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Deputy County Counsels

December 23, 2016

VIA U.S. POSTAL AND ELECTRONIC MAIL

The Honorable Lawrence Roberts

Principal Deputy Assistant Secretary for Indian Affairs

United States Department of the Interior

MS-3642-MIB

1849 C Street, N.W.

Washington, D.C. 20240

Email: lawrence.roberts@ios.doi.gov

Re: The County of Solano's Legal Memorandum in Response to the Scotts Valley Band of Pomo Indians Restored Lands Request for Vallejo, County of Solano, California

Dear Assistant Secretary Roberts:

Thank you again for meeting with us while we were in Washington, D.C. to discuss the application by the Scotts Valley Band of Pomo Indians ("Scotts Valley") for a restored lands determination under 25 U.S.C. 2719(b)(1)(B)(iii) in the City of Vallejo in Solano County.

At that time, you encouraged us to submit further correspondence and information regarding the County's concern that Scotts Valley lacks both a significant historical and a modern connection to the lands for which it is seeking a restored lands determination. The County of Solano hopes the attached legal memorandum is helpful to you in making a decision on the restored lands determination.

Sincerely,

A handwritten signature in blue ink that reads "Davina Smith".

Davina Smith

Deputy County Counsel

cc: John R. Hay, Assistant Solicitor, Division of Indian Affairs

Jennifer Turner, Acting Assistant Solicitor, Division of Indian Affairs

Bethany Sullivan, Attorney, Division of Indian Affairs

Enclosures

Legal Memorandum by the County of Solano in Response to the Scotts Valley Band of Pomo Indians Restored Lands Request for Vallejo, County of Solano, California

In January of 2016, the Scotts Valley Band of Pomo Indians (Scotts Valley) submitted a request for a restored lands determination for lands located in the City of Vallejo within the County of Solano (County). Upon discovering this request in late summer of 2016, the County quickly sent the Department of the Interior (Department) a letter opposing the request for a restored lands determination due to our belief upon the facts we possessed at the time that Scotts Valley did not qualify for such an exemption. Since that letter was sent in August, the County has endeavored to research in-depth the documents submitted by Scotts Valley in support of their request, along with those opposing the request submitted by the Yocha Dehe Wintun Nation (Yocha Dehe), and the United Auburn Indian Community (United Auburn), as well as letters from the City of Vallejo, the City of American Canyon, Napa County, Yolo County, Federated Indians of Graton Rancheria and Senator Dianne Feinstein, Representative Mike Thompson, Representative John Garamendi, Representative Doug LaMalfa, and Representative Jared Huffman.

Based upon our research into the submitted documents, the County remains steadfast in its position that Scotts Valley has not provided sufficient information that supports either a "modern connection" or a "significant historical connection" to the lands in Vallejo and therefore, we respectfully ask the Department to deny the restored lands request in this matter.

1. Restored Lands Determination

Although the Indian Gaming Regulatory Act (IGRA) (25 U.S.C 2701 *et seq.*) generally prohibits gaming on lands taken into trust after 1988, there is an exception that allows for gaming when "lands are taken into trust 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).) In order for a particular parcel to be "restored lands" under IGRA, three criteria must be met, two of which are at issue here: a "modern connection" (25 CFR 292.12(a)) and a "significant historical connection" (25 CFR 292.2 and 292.12(b)). The County's research indicates that Scotts Valley cannot show either a "modern connection" nor a "significant historical connection" to the lands in Vallejo.

2. Scotts Valley Does Not Have A "Modern Connection" To Land In Vallejo For Which It Is Seeking A Restored Lands Determination

A modern connection may be established in one of several ways: the site is a "reasonable commuting distance" from the tribe's reservation; if the tribe has no reservation, then the land is near where a significant number of tribal members reside; the site is within 25 miles of the tribe's headquarters or other tribal governmental facilities, which have existed for two years prior to the fee-to-trust application; and "other factors". (25 CFR 292.12(a).)

Here, the tribe does not have a reservation, although we understand they hold land in fee in Lake County. Documents submitted by Scotts Valley indicate that no tribal members live in Vallejo or even in Solano County. The Declarations submitted by Scotts Valley indicate that the majority of their tribal members live in proximity to their tribal headquarters in Lake County. For those tribal

members that reside in Contra Costa County, it would be useful to know when they established residency in that county and whether those time frames coincided with

Scotts Valley appears to believe that their tribal TANF office in Concord, Contra Costa County satisfies this “modern” connection. This office is located over 20 miles away (ranging from 22.1 to 24.7 miles, depending on the route used in Google Maps) from the proposed casino and hotel site in Vallejo. When deciding whether to allow a tribe to administer and operate a TANF program, the U.S. Department of Health and Human Services (DHHS) merely looks at whether the tribe is federally recognized and whether they can administratively serve the geographic area. (45 CFR 286.65 and 286.75.) No inquiry is made by DHHS into whether the tribe has any connection to the geographic area in which it intends to provide tribal TANF services.

This TANF office, which provides services to Indians, regardless of tribal affiliation, who live in Contra Costa, as well as tribal members in Lake, Mendocino, and Sonoma Counties¹, was established as part of Scotts Valley’s unsuccessful request for a restored lands determination in Contra Costa County. A review of the Scotts Valley tribal TANF webpage and Scotts Valley Facebook pages show that virtually all tribal activities take place at the tribal headquarters in Lakeport, near the Scotts Valley ancestral homeland, rather than at the TANF office in Concord. In prior cases, the Department has refused to give credence to a tribal government office established solely for the advancement of establishing a gaming site, and this case should be no different. (See, e.g. pages 8-9 of the Letter from Larry Echo Hawk, Assistant Secretary for Indian Affairs to the Honorable Merlene Sanchez, Chairperson of the Guidiville Band of Pomo Indians available at <http://www.bia.gov/cs/groups/public/documents/text/idc015051.pdf>.)

The final way that Scotts Valley could potentially establish a “modern connection” to the land in Vallejo is through “other factors”. Although not defined, the preamble to the Part 292 regulations indicate that the Department of Indian Affairs intended for the modern connections test to be “a means of evaluating whether the surrounding community had adequate prior notice, actual or constructive, of a tribe’s governmental presence in or near the community.” (73 Fed. Reg. 29365 and 29366 (May 20, 2008).) Here, the County of Solano had no notice whatsoever of the Scotts Valley band’s “governmental presence” in Contra Costa County. Representatives of the tribe had not introduced themselves or otherwise made any overtures to any of the Solano County Board of Supervisors until months after they submitted their request for a restored lands determination. Nor have members of Scotts Valley otherwise made themselves known in Solano County by, for example, requesting AB52 tribal consultation for projects in the County that are within the tribe’s area of traditional and cultural affiliation (Cal. Pub. Resources Code 21080.3.1(b)), or by having a Scotts Valley Tribal Historic Preservation Officer (THPO) or other tribal liaison active in Solano County to provide educational outreach programs to local grade school children or provide Pomo language conservation and rejuvenation efforts or coordinate the Native American Graves Protection and Repatriation Act for Scotts Valley in Solano County. Scotts Valley has been conspicuously absent from Solano County until they and their investors decided this was a profitable location for a casino.

Scotts Valley cannot meet the “modern connection” test required for a restored lands determination and therefore their request must be denied.

¹ Scotts Valley is specifically not allowed to provide services in Solano County or in the City of Vallejo.

3. Scotts Valley Does Not Have A “Historical Connection” To Land In Vallejo For Which It Is Seeking A Restored Lands Determination

Both Yocha Dehe and United Auburn have submitted extensive and well-researched expert reports refuting Scotts Valley’s claim of a “significant historical connection” to the Vallejo site. After reviewing their submissions, as well as the evidence submitted by Scotts Valley², the County joins Yocha Dehe and United Auburn in asserting that Scotts Valley has not submitted sufficient evidence to demonstrate a “significant historical connection” to the subject land in Vallejo. As discussed further below, the County has identified in the Scotts Valley documentation a number of unresolved and unsubstantiated issues, as well as internal contradictions, that raise serious questions as to the origin of the modern Scotts Valley tribe and their connection to land in Vallejo.

A. Scotts Valley’s Expert Reports

The reports submitted by the Scotts Valley Band include legal memoranda prepared by Steven J. Bloxham of Fredericks Peebles & Morgan LLP; a report by anthropologist Dr. Dorothea J. Theodoratus; a report by historian Dr. Albert L. Hurtado; and a report co-authored by anthropologists Dr. Heather A. Howard and Dr. James M. McClurken. Mr. Bloxham’s legal memoranda and all three experts state that the present Scott Valley Band descends primarily from Pomo Indians who lived at Clear Lake prior to the United States acquiring California. Each of the three expert reports focus on a different period of the Scotts Valley Band history. In general, Dr. Theodoratus addresses the Pomo origins of the Scotts Valley Band; Dr. Hurtado examines the period from around 1820-1860; and Drs. Howard and McClurken focus on the genealogy of the Scotts Valley Band members accorded a reservation in 1911.

B. Theodoratus: Contradicting Evidence on the Origin of the Modern Scotts Valley Band

i. Overview of Clear Lake Pomo Indians

Dr. Theodoratus presents a general overview of the Pomo Indians who lived around Clear Lake, citing several well-known scholars who wrote about these indigenous settlements. According to these studies, Pomo is a term that anthropologists and linguists have used to describe a linguistic family of related dialects, spoken by Indians who occupied a swath of land that extended about 130 miles along what is commonly referred to as the Coast Range from about Bodega Bay north and extending east-west about 100 miles from the Pacific coast east to the Sacramento River. By contrast, the Indians who lived immediately north of San Francisco and San Pablo Bay (the location of Vallejo) spoke dialects of different language families: Patwin, Wappo or Coast Miwok.

Like the other language family designations that scholars have used to describe California Indians, Pomo is not a cultural or political description. Pomo is not a “tribe” or “nation” and the Indians who spoke these related Pomo dialects did not recognize an overarching political, cultural or social relationship amongst the groups (called village-communities and/or “tribelets” by scholars) whose members spoke closely related dialects. Amongst Pomo-speakers (whose dialects were not necessarily mutually intelligible), scholars have identified Northern, Eastern, Southwestern and

² These reports include legal memoranda prepared by Steven J. Bloxham of Fredericks Peebles & Morgan LLP; a report by anthropologist Dr. Dorothea J. Theodoratus; a report by historian Dr. Albert L. Hurtado; and a report co-authored by anthropologists Dr. Heather A. Howard and Dr. James M. McClurken.

Southeastern Pomo-speaking areas that in turn have been further divided geographically by scholars (e.g., northern, southern, etc.). Each tribelet was autonomous, often having at least one permanent village and perhaps a few seasonal camps within a given valley. The Pomo speakers around upper and western Clear Lake spoke Eastern Pomo which in turn had dialectal variations among the tribelets living around the Lake.

ii. Scotts Valley's Experts Disagree on Who the Historic Scotts Valley Tribe was and How They Relate to the Modern Tribe

Theodoratus states that the Scotts Valley Band are descendants of one tribelet (variously termed Yemabak/Yima/Boilkai/Moal-kai) which occupied land northwest of the town of Lakeport on the western side of Clear Lake. Some of Theodoratus' sources state that a Northern Pomo group (Komli) immigrated to Clear Lake from the Ukiah Valley (to the north and west of Clear Lake) just before non-Indian contact. The Komli were allowed to reside with the Yemabak and at first retained a separate captain. Over time, the two groups amalgamated into a single tribelet at Scotts Valley. Dr. Theodoratus presents no information as to when the two groups no longer had separate captains and no longer spoke variations of Pomo.

By contrast, the Scotts Valley Tribal Chairman submitted a statement that his Band is descended from three Eastern Pomo tribelets that occupied territories on the west side of Clear Lake: Yimabak/Moalkai, Kulanapo and Habenepo. These tribelets were among several that were party to the August 20, 1851 Treaty that was negotiated by Agent Redick McKee. In turn, the Howard and McClurken report claims that the modern Scotts Valley Band has ancestors from diverse Pomo villages (not just from the Eastern Pomo ones around Clear Lake) as well as from some non-Pomo villages.

Theodoratus' report not resolve this core issue of which tribelet(s) were the ancestors of the modern Scotts Valley band; instead, it raises more questions. Is the present Scotts Valley Band descended from one or three Clear Lake Pomo tribelets? If the latter, how and when did these three tribelets "amalgamate" after they were individually identified on the August 20, 1851 Treaty? There were between 7 and 13 Pomo tribelets at Clear Lake during the pre-contact period however there were only eight listed on the 1851 Treaty. What happened to the others before and after the Treaty was negotiated? How does the membership of the community at Scotts Valley, which was historically located northwest of Lakeport, relate to that of the recognized tribe known as the Big Valley Rancheria, located south of Lakeport, which was and still is in the ancestral territory of the Kulanapo and adjacent to that of the Habenapo, the other two tribelets from which present Scotts Valley members supposedly descend? Do all of the Indians for whom a Scotts Valley reservation was ultimately established in 1911 northwest of Lakeport in fact descend from three Clear Lake tribelets?³

Theodoratus presents information about selected Scotts Valley families, yet the scanty data again begs numerous questions. For example, a large number of contemporary Scotts Valley tribal members descend from Clear Lake Pomo Captain Augustine (1830-1919) who purportedly was a prominent figure historically. However, his brother and the latter's descendants are not members of the Scotts Valley Band. Are they members of other Clear Lake Pomo bands? How did Captain Augustine's sole son become the ancestor of a large number of contemporary Scotts Valley Band

³ The Howard and McClurken report states that those at the 1911 reservation came from many different tribelets, something that is not addressed by Theodoratus.

members? Who else was a member of the Band contemporaneously with Captain Augustine in the nineteenth century?

The fact that there are different views about the Scotts Valley Band's ethnographic origin is itself problematic. To establish that they have a "significant historic connection" to the subject land, Scotts Valley must show who comprised the historic Scotts Valley Band and how they are related to the modern Scotts Valley Band. They have not established that with the Theodoratus report.

C. Theodoratus: Scotts Valley Has No Connection to Vallejo

Theodoratus provides no information in her report that connects the Scotts Valley Band historically to land in or near Vallejo. To the contrary, all of the scholarly studies that she cites underscore that the area around San Francisco and Vallejo were inhabited by Patwin, Wappo and Miwok speakers, not Pomo. These studies also state that the respective territories of the Clear Lake tribelets were restricted to the land near the lake itself and did not extend anywhere near San Francisco or Vallejo. While some Clear Lake Pomo visited Bodega Bay on the Pacific Coast seasonally for shells, this was within Pomo territory and there is no mention that Clear Lake Pomo visited further south along the Pacific Coast or that they utilized resources in the area of Vallejo which was in Patwin territory.⁴

In fact, early anthropologists could not find Indian informants to provide information about the pre- or early-contact villages in the San Francisco area precisely because the indigenous settlements and way of life there had been destroyed by Spanish, Mexican and American settlements long before the Indian informants who were interviewed in the twentieth century were born. By contrast, Barrett (who did fieldwork in 1903-1906) did find substantial Eastern Pomo informants who named ancestral villages in the Clear Lake area because they had for the most part lived beyond the reach of the Spanish missions and many were still living at Clear Lake.

Information in Theodoratus' supporting documentation (although not discussed in her report) also raises serious questions about Bloxham's argument that because the lands ceded by the August 20, 1851 Treaty at Clear Lake extended to San Pablo Bay, this provides a "significant historical connection" between the Scotts Valley Band and the land at Vallejo. All of the scholarly literature provided with Theodoratus' report on the Eastern Pomo underscores that each tribelet at Clear Lake had a clear, circumscribed territory at the lake and in no instance did these territories extend into areas occupied by non-Eastern Pomo tribelets. Eastern Pomo tribelets did not occupy the land around San Francisco and Vallejo. Instead, that was the territory of the Patwin, Wappo and Miwok. Just because the US government included the non-Eastern Pomo land in the ceded lands of the Clear Lake Treaty does not mean that the signatory tribes knew that this land was included or consented to its inclusion. While the Treaty did discuss the location of the proposed reservation to which the tribes would be relocated at the north of the Lake, it said nothing about the extent of the lands ceded that extended well beyond any territory of the tribes involved. As the archaeologist and scholar of California Indian history Robert Heizer wrote,

The three [federal] Commissioners did not have the slightest idea of the actual extent of tribal lands of any group they met with. Their orders were to secure Indian land title to California, and they managed to do this to their satisfaction by making treaties with some Indians and then dividing all of California west of the Sierra Cascade crest into eighteen unequal cession areas which, happily quite

⁴ Hurtado's unsubstantiated claim to the contrary, discussed below

covered the entire region. If the commissioners had made 12 treaties, the ceded areas would have been larger; if they had made 30 treaties the areas would have been smaller.⁵

Thus, the fact that the unratified 1851 Treaty intended to cede land well beyond the identified territories of the signatory tribes, does not in itself indicate that there was, in practice, a “significant historical connection” between those tribes and Vallejo.

In short, the Theodoratus report itself does not address any historical connection between the Scotts Valley Band and the land at Vallejo. However, the sources that she cites to do contain information about the Eastern Pomo tribelets around Clear Lake and they establish that the Scotts Valley Band has historic ties in the Clear Lake area. The same sources do not address any connections between the various claimed ancestral Scotts Valley tribelets to the land at Vallejo.

D. Hurtado: Interactions Between Mexicans, Americans And Indians, But No Documented Evidence Of The Scotts Valley Ancestors Involvement

Hurtado’s report focuses on the Mission period from 1820 to 1860. Despite discussing various historical events concerning the interactions between Indians and Mexicans and Americans during the targeted time frame, the report provides no documented information between these events and the ancestors of the Scotts Valley Band.

i. No Evidence that Scotts Valley Ancestors were at Missions or worked at Ranchos in Sonoma

Hurtado states that Pomo Indians were at the missions of San Rafael, San Francisco, Solano and Sonoma. However, the document he cites⁶ as authority for this indicates that the Pomo at these missions were Western and Northwestern Pomo, *not* the Eastern Pomo at Clear Lake. As at least one writer has pointed out, the Western and Northwestern Pomo were more readily captured by soldiers for the missions because of the geography where they were located; soldiers easily travelled up the valleys to round up potential neophytes in North Pomo territory. By contrast, Clear Lake lies in the middle of “precipitous” mountains with steep trails that made ascent and descent arduous. Difficult access served in part as protection for the Clear Lake Indians from Spanish and Mexican raiding parties. This does not mean that they were wholly immune to raids. However, again, the fact that Barrett’s early twentieth century Eastern Pomo informants could identify as many villages as they could at Clear Lake in 1903-06 demonstrates that the Eastern Pomo occupied many of them throughout the nineteenth century, something that was definitely not the case with the indigenous settlements to the north and east of the San Francisco Bay area.

After the missions were secularized, Hurtado’s report also leaves unanswered many questions with respect to what happened to the neophytes (Christianized Indians) at the missions. While it was common for the neophytes to become laborers at Mexican ranchos after secularization, Hurtado provides no evidence that the Indians who worked at Mariano Vallejo’s rancho in Sonoma County were from Clear Lake and specifically from the tribelets that are allegedly ancestral to the

⁵ Heizer, Robert F. *The Eighteen Unratified Treaties of 1851-1852 Between California Indians and the United States Government*. Archaeological Research Facility Department of Anthropology University of California, Berkeley 1972:5

⁶ Several of Theodoratus’ sources also state that the Indians of Clear Lake were largely beyond the reach of the San Francisco area missions.

contemporary Scotts Valley Band. If the neophytes at the missions were not Clear Lake Indians to begin with, then there is no evidence that Clear Lake Indians generally and Scotts Valley ancestors in particular were forced to work at ranchos in Patwin territory and far from their indigenous villages.

ii. Francisco Solano and the August 1851 Treaty do not Provide a Basis for a “Significant Historic Connection”

Hurtado spends a lot of pages in his report detailing the exploits of Francisco Solano, a Suisan Patwin Indian who had been raised at a mission and rose to the position of *alcalde* (mayor) in one. After the missions were secularized, Solano, who initially fought Mexican ranchero Mariano Vallejo, later developed a mutually beneficial relationship with Vallejo and his brother Salvador, owners of vast ranchos. Solano helped find and force Indians to work on the Vallejo ranchos for which he was well compensated.

Insofar as the Clear Lake tribelets are concerned, Solano’s import is that his partnership with the Vallejo brothers helped them become extremely successful rancheros who eventually controlled over 200,000 acres of land for whom thousands of Indians were forced to labor involuntarily. Salvador Vallejo made his first visit to the Clear Lake area around 1840 and established a rancho on the west side of Clear Lake. Clear Lake Indians were forced to work on this rancho under harsh conditions. However, in 1847, Vallejo sold his rancho to a partnership of Americans - brothers Benjamin and Andrew Kelsey, Charles Stone and Edward Shirland - who treated the Indian laborers even worse. The intolerable conditions prompted the Indians to later murder Andrew Kelsey and Charles Stone in 1849. This in turn led the Americans to seek retribution from the Clear Lake Indians, indiscriminately killing men, women and children.

While this sad history provides no ethnographic information about the relationship among the Clear Lake tribelets in the 1840’s, it does explain why, when in August 1851 Agent Redick McKee trekked over the mountain to Clear Lake to make a treaty⁷ with the Indians there, the Eastern Pomo Indians were receptive to being accorded a reservation. Quite simply, the promised reservation was a welcome haven from which they would not be expelled, and where they were, at least in theory, not be assaulted or forced to work as virtual slaves on settlers’ ranchos. Agent McKee underscored this when he described the proposed reservation to the Indians.

Most of the Treaty provisions were standard. Article 6 described the various goods to be furnished to the tribes to “encourage the said tribes in acquiring the arts of and habits of civilized life”, (e.g., clothing, cloth, implements, livestock, seeds, etc.) and Article 5 described “presents” that were given to the signatory tribal leaders on the spot for showing up and agreeing to the terms of the agreement: “ten head of beef cattle, three sacks of bread, and sundry clothing.”

However, what was highly unusual was a provision in Article 5 which stated that additional provisions would be provided “free of charge”. These goods would be furnished “at or near Vallejo, *or elsewhere, as may be most convenient*, with one hundred (100) head of beef-cattle, to average in weight five hundred pounds net, and two hundred (200) sacks of flour of fifty pounds each, in all ten thousand pounds, during the present year (1851), and a like quantity in each of the years 1852 and 1853...” (84, added emphasis).

⁷ This was one of 18 such agreements made by the federal government throughout the newly acquired California.

Hurtado points out the place of pickup for these goods was at a ranch owned by James Estelle who had previously gone into the cattle business with Mariano Vallejo and Vallejo's son-in-law, purchasing a portion of the old Soscol claim near San Pablo Bay and now calling the land Eden Ranch. Prior to the 1851 Treaty, Estelle had secured an agreement from Agent McKee to sell beef to the federal government for the Indians, doing so at greatly inflated prices and thereby securing himself a tremendous profit at the government's expense.⁸

While Hurtado and his sources make it clear the Clear Lake Indians did make the 50- to 60-mile trek to Eden Ranch to pick up the "free" goods, their doing so before the treaty was ratified, coupled with a senior official getting wind of the inflated beef trafficking, forced McKee to cancel any further disbursements to the Indians. Although Bloxham cites this incident as a "significant historical connection" to the Vallejo area (where Eden Ranch was located), the details of this incident undermine his argument. For one thing, it is clear that the location was chosen because it was profitable *for Estelle* and perhaps also for McKee's son. Certainly the location was not at all convenient for the Indians since it was far away and out of their home territory, forcing them to pass through areas settled by whites who could have harassed them or worse. In addition, the location had no social, cultural or political meaning *for the Indians*. Further, the activity occurred only once and was not repeated because all of the 18 California Treaties were never ratified. Indeed, McKee was severely reprimanded by his superior for having dispensed any goods for the Indians at Eden Ranch since he was not authorized to do so for a treaty that was not ratified.

It is also important to point out that Hurtado provides no evidence that the Clear Lake Indians stayed in the Eden Ranch area after they received the flour. In fact, there is good reason to surmise that they returned to Clear Lake as soon as possible. The Indians thought they had just consented to an agreement that secured them a safe parcel of land. There was no reason for them not to hurry home to take advantage of this promised haven.

As is clear from the above discussion, Hurtado's lengthy discussion of Solano, the Vallejo brothers and the treaty of August 1851 is largely irrelevant in regards to the ancestors of the Scotts Valley Band and does not establish the "significant historic connection" necessary for a restored lands determination for lands in the city of Vallejo.

iii. No Evidence that Ancestral Members of the Modern Scotts Valley Tribe were in Solano County in the 1850s or 1860s.

Hurtado discusses several issues of questionable relevance to the Scotts Valley Band. He notes for example that Indians were kidnapped for labor in the second half of the nineteenth century and that there were Indian children with no listed last name in households not headed by an Indian adult in the 1852 and 1860 Solano County censuses. While these individuals may in fact have been kidnapped at some point in their life, Hurtado provides no evidence that those children were Scotts Valley ancestors or even from Clear Lake. They could have been kidnapped from myriad tribes in California. Without specific evidence that these individuals were in fact from Clear Lake and from the tribelets that were allegedly ancestral to the Scotts Valley Band, the data is of no significance with respect to the Band's historic connection to land at Vallejo.

⁸ Estelle had accompanied McKee on the treaty-making trip to Clear Lake; the provision requiring pickup of flour and beef at his ranch was not coincidental. Moreover, McKee's grown son had stayed with Estelle at Eden ranch prior to the treaty and had clearly secured a deal with his host.

Also irrelevant is Hurtado's speculation that the names of two herders on an 1850 Solano County census – Chinito and Napomusano – “seem to be Indian names” (94). However, “Chinito” is a Spanish diminutive form of “chino” (Chinese) which could indicate that the person was Asian or it could have been a nickname that was given because of some physical trait or behavior. Similarly, “Napomusano” is a variation of a common Spanish name, “Nepomuceno.” This name could refer to a Mexican Indian or a California Indian. The fact that there may have been Indian herders of unknown tribal affiliation in Solano County, a county outside of the Eastern Pomo territory, in 1850, 1852 or 1860 is not evidence that the Scotts Valley Band had a “significant historical connection” to Vallejo.

Hurtado also cites no supporting documentation for the following statements in his “Conclusion.”

“Indians from Clear Lake had gone to the shores of San Pablo Bay for generations before the arrival of Euro-Americans.” (99)

“In the nineteenth century the homes and ranches of the North Bay Region were common places of employment for Indians. Clear Lake was often mentioned as a place of origin for these workers whether enslaved, indentured, or free. Under these violent and inhumane conditions, the North Bay region became a part of the SVBI homelands.” (99)

“The historical record frequently refers to ‘Clear Lake Indians’ without further identification. Yet when non-Indian observers specifically described Clear Lake Indians who were driven to work on the ranchos in the North Bay region they mention Rancho Lup-Yomi and Scotts Valley.” (99-100)

“In all cases that have come to my attention “Clear Lake Indians” taken as captives were Habenapo, Kulanapo, and Yimabak/Molakai who were associated with Rancho Lup-Yomi and Scotts Valley. Thus the preponderance of evidence supports a conclusion that the ‘Clear Lake Indians’ who are mentioned in the record are the Habenapo, Kulanapo, and Yimabak/Molakai-the ancestors of today’s SVBI.” (100)

In addition to citing no documentary evidence for the above claims, it appears that Hurtado believes that any reference to a Clear Lake Indian means that the person is an ancestor of Scotts Valley. This is not true. Historically there were other tribelets at Clear Lake which are today other recognized tribes: e.g., Big Valley Rancheria and Robinson Rancheria. Indeed, the Big Valley Rancheria is located on the site of one of the tribelets from which the Scotts Valley Band claims to descend. Yet Dr. Hurtado does not address this fact nor its implications for identifying Scotts Valley Band ancestors versus Big Valley Rancheria ancestors in historical documentation.

There is much in the Hurtado report that does not address the composition and actions of the historical ancestors of the Scotts Valley Band. And much that he does address is speculative and without documentary support, as discussed above. This simply does not provide the necessary evidence to show that Scotts Valley has a “significant historical connection” to lands in Vallejo

E. Howard And McClurken Report: Lack of Documented “Significant Historical Connections” Between Residents of the Scotts Valley (Sugar Bowl) Rancheria and Vallejo

- i. Howard and McClurken’s Interpretation of Scotts Valley Rancheria Marriage Patterns is Unsupported by Historical Ethnography.

According to the Howard and McClurken Report the Indians who were accorded a reservation in 1911 known as the Scotts Valley or Sugar Bowl Rancheria not only descended from Clear Lake Pomo, but also from non-Eastern Pomo and even non-Pomo Indians who were born outside of the Clear Lake area. The reason for this stems from the way in which the Rancheria was established.

In the early 1900's, Agent Charles E. Kelsey was charged with establishing trust land for "landless Indians." Because the criterion was simply that the Indians be landless, the rancherias that he created could and in fact did include people from diverse tribes and cultural groups placed together simply because they were "landless Indians". These individuals could include those who were born in other areas but who were themselves landless in a given location at the time Kelsey was taking a census of Indians in need of land. While Kelsey initially wanted to settle the landless Indians around Lakeport on a rancheria at the north of the Lake, at the request and urging of Joe Augustine (a nephew of Captain Augustine), this did not occur and a separate rancheria was established on lands southwest of Clear Lake.

Howard and McClurken have traced the genealogies of those on the initial list of 1911 Scotts Valley Rancheria and found many who were born outside of the Clear Lake area. The authors then state that intra-Pomo marriages and movement were historical cultural patterns of the Pomo generally and evident among the Clear Lake Pomo during the early contact period. They also note that the flexible marriage and settlement patterns were encouraged by the multiplex pressures upon the Indians by the coercive practices of the Spanish, Mexicans, and Americans.

It is certainly understandable that high indigenous mortality, forced indigenous labor, and eviction from their traditional villages wreaked havoc on pre-contact Pomo marriage and residence patterns. Given the relative small size of Clear Lake villages in the second half of the nineteenth century, it would have been difficult to find unrelated marriage partners locally. Since these numbers decreased drastically by the turn of the century (some village had less than 50 people, some just a few occupied houses), it is also understandable that Clear Lake Pomo married people beyond their small social circle, perhaps met when engaged as migrant laborers beyond Clear Lake. The issue is not that intermarriages occurred, but rather how Howard and McClurken are interpreting these marriages.

The writers seem to be claiming that the tribal origin of the non-Clear Lake Pomo who married Clear Lake Pomo should now be considered part of the modern Scotts Valley Band's geographic area to which the Band potentially has a "significant historical connection." But this claim does not rest upon historical ethnography, as shown below, notwithstanding their assertions.

Several anthropological studies have noted that newly-wed Eastern Pomo couples had the flexibility of residing with the parents of the wife or groom and may indeed live at one or other for a time. Eventually, however, the couple settled at one or the other village long term and generally remained there. Thus, when a non-Clear Lake Indian married a Clear Lake Indian and lived his/her whole life in a given Clear Lake tribelet and raised children there with the Clear Lake spouse, this did not alter the *tribelet's* identity nor did it extend rights of the Clear Lake *tribelet* to the non-Clear Lake natal village-community. While the non-Clear Lake person may retain options in his/her natal village-community, the marriage did not change the options of the Clear Lake *tribelet*.

Howard and McClurken's report takes a huge leap by assuming, for example, that if a non-Clear Lake spouse came from Napa, that relationship now affords the entire Scotts Valley Band a

“significant historical connection” to Napa. This is unsupported by historical ethnography and cannot serve as a basis for a restored lands determination.

ii. Insufficient Connection is Presented Between the 1911 Rancheria and the Yemabak/Komli Village Communities, alleged to be the Ancestors of the modern Scotts Valley Band

While Howard and McClurken do not fully explore this issue, it is important to note that the newly created Sugar Bowl Rancheria (Scotts Valley Rancheria) was *not* geographically located in Scotts Valley and thus *not* located where the Yemabak/Komli (who were sometimes called the Scotts Valley Indians) were situated historically. Herein lies a critical issue that is a source of confusion in analyzing the contemporary Scotts Valley tribe’s history.

According to Hurtado’s report, Captain Augustine was a Kulanapo Pomo (36) yet none of the three expert reports discuss how the Kulanapo, Habenepo and Yemabak/Komli village communities came to be considered a single entity nor when it happened. Captain Augustine’s nephew, Joe Augustine, is responsible for getting Kelsey to create a separate rancheria which was primarily, although not exclusively, accorded to Augustine kin⁹. However, the relationship of the 1911 rancheria to the historical village-community at Scotts Valley, the Yemabak/Komli, is never explained.

By using the term “Scotts Valley” both for the historic village-community of Yemabak/Komli and the rancheria created in 1911 by Kelsey, one is apt to assume a continuous historical tie between these two entities that may not exist. The various expert reports do not in fact explain and document what that connection is. Thus, several questions must be posed. If Captain Augustine was Kulanapo, then why is the rancheria (whose members are mostly his descendants from his son) not called a Kulanapo rancheria? Most importantly, how is the Sugar Bowl/Scotts Valley Rancheria related to the Kulanapo descendants who belong to the Big Valley Rancheria? None of the expert reports clearly address the relationship of the Scotts Valley Band to the recognized Big Valley Band. Yet the latter was located -- and today remains located -- in one of the territories of the tribelets claimed to be ancestral of the Scotts Valley Band and clearly shares genealogical ties with the latter.

There are numerous issues to be analyzed closely with respect to the Howard and McClurken report. As with the other two reports, a significant deficiency remains in addressing how the three tribelets became a single entity in the nineteenth century, assuming they did, and how the members of the 1911 Scotts Valley Rancheria are related to the historical Scotts Valley village(s). What also needs to be evaluated is the “significant historical connection” between the historic Scotts Valley village(s), the 1911 Scotts Valley Rancheria, and the restored modern Scotts Valley Band to the land in Vallejo.

In order to demonstrate a “significant historical connection” between the present Scotts Valley Band and the proposed parcel of land in Vallejo, it is necessary to first understand who comprised the Band historically and then evaluate that entity’s historical relationship to the land at Vallejo. Yet the expert reports submitted by Scotts Valley present information that is often ambiguous, irrelevant, contradictory and in some cases not supported by the source documents they cite to for

⁹ This does not mean that all Augustine kin lived at the 1911 Scotts Valley Rancheria, for they did not. It only means that the descendants of Captain Augustine’s only son Robert and the latter’s wife, Victoria, comprised the majority of the residents on the 1911 Rancheria.

their authority. Given this lack of clarity regarding the origins of the modern day Scotts Valley Band, the tribe cannot present sufficient evidence of a “significant historical connection” to the lands in Vallejo.

4. Conclusion

Scotts Valley has failed to present adequate information to establish either a “modern connection” or a “significant historical connection” to justify a restored lands determination for land in Vallejo. The County of Solano therefore respectfully requests that the Scotts Valley Band’s request for a restored lands determination for property in Vallejo be denied.