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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BUTTE COUNTY, CALIFORNIA, Plaintiff, v. JONODEV OSCEOLA CHAUDHURI, in his official capacity as CHAIRMAN OF THE NATIONAL INDIAN GAMING COMMISSION, et. al., Defendants. _____ MECHOOPDA INDIAN TRIBE OF CHICO RANCHERIA, CALIFORNIA, a federally recognized Indian Tribe, Intervenor.	Case No. 1:08-cv-00519 FJS Honorable Frederick J. Scullin **INTERVENOR MECHOOPDA INDIAN TRIBE'S MEMORANDUM IN OPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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I. STANDARD OF REVIEW

Under the Administrative Procedures Act, a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). However, the standard of review is narrow, and "[t]he court is not empowered to substitute its judgment for that of the agency." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971), abrogated on other grounds by *Califano v. Sanders*, 430 U.S. 99, 104 (1977).

II. INTRODUCTION

Intervenor, Mechoopda Indian Tribe of Chico Rancheria, California ("Mechoopda" or "Tribe"), files this Opposition to Plaintiff Butte County's ("Plaintiff," "Butte County," or "County") Motion for Summary Judgment (filed on July 10, 2015). (Docket No. 115.) Once again Butte County is attempting void a final United States Department of the Interior ("Interior Department," "Interior," or "Department") trust land acceptance decision in this matter by mischaracterizing the scope of the D.C. Circuit Court's Remand Order, making disingenuous statements about Mechoopda's supplemental expert witness report, improperly challenging the timeframe the County was given to rebut Mechoopda's report, and ignoring the Interior's consideration of the County's evidence.

The Interior Department's January 24, 2014 decision finding that the Tribe met the restored lands exception in the Indian Gaming Regulatory Act ("IGRA", Section 5 of the Indian Reorganization Act, and its implementing regulations at 25 C.F.R. Part 151 was fifty-three (53) pages in length, containing three-hundred and twenty (320) footnotes, which thoroughly

considered the County's 2006 Beckham Report, the County's other submissions on remand, Mechoopda's evidence, and its own independent research. (*See* AR NEW 0005384.) In order to draw a clear distinction between this process and the 2006 process overturned by the D.C. Circuit Court, the Interior began a new land into trust consideration offering both the County and the Tribe opportunities to submit and rebut materials as well as taking substantial time to develop its reasoning behind its decision.

Intervenor Mechoopda Indian Tribe respectfully requests that this Court deny Plaintiff's Motion for Summary Judgment and its alternative Motion to Remand because the Secretary of the Interior properly reviewed and issued the new 2014 trust decision in accordance with the D.C. Circuit Court and this Court's remand orders and the Administrative Procedure Act (APA). The Interior considered the County's arguments against accepting the Mechoopda's land into trust as "restored land" and properly reasoned that the County's arguments were unpersuasive in light of all of the facts in the record.

III. BACKGROUND

A. The District of Columbia Circuit Remand and Procedural History

On July 13, 2010, the United States Court of Appeals for the District of Columbia Circuit set aside the Secretary of the United States Department of Interior's final action to take the Mechoopda Tribe's land; known as the "Chico Parcel" located in Butte County, California, into trust, remanding to the Department for further proceedings consistent with the opinion. *Butte County v. Hogen*, 613 F.3d 190, 196–97 (D.C. Cir. 2010). The D.C. Circuit reversed the decision in favor of the Defendants in *Butte County v. Hogen*, 609 F. Supp.2d 20 (D. D.C. 2009). (Docket Nos. 65, 66.) The D.C. Circuit Court found that the Department had improperly declined to consider Butte County's expert witness submission by Stephen Dow Beckham (AR NEW

0003171, hereafter the 2006 Beckham Report") because the issue of whether the Chico parcel was eligible for trust status was still before the Department. *Butte County v. Hogen*, *supra* at 194–95. Indeed, as the Circuit Court pointed out, "The Secretary's final determination did not come until two years later." *Id*. The Circuit Court held that the Department's decision to refuse to consider the 2006 Beckham Report "provides no basis upon which we could conclude that it was the product of reasoned decision making." *Id.* at 195 (*citing Tourus Records, Inc. v. DEA*, 259 F.3d 731, 737 (D.C. Cir. 2001)). The Court noted that "an agency's refusal to consider evidence bearing on the issue before it constitutes arbitrary agency action within the meaning of [5 U.S.C.] § 706." *Id.* at 194. The Department's response "violate[d] the minimal procedural requirements [5 U.S.C.] § 555(e) imposed." *Id.* at 195.

B. Procedural Filing Regarding the Scope of Remand

On November 12, 2010, upon remand to the District Court, the District Court for the District of Columbia ordered "that the parties inform the Court no later than November 23, 2010 of their positions regarding how the Court should proceed to comply with the D.C. Circuit's remand of this case for further proceedings consistent with its opinion." (Docket No. 70 at 1.)

On or about November 22, 2010, the parties each submitted their positions on how the Court should proceed to comply with the United States Court of Appeals for the District of Columbia's Order. Butte County proposed that "the Court remand this matter to the Secretary of the Interior with instructions to reconsider his decisions to acquire the Chico Parcel into trust for Class III gaming purposes." (Docket No. 72 at 1.) Regarding the submission of new information, Butte County urged that "[t]he Court should direct the United States Department of Interior ("Interior") to review and consider **all materials** required to be considered as a matter of law." (*Id.*) (Emphasis added.) In contrast, the Tribe asked the Court to restrict the remand and order the

Department to simply reconsider its decision only with the addition of the 2006 Beckham Report. (Docket No. 73 at 2.)

On December 22, 2010, the District Court ordered "that this case is remanded to the Secretary of the Interior to reconsider his decision to acquire the Chico Parcel into trust for gaming purposes. The Secretary shall include and consider the 'Beckham Report' **as part of** the administrative record on remand." (Docket No. 74 at 1.) (Emphasis added.) No other direction or limitation was provided to the Interior Department regarding the scope of the remand, thus leaving agency discretion to the Interior Department on how to conduct the remand process.

C. The Procedural Process Before the Interior Department

On April 12, 2011, the Department issued a statement setting forth the procedural process that they would use in the remand of the Secretary's decision to acquire the Chico Parcel into trust for gaming purposes of the Tribe. (AR NEW 0004045.) The Department of Interior interpreted the District Court's Order in a manner requiring it to make "**a new trust decision**" and allowed the County to resubmit "any and all new information" it wished to be considered. (AR NEW 0004045 at 1.) (Emphasis added.) Not only did the Department allow new information, it also allowed submissions during the interim time period after the D.C. Circuit ruled on July 13, 2010 and the formal Interior remand process began on April 12, 2011. In its letter, the Department went further to state, "we are requesting that the County officially submit or resubmit within 30 days any and **all new information** that it wishes the Secretary to consider on remand, with a copy to the Tribe." (*Id.*) (Emphasis added). The Tribe then had thirty (30) days "to respond to the Beckham Report and the County's new submissions." (*Id.)* The Department also requested that the parties submit any information that they wished to have the Secretary consider on remand. (*Id.*) This allowed information filed by Mechoopda concerning

the United States Supreme Court decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009) explaining how Mechoopda met the test of "under federal jurisdiction" since 1934 set forth by the United States Supreme Court in *Carcieri*.

On or about May 12, 2011, the County submitted all its information that it wished the Secretary to consider on remand, which incorporated or otherwise included the 2006 Beckham Report, Beckham's Curriculum Vitae, fourteen documents from the litigation in *Butte County v. Hogen, supra*, and an extensive attack on Mechoopda's history, treaty relations, and Bidwell Ranch history. (AR NEW 0004063.)

On May 27, 2011, Mechoopda requested that the Interior grant the Tribe a short, 15-day extension to finish its response to the 2006 Beckham Report and the County's other submissions. (AR NEW 0004109.) A copy of the letter requesting the extension was also sent to Butte County's counsel. (*Id.*) Likewise, the County requested and obtained a 20-day extension. (Docket No. 75-23.) There is no record that the Plaintiff objected to the 15-day extension while the record was open before the Interior. (*See* Index for Administrative Record, Docket No. 114-2.) As the letter explained, this was the Tribe's first opportunity to respond to the 2006 Beckham Report on remand. (AR NEW 0004109. *See also* Docket No. 103-5). The Interior reasonably granted this a short extension so the Tribe could finish supplementing its original report. In its discretion, the Interior reasonably granted these extensions to the Tribe and the County.

On June 28, 2011, the Tribe submitted a twenty-five (25) page response to the County's submission including a twenty (20) page expert response to the Beckham Report (the "Tiley Report") and exhibits (AR NEW 0004110, 0004130.) During the submission process, Mechoopda also submitted a *Carcieri* analysis. (AR NEW 0004045 at 1.)

On July 12, 2011, the Department noticed the Tribe and the County that the record was closed. (AR NEW 0004248.)

On July 18, 2011, the County sent the Department a detailed correspondence requesting that the record be reopened. (AR NEW 0004251.) This correspondence contained rebuttals to the Tribe's June 28th submission including an extensive response to the Tiley Report. (*Id*.) The County opined on all issues both outside and beyond the issues of this case. In its conclusion, the County requested the record be reopened so it could further respond to the Tribe's submission. (*Id.* at 6.)

While it was under no mandate or legal duty to do so, on August 11, 2011, the Department in its discretion granted the County's request to reopen the record to allow a rebuttal to the Tribe's June 28, 2011 submission, giving the County a 20-day extension. (AR NEW 0004262.) The County was then given yet another opportunity to submit materials for consideration by the Department. The Tribe would then have ten (10) days thereafter to file a reply. "After submission of these materials, the administrative record will be considered closed unless the Department specifically asks either party to provide additional information." (*Id.*)

On August 12, 2011, the County declared the Department's decision unacceptable and objected to the Department's reopening of the record without describing why the Department's granting of the County's own extension request was inadequate, . (AR NEW 0004263.) The County already had the Tribe's June 28, 2011 submission under review by their experts. The County's July 18, 2011 correspondence to the Department contains detailed responses to the Tribe's Tiley Report with page referenced objections:

> At numerous points the Jacobs essay confirms the conclusions in the Beckham Report, though this is not evident from any reading of the Tiley Report. Some few representative examples follow: p. 230 … p. 238 … p. 233 … p. 238-239 … p. 239 … p. 240 … p. 241" (*Id.* at 5, 6.)

In effect, the County had sixty five (65) days (June 28th to August 31st) to respond to the Tribe's submission and the Tiley Report.

On August 30, 2011, the Tribe wrote to the Department confirming its understanding that the record was closed and that the County had decided not to participate further in the Department's process on remand. (AR NEW 0004267.)

D. Butte County's Motions to Reopen the Administrative Record

On September 19, 2011, the County filed a Motion to Clarify December 22, 2010 Remand Order and/or Limit the Administrative Record Upon Remand, essentially asking the Court to intervene to strike the Tiley Report in complete circumvention of the Department's noticed process on remand. (Docket No. 75.)

On March 19, 2012, this Court rejected the Plaintiff's Motion to Clarify December 22, 2010 Remand Order and/or Limit the Administrative Record. (Docket No. 86.) Importantly, the Court noted: "Whatever else the Department of Interior may feel may be relevant to the decision as to the issues involved, I think that's their prerogative." (Docket 103-3 at 13.) The Court also stated that the County had been afforded "ample time to submit whatever other information" it needed to have before the Department. (*Id.* at 14.)

The Department went on to consider the materials presented by both the Plaintiff and the Mechoopda and issued a new decision to take the land into trust for the Mechoopda Indian Tribe on January 24, 2014, notice of which was published on February 5, 2014. (AR NEW 000538, 0005843.) By this time, the Interior Department had taken over three (3) years to issue a new decision from the date of the the D.C. Circuit Court decision to remand. The Chico Parcel is now held in trust by the United States for the Mechoopda Indian Tribe.

In developing the trust decision, Interior spent a significant amount of time on its analysis. It addresses each of the statutory and regulatory requirements for meeting the restored lands exception in the IGRA and Section 5 of the Indian Reorganization Act. The decision's analysis also spends time considering and rebutting the 2006 Beckham Report's opposition to Mechoopda's ancestral claims to the Chico Parcel. (AR NEW 0005384 at 19–22). The Decision also makes a point of acknowledging that the 2006 Beckham Report attempted to show that the Mechoopda Tribe did not exist prior to John Bidwell (*Id.* at 25.) However, the Department was unpersuaded by the evidence presented by the Plaintiff and instead found the evidence presented in the accounts of several other experts to be more persuasive. (*Id.*)

In response to the new Interior decision, and without direction from this Court or the Department, the County had its expert, Dr. Beckham, update his report (hereafter the "2014 Beckham Report") over the next six months, which was completed on July 9, 2014. (Docket Nos. 91-1, 92-1, 93-1, 94-1.) Inexplicably, this new 2014 Beckham Report was filed almost **nine months** after the Department's January 24, 2014 trust decision was final.

Based on the newly developed 2014 Beckham Report, the County filed another motion to remand the Interior's decision with this Court on November 20, 2014. (Docket Nos. 89, 90.)

Both the Interior and Mechoopda opposed the County's motion and new 2014 Beckham Report on January 15, 2015 and January 16, 2015, respectively. (Docket Nos. 102, 103.) After additional responses from both parties on the matter (Docket Nos. 106–111), this Court heard oral arguments on the motion to remand on April 7, 2015. On April 9, 2015, this Court denied the Plaintiff's motions without prejudice so that the Interior could lodge the administrative record with the Court. (Docket No. 113.)

Now that the Interior has filed the certified list of the contents of the administrative record with this Court and mailed the administrative record to Plaintiff (Docket No. 114), Butte County has asked that the Court either overturn the Interior's decision to take the land into trust for Mechoopda, based on legally insupportable arguments that seek to distinguish the historic and Federally-recognized Mechoopda Indian Tribe of Chico Rancheria, or remand the decision so that the Interior is compelled to consider the 2014 Beckham Report, which was completed almost three (3) years **after** the Department closed the record. (Docket Nos. 115, 115-1.)

IV. ARGUMENT

A. Plaintiff's Motion Lacks Merit Based on the Record Before the Court Showing that the Interior Properly Gave Each Party an Opportunity to Present their Evidence Before Issuing a Positive Determination.

Unlike the 2006 administrative process and record reviewed by the D.C. Circuit Court in *Butte County v. Hogen, supra*, both the County and Mechoopda were given reasonable opportunities to submit their evidence for the Department's consideration on whether or not to take the Chico Parcel into trust.

i. Butte County's Motion To Remand Was Already Denied By This Court in March 2012.

As detailed in Mechoopda's January 16, 2015 response to Butte County's Motion and Memorandum, this Court already denied the Plaintiffs' Motion to Clarify the Scope of the Remand over two (2) years ago. (*See* Docket Nos. 103, 86.) Yet, once again, Plaintiff claims that the Secretary was only supposed to review the 2006 Beckham Report, without any new materials from Mechoopda. This claim misconstrues this Court's Order and the holding of the D.C. Circuit Court. This Court did not limit the scope of the D.C. Circuit's Remand, and in fact denied the Plaintiff's request to do so in an Order dated March 19, 2012. (*Id*.) Contrary to the County's

misrepresentation of the D.C. Circuit remand, the Department acted within its discretion in considering the Tribe's submission in its decision-making process. "[T]here is no principle of administrative law that restricts an agency from reopening proceedings to take new evidence after the grounds upon which it relied are determined by a reviewing court to be invalid." *PPG Indus., Inc. v. United States*, 52 F.3d 363, 366 (D.C. Cir. 1995). See, e.g., *Chamber of Commerce of the U.S. v. SEC*, 443 F.3d 890, 900 (D.C. Cir. 2006) ("Where the court does not require additional fact gathering on remand . . . the agency is typically authorized to determine, in its discretion, whether such fact gathering is needed . . . and how it should be accomplished.").

Furthermore, the D.C. Circuit never stated that the remand was to be limited to only a review of the 2006 Beckham Report. Rather, the Circuit Court held that the Department needed to consider the 2006 Beckham Report in its decision because it received the 2006 Beckham Report two years before the Department made a decision. (*Butte County*, 613 F.3d at 194-195.) The basis for the D.C. Circuit Court's remand was not just that the Department did not consider the 2006 Beckham Report, but that by arbitrarily refusing to consider it when the matter was not closed was not "the product of reasoned decision making." (*Id.* at 195.) If the Department, upon remand, were to only consider Butte County's materials, but no other relevant material from Mechoopda while the record was open, it would have been guilty of the same arbitrary decision making that the D.C. Circuit Court found in 2010. As a result, neither this Court nor the D.C. Circuit Court provided a limitation to the remand of the materials. Plaintiff's claims that the Secretary inappropriately considered Mechoopda's rebuttal should be dismissed.

Moreover, as the Court noted during the March 12, 2012 Status Conference and Hearing on the Plaintiff's Motion to Clarify, agencies have the discretion to consider whatever, in their

expertise, they believe to be relevant to their decisions. This Court denied Plaintiff's motion to limit, stating:

> Whatever else the Department of Interior may feel may be relevant to the decision as to the issues involved, I think that's their prerogative. I don't think this court has the authority to change that prerogative, and I therefore will not venture to do so. (Docket No. 103-3 at 13.)

Even the Plaintiff acknowledged in its initial Memorandum that the Interior had allowed a re-opening of the record. (Docket No. 90 at 7.) Plaintiff sat out this opportunity in 2011 and now years later regrets that strategy.

ii. Mechoopda Properly Complied with the Interior Department Remand Process

Plaintiff properly notes that Mechoopda initially proposed to this Court on November 22, 2010 that the remand be solely focused on the 2006 Beckham Report. (*See* Docket No. 73.) By contrast, Butte County took a broader approach and asked the Court require the Interior Department "to review and consider *all materials* required to be considered as a matter of law." (Docket No. 72 at 1.) (Emphasis added.) Ultimately, the District Court did not limit the remand process to the sole consideration of the 2006 Beckham Report – as Mechoopda had sought – but left the process open to the Department's discretion. The Interior interpreted the Order in a manner requiring it to make "a new trust decision" and allowed the County to submit "any and all new information" it wished to be considered. (AR NEW 0004045 at 1.) Far from Plaintiff's hyperbole that Mechoopda launched a "sneak attack" by filing the Tiley Report, what Mechoopda in fact did was accept the same invitation the Department gave to the County to submit "any and all new information" that it wished the Department to consider on remand.

Now that the tactic of arguing that the Interior was required to reopen the record and consider "all materials" has failed to result in a negative determination, Plaintiff attempts to use

Mechoopda's earlier request to limit the record as evidence against Mechoopda showing that the record was required to be limited all along. (Docket No. 115-1 at 6.) However, although Mechoopda initially asked that the record on remand be limited, the Tribe accepted this Court's Order and the Interior's determination to issue a new trust decision. The Department had the discretion on remand to invite additional submissions and grant extensions to complete those submissions. It granted extensions to both parties and gave the County an opportunity to provide the Department with additional submissions and respond to the Tribe's June 28th submission. Now, after both the Tribe and the Plaintiff have had the opportunity to present their evidence, the land into trust process has been repeated, and the Department has rendered a new decision on remand approving the trust acquisition, the County seeks to prevent the Department from considering the Tribe's June 28 submission, which was properly before the Department at the time of the Department's 2014 decision; to excuse its own failure to comply with administrative deadlines as required by the APA; and to have the Department additionally consider its 2014 Beckham Report, which was not properly before the Department at the time of the 2014 Decision. Mechoopda opposes Plaintiff's Motion for Summary Judgment and its alternative Motion to Remand the Department's decision. Plaintiff cannot be allowed to reopen the record merely because it disagrees with the result.

The fact that Mechoopda did not specifically list the preparation of the Tiley Report in its May 27, 2011 deadline extension request to the Department of Interior (AR NEW 0004109) cannot be validly construed as a limitation on its ultimate submission or as some ploy to mislead the Department. Modest two-week extension requests are routinely granted by Federal agencies just as they are granted by Federal courts. The Department had reasonably settled on a broad administrative process. Furthermore, Mechoopda's May 27, 2011 letter referencing the prior

Butte County submission and the need for more time to prepare a response to Butte County's challenges to Mechoopda's tribal history did not serve as some absurd self-limitation to the subject of Beckham's resume. (*See Id.*)

Mechoopda's submission on June 28, 2011 was its first opportunity (in the remand process) before the Interior Department to respond to the 2006 Beckham Report, as well as all of the arguments raised by Butte County during the District Court and D.C. Circuit litigation (*See* Docket No. 75-7). Prior to the Court's 2010 remand order and the Department's proposed process in its April 12, 20111 statement, the Tribe had no reason to respond to the County's Beckham Report and other allegations. Plaintiff's outlandish claim that Mechoopda misled the Department is belied by the fact that the County did not object to the proposed procedural process described by the Department in its April 12, 2011 statement to the parties. (Docket No. 75-4.) Plaintiff's pleadings in this current proceeding conveniently ignore that fact. The April 12, 2011 statement explained that the County would have 30 days to submit **any and all information** it wished the Secretary to consider during the remand, and the Tribe would then have 30 days to respond to the County's submissions. *Id*. On May 12, 2011, Plaintiff did not simply submit Beckham's Curriculum Vitae as its brief misleadingly suggests (Docket No. 115-1 at 8; 9 n.2; 18–19). Instead, Plaintiff incorporated or otherwise included the 2006 Beckham Report, a second report by the same Dr. Beckham (2010 Beckham Report), a letter with an attached exhibit containing the County's commentary on a key document in the administrative record, and fourteen (14) documents from the litigation in *Butte County v. Hogen, supra,* resulting in an extensive attack on Mechoopda's history, treaty relations and Bidwell Ranch history. (AR NEW 0004063.) A chronology highlighting the gross omissions from Plaintiff's misleading facts was included in an earlier filing with this Court. (*See* Docket No. 109-5).

Plaintiff's desperate and offensive claims regarding Mechoopda's filings and its pejorative labeling of them as "bad faith" and "intentionally misleading" are themselves misleading and false. [1]

Similarly, Plaintiff makes misleading statements to this Court that Mechoopda "abandoned" its prior experts and falsely labels Mechoopda's June 28, 2014 submission as a "Replacement Report." (Docket No. 115-1 at 10.) In no circumstance did Mechoopda abandon or replace its prior submissions with the Tiley Report. Mechoopda's June 28, 2011 submission expressly states, "[t]he Tiley Report reinforces the previously reviewed export opinions of Craig Bates and Brian Bibby." (AR 0004110 at 4). Mechoopda simply supplemented these submissions with the Tiley Report, notwithstanding Plaintiff's mischaracterization of the Tiley Report as a "Replacement Report." (AR 0004110, AR 0004130.). The Department of Interior was not confused on this point.

iii. PlaintiffHad Adequate Time to Respond to Mechoopda's Tiley Report and Waived their Right to Object Here After <u>When</u> they Failed to Timely Appeal

Plaintiff decries the limited time for replying to the Mechoopda submission of its June 28, 2011 Supplemental Report but if Plaintiff had taken advantage of the extension date of August 31, 2011, which the Interior Department had granted, the County would have had approximately sixty-five (65) days to challenge Mechoopda's expert findings. In hindsight, it is not clear how

[1] Plaintiff represents before this Court that Mechoopda lied about its resources in its May 27, 2011 extension request in order to "induce" Deputy Solicitor Kunesh to grant the extension (Docket No. 115-1 at 9.) This is a false characterization since Mechoopda's limited resources are a direct result of the long delays caused by the Plaintiff in the land into trust process. Mechoopda had lost its investor and is still without an investor today. (*See* Docket No. 103-5.) Elsewhere bizarre and meritless attacks are made by Plaintiff about secretly hiring a private consulting firm long before the remand process to prepare brand-new and "elaborate report" (Docket No. 115-1 at 9) that was "months in the making" (Docket No. 115-1 at 20) as if Mechoopda's routine two-week extension request and a twenty (20) and twenty-five (25) page responses to the 2006 Beckham Report (AR NEW 0004110, 0004130) had the hallmarks of a criminal conspiracy. Similarly, Plaintiff's outlandish claim that Mechoopda misled the Department is belied by the fact that the Department has never viewed or objected to Mechoopda's submission as somehow being outside the scope of the remand process.

long Plaintiff believed an appropriate time frame for extending the record, since its purported expert's analysis was not complete until *July 9, 2014* (*See* Docket Nos. 91-1, 92-1, 93-1, 94-1.) Presumably Plaintiff would have needed a three (3) year extension of the record from August 31, 2011 to July 9, 2014 to complete the work of their retained Oregon consultant. Such a request would have been inherently unreasonable given the long delays in Mechoopda's land into trust application, which was first approved by the Department on May 8, 2008.

As was pointed out at the March 12, 2012 hearing for Plaintiff's motion to remand, "after the record was closed, the County requested additional time, and they were given an additional 20 days, two thirds of the amount, the original time that each was given of 30 days, and that's when the County didn't submit anything but instead wrote and said that this process is unacceptable." (Docket No. 103-3 at 9-10.) The Tribe's counsel, also pointed out that "the County did not ask for an extension. They simply submitted objections and actually a fairly detailed response to the expert report that the Mechoopda Tribe relied upon. … So they certainly had the opportunity to respond, and in our view, they waived that objection." (Docket No. 103-3 at 11.) Because Plaintiff had ample opportunity to respond to the Tiley Report or ask for another extension of time, but did not do so, the County has long since waived its objection to the twenty (20) day opportunity it was given.

B. Interior Properly Considered All Materials Presented by Plaintiff and Mechoopda, Consistent with the D.C. Circuit Reasoning

Plaintiff's Motion for Summary Judgment, or alternatively, Motion to Remand should be denied based on the procedural grounds Mechoopda provides in Section A of its argument here. Alternatively, if this Court considers the merits of Plaintiff's pleading, we provide the following history and analysis, which demonstrates that Interior carefully reviewed all documentation properly submitted by the Plaintiff and made a reasoned decision.

i. The Department's January 2014 Decision Thoroughly Considers and then Debunks the 2006 Beckham Report

Plaintiff attempts to boot strap a reopening of the Administrative Record with a narrow procedural defect by the Interior Department in 2006 (its failure to provide an analysis of the 2006 Beckham Report); however, upon remand, the Department thoroughly reviewed the materials presented by both the Plaintiff and Mechoopda, *including the 2006 Beckham Report*, before issuing its positive determination to take the Chico Parcel into trust for the Tribe.

On January 24, 2014, the Department issued its decision to take the Chico Parcel into trust. (AR NEW 0005384. *See also* AR NEW 0005843.) The analysis provided by the Department's decision demonstrates the futility of either overturning the decision with a summary judgment or prolonging future remand proceedings. The circumstances of the 2011 Interior remand process now before the Court stand in stark contrast to the 2006 administrative process and record reviewed in *Butte County v. Hogen, supra*. In that process, the Department of Interior declined in 2006 to review certain materials submitted by Butte County, namely the 2006 Beckham Report. Here, as the Department of Interior's January 24, 2014 decision makes clear, (*see* AR NEW 0005384) both the 2006 Beckham Report and the 2011 Butte County submissions filed during the remand process were reviewed by the Department, thus negating any valid comparison to the process found to be deficient in *Butte County v. Hogen, supra*. Significantly, even Butte County's Memorandum Supporting its Motion for Summary Judgment in this proceeding acknowledges the Department of Interior's "general denials of Beckham's documented text and conclusions." (Docket No. 115-1 at 11).

As noted in the Department's decision, "[t]he present decision includes our review of the [2006] Beckham Report, as well as other information received from the parties, and incorporates

the findings and conclusions of the 2008 Decision and supporting materials." (AR NEW 0005384 at 1.) The Department noted:

> Although there was no requirement to open the record for additional materials, given the unique circumstances and procedural posture of this particular case, the Department afforded the County and the Tribe the opportunity to submit materials addressing two issues: the restored land analysis, and the relevance of issues that might arise under *Carcieri v. Salazar,* 555 U.S. 379 (2009). (*Id.* at 3.)

In its decision, the Department also stated:

> The history of the Mechoopda Tribe provided herein is divided essentially into two periods - before and after the arrival of Euro-American settlers in California. We describe each period separately and then discuss the Federal Government's treatment and relationship to the Tribe in the Twentieth Century. The recitation of the Tribe's history is derived from our review of all of the documents submitted by the Tribe and the County, as well as our own **independent research**. (*Id.* at 7.) (Emphasis added.)

After a lengthy analysis rejecting the Beckham Report's conclusions, the Department stated:

> We decline to adopt the County's conclusions that the Mechoopda Tribe was a creation of the Bidwells. Based on our review of the record, we conclude that the Mechoopda were a tribal polity that had significant historical connections to the region prior to John Bidwell's arrival, and those connections were not severed when the Tribe resided at Chico Rancheria. (*Id.* at 20.)

As a result, the Department found,

> The Mechoopda Tribe [was] able to use its early history to demonstrate its significant historical connection to the land. The available evidence support[ed] the Tribe's position that the subject parcels are located close to the villages of the pre-contact Mechoopda Tribe. While the historical accounts cannot define the Mechoopda Tribe's pre-contact boundaries with certainty, it is clear that the Mechoopda was a tribe of the Northwest Maidu. (*Id.* at 21.)

The Department concluded by stating that "[f]inally, the subject parcels are within the reservation boundaries that would have been created for the Tribe under the Treaty of 1851, had that treaty been ratified. As a whole, this evidence demonstrates the Tribe's significant historic connection to the land at issue." (*Id.* At 22.)

So while Plaintiff does not agree with the Department's conclusions and resulting determination to take the land into trust for Mechoopda, the Department thoroughly and reasonably considered the 2006 Beckham Report and all other materials submitted by the Plaintiff before the record was closed. Plaintiff's argument that the agency's decision was arbitrary and capricious is groundless because Interior "has examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made, [its] decision was based on a consideration of the relevant factors, 'and that [it] has made no clear error of judgment.'" *Bluewater Network*, 370 F.3d at 11 (D.C. Cir. 2004).

ii. The 2014 Department Decision Incorporates its 2008 Decision

While Judge Rodgers dissented in the D.C. Circuit Court's holding regarding the Department's need to review the Beckham Report in 2006, her dissent details and explains evidence that was not reversed by the majority in the decision. Her summary of the evidence, which is quoted extensively below, notes that even if the Beckham Report had been considered in the original Department decision, the evidence would have still been sufficient to support the Department's decision. As Judge Rogers explains (and the Department's 2014 decision considers),

> The Tribe's historical status with respect to the Chico parcel was confirmed in a comprehensive determination by the NIGC in 2003 in which Interior's Solicitor concurred. The 2003 determination concluded that the Tribe had proven its historical and cultural connection to the Chico parcel and that the parcel qualified as restored Indian lands under IGRA and NIGC regulations and should be taken into trust. *See* NIGC 2003 Determination at 1011, 12 (Mar. 14, 2003). The determination considered the factual circumstances of the Tribe's acquisition of the Chico parcel, the location of the Chico parcel (about ten miles from the Tribe's former rancheria on the Bidwell ranch, the "Chico Rancheria"), and the Tribe's historical and cultural nexus to it as well as the temporal relationship between the Tribe's restoration to federal recognition in 1992 and the Tribe's acquisition of the Chico parcel in 2001, concluding that all of these factors supported finding that

> taking the Chico parcel into trust would constitute a "restoration of lands" to the Tribe for purposes of IGRA section 20. In reaching this conclusion the determination relied on the key studies of the origins of the Tribe. These included the field notes of ethnologist C. Hart Merriam, who had interviewed Chico Rancheria residents in 1903, 1919, and 1923 regarding the locations of Mechoopda villages; the 2001 declaration of Craig Bates, the curator of ethnography for Yosemite National Park who had researched and published over one hundred articles and papers on Native Americans, sixteen of which directly related to the history and culture of the Maidu Indians of California, including the Mechoopda Tribe of Chico Rancheria that the Tribe is the sole surviving group of the Northwestern Valley Maidu Indians and has historical and cultural connections to the Chico parcel; and reports prepared in 2002 by ethnographer and historian Brian Bibby, an expert on California Indian communities, describing connections among the Tribe, the Chico parcel, and the historical villages of the Mechoopda. The 2003 determination noted that the Chico parcel was within the boundaries of historical Mechoopda village locations and within the boundaries of the land promised to the Mechoopda in the unratified Treaty of 1851.
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> Also part of the administrative record was the Currie report, published in 1957 in the California Historical Society Quarterly, tracing the history of the Mechoopda Tribe since 1849, when General John Bidwell purchased 22,000 acres of land including land the Mechoopda Tribe occupied. See also Editorial, The Enterprise Record, Apr. 9, 2002 ("The Mechoopda did most of the mining work that made John Bidwell rich and did much of the work on his ranch that allowed him to prosper."). The 2003 determination explained that although General and Mrs. Bidwell had established a Mechoopda Indian village for their Indian employees, and Mrs. Bidwell had deeded a 26 acre rancheria in trust for the Tribe, this land was lost after the Tribe's federal recognition was terminated in 1967, and that the city of Chico, California now occupies the site of the Tribe's former rancheria. Further, the 2003 determination noted that the 1992 stipulated judgment stated the Tribe could not attempt to reestablish the boundaries of its former rancheria.
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> (*Butte County v. Hogen, supra* at 199 (dissenting opinion).)

iii. Plaintiff Attempts to Make a Legally Unauthorized Distinction Between Modern and Historic Tribes

Although Plaintiff agrees that Mechoopda is a Federally recognized Tribe, the County repeatedly attempts to make the legally unsupportable argument that the current Tribe is not "the direct tribal descendant [that was] party to an unratified treaty with the United States executed in 1851 and … had a historical connection to the" Chico Parcel that is now held in trust for the

Tribe. (Docket No. 115-1 at 4.) Plaintiff relies on the 2006 Beckham Report to improperly bifurcate the history of the Mechoopda Tribe in an attempt to rebut the Tribe's claims to the Chico Parcel. However, Federal law prohibits drawing a distinction between a "modern" tribe and a "historic tribe." 25 U.S.C. § 476(f). Subsection (f), Privileges and immunities of Indian tribes; prohibition on new regulations, provides:

> Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination . . . with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

This language was expressly enacted by Congressional amendment in 1994 to eliminate Department of Interior distinctions between so-called "historic" or "created" (i.e., "modern") tribes and ensure that tribal sovereignty was not eroded by false distinctions. Senator Daniel K. Inouye (D–Hawaii), who co-sponsored the amendment, stated:

> [O]ur amendment would void any past determination by the Department that an Indian tribe is created and would prohibit any such determinations in the future . . . [O]ur amendment will correct any instance where any federally recognized Indian tribe has been classified as 'created' and that it will prohibit such classifications from being imposed or used in the future. Our amendment makes it clear that *it is and has always been* Federal law and policy that Indian tribes recognized by the Federal Government stand on an equal footing to each other and to the Federal Government.'' (140 Cong. Rec. S6147 (daily ed. May 19, 1994) (Emphasis added).)

In other words, a tribe is a tribe, regardless of temporal distinctions. Given that the Mechoopda Indian Tribe's status as a Federally recognized Indian tribe is not at issue here, under Federal law, the Department cannot draw a distinction between the current Tribe and the Tribe that negotiated the unratified Treaty of 1851. Therefore, Plaintiff's argument that the Mechoopda Indian Tribe is a modern tribe without connections to the parcel and the land within the aboriginal territory identified in Mechoopda's unratified Treaty of 1851 are unfounded. By

conceding that Mechoopda is a Federally recognized Indian tribe, Plaintiff cannot legally bifurcate Mechoopda's history.

As a result, Plaintiff's arguments that Interior did not properly consider the evidence offered in the 2006 Beckham Report that the modern Mechoopda Tribe is different from the historical Mechoopda Tribe are moot and should be dismissed.

C. It Would Be Manifestly Unjust to Overturn Interior's Decision or Initiate a New Process

Plaintiff's current motion represents simply another example of the County's continuing efforts to derail the Tribe's economic development plans and is without merit. Since it achieved restoration in 1992, the Tribe has consistently sought to acquire a land-base that would enable it to pursue the economic development that can support the Tribe's self-determination and self-sufficiency. The Tribe has been unwavering in its pursuit for land, because it is a necessary part of the Tribe's struggle to further its interests in self-government as a sovereign and improve its socioeconomic status. The Tribe's initial land-into-trust approval came in 2008 and the remand process took over three (3) years to complete. As the record reflects, Butte County has managed to stretch the litigation over the trust process out for nearly eight years (original complaint filed March 26, 2008). The County has switched back and forth on its arguments, and created an environment of uncertainty for Mechoopda, it's members and its economic investors for almost five (5) years after the D.C. Circuit's remand. The Chico Parcel is now in trust as Mechoopda's homeland. With trust land, the Tribe has been able to secure grant funding related to land management from the United States Department of Interior, Bureau of Reclamation, United States Department of Agriculture Natural Resources Conservation Service, and the United State Environmental Protection Agency. This has allowed the Tribe to expand their jurisdiction and protect their resources. The Tribe has no other land in trust.

V. CONCLUSION

Plaintiff's Motion for Summary Judgment and alternative Motion for Remand should be denied by this Court because the Department of Interior properly determined that the scope of the remand allowed it to issue a new trust decision, both parties were given reasonable opportunities to submit their evidence to the record, and the Department reasonably considered and rejected all of the County's arguments against accepting Mechoopda's land into trust as "restored land."