

Options Paper

California Valley Miwok Tribe – Leadership Dispute

Office of Indian Services

Division of Tribal Government Services

Overview

The Regional Director, Pacific Region, Bureau of Indian Affairs (BIA) affirmed a decision made by the Central California Agency (CCA) to assist the California Valley Miwok Tribe (CVMT) in reorganizing the tribe. The CCA made the decision to assist the Tribe reorganize¹ itself because there was an ongoing leadership dispute within the Tribe between Silvia Burley and Yakima Dixie. Because it would be impossible to settle the leadership dispute in that neither Dixie nor Burley would accept the other as leader, the BIA believed best solution was to reorganize the Tribe, bringing in other Indians with close ties to the rancheria, and letting the membership decide. As part the process as proposed by CCA, the BIA intended identify a group of “putative members” who descend from either the original assignees of the rancheria, the person who voted on the IRA, or the **distribute distribution** of the rancheria’s assets. The group would then hold a general council meeting for the purpose of electing an interim governing body which would appoint a committee to draft a constitution. Burley, who claimed status as Chairperson of the Tribe, appealed the Regional Director’s decision to the Interior Board of Indian Appeals (IBIA). The IBIA dismissed the claim by Burley on January 28, 2010, holding that it did not have jurisdiction over the appeal because it was, at heart, an appeal of an enrollment decision. The IBIA remanded this claim to the Assistant Secretary.

This paper offers four options that may settle the dispute, hopefully, without further appeal. The options are discussed below.

Option 1

Continue with the reorganization process initiated in 2006 which was the subject of the appeal, with the justification that in so doing, it falls within the responsibilities of the BIA to assist the Tribe in resolving the leadership dispute. The BIA has identified 16(?) persons who qualify as putative members who would participate in reorganizing the Tribe.

What criteria did the BIA use to determine who would qualify as putative members.

¹ The Court of Appeals for the D.C. Circuit found in *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1268 (D.C. Cir. 2008).

Prepared by E. Colliflower

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Discussion

In *Goodface v. Grassrope* the court concluded “[t]he BIA, in its responsibility for carrying on governmental relations with the Tribe, is obligated to recognize and deal with some tribal governing body.” 708 F.2d 335, 339 (8th Cir. 1983). When the tribe has a process for resolving the dispute, the BIA must defer to the tribe. *Id.* But when there is no tribal forum, as here, the BIA must step in. *Id.* As part of its effort to resolve the dispute and determine which leader to recognize, the BIA may assist the Tribe in reorganizing so that the members of the Tribe may select their own leader.

BIA must know that the individuals who are claiming leadership are legitimate members of the tribe and that they were put into office according to the tribe’s governing documents or traditions.

This situation is similar to that of the Apache Tribe of Oklahoma. The Apache was mired in a leadership dispute. The Assistant Secretary assumed jurisdiction of an appeal by certain elected officers of the Business Committee. The Assistant Secretary’s, in his decision of January 29, 2009, discussed the enrollment status of one of the elected leaders stating that “it is the policy of the BIA to defer to tribal authorities on matters of enrollment. However, the dispute over the membership of the Apache Business Committee requires the BIA to make a determination as to who is the legitimate government of the Tribe.” The Assistant Secretary further asserts that “[his] authority to affect the outcome of this dispute is generally tied to [his] duty to ensure the legitimacy of the tribal entity with which the United States conducts government-to-government relations.”

BIA should make decisions that do not infringe on the right of the Tribe to determine its own membership. The BIA should not interfere in a leadership dispute until the governing body no longer has a quorum to conduct business.

Dixie may accept this option. Burley probably will not.

Option 2

Conditionally accept a reorganization that is handled by the group of people who are putative tribal members. This means we do nothing in terms of the BIA handling the reorganization as proposed in Option 1, but offer to recognize that the tribe is reorganized upon the following conditions:

1. Accept the individuals identified by the Bureau as having descended from someone on previously identified Sheep Ranch Rancheria membership lists or other documents identifying potential members as putative members unless Burley and Dixie can provide evidence they are not, in fact, descendants.
2. Recognize whatever form of government that group adopts, as long as all individuals identified by the BIA as the putative members are allowed to participate. This can be an interim governing document inasmuch that it contains minimum provisions such as membership criteria.

3. The group would develop membership criteria.
4. Qualified members would vote to accept some form of leadership whether interim or permanent.

After the terms have been satisfied the leader elected through the tribe's own process will be recognized by the BIA as having been lawfully elected therefore re-establishing the government to government relationship.

Discussion

This option is supported by the court's comment in *California Valley Miwok Tribe v. United States*, 515 F.3d at 1267, that "[a] cornerstone of [the trust] obligation is to promote a tribe's political integrity, which includes ensuring that the will of tribal members is not thwarted by rogue leaders when it comes to decisions affecting federal benefits." Burley did not include Dixie or any other potential tribal members in developing a constitution in 1999. It is fundamentally against principles of equity and fairness for leadership to determine who constitutes the tribal membership unless such power was granted by the membership to the leaders.

Both Burley and Dixie may accept this option in view of the fact there's \$6 million dollars at stake.

See comments for Option 1.

Option 3

Recognize Silvia Burley as the leader on the basis that Dixie unconditionally adopted her and her daughters into the tribe and the three of them have elected Burley as leader.

Discussion

We would have to accept as legitimate all Burley's executive actions including her decision to disenroll Yakima Dixie. The Department would also have to accept Burley's assertion that the Tribe is organized, thus making the Tribe eligible for 638 contracts.

If the tribe has no governing document or ordinances, how was Silvia Burley adopted? If her adoption is not legitimate, how would her executive actions be legal? By what authority did she have to disenroll Yakima Dixie.

Yakima Dixie would not accept this option.

No Option 4.

After reading the IBIA case and California Valley Miwok Tribe v. US, I offer the following:

Prepared by E. Colliflower
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Although the termination of the Rancheria was not completed, there was documentation developed to determine the final roll for the Rancheria.

BIA must determine the rightful heirs to the last member of the Sheep Ranch Rancheria. Individuals would have to prove their lineal descent from the individual listed on the final roll.

BIA should look at probate file to ensure that no rightful heirs were erroneously omitted.

The BIA could then use the authority in 15 USCA 163 to develop a membership roll for the determining the rightful heirs to the Sheep Ranch Rancheria.

If no more heirs can be found, the membership of the Rancheria would end with Yakima Dixie, since he has no issue. The BIA cannot make individuals Indians for the purpose of reorganizing the Rancheria.