

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SCOTTS VALLEY BAND OF POMO
INDIANS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR; DAVID BERNHARDT,
*in his official capacity as Secretary of the
United States Department of the Interior;*
TARA SWEENEY, *in her official capacity
as Assistant Secretary for Indian Affairs of
the United States Department of the
Interior;* JOHN TAHSUDA, *in his official
capacity as Principal Deputy to the
Assistant Secretary for Indian Affairs of the
United States Department of the Interior*

Defendants.

CASE NO. 1:19-cv-1544 ABJ

Judge Amy Berman Jackson

JOINT REPORT AND MOTION FOR A SCHEDULING ORDER

Pursuant to the Court’s August 14, 2019 Minute Order, Plaintiff Scotts Valley Band of Pomo Indians, and Defendants the United States Department of the Interior; David Bernhardt, in his official capacity as Secretary of the United States Department of the Interior; Tara Sweeney, in her official capacity as Assistant Secretary for Indian Affairs of the United States Department of the Interior; and John Tahsuda, in his official capacity as Principal Deputy to the Assistant Secretary for Indian Affairs of the United States Department of the Interior (collectively “Interior”), respectfully request that the Court set a litigation schedule in the above captioned case. The Parties have conferred and hereby jointly move the Court to adopt the schedule below.

I. Background

Plaintiff brings claims under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, challenging Interior’s determination that a 128-acre parcel of land located in Vallejo, California does not qualify as “restored lands” under the Indian Gaming Regulatory Act

(“IGRA”), 18 U.S.C. §§ 2701, 2719 and 25 CFR Part 292, and thus cannot be taken into trust for gaming purposes. *See* ECF No. 1.

Because Plaintiff challenges final agency action, the parties agree that this case should be decided based on the administrative record compiled by Interior. *See* 5 U.S.C. § 706 (providing that the Court’s review shall be based on “the whole record or those parts of it cited by a party”). The Parties further submit that, in accordance with standard practice in actions for review on an administrative record, this matter should be resolved on cross-motions for summary judgment based on the administrative record. *See Amador Cty. v. S.M.R. Jewell*, 170 F. Supp. 3d 135, 141 (D.D.C. 2016), *aff’d sub nom. Amador Cty., California v. United States Dep’t of the Interior*, 707 F. App’x 720 (D.C. Cir. 2017) (“[C]laims brought pursuant to the APA are appropriately decided on summary judgment based solely upon the administrative record that existed at the time of the agency’s decision.”).

With this understanding, the parties have agreed to a proposed schedule for resolving this case, consisting of two components: (1) production and lodging of the agency administrative record, and a procedure for resolving any disputes over the completeness of the administrative record and appropriate extra-record materials; and (2) a schedule for briefing cross-motions for summary judgment.

II. Proposed Case Management Schedule

- a. Procedure for the production and lodging of the agency administrative record and informal negotiations among the Parties to attempt to resolve any disputes over the contents of the administrative record:

Event	Date
Interior will file a certified list of the contents of the administrative record with the Court and provide Plaintiff with a complete copy of the administrative record.	October 10, 2019
Plaintiff will identify and communicate to Interior any issues regarding completeness of the record and/or any issues regarding the admission of extra record evidence. Plaintiff will provide Interior with copies of any materials it seeks to include in the administrative record and copies of any materials that it seeks to admit as extra record evidence.	November 8, 2019

Interior will respond to any issues raised by Plaintiff regarding the contents of the administrative record and the admission of extra record evidence. The parties will attempt in good faith to resolve any issues that are raised.	November 26, 2019
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- b. Procedure for resolving any disputes among the Parties regarding the contents of the agency administrative record and/or extra record evidence through formal motions practice:

Event	Date
Deadline for Plaintiff to file a motion challenging the contents of the administrative record and/or seeking to admit extra record evidence.	December 17, 2019
Deadline for Interior to respond to Plaintiff's motion.	January 22, 2020
Deadline for Plaintiff to reply.	February 6, 2020
Deadline for the Parties to submit a joint status report to the Court with a new proposed summary judgment briefing schedule if Plaintiff files a motion challenging the contents of the administrative record and/or seeking to admit extra record evidence. In the status report, Interior shall propose a deadline by which it will tender the settled lists of contents of the administrative record and any authorized extra record evidence to the Court.	14 days from Decision on Plaintiff's Motion

- c. Procedure for cross-motions for summary judgment, provided Plaintiff does not file a motion challenging the contents of the agency administrative record and/or seeking to admit extra record evidence:

Event	Date
Plaintiff will file its opening motion for summary judgment.	January 9, 2020
Interior will file its combined opposition to Plaintiff's motion for summary judgment and cross-motion for summary judgment.	February 13, 2020
Plaintiff will file its combined response to Interior's motion for summary judgment and reply in support of its motion for summary judgment.	March 5, 2020
Interior will file its reply in support of its cross motion for summary judgment.	March 26, 2020

A Proposed Order reflecting the Parties agreed upon schedule is being filed herewith.

Respectfully submitted this 14th day of August, 2019.

/s/ Patrick R. Bergin
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