IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS, *Plaintiff*, v. DOUGLAS BURGUM, *et al.*, *Defendants.*	)	Civil Action No.: 1:25-cv-00958-TNM Judge Trevor N. McFadden

BRIEF OF *AMICUS CURIAE* OF THE COALITION OF LARGE TRIBES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to LCvR 7(o) and Fed. R. App. P. 29(a)(4), *Amicus Curiae* makes the following disclosure:

1) For non-governmental corporate parties please list all parent corporations: None.

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock: None.

3) If there is a publicly held corporation which is not party to the proceeding before this Court but which has a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests: Counsel for *Amicus Curiae* is aware of no such corporation.

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DATED: May 19, 2025

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INTEREST OF AMICUS CURIAE[1]

Amicus Curiae, the Coalition of Large Tribes ("COLT"), was established in 2011 to provide a unified advocacy base for sovereign, federally recognized Indian tribes governing large trust land bases. COLT represents the interests of the more than 50 tribes with reservations encompassing 100,000 acres or more, some the size of States like Delaware and West Virginia, including the Crow Tribe, Navajo Nation, Muscogee (Creek) Nation, Blackfeet Tribe, Shoshone-Bannock Tribes, Oglala Sioux Tribe, Mandan, Hidatsa and Arikara Nation, Rosebud Sioux Tribe, Sisseton Wahpeton Sioux Tribe, Cheyenne River Sioux Tribe, Northern Cheyenne Tribe, Shoshone-Paiute Tribes of the Duck Valley Reservation, Confederated Tribes of the Colville Reservation and others.

COLT's primary purpose is to defend its member tribes' inherent rights, to promote the health and welfare of tribal citizens, and to protect the sovereignty and Treaty rights of each COLT member tribe. *Amicus curiae* is interested in maintaining the federal government's duty to protect tribes, Treaty rights, and the natural resources necessary to sustain tribes, including tribal land bases—and the attendant ability of tribes to acquire or reacquire additional lands and to petition to have such lands secured by federal trust status and their ability to put those lands to their intended beneficial interest. *Amicus curiae* offers for the Court's consideration critical context regarding the grave consequences of allowing ex-post political interference on grounds of competitive interests of other governments into the regular order of the apolitical federal administrative land-into-trust process.

[1] No counsel for any party authored this brief in whole or in part, and no party, nor counsel for any party, nor any other person contributed money to fund the preparation or submission of this brief. LCvR 7(o)(5); Fed. R. App. P. 29(a)(4)(E).

INTRODUCTION AND BACKGROUND

The Scotts Valley Band of Pomo Indians' ("Scotts Valley") were disposed of their ancestral lands and government, and only formally recognized and restored in 1991. *See Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior,* 633 F. Supp. 3d 132, 171 (D.D.C. 2022). They are "the modern day successor of the Mo-al-kai … and Ca-la-na-po … bands of Pomo Indians[,] [and] [e]ach of these bands was a signatory to the August 20, 1851 Treaty of Camp Lu-pi-yu-ma with the United States, in which the tribes agreed to cede aboriginal lands in exchange for the establishment of a reservation by the United States." *Id*. at 138 (citation omitted). However, this treaty was never ratified, and Scotts Valley only obtained recognition after extensive litigation. *Id*. Since obtaining recognition, Scotts Valley has been diligently working to acquire a parcel of land that can serve as a reservation and which is suitable for gaming.

On January 10, 2025, after decades of effort, administrative proceedings, and litigation, the Secretary of Interior finally issued an order placing a property into trust and that it satisfied the requirements to be treated as "restored lands" pursuant to 25 C.F.R. Part 292 and 25 U.S.C. § 2719(b)(1)(B)(iii) and thus eligible for gaming. This order marked the culmination of a lengthy administrative process and was undoubtably a final agency action. But on March 27, 2025, following ex-post ex-parte political outreach from the competing tribes to the new Administration, in a letter signed by Defendant Davis as, "Senior Advisor to the Secretary of the Interior Exercising by delegation the authority of the Assistant Secretary - Indian Affairs," the Department purported to unilaterally partially revoke the January 10 final decision—which had already resulted in a transfer of title to the United States and substantial reliance by the Band ("Rescission").

ARGUMENT

Plaintiff is entitled to a preliminary injunction when the Tribe demonstrates that (1) it is likely to succeed on the merits, (2) is likely to suffer irreparable harm, absent injunctive relief, (3)

the balance of hardships tips in its favor, and that (4) the injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008). The Rescission was in error because the Indian Lands Opinion is not segregable from the decision to take land into trust. The land was put into trust for a purpose—economic development and gaming. If the purpose is invalid, then how could the land into trust decision stand? Once the land is in trust (and it undoubtedly is), the eligibility for gaming is the exclusive purview of the National Indian Gaming Commission and the Department has nothing to do with it at this point.

Likewise, the administrative record for the January 10 final decision was closed and it is up to the courts to review that decision, not a new Administration. Nothing in the Indian Reorganization Act of 1934 or the Indian Gaming Regulatory Act of 1988 provides any authority for the Department to reconsider the rationale of the decision published in the Federal Register. Indian gaming eligibility determinations alone are not a final agency action until—as here—they are incorporated into a federal decision like the January 10 final action. *See Kansas v. Zinke*, 861 F.3d 1024 (10th Cir. 2017).

Instead, abundant federal policy supports finality and regular order in federal Indian lands processes and decisions.

A. Tribes have a profound interest in the finality of Indian lands decisions.

Tribal trust land is absolutely foundational and fundamental for Indian tribes, and especially for members of COLT, which represents tribes that govern substantial land bases. As Chief Justice Marshall explained, "Indian nations ha[ve] always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial." *Worcester v. State of Ga*., 31 U.S. 515, 559 (1832). Tribes derive the bulk of their modern powers from their authority to manage tribal land and to condition entry onto those lands on compliance with tribal law and regulation. *Plains Commerce*

Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 335 (2008). "[A] hallmark of Indian sovereignty is the power to exclude non-Indians from Indian lands." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 141 (1982)."

Recognizing the centrality of land to the life of Indian tribes, Congress has imposed powerful limitations on its alienation. "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." 25 U.S.C. §177. Interests in tribal lands are heavily regulated, with extensive procedural formalities governing even routine leasing and rights of way. *See e.g*., 25 U.S.C. Chapter 12 (leases); Chapter 8 (Rights-of-Way). Once land is placed into trust for an Indian tribe it becomes sacrosanct, falling into the governance of the tribe, and hemmed in with federal safeguards and protections to ensure that it remains Indian land into perpetuity.

Additionally, Indian tribes also have the inherent power to engage in, and regulate, economic activity within their jurisdictions to "raise revenues to pay for the costs of government." *Merrion v. Jicarilla Apache Tribe,* 455 U.S. 130, 144 (1982); *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324, 335-36 (1983). In much the same way that states generate governmental revenues through a variety of enterprises, including liquor stores and lotteries, Indian tribes exercise their sovereign authority to generate such revenues by operating myriad enterprises, including tourism, timber harvesting, and gaming *see, e.g. id.* at 327 ("resort complex" for recreational hunting and fishing); *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 139 (1980) ("tribal enterprise that manages, harvests, processes, and sells timber"); *California v. Cabazon Band of Mission Indians,* 480 U.S. 202, 219 (1986) (gaming enterprise).

In enacting IGRA, Congress stated that its purpose was "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702. Congress expressly provided that IGRA would permit gaming on lands that are taken into trust after that date "as part of ... the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii).

The decision to take these lands into trust and to find them eligible for gaming under the "restored lands" provision are inextricably intertwined. This land is intended to provide a homeland for Scotts Valley by providing a means of sustenance for its people and to promote self-government and self-sufficiency. The two parts of the decision—taking the land into trust and finding it eligible for gaming—are not severable. Scotts Valley would not have sought to place this parcel into trust, or been able to finance its purchase and development, without the ability to use the land for its intended gaming purpose.

This is true for virtually every tribal land-into-trust transaction—finality and certainty are essential to financing and developing the property. If it were the case that any new Presidential Administration could reopen a decision after it has been published in the Federal Register, every party that opposed the transaction would wait for the next Administration to try to undo it. Federal law countenances no such thing. Endless uncertainty around land-into-trust decisions would be devastating to COLT tribes. How could any government take action with respect to its lands if there was always a chance a new Administration could be accessed by anti-competitive forces to undo the decisions of the past?

B. Competitors and entrenched interests have no valid interest in preventing Indian tribes from establishing land bases and building an economic base for their governments and communities.

Nowhere in any federal law or policy is there any requirement that the Department of the Interior favor the economic interests of certain tribes over others or reject new intertribal competition occasioned by federal decision-making. Rather, federal law and policy provides for equitable treatment among tribes, with federal agencies required to strictly follow the law and their processes outside of political interference. 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—it is critical for tribal sovereignty and self-determination, preserves tribal histories and culture for future generations, spurs economic development, supports the well-being of tribal citizens, and, critically, helps to right the wrongs of past policy.

Congress expressly provided that tribes that have been restored may conduct gaming on the same terms as tribes that have long held lands in their territories. 25 U.S.C. § 2719(b)(1)(B)(iii). These are often broadly unpopular. Virtually every land-into-trust decision could have some economic consequence for another government, whether it is direct tax revenue, competition for premium business locations, or new economic development competition not possible outside of trust status. But nothing in the National Environmental Policy Act or any other federal statute requires Defendants to conclude that only those governments first-in-time to economic opportunities get to benefit, and too bad for those tribes that come later.

From the founding of our Nation, the Supreme Court has recognized that the federal government has a unique trust obligation to protect tribal sovereignty and the power of self-governance. This trust responsibility has its origins in the constitutional responsibility for Indian affairs lodged in Congress, *see* U.S. CONST., art. I, § 8, cl. 3 (the "Indian Commerce Clause"), and in Chief Justice Marshall's foundational Indian law decisions interpreting that responsibility.

See Worcester v. Georgia, 31 U.S. 515, 551-52, 555 (1832) (United States' trust to Indian nations involves "a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to the laws of a master"); *see also Oneida County v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985) (discussing trust doctrine).

What happens in one land-into-trust decision can impact all others across the country. The bests interests of all of Indian Country are served by keeping politics out of those processes, strictly following the law, and acting consistently with the Department's many strong supporting tribes' self-determination, including the finality of the land-into-trust process following publication in the Federal Register.

CONCLUSION

For the foregoing reasons, COLT respectfully urges the Court to grant Plaintiff's Motion for Preliminary Injunction.

Dated: May 19, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7(o), which incorporates Federal Rule of Appellate Procedure 29(a)(4)(G), I certify that this brief complies with the page-length limitation of Local Rule 7(o)(4) because it is shorter than 25 pages.

/s/ Jennifer H. Weddle
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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2025, I electronically filed the foregoing using the Court's CM/ECF system, which will send notification of such filing to the parties.

/s/ Jennifer H. Weddle
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