

EXHIBIT 5

To

**Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary
Injunction**

AFFIDAVIT OF MICHAEL MENDIBLES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

THE CALIFORNIA VALLEY MIWOK
TRIBE, *et al.*,

v.

KEN SALAZAR, in his official capacity
as Secretary of the United States
Department of the Interior, *et al.*

Case No. 1:11-cv-00160-RWR

Affidavit of Michael Mendibles In Support
of Plaintiffs' Motion for Preliminary
Injunction

Hon. Richard W. Roberts

AFFIDAVIT OF MICHAEL MENDIBLES

I, Michael Mendibles, declare as follows:

1. I am an individual and a party in the above-entitled action. I am over the age of 18 and a resident of Calaveras County, California. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto.

2. This affidavit is submitted in support of Plaintiffs' Motion for Preliminary Injunction.

3. I am a member of the California Valley Miwok Tribe ("Tribe") and of its Tribal Council ("Council"). I trace my tribal lineal descent from my mother, Valarie Mata-Mendibles, my grandmother, Dora Hodge-Shelton Mata, and my great-grandmother, Lena Hodge-Shelton, who were listed in the 1915 Indian census and/or the 1929 Indian Census Roll of Calaveras County.

4. I own ancestral land adjacent to the Sheep Ranch Rancheria.

1 5. I recognize Yakima Dixie as the Hereditary Chief and Traditional
2 Spokesperson of the Tribe.

3
4 6. I do not recognize Silvia Burley as any authority for the Tribe.

5
6 7. In 2003, Yakima Dixie appointed me to the Council. The Council
7 currently consists of Yakima Dixie, me, and four other persons who are recognized as
8 persons of authority within the Tribe: Velma Whitebear, Antonia Lopez, Evelyn Wilson
9 and Antone Azevedo. With few exceptions, the Council has met each month since 2003 to
10 conduct Tribal business, enact resolutions, and perform other governmental functions.

11
12 8. The Tribal Council met with the BIA in September 2003 and
13 presented them with documentation of the Council's legitimate claim to Tribal authority.
14 We also presented the BIA with a list of Tribal community members who should be
15 allowed to participate in the initial organization of the Tribe. We requested that the BIA
16 call a Secretarial election under the IRA to select a tribal government by majority vote that
17 would be recognized by the United States government. The BIA did not act on the
18 Council's request to call a Secretarial election but continued to meet with the Council to
19 discuss efforts to organize the Tribe.

20
21 9. Tribal Council meetings are open to all members of the Tribal
22 community. Attendance at the meetings ranges from approximately 30 persons to more
23 than 100 persons. Attendance records are kept and meetings are recorded and archived. I
24 participate regularly in these meetings. Burley was specifically invited to the initial
25 meetings and has never been excluded, but she has never attended any of the meetings that
26 I attended.

27
28

1 10. Under the leadership of the Council, the Tribe has initiated a number
2 of programs aimed at benefiting the full Tribal membership, strengthening the tribal
3 community, and reestablishing historic ties with the larger Indian community. These
4 programs and activities include the following:

5
6 11. The Tribe has interceded in approximately ten child custody cases
7 under the Indian Child Welfare Act, in an effort to have children of Tribe members placed
8 with families that have ties to Indian traditions. Burley has opposed the Tribe's efforts in
9 those cases and denied that the children are eligible for membership in the Tribe.

10
11 12. The Tribe has participated in Indian health services, emergency
12 services and food distribution programs, including the MACT Indian health services
13 program, that benefit members of the Tribe and other Indian tribes.

14
15 13. The Tribe has participated, with other Miwok tribes, in an intertribal
16 Miwok Language Restoration Group. Evelyn Wilson is the senior Miwok member who
17 still speaks the Miwok language.

18
19 14. The Tribe has formed a ceremonial Indian dance group that represents
20 the Tribe at events throughout California.

21
22 15. The Tribe has consulted with Caltrans and other agencies regarding
23 Indian cultural artifacts and remains found at development sites.

24
25 16. The Tribe has offered classes in traditional crafts and skills, such as
26 basket weaving, and participates in ongoing efforts to revive the gathering of native plants,
27 pine nuts, and other materials for such crafts, as well as to protect the sites where those
28 materials are gathered.

1 17. The Tribe is engaged in discussions with Calaveras County and other
2 local and state agencies, through the Amador-Calaveras Consensus Group and the
3 Calaveras Healthy Impact Products Solutions program, regarding joint participation in the
4 Collaborative Forest Landscape Restoration Program, a federally supported forest
5 rehabilitation program. This program would provide economic opportunities for Tribe
6 members and the local community.

7
8 18. The Tribe participates in the annual Salmon Distribution Project in
9 which it obtains several tons of fresh salmon from the Oroville Dam hatchery and
10 distributes it to Tribe members.

11
12 19. The Tribe has issued Tribal identification cards and keeps a
13 membership roll that is updated regularly.

14
15 20. In April 2007, the BIA published public notices requesting that
16 individuals who asserted a claim to Tribal membership provide the BIA with
17 documentation of their claims, such as personal genealogies showing their descent from
18 historical members of the Tribe. I submitted my genealogy to the BIA. To my knowledge,
19 no member of the Burley Faction submitted any documentation of their claims to
20 membership.

21
22 21. As a result of the Assistant Secretary for Indian Affairs' December 22,
23 2010 Decision to recognize the Tribe as organized under an invalid 1998 resolution (the
24 "December 22 Decision"), the Tribal Council's authority is infringed, and the United
25 States does not recognize the Council or its members as representatives or authorities of
26 the Tribe.

1 22. I would like to participate in the organization of the Tribe under the
2 Indian Reorganization Act, but as a result of the December 22 Decision, neither I will not
3 be allowed to participate in the organization process, the drafting and adoption of a Tribal
4 constitution, or the creation of a Tribal government that is recognized by the United States.
5

6 23. Based on the December 22 Decision, Burley held a “special meeting”
7 on January 7, 2011, at which only Burley, her daughters, and her granddaughter were
8 allowed to attend. I was not permitted to attend the special meeting.
9

10 24. Burley characterized the special meeting as a meeting of the Tribe’s
11 General Council and attempted to hold a Tribal election at the meeting. I do not recognize
12 Burley’s authority to call a Tribal election or General Council meeting.
13

14 25. I do not recognize the results of the election Burley conducted at that
15 meeting, in which only Burley and her family members voted. However, the BIA has
16 issued decisions recognizing the results of the election and recognizing Burley as
17 Chairperson and her daughter Rashel Reznor as Secretary/Treasurer of the Tribe.
18

19 26. Burley also seeks to use the December 22 Decision as a basis to
20 exclude me and the other members of the Council from participating in litigation that she
21 filed in California Superior Court to gain access to more than \$6 million in Revenue
22 Sharing Trust Fund ("RSTF") money held in trust for the Tribe by the state of California.
23


24 27. Based on the December 12 Decision, the BIA has resumed payment
25 of tribal “self-determination” funds to Burley under Public Law 93-638. Those funds are
26 intended to assist the Tribe in organizing itself, forming a representative government and
27 performing governmental functions and services.
28

1 28. I have never received any of the RSTF money that Burley previously
2 received from the state of California, or any of the federal self-determination funds that
3 Burley previously received from the United States under Public Law 93-638. I am not
4 aware of any other Tribal member who received any of the funds except for Burley and her
5 immediate family. I am not aware of any programs or services for the benefit of the Tribe
6 or its members that were established or supported using the funds. If Burley receives the
7 funds, neither the Tribe itself, nor the Council, nor any other members of the Tribe will
8 receive any of the funds or benefit from the funds. In addition, the funds will support
9 Burley's continued efforts to deny the benefits of Tribe membership to other members.

10
11 29. The Assistant Secretary's December 22 Decision deprives me of
12 membership in the Tribe, because it allows Burley to deny membership to anyone who is
13 not a member of her immediate family. As a result of this deprivation, I feel a loss of my
14 cultural identity and my place in the Native American community. In addition, I will not
15 have access to federal medical benefits and other services available to members of
16 federally recognized Indian tribes.

17
18 I declare under penalty of perjury under the laws of the United States of
19 America that the foregoing is true and correct.

20
21 Executed March 5, 2011, at Calaveras County, California.

22
23
24 
25 Michael Mendibles
26 3-5-2011