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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TSI AKIM MAIDU OF TAYLORSVILLE RANCHERIA,

Plaintiff,

v.

United States Department of the Interior, **DEBRA HAALAND**,[1] in her official capacity as Secretary of the Interior; **BRYAN NEWLAND** in his official capacity as Acting Assistant Secretary – Indian Affairs of the United States Department of the Interior,

Defendants.

Case No.: 2:17-cv-01156-TLN-CKD

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE AND EQUITABLE RELIEF

[1] "The officer's successor is automatically substituted as a party." Federal Rules of Civil Procedure 25(d). The current Secretary of the Interior and Assistant Secretary – Indian Affairs are substituted here.

For its complaint TSI AKIM MAIDU OF TAYLORSVILLE RANCHERIA ("Plaintiff") by and through its attorney John M. Peebles, aver the following:

INTRODUCTION

1. The thrust of this complaint challenges conclusions and determinations reached by Defendants' interpretation of the California Rancheria Act, P.L. 85-671, 72 Stat. 619, amended by the Act of Aug. 1, 1964, P.L. 88-419, 78 Stat. 390 and the applicability of Defendants' regulations related to federal acknowledgement, in the Defendants' Decision of May 28, 2020 and the Defendants' Decision of June 9, 2015.
2. Plaintiff avers that the Defendants' Decisions of May 28, 2020 ("2020 Decision") and June 9, 2015 ("2015 Decision") violate the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq.
3. This Court is directed by the Administrative Procedure Act to "decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U.S.C. § 706. Final agency action is additionally reviewable under 5 U.S.C. §§ 702 and 704 (for final agency action for which there is no other adequate remedy).
4. In the Letter Decision of May 28, 2020, Defendants modify, republish, and incorporate, by reference, or otherwise, Defendants' conclusions and determinations in Defendants' 2015 Decision without explanation or reasoning. Defendants refer to this Letter as a "retraction". Plaintiff refers to this Letter as the "2020 Decision," and as an agency action reviewable by this Court, for reasons articulated below, that is either final agency action subject to judicial review or is ineffective and without effect on the 2015 Decision. The 2020 Decision purportedly withdraws only certain, arguably ill-defined, portions of the 2015 Decision in which Defendants determine, as it seems to conclude, whether Plaintiff is eligible to petition for federal acknowledgment, under 25 C.F.R. Part 83 (2015) and directs the Plaintiff to petition under Part 83 and meet its criteria for acknowledgment as a federal Indian tribe, including for eligibility to even petition to conduct government-to-government relations.

5. Plaintiff continues to challenge Defendants' June 9, 2015, determination that the sale of the Taylorsville Rancheria in 1966 terminated its status as a federally recognized Indian Tribe pursuant to "Congressional mandate" and Plaintiff is not time barred from challenging that interpretation of the Rancheria Act (Doc. 41) and not whether the Plaintiff is eligible and is required to for Federal Acknowledgment process under 25 C.F.R. Part 83. At the heart of the determination of Plaintiff's eligibility for and requirement to seek government relations under Part 83 federal acknowledgment is whether the California Rancheria Act mandates termination of Plaintiff in accordance with Defendants' interpretation of the statute. In its 2015 Decision the Agency interpretation of the Rancheria Act and the interpretative interplay with the Part 83 process is arbitrary and capricious, and therefore violates the Administrative Procedure Act.
6. Plaintiff challenges the primary conclusion of the June 9, 2015 letter that Congress mandated termination under Rancheria Act, Section 5(d).
7. Had Defendant not selectively cherry-picked the administrative records and also considered and analyzed other, available, interpretations of the California Rancheria Act, Defendants would have understood that (1) the Plaintiff was indeed not terminated by congressional mandate, (2) the Plaintiff need not petition under 25 C.F.R. Part 83, and (3) government-to-government relations with the Tribe required immediate restoration.
8. Defendants fail to adhere to a well-established principle and mandate under modern administrative law that requires the Agency to provide a reasoned decision or reasoned basis for the 2020 Decision including its withdrawal of portion of the 2015 Decision. Defendants violate the Administrative Procedure Act by failing to provide a reasoned explanation—in the case of the 2020 Decision, any explanation--for its action, including the failure to display awareness that Defendants were changing position of law or policy.
9. Both the 2015 Decision and the 2020 Decision constitute informal rule-making under the Administrative Procedure Act 5 U.S.C. § 555 and as defined under §551(5) (process for formulating, amending, or repealing a rule). That rule-making is subject to review under 5 U.S.C. § 706. Both are action that meet the definition of a rule subject to §706 judicial

review under 5 U.S.C. § 551(4). APA further defines "agency action" to include agency rules. 5 U.S.C. §551(13).

10. Defendants' May 28, 2020 Decision impacts rights of the Plaintiff. Direct and appreciable legal consequences flow from the issuance of the 2020 Decision's Order, and therefore such a decision is final agency action subject to judicial review under 5 U.S.C. § 706.
11. Defendants' 2020 Decision incorporates the conclusion that Plaintiff's federal relationship was terminated as a result of Defendants' interpretation of the California Rancheria Act.
12. Defendants' 2020 Decision's incorporation of the 2015 determination that the sale of the Rancheria is a thoroughgoing analysis to the cessation of a federal relationship with the Plaintiff tribe and is a misinterpretation of the California Rancheria Act, thus erroneous and violates the Administrative Procedures Act.
13. Defendants' 2015 Decision's interpretation of the plain language of the California Rancheria Act and 25 C.F.R. Part 83 (2008) violates the Administrative Procedure Act.
14. Defendants' 2020 Decision's interpretation of the plain language of the California Rancheria Act and 25 C.F.R. Part 83 (2015) violates the Administrative Procedure Act.
15. Defendants' 2020 Decision violates the Administrative Procedure Act by failing to provide a reasoned decision in accordance with Supreme Court precedent and modern administrative law practice.
16. Defendants 2020 Decision is a rule and subject to the requirement that a reasoned explanation must be provided. The 2020 Decision withdraws portions of the 2015 Decision without articulating a satisfactory explanation sufficient to justify the Agency change in policy. The sole strand of reasoning may be found in this Court's April 2020 Order finding that the 2015 Decision is subject to §706 review. It appears the Agency offered the Plaintiff, in its May 28, 2020 Decision, a nebulous and illusory Part 83 process to avoid judicial review. However, such *ipse dixit* reasoning is insufficient, especially with no written reasoning, to justify a policy change of this magnitude. Without a reasoned explanation for the 2020 Decision and then sufficiently stating an explanation of what from the 2015 Decision survives is an effort by the Agency to avoid providing genuine

justification that can be scrutinized by a court and interested public on a topic of whether to conduct-relations with an Indian tribe whose circumstances have been negatively impacted by happenstance and history.

17. While Defendants have the authority to correct its mistakes or the power or authority to reconsider, an agency cannot reconsider or modify a final agency action, in this case, the 2015 Decision, while the challenged action was under review by a federal court. To allow Defendants to unilaterally change the 2015 Decision would run afoul of the APA's limits on administrative review and undermine the Court's jurisdiction. Here the 2015 Decision was final and under review by a federal court. In this instance, the 2020 Decision is either a final agency action subject to §706 judicial review or it is ineffective and void. In either case, the Court's jurisdiction over this matter is not divested by the 2020 Decision.

18. Furthermore, Defendants' 2015 and 2020 Decisions violate the Administrative Procedure Act by failing to examine all relevant information in the record and in the Agency's file related to the Plaintiff, Tsi Akim of Taylorsville Rancheria, in possession of the United States or reports produced by provisions in statutes enacted by Congress. The Agency's failure to do so violates the Administrative Procedure Act.

19. Plaintiff knows or believes the Agency is in possession of highly relevant documents in the Agency files that the Agency is required to rely upon and may not skew the record information in its own files which have great pertinence to its determination. While some documents were in the public record, or in agency files, these records were not introduced by the Agency at the time of its 2015 Decision or made publicly available by the Agency or made part of the Administrative Record in prior actions before the federal court. Other documents were acquired through FOIA request to the Agency and were made available from the Agency's own files, even some decades old, and particularly relevant to (1) the Agency's policy and interpretation of the California Rancheria Act, and (2) the termination status of Plaintiff by the agency found in a report mandated by the United States to be partially conducted by the agency indicating the Plaintiff was not terminated and also interpreting the California Rancheria Act.

20. Defendants are obligated to review all documents pertinent to its determination and may not selectively and fail to consider evidence on the issues is arbitrary and capricious and must be set aside under §706.

21. Because Defendants failed to review records relevant and pertinent to the matter in its 2015 Decision, Plaintiff believes Defendants fell short of the requirements of the Administrative Procedure Act to provide a reasoned decision especially when that evidence is in the Agency's files, in the public record, and even reported to the U.S. Congress by statute and certainly cannot do so when that evidence contradicts the Agency's position that the Tribe must make application for federal acknowledgment through 25 C.F.R. Part 83. The Agency offers no articulable satisfactory explanation why it ignored or dismissed this evidence as not relative to either its 2015 Decision or its 2020 Decision. Plaintiff files here its Second Amended Complaint before, this Court and this complaint supersedes the original complaint and renders it without legal effect *See Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th Cir. 2012) including Defendants administrative record offered by the Defendant's in the 2015 Decision.

22. Furthermore, Defendant's failure to provide any reasoning in its 2020 Decision too violates the Administrative Procedure Act because the Agency has an obligation to publish a statement of reasons. In short, Defendants failed to articulate a satisfactory explanation that are sufficient to permit judicial review and even under an arbitrary and capricious standard the Agency's actions cannot be upheld when the inadequacy of explanation frustrates review by this Court. Even if the Defendants 2020 decision is a mere "retraction" because it is not final agency action, is also violated the APA because it fails to articulate either an administrative remedy for appeal or fails to articulate explanation for its change in Agency position.

23. It is a fundamental requirement of administrative law that an agency set forth its reasons for a decision and conclusory statements by themselves are insufficient a statement and must include reasoning.

24. Plaintiff challenges Defendants' 2015 Decision, alone, separately, or incorporated into the 2020 Decision, or the 2020 Decision alone, as violating the Administrative Procedure Act because Defendants' 2015 Decision violates the plain language of the California Rancheria Act including Defendants' conclusions that Section 5(d): (1) is a mandatory trigger to cease federal relations when land is sold under 5(d); and (2) Section 5(d), by its operation of law, did not mandate compliance with other Sections of the California Rancheria Act including Sections 2, 3, and 10. A plain reading of the Act could not reasonably conclude that Section 5(d) of the Act alone terminated or ceased government-to-government relations with an Indian tribe.

25. In other words, Defendant's interpretation of the California Rancheria Act violates the administrative procedure Act because that violation unreasonably concludes that the Agency can apply regulations found at 25 C.F.R. Part 83.

26. Plaintiff seeks declaratory and injunctive relief from this Court interpreting the California Rancheria Act pursuant to 5 U.S.C. §706 ("the reviewing court shall decide all relevant questions of law, interpret … statutory provisions, and determine the meaning or applicability of the terms of an agency action"). Plaintiff seeks a declaration that the California Rancheria Act prohibits the termination of a federal relationship with an Indian tribe, admittedly recognized prior to the enactment of the Rancheria Act, if lands unassociated with a tribe were determined under the Act, as "not occupied" and were sold by the United States.

27. Plaintiff seeks declaratory and injunctive relief in this Court finding that Defendants' 2020 Decision or 2015 Decision specifically violated the Administrative Procedure Act ("APA") under 5 U.S.C. § 706(2)(A) including that Defendants violated the plain meaning of the California Rancheria Act and in doing so Defendants' actions are arbitrary and capricious, and not in accordance with law. In addition, Plaintiffs seek declaratory and injunctive relief that Defendants' actions interpreting statutes and regulations were in excess of Defendants' statutory jurisdiction, authority and therefore in violation of the APA. Moreover, Plaintiffs seek declaratory and injunctive relief that because Defendants, "without observance of

procedure required by law" in interpreting and implementing the California Rancheria Act in its 2020 Decision or 2015 Decision Defendants actions were in violation of the APA.

28. Plaintiff seeks declaratory and injunctive relief by the Court. Plaintiff seeks an Order directing Defendants to correct their administrative mistake(s) in determining that the Plaintiff's government-to-government relation was terminated due to an erroneous interpretation of the California Rancheria Act.

29. Plaintiff urges the Court that remand is unnecessary in this matter because under §706 the Court has the authority to interpret the California Rancheria Act, and provide equitable remedy because the agency has unduly delayed or withheld its relations with the Plaintiff because of its erroneous interpretation and application. Plaintiff seeks remedy under 5 U.S.C. § 704 as well because the Agency itself knew that the Tribe *itself* was never terminated in accordance with the California Rancheria Act. Therefore, the Tribe seeks declaratory and injunctive relief ordering the United States to resume government-to-government relations with Plaintiff.

JURISDICTION AND VENUE

30. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), and 1362 (Indian tribe as plaintiff).

31. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and under 28 U.S.C. § 1362 because this is a civil action arising under the Constitution and laws of the United States, including but not necessarily limited to the following provisions: U.S. Const. Art. I, § 8, cl. 3 (Indian commerce clause); U.S. Const. Art. IV, §3, cl, 2 (property clause); U.S. Const. Amend. V (due process clause); the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* and § 701 *et seq.*; 25 U.S.C. §2.8; 28 U.S.C. §§ 2201 and 2202 (declaratory judgments); the All Writs Act, 28 U.S.C. § 1651; 43 U.S.C. § 1451 *et seq.* (establishment and responsibilities of the Department of the Interior); the California Rancheria Act, 85-671, 72 Stat. 619 (1958) as amended, P.L. 88-419 8 Stat. 390 (1964); and the Federal common law.

32. Moreover, actions and decisions of Department of the Interior Officials provide judicial review jurisdiction over requested relief available under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 and 25 C.F.R. Part 2 including 25 C.F.R. 2.6(c).

33. Defendants have consented to suit and Defendant's actions are reviewable and a remedy is available under the various provisions of the Administrative Procedure Act, including 5 U.S.C. § 702 (providing for judicial review of agency action under the Administrative Procedure Act); 5 U.S.C. §704 (providing remedy for final agency action when no other remedy is available; 5 U.S.C. §705, and 5 U.S.C.§706(1) (compel agency action unlawfully withheld or unreasonably delayed), §706(2)(A), §706(2)(B), §706(2)(C), § 706(2)(D), and in doing so this Court "shall decide all relevant question of law, interpret constitutional and statutory provisions and determine the meaning of applicability of the terms of an agency action." 5 U.S.C. § 706.

34. Declaratory relief is authorized pursuant to Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

35. This Court also has jurisdiction pursuant to 28 U.S.C. §1337 in that the action arises out of Acts of Congress regulating commerce with Indian tribes, pursuant to Article 1, §8, cl. 3 of the United States Constitution.

36. This Court has jurisdiction pursuant to 28 U.S.C. § 1361, in that this is a civil action in the nature of mandamus seeking to compel an officer or employee of the United States or an agency thereof to perform a duty owed to the Plaintiff, which duty arises under the Constitution and laws of the United States, including but not necessarily limited to the provisions previously described. This Court has jurisdiction pursuant to 28 U.S.C. §1361 (mandamus against federal official in that plaintiffs seek to compel officers and employees of the United States and its agencies to perform duties owed to plaintiffs and took action that led to a tribal entity, group and government to suffer a legal wrong and be adversely affected.

37. 28 U.S.C. §1561 provides the Court additional authority to provide remedy as appropriate and necessary.

VENUE

38. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. §§ 1391(b)(2) and (3) because the Plaintiff Indian tribe is located and a substantial part of the events or omissions giving rise to the claims at issue in this Complaint arose in this District, a substantial part of the property that is the ancillary subject of this action is situated in this District.

PARTIES

39. Plaintiff is a Native American Tribe consisting of Indian citizens, descendants, and are Indian successors in interests. Historical relations with the Tribe and the United States dates at least to 1852. On and around June 12, 1935, Tribal citizens voted to accept the Indian Reorganization Act of 1934. The Tribe appears in Theodore Haas, "Ten Years of Government under the I.R.A," United States Indian Service (January 1947-10M) (noting tribes the United States conducts relations with); *see also* Advisory Council on California Indian Policy, Final Reports and Recommendations to the Congress of the United States, Pursuant to Public Law 102-416 at page 256 (Sept. 1997) (acknowledging the Tribe as conducting government to government relations with the United States). Plaintiff Tribe is governed in accordance with the Tsi Akim Maidu of Taylorville Rancheria constitution by a board, holds cultural, ceremonial events, protects cultural resources, and provides various services to its citizens, and operates day-to-day in a manner not atypical of tribes throughout the United States.

40. Defendant the United States Department of the Interior ("the Department") is an administrative agency of the United States. The Department is headquartered at 1849 C Street, N.W., Washington DC 20240. The Department of the Interior is delegated authority by the United States Congress to carry-out certain delegated constitutional and plenary

authority and responsibility that Congress holds in the field of Indian Affairs and implement congressional directives and programming including the California Rancheria Act, P.L. 85-671 (1958), 72 Stat. 619, as amended, P.L. 88-419, 78 Stat. 390.

41. Defendant Debra Haaland is the Secretary of the Interior ("Secretary") and is sued here in her official capacity. Secretary Haaland took office on or around March 18, 2021. As the context may require, all references herein to the Secretary prior to March 18, 2021 refer to Secretary Haaland's predecessors in office, in their official capacities.

42. Defendant Bryan Newland is the Assistant Secretary – Indian Affairs ("Assistant Secretary") and is sued here in his official capacity. The Assistant Secretary took office on or around September 8, 2021. As the context may require, all references herein to the Assistant Secretary prior to September 8, 2021 refer to Assistant Secretary Newland's predecessors in office, in their official capacities. The Assistant Secretary is responsible for overall management of the Bureau of Indian Affairs ("BIA") and, along with the BIA, is delegated authority from the Secretary to conduct government-to-government relationships with a recognized government of a federally recognized Indian tribe.

RELEVANT LEGAL FRAMEWORK AND FACTUAL ALLEGATIONS

43. "Rancherias are numerous small Indian reservations or communities in California, the lands for which were purchased by the Government (with Congressional authorization) for Indian use from time to time in the early years of [the twentieth] century—a program triggered by an inquiry (in 1905–06) into the landless, homeless or penurious state of many California Indians." *Williams v. Gover*, 490 F.3d 785, 787 (9th Cir. 2007) *quoting Duncan v. United States*, 667 F.2d 36, 38 (9th Cir. 1981) [alteration in original internal quotation marks omitted].

44. In 2015, Defendants indicate that as a result of a Secretarial Order, Letter from E. B. Meritt, Assistant Commissioner, to Secretary of the Interior, with approval by F. M.

Goodwin, Assistant Secretary (June 1, 1923) land was purchased at what would become known as the Taylorville Rancheria for "homeless Indians of California." However, land purchased for homeless Indians were not intended as lands for tribes as political entities—those governments which the United States conducted government-to-government relations.

45. As Defendants admit, *see id.*, one of those Rancherias was purchased by the United States in Taylorsville, CA. That land was held in trust for the benefit of homeless, or generally, all Indians in California including individuals who were also citizen members of a band of Maidu Indians who occupied lands in an around the Indian Valley, CA near Taylorsville, which came to be known as the Tribe called, the Tsi Akim Maidu Indian of the Taylorsville Rancheria, a.k.a. the Plaintiff in this matter.

46. Historically, anthropologists and others identify Plaintiff as a known band of Maidu Indians located in and around the Indian Valley and other areas around what is now Taylorsville and Greenville, CA. The Plaintiff Tribe's relationship with the United States is traceable prior to 1934 and is demonstrated in the recorded vote to accept the Indian Reorganization Act of 1934 on or about June 12, 1935. Further, the Tribe appears in Theodore Haas, Ten Years of Government under the I.R.A, United States Indian Service, (January 1947-10M) as an Indian tribe of California.

47. In and around 1992, the U.S. Congress enacted Public Law 102-416. This law created the Advisory Council on California Indian Policy ("ACCIP"). In September 1997, ACCIP produced roughly a 900-page report including a full chapter report on the Congress' termination policy in California and implementation and interpretation of the California Rancheria Act. ACCIP acknowledged the Tribe as conducting government to government relations with the United States.

48. The 1997, ACCIP concluded, "Several unoccupied Rancherias were sold following the 1964 Amendments [to the California Rancheria Act]: [listing four others]… and Taylorsville. These sales did not affect the status of any tribe." Final Reports and

Recommendations to the Congress of the United States, Pursuant to 102-416 at page 256 (Sept. 1997).

49. In fact, ACCIP determined that the Tribe was not terminated by the United States. *See* ACCIP, Final Reports and Recommendations to the Congress of the United States, Pursuant to Public Law 102-416 at page 256.

50. The Department of the Interior and Bureau of Indian Affairs officials participated in the ACCIP.

51. Neither Defendants' 2015 Decision or its 2020 Decision refer to, review, analyze, or provide reasoning as to the conclusions of the ACCIP's finding or interpretation of the 1964 amendments that conclude that Plaintiff's status was unaffected by the sale of the Taylorsville Rancheria.

52. By the early 1950s, with the urging of the State of California, Congress indicated that the program providing lands for use by individual Indians in California has now served its purpose and chose, using its constitutional and plenary authority over Indian Affairs, to take steps to withdraw the program and the guardianship of the Indians and tribes under it.

53. Following the enactment of the California Rancheria Act, P.L. 85-671, substantial correspondence related to Indian Valley California which includes the location of the Taylorsville Rancheria discussed tribal groups including Plaintiff.

54. On August 18, 1958, Congress enacted the California Rancheria Act, P.L. 85-671, 72 Stat. 619 (1958), and that Act was subsequently amended by the Act of Aug. 1, 1964, P.L. 88-419, 78 Stat. 390 (1964) (the "CRA" or "the Act").

55. Section 1 of the California Rancheria Act provides that the assets of 41 (forty-one) named rancherias "shall be distributed in accordance with the provisions of this Act."

56. California Rancheria Act, Section 2(a) required that either the Indians of each Rancheria or the Secretary of the United States Department of the Interior, after consultation with the Indians, prepare a distribution plan for each Rancheria.

57. In instances where, purportedly acting under the authority of §2 of the Rancheria Act, the Secretary of the Interior gave final approval to distribution plans for each of the subject Rancherias.

58. California Rancheria Act, Section 3, required the Secretary to undertake certain other actions with respect to each Rancheria prior to distributing the land pursuant to the distribution.

59. The California Rancheria Act, directed that once the Secretary complied with all directives and procedures under the statutory scheme, the United States would cease federal relations with individual Indians and acknowledged Indian tribes and their governments.

60. In 1964, Congress amended the California Rancheria Act. 78 Stat. 390, 391 (1964).

61. The effect of the 1964 amendments was to substitute the phrase "sanitation facilities" for the phrase "irrigation or domestic water systems," thereby expanding the services required by the Act to include drainage facilities, sewage and waste-disposal facilities and shifting the authority for negotiations and implementation to the Secretary of Health, Education and Welfare. See Rancheria Act Section 3 (1964) (as amended).

62. Defendants intertwine Plaintiff into the Part 83 process as a result of an understanding that the Plaintiff sought to petition for federal recognition through the Part 83 process, rather than understanding that Plaintiff was seeking clarification of the status of government-to-government relations This misunderstanding is illustrated in 1998 when Plaintiff wrote Defendants stating,

> *The T'si-akim Maidu tribe is writing to express its intentions to petition for status clarification.*
>
> *At the meeting of the tribal council on September 29, 1998, the undersigned voted to pursue recognition by the United States of America.*
>
> Letter from Plaintiff to Defendant, Sept 29, 1998.

63. Defendants read Plaintiff's 1998 Letter and determined that the submission was "letter of intent to petition for acknowledgment as an Indian tribe under the 25 C.F.R. Part 83

process and became Petitioner #202." 2015 Decision at 1. The intent of the Plaintiff for submission of that Letter is unknown.

64. In and around 2015, Plaintiff later then sought clarification from the Department of the Interior about its status as a federally recognized Indian Tribe to conduct relations with the federal government, prompting a review by the Defendants.

65. After review, Defendants issued final agency action in a letter dated June 9, 2015.

66. The 2015 Decision interprets the California Rancheria Act and 25 C.F.R. Part 83 and issues agency action on the status of the tribe *vis-à-vis* the federal acknowledgment process pursuant to Part 83.

67. The Defendants' 2015 Decision concludes that "Congress terminated the Tsi Akim Maidu". 2015 Decision at 1. The challenge action of 2015 challenges the Agency's interpretation of the plain meaning of the California Rancheria Act and its implementation of the provisions of the Rancheria Act that in fact effectuated termination or more specifically cessation of relations with the United States.

68. Defendants admit in its June 2015 Decision that Tsi Akim Maidu, or a tribe of Indians known the Taylorsville Rancheria, the Plaintiff, was "recognized [as conducting government-to-government relations with the United States] prior to implementation of the California Rancheria Act." 2015 Decision at 1.

69. The California Rancheria Act is the controlling statute at issue in this matter. The Rancheria Act primarily does two things, one, it disposes and alienates lands in California purchased for and held in trust for Indians and, two, it terminated relationships with Indian tribes; in both instances substantial conditional steps were mandated by the Federal Government before the alienation of the land, services could be denied to individual Indians, or termination of the government-to-government with an Indian tribe could be effective.

70. Defendants 2020 Decision states, "We conclude that the question of whether your client [Plaintiff] is eligible to pursue Part 83 acknowledgment should have been assessed by the

Office of Federal Acknowledgment in the first instance, and that Assistant Secretary Washburn came to his negative conclusion prematurely."

71. While May 28, 2020 Decision states "we conclude" there is no reasoned analysis offered why the Assistant Secretary's conclusion was "premature."

72. Defendant's 2020 Decision purportedly "rescind[s] that portion of the 2015 Decision indicating that the Tsi Akim Maidu are ineligible to petition for acknowledgement under Part 83."

73. While the May 28, 2020 Decision states "we conclude" there is no reasoned analysis or explanation offered why the Tribe is eligible for Part 83. Such a conclusion would surely require a new or changing policy interpretation of the California Rancheria Act.

74. Defendants' interpretation in its 2020 Decision is without reasoned decision-making and its legal consequences implicate the interpretation of Plaintiffs eligibility under Part 83.

75. Nothing in the 2015 Decision or the 2020 Decision indicates that Defendants interpret the California Rancheria Act to require that to terminate Plaintiff's status or its federal relationship with the United States it needed only to comply subsection 5(d). More specifically, nothing in the 2015 Decision explains why to terminate, or cease relations with, other tribes, under the Act as amended, Defendants were required to comply fully with Sections 2, 3, and 10 of the Act. In fact, the 2015 Decision offers no reasoned analysis of the Agency's interpretation of the interplay with Section 5(d) of the Act and Sections 2, 3, and 10. For instance, in neither Decision do Defendants provide an explanation of their interpretation of the Act or reasoned decision for such a conclusion about (1) why section 5(d) provides express congressional authorization to terminated tribal status and cease federal relations; nor does the agency (2) explain why other provisions of the Rancheria Act were not complied with, including providing sanitation facilities or development of irrigation and domestic water systems or information related to the role of the Secretary of Health, Education and Welfare to comply with the entire statutory scheme. Therefore, Defendants' "agency action is arbitrary and capricious if it departs from agency precedent without explanation." *Dillman v. Nation Trans. Saf. Admin* (D.C. Cir. 2009).

76. Most significant to this matter, the 1964 Amendments to the Act authorized the Secretary to sell California rancherias that were "not occupied" and deposit the money to the interest of California Indians under a new subsection. *See* Section 5(d).

77. Congress used the legal term of art, "not occupied," rather than "vacant" or "abandoned" to describe where no Indians were found on June 1, 1964 to mandate the sale of certain properties in the Act, Section 5(d).

78. The U.S. House of Representatives Committee Report makes one comment about new subsection 5(d), stating,

> "The present law does not provide for the disposition of a rancheria or reservation that is presently not occupied. At the present time, there are six unoccupied rancherias in the northern part of the State and six unoccupied reservations in the southern part of the State. The substitute bill adds a new section 5(d) to the law to cover this type of case."

U.S. House of Representative, Report 1305, "Amending the Act Entitled 'An Act to Provide for the Distribution of the Land and Assets of Certain Indian Rancherias and Reservations in California and for Other Purposes,'" 88th Congress, April 7, 1964 [House Report 88-2305]. The Senate Report uses similar language. *See* Senate Report 88-1263 (July 29, 1964).

79. The 1964 Amendment to the Act while providing for the disposition of property "not occupied" on June 1, 1964, nothing in congressional hearings or reports indicate that the purpose of the new subsection 5(d) was beyond the plain meaning of the language to merely dispose of property determined not used for its original purpose, which was typically for use by individual California Indians. In this case, as Defendants admit the Taylorsville Rancheria—the real property—was acquired for the use of individual, homeless, California Indians and not tied to the Plaintiff tribe or band of Indians—similar to treaty or other reservation tribes outside California. The title to this land was not connected to Plaintiff's constitutional tribal status as a domestic dependent nation. Nothing in Congress' hearings or reports related to the Rancheria Act indicate that Congress

intended that the new subsection 5(d) allow or mandate the cessation or termination of federal relations with an Indian tribe or the status of the Plaintiff as an Indian tribe entitled to conducting relations with the federal government.

80. Defendants' 2015 Decision admits that the rancheria land was purchased for all Indians of California not Plaintiff Tribe but then leaps, with no citation of authority or reasoning that termination was required by 5(d). The 2015 Decision fails to distinguish the subtle but important legal distinction between terminating a tribe and ceasing to conduct relations.

81. Nothing in subsection 5(d) of the California Rancheria Act, provides for, or for that matter, requires termination, or cessation of federal relations, with an Indian tribe under the conditions set for in Section 5(d) alone. Defendants' 2015 Decision conveniently avoids the thoroughgoing logical connectors to between subsection 5(d) to the entire scheme but also side-steps how 5(d), which directs the sale of the land due to its "not occupied" status, equates to cessation of a federal relationship given that Sections 2, 3, and 10 mandated conditionalities to effectuate cessation of government relations. There is no ambiguity in the plaint text of the statute that would allow the agency to interpret the statutory scheme with such a broad reading and that deference is required.

82. More specifically, the plain language of Section 5(d) provides no ambiguity to read Congress' express intent to cease federal relations when land is sold under Section 5(d). The Tribe does not and did not fall within the Act—only the land did.

83. Defendants' 2015 Decision states that the Plaintiff Tribe was "terminated," by "Congressional Mandate." One might read Defendants' 2015 Decision to presume that Defendant's "terminated" Plaintiff, under the Act, rather than ceased relations government to government with the Plaintiff. More importantly, in this context, the 2015 Decision connects that 5(d) alone did something that Sections 2, 3, and 10 could not: terminate a tribe, Plaintiff, and its relations with the United States as (1) if it previously was not recognized or (2) those previous relations were so insufficient that now, in accordance with the 2020 Decision, the Plaintiff is required to seek Part 83 acknowledgment as Plaintiff had never conducted relations with the United States.

84. On or around January 19, 1979, the Sacramento Area Office, in a survey report of California tribes and review of the Office's compliance with the Rancheria Act indicates that in the case of Taylorsville, the Agency had not complied with Section 3 because "No land left in Indian ownership" and "No residents at time of termination." *See* Memorandum, Director, Sacramento Area Office to Acting Deputy Commissioner, January 19, 1979.

85. On or after August 1, 1965, Plaintiff is unaware of any communication, direct or indirect, or otherwise, or record sent or created by the Defendants that communicate with individual Plaintiff tribal citizens or the tribe in accordance with any provision of the California Rancheria Act including Sections 2, 3, or 10.

86. Plaintiff is unaware of citizen members of the Plaintiff receiving any assets from the sale of the Taylorsville Rancheria. Nor is the Plaintiff aware of any distribution plan created and approved by the Secretary of the Interior in accordance with the California Rancheria Act as a requisite precursor to cessation of federal relations with the Plaintiff.

87. Plaintiff is unaware of any Plaintiff citizen-members that received benefits pursuant to provisions of the Act.

88. Plaintiff is unaware of any direct communications or record, made, created or otherwise, by Defendants with the Plaintiff providing notice the Rancheria would be terminated or federal relationship would cease under the Act.

89. On or before June 1, 1964, Plaintiff is unaware of any effort or record by the Defendants to contact Plaintiff or Plaintiff members when the Defendants determined that the land referred to as the Taylorsville Rancheria as "not occupied."

90. In 1965, Defendants promulgated regulations to implement the California Rancheria as Amended in 1964 with regulation found at 25 C.F.R. § 242 (1965).

91. The regulation at 25 C.F.R. § 242 was struck down in in 1972. *See Kelly v. U.S. Dept. of the Interior*, 339 F. Supp. 1095, 1100-1102 (E.D. Cal. 1972).

92. Defendants never republished or promulgated regulations to implement the California Rancheria Act, as amended, after 1972.

93. In its 2015 Decision, Defendants fail to offer reasoned explanation or articulate an analysis under what circumstances were the regulations at Part 242 were used in making determinations and taking action related to the Plaintiff or their applicability to the Plaintiff given that actions taken by the Defendants occurred prior to 1972 using regulations that were found to be invalid.

94. The United States told the District Court for the Eastern District of California in 2005,

> "With the demise of the government's termination policy, Part 242 was replaced 20 years ago by wholly new and unrelated regulations. Therefore, the 1965 regulations, which were the original termination regulations that pre-dated the termination regulations invalidated in *Kelly v. U.S. Dept. of the Interior*, 339 F. Supp. 1095,1100-1102 (E.D.Cal. 1972)."

Corrected Brief for Appellee United States of America, U.S. District Court of the 9th Circuit, WL 2480819 (2005).

95. Under the authority of Section 2 of the Rancheria Act, the Secretary of the Interior gave final approval to distribution plans for each of the subject Rancherias *vis-à-vis* individual California Indians not tribal government. As approved, the distribution plans called for conveyance of each Rancheria's lands, in severalty, to named distributes who received fee simple patents to the land distributed to individuals.

96. To effectuate the conditions of the Act, the Secretary of the Interior was required to withdraw the trust status of the lands of the subject Rancherias and Plaintiff's rights and status as an Indian Tribe under the laws of the United States by publishing in the Federal Register Termination Proclamations or Termination Notices including those stating, "Notice of Termination of Federal Supervision Over Property and Individual Members Thereof" pursuant to the existing administrative regulation invalidly modified in 1965, at 25 C.F.R. §242.10 (1965) (later entire regulation invalidated as discussed above).

97. The Defendants' 2015 Decision further interprets the California Rancheria Act and its own regulations concluding, "[t]he Department properly sold the Taylorsville Rancheria pursuant to the 1964 amendment to the California Rancheria Act and fully implemented

the provisions of the California Rancheria Act for the Taylorsville Rancheria. The Department's sale of the Rancheria pursuant to Congressional mandate qualifies as Congressional termination of the Federal relationship. Accordingly, Congress has forbidden a Federal relationship with the Tsi Akim Maidu and the Group may not receive recognition by the Department," in accordance with *the previously promulgated* 25 C.F.R. § 83.3(e) (2008) replaced by 25 C.F.R. § 83.11(g) (July 1, 2015).

98. Defendants' interpretation in its 2015 Decision admittedly relies on interpretations of the California Rancheria Act and illegally published regulations and invalidated, 25 C.F.R. §242 (1965) related to the same, to determine whether the Plaintiff's government to government relationship was ceased.

99. Plaintiffs are unaware of any termination notice issued by Defendants to cease government-to-government relations between Plaintiff and Defendants. Neither, the 2015 or 2020 Decision cite or refer to the termination notice, publication in the Federal Registrar, or provide discussion or evidence that Defendants' relations with Plaintiff was terminated, as required by Section 2 of the Act, or explain why a notice to comply with Section 2 never existed but allowed Defendants to conclude that the Plaintiff must seek federal acknowledgment through 25 C.F.R. Part 83.

100. Defendants' implementation of the California Rancheria Act was challenged in a number of actions before federal courts, starting in and around 1972, related to termination of tribal status and federal relationships with tribes and its amendments and whether the federal government complied with all congressional directives on its way to distribute Rancheria resources and ceasing federal relations with tribes. Perhaps the most well-known example of a challenge to the federal government implementation of the California Rancheria Act is *Tillie Hardwick v. United States*, No. C-79-1710-SW (N.D. Calif. Aug. 3, 1983), which led to the restoration of at least seventeen (17) tribes purported subject to distribution plans and terminated federal relationship.

101. In or around June 1975, Defendants internal policy interpretating the Rancheria Act was stated as "if the section 3 improvements and services set forth in the Rancheria are not

adequately made prior to distribution of the assets, that the termination of a particular rancheria and its members was not in accordance with the Rancheria Act and therefore ineffective." Memorandum, Office of the Solicitor, Division of Indian Affairs to Director, Office of Trust Responsibilities, February 18, 1978 (explaining that the policy position taken by the Agency was in existence since June 1975).

102. Defendants 2015 Decision offers no explanation or analysis concerning the applicability of section 3, or why section 3 non-compliance in the case of Plaintiff allowed, mandated or was unnecessary for termination or ceasing of government relations with Plaintiff.

103. In or around 1975, in a memorandum from the Sacramento Area Director to the Commissioner of Indian Affairs, the Area Director interpreting the Rancheria Act noted that the Act "established certain procedures which must be adhered to by the Indians and Federal Government in carrying out termination." The Area Director further stated, "[w]hen section 3 and 10(b) are read in pari materia it becomes clear that only after section 3 services have been completed and the assets there -after distributed can the particular Indian distributes and their dependents who are not members of any other tribe or band of Indians be considered terminated and no longer entitled to Federal services." Moreover, the memorandum continues, "the Bureau of Indian Affairs, with the concurrence of the Associate Solicitor for Indian Affairs, has determined that termination under both the 1958 Act and the 1964 Amendment does not occur until the section 3 improvements have been adequately completed …" Memorandum, From Director Sacramento Area Director to the Commissioner of Indians, June 25, 1975.

104. Plaintiff knows of no change of policy or interpretation of the Rancheria Act by the Department since 1975 nor do the Decisions of 2015 and 2020, in this matter explain the divergence or change from this policy in the Decisions interpretation of the California Rancheria Act, especially vis-à-vis Section 5(d) of the Act.

105. The Decisions of 2015 and 2020 offer no reasoned explanation or reasoned analysis either why the Agency changes policy related to the interpretation of the Act or why after review of the Defendants' dealings with the Plaintiff and long-standing policy interpretation of the

Rancheria Act that Plaintiff was determined to be eligible or ineligible for the Part 83 process because (1) the Plaintiff could not be terminated under the Act or its amendment, (2) the Tribe was not terminated, and (3) therefore government-to-government relations should have been resumed immediately. "An unexplained inconsistency in agency policy is a reason for holding an interpretation to be arbitrary and capricious change from agency practice". *Encino Motorcar v. Navarro, LLC,* 136 S. Ct. 2117, 2125 (2016).

106. In fact, in and around the time of the so-called termination of the Plaintiff, in a list of Tribes terminated in California, the Bureau of Indian Affairs listed Taylorsville as "Taylorsville. Land Sold, deed approved 11-4-66." The listing of "Taylorsville" diverges from other Indian tribes listed in the same category. For instance, the first tribe in the list is listed as, "Alexander Valley. Termination effective 8-1-61." Twenty-eight (28) other tribes on that category list and are listed with the descriptor "Termination effective" accompanied by a date. "Taylorsville" is not listed with the connotation of "Terminated effective" with a date. In fact, one other tribe is listed in a similar manner to the Plaintiff: "Strathmore. Land Sold, deed approved 9-29-67." Of particular interest, as described further below, the congressionally mandated report produced by the Advisory Council on California Indian Policy determined that Strathmore Rancheria was also not terminated as a result land "not occupied" under Section 5(d) of the Rancheria Act.

107. Defendants' 2015 Decision relies on a number of letters, analysis, agency practice, and other agency records dated prior to 1972 and after 1972 as a basis and support of its interpretation of the California Rancheria Act and its conclusions indicating that the sale of the property under the California Rancheria Act §5(d) terminated the status of the Plaintiff Tribe and Plaintiff's government-to-government relationship was ceased. However, Defendants' 2015 Decision fails to explain its reasoning why it can rely and did rely on agency records and conclusions made in records prior to 1972 related to the interpretation of the California Rancheria Act §5(d) when those records relied or appear to rely on regulations, 25 C.F.R. Part 242, that were invalidated in and around 1972, and never promulgated again to remedy deficiency. This proffer of handful of record citations,

supposedly favorable to the Agency's conclusions in the 2015 Decision, is the embodiment of cherry-picked arbitrary and capricious conduct.

108. Defendants rely on prior "government documents" interpreting the Rancheria Act to support the 2015 Decision's conclusion that "[a]fter sale of the Taylorsville Rancheria, government documents indicate that the Federal Government no longer recognized or carried on a government-to-government relationship with the Taylorsville Rancheria." 2015 Decision at 2-3.

109. Neither Defendants' 2015 Decision, or its 2020 Decision, refer or rely upon other historical records, documents, and communications that indicate that the Plaintiff was conducting regular relations with the United States during the Defendants' implementation of the California Rancheria Act on the Greenville Tribe's distribution of lands and termination of federal relations.

110. In response to a Freedom of Information Act, dated November 15, 2004, request by Plaintiff seeking records including those "pertaining to official federal status of termination," Defendants responded in a letter dated January 12, 2005, listing fourteen (14) documents, none of which pertain to the termination of the status of the Tribe or the cessation of federal relations. Furthermore, the letter states, "[w]e can locate no documentation pertaining to the status of termination of the Taylorsville Rancheria…."

111. A mere twenty (20) days after Defendants issue its June 9, 2015 Decision, on June 29, 2015, Defendants published in the federal register, July 1, 2015 final rule to replace 25 C.F.R. Part 83 regulations. *See* 80 *Fed Reg.* 37887, July 1, 2015.

112. Defendants' May 28, 2020 Decision provides no reasoned decision-making as to (1) that the 2015 Decision was based on reading the Act with Part 83 regulations promulgated prior to July 1, 2015, and (2) the effects of the withdrawing only a portion of the 2015 Decision when the application of the July 1, 2015 Part 83 regulations will now apply to any petition under Part 83.

113. Following proceedings in this Court including an Order of April 24, 2020, Defendants issued a new Decision of May 28, 2020.

114. Defendant's offer the May 28, 2020 letter as a *post hoc* rationalization and effort to offer the Plaintiff a pathway to recognition illusory and contrary to both history and facts and inconsistent with a plain reading of the California Rancheria Act.

115. Defendants' 2020 Decision, as it is, culminated in a new agency action, May 28, 2020 concluding the Plaintiff can apply and continue with the Part 83 process directly contradicting the conclusion Defendant's reached in its 2015 Decision.

116. Defendants unequivocally state, "not withdrawing any portion of the 2015 Decision except with regard to the specific conclusion as to Tsi Akim Maidu's eligibility to petition under Part 83. Nor am I expressing any opinion the merits of such petition, nor giving any direction to the Office of Federal Acknowledgment regarding its assessment of such petition."

117. However, Defendants provide no reasoned basis for its decision only stating, "[The Assistant Secretary – Indian Affairs] office and attorneys from the Office of the Solicitor, Division of Indian Affairs have carefully scrutinized the 2015 Decision."

118. Defendants' 2020 Decision states, not withdrawing any portion of the 2015 Decision except with regard to the specific conclusion as to Tsi Akim Maidu's eligibility to petition under Part 83." The 2020 decision further states, expressing any opinion the merits of such petition, nor giving any direction to the Office of Federal Acknowledgment regarding its assessment of such petition. Rather, the sole effect of the partial withdrawal of the 2015 Decision is to allow your client, or any portion of its individual membership thereof, to submit a documented petition under the 2015 amendments to Part 83."

119. Part 83 makes ineligible, automatically, a tribal entity under, Part 83.11(g) (2015), to petition for federal acknowledgment if the entity is "the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship."

120. Defendants 2020 Decision incorporates the determination of the 2015 Decision that "The Department's sale of the Rancheria pursuant to Congressional mandate qualifies as Congressional termination of the Federal relationship."

121. On or about May 28, 2020 the Defendants were aware that its May 28, 2020 Decision, by incorporating its 2015 Decision determining that Plaintiff's federal relationship was terminated, would by operation of law, direct the Office of Federal Acknowledgment to automatically follow the 2020 Decision and 2015 Decisions legal analysis and directives and conclude Plaintiff to be ineligible under Part 83.11(g) (2015).

122. Defendants provide no reasoned explanation or basis for its change in direction.

123. Defendants' culmination of decision-making concludes that portions of the 2015 Decision related to the interpretation of the California Rancheria Act and the termination of federal relations with Plaintiff remain in effect with no reasoned explanation.

COUNT ONE
(VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT, §706(2)(A))

124. Plaintiff incorporates and reasserts by reference all the foregoing allegations of the proceeding paragraphs.

125. Plaintiff has been aggrieved by agency actions under the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq.

126. Defendants issued two decisions challenged in this action, (1) June 9, 2015 and (2) May 28, 2020.

127. The Administrative Procedure Act § 706 (2)(A) provides that a reviewing court shall: "(2) hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

128. Defendants acted arbitrarily, capriciously, and contrary to law in violation of the Administrative Procedure Act.

129. Agency action that is not a product of reasoned decision-making is arbitrary and capricious. *See Motor Vehicle Mfrs. Assoc. of the United States, Inc. v. State Farm Mut. Auto Ins. Co.*¸463 U.S. 29, 43 (1983). An Agency that "entirely fail[s] to consider an important aspect of the problem" before it has acted in an arbitrary and capricious manner; *see also Department of Homeland Security v Regents of the Univ. of Calif.*, No. 18-587, 2020 WL 3271746 at *18 (U.S. June 18, 2020).

130. Both the 2015 Decision and the 2020 Decision are arbitrary and capricious because each "entirely fail[s] to consider … important aspects of the problem" before the Agency.

131. Plaintiffs fail to review or consider records, documents, reports, and interpretations or law and policy in Defendants files and fail to explain the departure from the facts and policy and legal interpretations of the California Rancheria Act held or previously held by the Defendants or by the U.S. Congress.

132. Defendants in its decisions of 2015 and 2020 failed to properly interpret the plain language California Rancheria Act in related to determination of provisions requiring the sale of lands determined to be "not occupied" under subsection 5(d) and the subsequent effect of the sale of lands under 5(d) on tribal status including whether cessation of government relations with the United States was authorized, mandated, or otherwise.

133. Defendants erroneously interpreted the California Rancheria Act to require that the congressionally mandated sale of land under subsection 5(d) also required cessation of federal relations with the Plaintiff Tribe.

134. Defendants' 2020 Decision departs from its from its 2015 Decision without explanation. Defendants' 2020 Decision erroneously interprets the Defendant's own regulations to allow, require or direct Plaintiff, whose status is unaffected under the plain reading of the California Rancheria Act to petition in the 25 C.F.R. Part 83 process.

135. Defendants' 2020 Decision by withdrawing and incorporating portions of the 2015 Decision is a final agency action because legal consequences flow from its 2020 Decision with direct effects on Plaintiff's rights.

136. Indeed, the lack of any reasoning or justification in the 2020 Decision why the Agency partially withdraws the 2015 Decision "reveals a significant mismatch" between the 2015 Decision and "the rationale provided." *Department of Commerce v. New York*, 139 S. Ct. 2551, 2775 (2019) raising the prospect that the invitation to petition to the 25 C.F.R. Part 83 process as a cudgel to deny the Plaintiff recognition because termination is an outcome determinative factor for a positive federal acknowledgment decision.

137. Under the APA, the court may 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).

138. Plaintiff suffered a legal wrong or have been adversely affected or aggrieved by Defendants interpreted the California Rancheria Act and to (1) determine that the Tribe status and federal relationship was terminated in 1966, (2) Defendants' 2015 Decision concluded that Plaintiff was not eligible to petition for federal acknowledgment under 25 C.F.R. Part 83 because the Plaintiff's relations was terminated, (3) Defendants 2020 Decision reverses course without reasoned decision-making to conclude that the Plaintiff may now petition for federal acknowledgment under 25 C.F.R. Part 83, and (4) Defendants, by erroneously interpreting the California Rancheria Act, failed to correct an administrative error and up hold its trust duties and relationship to recognized Indian tribe.

139. Plaintiff suffered a legal wrong or has been adversely affected or aggrieved by Defendants' failure to review, examine, and explain all relevant and materials records, in their possession as well as provide a reasoned decision for its 2015 Decision and its 2020 Decision.

140. Plaintiff has exhausted all administrative remedies available to it as of right.

141. Plaintiff has no other recourse to judicial review other than by this action.

COUNT TWO
(VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, § 706(2)(C) and 706(D) AND FEDERAL COMMON LAW)

142. Plaintiff incorporates into this claim all the foregoing allegations in paragraphs in all preceding paragraphs

143. Plaintiff has been aggrieved by agency actions under the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq.

144. Defendants issued two decisions challenged in this action, (1) June 9, 2015 and (2) May 28, 2020.

145. A court shall find agency action unlawful in accordance with § 706(2)(C) "when an agency's action is excess of statutory jurisdiction, authority, or limitations, or short of statutory right" or when an agency's action, under § 706(2)(d) is "without observance of procedure required by law."

146. It is a sacrosanct principal that the United States owes a trust responsibility to Indians. *See generally Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

147. Plaintiff suffered a legal wrong or has been adversely affected or aggrieved by Defendants' interpretation of the California Rancheria Act to terminate the Plaintiff's status outside the scope of the Defendants' delegated responsibilities and outside congressional intent.

148. A court need not sustain agency interpretation of the Rancheria Act that was based, not on an agency's judgment, but on its erroneous interpretation of the Rancheria Act. Thus, an agency's interpretation is not "instantly carved in stone" because an Agency must consider varying interpretations and wisdom of the policy on a continuing bases" including interpretations of the Rancheria Act that the Agency itself holds as well as those presented to the U.S. Congress. *See Chevron*, 467 U.S. 837, 863-64 (1984). In this context, the interpretation of the plain meaning of the California Rancheria Act is at the heart of the 2015 and 2020 Decisions; in short, the Agency's interpretation of the Act is unreasonable.

149. Plaintiff suffered a legal wrong or has been adversely affected or aggrieved by Defendants because Defendants' incorrect or erroneous interpretation of the California Rancheria Act subsection 5(d) failed to develop and approve a statutorily required distribution plan and failed to observe other procedures embedded in the California Rancheria Act to effectuate termination of federal relations with the Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this honorable Court grant the following relief:

A. Declare that Defendants violated the Administrative Procedure Act in both its June 9, 2015 Decision and May 28, 2020 Decision; and,

B. Provide declaratory and injunctive relief under the laws of the United States, including but not limited to 5 U.S.C. §§ 701-706, 28 U.S.C. 1651, and 28 U.S.C. §§ 2201-2202; and,

C. Pursuant to 5 U.S.C. § 706 "decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of" the California Rancheria Act of 1958 and as amended in 1964 the agency actions taken in 2020 Decision and in the alternative the 2015 Decision; and,

D. Pursuant to 5 U.S.C. § 706(2)(A) declaratory relief that Defendants actions violate the plain meaning of the California Rancheria Act, by finding and declaring that Section 5(d) commands the United States to alienate lands owned by the United States, Section 5(d) is disconnected from provisions ceasing federal relations with Indian tribes, Sections 2, 3, and 10 of the Act were not complied with sufficiently to effectuate cessation of relations with Plaintiff and those sections were inapplicable or inoperable to Plaintiff as the time the land was sold, and declare, and the application of their own regulations was arbitrary and capricious, and not in accordance with law, in violation of the Administrative Procedure Act; and,

E. Pursuant to 5 U.S.C. § 706(2)(C) & (D) declaratory relief that Defendants actions and interpretations of the California Rancheria their own regulations violate is excess of statutory jurisdiction, authority, or limitations, or short of statutory right under the Rancheria Act to terminate Plaintiff's status without congressional authorization" and declare the agency's action, is without observance of procedure required by the California Rancheria Act to carry-out Congress directives to terminate the status of the Plaintiff, not in accordance with the law, in violation of the Administrative Procedure Act; and,

F. Pursuant to 5 U.S.C. § 706(2)(A) declaratory relief that Defendants actions erroneously interpreted the California Rancheria Act and violate the plain meaning of the California Rancheria Act and the application of their own regulations was

arbitrary and capricious and not in accordance with law, in violation of the Administrative Procedure Act because Defendants have failed to conduct relations with the Plaintiff; and,

G. Pursuant to 5 U.S.C. § 706(1), declaratory relief and relief in the nature of mandamus and a mandatory injunction compelling Defendants to, as a result of "unlawfully withheld or unreasonably delayed" action related to correcting its administrative and legal mistakes; and,

H. Vacate the Defendants' 2020 Decision and Defendants' 2015 Decision; and,

I. Find, Declare and Order, in accordance with this Court's authority 5 U.S.C. §704, Defendants to immediately resume the conduct of government-to-government relations with the Plaintiff; and,

J. Find, Declare, Order, in accordance with this Court's authority under "Federally Recognized Indian Tribe List Act of 1994," Public Law 103-454, 108 Stat. 4791, 4792 (1994), direct Defendants to place Plaintiff on the list of federal recognized tribes that are eligible for services from the United States and further direct Defendants to publish the placement of Plaintiff on the list in the Federal Register and in all subsequently published annual lists of the federally recognized tribes in the Federal Register; and,

K. Alternatively, remand and Order Defendants to interpret the California Rancheria Act as prohibiting the termination of a federal relationship with a tribe if lands unassociated with a tribal band and when determined to be "not occupied" under the Act, Section 5(d) were sold by the United States; and,

L. In the alternative, vacate Defendants 2020 Decision and 2015 Decision and issue an injunction prescribing the Defendants to correct its administrative mistake as a result of a misinterpretation of the California Rancheria Act or in the alternative vacate and remand to the agency to agency; and,

M. Award, costs, fees and expenses, and reasonable attorneys' fees and expenses, pursuant to and in accordance with the Equal Access to Justice Act, 28 U.S.C. § 2412; and,

N. Issue all other appropriate injunctive or equitable relief necessary to provide complete relief to Plaintiffs; and,

O. Such other further relief as this honorable Court may deem just and proper.

Dated: October 13, 2021

Respectfully submitted,

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By: /s/ John M. Peebles
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