

Congress of the United States
Washington, DC 20515

June 27, 2023

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20530

The Honorable Debra Haaland
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Attorney General Garland and Secretary Haaland:

We write you today regarding *Scotts Valley Band of Pomo Indians v. United States Department of the Interior*. We understand that in September 2022, Judge Amy Berman Jackson of the United States District Court for the District of Columbia held the Department’s 2019 Indian Lands Opinion to be arbitrary and capricious. We ask you to provide full and fair consideration to the letters from Yocha Dehe Winton Nation, Federated Indians of Graton Rancheria, and the Dry Creek Rancheria Band of Pomo Indians requesting you appeal the decision.

The Court ruled for the Department in every respect but one, holding that it should have applied the Indian law canon of construction – that “statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit” – in its review of factual evidence as it complied with a regulation. This holding arguably expanded the use of the Indian law canon of construction beyond where it had previously been applied. We have learned that last month Judge Jackson denied the Department’s Motion to Reconsider the decision, which was based on its concerns about the use of the Indian law canon in this case, and that denial of that motion will allow the Band to proceed with a proposed gaming site in Vallejo, California.

This case stems from a 2019 Department of Interior decision that found that the Band lacks a “significant historical connection” to the proposed gaming site. The property for which the Band requested an Indian Lands Determination is approximately 90 driving miles (75 straight-line miles) from the Tribe’s headquarters in Lake County, California. It is our understanding that the Band does not provide any significant services in Vallejo, which would demonstrate a tribal government presence in the area. For example, the Band’s Temporary Assistance for Needy Families (TANF) program does not have offices in Vallejo or elsewhere in Solano County.

In making its Motion for Reconsideration, the Department asserted that the Judge’s decision to apply the Indian law canon of construction to factual determinations was without legal basis. The Department argued that the Indian law canon applies only to ambiguities in treaties and statutes enacted for the benefit of Indian tribes. In applying the Indian law canon in this case, Judge Jackson suggests the canon may be enforced for the benefit of one tribe at the expense of others.

We understand that the US has fiduciary duties to multiple tribes and that the use of the Indian law canon to benefit one tribe over another is improper. We are concerned that if this decision is not clarified there will be unintended consequences, as well as situations where factual disputes

between tribes would be resolved in favor of whichever tribe presents their case before a decisionmaker first.

We ask you to provide full and fair consideration to the letters from Yocha Dehe Winton Nation, Federated Indians of Graton Rancheria, and the Dry Creek Rancheria Band of Pomo Indians requesting you appeal the decision. Thank you for your consideration.

Sincerely,



Mike Thompson
Member of Congress



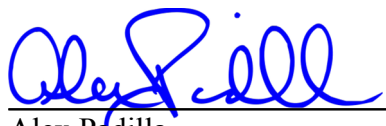
John Garamendi
Member of Congress



Dianne Feinstein
United States Senator



Jared Huffman
Member of Congress



Alex Padilla
United States Senator