



November 12, 2024

Tribal Council

Anthony Roberts
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Via Email and FedEx

Wizipan Garriott
Principal Deputy Assistant Secretary-Indian Affairs
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Re: Scotts Valley Band of Pomo Indians Request for Restored Lands in
Vallejo (Solano County), California

Principal Deputy Assistant Secretary Garriott:

On behalf of the Yocha Dehe Wintun Nation, I respectfully submit the enclosed comments on the Scotts Valley Band of Pomo Indians' request for a restored lands determination for a casino project site in the Bay Area city of Vallejo – more than 90 miles from Scotts Valley's homeland northwest of Clear Lake, but squarely within the ancestral lands of our Patwin people.

This submission focuses on certain aspects of Scotts Valley's failure to satisfy the restored lands exception's "significant historical connection" requirement. But, for avoidance of ambiguity, it should not be read as waiving any prior or further argument with respect to the significant historical connection requirement or otherwise.

As you may be aware, the California Native American Heritage Commission has designated Yocha Dehe as the most likely descendant of Native American remains found in Vallejo and the surrounding areas of Solano County (itself named for a Patwin leader). Yocha Dehe and a sister Patwin tribe hold a cultural easement protecting tribal cultural resources in Vallejo parks. The project site is near Patwin villages and burial

Yocha Dehe Wintun Nation

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sites. And the City of Vallejo, pursuant to California law, has identified Yocha Dehe as culturally affiliated with the site itself.

In contrast, there is no evidence whatsoever of Pomo villages, burials, use or occupancy of the Vallejo Property or its surroundings.

Scotts Valley has nonetheless claimed a “significant historical connection” to the Vallejo Property, alleging that its ancestors were baptized at Mission Sonoma, that its ancestors labored on ranchos north of San Pablo Bay, and that its ancestors “ceded” the Vallejo area in an unratified 1851 treaty.

This letter, together with the analyses and exhibits attached, provides historical documentation *squarely refuting each of those claims*. A few examples:

- Scotts Valley claims that Patwin people native to the Vallejo area were decimated by smallpox and replaced by Clear Lake Pomo people beginning in 1837. This submission provides historical documentation demonstrating that Patwin people continued to use, occupy, and exercise authority over the Vallejo area into the 1850s.
- Scotts Valley claims its ancestors were baptized as children at the Sonoma Mission in 1837, and were present in the vicinity of the Vallejo Property in connection with their baptism. This submission shows that the 1837 baptismal cohort did not, in fact, consist of Scotts Valley’s Eastern Pomo ancestors from Clear Lake; rather, the baptized children were Southern Pomo people from a village near Santa Rosa, more than 50 miles from Clear Lake. Moreover, there is no evidence that the baptized children were ever in the vicinity of the Vallejo Property.
- Scotts Valley claims that Clear Lake Pomo people worked on various ranchos controlled by the Vallejo family during California’s Mexican administration, and therefore its ancestors must have been among those who worked at the 84,000-acre Rancho Suscol controlled by Mariano Vallejo. This submission shows that Rancho Suscol was distinguishable from other ranchos of its time: Unlike ranchos worked by Indian laborers, Suscol was used for livestock owned by the Mexican army and, *according to sworn testimony submitted in subsequent legal proceedings by the United States itself*, Suscol was staffed by the Mexican military to and through the end of the Mexican administration of Alta California.

- Scotts Valley claims that one of its ancestors is named on an 1870 census of workers at Rancho Tulocay, near the present town of Napa. This submission explains that even if the named individual was a Scotts Valley ancestor residing with his kin (propositions *not* supported by the evidence) he could not have used or occupied the Vallejo Property: By 1870, the Property had been carved out of Rancho Suscol, sold multiple times, and was a family farm worked by non-Indian labor.
- Scotts Valley claims to have “ceded” the Project area in an unratified 1851 treaty. This submission explains why that is not so, pointing out that (among other things) Scotts Valley has admitted that it did not use, occupy, or hold any aboriginal title or claim to the area.

On this record, no reasonable decision-maker could find that Scotts Valley has demonstrated a significant historical connection to the Vallejo Property.

Nor can Interior credibly claim that its hands are tied by the United States District Court for the District of Columbia.

The District Court did not require or direct the Department to issue an ILO favoring Scotts Valley. To the contrary, the court expressly disclaimed any intent to substitute its judgment for that of the agency. And, in response to the Department’s own motion for reconsideration, Judge Jackson explicitly clarified that her ruling would not *require* application of the Indian law canon of construction on remand. To comply, the Department need only *consider* the canon.

That makes sense. After all, the canon is based on the trust relationship between the United States and each federally recognized tribal government. Scotts Valley’s claim of a significant historical connection has now been opposed and refuted by multiple federally recognized tribal governments, including (i) Patwin *and* Pomo tribes, (ii) gaming *and* non-gaming tribes, and (iii) restored tribes *and* tribes whose sovereign relationship with the United States was never terminated. The Department has an equal trust relationship to *all tribes*. Scotts Valley is not entitled to unique or different treatment under the law.

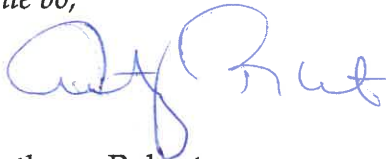
To be sure, Scotts Valley’s ancestors suffered at the hands of successive waves of Mexican and American settlers. Their people were sickened, sent away to boarding schools, enslaved, and even killed, often cruelly and without justice. But those

historical injustices affected – and continue to affect – *all California tribes, including ours*. There is no defensible legal or moral basis for the United States to “remedy” prior harm to Scotts Valley’s Pomo people by giving them our Patwin ancestral lands. Two wrongs don’t make a right.

If Scotts Valley is set on pursuing a gaming project in Vallejo, it remains free to use the two-part process set forth in the Indian Gaming Regulatory Act. Or, if Scotts Valley wishes to rely on the restored lands exception, it can pursue a gaming project in its Clear Lake homeland. What Scotts Valley cannot do is “restore” Patwin lands to which it has no significant historical connection and has never occupied or used.

I hope you will keep these things in mind as you review our submission. We are all counting on you to fairly review the facts and faithfully apply settled law, consistent with longstanding Departmental interpretation.

Wile bo,



Anthony Roberts
Tribal Chairman

cc: Bryan Newland, Assistant Secretary-Indian Affairs
Robert Anderson, Solicitor, Department of the Interior
Joel West Williams, Deputy Solicitor, Indian Affairs, Department of the Interior
Paula Hart, Director, Office of Indian Gaming
Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs

Enclosures

SCOTTS VALLEY HAS NO SIGNIFICANT HISTORICAL CONNECTION TO THE VALLEJO PROPERTY

1. Applicable Indian Gaming Regulatory Act Standards

The Indian Gaming Regulatory Act (“IGRA”) establishes the statutory framework governing gaming on Indian lands.¹ IGRA generally prohibits gaming on tribal trust lands acquired after the statute’s 1988 enactment, subject to a limited number of specific exceptions.²

Here, Scotts Valley has invoked the “restored lands” exception, which allows gaming on newly acquired lands taken into federal trust “as part of the restoration of lands for an Indian tribe that is restored to Federal recognition.”³

The Department of the Interior (“Interior” or “Department”) has promulgated regulations memorializing its interpretation of the restored lands exception.⁴ The regulations set out clear, specific requirements that all applicant tribes must meet. Where, as here, the applicant tribe was restored to federal recognition pursuant to a court-approved settlement agreement, the regulations require a “significant historical connection” to the land proposed to be “restored.”⁵

The regulations specifically define “significant historical connection” to mean “the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.”⁶

Many of the Department’s published Indian Lands Opinions (“ILOs”) also address the meaning of “significant historical connection.”

¹ 25 U.S.C. § 2701(3).

² 25 U.S.C. § 2719.

³ 25 U.S.C. § 2719(b)(1)(B)(iii).

⁴ See 25 C.F.R. § 292.1 (explaining purpose of 25 C.F.R. part 292).

⁵ 25 C.F.R. §§ 292.7, 292.11, 292.12.

⁶ 25 C.F.R. § 292.2.

Together, these two sources – the regulatory definition and the Department’s ILOs – yield key interpretive principles governing the “significant historical connection” standard.

As an initial matter, the regulations mean what they say: to satisfy the requirements of the restored lands exception, a historical connection must be “*significant*.”⁷ During the rulemaking process, commenters suggested easing the historical connection requirements by deleting the term “significant.”⁸ The Department denied the request, explaining that “[t]he suggestion to delete ‘significant’ was not adopted because the word reinforces the notion that the connection *must be something more than ‘any’ connection*.”⁹

In addition, a significant historical connection must be demonstrated “by historical documentation.”¹⁰ Commenters also sought to weaken this requirement during the rulemaking process. In response, the Department reiterated “[t]he definition of ‘significant historical connection’ calls for ‘historical documentation.’ ... [O]ral history is unnecessary when documentation is available; it would be insufficient alone.”¹¹

Importantly, the applicant tribe must demonstrate a significant historical connection *to the specific property* proposed to be “restored.”¹² This requirement can be satisfied with direct evidence of the applicant tribe’s village sites, burials, use, or occupancy of other nearby parcels, but *only if* that evidence causes a natural inference that the applicant tribe also historically used or occupied the property to be restored. As Interior has explained:

The Department used the word ‘vicinity’ in the Part 292 regulations to permit a finding of restored land on parcels where a tribe lacks any direct evidence of actual use or ownership of the parcel itself, but where the

⁷ 25 C.F.R. § 292.2 (emphasis added).

⁸ 73 Fed. Reg. 29354, 29599 (May 20, 2008).

⁹ *Id.* (emphasis added); see also Guidiville Indian Lands Opinion (2011) at 9-10 (relying on the Part 292 rulemaking for the same principle).

¹⁰ 25 C.F.R. § 292.2.

¹¹ 73 Fed. Reg. 29354, 29599 (May 20, 2008).

¹² 25 C.F.R. § 292.12 (requiring “a significant historical connection to *the land*”) (emphasis added); see also *Confederated Tribes of the Grand Ronde Community of Oregon v. Jewell*, 830 F.3d 552, 566-67 (D.C. Cir. 2016).

particular location and circumstances of available direct evidence on other lands cause a natural inference that the tribe historically used or occupied the subject parcel as well.¹³

In other words:

*Part 292's inclusion of the word 'vicinity' was not meant to expand IGRA's definition of restored land, which always has been limited to lands that a tribe used or occupied. It was included because it would be unduly burdensome and unrealistic to require a tribe to produce direct evidence of actual use or occupancy on every parcel within a tribe's historic use and occupancy area. A definition of 'vicinity' based solely on proximity would expand 'restored land' beyond land that was historically used or occupied by a tribe. Instead, a determination of whether a particular site with direct evidence of historic use or occupancy is within the vicinity of newly acquired land depends on the nature of the tribe's historic use and occupancy, and whether those circumstances lead to the natural inference that the tribe also used or occupied the newly acquired land.*¹⁴

As Interior has further explained, analysis of “natural inference” is necessarily “fact-intensive, and will vary based on the unique history and circumstances of any particular tribe.”¹⁵

A significant historical connection also requires something more than a transient presence. Even in the case of subsistence use “[t]he definition of ‘significant historical connection’ establishes criteria which require something more than evidence that a tribe

¹³ Scotts Valley Indian Lands Opinion (2012) at 15; *see also* Mashpee Indian Lands Opinion (2021) at 36 (confirming Department's interpretation); Guidiville Indian Lands Opinion (2011) at 13 (“evidence indicating that Pomos were present in the many counties near the Parcel does not, without more, show a particular connection to...where the Parcel is located”).

¹⁴ Scotts Valley Indian Lands Opinion (2012) at 15 (emphasis added); *see also* Guidiville Indian Lands Opinion (2011) at 17 (“The Band must offer historical documentation of its significant historical connection to the Parcel, not simply evidence of general Pomoan presence in the much larger Bay Area”).

¹⁵ Scotts Valley Indian Lands Opinion (2012) at 15 n. 59; *see also* Mashpee Indian Lands Opinion (2021) at 36 (undertaking extensive, fact-specific analysis).

merely passed through a particular area.”¹⁶ Thus, “activities that would tend to show a tribe was using land for subsistence purposes might include sowing, tending, harvesting and hunting on land and waters” while “[o]ccupancy’ can be demonstrated by a consistent presence in a region supported by the existence of dwellings, villages or burial grounds.”¹⁷

Moreover, a significant historical connection must be *tribal*. On its face, 25 C.F.R. § 292.2 defines “significant historical connection” to mean that “*a tribe* can demonstrate by historical documentation the existence of *the tribe’s* villages, burial grounds, occupancy or subsistence use in the vicinity of the land.”¹⁸ The locations of individual ancestors or citizens of the applicant tribe are “not necessarily indicative of *tribal* occupation or subsistence use.”¹⁹

Importantly, the applicant tribe may only rely on history that is its own. In other words, “[f]or purposes of Part 292, an applicant tribe’s historical references must be specific to the applicant tribe.”²⁰ Evidence of use or occupancy by different or broader groups (even groups within the same language family) is not sufficient.²¹

Consistent with the above, because “the burden is on the applicant tribe to establish its eligibility” for the restored lands exception, a significant historical connection must be based on positive evidence rather than negative inference.²² As the Department has repeatedly explained: “Part 292 requires reliable historical documentation of use or

¹⁶ 73 Fed Reg. 29354, 29366 (May 20, 2008); *see also* Guidiville Indian Lands Opinion (2011) at 14-15.

¹⁷ Guidiville Indian Lands Opinion (2011) at 14.

¹⁸ 25 C.F.R. § 292.2 (emphasis added).

¹⁹ Guidiville Indian Lands Opinion (2011) at 16-18.

²⁰ Scotts Valley Indian Lands Opinion (2012) at 7; Guidiville Indian Lands Opinion (2011) at 14-16; *see also* Mashpee Indian Lands Opinion (2021) at 33, 35 (confirming Department’s interpretation).

²¹ *See, e.g.*, Scotts Valley Indian Lands Opinion (2012) at 8-10; Guidiville Indian Lands Opinion (2011) at 15 (“It is important to note that evidence of Pomo use and occupancy does not, without more, indicate use or occupancy by this particular band of Pomo”).

²² 73 Fed. Reg. 29354, 29372 (May 20, 2008) (“It is understood that the burden is on the applicant tribe to establish its eligibility for an exception”); *see also* Scotts Valley Indian Lands Opinion (2012) at 9-10.

occupancy; inferences are insufficient to establish a significant historical connection.”²³ A significant historical connection cannot be based on absence of evidence.²⁴ And the mere possibility of use or occupancy – even where such possible use or occupancy is alleged to be “likely” by the applicant or its consultants – does not suffice.²⁵

2. Brief Summary of Procedural Background

Scotts Valley is a Pomo tribe *from Clear Lake*. Its ancestral lands are *at Clear Lake*. In 1851, its ancestors signed a treaty with the United States *at Clear Lake*. 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*. Despite the Senate’s failure to ratify the treaty, the United States did, in fact, create a reservation for Scotts Valley *at Clear Lake*. Scotts Valley citizens later voted to terminate the Clear Lake reservation and, as a result, they received property in fee simple *at Clear Lake*. When Scotts Valley was restored to federal recognition, it made its tribal headquarters *at Clear Lake*. Today, Scotts Valley owns multiple properties *at and around Clear Lake*, including a parcel described as “tribal lands” where Scotts Valley hosts tribal events and ceremonies.

Scotts Valley could easily have restored lands at or around Clear Lake at any time after its 1991 restoration to federal recognition. No reasonable decision-maker would have denied such a request. Indeed, other terminated-and-restored Clear Lake Pomo tribes – including others descended from tribal signatories of the 1851 unratified treaty – have restored their land bases at Clear Lake.

Instead, seeking what it perceives to be a more lucrative economic market, Scotts Valley has chosen to pursue “restored lands” in the San Francisco Bay Area, nearly 100 driving miles away.

In doing so, Scotts Valley has repeatedly sought to appropriate the lands and history of other tribes. But it has not demonstrated – and cannot demonstrate – a significant historical connection of its own to the Bay Area lands it has proposed to “restore.”

²³ Scotts Valley Indian Lands Opinion (2012) at 9.

²⁴ Guidiville Indian Lands Opinion (2011) at 13, n. 64; Scotts Valley Indian Lands Opinion (2012) at 9-10.

²⁵ Scotts Valley Indian Lands Opinion (2012) at 9; Guidiville Indian Lands Opinion (2011) at 17 n.88; Karuk Indian Lands Opinion (2004) at 8.

a. Richmond Proposal and Indian Lands Opinion (2004-2012)

In 2005, Scotts Valley requested a “restored lands” determination for land in the Bay Area city of Richmond, California, roughly 17 miles south of Vallejo.²⁶ The Band claimed several categories of historical connections to Richmond.²⁷ After carefully reviewing the evidence for and against those claims, Interior found Scotts Valley did not, in fact, have any historic connection to Richmond and denied the Band’s “restored lands” request.²⁸ Scotts Valley did not appeal and the statute of limitations has long since expired. Nevertheless, two of the Band’s claims with respect to the Richmond restored lands are worth noting here.

First, in its Richmond restored lands request, Scotts Valley (falsely) claimed to be a successor to the Suisun Patwin – an implicit recognition of the overwhelming evidence that the northeast Bay Area was used, occupied, and controlled by Patwin (and not Pomo) people.²⁹ In connection with that remarkable claim, Scotts Valley affirmatively alleged Suisun Patwin use of the area around the Vallejo Property.³⁰ *It also argued that “in the late 1830s, the Suisun Patwin, under the leadership of Chief Solano, provided the labor force for the Vallejo Ranchos.”*³¹ The Department properly found there was no evidence to suggest Scotts Valley is the successor to the Suisun Patwin, and therefore did not reach the “merits” of either argument.³² But these two contentions are nonetheless important because they fatally undermine Scotts Valley’s current assertion that the Patwin population near Vallejo was eliminated and replaced by Clear Lake Pomo people beginning in 1837 (*see* part 5.b, below).

Second, in its Richmond restored lands request, Scotts Valley argued that its ancestors were “located in and controlling access to Big Valley” – that is, Clear Lake – in 1853.³³ This argument, too, undermines Scotts Valley’s current position. If it’s true that Scotts Valley was located in and controlled access to Clear Lake in 1853, the Band would not

²⁶ Scotts Valley Indian Lands Opinion (2012) at 3.

²⁷ *Id.* at 6.

²⁸ *Id.* at 6-18.

²⁹ *Id.* at 10-13, 17.

³⁰ *Id.* at 17.

³¹ *Id.* at 17.

³² *Id.* at 17.

³³ *Id.* at 9-10.

have had a significant historical connection in Vallejo at that time. This is a key admission because the early 1850s were a critical time period – as explained below (see part 5.c), the Vallejo Property would become a small family farm shortly thereafter.

b. Vallejo Proposal and Indian Lands Opinion (2016-2019)

In 2016, having apparently abandoned claims of a significant historical connection to Richmond, Scotts Valley requested that Interior issue a restored lands determination for the Vallejo Property. The Band's 2016 request claimed a significant historical connection to Vallejo based on (i) an 1851 unratified treaty and (ii) allegations that Scotts Valley ancestors were forced to labor on large ranchos owned by the Vallejo family during the Mexican administration of California.

Yocha Dehe requested – and, after some delay, the Department eventually confirmed – an opportunity to submit relevant information and analysis.³⁴ Other federally recognized tribal governments did the same.³⁵ So did Solano County and the City of Vallejo.³⁶

In December 2016, after reviewing the submissions of all interested parties, the Department informed Scotts Valley that a favorable restored lands determination could not be granted because the Band had not tendered specific, positive evidence of a significant historical connection to the Vallejo Property.³⁷ Scotts Valley requested – and was granted – an opportunity to search for additional evidence.³⁸

³⁴ For your convenience, material from Yocha Dehe's 2016 submissions is attached as Exhibits A, B, and C.

³⁵ For your convenience, material from submissions by the United Auburn Indian Community and the Federated Indians of Graton Rancheria are attached as Exhibits D and E.

³⁶ For your convenience, copies of submissions by the County of Solano and the City of Vallejo are attached as Exhibits F and G.

³⁷ Scotts Valley letter to Acting Assistant Secretary-Indian Affairs Lawrence Roberts (Jan. 10, 2017) at 1 (“Both you and the Office of the Solicitor...have recently alerted the Tribe that the Department requires more evidence of the Tribe’s historical connections to the Vallejo parcel, and specifically a certain kind of evidence, characterized as ‘more direct evidence,’ before it can determine that the Tribe satisfies that requirement. Under the circumstances, the Tribe must be allowed a reasonable period of time to develop and present that evidence.”) [Administrative Record 0006863].

³⁸ *Id.*

In 2018, Scotts Valley submitted to Interior a series of expert reports claiming to have identified historical documentation that more than a dozen Scotts Valley ancestors were baptized at the Sonoma Mission in 1837. These reports included a detailed biography of one Scotts Valley ancestor in particular – a leader known as Shuk Augustine.³⁹

After carefully reviewing the entire, expanded record, the Department found Scotts Valley’s evidence remained insufficient. This conclusion was memorialized in a 2019 ILO addressing each and every one of Scotts Valley’s contentions. The 2019 ILO was thorough, well-reasoned, and supported by thousands of pages of evidence submitted by tribal governments.⁴⁰

c. Litigation (2019-2023)

Scotts Valley filed suit under the Administrative Procedure Act (“APA”), challenging both the Department’s IGRA regulations and the application of those regulations to the Band in the 2019 ILO.

Yocha Dehe moved to intervene in defense of the 2019 ILO. The United States successfully opposed our intervention, arguing (among other things) that “even if the court were to rule in Scotts Valley’s favor 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 ... to ensure that the agency considered all the appropriate arguments to properly assess Scotts Valley’s claim.”⁴¹ This left us in a position where we could not defend our own interests in court.

On the merits, the United States District Court for the District of Columbia upheld the Department’s IGRA regulations and found the 2019 ILO was not arbitrary or capricious under APA principles.⁴² But it granted Scotts Valley’s Motion for Summary Judgment and remanded the case to the Department for consideration of the narrow question of

³⁹ See Hurtado, “Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians” (2018) [Administrative Record 0004566-79].

⁴⁰ See Scotts Valley Indian Lands Opinion (2019) at 1-2 n.5-7 (describing materials considered).

⁴¹ Federal Appellees’ Final Response Brief (Doc. 1893213), *Scotts Valley Band of Pomo Indians v. United States Department of the Interior* (D.C. Cir. Case No. 21-5009) at 15, 17-20.

⁴² Memorandum Opinion (ECF 64), *Scotts Valley Band of Pomo Indians v. United States Department of the Interior* (D.D.C. Case No. 19-1544) at 1-51, 57-60.

whether the “Indian law canon of construction” should be applied in Scotts Valley’s favor.⁴³

Concerned that the court might interfere with its discretion on remand, Interior filed a motion for reconsideration. The District Court denied the reconsideration motion, making clear that it was neither requiring the agency to apply the Indian law canon of construction nor dictating the ultimate resolution of Scotts Valley’s ILO request.

With respect to the application of the Indian law canon of construction on remand, Judge Jackson clarified: “I didn’t rule that the Department of the Interior had to apply the canyon [sic].”⁴⁴

And with respect to the ultimate resolution of Scotts Valley’s restored lands request, she expressly recognized that “it is not [the court’s] role to ... substitute its judgment for that of the agency.”⁴⁵

Without consulting us, the United States elected not to follow through on an appeal to the United States Court of Appeals for the District of Columbia Circuit. This decision effectively remanded the proceedings back to the Department.

Having (i) successfully excluded Yocha Dehe from the litigation on the ground that a full opportunity for briefing and argument would be available on remand, (ii) lost a reconsideration motion claiming that the District Court had impermissibly constrained discretion, and (iii) received explicit confirmation that it is not strictly required to apply the Indian law canon of construction, the Department cannot reasonably conclude that its hands are now tied.

d. Remand and Refusal to Consult (2023-present)

Despite its prior representations – and repeated requests from Yocha Dehe and other potentially affected tribal governments – the Department has failed to establish a fair,

⁴³Memorandum Opinion (ECF 64), *Scotts Valley Band of Pomo Indians v. United States Department of the Interior* (D.D.C. Case No. 19-1544) at 51-56, 61.

⁴⁴ Transcript of Bench Ruling (May 8, 2023) *Scotts Valley Band of Pomo Indians v. United States Department of the Interior* (D.D.C. Case No. 19-1544) at 16, lines 23-24.

⁴⁵ Memorandum Opinion (ECF 64), *Scotts Valley Band of Pomo Indians v. United States Department of the Interior* (D.D.C. Case No. 19-1544) at 56.

transparent decision-making process on remand.⁴⁶ It has refused to establish a schedule or process for interested tribes to submit input. It has refused to provide interested tribal governments with the materials on which Scotts Valley proposes to rely. And, to date, it has even refused to honor its government-to-government consultation obligations by meeting with our Tribal Council.⁴⁷ Each of these failures is a significant, unexplained departure from longstanding Departmental policy and practice – including Interior’s own actions and representations in connection with the 2016 proceedings.⁴⁸

3. Scotts Valley’s Claimed Historical Connections

The Department’s arbitrary, capricious, and thoroughly inappropriate refusal to respond to our reasonable requests for information has made it impossible to be sure what claims Scotts Valley may have advanced in connection with its restored lands request and what evidence, if any, Scotts Valley may have submitted – both of which have materially impacted our ability to respond.

But based on what we do know, it appears that Scotts Valley has claimed three types of historical connections to the Vallejo Property.

- 1837 Baptismal Cohort: SV claims a significant historical connection to the Vallejo Property because “known SVB ancestors” named Augustine, Francisco Posh, and Treppa, along with other children purportedly from Augustine’s home village, were allegedly baptized at the Sonoma Mission in 1837.
- Indian Labor: Scotts Valley claims a significant historical connection to the Vallejo Property based on its ancestors’ labor – most of it involuntary – in the region north of San Pablo Bay.
- Unratified 1851 Treaty: Scotts Valley claims a significant historical connection to the Vallejo Property by virtue of an 1851 treaty, arguing that the treaty “ceded” the entire of California between Clear Lake and San Pablo Bay.

⁴⁶ For your convenience, our requests for the Department to set a fair, transparent process on remand are compiled and attached as Exhibit H.

⁴⁷ For your convenience, our formal consultation request, along with multiple follow-up letters, are compiled and attached as Exhibit I.

⁴⁸ See, e.g., Mashpee Indian Lands Opinion (2021) at 3 (noting Departmental procedures for analysis on remand); Mechoopda Indian Lands Opinion (2014) at 3 (describing Departmental process to receive additional information on remand).

These claims are refuted in parts 5.a (baptismal cohort), 5.b (Indian labor), and 5.c (unratified treaty), below.

4. What Is Not In Dispute

To place Scotts Valley's claims in their proper context, however, we begin by highlighting what is *not* in dispute.

a. Scotts Valley has admitted that the Vallejo Property is within the ancestral lands of the Patwin people.⁴⁹

b. Scotts Valley has also admitted that its own ancestral lands are far to the north, at Clear Lake.⁵⁰

c. Consistent with the above, Scotts Valley has admitted to the existence of Patwin villages near the Vallejo Property, but it has identified no villages or burials of its own in the vicinity.⁵¹

d. Scotts Valley has not tendered any evidence placing its ancestors at the Vallejo Property itself. Nor has the Band identified any historical documentation of its ancestors at Rancho Suscol, the 84,000-acre (130 square-mile) ranch that surrounded the

⁴⁹ See, e.g., Memorandum from Steven Bloxham to Paula Hart (Jan. 28, 2016) at 20 [Administrative Record 0000027] (“Ethnographers have long been in agreement that that area in and around what is now the City of Vallejo and adjacent portions of southern Napa and Solano counties were part of the territory of the Patwin people”); Letter from Scotts Valley Band of Pomo Indians to Acting Assistant Secretary-Indian Affairs Lawrence Roberts (Oct. 5, 2016) at 4 (“We have never denied that the Vallejo Property was within traditional Patwin territory”) [Administrative Record 0006760].

⁵⁰ See, e.g., Theodoratus, “Scotts Valley Report” (Jan. 2016) at 4-6 (describing and mapping Clear Lake Pomo territories), 12 (Scotts Valley traditional territory was located “on the western side of Clear Lake” and “[t]he Scotts Valley Band of Pomo Indians continues to maintain a community at or near the same location”) [Administrative Record 0002875-77, 0002883];

⁵¹ See, e.g., Scotts Valley Combined Brief in Opposition and Reply Brief, *Scotts Valley Band of Pomo Indians v. Department of the Interior* (ECF 58) (D.D.C. Case No. 19-1544) at 10-11 n.8 (acknowledging that Scotts Valley villages “were located farther north, around Clear Lake, in pre-contact times, with Patwin villages located in the south near the Parcel”).

Vallejo Property during the period of Mexican administration; at least one Scotts Valley expert has admitted that the record contains no such evidence.⁵²

e. The earliest time at which Scotts Valley claims to have used or occupied lands in the broader San Pablo Bay region is 1837.⁵³

f. The Vallejo Property was carved out of Rancho Suscol by 1855, sold multiple times shortly thereafter, and, by 1860, operated as smaller family farm whose owners did not use Indian labor.⁵⁴

The remaining question, then, is limited to the following: Has Scotts Valley demonstrated, on the basis of historical documentation, that sometime between 1837 and 1855 the Band's ancestors used and occupied as a tribe lands other than the Vallejo Property in such a way that they would also have naturally used or occupied (again, as a tribe) the Vallejo Property in a manner that established a *significant* historical connection.

As explained below, the clear answer is “no.”

5. Scotts Valley Has Not Demonstrated A Significant Historical Connection To The Vallejo Property

a. Baptismal Cohort

According to Scotts Valley, “known SVB ancestors” Augustine, Francisco Posh, and Treppa, along with 12 to 14 others from Augustine’s home village, were among a group of 30 children baptized at the Sonoma Mission, on September 24, 1837.⁵⁵ By making a series of estimates and projections, Scotts Valley alleges these individuals represented

⁵² Memorandum from Albert Hurtado to Lawrence Roberts (Nov. 14, 2016) at 3 (“The record does not place any identifiable individual Indians on the subject property, which was known as Rancho Suscol...”) [Administrative Record 0006791].

⁵³ See Hurtado *et al*, “Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region” (2018) at 2 (claiming that “[Scotts Valley] ancestors began living in the [San Pablo Bay region] in 1837, when at least three children (including Chief Augustine) were baptized at the mission in Sonoma”) [Administrative Record 0005014].

⁵⁴ Whiteman Supplemental Report (2024) [Ex. J] at 56-57.

⁵⁵ Hurtado, “Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians” (2018) at 3-4 [Administrative Record 0004568-69].

60% its child-aged population at the time of the baptism.⁵⁶ Further, the Band claims that 94% of the current Scotts Valley membership descends from the 1837 baptismal cohort.⁵⁷ The Band conjectures that the baptized children remained at the Sonoma Mission for a substantial period of time, thereby establishing a significant historical connection to the Vallejo Property.⁵⁸

This appears to be another attempt by Scotts Valley to appropriate the history of other tribes for its own economic purposes. Each and every aspect of the “baptismal cohort” story is false – or, more precisely, a false representation of *Scotts Valley’s* own history.

The baptismal records for the 1837 cohort do not match the biographical information of the “known SVB ancestors” they are purported to be. For example: Scotts Valley has identified the native name of its Chief Augustine as “Shuk” or “Cuk”; his father’s name as “Bukalnis”; his mother’s name as “Butckulu”; and his family’s village as “Bohanapwene.”⁵⁹ In contrast, baptismal records identify the “Augustin” in the 1837 baptismal cohort as having the native name “Calitta”; a father named “Sajuin”; a mother named “Poodoomen”; and a home village of “Potriqui-Yomi.”⁶⁰ No reasonable decision-maker could conclude they are the same person.

More fundamentally, the names of the 1837 cohort, the names of the parents of the 1837 cohort, and the village of origin of the 1837 cohort are all distinctively Southern Pomo, traceable to a known, historically documented Southern Pomo community near the Sonoma County town of Santa Rosa – more than 50 miles to the south of Scotts Valley’s Clear Lake homeland.⁶¹ Not only is the baptismal cohort unrelated to Scotts Valley, it is not Clear Lake Pomo at all.

⁵⁶ Hurtado, *et al.* “Addendum to the Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region” (2018) at 6 [Administrative Record 0005303].

⁵⁷ *Id.* at 7 [Administrative Record AR 0005304].

⁵⁸ *Id.* at 1-5 [Administrative Record 0005298-5302]; *See* Hurtado *et al.*, “Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region” (2018) at 7-9 [Administrative Record 0005019-21].

⁵⁹ Hurtado, “Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians” (2018) at 2-3 [Administrative Record 0004568-69].

⁶⁰ *See* Graton Report (2024) [Ex. K] at 4.

⁶¹ *Id.* at 11-25.

The Federated Indians of Graton Rancheria, whose ancestors include Southern Pomo people from Sonoma County, have proved these points beyond any reasonable doubt. Their report on the subject, richly supported by citations to relevant historical documentation, is attached as Exhibit K and incorporated by reference herein.

The distinction between Scotts Valley's Clear Lake Pomo ancestors and the Southern Pomo people represented in the 1837 baptismal cohort is no small thing. Unlike other native people in other parts of the country, the Pomo were not unified into a single tribe or a broad, confederated political unit.⁶² Rather, Pomo people were politically, culturally, and linguistically organized at the local level.⁶³ The territorial boundaries of each group were clear and definite, sized on the basis of proximate topographical divisions (*e.g.*, a single valley or watershed), and, in most cases, large enough only to ensure sufficient food and materials for a village community.⁶⁴ Furthermore, the linguistic distinctions among different Pomo languages were sufficiently significant that even relatively similar Pomo dialects were often mutually unintelligible.⁶⁵

It is also important to note that there is no independent basis (*i.e.*, unrelated to baptismal records) to conclude that Augustine, Francisco Posh, Treppa, or any other Scotts Valley ancestor spent time at the Sonoma Mission in 1837. Scotts Valley speculates that the children might have come to the Mission in 1837 as the result of a

⁶² Beckham Report (2016) [Ex. D] at 7-8 ("they did not recognize the people of a linguistic family or dialect as a unit, or the territory occupied by a linguistic family or dialect as a unit area ... usually each village community was named separately and considered separate from the adjacent communities"), 20-21 ("The village community was a political unit..."), 40-41 ("the native communities were localized and independent"), 41 ("the entire area was inhabited by people whose identity and focus was their village or the district immediately nearby, and no farther").

⁶³ *Id.* at 3, 6, 7-8, 20-21, 40-41.

⁶⁴ *Id.* at 8-9, 20-21, 28, 33; *see also* Theodoratus, "Scotts Valley Report" (Jan. 2016) at 3 ("It is important to understand that each tribelet was generally respected by other tribelets in regard to the ownership of their territory and their resources on those lands"), 4 ("Although [] several Lake Pomo tribelets co-existed around the lake, well-defined territorial boundaries were strongly defended..." and "[e]ach group of Eastern Pomo was recognized as a distinct group by other tribelets...[e]ach held specific lands recognized by the other local groups"), 6 [map depicting Clear Lake Pomo tribal territories) [Administrative Record 0002874-76].

⁶⁵ Graton Report (2024) [Ex. K] at 12-13; *see also* Beckham Report (2016) [Ex. D] at 3, 6, 40-41.

raid by Salvador Vallejo the year before.⁶⁶ But its only “evidence” of such a raid consists of Salvador’s self-interested testimony in a later land claim proceeding – testimony that does not specifically mention Scotts Valley or its predecessor tribes, was not credited during the land claim proceeding, and was later withdrawn by Salvador himself.⁶⁷ Indeed, recent research by Beebe and Senkewicz found, after reviewing voluminous historical documentation, that Salvador would not have been at Clear Lake prior to 1843.⁶⁸ That is consistent with Lyman Palmer’s 1881 anecdotal observation that Clear Lake Indians had not been subject to smallpox epidemic that affected the San Pablo Bay area in 1838-1839.⁶⁹

Moreover, even if there were evidence placing Augustine, Francisco Posh, Treppa, or other Scotts Valley ancestors at the Sonoma Mission in 1837 (and, again, there is not), it would not give rise to a natural inference that these children used or occupied the Vallejo Property. The Vallejo Property is not located between Sonoma and Clear Lake; it is nearly 25 miles to the southeast. In 1837, this would have been a multi-day journey over rough terrain, through the southern end of the Mayacamas Mountains, across the Napa River, and over Suscol Ridge. There is no sound basis to assume the small children identified in the baptismal records would have made such a trip *even if*, for sake of argument, they had been at the Sonoma Mission at the time.⁷⁰

b. Indian Labor

Scotts Valley also claims a significant historical connection arising from Indian labor, almost all of it involuntary, in the broader San Pablo Bay region.

The Band generally alleges that its ancestors were forced to work on ranchos owned by the Vallejo family, which controlled numerous large properties – including the 84,000-acre “Rancho Suscol” surrounding (what is now) the Vallejo Property (part 5.b.i, below). It also raises a series of more specific allegations involving incidents in which 172 Clear Lake Pomo were enslaved and taken to work in the town of Sonoma in 1848;

⁶⁶ Hurtado, *et al.* “Addendum to the Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region” (2018) at 3 (citing Hurtado, *et al.* “Supplemental Report” (2018) at 4-6)) [Administrative Record 0005300, citing 0005016-18].

⁶⁷ Whiteman Supplemental Report (2024) [Ex. J] at 37-38.

⁶⁸ *Id.* at 39-40.

⁶⁹ Lyman Palmer, *History of Napa and Lake Counties – Napa* (1881) at 23.

⁷⁰ If Scotts Valley is to be believed, Augustine would have been 6 years old in 1837.

Augustine was forced to labor at a Sonoma ranch owned by Benjamin Kelsey for one month that same year; and Augustine traveled from Clear Lake to Sonoma and back to pick up cattle purchased by Andy Kelsey and Charles Stone sometime in 1848 or 1849 (part 5.b.ii, below). The Band also points out that an individual named “Augustine” was identified in the 1870 census near Rancho Tulucay, in Napa County (part 5.b.iii, below).

All these claims have two things in common. First, they do not place any of the Band’s ancestors *at the Vallejo Property*. Second, they do not demonstrate – or even allege – that Scotts Valley ancestors, during their labor elsewhere, also used or occupied the Vallejo Property. For these reasons alone, Scotts Valley has not demonstrated a significant historical connection.⁷¹

Moreover, as we explain in the following sections, Scotts Valley’s Indian labor arguments are contrary to both the record and the law.

i. General Claims: Labor on Vallejo Family Ranchos [dates not specified]

Scotts Valley’s primary argument is that its ancestors were enslaved and held as captive labor on the Vallejo family’s large ranches north of San Pablo Bay. According to the Band, a smallpox epidemic eliminated the area’s Patwin population beginning in 1837, leading the Vallejo family to import Clear Lake Pomo as a replacement labor source during the late 1830s.⁷² However, Scotts Valley does not identify a specific time when its ancestors used or occupied the Vallejo Property.⁷³

As an initial matter, it is important to note that Scotts Valley’s current position is directly contrary to the position it took when requesting restored lands in Richmond (see part 2, above). In its Richmond restored lands request, Scotts Valley vigorously argued that “in the late 1830s, the Suisun Patwin, under the leadership of Chief Solano, provided the labor force for the Vallejo Ranchos.”⁷⁴ Here, without explanation or support, it has taken precisely the opposite position.

⁷¹ See 25 C.F.R. § 292.12 (restored lands exception requires significant historical connection to “the land” at issue); *Grand Ronde*, 800 F.3d at 568 (same); Scotts Valley Indian Lands Opinion (2012) at 15; Mashpee Indian Lands Opinion (2021) at 36.

⁷² Hurtado, “The Scotts Valley Band of Pomo Indians and the North San Francisco Bay Region” (2016) at 18-47 [Administrative Record 0002994-0003023].

⁷³ *Id.*

⁷⁴ Scotts Valley Indian Lands Opinion (2012) at 17.

Also worth noting is the fact that the actual time of the smallpox epidemic was 1838-1839.⁷⁵ It is unclear whether Scotts Valley’s reference to 1837 was an honest mistake or a misguided attempt to “manufacture” a temporal link to its now-debunked claims regarding the 1837 baptismal cohort.

Either way, there is overwhelming evidence that Patwin groups, led by Suisun Patwin Chief Francisco Solano, continued to use, occupy, and exercise a measure of tribal authority and control over their ancestral lands north of San Pablo Bay long after 1837. A few illustrative examples:

- In 1837, Francisco Solano obtained a Mexican land grant for Rancho Suisun, immediately west of Rancho Suscol, where he “continued in the possession and occupation” of the land and built hundreds of dwellings for the Suisun Patwin people. In issuing the grant, the Mexican government expressly recognized Solano as “chief of the tribes of this frontier and captain of the Suisun” noting that the area “belong[ed] to him by natural right and actual possession.” The grant was later confirmed by the Governor of Alta California (1842) and the United States Supreme Court (1854).⁷⁶
- Francisco Solano was involved in treaties with the Mexican government and other tribes during the period between 1837 and 1839.⁷⁷ He and the Suisun Patwin also played a political role within the Mexican government and in diplomatic visits by Americans and Russians in the 1840s.⁷⁸
- Francisco Solano and the Suisun Patwin remained a military force within their ancestral territory through the American takeover of Alta California, as evidenced by their capture of Portuguese sailor Antonio Silva (1838-39); their decisive victory over a Miwok leader known as “Narciso,” who had attempted to steal horses from the Suscol Valley (1840); their apprehension of Commodore Jones and his American crew (1842-43); their ability to muster a force of 1,400 for a campaign against the Satiyomi and Cainamero (1843); their capture of the

⁷⁵ See Graton Report (2024) [Ex. K] at 9-11.

⁷⁶ See Whiteman Supplemental Report (2024) [Ex. J] at 16-17, 19, 29-30.

⁷⁷ *Id.* at 17.

⁷⁸ *Id.* at 19-21. Solano’s involvement was sometimes helpful to Mariano Vallejo; other times, it was not. See, e.g., Mariano Guadalupe Vallejo, *Recuerdos* (2003) (Beebe and Senkewicz, ed.) at 1011-12 (describing Solano’s plan to kidnap the wife of a Russian envoy with whom Vallejo hoped to do business).

Sonoma *alcalde* (mayor) (1844); and Solano's offer to rescue Mariano Vallejo from the "Bear Flag" rebels (1846).⁷⁹

- At Mariano Vallejo's request, in 1850 the State of California named the area surrounding the Vallejo Property after Patwin leader Francisco Solano. Solano County is one of the State's original 27 county governments, and its official seal and flag include Francisco Solano's image.⁸⁰

These facts – and the many others compiled in the 2024 Whiteman Supplemental Report – confirm that Patwin people remained a vital force in their ancestral territory long after 1837.⁸¹ On this record, no reasonable decision-maker could adopt Scotts Valley's contrary assertion.

The record also reveals a second fatal flaw in Scotts Valley's arguments. According to the Band, its ancestors were enslaved by members of the Vallejo family; Rancho Suscol, a 84,000-acre ranch surrounding the Vallejo Property, was controlled by Mariano Vallejo, political and military leader of the "northern frontier" during the period of Mexican administration; and therefore (if the argument is to be believed) Scotts Valley ancestors must have worked at Rancho Suscol.⁸²

But Scotts Valley fails to confront the fact that record evidence refers to Rancho Suscol as a "Rancho Nacional," set aside for *military* use, and therefore distinct from the other ranchos controlled by the Vallejos:

[Rancho Suscol] was reserved by the Mexican government for the purpose of supplying the troops of the department of California with cattle and horses. It contained [cattle and horses] in charge of a corporal and eight or ten soldiers, the latter being utilized as vaqueros for the purpose of managing this stock.⁸³

⁷⁹ See Whiteman Supplemental Report (2024) [Ex. J] at 18-21.

⁸⁰ *Id.* at 22.

⁸¹ *Id.* at 17-25.

⁸² See, e.g., Hurtado, "The Scotts Valley Band of Indians and the North San Francisco Bay Region" (2016) at 42-45 [Administrative Record 0003018-21]; Memorandum from Albert Hurtado to Lawrence Roberts (Nov. 14, 2016) at 7, 9 [Administrative Record 0006791, 0006796].

⁸³ Whiteman Supplemental Report (2024) [Ex. J] at 26-29.

Unlike other ranchos of the period, livestock at Rancho Suscol was handled by Mexican soldiers, *not* Indian laborers.

The United States appears to have come to the same conclusion in the 1850s. In proceedings challenging Mariano Vallejo's claim to Rancho Suscol, the government put on three witnesses who testified

that they knew the land; that it was called the 'Rancho Nacional'; that it was occupied and cultivated by Mexican soldiers down to the time of the American conquest, when they were driven away; that all the stock on it was public property, and used to supply the soldiers with beef, &c. [sic.]; and that Vallejo had possession of it for the [Mexican] Government as a military officer, but they never heard of any private claim to it until long after the conquest.⁸⁴

The case eventually reached the Supreme Court, which relied on the evidence submitted by the United States to reject Mariano Vallejo's claim to the lands of Rancho Suscol. The Supreme Court specifically noted that Vallejo's position was undermined "by the fact, which is shown, that the ranch had been occupied by [Vallejo] as a military commandant with soldiers and government property."⁸⁵

Having defeated Mariano Vallejo's land claim by convincing the Supreme Court that Rancho Suscol was a Mexican military facility staffed by Mexican soldiers, the United States cannot legitimately find in this proceeding that Scotts Valley's ancestors provided the property's workforce.

Moreover, even if there were evidence that Scotts Valley's ancestors labored at Rancho Suscol, there would be no basis to find they were relocated to work there *as a tribe*. Nor, for that matter, are there any grounds to conclude they had a significant historical connection to the Vallejo Property in particular. Rancho Suscol was vast – 84,000 acres, or more than 130 square miles. The Vallejo Property is but a very small (and very steep) part. Involuntary labor on other parts of Rancho Suscol would not have naturally resulted in use or occupancy of the Vallejo Property.

To resolve any potential confusion, it is also necessary to address Scotts Valley's misrepresentation of the memoirs of William Heath Davis. The Band has repeatedly

⁸⁴ Whiteman Supplemental Report (2024) [Ex. J] at 29.

⁸⁵ *Id.*

cited the Davis memoirs for the general proposition that Clear Lake Indians labored “on all the ranches north of the bay of San Francisco.”⁸⁶ But the relevant passage from Davis actually says something very different:

To the north of the bay of San Francisco, wild Indians, from the Clear Lake country, assisted in farm work, such as making soap, *matanza* work, plowing lands for wheat, barley, beans, corn and small vegetables, onions, peas, cabbages, *calabazas*, *lantejas* and melons.

Civilized Indians from the Missions were scattered about the country, and many were to be found on the different ranchos. They were of peaceable disposition, were employed as vaqueros, and helped the rancheros at the planting season and at harvest time.⁸⁷

Contrary to Scotts Valley’s representation, Davis most definitely did *not* state that Clear Lake Indians worked at “all the ranches north of the bay of San Francisco.” Indeed, the evidence suggests his observations of Clear Lake Indians (who may or may not have been Scotts Valley ancestors) occurred at a ranch near Santa Rosa, nearly 50 miles north of Vallejo.⁸⁸

ii. Specific Claims: Involuntary Labor [1848-49]

Scotts Valley also invokes a series of specific episodes of involuntary labor from 1848 and 1849.

In the spring of 1848, 172 Pomo people from the Clear Lake region were enslaved and brought to Sonoma to build adobe houses.⁸⁹ They returned to Clear Lake that fall.⁹⁰

⁸⁶ See, e.g., Memorandum from Steven Bloxham to Paula Hart (Jan. 28, 2016) at 25 [Administrative Record 0000032]; Hurtado, “The Scotts Valley Band of Indians and the North San Francisco Bay Region” (2016) at 45 [Administrative Record 0003021; Hurtado, *et al.* “Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region” (2018) at 5 [Administrative Record 0005017].

⁸⁷ Whiteman Supplemental Report (2024) [Ex. J] at 35-36.

⁸⁸ *Id.*

⁸⁹ *Id.* at 42.

⁹⁰ *Id.*

During the same timeframe, Augustine was forced to work on Benjamin Kelsey's ranch in Sonoma.⁹¹ He escaped roughly one month later, returning to Clear Lake where his wife and infant child were living.⁹²

That summer, Andrew Kelsey and Charles Stone organized an expedition to the Feather River mines.⁹³ Historical documentation does not provide the precise mining location, but it was certainly nowhere near Clear Lake or Vallejo.⁹⁴ Augustine was among the 26 Pomo (some from Clear Lake, others from elsewhere) forced to go there to pan for gold.⁹⁵ After a month, the Indian laborers accumulated "a bag of gold as large as a man's arm."⁹⁶

Later in 1848 (or possibly in early 1849), Benjamin Kelsey organized a second mining expedition – this time to the El Dorado County town of Kelsey Diggings, near Placerville. The group included 100 Pomo (again, some from Clear Lake and others from surrounding areas). Augustine himself was not one of them. The second expedition ended tragically for the Indian laborers: Benjamin Kelsey sold most of the group's provisions; the group then contracted malaria and Kelsey was carried back to Clear Lake, leaving the sick laborers behind. All but three died attempting to return home.⁹⁷

Andy Kelsey and Charles Stone used their profits from the first (*i.e.*, Feather River) mining expedition to purchase 1,000 cattle in Sonoma.⁹⁸ Augustine was one of the vaqueros charged with traveling from Clear Lake to Sonoma to pick up the animals.⁹⁹ He later reported that it took six round trips to drive the entire herd back to Clear Lake.¹⁰⁰

⁹¹ Whiteman Supplemental Report (2024) [Ex. J] at 43.

⁹² *Id.*

⁹³ *Id.* at 41-42.

⁹⁴ The Feather River rises in the Sierra Nevada mountains, in northeastern California, and runs west and south until it flows into the Sacramento River just north of the City of Sacramento.

⁹⁵ Whiteman Supplemental Report (2024) [Ex. J] at 41-42.

⁹⁶ *Id.*

⁹⁷ *Id.* at 41-42

⁹⁸ *Id.* at 42.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 42.

These episodes of forced labor are horrific and unjust. But Scotts Valley has put them at issue, so we must respond. And, on review of the historical record, it's clear that in each episode Pomo people were forced to leave Clear Lake, made to work in a specific location, and returned (or attempted to return) to Clear Lake within a few months – precisely the sort of temporary, transitory presence the Department has consistently rejected in other restored lands determinations.¹⁰¹

Moreover, none of the episodes took place at or around the Vallejo Property. And there is no basis to conclude Scotts Valley ancestors used or occupied the Vallejo Property in connection with their labor elsewhere.

Some perspective is called for here. In 1848 and 1849, Clear Lake Pomo people were enslaved and taken to work in both the town of Sonoma and in Sierra Nevada mining district. Just by way of example, in 1848 the amount of time Augustine spent working for Benjamin Kelsey in Sonoma was roughly the same as the amount of time he spent at the Feather River mines. And the amount of time the 172 Pomo captives were forced to work in Sonoma was roughly the same as the duration of the horrific mining expedition to Kelsey Diggings.

Each and every instance of forced labor is appalling, regardless of duration or location. But does the Department believe Scotts Valley would have a significant historical connection to the mining districts near Yuba City, Placerville, or Sacramento? Could a connection to those places be claimed by any tribe, from anywhere in California, whose ancestors were taken to work at the mines? That would likely come as a surprise to the Maidu and Miwok people who have cared for those lands through countless generations.

iii. Specific Claims: Rancho Tulucay [1870]

Scotts Valley's final Indian labor claim is based on an 1870 census record identifying a man named "Augustine" living in Napa township near Cayetano Juarez's Rancho Tulucay, approximately 12 miles north of the Vallejo Property.¹⁰² The census lists this

¹⁰¹ See Guidiville Indian Lands Opinion (2011) at 14-15; *see also* Mashpee Indian Lands Opinion (2021) at 33-34 (confirming Departmental interpretation).

¹⁰² Untitled Attachment to Letter from Scotts Valley to John Tahsuda, Principal Deputy Secretary-Indian Affairs (May 3, 2018) at 15, 17 [Administrative Record 0004427, 0004429];

“Augustine” as a 32-year old laborer living with fifteen others – a mixture of men and women, boys and girls, aged 8 to 69.¹⁰³ Scotts Valley has argued this was a group of the Band’s ancestors working together in proximity to the Vallejo Property.¹⁰⁴

It is important to note, however, that there is no evidence that the “Augustine” in the 1870 census record is the Scotts Valley ancestor “Shuk” Augustine. True, they share the name “Augustine.” But baptismal records from the Sonoma Mission show at least two other men named “Augustine” (or the Spanish spelling “Augustin”) born very close in time to the 1870 census “Augustine.”¹⁰⁵ Still other similar-aged “Augustines” were baptized at other Missions.¹⁰⁶ And yet more were never baptized (and therefore do not show up in baptismal records) – after all, “Augustine” was one of the most common names in California at the time.¹⁰⁷ It is also notable that Palmer’s interview with Augustine, apparently conducted in the 1870s, touches on a broad variety of subjects dating back to 1848 but says nothing about a residence at Tulucay just a few years prior.

Scotts Valley’s erroneous assertions about the 1837 baptismal cohort clearly illustrate why it is improper to assume any “Augustine” in the historical record must be the Band’s ancestor of that name (*see* part 5.a, above). The same mistake should not be repeated in the context of the 1870 census.

Furthermore, there is no evidence that the fifteen others in the 1870 census household were Scotts Valley ancestors. In fact, *Scotts Valley has admitted that it “cannot document” a connection between the Band and the other Indians in the household.*¹⁰⁸

Hurtado, “Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians” (2018) at 9-10 [Administrative Record 0004574-75].

¹⁰³ Hurtado, “Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians” (2018) at 9-10 [Administrative Record 0004574-75].

¹⁰⁴ *Id.*

¹⁰⁵ Whiteman Supplemental Report (2024) [Ex. J] at 33-34.

¹⁰⁶ *Id.*; *see also* Graton Report (2024) [Ex. K] at 4-5

¹⁰⁷ Whiteman Supplemental Report (2024) [Ex. J] at 33-34; Graton Report (2024) [Ex. K] at 4-5.

¹⁰⁸ Hurtado, *et al.* “Addendum to the Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region (2018) at 7 (“we cannot document the connection between Scotts Valley and other residents of that particular household”) [Administrative Record 0005304]. The Band originally claimed, without citing any evidence, that the 1870 census “Augustine” was related to other Scotts Valley ancestors in his census dwelling. *See* Hurtado, “Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians” (2018) at 9-10 [Administrative Record 0004574]. In response to questions from the Department,

Also relevant is the fact that Shuk Augustine had a wife and children at the time of the 1870 census.¹⁰⁹ And while the 1870 census household contained several women and children, Shuk Augustine's family was not among them.¹¹⁰ In contrast, the 1880 census shows Shuk Augustine living with his family at Clear Lake.¹¹¹ Either the "Augustine" identified in the 1870 census was not the Band's ancestor or Shuk Augustine was present in Napa individually, without his Scotts Valley kin.

Most fundamentally, by 1870 the Vallejo Property had long since been carved out of Rancho Suscol and divided into much smaller parcels.¹¹² The western part of the Property was owned by John Carrington, while the eastern part was owned by James Hunter.¹¹³ There is no evidence that either Carrington or Hunter used Indian labor to work the land, and census records do not identify any Indians in or around the Carrington and Hunter households.¹¹⁴

Thus, even if there were evidence that the "Augustine" identified in the 1870 census was Scotts Valley ancestor Shuk Augustine – and even if, contrary to the evidence, Shuk Augustine's presence at Rancho Tulucay could somehow be imputed to the Scotts Valley Band as a whole – *there would be no basis to conclude that the 1870 census demonstrates Scotts Valley use or occupancy of the Vallejo Property.*

At base, Scotts Valley's claims regarding the 1870 census are not built on concrete evidence about Shuk Augustine, the 1870 census "Augustine," the dwelling in which the 1870 census "Augustine" was recorded, or any use or occupancy of the Vallejo Property. Instead, the Band's position is founded on a speculative assumption about

however, the Band was forced to admit that it could not document any Scotts Valley connection to others in the "Augustine" dwelling. *See* Hurtado, *et al.* "Addendum to the Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region (2018) at 1 ("This report is meant to answer questions..."), 7 (admitting inability document any connection) [Administrative Record 0005298, 0005304].

¹⁰⁹ Whiteman Supplemental Report (2014) [Ex. J] at 33-34.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 56-57.

¹¹³ *Id.*

¹¹⁴ *Id.*

the connection between Cayetano Juarez, the owner of Rancho Tulucay, and Scotts Valley ancestors.¹¹⁵ That assumption is squarely contradicted by the record.

Scotts Valley appears to believe Cayetano Juarez served as the majordomo (or overseer) at Salvador Vallejo's Rancho Lup-Yomi, near Clear Lake, at some unspecified time in the 1840s.¹¹⁶ The basis for that belief? A note in Palmer stating that Augustine remembered the first majordomo at Rancho Lup-Yomi was named "Juarez."¹¹⁷ Not "Cayetano Juarez."¹¹⁸ Just "Juarez."¹¹⁹

The distinction is important. The life of *Cayetano* Juarez is reasonably well documented, but no source reports that he served as majordomo at Rancho Lup-Yomi.¹²⁰ On the contrary, robust historical documentation places *Cayetano* Juarez in the town of Sonoma and at Rancho Tulucay at all relevant times.¹²¹ Nor would there have been any reason for *Cayetano* Juarez to take a position as a hired overseer on a remote ranch owned by Salvador Vallejo; he had a rancho of his own at Tulucay, with his own livestock, houses, and labor force, and beginning in 1844 he served as *alcalde* of the town of Sonoma.¹²²

There is, however, documentary evidence of a different "Juarez" closely connected to Rancho Lup-Yomi. Evidence filed in a California Land Act proceeding identifies a *Marcos* Juarez as one of Salvador Vallejo's Lup-Yomi partners.¹²³ There is no reference to a *Marcos* Juarez in *Cayetano* Juarez's family records.¹²⁴ The two appear to be unrelated.

¹¹⁵ See, e.g., Hurtado, "Chief Augustine: Significant Ancestor of the Scotts Valley Band of Pomo Indians" (2018) at 9 (claiming that Augustine "was employed in 1870 on or very near Rancho Tulucay, which was owned by Cayetano Juarez, who was probably the first major-domo at Rancho Lup-Yomi") [Administrative Record 0004574].

¹¹⁶ *Id.*

¹¹⁷ *Id.*; see also Whiteman Supplemental Report (2024) [Ex. J] at 30-31, 40-41.

¹¹⁸ Whiteman Supplemental Report (2024) [Ex. J] at 30-31, 40-41.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 39-41.

¹²⁴ *Id.* at 39-40.

Scotts Valley also refers to an undated anecdote told by Cayetano Juarez’s great-granddaughter, involving two elderly Indian men who supposedly came from Lake County to Rancho Tulucay, hoping to see Cayetano Juarez before they died.¹²⁵ Upon hearing that that Cayetano had already passed away, the men “were heartbroken” and expressed their condolences.¹²⁶ Although they accepted an offer of food and water, the men “refused to stay and started back the way they had come.”¹²⁷

Scotts Valley suggests this anecdote demonstrates a longstanding relationship between Clear Lake Indians and Rancho Tulucay.¹²⁸ But the evidence does not support that contention. The primary source for the anecdote does not say who the men were, whether they came from Clear Lake or Lake County more generally, or how they knew Cayetano Juarez.¹²⁹ Without that information, there is no sound basis to assume the two elderly men were Clear Lake Pomo people, much less *Scotts Valley* ancestors.¹³⁰ After all, Cayetano Juarez owned a large tract of land (known as “Rancho Yokaya”) close to the border between Mendocino County and Lake County.¹³¹ Given the absence of evidence independently linking Cayetano Juarez to Clear Lake (see above), the anecdote is best understood as a reflection of his ownership of the Yokaya property.

More fundamentally, the factual record overwhelmingly demonstrates that the Indian Rancheria at Rancho Tulucay was *Patwin*, not Pomo.¹³² Tulucay was named for a Patwin village.¹³³ When constructed, the Rancho was surrounded by settlements of the Uluca and Napa Indians, both Patwin groups.¹³⁴ Primary sources report that at least

¹²⁵ Hurtado, *et al.* “Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region” (2018) at 14-15 [Administrative Record 0005026]; *see also* Whiteman Supplemental Report (2024) [Ex. J] at 32-33 (providing source and context for anecdote).

¹²⁶ Whiteman Supplemental Report (2024) [Ex. J] at 32-33.

¹²⁷ *Id.*

¹²⁸ Hurtado, *et al.* “Supplemental Report: History of the Scotts Valley Band of Pomo Indians and the San Pablo Bay Region” (2018) at 14-15 [Administrative Record 0005026].

¹²⁹ *See* Whiteman Supplemental Report (2024) [Ex. J] at 32-33.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 31-33.

¹³³ *Id.*

¹³⁴ *Id.*

some Indians still lived there into the 1870s.¹³⁵ And, revealingly, Cayetano Juarez's children – who would have been in their 20s and 30s in 1870 – spoke a Patwin dialect.¹³⁶

If anything, the anecdote on which Scotts Valley relies demonstrates that the two Lake County Indians (who, again, may or may not have been from Clear Lake) did *not* have any kind of tribal community at Rancho Tulucay.¹³⁷ Apparently, the two men were unaware of Cayetano Juarez's death.¹³⁸ And rather than staying at or near Rancho Tulucay after their long journey, they immediately set off again.¹³⁹

On this record, no reasonable decisionmaker could conclude that the bare 1870 census reference to a man named "Augustine" demonstrates a significant historical connection between Scotts Valley and the Vallejo Property.

c. Unratified 1851 Treaty

Scotts Valley claims a significant historical connection to the Vallejo Property on the basis of an unratified 1851 treaty known as "Treaty O," arguing that the Treaty (i) constitutes a cession of the Vallejo Property by the Band's ancestors and (ii) recognized the Band's significant historical connection to the Vallejo Property. Neither claim is supported by the evidence.

i. Scotts Valley's Purported "Cession" Does Not Demonstrate A Significant Historical Connection.

Scotts Valley claims descent from two or three (depending on the document) of the eight tribal parties who signed Treaty O, and alleges the Treaty ceded the entire area from Clear Lake south to San Pablo Bay, including the Vallejo Property.¹⁴⁰ According to the Band, this constitutes a significant historical connection. The claim fails for multiple reasons.

¹³⁵ See Whiteman Supplemental Report (2024) [Ex. J] at 31-33.

¹³⁶ *Id.*

¹³⁷ *Id.* at 33.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See, e.g., Letter from Steven Bloxham to Eric Shepard (Sept. 15, 2016) at 4-5 [Administrative Record 0006727-28]; Memorandum from Steven Bloxham to Lawrence Roberts, Acting Assistant Secretary-Indian Affairs (Nov. 14, 2016) at 1-10 [Administrative Record 0006774-83].

As an initial matter, Treaty O does not “cede” the Vallejo Property. Unlike treaties the Department has relied on in other restored lands proceedings, Treaty O did not identify any ceded lands whatsoever.¹⁴¹ The Treaty says only that the tribal signatories would “jointly and severally relinquish, cede, and forever quit claim to the United States, all their right, title, claim or interest of any kind, which they or either of them may have to lands or soil in California,” without specifying any particular cession.¹⁴² So what “right, title, claim or interest” to the Vallejo Property did Scotts Valley’s ancestors really have? Again, Scotts Valley has admitted that the Vallejo Property is not within its ancestral territory.¹⁴³ There are no Pomo village sites or burials anywhere nearby.¹⁴⁴ Scotts Valley has disclaimed any aboriginal title to the area.¹⁴⁵ Certainly, it held no legal title to the Property. The records of the United States treaty delegation do not suggest the Indian parties to Treaty O were found near Vallejo; on the contrary, they confirm the signatory tribes were resident at Clear Lake and farther north.¹⁴⁶ In what sense, then, can Scotts Valley legitimately claim to have “ceded” the Vallejo Property through Treaty O?

Furthermore, historical documentation makes clear that *if* the Vallejo Property was ever ceded, it was ceded by the Suisun Patwin. Unlike Scotts Valley’s ancestors, Patwin people used, occupied, and exercised control over Vallejo and Solano County.¹⁴⁷ There are Patwin village sites, burials, and place names throughout the area, and the historical record is filled to bursting with evidence of Patwin use and occupancy.¹⁴⁸

¹⁴¹ See Yocha Dehe Response to Scotts Valley Request for Restored Lands Opinion (Nov. 8, 2016) [Ex. A], Legal Memorandum at 10-13 (comparison between Treaty O and the treaty at issue in the *Grand Traverse* litigation).

¹⁴² *Id.* at 12.

¹⁴³ See note 50, above.

¹⁴⁴ See note 51, above.

¹⁴⁵ Scotts Valley Combined Brief in Opposition and Reply Brief, *Scotts Valley Band of Pomo Indians v. Department of the Interior* (ECF 58) (D.D.C. Case No. 19-1544) at 10-11 n.8 (“the Tribe never claimed aboriginal title to the area in the vicinity of the Parcel”).

¹⁴⁶ See, e.g., Sen. Exec. Doc. 4, 32nd Cong., Spec. Sess., Minutes Kept by John McKee on the Expedition from Sonoma Through Northern California at 136-43 (Comm. Print 1851) [Administrative Record 0005716-23]; Yocha Dehe Reply to Scotts Valley (Nov. 22, 2016) [Ex. C], Exhibit A at 6-10 [Administrative Record 0008157-61].

¹⁴⁷ Whiteman Report (2016) [Ex. B] at 4-19; Whiteman Supplemental Report (2024) [Ex. J] at 5-25;

¹⁴⁸ *Id.*

Indeed, Mariano Vallejo expressly recognized that the area around the Vallejo Property was Patwin territory: “the only way I could maintain my position here was by means of Chief Solano’s cooperation.”¹⁴⁹ In 1835, he toured the area with Francisco Solano to signal his acknowledgment of Solano’s possession and authority.¹⁵⁰ In 1837, Vallejo called on Solano to witness a formal peace treaty between the Mexicans and the Satiyomi and felt compelled to turn over to the Suisun Patwin the majority of the treaty gifts the Mexicans received.¹⁵¹ In 1841, Vallejo further acknowledged that his own power derived from Solano and the Suisun Patwin, explaining “my prestige and powers were at their highest, for I could count on Prince Solano’s warriors.”¹⁵² In 1850, Vallejo prevailed on the State of California to name the area surrounding the Vallejo Property after Francisco Solano.¹⁵³ The evidence goes on and on, but the point remains the same: Mariano Vallejo, political and military chief of the Mexican government in the region north of San Pablo Bay and (later) founder of the city that bears his name, recognized Patwin occupancy of and authority over the area.¹⁵⁴

Official Mexican government documents likewise recognize Solano’s hereditary and possessory rights to the area. Solano was issued a formal Mexican land grant for Rancho Suisun, immediately adjacent to Rancho Suscol.¹⁵⁵ In his *Recuerdos*, Mariano Vallejo noted that Suisun represented just a part of Francisco Solano’s traditional territory.¹⁵⁶ The United States Supreme Court (later) upheld the Suisun grant, recognizing that Francisco Solano served as “principal chief” of the region.¹⁵⁷

¹⁴⁹ Whiteman Supplemental Report (2024) [Ex. J] at 15.

¹⁵⁰ *Id.* at 14 (citing Beebe and Senkewicz analysis that concluded Mariano Vallejo “was signaling to the large number of Indians who were present that he and the Mexicans acknowledged Solano’s possession of this territory...”)

¹⁵¹ *Id.* at 17.

¹⁵² *Id.* at 19 (“...my prestige and powers were at their highest, for I could count on Prince Solano’s warriors”).

¹⁵³ Whiteman Supplemental Report (2024) [Ex. J] at 22.

¹⁵⁴ *See id.* at 11-25.

¹⁵⁵ *Id.* at 16, 19, 29-30.

¹⁵⁶ Vallejo, *Recuerdos* (2023) (Beebe and Senkewicz, ed.) at 749 (“That tract of land, *in addition to many more leagues*, had belonged to Solano and to his Indians”) (emphasis added).

¹⁵⁷ Whiteman Supplemental Report (2024) [Ex. J] at 30.

Historical documentation also reveals an 1836 meeting between Francisco Solano and Juan Bautista Alvarado, a prominent Californio politician who soon thereafter assumed the governorship of Alta California, in which Solano agreed to cede the Napa Valley to the Mexican government.¹⁵⁸

In a similar vein, Mariano Vallejo's *Recuerdos* generally suggest that the Mexican government's possessions in the region north of San Pablo Bay came via cession from Francisco Solano and the Suisun Patwin.¹⁵⁹

It is also important to note that the majority of the tribal parties to Treaty O were *not* Scotts Valley's ancestors. Even if Treaty O had purported to cede the area near San Pablo Bay (which it does not), there would be no basis to conclude that Scotts Valley ancestors, rather than others, ceded the Vallejo Property.¹⁶⁰

No reasonable decision-maker could find that *Scotts Valley* did – or even could – cede lands in San Pablo Bay region in Treaty O.

In truth, Scotts Valley is not relying on Treaty O at all. Instead, its claims are based on a map, prepared by Charles Royce (who played no role in the treaty expedition) almost 50 years later, as part of a project that purported to assign “ceded areas” to various tribal treaties nationwide.¹⁶¹ It is Royce's later map – not Treaty O itself – that Scotts Valley cites for the proposition that its ancestors ceded the Vallejo Property.¹⁶² Therefore, it is worth considering what evidence Royce himself relied on.

¹⁵⁸ Whiteman Supplemental Report (2024) [Ex. J] at 15.

¹⁵⁹ Vallejo, *Recuerdos* (2023) (Beebe and Senkewicz ed.) at 749-50. According to Vallejo, the Suisun grant was based, in part, on the fact that Solano had ceded other territory to the Mexican government: “because he had ceded all his lands to me, and those lands had become the property of the government, I believed it was my duty to give him four leagues [i.e., Suisun] should he need them to protect himself from poverty.”

¹⁶⁰ See Scotts Valley Indian Lands Opinion (2012) at 14; Karuk Indian Lands Opinion (2004) at 7 (denying treaty-based request for restored lands determination where the treaty did not specify which lands belonged to the applicant tribe and which belonged to other treaty signatories).

¹⁶¹ See Whiteman Report (2016) [Ex. B] at 29; Beckham Report (2016) [Ex. D] at 63-64.

¹⁶² See, e.g., Letter from Scotts Valley to Lawrence Roberts, Acting Assistant Secretary-Indian Affairs (Dec. 12, 2016) at 3 (“The Vallejo Property is located within the territory ceded by the Scotts Valley Band's ancestors in the unratified 1851 treaty as shown by the treaty area delineated **in Royce Area 296**”) (emphasis original) [Administrative Record 0006838].

The short answer is “nothing substantial.” Royce’s map areas were drawn using data from a document titled “Schedule of Indian Land Cessions.”¹⁶³ For some treaties the Schedule of Land Cessions includes detailed information about ceded territories, but for Treaty O the Schedule merely says “[r]eserve a tract on Clear Lake” and “[c]ede all claim to other territory.”¹⁶⁴ There is nothing describing any specific lands used, occupied, or ceded by the tribal signatories.¹⁶⁵ In other words, Royce’s map was not based on evidence that any of Treaty O’s signatories – much less the specific signatories from which Scotts Valley claims descent – used or occupied the Vallejo Property or ceded it to the United States.

It is hardly surprising, then, that the boundaries of Royce’s Treaty O map are grossly inaccurate. For example, several Patwin villages – including Cham-met-co/Chemocu and Toc-de/Tokti – fall within Royce’s Treaty O boundaries even though their representatives never met with Treaty O’s negotiators.¹⁶⁶ In fact, Cham-met-co/Chemocu lies near the very center of the Royce Map purporting to depict Treaty O.¹⁶⁷ But neither Cham-met-co/Chemocu nor Toc-de/Tokti participated in or signed Treaty O; instead, they are signatories to the Treaty of Camp Colus (also known as “Treaty I”), an entirely different treaty, negotiated by an entirely different federal treaty party, whose ceded lands are supposedly depicted on an entirely different Royce map.¹⁶⁸ In other words, Royce’s map of Treaty O “ceded lands” includes lands known to have been used, occupied, and (purportedly) ceded by Patwin villages who signed an entirely different treaty.

Nor is this the only instance in which Royce’s maps have been found wanting. For example, in Indian Claims Commission (“ICC”) proceedings involving the Shoshone Indians, it was found that Royce’s work failed to consider 1835 and 1846 treaties

¹⁶³ Whiteman Report (2016) [Ex. B] at 29.

¹⁶⁴ *Id.*; see also Yocha Dehe Response to Scotts Valley Request for Restored Lands Opinion (Nov. 8, 2016) [Ex. A], Legal Memorandum at 14.

¹⁶⁵ *Id.*

¹⁶⁶ Yocha Dehe Response to Scotts Valley Request for Restored Lands Opinion (Nov. 8, 2016) [Ex. A], Legal Memorandum at 14-15; see also Map of Royce Areas and Villages (Nov. 8, 2016) [Administrative Record 0005816].

¹⁶⁷ See Map of Royce Areas and Villages (Nov. 8, 2016) [Administrative Record 0005816].

¹⁶⁸ Whiteman Report (2016) [Ex. B] at 24-25; Yocha Dehe Response to Scotts Valley Request for Restored Lands Opinion (Nov. 8, 2016) [Ex. A], Legal Memorandum at 13-16.

directly relevant to ceded lands.¹⁶⁹ Other ICC proceedings found that one of Royce's maps of Sioux territory misrepresented the boundaries described in the Treaty of Prairie du Chien.¹⁷⁰ More recently, a tribal recognition decision for the Little Shell Tribe of Montana found that a Royce map of reservation lands was erroneous.¹⁷¹ Clearly, Royce was not infallible.

Commentators have noted that Royce's mapping errors tended to be particularly pronounced in the context of unratified treaties, where he was known to bypass "errors in the field" and sometimes "fudged his maps" with unsurveyed areas.¹⁷² Some scholars have suggested this is because Royce himself did not intend his maps to be used for legal purposes.¹⁷³ Indeed, courts have characterized Royce maps as a "convenience to identify the areas in question before the Indian Claims Commission" rather than "binding authority."¹⁷⁴

To be clear, none of this means Royce's maps must be discarded altogether. Other Royce maps, prepared for other tribal treaties, may be perfectly accurate and suitable for Departmental decision-making. But the specific Royce map on which Scotts Valley relies in this proceeding is clearly *not* an accurate representation of any "cession" arising from Treaty O.

Moreover, even if Treaty O could legitimately be considered a "cession" of the Vallejo Property by Scotts Valley's ancestors (and, again, it cannot), it would not be enough to meet the requirements of the restored lands exception. The relevant legal standard is "significant historical connection," not "cession."¹⁷⁵ And the latter, without more, does not establish the former.

¹⁶⁹ See Imre Sutton, *Irredeemable America: The Indians' Land Estate and Land Claims* (1985) at 189-90 (describing expert witness testimony in the proceedings).

¹⁷⁰ See 10 Ind. Cl. Comm. 159, para. 35.

¹⁷¹ Proposed Finding Against Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana, Department of the Interior Board of Indian Appeals (2013) at 64 n.19.

¹⁷² *American Indian Culture and Research Journal*, 37: 1 (2013) "A Cartographic History of Indian-White Government Relations During the Past 400 Years" (Cole and Sutton).

¹⁷³ *Id.* at 51.

¹⁷⁴ *Devils Lake Sioux Tribe v. State of North Dakota*, 917 F.2d 1049, 1052 n.2 (8th Cir. 1990).

¹⁷⁵ 25 C.F.R. §§ 292.2, 292.12.

A pair of restored lands requests by the Karuk Tribe of California demonstrates the principle. In 2004, Karuk was denied a restored lands determination *even though the land at issue was within an area the tribe had jointly and severally ceded in an unratified treaty*, primarily because evidence of actual tribal use or occupancy was “based largely on the speculation of an ethnologist.”¹⁷⁶ Eight years later, Karuk was able to obtain a favorable restored lands determination for the same property by demonstrating, *in addition to cession of the land in an unratified treaty*, concrete evidence of its aboriginal camp sites on the premises.¹⁷⁷ Scotts Valley has provided no comparable evidence of habitation, use, or occupancy here.

ii. The Terms of Treaty O Do Not Establish a Significant Historical Connection

Article 5 of Treaty O would have required the United States to make available to tribal signatories specified amounts of cattle and flour “at or near Vallejo, or elsewhere, as may be most convenient.” Scotts Valley has suggested this language reflects its ancestors’ preexisting historical connection to Vallejo.¹⁷⁸ Once again, historical documentation demonstrates otherwise.

The minutes of the treaty expedition show that J.M. Estelle, of Vallejo, held a contract to supply beef to the treaty parties “at such time and place as he may direct.”¹⁷⁹ The minutes also reflect that Redick McKee told the Clear Lake treaty signatories that they “must send runners for [the supplies] as the mountains surrounding this lake are impassable for wagons, it would cause the President great expense to send [them] here [to Clear Lake] now.”¹⁸⁰ McKee also explained the location of General Estelle’s Vallejo property to the tribal signatories of Treaty O; if the tribal treaty parties truly had a

¹⁷⁶ Karuk Indian Lands Opinion (2004) at 7-8; *see also* Guidiville Indian Lands Opinion (2011) at 11 n.45 (finding “the Tribe’s use of the Royce maps to establish its significant historical connection to the Parcel” to be “unavailaing” because the map did not “reflect any specific use and occupation” by the applicant tribe).

¹⁷⁷ Karuk Indian Lands Opinion (2012) at 10.

¹⁷⁸ *See, e.g.*, Letter from Scotts Valley to Lawrence Roberts, Acting Assistant Secretary-Indian Affairs at 4 [Administrative Record 0006839].

¹⁷⁹ Whiteman Supplemental Report (2024) [Ex. J] at 44; Whiteman Report (2016) [Ex. B] at 28; Yocha Dehe Response to Scotts Valley Request for Restored Lands Opinion (Nov. 8, 2016) [Ex. A], Legal Memorandum at 18-21.

¹⁸⁰ Whiteman Supplemental Report (2024) [Ex. J] at 44.

preexisting historical connection to Vallejo, there should not have been a need for such explanation.¹⁸¹

Moreover, Estelle apparently had a side deal with McKee's son, who served as the treaty party's traveling secretary.¹⁸² In other words, specifying a pickup point "at or near Vallejo" was *not just a matter of convenience but also a matter of profit* for members of the United States delegation.

Taken together, this contemporaneous documentation shows that Treaty O made supplies available "at or near Vallejo, or elsewhere, as may be most convenient" in order to benefit Estelle and the United States, not to reflect any preexisting significant historical connection between Scotts Valley's ancestors and the city of Vallejo.¹⁸³

If further confirmation of this point were needed, it could readily be found in the fact that the United States also directed other tribal groups to pick up treaty supplies in Vallejo. For example, Treaty P, negotiated by a different group of tribes, in a different location, and at a different time, likewise instructed its tribal signatories to pick up promised rations of beef and flour in the same manner as those promised under Treaty O.¹⁸⁴ Clearly, the availability of provisions "at or near Vallejo, or elsewhere, as may be most convenient" did not reflect a historical connection specific to Scotts Valley's ancestors.

In an effort to salvage its position, Scotts Valley has repeatedly cited an 1852 exchange of letters between Brigadier General Ethan Hitchcock (commander of the Pacific Army) and Redick McKee. Hitchcock wrote to McKee:

I have to state that, on one occasion, subsequent to your treaty with the Clear Lake Indians ... I saw a considerable body of those Indians encamped by the brook at General Estelle's house, within nine miles of [Benecia] ... They had left their proper homes, and had travelled fifty or

¹⁸¹ Sen. Exec. Doc. 4, 32nd Cong., Spec. Sess., Minutes Kept by John McKee on the Expedition from Sonoma Through Northern California at 141 (Comm. Print 1851) [Administrative Record 0005721].

¹⁸² Whiteman Supplemental Report (2024) [Ex. J] at 44.

¹⁸³ *Id.*; see also Whiteman Report (2016) [Ex. B] at 28; Yocha Dehe Response to Scotts Valley Request for Restored Lands Opinion (Nov. 8, 2016) [Ex. A], Legal Memorandum at 18-21.

¹⁸⁴ Yocha Dehe Response to Scotts Valley Request for Restored Lands Opinion (Nov. 8, 2016) [Ex. A], Legal Memorandum at 18-19.

sixty miles, through the white settlements, to receive that beef ... I must take leave to say that nothing should have been more ill-judged, to say nothing of the manner of the issue...¹⁸⁵

In response, McKee wrote:

That you “saw a considerable body of Indians encamped by the brook at General Estelle’s ranche [sic.], within nine miles of Benicia,” I have no reason to question, nor yet their perfect right to make a visit there, if it suited their convenience or their whims. It is no uncommon thing for parties to come over from the lake to work for farmers in the valleys of Sonoma, Nappa, &c. ¹⁸⁶

Scotts Valley seems to believe these letters somehow demonstrate a significant historical connection.¹⁸⁷ If anything, the opposite is true. General Hitchcock expressed considerable alarm upon seeing Clear Lake Indians in Solano County, noting that they would have had to leave their “proper homes” (*i.e.*, Clear Lake) and, after crossing steep mountains, “travel fifty or sixty miles through the white settlements.”¹⁸⁸ Plainly, these Clear Lake Indians were an unusual presence, and the City of Vallejo was not their home or place of occupancy.¹⁸⁹ For his part, Redick McKee asserted that it was “no uncommon thing” for Clear Lake Indians to work in the Napa and Sonoma Valleys (which may or may not have been true), but conspicuously omitted any reference to Vallejo or Solano County.¹⁹⁰ And, critically, neither McKee nor Hitchcock said anything that would suggest the one-time visitors to Estelle’s Ranch were Scotts Valley ancestors rather than other Clear Lake Indians.¹⁹¹

Moreover, nothing in Hitchcock and McKee’s letters – or anywhere else for that matter – provides any reason to infer that the Clear Lake Indians who visited Estelle’s Ranch

¹⁸⁵ Whiteman Supplemental Report (2024) [Ex. J] at 44-45.

¹⁸⁶ *Id.*

¹⁸⁷ *See, e.g.*, Hurtado Report (2016) at 86-88 [Administrative Record 0003062-64]; Letter from Scotts Valley to Lawrence Roberts, Acting Assistant Secretary-Indian Affairs (Dec. 12, 2016) at 4 [Administrative Record 0006839].

¹⁸⁸ Whiteman Supplemental Report (2024) [Ex. J] at 44-45.

¹⁸⁹ *Id.* at 44-48.

¹⁹⁰ *Id.* at 45.

¹⁹¹ *Id.* at 44-45.

spent any time *at the Vallejo Property*. To the contrary, the historical documentation states that they came to Estelle's Ranch *once*, obtained their provisions, and returned home.¹⁹²

6. Conclusion

The Department has consistently denied restored lands requests that fail to demonstrate, based on historical documentation, a *significant* historical connection to the subject property that is specific to the applicant tribe and more than transient.¹⁹³ For the reasons set forth above, the Department must do the same here.

But that does not foreclose Scotts Valley from realizing the benefits of IGRA. If the Band wants to continue pursuing a gaming project in Vallejo, it can use the statute's "two-part determination" process. Or, if the Band wishes to develop a project in a place where it truly has a significant historical connection, it can restore a land base in its Clear Lake homeland – as other terminated-and-restored Pomo tribes have done.

Yocha Dehe is sympathetic to Scotts Valley's unfortunate history. But we must all play by the same rules. And the Department must apply those rules fairly and equally to everyone.

¹⁹² Whiteman Supplemental Report (2024) [Ex. J] at 46.

¹⁹³ See, e.g., Scotts Valley Indian Lands Opinion (2019); Scotts Valley Indian Lands Opinion (2012); Guidiville Indian Lands Opinion (2011); Karuk Indian Lands Opinion (2004).