Citations to the United States Code refer to Title 25 unless
otherwise specified.

1 the framework for determining on which lands Indians may conduct
2 gaming. See §§ 2703(4), 2719. IGRA authorizes NIGC "to bring
3 proceedings against Indian gaming facilities located on non-Indian
4 land." N. Cnty. Cmty. Alliance, Inc. v. Salazar, 573 F.3d 738, 748
5 (9th Cir. 2009). IGRA also regulates gaming conducted on "Indian
6 lands," which the statute defines as lands that are part of a
7 tribe's reservation, § 2703(4)(A), and lands held in trust by the
8 United States on behalf of an Indian tribe or individual, §
9 2703(4)(B). Thus, IGRA assumes the existence of a mechanism for
10 determining which lands are "Indian lands" -- that is, reservation
11 or trust lands.

12 IGRA itself does not authorize the government to impart
13 reservation or trust status. That authority is found within the
14 Indian Reorganization Act, which predates IGRA. 25 U.S.C. §§ 465,
15 467 ("IRA"). Section 465 of the IRA vests the Secretary of the
16 Interior with discretionary authority to take land into trust "for
17 the purpose of providing land for Indians." Section 467 permits
18 the Secretary to declare and add to reservations. Only after lands
19 are taken into trust or deemed reservations do they become "Indian
20 lands" subject to IGRA. § 2703(4).

21 Section 2719 of IGRA sets forth a general prohibition against
22 gaming on Indian lands taken into trust after the date of IGRA's
23 passage, October 17, 1988 ("later-acquired lands"), unless
24 specified exemptions or exceptions apply. The first exemption from
25 the general prohibition, found in § 2719(a)(1), permits gaming on
26 later-acquired lands if they are "within or contiguous to the
27 boundaries of the reservation of the Indian tribe on October 17,
28 1988."

1 This exemption plainly depends upon a tribe's having had a
2 reservation on October 17, 1988. However, many tribes had no
3 reservation on that date because their reservations had been
4 terminated during one of the periods of American history when the
5 Federal government pursued a policy of Indian assimilation. See
6 City of Roseville v. Norton, 348 F.3d 1020, 1022 (D.C. Cir. 2003)
7 (describing most recent period); County of Yakima v. Confederated
8 Tribes and Bands of Yakima Indian Nation, 502 U.S. 251, 253-254
9 (1992) (previous periods). In the 1950s this policy led the
10 Federal government to sever its government-to-government
11 relationship with many tribes and terminate their reservations.
12 City of Roseville, 348 F.3d at 1022. The Federal government has
13 since repudiated this policy and some tribes have been restored,
14 along with their reservations. See id. The plaintiff Tribe is one
15 such restored tribe. See AR at 6102-6111.

16 To "ensur[e] that tribes lacking reservations when IGRA was
17 enacted [were] not disadvantaged relative to more established
18 ones," Congress provided mechanisms by which restored tribes could
19 be permitted to conduct gaming on later-acquired lands,
20 notwithstanding IGRA's general prohibition. City of Roseville, 348
21 F.3d at 1030. These mechanisms take the form of "Exemptions" from
22 the general prohibition, set forth at § 2719(a), and "Exceptions,"
23 set forth at § 2719(b). This case turns on one of the Exceptions,
24 § 2719(b)(1)(B)(iii) (the "Restored Lands Exception"). It provides
25 that the general gaming prohibition does not apply to later-
26 acquired lands if the "lands are taken into trust as part of . . .
27 the restoration of lands for an Indian tribe that is restored to
28 Federal recognition." It was under this Exception that the Tribe

1 sought a determination from Interior as to whether the Parcels were
2 eligible for gaming.

3 **B. Factual Background**

4 In 1922, on behalf of the Tribe, the Federal government
5 established a reservation of about 30 acres, the original Redding
6 Rancheria. See AR 5405-13 ("Decision")³ at 1. In 1965, the
7 government withdrew the Tribe's federal recognition and terminated
8 the reservation. Id. at 1-2. In 1984, the Tribe was restored to
9 federal recognition. Id. at 2. Eight years later, in 1992, the
10 United States took back into trust a portion of the original
11 Rancheria comprising roughly 8.5 acres. Id. at 2. The Tribe
12 currently operates the Win-River Casino on that land. Id.

13 In 2004 and 2010, the Tribe bought the Parcels onto which it
14 hopes to expand its gaming operation. Pl.'s MSJ at ix-x. The
15 Parcels therefore are later-acquired lands for purposes of § 2719
16 and gaming may occur on these lands only if they fall within one of
17 IGRA's Exemptions or Exceptions.

18 The Tribe seeks to set aside a decision rendered by Interior
19 on December 22, 2010, in which Interior determined that the Parcels
20 did not qualify for the Restored Lands Exception, based on
21 regulations promulgated by the Secretary. Decision at 7-8. The
22 regulations implementing the Restored Lands Exception are codified
23 at 25 C.F.R. §§ 292.7-292.12 ("Regulations").⁴

24 The Regulations set forth conditions for qualifying for the
25 Restored Lands Exception. In short, the Restored Lands Exception
26 only applies to a restored tribe's restored lands. Interior does

27 ³ Further citations to the Decision use its internal page numbers.

28 ⁴ All further citations to the Code of Federal Regulations refer to Title 25.

1 not dispute that the Tribe is a restored tribe. Decision at 3-5.
2 Rather, Interior has determined that the Parcels are not "restored
3 lands" under the Regulations. Id. at 5.

4 For a tribe that has been judicially restored to federal
5 recognition, as the plaintiff Tribe was, Interior will only deem
6 the tribe's later-acquired lands "restored" if the lands meet
7 criteria set forth in § 292.12. See Decision at 5. Section 292.12
8 requires restored tribes to show three kinds of connections to its
9 later-acquired lands: a modern connection, § 292.12(a); a
10 historical connection, § 292.12(b); and a temporal connection, §
11 292.12(c). Interior found that the Tribe had demonstrated modern
12 and historical connections to the Parcels but had not demonstrated
13 the temporal connection required by § 292.12(c). Decision at 5.

14 Section 292.12(c) requires a tribe to show that either

15 (1) The land is included in the tribe's first request for
16 newly acquired lands since the tribe was restored to
Federal recognition; or

17 (2) The tribe submitted an application to take the land
18 into trust within 25 years after the tribe was restored
to Federal recognition and the tribe is not gaming on
other lands.

19
20 Interior determined that the Tribe could satisfy neither prong.
21 Decision at 7-8. Interior determined that the Secretary had taken
22 newly acquired lands into trust for the Tribe at least twice
23 before, and that therefore the Tribe could not satisfy the "first
24 request" test of § 292.12(c)(1). Id. at 7. Interior also observed
25 that the Tribe already operated a gaming facility, and found on
26 that basis that the Tribe could not meet § 292.12(c)(2)'s
27 requirement of gaming on no "other lands." Id. at 7-8. Interior
28 accordingly informed the Tribe that the Parcels would not qualify

1 for the Restored Lands Exception if taken into trust. Id. at 8.
2 This lawsuit followed.

3 **C. The Tribe's Claims**

4 Because IGRA does not provide a private right of action, the
5 Tribe brings suit under the Administrative Procedure Act, 5 U.S.C.
6 § 701 et seq. ("APA"). The Tribe asserts five claims. First, the
7 Tribe challenges the Secretary's authority to have promulgated the
8 Regulations. Compl. ¶¶ 26-31. The Tribe claims that IGRA vests
9 NIGC with "exclusive authority" to promulgate regulations. Id. ¶
10 27. Second, the Tribe asserts that the Regulations "impose[]"
11 conditions for the restored lands determination that Congress never
12 intended and [that] conflict[] with judicial interpretations of
13 [IGRA]." Id. ¶ 34. Third, the Tribe asserts that the Regulations
14 violate IGRA by "limit[ing] the number of times that a tribe could
15 use an Exemption or Exception" and "mak[ing] the Exemptions and
16 Exceptions mutually exclusive." Id. ¶ 42. The third claim also
17 asserts that the Decision itself was arbitrary and capricious
18 because Interior failed to consider important arguments made by the
19 Tribe. Id. ¶ 45.

20 The Tribe frames its first three claims as IGRA claims brought
21 under the APA. The Tribe's fourth claim reframes the foregoing
22 allegations as violations of the APA itself. See id. ¶¶ 49-54.
23 Lastly, in its fifth claim, the Tribe asserts that by rendering the
24 Decision unfavorably to the Tribe, Interior breached "a fiduciary
25 duty in the nature of a continuing trust obligation to assist the
26 Tribe in engaging and conducting gaming by interpreting the
27 provisions of the IGRA and the regulations promulgated thereunder
28 in favor of the Tribe and to the Tribe's benefit." Id. ¶¶ 58-60.

Both parties have moved for summary judgment on each claim. Having found no genuine issues of material fact, the Court determines that this case is suitable for summary judgment.

III. LEGAL STANDARD

A. Summary Judgment

Entry of summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment should be granted if the evidence would require a directed verdict for the moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251 (1986). Thus, "Rule 56[] mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

B. Administrative Procedure Act

When the court reviews a government agency's final action, the Rule 56 standard for summary judgment is amplified by 5 U.S.C. § 706(2) of the Administrative Procedure Act. Title 5 U.S.C. § 706 provides the applicable standard of review for agency action. Under § 706 of title 5, "the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." Under § 706(2) of title 5, the reviewing court shall set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance

1 with law" or "in excess of statutory jurisdiction, authority, or
2 limitations, or short of statutory right[.]"

3 "In making the foregoing determinations, the court shall
4 review the whole record or those parts of it cited by a party, and
5 due account shall be taken of the rule of prejudicial error." 5
6 U.S.C. § 706. Summary judgment in a case of judicial review of
7 agency action requires the court to review the administrative
8 record to determine whether the agency's action was "arbitrary and
9 capricious, an abuse of discretion, not in accordance with law, or
10 unsupported by substantial evidence on the record taken as a
11 whole." Environment Now! v. ESPY, 877 F. Supp. 1397, 1421 (E.D.
12 Cal. 1994) (citing Good Samaritan Hospital, Corvallis v. Mathews,
13 609 F.2d 949, 951 (9th Cir. 1979)).

14 "The court is not empowered to substitute its judgment for
15 that of the agency." Citizens to Preserve Overton Park, Inc. v.
16 Volpe, 401 U.S. 402, 416 (1971), overruled on other grounds by
17 Califano v. Sanders, 430 U.S. 99, 105 (1977). The Ninth Circuit
18 recognizes a narrow scope of review applicable to agency action:
19 "Assuming that statutory procedures meet constitutional
20 requirements, the court is limited to a determination of whether
21 the agency substantially complied with its statutory and regulatory
22 procedures, whether its factual determinations were supported by
23 substantial evidence, and whether its action was arbitrary,
24 capricious or an abuse of discretion." Toohey v. Nitze, 429 F.2d
25 1332, 1334 (9th Cir. 1970), cert denied, 400 U.S. 1022 (1971).
26 Despite this narrow scope of review, the court is still expected to
27 make a "thorough, probing, in-depth review" of the administrative
28 record to ensure the validity of the agency action and "must

1 consider whether the decision was based on a consideration of the
2 relevant factors and whether there has been a clear error of
3 judgment." Overton Park, 401 U.S. at 415-16.

4 **C. Canons Relevant to Indian Law**

5 "In reviewing an agency's interpretation of a statute
6 governing Indian tribes, the court must also consider canons of
7 construction relevant to Indian law." Oregon v. Norton, 271 F.
8 Supp. 2d 1270, 1275 (D. Or. 2003). One such canon counsels that
9 "statutes are to be construed liberally in favor of the Indians,
10 with ambiguous provisions interpreted to their benefit." Montana
11 v. Blackfoot Tribe of Indians, 471 U.S. 759, 766 (1985). However,
12 this canon has no application where a statute is unambiguous. See
13 Negonsott v. Samuels, 507 U.S. 99, 110 (1993). Moreover, in the
14 Ninth Circuit, when a court reviewing a statute governing Indian
15 tribes discerns an ambiguity that would, under Chevron U.S.A., Inc.
16 v. Natural Res. Def. Council, 467 U.S. 837 (1984), require the
17 court to defer to the agency's construction of the statute, "the
18 liberal construction rule must give way to agency interpretations
19 that deserve Chevron deference" Williams v. Babbitt, 115
20 F.3d 657, 663 n.5 (9th Cir. 1997); see also Seldovia Native Ass'n,
21 Inc. v. Lujan, 904 F.2d 1335, 1342 (9th Cir. 1990).

23 **IV. DISCUSSION**

24 **A. The Secretary Possessed the Requisite Authority to** 25 **Promulgate the Regulations**

26 The Tribe asserts that the Secretary had no authority to
27 promulgate the Regulations, that the Regulations are therefore
28 ultra vires and void, and that the Decision, which applied the

1 Regulations, must be set aside. See Pl.'s MSJ at 30. The thrust
2 of the Tribe's argument is that IGRA authorizes the NIGC, and only
3 the NIGC, to promulgate regulations implementing IGRA generally and
4 § 2719 specifically. Id. at 24-25; Compl. ¶¶ 26-31. The Tribe
5 rests this argument on § 2706(b)(10), which provides, in full, that
6 NIGC "shall promulgate such regulations and guidelines as it deems
7 appropriate to implement the provisions of this chapter."

8 Interior counters that this grant of authority to NIGC is, by
9 its plain language, non-exclusive. Defs'. MSJ at 10. Interior
10 argues that Congress clearly intended the Secretary's power to
11 promulgate regulations under 25 U.S.C. §§ 2 and 9 and 5 U.S.C. §
12 301 to extend specifically to IGRA. See id. at 15-16; Defs.' Opp'n
13 at 6. According to Interior, Congress's grant of regulatory
14 authority to NIGC "creates, at most, an ambiguity as to whether the
15 Secretary also possesses authority to promulgate regulations under
16 the IGRA," and urges the Court to give Chevron deference to the
17 Secretary's determination that he does have such authority. Id. at
18 17 (citing Chevron, 467 U.S. at 843).

19 Chevron directs a court reviewing an administrative agency's
20 construction of a statute it administers to undertake a two-step
21 analysis. See Chevron, 467 U.S. at 842-43. In step one, the court
22 determines "whether Congress has directly spoken to the precise
23 question at issue. If the intent of Congress is clear, that is the
24 end of the matter; for the court, as well as the agency, must give
25 effect to the unambiguously expressed intent of Congress." Id.
26 But if the court identifies an ambiguity or interpretive gap in the
27 statute, the court proceeds to Chevron's second step. In step two,
28 the court's sole inquiry is whether the challenged agency decision

1 "is based on a permissible construction of the statute." Id. at
2 843. In this inquiry, an agency interpretation will survive unless
3 it is "procedurally defective, arbitrary or capricious in
4 substance, or manifestly contrary to the statute." United States
5 v. Mead Corp., 533 U.S. 218, 227 (2001).

6 Applying Chevron principles here, the Court agrees with
7 Interior that § 2706(b)(10)'s grant of regulatory authority to NIGC
8 is non-exclusive and that Congress unambiguously intended to
9 authorize the Secretary to promulgate regulations interpreting §
10 2719. IGRA was passed against the backdrop of the Secretary's
11 existing authority to take lands into trust for Indian tribes and
12 to declare and add to their reservations pursuant to IRA §§ 465 and
13 467. The Secretary possesses general authority to promulgate
14 regulations in the exercise of these land-into-trust powers. See 5
15 U.S.C. § 301 (general grant of authority to heads of executive
16 Departments); 25 U.S.C. § 9 (authorizing President to make
17 regulations relating to Indian affairs); id. § 2 (giving Secretary
18 oversight of "management of all Indian affairs"); see also Santa
19 Rosa Band of Indians v. Kings County, 532 F.2d 655, 665 (9th Cir.
20 1975) (recognizing Secretary's authority to promulgate regulations
21 reasonably related to specific statutory responsibilities). The
22 Secretary has in fact promulgated such regulations. E.g., 25
23 C.F.R. Part 151. The only question, then, is whether IGRA changed
24 or limited the Secretary's land-into-trust powers in some fashion.
25 When Congress passed IGRA, it spoke directly to this question.
26 IGRA's § 2719(c) states: "Nothing in this section shall affect or
27 diminish the authority and responsibility of the Secretary to take
28 land into trust."

1 The Tribe's reading of IGRA plainly would affect and diminish
2 the Secretary's authority to take land into trust, for it would
3 carve out part of the Secretary's general authority to promulgate
4 regulations governing land-into-trust determinations and transfer
5 it to the NIGC. This result would be out of keeping with both §
6 2719(c) and the overall legislative scheme presented here. Where
7 Congress meant to transfer the Secretary's authority to NIGC, it
8 did so. See § 2711(h) ("The authority of the Secretary . . .
9 relating to management contracts . . . is hereby transferred to
10 [NIGC]."). With respect to the Secretary's land-into-trust
11 authority, it did just the opposite by expressly preserving that
12 authority in § 2719(c). It is true that § 2706(b)(10) permits NIGC
13 to promulgate regulations. However, it does not follow that the
14 Secretary lacks such authority, especially in light of the
15 statutory framework here, where the Secretary is responsible for
16 determining whether to take land into trust for any purpose,
17 including gaming, while the NIGC regulates gaming only.

18 Section 2709 tends to confirm this reading: it specifies that
19 until the NIGC is organized and promulgates regulations, the
20 Secretary shall continue to exercise his pre-IGRA authority
21 "relating to supervision of Indian gaming" In other words,
22 IGRA transferred to NIGC that portion of the Secretary's authority
23 relating to the supervision of Indian gaming, and only that
24 portion. The act of taking land into trust is not included in the
25 "supervision of Indian gaming," if for no other reason than that
26 land may be taken into trust on behalf of Indian tribes for a
27 variety of purposes, of which gaming is only one. Section 2709
28 provides additional confirmation that, just as Congress intended

1 for NIGC to supervise Indian gaming, it intended for the Secretary
2 to retain his pre-IGRA power to promulgate regulations for taking
3 land into trust.

4 "Indeed, when a court recently determined that the Secretary
5 did not enjoy a broad delegation of power under IGRA, Congress
6 quickly corrected that misapprehension." Oregon, 271 F. Supp. 2d
7 at 1277. In Sac and Fox Nation of Missouri v. Norton, the Tenth
8 Circuit held that NIGC had exclusive authority to interpret IGRA.
9 240 F.3d 1250, 1265 (10th Cir. 2001). From this premise, the Tenth
10 Circuit proceeded to determine that the Secretary had overstepped
11 his bounds by interpreting IGRA's exemption for reservations, §
12 2719(a)(1). Id. Within the year, Congress overturned the Tenth
13 Circuit's decision and, by implication, the premise upon which it
14 was based. Congress clarified that IGRA delegated to the
15 Secretary, not NIGC, the authority to "determine whether a specific
16 area of land is a 'reservation' for purposes of sections 2701-2721
17" Pub. L. No. 107-63, § 134 (2001); see also Oregon, 271 F.
18 Supp. 2d at 1278. The NIGC therefore cannot possess, as the Tribe
19 claims, "exclusive" authority to interpret § 2719. The Tribe does
20 not point to any persuasive reason why Congress would have endorsed
21 the Secretary's authority concerning § 2719(a) while withholding
22 the same authority with respect to § 2719(b)'s closely similar
23 provisions.

24 Alternately, if this Court were to hold, as the Tribe urges,
25 that the Secretary has the authority to "interpret" the Exemptions
26 but not to promulgate regulations giving those interpretations
27 prospective effect, it would force the Secretary to make each land-
28 into-trust determination on an ad hoc basis -- but only if the

1 land-into-trust application concerned lands earmarked for gaming.
2 In all other cases, the Secretary would be free to promulgate and
3 apply regulations. Such a result cannot be squared with § 2719(c),
4 with the overall legislative scheme, or with common sense. Cf. FDA
5 v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132-33 (2000).

6 The Tribe cites IGRA's "repeated reference to the Secretary"
7 as "unmistakable evidence that Congress was aware of the
8 Secretary's role in taking land into trust and chose not to grant
9 to him any more authority than it expressly did." Pl.'s Opp'n at
10 5. This is correct as far as it goes, but it fails to acknowledge
11 just how much authority Congress expressly granted. The Tribe
12 reads each of IGRA's references to the Secretary as an express
13 grant of authority which necessarily excludes other powers. See
14 id. at 3-5, Pl.'s MSJ at 27-28. But § 2719(c) is not an express
15 grant of authority; it is an express reservation of authority. It
16 expressly reserves the Secretary's preexisting power to make land-
17 into-trust transfers, which includes the power to promulgate
18 regulations binding the Secretary and his subordinates in the
19 exercise of that power.

20 The Tribe insists that IGRA, as a later and more specific
21 statute, trumps the earlier, general grants of authority upon which
22 the Secretary relied when promulgating the Regulations. Pl.'s MSJ
23 at 25-27. This argument assumes, incorrectly, that IGRA conflicts
24 with those earlier statutes; as explained above, IGRA preserves the
25 powers that the earlier statutes grant. The Tribe also argues that
26 the Secretary had no authority to promulgate the Regulations
27 because "Federal courts interpreting § 2 and § 9 have repeatedly
28 found that those statutes, standing alone, do not provide

1 sufficient authority to allow the Secretary to promulgate
2 regulations." Id. at 27. This argument is unavailing because the
3 Secretary did not rely on "those statutes, standing alone." He
4 relied on those statutes standing alongside § 2719. 73 Fed. Reg.
5 29354; see Santa Rosa Band of Indians, 532 F.2d at 665 ("[N]either
6 [§ 2 or § 9] grants general regulatory powers to the Secretary of
7 the Interior; to be valid a regulation must be reasonably related
8 to some other specific statutory provision."). Finally, the Tribe
9 cites liberally to a Fifth Circuit case warning courts of the
10 dangers of finding implied delegations of agency authority. See,
11 e.g., Pl.'s Opp'n at 3, 5 (citing Texas v. United States, 497 F.3d
12 491, 502-03 (5th Cir. 2007)). Texas is well-reasoned but
13 inapposite here. Texas addressed the Secretary's promulgation of
14 regulations pursuant to his role in the tribal gaming compact
15 approval process. That role originated with IGRA and, as the Texas
16 court noted, gives the Secretary minimal discretion. See 497 F.3d
17 at 503. As such, it is clearly distinguishable from the
18 Secretary's preexisting role as the United States' conduit for
19 taking land into trust for Indian tribes, a role in which the
20 Secretary must exercise substantial discretion.

21 For the foregoing reasons, the Court holds that the
22 Secretary's general regulatory authority, coupled with § 2719,
23 empowered the Secretary to promulgate regulations interpreting and
24 applying § 2719.⁵ Therefore, with respect to the first claim, the

25 _____
26 ⁵ Because the Court finds that Congress unambiguously authorized
27 the Secretary to promulgate the Regulations, it need not look to
28 Interior's own construction of IGRA. Nevertheless, the Court notes
that its understanding of NIGC's role is consistent with pre-
litigation positions taken by NIGC itself. See AR at 6586-90 (Jan.
9, 2009 decision of NIGC to follow the Regulations); id. at 6726
(Nov. 12, 2010 Memorandum of Agreement between Interior and NIGC,

1 Court GRANTS Interior's cross-motion for summary judgment.

2 **B. The Regulations Are Substantively Permissible**

3 The Tribe also challenges the substance of the Regulations
4 themselves, under IGRA through the APA (second claim and third
5 claim in part) and under the APA itself (fourth claim in part).
6 The Tribe regards the Restored Lands Exception as unambiguous and
7 claims that the Regulations impermissibly impose conditions on
8 land-into-trust determinations not found in § 2719 itself. The
9 Tribe further argues that these conditions run afoul of Federal
10 court decisions interpreting IGRA, Interior and NIGC's previous
11 interpretations of IGRA, and Congressional intent to promote gaming
12 by the Tribe. The Tribe also asserts that the Regulations impose
13 impermissible limitations on a tribe's ability to avail itself of
14 both § 2719(a)'s Exemptions and § 2719(b)'s Exceptions.⁶ Interior,
15 on the other hand, argues that the Restored Lands Exception is
16 ambiguous and that the Regulations rest on a permissible
17 construction of its terms and therefore are owed Chevron deference.
18 For the reasons set forth below, the Court agrees with Interior.

19 **1. The Restored Lands Exception Is Ambiguous and**
20 **Therefore Interior's Interpretation Commands Chevron**
21 **Deference**

22 Section 2719(b)(1)(B)(iii) does not define the term
23 "restoration of lands" and the term is susceptible to multiple

24
25 stating: "When the Secretary acquires land into trust for gaming,
26 [Interior] and NIGC agree that the Secretary decides whether a
tribe meets one of the exceptions in 25 U.S.C § 2719").

27 ⁶ As detailed in Section IV.B.3 infra, the Tribe initially framed
28 this argument as one that the Regulations were unreasonable because
they made the Exceptions and Exemptions "mutually exclusive." The
Tribe later qualified this view. Compare Compl. ¶ 42 and Pl.'s MSJ
at 18-19 with Pl.'s Reply at 4.

meanings. See Oregon, 271 F. Supp. 2d at 1277 (citing Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F. Supp. 2d 155, 162 (D.D.C. 2000)). Additionally, neither reading IGRA as a whole nor reading the Restored Lands Exception in the context of the larger statutory scheme reveals a way to ascertain which lands are restored lands for the purposes of § 2719(b)(1)(B)(iii). The Restored Lands Exception is therefore ambiguous.

Having discerned an ambiguity in the statute, the Court must ascertain how to apply Chevron deference in light of the Blackfeet Tribe presumption requiring liberal construction of ambiguous statutes to benefit Indians. The Court first notes that as recently as 2003 the Ninth Circuit declined to consider exactly this question, leaving it "for another day." Navajo Nation v. Dep't of Health and Human Servs., 325 F.3d 1133, 1136 n.4 (9th Cir. 2003). Navajo Nation went only so far as to highlight the tension between Ninth Circuit cases indicating that the Blackfeet Tribe presumption must yield to Chevron deference and out-of-circuit cases taking the opposite view. Id. This Court must follow Ninth Circuit precedent and therefore would apply the Ninth Circuit rule (that Blackfeet Tribe yields to Chevron) if it were to determine that the choice between Chevron or Blackfeet Tribe principles would change the outcome of this case. But the Court need not reach that question, because it determines instead that this case does not implicate Blackfeet Tribe. As explained below, the ambiguity of the Restored Lands Exception does not lead to one potential reading that benefits Indians and another potential reading that does not. The ambiguity leads to a reading that could favor one set of

1 Indians relative to another, if not for regulations balancing their
2 respective interests. Under these circumstances, the Blackfeet
3 Tribe presumption has no force because it gives no guidance as to
4 which set of Indians the Restored Lands Exception should benefit.
5 Because the Court determines that Blackfeet Tribe does not apply
6 here, it finds no conflict in this case between Blackfeet Tribe and
7 Chevron.

8 **2. The Regulations Rest on a Permissible Construction**
9 **of the Restored Lands Exception**

10 Applying Chevron principles, the Court must read the Restored
11 Lands Exception's lack of definition of "restoration of lands" as a
12 gap left by Congress for Interior to fill in with regulations. See
13 Chevron, 467 U.S. at 843-44. This Court's inquiry, then, is
14 limited to whether the Regulations rest on a permissible
15 construction of § 2719. Id. at 843. The Court determines that
16 they do.

17 The Restored Lands Exception provides that IGRA's general
18 prohibition of gaming on Indian lands acquired after October 17,
19 1988 "will not apply when . . . lands are taken into trust as part
20 of . . . the restoration of lands for an Indian tribe that is
21 restored to Federal recognition." § 2719(b)(1)(B)(iii). Because
22 the Restored Lands Exception does not define "the restoration of
23 lands," it contains no limiting principle. That is, it is amenable
24 to a reading that would allow restored tribes, and only restored
25 tribes, to conduct gaming on any and potentially all lands that
26 they acquire after their return to federal recognition. Cf. Grand
27 Traverse Band of Ottawa & Chippewa Indians v. U.S. Att'y for the W.
28 Dist. of Mich., 198 F. Supp. 2d 920, 934-35 (W.D. Mich. 2002)

1 ("Grand Traverse"), aff'd, 369 F.3d 960 (6th Cir. 2004) (rejecting
2 interpretation that would impose one kind of limitation on meaning
3 of "restoration of lands" but suggesting other kinds). Tribes
4 which never had their government-to-government relationship severed
5 and their reservations terminated, and thus never needed to be
6 restored, would not have the same ability to conduct gaming on
7 later-acquired lands. Cf. id. at 934. Whether Congress passed
8 IGRA affirmatively to "promote" Indian gaming, Pl.'s Reply at 2, or
9 merely to authorize it, Grand Traverse, 198 F. Supp. 2d at 933, it
10 is far from clear that in doing so Congress intended to advantage
11 restored tribes relative to other tribes. On the contrary, § 2719
12 embodies a policy of promoting parity between restored and other
13 tribes. See City of Roseville, 348 F.3d at 1030 ("[T]he exceptions
14 in IGRA § [2719](b)(1)(B) serve purposes of their own, ensuring
15 that tribes lacking reservations when IGRA was enacted are not
16 disadvantaged relative to more established ones.").

17 It is not for this Court to ascertain the proper balance
18 between, on the one hand, IGRA's authorization of Indian gaming as
19 a means of promoting tribal self-sufficiency and economic
20 development, and, on the other, IGRA's promotion of parity between
21 restored and other tribes -- a balance which must account for the
22 particular histories of different tribes and their lands, the
23 sensitivities of the various communities where tribes may seek to
24 game, and the competing interests of federal, state, and tribal
25 sovereigns. Congress committed the resolution of that delicate and
26 highly technical question to Interior when it withheld from IGRA
27 any clear way of determining which restored lands are eligible for
28 gaming. Cf. Chevron, 467 U.S. at 844. Accordingly, the Court may

1 not disturb the Regulations unless they constitute an unreasonable
2 accommodation of IGRA's conflicting policies or "not one that
3 Congress would have sanctioned." Id. at 845.

4 The Tribe claims that Congress would not have sanctioned the
5 Regulations because they impose conditions on the Restored Lands
6 Exception that are not present in the text of § 2719(b)(1)(B)(iii)
7 itself. Pl.'s MSJ at 6-13. But, of course, the imposition of
8 conditions not found in the statutory text is not, by itself,
9 inconsistent with a Congressional delegation of authority to
10 interpret a statute. In other words, delegation depends on
11 agencies articulating detailed conditions that implement a
12 statute's general provisions. The principle put forward by the
13 Tribe would limit agencies to parroting the statutory text.
14 Delegation, and Chevron, assume that agencies will apply criteria
15 not found on the face of the statute.

16 The Tribe also asserts that the Regulations conflict with
17 prior judicial constructions of the Restored Lands Exception. See
18 Pl.'s MSJ at 19-23. Even assuming arguendo that this were true, it
19 would not demonstrate that the Regulations run contrary to the
20 manifest intent of Congress. "A court's prior judicial
21 construction of a statute trumps an agency construction otherwise
22 entitled to Chevron deference only if the prior court decision
23 holds that its construction follows from the unambiguous terms of
24 the statute and thus leaves no room for agency discretion." Nat'l
25 Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967,
26 982 (2005). As the Tribe acknowledges, Pl.'s MSJ at 22-23, the
27 relevant construction comes from Grand Traverse. The Grand
28 Traverse court did not hold that its construction followed from the

1 unambiguous terms of the Restored Lands Exception. See 198 F.
 2 Supp. 2d at 934-37. On the contrary, Grand Traverse appeared to
 3 recognize the ambiguity of the term "restoration" in §
 4 2719(b)(1)(B)(iii)'s phrase "restoration of lands." See id. at 935
 5 ("Given the plain meaning of the language, the term 'restoration'
 6 may be read in numerous ways"). Grand Traverse did not
 7 foreclose Interior's discretion to promulgate regulations
 8 inconsistent with it and the Tribe points to no holding that would.

9 **3. Neither Interior's Decision to Promulgate the**
 10 **Regulations nor the Regulations Themselves Are**
 11 **Arbitrary and Capricious**

12 The Tribe takes Interior to task for changing its own
 13 definition of restored lands. In doing so, the Tribe acknowledges
 14 that a change of position, by itself, would not invalidate the
 15 Regulations. Pl.'s MSJ at 23, Pl.'s Reply at 9; see also Brand X,
 16 545 U.S. at 981, FCC v. Fox TV Stations, Inc., 129 S. Ct. 1800,
 17 1810-11 (2009) ("Fox TV"). Rather, the Tribe argues that Interior
 18 may not change positions "without a reasoned explanation for the
 19 change" and that "the level of deference to the agency's revised
 20 interpretation is not the same as that of a first interpretation."
 21 Pl.'s Reply at 9. The Court cannot endorse the second argument
 22 because it disregards recent guidance from the Supreme Court which
 23 clarifies that an agency "need not always provide a more detailed
 24 justification than what would suffice for a new policy created on a
 25 blank slate." Fox TV, 129 S. Ct. at 1811. Fox TV makes it clear
 26 that Chevron deference applies in either case. See id. at 1810-11.

27 The first argument, that Interior inadequately explained its
 28 reasons for changing positions, bears more extended discussion.

1 The focus of judicial inquiry when an agency changes its position
2 is whether either the change itself or the newly adopted position
3 is arbitrary and capricious. See id.; Brand X, 545 U.S. at 981.
4 Normally, but not always, this standard requires agencies to
5 explain their changes in position. Fox TV, 129 S. Ct. at 1811.
6 The agency "need not demonstrate to a court's satisfaction that the
7 reasons for the new policy are better than the reasons for the old
8 one; it suffices that the new policy is permissible under the
9 statute, that there are good reasons for it, and that the agency
10 believes it to be better, which the conscious change of course
11 adequately indicates." Id. Under this standard of review, a court
12 must presume the validity of agency action "and should uphold a
13 decision of less than ideal clarity if the agency's path may
14 reasonably be discerned." Providence Yakima Medical Center v.
15 Sebelius, 611 F.3d 1181, 1190 (9th Cir. 2010).

16 Of course, the Court only need reach this issue if Interior
17 changed policy in the first place. The Tribe strenuously asserts
18 that Interior did. See, e.g., Pl.'s MSJ at 19-23. Interior does
19 not squarely address the point, though language in their briefing
20 can be read to admit it. Defs. Opp'n at 16. The Court perceives
21 Interior's change as nothing more than a shift from case-by-case
22 application of the temporal limitation suggested by Grand Traverse
23 to a rule-based application of the temporal limitation. Compare
24 Grand Traverse, 198 F. Supp. 2d at 935-37 (inventing temporal
25 limitation and then, without explicit reference to any set
26 criteria, determining that lands were "part of the first systematic
27 effort to restore tribal lands") with § 292.12(c) (establishing
28 bright-line rules). The Court declines to hold that such a change

1 or the Regulations themselves are arbitrary and capricious.

2 The preamble to Interior's final rule promulgating the
3 Regulations provides ample evidence of rational and conscious
4 decision-making that is consistent with the purposes of IGRA. See
5 73 Fed. Reg. 29,354-74 (May 20, 2008). Interior stated that it
6 imposed the temporal limitation to "effectuate[] IGRA's balancing
7 of the gaming interests of newly acknowledged and/or restored
8 tribes with the interests of nearby tribes and the surrounding
9 community." Id. at 29367. Interior demonstrated that in doing so
10 it had contended with prior court decisions, its own previous
11 public statements of policy, and an array of comments submitted by
12 the public. See id. at 29,365-66. Moreover, Interior's stated
13 purpose for promulgating the Regulations evinced a permissible
14 intent to clarify its policies and impose consistency on its future
15 determinations.⁷ See id. at 29,354. These reasons suffice. See
16 Mayo Found. for Med. Educ. & Research v. United States, 131 S. Ct.
17 704, 715 (2011) (upholding bright-line rule because agency
18 "reasonably concluded" it would "improve administrability" and
19 "avoid[] the wasteful litigation and continuing uncertainty that
20 would inevitably accompany any purely case-by-case approach").

21 ///

22 _____
23 ⁷ The Tribe contends that this was not Interior's true motivation
24 and that Interior actually intended the Regulations to "address the
25 then current controversy concerning off-reservation gaming and, in
26 particular, the fear of state and local government officials and
27 citizen's groups of alleged reservation shopping" -- a fear which,
28 according to the Tribe, was about to result in Congressional
amendment of § 2719. See Pl.'s Opp'n at 9-10. The Tribe does not
show how this would be impermissible, even if true. See Fox TV,
556 U.S. at 1815-16 ("The independent agencies are sheltered not
from politics but from the President, and it has often been
observed that their freedom from presidential oversight (and
protection) has simply been replaced by increased subservience to
congressional direction.").

1 The Tribe strenuously argues that no clarification or further
2 assurance of consistency was required because NIGC and Interior had
3 "applied the same interpretation of the Restore[d] Lands Exception
4 for more than a decade before the Regulations were promulgated, a
5 period in which the Secretary made decisions on dozens of trust
6 acquisition applications." Pl.'s MSJ at 8. But of course the
7 Tribe is not the one who determines whether the Regulations were a
8 necessary or advisable means of implementing the ambiguous Restored
9 Lands Exception. Neither is this Court. See Motor Vehicle Mfrs.
10 Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)
11 ("[A] court is not to substitute its judgment for that of the
12 agency.") Congress entrusted that determination to Interior. Cf.
13 Heckler v. Campbell, 461 U.S. 458, 467 (1983) (refusing to "require
14 [an] agency continually to relitigate issues that may be
15 established fairly and efficiently in a single rulemaking
16 proceeding").

17 At the core of the Tribe's case is its argument that the
18 Regulations are unreasonable because the manner in which they limit
19 gaming is incompatible with Congressional intent. The Tribe
20 initially argued that the Regulations impermissibly rendered the
21 Exemptions set forth at § 2719(a) and § 2719(b)'s Exceptions
22 mutually exclusive. Compl. ¶ 42; Pl.'s MSJ at 18-19. The Court
23 understands the Tribe's position to have evolved somewhat: it has
24 backed off from the view that the Exemptions and Exceptions are,
25 strictly speaking, mutually exclusive, and instead argues that the
26 Regulations unreasonably impose a sequential and numeric limitation
27 on a restored tribe's exercise of the Exemptions and Exceptions.
28 See Pl.'s Reply at 4. That is, after a restored tribe first has

1 later-acquired lands taken into trust for gaming purposes, the
2 availability of Exemptions or Exceptions for other lands will
3 depend on which Exemption or Exception the restored tribe used for
4 the first trust acquisition, with the result that restored tribes
5 generally will be able to game only on the first parcel taken into
6 trust for gaming. See id. ("Because of the order in which the
7 Tribe sought to have land taken into trust, the Regulations prevent
8 the Tribe from having land taken into trust under both the Restored
9 Lands Exception and the On-Reservation Exemption.") The Tribe
10 asserts that such a limitation "is unquestionably a violation of
11 IGRA, which . . . explicitly includes the Restored Lands Exception
12 and the On-Reservation Exemption as separate, independent bases for
13 having land taken into trust for gaming purposes" Id.

14 Nevertheless, § 2719 nowhere "explicitly" provides that each
15 Exemption and Exception is a "separate, independent" basis. At
16 best, § 2719 implies that. The interplay of the statute's
17 Exceptions and Exemptions is ambiguous, and so the Court must defer
18 to Interior's construction unless it is manifestly unreasonable or
19 contrary to Congressional intent. State Farm, 463 U.S. at 43. The
20 Tribe has not shown that it is.

21 Interior does not, as the Tribe suggests, violate IGRA simply
22 by imposing extensive restrictions on the taking of land into trust
23 for gaming. As discussed in Section IV.A supra, the questions
24 before Interior in applying § 2719 were how to limit the definition
25 of "restoration of lands" (not whether to do so) and how to balance
26 the concerns of restored and other tribes (not whether to promote
27 tribal economic development at all). These questions have been
28 committed to Interior by Congress and the Court cannot say that the

1 Regulations fail to address them reasonably.

2 The Court GRANTS Interior's cross-motion for summary judgment
3 on the Tribe's second claim and on the third and fourth claims to
4 the extent they challenge the substance of the Regulations.

5 **C. The Decision Was Not Arbitrary and Capricious.**

6 The Tribe's third and fourth claims challenge, in part, the
7 Secretary's application of the Regulations, the former under IGRA
8 through the APA and the latter under the APA directly. The Tribe
9 asserts that Interior arbitrarily and capriciously failed to
10 consider important arguments and information when making the
11 Decision. E.g., Pl.'s MSJ at 30-34. Interior replies that it did
12 not fail to consider the arguments, but rather did not need to
13 reach them in order to render the Decision. Defs.' MSJ at 26-27.
14 The Court agrees with Interior.

15 At the root of the Tribe's contention is the Decision's
16 discussion of two arguments the Tribe made in support of its
17 application to have the Parcels taken into trust for gaming. The
18 first argument is that the lands on which the Win-River Casino is
19 located "did not constitute 'restored land' or 'newly acquired
20 lands' for the purposes of the Restored Lands Exception analysis"
21 because they had been taken into trust before October 17, 1988 and
22 because they were located within the boundaries of the Tribe's
23 original reservation. Pl.'s MSJ at 31 (citing AR 6093-6120). The
24 second argument is that certain lands were not "newly acquired
25 lands" within the meaning of § 292.2 because, when the United
26 States most recently took them into trust, they had merely been
27 returned to the trust status they enjoyed before the United States
28 terminated the Tribe's reservation, rather than coming under the

1 Tribe's control for the first time. Id. (citing AR 6150-57).

2 Interior addressed these arguments thus: "The Tribe asserts
3 that the trust-to-trust transfers giving the Tribe its first trust
4 holdings in 1992 should not be considered newly acquired land, as
5 the land was already held by the Secretary in trust before October
6 17, 1988. I do not have to reach that issue." Decision at 7.

7 Interior explained:

8 Whether we consider the Tribe's first request for newly
9 acquired lands to be the trust-to-trust transfers or the
10 subsequent fee-to-trust requests [for a Head Start site
11 and a tribal burial ground, described in the Decision's
12 Background section], it is evident that the subject
13 Parcels were not included in either of those requests.
14 Therefore, the Parcels were not "included in the
15 [T]ribe's first requests for newly acquired lands since
16 the [T]ribe was restored to Federal recognition, and they
17 cannot meet the standard in 25 C.F.R. § 292.12(c)(1).

18 Id. (quoting § 292.12(c)(1)). The Secretary then explained that
19 the Tribe could not satisfy the alternate criterion for
20 establishing a temporal connection to newly acquired lands, which
21 depends on a tribe conducting gaming on no other lands, see §
22 292.12(c)(2), because the Tribe already operated the Win-River
23 Casino. See id.

24 The Court sees nothing arbitrary or capricious about this
25 application of the Regulations. The Tribe's real objection to the
26 Decision appears to be not how Interior applied the Regulations but
27 rather that Interior applied them at all. The Tribe criticizes the
28 Decision on the ground that "no provision of § 2719 . . . supports
the conclusion that the Exemptions and Exceptions listed in §
2719(a) and (b) are mutually exclusive." Pl.'s MSJ at 32; see also
Pl.'s MSJ at 13 (noting that before Decision was made Tribe raised

1 objections to Regulations based on Tribe's reading of § 2719). But
2 of course the requirements of § 2719 were not before Interior when
3 it rendered the Decision. The requirements of the Regulations
4 implementing § 2719 were. The Court refuses to determine that the
5 Decision was arbitrary and capricious because it unerringly applied
6 Regulations with which the Tribe disagrees.

7 The Tribe, relying on Butte County v. Hogen, 613 F.3d 190
8 (D.C. Cir. 2010), suggests that the Decision simply provides too
9 little explanation. But Butte County actually establishes the
10 Decision's adequacy. The Butte County court explained that the APA
11 requires agencies to provide a "brief statement of the grounds for
12 denial of the party's request." 613 F.3d at 194 (internal
13 quotation marks omitted). The eight-page Decision did so, as
14 discussed above. See Decision at 7-8. "The agency's statement
15 must be one of reasoning; it must not be just a conclusion; it must
16 articulate a satisfactory explanation for its action." 613 F.3d at
17 194 (internal quotation marks omitted). The Decision clearly
18 satisfies this standard, too. See Decision at 7. A reasoned
19 determination that an issue need not be reached because other
20 issues are dispositive is not, by itself, an arbitrary and
21 capricious failure to consider arguments and evidence.

22 The Court GRANTS Interior's cross-motion for summary judgment
23 on the Tribe's third and fourth claims to the extent they are based
24 on Interior's asserted misapplication of the Regulations. This
25 disposes of the third and fourth claims in their entirety.

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**D. The Decision Did Not Violate Any Fiduciary Duty
Putatively Owed by the Secretary to the Tribe**

The Tribe's fifth and final claim asserts that, by issuing the Decision, the Secretary breached a fiduciary duty owed to the Tribe. The Tribe identifies this duty as "a continuing trust obligation to assist the Tribe in engaging and conducting gaming by interpreting the provisions of the IGRA and the regulations promulgated thereunder in favor of the Tribe and to the Tribe's benefit." Compl. ¶ 58. The Tribe does not point to any specific statutory provision that would impose this duty on the Secretary. Rather, the Tribe asserts that because "a trust relationship exists between the United States and the Tribe with respect to its Reservation lands" -- not, notably, with respect to the Parcels -- "the Secretary's conduct in interpreting the IGRA and promulgating the Regulations must be evaluated in accordance with his role as trustee" Pl.'s Opp'n at 15.

The argument lacks merit. The United States "assumes Indian trust responsibilities only to the extent it expressly accepts those responsibilities by statute." United States v. Jicarilla Apache Nation, 131 S. Ct. 2313, 2325 (2011). And IGRA "does not create a fiduciary duty; it is a regulatory scheme that balances the competing interests of the states, the federal government and Indian tribes." Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. United States, 259 F. Supp. 2d 783, 790 (W.D. Wis. 2003). Moreover, "the United States never acquired the subject land in trust for [the Tribe]. Without a trust, there is no fiduciary duty." Id. Because IGRA does not impose an enforceable trust responsibility on the Secretary and the Secretary

1 is not a trustee for the Tribe with respect to the Parcels, there
2 simply was no fiduciary duty for the Secretary to breach.

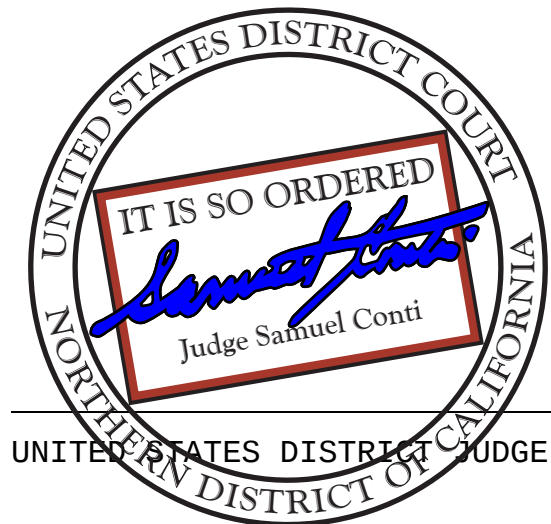
3 The Court GRANTS Interior's cross-motion for summary judgment
4 on the Tribe's fifth claim.⁸

5
6 **V. CONCLUSION**

7 For the foregoing reasons, the Court GRANTS the cross-motion
8 for summary judgment brought by Defendants Kenneth Salazar and
9 Larry Echo Hawk in their official capacities as, respectively,
10 Secretary of the United States Department of Interior and Assistant
11 Secretary for Indian Affairs for the United States Department of
12 the Interior. Accordingly, the Court DENIES Plaintiff Redding
13 Rancheria's motion for summary judgment. Interior's determination
14 that the Parcels do not qualify for the Restored Lands Exception
15 and therefore are ineligible for gaming remains undisturbed.

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20 IT IS SO ORDERED.

21
22 Dated: February 16, 2012



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27 ⁸ Interior objected to declarations that the Tribe submitted with
28 its Motion. Defs. Opp'n at 21-24. Because the Court has disposed
of the case without relying on the declarations, Interior's
objection is DENIED AS MOOT.