STEPHANIE YONEKURA
Acting United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division
MONICA L. MILLER (Cal. Bar No. 157695)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-4061
Facsimile: (213) 894-7819
E-mail: Monica.Miller@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

MARGARET MIRANDA, et al.,

Plaintiffs,

v.

SALLY JEWELL, Secretary of the Interior, and UNITED STATES DEPARTMENT OF THE INTERIOR,

Defendants.

No. EDCV 14-00312-VAP (SPx)

Hearing Date: January 12, 2015
Hearing Time: 2:00pm
Ctrm: 2
Honorable Virginia A. Phillips

1. DEFENDANTS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT;
2. DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT; and
3. MEMORANDUM OF POINTS AND AUTHORITIES.

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I. INTRODUCTION

Plaintiffs, all descendants of Rosa Pena Valencia Pace ("Rosa Pace" or "Mrs. Pace"), who was an enrolled member of the Santa Ynez Band of Mission Indians ("SYB" or "Tribe"), contend Defendants, Sally Jewell, Secretary of the United States Department of the Interior, and the United States Department of the Interior ("DOI"), acted arbitrarily and capriciously in violation of the Administrative Procedure Act, 7 U.S.C. § 701, et seq. ("APA"), by upholding the Tribe's decisions regarding Plaintiffs' applications for enrollment in the Tribe. The Tribe's governing laws set forth the procedures for enrollment in the Tribe, and provide the Bureau of Indian Affairs ("BIA") with certain obligations to review the SYB's decisions. The parties disagree on the interpretation of the laws with respect to enrollment. Defendants maintain their interpretation is correct and their Final Decision is supported by the Administrative Record.

Plaintiffs rely solely on one provision in the Tribal laws -- to the exclusion of all others -- to support their contention that the BIA violated the APA in denying their applications for membership in the Tribe. Plaintiffs' interpretation is not reasonable when looking at the governing Tribal laws as a whole, nor is it reasonable given statutory construction or common sense, and it does not show that Defendants acted arbitrarily or capriciously. In reading the laws as a whole, Defendants properly considered all the evidence regarding parentage, not just the evidence (i.e. the 1940 Census Roll) necessary to address the one single provision relied upon by Plaintiffs. In so doing, Defendants did not act arbitrarily or capriciously in reviewing all the information contained in the Administrative Record and then deciding to uphold the Tribe's initial decisions. The BIA's Final Decision is substantiated by the Administrative Record and thus complies with the APA.

Even if the Court were to determine the language contained in the governing laws was ambiguous, the Court should uphold Defendants' decision because Defendants did

not act in violation of the APA by giving deference to the Tribe's reasonable interpretation of its own laws. "A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." Cahto Tribe of Laytonville Rancheria v. Dutschke, 715 F.3d 1225, 1226 (9th Cir. 2013) (internal citation omitted).

For the reasons set forth below, Defendants request that the Court deny Plaintiffs' Motion for Summary Judgment and grant Defendants' Cross-Motion for Summary Judgment.

II. STATEMENT OF FACTS

A. Relevant Tribal Law

The Tribe has enacted governing documents relevant to the case before the Court. Articles of Organization ("Articles") were adopted by the Tribe on November 17, 1963 and approved by the Secretary of DOI on February 7, 1964. (Administrative Record ("AR") 198-211.) Addressing membership criteria, Article III states, in pertinent part:

> Section 1. Membership in the Band shall consist of:
>
> A. Those living persons whose names appear on the January 1, 1940 Census Roll….
>
> B. Living descendants of those persons described in Section 1A regardless of whether those persons listed on the census roll are living or deceased, provided that such descendants have one-fourth (1/4) or more degree of Indian blood of the Band.
>
> Section 2. The Business Council, as provided for in Article IV, shall keep the membership roll current at all times by striking therefrom the names of persons who have relinquished in writing their membership in the Band and of deceased members upon receipt of a death certificate or other evidence of death, and by adding the names of persons eligible under Article III, Section 1B.

(AR 201-02.)

The Tribe subsequently enacted Ordinances relevant to membership in the Tribe. A year after approving the Articles, on March 18, 1965, the BIA Area Director approved Ordinance No. 2, which contains the following relevant provisions:

> Section 1. Definitions
>
> C. "Commissioner" means the Commissioner of Indian Affairs.
>
> D. "Director" means the Area Director, Bureau of Indian Affairs, Sacramento Office[.]
>
> E. "Field Representative" means the Area Field Representative, Bureau of Indian Affairs, Riverside Field Office.
>
> G. "Indian Blood of the Band" as used in Article III, Section 1.B., of the Articles of Organization, means the total percentage of Indian blood derived from an ancestor or ancestors who were listed on the Santa Inez 1940 Census Roll.
>
> Section 6. Persons to be Enrolled
>
> The Enrollment Committee shall review and arrived at a perliminary [sic] decision as to the eligibility of the applicant based upon tribal records, information presented in the application or other sources of information. The Enrollment Committee shall refer the application, together with a statement of facts supporting the preliminary decision, to the Field Representative with the request for a review of the Bureau records for any additional data which would either substantiate or refute the preliminary decision of the Committee. The Field Representative shall prepare a statement containing information found in Bureau records relative to the eligibility of the applicant and shall forward such statement to the Enrollment Committee. After receiving the statement, the Enrollment Committee shall, on the basis of the evidence thus accumulated, approve or disapprove the application.

Section 7. Appeals

A person disapproved for enrollment shall be advised in writing of the reasons for the action of the Enrollment Committee and that its decision may be appealed to the Director within thirty (30) days following receipt of a rejection notices. If the Director sustains the decision of the Enrollment Committee, he shall notify the applicant of his decision and that his decision may be appealed to the Commissioner within thirty (30) days following receipt of the Director's decision….Appeals to the Director shall be filed with the Field Representative for forwarding to the Director. Appeals from the decision of the Director shall be filed with the Director within thirty (30) days from the date of notice of his decision for forwarding to the Commissioner.

Section 9. Re-evaluation of Application

Should the Committee subsequently find that a member misrepresented or omitted facts which might have made him ineligible or eligible for enrollment in the first instance, his application shall be re-evaluated in accordance with the procedure for processing an original application….

Section 10. Keeping Membership Roll Current

A. The Business Council shall keep the membership roll current by:

….

3. Making corrections to the roll, such as correcting dates of birth, degree of Indian blood, family relationship, etc., provided such corrections are supported by satisfactory evidence.

B. Any additions, deletions, or corrections as covered in paragraphs 10.A. 1, 2, or 3, above, must be submitted to the Director for approval.

(AR 215-20.)

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B. Evidence Regarding Rosa Pace's Degree of Blood of the Band

Although Plaintiffs' Complaint and Motion for Summary Judgment portray the issue before the Court as one primarily of interpretation of SYB laws and thus a purely legal question, a review of the many facts contained in the Administrative Record supports Defendants' interpretation of the Tribal laws. Accordingly, Defendants highlight evidence which shows they properly interpreted the Tribe's governing laws.

Rosa Pena Valencia Pace, born in 1906, is listed on the Tribe's 1940 Census Roll as full-blood Santa Ynez Indian. (AR 156 & 162.)

An "Application for Enrollment" in SYB was submitted on July 18, 1965, for Rosa Pace, under the name of Rosie Amlia Pace. (AR 164-65.) It lists her father as Mike Valencia and attributes no Santa Ynez Blood of the Band to him. It lists her mother, Inez Pina, as "F," apparently for full-blooded. (AR 164.) The handwritten note on the application states: Mike Valencia – no info. applicant claims no Ind. Blood." (Id.) The note also indicates that the total degree of SYB Blood of the Band for Mrs. Pace was reduced to conform with the blood degree of her parents, and with information provided by the applicant. (See AR 164.) Accordingly, on September 28, 1965, the SYB Enrollment Committee ("SYBEC") approved Rosa Pace's enrollment application, but decreased her blood degree from full to one-half, noting in the remarks section that "Blood degree is wrong – should be ½." (AR 165; see AR 144.)

In March 1969, Rosa Pace submitted to the BIA an Application for Enrollment to Share in California Judgment Funds. (AR 173-77.) Signed by Mrs. Pace, it names Mike Valencia as her father. (AR 174 & 177.)

The Church of Old Mission Santa Ines certified that Rosa Valencia, born to Ines Pina and Michael Valencia, was baptized in 1911. (AR 132.) The baptismal certificate was issued in September 1982. Id.

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A second Application for Enrollment was signed by Rosie Amelia Pina Pace[1] in December 1992. (AR 127-28.) It does not list a father for her. (AR 127.)

A second baptismal certificate from the Old Mission Santa Ines for Rosa Pina dated February 1993 lists Rosa Pace's mother as Ines Pina and her father as "unknown." (AR 126.)

A third baptismal certificate from the Mission Santa Ines for Rosa Pina, dated September 1995, lists her mother as Ines Pina and her father as Michael Valencia. (AR 124.)

A delayed registration of birth certificate, issued in 1999 (when Mrs. Pace was 93 years old), lists Rosie Amelia Pina Valencia's father as Guillermo Cordona, a Chumash Indian. (AR 117.)

C. Plaintiffs' Applications

The Plaintiffs in this action are all descendants of Rosa Pace. Rosa Pace's daughter Margaret Miranda is enrolled in the Tribe, as are her granddaughters Clara Miranda and Rosanna Miranda. Rosa Pace's daughter Cindy Griego is not enrolled in SYB, nor are Mrs. Pace's great-granddaughters, Helen Herrera, Rose Ann Herrera, Monica Herrera, Micki Herrera, Inez Alvarez (formerly known as Inez Howren), and Belinda Miranda.

Plaintiffs submitted applications for enrollment in the Tribe, or requests to increase the amount of designated blood degree[2], in 1992, 1993, and 2001. (Supplemental Administrative Record ("SAR") 221-70.) The Tribe's "Requirements for Enrollment" state: "You must complete the application enclosed and fill in the family tree. Send all birth certificates, baptismal records or other proof of parentage." (SAR 229.)

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[1] Rosa Pace is also known as "Rosie" Pace.

[2] Plaintiffs Margaret Miranda, Rosanna Miranda and Clara Miranda seek to increase the amount of blood quantum assigned to each of them to raise their SYB blood degree.

The Administrative Record contains several letters to and from Plaintiffs, the BIA, and the Tribe concerning the status of the applications over the years. Defendants hereby highlight certain documents relevant to the issue before the Court.

Pursuant to SYB Ordinance 2, Section 6, the BIA reviewed Plaintiffs' applications (along with other applications) and provided the SYBEC with the results of its review on August 23, 2002. (AR 060-64.)

In a letter dated July 19, 2001, the SYBEC sent to Plaintiff Rose Ann Herrera a letter rejecting her application for enrollment. (AR 098.) The letter provided her with appeal instructions mirroring those set forth in SYB Ordinance No. 2, Section 7. (Id.)

With respect to the three Plaintiffs seeking an increase in blood quantum, the SYBEC sent two separate letters dated November 4, 2002, to Rosanna Miranda and Margaret Miranda denying their applications. (See AR 045 & 047.) The letters informed the two Plaintiffs they had the right to appeal to the "Director at the Bureau of Indian Affairs in Riverside" within thirty days of receipt of the letter. Id.

On December 27, 2002, attorney Dennis Chappabitty sent a letter to the BIA Superintendent in Riverside stating it was a "Notice of Appeal of November 4, 2002 Decision" of the SYB. (AR 038.) The letter purported to constitute an appeal of the denial of applications for enrollment or to increase blood quantum for all the Plaintiffs, except Cindy Griego. (See AR 040.)

In a letter dated June 19, 2003, the SYBEC sent a letter to the BIA stating it had rejected applications from the following Plaintiffs: Margaret Miranda, Helen Herrera, Micki Herrera, Monica Herrera, Rose Ann Herrera, Inez Howren and Belinda Miranda. (AR 036.)

The BIA issued a Final Decision regarding the Plaintiffs' applications on November 21, 2013.[3] (AR 001.) The BIA found that there was insufficient evidence to

[3] Although the Tribe's Articles allow for appeals from the decision of the Director to the "Commissioner," now the Assistant Secretary of Indian Affairs, the Tribe's law is superseded by 25 C.F.R. Part 62.10(a), which makes the Director's decision final for the DOI. Additionally, according to the BIA Director's September 8, 2008, Memorandum

(footnote cont'd on next page)

show that Ms. Rosa Pace's father, Michael Valencia, was of Indian descent. (AR 003.) The BIA further found that the Tribe's governing laws did not require the SYBEC to rely on and use the blood degree assigned to Mrs. Pace on the 1940 Census Roll. (Id.) Lastly, the BIA noted the Tribe's right to define its own membership, and BIA's corresponding right to give deference to the Tribe's interpretation of its own laws. (AR 004.) Accordingly, the BIA upheld the decisions of the SYBEC to deny Plaintiffs' applications because they either did not have sufficient SYB blood to be entitled to enrollment or they did not provide sufficient evidence to warrant changing the assigned blood degree. (Id.)

III. ARGUMENT

A. The standard of review under the APA is deferential to Defendants

Plaintiffs allege Defendants violated the APA by improperly interpreting SYB's governing laws and upholding the Tribe's decision not to enroll Plaintiffs in the Tribe or change their SYB blood quantum. Contrary to Plaintiffs' assertion, Defendants complied with Tribal laws, and the Administrative Record supports the BIA's Final Decision.

Under the APA, a court may overturn agency decision-making only if it finds the underlying decision to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971); Gilbert v. Nat'l Transp. Safety Bd., 80 F.3d 364, 368 (9th Cir. 1996). The standard of review is narrow, and does not empower courts to substitute their judgment for that of the agency. Marsh v. Oregon Natural Res. Council, 490 U.S. 360, 378 (1989); Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); Friends of Clearwater v. Dombeck, 222 F.3d 552, 556 (9th Cir. 2000).

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regarding delegation of authority, "the Regional Directors shall...make final determinations on enrollment appeals submitted under 25 CFR Part 62.10(c)(l.2.), if not doing so before now." Hence the November 21, 2013, decision was final for the agency.

Under the "arbitrary and capricious" standard of the APA, "administrative action is upheld if the agency has 'considered the relevant factors and articulated a rational connection between the facts found and the choice made'." Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d 976, 982 (9th Cir. 1985) (quoting Baltimore Gas & Elec. Co. v. NRDC, 462 U.S. 87, 105 (1983)); Bowen v. American Hosp. Ass'n, 476 U.S. 610, 626 (1986)(reviewing court's role is only to determine whether agency considered relevant factors and information and articulated "a rational connection between the facts found and the choice made."); see also Friends of the Earth v. Hintz, 800 F.2d 822, 831 (9th Cir. 1986) ("The court may not set aside agency action as arbitrary and capricious unless there is no rational basis for the action.").

This standard is "highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision." Northwest Ecosystem Alliance v. U.S. Fish and Wildlife Serv., 475 F.3d 1136, 1140 (9th Cir. 2007 (citation omitted). Moreover, the U.S. Supreme Court has said, "[w]hile we may not supply a reasoned basis for the agency's action that the agency itself has not given, we will uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 285-86 (1974). "The [agency's] action . . . need be only a reasonable, not the best or most reasonable, decision." National Wildlife Federation v. Burford, 871 F.2d 849, 855 (9th Cir. 1989).

APA does not require "or even allow" a court to overturn an agency action because it disagrees with the agency's decision or even with its conclusions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). The reviewing court's task is simply "to ensure a fully-informed and well considered decision, not necessarily a decision that [the court] would have reached had [it] been a member of the decisionmaking unit of the agency." Id. at 558.

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If the agency's decision is found to be arbitrary and capricious or contrary to law, the proper remedy is to remand the decision to the agency for further consideration. See Camp v. Pitts, 411 U.S. 138, 142-43 (1973).

B. The language of the Tribe's governing laws demonstrates Plaintiffs' interpretation is incorrect

Generally, decisions regarding enrollment in a tribe are left to the sovereign authority of the tribe. As stated by the U.S. Supreme Court, "a tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72, n. 32 (1978).

Bearing that principle in mind, the Tribe in the case before the Court provided the BIA with certain obligations and authority with regard to membership. See Alto v. Black, 738 F.3d 1111, 1115 (9th Cir. 2013)("In view of the importance of tribal membership decisions and as part of the federal policy favoring tribal self-government, matters of tribal enrollment are generally beyond federal scrutiny….Here, however, the tribe's own governing documents vest the…[BIA] with ultimate authority over membership decisions."). Because laws governing Tribal membership are completely within the sovereign purview of the Tribe, the only authority exercised by DOI is that vested in it by the Tribe's Articles and Ordinances. See id. at 1125 (BIA's authority was constrained by tribal law).

The crux of Plaintiffs' argument is that only one provision of the Articles is relevant to the analysis of Plaintiffs' applications; specifically, Article III, Section 1.A, which deems eligible for membership "[t]hose living persons whose names appear on the January 1, 1940 Census Roll…." As argued by Plaintiffs, "[t]he plain meaning of the Tribe's Articles is that the 1940 Census is the *sole document* that should be referred to in membership determinations." (Plaintiffs' Motion at 6:4-5, emphasis added.) Inherent in Plaintiffs' argument is a demand that Defendants and the Court ignore the remainder of

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the provisions in the Articles or Ordinance, even if they are relevant to evaluation of membership applications.

Defendants disagree that the provision should be read in a vacuum, separate and alone from provisions in the remainder of the Articles and Ordinance No. 2. Interpreting one provision of a regulation in a way that is inconsistent with the overall structure of the statute and/or another provision is disfavored. Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618, 629-630 (2007). Similarly, there is a presumption against interpreting a provision in a way that would render other provisions of a statute superfluous. Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 113 (2001). Relevant portions of the governing documents are discussed below, and show that BIA reasonably interpreted Tribal laws in reviewing Plaintiffs' applications for membership.

The Section of the Articles following the provision relied upon by Plaintiffs contains a provision which requires the Tribe's Business Council to "keep the membership current at all times…." (AR at 202.) This provision indicates that the administration of the membership roll is a fluid process, not a static one with a stopping point of the 1940 Census Roll.

Further, several provisions in Ordinance No. 2 support Defendants' interpretation that the membership roll can be supplemented or corrected, if need be. Section 6 of the Ordinance states that the SYBEC shall review the eligibility of an applicant "based upon tribal records, information presented in the application *or other sources of information*." (AR 218, emphasis added.) Section 6 proceeds to require the BIA to review its records "*for any additional data* which would either substantiate or refute the preliminary decision" of the SYBEC. (Id., emphasis added.) Finally, after receiving information from the BIA, the SYBEC "*shall, on the basis of the evidence thus accumulated*, approve or disapprove the application." (Id., emphasis added.) All these provisions demonstrate that the Tribe intends to consider several sources of information regarding eligibility for membership. The Tribe's "Requirements for Enrollment" bolster this interpretation by requesting an applicant to submit a family tree and additional evidence, such as birth and

baptismal certificates. (SAR 229.)

Additional provisions of Ordinance No. 2 highlight the Tribe's intention that the membership roll be corrected if errors are subsequently discovered. Section 9 requires the SYBEC to reevaluate an application if it finds that "a member misrepresented or omitted facts which might have made him ineligible or eligible for enrollment in the first instance…." (AR 219.) In accordance with Section 2 of Article III, Section 10 of Ordinance No. 2 requires the Business Council to "keep the membership roll current by…*[m]aking corrections to the roll, such as correcting* dates of birth, *degree of Indian blood*, family relationship, etc., *provided such corrections are supported by satisfactory evidenc*e." (AR 219-20.)

C. Defendants did not act contrary to the APA in upholding the Tribe's decisions

Plaintiffs maintain that the BIA cannot formulate its own interpretations of tribal law when making decisions if that interpretation differs from the plain language of the law. (See Plaintiffs' Motion at 6:20-25.) Defendants agree with that principle of statutory construction. See Ransom v. Babbitt, 69 F. Supp. 2d 141, 151 (D.D.C. 1999)("the federal government is obliged to adhere to the clear meaning of statutory language if such language is plainly stated.") The Court should also read the plain meaning of the governing documents. Id. at 152 ("federal courts have limited the construction of words to their clear meaning when to do otherwise would intrude upon tribal sovereignty").

Plaintiffs rely on Ransom in an effort to persuade the Court that Defendants acted arbitrarily and capriciously by considering evidence other than the 1940 Census Roll as relevant to an evaluation of Plaintiffs' applications. (Motion at 9-10.) However, the facts of Ransom are inapposite because in that case the BIA and the Tribe disagreed on the interpretation of tribal law; in the case before the Court, the Tribe and Defendants agree on the interpretation of the SYB's laws as evidenced by documents contained in the Administrative Record.

The BIA's interpretation of the SYB's laws is not in conflict with the plain language of the Tribe's governing documents. In fact, Defendants believe their interpretation is more in keeping with the Tribe's governing documents than Plaintiffs' narrow interpretation. In upholding the Tribe's decisions, and thus its interpretation of its own laws, the BIA did not deviate from the plain meaning of the Tribal laws, and therefore did not act arbitrarily or capriciously in contravention of the APA.

Plaintiffs correctly state that the 1940 Census Roll is the starting point for membership determinations in the SYB; however, it is not also the ending point. An individual must be on the 1940 Census Roll, or descended from someone on that Roll, to be eligible for membership, but it does not follow that the 1940 Census is the only document that can be used to determine if descendants have ¼ Blood of the Band, as required by Article III, Section 1.B. (AR 201.)

The Articles themselves do not give instructions as to how blood degree should be calculated, only referencing the 1940 Census for initial membership criteria. Plaintiffs thus insist that, because the 1940 Census is the only document mentioned in the Articles, it is the only document that can be used to determine not just membership, but also blood quantum. However, Plaintiffs' interpretation is unreasonable in light of subsequently passed Ordinance No. 2 addressing the issue of membership applications in greater detail and providing guidance for the maintenance of a current and accurate membership roll.

The Tribe and the BIA determined that Ordinance No. 2 authorized them to consider relevant parentage and blood quantum information in evaluating Plaintiffs' eligibility for membership in the Tribe. The provisions highlighted in the Section above demonstrate that documents in addition to the 1940 Census Roll will be considered by the SYBEC in evaluating an application for membership. Moreover, the Tribe's enrollment application states that additional information should be included, such as birth and baptismal certificates, and other evidence, to support an application. (SAR 229.)

Looking at the parentage facts of Rosa Pace, while it is unclear from the

Administrative Record exactly what documents the SYBEC reviewed in rendering their respective decisions, it is clear they both relied on Rosa Pace's Application for Enrollment in the Tribe that she submitted in 1965. The Application submitted by Rosa Pace to the SYBEC on July 18, 1965, lists her father at Mike Valencia and lists no SYB or Indian blood for him. (AR 134.) The handwritten notation in the remarks section states: "Blood degree is wrong – should be ½." (AR 135.) The copy of the same Application from the National Archives at Riverside contains additional notations which state, in pertinent part, "Mike Valencia – No info. Applicant claims no Ind. Blood." (AR 164.) The notation further provides: "changed to conform w/ parents blood deg. and info. furnished by applicant." (Id.)

Regardless of whether the handwritten notations were made by the SYBEC or the BIA, the information submitted by Mrs. Pace herself on that application warranted the change in blood degree to her records and those of her descendants. Her application states that her father was Mike Valencia, a non-Indian. This justified the SYB's decision to reduce Rosa Pace's blood degree by one-half. The SYB had the authority from Ordinance No. 2, Sections 9 and 10 to make corrections to the membership Roll. (AR 215-20.)

Likewise, the BIA did not act arbitrarily or capriciously in relying on the SYBEC's review and determination that Mrs. Pace was not a full-blooded SYB Indian, especially as it does not appear Mrs. Pace provided any evidence to counter the information relied upon to reduce her designated blood degree. In support of this interpretation, Defendants direct the Court to a letter from the SYBEC to the BIA dated May 1, 2001, regarding Plaintiffs' enrollment applications, in which the SYBEC stated, "After further research and investigation done by the [SYBEC], it has been determined that Mrs. Pace does not have a blood quantum of 4/4, but rather a blood quantum of ½, which was apparently re-evaluated on the 1965 roll." (AR 115.)

The information on Mrs. Pace's 1965 Application for Enrollment in turn became the basis upon which Plaintiffs' subsequent applications rested. Accordingly, in

reviewing the applications submitted by Plaintiffs and noting the blood degree assigned to Rosa Pace, neither the Tribe nor the BIA erroneously concluded that Plaintiffs were not entitled to enrollment or were not entitled to have their blood degrees increased. As the BIA did not act arbitrarily or capriciously in relying upon the evidence submitted by Rosa Pace on her 1965 Application for Enrollment, Defendants did not violate the APA in rendering its Final Decision.

D. Evidence in the Administrative Record amply supports the BIA's decision to deny Plaintiffs' applications

Accepting that Defendants reasonably interpreted the SYB's governing laws to allow consideration of evidence of parentage other than simply the 1940 Census Roll in reviewing a membership application, the BIA reasonably concluded the evidence did not support Plaintiffs' applications for enrollment in the Tribe. Even though the Administrative Record is somewhat unclear as to exactly what documents the Tribe and the BIA reviewed in evaluating Plaintiffs' applications at the time of the initial decisions, the Administrative Record contains an abundance of documents supporting the BIA's Final Decision. The agency's Final Decision sets forth the many valid documents it relied upon, and other documents in the Administrative Record further support its Final Decision. The Court can rely on the evidence contained in the Administrative Record to find the BIA did not act arbitrarily or capriciously. Bowman Transp., Inc., 419 U.S. 281, at 285-86.

As stated in the Final Decision, the SYBEC "concluded that Rosa Pena (Valencia) Pace's mother was Ines Pina, 4/4 Santa Ynez Indian Blood, and her father was Michael Valencia, non-Indian." (AR 002.) On appeal, the BIA examined all available historical documents from sources such as the BIA records, Tribal records, State records, and baptismal records. Specifically, the BIA considered the following documents:

- The Roll of California Indians under the Act of May 18, 1928 (no parentage was identified for Rosa Pena Valencia Pace in the preparation of this roll) (AR 189);

- The Indian Census Roll of the Santa Ynez Mission as of January 1, 1940 (no parentage was identified for Rosa Pena (Valencia) Pace in the preparation of this roll) (AR 149);
- The 1965 Santa Ynez enrollment application completed by Rosie Amelia Pace (states her blood degree to be full blooded, but identifies Mike Valencia, Non-Indian, as her father) (AR 144 & 165);
- Mrs. Pace's Application for Enrollment to Share in the California Judgment Funds (names Mike Valencia as her father and notes he is non-Indian) (AR 173-74);
- Church of Old Mission Santa Ines, Certificate of Baptism, issued in 1982 (states Michael Valencia is the father and Ines Pina is the mother of Rosa Valencia) (AR132);
- Church of Old Mission Santa Ines, Certificate of Baptism, issued in 1993 (states Inez Pina is the mother of Rosa Valencia, and her father is unknown) (AR 127);
- Church of Old Mission Santa Ines, Certificate of Baptism, issued in 1993 (states Michael Valencia is the father and Inez Pina is the mother of Rosa Pina) (AR 126);
- Affidavit of Paternity signed by Rosie Amelia Pina Pace February 14, 1996 (stating her father was Guillermo Cordona, 4/4 Indian) (AR 122); and
- State of California, Department of Health and Human Services, Delayed Registration of Birth, for Rosie Amelia Pina-Valencia, issued June 22, 1999 (stating her father is Guillermo Cordona, Chumash, and mother is Inez Pina, Chumash) (AR 117).

In addition to these documents specifically mentioned in the Final Decision, the Administrative Record contains additional evidence demonstrating the Tribe interprets its laws as allowing corrections to the membership roll, and thus allowing for the consideration of evidence other than the 1940 Census Roll. In evaluating Plaintiffs'

applications, for example, a 1996 letter from a member of the SYB Business Committee to Rosa Pace advised Mrs. Pace that it was her responsibility to provide evidence to the SYB that the information on the 1965 roll was incorrect. (AR 118-20.) Mrs. Pace submitted an application to the SYBEC in June 1990, and was notified that she "needed to provide proof of paternal Santa Ynez Indian blood and tribal affiliation for [her] father, then listed as Mike Valencia, in order to be considered full blood. [She] did not provide the Enrollment Committee with an enrollment number, or tribal affiliation for [her] father, nor, [her] birth certificate, and the family tree was only filled out on one side…." (AR 118-19.) The letter further informed Mrs. Pace she could "challenge the blood degree discrepancy," but that a "preponderance of the evidence must show a listed blood degree is incorrect before it can be changed." (AR 119.) The letter advised Mrs. Pace that the information also should be sent to the BIA. (Id.)

Further, the letter noted that Mrs. Pace was listed on the 1928, 1933, 1940 and 1965 rolls as Rosa Pena Valencia, and queried why she waited so long to question the accuracy of that information if she claimed her father was Guillermo Cardona [sic]. (Id.) The letter also noted that the applications of her daughter (Margaret Miranda) and her grandchildren named her as Rosa Pena Valencia and did not mention Guillermo Cardona [sic]. (Id.)

Finally, the 1996 letter specifically references Article III, Section 2, which states the Business Council is obligated to keep the membership roll current, and Sections 9 and 10 of Ordinance No. 2 which provided for reevaluation of an incorrect membership application, and require that the Business Council make corrections to the membership roll. (AR 120.)

Other documents in the Administrative Record support the BIA's determination that Rosa Pace had not submitted sufficient information to warrant changing her blood degree on post-1940 membership rolls from ½ to full blood:

- A National Archives search by the BIA for records disclosed an application submitted by Mrs. Pace in 1972 which lists Mike Valencia, a non-Indian, as

her father. (AR 166.)

- The SYBEC certified that "membership eligibility was determined in accordance with Ordinance Number 2" in preparing the membership roll that was dated November 7, 1970 for submission to the BIA. (AR 137.)
- In a letter from the BIA to Mrs. Pace dated February 4, 1988, in response to a letter from her requesting information concerning her blood degree, the BIA informed Mrs. Pace she had not submitted any birth records with her 1965 Application for Enrollment . (AR 133.) The letter advised her she could challenge the blood degree discrepancy, but needed to show the listed degree was incorrect by a preponderance of the evidence. (Id.)
- A handwritten notation on Mrs. Pace's Application for Enrollment dated December 16, 1992 lists no father on the family tree chart and states, "paper work incomplete. Maternal % of S.Y.I.R. Blood already established. Must provide proof of paternal Santa Ynez blood in order to be 4/4 degree Santa Ynez. Show Tribal affiliation – None provided!" (AR 129.)
- With regard to Plaintiffs' applications, the SYBEC sent to the BIA a letter dated May 1, 2001, in which it stated, "[a]fter further research and investigation," it was determined Rosa Pace's SYB blood quantum was ½, not 4/4, and also noted she had not provided any proof justifying a higher blood degree. (AR 115.)
- In letters from BIA to Rosanna Miranda dated October 19, 2001 and to Monica Herrera dated September 18, 2001, the BIA observes that enrollment in a tribe is a matter between the individual and the tribe, and the burden for establishing eligibility is upon the individual seeking membership. (AR 072 & 076.)

The Administrative Record thus supports the BIA's determination that, the evidence relied upon by the Plaintiffs "either does not show [Rosa Pace's] father to be of Indian descent, or is self-reported by Mrs. Pace-who cannot provide a first-hand account

of her birth and parentage." (AR 003.) The BIA did not act arbitrarily in determining that Rosa Pace's blood degree was not 4/4 as shown on the 1940 Census Roll, but half that amount. Accordingly, the BIA properly concluded that Plaintiffs are not eligible to be enrolled in the Tribe, and/or are not eligible to increase their blood quantum.

As the Administrative Record supports the BIA's Final Decision, Defendants request that the Court deny Plaintiff's Motion for Summary Judgment and grant Defendants' Cross-Motion for Summary Judgment.

E. Even if the language of the Tribe's governing documents was ambiguous, Defendants properly deferred to the Tribe's reasonable interpretation of its laws

Even if the Court finds ambiguity in the meaning of the Tribe's Articles and Ordinance, Defendants rightfully deferred to the Tribe's reasonable interpretation of its own laws. Plaintiffs agree with this principle. (Motion at 9:2-4 "It is not disputed that if there is disagreement in the interpretations of ambiguous text, that it will be understood to favor the Tribe….")

The Tribe's interpretation of its governing laws is reasonable, especially as it is critical to the Tribe's ability to correct erroneous enrollment actions. The BIA appropriately deferred to the Tribe's interpretation of its laws so as to respect tribal sovereignty and self-determination. As stated by the United States Court of Appeals for the Ninth Circuit, "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." Cahto Tribe, 715 F.3d at 1226 (citing Santa Clara Pueblo, 436 U.S. 49, 72 n.32); see Ransom, 69 F. Supp. 2d at 150 ("Supreme Court jurisprudence has recognized the right to self-government as a fundamental aspect of tribal existence."); United Keetoowah Band of Cherokee Indians in Okla. v. Muskogee Area Dir., 22 IBIA 75, 80 (1992) ("Under the doctrines of tribal sovereignty and self-determination, a tribe has the right initially to interpret its own governing documents in resolving internal disputes, and the Department must give deference to a tribe's reasonable interpretation of its own laws.");

Estate of Mary Dodge Peshlakai v. Navajo Area Director, 15 IBIA 24, 36 (Oct. 28, 1986).

Plaintiffs do not contend that there is ambiguity in the meaning of the SYB's laws, but urge the Court to ignore provisions in the Articles and in a document enacted one year later (Ordinance No. 2) that they argue are inconsistent with the one provision upon which they rely. (Motion at 9:2-11.) In so doing, Plaintiffs rely on Oregon Department of Fish and Wildlife v. Klamath Indian Tribe for the principle that "courts cannot ignore plain language that, viewed in historical context and given a fair appraisal, clearly runs counter to a tribe's later claims." 473 U.S. 753, 774 (1985). However, the facts in Oregon Department of Fish and Wildlife bear no resemblance to the facts of this case. At issue in Oregon Department of Fish and Wildlife were a treaty enacted in 1864 and an agreement entered into in 1901. The rights contested were not discussed in the later agreement. Id. at 770. The Court concluded that, reviewing "the entire record," the tribe's subsequent claims could not be reconciled with the first legal document. Id. at 774.

Unlike the situation in Oregon Department of Fish and Wildlife, in the case before the Court the legal provisions at issue are in the same document or enacted one year later. As Plaintiffs concede, the provisions are not ambiguous. Nor are they contradictory. Viewed as a whole, the provisions of the Articles and Ordinance No. 2 with respect to membership are logical and sensible. Cahto Tribe, 715 F.3d 1225 at 1231 n. 9 (BIA gives deference to tribe's reasonable interpretation of its own laws). To find that the Tribe could not rely on the provisions it enacted to make additions, deletions or corrections to its membership roll would be nonsensical and wholly unfair to the Tribe. Cf. DeCoteau v. District County Court, 420 U.S. 425, 447 (1975)("A canon of construction is not a license to disregard clear expressions of tribal and congressional intent."). The provisions of the governing documents that Plaintiffs want to ignore allow the Tribe to correct any errors, and the provisions clearly were drafted to do just that.

Defendants request that the Court uphold the BIA's Final Decision because it is

based on a reasonable reading of the SYB's laws, and both Defendants and the Court owe the Tribe deference in matters of enrollment.

IV. CONCLUSION

In arguing they are eligible for membership based solely on the 1940 Census Roll, Plaintiffs overlook relevant tribal laws and also ignore facts. The SYB Articles and Ordinance No. 2 contain reasonable, clear provisions which plainly contemplate the use of other valid information, such as birth and baptismal certificates, to evaluate an application for membership.

In making its decision on Plaintiffs' appeals of the denial of their applications for membership in the Tribe, the BIA permissibly examined all available records. The BIA provided a reasoned explanation for its Final Decision to disapprove the blood quantum increases and membership applications of the Plaintiffs. The decision is amply supported by the Administrative Record. Accordingly, Defendants request the Court deny Plaintiff's Motion for Summary Judgment and grant their Cross-Motion for Summary Judgment.

Dated: October 20, 2014

Respectfully submitted,

STEPHANIE YONEKURA
Acting United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division

/s/
MONICA L. MILLER
Assistant United States Attorney

Attorneys for Defendants