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

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**CALIFORNIA VALLEY MIWOK TRIBE, a** ) Case No.: 2:16-cv-01345-WBS-CKD  
federally-recognized Indian )  
tribe, **THE GENERAL COUNCIL,** ) **PLAINTIFFS' REPLY TO**  
**SILVIA BURLEY, RASHEL REZNOR;** ) **INTERVENOR-DEFENDANTS'**  
**ANJELICA PAULK; and TRISTIAN** ) **OPPOSITION TO MOTION FOR AN**  
**WALLACE** ) **ORDER STAYING THE AS-IA'S**  
 ) **DECEMBER 30, 2015 DECISION**

Plaintiffs,

vs.

**SALLY JEWEL,** in her official ) Judge: Hon. William B. Shubb  
capacity as U.S. Secretary of ) Date: October 17, 2016  
Interior; **LAWRENCE S. ROBERTS,** in ) Time: 1:30 p.m.  
his official capacity as Acting ) Courtroom 5  
Assistant Secretary of Interior - )  
Indian Affairs; **MICHAEL BLACK,** in )  
his official capacity as Director )  
of the Bureau of Indian Affairs. )

Defendants.

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I.

**SUMMARY OF POINTS IN REPLY**

As stated in their motion papers, a decision on whether to grant a stay of a final agency action pending review of that decision in federal court is guided by consideration of four factors: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. In re E.P.A. (6<sup>th</sup> Cir. 2015) 803 F.3d 804, 806. These preliminary injunction factors are to be balanced, and are not prerequisites that must be met. Washington v. Reno (6<sup>th</sup> Cir. 1994) 35 F.3d 1093, 1099.

The Intervenor-Defendants' ("Dixie Faction") main argument is that the Plaintiffs here cannot show that they are likely to succeed on the merits so as to enable them to obtain the requested stay of the Assistant Secretary of Interior-Indian Affairs' ("AS-IA") December 30, 2015 Decision. The Dixie Faction's argument is based entirely on the erroneous assumption that the U.S. District Court's Order remanding to the AS-IA for reconsideration is correct. It is not. As shown below, there is a likelihood of success on the merits, the Plaintiffs will suffer irreparable harm without the stay, and the Dixie Faction will not be harmed if a stay is granted.

Plaintiffs seek merely to preserve the status quo pending resolution of their challenge of the AS-IA's December 30, 2015 Decision.

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II.

**PLAINTIFFS DID NOT FAIL TO APPEAL THE U.S. DISTRICT COURT ORDER GRANTING SUMMARY JUDGMENT, BUT INSTEAD WERE BARRED FROM APPEALING THAT ORDER WHEN THE GOVERNMENT ELECTED NOT TO APPEAL**

The Dixie Faction argues that Plaintiffs "cannot re-litigate" the U.S. District Court decision granting summary judgment in the Dixie Faction's favor, because Plaintiffs "did not appeal that decision." (Opp. Page 2, lines 1-2). This is inaccurate and misleading.

Plaintiffs ("the Burley Faction") were Intervenor-Defendants in the Dixie Faction's suit challenging the Assistant Secretary of Interior-Indian Affairs' ("AS-IA" or "Assistant Secretary") August 31, 2011 Decision ("2011 Decision"). The Federal Defendants in that suit chose not to appeal the decision. When the Burley Faction attempted to appeal, the Federal Defendants moved to dismiss the appeal for lack of jurisdiction, pointing out that "a private party - unlike the government - may not appeal a district court's order remanding to an agency because it is not final within the meaning of 28 U.S.C. § 1291." (Ex. "1," Motion to Dismiss Appeal for Lack of Jurisdiction). The Burley Faction conceded this point and stipulated to voluntarily dismiss their appeal. (Ex. "2," Stipulation of Voluntary Dismissal).

Accordingly, Plaintiffs here are not "re-litigating" issues decided by the U.S. District Court that remanded the matter back to the AS-IA to "reconsider" his 2011 Decision. That remand order was not final. Plaintiffs' suit instead is against the AS-IA relative to his December 30, 2015 Decision ("2015 Decision") which Plaintiffs contend is unlawful and arbitrary and capricious for several reasons, as outlined below.

///

III.

**A STAY IS WARRANTED BECAUSE PLAINTIFFS ARE LIKELY TO SUCCEED ON  
THE MERITS**

**A. THE 2015 DECISION IS ERRONEOUSLY PREDICATED ON A TIME-  
BARRED CLAIM THAT THE 1998 RESOLUTION ESTABLISHING THE  
GENERAL COUNCIL WAS INVALID AT THE OUTSET**

Dixie filed a Complaint against the federal government on January 24, 2011, challenging the AS-IA's December 22, 2010 decision recognizing the General Council established under the 1998 Resolution. After the AS-IA withdrew his December 22, 2010 decision, he issued another decision on August 31, 2011, reaffirming his December 2010 decision. Dixie then amended his Complaint on October 17, 2011 challenging the AS-IA's August 31, 2011 decision. Dixie's original Complaint included a claim that the 1998 Resolution establishing the Tribal Council was invalid at the outset, even though that was not an issue referred to the AS-IA to decide. In his second suit, Dixie reasserted that claim. Specifically, Dixie's attack on the validity of the 1998 Resolution was that "the identification of the Burleys as members was incorrect because Yakima Dixie did not have the authority to enroll them into the Tribe without the consent of the Tribe's existing members," which Dixie alleged to be members who were "living in the vicinity of the Sheep Ranch Rancheria in 1998" who "were readily identifiable as Tribal members, and were known or should have been known to the BIA." (Ex. "3," First Amended Complaint, paragraphs 44-46, pages 10-11, filed October 17, 2011). Dixie's claim in his federal action attacking the validity of the 1998 Resolution was, however, time-barred, and the AS-IA's decision based upon that claim was, therefore, erroneous as a matter of law.

Actions for judicial review of final agency actions brought under the Administrative Procedure Act are subject to a six-year



1 statute of limitations. Wind River Min. Corp. v. U.S. (9<sup>th</sup> Cir.  
2 1991) 946 F.2d 710, 713; 28 U.S.C. § 2401(a). Generally, a  
3 claim subject to the six-year statute of limitations period  
4 under § 2401(a) first accrues when the plaintiff comes into  
5 possession "of the critical facts that he has been hurt and who  
6 has inflicted the injury." United States v. Kubrick (1979) 444  
7 U.S. 111, 122. Under federal law, a cause of action accrues  
8 when the plaintiff is aware of the wrong and can successfully  
9 bring a cause of action. Acri v. Int'l Ass'n of Machinists &  
10 Aerospace Workers (9<sup>th</sup> Cir. 1986) 781 F.2d 1393, 1396. Stated  
11 another way, "[t]he moment at which a cause of action first  
12 accrues within the meaning of Section 2401(a) is when 'the  
13 person challenging the agency action can institute and maintain  
14 a suit in court.'" Muwekma Ohlone Tribe v. Salazar  
15 (D.D.C.2011) (quoting Spannaus v. U.S. Dep't of Justice  
16 (D.C.Cir.1987) 824 F.2d 52, 56).

17 In Muwekma, supra, the U.S. District Court concluded that  
18 the Tribe's claims under the APA against the Department of  
19 Interior ("DOI") and its agency officials for purportedly  
20 terminating its tribal status was barred by the six year statute  
21 of limitations under 28 U.S.C. § 2401(a). It found that the  
22 Tribe's claim first accrued and thus it could have pursued a  
23 cause of action against the agency on the following three  
24 occasions:

25 (1) in 1927, when the Muwekma contends that "the  
26 Department provided [it with only] a fraction of the federal  
27 funding and services allocated to ... Indian tribes;

28 (2) in 1979, when the Muwekma "was not listed on the  
Federal Register list of entities recognized by the Secretary of  
Interior as a tribe;" and

(3) in 1989, when the Muwekma filed its petition for  
federal acknowledgment.

1 813 F.Supp.2d at 191. The Court then stated:

2 Of these three dates, the Court finds that the most obvious  
3 point at which the Muwekma **could have brought suit** against  
4 the agency for purportedly terminating its tribal status  
5 was **in 1989, when it was clear that it was aware that it**  
6 **was not a federally recognized tribe.** Given that the  
7 Muwekma did not bring this action against the Department  
8 until 2001, approximately twelve years after it undoubtedly  
9 **possessed knowledge that it lacked acknowledgment by the**  
10 **federal government as a tribe,** its unlawful termination of  
11 tribal status claim is plainly barred by the limitations  
12 period of 28 U.S.C. § 24001(a). (Emphasis added).

13 813 F.Supp.2d at 191.

14 For the same reasons, the Dixie Faction's claim that the  
15 1998 Resolution was purportedly invalid is barred by the six  
16 year statute of limitations, because Dixie knew more than six  
17 years before he and his Faction filed suit against the DOI and  
18 its agencies on January 24, 2011, that the DOI and the BIA were  
19 acknowledging and accepting the General Council established  
20 under the 1998 Resolution while he was simultaneously objecting  
21 to it. As in the case of Muwekma, supra, there were several  
22 dates that Dixie could have brought suit against the DOI and the  
23 AS-IA for purportedly acknowledging and recognizing the General  
24 Council established under the 1998 Resolution which the Dixie  
25 Faction claimed in its 2011 suit was invalid at the outset.  
26 These dates are as follows:

27 (1) The U.S. District Court noted that "from as early as  
28 April 1999" Dixie "contested the validity of the [General]  
Council." It stated:

Here, the August 2011 Decision fails to address *whatsoever*  
the numerous factual allegations in the administrative  
record that raises significant doubts about the legitimacy  
of the General Council. **From as early as April 1999,**  
**Yakima [Dixie] contested the validity of the Council.** See  
AR 000182 (April 21, 1999 letter from Yakima to the BIA  
stating that he "cannot and will not resign as chairman of  
the Sheep Ranch Indian Rancheria"); see also, AR 000205

1 (October 10, 1999 letter from Yakima to BIA raising  
2 questions about Burley's authority); AR 001690, 000231  
3 (Yakima notifying the BIA of "fraud and misconduct" with  
4 respect to the Tribe's leadership). (Emphasis added).

5 California Valley Miwok Tribe v. Jewell (D.D.C.2013) 5 F.Supp.3d  
6 86, 100.

7 (2) On February 4, 2000, the BIA wrote to Dixie in  
8 response to his allegations of "fraud or misconduct" concerning  
9 the change in Tribal leadership that Dixie claims occurred in  
10 April and May of 1999. The BIA letter memorialized a meeting  
11 between BIA personnel and Dixie that occurred in December 1999.  
12 The letter recounts that Dixie presented the BIA with his own  
13 "constitution" for governing the Tribe that was purportedly  
14 adopted by Dixie and his Faction on December 11, 1999. The BIA  
15 returned the document to Dixie in its letter and stated that:

16 "...the body that acted on December 11, 1999, upon the  
17 document **does not appear to be the proper body to so act.**"  
18 (Emphasis added).

19 (Ex. "4," Letter from BIA to Dixie dated February 4, 2000, page  
20 5). In short, the BIA unequivocally informed Dixie that it was  
21 recognizing the General Council established under the 1998  
22 Resolution, and not the Dixie Faction's Tribal Council, despite  
23 Dixie's claim of fraud in connection with its formation.

24 (3) On March 7, 2000, the BIA wrote Silvia Burley, as the  
25 Chairperson of the Tribe, and summarized discussions its  
26 personnel had with Dixie on February 4, 2000. The letter  
27 recounts that Dixie was challenging his enrollment of Burley and  
28 her family into the Tribe. (Ex. "5," BIA letter to Burley dated  
March 7, 2000, page 2). His argument was obviously that if he  
never intended to enroll them as Tribal members, then the  
General Council established under the 1998 Resolution was  
invalid at the outset. The BIA indicated that it rejected  
Dixie's claims and requested he submit his grievances to the

1 Tribe's General Council, thus reaffirming the BIA's recognition  
2 of the General Council established under the 1998 Resolution.

3 The letter stated:

4 **"We also reiterated [to Dixie] our view, notwithstanding a**  
5 **Tribal decision to the contrary, that the appropriate**  
6 **Tribal forum is the General Council [established under the**  
7 **1998 Resolution].** At present, we view, again  
8 notwithstanding a Tribal decision to the contrary, the  
9 General Council as comprised of Yakima Dixie, Rashel  
10 Reznor, and you [Burley]..." (Emphasis added).

11 (Ex. "5," BIA letter to Burley dated March 7, 2000, pages 1-2).

12 (4) On July 18, 2001, Dixie filed suit in the U.S.  
13 District Court, Eastern District of California, alleging fraud  
14 against Burley in connection with the formation of the General  
15 Council established under the 1998 Resolution. Dixie alleged  
16 that the Tribe was "small," and that he, his brother Melvin and  
17 his son "Rocky" were the only members of the Tribe by virtue of  
18 being "lineal descendants of the Sheep Ranch Miwok Tribe." (Ex.  
19 "6," Complaint, "Sheep Ranch Miwok Tribe v. Burley, et al.,"  
20 Case No. CIV.S-01-1389 MLS-DAD, pp. 14, 27, 30-31, filed July  
21 18, 2001). He alleged that his enrollment of Burley and her  
22 family was conditioned on them "following his leadership." Id.  
23 He alleged that Burley and her family by fraud voted her to  
24 become the Tribal Chairperson and that they never intended to  
25 follow his leadership. Id. He alleged that had he known of  
26 Burley's true intentions, he would have never accepted her and  
27 her family as members. Id.

28 The U.S. District Court dismissed Dixie's suit and observed  
as follows:

As an initial matter, the court may take judicial notice of  
evidence that defendants Silvia Burley and Rashel Reznor  
are **recognized by the BIA as the sole members of the**  
**governing body of the Sheep Ranch Rancheria of Me-Wuk**  
**Indians.** See BIA July 12, 2000 Letter of Recognition,  
Burley Decl. Exh. C. (Emphasis added).

1 (Ex. "23," Order, January 24, 2002, No. CIV. S-01-1389 LKK/DAD,  
2 page 3, lines 12-16). Dixie never appealed this order of  
3 dismissal. The BIA letter of July 12, 2000, which was attached  
4 to the motion to dismiss, and which Dixie obviously got a copy  
5 of during the briefing of the motion, explicitly states:

6 "The Bureau of Indian Affairs, Central California Agency,  
7 recognizes the following individuals as members of the  
8 Tribal Council, governing body, of the Sheep Ranch  
9 Rancheria of Me-Wuk Indians:

- 10 1. Silvia F. Burley, Chairperson
- 11 2. Vacant, Vice-Chairperson
- 12 3. Rashel K. Reznor, Secretary/Treasurer

13 "Please contact Raymond Fry, Tribal Operations Officer, at  
14 (916) 566-7124 should you require additional information  
15 with regard to this matter."

16 (Ex. "7," BIA letter of July 12, 2000, to Burley). As stated,  
17 Dixie got a copy of this letter during the briefing of the  
18 motion to dismiss, and was therefore put on notice of the BIA's  
19 position with respect to the validity of the General Council  
20 established under the 1998 Resolution, at least as far back as  
21 January 24, 2000, the date of the order.

22 (5) On October 30, 2003, Dixie wrote a letter to the U.S.  
23 Department of the Interior ("DOI") attempting to appeal the  
24 BIA's 1999 recognition of Burley as the Chairperson of the  
25 Tribe, and requesting that the DOI "nullify her appointment and  
26 her and her families' adoption as member of the Tribe." His  
27 appeal states in pertinent part:

28 "In this appeal, I Yakima K. Dixie, as Appellant, am  
contesting the administrative action (without my knowledge  
and consent) by agents of the Bureau of Indian Affairs, in  
which Silvia Burley fraudulently came to be the recognized  
authority for and Chairperson of my ancestral tribe, of  
which I am the hereditary Chief and **rightful** Chairperson by  
lineal descent. As explained herein, I was tricked by  
Silvia Burley and others; and I, the Appellant, am

1 requesting the nullification of both her appointment as  
2 Chairperson and the nullification of her original adoption  
3 and the adoption of her daughter and two grand-daughters  
4 into my tribe, which, again, I allege was fraudulent..."  
(Emphasis added as to "hereditary" only; other emphasis in  
the original).

5 (Ex. "8," Dixie Notice of Appeal, dated October 30, 2003, page  
6 1). Here, Dixie is claiming to have hereditary rights and  
7 powers as the "hereditary chief" of the Tribe, notwithstanding  
8 the 1998 Resolution, which specifically provides:

9 "**RESOLVED**, That all other inherent rights and powers not  
10 specifically listed herein shall vest in the General  
11 Council..." (Emphasis added).

12 (Ex. "9," Resolution #GC-98-01, "Establishing a General Council  
13 to Serve as the Governing Body of the Sheep Ranch Band of Me-Wuk  
14 Indians," dated November 5, 1998, page 1). Accordingly, Dixie's  
15 2003 Notice of Appeal is clear evidence that he was attempting  
16 to challenge the validity of the General Council established  
17 under the 1998 Resolution, and thus was aware of the existence  
18 of such a claim more than six years from the time he filed his  
19 Complaint against the AS-IA on January 24, 2011.

20 In any event, Dixie's appeal was dismissed on procedural  
21 grounds and as untimely. In a letter dated February 11, 2005,  
22 the BIA wrote to Dixie as follows:

23 "I am writing in response to your appeal filed with  
24 the office of the Assistant Secretary-Indian Affairs on  
25 October 30, 2003...In that appeal, you challenged the  
26 Bureau of Indian Affairs' ("BIA") recognition of Sylvia  
27 Burley as tribal Chairman and sought to 'nullify' her  
28 admission, and the admission of her daughter and  
granddaughters into your Tribe. Although your appeal  
raises many difficult issues, I must dismiss it on  
procedural grounds.

\* \* \*

"In addition, your appeal appears to be untimely. In  
1999, you first challenged the BIA's recognition of Ms.

1 Burley as Chairman of the Tribe. In February 2000, the BIA  
2 informed you that it defers to tribal resolution of such  
3 issues. On July 18, 2001, you filed a lawsuit against Ms.  
4 Burley in the United States District court for the Eastern  
5 District of California challenging her purported leadership  
6 of the Tribe. On January 24, 2002, the district court  
7 dismissed your lawsuit, without prejudice and with leave to  
8 amend, because you had not exhausted your administrative  
9 remedies by appealing the BIA's February 2000 decision.

10 After the court's January 24, 2002, order, you should have  
11 pursued your administrative remedies with the BIA.  
12 Instead, you waited almost a year and a half, until June  
13 2003, before raising your claim with the Bureau. As a  
14 result of your delay in pursuing your administrative appeal  
15 after the court's January 24, 2002, order, your appeal  
16 before me is time barred." (Emphasis added).

17 (Ex. "10," BIA letter to Dixie, dated February 11, 2005, pages  
18 1-2). As the BIA explained to Dixie in this letter of February  
19 11, 2005, Dixie could have challenged the BIA's recognition of  
20 the General Council established under the 1998 Resolution as far  
21 back as 1999, by first exhausting his administrative remedies  
22 and then filing suit in the U.S. District Court. The District  
23 Court nevertheless gave Dixie another chance and allowed him to  
24 proceed with his claims after exhausting his administrative  
25 remedies, but he never followed through with that requirement.  
26 In the same way he was time-barred in February 2002, he was also  
27 time-barred under the six-year statute of limitations when he  
28 attempted to challenge the validity of the General Council  
established under the 1998 Resolution in his January 24, 2011  
suit in federal court.

In addition, Dixie's attempt to "nullify" Burley and her  
family's adoption as members of the Tribe goes to the heart of  
the validity of the 1998 Resolution establishing the General  
Council, which states in pertinent part:

"RESOLVED, That Yakima Dixie, Silvia Fawn Burley, and  
Rashel Kawehilani Reznor, as a majority of the adult

1 members of the Tribe, hereby establishes a General Council  
to serve as the governing body of the Tribe..."

2 (Ex. "9," Resolution #GC-98-01, "Establishing a General Council  
3 to Serve as the Governing Body of the Sheep Ranch Band of Me-Wuk  
4 Indians," dated November 5, 1998, page 2). Without these  
5 adopted members, there could be no General Council, and the  
6 Tribe would not have been organized with a General Council  
7 governing body.

8 (6) On May 5, 2004, Yakima Dixie executed a "Will &  
9 Testament." In this document, Dixie reiterates he is the "Chief  
10 and rightful authority of the Sheep Ranch Rancheria of MiWok  
11 Indians of California a.k.a. California Valley Miwok Tribe,"  
12 because of his "hereditary and lineal descent." (Ex. "11,"  
13 Yakima Dixie Will & Testament, May 5, 2004, page 1). The  
14 document also references the establishment of a Tribal Council,  
15 separate and apart from the "General Council" established under  
the 1998 Resolution, and states:

16 "At the time of this signing, the only member of the  
17 Tribal Council is Velma WhiteBear, who is designated as the  
Executive Director of the Tribe."

18 (Ex. "11," Yakima Dixie Will & Testament, May 5, 2004, page 2).  
19 The document then lists ten (10) persons as the only members of  
20 the Tribe, but does not name Burley and her three family members  
21 Dixie adopted into the Tribe in 1998. (He was also contradicting  
22 his claims that the Tribe consists of more than 200 members).  
23 Thus, at the time of the execution of his Last Will & Testament,  
24 dated May 5, 2004, Dixie was denying the validity of the General  
25 Council established under the 1998 Resolution. Together with  
26 his October 30, 2003 letter to the DOI and previous letters to  
27 the BIA objecting to the BIA's recognition of Burley as  
28 Chairperson of the Tribe and the BIA's recognition of Burley and  
her family as adopted members of the Tribe, Dixie therefore knew



1 he had a claim against the federal government for recognizing  
2 the Tribe's General Council that was purportedly invalid at the  
3 outset, more than six years from the date he filed suit on  
4 January 24, 2011.

5 (7) Notice that the Tribe had changed its name to the  
6 California Valley Miwok Tribe was published in the July 12, 2002  
7 Federal Register. (See Ex. "12," copy of 2002 Federal Register  
8 and Ex. "13," June 7, 2001, letter from BIA to Burley accepting  
9 new name for publication). The placement of the new name of the  
10 Tribe was an act of recognition by the DOI of the validity of  
11 the General Council established under the 1998 Resolution, after  
12 the General Council passed a resolution to change the name of  
13 the Tribe and submitted it to the BIA for approval. As the DOI  
14 stated in a letter to Silvia Burley on June 7, 2001:

15 "The *Sheep Ranch Rancheria* (Tribe) is a small tribe  
16 that does not have a tribal constitution. The tribe has a  
17 tribal council and conducts tribal business through  
18 resolution. A tribal resolution, such a resolution No. R-  
19 1-5-07-201, enacted by the Tribal council on May 7, 2001,  
20 is sufficient to effect the tribal name change. The  
21 Tribe's new name has been included on the Tribal Entities  
22 list that will be published in the FEDERAL REGISTER later  
23 this year."

24 (Ex. "13," Letter from Sharon Blackwell at BIA to Burley, dated  
25 June 7, 2001).

26 The DOI's publication of the Tribe's new name in the  
27 FEDERAL REGISTER was adequate notice to Dixie and his followers  
28 that on July 12, 2002, the DOI recognized the validity of the  
General Council established under the 1998 Resolution, thereby  
giving Dixie critical facts to institute a lawsuit.

"[S]tatute of limitations are to be applied against the  
claims of Indian tribes in the same manner as against any other  
litigant seeking legal redress or relief from the government."  
Hopland Band of Pomo Indians v. United States (Fed.Cir.1988) 855

1 F.2d 1573, 1576; Sissten-Wahpeton Sioux Tribe v. United States  
2 (9<sup>th</sup> Cir. 1990) 895 F.2d 588, 592 (“Indian Tribes are not exempt  
3 from statute of limitations governing actions against the United  
4 States”). Also, [a]ctual knowledge of government action...is  
5 not required for a statutory period to commence.” Shiny Rock  
6 Mining Corp. v. United States (9<sup>th</sup> Cir. 1990) 906 F.2d 1362,  
7 1364. Instead, “[p]ublication in the Federal Register is  
8 legally sufficient notice to all interested or affected persons  
9 regardless of actual knowledge or hardship resulting from  
10 ignorance.” Id. Accordingly, the notice published in the  
11 Federal Register on July 12, 2002, was adequate to apprise Dixie  
12 and his followers that the federal government was acknowledging  
13 the validity of the General Council established under the 1998  
14 Resolution. Thus, based on the Federal Register publication  
15 alone, a timely action challenging the validity of the 1998  
16 Resolution establishing the General Council should have been  
filed before July 12, 2008, six years after the 2002 FEDERAL  
REGISTER publication.

17 **B. THE U.S. DISTRICT COURT IMPROPERLY DIRECTED THAT THE AS-IA**  
18 **RECONSIDER HIS 2015 DECISION BASED ON A TIME-BARRED CLAIM**

19 As indicated, the Burley Faction, as an Intervenor-  
20 Defendant in Dixie’s federal suit challenging the August 2011  
21 AS-IA’s decision, was unable to appeal the U.S. District Court’s  
22 order granting summary judgment in favor of the Dixie Faction,  
23 because the Federal Defendants chose not to appeal and the  
24 remand order was not final. As a result, the AS-IA reconsidered  
25 its August 2011 decision based on erroneous remand instructions  
26 that included an order that the AS-IA address the issue of  
27 whether the General Council as established under the 1998  
28 Resolution was valid at the outset, as pled in the Dixie  
Faction’s complaint.

The U.S. District Court stated:

1 The August 2011 Decision declares: "[t]he [November] 1998  
2 Resolution established a General council form of  
3 government, comprised of all adult citizens of the Tribe,  
4 with whom the [BIA] may conduct government-to-government  
5 relations. AR 002056. Once again, in reaching this  
6 conclusion, the Assistant Secretary simply assumes, without  
7 addressing, the validity of the General Council...

8 The Court finds that the August 2011 Decision is  
9 unreasonable in light of the facts contained in the  
10 administrative record...Before invoking the principle of  
11 tribal self-governance, it was incumbent on [the Assistant  
12 Secretary] to first determine whether a duly constituted  
13 government actually exists...

14 Here, the August 2011 Decision fails to address *whatsoever*  
15 the numerous factual allegations in the administrative  
16 record that raise significant doubts about the legitimacy  
17 of the General Council. From as early as April 1999,  
18 Yakima contested the validity of the Council...

19 ...Accordingly, the Court will remand this issue to the  
20 Secretary for reconsideration. (Emphasis added).

21 California Valley Miwok Tribe v. Jewell (2013) 5 F.Supp.3d 86,  
22 99-101.

23 However, as stated, the issue of whether the General  
24 Council was invalid at the outset was barred by the six-year  
25 statute of limitations.

26 **C. PLAINTIFFS PRESERVED THE STATUTE OF LIMITATIONS ISSUE  
27 BEFORE THE U.S DISTRICT COURT IN DIXIE'S FEDERAL ACTION**

28 On March 26, 2012, the Burley Faction filed a motion to  
dismiss the Dixie Faction's FAC in the federal action  
challenging the AS-IA's 2011 Decision. Among other things, the  
Burley Faction alleged that the Dixie Faction's claims were  
barred by the six-year statute of limitations, including the  
claim challenging the validity of the General Council  
established under the 1998 Resolution. The motion stated in  
pertinent part as follows:



1 it did "recognize" Silvia Burley as a "person of authority  
2 within the California Miwok Tribe." The letter further stated  
3 that the BIA would not recognize either Burley or Dixie as  
4 "Chairman" of the Tribe, until the Tribe organized itself under  
5 the Indian Reorganization Act of 1934 ("IRA"). The BIA was  
6 clearly trying to get the Tribe to "re-organize" itself under  
7 the IRA, but was continuing to recognize Burley as a person with  
8 authority with whom the BIA was at that time conducting  
9 government-to-government relations. The letter never stated  
10 that the BIA considered the General Council established under  
11 the 1998 Resolution to be invalid. Indeed, recognizing Burley  
12 as a person of "authority" within the Tribe would seem to  
13 contradict that notion, since her authority was derived from the  
14 General Council. Thus, the statute of limitations issue was not  
15 mooted by the BIA's February 2005 letter.

16 Secondly, the February 11, 2005 letter did not address the  
17 issue of whether the General Council was invalid or not  
18 recognized, but simply made passing reference to a letter from  
19 the BIA dated March 26, 2004 that indicated the Tribe was not  
20 organized, and, because of that, the BIA stated in its February  
21 11, 2005 letter that it therefore could not "defer to any tribal  
22 dispute resolution process at [that] time" with respect to the  
23 BIA's recognition of Burley as the Tribal Chairperson and the  
24 admission of Burley's family as Tribal members.

25 Third, the AS-IA's 2011 Decision was not a "180-degree  
26 change of course" which "once again" "recognize[ed] the General  
27 Council as the Tribe's government," as the U.S. District Court  
28 characterized it in its Order. Rather, the 2011 Decision made  
it clear that its "180-degree change of course" was only with  
respect to its "finding (6)" that stated:

"Under the IRA, as amended, it is impermissible for the  
Federal government to treat tribes not 'organized' under

1 the IRA differently from those 'organized' under the IRA  
(25 U.S.C. §§ 476(f)-(h))."

2 (Ex. "16," AS-IA's August 31, 2011 Decision, page 2). Up to  
3 that point, the DOI was requiring the Miwok Tribe to  
4 "reorganize" itself under the IRA in order for it to be eligible  
5 to receive federal benefits. The 2011 Decision further stated:

6 "I reject as contrary to § 476(h) the notions that a tribe  
7 can be compelled to 'organize' under the IRA and that a  
8 tribe not so organized can have 'significant federal  
9 benefits' withheld from them. Either would be a clear  
10 violation of 25 U.S.C. § 476(f)."

11 (Ex. "16," AS-IA's August 31, 2011 Decision, page 6). This  
12 different (180 degree) policy direction was that the BIA should  
13 no longer require the Tribe to re-organize its governing body  
14 under the IRA, in order to be eligible to receive federal  
15 benefits, including P.L. 638 federal contract funding. The  
16 "policy" was not whether the General Council was to be  
17 recognized as a valid governing body or whether it was invalid  
18 at the outset, as the Court was suggesting.

19 Dixie's claim that the General Council established under  
20 the 1998 Resolution was invalid at the outset was time-barred,  
21 and the Burley Faction's motion to dismiss this claim should  
22 have been granted. Instead, the Court allowed this time-barred  
23 claim to proceed against the federal government and improperly  
24 ordered the AS-IA to re-evaluate on remand whether the 1998  
25 Resolution establishing the General Council was invalid at the  
26 outset.

27 **D. THE ISSUE OF THE VALIDITY OF THE 1998 RESOLUTION**  
28 **ESTABLISHING THE GENERAL COUNCIL WAS NEVER REFERRED TO THE**  
**AS-IA FOR REVIEW BY THE INTERIOR BOARD OF INDIAN APPEALS**

The issue the Interior Board of Indian Appeals ("IBIA")  
referred to the AS-IA for resolution was limited to an  
"enrollment dispute," i.e., whether the BIA could force the

1 Tribe to organize under the IRA and convene a "general council"  
2 meeting without the Tribe's consent and have non-members in the  
3 surrounding community participate in that "re-organization." Ex.  
4 "17," California Valley Miwok Tribe v. Pacific Director, BIA  
5 (01/28/2010) 51 IBIA 103, 120. As stated, the BIA was forcing  
6 this issue, not because it felt the General Council was invalid  
7 at the outset, but rather because it felt the Tribe could not  
8 qualify for federal benefits without being re-organized under  
9 the IRA. The IBIA did not refer any issue concerning the  
10 validity of the General Council. It referred this "enrollment"  
11 dispute to the AS-IA because the IBIA lacked jurisdiction to  
12 decide that issue. It stated:

13 "...In this appeal, Burley contends that BIA exceeded  
14 its authority in determining who would constitute the  
15 'greater tribal community,' or class of 'putative members,'  
16 and in deciding that they could participate as part of a  
17 'general council' meeting of the Tribe, to decide  
18 membership and organizational issues.

19 "As evidenced by the decisions of the Superintendent  
20 and the Regional Director, and the public notices published  
21 by BIA in 2007, BIA apparently has decided to create a base  
22 roll of individuals who satisfy criteria that BIA has  
23 determined to be appropriate and who will be entitled to  
24 participate—effectively as members (albeit in a somewhat  
25 undefined capacity)—in a 'general council' meeting of the  
26 Tribe to organize the Tribe. Although the facts of this  
27 case render BIA's decision far from a typical enrollment  
28 adjudication, we conclude [...], in substance, that is what  
29 it is. Whether or not some or all of the individuals BIA  
30 would determine, under the Decision, to be 'putative  
31 members' of the Tribe will ultimately be enrolled, BIA's  
32 determination of their 'putative membership' apparently  
33 will effectively 'enroll' them as members of the 'general  
34 council' that is to meet. And that general council, as  
35 apparently envisioned by BIA, will have the authority to  
36 determine permanent membership criteria.

37 "Understood in the context of the history of this  
38 Tribe, and BIA's dealings with the Tribe since  
39 approximately 1999, **this case is properly characterized as**

1 an enrollment dispute...Because the Board lacks  
2 jurisdiction to adjudicate tribal enrollment disputes, we  
3 dismiss this claim and refer it to the Assistant  
4 Secretary.” (Emphasis added).

51 IBIA at 120-121.

5 In the same way the AS-IA observed as undisputed that the  
6 Tribe was a federally-recognized Tribe (AS-IA August 31, 2011  
7 Decision, page 1), the AS-IA in his August 2011 Decision  
8 observed as undisputed the fact that the Tribe “operates under a  
9 General Council form of government, pursuant to Resolution #CG-  
10 98-01.” (Id. at page 2). Whether the General Council was  
11 invalid at the outset was not referred to him for resolution.  
12 Nor could it have been, because **Burley was not disputing that**  
13 **issue in her appeal before the IBIA.** Nor was the BIA. As  
14 stated, the issue first came up when Dixie, not Burley, raised  
15 it in his January 24, 2011 complaint he filed in federal court  
16 challenging the AS-IA’s December 22, 2010 Decision, and again on  
17 October 17, 2011, when he challenged the August 31, 2011 AS-IA’s  
18 Decision.

19 Accordingly, it was improper and erroneous for the AS-IA to  
20 entertain and decide that issue in his December 30, 2015  
21 Decision.

22 **E. THE 2015 DECISION ERRONEOUSLY CONCLUDED THAT THE 1998**  
23 **GENERAL COUNCIL WAS ESTABLISHED MERELY TO “MANAGE THE**  
24 **PROCESS “OR REORGANIZING THE TRIBE”**

25 In his 2015 Decision, the AS-IA concluded that the 1998  
26 Resolution establishing the General Council was enacted merely  
27 to “*manage the process* of re-organizing the Tribe.” (2015  
28 Decision, page 5). The AS-IA used this erroneous statement to  
justify its further determination that the Tribe was required to  
re-organize under the IRA with the participation of non-members  
 (“putative members”) in the surrounding community, all in  
opposition to the determinations made by the previous AS-IA in



1 his August 2011 Decision. In truth and fact, nowhere in the  
2 1998 Resolution is there any mention that it was established to  
3 "manage the process of re-organizing the Tribe."

4 While the Tribe had the option of re-organizing under the  
5 IRA, and the record reflects the Tribe pursued that option for a  
6 while but decided against it, the 1998 Resolution clearly  
7 provides that it "establishe[d] a General Council to serve as  
8 the governing body of the Tribe." (Page 2 of Resolution). It  
9 was not established to "manage the process of reorganizing the  
10 Tribe" under the IRA. Indeed, the title of the Resolution  
11 clearly states:

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

14 (Ex. "9," Resolution #GC-98-01, page 1). If, pursuant to 25  
15 U.S.C. § 476(h), the Tribe is not required to "organize" under  
16 the IRA, and the Tribe decides not to pursue that option, then  
17 the General Council remains as the governing body of the Tribe.  
18 As stated in the 1998 Resolution:

19 "**RESOLVED**, That the General Council shall exist until a  
20 Constitution is formally adopted by the Tribe and approved  
21 by the Secretary of the Interior or his authorized  
22 representative, unless this resolution is rescinded through  
23 subsequent resolution of the General Council." (Emphasis  
24 added).

25 (Ex. "9," Resolution #GC-98-01, page 3).

26 In addition, the BIA initially suggested the Tribe operate  
27 either as a General Council or an Interim Tribal Council, but  
28 the Tribe chose the first option, strongly suggesting that it  
did not want to be tied to the idea of having to re-organize  
under the IRA if it later decided against it. (Ex. "18," BIA  
letter to Dixie, dated September 24, 1998, pages 2-3). Indeed,  
the Tribe ultimately chose to simply operate as a General  
Council outside the IRA, and that's where the trouble began with

1 the BIA later trying to force the Tribe to re-organize under the  
2 IRA.

3 **F. THE 2015 DECISION INCORRECTLY CONCLUDES THAT PRIOR FEDERAL**  
4 **COURT DECISIONS HAVE HELD THAT THE TRIBE'S MEMBERSHIP IS**  
5 **LARGER THAN FIVE MEMBERS AND HAS MISCONSTRUED THE HISTORY**  
6 **OF THE CALIFORNIA RANCHERIAS**

7 The 2015 Decision states that "[a]ll of the Federal court  
8 decisions examining the CVMT dispute make clear that the Tribe  
9 is not limited to five individuals." (Page 3 of AS-IA December  
10 30, 2015 Decision). This is inaccurate.

11 No federal court decision involving the Tribe directly  
12 addressed the issue of whether the Tribe's membership consists  
13 of five members and whether the General Council is the duly  
14 constituted government of the Tribe. Indeed, the U.S. District  
15 Court remanding the AS-IA's 2011 Decision for reconsideration  
16 made the same observation. In rejecting the Dixie Faction's  
17 argument that collateral estoppel bars the Secretary from  
18 recognizing the General Council, the Court observed in a  
19 footnote as follows:

20 ...CVMT I and CVMT II do not share the same contested issue  
21 with this case. (citation). The only issue before the  
22 courts CVMT I and CVMT II was whether the Secretary had the  
23 authority to refuse to approve a constitution submitted  
24 under IRA § 476(h)(1). The courts did not directly address  
25 the issues raised here, namely whether the Tribe's  
26 membership consists of five members and whether the General  
27 Council is the duly constituted government of the Tribe...

28 5 F.Supp.3d at 101, fn. 15. The U.S District Court remanding  
the 2011 Decision for reconsideration merely criticized the AS-  
IA for simply assuming that the Tribe consists of five members,  
but made no ruling or holding itself that it was. 5 F.Supp.3d  
at 99 ("...rather than simply assume that the Tribe consists of  
five members, the Assistant Secretary was required to first  
determine whether the membership had been properly limited to

1 these five individuals"). Thus, no Court has ever held that the  
2 Tribe includes more than five members.

3 In addition, the AS-IA recounted an inaccurate history of  
4 the California Rancherias to further support its erroneous  
5 conclusion that the Tribe is not limited to five members. It  
6 stated without any evidentiary support as follows:

7 "When a parcel on a Rancheria came available, BIA would  
8 assign the land to such a non-resident Indian who was  
9 associated with the band, if possible...Thus, such  
10 associated band Indians who were non-residents were  
11 potential residents. And since membership in an  
12 unorganized Rancheria was tied to residence, potential  
13 residents equated to potential members."

14 (Ex. "19," AS-IA's December 30, 2015 Decision, page 4). There  
15 has never been an occasion where the BIA has determined that the  
16 membership lists of unorganized California Rancherias should be  
17 culled from "potential residents," and neither the AS-IA nor the  
18 Dixie Faction can provide evidence of such instances.

19 In most instances, the California Rancherias were  
20 terminated by the Rancheria Termination Act, i.e., P.L. 85-671.  
21 Thereafter, many unorganized Rancherias sought restoration of  
22 their status as federally recognized tribes through litigation.  
23 In those instances, following restoration of these Rancherias  
24 through stipulated judgments, the BIA looked to the **actual**  
25 residents and relied on distributee lists created during the  
26 termination period as the most accurate representation of the  
27 active members of a particular tribe and determined that only  
28 those individuals were entitled to participate in the tribes'  
reorganization. See Stipulated Judgment, Paragraph 6, Wilton  
Miwok Rancheria v. Salazar (N.D.Cal. June 8, 2009) No. C-07-  
02681, Dkt. 61 (stipulation between the United States and the  
Wilton Miwok Rancheria that "the initial tribal organization of  
the Tribe shall be a General Council consisting of all

1 distributes and dependent members listed in the Distribution  
 2 Plan...."); Alvarado v. Table Mountain Rancheria (N.D.Cal. July  
 3 28, 2005) 2005 WL 1806368, at \*1 (noting that the restoration of  
 4 the Table Mountain Rancheria involved reference to "Indians  
 5 named in the distribution plan of the assets of the Table  
 6 Mountain Rancheria and their successors in interests"), *aff'd on*  
 7 *other grounds*, (9<sup>th</sup> Cir. 2007) 509 F.3d 1008; Alan-Wilson v.  
 8 Sacramento Area Dir. (1997) 30 IBIA 241, 255 (concluding that  
 9 the individuals entitled to participate in the organization of  
 10 the Cloverdale Rancheria was based on the list of distributees  
 11 and the distributees' lineal descendants). These cases show  
 12 that when the BIA has had to determine who is eligible to  
 13 reorganize a tribe, it has looked to the distribute list—  
 14 reflecting actual residence on the Rancheria—as a reliable  
 15 record to determine membership. There is no legal basis  
 16 whatsoever—in the case of terminated tribes or tribes that  
 17 maintained federal recognition—for treating **potential** residents  
 18 as members for purposes of reorganization as the AS-IA's 2015  
 19 decision states.

20 Accordingly, the AS-IA relied upon these inaccurate facts  
 21 to support its erroneous conclusion that the Tribe is not  
 22 limited to five members.

23 **G. THE "ELIGIBLE GROUP SYSTEM" IMPROPERLY FORCES THE TRIBE TO**  
 24 **"RE-ORGANIZE"**

25 The AS-IA's 2015 Decision establishing the novel "Eligible  
 26 Group" system creates a system contrary to federal precedent and  
 27 the requirements of the IRA that equates potential membership  
 28 with actual membership.

When Burley and her family were adopted into the Tribe by  
 Dixie, their enrollment changed their status from individuals  
 with Miwok ancestry to members of a small tribe. In fact, the  
 2015 Decision recognizes that at the time of the Burley family's

1 enrollment the Tribe was suffering from the effects of a  
2 "dwindling tribe." (Ex. "19," AS-IA's December 30, 2015  
3 Decision, page 4, fn. 20). Inexplicably, the 2015 Decision  
4 rejects the 1998 Resolution establishing the General Council on  
5 the purported ground that "the people who approved the 1998  
6 Resolution...are not the majority of those eligible to take part  
7 in the reorganization of the Tribe." (Id. at page 5). The 2015  
8 decision then erroneously creates an "Eligible group" system to  
9 facilitate the reorganization of the Tribe that includes a  
10 larger pool of eligible people based not upon membership, but  
11 based upon descent, contrary to well established Indian law.

12 To be sure, the purported "Eligible group" system  
13 improperly places persons with only Miwok ancestry on par with  
14 enrolled members. See Santa Clara Pueblo v. Martinez (1978) 436  
15 U.S. 49, 55-56, 72, fn. 32. It also violates the provisions of  
16 25 U.S.C. § 476(f) and (h), because it forces the Tribe to  
17 reorganize under the IRA in order to receive federal benefits.

#### 18 IV.

#### 19 **PLAINTIFFS HAVE SHOWN THEY ARE LIKELY TO SUFFER IMMINENT AND** 20 **IRREPARABLE HARM ABSENT A STAY**

21 The Dixie Faction argues that Plaintiffs here will not  
22 suffer any imminent an irreparable harm so as to warrant a stay  
23 of the 2015 Decision. This contention is without merit.

24 The fact that the AS-IA's 2011 decision was stayed by its  
25 own terms cuts against the Dixie Faction's argument. The Dixie  
26 Faction had already sued the federal government challenging the  
27 2011 Decision when the AS-IA's Decision came down, because the  
28 Dixie faction had sued over the AS-IA's December 22, 2010  
Decision, which was withdrawn. In light of that pending  
litigation, the AS-IA incorporated a stay of his own decision  
"pending resolution of the litigation in the District Court for  
the District of Columbia." (Ex. "16," AS-IA's August 31, 2011

1 Decision, page 8). There is no reason why the Court should not  
2 do the same here. The issues are the same. The AS-IA reversed  
3 its position, and now the Plaintiffs are challenging that  
4 decision and requesting that the AS-IA's 2011 Decision be re-  
5 affirmed as the correct one.

6 As stated, the California Gambling Control Commission ("the  
7 Commission") has been paying out but withholding certain  
8 quarterly payments of Revenue Sharing Trust Fund ("RSTF") money  
9 for the Tribe. Presently, the RSTF payments being withheld  
10 exceed \$13 million. The AS-IA's 2015 Decision provides that the  
11 Dixie Faction may submit additional evidence that their proposed  
12 2013 Constitution was validly ratified and that adequate notice  
13 was given to others in the surrounding community to participate  
14 in the re-organization of the Tribe. Once the BIA accepts the  
15 Dixie Faction's proposed Constitution, the Dixie Faction will  
16 use that to get the Commission to release the RSTF payments to  
17 them, despite the fact that this lawsuit is presently  
18 challenging the AS-IA's 2015 Decision.

19 The Dixie Faction contends that if the BIA approves the  
20 Dixie Faction's proposed Constitution, the Plaintiffs can always  
21 administratively appeal that agency action. This contention is  
22 without merit, and skirts the issue. The Plaintiffs should not  
23 be strapped with the burden of battling two fronts. A stay will  
24 prevent that from ever occurring and allow the parties to  
25 resolve the issue here instead. If the Court grants the relief  
26 sought by the Plaintiffs, there will be no administrative  
27 appeal, because the BIA will not be authorized to approve the  
28 Dixie Faction's Constitution and allow that faction to take  
control of the Tribe.

The Dixie Faction's argument against a stay is premised on  
the erroneous assumption that it is the recognized, controlling  
governing body of the Tribe. However, that decision has not yet

1 been made. For example, if the RSTF payments (over \$13 million)  
2 are released to the Dixie Faction, and the AS-IA's 2015 Decision  
3 is reversed, the money will be irretrievably lost. It is  
4 unlikely the Dixie Faction will ever return those funds to the  
5 Tribe. This was the position the Dixie Faction took in its  
6 Complaint challenging the AS-IA's December 22, 2010 Decision  
7 (which the AS-IA reaffirmed in his August 2011 decision). Dixie  
8 alleged:

9 "The December 22 Decision, if upheld, could provide a  
10 basis for allowing Burley to divert funds held in trust for  
11 the Tribe by the State of California...

12 "In 2005, the Commission ceased distribution of the  
13 State Funds to Burley...Burley has filed litigation in  
14 California Superior Court, seeking to compel the Commission  
15 to resume distribution of the State Funds to her, including  
16 approximately \$6.6 million of the State Funds that the  
17 Commission has withheld since 2005...Burley seeks to  
18 introduce the December 22 Decision as evidence that she is  
19 entitled to receive the State Funds.

20 "If Burley receives the State Funds, Chief Dixie and  
21 the members of the Tribal Council will be denied the  
22 benefit of the State Funds, because the State of California  
23 has no control over the use of the State Funds once they  
24 are paid to the Tribe...."

25 (Ex. "20," Original Complaint filed by Dixie Faction, dated  
26 January 24, 2011, paragraph 64, pages 20-21). For the same  
27 reasons alleged by the Dixie Faction in the prior federal suit,  
28 the Plaintiffs will also suffer irreparable harm.

The Dixie Faction has plans to use the RSTF money earmarked  
for the Tribe to build a Casino under the control of a person by  
the name of Chadd Everone, a non-Indian, who purports to be the  
"deputy" of the Dixie Faction and Yakima Dixie. (See Ex. "21,"  
Appointment of Chadd Everone as Deputy, dated December 12,  
2003). For example, a document from Yakima Dixie's files,  
entitled "Bridge-Loan Agreement & Prospectus," shows that the

1 Dixie Faction has plans to use the RSTF money to build and  
2 operate a gambling casino. It states in relevant part as  
3 follows:

4 "‘Sheep Ranch...’ is a very small (<10 members), long-  
5 established (1916), federally recognized California Indian  
6 tribe...

7 "...[A]dministrative procedures and litigation are now  
8 in progress to return control of the tribe to Yakima so  
9 that he may receive about \$1.2 million in income that  
10 currently accrues to the tribe from the California Gambling  
11 [Control] Commission and so that the tribe can be  
12 position[ed] to create a casino."

13 (Ex. "22," Dixie Bridge-Loan Agreement & Prospectus, dated  
14 February 26, 2004, page 1). Notably, Dixie admits in this  
15 document that the Tribe has less than 10 members, in direct  
16 contradiction to the position he is currently taking, and the  
17 position he undertook in his federal suit challenging the ASI-  
18 IA's 2011 Decision. Those "members" are identified in his Last  
19 Will & Testament, dated February 9, 2004.

20 **V.**

21 **CONCLUSION**

22 For the foregoing reasons, and for the reasons set forth in  
23 Plaintiffs' motion papers, Plaintiffs' motion for a stay of the  
24 AS-IA's December 30, 2015 Decision should be granted, and remain  
25 in effect pending resolution of this litigation.

26 DATED: September 29, 2016

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