



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

**INTERESTED PARTIES'
RESPONSE IN OPPOSITION TO
APPELLANT'S REQUEST TO
REOPEN BRIEFING DATED
SEPTEMBER 25, 2009**

DOCKET NO. IBIA 07-100-A

OCTOBER 5, 2009

1. As an initial Response to the "Appellant's Request To Reopen The Briefing Period And Receive An Extension Of Time To Conduct Discovery And File A Supplemental Brief", dated September 25, 2009, the Interested Parties are OPPOSED to this Request, for obvious reasons.

2. In the interest of avoiding unnecessary pleadings, the Interested Parties will not provide, at this time, responses to the Appellant's assertions. Instead, the Interested Parties will wait to review the Response of the Appellee, BIA. If that Response adequately represents the position of the Interested Parties, then no further reply will be made.

3. The Interested Parties represent the interests of the following: 1) Yakima Dixie (as the Hereditary Chief of the Tribe and a Putative Member according to the definition of such in the Public Notice of the BIA of April 2007); the Tribal Council which Mr. Dixie established in 2003 (constituting 7 persons); the Putative Member class (as defined in that Public Notice and constituting some 14 persons); and the broader tribal community (as defined as the lineal descendants of persons who were identified as Miwok in Calaveras County in the Indian Census of 1929 - some 120 adults and 200 children). To rectify, once again, a mistake which the Appellant repeatedly makes, the characterization of Chadd Everone as a Member or Putative Member of the Tribe is wrong; he serves as the Deputy to Yakima Dixie, the Tribal

56 Council, and the Putative Member class. He is not a member of the Tribe nor has he ever
57 represented himself as such.

58 **3.** The Interested Parties request Judicial Notice of the attached, recent letter to BIA
59 officials.

62 Respectfully,
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69 /s/
70 _____
71 Yakima K. Dixie, Chief
72 California Valley Miwok Tribe (formerly
73 Sheep Ranch Rancheria of Me-Wuk Indians
74 of California)
75 11178 Sheep Ranch Rd. (Sheep Ranch)
76 Mountain Ranch, California 95246

70 /s/
71 _____
72 Velma WhiteBear, Executive Director
73 213 Downing Dr.
74 Galt, California 95632

77 Date: October 2, 2009

Date: October 2, 2009

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81
82 Drafted for Interested Parties by:
83

84
85
86
87
88 _____
89 Chadd Everone, Deputy
90 2140 Shattuck Ave. #602
91 Berkeley, California 94704
92 510-486-1314

93 Date: October 2, 2009
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Certificate of Service

I hereby certify that, on or about October 2, 2009, copies of the foregoing were served by First Class Mail (USPS) to the following addressees:

The IBIA:

Board of Indian Appeals
Office of Hearings and Appeals
U.S. Department of the Interior
801 North Quincy St.
Arlington, Virginia 22203

Assistant Secretary - Indian Affairs
U.S. Department of the Interior
MS 4141 - MIB
1849 "C" Street, N.W.
Washington, D.C. 200240

Appellee:

Associate Solicitor
Division of Indian Affairs
Attention: Jane Smith / Scott Keep
Office of the Solicitor
MS-6456-MIB
U.S. Department of the Interior
1849 "C" Street, N.W.
Washington, DC 20240

Appellant:

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California Valley Miwok Tribe
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Stockton, California 95212

Robert A. Rosette
ROSETTE & ASSOCIATES, PC
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Chandler, Arizona 85225

Regional Director
Pacific Regional Office
Bureau of Indian Affairs
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Sacramento, California 95825

Interested Parties:

Chadd Everone
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Berkeley, California 94704

Troy Burdick, Superintendent
Bureau of Indian Affairs,
Central California Agency
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Velma WhiteBear
213 Downing Dr.
Galt, California 95632

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2800 Cottage Way, Room E-1712
Sacramento, CA 95825-1890

Yakima Dixie
California Valley Miwok Tribe
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Mountain Ranch, California 95246

Chadd Everone, Deputy



California Valley Miwok Tribe, California
(Sheep Ranch Rancheria of Me-Wuk Indians of California)

11178 Sheep Ranch Rd. (Sheep Ranch) - Mountain Ranch, California 95246 / Tel: 209-728-8726
Administration: 1231 E. Hazelton Ave. - Stockton California 95205 / Tel: 209-946-9266
{ www.californiavalleymiwok.com }

September 28, 2009

Chadd Everone, Deputy
2140 Shattuck Ave. #602
Berkeley, California 94704
510-486-1314



Troy Burdick, Superintendent	Karen Koch, Regional Solicitor,	Jerry Gidner, Director,
Tia Sam, Tribal Operations Specialist,	Larry Echo Hawk, Assistant Secretary	Scott Keep, Assistant Solicitor,
Dale Morris, Regional Director,	George T. Skibine, Principal Deputy	Jane M. Smith, Att. Advisor,
Dale Risling, Deputy, Reg. Director,	Hilary Tompkins, Solicitor,	

This letter, with active links to the cited documents, has been posted on the Internet at:

<http://www.californiavalleymiwok.com/2009-09-28-Letter-to-BIA.pdq>

Mechuksus :

We appreciate the rapid response by the BIA to nullify the Request for a Stay in IBIA #07-100-A. That action was clearly a tactic to further confound and delay the process of organization and had nothing to do with the justice in our situation nor fundamental principles of tribal sovereignty. I assume that, in the future, there will not be any further private negotiations with Rob Rosette, Ms. Burley's attorney, and that all Interested Parties will be involved in advance in any discussion related to the tribe before any actions are taken or notices issued - at least I hope so.

After more that 2 ½ year of the IBIA appeal process, we seem to be on the verge of moving forward with the organization of the Tribe, and that should put a cap on a solid 10 years in attempting to get a Federally Recognized Authority for this Federally Recognized Tribe and the expenditure millions of dollars of resources (on the part of the U.S. Federal government, by the Friends of Yakima in the defense of my interests and the general members of the Tribe, and from the Tribe's money used by Ms. Burley to obstruct organization).

Here, I want to review our understanding of the issues that have already resolved and constitute "*res judicata*" and to state our understanding of the ground-rules for proceeding forward with tribal organization, so that we may know, in advance, any points of

disagreements and more easily coordinate the efforts of the Tribe and the BIA. Rather than include the cited documents as exhibit to this letter (documents which the Bureau already has and are well know to the Bureau), reference here will be made to copies on the Internet; and it is assume that they are incorporated as exhibits. Again, this letter with active links is posted on the Internet at the above URL.

In terms of nomenclature, I use the term "Dixie Cohort" to include: 1) myself, Yakima Dixie, as the Hereditary Chief and Authority under Miwok tradition and as recognized as such by the BIA from the death of my mother, Mabel Hodge Dixie, in July 11, 1971, until sometime in 1999 (a period of about 30 years); 2) the Tribal Council which I appointed in 2003 to help the Tribe to become organized and which includes Velma WhiteBear as the Executive Director, who is also the legatee of my estate and my hereditary, traditional rights; 3) the "Putative Members" as identified by the BIA (reference #5, below); and 4) the broader membership community of the lineal descendants of those Miwoks who are identified in the June 30, 1929 Indian Census Roll for Calaveras County taken by L.A. Dorrington. In all, this constitutes about 130 adults and several hundred children. Because the sole opposition to the Dixie Cohort has been Silvia Burley (and her immediate family), I will refer to her by personal name.

To summarize our understanding and position, we assume that both the BIA and the Dixie Cohort are in agreement on the following.

☛ First, the inchoate point of reference for moving forward with tribal organization is the "Olsen Determination" of February 11, 2005 (referenced as #1 in the Background Addendum, below). This Determination was an unappealable, final agency action that was predicated on the Risling Determination of one year prior (March 26, 2004) and which, itself, was an appealable Determination, but for which the right of appeal was forfeited by Ms. Burley by her never having filed an appealed. The Olsen Determination, in effect, wiped clean all prior, BIA identification of tribal authority and required a re-starting of the process by formal re-organization.

☛ Second, we assume that the Olsen Determination has been Affirmed in two Federal Court cases filed against it by Ms. Burley (referenced as #2 and #3 in the Background).

☛ Third, we assume that the organizing members of the Tribe have been legally defined in the Public Notice for organization as published by the BIA in April 2007. We have been repeatedly informed by the BIA that this Public Notice is the organizing platform. Indeed, other tribes are now being organized by the BIA on the same platform - e.g., Public Notice Wilton Rancheria of August 2009.

☛ The Olsen Determination as Affirmed by the Courts and as implemented by Public Notices of April 2007 and, we presume, the Determination upholding those actions in the forth-coming Determination of the IBIA must all be deemed to be "*res judicata*" for the epistemology of the identification of the Federally Recognized

Authority for this Tribe. All of those determinations have been made by the BIA. And, although we would have done it differently, the Dixie Cohort understands the difficulties which the BIA has had in this situation and has accepted those determinations. We have worked in good faith and assiduously to support the BIA in those efforts. If, after all of this, the BIA were to put aside or countermand, in some significant way, these decided things by some administrative fiat or contorted legalistic maneuver, then that would be unconscionable and cause massive objections; and we assume that that will not occur.

☪ Finally, assuming that the IBIA in case #07-100-A will determine that the BIA has the right to be involved in helping the tribe to organize such that a tribal authority is established in a manner that the BIA and the Tribe may conduct government-to-government relations as circumscribed by the criteria of the Courts, in this situation, then we expect that the BIA will move expeditiously to implement the Public Notice of April 2007 (document #5). Further, we expect that the BIA will not be impeded in this process by Ms. Burley filing another obstructive law suit because, as we are advised, the simple *filing* of a suit cannot stay the implementation of an IBIA determination - only a Court *Order* may stay the implementation.

We have provided a more detailed exposition of these points in the Background Addendum.

Peace,

Yakima Dixie, Chief

drafted by: Chadd Everone, Deputy

Copies to:

Troy Burdick, Superintendent, Bureau of Indian Affairs

Tia Sam, Tribal Operations Specialist, Bureau of Indian Affairs

Dale Morris, Regional Director, Pacific Regional Office

Dale Risling, Deputy, Regional Director, Pacific Regional Office

Karen Koch, Regional Solicitor, Pacific Regional Office

Larry Echo Hawk, Assistant Secretary, Bureau of Indian Affairs

George T. Skibine, Acting Principal Deputy, Assistant Secretary - Indian Affairs

Hilary Tompkins, Solicitor, United States Department of the Interior

Jerry Gidner, Director, Bureau of Indian Affairs

Scott Keep, Assistant Solicitor, Division of Indian Affairs

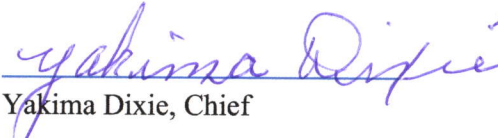
Jane M. Smith, Attorney Advisor, Division of Indian Affairs

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Dale Risling, Deputy, Regional Director, Pacific Regional Office
Karen Koch, Regional Solicitor, Pacific Regional Office
Larry Echo Hawk, Assistant Secretary, Bureau of Indian Affairs
George T. Skibine, Acting Principal Deputy, Assistant Secretary - Indian Affairs
Hilary Tompkins, Solicitor, United States Department of the Interior
Jerry Gidner, Director, Bureau of Indian Affairs
Scott Keep, Assistant Solicitor, Division of Indian Affairs
Jane M. Smith, Attorney Advisor, Division of Indian Affairs

Background Addendum

Here are the seminal documents in relationship to the organization of the California Valley Miwok Tribe.

First, Yakima Dixie's appeal (in protest of the recognition of Silvia Burley as the tribal authority by the BIA) culminated in the "Olsen Determination" of February 11, 2005. Therein, Principal Deputy, Assistant Secretary of Indian Affairs determined that the BIA did NOT recognize Silvia Burley as Chairperson (and had not so recognized her since one year prior in a determination that was made by Superintendent Risling in March 2004) nor did the Bureau recognize anyone else as Chairperson. Olsen instructed Yakima Dixie to resolve the issue of tribal Authority by formal organization under the auspices of the BIA. Also, it was determined that the BIA would not recognize any intra-tribal remedy for this situation. (See #1, below.)

#1. <http://www.californiavalleymiwok.com/2005-02-11-BIA-Determination.pdf>

Because the Olsen Determination was an unappealable, final agency action, there was no remedy within the IBIA; so, Ms. Burley immediately filed suit in Federal District Court challenging the authority of the BIA to be involved in helping to organize the tribe. That suit was dismissed for failure to state a claim on March 30, 2006. Also, the Court determined that the Olsen Determination (#1, above) was unappealable, final agency action. See:

#2. <http://www.californiavalleymiwok.com/USDC-DC-05CV00739/2006-03-30-Memorandum.pdf>

Immediately thereafter the Dismissal in District Court, on July 19, 2006, Ms. Burley placed that case on Appeal; and the U.S. Court of Appeals Affirmed the District Courts Dismissal on May 21, 2008, completely reviewing all of the incipient documents, holding a Hearing at which Mr. Dixie's lawyer presented an *amicus curiae* brief; and the Court of Appeals providing an expanded rationale for Affirming the Dismissal. See:

#3. <http://www.californiavalleymiwok.com/USDC-DC-05CV00739/2008-02-15-Court-Order.pdf>

Between the District Court's Dismissal in item #2 and the Court of Appeals Affirmation of that Dismissal in item #3, the BIA decided to move forward with organizing the tribe because the inability of the Tribe to present a unified representation was placing the Federal Recognition of the Tribe in jeopardy. The sole impediment to organizing the Tribe was Ms. Burley's adamant claim to be the only rightful authority. Silvia Burley appealed the BIA's intention to organize the tribe, and her appeal was denied by the Regional Director. See

#4. <http://www.californiavalleymiwok.com/2007-04-02-RegionToBurley.pdf>

Immediately thereafter, the BIA published its Public Notice in which the Bureau identified the Putative Members as the organizing body to work with the BIA. See:

#5. <http://www.californiavalleymiwok.com/2007-04-11-BIA-PublicNotice-AmadorLedgerDispatch.pdf>

And immediately after that, on April 20, 2007, Burley filed an IBIA Appeal #07-100-A. See:
#6. <http://www.californiavalleymiwok.com/IBIA-2/>

That Appeal became "ripe" in September 2007 and, after 2 years, it is now under consideration by the Board.

Yakima Dixie and the Putative Members of the Tribe and the extended tribal community have cooperated in every possible way with the BIA, at each step in the process; and one person, Silvia Burley, has been able to obstruct the implementation of what, in the beginning, was an unappealable, final agency action - item #1.