

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 The Court need not recount all background facts, as they are set forth fully in the Court’s
3 April 24, 2020 Order. (*See* ECF No. 41.) In short, this case involves Plaintiff’s efforts to
4 establish itself as a federally recognized Indian tribe. (ECF No. 65 at 2.) Plaintiff challenges two
5 of Defendants’ decisions under the Administrative Procedure Act (“APA”). (*Id.*)

6 First, Plaintiff challenges a letter Defendants sent on June 9, 2015 (“2015 decision”). (*Id.*)
7 The 2015 decision was issued in response to Plaintiff’s request for clarification regarding its
8 status as a federally recognized tribe. (ECF No. 13-1 at 4.) In the 2015 decision, Defendants
9 stated that “because Congress terminated [Plaintiff], it cannot be acknowledged by the
10 Department” under Part 83.¹ (*Id.*) Defendant further stated that “[t]he Department properly sold
11 the Taylorsville Rancheria pursuant to the 1964 amendment to the California Rancheria Act” and
12 the sale “qualifies as Congressional termination of the Federal relationship.” (*Id.*)

13 Second, Plaintiff challenges a letter Defendants sent on May 28, 2020 (“2020 decision”).
14 (ECF No. 65 at 2.) The 2020 decision rescinded a portion of the 2015 decision. (ECF No. 73 at
15 6.) Specifically, the 2020 decision asserts “the question of whether [Plaintiff] is eligible to pursue
16 Part 83 acknowledgement should have been assessed by the Office of Federal Acknowledgement
17 in the first instance.” (*Id.*) The 2020 decision thus rescinded the portion of the 2015 decision
18 indicating Plaintiff was ineligible to petition for acknowledgment under Part 83. (*Id.*) However,
19 the 2020 decision stated it was not withdrawing any other portion of the 2015 decision, leaving
20 intact the 2015 decision’s conclusion that the sale of the Taylorsville Rancheria terminated
21 Plaintiff’s tribal status. (*Id.*)

22 Plaintiff filed the operative Second Amended Complaint (“SAC”) on October 13, 2021.
23 (ECF No. 65.) Defendants filed the instant motion to dismiss based on lack of jurisdiction on
24 January 13, 2022. (ECF No. 70.)

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26 ¹ A tribe can be added to the list of federally recognized tribes pursuant to the Part 83
27 process. 25 C.F.R. § 83.5. The Department “reviews a Part 83 petition for recognition to
28 determine whether the tribe can meet a list of criteria.” *Agua Caliente Tribe of Cupeno Indians of
Pala Rsrv. v. Sweeney*, 932 F.3d 1207, 1214 (9th Cir. 2019). Congress updated the Part 83
regulations on July 1, 2015. *Id.*

1 **II. STANDARD OF LAW**

2 A motion under Federal Rule of Civil Procedure (“Rule”) 12(b)(1) challenges a federal
3 court’s jurisdiction to decide claims alleged in the complaint. Fed. R. Civ. P. 12(b)(1); *see also*
4 *id.* at 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the
5 court must dismiss the action.”). A court considering a motion to dismiss for lack of subject
6 matter jurisdiction is not restricted to the face of the complaint and may review any evidence to
7 resolve disputes concerning the existence of jurisdiction. *McCarthy v. United States*, 850 F.2d
8 558, 560 (9th Cir. 1988); *see also Thornhill Pub. Co., Inc. v. Gen. Tel. & Elec. Corp.*, 594 F.2d
9 730, 733 (9th Cir. 1979). “Once challenged, the party asserting subject matter jurisdiction has the
10 burden of proving its existence.” *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009).

11 **III. ANALYSIS**

12 In moving to dismiss, Defendants make two main arguments: (1) the Court lacks
13 jurisdiction to award the relief sought; and (2) the Court lacks jurisdiction to review the 2020
14 decision.² (ECF No. 70-1 at 3–6.) The Court will address each argument in turn.

15 A. Jurisdiction Over Relief Sought

16 Defendants argue the Court cannot grant Plaintiff’s request to place the tribe directly onto
17 the list of federally recognized tribes or compel the Department to do so. (ECF No. 70-1 at 23
18 (citing ECF 65 at 31 ¶¶ I, J).) In support of this contention, Defendants cite *Agua Caliente Tribe*,
19 932 F.3d at 1207. (*Id.*)

20 In opposition, Plaintiff argues the remedy highlighted by Defendants is only one of fifteen
21 remedies Plaintiff seeks that are reviewable by this Court. (ECF No. 71 at 5.) Plaintiff states the
22 purpose of this action is to determine whether Defendants correctly interpreted the California
23 Rancheria Act and the Court has jurisdiction to review this issue. (*Id.* at 8.)

24 In reply, Defendants admit the Court can review the issue of whether the Department
25 incorrectly found that Congress terminated the tribe when the Rancheria was sold. (ECF No. 73

27 ² Defendants also argue the Court should dismiss any rulemaking claims. (ECF No. 70-1 at
28 6.) Plaintiff in opposition clarifies that it is not pursuing rulemaking claims. (ECF No. 71 at 6.)
Therefore, the Court need not and does not address Defendants’ arguments on this issue.

1 at 3.) Defendants argue, however, that the Court lacks jurisdiction to order the Department to
2 “immediately resume the conduct of government-to-government relations with Plaintiff,” “to
3 place Plaintiff on the list of federally recognized tribes,” “to publish the placement of Plaintiff on
4 the list in the Federal Register,” or “to correct its administrative mistake.” (*Id.* at 3–4.)

5 Defendants argue that if the Court determines that the Department erred, the appropriate course of
6 action for the Court is to set aside the decision and remand to the agency.³ (*Id.* at 5.)

7 The Court is not convinced that *Agua Caliente Tribe* requires dismissal. In *Agua Caliente*
8 *Tribe*, a tribe sought to compel the Department to place it on a list of federally recognized tribes.
9 932 F.3d at 1209. The district court granted summary judgment in favor of the Department
10 because the tribe failed to exhaust administrative remedies by proceeding through the Part 83
11 process. *Id.* The Ninth Circuit affirmed. *Id.* While *Agua Caliente Tribe* seems to foreclose the
12 Court from compelling the Department to include Plaintiff on the federally recognized tribes list,
13 Plaintiff correctly points out that — unlike the plaintiff in *Agua Caliente Tribe* — it seeks other
14 forms of relief as well. (ECF No. 65 at 29–32 (seeking declaratory relief and an order vacating
15 Defendants’ decisions).) Indeed, Defendants admit that the Court can rule on the issue of whether
16 the Department incorrectly found that Congress terminated the tribe when the Rancheria was sold
17 and may ultimately set aside and remand that decision. (ECF No. 73 at 3.) The Court notes that
18 *Agua Caliente Tribe* suggests Plaintiff eventually must petition under Part 83 to attain federal
19 recognition, even if the Court finds the Department erred in concluding Plaintiff’s tribal status
20 was terminated. 932 F.3d at 1217 (rejecting the plaintiff’s argument that it could bypass the Part
21 83 process because “[a] plain reading of the Part 83 regulations makes no exceptions for tribes
22 that establish an unsevered relationship with the federal government”). It also bears mentioning
23 that the factual record that could be developed through the Part 83 process “would aid any future
24 judicial review.” *Id.* at 1219. Nevertheless, Defendants fail to persuade the Court that the case

25 ³ Defendants alternatively request the Court vacate the challenged portion of the 2015
26 decision and dismiss the action “to ensure the issue will receive de novo review by the
27 Department within the context of [Plaintiff’s] documented Part 83 petition.” (ECF No. 70-1 at 2;
28 ECF No. 73 at 5.) Plaintiff does not contest this alternative in its opposition. However,
Defendants fail to provide authority that would allow the Court to vacate the agency’s decision
without first determining that the decision was unlawful.

1 should be dismissed for lack of jurisdiction at this stage.

2 Accordingly, the Court DENIES Defendants’ motion to dismiss based on lack of
3 jurisdiction over the relief sought.

4 B. Jurisdiction Over the 2020 Decision

5 Defendants next argue the 2020 decision is not a final agency action subject to APA
6 review because it is not the consummation of the agency’s decision-making process. (ECF No.
7 70-1 at 5.) Defendants also argue the 2020 decision did not inflict an injury on Plaintiff and
8 instead benefits Plaintiff by allowing it to file a Part 83 petition. (*Id.* at 6.) In opposition,
9 Plaintiff states “whether the [2020 decision] is final or otherwise is only consequential in so far as
10 [Defendants] rely on it to reach its conclusion that the Tribe is terminated. In other words, in so
11 far as the 2020 [decision] interprets the California Rancheria Act it is subject to judicial review.”
12 (ECF No. 71 at 12.) Plaintiff further argues that “[a]n unlawful interpretation of the California
13 Rancheria Act constitutes concrete injury.” (*Id.* at 8, 13.)

14 “To maintain a cause of action under the APA, a plaintiff must challenge ‘agency action’
15 that is ‘final.’” *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800 (9th Cir. 2013) (citing
16 *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61–62 (2004)). For an agency’s action to be final,
17 two conditions must be met. “First, the action must mark the consummation of the agency’s
18 decision-making process — it must not be of a merely tentative or interlocutory nature.” *Bennett*
19 *v. Spear*, 520 U.S. 154, 177–78 (1997) (citation and quotation marks omitted). “[S]econd, the
20 action must be one by which rights or obligations have been determined, or from which legal
21 consequences will flow.” *Id.* (citation and quotation marks omitted).

22 The facts before the Court support the conclusion that Defendants reached a definite
23 position in the 2020 decision and determined Plaintiff’s rights and obligations by allowing
24 Plaintiff to pursue the Part 83 process. However, the specific question of whether the 2020
25 decision, like the 2015 decision, involved an agency interpretation of the California Rancheria
26 Act that harmed Plaintiff requires a review of the administrative record. *Friends of the River v.*
27 *U.S. Army Corps of Engineers*, 870 F. Supp. 2d 966, 976 (E.D. Cal. 2012) (“Determining whether
28 [the challenged actions] are final agency actions in the instant case requires a review of the full

1 administrative record, because . . . ‘the question of jurisdiction is dependent on the resolution of
2 factual issues going to the merits’ of [the] action.”); *Doe #1 v. Trump*, 423 F. Supp. 3d 1040,
3 1046 (D. Or. 2019) (“Without production of the administrative record, it will be difficult
4 conclusively to determine whether the agency action was final.”).

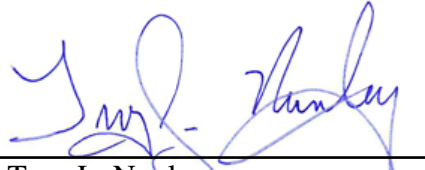
5 Therefore, the Court DENIES Defendants’ motion to dismiss based on lack of jurisdiction
6 over the 2020 decision.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the Court DENIES Defendants’ Motion to Dismiss. (ECF No.
9 70.) The parties are ORDERED to file a Joint Status Report not later than thirty (30) days from
10 the electronic filing date of this Order, proposing deadlines for the Department to prepare and file
11 its administrative record and for briefing on cross-summary judgment motions.

12 IT IS SO ORDERED.

13 **DATED: July 18, 2022**

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17 Troy L. Nunley
18 United States District Judge
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