



COALITION OF LARGE TRIBES

Blackfeet Nation • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe
Fort Belknap Indian Community • Mandan, Hidatsa & Arikara Nation • Navajo Nation • Northern Arapaho Tribe
Oglala Sioux Tribe • Rosebud Sioux Tribe • Sisseton Wahpeton Sioux Tribe
Shoshone Bannock Tribes • Spokane Tribe • Ute Indian Tribe • Walker River Paiute Tribe

June 14, 2023

Mr. Todd Kim
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Mr. Wizipan Little Elk Garriott
Principal Deputy Assistant Secretary, Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

VIA EMAIL

Re: COLT Urges the United States NOT to Appeal the U.S. District Court's Order Granting Summary Judgment in *Scotts Valley Band of Pomo Indians v. Department of the Interior* (D.D.C., No. 19-cv-1544-ABJ)

Dear Sirs:

On behalf of the Coalition of Large Tribes (“COLT”), a national tribal organization representing the interests of the more than 50 federally recognized Indian tribes that have reservations of 100,000 acres or more, I urge you NOT to appeal Judge Amy Berman Jackson’s May 8, 2023 denial of your motion for reconsideration of her September 30, 2022 order in the *Scotts Valley Band of Pomo Indians* case, No. 19-cv-1544. Quite simply, Judge Berman got it right, ruling in favor of the Tribe challenging a Trump Administration denial of the Tribe’s land-into-trust application.

Judge Berman Jackson’s opinion recognized the importance of the application of the Indian Canons of construction in agency fact-finding, with the Canons’ roots inextricably intertwined with the Trust doctrine and the government-to-government relationship between tribes and the United States. Judge Berman Jackson applied the Canon directing federal statutes (including the Indian Gaming Regulatory Act) to be broadly construed in favor of all tribes. The Court found that the Indian Land Order at issue in the case had failed to take the government’s role in weakening the historical connection between the Band and its land into account, and given the fundamental remedial nature of the restored lands exception and the Indian Canon of construction, any ambiguity or doubt when applying the regulation must be resolved in favor of the Band. Opinion at p. 51. The Court found the Department of the Interior’s decision in denying the land-into-trust application arbitrary and capricious. In short, the Court applied the Indian Canon correctly and the result was exactly as intended—effecting justice for an Indian tribe in light of the many grave injustices visited upon tribes by the United States.



COALITION OF LARGE TRIBES

Blackfeet Nation • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe
Fort Belknap Indian Community • Mandan, Hidatsa & Arikara Nation • Navajo Nation • Northern Arapaho Tribe
Oglala Sioux Tribe • Rosebud Sioux Tribe • Sisseton Wahpeton Sioux Tribe
Shoshone Bannock Tribes • Spokane Tribe • Ute Indian Tribe • Walker River Paiute Tribe

COLT is aware that several tribes have written to you expressing “concern” about the Court’s ruling in *Scotts Valley* and decrying one of the most pro-tribal-sovereignty opinions written by a District Court Judge in years. This is outrageous and based solely on those tribes’ anti-competitive motivations; they do not want Scotts Valley to get the land into trust because the Band could potentially engage in gaming activity there, competing with other tribes fortunate enough to already have northern California gaming operations in place. This sort of lateral oppression is disgusting and anti-tribal and should have no bearing on the United States’ appellate decision-making.

All tribes should support the broadest possible application of the Indian Canons because they are a theory of sovereignty, not a theory of contract interpretation and unequal bargaining power as commonly misunderstood. *See* Alex Tallchief Skibine, *Textualism and the Indian Canons of Statutory Construction*, 55 U. Mich. J. L. Reform 267 (2022). As Justice O’Connor explained:

‘[R]ooted in the unique trust relationship between the United States and the Indians,’ the Indian canon presumes congressional intent to assist its wards to overcome the disadvantages our country has placed upon them.

Chickasaw Nation v. United States, 534 U.S. 84, 99-100 (2002)(O’Connor, J., dissenting). This is a normative canon that stands for the basic principle that the United States should honor its Trust and Treaty relationships with tribes and try to help, and not hurt, Indians.¹ The Court in *Scotts Valley* understood this and remanded the ILO to the Department for something less than a herculean demonstration of historic connection to the land so the Band might be able to achieve some modicum of economic dignity thereafter.

One of the express promises of the Biden-Harris Campaign to Indian Country was that their Administration would “**Make it easier to place land into trust**.” One of the most important roles the federal government plays in rebuilding the nation-to-nation relationship is placing land into trust on behalf of tribes and self-determination, preserves tribal histories and culture for future generations, spurs economic development, supports the well-being of tribal citizens, and

¹ This is what many scholars have argued for years. *See* Curtis Berkey, *Rethinking the Role of the Federal Trust Responsibility in Protecting Indian Law and Resources*, 83 DENVER L. REV. 1069, 1079 (2006) (“In the current hostile legal climate, arguments that the trust responsibility requires federal agencies to act in the best interests of tribes, independent of their statutory duties, are likely to be greeted with skepticism”). Besides Berkey, other scholars have also argued that Tribes should be able to force the government to defend tribal trust resources. *See, e.g.*, Mary Christina Wood, *The Indian Trust Responsibility: Protecting Tribal Lands and Resources Through Claims for Injunctive Relief Against Federal Agencies*, 39 TULSA L.REV. 355, 364–68 (2003); Scott W. Stern, *Rebuilding Trust: Climate Change, Indian Communities, and a Right to Resettlement*, 47 ECOLOGY L.Q. 179 (2020).



COALITION OF LARGE TRIBES

Blackfeet Nation • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe
Fort Belknap Indian Community • Mandan, Hidatsa & Arikara Nation • Navajo Nation • Northern Arapaho Tribe
Oglala Sioux Tribe • Rosebud Sioux Tribe • Sisseton Wahpeton Sioux Tribe
Shoshone Bannock Tribes • Spokane Tribe • Ute Indian Tribe • Walker River Paiute Tribe

critically, helps to right the wrongs of past policy.” (bold emphasis in original on www.joebiden.com).

COLT cannot fathom why the Departments of Justice and the Interior would consider directly contradicting that promise by appealing Judge Berman Jackson’s ruling in hopes of making placing land into trust harder at the anti-sovereignty request of a privileged few gaming tribes trying to hoard the California gaming markets they so covet. We urge you to reject such requests and humbly accept Judge Berman Jackson’s reasoned Order and Memorandum Opinion and her thoughtful Order Denying Reconsideration and let the Indian Canons inform all of the Department of the Interior’s decision-making to help right past wrongs and honor the United States’ solemn Trust and Treaty obligations. The United States’ role as a Trustee and fiduciary and signatory to numerous Treaties requires nothing less. Please do the right thing for all tribes.

Respectfully,

Hon. Marvin Weatherwax, COLT Chairman
Councilman, Blackfeet Nation Tribal Business Council

CC: Senate Committee on Indian Affairs, Montana, South Dakota, North Dakota, Wyoming, Idaho, Nevada, Arizona, New Mexico, Washington and Utah Congressional Delegations