IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS, Plaintiff, v. DOUGLAS BURGUM, et al., Defendants.	Civil Action No.: 25-cv-00958-TNM Judge Trevor N. McFadden

BRIEF OF *AMICI CURIAE* YOCHA DEHE WINTUN NATION AND KLETSEL DEHE WINTUN NATION OF THE CORTINA RANCHERIA IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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INTERESTS OF *AMICI CURIAE*

Amici the Yocha Dehe Wintun Nation ("Yocha Dehe" or "Tribe") and the Kletsel Dehe Wintun Nation of the Cortina Rancheria ("Kletsel Dehe" and, together with Yocha Dehe, the "Patwin Amici" or "Amici") are federally recognized, sovereign tribal governments with a strong interest and unique perspective in the adjudication of this case. Amici's Patwin ancestors have, since time immemorial, used, occupied, and maintained a cultural and spiritual connection to the region that now lies within the region of the northeastern San Franciso Bay Area now known as Solano County – so named for a Patwin chief. The case arises from efforts of the Scotts Valley Band of Pomo Indians ("Scotts Valley" or "Band") to develop a large casino project on 160 acres of land in the Solano County city of Vallejo, California (the "Vallejo Property"). The project poses a significant threat to amici's cultural, governmental, and economic interests. On January 10, 2025, the Department of the Interior ("DOI") approved the project in violation of the Indian Gaming Regulatory Act and other federal laws ("January 10 Decision"). *Amici* filed litigation challenging the January 10 Decision. DOI has recognized some of the legal errors in that Decision and has initiated a reconsideration process. Scotts Valley seeks to invalidate the reconsideration. To protect their tribal resources, rights, and sovereignty, the Patwin Amici now respectfully request that their voices be heard.

INTRODUCTION

DOI saw a problem and acted promptly to solve it. In 2019, the agency issued an Indian Lands Opinion ("ILO") properly recognizing that Scotts Valley lacks a "significant historical connection" to Vallejo. Scotts Valley filed suit and Yocha Dehe sought to intervene. Scotts Valley and DOI defeated the intervention, arguing that Yocha Dehe's interests were not at risk because it

would have an opportunity to meaningfully participate and submit evidence in any future agency proceedings addressing Scotts Valley's "significant historical connection" claims.

Those proceedings took place in 2024. The Patwin Amici and other concerned tribes timely submitted extensive argument and evidence demonstrating (again) that Scotts Valley lacks a significant historical connection to Vallejo. DOI acknowledged receipt of the submissions and promised they would be considered. But the agency did not keep its word. Instead, it issued a new ILO without considering the evidence. The result was a factually erroneous, legally deficient, and procedurally indefensible decision approving Scotts Valley's proposed casino project.

Yocha Dehe promptly brought the error to DOI's attention, and the agency reasonably agreed to take another look. That decision falls squarely within DOI's inherent authority to reconsider, the existence of which no party disputes. The law, the facts, and the equities all support DOI's use of that authority here.

I. IN ISSUING THE 2025 ILO, DOI FAILED TO CONSIDER EVIDENCE BEARING DIRECTLY ON THE AGENCY'S DECISION.

During the fall of 2024, concerned tribes – including the Patwin Amici – submitted extensive evidence and argument demonstrating Scotts Valley lacked a significant historical connection to the Vallejo Property. AR 358-59. It is indisputable that DOI failed to consider this evidence when issuing the 2025 ILO – the ILO says so on its face. AR 4. A brief look at the broader regulatory and factual context of this dispute shows why the excluded evidence was important to a reasoned decision-making process – and why its exclusion was a serious legal error justifying reconsideration.

A. Regulatory Context

The Indian Gaming Regulatory Act ("IGRA") generally prohibits gaming on Indian lands taken into trust after the statute's October 17, 1988, effective date, subject to a limited number of

specific exceptions. *See* 25 U.S.C. § 2719. One exception, known as the "two-part process," allows gaming on lands taken into trust after 1988 if DOI determines that the gaming would be in the best interest of the applicant tribe and not detrimental to the surrounding community (including other Indian tribes) and the governor of the relevant state concurs. 25 U.S.C. § 2719(b)(1)(A). In its two-part analysis, DOI will consider favorably any "significant historical connections" the applicant tribe may have to the property proposed for gaming eligibility. 25 C.F.R. § 292.17(i). But a significant historical connection is not ***required*** – the two-part process allows gaming on lands where no such connection exists, provided that other requirements are met (*e.g.,* no detriment to the surrounding community, including other Indian tribes) and the governor concurs. *Id*. §§ 292.13, 292.16-292.23. There is no deadline for seeking gaming eligibility under the two-part process; a tribe can apply for a two-part determination at any time. 25 U.S.C. § 2719(b)(1)(A); 25 C.F.R. §§ 292.13-292.25.

Rather than pursuing the two-part process, Scotts Valley chose to seek gaming eligibility under the "restored lands exception," which allows gaming on lands taken into trust after 1988 as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). Unlike the two-part process, the restored lands exception does not mandate gubernatorial concurrence. *Id*.; *see also* 25 C.F.R. §§ 292.11-292.12. But it *requires* an applicant tribe to demonstrate, among other things, a "significant historical connection" to the property proposed to be restored and a "temporal connection" between the tribe's restoration and the request for restored lands. 25 C.F.R. §§ 292.11-292.12.

The significant historical connection requirement provides that an applicant tribe must either: (1) establish that "the land [proposed to be restored] is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty"; or (2) prove, with historical

documentation, "the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land." 25 C.F.R. §§ 292.2, 292.12. Scotts Valley's "last reservation under a ratified or unratified treaty" was at Clear Lake, roughly 100 miles north of the Bay Area (AR 344); therefore, the Band was required to provide historical documentation demonstrating "the existence of [its] villages, burial grounds, occupancy or subsistence use" (25 C.F.R. § 292.2).

Many of DOI's ILOs also address and interpret the "significant historical connection" requirement. Together, these two sources of authority – the ILOs and the Part 292 Regulations themselves – yield a settled body of agency interpretation, including five interpretive principles relevant here:

- First, the historical connection must be truly significant; an applicant tribe must prove something more than "any" connection.[1]

- Second, a significant historical connection requires "historical documentation"; claims lacking historical documentation do not suffice.[2]

- Third, the applicant tribe must demonstrate a significant historical connection to the specific parcels at issue. This requirement can be met with historical documentation of the applicant tribe's use or occupancy of other land "in the vicinity," but only if that evidence causes a natural inference that the tribe also used or occupied the specific property proposed to be "restored."[3]

- Fourth, a significant historical connection requires something more than an "inconsistent" or "transient" presence. The applicant must demonstrate "a consistent presence ... supported by the existence of dwellings, villages, or burial grounds."[4]

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[1] Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354, 29,366 (May 20, 2008); AR 393.

[2] 25 C.F.R. § 292.2; Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354, 29,366 (May 20, 2008).

[3] AR 396, 400, 419; *see also Confederated Tribes of the Grand Ronde Cmty. v. Jewell*, 830 F.3d 552, 566 (D.C. Cir. 2016).

[4] AR 397-98; Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354, 29,366 (May 20, 2008).

- Fifth, a significant historical connection must be tribal. The locations of individual ancestors or citizens of the applicant tribe are "not necessarily indicative of *tribal* occupation or subsistence use" and "[f]or purposes of Part 292, an applicant tribe's historical references must be specific to the applicant tribe."[5]

B. Relevant Factual Background

1. The Scotts Valley Band of Pomo Indians

In this regulatory context, it bears repeating that Scotts Valley is a Pomo tribe from the northwest shore of Clear Lake, California, roughly 100 miles from the San Francisco Bay Area. AR 344. Scotts Valley's ancestral territory is at Clear Lake. AR 344. In 1851, its ancestors signed a treaty with the United States at Clear Lake. *Id*. Had the 1851 treaty been ratified by the United States Senate, it would have created a reservation for Scotts Valley's ancestors at Clear Lake. *Id*. Despite the Senate's failure to ratify the treaty, in 1911 the United States did, in fact, create a reservation for Scotts Valley at Clear Lake. *Id*. In 1965, Scotts Valley citizens voted to terminate that reservation and in return they received property in fee simple at Clear Lake. *Id*. In 1991, Scotts Valley was restored to tribal status and it established a government headquarters at Clear Lake. Today, Scotts Valley owns multiple properties at and around Clear Lake, including a parcel where the Band hosts tribal events and ceremonies. *Id*. Scotts Valley also owns businesses headquartered at Clear Lake, including enterprises that have received state and federal funding for commercial activities at and around Clear Lake. AR 344-45.

Scotts Valley has been able to seek restored lands within its Clear Lake homeland ever since the Band was restored to federal recognition in 1991. AR 345. Other restored Clear Lake Pomo tribes have successfully restored gaming-eligible land bases at Clear Lake during that same

[5] AR 399-401, 411-12; 25 C.F.R. § 292.2 (requiring proof of "*the tribe's* villages, burial grounds, occupancy or subsistence use" (emphasis added)).

time period. *Id.*; *see also* Habematolel Pomo of Upper Lake Indian Lands Opinion (2007).[6] Instead, Scotts Valley has chosen to pursue what it perceives to be a more lucrative casino market by seeking "restored lands" within the northeast Bay Area ancestral territory of the Patwin people.

2. The 2012 Indian Lands Opinion

In 2005, Scotts Valley requested a restored lands determination for property in the northeast Bay Area city of Richmond, roughly 17 miles from Vallejo. AR 346. In its restored lands request, Scotts Valley falsely claimed to be a successor to the Suisun Patwin tribe – a recognition of the overwhelming evidence that the northeast Bay Area was used and occupied by Patwin (not Pomo) people. *Id.*

In 2012, DOI issued an ILO denying Scotts Valley's request for "restored lands" in Richmond. AR 405-23. DOI properly found there was no evidence to suggest Scotts Valley is the successor to the Suisun Patwin tribe. AR 414-17. And, more generally, the 2012 ILO found Scotts Valley lacked a significant historical connection to Richmond. AR 405-23. In July 2013, *more than a year after the ILO was issued*, Scotts Valley requested and advocated for reconsideration. *See* AR 206-07. DOI denied the reconsideration request as untimely and meritless, and the Band filed no further legal challenge. *Id.*; *see also* AR 346.

3. The 2019 Indian Lands Opinion

In 2016, having abandoned its claims of a significant historical connection to Richmond, Scotts Valley requested that DOI issue a restored lands determination for one of the four parcels that make up the Vallejo Property (the "Western Parcel").[7] AR 346-47. The 2016 restored lands

[6] The Habematolel Pomo of Upper Lake Indian Lands Opinion is available on the National Indian Gaming Commission's public website at https://www.nigc.gov/office-of-general-counsel/legal-opinions/indian-lands-opinions/.

[7] The 2016 request did not seek a restored lands determination for any of the three other parcels that would later comprise the Vallejo Site. AR 346-47, 372-73; *see also* section III, below.

request claimed a significant historical connection to the Western Parcel based on (1) an unratified treaty signed by some of Scotts Valley's ancestors (among many others) in 1851; and (2) allegations that Scotts Valley ancestors were forced to labor on large ranches owned by the Vallejo family during the Mexican administration of California. AR 347. DOI provided Yocha Dehe with an opportunity to submit evidence rebutting these claims, and Yocha Dehe did so. *Id*. Other concerned tribes and local governments submitted evidence as well. *See* AR 210-11. In December 2016, after reviewing all this material, DOI informed Scotts Valley that the evidence did not support the Band's 2016 restored lands theories. *Id*. Scotts Valley then asked for and was granted an opportunity to search for additional evidence. *Id*.

In 2018, Scotts Valley renewed its restored lands request for the Western Parcel with two new categories of "significant historical connection theories": (1) claims that a Scotts Valley ancestor known as "Shuk Augustine," along with several others from his village, were among a cohort of children baptized at the Sonoma Mission (roughly 20 miles from Vallejo) in 1837; and (2) claims that the same Shuk Augustine resided in a mixed household of laborers in the town of Napa (roughly 12 miles from Vallejo) in 1870. AR 347-48. Yocha Dehe was not provided the same opportunity to submit evidence rebutting these claims; instead, DOI proceeded to issue an ILO explaining why Scotts Valley's evidence remained insufficient (the "2019 ILO"). AR 348.

4. The 2019 Indian Lands Opinion Litigation

Scotts Valley filed suit challenging the 2019 ILO and seeking to invalidate the Part 292 Regulations. AR 348. Yocha Dehe moved to intervene as a defendant, noting that it could provide unique information and perspective rebutting Scotts Valley's arguments. *Id*. Scotts Valley and the United States each took the position that *Yocha Dehe's interests were not at risk because any future proceedings before DOI would include an opportunity for Yocha Dehe to submit evidence and argument addressing Scotts Valley's "significant historical connection" claims*. *Id*. For

example, in asking the D.C. Circuit to uphold denial of Yocha Dehe's intervention, DOI argued that "if the court were to rule in Scotts Valley's favor [on the merits] and remand the matter back to the agency, that outcome [ ] would not impair Yocha Dehe's interest because Yocha Dehe could submit information to the agency (as it did before) to ensure that the agency considered all the appropriate arguments to properly assess Scotts Valley's claim of a historical connection to the parcel."[8] Yocha Dehe's intervention was denied. *Id*.

On the merits, the District Court upheld the Part 292 Regulations and found the 2019 ILO was not arbitrary or capricious from an APA perspective. AR 349. Scotts Valley lost on every issue but one. *Id*. But on that last issue Scotts Valley prevailed on its argument that DOI should have considered whether to apply the "Indian law canon of construction." AR 349. DOI initially appealed the decision, but ultimately elected not to follow through on the appeal. *Id*. The matter was returned to the agency in late 2023. *Id*.

5. The 2024 Remand Proceedings

On remand, Yocha Dehe (and other tribes) repeatedly requested that DOI establish a fair, transparent, fact-based decision-making process in which all tribal parties could submit evidence and participate on an equal footing. AR 350. DOI never responded. *Id*. Yocha Dehe also made repeated requests to consult with DOI on a government-to-government basis, offering more than 40 dates on which its Tribal Council could travel from California to Washington, D.C. for an in-person consultation session. AR 357-58. DOI never responded to those requests either. *Id*.; *see also* AR 362, 364.

[8] Fed. Appellees Final Resp. Brf. at 16, *Yocha Dehe Wintun Nation v. U.S. Dep't of Interior*, 3 F.4th 427 (D.C. Cir. 2021) (No. 21-5009) Doc. #1893213.

Concerned by DOI's failures to respond, on November 13, 2024, Yocha Dehe submitted hundreds of pages of ethnohistorical documentation and expert analysis demonstrating Scotts Valley had *no* significant historical connection to the Vallejo Site.[9] AR 358-59. Among other things, Yocha Dehe's submission debunked the two theories advanced by Scotts Valley in 2018, on which no comment period had previously been provided. *Id*.

Rebutting Scotts Valley's 2018 theory that Shuk Augustine and others from his village were baptized at Mission Sonoma in 1837, Yocha Dehe identified Mission records conclusively demonstrating that the "Augustine" baptized in Sonoma in 1837 was not, in fact, Scotts Valley ancestor Shuk Augustine.[10] AR 359, 369. Nor did the remainder of the 1837 baptismal cohort include Scotts Valley ancestors; instead, it consisted of children from an entirely unrelated tribe near Santa Rosa, California, more than 50 miles away from Scotts Valley's Clear Lake homeland. *Id*.

Rebutting Scotts Valley's 2018 theory that Shuk Augustine established a Scotts Valley tribal presence in Napa in 1870, Yocha Dehe explained that although census records show *an* Augustine in Napa at that time, no historical documentation demonstrates that individual was Scotts Valley ancestor *Shuk* Augustine. AR 359. Moreover, the other members of the census household in which "Augustine" appeared had no relationship to Scotts Valley. *Id*. In fact, the household was located within a Patwin community. *Id*. And, perhaps most importantly, Yocha

[9] Other concerned tribes, including Kletsel Dehe, the United Auburn Indian Community, and the Federated Indians of Graton Rancheria also provided DOI with substantial evidence and analysis showing Scotts Valley had not met the requirements of the restored lands exception. AR 358.

[10] The two individuals had the same first name, but different native names, different fathers, different mothers, and different villages of origin. *See* Declaration of Matthew G. Adams in Support of Brief of Amici Curiae Opposing Plaintiff's Motion for Preliminary Injunction, Ex. 10 (ECF 55-12) at 17 (portion of Yocha Dehe submission). They were simply not the same person. *Id*.

Dehe demonstrated that in 1870 the Vallejo Site was a small family farm owned and worked by non-Indian labor; even if, contrary to the evidence, Shuk Augustine had established a Scotts Valley presence in the town of Napa in 1870, he could not have used or occupied the Vallejo Site. *Id*.

There was more. For example: Scotts Valley has claimed the Patwin people native to Vallejo were decimated by smallpox and "replaced" by Clear Lake Pomo people beginning in 1837; historical documentation submitted by Yocha Dehe demonstrated that Patwin people continued to use, occupy, and exercise authority over the area long after that date. AR 359; *see also* 340-41. Another example: Scotts Valley has claimed that its ancestors worked on ranches controlled by the Vallejo family during California' Mexican administration and therefore may have labored at "Rancho Suscol," a 130-square-mile property of which the Vallejo Site was a very small part; evidence submitted by Yocha Dehe showed that Rancho Suscol was used for livestock owned by the Mexican Army and, according to sworn testimony submitted by the United States in nineteenth-century legal proceedings, the Rancho was staffed exclusively by the Mexican military, not Indian labor. AR 359.

Later that same month, DOI's Office of Indian Gaming convened a "technical assistance meeting" to disseminate information about several pending restored lands requests.[11] The Patwin Amici were not invited to this meeting, notwithstanding their clearly expressed interest in the topic. But those who were invited (and did attend) reported that DOI representatives specifically confirmed that concerned tribes could submit comments and evidence addressing Scotts Valley's restored lands request.[12]

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[11] *See* Complaint (ECF 1), *Lytton Rancheria of California v. United States Dep't of the Interior* (D.D.C. Case No. 1:25-cv-01088) at ¶ 82.

[12] *Id*. (DOI representatives "stated that...[Lytton] and other tribes were permitted to submit new comments and evidence").

On November 27, 2024, Principal Deputy Assistant Secretary-Indian Affairs Wizipan Garriott (who would later sign the 2025 ILO) explicitly confirmed receipt of Yocha Dehe's submission and *promised it would be reviewed and considered* as part of DOI's restored lands decision-making. AR 66, 362. This commitment is further memorialized in a December 3, 2024, letter, which neither Principal Deputy Assistant Secretary Garriott nor anyone else at DOI has ever disputed. AR 362 (letter and absence of further follow-up); *see also* AR 66 (White Paper reference), Declaration of William C. Mumby ("Mumby Decl."), ¶ 3 Ex. 1 (full text of letter).

6. The January 10 Decision and 2025 Indian Lands Opinion

The January 10 Decision approved Scotts Valley's gaming project. *See* AR 483-554. Among other things, it purported to memorialize the agency's compliance with several federal statutes, including the National Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), the Indian Reorganization Act ("IRA"), and IGRA. *Id*.

One component of the January 10 Decision was an ILO, signed by Principal Deputy Assistant Secretary Garriott, erroneously concluding Scotts Valley has a significant historical connection to the entire 160-acre Vallejo Property (the "2025 ILO"). Notwithstanding its prior representations and commitments, DOI issued the 2025 ILO without considering the evidence timely submitted by Yocha Dehe and other concerned tribes. AR 4. It did not offer any *explanation* or *reason* for failing to consider that evidence. *Id*. Nor did it even pretend to explain why the agency had broken its repeated promises. *Id.* The ILO simply said "[DOI] neither solicited nor considered any additional evidentiary materials from outside parties, including the Band and those opposed to the Band's [restored lands] request." *Id*.

DOI's exclusion of evidence resulted in significant substantive defects in the 2025 ILO. Recall that the restored lands exception requires a "significant historical connection" between the applicant tribe and the parcels proposed to be restored. And to find a significant historical

connection, DOI had to determine that Scotts Valley used or occupied the Vallejo Property, as a tribe, in a consistent (and non-transient) fashion. The 2025 ILO made that determination by unquestioningly adopting Scotts Valley's 2018 theories of use and occupancy – *the very same theories that were squarely rebutted by the excluded evidence*. By burying its head in the sand, DOI compromised both the process and the substance of the restored lands determination.

II. THE PART 292 REGULATIONS DO NOT ESTABLISH A "CLOSED PROCESS" OR PROHIBIT CONSIDERATION OF EVIDENCE SUBMITTED BY INTERESTED PARTIES.

Scotts Valley's Motion does not seriously contest the above facts. Instead, the Band argues that reconsideration to address excluded evidence is inherently improper because the Part 292 Regulations establish "a closed process" that "involves only the applicant tribe and the Department." Motion at 17-18 (final agency action argument); *see also id*. at 40 ("improper political influence" claim), 43-44 (APA claim). The argument is frivolous.

Start with the plain language of Part 292. Nothing in the text mandates or establishes a "closed process" for implementing the Restored Lands Exception. *See* 25 C.F.R. §§ 292.1-292.4, 292.26 (general provisions), §§ 292.7-292.12 (provisions addressing restored lands exception). Nor does any regulatory provision prohibit DOI from considering information submitted by interested parties. *Id*.

Contrary to Scotts Valley's representation (Motion at 17-18), DOI's Part 292 rulemaking material does not suggest a "closed process" either. Just the opposite, in fact. Scotts Valley appears to base its position[13] on Federal Register material advising that a restored lands-specific

[13] It is not entirely clear what Scotts Valley is relying on because the keystone sentence in its argument – "In promulgating the final rule, the Department explicitly rejected a comment that the public, and especially nearby tribes, be allowed to participate in the consideration of restored lands applications." – is not supported by any citation. *See* Motion at 17.

comment period is not *mandatory*. Motion at 17. But that is not the same as a *prohibition* against comments by interested parties. In fact, the very same Federal Register entry on which Scotts Valley appears to rely includes a clear statement that interested parties may comment on restored lands requests and specifies the DOI office to which comments may be submitted:

> Although the regulations do not provide a formal opportunity for public comment...*the public may submit written comments that are specific to a particular [Indian] lands opinion*. Submissions may be sent to the appropriate agency that is identified in [25 C.F.R.] § 292.3.

Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354, 29,361 (May 20, 2008) (emphasis added).

Indeed, when evaluating restored lands requests DOI regularly considers comments and evidence submitted by interested parties. The agency has expressly acknowledged its consideration of interested-party submissions in *at least nine restored lands opinions* issued under the Part 292 Regulations.[14] Notably, DOI's restored lands determinations for the Coquille Indian Tribe and the Koi Nation, *the former issued simultaneously with the January 10 Decision and the*

[14] Three of the nine are available on the Office of Indian Gaming's public website at https://www.bia.gov/as-ia/oig/departmental-gaming-decisions. *See* Koi Nation of Northern California Indian Lands Opinion (2025) at 14-17; Coquille Indian Tribe Indian Lands Opinion (2025) at 11; Redding Rancheria Indian Lands Opinion (2024) at 9 n.27. One is available on the Office of Indian Gaming's public website at https://www.bia.gov/as-ia/oig/gaming-compacts/2017-01-19/wilton-rancheria-decision. *See* Wilton Rancheria Indian Lands Opinion (2017) at 1. One is available on the Office of Indian Gaming's public website at https://www.bia.gov/as-ia/oig/gaming-compacts/2011-09-01/guidiville-rancheria-california-decision. *See* Guidiville Band of Pomo Indians Indian Lands Opinion (2011) at 1. Two more are available at the National Indian Gaming Commission's public website at https://www.nigc.gov/office-of-general-counsel/legal-opinions/indian-lands-opinions/. *See* Mechoopda Indian Tribe of the Chico Rancheria Indian Lands Opinion (2014) at 21 n.140; Karuk Tribe of California Indian Lands Opinion (2012) at 13. The remaining two are the Scotts Valley Indian Lands Opinions from 2012 and 2019, both of which appear in the Administrative Record. *See* AR 189 (interested-party evidence considered in 2012 determination); AR 210-11 (interested-party evidence considered in 2019 determination).

latter just three days later, each purported to consider evidence submitted by concerned California tribes.[15]

More fundamentally, Scotts Valley's "closed process" arguments ring hollow in light of the Band's own representations and conduct over the years. The 2012 ILO expressly relied on evidence and argument submitted by Contra Consta County, but there is no indication Scotts Valley ever objected to DOI's consideration of that material.[16] *See* AR 187-205 (ILO), 206-07 (reconsideration). Similarly, the 2019 ILO finding Scotts Valley lacked a significant historical connection to the Western Parcel relied heavily on evidence submitted by the Patwin Amici, the United Auburn Indian Community, and other concerned tribes. AR 210-11. Scotts Valley did not object to that either.[17] And when Scotts Valley filed suit seeking to invalidate the 2019 ILO (and the Part 292 Regulations themselves), the Band did not allege that DOI is – or even should be – prohibited from considering evidence submitted by interested parties.[18]

Scotts Valley's 2019 litigation is relevant for another reason as well. Recall that Yocha Dehe sought to intervene as a defendant in that litigation. Scotts Valley successfully opposed intervention, arguing to the D.C. Circuit that Yocha Dehe faced no prospect of harm because there

[15] As noted above, the Coquille Indian Lands Opinion (January 10, 2025) and the Koi Indian Lands Opinion (January 13, 2025) are available on the Office of Indian Gaming public website at https://www.bia.gov/as-ia/oig/departmental-gaming-decisions.

[16] Although, Scotts Valley asked DOI to reconsider the 2012 ILO, there is no indication the reconsideration request contested the agency's authority to consider interested-party evidence. *See* AR 206-07.

[17] Although Scotts Valley sought reconsideration of the 2019 ILO on other grounds, it never contested DOI's consideration of or reliance on evidence submitted by interested parties. *See* AR 206-07.

[18] Complaint (ECF 1) at 1-15, *Scotts Valley Band of Pomo Indians v. U.S. Dep't of Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022) (No. 19-cv-1544-ABJ).

would be an opportunity to submit argument and evidence in any remand proceedings. For example:

- "Yocha Dehe would not be precluded from providing input at the agency review level or from advocating for its own conclusions..."[19]
- "[T]he denial of intervention will not as a practical matter impair Yocha Dehe's interests, as it will have ample opportunity to express its concerns on remand. Yocha Dehe notes that it previously provided extensive comments to Interior on Scotts Valley's [2016] Indian Lands Opinion request [ ] and if appropriate it can do so again on remand."[20]
- On remand DOI would issue a Record of Decision with "a new analysis of the [Vallejo property]'s eligibility for gaming under the Indian Gaming Regulatory Act exceptions, addressing the same statutory and Part 292 criteria covered in the [2019 ILO] and responding to comments from interested parties and the public."[21]
- "Moreover, this is not Yocha Dehe's last stand; should it need them, it will have multiple opportunities, unimpaired by any decision to be made in this case, to protect its interest."[22]

It is not possible to reconcile these prior representations to the D.C. Circuit with Scotts Valley's current contention that Part 292 establishes a "closed process" prohibiting consideration of evidence submitted by interested parties – and the Band has not even tried.

III. THE MARCH 27 RECONSIDERATION LETTER WAS NOT "PRETEXTUAL."

The March 27 Letter explains DOI's basis for reconsidering the 2025 ILO in clear, direct terms: "The Secretary [of the Interior] is concerned that the Department did not consider additional evidence submitted after the 2022 Remand." AR 676-77. That concern is reasonable and well-founded.

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[19] Appellee Brf. at 26, *Yocha Dehe Wintun Nation v. U.S. Dep't of Interior*, 3 F.4th 427 (D.C. Cir. 2021) (No. 21-5009) Doc. #1893220.

[20] *Id*. at 34-35.

[21] *Id*. at 35-36.

[22] *Id*. at 37.

As just explained, DOI can and routinely does rely on evidence submitted by interested parties when evaluating restored lands requests; DOI repeatedly promised that Yocha Dehe would have a meaningful opportunity to submit evidence in any remand proceedings relating to Scotts Valley's restored lands request; Yocha Dehe timely submitted relevant evidence; and DOI acknowledged receipt and confirmed the evidence would be considered. The agency nonetheless issued the 2025 ILO without considering evidence submitted by Yocha Dehe or other concerned tribes. And, by excluding that evidence, DOI adopted a factually erroneous, legally deficient, procedurally indefensible ILO that conflicted with the agency's own 2012, 2016, and 2019 determinations. That is more than enough to show the Secretary's concern was not mere pretext.

Ignoring all of this (and much more), Scotts Valley blithely dismisses the March 27 Letter as "pretextual" and "unsupported." Motion at 34. Although its arguments are not entirely clear, the Band seems to allege the Secretary's concerns about excluded evidence could not have been legitimate because DOI had decided to "close the record" in 2022. *Id*. at 34-35. Scotts Valley has not cited any *evidence* to support that claim, however. *Id*. It has not identified any 2022 document memorializing DOI's purported record closure. *Id*. Nor has it explained – or even tried to explain – why, if the record was truly and definitively closed, Principal Deputy Assistant Secretary Garriott acknowledged receipt of Yocha Dehe's 2024 evidentiary submission and promised to consider it. *Id*.; *see also* AR 66, 362 [¶ 125], Mumby Decl. ¶ 3, Ex. 1 at 3. Nor, for that matter, has the Band explained why DOI's Office of Indian Gaming convened a "technical assistance meeting" at which it assured other tribes they could submit comments and evidence on Scotts Valley's restored lands request. *Id*.

There is also a deeper problem with Scotts Valley's "closed record" claim. The Vallejo Property consists of four parcels. AR 372-73. As noted above, Scotts Valley requested a restored

lands determination for the Western Parcel in 2016. AR 346-47, 372. But the Band did not take any action with respect to the other three parcels (the "Eastern Parcels") until the summer of 2024. AR 351, 372-73; *see also* AR 1, n.1 ("The Band subsequently updated its request and the size of the [Vallejo Site] is now 160.33 acres"). The 2025 ILO then declared all four parcels gaming-eligible. AR 1, 373. If the record had truly and definitively been closed in 2022, it would have been clear legal error for DOI to add the Eastern Parcels to the proceedings in 2024 and declare them gaming-eligible in 2025 – an additional point *in favor of reconsideration*, not against it. Or, to put the issue in slightly different terms, even if the record had been closed in 2022, it must have been re-opened in the summer of 2024 – *i.e.,* prior to Yocha Dehe's November evidentiary submission – for the addition of the Eastern Parcels. *See Public Employees for Envtl. Resp. v. Hopper*, 827 F.3d 1077, 1090 (D.C. Cir. 2016) (agency consideration of post-remand information "reopened the record" for interested parties, creating an obligation to "consider [their] submissions"). Either way, the Secretary had reasonable, non-pretextual grounds for concern.[23]

IV. THE MARCH 27 LETTER WAS NOT THE PRODUCT OF "IMPROPER POLITICAL INFLUENCE."

Grasping at straws, Scotts Valley accuses Yocha Dehe of "improper political influence." Motion at 35-41. Combining selective citation and breathless hyperbole, the Band works hard to leave the impression that something scandalous occurred. *Id*. But what does the record actually show?

[23] In a parenthetical aside, Scotts Valley asserts that DOI held "four meetings with six local tribes in October-December 2024." Motion at 35. For clarity, two of the meetings (both held October 22, 2022) occurred before the remand process ever began. AR 64. The third (held November 27, 2024) was the group videoconference at which DOI acknowledged receipt of Yocha Dehe's evidentiary submission *and promised to consider it*. AR 64, 359-62. And the fourth has nothing to do with the Patwin Amici. AR 64. None of this renders the March 27 Letter "pretextual."

DOI issued the January 10 Decision at the very end of the last presidential administration. *See* AR 328 (departure of Deputy Assistant Secretary Garriott immediately after issuance of January 10 Decision). Yocha Dehe promptly requested reconsideration and prepared a White Paper summarizing the bases for the request – steps which, by necessity, occurred during the period of transition between administrations. AR 54-57. The White Paper identified several legal errors in the January 10 Decision, including DOI's failure to consider relevant evidence timely submitted by concerned tribes. AR 55. The Office of the Secretary of the Interior referred the reconsideration request and White Paper to Bryan Mercier, who was serving as acting Assistant Secretary-Indian Affairs at the time. AR 54. Several DOI officials reviewed the White Paper, but the agency took no concrete action during this transitional period. *See, e.g.,* AR 69, 73, 80.

On February 22, having heard nothing further, Yocha Dehe requested a meeting with Ken Bellmard, DOI's newly appointed Deputy Assistant Secretary for Policy and Economic Development. AR 93, 101 (request to "brief new [Indian Affairs] leadership"). A copy of the White Paper, with its description of legal errors, was attached to the meeting request. AR 101-104. After an extended round of scheduling discussions, on March 11 Yocha Dehe met with Deputy Assistant Secretary Bellmard, his staff, and attorneys from the Solicitor's Office to discuss the reconsideration request and White Paper – including, among other things, the 2025 ILO's failure to account for relevant evidence submitted by concerned tribes. AR 123-25, 229; *see also* AR 101-05.

On March 19, a Yocha Dehe representative followed up with Deputy Assistant Secretary Bellmard. *See* AR 238. She reiterated several points from the White Paper. *Id*. She confirmed that Yocha Dehe sought to work with the incoming administration on a process for reconsideration of the January 10 Decision. *Id*. But she also made clear that Yocha Dehe and other concerned

tribes were prepared to file a legal challenge to the January 10 Decision if necessary to protect their rights. *Id*. And, with that in mind, she shared a draft complaint prepared by Patwin Amici. *See* AR 240-287. The draft complaint provided additional detail on: (1) DOI's prior representations that Yocha Dehe and other concerned tribes would have an opportunity to submit evidence during the remand proceedings (*see, e.g.,* AR 257 [¶ 72], 268 [¶ 119], 272 [¶ 141]); (2) the evidence submitted by concerned tribes during those proceedings (AR 264-65 [¶¶ 108-10], 271-72 [¶ 138]); (3) DOI's exclusion of that same evidence (AR 268 [¶ 124], 271-72 [¶¶ 138-40]); and (4) the reasons why DOI's exclusion of evidence rendered the January 10 Decision arbitrary and capricious as a matter of law (AR 271-74 [¶¶ 138-43, 146, 149], 275-276 [¶ 153], 276-77 [¶¶ 155-158]).

Unbeknownst to Yocha Dehe, Deputy Assistant Secretary Bellmard then tasked the Solicitor's Office with preparing a draft notice to initiate the reconsideration process (AR 289) and placed the issue of reconsideration on the agenda for a March 25 meeting with Principal Deputy Assistant Secretary Scott Davis (AR 288).[24]

In the meantime, though, the Patwin Amici filed their complaint on March 24. AR 324-445. The United Auburn Indian Community filed its own complaint that same day. AR 446-606. Both complaints included (but were not limited to) claims regarding the 2025 ILO's failure to

[24] Scotts Valley mistakenly suggests the March 27 Letter was drafted by Yocha Dehe. Motion at 40 ("The lobbyists drafted the letter initiating these steps – a notice of reconsideration to [Scotts Valley].") Not so. Yocha Dehe submitted a sample letter to DOI. *See* AR 238.1. *But DOI chose not to use it*. *Compare* AR 238.1 *with* AR 669. The record shows the Solicitor's Office drafted the letter that was ultimately reviewed and approved by DOI. *See* AR 289 ("I have given [Solicitor's Office attorneys] a task on this"); AR 295-96 (Solicitor's Office provides draft letter); AR 320-22 (Solicitor's Office circulates draft letter to Office of Indian Gaming). And the letter prepared by the Solicitor's Office differs significantly in form and substance from the sample – notably, the Solicitor's letter calls only for reconsideration of the 2025 ILO rather than the entire January 10 Decision. *Compare* AR 238.1 *with* AR 669-70. DOI conducted its own review and reached its own conclusions.

consider evidence timely submitted by concerned tribes. *See, e.g.,* AR 324-382 (Patwin Amici complaint); AR 325-26 [¶ 3], 348 [¶ 79], 350 [¶¶ 85-89], 357-59 [¶¶ 109-16], 363 [¶ 130], 365-73 [¶¶ 140-65], 381 [¶¶ 195-97] (Patwin Amici allegations regarding failure to consider evidence); AR 446-482 (United Auburn Indian Community complaint); AR 447-48 [¶ 5], 463-69 [¶¶ 68-71, 75-78, 81-82, 84-89], 474-77 [¶¶ 110-23], 479-80 [¶¶ 133-35] (United Auburn Indian Community allegations regarding failure to consider evidence). Importantly, both complaints were reviewed and discussed within DOI. *See, e.g.,* AR 323 ("After reviewing these complaints and the draft reconsideration letter as well as speaking with Laura the staff attorney in [the Solicitor's Office]...").

On March 26, a draft letter initiating reconsideration of the 2025 ILO (but not the entire January 10 Decision) was circulated for approval and signature by Principal Deputy Assistant Secretary Davis. AR 323; *see also* AR 618-19 (executed March 26 letter). The letter was corrected and finalized on March 27. AR 669-75. And Scotts Valley, the Patwin Amici, and other concerned stakeholders received the letter the next day. *See* AR 689.

To sum up: Yocha Dehe requested reconsideration of the January 10 Decision and prepared a White Paper summarizing the bases for that request; Yocha Dehe requested and participated in a meeting with Deputy Assistant Secretary Bellmard, during which the parties discussed the reconsideration request and the White Paper; when it appeared no reconsideration was forthcoming, the Patwin Amici prepared and shared with DOI a draft complaint setting forth in detail many of the legal deficiencies in the January 10 Decision; hearing nothing more from DOI, the Patwin Amici (and the United Auburn Indian Community) proceeded to finalize and file their complaint(s); and after reviewing the draft and final complaints, DOI issued notice of its intent to address one of the deficiencies.

Nothing about this sequence of events can reasonably be characterized as "improper political influence." Yocha Dehe advised DOI of legal errors in the January 10 Decision. DOI eventually recognized one of its most egregious errors and took action to correct it by reconsidering the 2025 ILO. The agency's stated basis for reconsideration was reasonable and apolitical. And Scotts Valley has not even come close to meeting its heavy burden to identify "clear evidence" that DOI's motivations were in any way improper. *See Voyageur Outward Bound Sch. v. United States*, No. 1:18-cv-01463, 2021 U.S. Dist. LEXIS 91066, at *10-11 (D.D.C. May 13, 2021) (quoting *Latif v. Obama*, 677 F.3d 1175, 1178 (D.C. Cir. 2011)) (when reviewing claims of politically motivated reconsideration, courts "must presume that agencies have properly discharged their official duties unless there is clear evidence to the contrary"). DOI is entitled to a presumption of regularity, and Scotts Valley has not overcome that presumption here. *See id.* at *11.

In the end, Scotts Valley has not identified any sound reason to prohibit affected parties from proposing or advocating for reconsideration of an adverse restored lands decision. Nor could it credibly do so. After all, Scotts Valley has itself proposed and advocated for reconsideration of restored lands decisions. AR 206-09. Twice, in fact. *Id*. In 2013, the Band requested reconsideration of DOI's 2012 ILO, met with the Assistant Secretary-Indian Affairs to advocate for reconsideration, and submitted a supplemental analysis to DOI in further support of its request. AR 206-07. Similarly, Scotts Valley requested reconsideration of DOI's 2019 ILO and submitted legal material to the agency in support of that effort. AR 208-09. If it was permissible for Scotts Valley to propose and advocate for reconsideration in 2013 and 2019, it must also have been permissible for Yocha Dehe to do the same in 2025. Scotts Valley cannot have it both ways.

V. THE RECONSIDERATION LETTER WAS TIMELY.

DOI issued the March 27 Letter less than three months (fewer than 11 weeks) after the 2025 ILO. Scotts Valley nonetheless claims the reconsideration came too late. Motion at 31-35. But it has not identified a single case from this Circuit where an equivalent inherent-authority reconsideration was found untimely on a similar timeline. *Id*. at 32 (collecting cases).[25] Nor has it addressed the fact that a substantial part of DOI's deliberation period occurred during the transition between presidential administrations, when agency officials were still in the process of being appointed. *See Voyageur Outward Bound Sch. v. United States*, 444 F. Supp. 3d 182, 195 (D.D.C. 2020) (vacated on other grounds); AR 101 (February 22 request to "brief new [Indian Affairs] leadership"); *see also* AR 97 (Deputy Assistant Secretary Bellmard "getting swamped" and unable to meet immediately upon taking office).

VI. THE MARCH 27 LETTER DID NOT VIOLATE THE DUE PROCESS CLAUSE.

Scotts Valley argues the March 27 Letter violated the Fifth Amendment by depriving the Band of a protected property right to develop its casino project. That claim cannot be squared with prior representations to this Court – just a few months ago, in the context of the Patwin Amici's motion to intervene – that the project was no sure thing.

In the intervention briefing, Scotts Valley represented that its project was "many steps removed" from the March 27 Letter (ECF 31 at 24) and, further, that the project itself still had "numerous legal hurdles to clear" (*id*. at 22). In a series of arguments titled "Federal and State

[25] The most the Band can muster is an unpublished, out-of-circuit District Court ruling on a preliminary injunction motion. *Id*. at 32 (citing *Tesoro High Plains Pipeline Co., LLC v. United States*, No. 1:21-cv-90, 2024 U.S. Dist. LEXIS 122354 (D.N.D. July 10, 2024). The preliminary injunction posture is important. In the Eighth Circuit, a movant may secure preliminary injunctive relief even without proving a likelihood of success on the merits greater than fifty percent – a fact noted by the *Tesoro* court. *Tesoro*, 2024 U.S. Dist. LEXIS 122354, at *17.

Approvals Remain Outstanding," the Band swore that "[s]everal critical contingencies stand in the way of Scotts Valley conducting any Class III gaming." *Id*. at 31. In particular, Scotts Valley noted that it must "negotiate and execute a tribal-state gaming compact with the State of California" and secure the compact's approval by DOI. *Id*. The Band further emphasized that the compacting process "is inherently uncertain" because "the State retains discretion to negotiate or withhold agreement" and, if negotiations were to fail, Scotts Valley would need to successfully sue the State, undertake a mandatory mediation process, and then secure alternative gaming "procedures" from DOI. *Id*.

These admissions alone are more than enough to establish that Scotts Valley lacked a fully vested, constitutionally protected right to develop and operate a Class III casino. Indeed, "IGRA makes it clear that [] Tribes have no right, vested or inchoate, to conduct Class III games until a compact has been negotiated with the state." *Coeur D'Alene Tribe v. State*, 842 F. Supp. 1268, 1276 (D. Idaho 1994), *aff'd,* 51 F.3d 876 (9th Cir. 1995) (citing 25 U.S.C. § 2710(d)(1)(C)). For that reason, "the only time an Indian tribe could arguably claim a vested right to conduct . . . Class III gaming would be after a compact between the tribe and state . . . had been entered into and finally approved." *Id*.; *see also Wash. Legal Clinic for the Homeless v. Barry*, 107 F.3d 32, 36-37 (D.C. Cir. 1997) (no due process protection where uncertainty and administrative discretion remain).[26]

In denying Scotts Valley's preliminary injunction request, this Court made clear that the Band "cannot claim to be buried in red tape to prevent its competitors intervening but then wave

[26] As this Court noted in the context of Scotts Valley's preliminary injunction request, the most the 2025 ILO could have given Scotts Valley is "contingent authority pending the tribal-state compact outcome." ECF 83, at 13. Of course, a contingent right is not a property interest entitled to due process protections. *See Wash. Legal Clinic for the Homeless*, 107 F.3d at 36-37.

that tape aside when it serves its litigation purposes." ECF 83, at 13. The same principle requires denial of Scotts Valley's due process claim.

CONCLUSION

For the reasons set forth above, Defendants' Motion for Summary Judgment should be granted, and Scotts Valley's Motion for Summary Judgment should be denied.

Respectfully submitted on August 22, 2025.

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