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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) Case No.: 2:16-cv-01345-WBS-CKD
federally-recognized Indian)
tribe, **THE GENERAL COUNCIL,**) **MEMORANDUM OF POINTS AND**
SILVIA BURLEY, RASHEL REZNOR;) **AUTHORITIES IN SUPPORT OF**
ANJELICA PAULK; and TRISTIAN) **MOTION FOR AN ORDER STAYING**
WALLACE) **AS-IA'S DECEMBER 30, 2015**
) **DECISION**

Plaintiffs,

vs.

SALLY JEWEL, in her official) Date: August 8, 2016
capacity as U.S. Secretary of) Time: 1:30 p.m.
Interior; **LAWRENCE S. ROBERTS,** in) Judge: William B. Shubb
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.

Plaintiffs CALIFORNIA VALLEY MIWOK TRIBE, THE GENERAL
COUNCIL, SILVIA BURLEY, RASHEL REZNOR, ANJELICA PAULK and
TRISTIAN WALLACE submit the following Memorandum of Points and
Authorities in Support of Motion for an Order Staying the
Assistant Secretary-Indian Affairs' December 30, 2015 Decision.

I.

INTRODUCTION

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

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.

Echo Hawk then **stayed** implementation of his decision pending resolution of the Dixie Faction's federal litigation challenging that decision. (Ex. "9", page 8, Echo Hawk decision).

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

1 Dixie challenged that decision in federal court. In
2 December 2013, the federal district court ("the District Court"
3 or "U.S. District Court") granted summary judgment in favor of
4 Dixie and his Tribal Faction and remanded to the AS-IA for him
5 to "reconsider" his August 31, 2011 decision, because he
6 "assumed" certain factual issues rather than determined them
7 factually. Specifically, the U.S. District Court remanded back
8 to the AS-IA for him to reconsider his August 31, 2011 decision,
9 because, according to the U.S. District Court, the AS-IA merely
10 assumed the Tribe's membership is limited to five persons and
11 further merely assumed that the Tribe is governed by a duly
12 constituted General Council, without setting forth its reasons
13 for these conclusions, in light of the administrative record
14 that questioned the validity of those assumptions. Indeed,
15 although much of the decision is predicated on an existing
16 Tribal leadership dispute, the court there did not have the
17 benefit of the deposition transcript of Yakima Dixie taken in
18 the California State case, wherein he admits resigning as Tribal
19 Chairman, because it was not part of the administrative record.

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

25 Here, the August 2011 Decision fails to address
26 whatsoever the numerous factual allegations in the
27 administrative record that raise significant doubts
28 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

1 001690, 000231 (Yakima notifying the BIA of "fraud and
misconduct" with respect to the Tribe's leadership).

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

8 **AS-IA DECEMBER 30, 2015 DECISION**

9 On remand, the AS-IA erroneously concluded that the Tribe's
10 membership is more than five people, and that the 1998 General
11 Council does not consist of valid representatives of the Tribe.
12 It erroneously concluded that the Tribe was never properly
13 "reorganized" back in 1998, leaving questions as to the overall
14 membership of the Tribe, and therefore the Tribe must be
15 reorganized. It then wrongfully directed that unenrolled,
16 potential members be allowed to participate in reorganizing the
17 Tribe. It refused to acknowledge the Tribe's governing
18 document, Resolution #GC-98-01, which established the Tribe's
19 General Council, despite the fact that this governing document
20 has been in place for over 18 years. It stated:

21 At the time of its enactment, the 1998 Resolution
22 undoubtedly seemed a reasonable, practical mechanism for
23 establishing a tribal body to manage the process of
24 reorganizing the Tribe. But the actual reorganization of
25 the Tribe can be accomplished only via a process open to
26 the whole tribal community. Federal courts have
27 established, and my review of the record confirms, the
28 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].

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

3 **PRESENT SUIT CHALLENGING WASHBURN'S DECEMBER 30, 2015 DECISION**

4 Plaintiffs filed suit on June 17, 2016 challenging the
5 Washburn decision as arbitrary and capricious, or otherwise
6 unlawful. The decision is a final agency action and allows the
7 competing tribal faction to submit documentation to support its
8 own constitution for purposes or "reorganizing" the Tribe. The
9 BIA has recently sought to implement the Washburn decision by
10 notifying Plaintiffs that the competing tribal faction has in
11 fact submitted documentation to support its own constitution,
12 and further notifying Plaintiffs that it intends to act on the
13 submission by July 12, 2016. (See Ex. "1," BIA letter to Silvia
Burley).

14 Plaintiffs requested in their complaint an immediate stay
15 of the Washburn decision pending resolution of their suit in
16 federal court. (See First Amended Complaint attached as Ex.
"5").

17 The Defendants were served by formal process on June 29,
18 2016 with the summons and complaint. In addition, Plaintiffs'
19 counsel sent a separate letter to Defendants enclosing the
20 complaint and requesting that they voluntarily stay the
21 implementation of the Washburn decision. (See letter dated June
22 29, 2016 to Lawrence Roberts, AS-IA, Ex. "2"). To date, the
23 Defendants have not responded, and the July 12, 2016 date is
24 fast approaching.

25 Plaintiffs will be irreparably harmed if a stay is not
26 imposed, since once the competing faction's constitution is
27 approved by the BIA, then the competing faction will take over
28 the Tribe and submit their approved constitution to the
California Gambling Control Commission ("the Commission") which

1 is presently withholding over \$12.5 million in Revenue Sharing
2 Trust Fund ("RSTF") payments belonging to the Tribe. (See Ex.
3 "3" attached Report from the Commission regarding RSTF payments
4 withheld from the Tribe "pending identification of Tribal
5 government"). In particular, the Commission's recent report
6 states:

7 "Staff continues to recommend that the distribution to the
8 California Valley Miwok Tribe be allocated but withheld.
9 On December 30, 2015, Kevin Washburn, the Assistant
10 Secretary)of the Department of the Interior) for Indian
11 Affairs (AS-IA), issued a final agency decision that
12 unequivocally states that the United States does not
13 recognize leadership for the California Valley Miwok
14 government. A decision by AS-IA is final for the
15 Department, effective immediately, and unlike decisions
16 rendered by subordinate Bureau of Indian Affairs (BIA)
17 officials, is not automatically stayed upon appeal.
18 Accordingly, there continues to be no California Valley
19 Miwok Tribe government to which the Commission can make an
20 RSTF payment."

21 (Ex. "3," Commission Report, dated April 25, 2016 regarding RSTF
22 payments to various Tribes, page 1).

23 In the same way that the Echo Hawk decision was stayed
24 pending resolution of the federal litigation by the Dixie
25 Faction challenging that decision, the court should similarly
26 stay the implementation of the Washburn decision, so as to
27 maintain the status quo of the parties and allow the court to
28 resolve the issues raised in the First Amended Complaint
challenging the Washburn decision.

II.

ARGUMENT

A. THE COURT SHOULD STAY THE WASHBURN DECISION IN THE SAME WAY THE PRIOR ECHO HAWK DECISION WAS STAYED

As stated, on August 31, 2011, AS-IA Echo Hawk issued a
final agency decision stating that the Tribe comprises of five
(5) enrolled members, and that the General Council established

1 by the Tribe in 1998 was the recognized governing body of the
2 Tribe with whom the Department of Interior may conduct
3 government-to-government relations. Because the Dixie Faction
4 was challenging his decision in federal court, Echo Hawk then
5 stayed the implementation of his decision pending the outcome of
6 the federal litigation. His decision stated:

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

12 (Ex. "9", Page 8, Echo Hawk decision). The Court should do
13 likewise. Inherent in Echo Hawks' stay is the fact that
14 implementation of his decision would frustrate the pending
15 federal litigation. Similarly, a stay of Washburn's decision is
16 necessary, because the BIAS is already implementing Washburn's
17 decision by accepting for review the Dixie Faction's
18 constitution. Once accepted, the BIA will turn over the Tribe
19 to the Dixie Faction, and the Dixie Faction will then turn
20 around and collect the \$13 million in RSTF payments being
21 withheld for the Tribe. Once released, the Tribe cannot
22 retrieve those funds, and, if the Washburn Decision is set
23 aside, then the funds would be irretrievable lost. Prudence
24 dictates that the Washburn Decision be stayed pending the
25 conclusion of this litigation.

26 Accordingly, without a stay Plaintiffs will be irreparably
27 harmed.

28 **B. A STAY IS WARRANTED SO AS TO PRESERVE THE STATUS QUO
PENDING RESOLUTION OF THIS LITIGATION**

The Court's decision on whether to grant a stay under the
circumstances is to be guided by four factors: "(1) the
likelihood that the party seeking the stay will prevail on the
merits of the appeal; (2) the likelihood that the moving party

1 will be irreparably harmed absent a stay; (3) the prospect that
2 others will be harmed if the court grants the stay; and (4) the
3 public interest in granting the stay." In re E.P.A. (6th Cir.
4 2015) 803 F.3d 804, 806 (citing Mich. Coalition of Radioactive
5 Material Users, Inc. v. Griepentrog (6th Cir. 1991) 945 F.2d 150,
6 153. These factors are not perquisites that must be met.
7 Rather, they are "interrelated considerations that must be
8 balanced." Griepentrog, supra at 153.

9 A motion to stay an agency decision pending a challenge in
10 federal court is addressed to the court's sound discretion, is
11 made early on in the case "based on incomplete factual
12 development and legal research," and is done "for the purpose of
13 preserving the status quo pending further proceedings." United
14 States v. Edward Rose & Sons (6th Cir. 2004) 384 F.3d 258, 261.

15 In addition, the party seeking a stay bears the burden of
16 showing that the circumstances of the particular case justify
17 the exercise of the court's discretion, guided by sound legal
18 principles, to maintain the status quo pending conclusive
19 determination of the legality of the action. Nken v. Holder
20 (2009) 556 U.S. 418, 433.

21 **1. There is a likelihood of success on the merits.**

22 The Washburn decision is erroneous as a matter of law for
23 the following reasons:

24 **a. Yakima Dixie's enrollment of the Burleys in 1998**
25 **was appropriate.**

26 Yakima Dixie ("Dixie") enrolled the Burley family into the
27 CVMT voluntarily and only after Dixie and Silvia Burley
28 ("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

1 Tribal governance.

2 **b. Dixie's enrollment of the Burleys did not**
3 **compromise Melvin Dixie's interests.**

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

17 **c. Enrolling the Burleys in 1998 did not impair the**
18 **interests of unenrolled potential Tribal members.**

19 As discussed by the District Court, there is broad
20 agreement that there are a number of unenrolled potential Tribal
21 members. Those potential members had not sought to join the
22 Tribe when Dixie enrolled the Burleys; nor did those potential
23 members apply to the General Council for membership. The
24 potential members have instead emerged following and as a
25 consequence of a Tribal leadership dispute between Dixie and
26 Burley. Because none of the potential members has been denied
27 the opportunity to enroll in the Tribe, none of their interests
28 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.

1 **d. The Tribe's 1998 General Council is the**
2 **authorized and legitimate Tribal government.**

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

17 Thus, the CVMT is properly comprised of five members and is
18 governed by the 1998 General Council. Washburn's decision to
19 the contrary is erroneous as a matter of law and arbitrary and
20 capricious. The Echo Hawk Decision should have been reaffirmed
21 in its entirety.

22 **2. Plaintiffs will be irreparably harmed absent a stay.**

23 For the reasons set forth above, Plaintiffs will be
24 irreparably harmed if a stay of Washburn's decision is not
25 imposed. The BIA is poised to give the Tribe over to the Dixie
26 Faction in the immediate future, based upon the Washburn
27 decision. Once that occurs, the Dixie Faction will request and
28 obtain \$13 million in RSTF payments belonging to the Tribe.

29 **3. No others will be harmed if the court grants a stay.**

30 Since the purpose of the requested stay is to maintain and
31 preserve the status quo pending review by this court of the
32 Washburn decision, none of the parties or any other persons will

1 be harmed by a stay. Indeed, the accrued \$13 million in RSTF
2 payments being withheld by the California Commission will
3 continue to be withheld and safeguarded until a final resolution
4 of this matter in this case.

4 **4. It is in the public interest to grant a stay.**

5 The "public interest" factor is not directly implicated,
6 given the fact that the issues to be decided affect an Indian
7 Tribe and its members.

8 Accordingly, the court should weigh the above-mentioned
9 "interrelated considerations", and, on balance, conclude that a
10 stay of the Washburn decision is warranted, and that a stay of
11 that decision should remain in place pending the final
12 resolution of this case. In re E.P.A., supra.

12 **III.**

13 **CONCLUSION**

14 For the foregoing reasons, Plaintiff motion for an order
15 staying AS-IA's December 30, 2015 decision should be granted.

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18
19 Dated: July 7, 2016



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22 CALIFORNIA VALLEY MIWOK
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24 SILVIA BURLEY, RASHEL REZNOR,
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26 WALLACE
27
28