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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 CONSOLIDATED REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO INTERVENTOR MECHOOPDA INDIAN TRIBE'S CROSS MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

Intervenor, Mechoopda Indian Tribe of Chico Rancheria, California ("Mechoopda" or "Tribe"), files this Reply to Plaintiff Butte County's ("Plaintiff," "Butte County," or "County") two memorandums, 1) "Memorandum in Opposition to Intervenor Mechoopda Indian Tribe's Cross Motion for Summary Judgment" (filed on October 26, 2015) (Docket No. 120) and 2) "Memorandum in Opposition to Defendant's Cross-Motion for Summary Judgment and Reply in Support of Plaintiff's Motion for Summary Judgment." (filed on October 26, 2015.) (Docket No. 121.)

Plaintiff persists in its attempt to void or delay a final United States Department of the Interior ("Department of Interior," "Interior," or "Department") trust land acceptance decision in this matter by trying to inject an out of time expert report into the record, mischaracterizing the scope of the D.C. Circuit Court's and this Court's remand order, improperly challenging the timeframe it was given too rebut Mechoopda's supplemental report, and ignoring the Interior's consideration of the Plaintiff's evidence.

Indeed, Interior's January 24, 2014 decision finding that the Tribe met the restored lands exception in the Indian Gaming Regulatory Act ("IGRA") at 25 U.S.C. § 2719(b)(1)(B)(iii), 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 2006 Beckham Report and 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 in 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 time to develop its reasoning behind its decision.

Intervenor Mechoopda Indian Tribe respectfully requests that this Court deny Plaintiff's Motion for Summary Judgment because the Secretary of the Interior properly issued a new trust decision in keeping with the D.C. Circuit Court and this Court's remand orders and Interior considered the County's arguments against accepting the Mechoopda's land into trust as "restored land" and reasoned that they were unpersuasive in light of all of the facts in the record. The Tribe additionally requests that this Court deny Plaintiff's attempts to include the 2014 Beckham Report into these proceedings, and dismiss the arguments and evidence Plaintiff provided from the Report in its recent filing. (*See* Docket No. 121.)

II. ARGUMENT

A. The 2014 Beckham Report is Not Properly Before this Court

By stark contrast to the events that led to the D.C. Circuit Court's decision in 2010, the 2014 Beckham Report, which Plaintiff extensively cites in its recent filings (*see* Docket Nos. 120, 121), was not available until almost *nine months after* the Department issued its final January 24, 2014 trust decision and almost three (3) years after the Department closed the record. It would be unprecedented to require the Department to overturn its decision and reopen the record for submissions that did not even exist before the decision to take Mechoopda's land into trust was finalized. Plaintiff uses its filings before this Court in an attempt to insinuate the out-of-time evidence presented in its 2014 Beckham Report into the record. However, given the scope of the

D.C. Circuit and this Court's remand orders, in addition to the care the Department gave to issue a new trust decision – including providing both parties with additional time for their responses – Plaintiff has no grounds with which to oppose the Department's January 24, 2014 Decision to take the Chico Parcel into trust for Mechoopda.

i. Plaintiff Continues to Mischaracterize Scope of D.C. Circuit Court's and This Court's Remand

As detailed in Mechoopda's January 16, 2015 response to Butte County's Motion and Memorandum, this Court already denied the Plaintiff's Motion to Clarify the Scope of the Remand over two years ago. (*See* Docket Nos. 103, 86.) However, Plaintiff persistently 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*.) 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 v. Hogen*, 613 F.3d 190, 196–97 (D.C. Cir. 2010).) (Emphasis added.) The basis for the D.C. Circuit Court's remand was not just that the Department did not consider the 2006 Beckham Report, but specifically because the Department had refused to consider the Report when the matter *was not yet closed*. The 2006 Beckham Report had been available before the Department issued its decision.

As a result of not considering all the materials available before the Department when it made its previous decision, the D.C. Circuit Court held that the Department's decision was not "the product of reasoned decision making." (*Butte County v. Hogen*, *supra* at 195.) Neither this

Court nor the D.C. Circuit Court provided a limitation to the remand of the materials, and 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 12/22/2010 Remand Order, 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 "Memorandum of Points and Authorities in Support of Motion to Remand" 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. Department of Interior Granted Plaintiff Sufficient Time to Respond to Mechoopda's Updated Report and Plaintiff Waived its Right to Complain Here After it Failed to Timely Appeal

Plaintiff decries the limited time for replying to the Mechoopda submission of its June 28, 2011 Supplemental Report; however, if Plaintiff had taken advantage of the extension date of August 31, 2011, which the Interior Department extended it, the County would have had approximately sixty-five (65) days to challenge Mechoopda's expert findings. In hindsight, it is not clear how long Plaintiff believed would have been 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.) This point is further underscored by a letter Mechoopda Chairman Ramirez sent to the Department and Plaintiff back in August of 2011 pointing out that since Plaintiff refused to submit new materials within its twenty-day extension, it had waived its right to respond. (*See* AR NEW 0004267.)

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.

Moreover, Interior was under no obligation to grant Plaintiff an opportunity for rebuttal in the first place. As the United States points out in its "Opposition to Plaintiff's Motion for Summary Judgment and Cross Motion for Summary Judgment," (Docket No. 118 at 16–20) the APA does not give participants a right to rebuttal in informal adjudications. (*See Bean Dredging, LLC v. United States,* 773 F. Supp. 2d 63, 76 (D.D.C. 2011).) Neither the D.C. Circuit Court's, nor this Court's remand order, or the Secretary of the Interior's regulations required specific

procedures during the Interior's informal adjudication in deciding whether to take land into trust for Mechoopda. Although the Department extended a twenty-day period with which to respond to Mechoopda's Tiley Report, it was not required to do so. The Department then properly closed the record after the County's deadline passed because the County had no right to rebuttal.

B. Mechoopda Properly Complied with the Remand Process

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 sought a direction to 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 resubmit "any and all new information" it wished to be considered. (AR NEW 0004045 at 1.) 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. 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*. Butte County has not challenged (and has apparently conceded) the Department's extensive analysis in its decision regarding the application of the Indian Reorganization Act to Mechoopda, the so-called "*Carcieri* Analysis." The Department's conclusion that Mechoopda was "under Federal

jurisdiction" in 1934 establishes its unbroken tribal continuity from 1934 (and earlier) to the present.

Far from Plaintiff's exaggerated claim that Mechoopda launched a "sneak attack" by filing Dr. Tiley's Report, what Mechoopda in fact did was accept the same invitation the Department gave to Butte County to submit "any and all new information" that it wished the Department to consider on remand.

Although Mechoopda initially asked that the record on remand be limited, the Tribe accepted this Court's Order and Interior's determination to issue a new trust decision. Now, after both the Tribe and the Plaintiff had the opportunity to present their evidence and the land into trust process has been repeated, Mechoopda opposes Plaintiff's motion for summary judgment.

The fact that Mechoopda did not specifically list the preparation of Dr. Tiley's Report in its May 27, 2011 deadline extension request to the Department of Interior (*See* 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.*)

Plaintiff acknowledges that it was listed as a recipient of Tribe's email requesting a deadline extension, so it had actual and constructive notice of the Tribe's request before the Tribe's request was granted by the Department. (Docket No. 120 at 2.) Even if, as Plaintiff contends, it did not find out about the extension request until it was already granted, this is not a

sufficient argument for excusing Plaintiff's lack of objection. Indeed, as Plaintiff's unsolicited 2014 Beckham Report has shown, Plaintiff has no objection to protesting decisions after the fact.

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). Plaintiff's pleadings in this current proceeding conveniently ignore that fact. On May 12, 2011 Plaintiff did not simply submit Beckham's Curriculum Vitae as its brief misleadingly suggests (Docket No. 121 at 15). Instead, Plaintiff incorporated or otherwise included the 2006 Beckham Report, 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.) 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. For example, Plaintiff claimed that in order to receive its short extension during the remand process, Mechoopda told the Department that the Tribe "had *never* before received the County materials" and that the Tribe's statements were "knowingly false." (Docket No. 121 at 15) (Emphasis added). However, as the Plaintiff noted on the same page of its memorandum, what Mechoopda had actually written was, "Now that we have received and reviewed the Butte County submission, we are in the process of preparing a response …" (AR NEW 0004109). As noted above, Plaintiff's new submission included documents that Mechoopda had not previously seen. Furthermore, Mechoopda had had no reason to expand its resources toward a rebuttal of the 2006 Beckham Report before the remand process.

Plaintiff also represented 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.

Plaintiff's outlandish claim that Mechoopda misled the Department is belied by the fact that the Department did not contemporaneously in 2011 and has not since objected to Mechoopda's submission as somehow being outside the scope of the remand process. In fact, on July 12, 2011 the Department's Deputy Solicitor, Kunesh stated "Thank you very much for the submissions that both Butte County and the Tribe provided in response." (AR NEW 0004248.) Moreover, the Department reasonably considered the analysis from Dr. Tiley's Report as part of its record review in its January 24, 2014 final decision, along with Mechoopda's prior submissions and the Department's own independent research.

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 Dr. Tiley's Report. Mechoopda's June 28, 2011 submission expressly

states, "The Tiley Report reinforces the previously reviewed export opinions of Craig Bates and Brian Bibby." (AR 0004110 at 4). Mechoopda simply supplemented these submissions with Dr. Tiley's Report, notwithstanding Plaintiffs mischaracterization of Dr. Tiley's Report as a "Replacement Report." (AR 0004110, AR 0004130.). The Department of Interior was not confused on this point.

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

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 overturning with a summary judgment or vacating the decision. 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 also 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 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, "[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. **Interior's Determination that Mechoopda Demonstrated a Significant Historical Connection to the Land Should Be Given *Auer* Deference**

Despite the fact that the Department of the Interior did not find the 2006 Beckham Report more credible than the evidence supported its own research and the research of Mechoopda's experts does not mean that the Department acted in an arbitrary and capricious manner.

The Interior's decision to accept land into trust for Mechoopda represents an informal agency adjudication pursuant to the Interior's authority under the Indian Gaming Regulatory Act's (IGRA) "restored lands exception" at 25 U.S.C. § 2719(b)(1)(B)(iii), Section 5 of the

Indian Reorganization Act, and its own implementing regulations at 25 C.F.R. Parts 151 and 292. Because the point of contention here is in regard to the Interior's interpretation of its implementing own regulation, the Interior's interpretation should be reviewed following to the two-step *Auer* framework. (*See Auer v. Robbins*, 519 U.S. 452 (1997).) Under *Auer*, the Secretary of Interior's interpretation is "controlling unless plainly erroneous or inconsistent with the regulation." (*Id.* at 461.) As the U.S. Supreme Court pointed out in that case, *Auer* deference follows the two-step *Chevron* framework. (*Id.* at 457.) (*See also Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837 (1984); *Util. Air Regulatory Grp. v. EPA*, 134 S.Ct. 2427, 2439, 189 L.Ed.2d 372 (2014).)

Under the first step, the court must see whether Congress has spoken directly to the precise question at issue within the language of the statute. (*Natural Res. Def. Council v. EPA*, 643 F.3d 311, 322 (D.C. Cir. 2011).) If the statute is clear, then there ends the *Chevron* analysis and the court "must give effect to the unambiguously expressed intent of Congress." (*Chevron*, 467 U.S. at 842-43.) However, if the statute is "silent or ambiguous with respect to the specific issue," then the court "must determine whether the agency's response to the question at issue is reasonable and based on a permissible construction of the statute. (*Chevron*, 467 U.S. at 843.) If the agency's interpretation is reasonable, then the court must defer to the agency's interpretation. (*Am. Library Ass'n v. FCC*, 406 F.3d 689, 699 (D.C. Cir. 2005).)

Additionally, "when interpreting an ambiguous statutory provision involving Indian affairs, 'the governing canon of construction requires that statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.' *Confederated Tribes of Grand Ronde Community of Oregon v. Jewell*, --- F.Supp.3d ---- (2014 WL 7012707 (D.

D.C.)) (Quoting *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1266 n.7 (D.C. Cir. 2008)).

In this case, the Department regulations at 25 C.F.R. Part 292, specifically Sections 292.7 through 292.12 address IGRA's restored lands exception and require two conditions be met: 1) the Tribe is a restored tribe, and 2) whether the newly required lands meet the requirements listed in Section 292.11. Plaintiff objects to the Department's acceptance that Mechoopda has demonstrated a historical connection to the gaming site. (Docket No. 121 at 30.) Following the first step of the *Chevron* process, we would look to the language for the restored lands exception under IGRA at 25 U.S.C. § 2719(b)(1)(B)(iii), which states that IGRA's bar to off-reservation Indian gaming will not apply to "lands taken into trust as a part of the restoration of lands for an Indian tribe that is restored to Federal recognition." Congress provides no other guidance and has left it up to the Secretary of the Interior to promulgate regulations interpreting this provision. Indeed, the factor requiring the Tribe to prove a historical connection to the land is not a Congressional requirement. Rather it is a regulatory requirement that the Department of the Interior created in its interpretation of the statute. As a result of the fact that Congress left out what it means when a tribe's lands are put into trust as a part of the restoration of lands of the restoration of a tribe, the language of the statute is ambiguous and thus the court can move onto the next step in the *Chevron* deference analysis.

Under step two of the Chevron deference analysis, a court considers whether the Department's interpretation is reasonable. In our case, the Plaintiff has expressly acknowledged that Mechoopda is a restored Tribe. (Docket 121 at 2.) Plaintiff has also only taken issue with the very specific point of whether or not Mechoopda has demonstrated a significant historical connection to the land under 25 C.F.R. Part 292(b). Significantly, under the *Chevron* deference

analysis, the agency's interpretation does not have to be "the only possible interpretation, nor even the interpretation deemed most reasonable by the courts." (*Entergy Corp. v. Riverkeeper, Inc*., 556 U.S. 208, 218 (2009).) Rather, the court's review is "principally concerned with ensuring that [the Agency] 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, that the Agency's decision was based on a consideration of the relevant factors, 'and that the Agency has made no clear error of judgment.'" *Bluewater Network v. EPA*, 370 F.3d 1, 11 (D.C. Cir. 2004) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). However, because this case involves the Secretary's interpretation of its own regulations, the Secretary's interpretation not only has to be reasonable, it is given deference "unless plainly erroneous or inconsistent with the regulation." (*Auer* 519 U.S. at 461.)

As quoted extensively in Section C(i) of this Memorandum, above, the Department of the Interior carefully reviewed and rejected the County's materials and relied on its own research as well as evidence provided by the Tribe to find that the Mechoopda Tribe was not a creation of the Bidwells (AR NEW 0005384 at 20) and that its early history showed it to be a part of the Northwest Maidu (*Id.* at 21.) Regardless of whether Plaintiff believes its evidence and its expert to be more valuable, that does not detract from the fact that the Department of Interior may use its own significant expertise to draw a different, although entirely reasonable conclusion in finding that Mechoopda demonstrated a significant historical connection to the Chico parcel for the purposes of IGRA and the Department's own implementing regulations. Thus, the Department meets the bar for receiving *Chevron* deference, even though it was only required to meet the not "plainly erroneous" or "inconsistent" bars set by *Auer* deference.

Furthermore, drawing the conclusion that Mechoopda has a significant historical connection to the Chico Parcel is supported by the Indian canon of construction directing courts to construe ambiguous statutes in favor of tribes in matters of Indian affairs. (*Cal. Valley Miwok Tribe v. U.S., supra*.)

iii. **Plaintiff's Reliance on the 2014 Beckham Report is Not a Part of the Record and the Evidence Plaintiff Provides from that Report Should Be Disregarded Here**

Plaintiff's most recent filings are peppered with references to the so-called evidence presented by the 2014 Beckham Report, which is not properly before this Court. (*See, e.g.*, Docket No. 121 at 18–21.) Section C(2) of Plaintiff's Memorandum in Opposition to Defendant's Cross-Motion for Summary Judgment and Reply in Support of Plaintiff's Motion for Summary Judgment is particularly egregious on this point. (*Id.*) As the 2014 Beckham Report was submitted well after the Department issued its January 2014 decision and not a part of the Administrative record for the land into trust decision, this section should be dismissed by the Court.

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

Although Plaintiff agrees that Mechoopda is a Federally recognized Indian Tribe, Butte County repeatedly attempts to make the legally unsupportable argument that the current Tribe bears no connection to the parties to the unratified treaty with the United States executed in 1851. (Docket No. 121 at 2.) 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.

Plaintiff's recent motion mischaracterizes Mechoopda's argument here as one that requires some sort of automatic approval for its land into trust application. On the contrary, the land into trust application is rigorous and includes multiple tests that must be supported by evidence. Rather, the Tribe's argument points out that Congress prohibited the Department from diminishing tribes by classifying them as "created" and distinguishing them from their historical

origins. As a result, the 2006 Beckham Report's evidence making these distinctions must be disregarded by the Interior during the decision-making process. However, that does not by any means make the system automatic. As the January 2014 Decision illustrates, the Department considered a great deal of other evidence, as well.

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

Plaintiff's most recent memorandum is simply another example of its 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. Additionally, Butte County has stretched the litigation over the trust process, switched back and forth on its arguments, and created an environment of uncertainty for Mechoopda and its potential for 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 and the Tribe has no other land in trust.

III. CONCLUSION

Plaintiff's Motion for Summary Judgment 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."

By the same evidence, Defendants' and Intervenor Mechoopda Indian Tribe's Cross Motions for Summary Judgment should be granted by this Court.