

EXHIBIT M

to

**Affidavit of Robert J. Uram in Support of Plaintiffs'
Motion for Preliminary Injunction**

Notice of Appeal (Feb. 9, 2011)



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February 9, 2011

VIA FACSIMILE AND U.S. MAIL

Amy Dutschke
Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way Suite W-2820
Sacramento, California 95825

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NOTICE OF APPEAL

Dear Regional Director Dutschke:

On January 12, 2011, Troy Burdick, Superintendent of the Central California Agency, United States Bureau of Indian Affairs, issued a decision recognizing the results of a purported special election of the California Valley Miwok Tribe ("Tribe") held on January 7, 2011. The Superintendent's decision was contained in a letter to Silvia Burley ("Burley"), a true and correct copy of which is attached as Exhibit "A" (the "January 12 Decision"). The January 12 Decision states that the Bureau of Indian Affairs ("BIA") recognizes Burley and Rashel Reznor ("Reznor") as representatives and officials of the Tribe, based on the results of the January 7, 2011 election. Specifically, the Superintendent's decision recognizes Burley as Chairperson and Reznor as Secretary/Treasurer of the California Valley Miwok Tribal Council.

Pursuant to 25 C.F.R. sections 2.2 and 2.4(a), Yakima Dixie ("Chief Dixie"), the California Valley Miwok Tribe, and Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo, individually and as members of the California Valley Miwok Tribe Tribal Council ("Tribal Council"), appeal the Superintendent's January 12 Decision to the BIA's Pacific Regional Director. Chief Dixie, the Tribe, the Tribal Council and Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo are collectively referred to as "Appellants." Appellants are interested parties who are adversely affected by the January 12 Decision. Appeal of the January 12 Decision to the Pacific Regional Director is authorized by 25 C.F.R. section 2.4(a). *See also LeCompte v. Superintendent, Cheyenne River Agency*, 38 IBIA 62, 62 (2002).

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Appellants will file a separate STATEMENT OF REASONS within the time period prescribed by 25 C.F.R. section 2.10(c).

The filing of an appeal under 25 C.F.R. Part 2 triggers an automatic stay of the challenged action during the pendency of the appeal. *See* 25 C.F.R. § 2.6(b); *Yakama Nation v. Northwest Regional Director Bureau of Indian Affairs*, 47 IBIA 117, 119 (2008). Accordingly, the BIA may take no further action to implement the January 12 Decision, including any action to recognize or conduct business with Burley or Reznor as officials or representatives of the Tribe or of its Tribal Council, until this appeal is resolved.

Appellants note that they are interested parties within the meaning of 25 C.F.R. section 2.2 but were not served with notice of the January 12 Decision as required by 25 C.F.R. section 2.7(a). Therefore, the time for filing an appeal is tolled until the BIA provides proper notice to Appellants. 25 C.F.R. § 2.7(b); *Charlotte J. Begaye v. Navajo Regional Director Bureau of Indian Affairs*, 41 IBIA 109, 110 (2005); *Alonzo S. Gallegos et al. v. Southwest Regional Director Bureau of Indian Affairs*, 41 IBIA 286, 290 (2005). Nonetheless, and without waiving any objection to the lack of proper notice, this Notice of Appeal is timely because it is filed within 30 days of the date of the Superintendent's January 12 Decision. 25 C.F.R. § 2.9(a).

Any and all notices given or required to be given to Appellants in this matter, and all papers served or required to be served on Appellants in this matter, should be delivered and served upon the following:

Robert J. Uram, Esq.
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San Francisco, California 94111-4109
Telephone: 415-434-9100
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CERTIFICATION OF SERVICE. Service of this document was made by U.S. Mail, return receipt requested, on February 9, 2011, in accordance with all applicable rules, including 25 C.F.R. Part 2 of the Code of Federal Regulations.

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Dated: February 9, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By Robert J. Uram /s/
ROBERT J. URAM

*Attorneys for Appellants Yakima Dixie, the California
Valley Miwok Tribe, the Tribal Council, Velma
WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn
Wilson and Antoine Azevedo*

SHEPPARD MULLIN RICHTER & HAMPTON LLP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is Four Embarcadero Center, 17th Floor, San Francisco, California 94111-4109.

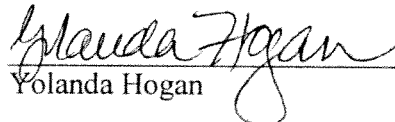
On **February 9, 2011**, I served the following document described as **NOTICE OF APPEAL** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes sent by certified mail, return receipt requested, addressed as follows:

Troy Burdick
Superintendent
Central California Agency
Bureau of Indian Affairs
650 Capital Mall, Suite 8-500
Sacramento, CA 95814
Facsimile: (916) 930-3780

Silvia Burley
10601 N. Escondido Pl.
Stockton, CA 95212

Robert Rosette, Esq.
Rosette & Associates
193 Blue Ravine Rd, Suite 255
Folsom, CA 95630
Facsimile: (916) 353-1085

Executed on February 9, 2011, at San Francisco, California.


Yolanda Hogan

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Exhibit A

The January 12 Decision



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

JAN 12 2011

Honorable Silvia Burley
Chairperson, California Valley Miwok Tribe
10601 N. Escondido Place
Stockton, California 95212

Dear Chairperson Burley:

The purpose of this correspondence is to acknowledge receipt of the Tribe's Report of Tribal Election and Addendum to Report of Tribal Election by tribal correspondence dated January 7, 2010. On January 7, 2011, the following witnesses: Tiger Paulk, Colleen Pringle, Richard Windfeathers Muniz, and Ty Muniz certified the election results of the January 7, 2010, Tribal election for the Chairperson and Secretary-Treasurer to be true and correct.

Therefore, as reported in the Tribe's Report of Tribal Elections, the following individuals currently represent and serve as officials of the California Valley Miwok Tribal Council:

1. Silvia Burley, Chairperson
2. Rashel Reznor, Secretary/Treasurer

Congratulations are extended to all the elected officials. Please feel free to contact my office about any Bureau program or any questions you may have.

Should you have any questions pertaining to this matter, please do not hesitate to contact Carol Rogers-Davis, Tribal Operations Officer, at (916) 930-3794.

Sincerely,

Troy Burdick
Superintendent

Notice of Appeal (Feb. 9, 2011) – Statement of Reasons for Appeal



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March 11, 2011

VIA U.S. MAIL

Amy Dutschke
Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way Suite W-2820
Sacramento, California 95825

STATEMENT OF REASONS

Dear Regional Director Dutschke:

On January 12, 2011, Troy Burdick, Superintendent of the Central California Agency, United States Bureau of Indian Affairs, issued a decision recognizing the results of a special election of the California Valley Miwok Tribe ("Tribe") held on January 7, 2011. The Superintendent's decision was contained in a letter to Silvia Burley ("Burley"), a true and correct copy of which is attached as Exhibit "A" (the "January 12 Decision" or "Decision"). The January 12 Decision states that the Bureau of Indian Affairs ("BIA") recognizes Burley and Rashel Reznor ("Reznor") as representatives and officials of the Tribe, based on the results of the January 7, 2011 election (the "Burley Election"). Specifically, the Superintendent's decision recognizes Burley as Chairperson and Reznor as Secretary/Treasurer of the California Valley Miwok Tribal Council.

Yakima Dixie ("Chief Dixie"), the California Valley Miwok Tribe,¹ and Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo, individually and as members of the Tribal Council formed by Chief Dixie in 2003 ("Dixie Council"), appealed the Superintendent's January 12 Decision to the BIA's Pacific Regional Director by filing a Notice of Appeal on February 9, 2011. (To avoid any confusion, this Statement of Reasons will refer to Appellants' Tribal Council as the "Dixie Council," to

¹ Appellants acknowledge that the Department currently recognizes Burley and Reznor as the representatives of the Tribe. The use of the Tribe's name is not meant to suggest that Burley or the recently elected Tribal Council authorized this appeal or that the Department recognizes the Dixie Council as authorized to act for the Tribe.

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STATEMENT OF REASONS

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distinguish it from Burley's newly constituted Tribal Council.) Appellants now file this separate **STATEMENT OF REASONS** pursuant to 25 C.F.R. section 2.10(c).

I. INTRODUCTION

As you know, the leadership and membership of this Tribe have been in dispute for many years. In 2003, our client Chief Yakima Dixie began working to organize the Tribe with the participation of the entire Tribal community. Chief Dixie formed the Dixie Council, composed of Chief Dixie, Appellants Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo. Each of the members of the Dixie Council claims Tribal membership as a lineal descendant of a historical member or members of the Tribe. Since late 2003, the Dixie Council has held open meetings approximately once each month. This body functioned as a Tribal government, representing the interests of all members of the Tribal community, while the dispute over leadership was ongoing. The Burley group also conducted activities in the name of the Tribe during this period, although it consistently excluded the broader Tribal community.

The Superintendent's January 12 Decision recognizes Burley and Reznor as the Tribal Council of the Tribe, based on an election in which only Burley, her two daughters and her granddaughter (collectively, the "Burleys"), and Chief Dixie were eligible to participate. [Public Notice Re Special Meeting of the General Council of the California Valley Miwok Tribe (Dec. 23, 2010).] Chief Dixie filed a notice of objection to the meeting. In his notice, Chief Dixie stated that it was inappropriate to hold an election while important Tribal membership and organization matters were in dispute, and while the Appellants had a challenge to the 2010 Decision pending. [Letter from Robert Uram to Silvia Burley (Jan. 6, 2011).] Burley did not respond and did not postpone the Burley Election.

In holding the Burley Election, Burley relied on the Assistant Secretary – Indian Affairs' recent decision regarding the Tribe, dated December 22, 2010. [Letter from Larry Echo Hawk, Assistant Secretary - Indian Affairs, to Yakima Dixie (Dec. 22, 2010) (the "2010 Decision").] Appellants believe that the 2010 Decision was unlawful, and they have filed suit in the federal district court for the District of Columbia, seeking judicial review of the 2010 Decision. *California Valley Miwok Tribe et al v. Salazar et al*, No. 1:11-cv-00160-RWR. Appellants believe it would be appropriate for the BIA to defer any implementation of the 2010 Decision while Appellants' judicial challenge to that decision is pending.

Even if the 2010 Decision were valid, however, the Superintendent's recognition of the Burley Election does not comply with the 2010 Decision. Appellants therefore request that the Regional Director vacate the Superintendent's January 12 Decision.

II. STANDING

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Appeal of the Superintendent's January 12 Decision to the Regional Director is authorized by 25 C.F.R. sections 2.2 and 2.4(a). *See also LeCompte v. Superintendent, Cheyenne River Agency*, 38 IBIA 62, 62 (2002). Appellants have standing to appeal because Appellants are interested parties who are adversely affected by the January 12 Decision. 25 C.F.R. § 2.2.

III. ARGUMENT

As the 2010 Decision notes, the Tribe must "act in accord with its governing documents when settling matters relating to leadership and membership." [2010 Decision p. 6.] But because the 2010 Decision rescinded a number of previous BIA decisions regarding the Tribe, without identifying the Tribe's current leadership or governing documents, it remains unclear what documents currently govern the Tribe. For example, over the years the Burleys have attempted to adopt a number of tribal constitutions, some of which would confer membership only on the Burleys and their descendants, while others would confer membership on non-Burley descendants as well. *See California Valley Miwok Tribe v. USA*, 424 F.Supp.2d 197, 203 n. 7 (D.D.C. 2006) (noting that Burley's most recent proposed constitution would confer membership on non-Burley descendants, for a possible total of 29 members). Neither the Tribe nor the BIA has identified which, if any, of the previously adopted governing documents might currently govern the Tribe.

Because the Tribe's governing documents have not been identified, the members eligible to participate in a General Council meeting or election cannot be identified. It therefore cannot be known whether all eligible members were served with proper notice of the Burley Election. It also cannot be known whether a sufficient number of Tribal members participated in order to constitute a quorum.² Likewise, it is unknown whether the proper procedures for noticing and conducting a tribal election were followed.

Under the circumstances, the Superintendent's decision to recognize the Burley Election results is arbitrary, capricious, and lacking in evidentiary support. *See, e.g., Bernell Kombol, d.b.a. Grass Mountain Logging Co. v. Acting Assistant Portland Area Director, Bureau of Indian Affairs*, 21 IBIA 116, 118 (1991) (holding that BIA decisions that are erroneous or unsupported by substantial evidence must be reversed); *Pueblo of Laguna v. Assistant Secretary - Indian*

² On that subject, Appellants also note that the January 12 Decision acknowledges the results of the Burley Election without even disclosing how many members voted in the election, who those members were, or for whom they voted. Appellants have made separate requests to both the Superintendent and Burley for a copy of the "Tribe's Report of Tribal Election and Addendum to Report of Tribal Election" referenced in the January 12 Decision. Neither party has so much as responded to Appellants' request.

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Affairs, 12 IBIA 80, 105 (1983) (holding that BIA decisions not supported by the administrative record must be vacated).

Moreover, the Superintendent's recognition of a tribal election conducted under these circumstances violates the BIA's obligations to the Tribe and its members. In recognizing the results of tribal elections, the BIA has a duty to ensure that the rights of all tribal members are protected and that any tribal leaders it recognizes enjoy the support of a majority of the Tribe's members. *Seminole Nation of Oklahoma*, 223 F.Supp.2d at 140, 146-147 (finding that "the DOI has the authority and responsibility to ensure that the [tribe's] representatives, with whom it must conduct government-to-government relations, are the valid representatives of the [tribe] as a whole," and affirming DOI's rejection of tribal election results). *See also California Valley Miwok Tribe*, 515 F.3d 1262, 1267 (D.C. Cir. 2008) (quoting *Seminole Nation*).

IV. CONCLUSION

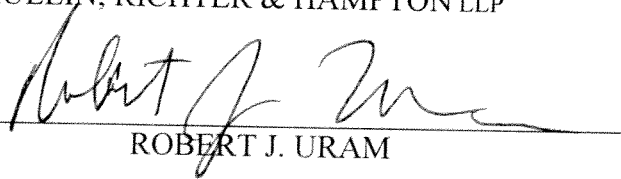
For the reasons set forth in this Statement of Reasons, Appellants respectfully request that the Regional Director vacate the Decision and direct the Superintendent that he shall not recognize the results of any Tribal election until the Tribe's governing documents have been identified and until the BIA has determined that an election complied with the requirements of those governing documents.

CERTIFICATION OF SERVICE. Service of this document was made by U.S. Mail, return receipt requested, on March 11, 2011, in accordance with all applicable rules, including 25 C.F.R. Part 2 of the Code of Federal Regulations.

Dated: March 11, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



ROBERT J. URAM

Attorneys for Appellants Yakima Dixie, the California Valley Miwok Tribe, the Tribal Council, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Exhibit A

The January 12 Decision

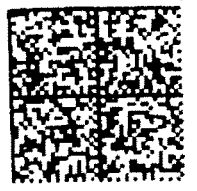
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DEPARTMENT OF THE INTERIOR**

Bureau of Indian Affairs
Central California Agency
650 Capitol Mall, Suite 8-500
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Silvia Burley, Chairperson
California Valley Miwok Tribe
10601 N. Escondido Place
Stockton, California 95212



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Congratulations are extended to all the elected officials. Please feel free to contact my office about any Bureau program or any questions you may have.

Should you have any questions pertaining to this matter, please do not hesitate to contact Carol Rogers-Davis, Tribal Operations Officer, at (916) 930-3794.

Sincerely,

Troy Burdick
Superintendent

SHEPPARD MULLIN RICHTER & HAMPTON LLP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is Four Embarcadero Center, 17th Floor, San Francisco, California 94111-4109.

On **March 11, 2011**, I served the following document described as **STATEMENT OF REASONS** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Rashel Reznor
California Valley Miwok Tribe
10601 N. Escondido Pl.
Stockton, CA 95212

Silvia Burley
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Stockton, CA 95212

California Valley Miwok Tribe
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Troy Burdick
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Robert Rosette, Esq.
(Attorney for Silvia Burley)
Rosette & Associates
193 Blue Ravine Rd, Suite 255
Folsom, CA 95630

Executed on March 11, 2011, at San Francisco, California.



Kathryn Campion