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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PECHANGA BAND OF INDIANS,

Plaintiff,

v.

ROBERT F. KENNEDY, JR., *et al.*,

Defendants.

No. 5:25-CV-03605-JGB-SP

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Date: June 22, 2026
Time: 9:00 a.m.
Ctrm: Courtroom 1, 2nd Floor
Honorable Jesus G. Bernal

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. IHS MISSTATES THE LEGAL STANDARD AND IS NOT ENTITLED TO DEFERENTIAL REVIEW. 1

II. PECHANGA'S PROPOSAL FALLS SQUARELY WITHIN IHS'S AUTHORITY UNDER THE ISDA. 4

III. IHS'S "ALTERNATIVE" REJECTION GROUNDS ALSO FAIL. 7

IV. THE PROPER REMEDY IS THE AWARD AND FUNDING OF THE COMPACT AND NOT A REMAND. 9

A. IHS's Payment of Funds to Riverside Does Not Relieve IHS of Its Obligation to Fully Fund Pechanga's Compact. 9

B. The Proper Remedies Are Specific Performance or Money Damages, But Not a Remand. 11

CERTIFICATE OF COMPLIANCE 15

TABLE OF AUTHORITIES

Cases

Becerra v. San Carlos Apache Tribe, 602 U.S. 222 (2024) 7

Blackhawk Heating & Plumbing Co., Inc. v. United States, 622 F.2d 539 (Ct. Cl. 1980) 12

Cherokee Nation of Okla. v. Leavitt, 543 U.S. 631 (2005) 10, 11, 12

Citizen Potawatomi Nation v. Salazar, 624 F. Supp. 2d 103 (D.D.C. 2009) 2

Cmty. Legal Servs. in E. Palo Alto v. U.S. Dep't of Health & Hum. Servs., 137 F.4th 932 (9th Cir. 2025) 10

Fort Defiance Indian Hosp. Bd., Inc. v. Becerra, 604 F. Supp. 3d 1187 (D.N.M. 2022) 2

Fort McDermitt Paiute & Shoshone Tribe v. Becerra, 6 F.4th 6 (D.C. Cir. 2021) 2

Fort McDermitt Paiute & Shoshone Tribe v. Price, No. CV 17-837, 2018 WL 4637009 (D.D.C. Sep. 27, 2018) 2, 3, 4

Hoopa Valley Indian Tribe v. Ryan, 415 F.3d 986 (9th Cir. 2005) 6

Jamestown S'Klallam Tribe v. Azar, 486 F. Supp. 3d 83 (D.D.C. 2020) 2, 8

Lincoln v. Vigil, 508 U.S. 182 (1993) 10

Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) 1

Los Coyotes Band of Cahuilla & Cupeno Indians v. Jewell, 729 F.3d 1025 (9th Cir. 2013) 2, 11

Los Coyotes Band of Cahuilla & Cupeno Indians v. Salazar, No. 10CV1448, 2011 WL 5118733 (S.D. Cal. Oct. 28, 2011) 3

Maniilaq Ass'n v. Burwell, 170 F. Supp. 3d 243 (D.D.C. 2016) 2

Navajo Health Found.–Sage Mem'l Hosp., Inc. v. Burwell, 256 F. Supp. 3d 1186 (D.N.M. 2015) 2

Navajo Nation v. DHHS, 325 F.3d 1133 (9th Cir. 2003) 6

Osage Nation v. Dep't of Interior, 800 F. Supp. 3d 70 (D.D.C. 2025) 4

Pyramid Lake Paiute Tribe v. Burwell, 70 F. Supp. 3d 534 (D.D.C. 2014) 1, 2

Ramah Navajo Sch. Bd., Inc. v. Babbitt, 87 F.3d 1338 (D.C. Cir. 1996).....10

Redding Rancheria v. Hargan, 296 F. Supp. 3d 256 (D.D.C. 2017) 2

S. Ute Indian Tribe v. Sebelius, 657 F.3d 1071 (10th Cir. 2011) 2

Salazar v. Ramah Navajo Chapter, 567 U.S. 182 (2012).....2, 3

Salt River Pima-Maricopa Indian Cmty. v. Kennedy, No. 18-CV-02360, 2025 WL 2377968 (D.D.C. Aug. 14, 2025) 2

Seneca Nation of Indians v. U.S. Dep't of Health & Hum. Servs., 945 F. Supp. 2d 135 (D.D.C. 2013) 2

St. Regis Mohawk Tribe v. Kennedy, No. 8:24-CV-01479, 2026 WL 877117 (N.D.N.Y. Mar. 31, 2026).....2

Susanville Indian Rancheria v. Leavitt, No. 2:07-CV-259, 2008 WL 58951 (E.D. Cal. Jan. 3, 2008) 2, 7

Agency Decisions

Mashantucket Pequot Tribal Nation, Decision No. 2028, 2006 WL 1337439 (H.H.S. Dep't Appeals Bd. May 3, 2006) 6, 7

Pasqua Yaqui Tribe of Ariz., Decision No. 1692, 1999 WL 985372 (H.H.S. Dep't Appeals Bd. June 1, 1999) 11

Pit River Health Service, Inc., Decision No. CR333, 1994 WL 596859 (H.H.S. Dep't Appeals Bd. Sep. 12, 1994).....11

Federal Statutes

25 U.S.C. § 1602 5

25 U.S.C. § 1641 5

25 U.S.C. § 1680c ..... *passim*

25 U.S.C. § 5331 12

25 U.S.C. § 5385 5

25 U.S.C. § 5386 10

25 U.S.C. § 5387 ..... *passim*

25 U.S.C. § 5392 3

25 U.S.C. § 5391 12

31 U.S.C. § 1552 11

Other Authorities

Cong. Rsch. Serv., *Interior, Environment, and Related Agencies: Overview of FY2025 Appropriations* (Sep. 29, 2025) *available at* https://www.everycrsreport.com/files/2025-09-29_R48267_6263b3d1d0c3c9ffe233b015ace174923723cf4b.pdf. 9

Letter from Michael D. Weahkee, U.S. Pub. Health Serv., to Dr. Lynn Malerba, TSGAC Chairwoman (Sep. 27, 2019), https://tinyurl.com/WeahkeeLetter 12

Once again IHS fundamentally misconstrues the basic requirements of the ISDA, masking its failure to address clear statutory rejection criteria by introducing page after page of irrelevant facts and inuendo.[1] Seeking deference that is plainly not due, IHS reiterates its argument that the provision of services to non-beneficiaries somehow makes Pechanga's proposed opioid treatment program unlawful. The Tribe's proposed program and the requested funding for the treatment of Indian patients fall squarely within the ISDA's compacting provisions. IHS may not reject the proposed compact simply because the Tribe will *also* serve non-beneficiaries, as it has a statutory right to do. The appropriate remedy for IHS's unlawful rejection is an order directing IHS to award and fund the proposed compact—precisely as authorized by the ISDA.

I. IHS MISSTATES THE LEGAL STANDARD AND IS NOT ENTITLED TO DEFERENTIAL REVIEW.

It is an "elemental proposition" that "courts decide legal questions by applying their own judgment." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391–92 (2024). IHS is therefore simply wrong in suggesting that the Rejection Letter should be reviewed under a deferential standard. Under 25 U.S.C. § 5387(b)–(c),[2] the sufficiency of a final offer rejection is a legal question, and the Court must apply its own judgment. *Loper Bright*, 603 U.S. at 392; *Pyramid Lake Paiute Tribe v. Burwell*, 70 F. Supp. 3d 534, 542 (D.D.C. 2014).

Further, the overwhelming majority of courts have reviewed ISDA claims without deference to IHS's interpretation of the Act, even in the era of *Chevron*

[1] IHS elected to include several unredacted exhibits with sensitive information that Pechanga shared with IHS with the understanding they would remain confidential. Pechanga requested a stipulation. It now appears likely a motion to seal will be necessary.

[2] All citations to the United States Code are to Title 25 unless otherwise noted.

deference.[3] This is because the ISDA mandates that the Act be construed in tribes' favor. *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 194 (2012) ("The Government, in effect, must demonstrate that its reading is clearly required by the statutory language."). By this and other means, the ISDA thus severely cabins IHS's discretion. *See* MSJ Mem., Dkt. No. 67 at 7–8, 19; Inj. Reply, Dkt. No. 60 at 1–2. "[D]eference to IHS's interpretation of the [ISDA] would be incongruous with the structure and purpose of the [ISDA]." *Pyramid Lake*, 70 F. Supp. 3d at 542; *accord Fort Defiance*, 604 F. Supp. 3d at 1217.

Of the two cases on which IHS relies, one is an outlier and the other supports *non*-deferential review. (Further, unlike this case, both also involved claims under the APA.) The first, *Citizen Potawatomi Nation v. Salazar*, 624 F. Supp. 2d 103, 108 (D.D.C. 2009), has not been considered persuasive within the district. *See Salt River Pima-Maricopa Indian Cmty. v. Kennedy*, No. 18-CV-02360, 2025 WL 2377968, at *3 (D.D.C. Aug. 14, 2025) ("Courts in this district review *de novo* questions of legal interpretation under the [ISDA]."). And the second, *Los Coyotes Band of Cahuilla & Cupeno Indians v. Jewell*, 729 F.3d 1025, 1035 (9th Cir. 2013), directly

[3] *See, e.g.*, *St. Regis Mohawk Tribe v. Kennedy*, No. 8:24-CV-01479, 2026 WL 877117, at *5 (N.D.N.Y. Mar. 31, 2026) (de novo); *Fort Defiance Indian Hosp. Bd., Inc. v. Becerra*, 604 F. Supp. 3d 1187, 1217–18 (D.N.M. 2022) (de novo); *Fort McDermitt Paiute & Shoshone Tribe v. Becerra*, 6 F.4th 6, 9 (D.C. Cir. 2021) (de novo); *Jamestown S'Klallam Tribe v. Azar*, 486 F. Supp. 3d 83, 87 (D.D.C. 2020) (de novo); *Fort McDermitt Paiute & Shoshone Tribe v. Price*, No. CV 17-837, 2018 WL 4637009, at *1 (D.D.C. Sep. 27, 2018) (de novo); *Redding Rancheria v. Hargan*, 296 F. Supp. 3d 256, 267 (D.D.C. 2017) (no deference); *Maniilaq Ass'n v. Burwell*, 170 F. Supp. 3d 243, 247 (D.D.C. 2016) (de novo); *Navajo Health Found.–Sage Mem'l Hosp., Inc. v. Burwell*, 256 F. Supp. 3d 1186, 1229 (D.N.M. 2015) (no deference); *Pyramid Lake*, 70 F. Supp. 3d at 542 (de novo); *Seneca Nation of Indians v. U.S. Dep't of Health & Hum. Servs.*, 945 F. Supp. 2d 135, 141 (D.D.C. 2013) (de novo); *S. Ute Indian Tribe v. Sebelius*, 657 F.3d 1071, 1078 (10th Cir. 2011) (no deference); *Susanville Indian Rancheria v. Leavitt*, No. 2:07-CV-259, 2008 WL 58951, at *7 n.3 (E.D. Cal. Jan. 3, 2008).

undermines IHS's position because the Ninth Circuit *and* the district court reviewed the ISDA claims under the ISDA standard, and only applied the APA standard to the APA claims. 729 F.3d at 1035–40; *Los Coyotes Band of Cahuilla & Cupeno Indians v. Salazar*, No. 10CV1448, 2011 WL 5118733, at *3–5 (S.D. Cal. Oct. 28, 2011).

With no deference, and applying its own judgment to the legal sufficiency of the rejection, the Court must assess IHS's actions in light of two interpretive directives. First, § 5392(a) requires IHS to "interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate": "(1) the *inclusion* of programs, services, functions, and activities (or portions thereof) and funds associated therewith" in agreements; "(2) the *implementation of compacts and funding agreements*"; and (3) "*tribal health goals and objectives*." (emphases added); *see* MSJ Mem. at 14–15. IHS ignores this provision altogether.

Second, § 5392(f) directs that "[e]ach provision of [Title V] . . . shall be liberally construed for the benefit of *the Indian tribe participating in self-governance* and any ambiguity shall be resolved in favor of the Indian tribe." (emphasis added); *see also Salazar*, 567 U.S. at 197. These interpretive directives, along with the extraordinarily high burden placed upon IHS to prove rejection by clear and convincing evidence, § 5387(d), inform the Court's inquiry into the legality of the Rejection Letter. In claiming that Pechanga overstates the applicable canon, IHS invokes language in a lower court decision that did not even cite the ISDA canon, Opp'n, Dkt. No. 75 at 22-23, whereas the Supreme Court was clear that IHS "must demonstrate that its reading is *clearly required* by the statutory language." *Salazar*, 567 U.S. at 194 (emphasis added).[4]

Finally, IHS misrepresents *Fort McDermitt* to argue for consideration of

[4] IHS argues the Indian canon only applies to statutory ambiguity, Opp'n at 22, but it is *IHS* that seeks to avoid the clear statutory language of multiple provisions, including the limited rejection criteria, § 5387(c), and § 1680c(c)(2).

evidence beyond the Final Offer and Rejection. While *Fort McDermitt* denied summary judgment on a disputed funding claim where the record was unclear, 2018 WL 4637009 at *2–3, the court *granted* summary judgment on other claims because IHS's legal defense did not align "with the statutory language IHS chose to rely on in rejecting the Tribe's offer." *Id.* at *4–5. In contrast, this case does not involve the interpretation of complex funding tables to determine funding amounts.[5]

II. PECHANGA'S PROPOSAL FALLS SQUARELY WITHIN IHS'S AUTHORITY UNDER THE ISDA.

IHS ignores § 5387(c)(1), which provides only four grounds for rejection. IHS continues to argue that it properly rejected Pechanga's proposal on the ground that the proposed opioid treatment program is outside the scope of IHS's authority because Pechanga would serve too many non-beneficiaries. Opp'n at 10–14. As the Court already found, this "is not a permissible basis for rejecting a final offer under Section 5387(c)." Order, Dkt. No. 66 at 7. And "even if it were," the Court correctly concluded the "Final Offer is not an illegal basis for compacting." *Id.*[6]

IHS continues to take umbrage at the fact that Pechanga intends to exercise its right under § 1680c(c)(2) to extend services to non-Indians, claiming that because Pechanga may ultimately serve more non-Indian than Indian patients, the program will somehow morph into a program that is not for the primary or significant benefit of Indians. This fundamentally confuses the assumed IHS program with the universe of services that Pechanga will ultimately offer. The program the Tribe is *assuming*

[5] IHS's only objection to the funding amount is a legal argument. To the extent that the numbers are relevant at all, this case simply requires the Court to assess whether IHS has proven that the Tribe will not spend at least $12,644 in providing opioid treatment services for its own members.

[6] IHS relies on *Osage Nation v. Dep't of Interior*, 800 F. Supp. 3d 70 (D.D.C. 2025), but that case involved a situation where the parties did not meaningfully negotiate before the tribe submitted its final offer. That is far from the case here.

from IHS—i.e., the program that must at least have Indians as "primary or significant beneficiaries" under § 5385(b)(2)—is the transfer of $12,644 for Indian opioid treatment services to Pechanga members, which Pechanga will use for precisely that purpose.[7] For the § 5385(b) inquiry, it is immaterial whether Pechanga will also service non-beneficiaries.

It is illogical for IHS to argue that care to Indian patients becomes less significant if non-Indians are also receiving care. To the contrary, the revenue generated by serving non-Indian patients will be used to *increase* the level of care and significant benefit to Pechanga members by enabling the Tribe to offer services far beyond what is available through IHS funds alone. In attempting to paint this as a "commercial" endeavor, IHS fails to account for the fact that Medicaid revenue *must* be used to improve healthcare and promote Indian health. §§ 1602, 1641(d)(2)(A). Far from being illegal, non-Indian services are expressly authorized under § 1680c(c)(2), which provides that "the governing body of the Indian tribe . . . providing health services under such contract or compact"—*not* IHS—"is authorized to determine whether health services should be provided under such . . . compact to individuals who are not [otherwise] eligible." Once a tribe decides to serve non-Indian patients, those services are "deemed to be provided under" a tribe's ISDA compact *without any permission needed from IHS*. § 1680c(c)(2).

IHS does not engage at all with the Court's finding that the statute does not impose a numerical requirement for the tribal members that will be served. Order at 9; *see also* MSJ Mem. at 18 n.19. Nor has IHS contested that the requested $12,644 will be used only to serve Pechanga members. Instead, it denigrates the Tribe and

[7] This is why it is irrelevant whether the Tribe is assuming an entire "program" or a "portion" of a program (which are treated equally under the ISDA), *see* Opp'n at 11; the point is that the program Pechanga is taking over is a slice of IHS's core healthcare programming that is indisputably "for the primary benefit of Indians."

self-governance, characterizing the proposed program—which the Pechanga Tribal Council has determined is necessary to serve the Tribe's members, some of whom have died from opioid addiction, *see* MSJ Mem. at 10—as generating a "*de minimis* benefit to Indians." Opp'n at 12. The only support IHS has offered for this is a wholly irrelevant comparison between the numbers of Indians and non-Indians residing in the area, and the notion that non-Indian care somehow reduces the significance of care that Pechanga members will receive. Unfortunately, it appears IHS is more concerned with non-Indians *not* getting care than it is with Indians getting care.

IHS's reliance on the case law fares no better. As the Court already explained, *Navajo Nation v. DHHS*, 325 F.3d 1133 (9th Cir. 2003), and *Hoopa Valley Indian Tribe v. Ryan*, 415 F.3d 986, 991 (9th Cir. 2005), are "plainly distinguishable" because the programs "were general in scope, not specifically for Indians," by contrast to the program here, which is "*precisely* the kind of federal program IHS offers specifically for Indians." Order at 9–10. Neither case supports the proposition that, once a tribe compacts to take over an Indian health program, there is any sort of numerical limit on its ability to expand that program to additional patients as authorized by § 1680c.

Worse yet, the *Mashantucket Pequot* administrative decision cited by IHS relied on that tribe's violation of a provision of § 1680c that Congress later *repealed*; it sheds absolutely no light on whether Pechanga's proposed program is lawful. At the time, § 1680c required that before extending care to non-Indians, a tribe had to determine that "there is no reasonable alternative health facility or services . . . available to meet the health needs of such individuals." § 1680c(b)(1)(A)(ii)(II) (1992) (amended 2010). In seeking to expand a pharmacy benefit program to its many non-Indian employees, the tribe failed to make such a finding (and the decision held that this requirement could never be satisfied because many alternatives existed). *Mashantucket Pequot Tribal Nation*, Decision No. 2028, 2006 WL

1337439, at *8–15 (H.H.S. Dep't Appeals Bd. May 3, 2006). IHS admits that Congress later repealed this "reasonable alternatives" requirement but fails to acknowledge that the repeal legislatively overrules *Mashantucket Pequot*. Opp'n at 14. By removing this requirement, Congress *expanded* the ability of tribes to serve non-Indian patients.

In short, none of IHS's authorities support the proposition that it can decline the proposed compact because the Tribe intends to serve non-Indian patients.[8]

III. IHS'S "ALTERNATIVE" REJECTION GROUNDS ALSO FAIL.

IHS's arguments regarding § 5387(c)(1)(A)(i)–(ii) are largely a rehash of the arguments about services to non-Indians and therefore fail for the same reasons.

IHS misreads *Becerra v. San Carlos Apache Tribe*, 602 U.S. 222 (2024), which dealt exclusively with contract support costs, a type of administrative costs not at issue here. (Indeed, IHS knows full well that under its current policy the agency does not pay contract support costs associated with services to non-Indians, *see* Inj. Reply at 4 & n.11; its suggestion that Pechanga is somehow seeking these benefits is therefore specious.) IHS's diversion about other funds that might be relevant to the "applicable funding level for the contract" is similarly irrelevant, was not raised in the Rejection Letter, and does not explain how the requested $12,644 *of the Tribe's own funds* now exceeds the funding level to which the Tribe is entitled.

[8] Despite impugning the integrity of Pechanga and its Native-owned contractor OneTogether Solutions, Opp'n at 4-7, IHS never makes an argument on this basis. With good reason: nothing in the ISDA limits a tribe's ability to contract with a third party for expertise needed to run a high-quality health care facility. It would be wholly contrary to self-governance if IHS could decide how tribal programs should be designed or who tribes should partner with to improve health care for their members. Nor was this raised as a ground for rejection. *See, e.g.*, *Susanville Indian Rancheria*, 2008 WL 58951, at *6 (rejecting "post hoc rationalizations").

See Opp'n at 15-16.[9] IHS is also wrong that Pechanga is seeking to "impermissibly expand" the FTCA coverage provided under the ISDA. The last sentence of § 1680c(c)(2) specifies that the FTCA applies to services to non-beneficiaries under an ISDA compact, so that coverage cannot be "impermissible." IHS similarly suggests that a tribe's ability to expand services under § 1680c should be limited in some manner nowhere disclosed in the statute, Opp'n at 18-19; one is left to guess what those limits might be. It is uncontested that Pechanga considered the necessary factors and adopted a resolution that IHS *approved*. Compl., Dkt. No. 1 ¶ 73. The discussion of eligibility, Opp'n at 19, is a red herring. Section 1680c is not an "end-run" around eligibility requirements for IHS beneficiaries, *see id.*; it is a statutory mechanism allowing Tribes to serve *non*-beneficiaries.

Inexplicably, IHS persists in its incomprehensible reading of the "inherent federal function" provision, Opp'n at 16, despite the Court having rejected this argument as "a willful misreading of the statute," Order at 11. IHS does not respond to Pechanga's contention that the *program* the Tribe is proposing—the provision of substance abuse services—is not an inherent federal function. IHS's reliance on *Jamestown S'Klallam Tribe* again ignores that *Jamestown* did not deny the tribe a compact for providing services to non-Indian patients (a program that served 97% non-Indian patients). 486 F. Supp. 3d at 84, 86. Rather, *Jamestown* concluded that a tribe is not entitled to additional lease funding for care provided to non-Indian patients—a matter not at issue in this case. *Id.* at 92–93.

IHS has offered no evidence, data, or legal authority, let alone clear and convincing evidence, to show how reprograming $12,644 of the Tribe's own IHS

[9] Pechanga has never denied it is seeking funding for the proposed compact, as IHS seems to suggest. Opp'n at 15. Pechanga has emphasized only that it is seeking no *additional* funding beyond a sum already allocated to the Tribe for Indian services and paid annually to Riverside.

funding allocation will exceed Pechanga's tribal member need. *See* § 5387(c)(1)(A)(i). IHS has not shown how operating the same type of opioid treatment program that has already been approved for other tribes could possibly be an inherent federal function. *See* § 5387(c)(1)(A)(ii). IHS's arguments all boil down to non-beneficiary services, which (1) is not a valid rejection criterion, (2) is contrary to the statutes at hand, and (3) misses the point that by expanding services to non-beneficiaries, and charging them for their care, Pechanga will provide *more* benefits for its members (effectively using revenues from non-beneficiary services to "underwrite" better care for Indian patients, *cf.* Opp'n at 17, precisely as the IHCIA commands). This is the type of program IHS should be celebrating, not fighting.

IV. THE PROPER REMEDY IS THE AWARD AND FUNDING OF THE COMPACT AND NOT A REMAND.

A. IHS's Payment of Funds to Riverside Does Not Relieve IHS of Its Obligation to Fully Fund Pechanga's Compact.

IHS appears to assert that the compact should be denied or delayed, or that additional negotiation is needed, because IHS already transferred $12,644 of Pechanga's share of funding to Riverside and that a return of these funds would force IHS into implementing a "unilateral" amendment to Riverside's funding agreement. First, this cannot be a ground for denying the compact as it was not raised in the Rejection Letter. Second, IHS offers no basis to conclude that IHS (with an annual budget of approximately $8 billion[10]) lacks $12,644 to fund a compact IHS should never have rejected in the first place. And third, IHS continues to ignore that Riverside *supports* the Pechanga proposal and has expressly confirmed its willingness to coordinate the withdrawal of funds if needed. As Riverside's

[10] *See* Cong. Rsch. Serv., *Interior, Environment, and Related Agencies: Overview of FY2025 Appropriations* at 10 (Table 1) (Sep. 29, 2025) *available at* https://www.everycrsreport.com/files/2025-09-29_R48267_6263b3d1d0c3c9ffe233b015ace174923723cf4b.pdf.

leadership has testified, "IHS is also incorrect when it asserts that Pechanga is seeking to withdraw funds 'without consideration or input' from [Riverside], that the Pechanga proposal 'could put IHS in conflict with [Riverside],' that the proposal would create 'competing compacts,' or that the Pechanga proposal 'would require the IHS to unilaterally reduce [Riverside's] funding.' Pechanga and [Riverside] have coordinated all of the foregoing issues and continue to work together." Dkt. No. 60-3 ¶ 9. Riverside further confirmed there would be no duplication of services and it "has consistently supported Pechanga's proposal to transfer a small amount of funding away from [Riverside] and to Pechanga, and to compact with IHS to provide an opioid treatment program." *Id.* ¶¶ 10, 13.

IHS cites *Lincoln v. Vigil*, 508 U.S. 182, 194 (1993), for its assertion that it can do whatever it wants with its appropriation—including wrongfully paying Pechanga's $12,644 to Riverside—despite a tribe's rights under the ISDA (including Pechanga's right to withdraw pursuant to § 5386(g)(2)), and even after Pechanga's tribal share had been agreed upon. Opp'n at 20; *see* Ans., Dkt. No. 68 ¶ 76 (acknowledging parties' agreement on withdrawal amount).[11] IHS neglects to tell the Court that *Lincoln* actually cautions: "Of course, an agency is not free simply to disregard statutory responsibilities: Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes." 508 U.S. at 193.[12] IHS's payments to Riverside cannot alter IHS's statutory obligation to

[11] It was unlawful for IHS to disregard Pechanga's withdrawal of funds from Riverside and disburse this funding to Riverside, regardless of the status of negotiations over a new Pechanga compact.

[12] *See also Cmty. Legal Servs. in E. Palo Alto v. U.S. Dep't of Health & Hum. Servs.*, 137 F.4th 932, 940 (9th Cir. 2025) ("Where Congress . . . directs (rather than merely authorizes) the agency to conduct certain activities, the rule in *Lincoln* has no application." (citation modified) (citing with approval *Ramah Navajo Sch. Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1347 (D.C. Cir. 1996))). This is why IHS's reliance on *Lincoln* failed in *Cherokee Nation of Okla. v. Leavitt*, 543 U.S. 631, 641–42 (2005);

honor its compact and funding agreement with Pechanga.

IHS's other citations, *see* Opp'n at 20-21, have no bearing on the issues presented. *Los Coyotes Band of Cahuilla & Cupeno Indians* simply observed that "[w]here there is no existing BIA program, there is nothing that the BIA would have spent on the program, and therefore nothing to transfer to the Tribe." 729 F.3d at 1028. But here, there is clearly an existing IHS program—a program Riverside had been operating and which Pechanga by law should now be operating. *Pasqua Yaqui Tribe of Ariz.*, Decision No. 1692, 1999 WL 985372, *1 (H.H.S. Dep't Appeals Bd. June 1, 1999), addressed a disagreement over the correct Secretarial amount, which is not the issue here because the parties agreed to the $12,644. And *Pit River Health Service, Inc.*, Decision No. CR333, 1994 WL 596859, *1 (H.H.S. Dep't Appeals Bd. Sep. 12, 1994), addressed one tribe's effort to force IHS to transfer programs and associated funding that were already being operated by other tribes; it too has nothing to do with a tribe partially withdrawing its own funds from a consortium.

B. The Proper Remedies Are Specific Performance or Money Damages, But Not a Remand.

Pechanga is entitled to an order directing IHS to award the improperly rejected compact and to pay the full amounts due under Pechanga's compact and funding agreement, as of the effective date of that compact and funding agreement.

As noted above, Riverside has already confirmed it is willing to refund the $12,644 at issue if needed. Dkt. 60-3 ¶¶ 9, 13.[13] As for current FY 2026, it is also

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see also id. at 642–43 (noting money damages remedy when IHS nonetheless prioritizes other spending over its ISDA obligations).

[13] Regardless, IHS has ample unobligated balances remaining from its FY 2025 appropriation from which to pay Pechanga. IHS ends each year with multi-million-dollar unobligated balances, *see e.g*. *Cherokee Nation*, 543 U.S at 646 (noting same for four years at issue there), and those balances can be obligated for up to five years, *see* 31 U.S.C. § 1552(a).

self-evident that IHS can find $12,644 out of an over *$8 billion appropriation*, starting with the Director's Emergency Fund.[14] In all events, Congress has authorized this Court to award Pechanga money damages to cover the contract amounts IHS should have paid, precisely as occurred in *Cherokee Nation*. §§ 5331(a), 5391(a).

Finally, to support its requested remand, IHS contends that its handling of the non-rejected portion of the Pechanga proposal (for "PRC" services) serves as "evidence" that "the parties can reach agreement." Opp'n at 24. What IHS does not disclose, however, is that almost a full year after IHS *approved* the severed PRC compact, IHS has *still not signed* that compact. Just like the opioid compact, IHS continues to find ways to delay and deny that compact as well.[15] IHS had two years to negotiate with the Tribe over the opioid compact prior to rejection. IHS also could have negotiated any time after that, with the Tribe seeking to do so many times. *See, e.g.*, Compl. ¶¶ 143–52 (Tribal Delegation Meeting and Technical Assistance requests post-rejection). But IHS has consistently elected not to do so. Further delay will only extend the number of Pechanga tribal members suffering without care they are entitled to receive under an ISDA program and add to the risk of additional addiction-related deaths. If ever there was a case where a remand should *not* occur—where "the evidence [does *not*] demonstrate[] the parties can reach agreement," Opp'n at 24—this is it.

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[14] Letter from Michael D. Weahkee, U.S. Pub. Health Serv., to Dr. Lynn Malerba, TSGAC Chairwoman 3 (Sep. 27, 2019), https://tinyurl.com/WeahkeeLetter. It is IHS's duty to find the funds. *Blackhawk Heating & Plumbing Co., Inc. v. United States*, 622 F.2d 539, 552 n.9 (Ct. Cl. 1980) (internal budgets "are purely of an in-house accounting nature and, as such are irrelevant to any determination respecting the availability of appropriated funds") (cited in *Cherokee Nation*, 543 U.S. at 641).

[15] Suppl. Simmons Decl., Dkt. No. 74 ¶ 15 (admitting the compact and PRC funds have not been awarded).

Respectfully submitted this 8th day of June 2026.

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Pechanga Band of Indians, certifies that this memorandum complies with the limit set out in section 9.b. of this Court's Standing Order, Dkt. No. 36, because it does not exceed 12 pages. The memorandum has been prepared in a proportionally-spaced typeface using Microsoft Word for Office 365 Times New Roman 14-point font.

DATED this 8th day of June 2026 at Anchorage, Alaska.

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