

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

CALIFORNIA VALLEY MIWOK TRIBE,
et al.,

Plaintiffs,

v.

KEN SALAZAR, et al.,

Defendants.

Case No. 1:11-CV-00160-BJR

Hon. Barbara Jacobs Rothstein

**DECLARATION OF SABA BAZZAZIEH IN SUPPORT OF MOTION TO EXPEDITE
CONSIDERATION OF THE INTERVENOR-DEFENDANT'S MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT**

I, Saba Bazzazieh, hereby declare:

1. I am an attorney licensed to practice in the United States District Court for the District of Columbia and admitted to practice *pro hac vice* in the instant action. I am a Partner at the law firm Rosette LLP, attorneys of record for the California Valley Miwok Tribe ("Tribe"), a federally-recognized Indian tribe and Intervenor-Defendant in the above-captioned matter. I make this declaration in support of the Tribe's Motion to Expedite Consideration of its Motion to Dismiss Plaintiff's First Amended Complaint For Declaratory and Injunctive Relief ("Motion to Expedite").

2. I have personal knowledge of the facts stated herein and would be competent to testify as to those facts if called upon to do so in a court of law.

3. As a federally-recognized "Non-Compact" Indian tribe located in the state of California, the Tribe is an eligible recipient of the Revenue Sharing Trust Fund monies administered by the California Gambling Control Commission ("CGCC"), a state agency which serves as trustee of these funds for eligible California tribes (*See* CGCC List of RSTF Eligible

tribes, dated October 24, 2012, attached hereto as Exhibit A).

4. On or around January 8, 2008, the Tribe initiated action in the Superior Court for the State of California, County of San Diego, Central District against the CGCC for improperly withholding the RSTF funds from the Tribe since 2005, as a result of its internal governance dispute. (*See California Valley Miwok Tribe v. The California Gambling Control Commission*, 37-2008-00075326-CU-CO-CTL) (“Tribe v. CGCC Action”).

5. After two successful rulings from the California Court of Appeals (Fourth Appellate District), on April 26 2013, the San Diego Superior Court ruled against the Tribe and granted the CGCC’s motion for summary judgment, which occurred, solely due to the fact that a final ruling has not yet been issued in this matter (*See Tentative Rulings in the Tribe v. CGCC Action*, dated April 25, 2013, attached hereto as Exhibit B)(“the court finds that, because the [D.C. action] is still pending...the Commission is justified in withholding the RSTF funds.” p.3 Opinion).

6. In addition, not only have the Tribe’s federal grant funds been halted, pending resolution of the instant action, but so have their ability to challenge previously withheld federal monies in fiscal years 2010 and 2011. Indeed, on April 3, 2012, the United States Civilian Board of Contract Appeals stayed the Tribe’s appeals for undistributed federal contract funds, “pending completion of the district court action.” (*See Order of the U.S. Civilian Board of Contract Appeals*, dated April 3, 2013, attached hereto as Exhibit C).

7. Consequently, the Tribe is now left with *no recourse* in any venue to attempt to retrieve either its federal or state monies to which it is entitled and had previously and appropriately received. This has led to and continues to inflict debilitating harm to the Tribe and its citizens (*See Declaration of Silvia Burley in Support of Intervenor-Defendant’s Motion to Expedite Consideration of its Motion to Dismiss Plaintiff’s Amended Complaint*, filed concurrently herewith).

8. Resolution of the outstanding federal and state monies owed to the Tribe can be had, from a legal standpoint, solely from a determination and decision issued by the Court in the instant action.

9. Pursuant to the requirements of Local Civil Rule 7(m) of the Rules of the United States District Court for the District of Columbia, on June 28, 2013, I contacted counsel to Plaintiffs, Roy Goldberg, as well as counsel to the Federal Defendants, Kenneth Rooney, to notify them of the Tribe's intention to file its Motion to Expedite in order to ascertain the parties' respective positions on this filing.

10. On June 28, 2013, Mr. Rooney represented that the Federal Defendants take no position as to the Motion to Expedite. Also on June 28, 2013, Mr. Goldberg represented that the Plaintiffs would oppose the Motion to Expedite.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of July, 2013.



Saba Bazzazieh

EXHIBIT A

**CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES**

October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
1	Alturas Indian Rancheria	Desert Rose Casino	Alturas	Modoc
2	Bear River Band of the Rohnerville Rancheria	Bear River Casino	Loleta*	Humboldt
3	Big Lagoon Rancheria	N/A	Arcata*	Humboldt
4	Big Pine Paiute Tribe of the Owens Valley <i>(previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation)</i>	N/A	Big Pine*	Inyo
5	Big Sandy Rancheria of Western Mono Indians of California <i>(previously listed as the Big Sandy Rancheria of Mono Indians of California)</i>	Mono Wind Casino	Auberry*	Fresno
6	Big Valley Band of Pomo Indians of the Big Valley Rancheria	Konocti Vista Casino	Lakeport*	Lake
7	Bishop Paiute Tribe <i>(previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony)</i>	Paiute Palace Casino	Bishop*	Inyo
8	Bridgeport Indian Colony <i>(previously listed as the Bridgeport Paiute Indian Colony of California)</i>	N/A	Bridgeport*	Mono
9	Buena Vista Rancheria of Me-Wuk Indians of California	N/A	Sacramento*	Sacramento
10	Cahto Tribe <i>(previously listed as the Cahto Indian Tribe of the Laytonville Rancheria)</i>	Red Fox Casino	Laytonville*	Mendocino
11	Cahuilla Band of Mission Indians of the Cahuilla Reservation	Cahuilla Casino	Anza	Riverside
12	California Valley Miwok Tribe	N/A	Stockton*	San Joaquin
13	Cedarville Rancheria	N/A	Alturas*	Modoc
14	Chemehuevi Indian Tribe of the Chemehuevi Reservation	Havasu Landing Resort & Casino	Lake Havasu*	San Bernardino
15	Cher-Ae Heights Indian Community of the Trinidad Rancheria	Cher-Ae Heights Casino	Trinidad	Humboldt
16	Chicken Ranch Rancheria of Me-Wuk Indians of California	Chicken Ranch Bingo & Casino	Jamestown*	Tuolumne
17	Cloverdale Rancheria of Pomo Indians of California	N/A	Cloverdale	Sonoma
18	Cold Springs Rancheria of Mono Indians of California	N/A	Tollhouse*	Fresno
19	Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California	N/A	Parker, AZ ¹	
20	Cortina Indian Rancheria of Wintun Indians of California	N/A	Williams*	Colusa
21	Coyote Valley Reservation <i>(formerly Coyote Valley Band of Pomo Indians of California)</i>	Coyote Valley Casino	Redwood Valley	Mendocino
22	Death Valley Timbi-sha Shoshone Tribe <i>(previously listed as the Death Valley Timbi-Sha Shoshone Band of California)</i>	N/A	Death Valley	Inyo
23	Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria	N/A	Clearlake Oaks	Lake
24	Elk Valley Rancheria	Elk Valley Casino	Crescent City	Del Norte
25	Enterprise Rancheria of Maidu Indians of California	N/A	Oroville*	Butte

*Tribal Headquarters.

¹ The Colorado Valley Indian Tribes are located in California and Arizona. Tribal Headquarters are located in Parker, Arizona.

**CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES**

October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
26	Ewiiapaayp Band of Kumeyaay Indians	N/A	Alpine*	San Diego
27	Federated Indians of Graton Rancheria	N/A	Rohnert Park*	Sonoma
28	Fort Bidwell Indian Community of the Fort Bidwell Reservation of California	N/A	Fort Bidwell*	Modoc
29	Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation	N/A	Fort Independence	Inyo
30	Fort Mojave Indian Tribe of Arizona, California & Nevada	N/A	Needles*	San Bernardino
31	Greenville Rancheria <i>(previously listed as the Greenville Rancheria of Maidu Indians of California)</i>	N/A	Greenville*	Plumas
32	Grindstone Indian Rancheria of Wintun-Wailaki Indians of California	N/A	Elk Creek*	Glenn
33	Guidiville Rancheria of California	N/A	Talmage*	Mendocino
34	Habematolel Pomo of Upper Lake	Running Creek Casino	Upper Lake	Lake
35	Hoopa Valley Tribe	Lucky Bear Casino	Hoopa	Humboldt
36	Iipay Nation of Santa Ysabel <i>(previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)</i>	Santa Ysabel Casino	Santa Ysabel*	San Diego
37	Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation	N/A	Escondido*	San Diego
38	Ione Band of Miwok Indians of California	N/A	Plymouth*	Amador
39	Jamul Indian Village of California	N/A	Jamul*	San Diego
40	Karuk Tribe <i>(previously listed as the Karuk Tribe of California)</i>	N/A	Happy Camp*	Siskiyou
41	Kashia Band of Pomo Indians of the Stewarts Point Rancheria	N/A	Santa Rosa*	Sonoma
42	La Jolla Band of Luiseno Indians <i>(previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)</i>	N/A ²	Pauma Valley	San Diego
43	La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation	La Posta Casino ³	Boulevard*	San Diego
44	Lone Pine Paiute-Shoshone Tribe <i>(previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation)</i>	N/A	Lone Pine*	Inyo
45	Los Coyotes Band of Cahuilla and Cupeno Indians <i>(previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)</i>	N/A	Warner Springs*	San Diego
46	Lower Lake Rancheria	N/A	Healdsburg*	Sonoma
47	Lytton Rancheria of California	N/A ⁴	Healdsburg	Sonoma
48	Manchester Band of Pomo Indians of the Manchester Rancheria <i>(previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria)</i>	Garcia River Casino	Point Arena	Mendocino

*Tribal Headquarters.

² La Jolla Band of Luiseno Indians' casino closed in August 2004.

³ La Posta Band of Diegueno Mission Indians' casino closed on October 22, 2012.

⁴ The Lytton Rancheria operates a card room (Casino San Pablo) with Class II gaming.

**CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES**

October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
49	Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation	N/A	Boulevard*	San Diego
50	Mechoopda Indian Tribe of Chico Rancheria	N/A	Chico	Butte
51	Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation	N/A	Santa Ysabel*	San Diego
52	Northfork Rancheria of Mono Indians of California	N/A	North Fork*	Madera
53	Pinoleville Pomo Nation (<i>previously listed as the Pinoleville Rancheria of Pomo Indians of California</i>)	N/A	Ukiah*	Mendocino
54	Pit River Tribe (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek, and Roaring Creek Rancherias)	Pit River Casino	Burney	Shasta
55	Potter Valley Tribe	N/A	Ukiah*	Mendocino
56	Quartz Valley Indian Community of the Quartz Valley Reservation of California	N/A	Fort Jones	Siskiyou
57	Ramona Band of Cahuilla (<i>previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California</i>)	N/A	Anza	Riverside
58	Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (<i>previously listed as the Redwood Valley Rancheria of Pomo Indians of California</i>)	N/A	Redwood Valley	Mendocino
59	Resighini Rancheria	N/A ⁵	Klamath	Del Norte
60	Round Valley Indian Tribes, Round Valley Reservation (<i>previously listed as the Round Valley Indian Tribes of the Round Valley Reservation</i>)	N/A	Covelo	Mendocino
61	Santa Rosa Band of Cahuilla Indians (<i>previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation</i>)	N/A	Hemet*	Riverside
62	Scotts Valley Band of Pomo Indians of California	N/A	Kelseyville*	Lake
63	Sherwood Valley Rancheria of Pomo Indians of California	Sherwood Valley Rancheria Casino	Willits	Mendocino
64	Smith River Rancheria	Lucky 7 Casino	Smith River	Del Norte
65	Susanville Indian Rancheria	Diamond Mountain Casino & Hotel	Susanville*	Lassen
66	Tejon Indian Tribe ⁶	N/A	Bakersfield	Kern
67	Torres Martinez Desert Cahuilla Indians (<i>previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California</i>)	Red Earth Casino	Thermal*	Riverside
68	Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation	N/A	Benton*	Mono
69	Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)	N/A	Gardnerville, NV ⁷	

*Tribal Headquarters.

⁵ The Resighini Rancheria's casino closed in July 2007.

⁶ The Tejon Indian Tribe was federally recognized on January 6, 2012 and is RSTF eligible tribe.

⁷ The Washoe Tribe of Nevada and California is located in both states. Tribal Headquarters is located in Gardnerville, Nevada.

CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES

October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
70	Wilton Rancheria	N/A	Sacramento Valley	Sacramento
71	Wiyot Tribe <i>(previously listed as the Table Bluff Reservation—Wiyot Tribe)</i>	N/A	Loleta	Humboldt
72	Yurok Tribe of the Yurok Reservation	N/A	Klamath	Del Norte

Note: Each eligible RSTF recipient receives \$275,000.00 per quarter, for a sum of \$1.1 million per fiscal year.

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - April 25, 2013

EVENT DATE: 04/26/2013 EVENT TIME: 02:00:00 PM DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

CASE NO.: 37-2008-00075326-CU-CO-CTL

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE VS. THE CALIFORNIA GAMBLING CONTROL COMMISSION

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED:

The court addresses the evidentiary issues. Defendant California Gambling Control Commission's request for judicial notice and reply request for judicial notice are granted. Plaintiff's request for judicial notice is denied as to 8 (because the document is missing), denied as to 22, 25 and 33, and granted as to the remainder.

The court then rules as follows. Defendant California Gambling Control Commission's motion for summary judgment is granted.

The decision in *California Valley Miwok Tribe v. The Superior Court of San Diego County* (Cal. Ct. App., Dec. 18, 2012, D061811) 2012 WL 6584030 frames the central issue on this motion.

Based on the gravamen of the complaint, the fundamental issue presented to the trial court for resolution on the merits is whether the current uncertainty in the federal government's relationship to the Miwok Tribe-including the pendency of the *Salazar* case-constitutes a legally sufficient basis for the Commission, as trustee of the RSTF, to withhold the RSTF funds from the Miwok Tribe. To resolve that issue the trial court need not determine the issues presented in the *Salazar* case or determine the proper tribal leadership body. The trial court need only *acknowledge* that the federal dispute is ongoing, and based on that factual predicate, determine whether the Commission has a legally sufficient basis for withholding the RSTF funds.

Put simply, the issue for the trial court to resolve is limited to whether the Commission is justified in withholding the RSTF funds because the *Salazar* case is pending and the BIA has not recognized a tribal leadership body for the distribution of ISDEAA benefits.

California Valley Miwok Tribe v. The Superior Court of San Diego County (Cal. Ct. App., Dec. 18, 2012, D061811) 2012 WL 6584030 at *7.

Government Code § 12012.75 provides:

There is hereby created in the State Treasury a special fund called the "Indian Gaming Revenue Sharing Trust Fund" for the receipt and deposit of moneys derived from gaming device license fees that are paid into the fund pursuant to the terms of tribal-state gaming compacts for the purpose of making distributions to noncompact tribes. **Moneys in the Indian Gaming Revenue Sharing Trust Fund shall**

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE CASE NUMBER: 37-2008-00075326-CU-CO-CTL
VS. THE CALIFORNIA GAMBLING

be available to the California Gambling Control Commission, upon appropriation by the Legislature, for the purpose of making distributions to noncompact tribes, in accordance with distribution plans specified in tribal-state gaming compacts.

Section 4.3.2.1(b) of the Compact provides

Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund. **The Commission shall serve as the trustee of the fund. The Commission shall have no discretion with respect to the use or disbursement of the trust fund. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-compact Tribes.** In no event shall the State's General Fund be obligated to make up any shortfall or pay any unpaid claims.

Gov. Code, § 12012.90 provides:

(a)(1) For each fiscal year commencing with the 2002-03 fiscal year to the 2004-05 fiscal year, inclusive, the California Gambling Control Commission shall determine the aggregate amount of shortfalls in payments that occurred in the Indian Gaming Revenue Sharing Trust Fund pursuant to Section 4.3.2.1 of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution as determined below:

....
(2) For purposes of this section, **"eligible recipient Indian tribe"** means a noncompact tribe, as defined in Section 4.3.2(a)(i) of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution.

....
(d) Upon a transfer of moneys from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund and appropriation from the trust fund, **the California Gambling Control Commission shall distribute the moneys without delay to eligible recipient Indian tribes** for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding.

California Constitution, Article IV, § 19(f) provides:

Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

The Commission construes its duty under the Compacts and these statutes to include a duty to ascertain the identity of the tribal representative authorized by the tribe to receive and administer the tribe's RSTF payments. "[T]he construction of an act by the agency charged with its enforcement is entitled to considerable deference from the courts 'and will be followed if not clearly erroneous. [Citations.]' (*Judson Steel Corp. v. Workers' Comp. Appeals Bd.*, *supra*, 22 Cal.3d 658, 668, quoting from *Bodinson Mfg. Co. v. California E. Com.*, *supra*, 17 Cal.2d 321, 325-326.)" *League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529, 557. The court finds the Commission's construction that its duty includes the obligation to take reasonable steps to distribute RSTF payments to the authorized representative of the tribe is not clearly erroneous. The court is persuaded that, implicit in the Commission's duty under the Compacts to distribute RSTF funds, is the Commission's duty to ascertain the identity of representatives authorized by their respective tribes to receive and administer the tribe's RSTF payments. The court agrees that the Commission cannot

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE CASE NUMBER: 37-2008-00075326-CU-CO-CTL
VS. THE CALIFORNIA GAMBLING

reasonably be deemed to discharge its responsibility to make a RSTF distribution to a tribe by making the payment to a person or group other than the one properly authorized to receive and administer the payment pursuant to a tribe's directives. The court also finds that the Commission's reliance on the BIA's decisions as to a tribe's authorized leadership, as fulfilling the Commission's duty under the Compact and accompanying statutes, is not clearly erroneous. The Commission's decision to discharge its duty by disbursing RSTF funds only to those individuals or leadership bodies recognized by the BIA for the government-to-government business of the disbursement and receipt of federal PL 638 contract funds is reasonable. It is the Department of the Interior, Bureau of Indian Affairs that "has the authority and responsibility to ensure that the Nation's representatives, with whom it must conduct government-to-government relations, are the valid representatives of the Nation as a whole. See *Seminole Nation v. United States*, 316 U.S. 286, 296, 62 S.Ct. 1049, 86 L.Ed. 1480 (1942)." *Seminole Nation of Oklahoma v. Norton* (D.D.C. 2002) 223 F.Supp.2d 122, 140. Given the BIA's authority with respect to the validity of tribal representatives, it is reasonable for the Commission to rely on the BIA for a determination of the authorized representative of a tribe for purposes of distribution of RSTF funds.

The Commission submits evidence that, at the present time, a dispute exists as to the composition and leadership of the Miwok Tribe, as evidenced by the pending *Salazar* matter [SSUMF 9]. The Commission also submits evidence that, when uncertainty exists as to a Non-compact Tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the Department of Interior, Bureau of Indian Affairs' (BIA) determinations [SSUMF 14]; because the BIA suspended PL 638 contract funding to the Miwok Tribe in 2005, the Commission suspended its disbursement RSTF payments, pending the BIA's resumption of PL 638 funding, or other BIA action [SSUMF 15]; as of this date the BIA has not resumed disbursing PL 638 funds to the Miwok Tribe, and has not recognized an authorized leader or leadership group for the Miwok Tribe [SSUMF 16]; the Commission will promptly disburse the accrued RSTF payments to the Miwok Tribe once the BIA has identified the Miwok Tribe's authorized leader or leadership group [SSUMF 18].

Since the BIA, the agency to which the Commission defers as to a tribe's authorized leadership, has suspended its PL 638 payments to the Miwok Tribe based on a leadership dispute, the court finds the Commission's suspension of disbursement of quarterly RSTF payments, pending the BIA's resumption of PL 638 funding or other BIA action recognizing the authorized representative of the Miwok Tribe, is justified. Such circumstances provide a legally sufficient basis for the Commission to withhold RSTF funds. Therefore, the court finds that, because the *Salazar* case is pending and because the BIA has not recognized a tribal leadership body for the distribution of PL 638 (ISDEAA) benefits, the Commission is justified in withholding the RSTF funds. As such, each of Plaintiff's claims fail as a matter of law.

The court is not persuaded by Plaintiff's argument that there is no dispute as to the composition and leadership of the Miwok Tribe [SSUMF 9]. Plaintiff argues that *Salazar* is irrelevant "per the Court of Appeal decision." However, the Court of Appeal decision specifically directs this court to consider *Salazar* in determining whether the Commission's conduct is justified. Plaintiff also argues that "[t]here is no dispute concerning the leadership of the Tribe, in light of recent deposition testimony of Yakima Dixie confirming that he had resigned as Tribal Chairman and acknowledging that Burley is the new Chairperson." [Plaintiff's response to SSUMF 9.] While Dixie does testify that he resigned as chairperson of the Tribe, it is not Dixie's resignation and/or Dixie's purported recognition of Burley as the new Chairperson that is at issue. Rather, it is the BIA's recognition of Burley, or another person or entity, as the authorized representative of the Miwok Tribe that is the determining factor. A determination as to the effect of the Dixie's testimony on the issue of the authorized representative of the Miwok Tribe is beyond the jurisdiction of this court.

The evidence Plaintiff offers to dispute SSUMF 14 and 15 is not sufficient to establish triable issue of material fact as to the Commission's policy that, "when uncertainty exists as to a Non-compact Tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the Department of Interior, Bureau of Indian Affairs' (BIA) determinations" [SSUMF 14] and that because the BIA suspended PL 638 contract funding to the Miwok Tribe in 2005, the Commission suspended its disbursement of quarterly RSTF payments, pending the BIA's resumption of PL 638 funding, or other BIA action [SSUMF 15]. The evidence Plaintiff offers to dispute SSUMF 16 does not establish triable

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE CASE NUMBER: 37-2008-00075326-CU-CO-CTL
VS. THE CALIFORNIA GAMBLING

issues of material fact as to whether, as of this date the BIA has not resumed disbursing PL 638 funds to the Miwok Tribe, and has not recognized an authorized leader or leadership group for the Miwok Tribe [SSUMF 16]. The court is not persuaded by Plaintiff's analogy to a stay of execution and argument that the stay does not affect the "declaration of rights" contained in the August 31, 2011, decision of the Assistant Secretary of the Interior. In light of the stay, there is no final decision of the BIA recognizing an authorized leader or leadership group for the Miwok Tribe. This is evidenced by the fact that the BIA has not resumed PL 638 funding to the Tribe. Plaintiff relies on the fact that the BIA has not resumed efforts to reorganize the Miwok Tribe to demonstrate that the stay has no effect on the ASI's recognition of the Tribal Council under Burley's leadership as the authorized representative of the Miwok Tribe. However, such conduct is consistent with the BIA staying any action based on the August 21, 2011, decision – i.e., either resuming these efforts, or resuming PL 638 funding.

As recognized in *California Valley Miwok Tribe v. Salazar* (D.D.C. 2012) 281 F.R.D. 43,

If the plaintiffs prevail in this action, the Assistant Secretary's August 31 decision will be vacated, the Bureau will be ordered to cease government-to-government relationships with the Tribe as organized in the form of the General Council, and the defendants will be enjoined from awarding any federal funds to Burley.

California Valley Miwok Tribe v. Salazar (D.D.C. 2012) 281 F.R.D. at 47. Given this potential, the court finds the Commission's suspension of RSTF payments is justified. Also supporting this conclusion is the Joint Status Report signed in *Salazar* wherein all parties, including the BIA, agreed that "the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' [intervenors here] claims or grants a dispositive motion of the Federal Defendants [Secretary of the United States Department of the Interior, et al.]. Via this Joint Status Report the BIA itself recognizes that the August 21, 2011 decision is of no force and effect. Such recognition provides further justification for the Commission's action in suspending RSTF payments. Whether the district court signed or adopted the Report is not relevant to the court's analysis. It is the BIA's interpretation that is at issue.

Plaintiff offers no evidence to dispute SSUMF 18 "the Commission will promptly disburse the accrued RSTF payments to the Miwok Tribe once the BIA has identified the Miwok Tribe's authorized leader or leadership group." Instead Plaintiff offers argument that the Compact does not require that the actions of the BIA dictate the conditions of disbursement of RSTF funds and that the Commission is wrong in conditioning payment on this basis. For the reasons set forth above, the court finds the Commission's deference to BIA's decisions as to a tribe's authorized leadership in instances of a leadership dispute is justified.

The court is not deciding whether the August 31, 2011 decision is final. Rather, as directed by the Court of Appeal, the court *acknowledges* that a federal dispute is ongoing, and based on this dispute, determines that the Commission has a legally sufficient basis for withholding the RSTF funds. As long as *Salazar* is remains pending, and the August 31, 2011, decision remains stayed, Plaintiff cannot establish that it is the recognized tribe and entitled to receive RSTF monies.

The court orders the Commission to submit a judgment, consistent with this ruling, within 10 days of this ruling.

=

EXHIBIT C



**UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS**

ORDER CONSOLIDATING AND STAYING PROCEEDINGS: April 3, 2012

CBCA 2676-ISDA, 2756-ISDA

CALIFORNIA VALLEY MIWOK TRIBE,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Rebecca Chapman of Rosette LLP, Folsom, CA, counsel for Appellant.

Sabrina A. McCarthy, Office of the Solicitor, Department of the Interior, Washington, DC, counsel for Respondent.

ZISCHKAU, Board Judge.

ORDER

In CBCA 2676-ISDA, Silvia Burley, acting on behalf of the appellant, California Valley Miwok Tribe, filed a notice of appeal on December 22, 2011, seeking payment of Tribal Priority Allocation funds for fiscal years 2010 and 2011 pursuant to the Tribe's self-determination contract no. CTJ51T62802 with the Bureau of Indian Affairs. In CBCA 2756-ISDA, Ms. Burley, acting on behalf of the Tribe, filed another notice of appeal on February 28, 2012, seeking payment of Tribal Priority Allocation funds for fiscal year 2012 pursuant to the same contract.

The respondent has moved to consolidate the two appeals and to stay further proceedings in the captioned appeals pending final review by the district court of an

CBCA 2676, 2756

August 31, 2011 decision of the Assistant Secretary for Indian Affairs of the Department of Interior in *California Valley Miwok Tribe v. Salazar*, C.A. No. 1-11-cv-00160-RWR (D.D.C. filed Mar. 16, 2011). The appellant opposes both motions.

Having considered the record, we consolidate the two appeals for further proceedings and grant the respondent's motion for stay of the consolidated appeals pending completion of the district court action which is considering substantial issues concerning the organization and representation of the Tribe and the validity of the Assistant Secretary's August 31, 2011 decision.

The appellant and respondent shall each file a status report within 14 days of the final disposition in *California Valley Miwok Tribe v. Salazar*.



JONATHAN D. ZISCHKAU
Board Judge