



**UNITED STATES DEPARTMENT OF THE INTERIOR**

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET #300  
ARLINGTON, VIRGINIA 22203  
703-235-3816

CALIFORNIA VALLEY MIWOK TRIBE, CALIFORNIA.

**APPELLANT**

PACIFIC REGIONAL DIRECTOR,  
BUREAU OF INDIAN AFFAIRS.

**APPELLEE**

YAKIMA DIXIE, VELMA WHITEBEAR, AND  
CHADD EVERONE.

**INTERESTED PARTIES**

**ANSWER OF INTERESTED PARTIES**

To

ORDER SETTING BRIEFING OF THE IBIA  
OF JUNE 13, 2007

AND To

APPELLANT'S BRIEF IN SUPPORT OF ITS  
APPEAL  
JULY 27, 2007

DOCKET No. IBIA 07-100-A  
AUGUST 18, 2007

**Terms**

**"The Appeal"** is this action (IBIA 07-100-A) in all of its filings.

**"The Board"** is the Interior Board of Indian Appeals.

**"The BIA"** or **"The Bureau"** is the Appellee, the Bureau of Indian Affairs.

**"The Interested Parties"** include Yakima Dixie (Chief and Hereditary Authority for The Tribe), Velma WhiteBear (Executive Director for The Tribe), and Chadd Everone (Deputy for Yakima Dixie and The Tribe).

**"The Tribe"** is the California Valley Miwok Tribe, California, formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California.

**"The Appellant"** or **"Appellant-Burley"** is The Tribe as represented by Silvia Burley - see caveat below.

### Caveat

In this case, the identity of The Appellant is ambiguous. There are two factions within The Tribe which claim to be the rightful authority: 1) Yakima Dixie *et alia*<sup>[1]</sup> and 2) Silvia Burley<sup>[2]</sup>. This Appeal was issued, unilaterally, under the escutcheon of The Tribe by Silvia Burley against the will of Yakima Dixie and the Putative Members. Thus, this Appeal does not represent the will of the Tribe and, on that basis alone, might be void.

### The Pleading

The Interested Parties hereby submit the following responses to the original "Notice of Appeal" (dated November 10, 2006); to the "Order Setting Briefing" of The Board (dated June 13, 2007) and to the "Appellant's Brief in Support of its Appeal" (dated July 27, 2007). The Interested Parties **OPPOSE** The Appeal being considered by The Board. This opposition is based on the grounds that the subject of The Appeal deals with a BIA Determination that is a final action and is unappealable. Further, the legal basis for this action has already been tried in Federal Court and has been dismissed. on the basis of The Appellant lacking a cause of action. Also, The Appellant would lack a legal basis for this Action owing to her lack of authority for this Action on behalf of The Tribe, and there is not standing for The Appeal due to lack of injury; and in any case, any such appeal would is premature. The basis for these various points is explained herein.

### The "Olsen Determination/Directive" of February 11, 2005 Is The Governing Paradigm

It is a matter of record that the authority for The Tribe has been in dispute since 1999 (i.e., for some 8 years). This dispute is between Yakima Dixie (representing himself and the Putative Members of The Tribe) and Silvia Burley. In 1999,

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<sup>1</sup> Yakima Dixie is the Ancestral Chief and Hereditary Authority for The Tribe, and he represents the group of individual who have a legitimate claim to membership in The Tribe and who have been denominated by the BIA as "Putative Members".

<sup>2</sup> Silvia Burley is a remote relative to Yakima Dixie to whom he informally gave tribal status in 1998 and who, subsequently, usurped his authority. She probably would not qualify as a Putative Member under the officially defined criteria for such.

1 Yakima Dixie initiated his appeal of the BIA's recognition of Silvia Burley as being  
2 the Chairperson for The Tribe. After a prolonged and tortuous series of events, Mr.  
3 Dixie's appeal became properly lodged with the BIA in 2004; and on February 11,  
4 2005, Michael Olsen (the Principal Deputy, Acting Assistant Secretary - Indian  
5 Affairs) issued his "Determination/Directive" regarding this matter<sup>[3]</sup>. The Olsen  
6 Determination was a **non-appealable determination**. Because of that, Ms. Burley  
7 filed a suit in federal court to prevent the Olsen Determination from being imple-  
8 mented (California Valley Miwok Tribe v. USA; U.S. District Court for the District  
9 of Columbia; case #05-0739)<sup>[4]</sup>. The Court dismissed her suit on the basis of her  
10 not stating a claim that would constitute a proper cause of action, in that her claim  
11 was based on one, subordinated clause of the IRA and ignored the dominant provi-  
12 sions of the entire Act. Also, in its ruling of March 30, 2006, that Court ruled that  
13 it "accepts that the letters of February 11, 2005 and March 26, 2004 were **final**  
14 **agency actions**." <sup>[5]</sup>

21 From February 11, 2005 to the present, all subsequent actions by the BIA (includ-  
22 ing the one which is being challenged in This Appeal) are simply implementations  
23 of that non-appealable Olsen Determination. Consequently, this Appeal should not  
24 have standing before The Board because the actions that are being appealed here  
25 are embedded within the non-appealable, Olsen Determination. In other words, if  
26 the incipient action is unappealable, then all actions which implement that should  
27 also be unappealable unless such actions contravened the incipient action. In this  
28 instance, the Determination of the Superintendent and the Regional Director imple-  
29 ment the incipient Olsen Determination; they do not contravene it. If the Board  
30 were to consider this Appeal, it seems that the Board would be making an improper  
31 circumvention and override of the authority of Assistant Secretary.

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38 <sup>3</sup> See Item 15c and Item 40 of the Administrative Record as submitted to the Board  
39 by The BIA on May 30, 2007.

40 <sup>4</sup> See Item 15g of the Administrative Record as submitted to the Board by The BIA  
41 on May 30, 2007.

42 <sup>5</sup> *ibid.*. See footnote on page 10.

1 The Olsen Determination of February 11, 2005 effectively put aside all historical  
 2 precedence of The Tribe in its dealings with The Bureau, including any standings  
 3 which either Yakima Dixie or Silvia Burley may have had with the BIA. And it  
 4 mandated that the matter of tribal authority be resolved by the *de novo*  
 5 re-organization of The Tribe with the help of The BIA and under its auspices. The  
 6 first step in such organization is to identify the "putative members" of The Tribe,  
 7 which is what the actions of the BIA, that being appealed, attempt to do. The key  
 8 elements in that Determination warrant reciting, here, in this Pleading.  
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13 Deputy Assistant Secretary, Olsen stated the following (*bolding and italics are*  
 14 *added for emphasis and referencing*).

15 "Your appeal (*i.e., the Appeal of Yakima Dixie*) of the BIA's recognition  
 16 of Ms. Burley as tribal Chairman has been rendered moot by the BIA's  
 17 decision of March 26, 2004 <sup>6</sup>, a copy of which is enclosed, rejecting the  
 18 Tribe's proposed constitution (*i.e., the Burley constitution*). In that letter,  
 19 the BIA made clear that the Federal government did not recognize Ms.  
 20 Burley as the tribal Chairman. Rather, the BIA would recognize her as  
 21 "a person of authority within California Valley Miwok Tribe". **Until**  
 22 **such time as the Tribe has organized, the Federal government can**  
 23 **recognize no one**, including yourself (*i.e., Yakima Dixie*), as the tribal  
 24 Chairman."  
 25

26 Olsen goes on to state:

27 "I encourage you (*Yakima Dixie*), either in conjunction with Ms. Burley,  
 28 other tribal members, or potential tribal members, to continue your  
 29 efforts to organize the Tribe along the lines outlined in the March 26,  
 30 2004, letter so that the Tribe can become organized and enjoy the full  
 31 benefits of Federal recognition. The first step in organizing the Tribe is  
 32 identifying **putative tribal members**."  
 33

34 And Olsen concludes:

35 "In light of the BIA's letter of March 26, 2004, that the Tribe is not an organized  
 36 tribe, however, the BIA does not recognize any tribal government, and  
 37 therefore, cannot defer to any tribal dispute resolution process at this time. I  
 38 understand that a Mr. Troy M. Woodward has held himself out as an Adminis-  
 39 trative Hearing Officer for the Tribe and purported to conduct a hearing to  
 40 resolve your (*i.e., Mr. Dixie's*) complaint against Ms. Burley. Please be advised  
 41 that the BIA does not recognize Mr. Woodward as a tribal officer or his hearing  
 42 process as a legitimate tribal forum. Should other issues arise with respect to  
 43 tribal leadership or membership in the future, therefore, **your appeal would**  
 44 **properly lie exclusively with the BIA**."  
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6 <sup>6</sup> *ibid.*

1 Since the Olsen Directive, The BIA has re-affirmed, in its actions and in documen-  
 2 tation, that The Bureau does not recognize Silvia Burley nor anyone as a governing  
 3 authority for The Tribe. For example, on March 7, 2007, Ms. Burley send a letter  
 4 of complaint to the Area Superintendent of The BIA in which she and her daugh-  
 5 ters, as purported officers of The Tribe, observed that:  
 6

7 "References to our Chairperson (*i.e.*, *Silvia Burley*) from your office (*i.e.*, *the*  
 8 *BIA*) have evolved from Chairperson until August 2004 to Spokesperson in  
 9 November of 2004 to "person of authority" in 2006 and now, simply "Silvia  
 10 Burley."" [7]  
 11

12 As far back as March 2005, The BIA has affirmed over the course of four court  
 13 pleadings (an probably at a cost to both The Tribe and the Federal government in  
 14 excess of several million dollars) that The Bureau does not consider Silvia Burley  
 15 to be the Executive authority for this Tribe.<sup>[8]</sup>  
 16  
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18 "For these and other reasons, BIA now has taken the position that Silvia Burley  
 19 can no longer be accorded formal recognition as an interim tribal chairperson,  
 20 but only as an informal point-of-contact for the tribe. For purposes of this  
 21 litigation, it is evident that Burley lacks knowledge concerning the history of her  
 22 tribe." [9]  
 23

24 Most recently, this posture of the BIA was reaffirmed when, on June 19, 2007, The  
 25 BIA responded to a petition by Yakima Dixie in which he requested that the BIA  
 26 withdraw its recognition of Silvia Burley as an authorized representative of The  
 27 Tribe. This request was based upon the definition of the criteria which The BIA  
 28 recently promulgated for its recognition of "putative member" status in this Tribe  
 29 and as defined in its Public Notices during April 2007 <sup>[10]</sup> and for which status  
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31 <sup>7</sup> See Item 8 of the Administrative Record as submitted to the Board by The BIA on  
 32 May 30, 2007.  
 33

34 <sup>8</sup> **1)** Calif. Valley Miwok v. BIA - United States Dist. Court for Eastern Dist. of Calif. case #  
 35 civ.s.02-0912(FCD) (dismissed) and **2)** Calif. Valley Miwok v. BIA - United States Court of  
 36 Appeals for the Ninth Circuit - case #04-16676 (dismissed). Also, **3)** Calif. Valley Miwok v.  
 37 BIA - United States District Court, D.C. - case #1:05-cv-00739-JR (dismissed) and **4)** Calif.  
 38 Valley Miwok v. BIA - United States Court of Appeals for the District of Columbia Cir.  
 39 case #06-5203 (pending).

40 <sup>9</sup> Brief for Appellee, United States of America, submitted in at least 3 of the 4 cases  
 41 which are cited above.  
 42

43 <sup>10</sup> See this pleading, Exhibit 1, Document #2007-04-11.

1 Silvia Burley would not qualify. Mr. Dixie's petition was rejected by the Area  
2 Superintendent, saying:  
3

4 "The BIA is unable to comply with this request to withdraw its recogni-  
5 tion of Silvia Burley as an authorized representative of the Tribe.  
6 Currently, the Agency recognizes Ms. Burley as a "person of authority"  
7 in dealing with the Tribe's **P.L. 93-638 contract only** (*emphasis added*).  
8 Ms. Burley has contracted the Aid to Tribal Government program on  
9 behalf of the Tribe to provide program services to its membership. The  
10 BIA does not recognize the actions taken by Ms. Burley under the 638  
11 contract to organize the Tribe to be representative of the will of the larger  
12 tribal community, referred to as the "putative group". Therefore, the BIA  
13 does not recognize a tribal governing body or governmental leader." <sup>[11]</sup>

14 Thus, The BIA has consistently and conclusively stated that it "does not recognize  
15 a tribal governing body or governmental leader" at this time. Further the Putative  
16 Member Class and its broader Indian community does not recognized Silvia Burley  
17 as its governmental leader or, even, representative. Consequently, Silvia Burley  
18 would not have the authority to cause This Appeal on behalf of The Tribe, and  
19 therefore The Appellant-Burley would not have standing for this action.  
20  
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22 If The Board were to accept this Appeal, it might be inferred and be used by  
23 Appellant-Burley to mean that The Board validates Silvia Burley as the recognized  
24 authority for The Tribe, something which would contravene The Bureau's  
25 expressed position, and for a variety of reasons, in tangible terms, it would be  
26 injurious to The Tribe <sup>[12]</sup>. More fundamentally, The Board should not consider  
27 The Appeal because it would violate the non-appealable Olsen Determination of  
28 February 11, 2005.  
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37 <sup>11</sup> See this pleading, Exhibit 2, Document #2007-06-19.

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39 <sup>12</sup> See this pleading, Exhibit 3, Document #2007-04-30, for one example of how Silvia Burley  
40 abuses tribal assets for her own personal benefit. (This and other acts almost certain would  
41 be subject to scrutiny under Title 18 - Crimes and Criminal Procedure Part - Crimes Chapter -  
42 Indians Sec. 1163. Embezzlement and theft from Indian tribal organizations.) Any delay in  
43 tribal organization will only serve to exacerbate this problem.

1 Now, turning to responding to the specific points which The Board required in its  
2 Order of June 13, 2007, The Board requested that three issues be addressed.  
3

4 **Issue #1 "... the Board orders that during briefing, the parties address whether**  
5 **there is a factual or legal basis for the Board to consider this appeal in the**  
6 **name of the Tribe as Appellant."**  
7

8 In reference to a **factual basis** for The Appeal, it is a fact that the Regional Director  
9 denied the appeal of Silvia Burley in which she asked for the revocation of the  
10 November 6, 2006 decision of the BIA to assist The Tribe in its efforts to organize  
11 The Tribe and that the Regional Director remanded the matter back to the Area  
12 Superintendent to implement his plans for doing such <sup>[13]</sup>. Also, it is a fact that the  
13 guidelines for organization have been defined in the Public Notices which were  
14 issued by the BIA during April 2007 to the Miwok Community in Calaveras  
15 County. Those Notices initiated the organization of The Tribe and define the crite-  
16 ria for determining putative member status. In addition, it is also a fact, as  
17 discussed above, that the Superintendent's and Regional Director's actions are  
18 extensions of the Olsen Determination/Directive of February 11, 2005, which is the  
19 over-riding fact in this situation and which is unappealable. These three facts are  
20 certain. The purported facts in the Brief of Appellant-Burley (July 27, 2007) are a  
21 complex web of numerous assertions including references to legal cases and corre-  
22 spondences, with these interwoven with conjectures, inferences, and, in some  
23 cases, incomplete representations and misstatements. To this Interested Party  
24 (Everone), much of this appears to be legal flimflamery, in which case it would  
25 be unwise and only confuse the issues if he were to make an attempt at rebuttal. It  
26 is possible, however, that the Appellant-Burley's arguments are highly astute juris-  
27 prudence and simply beyond the comprehension of This Interested Party, in which  
28 case, for the same reason, it would be unwise to make an attempt at rebuttal.  
29 Consequently, the Appellant-Burley's Brief will have to stand un-rebutted by the  
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41 <sup>13</sup> See Item 3 of the Administrative Record as submitted to the Board by the BIA  
42 on May 30, 2007.  
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1 Interested Parties except as addressed indirectly, here, as part of their own exposi-  
2 tion.  
3

4 In reference to the **legal basis** for The Appeal, the argument has already been made  
5 that this action is precluded by the Olsen Detemination/Directive of February 11,  
6 2005. Also, the Code of Federal Regulations defines the Scope of the authority of  
7 The Board (43 CFR § 4.330(b)) as follows:  
8  
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10 "(b) Except as otherwise permitted by the Secretary or the Assistant  
11 Secretary - Indian Affairs by special delegation or request, the Board  
12 shall not adjudicate:  
13 (1) Tribal enrollment disputes;  
14 (2) Matters decided by the Bureau of Indian Affairs through exercise of  
15 its discretionary authority;"

16 The Secretary or Assistant Secretary - Indian Affairs has not permitted this Appeal  
17 by special delegation or request. Thus, by these codified criteria, it would seem  
18 that The Board does **NOT** have a legal basis to consider this Appeal, which, on the  
19 part of The Tribe, fundamentally deals with "enrollment disputes" and which, on  
20 the part of the BIA, concerns its "discretionary authority" and trust responsibilities  
21 for resolving the matter of with whom the Federal government will deal in its  
22 government-to-government relations with The Tribe.  
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### 26 **The Sovereignty And Prerogatives Of The United States of America**

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29 Through the Department of Interior, the BIA is an extension of the United States of  
30 America. One issue that is routinely omitted from the discussion, with respect to  
31 this Tribe, is the inherent sovereignty of the United States of America, itself. The  
32 Appellant-Burley continuously asserts the doctrine of sovereign immunity as if The  
33 Tribe were the only entity with sovereignty and she were protected from oversight  
34 or contravention due to her own personal sovereignty. Further, Burley asserts that  
35 the Federal government "must" recognize her as the authority for The Tribe and her  
36 constitution as the governing instrument. For the Federal government to accept this  
37 posture would be a self-abrogation and voluntary forfeiture of its own sovereignty,  
38 which, in relationship to this case, the Federal government is, in fact, the superior  
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1 sovereign entity with its inherent prerogative, *sui juris*, to defined the class of  
2 persons with whom it chooses to deal in any government-to-government relation  
3 either with this Tribe or with any other sovereign entity. For example, in its  
4 relationship with foreign, national governments, it is a well established principle  
5 that the U.S. Federal government, while it almost always acknowledges that a  
6 particular country exists, it frequently refuses to acknowledge a current government  
7 or administration for particular countries; and it can refuse to give such acknowl-  
8 edge simply by its own prerogative; and it can rescind and grant and rescind again  
9 and re-grant its recognition of various administrations of sovereign entities - *ad*  
10 *libitum et infinitum*.  
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15 The April 2, 2007 dismissal by the Regional Director of Silvia Burley's Appeal is a  
16 proper exercise of the sovereignty of the United States government. In addition,  
17 because of special statutory requirements and trust obligations in its dealings with  
18 Indian tribes, the Federal government (through its Bureau of Indian Affairs) must  
19 take a more active role in helping a tribe to become organized in such a manner that  
20 the Federal government can officially recognize the administration of that tribe,  
21 after which the full benefits can accrue to the tribe. Because of the long standing,  
22 internal tribal dispute about authority and membership of The Tribe, which has no  
23 prospect of being resolved within The Tribe, the Federal government, in order to  
24 preserve the government-to-government relationship with The Tribe, elected to  
25 exercises its sovereign right to take a more active role by identifying the class of  
26 persons (Putative Members Class) with whom it will deal in organizing the tribe so  
27 that the administration of The Tribe will adequately reflect the whole community  
28 and become organized along the lines of a representative democracy with individ-  
29 ual, civil rights. Further, because the living individuals who are associated with  
30 The Tribe cannot resolve this matter by themselves within The Tribe, itself, The  
31 BIA identified historic, deceased, tribal members who are on record has having  
32 dealt officially with The BIA and then denominated the lineal descendants of those  
33 persons as putative members with whom the BIA will deal in the organization of  
34 The Tribe. Yakima Dixie and the other members with whom he as been organizing  
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1 The Tribe accept this determination even though most of those individuals may not  
 2 qualify as putative members during the first round of organization. Over the course  
 3 of some 8 years, The BIA has done everything that it possibly can to help and  
 4 encourage the members of The Tribe to resolve their differences, among  
 5 themselves, and to present a unified plan of organization; and the sole obstacle to  
 6 doing that has been one single person, The Appellant-Burley. This Appeal is just  
 7 another attempt on her part to prevent a just resolution to tribal organization; and  
 8 allowing this to further delay the proceedings would be unconscionable.  
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12  
 13 Although the Regional Director did make a rightful, just, practical, and fair deter-  
 14 mination about how to proceed with tribal organization, he did err when he deter-  
 15 mined that his decision was subject to appeal, something which, as discussed  
 16 above, should be precluded because his actions are simply carrying-out and are an  
 17 extension of the Directive of February 11, 2005 of the Deputy Assistant Secretary -  
 18 Indian Affairs - a non-appealable event.  
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22 **Issue #2 "... the Board orders that during briefing, the parties address whether**  
 23 **the Tribe has standing to bring this appeal."**  
 24

25 With respect to **standing**, The Board asked how the Regional Director's decision  
 26 might have caused injury to The Tribe, and it cited several references for evaluating  
 27 the issue of injury. The criteria for determining injury are:  
 28

29 "1) it (*The Tribe*)<sup>[14]</sup> **has** suffered an actual or imminent, concrete and  
 30 particularized injury to or invasion of a legally protected interest; 2) the  
 31 injury is fairly traceable to the challenged action; and 3) the injury is  
 32 likely to be redressed by a favorable decisions."  
 33

34 The Appellant-Burley addresses the issue of injury in § VI.(c)(i-ii) of its Brief. But  
 35 it is not demonstrated in that Argument that there has been an injury to The Tribe.  
 36

37 First, no injury *has* occurred because the Regional Director's action is in the  
 38 process of being implemented and there are no determinations at this point.  
 39

40 Second, any determination about the putative members who are to be recognized to  
 41 participant in the organization of The Tribe will not injury The Tribe, *per se*, which  
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43 <sup>14</sup> Again, italics and bolding are used within quotations to clarify the text or for emphasis.

1 is identified as the Appellant in this case. There seems to be a persistent confusion  
2 between the interests of the Appellant, as The Tribe, and the personal interests of  
3 Silvia Burley, the individual who initiated The Appeal on behalf of The Tribe. In  
4 the Regional Director's Mandate to move forward with the organization of The  
5 Tribe, there is not (nor could there be) any injury in this process to The Tribe in  
6 terms of any benefits which accrue to The Tribe or contracts which the government  
7 has with The Tribe nor is there any injury to any legitimate member of The Tribe.  
8 On the contrary, The Tribe would be injured by allowing this Appeal to move  
9 forward and thereby impeding its legitimate organization under IRA standards. In  
10 the organization of The Tribe under the auspices of the BIA, is there an invasion of  
11 a legally protected interest? Certainly, Silvia Burley nor any other individual,  
12 personally, does not have a legally protected interest; and the tribal government  
13 which she purports to have installed for The Tribe is not recognized by either The  
14 BIA nor the community of individuals who have a claim to membership; so it  
15 would seem that there is no demonstrable protected interest that can be invaded or  
16 injured by the forth-coming actions of the Superintendent or the Director.  
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24 **Issue #3 "... the Board orders that during briefing, the parties address whether**  
25 **this matter is ripe for Board review."**

26  
27 Assuming, *arguendo*, that the substance of this matter were justiciable and The  
28 Appellant were to have standing, it would be still be premature for The Board to  
29 consider the matter.  
30

31  
32 No definitive determinations have, at this time, been made with respect to denomi-  
33 nating the particular putative members and the broader community who might  
34 qualify as members. Until such time that there is a denomination of such individu-  
35 als, there is really nothing to appeal. And if an appeal is appropriate after that, then  
36 the appeal should be by individuals rather than by The Tribe.  
37  
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39  
40 Further, this Appeal by Silvia Burley is objecting to an administrative **process**  
41 rather than an administrative **out-come** of a process, something which would seem  
42 to abrogate the entirety concept of administrative due-process and, if sustained,  
43

1 could be used ubiquitously by anyone to prevent any government agency for  
2 conducting almost any proceeding to which someone might object.  
3

4 When the Olsen Determination/Directive was made in February 2005, soon thereaf-  
5 ter, Yakima Dixie and other putative members began meeting with The BIA toward  
6 the objective of organizing The Tribe. Although Silvia Burley was and always has  
7 been invited to attend that and all other meetings, she consistently boycotts them;  
8 and in April 2006, she filed suit in U.S. District Court in an attempt to accomplish  
9 that which she is attempting to do with This Appeal - interfere with the proper  
10 organization of The Tribe and/or have herself declared to the authority for The  
11 Tribe. Thus, in a very real sense, This Appeal has already been adjudicated in  
12 Court; and consequently, this matter may not only be untimely and not ripe but it  
13 may also be moot due to prior adjudication. In that suit, Ms. Burley attempted to  
14 have The Court rule that the government's attempt to help The Tribe become organ-  
15 ize was an invasion of The Tribe's protected interest under 43 U.S.C. § 1457.  
16

17 Several remarks from Judge Robertson's dismissal are worthy of note. <sup>[15]</sup>  
18

19 "Congress has delegated to the Secretary of the Interior broad authority  
20 over "public business relating to ... Indians." 43 U.S.C. § 1457.  
21 (Footnote: In turn, the Secretary has delegated this responsibility to the  
22 BIA and the Principal Deputy Assistant Secretary - Indian Affairs. Dkt.  
23 #18-12 at 1.) At the core of this authority is a responsibility to ensure  
24 that Secretary deals only with a tribal government that actually represents  
25 the members of a tribe. As early as 1942, when the government still held  
26 lands in trust for many tribes, the Supreme Court stated that the Depart-  
27 ment had a duty to conduct business only with lawfully-constituted  
28 governing bodies who represent the tribal membership.  
29

30 "In carrying out its treaty obligations with the Indian tribes, the Govern-  
31 ment ... has charged itself with moral obligations of the highest responsi-  
32 bility and trust. Its conduct, as disclosed in the acts of those who  
33 represent it in dealings with the Indians, should therefore be judged by  
34 the most exacting fiduciary standards. Payment of funds at the request of  
35 a tribal council which, to the knowledge of the Government officers  
36 charged with the administration of Indian affairs and the disbursement of  
37 funds to satisfy treaty obligations, was composed of representative faith-  
38 less to their own people ... would be a clear breach of the Government's  
39 fiduciary obligation. (Seminole Nation v. United States, 316 U.S. 286,  
40 296-97 (1942))."  
41

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42 <sup>15</sup> See Item 15g of the Administrative Record as submitted to the Board by the BIA  
43 on May 30, 2007.

1 Judge Robertson goes on to observe:

2 "The IRA charges the Secretary, broadly, with supervising tribal  
3 elections and ensuring their fundamental integrity .... that tribal actions  
4 reflect the will of a majority of the tribal community - whether or not  
5 they choose to organize under the IRA procedures" page 11.

6 On March 30, 2006, the above case was dismissed by the Court for failure "to state  
7 a claim upon which relief can be granted.

8 "Plaintiffs's claim of government interference in the internal affairs of the  
9 Tribe depends entirely on their reading of subsection 477(h), which, as I  
10 have explained, is erroneous. The first count of plaintiffs' complaint,  
11 asserting a "violation" of 25 U.S.C. § 476(h), thus fails to state a claim  
12 upon which relief can be granted." The other causes of action were  
13 similarly dismissed.  
14

15 The Board should evaluate Robertson's Dismissal to see if the essential issue in  
16 This Appeal has already been adjudicated in that case. That dismissal was put on  
17 appeal, where a hearing is set for October 12, 2007. The Interested Parties in This  
18 Appeal were allowed to enter an *amicus curiae* brief in the pleadings before U.S.  
19 Court of Appeals; and a copy of that *amicus* is provided here for background infor-  
20 mation. <sup>[16]</sup>  
21  
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### 23 **Alternative Dispute Resolution**

24 In its Order of June 13, 2007, The Board discussed imposing procedures for an  
25 alternative dispute resolution. The Interested Parties wish to bring to the attention  
26 of The Board the fact that many such attempts have been made since 2003; and  
27 although Yakima Dixie has always been willing to mediate, Silvia Burley has  
28 adamantly refused any discussion either in a formal or informal setting. In 2003,  
29 Mr. Dixie contacted Ms. Burley via this Interested Party (Everone) to request an  
30 informal meeting, which Burley declined. Immediately after the Olsen  
31 Determination/Directive of February 11, 2005, the BIA proposed that Kathryn  
32 Lynn of the Office of Collaborative Action and Dispute Resolution (Department of  
33 Interior) become involved in negotiating a resolution to the dispute in authority.  
34 Yakima Dixie agreed, and a meeting was held between Ms. Lynn and this Inter-  
35 ested Party and Mr. Dixie's General Counsel, Thomas Wolfrum. Ms. Lynn was  
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43 <sup>16</sup> See this pleading, Exhibit 4, Document #2007-06-25.

1 unable to obtain from Phillip Thompson, Ms. Burley's attorney, an agreement to  
2 meet with Ms. Burley; and nothing came of that effort. In September 2006, attor-  
3 neys Arlo Smith and Peter Melnicoe (advisors to Mr. Dixie and The Tribe) recom-  
4 mended to Mr. Dixie that they initiate an attempt at a negotiation with Ms. Burley.  
5 Commensurately, on October 3, 2006, they met with Phil Thompson and Karla Bell  
6 (attorneys for Ms. Burley). The meeting turned out to be a disingenuous gesture  
7 and a kind of set up by Thompson and Bell who attempted to intimidate Smith and  
8 Melnicoe rather than open discussion about settlement <sup>[17]</sup>. Thus, there is a bad  
9 faith gestalt among the lawyers in the case. Further, in the proceedings in the U.S.  
10 Court of Appeals in the case that is now pending, a mediator by the name of Steve  
11 Altman, who is adjunct to The Court, attempted to hold discussions with the oppos-  
12 ing parties. But in December 2006, he withdrew his participation due to the  
13 intransigent conditions of Ms. Burley, particularly her refusal to participate with  
14 Yakima Dixie and his representatives. Intermittently, members of The Tribe have  
15 contacted Ms. Burley to see if she will meet privately with them; and all of those  
16 efforts were refused by Ms. Burley.

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24 The conditions for when mediation would have been meaningful have probably  
25 passed. The BIA has, now, formally defined the class of individuals with whom it  
26 will meet to organize The Tribe (i.e., The Putative Member Class). This consists of  
27 lineal descendants of the 14 individuals who were named in the Public Notices of  
28 April 2007. By that criterion, Silvia Burley would not seem to qualify as a Putative  
29 Member; and any negotiation with her, separately, would be invalid and a abroga-  
30 tion of the authority of the Putative Members. Besides, to be frank, none of the  
31 members want to deal with this person, whom they hold to be pernicious.

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37 *Aho!*

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40 <sup>17</sup> After the meeting, Thompson and Bell visited the California Gambling Control Commission  
41 (the agency with which Smith and Melnicoe had been formerly Commissioner and Chief  
42 Counsel, respectively) and demanded from the Commission the personnel records of  
43 Smith and Melnicoe - a clear act of intimidation and attempt to scare away legal  
representation.

1 Respectfully,

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3 Drafted for Interested Parties by:

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7 \_\_\_\_\_  
8 Chadd Everone, Deputy  
9 2140 Shattuck Ave. #602  
10 Berkeley, California 94704  
11 510-486-1314

12 Date: \_\_\_\_\_

\_\_\_\_\_

Velma WhiteBear, Executive Director  
213 Downing Dr.  
Galt, California 95632  
916-690-2312

Date: \_\_\_\_\_

16  
17 \_\_\_\_\_  
18 Yakima K. Dixie, Chief & Hereditary  
19 Authority  
20 California Valley Miwok Tribe (formerly  
21 Sheep Ranch Rancheria of Me-Wuk Indians of  
22 California)  
23 11178 Sheep Ranch Rd. (Sheep Ranch)  
24 Mountain Ranch, California 95246  
25 209-728-8726

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Date: \_\_\_\_\_

**Certificate of Service**

**A copy of this Appeal has been sent to:**

**The IBIA:**

Board of Indian Appeals  
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801 North Quincy St.  
Arlington, Virginia 22203

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**NOTE: THE MAILING ADDRESS HAS  
CHANGED SOMEWHAT.**