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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TSI AKIM MAIDU OF TAYLORSVILLE RANCHERIA,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF THE INTERIOR,

Defendants.

Case No.: 2:17-cv-01156 – DJC-CKD

OPPOSITION TO DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT AND REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Federal Defendants efforts to present missing rationale to explain the 2015 and 2020 Decisions concede both Decisions are unlawful and violate the Administrative Procedure Act, 5 U.S.C. § 706. The government's interpretation of the California Rancheria Act, Section 5(d), requiring Plaintiff enter the 25 C.F.R Part 83 process because Congress terminated its relations with Plaintiff is unreasonable and violates the Administrative Procedure Act, 5 U.S.C. § 706.

The government misconstrues how this Court frames the issues in this matter, characterizing it as "whether Plaintiff's recognition must come from Congress, or whether Plaintiff could also pursue Part 83 recognition." Doc. 87-1 at 1. The government fails to apprehend that Plaintiff's Second Amended Complaint is not a cause of action for federal recognition, it is an action seeking judicial review of agency action.

This Court allowed this case to move forward in its 2022 Order. Doc 74 at 4-5 and its April 2020 Order, Doc. 41 under 5 U.S.C. §706. In the July 2022 Order, this Court observed that Plaintiff is seeking review of the government's interpretation of the California Rancheria Act in the 2015 Decision and "the specific question of whether the 2020 Decision, like the 2015 decision, involved an agency interpretation of the California Rancheria Act that harmed the Plaintiff requires a review of the administrative record." Doc. 74 at 5.

The matter before this Court, therefore, is more appropriately viewed through the lens of the Administrative Procedure Act (APA), 5 U.S.C. Section 706. Plaintiff seeks review of Federal Defendants interpretation of the California Rancheria Act. Plaintiff argues that Section 5(d) of the Act's plain meaning leads to only one conclusion: Plaintiff's tribal status and relationship was not terminated by the mere sale of land and, in turn, the 2015 and 2020 Decisions determining that the Plaintiff must/may/could seek acknowledgement *via* 25 C.F.R. Part 83 are unlawful and in violation of 5 U.S.C. §§ 706(2)(A), (C), and (D).

Rather than focus and drill down on the case law related to APA judicial review, the government focuses substantial energy in its cross-motion and opposition to this Motion for Summary Judgment on one of several potential remedies Plaintiff seeks: a request to this Court to

confer recognition. Doc 87-1 at 1. The focus on one of several options this Court has at its disposal to remedy unlawful agency action misses the point of action for judicial review. In fact, as this Court observed in it July 2022 Order, "Defendants admit that the Court can rule on the issue of whether the Department incorrectly found that Congress terminated the tribe when the Rancheria was sold and may ultimately set aside and remand that decision." Doc. 74 at 4.

Moreover, discussed below, as well as in Plaintiff's prior memorandum in support of Plaintiff's Motion for Summary Judgment to this Court, Plaintiff seeks multiple potential remedies; however, as this Court is aware, traditional remedy under APA judicial review, without special circumstances, upon a finding of a violation of the §706, is remand to the agency for further action or as this Court may otherwise deem appropriate, which might include mandamus relief.

Furthermore, Federal Defendants' lawyers for the first time present *post hoc* written explanation to fill in the missing analysis and reasoning concerning their *ipse dixit* interpretation of the California Rancheria Act in the 2015 and 2020 Decisions that termination was mandated by Congress when the land was sold. *See, e.g.*, Doc. 78-1 at 20 (arguing that—despite case law, *see e.g., Table Bluff v Andrus*, 532 Fed Supp. 255, 260-261 (N.D.Cal. 1981) and historical government memoranda stating that compliance with CRA Sections 2, 3, and 10 is mandatory for the cessation of relations with Indians under the California Rancheria Act, *see e.g.*, Doc. 85 at 19-20— Sections 2, 3, and 10 are irrelevant to the analysis and the mere sale of unoccupied property terminates status).

Federal Defendants also now present an explanation of their interpretation of the California Rancheria Act that requires a statutory and legislative intent analysis to reach Federal Defendant's interpretation of the California Rancheria Act which in turn terminated Plaintiffs status and requires 25 C.F.R. Part 83 to seek recognition. Doc. 81-1-1 & 3. For instance, only now does the government present an argument why the Indian Reorganization Act ("IRA") is critical to understanding Section 5(d) of the Rancheria Act.[1] Federal Defendants boldly claim, "Once the

[1] The term of art "federal recognition," as a formal regulatory or statutory status concept, is not found in the Indian Reorganization Act. In fact, the legal term, "federal recognition" is not found until, at least, the Agency's

Taylorsville Rancheria land ceased being a "reservation," the Taylorsville Rancheria tribe no longer met the IRA's definition of a "tribe." Doc. 78-1 at 1. The government's interpretation of Section 5(d), presented to this Court—of either statute—appears in the 2015 or 2020 Decisions. Therefore, Federal Defendants' arguments are *post hoc* as well as implicatively concede, *a priori*, that their 2015 and 2020 Decisions are violative of 5 U.S.C. §§ 706(2)(A), (C), & (D).

Federal Defendants rely heavily upon the agency's so-called "near plenary" authority, coupled with *Chevron and its progeny's* high deference to the agency's statutory and regulatory interpretation to convince this Court its Decisions were not violative of § 706. In short, the government's effort to convince this Court that the government is obligated to provide little or no reasoned explanation, or, in fact, little, if any, legal analysis or rationale related to its interpretation of a federal statute in its 2015 or 2020 Decisions, is both (1) inconsistent with the congressional policy over the past fifty years including restoration of relations with Indians that were unlawfully "terminated" and encourage self-determination, *see, e.g.,* AR 606-607, and (2) ironic, in that context, that the government seeks to use the long-abandon California Rancheria Act to ensure that the interpretation of the Act continues to be read against Indian interests.

Plaintiff urges this Court to find, determine, and declare that the government misinterpreted the California Rancheria Act, find the Defendants' 2015 and 2020 Decisions unlawful, and provide remedy in accordance with this Court's authority.

II. DISCUSSION

A. Government's Lawyers Attempt to Provide Missing Reasoning for the 2015 and 2020 Decisions.

The government's attorneys present a reasoned analysis that is missing from the 2015 and 2020 Decisions. Stated another way, the government's statutory analysis was not offered as part

promulgation of the Federal Acknowledgment Regulations, 5 CFR part 54 in 1978 or with Congress' enactment of the Federally Recognized Indian Tribe List Act of 1994, 108 Stat. 4791, P.L. 103-454, 25 U. S.C. 479a [now 25 U.S.C. 5130]. Furthermore, for historical context, the Neither House or Senate Committee Report for the California Rancheria Act offers no discussion of the Indian Reorganization Act especially for purposes of understanding any ambiguity. AR 450, AR 459, AR 578, and AR 592. In fact, no document in the administrative record requires the interpretation of the California Rancheria Act through the lens of the Indian Reorganization Act. *See SEC v Chenery Corp,* 318 U.S. 80 (1943).

of a written, reasoned decision that satisfactorily explains Federal Defendants' statutory interpretation *at the time* the Decision was made. *See Sierra Club v. Marsh*, 976 F.2d 763, 772-73 (1st Cir. 1992) ("No new rationalizations for the agency's decision should be included, and if included should be disregarded."). The government offers this analysis late and in violation of the APA.

The government's lawyers fill in the missing rationale by presenting a *post hoc in pari materia* reading of the CRA, that requires a novel interpretation and application of the Indian Reorganization Act (IRA) to distract, confuse, and obfuscate from the plain meaning of Section 5(d). The government hopes that this complicated and novel theory will signal that its expertise is based on its "near plenary authority" in Indian affairs. The government calculates that this Court will ignore Federal Defendants' missing rationale in its 2015 and 2020 Decisions and will fall back on the application of a well-known high deference standards to agency decision-making in line with *Chevron and its progeny*.[2] However, *post hoc* rationalization and explanation is *prima facie* arbitrary and capricious agency action, and this matter should be remanded to the agency at minimum. *See SEC v Chenery Corp*, 318 U.S. 80 (1943) (courts may not consider *post hoc* rationalizations in defense of administrative agency decisions).

Allowing an agency to develop new reasons for its actions during litigation suggests to the public that Federal Defendants' deliberative process was a sham and that the public explanation at the time of the decision was just a pretext. Therefore, remand under *Chenery* is desirable and in-line with judicial prerogative because it encourages reasoned decision making and provides the agency with an incentive to closely examine and justify a policy and statutory interpretation.

Plaintiff urges this Court to find and declare the government's action violates the APA.

[2] It is ironic that Federal Defendants continue to justify termination policy when it has been so roundly rejected by the United States. *See, e.g.*, President Ronald Reagan (January 24, 1983). *"Indian Policy. Statement by the President," available at* https://files.eric.ed.gov/fulltext/ED226884.pdf, *retrieved* May 12, 2023. And it doubly ironic that that in defending termination policy it foregoes, and eschews, one of the few policy and judicial tools to assist in its role as the agency delegated by Congress to deal with Indian affairs. Congress may well possess plenary authority over Indian affairs, however, Federal Defendants stance that it possesses "near plenary authority," under Section 2 of the Agency organic act is currently subject to argument related to the delimits of that authority before the United States Supreme Court. *See, e.g., Brakeen v. Haaland*, 994 F.3d 249 (5th Cir. 2021), *pending before the United States Supreme Court* No. 21-380 (argued Nov. 9, 2022).

B. The Government's Interpretation of the California Rancheria Act is Arbitrary and Capricious.

Federal Defendants' determination of whether Plaintiff is required to seek federal acknowledgment pursuant to Part 83, or is ineligible to do so, turns on whether selling land purchased for homeless Indians in California pursuant to the Section 5(d) of the California Rancheria Act ("CRA") ceased relations with the Plaintiff, tribe. Plaintiff argues there is no ambiguity in Section 5(d).

Only now, Federal Defendants offer a reasoned explanation for its 2015 and 2020 Decisions as discussed above. Notwithstanding the government's *post hoc* rationale neither the 2015 or 2020 Decisions offer the "reasons given for its decision," or articulate "a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n,* 463 U.S. at 43. "Generally, judicial review of agency action is limited to review of the administrative record." *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1436 (9th Cir.1988), amended by, 867 F.2d 1244 (9th Cir.1989). This is because the "task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court." *Hall v. Norton*, 266 F.3d 969, 977 (9th Cir. 2001) (explaining further that the "focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court."). The record in this matter is voluminous; however, it is difficult to discern the government's decision-making to the administrative record.[3]

Administrative agencies are judged by courts on whether the particular agency action under review is supported by "reasoned decisionmaking." *Massachusetts v. EPA*, 576 U.S. 743, 750 (2015); *see also, e.g.*, Cristina M. Rodriguez, Foreword: Regime Change, 135 Harv. L. Rev. 1, 94 (2021) ("Perhaps the most basic of expectations is that actors within the administrative state

[3] The government attempts to argue it did not ignore records before it. However, as Plaintiff has already argued in prior briefings to this Court, the Federal Defendant's have not provided reasoned explanation or satisfactory rationale why it relied on some records while ignoring others. *See* Doc. 85 at 16-17 & 19-21.

provide reasons for their actions[.]"). The government fails to show that Section 5(d) included an express mandatory termination of Plaintiff. For instance, the government claims that Sections 2, 3 and 10 are not germane. Doc.87-1 at 20. However, Section 2, 3, and 10 are interlinked to the cessations of relations with Indians and therefore directly germane to determining whether Section 5(d) includes cessation of relations. For example, Section 10, which provides for cessation of relations with individuals connects to Section 2 because individuals were required to create a distribution plan. It is the approval of this plan and the providing of services under Section 3 that allows for the *aim* of the statutory scheme: cessation of relations with Indians not tribal polities. The government concedes this point stating, "that aim is absent when a rancheria is unoccupied." Doc. 87-1 at 21.

Even so, Section 5(d) is decoupled from all other sections and other subsections in Section 5 and the other sections of the statute that link cessation of relations with individuals. This is because when no individual Indians were found on the lands, Congress was not concerned with cessation of relations with Indian because there were no individual Indian to apply Sections 2, 3, and 10.

Therefore, under Section 5(d) of the Act, Congress' unambiguous direction to Federal Defendants was to sell property that Federal Defendants admit was not held for a polity, Doc. 87-1 at 2, but held for use and occupancy of homeless Indians of California. Section 5(d) applied to properties held by the United States for the use and occupancy of homeless California Indians that were determined to be unoccupied. AR 560. Nothing in the House or Senate Committee Report for the 1964 amendments indicates that Section 5(d) signaled the intent of Congress to terminate relations with tribal polities as the government argues. *See* several administrative records related to House and Senate Reports beginning respectively at AR 450, AR 459, AR 578, and AR 592.

In addition, the government's throughgoing analysis notwithstanding its *post hoc* offering is that if the Plaintiff was not a Tribe under the IRA it was never eligible to be "recognized" or

conduct relations with the United States. Doc 87-1 at 11. In part, the government explains Plaintiff never organized under Section 16 of IRA. There are several factors that militate against Federal Defendant's analysis:

First, Section 16 of the IRA states: "*Any Indian tribe shall have the right to organize* for its common welfare, and *may adopt* an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when—". *See Indian Reorganization Act*, June 18, 1934, 48 Stat. 984, § 16 (This section was amended in its entirety by section 101 of Public Law 100–581 (102 Stat. 2938)). [emphasis supplied]. There is nothing *mandatory* about the language of Section 16. In fact, it is permissive, and a choice for a Tribe. The government admits that Section 16 is permissive stating, "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." Doc. 87-1 at 3.

Moreover, Federal Defendants' arguments are disingenuous and contradict how tribes nationally are governmentally organized or hold land.[4] For instance, at least three tribes in California are without "reservation" lands or lands held in trust by the United States: Scotts Valley Band of Pomo Indians of California, Guidiville Rancheria of California, and Koi Nation of Northern California (formerly referred to as Lower Lake Rancheria).

Each of the three are federally recognized Tribes. *See* Indian Tribal Entities Within the Contiguous 48 States Recognized by the Eligible to Receive Services From the United States Bureau of Indian Affairs, 88 Fed. Red. 2112 (Jan 12, 2023) that has no reservation or land held in trust by the United States. Guidiville voted in favor of the IRA, 14 to 1 on June 10, 1935. Scotts Valley voted in favor of the IRA 1 to 0, on June 12, 2035. *See Theodore Haass, Ten Years of Tribal Government under I.R.A.*, United States Indian Service (1947), at 14-15. Both Scotts Valley

[4] *See Kemper v. Interior*, No. 1:2015cv00771 (D.C.D.C July 21, 2016) (FOIA request to Bureau of Indian Affairs sought all tribal constitutions, articles of incorporation, or other documents establishing documents. BIA responded that it could not find any responsive records. Appeal to agency after hearing resulted in nothing further from agency. Federal Court lawsuit resulted in government turning over hundreds of governing documents including numerous tribes despite having voted for the IRA operated under the traditional governance and organization.) [pleadings available at https://foiaproject.org/case_detail/?title=on&style=foia&case_id=27622].

and Guidiville were federally recognized as a result of *Scotts Valley et al. v. the United States* case of September 6, 1991 (NO.C-86-3660-VRW).

Koi Nation (Lower Lake Rancheria) did not vote on IRA, *see* Haas at 14-15. Interestingly, on December 29, 2000, the government reaffirmed Lower Lake as a federally recognized tribe. *See* 80 Fed Reg. 47494 (Aug. 7, 2015) (*recounting that* "On December 29, 2000 the Assistant Secretary of Indian Affairs reaffirmed the Federal recognition of the Koi Nation (Tribe), formerly known as the Lower Lake Rancheria, and the government-to-government relationship between the United States and the Tribe").

There is context to the government relations with Plaintiff. This context, the government hopes that this Court will look past these historical circumstances and ignore difficult policy questions concerning whether the agency has any consistent policy for the application of disparate treatment of similarly situated tribal polities.

Furthermore, Federal Defendants would like this Court to believe that despite land status of "rancherias" across California, the United States was not nor did not conduct relations with polities of Indians in California. *Cf.* FN 5, *supra*. Federal Defendants offer a nebulous supportive argument that "The Taylorsville Rancheria was never organized under IRA Sections 16 or 17. AR 320-28, 692, 950" and therefore because Plaintiff did not do so the Tribe was terminated under the Act. Doc. 87-1 at 18 and FN 9. Such an argument is unmoored from any statutory interpretation linking Section 5(d) with Sections 2, 3, 10 and as the government points out section 11—where the government is directed to take special conditional action if the Indian had organized under the IRA. *Id.*

Finally, the government concedes that only Congress has plenary authority over Indians. If Congress is mandating termination when unoccupied land, unconnected to a tribal polity, is sold, one would expect Congress to use unmistakable or express language mandating the termination. *See, e.g., See Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 202 (1999) (finding Congress must use express language when exercising its plenary authority related to a fundamental relationship with Tribes).

This presents a profound question about plenary authority: Did Congress delegate to the agency to interpret the California Rancheria Act—even if the agency believes it to be ambiguous—as mandating termination of relations with Plaintiff? The government's interpretation of Section 5(d) that termination was mandatory is unlawful and beyond its authority because Congress provides no express or unmistakable legislative intent within the statutory scheme linking the sale of property under Section 5(d) to terminations.

No deference should be extended to the government's interpretation of the statute because Section 5(d) appearance in the statutory scheme is unambiguous, and the agency's interpretation is unreasonable. *Utility Air Regulatory Group v. EPA*, 134 S.Ct.2427,2442, 189 L.Ed.2d (2014). In short, Federal Defendants offer no reasoned explanation at the time the 2015 or 2020 Decisions were made and therefore Federal Defendants actions are arbitrary and capricious. And in so far that the agency offers explanation that now requires the simultaneous interpretation of the Indian Reorganization Act and the California Rancheria Act, such reasoning is unreasonable and therefore is arbitrary and capricious.

C. Plaintiff Relief Sought

Federal Defendants maintain that this Court lacks the authority to award the Plaintiff's requested relief. The APA, however, expressly provides that a court may "hold unlawful and set aside agency action . . . found to be . . . not in accordance with the law." 5 U.S.C. § 706(2) (emphasis added). Further, "[u]pon finding a violation of the ESA, courts have broad discretion to fashion injunctive relief." *Center For Biological Diversity v. Kempthorne*, No. CV-07-0038, 2008 WL 659822, at *13- (D. Ariz. Mar 06, 2008) (citing the APA and collecting Ninth Circuit case law to support decision to enjoin a final delisting rule). Pursuant to this authority, then, Plaintiff could potentially obtain the relief it seeks.

Here, Plaintiff's cause of action is a challenge to agency action under 5 U.S.C. § 706 and seeks various relief including remand, declaratory relief, and other injunctive relief. Plaintiff seeks relief only in accordance with the law or is within this Court's discretion.

D. Federal Defendants Disavowing of the Indian Cannon of Construction is Incongruent to DOI's s Described Delegated "Near-Plenary authority".

Federal Defendants represent to this Court that the Indian canon of construction is inapplicable to these circumstances to both the interpretation of the Statute and the historical evidence. Federal Defendants rely on Ninth Circuit precedent that declines to apply the Indian canon of construction. Doc. 87-1 at 17 *citing Redding Rancheria v. Jewell*, 776 F.3d 706, 713 (noting that in this Ninth Circuit, "an agency's legal authority to interpret a statute appears to trump any practice of construing ambiguous statutory provisions in favor of Indians."). The question of under which circumstances the Indian canon was not applied in *Redding v. Jewell* is worth reviewing. In *Redding v Jewell*, the Redding tribe sought application of the canon to a statute's interpretation not evidence. Therefore, while Ninth Circuit[5] is clear that the Indian canon has been repeated rejected as applying to statutory interpretation[6] is an open question if the canon is required to be applied by the government when evaluating or analyzing evidence especially that in the historic record.

Federal Defendants readily admit the unseemly and tragic historic context to all Indians in California and Plaintiff's circumstances including that the United States gained the benefit of the seizing of aboriginal lands following the Senate's failure to sign eighteen treaties with Indian tribes in California. Doc 87-1 at 2; AR 761 and 762. Federal Defendants also admit that the United States purchased land for homeless Indians that became known as the Taylorsville Rancheria for

[5] It appears that such is the fortune of the government litigating in the Ninth Circuit. Other Circuits are split on this point. *See, e.g.*, *Northern Arapaho v. Becerra*, No. 21-8046 (10th Cir. March 6, 2023). Such is the fortune of the Plaintiff choosing, for instance, to file in California federal court rather than the District of Columbia, where Secretary and her designee, made the 2015 and 2020 determination. In the District of Columbia, for instance, the government is required, even in cases involving California Indians to apply the Indian canon of construction. Order Delivered from Bench Case 1:19-cv-01544-ABJ, May 8, 2023 (denying government motion for reconsideration of administrative decisions finding on allegation of clear error regarding the evaluation of historical evidence regarding a California federally recognized tribe finding that Indian canon is applicable).

[6] Likewise, the leading treatise on federal Indian law, Cohen's Handbook of Federal Indian Law §2.02[1] (2012) plainly states that the Indian canon apply to federal regulations: "These canons [of construction] were first developed in the context of treaty interpretation, but the courts have consistently extended them to non-treaty sources of positive law such as agreements, statutes, executive orders, and federal regulations".

Indians associated with a Band. Doc 87-1 at 2. The government, however, fails to view these historic records with any context that may be viewed favorably in Plaintiff's interest.

For instance, the government conveniently disregards historical evidence in their own June 23, 1927, record that refers to the group of Indians as a "Band" of Indians at Taylorsville. AR 251. Moreover, the historic evidence indicates, and the government admits that the Band was treated as a polity for purposes of voting on the application of the Indian Reorganization Act. Doc. 87-1 at 3 FN 2 *citing* AR 275, 278, 314, 868 (admitting that the Band was a tribe especially given that historic and traditional tribes and bands of Indians nationwide participated in this statutorily mandated referendum).

Even when the government has favorable evidence in the record, for instance, AR 123, 685,[7] Federal Defendants fail to offer it as evidence in its 2015 or 2020 Decisions and offer no reasoned explanation or fails to satisfactorily provide rationale why Section 5(d) accomplished termination but rather offer *ipse dixit* in its 2015 and 2020 Decisions to reach its conclusion without conducting an independent analysis—that Part 83 applies in 2015 and Part 83 might apply in 2020.

The government is disingenuous at best when it comes to its view of historical evidence.[8] By cherry-picking the historical record to establish broad dispositive conclusions about the evidence, the government conveniently reaches the outcome that Plaintiff is not a tribe. By establishing these historical facts, the government may conveniently hide behind the Ninth Circuit's interpretation of the Indian canon of construction and argue without pausing for shame or horror that "'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

[7] Juxtapose AR 685 with AR 686. AR 686 categorizes "Taylorsville Rancheria" as "sold as unoccupied rancherias as authorized under Section 5(d) of the amended Rancheria Act, 78 Stat. 390." However, the government offers no analysis or characterization of the tribe's status at that time, although it does for other tribes mentioned in the memo. AR 685 matter-of -factly concludes the land was sold under Section 5(d), "[c]onsequently, these rancherias are terminated." Note, even here an evidentiary reading favorable to the Plaintiff would suggest that the term "terminated" may not have meant cessation of relations with Plaintiff tribal polity.

[8] Compare Memorandum Order Case 1:19-cv-01544-ABJ Document 64 Filed 09/30/22 and Order Delivered from Bench Case 1:19-cv-01544-ABJ, May 8, 2023 (denying government motion for reconsideration of administrative decisions finding on allegation of clear error regarding the evaluation of historical evidence regarding a California federal recognized tribe that Indian canon applicable).

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)).'" Doc. 87-1 at 17.

The government argues vehemently that it, nor this Court, need not apply the Indian canon. By hiding behind this precedent, it does not require Federal Defendants to grapple with the inescapable historical facts that Plaintiff was conducting relations with the United States and was stripped of its government-to-government relations.

Plaintiffs urge this court to find and declare that, at minimum, the Indian canon of construction applies to this Court's and the Department's assessment of historical evidence in the record.

III. CONCLUSION

Plaintiff seeks 5 U.S.C. Section 706 judicial review of Federal Defendants' 2015 and 2020 determinations that Plaintiff is either eligible or ineligible to seek federal recognition under 25 C.F.R. Part 83. Those determinations turn on whether Plaintiff tribe's government-to-government relations were terminated by the United States' Congress *vis-à-vis* the actions of Federal Defendants. Federal Defendants argue that under the California Rancheria Act, the sale of land, known as the Taylorsville Rancheria, that was determined to be not occupied, terminated the relationship of Plaintiff tribal polity with the United States by Congress' intent and operation of the Act itself.

Plaintiff urges this Court to find and declare that the government's 2015 and 2020 Decisions violate 5 U.S.C. §§ 706 (2)(A), (C), & (D) and therefore are unlawful. Plaintiff urges this Court to find and declare that that Federal Defendants misinterpreted the California Rancheria Act. Plaintiff further urges this Court to find and declare that Federal Defendants interpretation of Section 5(d) may only be read as a statutory directive to dispose of unused lands that had previously been set aside for use and occupancy of California Indians.

Plaintiff further urges this Court to find and declare that Section 5(d) of the California Rancheria Act could not and did not mandate cessation of United States relations with Plaintiff tribal polity associated by name or otherwise based on the sale of land and therefore Plaintiff tribal

polity's government-to-government relations were not ceased or terminated in any way. Plaintiff further urges this Court to Remand this matter to the government for action consistent with this Court's conclusions, findings, and Orders and take such action within a reasonable period of time. Plaintiff further requests this Court to provide additional remedial findings, relief, or Order as the Court deems appropriate.

DATED: May 12, 2023

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