

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**CALIFORNIA VALLEY MIWOK TRIBE,  
formerly SHEEP RANCH OF ME-WUK  
INDIANS OF CALIFORNIA,**

**Plaintiff,**

**v.**

**UNITED STATES OF AMERICA,  
GALE A. NORTON, Secretary of the  
Interior,**

**and**

**JAMES E. CASON, Associate Deputy  
Secretary of the Interior,<sup>1/</sup>**

**Defendants.**

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**No. 1:05CV00739**

**Judge James Robertson**

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

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Washington, D.C. 2004

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<sup>1/</sup> David W. Anderson, formerly the Assistant Secretary - Indian Affairs, is no longer with the Department of the Interior. The position of Assistant Secretary - Indian Affairs is vacant. The duties of the Assistant Secretary have been delegated by the Secretary of the Interior to the Associate Deputy Secretary by Secretarial Order 3259, dated February 8, 2005, as amended on August 11, 2005. James E. Cason, Associate Deputy Secretary is substituted for Mr. Anderson pursuant to Fed. R. Civ. P. 25(d).

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v.

UNITED STATES OF AMERICA,  
GALE A. NORTON, Secretary of the  
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No. 1:05CV00739

Judge James Robertson

MEMORANDUM IN SUPPORT OF DEFENDANTS' OPPOSITION  
TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The Tribe's preliminary injunction motion is yet another reflection of the underlying internal tribal dispute over leadership, membership and organizational issues which constitutes the very essence of this lawsuit. The Tribe's motion really amounts to the latest episode in an ongoing, seemingly interminable, saga of internal tribal turmoil. **Defendants strongly oppose this latest maneuver to avoid confronting the jurisdictional deficiencies in the Tribe's case, and request that this Court first consider Defendants' pending Motion to Dismiss before ruling on the Tribe's motion for preliminary injunction.**

Plaintiff California Valley Miwok Tribe now challenges the decision of Raymond Fry, Tribal Operations Officer, Bureau of Indian Affairs' Central California Agency, contained in the

October 26, 2005 letter from Mr. Fry to Ms. Silvia Burley, refusing to take action on Tribal Resolution No. R-1-09-26-2005. See Attachment A hereto. This resolution authorized the reprogramming of “Tribal Priority Allocation” (TPA) funds in the amount of \$3,000 for each of three years (fiscal years 2006, 2007, and 2008) for the purpose of transferring these funds “into a special Bureau [BIA Central California Agency] account for the express purpose of expanding the Realty and Environmental Services [offices of the Agency] in the area of fee-to-trust acquisitions by funding the California Fee-to-Trust Program.”<sup>2/</sup> The Tribe sent the Resolution to the Central California Agency for the purpose of having BIA approve it.

As noted, this present challenge (as is true of the Tribe’s challenge to the March 26, 2004 decision of the Superintendent of BIA’s Central California Agency (see Complaint filed April 12, 2005; Memorandum in Support of Defendants’ Motion to Dismiss, filed August 5, 2005 at 1-5)), clearly reflects the underlying internal tribal dispute over leadership and organizational issues which constitutes the very core of this suit. Plaintiff’s motion unavoidably implicates the Defendants’ Motion to Dismiss, which, if granted, would dictate denial of the Plaintiff’s motion. Accordingly, Defendants suggest that the Court first rule on their Motion to Dismiss on which briefing has been completed. In the alternative, Defendants request the Court to deny the Tribe’s motion for a preliminary injunction and then rule on the government’s Motion to Dismiss.

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<sup>2/</sup> Under the Indian Self-Determination and Education Assistance Act, Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, commonly referred to simply as “638” (25 U.S.C. § 450 *et seq.*), tribes can contract with the BIA to perform services that the BIA would otherwise perform pursuant to the Tribe’s Tribal Priority Allocation (TPA). The funds in this case were provided to the Tribe by the BIA pursuant to a “638” contract to enable the Tribe to implement the Aid to Tribal Government Program and, thus, were Federal government, not tribal monies.

### **FACTUAL BACKGROUND<sup>3/</sup>**

In his February 11, 2005, letter, Michael D. Olsen, the Acting Principal Deputy Assistant Secretary- Indian Affairs, stressed: “The first step in organizing the Tribe is identifying putative tribal members. If you need guidance or assistance, Ray Fry... of the Central California Agency of the BIA can advise you how to go about doing this.” This admonition prompted both tribal factions to set up meetings to discuss the organization of the Tribe. See Attachment B hereto (Third Declaration of Raymond Fry, dated January 3, 2006, ¶12).

Beginning in March, 2005, the Central California Agency’s acting and permanent Superintendents and Mr. Fry held a series of meetings, attended by Mr. Yakima Dixie, (hereditary chief of the Tribe, first Tribal Chairperson, and spokesperson for “putative tribal members,” -- see Motion of Yakima Dixie to Intervene at 2), his tribal consultants, attorneys and prospective tribal members and, on the other hand, representatives of Ms. Silvia Burley. See Attachment B (Id., ¶¶ 13-17).

The principal subjects of discussion at the foregoing meetings were: (1) identification of putative members of the Tribe; (2) organizational approaches/methods that should be considered for use; (3) the concerns of the Yakima Dixie faction about the use of P.L. No. 93-638 contract funds under Ms. Burley’s leadership; (4) the use of non-gaming revenues by the Burley faction; and (5) the lack of Ms. Burley’s personal involvement in any of these meetings. Id., ¶16.

Tribal Resolution No. R-1-09-26-2005, (dated September 26, 2005), authorized a reprogramming of “638” funds in the amount of \$3,000 for each of Fiscal years 2006, 2007 and 2008 for the purpose of joining the fee-to-trust consortium comprised of numerous federally

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<sup>3/</sup> The “Factual Background” of this litigation contained in the Memorandum in Support of the Defendants’ Motion to Dismiss at 5-9 covers the period from 1998 up through February 11, 2005, and is incorporated herein by reference.

recognized tribes in California. The purpose of the BIA's Pacific Region Fee-to-Trust Program is to facilitate putting tribal fee lands into trust. Id., ¶¶ 20, 21. The Department of the Interior is now reviewing the authority for, and appropriateness of, this program. Id., ¶22.

On September 2, 2005, Mr. Yakima Dixie moved to intervene in this case. Just before that, on August 30, 2005, Ms. Silvia Burley, the leader of the other faction of the Tribe, notified Mr. Dixie that he had been officially disenrolled from the Tribe. Id., ¶11. See also Plaintiff's Opposition to Yakima Dixie's Motion to Intervene, at 7-9.

In a letter of October 26, 2005, addressed to Ms. Silvia Burley, from Raymond Fry, Tribal Operations Officer for the BIA's Central California Agency, Mr. Fry stated that he was returning Tribal Resolution No. R-1-09-26-2005, authorizing a reprogramming of Tribal Priority Allocation (TPA) funds [that is, "638" contract monies provided to the Tribe by BIA to enable the Tribe to implement the Aid to Tribal Government Program and thus government, not tribal, monies], in the amount of \$3,000 annually (for Fiscal Years 2006, 2007, and 2008) for use in the BIA's Fee-to-Trust Program without taking any action thereon. See Attachment B (Declaration of Raymond Fry), ¶¶ 23, 24. The stated rationale for the refusal to take action was that "... the BIA does not recognize any governing body for the Tribe, nor do we currently have a government-to-government relationship with the California Valley Miwok Tribe ..." Although Mr. Fry had sent a draft of the letter to Scott Keep, Assistant Solicitor, Tribal Government and Alaska, in the main Office of the Solicitor in Washington, D.C., neither Mr. Fry nor any other official of the BIA's Central California Agency requested Mr. Keep's approval of the draft before it was sent to Ms. Burley. See Attachment D hereto (Declaration of Scott Keep, ¶ 8).

The quoted language was derived from Mr. Fry's reliance on the decision contained in the March 26, 2004, letter from Superintendent Dale Risling to M. Silvia Burley. See

Attachment B hereto (Declaration of Raymond Fry, ¶24). The gist of the March 26th decision was that the Tribe was not “organized” because it had not yet identified the members of the “greater tribal community” and, therefore, the Tribe’s organizational efforts up to then “did not reflect the involvement of the whole tribal community.” The Superintendent concluded that the BIA could not recognize the tribal constitution [or, by extension, any other tribal governing document] or recognize Ms. Burley as Tribal Chairperson. See Attachment A to Defendants’ Reply to Plaintiff’s Opposition to Defendants’ Motion to Dismiss. Mr. Fry’s conclusion that the BIA “does not recognize any governing body for the Tribe” is fully supported by the March 26<sup>th</sup> letter.

However, the March 26<sup>th</sup> letter does not appear to support the statement that there is no “government-to- government relationship” between CVMT and the federal government. The decision embodied in the March 26<sup>th</sup> letter is at the core of the pending lawsuit, as Defendants’ Motion to Dismiss amply demonstrates, and is likewise implicated by the preliminary injunction motion because the Fry letter is derivative of the March 26<sup>th</sup> letter.

On November 2, 2005, the attorney of record for the Defendants, James M. Upton, had a telephone conversation with Plaintiff’s attorney of record, George Steele. Mr. Steele requested that the October 26<sup>th</sup> Fry letter be retracted. See Attachment C hereto (Declaration of James M. Upton, ¶2). In response to Mr. Steele’s specific question as to whether Scott Keep had seen a draft of the Fry letter before it was sent out, Mr. Upton stated that Mr. Keep had received a draft of the Fry letter, but that no BIA Central California Agency official checked with Mr. Keep to obtain his approval of the letter before the letter was sent to Ms. Burley. Id. Mr. Upton told Mr. Steele that he would attempt to find out as soon as possible whether BIA would be willing to retract the October 26<sup>th</sup> letter. Id. Mr. Upton informed Mr. Keep that Mr. Steele wanted to know



if BIA was going to retract the October 26<sup>th</sup> Fry letter. Attachment D (Second Declaration of Scott Keep, ¶ 9). Mr. Keep could not furnish an answer to Mr. Steele's inquiry, until Mr. Keep had an opportunity to brief the Acting Principal Deputy Assistant Secretary on this matter. See Attachment D (Second Declaration of Scott Keep, ¶ 11). This briefing still had not occurred when Mr. Keep was advised that Plaintiff anticipated filing a motion for a temporary restraining order. Id. ¶¶ 12-14.

Subsequent to the November 2<sup>nd</sup> conversation, Mr. Upton requested that Mr. Keep contact Mr. Fry directly to determine if the Agency was willing to retract the Fry letter. Mr. Keep stated that he would contact Mr. Fry. Id., ¶3

In a November 21, 2005, telephone conversation with Mr. Steele, Mr. Upton stated that the Central California Agency had not yet responded to Mr. Keep's request and that he had nothing to report. Mr. Upton conveyed Mr. Keep's request that the parties agree on a deadline for the next telephone conversation. Counsel for the parties agreed on a deadline of December 1, 2005. Id., ¶4.

On or about December 2, 2005, Mr. Upton left a message for Mr. Steele that he still did not have anything to report because the Central California Agency had not yet decided whether or not it would retract the Fry letter. Id., ¶5.

On October 28, 2005, the BIA Central California Agency had notified Ms. Burley that it was scheduling an on-site "monitoring" visit for the purpose of reviewing the tribe's use of "638" contract funds for November 28, 2005. See Attachment B (Third Declaration of Raymond Fry, ¶25); see also ¶¶ 18, 19 regarding the purposes of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450, et seq. (2005). The BIA's regulations establish a standard procedure for the annual monitoring of tribal handling of "638" contract funds. See 25

C.F.R. Part 900 (2005). In addition, the Tribe had agreed to such a visit in the Fiscal Year 2005 Annual Funding Agreement which is a part of the “638” contract between the Tribe and BIA. Fry Deposition, ¶ 25.

On November 7, 2005, Ms. Burley refused to agree to the November 28<sup>th</sup> visit. Id., ¶¶ 25, 26, 27. In a December 6, 2005 letter, the BIA scheduled a December 12, 2005, site visit at Ms. Burley’s residence/office. Ms. Burley cancelled the site visit. The BIA rescheduled the site visit for December 20, 2005, and, once again, Ms. Burley cancelled the site visit. See Attachment B, Declaration of Raymond Fry. Id., ¶¶ 28-34.

On December 5, 2005, Mr. Upton telephoned Mr. Steele to inform him that the BIA had decided it would not retract the Fry letter and was standing by the position stated therein. See Attachment C hereto (Declaration of James M. Upton, ¶6).

On December 5, 2005, Mr. Chad Everone sent a letter to Superintendent Troy Burdick of the Central California Agency stating that the California Gambling Control Commission had filed an interpleader suit in State court against Silvia Burley, Yakima Dixie, Chad Everone, and Velma Whitebear, in order to resolve the question of how the Commission should handle the distribution of Revenue Sharing Trust Fund (RSTF) monies to the Tribe. See Attachment F hereto. The Commission’s Complaint alleges that it “. . . lacks knowledge and authority to determine the validity of the defendants’ conflicting claims to control of the CVMT’s government, and authority to represent it, and so cannot determine to whom the RSTF monies should be distributed, on behalf of the CVMT.” See Exhibit 5 attached to the Tribe’s Motion for Preliminary Injunction, ¶14. This Fund is comprised of a fixed portion of the gaming revenues earned annually by the federally recognized tribes in California that conduct Indian gaming; these revenues are distributed to the non-gaming tribes, such as the Plaintiff tribe, each year on a

quarterly basis. Id. See also Defendants' Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss at 10-12.

## ARGUMENT

### I. THE UNITED STATES' MOTION TO DISMISS SHOULD BE CONSIDERED FIRST.

As set forth above, Defendants filed their Motion to Dismiss on August 5, 2005, arguing that the Tribe's case suffers from jurisdictional infirmities. Briefing on Defendants' Motion to Dismiss has been concluded and awaits a ruling by this Court. In their Motion to Dismiss, Defendants argue that: (1) this Court lacks subject matter jurisdiction over this case which, at its core, is really an internal tribal dispute, or, in the alternative; (2) this suit fails to state a claim upon which relief may be granted because the suit, in reality, challenges the March 26, 2004 decision of Superintendent Dale Risling, and Ms. Burley failed to exhaust her (or the Tribe failed to exhaust its) administrative remedies for appealing this decision. Consideration of Defendants' Motion to Dismiss before the Tribe's motion for preliminary injunction is appropriate because this Court must first assure itself that it has jurisdiction. See, e.g., In re Federal Election Campaign Act Litigation, 474 F. Supp. 1051, 1053 (D.D.C. 1979) (If a court believes that it is without subject matter jurisdiction, dismissal is mandatory.). See also Taylor v. Commonwealth of Virginia Department of Transportation, 170 F.R.D. 10, 12 (E.D. Va. 1996); and Watson v. Clark, 716 F. Supp. 1354, 1356 (D. Nev. 1989) (Dismissal is mandatory if the court lacks subject matter jurisdiction). Because Defendants' Motion to Dismiss challenges this Court's subject matter jurisdiction to hear Tribe's claims, it should be heard prior to the Tribe's motion for preliminary injunction.

**II. THE ISSUANCE OF A PRELIMINARY INJUNCTION IS AN EXTRAORDINARY REMEDY.**

The United States Supreme Court has declared that a preliminary injunction constitutes an “extraordinary and drastic remedy.” Mazurek v. Armstrong, 520 U.S. 968, 972 (1997). The movant for a preliminary injunction bears the burden of making the following four showings: (1) a substantial likelihood of success on the merits; (2) movant will suffer irreparable harm if its motion is denied; (3) injunctive relief would not significantly harm other interested parties; and (4) the public interest would be served by granting injunctive relief. Katz v. Georgetown Univ., 246 F.3d 685, 687 (D.C. Cir. 2001); Mova Pharm. Corp. v. Shalala, 140 F. 3d 1060, 1066 (D.C. Cir. 1998). The federal district court balances the showings made on each of the four factors in order to determine how to rule upon a motion for a preliminary injunction. Mova Pharm. Corp., 140 F.3d at 1066. Defendants submit that this balancing process should lead the Court to deny the motion.

**III. PLAINTIFF HAS NOT MADE A SHOWING OF A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.**

Plaintiff must make a “strong showing it is likely to prevail on the merits” - - that is, must establish “a substantial indication of probable success.” Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 842-43, 844 (D.C. Cir. 1977). In the circumstances present here, Plaintiff cannot make the required showing, unless it preliminarily succeeds in refuting Defendants’ arguments that: (1) this Court lacks subject matter jurisdiction over this case which, at its core, is really an internal tribal dispute, or, in the alternative; (2) this suit fails to state a claim upon which relief may be granted because the suit, in reality, challenges the March 26, 2004 decision of Superintendent Dale Risling, and Ms. Burley failed to exhaust her (or the Tribe failed to exhaust its) administrative remedies for appealing this decision. Even

though the PI motion is purportedly aimed at the Fry letter sent to Ms. Burley on October 26, 2005, the Fry letter is really rooted in the March 26<sup>th</sup> letter, as the Fry Declaration attached hereto makes readily apparent.<sup>4/</sup>

**A. Lack of Subject Matter Jurisdiction.**

We reiterate the argument contained in our Motion to Dismiss filed on August 5, 2005, that, at bottom, this lawsuit amounts to nothing more than an internal tribal dispute, and, as a general rule, federal district courts lack jurisdiction over internal tribal leadership, membership and organizational issues. See Memorandum in Support of Defendants' Motion to Dismiss at 9-11. If the Court should find that it lacks jurisdiction over this lawsuit, it follows, a fortiori, that the Plaintiff's PI motion must be denied.

**B. Failure to State a Claim Upon Which Relief May be Granted.**

Neither Ms. Burley nor the Tribe attempted to file an administrative appeal from the Superintendent's decision contained in the March 26, 2004 letter, even though the letter specified the applicable administrative appeal procedures. This failure to exhaust administrative remedies constitutes a failure to state a claim upon which relief may be granted and the Court should dismiss the Complaint. If the Court should decide to dismiss the Complaint, then it must necessarily deny the Tribe's PI motion. See Memorandum in Support of Defendants' Motion to Dismiss at 12-21 on the argument concerning the failure to state a claim.

In sum, if the purpose of Plaintiff's PI motion is to preserve the status quo until such time as the court can make "a final determination of the merits of the suit" Washington Metro. Area Transit Comm'n. v. Holiday Tours, Inc., 559 F.2d at 844, but the Defendants have pending a

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<sup>4/</sup> This does not mean that because the Tribe did not file an administrative appeal from the March 26<sup>th</sup> decision, it was somehow precluded from lodging an administrative appeal from the October 26<sup>th</sup> action.

dispositive motion (based principally on non-merits defenses to the lawsuit), which could be granted solely on the basis of these non-merits defenses, then the Court should rule on that dispositive motion first. If the Court were to grant the Defendants' Motion to Dismiss, the Court would not have to reach the merits of the suit. Accordingly, ruling on the Motion to Dismiss first has the potential for conserving judicial resources. In this regard, we stress that a plurality of the Justices in one decision of the United States Supreme Court voiced a strong objection to having a federal court decide the merits of a case over which the court lacks jurisdiction. Steel Co. v. Citizens for a Better Env't, 523 U. S. 83, 101-102 (1998).

If the Court decides it will not rule on Defendants' Motion to Dismiss first, then, alternatively, we request that the Court rule on the non-merits defenses set out therein (and reiterated above), when considering Plaintiff's preliminary injunction motion.

**C. Likelihood of Plaintiff's Success on the Merits.**

Plaintiff contends there are two merits issues in this case: "1) whether CVMT possesses the right to make its own laws and be governed by them; and 2) whether Defendants are acting unlawfully by interfering with CVMT's self-governance." (Pl. Memorandum at 11). Plaintiff asserts that the decision in Ransom v. Babbitt, 69 F. Supp. 2d 141 (D.D.C. 1999) stands for the proposition that the Defendants "... have the responsibility to interpret, not approve or reject, tribal laws." [Emphasis supplied] Id. However, while Indian tribes have a right to promulgate their own governing documents, the BIA, nonetheless, has the responsibility to ensure that these documents reflect the will of the tribe as a whole, including the greater tribal community in the case of an "unorganized" tribe such as the CVMT. Mr. Fry's October 26, 2005 letter is consistent with this responsibility and did not unlawfully interfere with the CVMT's self-governance.

The threshold fact here is that the Tribe sent Tribal Resolution No. R-1-09-26-2005 to the BIA Central California Agency for the purpose of obtaining BIA approval. See Third Declaration of Raymond Fry, ¶23 (Attachment B hereto). This reality is totally inconsistent with the Tribe's basic argument that the BIA has no responsibility/authority to approve or reject tribal laws and, in and of itself, should preclude any showing of "a substantial indication of [Plaintiff's] probable success." Washington Metro. Area Transit Comm'n., supra, 559 F.2d at 842.<sup>5/</sup>

**1. The Will of the Tribal Membership is an Important Element of the Federal-Tribal Relationship.**<sup>6/</sup>

More than three and one-half years ago, the Tribe stated in a previous suit against the federal government that " . . . it was an Indian Tribe with a **potential membership of 250 people . . .**" [Emphasis added]. See Attachment B to Defs. Memo. in Support of Motion to Dismiss. As we point out in our Motion to Dismiss, and reiterate here, the Plaintiff has yet to identify which of the 250 potential members should be made members of the CVMT.<sup>7/</sup>

The federal-tribal relationship is founded upon the premise that tribal governing

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<sup>5/</sup> The Department is now reviewing the existing Fee-to-Trust program of the BIA's Pacific Regional Office. See Attachment B hereto (Declaration of Raymond Fry, ¶22).

<sup>6/</sup> In their Motion to Dismiss, the Defendants analyze the merits of this suit. Defs. Memo. at 21-32; to the extent this Opposition may not reiterate all of the merits arguments in support of Defendants' Motion to Dismiss this case, it incorporates herein any remaining arguments by reference.

<sup>7/</sup> It is ironic that soon after the series of meetings held at the Central California Agency to facilitate the organization of the Tribe began, Ms. Burley wrote to Acting Superintendent Dale Morris that Mr. Melvin Dixie, Yakima Dixie's brother, ". . . may have a right to participate in the organization of the Tribe." See Attachment B (Third Declaration of Raymond Fry, Exhibit 6G attached thereto). This statement could be viewed as an admission by Ms. Burley that at least some individuals in the Yakima Dixie faction should be made members of the CVMT, thereby entitling them to participate in the organization of the Tribe.

documents reflect the will of the tribe as a whole. The Secretary of the Interior has the responsibility to determine whether the governing documents of a tribe with which the Secretary deals actually represent the will of the tribe as a whole. In Ransom v. Babbitt, 69 F. Supp. 2d 141 (D.D.C. 1999) (a decision relied upon by Plaintiff), the failure of the BIA to determine whether a proposed tribal constitution was valid led the court to conclude the BIA was “ . . . derelict in [its] responsibility to ensure that the Tribe make its own determination about its government consistent with the will of the Tribe and the principles of tribal sovereignty.” 69 F. Supp. 2d at 153. While Ransom dealt with an organized tribe, the quoted language logically applies to an “unorganized” Indian tribe, which also should make all of its determinations about tribal governing documents consistent with the will of the greater tribal community. It appears that Tribal Resolution No. R-1-09-26-2005 does not reflect the will of the greater tribal community, because the CVMT has not, as of January 3, 2006, identified which of the **250 potential members** should be made tribal members. In this regard, the February 11, 2005, Olsen letter pointedly states, in pertinent part, as follows: “The first step in organizing the Tribe is identifying putative tribal members.” Yakima Dixie’s Motion to Intervene, filed on September 2, 2005, echoes Mr. Olsen’s concern, because it asserts that Mr. Dixie “is hereditary Chief, by lineal descent, of the Tribe and a Spokesperson for the ‘Putative members of the Tribe.’” Dixie Motion to Intervene at 2.

In sum, Mr. Fry’s October 26<sup>th</sup> letter is totally consistent with the Department’s responsibility to ensure that Tribal Resolution No. R-1-09-26-2005 reflects the will of the greater tribal community - - that is, all or most of the **potential membership of 250 people**, which, according to the Plaintiff, existed as of **April 25, 2002** (the date the complaint in the prior suit was signed). It follows, then, that the October 26<sup>th</sup> letter did not unlawfully interfere with the



CVMT's right of self-governance.

**2. Neither 25 U.S.C. 476(h) nor 25 U.S.C. 3601(4) Makes Plaintiff Success on the Merits Likely.**

Plaintiff relies upon Section 476(h) of the Indian Reorganization Act and Section 3601(4) of the Indian Tribal Justice Act for the proposition that the BIA may not “. . . disregard CVMT's governing documents and Constitution.” Pl. Memo. at 11-12. Plaintiff is really arguing that the government must accept whatever tribal constitution and other tribal governing documents the CVMT has promulgated and has no role to play with respect to these governing documents. However, this argument ignores the Department of the Interior's responsibility for ensuring that an Indian tribe's tribal constitution and other governing documents reflect the will of the tribe as a whole. In the circumstances of this case, that duty extends to ensuring that CVMT's Tribal Resolution No. R-1-09-26-2005 (the governing document put specifically at issue by the PI motion) reflects the will of the greater tribal community, as discussed above. See Defs. Memo. in Support of Motion to Dismiss at 24-28.

Section 476(a)(1) of the Indian Reorganization Act (IRA) (P.L. No. 383, Act of June 18, 1934, 48 Stat. 984 (25 U.S.C. § 461 *et seq.*), has been held to allow the Secretary to reject the results of a Secretarial election held for the purpose of determining whether amendments to a tribal constitution should be approved, where it was unclear whether the approved amendments were supported by a majority of the voting members of the tribe. Shakopee Mdewakanton Sioux (Dakota) Community v. Babbitt, 107 F. 3d 667, 670 (8<sup>th</sup> Cir. 1997). Clearly, Congress is presumed to know the law when it enacts new legislation. Garrett v. United States, 471 U.S. 773, 793-94 (1985). This presumption necessarily encompasses awareness that the premise of the federal-tribal relationship is that tribal governing documents reflect the will of the tribal membership. Therefore, it follows that when Congress enacted Section 476(h) of the IRA,

Section 476(h) implicitly incorporated the principle that tribal governing documents must reflect the will of the tribe as a whole. It is well established that sections of the same statute are to be read together so as to be consistent. King v. Shaefer, 940 F.2d 1182, 1185 (8<sup>th</sup> Cir. 1991). Since Section 476(a)(1) has been held to incorporate the Secretary's responsibility to ensure that tribal governing documents reflect the will of the tribal membership/the tribe as a whole, it follows, then, that Section 476(h) implicitly incorporates the same responsibility. Finally, we read Section 476(h) as freeing tribes from the procedural constraints of Sections 476(a) and (c) that apply to tribal requests for the calling of a Secretarial election to approve proposed tribal governing documents (or amendments thereto). Plaintiff has not demonstrated that Section 476(h) effectively negated the Secretary's authority to find that a tribe is "unorganized" and to refuse to recognize a tribal governing document because it does not reflect the will of the greater tribal community (or a majority of the members of that community). Finally, Interior's reading of Section 476(h) is entitled to substantial deference given its expertise in interpreting Indian legislation. Chevron USA, Inc. v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984). The Supreme Court has "... long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer." 467 U.S. at 844.

Plaintiff's reliance on the Indian Tribal Justice Act (P.L. No. 103-176, Act of December 3, 1993, 107 Stat. 2004 (codified at 25 U.S.C. 3601, et seq.)) is misplaced as well. The finding in Section 3601(4) is outweighed by the fact that the basic purpose of the Act was "... to improve the administration of justice ... [in] Indian country and to provide resources to tribal justice systems." H.R. Rep. No. 103-205, reprinted in U.S. Code Cong. & Admin. News, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess. (1993), p. 2425. The same report states, in pertinent part, that "... funding for

tribal courts remains a serious problem. \* \* \* The Committee is aware of many Indian tribes that have not developed tribal justice systems due to a lack of funds.” Id. p. 2429. Unlike Section 476 of the IRA, the Indian Tribal Justice Act does not concern the promulgation of tribal governing documents and should be deemed irrelevant.

**3. Defendants Acknowledge there is a Government-to-Government Relationship between the Federal Government and the CVMT.**

Notwithstanding the language of the October 26<sup>th</sup> letter, Mr. Fry’s Declaration establishes that his letter was, in fact, based upon the March 26, 2004 letter of Superintendent Risling to Silvia Burley and the letter’s statement that the BIA “does not recognize any governing body for the Tribe” accurately reflects the decision contained in the March 26<sup>th</sup> letter, but that the March 26<sup>th</sup> letter does not appear to support the statement about the absence of a “government-to-government relationship” between the CVMT and the federal government. Defendants submit that the lack of a recognized governing body, in and of itself, adequately supports Mr. Fry’s decision not to take any action on the Tribal resolution. Even though Defendants agree with plaintiff that the October 26<sup>th</sup> letter could not operate to abolish the government-to-government relationship, the Tribe’s fixation with this issue belies the fundamental issue presented by this case - - namely: the Secretary’s responsibility for ensuring that tribal governing documents promulgated by an “unorganized” tribe reflect the will of the greater tribal community.

In short, Plaintiff has not met its burden of demonstrating a likelihood of success on the merits.

**IV. PLAINTIFF HAS NOT SHOWN IT WILL SUFFER IRREPARABLE HARM IF ITS MOTION FOR A PRELIMINARY INJUNCTION IS DENIED.**

Plaintiff asserts that the Interior Department’s “unlawful interference with tribal self-governance constitutes irreparable harm.” Pl. Memo at 16-17. The Tribe cites three decisions - -

(1) Prairie Band of Potawatomie Indians v. Pierce, 253 F.3d 1234 (10<sup>th</sup> Cir. 2001); (2) Kiowa IndianTribe of Oklahoma v. Hoover, 150 F.3d 1163 (10<sup>th</sup> Cir. 1998); and (3) Seneca-Cayuga Tribe v. Oklahoma, 874 F.2d 709 (10<sup>th</sup> Cir. 1989) - - in support of its argument. Id. at 17.

At the outset, we note that the Tribe does not allege that it contemplated the imminent purchase of land which it would request be put into trust. Thus, the October 26<sup>th</sup> refusal to act upon the Tribal Resolution No. R-1-09-26-2005 did not irreparably harm any anticipated efforts to put tribal land into trust. Also, the premise of the CVMT's argument is that the BIA Central California Agency "unlawfully interfered" with the CVMT's self-governance. To the contrary, we have demonstrated that the fundamental issue here is whether the BIA has the responsibility/authority to ensure the tribal governing documents promulgated by an "unorganized" tribe reflect the will of the greater tribal community, and that the BIA does have such responsibility/authority. Since the premise for the Tribe's argument on irreparable harm is faulty, its argument should be rejected for this reason, as well.

None of the three cited decisions, however, concerns allegedly unlawful actions by the federal government. Kiowa, for example, involved a series of suits against the tribe in state court by tribal creditors. These suits presented the prospect of potential seizure of tribal assets by those tribal creditors and the creation of a bar against the full enforcement of tribal laws bearing on rights of tribal creditors. In Seneca-Cayuga, the state of Oklahoma sued in state court to enjoin the operations of a tribe's bingo games; the federal court granted the tribe's preliminary injunction to head off possible loss of revenue from tribal bingo operations and loss of tribal members' jobs at the bingo parlor. Plaintiff argues: "As in Kiowa and Seneca-Cayuga, Defendants' interference has caused interruptions or complete stoppages of income lawfully due to the Tribe, and upon which the Tribe depends." Pl. Memo at 17.

Unlike the Court of Appeals for the Tenth Circuit, the Court of Appeals for this Circuit has held that “economic loss does not, in and of itself, constitute irreparable harm.” Wisconsin Gas Co. v. Fed. Energy Regulatory Comm’n., 758 F.2d 669, 674 (D.C. Cir. 1985); National Head Start Ass’n v. Department of Health & Human Services, 297 F. Supp. 2d 242, 251 (D.D.C. 2004) (held that alleged loss did not amount to a “significant and irreparable loss”). At a minimum, an alleged monetary loss which can be compensated at a later time does not amount to irreparable harm. Smith, Bucklin & Associates v. Sonntag, 83 F. 3d 476, 481 (D.C. Cir. 1996). While the suit filed in state court against four possible “persons of authority” within the CVMT by the California Gambling Control Commission (Commission) (Exhibit 5 to Plaintiff’s Motion) may delay the distribution of RSTF (Revenue Sharing Trust Fund) monies to the CVMT, the Commission states that it has no [property] interest in the future distributions of RSTF monies to the CVMT. The Complaint also states that the Commission will deposit the scheduled distribution by the CVMT that it is now withholding with the Clerk of the Court (the Superior Court of California for the County of Sacramento).

The current situation does not present the spectre of a permanent, uncompensable loss of the RSTF monies. This is true, in part, because the monies already being withheld from distribution to the CVMT have been deposited with the Clerk of the Court and monies to be scheduled for future distribution to the CVMT will undoubtedly be deposited with the Clerk of the Court, as well. Furthermore, in a letter of August 4, 2005, the Commission stated that its “... trustee status under the [Gaming] Compact [between the State and Indian tribes in California engaged in gaming] demands that we ensure the RSTF contributions go to the [T]ribe for the benefit of the Tribe and not merely an individual member.” See Attachment E (Commission’s letter of August 4, 2005). The Commission was implicitly conceding potential liability for

money damages, if the distributions to the Tribe were not properly made. Therefore, any monetary loss suffered by the Tribe arguably would be “compensable” within the meaning of the Smith, Bucklin & Associates opinion. Accordingly, these “interruptions or complete stoppages of income lawfully due to the Tribe [that is, scheduled distributions of RSTF monies to the CVMT]” (Pl. Memo at 17) cannot constitute “irreparable harm.”<sup>8/</sup>

Plaintiff also contends it will be “forced to spend time, effort and money” to defend the state court suit by the Commission. Id. This alleged injury falls into the category of “‘mere’ economic injuries which under *Virginia Petroleum Jobbers* is insufficient to warrant a stay.” Washington Area Transit Commission, 559 F.2d at 843 n. 2. Although Virginia Petroleum Jobbers Ass’n v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958) involved a motion for a stay of proceedings before the Federal Power Commission pending the Circuit’s review of certain administrative orders of the Commission, the Washington Area Transit Commission opinion referenced Virginia Petroleum Jobbers because at that time the factors to be considered in ruling on a stay also applied to motions for preliminary injunctions. 559 F.2d at 842 n.1. In Virginia Petroleum Jobbers, the Court of Appeals for the D.C. Circuit held: “**mere injuries**, however substantial, **in terms of time, money and energy necessarily expended** [on the court’s review of the Federal Power Commission’s orders], are not enough.” [Emphasis added] 259 F. 2d at 925. Similarly the “time, effort and money” that the CVMT allegedly must invest in

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<sup>8/</sup> It also appears that any loss suffered would be restricted to the delayed receipt of these RSTF monies by the CVMT. This type of loss would be compensable by the recovery of interest. The August 4<sup>th</sup> letter of the Commission relates to this issue because in it the Commission stated that any withheld [delayed] distributions would be paid over to the Tribe together with “appropriate accrued interest,” once the question of the appropriate person to whom to pay over the quarterly distribution (then being withheld) was resolved. On the basis of this representation, the CVMT would likely be able to recover interest from the Commission, which should have accrued on distributions paid into the court registry during the time it took to resolve the Commission’s suit.

defending the state court suit against the California Gambling Control Commission does not justify the issuance of a preliminary injunction. Moreover, if the CVMT were to succeed in getting the state court suit dismissed for lack of jurisdiction, it could seek recovery of its attorney fees and costs and other litigation expenses incurred in defending the suit by the Gambling Control Commission.

The Tribe's failure to make any showing of irreparable harm, in and of itself, strongly militates in favor of the denial of Plaintiff's motion. Indeed, on one occasion, this court denied a PI motion solely on the grounds of a lack of irreparable harm; the Court of Appeals affirmed, and noted that the plaintiff was unlikely to succeed on the merits, either. Tenacre Foundation v. Immigration & Naturalization Service, 78 F. 3d 693, 696 (D.C. Cir. 1996).

**V. THE ISSUANCE OF A PRELIMINARY INJUNCTION WOULD CAUSE SIGNIFICANT HARM TO THE DEFENDANTS.**

The Plaintiff argues that "there is no conceivable interest of Defendants that can be burdened" by the issuance of the requested preliminary injunction. Pl. Memo at 18. To the contrary, the grant of the requested relief will cause significant harm to the Defendants. First, issuance of the injunction would make the CVMT believe it was justified in cancelling three scheduled site visits by the BIA for the purpose of monitoring the Tribe's administration of "638" contract funds provided to the Tribe under the present "638" contract between the CVMT and the BIA, and would strongly encourage it to resist any future site visits. See Attachment B, Declaration of Raymond Fry, ¶¶ 25-34. The governing regulations (25 C.F.R. Part 900) authorize the BIA to conduct at least one site visit per year for the purpose of monitoring a tribe's handling of "638" contract monies. More importantly, the Tribe agreed to the annual monitoring visit in the Fiscal Year 2005 Annual Funding Agreement which is part of the "638" contract between the Tribe and BIA. Id., ¶25. It is important that the BIA be able to ascertain

how such federal funds are being handled. Second, as documented in Attachment B (Declaration of Raymond Fry, ¶¶ 12-17), the BIA has made a vigorous effort to facilitate the organization of the CVMT by attempting to bring together the Burley and Dixie factions within the Tribe/greater tribal community. Although Mr. Dixie, his counsel, consultant and certain supporters attended the meetings at which both tribal factions were represented, held at BIA's Central California Agency, Ms. Burley refused to appear in person at any of these meetings. See Attachment B (Declaration of Raymond Fry, ¶16).

The government-to-government relationship between the Tribe and the federal government is not the "one-way street" that the Tribe's rhetoric strongly suggests. Rather, the Tribe, too, has an obligation to cooperate with lawful and reasonable requests of the BIA of the type described in the preceding paragraph. In short, if the government is not able to conduct business with tribes in a reasonably cooperative fashion, a "two-way street" cannot exist. This reality, when viewed in juxtaposition with the absence of a showing of irreparable harm, tips the "balance of harms" in favor of the Defendants. National Wildlife Federation v. Burford, 835 F.2d 305, 318-19, 326 (D.C.Cir. 1987).<sup>9</sup>

**VI. THE PLAINTIFF HAS NOT SHOWN THAT THE PUBLIC INTEREST WILL BE SERVED BY ISSUANCE OF THE INJUNCTION.**

Plaintiff asserts that the "protection of tribal sovereignty" is the public interest at stake in this case. Pl. Memo at 19. While the promotion of tribal sovereignty is an important aspect of federal Indian policy, this must be balanced against the public interest in the "effective and transparent administration" of federal monies used to finance "638" contracts. Cf. National Head Start Ass'n v. Department of Health and Human Services, 297 F. Supp. 2d 242, 251

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<sup>9</sup> The grant of Plaintiff's motion would also likely harm Yakima Dixie and other interested third parties.



(D.D.C. 2004) (held that the public's "... strong interest in the effective and transparent administration of federal grant programs" outweighed the interest of the plaintiff in avoiding a possible "... campaign to discredit Head Start programs as profligate ..."). In addition, there is a public interest to be served in having BIA continue to facilitate the organization of the CVMT which, in turn, will lead to the creation of a workable government-to-government relationship between the Tribe and the BIA. This organization of the Tribe, not the issuance of a preliminary injunction, is the only real means of ensuring that state and local agencies with which the Tribe now does business will no longer be running the present "risk," emphasized by the Tribe, of dealing with "unauthorized representatives" of the Tribe. Pl. Memo. at 19.

### CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Plaintiff's motion for a preliminary injunction be denied.

Dated this 3<sup>rd</sup> day of January, 2006.

Respectfully submitted,

Electronically signed  
JAMES M. UPTON  
U.S. Department of Justice  
Environment & Natural Resources Division  
General Litigation Section  
P.O. Box 663  
Washington, D.C. 20044  
Tel. (202) 305-0482  
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Attachments

**ATTACHMENT A**



## 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

OCT 26 2005

Sylvia Burley  
California Valley Miwok Tribe  
10601 Escondido Pl.  
Stockton, CA 95212

Dear Ms. Burley:

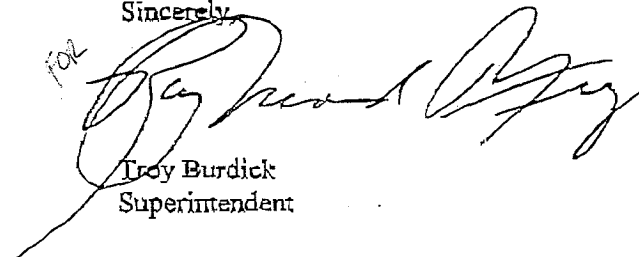
This letter shall serve to acknowledge receipt at the Central California Agency of California Valley Miwok Tribal Resolution No. R-1-09-26-2005, on October 17, 2005.

This resolution authorized the Tribe to Reprogram Fiscal Year 2006, 2007 and 2008 Tribal Priority (TPA) Allocation funds in the amount of \$3,000 annually into the Bureau of Indian Affairs (BIA) Fee-to-Trust Program.

Since the BIA does not recognize any governing body for the Tribe, nor do we currently have a government-to-government relationship with the California Valley Miwok Tribe, we are returning this resolution without action.

If you have any questions, please do not hesitate to contact Raymond Fry, Tribal Operations Officer at (916) 978-3794.

Sincerely,

*for*  
  
Troy Burdick  
Superintendent

**ATTACHMENT B**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CALIFORNIA VALLEY MIWOK TRIBE, )  
Formerly, SHEEP RANCH OF ME-WUK )  
INDIANS OF CALIFORNIA, )**

**Plaintiff,**

**v.**

**UNITED STATES OF AMERICA, )  
GALE A. NORTON, Secretary of the )  
Interior, )**

**JAMES E. CASON, Associate Deputy )  
Secretary of the Interior,<sup>1</sup> )**

**Defendants.**

**No. 1:05CV00739**

**Judge James Robertson**

**THIRD DECLARATION OF RAYMOND FRY**

<sup>1</sup> David W. Anderson, formerly the Assistant Secretary - Indian Affairs, is no longer with the Department of the Interior. The position of Assistant Secretary - Indian Affairs is vacant. The duties of the Assistant Secretary have been delegated by the Secretary of the Interior to the Associate Deputy Secretary by Secretarial Order 3259, dated February 8, 2005, as amended on August 11, 2005. James E. Cason, Associate Deputy Secretary is substituted for Mr. Anderson pursuant to Fed. R. Civ. P. 25(d).

**I, Raymond Fry, declare:**

1. I am the Tribal Operations Officer for the Central California Agency (CCA), Bureau of Indian Affairs, located in Sacramento, California and I have personal knowledge of the facts set forth in this Declaration.
2. I have held that position since June of 1991, and I have worked and continue to work extensively with a large number of the 54 federally recognized tribes in our service area to organize their tribes and develop and strengthen their governmental infrastructures by conducting training conferences for all tribes covering a variety of subjects and by providing technical support and assistance to these tribes resulting in an enhanced government-to-government relationship between these tribes and the BIA.
3. It was and continues to be the practice within the BIA's Pacific Region in California, that if a tribe is federally recognized but has not formally re-organized by adopting a written governing document at an election duly noticed and open to all adults who are eligible for membership in the tribe, that the BIA would identify a spokesperson for the tribe whom we could maintain contact with on behalf of the tribe until such re-organization occurred.
4. On September 7, 1994, I assisted the California Valley Miwok Tribe, then known as the Sheep Ranch Rancheria, by preparing two documents for the Tribal Spokesperson Mr. Yakima K. Dixie, to consider and if acceptable sign and I have been working with

the California Valley Miwok Tribe since July of 1994, and on tribal leadership issues since 1998.

5. Mr. Yakima K. Dixie was a son of Mabel Hodges Dixie, the last occupant of the groups small, 0.9 of an acre Rancheria. As one of four heirs to Ms. Dixie's estate, Mr. Dixie is considered a divided interest holder of the former Rancheria land.
6. The other initial members of the group were Ms. Silvia Burley, her two daughters and minor granddaughter. Ms. Burley's ties to the Rancheria are remote. In a deposition taken in an earlier case brought to challenge the transfer of the land to Mr. Dixie, which Ms. Burley has appealed to the Ninth Circuit Court of Appeals where it is awaiting a decision, Ms. Burley indicated that Mabel Dixie's mother was her grandfather's sister.
7. By certified letter dated March 26, 2004, from the BIA, to Ms. Silvia Burley (see Exhibit No. 1), the Superintendent stated that he recognized Ms. Burley as a person of some authority within the Indian Community, but he did not recognize the Tribe as being organized or as having any dully adopted governing document. In accordance with provisions of 25 CFR Part 2, Administrative Appeals, Ms. Burley was provided notice of her appeal rights and a copy of the regulations, but she failed to file a Notice of Appeal or an Appeal within the prescribed 30-day timeframe.
8. By letter dated February 11, 2005, to Mr. Yakima Dixie, of the Sheep Ranch Rancheria of Miwok Indians of California, Michael D. Olsen, Principal Deputy, Acting Assistant Secretary-Indian Affairs, addressed Mr. Dixie's appeal as well as referencing the Central California Agency's March 26, 2004, correspondence which indicated that



the tribe was not organized and that the BIA did not recognize any tribal government or governing document being in effect. (See Exhibit No. 2) Mr. Olsen further stated:

I encourage you to continue, either in conjunction with Ms. Burley, other tribal members, or potential tribal members to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004, letter so that the tribe can become organized and enjoy the full benefits of Federal recognition.

9. By letter dated March 7, 2005, addressed to the BIA, CCA, Yakima Dixie made a formal request for action from Ray Fry, BIA, CCA Tribal Operations Officer "in the form of a written acknowledgement of his right to organize the tribe . . . in such terms as may be mutually agreeable. (See Exhibit No. 3)
10. In an April 8, 2005, letter to the Superintendent of the Central California Agency, Ms. Burley acknowledged the efforts by Judge Kathryn Lynn, administrative law judge from the Department's Office of Hearings and Appeals, to mediate the dispute between the tribe and Mr. Dixie. Ms. Burley's response to Judge Lynn's efforts was to state that Mr. Dixie was a tribal member and that the Tribe had no dispute with him. (See Exhibit No. 4) While Ms. Burley stated her belief that the Bureau was interfering in the internal matter of the Tribe, she also stated that the Tribe believed it could work out solutions that address the core concerns of the BIA while protecting the sovereignty of the Tribe.
11. By letter of August 30, 2005, Mr. Dixie, was notified that he had been dis-enrolled in accordance with the Miwok Customs and Traditions and with the California Valley Miwok Tribe's Enrollment Ordinance.(See Exhibit No. 5).

12. Principal Deputy, Acting Assistant Secretary Olsen's February 11, 2005, letter included the observation that the first step in organizing the Tribe is identifying putative tribal members and the offer that [i]f you need guidance or assistance, Ray Fry (916) 930-3794, of the Central California Agency of the BIA can advise you how to go about doing this. Based upon this suggestion, the BIA was contacted by both tribal factions to set up meetings to discuss the organization of the Tribe. (See Exhibit No. 2).
13. On March 10, 2005, at 2:00 pm, Mr. Gregory, the Pacific Regional Director, members of his staff, Mr. Morris, Central California Agency Acting Superintendent, and members of his staff including myself met with Ms. Silvia Burley, her attorneys, and tribal staff at the Pacific Regional Office, to discuss Mr. Olsen's February 11, 2005, letter. Prior to setting up this meeting, the BIA continuously encouraged each group to work together in this organization effort, but Ms. Burley indicated that she did not want Mr. Dixie or his representatives to be present at this meeting. The central theme of this meeting was to define roles and responsibilities of the tribe and the BIA in the overall organization efforts of the tribe.
14. On March 14, 2005, a meeting took place at the Central California Agency between the Acting Superintendent, Mr. Morris, BIA staff and representatives of both tribal factions including Yakima Dixie, Melvin Dixie (Yakima's brother) their representatives and a representative for Ms. Burley. The primary topic of discussion was again, the organization of the tribe and who would constitute the putative member class.

15. On July 8, 2005, BIA's Central California Agency staff met with Mr. Yakima Dixie's consultants, attorneys, Ms. Dequita Boire (daughter to Merle Butler, also a divided interest holder of the Rancheria), Ms. Velma Whitebear and other local Miwok Indians and Ms. Carla Bell, attorney for Ms. Burley. Mr. Yakima Dixie was unable attend this meeting. The Yakima Dixie group requested that Ms. Bell not be allowed to participate in the meeting as they wanted Ms. Burley there as they believed that at this juncture of time, she was the only individual who could make positive contributions to the discussions. To accommodate all, the BIA's Agency Superintendent, Mr. Burdick and myself met separately with both Mr. Dixie's group as well as with Ms. Bell. Mr. Dixie's group was asked by the BIA to submit a proposal for organizing the tribe. This request was passed on to Ms. Bell, who indicated that she would relay this information back to Ms. Burley. There were no documents provided by Ms. Burley to have Ms. Bell be the designated representative for Ms. Burley's group.
16. The main topics of discussion at these meetings included identifying the putative members of the Tribe, organizational processes that should be considered and concerns the Dixie group had regarding the use of P.L. 93-638 funds by the Tribe, under Ms. Burley's leadership, the use of the non-gaming revenue by Ms. Burley's faction and the lack of involvement at these multiple meetings by Ms. Burley herself.
17. The Bureau's efforts to assist in the organization of the Tribe are reflected in part in the attached collection of correspondence, meeting sign-in sheets and minutes. (See Exhibit No. 6)

18. The enhancement of self-determination by federally recognized tribes was captured in P.L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. ' 450 *et seq.*)(commonly referred to simply as "638"), which stated the following purposes:

This Act is to provide maximum Indian participation in the Government and education of the Indian people: to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people: to establish a program of assistance to upgrade Indian education: to support the right of Indian citizens to control their own educational activities: and for other purposes.

19. The regulations implementing the Indian Self-Determination and Education Assistance Act, contained in 25 CFR Part 900, prescribe the contracting process and the roles and responsibilities of the tribes, as well as the federal government in the tribal self-determination process contained in P.L. 93-638. The Act and these federal regulations provide significant latitude to tribes who are proposing to enter into a contractual relationship with the federal government. For instance, a tribe may contract to administer all or part of a BIA authorized program, for periods of time ranging from one to three years in length. These programs may be redesigned to meet the tribe's needs as long as they do not violate federal law or regulation. Once the contracts are reviewed and awarded by the BIA, the provisions of those contracts must be met. An example of non-compliance may occur if specific funding is set aside by BIA for the administration of a particular program and the tribe attempts to reprogram those earmarked funds for other purposes, without first BIA approval for revising or

modifying their contract, which is a process required to redefine the use of those funds.

20. The Fee-To-Trust Consortium that the California Valley Miwok Tribe had proposed to join in FY 2006, 2007 and 2008, was initially developed by the tribes located within the service area of BIA's Central California Agency in 2000, for the express purpose of assisting tribes who had or who had anticipated acquiring land in fee, put into trust. Although the process by which the United States puts land into trust for the benefit of Indians and tribes is a BIA responsibility, BIA's Central California Agency, with 54 federally recognized tribes covering 26 counties in its service area, could not promptly process all of the pending fee-to-trust applications with the Realty staff and resources available. To remedy this, the tribes agreed to enter into a Memorandum of Understanding (MOU) with the BIA and to provide funding to the BIA to hire additional staff to carryout this process. (See Exhibit No. 7)
21. With the lack of sufficient staff to perform realty and environmental services required to process fee-to-trust land applications throughout the entire Pacific Region, the Fee-To-Trust consortium was expanded in 2001, to federally recognized tribes located throughout the state of California. The administrative oversight was elevated to the BIA's Pacific Regional Office. Requirements for tribes to join this Fee-To-Trust Consortium, included adopting a separate resolution, contributing a minimum of \$3,000.00 to the consortium and entering into an MOU. As of August 2005, there were 56 tribes participating in this Fee-To-Trust Consortium throughout the State of California. (See Exhibit No. 8 - sample resolution).

22. I am advised by the Solicitor's office in Washington, D.C., that the Department has initiated a review of the authority for and appropriateness of this fee to trust program in California generally.
23. California Valley Miwok Tribal Resolution No. R-1-09-26-2005, was enacted by Ms. Silvia Burley, Chairperson; Ms. Anjelica Paulk, Vice-Chairperson; and Ms. Rashed Reznor, Secretary-Treasurer, on September 26, 2005. (See Exhibit No. 9) Resolution R-1-09-26-2005, was received by the Agency on October 7, 2005. I reviewed the resolution to determine whether it was properly authorized (role of the Branch of Tribal Operations) by the recognized tribal government and prepared a response for the signature of BIA's Central California Agency Superintendent, which was issued October 26, 2005. (See Exhibit No. 10).
24. The reasons stated for returning the tribal resolution was that the "BIA does not recognize any governing body for the Tribe, nor do we currently have a government - to-government relationship with the California Valley Miwok Tribe." Although I did not reference the March 26, 2004, letter of Superintendent Dale Risling to Ms. Silvia Burley, the reasons I gave for taking no action on the resolution were based upon the decision contained in that letter. Superintendent Risling decided, based upon a review of a copy of the tribal constitution sent to the BIA (and other information available to the Superintendent), that the Tribe was not "organized" because it had not identified the members of the "greater tribal community," and, thus, the Tribe's organizational efforts up to that point "did not reflect the involvement of the whole tribal community." The Superintendent concluded that the BIA could neither recognize the

tribal constitution nor Ms. Burley as the Tribal Chairperson. I believe that my statement that the "BIA does not recognize any governing body for the Tribe" accurately reflects the language and intent of the March 26, 2004, letter. The March 26th letter does not appear to support the second stated reason for taking no action on the Tribal resolution, that is, that there is no "government-to-government relationship" between the Tribe and the federal government. There is a government-to-government relationship between the Tribe and the federal government but that relationship can not function fully in the absence of duly authorized representatives of the entire tribal community.

25. The BIA advised Ms. Silvia Burley by letter dated October 28, 2005, it was scheduling an annual on-site monitoring visit for November 28, 2005 (30 day Notice provided) and that the monitoring team would be composed of four individuals. (See Exhibit No. 11). The monitoring visit was agreed upon by the Tribe and BIA through the FY 2005 Annual Funding Agreement that was a part of the PL 93-638 which states:

The Secretary shall provide monitoring services to ensure the proper delivery of program services to Indian people, compliance to Contract terms, and to the Act, pursuant to 1(b)(7)(C)(i) and (ii) and Attachment 2 (V) (a) and (c) of this contract.

26. The October 28, 2005, letter informed the Tribe of the purpose of the monitoring visit and provided a copy of the standard guidelines for such visits entitled Purpose and Strategy - Official Monitoring Visit. (See Exhibit No. 12).

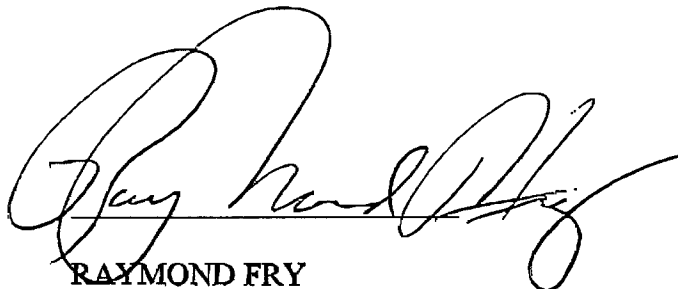
27. A November 7, 2005, letter from Ms. Burley to the Agency Superintendent BIA, Central California Agency, stated that [u]ntil we can reach agreement on the composition of a new monitoring team or appointment of a Special Master, the Tribe respectfully declines your request to schedule an on-site monitoring visit on November 28, 2005. (See Exhibit No. 13).
28. By letter dated November 15, 2005, the Agency acknowledged receipt of Ms. Burley's November 7, 2005, response and request. In the spirit of cooperation the BIA changed the makeup of the monitoring team and reaffirmed the scheduled monitoring trip date of November 28, 2005, at 10:00AM. (See Exhibit No. 14).
29. By letter dated November 17, 2005, Ms. Burley requested to reschedule the November 28, 2005, monitoring meeting to December 20, 2005, at 10:00 AM. (See Exhibit No. 15 ). Ms. Burley also stated in her letter that she would have a councilmember, tribal staff and legal counsel in attendance at the monitoring meeting and informed the BIA that the monitoring visit would be video taped.
30. By letter to Ms. Burley dated November 23, 2005, the Superintendent, BIA Central California Agency, indicated that the proposed December 20, 2005, date for monitoring was not feasible due to the our team's schedule, but that BIA would be willing to meet on either December 5, 2005, or December 12, 2005, at 10:00 am..(See Exhibit No. 16). The Superintendent agreed to having the tribe's proposed participants in attendance and video taping of the meeting.



31. By facsimile dated November 18, 2005, Ms. Burley, confirmed her availability for meeting with the Superintendent on December 12, 2005, at 1:00 pm. (See Exhibit No. 17).
32. By facsimile dated November 28, 2005, Ms. Burley agreed to the December 12, 2005, monitoring meeting date. Ms. Burley also requested to meet with the Superintendent of the BIA Central California Agency, to discuss issues prior to the monitoring visit. (See Exhibit No. 18).
33. In a letter dated December 6, 2005, the BIA Agency reminded Ms. Burley that she had cancelled the December 12, 2005, monitoring visit via a facsimile dated December 6, 2005. (See Exhibits No. 19 and 20). The Agency also indicated to Ms. Burley that it was imperative that monitoring take place and that December 20, 2005, would be a good date to complete this process.
34. By letter dated December 14, 2005, Ms. Burley cancelled without explanation the monitor meeting scheduled for December 20, 2005. (See Exhibit No. 21).

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 3<sup>rd</sup> day of January 2006



RAYMOND FRY

# **Exhibit 1**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



## United States Department of the Interior

### BUREAU OF INDIAN AFFAIRS

Central California Agency  
650 Capitol Mall, Suite 8-500  
Sacramento, CA 95814

IN REPLY REFER TO

MAR 26 2004

Certified Mail No.7003 1680 0002 3896 9127

Return Receipt Requested

Ms. Sylvia Burley, Chairperson  
California Valley Miwok Tribe  
10601 Escondido Pl.  
Stockton, California 95121

Dear Ms. Burley:

This letter acknowledges our February 11, 2004, receipt of a document represented to be the tribal constitution for the California Valley Miwok Tribe. It is our understanding that the Tribe has shared this tribal constitution with the Bureau of Indian Affairs (BIA) in an attempt to demonstrate that it is an "organized" tribe. Regretfully, we must disagree that such a demonstration is made.

Although the Tribe has not requested any assistance or comments from this office in response to your document, we provide the following observations for your consideration. As you know, the BIA's Central California Agency (CCA) has a responsibility to develop and maintain a government-to-government relationship with each of the 54 federally recognized tribes situated within CCA's jurisdiction. This relationship, includes among other things, the responsibility of working with the person or persons from each tribe who either are rightfully elected to a position of authority within the tribe or who otherwise occupy a position of authority within an unorganized tribe. To that end, the BIA has recognized you, as a person of authority within the California Valley Miwok Tribe. However, the BIA does not yet view your tribe to be an "organized" Indian Tribe and this view is borne out not only by the document that you have presented as the tribe's constitution but additionally, by our relations over the last several decades with members of the tribal community in and around Sheep Ranch Rancheria. ( Let me emphasize that being an organized vis-à-vis unorganized tribe ordinarily will not impact either your tribe's day-to-day operations but could impact your tribe's continued eligibility for certain grants and services from the United States).

Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was

Page 2 of 4

attempted or has occurred with the purported organization of your tribe. For example, we have not been made aware of any efforts to reach out to the Indian communities in and around the Sheep Ranch Rancheria, or to persons who have maintained any cultural contact with Sheep Ranch. To our knowledge, the only persons of Indian descent involved in the tribe's organization efforts, were you and your two daughters. We are unaware of any efforts to involve Yakima Dixie or Mr. Dixie's brother Melvin Dixie or any offspring of Merle Butler, Tillie Jeff or Lenny Jeff, all persons who are known to have resided at Sheep Ranch Rancheria at various times in the past 75 years and persons who have inherited an interest in the Rancheria. We are also not aware of any efforts to involve Indians( such as Lena Shelton) and their descendents who once lived adjacent to Sheep Ranch Rancheria or to investigate the possibility of involving a neighboring group. We are aware that the Indians of Sheep Ranch Rancheria were in fact, part of a larger group of Indians residing less then 20 miles away at West Point. Indeed, at your February 23, 2004 deposition, you yourself testified you were at one time of the West Point Indian Community; we understand as well, that you had siblings residing there for many years. The BIA remains available, upon your request, to assist you in identifying the members of the local Indian community, to assist in disseminating both individual and pubic notices, facilitating meetings, and otherwise providing logistical support.

It is only after the greater tribal community is initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified. The participation of the greater tribal community is essential to this effort. We are very concerned about the designated "base roll" for the tribe as identified in the submitted tribal constitution; this "base roll" contains only the names of five living members all but one whom were born between 1960 and 1996, and therefore would imply that there was never any tribal community in and around Sheep Ranch Rancheria until you met with Yakima Dixie, asking for his assistance to admit you as a member. The base roll, thus, suggests that this tribe did not exist until the 1990's, with the exception of Yakima Dixie. However, BIA's records indicate with the exception not withstanding, otherwise.

Base membership rolls are used to establish a tribe's cohesiveness and community at a point in time in history. They would normally contain the names of individuals listed on historical documents which confirm Native American tribal relationships in a specific geographical region. Since tribes and bands themselves did not usually possess such historical documents, therefore, tribal base rolls have included persons listed on old census rolls, Indian Agency rolls, voters rolls, etc. Our experience with your sister Miwok tribes (e.g., Shingle Springs Rancheria, Tuolumne Rancheria, Lone Band, etcetera) leads us to believe that Miwok tradition favors base rolls identifying persons found in Miwok tribes stretching from Amador County in the North to Calavaras and Mariposa Counties in the South. The Base and Enrollment criteria for these tribes vary; for example, Amador County tribes use the 1915 Miwok Indian Census of Amador County, El Dorado County tribes utilize the 1916 Indian Census Roll, tribe(s) in Tuolumne County utilize a 1934 IRA voters' list. The base roll typically constitutes the

Page 3 of 4

cornerstone of tribal membership and based upon our experience, has been the basic starting point and foundation for each of the Miwok tribes in our jurisdiction, i.e., the Lone Band of Miwok Indians, Shingle Springs Rancheria and Tuolumne Rancheria.

We must continue to emphasize the importance of the participation of a greater tribal community in determining membership criteria. We reiterate our continued availability and willingness to assist you in this process and that via PL 93-638 contracts intended to facilitate the organization or reorganization of the tribal community, we have already extended assistance. We urge you to continue the work that you have begun towards formal organization of the California Valley Miwok Tribe.

If we can assist your efforts in any way, please contact Raymond Fry, Manager, Tribal Services, at (916) 930-3794.

Should you wish to appeal any portion of this letter, you are advised that you may do so by complying with the following:

This decision may be appealed to the Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. In accordance with the regulations in 25 CFR Part 2 (copy enclosed). Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing or notice is the date it is post marked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone number. It should clearly identify the decision to be appealed. If possible attach a copy of the decision. The notice of and the envelope which it is mailed, should be clearly labeled "NOTICE OF APPEAL." The notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice.

You must also send a copy of your notice to the Regional Director, at the address given above.

If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal.

Page 4 of 4

If no timely appeal is filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

*Sgd. Dale Risling, Sr.*

Dale Risling, Sr.  
Superintendent

CC: Pacific Regional Director  
Debora Luther, Assistant US Attorney  
Myra Spicker, Deputy Solicitor  
Yakima Dixie-Tribal Member

# **Exhibit 2**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



## United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

FEB 11 2005

Mr. Yakima K. Dixie  
Sheep Ranch Rancheria of MiWok Indians of California  
11178 Sheep Ranch Rd.  
P.O. Box 41  
Sheep Ranch, California 95250

Dear Mr. Dixie:

I am writing in response to your appeal filed with the office of the Assistant Secretary – Indian Affairs on October 30, 2003. In deciding this appeal, I am exercising authority delegated to me from the Assistant Secretary – Indian Affairs pursuant to 209 DM 8.3 and 110 DM 8.2. In that appeal, you challenged the Bureau of Indian Affairs’ (“BIA”) recognition of Sylvia Burley as tribal Chairman and sought to “nullify” her admission, and the admission of her daughter and granddaughters into your Tribe. Although your appeal raises many difficult issues, I must dismiss it on procedural grounds.

Your appeal of the BIA’s recognition of Ms. Burley as tribal Chairman has been rendered moot by the BIA’s decision of March 26, 2004, a copy of which is enclosed, rejecting the Tribe’s proposed constitution. In that letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. Rather, the BIA would recognize her as “a person of authority within California Valley Miwok Tribe.” Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you, either in conjunction with Ms. Burley, other tribal members, or potential tribal members, to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004, letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members. If you need guidance or assistance, Ray Fry, (916) 930-3794, of the Central California Agency of the BIA can advise you how to go about doing this.

In addition, your appeal to my office was procedurally defective because it raised issues that had not been raised at lower levels of the administrative appeal process. In May 2003, you contacted the BIA to request assistance in preparing an appeal of the BIA’s recognition of Ms. Burley as tribal Chairman. You specifically stated that you were not filing a formal Notice of Appeal. In June 2003, you filed an “Appeal of inaction of official,” pursuant to 25 C.F.R. §2.8, with the Central California Agency Superintendent challenging the BIA’s failure to respond to your request for assistance. In August 2003, you filed another “Appeal of inaction of official”



with the Acting Regional Director challenging the failure of the Superintendent to respond to your appeal of the BIA's inaction. Your appeal with my office, however, was not an "Appeal of inaction of official." Rather, your "Notice of Appeal" challenged the BIA's recognition of Ms. Burley as tribal Chairman and sought to nullify the Tribe's adoption of her and her family members. Those issues were not raised below. They are not, therefore, properly before me.

In addition, your appeal appears to be untimely. In 1999, you first challenged the BIA's recognition of Ms. Burley as Chairman of the Tribe. In February 2000, the BIA informed you that it defers to tribal resolution of such issues. On July 18, 2001, you filed a lawsuit against Ms. Burley in the United States District Court for the Eastern District of California challenging her purported leadership of the Tribe. On January 24, 2002, the district court dismissed your lawsuit, without prejudice and with leave to amend, because you had not exhausted your administrative remedies by appealing the BIA's February 2000 decision. After the court's January 24, 2002, order, you should have pursued your administrative remedies with the BIA. Instead, you waited almost a year and a half, until June 2003, before raising your claim with the Bureau. As a result of your delay in pursuing your administrative appeal after the court's January 24, 2002, order, your appeal before me is time barred.

In light of the BIA's letter of March 26, 2004, that the Tribe is not an organized tribe, however, the BIA does not recognize any tribal government, and therefore, cannot defer to any tribal dispute resolution process at this time. I understand that a Mr. Troy M. Woodward has held himself out as an Administrative Hearing Officer for the Tribe and purported to conduct a hearing to resolve your complaint against Ms. Burley. Please be advised that the BIA does not recognize Mr. Woodward as a tribal official or his hearing process as a legitimate tribal forum. Should other issues arise with respect to tribal leadership or membership in the future, therefore, your appeal would properly lie exclusively with the BIA.

Sincerely,



---

Michael D. Olsen  
Principal Deputy  
Acting Assistant Secretary - Indian Affairs

Enclosure

cc: Sylvia Burley  
Troy M. Woodward, Esq.  
Thomas W. Wolfrum, Esq.  
Chadd Everone

# **Exhibit 3**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



**YAKIMA K. DIXIE**

Sheep Ranch Rancheria of MiWok Indians of California  
a.k.a. California Valley Miwok Tribe  
11178 Sheep Ranch Rd., Mail P.O. Box 41  
Sheep Ranch California 95250  
209-728-2102

March 7, 2005

Raymond Fry, Tribal Operations Officer for Tribal Services  
Bureau of Indian Affairs, U.S. Dept. of the Interior  
Sacramento Area Office  
650 Capital Mall 8-500  
Sacramento, California 95814  
Tel: (916) 930-3794 Fax: (916) 930-3780

**A Formal Request for Action**

The Declaration of Brian Golding, Jr. of April 30, 2004 (as submitted by the BIA in Case No. CIV S-02-0912) is acknowledged by the BIA (as averred by both Scott Keep and Debora Luther) to be the present position of the BIA with regard to the issues of "Chairperson" "authorized representative" and "putative members" of this Tribe. (See Exhibit 2004-04-30.) The Golding Declaration states the following:

"5. .... With respect to federally recognized tribes that are unorganized, have no formal government structure and/or have no formal enrollment document or list of members and where a distribution plan was prepared for the Tribe, such as Sheep Ranch Rancheria, it has been BIA's practice to acknowledge the distributees listed on the plan and their lineal descendants as putative members of the tribe. Pursuant to this practice, Yakima Dixie was and has been acknowledged by BIA as a putative member of the Tribe." (Page 3 line 6-11.)

"9. At the present time, the Bureau of Indian Affairs acknowledges Silvia Burley as the authorized representative of the California Valley Miwok Tribe with whom government-to-government business is conducted. However, the BIA does not view the Tribe to be an organized tribe and therefore, declines to recognize Ms. Burley as a 'tribal chairperson' in the traditional sense as one who exercises authority over an organized Indian tribe." (Page 4 line 19-23.)

Consistent with the Golding Declaration, the Olson Letter of Determination of February 11, 2005 asserts the following.

2005-03-07-Fry-meeting-documents

"Your appeal of the BIA's recognition of Ms. Burley as tribal Chairman has been rendered moot by the BIA's decision of March 26, 2004, a copy of which is enclosed, rejecting the Tribe's proposed constitution. In that letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. Rather, the BIA would recognize her as "a person of authority within California Valley Miwok Tribe." Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you, either in conjunction with Ms. Burley, other tribal members, or potential tribal members, to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004, letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members. If you need guidance or assistance, Ray Fry (916) 930-3794, of the Central California Agency of the BIA can advise you how to go about doing this." (See Exhibit 2005-02-11, page 1, §2.)

Given these two, seminal documents (The Golding Declaration and the Olson Letter of Determination), I (Yakima K. Dixie) am the only "putative" member of the Tribe that has been officially recognized to date; and therefore, I assert and ask that you recognize my right to organize the Tribe along the lines which I have been doing since December 1999.

Accordingly, I request from you, Raymond Fry, that you make a written acknowledgment of my right to organize the Tribe and that you do so in such terms as may be mutually agreeable.

\_\_\_\_\_  
Yakima K. Dixie

\_\_\_\_\_  
Date

### Confirmation

I decline the above request.

I abstain from the above request.

I agree to the above request.

\_\_\_\_\_  
Raymond Fry

\_\_\_\_\_  
Raymond Fry

\_\_\_\_\_  
Raymond Fry

### Witnesses

\_\_\_\_\_  
Date

## Background

### Synthesized by Chadd Everone, Deputy

78 Sheep Ranch Rancheria of MiWok Indians of California a.k.a. California Valley Miwok  
Tribe is a federally recognized, California Indian Tribe, established in 1916.

80  
82 An adequate explanation of the history of the Tribe is provided in the document entitled:  
"Plan For Distribution Of The Assets Of the Sheep Ranch Rancheria ...." which was written by  
Robert Bennett, Commission of Indian Affairs and dated August 18, 1966. That, together with  
84 the attendant documents of the estate of Mable Hodge Dixie, substantiates that her son, Yakima  
K. Dixie, is the rightful authority for the tribe, inheriting that position by his lineal descent. (See  
86 **Exhibit 1966-08-18.**)

88 Since his mother's death, Yakima Dixie has always been recognized as the head of the  
Tribe by the general MiWok community. For some 30 years, he was recognized by the BIA as  
90 "Chairperson" for the Tribe; and he was treated as such, as is evident in the transcription of the  
video tape of the meeting between himself, Raymond Fry, Brian Golding, and Silvia Burley of  
92 September 8, 1998 at the Sheep Ranch Reservation. (See **Exhibit 1998-09-08.**) The purpose of  
that meeting was to help Yakima organize the Tribe.

94  
96 Sometime, in 1999, without his consent or knowledge and by means that cannot yet be  
discovered, Yakima was substituted by Silvia Burley as the "authorized representative" for the  
Tribe.

98  
100 This substitution was discovered inadvertently by Yakima in November 1999, where upon  
he immediately initiated his protest and appeal of the substitution, which since then has become a  
lengthy, arduous, immensely costly, emotionally exhausting, and life-threatening process for him.  
102 Given the afore-mentioned "Olson Letter of Determination" of February 11, 2005 (**Exhibit 2005-**  
**02-11**) and its apparent mandate to organize the Tribe, it is easy to see how Yakima might think  
104 that, after some 6 years of seeking restitution, he is back to where he started with Raymond Fry in  
September 1999.

106  
108 In terms of organizing the Tribe, Yakima, together with various others associated with the  
Tribe, presented to the BIA his Constitution of December 11, 1999 at a meeting with Raymond  
Fry, Dale Risling, and Brian Golding. (See **Exhibit 1999-12-11.**) The document was accepted  
110 by those representatives of the BIA and ostensibly recorded and filed; but it remained unacknow-  
ledged by the BIA. At a meeting in May 2003 with Raymond Fry, which was for the purpose of  
112 continuing his protest and appeal of the recognition of Silvia Burley, Fry recommended to Yakima  
that he might resolve the problem by identifying various family members (who had lived at the  
114 Sheep Ranch Reservation) and by submitting their dossiers to him, he would call a Secretarial  
Supervised election that could reinstate Yakima's authority. Following Fry's recommendation,  
116 Yakima submitted the dossiers of 9 such members on September 25, 2003. Those documents are  
on record with the BIA and are not reproduced here; only the memorandum transmitting the  
118 documents is provided here. (See **Exhibit 2003-09-25.**) Those individuals have provided Decla-  
rations on behalf of Yakima's claim to authority; and those Declarations are submitted here. (See  
120 **Exhibits 2005-01-26.**) In late 2003, Yakima designated Velma WhiteBear to be his Executive  
Director and under her administration, he initiated monthly tribal meetings at the Sheep Ranch  
122 Reservation. Those meetings have been held continuously, even during a period of Yakima's

## Background

### Synthesized by Chadd Everone, Deputy

#### Various Definitions of the Term "Putative"

- 1) **dictionary.law.com**: putative - adj. commonly believed, supposed or claimed. Thus a putative father is one believed to be the father unless proved otherwise, a putative marriage is one that is accepted as legal when in reality it was not lawful (e.g. due to failure to complete a prior divorce). A putative will is one that appears to be the final will but a later will is found that revokes it and shows that the putative will was not the last will of the deceased.
- 2) **Webster's Unabridged Dictionary**: putative. Pronunciation: \*py\*d.\*d.iv Function: adjective  
Etymology: Middle English, from Late Latin putativus, from Latin putatus (past participle of putare to consider, think) + -ivus -ive \* more at PAVE
- 1 : commonly accepted or supposed : REPUTED \*a few of us are a little dubious about these putative human superiorities— E.A.Hooton\* \*the putative father\*
- 2 : assumed to exist or to have existed : HYPOTHEZIZED, INFERRED \*they can recognize rock strata capable of producing oil, and look for the putative product— Time\* \*traced back to a postulated form in a putative parent language— J.B.Carroll\*
- puftatitivefly \-d.\*vl\*\ adverb
- 3) **New Oxford English Dictionary**: putative, *a.*
- (ˈpjʊ:tətɪv) [a. F. *putatif* (14–15th c. in Hatz.-Darm.), or ad. late L. *putatīvus* (Tertullian c 200), f. *putat-* *us*: see prec. and -ive.]
- That is such by supposition or by repute; commonly thought or deemed; reputed, supposed.
- putative marriage**, in *Canon Law*, a marriage which though legally invalid was contracted in good faith by at least one of the parties.
- 1432–50 tr. *Higden* (Rolls) III. 331 Philippus,..fader putative of the noble conquerour Alexander. 1539 *Test. Ebor.* (Surtees) VI. 92 John Beilbie, my sone putative. a1548 *Hall Chron., Edw. IV* 196 Of al hys other putatyue (I dare not say fayned) frendes..he had bene clerely abandoned. 1577 tr. *Bullinger's Decades* (1592) 688 Neither is the Scripture it selfe ashamed, to call Marie..not the putative or supposed, but the true and naturall mother. 1681 J. Flavel *Meth. Grace* vi. 130 Let their blasphemous mouths call it in derision putative righteousness, (*i.e.*) a mere fancied or conceited righteousness; yet we know assuredly Christ's righteousness is imputed to us, and that in the way of faith. 1765 *Blackstone Comm.* I. xvi. 458 If such putative father, or lewd mother, run away from the parish, the overseers..may seize their rents, goods, and chattels, in order to bring up the said bastard child. 1858 *Sears Athan.* ii. xi. 240 He [Christ] imparts not a putative, but a subjective, righteousness to the believer.
- 1811 *Ld. Meadowbank in Brymner v. Riddell* (Febr.) (Ct. of Session), Here there was a putative marriage, acknowledged by all the friends of both parties, and by the general admission..of the legality of that marriage. 1825 *Rt. Bell (title)* Report of a case of legitimacy under a putative marriage [Brymner v. Riddell] tried..1811. 1876 P. Fraser *Husb. & Wife Law Scotl.* (ed. 2) I. 152 The children born of such a putative marriage are, by the law of Scotland legitimate, though the marriage be null.
- Hence '**putatively** *adv.*, in a putative way or manner; supposedly, reputedly.
- 1716 M. Davies *Athen. Brit.* II. 220 He subjoin'd also that Christ did not really suffer, but only Putatively in people's Fancies. 1851 P. Colquhoun *Rom. Civ. Law* II. §1078 Putatively married persons have the same privilege. 1903 McNeill *Egregious English* 109 Mr. Davidson is a Scot, and Mr. Yeats, putatively at any rate, an Irishman

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(ˈpjʊtətɪv) [a. F. *putatif* (14–15th c. in Hatz.-Darm.), or ad. late L. *putatīvus* (Tertullian c 200), f. *putat-* us: see prec. and -ive.]

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**putative marriage**, in *Canon Law*, a marriage which though legally invalid was contracted in good faith by at least one of the parties.

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1811 Ld. Meadowbank in *Brymner v. Riddell* (Febr.) (Ct. of Session), Here there was a putative marriage, acknowledged by all the friends of both parties, and by the general admission..of the legality of that marriage. 1825 Rt. Bell (*title*) Report of a case of legitimacy under a putative marriage [Brymner v. Riddell] tried..1811. 1876 P. Fraser *Husb. & Wife Law Scotl.* (ed. 2) I. 152 The children born of such a putative marriage are, by the law of Scotland legitimate, though the marriage be null.

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# **Exhibit 4**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-nsn.gov>



Transmitted Via Fax and First Class Mail

April 8, 2005

Mr. Dale Morris, Superintendent  
Central California Agency  
650 Capital Mall, Suite 8-500  
Sacramento, CA 95814

Re: California Valley Miwok Tribe

Dear Superintendent Morris:

I am writing in response to the letter forwarded to you on or about March 16, 2005 from Yakima Dixie. First, as you are well aware, the P.L. 638 Contract the Government has entered into with the California Valley Miwok Tribe sets out specific standards relating to the Tribe. Any effort to interfere with that contract will be met by legal and administrative challenges. That contract was negotiated with the BIA in good faith and the Tribe has met all contracting standards. Mr. Dixie's request to bifurcate contract payments would not only violate the terms of the agreement, it would also violate the regulations relating to the disbursement of funds under 638 contracts.

As you may or may not be aware, Judge Kathleen Lynn has contacted the Tribe regarding mediation efforts. The Tribe's position is that the Tribe has no dispute with Mr. Yakima Dixie or the group of non-tribal members he has aligned himself with. He is a tribal member and as such the Tribe has authority to handle any issue he may have with the Tribe as an internal matter. The only dispute that the Tribe has is with the Bureau of Indian Affairs regarding its continued interference with internal tribal affairs.


The Tribe's position is that if Judge Lynn were to be used as a catalyst for discussions, it would involve discussions between the Tribe and the Bureau. In that regard, the Tribe would request that Judge Lynn be invited to a meeting between the Tribe and your office in order to assist us in discussing the issues of contention between the Tribe and the Bureau of Indian Affairs. The Tribe believes that with Judge Lynn's assistance, the Tribe and the Bureau could begin to work out the foundation for addressing the concerns each party has and possibly work out solutions

that would allow the Tribe and the Bureau to come to an agreement on the contentious issues involving the governance of the Tribe.

The Tribe hopes that the Bureau of Indian Affairs can see the benefit of this course of action. The time has come for us to try to resolve these problems with face-to-face discussions. The Tribe will not allow the Bureau to make unilateral decisions on the organization, composition or governance of the Tribe. However, the Tribe is more than willing to try to work out a solution, which both parties can mutually agree upon that address the core concerns of the Bureau while protecting the sovereignty of the Tribe.

Please let us know at your earliest convenience if your office is interested in enlisting the assistance of Judge Lynn in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Silvia Burley, Chairperson  
California Valley Miwok Tribe

Cc: Tribal Council  
Colleen Petty  
George Steele, Esq.  
Phillip E. Thompson, Esq.  
Judge Kathleen Lynn  
Clay Gregory

# **Exhibit 5**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-nsn.gov>



2005-09-30

### ENROLLMENT COMMITTEE - OFFICIAL NOTICE

August 30, 2005

Yakima Kenneth Dixie  
P.O. Box 41  
Sheep Ranch, California 95250

Subject: Official Notice - Disenrollment of Yakima Kenneth Dixie

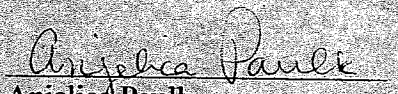
Mr. Dixie,

This official letter is to inform you that you have been **disenrolled**, in accordance with the Miwok Customs and Traditions and with the California Valley Miwok Tribe's Enrollment Ordinance. An official notice was mailed to you on Wednesday, August 10<sup>th</sup>, 2005 in which you had 15 days to request a hearing on the proposed disenrollment, as provided in Chapter 8, Section 08.020 Disenrollment Procedure.

Therefore, your failure to respond to, and /or send any corresponding evidence to the contrary of information on file with the Tribal Government made available to the Enrollment Committee has left the committee with no other alternative than to make this a final determination

As of this date, be it known that you (Yakima Kenneth Dixie) are now **disenrolled** as a member of the California Valley Miwok Tribe.

Certified By

  
Anjelica Paulk  
Enrollment Committee Officer

Certified by  
Anjelica Paulk  
Enrollment Committee Officer  
California Valley Miwok Tribe  
Date AUG 30 2005

CVMT-2011-001112

# **Exhibit 6**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

## California Valley Miwok Tribe Organizational Efforts Correspondence, Meeting Sign-in Sheets and Minutes

- A. Letter to Raymond Fry, Tribal Operations Officer, Central California Agency, dated February 28, 2005, from Mr. Yakima Dixie confirming the initial meeting he had scheduled with the Agency for February 28, 2005, had been re-scheduled for March 7, 2005, at 1:00 PM and that he would have four other representatives with him.
- B. Letter to Ms. Silvia Burley dated February 28, 2005, from Mr. Yakima Dixie, inviting her to attend the March 7, 2005, meeting at the Central California Agency to discuss organizing the Tribe.
- C. Letter to Ms. Silvia Burley dated March 4, 2005, from the Acting Superintendent, Central California Agency, BIA, a Spokesperson for the California Valley Miwok Tribe memorializing a telephone conversation Mr. Morris had with her regarding the scheduled meeting with Mr. Yakima Dixie and representatives on March 7, 2005, (typo in second line of letter states February 7, 2005) and encouraging her or her representative to be in attendance at that the upcoming meeting where organization of the California Valley Miwok Tribe would be discussed. Acting Superintendent also indicated he would be available to meet with her on March 10, 2005, at 1:00 PM as an accommodation if she or her representative were not able to attend the March 7 meeting.
- D. Letter to Clay Gregory, Pacific Regional Director, BIA dated March 8, 2005, from Ms. Burley requesting a meeting with Mr. Gregory and the Acting Superintendent, Mr. Morris, to discuss concerns and issues the tribe was currently facing. This meeting was eventually set up for March 10, 2005, at 2:00 PM to be held at the Pacific Regional Office, in Sacramento, California.
- E. Letter to the BIA dated March 11, 2005, from Ms. Burley, Ms. Burley indicating that Mr. Tiger Paulk would attend all future meetings between BIA and her group and Mr. Dixie's group as the official representative of her group due to fear for their individual safety.
- F. Plan for organization of the Tribe submitted by Yakima Dixie following informational meeting of March 7, 2005.
- G. Letter to acting Superintendent, Mr. Morris, dated March 18, 2005, from Ms. Burley, confirming Mr. Melvin Dixie's attendance at the March 14, 2005, meeting, providing information to Melvin Dixie and requesting that he contact her group.
- H. Letter to Acting Superintendent and Assistant Regional Solicitor dated April 16, 2005, from Yakima Dixie in response to April 11, 2005, meeting.

- I. Letter to Raymond Fry, Tribal Operations Officer, Central California Agency, dated May 20, 2005, from Mr. Yakima Dixie confirming meeting date and participants for May 25 meeting.
- J. Letter to Troy Burdick, Superintendent, Central California Agency, dated August 26, 2005, from Attorney Karla Bell, representing the California Valley Miwok Tribe, following up on a July 8, 2005, meeting with the Superintendent.
- K. Notes of Superintendent Burdick of his December 2, 2005, meeting with Ms. Burley, one of her attorneys and a financial manager.
- L. Meeting Sign-in Sheets from various meetings.

# **Exhibit 6 A**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry





**YAKIMA K. DIXIE**

Sheep Ranch Rancheria of MiWok Indians of California  
a.k.a. California Valley Miwok Tribe  
11178 Sheep Ranch Rd., Mail P.O. Box 41  
Sheep Ranch California 95250  
209-728-2102

February 28, 2005

Raymond Fry, Tribal Operations Officer for Tribal Services  
Bureau of Indian Affairs, U.S. Dept. of the Interior  
Sacramento Area Office  
650 Capital Mall 8-500  
Sacramento, California 95814  
Tel: (916) 930-3794  
Fax: (916) 930-3780

Raymond:

This is to confirm my understanding that the meeting of February 28, 2005 has been changed to March 7, 2005 at 1 p.m.

In addition to myself, the following will be attending the meeting on my behalf.

**Chadd Everone**, Deputy to Yakima Dixie, whom I appointed on December 12, 2003 and who as done most of my representation for the last 2 years;

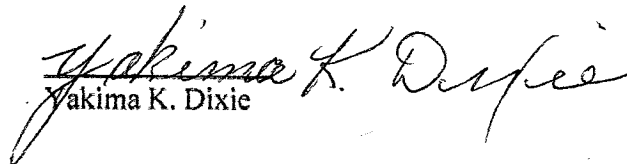
**William Pink**, Special Representative for tribal organization, who was the Tribal Operations Officer for my Tribe during 2000 and who is well acquainted with the history of the Tribe;

**Thomas Wolfrum**, my General Counsel for the Tribe, whom he appointed in that capacity in December 2003;

**Velma WhiteBear**, who is the Executive Director of the Tribe and whom I appointed to the capacity in June 25, 2004 but who functioned in that capacity for some time prior to that.

Also, please see my letter to Silvia. In that regard and for the reasons which I express in that letter, I ask that you also send a letter to her requesting that she place in reserve the funds which the BIA has recently disbursed to her under Public Law 93-638.

Thank you,

  
Yakima K. Dixie

# **Exhibit 6 B**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

2005-02-28-Burley-memo



**YAKIMA K. DIXIE**

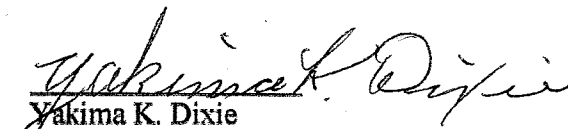
Sheep Ranch Rancheria of MiWok Indians of California  
a.k.a. California Valley Miwok Tribe  
11178 Sheep Ranch Rd., Mail P.O. Box 41  
Sheep Ranch California 95250  
209-728-2102

February 28, 2005

Silvia Burley  
10601 Escondido Pl.  
Stockton, California 95212  
Phone 209-931-4567 Fax 209-931-4333

As you are aware, I am organizing the Tribe consequent to the letter of determination that was issued to me on February 11, 2005 by Michael Olson (Principal Deputy Acting Assistant Secretary - Indian Affairs). At Mr. Olson's request, I am proceeding with Raymond Fry (Tribal Operations Officer for Tribal Services); and I had arranged a meeting with him for February 28, 2005. I gave to you notice of that meeting and invited you to attend. I understand that you contacted Mr. Fry and made some kind of a complaint and that the meeting has been changed to March 7, 2005 at 1 p.m. Again, you are invited to attend.

In addition, I am informed that very recently the BIA released to you funds under Public Law 93-638. I hereby request that you do not spend those funds and that you hold them in reserve, pending the determinations that are to be made with the BIA as a result of the tribal organization by its putative members. Certainly, you do not have any pressing need to disburse those funds and preserving them would mitigate potential damages.

  
Yakima K. Dixie

cc. Ray Fry.

RECEIVED  
FEB 28 2005  
BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D.C.

CVMT-2011-001119

# **Exhibit 6 C**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



IN REPLY REFER TO:

## United States Department of the Interior

### BUREAU OF INDIAN AFFAIRS

Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

**MAR - 4 2005**

Silvia Burley, Spokesperson  
California Valley Miwok Tribe  
10601 Escondido Place  
Stockton, CA 95121

Dear Ms. Burley:

This letter is a follow-up to a phone conversation I had with you about a meeting I have scheduled with Mr. Yakima Dixie on February 7, 2005, at 1:00 p.m. We will be discussing Mr. Dixie's concerns about organization of the California Valley Miwok Tribe. As I told you over the phone, you or your representatives are welcome to attend the meeting. In fact, I would encourage you to attend so that you can also present your concerns about the organization of the tribe. Mr. Dixie has also asked Chadd Everone, William Pink, Thomas Wolfrum, and Velma WhiteBear to attending the meeting.

If you are not able to attend the March 7, 2005 meeting I am available to meet with you on March 10, 2005, at 1:00 p.m. Please let me know if the proposed meeting date and time is acceptable to you. You can reach me at (916) 978-3776.

Sincerely,

Dale Morris  
Acting Superintendent

# **Exhibit 6 D**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-nsn.gov>



March 8, 2005

Mr. Clay Gregory  
Regional Director  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

Subject: Official Request to meet with Mr. Clay Gregory, Regional Director

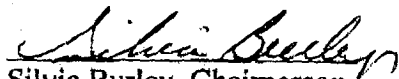
Dear Mr. Gregory,

This letter serves as an official request in regards to our phone conversation earlier this afternoon. I would like to request a meeting with you and Mr. Dale Morrison regarding the California Valley Miwok Tribe to discuss the concerns and issues that the Tribe is currently facing.

If at all possible I would like to meet ASAP... preferably this week. If this week is not possible than any day next week is open for me to discuss our ongoing concerns. I am available Wednesday March 9<sup>th</sup> through Friday March 11<sup>th</sup> and Monday, March 14<sup>th</sup> through Friday, March 18<sup>th</sup>.

I look forward to hearing from you.

Sincerely,

  
Silvia Burley, Chairperson

Cc: Mr. Dale Morris, Superintendent  
Phillip Thompson, Esq.  
George Steele, Esq.  
Colleen Petty

# **Exhibit 6 E**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-nsn.gov>



March 11, 2005

Mr. Dale Morris, Acting Superintendent  
CCA/Bureau of Indian Affairs  
650 Capitol Mall, Suite 8-500  
Sacramento, CA 95814

Re: Future Meeting re: California Valley Miwok Tribe

Dear Mr. Morris,

This letter is a follow up to the meeting held yesterday at the Regional Office at 2:00 P.M. with all concerned. Due to the fact that the Bureau stated that they have the right to meet with anybody that wants to come there, the Tribal members fear for their safety. Individuals who have threatened Tribal members have in the past and do currently meet with Bureau employees/Officials regarding issues and concerns that impact our Tribal Government. Therefore, THE tribe has authorized Tiger Paulk, Tribal Consultant to attend (on their behalf) as a representative of the Tribe any meetings that are scheduled or may be scheduled in the future at either the Central California Agency or Regional Office (if you or any of your staff are in attendance).

We are requesting, a curtsey to the Tribe, that the Central California Agency/BIA please afford the Tribe the time to prepare for any current or future meetings by contacting the Tribal Offices located at 10601 Escondido Pl., Stockton, California 95212 and if by fax to (209) 931-4333 to be followed by a hardcopy.

Are you agreeable that the Tribe is entitled to have at the very least a representative to monitor what decisions and direction the Bureau of Indian Affairs may take or imply at any meeting /s ? In assuming your answer to be yes, the representative will be sent with the intentions of keeping the Tribe informed as to any further actions that the Bureau of Indian Affairs may take in any way that will and/or may impact the California Valley Miwok Tribe's inherent sovereign rights.

Respectfully,

  
Silvia Burley, Chairperson

Cc: Phillip Thompson, Esq.  
George Steele, Esq.  
Clay Gregory, Regional Dir.  
✓ Tiger Paulk,  
Colleen Petty  
File

# **Exhibit 6 F**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

2005-03-14-FryMeeting



## YAKIMA K. DIXIE

Sheep Ranch Rancheria of MiWok Indians of California  
a.k.a. California Valley Miwok Tribe  
11178 Sheep Ranch Rd.  
Sheep Ranch, California 95202  
209-728-2102

### A PLAN FOR THE ORGANIZATION OF THE TRIBE UNDER THE AUTHORITY OF YAKIMA K. DIXIE

Consequent to the "Informational Meeting" of March 7, 2005 with Ray Fry *et al.*, whereat, it was agreed that Yakima K. Dixie was to outline a plan for organizing the above Tribe and submit it at this meeting to the representatives of the BIA for technical assistance; and given, as foundational documents: 1) the "Olson Letter of Determination" of February 11, 2005; 2) the "Golding Declaration" of April 30, 2004 (as submitted by the BIA in Case No. CIV S-02-0912); and 3) the "Risling Rejection Letter" of March 26, 2004, Yakima Dixie directed his Deputy, Chadd Everone, in concert with his other advisors, to draft such an organizational plan. And that is provided herein.

### SYNOPSIS

There are two alternative plans for the organization of the Tribe: 1) the "Pink Doctrine"; and 2) the "Continuation of Antecedent Actions". In practice, the two naturally converge.

#### Option #1

The "Pink Doctrine". This refers to William Pink, who was Tribal Operations Officer for this Tribe from early 2000 through early 2001 and who currently is Special Consul to Yakima K. Dixie. He proposes that we hold the "Olson Letter of Determination" of February 11, 2005 to be a mandamus to organize the Tribe *de novo*. Accordingly, **ALL PRIOR ACTIONS** would be put aside. In this mode, the following would occur.

☉ The first order of business would be to establish those "putative" members of the Tribe who would have the right to initially organize the Tribe. Assuming

2005-03-14-FryMeeting

that "putative" means "commonly recognized", "by common law or judicial *stare decisis*", or "by tradition", then the distributees of the estate of Mable Hodge Dixie (Exhibits 1966-08-18; and 1971-11-01) would be the only ones who qualified as the primary "putative" members. That means that Yakima K. Dixie, his brother Melvin Dixie, and Dequita Boire, the daughter of Merle Butler, are the primary "putative" members of the Tribe. This persons are already in accord about organizing the tribe. See the Declarations of Yakima (Exhibit 2005-01-26) and Melvin and Dequita (Exhibits 2005-03-03). And among this group and the other designated members of the Tribe (Exhibits 2005-01-26), there is already consent that Yakima K. Dixie is the authority for the tribe. The right for Yakima Dixie to organize the Tribe is further predicated on the very first organizational meeting between himself, Ray Fry, and Brian Golding (See excerpt from transcribed video tape of that meeting - Exhibit 1998-09-08).

☪ The second order of business will be appoint Velma WhiteBear to help the putative members organize the tribe. Velma is uniquely qualified for this objective. She is a close relative of Yakima, who live on the Sheep Ranch reservation land in early childhood. She has maintained contact with Yakima and the reservation throughout the years; and she has been largely responsible for the organizational efforts since May of 2003. She knows all of the family tree, is highly active in the Miwok and Indian communities; and she is a professional administrator (See Exhibit 2004-12-16).

☪ The third order of business will be to hold meetings with the putative members of the tribe to construct a constitution which fits the particular customs and objectives if this Tribe. Emphasis will be placed on defining leadership in unambiguous terms such that intercline disputes will be avoided and on building a tribal organization that is competent at self-administration and management of business enterprises. Much of the construction for the Constitution is already in draft form and can be completed and ratified by the primary "putative" members within about 2 weeks. This expansion of membership would automatically include the individuals who have already been designated as members by Yakima Dixie; and Silvia Burley would be eligible for such membership. These enrollments were constructed based on criteria that were enunciated by Ray Fry in his meeting with Yakima in May 2003 and their dossiers were submitted to Fry on September 25, 2003 (Exhibit 2003-09-25 et seq.).

☪ Once the constitution is in place and is approved by the BIA, then the fourth order of business, the enrollment process, can proceed. This out-reach will include such venues as:

a) public notices such as the one which has already been constructed (Exhibit 2005-03-10);

b) a booth at the 35 UC Davis Pow-wow that is being held on April 2, 2005; and a booth at the Lathrop Community Pow-wow of April 30, 2005;

c) various Internet news groups  
(e.g., <http://groups.yahoo.com/group/ncanativeeventsandnews>).

Q The subsequent business would be to proceed with tribal development including projects like the ones which have already been done. For the sake of brevity, exhibits of the projects are not provided herein; however, at the meeting, Velma WhiteBear will provide a review of this work, if appropriate.

In order to move forward with the above and to stay the improper distribution of money which continues to occur and which causes irreparable injury to the Tribe, Yakima K. Dixie requests from the BIA a letter of determination that he is the rightful authority for the organization of the Tribe.

#### Option #2

In the absence of affirmative action on the part of the BIA with respect to the proposal in Option #1, Yakima K. Dixie will proceed forward with his antecedent actions. As the record will show, Yakima K. Dixie and Silvia Burley (whom he originally appointed to help him organize the Tribe, whom he once again, formally dismissed in October 2004, but who still holds control over tribal resources) have irreconcilable differences. In his letter of September 24, 1998 to Yakima Raymond Fry noted regarding membership:

"In those situations where an "unterminated" Tribe is pursuing reorganization, the persons possessing the right to reorganize the Tribe is usually specified by the decision of the court, as the majority of "unterminated" Tribes regain federal recognition through litigation. Usually, the court decisions will state that the persons possessing the right to reorganize the Tribe are those persons still living who are listed as distributees or dependent members on the federally approved Distribution Plan. In some cases the courts have extended the right of participation to the lineal descendants of distributees or dependent members, whether or living or deceased." (See Exhibit 1998-09-24)

Therefore, I, Yakima K. Dixie, request from Raymond Fry and the agents of the BIA in attendance of this meeting to advise me about the above cited court actions and about how I might proceed to resolve this matter of authority by court action.

Respectfully,

---

Yakima K. Dixie

# Exhibit 6 G

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

# CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-nsn.gov>



March 18, 2005

Mr. Dale Morris, Acting Superintendent  
CCA/Bureau of Indian Affairs  
650 Capitol Mall, Suite 8-500  
Sacramento, California 95814

Re: Official Request for Information on Melvin Leroy Dixie

Dear Mr. Morris,

It was brought to the attention of the Tribe that at the meeting of Monday, March 14, 2005 between yourself and Mr. Yakima Dixie's group that calls themselves Sheep Ranch Rancheria of MiWok Indians of California aka California Valley Miwok Tribe, there was an individual who claimed to be Mr. Melvin Dixie.

The Tribe believes that Mr. Melvin Dixie may have a right to participate in the process of the organization of the Tribe. If this is truly Melvin Dixie we are requesting that Mr. Dixie contact the Tribe with valid verification to prove that he is who he claims to be.

We understand the "Privacy Act" and therefore we are requesting that the Central California Agency contact Mr. Melvin Dixie to inform him of the Tribes inquiry and since we have not been given his contact information, we are asking him to contact the official California Valley Miwok Tribe (not to get confused by the individual who has broken off from the Tribe and is in the process of starting a new Tribe called the Sheep Ranch Rancheria of MiWok Indians of California aka California Valley Miwok Tribe).

If you find that you (for some reason) cannot or will not contact Mr. Dixie with an official letter from your office, or if you cannot forward the requested contact information to our Tribe, then the Tribe is requesting that you forward a copy of this letter to Melvin Dixie at the next meeting with the Central California Agency/BIA in which he participates. Thank you for your time and understanding.

Respectfully,

  
Silvia Burley, Chairperson

CC: Tribal Council  
Phillip Thompson, Esq.  
George Steele, Esq.  
Karla Bell, Esq.

# **Exhibit 6 H**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



2005-04-16-BIA-issues

**YAKIMA K. DIXIE**

Sheep Ranch Rancheria of MiWok Indians of California  
 a.k.a. California Valley Miwok Tribe  
 11178 Sheep Ranch Rd., Mail P.O. Box 41  
 Sheep Ranch California 95250  
 209-728-2102

April 16, 2005

Dale Morris, Acting Superintendent  
 Bureau of Indian Affairs  
 U.S. Dept. of the Interior  
 Sacramento Area Office  
 650 Capital Mall 8-500  
 Sacramento, California 95814  
 Tel: (916) 930-3794 Fax: (916) 930-3780

Myra P. Spicker, Asst. Reg. Solicitor  
 U.S. Dept. of the Interior  
 Office of the Regional Solicitor  
 Pacific Southwest Region  
 2800 Cottage Way, Rm. E-1712  
 Sacramento, CA 95825-1890  
 Tel: (916) 978-5675 Fax: (916) 978-5694

Mr. Morris & Ms. Spicker:

This is a follow-up to the faxed memo which we sent on April 16. This one is signed by Mr. Dixie and is virtually identical to the previous.

As we agreed in our meeting of April 11, 2005, Mr. Dixie is sending herein a list of issues which he, Velma WhiteBear, and their advisors believe should be addressed in the process of organizing the Tribe pursuant to the mandate to do so in the letter of determination of February 14, 2005 from Michael Olson (the Principal Deputy, Acting Assistant Secretary - Indian Affairs).

We are appraised that Silvia Burley did file suit against the BIA on April 12, 2005; and we are in the process of studying the filings. It appears that she is asking the court to prohibit the BIA from being involved in tribal organization. We believe that this action is evidence that Ms. Burley understands that she has no legitimate standing for organizing the Tribe - a process which can only be done by individuals with inherent (read inherited) rights, such as, primarily, the distributees of Mable Hodge Dixie (i.e., Yakima, his brother Melvin, and Dequita Boire) and, secondarily, those individuals who lived at Sheep Ranch for a significant period of time. Ms. Burley does not qualify by either criterion. Our position is: 1) that Silvia Burley does not have any standing to file litigation on behalf of the Tribe, 2) that this court action is an obstructive measure, which attempts to use the courts to impede the organization of the Tribe rather to facilitate it and that it does not serve ends of justice, resulting only to further deplete

2005-04-16-BIA-issues

44 Tribal resources by superfluous legal expenses, and 3) that, unless and until so ordered by the  
46 Court, the organization of the Tribe via administrative procedures can, should, and will  
proceed independently of any court action.

48 Chadd Everone, Deputy  
2054 University Ave. #407  
50 510-486-1314

52 **Prefacing Remarks**

54 First, I regret that Raymond Fry chose to not attend the meeting of April 11. He was a key  
56 participant at the original meeting of March 7 and the follow-up meeting of March 14. At that  
meeting of March 14, he did agreed to the April 11 date for the meeting; and he was reminded  
58 by us well in advance by phone message and by letter. He is well aware that it is a major  
organizational effort to assemble my constituents from many locations (notably, I from Sheep  
60 Ranch, WhiteBear from Galt, Lopez from Stockton, Wofrum from Walnut Creek, Everone  
from Berkeley, Pink from Southern California, and the others from their respective locations).  
62 Being that he was specifically identified in the Olson letter to assist me in organizing the Tribe  
and being that he is acknowledged by all to be the most knowledgeable person in the affairs of  
this Tribe<sup>1</sup>, I would have been able and willing to reschedule the meeting to suit his conven-  
64 ience; but he provided no notification to us that he would not be attending. Fortunately, both  
of you were in attendance; and I feel that progress was made. (Upon consideration, it might be  
66 appropriate for Mr. Fry to recuse himself from these determinations, because, having been so  
involved in this tribe for such a long period of time, he may have conflicts of interest.  
68 However, we shall not make that request at this time but, instead, leave it to your  
consideration.)

70  
72 Second, I request that you, Dale Morris, remain the Superintendent with respect to this  
particular situation even if you are replace by a new Superintendent and you return to your  
previous position at the Department of Interior. We acknowledge that you desire not to  
74 continue presiding over the situation; but we believe that you are an honest and dutiful repre-  
sentative of the Bureau, and, in the interest of substantive due process, our proceedings would  
76 be seriously delayed by having to acculturate a new Superintendent who is unfamiliar with the  
details of the case.

---

<sup>1</sup> Ray Fry has been the Tribal Operations Officer in charges of this tribe since the 1970's.

2005-04-16-BIA-issues

78 A reiteration of my requests

80 (Each request is severable from the others and may be  
fulfilled or rejected individually without affect the others.)

82 Q I have already formally requested that the BIA issue a letter to the California  
84 Gambling Control Commission that the Tribe is being formally organized and that the  
BIA recommends, suggests, or is otherwise on the record as believing that the royalty  
86 income should not be distributed to the Tribe and either retained in trust by the Commis-  
sion or placed in receivership, pending the final organization of the Tribe. This request  
was formally submitted to you at the meeting of April 11, 2005.

88 Q I have already formally requested that the BIA withhold 638 and other grant money to  
90 the Tribe, pending the final organization of the Tribe. This request was formally submit-  
ted to you at the meeting of April 11, 2005.

92 Q I request, in addition to the above, copies of the 638 and other grant contracts which  
94 the Tribe has made, under the representation of Ms. Burley, with the BIA and any atten-  
dant budgets, audits, or other ancillary documents to those contracts. If required,  
96 consider this to be a "**Request Under The Freedom Of Information And Privacy  
Acts**" which I make under the following laws: The Freedom of Information Act of 1974  
98 (5 U.S.C. 552), The Privacy Act of 1974, Public Law No 104-231 of 1994, and Title 25  
of the Code of Federal Regulations Section 517.

100 Q I request, also within the above FOIA, specifically, copies of all correspondences  
102 between Silvia Burley and both the local areas and regional offices during the course of  
her tenure as the Spokesperson for the Tribe, dating from 1998 to the present.

104 Q I request that the BIA mediate with me the issues involved in organizing the Tribe. My  
106 primary problems in communication are and have been with the BIA more than with  
anyone else. Being that the BIA originally suggested mediation as being a good idea, *per*  
108 *se*, to attempt to resolve issues and also a good idea because it would be an integral part  
of any eventual litigation, I assume that that would apply to all parties, including the BIA.  
110 Indeed, that might be a novel response by the BIA to Ms. Burley's recent suit. In discus-  
sion with Judge Kathryn Lynn of the Office of Collaborative Action and Dispute Resolu-  
112 tion of the U.S. Department of the Interior, she was asked if mediation could occur  
between myself and the BIA; and she acknowledged that it could, assuming that the  
114 Bureau agreed. She has already identified a mediator who, from my perspective, would  
be appropriate. Therefore, I am asking that the Bureau mediate with me the organization  
116 of the Tribe.

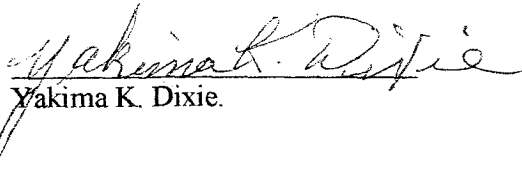
Q I request that the BIA cease holding secret meetings with Silvia Burley which exclude  
118 one or more of my representatives. As you know, we have objected to this in the past. It  
has been our policy to notify Ms. Burley of our scheduled meetings with the BIA and to

2005-04-16-BIA-issues

allow her or her representative to attend. We expect reciprocity. The private, confidential discussions with Ms. Burley may impact my pleadings.

I believe that my requests to freeze the 638 money, to have the BIA notify the California Gambling Control Commission, to obtain relevant records, to mediate issues, and to hold an open forum are simple, fair, and appropriate to the situation. They are in line with the "Olson Mandate"; and they do not evidence any prejudice on the part of the BIA toward either, particular faction. Further, by taking such actions, you will put on the record that the Bureau is attempting to be cooperative in the organization of the Tribe and to mitigate damages; and that might help to protect the Bureau from tort claims, if we should pursue remedies in court. Hopefully, you will grant all or some of the above requests so that we can continue moving forward.

Respectfully,

  
Yakima K. Dixie.

# **Exhibit 6 I**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

2005-05-25-FryMeeting



**YAKIMA K. DIXIE**

Sheep Ranch Rancheria of MiWok Indians of California  
 a.k.a. California Valley Miwok Tribe  
 11178 Sheep Ranch Rd., P.O. Box 95250  
 Sheep Ranch, California 95202

May 20, 2005

Chadd Everone  
 Deputy

Raymond Fry, Tribal Operations Officer  
 Bureau of Indian Affairs,  
 U.S. Dept. of the Interior  
 Sacramento Area Office  
 650 Capitol Mall 8-500  
 Sacramento, California 95814  
 Tel: (916) 930-3794 Fax: (916) 930-3780

Mr. Fry:

Our apology for the misunderstanding about the meeting date. Just another example of the motto: "trust but verify"! The date is now confirmed to be May 25, 2005 10 a.m. at your place. William Pink will have to attend via cell phone, being that he is leaving for China that afternoon. In attendance will be the following.

Velma WhiteBear,  
 Tribal Executive Director

Chadd Everone,  
 Deputy, Yakima Dixie

Thomas Wolfrum, Esq.  
 Tribal General Counsel

Antonia Lopez  
 Tribal Secretary

William Pink  
 Consultant, Indian Affairs

Peter Glick, Esq.  
 Tribal Special Counsel

Everyone seems to be in accord that it is imperative for us to make a final determination about whether or not the organizational process can be accomplished by administrative measures within the BIA at the Area level. If so, how do we proceed expeditiously; if not, what are the alternative strategies for resolving the situation.

One common rhetorical devise is to ask a critical question on an essential issue. Thus, can you (i.e., Fry and/or Morris and/or Spicker) re-affirm that the Golding Declaration (Exhibit 2004-05-14) represents the present policy of the BIA - something which has been averred to us

on several occasions by Luther and Keep? Specific reference is to paragraphs #5 and #9 of the that document.

Further, can you (i.e., Fry and/or Morris and/or Spicker) make and issue in writing a determination along the lines of the following?

'Based on the relevant documents, The BIA determines that the official location of the Tribe is at Sheep Ranch and that Yakima K. Dixie, as the primary putative member, is acknowledged to have the authority to appoint Velma WhiteBear as the official Spokesperson to represent the Tribe to the BIA with the provision that the newly appointed Spokesperson organize the Tribe and present to the BIA with 120 days a suitable roster of enrolled members and a suitable constitution.'

Obviously the next question would be, not only can you issue such a determination but, will you?

The legalistic case which validates such a determination has already been made in various pleadings of Yakima; but it warrants outlining here. The Tribe is unorganized and, therefore, is governed by custom or tradition. For several decades, Yakima and his brother, Melvin, were recognized by the BIA as being the sole members of the Tribe and Yakima, as the sole authority for the Tribe. Yakima made an agreement with Silvia Burley to give her tribal status so that she could receive government benefits in terms of educational and medical services, in return for which she was to help him organize the Tribe. Because the Tribe is unorganized such "tribal status" could not include tenured membership. In virtually every aspect, Silvia failed at and made a wreck out of tribal organization. Exercising his inherent authority, Yakima dismissed Silvia as the representative of the Tribe and appointed Velma WhiteBear (**Exhibit 2004-10-03**) to that position. As the issue of proper authority for this unorganized tribe has evolved further, it is now held that the individuals who have an inherent right to organize the tribe and who would constitute the "primary" putative members would be the distributees of the estate of Mable Hodge Dixie, which would be the descendant of Merle Butler (i.e., Dequita Boyer) in addition to Yakima and Melvin Dixie. Expanding that further, according to the principles which Ray Fry enunciated in May 2003, putative members would also include individuals who had lived for a significant time on the Sheep Ranch Reservation. These "secondary" putative members are on file with the BIA and have issued Declarations in support of Yakima, as the authority for the Tribe. And a new resolution to that effect can be drafted and signed by both the primary and secondary putative members. In any event, Silvia Burley has no "equity" position in the Tribe and having once been appointed by Yakima, to be a representative, can now be replaced by Yakima, which is critical due to her massive malfeasance.

In an attempt to circumvent due process, Silvia commissioned one Troy Woodward to make a determination about the authority for the Tribe. For many reasons, those proceedings were fallacious, *per se*, and procedurally they were defective. The nullification of Woodward has been made in various rebuttals. However, being that the Olsen Determination (**Exhibit 2005-02-11**) does that in very clear and explicit terms<sup>1</sup>, it should not have to be argued in our current proceedings.

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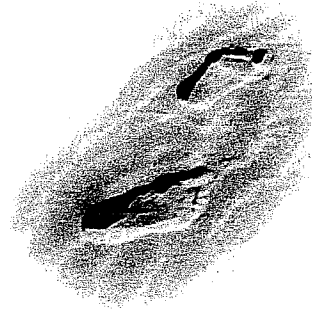
<sup>1</sup> See Exhibit 2005-02-11, final paragraph: "In light of the BIA's letter of March 26, 2004, that the Tribe

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88 Finally, it is true that Yakima and Velma have made attempts to discuss matters with  
89 Silvia; and Yakima and Velma did agree to mediation with Silvia; but Silvia categorically refuse  
90 any such discussion. However, in practical terms, it is almost certain that Yakima et al. would not  
91 be able to "share" authority for this Tribe with Silvia. As everyone knows, the problem is  
92 probably not so much with Silvia, *per se*, but with her husband, James (Tiger) Paulk. Tiger holds  
93 this to be "his tribe"; and he is known to make threatening remarks with regard to anyone "who  
94 would attempt to take it away" from him. He exercises a tyrannical influence over Silvia, which  
95 would be entirely unacceptable to any kind of an expanded membership; and he riding roughshod  
96 over people would insure that the development of the Tribe would not benefit the broader Miwok  
97 community.

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99 Respectfully,

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is not an organized tribe, however, the BIA does not recognize any tribal government, and therefore, cannot defer to any tribal dispute resolution process at this time. I understand that a Mr. Troy M. Woodward has held himself out as an Administrative Hearing Officer for the Tribe and purported to conduct a hearing to resolve your (*Yakima's*) complaint against Ms. Burley. Please be advised that the BIA does not recognize Mr. Woodward as a tribal official or his hearing process as a legitimate tribal forum. Should other issues arise with respect to tribal leadership or membership in the future, therefore, your appeal would properly lie exclusively with the BIA.



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**YAKIMA K. DIXIE**

Sheep Ranch Rancheria of MiWok Indians of California  
 a.k.a. California Valley Miwok Tribe  
 11178 Sheep Ranch Rd., P.O. Box 95250  
 Sheep Ranch, California 95202

**Meeting May 25, 2005 10 a.m.**

<b>Exhibit #</b>	<b>Title</b>	<b>Comments</b>
2005-05-25	Cover Letter	To meeting of May 25, 2005.
<b>Relevant Documentation</b>		
2004-03-26	Risling Letter	Rejects Silvia's Constitution. This letter was cited in the Olsen Determination 2005-02-11.
2004-04-30	Golding Declaration	This represents BIA policy, as has been averred by Luther and Keep? See ¶ 5 & 9.
2004-10-03	Dismissal/Appointment	Yakima dismisses Burley/Thompson and appoints WhiteBear to represent Tribe.
2005-02-11	Olsen Determination	Mandate to organize the Tribe.
2005-03-07	Yakima Request to BIA	Requests action and validation of his authority at first meeting with Morris, Fry, and Spicker.
2005-03-14	Yakima Plan to BIA	Plan for organizing Tribe at second meeting with Morris, Fry, and Spicker.
2005-04-16	Yakima Issues to BIA	Requests answers to some issues at third meeting with Morris and Spicker.
2005-05-10	Morris Responses	Response to Yakima's requests 2005-04-16 from Morris
2005-05-12	Yakima's Declaration	A chronological recitation of events.

# **Exhibit 6 J**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

**Law Offices of Karla D. Bell**

4712 Admiralty Way, Suite 580  
Marina del Rey, CA 90292  
(310) 577-2555 phone  
(310) 577-3210 fax  
kbelllaw@msn.com

SUPT. A  
ADMIN. TO  
ROUTE TO  
RESPONSE REQUIRED VIS  
DUE DATE 10/6/2005  
MEMO LTR  
TELE OTHER

**ACKNOWLEDGE AND  
RESCIND REQUEST.  
IF MORE INFO NEEDED,  
CONTACT MS. BELL.**

*Via U.S. Mail*

August 26, 2005

Mr. Troy Burdick, Superintendent  
Bureau of Indian Affairs  
650 Capital Mall  
Suite 8-500  
Sacramento, CA 95814

RE: California Valley Miwok Tribe

Dear Mr. Burdick:

Thank you for meeting with me on Friday, July 8th. During this meeting you agreed to provide information regarding the potential members of the California Valley Miwok Tribe ("Tribe") that were identified in my letter dated February 24, 2005. Since this meeting and my prior meeting with Mr. Ray Fry on June 17<sup>th</sup>, we have been awaiting any information from your office that may be helpful to assist the Tribe with processing and evaluating the potential members that have been identified. To date, we have not received any information regarding the individuals that have been identified. Please provide us with the status of obtaining this information.

In addition, we understand that your office has been in contact with or has the contact information for Mr. Melvin Dixie. The Tribe would greatly appreciate it if your office would forward Mr. Dixie's contact information or last known address to us.

The Tribe looks forward to any information that your office can provide regarding any potential members. If you have any questions regarding enrollment or membership matters, please feel free to contact me. Thank you in advance for your assistance.

Sincerely,



Karla D. Bell

cc: Silvia Burley, Chairperson  
Phil Thompson, Esq.  
George Steele, Esq.

# **Exhibit 6 K**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

Notes of meeting between Superintendent, Sylvia Burley, California Valley Miwok

December 2, 2005

On this date I met with Sylvia Burley, California Valley Miwok, Phillip Thompson, attorney for Sylvia, and Colleen Petty, Financial Manager, California Valley Miwok.

I had agreed to this meeting, at her request, to discuss matters important to the tribe. Ms. Burley had explained that there was a high degree of mistrust of the Agency for her part due to actions by Agency staff that, in her opinion, were personal attacks on her and the tribe as a whole. It is her contention that the suspension of the 638 contract in August of 2005, by the Awarding Official, Janice Whipple, was motivated by her dislike of Ms. Burley and that Mr. Raymond Fry, Tribal Operations Officer, had a personal agenda against her and the tribe, based on letters that he had signed (*It should be noted these signing actions were carried out at the direction of myself and previous Superintendent's for those occasions when the Superintendent was out of the office as a normal function – delegation of authority*).

They questioned why it was necessary to do a monitoring visit in light that for three years, no monitoring had been done. They also questioned the timing of the request to monitor. I responded by telling them that monitoring is a normal function of the agency and that it has been performed with other tribes. Mr. Thompson stated that a Special Master should be appointed for this purpose due to the nature of the current relations.

I assured them that the monitoring was a normal part of the contracting process and there was nothing out of the ordinary as far as what would take place. I pointed out that we had accommodated their requests for changes in the personnel comprising the monitoring team and compromised on the date of the monitoring. I also made it clear to Ms. Burley (*and Agency staff*) that the personnel conducting the monitoring will be following a specific plan and that they would not stray from it and that if there were problems at any certain point, that the Agency personnel would not make an issue of it, rather they would note the issue and move on per my instruction.

*(Agency staffs were not comfortable with having attorneys as a part of the tribe's representative team as well as having the process video taped. I told my staff that it should not be a hindrance so long as they followed the monitoring plan, which was sent to the tribe in advance.)*

I further assured Ms. Burley and company that even if there was a finding that that in itself would not be grounds for suspending the contract and that there is a process that is required in order to correct any deficiency.

Finally, I assured them that any actions taken by Agency staff would be at my direction and none would be engaged in any "rogue" actions. They stated they were satisfied with my comments on this matter.

At the conclusion of the meeting, I had the impression that the monitoring visit would go on as scheduled.



Troy Burdick  
Superintendent

# **Exhibit 6 L**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

Sign In -

3.7.05

- 1 Yakima Dixie
- 2 William J. Puck
- 3 Peter E. Gled.
- 4 Thomas Wolfson
- 5 George Steel
- 6 Phillip E. Thompson
- 7 Velma White Bear
- 8 Myza Spicker
- 9 Cole Harris
- 10 Guymond Atty
- 11
- 12

March 10, 2005 - Sign In Sheet 2:00 P.M.  
California Valley Miwok Tribe  
Official Meeting at Regional Office/BIA  
2800 Cottage Way  
Sacramento, CA

Silvia Burley - Silvia Burley California Valley Miwok  
Colleen Petty - Colleen Petty California Valley Miwok  
Tiger Paul - Cal Val Miwok Tribe  
Phillip E. Thompson - California Valley Miwok Tribe  
Val Morris - Calif California Agency - Acting Agency Superintendent  
Dian Gregory PRO BIA  
Raymond H. CCA BIA  
Myra Becker SOL - Asst Regional Solicitor



Sign In Sheet- Sheep Ranch Rancheria  
of Miwok Indians of Calif. AKA  
May 25, 2005 California Valley Miwok Meeting

1. Chad EVRON
2. Jitueglin
3. Velma White Bear
4. Antonia Lopez
5. Jal Marin
6. Lia Sam, BIA, I.O. Specialist
7. Raymond H. H. H.
- 8.
- 9.
- 10.
- 11.

SIGN-IN SHEET

Raymond [unclear] CCA-BIA Tribal Grazing Office  
Wendy White Bear Sheep Ranch Rancheria - 1  
Regina Boie - Blythe ca  
Ortonia Lopez  
Albert Arista Turlock Ca.  
LeRoi R. Chapelle, Elk Grove, Ca -  
Bill Martin Los Angeles CA  
Peter Glick Acting for Yachin Dier -  
Chad Everone Deputy Y. Dier  
William J. Pugh Consultant, Sheep Ranch Rancheria  
Troy BORDICK BIA/CCA/SUPERINTENDENT

# **Exhibit 7**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

MEMORANDUM OF UNDERSTANDING  
Between  
CALIFORNIA FEE TO TRUST CONSORTIUM TRIBES  
And  
BUREAU OF INDIAN AFFAIRS PACIFIC REGIONAL OFFICE

This Memorandum of Understanding (hereinafter the "Agreement") is entered into by and between the California Fee To Trust Consortium Tribes (hereinafter the "Consortium") and the Department of the Interior, Bureau of Indian Affairs Pacific Regional Office, (hereinafter "PRO") (collectively referred to as "the Parties") as of the date set forth below.

This Agreement is being entered into for the purpose of setting forth, in writing, the understanding of the relationship of the Parties and facilitating the expeditious processing of fee-to-trust applications submitted by participating Consortium tribes (hereinafter the "Project").

RECITALS

- A. The need for increased land base is imperative to the tribes of California. Most tribes do not have sufficient land to meet current housing, community and economic development needs and a significant number have no land at all.
- B. A number of factors have combined to make it difficult for current California Regional and Agency staff to manage the fee-to-trust acquisition needs. Consequently a tremendous backlog of applications currently exists which is compounded by the increasing number of applications filed each year.
- C. The gap between land into trust applications and land being accepted into trust by the Secretary of the Interior is widening.
- D. The authority of the Bureau of Indian Affairs to re-program TPA funds to this Project is found at 25 U.S.C § 123c.
- E. It is acknowledged that the reference to the Pacific Regional Office implies that the Pacific Regional Office has oversight, responsibility, and accountability for the administration of the California Regional and Agency staff.
- F.
  - (i) It is acknowledged that signatories to this Agreement are entitled to equal access to non-Consortium fee-to-trust resources and services provided by the Bureau of Indian Affairs (hereinafter "BIA"), however tribes that are not members of the Consortium are not eligible to access Consortium fee-to-trust staff. Neither consortium funds nor consortium staff will be used for non-consortium purposes.
  - (ii) Further, non-consortium staff must continue to facilitate and assist consortium tribes with their Fee To Trust applications and other concerns.

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Memorandum Of Understanding  
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- (iii) Further, non-consortium staff work, including but not limited to: salary, administrative, or travel expenses, will not be offset (charged) against the Project budget.

## TERMS AND CONDITIONS

### I. CONSORTIUM AGREEMENT TERM

1. This Agreement shall be in effect for three (3) years beginning the Fiscal Year October 1, 2005 through Fiscal Year ending September 30, 2008, at which time it shall be reviewed for possible extension.
2. If the Consortium has not voted to renew this Agreement at least six months (6) before the close of the third fiscal year of the Agreement, it will be deemed expired as of the date of the end of the third fiscal year and the terms and conditions contained herein will terminate.

### II. MEMBERSHIP

#### 1. Conditions Precedent/Eligibility

- (a) The Tribal Resolution: Participation in the Project will not become effective until the Consortium Project Leader (as defined Section III(i)) has received a signed Tribal Resolution from the interested Tribe (a sample is attached), which contains an acknowledgement of the minimum required financial contribution and commitment of the required TPA funds, and acknowledgment of the necessity to commit to becoming a signatory of the Agreement and to be bound by its terms.
- (b) The Agreement and contribution: The Tribe must sign the Agreement and complete any additional paperwork necessary to facilitate the re-programming of TPA funds to the Project.
- (c) In addition to the Tribal Resolution, Tribes will submit a letter identifying the designated tribal representative and alternates for the purpose of representation at Consortium meetings. Consortium Tribes reserve the right to change the names of individual tribal representatives at their discretion.

#### 2. Minimum Financial Participation

- (a) Tribes may participate by contributing a minimum of three thousand dollars (\$3,000.00) per fiscal year from their TPA funds for three consecutive years.
- (b) Newly recognized Tribes that have not received their TPA funds may have their minimum contribution waived until they have received their TPA.

### III. CONSORTIUM EMPLOYEES

#### 1. Scope of Work.

- (a) The Consortium Project leader will be the PRO Lead Realty Specialist, hereinafter

Fee-To-Trust Consortium  
Memorandum Of Understanding  
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"PRO-LRS"). The PRO-LRS will be responsible for seeing that the BIA Consortium staff will adhere to the duties and responsibilities required for the processing of Fee-To-Trust Applications for Consortium Tribes.

- (b) The Parties agree that the BIA personnel for the Consortium shall be governed by the terms of this Agreement. Any conflict involving the duties and/or responsibilities of the personnel shall be resolved in accordance with this Agreement and the PRO personnel policies.

2. Selection of Employees.

- (a) It is agreed that the process for selecting Consortium staff for filling of the Consortium positions will include the direct participation of the Committee.
- (b) Such participation may include, but may not be limited to, the development of position descriptions, and interviewing prospective candidates.
- (c) The Oversight Committee has the authority to make recommendations to the Bureau regarding the filling of open positions.
- (d) All federal personnel rules and regulations will apply to this process.

3. Employee Performance.

- (a) It is further agreed that participating tribes may submit documentation to the Committee and PRO-LRS concerning the performance of the Project employee's duties under this Agreement and that the PRO-LRS and the Committee shall give such documentation due consideration with respect to conducting employee performance evaluations.
- (b) Recommendations for incentive or star awards will be brought forward to the Fee To Trust Consortium Oversight Committee.

IV. RECORD KEEPING

1. Accounts.

- (a) Complete books of account of the Project's operations, in which each Project transaction shall be fully and accurately entered, shall be kept at the Project's principal office (the PRO), under the care of the PRO-LRS, and at such other locations as the PRO-LRS and Committee shall determine from time to time and shall be open to inspection and copying on reasonable notice by any authorized Consortium member representative during normal business hours. The costs of such inspection and copying shall be borne by the particular Consortium member.
- (b) PRO acknowledges that it has established a separate and distinct account from other BIA Realty operations for the Project.

- 2. Accounting. The financial statements of the Project shall be prepared in accordance with generally accepted accounting principles and shall be appropriate and adequate for the Project's intended purpose and for carrying out the provisions of this Agreement. The fiscal year of the Project shall be October 1 through September 30.

- 3. Records. At all times during the term of existence of the Project, the PRO-LRS shall

Fee-To-Trust Consortium  
Memorandum Of Understanding  
Page 4 of 9

keep or cause to be kept the books of account referred to in Section IV, together with:

- (a) A current list of the contact information, which also identifies the Consortium member contribution;
- (b) A copy of this Agreement and any other operating documents (if any);
- (c) Financial statements of the Project for the six most recent fiscal years;
- (d) The books and Records (including budgets) of the Project as they relate to the Project's internal affairs for the current and past four fiscal years.

- 4. Status Reports. A minimum of once per quarter, the PRO-LRS shall cause to be prepared a Fee-To-Trust Consortium member land into trust status report. The reports shall be delivered at the quarterly Fee-To-Trust Consortium meetings or by mail; whichever is reasonably calculated to provide the member with the information in a timely manner.

V. MEETINGS: REGULAR, SPECIAL, LOCATION, NOTICE, CALL, AND QUORUM.

- 1. Regular meetings. Regular meetings of the Consortium shall be held once every quarter.
- 2. Special Meetings. The PRO-LRS, the Committee, or Consortium members representing at least 50% of the Consortium members shall call special meetings at any time. If a meeting of the Consortium is called by the Consortium members, notice of the call shall be delivered to the PRO-LRS and the Fee To Trust Oversight Committee.
- 3. Location. Meetings may be held at the PRO or at such other location as may be designated by the Consortium. Effort shall be made to assure that a reasonable split between locations throughout Northern, Central and Southern California is achieved.
- 4. Notice. Following the call of a meeting, the PRO-LRS shall give notice of the meeting no less than fourteen, or more than 60 calendar days prior to the date of the meeting to all Consortium members. The notice shall state the place, date, and hour of the meeting and the general nature of business to be discussed.
- 5. Quorum/Voting.
  - (a) A quorum at any meeting of the Consortium members shall consist of at least thirty percent (30%) of the Consortium members.
  - (b) There will be one vote per tribe.
- 6. Minutes.
  - (a) The PRO-LRS, Fee To Trust Oversight Committee and/or Consortium will dedicate an individual to serve as secretary of the meetings.
  - (b) A draft of the minutes will be prepared and distributed to Consortium members within 7 days of the meeting for comment and verification before becoming part of the record of the Project.

Fee-To-Trust Consortium  
Memorandum Of Understanding  
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## VI. OVERSIGHT COMMITTEE

### 1. Purpose

- (a) The Fee-To-Trust Consortium Oversight Committee (hereinafter the "Committee") comprised of Consortium members, will have oversight of the Project and the obligation to assure that the terms of this Memorandum of Understanding are met.
- (b) The Committee shall have limited decision-making authority as outlined herein or as delegated by the Consortium.
- (c) The Committee will help Consortium staff develop agenda and provide assistance in facilitating regular Consortium and Committee meetings.

### 2. Committee Structure

- (a) The Committee shall be made up of nine (9) elected Tribal Officials representing their respective region.
- (b) The nine Committee members will be chosen by a majority vote of the Consortium Tribes present at the elections.
- (c) The number of representatives from each region was determined by a majority vote as follows:
  - (i) Five (5) elected Tribal officials from the Central California Agency Region;
  - (ii) Three (3) elected Tribal officials from the Southern California Agency Region;
  - (iii) One (1) elected Tribal officials from the Northern California Agency Region;

### 3. Term of Committee Service

- (a) Committee members will serve a two-year term beginning from the date of the regularly held election.
- (b) Committee members elected to fill a vacant position shall serve for the duration of the term of the member who vacated the position.

### 4. Elections

- (a) Elections for Committee members shall be held at the second quarterly meeting of the Consortium.
- (b) Once a quorum is established at that meeting at which elections are to be held, the first order of business for the Consortium is to solicit nominations for the Committee positions.
- (c) Nominations shall be called out and seconded by a different individual and noted by the meeting Secretary.
- (d) Once nominations have been completed, a confirmation shall be made that a quorum has been maintained. Once a quorum has been confirmed, voting shall commence.



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- (e) Voting shall be done by secret ballot. The nominee with the most votes shall be elected and installed upon acceptance by the nominee. Ties in the number of votes between nominees will go to a coin toss.
5. Responsibility of Officers. Once the Committee has been established, the members shall appoint officers among themselves. Each Committee Member has one vote.
- (a) Chairperson:
- Shall coordinate the activities of the Committee and Consortium in consultation with the PRO Lead Realty Specialist and Consortium staff
  - Shall serve as the official Chairperson for the Consortium.
  - Shall set meeting times.
  - Shall follow agendas for Consortium and Committee meetings.
  - Shall monitor and report on the status of required compliance with the Memorandum of Understanding for such issues including, but not limited to, budget, Committee vacancies, and staff vacancies.
- (b) Secretary:
- Shall record or cause to be recorded minutes from all Committee and Consortium meetings and have them prepared and distributed to the Consortium members within seven (7) days of an Oversight Committee meeting or a Consortium meeting, pursuant to Section V (6)(b). A copy of all minutes will be kept on file with the PRO.
  - Shall work with the Chairperson to record meeting attendance.
  - Shall create an agenda in consultation with the Chairperson and Consortium staff. The agenda must be distributed to the Consortium at least 10 days in advance of the next meeting.
- (c) Vice-Chairperson:
- Shall assume the responsibilities for the Chairperson, whenever the Chairperson is absent from Consortium and Committee meetings or is unable to fulfill the functions of the Chairperson.
- (d) Committee members:
- In the absence of all three Officers, the remaining Committee members shall select an individual to Chair the meeting.
6. Removal from Office/Vacancy.
- (a) All Committee members, are subject to removal from the Committee for either of the following reasons:
- (i) Failure to attend three consecutive meetings without just cause.
  - (ii) Failure to be re-elected to Tribal office.
- (b) Committee members can only be removed by a majority vote of the Committee. The Committee will submit a written memorandum to the Consortium, with its decision citing the reasons for removal.
- (c) Vacancies on the Committee shall be filled by special election at the next scheduled Consortium meeting.

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7. Meetings

- (a) Meetings. The PRO-LRS or the majority of the Oversight Committee members may call meetings at any time. In addition to consultation concerning specific applications or activities, the Committee, the PRO-LRS and the BIA agree to meet and confer as necessary on matters of mutual concern.
- (b) Notice. To the extent practicable, each party shall provide the other with a list of topic issues to be discussed at least five business days in advance of each such meeting. The PRO-LRS shall give notice of the meeting no less than ten working days prior to the date of the meeting to all Consortium members. The notice shall state the place, date and hour of the meeting and the general nature of business to be discussed. Notices may be sent by fax or e-mail to facilitate timeliness.
- (c) Quorum. A quorum at any meeting of the Committee shall consist of at least five members.
- (d) Attendance.
  - (i) In the event a Committee member is unable to attend a meeting, he/she shall choose a duly elected Tribal Official from his/her respective Region as his/her alternate to attend the meeting. This delegation must be communicated to the PRO-LRS in a reasonably timely manner.
  - (ii) In the event a Committee member is unable to attend a meeting and is unable to designate an alternate pursuant to Section VI(7)(d)(i), the Committee member shall communicate his/her inability to attend to the PRO-LRS in a reasonably timely manner.
  - (iii) The Committee may conduct its business via telephonic conferencing.
- (e) Voting. There will be one vote per Committee member.

VII. GENERAL PROVISIONS

- 1. Freedom of Information Act (FOIA). Any Freedom Of Information Act (hereinafter "FOIA") requests to the BIA shall be disclosed immediately to the particular tribe upon which the particular request is made, including the details of the specific information requested and a copy of the response and enclosures.
- 2. Notices. All notices hereunder shall be given in writing by mail (postage prepaid), messenger or facsimile. The earlier of: (a) actual receipt; (b) the date of messengering, telecopying or of personal delivery (provided written confirmation is received); or (c) 3 business days after the date of mailing, shall be deemed to be the date of service.

Mail and Messenger:

United States Department of the Interior  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, California 95825

Consortium Members  
Addresses attached

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Attention: California Tribal Fee to Trust Consortium PRO Lead Realty Specialist

3. Dispute Resolution. Any dispute as to the interpretation of any provision of this Agreement will be submitted to the Committee who will review all relevant material pertaining to the dispute. The Committee will issue a written decision. The decision of the Committee is final.
4. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any and every nature between them, and neither party shall be bound by any condition, definition, warranty or representation other than expressly set forth or provided for in this Agreement, or as may be, on or subsequent to the date hereof, duly enacted pursuant to Section VII(5) of this Agreement or set forth in writing and signed by the Parties to be bound thereby; and this Agreement may not be changed or modified except by a duly enacted amendment pursuant to Section VII(5) of this Agreement or an agreement in writing signed by the Parties.
5. Amendment. This agreement may be amended by a majority of the Consortium Tribes at a duly noticed and held meeting of the Consortium and with the concurrence of the BIA Pacific Regional Office.
6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Consortium Members, Consortium staff and its successors and assigns, and executive and employees, agents, and legal representatives.
7. Dissolution/Withdrawal
  - (a) The Consortium may be dissolved by the affirmative vote of a majority of the members taken at least 60 days before the end of the then-current fiscal year; to be effective at the end of the fiscal year in which the vote is taken.
  - (b) A Tribe may withdraw from the Consortium for the remainder of the term of this agreement by giving written notice, by Tribal Resolution, of such intent to the Consortium PRO-LRS at least 90 days prior to the end of the then-current fiscal year.

Pec-To-Trust Consortium  
Memorandum Of Understanding  
Page 9 of 9

### CERTIFICATION

This Agreement entered into by the between the Consortium members set forth below, and the Pacific Regional Director does hereby take effect beginning the Fiscal Year October 1, 2005 through FY ending September 30, 2008 at which time this Agreement may be extended, amended, or rescinded.

### Bureau of Indian Affairs, Pacific Regional Office

By: \_\_\_\_\_  
Pacific Regional Director

Dated: \_\_\_\_\_

Consortium Member (Tribe): <your Tribe's name here>

By: \_\_\_\_\_  
<name of Tribal leader>  
Tribal Chairperson

Dated: \_\_\_\_\_

Tribal Resolution # \_\_\_\_\_

Dated: \_\_\_\_\_

# **Exhibit 8**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

### SAMPLE RESOLUTION

A RESOLUTION APPROVING THE REPROGRAMMING OF TPA FUNDS IN THE AMOUNT OF \$\_\_\_\_\_ ANNUALLY FOR THE NEXT THREE YEARS FOR THE PURPOSE OF FUNDING THE CALIFORNIA FEE-TO-TRUST PROGRAM \_\_\_\_\_

WHEREAS, \_\_\_\_\_ IS A FEDERALLY RECOGNIZED Indian Tribe with the inherent sovereignty to make its own laws and be governed by them; and

WHEREAS, \_\_\_\_\_ adopted a Constitution and Bylaws and the Tribal Resolution adopting such Constitution and Bylaws was accepted and approved by the Department of Interior, Bureau of Indian Affairs; and

WHEREAS, \_\_\_\_\_ constitution and Bylaws authorizes the Tribal Council to plan and manage all economic affairs of the Reservation/Rancheria; and

WHEREAS, the Tribe has identified land acquisition as a priority and desires to preserve land by putting fee land into trust for the Tribe and/or Tribal members; and

WHEREAS, the Tribe and other California Indian tribes presently have fee-to-trust applications pending with the Bureau of Indian Affairs or contemplate filing applications within the near future; and

WHEREAS, The Bureau of Indian Affairs has limited resources due to staffing cutbacks and other internal problems that has resulted in a back log of fee-to-trust applications; and

WHEREAS, the Tribal Council has met with other California Tribes and developed a strategy to assist in the timely processing of applications, and

WHEREAS, the strategy requires the Tribe to reprogram \$\_\_\_\_\_ of its TPA for FY2006, 2007, 2008 into a special Bureau account for the express purpose of expanding the Realty and Environmental Services in the area of fee to trust acquisitions by funding the California Fee-to-Trust Program.

NOW, THEREFORE BE IT, the Tribal Council approves the reprogramming of \$\_\_\_\_\_ of its TPA funds for FY 2006, 2007, 2008, for the express purpose of expanding the Realty and Environmental Services in the area of fee to trust acquisitions by funding the California Fee-to-Trust Program.

BE IT FURTHER RESOLVED that the activities conducted with these funds will be in accordance with the Fee-to-Trust Project Memorandum of Understanding, which the Tribe shall become a signatory of and be bound by its terms.

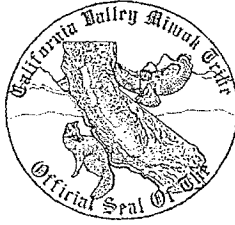
### CERTIFICATION

# **Exhibit 9**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

## **CALIFORNIA VALLEY MIWOK TRIBE**

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333  
<http://www.californiavalleymiwoktribe-nsn.gov>



RECEIVED-BIA

05 OCT -7 PM 3:31

SACRAMENTO  
AREA OFFICE

**Tribal Council**

### **GOVERNING BODY OF THE CALIFORNIA VALLEY MIWOK TRIBE**

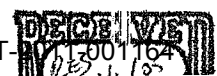
**RESOLUTION OF SEPTEMBER 26, 2005**

**R-1-09-26-2005**

#### **RESOLUTION APPROVING THE REPROGRAMMING OF TPA FUNDS IN THE AMOUNT OF \$3000.00 ANNUALLY FOR THE NEXT THREE YEARS FOR THE PURPOSE OF FUNDING THE CALIFORNIA FEE-TO-TRUST PROGRAM**

- Whereas,** The California Valley Miwok Tribe is a sovereign governing Indian Tribe recognized by the United States Government; and
- Whereas,** [Article VI, Section 1 (a)], of the Constitution of the California Valley Miwok Tribe invest in the Tribal Council the authority to negotiate and contract with agencies of the Federal, State, Local, Tribal Governments, private entities and individuals on behalf of the Tribe; and
- Whereas,** the Tribal Council is the Governing Body of the California Valley Miwok Tribe; and
- Whereas,** the Tribe has identified land acquisition as a priority and desires to preserve land by putting fee land into trust for the Tribe and/or Tribal members; and
- Whereas,** the Tribe and other California Indian tribes presently have fee-to-trust applications or are contemplating filing applications within the near future with the Bureau of Indian Affairs; and

CVMT-





**R-1-09-26-2005**

- Whereas,** the Bureau of Indian Affairs has limited resources due to staffing cutbacks and other internal problems that has resulted in a back log of fee-to-trust applications; and
- Whereas,** the Tribal Council has met with other California Tribes and developed a strategy to assist in the timely processing of applications; and
- Whereas,** the strategy requires the Tribe to reprogram \$3,000.00 of its TPA for years 2006, 2007 and 2008 into a special Bureau account for the express purpose of expanding the Realty and Environmental Services in the area of fee-to-trust acquisitions by funding the California Fee-to-Trust Program.


**NOW THEREFORE BE IT RESOLVED** that the Tribal Council has authorized the Chairperson who is the "Person of Authority Within The Tribe" to officially request that \$3,000.00 of the tribal budget be placed in the Realty Program for years 2006, 2007 and 2008; and

**BE IT FURTHER RESOLVED** that the activities conducted with these funds will be in accordance with the Fee-to-Trust Project Memorandum of Understanding, which the Tribe shall become a signatory of and be bound by its terms.

**CERTIFICATION**

This is to certify that the above matter was considered and heard at a duly noticed meeting of the California Valley Miwok Tribe Tribal Council at which time a quorum was present, held on this day, of Monday, September 26, 2005, and that this resolution was adopted by a vote of 3 in favor, 0 opposed, and 0 abstaining.

**ATTEST**

  
Silvia Burley, Chairperson

9/26/2005  
Date

  
Anjelica Paulk, Vice-Chairperson

09/26/05  
Date

  
Rashel Reznor, Secretary/Treasurer

9/26/05  
Date

RECEIVED  
CENTRAL CALIF AGENCY  
05 OCT 14 PM 2:20

RECEIVED

OCT 17 2005

TRIBAL OPERATIONS

# **Exhibit 10**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



## 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

OCT 26 2005

Sylvia Burley  
California Valley Miwok Tribe  
10601 Escondido Pl.  
Stockton, CA 95212

Dear Ms. Burley:

This letter shall serve to acknowledge receipt at the Central California Agency of California Valley Miwok Tribal Resolution No. R-1-09-26-2005, on October 17, 2005.

This resolution authorized the Tribe to Reprogram Fiscal Year 2006, 2007 and 2008 Tribal Priority (TPA) Allocation funds in the amount of \$3,000 annually into the Bureau of Indian Affairs (BIA) Fee-to-Trust Program.

Since the BIA does not recognize any governing body for the Tribe, nor do we currently have a government-to-government relationship with the California Valley Miwok Tribe, we are returning this resolution without action.

If you have any questions, please do not hesitate to contact Raymond Fry, Tribal Operations Officer at (916) 978-3794.

Sincerely,

for

Troy Burdick  
Superintendent

# **Exhibit 11**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



## 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

Indian Self Determination

CERTIFIED MAIL -  
RETURNED RECEIPT REQUESTED  
No. 7003 1680 0001 3212 2604

October 28, 2005

Ms. Silvia Burley  
California Valley Miwok Tribe  
10601 Escondido Place  
Stockton, CA 95212

Dear Ms. Burley:

In accordance with Contract No. CTJ51T62802 (FY 05/06 Mature Status - Aid to Tribal Government Program) and the Annual funding agreement for FY 05 signed February 8, 2005, we would like to accomplish the following. Pursuant to Section 1(b) (7)(C)(i) and (ii), the Secretary shall provide monitoring services to ensure proper delivery of program services to Indian people, and compliance to the contract. We would like to schedule an on-site monitoring visit with the tribe on November 28, 2005 at 10:00 a.m. at 10601 Escondido Place, Stockton, California.

The monitoring team will consist of the following staff:

Mr. Raymond Fry, Tribal Operations Officer, Awarding Official Technical Representative (AOTR);  
Ms. Tia Sam, Tribal Operations Specialist;  
Ms. Janice Whipple-DePina, Awarding Official/Indian Self-Determination Officer; and  
Ms. Tina Fourkiller, Indian Self-Determination Specialist

Enclosed for your reference and use are the guidelines that we will be utilizing during our monitoring visit:

(1) Contract Administration for the Aid to Tribal Government Program, this will determine compliance with contract terms and conditions, and financial accountability and;

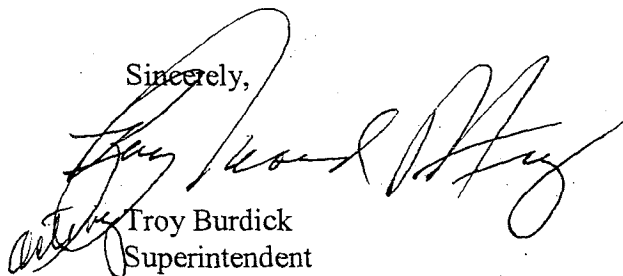
CVMT-2011-001170

2) Monitoring of each Management systems to determine compliance with 25 CFR, Chapter V, Part 900, Subpart F and the tribes own management systems, policies and procedure documents.

Please inform this agency in writing of the tribe's representatives that will be present during this visit. We will do a final exit to discuss any items that may arise during our visit.

Should you have any additional questions, please contact Ms. Tina Fourkiller, Indian Self-Determination Specialist at (916) 930-3787 or Ms. Janice Whipple-DePina, Indian Self-Determination Officer at (916) 930-3742 regarding this scheduled visit. We look forward to meeting and working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy Burdick", is written over the typed name and title.

Troy Burdick  
Superintendent

Enclosures

# **Exhibit 12**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



**PURPOSE AND STRATEGY**

**OFFICIAL MONITORING VISIT**

- I. **Entrance Interview:** Meet with Tribal Chairperson or authorized representative to explain reason for the visit and items to be reviewed.
  - A. **Interview Contractor:** Determine compliance with contract terms and conditions, and financial accountability.
    - (1) **Monitoring Procedure:**
      - (a) **Visitation:** Visit each activity while in session.
      - (b) **Personnel Interviewed:** Interview employees, ask about their role or function within the particular program and the organization as a whole. What objectives are they working towards, their general knowledge of the organizational structure, and the particular contract being reviewed if they are program personnel.
    - (2) **Monitoring Checklist:** Complete the checklist with Contractor representatives and program personnel.
      - (a) **Discussion Items:** Discuss each item and explain any problems encountered.
      - (b) **Findings, Comments and Recommendations:** List these as they occur.
- II. **Exit Interview:** Meet with Tribal Chairperson or authorized representative prior to departure.
  - A. **Summarize Findings:** Discuss items reviewed during the visit. Be specific regarding any problems or weaknesses discovered during the visit.
  - B. **Comments and Recommendations:** Offer technical assistance to resolve the problems or weaknesses.
- III. **Trip Report:** Upon return to office complete the Trip Report and the Official Monitoring Report. Provide a copy of the Official Monitoring Report to the Tribe.

## OFFICIAL MONITORING REPORT

Contractor Name: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone No. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract No. \_\_\_\_\_ Mature: ☐ Yes ☐ No

Program(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Official Monitoring Visit: \_\_\_\_\_

Name(s) and Title(s) of Monitoring Team:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Awarding Official's Technical Representative:

_____	_____
AOTR	Title
_____	_____
SAOTR	Title

Contractor's Representative:

_____	_____
Name	Title

[illegible]

**Contract Award Date:** \_\_\_\_\_

**Contract Term:** \_\_\_\_\_

**Contract Administration:**

- A. Does the Tribal Program Director have a complete copy of the contractual agreement?

☐ Yes ☐ No

If no, provide a copy.

- B. Are all expenditures under the contract properly documented and supported?

☐ Yes ☐ No

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- C. Is the Tribal Program Director involved in the vouchering, financial reporting, process for this contract?

☐ Yes ☐ No

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- D. Does the Tribal Program Director maintain a cuff account system?

☐ Yes ☐ No

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. Finance Management:

(1) Finance Status

(a) Total Contract Amount \$ \_\_\_\_\_  
 (b) Total expended (year-to-date) \$ \_\_\_\_\_  
 (c) Balance Remaining \$ \_\_\_\_\_

(2) Total Amount Paid to Contractor \$ \_\_\_\_\_

(3) Payment Methodology

— Lump Sum Advance  
 — Semi-Annual Advance  
 — Quarterly Advance  
 — Other - Explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(4) Does the Tribal Program maintain financial records?

\_\_ Yes \_\_ No

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Comments on Finance Management for this Program: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Contract Personnel:**

A. How many people are employed under this contract? \_\_\_\_\_

B. List each position and annual wage:

<u>Position</u>	<u>Wage</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

C. Is there a position description available for each position?

☐ Yes ☐ No

If yes, obtain a copy.

If no, comment: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

D. Administration

Are payroll checks supported by time sheets, etc.?

☐ Yes ☐ No

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Property Management:**

A. Has property been provided for, and/or acquired under, this contract?

☐ Yes ☐ No

B. Are property records being maintained?

☐ Yes ☐ No

C. Is there any property under this program with a value of, or in excess of, \$ 5,000.00?

☐ Yes ☐ No

D. Has property (equipment) with a value of, or in excess of, \$ 5,000.00 been tagged?

☐ Yes ☐ No

E. Was property acquired in accordance with the Procurement Management System?

☐ Yes ☐ No

F. Is property being maintained in accordance with the Property Management System?

☐ Yes ☐ No

G. Is there an up-to-date property inventory listing?

☐ Yes ☐ No

If yes, obtain a copy of the Property Inventory listing.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Contract Scope:**

- A. Is the Contractor performing all required functions of the contract in accordance with the Statement of Work (SOW)?

☐ Yes ☐ No

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. Has the Contractor provided the necessary personnel, as indicated in the agreement, to provide the required services?

☐ Yes ☐ No

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- C. Are services being provided in accordance with the agreement?

☐ Yes ☐ No

If yes, evaluate services being provided: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If no, provide recommendations on how to correct the problem and indicate what services are being provided: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



D. Has the contractor submitted all reports required under the agreement?

☐ Yes ☐ No

If yes, indicate what reports have been submitted and evaluate the reports: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If no, indicate what reports have not been submitted and indicate the corrective actions taken: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Travel:**

A. Is travel an allowable item under this contract?

☐ Yes ☐ No

If yes, who is authorized to travel under this contract? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Are expenditures for travel properly documented showing expenditures, purpose of travel, who was the traveler(s), and what was accomplished?

☐ Yes ☐ No

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Is travel reconciled in accordance with established tribal procedures?

☐ Yes ☐ No

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# **Exhibit 6 G**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-nsn.gov>



March 18, 2005

Mr. Dale Morris, Acting Superintendent  
CCA/Bureau of Indian Affairs  
650 Capitol Mall, Suite 8-500  
Sacramento, California 95814

Re: Official Request for Information on Melvin Leroy Dixie

Dear Mr. Morris,

It was brought to the attention of the Tribe that at the meeting of Monday, March 14, 2005 between yourself and Mr. Yakima Dixie's group that calls themselves Sheep Ranch Rancheria of MiWok Indians of California aka California Valley Miwok Tribe, there was an individual who claimed to be Mr. Melvin Dixie.

The Tribe believes that Mr. Melvin Dixie may have a right to participate in the process of the organization of the Tribe. If this is truly Melvin Dixie we are requesting that Mr. Dixie contact the Tribe with valid verification to prove that he is who he claims to be.

We understand the "Privacy Act" and therefore we are requesting that the Central California Agency contact Mr. Melvin Dixie to inform him of the Tribes inquiry and since we have not been given his contact information, we are asking him to contact the official California Valley Miwok Tribe (not to get confused by the individual who has broken off from the Tribe and is in the process of starting a new Tribe called the Sheep Ranch Rancheria of MiWok Indians of California aka California Valley Miwok Tribe).

If you find that you (for some reason) cannot or will not contact Mr. Dixie with an official letter from your office, or if you cannot forward the requested contact information to our Tribe, then the Tribe is requesting that you forward a copy of this letter to Melvin Dixie at the next meeting with the Central California Agency/BIA in which he participates. Thank you for your time and understanding.

Respectfully,

  
Silvia Burley, Chairperson

CC: Tribal Council  
Phillip Thompson, Esq.  
George Steele, Esq.  
Karla Bell, Esq.

# **Exhibit 13**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



SUPT. 50  
ADMIN. \_\_\_\_\_  
ROUTE 101638  
RESPONSE REQUIRED \_\_\_\_\_  
DUE DATE \_\_\_\_\_  
MEMO \_\_\_\_\_ LTR \_\_\_\_\_  
TELE \_\_\_\_\_ OTHER \_\_\_\_\_

Transmitted Via Express Mail With Certified Return Receipt

November 7, 2005

Mr. Troy Burdick, Superintendent  
Central California Agency  
650 Capital Mall, Suite 8-500  
Sacramento, CA 95814

Re: California Valley Miwok Tribe

Dear Superintendent Burdick:

The Tribe is in receipt of your letter dated October 28, 2005 relating to the Central California Agency Office's desire to conduct an on-site monitoring visit at the Tribal Offices on or about November 28, 2005. (Attachment 1) Although the Tribe appreciates the fact that this letter was addressed to me at the address listed above, the Tribe is perplexed as to the timing of this request, the composition of the team of individuals your office has chosen to conduct this monitoring visit and the nature of this request balanced against the fact that your office and the Bureau of Indian Affairs continues the charade of not recognizing our Tribal government.

Just one day prior to receiving your letter requesting an on-site monitoring visit, the Tribe received an undated letter, signed under your authority by Mr. Ray Fry. In this letter, Mr. Fry presumably speaking on behalf of the BIA states that, "the BIA does not recognize any governing body for the Tribe, nor do we currently have a government-to-government relationship with the California Valley Miwok Tribe." (Attachment 2) Although Mr. Fry's letter runs counter to several recent letters we have received from the BIA and legal documents filed in the District Court in Washington, D.C., we are unsure as to how your office can inspect programs, policies or procedures that you do not recognize us as having the authority to implement.

Although we could go through ad nauseum the BIA's inconsistency regarding the Tribe's government and our government-to-government relationship, at this particular moment, with litigation pending on that question, we can debate that issue at a later time. However, one fact remains, the Tribe believes wholeheartedly that your office's request for an on-site visit at this time is but a subterfuge to try to somehow impact the pending litigation and/or terminate, suspend or not approve the Tribe's P.L. 638 contract.

These suspicions are only further heightened by the inclusion of Ray Fry and Janice Whipple-Depina on this so-called monitoring team. Both of these individuals have shown nothing but

utter contempt for the Tribe, its government and membership. They have also shown that they will violate the law and regulations to try to bring harm to this Tribe. These facts are clearly demonstrated by Ms. Whipple-Depina's attempt to unilaterally terminate the Tribe's P.L. 638 contract and Mr. Fry's recent letter again unilaterally terminating the Tribe's government-to-government relation both in violation of 25 USC Section 450 et seq. and 25 CFR Part 900. The Tribe Council believes the inclusion of these individuals on any monitoring team involving the California Valley Miwok Tribe brings into question the objectivity the process and the ultimate goal of your office in conducting such a visit.

The Tribal Council believes short of an on-site monitoring team composed of individuals from another agency office being appointed, the only true way to ensure objectivity in the process is to request that a Special Master be appointed to monitor the process. As such, the Tribal Council has directed me to inform you that if your office insists on an on-site monitoring visit and this continuous unilateral action in violation of the above-mentioned laws, the Tribe will direct its legal team to file a request to the United States District Court in Washington, D.C. to appoint a Special Master to monitor this on-site visit and all future matters relating to the California Valley Miwok Tribe and the BIA.

Until we can reach agreement on the composition of a new monitoring team or appointment of a Special Master, the Tribe respectfully declines your request to schedule an on-site monitoring visit on November 28, 2005. However, the Tribe is prepared to entertain any specific questions your office may have regarding our programs which have not been addressed by our audit reports. We also reiterate our request for information on the enrollment applicants we forwarded to your office well over six months ago as directed by your predecessor. Our recent public notices have resulted in additional applicants and we hope that your office will respond to our future requests for information on those applicants too.

In addition, we still await your response to our request, made several months ago, for a meeting to discuss our governmental, organization and enrollment issues. The Tribe was directed by Mr. Mike Olsen and Mr. Mike Smith to request a meeting and try to work through you to solve our differences. We believe that had dialogue been established, some of the issues we now have could have been averted. No matter what our differences are, we should be communicating to try to work out our problems.

The Tribe looks forward to accepting your invitation to meet and confer on all issues. If you have any questions, please feel free to contact me.

Sincerely,



Silvia Burley, Chairperson  
California Valley Miwok Tribe

Enc (2)

Cc: Tribal Council  
Colleen Petty  
George Steele  
Phillip E. Thompson  
Michael Olsen  
Michael Smith  
Dan Shillito  
Clay Gregory

# **Exhibit 14**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry





## 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

**NOV 15 2005**

**CERTIFIED MAIL –  
RETURN RECEIPT REQUESTED  
NO. P 358 409 689**

Ms. Silvia Burley  
California Valley Miwok Tribe  
10601 Escondido Place  
Stockton, California 95212

Dear Ms. Burley:

We are in receipt of your letter dated November 7, 2005 and received at this agency on November 9, 2005, regarding the on-site monitoring review, wherein you objected to the inclusion of Mr. Raymond Fry and Ms. Janice Whipple on the monitoring team and requested a change in monitoring personnel. We have taken your correspondence into consideration and are acceptable to modifying the monitoring team to reflect the following personnel:

Mr. Terry Lincoln, Northern California Agency – Awarding Official  
Ms. Carol Rogers-Davis, Tribal Operations Specialist – Delegated AOTR  
Ms. Tia Sam, Tribal Operations Specialist, SAOTR  
Ms. Tina Fourkiller, Indian Self-Determination Specialist

This monitoring visit is scheduled to take place on November 28, 2005, at 10:00 a.m. at 10601 Escondido Place, Stockton, California. Again, please inform this agency in writing of the representative (s) that will be present during this visit.

Secondly, to address your request for a meeting with me to discuss governmental, organizational, and enrollment issues, I would be willing to meet with you at your convenience. Please contact my office at the phone number below to schedule an appointment.

We look forward to our visit and working with the staff in this endeavor. Should you have any additional questions, please feel free to contact this office at (916) 930-3680.

Sincerely,

A handwritten signature in black ink, appearing to be 'T. Burdick', written in a cursive style.

Troy Burdick  
Superintendent

---

Cc: Clay Gregory, Regional Director, Pacific Region  
Dan Shillito, Regional Solicitor, Pacific Southwest Region  
Michael Smith, Deputy Director, Field Operations

# **Exhibit 15**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleyvmiwoktribe-nsn.gov>



Transmitted Via Express Mail With Certified Return Receipt

November 17, 2005

Mr. Troy Burdick, Superintendent  
Central California Agency  
650 Capital Mall, Suite 8-500  
Sacramento, CA 95814

Re: California Valley Miwok Tribe

Dear Superintendent Burdick:

The Tribe is in receipt of your letter dated November 15, 2005 relating to the Central California Agency Office's desire to conduct an on-site monitoring visit at the Tribal Offices on or about November 28, 2005. (Attachment 1) Due to scheduling problems and the desire of the Tribal Council for me to have a face to face meeting with you before the on-site monitoring visit, we are seeking to reschedule the visit to Tuesday, December 20, 2005 at 10:AM, in the Tribal Offices located at 10601 Escondido Place, Stockton, California. Besides me, the Tribe will have the following representatives present:

Ms. Colleen Petty Financial Manager  
Ms. Anjelica Paulk, Tribal Vice-Chairperson  
Mr. Phillip E. Thompson, Tribal Attorney  
Mr. George Steele, Tribal Attorney


Because the Tribe is somewhat leery of the Central California Agency Office's motives for wanting to conduct an on-site visit after three plus years of practically ignoring the Tribe, we intend to video tape the entire meeting to ensure a complete record of the proceedings. We hope that this precaution will prove to be academic.

As stated above, the Tribal Council would desire a meeting between you and me before the on-site visit. Therefore, I will be calling your office in the next several days to hopefully schedule a meeting with you as directed in the above listed letter.

As strange as this may sound, we look forward to the on-site monitoring visit. The Tribe has worked hard to develop and maintain its programs. In addition, we hope this will be a start to improving our relationship with the Central California Agency Office. We want to move forward and work to achieve our mutual goals.

If you have any questions, please feel free to contact me. I look forward to meeting with you before the on-site visit.

Sincerely,



Silvia Burley  
Chairperson  
California Valley Miwok Tribe

Enc (1)

Cc: Tribal Council  
Colleen Petty  
George Steele  
Phillip E. Thompson  
Michael Olsen  
Michael Smith  
Dan Shillito  
Clay Gregory

<b>P H O N E  M E M O</b>	TO	Troy		DATE	11/18	TIME	1:27	AM	PM
	FROM	Sylvia Burley		PHONE (209)	931-4567				
	OF	Cal Valley Mwok		CELL ( )					
				FAX ( )					
<b>M E S S A G E</b>	would like to setup meeting; early December!								
	E-MAIL ADDRESS							SIGNED	
	PHONED <input type="checkbox"/>	CALL BACK <input type="checkbox"/>	RETURNED CALL <input type="checkbox"/>	WANTS TO SEE YOU <input type="checkbox"/>	WILL CALL AGAIN <input type="checkbox"/>	WAS IN <input type="checkbox"/>	URGENT <input type="checkbox"/>		

# **Exhibit 16**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



## United States Department of the Interior

### BUREAU OF INDIAN AFFAIRS

Central California Agency  
650 Capitol Mall, Suite 8-500  
Sacramento, CA 95814

IN REPLY REFER TO

NOV 23 2005

CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED  
NO. 7001 2510 0009 4496 3786

Ms. Silvia Burley  
California Valley Miwok Tribe  
10601 Escondido Place  
Stockton, California 95212

Dear Ms. Burley:

We are in receipt of your letter dated November 17, 2005 and received at this agency via facsimile on November 18, 2005, and original letter received on November 21, 2005, regarding the on-site monitoring review, wherein you are now requesting a change in the date of the monitoring visit from November 28, 2005, to December 20, 2005.

Unfortunately, we are unable to accommodate the date you requested. However, in the spirit of cooperation, we are going to provide you with an option to have the on-site monitoring visit take place at 10:00 a.m. on either December 5, 2005, or December 12, 2005, at 10601 Escondido Place, Stockton, California, with the team identified in our previous correspondence dated November 15, 2005:

Mr. Terry Lincoln, Northern California Agency - Awarding Official  
Ms. Carol Rogers-Davis, Tribal Operations Specialist - Delegated AOTR  
Ms. Tia Sam, Tribal Operations Specialist, SAOTR  
Ms. Tina Fourkiller, Indian Self-Determination Specialist

We also acknowledge the identification of your representative for the monitoring session:

Ms. Colleen Petty, Financial Manager  
Ms. Anjelica Paulk, Tribal Vice-Chairperson  
Mr. Phillip E. Thompson, Tribal Attorney  
Mr. George Steele, Tribal Attorney



# **Exhibit 17**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-nsn.gov>



FAXED TO: 916-930-3780

November 18, 2005

### Attention:

Dear Mr. Burdick, Superintendent;

I am faxing a copy of a letter addressed (from the California Valley Miwok Tribal Chairperson) to you, dated November 17, 2005, the original letter will be mailed via certified mail.

This fax is also confirming the telephone conversation I had with you earlier this afternoon in which it has been agreed upon that you and I have a scheduled appointment for 1:00 P.M on Friday, December 2, 2005 at the Central California Agency.

Sincerely,

  
Silvia Burley, Chairperson - CVMT

# **Exhibit 18**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

NOV-28-2005 02:48 PM VMT

931 4333

P.01

## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-nsn.com>



Faxed To: (916) 930-3780

DATE: November 28, 2005

SUBJECT: Onsite Monitoring Visit Scheduled for Dec. 12, 2005

ATTENTION: Mr. Troy Burdick, Superintendent

---

## COVERSHEET

Dear Mr. Burdick,

This is to confirm that the California Valley Miwok Tribe is in acceptance of the proposed scheduled date set for Dec. 12, 2005 regarding the On-Site Monitoring Visit.

Per your request, we are responding to your letter dated November 23, 2005, in which you asked that we notify you of which date we preferred no later than close of business on November 29, 2005.

Thank you

  
Silvia Burley, Chairperson  
California Valley Miwok Tribe

Total Pages Sent Including Coversheet: 4

CVMT-2011-001200

# **Exhibit 19**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

Indian  
Self-Determination

DEC 06 2005

**CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED  
NO. P 358 409 690**

Ms. Sylvia Burley  
California Valley Miwok Tribe, California  
10601 Escondido Place  
Stockton, California 95212

Dear Ms. Burley:

This correspondence will serve as a follow-up to your voice message received at the agency today and acknowledges your cancellation of the scheduled monitoring visit on December 12, 2005.

At this time it is imperative that we reschedule this very important visit and strongly suggest this site visit to take place on December 20, 2005. The time, place and monitoring team will remain the same as previously scheduled on December 12, 2005. Please contact this office for confirmation of the new date no later than December 9, 2005 by close of business. Should you have any additional questions, please do not hesitate to contact this office at (916) 930-3680.

We look forward to hearing from you in the near future.

Sincerely,

*Eddie J. Romo*  
ACTING Troy Burdick  
Superintendent

cc: Clay Gregory, Regional Director, Pacific Region  
Dan Shilito, Regional Solicitor, Pacific Southwest Region  
Michael Smith, Deputy Director, Field Operations

JWHIPPLEDEPINA  
12/06/05  
ack.wpd

CVMT-2011-001202

# **Exhibit 20**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

*cc: Amy J.*

## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-nsn.com>

**COPY FOR YOUR  
INFORMATION**



**Faxed To: (916) 930-3780**

**IMPORTANT; PLEASE READ IMMEDIATELY**

**DATE: December 6, 2005**

**SUBJECT: Monitoring Visit Scheduled for Dec. 12, 2005  
HAS BEEN CANCELED**

**ATTENTION: Mr. Troy Burdick, Superintendent**

---

## COVERSHEET

Dear Mr. Burdick,

On behalf of the California Valley Miwok Tribe, I would like to state that we are going to have to cancel the Monitoring Visit, which was scheduled for December 12, 2005.

A matter has arisen which is of extreme importance to the Tribe. Unfortunately, because we are a small Tribe, all of our resources are going to have to be used in this matter.

We apologize for this inconvenience.

Sincerely,

  
Silvia Burley, Chairperson  
California Valley Miwok Tribe

Cc: Phillip Thompson, Esq.  
George Steele, Esq.

Total Pages Sent Including Coversheet: 1



# **Exhibit 21**

California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.californiavalleymiwoktribe-usn.gov>



gm  
TV  
RECEIVED  
DATE  
TIME  
INITIALS

Transmitted Via Fax and First Class Mail With Certified Return Receipt

December 14, 2005

Mr. Troy Burdick  
Superintendent  
Central California Agency  
650 Capital Mall  
Suite 8-500  
Sacramento, CA 95814

Re: California Valley Miwok Tribe

Dear Superintendent Burdick:

When we left your office on December 2, 2005 after our meeting with you, I felt that for the first time in many years I had dealt with someone at the Bureau of Indian Affairs Central California Agency office who would deal with the Tribe in a fair manner. However, recently we have found out from the State of California that Mr. Ray Fry has contacted the State Gambling Control Commission and informed them that the Central California Agency Office did not recognize me in any way as the person of authority for the California Valley Miwok Tribe except through the Tribe's P.L. 638 Contract.

The Tribe believes Mr. Fry's clear motives in taking this action were to get the State to stop their revenue sharing distributions to the Tribe. Mr. Fry's action came less than two months after he made a sworn Declaration that he had not made any attempts to interfere with the State Gambling Control Commission revenue sharing distribution to the Tribe. (Attachment 1)

During our meeting, you made several emphatic statements that you would keep individuals in the Central California Agency Office from taking rogue and/or personal actions when it came to dealing with Tribes. In this case, either Mr. Fry was working on specific instruction from you or someone else at the Departments of Interior or Justice or Mr. Fry took it upon himself to contact the California Gambling Control Commission and make statements about the Tribe.

The end result is now that the State has filed a Complaint in Interpleader to try to get me and several non-tribal member individuals named in that action to come before a State Judge to make arguments as to why the Revenue Sharing funds due to the Tribe should be distributed to them.

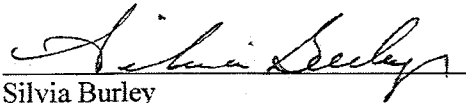
(Attachment 2) The Tribe believes that even you would agree with the detrimental impact a State Court decision on tribal leadership could have on tribal sovereignty issues in the State of California. Even worse, the State Court would have no jurisdiction to bring the Central California Agency and Mr. Fry who caused this problem before the Court.

Needless to say, the Tribe feels that it can no longer trust the Central California Agency. As such, we are canceling the site visit scheduled for December 20, 2005 until after the Tribe is able to petition the District Court in Washington D.C. to have a Special Master appointed to oversee the government-to-government relationship between the Tribe and the Bureau of Indian Affairs and to enjoin the Bureau of Indian Affairs from taking action such as those made by Mr. Fry until such time as a full adjudication of the issues raised in its legal action can be addressed

We had hoped that even with the litigation, we could proceed in a professional manner. However, based on statements provided to us by State representatives, Mr. Fry believes that he and the Central California Agency Office have the right to continue to interfere in the internal affairs of the California Valley Miwok Tribe. Since this seems to be your office's official position, the Tribe believes that a third-party arbiter (a Special Master) needs to be in place to prevent future abuses by Mr. Fry and others within the Central California Agency Office.

We hope that Mr. Fry's actions are not a prelude to another attempt by your office to unilaterally terminate our P.L. 638 contract. If you have any questions, please feel free to contact me.

Sincerely,



Silvia Burley  
Chairperson  
California Valley Miwok Tribe

Enc (2)

Cc: Tribal Council  
Colleen Petty  
George Steele  
Phillip E. Thompson  
Michael Olsen  
Michael Smith  
Dan Shillito  
Clay Gregory

**ATTACHMENT C**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

**CALIFORNIA VALLEY MIWOK  
TRIBE, formerly SHEEP RANCH OF  
ME-WUK INDIANS OF CALIFORNIA,**

**Plaintiff,**

**v.**

**No. 1:05CV00739  
Judge James Robertson**

**UNITED STATES OF AMERICA,  
GALE A. NORTON, Seretary of the  
Interior,**

**and**

**JAMES E. CASON, Associate Deputy  
Secretary of the Interior,**

**Defendants.**

---

**DECLARATION OF JAMES M. UPTON**

Pursuant to 28 U.S.C. 1746, I, **James M. Upton**, declare:

1. I am the attorney of record for defendants and have has multiple telephone conversations with the plaintiff's attorney of record, George L. Steele, in the past two months.
2. In a November 2, 2005, telephone conversation between the parties' counsel, Mr. Steele requested that the BIA retract Mr. Raymond Fry's letter of October 26, 2005, which returned Tribal Resolution No. R-1-09-26- 2005 to Ms. Silvia Burley together with a transmittal letter explaining why the BIA was taking no action on the Resolution. In this conversation, Mr. Steele specifically inquired as to whether Mr. Scott Keep, Assistant Solicitor, Tribal Government and Alaska, Indian Affairs Division, Office of the Solicitor, Washington, D.C. had seen a draft of the October 26<sup>th</sup> letter before it was sent to Ms. Burley. I responded that Mr. Keep had received a draft of the Fry letter, but that no BIA Central California Agency official had checked with Mr. Keep to request approval of the draft before it was sent out to Ms. Burley on October 26<sup>th</sup>. I told Mr. Steele that I would attempt to find out as soon as possible whether the Central California Agency would be willing to retract this letter.
3. Shortly after the November 2<sup>nd</sup> telephone conversation, I requested that Mr. Keep contact Mr. Fry directly to determine if the Agency was willing to retract the October 26<sup>th</sup> letter. Mr. Keep responded that he would contact Mr. Fry.
4. My next telephone conversation with Mr. Steele took place on November 21, 2005.

In that conversation, I informed Mr. Steele that the Agency had not yet responded to Mr. Keep's inquiry and that I had nothing to report. I conveyed Mr. Keep's request that the parties agree on a deadline for the next telephone conversation. Counsel for the parties agreed on a deadline of December 1, 2005.

5. On or about December 2, 2005, I left a message for Mr. Steele at his office informing him that the Central California Agency had still not yet decided whether to retract the Fry letter.
6. On December 5, 2005, I telephoned Mr. Steele to inform him that the BIA had decided it would not retract the Fry letter and was standing by the position stated therein.

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

Executed on this 3<sup>rd</sup> day of January, 2006.

---

**JAMES M. UPTON**

**ATTACHMENT D**



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CALIFORNIA VALLEY MIWOK TRIBE, )  
Formerly, SHEEP RANCH OF ME-WUK )  
INDIANS OF CALIFORNIA, )**

**Plaintiff, )**

**v. )**

**No. 1:05CV00739  
Judge James Robertson**

**UNITED STATES OF AMERICA, )  
GALE A. NORTON, Secretary of the )  
Interior, )**

**JAMES E. CASON, Associate Deputy )  
Secretary of the Interior,<sup>1</sup> )**

**Defendants. )**

**SECOND DECLARATION OF SCOTT KEEP**

---

<sup>1</sup> David W. Anderson, formerly the Assistant Secretary - Indian Affairs, is no longer with the Department of the Interior. The position of Assistant Secretary - Indian Affairs is vacant. The duties of the Assistant Secretary have been delegated by the Secretary of the Interior to the Associate Deputy Secretary by Secretarial Order 3259, dated February 8, 2005, as amended on August 11, 2005. James E. Cason, Associate Deputy Secretary is substituted for Mr. Anderson pursuant to Fed. R. Civ. P. 25(d).

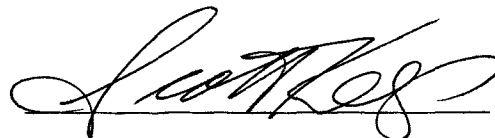
I, Scott Keep, declare:

1. I am the Assistant Solicitor, Branch of Tribal Government and Alaska, Division of Indian Affairs, U.S. Department of the Interior, Washington, D.C.
2. I have held my current position in an acting or permanent status since the fall of 1976.
3. In my capacity as Assistant Solicitor, I am responsible for providing and supervising the provision of legal counsel to Department of the Interior and Bureau of Indian Affairs (BIA) officials on matters relating to the organization and functioning of Indian tribal governments.
4. In my capacity as Assistant Solicitor I have been involved with questions relating to the status and organization of the California Valley Miwok Tribe (Tribe), formerly known as the Sheep Ranch Rancheria, including the challenge in District Court in California to the transfer of the rancheria land to Mable Dixie, Yakima Dixie's mother, which is now pending before the Ninth Circuit Court of Appeals pursuant to Ms. Silvia Burley's appeal.
5. Recently, I have been assisted in providing counsel on matters relating to the California Valley Miwok Tribe by another attorney, Jane Smith, in the Branch of Tribal Government and Alaska.
6. In October 2005, I was advised that the Tribe had requested BIA approval to reprogram some Federal Public Law 93-638 contract funds in order to participate in a consortium for the purpose of expediting the acquisition of land in trust.
7. I was provided with a draft of the BIA's proposed response to the request declining to approve it.
8. I did not approve the draft response nor do I recall being asked to approve it.

9. Mr. James Upton, counsel of record for the Federal defendants in this matter, contacted me and advised me that plaintiff's counsel wanted to know if we were going to retract the letter declining to approve the reprogramming.
10. At the time I learned that the draft had been finalized and sent, I had been scheduled to meet with Michael D. Olsen, Acting Principal Deputy Assistant Secretary - Indian Affairs, to brief him on the status of the Tribe's efforts to reorganize.
11. I advised Mr. Upton that I could not give him an answer for plaintiff's counsel until the Acting Principal Deputy Assistant Secretary had been briefed.
12. The planned briefing for the Acting Principal Deputy Assistant Secretary was postponed several times because of the Acting Principal Deputy Assistant Secretary's schedule.
13. While I was aware that plaintiff's counsel was anxious for a response, I was not, and am not, aware of any time limit, as a matter of law, for the requested retraction.
14. The planned briefing for the Acting Principal Deputy Assistant Secretary still had not taken place when I was advised that the plaintiff anticipated filing for a Temporary Restraining Order, which filing was later postponed and converted to the current Motion for a Preliminary Injunction.

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 2nd day of January 2006.



Scott Keep

**ATTACHMENT E**

AUG 05 2005 14:58 FR CA GAMBLING CNTRL COMS16 263 0499 TO 916262400629 P.02/03



STATE OF CALIFORNIA

**GAMBLING CONTROL COMMISSION**

2399 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833-4231  
PO. BOX 529013  
Sacramento, CA 95852-6013

(916) 263-0703  
(916) 263-0499 Fax

ARNOLD SCHWARZENEGGER, GOVERNOR

DEAN SHELTON, CHAIR

JOHN CRUZ

J.K. SASAKI

ED C. WILLIAMS

August 4, 2005

Ms. Sylvia Burley  
10601 Escondido Place  
Stockton, California 95121

Yakima Dixie  
P.O. Box 41  
11178 Sheep Ranch Road  
Sheep Ranch, California 95250

Re: Revenue Sharing Trust Fund (RSTF) Distributions

Dear Ms. Burley and Mr. Dixie:

This is to notify you that the California Gambling Control Commission will not release the current RSTF quarterly distribution to the California Valley Miwok Tribe for the quarter ending June 30, 2005, and any subsequent distributions. This action is based on information recently received from the Bureau of Indian Affairs (BIA) regarding the fact that the California Valley Miwok Tribe (the Tribe) does not have a recognized tribal government, nor a recognized tribal chairperson and that, based on the organizational/governmental status of the Tribe, the BIA has taken action to suspend Contract No. CTJ51T62802 (FY 05/06 Mature Status - Aid to Tribal Government Program), pursuant to PL 93-638. We refer you to the following correspondence (copies enclosed):

March 26, 2004 letter from Dale Risling, Sr. (BIA) to Sylvia Burley, copy to Yakima Dixie

February 11, 2005 letter from the Department of Interior, Acting Assistant Secretary - Indian Affairs, Michael D. Olson to Yakima K. Dixie, copy to Sylvia Burley

July 19, 2005 letter from Janice L. Whipple-DePina, (BIA) to Sylvia Burley, copy to Yakima Dixie

These letters reflect, among other things, a long-standing effort to encourage the tribe to organize itself and establish tribal leadership. During the past year to 18 months, the Commission has made quarterly distributions and directed them to Ms. Burley, because she continued to be recognized as the chairperson (3/26/04 letter) or person of authority within the tribe (2/11/05 letter) with whom the BIA conducted business. The July 19, 2005 letter, however, reflects the BIA's decision that the lack of a recognized tribal government or leadership now causes it sufficient concern that it must suspend the above referenced PL 93-638 contract in order to

AUG 05, 2005 13:51

916 263 0499

Page 2

CVMT-2011-001217

AUG 05 2005 14:59 FR CA GAMBLING CNTRL COM916 263 0499 TO 916262400629 P.03/03

"safeguard federal funds and until such time as the tribes becomes formally organized and a tribal government is re-established."

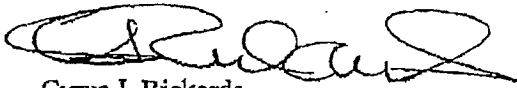
This most recent action and the position of the BIA regarding tribal leadership and organization leave us with no alternative, but to withhold funds until such time as there exists sufficient tribal government organization and leadership to allow the BIA to conduct government-to-government relations with the tribe - either through a recognized tribal chair or representative.

We take this action pursuant to our RSTF trustee responsibilities under Section 4.3.2.1 of the Tribal-State Gaming Compact (the Compact). In taking this action, we want to be clear that there is no question of the tribe's eligibility to receive RSTF distributions, and that we have neither authority over nor responsibility for the composition of tribal government or leadership. However, we believe that our trustee status under the Compact demands that we ensure the RSTF distributions go to the Tribe for the benefit of the Tribe and not merely to an individual member. We have not received any direction in this regard from the BIA, but in situations involving tribal leadership disputes and/or tribal organizational problems, we take our lead from the actions and positions of the BIA. We take no position regarding the future form of tribal government, nor the selection of tribal leadership. We look forward to being able to make distributions as soon as the Tribe's leadership and organizational status is resolved to a degree sufficient to allow the BIA to resume government-to-government relations.

Distributions from the RSTF will remain in the fund until such time as the current situation is resolved, and the Commission is notified of resolution, at which time withheld distributions will be forwarded to the Tribe with appropriate accrued interest.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Cyrus J. Rickards  
Chief Counsel

Cc: Peter Glick

AUG 05, 2005 13:51

916 263 0499

\*\* TOTAL PAGE.03 \*\*

Page 3

CVMT-2011-001218

**ATTACHMENT F**

12/06/2005 09:55

5108483236

COPY CENTRAL

PAGE 02

2005-12-05-Burdick Memo

California Valley Miwok Tribe  
f.k.a. Sheep Ranch Rancheria of MiWok Indians of California  
11178 Sheep Ranch Rd., P.O. Box 41  
Sheep Ranch, California 95202

December 5, 2005

Chadd Everona, Deputy

510-486-1314

Troy Burdick, Superintendent  
Bureau of Indian Affairs, Central California Agency  
650 Capitol Mall 8-500  
Sacramento, California 95814  
Tel: (916) 930-3680; Fax: (916) 930-3780

Mr. Burdick:

I report herein two items.

1) Today, December 5, the California Gambling Control Commission filed an Interpleader suit as a method for determining how the distribution of money should be handled. Attached is a copy of that suit. We had recommended, over a year ago, that the Commission do this; and being that we are raising such a concerted and informed protest (recall that we retained Peter Melnicoe, the previous Chief Counsel for the Commission, to represent Yakima), they have changed their attitude. This will freeze the distribution until the suit is resolved. You will note that, in addition to Silvia and Yakima being co-defendants, both Velma and I are also named. That is fallacious because while Velma might be in a position to assert that she is a person of authority for the Tribe, I do not nor never have. And neither she nor I have claimed "a right to receive distributed funds ....". Be that as it may, we understand that the action was put together rather hastily, and we are well pleased with this action. (My only reservation is that the BIA may now slack off on the organization of the Tribe.)

2) Velma reports that she spoke with Bob Terry of the Ione Band regarding Bob Johnson and the IHS installations. Terry indicated that the individuals could be placed under administrative authority of the Ione Tribe. Velma followed-up, and today, Monday, Bob Johnson reported that the arrangements had been made. (Velma got the inference that perhaps he had spoken with you.) In any event, that seems to be moving forward; and we are grateful for any nudge which you might have given. Velma will be meeting with Margaret Dalton of Jackson Rancheria on a matter of mutual ancestors and a cemetery matter; and she may ask Dalton to reinforce the IHS installations.

As far as I know from our D.C. representatives, the BIA officials back there are still pondering the determination; and we may ask for a meeting with you within a week or so; particularly in reference to the FOIA, which will be necessary in our defense of this above suit.

Best wishes,

