IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS,
2727 Syston Drive
Concord, CA 94520

Plaintiff,

v.

DOUGLAS BURGUM, in his official capacity as Secretary of the U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

SCOTT DAVIS, in his official capacity as Senior Advisor to the Secretary of the U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

and

UNITED STATES DEPARTMENT OF THE INTERIOR,
1849 C Street, N.W.
Washington, D.C. 20240

Defendants.

Civil Action No.: 1:25-cv-00958-TNM
Judge Trevor N. McFadden

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Scotts Valley Band of Pomo Indians ("Tribe") brings this action for declaratory and injunctive relief to prevent the Defendants, Secretary of the Interior Douglas Burgum, Senior

Advisor to the Secretary of the Interior Scott Davis, and the Department of the Interior ("Department") (collectively, the "Defendants"), from unlawfully suspending a final agency action, reopening the administrative record, and accepting or considering extra-record evidence in connection with its January 10, 2025 Gaming Eligibility Determination. AR SV-0001-53.[1] The Defendants' action undermines a final determination that vested the Tribe with jurisdiction over gaming on its trust land and is causing ongoing harm to the Tribe's sovereign, economic, and contractual and property interests.

The unlawful agency action relates to gaming eligibility of 160.33 acres of land located in the City of Vallejo, California (the "Vallejo Site") as restored land under the Indian Gaming Regulatory Act, 18 U.S.C. §§ 2701, 2719 ("IGRA"), and 25 CFR Part 292.

On January 10, 2025, the Department issued a final decision concluding the Vallejo Site qualifies as "restored lands" under IGRA, 25 U.S.C. § 2719(b)(1)(B)(iii), and that the site is eligible for gaming. This decision was made following a court-ordered remand and on a closed administrative record.

The Tribe's request for the trust acquisition and gaming eligibility determination dates back to 2016. In 2019, after three years of review, the Department denied the request based solely on a finding that the Tribe lacked a "significant historical connection" to the Vallejo Site. The Tribe challenged that denial in federal court. On September 30, 2022, the United States District Court for the District of Columbia ruled that the Department's denial was arbitrary and capricious when considered in light of the Indian canon of statutory construction and remanded the matter for further consideration. *Scotts Valley Band of Pomo Indians v. United States Dep't of the Interior*,

[1] The cited AR documents are attached as an exhibit to the complaint.

633 F. Supp. 3d 132 (D.D.C. 2022).

On remand, the Department sought the Tribe's views on whether it wished to submit additional evidence for the administrative record. The Tribe responded that it did not, and the Department then decided not to reopen the record or solicit materials from other parties. The Department subsequently issued its January 10, 2025, Eligibility Determination concluding that the Tribe met all the regulatory criteria for restored lands. AR SV-0001-0053.

On March 27, 2025, the Defendant Scott Davis ("Davis") issued a letter ("March 27, 2025, Rescission") unilaterally and without notice or consultation with the Tribe, purporting to "temporarily rescind" the final Gaming Eligibility Determination pending a reconsideration because, "The Secretary is concerned that the Department did not consider additional evidence submitted after the 2022 Remand." AR SV-0682-683. Defendant Davis's letter further stated, "we invite the Tribe and other interested parties to submit evidence and/or legal analysis regarding whether the Vallejo Site qualifies as restored lands" under IGRA. *Id.*

The March 27, 2025, Rescission contravenes the requirements of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, and established principles of administrative law that preclude an agency from reopening the record or altering final agency action without proper legal authority and process. The Defendants' action violates the Tribe's due process rights, exceeds the Defendants' authority under 43 C.F.R. § 4.5, and undermines the integrity of the final agency action on which the Tribe has reasonably relied to its detriment.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1362, as a civil action brought by an Indian tribe with a governing body duly recognized by the Secretary

of the Interior wherein the matter in controversy arises under the Constitution, laws or treaties of the United States, including IGRA; regulations implementing IGRA at 25 CFR Part 292; the Administrative Procedure Act, 5 U.S.C. §§ 701-706; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; and the All Writs Act, 28 U.S.C. § 1651(a), as necessary to preserve the Court's jurisdiction and the integrity of the District Court's prior remand order.

2. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) and (e), in that a substantial part of the events or omissions giving rise to the claim occurred in this District and Defendants are an agency of the United States and officers thereof acting in their official capacities.

PARTIES

3. Plaintiff SCOTTS VALLEY BAND OF POMO INDIANS is a federally recognized Indian tribe with newly acquired trust land in Vallejo, California and two tribal offices located in Lakeport and Concord, California. *See* Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 89 Fed. Reg. 99899, 99901 (Dec. 11, 2024) (listing "Scotts Valley Band of Pomo Indians of California").

4. Defendant DOUGLAS BURGUM is the Secretary of the Department and, as such, is vested with authority to execute federal law and policy respecting Indian tribes. He is sued in his official capacity.

5. Defendant SCOTT DAVIS is a Senior Advisor to the Secretary, who while exercising by delegation the authority of the Assistant Secretary – Indian Affairs, issued the March 27, 2025 Rescission. He is sued in his official capacity.

6. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the federal agency charged by statute with the primary administration of Indian affairs for the federal

government (25 U.S.C. §§ 2 and 9) and is responsible for implementing IGRA and related regulations.

FACTUAL ALLEGATIONS

Background on Scotts Valley Band of Pomo Indians

7. The Scotts Valley Band of Pomo Indians is a federally recognized Indian tribe and a political successor to the Mo-al-kai and Ca-la-na-po bands of Pomo Indians, who have lived in Northern California since time immemorial. In 1851, the Tribe entered into a treaty with the United States—the Treaty of Camp Lu-pi-yu-ma—through which it agreed to cede vast tracts of its ancestral land in exchange for the promise of a reservation. That promise was never fulfilled. The treaty was signed but never ratified by the Senate, and no reservation was ever established. Instead, the Tribe became landless.

8. In 1911, the federal government acquired a small parcel of land for the Tribe, later known as the Sugar Bowl Rancheria. That land was stripped away in 1958, when Congress enacted the California Rancheria Termination Act. 72 Stat. 619 (Aug. 18, 1958). The Act terminated the federal trust relationship with the Tribe and extinguished the reservation status of the Sugar Bowl Rancheria. The Tribe once again became landless—this time not by treaty, but by statute.

9. In 1986, the Tribe (and other California Indian tribes) sued the United States, alleging that the termination of the federal trust relationship with the Tribe was unlawful because the United States had not complied with all the requirements of the 1958 Rancheria Termination Act. As part of a settlement of the lawsuit, the United States reinstated the status of the Tribe as a federally recognized tribe, effective September 5, 1991. 57 Fed. Reg. 5214 (Feb. 12, 1992). Since

that time, the United States has continuously recognized the Tribe as entitled to all the privileges and immunities of Indian tribes recognized by the United States. No land was restored to the Tribe.

10. In 2016, the Tribe took steps toward rebuilding what had been lost. The Tribe filed an application with the Department to acquire the Vallejo Site in trust as a restored homeland. It also sought a determination under IGRA that the land qualified as "restored lands" eligible for gaming purposes under 25 U.S.C. § 2719(b)(1)(B)(iii).

IGRA and Implementing Regulations

11. On October 17, 1988, Congress enacted IGRA for the purposes of, among other things, "provid[ing] a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments[.]" 25 U.S.C. § 2702(1).

12. IGRA governs the conduct of gaming on "Indian lands," which are defined by the Act as: "(A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe of individual or held by any Indian tribe of individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703(4).

13. IGRA prohibits gaming "on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988," subject to certain specified exceptions. 25 U.S.C. § 2719.

14. One of the specified exceptions to the prohibition on gaming on post-1988 trust acquisitions is the "restored lands" exception, which provides that the section 2719 prohibition "will not apply when ... lands are taken into trust 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).

15. The Department, through the Bureau of Indian Affairs ("BIA"), has promulgated regulations to "articulate standards that the BIA will follow in interpreting the various exceptions to the gaming prohibitions contained in section 2719 of IGRA." Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29354 (May 20, 2008); 25 CFR §§ 292.1-292.26.

16. The first requirement of the regulations to qualify for the restored lands exception is that the tribe must have been federally recognized, then "lost its government-to-government relationship," then had its government-to-government relationship restored. 25 CFR § 292.7(a), (b), (c). The regulations also define each of these terms. 25 CFR §§ 292.8, 292.9, 292.10.

17. The second requirement of the regulations to qualify for the restored lands exception relates to the land itself: the land must be located within the same state as the tribe; there must be a "modern connection" between the land and the restored tribe; there must be a "significant historical connection" between the land and the tribe; and there must be a "temporal connection" between the date of the request for trust acquisition and the tribe's restoration. 25 CFR §§ 292.11 (c), 292.12.

18. The regulations authorize Indian tribes to request an opinion, before land is placed into trust, whether that parcel would qualify for one of the exceptions to the prohibition against gaming on trust land acquired after 1988. The regulations specify that such a request, commonly

called an Indian Lands Opinion ("ILO"), is to be submitted to the Office of Indian Gaming ("OIG"), an office within Assistant Secretary-Indian Affairs (AS-IA) that is the primary advisor to the Secretary and AS-IA on Indian gaming and the requirements of IGRA.

The 2019 Negative Decision, Litigation, and Remand

19. In 2019, the Department denied the Tribe's request for a favorable ILO, claiming the Tribe had failed to demonstrate a "significant historical connection" to the Vallejo Site as required under 25 C.F.R. § 292.12. The Tribe challenged that decision in the U.S. District Court for the District of Columbia. In a ruling issued on September 30, 2022, the court agreed with the Tribe, holding that the Defendants' denial was arbitrary and capricious when measured against the Indian canon of construction. *Scotts Valley Band of Pomo Indians v. United States Dep't of the Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022). The court remanded the matter for further consideration, instructing the Department to reassess the Tribe's eligibility under IGRA applying the Indian canon of construction.

20. On remand, the Department consulted with the Tribe and asked whether it wished to reopen the administrative record. The Tribe declined. The Department then decided to issue a final determination based solely on the existing administrative record, consistent with the court's instructions and established administrative law principles.

The January 10, 2025 Favorable Decision

21. On January 10, 2025, after nearly a decade of administrative review and litigation, the Department issued a favorable and final decision on the Tribe's application to take the Vallejo Site into trust, which also contained the Department's determination that the Vallejo Site qualified

as "restored lands" under IGRA. AR SV-0001-0053. The decision stated explicitly that the Tribe "may conduct gaming on the Vallejo Site once it is acquired in trust." AR SV-0023. That same day, the Department acquired the Vallejo Site into trust status under 25 C.F.R. Part 151.

22. In issuing the January 10, 2025 Eligibility Determination, the Department explained:

> On remand, we have carefully reconsidered the Band's request in light of the Court's opinion and conclude that the Vallejo Site qualifies as restored lands. Our conclusion is based on the extensive documentation in the administrative record for the 2019 ILO, which includes materials submitted by the Band and parties opposed to the Band's request, as well as publicly available documents and records. We note that, in reconsidering the 2019 ILO on remand, the Department neither solicited nor considered any additional evidentiary materials from outside parties, including the Band and those opposed to the Band's request.

AR SV-0003-04. The Department's analysis relied entirely on the pre-existing administrative record, with the only documents dated between 2019 and 2022 comprising publicly filed court materials such as briefs, a transcript, and orders in the Tribe's federal court challenge. The January 10, 2025 Eligibility Determination was made based solely on the existing 11,615 page administrative record, and not on any post-remand evidentiary submissions from the Tribe or any third party.

23. As reflected in the January 10, 2025 Eligibility Determination, the administrative record considered by the Department included submissions from third-party tribes and local governments opposed to the Tribe's request. These included numerous written materials from the Yocha Dehe Wintun Nation, and from the United Auburn Indian Community. AR SV-0004 & n.32. The record also included letters from Solano County and the City of Vallejo. *Id*. The

Department decided to not solicit or receive any new submissions from these parties—or any other party—following the 2022 court-ordered remand.

24. The January 10, 2025 decision marked a historic moment for the Tribe. For the first time in nearly 70 years, the Tribe had trust land. For the first time in its modern history, it had a viable opportunity to pursue economic self-sufficiency through gaming. And for the first time in decades, the Tribe had certainty that it had followed the rules, made its case, and received a lawful and final determination from the federal government.

25. Relying on that finality, the Tribe began moving forward. It incurred and authorized more than $1.88 million in project-related expenditures, entered into infrastructure and environmental contracts, presented the City of Vallejo with a reimbursement agreement to fund the development of an intergovernmental agreement, and formally began Tribal-State compact negotiations with the Governor of California. It also submitted its gaming ordinance to the National Indian Gaming Commission ("NIGC"), which approved the ordinance on March 25, 2025—confirming the Tribe's eligibility to conduct gaming on the Vallejo Site under IGRA.

26. Then, without warning, the ground shifted.

The March 27, 2025 Recission Letter

27. On March 27, 2025, Defendant Scott Davis issued a letter purporting to "temporarily rescind" the January 10, 2025 Eligibility Determination. Defendants did not provide the Tribe with prior notice or opportunity to be heard prior to issuing the letter. AR SV-0682-83. The letter was signed by Defendant Davis as "Senior Advisor to the Secretary, acting by delegation of the Assistant Secretary – Indian Affairs." AR SV-0683. The letter cited no statutory authority. It

invoked 43 C.F.R. § 4.5 as justification for reopening the record and soliciting new materials. The letter expressly instructed: "During the pendency of this reconsideration, neither the Tribe nor any other entity or person should rely on the Gaming Eligibility Determination." AR SV-0682.

28. The effect was immediate and destabilizing. The rescission cast a cloud over the Tribe's legal and financial footing. It upended project planning, jeopardized negotiations with the City of Vallejo and the State of California, and introduced legal uncertainty into contracts, governmental negotiations, and regulatory processes that had already been set in motion.

29. While the Defendants established May 30, 2025, as the deadline for any interested party to submit any additional evidence or legal analysis regarding whether the Vallejo Site qualifies as restored lands, there is no deadline or prescribed timeline for the Department to complete its reconsideration or issue a new final decision.

30. Worse still, the Defendants' action did not arise from any formal challenge by a party with standing. Rather, it was issued in response to submissions from lobbyists for third-party Indian tribes whose legal challenges to the Eligibility Determination are already pending before this Court. Those tribes had no right to a reopened record—and certainly no right to bypass judicial process in favor of a secretive, *ad hoc* reconsideration within the agency.

31. This case seeks to restore the rule of law. The Defendants' rescission is procedurally indefensible, legally unauthorized, and profoundly harmful to the Scotts Valley Band. The Tribe followed every rule. It fought for decades to regain a homeland and economic opportunity. It earned a final decision. That decision now deserves to be honored—not reconsidered

without any factual or rational basis, solely at the behest of well-heeled opponents with competitive interests and political connections to the new administration.

32. The March 27, 2025 Rescission constitutes final agency action subject to judicial review, as it marks the consummation of the agency's decision-making process and has immediate and substantial legal and practical consequences for the Tribe. The March 27, 2025 Rescission immediately, and without notice, changes the applicable substantive gaming laws on the Vallejo Site from the laws of the Tribe to the laws of the State of California, pursuant to 18 U.S.C. § 1166, which applies "all state laws pertaining to the licensing, regulation, or prohibition of gambling to Indian Country," unless such gambling is conducted pursuant to the Indian Gaming Regulatory Act. The March 27, 2025 Rescission thus immediately infringes on the Tribe's sovereignty over its territory, which constitutes irreparable injury. The March 27, 2025 Rescission further impairs the Tribe's legally protected sovereign power to negotiate a tribal-state gaming compact with the State of California pursuant to IGRA, 25 U.S.C. § 2710(d)(3)(A). The March 27, 2025 Rescission further impairs the Tribe's property rights, as it deprives (or indefinitely delays) the Tribe of the ability to pursue the most economically valuable use of its trust land—gaming. The March 27, 2025 Recission also deprives the Tribe of property interests contained in contracts that it entered into with multiple private vendors for infrastructure planning, water and wastewater engineering, environmental compliance, and technical site assessments, as well as an agreement with the City of Vallejo for its review and planning costs, all in reliance on the Eligibility Determination.

Political Influence and Lobbyist-Orchestrated Reversal

33. The full extent of the Department's departure from lawful process did not become clear until after the production of the Certified Administrative Record on July 2, 2025. *See* ECF No. 90 (Notice of Filing Certified Administrative Record Index). That production illuminated the political choreography that led to the March 27 Rescission. The record reveals that the decision was not grounded in any neutral analysis or administrative reconsideration, but rather drafted and delivered in close coordination with White House-connected lobbyists representing a competing tribal casino.

34. In late January 2025, just days after the Presidential Inauguration, lobbyists representing the Yocha Dehe Wintun Nation began a sustained political pressure campaign targeting White House and Interior officials. On January 31, lobbyist Ashley Gunn of Miller Strategies contacted Alexander Meyer, Director of the White House Office of Intergovernmental Affairs, warning that Scotts Valley was about to "*break ground*" and urging the Administration to act swiftly. Gunn attached a document titled *Scotts Valley White Paper for Trump DOI (Final).* (the "White Paper") advocating reversal of the January 10 determination. AR SV-0127; AR SV-0055. Gunn escalated her efforts, contacting Meyer again on February 3: "*Hate to bug you. If Scotts Valley Pomo Indians break ground before this is withdrawn it will be a terrible situation*." AR SV-0127. Later that day, Gunn emailed Deputy Director Christine Glassner, who then forwarded Gunn's email to Laura Rigas. White House Liaison, and Daniel Gustafson**.** Deputy Director, External Affairs, at the Department of the Interior, asking them to "*shed some light on this situation and the urgency of it.*" AR SV-0126.

35. The next day, Deputy Director Gustafson emailed Bryan Mercier, (BIA Director, then exercising the delegated authority of the Assistant Secretary – Indian Affairs) and explained that he and White House Liaison Rigas had received "a few items" requiring attention and sought time that afternoon to discuss the issues with Mercier. AR SV-0054. He attached the White Paper. AR SV-0055.

36. Shortly thereafter, Director Mercier forwarded Deputy Director Gustafson's email and the White Paper to Philip Bristol, the Acting Director of the Office of Indian Gaming and assigned Director Bristol to review the White Paper and prepare briefing materials concerning the Scotts Valley decision. AR SV-0058. That afternoon, Director Bristol produced a memorandum and compiled a meeting list addressing an allegation contained in the White Paper. AR SV-0062. Director Bristol's memorandum has been withheld from the Administrative Record in its entirety on the basis of deliberative process privilege, as reflected in the updated privilege log dated July 10, 2025.

37. On the following day, February 5, 2025, lobbyist Ches McDowell, Managing Partner of Checkmate Government Relations, sent a draft letter titled *Scotts Valley Draft Reconsideration Letter for Trump DOI (Final)* (the "Draft Reconsideration Letter") (AR SV-___)[2] and the White Paper directly to Wynn Radford, then Chief of Staff to the Secretary of the Interior. AR SV-0065. These attachments urged swift administrative action to reconsider and overturn the January 10 decision. Radford forwarded them to other senior political appointees at Interior asking

[2] After Plaintiff alerted Defendants that the Draft Reconsideration Letter was omitted from the AR, Defendants agreed to add the document to the AR. At the time of this filing, the Draft Reconsideration Letter has not been given an AR page number. It is filed herewith at the end of the AR excerpts.

whether a stay letter "*to prevent potential litigation*" could be received "*this evening*." AR SV-0069. Greg Zerzan, Acting Solicitor, was quickly enlisted to "*weigh in*" (AR SV-0075) and a memorandum from the Solicitor's Office was circulated by February 6, 2025. AR SV-0089. This memorandum was excluded from the record in its entirety on the basis of deliberative process privilege, it was prepared by an attorney in anticipation of litigation, and because it provides legal advice to a client, as reflected in the updated privilege log dated July 10, 2025.

38. These lobbyists (Miller Strategies and Checkmate Governmental Relations) are individuals with deep connections to the Trump Administration. Miller Strategies, led by Jeff Miller, is described as "one of the lobbying firms closest to the White House" and Jeff Miller is key figure in Trump's political apparatus. *See Axios*, "New MAGA Alliance: Miller Strategies and Checkmate," https://www.axios.com/2025/02/24/new-maga-alliance-miller-strategies-checkmate (last visited July 5, 2025); ABC News, "Trump-aligned lobbyists flourish," https://abcnews.go.com/US/trump-aligned-lobbyists-flourish-companies-flock-gain-administrations/story?id=121098657 (last visited July 5, 2025). Similarly, Ches McDowell of Checkmate Government Relations & Public Affairs was described as "Washington's hottest new lobbyist" and maintains a close personal relationship with Donald Trump Jr. See Wall Street Journal, "The MAGA Lobbyists Upending Washington," https://www.wsj.com/politics/policy/the-maga-lobbyists-upending-washington-with-mcdonalds-and-bear-hunting-a37e3d06 (last visited July 5, 2025).

39. In parallel, on or about February 22, 2025, a third lobbyist, Aurene Martin , Founder and Managing Partner, Spirit Rock Consulting, requested a meeting between the Yocha Dehe Tribal Council and Kennis Bellmard, Deputy Assistant Secretary for Indian Affairs, characterizing

the request as involving "*one of the last minute decisions made by the department*" and noting that it was "*time sensitive*". AR SV-0093. She also attached the White Paper to her meeting request. *Id.*, AR SV-0140, 0154. Despite a newly announced restriction on lobbyists attending principal-level meetings, Interior staff volunteered to list Martin as an "*attorney*" to facilitate her attendance, which she joined on March 11. AR SV-0154, 159, and 175.

40. That same day, White House Liaison Rigas directed Deputy Director Gustafson and Deidre Kohlrus, Director, Office Of Intergovernmental Affairs, to coordinate with the Tribal team to respond to Ashley Gunn's inquiry. AR SV-0126, 128.

41. On March 18, 2025, Deputy Assistant Secretary Bellmard urgently requested a summary from Director Bristol: *"I need a half a pager on what's going on with [Scotts] Valley? ASAP!*" AR SV-0231. Director Bristol responded within minutes, attaching both his earlier prepared memorandum and the White Paper. (AR SV-0232).

42. The influence campaign escalated on March 19, 2025, when Ashley Gunn, Miller Strategies, emailed Deputy Assistant Secretary Bellmard directly, thanking him for a phone call earlier that day. AR SV-0238. With her email marked: "RE: [EXTERNAL] Scott's valley withdrawal" Gunn attached the lobbyists' Draft Reconsideration Letter and a draft complaint styled as *Yocha Dehe Wintun Nation, et al. v. United States Department of the Interior, et al*. AR SV-0240-287. She wrote:

> *Ken,*
>
> *Thank you so much for speaking with me today and I know you met with folks on 3/12 on the issue Again, we appreciate your focus on this. Please see the background and draft litigation.*

RECONSIDERATION

Obviously, important to note that this is a decision the agency would "reconsider" (as distinguished from a regulation they could "withdraw"). The white paper (attached) might be helpful on this point – it explains that the best practice is a two-step approach, where the first step is a letter informing Scotts Valley of the reconsideration and the second step is the substantive reconsideration process.

Also attached is a draft notice letter that DOI could get out to take that first step. The second step could potentially wait until the Asst Sec is seated, if that's the Secretary's preference.

The white paper also explains why it's important for the notice (the first step) to go out quickly: if too much time passes, or if Scotts Valley starts breaking ground (or otherwise relies on the decision), there's a real risk Interior might not be successful and/or could be tied up in court.

LITIGATION

Another consideration: By its own admission, Interior did not consult with local tribes before making this decision and did not consider any of the evidence local tribes provided. A coalition of local Tribes, led by Yocha Dehe, has a legal challenge all teed up.

*But *we have refrained from filing the lawsuit because we would prefer not to sue the Trump Administration – instead, we want the Trump Administration to be able to claim full credit for pulling back this erroneous, antitribal decision.* We want the Administration to get the win for this rather than being forced into something through litigation.*

We can't hold off forever, though. Without a case on file, we would not be able to stop the project from moving forward.

AR SV-0238.

43. By March 20, Deputy Assistant Secretary Bellmard informed Director Bristol that he had "*tasked*" Eric Shepard, Associate Solicitor, and John Hay, Assistant Solicitor, with an assignment related to Scotts Valley AR SV-0289. Shortly thereafter, Deputy Assistant Secretary Bellmard added: *"I do need something on Scott's Valley by tomorrow am."* AR SV-0291.

44. That afternoon, Assistant Solicitor Hay sent a draft letter for Deputy Assistant Secretary Bellmard's review. AR SV-0295. Hay's letter adopted the reconsideration plan proposed by the lobbyists. AR SV-0296. It cited concerns that Interior may not have considered materials submitted after the 2022 remand, but omitted the more inflammatory and categorical allegations set forth in the lobbyists' draft rescission letter. *Id.* Despite these differences, the substance of both letters reflects a shared origin. Interior's March 20 Draft Rescission letter followed the roadmap outlined by Yocha Dehe's lobbyists just one day earlier, both in timing and content. The similarities confirm that the Department did not initiate an independent legal review based on substantive concerns regarding compliance with the regulatory process, but instead implemented a strategy drafted outside the agency by political operatives seeking to benefit a competing Indian tribe.

45. Over the following days, Deputy Assistant Secretary Bellmard and other senior staff at Interior discussed rollout plans, media coordination, and courtesy notifications to third parties prior to any notification to Scotts Valley. AR SV-0619-636. The rescission letter was first finalized and signed on March 26, 2025. AR SV-0619, then publicly circulated to third parties (AR SV-0622), including Yocha Dehe. After a typographical error was observed, a corrected letter was signed on March 27. AR SV-0678. Although third parties were informed of the decision at least as early as March 27, Scotts Valley was first informed of Interior's decision on March 28. AR SV-0689.

46. Throughout this process, no consultation or communication occurred with Scotts Valley. Interior did not identify what materials were supposedly overlooked, nor did it provide the Tribe any factual or legal rationale for rescinding a decision that had been more than a decade in

the making and previously litigated by the Tribe. Interior did not contact the Tribe to inquire into what actions it or third parties had taken in reliance on the January 10 decision. The Administrative Record reflects no deliberation over tribal reliance interests, no legal justification, and no internal analysis independent of materials submitted by outside lobbyists. Instead, the agency's process mirrored the plan laid out by Yocha Dehe's lobbyists.

47. The March 27 Rescission letter purports to justify the Department's action by stating that it had failed to consider additional evidence submitted after the 2022 remand. However, the Administrative Record is devoid of any identification or discussion of this so-called additional evidence. Nowhere does the Department specify what materials were submitted, who submitted them, or how they could possibly alter the outcome of a decision rooted in a decade of environmental review, legal analysis, and interagency coordination. There is no memorandum, no comparative assessment, and no reference to relevance or materiality. The vague and unsubstantiated reference to "additional evidence" is not only procedurally inadequate—it is a transparent pretext designed to obscure the true basis of the rescission: political pressure from a well-connected competitor.

48. The record thus reveals that the March 27 Rescission was not an exercise of agency discretion, but an act of politically motivated capitulation—an abuse of process violating the Tribe's rights under the Administrative Procedure Act and the Department's fiduciary trust obligations.

CLAIMS FOR RELIEF

COUNT I

Violation of the Administrative Procedure Act

(5 U.S.C. § 706)

49. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

50. Defendants' March 27, 2025 Rescission is arbitrary, capricious, an abuse of discretion, and contrary to law in violation of 5 U.S.C. § 706(2).

51. Defendants' March 27, 2025 Rescission is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, and is without observance of procedure required by law in violation of 5 U.S.C. § 706(2).

52. Defendants acted without legal authority to rescind and reconsider their prior decision under 43 C.F.R. § 4.5 because the decision is unlawfully untimely and pretextual in a manner that does not comport with the Department's regulations and rules relating to review.

53. Defendant Scott Davis unlawfully exercised the authority reserved exclusively to the Secretary of the Interior under 43 C.F.R. § 4.5.

54. Defendants unlawfully reopened a closed record and invited extra-record evidence without any statutory or regulatory basis and in the absence of procedurally valid amendment or modification of the governing regulations. In particular, 43 C.F.R. § 4.5, which Defendant Davis cites as authorization to rescind the prior decision for reconsideration, provides that the

reconsideration will be based upon the existing administrative record without supplementation by new "evidence." 43 C.F.R. § 4.5(c).

55. Defendants acted without notice, consultation, or opportunity to be heard, depriving the Tribe of due process.

56. The March 27, 2025 Rescission effectively constitutes a withdrawal or suspension of a final agency action, without satisfying the legal requirements for reversal or reconsideration.

COUNT II

Violation of Procedural Due Process

(U.S. Const. amend. V)

Violation of the Administrative Procedure Act (5 U.S.C. § 706)

57. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

58. The Department's final Gaming Eligibility Determination issued on January 10, 2025, established the Tribe's sovereign and legally protected right to regulate and operate gaming activity on the Vallejo Site.

59. The Department's final Gaming Eligibility Determination issued on January 10, 2025, created a legitimate expectation and protectable property, liberty and sovereign interests for the Tribe under established law and regulations.

60. The Tribe has relied on that final agency action to undertake substantial contractual and financial obligations in furtherance of the gaming project, including development agreements and loan commitments.

61. The March 27 Rescission constitutes final agency action that rescinds a prior final determination without formal notice, hearing, or opportunity to be heard, and reopens the administrative record from a prior final agency action to consider extra-record evidence submitted by third parties with no legal standing, and as such, the Defendants, in issuing the March 27 Rescission, unlawfully deprived the Tribe of its legally protected interests, including its sovereign rights over its land and its property interests, without due process of law.

62. Defendants' actions constitute a violation of the Tribe's legally protected rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

63. Defendants' March 27 Rescission is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, is contrary to constitutional right, power, privilege, or immunity, and is without observance of procedure required by law, in violation of 5 U.S.C. § 706(2)(A), (B) and (D).

COUNT III

Ultra Vires Agency Action

Violation of the Administrative Procedure Act (5 U.S.C. § 706)

Indian Gaming Regulatory Act (25 U.S.C. § 2706, 2710)

64. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

65. Defendants' March 27, 2025 Rescission exceeds the authority granted to it by Congress and is ultra vires, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. The Indian Gaming Regulatory Act assigns jurisdiction over gaming on trust lands

to the National Indian Gaming Commission and the Tribe once land is acquired in trust and a valid gaming ordinance is approved. 25 U.S.C. §§ 2706, 2710.

66. Nothing in IGRA or 25 C.F.R. Part 292 authorizes Defendants to rescind a final gaming eligibility determination once trust acquisition is complete. Nor does 43 C.F.R. § 4.5 confer authority to suspend final agency action or reopen an administrative record absent notice and due process.

67. Defendants' unilateral rescission of a final, jurisdictional determination is ultra vires and must be set aside.

COUNT IV

Violation of the Administrative Procedure Act – Arbitrary and Capricious Action in Contradiction of Prior Agency Decision (5 U.S.C. § 706)

68. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

69. In the January 10, 2025 Eligibility Determination, the Department expressly stated that it was not soliciting or considering additional evidentiary materials from the Tribe or any third party. It affirmed that its determination was made based solely on the administrative record as it existed in 2019 and publicly available documents filed in court.

70. The Department's subsequent March 27, 2025 Rescission directly contradicts this decision not to reopen the record, asserting that the January 10 decision must be reconsidered because it did not take into account additional post-remand evidence. That rationale is pretextual

and arbitrary, particularly in light of the Department's own deliberate decision to refrain from reopening the record and its clear statement that no new submissions had been or would be considered.

71. The Department's reversal of position without explanation or acknowledgment of its prior representations constitutes arbitrary and capricious conduct in violation of 5 U.S.C. § 706(2), and further erodes the integrity of final agency action by undermining reliance interests established by the January 10 decision.

72. Accordingly, the March 27, 2025 Rescission must be set aside as unlawful under the Administrative Procedure Act.

COUNT V

Violation of the Administrative Procedure Act – Agency Action Unlawfully Influenced by Political Pressure (5 U.S.C. §§ 706(2)(A), 706(2)(D))

73. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

74. Under the Administrative Procedure Act, agency action must be the product of reasoned decision-making and must be free from arbitrary, capricious, or pretextual motives. See 5 U.S.C. § 706(2)(A). Where the administrative record reflects that an agency acted under political pressure to benefit particular third parties—rather than based on the record before it—the action must be set aside. *See D.C. Fed'n of Civic Ass'ns v. Volpe*, 459 F.2d 1231, 1246 (D.C.Cir.1972) ("The test is whether extraneous factors intruded into the calculus of consideration of the

individual decisionmaker."). Agencies must make their decisions "based strictly on the merits and completely without regard to any considerations not made relevant by Congress in the applicable statutes." *Volpe,* 459 F.2d at 1246. This rule exists for the obvious reason that "[political] interference so tainting the administrative process violates the right of a party to due process of law." *Noble Energy, Inc. v. Salazar*, 691 F. Supp. 2d 14, 21 (D.D.C. 2010) (quoting *ATX, Inc. v. U.S. Dep't of Transp.,* 41 F.3d 1522, 1527 (D.C.Cir.1994)).

75. Interior's March 27 decision to rescind and reconsider the January 10 Gaming Eligibility Determination was the result of a sustained and documented lobbying campaign orchestrated by representatives of a politically influential, competing tribal government.

76. The Administrative Record includes direct communications between lobbyists and high-ranking White House and Department officials, submission of draft decision documents authored by those lobbyists, internal emails showing Interior staff coordinating with the lobbyists to implement a suggested "two-step" plan to overturn the Scotts Valley decision, and evidence that the Department prioritized communication with objecting parties over Scotts Valley.

77. The Department's decision was not based on a record-supported legal error or newly discovered material fact, but rather on the preferences and political leverage of third-party actors. The record reveals no independent reconsideration process or reasoned explanation for the reversal, and no opportunity was afforded for Plaintiff to be heard.

78. To the extent the Department has claimed that reconsideration was warranted to review "additional evidence," that justification is plainly pretextual. The Administrative Record contains no copy of any such evidence, and none of the internal communications among political

appointees or career staff reflect awareness of its existence, any discussion of its merits, or any evaluation of whether failure to review it constituted legal error. Indeed, the Administrative Record contains no reference at all to any legal error or factual insufficiency of the significant historical connection between the Tribe and the Vallejo Site. Nor do the emails reflect any deliberation as to whether disturbing a final decision was warranted despite the Department's express findings on January 10. Instead, the record demonstrates that the agency's actions were driven by external pressure, not by any *bona fide* assessment of previously unavailable material facts.

79. Such conduct violates the APA's requirement that agency actions be free from improper political interference, grounded in evidence, and conducted through fair and lawful procedure.

80. Accordingly, the March 27 decision must be declared unlawful and set aside under 5 U.S.C. § 706(2)(A) and (D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Declare that the Defendants' March 27, 2025 Rescission and related actions are unlawful;

B. Pursuant to 28 U.S.C. § 1651(a), enjoin Defendants from reopening the administrative record established prior to the Eligibility Determination and preserve this Court's jurisdiction to review final agency action;

C. Enjoin the Defendants from accepting, considering, or relying on any evidence or argument not contained in the administrative record as of 2019;

D. Set aside the Recission letter and reinstate the Eligibility Determination.

E. Award Plaintiff its costs and attorneys' fees; and

F. Grant such other relief as the Court deems just and proper.

Dated: July 14, 2025

Respectfully submitted,

By: /s/ Patrick R. Bergin

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