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ANTONIA LOPEZ, MICHAEL MENDIBLES,  
9 GILBERT RAMIREZ, JR, ANTOINETTE  
LOPEZ AND IVA SANDOVAL  
10

11 UNITED STATES DISTRICT COURT

12 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION  
13

14 CALIFORNIA VALLEY MIWOK TRIBE, a  
federally-recognized Indian tribe, THE  
15 GENERAL COUNCIL, SILVIA BURLEY,  
RASHEL REZNOR; ANGELICA PAULK; and  
16 TRISTIAN WALLACE,

17 Plaintiffs,

18 v.

19 SALLY JEWEL, in her official capacity as  
U.S. Secretary of Interior; LAWRENCE S.  
20 ROBERTS, in his official capacity as Acting  
Assistant Secretary of Interior - Indian Affairs;  
21 MICHAEL BLACK, in his official capacity as  
Director of the Bureau of Indian Affairs,  
22

23 Defendants.  
24  
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26  
27  
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Case No. 2:16-01345 WBS CKD

**DECLARATION OF ROBERT URAM IN  
SUPPORT OF MOTION TO INTERVENE**

Judge: Hon. William B. Shubb

DECLARATION OF ROBERT URAM

I, Robert Uram, declare as follows:

1. I am an attorney with the law firm of Sheppard, Mullin, Richter & Hampton LLP, attorneys for The California Valley Miwok Tribe (Tribe), The Tribal Council, Yakima Dixie, Velma WhiteBear, Antonia Lopez, Michael Mendibles, Antoinette Lopez, Iva (Carsoner) Sandoval and Gilbert Ramirez, Jr., proposed Intervenor-Defendants in this case.

2. This declaration is submitted in support of Intervenor-Defendants' Motion to Intervene and their Opposition to Plaintiffs' Motion for an Order Staying AS-IA's December 30, 2015 Decision.

3. Exhibit A hereto is a true and correct copy of the request for recognition of the Tribe's constitution and Tribal Council form of government adopted through an election on July 6, 2013, which I submitted to the federal Bureau of Indian Affairs (BIA) on behalf of the Tribe on April 18, 2016.

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

Executed August 1, 2016, at San Francisco, California.

/s/ Robert J. Uram  
ROBERT J. URAM

**Exhibit A**  
**to Declaration of Robert Uram**

**California Valley Miwok Tribe Request to BIA Regional Director  
for Recognition of 2013 Constitution (Recognition Request)**



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April 18, 2016

File Number: 26RJ-159149

**VIA FEDEX AND E-MAIL**

Amy Dutschke  
Regional Director, Pacific Regional Office  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

Re: California Valley Miwok Tribe

Dear Director Dutschke:

I am writing on behalf of the California Valley Miwok Tribe (Tribe) to request that the Bureau of Indian Affairs recognize the government the Tribal community established in an election held on July 6, 2013 (2013 Election). The 2013 Election was the culmination of more than eight years of efforts to identify the members of the Tribal community, to develop a Tribal constitution with their participation and input, and to ensure that the entire community had the opportunity to vote on adopting the constitution. The Election resulted in ratification of a Tribal constitution (2013 Constitution, **Attachment 1**) by a vote of 90-10.

In his December 30, 2015 decision regarding the Tribe (2015 Decision), Assistant Secretary Washburn authorized you to receive additional submissions from the Tribe for the purpose of establishing whether the 2013 Constitution was validly ratified. We ask that you review the information provided with this letter, find the 2013 Constitution was validly ratified, and recognize the Tribal Council established under that constitution for the purpose of reestablishing government-to-government relations between the United States and the Tribe.

The Tribe has been without a federally recognized government for more than 10 years, with multiple administrative appeals and court challenges spanning that period. Silvia Burley, her two daughters, and her granddaughter (the Burley Faction) have already signaled their intent to prolong that situation by submitting a request for reconsideration of the 2015 Decision to the Assistant Secretary. To avoid unnecessary delay in restoring the federal relationship with this Tribe, we ask that the Assistant Secretary not only deny the Burley Faction's request for reconsideration, but also make your decision on the recognition of the 2013 Constitution and Tribal Council final agency action for the Bureau of Indian Affairs (BIA).

With this letter we provide a report documenting the Tribal organization process that culminated in ratification of the 2013 Constitution. The contents of the report are briefly summarized below. We are also providing, under separate cover, a genealogical history of the Tribal community members who participated in the initial organization. Because the genealogical history contains

## **SheppardMullin**

Amy Dutschke  
April 18, 2016  
Page 2

sensitive personal information, we ask that the BIA keep the information confidential to protect the participants' privacy.

### **The Entire Tribal Community Had the Opportunity to Participate in Organization**

Under the guidance of an initial Tribal Council and interim constitution established in 2006, the Tribe conducted extensive outreach to the Tribal community through monthly open meetings, mailings, meetings and phone calls with the local Miwok community, and participation in cultural activities and Native American gatherings. The BIA also assisted through publication of a public notice in 2007 that invited Tribal community members to participate in Tribal organization. These efforts initially focused on identifying and involving those whom the 2015 Decision refers to as members of the Eligible Groups. The Eligible Group members include (1) the individuals listed on the 1915 Terrell Census and their descendants; (2) the descendants of Rancheria resident Jeff Davis; and (3) the heirs of Mabel Dixie, as identified by OHA in 1971, and their descendants.

In 2008, the Eligible Group members recognized that the Tribal community of which they and their ancestors were a part also included Miwoks named on the 1929 Calaveras County Indian Census (1929 Census), and their descendants. The 1929 Census families are closely interrelated with the Eligible Group families and have a long history of active participation in Tribal affairs.<sup>1</sup> The Tribe proceeded to include the 1929 Census descendants in the Tribal organization process. That decision was consistent with the BIA's long-held understanding of the Tribal community make-up, and it was well within the Tribe's sovereign power to define its own membership.

The Tribal Council continued its organization efforts and, in 2012, scheduled an election to ratify a new Tribal constitution. By that time, the Tribal Council had identified approximately 200 adult members of the Tribal community (plus an approximately equal number of children). The Tribe's initial attempt to ratify the constitution, in October 2012, did not succeed, but the Tribe learned from that experience and revised its election procedures to improve voter participation by conducting automatic voter registration and allowing absentee voting.

### **The 2013 Election Provided Adequate Notice and Opportunity to Participate**

In April 2013, the Tribal Council approved the presentation of the 2013 Constitution to the Tribal community for ratification, and scheduled an election for that purpose to be held on July 6, 2013. As documented in the attached report, the Tribe:

- Mailed an election notice and voting materials to each documented adult member of the Tribal community;
- Posted notice of the election at U.S. Post Offices in West Point, California and San Andreas, California;

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<sup>1</sup> As the 2015 Decision recognized, the BIA has known for approximately 100 years that Miwok Indians living around Sheep Ranch and those living in other locations in Calaveras County were "to some extent ... interchangeable in their relations."



Amy Dutschke  
April 18, 2016  
Page 3

- Mailed multiple election reminders to known members of the Tribal community to encourage voter turnout;
- Announced the election at each monthly Tribal meeting prior to the election;
- Posted the eligible voter list at Tribal headquarters in Sheep Ranch for review and possible challenge;
- Made the voter list available at the monthly Tribal meetings before the election; and
- Informed the BIA of the election and invited BIA representatives to observe the election.

The Tribal Council's Election Committee supervised the voting and counted the votes. Out of 200 eligible voters, more than half (104) cast ballots, and they overwhelmingly approved the 2013 Constitution by a vote of 90 to 10, with 4 abstentions. The Election Committee posted the results at the Tribe's headquarters, on the Tribe's website, and at the next Tribal meeting. There were no challenges to either the eligible voter list or the election results. The Tribe informed the BIA of the election results on July 11, 2013.

The notice to the Tribal community, the election procedures, levels of participation, and election results all met or exceeded the requirements for constitutional ratification found in the Tribe's own bylaws, as well as the requirements of the federal regulations in effect at that time for Secretarial elections.<sup>2</sup>

The 2013 Constitution ratified by the Tribal community recognizes both the Eligible Groups and the 1929 Census descendants as eligible for Tribal membership, and provides that anyone meeting the membership criteria may apply for membership by submitting their genealogy and other documentation to the Tribe's Enrollment Committee. (Attachment 1, Art. II.) The 2013 Constitution also ratifies the current Tribal Council and requires a Tribal election to elect a new Tribal Council within twelve months after the BIA recognizes the Tribal government. (Attachment 1, Art. VI(b).)

The Assistant Secretary's 2015 Decision included some comments on the 2013 Constitution from the BIA Regional Office and Regional Solicitor, with recommendations for revisions to clarify certain provisions of the Constitution. The Tribe appreciates the comments and intends to work with the BIA after its government is recognized to address the recommendations. We do not regard the recommendations as raising issues that would require amendment of the Tribe's Constitution prior to the BIA making a recognition decision.

### **Participants in Tribal Organization Were Overwhelmingly Eligible Group Members**

The Tribe disagrees with the Assistant Secretary's failure to include the 1929 Census descendants among the Eligible Groups, and with his statement in the 2015 Decision that the 1929 Census descendants may participate in Tribal organization "[a]t the discretion of the

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<sup>2</sup> Since the election was a Tribal election and not a Federal election, compliance with the Secretarial election procedures was not required, but the regulations are informative because they may be used as guidelines for Tribes wishing to hold constitutional elections not conducted pursuant to a Federal statute. 25 C.F.R. § 81.2(b).

## SheppardMullin

Amy Dutschke

April 18, 2016

Page 4

Eligible Groups.” The Tribe regards the Eligible Groups and the 1929 Census descendants as equally entitled to participate.

The issue has no practical significance, however, because nearly all known members of the Tribal community are members of the Eligible Groups. Of 200 adults on the 2013 Election roster, 183 (92 percent) were members of the Eligible Groups.<sup>3</sup> The remaining 17 members were 1929 Census descendants from families that are extensively interrelated with the Eligible Groups and have always been a part of the Tribal community. The Tribe has provided the BIA, under separate cover, with information documenting the lineal descent of the 200 adults on the 2013 Election roster.

The Tribal community (mostly Eligible Group members) decided in 2008 to include the 1929 Census descendants in Tribal organization, and therefore the participation of the 1929 Census descendants in the 2013 Election was consistent with the 2015 Decision. But even if the Eligible Groups had not made that decision, it would not matter, because the participation by the 1929 Census descendants did not affect the outcome of the 2013 Election.

Of the 104 adults who cast votes in the 2013 Election, 95 (91%) were Eligible Group members, and the remaining nine were 1929 Census descendants. The voters approved the Tribal Constitution by a vote of 90 to 10 with 4 abstentions. Even assuming that all the 1929 Census descendants voted in favor of ratification, the election result without their votes still would have been 81 to 10 in favor of ratification—more than enough for approval of the 2013 Constitution.

### **The Burleys Chose to Not Participate in the Tribal Community**

The 2015 Decision unequivocally resolved one of the major issues that had delayed the recognition of a Tribal government—the claims by the Burley Faction that the Tribe consists of only five members and that a Tribal government was established in 1998. The 2015 Decision found that the Tribe’s membership is not limited to five people, and that the Burley Faction’s actions taken pursuant to the 1998 Resolution did not establish a Tribal government. The 2015 Decision also found that the Burley Faction does not represent the Tribe and have only the same rights as any other member of the Eligible Groups, including the *opportunity* to take part in the initial organization of the Tribe.<sup>4</sup>

The Tribe provided the Burleys with many opportunities to participate in Tribal organization. Although some of their family members participated, the Burley Faction chose not to. Instead, they sought recognition for their own, separate “tribal government,” and actively opposed efforts to include the larger Tribal community in organizing. Having rejected many opportunities to

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<sup>3</sup> We provide information on the 200 adults who were included on the 2013 Election roster, because that is most relevant to the adoption of the 2013 Constitution. The current roster of enrolled members reflects some differences from the 2013 roster due to deaths, additional members who have become adults, etc., but the composition of both rosters is comparable.

<sup>4</sup> Although the Burleys have not applied to the Tribe for membership, we believe, based on the genealogical information available to us, that the Burleys are members of the Eligible Groups.



**SheppardMullin**

Amy Dutschke

April 18, 2016

Page 5

participate in Tribal organization, the Burley Faction cannot now blame the Tribe for their decision.

## **Conclusion**

The Tribal Council's years of outreach, inclusive policies, transparent approach to Tribal organization, and rigorous election procedures ensured that anyone wishing to participate in Tribal organization had ample notice and opportunity to do so. The process protected the interests of the Eligible Group members while also including the 1929 Census descendants, with the consent of the Eligible Group supermajority. The results of the process speak for themselves: the Tribal community overwhelmingly approved the 2013 Constitution, and no member of the community objected to the process or challenged the 2013 Election results.

Some members of the Tribal community, including the Burley Faction, chose not to participate in the organization process, as is their right. Those individuals may apply to the Tribal Council for recognition as Tribal members at any time. Under the 2013 Constitution, they will enjoy the same rights and responsibilities as any other Tribal member.

The ratification of the 2013 Constitution reflected the will of the entire Tribal community, consistent with the majoritarian principles established by multiple administrative and federal court decisions involving this Tribe. We request the BIA take final agency action to recognize the Tribe's 2013 Constitution and Tribal Council without further delay. Please contact me if you have any questions.

Very truly yours,



Robert J. Uram  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:475472211.7

## **Attachments**

Attachment 1, 2013 Constitution

Attachment 2, Report on Tribal Organization

cc: Larry Roberts, Acting Assistant Secretary – Indian Affairs  
Kevin Bearquiver, BIA  
Dale Risling, BIA  
Harley Long, BIA  
California Valley Miwok Tribal Council  
Chadd Everone  
James Rusk



**Attachment 1**

**2013 Constitution**

**THE CONSTITUTION  
OF THE  
CALIFORNIA VALLEY MIWOK TRIBE  
ALSO KNOWN AS  
SHEEP RANCH RANCHERIA OF ME-WUK INDIANS OF CALIFORNIA**

**DEDICATION**

We, the People of the California Valley Miwok Tribe (a.k.a. Sheep Ranch Rancheria of Me-Wuk Indians of California) do hereby establish this Constitution, in respect for our ancestors and future generations, in order to protect the rights of the Tribe and its Members as a sovereign nation, to preserve and advance our cultural identity, to promote the general welfare of our people and descendants, and for the conduct of the affairs of our community within this legal structure.

**HISTORY**

The California Valley Miwok Tribe a.k.a. Sheep Ranch Rancheria of Me-Wuk Indians of California is a California Indian tribe, recognized by the United States of America by Federal census on August 13, 1915 and pursuant to a land allocation Act of April 30, 1908 (35 Stat. 70-76).

In that initial Federal recognition of the Tribe of 1915, the Tribe was designated as the "Sheepranch-Indians". The twelve members in the original census were identified 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"; and their ancestors dated back, several thousand years into pre-historic times. In 1935, the government formally identified the Tribe as the "Sheep Ranch Rancheria", when the Tribe voted to become organized under the Indian Reorganization Act of 1934. In 1965, the Federal government prepared a distribution plan for the assets of the Tribe for the purposes of the Rancheria Termination Act; however, unlike other rancheria tribes, this Tribe was never terminated. The Members identified on the 1915 census, those who voted in the 1935 election, and those identified in the 1965 distribution plan (14 members in all) became known, by the Bureau of Indian Affairs, as hereditary members with their lineal descendants being the "Putative Members" of the Tribe. In addition, many other members came and went from the Sheep Ranch Rancheria over the decades after 1915; and the Tribe existed as a network of related families with regional ceremonies. These Members of the tribal community were identified in the 1929 Federal Indian Census Roll for Calaveras County, and the Tribe included the Me-wuks on that census as Members.

In 1994, the Federal government began publishing a list of federally recognized tribes in the Federal Register; and therein, the Tribe became identified as: "Sheep Ranch Rancheria of Me-Wuk Indians of California". Then, in 2002, the name was changed in the Federal Register to "California Valley Miwok Tribe (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)".

From its earliest inception, up to this Constitution, the Tribe remained governed by Me-Wuk tradition, which is centered around the values of a shared identity, mutual support, openness, consensus

among the Members and a "*toko hyapo*" or spokesperson. These customs continue to influence the conduct of the Tribe, as implemented by these Articles of Organization.

## SYNOPSIS OF THE CONSTITUTION

With the exception of the rights that are retained by the individual Members (Article XIV), and the powers that are embedded in the Electorate (Article IV), and the independence of the Court (Article VII), all authority and powers to conduct the affairs of the Tribe reside in the Tribal Council (Articles V & VI) as constituted by its elected representatives and implemented by properly enacted By-laws (Articles V(I)).

In this Constitution, the Territory of the Tribe is defined for the purposes of its Jurisdiction (Article I). Membership in the Tribe is through inherent right and by lineal descent from an established member (Article II). The Governance (Article III) includes: the Electorate (Article IV); the Tribal Council (Articles V & VI); and the Court (Article VII).

The Constitution describes procedures for the Tribal Administration (Article VIII), Elections (Article IX), Removal of Officers from the Tribal Council and the filling of Vacancies (Article X), for Initiatives and Referenda (Article XI), Land (Article XII), Sovereign Immunity (Article XIII), Civil Rights of its Members (Article XIV), and for making Amendments to this Constitution (Article XVI), among other provisions.

In case of any conflict between this Synopsis and the Articles of Organization, the Articles shall govern.

## ARTICLES OF ORGANIZATION

### ARTICLE I - TERRITORY & JURISDICTION

**§ I(a) - TERRITORY.** The territory of the Tribe shall include, to the fullest extent possible and consistent with federal law, all lands, water, property, airspace, surface and subsurface rights, and other natural resources in which the Tribe now has or in the future will have any interest including without limitation all lands located within the historic Rancheria, all lands owned by the Tribe in fee, and all lands which are owned by the United States for the exclusive or non-exclusive benefit of the Tribe, or for individuals as tribal members, excepting any rights-of-way.

**§ I(b) - JURISDICTION.** Except as prohibited by federal law and this Constitution, the Tribe shall have jurisdiction over all tribal Members and all persons, subjects, property, and activities which occur within its territory, as defined above in this Article. Apart from the limitations that are imposed herein, there shall be no other limits on the Tribe to exercise its jurisdiction according to its inherent sovereignty.

The Constitution of the California Valley Miwok Tribe  
(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)

**§ I(c) - HEADQUARTERS LOCATION.** The traditional and cultural headquarters of the Tribe is the site of the Tribe's historic Rancheria at Sheep Ranch, California. In addition, the Tribal Council may designate the Tribe's administrative headquarters and reservation property as being at another location owned by the Tribe in fee or owned by the United States in trust on behalf of the Tribe.

## ARTICLE II – MEMBERSHIP

### § II(a) - MEMBERSHIP BY INHERENT RIGHT.

**§ II(a)1 - The Putative Members.** A person can be a Member of the Tribe if one is a lineal descendant of one of the 14 persons with whom the Federal government conducted official business with the Tribe between 1915 and 1967. These are:

Peter Hodge	Tom Hodge	Mrs. Limpey (Rose Davis)	Mamy Duncan
Annie Hodge	Andy Hodge	John Tecumchey	Jeff Davis
Malinda Hodge	Jeff Davis	Pinkey Tecumchey	Mabel Hodge Dixie
Lena Hodge	Betsey Davis		

**§ II(a)2 - Census of 1929.** Any person or the lineal descendant of that person, who is identified as Me-wuk in the "Indian Census Roll" for the County of Calaveras (dated June 30, 1929 and taken by L.A. Dorrington, Superintendent of the Bureau of Indian Affairs) can be a Member of the Tribe. These are:

Barry, Lizzie	Eaph, Wilbur	Jack, Lyda	Shelton, John
Butler, Daisy	Fuchs, Elmira	Jeff, Hempie	Shelton, Lena J.
Butler, Earl	Fuchs, Paul F.	Jeff, John	Shelton, Stephen
Butler, Frank	Geto, Alice	Jeff, Lennie	Shrum, Emma
Butler, Gus	Geto, Florence	Jeff, Manuel	Shrum, Georgia
Carlton, Lucile	Geto, Frank	Jeff, Ray	Shrum, James E.
Carsoner, Dan	Geto, Jeanette	Jeff, Susner	Sissel, Abbie
Carsoner, Mary	Geto, Laura	Jeff, Tessie	Sissel, Jesse
Carsoner, Tom	Geto, Louis	Jeff, Tillie	Sissel, Mayme
Cartega, Billy	Geto, Mary	Jeff, Walter	Swanson, Adeline D.
Cartega, Mary	Gold, Bernal E.	Learned, Albert	Swanson, Irene
Cassella, Charles	Gold, Sherwood D.	Learned, Oscar	T(F)ecumseh, John
Cassella, Ellwood	Hunter, Annie	Lincoln, Abraham	T(F)ecumseh, Pinky
Cassella, Eugene	Hunter, James	McBath, Thomas J.	Vallencia, Charles
Cassella, Lawrence	Hunter, Nettie	Mose, Alva	Vallencia, Gertrude
Crosby, Edith	Hern(m)andez, Hattie	Mose, Angie	Vallencia, Joseph
Crosby, Helen	Herzer, Andrew C.	Mose, Dewey	Vallencia, William
Crosby, Nora	Herzer, Clarence	Mose, Eva	Weirich, Clara
Crosby, Raymond	Herzer, Eleanor	Mose, Irene	Wilson, Charles
Crosby, Stanley	Herzer, Larence F.	Mose, Lester	Wilson, Ella
Davis, Betsy	Herzer, Louis F.	Mose, Lulu	Wilson, George
Davis, Jeff	Herzer, Lula	Mose, Violet	Wilson, George W.
Davis, Limpy	Herzer, Phillip	O'Connor, Lillie	Wilson, Harry
Davis, Margaret	Herzer, Vernon G.	O'Connor, Pedro	Wilson, Henry
Davis, May	Hodge, Mabel	Ross, Charlotte	Wilson, Lillie

The Constitution of the California Valley Miwok Tribe  
(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)

Dixie, Joe	Hodge, Tex	Ross, Ida	Wilson, Luther
Dixie, Mary	Hodges, Andrew	Ross, Juanita	Wilson, Steve
Eaph, Andy	Hodges, Inez	Ross, Robert	Wilson, Viola
Eaph, Edna	Hodges, Patterson	Ross, Vincent	Yale, Alta C.
Eaph, John	Hodges, Thomas	Sawyer, Maggie	Yale, Edmund S.
Eaph, Lillie	Jack, Charles	Shelton, Charlie	Yale, Juline
Eaph, Mallinnie	Jack, Edna	Shelton, Charlotte	Yale, Tyler S.
Eaph, Rowena	Jack, James	Shelton, Dora	
Eaph, Virginia	Jack, Lavina	Shelton, Elsie	

In addition to the above individuals, any other Me-wuk Indian who was indigeneous to Calaveras County at the time of the 1929 census and who is certified to be such by the Tribal Council.

**§ II(a)3 - Lineal Descent Of An Established Member.** Any person who is born to an existing Member (as verified by birth certificate or other acceptable affidavit) is, by lineal descent, eligible to be enrolled as a Member of the Tribe.

**§ II(a)4 - The Current Members.** The existing Members of the Tribe are those persons who are listed as Enrolled Members on the Tribal Roster as of the date of the adoption of this Constitution.

**§ II(b) - ACCEPTANCE OF MEMBERSHIP.** Any new Member shall become such by submitting one's genealogy and documents in proof of the criteria cited above, §§ IIa(1-4), to the Tribe's Enrollment Committee as prescribed in the Enrollment By-laws. Upon verification, the new member's identification shall be placed on the Tribal Roster; and the new member shall be issued a tribal enrollment number and inducted into the Tribe by prescribed ceremony.

**§ II(c) - RIGHTS OF MEMBERS.** There is only one class of membership; and any person who is a Member under §§ IIa(1-4) of this Article shall have full and equal rights as any other Member under this Constitution.

**§ II(d) - LOSS OF MEMBERSHIP AND SANCTIONS.**

**§ II(d)1 - Invalidation Of Membership.** A Member of the Tribe may not lose one's Membership involuntarily nor be dis-enrolled for any reason other than providing erroneous facts about the person's lineage during the Enrollment process or having membership in another Federally Recognized tribe.

**§ II(d)2 - Sanctions Against Members.** On a case-by-case basis, the Tribal Council, by majority vote (51%), may sanction a Member for a justifiable cause by withdrawing or suspending tribal benefits and privileges. Such sanctioning shall be



done in writing and in accordance with the procedures that have been established in the appropriate By-laws as adopted by the Tribal Council. Such sanctions shall not include the loss of tribal membership.

**§ II(d)3 - Reinstatement Of Privileges Or Benefits.** Any person who has been sanctioned pursuant to § II(d)2, as above, may be restored in accordance with procedures as prescribed by the applicable By-Law.

**§ II(d)4 - Appeal Of Sanction Or Membership Loss.** Any person who has been dis-enrolled or sanctioned may appeal to the Tribal Court in accordance with the applicable By-laws.

**§ II(e) - MEMBERSHIP ROLL.** The Enrollment Committee shall maintain the membership roll of all current and former tribal Members.

**§ II(f) - OATH OF MEMBERSHIP.** A Member, upon becoming 18 years of age and therefore qualified, shall read this Constitution and sign an oath to uphold the Constitution and to pledge one's allegiance to the Tribe; and this oath shall be prescribed in the appropriate By-Law.

**§ II(g) - MEMBERSHIP BY-LAWS.** Consistent with this Constitution, the Tribal Council shall enact By-laws related to Tribal Membership, defining the specific procedures which govern the enrollment and other conditions of Membership.

### ARTICLE III – GOVERNANCE

**§ III(a) - GOVERNING BODIES.** The governance of the Tribe shall be: the Tribal Electorate [Article IV], the Tribal Council [Articles V & VI], and the Tribal Court [Article VII].

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### ARTICLE IV - TRIBAL ELECTORATE

**§ IV(a) - THE ELECTORATE.** The Electorate of the Tribe shall be all adult Members (18 years of age or older). The Electorate is at-large and not segmented into geographical districts. The Electorate votes for and thereby establishes the Tribal Council (Article V). Also, the Electorate may remove a Tribal Council Member(s) and fill Vacancies (Article IX & X); and make Initiatives and Referenda (Article XI) and make Amendments to the Constitution (Article XVI). The power of the Electorate shall be restricted exclusively to those functions.

**ARTICLE V - TRIBAL COUNCIL**

**§ V(a) - TRIBAL COUNCIL.** The legislative body of the Tribe (enacting the By-laws and Administrative Codes) shall be the Tribal Council elected by the General Electorate. There shall be seven (7) Members of the Tribal Council. All Tribal Council members shall be enrolled Members of the Tribe and at least thirty (30) years of age, who are members of the Electorate and who have been elected in accordance with this Constitution by the procedures in Article IX.

**§ V(b) - CHAIRPERSON.** The Tribal Council shall have one position of Chairperson who shall be at least thirty five (35) years of age. The Chairperson is a voting member of the Council.

**§ V(b)1 - Duties Of Chairperson.** The duties of the Chairperson shall include, but are not limited to, organizing the meetings and agenda for the deliberation and voting of the Tribal Council, administering the meetings and proceedings of the Tribal Council, over-sight of all administrative activities of the Tribe, and communication of the tribal activities to the Membership. These functions may be delegated to others by the Chairperson but such delegation is subject to the over-sight of the Chairperson.

**§ V(c) - VICE CHAIRPERSON.** The Tribal Council shall have one position of Vice Chairperson who must be at least thirty five (35) years of age.

**§ V(c)1 - Duties Of Vice Chairperson.** The duties of the Vice Chairperson shall include, but are not limited to, assisting the Chairperson and substituting for the Chairperson in the absence of that official.

**§ V(d) - SECRETARY.** The Tribal Council shall have one position of Secretary who must be at least thirty (30) years of age.

**§ V(d)1 - Duties Of Secretary.** The duties of the Secretary shall include, but are not limited to: taking roll call at all meetings, maintaining the minutes of all meetings, provide agendas for all meetings, maintaining all the correspondence for the Tribe.

**§ V(e) - TREASURER.** The Tribal Council shall have one position of Treasurer who must be at least thirty (30) years of age.

**§ V(e)1 - Duties of Treasurer.** The duties of the Treasurer shall include, but are not limited to, overseeing the fiduciary affairs of the Tribe and making reports as needed to the Tribal Council.



328  
330 **§ V(f) - THE OTHER COUNCIL MEMBERS.** The three (3) other Tribal Council  
332 Members shall perform functions as may be assigned by the Council. These are voting  
members of the Council.

334 **§ V(g) - ADJUVANT COUNCILS.** The Tribal Council shall established a Council of  
336 Elders, a Council of Youth, or other *ad hoc* Councils as deemed appropriate, pursuant to  
338 By-laws. Representatives of these Adjuvant Councils are elected by a majority of the Tribal  
Council, and they may attend Council meetings, and address, and advise the Council.  
340 However, these are non-voting positions with respect to the actions of the Tribal Council.

342 **§ V(h) - TRIBAL COUNCIL TERMS OF OFFICE.** The terms of office for all Tribal  
344 Council Members including the Chairperson and Vice Chairperson shall be four (4) years  
except as provided for in Section IX(d) - The First Election. There shall be no limitations on  
346 serving consecutive terms on the Tribal Council.

348 **§ V(i) - DUTIES OF THE TRIBAL COUNCIL.** Consistent with this Constitution, the  
350 duties of the Tribal Council Members include but are not limited to those functions as  
enumerated below. Other functions shall be defined by By-laws pursuant to § V(l) of this  
352 Article.

354 **§ V(j) - MEETINGS OF THE TRIBAL COUNCIL.**

356  
358 **§ V(j)1 - Routine Monthly Meetings.** The Tribal Council shall hold regular  
meetings, once per month. These meeting shall be open to the Members, except  
360 closed-session meeting for personnel matters and other issues considered confidential  
under State or Federal law.  
362

364 **§ V(j)2 - Special Meetings.** The Chairperson or any three other members of the  
Tribal Council may call special meetings of the Tribal Council. Adequate notice of all  
366 special meetings (in terms of subject and timing) shall be given to all members of the  
Tribal Council as defined in By-laws.

368  
370 **§ V(j)3 - Rules Of Order.** The meetings of the Tribal Council shall be conducted  
372 according to rules-of-order as defined in By-laws.

374 **§ V(j)4 - Recording.** At each regular or special meeting of the Tribal Council, a  
recording of the proceedings shall be made, and a person shall be appointed to take  
376 minutes of the meeting, and a copy of the minutes shall be preserved by the Tribal  
Council and available to tribal Members in accordance with By-laws.  
378

380 **§ V(j)5 - Quorum.** Two thirds (2/3) of the Tribal Council, who are currently holding

office, shall constitute a quorum for any regular or special Tribal Council meetings. And a quorum is required at all meetings in order to enact official business of the Tribal Council and create Enactments as defined in § V(l) of this Article. In no case shall a quorum be fewer than four (4), regardless of the number of Tribal Council office holders.

**§ V(j)6 - Voting.** The Tribal Council shall make enactments by a majority vote of a quorum of the Tribal Council, except as otherwise provided in this Constitution with respect to the Electorate in its power (Article IV). All Tribal Council Members, including the Chairperson and Vice Chairperson, shall have the power to vote. Proxy voting in the Council is prohibited.

**§ V(k) - CODE OF ETHICS.** The Tribal Council shall have the power to adopt a Code of Ethics by appropriate By-Law which governs the conduct of tribal officials - Council and Administrative. The Code of Ethics may include disciplinary procedures so long as the official in question is informed of the charges and given an opportunity to respond to those charges - including the opportunity to present witnesses and other evidence in one's own defense.

**§ V(l) - BY-LAWS OR ENACTMENTS.** The Constitution shall not be changed except by the Amendment processes. All enactments of the Tribal Council under the authority of the Constitution shall be termed a By-law to the Constitution as described below.

**§ V(l)1 - Tribal Laws.** A Tribal Law is a By-law to the Constitution that is enacted by the Tribal Council to regulate the conduct or actions of its members, the officers of its government, the administration of programs, and the governmental process.

**§ V(l)2 - Tribal Resolutions.** A Tribal Resolution is a By-Law to the Tribal Laws that represents a formal expression of position, opinion, will, or intent as voted by the Tribal Council. A Resolution may be an interpretation by the Tribal Council about the meaning of a particular segment of the Constitution, a Law, or an Administrative Regulation, prior to or other than a judicial interpretation by the Tribal Court. Tribal Resolutions shall be titled according to the date of enactment, the type of enactment, and a descriptor - e.g., *yyyy-mm-dd-Resolution-descriptor*. And they shall be both journaled in chronologically ordered enactments and transcribed to codified Titles which shall be harmonized, as much as possible, with Federal Titles.

**§ V(l)3 - Tribal Proclamation Or Executive Order.** A Tribal Proclamation or Executive Order is an expression of an intent of the Tribal Council and has no scope or duration except as specified within the Proclamation or Order. Tribal Proclamation or Executive Order shall be titled according to the date of enactment, the type of enactment, and a descriptor - e.g., *yyyy-mm-dd-Proclamation/Executive Order-descriptor*.

436  
438       **§ V(l)4 - Tribal Administrative Regulation.** A Tribal Administrative Regulation is  
440 a By-Law which implements administrative procedures of a Tribal Law or Resolution  
442 as enacted by the Tribal Council. Tribal Administrative Regulations shall be titled  
444 according to the date of enactment, the type of statute, and a descriptor - e.g.,  
446 *yyyy-mm-dd-Administrative-Regulation-descriptor*. And they shall be both journaled  
in chronologically ordered By-laws and codified in a Code of Administrative  
Regulations.

## 448                   **ARTICLE VI - POWERS OF THE TRIBAL COUNCIL**

450       **§ VI(a) - PLENARY POWERS.** Except for the power allocated to the Electorate in the  
452 holding of Elections (Article IX), Removal and Vacancy (Article X), Initiative and  
454 Referendum (Article IX), and Amendments to the Constitution (Article XVI), the Tribal  
456 Council is the sole authority to exercise all powers that are vested in the Tribe through its  
458 inherent sovereignty or through federal law. The Council shall execute these powers  
pursuant to the definitions and limitations in the Constitution and in accordance with  
established By-laws and customs of the Tribe. These powers shall include, but are not limited  
to, the following:

460  
462       **§ VI(a)1 - Representations.** To represent the Tribe and act in the name of the Tribe  
464 in all matters that concern the Tribe and to make decisions for the Tribe in a manner  
that is consistent with this Constitution;

466       **§ VI(a)2 - Contracts.** To negotiate and enter into contracts with the federal, state,  
468 and local governments and other tribal governments and with individuals,  
470 associations, corporations, enterprises, or organizations;

472       **§ VI(a)3 - Business Entities.** To create Tribal entities to operate businesses that are  
474 conducted by a wholly-owned, subordinate entity of the Tribe; and invest as majority  
or minority interest in a business entity other than one which is wholly-owned by the  
476 Tribe;

478       **§ VI(a)4 - Property.** To purchase or accept any land or property for the Tribe;

480       **§ VI(a)5 - Inherited Property.** To enact laws which regulate the use, disposition,  
482 and inheritance of all real property within the Territory of the Tribe, as defined in  
484 Article I;

486       **§ VI(a)6 - Assets.** To prevent, veto or approve the sale, disposition, lease, or  
488 encumbrance of tribal lands, interests in land, tribal funds or other tribal assets;

490 § VI(a)7 - **Legal Counsel.** To employ attorneys and other legal counsel;

492 § VI(a)8 - **Domestic Relations.** Within the territorial jurisdiction of the Tribe and  
494 within the limitations of Article XIV - Civil Rights, to enact laws which regulate the  
496 domestic relations of persons;

498 § VI(a)9 - **Individual Conduct.** Within the territorial jurisdiction of the Tribe and  
500 within the limitations of Article XIV - Civil Rights, to enact laws which regulate the  
502 conduct of individual persons;

504 § VI(a)10 - **Removal.** To provide for the removal or exclusion of any Member or  
506 non-member of the Tribe whose presence may be injurious to Members of the Tribe  
508 and to prescribe conditions upon which any Member or non-member may remain  
510 within the Territory of the Tribe;

512 § VI(a)11 - **Assessments.** To levy and collect taxes, duties, fees, and assessments on  
514 individuals and entities;

516 § VI(a)12 - **Allocations of Money.** To appropriate and regulate the use of tribal  
518 funds in accordance with an annual budget approved by the Tribal Council;

520 § VI(a)13 - **Business Activities.** To regulate all business activities within the  
522 jurisdiction of the Tribe and to manage all tribal economic affairs and enterprises;

524 § VI(a)14 - **Health and Safety.** To regulate all matters and to take all actions  
526 necessary to preserve and safeguard the health, safety, welfare, and political integrity  
528 of the Tribe;

530 § VI(a)15 - **Appointments.** To appoint subordinate committees, commissions,  
532 boards, tribal officers, and employees and to set their compensation, tenure, and  
534 duties;

536 § VI(a)16 - **Legal Enactments.** To enact Tribal Laws, Resolutions, and  
538 Proclamations and regulations that are necessary or incidental to the exercise of its  
540 legislative powers.

542 § VI(b) - **INITIAL TRIBAL COUNCIL.** In order to maintain continuity of operations,  
after the adoption of this Constitution, the first Tribal Council shall consist of those  
individuals who were appointed to serve as such by Yakima Dixie in the 2006 Constitution  
and who guided the Tribe through its the formative years of it organization. That Council  
will stay in office until the Federal government has confirmed a Federally Recognized  
Authority for the Tribe; and thereafter, the election of new officer will be conducted within 1



year or sooner as judged appropriate by the Council. In the interim, the Council may appoint vacated positions.

## ARTICLE VII - COURT

§ VII(a) - ESTABLISHMENT. The Tribal Council shall establish the Tribal Court System by a By-Law entitled "Law for the Tribal Court System"; and the judicial power for the Tribe shall be vested in that Tribal Court. The Tribal Court System shall include the Tribal Court, itself, and such other lower courts of special jurisdiction, including forums for traditional dispute resolution, as the Tribal Council may deem necessary. There shall also be a Court of Appeals which shall be the court of last resort for all cases filed within the Tribal Court System.

§ VII(b) - BY-LAWS. The Law for the Tribal Court System shall define such issues as: Jurisdiction; Appointment of Judges; Qualification of Judges; Compensation; Removal of Judges; and Court Procedures and Due Process.

§ VII(c) - INITIAL COURT. During the first five (5) years or sixty (60) months after the acceptance of this Constitution, the Tribal Council shall act as the Tribal Court and shall commission a local, qualified attorney with judicial experience as the Court of Appeals. The procedures for this intermediate, transitional Jurisdiction shall be defined in the By-laws for the Tribal Court that shall be adopted within the first year after the ratification of this Constitution.

§ VII(d) - INITIAL DETERMINATIONS. The determinations of this Initial Court shall be treated as By-laws, to which subsequent Court cases may refer as *res judicata* or as *stare decisis*.

## ARTICLE VIII - TRIBAL ADMINISTRATION

§ VIII(a) - ADMINISTRATIVE OFFICERS AND STAFF. The Tribal Administration shall consist of officers and staff who are appointed by majority vote of the Tribal Council. The Tribal Administration shall over-see the implementation and management of the Tribe's business and programs and deal with the day-to-day, specific operations of the Tribe. The Tribal Administration shall be sub-ordinate to the Tribal Council; and a Tribal Member shall serve on all administrative entities. This administration shall be regulated by a By-Law for Tribal Administration practices and policy.

## ARTICLE IX - ELECTIONS

§ IX(a) - ELECTION PROCEDURES. The elections shall be conducted according to the procedures as defined in Election By-Laws and as adopted by the Tribe. The Tribal Council

positions of Chairperson, Vice Chairperson, Secretary, and Treasurer are elected to those specific offices and the remaining three positions are at-large and not by an election district.

**§ IX(b) - GENERAL ELECTIONS.** The Electorate (Article IV) shall vote on the election of Tribal Council positions (Article V) in the general elections.

**§ IX(c) - SPECIAL ELECTIONS.** The Electorate (Article IV) shall vote on the Removal of Tribal Council Members (Article X), Initiatives and Referenda (Article XI), Amendments to the Constitution (Article XVI), and other special elections, when called for by the Tribal Council, by this Constitution, or by the voting Members as provided for in this Constitution or appropriate By-laws.

**§ IX(d) - THE FIRST ELECTION.** Given the provisions in § VI(b) for the Initial Tribal Council until the Federally Recognized Authority is established, the first General Election of Council members shall be held within 1 year of that Federal Recognition. The Council positions shall have staggered terms of office for the first elected Tribal Council. The initial, elected Chairperson, Vice Chairperson, and Treasurer shall serve for a term of six (6) years. The Secretary and remaining three (3) at-large, elected Council Members shall serve for a term of four (4) years. After this initial variation, all Council positions shall be for a term of four (4) years.

**§ IX(e) - ELECTION BOARD.** The Tribal Council shall appoint an Election Board to conduct all elections including all special elections. The Election Board shall consist of five tribal members of which one shall be age 55 or older, another between the ages of 35 and 54, and another between the ages of 18 to 34 - provided that all members of the Election Board shall be at least 18 years of age. An Election Board Member shall not be a candidate for a position on the Tribal Council. All Election Board Members shall serve for a specific term of office as established in this Constitution and in the By-laws for Tribal Elections. The Election Board may appoint clerks, poll-workers, and others to assist the Election Board in conducting the election. In the absence of a sufficient number of Tribal Members to fill the Election Board, the Tribal Council may hire non-member professionals for necessary functions.

**§ IX(f) - NOMINATIONS.** For all elections of Tribal Council Members, the Election Board shall conduct a Nomination Meeting among the Electorate to accept a nomination of the candidates for the available Tribal Council seats. This Nomination Meeting shall be at least 60 days prior to the election date. At the Nomination Meeting, members of the Electorate may submit nominations for any vacant seat. The Election Board shall mail a notice regarding the qualified candidates to all of the Electorate at least 30 days prior to the election date. The particulars of the nomination process shall be defined in the By-laws for Elections.

**§ IX(g) - QUALIFICATIONS FOR TRIBAL COUNCIL.** Persons who are nominated to

run for the Tribal Council seats must be enrolled tribal Members who meet the age requirements which are set forth in Article V on or before the date of the election.

**§ IX(h) - ELIGIBLE VOTERS.** All tribal Members who are eighteen (18) years of age or older shall be eligible to vote and are automatically considered Registered Voters.

**§ IX(i) - BALLOTS.** All voting at regular and special elections shall be done by secret written ballot.

**§ IX(j) - ABSENTEE BALLOTS.** Absentee voting shall be permitted pursuant to provisions in a By-law.

**§ IX(k) - ELECTION RESULTS.** The Election Board shall certify the results of an election within three (3) days after the election day. The candidates receiving the highest number of votes shall be declared members of the Tribal Council for the available positions.

**§ IX(l) - TIE VOTES.** Tie votes between two or more candidates shall be decided in a run-off election. All members of the Electorate shall be entitled to vote in any run-off election. If a run-off election ends in another tie, the outcome shall be decided by the existing Tribal Council. The Election Board shall certify the results of any run-off election within three (3) days after the run-off election day.

**§ IX(m) - CHALLENGES.** Any member of the Electorate, who voted in an election, may challenge the results of that election by presenting his or her challenge, in writing, to the Tribal Court within five (5) days after the election results have been certified. Causes of action may be only for a miscount of votes or votes by persons who were not improperly a member of the Electorate. The Tribal Court shall decide all election challenges within ten (10) days from the date the challenge is filed. Any appeals shall be filed with the Court of Appeals within five (5) days of the issuance of the Tribal Court decision, and the Court of Appeals shall decide the appeal within ten (10) days. If the Tribal Court or Court of Appeals invalidates the election results, a new election shall be held within sixty (60) days of the original election.

**§ IX(n) - OATH OF OFFICE.** The oath of office for newly elected Tribal Council Members shall be administered by the Election Board within thirty (30) days after the Election Board declares the winners of the election, unless a Challenge is filed and, in that case, within thirty (30) days after a final decision by the Tribal Court or Court of Appeals. If a challenge is filed but it does not relate to all of the elected seats, then the oath of office shall be administered to the newly elected Tribal Council Members whose seats have not been challenged as above, within thirty (30) days after the Election Board declares the winners. Each incumbent Tribal Council Member shall remain in office until the oath of office is administered to the newly elected Tribal Council Member for one's seat.



**§ IX(o) TRANSFER OF RECORDS.** Upon expiration of the incumbent's term of office, that incumbent shall transfer all tribal records within one's control to the newly elected Tribal Council Member.

**§ IX(p) - ELECTION BY-LAWS.** The Tribal Council shall enact an election By-Law that is consistent with this Constitution and which covers all necessary procedures for all elections other than the procedures stated in this Constitution.

**§ IX(q) - REFERENDA AND AMENDMENTS.** Other than elected officials, the term "Election" shall also refer to the adoption of By-laws by Initiative and Referendum under Article XI and to Amendments under Article XVI, both of which require a vote of the general Membership.

## ARTICLE X - REMOVAL AND VACANCY

### § X(a) - REMOVAL OF COUNCIL MEMBER BY THE TRIBAL COUNCIL.

**§ X(a)1 - Removal.** The Tribal Council shall remove a Council Member for a conviction of a felony by any tribal, federal, or state court while serving on the Tribal Council.

**§ X(a)2 - Suspension.** The Tribal Council may suspend a Council Member charged with a felony pending the outcome of the trial and any appeal.

**§ X(a)3 - Discipline.** The Tribal Council may discipline or remove a Council Member by a vote of at least five (5) Members of the Tribal Council for converting tribal property or moneys for personal use or failing to attend four (4) regular or special meetings consecutively without good cause or for the violation of the Tribal Code of Ethics.

**§ X(a)4 - Due Process.** In all proceedings under § X(a)1, 2, and 3, above, the Tribal Council Member, who is subject to these proceedings, shall be afforded full due process rights including a written statement of the charges, the right to respond to those charges, the right to be represented by counsel, and the right to present witnesses and other evidence in his or her defense. The decision of the Tribal Council shall be final and shall be appealable to the Tribal Court only if a claim is made that there has been an error in a relevant fact(s) related to the removal, or the Tribal Constitution has been violated, or due process rights have not been afforded. A Council Member, who removed from office, must wait at least five (5) years from the official date of removal to run again for office.

### § X(b) - REMOVAL OF TRIBAL COUNCIL MEMBER BY ELECTORATE.

760  
762 **§ X(b)1 - Initiative by Tribal Member.** Any adult Enrolled Member may initiate  
764 recall proceedings, for good cause, against any Tribal Council Member by filing a  
766 written request with the Election Board, provided that a recall proceeding may not be  
initiated against any Tribal Council Member whose term expires within six (6)  
months.

768 **§ X(b)2 - Issuance of Petition.** After receipt of the written request, the Election  
770 Board shall issue official petition forms to the tribal member who initiated the Recall.  
772 That tribal Member shall have sixty (60) days to collect the signatures from thirty  
774 percent (30%) of the Electorate. Upon a valid petition, the Tribal Council shall call a  
special election pursuant to Article IX and appropriate By-Laws.

776 **§ X(b)3 - Number of recalls.** A recall petition shall be circulated for each Tribal  
778 Council Member who is subject to recall. A maximum of three (3) Tribal Council  
Members may be recalled at a time.

780 **§ X(b)4 - Recall Meeting.** The Election Board shall verify the signatures on a recall  
782 petition within ten (10) days of receipt of the signed petitions. If the tribal member  
784 seeking recall has collected the required number of signatures in the allotted time,  
786 then the Election Board shall hold a recall meeting within sixty (60) days of the  
788 receipt of the signed petitions. Notice of the recall meeting shall be mailed to the  
Electorate at least thirty (30) days prior to the recall meeting. The persons initiating  
790 the recall and the person subject to recall shall be given a reasonable opportunity to  
speak and present evidence at the recall meeting.

792 **§ X(b)5 - Majority Vote.** A majority vote by secret, written ballot of the Electorate  
794 who are in attendance at the recall meeting shall determine the success or failure of  
796 the recall petition(s), provided that at least thirty percent (30%) of the Electorate  
798 actually vote at the recall meeting and, of that, fifty one percent (51%) votes in favor  
of recall.

800 **§ X(b)6 - Voting Procedures.** Recall procedures, which are not specified in the  
802 Constitution, shall be held in accordance with the provisions of the By-laws for Tribal  
Elections, which shall include a section on recall procedures.

804 **§ X(c) - VACANCIES.**

806  
808 **§ X(c)1 - Filling a Vacancy.** If a Tribal Council Member should become deceased or  
810 incapacitated, resign, or be removed or recalled from office, then the Tribal Council  
812 shall declare the position vacant. The Tribal Council shall fill a vacancy by special  
election unless there are less than six (6) months remaining in the term, in which case  
the Tribal Council shall leave the position vacant. The elected person who fills a

vacant position shall only serve out the term of the person whom he or she is replacing.

**§ X(c)2 - Resignation.** All resignations from the Tribal Council shall be done in writing.

## **ARTICLE XI - INITIATIVE AND REFERENDUM**

**§ XI(a) - INITIATIVE TO THE TRIBAL COUNCIL.** Excluding issues that regard Membership under Article II, land, or housing, any member of the Electorate may propose to the Tribal Council that a By-law be adopted by the Tribal Council. Any such Initiative must be consistent with this Constitution and cannot be an Amendment to the Constitution, which is available elsewhere, under Article § XVI. Such an Initiative must be in the form of a petition, as defined under a By-Law, that has been signed by at least thirty percent (30%) of the Electorate of the Tribe. The Tribal Council must vote on said Initiative within sixty (60) days after receipt of the petition with its qualifying number of petition signatures. A majority vote of the Tribal Council shall decide whether the proposed By-law is adopted and, thereafter, be in effect. If the Tribal Council denies the petition or does not act within the sixty (60) day enactment period, the petitioner of the Initiative may use the Referendum process, below.

**§ XI(b) - REFERENDUM TO THE ELECTORATE.** If the Tribal Council fails to vote on an Initiative, as above, or if the Tribal Council votes against said Initiative, then the Petitioners may seek a Referendum directly to the Electorate. Pursuant to appropriate By-Laws to this Article, the Petition shall be reconstructed as a Referendum, and that shall be sent by the Tribal Council to the Electorate. Thirty percent (30%) of the Electorate must have affirmed the Referendum before it is valid, and, if so, it shall be presented to the Tribal Council for the calling of a special election pursuant to an appropriate Election By-law under Article IX.

**§ XI(c) - PROCEDURES.** Initiative and Referendum elections shall be conducted by the Election Board and shall be held in accordance with the provisions of a By-law which deals specifically with Initiatives and Referenda procedures.

## **ARTICLE XII - LAND**

**§ XII(a) LAND POLICY.** The Tribal Council shall have the authority to establish land policies, to adopt land-use By-laws, and to otherwise regulate land within the territory of the Tribe and in accordance with this Constitution and applicable State and Federal laws.

**ARTICLE XIII - SOVEREIGN IMMUNITY**

**§ XIII(a) - WAIVER.** The California Valley Miwok Tribe (also known as the Sheep Ranch Rancheria of Me-Wuk Indians of California) shall be immune from suit except to the extent that the Tribal Council expressly waives the Tribe's sovereign immunity.

**ARTICLE XIV - CIVIL RIGHTS**

**§ XIV(a) - INHERENT RIGHTS OF MEMBERS.** The Tribe (its Members and the elected and appointed officers) in exercising its powers of self-government shall not abrogate the following Civil Rights of individual Members.

**§ XIV(b) - SPEECH AND ASSEMBLY.** The governance of the Tribe is secular and shall not make or enforce any law which prohibits the free exercise of religion, or abridges the freedoms of speech, communications, or the right of people to peaceably assembly and to petition for redress of grievances or initiate By-laws.

**§ XIV(c) - FURTHER PROSCRIPTIONS.** The Tribe shall not violate the right of Members to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, nor shall warrants be issued except on probable cause and supported by an oath or affirmation of an officer who is appointed for such actions and which describes the particular place to be searched and the person or thing to be seized.

**§ XIV(d) - DOUBLE JEOPARDY.** The Tribe shall not subject any person to prosecution more than once for the same offense and thereby place said person in double jeopardy for the same offense.

**§ XIV(e) - SELF-INCRIMINATION.** The Tribe shall not compel any person in any criminal case to be a witness against oneself.

**§ XIV(f) - CONDEMNATION OF PRIVATE PROPERTY.** The Tribe shall not take any private property for a public use without just compensation.

**§ XIV(g) - EXPEDITED JUDICIAL PROCEEDINGS.** The Tribe shall not deny to any person, in a criminal proceeding, the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against the accused, to have compulsory process for obtaining witnesses in favor of the accused, and at one's own expense to have the assistance of counsel for defense of the accused, and to have these rights explained at the time of arrest.

**§ XIV(h) - BAIL AND FINES.** The Tribe shall not require excessive bail, impose excessive fines, or inflict cruel and unusual punishment.



922  
924 **§ XIV(i) - EQUAL PROTECTION.** The Tribe shall not deny to any person (Member or  
926 non-Member) within its jurisdiction the equal protection of its laws or deprive any person of  
liberty or property without due process of law.

928  
930 **§ XIV(j) - PROSCRIBED PROCEDURES.** The Tribe shall not create any law of attainder  
932 which declares a person or group of persons guilty of some crime and punishes them without  
934 benefit of a trial; nor shall the Tribe find a person or group of persons guilty of a violation, *ex*  
*post facto*.

936 **§ XIV(k) - TRIAL BY JURY.** The Tribe shall not deny to any person, who is accused of  
938 an offense which is punishable by imprisonment, the right, upon request, to a trial by jury of  
not less than six persons.

## 940 **ARTICLE XV - GENERAL MEETINGS**

942  
944 **§ XV - ANNUAL GENERAL MEETING.** The Tribal Council shall call at least one (1)  
946 general meeting per year of all Members of the Tribe to report, identify, and discuss  
important tribal matters.

## 948 **ARTICLE XVI - AMENDMENTS**

950  
952 **§ XVI - CONSTITUTIONAL PROVISIONS.** This Constitution may be amended by a  
954 super majority vote of sixty percent (60%) of the Electorate of the Tribe voting at an election  
956 called for that purpose in accord with procedures in this Constitution and further defined by  
appropriate By-Laws.

## 958 **ARTICLE XVII - SAVINGS AND SEVERABILITY**

960  
962 **§ XVII(a) - PRIOR ENACTMENTS.** All Enactments of the Tribe, which have been  
964 adopted by the standing Tribal Council from the Constitution of 2006 to the effective date of  
this Constitution, shall continue in full force and effect to the extent that they are consistent  
966 with this Constitution and unless modified subsequently by the Tribal Council within this  
Constitution.

968  
970 **§ XVII(b) - INVALIDATION OF SECTIONS.** If any section or element of this  
972 Constitution be judged to be illegal by a competent authority, then that section or element  
shall become null and void without any of the other sections or elements of this Constitution  
974 becoming null and void nor there be a need to revise this Constitution by Amendment.

The Constitution of the California Valley Miwok Tribe  
(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)

## ARTICLE XVIII - ADOPTION OF CONSTITUTION

§ XVIII(a) - ADOPTION CLAUSE. This Constitution, when adopted by a majority vote of the Electorate of the California Valley Miwok Tribe (a.k.a. the Sheep Ranch Rancheria of Me-Wuk Indians of California), who have voted at a special election called by the Tribal Election Committee and in which at least thirty percent (30%) of the Electorate has participated, shall become the governing instrument for the Tribe. And it shall be submitted to the Secretary of the Interior for acceptance as the basis for government-to-government relations between this Federally recognized tribe and the United States of America.

## CERTIFICATE OF RESULTS OF ELECTION

Pursuant to the 2006 Constitution to revise the tribal constitution, this Constitution of the California Valley Miwok Tribe (also known as the Sheep Ranch Rancheria of Me-Wuk Indians of California), as approved by the Tribal Council, was submitted to the Electorate of the Tribe on July 16 2013 in an election in which at least thirty percent (30%) of the Electorate was required to participate for a valid election. The number of the Electorate voting was 100 out of a total of 200 eligible voters for a percentage of 50 %.

Therefore the Election ☒ was ( ) was not valid. To ratify the Constitution, 60% of those voting had to vote in the affirmative. The vote was 90 For and 10 Against, and 0 cast ballots were indecipherable, this being 90 % For and 10 % Against.

Accordingly, this Constitution ☒ is Adopted \_\_\_ is Not Adopted.

## SIGNATORIES

### ELECTION COMMITTEE MEMBERS

Edgar E. Wilson Sr. Yakima Duffie  
Leona White \_\_\_\_\_

### VOTING TRIBAL MEMBERS

Buana Ambrose Gust Ramirez  
Joe R. Aniel Jr. Antoinette Jones

The Constitution of the California Valley Miwok Tribe  
(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)

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*[Signature]*

Carolyn Sayers

Jeff Sayers

Lawrence E. Wilson, Jr.

Celine J. Wilson

*[Signature]*

Dr. R. Jimmy

Antonia Amestoy

Gilbert Ramirez

Angelina Jimenez

Solomon Sordova

Joe Carson

Wesley B.

Vincent B.

Cecilia Fisher

*[Signature]*

Ramon M.

Rae Shook

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

R. O'Neil

Pete Ramirez

Harold Jack

Julie Flower Stevens

Clonday Stevens-G

By Little Flower Stevens

*[Signature]*

Ellen Wilson

Cherinda Ramirez

Michael Wilson

Anthony Wilson <sup>BY</sup> <sub>EW</sub>

Lawrence Wilson <sup>BY</sup> <sub>EW</sub>

Manuel Ramirez (LR)

Robert Ramirez (LR)

George Ramirez (LR)

Joshua Ramirez Blackwell (LR)

*[Signature]*



The Constitution of the California Valley Miwok Tribe  
(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)

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**The Constitution of the California Valley Miwok Tribe**  
**(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)**

1138		
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1142		
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1154		
1156		
1158		
1160		
1162		
1164		
1166		
1168		
1170		
1172		
1174		
1176		
1178		
1180		
1182		
1184		
1186		
1188		
1190		

The Constitution of the California Valley Miwok Tribe  
(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)

## TABLE OF CONTENTS

1192		
1194		
1196	<b>DEDICATION</b> .....	1
1198	<b>HISTORY</b> .....	1
1200	<b>SYNOPSIS OF THE CONSTITUTION</b> .....	2
1202	<b>ARTICLES OF ORGANIZATION</b> .....	2
1204	<b>ARTICLE I - TERRITORY &amp; JURISDICTION</b> .....	2
1206	§ I(a) - TERRITORY .....	2
1208	§ I(b) - JURISDICTION .....	2
1210	§ I(c) - HEADQUARTERS LOCATION .....	3
1212	<b>ARTICLE II – MEMBERSHIP</b> .....	3
1214	§ II(a) - MEMBERSHIP BY INHERENT RIGHT .....	3
1216	§ II(a)1 - The Putative Members .....	3
1218	§ II(a)2 - Census of 1929 .....	3
1220	§ II(a)3 - Lineal Descent Of An Established Member .....	4
1222	§ II(a)4 - The Current Members .....	4
1224	§ II(b) - ACCEPTANCE OF MEMBERSHIP .....	4
1226	§ II(c) - RIGHTS OF MEMBERS .....	4
1228	§ II(d) - LOSS OF MEMBERSHIP AND SANCTIONS .....	4
1230	§ II(d)1 - Invalidation Of Membership .....	4
1232	§ II(d)2 - Sanctions Against Members .....	4
1234	§ II(d)3 - Reinstatement Of Membership Or Benefits .....	5
1236	§ II(d)4 - Appeal Of Sanction Or Membership Loss .....	5
1238	§ II(e) - MEMBERSHIP ROLL .....	5
1240	§ II(f) - OATH OF MEMBERSHIP .....	5
1242	§ II(g) - MEMBERSHIP BY-LAWS .....	5
1244	<b>ARTICLE III – GOVERNANCE</b> .....	5
	§ III(a) - GOVERNING BODIES .....	5
	<b>ARTICLE IV - TRIBAL ELECTORATE</b> .....	5
	§ IV(a) - THE ELECTORATE .....	5
	<b>ARTICLE V - TRIBAL COUNCIL</b> .....	6
	§ V(a) - TRIBAL COUNCIL .....	6
	§ V(b) - CHAIRPERSON .....	6
	§ V(b)1 - Duties Of Chairperson .....	6
	§ V(c) - VICE CHAIRPERSON .....	6
	§ V(c)1 - Duties Of Vice Chairperson .....	6
	§ V(d) - SECRETARY .....	6

The Constitution of the California Valley Miwok Tribe  
(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)

1246	§ V(d)1 - Duties of Secretary .....	6
	§ V(e) - TREASURER .....	6
1248	§ V(e)1 - Duties of Treasurer .....	6
1250	§ V(f) - THE OTHER COUNCIL MEMBERS .....	7
	§ V(g) - ADJUVANT COUNCILS .....	7
1252	§ V(h) - TRIBAL COUNCIL TERMS OF OFFICE .....	7
	§ V(i) - DUTIES OF THE TRIBAL COUNCIL .....	7
1254	§ V(j) - MEETINGS OF THE TRIBAL COUNCIL .....	7
	§ V(j)1 - Routine Monthly Meetings .....	7
1256	§ V(j)2 - Special Meetings .....	7
1258	§ V(j)3 - Rules Of Order .....	7
	§ V(j)4 - Recording .....	7
1260	§ V(j)5 - Quorum .....	7
	§ V(j)6 - Voting .....	8
1262	§ V(k) - CODE OF ETHICS .....	8
1264	§ V(l) - BY-LAWS OR ENACTMENTS .....	8
	§ V(l)1 - Tribal Laws .....	8
1266	§ V(l)2 - Tribal Resolutions .....	8
	§ V(l)3 - Tribal Proclamation Or Executive Order .....	8
1268	§ V(l)4 - Tribal Administrative Regulation .....	9
1270	<b>ARTICLE VI - POWERS OF THE TRIBAL COUNCIL .....</b>	9
1272	§ VI(a) - PLENARY POWERS .....	9
	§ VI(a)1 - Representations .....	9
1274	§ VI(a)2 - Contracts .....	9
	§ VI(a)3 - Business Entities .....	9
1276	§ VI(a)4 - Property .....	9
	§ VI(a)5 - Inherited Property .....	9
1278	§ VI(a)6 - Assets .....	9
1280	§ VI(a)7 - Legal Counsel .....	9
	§ VI(a)8 - Domestic Relations .....	10
1282	§ VI(a)9 - Individual Conduct .....	10
	§ VI(a)10 - Removal .....	10
1284	§ VI(a)11 - Assessments .....	10
1286	§ VI(a)12 - Allocations of Money .....	10
	§ VI(a)13 - Business Activities .....	10
1288	§ VI(a)14 - Health and Safety .....	10
	§ VI(a)15 - Appointments .....	10
1290	§ VI(a)16 - Legal Enactments .....	10
1292	§ VI(b) - INITIAL TRIBAL COUNCIL .....	10
1294	<b>ARTICLE VII - COURT .....</b>	11
	§ VII(a) - ESTABLISHMENT .....	11
1296	§ VII(b) - BY-LAWS .....	11
	§ VII(c) - INITIAL COURT .....	11
1298	§ VII(d) - INITIAL DETERMINATIONS .....	11

The Constitution of the California Valley Miwok Tribe  
(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)

1300		
1302	<b>ARTICLE VIII - TRIBAL ADMINISTRATION</b>	11
1304	§ VIII(a) - ADMINISTRATIVE OFFICERS AND STAFF	11
1306	<b>ARTICLE IX - ELECTIONS</b>	11
1308	§ IX(a) - ELECTION PROCEDURES	11
1310	§ IX(b) - GENERAL ELECTIONS	12
1312	§ IX(c) - SPECIAL ELECTIONS	12
1314	§ IX(d) - THE FIRST ELECTION	12
1316	§ IX(e) - ELECTION BOARD	12
1318	§ IX(f) - NOMINATIONS	12
1320	§ IX(g) - QUALIFICATIONS FOR TRIBAL COUNCIL	12
1322	§ IX(h) - ELIGIBLE VOTERS	13
1324	§ IX(i) - BALLOTS	13
1326	§ IX(j) - ABSENTEE BALLOTS	13
1328	§ IX(k) - ELECTION RESULTS	13
1330	§ IX(l) - TIE VOTES	13
1332	§ IX(m) - CHALLENGES	13
1334	§ IX(n) - OATH OF OFFICE	13
1336	§ IX(o) - TRANSFER OF RECORDS	13
1338	§ IX(p) - ELECTION BY-LAWS	14
1340	§ IX(q) - REFERENDA AND AMENDMENTS	14
1342	<b>ARTICLE X - REMOVAL AND VACANCY</b>	14
1344	§ X(a) - REMOVAL OF COUNCIL MEMBER BY THE TRIBAL COUNCIL	14
1346	§ X(a)1 - Removal	14
1348	§ X(a)2 - Suspension	14
1350	§ X(a)3 - Discipline	14
1352	§ X(a)4 - Due Process	14
	§ X(b) - REMOVAL OF TRIBAL COUNCIL MEMBER BY ELECTORATE	14
	§ X(b)1 - Initiative by Tribal Member	14
	§ X(b)2 - Issuance of Petition	15
	§ X(b)3 - Number of recalls	15
	§ X(b)4 - Recall Meeting	15
	§ X(b)5 - Majority vote	15
	§ X(b)6 - Voting Procedures	15
	§ X(c) - VACANCIES	15
	§ X(c)1 - Filling a Vacancy	15
	§ X(c)2 - Resignation	16
	<b>ARTICLE XI - INITIATIVE AND REFERENDUM</b>	16
	§ XI(a) - INITIATIVE TO THE TRIBAL COUNCIL	16
	§ XI(b) - REFERENDUM TO THE ELECTORATE	16
	§ XI(c) - PROCEDURES	16
	<b>ARTICLE XII - LAND</b>	16

The Constitution of the California Valley Miwok Tribe  
(also known as the Sheep Ranch Rancheria Of Me-wuk Indians of California)

1354	§ XII(a) LAND POLICY .....	16
1356	<b>ARTICLE XIII - SOVEREIGN IMMUNITY .....</b>	16
1358	§ XIII(a) - WAIVER .....	16
1360	<b>ARTICLE XIV - CIVIL RIGHTS .....</b>	17
1362	§ XIV(a) - INHERENT RIGHTS OF MEMBERS .....	17
1364	§ XIV(b) - SPEECH AND ASSEMBLY .....	17
1366	§ XIV(c) - FURTHER PROSCRIPTIONS .....	17
1368	§ XIV(d) - DOUBLE JEOPARDY .....	17
1370	§ XIV(e) - SELF-INCRIMINATION .....	17
1372	§ XIV(f) - CONDEMNATION OF PRIVATE PROPERTY .....	17
1374	§ XIV(g) - EXPEDITED JUDICIAL PROCEEDINGS .....	17
1376	§ XIV(h) - BAIL AND FINES .....	17
1378	§ XIV(i) - EQUAL PROTECTION .....	17
1380	§ XIV(j) - PROSCRIBED PROCEDURES .....	18
1382	§ XIV(k) - TRIAL BY JURY .....	18
1384	<b>ARTICLE XV - GENERAL MEETINGS .....</b>	18
1386	§ XV - ANNUAL GENERAL MEETING .....	18
1388	<b>ARTICLE XVI - AMENDMENTS .....</b>	18
1390	§ XVI - CONSTITUTIONAL PROVISIONS .....	18
1392	<b>ARTICLE XVII - SAVINGS AND SEVERABILITY .....</b>	18
1394	§ XVII(a) - PRIOR ENACTMENTS .....	18
1396	§ XVII(b) - INVALIDATION OF SECTIONS .....	18
1398	<b>ARTICLE XVIII - ADOPTION OF CONSTITUTION .....</b>	18
1400	§ XVIII(a) - ADOPTION CLAUSE .....	18
1402	<b>CERTIFICATE OF RESULTS OF ELECTION .....</b>	19
1404	<b>SIGNATORIES .....</b>	19
1406		

**ATTACHMENT 2**

**To the California Valley Miwok Tribe's Request  
for Federal Recognition of its Tribal Government**



**California Valley Miwok Tribe  
(a.k.a. Sheep Ranch Rancheria of Me-Wuk Indians of California)**

**Tribal Council Resolution 2016-04-16  
(Certification of Report on Tribal Organization)**

**WHEREAS**

The California Valley Miwok Tribe (Tribe) and its Tribal Council conducted outreach from 2006 through 2013 for the purpose of identifying the whole Tribal community and providing its members with an opportunity to participate in the Tribe's initial organization.

The Tribe drafted a Tribal Constitution, with the participation of all interested members of the Tribal community.

The Tribe conducted a Tribal election on July 6, 2013, in which the entire Tribal community had an opportunity to participate, and in which the Tribal community ratified the Tribal Constitution by a 90-10 vote (the 2013 Constitution).

The Tribal Council, by Resolution 2013-12-23, requested that the United States Department of the Interior recognize the Tribal government established under the 2013 Constitution, but the Department has not yet done so.

The December 30, 2015 decision by Assistant Secretary Kevin Washburn authorized the Bureau of Indian Affairs Pacific Regional Director to receive additional submissions from the Tribe for the purpose of determining whether to recognize the Tribal government created under the 2013 Constitution.

The Tribal Council has caused a Report on Tribal Organization to be prepared (Report), to document the organization process that led to the Tribal community's ratification of the 2013 Constitution.

The Tribal Council has reviewed the Report and has verified that the facts and representations contained in the Report are true and correct, based on Tribal records and on the personal knowledge of the Tribal Council members, including those Tribal Council members who served on the Election Committee for the July 6, 2013 election.

**THEREFORE, BE IT RESOLVED THAT**


The Tribal Council hereby certifies that the Report on Tribal Organization dated April 15, 2016, and attached hereto is a true and correct account of the Tribal organization process from 2006 through 2013; and

The Tribal Council requests that the Bureau of Indian Affairs Pacific Regional Director review the Report, find that the 2013 Constitution was validly ratified, and acknowledge the Tribal Council established under the 2013 Constitution as the governing body of the Tribe, with whom the United States maintains a government-to-government relationship.

**VERIFICATION**

We, the undersigned, as a majority of the Tribal Council of the California Valley Miwok Tribe, do hereby certify that the foregoing Resolution was adopted at a duly convened meeting of the Tribal Council on April 16, 2016.

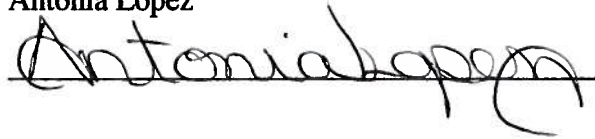
**Yakima K. Dixie**



**Velma WhiteBear**



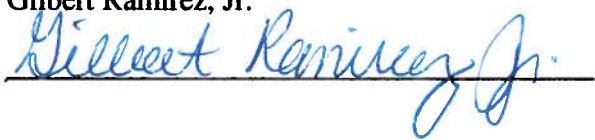
**Antonia Lopez**



**Michael Mendibles**



**Gilbert Ramirez, Jr.**



**Antoinette Lopez**



**Iva Carsoner**



**California Valley Miwok Tribe  
Report on Tribal Organization**

**April 15, 2016**

## **Table of Contents**

Part I: Outreach to the Tribal Community and Development of Tribal Constitution.....	2
Part II: The 2013 Election Process.....	6
Part III: Burley Faction Opportunities for Participation in Tribal Organization .....	13

**List of Exhibits**

EXHIBIT "A" .....	2006 California Valley Miwok Tribe Constitution
EXHIBIT "B" .....	BIA Public Notice (April 11, 2007)
EXHIBIT "C" .....	Letter from California Valley Miwok Tribe Re Tribal Organization (April 23, 2007)
EXHIBIT "D" .....	Burley Notice of Appeal to Pacific Regional Director
EXHIBIT "E" .....	Burley Notice of Appeal to IBIA
EXHIBIT "F" .....	Letter from California Valley Miwok Tribe Re Tribal Meeting on April 19, 2008
EXHIBIT "G" .....	Tribal meeting logs for April, May and July 2008 and January 2009
EXHIBIT "H" .....	2008 Draft Constitution of the California Valley Me-Wuk Tribe of the Sheep Ranch Rancheria
EXHIBIT "I" .....	Response to April 8, 2011 Request for Briefing on Referral from Interior Board of Indian Appeals (May 3, 2011)
EXHIBIT "J" .....	Letter from California Valley Miwok Tribe to Assistant Secretary Re Tribal Election Bylaws (July 22, 2011)
EXHIBIT "K" .....	Letter from California Valley Miwok Tribe to Honorable Kevin Washburn Re October 20, 2012 Tribal Election
EXHIBIT "L" .....	Letter from California Valley Miwok Tribe to Honorable Kevin Washburn Re October 20, 2012 Tribal Election Results
EXHIBIT "M" .....	Resolution 2013-04-14(a) Revising Election Bylaws
EXHIBIT "N" .....	Resolution 2013-04-14(b) Authorizing July 6, 2013 Election
EXHIBIT "O" .....	Enrolled Members Eligible to Vote in Election of July 6, 2013
EXHIBIT "P" .....	Letter from California Valley Miwok Tribe Re July 6, 2013 Election
EXHIBIT "Q" .....	Letter from California Valley Miwok Tribe to Honorable Kevin Washburn Re Election Scheduled for July 7, 2013 (May 24, 2013)
EXHIBIT "R" .....	May 30, 2013 Tribal Meeting Notice and Election Reminder



EXHIBIT "S" .....	June 12, 2013 Election Reminder
EXHIBIT "T" .....	Absentee Ballot Receipt Confirmation and Tribal Meeting Reminder
EXHIBIT "U" .....	June 30, 2013 Final Election Reminder
EXHIBIT "V" .....	California Valley Miwok Tribe Election Roster
EXHIBIT "W" .....	Certification of Election Results
EXHIBIT "X" .....	Letter from California Valley Miwok Tribe to Assistant Secretary Re Tribal Election Bylaws, as filed in <i>CVMT v. Jewell</i> (July 11, 2013)
EXHIBIT "Y" .....	February 11, 2005 Acting AS-IA (Olsen) Decision Letter
EXHIBIT "Z" .....	Letter from Superintendent to Silvia Burley (November 6, 2006)
EXHIBIT "AA" .....	Letter from Superintendent to Yakima Dixie and Silvia Burley (February 23, 2007)
EXHIBIT "BB" .....	Letter from Silvia Burley to Superintendent (March 16, 2007)
EXHIBIT "CC" .....	Letter from Regional Director to Silvia Burley (April 2, 2007)
EXHIBIT "DD" .....	Burley pleading in <i>CVMT v. Jewell</i>

## INTRODUCTION

The California Valley Miwok Tribe (Tribe) has prepared this report in support of its request for federal recognition of the Tribal government established by a Tribal election held on July 6, 2013 (the 2013 Election). The report summarizes the Tribal organization process that led to the ratification of a Tribal Constitution (2013 Constitution) in the 2013 Election. It draws upon the documents developed by the Tribe throughout the organization process, as well as the personal knowledge of the Tribal Council and Election Committee members involved in that process.

Part I of this Report summarizes the identification of, and outreach to, the Tribal community, and the development of the 2013 Constitution that preceded the 2013 Election. Part II documents the notice and other procedures employed specifically for the 2013 Election, and the election results. Part III describes the opportunity provided to Silvia Burley, her two daughters and her granddaughter (the Burley Faction) to participate in Tribal organization, and their rejection of that opportunity.

For the convenience of the Bureau of Indian Affairs (BIA), the Tribe has attached copies of relevant documents. Where applicable, the report also includes citations to the administrative record in *CVMT v. Jewell*, No. 1:11-cv-00160-BJR (D.D.C.), using the format “AR #####”.

## **Part I: Outreach to the Tribal Community and Development of Tribal Constitution**

For more than eight years before the ratification of its Constitution in July 2013, the Tribe carried out an extensive outreach program to identify the members of the Tribal community and provide them with opportunities to participate in the initial organization of the Tribe. The outreach included noticed, open monthly meetings, personal outreach to individuals, outreach to local Miwok organizations, posting of information on the Tribal website (<http://californiavalleymiwok.com/>), social media, and participation in cultural events within the broader Miwok community. All who responded to the Tribe's outreach were welcomed.

The development of a Tribal government reflected the same guiding principles of inclusiveness and openness as the Tribe's outreach. The Constitution submitted to the Tribal community for ratification reflected countless hours of open discussion at Tribal meetings, revisions and further discussion until consensus was reached.

1. In 2006, the Tribe established an initial Tribal Council and interim constitution to guide the process of Tribal organization, including identifying the members of the Tribal community. (**Exhibit A**, 2006 Constitution, AR 2252.) The initial Council members were appointed by Yakima Dixie in consultation with Velma WhiteBear, both of whom resided for years on the Sheep Ranch Rancheria and are very familiar with the Tribe's history and community.
2. All the initial members of the Tribal Council, including Mr. Dixie and Ms. WhiteBear, were members of the Eligible Groups, as defined in Assistant Secretary Washburn's December 30, 2015 decision (2015 Decision).<sup>1</sup> (See **Exhibit A**, Part 11.)<sup>2</sup> Since the Council was formed, vacancies have been filled through a consensus-based process, with the replacements all being members of the Eligible Groups.<sup>3</sup>
3. The initial Tribal Council included Silvia Burley. (**Exhibit A**, Part 11.) Velma WhiteBear personally asked Ms. Burley in 2006 to participate in the Tribal Council. Ms. Burley declined. Based on her refusal to participate, Ms. Burley was removed from the Council in 2008.

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<sup>1</sup> The 2015 Decision defined the Eligible Groups as: (1) the individuals listed on the 1915 Terrell Census, and their descendants; (2) the descendants of Sheep Ranch Rancheria resident Jeff Davis; and (3) the heirs of Mabel Dixie, as identified by OHA in 1971, and their descendants.

<sup>2</sup> The Tribe has provided the BIA with a genealogical summary of the adult Tribal community members who participated in the 2013 Election, including the Tribal Council members, under separate cover.

<sup>3</sup> The current Tribal Council includes Yakima Dixie, Velma WhiteBear, Antonia Lopez, Gilbert Ramirez, Jr., Michael Mendibles, Antoinette Lopez, and Iva Carsoner.

4. The 2006 constitution identified the Eligible Group members. (**Exhibit A**, Part 6(a).) It established Tribal organization efforts, including identification and enrollment of Tribal members, as a top priority. (**Exhibit A**, Part 8.)
5. During 2006 and thereafter, the Tribal Council members conducted extensive outreach to the Tribal community, including mailings and personal communications with Miwoks living in Calaveras County; holding monthly open meetings at Sheep Ranch and nearby Mountain Ranch; attending meetings of other local Miwok organizations such as Calaveras Band of Miwoks and Mountain Miwoks; participating in cultural activities such as Miwok language classes, basket weaving and gathering of native materials; and representing the Tribe at gatherings of the larger Miwok community such as Big Times. All individuals who expressed an interest in Tribal membership were invited to participate in Tribal activities and to submit information documenting their relationship to the Tribal community.
6. In 2007, the BIA decided to assist the Tribe in its reorganization efforts, and published a public notice identifying the Tribal community and requesting interested individuals to submit genealogical information to the BIA. (**Exhibit B**, AR 1501.) The BIA's identification of the Tribal community was consistent with the Eligible Groups defined in the 2015 Decision. The Tribal Council asked that individuals responding to the BIA's public notice also submit their genealogical information to the Tribe. (**Exhibit C**, AR 2260.) The Tribal Council also began keeping a roster of individuals who had expressed interest in being recognized as Tribal members.
7. Administrative appeals and litigation by Silvia Burley prevented the BIA from providing further organizational assistance to the Tribe after the 2007 public notice was issued. (E.g., **Exhibit D**, Burley Notice of Appeal to Pacific Regional Director, AR 1267; **Exhibit E**, Burley Notice of Appeal to IBIA, AR 1502; *see Cal. Valley Miwok Tribe v. Pacific Regional Director*, 51 IBIA 103, AR 1683.) However, the Tribal Council continued to hold monthly open meetings and to identify the Tribal community.
8. With the participation of those identified through the Tribal Council's outreach and the BIA's public notice, the Tribal Council proposed to draft a new constitution that would, among other things, define the criteria for Tribal membership. On April 12, 2008, the Tribal Council mailed notice to each person on the Tribe's roster of interested individuals, that the draft constitution and membership criteria would be discussed at the next Tribal meeting on April 19, 2008. (**Exhibit F**, AR 2296.)
9. Sixty-two people attended the April 19, 2008 Tribal meeting to discuss the draft constitution and membership criteria. The discussion was continued in the next Tribal meeting, held May 17, 2008, which 50 people attended. (**Exhibit G**, Tribal meeting logs.) The participants were predominantly Eligible Group members.
10. Through this process, the participants reached a consensus that the Tribal community included both those who were identified in the BIA's 2007 public notice and are now referred to as the Eligible Groups, and the descendants of Miwoks identified on the 1929 Calaveras County Indian Census (1929 Census descendants). They decided that the 1929

Census descendants should be included in Tribal organization in order to be fully inclusive. This decision was reflected in the draft Tribal constitution that was prepared. (**Exhibit H**, 2008 draft constitution, AR 2298-2300.) The draft constitution was circulated and further discussed at the July 19, 2008 meeting, which 64 people attended (**Exhibit G**).

11. The categories of Tribal members defined in the 2008 draft constitution included all of the Eligible Groups (defined in the 2008 draft constitution by reference to the BIA's 2007 public notice) and the 1929 Census descendants. (**Exhibit H**, Art. II.) Subsequent organization efforts reflected these inclusive criteria.
12. The Tribal Council continued to hold regular monthly meetings, including some that focused specifically on outreach and identification of the Tribal community—for instance, the Tribe held an open meeting in January 2009 at Sheep Ranch at which assistance was provided to attendees interested in researching and documenting their lineal descent from historical Tribal members. 190 people attended the January 2009 meeting. (**Exhibit G**.)
13. In 2011, the Tribe decided to move forward with ratification of a Tribal constitution to complete the organization process. On May 3, 2011, the Tribe briefed Assistant Secretary Echo Hawk on the organization process. The briefing included the 2006 interim constitution, the 2008 draft constitution, and a current Tribal roster, and stated the Tribe's intent to hold an election to ratify its constitution. (**Exhibit I**, AR 2121-2321.) The briefing also requested that the BIA identify any additional members of the Tribal community known to it. (**Exhibit I**, AR 2142.) Mr. Rosette, Silvia Burley's attorney, received a copy of the briefing. Neither the BIA nor Mr. Rosette identified any additional Tribal community members.
14. On July 22, 2011, the Tribe sent Assistant Secretary Echo Hawk a letter that included election bylaws the Tribal Council had adopted, and reiterated its intent to hold a constitutional election. (**Exhibit J**.) Mr. Rosette received a copy of the letter. Neither the BIA nor Mr. Rosette responded to the letter.
15. The Tribal Council subsequently held another open meeting to discuss additional revisions to the draft constitution and, on October 4, 2012, informed Assistant Secretary Washburn by letter that an election would be held on October 20, 2012, and invited the BIA to attend the election. (**Exhibit K**.) The Tribe's letter included a copy of the current draft constitution that would be voted on. The 2012 draft constitution identified the Eligible Group members and the 1929 Census descendants as eligible for Tribal membership.
16. On October 20, 2012, the Tribal Council conducted an election to ratify the proposed constitution. The death of a Tribal elder prevented some members of the Tribal community from attending the election in person, and some also felt that the additional requirement of voter registration had unfairly limited the opportunity for participation in the election. As a result, a majority of those voting in the election voted against



ratification, and the constitution was not adopted. The Tribe notified Assistant Secretary Washburn of the election results by letter dated October 30, 2012. (**Exhibit L.**)

17. From November 2012 to March 2013, the Tribal Council held five open monthly meetings at which further revisions to its draft constitution were discussed. The Tribal community reaffirmed its decision to include the 1929 Census descendants in Tribal organization.
18. On April 14, 2013, the Council adopted revised election bylaws, Resolution 2013-04-14(a), providing for automatic voter registration of all “enrolled members” age 18 and older, and allowing voting by absentee ballot in addition to voting at designated polling locations. (**Exhibit M.**) For purposes of voter registration and creating the eligible voter list, the election bylaws defined an “enrolled member” as one who had submitted their genealogy and other supporting documents to the Tribal Council to document their relationship to the Tribal community (*i.e.*, a documented Eligible Group member or 1929 Census descendant), and had been placed on the Tribal roster. Individuals who had expressed interest in Tribal membership but had not provided evidence of their lineal descent from the Eligible Groups or 1929 Census members were not considered enrolled members, although they were considered prospective members. In addition, some individuals who had submitted documentation of their lineal descent and had been placed on the roster were removed, at their request, after they informed the Tribe they did not wish to participate—for instance, members who elected to join the Wilton Rancheria after it regained federal recognition in 2009. These individuals also were not considered enrolled members for purposes of voter eligibility.
19. Also on April 14, 2013, the Tribal Council adopted a resolution authorizing a new election to be held on July 6, 2013 and approved a revised constitution to be presented to the voters for ratification at that election—the 2013 Constitution. (**Exhibit N.**) The 2013 Constitution identified the Eligible Group members and the 1929 Census members as eligible for Tribal membership.
20. At the time of the 2013 Election, there were approximately 200 adult enrolled members on the Tribal roster. The outreach, notice, and other procedures followed for the July 6, 2013 election are documented in **Part II** of this report.

## Part II: The 2013 Election Process

In April 2013, after the unsuccessful attempt to ratify a Tribal constitution in October 2012, the California Valley Miwok Tribe decided to hold a second constitutional election on July 6, 2013. The election was conducted pursuant to newly revised Tribal election bylaws that were intended to maximize participation by the Tribal community and largely reflected the Federal regulations for Secretarial elections that were in effect at that time (see **Table 1**, below).

1. On April 14, 2013, the Tribal Council adopted Resolution 2013-04-14(b), authorizing an election to be held on July 6, 2013, to ratify a Tribal Constitution. (**Exhibit N.**)
2. On May 5, 2013, the Tribal Council's Election Committee posted the list of eligible voters at Sheep Ranch. (**Exhibit O.**) All enrolled members who would be 18 years of age, or older, by July 6, 2013, were included on the list. No challenges to the list of eligible voters were received.
3. On May 8, 2013, the Tribe sent election notices by U.S. Mail to all enrolled members who would be at least 18 years old by July 6, 2013. Copies of the notice were posted at the United States Post Offices in West Point, California and San Andreas, California. Each notice included a copy of Resolution 2013-04-14(b), the Constitution to be voted on, a ballot, an envelope for the ballot, and instructions for voting either in person or by absentee ballot. (**Exhibit P.**)
4. On May 24, 2013, the Tribe notified Assistant Secretary Washburn of its plans to hold an election on July 6, 2013, and enclosed an example of the election notice sent to Tribal members. The letter invited BIA representatives to observe the election. (**Exhibit Q.**)
5. On May 30, 2013, the Tribe notified individuals on the Tribal roster, by U.S. Mail, that a routine Tribal meeting would be held on June 15, 2013. The notice said the eligible voter list for the July 6 election would be available, restated that the election would be held on July 6, and encouraged absentee voters to send in their ballots. (**Exhibit R.**)
6. On June 12, 2013, the Tribe sent a reminder of the election by U.S. Mail. The reminder encouraged voters to mail their absentee ballots or to vote in person on July 6, 2013. (**Exhibit S.**)
7. Starting on June 20, 2013, the Tribe notified by U.S. Mail those who voted by absentee ballot that their ballots had been received. The notice stated that this was a historic event for the Tribe and encouraged all eligible voters to participate. The confirmation also restated the July 6 election date. (**Exhibit T.**)
8. On June 30, 2013, the Tribe sent a last reminder by U.S. Mail to eligible voters, encouraging them to vote by absentee ballot or in person. (**Exhibit U.**)

9. On July 6, 2013, the Tribe conducted in-person voting on the proposed Constitution at the Tribal headquarters in Sheep Ranch, California. (**Exhibit V**, Election Roster.) Of the 200 eligible voters, 183 (92 percent) were members of the Eligible Groups. (**Exhibit V**).<sup>4</sup>
10. On July 6, 2013, after the close of voting, the Election Committee opened and counted the ballots (absentee ballots and those cast in person) and certified the election results. (**Exhibit W**.)
11. **Results:** The Tribal community ratified the constitution by a vote of 90 to 10 (with four additional ballots cast but abstaining). (**Exhibit W**.) Of the 104 voters, 95 were members of the Eligible Groups, and the remaining nine were descendants of the 1929 Census members. (**Exhibit V**.) More than 50 percent of the 200 eligible voters voted in the election, and the constitution was approved by 87 percent of those voting, thereby exceeding the requirements for a valid election.
12. The Election Committee posted the results at the Tribe's headquarters in Sheep Ranch on July 6, 2013, and on the Tribe's website on July 7, 2013. There were no challenges to the election results.
13. The adopted 2013 Constitution grants membership eligibility to both Eligible Group members and 1929 Census descendants, and it allows anyone seeking membership to apply to the Tribe at any time. It requires the Tribe to hold a Tribal election to elect a new Tribal Council within twelve months after the BIA recognizes the Tribal government.
14. On July 11, 2013, the Tribe notified Assistant Secretary Washburn that the Tribal community had approved the 2013 Constitution and asked the Department to recognize its Tribal government once pending litigation concerning the Tribe was resolved. (**Exhibit X**.)

[Part II continues on next page]

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<sup>4</sup> The Tribe has provided the BIA, under separate cover, with information documenting the lineal descent of the 200 members on the 2013 Election roster.

**Table 1: Comparison of Tribal and Secretarial Election Procedures**

This table compares (1) the California Valley Miwok Tribe's election procedures, established through bylaws adopted in April 2013; (2) the procedures for Secretarial elections that were in effect at the time; and (3) the steps taken to conduct the Tribal election held on July 6, 2013. Since the election was a Tribal election and not a Federal election, compliance with the Secretarial election procedures was not required, but information on those procedures is included because they may be used as guidelines for Tribes wishing to hold constitutional elections not conducted pursuant to a Federal statute. 25 C.F.R. § 81.2(b).

	<b>California Valley Miwok Tribe Election Bylaws (Res. 04-14-2013(a))</b>	<b>Federal Procedures for Secretarial Elections as of 2013 (25 CFR Part 81)</b>	<b>July 6, 2013 Constitution Ratification Process</b>
<b>Calling an Election</b>	The Tribal Council calls an election by resolution. (§1).	The Secretary authorizes the calling of an election upon a request from the tribal government or receipt of a petition from the tribe's members. (§81.5(a)-(b)).	<b>April 14, 2013:</b> The Tribal Council adopted Resolution 2013-04-14(b), authorizing an election to ratify a Tribal Constitution.
<b>Timing of Election</b>	The election must be held at least 30 days, and no more than 90 days, after the Tribal Council's authorization. (§2).	Notice of the election must be given within 90 days after the Secretary's authorization. (§81.5(f)). The election must be held no less than 30 days and no more than 60 days after the election notice is provided.	The election was held on <b>July 6, 2013</b> , 83 days after the Council authorized it.
<b>Election Committee</b>	The Tribal Council shall appoint an Election Committee consisting of at least three persons who are members of the Council. (§3).	There must be an Election Board consisting of the BIA officer in charge and at least two representatives of the tribal governing body. (§81.8(a)).	<b>September 3, 2012:</b> The Tribal Council adopted Resolution 2012-09-03(b), appointing 3 Tribal Council members to the Election Committee.
<b>Election Committee Duties</b>	Election Committee must supervise and conduct elections in accordance with the Bylaws. (§3).	Election Board must conduct elections in compliance with the procedures defined in the regulations. (§81.8(b)).	The Election Committee provided notice of the election, prepared the voter roster, supervised the election on election day, counted the ballots, and certified the election results in accordance with the Election Bylaws.
<b>Voter Eligibility</b>	Any adult enrolled member (18 years or older on election day) is entitled to vote. (§§5-6). There is no residency requirement.	Any duly registered adult member (18 years or older on election day), regardless of residence, is entitled to vote. (§81.6(a)(1)).	All Enrolled Members who would be at least 18 years old on July 6, 2013, were eligible to vote.

	<b>California Valley Miwok Tribe Election Bylaws (Res. 04-14-2013(a))</b>	<b>Federal Procedures for Secretarial Elections as of 2013 (25 CFR Part 81)</b>	<b>July 6, 2013 Constitution Ratification Process</b>
<b>Voter Registration</b>	All adult Enrolled Members (those who will be 18 years or older on election day) are automatically registered to vote in the election. No additional voter registration procedure is required. (§§5-7).	Members must register in order to vote in a Secretarial election. (§81.11(a)).	All adult Enrolled Members (18 years or older on July 6, 2013) were automatically registered to vote and included on the list of eligible voters.
<b>Voter Registration Notification</b>	No separate voter registration required. (§ 7.)	Election Board must notify any tribal member of the need to register if they intend to vote. (§18.11(a)).	The election notice informed enrolled members that they were eligible to vote in the July 6, 2013 election without any additional voter registration.
<b>Election Notice</b>	Within 30 days after the Tribal Council resolution authorizing an election, the Election Committee shall send notice to the adult enrolled members by First Class U.S. mail. The Election Committee shall also post the election notice in such places as it finds appropriate. (§§12-13).	The Election Board shall give not less than 30 nor more than 60 days' notice of the date of the election. The Election Board shall determine how the notice will be distributed, which may include distribution by mail. (§81.14).	<p><b>May 8, 2013</b>– Election Committee sent election notices by U.S. Mail to all enrolled members who would be at least 18 years old as of July 6, 2013. Notice was sent 24 days after the Tribal Council authorized the election. Copies of the notice were posted at U.S. Post Offices in West Point, CA and San Andreas, CA.</p> <p>Each notice included a copy of Resolution 2013-04-14(b), the Constitution to be voted on, a ballot, envelopes for the ballot, and instructions for voting either in person or by absentee ballot.</p> <p>The Tribe provided a sample of the election notice to the BIA in a letter to Assistant Secretary Washburn dated May 24, 2013. The BIA Regional Director and Superintendent of the Central California Agency also received the letter and notice.</p>



	<b>California Valley Miwok Tribe Election Bylaws (Res. 04-14-2013(a))</b>	<b>Federal Procedures for Secretarial Elections as of 2013 (25 CFR Part 81)</b>	<b>July 6, 2013 Constitution Ratification Process</b>
<b>Eligible Voter List</b>	At least 21 days prior to the election date, the Election Committee shall certify the list of eligible voters and publish it at the Tribe's headquarters. (§8).	Election Board must compile a list of registered voters, which shall designate those who have requested an absentee ballot, the members who will have turned 18 by election day, and those members duly registered to vote. The list must be posted at the Tribal headquarters, the local BIA unit, and other public places designated by the election board, at least 20 days prior to the election. (§18.12).	<b>May 5, 2013:</b> Election Committee posted the list of eligible voters at Sheep Ranch, 62 days before the election. The list included all enrolled members who would be 18 years of age or older by July 6, 2013. The list was also posted on the Tribe's website and was available at Tribal Council meetings held on May 18, 2013 and June 15, 2013.  The Election Committee also mailed a notice to all those on the Tribal roster on May 30, 2015, reminding them of the upcoming Tribal meeting on June 15, 2015, and stating that the eligible voter list would be available for review at that meeting.
<b>Challenge to Voter List</b>	Any challenge to the eligible voter list must be filed in writing with the Election Committee within 7 days after the list is posted. The Election Committee must decide any appeals at least 10 days before the election and post the final list of eligible voters at the Tribe's headquarters no less than 7 days before the election.	Any challenge to the eligible voter list must be presented to the Election Board at least 10 days before the election and must be decided by the Election Board at least 10 days before the election. 25 C.F.R. § 81.13.	No challenges to the eligible voter list were received. The voter list remained posted at Tribal headquarters until the election.

	<b>California Valley Miwok Tribe Election Bylaws (Res. 04-14-2013(a))</b>	<b>Federal Procedures for Secretarial Elections as of 2013 (25 CFR Part 81)</b>	<b>July 6, 2013 Constitution Ratification Process</b>
<b>Absentee Voting</b>	Absentee voting is allowed for all eligible voters. Each election notice must contain an absentee ballot and instructions for voting it. (§12).	<p>Any duly registered adult nonresident members, ill, or physically disabled adult resident members may vote by absentee ballot. (§81.6(a)(2)).</p> <p>The Election Board shall give or mail absentee ballots to registered voters who may be entitled to receive them. (§81.19(a)). Accompanying the absentee ballot must be: (1) an inner envelope labeled “Absentee Ballot”; (2) instructions for completing the absentee ballot; (3) a copy of the proposed constitution; and (4) a preaddressed outer envelope with a prescribed written certificate written on it. (§81.19(b)).</p> <p>The Election Board shall make and keep a record of ballots mailed, to whom mailed, the date of mailing, the address on the envelope, the date of the return of the ballot, and from whom received. (§81.19(d)).</p>	<p><b>May 8, 2013</b>– The election notice packet sent to all adult enrolled members included, among other things, a ballot, an inner and outer envelope for the ballot, the proposed Constitution, and instructions for casting the ballot either absentee or in person. The Election Committee also mailed multiple reminders to enrolled members to mail their ballots if voting absentee.</p> <p>Starting June 20, 2016, the Election Committee mailed notification to voters whose absentee ballots had been received. The Election Committee also retained the outer envelopes in which absentee ballots were received, identifying the voters from whom ballots were received. The date of receipt of each absentee ballot was noted on the 2013 Election roster.</p>
<b>In-person Voting</b>	On election day, the election is held and votes are counted at the poll, including the absentee ballots. Polls are to be open during the time period set by the Election Committee. (§13G).	Registered voters may vote by arriving at the appropriate polling place during prescribed polling hours and telling officials their names and addresses, signing their signature on the voting list, and by marking the ballots, which shall be done in secret, and placing the ballots in the ballot box. (§81.18(a)).	<b>July 6, 2013</b> – Election Committee conducted in-person voting on the 2013 Constitution from noon – 3 p.m. at the Tribal Headquarters in Sheep Ranch, California. After identifying themselves to the Election Committee, in-person voters signed the voting list, marked their ballots in secret, and placed the ballots in the ballot box.
<b>Minimum Participation Requirements</b>	At least 30% of eligible voters (i.e., adult enrolled members) must cast votes for an election to be valid. (§10).	The total votes cast must be at least 30% of those tribal members entitled to vote (i.e., duly registered adult members). (§81.7).	<b>Results:</b> 104 of 200 eligible voters cast votes in the July 6, 2013 election—more than 50% of eligible voters.

	<b>California Valley Miwok Tribe Election Bylaws (Res. 04-14-2013(a))</b>	<b>Federal Procedures for Secretarial Elections as of 2013 (25 CFR Part 81)</b>	<b>July 6, 2013 Constitution Ratification Process</b>
<b>Required Number of Votes for Ratification</b>	Ratification or amendment of a Tribal constitution requires that 60% of the votes cast be in favor. (§11).	A constitution shall be considered adopted, ratified, or revoked if a majority of those actually voting are in favor of the adoption, ratification, or revocation. (§81.7).	<b>Results</b> – 90 of 104 votes cast in the election (86.5%) were in favor of ratifying the Constitution (90 “yes” votes / 10 “no” votes / 4 “abstain” votes)
<b>Certifying the Results</b>	The Election Committee shall certify the election results within 10 days after the election and shall post the results at the Tribal Headquarters and other appropriate places as determined by the Election Committee. The Election Committee shall also send a copy of the results to the local BIA office. (§13(H)-(I)). Any challenge to the election results must be filed with the Election Committee within 3 days after the results are posted.	The results of the election shall be posted in the local BIA office, tribal headquarters, and other appropriate public places. (§81.23(a)). The Election Board shall certify the results of the election on a form and transmit the results to the BIA. (§81.23(b)).	<b>July 6, 2013</b> – After the close of the polls, the Election Committee opened and counted the ballots (in-person ballots and absentee ballots received by closing of polls) and certified the election results. The results were posted at the Tribal Headquarters on July 6 and on the Tribe’s website on July 7, 2013. No challenges to the election results were received.  The Tribe notified the Central California Agency Superintendent, the Pacific Regional Director, and Assistant Secretary Washburn of the results by letter dated July 11, 2013, which included a copy of the ratified Constitution and election certification.

### **Part III: Burley Faction Opportunities for Participation in Tribal Organization**

The Burley Faction had many opportunities to participate in the organization of the Tribe and in the 2013 Election.<sup>5</sup> The Burley Faction rejected all those opportunities and instead sought recognition for their own, separate “tribal government” that included only themselves.

While the Tribe was attempting to organize itself, the Burley Faction brought a series of administrative appeals and court challenges, seeking to force the BIA to recognize their claims to Tribal authority. They argued it was unnecessary and inappropriate to allow the whole Tribal community to participate in Tribal organization, because the Tribe was limited to five members and was already organized under Resolution GC-98-01. At the same time, they held themselves out to the Native American community, state and local governments, and the public as the Tribe’s government, and denied that anyone other than themselves and Yakima Dixie was even a Tribal member. They continue to maintain that position in their recent request for reconsideration of the Assistant Secretary’s December 30, 2015 decision, which they submitted on March 4, 2016.

It is no surprise that the Burley Faction chose not to participate with the Tribal community in its organization efforts. Participation would have undermined the Burleys’ attempts to obtain complete control of the Tribe for themselves. Now that those attempts have failed, the Burley Faction cannot claim they lacked the opportunity to participate in a Tribal process they actively opposed.

Below is a partial chronology of events in the Tribal organization process, demonstrating the Burley Faction’s opportunity for participation and their rejection of that opportunity.

1. On February 11, 2005, Assistant Secretary Michael Olsen issued a decision stating that the “the Tribe is not an organized Tribe” and that “the BIA does not recognize any Tribal government.” The decision encouraged Mr. Dixie, along with other Tribal members, to continue their efforts to organize the Tribe, and stated that the first step in organization was identifying the Tribe’s putative members. (**Exhibit Y**, AR 609.)
2. By February 2006, the Tribe established an initial Tribal Council and interim constitution to guide the process of identifying and involving the Tribal community and establishing a framework for Tribal organization. Silvia Burley was included as a member of the initial Tribal Council. (**Exhibit A**, Part 11.)
3. Velma WhiteBear personally asked Ms. Burley in 2006 to participate in the Tribal Council. Ms. Burley declined. Based on her rejection of the position, she was removed from the Council in 2008.

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<sup>5</sup> The Tribal roster includes other Burleys who are relatives of the Burley Faction and who have chosen to participate in Tribal affairs. References to the Burley Faction do not include these other Burley family members, whom the Burley Faction does not acknowledge as Tribal members.

4. Throughout 2006 and thereafter, the Tribal Council members conducted extensive outreach to the Tribal community, including mailings, personal communications with Miwoks living in Calaveras County, holding open meetings at Sheep Ranch and nearby Mountain Ranch, attending meetings of other local Miwok organizations such as Calaveras Band of Miwoks and Mountain Miwoks, and representing the Tribe in cultural activities and gatherings of the larger Miwok community such as Big Times. All interested individuals were invited to participate in Tribal activities and to submit information documenting their relationship to the Tribal community. The Burley Faction did not respond to these outreach efforts.
5. On November 6, 2006, BIA Superintendent Troy Burdick proposed to assist the Tribe in organizing, with the participation of the Tribe's members, and invited Ms. Burley to participate. (**Exhibit Z**, AR 1261.) Ms. Burley declined to participate, and on November 13, 2006, the Burley Faction appealed Mr. Burdick's decision to the BIA Regional Director. (**Exhibit D**.)
6. On February 23, 2007, the BIA again invited Ms. Burley and Mr. Dixie to meet to discuss the Tribal organization process. (**Exhibit AA**, AR 1455.) Ms. Burley again declined to participate. (**Exhibit BB**, AR 1488.)
7. On April 2, 2007, the BIA Regional Director denied the Burley Faction's appeal of the Superintendent's decision to assist the Tribe in organizing itself. (**Exhibit CC**, AR 1494.) On April 11, 2007, the BIA published a public notice identifying the Tribal community and requesting that persons interested in participating in Tribal organization submit genealogical information to the BIA. (**Exhibit B**.)
8. At the Tribal Council's request, many individuals who submitted responses to the BIA also submitted genealogies to the Tribe and were added to the Tribal roster (*see* **Exhibit C**). The Burley Faction did not submit their genealogies to the BIA or to the Tribe. Instead, the Burley Faction filed an appeal of the Regional Director's decision with the Interior Board of Indian Appeals on April 16, 2007. (**Exhibit E**.)
9. The Tribal Council held monthly open meetings between 2006 and the July 6, 2013 election, at which organization and other Tribal affairs were discussed. The meetings were open to all interested individuals and were typically attended by about 30 to 100 people. None of the Burley Faction ever attended these open meetings.
10. On May 3, 2011, the Tribe notified Assistant Secretary Echo Hawk and the Burley Faction (through their attorneys) that it planned to conduct an election to ratify a new constitution. (**Exhibit I**, May 2011 briefing, AR 2121, 2142.) It provided them with Tribal Resolution 2011-04-30, which certified the Tribal roster and included the names of the adults on the roster as of that date. (AR 2265.) Since they had not submitted genealogies to the Tribe, the members of the Burley Faction were not on the roster. The Resolution stated that individuals who desired to be members of the Tribe could submit an application to the Tribal Council. (AR 2265.) The members of the Burley Faction did not submit any applications to the Tribe or otherwise respond to this notice.



11. On July 22, 2011, the Tribe notified Assistant Secretary Echo Hawk and the Burley Faction (through their attorneys) that the Tribal Council had adopted election bylaws, and reiterated its intent to hold a constitutional election. (**Exhibit J.**) The Burley Faction did not respond to the notice and made no effort to participate in the organization process.
12. After further outreach efforts, and extensive drafting and discussion of a new Tribal constitution, the Tribal Council held an election on October 20, 2012. The Burley Faction did not participate in the election. On October 30, 2012, the Tribal Council notified Assistant Secretary Washburn that the proposed constitution was not ratified. (**Exhibit L.**)
13. In May 2013, the Tribe posted notice in the West Point and San Andreas, California post offices, and on its website, that it would hold another election on July 6, 2013, to ratify a proposed Tribal constitution. The Tribal Council also mailed notice of the election to each enrolled member on the Tribal roster who would be 18 years old by July 6, 2013. (**Exhibit P.**) The Tribe did not provide personal notice to individuals who had not expressed interest in the Tribal organization process, including the members of the Burley Faction. The Burley Faction did not respond to the posted notices or express interest in participating in the Tribal election.
14. In May 2013, the Tribe posted the list of eligible voters for the July 6, 2013 election at the Tribal headquarters in Sheep Ranch, California. (**Exhibit O.**) The Burley Faction did not challenge the omission or inclusion of any person from the eligible voter list.
15. The planned July 6, 2013 election was discussed at the February, March, April, May and June 2013 monthly Tribal meetings. The Burley Faction did not attend those meetings or seek information about the proposed constitution.
16. The Tribal Council conducted the election on July 6, 2013. The Burley Faction did not participate in the election. (**Exhibit V.**)
17. The Election Committee certified the results and posted the results at the Tribe's headquarters in Sheep Ranch and on the Tribe's website. The Tribe also notified the Burley Faction of the election results by serving them with a copy of the adopted Tribal Constitution and election certification on July 19, 2013, in the *CVMT v. Jewell* litigation. (**Exhibit X**, No. 1:11-cv-00160-BJR (D.D.C.), ECF No. 74-2.) The Burley Faction responded by characterizing the election as a litigation tactic and questioning its legitimacy. (**Exhibit DD**, *CVMT v. Jewell*, ECF No. 75, p. 3 n.1; p. 8.) The Burley Faction did not seek to challenge the results of the election with the Tribe.