ATTACHMENT E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALIFORNIA VALLEY MIWOK TRIBE, formerly, SHEEP RANCH OF ME-WUK INDIANS OF CALIFORNIA,	
Plaintiff,	
v.	**Judge James Robertson**
	No. 1: 05CV00739
UNITED STATES OF AMERICA, GAIL A. NORTON, Secretary of the Interior, MICHAEL D. OLSEN, Acting Assistant Secretary-Indian Affairs,	
Defendants.	

SUPPLEMENTAL DECLARATION OF FRED DOKA, Jr.

I, FRED DOKA, Jr. declare:

1. This Declaration supplements my Declaration of November 9, 2004, filed in California Valley Miwok Tribe v. United States, et al., No. 1:04CV17941794 (RWR) - - a suit filed in the federal district court for the District of Columbia.

2. I am the Tribal Operations Officer for the Pacific Regional Office of the Bureau of Indian Affairs located in Sacramento, California. I have personal knowledge of the facts set forth in this Supplemental Declaration.

3. In my November 9, 2004, Declaration, I referred to the March 26, 2004, decision of BIA's Central California Agency "concerning Sylvia Burley and the California Valley Miwok Tribe." I also stated that "[t]here has been no appeal submitted to the Pacific Regional Office . . ." from that March 26, 2004, decision.

4. I have checked the records of the Pacific Regional Office for the period from November 9, 2004 to July 28, 2005. No appeal from the March 26, 2004, decision has been filed during this period, either.

Pursuant to the provisions of 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29th day of July, 2005, in Sacramento, California.

FRED DOKA, Jr.

ATTACHMENT F

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUN 10 2003

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Department of the Interior has reviewed S. 523, the " Native American Technical Corrections Act of 2003," as amended. The following are the Department's views on this legislation.

TITLE I – TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

Subtitle A – Technical Amendments

Section 103 - Tribal Sovereignty

Section 103 authorizes tribes to adopt governing documents under procedures other than those specified in Section 103. The Department is concerned about the serious potential implications of this provision.

Tribes have the inherent authority to adopt governing documents outside the procedural requirements imposed by certain federal statutes. It is therefore unclear and troublesome what, if anything, Section 103 adds to existing law. It is also unclear how Section 103 would affect tribes seeking to amend their current constitutions, particularly those containing an express "reserved powers" clause. The federal statutes that form the basis for tribal reorganization (the Indian Reorganization Act of 1934 (IRA), including the Alaska amendment of 1936, and the Oklahoma Indian Welfare Act of 1936, and the regulations implementing them) guarantee notice, a defined process, and minimum participation before a tribe's constitution is adopted. That process and minimum participation provides the Secretary with assurance that those with whom she deals in accordance with the tribe's constitution represent the majority of tribal members. Additionally, the process ensures predictability and certainty in tribal operation and reliability by those dealing with the tribes, factors that are fundamental to successful tribal operation in numerous areas, including economic development.

Without the procedures set forth in the above-mentioned statutes and their implementing regulations, identifying a tribe's governing document and its duly elected leaders will be difficult. The Catawba Restoration Act (25 U.S.C. § 941 et seq.) illustrates the potential problems. The Act was enacted in October of 1993 and gave the Tribe the option of reorganizing under the IRA (25 U.S.C. § 941g). The tribal leaders in office at the time of restoration have asserted that their constitution was amended to allow them to remain in office until a new constitution is adopted. The litigation between the two tribal factions over the governing constitution and the tribe's correct leaders is in its fifth year.

Section 107 - Chippewa Cree Tribe; Modification of Settlement

The Department suggests that this section be removed. The conditions for settlement effectiveness have been met and there is no need for an extension.

Subtitle B – Other Provisions Relating to Native Americans

Section 121 - Barona Band of Mission Indians Pipeline Construction

Section 121 is a legislative transfer into trust of approximately 85 acres of the Barona Band's fee land. The land is to be used for the construction of a pipeline and for conservation purposes, and will become part of the tribe's reservation. The Department asks that Congress consider the cost to and potential liability of the United States Government with respect to legislative transfers of land into trust, both in this particular instance and all future mandatory trust transactions.

Section 124 - Pueblo of Acoma; Land and Mineral Consolidation

This provision is consistent with language drafted by the Office of the Solicitor and the Bureau of Land Management. It will assist the Pueblo in maintaining its traditional way of life by providing another option for the acquisition of non-trust mineral rights.

The Department does, however, recommend that the word "other" be deleted from subsection (c)(2). As currently drafted, this subsection is ambiguous as to who may take advantage of the bidding or royalty credit. This change would clarify that any holder of the credit may use it.

Section 129 - Shakopee Mdewakanton Sioux Community

Department regulations at 25 C.F.R. 151.22 (b) provide that the Secretary must approve conveyances of all tribally held lands (including fee lands). Section 129 authorizes the Tribe to lease, sell, convey, warrant, or otherwise transfer any of its fee-owned land without first receiving Secretarial approval. This provision also makes clear that the Tribe is not authorized to sell its trust lands. Section 129 clarifies that conveyances of the Tribe's fee lands will not violate the

Non-Intercourse Act, 25 U.S.C. 177, and will enable the Tribe to freely convey its properties without additional administrative burdens. The Department supports this provision.

Section 130 - Agua Caliente Band of Cahuilla Indians

Section 130(a) states that the United States must take lands into trust under 25 U.S.C. 465 despite any restrictive covenants. Subsection (b) states that any covenants attached to the lands acquired in trust are unenforceable against the government if the land was held in trust before the land became restricted. The Department is concerned about the mandatory nature of this provision, *i.e.*, the automatic transfer of land into trust without the 25 CFR Part 151 acquisition process. Moreover, the Department believes that this provision is overly broad in two respects. First, no specific parcel of land is mentioned in the legislation. Therefore, not only is it unclear which land must be taken into trust, it appears that there are no limits on the amount of land or the number of parcels that "shall be taken [into trust] in the name of the United States." Second, this provision provides that any lands acquired by the United States in trust under 25 U.S.C. 465 for the Tribe shall be taken into trust regardless of any other provisions of law, "including any restrictive covenant." The Department is concerned that this language could be expansively interpreted to mean that the Secretary could be put in a position of accepting into trust land that has other "problems," *e.g.*, environmental liabilities, or that lands acquired in trust do not have to meet Department of Justice Title Standards.

The Department would like to work with the Committee on amending Section 130 both to accomplish the goals of the provision as well as address the Department's concerns. In addition, the Department asks that Congress consider the cost to and potential liability of the United States Government with respect to legislative transfers of land into trust.

Section 131 - Saginaw Chippewa Tribal College

The Department believes this provision is premature. The Department currently has an accreditation process for colleges seeking status and funding as a Tribally Controlled Community College. Although Saginaw Chippewa Tribal College has an application before the Department, it has yet to be completely vetted under this accreditation process.

Section 132 - Ute Tribe Shale Reserve

In 2000, Congress conveyed 80,000 acres of land from the Department of Energy to the Ute Indian Tribe of the Uintah and Ouray Reservation in northeastern Utah. The conveyance was in fee simple, and the United States relinquished all management authority over the land. Section 132 would clarify the status of the land with respect to alienation and would assist the Tribe in developing its gas reserves. Section 132 is also consistent with the focus on self-determination found in the energy bills pending before Congress. The Department supports this provision.

TITLE II – PUEBLO OF SANTA CLARA AND PUEBLO OF SAN ILDEFONSO

Title II transfers land managed by the Bureau of Land Management into trust for the benefit of the Pueblos of Santa Clara and San Ildefonso and declares the lands to be part of the Pueblos' reservations. Sec. 205 designates the lands to be part of the reservations but also restricts the use of the trust lands to conservation and traditional and customary purposes. The language also restricts any new commercial development and gaming on the trust lands. The Department testified in support of this provision during a hearing on February 27, 2003 in front of the Senate Energy and Natural Resources Committee Subcommittee on Public Lands and Forests.

TITLE III – QUINAULT FISHERIES FUND DISTRIBUTION

The provisions of Title III allow for the direct distribution to the Quinault Indian Nation (QIN) of Tribal Fisheries and Interest Claims moneys awarded by the United States Claims Court. QIN is mandated to create and maintain three separate accounts: 1) A Permanent Fisheries Fund for the principal amount of the judgment funds where the principal cannot be expended by the Tribe and must be invested; 2) An investment account based on the investment interest earned from the funds deposited into the Permanent Fisheries Fund from the date of disbursement to the QIN to be available for fisheries enhancement projects; and 3) An account for the investment income earned on the judgment funds from September 19, 1989, to the date of disbursement to the Tribe. The bill authorizes the third account to be used for tribal government activities.

We are concerned that the provisions in Title III do not allocate the funds appropriately among the claims against which the judgment was awarded (tribal fisheries and interest claims). In addition, the legislation does not provide for Departmental review or approval over the QIN investment policy. Upon disbursement, therefore, the Department could no longer ensure that the investment or use of these funds is consistent with the terms of the judgment award.

As trustee, it is the Department's responsibility to ensure that the judgment award is distributed according to the terms of the settlement agreement between the parties, and that the distribution follows the Court's order. Consequently, the Permanent Fisheries Fund should be funded with the principal awarded, but the interest earned on the principal from the date the funds were deposited with Treasury should be invested for fisheries enhancement projects. The original interest claim, plus interest earned on that amount from the date the funds were deposited with Treasury, should be allocated for the "tribal government activities" fund.

Additionally, we recommend that approval authority over the Tribe's investment plan be required by the Department prior to the disbursement of these funds to the Tribe. This requirement is consistent with Title II of the 1994 American Indian Trust Fund Management Reform Act that requires Secretarial approval of a Tribe's management plan prior to the withdrawal of funds from trust. Annual Departmental approval of the QIN investment plans will provide the Department assurance that these funds are managed prudently.

The Office of Management and Budget has advised that there are no objections to the submission of this report from the standpoint of the Administration's programs.

Sincerely,

David L. Bernhardt
Director of Congressional and
Legislative Affairs and Counselor
to the Secretary

cc: Honorable Daniel K. Inouye
Vice Chairman

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

OCT 23 2003

Honorable Richard Pombo
Chairman, Committee on Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The following sets forth the concerns of the Department of the Interior on S. 523, the "Native American Technical Corrections Act of 2003". The bill was introduced by Senator Campbell on March 5, 2003, and following Senate passage on July 30, 2003, was referred to the House Resources Committee for action. The Department has the following concerns with the bill.

TITLE I – TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

Subtitle A – Technical Amendments

Section 103 - Tribal Sovereignty

Section 103 authorizes tribes to adopt governing documents under procedures other than those specified in Section 103. The Department is concerned about the serious potential implications of this provision.

Tribes have the inherent authority to adopt governing documents outside the procedural requirements imposed by certain federal statutes. It is therefore unclear and troublesome what, if anything, Section 103 adds to existing law. It is also unclear how Section 103 would affect tribes seeking to amend their current constitutions, particularly those containing an express "reserved powers" clause. The federal statutes that form the basis for tribal reorganization (the Indian Reorganization Act of 1934 (IRA), including the Alaska amendment of 1936, and the Oklahoma Indian Welfare Act of 1936, and the regulations implementing them) guarantee notice, a defined process, and minimum participation before a tribe's constitution is adopted. That process and minimum participation provides the Secretary with assurance that those with whom she deals in accordance with the tribe's constitution represent the majority of tribal members. Additionally, the process ensures predictability and certainty in tribal operation and reliability by those dealing with the tribes, factors that are fundamental to successful tribal operation in numerous areas, including economic development.

Without the procedures set forth in the above-mentioned statutes and their implementing regulations, identifying a tribe's governing document and its duly elected leaders will be difficult. The Catawba Restoration Act (25 U.S.C. § 941 et seq.) illustrates the potential problems. The Act was enacted in October of 1993 and gave the Tribe the option of reorganizing under the IRA (25 U.S.C. § 941g). The tribal leaders in office at the time of restoration have asserted that their constitution was amended to allow them to remain in office until a new constitution is adopted. The litigation between the two tribal factions over the governing constitution and the tribe's correct leaders is in its fifth year.

Subtitle B – Other Provisions Relating to Native Americans

Section 123 – Pueblo of Acoma; Land and Mineral Consolidation

Section 123 will assist the Pueblo in maintaining its traditional way of life by providing another option for the acquisition of non-trust mineral rights. However, after further review, the Department believes there is a more workable alternative to the language currently provided for in the bill. The Department requests that the provision be amended by striking subsections (a) and (c), and amending (b) by striking "(b)" and by striking "issuing bidding or royalty credits under this section" and inserting at the end of the section "from royalties derived from leases issued under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) that otherwise would be deposited to miscellaneous receipts.".

Section 127 - Agua Caliente Band of Cahuilla Indians

Section 127(a) states that the United States take lands into trust that the Secretary of the Interior agrees is to be acquired by the United States under 25 U.S.C. 465 despite any restrictive covenants. Subsection (b) states that any covenants attached to the lands acquired in trust are unenforceable against the government if the land was held in trust before the land became restricted. The Department is concerned about the mandatory nature of this provision, *i.e.*, the automatic transfer of land into trust without the 25 CFR Part 151 acquisition process. The Department asks that Congress consider the cost to and potential liability of the United States Government with respect to legislative transfers of land into trust.

TITLE II – PUEBLO OF SANTA CLARA AND PUEBLO OF SAN ILDEFONSO

Title II transfers land managed by the Bureau of Land Management into trust for the benefit of the Pueblos of Santa Clara and San Ildefonso and declares the lands to be part of the Pueblos' reservations. Sec. 205 designates the lands to be part of the reservations but also restricts the use of the trust lands to conservation and traditional and customary purposes. The language also restricts any new commercial development and gaming on the trust lands. This provision was introduced by Senator Domenici as S. 246 on January 29, 2003, on which the Department testified in support during a hearing before the Senate Energy and Natural Resources Committee Subcommittee on Public Lands and Forests on February 27, 2003. S. 246 passed the Senate on June 16, 2003 and the House of

Representatives on July 16, 2003. The President signed the bill on July 30, 2003 (Pub. L. 108-66). Therefore, Title II should be struck from S. 523.

TITLE III – QUINAULT FISHERIES FUND DISTRIBUTION

The provisions of Title III allow for the direct distribution to the Quinault Indian Nation (QIN) of Tribal Fisheries and Interest Claims moneys awarded by the United States Claims Court. QIN is mandated to create and maintain three separate accounts: 1) A Permanent Fisheries Fund for the principal amount of the judgment funds where the principal cannot be expended by the Tribe and must be invested; 2) An investment account based on the investment interest earned from the funds deposited into the Permanent Fisheries Fund from the date of disbursement to the QIN to be available for fisheries enhancement projects; and 3) An account for the investment income earned on the judgment funds from September 19, 1989, to the date of disbursement to the Tribe. The bill authorizes the third account to be used for tribal government activities.

The Order issued by the United States Court of Claims states that "Final judgment be entered on behalf of the Quinault Indian Nation in the amount of $600,000 for the Tribal Fisheries and Interest Claims. . ." The Tribal Fisheries claim was for the loss of a tribal asset, i.e., loss of fish catches, depletion of spawning and failure to protect fisheries from debris in the river as a result of inappropriate timber harvesting methods. The Interest claim was the result of the nonpayment of interest for one year on a separate judgment the Tribe was awarded in July 1964, to be used for purposes determined by the Tribe. The Interest claim was settled for $17,000 as a portion of the entire $600,000 award. Attorney fees of $60,000 also were awarded as a portion of the $600,000 award. The Tribal Fisheries portion of the claim, $523,000, made up the remainder of the total judgment amount.

We are concerned that the provisions in Title III do not allocate the funds appropriately among the claims against which the judgment was awarded (tribal fisheries and interest claims). The Department recommends the bulk of the settlement award be provided for fisheries restoration projects, which will benefit current and future members of the Tribe. As currently worded, S. 523 allocates the bulk of the judgment award (all investment income earned on the funds from September 19, 1989, until the date of disbursement) to tribal operations. Thus, the significant interest that has accumulated on the principal invested since 1989 may not be used for fisheries enhancements at all, but for any purpose determined by the Tribe. If the settlement funds had been released more promptly, the vast majority of interest earned during the ensuing years would have been used for fisheries, as originally intended. The fact that the fund has generated interest for fourteen years should benefit the fisheries program, rather than tribal operations. According to the allocation identified in the current language, several more years could pass before the fisheries program for the Tribe benefited by this award.

The Department, therefore, recommends that the Permanent Fisheries Fund be established with the interest earned on the principal from the date the funds were deposited with Treasury. The account for tribal operations should be funded by the

Interest claim of $17,000, plus interest earned on that amount from the date the funds were deposited with Treasury.

The Office of Management and Budget has advised that there are no objections to the submission of this report from the standpoint of the Administration's programs.

Sincerely,

David L. Bernhardt
Director of Congressional and
Legislative Affairs and Counselor
to the Secretary

cc: Honorable Nick J. Rahall
Ranking Minority Member