

**EXHIBIT 2**  
**(Part 3)**

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>57</sup>

1. **The Will of the Tribal Membership is an Important Element of the Federal-Tribal Relationship.**<sup>58</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>59</sup>

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

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<sup>57</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>58</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>59</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 Indian Tribe 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>97</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>97</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  
Fax: (202) 305-0506

OF COUNSEL:

Scott Keep, Assistant Solicitor,  
Branch of Tribal Government and Alaska  
Office of the Solicitor  
U. S. Department of the Interior  
Room 6456  
1849 C Street, N. W.  
Washington, D.C. 20240

Jane Smith  
Attorney-Advisor  
Office of the Solicitor  
U.S. Department of the Interior  
Room 6456  
1849 C Street, N.W.  
Washington, D. C. 20240

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. )**

**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. )**

**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. Rashel 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.

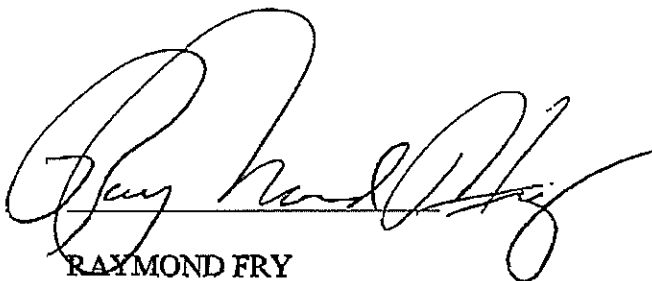
26. The October 28, 2005, letter informed the Tribe of the purpose of the monitoring visit and provided a copy of the standard guidelines for such visits entitled Purpose and Strategy - Official Monitoring Visit. (See Exhibit No. 12).

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 descendants 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 than 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 public 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 Calaveras 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"

2

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 : HYPOTHESIZED, 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\*
- puftatatively \-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. 1548 *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



**Background**  
**Synthesized by Chadd Everone, Deputy**

**Various Definitions of the Term "Putative"**

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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**

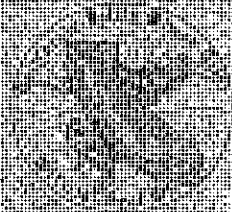
California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry

Case 1:11-cv-00160-RWR Document 68-4 Filed 06/01/12 Page 54 of 281

## CALIFORNIA VALLEY MIWOK TRIBE

16901 Escondido Blvd., Escondido, CA 92025 Phone: (951) 941-4367 Fax: (951) 941-4333

[www.californiavalleytribe.com](http://www.californiavalleytribe.com)



2005-09-30

### ENROLLMENT BOARD NOTICE

September 30, 2005

Yakima Kenneth Dixie  
P.O. Box 41  
Sharp Ranch, California 95330

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 that 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:

  
Angela Parik  
Enrollment Committee Officer

Certified by  
Angela Parik  
Enrollment Committee Officer  
California Valley Miwok Tribe  
Date: 11-31-05

CVWD-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

2005-02-28c-Fry-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

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,

A handwritten signature in cursive script that reads "Yakima K. Dixie".  
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**

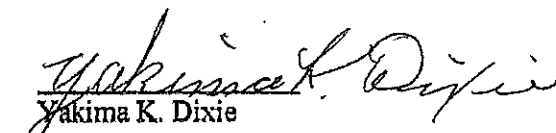
Sheep Ranch Rancheria of MiWok Indians of California  
a.k.a. California Valley Miwok Tribe  
11178 Sheep Ranch Rd., Mail P.O. Box 41  
Sheep Ranch California 95250  
209-728-2102

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.

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



MAR-08-2005 04:49 PM Ca Valley Miwok

20997 4333

P.02

## CALIFORNIA VALLEY MIWOK TRIBE

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

<http://www.cqliforniavalleymiwoktribe-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

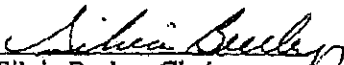
Dear Mr. Gregory,

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

44 that "putative" means "commonly recognized", "by common law or judicial *stare*  
46 *decisis*", or "by tradition", then the distributees of the estate of Mable Hodge  
48 Dixie (Exhibits 1966-08-18; and 1971-11-01) would be the only ones who  
50 qualified as the primary "putative" members. That means that Yakima K. Dixie,  
52 his brother Melvin Dixie, and Dequita Boire, the daughter of Merle Butler, are the  
54 primary "putative" members of the Tribe. This persons are already in accord about  
56 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).

58 ¶ The second order of business will be appoint Velma WhiteBear to help the  
60 putative members organize the tribe. Velma is uniquely qualified for this objective.  
62 She is a close relative of Yakima, who live on the Sheep Ranch reservation land in  
64 early childhood. She has maintained contact with Yakima and the reservation  
66 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).

68 ¶ The third order of business will be to hold meetings with the putative  
70 members of the tribe to construct a constitution which fits the particular customs  
72 and objectives if this Tribe. Emphasis will be placed on defining leadership in  
74 unambiguous terms such that intercline disputes will be avoided and on building a  
tribal organization that is competent at self-administration and management of  
76 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  
78 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.).

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

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

2005-03-14-FryMeeting

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>).

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,

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Yakima K. Dixie

# Exhibit 6 G

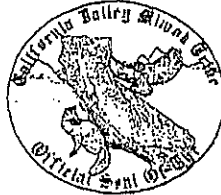
California Valley Miwok Tribe v.  
United States  
3rd Declaration of  
Raymond Fry



## 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 than 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  
64 this Tribe<sup>1</sup>, I would have been able and willing to reschedule the meeting to suit his conven-  
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.

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<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  
88           was formally submitted to you at the meeting of April 11, 2005.

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

94       Q   I request, in addition to the above, copies of the 638 and other grant contracts which  
the Tribe has made, under the representation of Ms. Burley, with the BIA and any atten-  
96           dant budgets, audits, or other ancillary documents to those contracts. If required,  
consider this to be a "Request Under The Freedom Of Information And Privacy  
98           Acts" which I make under the following laws: The Freedom of Information Act of 1974  
(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.

118       Q   I request that the BIA cease holding secret meetings with Silvia Burley which exclude  
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

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

124 I believe that my requests to freeze the 638 money, to have the BIA notify the California  
126 Gambling Control Commission, to obtain relevant records, to mediate issues, and to hold an  
128 open forum are simple, fair, and appropriate to the situation. They are in line with the "Olson  
130 Mandate"; and they do not evidence any prejudice on the part of the BIA toward either,  
132 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.

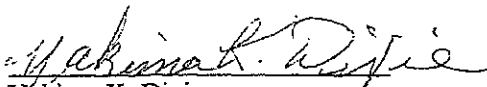
132 Respectfully,

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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



2005-05-25-FryMeeting

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

2005-05-25-FryMeeting

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.

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

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

Exhibit #	Title	Comments
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.   Jia    
ROUTE   TO    
RESPONSE REQUIRED   YES    
DUE DATE   10/6/2005    
MEMO   LTR    
TELE   OTHER    
**ACKNOWLEDGES AND  
RESEARCH 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 Duffie
- 2 William J. Puck
- 3 Peter E. Gled.
- 4 Thomas Wolfson
- 5 George Steel
- 6 Phillip E. Thompson
- 7 Velma White Bear
- 8 Myra Spiker
- 9 G. Morris
- 10 Fred and Amy
- 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 Morin - CofA California Agency - Acting Agency Superintendent  
Elean Quegan - PRO BIA  
Ruth A. B. - CA BIA  
Myra Pickett - SOL - Asst Regional Solicitor

Sign In Sheet- Sheep Ranch Rancheria  
of Miwok Indians of Calif. AKA  
May 25, 2006 California Valley Miwok Meeting

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

SIGN-IN Sheet

Raymond [unclear] CCA-BIA Tribal Guardians Office  
Wendy White Bear Sheep Ranch Rancheria - 1  
Regina Boie - Blythe CA  
Ortonia Lopez -  
Albert Ariza Turlock CA  
LeRoi R. Chapelle, Elk Grove, CA  
Bill Martin Los Angeles CA  
Peter Glich Attorney for Yakima River  
Chad Everone Deputy Yak. Dir. of  
William J. Lutz Consultant, Sheep Ranch Rancheria  
Troy Burdick 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.

Fee-To-Trust Consortium  
Memorandum Of Understanding  
Page 2 of 9

- (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  
Page 3 of 9

"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  
Page 5 of 9

## 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.

Fee To-Tribal Consortium  
Memorandum Of Understanding  
Page 6 of 9

- (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.

Fee-For-Trust Consortium  
Memorandum Of Understanding  
Page 7 of 9

## 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

Fee-To-Trust Consortium  
Memorandum Of Understanding  
Page 8 of 9

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.

Fee-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: \_\_\_\_\_ Dated: \_\_\_\_\_  
Pacific Regional Director

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

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

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>



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05 OCT -7 PM 3:31

SACK MONTU  
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

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**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

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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:

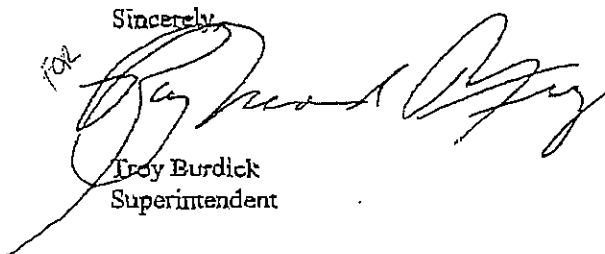
This letter shall serve to acknowledge receipt at the Central California Agency of California Valley Miwok Tribal Resolution No. R-1-09-26-2005, on October 17, 2005.

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

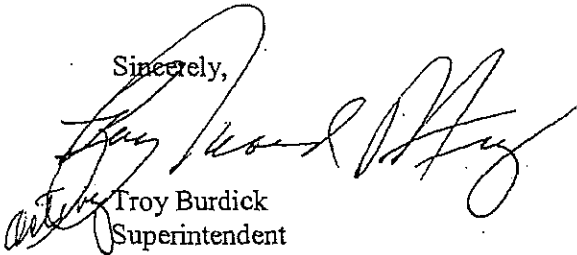


2) Monitoring of each Management systems to determine compliance with 25 CFR, Chapter V, Part 900, Subpart F and the tribes own management systems, policies and procedure documents.

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

**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: \_\_\_\_\_

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

A. Identify Program Records requirements. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☐ Yes ☐ No

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Comments and/or Recommendations:** \_\_\_\_\_

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

# **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,

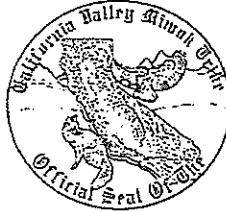
  
Silvia Burley, Chairperson

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

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

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

SUPT.                       
 ADMIN.                       
 ROUTE 121638  
 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 adverted. 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.

FOR THE DIRECTOR, BUREAU OF INDIAN AFFAIRS  
SACRAMENTO, CALIFORNIA  
NOV 15 2005  
U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
SACRAMENTO, CALIFORNIA

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 read 'T. Burdick', with a stylized flourish at the end.

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.californiavalleymiwoktribe-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) 931-9507			
	OF	Cal Valley Miwok	CELL	( )			
			FAX	( )			
	MESSAGE	wold 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-nsh.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,

A handwritten signature in cursive script, appearing to read "Silvia Burley".

Silvia Burley, Chairperson - CVMT

Total Number of Pages Sent Including Coversheet: 5

CVMT-2011-001198

# **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

*Rec: Imgt.*

## 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>



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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.

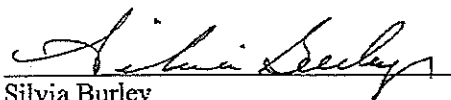
(Attachment 2) The Tribe believes that even you would agree with the detrimental impact a State Court decision on tribal leadership could have on tribal sovereignty issues in the State of California. Even worse, the State Court would have no jurisdiction to bring the Central California Agency and Mr.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

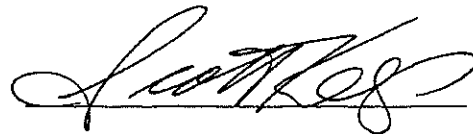
I, Scott Keep, declare:

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**

2398 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833-4231  
P.O. BOX 523013  
Sacramento, CA 95852-0013

(916) 263-0700  
(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 8499 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."

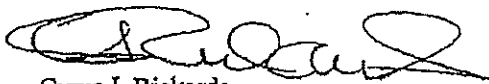
This most recent action and the position of the BIA regarding tribal leadership and organization leave us with no alternative, but to withhold funds until such time as there exists sufficient tribal government organization and leadership to allow the BIA to conduct government-to-government relations 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**

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 Eversone, 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:

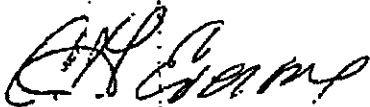
I report herein two items.

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 the above suit.

Best wishes,



## DOCUMENT NO. 59

**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. )**

**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. Rashel 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.

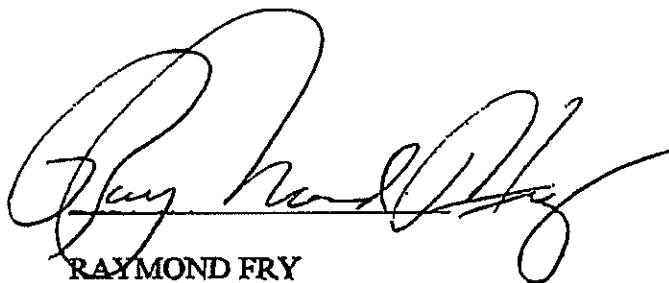
26. The October 28, 2005, letter informed the Tribe of the purpose of the monitoring visit and provided a copy of the standard guidelines for such visits entitled Purpose and Strategy - Official Monitoring Visit. (See Exhibit No. 12).

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

## DOCUMENT NO. 60



CALIFORNIA VALLEY **MIWOK** TRIBE, fka SHEEP RANCH OF ME-WUK INDIANS OF CALIFORNIA, Plaintiff - Appellant, v. UNITED STATES OF AMERICA, et al., Defendants - Appellees.

No. 04-16676

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

197 Fed. Appx. 678; 2006 U.S. App. LEXIS 21261

July 24, 2006, Submitted, San Francisco, California \*\*

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).  
August 17, 2006, Filed

**NOTICE: [\*\*1]** RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

**PRIOR HISTORY:** Appeal from the United States District Court for the Eastern District of California. D.C. No. CV-02-00912-FCD. Frank C. Damrell, Jr., District Judge, Presiding.

**COUNSEL:** For CALIFORNIA VALLEY MIWOK TRIBE, fka Sheep Ranch of the Me-Wuk Indians of California, Plaintiff - Appellant: George L. Steele, Esq. ▼, LAW OFFICES OF GEORGE L. STEELE, Pasadena, CA; George L. Steele, Esq. ▼, Pasadena, CA.

For UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, GAIL NORTON, Secretary of the Interior, NEAL MCCALED, Assistant Secretary of Interior for Indian Affairs, Defendant - Appellee: Debora G. Luther, Esq. ▼, McGregor W. Scott ▼, USSAC - OFFICE OF THE U.S. ATTORNEY, Sacramento, CA.

**JUDGES:** Before: SILVERMAN and RAWLINSON, Circuit Judges, and BERTELSMAN, Senior District Judge. \*\*\*

\*\*\* The Honorable William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

## **OPINION**

[\*679] MEMORANDUM \*

## **FOOTNOTES**

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3 .

**[\*\*2]** Before: SILVERMAN and RAWLINSON, Circuit Judges, and BERTELSMAN, Senior District Judge.\*\*\*

The California Valley Miwok Tribe appeals the dismissal of its claims against the United States for breach of trust and violation of the Rancheria Act of 1958, as amended, arising out of the improper conveyance of tribal trust land to an individual Tribe member. We affirm.

We first reject the government's argument for summary affirmance. While the district court found no waiver of sovereign immunity on four theories, including the Administrative Procedure Act (APA), 5 U.S.C. § 706(1), the court then proceeded to the merits of the statute of limitations issue. In doing so, it assumed correctly that sovereign immunity was waived under the APA, 5 U.S.C. § 702. The Tribe did not need to appeal this assumption because it was in its favor.

Next, although the Tribe correctly argues that the limitations period in 28 U.S.C. § 2401(a) is not strictly jurisdictional, *see Cedars-Sinai Med. Ctr. v. Shalala*, 125 F.3d 765, 770 (9th Cir. 1997); *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 n.2 (9th Cir. 1995), **[\*\*3]** we conclude that the district court nonetheless correctly analyzed the limitations issue and held based on the undisputed facts that the 1993 ALJ decision effectively put the Tribe on notice of its injury, adopting the reasoning of *Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1577 (Fed. Cir. 1988). Under *Hopland's* "knew or should have known" standard, Yakima Dixie was in a position to obtain knowledge of the Tribe's injury caused by the ALJ's 1993 decision, and the Tribe's claim thus accrued at that time.

Finally, this case presents no exception to the general rule that we will not consider arguments made for the first time on appeal. *See United States v. Monreal*, 301 F.3d 1127, 1131 (9th Cir. 2002). Thus, we do not reach the Tribe's equitable estoppel and tolling arguments.

**AFFIRMED.**

**CONCUR BY: SILVERMAN**

**CONCUR**

SILVERMAN, Circuit Judge, concurring:

As often occurs, the district court decided this case on one fully dispositive ground, and then, in an example of belt-and-suspenders precaution, it also decided the case on an alternative ground, just in the event that its first basis was mistaken. The appellant totally failed **[\*\*4]** to address in its opening brief the first alternative basis on which the district court dismissed the case - that the suit was barred by sovereign immunity. Because appellant failed to argue, must less show, why the district court's sovereign immunity ruling was in error, I would affirm the district court.

## DOCUMENT NO. 61

## **ATTACHMENT 1**

11/06/2006 16:34 FAX 916 930 3780

BIA CENTRAL CAL AGENCY

002/005



## United States Department of the Interior

### BUREAU OF INDIAN AFFAIRS

Central California Agency  
650 Capitol Mall, Suite 8-300  
Sacramento, CA 95814-4710

IN REPLY REFER TO

**CERTIFIED MAIL NO. 7003 1680 0002 3892 1019**  
**RETURN RECEIPT REQUESTED**

**NOV - 6 2006**

Ms. Silvia Burley  
10601 Escondido Place  
Stockton, California 95212

**CERTIFIED MAIL NO. 7003 1680 0002 3892 1002**  
**RETURN RECEIPT REQUESTED**

Mr. Yakima K. Dixie  
c/o Mr. Chadd Everone  
2054 University Avenue, #407  
Berkeley, California 94704

Dear Ms. Burley and Mr. Dixie:

The Bureau of Indian Affairs (BIA) remains committed to assist the California Valley Miwok Tribe (Tribe) (formerly Sheep Ranch Rancheria of the Me-Wuk Indians of California) in its efforts to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to the clear majority of those Indians. We are writing you because of your claim of leadership of the Tribe.

The Central California Agency (Agency) has been meeting with both of you and your representatives for some time to discuss issues and to offer assistance in your organizational efforts for the Tribe. It is evident, however, that the ongoing leadership dispute is at an impasse and the likelihood of this impasse changing soon seems to be remote. Therefore, we renew our offer to assist the Tribe in the organizational process. Our intention is not to interfere with the Tribe's right to govern itself. Rather, we make this offer consistent with the well-established principle that the BIA has a responsibility to determine that it is dealing with a government that is representative of the Tribe as a whole. The authority and responsibility to take this action becomes evident once there is clear evidence that the dispute between competing leadership factions, such as yours, threatens to impair the government-to-government relationship between the Tribe and the United States.

The Agency, therefore, will publish a notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process. The notice shall invite the members of the Tribe and potential members to the meeting where the members will discuss the issues and needs confronting the Tribe. We have used this sort of general council meeting approach in other instances to help tribes reorganize when for various reasons the tribes lacked an organized tribal government that represented the entire membership.

11/08/2006 16:34 FAX 916 930 3760

BIA CENTRAL CAL AGENCY

003/003

-2-

It appears that you each have determined your membership criteria, and membership, and developed constitutions or governing documents. We understand, however, you do not agree on certain issues that are fundamental to the process of building an organized government. We propose to discuss the following issues that are preventing you from moving forward as a unified tribe:

- form of government;
- adoption of a constitution;
- organization under a federal statute (should the tribe decide to adopt a constitution);
- should the tribe adopt a constitution, what constitution will be used: the Dixie or Burley constitution, combination of both, or another;
- determining the census where membership is first listed, i.e., 1916 Sheep Ranch Rancheria census or other document;
- determining leadership of the tribe, i.e., holding a transitional election or agreeing to some type of power sharing.

The general council first needs to determine the type of government your tribe will adopt. Tribes do not always adopt constitutions; some govern according to the tribe's tradition or have some sort of power sharing in an open participatory type of government. Next, the general council needs to agree to the census or other documents that establishes the original members of the Rancheria. That census should be the starting point from which the tribe develops membership criteria. The immediate goal is determining membership of the tribe. Once membership is established and the general council determines the form of government, then the leadership issues can be resolved.

The Agency will coordinate the meeting by setting the date, time, location and other arrangements, but we would appreciate your suggestions, date, time, location, and possible agenda items. The BIA offers the assistance of an independent observer/mediator to facilitate the meeting or meetings. Please respond to the Agency concerning your willingness to participate in a meeting to discuss the issues in depth and begin the resolution process.

We very much desire that you both participate. We intend to conduct a fair and open process in which supporters of each of you can participate and be heard. We will proceed with this process, however, even if one or both of you declines to participate.

Please contact Carol Rogers-Davis, Acting Tribal Operations Officer, Central California Agency, at (916) 930-3764, to work with her on setting up the meeting.

Sincerely,

  
Troy Burdick  
Superintendent

cc: Director, Pacific Region  
Regional Solicitor  
Director, Bureau of Indian Affairs  
Assistant Solicitor, Branch of Tribal Government & Alaska

CVMT-2011-001262

## DOCUMENT NO. 62

UNITED STATES GOVERNMENT  
 RECEIVED BIA  
 memorandum  
 2007 JAN 25 AM 2:39

JAN - 9 2007

DATE:

REPLY TO  
ATTN OF:

Superintendent, Central California Agency

SUBJECT:

Notice of Appeal of Silvia Burley, California Valley Miwok Tribe

PACIFIC REGIONAL  
OFFICE

TO:

Regional Director, Pacific Region, Bureau of Indian Affairs  
Attention: Regional Tribal Operations Officer

The Bureau of Indian Affairs, Central California Agency, is in receipt of a Notice of Appeal filed pursuant to 25 CFR §2.9(a) by Silvia Burley. The Appellant is appealing the Superintendent's letter of November 6, 2006, wherein the Bureau of Indian Affairs, Central California Agency, will assist the California Valley Miwok Tribe (formerly Sheep Ranch Rancheria of the Me-Wuk Indians of California) in its efforts to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to the clear majority of those Indians. The Notice of Appeal was received at the Agency on November 13, 2006.

The Agency also received the Appellants Statement of Reasons on December 13, 2006. Both the Notice of Appeal and the Statement of Reasons were timely filed pursuant to 25 CFR § 2.10 (c). In addition, the Agency is in receipt of an Answer of Interested Party dated December 12, 2006, filed pursuant to 25 CFR § 2.11 (a) to the Appeal of Silvia Burley, submitted by Chadd Everone, Deputy, on behalf of Yakima Dixie and Velma Whitebear. The Agency received the Answer of Interested Party on December 14, 2006.

The following is a brief narrative and description of the events that have occurred leading to this appeal:

#### Background

The California Valley Miwok Tribe (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California) was purchased August 5, 1916, by the United States Government for landless or homeless California Indians and is recognized and eligible for funding and services pursuant to Section 104 of the Act of November 2, 1994, (P.L. 103-454; 108 Stat 4791, 4792). The Tribe voted in 1935 to accept the terms of the Indian Reorganization Act; however, they never formally organized.

Pursuant to the provision of the California Rancheria Act P.L. 85-671, 72 Stat. 619; as amended, a Plan of Distribution of the Assets of the Sheep Ranch Rancheria, was approved by the Associate Commissioner of Indian Affairs on October 12, 1966, which listed Mabel (Hodge) Dixie as the sole distributee entitled to participate in the distribution of the assets of the Sheep Ranch Rancheria. On July 11, 1971, Mable (Hodge) Dixie passed away and an Order of Determination of Heirs was made regarding the estate of Mable Dixie listing Merle Butler, husband; Richard Dixie, son;

OPTIONAL FORM NO. 10

GSA

(REV. 1-04)

FPMR (41 CFR) 101-11.6  
CVM11-001451

FPI-SST



Yakima Edward Dixie, son; Melvin Dixie, son; and Tommy Dixie, son. Yakima Dixie, is one of the two remaining heirs, and was considered the spokesperson of the Tribe until April 1999.

On August 5, 1998, a letter signed by Yakima Dixie, Spokesperson/Chairman of the Sheep Ranch Rancheria, was provided to the Central California Agency accepting Silvia Fawn Burley as an enrolled Tribal member of the Sheep Ranch Rancheria along with her daughters Rashel K. Reznor and Angelica J. Paulk, and granddaughter, Tristian S. Wallace.

A transcription of a meeting videotaped on September 8, 1998, between Brian Golding, Sr., Tribal Operations Specialist, Raymond Fry, Tribal Operations Officer, Central California Agency, and Yakima Dixie, Chief, Sheep Ranch Rancheria and Silvia Burley, prospective member of the Sheep Ranch Rancheria, indicates that the meeting was held at the Sheep Ranch Rancheria, to discuss the process of formally organizing the Tribe, the status of the Tribe, membership, governance, grant funding, Bureau costs associated with organizing, and other issues. Mr. Dixie states (page 8 of transcript) that his main concern is to help Mrs. Burley because no one will help or listen to her. Mr. Raymond Fry, Tribal Operations Officer, (pages 8, 19, 20, 21, 23, 24 and 25) discusses the benefits possible to Silvia Burley, as a tribal member, from the Bureau's Scholarship Program and Housing Improvement Program (HIP). Mr. Fry also addresses the various membership criteria Mr. Dixie may choose on how to organize the Tribe. The Agency's position was to provide technical assistance for the organization of the Tribe and not dictate the membership criteria, but advised Mr. Dixie that he had the right to choose the membership criteria, which may possibly include a larger community. A follow-up meeting was also proposed to discuss draft resolutions and additional details of the organization process but it was never formally completed.

Shortly thereafter, a letter titled "Formal notice of resignation" was provided to the Agency by Mrs. Burley, stating that Yakima Dixie was resigning as Chairman on Tuesday, April 20, 1999, and it shall serve as formal notice within the Tribe and to the United States Government. The Tribe also provided a notice of "SPECIAL MEETING CALLED TO ORDER ON THE 20<sup>TH</sup> OF APRIL 1999," which states, "The General Council has agreed to accept the resignation of Chairperson from Mr. Yakima Dixie and appoint Mrs. Silvia Burley as the new Chairperson of the Sheep Ranch Rancheria. The Agency is in receipt of a letter to Silvia Burley, dated April 21, 1999, wherein Mr. Dixie, notifies Mrs. Burley that he cannot and will not resign as Chairman of the Sheep Ranch Rancheria but gives Mrs. Burley the right to act as a delegate to represent the Sheep Ranch Indian Rancheria. In correspondence dated December 26, 1999, Mr. Dixie requested a meeting with the elected officials for the purpose of clearing up the matter of who is the proper Chairperson at this time.

#### Issues

Since the resignation letter of Mr. Dixie was submitted to the Central California Agency in April 1999, Ms. Burley has initiated a number of actions to recognize herself

as Chairperson and her daughters as the only members of the Tribe. Meeting Notices were provided to the Agency by Ms. Burley, showing that the Tribe was proposing to adopt a Constitution and ordinances for the purpose of organizing the Tribe. Prior to this, the Tribe had never formally organized or requested assistance for the organization of the Tribe even though the Tribe voted to accept the provisions of the 1934 Indian Reorganization Act (IRA). Mr. Dixie claims that he did not resign as Chairperson and he did not submit the letter to the Agency. To this day, both parties have been in a constant dispute as to who is the rightful Chairperson of the Tribe.

It has been past practice of the BIA to assist tribes that are unable to work together as a tribal government. In 1999, Agency staff began working with a number of tribes within the jurisdiction of the Central California Agency experiencing the same political issues of the California Valley Miwok Tribe and provided technical assistance in completing the process of formally organizing.

The Bureau of Indian Affairs (BIA) has a responsibility to determine that it is dealing with a government that is representative of the Tribe, as a whole. In a letter dated March 7, 2000, to Silvia Burley, the Agency stated that it would not interfere in the internal matters of the Tribes unless the dispute regarding the composition of the governing body of the Tribe continues without resolution, and the government to government relationship between the Tribe and the United States may be compromised and in such situations, the Agency will advise the Tribe to resolve the dispute internally within a reasonable period of time. To date, both parties have been unable to resolve their dispute within a reasonable time period.

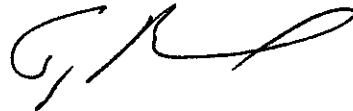
Beginning in 1999 the Agency provided technical assistance to the Tribe for the purpose of awarding a P.L.93-638 Contract. This process was to assist in the development of the Tribe and organization for the benefit of future tribal members. During this period, the Agency continued to work separately with Mr. Dixie and Mrs. Burley and provide technical assistance for the purpose of organizing.

Then, in Agency correspondence dated March 26, 2004, to Ms. Burley, the Agency addressed its concerns regarding a constitution Mrs. Burley had submitted to the Agency attempting to demonstrate that the Tribe is organized. The Agency advised Mrs. Burley, that she was considered as a person of authority within an unorganized tribe, for the purpose of receiving grants and services from the United States Government, such as the P.L.-638 grant. The Agency addressed the fact that the BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community and that the Constitution provided did not demonstrate involvement of a greater tribal community. In fact, a Constitution, ratified March 8, 2000, submitted by Mrs. Burley, under Article III, Membership, identified the base roll, consisting of only five living members: Silvia Burley, Yakima Dixie, Rashel Reznor, Anjelica Paulk and Tristian Wallace. In a document dated January 9, 2006, submitted by Mrs. Burley, a revised Official Tribal Roll excludes Mr. Dixie. In an effort to provide technical assistance to the Tribe, the Agency has made numerous attempts to work with both factions and assist them with the organization of the Tribe.

Conclusion

It is the Agency's position that both factions are at an impasse and cannot come to an agreement for the organization of the Tribe. It is not the goal of the Agency to determine membership of the Tribe. The purpose of the November 6, 2006, letter was to bring together the "putative group" who believe that they have the right to participate in the organization of the Tribe, contrary to Mrs. Burley's assertions. It was, and is not, the intent of the Agency to determine who the members of the Tribe will be. Then the "putative" group can define the criteria for membership. As in past cases (*Ione v. Area Director* and *Pinoleville v. United States*) the Bureau assisted various tribes to work together and resolve their differences and retain a government-to-government relationship. Therefore, the Superintendent stands by his November 6, 2006, decision to assist the Tribe in its efforts to organize a government that will represent the Tribe as a whole.

We are transmitting the Notice of Appeal and the Agency's Administrative Records to your office for appropriate action. Please contact Carol Rogers-Davis, Acting Tribal Operations Officer, at (916) 930-3764 should you require additional information.

A handwritten signature in black ink, appearing to be 'G. R. P.', is centered on the page.

Attachments

## DOCUMENT NO. 63



## 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

**FEB 23 2007**

**CERTIFIED MAIL NO. 7003 1680 0002 1781**  
**RETURN RECEIPT REQUESTED**

Ms. Silvia Burley  
10601 Escondido Place  
Stockton, California 95212

**CERTIFIED MAIL NO. 7003 1680 0002 1798**  
**RETURN RECEIPT REQUESTED**

Mr. Yakima K. Dixie  
c/o Mr. Chadd Everone  
2054 University Avenue, #407  
Berkeley, California 94704

Dear Ms. Burley and Mr. Dixie:

The purpose of this letter is to follow-up on our November 6, 2006, letter, which offered the Bureau's assistance to the California Valley Miwok Tribe, aka, Sheep Ranch Rancheria (Tribe), in its efforts to organize. In that letter, the Agency indicated that it would publish a notice in the newspapers within the Miwok region, a general council meeting of the Tribe. Because of our past relationship with you relating to the Tribe, we would like to meet with you to discuss the process by which the Tribe will organize, prior to publishing the notice.

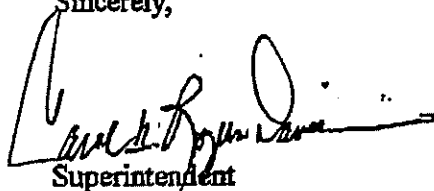
We would like to schedule this meeting to be held at the Central California Agency sometime in mid-March 2007. Please contact the Agency in writing concerning your willingness to participate in the meeting and your availability. If you do not respond within 10 business days of receiving this letter, the Bureau will assume that you do not wish to participate in this process.

Prior to the meeting, we will send you another letter with a draft of the general council meeting notice we propose to publish and an explanation of the approach and process for reorganization. This tentative date for the meeting is to have a discussion with you about the notice of the general council meeting, who would be eligible to attend that meeting, and to offer a fuller explanation of the process we are proposing.

The Agency has had success working with other tribes in our jurisdiction with their organizational process. By explaining our involvement and offering you an opportunity to provide input, we believe we can resolve any concerns you may have about our plan and the general council meeting.

You are welcome to bring one or two advisors with you. We have invited the mediator from the District of Columbia Circuit Court of Appeals to attend this meeting.

Sincerely,



Superintendent

cc:

Phillip Thompson, Esq.  
601 Pennsylvania Ave., Suite 900  
South Building  
Upper Marlboro, MD 20772-3665

Karla D. Bell, Esq.  
Sanders & Bell LLP  
4717 Admiralty Way, Suite 580  
Marina Del Rey, CA 90292

Tim Vollmann, Esq.  
3301-R Coors Rd. N.W. # 302  
Albuquerque, NM 87120

Elizabeth Walker, Esq.  
Walker Law LLC  
127 South Fairfax St. # 127  
Alexandria, VA 22314

Mark Haag, Esq.  
William Lazarus, Esq.  
Appellate Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23795  
Washington 20026-3795

Bureau of Indian Affairs  
Director, Bureau of Indian Affairs  
Attention-MS 4606-MIB  
1849 C Street, NW., MS-4513-MIB  
Washington, DC 20240

Bureau of Indian Affairs

02/28/2007 11:23 FAX 916 930 3780

BIA CENTRAL CAL AGENCY

004/004

Deputy Director- Field Operations  
1849 C Street, NW., MS-4513-MIB  
Washington, DC 20240

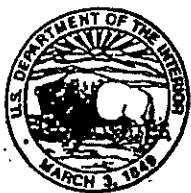
Associate Solicitor  
Division of Indian Affairs  
ATTN: Jane M. Smith, Office of the Solicitor  
MS 6456-MIB  
U.S. Department of the Interior  
1849 "C" Street, N.W.  
Washington, DC 20240

Deputy Director Tribal Services  
ATTN: Chief, Tribal Govt. Services  
Bureau of Indian Affairs  
1951 Constitution Ave., N.W.  
MS-320-SIB  
Washington, DC 20240

Regional Solicitor  
Pacific Southwest Regional Office  
U.S. Department of the Interior  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825

## DOCUMENT NO. 64





IN REPLY REFER TO:

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Pacific Regional Office

2800 Cottage Way

Sacramento, California 95825

APR - 2 2007

**CERTIFIED MAIL NO. 7006 0810 0001 4950 9008**  
**RETURN RECEIPT REQUESTED**

Ms. Silvia Burley  
10601 Escondido Place  
Stockton, California 95212

Dear Ms. Burley:

The purpose of this correspondence is to inform you of my decision regarding your Notice of Appeal dated November 10, 2006, filed pursuant to 25 Code of Federal Regulation (CFR) Part 2, from the decision dated November 6, 2006 of the Bureau of Indian Affairs (BIA), Superintendent, Central California Agency (Agency), which noticed you and Yakima Dixie, because of your leadership claims, of the Agency's commitment to assist the California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California), with the Tribe's efforts to organize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe. Your Notice of Appeal, Statement of Reasons, Answer of Interested Party and the Administrative Record of the Superintendent were all received on January 11, 2007. The Superintendent has indicated that your Appeal was timely filed.

It is a well established BIA policy that the federal government not intervene in internal tribal disputes where there is no threat to government-to-government relationship. However, in this situation, where the BIA does not recognize a tribal government we feel that such a threat appears imminent, and we believe that the better course of action would be to allow the Agency to assist the Tribe to sort out the situation. Therefore, based on our analysis, it was concluded that I remand this matter back to the Superintendent and allow the Agency to continue with its plans to assist the Tribe with its organizational efforts. We present our analysis of the situation as follows.

### BACKGROUND

An August 13, 1915 letter from Special Indian Agent to the Commissioner of Indian Affairs, Washington, D. C., reported his finding and in part, stated that, "The census the Indians designated Sheepranch-Indians only aggregating 12 in number, constitutes the remnant of once a larger band of Indians ....". A census of the Indians at and near Sheep Ranch in Calaveras County, California was attached to the August 13 letter that listed the follows individuals; Peter Hodge (1/2 Indian blood), Annie, wife (4/4 Indian blood), their children Malida, Lena, Tom, and

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IN AMERICA** 

CVMT-2011-001494

Andy, Jeff Davis (4/4 Indian blood), Betsey, wife (4/4 Indian blood), Mrs. Limpey (4/4 Indian blood), John Tecumchey (4/4 Indian blood) and his wife Pinkey (4/4 Indian blood), and Mamy Duncan, granddaughter of Jeff Davis (3/4 Indian blood). Further states that the "to some extent the Indians of Sheepranch, Murphys, Six-Mile, Avery and Angles are interchangeable in their relationships." These communities are all located in Calaveras County, California.

On April 5, 1916, the Sheep Ranch Rancheria, comprising of 0.92 acres located in Calaveras County, California was purchased and held in trust by the United States of America for the use and benefit of certain homeless California Indians.

On June 8, 1935, the approved list of Voters for Indian Reorganization Act (IRA) for the Sheep Ranch Rancheria, Calaveras County, only listed a Jeff Davis, who voted to accept the terms of the IRA. Although Mr. Davis voted in 1935 to accept the terms of the IRA, the Tribe never formally organized under a constitution approved by the Secretary of the Interior. There were no documents located that referenced Mr. Davis attempted to organize the Tribe under the IRA or any record requesting the Agency to assist in the Tribe's efforts to organize.

On August 18, 1966, pursuant to the Rancheria Act (P.L. 85-671, 72 Stat. 619), as amended, whereby the distribution of the Rancheria's assets were made to one distributee, a Mabel Hodge Dixie. On April 11, 1967, the property was deeded to Mrs. Dixie; however, the transfer of title was nullified by a quit claim deed executed by Mrs. Dixie on September 6, 1967, which reverted title of the property to the United States of America. Prior to the complete implementation of the distribution plan, Mabel Hodge Dixie passed away on July 11, 1971. As a result of a probate decision in 1990, the Rancheria was distributed to five heirs, listed as follows; Richard Dixie, and Merle Butler, Mrs. Dixie's common-law husband. Melvin Dixie and Yakima Edward Dixie are the only two remaining heirs. BIA records reflect that the Rancheria land is held in trust for the heirs of Mable Hodge Dixie.

A Notice of Termination was never published in the Federal Register or other letter or notice stating the federal government's intention to terminate services to and/or relations with the Sheep Ranch Rancheria. Furthermore, as evident by the earliest publication of federally recognized tribes in a booklet published in 1972 entitled "American Indians and Their Federal Relationship." The Sheep Ranch Rancheria was listed therein as a recognized tribe eligible for funding and services from the Bureau by virtue of their status as an Indian tribe. This notice and subsequent notices were published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792). The Federal Register, dated November 25, 2005; Sheep Ranch Rancheria is listed as the California Valley Miwok Tribe. For the above reasons, the BIA has never viewed this Tribe as a "restored" tribe, which is a term that refers to a tribe once acknowledged as a federally-recognized tribe, then was "terminated," and subsequently "restored" to federal recognition.

## DISCUSSION

The BIA has recognized Mr. Yakima Dixie, one of the two remaining heirs, as the spokesperson of the Tribe until April 1999. This recognition was based on the fact that Yakima Dixie is a lineal descendant of the sole distributee, his mother Mable Hodge Dixie. Mrs. Dixie was

identified in the Plan for the Distribution of assets of the Sheep Ranch Rancheria, as approved by the Associate Commissioner of Indian Affairs on October 12, 1966. Yakima Dixie was also one of two remaining heirs identified in the Order of Determination of Heirs issued on November 1, 1971 and reaffirmed by a subsequent Order issued on April 14, 1993.

On August 5, 1998, by letter signed by Yakima Dixie, as Spokesperson/Chairman of the Sheep Ranch Rancheria informed the Agency that he had accepted you and your daughters; Rashel K. Reznor and Angelica J. Paulk, and granddaughter Tristian S. Wallace as enrolled members of the Tribe. However, he did not provide the criteria he used to determine your eligibility to be enrolled into the Tribe; what documentation that you provided to substantiate your eligibility to be enrolled and his authority to initiate this enrollment action. The above individuals, including Melvin Dixie, comprised the total membership of the Tribe.

On September 8, 1998, a meeting was held at the Rancheria between the Agency staff, you and Yakima Dixie, Spokesperson/Chairman of the Tribe. The purpose of the meeting was to discuss the process of formally organizing the Tribe, the status of the Tribe, membership, governance, grant funding and other issues. The Agency staff advised that Yakima Dixie, as the Spokesperson of the Tribe and as one of the two remaining heirs, had the right to choose the membership criteria, which may possibly, include a larger community.

Since the resignation letter dated April 20, 1999 of Yakima Dixie, which you submitted to the Agency, you had initiated a number of actions such as; to recognize yourself as Chairperson and your daughters as the only members of the Tribe. You provided Meeting Notices to the Agency indicating that the Tribe was proposing to adopt a Constitution and ordinances for the purpose of organizing the Tribe. Prior to this, the Tribe had never formally organized or requested assistance for the organization of the Tribe even though the Tribe voted to accept the provisions of the 1934 Indian Reorganization Act (IRA).

On April 21, 1999, by letter from Yakima Dixie, he notified you that he cannot and will not resign as Chairman of the Tribe; however, he gave you the right to act as a delegate to represent the Tribe. This began the constant dispute between you and Yakima Dixie as to who is the rightful Chairperson of the Tribe.

The Agency continued to provide technical assistance to the Tribe for the purpose of awarding a P.L.93-638 Contract. This process was to assist in the development of the Tribe and organization for the benefit of future tribal members. During this period, the Agency continued to work separately with you and Mr. Dixie by providing technical assistance for the purpose of organizing.

On March 7, 2000, by letter to you, the Agency stated that it would not interfere in the internal matters of the Tribe unless the dispute regarding the composition of the governing body of the Tribe continues without resolution; and the government-to-government relationship between the Tribe and the United States may be compromised and in such situations, the Agency will advise the Tribe to resolve the dispute internally within a reasonable period of time.

On March 26, 2004, by letter to you, the Agency addressed its concerns regarding the constitution you had submitted to the Agency in which you attempted to demonstrate that the Tribe is organized. The Agency advised you, that you were considered as a person of authority within an unorganized tribe, for the purpose of receiving P.L. 93-638 contract/grants and services from the United States Government. The Agency addressed the fact that the BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community and that the Constitution provided did not demonstrate involvement of a greater tribal community. In fact, a Constitution, ratified March 8, 2000, which you submitted, under Article III, Membership, identified the base roll, consisting of only five living members: Silvia Burley, Yakima Dixie, Rashel Reznor, Anjelica Paulk, and Tristian Wallace. In a document dated January 9, 2006, you submitted a revised Official Tribal Roll which excluded Yakima Dixie, indicating that he was disenrolled.

Since the purported resignation of Yakima Dixie and his disenrollment, for the purpose of organizing the Tribe, you and Yakima Dixie separately began initiating a number of actions such as; recognizing each of yourselves as Chairperson, proposing to adopt a Constitution and ordinances, and creating lists of potential members. The documents for which you both provided to the Agency were returned by the Agency without action or passed back for further information in order to process requests for which you requested.

The Agency has been meeting with the both of you and with your representatives to discuss and offer assistance in your organizational efforts of the Tribe. However, it is evident that the ongoing leadership dispute between you and Yakima Dixie is at an impasse and the likelihood of this changing soon seems to be remote. The Agency currently recognizes you as the authorized representative of the California Valley Miwok Tribe with whom government-related business is conducted; however, the Agency does not yet view the Tribe to be an "organized" Indian Tribe. This is due to the fact that both of you have failed to identify the whole community who are entitled to participate in the Tribe's efforts to organize, which the Agency has been mentioning in prior correspondences and meetings with you and Yakima Dixie.

### **CONCLUSION:**

Please be advised that Federal Law requires that we know with whom we are dealing with when we contract on a government-to-government basis with tribes pursuant to, for example, the 1974 Indian Financing Act, 25 U.S.C. 1451; the 1975 Indian Self-Determination and Education Assistance Act, Public Law 93-638; the 1978 Indian Child Welfare Act, 25 U.S.C. 1901, and other federal statutes intended to benefit Indian tribal governments. In instances where there is a dispute as to the identity of the rightful tribal leaders empowered to conduct business on behalf of the tribe and it is apparent that no tribal resolution is forthcoming, we are authorized to determine whether or not to continue our government-to-government relationship with the tribe.

Congress has delegated to the Secretary of the Interior broad authority over "public business relating to ... Indians." 43 U.S.C. § 1457.<sup>1</sup> At the core of this authority is a responsibility to ensure that Secretary deals only with a tribal government that actually represents the members of

<sup>1</sup> In turn, the Secretary has delegated this responsibility to the BIA and the Principal Deputy Assistant Secretary - Indian Affairs.

a tribe. As early as 1942, when the government still held lands in trust for many tribes, the Supreme Court stated that the Department had a duty to conduct business only with lawfully-constituted governing bodies who represent the tribal membership. It is the Agency's position that both factions are at an impasse and cannot come to an agreement for the organization of the Tribe. We believe it is not the goal of the Agency to determine membership of the Tribe or the intent of the Agency to determine who the members of the Tribe will be. The purpose of the November 6, 2006, letter was to bring together the "putative group" who believe that they have the right to participate in the organization of the Tribe, contrary to your assertions. We believe that the main purpose was to assist the Tribe in identifying the whole community, the "putative" group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. A determination of who is a tribal member must, however, preclude any determination of who is a tribal leader. It is our belief that until the Tribe has identified the "putative" group, the Tribe will not have a solid foundation upon which to build a stable government.

In all fairness to the current tribal membership and the "putative" group, and for the reasons stated above, I agree with the Superintendent's proposed actions as stated in his November 6th letter to assist the Tribal in its efforts to organize. Therefore, to further assist the Tribe regarding this matter, I am, by copy of this letter, remanding this matter back to the Superintendent, Central California Agency to implement the actions mentioned in his November 6th letter, and as soon as possible publish a Notice in the newspapers, within the Miwok region, of the Agency's plan to assist in identifying the "putative" group of the Tribe. Furthermore, the Superintendent will provide personal oversight to assure that the proposed actions outlined in his November 6th letter are fully implemented and completed.

This decision may be appealed to the Interior Board of Indian Appeal, 801 North Quincy Street, Arlington, Virginia 22203, in accordance with regulations in 43 CFR § 4.310 - 4.340. Your Notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) The Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 1849 C Street, N. W. Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your Notice of Appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. If you file a Notice of Appeal, the Board of Indian Appeals will notify you of further appeal procedures. If no appeal is timely 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,



Regional Director

cc: See List of Interested Parties  
TO/fdj/03/21/2007/1236-P5Burley

rect Query - Intranet - "Quick" Search



## Track/Confirm - Intranet Item Inquiry - Domestic

Item: 7006 0810 0001 4950 8995			
Destination	ZIP Code: 94704	City: BERKELEY	State: CA
Origin	ZIP Code:	City:	State:

Event	Date/Time	Location	Scanner ID
DELIVERED	04/09/2007 10:39	BERKELEY, CA 94704	POS6420051
<a href="#">Request Delivery Record</a> (A PS Form 3849, Delivery Receipt, has not been appended to this record. If the item was recently delivered, the Delivery Receipt may not yet have been scanned.)			
NOTICE LEFT	04/06/2007 14:23	BERKELEY, CA 94704	L819171

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Quick Search ☒Extensive Search ☐
[Explanation of Quick and Extensive Searches](#)
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<input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
1. Article Addressed to:  Chadd Everone, Deputy c/o Yakima Dixie 2140 Shattuck Avenue, #602 Berkeley, CA 94704	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
2. Article Number (Transfer from service label)	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	

7006 0810 0001 4950 8995

CVMT-2011-001499

4/11/2007 17:46:53 PM

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Total Postage & Fees	\$	

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Sent To Ms. Silvia Burley  
 Street, Apt. No.,  
 or PO Box No. 10601 Escondido Place  
 City, State, ZIP+4 Stockton CA 95212

PS Form 3811, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p><input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p><input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you.</p> <p><input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Ms. Silvia Burley          10601 Escondido Place          Stockton, California 95212</p> <p>2. Article Number          (Transfer from service label)</p>	<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee  <u>Silvia Burley</u></p> <p>B. Received by (Printed Name)  <u>Silvia Burley</u></p> <p>C. Date of Delivery  <u>4-4-07</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
7006 0810 0001 4950 9008	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	

## DOCUMENT NO. 65



# Ledger Dispatch

Wednesday, April 11, 2007

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

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## THE BUREAU OF INDIAN AFFAIRS

### Description

**PUBLIC NOTICE** The Bureau of Indian Affairs, Central California Agency (Agency) plans to assist the California Valley Miwok Tribe, aka, Sheep Ranch Rancheria (Tribe) in its efforts to organize a formal governmental structure that is acceptable to all members. The first step in the organizational process is to identify putative members of the Tribe who may be eligible to participate in all phases of the organizational process of the Tribe. Therefore, if you believe you are a lineal descendant of a person(s) listed below, you will need to complete Form OMB#1076-0153, Bureau of Indian Affairs, Request for Certificate of Degree of Indian or Alaska Native Blood, and provide a certified copy of a birth certificate, death certificate, or other official documentation as required to establish your relationship to a person(s) listed below or other documents acceptable to the Secretary of the Interior (Secretary), and submit them to the Bureau of Indian Affairs, Central California Agency, 650 Capitol Mall, 8-500, Sacramento, California 95814, postmarked on or before May 25, 2007. You may contact Carol Rogers-Davis, Acting Tribal Operations Officer, at (916) 930-3764, or Tia Sam, Tribal Operations Specialist, at (916) 930-3765, Bureau of Indian Affairs, Central California Agency, for the necessary information and to obtain the forms that will assist the Bureau Team in determining your eligibility. 1. August 13, 1915 - Census of Indians at or near Sheep Ranch, Calaveras County, California, which listed the following: 1. Peter Hodge 2. Annie Hodge 3. Malinda Hodge (Daughter of Peter and Annie Hodge) 4. Lena Hodge (Daughter of Peter and Annie Hodge) 5. Tom Hodge (Son of Peter and Annie Hodge) 6. Andy Hodge ( Son of Peter and Annie Hodge) 7. Jeff Davis 8. Betsey Davis 9. Mrs. Limpey 10. John Tecumchey 11. Pinkey Tecumchey 12. Mamy Duncan (Granddaughter of Jeff Davis) 2. June 6, 1935, Approved List of Voters for Indian Reorganization Act of Sheep Ranch Rancheria, Calaveras County, California, which listed the following: 1. Jeff Davis 3. August 11, 1964, Approved Plan for Distribution of the Assets of the Sheep Ranch Rancheria, in accordance with provisions of Public Law 85-671, approved August 18, 1958, and amended by Public Law 88-419, which listed the following: 1. Mabel Hodge Dixie All individuals who have been determined to be eligible to participate in the organization of the Tribe will be notified by letter from the Agency. All individuals not determined eligible will be noticed of their right to appeal to the BIA, Pacific Regional Director within 30 days of receipt of decision. Upon rendering final decisions regarding appeals filed, the Agency will notify all individuals determined to be eligible of the organizational meeting which will include an agenda of the next actions to be taken by the group. 4/11, 4/18/07 CNS-1116998# AMADOR LEDGER DISPATCH April 11, 18 2007-S473

### Details

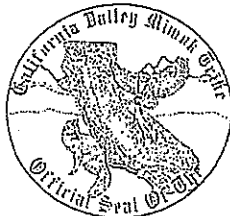
**Posted By:** [Ad:217124](#)  
**Posted On:** 4/11/2007  
**Ad Expires:** 4/20/2007  
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## DOCUMENT NO. 66

## CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333  
9450 Pennsylvania Ave., Suite 4, Upper Marlboro MD 20772 Bus: (703) 779-8783 Fax: (202) 905-0057  
<http://www.californiavalleymiwoktribe-nsn.gov>



*Transmitted By Certified Mail  
Return Receipt Requested*

April 16, 2007

Interior Board of Indian Appeals  
801 North Quincy Street  
Suite 300  
Arlington, VA 22203

**Re: Notice of Appeal**

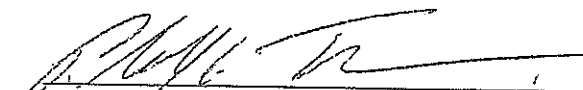
Dear Sirs:

This letter constitutes a **Notice of Appeal** by the California Valley Miwok Tribe (Tribe) to a decision made by the Regional Director of the Bureau of Indian Affairs (BIA), Pacific Regional Office in a letter dated April 2, 2007. (See Attachment) In that decision, the Regional Director made a determination that the Tribe was never terminated and restored; that the California Valley Miwok Tribe was an unorganized Tribe; that the BIA had the authority to determine tribal membership; that the BIA has the authority to determine tribal government; that the BIA can determine a "putative" class of tribal membership even though that term has no meaning in Federal Indian Law; and that the BIA can hold a general council meeting for the Tribe outside the specific permission or authority of the Tribe's governing body.

The Tribe hereby seeks to appeal this decision pursuant to 43 C.F.R. Sections 4.310 to 4.340 and 25 C.F.R. Part 2. Copies of this Notice of Appeal are being forwarded to the Assistant Secretary – Indian Affairs, the Regional Director of the Pacific Regional office and to the Central California Agency Offices at the below listed addresses.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,



Phillip E. Thompson,  
General Counsel  
California Valley Miwok Tribe

**Copies Transmitted By Certified Mail Return Receipt to:**

Assistant Secretary –Indian Affairs  
U.S. Department of the Interior  
MIB 4140  
1849 C Street, N.W.  
Washington, D.C. 20240

Clay Gregory  
Regional Director  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

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

Cc: Chairperson Burley  
Tribal Council

Thompson Associates  
601 Pennsylvania Ave  
Suite 900 South Building  
Washington, D.C. 20004

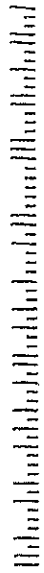
DULLES VA 201  
18 MAY 2007 PM 2 T



Yakima Dixie  
11178 Sheep Ranch Road  
P.O. Box 41  
Sheep Ranc

957 NEE 1 705C QD 05/24/07  
NOTIFY SENDER OF NEW ADDRESS  
DIXIE SHEEP RANCH RD  
11178  
MTN RANCH CA 95246-9751  
BC: 95246975179 \*2517-19203-10-25

95246975179



CVMT-2011-001504

Thompson Associates  
601 Pennsylvania Ave  
Suite 900 South Building  
Washington, D.c. 20004

DULLES, VA 20112

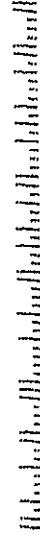
18 MAY 2007 PM 2 L



*Received  
May 18, 2007*

Chadd Everone  
2140 Shattuck Ave., #602  
Berkeley, CA 94704

94704+1227



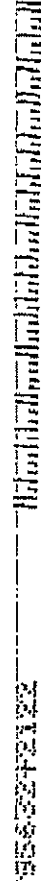
Thompson Associates  
601 Pennsylvania Ave  
Suite 900 South Building  
Washington, D.c. 20004

DULLES VA 201

18 MAY 2007 PM 2 T



Velma Whitebear  
213 Downing Dr.  
Galt, CA 95632



MAY-20-07

15:07

FROM-WD Program

T-567 P.002/004 F-846

Declaration of  
Velma WhiteBear

Under penalty of perjury, I hereby declare the following.

I am an Interest Party of Record in all matters before the Interior Board of Indian Appeals (Board) that concern the California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California).

On May 23, 2007 I received a letter from Thompson Associates which included a copy of a cover letter from California Valley Miwok Tribe to the Board that was dated April 16, 2007, a copy of which I have included herein as an exhibit. That cover letter makes reference to a Notice of Appeal that was filed on April 2, 2007 and to "Sec Attachment".

The above cited "Attachment" was not included in the letter to me.



Velma WhiteBear, Executive Director  
California Valley Miwok Tribe, California  
Sheep Ranch Rancheria of Me-Wuk Indians of California





# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
 INTERIOR BOARD OF INDIAN APPEALS  
 801 NORTH QUINCY STREET  
 SUITE 300  
 ARLINGTON, VA 22203

of 5/17 15 ✓  
 Reg Dir \_\_\_\_\_  
 Reg Adm Off \_\_\_\_\_  
 Route \_\_\_\_\_  
 Response Required \_\_\_\_\_  
 Due Date \_\_\_\_\_  
 Memo \_\_\_\_\_  
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CALIFORNIA VALLEY MIWOK TRIBE, : Pre-Docketing Notice and Order  
 Appellant, : Concerning Service  
 :  
 v. :  
 : Docket No. IBIA \_\_\_\_\_  
 PACIFIC REGIONAL DIRECTOR, :  
 BUREAU OF INDIAN AFFAIRS, :  
 Appellee. : May 1, 2007

On April 20, 2007, the Board of Indian Appeals (Board) received a notice of appeal from the California Valley Miwok Tribe (Tribe), through Phillip E. Thompson, Esq. 1/ The appeal seeks review of an April 2, 2007 decision of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director rejected Sylvia Burley's appeal from a November 6, 2006 decision of the Central California Agency Superintendent, BIA, to assist the Tribe in its efforts to organize, and remanded the matter back to the Superintendent to allow him to continue with his plans to assist the Tribe with its organizational efforts.

Procedural regulations governing administrative appeals to the Board are found in 43 Code of Federal Regulations (C.F.R.) Part 4. A copy of these regulations is enclosed for non-Federal parties.

1/ The appeal is styled as being on behalf of the Tribe, and Mr. Thompson identifies himself as General Counsel for the Tribe. The appeal challenges a decision by the Regional Director which, among other things, indicates that BIA does not recognize the Tribe as having an organized government. Although the Board captions this case according to the manner in which the appeal is styled, the caption shall not be construed as a determination by the Board regarding the authority of either Mr. Thomson or Ms. Burley to bring an appeal on behalf of the Tribe.

Another case related to the Tribe's internal dispute is before the Board, Chadd Everone and Velma Whitebear v. Pacific Regional Director, Docket No. IBIA 06-70-A. In that case, the appellants contend that Ms. Burley should not be recognized by BIA as an authority for or as representing the Tribe. Ms. Burley has moved to dismiss that appeal on jurisdictional grounds.

As a preliminary matter, the Board notes that the Tribe filed its notice of appeal without certifying or otherwise indicating that it had served copies on Chadd Everone, Velma White Bear, and Yakima Dixie, who are appellants or who have been identified as interested parties in the Everone appeal. Section 4.333 of 43 C.F.R. requires that an notice of appeal be served on all known interested parties, which includes individuals who are known to be claiming interested party status. Therefore, the Board will require the Tribe to complete this service requirement.

On or before May 18, 2007, the Tribe shall send a copy of her notice of appeal to Chadd Everone, Velma White Bear, and Yakima Dixie, as shown on the attached distribution list, and by that date shall file a statement with the Board that it has done so. If the Tribe fails to comply with this order, this appeal may be dismissed without further notice.

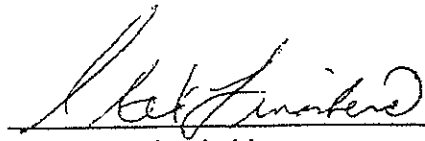
The Regional Director is requested to take the following steps in accordance with the procedural regulations in 43 C.F.R. § 4.335. Within 20 days after receipt of a copy of the notice of appeal or after receipt of this notice from the Board:

1. Assemble and transmit the administrative record to the Board. The administrative record shall include, but not be limited to, a copy of the decision being appealed; all documents that were before the deciding official when he or she issued the decision; all documents, petitions, or applications by which the appeal was initiated or which set forth claims of interested parties; and copies of any transcripts of testimony taken;
2. Prepare a table of contents to serve as an index to the record; and
3. Include as part of the record a written confirmation that it contains all information and documents utilized by the deciding official in rendering the decision appealed.

If the Regional Director is unable to transmit the record within 20 days, he should inform the Board and the parties when the record will be sent.

In accordance with 43 C.F.R. § 4.336, this case will be assigned a docket number 20 days after the date of receipt noted above unless the Board has been properly notified before that date that the Assistant Secretary - Indian Affairs has assumed jurisdiction over the appeal. Upon receipt of the record, a Notice of Docketing, setting forth the briefing

schedule or other procedures, will be sent to all interested parties as shown by the administrative record. If the Assistant Secretary - Indian Affairs properly notifies the Board of an assumption of jurisdiction under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b), the parties will be so informed, and the administrative record will be transmitted to him.

  
\_\_\_\_\_  
Steven K. Linscheid  
Chief Administrative Judge

Enclosure (for non-Federal parties)  
Distribution: See attached list.

## DOCUMENT NO. 67



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
 INTERIOR BOARD OF INDIAN APPEALS  
 801 NORTH QUINCY STREET  
 SUITE 300  
 ARLINGTON, VA 22203

CALIFORNIA VALLEY MIWOK  
 TRIBE,

Appellant,

v.

PACIFIC REGIONAL DIRECTOR,  
 BUREAU OF INDIAN AFFAIRS,

Appellee.

Order Denying Request for Dismissal,

Notice of Docketing, and Order

Setting Briefing Schedule

Docket No. IBIA 07-100-A

June 13, 2007

On April 20, 2007, the Board of Indian Appeals (Board) received a notice of appeal from the California Valley Miwok Tribe (Tribe or Appellant), through Phillip E. Thompson, Esq. The appeal seeks review of an April 2, 2007, decision of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director rejected Sylvia Burley's appeal from a November 6, 2006, decision of the Central California Agency Superintendent (Superintendent), BIA, to assist the Tribe in its efforts to organize, and remanded the matter back to the Superintendent to allow him to continue with his plans to assist the Tribe with its organizational efforts. The Board issued a Pre-Docketing Notice and Order Concerning Service on May 1, 2007.

In this order, the Board (1) declines to dismiss this appeal based on Appellant's failure to comply with the Board's May 1 order, and (2) gives notice of docketing of this appeal and schedules briefing, with special briefing instructions.

## Compliance with the Board's May 1, 2007, Order

In its May 1 order, the Board ordered Appellant, on or before May 18, 2007, to serve its notice of appeal on Chadd Everone, Velma WhiteBear, and Yakima Dixie "and by that date [to] file a statement with the Board that it has done so." Order at 2 (emphasis in original).

The Board has never received a statement from Appellant certifying that it complied with the service requirements of the Board's May 1 order, and therefore the Board finds that Appellant failed to comply with that portion of the Board's order. On June 4, 2007, the Board received from Chadd Everone a request that the appeal be dismissed on the grounds that Appellant's service to Everone, WhiteBear, and Dixie had been incomplete — and

therefore failed to comply with the Board's order — because it failed to include a copy of the attachment referenced in the notice of appeal. Included with Everone's request were copies of the notice of appeal served on Everone, WhiteBear, and Dixie, and declarations from those individuals that they did not receive the attachment.

Appellant's failure to comply with the Board's order is troubling, given the clear instructions from the Board. However, the evidence submitted by Everone indicates that Appellant did comply, except for the attachment, with the portion of the Board's May 1 requiring service the notice of appeal on Everone, WhiteBear, and Dixie. Although Appellant should have included the attachment, the referenced attachment was to a copy of the Regional Director's April 2, 2007, letter. The Regional Director had provided Everone, WhiteBear, and Dixie with a copy of that letter when it was issued, and therefore they were not prejudiced by Appellant's failure to send them another copy. Appellant also failed to comply with the portion of the Board's order requiring that certification of completion of service be filed with the Board, thus risking summary dismissal of this appeal. However, because it is now clear that Appellant did serve the notice of appeal on Everone, WhiteBear, and Dixie, the Board finds that Appellant's failure to comply with this portion of the Board's order does not warrant dismissal of this appeal.<sup>1</sup>

Notice of Docketing and Order Setting Briefing Schedule  
with Special Briefing Instructions

The Board received the administrative record in this case on May 30, 2007, including a including a table of contents for the record. A copy of the table of contents is enclosed for the benefit of the parties. The administrative record in this case is available for inspection at the Board's office and also in the office of the Regional Director. The Board is not able to handle large-volume copying requests. Therefore, if a party desires to obtain copies of documents in the administrative record, and the volume of the documents sought exceeds 100 pages, the Board requests that the party make arrangements with the Regional Director to obtain the desired copies.

Pursuant to 43 C.F.R. § 4.336, on May 10, 2007, the appeal was assigned the above case name and docket number, which should be cited in all future correspondence or inquiries regarding the matter.

Regulations governing appeals to the Board are found in 43 C.F.R. Part 4. A copy of these regulations was mailed to non-Federal parties with the Board's May 1, 2007, pre-docketing notice.

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<sup>1</sup> In effect, Everone's filing saved Appellant's appeal from summary dismissal.

Copies of all pleadings filed with the Board must be served on all interested parties. 43 C.F.R. §§ 4.310(b), 4.333(a). If U.S. mail is used for service and filing, it does not need to be by certified mail; parties may use regular first-class mail, unless they wish to obtain a receipt for their own records. If counsel is appearing for an interested party, counsel should enter an appearance, after which service should be made on counsel. A certificate or affidavit evidencing service shall be filed concurrently with the document furnished to the Board.

The parties are advised that the Board will not accept any filing by facsimile transmission (fax) unless the Board has first granted permission for the filing of that particular document by fax. The Board may grant permission to file by fax in extraordinary circumstances. Because documents filed with the Board are filed as of the date of mailing, extraordinary circumstances do not include the fact that a filing is due that day. Any document filed by fax without permission will not be accepted.

#### Briefing Schedule

In accordance with 43 C.F.R. § 4.311(e), Appellant's opening brief is due on or before July 27, 2007. Appellant is advised that it bears the burden of demonstrating jurisdiction for this appeal and for proving error in the decision being appealed.

Opposing parties or their counsel may file an answer(s) within 30 days from receipt of Appellant's opening brief or statement. Appellant shall have 15 days from receipt of any answer brief(s) in which to file a reply brief.

#### Special Briefing Instructions

This appeal apparently involves a dispute within the Tribe, and raises several jurisdictional issues that will likely need to be addressed.

First, the appeal was filed in the name of the California Valley Miwok Tribe as the appellant, through counsel. Silvia Burley, to whom the Regional Director's decision letter was addressed, did not appeal either individually or in an official capacity as an officer of the Tribe, but either she or someone else apparently instructed counsel to file this appeal in the name of the Tribe itself. While Burley may well have had standing to file an appeal in an official capacity based on a claim of the status as an officer or representative, it is unclear what legal or factual basis exists for this appeal to be brought in the name of the Tribe itself.

Therefore, the Board orders that during briefing, the parties address whether there is a factual or legal basis for the Board to consider this appeal in the name of the Tribe as Appellant.

Second, it is not clear whether or how the Regional Director's decision caused injury to the Tribe, thus raising a question of standing. Although the Board, as an Executive Branch forum, is not limited by the same constitutional and prudential constraints that apply to the exercise of judicial authority, the Board has a well-established practice of adhering to those jurisdictional constraints as a matter of prudence in the interest of administrative economy. See *Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005). These constraints include the requirement that an appellant demonstrate that it has standing. *Arizona State Land Dep't v. Western Regional Director*, 43 IBIA 158, 163 (2006). The Board follows the three elements of standing described in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992): an appellant must show that (1) it has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally-protected interest; (2) the injury is fairly traceable to the challenged action; and (3) the injury will likely be redressed by a favorable decision.

The Regional Director remanded the matter to the Superintendent to "allow the Agency to continue with its plans to assist the Tribe with its organizational efforts." Decision at 1. It is not clear, however, whether or how this decision caused the Tribe "actual or imminent, concrete and particularized injury to or invasion of a legally-protected interest." See *Lujan*, 504 U.S. at 560-61.

Therefore, the Board orders that during briefing, the parties address whether the Tribe has standing to bring this appeal.

Third, given the procedural character of the Regional Director's decision, it is not clear whether this appeal is ripe for Board review. Cf. *U&I Redevelopment LLC v. Acting Northwest Regional Director*, 44 IBIA 240 (2007) (dismissing appeal for lack of ripeness); *Wind River Resources Corp. v. Western Regional Director*, 43 IBIA 1, 3 (2006) (describing the considerations for determining ripeness). Thus, even if the Tribe can demonstrate standing, it may be appropriate for the Board to consider whether the appeal is ripe.

Therefore, the Board orders that during briefing, the parties address whether this matter is ripe for Board review.

Briefing for the above issues will not be bifurcated from briefing on the merits, and therefore the above issues shall be addressed in the parties' briefs in addition to any arguments they may wish to make on the merits of the appeal.



The Board's Internet website, containing a searchable database of its decisions, is currently off-line, due to a court order. However, its decisions can be searched on the free, private website [www.ibiadecisions.com](http://www.ibiadecisions.com) and on the for-fee websites of WestLaw and Lexis-Nexis. Although there is some delay in providing Board decisions to the operators of these sites, they are relatively current.

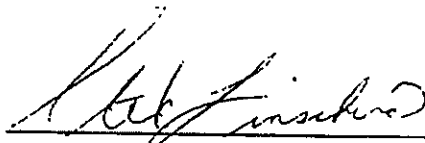
#### Alternative Dispute Resolution

The Board understands that this appeal may involve disputed issues that are not subject to easy resolution. However, in keeping with long-standing policy, the Board strongly encourages the real parties in interest to consider whether voluntary resolution of this dispute may be possible. Such efforts toward resolution might take the form of traditional settlement discussions, or might involve the use of some form of alternative dispute resolution (ADR), such as mediation.

If the parties wish to discuss the possibility of settling this dispute or engaging in ADR, they should so inform the Board. Upon receiving such notification, the Board may stay further proceedings before it while the parties are exploring other possibilities.

If the parties would like to use mediation or another form of ADR, but have questions about the process, would like assistance in locating a neutral, or have other concerns, they may contact either the Board, which will refer them to the Department's Office of Collaborative Action and Dispute Resolution (CADR), or they may contact CADR directly. CADR does not normally provide neutrals, but can answer questions about ADR processes and assist parties in locating a mutually acceptable neutral.

The parties are also advised that the Board reviews all appeals, usually on several occasions, to determine whether it believes that the parties might benefit from the use of ADR. If it believes that the parties might benefit from the use of ADR, the Board may order them to participate in an assessment conference to determine whether ADR is likely to be successful. The Board will not, however, order the parties to mediation or any other form of ADR over their objections.

  
\_\_\_\_\_  
Steven K. Linscheid  
Chief Administrative Judge

Enclosure

Distribution: See attached list.

## DOCUMENT NO. 68



## United States Department of the Interior

### BUREAU OF INDIAN AFFAIRS

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

IN REPLY F

CERTIFIED MAIL NO. 7003 1680 0005 5923 7721  
RETURN RECEIPT REQUESTED

JUN 19 2007

Mr. Yakima Dixie  
Attention: Mr. Chad Everone  
Post Office Box 41  
Sheep Ranch, California 95250

Dear Mr. Dixie:

The purpose of this correspondence is to provide a response to your correspondence of June 5, 2007, requesting the Bureau of Indian Affairs (BIA or Agency) to make an immediate determination to suspend or withdraw its recognition of Silvia Burley as spokesperson and an "authorized representative of the California Valley Miwok Tribe (Tribe) with whom government-related business is conducted." This request is being made as a result of the June 4, 2007, letter from the State of California Gambling Control Commission, in which the Commission intends to resume the disbursement of Revenue Sharing Trust Funds to Ms. Burley as the "authorized representative" of the Tribe at the Stockton address.

The BIA is unable to comply with this request to withdraw its recognition of Silvia Burley as an authorized representative of the Tribe. Currently, the Agency recognizes Ms. Burley as a "person of authority" in dealing with the Tribe's P. L. 93-638 contract only. Ms. Burley has contracted the Aid to Tribal Government program on behalf of the Tribe to provide program services to its membership. The BIA does not recognize the actions taken by Ms. Burley under the 638 contract to organize the Tribe to be representative of the will of the larger tribal community, referred to as the "putative group." Therefore, the BIA does not recognize a tribal governing body or governmental leader.

As you are aware, the Regional Director, Pacific Region, rendered a decision on April 2, 2007, on the appeal of Ms. Silvia Burley, filed pursuant to 25 C.F.R., Part 2, from the decision dated November 6, 2006, of the Superintendent, Central California Agency. In the November 6, 2006 letter, the Agency committed to assist the Tribe with its efforts to organize a formal governmental structure that is representative of all Indians who can establish a legitimate basis for their interest in the Tribe. In rejecting Ms. Burley's challenge of the November 6, 2006 letter, the Regional Director determined that "In all fairness to the current tribal membership and the 'putative' group," and for the reasons explained in his decision, he remanded this matter to the Agency Superintendent. The Superintendent was "to implement the actions mentioned in [the] November 6, 2006, letter, and as soon as possible publish a notice in the newspapers, within the Miwok region, of the Agency's plan to assist in identifying the 'putative' group of the Tribe. Furthermore, the Superintendent will provide personal oversight to assure that the proposed actions outlined in his November 6 letter are fully implemented and completed."

CVMT-2011-001519


Page 2

The BIA is committed to assisting the Tribe in its efforts to establish a formal governmental structure that represents all Indians who can establish a legitimate basis for their interest in the Tribe. In accordance with the April 2 Regional Director's decision, the Agency is now in the process of completing the proposed actions outlined in the November 6, 2007, letter.<sup>1</sup> The Agency's main purpose is to assist the Tribe in identifying the greater tribal community, the "putative" group, that is entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. The tribe must first determine its membership and its governmental organization before it can determine its leadership. In turn, the Agency cannot recognize any leader until the Tribe has gone through the above steps.

As directed, the Agency placed the notice during the second and third week of April 2007, for publication in local newspapers within the Miwok region, establishing May 25, 2007, as the deadline for individuals to respond to the notice. Approximately 485 individuals responded to the notice and the Agency staff is currently processing these requests. The Agency will notify all individuals who have been determined to be eligible to participate in the organization of the Tribe by letter. The Agency will notify all individuals not determined eligible of their right to appeal to the BIA, Pacific Regional Director, within 30 days of receipt of decision. Upon rendering final decisions regarding appeals filed, the Agency will notify all individuals determined to be eligible of the organizational meeting which will include an agenda of the next actions to be taken by the group. The Agency anticipates this process to be completed by the latter part of July or the first part of August of 2007.

Please contact Ms. Carol Rogers-Davis, Acting Tribal Operations Officer, at (916) 930-3764 should you require further assistance in this matter.

Sincerely,

  
Troy Burdick  
ACTING Superintendent

cc: Cyrus J. Rickards, Chief Counsel, State Gambling Control Commission  
See List of Interested Parties

<sup>1</sup> Ms. Burley has appealed the Regional Director's decision to the Interior Board of Indian Appeals (IBIA). This has the effect of suspending the Superintendent's decision pending resolution of her appeal by the IBIA. Rather than halt the reorganization process, the Agency is going ahead with its assistance but will not recognize the results of the organization process until the IBIA has issued its decision.

## DOCUMENT NO. 69

**EXHIBIT B**

**to**

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

**Letter from Edith Blackwell, Associate Solicitor, Indian Affairs, to Peter Kaufman,**  
**California Deputy Attorney General (Dec. 2, 2008) (the "Solicitor's Letter")**



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

In reply, please address to:  
Main Interior, Room 6513

Peter Kaufman, Esq.  
Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92101

DEC 12 2008

Dear Mr. Kaufman:

This letter is in response to your telephone inquiry requesting information on the status of the leadership for the California Valley Miwok Tribe (CVMT). CVMT presents the Bureau of Indian Affairs (BIA) with a unique situation. The following summarizes the history of the Tribe and the current leadership dispute.

CVMT began as a rancheria set up for 12 individual Indians in 1916. The government set aside .92 acres of land on which those twelve individuals could live. In 1935, the sole adult member of the rancheria voted not to reject the Indian Reorganization Act (IRA).<sup>1</sup> In 1966, the Federal government undertook to terminate the rancheria by, among other things, distributing the assets of the rancheria to the rancheria's residents. Ultimately, the Federal government failed to take the steps necessary to complete terminate of the Federal relationship with the rancheria and the rancheria continued to exist. There was one resident, Mabel Hodge Dixie. For reasons that are not relevant to your inquiry, the government did not convey the property to Ms. Dixie successfully and ultimately held it in trust for her. When she died, her heirs inherited the 0.92 acre held in trust by the government. In 1998, Ms. Dixie's son, Yakima Dixie, resided on the rancheria land and was its only known member. That same year, Silvia Burley, a distant relative of Mr. Dixie, approached Mr. Dixie about adopting her, her two daughters, and her granddaughter into the Tribe so that they would be eligible for Indian health and education benefits. Mr. Dixie adopted Ms. Burley and her family.

Mr. Dixie and Ms. Burley became interested in organizing the tribe formally—that is establishing a tribal government. In 1999, the two of them approached the BIA for assistance. At that time, Mr. Dixie acted as the Tribe's leader and he held the title of "Chairman." On April 20, 1999, Ms. Burley submitted a purported letter of resignation from Mr. Dixie. The next day, Mr. Dixie asserted he never resigned his position and refused to do so. He claims that Ms. Burley forged his name on the resignation letter. After Mr. Dixie's purported resignation, Ms. Burley became leader of the Tribe, having been elected by herself and one of her daughters. Ms. Burley claimed the title of

<sup>1</sup> While it is common for people to refer to the Indians of a reservation as voting to accept the IRA, the act applied to a reservation unless a majority of the Indians voted against its application within a year, later extended for another year. See 25 U.S.C. § 478.

"Chairman." The BIA accepted her in this position but noted the leadership dispute between her and Mr. Dixie. On March 7, 2000, the BIA wrote in a letter to Ms. Burley that it would not interfere in the dispute unless the dispute continued without resolution and the government-to-government relationship between the United States and the Tribe became threatened. If the government-to-government relationship were to become threatened, the BIA advised, it would advise the Tribe to resolve the dispute within a reasonable period of time.

Ms. Burley and her daughters responded by attempting to organize the Tribe. Initially, they sought to organize the government under the provisions of the Indian Reorganization Act, but the BIA failed to call the requisite election on the proposed constitution.

In 2002, counsel purporting to represent the California Valley Miwok Tribe and Ms. Burley filed suit in the United States District Court for the Eastern District of California claiming the United States had breached its trust responsibilities and violated the California Rancheria by conveying the less than one acre of land to Ms. Dixie in 1967 when the tribe had potentially 250 members. The court dismissed the suit on grounds that it was filed beyond the six-year statute of limitations. The Ninth Circuit Court of Appeals affirmed in an unpublished opinion. *See California Valley Miwok Tribe v. United States*, No. 04-16676, 2006 WL 2373434 (9<sup>th</sup> Cir., Aug. 17, 2006)

Ultimately, in 2003, Ms. Burley tried to organize the Tribe under the Tribe's inherent sovereign authority without the supervision of the BIA. Ms. Burley submitted the Tribe's constitution to the BIA for informational purposes. The BIA reviewed the constitution and determined that it was not valid because Ms. Burley had failed in the process of developing and adopting the constitution to include other Indians with legitimate ties to the Tribe. On March 26, 2004, the BIA informed Ms. Burley that the Tribe remained unorganized and had no government. Because the Tribe had no government, it could not have a governmental leader. The BIA would not recognize Ms. Burley as Chairman, that is, the governmental leader of the Tribe. Instead the BIA would deal with her as a "spokesperson" or "person of authority" for the Tribe for the purposes of awarding Federal contracts.

Meanwhile, Mr. Dixie continued to assert that he was the hereditary leader of the Tribe and that he had never resigned his position. In March 2005, a representative of the Assistant Secretary – Indian Affairs decided Mr. Dixie's appeal of the BIA's acceptance of Ms. Burley as tribal Chairman. In the letter dismissing Mr. Dixie's appeal, the Deputy Assistant Secretary informed Mr. Dixie that Ms. Burley was not the governmental leader of the Tribe. In fact, the letter explained, the Tribe could have no governmental leader until it had a government developed through an organizational process that included the broader tribal community of other Indians with legitimate ties to the Tribe.

Thus, the BIA faced a stand-off between Ms. Burley, who insisted the Tribe had organized properly under her constitution, and Mr. Dixie, who claimed to be the hereditary leader of the Tribe. Ms. Burley sued the BIA in Federal district court in the District of Columbia, claiming that the BIA improperly denied her constitution's validity.



The district court granted the BIA's motion to dismiss for failure to state a claim. The Court of Appeals affirmed. See *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006), *aff'd* 515 F.3d 1262 (D.C. Cir. 2008)

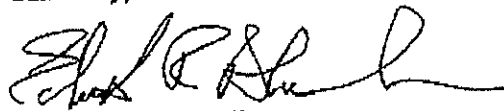
When the district court granted its motion to dismiss, the BIA worked with both Ms. Burley and Mr. Dixie to assist the Tribe in organizing itself. After initial efforts by the BIA to find a mutually agreeable solution, Ms. Burley chose not to cooperate. The BIA decided to initiate the organization process by identifying those persons who are lineal descendants of the original twelve Indians for whom the government established the rancheria, the single resident who voted in 1935 on the IRA, and the sole distributee, Mabel Hodge Dixie. Ms. Burley appealed the BIA's decision to the Interior Board of Indian Appeals (IBIA), *California Valley Miwok Tribe v. Pacific Regional Director*, Docket No.: IBIA 07-100-A. Under the Department's regulations, a decision of a Regional Director that has been appealed to IBIA is not final and effective except under certain circumstances, not present here, which effectively stayed the BIA's effort to assist the Tribe in organizing itself. See 25 C.F.R. § 2.6(a).

When the BIA is faced with a situation such as this, when it cannot determine who the legitimate leader of the Tribe is, the BIA must first defer to the Tribe to resolve the dispute. See, e.g., *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65 (1978); *Fisher v. District Court*, 424 U.S. 382, 386-89 (1976); *Smith v. Babbitt*, 100 F.3d 556, 559 (8<sup>th</sup> Cir. 1996); *Wheeler v. Department of the Interior*, 811 F.2d 549 (10<sup>th</sup> Cir. 1987). The difficulty with CVMT is that because it has no government, it has no governmental forum for resolving the dispute. In similar situations, the BIA would turn to a tribe's general council, that is, the collective membership of the tribe. *Johannes Wanatee v. Acting Minneapolis Area Director*, 31 IBIA 93 (1997). But because CVMT has not even taken the initial step of determining its membership, a general council meeting is not possible.

The only answer is for the BIA to wait for the Tribe to organize itself. The Tribe will be able to do so once the IBIA decides Ms. Burley's appeal. The IBIA has a significant workload but the briefing on Ms. Burley's appeal was completed essentially a year ago and the D.C. Circuit Court opinion of earlier this year has been served as supplemental authority in the IBIA proceedings so we could expect a decision at any time. In the meantime, neither the BIA nor any court has authority to resolve the leadership dispute that is crippling the Tribe. See, *Goodface v. Grassrope*, 708 F.2d 335 (8<sup>th</sup> Cir. 1983).

I hope that this letter provides all the information you need. Should you need additional information or have further questions, please contact Jane Smith (202-208-5808), the member of my staff handling this matter.

Sincerely,



Edith R. Blackwell  
Associate Solicitor, Indian Affairs

## DOCUMENT NO. 70

CALIFORNIA VALLEY MIWOK TRIBE, Plaintiff, v. DIRK KEMPTHORNE; GEORGE SKIBINE, DALE RISLING; and TROY BURDICK, Defendants.

NO. CIV. S-08-3164 FCD/EFB

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA,  
SACRAMENTO DIVISION

2008 U.S. Dist. Ct. Motions 107917; 2009 U.S. Dist. Ct. Motions LEXIS 40996

February 6, 2009

Motion for Injunction

**COUNSEL:** [\*1] LAWRENCE G. BROWN, Acting United States Attorney, SYLVIA QUAST, Assistant United States Attorney, Sacramento, California, Attorneys for Defendants.

**JUDGES:** Hon. Frank C. Damrell, Jr.

**TITLE: MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

**TEXT: INTRODUCTION**

Sylvia Burley ("Burley"), purporting to be the leader of the California Valley Miwok Tribe ("Tribe"), brings this lawsuit against officials of the United States Department of the Interior ("DOI") and DOI's Bureau of Indian Affairs ("BIA"), challenging the BIA's December 14, 2007 decision to reject her application for funds for calendar year 2008 under the Indian Self-Determination and Education Assistance Act ("ISDA"). She now seeks a preliminary injunction "sequestering or ordering the release of the funds." Plaintiff's Memorandum of Law In Support of Temporary Restraining Order and Preliminary Injunction ("Memo") at 13. However, she fails to mention another recent federal court action in which she challenged (among other things) DOI's rejection of her as leader of the Tribe and lost. California Valley Miwok Tribe v. United States ("CVMT I"), 424 F. Supp. 2d 197 (D.D.C. 2006), [\*2] aff'd, California Valley Miwok Tribe v. United States ("CVMT II"), 515 F.3d 1262, 1263-64 (D.C. Cir. 2008). This Court should likewise reject her attempt to equate herself with the Tribe and her challenge under the ISDA, which only creates jurisdiction over challenges by tribes and tribal organizations, not private individuals. Burley's challenge also fails because she opted to pursue administrative remedies rather than a district court action and then failed to exhaust those remedies. Moreover, BIA will likely prevail on the merits, since it can only enter into ISDA self-determination contracts with tribal organizations. Finally, the balance of harms tips in DOI's favor - it is much too late to seek preliminary relief for funding for last year's activities, and in any event, DOI has an obligation "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." CVMT II, 515 F.3d at 1267.

## STATUTORY AND REGULATORY BACKGROUND

### I. Tribal "Recognition" and Tribal "Organization"

If an American Indian group [\*3] wishes to obtain the protection, services, and benefits that the Federal government offers to Indian tribes in virtue of their status as tribes, it must be "acknowledged" or "recognized" by the Department of the Interior. 25 C.F.R. §83.2; CVMT II, 515 F.3d at 1263-64. Historically, the federal government recognized tribes through treaties, statutes, and executive orders, id., but acknowledgment now generally occurs through a standardized application process administered by BIA. 25 C.F.R. Part 83.

Although formal recognition by DOI may allow a tribe to claim certain federal benefits, other benefits are available only to tribes "organized" under the Indian Reorganization Act ("IRA"). CVMT II, 515 F.3d at 1264. There are two ways for tribes to organize under the Indian Reorganization Act ("IRA"). Section 476(a) sets out standards and procedures by which a federally-recognized tribe that wishes to organize "may adopt an appropriate constitution and bylaws" and secure the Secretary's approval of those documents. 25 U.S.C. §476(a). Section 476(h) recognizes that tribes may organize pursuant to their inherent [\*4] sovereignty as well. 25 U.S.C. §476(h). The difference between the two provisions is that Section 476(a) acts as a "safe harbor" in that if a tribe follows its procedures the Secretary will necessarily recognize the constitution and resulting government. CVMT II, 515 F.3d at 1264. A tribe that organizes under Section 476(h) does not have the benefit of a safe harbor and has no guarantee that the Secretary will recognize its constitution and resulting government. A tribe that has not successfully organized under either section is an unorganized tribe and its government is not "recognized." The IRA does not require recognized tribes to organize, but organized tribes are vested with the power "[t]o employ legal counsel; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments." 25 U.S.C. §476(e).

### II. The Indian Self-Determination and Education Assistance Act ("ISDA")

In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act [\*5] ("ISDA"), a statute that was designed to foster Indian self-government by permitting the transfer of certain federal programs to Indian Tribes. See 25 U.S.C. §§ 450, 450a. "'Indian tribe' means any Indian tribe, band, nation, or other organized group or community . . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. §450b(e). The ISDA directs the Secretary of DOI, upon the request of an Indian Tribe, to enter into "self-determination contract[s]" with "tribal organization[s]." See 25 U.S.C. §§ 450f(a)(1), 450b(I). A "self-determination contract" is a contract "entered into . . . between a tribal organization and the [Secretary of DOI] for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law." § 450b(j). "[T]ribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, [\*6] sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such an organization and which includes the maximum participation of Indians in all phases of its activities. . . ." §450b(l).

Under the ISDA, if an Indian Tribe wishes to take over the planning, conduct, or administration of programs or services which are otherwise provided by DOI, it may authorize a tribal organization to "submit a proposal for a self-determination contract, or a proposal to amend or renew a self-determination contract, to the Secretary for review." See 25 U.S.C. §450f(a)(2). The proposal must contain, inter alia, the amount of funding requested for the contract. See 25 C.F.R. §900.8(h). The Secretary thereafter has 90 days either to (1) approve the proposal and proposed funding levels and award the contract, or (2) issue a written notification declining all or part of the proposal for one of five justifications found in §450f(a)(2). See 25 U.S.C. § 450f(a)(2); 25 C.F.R. § 900.16. If the Secretary does not [\*7] take action on a contract proposal within 90 days, the proposal is deemed approved. See 25 C.F.R. § 900.18.

Each ISDA contract has three components: the contract itself, modifications or amendments to the contract, and, since 1995, annual funding agreements ("AFAs"). See 25 U.S.C. § 450l (providing for a model contract); id. § 450l(c)(e)(2) (providing for written modifications to the contract); id. §§ 450l(c)(b)(4), (c)(f)(2) (providing for an AFA). The funding levels for an ISDA contract are generally described in the AFA.

Although many self-determination contracts remain in effect for more than one year, Tribal contractors must submit AFA proposals each year, which are then subject to individualized negotiations with the Secretary. See id. § 450j-1(a)(3)(B); 25 C.F.R. § 900.12. If the parties are unable to agree on the appropriate funding level, the Secretary can decline the proposal in part or in full under the declination procedures described above. See 25 C.F.R. § 900.32.

The Secretary may decline, in part or in full, a contract proposal [\*8] on one of five statutory bases. See 25 U.S.C. § 450f(a)(2); see also 25 C.F.R. § 900.22 (reciting statutory bases). In issuing a partial or full contract "declination," the Secretary must "state any objections in writing[.]" "provide assistance to the tribal organization to overcome the stated objections," and provide the organization with an administrative appeals process. See § 450f(b); 25 C.F.R. § 900.31. This administrative appeals process is set forth in 25 C.F.R. §§ 900.150-900.176.

"In lieu of" pursuing an administrative appeal, an Indian Tribe or Tribal organization may also initiate a federal court action under 25 U.S.C. § 450m-1(a). See 25 U.S.C. § 450f(b). Section 450m-1(a) gives federal courts the power to review a Secretary's declination decision for its compliance with ISDA and, if the decision is in error, to enjoin the Secretary "to reverse the declination finding . . . or to compel the Secretary to award and fund an approved self-determination contract." 25 U.S.C. § 450m-1(a) [\*9]. The conclusion of an action challenging a declination is an order affirming the decision of the Secretary or an order compelling the Secretary to enter into a contract.

## STATEMENT OF FACTS

### I. Tribal Leadership Disputes Within the California Valley Miwok Tribe

In 1916, the United States purchased a small parcel of land near Sheep Ranch, California, in Calaveras County, for the benefit of approximately 13 Miwok living in the area. CVMT I, 424 F. Supp. 2d 197 (D.D.C. 2006). The group dwindled to one, and in 1966, the Federal government transferred the land, known as the "Sheep Ranch Rancheria," to Mabel Hodge Dixie, as the only Indian still living on it. Id. at 198.

In 1979, the Sheep Ranch Rancheria of Me-Wuk Indians of California was still a federally recognized tribe. n1 44 Fed. Reg. 7235, 7236 (Feb. 6, 1979); 60 Fed. Reg. 9250, 9253 (Feb. 16, 1995). Yakima Dixie ("Dixie"), a son of Mabel Hodge Dixie, claimed to be the hereditary chief of the Tribe. CVMT I, 424 F. Supp. 2d at 198. In 1996, Silvia Burley approached Dixie and requested tribal status for herself and her daughters Rashel [\*10] Reznor and Anjelica Paulk, and her granddaughter, Tristan Wallace, id., and Dixie adopted them into the Tribe.

----- Footnotes -----

n1 The Burley Government purported to re-name the Tribe the California Valley Miwok Tribe in June 2001.

----- End Footnotes -----

On September 24, 1998, BIA advised Dixie that he, his brother Melvin Dixie, Burley, and Burley's daughters and granddaughter "possess[] the right to participate in the initial organization of the Tribe" under the IRA. Id. This group established a tribal council with Dixie as chairman. Id. Shortly thereafter, Dixie allegedly resigned that position, and on May 8, 1999, the group held a "general election" at which Burley was elected Chairperson and Dixie was elected Vice Chairperson. Id. BIA recognized Burley as tribal chairperson on June 25, 1999. Id.

In late 1999, a leadership dispute developed within the Tribe between Dixie and Burley, which has spawned several lawsuits and administrative proceedings. Dixie complained about this dispute to BIA as well as internally, id. at 199, [\*11] and eventually filed an action in this Court, *Sheep Ranch Miwok v. Silvia Burley*, No. 01-1389-LKK-DAD (E.D. Cal. 2002), in which he challenged Burley's claim to be Chairperson. On January 24, 2002, this Court dismissed his case because he failed to exhaust his administrative appeal of BIA's February 2000 decision rejecting his request to reverse BIA's recognition of Burley and the award of the self-determination contract to Burley's tribal government.

Later in 2002, Burley filed *California Valley Miwok Tribe v. United States*, No. 02-0912-FCD-GGH (E.D. Cal. 2002), in which she alleged the United States violated the California Rancheria Act and breached a fiduciary duty to the Tribe when it transferred title to the Rancheria to Mable Hodge Dixie in 1967. The apparent goal of the lawsuit was to use the land taken into trust to build and operate a casino. *California Valley Miwok Tribe*, No. 02-0912-FCD-GGH (E.D. Cal. July 1, 2004) (Document 80 at p.6). Burley's complaint asserted that, as of April 2002, the Tribe had a potential membership of 250 people. CVMT II, 515 F.2d at 1265. This court dismissed on sovereign immunity and statute of limitations grounds, [\*12] and was affirmed by the Ninth Circuit in California Valley Miwok Tribe v. United States, 197 Fed. Appx. 678 (9th Cir. 2006).

In 2003, Dixie filed an administrative appeal challenging BIA's June 1999 recognition of Burley as tribal Chairperson and seeking to nullify his 1998 adoption of Burley, her daughters and granddaughter into the Tribe. On February 11, 2005, the Principal Deputy, Acting Assistant Secretary-Indian Affairs dismissed Dixie's appeal on procedural grounds. CVMT I, 424 F. Supp. 2d at 200. Among other things, he found that Dixie's challenge to BIA's recognition of Burley as tribal Chairperson was rendered moot by a BIA decision of March 26, 2004, rejecting the Tribe's proposed constitution. The decision explained that "BIA did not recognize Silvia Burley as Tribal Chairperson, but as a 'person of authority' within California Valley Miwok Tribe," and

"that BIA would not recognize anyone as the Tribal Chairperson until the Tribe had organized as described in the March 26, 2004 letter." CVMT I, 424 F. Supp. 2d at 200.

In March 2005, BIA convened a series of meetings in an attempt to resolve the leadership dispute and other [\*13] issues besetting the Tribe. CVMT I, at 200-01. This attempt failed, and later that year, the Tribe purportedly "disenrolled" Dixie. Id.

## **II. DOI's Rejection of Burley's Attempts to Obtain Approval of a Constitution**

Burley engaged in a series of attempts to obtain BIA approval of tribal constitutions developed by her and her supporters (i.e., her daughters) during her ongoing leadership dispute with Dixie. Her first attempt came in March 2000 when they adopted a constitution and requested that BIA conduct a Secretarial election to ratify it under the IRA. CVMT II, 515 F.3d at 1265; CVMT I, 424 F. Supp. 2d at 199; 25 U.S.C. § 476 (c), (d). The election did not happen and on June 7, 2001, she withdrew her request. CVMT II, 515 F.3d at 1265; CVMT I, 424 F. Supp. 2d at 199.

Her second attempt came a few months later in September 2001 when her group submitted an amended version of the tribal constitution to BIA for approval. CVMT II, 515 F.3d at 1265; CVMT I, 424 F. Supp. 2d at 199. On October 31, 2001, BIA returned the amended constitution [\*14] without taking action on it, and advised that BIA would "continue to recognize the Tribe as an unorganized Tribe and its elected officials as an interim Tribal Council until the Tribe takes the necessary steps to complete the Secretarial election process," CVMT I, 424 F. Supp. 2d at 199-200 (emphasis deleted), and further offered agency staff to provide technical assistance. Burdick Declaration Exhibit 5.

Her third and final attempt came in February 2004. CVMT II, 515 F.3d at 1265; CVMT I, 424 F. Supp. 2d at 200. On March 26, 2004, BIA advised Burley that it still considered the Tribe to be unorganized and that she would at least need to attempt to involve the entire tribe in the organizational process before it could approve a constitution. CVMT II, 515 F.3d at 1265-66; CVMT I, 424 F. Supp. 2d at 200. Specifically, BIA explained that:

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 attempted [\*15] 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.

Burdick Declaration Exhibit 4. It further reiterated the Agency's continued willingness to "facilitate the organization or reorganization of the tribal community" through Public Law 93-638 self-determination contracts and other forms of assistance. Burdick Declaration Exhibit 4.

### III. Burley's Unsuccessful Attempt in the D.C. Circuit to Establish Her Leadership of the Tribe

Rather than file an administrative appeal of BIA's decisions, on April 12, 2005, Burley filed a complaint in the federal district court in the District of Columbia, challenging BIA's rejection of her government, its documents, and her claims to chair the Tribe. CVMT I, 424 F. Supp. 2d at 201; Complaint in CVMT I PP 57-59 (alleging "actions of the Defendant in declining to recognize [\*16] Silvia Burley as tribal chairperson . . . not in accordance with law"). Among other things, she sought a declaration that the tribe was organized for purposes of the IRA and approval of a tribal constitution that conferred tribal membership exclusively upon her, her two daughters, and their descendants. CVMT II, 515 F.3d at 1266; CVMT I, 424 F. Supp. 2d at 201, 203 n.7; Complaint in CVMT I (Appendix A attached hereto), at p.13 (requesting declaratory relief that DOI February 11, 2005 letter stating that BIA did not recognize Burley as Tribal Chairperson was "invalid"). On March 31, 2006, the district court granted the government's motion to dismiss for lack of jurisdiction and failure to state a claim. CVMT I, at 203 n.8. It explained that Burley predicated her claims on the mistaken view that, under 25 U.S.C. § 476(h), the Secretary was required to recognize the Burley government and its government documents even though Burley was elected, and the governing documents were adopted, without the participation of the majority of the Tribe's potential membership. CVMT I, at 201-203.

Burley appealed, and the court of [\*17] appeals affirmed the district court on February 15, 2008. CVMT II, 515 F. 3d 197. In so doing, the court explicitly rejected Burley's attempt to equate herself with the Tribe, CVMT II, 515 F.3d at 1263 n.1 & 1266 n.7, and noted that although the Tribe "has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary." CVMT II, 515 F.3d at 1267.

### IV. The ISDA Contract at Issue

Shortly after the BIA's initial recognition of Burley as tribal chairperson in 1999 and before the tribal leadership squabbles began in earnest, BIA and the Tribe entered into an ISDA self-determination contract (also known as a Public Law 93-638 contract) pursuant to 25 U.S.C. § 450f. CVMT I, 424 F. Supp. 2d at 198. Under this contract, BIA provided funding to support and assist the Tribe in becoming organized through the development of a tribal constitution and organized government. Burdick Declaration P 7; CVMT I, 424 F. Supp. 2d at 198. In January [\*18] 2004, the BIA determined that the self-determination contract was a "mature contract" under the ISDA. n2 Complaint at P 13. The amount of this funding varied each year, ranging from approximately \$ 166,000 to almost \$ 353,000. CVMT I, 424 F. Supp. 2d at 203, n.7; Burdick Declaration P 7. n3

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n2 A "mature contract" is one that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization. 25 U.S.C. § 450b(h). Burley's assertion that a mature contract may not be declined (Complaint P 21) is incorrect.



n3 At one point, the Tribe also received additional funding from the California Gambling Control Commission, a state agency that makes payments to non-gaming tribes from the California Revenue Sharing Trust Fund. These payments are made on a per-tribe basis, not on the number of tribe members, and amounted to over \$ 1 million in 2005. CVMT I, at 203 n. 7.

----- End Footnotes----- [\*19]

In light of the February 11, 2005, decision by the Principal Deputy, Acting Assistant Secretary-Indian Affairs, discussed supra at p.7, which in part stated that BIA did not recognize Burley as tribal chairperson and that it "would not recognize anyone as the Tribal Chairperson until the Tribe had organized," BIA suspended the contract on June 19, 2005, but subsequently reinstated it. CVMT I, at 200.

On October 1, 2007, Burley submitted a proposal to renew the contract's annual funding agreement for 2008. Memo at 7. On December 14, 2007, BIA informed Burley that it was returning her application for funding under the ISDA (P.L. 93-638), citing the definition of "tribal organization" under the Act, and explaining that DOI did not recognize the California Valley Miwok Tribe as having a governing body, and that it would only consider applications submitted by federally recognized tribes with a recognized governing body. Burdick Declaration Exhibit 2. It further cited CVMT I in support of DOI's position. Id. BIA's letter informed Burley that she had thirty days from the date she received notice of BIA's decision to appeal, citing and enclosing the administrative appeal [\*20] regulations in 25 C.F.R. Part 2, and informed her of the procedures for filing an administrative appeal. Id.

Burley received the letter on December 17, 2007, and thirty-one days later, on January 17, 2008, requested that the BIA commence an informal conference pursuant to 25 C.F.R. § 900.154. Memo at 7-8. Because Burley submitted her request late, BIA did not commence the informal conference. Id.; Burdick Declaration Ex. 1. On March 28, 2008, Burley filed an administrative appeal of the December 14 letter before the Interior Board of Indian Appeals, but the appeal was deemed untimely. Id.; Memo at 8. Rather than challenge that final agency action, Burley filed this lawsuit. Memo at 8. n4

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n4 Burley sought to renew ISDA funding for the current fiscal year as well. The BIA rejected this application on the same grounds that it rejected her fiscal year 2008 application. Burdick Declaration P 6. Although she refers to the October 16, 2008 BIA letter rejecting her request, Memo at 7 n. 1, she does not challenge that decision here.

----- End Footnotes----- [\*21]

## ARGUMENT

### I. Preliminary Injunction Standard

Burley misstates the standard for a preliminary injunction. Memo at 2-3. In Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 376-77 (Nov. 12, 2008), the Supreme Court rejected the "possibility of harm" standard as "too lenient." 129 S. Ct. at 376. Reversing the Ninth Circuit, the Court held that a plaintiff must always show, inter alia, that he is *likely* to suffer irreparable harm in the absence of preliminary relief. 129 S. Ct. at 376. Moreover, the Court held in Munaf

v. Geren, 128 S. Ct. 2207 (Mar. 25, 2008), the Court held that an injunction may not properly issue based on "questions so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberative investigation." Id. at 2219 (internal quotation omitted). Instead, "a party seeking a preliminary injunction must demonstrate, among other things, 'a likelihood of success on the merits.'" 128 S. Ct. at 2219 (quoting Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 428, 126 S. Ct. 1211 (2006)). [\*22]

Even when a statute directs a court to issue an injunction, the court still is to follow traditional equitable principles in determining whether injunctive relief is appropriate. See Hecht Co. v. Bowles, 321 U.S. 321, 329, 64 S. Ct. 587 (1944) (finding that court was to use discretion in determining whether injunction should issue under the Emergency Price Control Act, notwithstanding statutory language that injunction "shall be granted"); Rondeau v. Mosinee Paper Corp., 422 U.S. 49, 60-65, 95 S. Ct. 2069 (1975) (finding that injunction should not issue for violation of securities laws without demonstrating irreparable harm, even when violation of statute was conceded). "A preliminary injunction is an extraordinary remedy never awarded as of right." Winter, 129 S. Ct. at 376. To obtain an injunction, the plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter, 129 S. Ct. at 374. The court must "balance the competing [\*23] claims of injury" and "consider the effect on each party of the granting or withholding of the requested relief." Winter, 129 S. Ct. at 377 (quoting Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 542, 107 S. Ct. 1396 (1987)). The public interest may preclude an injunction even if the other requirements are satisfied. 129 S. Ct. at 381. See also Weinberger v. Romero-Barcelo, 456 U.S. 305, 313, 102 S. Ct. 1798 (1982); Lands Council v. McNair, 537 F.3d 981, 1003-04 (9th Cir. 2008) (en banc). Applying those standards, an injunction is not proper here.

## **II. This Court Lacks Jurisdiction Because Burley Is Neither A "Tribe" Or A "Tribal Organization" For Purposes Of The ISDA**

Burley asserts that this Court has jurisdiction over this action based on the judicial review provisions in the ISDA. Complaint PP 3,4. The ISDA provides that when DOI declines to enter into a self-determination contract with a tribal organization, it shall provide the tribal organization with an administrative appeal "except that the tribe or tribal organization may, in lieu of filing such [an] appeal, exercise the option [\*24] to initiate an action in a Federal district court and proceed directly to such court pursuant to section 450m-1(a) of [the ISDA]." 25 U.S.C. § 450f(b). Thus, only a tribe or tribal organization is allowed to sue under § 450f. Burley is neither, regardless of how she captions her complaint. Accordingly, this Court lacks jurisdiction over her complaint because the ISDA does not authorize private individual to bring an action.

The ISDA defines "Indian Tribe" to mean "any Indian tribe, band, nation, or other organized group or community . . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. § 450b(e). Burley is obviously not a tribe herself, nor is she the recognized leader of the California Valley Miwok Tribe. The D.C. Circuit recently upheld BIA's determinations that the California Valley Miwok Tribe has no recognized governing body and that Burley is not the recognized Tribal chairperson, and rejected her attempt to equate herself with the Tribe. CVMT I, 424 F. Supp. 2d

at 200-203, aff'd CVMT II, 515 F.3d 1262. [\*25] She is estopped from relitigating these issues here, as they are identical to the ones alleged in the D.C. Circuit litigation, were actually litigated by Burley, and their determination was a critical and necessary part of the judgment in that litigation. See Town of N. Bonneville v. Callaway, 10 F.3d 1505, 1508 (9th Cir. 1993) (discussing elements of collateral estoppel). See also Fireman's Fund Ins. Co. v. Int'l Mkt. Place, 773 F.2d 1068, 1069 (9th Cir. 1985) ("Federal law governs the collateral estoppel effect of a federal case decided by a federal court."). Accordingly, this Court should reject her attempt to pass herself off as the Tribe for purposes of this lawsuit.

Moreover, she does not qualify as a "tribal organization," which the ISDA defines to mean "the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such [an] organization and which includes the maximum participation of Indians in all phases of its activities. . . ." § 450b(l). [\*26] Again, the D.C. Circuit upheld BIA's determinations that the California Valley Miwok Tribe has no recognized governing body. CVMT I, 424 F. Supp. 2d at 200-203, aff'd CVMT II, 515 F.3d 1262. Nor does she qualify as a "legally established organization of Indians . . . which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities" because she and her daughters were not democratically elected. CVMT II, 515 F.3d at 1267. She is thus also estopped from arguing that she represents a "tribal organization" since the California Valley Miwok Tribe has no recognized governing body, let alone a "democratically elected body." For these reasons, the Court should dismiss this action.

### **III. This Court Lacks Jurisdiction Because Burley Failed to Exhaust Her Administrative Appeals**

Tribal organizations with whom DOI has declined to enter into self-determination contracts have two options under the jurisdictional provision in the ISDA: they can file an administrative appeal under rules and regulations [\*27] promulgated by DOI, or "in lieu of filing such appeal," they may "exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 450m-1(a)." 25 U.S.C. § 450f(b). Rather than choosing one or the other, however, Burley chose both. She first filed an administrative appeal from the December 14, 2007 letter, which she failed to exhaust, and then filed this action directly challenging BIA's decision. The ISDA does not permit this - it says "in lieu of filing" an administrative appeal, not "in addition to filing" such an appeal. Accordingly, this Court should dismiss Burley's action because she failed to exhaust her administrative remedies.

Burley acknowledges that she filed an administrative appeal of BIA's December 14, 2007, letter returning her ISDA annual funding application. Memo at 7-8. She began by requesting an informal conference pursuant to the ISDA rules and regulations at 25 C.F.R. § 900.154. n5 Id. However, she missed the 30-day deadline for filing her request, and BIA did not commence the conference. Id. She then filed an appeal to the Interior Board of Indian [\*28] Appeals ("IBIA") on March 28, 2008, which the IBIA dismissed because she missed the 30-day cut-off for initiating her appeal. Id.; Memo at 8. Although she could have appealed the IBIA's decision to the district court under the Administrative Procedure Act, 5 U.S.C. § 704, she did not do so. Instead, she chose to start anew by filing an action in this Court. Memo at 8.

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n5 The December 14 letter stated that she could file an administrative appeal pursuant to 25 C.F.R. Part 2 within 30 days of receipt of the letter. Burdick Declaration Exhibit 2. Part 2 provides default administrative procedures for decisions where no other regulatory route of appeal is provided. Burley filed her appeal pursuant to 25 C.F.R. §§ 900.150 through 900.176, which provides the ISDA administrative appeal procedures, and also allows 30 days from the date or receipt to file an appeal. 25 C.F.R. §§ 900.154, 900.158.

----- End Footnotes----- [\*29]

The ISDA does not countenance this, and the Court should not either. Exhaustion of remedies is a well-established doctrine of administrative law, which serves the purpose of giving the agency an opportunity to correct its own mistakes and also promotes efficiency, since "[c]laims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court." Woodford v. Ngo, 548 U.S. 81, 89 (2006). Moreover, "[p]roper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." Id. at 90-91. Because Burley did not exhaust her administrative remedies, this Court should dismiss for lack of jurisdiction.

#### **IV. Burley is Not Eligible For An ISDA Self-Determination Contract Because DOI Can Only Enter Into Such Contracts With Tribal Organizations**

DOI may only enter into ISDA self-determination contracts with tribal organizations. See 25 U.S.C. § 450b(j) (defining "self-determination contract" as a contract [\*30] "entered into . . . between a tribal organization and the [Secretary of DOI] for the planning, conduct and administration of programs or services . . ."); 25 U.S.C. § 450f(a)(1) ("The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs . . ."); 25 U.S.C. § 450f(a)(2) ("If so authorized by an Indian tribe . . . a tribal organization may submit a proposal for a self-determination contract, or a proposal to amend or renew a self-determination contract, to the Secretary for review."). As previously noted, the ISDA defines "tribal organization" to mean "the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such [an] organization and which includes the maximum participation of Indians in all phases of its activities. . . ." § 450b(l). Because the California Valley Miwok Tribe [\*31] has no recognized governing body or other democratically elected organization, there is no "tribal organization" with which to contract under § 450f. Accordingly, BIA was correct to return Burley's application for an annual funding agreement under the ISDA.

n6

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n6 There was no need for BIA to address the five statutory bases for declining an ISDA contract, 25 U.S.C. § 450f(a)(2), 25 C.F.R. § 900.22, because Burley could not satisfy an even more fundamental requirement in the statute - the requirement that DOI contract with a "tribal organization."

----- End Footnotes-----

Burley notes that BIA has been contracting with the Tribe for a number of years under the ISDA and alleges that the governing body of the Tribe has not changed over time. Complaint PP 11, 32. However, what is conspicuously absent from her filings is any mention of CVMT I, let alone CVMT II. BIA initially recognized Burley as tribal chairperson on June 25, 1999, and entered into a self-determination contract [\*32] with the Tribe with her as Tribal Chairperson one month later. CVMT I, 424 F. Supp. 2d at 198. Under this contract, BIA provided funding to support and assist the Tribe in becoming organized through the development of a tribal constitution and organized government. Burdick Declaration P 7; see CVMT I, 424 F. Supp. 2d at 198. Over time and after repeated undemocratic attempts to limit membership in the Tribe to Burley's direct descendants, BIA began to reconsider its view of Burley and her claim to lead the Tribe and question her ability or willingness to properly organize it. This culminated in the CVMT I court's upholding BIA's determination not to recognize her as Tribal Chair or the Tribe as having a governing body, which BIA subsequently relied on to reject her application for yet more self-determination funding in 2007. n7 Ironically, it is in part because Burley's so-called "governing body" had not changed over time that BIA ultimately rejected her application.

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n7 Burley cites the possible loss of the Tribe's "privileged status" if "the BIA deems the Tribe's government to be unorganized and hence unworthy of 638 funding." Memo at 9. She does not appear to grasp that BIA has already deemed the Tribe to be unorganized and ineligible for 638 (i.e. ISDA) funding.

----- End Footnotes----- [\*33]

#### **V. The Traditional Equitable Considerations for Preliminary Injunctive Relief and the Public Interest Tip in BIA's Favor**

For the foregoing reasons, Burley cannot establish that she is likely to succeed on the merits. This is sufficient grounds for denying her motion for a preliminary injunction. Winters, 129 S. Ct. at 374. Balancing the equities and the public interest would tip the balance in DOI's favor in any event. Id. BIA informed Burley on December 14, 2007, well over a year ago, that it would not accept her funding application for one year's worth of funding in 2008. If the failure to obtain that funding actually presented the likelihood of irreparable injury, the time to seek preliminary relief from this Court was in December of 2007, before the funding year started, not on January 15, 2008, two weeks after it ended. This Court should not reward such a gross example of laches.

Burley also cites the threat that the Tribe will be precluded from entering the tribal self-governance program if it does not get the 2008 funding. Memo at 2, 8; Complaint P 19. The Tribe has much more fundamental problems that prevent it from entering into the ISDA [\*34] self-governance program. This program, which is established in section 450h(a) of the ISDA, provides, "The Secretary of the Interior is authorized, upon the request of an Indian tribe . . . to contract with or make a grant or grants to any tribal organization . . . ." 25 U.S.C. §450h(a). As has already been discussed, the Tribe fails to satisfy the definition of "tribal organization" in the ISDA. 25 U.S.C. § 450b(l). There is no "recognized governing body" and no "legally established organization of Indians . . . which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of

Indians in all phases of its activities" because Burley and her daughters were not democratically elected. § 450b(1); see CVMT II, 515 F.3d at 1267. As a result, the Tribe is not eligible for ISDA self-governance contracts. n8

----- Footnotes -----

n8 For the same reasons, an "annual audit" is not the only thing standing between the Tribe and self-governance status. See Memo at 2, 8.

----- End Footnotes----- [\*35]

Finally, the public interest weighs strongly in favor of withholding relief. As the district court in CVMT I noted, the Secretary of the Interior has broad authority over "public business relating to . . . Indians." CVMT I, 424 F. Supp. 2d at 201, quoting 43 U.S.C. § 1457. "At the core of this authority is a responsibility to ensure that [the] Secretary deals only with a tribal government that actually represents the members of a tribe." CVMT I, 424 F. Supp. 2d at 201. Moreover, the Secretary has an obligation "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." CVMT II, 515 F.3d at 1267. In light of these considerations and Burley's history of dealings with the Tribe, as evidenced by CVMT I and CVMT II, this Court should abstain from giving her any relief.

## CONCLUSION

For the foregoing reasons, the Court should deny the motion for a preliminary injunction and dismiss this case.

Dated: February 6, 2009

LAWRENCE G. BROWN  
ACTING UNITED STATES [\*36] ATTORNEY

By: /s/ Sylvia Quast  
SYLVIA QUAST Assistant United States Attorney

## DECLARATION OF TROY BURDICK IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Troy Burdick, declare as follows:

1. I am the Central California Agency Superintendent of the Bureau of Indian Affairs ("BIA") in the United States Department of the Interior, and have been with BIA in this capacity since June 2005, and have been with the agency since October 1990. As the Superintendent, I am responsible for ensuring that programmatic activities are properly coordinated to deliver services to the Tribes within my jurisdiction. I have administrative jurisdiction over 54 federally-recognized tribes in Central California, one of which is the California Valley Miwok Tribe ("Tribe"). I make this declaration based on my personal knowledge and experience and, if called, would testify to the same facts at trial.

2. Attached hereto is Exhibit 1, which is a true and correct copy of the Interior Board of Indian Appeals June 10, 2008, decision rejecting Silvia Burley's appeal of my December 14, 2007 decision (a true and correct copy of which is attached hereto as Exhibit 2) [\*37] to return her application for annual funding for 2008 under the Indian Self-Determination and Education Assistance Act ("ISDA"), P.L. 93-638.
3. Attached hereto is Exhibit 3, which is a true and correct copy of the Acting Assistant Secretary - Indian Affairs's letter rejecting Yakima Dixie's appeal filed October 30, 2003.
4. Attached hereto is Exhibit 4, which is a true and correct copy of a March 26, 2004 letter rejecting Burley's third proposed tribal constitution for the Tribe.
5. Attached hereto is Exhibit 5, which is a true and correct copy of a October 31, 2001 letter rejecting Burley's second proposed tribal constitution for the Tribe.
6. Silvia Burley submitted an application in the name of the California Valley Miwok tribe for ISDA funding for fiscal year 2009. On October 16, 2008, the BIA rejected this application on the same grounds that it rejected her fiscal year 2008 application.
7. BIA first entered into an ISDA contract with the Tribe in 1999. Under this contract, BIA provided funding to support and assist the Tribe in becoming organized through the development of a tribal constitution and organized government. Over the course of the years, the amount of the funding [\*38] under the contract varied each year, ranging from \$ 166,160 in one fiscal year to \$ 352,821 in another.
8. Each Exhibit provided with my declaration is a true and correct copy of a document kept in the ordinary course of business and located in files in the BIA's offices in Sacramento, California.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Sacramento, California, this 5th day of February, 2009.

By: /s/ [Signature]  
TROY BURDICK  
Superintendent  
Central California Agency  
Bureau of Indian Affairs

[SEE APPENDIX A IN ORIGINAL]

[SEE EXHIBIT 1 IN ORIGINAL]

[SEE EXHIBIT 2 IN ORIGINAL]

[SEE EXHIBIT 3 IN ORIGINAL]

[SEE EXHIBIT 4 IN ORIGINAL]

[SEE EXHIBIT 5 IN ORIGINAL]



## DOCUMENT NO. 71

CALIFORNIA VALLEY **MIWOK** TRIBE, Plaintiff, v. DICK KEMPTHORNE, Secretary of The United States Department of the Interior; GEORGE SKIBINE, Acting Deputy Assistant Secretary for Policy and Economic Development-Indian Affairs; DALE RISLING, Regional Director of the Bureau of Indian Affairs; TROY BURDICK, Superintendent of the Central California Agency of the Bureau of Indian Affairs, Defendants.

NO. CIV. S-08-3164 FCD/EFB

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

2009 U.S. Dist. LEXIS 13465

February 23, 2009, Decided  
February 23, 2009, Filed

**PRIOR HISTORY:** Cal. Valley Miwok Tribe v. United States, 380 U.S. App. D.C. 39, 515 F.3d 1262, 2008 U.S. App. LEXIS 3209 (2008)

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Plaintiff Tribe sued defendants, Secretary of the United States Department of Interior (DOI), federal agencies and state agency, in which they challenged the denial of the Tribe's annual funding agreement (AFA). The Tribe moved for a preliminary injunction.

**OVERVIEW:** The Tribe asserted that defendants failed to renew its AFA based on a misreading of the applicable law. The Tribe further asserted that the denial of the AFA caused the Tribe to shut down tribal operations and precluded the Tribe from entering into the self-governance program which permitted the Tribe to provide certain programs and services to its members on behalf of the federal government. Defendants asserted that the Tribe failed to exhaust its administrative remedies. The court found that under 25 U.S.C.S. § 450f(b), the Tribe could have filed this action "in lieu of" filing an administrative appeal under the DOI regulations and proceed directly to the court, but it chose the latter and proceeded first through the administrative channels. The plain language of the statute did not give the Tribe discretion to do both. Once it chose to proceed through the administrative process, the Tribe had to complete that process before filing suit. Even if the court had jurisdiction, the motion for a preliminary injunction would fail on the merits because defendants had grounds to reject the Tribe's AFA on the basis of the Tribe's failure to have a recognizable "tribal organization."

**OUTCOME:** The action was dismissed for lack of jurisdiction. The motion for a preliminary injunction was denied.

**Available Briefs and Other Documents Related to this Case:**

U.S. District Court Motion(s)      U.S. District Court Pleading(s)

**COUNSEL: [\*1]** For California Valley Miwok Tribe, Plaintiff: Manuel Corrales, Jr., LEAD ATTORNEY, Law Offices of Manuel Corrales, Jr., San Diego, CA.

For Dick Kempthorne, Secretary of the U.S. Dept. of the Interior, George T. Skibine, Acting Deputy Assistant Secretary for Policy and Economic Development Indian Affairs, Dale Risling, Regional Director of the Bureau of Indian Affairs, Troy Burdick, Superintendent of the Central California Agency of the Bureau of Indian Affairs, Defendants: Sylvia Ann Quast,

LEAD ATTORNEY, United States Attorney's Office, Sacramento, CA.

**JUDGES:** FRANK C. DAMRELL, JR. ▼, UNITED STATES DISTRICT JUDGE.

**OPINION BY:** FRANK C. DAMRELL, JR. ▼

## **OPINION**

### **MEMORANDUM AND ORDER**

This matter is before the court on California Valley Miwok Tribe's ("plaintiff" or "the Tribe") motion for preliminary injunction against defendants <sup>1</sup> ("defendants," "BIA" or "the government"). <sup>2</sup> Plaintiff contends that defendants' failure to renew its annual funding agreement ("AFA") is based upon a misreading of the applicable law, and that the denial of the AFA has caused plaintiff to "shut down tribal operations" and "threatens to preclude the Tribe from entering the Self-Governance Program," which permits the Tribe to provide certain programs **[\*2]** and services to its members on behalf of the federal government. (Pl.'s Mem. in Supp. of TRO and Prelim. Inj. ("Pl.'s Mem."), filed Jan. 15, 2009, at 2.) Plaintiff requests the court sequester or disburse to it the funds allocated to the Tribe for the 2008 program year, pending resolution of this action. (Id. at 13.)

### **FOOTNOTES**

<sup>1</sup> The named defendants are: Dick Kempthorne, Secretary of The United States Department of the Interior; George Skibine, Acting Deputy Assistant Secretary for Policy and Economic Development--Indian Affairs; Dale Risling, Regional Director of the Bureau of Indian Affairs; and Troy Burdick, Superintendent of the Central California Agency of the Bureau of Indian Affairs.

<sup>2</sup> On January 15, 2009, plaintiff filed a motion for temporary restraining order ("TRO") and preliminary injunction, setting the matter for hearing on March 6, 2009, the court's next available law and motion date (Docket # 7-2). In conjunction with the motion, plaintiff filed an ex parte application to shorten time on the motion, indicating it needed a decision on or before March 2, 2009, the alleged date by which the Tribe had to apply to be a "Self-Governance Tribe." Considering that March 2 deadline, there **[\*3]** was no need to hear the motion as a TRO, and accordingly, the court set the matter for hearing on plaintiff's request for a preliminary injunction for February 20, 2009, the court's next regularly set law and motion date preceding March 2. (Minute Order, filed Jan. 16, 2009.) Thus, contrary to plaintiff's argument in its reply, the government properly responded to

the motion as a motion for preliminary injunction, not a motion for TRO. Regardless, however, the standard for a TRO is essentially the same as for a preliminary injunction, and the court's decision herein would be the same whether considering a motion for TRO or preliminary injunction.

Upon the government's denial of the Tribe's 2008 AFA, the Tribe appealed the decision to the Department of the Interior, Board of Indian Appeals ("the Board"), thus initiating the administrative appeals process. See *Cal. Valley Miwok Tribe v. Cent. Cal. Agency Superintendent, Bureau of Indian Affairs*, 47 IBEA 91, Docket No. IBIA 08-58-A (June 10, 2008) (denying the Tribe's appeal as "untimely"). Rather than exhausting its administrative remedies by appealing the Board's decision to the district court, pursuant to the Administrative Procedures Act ("APA"), 5 U.S.C. § 706, plaintiff filed the instant action, asserting direct claims against defendants based on their denial of the AFA. Under the doctrine of exhaustion of remedies, this court lacks jurisdiction over this matter, and plaintiff's complaint must be dismissed for that reason.

However, even if this court had jurisdiction over this case, plaintiff would not prevail on its motion. A recent district court decision found that the Tribe lacks a recognizable governing body (see *Cal. Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 202-03 (D.D.C. 2006) ("CVMT I")); the government relied on CVMT I in rejecting the AFA. Because having a recognizable governing body is a prerequisite for the government to contract with an Indian tribe, plaintiff cannot demonstrate a likelihood of success on the merits of its claims sufficient to obtain a preliminary injunction.

For the reasons set forth in more detail below, this action is dismissed for plaintiff's failure to exhaust administrative remedies, or, alternatively, plaintiff's motion for preliminary injunction is denied on the merits as plaintiff cannot demonstrate a reasonable likelihood of success on its claims.<sup>3</sup>

## FOOTNOTES

<sup>3</sup> Because [\*5] oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 78-230(h).

## BACKGROUND

For the past decade, the California Miwok Tribe, a federally recognized Indian tribe (*Cal. Valley Miwok Tribe v. United States*, 380 U.S. App. D.C. 39, 515 F.3d 1262, 1265 (D.C. Cir. 2006) ("CVMT II") (citing 70 Fed. Reg. 71,194, 71,194 (Nov. 25, 2005))), has been mired in internal leadership disputes, bringing into question the legitimacy of the Tribe's organizational structure. The BIA has, on several occasions, refused to recognize the Tribe's governing body. In 2006, a district court ruled in favor of the government, finding that the government was not required to recognize the Tribe as an "organized tribe" when the purported leadership only represented a small percentage of the potential tribal membership. CVMT I, 424 F. Supp. 2d at 202-03. The following represents a chronology of

relevant facts and tribal dealings leading to the 2006 litigation and the current litigation.

### **1. The 2006 Litigation: The Tribe's Attempt to Obtain Approval of their Constitution**

In November 1998, upon recommendation of the BIA, the Tribe established a tribal council. CVMT I, 424 F. Supp. 2d at 198. **[\*6]** The Tribe subsequently elected Silvia Burley ("Burley") as chairperson of that council in 1999. *Id.* In 2000, in an attempt to become organized under federal law, Burley requested that the BIA review and approve the Tribe's newly-adopted constitution. *Id.* at 199; CVMT II, 515 F.3d at 1265. The BIA failed to do so in a timely manner and Burley subsequently withdrew her request. CVMT I, 424 F. Supp. 2d at 199; CVMT II, 515 F.3d at 1265. A second effort to organize was similarly unsuccessful. In 2001, the Secretary of the BIA informed Burley that the Tribe's constitution was "defective and the [T]ribe still unorganized." CVMT II, 515 F.3d at 1265. Forming the basis for the BIA's position was the current leadership's failure to "attempt to involve the entire tribe in the organizational process." *Id.*

Burley, in the Tribe's name, then sued the government for its failure to recognize the tribe as organized, seeking declaratory and injunctive relief. *Id.* at 1266. The Tribe alleged that the BIA had violated 25 U.S.C. section 476(h) by not recognizing the Tribe's "government, its documents, and its chairperson." CVMT I, 424 F. Supp. 2d at 201. The District Court for the District of Columbia found **[\*7]** in favor of the government, holding that the BIA was not required to recognize the Tribe's governing body and its governing documents when the leadership did not actually represent the tribal membership. CVMT I, 424 F. Supp. 2d at 201-03. The court dismissed the Tribe's action for failure to state a claim. *Id.* at 203. The D.C. Circuit affirmed, noting that the government must work to "promote a tribe's political integrity," which means ensuring that the tribe's leaders represent the tribe *as a whole*. CVMT II, 515 F.3d at 1267 (citing *Seminole Nation v. United States*, 316 U.S. 286, 296-97, 62 S. Ct. 1049, 86 L. Ed. 1480, 96 Ct. Cl. 561 (1942) and *Seminole Nation v. Norton*, 223 F. Supp. 2d 122, 140 (D.C. Cir. 2002)). As the court articulated, the Tribe "ha[d] a potential membership of 250, [yet] only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary." *Id.* at 1267.

### **2. The Current Litigation: The BIA's Failure to Renew the AFA**

On September 30, 1999, the Tribe, through Burley, became a "contracting tribe" under the Indian Self-Determination and Education Assistance Act ("ISDEAA"). <sup>4</sup> (Pl.'s Mem. at 6.) Pursuant to a contract **[\*8]** between the Tribe and the BIA, the Tribe was responsible for government organizational tasks, including "drafting a constitution, adopting laws to govern the Tribe, adopting and implementing tribal member enrollment criteria and interacting with the State of California and other states to protect the interests of eligible Miwok Indian children under the Indian Child Welfare Act, 25 U.S.C. section 1901 et seq." (*Id.* at 6-7.)

### **FOOTNOTES**

<sup>4</sup> A "contracting tribe" is one that enters into a self-determination contract for planning, conducting, and administering programs and services under one of the ISDEAA's five delineated purposes. See 25 U.S.C. § 450f(a)(1)(A)-(E) .

Every year from September 30, 1999 to December 31, 2007, the BIA renewed the Tribe's AFA, which provided funds to the Tribe to "operate programs, functions and activities on behalf of the Tribe." (Id. at 7.) Colleen Petty, the Tribe's Financial Administrator/Consultant, submitted the 2008 AFA proposal and resolution to Troy Burdick ("Burdick"), Superintendent of the Central California Agency of the BIA, on October 1, 2007. (Decl. of Colleen Petty, filed Jan 15, 2009 ("Petty Decl."), at P 15; Pl.'s Mem. at 7.) In a letter dated December 14, **[\*9]** 2007, Burdick informed the Tribe that the AFA would not be renewed because "[t]he Department of the Interior does not recognize that the California Valley Miwok Tribe has a governing body." (Letter from Troy Burdick, Superintendent, BIA, to Silvia Burley, Dec. 14, 2007 ("BIA's rejection letter")). Burdick cited the 2006 case, CVMT I, to support the BIA's position. Id. The letter notified the Tribe that it had 30 days to file an administrative appeal to the Regional Director of the BIA. Id. <sup>5</sup>

## FOOTNOTES

<sup>5</sup> In so providing, the letter cited the incorrect appeal procedures; 25 C.F.R. Part 2, cited in the letter, provides the default administrative appeal procedures for decisions where no other regulatory route of appeal is provided. However, when plaintiff appealed the BIA's decision in this case, it employed the correct procedures for appeals under the ISDEAA. See 25 C.F.R. § 900.150-900.176 . Significantly, the 30 day deadline for filing an appeal is the same under Part 2 as it is under Section 900.150 *et seq.* , and thus, plaintiff suffered no prejudice from the incorrect citation to the appeals process.

The Tribe received the BIA's rejection letter on December 17, 2007 and requested an informal conference **[\*10]** 31 days later on January 17, 2008. (Pl.'s Mem. at 7-8.) The BIA did not respond because the Tribe "missed the 30-day deadline for filing [the] request." (Defs.' Opp'n, filed Feb. 6, 2009, at 13.) Over three months later, on March 18, 2008, the Tribe appealed to the Interior Board of Indian Appeals ("the Board"). *Cal. Valley Miwok Tribe v. Cent. Cal. Agency Superintendent, Bureau of Indian Affairs*, 47 IBEA 91, Docket No. IBIA 08-58-A (June 10, 2008). The Board dismissed the appeal as "untimely." Id. at 98.

Plaintiff filed the instant action on December 29, 2008, asserting claims for injunctive and declaratory relief based on defendants' alleged violations of the ISDEAA and DOI regulations. (Compl. at PP 33-45; Pl.'s Mem. at 11-13.) Plaintiff now moves for a preliminary injunction, requesting that the court sequester or release the funds as proscribed in the AFA pending resolution of this action. <sup>6</sup> (Pl.'s Mem. 2.)

## FOOTNOTES

<sup>6</sup> At times in its papers, plaintiff requests that the court "sequester" the subject funds in order to preserve the status quo during the pendency of this action. However, plaintiff also requests, more clearly at other times in its papers, immediate disbursement of the

2008 funds [\*11] so that the Tribe can continue to operate its contractual programs (see Reply, filed Feb. 13, 2009, at 13). As set forth below, to obtain such mandatory injunctive relief, plaintiff must meet a higher burden. However, the court does not reach that issue herein because for the reasons set forth below, this action is dismissed for lack of jurisdiction, and/or plaintiff cannot establish a reasonable likelihood of demonstrating a violation of law by defendants, and thus, the court need not consider whether mandatory injunctive relief is warranted in this case.

## ANALYSIS

### 1. Exhaustion of Administrative Remedies

In response to plaintiff's motion, defendants argue, in the first instance, that this court lacks jurisdiction because plaintiff failed to exhaust its administrative remedies. <sup>7</sup> (Defs.' Opp'n at 12-14.) It is a well-recognized tenet of administrative law that "no one is entitled to judicial relief for the supposed threatened injury until the prescribed administrative remedy has been exhausted." *Woodford v. Ngo*, 548 U.S. 81, 88-89, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006) (citing *McKart v. United States*, 395 U.S. 185, 193, 89 S. Ct. 1657, 23 L. Ed. 2d 194 (1969) (quoting *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51, 58 S. Ct. 459, 82 L. Ed. 638 (1938))). Exhaustion of [\*12] remedies protects agency autonomy, promotes efficiency, and saves judicial resources. *Id.* at 89. "Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." *Id.* at 90. The failure to appeal from an administrative agency's decision is the classic example of a failure to exhaust administrative remedies. See e.g., *Lichter v. United States*, 334 U.S. 742, 792, 68 S. Ct. 1294, 92 L. Ed. 1694 (1948).

## FOOTNOTES

<sup>7</sup> Defendants also raised the alternative argument that this court lacks jurisdiction because Burley is neither a "tribe" nor a "tribal organization" and thus cannot bring a claim under the ISDEAA. (Defs.' Opp'n at 11-12.) The court does not reach that issue because this case is properly dismissed for failure to exhaust administrative remedies.

Here, 25 U.S.C. section 450f(b) delineates the "[p]rocedure upon refusal of request to contract." Specifically, tribal organizations may appeal decisions: under such rules and regulations as the Secretary may promulgate, except that the tribe or tribal organization may, *in lieu of* filing such appeal, exercise *the option* [\*13] to initiate an action in the Federal district court and proceed *directly* to such court pursuant to section 450m-1(a) of this title.

Id. (emphasis added). Section 450(f) thus gives plaintiffs the option to *either* file an administrative appeal under the DOI regulations *or* seek review by the district courts. In this case, the Tribe attempted to do both. It initially sought an informal conference in accordance with the rules and regulations of the ISDEAA. See 25 C.F.R. § 900.154 (stating that an Indian tribe or tribal organization "shall file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision"). The Tribe filed its request 31 days after receiving the BIA's rejection letter. (Pl.'s Mem. at 7-8.) Due to the Tribe's untimely request, the BIA did not respond. (Defs.' Opp'n at 13.) The Tribe then appealed to the next level of review, the Interior Board of Indian Appeals (the "Board"). *Cal. Valley Miwok Tribe v. Cent. Cal. Agency Superintendent, Bureau of Indian Affairs*, 47 IBEA 91, Docket No. IBIA 08-58-A (June 10, 2008). After the Board dismissed the appeal as "untimely" (id. at 98), plaintiff [\*14] did not appeal the Board's decision to the next and final level of review, the district court, pursuant to the APA. Instead, the Tribe filed this action on December 29, 2008, asserting direct claims against defendants for alleged violations of the ISDEAA and DOI regulations; the Tribe did not request review of the Board's decision under the APA.

Under the governing statute, Section 450f(b), the Tribe could have filed this action "*in lieu of*" filing an administrative appeal under the DOI regulations and proceed directly to this court, but it chose the latter and proceeded first through the administrative channels. The plain language of the statute does not give plaintiff discretion to do both. Once it chose to proceed through the administrative process, the Tribe had to complete that process before filing suit herein.

Plaintiff's reliance on *Aleutian Pribilof Islands Association, Inc. v. Kempthorne*, 537 F. Supp. 2d 1 (D.D.C. 2008) for the contrary proposition is unavailing. In *Aleutian*, the BIA declined the tribal association plaintiff's request for funds, indicating that it would provide those funds to a regional tribal corporation instead. Id. at 5. The plaintiff requested an informal [\*15] conference, thus instituting the administrative appeals process. Id. After the Deputy Regional Director recommended upholding the BIA's decision, the plaintiff appealed to the Board, which likewise upheld the BIA's decision. Id. This is where *Aleutian* diverges from the present case.

In *Aleutian*, unlike here, the tribal association plaintiff filed suit in district court, asserting direct claims against the government under the ISDEAA but *also bringing claims pursuant to the APA*, seeking review of the Board's decision. Id. at 7-8. The *Aleutian* court did not reach the association's ISDEAA claims and instead resolved the entirety of the action under the APA. Id. at 6-7. Thus, in *Aleutian*, the plaintiff association had fully exhausted its administrative remedies by filing its district court action at least in part based on the APA.

This court acknowledges that in *Aleutian*, the district court remarked (notwithstanding the full exhaustion in that case) that under the governing statute, a plaintiff is not required to exhaust all administrative levels of review because the statute expressly permits the filing of a direct action in district court. Id. at 8. This observation is dicta, and even [\*16] if it were not, the court would not find *Aleutian* persuasive authority on this point. Contrary to the *Aleutian* court's finding, the plain language of 450f(b) clearly provides that a plaintiff may "*exercise the option*" of foregoing the administrative appeals process and proceed "*directly*" to the district court. This choice, however, is to be made "*in lieu of*" the administrative appeals process (not "*in addition to*" that process), thus indicating that a plaintiff cannot choose to do both. Indeed, to allow both would be contrary to the interests of promoting agency autonomy, judicial



efficiency, and consistency of judgments.

Ultimately, to support its statement that exhaustion of remedies is not required under the ISDEAA, the Aleutian court relied on Congress's use of the word "may" (i.e., "a tribe *may*, in lieu of filing such appeal, exercise the option to initiate an action in Federal district court . . . .") Id. at 8. The permissive word "may," however, simply emphasizes a tribe's *choice* or "option" of avenues, it does not mean that a tribe may institute either process *at any time*.

Because the Tribe here has not sought review of the Board's decision pursuant to the APA, it has failed [\*17] to exhaust its administrative remedies, and thus, this court lacks jurisdiction over this action and must dismiss plaintiff's complaint. \*

## FOOTNOTES

8 Defendants' incorrect citation to the relevant appeal procedures does not impact the court's decision. Plaintiff concedes it employed the correct procedures when effectuating its appeal, and the 30 day deadline was the same under the default procedures cited by defendants as the applicable procedures.

Nevertheless, the court notes that even if plaintiff had properly exhausted its administrative remedies and this court had jurisdiction over this matter, plaintiff would not prevail on the instant motion. Because the government had grounds to reject the Tribe's AFA on the basis of the Tribe's failure to have a recognizable "tribal organization," plaintiff cannot demonstrate it is likely to prevail on its claims in this action.

## 2. Injunctive Relief

### A. Standard

Typically, to prevail on a motion for preliminary injunction, plaintiff must show: (1) a likelihood of success on the merits, (2) that plaintiff is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in plaintiff's favor, and (4) that an injunction [\*18] is in the public interest. *Winter v. Nat'l Res. Def. Council, Inc.*, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008). However, "[t]he[se] standard requirements for equitable relief need not be satisfied when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief." *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 869 (9th Cir. 1983); see also, *United States v. Estate Pres. Serv.*, 202 F.3d 1093, 1098 (9th Cir. 2000) ("The traditional requirements for equitable relief need not be satisfied since [the statute] expressly authorizes the issuance of an injunction.").

The cases defendants cite are inapposite. *Hecht Co. v. Bowles*, 321 U.S. 321, 64 S. Ct. 587, 88 L. Ed. 754 (1944) merely gives a court discretion in granting an injunction where the statute authorizes such relief, emphasizing the flexible nature of equitable relief. Id. at 329. The statute at issue in *Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 95 S. Ct. 2069, 45 L. Ed. 2d 12 (1975) is distinguishable from the statute in this case,

as it did not expressly authorize injunctive relief. See *Hecht Co.*, 321 U.S. at 323 nn. 1-4 (delineating the applicable statutory provisions). In fact, Justice Brennan's dissent implies that *had* the statute [\*19] expressly authorized such relief, a showing of irreparable harm would not have been necessary. See *Rondeau*, 422 U.S. at 65 (Brennan, J., dissenting) (arguing that the statute at issue did in fact impliedly authorize injunctive relief, and thus, irreparable harm did not need to be shown).

Here, the statute at issue grants district courts the authority to "order appropriate relief including money damages [and] injunctive relief . . . (including immediate injunctive relief to reverse a declination finding . . . or to compel the Secretary to award and fund an approved self-determination contract)." 25 U.S.C. § 450m-1. Thus, the court need only consider plaintiff's likelihood of success on the merits in determining whether to grant a preliminary injunction.

Finally, where a plaintiff seeks a mandatory injunction, like plaintiff's request for immediate disbursement of the funds here, a court must apply heightened scrutiny to determine whether the facts and law favor the plaintiff. *Dahl v. HEM Pharmaceuticals Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993) (citing *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980)).

#### **B. Likelihood of Success on the Merits**

In enacting the ISDEAA, Congress [\*20] sought to effectuate a "strong Federal policy of self-determination" on the part of Indian tribes." 25 U.S.C. § 450a; 25 C.F.R. § 900.3. The Secretary of the United States Department of the Interior ("DOI") is required, "upon the request of any Indian tribe by tribal resolution," to enter into a self-determination contract with federally-recognized Indian tribes, allowing the tribal organization to plan, conduct, and administer certain authorized "programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law . . . ." 25 U.S.C. § 450f(a)(1); 25 U.S.C. § 450b(j).

The ISDEAA provides five specific circumstances under which the Secretary may reject proposed contracts. \* 25 U.S.C. § 450f(a)(2). In doing so, the DOI must provide written notice to the applicant, clearly demonstrating that the proposed contract falls within one of the five statutory bases for denying a contract. *Id.* Echoing the strong policy in favor of such contracts, Federal regulations specifically state that the Secretary cannot "decline an Indian tribe or tribal organization's proposed successor annual funding agreement . . . if it is substantially the same as the prior annual [\*21] funding agreement." 25 C.F.R. § 900.32.

#### **FOOTNOTES**

9 The five grounds for denying a contract under Section 450f of the ISDEAA are as follows:

(A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(B) adequate protection of trust resources is not assured;

(C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(D) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 450j-1(a) of this title; or

(E) the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under paragraph (1) because the proposal includes activities that cannot lawfully be carried out by the contractor.

25 U.S.C. § 450f(a)(2)

In this case, both parties concede that defendants did not provide written notice demonstrating that the Tribe's proposed AFA fell within one of the five statutory grounds for denying a contract. (Pl.'s Mem. at 12; Defs.' Opp'n at 14 n.6.; BIA's rejection letter.)

**[\*22]** However, as defendants emphasize, "[t]here [is] no need for [the] BIA to address the five statutory bases for declining an ISDA contract . . . , because [the Tribe] could not satisfy an even more fundamental requirement in the statute--the requirement that DOI contract with a 'tribal organization.'" (Def.'s Opp'n at 14 n.6.) The DOI may only enter into self-determination contracts with "tribal organizations." See 25 U.S.C. § 450(b) (defining "self-determination contract" as "a contract . . . entered into . . . between a tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services . . ."). The ISDEAA defines "tribal organization" as "the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities . . . ." 25 U.S.C. § 450b(l).

Although the BIA renewed the Tribe's AFA every year between 1999 and 2007, it did so before the courts. **[\*23]** affirmed the BIA's position that the Tribe lacked a recognized governing body. CVMT I, 424 F. Supp. 2d at 202-03. In CVMT I, the Tribe brought an action for declaratory and injunctive relief, alleging that the government had interfered with the Tribe's internal affairs and, in refusing to adopt the Tribe's constitution, violated the Indian Reorganization Act, 25 U.S.C. section 476(h). Id. at 197, 201. In dismissing the Tribe's claims, the court agreed with the government's contention that the Tribe lacked a recognized governing body. Id. at 202-03. As the district and appellate courts expressly stated, the government "ha[s] a duty to conduct business only with lawfully-constituted governing bodies who represent the tribal membership" and thus the government must determine "whether a tribe has properly organized itself to qualify for federal benefits" before contracting with that particular tribe. CVMT I, 424 F. Supp. 2d at 201; CVMT II, 515 F.3d at 1267.

Defendants rejected the Tribe's 2008 AFA because the Tribe lacked a recognized governing body; in doing so, defendants expressly relied upon the court's decision in CVMT I. That

decision was affirmed by the circuit court. CVMT II, 515 F.3d at 1267. **[\*24]** Although the ultimate issue in those cases may be distinguished from the case at hand, the rationale in CVMT I and II applies equally here. Like CVMT I and II, the BIA's decision here turned on whether the Tribe had a recognizable governing body. The BIA's determination that the Tribe did not was affirmed by the courts in CVMT I and II. Based on those decisions, this court cannot find that plaintiff is likely to succeed on the merits of its claims in this case.

For these reasons, the Tribe cannot establish entitlement to a preliminary injunction. Therefore, even if this court were to reach the merits of plaintiff's claims, plaintiff's motion for a preliminary injunction would be DENIED.

#### **CONCLUSION**

Based on the foregoing, the court dismisses this action, without prejudice, for lack of jurisdiction based on plaintiff's failure to exhaust administrative remedies. Alternatively, even assuming arguendo that the court had jurisdiction, plaintiff has not shown it is likely to succeed on the merits of its claims because the government's basis for denying the AFA has been upheld by the courts.

IT IS SO ORDERED

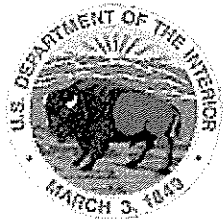
DATED: February 23, 2009.

/s/ Frank C. Damrell, Jr.

FRANK C. DAMRELL, JR.

UNITED STATES DISTRICT **[\*25]** JUDGE

## DOCUMENT NO. 72



## INTERIOR BOARD OF INDIAN APPEALS

California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs

51 IBIA 103 (01/28/2010)

### Related Board Cases:

53 IBIA 51

47 IBIA 91

46 IBIA 249



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
 INTERIOR BOARD OF INDIAN APPEALS  
 801 NORTH QUINCY STREET  
 SUITE 300  
 ARLINGTON, VA 22203

CALIFORNIA VALLEY MIWOK	)	Order Dismissing Appeal in Part and
TRIBE,	)	Referring Appeal in Part to the
Appellant,	)	Assistant Secretary - Indian Affairs
	)	
v.	)	
	)	Docket No. IBIA 07-100-A
PACIFIC REGIONAL DIRECTOR,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	January 28, 2010

The California Valley Miwok Tribe (Tribe) (formerly known as Sheep Ranch Rancheria, and Sheep Ranch of Me-wuk Indians of California), under the direction of Silvia Burley as the Tribe's Chairperson,<sup>1</sup> appealed to the Board of Indian Appeals (Board) from an April 2, 2007, decision (Decision) of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director affirmed a November 6, 2006, decision of the BIA Central California Agency Superintendent (Superintendent) that BIA would "assist" the Tribe in organizing a tribal government. To do so, the Superintendent announced that BIA would sponsor a "general council meeting of the Tribe," to which BIA would invite tribal members (apparently numbering six) as well as "potential" or "putative" members (apparently numbering in the several hundreds). BIA decided the criteria for (and intends to make individual eligibility determinations for) the class of "putative" members who would be allowed to participate in the general council meeting, and whose involvement BIA deemed necessary in order to include the "whole tribal community" in the tribal organization and membership decisions. BIA concluded that these actions were necessary because until the tribal organization and membership

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<sup>1</sup> Our caption of the appeal reflects the entity in whose name the appeal was filed. As will become apparent, Burley's position and authority to bring this appeal in the name of the Tribe is disputed by both BIA and by Yakima Dixie (Yakima), a tribal member who claims to be the "Hereditary Chief" of the Tribe. Our references in this decision to Burley as the "appellant" are simply for the sake of identifying actions and positions with the individuals involved, and do not imply a decision by the Board, one way or the other, on the underlying dispute over whether Burley has authority to bring this appeal on behalf of the Tribe.

issues were resolved, a leadership dispute between Burley and Yakima, *see supra* note 1, could not be resolved, and resolution of that dispute was necessary for a functioning government-to-government relationship with the Tribe.

Burley appealed from the Decision, objecting on three grounds: (1) the Decision, as partially implemented, violated the Tribe's Fiscal Year (FY) 2007 contract with BIA under the Indian Self-Determination and Education Assistance Act (ISDA), *see* Pub. L. No. 93-638, 25 U.S.C. § 450 *et seq.*, through which the Tribe performed governmental and enrollment functions; or, in the alternative, that the Decision constituted an unlawful reassumption of that contract, *see* 25 C.F.R. Part 900, Subpart P (Retrocession and Reassumption Procedures); (2) the Tribe is already organized, BIA's proffered "assistance" was not requested by the Tribe, and thus BIA's action constitutes an impermissible intrusion into tribal government and membership matters that are reserved exclusively to Indian tribes; and (3) the Regional Director erred in stating that the Tribe was never terminated and thus is not a "restored" tribe, which is a status that is relevant to the Tribe for purposes of Indian gaming. The Regional Director and Yakima<sup>2</sup> seek dismissal of this appeal on the grounds that Burley lacks authority to represent the Tribe, and that intervening Federal court decisions, in litigation brought by Burley against the Department of the Interior, are dispositive against her in this appeal.

We need not decide whether Burley has authority to represent the Tribe in claiming that the Decision, as partially implemented, violated the Tribe's FY 2007 ISDA contract because another jurisdictional bar precludes us from considering the claim: the Board does not have jurisdiction to review an ISDA breach-of-contract claim against BIA. Burley's assertion that the Decision constituted an illegal "reassumption" of the ISDA contract suffers the same fate because it is, in substance, simply a recharacterization of her breach-of-contract claim, and it rests on a misunderstanding of the applicable regulations concerning ISDA contract reassumption.

Burley's authority to represent the Tribe with respect to its second claim is closely related to the underlying merits of those claims, and because we conclude that we do not have jurisdiction over the subject matter of those claims, we also dismiss them on

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<sup>2</sup> Yakima claims to represent a class of "putative" tribal members, but the record contains no basis upon which the Board can make a determination of which, if any, individuals have authorized Yakima to represent their interests in this appeal, or whether any other individuals would in fact qualify as interested parties. Yakima does qualify as an interested party, and whether or not he represents other individuals is not relevant to our consideration of his pleadings or our disposition of this appeal.



jurisdictional grounds, independent of whether or not Burley is authorized to represent the Tribe in this appeal. In 2005, before the Decision was issued, the Acting Assistant Secretary confirmed as final for the Department a decision made by BIA in 2004 that BIA does not consider the Tribe to be organized. With exceptions not relevant here, the Board does not have authority to review a decision of the Assistant Secretary. Moreover, the Department's position declining to recognize the Tribe as organized was upheld in Federal court.

The Regional Director's Decision, however, goes beyond what was decided or confirmed by the Assistant Secretary. To the extent that it does, our review would not necessarily be precluded by the Assistant Secretary's action. But another jurisdictional hurdle exists: the Decision decides what is effectively and functionally a tribal enrollment dispute, for purposes of determining who BIA will recognize, individually and collectively, as members of the "greater tribal community" that BIA believes must be allowed to participate in the general council meeting of the Tribe for organizational purposes. The Board lacks jurisdiction over tribal enrollment disputes. Thus, we lack jurisdiction over Burley's appeal regarding BIA's actions to assist the Tribe in organizing itself. Because this portion of the Decision effectively implicates a tribal enrollment dispute, we refer Burley's second claim to the Assistant Secretary.

With respect to Burley's third claim — that the Tribe is a "restored" tribe and that the Regional Director erred in stating otherwise — we conclude that Burley has not shown that the Tribe has been adversely affected by this statement in the Decision. Thus, the Tribe lacks standing to raise that claim in this appeal. Even assuming that the Tribe had standing, we would nevertheless dismiss this claim because it is not ripe for our review. By dismissing this claim, we leave for another day resolution of this issue regarding the Tribe's status.

### **Background**

This appeal involves an Indian tribe whose legal status as a tribal political entity is undisputed as a matter of Federal law, *see* 74 Fed. Reg. 40,218, 40,219 (Aug. 11, 2009) (Federally recognized tribes list), but whose polity in fact — who or what individuals collectively constitute, or are entitled to constitute, the "Tribe" for purposes of participating in organizing a tribal government and establishing membership criteria — is bitterly disputed within the handful of individuals who have been recognized by BIA as the Tribe's currently enrolled members. Some background on the Sheep Ranch Rancheria and the history leading up to the present dispute will provide context for understanding our characterization of this appeal and, in particular, our conclusion that the Tribe's second claim should be referred to the Assistant Secretary.

## I. Historical Background

In 1915, an Indian Agent forwarded to the Commissioner of Indian Affairs a census “of the Indians designated ‘Sheepranch-Indians’ . . . aggregating 12 in number,” which the Agent described as constituting “the remnant of once quite a large band of Indians in former years living in and near the old decaying mining town known and designated on the map as ‘Sheepranch.’” Administrative Record (AR), Tab 94. The Indian Agent recommended purchasing land for the Indians, and in 1916, the United States purchased approximately 0.92 acres in Calaveras County, California, which became known as the Sheep Ranch Rancheria. *See* AR, Tab 93.

In 1934, Congress passed the Indian Reorganization Act (IRA), which, among other things, required the Secretary to hold elections through which the adult Indians of a reservation decided whether to accept or reject the applicability of certain provisions of the IRA to their reservation, including provisions authorizing tribes to organize and adopt a constitution under the IRA. *See* 25 U.S.C. §§ 476 and 478. The IRA voter list for Sheep Ranch Rancheria identified only a single eligible voter, Jeff Davis, who voted in favor of the IRA.<sup>3</sup> AR, Tabs 90-92. Neither Davis, nor any subsequent residents of the Rancheria, organized a tribal government pursuant to the IRA.

In 1966, during a period in which the Federal government sought to terminate the Federal trust relationship with various Indians and Indian tribes, BIA prepared a plan to distribute the assets of the Sheep Ranch Rancheria as a prelude to termination. *See* AR, Tab 88; *see generally* California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, *as amended by* Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390. The distribution plan recited that several Indian families (not identified) had lived on the Rancheria since it was purchased, but none of the land had been allotted or formally assigned to individuals, and for the 8 years preceding, the only house had been occupied by Mabel Hodge Dixie.<sup>4</sup> BIA determined that Mabel was the only Indian entitled to receive the assets of the

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<sup>3</sup> The IRA defined “tribe” as referring to “any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.” 25 U.S.C. § 479.

<sup>4</sup> The 1915 census identified a Peter Hodge and his family as among the Sheepranch Indians, although any relationship between Mabel and Peter is not shown in the record.

Rancheria, and she voted to accept the distribution plan and was issued a deed to the land. AR, Tabs 86-88.<sup>5</sup>

## II. BIA Dealings with the Tribe Between 1994 and 2003.

Mabel was the mother of Yakima, who grew up on the Rancheria. *See* AR, Tab 73 at 5-6. In 1994,<sup>6</sup> Yakima wrote to the Superintendent, expressing a need for BIA assistance for home repairs, and describing himself as “the only descendant and recognized . . . member” of the Tribe. AR, Tab 76.

Sometime during the 1990s, Burley contacted BIA for information related to her Indian heritage, which BIA provided, and by 1998 — at BIA’s suggestion — Burley had contacted Yakima.<sup>7</sup> On August 5, 1998, Yakima, “[a]s Spokesperson/Chairman” of the Tribe, signed a statement accepting Burley as an enrolled member of the Tribe, and also enrolling Burley’s two daughters and her granddaughter. AR, Tab 75.

In September of 1998, Yakima and Burley met at the Rancheria with BIA staff from the Sacramento Area (now “Pacific Regional”) Office to discuss organizing the Tribe. Among the issues discussed was developing criteria for membership in the Tribe. BIA staff suggested during the meeting that Yakima had both the authority and broad discretion to decide that issue. *See, e.g.*, AR, Tab 73 at 7-8, 24-25. Brian Golding, a BIA Tribal Operations Officer, characterized Yakima and his brother, Melvin, along with Burley and her adult daughter, as the “golden members” of the Tribe. Because Melvin’s whereabouts were unknown at the time, Golding stated: “that basically leaves us with three people.” AR, Tab 73 at 32. Golding continued, “usually what we’ll do is we’ll call that group of

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<sup>5</sup> In 1967, Mabel executed a quit claim deed to convey the land back to the United States, and following her death, the Department of the Interior probated the property and determined that it passed to Mabel’s husband and her four sons, as her heirs.

<sup>6</sup> We cannot determine with certainty the date of the letter, but a barely legible portion of a date stamp appears to read “94.”

<sup>7</sup> It appears that Burley may trace her ancestry to a “Jeff Davis” who was listed on the 1913 census: his age (58) in 1913 is consistent with his date of birth (1855) identified in genealogical information sent to Burley by BIA. *See* AR, Tabs 77 & 94. As noted, the sole eligible voter for the Sheep Ranch Rancheria IRA vote in 1935 was also a “Jeff Davis,” but the date of birth listed for him is not the same as that for the Jeff Davis identified in the genealogical information sent to Burley. *Compare* AR, Tab 92 *with* AR, Tab 77.

people a general council. They're the body. They're the tribe. They're the body that has the authority to take actions on behalf of the tribe. So in this case, we'd be looking at, possibly, three people." *Id.*

In a followup letter to Yakima, dated September 24, 1998, the Superintendent described what BIA considered to be the unusual circumstances in which the Tribe and BIA found themselves. Typically, according to the Superintendent, California tribes that had been unlawfully terminated by the Federal government regained Federal recognition through litigation, and a court judgment identified the class of persons entitled to organize the tribe — e.g., the distributees and their dependents, and their lineal descendants. Although the Sheep Ranch Rancheria land had been distributed to Mabel pursuant to a distribution plan, the Department apparently never published a final notice of termination and had accepted the land back from Mabel through a quit claim deed, thus essentially administratively "unterminating" the Tribe before it had been formally terminated. Unlike terminated tribes that were restored through litigation, there was no court decision for Sheep Ranch Rancheria to which the Tribe and BIA could look to determine who was a member of the Tribe or otherwise entitled to organize it.

Under the circumstances, BIA concluded that "for purposes of determining the initial membership of the Tribe," BIA must include Yakima and Melvin, as the remaining heirs of Mabel Hodge Dixie. AR, Tab 72 at 2 (unnumbered). In addition to those two, BIA recognized that Yakima had adopted Burley, her two daughters, and her granddaughter, into the Tribe, and therefore those adoptees who were of majority age also had "the right to participate in the initial organization of the tribe." *Id.* The Superintendent continued:

At the conclusion of [the meeting with BIA staff], you were going to consider *what enrollment criteria should be applied to future prospective members. Our understanding is that such criteria will be used to identify other persons eligible to participate in the initial organization of the Tribe.* Eventually, such criteria would be included in the Tribe's Constitution.

*Id.* (emphasis added).

The Superintendent stated that "given the small size of the Tribe, we recommend that the Tribe operate as a General Council," *id.* at 3, which could elect or appoint a chairperson and conduct business. In order to provide assistance, the Superintendent offered a \$50,000 ISDA grant available for improving tribal governments, and provided a draft resolution for the Tribe to use in requesting the grant. *Id.*

On November 5, 1998, Yakima and Burley signed a resolution establishing a General Council, consisting of all adult members of the Tribe, to serve as the governing body of the Tribe. AR, Tab 71. In less than 5 months, however, a leadership dispute arose between Burley and Yakima. In April of 1999, Yakima purportedly resigned as chairperson of the Tribe, concurred in General Council action appointing Burley as Chairperson, and then repudiated his resignation, while still giving Burley "the right to act as a delegate to represent" the Tribe, subject to his orders. *See* AR, Tabs 68-70.

There was sufficient cooperation, however, for Yakima, Burley, and the elder of Burley's daughters, Rashel Reznor, to submit a petition to BIA asking for a Secretarial election to be held, pursuant to the IRA, 25 U.S.C. § 476, to vote on a proposed constitution. AR, Tab 66. The proposed constitution (1999 Yakima-Burley Constitution) identified the "base enrollees" as Yakima, Burley, Burley's two daughters, Burley's granddaughter, and (prospectively) the direct lineal descendants of these base enrollees. It also provided that all descendants of base enrollees and all descendants of any person who became a member subsequent to the adoption of the constitution "shall automatically become members of the Band at birth." *Id.*, 1999 Yakima-Burley Constitution, Art. II, Sec. 3(B). Other persons "of Sheep Ranch blood" could also be adopted into membership by a 2/3 majority vote of the General Council, which consisted of all members 18 years of age or older. *Id.*, 1999 Yakima-Burley Constitution, Art. II, Sec. 3(C) & Art. III, Sec. 2. BIA did not call a Secretarial election to vote on the 1999 Yakima-Burley Constitution.

By October of 1999, any remaining cooperation between Yakima and Burley appears to have evaporated, and Yakima sought assistance from BIA to expel Burley and her family from the Tribe. *See* AR, Tabs 57, 62. In December of 1999, Yakima provided BIA with a tribal constitution, purportedly adopted on December 11, 1999 (1999 Yakima Constitution). Enclosed with the constitution were documents by which Yakima, as Chairperson, purported to enroll seven additional individuals as members of the Tribe. The 1999 Yakima Constitution identified the Tribe's membership as (1) all persons who were listed as distributees and dependent members of their immediate families in the Sheep Ranch Rancheria Distribution Plan, (2) lineal descendants of those falling into the first category, (3) all persons enrolled by Yakima, and (4) all persons approved in the future by the Chairperson and Tribal Council to become members.

By letter dated February 4, 2000, the Superintendent returned the 1999 Yakima Constitution to Yakima without action, observing that the body that approved it did not appear to be the proper body to do so. The Superintendent agreed to a meeting with Yakima later in the month, with notice to Burley.

Burley and her daughter declined to participate in the meeting between BIA and Yakima, and on March 7, 2000, the Superintendent sent her a summary of the meeting. AR, Tab 8. The Superintendent reaffirmed BIA's view that the General Council consisted of Yakima, Burley, and Rashel. The Superintendent reported that BIA had rejected an assertion by Yakima that he had only given "limited enrollment" to Burley and her family, and also reported that BIA had advised Melvin, with whom BIA was now in contact, that as an heir of Mabel Hodge Dixie for the Rancheria land, he was entitled to participate in the organization of the Tribe.

Meanwhile, Burley and her daughter Rashel adopted their own tribal constitution, on March 6, 2000 (2000 Burley Constitution). The 2000 Burley Constitution identified the membership of the Tribe as Yakima, Burley, her two daughters, and her granddaughter, and provided that any further membership would be decided by a subsequent enrollment ordinance to be adopted by 2/3 majority vote of the Tribal Council. On October 31, 2001, the Superintendent wrote to Burley to "acknowledge receipt" of the 2000 Burley Constitution, as amended and corrected in September 2001. The Superintendent stated that BIA could not act on it without a formal request. The Superintendent concluded his letter by stating that "[t]he Agency will continue to recognize the Tribe as an unorganized Tribe and its elected officials as an interim Tribal Council until the Tribe takes the necessary steps to complete the Secretarial election process." AR, Tab 49 at 2 (unnumbered).

Between 1999 and 2003, BIA corresponded with Burley by addressing and recognizing her as the Tribe's Chairperson, or sometimes as "Interim Chairperson." *See, e.g.*, AR Tabs 8, 14 (Nov. 24, 2003, Letter from Superintendent), and 52. Eventually, as discussed in Part IV of this Background, BIA began to refer to Burley as a "person of authority" whom BIA considered as representing the Tribe for government-to-government purposes.

### III. The Tribe's ISDA Contract

Beginning in 1999, and continuing through FY 2007, BIA executed an ISDA contract with the Tribe for improving tribal government, which apparently included such functions as developing a tribal enrollment ordinance and membership lists. Initially, BIA seems to have treated Burley as the Tribe's Chairperson for purposes of executing the contract. Later, when BIA began referring to her as a "person of authority," it continued to relate to the Tribe through Burley for purposes of executing annual funding agreements for the ISDA contract. The Decision that is the subject of this appeal was issued during FY 2007, when an ISDA contract funded for that year was in effect.

For FY 2008, the Superintendent returned without action a proposal from Burley to renew or re-fund the Tribe's ISDA contract, after concluding (in light of several court decisions) that Burley had not shown that the Tribe had authorized her to submit the ISDA contract proposal. See *California Valley Miwok Tribe v. Central California Agency Superintendent*, 47 IBIA 91 (2008). Burley's attempt to challenge, in court, BIA's decision not to renew the Tribe's ISDA contract for FY 2008, was unsuccessful. See Memorandum and Order, *California Valley Miwok Tribe v. Kempthorne*, No. Civ. S-08-3164 FCD/EFB (E.D. Cal. Feb. 23, 2009), *appeal docketed*, No. 09-15466 (9th Cir. Mar. 12, 2009).

For FY 2009, Burley again submitted a contract proposal and BIA again returned it without action on the same grounds relied upon for returning the FY 2008 proposal. The Tribe, through Burley, appealed that decision, and that appeal is pending before the Board in *California Valley Miwok Tribe v. Central California Agency Superintendent*, Docket No. IBIA 09-13-A.

#### IV. Superintendent's 2004 Decision and Acting Assistant Secretary's 2005 Decision

On March 26, 2004, in a letter that the Acting Assistant Secretary later relied upon as a final Departmental decision, the Superintendent wrote to Burley, acknowledging receipt on February 11, 2004, of a document purporting to be the Tribe's constitution, which the Superintendent understood had been submitted to demonstrate that the Tribe is an "organized" tribe. Although the letter was addressed to "Silvia Burley, Chairperson," in the text the Superintendent stated that BIA recognized Burley as "a person of authority" within the Tribe, but did "not yet view [the] tribe to be an 'organized' Indian Tribe." AR, Tab 40 at 1 (2004 Decision). The Superintendent stated that when a tribe that has not previously organized seeks to do so, BIA has a responsibility to determine that the organizational efforts "reflect the involvement of the whole tribal community." *Id.* He noted a lack of evidence of any outreach to Indian communities in and around Sheep Ranch or to persons who have maintained any cultural contact with Sheep Ranch. *Id.* at 2. The Superintendent further stated that "[i]t 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." *Id.*

The Superintendent expressed concern that the "base roll" submitted by Burley contained only five names, "thus, suggest[ing] 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." *Id.* According to the Superintendent, BIA's experience with

the Tribe's "sister Miwok tribes" led BIA to believe that "Miwok tradition favors base rolls identifying persons found in Miwok tribes," noting that the Amador County tribes used the 1915 Miwok Indian Census for that County; El Dorado County tribes used a 1916 Indian census; and Tuolumne County tribes used a 1934 IRA voter list. *Id.* The Superintendent emphasized "the importance of the participation of a greater tribal community in determining membership criteria." *Id.* at 3. The Superintendent advised Burley of her right to appeal the letter to the Regional Director. No appeal was filed.

On February 11, 2005, Principal Deputy and Acting Assistant Secretary - Indian Affairs Michael D. Olsen dismissed an "appeal" that Yakima had filed in 2003 with the Office of the Assistant Secretary to challenge BIA's recognition of Burley as Chairperson of the Tribe (2005 Decision). The 2005 Decision dismissed Yakima's appeal on procedural grounds, finding, among other things, that the 2004 Decision had rendered the appeal moot.<sup>8</sup> The Assistant Secretary interpreted the 2004 Decision as making clear that BIA did not recognize Burley as chairperson, and that until the Tribe has organized itself, the Department could not recognize anyone as the Tribe's chairperson. The Assistant Secretary stated that "the Tribe is not an organized tribe," "BIA does not recognize any tribal government," and "[t]he first step in organizing the Tribe is identifying the putative tribal members." 2005 Decision at 1-2.

Burley, in the name of the Tribe, filed suit against the Department, challenging the 2004 Decision and the 2005 Decision, and the court accepted the two decisions as final Departmental action for purposes of judicial review. *See California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 201 n.5 (D.D.C. 2006). The court rejected Burley's claim that the Department's refusal to recognize as valid the constitution proffered by Burley, the Department's refusal to consider the Tribe as organized, and the Department's insistence on participation of a "greater tribal community" in organizational efforts, constituted unlawful and improper interference in the internal affairs of the Tribe. The

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<sup>8</sup> Perhaps because he concluded that Yakima's appeal was moot, Olsen did not otherwise address his jurisdiction to consider such an appeal. Under 25 C.F.R. Part 2, an appeal from a Regional Director's decision ordinarily must be filed with the Board, after which the Assistant Secretary has a 20-day window in which to assume jurisdiction over the appeal. *See* 25 C.F.R. §§ 2.4(e), 2.20(c). Yakima did not file his appeal with the Board.



court dismissed Burley's suit for failure to state a claim, thus leaving the 2004 and 2005 Decisions intact.<sup>9</sup>

On appeal, the U.S. Court of Appeals affirmed the District Court's decision. *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008). The court found reasonable the Department's position that the Secretary's authority under the IRA included the power to refuse to recognize the validity of Burley's proffered tribal constitution when it "does not enjoy sufficient support from [the] tribe's membership." *Id.* at 1267. The court noted that, by Burley's own admission, the Tribe had a potential membership of 250, and upheld the Secretary's decision to reject what the court characterized as the "antimajoritarian gambit" by Burley and her small group of supporters. *Id.*

#### V. BIA Decisions in 2006 and 2007 and Subsequent Actions

After the District Court had issued its decision in *California Valley Miwok Tribe v. United States*, but while Burley's appeal to the Court of Appeals was pending, the Superintendent issued his November 6, 2006, decision, AR, Tab 19, and, following Burley's appeal, the Regional Director upheld the Superintendent, in the April 2, 2007, Decision, AR, Tab 3, that is the subject of this appeal.

The Superintendent's 2006 decision was addressed to both Burley and Yakima, and characterized BIA's action as an offer to assist the Tribe in the Tribe's efforts "to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to the clear majority of those Indians." AR, Tab 19 at 1. The Superintendent disclaimed any intent to interfere with the Tribe's right to govern itself, but found that the leadership dispute between Burley and Yakima threatened the government-to-government relationship between the United States and the Tribe. The Superintendent announced that the Agency

will publish a notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process. The notice shall invite the members of the Tribe and

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<sup>9</sup> The development of competing constitutions has not abated. In 2006, an 11-person group of 12 "initial members" of the Tribe aligned with Yakima purported to adopt a constitution, which recognized Burley as the 12th "initial member," but did not recognize Burley's daughters or granddaughter as members.

potential members to the meeting where the members will discuss the issues and needs confronting the Tribe.

*Id.*

The Superintendent listed several proposed issues for the general council to discuss, and described the necessary tasks for the general council as follows:

The general council first needs to determine the type of government your tribe will adopt. . . . Next, the general council needs to agree to the census or other documents that establishes the original members of the Rancheria. That census should be the starting point from which the tribe develops membership criteria. The immediate goal is determining membership of the tribe. Once membership is established and the general council determines the form of government, then the leadership issues can be resolved.

*Id.* at 2. The Superintendent concluded his letter by stating that BIA very much wished to have both Burley and Yakima participate, but that BIA would proceed with the process even if one or both of them declined to participate. *Id.*

Burley appealed the Superintendent's 2006 decision to the Regional Director, arguing that BIA had recognized her as a person of authority and thus there was no leadership dispute; that BIA previously had already decided which individuals had the right to organize the Tribe; that BIA lacked authority to organize an Indian tribe unless requested to do so by the tribe's government; and that BIA lacked authority to establish a class of individuals entitled to participate in organizing the Tribe as members of a "general council" convened by BIA. AR, Tabs 14, 17. The Superintendent responded to Burley's arguments by stating that

[i]t is not the goal of the Agency to determine membership of the Tribe. The purpose of the [Agency's] letter was to bring together the 'putative group' who believe that they have the right to participate in the organization of the Tribe . . . . It was not, and is not, the intent of the Agency to determine who the members of the Tribe will be. Then the 'putative' group can define the criteria for membership. . . .

AR, Tab 13 at 4.

In the Decision, the Regional Director first concluded that because BIA did not recognize a tribal government for the Tribe and because Burley and Yakima were at an

impasse, the government-to-government relationship was threatened, and thus it was necessary for BIA to assist the Tribe with the Tribe's organizational efforts. The Regional Director recounted the history of the Tribe, and in the course of that background, stated that a notice of termination was never published in the Federal Register or otherwise issued for the Sheep Ranch Rancheria, that the Tribe was included in a 1972 list of Federally recognized tribes, and therefore that BIA has never viewed the Tribe as having been terminated and then "restored" to Federal recognition. Decision at 2.

The Regional Director also recounted BIA's dealings with both Yakima and Burley, concluding that "both [had] failed to identify the whole community who are entitled to participate in the Tribe's efforts to organize." Decision at 4. The Regional Director agreed that it was not the Superintendent's goal to determine the membership of the Tribe, but instead to

bring together the "putative group" who believe that they have the right to participate in the organization of the Tribe . . . . We believe the main purpose was to assist the Tribe in identifying the whole community, the "putative" group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. A determination of who is a tribal member must, however, [precede] any determination of who is a tribal leader.

*Id.* at 5. The Regional Director stated that "[i]n all fairness to the current tribal membership and the 'putative' group," he agreed with the Superintendent's proposed course of action. *Id.* Thus, the Regional Director affirmed the Superintendent's decision and remanded the matter for implementation.

On April 10 and 17, 2007, shortly after the Decision was issued and before Burley filed this appeal, BIA published notices in local newspapers announcing its plans

to assist the [Tribe] in its efforts to organize a formal governmental structure that is acceptable to all members. The first step in the organizational process is to identify putative members of the Tribe who may be eligible to participate in all phases of the organizational process of the Tribe. Therefore, if you believe you are a lineal descendant of a person(s) listed below, you will need to [submit specified documentation to BIA] . . . that will assist the Bureau Team in determining your eligibility.

*Calaveras Enterprise*, April 10 and 17, 2007, Ex. 1 to Appellant's Opening Brief.<sup>10</sup> The notice described the putative members as lineal descendants of (1) individuals listed on the 1915 census of the Sheepbranch Indians, (2) Jeff Davis (the sole individual on the IRA voter list in 1935), and (3) Mabel Hodge Dixie (the sole distributee under the 1964 Distribution Plan). The notice continued:

All individuals who have been determined to be eligible to participate in the organization of the Tribe will be notified by letter from the Agency. All individuals not determined eligible will be noticed of their right to appeal to the BIA, Pacific Regional Director within 30 days of receipt of decision. Upon rendering final decisions regarding appeals filed, the Agency will notify all individuals determined to be eligible of the organizational meeting which will include an agenda of the next actions to be taken by the group.

*Id.*

Burley, in the name of the Tribe, and represented by counsel, appealed the Decision to the Board. Burley, the Regional Director, and Yakima filed briefs.

## VI. Arguments on Appeal

Burley characterizes the appeal as "rais[ing] the permissible scope of BIA involvement in internal Tribal government functions through unlawful reassumption of [ISDA] contract functions involving enrollment." Opening Brief at 3. According to Burley, the issues raised include the Regional Director's findings that BIA, rather than the Tribe, can determine tribal membership; that BIA may designate a putative class of membership; that the Tribe is an unorganized Tribe; that BIA can determine the make up of tribal government and refuse to recognize the Tribe's judicial forum; that BIA can hold a general council meeting for the Tribe without permission from the Tribe's governing body; and "lastly," that the Tribe was never terminated and restored. *Id.* at 3-4. Burley contends

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<sup>10</sup> Burley objected to the Board that BIA's public notices violated the automatic stay that attaches to BIA decisions, *see* 25 C.F.R. § 2.6, and were issued after BIA no longer had jurisdiction over the matter. While not conceding a violation, BIA has represented to the Board that it has refrained from taking any further action to convene a general council meeting. Independent of BIA's authority to publish them, the notices reflect, as a factual matter, BIA's understanding of the nature, scope, and intent of the Superintendent's November 6, 2006, decision and the Regional Director's Decision upholding the Superintendent.

that she was elected Chairperson of the Tribe and has been so recognized by BIA; that the five adult members of the Tribe adopted a general council form of government and thereafter the Tribe was no longer an “unorganized” tribe; that the Tribe is a party to an ISDA contract with BIA; and that BIA’s actions to implement the Decision by publishing the newspaper notices constitute an unlawful reassumption of contract functions because BIA “has engaged its own process of promulgating enrollment standards that differ from those of the Tribe,” which violates the terms of the ISDA contract. *Id.* at 11. Burley argues that BIA has overstepped its authority and impermissibly interfered with decisions on tribal membership and tribal governance that are reserved exclusively to Indian tribes. Burley also argues that the Regional Director erred in stating that the Tribe is not a “restored” tribe, because once fee title to the Rancheria land passed to Mabel Dixie, the Tribe was terminated, and therefore the Tribe necessarily must be a “restored” tribe.

The Regional Director contends that the appeal should be dismissed because the appeal cannot properly be brought in the name of the Tribe. The Regional Director argues that (1) the Decision was directed at Burley, as a person claiming to be the leader of the Tribe, and was not directed at the Tribe; (2) the appeal seeks to vindicate Burley’s own rights as an alleged elected official, and does not represent the interests of the Tribe as a whole; and (3) the Tribe lacks standing to appeal because it was not adversely affected by the Decision. In making the standing argument, the Regional Director contends that the Decision did not violate the ISDA contract or the Tribe’s right to determine its own membership, and that until the organizational process is complete, it is not possible to determine whether the Tribe was injured. The Regional Director also defends the Decision on the merits.

Yakima argues that the Superintendent’s 2004 Decision and the Assistant Secretary’s 2005 Decision, as final Departmental decisions, are dispositive of the issues raised in this appeal and thus prevent the Board from considering the appeal on the merits. Yakima also contends that this matter constitutes an enrollment dispute, and the Board lacks jurisdiction to adjudicate tribal enrollment disputes. *See* 43 C.F.R. § 4.330(b)(1).

## Discussion

### I. Jurisdictional Principles

The Board has jurisdiction to review an appeal from a non-emergency rescission and reassumption of an ISDA contract, *see* 25 C.F.R. § 900.150(e), but the Board does not have general jurisdiction over disputes that arise after an ISDA contract has been awarded, *id.* § 900.151(a) & (b), including claims that a Federal agency has violated an ISDA

contract. *See id.* Part 900, Subpart N (Post-Award Contract Disputes). As a general rule, the Board has jurisdiction to review a decision of a BIA Regional Director. *See* 25 C.F.R. § 2.4(e);<sup>11</sup> 43 C.F.R. § 4.330(a). But, except by special delegation or request from the Secretary or Assistant Secretary, the Board is expressly precluded from adjudicating tribal enrollment disputes, *see* 43 C.F.R. § 4.330(b)(1), or stated more precisely, from adjudicating challenges to BIA actions deciding tribal enrollment disputes. *See Vedolla v. Acting Pacific Regional Director*, 43 IBIA 151, 154 n.4 (2006).<sup>12</sup> In addition, the Board does not have jurisdiction to review a decision by the Assistant Secretary. *Ramah Navajo Chapter v. Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs*, 49 IBIA 10, 11-12 (2009), and cases cited therein; *Felter v. Acting Western Regional Director*, 37 IBIA 247, 250 (2002).

With these jurisdictional principles in mind, we address each argument raised by Appellant in this appeal.<sup>13</sup>

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<sup>11</sup> BIA's appeal regulations refer to decisions made by an "Area Director," but the position is now titled "Regional Director."

<sup>12</sup> In *Vedolla*, the Board noted that regardless of section 4.330(b), the Board lacks jurisdiction to directly review enrollment (or other) actions by Indian tribes.

<sup>13</sup> Another jurisdictional principle applied by the Board is that it will only consider matters that are ripe for review. *See, e.g., U&I Redevelopment LLC v. Acting Northwest Regional Director*, 44 IBIA 240 (2007) (dismissing appeal for lack of ripeness); *Wind River Resources Corp. v. Western Regional Director*, 43 IBIA 1, 3 (2006) (describing the considerations for determining ripeness). The Board solicited briefing on this issue, and both the Tribe and the Regional Director contend that this appeal is ripe. Yakima contends that the appeal is not ripe because Burley is objecting only to a *process*, and not an outcome, and no definitive determinations "have . . . been made with respect to denominating the particular putative members and the broader community who might qualify as members." Answer of Interested Parties at 11. Yakima later contradicts himself, however, by asserting that "BIA has, now, formally defined the class of individuals with whom it will [meet] to organize the Tribe." *Id.* at 14. Except with respect to the Decision's conclusion that the Tribe is not a "restored" Tribe, *see infra* at 122-23, we agree that this appeal is ripe, and that no purpose would be served by dismissal without deciding those issues.

## II. Analysis

### A. Claims Based on Tribe's ISDA Contract

#### 1. Does the Decision Violate the Tribe's ISDA Contract?

Burley contends that the Decision, and subsequent notices identifying the class of putative members whom BIA would invite to a general council meeting of the Tribe, violated the Tribe's ISDA contract because the contract includes enrollment functions. As noted above, the Board lacks jurisdiction to consider claims that BIA breached a tribe's ISDA contract, and thus we dismiss this claim without addressing whether Burley would otherwise be authorized to bring such a claim on behalf of the Tribe.<sup>14</sup>

#### 2. Does the Decision Constitute an Impermissible Reassumption of the ISDA Contract?

Burley argues that the Decision, as partially implemented by the newspaper notices announcing criteria for "putative" members of the Tribe and announcing BIA's intent to convene a general council meeting, constitutes an impermissible "reassumption" of the Tribe's ISDA contract. The Regional Director argues that Burley does not have authority to represent the Tribe in asserting this claim and that the Tribe itself lacks standing because "until the organizational process is complete, we cannot know whether there has been an actual injury." Appellee's Opposition Brief at 9. We need not address the Regional Director's contentions because we conclude that Burley's impermissible-reassumption argument is simply a restatement of her breach-of-contract claim, over which we lack jurisdiction.

Under the ISDA regulations, "reassumption" means "*rescission*, in whole or in part, of a contract *and* assuming or resuming control or operation of the contracted program by

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<sup>14</sup> We note that an appeal was filed with the Civilian Board of Contract Appeals (CBCA) in the name of the Tribe, from the same actions challenged in this appeal (Superintendent's November 6, 2006, decision; Regional Director's April 2, 2007, Decision; and April 2007 newspaper notices), arguing that BIA's actions constituted an impermissible revision and/or amendment of the contract in violation of the contract and governing statute. The CBCA dismissed the appeal for lack of jurisdiction because the Tribe had made no claim to the awarding official and the awarding official had issued no decision. See *California Valley Miwok Tribe v. Department of the Interior*, CBCA 817-ISDA (Sept. 27, 2007) (dismissing appeal for lack of jurisdiction).

the Secretary without consent of the Indian tribe or tribal organization pursuant to the notice and other procedures set forth in subpart P.” 25 C.F.R. § 900.6 (emphases added). The “rescission” of a contract by one party refers to the “unilateral *unmaking* of a contract for a legally sufficient reason.” Black’s Law Dictionary 1332 (8th ed. 2004) (emphasis added). Subpart P of 25 C.F.R. Part 900 prescribes the specific circumstances under which an agency may rescind an ISDA contract, the specific procedural steps that must be followed, and the effective date of the rescission and reassumption. *See* 25 C.F.R. §§ 900.247 -.253.

In the present case, the Decision did not purport to rescind or terminate the Tribe’s ISDA contract for FY 2007, and the Regional Director does not argue on appeal that the contract was rescinded or terminated. Nor does Burley contend that BIA followed the proper procedures for rescinding the contract. Instead, Burley contends that BIA’s actions constituted unlawful interference with the Tribe’s ability to perform under the contract by essentially taking over enrollment activities. Burley describes this as a “reassumption,” but the actions described, in substance, do not fall within the regulatory definition of that term. In effect, Burley’s contention is a restatement of her allegation that BIA’s actions either breached or unlawfully interfered with the Tribe’s still-effective and still-valid FY 2007 ISDA contract.

Thus, for the same reason that we have dismissed Burley’s express breach-of-contract claim, we also dismiss Burley’s unlawful-reassumption claim: the Board lacks jurisdiction to consider what is in substance an ISDA breach-of-contract claim.

B. BIA’s Decision to Convene a General Council Meeting of the Tribe’s Current and Putative Membership and to Determine Criteria for Putative Membership

Burley contends that the Regional Director erred in stating that the Tribe is unorganized, and that because the Tribe (i.e., Burley’s faction) did not request assistance from BIA, BIA has no authority to convene a “general council” meeting of the Tribe, or to determine the class(es) of individuals who may participate in such a meeting. We conclude, based on the Assistant Secretary’s 2005 Decision, which included his acceptance of the Superintendent’s 2004 Decision as final for the Department, that the following determinations are not subject to further review by the Board in this appeal: (1) the Department does not recognize the Tribe as being organized or having any tribal government that represents the Tribe; (2) the Department does not recognize the Tribe as necessarily limited to Yakima, Melvin, Burley, her two daughters, and her granddaughter, for purposes of who is entitled to organize the Tribe and determine membership criteria; and (3) the Department has determined that it has an obligation to ensure that a “greater tribal community” be allowed to participate in organizing the Tribe. Each of these



determinations was either explicitly or implicitly accepted in the Assistant Secretary's 2005 Decision as final for the Department, *see supra* at 111-12, and the Board lacks jurisdiction to review a decision by the Assistant Secretary.

That does not end our inquiry, however, because the Regional Director's Decision arguably went beyond the above determinations by deciding more specifically what BIA would do to implement those determinations. In this appeal, Burley contends that BIA exceeded its authority in determining who would constitute the "greater tribal community," or class of "putative members," and in deciding that they could participate as part of a "general council" meeting of the Tribe, to decide membership and organizational issues.<sup>15</sup>

As evidenced by the decisions of the Superintendent and the Regional Director, and the public notices published by BIA in 2007,<sup>16</sup> BIA apparently has decided to create a base roll of individuals who satisfy criteria that BIA has determined to be appropriate and who

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<sup>15</sup> On October 13, 2009, Burley filed a request that the Board "take judicial notice of the United States Supreme Court's October 5, 2009, denial of [a petition for a writ of certiorari] in the *Hendrix v. Coffey* matter." *See Hendrix v. Coffey*, No. Civ. 08-605-M, 2008 WL 2740901 (W.D. Okla. July 10, 1008), *aff'd*, 305 Fed.Appx. 495 (10th Cir. 2008) (unpublished), *cert. denied*, 130 S. Ct. 61, 2009 WL 1106742 (U.S. Oct. 5, 2009). Burley characterized the *Hendrix* decisions as reaffirming well-settled principles of law that Indian tribes have complete authority to determine all questions of their own membership, and ascribed significance to the Supreme Court's recent denial of Hendrix's petition for a writ of certiorari. Counsel for the Tribe, Kevin M. Cochrane, Esq., of Rosette & Associates, PC, subsequently certified that he had reviewed and endorsed Burley's request as one made in good faith and for which a reasonable legal justification exists. Because we lack jurisdiction to consider the merits of Burley's second claim, we decline to further consider Burley's request or Cochrane's certification. *But see Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950) (Opinion of Justice Frankfurter) ("This Court has rigorously insisted that such a denial [of certiorari] carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review.").

<sup>16</sup> BIA published the newspaper notices after the Regional Director issued the Decision, but before the Tribe timely filed this appeal. Subsequently, the Tribe objected to BIA's action as violating the automatic stay. *See* 25 C.F.R. § 2.6. We agree with the Tribe that BIA should not have begun to implement a decision that was not effective and that was subject to appeal. BIA subsequently confirmed with the Board that it cannot take any action to assist the Tribe in organizing while Burley's appeal remains pending. *See* Appellee's Opposition to Appellant's Motion to Enforce Stay at 1; *see also supra*, note 10.

will be entitled to participate — effectively as members (albeit in a somewhat undefined capacity) — in a “general council” meeting of the Tribe to organize the Tribe. Although the facts of this case render BIA’s decision far from a typical enrollment adjudication, we conclude that, in substance, that is what it is. Whether or not some or all of the individuals BIA would determine, under the Decision, to be “putative members” of the Tribe will ultimately be enrolled, BIA’s determination of their “putative membership” apparently will effectively “enroll” them as members of the “general council” that is to meet. And that general council, as apparently envisioned by BIA, will have the authority to determine permanent membership criteria.

Understood in the context of the history of this Tribe, and BIA’s dealings with the Tribe since approximately 1999, this case is properly characterized as an enrollment dispute. *Cf. Vedolla v. Acting Pacific Regional Director*, 43 IBIA at 155 (Board lacks jurisdiction over what is, at its core, a tribal enrollment dispute, notwithstanding an appellant’s characterization to the contrary; matter referred to the Assistant Secretary); *Walsh v. Acting Eastern Area Director*, 30 IBIA 180 (1997) (dismissing appeal from alleged actions and inactions regarding the development of a proposed final base membership roll for the Catawba Indian Tribe of South Carolina, and referring matter to Assistant Secretary); *Deardorff v. Acting Portland Area Director*, 18 IBIA 411 (1990) (dismissing appeal from BIA decision holding that 58 individuals were qualified to be enrolled in the Crow Creek Band of Umpqua Tribe of Indians, and referring matter to the Assistant Secretary). Because the Board lacks jurisdiction to adjudicate tribal enrollment disputes, we dismiss this claim and refer it to the Assistant Secretary.<sup>17</sup>

C. Did the Regional Director Err in Stating that the Tribe is Not a “Restored” Tribe?

A determination whether a tribe is a “restored” tribe may have significant gaming-related implications when land is taken into trust for such a tribe. *See Butte County v. Hogen*, 609 F. Supp. 2d 20, 24 (D.D.C. 2009). It is unclear, however, whether the Regional Director intended the statement in his Decision that the Tribe is not a “restored” tribe to constitute a “decision,” or whether it was intended only as background. We

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<sup>17</sup> Even if we did not conclude that Burley’s second claim presents an enrollment dispute over which we lack jurisdiction, referral of this claim might still be required because of the discretionary character of BIA’s decision. *See* 43 C.F.R. § 4.330(b)(2). The Department has determined that a “greater tribal community” must be included in organizing the Tribe, but even if we limited our review to the *classes* of individuals that BIA decided to include, it is unclear what legal standard we would apply.

conclude that the Tribe lacks standing to appeal this portion of the Decision because there is no showing, on this record, that the Tribe was adversely affected by the statement on this issue in the Decision. *See* 25 C.F.R. § 2.3 (administrative appeals regulations apply to appeals by persons who may be adversely affected by a BIA decision). The Decision is directed at neither gaming on tribal lands nor taking land into trust for the Tribe. And although the statement that the Tribe is not a “restored” Tribe may well have been intended to signal BIA’s position on the subject, the Decision itself presents no context, nor any action that BIA intends to take to implement that position in a way that might have an actual adverse effect.

Even if we were to conclude that the Tribe had shown that it was adversely affected by the statement, we would nevertheless conclude on this record that the matter is not ripe for our review. The Board applies the doctrine of ripeness, and three considerations are relevant for determining whether a matter is ripe: will a delay cause hardship, will Board intervention interfere with further administrative action, and is further factual development of the issues required? *Wind River Resources, Corp. v. Western Regional Director*, 43 IBIA 1, 3 (2005). In the present case, the first and third criteria weigh in favor of dismissal for lack of ripeness. Because there is no indication in the record that BIA intends to take any action to “implement” the statement, delay will not cause hardship; nor has a factual record been developed for this issue. Given the lack of context for the Decision’s statement that the Tribe is not a “restored” tribe, it is unclear whether Board intervention would interfere with further administrative action, but considering the three factors together, we would conclude that this claim is not ripe. Thus, whether viewed as an issue of standing or of ripeness,<sup>18</sup> we conclude that this claim should be dismissed, and review on the merits must wait.

### Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board (1) dismisses Burley’s claims related to the Tribe’s FY 2007 ISDA contract; (2) dismisses Burley’s claims that BIA improperly determined that the Tribe is “unorganized,” failed to recognize her as the Tribe’s Chairperson, and is improperly intruding into tribal affairs by determining the criteria for a class of putative tribal members and convening a general council meeting that will include such individuals; and (3) dismisses Burley’s claim that the Regional Director erred in stating

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<sup>18</sup> In *Wind River Resources*, we noted that the doctrines of standing and ripeness are closely related. *See* 43 IBIA at 3 n.2.

that the Tribe is not a “restored” tribe. We refer Burley’s second claim to the Assistant Secretary.<sup>19</sup>

I concur:

\_\_\_\_\_  
// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
// original signed  
Sara B. Greenberg  
Administrative Judge\*

\*Interior Board of Land Appeals, sitting by designation.

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<sup>19</sup> In this appeal, briefs filed on behalf of Yakima and purportedly other interested parties, *see supra* note 2, have been filed by Chadd Everone, a non-attorney who does not claim to be a member or putative member of the Tribe but who claims to serve as the “Deputy” to Yakima. *See, e.g.*, Interested Parties’ Response in Opposition to Appellant’s Request to Reopen Briefing at 1 (Oct. 5, 2009). On November 30, 2009, more than a year after briefing on the merits had concluded and after the Board had advised the parties that it had taken this case under consideration, Burley, through counsel, filed a Motion to Institute Disciplinary Proceedings Against Chadd Everone, asserting that Everone is not authorized to practice before the Board and that therefore all pleadings filed on behalf of Yakima should be stricken and not considered by the Board. Burley’s motion, at this late stage of the proceedings, is untimely and we decline to consider it further. We note that Burley’s motion selectively quotes 43 C.F.R. § 1.3, and does not address the Board’s interpretation of that provision. *See, e.g., Estate of Benjamin Kent, Sr.*, 13 IBIA 21, 23 (1984). Moreover, the motion apparently assumes that Yakima did not sign any of the pleadings himself. *But cf.* Interested Parties’ Answer Brief at 15. Finally, even were we to strike all pleadings filed on behalf of Yakima, we would not resolve this appeal differently.

## DOCUMENT NO. 73



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

DEC 22 2010

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

Dear Ms. Burley:

This letter is to inform you of the Department of the Interior's response to the decision of the Interior Board of Indian Appeals (IBIA) in *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIA 103 (January 28, 2010) (Decision).

The Decision stemmed from Sylvia Burley's appeal of the Bureau of Indian Affairs Pacific Regional Director's April 2, 2007 decision to affirm the Central California Agency Superintendent in his efforts to "assist" the Tribe in organizing a tribal government. In the Decision, the IBIA dismissed each of Ms. Burley's three complaints for lack of jurisdiction.<sup>1</sup> The IBIA did, however, refer Ms. Burley's second claim to my office, because it was in the nature of a tribal enrollment dispute. *Decision*, 51 IBIA at 122.

This letter is intended to address the limited issues raised by Ms. Burley's second complaint, as referred to my office by the IBIA: the BIA's involvement in the Tribe's affairs related to government and membership.

### Background

This difficult issue is rooted in the unique history of the California Valley Miwok Tribe. A relatively small number of tribal members had been living on less than 1 acre of land in Calaveras County, California known as the Sheep Ranch Rancheria, since 1916. In 1966, the Department was preparing to terminate the Tribe pursuant to the California Rancheria Termination Act, as part of that dark chapter of Federal Indian policy known as the "Termination Era." As part of this effort, the Department had intended to distribute the assets of the Sheep Ranch Rancheria to Ms. Mabel Dixie, as the only eligible person to receive the assets.

The Department never completed the process of terminating the Tribe, and the Tribe never lost its status as a sovereign federally-recognized tribe.

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<sup>1</sup> Ms. Burley's complaints were: 1.) The BIA Pacific Regional Director's April 2, 2007 decision violated the Tribe's FY 2007 contract with the BIA under the Indian Self-Determination and Education Assistance Act, or the Regional Director's decision constituted an unlawful reassumption of the contract; 2.) the Tribe is already organized, and the BIA's offer of assistance constitutes an impermissible intrusion into tribal government and membership matters that are reserved exclusively to the Tribe; and, 3.) the Regional Director erred in stating that the Tribe was never terminated and thus is not a "restored" tribe. *Decision*, 51 IBIA at 104.

In 1998, Yakima Dixie, a tribal member acting as the leader of the Tribe, adopted Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as members of the Tribe. At that time, the Department recognized those five individuals, along with Yakima Dixie's brother Melvin, as members of the Tribe. *Decision*, 51 IBIA at 108.

On September 24, 1998, the Superintendent of the Bureau of Indian Affairs Central California Agency advised Yakima Dixie, then serving as Tribal Chairman, that Yakima Dixie, Melvin Dixie, Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristan Wallace were able to participate in an effort to reorganize under the Indian Reorganization Act. *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 198 (D.D.C. 2006). In that same letter, the Superintendent also recommended that the Tribe establish a general council form of government for the organization process, and provided the Tribe with a draft version of a resolution to implement such a form of government. On November 5, 1998, by Resolution # GC-98-01, the Tribe established the General Council. *Id.*

Several months afterwards, in April 1999, Yakima Dixie resigned as Tribal Chairman. On May 8, 1999, the Tribe held a general election, in which Yakima Dixie participated, and elected Sylvia Burley as its new chairperson. The BIA later recognized Sylvia Burley as Chairperson of the California Valley Miwok Tribe. *Id.*

Shortly thereafter, the Tribe developed a draft constitution, and submitted it to the BIA for Secretarial review and approval in May 1999.<sup>2</sup> During this effort, it is apparent that a leadership dispute developed between Ms. Burley and Mr. Dixie.

On March 6, 2000, the Tribe ratified its Constitution and later requested that the BIA conduct a review and hold a secretarial election pursuant to the Indian Reorganization Act. *Id.* at 199. In the interim, on March 7, 2000, the Superintendent issued a letter to Sylvia Burley stating that the BIA "believed the Tribe's General Council to consist of the adult members of the tribe, i.e., Mr. Dixie, Ms. Burley, and Ms. Reznor,"<sup>3</sup> and stated that the leadership dispute between Mr. Dixie and Ms. Burley was an internal tribal matter." *Id.*

In February 2004, Ms. Burley submitted a document to the BIA purporting to serve as the Tribe's constitution. The BIA declined to approve the constitution because it believed that Ms. Burley had not involved the entire tribal community in its development and adoption. Letter from Dale Risling, Sr. to Sylvia Burley (March 26, 2004). The BIA noted that there were other Indians in the local area who may have historical ties to the Tribe. In that same letter, the BIA indicated that it did not view the Tribe as an "organized" Indian Tribe," and that it would only recognize Ms. Burley as a "person of authority" within the Tribe, rather than the Chairperson. Letter from Dale Risling, Sr. to Sylvia Burley (March 26, 2004). The Office of the Assistant Secretary – Indian Affairs affirmed this position in a letter stating:

[T]he BIA made clear [in its decision of March 26, 2004] that the Federal government did not recognize Ms. Burley as the tribal Chairman. Rather, the BIA would recognize her as a 'person of

<sup>2</sup> The Tribe withdrew its original request for Secretarial review of its constitution in July 1999.

<sup>3</sup> Pursuant to the Tribe's Resolution # GC-98-01, the General Council shall consist of all adult members of the Tribe.

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.

Letter from Acting Assistant Secretary – Indian Affairs Michael D. Olsen to Yakima Dixie (February 11, 2005). At that point, the BIA became focused on an effort to organize the Tribe under the Indian Reorganization Act, and to include a number of people who were not officially tribal members in that effort.<sup>4</sup>

In 2005, the BIA suspended a contract with the Tribe, and later asserted that there was no longer a government-to-government relationship between the United States and the Tribe. 424 F. Supp. 2d. at 201.

Sylvia Burley, on behalf of the Tribe, filed a complaint against the United States in the United States District Court for the District of Columbia seeking declaratory relief affirming that it had the authority to organize under its own procedures pursuant to 25 U.S.C. § 476(h), and that its proffered constitution was a valid governing document. *Id.* The United States defended against the claim by arguing that its interpretation of the Indian Reorganization Act was not arbitrary and capricious, and that it had a duty to protect the interests of all tribal members during the organization process – which included those individual Miwok Indians who were eligible for enrollment in the tribe. See *Id.* at 202. The District Court ruled that the Tribe failed to state a claim for which relief could be granted, which was affirmed by the United States Court of Appeals for the District of Columbia Circuit. *Id.* at 202; 515 F.3d. 1262.

On November 6, 2006, the Superintendent of the BIA Central California Agency issued letters to Sylvia Burley and Yakima Dixie, stating, “[i]t is evident, however, that the ongoing leadership dispute is at an impasse and the likelihood of this impasse changing soon seems to be remote. Therefore, we renew our offer to assist the Tribe in the organizational process.” Letter from Troy Burdick to Sylvia Burley and Yakima Dixie (November 6, 2006). The Superintendent then stated “[t]he Agency, therefore, will publish notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process.” *Id.*

Sylvia Burley appealed this decision to the BIA Pacific Regional Director, who affirmed the Superintendent’s decision on April 2, 2007. That same month, the BIA Pacific Regional Office published notice of the reorganizational meeting in a newspaper in the region. Sylvia Burley appealed the Regional Director’s decision to the IBIA, which subsequently dismissed her claims, while referring the second claim to my office.

## Discussion

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<sup>4</sup> The BIA, Yakima Dixie, and Sylvia Burley all agreed that there was a number of additional people who were potentially eligible for membership in the Tribe. See, *California Valley Miwok Tribe v. United States*, 515 F.3d 1267 - 1268 (D.C. Cir. 2008) (noting that the Tribe has admitted it has a *potential* membership of 250) (emphasis added).



I must decide whether to move forward with the BIA's previous efforts to organize the Tribe's government, or to recognize the Tribe's general council form of government – consisting of the adult members of the tribe – as sufficient to fulfill our nation-to-nation relationship.

The Department of the Interior is reluctant to involve itself in these internal tribal matters. To the extent that Department must touch upon these fundamental internal tribal matters, its actions must be limited to upholding its trust responsibility and effectuating the nation-to-nation relationship.

#### **A. Tribal Citizenship**

In this instance, the facts clearly establish that the Tribe is a federally recognized tribe which shares a nation-to-nation relationship with the United States. Moreover, the facts also establish that Mr. Dixie adopted Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as members of the Sheep Ranch Rancheria in 1998.

The California Valley Miwok Tribe, like all other federally recognized tribes, is a distinct political community possessing the power to determine its own membership, and may do so according to written law, custom, intertribal agreement, or treaty with the United States. See, Cohen's Handbook of Federal Indian Law, § 4.01[2][b] (2005 Edition); see also, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 54 (1978) ("To abrogate tribal decisions, particularly in the delicate area of membership, for whatever 'good' reasons, is to destroy cultural identity under the guise of saving it") quoting *Santa Clara Pueblo v. Martinez*, 402 F.Supp. 5, 18-19 (D.N.M. 1975).

I understand the difficult circumstances facing those individual Miwok Indians living in Calaveras County, California and who lack an affiliation with a federally recognized tribe. Affiliation with a tribe lies at the core of Indian identity. This is one reason why the Department is working to improve the process by which tribes can become federally recognized, and have their nation-to-nation relationship with the United States restored.

Nevertheless, the United States cannot compel a sovereign federally recognized tribe to accept individual Indians as tribal citizens to participate in a reorganization effort against the Tribe's will. See *Santa Clara Pueblo*, supra. It is possible that there are other individual Indians in the area surrounding Sheep Ranch who are eligible to become members of the Tribe. Mr. Dixie and Ms. Burley, along with the BIA, have previously indicated such. See 515 F.3d at 1267-68 (D.C. Cir. 2008).

There is a significant difference, however, between eligibility for tribal citizenship and actual tribal citizenship. Only those individuals who are actually admitted as citizens of the Tribe are entitled to participate in its government. The proper recourse for those individuals eligible for tribal citizenship, but who are not yet enrolled, is to work through the Tribe's internal process for gaining citizenship.

It is indisputable that Mr. Dixie adopted Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as citizens of the Tribe. Moreover, it is indisputable that the BIA previously accepted the Tribe's decision to enroll these individuals as tribal citizens, as evidenced by its letter of September 24, 1998.