

INTERIOR BOARD OF INDIAN APPEALS

California Valley Miwok Tribe	)	
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Appellant,	)	Docket No.: IBIA 07-100-A
	)	
vs.	)	
	)	
Pacific Regional Director,	)	
	)	
Appellee.	)	
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**Appellee's Opposition to Appellant's Brief in Support of Its Appeal**

The California Valley Miwok Tribe (CVMT) is a federally recognized tribe. It is unorganized, meaning that the Bureau of Indian Affairs (BIA) does not recognize that it has governing documents or a governing body. Two groups within the tribe are seeking to organize the tribe. Silvia Burley claims to be the leader of the elected government of the tribe with the right to organize the tribe and determine its membership. Yakima Dixie claims to be the hereditary Chief of the tribe with rights to organize the tribe and determine its membership.

The BIA determined that the leadership dispute between Ms. Burley and Mr. Dixie threatens the tribe's government-to-government relationship with the Federal government. Accordingly, the BIA undertook to help the tribe resolve the dispute. On November 6, 2006, the Superintendent of the Central California Agency informed Ms. Burley and Mr. Dixie that the BIA would assist the tribe in organizing by calling a meeting of potential tribal members. Ms. Burley appealed this decision to the Regional Director. On April 2, 2007 the Regional Director denied her appeal and remanded the matter to the Superintendent to proceed with the plan outlined in the November 6, 2006 letter. Ms. Burley appeals the Regional Director's decision in the name of the tribe.

The Board should dismiss this case for two reasons. First, the tribe cannot bring this appeal in its own name for two reasons. First, the Regional Director's decision was directed at Ms. Burley as a person who claims to be the leader of the tribe. It was not directed at the tribe. Second, in pursuing this appeal, Ms. Burley seeks to vindicate her alleged rights as the alleged elected leader of the tribe. In this case, therefore, the tribe is advancing Ms. Burley's interests and not the interests of the tribe as a whole. It lacks standing to do this. Second, the tribe lacks standing to bring this case because there has been no injury in fact. There are two other elements to standing and Ms. Burley fails to establish those as well.

If the Board determines that it has jurisdiction over this appeal, it should affirm all portions of the Regional Director's decision. Ms. Burley either misunderstands or misstates much of the contents of the Regional Director's decision. As a result, a number of her challenges are simply misguided. Moreover, to the extent she challenges the BIA's decision to initiate an organizational process, the BIA is acting within its authority to assist the tribe in resolving leadership disputes when such a dispute threatens the tribe's government-to-government relationship with the tribe.

#### I. Background

CVMT began in 1916 as the Sheep Ranch Rancheria when the Federal government obtained 0.92 acres in trust for 12 landless Indians in Calaveras County, California. (AR 94). In 1935, the tribe's one eligible voter voted that the tribe would organize under the Indian Reorganization Act, 25 U.S.C. § 476 *et seq.*<sup>1</sup> (AR 91, 92). The

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<sup>1</sup> Appellant claims that this voter was the only member of the tribe. The Indian Reorganization Act provided that eligible voters were the adult members of the tribe. See 25 U.S.C. § 476. Because there may have been members who were minors, it is impossible to know whether the sole adult member was the sole member.

tribe never did so. In 1967, the only resident of the rancheria, Mabel Dixie, voted under the Rancheria Act to distribute the rancheria's land and terminate the tribe's trust relationship with the Federal government.<sup>2</sup> (AR 89). Under section 3(c) of the Rancheria Act, before distributing the rancheria property, the Federal government was to construct and provide, among other things, sanitation facilities. The Federal government did not provide such facilities at that time. (*Id.*) The Federal government never published a Proclamation of Termination of Sheep Ranch Rancheria in the Federal Register as required by the Rancheria Act regulations. Accordingly, the Federal government failed to fulfill its obligations under the Rancheria Act and the tribe's trust relationship remained in tact.<sup>3</sup>

Upon Mabel Dixie's death, her heirs, including her son Yakima Dixie, inherited her interest in the rancheria property. In 1998, Yakima Dixie was the only resident on the property and was the only known tribal member.

In 1998, Silvia Burley approached Mr. Dixie about accepting her and her daughters and granddaughter as members of the tribe so they could receive Indian benefits. (AR 73, p. 8). Mr. Dixie agreed. (AR 75). Initially, Ms. Burley and Mr. Dixie worked together, exploring the possibility of organizing the tribe. (AR 72). The BIA informed Ms. Burley and Mr. Dixie in 1998 that there were other Indians in the area whom they should consider including in the tribe. (AR 73, p. 7, AR 57). By 1999, Ms.

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<sup>2</sup> Appellant claims that Mabel Dixie was the only member of the tribe. The Rancheria Act provided that "the Indians of a rancheria or reservation" would request termination and distribution of assets. 78 Stat. 390. Because there may have been tribal members who lived off the rancheria, it is impossible to know whether Mabel Dixie was the sole member.

<sup>3</sup> Ms. Burley's current position that the Federal government terminated the tribe contradicts a resolution passed by a government she claims is legitimate that states that the Sheep Ranch Rancheria was never terminated. (AR 71).

Burley and Mr. Dixie were embroiled in a leadership dispute that lies at the heart of this case. (AR 68).

For many years, the BIA refrained from involving itself in Ms. Burley's and Mr. Dixie's dispute, directing them to turn to the tribe for resolution. (AR 57, AR 55). During this time, the BIA recognized Ms. Burley as the nominal leader of the tribe, though it did not recognize a government. The issue became more complicated in 2004 when Ms. Burley claimed to have organized the tribe under a constitution adopted by herself and her two daughters. The BIA rejected her constitution as a valid governing document because she had not involved the "greater tribal community" in its adoption. (AR 40). Accordingly, the BIA informed Ms. Burley that the tribe continued to be unorganized and lacked a recognized government, and that the BIA would recognize her as a person of authority within the tribe, not a governmental leader.<sup>4</sup> (*Id.*) The letter advised Ms. Burley that in organizing the tribe she should first identify the "greater tribal community" – persons who have a legitimate connection to the tribe – and recommended using historical documents establishing the tribe's membership at previous points in time as a base roll. (*Id.*) The Department reiterated this position in March 2005 in a letter to Mr. Dixie dismissing his challenge to Ms. Burley's status as Chairman<sup>5</sup> and encouraged Mr. Dixie to continue the tribe's efforts to organize along the lines outlined in the 2004 letter to Ms. Burley. (AR 37). The letter informed Mr. Dixie that the BIA did not

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<sup>4</sup> Ms. Burley appealed this decision to the Federal District Court of the District of Columbia, which dismissed her action for failing to state a claim. *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.C.D.C. 2006). Ms. Burley has appealed that decision to the Federal Court of Appeals for the D.C. Circuit.

<sup>5</sup> The Department dismissed Mr. Dixie's challenge for several reasons, including the fact that the BIA's determination that Ms. Burley was a person of authority within the tribe, as opposed to its Chairman, rendered Mr. Dixie's complaint moot.

recognize Ms. Burley's tribal court for resolving his claims because the BIA did not recognize that the tribe had a government. (*Id.*)

In the fall of 2006, the BIA determined that the leadership dispute between Ms. Burley and Mr. Dixie threatened the tribe's government-to-government relationship with the Federal government.<sup>6</sup> On November 6, 2006, the Superintendent of the Central California Agency informed Ms. Burley and Mr. Dixie of that determination and announced that the BIA would assist the tribe in resolving the dispute by initiating an organization process by which the tribe could organize itself. (AR 19). The first step in this process is to identify persons with a legitimate connection to the tribe who may be eligible to participate in the organizational process by virtue of their status as potential members. (*Id.*) To that end, the BIA would publish in area newspapers the criteria for participants in the organizational process and schedule an initial meeting.<sup>7</sup> Once the class of persons eligible to participate in the organizational process had been identified, the tribe would assume full responsibility for the organizational process, determining the form of government, drafting governing documents, determining membership criteria, and ultimately electing leaders.

Ms. Burley appealed the November 6, 2006 letter to the Regional Director of the Pacific Region. (AR 17). The Regional Director upheld the Superintendent's decision and remanded the matter to the Superintendent to proceed according to the plans outlined in the November letter. (AR 3). This appeal ensued.

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<sup>6</sup> Ms. Burley does not challenge this determination.

<sup>7</sup> The BIA determined that the class of putative members should be lineal descendents of the 12 Indians for whom the government established the Rancheria, the lone eligible voter in 1935, and Mabel Dixie, the sole distributee in 1967.

I. Argument

A. The Tribe Cannot Bring this Appeal in Its Own Name

The decision that is the subject of this appeal was directed at Ms. Burley, as an individual who claims to be the leader of the tribe with the authority to organize the tribe. It was not directed at the tribe itself because the Superintendent's decision and Ms. Burley's appeal to the Regional Director concerned Ms. Burley's interest as a person claiming to be the leader of the tribe. Ms. Burley brought this appeal in the name of the tribe.

There are two problems. First, the BIA does not recognize Ms. Burley as the governmental leader of the tribe. She cannot act for the tribe outside the context of 638 contracting. Accordingly, she lacks authority to bring this appeal in the name of the tribe. Second, Ms. Burley is using the name of the tribe to advance her own interests. But the interests of the tribe are divided. Ms. Burley purports to represent the tribe. Mr. Dixie purports to represent the tribe. This situation is analogous to the situation in *Darrell Doney and Fort Belknap Community Council v. Rocky Mountain Regional Director*, 43 IBIA 231 (2006). In that case, the tribe appealed the BIA's determination of the rental rate for grazing land. This Board held that the tribe lacked standing to bring the appeal because it was not asserting the interests of the tribe as a whole. The tribe advocated the position of its rancher members. But it also had members who leased grazing land. Because the tribe's responsibility ran to both ranchers and landowners, it did not have standing to assert the interests of just one group.

In this case, within the tribe there are at least two groups with apparently conflicting interests. Ms. Burley claims to be the leader of the tribe with the authority to

organize the tribe. Mr. Dixie claims the same. Ms. Burley challenged the Superintendent's decision because, among other things, she claimed it interfered with her authority as elected leader of the tribe to organize the tribe. If the tribe is allowed to appeal the Regional Director's decision affirming the Superintendent's opinion, the tribe will be in the position of advancing Ms. Burley's interest. Ms. Burley has brought this appeal in the name of the tribe but in reality she seeks to vindicate her interest in determining the tribe's membership criteria. Under *Doney*, the tribe does not have standing to do that.

Ms. Burley seems to advance two arguments. First, Ms. Burley argues "Silvia Burney (sic) as the Chairperson of the Tribe has authority to sue on behalf of the Tribe." (Appellant's Brief, p. 9). But the BIA does not recognize her as a governmental leader. Moreover, the BIA determined there is a leadership within the tribe and that its government-to-government relationship with the tribe is threatened because it is not sure who the legitimate government is. Under these circumstances, Ms. Burley cannot exercise the rights of the governmental leader of the tribe. Second, Ms. Burley argues that the tribe can bring the appeal in its own name because the BIA's decision interferes with the tribe's 638 contract. Ms. Burley brought the appeals at the agency level in her own name as a person who claims to be the leader of the tribe. She asserts her own interests in having the tribe adopt her membership criteria, not the interests of the tribe as a whole.

The BIA does not recognize Ms. Burley as a governmental leader of the tribe with authority to act outside the context of the 638 contract. The decisions at the agency level were directed at Ms. Burley as someone claiming to be the leader of the tribe, not the

tribe. Ms. Burley represents one faction of the tribe. She does not represent the tribe as a whole. Ms. Burley brings this appeal to vindicate her own rights. The tribe is not representing the interests of the tribe as a whole in this appeal. Accordingly, the tribe cannot bring the appeal in its own name.

**B. The Tribe Lacks Standing Because It Has Not Suffered Injury In Fact**

As the appellant, Ms. Burley bears the burden of establishing that the tribe has standing to pursue to appeal. *Doney*, 43 IBIA 231 (2006). In order to satisfy this burden, she must establish all three elements of standing: first, the tribe has suffered an actual and concrete injury to a legally protected interest; second, that that injury is fairly traceable to the Regional Director's decision; and third, that the tribe's injury likely will be redressed by a favorable decision. Ms. Burley fails to establish that the tribe has standing because she has failed to establish an actual and concrete injury to a legally protected interest. Even if she has established the first element, she has failed to carry her burden of establishing standing because she has not established that the tribe's alleged injury is fairly traceable to the Regional Director's decision and that its injury likely will be redressed by a favorable decision.

**1. The Tribe Has Not Suffered An Actual And Concrete Injury To A Legally Protected Interest**

Ms. Burley argues that the tribe has suffered injury in fact because the BIA's decision to initiate an organization process violates its authority under its 638 contract over enrollment matters and violates its sovereign right to determine its own membership. In fact, the BIA's decision does not violate the tribe's 638 contract or its right to determine its own membership. Moreover, she has failed to establish actual and concrete injury.

The BIA's decision does not violate Ms. Burley's 638 contract. Ms. Burley has a contract to provide, among other things, tribal enrollment services. These are administrative functions. Specifically, her enrollment responsibilities provide that she will maintain the membership roll, process enrollment appeals, and update the eligible voters list. Nothing in the BIA's decision takes those responsibilities away from her. Because the BIA's decision does not violate the 638 contract, Ms. Burley has not identified a concrete and particularized injury to a legally protected interest based on the 638 contract.

The BIA's decision also does not violate the tribe's right to determine its own membership. Ms. Burley states that the BIA will be setting the membership criteria for the tribe. In fact, the tribe itself will be determining its membership criteria in the course of the organizational process. The tribe could select Ms. Burley's criteria, Mr. Dixie's criteria, or some other criteria. In any event, the tribe itself, not the BIA, will select the membership criteria. Because the BIA's decision to initiate an organizational process does not violate the tribe's right to determine its own membership, Ms. Burley has failed to establish an actual and concrete injury to a legally protected interest.

Even assuming Ms. Burley does in fact represent the tribe as a whole and that her membership criteria is the tribe's membership criteria, the tribe has not suffered injury in fact because until the organizational process is complete, we cannot know whether there has been an actual injury. The tribe could very well select Ms. Burley's membership criteria. In that case, there would be no injury in fact. Because the tribe could adopt Ms. Burley's membership criteria in the process of organizing the tribe, the tribe, given Ms. Burley's definition of the tribe's interests, has not suffered an actual or imminent injury.

2. The Tribe's Alleged Injury Is Not Fairly Traceable To the Regional Director's Decision

Ms. Burley alleges that the tribe has suffered an injury to a legally protected injury because the Regional Director's decision somehow took away from the tribe its contractual responsibilities over enrollment matters. As explained above, Ms. Burley retains her administrative responsibilities over enrollment matters under the 638 contract. Whatever injuries Ms. Burley suffers to her authority over contractual enrollment responsibilities is not fairly traceable to the Regional Director's decision.

3. A Favorable Decision Will Not Redress The Alleged Injuries

If the Board were to reverse the Regional Director's decision, Ms. Burley's alleged injuries will not likely be redressed because the tribe will still have to resolve the stalemate between Ms. Burley and Mr. Dixie over the tribe's organization. Ms. Burley assumes that if the Board reverses the Regional Director, the Board will necessarily decide the leadership dispute in her favor and that she will then have clear authority to organize the tribe on her own. But the tribe must resolve the leadership dispute itself. The Board's decision, therefore, likely will not resolve the leadership dispute and redress the injuries she alleges.

C. The Regional Director's Decision Is Ripe For Review

The Regional Director believes his decision is ripe for review.

D. The Board Should Affirm the Regional Director's Decision

1. The Regional Director Did Not Err In Determining The Tribe Is Unorganized

Ms. Burley claims that the Regional Director erred in determining that the tribe is unorganized. This is essentially the same argument that she raised in the District Court

for the District of Columbia. In that case, the court, on a motion to dismiss, upheld the BIA's discretion to reject Ms. Burley's proffered tribal constitution. Until and unless the D.C. Circuit reverses the District Court, this issue is settled as a matter of law that the tribe is not organized pursuant to a valid governing document recognized by the BIA. The tribe, therefore, is unorganized. Because the tribe is unorganized, it does not have a government recognized by the BIA. Because it does not have a government, it does not have a tribal court that the BIA recognizes. Accordingly, the BIA does not defer to the determination of Ms. Burley's alleged tribal court.

2. The Regional Director Did Not Determine That The BIA Would Determine Tribal Membership

Ms. Burley asserts that the BIA intends to determine the tribe's membership. The BIA will not determine the tribe's membership. The tribe will determine its own membership criteria. Ms. Burley claims that the BIA has determined that the lineal descendents of the persons listed in the newspaper notice will be members of the tribe. That is not so. The BIA has determined that the lineal descendents of the persons listed in the notice should be allowed to participate in organizing the tribe and in selecting the tribe's membership criteria.

Ms. Burley claims that *Williams v. Gover*, 2007 U.S. App. LEXIS 14465 (9<sup>th</sup> Cir., June 20, 2007) controls this case. In *Williams*, the Ninth Circuit affirmed the District Court's dismissal of the appellants' claim against the BIA. The Mooretown Rancheria organized under a constitution that limited its membership to the four distributees, their dependents, lineal descendents of the distributees, and their dependents. The tribe further limited membership to the distributees and their lineal descendents. The appellants were descendents of Indians listed on the original Rancheria census and later voting lists.

They were not included in the membership of the tribe. They sued the BIA. The District Court dismissed the case because the BIA had nothing to do with determining the tribe's membership and because tribes have sovereign authority to determine their own memberships.

This situation is distinguishable from the *Williams* case. This case is about who gets to organize the tribe, not who gets to be a member. Ms. Burley believes she should say who can organize the tribe. Mr. Dixie believes he should say who can organize the tribe. The BIA believes those Indians with a legitimate connection with the tribe should participate in organizing the tribe. Significantly, in *Williams*, the appellants who were excluded from tribal membership had been included in the tribe's organizational meeting. That is what the BIA intends here.

3. The Regional Director Did Not Determine that CVMT Is The Correct Group For Miwok Descendents In California To Join

Ms. Burley argues that the Regional Director determined the CVMT should be the repository tribe for all California Miwoks. The Regional Director did not make such a determination. Rather, the Regional Director affirmed the Superintendent's decision that the group eligible to organize the tribe should include the lineal descendents of the original Rancheria Indians, the sole voter in 1935, and the sole distributee in 1967.

4. The Regional Director's Decision Does Not Violate the APA

Ms. Burley argues that the Regional Director violated the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*, because he did not follow the procedures for formal rulemaking in section 553 when he published the notice soliciting applications from Indians with a legitimate connection to the tribe through lineal descent from the

original Rancheria Indians, the 1935 voter, and the sole distributee. Because the Regional Director is not engaging in formal rulemaking, section 553 does not apply.

5. The BIA is Acting Within Its Authority to Assist The Tribe Resolve an Intractable Leadership Dispute

As a general rule, the BIA lacks authority to involve itself in internal tribal matters. See, *Wheeler v. U.S. Dep't of the Interior*, 811 F.2d 549, 551. However, "some special situations require Department action." *Id.* One of those situations is when the Department needs to determine with whom it will deal as the government. *Id.* at 552. That is the situation in this case. The BIA has determined that the leadership dispute between Ms. Burley and Mr. Dixie has raised questions about the legitimate leadership of the tribe such that the dispute threatens the tribe's government-to-government relationship with the Federal government. Rather than interfering in internal tribal matters by choosing between Ms. Burley and Mr. Dixie, the BIA has initiated a process by which the tribe can determine its leadership and government. Because the tribe is unorganized, the BIA initiated an organizational process by which the tribe will ultimately resolve the leadership dispute.

6. The Regional Director Did Not Err In Determining That The Tribe Was Never Terminated And Restored

CVMT was never terminated pursuant to the Rancheria Act because the Federal government failed to fulfill its responsibility under the Act to provide modern sanitation facilities and the Federal government never published in the Federal Register any proclamation that the tribe had been terminated. Because the government failed to take these steps, the tribe was never terminated pursuant to the Rancheria Act.

The BIA has always conceded that it failed to fulfill its responsibilities under the Plan of Distribution. The government failed to provide modern sanitation and water facilities to the Rancheria. Because of this failure, the Federal government failed to terminate the rancheria. *Table Bluff Band of Indians v. Andrus*, 532 F. Supp. 255, 259 (N.D. Cal. 1981); *Smith v. United States*, 515 F. Supp. 56 (N.D. Cal. 1978). Because it was never terminated, the tribe cannot be restored. Accordingly, the Board should uphold the Regional Director's statement that the tribe was not terminated and restored.

This conclusion is consistent with the fact that the Federal government never published a termination proclamation for Sheep Ranch Rancheria in the Federal Register, the final step required to terminate the Federal-tribal trust relationship. *See*, 24 Fed. Reg. 4654 (1959). It is also consistent with the fact that Sheep Ranch Rancheria identified by the BIA in 1972 as an unorganized "Indian organization" "for which the Bureau of Indian Affairs has a definite responsibility." American Indians and Their Federal Relationship, United States Dept. of the Interior, Bureau of Indian Affairs (March 1972). Significantly, the BIA did not identify Sheep Ranch Rancheria as a terminated group. Because the Federal government failed to fulfill its obligations under the statute, because it never published a termination proclamation as required by the Rancheria Act regulations, and because the BIA identified Sheep Ranch Rancheria as an Indian group with which it had a relationship in 1972, the Board should uphold the Regional Director's conclusion that the Federal government did not terminate or restore Sheep Ranch Rancheria.

II. Conclusion

For the foregoing reasons, the Board should uphold the Regional Director's

Dated: August 24, 2007

  
Jane M. Smith  
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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2007 I caused to be served on Phillip E. Thompson, counsel for Appellant, a copy of the Appellee's Opposition to Appellant's Brief in Support of Its Appeal by regular first-class mail at the following address:

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Dated: August 20, 2007

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2007 I caused to be served on Chad Everone, an interested party, a copy of the Appellee's Opposition to Appellant's Brief in Support of Its Appeal by regular first-class mail at the following address:

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Dated: August 28, 2007

  
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