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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BUTTE COUNTY, CALIFORNIA,)
)
Plaintiff,)
)
v.)
)
JONODEV OSCEOLA CHAUDHURI,)
 et al.,)
)
Defendants.)
_____)

Case No.: 1:08-cv-00519 FJS

Honorable Frederick J. Scullin

MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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I. STANDARD OF REVIEW

The Defendants rendered their final decision in the face of uncontradicted facts in the 2006 Beckham Report that are supported by federal records establishing that the well-defined requirements for "restored land" status do not exist. Moreover, they refused to extend adequate time to the County in which to prepare a response to new materials submitted to the Department of the Interior by the Mechoopda Tribe in the form of the Mechoopda Replacement Report. Even then, Defendants did not state that they carefully considered the documented facts in the 2006 Beckham Report reconciled their final decision with that substantial evidence running counter to the materials in the Mechoopda Replacement Report.

The Administrative Procedures Act provides that the court shall overturn agency actions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 5 U.S.C. § 706(2)(A). Reviewing courts generally owe deference to agency decisions, but this Court has recognized that "no deference is due when the agency has stopped shy of carefully considering disputed facts." See *Cities of Carlisle & Neola, IA v. F.E.R.C.*, 741 F.2d 429, 433 (D.C. Cir. 1984); see also *Wheaton Van Lines, Inc. v. I.C.C.*, 671 F.2d 520, 527 (D.C. Cir. 1982) ("deference to an expert tribunal cannot be allowed to slip into a judicial inertia").

Any decision based on factual findings or assumptions not supported by substantial evidence constitutes an abuse of discretion. *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005).

An agency determination is arbitrary and capricious if it fails to consider an important aspect of the matter before it, offers an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n of U.S. Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

This Court must assure that the Defendants gave reasoned consideration to the facts they were to determine, the conclusions based thereon and judgments made on the basis of evidence before them. *Wheaton Van Lines, supra*, 671 F.2d at 527. The courts may not affirm an agency action on "a reasoned basis different from the rationale actually put forth by the agency." *Pub. Media Ctr. v. F.C.C.*, 587 F.2d 1322, 1332 (D.C. Cir. 1978); *Motor Vehicle Ass'n of U.S. v. State Farm, supra*, 463 U.S. at 43. This means that advocacy of legal counsel cannot save an arbitrary and capricious agency action on review by supplying a rationale that the agency's decision itself did not provide. *KeySpan-Ravenswood, LLC v. FERC*, 348 F.3d 1053, 1059 (D.C. Cir. 2003); *Balt. & Annapolis R.R. Co. v. WMATC*, 642 F.2d 1365, 1370 (D.C. Cir. 1980).

With this, it is settled that the agencies' decisions at issue should only be affirmed if this Court concludes that Interior took a hard look at the issues by considering the relevant factors and articulating a rational connection between the facts found and the choice made. *Transcon. Gas Pipe Line Corp. v. F.E.R.C.*, 518 F.3d 916, 919 (D.C. Cir. 2008).

II. INTRODUCTION

This litigation was filed by Butte County, California ("County") to challenge a decision of the United States Department of the Interior ("Interior") to accept a specific parcel of land within the County into trust for gaming by Mechoopda Indian Tribe of the Chico Rancheria, a federally recognized Indian tribe (herein known as "Mechoopda" and/or "Tribe"). The proposed gaming site is more than 10 miles from the closest boundary of the former Chico Rancheria land and is referred to herein as the "trust land" and/or "casino site."

The Tribe (i) was federally recognized – but not formally organized – by the federal defendants in the 1930s when the United States Department of the Interior accepted the Chico Rancheria land into trust status, (ii) briefly organized in the 1950s, (iii) lost its federal

recognition in the 1960s pursuant to an Act of Congress, and (iv) regained federal recognition by having that formal status "restored" by Interior pursuant to federal litigation.

At issue is whether the casino site is eligible for Mechoopda tribal gaming pursuant to the Indian Gaming Regulatory Act of October 17, 1988, 25 U.S.C. § 2701, *et seq.* ("IGRA"). The Tribe purchased the trust land many years after the enactment of IGRA, Section 20 of which prohibits Indian gaming on land acquired after October 17, 1988, unless the land satisfies one of several enumerated exceptions. Addressing this issue, the Tribe claims the site satisfies the so-called "restored lands" exception which is codified at 25 U.S.C. § 2719(b)(1)(B)(iii), and reads as follows:

(B) [newly acquired] lands are taken into trust as part of –

* * *

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

The parties to this litigation agree on three things: (1) Mechoopda is "an Indian tribe that is restored to federal recognition;" (2) IGRA's "restored lands" provision requires that the Tribe must have historically owned and occupied the newly-acquired casino site for the "restoration of lands" exception to apply; and (3) if the restored lands exception does not apply, the Tribe cannot conduct gaming on the casino site.

The County is challenging the proposed trust land's qualification as "restored land" for the reason that the only land that the modern Mechoopda tribal members ever occupied as a group was the former Chico Rancheria, which previously was the ranch of John and Annie Bidwell, where members of various tribal and non-Indian ancestries were employed and allowed to live as long as they worked for the Bidwells and adhered to a strict code of conduct dictated by the Bidwells. These Indians lived and worked at the Bidwell Ranch, but they never lived and worked on the proposed trust land which is miles away from the former Chico Rancheria.

Specifically, the County's lawsuit does not contest the Mechoopda's federal recognition. The County does, however, contend that (a) the only land ever commonly occupied by the ancestors of the specific people who ultimately were federally recognized as members of the Tribe was the Bidwell Ranch property and not the proposed casino site and, accordingly, (b) the tribal members cannot demonstrate any tribal historic ties to, or connection with, the proposed casino site as required by IGRA. Consequently, if the County's position is correct as a matter of fact, it would be legally impossible for the land to qualify as "restored land to a restored tribe" as a matter of law.

This challenge is not anti-Mechoopda Tribe and is not anti-Indian. Rather it is a challenge to the modern Mechoopda Tribe's claim as an Indian tribe that it is the direct tribal descendent of a Mechoopda village tribelet that (i) was party to an unratified treaty with the United States executed in 1851 and (ii) had a historical connection to the proposed casino site at the time of treaty execution. That this challenge was reluctantly filed was made clear when the Complaint was filed with a special Preliminary Statement:

PRELIMINARY STATEMENT

Butte County reluctantly files this litigation. Indeed, the County did everything possible to avoid having to do so. However, the County's attempts to resolve the dispute over siting of a proposed casino were repeatedly and abjectly rejected by the Mechoopda Tribe. The Tribe simply refused to consider any other site. The Tribe's rejection of an amicable resolution of the matter has left the County with no recourse other than this litigation. Finally, it is emphasized that the County does not question the Tribe's recognition or sovereignty.

See Docket No. 1 at p.1.

The Tribe's intransigence left the County no choice but to file this litigation. Contrary to arguments advanced by the Defendants, this litigation is not grounded on undocumented expert witness assumptions but rather is based on documented facts.

III. STATEMENT OF FACTS

1. For a second time, the Defendants have approved trust acceptance for gaming purposes of a parcel of land within Butte County, an approval memorialized and served upon the interested parties in the Land Determination Decision dated January 24, 2014, AR NEW 0005384 (herein referred to as the "2014 Interior Decision"). This federal action was based on an Expert Report submitted to the Department of the Interior by the Tribe and was made without considering expert rebuttal materials of the County and without reconciling critical conclusions with documented facts of the multi-tribal and non-Indian ancestry of the Bidwell Ranch employees as well as the Bidwells' total control of every element of the lives of the Ranch residents. See "Mechoopda Indian Tribe of the Chico Rancheria" (Jan. 2006), by Dr. Stephen Dow Beckham, Pamplin Professor of History, Lewis & Clark College, Portland, OR (herein known as the "2006 Beckham Report"). AR NEW 0003171.

2. The first trust acceptance was promulgated through *Federal Register* notice published on May 8, 2008 (herein known as "2008 Interior Decision"). AR NEW 0003282. That trust decision primarily was based on Mechoopda tribal materials generated by three purported tribal experts lacking the credentials and expertise necessary to render ethnohistorical opinions and conclusions, as Dr. Beckham explained and documented in his "An Assessment of the Credentials, Alleged Expertise, and Controversies of the Three 'Experts' Retained by the Mechoopda Indian Tribe of the Chico Rancheria to Establish Historical Tribal Connections to Land Proposed to Be Used for Indian Gaming" (Oct. 2010). AR NEW 0003810-0003832.

3. In rendering the 2008 Interior Decision, the Defendants ignored the County's expert report – the 2006 Beckham Report – contradicting their historic and ethnographic conclusions, and actually admitted that they had affirmatively refused to even read that

document, even though it was researched and written by one of the leading experts in the ethnohistory of American Indians, Dr. Stephen Dow Beckham.

4. This Court dismissed the County's challenge to the 2008 Interior Decision, Docket No. 66, a decision that was reversed on July 13, 2010, by the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"). *Butte Cnty., Cal. v. Hogen*, 613 F.3d 190 (D.C. Cir. 2010).

5. The D.C. Circuit ruled that Defendants' failure to consider the 2006 Beckham Report in developing the 2008 Interior Decision violated the Administrative Procedure Act, Pub.L. 79-404 (60 Stat. 237) ("APA"), and remanded the matter with the further order that Defendants reconsider the 2008 Interior Decision in light of the 2006 Beckham Report. *Id.* at 194.

6. At issue before this Court is the Interior Secretary's second trust acceptance of January 24, 2014, known herein as the 2014 Interior Decision.

7. In its reversal and remand described at ¶5 *supra*, the D.C. Circuit determined that the Secretary's deliberate refusal to consider the 2006 Beckham Report challenging the proposed casino site's qualification for gaming was arbitrary, failed to meet even the minimal requirements of reasoned decision-making required by the APA at 5 U.S.C. § 555, and provided no basis upon which the Court could conclude that it was the product of reasoned decision making. 613 F.3d at 195.

8. On November 22, 2010, in a letter to this Court, the Tribe identified its view as to the proper scope of remand that it should be "narrowly focused on the specific issue addressed by the D.C. Circuit, namely consideration of the [2006] Beckham Report, and also narrowly focused on the administrative record as it existed at the time the Department failed to give

adequate consideration to the [2006] Beckham Report, *i.e.* in August 2006, and nothing more." Docket No. 73 at ¶2. (Emphasis supplied.)

9. On December 22, 2010, this Court remanded the Secretary's decision to the Secretary with an order to "include and consider the [2006] Beckham Report as part of the administrative record on remand." AR NEW 0003832.

10. In light of the specific dictates of the remand order, the Administrative Record ("AR") before the Department should have consisted solely of (a) the AR promulgated herein by Interior on August 27, 2008, (b) the 2006 Beckham Report and (c) any materials directly connected to the two categories identified at (a) and (b).

11. Nothing in the orders of the D.C. Circuit or this Court even suggested – let alone contemplated – that the Tribe would be permitted to abandon its first three "experts" and retain an entirely new team of purported experts for the purpose of (i) abandoning the Tribe's original recitation of the claimed Mechoopda history of tribal political organization and migration and then (ii) writing an entirely new report with citation to, and inclusion of, materials that the Tribe's original "expert" team never even mentioned.¹

12. On April 12, 2011, Interior's then-Deputy Solicitor for Indian Affairs Patricia Kunesh advised the Tribe and County that she had arbitrarily imposed a 30-day deadline for each party to submit "all information that it wishes the Secretary to consider on remand that was not within the original administrative record filed with the court in the preceding litigation." AR NEW 0004044.

¹ The Tribe's new "expert team" wrote a new report entitled "Report and Response of the [Tribe] to the May 12, 2011 Response of Butte County Filed with the Office of the Solicitor for the Department of the Interior" (June 28, 2011). Although this new tribal report included credentials for the two replacement "experts," *see* AR NEW 0004110, it clearly is primarily the work of archaeologist Michelle Tiley. This document is referred to herein as the "Mechoopda Replacement Report."

13. Given the relatively short 30-day time line unilaterally imposed by Deputy Solicitor Kunesh as well as the Tribe's clearly-stated intention to submit the limited response described in its filing with this Court discussed at ¶8 *supra*, there was nothing to even suggest that Kunesh was inviting an unrestrained expansion of the Mechoopda justification for its trust application.

14. Anticipating a tribal submission reconciling its already-submitted "expert" materials with the 2006 Beckham Report in accordance with the D.C. Circuit's orders and the tribal statements discussed at ¶8, the County on May 12, 2011, submitted limited materials consisting of two documents responsive to the request, addressing problems with the Department's original decision based on the Administrative Record filed by the Department in this litigation.

15. The only document submitted on May 12, 2011, not previously furnished to Defendants and available to the Tribe was Dr. Beckham's *Curriculum Vitae*. AR NEW 0004068. In order to insure its inclusion in materials to be considered by Defendants, the County also re-submitted Dr. Beckham's written assessment of the credentials and expertise of the Tribe's original three-person expert team, a report originally submitted to the Defendants in October 2010 as is described at ¶11 *supra*. AR NEW 0003810.

16. By the time of the County's submission on May 12, 2011, the Tribe's three original "experts" had, without the County's knowledge, already been replaced and their materials upon which the 2008 Interior Decision relied essentially had been abandoned.

17. On May 27, 2011, the County received notice by e-mail from the Department that the Tribe was unable to meet its deadline previously extended by Kunesh and had requested a

15-day extension of time to file its submission, without even informing the County of the request. AR NEW 0004108.

18. The notice described at ¶17 disclosed that Kunesh – without consulting the County – had already granted the request, and attached a copy of the Tribe's letter dated that same day requesting the additional time with the following justification: "Now that we have received and reviewed the Butte County submission [of May 12, 2011], we are in process of preparing a response to Butte County's challenges to our tribal history." AR NEW 0004109.²

19. The notice described at ¶17 also quoted the Mechoopda request as stating that the Tribe was (a) "impoverished", (b) "lost [its] investor" and was (c) "proceeding with very limited resources." *Id.* (Emphasis added.)

20. To induce Deputy Solicitor Kunesh's ostensible reliance on the three tribal representations described at ¶19, the Tribe did not disclose that its claims of insolvency were contrary to the fact that it already had hired Dr. Tiley to write the Mechoopda Replacement Report.

21. It is clear that prior to making the claims described at ¶20 *supra*, the Tribe already had secured sufficient funds to retain a private consulting firm with a new team of experts who were in the process of preparing an elaborate report that did not merely respond to the 2006 Beckham Report but actually presented an entirely new case to support its original trust application to the Department – a new case which neither the County nor Dr. Beckham had ever previously seen and one far beyond the scope of the orders of the D.C. Circuit and this Court that

² As stated at ¶15, the only document submitted on May 12, 2011, not previously furnished to Defendants and available to the Tribe was Dr. Beckham's *Curriculum Vitae*, which recited his credentials and professional experience and expertise. Nowhere in that document is there any challenge to the Tribe's history requiring an additional response, meaning that the Tribe's justification for seeking additional time in order to respond to the purported new "challenges to [Mechoopda] tribal history" in the County's May 12 submission was fiction. And the "justification" language was repeated in the title to the Mechoopda Replacement Report: "Report and Response of the Mechoopda Tribe of the Chico Rancheria to the May 12, 2011 Response of Butte County Filed With The Office of The Solicitor for the Department of the Interior." AR NEW 0004110.

Defendants reconsider their original decision in light of the 2006 Beckham Report. *See* ¶5 *supra*; *Butte Cnty., Cal. v. Hogen*, 613 F.3d at 194.

22. In order words, contrary to its earlier demand that Interior conduct a limited remand based on the 2006 Beckham Report and Original AR, on June 28, 2011, the Tribe abandoned its original justification for "restored lands" gaming status and replaced it with an entirely new justification set forth in the 291-page Mechoopda Replacement Report, including hundreds of pages of "exhibits and analysis." AR NEW 0004110. *See also* ¶¶5, 21 *supra*.

23. On July 12, 2011, Deputy Solicitor Kunesh notified the parties that she had closed the record despite the County's request for a reasonable amount of additional time for it to review and respond to the Tribe's entirely new submission. AR NEW 0004248.

24. In a letter dated July 18, 2011, the County strenuously objected to Kunesh's closure of the record and – in response – Kunesh summarily granted a 20-day extension, despite the obvious fact that a comprehensive review, research and response to the Tribe's 291-page filing would consume months and not days. AR NEW 0004251.

25. The County then sought an order from this Court to clarify the remand and allow the County an adequate time in which to respond to the new tribal materials or, alternatively, to limit the record to the original tribal application and Beckham Report. Docket No. 75. That request was denied by this Court's Order dated March 19, 2012. Docket No. 86.

26. On January 24, 2014, the Secretary promulgated the 2014 Interior Decision accepting the land into trust for gaming, extensively citing undocumented conclusions of historical facts of the tribal ancestry of Mechoopda Replacement Report and again failing to reconcile those speculative conclusions about the tribal ancestry of the residents of the Bidwell Ranch and the Chico Rancheria with contradictory historical facts documented in the 2006

Beckham Report and Federal Census documents compiled in 1910 and 1928-33. Instead, the 2014 Interior Decision largely recited general denials of Beckham's documented text and conclusions and accepted undocumented conclusions of the Tribe's archaeology expert. AR NEW 0005384.

27. The 2014 Interior Decision was based in substantial part on, and cited to, the conclusions of the Mechoopda Replacement Report in the absence of a response from the County, an absence which was the direct and inevitable product of Kunesh's proposed arbitrary and unreasonable 20-day extension of time to allow the County's expert to research and write a competent and professional response.

28. Dr. Beckham subsequently prepared a response to the Mechoopda Replacement Report entitled "Problems with Shelly Tiley's 'Rebuttal to the Beckham Report Regarding the Mechoopda Indians' (2011): Why It Is Impossible to 'Restore Lands' to the 'Restored Mechoopda Tribe'" ("2014 Beckham Report"). Docket No. 92-1.

29. The 2014 Beckham Report was not considered by Defendants in their development of the 2014 Interior Decision.

30. The 2014 Beckham Report competently challenges Tiley's (a) credentials as a historian or ethnohistorian, (b) sources and (c) conclusions, with an emphasis on the fact that Tiley heavily relied on secondary source materials rather than the primary source materials that are researched and cited by certified expert historians and ethnohistorians such as Dr. Beckham.³

³ Dr. Beckham's extensive work as a certified ethnohistorian expert in litigation and working under contract with a wide range of private and government entities is documented in his *Curriculum Vitae*, AR NEW 0003810. Indeed, as testament to his acknowledged expertise and credentials is the fact that his CV identifies expert services that he has provided to various federal agencies, including agencies within the Department of the Interior, over several decades.

31. As the 2014 Beckham Report documents, many of the Tiley conclusions drawn from the secondary sources upon which she relied are contradicted by primary sources either not found by her or consciously ignored. *See* 2014 Beckham Report.

32. Dr. Beckham documented his research for the 2014 Beckham Report in a Declaration filed with this Court ("Beckham Declaration"). Docket No. 91-1.

33. In preparing the 2014 Beckham Report, Dr. Beckham visited and personally examined the relevant archives containing primary source materials concerning the Indian employees at the Bidwell Rancho Arroyo Chico from whom the current Mechoopda members claim direct descendancy. *Id.* These materials are readily available to qualified historians but apparently unknown to Tiley since she neither attempted to justify nor even explain her failure to cite them.⁴

34. As a result of his work described at ¶33, *supra*, Dr. Beckham discovered problems with many of Tiley's key conclusions and reported that they were abjectly contradicted by documents in the archives.

35. The problems described at ¶34, *supra*, are critical because those key conclusions were heavily relied upon by the Secretary in the 2014 Interior Decision in favor of the Tribe, as discussed in the Beckham Declaration and described in detail in the 2014 Beckham Report.

36. The record before the Secretary at the time of the 2014 Interior Decision was incomplete for two reasons: (a) it consisted of the materials supplied by Dr. Tiley as part of an incomplete and flawed review of historical materials available to Tiley but which she neither cited nor even identified, and (b) the County was denied a reasonable opportunity to research and respond to the Mechoopda Replacement Report.

⁴ Again, it is emphasized that Dr. Tiley's professional work and credentials are as an archaeologist and not a qualified ethnohistorian or historian.

37. The historical record described at ¶36 *supra* was visited and extensively researched by Dr. Beckham, and referenced, cited, and contained materials contradicting the claims of the Tribe and Tiley's conclusions. *See* Docket No. 91-1.

38. The additional records described at ¶36 and reviewed by Dr. Beckham as discussed at ¶37 (i) confirmed the conclusions of the 2006 Beckham Report, (ii) dispelled any notion of a historical connection between the Tribe and the proposed casino site sufficient to trigger the "restored land" exception to IGRA and (iii) revealed critical materials impeaching Tiley's assumptions and conclusions that were never discussed by either Tiley or the Defendants' professional staff who researched and wrote the 2014 Interior Decision.

39. On November 20, 2014, Plaintiff filed its Motion for Remand of this matter to Interior for Reconsideration of the 2014 Interior Decision. Docket No. 89.

40. On April 9, 2015, this Court denied Plaintiff's Motion for Remand as premature and ordered Defendants to lodge a new Administrative Record. Docket No. 113.

41. On May 5, 2015, Defendants lodged the second Administrative Record ("AR NEW") containing 5,845 pages of materials. Docket No. 114. Defendants apparently copied and entered entire volumes into the record, including comprehensive overviews of Indian culture, language and history in California, but the pages pertinent to the Mechoopda are very limited. The result is an AR consisting of an extremely large number of pages of which perhaps 90 percent are not relevant to the 2014 Interior Decision.

42. Significantly, no materials in the new Administrative Record (a) confirm the Tribe's claim to be the successor-in-interest to the small 1851 Treaty tribelet at Mechoopda village or (b) refute Beckham's documented conclusion that the modern Tribe can only trace its historical lineage to the multi-ethnic worker village at the Bidwell Ranch going back to the late

19th Century or early 20th Century. Establishing a direct and unequivocal tribal connection to the 1851 Treaty tribe is the only vehicle through which Mechoopda can claim the casino site is within its historic lands, and this has not been done by either the Tribe or the Defendants.

IV. ARGUMENT

A. Defendants Violated the Administrative Procedure Act, the D.C. Circuit Order and this Court's Order to Consider All Evidence Bearing on the Issue of the Tribe's Qualification for Gaming.

The D.C. Circuit ruled that Defendants' acceptance of, and reliance on, the Tribe's original submissions and express refusal to read the 2006 Beckham Report violated the Administrative Procedure Act, Pub.L. 79-404 (60 Stat. 237) ("APA"). *Butte Cnty, Cal. v. Hogen*, 613 F.3d 190, 192 (D.C. Cir. 2010). Subsequent to this Court's December 22, 2010 Order remanding the 2008 Interior Decision, Docket No. 74, the Defendants again failed to follow the procedural requirements of the APA, the D.C. Circuit's order, and this Court's order in their issuance of the 2014 Interior Decision.

Specifically, Defendants (i) accepted new materials from the Tribe which impermissibly expanded the record, (ii) denied the County a reasonable opportunity to prepare a response to those materials, thereby excluding countervailing evidence contradicting the Tribe's position, and (iii) failed to reconcile the 2006 Beckham Report and their conclusion that the Tribe's membership has at all times been directly descended from the Mechoopda village residents who were party to the 1851 treaty and, accordingly, entitled to conduct gaming on the lands located miles from the Bidwell Ranch/Chico Rancheria.

The Defendants' acceptance of the modern tribal members' lines of descent to the historic Mechoopda village ignored uncontradicted documented facts in the 2006 Beckham Report, including federal Census Reports compiled during the first three decades of the 20th Century. These reports show that a majority of the Indians living on the Bidwell Ranch affirmatively

disclosed their family and tribal affiliations to have been other than Mechoopda, but the Interior decision makers consistently "concluded" that their assumptions are superior to federal Census Reports to the contrary.

The only viable remedy is an order (a) declaring that the proposed casino site does not qualify for restored land status or (b) remanding the 2014 Interior Decision to Defendants for reconsideration with instructions to either (i) limit their review and decision to the AR, which includes the 2006 Beckham Report and excludes the Mechoopda Replacement Report or (ii) review the entire record, including the 2014 Beckham Report.

1. Defendants' Consideration of the Tribe's Application on Remand Violated the Clear Standard Set by the D.C. Circuit.

The APA requires that a federal agency articulate a non-conclusory, reasoned explanation for its actions, and may not exclude or ignore evidence contradicting its position. *Butte Cnty v. Hogan*, 613 F.3d 190, 194 (D.C. Cir. 2010).

In reversing this Court's dismissal of the Complaint, the D.C. Circuit succinctly framed the issue originally before the Department as "whether land the Tribe purchased and offered to the Department of the Interior to take into trust for its benefit qualified as restored lands." *Id.* at 192. The Court noted that agency decisions in informal adjudication are subject to judicial review under 5 U.S.C. § 706 and reiterated the principle that decisions that are arbitrary, capricious or an abuse of discretion must be set aside. *Id.* at 194. In the process, the D.C. Circuit held that the Department of Interior's outright rejection of the 2006 Beckham Report without even reading it "managed to violate the minimal procedural requirements" imposed by the Administrative Procedure Act. With that, the D.C. Circuit set aside the Department's final action to take the Tribe's land into trust, and remanded "for further proceedings consistent with this opinion." *Id.*

The minimal procedural requirements dictated by the D.C. Circuit that the Department failed to meet are as follows:

First, under [APA] §555(e) the agency must provide an interested party — here Butte County — with a "brief statement of the grounds for denial" of the party's request [T]he agency must explain why it decided to act as it did. The agency's statement must be one of "reasoning"; it must not be just a "conclusion"; it must "articulate a satisfactory explanation" for its action.

Second, an agency's refusal to consider evidence bearing on the issue before it constitutes arbitrary agency action within the meaning of [the APA]. This proposition may be deduced from case law applying the substantial evidence test, under which an agency cannot ignore evidence contradicting its position.

Butte Cnty, 613 F.3d at 194 (internal citations omitted) (emphasis added.)

The D.C. Circuit further stated that "[t]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight." *Id.* (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951)). The full quote from the Supreme Court's opinion in *Universal Camera Corp.* clarifies why Defendants' rejection of the 2006 Beckham Report, and Kunesh's cavalier refusal to allow a reasonable period of time to allow development of a professional response to the improperly submitted Mechoopda Replacement Report, violated the APA:

Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a[n agency] decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the [APA] definitively precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement in both [the APA and the Taft-Hartley Act] that courts consider the whole record.

* * * *

Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot

conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view.

Universal Camera Corp. v. NLRB, 340 U.S. 474, 487-488 (1951) (emphasis added).

In a similar case, the D.C. Circuit previously echoed the Supreme Court's admonition that there can be no substantial evidence when an agency refuses to accept contradictory evidence: "It is well established that the substantial evidence rule requires consideration of the evidence on both sides; evidence that is substantial viewed in isolation may become insubstantial when contradictory evidence is taken into account." *Landry v. FDIC*, 204 F.3d 1125, 1140 (D.C. Cir. 2000) (emphasis added).

A refusal to consider contrary evidence is arbitrary and capricious within the meaning of the APA. *Id.* At a minimum, the APA standard allowing reversal of decisions which are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. §706(2)(A), requires any agency to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Assn of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

To this point, the D.C. Circuit specifically found Defendants' refusal to consider the 2006 Beckham Report with the bald statement that "we are not inclined to revisit this decision" was neither informed nor even-handed, and violated the APA requirements that Defendants (1) present a "brief statement of the grounds for denial" and (2) consider all evidence bearing on the issue before them. But despite the clear rebuke of Defendants by the D.C. Circuit, the Defendants astonishingly repeated their prior procedural error for which their 2008 Decision was remanded back to them by denying the County the opportunity to substantively respond to the

Tribe's wholly new Mechoopda Replacement Report which went far beyond merely responding to the 2006 Beckham Report to the point of even abandoning the Tribe's original trio of non-credentialed "experts."

2. Defendants Improperly Granted the Tribe's Intentionally Misleading Request for Additional Time to Respond to the 2006 Beckham Report.

In order to secure an extension of the Department's previously announced deadlines for the purpose of completing the Mechoopda Replacement Report, the Tribe appears to have acted in bad faith and intentionally misled the Department regarding (1) tribal resources and (2) the scope of the proposed tribal submission. In the May 27, 2011 letter to Deputy Solicitor Kunesh, the Tribe pleaded for additional time, stating that "we have lost our investor, and we are proceeding with very limited resources." AR NEW 0004109. The Tribe continued, "Now that we have received and reviewed the Butte County submission, we are in the process of preparing a response to Butte County's challenges to our tribal history," and requested additional time "in order to properly respond to Butte County's submissions and potentially retain experts." *Id.* (emphasis added).

In fact, the County's only "challenge to [Mechoopda] the tribal history" were through the 2006 Beckham Report which the Tribe received years before writing its May 27, 2011 letter, as evidenced by the fact that tribal attorneys participated in briefing and oral argument before the D.C. Circuit on Dec. 10, 2009. Indeed, the Tribe's representation to Kunesh in May 2011 that it had only recently received and become aware of the County's purported challenge to its tribal history was false and bordering on contempt of this Court's remand order. To this same point, Kunesh either knew or should have known those facts when granting the tribal extension and blocking the County's ability to respond.

To accept the Tribe's representations in the May 27, 2011 letter means that one has to recognize that the 2006 Beckham Report was old news by that date. This, in turn, would mean that the only new document to which the Tribe could possibly have been referring was Dr. Beckham's CV, which was delivered to Interior and the Tribe on May 12, 2011.

The timing of his two submissions subsequent to preparation of the 2006 Beckham Report was discussed by Dr. Beckham in his Declaration:

3. In response to the Circuit Court's decision and remand discussed at ¶¶1- 2 *supra*, I prepared two subsequent reports addressing specific matters already before this Court as part of the original Administrative Record ("A/R") that were timely delivered to the Department of the Interior for inclusion in the Administrative Record on remand as the County's final submission. They were entitled (a), "An Assessment of the Credentials, Alleged Expertise, and Controversies of the Three 'Experts' Retained by the [Tribe] to Establish Historical Tribal Connections to Land Proposed to Be Used for Indian Gaming" (October 2010) and (b) "Dr. Stephen Dow Beckham – Curriculum Vitae" (May 12, 2011). These two final submissions were made in support of the Original [2006] Beckham Report identified at ¶2, *supra*, and are attached to the County's Memorandum of Points & Authorities respectively as Exhibits 3 and 4.

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As is clear from Dr. Beckham's foregoing statement in his Declaration, no new historical material was submitted on May 12, 2011, despite the Tribe's representation that these two submissions somehow introduced new ethnohistory text requiring new research and analysis. To the contrary, they consisted of (a) Dr. Beckham's widely-recognized credentials as a judicially-certified ethnohistory expert and (b) a critique of the Tribe's "experts" whose work (i) constituted the foundation for the Tribe's application to the Department on which the 2008 Interior Decision relied and (ii) which was delivered to Defendants in October 2010 and (iii) contained no text concerning the Tribe or the "tribal history." AR NEW 0003810.

To emphasize the extent of the Tribe's false representations to Interior, no new information was submitted by the County on May 12, 2011 requiring any response at all, let

alone a new "expert" report to replace the work of the Tribe's original "team of experts." Moreover, the Mechoopda Replacement Report is clearly a project that was months in the making, and reflects an investment of considerable funds far beyond the "limited" resources described by the Tribe in seeking additional time. At the time the Tribe wrote the May 27, 2011 letter, its officials and legal counsel were well aware that their proposed submission would consist of an entirely new historical justification for its gaming application. And yet, their request was couched as an ostensible need to prepare a "response" to Dr. Beckham's CV. And it is beyond dispute that the 291 page Mechoopda Replacement Report contained nothing that responded to Dr. Beckham's CV.

Without investigation or hesitation, Kunesh immediately responded to the Tribe's request for additional time in a one-sentence email from Interior attorney Jeffrey Nelson to Mechoopda Tribal Attorney Michael Anderson dated May 27, 2011, granting the Tribe a unilateral extension and sending a copy to the County's legal counsel:

Michael [Anderson], Deputy Solicitor Kunesh asked me to contact you right away to say that the Tribe's request for a 15-day extension is granted. We look forward to your submission.

AR NEW 0004108.

On June 28, 2011 – only 32 days after receiving the extension of time – the Tribe submitted its Replacement Report, a 291-page document. AR NEW 0004110. The County protested, but on July 12, 2011, Deputy Solicitor Kunesh sent a letter to the Tribe and County rejecting the County's request for a reasonable extension of time in which to develop a response to this new justification for "restored land" status:

The Department of the Interior has now closed the record, which ensures that we can fully process and consider the information provided. I am aware that Butte County, through outside legal counsel, has requested an opportunity to submit materials in reply to the Tribe's most recent submission. We have, however, already

provided a sufficient opportunity for the County to submit its expert reports and legal analyses and we are now prepared to develop our decision. AR NEW 0004248.

This statement cannot be reconciled with the fact that the County was denied a "sufficient opportunity" to effectively respond to the entirely new case presented by the Mechoopda Replacement Report.

Thus, instead of responding to the Original Beckham Report, the Tribe abandoned its previous historical analysis and team of "experts," and replaced them with the Mechoopda Replacement Report written by a non-ethnohistorian archaeologist, and in the process expanded the AR to incorporate the newly-created materials upon which the Defendants heavily relied in rendering the January 2014 Decision and to which the County was not permitted any meaningful opportunity to develop a substantive analysis and response.⁵

3. Defendants Improperly Allowed the Tribe to Abandon the Application to Which the 2006 Beckham Report Responded and Replace It with the Mechoopda Replacement Report.

Defendants' consideration of the Mechoopda Replacement Report violated this Court's remand order. That order stated "that this case is remanded to the Secretary of the Interior to reconsider his decision to acquire the Chico [casino site] Parcel into trust for gaming purposes. The Secretary shall include and consider the 'Beckham Report' as part of the administrative record on remand." AR NEW 0003832. Nowhere did the D.C. Circuit or this Court invite the Tribe to substitute an entirely new application for the Department's reconsideration on remand. The express purpose of the remand was to consider the Beckham Report on the basis of the D.C. Circuit's finding that the APA required the Department to at least consider the 2006 Beckham

⁵ To believe the representations of the Tribe's May 27 request for time, one would have to accept that within a period of only 32 days (a) the Tribe found a new investor, (b) secured funding, (c) hired Far Western Anthropological Research Group, which (d) immediately assembled a professional team that in turn (e) was able to mount a major research and writing project and (f) publish the finished product prior to June 28! This feat not only strains credibility, it defies reality.

Report as the County's response to the Tribe's submission. The Tribe's submission and Kunesh's acceptance of the Mechoopda Replacement Report was beyond the scope of the remand. The County then promptly requested that Defendants either (1) reject the Mechoopda Replacement Report or (2) allow a reasonable time for a reply. AR NEW 0004251. Defendants' failure to reject the 291-page Mechoopda Replacement Report and allowance of a mere 20 days to research and write a response was arbitrary and capricious in violation of the APA.

4. The Mechoopda Replacement Report Was Written by New Experts Who Relied on New Sources, Never Mentioned in the Tribe's Original Submission, to Propose an Entirely New Mechoopda Tribal History Relying on Maps That Were Altered by Dr. Tiley.

The Tribe's original submission relied exclusively on reports prepared by Brian Bibby, Craig Bates, and Anne Currie. Dr. Beckham prepared an assessment of the Tribe's experts entitled "An Assessment of the Credentials, Alleged Expertise, and Controversies of the Three 'Experts' Retained by The Mechoopda Indian Tribe of the Chico Rancheria to Establish Historical Tribal Connections to Land Proposed to Be Used for Indian Gaming." AR NEW 0003810. Beckham's Assessment unequivocally demonstrates that none of those Mechoopda "experts" had the academic credentials or professional competence to qualify as an expert on the matters of tribal identity and the historical use and occupancy of lands of the Mechoopda Tribe of the Chico Rancheria. *Id.* at 19.

In the Assessment, Dr. Beckham determined that the each of the experts failed to conduct the analyses that would form the basis for a determination by Defendants that the Tribe had the requisite historic connections to the casino site that would qualify it for gaming as "restored land" to a "restored tribe." To this point, Dr. Beckham reports that they failed to (i) examine the membership and ancestry of the Mechoopda Tribe, (ii) identify or assess the functioning of the Tribe, except for Annie Currie who noted that as of 1957 there was no Mechoopda tribal

government of any kind, (iii) link the federally-recognized Mechoopda Tribe with the requisite "use and occupancy" of the casino site, (iv) visit the archives of the BIA, National Archives, San Bruno, or (v) use historical writings and field notes to connect the modern Mechoopda Tribe to the casino site located miles from the Bidwell Ranch and former Chico Rancheria. *Id.*

In the face of Dr. Beckham's professional credentials and documented criticism of its three experts whose work was the sole professional justification for the trust application, the Tribe retained an entirely new set of consultants consisting of Dr. Tiley and – to a much lesser degree – Patricia Mikkelson to prepare a new "historical" justification for a "restored land" determination. Even with that change in the Tribe's professional team, the qualifications of the new consultants as qualified historians or ethnohistorians are virtually nonexistent. As noted in the 2014 Beckham Report, Dr. Tiley's teaching, research, and publications reveal that she is an archaeologist whose experience and research had dealt with prehistory, not with the history of California tribes or federal relations with California tribes over the course of federal Indian policies. 2014 Beckham Report at 7. Her lack of a tenure-track academic position in a college or university, and conspicuous lack of academic publication correspond to the fundamental problems in her analysis and reinforce the inappropriateness of Defendants' reliance on her Report in promulgating their January 24, 2014 Decision. *Id.* As for Ms. Mikkelson, the nature and extent of her contributions to the Mechoopda Replacement Report are simply unclear.

The Mechoopda Replacement Report heavily and primarily relied on Dorothy Hill's THE INDIANS OF CHICO RANCHERIA (1978), first published by California Parks and Recreation and subsequently self-published by Hill's own publishing company. 2014 Beckham Report at 9. While Hill assembled an impressive primary source archive now held by Chico State University, Tiley relied solely on Hill's published accounts. This was an incompetent source, as Hill's

published work was not concerned with the history of the tribal-federal relationship. *Id.* Significantly, Hill herself understood the Indians of the Chico Rancheria to be a multi-ethnic, polyglot group – not a "Mechoopda Tribe." *Id.* Moreover, as Dr. Beckham noted in his Declaration, Dr. Tiley failed to even mention materials in the Hill Collection that contradict the case she was hired to make:

I visited the Chico State University Library in June 2014, and spent several days conducting a thorough review of the archives relevant to the Mechoopda Tribe and its relationship to the Chico Rancheria. In the Dorothy Hill Collection, MSS 160, at the Meriam Library, Chico State University extensively cited by Tiley, are the following important sources that she either (a) overlooked or (b) intentionally ignored because they do not support her contracted "rebuttal conclusions:"

- Azbill, Henry
 - n.d.a Interview with Sue Jones. Folder 5, Box 2, MSS 160.
 - n.d.b Azbill Genealogy. Folder 11, Box 2.
- 1966a Interview with Dorothy Hill. Transcript, Folder 1, Box 2.
- 1966b Interview with Jim Neider and Dorothy Hill, January 11. Folder 6, Box 2.
- 1971a Interview with Dorothy Hill, March 3. Transcript Tape #4, Folder 2, Box 2.
- 1971b Interview with Dorothy Hill, March 4. Transcript Tape #7, Folder 3, Box 2.
- 1971c Interview with Dorothy Hill, Transcript Tape #3, Folder 3, Box 2.
- 1974a "The Forgotten Californians." Photocopy, Folder 9, Box 2.

Docket No. 91, ¶9.

The maps created by Tiley purporting to document "Mechoopda Tribelet Territory" in the Mechoopda Replacement Report are misleading and entirely synthesized by Dr. Tiley herself from other maps not intended to show Mechoopda territorial boundaries. 2014 Beckham Report at 12. Tiley's maps erase other villages found on her source maps without any explanation by Tiley about (i) her alteration of her cited base maps or (ii) the source for her undisclosed addition

to maps of some 15 "dots" purporting to be sites of native villages not found on the actual maps with which she purportedly was working. *Id.*

The wholesale replacement of the Tribe's previous panel of experts, citation to entirely new sources, alteration and falsification of maps critical to their work and development of an entirely new theory of Mechoopda history demanded a response by the County. That response was blocked by Kunesh when she prematurely and arbitrarily closed the record.

5. Defendants Blocked a County Response to the Entirely New Tribal Application by Refusing to Allow Adequate Time for County Research and Response, and Prematurely and Arbitrarily Closing the Record.

Defendants repeated their previous APA violation – and contravened the Court's order as a result – through their refusal to allow the County the opportunity to rebut the Mechoopda Replacement Report. Kunesh stated only:

I am aware that Butte County, through outside legal counsel, has requested an opportunity to submit materials in reply to the Tribe's most recent submission [the Mechoopda Replacement Report]. We have, however, already provided a sufficient opportunity for the County to submit its expert reports and legal analyses, and we are now prepared to develop our decision. If we require any additional information from either party, we will request it.

AR NEW 0004248. This statement that the County's opportunity was "sufficient" does not qualify as a "brief statement of the grounds for denial" and therefore violates the APA, 5 U.S.C. § 555(e). Kunesh did subsequently offer the County a 20-day "re-opening" of the record in order to rebut the 291-page Mechoopda Replacement Report, AR NEW 0004260, a period of time that was so *insufficient* as to render impossible any effort of the County to research and write a rebuttal. Indeed, Kunesh's refusal to grant the County a reasonable extension of time effectively constituted a second Departmental "refusal to consider evidence bearing on the issue before it"

and, as such, qualifies as arbitrary agency action pursuant to 5 U.S.C. § 706. *Butte Cnty*, 613 F.3d at 194.

Judicial review "ensures that the agency has 'taken a 'hard look' at the salient problems,' and has 'engaged in reasoned decision-making' essential to the informed and even-handed implementation of public policy." *Cross-Sound Ferry Servs., Inc. v. I.C.C.*, 738 F.2d 481, 483 (D.C. Cir. 1984) (emphasis added) (quoting *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970)). There can be no such "hard look" at the Mechoopda Replacement Report in the absence of the 2014 Beckham Report. In *Cross-Sound Ferry*, the D.C. Circuit held in a license application proceeding that the Interstate Commerce Commission's "stubborn refusal to expand the evidentiary base by requiring greater specificity from [the applicant] or by permitting [Plaintiff] to ferret out relevant evidence through discovery or oral hearing is unsupportable [pursuant to APA procedural requirements]." *Id.* at 484 (emphasis added).

Now, the Tribe has abandoned its original application and the work of all three of its purported experts which constituted the historical basis for that application. Instead, the Tribe replaced their flawed work with the flawed Mechoopda Replacement Report.

The Department's arbitrary and capricious acceptance of the Tiley Report was exceeded by their arbitrary and capricious refusal to allow the County adequate time for development of professional research and analysis which ultimately resulted in the 2014 Beckham Report. The Department's second failure to observe the procedural requirements of agency decision-making requires a second remand.

B. Defendants' Sole Reliance on the Unrebutted Mechoopda Replacement Report Inevitably Resulted in a Positive Determination, Thus Requiring a Second Remand.

Plaintiffs ask this Court to either declare that the proposed casino site does not qualify for restored lands status or remand the matter to Interior with direction that Defendants either (i)

limit their review and decision to the Administrative Record which includes the 2006 Beckham Report and does not include the Mechoopda Replacement Report, or (ii) review all the materials before the Department including the 2014 Beckham Report and (iii) issue a new Decision based on the complete record and which reconciles disputes of fact between the (a) submissions from the Tribe and (b) Dr. Beckham's 2006 and 2014 Reports.

The result of the process pursuant to which the Department considered the cherry-picked materials submitted by the Tribe's replacement expert team without the benefit of a response from the County's expert was, predictably, an acceptance as fact of Dr. Tiley's alteration of maps and her use of them to support her assertions that the modern Mechoopda tribe is the successor-in-interest to the 1851 Mechoopda Village tribelet. In other words, the Defendants, in plain violation of the APA, have again abused the process to arbitrarily and capriciously generate a thoroughly one-sided account of a tribal history without giving reasonable consideration to the multitude of primary sources contradicting that account.

1. The After-Acquired Land Does Not Meet IGRA's Exception at 25 U.S.C. § 2719(b)(1)(B)(iii) for "Restoration of Lands for an Indian Tribe that is Restored to Federal Recognition" or Applicable NIGC Regulations.

IGRA generally prohibits gaming on trust land acquired after the date of its enactment, October 17, 1988. 25 U.S.C. § 2719(A). The Tribe has claimed that the gaming site falls under IGRA's "Restored Land exception" allowing gaming on land taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). NIGC regulations at 25 *CFR* Part 292 supply the specificity lacking in the statute, and 25 *CFR* § 292.11(c) is the regulation that applies to the Mechoopda tribe, which was restored via a settlement of federal litigation:

If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement

agreement entered into by the United States, it must meet the requirements of § 292.12.

This applicable *CFR* section imposes a series of qualifications to determine the eligibility of a particular parcel for gaming – qualifications that the Tribe's gaming site does not meet. To establish a connection to the land required for the Restored Land exception, a tribe, *inter alia*, "must demonstrate a significant historical connection to the land." 25 *CFR* 292.12(b). The Tribe's failure to demonstrate that connection – a failure that is documented by both the 2006 Beckham Report and the 2014 Beckham Report – is fatal to the Tribe's trust application. The Bidwell Ranch was the only land occupied by the Tribe *as a group*. That group, in turn, consisted of descendants of various tribes who were allowed to live on the Ranch while they were employed as workers and agreed to follow strict rules of personal conduct dictated by John and Annie Bidwell.⁶ In other words, at all times relevant to this matter, the Bidwell Ranch residents consisted of a disparate group of Indians from many different tribes, only a few of whom claimed ancestry tracing to the historic Mechoopda Village tribelet.

The Bidwell Ranch residents *as a group* neither had any historical connection to, nor ever occupied, the proposed casino site located miles from the Bidwell Indian village created⁷ and

⁶ Bidwell's will thus defined how he and his wife controlled the residency of Indians on Rancho Arroyo Chico. Indians who had the privilege of living on the Bidwells' land had to conform to their standards of behavior. Any Indian who appeared "dissipated" or who became a "criminal or troublesome" forfeited the right of residency. The Bidwells – not the Indians – established the standard. (Bidwell 1897).

2006 Beckham Report at 9, AR NEW 0003184

⁷ The Bureau of Indian Affairs continued an interest in the Bidwell property at Chico. In August, 1935, Agent Edward Post of the Sacramento Agency visited the community and found an Indian population of approximately sixty. He gave a bit of the community's history:

This village was established by General and Mrs. Bidwell at the time when many of the Indians in the vicinity of Chico were moved to the Round Valley Reservation. A group of Indians were kept at Chico by General Bidwell to work his ranch holdings, as a result the present village came into being and was maintained by General and Mrs. Bidwell during their lifetime.

2006 Beckham Report at 27, AR NEW 0003202

controlled by John and Annie Bidwell. The lack of a historical connection to the casino site by the group living on the Ranch precludes any finding of the existence of the "significant historical connection" required for "restored land" status. As a result, the Defendants' conclusion that the Tribe met this criterion, without reconciling its decision with the evidence and analysis in the 2014 Beckham Report, renders the 2014 Interior Decision arbitrary and capricious.

A 55-year gap exists between the signing of the unratified Treaty of 1851 by "Mi-chop-da" residents of the Mechoopda Village tribelet village and the 1906 census of the worker village. 2014 Beckham Report at 41. Beckham's analysis of the Federal Census compiled in 1910 demonstrates that most worker village residents identified themselves not as "Mechoopda" but as members of other tribes into the 20th century. *Id.* at pp. 65-70. The 1910 Census was not discussed in either the Mechoopda Replacement Report or the 2014 Interior Decision, meaning that the authors of each those documents either did not find that Census or ignored its inconvenient historical information.

Moreover, in 1914, Bureau of Indian Affairs employee W.C. Randolph conducted an official visit to the Bidwell Ranch, during which he visited with and observed the residents and wrote: "I do not believe that these Indians belong to any particular band, but are remnants of various small bands, originally living in Butte and nearby counties." *See* 2006 Beckham Report at p. 46, AR NEW 0000003221. To this point, Randolph identified no tribe as having a beneficial interest or control over the village on the Bidwell ranch. *Id.*

Between 1928-1933, the Bureau of Indian Affairs mounted an enrollment program of all California Indians in anticipation of settlement of all of their aboriginal land claims then before the United States Claims Court. As part of that program, a team of enrollment officers were dispatched to the Indian Village on the Bidwell land, and these officers interviewed the adult

Indians then in residence and memorialized their responses. The 2006 Beckham Report discussed in great detail the specific facts of this information-gathering process, as documented in the resulting Federal Census:

Each head of family filed a witnessed affidavit with a BIA enrollment officer. The affidavit sought information on blood quantum, tribal affiliation, ancestry of parents and grandparents, and other information. The following data documents a majority of the families resident on the Bidwell property at Chico between 1928 and 1933. The data unequivocally confirmed the conclusion of W. [C.] Randolph that the Indian community was made up of "remnants of various small bands, originally living in Butte and nearby counties." The data actually went further in documenting the mixed ancestry and places of origin of the people who worked for the Bidwells and lived on their ranch.

2006 Beckham Report at 17; AR NEW 0003191

The entire 1928-32 Federal Census at Chico was then reproduced *in toto* by Dr. Beckham to eliminate any ambiguity as to the identity and specific response of each of the Rancheria's 43 adult residents. It consumes more than five pages of the 2006 Beckham Report. *Id.* at 18-23; AR NEW 0003193-98.

Although the 2006 Beckham Report reproduced the entire Chico Census of 1928-33, Dr. Beckham also explained in his Conclusions that the Federal Census documented the absence of a tribal population at the Bidwell Indian village that was either "Mechoopda" as a matter of ancestry and culture or the political successor to the 1851 Mechoopda Village tribelet:

5. The BIA enrollment of California Indians, 1928-33, enumerated many of the Indians occupying Chico Rancheria located on a portion of the former Bidwell Ranch. The affidavits executed by these people confirmed the observation made in 1914 by Agent Randolph. The village was made up of people of Wailaki, Concow, Noi-ma (Nue-muck), Mi-chop-da, Sioux, Pit River, Yuki (Ukie), Wintun, Hawaiian, African-American, and white ancestry. Some were unable to name the Indian band from which they were descended.

Id. at 47, AR NEW 0003222.

It is significant that the 2014 Interior Decision did not cite or even refer to the Beckham disclosure of the 1928-33 Federal Census at the Bidwell Ranch Village. Instead the Defendants ignored this important information reporting the facts of Indian ancestry of the Village occupants at that critical time in the Village existence and, with cavalier disregard of the substantive research and citation to primary source authority found in Dr. Beckham's work, denigrated much of his work as "argument" and not ethnohistorical documentation. Illustrative of Defendants' pointed refusal to consider Dr. Beckham's recitation of facts recorded by federal agents at the time of their first-hand observations at the Bidwell Ranch, as well as the information in the 1928-33 Federal Census copied from affidavits executed by the Indian residents themselves is shown by the following:

Butte County submitted the Beckham Report to the Department asserting that the Mechoopda Tribe is no more than an amalgamation of members of various Indian tribes and non-Indians brought together and shaped by the Bidwells, and, further, that the contemporary Mechoopda Tribe is not the successor-in-interest to the Tribe that negotiated the 1851 Treaty. In making these assertions, the County relies in part on a statement made by BIA Clerk C.W. Randolph in his 1914 report concerning the Tribe's status and on the fact that Commissioner Collier declined to hold an IRA election at Mechoopda Village. We do not find these arguments persuasive based on the history of the Mechoopda and the record.

2014 Interior Report at 37. (Emphasis added.)

Remarkably, Defendants do not even mention the 1910 Census or the statutorily-directed BIA Indian Enrollment Census of 1928-33. Defendants wholly fail to reconcile their conclusions with the detailed personal information provided by affidavit from each resident interviewed. Instead, they describe this relevant historical information collected by federal agents acting in their official capacities as nothing more than "arguments" manufactured by Dr. Beckham. Thus,

by ignoring documented historical facts they found inconvenient, the Defendants were able to justify a decision in what can only be described as not "merely arbitrary and capricious," but rather nothing short of "deliberately misleading."

In 1935, Commissioner of Indian Affairs John Collier determined that the residents were "not now a gov't reservation hence ineligible for election at present." 2006 Beckham Report at 26-27, AR NEW 0003201-0003202. This too was dismissed by Defendants as "argument" without explaining why Commissioner Collier's determination was contrary to fact.

The uncontroverted fact is that there is no evidence of a functioning Mechoopda Tribe between 1939 and 1955, except for a 1950 meeting of people opposing the sale of some Bidwell Ranch land to a fraternity at Chico State University. *Id.* at 48, AR NEW 0003223. The absence of a tribe at the Bidwell Ranch was further explained by Dr. Beckham through citation to still another federal document reporting the facts observed at the time:

10) From 1939 to 1950 there is no evidence of any community government on the Chico Rancheria. The Request of Delta Psi Delta to obtain a lot for a fraternity house prompted a meeting of residents in 1950 to oppose the project. In 1955, sixteen years after federal ownership, the BIA found no government. Commissioner Greenwood wrote: "It is apparent that this group has never submitted a definite membership roll; that no official and accepted survey of the lot and block subdivision of this rancheria is available and that the group does not have an approved land code." That same year Area Director Hill noted that no formal election has ever been held or any organization perfected.

Id. at 48, AR NEW 0003223

At the point of termination of the Chico Rancheria in 1958, no organized Mechoopda community existed on the site, only seven of the 45 distributees identified by the United States lived on the Rancheria, 32 did not even live in the county in which the land was situated and seven did not live within California. *Id.* at 41, 48; AR NEW 0003216, 0003223; 2014 Beckham

Report at 72. The distributees promptly sold the land and abandoned the Rancheria, never to return. *Id.*

The research of primary source documents as documented in the 2014 Beckham Report directly led to Dr. Beckham's third conclusion that "[a]lthough the federal government has recognized a restored Mechoopda Tribe, that tribe does not have a political succession in interest to the aboriginal Mechoopda nor to the aboriginal lands ceded in the unratified treaty of 1851." 2014 Beckham Report at 71.

Moreover, the absence of primary source materials documenting the continuous tribal existence of a "Mechoopda tribe" with a direct descendancy as a tribe from the 1851 Treaty aboriginal tribelet was previously reported by Dr. Beckham in the 2006 Beckham Report:

The Chico Rancheria was a place of residency of Indians whose entitlement to live there was a function not of tribe, nor language, nor ethnicity, but of the dictates of John and Annie E. K. Bidwell of the moral behavior of their former employees. The federal government accepted the Bidwells' definition when, in distribution of the assets of the Chico Rancheria, it excluded the family of Bud Bain, excepting for ownership of the two lots where family members resided in 1958.

2006 Beckham Report at 50, AR NEW 3225 (Emphasis supplied.)

This conclusion is in direct conflict with Dr. Tiley's ultimate assumption that the Indians living on the Bidwell Ranch (a portion of which became the Chico Rancheria) constituted the 1851 treaty tribe based on her use of secondary source documents and failure to reconcile her assumption with primary source documents. In accepting her inadequately-documented assumption and failing to reconcile it with the 2006 Beckham Report, the Defendants acted in an arbitrary and capricious manner.

2. The 2014 Interior Decision Extensively Relied on the Mechoopda Replacement Report and Selectively-Edited Materials Submitted by the Tribe.

The 2014 Interior Decision made two conclusions requisite to the Department's determination that the land should be taken into trust and qualifies for gaming: (a) that the tribe is a "restored tribe," and (b) that the lands meet the Department's published criteria for "restored lands" in 25 *CFR* § 292.11. 2014 Interior Decision at 2. The Department reached affirmative answers for each of these inquiries based on an incomplete record – the Mechoopda Replacement Report and its numerous exhibits. The 2014 Interior Decision addressed the 2006 Beckham Report as follows:

Butte County submitted the Beckham Report to the Department asserting that the Mechoopda Tribe is no more than an amalgamation of members of various Indian tribes and non-Indians brought together and shaped by the Bidwells, and, further, that the contemporary Mechoopda Tribe is not the successor-in-interest to the Tribe that negotiated the 1851 Treaty.... We do not find these arguments persuasive based on the history of the Mechoopda and the record.

....

The restored lands section above addresses and refutes the assertions concerning the historical connection between the present-day Mechoopda Tribe and the Mechoopda Tribe that negotiated the 1851 Treaty, relying in part on a report prepared by Dr. Shelly Tiley.... We find Dr. Tiley's report more persuasive and as discussed above, determine that, on the whole, the record supports the conclusions in Dr. Tiley's report.

2014 Interior Decision at 37 (emphasis added).

It is of course axiomatic that the record consisting of the Mechoopda Replacement Report and maps altered by Tiley as well as her cherry-picked materials – but excluding any County response – would "support" Tiley's conclusions! The statement quoted above concerning

continuing Mechoopda tribal existence failed to concede that neither Dr. Tiley nor the Defendants reconciled their conclusions with the contradictory Federal Census projects consisting of three separate surveys conducted in 1910, 1913 and 1928-1933. When Defendants relied on an incomplete record and failed to consider Federal Census records contradicting their "conclusions," the resulting agency action was arbitrary and capricious.

3. The 2014 Decision Failed to Reconcile Its Conclusion with Countervailing Evidence Raised by the 2006 Beckham Report Demonstrating the Invalidity of the Modern Mechoopda Tribal Claim of Successorship to the 1851 Tribe at the Mechoopda Village.

a. Residents of the Indian Village at the Bidwell Ranch self-identified as various multi-ethnic groups, not as Mechoopda, in the 1928 BIA Census Roll.

Defendants' 2014 Decision fails to reconcile their conclusion that the Tribe is the successor to the treaty signatories with evidence included in the 2006 Beckham Report. Dr. Beckham reproduced a census performed by the Bureau of Indian Affairs between 1928 and 1932 recording the self-identification of residents of the Bidwell Ranch for the purpose of identifying those California Indians due compensation from a judgment award from the United States. 2006 Beckham Report at 17-23, AR NEW 0003192-3198.

In 1928, the United States Congress enacted the California Indian Jurisdictional Act, Act of May 18, 1928 (45 Stat. 602), which established jurisdictional standing to the California Attorney General to sue the United States in the Court of Claims on behalf of California Indians for the value of land ceded by the Indians in treaties executed in 1851 that were never ratified by the United States, which included the treaty to which the Mechoopda Village tribelet was a party. The Act further provided that a roll be created for those entitled to enrollment as "Indians of California" and compensation from any judgment award. A project was initiated by the Bureau

of Indian Affairs to determine the tribal affiliation of Native Americans throughout California, including those living on the Bidwell Ranch.

The 2006 Beckham Report reported all of the original data collected by BIA enrollment officers conducting the 1928-32 Census through witnessed affidavits from each head of family on the Bidwell Ranch. Workers on the Ranch self-identified their Indian ancestry as Wailaki, Concow, Noi-ma (Nue-muck), Sioux, Pit River, Mechoopda, Ukie/Yuki, Wintun, and Che-no. Other ancestry included white, Hawaiian, and African-American/Negro. *See* 2006 Beckham, Report at 18-23, 47; AR NEW 0003192-0003198, 0003222.

The 2014 Interior Decision does not cite or refer to the 1928 BIA Census Roll but instead appears to have consciously ignored both (1) the information reported in that Census and (2) Dr. Beckham's reproduction *in toto* of the detailed information directly contradicting Interior's abject rejection of the facts by characterizing them as Dr. Beckham's "conclusions." Moreover, the 2014 Interior Decision does not even attempt to address Dr. Beckham's citation to the Federal Census confirming that the Bidwell Ranch village was, by 1928, not a single Tribe but a multi-ethnic and polyglot worker community as demonstrated by the 1928-33 BIA census. Instead, Defendants relied on a one-page "census" which is an exhibit to Dr. Tiley's Mechoopda Replacement Report. AR NEW 0004206. This document, written in 1906 by Charles E. Kelsey, Special Indian Agent for the California Indians, lists 27 "heads of household" as residents of "Bidwell Ranch." However, Kelsey's "census" does not specify the specific tribal affiliation of any resident, contrary to Defendants' statement in the 2014 Interior Decision that "Kelsey's census names Captain Lafonso and William Conway as the head of the list of Mechoopda families." AR NEW 0005416 (emphasis added). The word "Mechoopda" does not appear on that Census document! *Id.* Defendants' statement is false and can only be described as an

intentional misrepresentation of the contents of that Census to support Interior's declared existence of a cohesive "Mechoopda" community on the Bidwell Ranch. And it is just one example of Defendants' failure to demonstrate some semblance of a rational connection between the facts before Interior and the conclusions drawn.

Further, the 2014 Beckham Report cites federal documents demonstrating that 17 of the 27 "heads of household" identified by Kelsey in 1906 were missing only four years later in the "Indian Population Schedule" of the thirteenth decennial census of the United States (1910) – a document which Tiley either (a) did not find or (b) deliberately failed to mention in the Mechoopda Replacement Report. *See* 2014 Beckham Report *at* 65-68. Curiously, the Defendants similarly failed to either find or mention the thirteenth decennial census of the United States altogether.

Tiley also failed to advise the readers of her Replacement Report of the fact that the 1910 census bluntly reported that, in 1910, only seven of 49 Indian residents at the Bidwell Ranch self-identified as "Mechoopda" or "Mydoo/Mechoopda." *Id.* at 67. The comparison between the census records of 1906 and 1910 are primary source evidence as to the fluidity of the population at what the Tribe and the Defendants deem the "Mechoopda village." Tiley failed to report any such comparison.

Both the 2006 and 2014 Beckham Reports document that, as of 1954, only seven alleged "members" lived on the Rancheria. Conveniently, neither Tiley's Report nor the 2014 Interior Decision made mention of the protests of the family of Bud Bain in 1954 who challenged the distribution of the assets of the Rancheria. The Bains pointed out that in 1954 only seven alleged "members" lived on the Rancheria, 32 did not live in Butte County, and seven of the 32 non-residents did not even live in California. 2006 Beckham Report at 41-22, AR NEW 0003216-

0003217; 2014 Beckham Report at 72. It is not clear that either Tiley or the Defendants found or even looked for this information although they purportedly were responding to the 2006 Beckham Report; however, it is clear that the Defendants did not consider it worth reconciling with their conclusions in the 2014 Interior Decision although their direction from the D.C. Circuit and this Court were to reconcile their conclusions with the 2006 Beckham Report. Moreover, had they allowed sufficient time for a County response to the Mechoopda Replacement Report, this key rebuttal information impeaching every substantive conclusion of Dr. Tiley would have been on the table while the 2014 Interior Decision was being developed.

b. The terms of inclusion in the resident worker community on their rancho at Chico were dictated by the Bidwells and Annie Bidwell's will after her death, and not a functioning tribal government.

Dr. Beckham's reliance on primary sources such as contemporaneous census records and government officials' first-hand reports makes clear that the worker community on John and Annie Bidwell's Rancho Arroyo Chico was a multi-tribal, multi-ethnic, polyglot group of employees and their families whose residence on the Ranch and conduct were totally controlled by the Bidwells. While a few traced to Mechoopda ancestors who lived in the area, a majority were members of other tribes or of non-Indian origins. The unimpeached facts are clearly set out in both Beckham Reports, and the following quotes are merely representative conclusions of the documented facts upon which they were based.

The 2006 Beckham Report detailed the following:

6. In 1935 the Butte County Superior Court in the final probate of the estate of Annie E. K. Bidwell appointed Harris Pillsbury trustee of Parcels 1 and 2. The court told Pillsbury to "hold the same trust estate in perpetual eleemosynary trust for the benefit of any Indians of Northern California, who may at any time be members of or residents of the Indian Village at Chico, California, sometimes known as Me-choop-da Indian Village" The court, in its reading of Mrs. Bidwell's will, clearly understood that Indian

residency on the Bidwell property was open to "any Indians of Northern California." It named no tribe or band as beneficiary, excepting the mixed population of the "Indian Village at Chico, California."

* * * * *

7. Harris Pillsbury acted as trustee for the Chico Rancheria from 1935-39 in full awareness that residency on the property was defined by the terms of the will of Annie E. K. Bidwell. He expressed to the BIA his responsibility to prohibit the residency of any Indian "habitually drunken," "disorderly," or "addicted to gambling." During Pillsbury's tenure as trustee, no tribe or band was identified as having beneficial interest in the property excepting those individuals who met the terms of Mrs. Bidwell's will.

2006 Beckham Report at 26-28, 47; AR NEW 0003201-0003203, 0003222.

And both Beckham Reports further reported on the relevant facts:

4) The worker community on Rancho Arroyo Chico had leaders appointed by John Bidwell and operated under rules and restrictions imposed by him and his wife, Annie Kennedy Bidwell. The Bidwells dictated who could be a member of the worker community. They expelled those who they believed violated their standards. The Bidwells required attendance of all residents at all religious services (except in the case of illness) and prohibited drinking, gaming, and Sabbath-breaking by hunting, fishing, or amusements. The Bidwells refused to give land to individuals they believed in violation of their dictates. The Bidwells dictated who was and who was not a member of the "Mechoopda Village" or "Chico Rancheria."

(6) In her 1909 will, Annie Kennedy Bidwell prescribed the conditions whereby Indians could settle on the property she deeded to the Mission Board of the Presbyterian Church: "That the said Board of Missions may locate other Indians of good character on such lots or portions of said land as may become vacant by death or desertion, provided such vacant lots or tracts shall not be needed for the use and occupancy of the descendants of the present inhabitants of the tract of land hereinabove described" (Pillsbury 1938).

(7) By self-identification in the California Indian enrollment program of 1928-33, the residents of the worker village on the Bidwell ranch gave their genealogies as best they knew them.

These records, reproduced in the Beckham report (2006:18-23), confirm the multi-tribal and mixed ethnic heritage of the community. Dorothy Hill in *The Indians of the Chico Rancheria* (1978) likewise identified the multi-ethnic, polyglot nature of the worker village. Her biographical profiles of her principal informants—Emma Cooper, Bud Bain, Henry Azbill, and others confirmed the diverse origins of the community

2006 Beckham Report at 17-23; AR NEW 0003192-0003198; 2014 Beckham Report at 71.

The design and even the location of the worker village was not "Mechoopda" but, rather, defined by John Bidwell. 2014 Beckham Report at 71-72. The organizing principle of the Chico Rancheria was not a shared Mechoopda culture, but rather the rules and restrictions imposed by John and Annie Bidwell. *Id.* Those rules and restrictions were the ultimate community standards in the worker village, and defined who was allowed residence, required attendance of religious services and keeping of the Sabbath, required membership in the community, and prohibited drinking and gaming. *Id.*

Both Beckham Reports document that every element of residency at the Indian Village on the Bidwell Ranch was controlled by John and Annie Bidwell during their lives and for decades thereafter. Indeed, John Bidwell's "Proclamation of Rules Made for Rancho Chico Indians, 1885" confirm the control he maintained over life at the Chico Rancheria. 2014 Beckham Report at 46-51. Bidwell named Lafonso as Chief, despite the ordinary custom of Indian tribes to select their own chief. *Id.* Likewise, Bidwell named another resident, Billy Preacher, to be the exemplar of behavior on the Rancheria. *Id.* Most notably, Bidwell's rules expressly made adherence to those rules a condition of residence at the Rancheria – and simultaneously opened up residence to "any Indians who may wish to come and live here" – so long as they adhered to the rules. *Id.*

All of these elements of the Bidwell's control over the Indians living in the Bidwell Indian Village are acknowledged by Dr. Tiley herself. *See e.g.*, Mechoopda Replacement Report at 8-10, AR NEW 0004141-0004143. Indeed, Tiley further acknowledges that Annie Bidwell, successor to her husband in running Rancho Chico and administrator of his estate, insisted on even stronger prescriptions over the lives of the Indian workers in perpetuity. Tiley wrote:

Bidwell's wife Annie, who survived him and became his executrix, gave the Home Mission Board of the Presbyterian Church the tract occupied by the Indians in 1909. She further circumscribed the future land uses in 1909, prohibiting use of the land for the production or sale of liquor, protecting Indian residency on the tracts of land except where the individuals or their descendants became 'drunken, disorderly, or addicted to gambling,' for which they might be evicted. She also stated that the Mission Board might allow other Indians 'of good character' to reside on lots not needed by the descendants of 'present occupants' (Pillsbury 1938 cited in Beckham 2006:10). [Emphasis supplied.]

AR NEW 0004142-0004143.

The 2014 Beckham Report documents and details the conditions of life on the Rancheria and the incompatibility of those conditions with California Indian custom, in direct contrast to Dr. Tiley, who ignored the primary sources that were readily available to her. Because she ignored these sources, Dr. Tiley was free to offer anecdotal speculation on these matters or having to reconcile her assumptions with the documented facts.

c. No functioning tribal government existed among the Indians of the Chico Rancheria in the 1910s, 1930s, and 1950s, or at any time in the 20th Century (except briefly in 1957).

The 2014 Interior Decision completely ignored evidence in the 2006 Beckham Report confirming the lack of any functioning government among the Indians of the Chico Rancheria in the 1910s, 1930s, and 1950s, or at any time in the 20th Century, except briefly in 1957. The Rancheria was never formally organized, did not vote on IRA, had no constitution or bylaws, and

had no membership regulations. Not until 1957 did the BIA create a constitution and by-laws – 10 ten months subsequent to the passage of the California Rancheria Termination Act—in order to devise a way to dispose of the real property of the Bidwell Rancheria. None of these actions were "tribal" but rather all of them were part of an administrative initiative of the BIA staff in Sacramento necessitated by the absence of any tribal organization or government. 2006 Beckham Report at 35-38, AR NEW 0003210-13.

V. CONCLUSION

The Department's refusal to allow sufficient time for the County to research and prepare materials responsive to the Mechoopda Replacement Report guaranteed that there would be no meaningful rebuttal to Dr. Tiley's materials. That refusal was amplified by what amounted to a lack of adequate explanation for doing so by Kunes. Her unilateral action was the equivalent to Defendants' original refusal to even read the 2006 Beckham Report, which refusal resulted in the D.C. Circuit's remand. Kunes repeated the very exclusion that the D.C. Circuit found arbitrary and capricious.

The Defendants' unexplained decision provides no basis upon which to conclude that it was the product of reasoned decisionmaking. *Butte Cnty*, 613 F.3d at 195. It is no more than a statement that the Department "would prefer not to" consider materials bearing directly on its decision. *Id.* Moreover, Defendants again ignored the substantive documented facts in the 2006 Beckham Report and failed to articulate a reasoned connection between the 2014 Interior Decision and the evidence contradicting the Department's position that the modern Mechoopda tribal members demonstrate a historic tie to, and connection with, the proposed casino site such that the land qualifies as "restored land to a restored tribe" as a matter of law stated at IGRA Section 20(b)(1)(B)(iii).

Further, the Department's refusal to provide adequate time to receive materials bearing on the issue before it constitutes arbitrary agency action. *Id.* The D.C. Circuit has made it clear that the Department may not deny a party the opportunity to expand the evidentiary basis for the Department's decision and "ferret out" relevant materials bearing on the decision. *Cross-Sound Ferry Servs, Inc. v. I.C.C.*, 738 F.2d 481, 483 (D.C. Cir. 1984). Had the Department refused the Mechoopda Replacement Report as a document that was outside the scope of the remand, its closure of the record may well have been reasonable. However, Defendants' acceptance of the Mechoopda Replacement Report mandated permitting a reasonable opportunity for the research and preparation of a response from the County. The Department's refusal to allow the County adequate time to prepare and submit a rebuttal was arbitrary and capricious, and constituted a fatal procedural flaw that has led to the acceptance of a flawed history.

The 2014 Interior Decision, based on the improperly accepted and unrebutted Mechoopda Replacement Report, should be rejected by this Court and the proposal casino site declared ineligible for restored land status. Alternatively, the matter should be remanded to the Department for reconsideration with an order to reconcile the 2014 Interior Decision with the 2006 Beckham Report, and either strike the Mechoopda Replacement Report from the record or reconcile it with the countervailing evidence supplied in the 2014 Beckham Report.

Because Defendants have failed to produce any evidence in the Administrative Record or otherwise demonstrating a genuine dispute as to any material fact, the County is entitled to judgment as a matter of law pursuant to Fed R. Civ. P. 56.

DATED this 10th day of July 2014.

Respectfully submitted,

s/ Dennis J. Whittlesey
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