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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TSI AKIM MAIDU OF TAYLORSVILLE RANCHERIA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 2:17-CV-01156-DJC-CKD

MEMORANDUM SUPPORTING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

The Tsi Akim Maidu of Taylorsville Rancheria is not currently a federally-recognized Indian tribe, but they believe they should be. A tribe can obtain federal recognition through (1) Congressional legislation, or (2) the Department of the Interior via the administrative process in 25 C.F.R. Part 83.[1]

The issue in this case is not whether Plaintiff should be granted federal recognition, from a normative or legal standpoint—in its three prior orders on Defendant's motions to dismiss, the Court held that it cannot require the Department to confer federal recognition, and that challenges to the validity of the Taylorsville Rancheria's termination and non-recognition as a tribe are time-barred. Rather, the Court has identified one narrow legal issue: whether Plaintiff's recognition must come from Congress, or whether Plaintiff could also pursue Part 83 recognition. In its 2015 and 2020 decisions, the Department determined that Plaintiff could not seek Part 83 recognition to the extent they claim to be the same tribe as the Taylorsville Rancheria. If they don't, however, they could seek Part 83 recognition based on the historical, community, and political factors enumerated in Part 83 regulations.

The Department's decision was not arbitrary or capricious. Part 83 recognition is precluded where petitioners "are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship." 25 C.F.R. § 83.11(g). The Taylorsville Rancheria, originally purchased in 1923 by the United States for the benefit of California Indians, became a federally-recognized tribe in 1934 through the Indian Reorganization Act, which defined a "tribe" as "any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." The United States sold the Taylorsville Rancheria in 1966 because Section 5(d) of the California Rancheria Act (as amended in 1964) *required* that unoccupied rancherias held for California Indians "shall be sold." Once the Taylorsville Rancheria land ceased being a "reservation," the Taylorsville Rancheria tribe no longer met the IRA's definition of a "tribe." And because a Congressional mandate ended the Taylorsville Rancheria tribe, Section 83.11(g) precludes Part 83 or other administrative recognition of it.

Despite this Court's clear direction in prior orders, Plaintiff devotes little of their Motion to

[1] Technically, "recognition" refers to placement on the list of federally-recognized tribes by Act of Congress, whereas "acknowledgment" refers to placement on the list by Part 83 administrative adjudication. For simplicity, Defendant uses the two terms interchangeably in this Motion.

addressing the narrow legal issue before the Court. Instead, they attack the validity of the termination of the tribe's federally-recognized status and request that this Court order their placement on the federal recognition list. The Court has already determined that these attacks are time-barred—though they also are meritless. And it has further held that it cannot order the Department to federally recognize Plaintiff. Because Plaintiff has not shown that the Department acted arbitrarily or capriciously in deciding the sole issue in this case, the Court should deny their Motion and grant the Department's Cross-Motion.

II. BACKGROUND

A. The Taylorsville Rancheria

The Mexican American War ended with the 1848 Treaty of Guadalupe Hidalgo, where the United States acquired present-day California from Mexico. AR 761. In 1851, the President sent agents to California to negotiate treaties with the numerous American Indian tribes living there. Eighteen treaties were negotiated, which would have set aside large reservations for American Indians. AR 762.

The Senate, however, did not ratify the treaties and sequestered them. *Id.* In 1905, after discovery of the unratified treaties and increasing public concern for the well-being of California Indians, Congress directed the Secretary of the Department to gather information and prepare a report. *Id.* The Kelsey Report, submitted the next year, recommended that the federal government acquire lands for Indians in California. AR 197-227. Congress followed the recommendation and appropriated money "for the purchase of lands for the homeless Indians in California" in 1921. AR 232 (41 Stat. 1225 (1921)); AR 882; *Williams v. Gover*, 490 F.3d 785, 787 (9th Cir. 2007).

In 1923, using those appropriated funds, the federal government purchased what became the Taylorsville Rancheria. AR 233-36, 251, 878, 1186-94. Importantly, the rancherias in general, and the Taylorsville Rancheria in particular, were not held for named tribes, but rather were held for the benefit of "homeless Indians." AR 232. The Department has not located any pre-1934 federal legislation or treaty deeming the Taylorsville Rancheria to be a federally-recognized tribe. Nor is there any evidence of government-to-government relations with Indians living on California rancherias. *See* AR 271 (1934 Department memorandum noting that rancherias "have no tribal or business organization of any sort").

B. The Indian Reorganization Act

In 1934, Congress passed the Indian Reorganization Act (IRA), which sought to increase

American Indian self-government and responsibility. Pub. L. 73-383, 48 Stat. 984; AR 266, 299. The IRA defined an "Indian" as (1) all persons of Indian descent who are members of "any recognized Indian tribe now under Federal jurisdiction"; (2) descendants of members "who were, on June 1, 1934, residing within the present boundaries of any Indian reservation"; and (3) all persons one-half or more Indian blood. 25 U.S.C. § 5129; AR 270. A "tribe," meanwhile, was defined as (1) "any Indian tribe, organized band, [or] pueblo," or (2) "the Indians residing on one reservation." *Id.*

Because the IRA defined a tribe as "Indians residing on one reservation," the Bureau of Indian Affairs (BIA) construed it as creating many new federally-recognized tribes, including the California rancherias that previously had no federally-recognized tribal status. *See* AR 271, 273-74, 281, 286, 289. Thus, for the first time, the Indians residing on the Taylorsville Rancheria were recognized as a tribe.[2]

As Indians residing on a reservation may wish to formally organize, Section 16 of the IRA allowed tribes to create a constitution and bylaws to, among other things, define tribal membership and negotiate with the federal and other governments. 25 U.S.C. § 5123; *United States v. Fowler*, 48 F.4th 1022, 1026 (9th Cir. 2022). Section 17 allowed tribes to adopt an incorporation charter to give the tribe additional powers relating to reservation lands and other property. 25 U.S.C. § 5124. The Taylorsville Rancheria never organized under IRA Sections 16 or 17. AR 320-28, 692, 950.

C. The Rancheria Act of 1958 and the 1964 Amendment

In 1947, Congress began drafting legislation to terminate the federal recognition of California rancherias. AR 358. The contemplated legislation was part of a larger project of terminating federal supervision of many Indian tribes—a policy goal confirmed via joint resolution in 1953 through House Concurrent Resolution 108. AR 358-59, 426, 561.

Congress's efforts culminated in the California Rancheria Act of 1958. AR 509-11. The Rancheria Act directed the Secretary to initiate a process that, when completed, would end federal ownership of rancheria land, and the federal status for rancheria Indians, for 41 named rancherias (out of 116 existing ones). AR 509, 561. The Rancheria Act included the following provisions (AR 509-10):

[2] Section 18 of the IRA allowed a majority of adult Indians on a reservation to vote against the law's application to their particular reservation. In 1935, four individuals on the Taylorsville Rancheria were eligible to vote under Section 18, and they voted 2-0 to accept the IRA. AR 275, 278, 314, 868.

- Section 1 stated that lands and assets of 41 named rancherias "shall be distributed in accordance with the provisions of this Act."
- Section 2 provided a process for Indians on reservations or rancherias to prepare a plan for distributing rancheria assets or conveying them to a corporation or entity the group designates.
- Section 3 set forth requirements "[b]efore making the conveyances authorized by this Act," including land surveys; road improvements; and installing or rehabilitating water supplies "as [the Secretary] and the Indians affected agree, within a reasonable time, should be completed."
- Section 5 permitted the Secretary to convey certain federally-owned property within rancherias to Indians receiving land conveyances, or to any corporation or entity those Indians organized.
- Section 10(b) stated that once rancheria assets were distributed, the Indians who received any assets and their dependents would no longer be entitled to any federal services for Indians.
- Section 11 directed the Secretary to revoke any constitution or corporate charter ratified by a rancheria pursuant to the IRA.

In 1964, Congress amended the Rancheria Act to apply to all "rancherias and reservations lying wholly within the State of California," not just the originally named ones. AR 559, 561. The 1964 Amendment made changes to several sections of the Rancheria Act. AR 559-60, 565-69. Most importantly for this case, it added new Section 5(d), which empowered the Secretary to sell rancherias that were "not occupied" as of January 1, 1964, depending on for whom the United States held the land. If the rancheria was "held by the United States for the use of Indians of California," then the Secretary was *required* to sell the rancheria ("shall be sold"), with proceeds distributed to "the Indians of California." If, however, the rancheria was held "for a named tribe, band, or group," then the Secretary *had discretion* to sell the rancheria ("may be sold"), with proceeds distributed to the tribe. AR 568.

As stated in the House and Senate Reports, the 1964 Amendment "extend[ed] the provisions of the California Rancheria Termination Act . . . to all Indian reservations and rancherias" in California by "enlarging the scope of the 1958 act, with certain amendments, to include 75 rancherias and reservations which were not originally covered by it." AR 560-61 (H. Rep. 88-1305 (1964)); AR 578-79 (S. Rep. 88-1263 (1964)). Congress identified one such amendment as "providing . . . [t]hat unoccupied rancherias may be disposed of and the proceeds thereof credited to the proper parties." AR 561, 579. The Assistant Secretary of the Department concurred that "the present law [did] not provide for the disposition of a rancheria or reservation that is presently not occupied," but that "new section 5(d)

[would] cover this type of case," including for twelve rancherias known to be unoccupied. AR 563, 581.

D. Sale of the unoccupied Taylorsville Rancheria.

As early as 1950, Congress received reports that the Taylorsville Rancheria was unoccupied. AR 344-46. The Department found the same in 1957, 1960, and 1964, and it verified the vacancy as of January 1, 1964, through a physical inspection of the rancheria and affidavits from local residents. AR 427, 515, 533, 601. Because the Taylorsville Rancheria was unoccupied and held for California Indians, Congress required its sale under Section 5(d) of the 1964 Amendment to the Rancheria Act.

The Secretary sold the Taylorsville Rancheria in November 1966 and deposited the proceeds of the sale for the benefit of California Indians (not for a particular group or tribe). AR 605, 698. Four other unoccupied rancherias also were sold and the resulting proceeds similarly deposited. AR 685, 698.

After the sale, the Taylorsville Rancheria no longer had federal tribal recognition. In 1979, the Department did not include the Taylorsville Rancheria in its first public listing of all Indian tribes having a government-to-government relationship with the United States, and it has never appeared on any subsequent public lists. AR 710-12 (44 Fed. Reg. 7235 (Feb. 6, 1979)). The Department also identified the Taylorsville Rancheria as "terminated" in 1976, 1977, and 1980. AR 685, 698, 700, 713.[3]

E. Request for status of the Taylorsville Rancheria.

In November 1998, a group identifying themselves as the T'si-akim of the Maidu Tribe notified the BIA of its intent to petition for status clarification. AR 842, 845, 847, 900. The Department listed the T'si-akim Maidu as having submitted a letter of intent to petition for federal acknowledgment in the Federal Register four months later. AR 843-44 (64 Fed. Reg. 1818 (Jan. 12, 1999)). The Department also sent letters to the California governor, the California attorney general, and seven federally-recognized tribes that potentially could have a historical or present interest in the outcome. AR 845-49.

In September 1999, however, the T'si-akim Maidu decided to pursue recognition through reinstatement of the Taylorsville Rancheria. AR 941, 1251. They noted that "[t]he Taylorsville Rancheria . . . was created by Congress," and thus they would "have to go to Congress to get

[3] A May 20, 1977 Tribal Government Services memorandum was particularly explicit: "The following five rancherias [including Taylorsville] should also be considered finally terminated in that they were unoccupied and all lands were sold pursuant to the amended Termination Act." AR 700.

recognized." AR 903-04. They hoped to use Congressional reinstatement of the Taylorsville Rancheria as a "stepping board" to recognition separate from presence on the rancheria itself. AR 904.

In November 1999, seven T'si-akim Maidu representatives met with the Department to discuss their enrollment and future plans if their tribe gained federal recognition. AR 946-47. The next month, the BIA listed the Taylorsville Rancheria (and six others) as potential inclusions in a legislative restoration initiative. AR 850-52, 865-67. The BIA and the T'si-akim Maidu continued to correspond regarding tribal history and other pertinent information to determine if legislative restoration was merited. AR 948-51. The T'si-akim Maidu were not ultimately part of any legislative package.

In March 2005, the "Tsi-Akim Maidu of the Taylorsville Rancheria Community" (the Plaintiff in this case) requested federal status clarification from the BIA. AR 953-54. Their letter stated that "[t]he Taylorsville Rancheria Community is recognized by the Federal Government" under the IRA, and that "[t]he Taylorsville Rancheria Community" lacked any documentation from Congress or the Department "terminating its Rancheria or members' Federal status." *Id.* From 2010 through 2016, Plaintiff and the Department had numerous communications regarding the federal status clarification, along with periodic exchanges of additional information. *See, e.g.*, AR 960-65, 981-1024, 1032-79.

F. The 2015 Decision.

On June 9, 2015, Assistant Secretary-Indian Affairs (AS-IA) Kevin Washburn formally responded to Plaintiff's request for clarification (the "2015 Decision"). AR 1080-85. AS-IA Washburn noted that Plaintiff claimed it was "comprised of the same members (or their descendants) as the Taylorsville Rancheria." AR 1080. He also noted Plaintiff's notice of intent to petition under Part 83 and request for "a decision on whether it was terminated and therefore ineligible for acknowledgment by the" Interior through Part 83. *Id.*

AS-IA Washburn's response recounted the Taylorsville Rancheria's history, which the federal government purchased in 1923 for "homeless Indians in California" and recognized as a "reservation" under the 1934 IRA. AR 1080-81. He found that federal officials documented an absence of Indian residents at the Taylorsville Rancheria beginning in the 1950s, including through a physical inspection and affidavits from local residents. AR 1081-82. Because the Taylorsville Rancheria was held for use of Indians of California and was not occupied, Section 5(d) of the Rancheria Act mandated its sale—

which the Department did, and deposited the proceeds into a fund for the benefit of California Indians. AR 1081. After the sale, "government documents indicate[d] that the Federal Government no longer recognized or carried on a government-to-government relationship with the Taylorsville Rancheria." *Id.*

AS-IA Washburn noted that Part 83 barred administrative acknowledgment of tribes that were subject to Congressional legislation terminating or forbidding the federal relationship. AR 1083. The bar applied to Plaintiff because Congress ordered the sale of the Taylorsville Rancheria through the 1964 Amendment, and thus "[t]he Taylorsville Rancheria was in the class of tribes that Congress intended to reach." *Id.* Accordingly, AS-IA Washburn held that the Taylorsville Rancheria could only receive federal recognition through Congress, not the Part 83 process. AR 1085.

AS-IA Washburn also rejected Plaintiff's claim that it continued to be federally recognized even after sale of the Taylorsville Rancheria. He found that a 1996 BIA map purportedly showing the Taylorsville Rancheria's historical boundaries was "not inconsistent with Congressional termination of the group." AR 1083. He also found that a 1970 account held by the U.S. Treasury for the "Taylorsville Band of Maidu Indians" did not show federal acknowledgment, pointing out that the "Treasury routinely has held funds for groups that are not federally recognized," and that the funds were accounted for and reflected compliance with the 1964 Amendment. AR 1083-84. And a 2000 letter from the BIA advocating for legislative restoration of the Taylorsville Rancheria (and several others) confirmed the Department's understanding that the rancheria had been terminated by Congressional mandate, and thus only Congress could reinstate federal recognition. AR 1085.

G. The 2020 Decision

On May 28, 2020, AS-IA Tara Sweeney amended the 2015 Decision (the "2020 Decision"). AR 1125. The 2020 Decision did not alter the history or reasoning of the 2015 Decision, including the finding that any federal recognition of the Taylorsville Rancheria was terminated by Congress pursuant to Section 5(d) of the Rancheria Act as amended. But it rescinded the prior determination that Plaintiff "or any portion of its individual membership" were categorically ineligible for Part 83 acknowledgment because that determination "should have been assessed by the Office of Federal Acknowledgment [OFA] in the first instance." *Id.* It cautioned, however, that if the group or part of the group sought Part 83 recognition, it was still their "responsibility to satisfy all applicable Part 83 requirements, including

those prohibiting entities subject to congressional termination from proceeding." *Id.*

As a practical matter, the 2015 and 2020 Decisions together have four effects:

1. They confirm the Department's view that the sale of the Taylorsville Rancheria pursuant to Section 5(d) of the Rancheria Act terminated that rancheria as a matter of law.

2. They deny Plaintiff's request to be "reaffirmed"—that is, for the Secretary to add Plaintiff to the list of federally recognized tribes without requiring Plaintiff to go through the Part 83 process.

3. They state the Department's legal view that Plaintiff cannot obtain Part 83 recognition if they are the same polity as the Taylorsville Rancheria tribe because an Act of Congress (Section 5(d) of the Rancheria Act) forbade a federal relationship with the Taylorsville Rancheria tribe.

4. They state the Department's view that the determination of whether Plaintiff is the same polity as the Taylorsville Rancheria, and thus is precluded from Part 83 acknowledgment, should initially be made by the OFA based on the documentation Plaintiff submits with their Part 83 petition.

Notably, the March 2005 request for federal status clarification, which the 2015 and 2020 Decisions addressed, solely involved recognition of the Tsi Akim Maidu based on the existence of the Taylorsville Rancheria. AR 953-54. Whether Plaintiff can demonstrate entitlement to tribal recognition under Part 83 based upon other considerations was not before the Department, and is not before the Court now.

H. Procedural history

Plaintiff Tsi Akim Maidu of Taylorsville Rancheria filed suit in the U.S. District Court for the Northern District of California in December 2016, which was transferred to this Court six months later.

1. The Complaint (ECF No. 1)

Plaintiff's initial Complaint asserted that the sale of the Taylorsville Rancheria under Section 5(d) of the Rancheria Act did not terminate their federal relationship. Compl. ¶¶ 25, 28. They asked the Court to declare that they are "a federally [recognized] tribe" and that their "members are Indians whose status has not been vanquished pursuant to the" Rancheria Act. Compl. at p.7.

The Court dismissed the Complaint, holding that Plaintiff's claim was time-barred by the APA's six-year statute of limitations because "[t]he thrust of Plaintiff's allegations is that it was injured by its loss of federal recognition, which can be traced back to the sale of the Taylorsville Rancheria in 1966." ECF No. 33, at 9. The Court granted leave to amend to allow Plaintiff to "allege further factual details regarding its lack of notice of adverse agency action." *Id.*

2. **The Amended Complaint (ECF No. 34)**

Plaintiff filed an Amended Complaint in February 2019, which was substantively similar to the initial Complaint and asserted the same requests for relief. It did not allege any facts regarding lack of notice of an adverse action that might have tolled the statute of limitations. In April 2020, the Court again held that "Plaintiff's claim as to loss of federal status is time-barred" because Plaintiff was on notice of its lack of federal status "as of the first publication of the list of federally recognized tribes in 1979." ECF No. 41, at 6. However, the Court allowed Plaintiff to challenge the 2015 Decision's finding that it was ineligible for Part 83 acknowledgment. *Id.*

3. **The Second Amended Complaint (ECF No. 65)**

Plaintiff filed a Second Amended Complaint in October 2021. The Second Amended Complaint explicitly raised an APA challenge to the Department's interpretation of the Rancheria Act and the applicability of Part 83 regulations in its 2015 and 2020 Decisions. SAC ¶¶ 1-2. Specifically, Plaintiff "challenge[d] the primary conclusion of the [2015 Decision] that Congress mandated termination under the Rancheria Act, Section 5(d)." SAC ¶¶ 6, 24-28. The Second Amended Complaint requested numerous remedies, including holding that the 2015 and 2020 Decisions are legally unsupported, declaring that other provisions of the Rancheria Act were not complied with, and ordering that "Defendants immediately resume . . . government-to-government relations with the Plaintiff" and "place Plaintiff on the list of federal recognized tribes." SAC at pp.29-30.

Defendant moved to dismiss the Second Amended Complaint for lack of jurisdiction. ECF No. 70. The Court denied the motion, observing that Plaintiff was challenging two decisions under the APA: (1) the 2015 Decision's findings that the sale of the Taylorsville Rancheria terminated Plaintiff's tribal status, and that Plaintiff cannot be acknowledged under Part 83 because Congress terminated it; and (2) the 2020 Decision's rescission of the portion of the 2015 Decision stating that Plaintiff was ineligible to petition for acknowledgment. ECF No. 74, at 2.

Although the Court did not grant the motion, it found that some of Plaintiff's requested remedies were untenable. The Court held that it could not compel the Department to place Plaintiff on the list of federally recognized tribes. ECF No. 74, at 4. Further, "Plaintiff eventually must petition under Part 83 to attain federal recognition, even if the Court finds the Department erred in concluding Plaintiff's tribal

status was terminated." *Id.* However, the Court held that it had jurisdiction to determine whether the Department correctly found that Congress terminated the tribe when the Taylorsville Rancheria was sold, and that the Court could "set aside and remand that decision." *Id.* at 4-5. The Court further held that it could review the 2020 Decision's "interpretation of the California Rancheria Act." *Id.* at 5. Thus, the only question currently pending before this Court is whether the Department violated the APA when it found that the Taylorsville Rancheria's sale, mandated by Section 5(d) of the Rancheria Act, renders the Taylorsville Rancheria "an entity that is, or an entity whose members are, subject to congressional legislation terminating or forbidding the government-to-government relationship," and thus ineligible for Part 83 acknowledgment.

III. STANDARD OF REVIEW

Under the APA, a court may set aside agency action only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law[.]" 5 U.S.C. § 706(2)(A). The Court applies this standard of review to the agency decision based on the administrative record that the agency presents to the Court. *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005).

Judicial review under the APA is "highly deferential," "extremely narrow," and "presumes agency action to be valid." *USPS v. Gregory*, 534 U.S. 1, 6 (2001); *Short Haul Survival Comm. v. United States*, 572 F.2d 240, 244 (9th Cir. 1978). "[A] decision is arbitrary and capricious only if the agency relied on factors Congress did not intend for it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Lands Council v. McNair*, 629 F.3d 1070, 1074 (9th Cir. 2010). The Court may not "substitute its own judgment for that of the [agency]." *Gregory*, 534 U.S. at 7.

Courts generally resolve APA claims on summary judgment. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1472 (9th Cir. 1994). But unlike in a "typical summary judgment proceeding," the Court does not examine "whether there are disputed issues of material fact." *W. Watersheds Project v. Bureau of Land Mgmt.*, 971 F. Supp. 2d 957, 968 (E.D. Cal. 2013). Instead, the court determines "whether or not . . . the evidence in the administrative record permitted the agency to make the decision it did." *S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, 723 F. Supp. 2d 1247, 1256

(E.D. Cal. 2013) (citation omitted). The ultimate question is whether the agency's action was "reasonable" (*FCC v. Fox Television Stations*, 556 U.S. 502, 514-15 (2009)) and "within the bound of reasoned decisionmaking" (*Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 105 (1983)).

IV. LAW AND ANALYSIS

A. The Department's 2015 and 2020 Decisions were not arbitrary or capricious.

The 2015 and 2020 Decisions, taken together, draw four conclusions:

1. The Taylorsville Rancheria was a federally recognized tribe by virtue of meeting the IRA's definition of a tribe as being "the Indians residing on one reservation."
2. The Taylorsville Rancheria was properly sold in 1966 pursuant to the 1964 Amendment to the Rancheria Act.
3. The sale of the Taylorsville Rancheria precluded its federal recognition as a tribe.
4. By requiring that the Taylorsville Rancheria to be sold, Congress forbade a federal relationship with the Taylorsville Rancheria tribe. Plaintiff still could seek Part 83 recognition if they provided sufficient evidence of their historical existence, community, and political influence under that Part, which would be decided by the OFA.

None of these is arbitrary or capricious, and the Department's decision should be affirmed.

1. Federal recognition of the Taylorsville Rancheria tribe

The Department did not act arbitrarily or capriciously in determining that Plaintiff only had federal recognition by virtue of the IRA's new definition of a "tribe." Before the IRA, Congress recognized Indian tribes only by treaty or through legislation. *Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51, 57 (2d Cir. 1994). The Taylorsville Rancheria was never a recognized tribe through treaty or legislation—it only became a federally-recognized tribe after the 1934 IRA defined an Indian tribe as, among other things, "the Indians residing on one reservation." *See* Section II.B. "Reservations" include rancherias, and any Indians living on a rancheria become a tribe under the "expansive definition" of the IRA. *Gover*, 490 F.3d at 787; *Cachil Dehe Band of Wintun Indians v. Zinke*, 889 F.3d 584, 594, 596 (9th Cir. 2018); *Stand Up for California! v. U.S. Dep't of the Interior*, 879 F.3d 1177, 1183 (D.C. Cir. 2018).

2. Sale of the Taylorsville Rancheria

The Department also did not act arbitrarily or capriciously in determining that the Taylorsville Rancheria was properly sold pursuant to the amended Rancheria Act. The administrative record is

replete with findings that the Taylorsville Rancheria was unoccupied beginning in 1950 and remained that way through its sale in 1966. *See* Section II.D. The vacancy was confirmed with a visual search and affidavits from local residents. *Id.* The sale occurred and the proceeds were deposited for the benefit of California Indians. *Id.* The Department did not arbitrarily or capriciously determine that the Taylorsville Rancheria was unoccupied and properly sold pursuant to Section 5(d) of the Rancheria Act.

Although Plaintiff does not appear to directly challenge the Department's sale of the Taylorsville Rancheria, they suggest that the rancheria may not have been unoccupied and that county officials pressured the BIA to sell the property. Pl. MSJ at 25. This Court has already held that such a challenge is precluded by the APA statute of limitations. *See* Order of 1/3/19, ECF No. 33, at 8-9; Order of 4/24/20, ECF No. 41, at 6. And not only is the subjective intent of a party to the sale irrelevant here, but Plaintiff's suggestion has no support in the record. While Plaintiff notes that one person "inquired about the land" (Pl. MSJ at 25 (citing AR 599)), an inquiry does not show occupancy, and Plaintiff cites no evidence in support of its suggestion that the Taylorsville Rancheria was occupied by Indians in 1964. In fact, Plaintiff acknowledged during an August 1999 internal meeting that the "Taylorsville Rancheria had no inhabitants when it was terminated." AR 903-04.

3. **Sale of the Taylorsville Rancheria precluded its federal recognition as a tribe.**

The Department also did not act arbitrarily or capriciously in determining that sale of the Taylorsville Rancheria precluded any federal tribal recognition associated with it. The IRA's definition of "tribe" includes "the Indians residing on one reservation." 25 U.S.C. § 5129; AR 270. Thus, "[t]he term 'rancheria' has been used to refer both to the land itself, and to the Indians residing thereon; which is to say, 'rancheria' is synonymous with both 'reservation' and 'tribe.'" *In re $323,647.60 in Funds Belonging to Cal. Valley Miwok Tribe*, No. 18-cv-1194, 2019 WL 687832, at *5 n.10 (D.N.M. Feb. 19, 2019); *Redding Rancheria v. Jewell*, 776 F.3d 706, 709 (9th Cir. 2015) ("The Redding Rancheria . . . is a very small Indian tribe"); *Stand Up for California! v. U.S. Dep't of the Interior*, 994 F.3d 616, 619 (D.C. Cir. 2021) ("The Wilton Rancheria is an Indian tribe[.]"); AR 903-04 (Plaintiff acknowledging in August 1999 that "[t]he Taylorsville Rancheria is a created tribe [that] was created by Congress"); *see also* 25 C.F.R. § 151.2(b) ("Tribe means any . . . rancheria . . . which is recognized by the Secretary"); 45 Fed. Reg. 62034, 62036 (Sept. 18, 1980) (same for earlier version of regulation).

Once a reservation ceases to exist, however, there can no longer be "Indians residing on" it, and thus the government-to-government relationship with any tribe defined by residency on that rancheria must cease too. *Cf. Stand Up*, 879 F.3d at 1184 (rejecting argument that termination of federal trust relationship with North Fork Rancheria under the Rancheria Act only "ended the government's relationship with the . . . *Rancheria*, not with any *tribe*," because "under the IRA, the 'Indians residing on one reservation' *are* a tribe" (emphasis original)); *Allen v. United States*, No. C-16-4403, 2017 WL 5665664, at *1 (N.D. Cal. Nov. 27, 2017), *aff'd*, 797 F. App'x 302 (9th Cir. 2019) ("[I]n 1966, the tribe was terminated pursuant to the Rancheria Act[.]").

Plaintiff argues that the Department failed to provide a reasoned explanation for its conclusion that Plaintiff had been terminated, and that termination of a rancheria merely ends the federal government's relationship with land, but not with any tribe. Pl. MSJ at 15, 17. This argument goes to the validity of the Department's cessation of recognition of the Taylorsville Rancheria, which is time-barred. This Court has held twice that Plaintiff was on notice of their termination in 1979, when they were not included in the first publication of federally-recognized tribes, and thus any challenge to their termination is time-barred. Order of 1/3/19, ECF No. 33, at 8-9; Order of 4/24/20, ECF No. 41, at 6. The Court was correct both times, and Plaintiff offers no reason to revisit those rulings now.

In any event, Plaintiff's position is wrong on the merits. It is wrong as a matter of law because insofar as the IRA defines a "tribe" to include "the Indians residing on one reservation," it follows that when the reservation disappears, so does federal recognition of any tribe of Indians residing on it. *Cf. Stand Up*, 879 F.3d at 1184. Revealingly, Plaintiff's position does not square with their prior pleading assertion that "[t]he Rancheria Act . . . terminated relationships with Indian tribes." SAC ¶ 69.

It is also wrong as a matter of fact, as the Department has consistently referred to the Taylorsville Rancheria tribe as "terminated" and did not list it as a recognized tribe in the Federal Register. AR 685, 698, 700, 710-13. Plaintiff does not address these documents and instead points to a 1997 report from the Advisory Council on California Indian Police (ACCIP) stating that the sale of the unoccupied rancherias "did not affect the status of any tribe." Pl. MSJ at 16-17 (quoting AR 796). That isolated statement has no bearing on this case.[4] The ACCIP was an advisory council and not responsible for

[4] The ACCIP report statement might have presumed that no tribal status was affected by sales of

federal tribal recognition. Thus, even if Plaintiff's interpretation of the ACCIP statement is correct, the Department could reasonably have given greater weight to its own documents from 20 years earlier stating that the Taylorsville Rancheria was "terminated," and to its decision not to include the Taylorsville Rancheria on the list of federally-recognized tribes.[5] One ambiguous throwaway statement in a historical overview document not even prepared by the Department does not undercut the reasonableness of the Department's long-standing and unchanging view that the Taylorsville Rancheria was not federally recognized after the 1966 sale. Indeed, Plaintiff itself referred to the Taylorsville Rancheria tribe as "terminated" in August 1999. AR 903.

Plaintiff also notes that the U.S. Treasury held monies in an account for the "Taylorsville Band of Maidu Indians." Pl. MSJ at 18. But as the Department noted in the 2015 Decision, "Treasury routinely has held funds for groups that are not federally recognized." AR 1084. Further, the account originated in 1947 (when the Taylorsville Rancheria was still federally recognized), and the Department explained at length how the deposits reflected license funds and lease payments that stayed with the land after its 1966 sale. *Id.* Most importantly, when disbursements from the account were made in 1972, they were made not to Plaintiff, but to 69,911 Indians on the California judgment roll. AR 1084 & n.28. Contrary to Plaintiff's assertion that it "fail[ed] to cogently explain" the account, the Department discussed the account's history at length and explained why it did not show federal tribal recognition. Plaintiff does not address the Department's findings or show that they were arbitrary and capricious.

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unoccupied rancherias because those rancherias no longer had "Indians residing on one reservation," and thus had ceased meeting the definition of "tribe" under the IRA even before the lands were sold. Federally-recognized tribes can "abandon" their federal recognition through migration. *See Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 219 (D.C. Cir. 2013); *Miami Nation of Indians of Ind., Inc. v. U.S. Dep't of the Department*, 255 F.3d 342, 346 (7th Cir. 2001). Under this reading, the Taylorsville Rancheria's sale "did not affect the status" of the Taylorsville Rancheria tribe because it had already ceased to exist—and the sale prevented the tribe from reconstituting through re-occupying the rancheria. Such a reading is consistent with the Department's view that the rancheria sale precluded recognition.

[5] *See Pit River Home & Agr. Co-op. Ass'n v. United States*, 30 F.3d 1088, 1097 (9th Cir. 1994) ("[T]he additional evidence proffered by the Association would not have established its existence as a federally recognized tribe. The additional evidence is either ambiguous or presents the views of people without authority to recognize an Indian tribe."); *Allen*, 2017 WL 5665664, at *6 (holding that Interior did not act arbitrarily or capriciously in determining that rancheria was purchased for identified Indians, despite a letter from the BIA stating that it was purchased "for homeless Indians," because other parts of the record "show[ed] that the Rancheria *was* purchased for an identifiable (and identified) group").

Finally, Plaintiff contends that a 2004 BIA Freedom of Information Act (FOIA) response stating it "locate[d] no documentation pertaining to the status of the termination of the Taylorsville Rancheria" showed that the rancheria was not terminated. Pl. MSJ at 18. But the FOIA response states that its documents came from the "Division of Real Estate Services," and it recommended that Plaintiff contact the Central California Agency and the Federal Archives Center for additional records. AR 955-56. Simply because the one division lacked records relating to the Taylorsville Rancheria's termination does not mean there were no such records—clearly there were, as they are in the administrative record. *See* AR 685, 698, 700, 713. Plaintiff does not explain why a FOIA response based on a search of one division compelled the Department to disregard its internal documents from nearly 40 years earlier stating that the Taylorsville Rancheria was terminated. *See Allen*, 2017 WL 5665664, at *6.

4. **Congress's forbidding a federal relationship with the Taylorsville Rancheria.**

Finally, the Department did not act arbitrarily or capriciously in deciding the only live issue in this case: that, to the extent Plaintiff is the same polity as the Taylorsville Rancheria, it was terminated by Act of Congress and thus ineligible for Part 83 acknowledgment. *See* Order of 4/24/20, ECF No. 41, at 6; Order of 7/19/22, ECF No. 74, at 2. As discussed above, when the Taylorsville Rancheria was terminated through sale, so was federal recognition of the Taylorsville Rancheria tribe. Interior regulations preclude Part 83 recognition where petitioners "are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship." 25 C.F.R. § 83.11(g).

The Department found that the Taylorsville Rancheria was legislatively terminated. AR 1083. This was not arbitrary or capricious. Section 5(d) of the Rancheria Act, as amended in 1964, stated that an unoccupied rancheria "shall be sold" if it was "held by the United States for the use of Indians of California." AR 560, 568. By contrast, unoccupied rancherias held "for a named tribe, band, or group . . . may be sold" at the Department's discretion. *Id.* "When a statute distinguishes between 'may' and 'shall,' it is generally clear that 'shall' imposes a mandatory duty." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016); *Forrest v. Spizzirri*, 62 F.4th 1201, 1204 n.3 (9th Cir. 2023). Because the Taylorsville Rancheria was held for the use of homeless California Indians, Congress required its sale—and its termination—without leaving the Department any choice in the matter.

The legislative history confirms that termination of unoccupied rancherias was a subject of

Congressional legislation. The 1964 Amendment to the 1958 Rancheria Act (referred to as the "California Rancheria Termination Act" in the House and Senate reports) was intended to extend the 1958 Act to all rancherias, not just the 41 originally identified. AR 560, 578. Congress was aware of six unoccupied rancherias in California, and the House and Senate reports confirm that new Section 5(d) was intended to create a previously-nonexistent mechanism to dispose of them. AR 561, 563, 579, 581.

Subsequent efforts to reinstate the Taylorsville Rancheria also confirm Plaintiff's own understanding that they may only seek federal recognition through Congress (to the extent that they seek recognition or reinstatement of the Taylorsville Rancheria). Although Plaintiff initially pursued Part 83 acknowledgment, in September 1999 they determined that "[t]he Taylorsville Rancheria . . . was created by Congress" and thus they would "have to go to Congress to get recognized." AR 903-04. They hoped to use Congressional reinstatement of the Taylorsville Rancheria as a "stepping board" to recognition separate from their presence on the rancheria. AR 904. Two months later, the BIA proposed including the Taylorsville Rancheria in a legislative restoration initiative. AR 850-52, 865-67.[6]

Plaintiff asserts that the plain language of Section 5(d) shows that its intent "was to merely dispose of property determined not [sic] used for its original purpose." Pl. MSJ at 10. But Plaintiff's assertion ignores the interaction between Section 5(d) and the IRA's definition of a "tribe" as "the Indians residing on one reservation." When a rancheria is sold, there can no longer be a tribe of "Indians residing on" the rancheria. *See Stand Up*, 879 F.3d at 1184. For rancherias (like Taylorsville) that were not held in trust for named tribes, Section 5(d) and the IRA must be read together. *See California v. Trump*, 963 F.3d 926, 947 n.15 (9th Cir. 2020).

Plaintiff's construction also does not jibe with Congress's policy of termination in the 1950s and 1960s, specifically stated in House Concurrent Resolution 108 (AR 426), nor Congress's specific intent

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[6] Plaintiff asserts that over several years, its attorney "sought a 'reaffirmation' of the Plaintiff's tribal status" and its administrative placement on the list of recognized tribes. Pl. MSJ at 17. But Plaintiff's requests cannot decide whether the Department has legal authority to administratively acknowledge Plaintiff. Nor has the Department represented that it has such power—to the contrary, it said in an August 2014 meeting with Plaintiff that "the Taylorsville Rancheria is not similarly situated to tribes the Department has administratively reaffirmed in the past" because it was "not recognized after [its] 1966 sale." AR 1078. The Department also has rejected administrative acknowledgment decisions outside of the Part 83 process, including "reaffirmation." 80 Fed. Reg. 37538, 37539 (July 1, 2015) (stating that Department "will no longer accept requests for acknowledgment outside the Part 83 process").

for the 1964 Amendment to "assist in accomplishing the intent of House Concurrent Resolution 108" by "extend[ing] the provisions of the California Rancheria Termination Act . . . to all Indian reservations and rancherias," including six unoccupied rancherias. AR 560-61, 578-79; *Jewell*, 776 F.3d at 709 ("[S]tarting in the 1950s, the federal government began an official 'policy of rapid assimilation through termination.'"). In fact, Congress created Section 5(d) precisely to end unoccupied rancherias or reservations. AR 563, 581. Plaintiff does not explain how the Taylorsville Rancheria tribe can meet any definition of "tribe" after the land ceased being held by the United States for the benefit of Indians.[7]

Plaintiff also argues for application of the Indian canon of construction that statutes are to be construed liberally in favor of Indians. Pl. MSJ at 13-14. The Ninth Circuit, however, "has repeatedly 'declined to apply [the Indian canon of construction] in light of competing deference given to an agency charged with the statute's administration.'" *Jewell*, 776 F.3d at 713 (citation omitted).[8] In this Circuit, "an agency's legal authority to interpret a statute appears to trump any practice of construing ambiguous statutory provisions in favor of Indians." *Id.*; *Williams v. Babbitt*, 115 F.3d 657, 663 n.5 (9th Cir. 1997) (stating that the Indian canon is "a mere 'guideline and not a substantive law,'" but *Chevron* deference to an agency's interpretation is "a substantive rule of law"). Congress exercises plenary authority over Indian affairs and has delegated near-plenary authority to the Department. *Michigan v. Bay Mills Indian Cmty.*, 527 U.S. 782, 788 (2014); 43 U.S.C. § 1457; 25 U.S.C. § 2. "As the agency charged with the administration of the Indian laws and responsible for drafting many of them, [the] Interior's interpretation is entitled to 'great weight' and 'is not to be overturned unless clearly wrong.'" *Stevens v. CIR*, 452 F.2d 741, 746 (9th Cir. 1971) (quoting *United States v. Jackson*, 280 U.S. 183, 193 (1930)).

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[7] Plaintiff notes that the Department "attempted" to promulgate implementing regulations for the Rancheria Act, 25 C.F.R. Part 242 (1965). Pl. MSJ at 11. Those regulations were in force for seven years until invalidated by *Kelly v. U.S. Dep't of the Department*, 339 F. Supp. 1095, 1100-02 (E.D. Cal. 1972). Plaintiff makes no argument invoking *Kelly* or the 1965 regulations, and rightly so—they are not relevant to this case.

[8] The canon also applies only when determining the "proper interpretation of an ambiguous provision in a federal statute enacted for the benefit of an Indian tribe." *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 729 (9th Cir. 2003); *accord S. Carolina v. Catawba Indian Tribe*, 476 U.S. 498, 506 (1986) (stating that the Indian canon "does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress"). There is no ambiguity, and Plaintiff does not show how a statute aimed at eliminating Indian reservations (and, by association, tribes) passed during the Termination Era was enacted "for the benefit of an Indian tribe."

Even assuming the canon could apply, "statutes must be interpreted in the context of their enactment," and "other circumstances evidencing Congressional intent" can overcome the force of interpretive canons such as the Indian canon. *Mountain States Tel. & Tel. Co. v. Santa Ana*, 472 U.S. 237, 252 (1985); *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001). From House Concurrent Resolution 108 (1953) to the 1964 Amendment to the Rancheria Act, Congress has expressed an intent to terminate government-to-government relations with the California rancherias. The Senate Report on the 1964 Amendment was particularly explicit, stating that the amendment would "assist in accomplishing the intent of House Concurrent Resolution 108 by enlarging the scope of the 1958 act, with certain amendments, to include the 75 rancherias and reservations which were not originally covered by it." *Id*. And while Congress did not use the word "termination" in the formal title of the Rancheria Act or its 1964 Amendment, Section 9 unambiguously shows the purpose of the Act by authorizing the Secretary to provide educational and training programs for Indians "prior to the termination of the federal trust relationship in accordance with the provisions of this Act." AR 511.[9]

In short, the Department did not act arbitrarily or capriciously in determining that the Taylorsville Rancheria could not seek Part 83 recognition because it was the subject of Congressional legislation terminating or forbidding the federal relationship.

B. The 2020 Decision was not an arbitrary or capricious change in policy.

Plaintiff asserts that the 2020 Decision was an "unexplained departure" from the 2015 Decision, and its failure to provide reasoned analysis for the "change[d]" conclusion renders it arbitrary and capricious under the APA. Pl. MSJ at 13-14, 22-23. While the 2020 Decision is short and not substantially detailed, an agency's decision need not "be a model of analytic precision to survive a challenge" under the APA, and even "a decision of less than ideal clarity" should be upheld "if the agency's path may reasonably be discerned." *McKinney v. Wormuth*, 5 F.4th 42, 47 (D.C. Cir. 2021);

[9] Congressional intent of termination also is shown by its treatment of the rancherias that organized under the IRA. While most rancherias (including Taylorsville) were unorganized, some ratified organic documents under the IRA. Under the IRA, a tribe existing independently of a reservation (for example, as an "organized band," *see* 25 U.S.C. § 5129) could still exist even if the reservation disappeared. But the 1958 Rancheria Act precluded this, with Section 11 requiring revocation of all constitutions and charters adopted pursuant to the IRA when a distribution plan was approved. AR 511. The 1964 Amendment went even further, requiring revocation of constitutions and charters not just enacted under the IRA, but under "any other authority." AR 596.

Inova Alexandria Hosp. v. Shalala, 244 F.3d 342, 350 (4th Cir. 2001).

Here, the Department's path can reasonably be discerned. The 2015 Decision concluded that Plaintiff "has been terminated at the direction of Congress" and thus "its only remedy is to petition Congress for Federal recognition or restoration." AR 1085. That conclusion was premised on the assumption that the "Tsi Akim Maidu of Taylorsville Rancheria" was the same group that lost its federal tribal recognition after sale of the Taylorsville Rancheria in 1966. *See* AR 1083 ("The Taylorsville Rancheria was in the class of tribes that Congress intended to reach with its amendments to the California Rancheria Act. Therefore, the current members or descendants of the Taylorsville Rancheria . . . are precluded from gaining recognition through the Part 83 process.").

The 2020 Decision recognized that the 2015 Decision was "premature" on that issue because there was a possibility that Plaintiff is not identical to the terminated Taylorsville Rancheria tribe. AR 1125. As laid out in a 1996 letter from OFA's predecessor to a group of Indians associated with the terminated Alexander Valley Rancheria, a petitioner might be able to demonstrate that the group existed as an entity distinct from a terminated rancheria. AR 779. The 2020 Decision thus withdrew "the specific conclusion as to Tsi Akim Maidu's eligibility to petition under Part 83" but left all other analysis intact. AR 1125.

The 2020 Decision, in other words, accounts for the possibility that Plaintiff is a separate tribe from the Taylorsville Rancheria. If Plaintiff and the Taylorsville Rancheria are synonymous, then Plaintiff would be precluded from seeking Part 83 recognition because, as the 2015 Decision found, "the current members or descendants of the Taylorsville Rancheria are 'the subject of Congressional legislation terminating or forbidding the Federal relationship.'" AR 1083. If, however, Plaintiff and the Taylorsville Rancheria are different tribes, then Plaintiff could obtain Part 83 recognition by meeting the necessary criteria. AR 1125. Contrary to Plaintiff' claims of "inconsistency" (Pl. MSJ at 7-8, 12-13), the 2015 and 2020 Decisions are complementary and do not draw arbitrary or capricious distinctions. Not only that, the 2020 Decision is helpful to Plaintiff, as it provides a potential avenue for acknowledgment that the 2015 Decision completely foreclosed. Thus, even if the Court agreed that the 2020 Decision was not supported, that would not justify granting Plaintiff relief.

C. Sections 2, 3, and 10 of the Rancheria Act are not germane here.

Plaintiff argues that the Department violated the APA because "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." Pl. MSJ at 12. Plaintiff offers a related argument that because the Department did not comply with Sections 2, 3, and 10 of the Rancheria Act prior to selling it, the termination was not effective. *Id.* at 12, 14.

The Court has already foreclosed as time-barred any argument as to whether the sale or termination of the Taylorsville Rancheria was invalid. ECF No. 33, at 8-9; ECF No. 41, at 6. More importantly, agencies are not required to consider or make findings on irrelevant information. *MFAN v. Mayorkas*, 854 F. App'x 940, 941 (9th Cir. 2021); *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976). And Sections 2, 3, and 10 of the Rancheria Act on their face do not apply to Section 5(d) dispositions.

Section 2 applies where "Indians of a rancheria or reservation request a distribution." AR 593. Section 10 confirms that "[t]he plan for the distribution of the assets of a rancheria" under Section 2 "shall be final," and that Indians who receive distributions are no longer entitled to federal services for Indians. AR 596. But there was no distribution request or distribution plan for the Taylorsville Rancheria because there were no "Indians of a rancheria" to request the distribution.[10]

Section 3, meanwhile, provides for improvements "[b]efore making the conveyances authorized by this Act." The Rancheria Act uses the terms "convey" or "conveyance" in other sections, each time referring to distributions to Indians or Indians' designees.[11] *See HollyFrontier Cheyenne Refining, LLC*

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[10] Plaintiff's citation to *Duncan v. Andrus*, 517 F. Supp. 1 (N.D. Cal. 1977), is not germane because it involved termination of an *occupied* rancheria, whereas Taylorsville was unoccupied.

[11] *See* Section 2(a) ("conveying such assets to a corporation or other legal entity organized or designated by the group, or for conveying such assets to the group as tenants in common"); Section 2(c) ("Any grantee under the provisions of this section shall receive an unrestricted title to the property conveyed, and the conveyance shall be recorded"); Section 4 (stating that if California water laws are not in effect, "they shall continue to be inapplicable while the water right is in Indian ownership for a period not to exceed fifteen years after the conveyance pursuant to this Act," and "the Attorney General shall represent the Indian owner in all legal proceedings . . . involving such water right"); Section 5(a) ("The Secretary of the Department is authorized to convey without consideration to Indians who receive conveyances of land"); Section 8 ("Before conveying or distributing property pursuant to this Act, the Secretary of the Department shall protect the rights of individual Indians who are minors," including by "creation of a trust for such Indians' property with a trustee selected by the Secretary, or the purchase by the Secretary of annuities for such Indians").

v. Renewable Fuels Ass'n, 141 S. Ct. 2172, 2177 (2021) ("absent contrary evidence, this Court normally presumes consistent usage" of the same word in a statute). When a rancheria is unoccupied, however, there are no conveyances to make to Indians or their designees, and no reason to make improvements for non-existent Indians' benefit. As courts have found, Section 3 improvements were intended to provide livable land to Indians so that they can sustain themselves and enjoy economic self-sufficiency. *See, e.g.*, *Duncan v. Andrus*, 517 F. Supp. 1, 6 (N.D. Cal. 1977); *Duncan v. United States*, 667 F.2d 36, 45 (Ct. Cl. 1981). But that aim is absent when a rancheria is unoccupied. For these reasons, the Department has distinguished between occupied rancherias that were improperly sold and terminated before making Section 3 improvements and unoccupied rancherias (including Taylorsville), which "should . . . be considered finally terminated in that they were unoccupied and all lands were sold pursuant to the amended Termination Act." AR 700; *see also* AR 686.

In short, because Sections 2, 3, and 10 do not apply to sales of unoccupied rancherias under Section 5(d), the Department did not act arbitrarily or capriciously in failing to analyze those sections.

D. The Department did not act arbitrarily or capriciously by failing to explicitly consider the documents proffered in Plaintiff's Motion.

Plaintiff argues that the Department's failure to consider certain documents renders its 2015 and 2020 Decisions arbitrary and capricious. Most of Plaintiff's proffered records relate to the validity of the sale or termination of the Taylorsville Rancheria, which the statute of limitations precludes Plaintiff from contesting. ECF No. 33, at 8-9; ECF No. 41, at 6. Thus, to the extent that Plaintiff uses the documents to challenge the Taylorsville Rancheria's sale or termination, they need not be considered.

Regardless, the records do not apply to the issues in this case or undermine the Department's decisions, and thus the Department was not required to consider them. *MFAN*, 854 F. App'x at 941; *Bagamasbad*, 429 U.S. at 25.

- *June 25, 1975 Memorandum* (Pl. MSJ at 19-20, citing Decl. Ex. E) – Plaintiff asserts that this memorandum shows that Section 3 improvements must be completed before termination of a rancheria is effective. But the memorandum never mentions Section 5(d) or the termination of unoccupied rancherias. In fact, its use of the terms "distribution" and "Indian distributees," and its specific identification of eight occupied rancherias, make clear that it refers only to occupied rancherias. *See* Decl. Ex. E, at 1-3; Section IV.C.

- *March 1972 list of tribes* (Pl. MSJ at 20-21, citing Decl. Ex. D[12]) – Plaintiff argues that the listing of Taylorsville as "Land sold, deed approved 11-4-66" rather than "terminated" shows that the Taylorsville Rancheria was not terminated. But the Taylorsville Rancheria is listed under the heading "Terminated Since 1958." Decl. Ex. D, ECF No. 85-2 at 12. Further, the listing of the Taylorsville and Strathmore Rancherias as "Land Sold" is not unexpected given that they were the only two unoccupied rancherias under the "Terminated Since 1958" section. AR 685. The other rancherias were occupied, and all but one (Shingle Springs) were among the 41 named rancherias in the Rancheria Act and could not be terminated simply by selling the land. *Compare id.* with AR 509. The March 1972 list also does not undermine the numerous Interior documents designating the Taylorsville Rancheria as "terminated." *See, e.g.*, AR 685, 698, 700, 713. In fact, Exhibit G to Plaintiff's Declaration provides "Termination Effective" dates for the Taylorsville and Strathmore Rancherias. Pl. MSJ Decl. Ex. G, ECF No. 85-2 at 24.

- *January 19, 1979 survey of tribes* (Pl. MSJ at 21, citing Decl. Ex. G[13]) – Plaintiff claims that the Department admits that it had not complied with Section 3 for the Taylorsville Rancheria. The 1979 survey states no such thing, nor does it suggest that Section 3 compliance was required for the Taylorsville Rancheria. In fact, by noting that there was "[n]o land left in Indian ownership" and "[n]o residents at time of termination" for the five unoccupied rancherias (*compare* AR 685), the 1979 survey indicates that Section 3 compliance was not required to sell an unoccupied rancheria under Section 5(d). Pl. MSJ Decl. Ex. G, ECF No. 85-2, at 24.

- *Lack of communications with Plaintiff tribal citizens* (Pl. MSJ at 21) – Plaintiff states that it is not aware of any communications from the Department to Plaintiff or any tribal members in accordance with Sections 2, 3, or 10 of the Rancheria Act. Such communications were not required because Sections 2, 3, and 10 do not apply to unoccupied rancherias. *See* Section IV.C.

- *February 1978 memorandum* (Pl. MSJ at 21, citing Decl. Ex. F) – Plaintiff asserts that this memorandum shows that Section 3 improvements must be completed before terminating a rancheria. The memorandum, however, specifically references the 41 rancherias identified in the original Rancheria Act, which were occupied. The memorandum does not reference Section 5(d) or indicate that it applies to unoccupied rancherias such as the Taylorsville Rancheria.

In short, Plaintiff's proffered documents shed no light on the one question before the Court: whether sale of the Taylorsville Rancheria constitutes an Act of Congress forbidding future Part 83 acknowledgment. And they even fail for the purpose Plaintiff submitted them, as they reinforce the 2015 Decision's conclusion that federal recognition of the Taylorsville Rancheria ended when the lands were sold.

E. The Court cannot order the Department to grant Plaintiff federal recognition or to resume government-to-government relations with Plaintiff.

Finally, Plaintiff asserts that because of the "unusual" delay in agency action, remand is inappropriate, and the Court should simply "declar[e] that the relationship of the Plaintiff was not and

[12] Plaintiff's Motion appears to mistakenly cite Exhibit G rather than Exhibit D.
[13] Plaintiff's Motion appears to mistakenly cite Exhibit H rather than Exhibit G.

has never been terminated with the United States." Pl. MSJ at 25-26.

Plaintiff's request is legally untenable. For one, any challenge to the termination of federal recognition of Plaintiff is time-barred, as this Court has already held twice. Order of 1/3/19, ECF No. 33, at 8-9; Order of 4/24/20, ECF No. 41, at 6. Plaintiff was on notice of its termination by 1979 when it was not included on the federal list of recognized tribes, and Plaintiff's failure to challenge that termination within six years means Plaintiff cannot do so here.

More fundamentally, even if the Department's interpretation of the various statutes and regulations were erroneous, the Court lacks jurisdiction to order the relief Plaintiff requests. A tribe gains federal recognition by being placed on the Department's list published annually per the Federally Recognized Indian Tribe List Act of 1994. 25 C.F.R. § 83.1; *Agua Caliente Tribe of Cupeno Indians of Pala Reservation v. Sweeney*, 932 F.3d 1207, 1217 (9th Cir. 2019) ('[A] federally recognized tribe is one that is already on the list."). And to get on the list, a group must first exhaust "the prescribed remedy" of the Part 83 process. *Agua Caliente*, 932 F.3d at 1216-17; *Mdewakanton Band of Sioux in Minn. v. Haaland*, 848 F. App'x 439, 440 (D.C. Cir. 2021) ("[A]ny tribe claiming to be federally recognized [must] file a Part 83 petition before it can obtain judicial review.").

Plaintiff has never been on the list of federally recognized tribes and has not exhausted the Part 83 process. Whether framed as inclusion on the list or a "correction" to the list, this Court cannot compel the Department to give Plaintiff federal recognition. *Agua Caliente*, 932 F.3d at 1217; *see also Kanam v. Haaland*, No. 21-1690, 2022 WL 2315552, at *5 (D.D.C. June 28, 2022) (holding that plaintiff could not seek recognition in court until it had gone through Part 83 process); *Mdewakanton Band of Sioux in Minn. v. Bernhardt*, 464 F. Supp. 3d 316, 321-23 (D.D.C. 2020), *aff'd*, 848 F. App'x 439 (D.C. Cir. 2021) (holding that plaintiffs could not sue for federal recognition because they did not go through Part 83 process first). Indeed, the Court has already held that "*Agua Caliente Tribe* seems to foreclose the Court from compelling the Department to include Plaintiff on the federally recognized tribes list," and Plaintiff has provided no case law to the contrary. Order of 7/19/22, ECF No. 74, at 4.

Plaintiff also argues that Part 83 does not apply because § 83.3 applies "only to indigenous entities that are not federally recognized tribes." Pl. MSJ at 22. Though somewhat unclear, Plaintiff appears to be arguing that they need not go through the Part 83 process because they were previously

federally recognized and their relationship with the federal government has never been severed. But the Ninth Circuit has already rejected this same argument and held that a group cannot bypass the Part 83 process even if they contend they have an unsevered government-to-government relationship. *Agua Caliente*, 932 F.3d at 1217; *see also Mackinac Tribe v. Jewell*, 829 F.3d 754, 756-57 (D.C. Cir. 2016); *Muwekma*, 708 F.3d at 219 (noting that an entity's non-inclusion on the List meant that they are not entitled to direct placement on the List outside of Part 83, even if the entity was, at one time, unquestionably federally recognized); *Miami Nation*, 255 F.3d at 346 ("Indian nations, like foreign nations, can disappear over time . . . whether through conquest, or voluntary absorption into a larger entity, or fission, or dissolution, or movement of population.").

In short, even if the Court agreed that the Department's legal conclusion was erroneous, the only permissible remedy is remand so that Plaintiff can, if it chooses, go through the Part 83 process.

V. CONCLUSION

For the foregoing reasons, the Court should affirm the Department's decisions, deny Plaintiff's Motion for Summary Judgment, and grant Defendant's Cross-Motion for Summary Judgment.

Dated: April 17, 2023

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