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CALIFORNIA VALLEY MIWOK TRIBE,
THE GENERAL COUNCIL, SILVIA BURLEY,
RASHEL REZNOR, ANJELICA PAULK and
TRISTIAN WALLACE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA VALLEY MIWOK TRIBE, a federally-recognized Indian tribe, **THE GENERAL COUNCIL, SILVIA BURLEY, RASHEL REZNOR; ANJELICA PAULK**; and **TRISTIAN WALLACE**

Plaintiffs,

vs.

SALLY JEWEL, in her official capacity as U.S. Secretary of Interior; **LAWRENCE S. ROBERTS**, in his official capacity as Acting Assistant Secretary of Interior – Indian Affairs; **MICHAEL BLACK**, in his official capacity as Director of the Bureau of Indian Affairs.

Defendants.

Case No.: 2:16-CV-01345-WBS-CKD

FIRST AMENDED COMPLAINT

1. **For Order Setting Aside Arbitrary and Capricious Final Agency Action [5 U.S.C. §706(2)(A)]**
2. **Declaratory Relief**
3. **Injunctive Relief**
4. **Violations of Substantive and Procedural Due Process**

REQUEST FOR IMMEDIATE STAY OF AGENCY DECISION

Plaintiffs allege as follows:

INTRODUCTION

1. Plaintiffs seek to set aside an erroneous decision by the Assistant Secretary of Interior-Indian Affairs ("AS-IA") of the U.S. Department of Interior ("DOI" or "the Department") that illegally disavowed recognition of the existing governing body

of the California Valley Miwok Tribe ("the Tribe") that was established in 1998, and illegally directed that the Tribe be reorganized with participation by unenrolled members beyond the five (5) existing enrolled members.

AUGUST 31, 2011 AS-IA DECISION

2. On August 31, 2011, the AS-IA Larry Echo Hawk made the following decision concerning the Tribe:

a. He reaffirmed that the Tribe is a federally recognized tribe whose entire citizenship, as of August 31, 2011, consists of five acknowledged citizens;

b. The 1998 Resolution established a General Council form of government, comprised of all the adult citizens of the Tribe, with whom the Department may conduct government-to-government relations;

c. The Department shall respect the validly enacted resolutions of the General Council; and

d. Only upon a request from the General Council will the Department assist the Tribe in refining or expanding its citizenship criteria, or developing and adopting other governing documents.

U.S. DISTRICT COURT DECISION REMANDING TO AS-IA

3. Dixie challenged that decision in federal court. In December 2013, the federal district court ("the District Court" or "U.S. District Court") granted summary judgment in favor of Dixie and his Tribal Faction and remanded to the AS-IA for him to "reconsider" his August 31, 2011 decision, because he "assumed" certain factual issues rather than determined them factually. Specifically, the U.S. District Court remanded back to the AS-IA for him to reconsider his August 31, 2011 decision, because, according to the U.S. District Court, the AS-IA merely assumed the Tribe's membership is limited to five persons and further merely assumed that the Tribe is governed by a duly

constituted General Council, without setting forth its reasons for these conclusions, in light of the administrative record that questioned the validity of those assumptions. Indeed, although much of the decision is predicated on an existing Tribal leadership dispute, the court there did not have the benefit of the deposition transcript of Yakima Dixie taken in the California State case, wherein he admits resigning as Tribal Chairman, because it was not part of the administrative record.

4. As a result, the U.S. District Court was misled into thinking that Dixie still maintained that he never resigned as Tribal Chairman, and the court relied upon that on-going claim in her court as a basis for her ruling. For example, the U.S. District Court stated:

> Here, the August 2011 Decision fails to address *whatsoever* the numerous factual allegations in the administrative record that raise significant doubts about the legitimacy of the General Council. From as early as April 1999, Yakima contested the validity of the Council. *See* AR 000182 (April 21, 1999 letter from Yakima to the BIA stating that he "cannot and will not resign as chairman of the Sheep Ranch Indian Rancheria"); *see also*, AR 000205 (October 10, 1999 letter from Yakima to BIA raising questions about Burley's authority); AR 001690, 000231(Yakima notifying the BIA of "fraud and misconduct" with respect to the Tribe's leadership).

CVMT v. Jewell (formerly Salazar) (D.C. Dist. Ct. 2013) 2013 U.S. Dist. LEXIS 174535. Accordingly, based solely on the administrative record, the U.S. District Court concluded that Dixie's claim that his resignation was forged and that he never resigned raised doubts about the validity of the General Council under the Burley Faction.

AS-IA DECEMBER 30, 2015 DECISION

5. On remand, the AS-IA erroneously concluded that the Tribe's membership is more than five people, and that the 1998 General Council does not consist of valid representatives of the

Tribe. It erroneously concluded that the Tribe was never properly "reorganized" back in 1998, leaving questions as to the overall membership of the Tribe, and therefore the Tribe must be reorganized. It then wrongfully directed that unenrolled, potential members be allowed to participate in reorganizing the Tribe. It refused to acknowledge the Tribe's governing document, Resolution #GC-98-01, which established the Tribe's General Council, despite the fact that this governing document has been in place for over 18 years. It stated:

> At the time of its enactment, the 1998 Resolution undoubtedly seemed a reasonable, practical mechanism for establishing a tribal body to *manage the process* of reorganizing the Tribe. But the actual reorganization of the Tribe can be accomplished only via a process open to the whole tribal community. Federal courts have established, and my review of the record confirms, the people who approved the 1998 Resolution (Mr. Dixie, Ms. Burley, and possibly Ms. Burley's daughter Rashel Reznor) are not a majority of those eligible to take part in the reorganization of the Tribe. Accordingly, I cannot recognize the actions to establish a tribal governing structure taken pursuant to the 1998 Resolution. Ms. Burley and her family do not represent the CVMT [the Tribe].

(Page 5 of Washburn Decision). This conclusion is erroneous and arbitrary and capricious for the reasons alleged herein.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28. U.S.C. § 1331 because the asserted claims arise under the Constitution and laws of the United States.

7. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1361 in that the Tribe seeks to compel officers and employees of the United States and its agencies to perform duties owed to the Tribe.

8. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1362 because the Tribe is an Indian

tribe duly recognized by the Secretary of the Interior, and the matter in controversy arises under the Constitution, laws or treaties of the United States.

9. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Plaintiffs reside in this district and no real property is involved in the action.

10. Judicial review of the agency action is authorized by the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 702, 704 and 706. The AS-IA's decision is final agency action under the APA and 25 C.F.R. § 2.6(c).

11. The requested declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201-2202.

12. Plaintiffs have exhausted their administrative remedies and are not required to pursue additional administrative remedies before seeking and obtaining judicial relief.

13. An actual case and controversy has arisen and now exists between the parties with regard to the AS-IA's violations of the constitutional provisions, statutes and regulations cited herein.

PARTIES

14. Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Miwok Tribe" or "the Tribe") is a federally-recognized Indian Tribe located in Stockton, California. The Tribe has a governing body under the leadership of Silvia Burley ("Burley"), who has been duly elected and appointed as the Tribe's Chairperson.

15. Plaintiff GENERAL COUNCIL is the legitimate governing body of the Tribe. The General Council consists of Silvia Burley, Rashel Reznor and Angela Paulk.

16. Plaintiffs Silvia Burley, Rashel Reznor, Angela Paulk, and Tristian Wallace are members of the Tribe. Yakima Dixie is

also a member of the Tribe, but he is not a party Plaintiff in this action.

17. Defendant SALLY JEWELL is the U.S. Secretary of Interior, and is sued in her official capacity only. Ms. Jewell is responsible for the supervision of the various federal agencies and bureaus within the DOI, including the BIA.

18. Defendant LAWRENCE S. ROBERTS is the acting AS-IA and head of the BIA. Mr. Kevin Washburn was the AS-IA who authored the December 30, 2015 decision being challenged in this action, but he retired immediately after rendering that decision. Mr. Roberts is sued in his official capacity only.

19. Defendant MICHAEL BLACK is the Director of the Bureau of Indian Affairs with the DOI. He is responsible for the day-to-day operations of the BIA, including its relations with federally recognized Indian tribes. Mr. Black is sued in his official capacity only.

GENERAL ALLEGATIONS

20. In 1916, the United States government purchased approximately 0.92 acres of land in Calaveras County, California, for the benefit of twelve (12) named Indians living on the Sheep Ranch Rancheria. The Indian agent who recommended the purchase of the land for these Indians described the group as "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.'"

21. In 1934, Congress passed the Indian reorganization Act ("IRA"), which, among other things, required the U.S. Secretary of Interior ("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. 25 U.S.C.

Sections 476 and 478. In 1935, Jeff Davis, the only Indian living on the Rancheria, voted in favor of the Tribe being organized under the Indian Reorganization Act of 1934 ("IRA"). However, the process was never followed through, and as a result the Tribe was never organized under the IRA.

22. In 1958, in keeping with the then-popular policy of assimilating Native Americans into American society, Congress enacted the California Rancheria Act, which authorized the Secretary to terminate the federal trust relationship with several California tribes, including several Rancherias, and to transfer tribal lands from federal trust ownership to individual fee ownership. (Act of Aug. 18, 1958, Pub.L. No. 85-671, 72 Stat. 619). To this end, the Bureau of Indian Affairs ("BIA") prepared a plan in 1966 to distribute the assets of the Sheep Ranch Rancheria as a prelude to termination. At that time, Mabel Hodge Dixie was the only adult Indian living on the Rancheria who was entitled to receive the assets of the Rancheria. She, therefore, voted to accept the distribution plan and was issued a deed to the land in 1966.

23. Although the Sheep Ranch Rancheria land had been distributed to Mabel Dixie pursuant to a distribution plan, the Secretary never published a final notice of termination and had accepted the land back from Mabel Dixie through a quitclaim deed. As a result, the Tribe was administratively "unterminated" before it could be formally terminated. In other words, the Tribe was never terminated.

24. In 1979, individuals from a number of terminated Rancherias filed an action in the U.S. District Court, Northern District, styled Hardwick v. U.S. (Civ. No. C-79-1710). The Hardwick plaintiffs sought restoration of their status as Indians, entitlement to federal Indian benefits, and the right to re-establish their tribes as formal government entities.

Specifically, the Hardwick plaintiffs sought by injunction to undo the effects of the California Rancheria Act and to require the Secretary to "unterminate" each of the subject Rancherias and to "treat all of the subject Rancherias as Indian reservations in all respects." The Hardwick lawsuit ended in a settlement between the tribes and the federal government, culminating in a series of stipulated judgments. In the settlement, the Secretary agreed to restore "any of the benefits or services provided or performed by the United States for Indians because of their status as Indians" and to "recognize the Indian Tribes, Bands, Communities or groups of the seventeen Rancherias...as Indian entities with the same status as they possessed prior to distribution of the assets of these Rancherias under the California Rancheria Act." (Stipulation and Order, Hardwick v. United States, No. C-79-1710 (Dec. 22, 1983)).

25. In 1994, Yakima Dixie ("Dixie"), the son of Mabel Dixie, wrote to the BIA asking for BIA assistance for home repairs on the Rancheria, and described himself as "the only descendent and recognized...member" of the Tribe. At that time Dixie and his brother, Melvin Dixie, were the only surviving children of Mabel Dixie, but Melvin Dixie's whereabouts were unknown. Melvin later died in 2008.

26. In the mid-1990s, Burley contacted the BIA for information related to her Indian heritage. The BIA provided her with this information, which showed that she was related to Jeff Davis who had initially voted in favor of the Tribe being organized under the IRA. Burley was also related to Dixie.

27. On August 5, 1998, Dixie, as "Spokesperson/Chairman" of the Tribe, signed a statement accepting Burley as an enrolled member of the Tribe, and also enrolled Burley's two daughters and her granddaughter. As a result of Dixie's actions, the

Tribe in 1998 consisted of six enrolled members: (1) Yakima Dixie; (2) Melvin Dixie; (3) Silvia Burley; (4) Anjelica Paulk; (5) Rashel Reznor; and (6) Tristian Wallace.

28. In September of 1998, Yakima Dixie and Burley met at the Rancheria with BIA staff to discuss organizing the Tribe. One of the issues discussed was developing criteria for membership in the Tribe. At the time, the whereabouts of Melvin Dixie, Yakima's brother, were unknown. As a result, the BIA staff told Yakima Dixie that he had both the authority and the broad discretion to decide the criteria for membership. According to the BIA, Yakima Dixie, his brother Melvin Dixie, Burley and Burley's adult daughter were the "golden members" of the Tribe. And because Melvin Dixie's whereabouts were unknown, the BIA concluded that the three adult members consisting of Yakima Dixie, Burley and her adult daughter were the General Council of the Tribe that had the authority to take actions on behalf of the Tribe.

29. Because the Tribe was never formally terminated, there was no court decision, like Hardwick, supra, that affected the Tribe, and to which the Tribe and the BIA could look to so as to determine who was a member of the Tribe or otherwise entitled to organize it. Typically, California tribes who had been unlawfully terminated by the federal government regained federal recognition through litigation like Hardwick, supra, and the court judgment in that litigation identified the class of persons entitled to organize the tribe, e.g., the distributes and their dependents, and their lineal descendants. However, in the case of the Sheep Ranch Rancheria, although the land had been distributed to Mabel Dixie pursuant to a distribution plan preparatory to termination, the Secretary never actually followed through and published a final notice of termination. Instead, the Secretary accepted the land back from Mabel Dixie

through a quitclaim deed, thus essentially administratively "unterminating" the Tribe before it had ever been formally terminated.

30. Therefore, because of the unique circumstance that the Sheep Ranch Rancheria found itself in never being terminated, the BIA concluded that "for purposes of determining the initial membership of the Tribe," Yakima Dixie and Melvin Dixie must be included, because they were the remaining heirs of Mabel Dixie. In addition to these two initial members, the BIA recognized that Yakima Dixie had adopted Burley, her two daughters, and her granddaughter, into the Tribe. As a result, the BIA concluded that Burley and her adult daughter, together with Yakima and Melvin Dixie had "the right to participate in the initial organization of the Tribe."

31. Melvin Dixie later died in 2008.

32. On September 24, 1998, the BIA told Yakima and Burley that it "recommend[ed] the Tribe operate as a General Council," because of its "small size," so that they could elect or appoint a chairperson and conduct business. To this end, the BIA offered the Tribe $50,000.00 in grant money for purposes of improving its tribal government, and provided Dixie and Burley with a draft resolution "form" for them to use in requesting the grant. The draft resolution contained language establishing the General Council.

33. Using the draft resolution form prepared by the BIA, Dixie and Burley prepared and signed a resolution on November 5, 1998, establishing a General Council consisting of all adult members of the Tribe, to serve as the governing body of the Tribe. The resolution became known as Resolution #CG-98-01, which the BIA accepted as the governing document of the Tribe, and which is attached herewith and marked as Exhibit "1." The document was signed by Yakima Dixie and Silvia Burley, and later

by Rashel Reznor, and specifically noted that the whereabouts of Melvin Dixie were at that time unknown. Resolution #GC-98-01 vested the General Council with the governmental authority of the Tribe to conduct the full range of government-to-government relations with the United States.

34. Pursuant to Resolution #GC-98-01, Yakima Dixie was appointed and elected as the Tribal Chairman.

35. On April 20, 1999, Yakima Dixie signed a notice of resignation as Tribal Chairman. A copy of this document is attached and marked as Exhibit "2." On the same date, Yakima Dixie also signed a document confirming his resignation as Tribal Chairman and agreeing to the appointment of Silvia Burley to replace him as the new Tribal Chairperson.

36. Sometime after he resigned, Yakima Dixie was approached by a non-Indian, Chad Everone, who sought Yakima's cooperation in taking control of the Tribe in order to build a gambling casino using the name and status of the Tribe. The problem was that Yakima Dixie had already expressly resigned. To regain control of the Tribe, Everone and others conspired with Yakima to have Yakima falsely say that he never resigned and that his written resignation was a forgery. Yakima Dixie then told the BIA and others that he never resigned and that his resignation was forged. This then created a Tribal leadership dispute between Yakima Dixie and Burley that has since 1999 caused havoc with the Tribe and crippled the Tribe's ability to operate effectively over the years. Yakima maintained that claim from 1999 up through February 7, 2012, when he was deposed and testified in a California state action that he in fact resigned in April of 1999, that his resignation was not forged as he had previously claimed, and that the signatures on the Tribal resignation documents were in fact his.

37. Despite Dixie's claim that he never resigned, the BIA chose to acknowledge Burley as the Chairperson of the Tribe, and, as a result, accepted and honored numerous Tribal resolutions passed by the General Council under Burley's leadership from 1999 through July 2005.

38. From 1999 through July 2005, the BIA entered into annual P.L. 638 federal contracts with the Tribe under Burley's leadership, and awarded the Tribe federal contract funding.

PROCEDURAL SUMMARY

39. On December 13, 2013, the District Court for the District of Columbia remanded this matter to the Department to reconsider and provide further explanation for its August 31, 2011 decision relating to the membership of the Tribe and the authority of its General Council.

40. The District Court held that the Department's August 31, 2011 decision concerning membership of the CVMT[1] (the "August 2011 Decision") failed to provide sufficient explanation for its conclusions, because it did not adequately address: (i) whether the Burley family, which was admitted to the Tribe in 1998, fraudulently induced or otherwise coerced Yakima Dixie, the Tribal leader, to admit them; (ii) whether Tribal member Melvin Dixon's interests had been adequately protected when Yakima admitted the Burleys to the Tribe; (iii) how the Tribe could be comprised of only five people, when there were many more potential Tribal members; and (iv) why the General Council formed by the CVMT in 1998 was the legitimate Tribal government. *Id.* at 17-23.

41. However, there was ample evidence to support the August 2011 Decision. Indeed, the weight of the record was

[1] Letter from Larry Echo Hawk, Assistant Secretary, Department of the Interior Bureau of Indian Affairs, to Ms. Silvia Burley and Mr. Yakima Dixie, August 31, 2011.

unequivocal that Yakima Dixie properly and voluntarily enrolled the Burleys, that Melvin Dixie's interests were not compromised when the Burleys were enrolled, that the Tribe is currently and properly comprised of five members, and that the 1998 General Council was properly established and is the legitimate Tribal government. Indeed, to conclude otherwise, the Department would have had to ignore the record and history of the Department's own interaction with the CVMT over decades. There is no evidence of impropriety in connection with the formation of the 1998 General Council, and the Department was required to adhere to long-standing precedent and defer to the General Council on matters of Tribal governance, including membership.

42. Adequate review of the full record, with appropriate regard for the legal and policy precedent to which the Department should have adhered to, makes apparent that the August 2011 Decision was correct and that the Department should have reached the same conclusion.

43. The Tribe's membership is presently comprised of five people and that Tribal governance—including membership—should be entrusted to the Tribe's General Council.

44. The District Court held that the Department's August 2011 Decision did not recite sufficient record evidence to provide assurance that the Department had exercised adequate care over Tribal membership and governance. However, on remand, the Department failed to reconsider each of the issues identified by the Court and failed to explain its position, by reference to record evidence.

45. The AS-IA's decision was erroneous and unlawful for the following reasons:

a. ***Yakima Dixie's enrollment of the Burleys in 1998 was appropriate.*** Yakima Dixie ("Dixie") enrolled the Burley family into the CVMT voluntarily and only after Dixie and Silvia Burley

("Burley") had corresponded for some years. There is no evidence that Dixie's decision to enroll the Burleys was subject to undue or inappropriate influence or was fraudulent in any respect. To the contrary, the contemporaneous evidence is unequivocal—Dixie freely chose to enroll the Burleys and promptly involved them in Tribal governance.

b. ***Dixie's enrollment of the Burleys did not compromise Melvin Dixie's interests.*** It is true that Yakima Dixie enrolled the Burleys into the Tribe and involved them in Tribal governance, but did not consult his brother, Melvin Dixie. At that time, however, Melvin had not been involved in Tribal matters for decades and had not been in touch with Yakima for 30 years. Indeed, neither Yakima nor the Department then knew where Melvin lived. When Melvin was found a couple of years later, he was invited to participate in Tribal affairs and was encouraged to avail himself of Tribal benefits to which he was entitled. Under the circumstances, Yakima's decision to enroll the Burleys without consulting Melvin was reasonable. Moreover, Melvin is now deceased, and any supposed impairment of his interests is consequently moot.

c. ***Enrolling the Burleys in 1998 did not impair the interests of unenrolled potential Tribal members.*** As discussed by the District Court, there is broad agreement that there are a number of unenrolled potential Tribal members. Those potential members had not sought to join the Tribe when Dixie enrolled the Burleys; nor did those potential members apply to the General Council for membership. The potential members have instead emerged following and as a consequence of a Tribal leadership dispute between Dixie and Burley. Because none of the potential members has been denied the opportunity to enroll in the Tribe, none of their interests have been impaired. The proper course for the Department was to encourage the potential members to

apply to join the Tribe and for the Tribe to assess and evaluate each of their applications, not to unlawfully dismantle Tribal membership and require the Tribe to "reorganize" with participation of these non-members.

d. *The Tribe's 1998 General Council is the authorized and legitimate Tribal government.* Following enrollment of the Burleys in 1998, Dixie and Burley worked with the Department to organize the Tribe. To that end, the CVMT passed resolution #GC-98-01, which established a Tribal General Council. The Department recognized the General Council and compacted with it for a number of years. There is no record evidence that the formation of the General Council was tainted by fraud or in any way inappropriate. Moreover, the Department's years-long dealings with the General Council caused it and the enrolled members of the Tribe to develop reasonable and settled expectations that the Department would continue to maintain government-to-government relations with the Tribe through the General Council. As a consequence, the Department should have resumed recognition of the General Council, which can resolve any outstanding membership issues.

46. Thus, the CVMT is properly comprised of five members and is governed by the 1998 General Council.

MATERIAL FACTUAL BACKGROUND

47. By the 1990s, the CVMT had only one active member, Yakima Dixie ("Dixie").[2] From the early 1990s through 1998, Silvia Burley ("Burley") and her family researched their Indian roots, sought guidance from the Bureau of Indian Affairs ("BIA"), and applied to join the Tribe. Dixie enrolled the Burley family in 1998. Later that same year, Dixie and the

[2] In 1915, the Tribe had been reduced from a "large band of Indians" to 13 members, and by 1994, Yakima Dixie was the only active tribal member.

Burley family, with BIA advice, then organized the Tribe, through the establishment of a General Council. The Tribe then sought to organize under the Indian Reorganization Act ("IRA"), by seeking BIA approval of a Tribal Constitution. This effort subsequently slowed and then halted as a consequence of a disagreement between Dixie and Burley over the leadership of the Tribe, which has precipitated years of litigation.

I.

YAKIMA DIXIE APPROPRIATELY ENROLLED THE BURLEY FAMILY IN THE TRIBE IN 1998

48. The events that led to the Burleys' enrollment and how the Tribe was governed in the immediate aftermath of their enrollment are as follows:

a. In 1994, Dixie contacted the BIA and, with the help of the BIA representative Raymond Fry, identified himself as "the only descendant and recognized tribal member of the Sheep Ranch Rancheria, of Me-wuk [Miwok] Indians of California."

b. A year later, Burley also contacted the BIA, seeking assistance documenting her Indian heritage. On September 22, 1995, the BIA certified Burley as a California Indian named on the California Judgment Fund Roll, based on her ½ degree of Indian blood.[3] The BIA's certification did not enroll Burley into the CVMT, because blood quantum alone does not qualify a person for membership. The BIA also created Burley's genealogical chart.

c. Burley and her family sought to join the Tribe and provided the BIA documentation to Dixie. Before Dixie could make a membership decision, however, he went to prison.

d. In 1998, the federal government recognized Yakima

[3] Burley was the daughter of Mildred F. (Jeff) Burley, who was a 4/4 Miwok Indian. "Miwok" is a general term, which may refer to several different bands. Burley never applied for membership in any Miwok band other than the CVMT.

Dixie and his brother, Melvin Dixie, as the only members of the CVMT who had the right to organize the Tribe. Melvin Dixie, however, had not been involved in Tribal affairs for decades.

e. That same year, Burley again contacted the BIA seeking assistance enrolling in the CVMT. The BIA directed Burley to Yakima Dixie, who was then out of jail. The BIA provided Dixie's contact information to Burley. Burley contacted Dixie, renewing her effort to join the Tribe.

f. On August 5, 1998, Dixie—who was then authorized to act on behalf of the CVMT —signed an order enrolling Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace (the "Burley family") into the Tribe.

g. On September 24, 1998, the BIA confirmed the enrollment of the Burley family, stating that "as the Spokesperson of the Tribe, [Dixie] accepted Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as enrolled members of the tribe. Therefore, these persons..., provided that they are at least eighteen years of age, possess the right to participate in the initial organization of the tribe." The BIA letter further explained that future action by the Tribe would include determination of "what enrollment criteria should be applied to future prospective members."

h. Shortly thereafter, the adult acting members of the Tribe—Dixie, Burley and Reznor—enacted tribal resolution #GC-98-01, which formed a General Council (the "1998 General Council"). The 1998 General Council as a whole can make authoritative decisions for the Tribe, even without a Chairperson.

i. The federal government maintained a government-to-government relationship with the CVMT from November 1998 until at least 2005, through the 1998 General Council. Over that time, the BIA entered into 10 contracts with the General Council under Pub. L. 93-638, which funded the Tribe through 2008.

49. There is no evidence that anyone other than the Burleys sought to join the CVMT from the 1960s at least through formation of the 1998 General Council.

II.

ALTHOUGH A LEADERSHIP DISPUTE BEGAN IN 1999 AND CONTINUES TODAY, THE TRIBE'S GOVERNANCE STRUCTURE PERMITS DIRECT OVERSIGHT OF THE TRIBE BY THE GENERAL COUNCIL

50. Between November 1998 and late April 1999, Dixie led the General Council. In April 1999, a disagreement arose between Dixie and Burley over whether Dixie had resigned as Tribal Chairperson, to be succeeded by Burley. Despite their falling out, Dixie informed the BIA that he "g[ave] [Burley] the right to act as a delegate to represent the Sheepranch Indian Rancheria." The leadership dispute remains unresolved to this day, as both Dixie and Burley purport to lead the CVMT.

51. However, in 2012, Dixie was deposed in a related California State case over receipt of Revenue Sharing Trust Fund ("RSTF") distributions belonging to the Tribe. Dixie admitted under oath that he in fact resigned as Tribal Chairman in 1999.

52. The leadership dispute, however, should not paralyze the Tribe or its governance, because the Tribe's General Council resolution entrusts governance of the Tribe to the General Council as a whole:

> RESOLVED, That Yakima Dixie, Silvia Fawn Burley, and Rashel Kawehilani Reznor, as a majority of the adult members of the Tribe, hereby establishes a General Council to *serve as the governing body of the Tribe.*

53. The resolution further allows that "all other inherent rights and powers not specifically listed herein shall vest in the General Council, provided that the General Council may specifically list such other rights and powers through subsequent resolution of the General Council." (*Id.*) Thus, even in the absence of consensus over the Chair of the Tribe, the

General Council has the power to make all decisions necessary for Tribal governance. August 2011 Decision at 8 ("The 1998 Resolution established a General Council form of government, comprised of all the adult citizens of the Tribe, with whom the Department may conduct government-to-government relations."). *See also Samuel George, William Jacobs, Chester Isaac, Bernadette Hill, and Inez Jimerson v. Eastern Regional Director, Bureau of Indian Affairs*, 49 IBIA 164 (May 4, 2009) ("The governing body is the Council . . . It has no written law, court, or body other than the Council itself for resolving disputes that arise within the Council.")

III.

THE LEADERSHIP DISPUTE EVOLVED INTO A MEMBERSHIP DISPUTE, AS DIXIE SOUGHT TO CIRCUMVENT THE 1998 GENERAL COUNCIL

54. Dixie first contested the scope of the Burley's Tribal membership in 2000, in an effort to reclaim unilateral control over the Tribe. Dixie argued to the BIA then that the Burleys' Tribal membership was limited to participation in social welfare programs and did not permit them to participate in Tribal governance. The BIA examined the evidence proffered by Dixie and rejected his claim, concluding that the evidence on which he relied did not support his position; that contemporaneous enrollment documentation did not purport to limit the Burleys' Tribal membership; and that Burley and Reznor had participated with Dixie in Tribal governance for many months before Dixie first claimed that their membership was limited to the receipt of benefits.

55. From mid-1999 until 2004, the BIA recognized "the General Council chaired by Ms. Sylvia [sic] Burley" as the legitimate Tribal government. For example, the BIA referred two potential Tribal members—Yakima and Melvin's alleged sons—to the 1998 General Council for determination of their membership,

because "what evidence is acceptable for establishing [] lineal descendancy is an internal matter to be determined by the Tribe." During that period, the Department regularly compacted with the Tribe, through Burley as the Chair of the General Council.

56. The purported membership dispute on which the District Court opinion focused arose in earnest in late 2003, after the leadership disagreement had remained unresolved for some years and after Dixie had allied himself with gaming developers, who orchestrated a membership contest as a means to restore Dixie as Tribal Chairman and thereby further their development interests.

57. In 2004, the BIA abruptly changed its position and pressed the Tribe to involve the "whole tribal community," comprised of potential members, in the adoption of enrollment criteria. Consistent with that approach, the BIA took the position in subsequent litigation that, as Chair, Burley had not given adequate consideration to potential Tribal members, when the Tribe sought to organize under the Indian Reorganization Act ("IRA"). *See California Valley Miwok Tribe v United States*, 424 F. Supp. 2d 197 (D.D.C. 2006) *("CVMT I")*. In its briefs, the Department did not explain either the legal status of "potential" Tribal members or the implications to the Tribe of their potential membership but represented that it believed the Tribe actually consisted of this larger pool of potential members. The Department did not explain its dramatic change in policy.

58. To effect the position it was then taking in litigation, the Department sought to force a General Council meeting in 2007 that included both enrolled and potential members, at which potential members would be permitted to participate in determining Tribal membership criteria. Burley challenged the BIA's effort before the Interior Board of Indian

Appeals ("IBIA"), referred the membership issue to the AS-IA, who ultimately rejected the BIA's plan in August 2011. The AS-IA reasoned that compelling the CVMT to include potential members in a General Council meeting would effectively turn potential members into actual members, which would impermissibly involve the BIA in the resolution of membership questions.

IV.

THE DEPARTMENT'S AUGUST 2011 DECISION RESTORED THE DEPARTMENT'S PRIOR RECOGNITION OF THE 1998 GENERAL COUNCIL

59. The August 2011 Decision was premised on the Department's long-standing relationship with the CVMT, considered the full administrative record then before the Department, and sought to correct the BIA's earlier effort to force the CVMT to include potential members in its governmental and membership decisions. August 2011 Decision at 2.

60. In the August 2011 Decision, Assistant Secretary Echo Hawk recognized the CVMT had a functioning Tribal government and affirmed that the 1998 General Council "may conduct the full range of government-to-government relations with the United States since [a]lthough this current General Council form of government does not render CVMT an 'organized' tribe under the [IRA] . . . a federally recognized tribe is not required 'to organize' in accordance with the procedures of the IRA." *Id.*; *see* 25 U.S.C. § 476 (permitting but not requiring tribes to organize under the IRA). In addition, the Department told the District Court that it will protect potential members' interests, stating in its briefs that, "[i]f the Tribe, acting through its General Council, endeavors to organize under either 476(a) or 476(h) in a manner that thwarts the participation of the tribal community, then the Assistant Secretary will be bound by his legal duties outlined in *Miwok I* and *Miwok II*."

61. Dixie challenged the August 2011 Decision in the

District Court. The Court ultimately held that the Department's August 31, 2011 Decision did not adequately consider record evidence suggesting that the Tribe was actually comprised of more than five members (Order at 17-20) and did not adequately explain its bases for recognizing the 1998 General Council (Order at 20-23).

GENERAL ALLEGATIONS

62. As the District Court noted in reviewing the August 2011 Decision, the Department has a "distinctive obligation of trust" with respect to Indian tribes. Order at 20 (quoting *Seminole Nation*, 316 U.S. 286, 296 (1942)). The Department's trust obligation is based on "the fact that the Nation is a sovereign entity and, as such, has the right to self-government." *Seminole Nation of Oklahoma v. Norton*, 223 F. Supp. 2d 122, 131-32 (D.D.C. 2002). Thus, whether to interfere in Tribal membership questions "should be resolved in favor of tribal self-determination and against Federal Government interference."

63. In the present case, the Department has played a constructive role consistent with both its trust obligation and its appropriate deference to tribal self-governance, in reviving the CVMT over the years, by evaluating the merits of the Burley family's potential membership, by referring the Burleys to Yakima Dixie, by advising the CVMT about the formation of the General Council, and then by engaging in government-to-government relations with the Tribe. The Department exercised appropriate and judicious care in evaluating the CVMT's enrollment of new members and its creation of a nascent governance structure.

64. Consistent with the Department's August 2011 Decision, the record demonstrates that Yakima Dixie properly enrolled the Burley family in 1998, that their enrollment did not harm Melvin

Dixie, and that the Tribe is in fact presently comprised of five enrolled members. As a consequence, the AS-IA's August 2011 Decision was correct to recognize the authority of the General Council formed by the CVMT in 1998 and to defer to the General Council concerning the enrollment of potential Tribal members.

I.

THE CALIFORNIA VALLEY MIWOK TRIBE'S CURRENT MEMBERSHIP IS PROPERLY COMPRISED OF YAKIMA DIXIE, SILVIA BURLEY, RASHEL REZNOR, ANGELICA PAULK, AND TRISTIAN WALLACE

65. The District Court questioned whether the August 2011 Decision had given adequate consideration to the validity of Dixie's enrollment of the Burley family. Order at 17-19. However, review of the administrative record confirms that Assistant Secretary Echo Hawk's August 2011 Decision was in fact correct: enrollment of the Burley family was a legitimate exercise of Tribal governance and was not induced by fraud; the Burleys' enrollment did not undermine Melvin Dixie's rights; and the interests of potential but unenrolled members are adequately protected.

A. *Dixie Properly Enrolled the Burley Family in the Tribe*

66. The District Court held that the August 2011 Decision did not address whether the Burley family took undue advantage of Dixie, when he enrolled them in the Tribe in 1998. Order at 19. However, no such fraud or coercion occurred. In fact, there is *no* evidence that Burley fraudulently induced or otherwise coerced Dixie to enroll the Burley family in the Tribe. To the contrary, Dixie willingly and voluntarily enrolled the Burleys only after he and Burley had interacted over a number of years.

67. Burley's relationship with the CVMT and Dixie dated to Burley's childhood. In 1995, shortly after Burley contacted Dixie about enrolling in the Tribe, Dixie went to jail. Over

the next few years, Burley and Dixie occasionally corresponded. In 1998, shortly after Dixie had been released from prison and at the BIA's suggestion, Burley approached him about enrolling in the Tribe, and Dixie voluntarily chose to enroll Burley and her family into the CVMT.

68. The District Court opinion notes that, when Burley was introduced to Dixie in 1995, he was incarcerated and physically ill and disabled. Order at 19.[4] Dixie, however, did not enroll the Burleys in 1995; he waited another three years, *after* he was out of prison. There is no record evidence whatsoever that Burley misled Dixie or coerced him into enrolling her family. Indeed, even Dixie's own allegation that Burley engaged in fraud pertains only to the "*change in Tribal leadership during April and May 1999*." Dixie himself does not allege that the Burleys tricked or coerced him into admitting them.

69. The contemporaneous record of the BIA's interaction with the CVMT confirms that Dixie's decision to enroll the Burleys was deliberate and intended to benefit the Tribe. For example, shortly after the enrollment of the Burley family, Dixie told BIA representatives Raymond Fry and Brian Golding that Burley would be an asset to the Tribe and expressed his admiration for Burley's education in Tribal Business Administration. During that meeting with Fry and Golding, Dixie and Burley together participated in a thoughtful conversation about how the CVMT could develop a tribal government and potentially enroll additional members.

70. There is no evidence indicating that in 1998 Burley induced Dixie to admit her family through fraud or coercion.

[4] Given the incarceration rates and health indicators in Indian Country, any suggestion that ability to lead a tribe should be contingent on a clean arrest record and/or physical health would rob tribes of valuable potential leaders. *See e.g.*, "A Quiet Crisis: Federal Funding and Unmet Needs of Indian Country" US Commission on Civil Rights (July 2003).

Rather, the record of the Burley family's enrollment and the subsequent interaction with the BIA confirms that Dixie willingly admitted the Burley family to the Tribe, soon thereafter involved them in Tribal governance, and sought to work with Burley and the BIA to advance Tribal interests. When Dixie first challenged the scope of the Burley family's Tribal membership, the BIA reviewed the evidence presented by Dixie, found his claims disingenuous and unsupported by the record, and concluded that the Burleys had been properly admitted to the Tribe, without any limits on the scope of their membership.

B. *Enrollment of the Burleys in the CVMT Did Not Compromise Melvin Dixie's Interests*

71. The District Court separately expressed concern that the Department may not have adequately protected Melvin Dixie's interests when it permitted Yakima to enroll the Burley family. *See* Order at 20. The Court reasoned that, because Yakima Dixie did not consult Melvin before enrolling the Burley family, Yakima left Melvin's Tribal rights "at the mercy of the Burleys." *Id.* at 20. The Court's concern with interests of Melvin was misplaced for two reasons.

72. ***First***, Yakima had a good reason for not consulting Melvin: at the time of the Burleys' enrollment Melvin had not been involved in Tribal matters for more than 30 years. Melvin's interests were not and could not have been impaired, because he was then playing no role at all in Tribal governance or affairs. Before enrolling the Burleys in 1998, Yakima had for years been the only person who purported to act on behalf of the Tribe, and the BIA had recognized him as the leader of the CVMT. When addressing enrollment of the Burley family in 1998, however, the BIA nevertheless asked Yakima about the whereabouts of his brother. Yakima told the BIA that he believed, through second-hand information, that Melvin lived in Sacramento but he made

clear that he and Melvin had not spoken in over 30 years.

73. During that discussion, the BIA's Brian Golding acknowledged Melvin's rights but noted that, because the BIA did not know Melvin's location, Tribal decision-making would be vested in Yakima, Burley, and Reznor. When the BIA verified the Burley family's enrollment later in 1998, the BIA affirmed that the "whereabouts of . . . Melvin Dixie, were presently unknown."

74. When the BIA located Melvin two years later, it advised him that he was entitled to participate in Tribal governance. The BIA also informed Melvin that he could request financial or technical assistance and should inform the Tribe of any circumstances, which would limit his ability to participate in Tribal affairs. Upon learning that Melvin was in contact with the BIA, Burley sought and received Melvin's contact information and invited him to participate in Tribal governance. Melvin did not respond to Burley's outreach.

75. The record thus demonstrates that Melvin Dixie voluntarily abandoned the Tribe decades before Yakima enrolled the Burley family. Their enrollment consequently had no discernible effect on Melvin's interests, because at the time, Melvin himself had chosen not to participate in Tribal governance or to interact with the Tribe or the BIA.

76. ***Second***, in all events, this question is academic—Melvin is now deceased. Whether his interests were compromised in 1998 by the Burleys' enrollment therefore is legally irrelevant.

C. *Potential Tribal Members Are Not Entitled to the Same Consideration as Enrolled Members of the Tribe*

77. In its August 2011 Decision, the Department distinguished between the five enrolled Tribal members and the approximately 250 potential but unenrolled members of the Tribe. The Department concluded that "the Tribe is not comprised of

both citizens and potential citizens. Rather, the five acknowledged citizens are the only citizens of the Tribe, and the General Council of the Tribe has the exclusive authority to determine the citizenship criteria for the Tribe."

78. The District Court, however, concluded that the Department had "ignore[d] ... evidence that the Tribe's membership is potentially larger than just these five individuals." Order at 18. The District Court also referred to a D.C. Circuit opinion that mentions Burley's acknowledging 250 "potential" members of the Tribe. *CVMT II*, 515 F.3d at 1265. Plaintiffs agree that that there are additional potential members of the Tribe, though the potential members to whom she was then referring were not necessarily CVMT members. Rather, Burley was discussing potential members of all Miwok bands in the area, rather than the CVMT alone. *See supra* n.3. To resolve CVMT membership specifically, potential members' eligibility must be certified; the General Council must evaluate whether to enroll them; and the General Council then must act to admit them. A full consideration of all record evidence makes clear that the Department's initial decision was correct, and the Department should have confirmed that conclusion on remand.

79. The Burleys were properly enrolled in the Tribe and possessed, with Yakima Dixie, the right to organize the Tribe and determine membership. There was substantial evidence in the record that, in contrast to the Burleys, the potential but unenrolled members to whom the District Court referred had not applied to enroll in the Tribe at the time that Dixie admitted the Burleys, did not apply to the General Council for admission after the Tribe began to organize, and are not entitled to avoid the usual membership application process by appeal to the Department.

80. Assuming that the potential members apply for

membership to the General Council and satisfy membership criteria, they will receive appropriate consideration by the General Council. In the event the Tribe chooses to organize under the IRA, the Department has indicated it will review the Tribe's membership procedures.

(1) As the Only Active Tribal Member and the BIA-Recognized Tribal Spokesperson in 1998, Yakima Dixie Properly Enrolled the Burley Family.

81. In the 80 years before admission of the Burleys, the Tribe was fading and nearly defunct. In 1915, the Government identified 13 Indians living on 160 acres in or near Calaveras County. By the time Congress enacted the IRA in 1934, however, only one identifiable CVMT member, Jeff Davis, remained. None of the Indians identified in the 1915 census contested that Davis was the only remaining Tribal member. In 1965, the Government again identified only one Tribal member, Mabel Hodge Dixie, a descendant of Jeff Davis. To ensure that Dixie was the only remaining Tribal member, the BIA sent a letter to descendants of the Indians identified in the 1915 census and published Tribal membership criteria once weekly for three weeks in the local newspaper. The BIA allowed 15 days for anyone to challenge its conclusion that Dixie was the only remaining Tribal member and to claim membership in the Tribe.

82. Dora Mata contested the BIA's determination, claiming that she and some of her family were Tribal members. The BIA, however, found that none of Mata's family met the established membership criteria. The BIA consequently determined that Mabel Hodge Dixie was the last remaining Tribal member of the CVMT in 1965. Following Mabel Hodge Dixie's death, the BIA determined, based on the Department of Interior's Office of Hearing and Appeals Order of Determination of Heirs, that Yakima and Melvin Dixie were the remaining members of the Tribe.

83. By the mid-1990s, Melvin was not participating in Tribal affairs, and Yakima was the last participating Tribal member. Yakima, whom the BIA recognized as the sole Tribal authority, enrolled the Burley family in the CVMT in 1998.

84. At the time that Dixie enrolled the Burley family, the Department was not obliged to scour the historic Sheep Ranch area, to determine whether other residents might be potential members of the Tribe. Because the CVMT was never terminated it need not be restored to recognition and does not need assistance from the Assistant Secretary to become reorganized. Thus, the CVMT itself—through its duly constituted General Council—was and remains entitled to make membership determinations, as potential members apply to enroll in the Tribe.

(2) Potential Tribal Members Had Not Sought to Enroll in the Tribe Until After The Enrollment of the Burley Family; Nor Have They Ever Applied to the General Council for Membership.

85. The District Court held that Assistant Secretary Echo Hawk did not adequately explain how the Tribe has only five members, despite evidence of a greater tribal community of around 250 people. Order at 18.

86. The Tribe's small membership is not suspect. It is instead an unsurprising consequence of the Tribe's decline and near annihilation. As stated, the Sheep Ranch had been decimated by the early 20th century, leaving only 13 members in 1915. Between 1930s and the 1990s, the Tribe never had even five members.

87. There is no evidence—nor did the District Court refer to any—that potential members other than the Burleys sought to join the Tribe at any point before the CVMT established its General Council in 1998. Indeed, the evidence before AS-IA Washburn showed the potential members sought to join the Tribe only *after* the General Council had been established and *after*

the leadership dispute had arisen between Dixie and Burley. It is also ironic that Dixie now appears to contend that Burley is ignoring the interests of unenrolled potential members. In 1998, Dixie told Burley and the BIA that he "would like to keep [Tribal membership] restricted, you know, just to a few . . ."

88. Because the potential members never applied to the General Council to enroll, it is premature either to assume that the potential members are in fact entitled to membership (*e.g.*, do they in fact have Miwok ancestry?) or to conclude that they would not receive appropriate membership consideration if they were to apply to the General Council.

II.

RESOLUTION #GC-98-01 ESTABLISHED THE LAST UNCONTESTED CVMT GENERAL COUNCIL AND REMAINS THE PROPER TRIBAL GOVERNMENT

89. The District Court held that Assistant Secretary Echo Hawk did not adequately consider whether "a duly constituted government actually exists." Order at 20-22. The Court noted that the August 2011 Decision's recognition of the 1998 General Council, including deferring to the General Council on Tribal membership, upset the reliance interests of the 250 potential members, because the Department previously appeared to have said those potential members should have an immediate say in CVMT governance. This is inaccurate.

90. There is overwhelming evidence that the 1998 General Council was organized appropriately, with the guidance of the BIA, and that recognizing the authority of the 1998 General Council would not improperly undermine potential members' interests. To the contrary, only the General Council is in a position to give proper and due consideration to potential members' qualifications to join the Tribe.

A. *The 1998 General Counsel Was Properly Formed*

91. Shortly after enrollment of the Burley family and with

guidance from the BIA, the active adult membership of the tribe—Yakima Dixie, Silvia Burley, and Rashel Reznor—formed a General Council through Tribal resolution #GC-98-01, which Dixie and Burley signed. Following adoption of #GC-98-01, Dixie yielded his unilateral authority over Tribal matters, and the 1998 General Council became the governing authority of the Tribe.

92. The District Court questioned whether #GC-98-01 is compromised, either because it was not actually approved by an appropriate quorum of adult members or because Dixie has "contested the legitimacy of the Council." Order at 21-22. Such concerns are unfounded.

93. ***First***, the District Court noted that neither Reznor nor Melvin Dixie signed the accompanying Resolution. Order at 7 n.7. Reznor did not sign #GC-98-01 because she was away at college and therefore participated in the meeting by phone. She voted in favor of the resolution and has since endorsed its validity. As stated, Melvin Dixie was not in touch with or involved in the Tribe in 1998.

94. Thus, all three participating Tribal members voted in favor of adopting #GC-98-01, and even counting Melvin Dixie, three of the four enrolled adult Tribal members alive in 1998 endorsed #GC-98-01. Consistent with its uncontested adoption at the time, the BIA regularly and repeatedly has recognized the General Council as the governing body of the Tribe since 1998. As noted earlier, the BIA also has entered into 10 contracts with the 1998 General Council under Pub. L. 93-638.

95. ***Second***, the District Court questioned the authority of #GC-98-01, on the basis that Dixie has alleged that Burley became Tribal Chair through fraud. Order at 21-22. The District Court decision, however, confused the acknowledged *leadership* dispute between Dixie and Burley with a non-existent dispute over the *formation* of the Tribe's government, the General

Council. Not one of the documents on which the District Court premised its finding concerned any alleged deficiency in the formation or organization of the General Council. The documents to which the District Court referred instead repeat Dixie's allegations about the impropriety of Burley's assuming the Chairmanship.

96. Dixie has consistently contended that Burley purloined the Chairmanship through fraud; he has not, however, argued or offered any evidence that the creation of the 1998 General Council was tainted by fraud. To the contrary, Dixie and Burley have agreed over the years that #GC-98-01 was authorized, appropriately undertaken, and legitimate. Indeed, Dixie himself chaired the General Council for at least five months after adoption of #GC-98-01. And, consistent with the legitimacy of the General Council and its authority over Tribal affairs, Dixie told the BIA even after the leadership dispute arose that he "g[ave] [Burley] the right to act as a delegate to represent the Sheepranch Indian Rancheria."

97. The disagreement between Dixie and Burley that underlies this entire matter is a leadership dispute. And leadership disputes in Indian Country, while inconvenient, are not uncommon or unprecedented. In the event of an internal tribal leadership dispute, this Department's established policy is to recognize the last uncontested tribally elected council. In this case, the last undisputed General Council is the 1998 General Council established by #GC-98-01.

B. *Recognizing the Authority of the 1998 General Council Would Not Improperly Undermine Potential Members' Interests*

98. The District Court correctly held that the Department must provide a "detailed justification" for changing a policy that "had engendered serious reliance interests." Order at 14, 20 (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502,

515 (2009)). The Court found that the Department's August 2011 Decision was a "180 degree-change of course" from prior BIA positions dating to 2004 that appeared to favor giving potential Tribal members a say in CVMT governance matter, presumably including their own membership applications. The Court consequently held that the Department did not provide an adequate explanation in 2011 for recognizing the General Council's authority to govern Tribal affairs, including membership. Opinion at 18.

99. On remand, the Department should have concluded that: (i) there is no evidence that any potential Tribal members interest has yet been compromised, and (ii) examination of the record back to the 1990s supports the conclusion that the Tribe has five members. Its failure to reach this conclusion was erroneous for the following reasons.

100. ***First***, there was no evidence in the record that potential Tribal members would not be admitted if they were to apply to the General Council for membership. The record was therefore devoid of any basis to conclude that any actual interest in membership for any potential Tribal members has yet been compromised. Absent evidence of such an injury, it was premature to conclude that potential members' interests have been injured.

101. ***Second***, the District Court characterized the Department's position that the "Tribe's membership was limited to only Yakima in 1998 (and the Burleys after Yakima enrolled them)" as "newly adopted." Order at 19. Examination of the full record, however, demonstrates that the Department has long held a consistent position on the Tribe's membership and on the propriety of Dixie's enrolling the Burleys.

102. Between 1998 and 2004, the Department interacted regularly with the CVMT. Its approach to the Tribe during that

period was deliberate and careful and also created settled expectations by recognizing the right of the five-member Tribe to organize, including establishing a General Council and determining "what enrollment criteria should be applied to future prospective members." Indeed, in the years after formation of the 1998 General Council, the CVMT compacted with the federal government, sought to prepare a constitution, and tried to enroll new members.

103. By comparison, potential members' interests are inchoate. Although the Department has at times taken the position that potential members may participate in enrollment decisions, the Department has never determined the legitimacy of those potential members' claims to Tribal membership. Nor has the Department participated in or organized or ratified processes to determine the method by which the potential members' applications to join the CVMT should be adjudicated. The potential members' reliance interest in the Department's position is therefore at best limited.

104. The interests of the members of the 1998 General Council reflect a lengthy and substantial interaction with the Department, including years of government-to-government relations. That type of interaction engendered more substantial reliance by the members of the General Council than the interest in *possible* membership that potential members may have acquired as a consequence of the policy and litigation positions taken by the Department between 2004 and 2011.

C. *Enrollment of Potential Members of the Tribe Must Be Entrusted to the General Council*

105. The Department's position between 2004 and 2011 has been that potential Tribal members should receive appropriate and fair process when they apply to join the Tribe. The 1998 General Council is best positioned to determine and then provide

that process.

106. Consistent with longstanding judicial and Department precedent and policy, the August 2011 Decision concluded that the BIA could not compel the Tribe to enroll potential members to its citizenship, because the Tribe already had an existing membership and form of government. August 2011 Decision at 6.

107. The Department should have referred the unenrolled, potential Tribal members to the CVMT for a membership determination, as it once referred Burley to Dixie.

FIRST CAUSE OF ACTION

(Arbitrary and Capricious Agency Action in Violation of the Administrative Procedures Act, as against all Defendants)

108. The allegations in paragraphs 1 through 107 are re-alleged and incorporated herein by reference.

109. The Administrative Procedures Act ("APA") provides that a court must hold unlawful and set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. " 5 U.S.C. §706(2)(A).

110. The AS-IA's December 30, 2015 decision constitutes "final agency action."

111. The AS-IA's December 30, 2015 decision violates APA §706(2)(A) because it unlawfully opened and addressed issues that were not within the scope of jurisdiction of the Board of Appeal from which the decision arose, and contrary to the instructions on remand from the U.S. District Court, for the reasons alleged herein. It is arbitrary and capricious because it failed to consider relevant evidence bearing on the issues before the AS-IA and ignored evidence contradicting his position. This includes, but is not limited to, the allegations herein alleged and the following:

///

THE AS-IA FAILED TO CONSIDER ON REMAND DIXIE'S DEPOSITION TESTIMONY

112. Dixie's deposition testimony that he resigned, that his resignation was not forged after all, and that he signed Tribal documents appointing Burley to replace him as Tribal Chairman, were highly relevant to the issues for resolution on remand. Indeed, the issue of the Tribal leadership dispute, i.e., Dixie's claim that he, not Burley, is the rightful Chairman of the Tribe, is referenced throughout the U.S. District Court decision. (Page 7 ["leadership dispute brewing between Yakima and Burley…], ["On October 10, 1999, Yakima raised concern about the leadership dispute"], [December 1999 "Yakima again alleged 'fraud and misconduct relative to the change in Tribal leadership during April and May 1999' and maintained that he is the rightful Chairperson of the Tribe"], page 8 [BIA writes Yakima and Burley advising them to resolve the dispute internally within a reasonable time], page 9 ["The leadership and membership dispute between Yakima and Burley continued"], page 11 ["by November 2006, the BIA concluded that "the ongoing leadership dispute [was] at an impasse…"]).

113. Based on these facts in the administrative record raising doubts about the Tribal leadership dispute, the U.S. District Court concluded that the August 31, 2011 decision was required to address them. It stated:

> Here, the August 2011 Decision fails to address *whatsoever* the numerous factual allegations in the administrative record that raise significant doubts about the legitimacy of the General Council. From as early as April 1999, Yakima contested the validity of the Council (citing Dixie's letter to the BIA stating that he "cannot and will not resign as chairman of the Sheep Ranch Indian Rancheria").

(Page 21 and 22 of U.S. District Court decision).

114. Significantly, the Court stated that Dixie contested the "validity of the Council" from April of 1999," knowing full well that the General Council was established in November 1998 under Resolution #CG 98-01. Thus, reference here is to Dixie's claim that he never resigned and that his resignation was forgery, not that the establishment of the 1998 General Council under Resolution #CG 98-01 was "void at the outset."

THE VALIDITY OF THE ESTABLISHMENT OF THE GENERAL COUNCIL IN 1998 WAS NEVER REFERRED TO THE AS-IA FOR RESOLUTION

115. In fact, whether the establishment of the 1998 General Council was void or invalid at the outset was never an issue the IBIA referred over to the AS-IA for resolution. As the IBIA decision aptly states:

> Understood in the context of the history of this Tribe, and the BIA's dealings with the Tribe since approximately 1999, this case is properly characterized as an enrollment dispute…

51 IBIA 103, 122.

116. Here, the IBIA casts the dispute for resolution from the time the leadership dispute arose in April 1999, not at the time the General Council was established in November 1998. The AS-IA was never referred for review any issue regarding the validity of the establishment of the 1998 General Council. Specifically, the IBIA referred over the following issue to the AS-IA:

> [Whether] the BIA improperly determined that the Tribe is "unorganized," failed to recognize [Burley] 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.
>
> 51 IBIA at 123.

117. The issue of whether the Tribe is "unorganized" involves whether the Tribe can operate under a General Council

or whether it must re-organized under the Indian Reorganization Act of 1934 ("IRA") to receive federal funding and have an ongoing government-to-government relationship with the federal government. The issue is not whether the General Council was properly organized in 1998. That was never the intent of the IBIA referral. Indeed, nothing in the IBIA decision referring the "enrollment dispute" over to the AS-IA mentions the challenge of the establishment of the General Council under Resolution #CG 98-01 in November 1998.

118. There was no dispute that arose out of the validity of the General Council that Dixie and Burley established in 1998. No such issue was ever tendered to the IBIA for resolution, and the IBIA has never referred such an issue to the AS-IA for resolution.

119. It is also undisputed that the Miwok Tribe is federally-recognized, and thus is "an already existing tribal entity." Thus, the dispute between Dixie and Burley is an "ordinary tribal government dispute, arising from an internal dispute in an already existing tribal entity."

DIXIE IS ESTOPPED FROM OBJECTING TO THE VALIDITY OF THE 1998 GENERAL COUNCIL

120. Yakima Dixie signed the 1998 Resolution establishing the General Council confirming that the "whereabouts of Melvin Dixie are unknown." Yakima Dixie also had the power to adopt Burley and her daughters as members of the Tribe, which he exercised prior to his execution of the 1998 Resolution. Dixie cannot object to his own actions as a basis to claim the 1998 Resolution establishing the General Council is invalid. He affirmatively represented that he did not know the whereabouts of Melvin Dixie at the time of the establishment of the General Council in 1998, and cannot now claim that the whereabouts of

Melvin were in fact known and that he should have been contacted.

121. Here, the BIA and Burley and the other adopted members relied on Yakima Dixie's representations that he did not know the whereabouts of Melvin Dixie at the time the 1998 Resolution was executed and the General Council established. The doctrine of promissory estoppel prevents him from now claiming the General Council's creation is invalid because he purportedly in fact knew of Melvin Dixie's whereabouts.

DIXIE'S OBJECTIONS TO THE VALIDITY OF THE GENERAL COUNCIL IS BARRED BY THE STATUTE OF LIMITATIONS

122. It is undisputed that Dixie and his followers sued the federal government in its challenge to the August 31, 2011 decision. As part of that challenge, the Dixie Faction sought to claim that the General Council established under Resolution #CG-98-01 was invalid at the outset, as a result of the BIA's actions. While this claim was never tendered to the AS-IA by the IBIA for resolution, the Dixie Faction nonetheless asserted it as a claim within their challenge of the August 31, 2011 decision. However, the claim is barred by the statute of limitations.

123. Accordingly, upon reconsideration, the Department should have but failed to consider this fact as a basis for rejecting the Dixie Faction's claim that the General Council was invalid when it was formed in November of 1998. Because this claim was barred by the statute of limitations, the AS-IA had no jurisdiction to consider it and declare it invalid.

124. The Indian Claims Commission Act required all claims accruing before August 13, 1946, to be brought during a five-year period ending in 1951. The claims may not "thereafter be submitted to any court or administrative agency for consideration." Indian Claim Commission Act of 1946, §12, 60

Stat. 1049 (*formerly* 25 U.S.C. §70k); COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, 2012 edition, §5.06[5], pp. 443-444. Claims accruing after that date must now be brought within six (6) years from the date the claim first accrues. 28 U.S.C. §2501(Court of Federal Claims), 28 U.S.C. §2401(civil actions in federal district courts).

125. Here, Dixie has acknowledged executing the 1998 Resolution establishing the General Council. He was aware of its creation through the BIA's assistance since it was first drafted. He was the first Tribal Chairman appointed under that newly formed General Council, and he claimed for many years after April 1999 that he never resigned from the position of Tribal Chairman of that General Council, a claim we now know was false. Yet he never filed any administrative claim or federal lawsuit claiming that the General Council was invalid at the outset, until his federal suit challenging the August 31, 2011 AS-IA decision in October 2011, i.e., 13 years later. Accordingly, Dixie's claim that the General Council was purportedly invalid at the outset is time-barred under 28 U.S.C. §2501 and 28 U.S.C. §2401 for having failed to commence any action on that claim within 6 years of the date he executed the November 1998 Resolution.

126. Pursuant to the directions on remand, the AS-IA failed to consider this fact in reconsidering its decision, rendering the decision erroneous as a matter of law.

CLAIMING TO BE THE CALIFORNIA VALLEY MIWOK TRIBE AND THEN SUING IN THAT NAME REFUTES THE ASSERTION THAT THE GENERAL COUNCIL WAS INVALID AT THE OUTSET

127. It is undisputed that the Dixie Faction filed suit in federal court challenging the August 31, 2011 AS-IA decision as Plaintiff CALIFORNIA VALLEY MIWOK TRIBE. However, it is also undisputed that the Tribe was formerly called the Sheep Ranch

Rancheria of Me-Wuk Indians of California. That was the name the Tribe called itself when it organized its governing body as a General Council in November 1998 under Dixie and Burley's signature. However, the record shows that the General Council under Burley's leadership thereafter passed a resolution changing the name of the Tribe to the California Valley Miwok Tribe, which the BIA accepted and then made that change in the Federal Register.

128. Rather than sue under the original name, the Dixie Faction instead sued under the new name of the Tribe, thus confirming and ratifying that the General Council under Burley's leadership had the authority to pass such a resolution affecting the Tribe. The Dixie Faction cannot in good faith maintain that the General Council was invalid at the outset, and then purport to sue under the changed name of the Tribe by the authority it disputes. The AS-IA's December 2015 Decision ignored this salient point.

129. As a direct and legal result of the December 30, 2015 decision, Plaintiffs have been, are, and will continue to be denied the benefits of Tribal membership and will suffer irreparable injury and financial loss, according to proof.

130. As a direct and legal result of the December 30, 2015 decision, Plaintiffs have been, are, and will continue to be denied the use of PL 638 funds available through the BIA, the California State RSTF distribution payments made available by the California Gambling Control Commission, and will suffer irreparable injury and financial loss.

SECOND CAUSE OF ACTION

(Declaratory Relief)

131. The allegations in paragraphs 1 through 130 are re-alleged and incorporated herein by reference.

132. An actual controversy has arisen and now exists between Plaintiffs and the Defendants concerning the validity and scope of the AS-IA's December 30, 2015 decision, including, but not limited to whether the DOI/BIA has the right to "reorganize" the Tribe's governing body, without the present members' consent, and allow, without the present members' consent, other unenrolled members to participate in reorganizing the Tribe. The dispute also requires resolution of whether the AS-IA has jurisdiction or the right to cancel the presently governing body of the Tribe, established in 1998, and require the Tribe to be reorganized under another form of government not agreed to by the Tribe. The dispute also requires resolution of whether any challenge to the 1998 resolution establishing the General Council is time-barred as a matter of law, and whether the AS-IA ever had jurisdiction to consider a challenge to the validity of the 1998 Resolution establishing the General Council, since that was not within the scope of referral from the Interior Board of Indian Appeals in the first instance. The dispute also requires resolution of whether the AS-IA had the right to expand the Tribal membership beyond the five enrolled members without the tribe's consent, and all other issues herein alleged that the December 2015 Decision is erroneous as a matter of law.

THIRD CAUSE OF ACTION

(Injunctive Relief)

133. The allegations in paragraphs 1 through 132 are re-alleged and incorporated herein by reference.

134. Plaintiff has no adequate remedy at law.

135. Grounds exist for injunctive relief, because the requested relief involves an obligation arising from a trust relationship between the federal government and a federally-recognized tribe. The AS-IA had a duty to follow and apply the

law so as to not deny Plaintiffs benefits under the law as herein alleged.

136. Accordingly, Plaintiff requests the court order Defendants to cease and desist from implementing the AS-IA's December 30, 2015 decision, temporarily until this action is resolved, and then permanently, upon successful resolution.

FOURTH CAUSE OF ACTION

(Violation Of Substantive and Procedural Due process)

137. The allegations in paragraphs 1 through 136 are re-alleged and incorporated herein by reference.

138. The December 2015 Decision violates Plaintiffs' substantive due process rights under the 5th Amendment to the U.S. Constitution because it arbitrarily deprives Plaintiffs of their fundamental rights as Tribal members, including rights to citizenship, political representation, and self-government, and for the following reasons.

139. During the Dixie Faction's challenge of the August 2011 AS-IA Decision, Plaintiffs were barred from participating as intervenors in the federal litigation. As a result, they were not able to assert their position against the Dixie Faction's claims, which enabled the Dixie Faction to "set the stage" for having the U.S. District Court remand the August 2011 AS-IA Decision for reconsideration based on points and argument Plaintiffs' were not able to address in the U.S. District Court. As a result, the December 2015 AS-IA's Decision was preconditioned to favor the Dixie Faction to the detriment of Plaintiffs.

140. Upon information and belief, the Dixie Faction engaged in ex parte contacts with the staff at the DOI in order to influence a reconsidered decision in its favor.

///

REQUEST FOR IMMEDIATE STAY

141. The AS-IA's August 2011 Decision was stayed pending resolutions of Dixie's challenge to it in federal court. Likewise, Plaintiffs are entitled to, and hereby request, an immediate stay of the implementation of the AS-IA's December 2015 Decision pending resolution of this federal action challenging that decision.

142. Attached as Exhibit "3" is a copy of the August 31, 2011 AS-IA Decision.

143. Attached as Exhibit "4" is a copy of the U.S. District Court Decision dated December 13, 2013.

144. Attached as Exhibit "5" is a copy of the December 30, 2015 AS-IA Decision.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request the Court issue the following orders:

1. Vacating and setting aside the December 2015 AS-IA Decision as arbitrary, capricious, unsupported by substantial evidence in the record, an abuse of discretion and otherwise not in accordance with law;

2. Declaring that the Secretary (acting through the AS-IA) violated his fiduciary duty to the Tribe and its individual members by adopting the December 2015 AS-IA Decision, refusing to recognize the General Council established under Resolution #GC-98-01, refusing to follow the August 2011 AS-IA's Decision limiting membership to five enrolled members and allowing non-enrolled members to participate in "reorganizing" the Tribe.

3. Declaring that the December 2015 AS-IA's Decision denied Plaintiffs substantive and procedural due process.

4. Directing the AS-IA and the BIA to recognize the General Council established under Resolution #GC-98-01 and resume government-to-government relations with that General Council.

5. Preliminarily and permanently enjoining the Secretary, the AS-IA and the BIA from taking any action to implement the December 2015 AS-IA Decision, including awarding any federal funds to anyone other than the General Council established under Resolution #GC-98-01;

6. Awarding Plaintiffs' damages, attorneys' fees and costs incurred in connection with this action;

7. Granting such other relief as the Court deems just and proper.

DATED: 6/17/2016

Manuel Corrales, Jr., Esq.
Attorney for Plaintiffs
CALIFORNIA VALLEY MIWOK TRIBE, THE GENERAL COUNCIL, SILVIA BURLEY, RASHEL REZNOR, ANJELICA PAULK and TRISTIAN WALLACE

EXHIBIT “1”

RESOLUTION #GC-98-01

ESTABLISHING A GENERAL COUNCIL TO SERVE AS THE GOVERNING BODY OF THE SHEEP RANCH BAND OF ME-WUK INDIANS

WHEREAS, The Sheep Ranch Band of Me-Wuk Indians of the Sheep Ranch Rancheria of California ("the Tribe") was not terminated pursuant to the provisions of the Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat/ 390 ("the Rancheria Act"), and is a federally recognized Indian Tribe as confirmed by the inclusion of the Tribe in the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, as published in the Federal Register on October 23, 1997.

WHEREAS, The plan of Distribution of the Assets of the Sheep Ranch Rancheria, approved by the Associate Commissioner of Indian Affairs on October 12, 1966, identified Mabel (Hodge) Dixie as the sole distributee entitled to participate in the distribution of the assets of the Sheep Ranch Rancheria;

WHEREAS, The Bureau of Indian Affairs did not completely implement the steps necessary to effect the termination of the Tribe prior to the passing of Mabel (Hodge) Dixie;

WHEREAS, The estate of Mabel (Hodge) Dixie was probated and Order of Determination of Heirs was issued on October 1, 1971, listing the following persons as possessing a certain undivided interest in the Sheep Ranch Rancheria:

Merle Butler, husband	Undivided 1/3 interest
Richard Dixie, son	Undivided 1/6 interest
Yakima Dixie, son	Undivided 1/6 interest
Melvin Dixie, son	Undivided 1/6 interest
Tommy Dixie, son	Undivided 1/6 interest

and this Order was reaffirmed by another Order issued on April 14, 1993;

WHEREAS, The surviving heirs are believed to be Yakima and Melvin Dixie, as the other heirs are or are believed to be deceased, and their heirs are in the process of requesting the estates of the deceased heirs be probated, and it is believed that the deceased heirs had no issue;

WHEREAS, The whereabouts of Melvin Dixie are unknown;

WHEREAS, The membership of the Tribe currently consists of at least the following individuals; Yakima Dixie, Silvia Fawn Burley, Rashel Kawehilani Reznor, Anjelica Josett Paulk, and Tristian Shawnee Wallace; this membership may change in the future consistent with the Tribe's ratified constitution and any duly

enacted Tribal membership statutes.

WHEREAS, The Tribe, on June 12, 1935, voted to accept the terms of the Indian Reorganization Act (P.L. 73-383; 48 Stat. 984) but never formally organized pursuant to federal statute, and now desires to pursue the formal organization of the Tribe; now, therefore, be it

RESOLVED, That Yakima Dixie, Silvia Fawn Burley, and Rashel Kawehilani Reznor, as a majority of the adult members of the Tribe, hereby establishes a General Council to serve as the governing body of the Tribe;

RESOLVED, That the General Council shall consist of all members of the Tribe who are at least eighteen years of age, and each member shall have one vote;

RESOLVED, That the General Council shall have the following specific powers to exercise in the best interest of the Tribe and its members:

(a) To consult, negotiate, contract, or conclude agreements with the Bureau of Indian Affairs, for the purpose of furthering the development and adoption of a Constitution;
(b) To administer assets received from such agreements specified in (a) above, including the power to establish bank accounts and designate signers thereupon;
(c) To administer the day-to-day affairs related to such agreements specified in (a) above;
(d) To develop and adopt policies and procedures regarding personnel, financial management, procurement and property management, and other such policies and procedures necessary to comply with all laws, regulations, rules, and policies related to funding received from such agreements specified in (a) above;
(e) To employ legal counsel for the purpose of assisting in the development of the Constitution and the policies and procedures specified in (d) above, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior or his authorized representative;
(f) To receive advice from and make recommendations to the Secretary of the Interior with regard to all appropriation estimates or federal projects for the benefit of the Tribe prior to the submission of such estimates to the Office of Management and Budget and to Congress;
(g) To faithfully advise the General Council of all activities provided for in this resolution at each regularly scheduled meeting of the General Council;
(h) To purchase real property and put such real property into trust with the United States government for the benefit of the Tribe;

RESOLVED, That all other inherent rights and powers not specifically listed herein shall vest in the General Council, provided that the General Council may specifically list such other rights and powers through subsequent resolution of the General Council;

RESOLVED, That the General Council shall appoint from among its members a Chairperson, who shall preside over all meetings of the General Council and rights and powers through

subsequent resolutions of the General Council, provided that in the absence of the Chairperson, a Chairperson Pro Tem shall be appointed from members convening the meeting;

RESOLVED, That the Chairperson shall notice and convene regular meetings of the General Council on the second Saturday of each month following the adoption of this resolution, provided that special meetings of the General Council may be called by the Chairperson upon providing a least fifteen (15) days notice stating the purpose of the meeting;

RESOLVED, That the Chairperson shall call a special meeting of the General Council, within thirty (30) days of receipt of a petition stating the purpose of the meeting, signed by at least fifty-one percent (51%) of the General Council, and the Chairperson shall provide at least fifteen (15) days notice stating the purpose of the meeting, provided that at such meeting, it shall be the first duty of the General Council to determine the validity of the petition;

RESOLVED, That the General Council shall elect from among its members a Secretary/Treasurer, who shall record the minutes of all General Council meetings, maintain the official records of the Tribe, certify the enactment of all resolutions, and disburse all funds as ordered by the General Council;

RESOLVED, That the quorum requirement for meetings of the General Council shall be conducted pursuant to Robert's Rules of Order;

RESOLVED, That the General Council shall exist until a Constitution is formally adopted by the Tribe and approved by the Secretary of the Interior or his authorized representative, unless this resolution is rescinded through subsequent resolution of the General Council.

CERTIFICATION

We, the undersigned as a majority of the adult members of the General Council of the Sheep Ranch Band of Me-Wuk Indians of the Sheep Ranch Rancheria of California ("the Tribe"), do hereby certify that at a duly noticed, called, and convened special meeting of the General Council held on Thursday, in Sheep Ranch, California, where a quorum was present, this resolution was adopted by a vote of 2 in favor, 0 opposed, and 0 abstaining. We further certify that this resolution has not been rescinded, amended, or modified in any way.

Dated this 5 day of November, 1998:

Yakima Dixie
Yakima Dixie

Silvia Burley
Silvia Burley

Rashel Reznor

EXHIBIT "2"

Sheep Ranch Tribe of Me-Wuk Indians

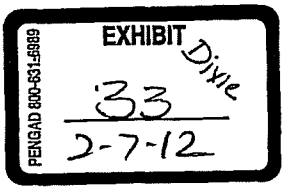
Formal notice of resignation

I Yakima K. Dixie being of sound mind and body on this date of Tuesday April 20th, 1999, am resigning as Chairperson of the Sheep Ranch Tribe of Me-Wuk Indians Sheep Ranch, California. This written document shall serve as a formal notice within the Tribe and to the United States Government and/or any other powers that may be.

Signed Yakima Kenneth Dixie

YAKIMA K. DIXIE

Cc: Mr. Yakima K. Dixie
11178 School Road
P.O. BOX 41
Sheep Ranch, CA 95250
(209) 728-8625



GENERAL COUNCIL GOVERNING BODY OF THE SHEEP RANCH TRIBE OF ME-WUK INDIANS

RE: ***Chairperson***

SPECIAL MEETING CALLED TO ORDER ON THE 20TH OF APRIL 1999.

Time Beginning: 12:00 NOON

The General Council as the Governing Body of the Sheep Ranch Tribe of Me-Wuk Indians has agreed to accept the resignation of Chairperson from Mr. Yakima K. Dixie.
The General Council has appointed Silvia Burley as Chairperson.

Signed Yakima Kenneth Dixie
Yakima K. Dixie (Chairperson)
Sheep Ranch Tribe of Me-Wuk Indians

Signed Silvia Burley
Silvia Burley (Secretary/Treasurer)
Sheep Ranch Tribe of Me-Wuk Indians

Signed Rashel K. Reznor
Rashel K. Reznor (Tribal Member)
Sheep Ranch Tribe of Me-Wuk Indians

RESOLVED: ***That the General Council is in agreement to the acceptance of the resignation of Mr. Yakima K. Dixie as Chairperson and has officially appointed Silvia Burley as Chairperson of the Sheep Ranch Tribe of Me-Wuk Indians, now, therefore be it.***

This Special Meeting is now adjourned.

Time Ending: 12:30 PM

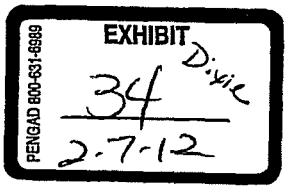


EXHIBIT “3”

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 31 2011

Ms. Silvia Burley
10601 N. Escondido Place
Stockton, California 95212

Mr. Yakima Dixie
1231 E. Hazelton Avenue
Stockton, California 95295

Dear Ms. Burley and Mr. Dixie:

Introduction and Decision

On December 22, 2010, I sent you a letter setting out my decision in response to a question referred to me by 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) (IBIA decision). I determined that there was "no need for the BIA to continue its previous efforts to organize the Tribe's government, because it is organized as a General Council, pursuant to the [1998 General Council Resolution] it adopted at the suggestion of the BIA." I concluded further that there was "no need for the BIA to continue its previous efforts to ensure that the Tribe confers tribal citizenship upon other individual Miwok Indians in the surrounding area."

I issued my December decision without providing the parties a formal opportunity to brief me on the facts and issues as they saw them. As a result of subsequent actions by both parties, I determined to withdraw the December decision, and, on April 8, 2011, I requested briefing from the parties. Counsel for the parties provided detailed responses with numerous exhibits. I appreciate the time and effort that went into providing these responses. I have considered them carefully.

Based on the litigation records in the prior Federal court actions in both California and Washington, D.C., the proceedings before the Department's Interior Board of Indian Appeals, and the material submitted in response to my April 8 letter, I now find the following:

(1) The California Valley Miwok Tribe (CVMT) is a federally recognized tribe, and has been continuously recognized by the United States since at least 1916;

(2) At the present date, the citizenship of the CVMT consists solely of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace;

(3) The CVMT today operates under a General Council form of government, pursuant to Resolution #CG-98-01, which the CVMT passed in 1998, facilitated by representatives of the Bureau of Indian Affairs (Bureau or BIA)(1998 General Council Resolution);

(4) Pursuant to the 1998 General Council Resolution, the CVMT's General Council is vested with the governmental authority of the Tribe, and may conduct the full range of government-to-government relations with the United States;

(5) Although this current General Council form of government does not render CVMT an "organized" tribe under the Indian Reorganization Act (IRA) (*see e.g.*, 25 U.S.C. 476(a) and (d)), as a federally recognized tribe it is not required "to organize" in accord with the procedures of the IRA (25 U.S.C. § 476(h));

(6) Under the IRA, as amended, it is impermissible for the Federal government to treat tribes not "organized" under the IRA differently from those "organized" under the IRA (25 U.S.C. §§ 476(f)-(h)); and

(7) As discussed in more detail below, with respect to finding (6), on this particular legal point, I specifically diverge with a key underlying rationale of past decisions by Department of the Interior (Department) officials dealing with CVMT matters, apparently beginning around 2004, and decide to pursue a different policy direction.[1] Under the circumstances of this case, it is inappropriate to invoke the Secretary's broad authority to manage "all Indian affairs and [] all matters arising out of Indian relations," 25 U.S.C. § 2, or any other broad-based authority, to justify interfering with the CVMT's internal governance. Such interference would run counter to the bedrock Federal Indian law principles of tribal sovereignty and tribal self-government, according to which the tribe, as a distinct political entity, may "manag[e] its own affairs and govern[] itself," *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1832); and would conflict with this Administration's clear commitment to protect and honor tribal sovereignty.

Obviously, the December 2010 decision, and today's reaffirmation of that decision, mark a 180-degree change of course from positions defended by this Department in administrative and judicial proceedings over the past seven years. This change is driven by a straightforward correction in the Department's understanding of the California Valley Miwok Tribe's citizenship and a different policy perspective on the Department's legal obligations in light of those facts.

As discussed below, the BIA clearly understood in 1998 that the acknowledged CVMT citizens had the right to exercise the Tribe's inherent sovereign power in a manner they chose. It is unfortunate that soon after the 1998 General Council Resolution was enacted, an intra-tribal leadership dispute erupted, and both sides of the dispute found, at various points in time in the intervening years, that it served their respective interests to raise the theory that the BIA had a duty to protect the rights of approximately 250 "potential citizens" of the Tribe. A focus on that theory has shaped the BIA's and the Department's position on the citizenship question ever

[1] I recognize that the D.C. Circuit Court of Appeals' 2008 opinion upholding prior Department efforts to organize the CVMT pursuant to the IRA afforded broad deference to the Department's prior decisions and interpretations of the law. *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1264-68 (D.C. Cir. 2008).

since. By contrast, today's decision clears away the misconceptions that these individuals have inchoate citizenship rights that the Secretary has a duty to protect. They do not. The Tribe is not comprised of both citizens and potential citizens. Rather, the five acknowledged citizens are the only citizens of the Tribe, and the General Council of the Tribe has the exclusive authority to determine the citizenship criteria for the Tribe. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57 (1978). I believe this change in the Department's position is the most suitable means of resolving this decade-long dispute and is in accord with principles of administrative law. *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

Background

This decision is necessitated by a long and complex tribal leadership dispute that resulted in extensive administrative and judicial litigation. Much of the factual background is set out in the prior decisions, so it is not necessary to repeat or even summarize all of it here.

The history of this Tribe, and the record of this case to date, demonstrates the following:

- The CVMT is a federally recognized tribe, 74 Fed. Reg. 40,218, 40,219 (Aug. 11, 2009);
- In 1916, the United States purchased approximately 0.92 acres in Calaveras County, California, for the benefit of 12 named Indians living on the Sheepranch Rancheria (now Sheep Ranch)(Rancheria) (51 IBIA at 106);
- The Indian Agent, who in 1915 recommended the purchase of the 0.92 acres, described the group of 12 named individuals as "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.'" *Id.*;
- The record shows only one adult Indian lived on the Rancheria in 1935, a Jeff Davis, who voted "in favor of the IRA" *Id.*;
- In 1966, the record shows only one adult Indian, Mabel Hodge Dixie, Yakima Dixie's mother, lived on the Rancheria, when the BIA crafted a plan for distribution of tribal assets pursuant to the 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;
- Mabel Hodge Dixie was to be the sole distributee of tribal assets under the 1966 Rancheria distribution plan;
- While the Bureau initiated the process to terminate the Tribe, it never declared the Tribe terminated and has never treated the Tribe as if it had been terminated;
- In 1994, Yakima Dixie wrote the BIA asking for assistance with home repairs and describing himself as "the only descendant and recognized . . . member of the Tribe." (51 IBIA at 107);
- At some point during the 1990s, Silvia Burley "contacted BIA for information related to her Indian heritage, which BIA provided, and by 1998 at BIA's suggestion Burley had contacted Yakima[]" Dixie (as the IBIA has noted, "it appears that Burley may trace her ancestry to a 'Jeff Davis' who was listed on the 1913 census. . . .") 51 IBIA at 107, including footnote 7;
- On August 5, 1998, Mr. Dixie "signed a statement accepting Burley as an enrolled member of the Tribe, and also enrolling Burley's two daughters and her granddaughter." *Id.*;

- The Tribe was not organized pursuant to the IRA prior to 1998 and did not have organic documents setting out its form of government or criteria for tribal citizenship;
- In September of 1998, BIA staff met with Mr. Dixie and Ms. Burley "to discuss organizing the Tribe," and on September 24, 1998 sent follow-up correspondence recommending that, "given the small size of the Tribe, we recommend that the Tribe operate as a General Council," which could elect or appoint a chairperson and conduct business. *Id.* at 108;
- On November 5, 1998, Mr. Dixie and Ms. Burley signed a resolution establishing a General Council, which consisted of all adult citizens of the Tribe, to serve as the governing body of the Tribe. *Id.* at 109;
- Less than five months later, leadership disputes arose between Mr. Dixie and Ms. Burley—and those conflicts have continued to the present day;[2]
- Initially the BIA recognized Mr. Dixie as Chairman, but later recognized Ms. Burley as Chairperson based primarily upon the April 1999 General Council action appointing Ms. Burley as Chairperson - an action concurred in by Mr. Dixie. *Id.*;
- Mr. Dixie later challenged Ms. Burley's 1999 appointment;
- In 2002, Ms. Burley filed suit in the name of the Tribe alleging that the Department had breached its trust responsibility to the Tribe by distributing the assets of the Rancheria to a single individual, Mabel Dixie, when the Tribe had a potential citizenship of "nearly 250 people[.]" *See* Complaint for Injunctive and Declaratory Relief at 1, *Cal. Valley Miwok Tribe v. United States*, No. 02-0912 (E.D. Cal. Apr. 29, 2002);
- In March, 2004, the BIA Superintendent rejected a proposed constitution from Ms. Burley because she had not involved the "whole tribal community" in the governmental organization process;
- On February 11, 2005, the Acting Assistant Secretary – Indian Affairs issued a decision on Mr. Dixie's 1999 appeal, ruling that the appeal of the Bureau's 1999 decision to recognize Ms. Burley as Chairperson was moot and that the BIA would recognize Ms. Burley only as a person of authority within the Tribe;
- Ms. Burley sued in D.C. District Court challenging the February 2005 decision;
- After the District Court dismissed her challenge, *Cal. Valley Miwok Tribe v. United States*, 424 F.Supp. 2d 197 (D.D.C. 2006), the D. C. Circuit Court of Appeals affirmed. *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008);
- In January 2010, the IBIA rejected Ms. Burley's appeal objecting to, among other matters, the Superintendent's decision to continue to assist the Tribe in organizing its government according to the IRA because it viewed the matter as "effectively and functionally a tribal enrollment dispute," and then referred the matter to me on jurisdictional grounds.

In response to the Board's referral, I issued my December 22, 2010 decision letter. I intended that decision to resolve the citizenship question referred to me by the IBIA by finding that the current Tribe's citizenship consisted of the five acknowledged citizens noted above and recognizing the Tribe's General Council as a tribal government with which the United States may

[2] I note that the Department repeatedly has offered to assist in mediating this dispute – to no avail. The amount of time and resources focused on these disputes reflects poorly on all the parties, and they must be mindful that continuing this imprudent dispute risks potential adverse consequences well beyond the Tribe and its citizens.

conduct government-to-government relations. Almost immediately, Mr. Dixie filed suit in the D.C. District Court challenging that decision. Recognizing the complex and fundamental nature of the underlying issues, and because I desired the benefit of submissions from the interested parties, I set aside that decision and requested formal briefing.

The submissions by the parties in response to my request were thorough. I have carefully reviewed the submissions and find they were most helpful in enhancing my understanding of the parties' positions.

Analysis

It is clear to me that the heart of this matter is a misapprehension about the nature and extent of the Secretary's role, if any, in determining tribal citizenship of a very small, uniquely situated tribe. Related to this issue is the Tribe's current reluctance to "organize" itself under the IRA, choosing instead to avail itself of the provisions in 25 U.S.C. § 476(h), first enacted in 2004, which recognizes the inherent sovereign powers of tribes "to adopt governing documents under procedures other than those specified . . . [in the IRA.]"

Applicability of General Legal Authorities of the Secretary of the Interior in Indian Affairs

The D.C. Circuit viewed § 476(h) as ambiguous, and then granted *Chevron* deference to the then-Secretary's interpretation of that provision. 513 F.3d at 1266-68. The D.C Circuit put great weight on the Secretary's broad authority over Indian affairs under 25 U.S.C. § 2, writing that "[w]e have previously held that this extensive grant of authority gives the Secretary broad power to carry out the federal government's unique responsibilities with respect to Indians." *Id.* at 1267, *citations omitted.* In addition to § 2, 25 U.S.C. §§ 9, and 13, and 43 U.S.C. § 1457, are often cited as the main statutory bases for the Department's general authority in Indian affairs. *Cal. Valley Miwok Tribe v. United States*, 424 F.Supp. 2d 197, 201 (D.D.C. 2006); *see also* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 5.03[2] at 405 (2005 ed.) [hereinafter COHEN]. The D.C. Circuit also cited two cases involving separate bands of the Seminole Nation for the general propositions that the United States has an "obligation" "to promote a tribe's political integrity" as well as "the responsibility to ensure that [a tribe's] representatives, with whom [it] must conduct government-to-government relations, are valid representatives of the [tribe] *as a whole.*" 513 F.3d at 1267(*emphasis added by the Court*), *citing, Seminole Nation v. United States*, 313 U.S. 286, 296 (1942), and *Seminole Nation of Oklahoma v. Norton*, 223 F.Supp. 2d 122, 140 (D.D.C. 2002).

In my view, prior Department officials misapprehended their responsibility when they: (1) took their focus off the fact that the CVMT was comprised a five individuals, and (2) mistakenly viewed the Federal government as having particular duties relating to individuals who were not citizens of the tribe. I decline to invoke the broad legal authorities cited above to further intrude into internal tribal citizenship and governance issues in the instant case. In making this decision, I also am mindful of the Supreme Court's recent guidance concerning: (1) the importance of identifying "specific rights creating or duty-imposing statutory or regulatory prescriptions" before concluding the United States is obligated to act in a particular manner in Indian affairs,

and (2) the central role Federal policy plays in administering Indian affairs. *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2323-24, 2326-27 (June 13, 2011).

Application of Specific Legal Authorities

In my view, prior Department officials (from 2003 to the present) fundamentally misunderstood the role of the Federal government in addressing the CVMT citizenship and governance issues: (1) they misunderstood and ignored the legal authority of CVMT to govern itself through its General Council structure without being compelled to "organize" under the IRA; and (2) they confused the Federal government's obligations to *possible* tribal citizens with those owed to *actual* tribal citizens.

The February 11, 2005, decision of Acting Assistant Secretary – Indian Affairs Michael D. Olsen stated that, until the Tribe organized itself, the Department could not recognize anyone as the Tribe's Chairperson, and that the "first step in organizing the Tribe is identifying the putative tribal members." (2005 Decision at 1-2, *discussed in* 51 IBIA at 112). The D.C. Circuit, after citing the Secretary's broad authority under 25 U.S.C. § 2, endorsed this approach as a reasonable interpretation of 25 U.S.C. § 476(h) because "[t]he exercise of this authority is especially vital when, as is the case here, the government is determining whether a tribe is organized, and the receipt of significant federal benefits turns on the decision." 515 F.3d at 1267. As I have stated above, I reject as contrary to § 476(h) the notions that a tribe can be compelled to "organize" under the IRA and that a tribe not so organized can have "significant federal benefits" withheld from it. Either would be a clear violation of 25 U.S.C. § 476(f).

The CVMT currently consists of the five citizens identified above. Under the current facts, the Department does not have a legitimate role in attempting to force the Tribe to expand its citizenship.[3] Department officials previously referred to "the importance of participation of a greater tribal community in determining citizenship criteria." (Superintendent's 2004 Decision at 3, *discussed in* 51 IBIA at 111-112). The D.C. Circuit, referring to the Tribe's governance structure that arguably would maintain a limited citizenship, stated "[t]his antimajoritarian gambit deserves no stamp of approval from the Secretary." 515 F.3d at 1267. However, I know of no *specific statutory or regulatory authority* that warrants such intrusion into a federally recognized tribe's internal affairs. (As to the more general sources of authority cited in support of Federal oversight of tribal matters, I have explained my views on the proper scope of those authorities above). "Courts have consistently recognized that one of an Indian tribe's most basic powers is the authority to determine questions of its own membership." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57, 72 n.32 (1978); *United States v. Wheeler*, 435 U.S., 313, 322 n.18 (1978); COHEN § 3.03[3] at 176, *citations omitted*. "[I]f the issue for which the determination is important involves internal affairs of the Indian nation, it is more consistent with principles of tribal sovereignty to defer to that nation's definition." *Id.* at 180. As discussed in the previous paragraph, I also believe that, based on an incorrect interpretation of § 476(h), the previous Administration's views on the IRA's application to this case were erroneous and led to an improper focus on expanding the size of the Tribe and altering the form of its government.

[3] While I believe that it is *equitably* appropriate for the CVMT General Council to reach out to potential citizens of the Tribe, I do not believe it is proper, *as a matter of law*, for the Federal government to attempt to impose such a requirement on a federally recognized tribe.

Mr. Dixie invokes the *Alan-Wilson* IBIA cases to support the theory that the Secretary has a duty to ensure that the potential citizens are involved in the organization of an unorganized, but federally recognized tribe.[4] 30 IBIA 241. But, in fact, *Alan-Wilson* works directly against Mr. Dixie's position, and this distinction provides additional support for my decision. Unlike CVMT, the Cloverdale Rancheria was a federally recognized tribe terminated under the California Rancheria Act. It was later restored pursuant to the *Tillie Hardwick* litigation and settlement, which required the Rancheria to organize its tribal government under the IRA.

30 IBIA 241, 248.

My review of the history of the CVMT compels the conclusion set out in the December decision and reaffirmed here: the CVMT has been continuously recognized, and its political relationship with the Federal government has not been terminated. The five acknowledged citizens are the only current citizens of the Tribe, and the Tribe's General Council is authorized to exercise the Tribe's governmental authority. In this case, again, the factual record is clear: there are only five citizens of CVMT. The Federal government is under no duty or obligation to "potential citizens" of the CVMT. Those potential citizens, if they so desire, should take up their cause with the CVMT General Council directly.

Given both parties' acknowledgment of the existence of other individuals who could potentially become tribal citizens, the Department's prior positions are understandable. The Department endeavored to engage both parties in a resolution of the tribal citizenship issues, including offers of assistance from the Department's Office of Collaborative Action and Dispute Resolution (CADR) – to no avail. By the time this matter was referred to me by the IBIA in January 2010, serious doubts existed about the likelihood of the parties ever being able to work together to resolve the issues involving the citizenship and governance of the Tribe.

Absent an express commitment from the parties to formally define tribal citizenship criteria, any further effort by the Department to do so would result in an unwarranted intrusion into the internal affairs of the Tribe. Moreover, given the unfortunate history of this case, most likely such efforts would not succeed in accomplishing this objective. While there may be rare circumstances in which such an intrusion would be warranted in order for the Secretary to discharge specific responsibilities, no such specific law or circumstances exist here.

Accordingly, unless asked by the CVMT General Council, the Department will make no further efforts to assist the Tribe to organize and define its citizenship. I accept the Resolution #GC-98-01 as the interim governing document of the Tribe, and as the basis for resuming government-to-government relations between the United States and the Tribe.

While I appreciate that the General Council Resolution may prove lacking as to certain aspects of tribal governance, I also recognize that this tribe is very small and uniquely situated. Many tribes have been able to govern effectively with limited or no written governing documents.

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[4] Mr. Dixie also invokes the case of *Seminole Nation of Oklahoma* v. *Norton*, 223 F.Supp.2d 122 (D.D.C. 2002) in support of his position. *Seminole Nation* involved a dispute where a particular faction of the Tribe asserted rights to tribal citizenship under an 1866 treaty. *Id.* at 138. There is no overriding treaty or congressional enactment governing tribal citizenship at issue in this dispute.

Conclusion

Based upon the foregoing analysis, I re-affirm the following:

- CVMT is a federally recognized tribe whose entire citizenship, as of this date, consists of the five acknowledged citizens;
- The 1998 Resolution established a General Council form of government, comprised of all the adult citizens of the Tribe, with whom the Department may conduct government-to-government relations;
- The Department shall respect the validly enacted resolutions of the General Council; and
- Only upon a request from the General Council will the Department assist the Tribe in refining or expanding its citizenship criteria, or developing and adopting other governing documents.

In my December 2010 decision letter I rescinded several earlier decisions. I am persuaded that such attempts to rewrite history are fraught with the risk of unintended consequences. Past actions, undertaken in good faith and in reliance on the authority of prior Agency decisions, should not be called into question by today's determination that those prior Agency decisions were erroneous. Thus, today's decision shall apply prospectively.

This decision is final for the Department and effective immediately, but implementation shall be stayed pending resolution of the litigation in the District Court for the District of Columbia, *California Valley Miwok Tribe v. Salazar*, C.A. No. 1:11-cv-00160-RWR (filed 03/16/11).

Finally, I strongly encourage the parties to work within the Tribe's existing government structure to resolve this longstanding dispute and bring this contentious period in the Tribe's history to a close.

Sincerely,

Larry Echo Hawk
Assistant Secretary – Indian Affairs

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EXHIBIT “4”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CALIFORNIA VALLEY MIWOK TRIBE, et al.,

Plaintiffs,

v.

SALLY JEWELL, in her official capacity as Secretary of the United States Department of the Interior, et al.,

Defendants,

and,

CALIFORNIA VALLEY MIWOK TRIBE

Defendant-Intervenor.

Civil Action No. 11-CV-00160 (BJR)

ORDER REGARDING CROSS MOTIONS FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on cross motions for summary judgment. Plaintiffs, led by Yakima Dixie, claim to be members of the California Valley Miwok Tribe (the "Tribe"). They challenge the August 31, 2011 final decision of Larry Echo Hawk, the Assistant Secretary of the Bureau of Indian Affairs ("BIA") of the United States Department of Interior ("DOI"). Dkt. No. 49 ("Pls.' Mot."). Federal Defendants Sally Jewell, Secretary of the DOI, Michael Black, Director of BIA, and Larry Echo Hawk (collectively "the Federal Defendants") oppose Plaintiffs' motion and request that this Court affirm the August 31, 2011 decision. Dkt. No. 56 ("Defs.' Mot."). At the Court's request, Intervenor-Defendant, another group of individuals who claim to be members of the Tribe and who are led by Silvia Burley, filed a brief in support of the Federal Defendants' summary judgment motion. Dkt. No. 83.

For the reasons discussed below, this Court concludes that the Assistant Secretary erred when he assumed that the Tribe's membership is limited to five individuals and further assumed that the Tribe is governed by a duly constituted tribal council, thereby ignoring multiple administrative and court decisions that express concern about the nature of the Tribe's governance. Therefore, the Court will grant Plaintiffs' motion for summary judgment in so far as it seeks remand of the August 2011 Decision and deny the Federal Defendants' cross motion for summary judgment.[1]

II. FACTUAL BACKGROUND

In 1906, Congress authorized the BIA to purchase land for use by Indians in California who lived outside reservations or who lived on reservations that did not contain land suitable for cultivation. Act of June 21, 1906, 34 Stat. 325. In 1915, an agent working for the Office of Indian Affairs (now the BIA) was tasked with locating a group of Indians known at the time as the "Sheepranch Indians." AR 000001. In reporting back to the Office of Indian Affairs, the agent noted that while the Sheepranch Indians had once been part of "a large band of Indians," the band had dwindled down to "13 in number… living in and near the old decaying mining town known and designated on the map as 'Sheepranch.'" *Id.*[2] In 1916, the BIA acquired approximately 0.93 acres in Calaveras County, California for the benefit of these Indians. AR 000006. The land became known as the "Sheep Ranch Rancheria" and was held in trust for the Indians by the Federal government. AR 001687.

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[1] In light of this ruling, Plaintiffs' Motion to Supplement the Administrative Record [Dkt. No. 51] is stricken from the record as moot.

[2] The agent listed the following individuals on the census for the "Sheepranch Indians": Peter and Annize Hodge and their four children, Malida, Lena, Tom, and Andy; Jeff and Betsey Davis; Mrs. Limpey; John and Pinkey Tecumchey; and Mamy Duncan (although the agent claimed that he located 13 Indians, the census only lists 12 individuals). AR 000002. The census also noted that "[t]o some extent the Indians of Sheepranch, Murphys, Six-Mile, Avery and Angles are interchangeable in their relations." *Id*.

In 1934, Congress passed the Indian Reorganization Act ("IRA"), which, among other things, required the BIA 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. 25 U.S.C. §§ 476 and 478. In 1935, the sole resident of the Sheep Ranch Rancheria was Jeff Davis. AR 001687. He voted in favor of the IRA; however, the tribe was never organized pursuant to the IRA at that time. *Id*.

In 1966, during a period in which the Federal government sought to terminate the Federal trust relationship with various Indian tribes, the BIA reached out to the Sheep Ranch Rancheria in order to distribute the assets of the Rancheria to its members as a prelude to termination of the trust relationship. AR 001687. The BIA discovered that the only home on the Rancheria that remained occupied was that of Mabel Hodge Dixie, presumably the granddaughter of Peter and Annize Hodge, who were identified in the 1915 census of the Sheepranch Indians. *Id*. According to Mabel, she had lived on the Rancheria for at least thirty years by 1966. AR 000039. The BIA determined that Mabel was the only Indian entitled to receive the assets of the Rancheria, and she voted to accept the distribution plan and was issued a deed to the land. AR 000048-51, 001687-88. However, the BIA failed to take the steps necessary to complete the termination of Sheep Ranch Rancheria. AR 001573.[3]

[3] Because the BIA did not complete the termination of the Rancheria, it is considered an "unterminated" tribe. AR 000172. This is significant because in those situations where an "unterminated" tribe is pursuing organization under the IRA, the persons possessing the right to organize the tribe are usually specified by a decision of a court, as the majority of "unterminated" tribes regain federal recognition through litigation. *Id*. Usually, the court decision will state that the persons possessing the right to organize the tribe are those persons still living who are listed as distributees or dependent members on the federally approve distribution plan (in this case, Mabel Hodge Dixie). *Id*. In some cases, the courts have extended this right of participation to the lineal descendents of distributees or dependant members, whether living or deceased. *Id*. Here, the usual manner for determining who may organize the tribe does not apply because there is no court decision regarding the same. AR 000173.

Mabel died in 1971. AR 000173. A probate was ordered and the Administrative Law Judge issued an Order of Determination of Heirs on October 1, 1971, reaffirmed by a subsequent Order issued on April 14, 1993. *Id*. The Order listed the following individuals as possessing a certain undivided interest in the Sheep Ranch Rancheria: Merle Butler (Mabel's common law husband) and Mabel's four sons Richard Dixie, Yakima Dixie, Melvin Dixie, and Tommy Dixie. *Id*.; AR 000061.

Sometime in 1994,Yakima Dixie, Mabel's son, wrote a letter to the BIA requesting financial assistance to make repairs to his house on the Rancheria.[4] AR 000082. The letter was written on behalf of Yakima by Raymond Fry, who at the time was a Tribal Operations Officer for the Central California Agency of BIA. AR 001083. In the letter, Yakima represented that he is "the only descendant and recognized tribal member of the Sheep Ranch Rancheria." AR 000082. By 1998, only two of Mabel's five heirs to the Rancheria—Yakima and Melvin—were living. AR 000173.

Also sometime during the 1990s, Silvia Burley contacted the BIA for information related to her Indian heritage. AR 001688. It appears that at one time Burley had been a member of the Jackson Rancheria, a community near the Sheep Ranch Rancheria, but by 1998 was no longer a member. AR 000250, 001096. The reason for her disenrollment is not clear from the record. The BIA determined that Burley might be remotely related to Jeff Davis, the sole eligible voter for the Sheep Ranch Rancheria IRA vote in 1935. AR 001688, n. 7. By 1998,—at the BIA's suggestion—Burley had contacted Yakima. *Id*.

On August 5, 1998, Burley wrote for Yakima's signature, a statement purporting to enroll herself, her two children, Rashel Roznor and Anjelica Paulk, and her granddaughter, Tristian

[4] The date of the letter is illegible except for "94" so this Court presumes, along with the parties, that the letter was written sometime in 1994.

Wallace, into the Tribe. AR 000110. The statement lists Yakima as "spokesperson/Chairman of the Sheep Rancheria" but does not mention Melvin. *Id*. Nor does it describe what criteria, if any, Yakima used to determine whether Burley and her daughters/granddaughter were eligible for tribal membership. *Id*.

On September 24, 1998, Mr. Fry and Brian Golding, Sr., (also a Tribal Operations Specialist with the BIA), met with Yakima and Silvia. The BIA claims that the purpose of the meeting was to "discuss the process of formally organizing the Tribe." AR 000172. However, Yakima claims that he met with Mr. Fry and Mr. Golding, in order to get BIA to help Burley and her family. AR 000120-121; *see also* AR 000250 (stating that Yakima's intent in enrolling the Burley family in the Tribe was only to grant such membership rights necessary to qualify the family for services offered by BIA to members of federally recognized tribes).

The BIA followed up the meeting with a letter in which it "summarized" the issues discussed during the September 24 meeting. AR 000172-176. Relevant to this lawsuit, BIA made the following statements: (1) the Tribe is "held to the Order of the [probate] Administrative Law Judge" for "purposes of determining the initial membership of the Tribe"; (2) Yakima and Melvin, as the only remaining heirs, "are those persons possessing the right to initially organize the Tribe"; (3) because Yakima "accepted Silvia Burley, Rashel Raznor, Anjelica Paulk, and Tristian Wallace as enrolled members of the Tribe," these individuals, "provided that they are at least eighteen years of age," also "possess the right to participate in the initial organization of the Tribe"; (4) Yakima and Burley were to "consider what enrollment criteria should be applied to further prospective members"; and (5) the BIA recommended, "given the size of the Tribe," that

the Tribe "operate as a General Council, which could elect or appoint a chairperson and conduct business."[5] AR 001689.

To that end, the BIA drafted Resolution #GC-98-01, which Yakima and Burley executed on November 5, 1998 (hereinafter, the "November 1998 Resolution").[6] AR 000177-179. The November 1998 Resolution states that the "membership of the Tribe currently consists of at least the following individuals: Dixie, Burley, Rashel, Anjelica, and Tristian; this membership may change in the future consistent with the Tribe's ratified constitution and any duly enacted Tribal membership statutes." *Id*. It further states that Yakima, Burley, and Rashel, "as a majority of the adult members of the Tribe, hereby establish a General Council to serve as the governing body of the Tribe." *Id*.

The next correspondence that the BIA received from the Tribe is a letter submitted by Burley dated April 20, 1999. AR 001573. The letter is titled "Formal notice of resignation" and states that Yakima "resign[ed] as Chairperson of the Sheep Ranch Tribe." AR 000180. Yakima claims that Burley forged his signature on the April 20, 1999 letter. AR 001573. The very next day, on April 21, the BIA received a letter from Yakima in which he states "I cannot and will not resign as chairman of the Sheep Ranch Indian Rancheria." AR 000182. However, the letter further states that Yakima "give[s] [Burley] the right to act as a delegate to represent the Sheepranch Indian Rancheria." *Id*.

On July 20, 1999, BIA and the Tribe entered into a "self-determination contract" that provided annual funding for the development and organization of the Tribe for the benefit of future tribal members, and on September 30, 1999, the Tribe became a "contracting Tribe"

[5] 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. AR 001689.

[6] Rashel Reznor did not sign the Resolution. AR 000179. In addition, the Resolution acknowledges that Melvin Dixie is a surviving heir to the Rancheria, but his whereabouts are "unknown." AR 000177.

pursuant to the Indian Self Determination Act, PL 93-638. AR 001453. The parties refer to this annually renewing contract as the Tribe's "P.L. 638 Contract." *Id*.

Shortly thereafter, the leadership dispute that had been brewing between Yakima and Burley came to a head. Over the course of the next couple of years, both Yakima and Burley laid claim to the role of "Chairperson" of the Tribe and attempted to organize the Tribe pursuant to the IRA by submitting multiple competing constitutions that purportedly had been adopted by the tribal membership. For instance, on May 14, 1999, the BIA received a letter that stated that the Tribe's General Council had held an election on May 8, 1999, and as a result of that election, Burley was now the Chairperson of the Tribe, Yakima, the Vice-Chairperson, and Rashel, the Secretary/Treasurer. AR 000236. However, on October 10, 1999, BIA received a letter from Yakima in which he raised concern about the leadership dispute within the Tribe and questioned whether he can "exclude" Burley and her family members from the Tribe. AR 000205. Thereafter, on December 26, 1999, Yakima provided the BIA with a tribal constitution, purportedly adopted by the Tribe on December 11, 1999. AR 001690, 000231. He again alleged "fraud or misconduct relative to the change in Tribal leadership during April and May 1999" and maintained that he is the rightful Chairperson of the Tribe. *Id*.

On February 4, 2000, the BIA wrote a letter to Yakima in response to the concerns he raised regarding the leadership dispute within the Tribe. AR 000234-239. In the letter, the BIA states the following: (1) a General Council was elected by a "majority of the adult members of the Tribe" on November 5, 1998;[7] (2) Burley is the "person presently recognized by the Agency as the Chairperson of the Tribe"; (3) "the appointment of Tribal leadership and the conduct of Tribal elections are internal matters" to be resolved by the Tribe; and (4) in the event of an

[7] The BIA states that the November 1998 Resolution was approved by "a majority of the adult members of the Tribe" even though only two adult members signed the Resolution—Yakima and Silvia. AR 000236. Melvin and Rashel did not sign the Resolution. *Id*.

internal leadership dispute, it is the Agency's policy "to continue to recognize[] the Tribal government as constituted prior to the [contested] appointment or election" until such time that the dispute is resolved by the Tribe. AR 000236-237.

However, the BIA further noted that "a continuing dispute regarding the composition of the governing body of the Tribe raises concerns that a duly constituted government is lacking." AR 000237. Therefore, the BIA advised "the Tribe to resolve the dispute internally within a reasonable amount of time … failure to do so may result in sanctions taken against the Tribe, up to and including the suspension of the government-to-government relationship between the Tribe and the United States."[8,9] *Id*.

The BIA followed up the February 4 letter to Yakima with a letter to Burley dated March 7, 2000. AR 000249-254. In it the BIA stated the following: (1) it believes that the appropriate form of government for the Tribe is the General Council; (2) the General Council is comprised of Burley, Rashel, and Yakima; (3) membership and leadership dispute are internal matters to be resolved by the Tribe; and (4) while leadership and membership issues of the Tribe are internal matters to be resolved by the Tribe, "if in time [the] dispute regarding the composition of the governing body of the Tribe continues without resolution, the government-to-government relationship between the Tribe and the United States may be compromised." The BIA again advised that "the Tribe [ ] resolve the dispute internally within a reasonable period of time." AR

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[8] The BIA also acknowledged in the same letter that it met with Melvin Dixie on January 13, 2000, and that Melvin expressed an interest in participating in the organization of the Tribe. AR 000238. "Since Melvin Dixie is the only remaining heir, other than [Yakima], identified in the Order of Determination of Heirs, he is entitled to participate in the organization of the Tribe." *Id*.

[9] On July 18, 2001, Yakima filed a lawsuit against Burley in the United States District Court for the Eastern District of California challenging her purported leadership of the Tribe. AR 000611. On January 24, 2002, the district court dismissed Yakima's lawsuit without prejudice and with leave to amend, for failure to exhaust his administrative remedies. AR 000611. The court determined that Yakima should have appealed the BIA's February 4, 2000 decision in which it recognized Burley as the Chairperson of the Tribe. AR 000611. Thereafter, Yakima filed an appeal of the February 4, 2000 decision with the BIA in June 2003. *Id*. In it, he "challenged the [BIA's] recognition of [] Burley as [the] tribal Chairman and sought to 'nullify' her admission, and the admission of her daughter [sic] and granddaughters [sic] into [his] Tribe." AR 000610.

000253. The BIA also informed Burley that "failure to [resolve the dispute within a reasonable period of time] may result in sanctions against the Tribe, up to and including the suspension of the government-to-government [relationship]." *Id.*[10]

The leadership and membership dispute between Yakima and Burley continued. Then, on February 11, 2004, Burley submitted to the BIA what she alleged was the Tribe's newly adopted constitution—not for the BIA's review—but only for the BIA's records. AR 001095. The BIA interpreted this as Burley's "attempt to demonstrate that [the Tribe] is an 'organized' tribe" under the newly enacted Section 476(h) of the IRA, which allows that "each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section." *Id.*; 25 U.S.C. § 476(h). On March 26, 2004, the BIA notified Burley that it rejected her attempt to "organize" under the IRA pursuant to Section 476(h) (hereinafter, the "March 2004 Decision"). *Id.* In reaching this decision, the BIA emphasized that when a tribe seeks to organize under the IRA, the BIA has a duty "to determine that the organizational efforts reflect the involvement of the whole tribal community." AR 001095. The BIA noted that it did not appear that Burley had made any effort to include the whole tribal community; rather, it appeared that Burley only included herself and her daughters in the process. AR 001096.[11]

Thereafter, the BIA "acknowledge[d] [] Burley as the authorized representative of the [Tribe] with whom government-to-government business is conducted. However, the BIA [did] not view the Tribe to be an organized tribe and, therefore, decline[d] to recognize [] Burley as a

[10] Thereafter, the BIA continued to recognize the General Council as the governing body of the Tribe and Burley as its Chairperson by renewing the Tribe's P.L. 638 Contract annually until 2005. AR 002691. However, as discussed *infra*, in 2005, the Superintendent returned without action proposals from Burley to renew the Tribe's P.L. 98-638 Contract, after concluding that Burley had not shown that the Tribe had authorized her to submit the contract proposal. AR 001692. Burley unsuccessfully challenged the BIA's decisions in federal court in the Eastern District of California. *See California Valley Miwok Tribe v. Kempthorne*, No. Civ. 8-3164 (E.D. Cal. Feb. 23, 2009), *appeal docketed*, No. 09-15466 (9th Cir. March 12, 2009); AR 001692.

[11] The BIA advised Burley of her right to appeal the letter to the Regional Director. AR 001693. No appeal was filed. *Id.*

'tribal chairperson' in the traditional sense as one who exercises authority over an organized Indian tribe." AR 000507.

In a letter dated February 11, 2005 (hereinafter, the "February 2005 Decision"), the BIA notified Yakima that his appeal from June 2003[12] had been "rendered moot" by the March 2004 Decision. *Id*. In the February 2005 Decision, the BIA reiterated that it did not recognize Burley as the tribal Chairperson, but rather, a "person of authority" within the Tribe." *Id*. It further stated that "[u]ntil such time as the Tribe has organized, the Federal government can recognize no one, including [Yakima], as the tribal Chairman." *Id*. The BIA concluded by stating that it "does not recognize any tribal government" for the Tribe "[i]n light of the BIA's [March 2004 Decision] that the Tribe is not an organized tribe." AR 000611. This is the first time since November 5, 1998 (when the BIA first acknowledged the Tribe's General Council) that the BIA claimed that it did not recognize a duly constituted government for the Tribe.

On July 19, 2005, the BIA, acting on the February 2005 Decision, suspended the Tribe's P.L. 638 Contract. *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 201 (D.D.C. 2006) ("*CVMT I*"). Further, on August 4, 2005, the California Gambling Control Commission notified the Tribe that it would withhold distributions from the California Revenue Sharing Trust Fund until the tribal leadership was established. AR 001217-18. On October 26, 2005, the BIA returned a tribal resolution to Burley without having taken the action requested in the resolution, asserting that there was no "government-to-government" relationship with the Tribe. *CVMT I* at 201.

On April 12, 2005, Burley, allegedly on behalf of the Tribe, filed suit in federal court in the District of Columbia, claiming that the BIA was interfering in the Tribe's internal affairs

[12] This is the appeal that Yakima filed after the United States District Court for the Eastern District of California dismissed his lawsuit without prejudice because he failed to exhaust his administrative remedies by appealing the BIA's February 4, 2000 decision to recognize Burley as the Tribe's Chairperson. *See*, *infra*, at n. 9.

based on the BIA's refusal to recognize the Tribe as organized under the IRA. *CVMT I*, 424 F. Supp. 2d at 197. The BIA countered that while Section 476(h) of the IRA gives tribes more procedural flexibility in organizing under the IRA, it does not relieve the BIA of its duty to ensure that the interests of all tribal members are protected during organization and that tribal governing documents reflect the will of a majority of the tribe's members. *Id*. BIA thus defended its refusal to recognize the Tribe as an organized tribe on the ground that the Tribe had failed to take necessary steps to protect the interests of its potential members. *Id*. The district court agreed with BIA and dismissed the complaint for failure to state a claim. *Id*. at 203.

Burley appealed to the D.C. Circuit, which affirmed the district court's decision. *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008) ("*CVMT II*"). The Circuit Court noted that "[a]s Congress has made clear, tribal organization under the [IRA] must reflect majority value" and Burley's "antimajoritarian gambit deserves no stamp of approval from the Secretary." *Id*. at 1267-68.

Meanwhile, the BIA continued to encourage both Yakima and Burley to "organize 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 001261. To that end, officials with the BIA met with Yakima and Burley "to offer assistance in [their] organizational efforts for the Tribe." *Id*. However, by November 2006, the BIA concluded that "the ongoing leadership dispute [was] at an impasse and the likelihood of th[e] impasse changing soon [is] remote." *Id*.

Accordingly, the BIA, in a November 6, 2006 decision (hereinafter, the "November 2006 Decision"), resolved to "publish a notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region." *Id*. The purpose of the notice

was to "initiate the reorganization process" by inviting "the members of the Tribe and potential members to the meeting" to discuss "the issues and needs confronting the Tribe." *Id*. The BIA invited both Yakima and Burley to participate in the meeting, but noted that the meeting would be held even if one or both of them declined to participate. AR 001262.

Burley appealed the November 2006 Decision to the Regional Director of the BIA. AR 001494. On April 2, 2007, the Regional Director affirmed the November 2006 Decision (hereinafter, the "April 2007 Decision"). AR 001497. The April 2007 Decision noted that the purpose of calling the general council meeting was to identify the "putative" group of individuals who believe they have the right to participate in the organization of the Tribe, and "until the Tribe has identified the 'putative' group, the Tribe will not have a solid foundation upon which to build a stable government." AR 001498.

Burley appealed the April 2007 Decision to the Interior Board of Indian Appeals ("IBIA"). AR 001502. The IBIA affirmed, in part, the April 2007 Decision on January 28, 2010. AR 001684-001705. However, the IBIA also determined that the April 2007 Decision involved an enrollment dispute, and therefore, referred that portion of the April 2007 Decision to the Assistant Secretary of the BIA for review because the IBIA does not have jurisdiction to review enrollment disputes. *Id*.

Sometime in March 2010, after the IBIA referred the matter to the Assistant Secretary but before he issued his decision, Wilson Pipestem, a lobbyist based out of Washington, D.C. and acting on behalf of Burley, met with Tracie Stevens, the Senior Advisor to the Assistant Secretary; Jerry Gidner, Director of the BIA; and Mike Smith, Deputy Director of the BIA's Field Operations, to discuss the IBIA referral. AR 001997. Pipestem followed up the meeting with a letter dated March 24, 2010 in which he argued that the Tribe consists of five members

(Yakima, Burley, Burley's two daughters and Burley's granddaughter) and is governed by the General Council that the Tribe adopted on November 5, 1998. AR 001997 at pp. 1-4.

Without notifying Yakima of the Department's meeting with Pipestem, nor providing Yakima with an opportunity to meet with the Assistant Secretary or brief his side of the issues, the Assistant Secretary issued his decision on December 22, 2010 (hereinafter, the "December 2010 Decision"). AR 001798-001803. In it, the Assistant Secretary "determined that there was 'no need for the BIA to continue its previous efforts to organize the Tribe's government, because it is organized as a General Council, pursuant to the [November 1998 Resolution] it adopted at the suggestion of the BIA.'" AR 002049. The Assistant Secretary also determined that there was "no need for the BIA to continue its previous efforts to ensure that the Tribe confers tribal citizenship upon other individual Miwok Indians in the surrounding area." *Id*.

Yakima objected to the fact that he was not given an opportunity to brief the issues before the Assistant Secretary issued the December 2010 Decision. *Id*. As a result, the Assistant Secretary withdrew the Decision and requested briefing from all of the parties. *Id*.

On August 31, 2011, the Assistant Secretary issued his revised decision (hereinafter, the "August 2011 Decision"). AR 002049-2056. The August 2011 Decision reached the following conclusions: (1) the Tribe is a federally recognized tribe; (2) the BIA cannot force the Tribe to organize under the IRA and will cease all efforts to do so absent a request from the Tribe; (3) the BIA cannot compel the Tribe to expand its membership and will cease all efforts to do so absent a request from the Tribe; (4) as of the date of the Decision, the Tribe's entire citizenship consists solely of Yakima, Burley, Burley's two daughters, and Burley's granddaughter; and (5) the November 1998 Resolution established a General Council comprised of all of the adult citizens of the Tribe, with whom BIA may conduct government-to-government relations. AR 002049-

2050, 002056. The Assistant Secretary acknowledged that the August 2011 Decision "mark[ed] a 180-degree change of course from positions defended by [BIA] in administrative and judicial proceedings over the past seven years." AR 002050. Therefore, the Assistant Secretary stayed implementation of the August 2011 Decision pending resolution of the present litigation. AR 002056.

III. STANDARD OF REVIEW

The Administrative Procedure Act ("APA") empowers this Court to "hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Although the judiciary bears the responsibility under the APA to set aside agency decisions that meet this description, *see MD Pharmaceutical, Inc. v. Drug Enforcement Admin.*, 133 F.3d 8, 16 (D.C. Cir. 1998), "[t]he scope of review under the 'arbitrary and capricious standard' is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Nonetheless, this Circuit has held that "where the agency has failed to provide a reasoned explanation, or where the record belies the agency's conclusion, we must undo its action." *Petroleum Communications, Inc. v. F.C.C.*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (citing *American Tel. & Tel. Co. v. F.C.C.*, 974 F.2d 1351 (D.C. Cir. 1992)). So long as there are no genuine issues of material fact in dispute, a party is entitled to summary judgment if it is entitled to judgment as a matter of law. *See Tao v. Freeh*, 27 F.3d 635, 638 (D.C. Cir. 1994).

IV. DISCUSSION

As discussed above, the August 2011 Decision reached the following conclusions: (1) the Tribe is a federally recognized tribe; (2) the BIA cannot compel the Tribe to organize under the

IRA and will cease all efforts to do so absent a request from the Tribe; (3) the BIA cannot compel the Tribe to expand its membership and will cease all efforts to do so absent a request from the Tribe; (4) as of the date of the Decision, the Tribe's entire citizenship consisted of Yakima, Burley, Burley's two daughters, and Burley's granddaughter; and (5) the November 1998 Resolution established a General Council comprised of all of the adult citizens of the Tribe, with whom BIA may conduct government-to-government relations.

For the reasons discussed below, the Court finds that the Assistant Secretary was remiss in assuming that the Tribe's membership consisted of only those five individuals and that the General Council is a duly constituted government. Because the Court reaches this conclusion, it is not necessary for the Court to address the remaining three findings in the August 2011 Decision.[13]

A. Governing Principles of Federal Indian Law

In determining whether the Assistant Secretary's findings in the August 2011 Decision are arbitrary, capricious, or otherwise not in accordance with the law, this Court recognizes several overarching principles that govern federal Indian law. First, since at least 1831, Congress and the Supreme Court have acknowledged the existence of a trust relationship between the United States and Indian tribes. *Cherokee Nation v. Georgia*, 5 U.S. 1, 17 (1831). Indeed, the Supreme Court's decisions, and nearly every piece of legislation dealing with Indian tribes over the past century, have repeatedly reaffirmed that the federal government has a "distinctive obligation of trust" in its dealings with Indians. *United States v. Jicarilla Apache Nation*, __ U.S. __, 131 S. Ct. 2313, 2334 (2011) (dissent, Justice Sotomayor) (quoting *Seminole Nation v.*

[13] Although the Court notes that none of the parties dispute the Assistant Secretary's conclusion that the Tribe is a federally recognized tribe.

United States, 316 U.S. 286, 296 (1942) and F. Cohen, Handbook of Federal Indian Law § 5.04[4][a], pp. 420-421 (2005 ed.)).

Second, Congress has delegated to the Secretary broad power to carry out the federal government's unique responsibilities with respect to Indians. *See*, *Udall v. Littell*, 366 F.2d 668, 672 (D.C. Cir. 1966); *CVMT II*, 515 F.3d 1267 (noting that the Secretary "has the power to manage *all* Indian affairs, and *all* matters *arising out of Indian relations*.") (emphasis in original) (citations omitted). And third, every Indian tribe is "capable of managing its own affairs and governing itself." *CVMT II*, 515 F.3d at 1263 (quoting *Cherokee Nation*, 5 U.S. at 16). This means that although tribes do not possess the "full attributes of sovereignty, they remain a separate people, with the power of regulating their internal and social relations." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (citations omitted).

In light of these governing principles, the D.C. Circuit has held—and reaffirmed in this very case—that the Secretary has a duty "to promote a tribe's political integrity." *CVMT II*, 515 F.3d at 1267 ("A cornerstone of this [trust] obligation is to promote a tribe's political integrity, which includes ensuring that the will of the tribal members is not thwarted by rogue leaders when it comes to decisions affecting federal benefits."). Courts in this Circuit have interpreted this duty to mean that when the federal government engages in government-to-government relations with a tribe, it must ensure that it is dealing with a duly constituted government that represents the tribe as a whole. *Morris v. Watt*, 640 F.2d 404, 415 (D.C. Cir. 1981) (noting that tribal governments must "fully and fairly involve the tribal members"); *CVMT II*, 515 F.3d at 1267-68 (rejecting Burley's earlier attempt to force the Secretary to recognize the Tribe as organized under the IRA as an "antimajoritarian gambit [that] deserves no stamp of approval from the Secretary"); *CVMT I*, 424, F. Supp. 2d 197, 2011 (the Secretary must "ensure that [she]

deals only with a tribal government that actually represents the members of the tribe); *Seminole Nation v. Norton*, 223 F. Supp. 2d 122, 140 (D.D.C. 2002) (noting that the Secretary "has the responsibility to ensure that [a tribe's] representatives, with whom [she] must conduct government-to-government relations, are valid representatives of the [tribe] as a whole"); *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 153 (D.D.C. 1999) (the Secretary was "derelict in [her] responsibility to ensure that the Tribe make its own determination about its government consistent with the will of the Tribe"). With these principles in mind, the Court will now turn to the August 2011 Decision.

B. It Was Unreasonable for the Assistant Secretary to Assume that the Tribe's Membership is Limited to Five Individuals

The August 2011 Decision declares: "the factual record is clear: there are only five citizens of [the Tribe]… the citizenship of the [Tribe] consists solely of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace." AR 002049 and AR 002055. In reaching this conclusion, the Assistant Secretary assumes, without addressing, the validity of this statement and finds that "prior Department officials misapprehended their responsibility when they: (1) took their focus off the fact that the [Tribe] was comprised a [*sic*] five individuals, and (2) mistakenly viewed the Federal government as having particular duties relating to individuals who were not citizens of the [T]ribe." AR 002053. The Assistant Secretary acknowledges that his August 2011 Decision "mark[s] a 180-degree change of course from positions defended by this Department in administrative and judicial proceedings over the past seven years." *Id*. However, he argues that the course change is necessary and "driven by a straightforward correction in the Department's understanding of the [Tribe's] citizenship."*Id*.

In urging this Court to affirm the August 2011 Decision, the Federal Defendants argue that the Decision "merely reaffirms the state of affairs that has existed since 1998, which

includes Mr. Dixie's unequivocal adoption of the Burley family … [and] marks the BIA's decision to defer, once again, to these individuals to develop membership criteria." Defs.' Mot. at 21. The Federal Defendants argue that the BIA has "full authority to reconsider 'the wisdom of [its] polic[ies] on a continuing basis'" and, under the APA, this Court must uphold the revised policy so long as the agency has provided a "reasoned explanation" for the change. Defs.' Mot. at 16-17 (citing *NCTA v. Brand X Internet Servs.*, 545 U.S. 976, 981 (2005) and *Anna Jaques Hosp. v. Sebelius*, 583 F.3d 1 (D.C. Cir. 2009)).

This Court finds that the Assistant Secretary's conclusion that the citizenship of the Tribe consists solely of Yakima, Burley, Burley's two daughters, and Burley's granddaughter is unreasonable in light of the administrative record in this case. The Assistant Secretary rests his conclusion on principles of tribal sovereignty, but ignores—entirely—that the record is replete with evidence that the Tribe's membership is potentially significantly larger than just these five individuals. For instance, from at least as early as 1997, the BIA recognized that the Tribe consisted of a "loosely knit community of Indians in Calaveras County," AR 000507, and at various times over the last twelve years, the BIA claimed that the Tribe consisted of at least 250 individuals. *See*, *e.g.*, AR 000510, AR 000827. The BIA received genealogies from at least 242 individuals in response to the notice it placed in the newspapers in 2007. AR 002139-340. Even Burley at one time represented to a federal district court that the Tribe consists of at least 250 individuals. *See* Complaint for Injunctive and Declaratory Relief at 1, *California Valley Miwok Tribe v. United States*, No. 02-0912 (E.D. Cal. Apr. 29, 2002). Indeed, the D.C. Circuit took judicial notice that the potential membership of the Tribe consisted of 250 individuals. *CVMT II*,

515 F.3d 1265. The August 2011 Decision makes no effort to address any of this evidence in the record; instead, it simply declares that there are only five citizens of the Tribe.[14]

What is more, even if this Court were to accept the Federal Defendants' newly adopted view that the Tribe's membership was limited to only Yakima in 1998 (and the Burleys after Yakima enrolled them), the August 2011 Decision does not explain why the BIA was not required, pursuant to its "unique trust relationship" with Indian tribes, to ensure that Burley was not taking advantage of Yakima when she sought membership for her family. This Court notes that at the time that Burley first contacted Yakima, he was in jail and suffering from several serious illnesses and other disabilities. *See*, *e.g.*, AR 000082, AR 000464. Yet, the BIA acknowledges that it made no effort to determine what criteria Yakima used in determining the Burleys' eligibility. Indeed, Yakima claims that "his intent [in enrolling Burley's family in the Tribe] was only to grant such membership rights necessary to qualify [Burley's family] for services offered by [BIA] to members of federally recognized tribes," thereby suggesting that he enrolled her out of sympathy rather than based on any eligibility criteria. AR 00250, *see also*, AR 000120-121 (same).

Nor does the August 2011 Decision explain why the BIA did not have a duty to protect Yakima's brother Melvin. In September 1998, the BIA acknowledged that Melvin was a member of the Tribe. AR 000172-176. However, Melvin was not consulted by Yakima before Yakima enrolled Burley's family into the Tribe. The August 2011 Decision does not address why the BIA did not have a duty to ensure that Melvin's interests were protected before accepting the

[14] The August 2011 Decision draws a distinction between citizens and "potential" citizens of the Tribe, but this argument assumes that the five citizens recognized by the Decision have the exclusive authority to determine citizenship of the Tribe. This circular argument "provides no basis on which [the Court] can conclude that it was the product of reasoned decisionmaking" and therefore violates the APA. *Butte County, Cal. v. Hogen*, 613 F.3d 190, 195 (D.C. Cir. 2010).

Burleys' enrollment into the Tribe (by admitting the four Burley family members, Yakima effectively placed Melvin's tribal rights at the mercy of the Burleys).

Put simply, the Assistant Secretary missed the first step of the analysis. Under these circumstances and in light of this administrative record, rather than simply assume that the Tribe consists of five members, the Assistant Secretary was required to first determine whether the membership had been properly limited to these five individuals. *See, e.g., Seminole Nation,* 316 U.S. at 296 (noting the "distinctive obligation of trust" the federal government has with respect to Indian tribes); *CVMT II*, 515 F.3d at 1267 (noting that the exercise of the Secretary's authority to manage all Indian affairs is especially vital when the receipt of significant federal benefits is at stake). Accordingly, the Court will remand this issue to the Secretary for reconsideration.

C. It Was Unreasonable for the Assistant Secretary to Assume that the General Council Represents a Duly Constituted Government of the Tribe

The August 2011 Decision declares: "[t]he [November] 1998 Resolution established a General Council form of government, comprised of all adult citizens of the Tribe, with whom the [BIA] may conduct government-to-government relations. AR 002056. Once again, in reaching this conclusion, the Assistant Secretary simply assumes, without addressing, the validity of the General Council. The Federal Defendants acknowledge that the Assistant Secretary's conclusion represents a "180-degree change of course," but argue that the decision to recognize the General Council as the Tribe's duly constituted government was reasonable and consistent with principles of tribal sovereignty. Defs.' Mot. at 27.

The Court finds that the August 2011 Decision is unreasonable in light of the facts contained in the administrative record. *See F.C.C. v. Fox Television Stations, Inc*., 556 U.S. 502 (2009) (noting that an agency must provide "a more detailed justification" for its decision "when its prior policy had engendered serious reliance interests"); *Petroleum Communications*, 22 F.3d

at 1172 ("where the agency has failed to provide a reasoned explanation, or where the record belies the agency's conclusion, we must undo its action"). The Assistant Secretary rests his decision to reverse course on the BIA's "clear commitment to protect and honor tribal sovereignty." AR 002050. However, once again, the Assistant Secretary starts his analysis a step too late. Before invoking the principle of tribal self-governance, it was incumbent on him to first determine whether a duly constituted government actually exists. *See, e.g.*, *Seminole Nation*, 223 F. Supp. 2d at 140 (noting that the Secretary must "ensure that [a tribe's] representatives, with whom [she] must conduct government-to-government relations, are valid representatives of the [tribe] as a whole"); *CVMT I*, 424 F. Supp. 2d 197, 2011 (the Secretary must "ensure that [she] deals only with a tribal government that actually represents the members of the tribe). Indeed, as the Interior Board of Indian Appeals has recognized, when an internal dispute questions the legitimacy of "the initial tribal government," the BIA must ascertain whether the initial government is a duly constituted government:

> This is not an ordinary tribal dispute, arising from an internal dispute in an already existing tribal entity. In such cases [BIA] and this Board must exercise caution to avoid infringing upon tribal sovereignty. Rather, this case concerns, in essence, the creation of a tribal entity from a previously unorganized group. In such a case, BIA and this Board have *a responsibility to ensure that the initial tribal government is organized by individuals who properly have the right to do so*.

Alan-Wilson v. Bureau of Indian Affairs, 1997 WL 215308, *10 (IBIA 1997) (citations omitted) (emphasis added); *see also*, *Ransom*, 69 F. Supp. 2d at 155 (chastising the Department for "merely repeating the rhetoric of tribal exhaustion and federal noninterference with tribal affairs," rather than determining the legitimacy of a disputed tribal government).

Here, the August 2011 Decision fails to address *whatsoever* the numerous factual allegations in the administrative record that raise significant doubts about the legitimacy of the

General Council. From as early as April 1999, Yakima contested the validity of the Council. *See* AR 000182 (April 21, 1999 letter from Yakima to the BIA stating that he "cannot and will not resign as chairman of the Sheep Ranch Indian Rancheria"); *see also*, AR 000205 (October 10, 1999 letter from Yakima to BIA raising questions about Burley's authority); AR 001690, 000231 (Yakima notifying the BIA of "fraud and misconduct" with respect to the Tribe's leadership).

In the Federal Defendant's current view of this case, once a Tribe announces a government, the BIA is prohibited from ever questioning the legitimacy of the government no matter how many allegations of fraud are raised. Such a conclusion is not consistent with the "distinctive obligation of trust" the federal government must employ when dealing with Indian tribes, *Seminole Nation*, 316 U.S. at 296, nor is it supported by a reasoned explanation based on the administrative record. *Petroleum Communications*, 22 F.3d at 1172; *CVMT II*, 515 F.3d at 1267 (noting that the exercise of the Secretary's authority to manage all Indian affairs is especially vital when the receipt of significant federal benefits is at stake). Accordingly, the Court will remand this issue to the Secretary for reconsideration.[15]

[15] Plaintiffs challenge the August 2011 Decision on several other legal and procedural grounds. However, each of these arguments fails. First, relying on the *CVMT I* and *CVMT II* decisions, Plaintiffs argue that the Secretary is barred by the doctrine of issue preclusion and/or judicial estoppel from recognizing the General Council as the governing body of the Tribe. Pls.' Mot. at 37. This argument is without merit because *CVMT I* and *CVMT II* do not share the same contested issue with this case. *See Allen v. McCurry*, 449 U.S. 90, 94 (1980). The only issue before the courts *CVMT I* and *CVMT II* was whether the Secretary had the authority to refuse to approve a constitution submitted under IRA § 476(h)(1). The courts did not directly address the issues raised here, namely whether the Tribe's membership consists of five members and whether the General Council is the duly constituted government of the Tribe. Indeed, the Federal Defendants acknowledge that if the General Council were to attempt to organize under § 476(h) in a manner that thwarts the participation of the majority of the General Council, the Secretary would be bound by the legal duties outline in *CVMT I* and *CVMT II*. Def.'s Mot. at 30. Next, Plaintiffs argue that the August 2011 Decision is procedurally flawed because it was issued more than "six and a half years after the 2004 Decision was made." Pls.' Mot. at 41. However, this argument ignores the fact that the August 2011 Decision was not a reconsideration of the 2004 Decision but a reconsideration of the December 22, 2010 Decision. Finally, Plaintiffs argue that the Assistant Secretary "lacked jurisdiction" to address any issues related to "the organizational status of the [T]ribe, the recognition of the [General Council], and the participation of the entire Tribal community in the organization process." Pls.' Mot. at 43-44. This argument, too, is without merit. Not only are Plaintiffs' regulatory citations inapposite, their interpretation is directly undermined by the wealth of authority that establishes the Secretary's "plenary administrative authority in discharging the federal government's trust obligations to Indians." *Udall*, 366 F.2d at 672.

V. CONCLUSION

For the foregoing reasons, it is HEREBY ORDERED that:

1. Plaintiffs' Motion for Summary Judgment [Dkt. No. 49] is GRANTED in so far as it seeks remand of the August 2011 Decision;
2. The Federal Defendant's Cross-Motion for Summary Judgment [Dkt. No. 56] is DENIED;
3. This matter is remanded to the Secretary for reconsideration consistent with the terms of this order; and
4. Plaintiffs' Motion to Supplement the Administrative Record [Dkt. No. 51] is STRICKEN from the record as MOOT.

Dated this 13th day of December, 2013.

Barbara Jacobs Rothstein
U.S. District Court Judge

EXHIBIT “5”

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 30 2015

Ms. Silvia Burley
c/o Robert A. Rosette, Esq.
Rosette, LLP
565 W. Chandler Boulevard, Suite 212
Chandler, Arizona 85225

Dear Ms. Burley:

The California Valley Miwok Tribe (CVMT, Tribe) has been the subject of an internal leadership dispute for years. In December 2013, the U.S. District Court for the District of Columbia (District Court) vacated and remanded a 2011 decision by the Assistant Secretary – Indian Affairs (AS-IA) to review questions of tribal membership and government.

The Department of the Interior (Department) is loath to become involved in tribal membership disputes because of potential interference with tribal self-determination and inherent sovereignty. However, in many instances the Department has assisted in the initial organization of an unorganized tribe. In this case, the reorganization of the Tribe has never properly occurred, leaving questions as to the overall membership of the Tribe.

The factual and procedural history of this dispute has been described at length in decisions by the Interior Board of Indian Appeals (IBIA), the District Court, and the U.S. Court of Appeals for the District of Columbia Circuit (Circuit Court).[1] For purposes of this decision, I set out only the essential facts.

Background

In 1916, the United States acquired a parcel of approximately one acre in Sheep Ranch, California, for the benefit of Mewuk[2] Indians living in that area of Calaveras County. The land became the Sheep Ranch Rancheria (Rancheria). The lone Indian residing on the Rancheria in 1935, Jeff Davis, was allowed to vote on whether to accept the Indian Reorganization Act (IRA). An Indian residing on the Rancheria in 1967, Mabel Hodge Dixie, was identified as the distributee of the Rancheria assets. Mabel's son, Yakima Dixie (Mr. Dixie), has been the

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[1] *See CVMT v. Pacific Regional Director, BIA*, 51 IBIA 103 (IBIA 2010); *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006) ("*CVMT I*"); *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008) ("*CVMT II*"); *California Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86 (D.D.C. 2013) ("*CVMT III*").

[2] Also spelled Miwok, Mi-Wuk, or Me-Wuk. Writing in 1906, Special Agent C.E. Kelsey used "Miwak." The former name of the federally recognized Tribe was "Sheep Ranch Rancheria of Me-Wuk Indians of California." The current name is the "California Valley Miwok Tribe."

only Indian resident of the Rancheria since Mabel's death. Mr. Dixie purported to enroll Silvia Burley (Ms. Burley) and her family (Burley Family)[3] in the Tribe in 1998. Since 1999, Mr. Dixie and Ms. Burley have competed for control of the Tribe, which has resulted in protracted litigation. In 2010, IBIA referred to AS-IA a claim by Ms. Burley that "effectively implicate[d] a tribal enrollment dispute."[4] In 2011, the AS-IA issued a decision stating that the Tribe had five members and was governed by a General Council comprising the adults among those five members. In 2013, the District Court vacated and remanded the AS-IA's decision, directing AS-IA to "determine whether the [Tribe's] membership had been properly limited" to just Mr. Dixie and the Burley family,[5] and ensure that the tribal government consists of "valid representatives of the [tribe] as a whole."[6]

The Sheep Ranch Rancheria

In 1915, Special Agent John Terrell sent the Commissioner of Indian Affairs a letter with "a census of the Indians designated 'Sheepranch Indians,'" (sic), describing the group as "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.'"[7] Importantly, Agent Terrell also noted that "to some extent the Indians of Sheepranch, Murphys, Six-Mile, Avery and Angles are interchangeable in their relations."[8] All of those towns are located in Calaveras County, California.

In 1916, the Federal Government purchased a one acre lot in the town of Sheep Ranch for the benefit of the Indians identified by Terrell.[9] Because the parcel was so small, only a few members of the group could reside on it at any one time; many Indians associated with the community did not reside on the Rancheria.

In 1929, the Bureau of Indian Affairs (BIA) conducted a census of the Indians of Calaveras County, which identified 147 Indians, mostly Miwuk, but also some Tuolumne.[10] The census included children of mixed Miwuk/Tuolumne, and mixed Indian/non-Indian, ancestry.

In 1935, pursuant to the mandate of the Indian Reorganization Act (IRA),[11] BIA held referendum elections in which the adult Indians of reservations voted on whether to reject the application of the IRA. The BIA found only one eligible adult Indian, Jeff Davis, to be residing on the Rancheria.

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[3] Silvia Burley, her daughters Rashel Reznor and Anjelica Paulk, and Rashel's daughter Tristian Wallace.
[4] 51 IBIA 103, 105 (IBIA 2010).
[5] *CVMT III* at 99.
[6] *Id.* at 100, *quoting Seminole Nation v. Norton,* 223 F. Supp. 2d 122, 140 (D.D.C. 2002).
[7] Attachment A: 1915 Terrell Census
[8] Presumably "Angles" referred to Angel's Camp, about 5 miles southwest of Murphys and 15 miles southwest of Sheep Ranch.
[9] In 2006, the District Court suggested that the Sheep Ranch Rancheria was the same parcel occupied by Peter Hodge and his family in 1915. *CVMT I* at 197-98 (D.D.C. 2006). The record shows that Hodge resided two and a half miles north of Sheep Ranch, while the parcel acquired by the United States was within the town itself.
[10] Attachment B: 1929 Census.
[11] 48 Stat. 984 (1934).

The California Rancheria Act of 1958, amended in 1964,[12] authorized the termination of Federal recognition of California Rancherias by distributing each rancheria's assets to the Indians of the rancheria. The process required the development of a distribution plan identifying the distributees. At that time, the Rancheria was occupied by Mr. Dixie's mother, Mabel Hodge Dixie, along with Merle Butler.[13] On February 9, 1967, Mabel Dixie, as the sole eligible Indian resident, voted to terminate the Rancheria. The BIA transferred title of the Rancheria's land to Mabel in April or May of 1967. In September of 1967, however, the BIA asked Mabel to quitclaim the parcel back to the United States, apparently to ensure that all of BIA's duties under the California Rancheria Act were completed before BIA transferred title to Mabel. Mabel executed the quitclaim on September 6, 1967, but no other action was taken with respect to the title prior to Mabel's death on July 1, 1971. The Tribe was never terminated.[14]

On November 1, 1971, the Office of Hearings and Appeals (OHA) issued its "Determination of Heirs" of Mabel Dixie.[15] The OHA determined that Merle Butler, as Mabel's husband, inherited 2/6 of Mabel's trust or restricted estate, and each of her 4 sons inherited 1/6. Accordingly, the title to the Rancheria land is held in trust by the United States for Mabel Dixie's heirs, who have an undivided, inheritable, beneficial interest in the land.

Membership in CVMT is not limited to five people.

All of the Federal court decisions examining the CVMT dispute make clear that the Tribe is not limited to five individuals. The BIA decision under review in *CVMT I* plainly rejected the 1998 CVMT Constitution offered by Ms. Burley as controlling the Tribe's organization because it had not been ratified by the "whole tribal community."[16] This conclusion necessarily reflected the court's consideration and rejection of the contention that the Tribe consisted solely of five people.

In affirming *CVMT I*, the Circuit Court in *CVMT II* emphasized that the Tribe had more than five people:

> This case involves an attempt by a small cluster of people within the California Valley Miwok tribe ("CVM") to organize a tribal government under the Act. CVM's chairwoman, Silvia Burley, and a group of her supporters adopted a constitution to govern the tribe without so much as consulting its membership.[17]

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[12] 72 Stat. 619 (1958). 78 Stat. 390 (1964).

[13] The record indicates that Merle Butler was the common-law husband of Mabel Dixie. According to a memorandum dated January 5, 1966, signed by the BIA Tribal Operations Officer, Mr. Butler agreed that Mabel Dixie should receive title to the Rancheria. Attachment D.

[14] "The Sheep Ranch Rancheria of Me-Wuk Indians of California" was included on every list of federally recognized tribes published in the Federal Register from the first such publication in 1979, at 44 Fed. Reg. 7235. Silvia Burley and Rashel Reznor, as the Tribal Council, adopted a Resolution changing the name of the Tribe to the California Valley Miwok Tribe on March 6, 2000. The BIA began using the new name no later than October 31, 2001. The list published in 2002 noted that the Tribe had changed its name to California Valley Miwok Tribe, and it has been identified as such in every subsequent list of federally recognized tribes.

[15] Attachment C.

[16] March 26, 2004, letter, Superintendent to Burley; cited in *CVMT I* at 200 - 203; quoted in *CVMT II* at 1265-66; and quoted in *CVMT III* at 93.

[17] *CVMT II* at 1263.

Lastly, in *CVMT III*, the District Court vacated the AS-IA's 2011 determination that the Tribe comprised just five people. It is true that the District Court remanded to the AS-IA the question of tribal membership, but only after noting that "the record is replete with evidence that the Tribe's membership is potentially significantly larger than just these five individuals."[18] As suggested by the District Court in *CVMT III*, and held by *CVMT I and II*, the record shows that there are far more than five people eligible to take part in the organization of the Tribe.

The term "rancheria" has been used to refer both to the land itself, and to the Indians residing thereon; which is to say, "rancheria" is synonymous with both "reservation" and "tribe." Few rancherias organized under the IRA prior to passage of the California Rancheria Act in 1958. In most instances, lands were acquired for the benefit of a band of Indians identified by Indian Agents C.E. Kelsey and John Terrell. In many instances, as in the circumstance for Sheep Ranch, a rancheria was not large enough for all members of the band to take up residence. Nonetheless, BIA field officials remained cognizant of the Indians of a band associated with, but not residing upon, each rancheria.[19] When a parcel on a rancheria came available, BIA would assign the land to such a non-resident Indian who was associated with the band, if possible. Thus, such associated band Indians who were non-residents were potential residents. And since membership in an unorganized rancheria was tied to residence, potential residents equated to potential members.

With this understanding of the Department's dealings with the California Rancherias and in light of the rulings in *CVMT I, II* and *III*, I conclude that the Tribe's membership is not properly limited to Mr. Dixie and the Burley family. Given Agent Terrell's 1915 census of the "Indians designated 'Sheepranch Indians,'" and the 1916 acquisition of land by the United States for the benefit of the Mewuk Indians residing in the Sheep Ranch area of Calaveras County, California, I find that for purposes of reorganization, the Tribe's membership is properly drawn from the Mewuk Indians for whom the Rancheria was acquired and their descendants. The history of the Rancheria, supported by the administrative record, demonstrates that this group consists of: (1) the individuals listed on the 1915 Terrell Census and their descendants; (2) the descendants of Rancheria resident Jeff Davis (who was the only person on the 1935 IRA voters list for the Rancheria); and (3) the heirs of Mabel Dixie (the sole Indian resident of the Rancheria eligible to vote on its termination in 1967) as identified by OHA in 1971 and their descendants (Dixie Heirs) (all three groups collectively identified herein as the Eligible Groups).[20]

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[18] *CVMT III* at 98.

[19] A January 3, 1935, memorandum from the Indian Office provided population information for many Rancherias. It listed the "total population" at Sheep Ranch as 16. Attachment E. Yet the following June, only one adult Indian was found to be *residing on* the Reservation and thus eligible to vote in the IRA referendum.

[20] As one of the Dixie Heirs, Mr. Dixie is part of the group of individuals from whom the Tribe's membership is drawn. He would also be eligible for membership given that for years, he has been the only Indian residing on the Rancheria. See 25 U.S.C. § 479 (IRA's defining "tribe" as, inter alia, "the Indians residing on one reservation"). The *CVMT III* court expressed concern that the enrollment of the Burley family prejudiced the interests of Mr. Dixie's brother Melvin. The BIA's decision to strengthen a dwindling tribe by facilitating the enrollment of a family of relatives was an appropriate step to the benefit of Mr. Dixie and Melvin as well as to the Burley family. The ensuing difficulties were unforeseeable, and do not convert a reasonable agency decision into a lapse of trust duty. Melvin passed away in 2009 without issue. Attachment F.

The record also indicates that the Indians named on the 1915 Terrell Census had relatives in other Calaveras County communities.[21] In 1929, the BIA conducted a census (1929 Census) of the Indians of Calaveras County, which identified 147 Indians – mostly Miwok, but also some Tuolumne. The census included children of mixed Miwok/Tuolumne, and mixed Indian/non-Indian ancestry. Accordingly, including the descendants of the Miwok Indians identified on the 1929 Census as eligible to take part in the organization of the Tribe may be of proper in light of Agent Terrell's conclusion that "to some extent the Indians of Sheepranch, Murphys, Six-Mile, Avery and Angles are interchangeable in their relations."[22] Whether the descendants of the Miwoks identified in the 1929 Census shall be included in the organization of the CVMT is an internal tribal decision that shall be made by the individuals who make up the Eligible Groups.

To the extent the Burley Family is among the individuals who make up the Eligible Groups, I encourage them to participate in the Tribe's reorganization efforts as discussed below.[23] If the Burley Family cannot demonstrate that they are part of the Eligible Groups, I leave to the Tribe, as a matter of self-governance and self-determination to clarify the membership status of the Burley Family.

The United States does not recognize leadership for the CVMT government.

For purposes of administering the Department's statutory responsibilities to Indians and Indian tribes, I must ensure that CVMT leadership consists of valid representatives of the Tribe as a whole. Both parties point to documents supporting their claim to be valid representatives of the Tribe. I find I cannot accept either party's claims.

Ms. Burley points to the 1998 Resolution as the basis for her leadership.[24] At the time of its enactment, the 1998 Resolution undoubtedly seemed a reasonable, practical mechanism for establishing a tribal body to *manage the process* of reorganizing the Tribe. But the actual reorganization of the Tribe can be accomplished only via a process open to the whole tribal community.[25] Federal courts have established, and my review of the record confirms, the people who approved the 1998 Resolution (Mr. Dixie, Ms. Burley, and possibly Ms. Burley's daughter Rashel Reznor) are not a majority of those eligible to take part in the reorganization of the Tribe.[26] Accordingly, I cannot recognize the actions to establish a tribal governing structure taken pursuant to the 1998 Resolution. Ms. Burley and her family do not represent the CVMT.

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[21] Attachment A.
[22] Attachment A.
[23] The district court expressed concerns about Mr. Dixie's 1998 enrollment of the Burley family. *CVMT III* at 99. Testimony evidence in the record shows that Mr. Dixie required evidence of Ms. Burley's connection to the Miwok Indians of Sheep Ranch and suggests that the Burley family qualifies for inclusion in the Eligible Groups. In a 2004 deposition, Ms. Burley testified that "it was confirmed that his grandma and my grandpa were brother and sister." Attachment G, at 106. If documentary evidence supports Ms. Burley's testimony, the Burley family must be accorded the same right to take part in the reorganization of the Tribe as all other persons in the Eligible Groups.
[24] Attachment I.
[25] CVMT II at 44; CVMT III at 97.
[26] CVMT II at 44; CVMT III at 98.

In 2006, Mr. Dixie and others purported to ratify a Constitution, Attachment J, which set out membership criteria (Part 6) and a list of twelve people (including Ms. Burley) as the "Base Enrollment of the Tribe" (Part 7). The last section of the 2006 Constitution, "Part 11, Ratification and Confirmation," lists thirteen people, twelve of whom signed the document. There is no other text in Part 11 to explain the significance of the signatures or to shed light on whether or how the 2006 Constitution was ratified. Thus, there is nothing in the text of the 2006 Constitution that shows it was ratified via a process that provided broad notice to persons eligible to take part in the Tribe's organization. I cannot, therefore, find the 2006 Constitution to be validly enacted.

In July 2013, Mr. Dixie and others purported to ratify a new Constitution.[27] Under the 2013 Constitution, tribal membership eligibility criteria included anyone whose name appeared on, or anyone descended from someone whose name appeared on: the Terrell Census, the list of Miwok Indians on the 1929 Census, the 1935 IRA voters list for the Rancheria, or the list of Dixie Heirs. However, the record is silent on the effort to notify all those eligible to take part in the organization of the Tribe to ratify the 2013 Constitution.[28] For purposes of this decision, I find that Mr. Dixie has not demonstrated that the 2013 Constitution was validly ratified.[29] But I do not foreclose the possibility that Mr. Dixie may provide additional evidence that could demonstrate adequate notice for BIA's acceptance of the 2013 Constitution.

Conclusion

Responding to the court's remand, I conclude that the Tribe's membership is more than five people, and that the 1998 General Council does not consist of valid representatives of the Tribe. I further conclude that the individuals who make up the Eligible Groups must be given opportunity to take part in the reorganization of CVMT. At the discretion of the Eligible Groups, the Miwok Indians named on the 1929 Census and their descendants may be given that opportunity to participate in the reorganization of CVMT.

I find that Mr. Dixie has not proven that the 2013 Constitution was validly ratified. I authorize the BIA Pacific Regional Director (RD) to receive additional submissions from Mr. Dixie for the purpose of establishing whether the 2013 Constitution was validly ratified. As an alternative, I encourage the Tribe to petition for a Secretarial election under 25 C.F.R. Part 81 within 90 days of this decision.

Pursuant to today's decision, the RD will work with the Eligible Groups to help the Tribe attain its manifest goal of reorganizing. This is a role that BIA has undertaken in other situations involving California Rancherias.

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[27] Attachment K.

[28] Mr. Dixie did not provide evidence that outreach to the greater tribal community was part of the drafting or ratification of the Constitution. Rather, the text of the Constitution itself indicates that the organizers had established a tribal membership roll *prior* to ratifying the Constitution (Section II(a); II(e)), had defined the "electorate" as adults on the membership roll (Section IV(a)), and had purported to ratify the Constitution via a vote of the electorate (Section XVIII(a)).

[29] The "Certificate of Results of Election" within Article XIII, "Adoption of Constitution," suggests that the adoption of the 2013 Constitution was "pursuant to the 2006 Constitution." Having rejected the 2006 Constitution, I cannot accept that the 2013 Constitution was validated by a process in the 2006 Constitution.

The Pacific Regional Office has suggested a number of revisions to the 2013 Constitution submitted by Mr. Dixie.[30] If the RD concludes that the 2013 Constitution was validly ratified, I urge the Tribe to work with BIA to revise and amend its Constitution, as appropriate.

This decision is a final agency action.

Sincerely,

Kevin K. Washburn
Assistant Secretary – Indian Affairs

Attachments:

A. 1915 Terrell Census
B. 1929 Census
C. 1971 OHA determination of heirs
D. 1966 BIA memo re Mabel and Merle
E. 1935 Indian Office Memo with Rancheria censuses
F. 2009 Melvin Dixie Death Index
G. 2004 Burley deposition, selection
H. 2015 Wilmer Hale letter
I. 1998 GC resolution
J. 2006 Dixie Constitution
K. 2013 Dixie Constitution
L. 2013 BIA comments on Dixie 2013 Constitution

[30] Attachment L.

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