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Attorney for Plaintiffs
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,**) **DECLARATION OF MANUEL**
SILVIA BURLEY, RASHEL REZNOR;) **CORRALES, JR. IN SUPPORT OF**
ANJELICA PAULK; and TRISTIAN) **PLAINTIFFS' REPLY TO**
WALLACE) **INTERVENOR-DEFENDANTS'**

Plaintiffs,

vs.

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

Defendants.

I, Manuel Corrales, Jr., declare that if called a witness
in this case I could competently testify as follows:

1. I am an attorney at law duly licensed to practice law
in the State of California, the State of New Mexico, and the
State of Utah. I am the attorney of record for Plaintiffs
herein. I have personal knowledge of the facts set forth herein.

1 2. Attached herewith and marked as Exhibit "1" is a true
2 and correct copy of a Motion to Dismiss Appeal for Lack of
3 Jurisdiction.

4 3. Attached herewith and marked as Exhibit "2" is a true
5 and correct copy of a Stipulation of Voluntary Dismissal.

6 4. Attached herewith and marked as Exhibit "3" is a true
7 and correct copy of First Amended Complaint, filed October 17,
8 2011.

9 5. Attached herewith and marked as Exhibit "4" is a true
10 and correct copy of a Letter from BIA to Dixie dated February 4,
11 2000.

12 6. Attached herewith and marked as Exhibit "5" is a true
13 and correct copy of a BIA letter to Burley dated March 7, 2000.

14 7. Attached herewith and marked as Exhibit "6" is a true
15 and correct copy of the Complaint, "Sheep Ranch Miwok Tribe v.
16 Burley, et al.," Case No. CIV.S-01-1389 MLS-DAD filed July 18,
17 2001.

18 8. Attached herewith and marked as Exhibit "7" is a true
19 and correct copy of a BIA letter of July 12, 2000, to Burley.

20 9. Attached herewith and marked as Exhibit "8" is a true
21 and correct copy of Dixie Notice of Appeal, dated October 30,
22 2003.

23 10. Attached herewith and marked as Exhibit "9" is a true
24 and correct copy of the Resolution #GC-98-01.

25 11. Attached herewith and marked as Exhibit "10" is a true
26 and correct copy of a BIA letter to Dixie, dated February 11,
27 2005.

28 12. Attached herewith and marked as Exhibit "11" is a true
and correct copy of Yakima Dixie Will & Testament, May 5, 2004.

 13. Attached herewith and marked as Exhibit "12" is a true
and correct copy of the 2002 Federal Register.

1 14. Attached herewith and marked as Exhibit "13" is a true
2 and correct copy of a Letter from Sharon Blackwell at BIA to
3 Burley, dated June 7, 2001.

4 15. Attached herewith and marked as Exhibit "14" is a true
5 and correct copy of the PAs in Support of Intervenor-Defendant's
6 Motion to Dismiss, filed March 26, 2012

7 16. Attached herewith and marked as Exhibit "15" is a true
8 and correct copy of the Memorandum Opinion Denying Motion to
9 Dismiss, dated September 6, 2013.

10 17. Attached herewith and marked as Exhibit "16" is a true
11 and correct copy of the AS-IA's August 31, 2011 Decision.

12 18. Attached herewith and marked as Exhibit "17" is a true
13 and correct copy of California Valley Miwok Tribe v. Pacific
14 Director, BIA (01/28/2010) 51 IBIA 103, 120.

15 19. Attached herewith and marked as Exhibit "18" is a true
16 and correct copy of a BIA letter to Dixie, dated September 24,
17 1998.

18 20. Attached herewith and marked as Exhibit "19" is a true
19 and correct copy of the AS-IA's December 30, 2015 Decision.

20 21. Attached herewith and marked as Exhibit "20" is a true
21 and correct copy of the Original Complaint filed by Dixie
22 Faction, dated January 24, 2011.

23 22. Attached herewith and marked as Exhibit "21" is a true
24 and correct copy of the Appointment of Chadd Everone as Deputy,
25 dated December 12, 2003.

26 23. Attached herewith and marked as Exhibit "22" is a true
27 and correct copy of the Dixie Bridge-Loan Agreement &
28 Prospectus, dated February 26, 2004.

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1 24. Attached herewith and marked as Exhibit "23" is a true
2 and correct copy of an Order, January 24, 2002, No. CIV. S-01-
3 1389 LKK/DAD

4 I declare under penalty of perjury under the laws of the
5 State of California that the foregoing is true and correct.

6 Executed this 29th day of September 2016 at San Diego,
7 California.

8 /s/ Manuel Corrales, Jr.
9 MANUEL CORRALES, JR.

EXHIBIT “1”

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14-5014

CALIFORNIA VALLEY MIWOK TRIBE [“Burley faction”],
Defendant-Appellant,

v.

SALLY JEWELL, in her official capacity as Secretary, UNITED
STATES DEPARTMENT OF THE INTERIOR, *et al.*,
Defendants-Appellees,

and

CALIFORNIA VALLEY MIWOK TRIBE [“Dixie faction”], *et al.*,
Plaintiffs-Appellees.

On Appeal from the United States District Court
for the District of Columbia (Hon. Barbara J. Rothstein)
No. 11-cv-00160

MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

Defendant-appellant California Valley Miwok Tribe (the “Burley faction”) seeks to appeal a district court order remanding for further consideration a decision of the Department of the Interior’s Assistant Secretary – Indian Affairs. The United States has decided not to appeal the district court’s decision. Under this Court’s case law, it is

“axiomatic 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. *N. Air Cargo v. U.S. Postal Serv.*, 674 F.3d 852, 857 (D.C. Cir. 2012). Accordingly, this Court lacks jurisdiction, and the Burley faction’s appeal must be dismissed.

STATEMENT

This case arises out of a long-running leadership dispute between two factions that claim to speak for the California Valley Miwok Tribe. In connection with that dispute, the Assistant Secretary issued an August 31, 2011 decision finding, among other things, that the membership of the Tribe consists of five individuals and that the General Council established in 1998 “is vested with the governmental authority of the Tribe.” *See California Valley Miwok Tribe v. Jewell*, --- F. Supp. 2d ---, 2013 WL 6524636 at *9, *10 (D.D.C. 2013).

Plaintiff-appellees (the “Dixie faction”) challenged the Assistant Secretary’s decision in the district court, and the Burley faction intervened to defend the Assistant Secretary’s decision. *Id.* at *1. In a December 13, 2013 Order, the district court found that the Assistant Secretary’s decision was arbitrary and capricious because it failed to

explain the basis for certain key assumptions and failed to address certain contrary evidence in the record. *Id.* at *10-*11. The court remanded to the agency for reconsideration. *Id.* at *12.

The Burley faction then filed this appeal of the district court's Order. The United States, however, has decided to accept the remand ordered by the district court, and will be reconsidering the decision. The United States therefore has not appealed the Order, and the time for any such appeal expired on February 11, 2014. *See* FRAP 4(a)(1)(B).

ARGUMENT

The Burley faction's appeal must be dismissed, because the district court's order is not final within the meaning of 28 U.S.C. § 1291.

Under 28 U.S.C. § 1291, this Court's jurisdiction is ordinarily limited to appeals from "final decisions" by a district court. *See Pueblo of Sandia v. Babbitt*, 231 F.3d 878, 880 (D.C. Cir. 2000). This Court has construed the final judgment rule strictly, repeatedly noting that a decision is not "final" within the meaning of Section 1291 until it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Ibid.* (quoting *Digital Equip. Corp. v. Desktop Direct*, 511 U.S. 863, 867 (1994) (internal quotations, citation omitted)).

This finality requirement is meant to promote judicial efficiency by avoiding the inconvenience and costs of multiple appeals, *e.g.*, one from the remand order and one from a later district court order reviewing compliance with the remand. *Pueblo of Sandia*, 231 F.3d at 880 (citing *In re St. Charles Preservation Investors, Ltd.*, 916 F.2d 727, 729 (D.C. Cir. 1990)); *see Coopers & Lybrand v. Livesay*, 437 U.S. 463, 471 (1978). Deferring review also allows for the possibility that an appeal might not be needed if the agency's actions on remand satisfy all parties. *Ibid.*

"It is black letter law" in this Circuit "that a district court's remand order is not normally 'final' for purposes of appeal under 28 U.S.C. § 1291." *Sierra Club v. U.S. Dept. of Agriculture*, 716 F.3d 653, 656 (D.C. Cir. 2013) (citing *Pueblo of Sandia*, 231 F.3d at 880, and *N.C. Fisheries Ass'n v. Gutierrez*, 550 F.3d 16, 19 (D.C. Cir. 2008)); *accord NAACP v. U.S. Sugar Corp.*, 84 F.3d 1432, 1436 (D.C. Cir. 1996); *N. Air Cargo v. U.S. Postal Serv.*, 674 F.3d 852, 857 (D.C. Cir. 2012). This is so because rather than resolving the dispute, a remand order "simply turns it back for further proceedings by the agency, after which it may well return [to court] again." *Am. Hawaii Cruises v. Skinner*, 893 F.2d

1400, 1403 (D.C. Cir. 1990). Consequently, remand orders generally cannot be appealed by private parties. *NAACP*, 84 F.3d at 1436.

There is a limited exception to the general rule of non-appealability that applies when the *agency* to which the case is remanded seeks to appeal, as it would have no opportunity to appeal from its own order after proceeding on remand. *Occidental Petroleum Corp. v. SEC*, 873 F.3d 325, 330 (D.C. Cir. 1989). But the Burley faction is not a federal agency, and therefore it cannot take advantage of the *Occidental Petroleum* exception. *See id.* at 331 (“a private party may not, in most cases, immediately appeal a district court order remanding a case for further agency proceedings”); *N.C. Fisheries Ass’n*, 550 F.3d at 20 (“that path is not normally available to a private party”). *Cf. NAACP*, 84 F.3d at 1436 (considering arguments by intervenor challenging remand order only because the government had also appealed).

The fact that the Burley faction intervened on the side of the Assistant Secretary and seeks to uphold the Assistant Secretary’s decision does not allow it to take advantage of the *Occidental Petroleum* exception. This Court has dismissed private-party appeals of remand

orders where the private party is aligned with the government. *See, e.g., Pueblo of Sandia*, 231 F.3d at 880; *U.S. Sugar Corp.*, 84 F.3d at 1436. That is because “the issue of appealability under § 1291 is to be determined for the entire category to which a claim belongs, without regard to the chance that litigation might be speeded, or a ‘particular injustice’ averted by a prompt appellate court decision.” *Pueblo of Sandia*, 231 F.3d at 880 (quoting *Digital Equip. Corp.*, 511 U.S. at 868). By contrast, when the government appeals a remand order, the only reason that a Court has jurisdiction to consider the arguments of an intervenor is because the government’s appeal provides the basis for jurisdiction. *See NAACP*, 84 F.3d at 1436.

CONCLUSION

The Burley faction’s appeal should be dismissed.

Respectfully submitted,

/s/Mark R. Haag
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February 2014
DJ# 90-2-4-13338

CERTIFICATE OF PARTIES AND AMICI

The following persons and entities appeared as parties, intervenors, or amici before the district court or this court:

California Valley Miwok Tribe

Tribal Council

Yakima Dixie

Velma Whitebear

Antonia Lopez

Michael Mendibles

Evelyn Wilson

Antoine Azevedo

Larry Echo Hawk, in his official capacity as Assistant Secretary – Indian Affairs, United States Department of the Interior

Michael Black, in his official capacity as Assistant Secretary – Indian Affairs, United States Department of the Interior

Kenneth Lee Salazar, in his official capacity as Secretary, United States Department of the Interior

Sally Jewell, in her official capacity as Secretary, United States Department of the Interior

/s/Mark R. Haag

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2014, I served the forgoing Motion by electronic filing using the Court's CM/ECF system, which will send notification of such filing to all ECF-registered parties in this case.

I further certify that on February 25, 2014, a copy of the foregoing Motion was sent by U.S. Mail, postage prepaid, to the following:

Robert A. Rosette
Saba Bazazieh
565 West Chandler Blvd.
Suite 212
Chandler, AZ 85225

/s/Mark R. Haag

EXHIBIT “2”

NO 14-5014

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CALIFORNIA VALLEY MIWOK TRIBE, et al.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellees,

CALIFORNIA VALLEY MIWOK TRIBE, a federally-recognized Indian tribe

Defendant-Appellant.

On Appeal from the United States District Court
For the District of Columbia, 1:11-cv-000160-BJR
The Honorable Barbara J Rothstein, Senior Judge

STIPULATION OF VOLUNTARY DISMISSAL

IT IS HEREBY STIPULATED AND AGREED by and between the parties
that the above-captioned appeal is voluntarily dismissed pursuant to Federal Rule
of Appellate Procedure 42(b).

...

...

...

...

Each party shall bear its own costs.

/s/ Saba Bazzazieh
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Attorneys for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2014, the foregoing Stipulation of Voluntary Dismissal was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system and served electronically on all counsel of record.

/s/ Leigh D. Wink

Leigh D. Wink

EXHIBIT “3”

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

THE CALIFORNIA VALLEY MIWOK
TRIBE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

THE TRIBAL COUNCIL,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

YAKIMA DIXIE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

VELMA WHITEBEAR,
213 Downing Drive
Galt, CA 95632

ANTONIA LOPEZ,
P.O. Box 1432
Jackson, CA 95642

MICHAEL MENDIBLES,
P.O. Box 266
West Point, CA 95255

EVELYN WILSON,
4104 Blagen Blvd.
West Point, CA 95255

ANTONE AZEVEDO,
4001 Carribee Ct.
North Highlands, CA 95660

v.

KEN SALAZAR, in his official capacity as
Secretary of the United States Department of the
Interior,
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

LARRY ECHO HAWK, in his official capacity as
Assistant Secretary-Indian Affairs of the United
States Department of the Interior,
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

MICHAEL BLACK, in his official capacity as
Director of the Bureau of Indian Affairs within the

Case No. 1:11-cv-00160-RWR

Hon. Richard W. Roberts

United States Department of the Interior,
Bureau of Indian Affairs
MS-4606
1849 C Street, N.W.
Washington, D.C. 20240

Defendants.

**PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF**

Plaintiffs ask the Court to vacate an erroneous decision of the Assistant Secretary – Indian Affairs for the United States Department of the Interior ("Department") that arbitrarily limits the membership of a federally recognized Indian tribe to five people and disenfranchises 242 adult members of the tribe plus their children, without due process and in violation of the Department's trust responsibilities to Indian tribes and their members. Because the decision knowingly recognizes a tribal government based on a tribal document adopted without the knowledge, participation or consent of the vast majority of the tribe's members, it violates federal law and must be reversed.

Plaintiffs Yakima Dixie, the California Valley Miwok Tribe ("Tribe"), and Tribe members Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo, individually and as members of the Tribal Council ("Council"), therefore submit this First Amended Complaint against the Defendants, Ken Salazar, Secretary of the Department, Larry Echo Hawk, Assistant Secretary– Indian Affairs ("AS-IA") of the Department, and Michael Black, Director of the Bureau of Indian Affairs ("BIA") within the Department, and state and allege as follows:

INTRODUCTION AND SUMMARY

1. The Tribe is a federally recognized Indian tribe that was recognized around 1915 when the United States purchased the Sheep Ranch Rancheria for the benefit of a small band of Miwok Indians living near Sheep Ranch, California. Today the Tribe has approximately 242 adult members,

and approximately 350 members under the age of 18, who are lineal descendants of the original 1915 members.

2. In 1935, the Tribe voted to accept the Indian Reorganization Act of 1934 ("IRA"), which allowed tribes to assume the responsibility of self-government by adopting governing documents and establishing a tribal government. The process of creating a tribal government is known as "organization," or sometimes "reorganization." For tribes that have accepted the IRA, organization must comply with the substantive and procedural requirements of the IRA.

3. Despite accepting the IRA, the Tribe has never organized itself. For many years its members maintained only an informal Tribal community, although many lived on the Rancheria at various times or in the surrounding area and maintained familial and community ties.

4. In 1998, at the BIA's urging, a woman named Silvia Burley approached Yakima Dixie, whom the BIA recognized as a Tribal spokesperson at that time. Ms. Burley, a resident of a neighboring Indian community, asked to be enrolled into the Tribe along with her two daughters and her granddaughter (collectively, the "Burleys"). The BIA erroneously told Mr. Dixie that he had the authority to enroll the Burleys into the Tribe, and he agreed to do so. The BIA thereafter treated the Burleys as Tribal members, although their enrollment was invalid without Tribal consent.

5. Around September 1998, Mr. Dixie and Ms. Burley began discussions with the BIA about organizing the Tribe. The BIA erroneously told Mr. Dixie that the people entitled to participate in the initial organization of the Tribe were determined by a plan for distribution of tribal assets that had been approved in 1966 as part of an unsuccessful attempt to "terminate" the Tribe under the California Rancheria Act. The BIA concluded that these people included Mr. Dixie, his brother Melvin Dixie, and the Burleys (by virtue of their purported enrollment), and that those individuals were entitled to decide who else might participate in Tribal organization. This conclusion was and is incorrect.

6. Contrary to the BIA's conclusion, all lineal descendants of the Tribe's original members (circa 1915) were members of the Tribe in 1998 and were entitled to participate in any organization effort. Of the Tribe's current members, at least 83 were alive and over the age of 18 in 1998 and were entitled to participate in any organization of the Tribe (the "1998 Adult Members"). Other, now-deceased members were also alive in 1998 and entitled to participate.

7. The BIA suggested to Mr. Dixie that the Tribe form a general council as an interim step in order to manage itself until it had adopted a constitution and completed the organization process as defined in the IRA. A general council is a form of government consisting of all of a tribe's members. The BIA supplied a resolution purporting to create such a general council, and Mr. Dixie and Ms. Burley signed the resolution on November 5, 1998 (the "1998 Resolution"). The adoption of the 1998 Resolution was invalid.

8. The Tribe never completed the organization process that the 1998 Resolution was intended to facilitate. A dispute erupted between Ms. Burley and Mr. Dixie over control of the organization process, with both sides pursuing organization under separate documents.

9. The BIA rejected constitutions that Ms. Burley submitted in the name of the Tribe in 1999, 2000, 2001 and 2004, which essentially would have limited Tribal membership to Mr. Dixie, the Burleys and their descendants. The BIA, reversing the erroneous advice it provided Mr. Dixie in 1999, informed Ms. Burley that organization must involve the entire Tribal community, and it identified a number of other people who must be allowed to participate, including the lineal descendants of historical Tribe members. Ms. Burley responded by filing a series of administrative appeals and federal court challenges seeking to compel the BIA to recognize the Tribe as organized under her constitution and with her as its leader.

10. Ms. Burley's appeals culminated in a 2006 decision by the federal district court for the District of Columbia, which upheld the BIA's rejection of Ms. Burley's 2004 constitution. The court

held that the IRA imposes fundamental requirements on tribal organization, including notice, a defined process, and minimum levels of participation. *California Valley Miwok Tribe v. United States*, 424 F.Supp.2d 197 (D.D.C. Mar. 31, 2006). The federal government argued that the BIA has a "duty to ensure that the interests of all tribe members are protected during organization and that governing documents reflect the will of a majority of the Tribe's members," and the court agreed. Because the BIA estimated that the Tribal community entitled to participate in organization "may exceed 250 members," while Ms. Burley had involved only herself and her daughters, rejection of the Burley constitution was consistent with the BIA's duty.

11. The Court of Appeals for the District of Columbia Circuit affirmed in a published opinion, holding that, "Although [the Tribe], by its own admission, has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary." *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267 (D.C. Cir. 2008).

12. Following the district court's decision, in 2006, the BIA attempted to assist the Tribe in identifying its entire membership by asking descendants of the 1915 members to submit genealogies showing their status as lineal descendants of historical Tribe members. Once the lineal descendants were identified, the BIA planned to arrange a meeting so the members could proceed with Tribal organization if they wished to do so. Ms. Burley filed administrative appeals, essentially attempting to re-litigate her previous position that the Tribe was already organized under her leadership. Those appeals eventually led to a decision on August 31, 2011 by the AS-IA (Exhibit "A") (the "August 31 Decision").

13. In the August 31 Decision, the AS-IA found, without any explanation or support, that the membership of the Tribe is limited to five people. In doing so, he ignored the overwhelming

evidence before him that the Tribe's membership currently includes 242 adult members and their children, who are lineal descendants of historical Tribe members.

14. In the August 31 Decision, the AS-IA found that those five people had established a valid Tribal government under the 1998 Resolution. The 1998 Resolution was void *ab initio* as a Tribal action and could not be a valid governing document because it was adopted without notice to, or consent of, a vast majority of the Tribe and did not comply with the IRA.

15. In the August 31 Decision, the AS-IA explicitly repudiated and failed to carry out the BIA's duty to ensure that the interests of all Tribal members are protected during organization, and that the governing documents for the Tribe reflect the will of a majority of the members, as required by the IRA and binding decisional law of this Circuit. The AS-IA has no authority to do so.

16. The August 31 Decision cedes complete control of the Tribe to the Burleys and deprives Plaintiffs and the Tribe's other members of fundamental rights in violation of the U.S. Constitution, the Indian Civil Rights Act, the IRA, the Department's trust responsibility to the Tribe and its members, and other federal laws.

JURISDICTION AND VENUE

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

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

19. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1362 because the Tribe is an Indian tribe duly recognized by the Secretary of the Interior, and the matter in controversy arises under the Constitution, laws or treaties of the United States.

membership. This duty is informed and strengthened by the United States' trust obligations to Indian tribes and their members.

The California Rancheria Act and Failure to Terminate the Tribe

41. In 1958, Congress enacted the California Rancheria Act, which authorized the Secretary to terminate the lands and trust status of enumerated Indian tribes on California Rancherias under certain conditions.

42. The Tribe was never terminated pursuant to the California Rancheria Act. The United States has recognized the Tribe as an Indian Tribe since its inception and continues to do so.

The Invalid 1998 Resolution

43. The 1998 Resolution recites that it was signed by a majority of the Tribe's adult members. That is incorrect. A "majority" means more than one-half. Only two people signed the 1998 Resolution.

44. The 1998 Resolution identified four Tribal members who were adults in 1998: Yakima Dixie, Melvin Dixie, Silvia Burley and Rashel Reznor. The 1998 Resolution did not state that these were the only members of the Tribe. It recited that that Tribe consisted of "at least" those members. 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.

45. The 1998 Adult Members were also members of the Tribe in November 1998. There were also many other members in 1998 who have died since then. Except for Yakima Dixie, none of the 1998 Adult members or the now-deceased members signed the 1998 Resolution.

46. Neither Melvin Dixie nor any of the 1998 Adult Members (except for Yakima Dixie) or the now-deceased members received actual or constructive notice of the 1998 Resolution prior to its adoption or were provided with an opportunity to participate in the process of drafting or voting on the 1998 Resolution. Most or all of these members were living in the vicinity of the Sheep Ranch

Rancheria in 1998, were readily identifiable as Tribal members, and were known or should have been known to the BIA.

47. The 1998 Resolution was invalid and of no force and effect because it was adopted without notice to, participation by, or consent of a majority of the Tribe's adult members.

Burley Seeks Control of the Tribe

48. Shortly after her purported enrollment, Ms. Burley sought to take control of the Tribe. The 1998 Resolution named Mr. Dixie as the Tribe's chairperson. But in April 1999, Burley claimed that she was the Chairperson. That claim was and is false.

49. Burley submitted proposed Tribal constitutions to the BIA in 1999, 2000 and 2001. The constitutions would have limited Tribal membership to the Burleys, their descendants and, in some cases, Mr. Dixie. No Tribal member except for the Burleys had any part in the development or ratification of these constitutions.

50. The BIA did not approve any of the constitutions that Burley submitted.

The BIA Rejects Burley's 2004 Constitution

51. Burley submitted another proposed constitution to the BIA in February 2004, purportedly to demonstrate that the Tribe was already organized with Ms. Burley as its leader.

52. Although Burley had acknowledged in federal court in 2002 that the Tribe had a potential citizenship of "nearly 250 people," her proposed constitution recognized only five members.

53. In a March 26, 2004 letter to Burley, the BIA declined to approve her latest constitution. The BIA explained that efforts to organize a Tribe must reflect the involvement of the whole tribal community:

Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was attempted or has occurred with the purported organization of your tribe. . . . To our knowledge, the only persons of Indian descent involved in the tribe's organization

that the Burley Government was elected, and its governing documents adopted, by just three people and without the participation of the vast majority of the potential members of the Tribe."

Mr. Dixie's Efforts to Organize the Tribe

65. While the Burleys were attempting to limit the Tribe to their immediate family, Mr. Dixie and other Tribal members began to identify and bring together all of the Tribe's members. Beginning in 2003, they held open meetings of the Tribe's membership each month, which have been held ever since. They also formed the Tribal Council.

66. The Council met with the BIA in September 2003 and requested that the BIA call an election pursuant to the IRA to adopt a Tribal constitution and establish government-to-government relations with the United States. The BIA did not act on the Council's request but continued to meet regularly with Mr. Dixie and the Council to discuss efforts to organize the Tribe.

67. With the support and participation of the Tribe's members, the Tribal Council has met approximately every other month since its formation to discuss Tribal policy, enact resolutions, and conduct other Tribal business. The Council has made great strides in rebuilding a functioning Tribal community. Since at least 2004, the Tribe and its members have engaged in a variety of cultural, religious, economic and social activities that benefit the full Tribal membership, strengthen the Tribal community and restore historic ties with the larger Indian community. Tribal activities include:

a. The Tribe intervenes in child custody proceedings under the Indian Child Welfare Act, on behalf of children of Tribe members. In those cases where a child is removed from its family, the Tribe seeks to have the child placed with an Indian family or a family with ties to Indian traditions, so that the child is not deprived of its cultural heritage and place in the Indian community. Burley has opposed the Tribe's efforts in these cases.

b. The California Native American Heritage Commission has recognized the Tribe's Cultural Preservation Committee. Several Tribe members have been trained to serve as

102. The August 31 Decision violates APA section 706(2)(A) because it concludes that the Tribe only has five members, relies on the 1998 Resolution which is invalid because it was not adopted by a majority of the Tribe's members, and relies on an enrollment of the Burleys into the Tribe which was not approved by a majority of the Tribe's members.

103. The August 31 Decision violates APA section 706(2)(A) because it abdicates the Secretary's fiduciary duty to the Tribe and its members. Under the IRA, the Secretary has a duty to ensure that the Department recognizes only a legitimate tribal government that reflects the participation of a majority of the Tribe's membership. In addition, under section 450J of PL 638, the Secretary has a fiduciary duty to ensure that any tribal organization that receives federal funds to support tribal government, programs and services actually uses those funds to provide services and assistance to the tribe's members in a fair and uniform manner.

104. The August 31 Decision is arbitrary and capricious because the AS-IA failed to consider relevant evidence bearing on the issues before him and ignored evidence contradicting his position. This evidence includes, but is not limited to:

- a. Personal genealogies and other information submitted to the BIA in response to the BIA's 2007 public notice regarding Tribal organization, which demonstrate that there are currently several hundred adult members of the Tribe;
- b. The Tribe's current roster of adult members submitted with Plaintiffs' May 3, 2011 briefing, which demonstrates that there are currently several hundred adult members of the Tribe;
- c. Information showing that the 1998 Resolution was adopted without the participation or consent of a majority of the Tribe's adult members at that time; and

- d. Evidence of irregularities and improprieties in Burley's attempt to displace Mr. Dixie as Tribal chairperson and take control of the Tribe for herself.

105. The August 31 Decision violates APA section 706(2)(A) because, on information and belief, the AS-IA and personnel involved in the decisional process for the August 31 Decision engaged in improper ex parte contacts with representatives of Ms. Burley prior to the issuance of the August 31 Decision, and prejudged the issues involved in the August 31 Decision, in violation of the Department's regulations at 43 C.F.R. Part 4, including 43 C.F.R. section 4.27.

106. The August 31 Decision violates APA section 706(2)(A) because, on information and belief, the AS-IA and personnel involved in the decisional process for the August 31 Decision engaged in improper ex parte contacts prior to the issuance of the August 31 Decision with BIA employees or representatives who represented the BIA in Ms. Burley's appeal before the Board, and prejudged the issues involved in the August 31 Decision, in violation of the Department's regulations at 43 C.F.R. Part 4, including 43 C.F.R. section 4.27.

107. As a direct and proximate result of the August 31 Decision, Mr. Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo have been and will continue to be denied the benefits of Tribe membership and will suffer irreparable injury and financial loss.

108. As a direct and proximate result of the August 31 Decision, Mr. Dixie, the Tribal Council, and Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo have been and will continue to be denied their rightful opportunity to participate in the organization and governance of the Tribe and will suffer irreparable injury and financial loss.

109. As a direct and proximate result of the August 31 Decision, the Tribe, the Tribal Council and the members of the Tribe, including Mr. Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo, have been and will continue to be denied the

H. Awarding the Plaintiffs damages, and attorneys fees and reasonable costs incurred in connection with this action; and

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

Respectfully submitted,

/s/ M. Roy Goldberg
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Dated: October 17, 2011

Of Counsel:

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EXHIBIT “4”



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
1824 Tribute Road, Suite J
Sacramento, CA 95815-4308



IN REPLY REFER TO:

FEB - 4 2000

Yakima K. Dixie, Vice-Chairperson
Sheep Ranch Rancheria
P.O. Box 41
Sheep Ranch, California 95250

Dear Mr. Dixie:

This correspondence serves three purposes. First, we respond to concerns raised by you and other persons purporting to be members of the Sheep Ranch Rancheria, during a meeting held at the Central California Agency (Agency) on December 28, 1999. Second, we respond to your delivery during the aforementioned meeting of the "Constitution of the (Sheep (Ranch Rancheria) Miwok Indian Tribe of California," purportedly adopted on December 11, 1999. Third, we give you notice of the meeting to be held on Tuesday, February 15, 2000, for the purpose of discussing further these issues among the members of the Tribe.

Allegations of Fraud Raised at our Meeting of December 28, 1999

The concerns raised at our meeting with you and other persons purported to be members of the Sheep Ranch Rancheria (Tribe) center around allegations of fraud or misconduct relative to the change in Tribal leadership during April and May 1999. You provided us with copies of two documents as support for your claims. The first document appears to be a resolution of the General Council, where at a special meeting held on April 20, 1999, the General Council accepted your resignation from the office of Chairperson. The second document contains two letters from you to Silvia Burley wherein you assert that you "cannot and will not (resign) as Chairman" but "do give (Ms. Burley)...the right to act as a delegate to represent the Sheep Ranch Indian Rancheria." During our meeting, you also stated that within two weeks you would submit to the Agency additional documents and statements supporting your claims. However, we did not receive anything from you as of the date of this letter.

At the conclusion of our meeting, we agreed to review our records and provide you with a response regarding your allegations. We also agreed that as a matter of protocol our response would be shared with the person presently recognized by the Agency as the Chairperson of the Tribe, Silvia Burley. We further agreed that our response would be among the subjects of discussion at a future meeting with the Tribe.

Background

Prior to August 1998, the Agency recognized you as the Spokesperson of the Tribe. This recognition was based upon the fact that you are a lineal descendant of the sole distributee (your mother, Mabel Hodge Dixie) identified in the Plan for the Distribution of the Assets of the Sheep Ranch Rancheria, as approved by the Associate Commissioner of Indian Affairs on October 12, 1966. You are also one of the two remaining heirs identified in the Order of Determination of Heirs issued on November 1, 1971, as reaffirmed by subsequent Order issued on April 14, 1993. At that time, the whereabouts of the other remaining heir (your brother Melvin Dixie) were unknown.

On August 5, 1998, as Spokesperson of the Tribe, you accepted as enrolled members of the Tribe four persons: (1) Silvia Burley, (2) her daughter Rashel Reznor, (3) her daughter Anjelica Paulk, and (4) her granddaughter Tristian Wallace. The documents evidencing your action do not state any restrictions upon the rights of these persons as members of the Tribe. As such, we view these persons as members of the Tribe, enjoying all benefits, privileges, rights, and responsibilities of Tribal membership. This includes the right to participate in the initial organization of the Tribe, provided that those persons are eighteen years or older.

On September 8, 1998, and again on October 16, 1998, Agency staff met with you, Ms. Burley, Ms. Reznor, and other interested parties (including representatives from California Indian Legal Services) to discuss the group's interest in formally organizing the Tribe. The group expressed an interest in proceeding and we agreed to provide technical assistance to the group.

Generally, the initial issue to be addressed in the process of organizing an "unterminated" Tribe is that of specifying those persons entitled to participate. The position of the Agency on this subject is that, at a minimum, those persons entitled to organize the Tribe are those persons now living and listed on either (1) the Distribution Plan or (2) the Order of Determination of Heirs, and the lineal descendants of those persons. As stated above, your August 5, 1998, enrollment action is viewed by the Agency as extending to Ms. Burley and Ms. Reznor the right of participation. Thus, as of that date, you, Ms. Burley, and Ms. Reznor formed the group of persons entitled to participate in the organization of the Tribe.

We also recommended that the group consider eliciting the participation of descendants of those persons listed on the Census of Sheepranch-Indians, as attached to the letter by the Special Indian Agent, dated August 13, 1915, recommending the purchase of land that would later become the Sheep Ranch Rancheria. At this time, we do not know whether the group has formally considered this recommendation.

Another recommendation we made involved the initial form of government to be adopted by the group, and was based upon the General Council concept. To this end, we prepared a draft resolution that would establish a General Council as the governing body of the Tribe and empowered that body to act with regard to various aspects of the organization process. On November 5, 1998, the majority of the adult members of the Tribe, adopted Resolution #GC-98-01, thus establishing a General Council to serve as the governing body of the Tribe.

Resolution #GC-98-01 provided for the appointment of a Chairperson and the election of a Secretary/Treasurer. We do not have any record of the appointment of a Chairperson or the election of a Secretary/Treasurer. We do have two letters, both from Ms. Burley, the first dated April 2, 1999, wherein she asserts that she is the elected Secretary/Treasurer of the Tribe, and the second dated April 13, 1999, which states Ms. Burley's title as Secretary/Treasurer. The second letter also indicates a courtesy copy was sent to Yakima Dixie, Chairman.

The first of the two documents you provided us during our meeting on December 28, 1999, indicate that, at a special meeting held on April 20, 1999, the General Council accepted your resignation from the office of Chairperson. The second document contains two letters from you to Ms. Burley, dated April 21, 1999, wherein you assert that you "cannot and will not (resign) as Chairman" but "do give you...the right to act as a delegate to represent the Sheep Ranch Indian Rancheria." Prior to our meeting, we did not have copies of these documents in our records.

The next correspondence regarding the Tribe contained in our records is dated May 14, 1999, from Mary T. Wynne, Attorney at Law, which purported to transmit to the Agency several documents, including a constitution, an attorney contract, and a certification of election. However, a copy of the certification of election was not received by the Agency until May 27, 1999. The certificate states that an election occurred on May 8, 1999, pursuant to Article XIV of the constitution ratified the same day. As a result of the election, Ms. Burley became Chairperson, you became Vice-Chairperson, and Ms. Reznor became Secretary/Treasurer. Also contained in our records is a copy of the May 8, 1999, General Council Meeting Notice upon which your signature appears.

As for the attorney contract that was enclosed with the May 14, 1999, correspondence, the Agency by letter addressed to you and dated May 27, 1999, returned the proposed contract to the Tribe without action for a number of reasons, including the fact that the "Agency has not received any documentation from the tribe which would clarify how, when and where the leadership of the tribe changed from having Mr. Yakima Dixie be the Chairperson to Ms. Silvia Burley assuming that elected position." The Agency did not receive a written response from the Tribe addressing the lack of documentation. As stated above, the Agency did receive on May 27, 1999, copies of the Certificate of Election and the May 8, 1999, General Council Meeting Notice.

Analysis

You alleged that the events during April and May 1999 leading to the change in Tribal leadership resulted from fraud and your lack of awareness of what was happening during that period of time. You also requested that the Agency take action to clear up this matter. We cannot at this time fulfill your request that the Agency act to clear up this matter.

The general position of the Agency is that the appointment of Tribal leadership and the conduct of Tribal elections are internal matters. Tribal members reasonably believing such actions to be invalid have the right to appeal as a matter of due process. Appeals are to be made within a reasonable time after the election and in an appropriate manner as defined by Tribal law. Appeals are to be made directly to and resolved within the appropriate Tribal forum designated and empowered under Tribal law to process and decide such appeals.

When the appointment of Tribal leadership or the conduct of a Tribal election is the subject of an appeal, the Agency as a matter of policy continues to recognize the Tribal government as constituted prior to the appointment or election. Such recognition continues until either (1) the Agency is assured that the appeal is resolved, or (2) the Agency determines that resolution of the appeal within a reasonable time appears unlikely. In the first instance, the Tribe's assurance of resolution of the appeal is the basis for Agency acknowledgement of the newly appointed or elected officials of the Tribal government.

However, in the second instance, often the appointment of Tribal leadership or the conduct of a Tribal election becomes the center of a larger dispute, such that appeals are unlikely to be handled in a manner affording due process. The factions then will approach the Agency and request our recognition of each faction's actions. As a matter of policy, the Agency informs the Tribal government as constituted prior to the appointment or election that a continuing dispute regarding the composition of the governing body of the Tribe raises concerns that a duly constituted government is lacking. The Agency then advises the Tribe to resolve the dispute internally within a reasonable period of time, and that failure to do so may result in sanctions taken against the Tribe, up to and including the suspension of the government-to-government relationship between the Tribe and the United States. Such suspensions are rare, but they do occur.

With respect to your allegations regarding the transition in leadership of the Tribe, we view such allegations as the basis of an appeal regarding the appointment of Tribal leadership and the conduct of the May 8, 1999, Tribal election. Such an appeal should have been pursued within a reasonable time after the election was conducted, and made to the appropriate body empowered to decide such an appeal. Whether your letter of April 21, 1999, to Silvia Burley, wherein you expressed your inability to resign

from the office of Chairperson, was such an appeal is a question to be decided by the Tribe. As regards the May 8, 1999, Tribal election, you provided no evidence to us that you pursued or attempted to pursue those remedies available to you within the Tribe. If you possess such evidence, you should present it to the appropriate body empowered to process and decide an appeal. Thus, consistent with Agency policy, we cannot at this time fulfill your request that the Agency act to clear up this matter as this issue is an internal matter to be resolved by the Tribe.

Constitution of December 11, 1999

During our meeting on December 26, 1999, you provided us with a document entitled, "Constitution of Sheep (Ranch (Rancheria) Miwok Indian Tribe of California" (Constitution). The last page of the Constitution indicates that it was adopted on December 11, 1999.

Please find enclosed the Constitution. We return it to you, without action, as a formal request for review did not accompany the Constitution. Further, the body that acted on December 11, 1999, upon the document does not appear to be the proper body to so act.

Proposed Meeting of February 15, 2000

During our meeting on December 26, 1999, you requested that another meeting be held after we responded to your concerns. For this reason, and in light of the present dispute within the Tribe, we scheduled the requested meeting for Tuesday, February 15, 2000, at 11:30 a.m., to be held in the Conference Room of the Central California Agency. The purpose of this meeting will be to discuss the issues raised in light of the discussion above, as well as steps the Tribe may take to resolve this matter internally.

You also requested that only members of the General Council and one non-attorney representative for each side participate in this meeting. We understand that Rebecca Cuthill and your brother, Melvin Dixie, will be accompanying you to this meeting. Ms. Cuthill was present at our meeting on December 28, 1999. We briefly met with Melvin Dixie at the Agency on January 13, 2000, and informed him of the efforts made to formally organize the Tribe. At that time, he expressed an interest in being involved in that process. Since Melvin Dixie is the only remaining heir, other than you, identified in the Order of Determination of Heirs, he is entitled to participate in the organization of the Tribe.

A copy of this letter is being sent under separate cover letter to Ms. Burley so as to apprise her of your concerns and our position. The separate cover letter will provide Ms. Burley with notice of the February 15, 2000, meeting, as described in this letter.

Should you have any questions with regard to this matter, please contact Mr. Raymond Fry, Tribal Operations Officer, at (916) 566-7124.

Sincerely,


Dale Rising, Sr.
Superintendent

Enclosure

cc: Rebecca Cuthill.(without enclosure)

EXHIBIT “5”

MAR - 7 2000

Silvia Burley, Chairperson
Sheep Ranch Rancheria
1055 Winter Court
Tracy, California 95376

Dear Ms. Burley:

The purpose of this correspondence is to provide you with a summary of the discussion that occurred during a meeting on February 15, 2000, held at the Central California Agency (Agency), with Yakima Dixie, Vice-Chairperson of the Sheep Ranch Rancheria (Tribe), his brother Melvin Dixie, and other interested parties. The summary responds to the concerns you expressed in your letter dated February 15, 2000. We also respond to your requests expressed in your letter dated February 24, 2000.

The Meeting of February 15, 2000

At the request of Yakima Dixie, Vice-Chairperson, which he made during a meeting at the Agency with him and other interested parties on December 28, 1999, we scheduled a meeting to be held at the Agency on February 15, 2000. As explained in our February 4, 2000, letters to you and to Mr. Dixie, the purpose of that meeting was to discuss the issues raised in those letters, as well as steps the Tribe may take to resolve this matter internally. Mr. Dixie also requested that only members of the General Council and one non-attorney representative for each side participate in that meeting. We understood Mr. Dixie's request as a desire to ensure a free exchange of ideas among those persons comprising the body possessing authority to decide the issues.

By letters dated February 9, 2000, you informed the Agency that the Tribe concluded that the February 15, 2000, meeting was inconsistent with Tribal management of its own affairs. On that basis, you and Rashel Reznor declined to participate in that meeting.

On February 15, 2000, we informed Yakima Dixie, his brother Melvin Dixie, and other interested parties, of the decision of Rashel Reznor and you not to participate in the scheduled meeting. However, Yakima Dixie requested a brief meeting with us to address general questions arising from our February 4, 2000, letter to him. We agreed to meet for that limited purpose. The following is a summary of the ensuing discussion.

At the outset of the meeting, we reiterated to the parties present the Agency's position that the issues raised in our letter of February 4, 2000, are internal matters. As such, the parties present needed to seek redress within the appropriate Tribal forum empowered to process and decide such issues. We also reiterated our view, notwithstanding a Tribal decision to the contrary, that the appropriate Tribal forum is the General Council. At present, we view, again notwithstanding

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a Tribal decision to the contrary, the General Council as comprised of Yakima Dixie, Rashel Reznor, and you. The rights of Melvin Dixie, Rocky McKay, and other interested parties, to participate in the governance of the Tribe are to be determined by the appropriate Tribal forum, and are further discussed below.

Your Membership Status

The discussion then turned to the assertion by Yakima Dixie that his act of August 5, 1998, to accept Rashel Reznor, Anjelica Paulk, Tristian Wallace, and you, as enrolled members of the Tribe was a limited enrollment. He explained that he intended only to grant to the four of you such membership rights necessary to qualify the four of you for services offered by the Bureau of Indian Affairs to members of federally recognized tribes. Yakima Dixie stated that his intent was consistent with the context in which you originally approached him, seeking a means of obtaining additional assistance after such assistance previously provided to you by the Jackson Rancheria was discontinued. As evidence of his position, Yakima Dixie produced videotape of a meeting held at Yakima Dixie's residence on or about October 16, 1998, at which representatives from the Agency and the California Indian Legal Services were present. We viewed a portion of the videotape documenting a discussion of your potential eligibility as a member of the Tribe to receive scholarship, housing, and other assistance. Afterward, we expressed our view that it was unlikely that the Tribe would find such a limitation on your enrollment expressed in the videotape. Further, we pointed out the fact, as stated in our letter of February 4, 2000, that the documents signed by Yakima Dixie to effect your enrollment expressed no such limitation. Moreover, we explained that Yakima Dixie's subsequent actions tended to establish the contrary view that you possess full rights of membership, since Mr. Dixie only objected to your participation in the deliberations of the decision-making body of the Tribe many months after the transition in leadership.

Allegations of Fraud or Misconduct

The discussion then turned to the allegations of fraud or misconduct relative to the change in Tribal leadership during April and May 1999. Yakima Dixie asked what action we were going to take. We explained that there was no action for the Agency to take, consistent with our position as expressed in our letter of February 4, 2000, that the allegations are issues properly decided within the appropriate Tribal forum. Thus, we explained, in light of federal law and policy, there was no basis for Agency involvement, since this situation is a dispute of an internal nature.

Your Decision Not to Participate in the Meeting

Yakima Dixie then asked why you and Rashel Reznor did not attend the meeting, and whether we were going to do something about your lack of participation. We explained that attendance at the meeting was not mandatory. Our reasons for fulfilling Mr. Dixie's request were threefold. First, we believed fulfilling the request was appropriate to provide a safe neutral location for the meeting. Second, by hosting a meeting at the Agency, we would assure our availability to answer general questions regarding steps the Tribe may take to resolve this matter internally. Third, we believed the meeting would assure a free exchange of ideas among the persons comprising the body possessing authority to decide the issues. However, we believed that requiring the mandatory participation of the parties would likely be viewed as an intrusion into an internal matter of the Tribe.

We also discussed your letter to Yakima Dixie, dated February 9, 2000, wherein you informed Mr. Dixie of the Tribe's decision to extend to him a thirty-day period within which to raise his concerns and present his issues to the Tribe. We reiterated to Mr. Dixie of our position that, where issues are internal in nature, their resolution must be sought within the appropriate Tribal forum. In light of your letter and consistent with our position, we suggested that Mr. Dixie send to the Tribe a letter stating his claims and requesting a hearing. Moreover, we recommended Mr. Dixie provide the Tribe with notice of that address where he expected delivery of notices of Tribal meetings and other correspondence to occur. We also suggested that Mr. Dixie inform the Tribe of any circumstances which may limit his ability to participate in Tribal affairs, such as a lack of access to transportation or an inability to pay out-of-pocket costs of transportation. If Mr. Dixie believes such circumstances exist, he should request financial assistance from the Tribe or suggest alternatives he believes may reduce or eliminate potential barriers to his participation in Tribal affairs. We also suggested that Mr. Dixie provide the Agency with a courtesy copy of such a notice. To date, no such courtesy copy has been received at the Agency.

Ability of Rocky McKay to Participate

During the meeting, Rocky McKay presented us with an original affidavit from his mother, Wanda Lewis, wherein she states that Yakima Dixie is the true father of Mr. McKay. We briefly reviewed the document. We then expressed our view that Mr. McKay may be entitled to participate in the organization of the Tribe, if he can establish that he is a lineal descendant of Yakima Dixie, one of the heirs now living listed in the Order of Determination of Heirs issued on November 1, 1971, as reaffirmed by subsequent Order issued on April 14, 1993. Further, we informed Mr. McKay that the subject of what evidence is acceptable for establishing his lineal descendancy is an internal matter to be determined by the Tribe. Thus, Mr. McKay's ability to participate in the organization of the Tribe also depends upon whether he can provide that type of evidence determined by the Tribe to be acceptable for purposes of establishing lineal descendancy.

We then recommended that Rocky McKay provide to the Tribe a written request to be enrolled as a member of the Tribe. We also recommended that Mr. McKay enclose with his request any documents and other evidence he believed to be acceptable for establishing his lineal descendancy.

By way of a letter dated February 25, 2000, we informed Rocky McKay that the Tribe would likely view the affidavit from Wanda Lewis as insufficient evidence of Yakima Dixie's paternity. In general, where the Bureau of Indian Affairs is performing enrollment functions, a valid affidavit from the purported father is acceptable evidence of paternity. However, as stated previously, the subject of what evidence is acceptable for establishing paternity is an internal matter to be determined by the Tribe. Thus, we recommended that Mr. McKay obtain from Yakima Dixie a notarized affidavit asserting his paternity. We also recommended that Mr. McKay seek an amendment to his birth certificate, since Yakima Dixie is not named therein as the father. We further recommended that Mr. McKay request financial and technical assistance from the Tribe in obtaining an affidavit or any other evidence the Tribe may determine to be necessary to establish his eligibility for enrollment and membership in the Tribe.

In our February 25, 2000, letter to Rocky McKay, we expressed the view that the letter accompanying his correspondence dated November 22, 1999, from Yakima Dixie declaring his adoption of Mr. McKay as a member of the Tribe would likely be viewed by the Tribe as ineffective. Copies of these documents were faxed by the Agency to you on December 7, 1999. We also informed Mr. McKay that in general, only the Tribe, acting at a duly noticed, called, and convened meeting at which a quorum is present, is the proper body to consider and effect his enrollment in the Tribe.

Ability of Melvin Dixie to Participate

Also during the February 15, 2000, meeting, we discussed the right of Melvin Dixie to participate in the organization of the Tribe. We advised Melvin Dixie that he is entitled to participate in the organization of the Tribe because he is one of the heirs now living listed in the Order of Determination of Heirs issued on November 1, 1971, as reaffirmed by subsequent Order issued on April 14, 1993. We then recommended Mr. Dixie provide to the Tribe written notice of his present address and telephone number, as the present leadership and administration of the Tribe must have such information in order to deliver proper and timely notice of Tribal meetings. We further advised Mr. Dixie to inform the Tribe of any circumstances which may limit his ability to participate in Tribal affairs, such as a lack of access to transportation or an inability to pay out-of-pocket costs of transportation. If Mr. Dixie believes such circumstances exist, he should request financial assistance from the Tribe or suggest alternatives he believes may reduce or eliminate potential barriers to his participation in Tribal affairs.

In connection with Melvin Dixie's right to participate in the organization of the Tribe, we expressed the view that he would likely be requested to provide to the Tribe proof of his identity. We explained that the subject of what evidence is acceptable for establishing identity is an internal matter to be determined by the Tribe. Therefore, we suggested that Mr. Dixie provide written notice to the Tribe of his assertion of entitlement to participate in the organization of the Tribe, and to enclose documents and other evidence he believed to be acceptable for establishing his identity.

In a subsequent letter dated February 25, 2000, we further recommended that Melvin Dixie request financial and technical assistance from the Tribe in obtaining any other evidence the Tribe might determine to be necessary.

In the aforementioned letter, we also discussed our views related to an affidavit by Melvin Dixie. The affidavit was received at the Agency on February 1, 2000. In the affidavit, among other assertions, Melvin Dixie stated that he is the father of a son. In our letter, we recommended that Melvin Dixie provide to the Tribe a written request that his son be enrolled as a member of the Tribe. We suggested Mr. Dixie enclose with his request a photocopy of the birth certificate or provide other evidence establishing that he is the father of his son. We further suggested that Mr. Dixie obtain, if not already in his possession, a certified copy of the birth certificate naming Mr. Dixie as the father of his son. Moreover, we recommended that Melvin Dixie, should he not be named in the birth certificate, complete an affidavit asserting his paternity of his son, and have the affidavit notarized. We also suggested that Melvin Dixie seek an amendment to the birth certificate if he is not named as the father in the birth certificate. We then recommended that Melvin Dixie request assistance from the Tribe in obtaining a certified birth certificate, an affidavit, or any other evidence the Tribe might determine to be necessary to establish his son's eligibility for enrollment and membership in the Tribe.

Your Letter of February 15, 2000

As for your concern expressed in your letter of February 15, 2000, that the meeting of the same day with Yakima and Melvin Dixie and other interested parties was improper, we assure you that the meeting was completely proper. First and foremost, we agreed to meet, at the request of an officer of the Tribe's governing body, for the limited purpose of addressing general questions arising from our letter of February 4, 2000. Moreover, we reiterated to the parties present our position as expressed in our letter of February 4, 2000, that these issues are internal matters to be considered and acted upon by the appropriate Tribal forum. Thus, we believe that our actions were consistent with our responsibility to provide technical assistance, and with established policies of non-interference, deference to Tribal decision-making, and respect for Tribal self-determination and sovereignty.

Your Letter of February 24, 2000

In your letter of February 24, 2000, you requested copies of the "sworn affidavits" submitted to the Agency by Yakima Dixie "alleging fraud on the part of the Tribal Council and that Rocky McKay is his son." Unfortunately, we cannot fulfill your request, as no such documents by Mr. Dixie are maintained within the records of the Agency.

As to your statement that the Agency "refused" to provide the Tribe with information as to the address and location of Melvin Dixie, we have no record of a Tribal request for such information. Further, such information is contained in a system of records covered by the Privacy Act (5 USC § 552a). As such, we are unable to release this information to you without the express consent of Melvin Dixie. As stated above, we also suggested in our letter of February 25, 2000, that Mr. Dixie provide this information to the Tribe.

Your Letter Postmarked February 2, 2000

As for your undated letter, postmarked February 2, 2000, requesting that we forward a letter to Yakima Dixie regarding the Regular Tribal Meeting scheduled for February 7, 2000, we were unable to fulfill your request. The letter was received at the Agency on Thursday afternoon, February 3, 2000. Even if the Agency, within a twenty-four hour period, had processed and forwarded the letter via overnight mail, the meeting day of Monday, February 7, 2000, would likely be the earliest Yakima Dixie would have received the letter. Thus, we return to you the enclosed sealed envelope addressed to Yakima Dixie.

Conclusion

The issues surrounding the present leadership and membership of the Tribe are internal matters to be resolved within the appropriate Tribal forum. As a matter of policy, the Agency will not interfere in the internal matters of the Tribe. However, if in time a dispute regarding the composition of the governing body of the Tribe continues without resolution, the government-to-government relationship between the Tribe and the United States may be compromised. In such situations, the Agency will advise the Tribe to resolve the dispute internally within a reasonable period of time. The Agency will also inform the Tribe that its failure to do so may result in sanctions against the Tribe, up to and including the suspension of the government-to-government.

The Tribe, in the letter dated February 9, 2000, granted a thirty-day period of time to Yakima Dixie within which to raise his concerns and present his issues to the Tribe. This fact demonstrates that the Tribe is attempting to resolve this internal matter. We respectfully request that the Tribe inform us in writing of the action taken by the appropriate Tribal forum to resolve the dispute. We further request the Tribe's written response clearly explain what action was taken to resolve the dispute, the legal authority in Tribal law for the action, and the rationale for the action.

As always, Agency staff is available to the extent resources permit to provide the Tribe with technical assistance, upon your written request.

Should you have any questions with regard to this matter, please contact Mr. Raymond Fry, Tribal Operations Officer, at (916) 566-7124.

Sincerely,

Sgd. Dale Risling, Sr.

Dale Risling, Sr.
Superintendent

Enclosure

cc: 3703-P3 Sheep Ranch Rancheria FY 00
Tribal Operations Chron
Superintendent Chron
Blind Copy (Brian)

BGolding, Sr.:03/06/2000

EXHIBIT “6”

**ORIGINAL
FILED**

JUL 18 2001

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Deputy Clerk

1 ASKEW & ARCHBOLD,
A PROFESSIONAL CORPORATION
2 JAMES A. ASKEW - SBN 60469
RICHARD M. ARCHBOLD - SBN 87784
3 1776 West March Lane, Suite 350
Stockton, California 95207-6450
4 Telephone: (209) 955-2260

5 Attorneys for Plaintiffs SHEEP RANCH
(RANCHERIA) MIWOK INDIAN TRIBE
6 OF CALIFORNIA; YAKIMA DIXIE,
MELVIN DIXIE, and ROCKY DIXIE
7

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 SHEEP RANCH (RANCHERIA) MIWOK)
11 INDIAN TRIBE OF CALIFORNIA;)
12 YAKIMA DIXIE (CHIEF), MELVIN)
DIXIE, and ROCKY DIXIE.)

13 Plaintiffs,)

14 vs.)

15 SILVIA BURLEY, TIGER BURLEY; and)
16 RASHEL REZNOR,)

17 Defendants.)
18

CIV.S-01 - 1389 MLS DAD

Case No. _____

COMPLAINT FOR:

1. Fraud;
2. Violation of the Racketeer Influenced and Corrupt Organizations;
3. Accounting; and,
4. Declaratory Relief.

19 Plaintiffs SHEEP RANCH (RANCHERIA) MIWOK INDIAN TRIBE OF CALIFORNIA
20 (hereinafter "Sheep Ranch Miwok Tribe"), YAKIMA DIXIE, MELVIN DIXIE and ROCKY
21 DIXIE allege as follows:

22 **PARTIES**

23 1. Plaintiff Sheep Ranch Miwok Tribe was recognized by the United States Bureau of
24 Indian Affairs and on June 12, 1935 the Sheep Ranch Miwok Tribe voted to accept the terms of
25 the Indian Reorganization Act (P.L. 73-383; 48STAT. 984). The Sheep Ranch Miwok Tribe is a
26 Federally recognized Indian Tribe as confirmed by the inclusion of the Tribe and the list of
27 Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of
28 Indian Affairs as published in the Federal Register on October 23, 1997.

COMPLAINT

1 2. Plaintiff Yakima Dixie was recognized on October 1, 1971 as an heir and possessing
2 an undivided interest in the Sheep Ranch Miwok Tribe. The Bureau of Indian Affairs recognized
3 Yakima Dixie as a spoke's person for the Sheep Ranch Miwok Tribe.

4 3. Plaintiff Melvin Dixie was recognized on October 1, 1971 as owning an undivided
5 interest in the Sheep Ranch Miwok Tribe.

6 4. Plaintiff Rocky Dixie is the son of Yakima Dixie and a member of the tribe.

7 5. Plaintiffs Yakima Dixie, Melvin Dixie and Rocky Dixie are lineal descendants

8 6. Defendant SHEEP RANCH (RANCHERIA) OF ME-WUK INDIANS (hereinafter
9 "Burley Me-Wuk Indians") lodged a purported constitution of the "Sheep Ranch Band of Me-
10 Wuk Indians" - the constitution has not been recognized by the United States Bureau of Indian
11 Affairs.

12 7. Defendant Silvia Burley is not a lineal descendant of the Sheep Ranch Miwok Tribe.
13 Rather based upon recommendations and encouragement of the Bureau of Indian Affairs she was
14 voted a tribal member.

15 8. Defendant Tiger Burley is not a purported member of the Sheep Ranch Miwok Tribe
16 nor of the Burley Me-Wuk Indians. He is the husband of Silvia Burley.

17 9. Defendant Rashel Reznor is not a lineal descendant of the Sheep Ranch Miwok Tribe
18 but is the daughter of Silvia Burley and Tiger Burley. She was voted as member of the tribe
19 upon the recommendation of the Bureau of Indian Affairs.

20 **JURISDICTION AND VENUE**

21 10 This court has exclusive jurisdiction pursuant to the provisions of 28 USC §1362
22 providing that the district court shall have original jurisdiction of all civil actions brought by any
23 Indian tribe or band.

24 11. The court also has jurisdiction over the subject matter of this action based upon 28
25 USC §1331 concerning original jurisdiction on all civil actions arising under the Constitution.
26 laws, or treaties of the United States.

27 12. At all relevant times to this action Defendants resided and the events arose in the
28 Eastern District of California where the Sheep Ranch Miwok Tribe is located. Venue is proper

1 pursuant to 28 USC §1391.

2 INTRODUCTION

3 13. The Sheep Ranch Miwok Tribe is a small tribe located in Sheep Ranch, California in
4 the County of Calaveras, State of California. It is the only federally recognized "Rancheria" in
5 Calaveras County.

6 14. It is a small tribe and it is recognized by the United States Government. The "true
7 tribal members those born of lineal descendants" are the progeny of Mabel (Hodge) Dixie who
8 have surviving sons Yakima Dixie and Melvin Dixie. Rocky Dixie is the son of Yakima Dixie.
9 Yakima Dixie, Melvin Dixie and Rocky Dixie are lineal descendants of Mabel (Hodge) Dixie.

10 15. The tribe was recognized by the United States Government.

11 16. Thereafter, Defendants Silvia Burley and Rashel Reznor (mother and daughter)
12 approached the United States Bureau of Indian Affairs in order to align themselves and be
13 accepted by a California Indian tribe. After several attempts the Bureau of Indian Affairs
14 encouraged Yakima Dixie, Chief of the Sheep Ranch Miwok Tribe to accept Silvia Burley and
15 Rashel Reznor as non lineal descendants but members of the Sheep Ranch Miwok Tribe in order
16 for them to obtain some benefits since they had not been placed with another tribe.

17 17. Upon the recommendation of the United States Bureau of Indian Affairs Yakima
18 Dixie, Chief of the Sheep Ranch Miwok Tribe agreed to accept Silvia Burley and Rashel Reznor
19 as tribal members.

20 18. Thereafter, Silvia Burley, Rashel Reznor and Tiger Burley proceeded to orchestrate
21 Silvia Burley's appointment as chair person of a different tribe known as the Sheep Ranch
22 Rancheria of Me-Wuk Indians, appoint Rashel Reznor secretary/treasurer and appoint Yakima
23 Dixie vice chair person. The appointments were made without the consent of Yakima Dixie,
24 Melvin Dixie, or Rocky Dixie.

25 19. Silvia Burley and Rashel Reznor lodged a "Constitution of the Sheep Ranch Band of
26 Me-Wuk Indians" with the Bureau of Indian Affairs.

27 20. On or about April 27, 2000 Yakima K. Dixie, Chief-Chair Person filed an
28 "OBJECTION TO THE PROPOSED TRIBAL CONSTITUTION, IN RE SHEEP RANCH

1 (RANCHERIA) MIWOK INDIAN TRIBE OF CALIFORNIA" with the Department of Interior
2 Bureau of Indian Affairs, Tribal Operations. (Attached as Exhibit "A").

3 21. The Department of Interior, Bureau of Indian Affairs, Tribal Operations, has taken no
4 action on the Burley Constitution.

5 22. Yakima Dixie and the Sheep Ranch Miwok Tribe lodged its Constitution with the
6 Bureau of Indian Affairs (Attached as Exhibit "B").

7 23. Silvia Burley and Rashel Reznor have over the past years solicited and accepted funds
8 from the United States Government Department of the Interior, Bureau of Indian Affairs in the
9 hundreds of thousands of dollars. There has never been an accounting nor have Yakima Dixie,
10 Melvin Dixie or Rocky Dixie received any of the monies.

11 24. On or about December 7, 1999 Silvia Burley as Chair Person of the "California Valley
12 Miwok Tribe f/k/a Sheep Ranch Tribe of Me-Wuk" executed an agreement with John Dietrich,
13 Robert Dawson, Harold Chesnin and Alan Ginsburg/NORAM (hereinafter collectively referred
14 to as "Developer") for the development of a "casino project". Silvia Burley has defaulted on the
15 agreement and a complaint has been filed before this Court No. CIV. S-00-2107 DFL DAD.

16 25. Plaintiffs Yakima Dixie, Melvin Dixie, and Rocky Dixie have never consented to nor
17 participated in any of the actions taken by Defendants.

18 **FIRST CAUSE OF ACTION**
19 **(Fraud)**

20 26. Plaintiffs incorporate as if fully set forth herein the allegations of paragraphs 1
21 through and including 25, above.

22 27. Defendants Silvia Burley and Rashel Reznor represented to Plaintiffs that if voted as
23 non lineal tribal members would in good faith follow Yakima Dixie's leadership and comply
24 with the desire and wishes of the descendants of the lineal tribe Sheep Ranch Miwok Tribe.

25 28. Based upon these representations Silvia Burley and Rashel Reznor were voted as non
26 lineal tribe members at the request of Defendants and the United States Bureau of Indian Affairs.

27 29. The above representations were false.

28 30. Defendants and co-conspirator Tiger Burley intended to not follow the leadership of

1 the lineal descendants of the Sheep Ranch Miwok Tribe. Instead, they voted to give the
2 chairpersonship to Silvia Burley and to take the funds available to Sheep Ranch Miwok Tribe for
3 their personal benefit. None of the lineal descendants of the Sheep Ranch Miwok Tribe have
4 received any funds.

5 31. If the Sheep Ranch Miwok Tribe had known of the true intent of Defendants, the
6 Sheep Ranch Miwok Tribe would not have accepted Defendants Silvia Burley and Rashel
7 Reznor as non lineal tribe members.

8 32. Based upon the fraudulent representations of Defendants Plaintiff has been damaged
9 in the amount according to proof and will seek the recovery set forth below.

10 **SECOND CAUSE OF ACTION**
11 **(Violation of the Racketeer Influenced and Corrupt Organizations)**
12 **(RICO)**

13 33. Plaintiffs incorporate as if fully set forth herein the allegations of paragraphs 1
14 through and including 32, above.

15 34. In making the fraudulent statements the Defendants utilized the United States Mail,
16 the Bureau of Indian Affairs and telephonic communication on an ongoing and continuing basis.
17 These uses substantially facilitated Defendants fraudulent scheme.

18 35. Defendants' actions consisted of violations of 18 USC §1961.

19 36. Defendants conspired to conduct the above referenced enterprise through the pattern
20 of racketeering, deception and fraud set forth above.

21 37. As a proximate result of Defendants conspiracy Plaintiffs has suffered in excess of
22 \$75,000 in damages.

23 38. Pursuant to 18 USC §1964(c) Plaintiffs are entitled to recover treble damages, costs,
24 and attorneys fees.

25 **THIRD CAUSE OF ACTION**
26 **(Accounting)**

27 39. Plaintiffs incorporate as if fully set forth herein the allegations of paragraphs 1
28 through and including 38, above.

40. Upon information and belief Plaintiffs allege that Defendants have received in excess

EXHIBIT “7”



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
1824 Tribute Road, Suite J
Sacramento, CA 95813-4508

0568

JUL 12 2000

Silvia Burley, Chairperson
Sheep Ranch Rancheria
1055 Winter Court
Tracy, California 95376

Dear Ms. Burley:

The purpose of this correspondence is to provide a response to the Tribe's request for a recognition letter from the Bureau of Indian Affairs.

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

1. Silvia F. Burley, Chairperson
2. Vacant, Vice-Chairperson
3. Rachel K. Reznor, Secretary/Treasurer

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

Sincerely,


Dale Rising, Sr.
Superintendent

EXHIBIT “8”



YAKIMA K. DIXIE

Sheep Ranch Rancheria of MiWok Indians of California
11178 Sheep Ranch Rd., Mail P.O. Box 41
Sheep Ranch, California 95250
Phone: 209-728-2102

October 30, 2003

Aurene Martin, Principal Deputy Assistant Secretary
U. S. Department of the Interior
Bureau of Indian Affairs
1849 C St. NW # 4160
Washington DC 20240-9997
(202) 208-7163

NOTICE OF APPEAL

This is a formal appeal which is made under Title 25 of the Code of Federal Regulations
Ch. 1 (4-1-03 Edition) Part 2 "Appeals From Administrative Actions" (The Code)

This action pertains to the federally registered Indian tribe known as the "California
Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk
Indians of California)" (See: Federal Register Vol 67, No. 134 / Friday, July 12, 2002,
page 46328).

In this appeal, I, Yakima K. Dixie, as Appellant, am contesting the administrative action
(without my knowledge or 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 requesting the nullification of both her appointment as Chairperson and
the nullification of her original adoption and the adoption of her daughter and two
grand-daughters into my tribe, which, again, I allege was fraudulent.

NOTICE OF APPEAL

2003-05-05-BIA-appeal

**Why this Appeal is now directed to the Washington Office
and the Principal Deputy Assistant Secretary.**

(ref. Section 2.9)

I Appeal directly to the Assistant Secretary of the BIA because repeated attempts, over the last 5 months, to initiate the Appeal at the office of both the Area and Regional Directors have failed to receive any attention. These prior actions are described below.

On May 5, 2003, I sent a formal request to Raymond Fry, Tribal Operations Officer for Tribal Services of the Sacramento Area Office, with whom I have dealt for over 20 years, who has been assigned to help me with tribal matters, who was instrumental in getting me to adopt Silvia Burley into my tribe, and who is involved with all of the details surround this situation. In this request, I asked him for help in preparing this Appeal as is his duty under Sub-section 2.9.7 of the CFR code cited above.

"When the appellant is an Indian or Indian Tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal"

Further, I requested all relevant documents under the Freedom of Information Act. Contrary to his usual practice in responding to me, Mr. Fry has remained completely unresponsive to my request, which I have made repeatedly in both written form and by telephone message. See Exhibit #2003-05-05

On June 26, 2003, I directed this same inquiry to Raymond Fry's supervisor, Dale Risling, Superintendent Central California Area Office. In like manner, he also failed to respond to my request. See Exhibit 2003-06-26.

Finally, on August 15, 2003, I sent a formal NOTICE OF "APPEAL from inaction of official" under 25 Code of Federal Regulations Ch. 1 Section 2.8 to Clayton Gregory, the Acting Regional Director - Pacific Region, in which I requested that he force either Raymond Fry or Dale Risling to respond to my rightful requests. Again, Mr. Gregory neither responded to my request nor notified me of his intent not to respond. He simply ignored my request. See Exhibit 2003-08-15

Consequently, I have exhausted my attempts to initiate my Appeal "in the office of the official whose decisions is being appealed" as prescribed in Section 2.9 of the above cited code in the CFR. For reason of the inactions that are cited above and for reasons of

NOTICE OF APPEAL

2016-09-29 BIA Appeal

possible malfeasance and breach of trust cases, which will be delineated later, the Area or Regional agents (Fry, Risling, Golden, and Gregory) cannot be trusted to mediate this Appeal. And I now Appeal directly to the headquarters of the Bureau in Washington.

Statement of Reasons for This Appeal

(ref. Section 2.10)

The reasons and causes for my Appeal that Silvia Burley be nullified as both Chairperson and member of my tribe include allegations against Silvia Burley of fraud, forgery, theft of large sums of money, and gross mis-management of tribal affairs and business. This is made clear in the recitation of the following historical events.

By lineal descent and inheritance, I, Yakima K. Dixie am the legitimate heir to and the rightful Chief and Chairperson of the Sheep Ranch Rancheria of MiWok Indians of California. That is the traditional name of my tribe and it is my preferred tribal name, even though the tribal name was changed recently, without my knowledge or permission, in the Federal Register to "California Valley Miwok Tribe, California (formerly the Sheep Ranch rancheria of Me-Wuk Indians of California)".

My authority in the tribe as Chief and rightful Chairperson is by heredity and lineal descent through three historically documented generations spanning over 100 years (from my mother, Mable Hodge Dixie (Exhibits 1971-08-09 and 1971-11-01); and to her from her father, Tom Hodge (Exhibit 1915-08-13), and to him from his father Peter Hodge (Exhibit 1915-08-13)) and prior to that back into pre-recorded history.

From the earliest anthropological studies, it is recorded that in Miwok tradition "Chieftanship was a well-defined and hereditary affair, as is show by the passage of the title to women, in the male line." (Exhibit 1925-00-05). This has certainly been the tradition in my particular tribe. Thus, according to tradition, I could never resign my Chairmanship nor could Silvia Burley or anyone else other than a lineal descendant ever be Chief. The authenticity of my lineal descent has never been in dispute at the BIA (Exhibit 1998-??-??) or by any other entity and is fully acknowledged by the key BIA agents, Raymond Fry and Brian Golden, in the video tape of their discussions with me wherein they purport to help me organize the tribe so that I may receive Trust benefits (Video Tape Exhibit 1998-09-08). One component of such help was to be the acceptance of Silvia Burley as a tribal member. This tape is an important document and warrants viewing; and a written transcription will be prepared if warranted.

Some time in 1996, Silvia Burley visited me at my house (rancheria) and tribal location at Sheep Ranch. She was a tribeless Indian and unknown to me at the time. She introduced herself by saying that the BIA had recommended that she discuss with me the prospect of accepting herself, her daughter, and two grand-daughters into the tribe so that they could obtain government health and educational benefits. Apparently, at the time,

NOTICE OF APPEAL

10-3-16-01-01-00000000

126 she was virtually destitute, without much education, and living on welfare. Her
 127 socio-economic status is important because it would seem impossible that she, of her
 128 own capacity, could engineer the sophisticated maneuvers that were necessary to take
 129 away my authority and divert such large sums of money - thus, inferring her management
 130 by others. Over a period of about 2 years, I discussed with Silvia, both in person and in
 131 letters, her request of becoming a member in my tribe, and in about October 1998, after
 132 the meeting with Fry and Golden (Video Tape Exhibit #1998-09-08), I somehow
 133 accepted Silvia, her daughter, and grand-daughters into the tribe. I say "somehow"
 134 because there is no written membership induction or traditional ceremony nor official
 135 notice to me by the BIA. I have no clear recollection of how she became a member, it
 136 just seemed to be assumed. Further, the agents of the BIA did not counsel me on the
 137 implications of such an acceptance and on the various modes of membership -
 138 non-voting, etc. However, by late 1998, in Resolution #GC-98-01, the BIA considers
 139 Silvia to be a full member (op. cit. Exhibit 1998-11-22).

141 My documentation on these and virtually all other transactions is only partial due to the
 142 unwillingness of the agents of the Area and Regional BIA to provide complete
 143 documents and the fact that I am still waiting for the fulfillment of my formal requests
 144 under the Freedom of Information Act. (Exhibit 2003-04-05-30)

146 In the BIA files, there is a document which is dated April 20, 1999 and which purports to
 147 represent that I resigned my Tribal Chairmanship to Silvia Burley (Exhibit 1999-04-20);
 148 and it is said that upon this document, the Chairmanship was officially transferred. I
 149 never signed such a document! The document is unnotarized; and the signature is forged.
 150 I was never issued by the BIA a Notice of Administrative Decision or Action to this
 151 effect, nor was I ever contacted by the agents of the BIA to confirm the matter, which one
 152 would assume to be a routine part of their fiduciary and trusteeship responsibility to me
 153 when dealing with major events such as this. Indeed, I did not know of the existence of
 154 such a document or the fact that I had been replaced until some 7 months later, in
 155 November 1999, when it was accidentally discovered by a business associate in the
 156 course of his due diligence. The allegation of a fraudulent resignation letter was brought
 157 to the attention of the BIA in a meeting of December 23, 1999, which I called to correct
 158 this mistake, and the issue was acknowledged by the BIA in a communication of two
 159 months later (Exhibit 2000-02-04). However, no action was ever taken.

161 The letter of resignation upon which Silvia Burley's authority rests is not legitimate for
 162 numerous reasons. I swear, under penalty of perjury, that I never signed such a letter.
 163 The document is not properly witnessed and is un-notarized. The resignation document
 164 of April 20, 1999 was subjected to the analysis of a qualified handwriting expert and
 165 judged that "... Yakima Kenneth Dixie did not sign the questioned resignation letter"
 166 (Exhibit 2003-06-22), (the emphasis is mine). Under any circumstances, such a
 167 resignation would have been illegitimate under general tradition of the MiWoks and the
 168 particular tradition of my tribe. Even if I had signed such a resignation, it would have
 169 been the obligation of BIA agents to contact me and confirm in a formal manner that
 170 such was my true desire under free will - something which was not done.

NOTICE OF APPEAL

2000-09-27-0001

Thus, within a month of having been admitted into my tribe for the charitable purpose of helping her and her daughters obtain government health and educational benefits, Silvia Burley goes from being a homeless, indigent person, not a part of my clan, to becoming the Chairperson of a federally recognized Indian tribe with a documented lineal descent of over 100 years, and in control of making all decisions for my tribe and capable of diverting to herself huge sums of money from contracts, Federal Trust accounts, and the California Gambling Control Commission.

The fraud and malfeasance of Silvia Burley increases exponentially from this point.

On April 30, 1999, ten days after the purported resignation of which I was unaware at the time, and at Silvia's instigation, I did sign a power of attorney in which one Mary Turgeon Wynne (PO Box 1218, 212 E. Ave. B, Suite 5, Okanogan, Washington 99821-0952, Phone: 509-422-6267) was authorized to represent me in filing documents with the BIA to obtain my trust benefits. Exhibit 1999-14-50, which by then had accrued to, I believe, about \$280,000. A suspicious element is that, if I had signed such a resignation, then why was such a power of attorney required from me? Why did Silvia not sign the power of attorney by herself, as Chairperson. She has never required my signature on any other document. This might be an indication that the April 20 document was back-dated. Be that as it may, I never learned what Wynne did on my behalf; and I have requested full documentation from her, which will be amended to this Appeal if received.

Another example of fraud centers around a meeting of December 10, 1999. As mentioned previously, when the Appellant learned about the forged resignation letter, a meeting was called at the BIA to contest the issue. At the last moment, the agents of the BIA canceled the appointment and deferred it to December 23, 1999. About a year later, I learned through an inside informant, that a secret meeting was held on December 10, between the BIA agents, Silvia Burley, and representatives of a group called North American Sports Management, Inc. I was not informed of such a meeting even though I was the designated "Vice-Chairperson" in Burley's tribal organization and should have been informed of such an important event. The purpose of the meeting, I learned, was to discuss the prospects of establishing The Tribe as an operator of a gambling casino. Immediately after that meeting, North American Sports Management and Silvia Burley for The Tribe signed an agreement to move forward on that opportunity, with Silvia Burley receiving a check for \$250,000 plus a commitment of \$50,000 per month until a casino was established. Again, all of this was done without my knowledge or permission. The agreement between Burley and North American Sports Management lasted for about 5 months and ended in North American filing suit on September 27, 2000 against Silvia Burley and The Tribe for "breach of contract and fraud" (Exhibit 2000-09-27-0001). The suit was settled before trial for a large, undisclosed amount of money to be paid by my tribe to North American Sports Management.

NOTICE OF APPEAL

2016-09-29-31A-armed

On July 18, 2001, I initiated a suit against Silvia Burley, but the legal representation became mismanaged, and the suit was eventually dismissed by the court on January 24, 2002 because administrative remedies had not been exhausted. (Exhibit 2001-07-18)

During the course of the above and continuing into the present, Silvia Burley has garnered to herself through The Tribe something over \$3 million, most of which has come from the California Indian Gaming Revenue Sharing Trust Fund, a partial accounting of which is provided in the table below and is available on their web-site (http://www.leginfo.ca.gov/pub/01_07_01/burley.html).

STATE OF CALIFORNIA GRAY DAVIS, Governor
CALIFORNIA GAMBLING CONTROL COMMISSION

Report to Legislature for Distribution of Funds from
 Indian Gaming Revenue Sharing Trust Fund

as Sheep Ranch Rancheria	
July 1, 2000	\$50,000
September 30, 2000	50,000
December 30, 2000	50,000
March 31, 2001	150,000
May 30, 2001	150,000
June 30, 2001	300,000
September 30, 2001	200,000
June 30, 2002	188,385
as California Valley Miwok Tribe	
September 30, 2002	159,393
December 31, 2002	111,234
March 31, 2003	50,358
June 30, 2003	95,172
Pending Distribution	683,160
Total	\$2,237,702

As far as can be determined, the sole beneficiary of this money has been Silvia Burley and her personal family with none of this money being used to advance tribal values or any activities related to Indians - thus, constituting gross mismanagement of The Tribe.

NOTICE OF APPEAL


2016-09-29-appeal

234
235 Meanwhile, the Appellant, who by lineage, descent and circumstance is the legitimate heir to
236 and the rightful Chief and Chairperson of the Sheep Ranch Rancheria of MiWok Indians
237 of California continues to subsist on some \$700 per month in state aid.

238
239 In progress is a request for full documentation from the BIA under the Freedom of
240 Information Act. In addition, a request for records has been sent to Silvia Burley and to
241 Mary Wynne. Pertinent information obtained therefrom will be amended to this Appeal.
242 And additional points may enumerated at a later time and at the hearing.

243
244 I need to know, as rapidly as possible, if the Bureau will hear this Appeal. If not, I need
245 to know that in writing and the reasons for not hearing this Appeal. If the Bureau will
246 hear the Appeal, then I need to know the procedures for further documentation and
247 hearing preparation. I need to know with whom the BIA will be the case manager and
248 how to contact that person, and I need to have an itinerary of events.

249
250
251 Respectfully,

252
253 
254 Yakima K. Dixie
255
256
257
258

NOTICE OF APPEAL

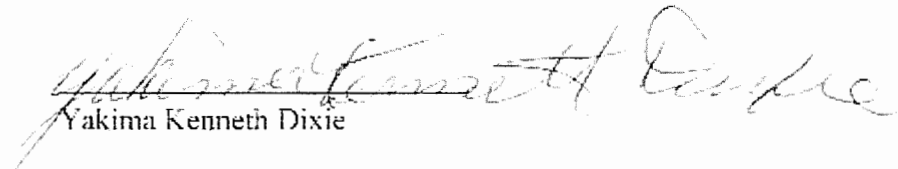
2003-10-30-BIA-appea

Affidavit

(Under California Code of Civ. Proc. Section 2015.5)

I, Yakima Kenneth Dixie, hereby swear, under penalty of perjury, that the foregoing is true and correct and when called to testify will do so as is represented herein. Although I have had outside assistance in constructing and writing this Appeal, I have completely read and understand its contents; and I confirm that this accurately represents my personal testimony.

Date: 11-3-16


Yakima Kenneth Dixie

JURAT

State/Commonwealth of California
County of AMADOR

} ss.

Subscribed and sworn to (or affirmed) before me
this 3rd day of November, 2003, by

(1) Yakima Kenneth Dixie
Name of Signer #1

(2) _____
Name of Signer #2



Place Notary Seal under Affiant's Name

Kristie M. Freitas
Signature of Notary Public
Kristie M. Freitas
Printed Name of Notary Public

OPTIONAL

Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Affidavit

Document Date: 11/3/03 Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT
OF SIGNER #1

RIGHT THUMBPRINT
OF SIGNER #2

NOTICE OF APPEAL

2003-04-10-01A-appeal

Certificate of Service

In accordance with Sec. 2.12, Service of appeal documents of The Code, I hereby certify that, on October 30, 2003, I served copies of the foregoing Appeal to the following Interested Parties by first class U.S. mail, postage prepaid, addressed to:

Interested Parties

For The Bureau of Indian Affairs

Aurene Martin
Principal Deputy Assistant Secretary
U.S. Department of the Interior
Bureau of Indian Affairs
1849 C St. NW # 4160
Washington DC 20240-9997
(202) 208-7163

Collateral Interested Parties


Debra G. Luther
United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814

For Silvia Burley

Silvia Burley
California Valley Miwok Tribe
11701 Escondido Pl.
Stockton, California 95212
Phone 209-931-4567 Fax 209-931-4333

David J. Rapport
Rapport and Marston
P.O. Box 488
465 West Perkins Street
Ukiah, California 95482
767-462-6846

Philip E. Thompson
Thompson Associates
2307 Thornknoll Dr. Suite 100
Fort Washington, Maryland 20744
301-248-6480


William Martin
203 Plaza Ave.
Lodi, California 95240
925-586-7260

NOTICE OF APPEAL

2009-11-23-BIA-appeal

Table of Exhibits

Document number assoc. with date.	Document Title	Annotations
1915-08-13	BLA census of Sheep Ranch Indians	Some 12 Indians are identified as part of the "Sheep-ranch Indians from "once quite a large band of Indians in former years. . .". Yakima is the grandson of one of 4 children of Peter Hodge and Annite Hodge.
1925-00-00	Handbook of the Indians of California by A.L. Kroeber LCB	Important over-view of Miwoks including a definition of chiefdomship. Also territorial maps. See page 452 Social Practices "Chiefdomship was a well-defined and hereditary affair, as is show by the passage of the title to women in the male line. . ."
1971-08-09	Inventory and Appraisement of Indian Trust Land of Mable Hodge Dixie	Title of Yakima's land - relevant to "preservation" of the tribe and his position as Chief
1971-11-01	Order Determining Heirs	BIA document designating Yakima and Melvin as heirs of Sheep Ranch land
1998-09-08	Video tape of BIA meeting with Yakima at Sheep Ranch	Raymond Foy and Brian Goldman, Tribal Officers of the BIA have a meeting at Yakima's house in Sheep Ranch with Silvia Burley to discuss various issues of Yakima's tribe, including Sylvia's entry into the tribe. The meeting is recorded on a 2 hour tape taken by Rocky McCay's wife. There is absolutely no doubt that Yakima is held to be the Chief, Chairperson, and sole determining entity in the Tribe by the BIA. They mention that there is a trust fund that has accumulated for Yakima (\$250,000) and that he needs to get his

NOTICE OF APPEAL

1005-0000-BIA Appeal

		<p>tribe organized so that they can disburse the money to him to fix up his house and give him a decent standard of living. They convince Yakima to take Silvia into Tribe and do not advise him about various options such as voting or non-voting membership. There is no mention of making her Chairperson. Yakima repeatedly says that he is not an educated man, does not understand what is going on, and needs help</p>
1998-?-?	BIA Resolution =GC-98-01	<p>"Establishing a General Council to Serve as the Governing Body of The Sheep Ranch Band of Me-Wuk Indians." We have only page one. This is important and mentions Silvia</p>
1999-04-20	Resignation of Chairmanship by Yakima to Silvia	<p>Forged document upon which the BIA validates its designation Silvia as Chairperson. It is not notarized and Silvia and her daughter are the only co-signers. Yakima claims that he never signed such a document; and indeed, he was completely surprised when this was discovered accidentally some 7 months later on November 15, 1999, by others. Because chieftainship in the Miwok is by lineal descent, Yakima cannot resign his position but could only assign it with right of revocation - See Exhibit 1925-00-00. This document was reviewed by a hand-writing expert and found "Yakima Kenneth Dixie did not sign the questioned resignation letter."</p>
1999-04-30	Power of attorney from Yakima to Mary Wynn	<p>A power of attorney is granted by Yakima to Mary Wynn, attorney in Okanogan, Washington to manage the legal affairs of the tribe. Silvia was then going to school there, being funded by the BIA. (This power of attorney is curious because if Yakima had resigned his Chairpersonship</p>

NOTICE OF APPEAL

2003-10-10-BIA-appeal

		1999-04-20 to her 10 days before, then why did Silvia ask him to sign a document which, ostensibly, she, herself, was empowered to execute?) Yakima is told that the power of attorney was necessary to get money from the BIA to fix his house, give him some income, and generally conduct the affairs of the tribe. Subsequent to this document, Yakima hears virtually nothing from Silvia or the BIA after this date.
		Yakima withdraws the power of attorney on March 4, 2000.
2000-02-04	BIA letter to Yakima reciting events and giving determinations.	This needs study. Note, they address it to Yakima K Dixie, Vice-Chairperson.
2000-09-27	North American Sports suit against the Tribe and Silvia.	Case # CIV.S-00-21-7 DFL DAD Complaint for Breach of Contract and Fraud.
2001-07-18	Sheep Ranch and Yakima sue Silvia Burley.	Case# CIV.S-01-1389 MLS DAD Complaint for Fraud, RICO, Accounting, Declaratory Relief.
2003-05-05	Letter to Raymond Fry of the BIA.	Yakima requests help from Fry in filing an appeal - Procedures, Interested Persons, and Freedom of Information documents. Fry does not respond.
2003-06-22	Document Examiners evaluation of Yakima's signature on resignation of Chairmanship.	See document of 1999-04-20-E. Examiner holds that "Yakima Kenneth Dixie did not sign the questioned resignation letter."
2003-06-26	Letter to Dale Risling of the BIA.	Yakima requests help in filing an appeal from Raymond Fry's Supervisor.
2003-08-15	Letter to Clayton Gregory of the BIA.	Yakima makes an Appeal to Regional BIA, attempting to compel Fry and Risling, above, to fulfill their duty.
2003-09-30	Request for documents under Freedom of Information Act.	FOIA re-sent to Willie Chism.

EXHIBIT “9”

RESOLUTION #GC-98-01

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

- WHEREAS,** The Sheep Ranch Band of Me-Wuk Indians of the Sheep Ranch Rancheria of California ("the Tribe") was not terminated pursuant to the provisions of the Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390 ("the Rancheria Act"), and is a federally recognized Indian Tribe as confirmed by the inclusion of the Tribe in the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, as published in the Federal Register on October 23, 1997.
- WHEREAS,** The plan of Distribution of the Assets of the Sheep Ranch Rancheria, approved by the Associate Commissioner of Indian Affairs on October 12, 1966, identified Mabel (Hodge) Dixie as the sole distributee entitled to participate in the distribution of the assets of the Sheep Ranch Rancheria;
- WHEREAS,** The Bureau of Indian Affairs did not completely implement the steps necessary to effect the termination of the Tribe prior to the passing of Mabel (Hodge) Dixie;
- WHEREAS,** The estate of Mabel (Hodge) Dixie was probated and Order of Determination of Heirs was issued on October 1, 1971, listing the following persons as possessing a certain undivided interest in the Sheep Ranch Rancheria:
- | | |
|-----------------------|------------------------|
| Merle Butler, husband | Undivided 1/3 interest |
| Richard Dixie, son | Undivided 1/6 interest |
| Yakima Dixie, son | Undivided 1/6 interest |
| Melvin Dixie, son | Undivided 1/6 interest |
| Tommy Dixie, son | Undivided 1/6 interest |
- and this Order was reaffirmed by another Order issued on April 14, 1993;
- WHEREAS,** The surviving heirs are believed to be Yakima and Melvin Dixie, as the other heirs are or are believed to be deceased, and their heirs are in the process of requesting the estates of the deceased heirs be probated, and it is believed that the deceased heirs had no issue;
- WHEREAS,** The whereabouts of Melvin Dixie are unknown;
- WHEREAS,** The membership of the Tribe currently consists of at least the following individuals; Yakima Dixie, Silvia Fawn Burley, Rashel Kawehilani Reznor, Anjelica Josett Paulk, and Tristian Shawnee Wallace; this membership may change in the future consistent with the Tribe's ratified constitution and any duly

enacted Tribal membership statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATION

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

Dated this 5 day of November, 1998:

Yakima Dixie
Yakima Dixie

Silvia Burley
Silvia Burley

Rashel Reznor
Rashel Reznor

EXHIBIT “10”



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 11 2005

Mr. Yakima K. Dixie
Sheep Ranch Rancheria of MiWok Indians of California
11178 Sheep Ranch Rd.
P.O. Box 41
Sheep Ranch, California 95250

Dear Mr. Dixie:

I am writing in response to your appeal filed with the office of the Assistant Secretary – Indian Affairs on October 30, 2003. In deciding this appeal, I am exercising authority delegated to me from the Assistant Secretary – Indian Affairs pursuant to 209 DM 8.3 and 110 DM 8.2. In that appeal, you challenged the Bureau of Indian Affairs' ("BIA") recognition of Sylvia Burley as tribal Chairman and sought to "nullify" her 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.

Your appeal of the BIA's recognition of Ms. Burley as tribal Chairman has been rendered moot by the BIA's decision of March 26, 2004, a copy of which is enclosed, rejecting the Tribe's proposed constitution. In that letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. Rather, the BIA would recognize her as "a person of authority within California Valley Miwok Tribe." Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you, either in conjunction with Ms. Burley, other tribal members, or potential tribal members, to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004, letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members. If you need guidance or assistance, Ray Fry, (916) 930-3794, of the Central California Agency of the BIA can advise you how to go about doing this.

In addition, your appeal to my office was procedurally defective because it raised issues that had not been raised at lower levels of the administrative appeal process. In May 2003, you contacted the BIA to request assistance in preparing an appeal of the BIA's recognition of Ms. Burley as tribal Chairman. You specifically stated that you were not filing a formal Notice of Appeal. In June 2003, you filed an "Appeal of inaction of official," pursuant to 25 C.F.R. §2.8, with the Central California Agency Superintendent challenging the BIA's failure to respond to your request for assistance. In August 2003, you filed another "Appeal of inaction of official"

with the Acting Regional Director challenging the failure of the Superintendent to respond to your appeal of the BIA's inaction. Your appeal with my office, however, was not an "Appeal of inaction of official." Rather, your "Notice of Appeal" challenged the BIA's recognition of Ms. Burley as tribal Chairman and sought to nullify the Tribe's adoption of her and her family members. Those issues were not raised below. They are not, therefore, properly before me.

In addition, your appeal appears to be untimely. In 1999, you first challenged the BIA's recognition of Ms. Burley as Chairman of the Tribe. In February 2000, the BIA informed you that it defers to tribal resolution of such issues. On July 18, 2001, you filed a lawsuit against Ms. Burley in the United States District Court for the Eastern District of California challenging her purported leadership of the Tribe. On January 24, 2002, the district court dismissed your lawsuit, without prejudice and with leave to amend, because you had not exhausted your administrative remedies by appealing the BIA's February 2000 decision. After the court's January 24, 2002, order, you should have pursued your administrative remedies with the BIA. Instead, you waited almost a year and a half, until June 2003, before raising your claim with the Bureau. As a result of your delay in pursuing your administrative appeal after the court's January 24, 2002, order, your appeal before me is time barred.

In light of the BIA's letter of March 26, 2004, that the Tribe is not an organized tribe, however, the BIA does not recognize any tribal government, and therefore, cannot defer to any tribal dispute resolution process at this time. I understand that a Mr. Troy M. Woodward has held himself out as an Administrative Hearing Officer for the Tribe and purported to conduct a hearing to resolve your complaint against Ms. Burley. Please be advised that the BIA does not recognize Mr. Woodward as a tribal official or his hearing process as a legitimate tribal forum. Should other issues arise with respect to tribal leadership or membership in the future, therefore, your appeal would properly lie exclusively with the BIA.

Sincerely,



Michael D. Olsen
Principal Deputy
Acting Assistant Secretary - Indian Affairs

Enclosure

cc: Sylvia Burley
Troy M. Woodward, Esq.
Thomas W. Wolfrum, Esq.
Chadd Everone

EXHIBIT “11”

YAKIMA K. DIXIE

Sheep Ranch Rancheria of Miwok Indians of California
a.k.a. California Valley Miwok Tribe
11178 Sheep Ranch Rd., Mail P.O. Box 41
Sheep Ranch California 95250
209-728-2142

The Will & Testament

of

Yakima K. Dixie

I, Yakima K. Dixie (born February 1, 1940, a resident of California, and being of sound mind) make this Will for the organization of my Tribe, the conduct of its business, and the disposition of my personal property.

I

The Organization of My Tribe

I (a) - The Structure and Function of The Tribe

Until such time that the Tribe becomes organized within the frame-work of a constitution that is formally recognized by the government of the United States, this document represents my Will for the purpose, structure, and activities of my Tribe.

I (b) - The Purpose of The Tribe

The purpose of the Tribe shall be to engage its members in activities that enhance the particular interests of the Tribe, of Miwok Indians and their descendants in the vicinity of Sheep Ranch and of Native Americans and humanity in general. This will include, but not be limited to, the following activities: business enterprises, health and medical programs, educational and employment programs, projects in sustainable development, projects in Miwok traditions.

I (c) - The Office of The Chief

By hereditary and lineal descent, I, Yakima K. Dixie, am the Chief and rightful authority of the Sheep Ranch Rancheria of Miwok Indians of California a.k.a. California Valley Miwok Tribe (Tribe). I inherit my position and authority through three, historically documented generations.

spanning over 100 years. From my mother, Marie Hodge Dixie (1918-1971), I inherited tribal authority - superseding my elder brother, Richard Dixie (1927-1987) and my younger brothers, Melvin Dixie (1943 -) and Tommy Dixie (1945-1983). My mother inherited her authority for The Tribe from her father, Tom Hodge, who, in turn, inherited his authority from his father, Peter Hodge. Prior to that, descent goes back into pre-recorded history.

Until superseded by a constitutional form of government, the Chief is the sole authority for the Tribe. If I were to die without progeny, the Office of Chief will cede to my next of kin, Melvin Dixie. The following are prerequisites for Melvin to inherit this position. 1) He would have to complete an accredited alcohol detoxification and treatment program. 2) He would have to pledge to honor all agreements which I have made for the Tribe and which are identified in this document. 3) He may not associate with Rocky MacKay. And 4) for a period of 2 years, he would have to manage the affairs of the Chief under the supervision of a Board of Trustees which would include the Executive Director of the Tribe plus one representative of each of the entities with whom I have made a business agreement and who is identified herein.

If I were to survive Melvin, then his son, as next of kin, would inherit the position of Chief with the same provisos as above. If there is no next of kin or if the next of kin is unable to fulfill the functions of Chief, the Office shall cede to the Executive Director of the Tribal Council.

I (d) - Tribal Counsel

The Tribal Counsel shall consist of those member of the Tribe who are engaged in managing the functions of the Tribe. The Counsel may have consultants who are non-tribal members. The Tribal Counsel may initiate tribal policy for the approval of the Chief and the Counsel may organize itself as it determines appropriate to its activities. The initial Tribal Counsel shall be appointed by the Chief and serve for a defined term. At the time of this signing, the only member of the Tribal Counsel is Velma WhiteBear, who is designated as the Executive Director of the Tribe.

I (e) - Tribal Membership

Membership in the Tribe shall be proposed by the Counsel by a majority vote and subject to approval by the Chief or proposed by the Chief and approved by a majority of the Counsel. There shall be various types of membership such as: probationary, conditional, life-time, and hereditary. The provisional members are listed below.

Annone Azevedo	4001 Currie Bee Court	North Highlands, Calif. 95660
Melvin Dixie	Not known	
Arvada Fisher	PO BOX 224	Burson, Calif. 95225
Antonia Lopez	PO BOX 1432	Jackson, Calif. 95642
Robert Ramirez, Jr.	PO BOX 844	Valley Springs, Calif.
Iva A. Sandoval	31112 Sinclair St.	Stockton, Calif. 95211

109 Loretta F. Wilson 213 Lexington Drive Oakland, Calif. 95052
 110 Stanley M. Wilson 3352 Bellview St. Stockton, Calif. 95206
 111 Loreyn F. Wilson PO BOX 189 West Point, Calif. 95255
 112 Patricia L. Williams 4585 Iowa Ave. Sacramento, Calif. 95824
 113
 114
 115

116 I (f) - Contracts with Non-tribal Entities

117
 118 In the course of regaining my authority of the Tribe and positioning it for business enterprises, I,
 119 as Chief, have made various agreements with non-tribal entities (individuals and organizations).
 120 These agreements are hereby incorporated into my Will as policy for the Tribe. At the time of this
 121 signing, there are four contracts. These are:

122
 123 My Agreement with Bill Martin and LeRon Chapelle. (Exhibit A)

124
 125 My Finders Agreement with Philip Peck and Michael Babcock. (Exhibit B)

126
 127 My Bridge-loan Agreement with various people. (Exhibit C)

128
 129 My pending agreement with the casino Developer and Operator. (Exhibit D)

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 135 End of Section I - The Organization of My Tribe.
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II
The Disposition of My Personal Property

II (a) - Appointment of Executor

I designate Velma Whitebear my cousin to be the Executor of this Will.

II (b) - Distribution of My Money

My accumulated cash reserves are to be distributed accordingly.

1) The sum of \$5,000 is to be used by the executor to cover the costs of probating this Will.

2) The payment my obligations and debts

(a) Priority in the payment of my obligations is the money which Bill Martin has expended on my behalf and on behalf of my Tribe since November 1999. Payment will be based on the expense receipts which are presented by Martin to the Executor plus a reasonable allowance for travel which he has made over the years.

(b) Payment to my remaining debts, including any "bridge-loans" which I may have made to cover expenses related to tribal matters, are to be made to individual lenders on a *pro rata* basis.

3) The remainder is to be donated to the general fund of my tribe.

3 - Distribution of Real Estate

a) My interest in any real estate that is held in trust for me with the Bureau of Indian affairs is to remain in federal trust and is to be deeded to my tribe (Sheep Ranch Rancheria of MiWok Indians of California a.k.a. California Valley Miwok Tribe) given the Exclusionary Principle as described below in section 5.

4 - Distribution of Other Assets

a) Earned income from intellectual properties, accrued earnings from other sources (including BIA trust accounts), and other assets that may be in my estate are to be used first to repay any outstanding debts and obligations as described in section 2, with the remainder to be conveyed to my Tribe according to my wishes as described below in both section 5 (Exclusionary Principle) and section 6 (Inheritance Of Tribal Authority).

2004-02-09-Yakima-Will

217 **5 - Exclusionary Principle**

218
219 a) Where I have conveyed my personal assets to my Tribe, the following exclusionary principle
220 shall apply. If (at the time of my demise and when this Will comes into force) the Tribe is still
221 under the control of Silvia Burley or her relative(s), then my assets shall remain in my estate until
222 such time as she is replaced by the rightful, lineal descendant as defined herein under section 6
223 (Inheritance Of Tribal Authority). If the probate of the Will is required by lawful authority before
224 such recover of tribal authority, then such assets are willed to the Executor to be retained
225 personally until, at the discretion of the Executor, the assets may be re-conveyed back to the
226 Tribe.
227
228

229 **6 - Inheritance Of Tribal Authority**

230
231 To restate what is above, according to Miwok tradition, I am, by lineal descent, the Chief and
232 rightful authority (Chairperson) of the federally recognized Indian tribe which is known as: Sheep
233 Ranch Rancheria of MiWok Indians of California a.k.a. California Valley Miwok Tribe. I have
234 held this position since the death of my mother (Mabel Hodge Dixie) in 1965. My mother
235 inherited the Chieftanship from her father (my maternal grandfather), Tom Hodge. Tom Hodge
236 inherited the Chieftanship from his father (my great-grandfather), Peter Hodge. Peter Hodge
237 traced his ancestry back to pre-recorded history.
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241 If I were to die without progeny, the Office of Chief will cede to my next of kin as described
242 above. If there is no next of kin or if the next of kin is unable to fulfill the functions of Chief, the
243 Office shall cede to the Executive Director of the Tribal Counsel.
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247 End of Section II - The Disposition of My Personal Property.
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Date: 5/5/04

Yakima K. Dixie
Yakima K. Dixie

Witnesses

Date: 05/05/04

Bill Mester

2014-01-09 Yaxima-Will

5 - Exclusionary Principle

at Where I have conveyed my personal assets to my Tribe, the following exclusionary principle shall apply. If (at the time of my demise and when this Will comes into force) the Tribe is still under the control of Silvia Burley or her relatives, then my assets shall remain in my estate until such time as she is replaced by the rightful, lineal descendant as defined herein under section 6 (Inheritance Of Tribal Authority). If the probate of the Will is required by lawful authority before such recover of tribal authority, then such assets are willed to the Executor to be retained personally until, at the discretion of the Executor, the assets may be re-conveyed back to the Tribe.

6 - Inheritance Of Tribal Authority

To restate what is above, according to Miwok tradition, I am, by lineal descent, the Chief and rightful authority (Chairperson) of the Federally recognized Indian tribe which is known as: Sheep Ranch Rancheria of Miwok Indians of California a.k.a. California Valley Miwok Tribe. I have held this position since the death of my mother (Mabel Hodge Dixie) in 1965. My mother inherited the Chieftanship from her father (my maternal grandfather), Tom Hodge. Tom Hodge inherited the Chieftanship from his father (my great-grandfather), Peter Hodge. Peter Hodge traced his ancestry back to pre-recorded history.

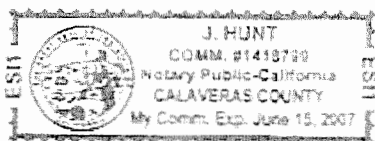
If I were to die without progeny, the Office of Chief will cede to my next of kin as described above. If there is no next of kin or if the next of kin is unable to fulfill the functions of Chief, the Office shall cede to the Executive Director of the Tribal Council.

End of Section II - The Disposition of My Personal Property.

Continued }

Notary Seal *July 9, 2011*

NOTARY SEAL



J. Hunt
J. Hunt

EXHIBIT “12”



Federal Register

Friday,
July 12, 2002

Part IV

Department of the Interior

Bureau of Indian Affairs

**Indian Entities Recognized and Eligible
To Receive Services From the United
States Bureau of Indian Affairs; Notice**

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of 562 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS-4631-MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208-2475.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the notice published on March 13, 2000 (65 FR 13298). Six tribal entities have been added to the list. Three of the six tribes became newly recognized since the last publication. The other three tribes were omitted from earlier **Federal Register** publications of the Tribal Entities List. The Shawnee Tribe and the Graton Rancheria, were recognized under Titles 7 and 14 of the Act of December 27, 2000, Pub. L. 106-568, 114 Stat. 2868. The Cowlitz Indian Tribe was acknowledged under 25 CFR part 83. The final determination for federal acknowledgment became effective on January 4, 2002. The Assistant Secretary—Indian Affairs reaffirmed the formal recognition of the King Salmon Tribe, the Shoonaq' Tribe of Kodiak, and the Lower Lake Rancheria, on December 29, 2000. The reaffirmation acknowledged that an administrative oversight had occurred and that three tribes had been omitted from the **Federal Register** list of entities recognized and eligible to receive services from the United States Bureau of Indian Affairs.

Several tribes have also made changes to their tribal name. Most of the name changes are minor in nature, except for the California Valley Miwok Tribe (formerly the Sheep Ranch Rancheria). To aid in identifying tribal name

changes, the tribe's former name is included with the new tribal name. We will continue to list the tribe's former name for several years before dropping the former name from the list. We have also made several corrections. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: July 1, 2002.

Neal A. McCaleb,
Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
 Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
 Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
 Alabama-Coushatta Tribes of Texas
 Alabama-Quassarte Tribal Town, Oklahoma
 Alturas Indian Rancheria, California
 Apache Tribe of Oklahoma
 Arapahoe Tribe of the Wind River Reservation, Wyoming
 Aroostook Band of Micmac Indians of Maine
 Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
 Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
 Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
 Bay Mills Indian Community, Michigan (previously listed as the Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan)
 Bear River Band of the Rohnerville Rancheria, California
 Berry Creek Rancheria of Maidu Indians of California
 Big Lagoon Rancheria, California
 Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California

Big Sandy Rancheria of Mono Indians of California
 Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
 Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
 Blue Lake Rancheria, California
 Bridgeport Paiute Indian Colony of California
 Buena Vista Rancheria of Me-Wuk Indians of California
 Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
 Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
 Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
 Caddo Indian Tribe of Oklahoma
 Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
 Cahto Indian Tribe of the Laytonville Rancheria, California
 California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)
 Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
 Capitan Grande Band of Diegueno Mission Indians of California:
 Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
 Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
 Catawba Indian Nation (aka Catawba Tribe of South Carolina)
 Cayuga Nation of New York
 Cedarville Rancheria, California
 Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
 Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
 Cherokee Nation, Oklahoma
 Cheyenne-Arapaho Tribes of Oklahoma
 Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
 Chickasaw Nation, Oklahoma
 Chicken Ranch Rancheria of Me-Wuk Indians of California
 Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
 Chitimacha Tribe of Louisiana
 Choctaw Nation of Oklahoma
 Citizen Potawatomi Nation, Oklahoma
 Cloverdale Rancheria of Pomo Indians of California
 Cocopah Tribe of Arizona
 Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
 Cold Springs Rancheria of Mono Indians of California
 Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California

Comanche Nation, Oklahoma (formerly the Comanche Indian Tribe)
 Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
 Confederated Tribes of the Chehalis Reservation, Washington
 Confederated Tribes of the Colville Reservation, Washington
 Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
 Confederated Tribes of the Goshute Reservation, Nevada and Utah
 Confederated Tribes of the Grand Ronde Community of Oregon
 Confederated Tribes of the Siletz Reservation, Oregon
 Confederated Tribes of the Umatilla Reservation, Oregon
 Confederated Tribes of the Warm Springs Reservation of Oregon
 Confederated Tribes and Bands of the Yakama Nation, Washington (formerly the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation)
 Coquille Tribe of Oregon
 Cortina Indian Rancheria of Wintun Indians of California
 Coushatta Tribe of Louisiana
 Cow Creek Band of Umpqua Indians of Oregon
 Cowlitz Indian Tribe, Washington
 Coyote Valley Band of Pomo Indians of California
 Crow Tribe of Montana
 Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
 Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
 Death Valley Timbi-Sha Shoshone Band of California
 Delaware Nation, Oklahoma (formerly the Delaware Tribe of Western Oklahoma)
 Delaware Tribe of Indians, Oklahoma
 Dry Creek Rancheria of Pomo Indians of California
 Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
 Eastern Band of Cherokee Indians of North Carolina
 Eastern Shawnee Tribe of Oklahoma
 Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
 Elk Valley Rancheria, California
 Ely Shoshone Tribe of Nevada
 Enterprise Rancheria of Maidu Indians of California
 Flandreau Santee Sioux Tribe of South Dakota
 Forest County Potawatomi Community, Wisconsin (previously listed as the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin)
 Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
 Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
 Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
 Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
 Fort McDowell Yavapai Nation, Arizona (formerly the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation)
 Fort Mojave Indian Tribe of Arizona, California & Nevada
 Fort Sill Apache Tribe of Oklahoma
 Gila River Indian Community of the Gila River Indian Reservation, Arizona
 Grand Traverse Band of Ottawa and Chippewa Indians, Michigan (previously listed as the Grand Traverse Band of Ottawa & Chippewa Indians of Michigan)
 Graton Rancheria, California
 Greenville Rancheria of Maidu Indians of California
 Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
 Guidiville Rancheria of California
 Hannahville Indian Community, Michigan (previously listed as the Hannahville Indian Community of Wisconsin Potawatomi Indians of Michigan)
 Havasupai Tribe of the Havasupai Reservation, Arizona
 Ho-Chunk Nation of Wisconsin (formerly the Wisconsin Winnebago Tribe)
 Hoh Indian Tribe of the Hoh Indian Reservation, Washington
 Hoopa Valley Tribe, California
 Hopi Tribe of Arizona
 Hopland Band of Pomo Indians of the Hopland Rancheria, California
 Houlton Band of Maliseet Indians of Maine
 Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
 Huron Potawatomi, Inc., Michigan
 Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
 Ione Band of Miwok Indians of California
 Iowa Tribe of Kansas and Nebraska
 Iowa Tribe of Oklahoma
 Jackson Rancheria of Me-Wuk Indians of California
 Jamestown S'Klallam Tribe of Washington
 Jamul Indian Village of California
 Jena Band of Choctaw Indians, Louisiana
 Jicarilla Apache Nation, New Mexico (formerly the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation)
 Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
 Kalispel Indian Community of the Kalispel Reservation, Washington
 Karuk Tribe of California
 Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
 Kaw Nation, Oklahoma
 Keweenaw Bay Indian Community, Michigan (previously listed as the Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan)
 Kialegee Tribal Town, Oklahoma
 Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
 Kickapoo Tribe of Oklahoma
 Kickapoo Traditional Tribe of Texas
 Kiowa Indian Tribe of Oklahoma
 Klamath Indian Tribe of Oregon
 Kootenai Tribe of Idaho
 La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
 La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
 Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (previously listed as the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin)
 Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
 Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan (previously listed as the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan)
 Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
 Little River Band of Ottawa Indians, Michigan (previously listed as the Little River Band of Ottawa Indians of Michigan)
 Little Traverse Bay Bands of Odawa Indians, Michigan (previously listed as the Little Traverse Bay Bands of Odawa Indians of Michigan)
 Lower Lake Rancheria, California
 Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
 Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
 Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
 Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
 Lower Sioux Indian Community in the State of Minnesota (previously listed as the Lower Sioux Indian Community of Minnesota)
 Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota)

Lummi Tribe of the Lummi Reservation,
 Washington
 Lytton Rancheria of California
 Makah Indian Tribe of the Makah Indian
 Reservation, Washington
 Manchester Band of Pomo Indians of the
 Manchester-Point Arena Rancheria,
 California
 Manzanita Band of Diegueno Mission
 Indians of the Manzanita Reservation,
 California
 Mashantucket Pequot Tribe of
 Connecticut
 Match-e-be-nash-she-wish Band of
 Pottawatomis Indians of Michigan
 Mechoopda Indian Tribe of Chico
 Rancheria, California
 Menominee Indian Tribe of Wisconsin
 Mesa Grande Band of Diegueno Mission
 Indians of the Mesa Grande
 Reservation, California
 Mescalero Apache Tribe of the
 Mescalero Reservation, New Mexico
 Miami Tribe of Oklahoma
 Miccosukee Tribe of Indians of Florida
 Middletown Rancheria of Pomo Indians
 of California
 Minnesota Chippewa Tribe, Minnesota
 (Six component reservations: Bois
 Forte Band (Nett Lake); Fond du Lac
 Band; Grand Portage Band; Leech
 Lake Band; Mille Lacs Band; White
 Earth Band)
 Mississippi Band of Choctaw Indians,
 Mississippi
 Moapa Band of Paiute Indians of the
 Moapa River Indian Reservation,
 Nevada
 Modoc Tribe of Oklahoma
 Mohegan Indian Tribe of Connecticut
 Mooretown Rancheria of Maidu Indians
 of California
 Morongo Band of Cahuilla Mission
 Indians of the Morongo Reservation,
 California
 Muckleshoot Indian Tribe of the
 Muckleshoot Reservation, Washington
 Muscogee (Creek) Nation, Oklahoma
 Narragansett Indian Tribe of Rhode
 Island
 Navajo Nation, Arizona, New Mexico &
 Utah
 Nez Perce Tribe of Idaho
 Nisqually Indian Tribe of the Nisqually
 Reservation, Washington
 Nooksack Indian Tribe of Washington
 Northern Cheyenne Tribe of the
 Northern Cheyenne Indian
 Reservation, Montana
 Northfork Rancheria of Mono Indians of
 California
 Northwestern Band of Shoshoni Nation
 of Utah (Washakie)
 Oglala Sioux Tribe of the Pine Ridge
 Reservation, South Dakota
 Omaha Tribe of Nebraska
 Oneida Nation of New York
 Oneida Tribe of Indians of Wisconsin
 (previously listed as the Oneida Tribe
 of Wisconsin)
 Onondaga Nation of New York
 Osage Tribe, Oklahoma
 Ottawa Tribe of Oklahoma
 Otoe-Missouria Tribe of Indians,
 Oklahoma
 Paiute Indian Tribe of Utah (Cedar City
 Band of Paiutes, Kanosh Band of
 Paiutes, Koosharem Band of Paiutes,
 Indian Peaks Band of Paiutes, and
 Shivwits Band of Paiutes)
 Paiute-Shoshone Indians of the Bishop
 Community of the Bishop Colony,
 California
 Paiute-Shoshone Tribe of the Fallon
 Reservation and Colony, Nevada
 Paiute-Shoshone Indians of the Lone
 Pine Community of the Lone Pine
 Reservation, California
 Pala Band of Luiseno Mission Indians of
 the Pala Reservation, California
 Pascua Yaqui Tribe of Arizona
 Paskenta Band of Nomlaki Indians of
 California
 Passamaquoddy Tribe of Maine
 Pauma Band of Luiseno Mission Indians
 of the Pauma & Yuima Reservation,
 California
 Pawnee Nation of Oklahoma
 Pechanga Band of Luiseno Mission
 Indians of the Pechanga Reservation,
 California
 Penobscot Tribe of Maine
 Peoria Tribe of Indians of Oklahoma
 Picayune Rancheria of Chukchansi
 Indians of California
 Pinoleville Rancheria of Pomo Indians
 of California
 Pit River Tribe, California (includes Big
 Bend, Lookout, Montgomery Creek &
 Roaring Creek Rancherias & XL
 Ranch)
 Poarch Band of Creek Indians of
 Alabama
 Pokagon Band of Potawatomi Indians,
 Michigan and Indiana (previously
 listed as the Pokagon Band of
 Potawatomi Indians of Michigan)
 Ponca Tribe of Indians of Oklahoma
 Ponca Tribe of Nebraska
 Port Gamble Indian Community of the
 Port Gamble Reservation, Washington
 Potter Valley Rancheria of Pomo
 Indians of California
 Prairie Band of Potawatomi Nation,
 Kansas (formerly the Prairie Band of
 Potawatomi Indians)
 Prairie Island Indian Community in the
 State of Minnesota (previously listed
 as the Prairie Island Indian
 Community of Minnesota)
 Mdewakanton Sioux Indians of the
 Prairie Island Reservation, Minnesota)
 Pueblo of Acoma, New Mexico
 Pueblo of Cochiti, New Mexico
 Pueblo of Jemez, New Mexico
 Pueblo of Isleta, New Mexico
 Pueblo of Laguna, New Mexico
 Pueblo of Nambe, New Mexico
 Pueblo of Picuris, New Mexico
 Pueblo of Pojoaque, New Mexico
 Pueblo of San Felipe, New Mexico
 Pueblo of San Juan, New Mexico
 Pueblo of San Ildefonso, New Mexico
 Pueblo of Sandia, New Mexico
 Pueblo of Santa Ana, New Mexico
 Pueblo of Santa Clara, New Mexico
 Pueblo of Santo Domingo, New Mexico
 Pueblo of Taos, New Mexico
 Pueblo of Tesuque, New Mexico
 Pueblo of Zia, New Mexico
 Puyallup Tribe of the Puyallup
 Reservation, Washington
 Pyramid Lake Paiute Tribe of the
 Pyramid Lake Reservation, Nevada
 Quapaw Tribe of Indians, Oklahoma
 Quartz Valley Indian Community of the
 Quartz Valley Reservation of
 California
 Quechan Tribe of the Fort Yuma Indian
 Reservation, California & Arizona
 Quileute Tribe of the Quileute
 Reservation, Washington
 Quinault Tribe of the Quinault
 Reservation, Washington
 Ramona Band or Village of Cahuilla
 Mission Indians of California
 Red Cliff Band of Lake Superior
 Chippewa Indians of Wisconsin
 Red Lake Band of Chippewa Indians,
 Minnesota (previously listed as the
 Red Lake Band of Chippewa Indians
 of the Red Lake Reservation,
 Minnesota)
 Redding Rancheria, California
 Redwood Valley Rancheria of Pomo
 Indians of California
 Reno-Sparks Indian Colony, Nevada
 Resighini Rancheria, California
 (formerly the Coast Indian
 Community of Yurok Indians of the
 Resighini Rancheria)
 Rincon Band of Luiseno Mission
 Indians of the Rincon Reservation,
 California
 Robinson Rancheria of Pomo Indians of
 California
 Rosebud Sioux Tribe of the Rosebud
 Indian Reservation, South Dakota
 Round Valley Indian Tribes of the
 Round Valley Reservation, California
 (formerly the Covelo Indian
 Community)
 Rumsey Indian Rancheria of Wintun
 Indians of California
 Sac & Fox Tribe of the Mississippi in
 Iowa
 Sac & Fox Nation of Missouri in Kansas
 and Nebraska
 Sac & Fox Nation, Oklahoma
 Saginaw Chippewa Indian Tribe of
 Michigan (previously listed as the
 Saginaw Chippewa Indian Tribe of
 Michigan, Isabella Reservation)
 St. Croix Chippewa Indians of
 Wisconsin (previously listed as the St.
 Croix Chippewa Indians of
 Wisconsin, St. Croix Reservation)
 St. Regis Band of Mohawk Indians of
 New York

Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
 Samish Indian Tribe, Washington
 San Carlos Apache Tribe of the San Carlos Reservation, Arizona
 San Juan Southern Paiute Tribe of Arizona
 San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California
 San Pasqual Band of Diegueno Mission Indians of California
 Santa Rosa Indian Community of the Santa Rosa Rancheria, California
 Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
 Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
 Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
 Santee Sioux Tribe of the Santee Reservation of Nebraska
 Sauk-Suiattle Indian Tribe of Washington
 Sault Ste. Marie Tribe of Chippewa Indians of Michigan
 Scotts Valley Band of Pomo Indians of California
 Seminole Nation of Oklahoma
 Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations
 Seneca Nation of New York
 Seneca-Cayuga Tribe of Oklahoma
 Shakopee Mdewakanton Sioux Community of Minnesota (previously listed as the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake))
 Shawnee Tribe, Oklahoma
 Sherwood Valley Rancheria of Pomo Indians of California
 Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
 Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
 Shoshone Tribe of the Wind River Reservation, Wyoming
 Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
 Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
 Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
 Skokomish Indian Tribe of the Skokomish Reservation, Washington
 Skull Valley Band of Goshute Indians of Utah
 Smith River Rancheria, California
 Snoqualmie Tribe, Washington
 Soboba Band of Luiseno Indians, California (formerly the Soboba Band of Luiseno Mission Indians of the Soboba Reservation)
 Sokaogon Chippewa Community, Wisconsin (previously listed as the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin)
 Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
 Spirit Lake Tribe, North Dakota
 Spokane Tribe of the Spokane Reservation, Washington
 Squaxin Island Tribe of the Squaxin Island Reservation, Washington
 Standing Rock Sioux Tribe of North & South Dakota
 Stockbridge Munsee Community, Wisconsin (previously listed as the Stockbridge-Munsee Community of Mohican Indians of Wisconsin)
 Stillaguamish Tribe of Washington
 Summit Lake Paiute Tribe of Nevada
 Suquamish Indian Tribe of the Port Madison Reservation, Washington
 Susanville Indian Rancheria, California
 Swinomish Indians of the Swinomish Reservation, Washington
 Sycuan Band of Diegueno Mission Indians of California
 Table Bluff Reservation—Wiyot Tribe, California
 Table Mountain Rancheria of California
 Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
 Thlopthlocco Tribal Town, Oklahoma
 Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
 Tohono O'odham Nation of Arizona
 Tonawanda Band of Seneca Indians of New York
 Tonkawa Tribe of Indians of Oklahoma
 Tonto Apache Tribe of Arizona
 Torres-Martinez Band of Cahuilla Mission Indians of California
 Tule River Indian Tribe of the Tule River Reservation, California
 Tulalip Tribes of the Tulalip Reservation, Washington
 Tunica-Biloxi Indian Tribe of Louisiana
 Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
 Turtle Mountain Band of Chippewa Indians of North Dakota
 Tuscarora Nation of New York
 Twenty-Nine Palms Band of Mission Indians of California (previously listed as the Twenty-Nine Palms Band of Luiseno Mission Indians of California)
 United Auburn Indian Community of the Auburn Rancheria of California
 United Keetoowah Band of Cherokee Indians in Oklahoma (previously listed as the United Keetoowah Band of Cherokee Indians of Oklahoma)
 Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
 Upper Sioux Community, Minnesota (previously listed as the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota)
 Upper Skagit Indian Tribe of Washington
 Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
 Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
 Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
 Walker River Paiute Tribe of the Walker River Reservation, Nevada
 Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
 Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
 White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
 Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
 Winnebago Tribe of Nebraska
 Winnemucca Indian Colony of Nevada
 Wyandotte Tribe of Oklahoma
 Yankton Sioux Tribe of South Dakota
 Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
 Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
 Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
 Yomba Shoshone Tribe of the Yomba Reservation, Nevada
 Ysleta Del Sur Pueblo of Texas
 Yurok Tribe of the Yurok Reservation, California
 Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Village of Afognak
 Agdaagux Tribe of King Cove
 Native Village of Akhiok
 Akiachak Native Community
 Akiak Native Community
 Native Village of Akutan
 Village of Alakanuk
 Alatna Village
 Native Village of Aleknagik
 Algaaciq Native Village (St. Mary's)
 Allakaket Village
 Native Village of Ambler
 Village of Anaktuvuk Pass
 Yupiit of Andreafski
 Angoon Community Association
 Village of Aniak
 Anvik Village
 Arctic Village (See Native Village of Venetie Tribal Government)
 Asa'carsarmiut Tribe (formerly the Native Village of Mountain Village)
 Native Village of Atka
 Village of Atmautluak

Atkasuk Village (Atkasook)	Inupiat Community of the Arctic Slope	Nome Eskimo Community
Native Village of Barrow Inupiat	Iqurmit Traditional Council (formerly	Nondalton Village
Traditional Government	the Native Village of Russian Mission)	Noorvik Native Community
Beaver Village	Ivanoff Bay Village	Northway Village
Native Village of Belkofski	Kaguyak Village	Native Village of Nuiqsut (aka Nooiksut)
Village of Bill Moore's Slough	Organized Village of Kake	Nulato Village
Birch Creek Tribe	Kaktovik Village (aka Barter Island)	Nunakauyarmiut Tribe (formerly the
Native Village of Brevig Mission	Village of Kalskag	Native Village of Toksook Bay)
Native Village of Buckland	Village of Kaltag	Native Village of Nunapitchuk
Native Village of Cantwell	Native Village of Kanatak	Village of Ohogamiut
Native Village of Chanega (aka Chenega)	Native Village of Karluk	Village of Old Harbor
Chalkyitsik Village	Organized Village of Kasaan	Orutsararmiut Native Village (aka
Cheesh-Na Tribe (formerly the Native	Native Village of Kasigluk	Bethel)
Village of Chistochina)	Kenaitze Indian Tribe	Oscarville Traditional Village
Village of Chefornak	Ketchikan Indian Corporation	Native Village of Ouzinkie
Chevak Native Village	Native Village of Kiana	Native Village of Paimiut
Chickaloon Native Village	King Island Native Community	Pauloff Harbor Village
Native Village of Chignik	King Salmon Tribe	Pedro Bay Village
Native Village of Chignik Lagoon	Native Village of Kipnuk	Native Village of Perryville
Chignik Lake Village	Native Village of Kivalina	Petersburg Indian Association
Chilkat Indian Village (Klukwan)	Klawock Cooperative Association	Native Village of Pilot Point
Chilkoot Indian Association (Haines)	Native Village of Kluti Kaah (aka Copper	Pilot Station Traditional Village
Chinik Eskimo Community (Golovin)	Center)	Native Village of Pitka's Point
Native Village of Chitina	Knik Tribe	Platinum Traditional Village
Native Village of Chuathbaluk (Russian	Native Village of Kobuk	Native Village of Point Hope
Mission, Kuskokwim)	Kokhanok Village	Native Village of Point Lay
Chuloonawick Native Village	Native Village of Kongiganak	Native Village of Port Graham
Circle Native Community	Village of Kotlik	Native Village of Port Heiden
Village of Clarks Point (previously listed	Native Village of Kotzebue	Native Village of Port Lions
as the Village of Clark's Point)	Native Village of Koyuk	Portage Creek Village (aka Ohgsenakale)
Native Village of Council	Koyukuk Native Village	Pribilof Islands Aleut Communities of
Craig Community Association	Organized Village of Kwethluk	St. Paul & St. George Islands
Village of Crooked Creek	Native Village of Kwigillingok	Qagan Tayagungin Tribe of Sand Point
Curyung Tribal Council (formerly the	Native Village of Kwinhagak (aka	Village
Native Village of Dillingham)	Quinhagak)	Qawalangin Tribe of Unalaska
Native Village of Deering	Native Village of Larsen Bay	Rampart Village
Native Village of Diomedea (aka Inalik)	Levelock Village	Village of Red Devil
Village of Dot Lake	Lesnoi Village (aka Woody Island)	Native Village of Ruby
Douglas Indian Association	Lime Village	Saint George Island (See Pribilof Islands
Native Village of Eagle	Village of Lower Kalskag	Aleut Communities of St. Paul & St.
Native Village of Eek	Manley Hot Springs Village	George Islands)
Egegik Village	Manokotak Village	Native Village of Saint Michael
Eklutna Native Village	Native Village of Marshall (aka Fortuna	Saint Paul Island (See Pribilof Islands
Native Village of Ekuk	Ledge)	Aleut Communities of St. Paul & St.
Ekwok Village	Native Village of Mary's Igloo	George Islands)
Native Village of Elim	McGrath Native Village	Village of Salamatoff
Emmonak Village	Native Village of Mekoryuk	Native Village of Savoonga
Evansville Village (aka Bettles Field)	Mentasta Traditional Council	Organized Village of Saxman
Native Village of Eyak (Cordova)	Metlakatla Indian Community, Annette	Native Village of Scammon Bay
Native Village of False Pass	Island Reserve	Native Village of Selawik
Native Village of Fort Yukon	Native Village of Minto	Seldovia Village Tribe
Native Village of Gakona	Naknek Native Village	Shageluk Native Village
Galena Village (aka Loudon Village)	Native Village of Nanwalek (aka English	Native Village of Shaktoolik
Native Village of Gambell	Bay)	Native Village of Sheldon's Point
Native Village of Georgetown	Native Village of Napaimute	Native Village of Shishmaref
Native Village of Goodnews Bay	Native Village of Napakiak	Shoonag' Tribe of Kodiak
Organized Village of Grayling (aka	Native Village of Napaskiak	Native Village of Shungnak
Holikachuk)	Native Village of Nelson Lagoon	Sitka Tribe of Alaska
Gulkana Village	Nenana Native Association	Skagway Village
Native Village of Hamilton	New Koliganek Village Council	Village of Sleetmute
Healy Lake Village	(formerly the Koliganek Village)	Village of Solomon
Holy Cross Village	New Stuyahok Village	South Naknek Village
Hoonah Indian Association	Newhalen Village	Stebbins Community Association
Native Village of Hooper Bay	Newtok Village	Native Village of Stevens
Hughes Village	Native Village of Nightmute	Village of Stony River
Huslia Village	Nikolai Village	Takotna Village
Hydaburg Cooperative Association	Native Village of Nikolski	Native Village of Tanacross
Igiugig Village	Ninilchik Village	Native Village of Tanana
Village of Iliamna	Native Village of Noatak	Native Village of Tatitlek

Native Village of Tazlina
 Telida Village
 Native Village of Teller
 Native Village of Tetlin
 Central Council of the Tlingit & Haida
 Indian Tribes
 Traditional Village of Togiak
 Tuluksak Native Community
 Native Village of Tuntutuliak
 Native Village of Tununak

Twin Hills Village
 Native Village of Tyonek
 Ugashik Village
 Umkumiute Native Village
 Native Village of Unalakleet
 Native Village of Unga
 Village of Venetie (*See* Native Village of
 Venetie Tribal Government)

Native Village of Venetie Tribal
 Government (Arctic Village and
 Village of Venetie)
 Village of Wainwright
 Native Village of Wales
 Native Village of White Mountain
 Wrangell Cooperative Association
 Yakutat Tlingit Tribe
 [FR Doc. 02-17508 Filed 7-11-02; 8:45 am]
 BILLING CODE 4310-4J-P

EXHIBIT “13”

0457



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

Tribal Government Services
BCCO 01792

JUN 7 2001

Honorable Silvia Burley
Chairperson, California Valley Miwok Tribe
aka "Sheep Ranch Rancheria of Me-Wuk
Indians of California"
1055 Winter Court
Tracy, California 95376

Dear Chairperson Burley:

Thank you for your letter dated April 9, 2001, regarding the Tribal Council's desire to change the name of the *Sheep Ranch Rancheria of Me-Wuk Indians of California* to the *California Valley Miwok Tribe*. You have received conflicting information on how to accomplish the name change so you've requested us to clarify the matter.

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

Some tribes have constitutions that contain a provision that specifically states the tribe's official name. In that situation, the tribe will have to amend that particular provision in the constitution before the new name will be published in the FEDERAL REGISTER. On the other hand, if the tribal constitution does not contain a provision that sets out the tribe's official name, an amendment to the constitution is unnecessary. In such instances, the tribe can change its name by enacting a tribal ordinance to establish its official name.

We hope that this information resolves the matter for you.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon Backman", is written over a horizontal line.

Deputy Commissioner of Indian Affairs

cc: Regional Director, Pacific Region w/copy of incoming
Superintendent, Central California Agency w/copy of incoming

EXHIBIT “14”

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

THE CALIFORNIA VALLEY MIWOK
TRIBE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

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

THE TRIBAL COUNCIL,
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Mountain Ranch, CA 95246

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Mountain Ranch, CA 95246

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ANTOINE AZEVEDO,
4001 Carribee Court
North Highlands, CA 95660

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as
Secretary of the United States Department of
the Interior,
United States Department of the Interior

1849 C Street, N.W.

Washington, D.C. 20240

LARRY ECHO HAWK, in his official
capacity as Assistant Secretary-Indian Affairs
of the United States Department of the Interior,
Department of the Interior

1849 C Street, N.W.

Washington, D.C. 20240

MICHAEL BLACK, in his official capacity as
Director of the Bureau of Indian Affairs within
the United States Department of the Interior,
Bureau of Indian Affairs

MS-4606

1849 C Street, N.W.

Washington, D.C. 20240

Defendants.

**STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF INTERVEOR
DEFENDANT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

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Dated: December 13, 2011

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S-03-1476 slip op. at 7 (E.D. Cal. Nov. 4, 2003) (“It is by now well-established that an Indian tribe has exclusive jurisdiction over wholly internal tribal subject matter, such as membership disputes...”); *Lincoln v. Saginaw Chippewa Indian Tribe of Michigan*, 967 F.Supp. 966, 967 (E.D. Mich. 1997) *aff’d*, 156 F.3d 1230 (6th Cir. 1998) (“this court finds that it lacks jurisdiction to hear what is essentially a membership dispute between Plaintiffs and the Tribe.”); *Montgomery v. Flandreau Santee Sioux Tribe*, 905 F.Supp. 740, 746 (D.S.C. 1995) (“Giving deference to the Tribe’s right as a sovereign to determine its own membership, the Court holds that it lacks subject matter jurisdiction to determine whether any plaintiffs were wrongfully denied enrollment in the Tribe.”)

Moreover, “[f]ederal court jurisdiction does not reach this matter simply because the plaintiffs carefully worded their complaint.” *Smith v. Babbitt*, 100 F.3d at 559. In their Amended Complaint, Plaintiffs allege violations of the APA, the U.S. Constitution, and the Indian Civil Rights Act (“ICRA”). (Amended Complaint, ¶¶ 90-119). However, upon closer examination, it is evident that “these allegations are merely attempts to move this [internal tribal] dispute, over which this [C]ourt would not otherwise have jurisdiction, into federal court.” *Smith v. Babbitt*, 100 F.3d at 559. This Court cannot, and appropriately should not, permit Plaintiffs to pursue their enrollment grievances in this forum, as this Court lacks the necessary subject matter jurisdiction to do so pursuant to the aforementioned authority — despite Plaintiffs’ attempts to cloak an undisputed enrollment dispute under the guise of an APA action. Leaving these issues to the Tribe and to the Tribe alone is what current Federal law and policy towards Indian self-determination requires.

3. Plaintiffs’ Claims Are Time-Barred, Warranting Dismissal of This Action.

A separate and independent jurisdictional basis warranting dismissal of Plaintiffs' Amended Complaint is that the Plaintiffs' challenge to past BIA determinations, under the guise of challenging the August 2011 Decision, is statutorily prohibited as time-barred. Claims which arise under the APA are subject to the statute of limitations governed by 28 U.S.C. § 2401(a), which bars civil actions against the United States that are not filed within six years after the right of action first accrues. *See Impro Products, Inc. v. Block*, 722 F.2d 845, 850 (D.C. Cir. 1983). The right of action first accrues on the date of the final agency action.⁵ *Id.*; *Sendra Corp. v. Magaw*, 111 F.3d 162, 165 (D.C. Cir. 1997). As the D.C. Circuit has long held, Section "2401(a) is a jurisdictional condition attached to the government's waiver of sovereign immunity, and as such, it must be strictly construed." *Spannaus v. U.S. Dep't of Justice*, 824 F.2d 52, 55 (D.C. Cir. 1987) (citations omitted); *see West Virginia Highlands*, 540 F. Supp. 2d 125, 138 (4th Cir. 1998). Further, a jurisdictional statute of limitations, such as Section 2401(a) "cannot be overcome by the application of judicially recognized exceptions such as waiver, estoppels, equitable tolling, fraudulent concealment, the discovery rule, and the continuing violations doctrine." *Id.* (citations and alternations omitted). Instead, a "single violation...accrues on the day following the deadline" and a suit challenging such a violation is barred if filed outside the six-year statute of limitations. *Ctr. For Biological Diversity v. Hamilton*, 453 F.3d 1331, 1335 (11th Cir. 2006). Thus, where a party seeks to sue the United States pursuant to such a waiver of sovereign immunity, as Plaintiffs do here, the expiration of the statute of limitations on that claim is "construed as a bar to the court's subject matter

⁵ In *Bennett v. Spear*, the U.S. Supreme Court set forth two conditions in order for an agency action to be deemed "final": "First, the action must mark the 'consummation' of the agency's decision making process – it must not be of a merely tentative or interlocutory nature." (citations omitted) Second, "the action must be one by which rights or obligations have been determined," or from which "legal consequences will flow." 520 U.S. 154, 177-78, 117 S.Ct. 1154, 1168 (1997) (citations omitted).

jurisdiction, and thus a proper subject for a motion to dismiss under Rule 12(b)(1).” *Felter, et al. v. Norton*, 412 F.Supp.2d 118, 125 (D.D.C. 2006); *West Virginia Highlands*, 540 F. Supp. 2d at 138.

Plaintiffs’ Amended Complaint asserts claims against Federal Defendants that pertain, not to independent determinations of the August 2011 Decision, but, rather, to long-standing BIA determinations, which were used as the basis for the August 2011 Decision. Because these previous BIA decisions were never challenged by a single one of the Plaintiffs at the time of issuance or the six-year period thereafter, the statute of limitations governing such claims and the Plaintiffs’ APA action have lapsed in their entirety. As such, this Court lacks subject matter jurisdiction to entertain Plaintiffs’ time-barred claims. In challenging the Tribe’s governing body and composition of five Tribal members, Plaintiffs also challenge the BIA’s 1934 Final Agency Action, its 1966 Final Agency Action as well as the 1971 and 1993 Final Agency Actions pertaining to recognition of Mabel Hodge Dixie and her heirs as the sole members of the Tribe. (RAR Decl., Exs A and D thereto) Such determinations as to the Tribe’s membership, including the denial to claims of membership by the heirs of the 1915 Census Indians in the 1966 Final Agency Action, were never challenged by Plaintiffs, and therefore, claims challenging recognition of the Tribe’s membership is statutorily barred pursuant to 28 U.S.C. § 2401(a).

Plaintiffs’ Amended Complaint also very clearly challenges the September 24, 1998 BIA final agency action which first recognized the Tribe’s five member citizenship and their authority to establish a Tribal government, alleging that the BIA acted “erroneously” that the determination made therein as to the Tribe’s membership “was and is incorrect.” (Amended Complaint, ¶¶ 4-7; RAR Decl., Ex. D thereto). Neither the Non-Members, (who, apparently had yet to discover their “membership” at that time and were nowhere to be found), nor Mr. Dixie

ever challenged the 1998 Final Agency Action. Nor did Plaintiffs' challenge subsequent BIA final agency actions issued on February 2000 and March 2000, which reaffirmed the authority of the Tribe's governing body, pursuant to Resolution #GC-98-01, and its five federally recognized members. (RAR Decl., Exs. C, E and F thereto). By this APA action, Plaintiffs seek to challenge the underlying holdings of the 1998 Final Agency Action, the February 2000 Final Agency Action and the March 2000 Final Agency Action, including the validity of the Tribe's governing document itself which had, up until the present action, never been challenged. As the statute of limitations has long since expired to bring challenges to the well-settled and undisturbed BIA determinations pertaining to the membership and government of the Tribe, this Court lacks jurisdiction over Plaintiffs' time-barred claims.

B. The Tribe is a Necessary and Indispensable Party to This Litigation and Cannot be Joined Because of Its Sovereign Immunity.

The Plaintiffs' central allegations — that the Tribe's membership and governing body was improperly recognized by the Assistant Secretary despite almost a century of the United States' history with the Tribe and fundamental tenants of Federal Indian law — is a direct attack on the sovereignty and internal affairs of the California Valley Miwok Tribe. It is a direct attack on the right of the Tribe to establish its own form of government, and like other sovereign Indian nations, "to make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217, 220 (1959).

It is a bedrock principle of federal Indian law that Indian tribes possess sovereign immunity from suit without their consent. *Kiowa Tribe of Okla. v. Mtg. Techs., Inc.*, 523 U.S. 751, 754 (1998); *Okla. Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe*, 498 U.S. 505, 509, (1991); *Santa Clara Pueblo v. Martinez*, 436 U.S. at 58; *Puyallup Tribe v. Wash. Dep't of Game*, 433 U.S. 165, 172-73 (1977); *U.S. v. U.S. Fidelity & Guar. Co.*, 309 U.S. 506, 512

Respectfully submitted this 13th day of December, 2011.

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EXHIBIT “15”

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

**CALIFORNIA VALLEY MIWOK TRIBE
et al.,**

Plaintiffs,

v.

**KEN SALAZAR, Secretary,
United States Department of the Interior,
et al.,**

Defendants,

and,

CALIFORNIA VALLEY MIWOK TRIBE

Intervenor-Defendant

Civil Action No. 11-00160 (BJR)

**MEMORANDUM OPINION GRANTING
INTERVENOR-DEFENDANT'S
MOTION TO JOIN A REQUIRED
PARTY AND GRANTING IN PART AND
DENYING IN PART INTERVENOR-
DEFENDANT'S MOTION TO DISMISS**

This matter is before the Court on Intervenor-Defendant's motion to dismiss for lack of subject-matter jurisdiction, Fed. R. Civ. P. 12(b)(1), and for failure to state a claim, Fed. R. Civ. P. 12(b)(6). *See* Motion to Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief ("Mot."), Dkt. No. 58, at 2 (Mar. 26, 2012). Intervenor-Defendant also argues that it is a required party but that its joinder is precluded by sovereign immunity, *id.* at 21; for clarity the Court will construe this argument as a motion to join a required party under Federal Rule of Civil Procedure 19(a)(2). Because the Court agrees that Intervenor-Defendant is a required party but not that its joinder is precluded by sovereign immunity, the motion to join a required party is GRANTED. Because the Court finds Intervenor-Defendant's remaining arguments to be largely — but not entirely — without merit, the motion to dismiss is GRANTED in part and DENIED in part.

I. BACKGROUND

This is the latest volley in a long and bitter contest for control over the California Valley Miwok Tribe (“Tribe”), a federally recognized tribe. Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 78 Fed. Reg. 26,384, 26,385 (May 6, 2013). Plaintiffs are alleged Tribe members led by Yakima Dixie; the Intervenor-Defendant is a rival group led by Silvia Burley. For years each faction has attempted to organize its own tribal government and win recognition from the federal government; in this litigation, accordingly, both style themselves the “California Valley Miwok Tribe.” To avoid confusion the Court will refer to Plaintiffs as the “Dixie faction” and to Intervenor-Defendant as the “Burley faction.” The Dixie faction seeks to set aside a decision of the Secretary of the Interior¹ (“Secretary”) recognizing a tribal government controlled by the Burley faction. *See* Letter from Larry Echo Hawk, Assistant Secretary – Indian Affairs, to Silvia Burley and Yakima Dixie (“Decision Letter”), Administrative Record (“A.R.”) at 2049 (Aug. 31, 2011).

At stake is not only the prestige of leadership but also the authority to manage, on behalf of the Tribe, considerable state and federal largesse. As a California tribe without a gambling operation, the Tribe is entitled to receive \$1.1 million per year under a California revenue-sharing compact. *California Valley Miwok Tribe v. Superior Court of San Diego County*, No. D061811, 2012 WL 6584030 at *2 (Cal. Ct. App. Dec. 18, 2012). Since 2005 the California Gambling Control Commission has held these funds in trust pending resolution of the leadership dispute; by the end of 2011 the trust funds had grown to over \$7.6 million. *Id.* The tribal

¹ The court will refer to all final decisions of the Assistant Secretary — Indian Affairs and his subordinates as decisions of the Secretary of the Interior. Although the Secretary has delegated his authority to the Assistant Secretary, *see* 209 Department of the Interior Departmental Manual 8.1 (Apr. 21, 2003), ultimate responsibility for “the management of all Indian affairs and of all matters arising out of Indian relations” resides in the Secretary, 25 U.S.C. § 2.

government that wins federal recognition will likely control the \$7.6 million held in trust, the \$1.1 million annual payout, and any grants the federal government may bestow. *See* Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450h(a)(1) (“The Secretary of the Interior is authorized, upon the request of any Indian tribe ... to contract with or make a grant ... to any tribal organization for the strengthening or improvement of tribal government”); *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 203 n.7 (D.D.C. 2006) (*CVMT I*) (“The Tribe received approximately \$400,000 in federal funds [in 2005]”).

Prior to the decision on review, the federal government recognized a tribal government only if the tribe was “organized” pursuant to Section 476 of the Indian Reorganization Act (IRA), 25 U.S.C. § 476. *See* Decision Letter, A.R. at 2054; Letter from Michael D. Olsen, Acting Assistant Secretary — Indian Affairs, to Yakima Dixie (“Nonrecognition Letter”), A.R. at 610–11 (Feb. 11, 2005). Section 476 provides two ways for a tribe to organize. Under § 476(a), a tribe may “adopt an appropriate constitution and bylaws,” which become effective when (1) “ratified by a majority vote of the adult members of the tribe ... at a special election authorized and called by the Secretary” and (2) approved by the Secretary. Alternatively, a tribe may organize pursuant to § 476(h)(1), which provides “each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section.” In short, § 476(a) allows a tribe to adopt a constitution according to federal procedures, while § 476(h) allows a tribe to “adopt a constitution using procedures of its own making.” *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1265 (D.C. Cir. 2008) (*CVMT II*).

As recently as 1997 organization of the Tribe would have been a simple affair, for the

only known member was Yakima Dixie.² In 1998, however, Dixie expanded the Tribe by enrolling Silvia Burley, her two daughters, and her granddaughter. Enrollment Letters, A.R. at 111–14 (Aug. 6, 1998). Soon thereafter Dixie and Burley met with representatives from the Bureau of Indian Affairs (“Bureau”), who advised them to set up a General Council as a “stepping stone” to formal organization. Transcription of Videotape of Meeting between Yakima Dixie, Raymond Fry, Brian Golding, and Silvia Burley, A.R. at 145 (Sep. 8, 1998). Dixie and Burley accepted the advice and signed a resolution establishing a “General Council ... consisti[ng] of all members of the Tribe who are at least eighteen years of age” to serve as “the governing body of the Tribe.” Resolution # GC-98-01 (“General Council Resolution”), A.R. at 178 (Nov. 5, 1998).

Despite this promising start, relations between Dixie and Burley soon began to sour. Between 2000 and 2004, Burley and her daughters made three failed efforts to organize the Tribe by submitting to the Secretary constitutions they adopted without Dixie’s participation; in their 2004 constitution, the Burley faction attempted to cut Dixie out altogether by “conferr[ing] tribal membership upon only them and their descendants.” *CVMT I*, 424 F. Supp. 2d at 203 n.7. Dixie now returns the favor by disputing the validity of his enrollment of Burley and her descendants; he also disputes the validity of the General Council Resolution. Plaintiffs’ First Amended Complaint (“Compl.”), Dkt. No. 32, at ¶¶ 44–47 (Oct. 17, 2011).

The Secretary rejected the Burley faction’s 2004 constitution because its organizers had made no effort to seek the “involvement of the whole tribal community,” including potential

² In 1994, Yakima Dixie wrote a letter to the Bureau of Indian Affairs identifying himself as “the only descendant and recognized tribal member of the [Tribe].” Letter from Yakima Dixie to Harold Brafford, Superintendent, Bureau of Indian Affairs, A.R. at 82 (1994). In 1998, Dixie informed the Bureau that he had a brother, Melvin, though Melvin’s whereabouts were unknown. Transcription of Videotape of Meeting between Yakima Dixie, Raymond Fry, Brian Golding, and Silvia Burley, A.R. at 127, 130–31 (Sep. 8, 1998).

members of the Tribe living near its Rancheria. Letter from Dale Risling, Sr., Superintendent, Bureau of Indian Affairs, to Silvia Burley, A.R. at 499 (Mar. 26, 2004). The Burley faction brought suit in the district court, arguing that the Tribe had “lawfully organized pursuant to its inherent sovereign authority” and that § 476(h) required the Secretary to approve its constitution. *CVMT I*, 424 F. Supp. 2d at 201. The district court dismissed the suit, *id.* at 203, and the D.C. Circuit affirmed, *CVMT II*, 515 F.3d at 1263. The D.C. Circuit held § 476(h) ambiguous and, in accordance with *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), deferred to the Secretary’s reasonable determination that “her authority under § 476(h) includes the power to reject a proposed constitution that does not enjoy sufficient support from a tribe’s membership.” *CVMT II*, 515 F.3d at 1267. The court noted that although the Tribe, “by its own admission, has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution.” *Id.* “This antimajoritarian gambit,” the court declared, “deserves no stamp of approval from the Secretary.” *Id.*

While litigation over the Burley constitution wound through the courts, Dixie began to identify potential members who might be eligible to participate in organizing the Tribe. Compl. ¶¶ 65–70. The Bureau assisted in these efforts by publishing notices in local newspapers seeking individuals who might be lineal descendants of historic members of the Tribe. *See* Letter from Troy Burdick, Superintendent, Bureau of Indian Affairs, to Silvia Burley and Yakima Dixie, A.R. at 1261 (Nov. 6, 2006); Legal Announcement, A.R. at 1501 (Apr. 11, 2007). Burley filed an administrative appeal of the Bureau’s action, whereupon the Bureau explained its purpose was not to “determine who the members of the Tribe will be,” but rather to “assist the Tribe in identifying the whole community, the ‘putative’ group, who would be entitled to participate in the Tribe’s efforts to organize a government that will represent the Tribe as a whole.” Letter

from Clay Gregory, Regional Director, Bureau of Indian Affairs, to Silvia Burley, A.R. at 1498 (Apr. 2, 2007). Unsatisfied, Burley further appealed to the Interior Board of Indian Appeals (“IBIA”). Notice of Appeal, A.R. at 1502 (Apr. 16, 2007). In the interim the Bureau received 503 applications from individuals claiming lineal descendancy and prepared notification letters to those whose claims it believed valid. Declaration of Troy Burdick, Superintendent, Bureau of Indian Affairs, A.R. at 2105 (Dec. 6, 2007). It did not send the letters, however, pending Burley’s appeal.

In December 2010 the Assistant Secretary — Indian Affairs, to whom the IBIA had referred a jurisdictional question, directed the Bureau to cease its efforts to assist the organization of the Tribe because the Tribe was already “organized as a General Council” pursuant to the 1998 General Council Resolution. Letter from Larry Echo Hawk, Assistant Secretary — Indian Affairs, to Silvia Burley, A.R. at 1765 (Dec. 22, 2010). The Dixie faction immediately filed this suit to set aside the decision. In response the Secretary withdrew his decision for reconsideration and requested briefing from both factions. Letter from Larry Echo Hawk, Assistant Secretary — Indian Affairs, to Yakima Dixie and Silvia Burley, A.R. at 2004 (Apr. 8, 2011). In August 2011 the Secretary issued his reconsidered decision. He determined (1) The “citizenship of the [Tribe] consists solely of Yakima Dixie, Silvia Burley,” and Burley’s three descendants; (2) “Pursuant to the 1998 General Council Resolution, the ... General Council is vested with the governmental authority of the Tribe, and may conduct the full range of government-to-government relations with the United States;” and (3) “Although this current General Council form of government does not render [the Tribe] an ‘organized’ tribe under the [IRA], as a federally recognized tribe it is not required ‘to organize’ in accord with the procedures of the IRA.” Decision Letter, A.R. at 2049–50. The Secretary acknowledged his

decision “mark[ed] a 180-degree change of course from positions defended by this Department in administrative and judicial proceedings over the past seven years.” *Id.*

In October 2011 the Dixie faction amended its complaint to challenge the reconsidered decision of the Secretary. The Dixie faction alleges the Secretary made procedural and substantive errors that amount to violations of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A), the Due Process Clause of the Fifth Amendment to the Constitution of the United States, and the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302. Compl. ¶¶ 90–119. The Dixie faction claims it has been injured by the Secretary’s decision because each individual plaintiff is in fact a member of the Tribe by lineal descent, Compl. ¶¶ 26, 28. By excluding all the plaintiffs except Yakima Dixie from his determination of the Tribe’s current membership, the Dixie faction argues, the Secretary denied the excluded plaintiffs the opportunity to participate in the organization of the Tribe and made them ineligible for federal health, education, and other benefits reserved for members of recognized federal tribes. Compl. ¶¶ 85–86. For relief the Dixie faction requests, among other things, the Court vacate the Secretary’s decision and direct the Secretary to “establish government-to-government relations only with a Tribal government that reflects the participation of the entire Tribal community, including individual Plaintiffs and all other Current Members.” Compl. at 30.

In March 2012 the Court granted the Burley faction leave to intervene “for the limited purpose of filing a motion to dismiss for lack of subject matter jurisdiction, for failure to join an indispensable party, and for failure to state a claim.” Memorandum Opinion and Order, Dkt. No. 52, at 6 (Mar. 26, 2012). That motion is now before the Court.

II. STANDARD OF REVIEW

In evaluating a motion to dismiss, the Court “must accept as true all material allegations of the complaint, drawing all reasonable inferences from those allegations in plaintiffs’ favor, and presuming that general allegations embrace those specific facts that are necessary to support the claim.” *LaRoque v. Holder*, 650 F.3d 777, 785 (D.C. Cir. 2011) (internal quotation marks, brackets, and citations omitted). In assessing standing, moreover, the Court “must assume that plaintiffs will prevail on the merits of their claims,” *City of Jersey City v. Consol. Rail Corp.*, 668 F.3d 741, 744 (D.C. Cir. 2012), and that they will be granted the relief they seek, *In re Thornburgh*, 869 F.2d 1503, 1511 (D.C. Cir. 1989).

III. DISCUSSION

The Burley faction presents five arguments in its motion to dismiss: (1) the plaintiffs lack standing; (2) the dispute is effectively over tribal membership, a matter over which the court has no jurisdiction; (3) the claims asserted in the complaint are time-barred; (4) the complaint fails to state a claim upon which relief can be granted; and (5) the Tribe, as represented by the Burley faction, is a required party but its joinder is precluded by sovereign immunity. As indicated earlier, the Court will construe the last argument as a motion to join a required party pursuant to Federal Rule of Civil Procedure 19(a)(2).

1. Standing

The standing inquiry has two parts, one constitutional and one prudential. Constitutional standing is a jurisdictional doctrine that enforces the “case-or-controversy requirement of Article III,” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), while prudential standing is a “judicially self-imposed limit[] on the exercise of federal jurisdiction,” *Allen v. Wright*, 468 U.S. 737, 751 (1984). “To secure constitutional standing the plaintiffs must show injury in fact that is

fairly traceable to the defendant's action and redressable by the relief requested. To secure [prudential standing] under the APA, they must show that the injuries they assert fall within the 'zone of interests' of the relevant statute." *Animal Legal Def. Fund, Inc. v. Espy*, 23 F.3d 496, 498–99 (D.C. Cir. 1994). Although the Burley faction challenges only the Dixie faction's constitutional standing in its motion to dismiss,³ the D.C. Circuit "treats prudential standing as a jurisdictional issue which cannot be waived or conceded." *Ass'n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 674 (D.C. Cir. 2013) (per curiam) (internal quotation marks omitted). Accordingly, the Court will address the Dixie faction's prudential as well as constitutional standing to bring this suit.

The Dixie faction easily satisfies the requirements for constitutional standing. The individual plaintiffs, Dixie excepted,⁴ are injured because they are allegedly members of the Tribe by lineal descent but have been denied the right to participate in the organization and governance of the tribe. *See* Dixie Opp. at 20–21. The injury was caused by the Secretary's determination that Dixie, Burley, and her three descendants "are the only current citizens of the Tribe, and the Tribe's General Council," composed of those same citizens, "is authorized to exercise the Tribe's governmental authority." Decision Letter, A.R. at 2055. Vacating the Secretary's decision would redress the injury by restoring the possibility, if not the certainty, that the excluded plaintiffs could participate in any renewed efforts to organize the Tribe.

³ The Burley faction addressed prudential standing for the first time in its reply, Intervenor-Defendant's Reply in Support of Its Motion to Dismiss Plaintiffs' First Amended Complaint (Related to Docket Nos. 58 and 59) ("Reply to Dixie Opp."), Dkt. No. 63, at 7–13 (Apr. 27, 2012), after the Dixie faction volunteered the issue, Plaintiffs' Memorandum of Points and Authorities in Opposition to Intervenor's Motion to Dismiss ("Dixie Opp."), Dkt. No. 59, at 24–25 (Apr. 20, 2012).

⁴ The Court need not address whether Dixie also has standing. *See Newdow v. Roberts*, 603 F.3d 1002, 1008 (D.C. Cir. 2010) ("[O]nce one plaintiff has standing, there is 'no occasion to decide the standing of the other [plaintiffs]'" (quoting *Carey v. Population Servs. Int'l*, 431 U.S. 678, 682 (1977)); *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock*, 783 F.2d 237, 246 n.12 (D.C. Cir. 1986) (similar).

The Burley faction objects on the ground that the excluded plaintiffs “cannot legitimately claim a denial of benefits” because they “never once ... had membership status within this Tribe.” Mot. at 11. The Burley faction points out that although the Court must accept as true the plaintiffs’ factual allegation that they are lineal descendants of historical members of the Tribe, it need not accept their legal conclusion that they are members of the Tribe. *Id.* at 4. “Being a direct lineal descendant ... does not mean one is entitled to Tribal membership.” *Id.* at 5 (internal quotation marks omitted). The Court disagrees. Prior to the decision on review, there was no functioning tribal government to determine membership; in such a circumstance, and for the limited purpose of determining standing, the Court can infer tribal membership from lineal descent.⁵

In any event, the constitutional standing of the excluded plaintiffs does not depend upon their actual membership in the Tribe. Prior to the decision on review, the Bureau sought genealogical evidence from individuals who might be “putative” members of the “whole community” eligible to participate “in the Tribe’s efforts to organize a government that will represent the Tribe as a whole.” Letter from Clay Gregory, Regional Director, Bureau of Indian Affairs, to Silvia Burley, A.R. at 1498 (Apr. 2, 2007). The Bureau’s emphasis upon genealogy implies it would regard a lineal descendant of a historical member of the Tribe a “putative” member eligible to participate in efforts to organize the Tribe. Thus, the excluded plaintiffs have constitutional standing because if, as the court must assume, they are lineal descendants of historic members of the Tribe, and if, as the court must assume, they are granted an order vacating the Secretary’s decision, then they will likely be eligible to participate in any renewed

⁵ Indeed, Burley’s own claim to tribal membership rests upon a bare claim of lineal descent: She was enrolled by Dixie, and Dixie claimed, in his first letter to the Bureau, that he was “the only descendant and recognized ... member of the [Tribe].” *See* Letter from Yakima Dixie to Harold Brafford, Superintendent, Bureau of Indian Affairs, A.R. at 82 (1994).

efforts to organize the Tribe.

The excluded plaintiffs have prudential standing for much the same reason. They seek to vindicate their interest in “participat[ing] in the organization of their Tribe’s government.” Dixie Opp. at 24. That is well within the zone of interests protected by § 476 of the IRA, whose core “purpose was to ‘encourage Indians to revitalize their self-government.’” *Feezor v. Babbitt*, 953 F. Supp. 1, 5 (D.D.C. 1996) (quoting *Cheyenne River Sioux Tribe v. Andrus*, 566 F.2d 1085, 1087 (8th Cir. 1977)). Indeed, the D.C. Circuit has all but held the IRA was designed to protect these very plaintiffs: Just five years ago, that court criticized the Burley faction’s failure to involve the Tribe’s “potential membership of 250” because “organization under the [IRA] must reflect majoritarian values ... [and] tribal governments should fully and fairly involve the tribal members in the proceedings leading to constitutional reform.” *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267–68 (D.C. Cir. 2008) (*CVMT II*) (internal quotation marks omitted).

2. Intratribal Dispute

The Burley faction next argues the Court lacks jurisdiction because “Plaintiffs’ ... grievances pertain[] to their lack of recognition as members of the Tribe,” an issue properly characterized “as a Tribal enrollment dispute.” Mot. at 15. It is indeed axiomatic that a tribe “retain[s] ... inherent power to determine tribal membership,” *Montana v. United States*, 450 U.S. 544, 564 (1981), but the Dixie faction does not complain it has been denied tribal membership by a tribal government. It complains a federal agency has recognized a rogue tribal government in violation of the APA and other federal laws. The Congress has vested this Court with “original jurisdiction of all civil actions arising under the Constitution [and] laws ... of the United States,” 28 U.S.C. § 1331, and the Court “ha[s] no more right to decline the exercise of

jurisdiction which is given, than to usurp that which is not given,” *Cohens v. Virginia*, 19 U.S. 264, 404 (1821). Even the Secretary concedes that “[w]hatever limitations there may be on the scope of relief that the court can order, vacating the [decision on review] is well within those limitations.” Federal Defendants’ Memorandum in Opposition to Defendant-Intervenor’s Motion to Dismiss (“Fed. Opp.”), Dkt No. 60, at 5 n.3 (April 20, 2012); *accord* 5 U.S.C. § 706(2)(A) (“The reviewing court shall hold unlawful and set aside agency action ... found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”); *Goodface v. Grassrope*, 708 F.2d 335, 338 (8th Cir. 1983) (“[T]he district court did have jurisdiction under 28 U.S.C. § 1331 to review, pursuant to the APA, the action taken by the [Bureau] in refusing to recognize either tribal council”). Because the question here is whether the Secretary violated federal law, the Court has jurisdiction over this case.

The Burley faction objects that the Secretary himself characterized his prior position as an unwarranted “intru[sion] into a federally recognized tribe’s internal affairs.” Mot. at 15 (quoting Decision Letter, A.R. at 2054). As discussed further below, the Burley faction is not entitled to rely upon this rather dubious characterization — the supposedly unwarranted “intrusion,” after all, had been upheld by the D.C. Circuit just five years ago — because it appears in the very decision this court has been asked to review. *See Cherokee Nation of Oklahoma v. Babbitt*, 117 F.3d 1489, 1499 (D.C. Cir. 1997) (“[T]he Final Decision ... cannot itself be used to block review”). The Burley faction asks the Court to decline jurisdiction to decide the lawfulness of the Secretary’s decision by assuming the decision was lawful. The Court will do no such thing.

3. Statute of Limitations

The Burley faction next argues certain of the Dixie faction’s claims are time-barred

because they “pertain not to independent determinations of the August 2011 Decision, but, rather, to long-standing [agency] determinations, which were used as the basis for the August 2011 Decision.” Mot. at 19. Specifically, the Burley faction argues the Secretary upheld “the Tribe’s five member citizenship” and “the authority of the Tribe’s governing body[] pursuant to [the General Council Resolution]” in letters issued September 1998, February 2000, and March 2000. Mot. at 19–20. Because the Dixie faction did not challenge these letters within the six-year statute of limitations, the Burley faction argues, its claims are time-barred now. *See* 28 U.S.C. § 2401(a) (“[E]very civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues”); *Hardin v. Jackson*, 625 F.3d 739, 743 (D.C. Cir. 2010) (“[A] party challenging final agency action must commence his suit within six years after the right of action accrues and the right of action first accrues on the date of the final agency action” (internal quotation marks omitted)).

The Dixie faction’s challenges are timely. Although the February 2000 letter did indicate the Secretary’s view that Dixie and the four Burleys are “members of the Tribe,” Letter from Dale Risling, Sr., Superintendent, Bureau of Indian Affairs, to Yakima Dixie, A.R. at 235 (Feb. 4, 2000), neither it nor the other letters presaged the Secretary’s announcement, in the decision on review, that the “citizenship of the [Tribe] consists *solely* of Yakima Dixie, Silvia Burley,” and Burley’s three descendants, Decision Letter, A.R. at 2050 (emphasis added). It is true that in February 2000, the Secretary accepted the “General Council ... as the governing body of the Tribe,” A.R. at 236, and the Dixie faction could have challenged his determination then. Any such challenge would have been mooted, however, by the Secretary’s reversal in February 2005, when he held “the [Bureau] does not recognize any tribal government.” Nonrecognition Letter, A.R. at 611. Because the Secretary’s decision on review “mark[ed] a 180-degree change of

course” by once again recognizing the General Council as the Tribe’s government, the Dixie faction’s challenge is timely. Decision Letter, A.R. at 2050.

4. Failure to State a Claim

The Burley faction argues the Dixie faction has failed to state a claim under the APA or Due Process Clause because relief would require the Court to “make the Non-Members enrolled members of th[e] Tribe.” Mot. at 27. This, they reiterate, the Court cannot do. *Id.* As the Court has already explained, however, it is no intrusion upon tribal sovereignty to set aside the decision of a federal agency if, as the Dixie faction alleges, that decision violates federal law. The Dixie faction’s APA and due process claims are not merely cognizable; they are the bread and butter of the Court.

The Dixie faction’s ICRA claim is another matter. The Dixie faction alleges the decision on review “violated the ICRA by recognizing a Tribal governing document and governing body that deprive Plaintiffs and other Tribal members of equal protection and due process of law,” Compl. at 30, but the ICRA does not operate against the federal government. *See* 25 U.S.C. § 1302(a)(8) (“No *Indian tribe* in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law” (emphasis added)). Instead, the ICRA imposes “restrictions upon tribal governments similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57 (1978). Because the Dixie faction has not alleged any violation by a tribal government, its ICRA claim must be dismissed.

5. Required Joinder

Federal Rule of Civil Procedure 19(a)(1)(B)(i) provides:

A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if ... that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may ... as a practical matter impair or impede the person's ability to protect the interest.

If a required party can be joined, then "the court must order that the person be made a party."

Fed. R. Civ. P. 19(a)(2). If a required party cannot be joined, then "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). The Burley faction argues that it is a required party but that sovereign immunity precludes its joinder. Mot. at 21–23. Consequently, the Burley faction argues, the Court must dismiss the suit. Mot. at 23–25.

One aspect of this argument requires immediate clarification. The Burley faction takes as its premise that it is the proper representative of the Tribe: It claims it is a required party on the basis of the Tribe's interests in its "sovereignty" and "established governing structure and membership," Mot. at 22, and it invokes sovereign immunity on behalf of the Tribe. The Court cannot accept the premise of this argument. Prior to the decision on review, the Secretary recognized no government of the Tribe, Nonrecognition Letter, A.R. at 611; the Secretary then changed course by recognizing, in the decision on review, the General Council as the government of the Tribe. The Burley faction's authority to represent the Tribe therefore rests upon its control of the General Council, and, ultimately, the very decision on review. "Because reliance cannot be placed on the [Secretary's] recognition" of the General Council, *Cherokee Nation of Oklahoma v. Babbitt*, 117 F.3d 1489, 1499 (D.C. Cir. 1997), the Court cannot regard the Burley faction as the Tribe or accept its invocation of sovereign immunity. Were the Court to accept the Burley faction's invocation of sovereign immunity on the basis of the challenged decision, "then the [Secretary's] recognition decisions would be unreviewable, contrary to the

presumption in favor of judicial review of agency action.” *Id.* at 1499.

The question, then, is not whether joinder of the Burley faction is possible, but whether joinder is necessary. It is. Although the Burley faction is not entitled to defend the sovereign interests of the Tribe, it is certainly entitled to defend its own interest in federal recognition of its favored governmental structure. That interest is pecuniary as well as political: If the decision on review is upheld, then the Burley faction will control the Tribe’s federally-recognized government and with it, an immense flow of federal and state funds. Nor can the Burley faction’s interest be adequately represented, as the Secretary suggests, by the Secretary’s defense of the suit. *See Fed. Opp.* at 7–12. The D.C. Circuit observed in *Cherokee Nation*:

[A]lthough the Delawares and the Department currently take the same position regarding the Delawares’ sovereignty, and to that extent their interests are the same, the Department has twice reversed its position regarding the Delawares since 1940.... [T]he Department may reverse itself again. Moreover, even were the Department vigorously to represent the Delawares ... in the district court, the Department might decide not to appeal any unfavorable decision.

Id. at 1497. That this precedent controls this case is self-evident.

IV. CONCLUSION

For the foregoing reasons, it is, hereby

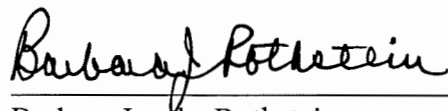
1. ORDERED that the Fourth Cause of Action in the First Amended Complaint, Violation of the Indian Civil Rights Act, is DISMISSED. It is further,
2. ORDERED that Intervenor-Defendant’s Motion to Dismiss is in all other respects DENIED. It is further,
3. ORDERED that Intervenor-Defendant is dismissed as an intervenor and joined as a party defendant. It is further,
4. ORDERED that Intervenor-Defendant is granted leave to file any additional arguments in support of Federal Defendants’ motion for summary judgment. The memorandum must

be filed within 14 days and may not exceed 15 pages. Oppositions must be filed within 10 days of the memorandum and may not exceed 10 pages. No leave is granted to file a reply. It is further,

5. ORDERED that Intervenor-Defendant's Motion to Expedite Consideration of the Motion to Dismiss is DISMISSED as moot.

SO ORDERED.

September 6, 2013

A handwritten signature in black ink, reading "Barbara J. Rothstein", written over a horizontal line.

Barbara Jacobs Rothstein
U.S. District Court Judge

EXHIBIT “16”



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 31 2011

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

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

Dear Ms. Burley and Mr. Dixie:

Introduction and Decision

On December 22, 2010, I sent you a letter setting out my decision in response to a question referred to me by the Interior Board of Indian Appeals (IBIA) in *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIA 103 (January 28, 2010) (IBIA decision). I determined that there was “no need for the BIA to continue its previous efforts to organize the Tribe’s government, because it is organized as a General Council, pursuant to the [1998 General Council Resolution] it adopted at the suggestion of the BIA.” I concluded further that there was “no need for the BIA to continue its previous efforts to ensure that the Tribe confers tribal citizenship upon other individual Miwok Indians in the surrounding area.”

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

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

- (1) The California Valley Miwok Tribe (CVMT) is a federally recognized tribe, and has been continuously recognized by the United States since at least 1916;
- (2) At the present date, the citizenship of the CVMT consists solely of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace;

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

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

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

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

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

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

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

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

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

Background

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

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

- The CVMT is a federally recognized tribe, 74 Fed. Reg. 40,218, 40,219 (Aug. 11, 2009);
- In 1916, the United States purchased approximately 0.92 acres in Calaveras County, California, for the benefit of 12 named Indians living on the Sheepranch Rancheria (now Sheep Ranch)(Rancheria) (51 IBIA at 106);
- The Indian Agent, who in 1915 recommended the purchase of the 0.92 acres, described the group of 12 named individuals as “the remnant of once quite a large band of Indians in former years living in and near the old decaying mining town known and designated on the map as ‘Sheepranch.’” *Id.*;
- The record shows only one adult Indian lived on the Rancheria in 1935, a Jeff Davis, who voted “in favor of the IRA” *Id.*;
- In 1966, the record shows only one adult Indian, Mabel Hodge Dixie, Yakima Dixie's mother, lived on the Rancheria, when the BIA crafted a plan for distribution of tribal assets pursuant to the California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, *as amended by* Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390;
- Mabel Hodge Dixie was to be the sole distributee of tribal assets under the 1966 Rancheria distribution plan;
- While the Bureau initiated the process to terminate the Tribe, it never declared the Tribe terminated and has never treated the Tribe as if it had been terminated;
- In 1994, Yakima Dixie wrote the BIA asking for assistance with home repairs and describing himself as “the only descendant and recognized . . . member of the Tribe.” (51 IBIA at 107);
- At some point during the 1990s, Silvia Burley “contacted BIA for information related to her Indian heritage, which BIA provided, and by 1998—at BIA's suggestion—Burley had contacted Yakima[]” Dixie (as the IBIA has noted, “it appears that Burley may trace her ancestry to a ‘Jeff Davis’ who was listed on the 1913 census. . . .”) 51 IBIA at 107, including footnote 7;
- On August 5, 1998, Mr. Dixie “signed a statement accepting Burley as an enrolled member of the Tribe, and also enrolling Burley's two daughters and her granddaughter.” *Id.*;

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

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

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

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

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

Analysis

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

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

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

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

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

Application of Specific Legal Authorities

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

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

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

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

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

30 IBIA 241, 248.

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

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

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

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

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

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

Conclusion

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

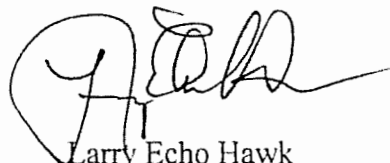
- CVMT is a federally recognized tribe whose entire citizenship, as of this date, consists of the five acknowledged citizens;
- The 1998 Resolution established a General Council form of government, comprised of all the adult citizens of the Tribe, with whom the Department may conduct government-to-government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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Larry Echo Hawk', with a stylized flourish extending to the right.

Larry Echo Hawk
Assistant Secretary – Indian Affairs

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EXHIBIT “17”



INTERIOR BOARD OF INDIAN APPEALS

California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs

51 IBIA 103 (01/28/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
 INTERIOR BOARD OF INDIAN APPEALS
 801 NORTH QUINCY STREET
 SUITE 300
 ARLINGTON, VA 22203

CALIFORNIA VALLEY MIWOK)	Order Dismissing Appeal in Part and
TRIBE,)	Referring Appeal in Part to the
Appellant,)	Assistant Secretary - Indian Affairs
)	
v.)	
)	Docket No. IBIA 07-100-A
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	January 28, 2010

The California Valley Miwok Tribe (Tribe) (formerly known as Sheep Ranch Rancheria, and Sheep Ranch of Me-wuk Indians of California), under the direction of Silvia Burley as the Tribe's Chairperson,¹ appealed to the Board of Indian Appeals (Board) from an April 2, 2007, decision (Decision) of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director affirmed a November 6, 2006, decision of the BIA Central California Agency Superintendent (Superintendent) that BIA would "assist" the Tribe in organizing a tribal government. To do so, the Superintendent announced that BIA would sponsor a "general council meeting of the Tribe," to which BIA would invite tribal members (apparently numbering six) as well as "potential" or "putative" members (apparently numbering in the several hundreds). BIA decided the criteria for (and intends to make individual eligibility determinations for) the class of "putative" members who would be allowed to participate in the general council meeting, and whose involvement BIA deemed necessary in order to include the "whole tribal community" in the tribal organization and membership decisions. BIA concluded that these actions were necessary because until the tribal organization and membership

¹ Our caption of the appeal reflects the entity in whose name the appeal was filed. As will become apparent, Burley's position and authority to bring this appeal in the name of the Tribe is disputed by both BIA and by Yakima Dixie (Yakima), a tribal member who claims to be the "Hereditary Chief" of the Tribe. Our references in this decision to Burley as the "appellant" are simply for the sake of identifying actions and positions with the individuals involved, and do not imply a decision by the Board, one way or the other, on the underlying dispute over whether Burley has authority to bring this appeal on behalf of the Tribe.

issues were resolved, a leadership dispute between Burley and Yakima, *see supra* note 1, could not be resolved, and resolution of that dispute was necessary for a functioning government-to-government relationship with the Tribe.

Burley appealed from the Decision, objecting on three grounds: (1) the Decision, as partially implemented, violated the Tribe's Fiscal Year (FY) 2007 contract with BIA under the Indian Self-Determination and Education Assistance Act (ISDA), *see* Pub. L. No. 93-638, 25 U.S.C. § 450 *et seq.*, through which the Tribe performed governmental and enrollment functions; or, in the alternative, that the Decision constituted an unlawful reassumption of that contract, *see* 25 C.F.R. Part 900, Subpart P (Retrocession and Reassumption Procedures); (2) the Tribe is already organized, BIA's proffered "assistance" was not requested by the Tribe, and thus BIA's action constitutes an impermissible intrusion into tribal government and membership matters that are reserved exclusively to Indian tribes; and (3) the Regional Director erred in stating that the Tribe was never terminated and thus is not a "restored" tribe, which is a status that is relevant to the Tribe for purposes of Indian gaming. The Regional Director and Yakima² seek dismissal of this appeal on the grounds that Burley lacks authority to represent the Tribe, and that intervening Federal court decisions, in litigation brought by Burley against the Department of the Interior, are dispositive against her in this appeal.

We need not decide whether Burley has authority to represent the Tribe in claiming that the Decision, as partially implemented, violated the Tribe's FY 2007 ISDA contract because another jurisdictional bar precludes us from considering the claim: the Board does not have jurisdiction to review an ISDA breach-of-contract claim against BIA. Burley's assertion that the Decision constituted an illegal "reassumption" of the ISDA contract suffers the same fate because it is, in substance, simply a recharacterization of her breach-of-contract claim, and it rests on a misunderstanding of the applicable regulations concerning ISDA contract reassumption.

Burley's authority to represent the Tribe with respect to its second claim is closely related to the underlying merits of those claims, and because we conclude that we do not have jurisdiction over the subject matter of those claims, we also dismiss them on

² Yakima claims to represent a class of "putative" tribal members, but the record contains no basis upon which the Board can make a determination of which, if any, individuals have authorized Yakima to represent their interests in this appeal, or whether any other individuals would in fact qualify as interested parties. Yakima does qualify as an interested party, and whether or not he represents other individuals is not relevant to our consideration of his pleadings or our disposition of this appeal.

jurisdictional grounds, independent of whether or not Burley is authorized to represent the Tribe in this appeal. In 2005, before the Decision was issued, the Acting Assistant Secretary confirmed as final for the Department a decision made by BIA in 2004 that BIA does not consider the Tribe to be organized. With exceptions not relevant here, the Board does not have authority to review a decision of the Assistant Secretary. Moreover, the Department's position declining to recognize the Tribe as organized was upheld in Federal court.

The Regional Director's Decision, however, goes beyond what was decided or confirmed by the Assistant Secretary. To the extent that it does, our review would not necessarily be precluded by the Assistant Secretary's action. But another jurisdictional hurdle exists: the Decision decides what is effectively and functionally a tribal enrollment dispute, for purposes of determining who BIA will recognize, individually and collectively, as members of the "greater tribal community" that BIA believes must be allowed to participate in the general council meeting of the Tribe for organizational purposes. The Board lacks jurisdiction over tribal enrollment disputes. Thus, we lack jurisdiction over Burley's appeal regarding BIA's actions to assist the Tribe in organizing itself. Because this portion of the Decision effectively implicates a tribal enrollment dispute, we refer Burley's second claim to the Assistant Secretary.

With respect to Burley's third claim — that the Tribe is a "restored" tribe and that the Regional Director erred in stating otherwise — we conclude that Burley has not shown that the Tribe has been adversely affected by this statement in the Decision. Thus, the Tribe lacks standing to raise that claim in this appeal. Even assuming that the Tribe had standing, we would nevertheless dismiss this claim because it is not ripe for our review. By dismissing this claim, we leave for another day resolution of this issue regarding the Tribe's status.

Background

This appeal involves an Indian tribe whose legal status as a tribal political entity is undisputed as a matter of Federal law, *see* 74 Fed. Reg. 40,218, 40,219 (Aug. 11, 2009) (Federally recognized tribes list), but whose polity in fact — who or what individuals collectively constitute, or are entitled to constitute, the "Tribe" for purposes of participating in organizing a tribal government and establishing membership criteria — is bitterly disputed within the handful of individuals who have been recognized by BIA as the Tribe's currently enrolled members. Some background on the Sheep Ranch Rancheria and the history leading up to the present dispute will provide context for understanding our characterization of this appeal and, in particular, our conclusion that the Tribe's second claim should be referred to the Assistant Secretary.

I. Historical Background

In 1915, an Indian Agent forwarded to the Commissioner of Indian Affairs a census “of the Indians designated ‘Sheepranch-Indians’ . . . aggregating 12 in number,” which the Agent described as constituting “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.’” Administrative Record (AR), Tab 94. The Indian Agent recommended purchasing land for the Indians, and in 1916, the United States purchased approximately 0.92 acres in Calaveras County, California, which became known as the Sheep Ranch Rancheria. *See* AR, Tab 93.

In 1934, Congress passed the Indian Reorganization Act (IRA), which, among other things, required the Secretary to hold elections through which the adult Indians of a reservation decided whether to accept or reject the applicability of certain provisions of the IRA to their reservation, including provisions authorizing tribes to organize and adopt a constitution under the IRA. *See* 25 U.S.C. §§ 476 and 478. The IRA voter list for Sheep Ranch Rancheria identified only a single eligible voter, Jeff Davis, who voted in favor of the IRA.³ AR, Tabs 90-92. Neither Davis, nor any subsequent residents of the Rancheria, organized a tribal government pursuant to the IRA.

In 1966, during a period in which the Federal government sought to terminate the Federal trust relationship with various Indians and Indian tribes, BIA prepared a plan to distribute the assets of the Sheep Ranch Rancheria as a prelude to termination. *See* AR, Tab 88; *see generally* California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, *as amended by* Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390. The distribution plan recited that several Indian families (not identified) had lived on the Rancheria since it was purchased, but none of the land had been allotted or formally assigned to individuals, and for the 8 years preceding, the only house had been occupied by Mabel Hodge Dixie.⁴ BIA determined that Mabel was the only Indian entitled to receive the assets of the

³ The IRA defined “tribe” as referring to “any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.” 25 U.S.C. § 479.

⁴ The 1915 census identified a Peter Hodge and his family as among the Sheepranch Indians, although any relationship between Mabel and Peter is not shown in the record.

Rancheria, and she voted to accept the distribution plan and was issued a deed to the land. AR, Tabs 86-88.⁵

II. BIA Dealings with the Tribe Between 1994 and 2003.

Mabel was the mother of Yakima, who grew up on the Rancheria. *See* AR, Tab 73 at 5-6. In 1994,⁶ Yakima wrote to the Superintendent, expressing a need for BIA assistance for home repairs, and describing himself as “the only descendant and recognized . . . member” of the Tribe. AR, Tab 76.

Sometime during the 1990s, Burley contacted BIA for information related to her Indian heritage, which BIA provided, and by 1998 — at BIA’s suggestion — Burley had contacted Yakima.⁷ On August 5, 1998, Yakima, “[a]s Spokesperson/Chairman” of the Tribe, signed a statement accepting Burley as an enrolled member of the Tribe, and also enrolling Burley’s two daughters and her granddaughter. AR, Tab 75.

- In September of 1998, Yakima and Burley met at the Rancheria with BIA staff from the Sacramento Area (now “Pacific Regional”) Office to discuss organizing the Tribe. Among the issues discussed was developing criteria for membership in the Tribe. BIA staff suggested during the meeting that Yakima had both the authority and broad discretion to decide that issue. *See, e.g.*, AR, Tab 73 at 7-8, 24-25. Brian Golding, a BIA Tribal Operations Officer, characterized Yakima and his brother, Melvin, along with Burley and her adult daughter, as the “golden members” of the Tribe. Because Melvin’s whereabouts were unknown at the time, Golding stated: “that basically leaves us with three people.” AR, Tab 73 at 32. Golding continued, “usually what we’ll do is we’ll call that group of

⁵ In 1967, Mabel executed a quit claim deed to convey the land back to the United States, and following her death, the Department of the Interior probated the property and determined that it passed to Mabel’s husband and her four sons, as her heirs.

⁶ We cannot determine with certainty the date of the letter, but a barely legible portion of a date stamp appears to read “94.”

⁷ It appears that Burley may trace her ancestry to a “Jeff Davis” who was listed on the 1913 census: his age (58) in 1913 is consistent with his date of birth (1855) identified in genealogical information sent to Burley by BIA. *See* AR, Tabs 77 & 94. As noted, the sole eligible voter for the Sheep Ranch Rancheria IRA vote in 1935 was also a “Jeff Davis,” but the date of birth listed for him is not the same as that for the Jeff Davis identified in the genealogical information sent to Burley. *Compare* AR, Tab 92 *with* AR, Tab 77.

people a general council. They're the body. They're the tribe. They're the body that has the authority to take actions on behalf of the tribe. So in this case, we'd be looking at, possibly, three people." *Id.*

In a followup letter to Yakima, dated September 24, 1998, the Superintendent described what BIA considered to be the unusual circumstances in which the Tribe and BIA found themselves. Typically, according to the Superintendent, California tribes that had been unlawfully terminated by the Federal government regained Federal recognition through litigation, and a court judgment identified the class of persons entitled to organize the tribe — e.g., the distributees and their dependents, and their lineal descendants. Although the Sheep Ranch Rancheria land had been distributed to Mabel pursuant to a distribution plan, the Department apparently never published a final notice of termination and had accepted the land back from Mabel through a quit claim deed, thus essentially administratively "unterminating" the Tribe before it had been formally terminated. Unlike terminated tribes that were restored through litigation, there was no court decision for Sheep Ranch Rancheria to which the Tribe and BIA could look to determine who was a member of the Tribe or otherwise entitled to organize it.

Under the circumstances, BIA concluded that "for purposes of determining the initial membership of the Tribe," BIA must include Yakima and Melvin, as the remaining heirs of Mabel Hodge Dixie. AR, Tab 72 at 2 (unnumbered). In addition to those two, BIA recognized that Yakima had adopted Burley, her two daughters, and her granddaughter, into the Tribe, and therefore those adoptees who were of majority age also had "the right to participate in the initial organization of the tribe." *Id.* The Superintendent continued:

At the conclusion of [the meeting with BIA staff], you were going to consider *what enrollment criteria should be applied to future prospective members. Our understanding is that such criteria will be used to identify other persons eligible to participate in the initial organization of the Tribe.* Eventually, such criteria would be included in the Tribe's Constitution.

Id. (emphasis added).

The Superintendent stated that "given the small size of the Tribe, we recommend that the Tribe operate as a General Council," *id.* at 3, which could elect or appoint a chairperson and conduct business. In order to provide assistance, the Superintendent offered a \$50,000 ISDA grant available for improving tribal governments, and provided a draft resolution for the Tribe to use in requesting the grant. *Id.*

On November 5, 1998, Yakima and Burley signed a resolution establishing a General Council, consisting of all adult members of the Tribe, to serve as the governing body of the Tribe. AR, Tab 71. In less than 5 months, however, a leadership dispute arose between Burley and Yakima. In April of 1999, Yakima purportedly resigned as chairperson of the Tribe, concurred in General Council action appointing Burley as Chairperson, and then repudiated his resignation, while still giving Burley "the right to act as a delegate to represent" the Tribe, subject to his orders. *See* AR, Tabs 68-70.

There was sufficient cooperation, however, for Yakima, Burley, and the elder of Burley's daughters, Rashel Reznor, to submit a petition to BIA asking for a Secretarial election to be held, pursuant to the IRA, 25 U.S.C. § 476, to vote on a proposed constitution. AR, Tab 66. The proposed constitution (1999 Yakima-Burley Constitution) identified the "base enrollees" as Yakima, Burley, Burley's two daughters, Burley's granddaughter, and (prospectively) the direct lineal descendants of these base enrollees. It also provided that all descendants of base enrollees and all descendants of any person who became a member subsequent to the adoption of the constitution "shall automatically become members of the Band at birth." *Id.*, 1999 Yakima-Burley Constitution, Art. II, Sec. 3(B). Other persons "of Sheep Ranch blood" could also be adopted into membership by a 2/3 majority vote of the General Council, which consisted of all members 18 years of age or older. *Id.*, 1999 Yakima-Burley Constitution, Art. II, Sec. 3(C) & Art. III, Sec. 2. BIA did not call a Secretarial election to vote on the 1999 Yakima-Burley Constitution.

By October of 1999, any remaining cooperation between Yakima and Burley appears to have evaporated, and Yakima sought assistance from BIA to expel Burley and her family from the Tribe. *See* AR, Tabs 57, 62. In December of 1999, Yakima provided BIA with a tribal constitution, purportedly adopted on December 11, 1999 (1999 Yakima Constitution). Enclosed with the constitution were documents by which Yakima, as Chairperson, purported to enroll seven additional individuals as members of the Tribe. The 1999 Yakima Constitution identified the Tribe's membership as (1) all persons who were listed as distributees and dependent members of their immediate families in the Sheep Ranch Rancheria Distribution Plan, (2) lineal descendants of those falling into the first category, (3) all persons enrolled by Yakima, and (4) all persons approved in the future by the Chairperson and Tribal Council to become members.

By letter dated February 4, 2000, the Superintendent returned the 1999 Yakima Constitution to Yakima without action, observing that the body that approved it did not appear to be the proper body to do so. The Superintendent agreed to a meeting with Yakima later in the month, with notice to Burley.

Burley and her daughter declined to participate in the meeting between BIA and Yakima, and on March 7, 2000, the Superintendent sent her a summary of the meeting. AR, Tab 8. The Superintendent reaffirmed BIA's view that the General Council consisted of Yakima, Burley, and Rashel. The Superintendent reported that BIA had rejected an assertion by Yakima that he had only given "limited enrollment" to Burley and her family, and also reported that BIA had advised Melvin, with whom BIA was now in contact, that as an heir of Mabel Hodge Dixie for the Rancheria land, he was entitled to participate in the organization of the Tribe.

Meanwhile, Burley and her daughter Rashel adopted their own tribal constitution, on March 6, 2000 (2000 Burley Constitution). The 2000 Burley Constitution identified the membership of the Tribe as Yakima, Burley, her two daughters, and her granddaughter, and provided that any further membership would be decided by a subsequent enrollment ordinance to be adopted by 2/3 majority vote of the Tribal Council. On October 31, 2001, the Superintendent wrote to Burley to "acknowledge receipt" of the 2000 Burley Constitution, as amended and corrected in September 2001. The Superintendent stated that BIA could not act on it without a formal request. The Superintendent concluded his letter by stating that "[t]he Agency will continue to recognize the Tribe as an unorganized Tribe and its elected officials as an interim Tribal Council until the Tribe takes the necessary steps to complete the Secretarial election process." AR, Tab 49 at 2 (unnumbered).

Between 1999 and 2003, BIA corresponded with Burley by addressing and recognizing her as the Tribe's Chairperson, or sometimes as "Interim Chairperson." *See, e.g.*, AR Tabs 8, 14 (Nov. 24, 2003, Letter from Superintendent), and 52. Eventually, as discussed in Part IV of this Background, BIA began to refer to Burley as a "person of authority" whom BIA considered as representing the Tribe for government-to-government purposes.

III. The Tribe's ISDA Contract

Beginning in 1999, and continuing through FY 2007, BIA executed an ISDA contract with the Tribe for improving tribal government, which apparently included such functions as developing a tribal enrollment ordinance and membership lists. Initially, BIA seems to have treated Burley as the Tribe's Chairperson for purposes of executing the contract. Later, when BIA began referring to her as a "person of authority," it continued to relate to the Tribe through Burley for purposes of executing annual funding agreements for the ISDA contract. The Decision that is the subject of this appeal was issued during FY 2007, when an ISDA contract funded for that year was in effect.

For FY 2008, the Superintendent returned without action a proposal from Burley to renew or re-fund the Tribe's ISDA contract, after concluding (in light of several court decisions) that Burley had not shown that the Tribe had authorized her to submit the ISDA contract proposal. See *California Valley Miwok Tribe v. Central California Agency Superintendent*, 47 IBIA 91 (2008). Burley's attempt to challenge, in court, BIA's decision not to renew the Tribe's ISDA contract for FY 2008, was unsuccessful. See Memorandum and Order, *California Valley Miwok Tribe v. Kempthorne*, No. Civ. S-08-3164 FCD/EFB (E.D. Cal. Feb. 23, 2009), *appeal docketed*, No. 09-15466 (9th Cir. Mar. 12, 2009).

For FY 2009, Burley again submitted a contract proposal and BIA again returned it without action on the same grounds relied upon for returning the FY 2008 proposal. The Tribe, through Burley, appealed that decision, and that appeal is pending before the Board in *California Valley Miwok Tribe v. Central California Agency Superintendent*, Docket No. IBIA 09-13-A.

IV. Superintendent's 2004 Decision and Acting Assistant Secretary's 2005 Decision

On March 26, 2004, in a letter that the Acting Assistant Secretary later relied upon as a final Departmental decision, the Superintendent wrote to Burley, acknowledging receipt on February 11, 2004, of a document purporting to be the Tribe's constitution, which the Superintendent understood had been submitted to demonstrate that the Tribe is an "organized" tribe. Although the letter was addressed to "Silvia Burley, Chairperson," in the text the Superintendent stated that BIA recognized Burley as "a person of authority" within the Tribe, but did "not yet view [the] tribe to be an 'organized' Indian Tribe." AR, Tab 40 at 1 (2004 Decision). The Superintendent stated that when a tribe that has not previously organized seeks to do so, BIA has a responsibility to determine that the organizational efforts "reflect the involvement of the whole tribal community." *Id.* He noted a lack of evidence of any outreach to Indian communities in and around Sheep Ranch or to persons who have maintained any cultural contact with Sheep Ranch. *Id.* at 2. The Superintendent further stated that "[i]t is only after the greater tribal community is initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified. The participation of the greater tribal community is essential to this effort." *Id.*

The Superintendent expressed concern that the "base roll" submitted by Burley contained only five names, "thus, suggest[ing] that this tribe did not exist until the 1990's, with the exception of Yakima Dixie. However, BIA's records indicate with the exception not withstanding, otherwise." *Id.* According to the Superintendent, BIA's experience with

the Tribe's "sister Miwok tribes" led BIA to believe that "Miwok tradition favors base rolls identifying persons found in Miwok tribes," noting that the Amador County tribes used the 1915 Miwok Indian Census for that County; El Dorado County tribes used a 1916 Indian census; and Tuolumne County tribes used a 1934 IRA voter list. *Id.* The Superintendent emphasized "the importance of the participation of a greater tribal community in determining membership criteria." *Id.* at 3. The Superintendent advised Burley of her right to appeal the letter to the Regional Director. No appeal was filed.

On February 11, 2005, Principal Deputy and Acting Assistant Secretary - Indian Affairs Michael D. Olsen dismissed an "appeal" that Yakima had filed in 2003 with the Office of the Assistant Secretary to challenge BIA's recognition of Burley as Chairperson of the Tribe (2005 Decision). The 2005 Decision dismissed Yakima's appeal on procedural grounds, finding, among other things, that the 2004 Decision had rendered the appeal moot.⁸ The Assistant Secretary interpreted the 2004 Decision as making clear that BIA did not recognize Burley as chairperson, and that until the Tribe has organized itself, the Department could not recognize anyone as the Tribe's chairperson. The Assistant Secretary stated that "the Tribe is not an organized tribe," "BIA does not recognize any tribal government," and "[t]he first step in organizing the Tribe is identifying the putative tribal members." 2005 Decision at 1-2.

Burley, in the name of the Tribe, filed suit against the Department, challenging the 2004 Decision and the 2005 Decision, and the court accepted the two decisions as final Departmental action for purposes of judicial review. *See California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 201 n.5 (D.D.C. 2006). The court rejected Burley's claim that the Department's refusal to recognize as valid the constitution proffered by Burley, the Department's refusal to consider the Tribe as organized, and the Department's insistence on participation of a "greater tribal community" in organizational efforts, constituted unlawful and improper interference in the internal affairs of the Tribe. The

⁸ Perhaps because he concluded that Yakima's appeal was moot, Olsen did not otherwise address his jurisdiction to consider such an appeal. Under 25 C.F.R. Part 2, an appeal from a Regional Director's decision ordinarily must be filed with the Board, after which the Assistant Secretary has a 20-day window in which to assume jurisdiction over the appeal. *See* 25 C.F.R. §§ 2.4(e), 2.20(c). Yakima did not file his appeal with the Board.

court dismissed Burley's suit for failure to state a claim, thus leaving the 2004 and 2005 Decisions intact.⁹

On appeal, the U.S. Court of Appeals affirmed the District Court's decision. *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008). The court found reasonable the Department's position that the Secretary's authority under the IRA included the power to refuse to recognize the validity of Burley's proffered tribal constitution when it "does not enjoy sufficient support from [the] tribe's membership." *Id.* at 1267. The court noted that, by Burley's own admission, the Tribe had a potential membership of 250, and upheld the Secretary's decision to reject what the court characterized as the "antimajoritarian gambit" by Burley and her small group of supporters. *Id.*

V. BIA Decisions in 2006 and 2007 and Subsequent Actions

After the District Court had issued its decision in *California Valley Miwok Tribe v. United States*, but while Burley's appeal to the Court of Appeals was pending, the Superintendent issued his November 6, 2006, decision, AR, Tab 19, and, following Burley's appeal, the Regional Director upheld the Superintendent, in the April 2, 2007, Decision, AR, Tab 3, that is the subject of this appeal.

The Superintendent's 2006 decision was addressed to both Burley and Yakima, and characterized BIA's action as an offer to assist the Tribe in the Tribe's efforts "to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to the clear majority of those Indians." AR, Tab 19 at 1. The Superintendent disclaimed any intent to interfere with the Tribe's right to govern itself, but found that the leadership dispute between Burley and Yakima threatened the government-to-government relationship between the United States and the Tribe. The Superintendent announced that the Agency

will publish a notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process. The notice shall invite the members of the Tribe and

⁹ The development of competing constitutions has not abated. In 2006, an 11-person group of 12 "initial members" of the Tribe aligned with Yakima purported to adopt a constitution, which recognized Burley as the 12th "initial member," but did not recognize Burley's daughters or granddaughter as members.

potential members to the meeting where the members will discuss the issues and needs confronting the Tribe.

Id.

The Superintendent listed several proposed issues for the general council to discuss, and described the necessary tasks for the general council as follows:

The general council first needs to determine the type of government your tribe will adopt. . . . Next, the general council needs to agree to the census or other documents that establishes the original members of the Rancheria. That census should be the starting point from which the tribe develops membership criteria. The immediate goal is determining membership of the tribe. Once membership is established and the general council determines the form of government, then the leadership issues can be resolved.

Id. at 2. The Superintendent concluded his letter by stating that BIA very much wished to have both Burley and Yakima participate, but that BIA would proceed with the process even if one or both of them declined to participate. *Id.*

Burley appealed the Superintendent's 2006 decision to the Regional Director, arguing that BIA had recognized her as a person of authority and thus there was no leadership dispute; that BIA previously had already decided which individuals had the right to organize the Tribe; that BIA lacked authority to organize an Indian tribe unless requested to do so by the tribe's government; and that BIA lacked authority to establish a class of individuals entitled to participate in organizing the Tribe as members of a "general council" convened by BIA. AR, Tabs 14, 17. The Superintendent responded to Burley's arguments by stating that

[i]t is not the goal of the Agency to determine membership of the Tribe. The purpose of the [Agency's] letter was to bring together the 'putative group' who believe that they have the right to participate in the organization of the Tribe It was not, and is not, the intent of the Agency to determine who the members of the Tribe will be. Then the 'putative' group can define the criteria for membership. . . .

AR, Tab 13 at 4.

In the Decision, the Regional Director first concluded that because BIA did not recognize a tribal government for the Tribe and because Burley and Yakima were at an

impasse, the government-to-government relationship was threatened, and thus it was necessary for BIA to assist the Tribe with the Tribe's organizational efforts. The Regional Director recounted the history of the Tribe, and in the course of that background, stated that a notice of termination was never published in the Federal Register or otherwise issued for the Sheep Ranch Rancheria, that the Tribe was included in a 1972 list of Federally recognized tribes, and therefore that BIA has never viewed the Tribe as having been terminated and then "restored" to Federal recognition. Decision at 2.

The Regional Director also recounted BIA's dealings with both Yakima and Burley, concluding that "both [had] failed to identify the whole community who are entitled to participate in the Tribe's efforts to organize." Decision at 4. The Regional Director agreed that it was not the Superintendent's goal to determine the membership of the Tribe, but instead to

bring together the "putative group" who believe that they have the right to participate in the organization of the Tribe We believe the main purpose was to assist the Tribe in identifying the whole community, the "putative" group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. A determination of who is a tribal member must, however, [precede] any determination of who is a tribal leader.

Id. at 5. The Regional Director stated that "[i]n all fairness to the current tribal membership and the 'putative' group," he agreed with the Superintendent's proposed course of action. *Id.* Thus, the Regional Director affirmed the Superintendent's decision and remanded the matter for implementation.

On April 10 and 17, 2007, shortly after the Decision was issued and before Burley filed this appeal, BIA published notices in local newspapers announcing its plans

to assist the [Tribe] in its efforts to organize a formal governmental structure that is acceptable to all members. The first step in the organizational process is to identify putative members of the Tribe who may be eligible to participate in all phases of the organizational process of the Tribe. Therefore, if you believe you are a lineal descendant of a person(s) listed below, you will need to [submit specified documentation to BIA] . . . that will assist the Bureau Team in determining your eligibility.

Calaveras Enterprise, April 10 and 17, 2007, Ex. 1 to Appellant's Opening Brief.¹⁰ The notice described the putative members as lineal descendants of (1) individuals listed on the 1915 census of the Sheepbranch Indians, (2) Jeff Davis (the sole individual on the IRA voter list in 1935), and (3) Mabel Hodge Dixie (the sole distributee under the 1964 Distribution Plan). The notice continued:

All individuals who have been determined to be eligible to participate in the organization of the Tribe will be notified by letter from the Agency. All individuals not determined eligible will be noticed of their right to appeal to the BIA, Pacific Regional Director within 30 days of receipt of decision. Upon rendering final decisions regarding appeals filed, the Agency will notify all individuals determined to be eligible of the organizational meeting which will include an agenda of the next actions to be taken by the group.

Id.

Burley, in the name of the Tribe, and represented by counsel, appealed the Decision to the Board. Burley, the Regional Director, and Yakima filed briefs.

VI. Arguments on Appeal

Burley characterizes the appeal as "rais[ing] the permissible scope of BIA involvement in internal Tribal government functions through unlawful reassumption of [ISDA] contract functions involving enrollment." Opening Brief at 3. According to Burley, the issues raised include the Regional Director's findings that BIA, rather than the Tribe, can determine tribal membership; that BIA may designate a putative class of membership; that the Tribe is an unorganized Tribe; that BIA can determine the make up of tribal government and refuse to recognize the Tribe's judicial forum; that BIA can hold a general council meeting for the Tribe without permission from the Tribe's governing body; and "lastly," that the Tribe was never terminated and restored. *Id.* at 3-4. Burley contends

¹⁰ Burley objected to the Board that BIA's public notices violated the automatic stay that attaches to BIA decisions, *see* 25 C.F.R. § 2.6, and were issued after BIA no longer had jurisdiction over the matter. While not conceding a violation, BIA has represented to the Board that it has refrained from taking any further action to convene a general council meeting. Independent of BIA's authority to publish them, the notices reflect, as a factual matter, BIA's understanding of the nature, scope, and intent of the Superintendent's November 6, 2006, decision and the Regional Director's Decision upholding the Superintendent.

that she was elected Chairperson of the Tribe and has been so recognized by BIA; that the five adult members of the Tribe adopted a general council form of government and thereafter the Tribe was no longer an “unorganized” tribe; that the Tribe is a party to an ISDA contract with BIA; and that BIA’s actions to implement the Decision by publishing the newspaper notices constitute an unlawful reassumption of contract functions because BIA “has engaged its own process of promulgating enrollment standards that differ from those of the Tribe,” which violates the terms of the ISDA contract. *Id.* at 11. Burley argues that BIA has overstepped its authority and impermissibly interfered with decisions on tribal membership and tribal governance that are reserved exclusively to Indian tribes. Burley also argues that the Regional Director erred in stating that the Tribe is not a “restored” tribe, because once fee title to the Rancheria land passed to Mabel Dixie, the Tribe was terminated, and therefore the Tribe necessarily must be a “restored” tribe.

The Regional Director contends that the appeal should be dismissed because the appeal cannot properly be brought in the name of the Tribe. The Regional Director argues that (1) the Decision was directed at Burley, as a person claiming to be the leader of the Tribe, and was not directed at the Tribe; (2) the appeal seeks to vindicate Burley’s own rights as an alleged elected official, and does not represent the interests of the Tribe as a whole; and (3) the Tribe lacks standing to appeal because it was not adversely affected by the Decision. In making the standing argument, the Regional Director contends that the Decision did not violate the ISDA contract or the Tribe’s right to determine its own membership, and that until the organizational process is complete, it is not possible to determine whether the Tribe was injured. The Regional Director also defends the Decision on the merits.

Yakima argues that the Superintendent’s 2004 Decision and the Assistant Secretary’s 2005 Decision, as final Departmental decisions, are dispositive of the issues raised in this appeal and thus prevent the Board from considering the appeal on the merits. Yakima also contends that this matter constitutes an enrollment dispute, and the Board lacks jurisdiction to adjudicate tribal enrollment disputes. *See* 43 C.F.R. § 4.330(b)(1).

Discussion

I. Jurisdictional Principles

The Board has jurisdiction to review an appeal from a non-emergency rescission and reassumption of an ISDA contract, *see* 25 C.F.R. § 900.150(e), but the Board does not have general jurisdiction over disputes that arise after an ISDA contract has been awarded, *id.* § 900.151(a) & (b), including claims that a Federal agency has violated an ISDA

contract. *See id.* Part 900, Subpart N (Post-Award Contract Disputes). As a general rule, the Board has jurisdiction to review a decision of a BIA Regional Director. *See* 25 C.F.R. § 2.4(e);¹¹ 43 C.F.R. § 4.330(a). But, except by special delegation or request from the Secretary or Assistant Secretary, the Board is expressly precluded from adjudicating tribal enrollment disputes, *see* 43 C.F.R. § 4.330(b)(1), or stated more precisely, from adjudicating challenges to BIA actions deciding tribal enrollment disputes. *See Vedolla v. Acting Pacific Regional Director*, 43 IBIA 151, 154 n.4 (2006).¹² In addition, the Board does not have jurisdiction to review a decision by the Assistant Secretary. *Ramah Navajo Chapter v. Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs*, 49 IBIA 10, 11-12 (2009), and cases cited therein; *Felter v. Acting Western Regional Director*, 37 IBIA 247, 250 (2002).

With these jurisdictional principles in mind, we address each argument raised by Appellant in this appeal.¹³

¹¹ BIA's appeal regulations refer to decisions made by an "Area Director," but the position is now titled "Regional Director."

¹² In *Vedolla*, the Board noted that regardless of section 4.330(b), the Board lacks jurisdiction to directly review enrollment (or other) actions by Indian tribes.

¹³ Another jurisdictional principle applied by the Board is that it will only consider matters that are ripe for review. *See, e.g., UOI Redevelopment LLC v. Acting Northwest Regional Director*, 44 IBIA 240 (2007) (dismissing appeal for lack of ripeness); *Wind River Resources Corp. v. Western Regional Director*, 43 IBIA 1, 3 (2006) (describing the considerations for determining ripeness). The Board solicited briefing on this issue, and both the Tribe and the Regional Director contend that this appeal is ripe. Yakima contends that the appeal is not ripe because Burley is objecting only to a *process*, and not an outcome, and no definitive determinations "have . . . been made with respect to denominating the particular putative members and the broader community who might qualify as members." Answer of Interested Parties at 11. Yakima later contradicts himself, however, by asserting that "BIA has, now, formally defined the class of individuals with whom it will [meet] to organize the Tribe." *Id.* at 14. Except with respect to the Decision's conclusion that the Tribe is not a "restored" Tribe, *see infra* at 122-23, we agree that this appeal is ripe, and that no purpose would be served by dismissal without deciding those issues.

II. Analysis

A. Claims Based on Tribe's ISDA Contract

1. Does the Decision Violate the Tribe's ISDA Contract?

Burley contends that the Decision, and subsequent notices identifying the class of putative members whom BIA would invite to a general council meeting of the Tribe, violated the Tribe's ISDA contract because the contract includes enrollment functions. As noted above, the Board lacks jurisdiction to consider claims that BIA breached a tribe's ISDA contract, and thus we dismiss this claim without addressing whether Burley would otherwise be authorized to bring such a claim on behalf of the Tribe.¹⁴

2. Does the Decision Constitute an Impermissible Reassumption of the ISDA Contract?

Burley argues that the Decision, as partially implemented by the newspaper notices announcing criteria for "putative" members of the Tribe and announcing BIA's intent to convene a general council meeting, constitutes an impermissible "reassumption" of the Tribe's ISDA contract. The Regional Director argues that Burley does not have authority to represent the Tribe in asserting this claim and that the Tribe itself lacks standing because "until the organizational process is complete, we cannot know whether there has been an actual injury." Appellee's Opposition Brief at 9. We need not address the Regional Director's contentions because we conclude that Burley's impermissible-reassumption argument is simply a restatement of her breach-of-contract claim, over which we lack jurisdiction.

Under the ISDA regulations, "reassumption" means "*rescission*, in whole or in part, of a contract *and* assuming or resuming control or operation of the contracted program by

¹⁴ We note that an appeal was filed with the Civilian Board of Contract Appeals (CBCA) in the name of the Tribe, from the same actions challenged in this appeal (Superintendent's November 6, 2006, decision; Regional Director's April 2, 2007, Decision; and April 2007 newspaper notices), arguing that BIA's actions constituted an impermissible revision and/or amendment of the contract in violation of the contract and governing statute. The CBCA dismissed the appeal for lack of jurisdiction because the Tribe had made no claim to the awarding official and the awarding official had issued no decision. See *California Valley Miwok Tribe v. Department of the Interior*, CBCA 817-ISDA (Sept. 27, 2007) (dismissing appeal for lack of jurisdiction).

the Secretary without consent of the Indian tribe or tribal organization pursuant to the notice and other procedures set forth in subpart P.” 25 C.F.R. § 900.6 (emphases added). The “rescission” of a contract by one party refers to the “unilateral *unmaking* of a contract for a legally sufficient reason.” Black’s Law Dictionary 1332 (8th ed. 2004) (emphasis added). Subpart P of 25 C.F.R. Part 900 prescribes the specific circumstances under which an agency may rescind an ISDA contract, the specific procedural steps that must be followed, and the effective date of the rescission and reassumption. *See* 25 C.F.R. §§ 900.247 -.253.

In the present case, the Decision did not purport to rescind or terminate the Tribe’s ISDA contract for FY 2007, and the Regional Director does not argue on appeal that the contract was rescinded or terminated. Nor does Burley contend that BIA followed the proper procedures for rescinding the contract. Instead, Burley contends that BIA’s actions constituted unlawful interference with the Tribe’s ability to perform under the contract by essentially taking over enrollment activities. Burley describes this as a “reassumption,” but the actions described, in substance, do not fall within the regulatory definition of that term. In effect, Burley’s contention is a restatement of her allegation that BIA’s actions either breached or unlawfully interfered with the Tribe’s still-effective and still-valid FY 2007 ISDA contract.

Thus, for the same reason that we have dismissed Burley’s express breach-of-contract claim, we also dismiss Burley’s unlawful-reassumption claim: the Board lacks jurisdiction to consider what is in substance an ISDA breach-of-contract claim.

B. BIA’s Decision to Convene a General Council Meeting of the Tribe’s Current and Putative Membership and to Determine Criteria for Putative Membership

Burley contends that the Regional Director erred in stating that the Tribe is unorganized, and that because the Tribe (i.e., Burley’s faction) did not request assistance from BIA, BIA has no authority to convene a “general council” meeting of the Tribe, or to determine the class(es) of individuals who may participate in such a meeting. We conclude, based on the Assistant Secretary’s 2005 Decision, which included his acceptance of the Superintendent’s 2004 Decision as final for the Department, that the following determinations are not subject to further review by the Board in this appeal: (1) the Department does not recognize the Tribe as being organized or having any tribal government that represents the Tribe; (2) the Department does not recognize the Tribe as necessarily limited to Yakima, Melvin, Burley, her two daughters, and her granddaughter, for purposes of who is entitled to organize the Tribe and determine membership criteria; and (3) the Department has determined that it has an obligation to ensure that a “greater tribal community” be allowed to participate in organizing the Tribe. Each of these

determinations was either explicitly or implicitly accepted in the Assistant Secretary's 2005 Decision as final for the Department, *see supra* at 111-12, and the Board lacks jurisdiction to review a decision by the Assistant Secretary.

That does not end our inquiry, however, because the Regional Director's Decision arguably went beyond the above determinations by deciding more specifically what BIA would do to implement those determinations. In this appeal, Burley contends that BIA exceeded its authority in determining who would constitute the "greater tribal community," or class of "putative members," and in deciding that they could participate as part of a "general council" meeting of the Tribe, to decide membership and organizational issues.¹⁵

As evidenced by the decisions of the Superintendent and the Regional Director, and the public notices published by BIA in 2007,¹⁶ BIA apparently has decided to create a base roll of individuals who satisfy criteria that BIA has determined to be appropriate and who

¹⁵ On October 13, 2009, Burley filed a request that the Board "take judicial notice of the United States Supreme Court's October 5, 2009, denial of [a petition for a writ of certiorari] in the *Hendrix v. Coffey* matter." *See Hendrix v. Coffey*, No. Civ. 08-605-M, 2008 WL 2740901 (W.D. Okla. July 10, 1008), *aff'd*, 305 Fed.Appx. 495 (10th Cir. 2008) (unpublished), *cert. denied*, 130 S. Ct. 61, 2009 WL 1106742 (U.S. Oct. 5, 2009). Burley characterized the *Hendrix* decisions as reaffirming well-settled principles of law that Indian tribes have complete authority to determine all questions of their own membership, and ascribed significance to the Supreme Court's recent denial of Hendrix's petition for a writ of certiorari. Counsel for the Tribe, Kevin M. Cochrane, Esq., of Rosette & Associates, PC, subsequently certified that he had reviewed and endorsed Burley's request as one made in good faith and for which a reasonable legal justification exists. Because we lack jurisdiction to consider the merits of Burley's second claim, we decline to further consider Burley's request or Cochrane's certification. *But see Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950) (Opinion of Justice Frankfurter) ("This Court has rigorously insisted that such a denial [of certiorari] carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review.").

¹⁶ BIA published the newspaper notices after the Regional Director issued the Decision, but before the Tribe timely filed this appeal. Subsequently, the Tribe objected to BIA's action as violating the automatic stay. *See* 25 C.F.R. § 2.6. We agree with the Tribe that BIA should not have begun to implement a decision that was not effective and that was subject to appeal. BIA subsequently confirmed with the Board that it cannot take any action to assist the Tribe in organizing while Burley's appeal remains pending. *See* Appellee's Opposition to Appellant's Motion to Enforce Stay at 1; *see also supra*, note 10.

will be entitled to participate — effectively as members (albeit in a somewhat undefined capacity) — in a “general council” meeting of the Tribe to organize the Tribe. Although the facts of this case render BIA’s decision far from a typical enrollment adjudication, we conclude that, in substance, that is what it is. Whether or not some or all of the individuals BIA would determine, under the Decision, to be “putative members” of the Tribe will ultimately be enrolled, BIA’s determination of their “putative membership” apparently will effectively “enroll” them as members of the “general council” that is to meet. And that general council, as apparently envisioned by BIA, will have the authority to determine permanent membership criteria.

Understood in the context of the history of this Tribe, and BIA’s dealings with the Tribe since approximately 1999, this case is properly characterized as an enrollment dispute. *Cf. Vedolla v. Acting Pacific Regional Director*, 43 IBIA at 155 (Board lacks jurisdiction over what is, at its core, a tribal enrollment dispute, notwithstanding an appellant’s characterization to the contrary; matter referred to the Assistant Secretary); *Walsh v. Acting Eastern Area Director*, 30 IBIA 180 (1997) (dismissing appeal from alleged actions and inactions regarding the development of a proposed final base membership roll for the Catawba Indian Tribe of South Carolina, and referring matter to Assistant Secretary); *Deardorff v. Acting Portland Area Director*, 18 IBIA 411 (1990) (dismissing appeal from BIA decision holding that 58 individuals were qualified to be enrolled in the Crow Creek Band of Umpqua Tribe of Indians, and referring matter to the Assistant Secretary). Because the Board lacks jurisdiction to adjudicate tribal enrollment disputes, we dismiss this claim and refer it to the Assistant Secretary.¹⁷

C. Did the Regional Director Err in Stating that the Tribe is Not a “Restored” Tribe?

A determination whether a tribe is a “restored” tribe may have significant gaming-related implications when land is taken into trust for such a tribe. *See Butte County v. Hogen*, 609 F. Supp. 2d 20, 24 (D.D.C. 2009). It is unclear, however, whether the Regional Director intended the statement in his Decision that the Tribe is not a “restored” tribe to constitute a “decision,” or whether it was intended only as background. We

¹⁷ Even if we did not conclude that Burley’s second claim presents an enrollment dispute over which we lack jurisdiction, referral of this claim might still be required because of the discretionary character of BIA’s decision. *See* 43 C.F.R. § 4.330(b)(2). The Department has determined that a “greater tribal community” must be included in organizing the Tribe, but even if we limited our review to the *classes* of individuals that BIA decided to include, it is unclear what legal standard we would apply.

conclude that the Tribe lacks standing to appeal this portion of the Decision because there is no showing, on this record, that the Tribe was adversely affected by the statement on this issue in the Decision. *See* 25 C.F.R. § 2.3 (administrative appeals regulations apply to appeals by persons who may be adversely affected by a BIA decision). The Decision is directed at neither gaming on tribal lands nor taking land into trust for the Tribe. And although the statement that the Tribe is not a “restored” Tribe may well have been intended to signal BIA’s position on the subject, the Decision itself presents no context, nor any action that BIA intends to take to implement that position in a way that might have an actual adverse effect.

Even if we were to conclude that the Tribe had shown that it was adversely affected by the statement, we would nevertheless conclude on this record that the matter is not ripe for our review. The Board applies the doctrine of ripeness, and three considerations are relevant for determining whether a matter is ripe: will a delay cause hardship, will Board intervention interfere with further administrative action, and is further factual development of the issues required? *Wind River Resources, Corp. v. Western Regional Director*, 43 IBIA 1, 3 (2005). In the present case, the first and third criteria weigh in favor of dismissal for lack of ripeness. Because there is no indication in the record that BIA intends to take any action to “implement” the statement, delay will not cause hardship; nor has a factual record been developed for this issue. Given the lack of context for the Decision’s statement that the Tribe is not a “restored” tribe, it is unclear whether Board intervention would interfere with further administrative action, but considering the three factors together, we would conclude that this claim is not ripe. Thus, whether viewed as an issue of standing or of ripeness,¹⁸ we conclude that this claim should be dismissed, and review on the merits must wait.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board (1) dismisses Burley’s claims related to the Tribe’s FY 2007 ISDA contract; (2) dismisses Burley’s claims that BIA improperly determined that the Tribe is “unorganized,” failed to recognize her as the Tribe’s Chairperson, and is improperly intruding into tribal affairs by determining the criteria for a class of putative tribal members and convening a general council meeting that will include such individuals; and (3) dismisses Burley’s claim that the Regional Director erred in stating

¹⁸ In *Wind River Resources*, we noted that the doctrines of standing and ripeness are closely related. *See* 43 IBIA at 3 n.2.

that the Tribe is not a “restored” tribe. We refer Burley’s second claim to the Assistant Secretary.¹⁹

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Sara B. Greenberg
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.

¹⁹ In this appeal, briefs filed on behalf of Yakima and purportedly other interested parties, *see supra* note 2, have been filed by Chadd Everone, a non-attorney who does not claim to be a member or putative member of the Tribe but who claims to serve as the “Deputy” to Yakima. *See, e.g.*, Interested Parties’ Response in Opposition to Appellant’s Request to Reopen Briefing at 1 (Oct. 5, 2009). On November 30, 2009, more than a year after briefing on the merits had concluded and after the Board had advised the parties that it had taken this case under consideration, Burley, through counsel, filed a Motion to Institute Disciplinary Proceedings Against Chadd Everone, asserting that Everone is not authorized to practice before the Board and that therefore all pleadings filed on behalf of Yakima should be stricken and not considered by the Board. Burley’s motion, at this late stage of the proceedings, is untimely and we decline to consider it further. We note that Burley’s motion selectively quotes 43 C.F.R. § 1.3, and does not address the Board’s interpretation of that provision. *See, e.g., Estate of Benjamin Kent, Sr.*, 13 IBIA 21, 23 (1984). Moreover, the motion apparently assumes that Yakima did not sign any of the pleadings himself. *But cf.* Interested Parties’ Answer Brief at 15. Finally, even were we to strike all pleadings filed on behalf of Yakima, we would not resolve this appeal differently.

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **California Valley Miwok Tribe v. California Gambling Control Commission**

No.: **D054912**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On February 8, 2010, I served the attached, **RESPONDENT'S REQUEST FOR JUDICIAL NOTICE**, by placing a true copy thereof enclosed in a sealed envelope with the **FEDEX**, addressed as follows:

Manuel Corrales, Jr. Esq.
11753 Avenida Sivrita
San Diego, CA 92128
Attorney for Plaintiff
Tracking No. 8659 6051 0302

Terry Singleton, Esq.
Singleton & Associates
1950 Fifth Avenue, Suite 200
San Diego, CA 92101
Co-Counsel for Plaintiff
Tracking No. 8659 6051 0298

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 8, 2010, at San Diego, California.

Rosario Asensio

Declarant



Signature

EXHIBIT “18”

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
1824 Tribute Road, Suite J
Sacramento, CA 95815-4308

SEP 24 1998

IN REPLY REFER TO:

Yakima K. Dobe, Spokesperson
Sheep Ranch Rancheria
11178 School Street
Sheep Ranch, California 95250

Dear Mr. Dobe:

The purpose of this correspondence is to summarize the issues discussed during a meeting held with you and Silvia Burley on September 8, 1998, at your residence on the Sheep Ranch Rancheria in Sheep Ranch, California. The purpose of the meeting was to discuss the process of formally organizing the Tribe. In attendance at this meeting from my staff was Mr. Raymond Fry, Tribal Operations Officer, and Mr. Brian Golding, Sr., Tribal Operations Specialist.

Status of the Tribe

The Sheep Ranch Rancheria is a federally recognized Tribe, as it was not lawfully terminated pursuant to the provisions of the California Rancheria Act. The California Rancheria Act provided for the termination of specific Tribes by distributing the assets of the Tribes to those persons determined eligible, and in exchange, the recipients of the assets would no longer be eligible to receive services and benefits available to Indian people. The Plan of Distribution of the Assets of the Sheep Ranch Rancheria, approved by the Associate Commissioner of Indian Affairs on October 12, 1966, identified your mother, Mabel (Hodge) Dobe as the sole distributee entitled to participate in the distribution of the assets of the Sheep Ranch Rancheria. The Distribution Plan has not been revoked.

Membership

In those situations where an "unterminated" Tribe is pursuing reorganization, the persons possessing the right to reorganize the Tribe is usually specified by the decision of the court, as the majority of "unterminated" Tribes regain federal recognition through litigation. Usually, the court decision will state that the persons possessing the right to reorganize the Tribe are those persons still living who are listed as distributees or dependent members on the federally approved Distribution Plan. In some cases the courts have extended this right of participation to the lineal descendants of distributees or dependent members, whether living or deceased.

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In this case, the usual manner of determining who may reorganize the Tribe does not apply here as there is no such court decision. However, with the passing of Mabel (Hodge) Dixie, a probate was ordered, and the Administrative Law Judge issued an Order of Determination of Heirs on October 1, 1971, as reaffirmed by subsequent Order issued on April 14, 1993. The Order listed the land comprising the Sheep Ranch Rancheria as part of the estate of Mabel (Hodge) Dixie. The Order then listed the following persons as possessing a certain undivided interest in the Sheep Ranch Rancheria:

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

During our meeting, you explained to us that three of the heirs were deceased, and that the whereabouts of your brother, Melvin Dixie, were presently unknown.

We believe that for the purposes of determining the initial membership of the Tribe, we are held to the Order of the Administrative Law Judge. Based upon your statement that three of the heirs were deceased, the two remaining heirs are those persons possessing the right to initially organize the Tribe.

On August 5, 1998, as the Spokesperson of the Tribe, you accepted Silvia Burley, Rashol Reznor, Anjelica Paulk, and Tristian Wallace as enrolled members of the Tribe. Therefore, these persons as well, provided that they are at least eighteen years of age, possess the right to participate in the initial organization of the Tribe.

At the conclusion of our meeting, you were going to consider what enrollment criteria should be applied to future prospective members. Our understanding is that such criteria will be used to identify other persons eligible to participate in the initial organization of the Tribe. Eventually, such criteria would be included in the Tribe's Constitution.

Governance

Tribes that are in the process of initially organizing usually consider how they will govern themselves until such time as the Tribe adopts a Constitution through a Secretarial Election, and Secretarial approval is obtained. Agency staff explained two options for the consideration of the General Membership:

- 1) the members could operate as a General Council, retaining all powers and authorities, and delegating specific limited powers to a Chairperson, and

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- 2) the members could form an Interim Tribal Council, and delegate from the General Council various general powers and authorities to the Interim Tribal Council.

In this case, given the small size of the Tribe, we recommend that the Tribe operate as a General Council, as described in the first option above. Enclosed for your consideration, is a draft General Council resolution (Resolution #GC-98-01) specifying general powers of the General Council and rules for governing the Tribe.

A number of the provisions of the draft resolution may be changed by the Tribe to reflect the manner in which it desires to conduct business. For instance, the first "Resolved" clause on the second page lists seven (7) specific powers to be exercised by the General Council. For the most part, this list involves those powers that the General Council would exercise in order to accomplish the initial organization process. There is no mention of other powers, such as the power to purchase land, since such a power most likely would not be used during the organization process. Rather, such a power would be used after the Tribe organizes, and would be included in the Tribe's Constitution.

Another example of a change to consider is the fourth "Resolved" clause on the second page. This clause states that regular meetings of the General Council will be held on the second Saturday of each month. The Tribe may wish to change this to a day of the week that will best meet the Tribe's needs.

Once the General Council adopted such a resolution, the General Council would then proceed to elect or appoint a Chairperson. The General Council would then be able to proceed with the conduct of business, in a manner consistent with the authorizing resolution. Additional powers can be specified by the General Council through either an amendment to the authorizing resolution, or adoption of another authorizing resolution.

Grant Funding

We discussed the fact that the Bureau of Indian Affairs makes grants, under the provisions of the Indian Self-Determination and Education Assistance Act, as amended, to Tribes for the purpose of strengthening or improving Tribal government and developing Tribal capacity to enter into future contracts. Such grants can be used to cover costs incurred by the Tribe in establishing a Tribal office, equipment and furniture, supplies, and legal assistance. In this case, we advised the Tribe that the first grant would be made in the amount of \$50,000.

In order to apply for and receive funding from the Bureau, the Self-Determination Act requires that a Tribe indicate by resolution its desire to receive grant funding. Enclosed is a draft General Council resolution (Resolution #GC-98-02) which fulfills this requirement.

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We discussed the nature of congressional appropriations regarding the funding that Tribes receive. We recommended that the Tribe consider reprogramming funds from various programs into the Consolidated Tribal Government program. Such reprogramming would then provide the Tribe with the greatest flexibility in using the funds in the upcoming year. As a result of our discussion, you provided the Agency staff present with a letter proscribing your reprogramming preferences. A copy of this letter is enclosed for your records.

Bureau Costs Associated with Organizing

We discussed the Bureau's role in providing technical assistance to Tribes in the process of organizing the Tribe. The Bureau receives some funding from each of the Tribes in our jurisdiction as a means of providing a minimum amount of technical assistance. But in those cases where a Tribe is pursuing formal organization, such funds are insufficient to cover all costs.

We request that the Tribe consider the adoption of the enclosed draft General Council resolution (Resolution #GC-98-03). The purpose of this resolution is to authorize the Bureau to charge expenses related to the organization of the Tribe to the Tribe's FY 1998 Tribal Priority Allocation funding. One example of a cost supporting the organization process is the purchase of death certificates for the three deceased heirs. The death certificates are necessary for the initiation of the probate process. Another example of such costs is the hiring of a new Bureau employee, or the temporary assignment of an existing Bureau employee, to work directly with the Tribe in the organization process. Such work may focus on the enrollment process, development of administrative management systems, or on issues related to governance.

Other Issues

Probates: We discussed the status of the land, and the need for additional probates to be completed to determine the status of the estates of deceased heirs. We agreed to obtain copies of the death certificates of the deceased heirs. A request for death certificates was prepared, and we expect the processing of the request by the State Office of Vital Records within the next month. Once received, we will then proceed with preparing the probates.

The fact that there are probate actions remaining to be taken directly impacts your ability to enter into a homesite lease. This is relevant to the question you asked regarding Silvia's eligibility for assistance under the Housing Improvement Program (HIP). An applicant under the HIP must demonstrate ownership or control over land, either through an assignment or a homesite lease. In this case, as the land is considered as individually-owned trust land, you and the other heirs would have to enter into a homesite lease with Ms. Burley. Other eligibility criteria exists for the HIP that are beyond the purview of this letter. We have requested that the HIP send an application to Ms. Burley for her review.

03/02/2005 13:15

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THOMPSONASS

PAGE 14

Septic Tank: With regard to the septic tank issue you brought to our attention, we researched our files and found that the house you are currently occupying was constructed under the HIP in 1967. The issue is addressed in a memorandum from the Agency Realty Officer to the Area Realty Officer, dated August 12, 1971, which states, "The 20' x 24' house was constructed in 1967 at a cost of \$8,500.00 and the septic tank, installed by Phoenix Health Service, would cost about \$1,500.00." We contacted the Indian Health Service, California Area Office, here in Sacramento, and inquired whether they will be able to provide maintenance services to you. We obtained their commitment to perform the work within the next couple of months. We will work with you to ensure that the work is completed in an appropriate manner.

Access to Rancheria: We discussed the notion that the driveway leading up to the Sheep Ranch Rancheria was not within the Rancheria. We agreed to look into the ownership of the driveway. Please find enclosed an Assessor's Parcel Map of a portion of the Sheep Ranch Townsite. This map shows a number of "paper" roads that do not exist today. We are currently researching the ownership of the paper roads to determine what rights the Tribe may have to assert a use right to the driveway.

Next Meeting: We agreed that another meeting was necessary to discuss the draft resolutions and additional details of the organization process. We propose that we meet on Friday, October 2, 1998, at 11:00 a.m., to be held at your residence in Sheep Ranch, California.

I thank you for your concern and positive participation in the organization process. I am certain that if we continue to work together, the organization process will be completed without undue delay. Toward this end, I extend the assistance of my staff, upon your written request.

Sincerely,


Dale Risling, Sr.
Superintendent

EXHIBIT “19”



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 30 2015

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

Dear Ms. Burley:

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

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

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

Background

In 1916, the United States acquired a parcel of approximately one acre in Sheep Ranch, California, for the benefit of Mewuk² Indians living in that area of Calaveras County. The land became the Sheep Ranch Rancheria (Rancheria). The lone Indian residing on the Rancheria in 1935, Jeff Davis, was allowed to vote on whether to accept the Indian Reorganization Act (IRA). An Indian residing on the Rancheria in 1967, Mabel Hodge Dixie, was identified as the distributee of the Rancheria assets. Mabel's son, Yakima Dixie (Mr. Dixie), has been the

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

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

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

The Sheep Ranch Rancheria

In 1915, Special Agent John Terrell sent the Commissioner of Indian Affairs a letter with "a census of the Indians designated 'Sheepranch Indians,'" (sic), describing the group as "the remnant of once quite a large band of Indians in former years living in and near the old decaying mining town known and designated on the map as 'Sheepranch.'"⁷ Importantly, Agent Terrell also noted that "to some extent the Indians of Sheepranch, Murphys, Six-Mile, Avery and Angles are interchangeable in their relations."⁸ All of those towns are located in Calaveras County, California.

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

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

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

³ Silvia Burley, her daughters Rashel Reznor and Anjelica Paulk, and Rashel's daughter Tristian Wallace.

⁴ 51 IBIA 103, 105 (IBIA 2010).

⁵ *CVMT III* at 99.

⁶ *Id.* at 100, quoting *Seminole Nation v. Norton*, 223 F. Supp. 2d 122, 140 (D.D.C. 2002).

⁷ Attachment A: 1915 Terrell Census

⁸ Presumably "Angles" referred to Angel's Camp, about 5 miles southwest of Murphys and 15 miles southwest of Sheep Ranch.

⁹ In 2006, the District Court suggested that the Sheep Ranch Rancheria was the same parcel occupied by Peter Hodge and his family in 1915. *CVMT I* at 197-98 (D.D.C. 2006). The record shows that Hodge resided two and a half miles north of Sheep Ranch, while the parcel acquired by the United States was within the town itself.

¹⁰ Attachment B: 1929 Census.

¹¹ 48 Stat. 984 (1934).

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

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

Membership in CVMT is not limited to five people.

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

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

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

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

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

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

¹⁵ Attachment C.

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

¹⁷ *CVMT II* at 1263.

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

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

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

¹⁸ *CVMT III* at 98.

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

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

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

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

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

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

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

²¹ Attachment A.

²² Attachment A.

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

²⁴ Attachment I.

²⁵ *CVMT II* at 44; *CVMT III* at 97.

²⁶ *CVMT II* at 44; *CVMT III* at 98.

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

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

Conclusion

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

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

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

²⁷ Attachment K.

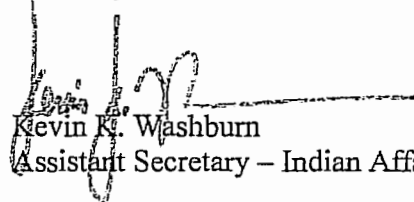
²⁸ Mr. Dixie did not provide evidence that outreach to the greater tribal community was part of the drafting or ratification of the Constitution. Rather, the text of the Constitution itself indicates that the organizers had established a tribal membership roll *prior* to ratifying the Constitution (Section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

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

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

This decision is a final agency action.

Sincerely,



Kevin K. Washburn
Assistant Secretary – Indian Affairs

Attachments:

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

³⁰ Attachment L.

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Director, BIA

Regional Director, Pacific Regional Office

Regional Solicitor, Pacific Southwest Regional Office

EXHIBIT “20”

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division**

THE CALIFORNIA VALLEY MIWOK TRIBE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

THE TRIBAL COUNCIL,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

YAKIMA DIXIE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

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ANTOINE AZEVEDO,
4001 Carribee Ct.
North Highlands, CA 95660

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as
Secretary of the United States Department of the
Interior,
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

LARRY ECHO HAWK, in his official capacity as
Assistant Secretary-Indian Affairs of the United
States Department of the Interior,
Department of the Interior
1849 C Street, N.W.

Case No. _____

Washington DC 20240

MICHAEL BLACK, in his official capacity as
Director of the Bureau of Indian Affairs within the
United States Department of the Interior,
Bureau of Indian Affairs
MS-4606
1849 C Street, N.W.
Washington, D.C. 20240

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Yakima Dixie ("Chief Dixie"), the California Valley Miwok Tribe ("Tribe"), and Tribe members Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo, individually and as members of the Tribal Council ("Council"), submit this Complaint against the Defendants, Ken Salazar, Secretary of the United States Department of the Interior ("Department"), Larry Echo Hawk, Assistant Secretary– Indian Affairs of the Department, and Michael Black, Director of the Bureau of Indian Affairs within the Department, and state and allege as follows:

INTRODUCTION

1. In *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008), the Court of Appeals for the District of Columbia Circuit upheld the Secretary of the Interior's ("Secretary") decision that Sylvia Burley ("Burley") and her two daughters (collectively, the "Burley Faction") were not the legitimate government of the Tribe. The court held that the Secretary, in 2004 and 2005, properly rejected a purported tribal constitution that the Burley Faction had submitted "without so much as consulting [the Tribe's] membership." The Secretary therefore properly refused to recognize Ms. Burley as Chairperson of the Tribe, and properly refused to recognize the Tribe as "organized" under the Indian Reorganization

Act of 1934 ("IRA"). *See* Letter from Dale Risling Sr., Superintendent, Bureau of Indian Affairs Central California Agency, to Silvia Burley (Mar. 26, 2004) (the "2004 Decision") (a true and correct copy of which is attached hereto as Exhibit "A"); Letter from Michael Olsen, Acting Assistant Secretary – Indian Affairs, to Yakima Dixie, (Feb. 11, 2005) (the "2005 Decision") (a true and correct copy of which is attached hereto as Exhibit "B"). The Court of Appeals thus affirmed a decision by the District Court for the District of Columbia, dismissing Ms. Burley's challenge to the Secretary's decisions.

2. In briefs submitted to the Court of Appeals, the Secretary took the position that, "for an 'Indian tribe' to organize under the IRA, action by the tribe as a whole is required; action by an unrepresentative faction is insufficient." The Secretary argued, in support of the 2004 and 2005 Decisions, that she could not recognize Burley's purported tribal government, or its constitution, because "the undisputed facts show that the Burley Government was elected, and its governing documents adopted, by just three people and without the participation of the vast majority of the potential members of the Tribe." The Secretary also recognized that she had not only the authority but the obligation to "ensure the legitimacy of any purported tribal government that seeks to engage in [a] government-to-government relationship with the United States."

3. The Court of Appeals agreed with the Secretary, holding that "as Congress has made clear, tribal organization under the [IRA] must reflect majoritarian values," and that "[Burley's] antimajoritarian gambit deserves no stamp of approval from the Secretary."

4. Following the Court of Appeals' decision, on November 6, 2006, the Bureau of Indian Affairs ("BIA") issued a decision describing how it would assist the Tribe in organizing under the IRA. The Burley Faction appealed this decision to the BIA's Regional Director. On April 2, 2007, the Regional Director affirmed the decision.

5. On April 10 and 17, 2007, the BIA published a notice seeking personal genealogies and other information from potential Tribe members, which was to be used to identify those who were entitled to participate in the initial organization of the Tribe. More than 500 people responded. The BIA has taken no action as to these submittals.

6. The Burley Faction did not participate in the process initiated by the BIA, but instead appealed the Regional Director's April 2, 2007 decision to the Interior Board of Indian Appeals ("Board"). *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIA 103 (Jan. 28, 2010).

7. The Board held that the Secretary's previous, judicially approved decisions regarding the status of the Burley Faction and the requirement of majority participation were not subject to further review. It therefore dismissed all but one of Burley's claims for lack of jurisdiction. The Board referred a single, narrow issue from Burley's appeal to the Assistant Secretary – Indian Affairs (the "Assistant Secretary"): the process for identifying which members of the Tribal community were entitled to participate in the initial organization of the Tribe.

8. On December 22, 2010, the Assistant Secretary acted on Burley's appeal Letter from Assistant Secretary—Indian Affairs to Yakima Dixie (December 22, 2010) (the "December 22 Decision"), (a true and correct copy of which is attached hereto as Exhibit "C"). The Assistant Secretary did not address the narrow issue over which he had jurisdiction. Instead, he inexplicably repudiated each of the arguments that the Secretary had made before the District Court and the Court of Appeals. Without any reasoned explanation, he reversed each and every one of the Secretary's prior decisions that those courts had upheld. The Assistant Secretary rescinded the 2004 and 2005 Decisions denying recognition of the Burley Faction and its constitution. He declared that the Tribe was "organized" under a General

Council form of government, pursuant to a 1998 tribal resolution that was not signed by a majority of the Tribe's adult members (the "1998 Resolution"). He directed the BIA to carry on government-to-government relations with the Burley Faction. And he ordered the BIA to rescind its efforts to help the Tribe organize according to majoritarian principles.

9. Plaintiffs challenge the Assistant Secretary's action as arbitrary, capricious, and not in accordance with law. The December 22 Decision exceeds the scope of the issue referred to the Assistant Secretary on appeal, improperly revisits and overturns long-settled, judicially approved decisions, addresses issues barred by failure to file timely appeals with the Board, and violates the Secretary's responsibility to ensure that the United States conducts government-to-government relations only with valid representatives of the Tribe.

10. The December 22 Decision directly contradicts the Secretary's prior representations to this Court and cedes complete control of the Tribe to the Burley Faction, who have fought for more than a decade to deny the benefits of Tribe membership to anyone but themselves.

11. Plaintiffs therefore file this action, asking this Court to invalidate the Assistant Secretary's decision and to enjoin and invalidate its implementation.

JURISDICTION AND VENUE

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

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

14. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1362 because the Tribe is an Indian tribe duly recognized by the Secretary of the Interior, and the matter in controversy arises under the Constitution, laws or treaties of the United States.

15. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Secretary, the Assistant Secretary, the Director of the BIA, and the Department are located in this district.

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

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

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

19. An actual case and controversy has arisen and now exists between the parties with regard to the Assistant Secretary's violations of the statutes and regulations cited herein.

PARTIES

20. Plaintiff California Valley Miwok Tribe, also known as the "Sheep Ranch Rancheria," the "Sheep Ranch Rancheria of Me-Wuk Indians of California," and the "Sheep Ranch Band of Me-wuk Indians of the Sheep Ranch Rancheria," is a federally recognized Indian tribe situated in Sheep Ranch, California, in Calaveras County. (The Burley Faction purported to enact a tribal resolution in 2001, changing the name of the Tribe from the Sheep Ranch Band of Me-wuk Indians to the California Valley Miwok Tribe. Plaintiffs dispute that the Burley Faction had the authority to enact such a resolution. But because the BIA now refers to the Tribe as the California Valley Miwok Tribe, Plaintiffs and members of the larger tribal community have used that name to avoid confusion. This Complaint will do the same.)

The Tribe consists of Indian members and their descendants, and/or their Indian successors in interest, for whose benefit the United States acquired and created the Sheep Ranch Rancheria. There is an ongoing dispute regarding the true membership and leadership of the Tribe.

21. Plaintiff Yakima Dixie is the Hereditary Chief and Traditional Spokesperson, and the historical Chairperson, of the California Valley Miwok Tribe.

22. Plaintiff Tribal Council is the duly authorized and legitimate governing body of the Tribe, appointed by Chief Dixie. The Council consists of Chief Dixie and Tribe members Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo.

23. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo are members of the Tribe and of the Tribal Council. Each is a lineal descendant of a historical member or members of the Tribe.

24. Defendant Ken Salazar is the Secretary of the United States Department of the Interior. Mr. Salazar is responsible for the supervision of the various federal agencies and bureaus within the Department, including the BIA. Mr. Salazar is an officer or employee of the United States and has a direct statutory duty to carry out the provisions of the Indian Reorganization Act of 1934 (“IRA”) and other relevant laws. Mr. Salazar is sued in his official capacity only.

25. Defendant Larry Echo Hawk is the Assistant Secretary – Indian Affairs of the Department and head of the Bureau of Indian Affairs. Mr. Echo Hawk issued the December 22 Decision that is challenged in this action. Mr. Echo Hawk is sued in his official capacity only.

26. Michael Black is the Director of the Bureau of Indian Affairs within the Department. Mr. Black is responsible for the day-to-day operations of the BIA, including its relations with federally recognized Indian tribes. Mr. Black is sued in his official capacity only.

RELEVANT FACTS

Tribal History and Indian Reorganization Act

27. In 1916, the United States purchased approximately one to two acres of land and created the Sheep Ranch Rancheria for the benefit of a small cluster of twelve to fourteen Miwok Indians that were found living in or near Sheep Ranch, California. The United States subsequently recognized the Sheep Ranch Band of Me-wuk Indians as a federal Indian Tribe.

28. In 1935, the Tribe voted to accept the IRA. The IRA allows Indian tribes to adopt a constitution, form a tribal government, and elect tribal officials, subject to substantive and procedural requirements in the IRA. Tribes thus “organized” under the IRA are eligible for certain federal benefits and services. Although it accepted the IRA, the Tribe did not take action to become “organized.”

29. Under the IRA, the Secretary has a duty to ensure that the Department recognizes only a legitimate tribal government that reflects the participation of a majority of the Tribe’s membership. This duty is informed and strengthened by the United States’ trust obligations to Indian tribes and their members.

The California Rancheria Act and Failure to Terminate the Tribe

30. In 1958, Congress enacted the California Rancheria Act, which authorized the Secretary to terminate the lands and trust status of enumerated Indian tribes on California Rancherias under certain conditions. Under the Act, tribes could accept termination in exchange for fee title to Rancheria assets and the provision of certain services by the federal government.

31. In 1965, the BIA listed Mabel Hodge Dixie as the only Indian living on Sheep Ranch Rancheria.

32. On or about 1966, the BIA began proceedings to "terminate" the Tribe pursuant to the California Rancheria Act, and the United States conveyed fee title in the Sheep Ranch Rancheria to Mabel Hodge Dixie. The BIA never completed the requirements for termination. In 1967, Ms. Dixie quitclaimed the Rancheria back to the United States, thereby preventing termination of the Tribe from becoming effective.

33. In 1971, Ms. Dixie died, and her son Yakima Dixie inherited the position of Hereditary Chief and Traditional Spokesperson of the Tribe.

34. In 1994, Congress enacted the Tribe List Act, Pub. L. 103-454; 108 Stat. 4791, 4792, which requires the Secretary annually to publish a list of federally recognized Indian Tribes. The Tribe was included on the 1994 list and has been included on each list published since that time. Inclusion of a tribe on the list does not mean that the tribe is "organized" under the IRA or that its membership has been determined.

Burley Seeks Control of the Tribe

35. In 1998, Chief Dixie was the only Indian living on the Sheep Ranch Rancheria. Burley contacted Chief Dixie and asked him to enroll Burley, her two daughters, and her granddaughter in the Tribe so they could receive federal education and health benefits available to Indian tribe members. Chief Dixie agreed. Chief Dixie, Ms. Burley and her daughters then began preliminary efforts to organize the Tribe under the IRA.

36. Soon thereafter, a series of disputes ensued as Burley attempted to gain sole control of the Tribe. In 1998, Burley submitted the 1998 Resolution, which purported to establish a General Council to serve as the governing body of the Tribe. The 1998 Resolution was invalid, however, because it was not signed by a majority of the Tribe's adult members. Burley then filed a document purporting to be the resignation of Chief Dixie as Tribal Chairperson. Chief Dixie immediately denied the validity of the document and continues to do

so. Over the next few years, Burley tried several times, unsuccessfully, to gain BIA approval of various Tribal constitutions that would have recognized her as the Tribe's leader and limited Tribe membership to Burley and a few others.

Chief Dixie's Efforts to Organize the Tribe

37. After several years of failed efforts to resolve the leadership disputes that had arisen with Burley, Chief Dixie began efforts in 2003 to organize the Tribe without Burley's assistance and with the participation of the entire Tribal community. Since late 2003, the Tribe has held open meetings each month. Attendance at the meetings ranges from approximately 30 to more than 100 members. Attendance records are kept, and meetings are recorded and archived. Although Burley was specifically invited to the initial meetings and has never been excluded from any meeting, she has never attended.

38. In addition to the general Tribal meetings, Chief Dixie convened a group of individuals who were recognized within the Tribal community as figures of authority, in order to form a Tribal Council. In addition to Chief Dixie, the Council consists of Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo. Each of the members of the Tribal Council is a lineal descendant of a historical member or members of the Tribe. The Council met with the BIA in September 2003 and presented the BIA with documentation of their legitimate claims to Tribal membership and authority.

39. At the September 2003 meeting, Chief Dixie and the Council presented the BIA with a list of Tribal community members who should be allowed to participate in the initial organization of the Tribe, and requested that the BIA call an election pursuant to the IRA to select a Tribal government that could be recognized by the United States. The BIA did not act on the Council's request but continued to meet regularly with Chief Dixie and the Council to discuss efforts to organize the Tribe. Since its formation, the Tribal Council has met

approximately every other month to discuss Tribal policy, enact resolutions, and conduct other Tribe business.

40. Under the leadership of the Council, the Tribe has established many programs aimed at benefiting the full Tribal membership, strengthening the tribal community, and reestablishing historic ties with the larger Indian community. Extensive information about the Tribe's activities is available on the Tribe's website at <http://californiavalleymiwok.com/x-index.html>. Tribal activities include:

- a. Involvement in approximately ten Indian Child Welfare Act cases, in an effort to have children of Tribe members who are in protective services placed with families that have ties to Indian traditions. Burley has opposed the Tribe's efforts in these cases.
- b. Issuance of Tribal identification cards.
- c. Involvement in Indian health services, emergency services and food distribution programs, including the MACT Indian health services program, that benefit members of the Tribe and other Indian tribes.
- d. Participation, with other Miwok tribes, in an intratribal Miwok Language Restoration Group. Plaintiff Evelyn Wilson is the senior Miwok member who still speaks the Miwok language.
- e. A ceremonial Indian dance group (through Tribe members Gilbert Ramirez and his son Pete) that represents the Tribe at events throughout California.
- f. Consultation with Caltrans regarding possible Indian remains found at development sites.
- g. Consultation with the U.S. Forest Service to help identify native plants on state and federal land that have been used by Indians for medicinal and other purposes.

h. Classes in traditional crafts and skills, such as basket weaving, and continuing efforts to revive the gathering of native plants, pine nuts, and other materials for such crafts, as well as to protect the sites where those materials are gathered.

i. Potential involvement, in collaboration with Calaveras County and other local and state agencies, in the Collaborative Forest Landscape Restoration Program, a federally supported forest rehabilitation program.

j. Participation in a variety of other economically and socially beneficial programs and activities, including but not limited to the Calaveras Healthy Impact Products Solutions program.

Each of these activities will be harmed if the December 22 Decision is allowed to stand and the federal government recognizes the Burley Faction as the government of the Tribe.

The BIA Repudiates the Burley Faction

41. Burley responded to Chief Dixie's efforts to organize the Tribe around its legitimate members by submitting yet another proposed constitution, in February 2004, to the BIA—purportedly to demonstrate that the Tribe was already “organized” with Ms. Burley as its leader.

42. In a March 26, 2004 letter to Burley, the BIA declined to approve her latest constitution. The BIA explained that efforts to organize a Tribe must reflect the involvement of the whole tribal community: "Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was attempted or has occurred with the purported organization of your tribe. . . . To our knowledge, the only persons of Indian descent involved in the tribe's organization efforts, were you and your two daughters It is only after the greater tribal community is

initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified."

43. The BIA's letter identified several groups of Tribe members and segments of the tribal community who should be involved in the initial organization efforts. These groups included Chief Dixie and his brother Melvin Dixie; other individuals who had resided at Sheep Ranch Rancheria in the past, and their offspring; persons who had inherited an interest in the Sheep Ranch Rancheria; Indians who had once lived adjacent to Sheep Ranch Rancheria, and their descendants; and neighboring groups of Indians, of which the Tribe may once have been a part.

44. The BIA's letter also stated that "the BIA does not yet view your tribe to be an 'organized' Indian Tribe" and that, as a result, the BIA could not recognize Burley as the Tribe's Chairperson.

45. On February 11, 2005, the Assistant Secretary – Indian Affairs sent a letter to Chief Dixie and Burley in which he reiterated the decisions expressed in the BIA's March 26, 2004 letter. The Assistant Secretary stated, "In that letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. . . . Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you . . . to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004 letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members."

46. After the Assistant Secretary's 2005 determination, the BIA sought to work with Chief Dixie's Tribal Council and the Tribe to complete the organization process. Chief Dixie

and the BIA invited Burley to participate, but she again refused and instead filed suit challenging the Assistant Secretary's decision.

The District Court and Court of Appeals Uphold the BIA's Decision

47. In April 2005, the Burley Faction filed suit in the federal district court for the District of Columbia. The suit challenged the BIA's and Assistant Secretary's refusal to approve the Burley Faction's proposed constitution and to recognize its purported Tribal government, and sought a judgment that the Tribe was "organized." Notably, Burley did not contest in federal court the BIA's specific decision not to recognize her as the Tribal Chairperson. She thereby waived any challenge to that decision.

48. Around the same time, the Burley Faction also purported to disenroll Chief Dixie from the Tribe, for the purpose of denying him status to participate in the federal lawsuit. Ironically, in 2009, the Burley Faction purported to reinstate Chief Dixie as a member of the Tribe, in an attempt to deny him a basis to intervene in state court litigation in which Burley sought access to funds held in trust for the Tribe.

49. The district court dismissed the Burley Faction's claims in March 2006. The court found that the Secretary has "a responsibility to ensure that [she] deals only with a tribal government that actually represents the members of a tribe." *California Valley Miwok Tribe v. United States*, 424 F.Supp.2d 197 (D.D.C. Mar. 31, 2006). Likewise, the court found that the BIA has a "duty to ensure that the interests of all tribe members are protected during organization and that governing documents reflect the will of a majority of the Tribe's members." The court found the BIA's decisions consistent with that duty.

50. The district court noted that the Burley Faction had submitted a constitution that "conferred tribal membership only upon them and their descendants . . . [but] the government estimates that the greater tribal community, which should be included in the organization

process, may exceed 250 members." In light of the fact that the Tribe was receiving approximately \$1.5 million per year in state and federal funds at the time, the court concluded that Burley's motivation was self-evident: "As H.L. Mencken is said to have said: 'When someone says it's not about the money, it's about the money.'"

51. Burley challenged the district court's decision, and the Court of Appeals for the District of Columbia Circuit affirmed. *California Valley Miwok Tribe, supra*, 515 F.3d 1262. According to the Court of Appeals, the rejection of the Burley government and constitution fulfilled a cornerstone of the United States' trust obligation to Indian tribes: to "promote a tribe's political integrity, which includes ensuring that the will of tribal members is not thwarted by rogue leaders when it comes to decisions affecting federal benefits."

52. The Court of Appeals further explained: "In Burley's view, the Secretary has no role in determining whether a tribe has properly organized itself . . . That cannot be. . . . [T]he Secretary has the power to manage '*all* Indian affairs and *all* matters arising out of Indian relations.' . . . The exercise of this authority is especially vital when, as is the case here, the government is determining whether a tribe is organized, and the receipt of significant federal benefits turns on the decision. The Secretary suggests that her authority . . . includes the power to reject a proposed constitution that does not enjoy sufficient support from a tribe's membership. Her suggestion is reasonable, particularly in light of the federal government's unique trust obligation to Indian tribes" (emphasis in original). The court concluded: "Although [the Tribe], by its own admission, has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary."

The BIA Attempts to Assist the Tribe In Organizing

53. On November 6, 2006, after the district court had dismissed Burley's claims, the BIA informed the Burley Faction that it would assist the Tribe in organizing according to majoritarian principles, consistent with the decisions upheld by the court. The Superintendent of the BIA's Central California Agency wrote to Burley and Chief Dixie that the BIA "remain[ed] committed to assist the [Tribe] in its efforts to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to a clear majority of those Indians." To help achieve that goal, the BIA would facilitate a public meeting of existing members and Putative Members—i.e., those members of the tribal community with a legitimate claim to Tribal membership based on their lineal descent from original members of the Tribe.

54. Instead of cooperating in this effort to organize the Tribe, the Burley Faction appealed the Superintendent's November 6, 2006 decision to the BIA's Pacific Regional Director. On April 2, 2007, the Regional Director affirmed the decision and remanded the matter back to the Superintendent to implement the actions mentioned in the November 6, 2006 decision. The Regional Director wrote, "We believe the main purpose [of the November 6, 2006 decision] was to assist the Tribe in identifying the whole community, the 'putative' group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. . . . It is our belief that until the Tribe has identified the 'putative' group, the Tribe will not have a solid foundation upon which to build a stable government."

55. On April 10 and April 17, 2007, the BIA published public notice of an upcoming meeting to organize the Tribe. The notice requested that Putative Members submit documentation of their membership claim to the BIA (e.g., personal genealogies). The public

notice defined the Putative Members as lineal descendants of: (1) individuals listed on the 1915 Indian Census of Sheep-ranch Indians; (2) Jeff Davis (the only Indian listed as an eligible voter on the federal government's 1935 voting list for the Rancheria); and (3) Mabel Hodge Dixie.

56. According to the BIA, approximately 580 persons submitted personal genealogies to the BIA in response to the April 2007 public notices. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo each submitted genealogies and other documentation to the BIA in response to the public notices. No member of the Burley Faction submitted documentation in response to the public notices. The BIA has taken no action on the information submitted.

Burley Attempts to Relitigate Her Claims Before the Board

57. Burley appealed the Regional Director's April 2, 2007 decision to the Interior Board of Indian Appeals. Among other claims not relevant here, Burley argued that the BIA's decision to involve the Tribal community in the initial organization of the Tribe was an impermissible intrusion into Tribal government and membership matters, because the Tribe was *already* "organized"—an issue that the district court and Court of Appeals had already decided adversely to Burley in her earlier federal suit.

58. In January 2010, the Board decided Burley's appeal. The Board recognized that the Assistant Secretary's February 11, 2005 decision and the ensuing federal litigation had already finally determined the following issues: (1) that the BIA did not recognize the Tribe as being organized; (2) that the BIA did not recognize any tribal government that represents the Tribe; (3) that the Tribe's membership was not necessarily limited to the Burley Faction and Yakima Dixie; and (4) that the BIA had an obligation to ensure that a "greater tribal community" was allowed to participate in organizing the Tribe. The Board recognized that, to the extent Burley's appeal attempted to relitigate those issues, it had no jurisdiction over her

claims. Accordingly, the Board dismissed all of Burley's claims (including those claims not discussed here), except for a single, narrow issue.

59. According to the Board, the Burley appeal raised a solitary issue that had not already been decided by the Assistant Secretary: the process for deciding "who BIA will recognize, individually and collectively, as members of the 'greater tribal community' that BIA believes must be allowed to participate in the general council meeting of the Tribe for organizational purposes." The Board characterized this as a "tribal enrollment dispute" and therefore referred the issue to the Assistant Secretary for resolution.

The Assistant Secretary's December 22 Decision

60. The Assistant Secretary issued his decision in the Burley appeal on December 22, 2010. But instead of deciding the issue referred to him, the Assistant Secretary inexplicably, and without any reasoned explanation, reopened issues long settled and not subject to further appeal. The Assistant Secretary rescinded the March 26, 2004 and February 11, 2005 decisions by the BIA and Assistant Secretary, which had denied recognition of the Burley Faction and its constitution and declared that the larger Tribal community must be involved in the organization of the Tribe. Assistant Secretarial review of both decisions is time barred under binding regulations. Contrary to the Court of Appeals ruling, the Assistant Secretary declared that the Tribe was already "organized as a General Council" pursuant to the 1998 Resolution. He ordered the BIA to rescind its 2006 and 2007 decisions to help the Tribe organize according to majoritarian principles. And he directed the BIA to carry on government-to-government relations with the sham government headed by Burley.

Consequences of the Secretary's Unlawful Decision

61. As a result of the Assistant Secretary's unlawful December 22 Decision, the Plaintiffs have suffered and will continue to suffer great injury, including but not limited to the following:

62. Chief Dixie and the members of the Tribal council have been denied the opportunity to participate in the organization and governance of the Tribe.

a. Immediately after the Secretary issued his December 22 Decision, the Burley Faction issued a public notice calling for a "special election" to elect tribal officers. The public notice stated that only Ms. Burley, her two daughters, and Chief Dixie would be allowed to participate in the election of the Tribe's government. The public notice relied on the December 22 Decision as the basis for the Burley Faction's right to call the election.

b. On January 7, 2011, the Burley Faction conducted its "special election" among the three members of the Burley family. Neither Chief Dixie nor any member of the Tribal Council participated in the "special election." Except for Chief Dixie, the other individual plaintiffs were barred from participating.

c. On January 12, 2011, the BIA acknowledged receipt of the results of the Burley Faction's January 7 "special election" and recognized a "tribal council" consisting of Burley as Chairperson and her daughter, Rashel Reznor, as Secretary/Treasurer. It is telling that the BIA's letter does not mention the number of voters participating in this "election." Under the government recognized by the BIA, none of the Plaintiffs has any voice in the organization or governance of the Tribe.

63. Chief Dixie and the members of the Tribal Council have been and will be denied the benefits of Tribe membership, because the December 22 Decision allows the Burley

Faction to withhold funds, benefits and services that should be made available to them as Tribe members. Among other things:

a. The December 22 Decision allows the Burley Faction to exercise complete control over Tribe membership and to exclude Chief Dixie and the members of the Tribal Council from membership in the Tribe.

b. As a result of being denied Tribe membership, the members of the Tribal Council are not and will not be eligible to receive federal health, education and other benefits provided to members of recognized Indian Tribes.

64. The December 22 Decision, if upheld, could provide a basis for allowing Burley to divert funds held in trust for the Tribe by the State of California. Beginning in 1999, Burley represented to the California Gambling Control Commission (“Commission”) that she was the authorized representative of the Tribe and entitled to collect funds paid by the state to tribes that do not operate casinos or gaming devices. Burley received funds from the Commission, which were meant for the Tribe, between 1999 and 2005 (the “State Funds”). The State Funds totaled approximately \$1 million or more per year.

a. None of the Plaintiffs received any of the State Funds. The Plaintiffs do not know of any members of the Tribe who received or benefited from any of the State Funds except for Burley and her immediate family. The Plaintiffs do not know of any programs for the benefit of the Tribe or its members that were created or supported with the Funds.

b. In 2005, the Commission ceased distribution of the State Funds to Burley on the ground that the federal government did not recognize her as the appropriate representative of the Tribe. Burley has filed litigation in California Superior Court, seeking to compel the Commission to resume distribution of the State Funds to her, including approximately \$6.6 million of the State Funds that the Commission has withheld since 2005.

California Valley Miwok Tribe v. California Gambling Control Commission, No. 37-2008-00075326 (Sup. Ct. San Diego). Burley seeks to introduce the December 22 Decision as evidence that she is entitled to receive the State Funds.

c. If Burley receives the State Funds, Chief Dixie and the members of the Tribal Council will be denied the benefit of the State Funds, because the State of California has no control over the use of the State Funds once they are paid to a tribe.

d. If Ms. Burley receives the State Funds, the Tribe will be denied the Funds, because Ms. Burley is not a legitimate representative of the Tribe.

65. The December 22 Decision will allow Burley to divert federal funds intended for the Tribe. Beginning in 1999, and continuing through 2007, Burley received federal grant money intended for the Tribe, based on her representation that she was an authorized representative of the Tribe. The grant money was provided through a “self-determination contract” pursuant to Public Law 93-638 (“PL 638”) to assist the Tribe in organizing under the IRA. Burley received from \$400,000 to \$600,000 per year.

a. Burley did not use the PL 638 funds to organize the Tribe consistent with the IRA. Instead, she sought to disenfranchise Plaintiffs and other members of the Tribal community and secured the benefits of Tribe membership only for herself and her immediate family.

b. The BIA has indicated its intent, based on the Secretary’s decision, to enter into a new PL 638 contract with the Burley Faction to provide funds for organization of the Tribe. The Tribe will be denied its rightful use of the PL 638 funds, because those funds will be paid to Burley and her illegitimate government instead.

Plaintiffs' Request for Reconsideration

66. On January 6, 2011, the Plaintiffs requested that the Secretary immediately reconsider and stay the Assistant Secretary's December 22 Decision. The Secretary did not respond, and on January 21, 2011, Plaintiffs withdrew the request for reconsideration.

FIRST CAUSE OF ACTION

(Arbitrary and Capricious Agency Action in Violation of the APA)

67. Plaintiffs re-allege paragraphs 1 through 66, and incorporate those paragraphs herein as if set forth in full.

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

69. The Assistant Secretary's December 22 Decision constitutes "final agency action."

70. The December 22 Decision violates APA section 706(2)(A) because it unlawfully reopened and addressed issues not within the scope or jurisdiction of the Board appeal from which the decision arose, including the status of the Tribe as not "organized," the BIA's and Department's refusal to recognize the tribal government led by Burley, and the BIA's decision to involve the entire tribal community in the organization of the Tribe. Under binding regulations of the Department, those issues were final, not subject to the jurisdiction of the Board, not subject to appeal, and not referred to the Assistant Secretary by the Board.

71. The December 22 Decision violates APA section 706(2)(A) because it fails to provide a reasoned analysis explaining why the decision completely reverses judicially approved, longstanding BIA and Department policy and prior BIA and Department

determinations in this case, regarding the status of the Tribe and the Burley government and the requirements for organization under the IRA.

72. The December 22 Decision violates APA section 706(2)(A) because it is precluded by the doctrine of *res judicata*. The status of the Tribe and of Burley's purported government are issues that were previously litigated and finally decided by a court of competent jurisdiction in a prior dispute between Burley and the Department. The Court of Appeals for the District of Columbia Circuit held that the Secretary properly refused to recognize the tribe as organized under the Burley Faction. *Res judicata* therefore bars Burley from attempting to relitigate those issues in another forum. The Assistant Secretary's December 22 Decision is precluded by the district court's and Court of Appeals' resolution of those issues.

73. The December 22 Decision violates APA section 706(2)(A) because it is barred by the doctrine of judicial estoppel, because the Secretary previously argued, before the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit, that the Tribe was not organized and that she could not recognize Burley's purported government. The December 22 Decision reverses the very same actions that the Secretary defended before the district court and the Court of Appeals.

74. The December 22 Decision violates APA section 706(2)(A) because it fails to address a prior appeal by Chief Dixie. In October 2003, Chief Dixie filed an appeal with the Assistant Secretary – Indian Affairs, challenging the BIA's recognition (at that time) of Ms. Burley as Chairperson. On February 11, 2005, the Assistant Secretary – Indian Affairs dismissed the appeal on procedural grounds. The Assistant Secretary found that the BIA's 2004 Decision had rendered Chief Dixie's appeal moot, because that decision made clear that the BIA did not recognize Ms. Burley as Tribal Chairperson, that the Tribe was not

“organized;” and that the United States did not recognize any Tribal government. Because the December 22 Decision purports to rescind the final 2004 Decision, the Assistant Secretary must reinstate and decide Chief Dixie’s appeal before recognizing any Tribal government.

75. The December 22 Decision violates APA section 706(2)(A) because it does not fulfill the Secretary's trust obligation to the Tribe and its members. The Secretary has a fiduciary duty to ensure that any tribal government he recognizes represents a majority of the tribal community. By recognizing a purported government that represents only three members of the Tribe, the Secretary (acting through his subordinate the Assistant Secretary) has breached his duty to the Tribe, the Tribal Council and the individual Plaintiffs.

76. The December 22 Decision violates APA section 706(2)(A) because it is inconsistent with the IRA. The IRA imposes substantive and procedural requirements that must be met before the Secretary may recognize a tribal government. By recognizing a tribal government that was not elected or ratified pursuant to those requirements, the Secretary (acting through the Assistant Secretary) has violated the IRA.

77. The December 22 Decision violates APA section 706(2)(A) because it unlawfully recognizes a tribal government based on the 1998 Resolution, which is invalid on its face. The 1998 Resolution identifies "at least" five individuals who are Tribe members, and recites that it was authorized by a majority of the Tribe's adult members. But it bears only two signatures. Moreover, one of those signatures purports to be that of Chief Dixie, who disputes the validity of the signature. Therefore, the 1998 Resolution cannot be the basis for a valid government recognized by the United States.

78. As a direct and proximate result of the December 22 Decision, Chief Dixie, the Tribal Council, and Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied their rightful opportunity to

participate in the organization and governance of the Tribe and will suffer irreparable injury and financial loss.

79. As a direct and proximate result of the December 22 Decision, Chief Dixie, Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied the benefits of Tribe membership and will suffer irreparable injury and financial loss.

80. As a direct and proximate result of the December 22 Decision, the Tribe and the members of the Tribe, including Chief Dixie, Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo, have been and will continue to be denied the use of the PL 638 funds available through the BIA, and the State Funds provided by the Commission, and will suffer irreparable injury and financial loss.

81. As a direct and proximate result of the December 22 Decision, the Tribe will be denied recognition to conduct traditional Tribal activities and official acts, and to intervene in legal and regulatory proceedings to protect its interests and those of its members, and will suffer irreparable injury and financial loss.

SECOND CAUSE OF ACTION

(Agency Action Unlawfully Withheld and Unreasonably Delayed in Violation of the APA)

82. Plaintiffs re-allege paragraphs 1 through 66, and incorporate those paragraphs herein as if set forth in full.

83. An agency's "failure to act" constitutes "agency action." 5 U.S.C § 551(13). The APA therefore provides that a court shall "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C §706(1).

84. The BIA's failure to adjudicate the status of the 580 Putative Members of the Tribe who submitted genealogies and other documentation to the BIA in response to the April 2007 public notices constitutes "agency action unlawfully withheld or unreasonably delayed."

85. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo submitted genealogies and other documentation to the BIA in response to the April 2007 public notices.

86. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied their rightful opportunity to participate in the organization and governance of the Tribe and will suffer irreparable injury and financial loss.

87. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, the Tribe will be denied the opportunity to organize itself and elect a legitimate representative government under the IRA and will suffer irreparable injury and financial loss.

88. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied the benefits of Tribe membership and will suffer irreparable injury and financial loss.

89. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson, Antoine Azevedo and the Tribe have been and will continue to be denied the use of the PL 638 funds available through the BIA, and the State Funds provided by the Commission and will suffer irreparable injury and financial loss.

90. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, the Tribe will be denied recognition to conduct traditional Tribal activities and official acts, and to intervene in legal and regulatory proceedings to protect its interests and those of its members, and will suffer irreparable injury and financial loss.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this court issue an order:

A. Declaring that the Assistant Secretary acted arbitrarily, capriciously and otherwise not in accordance with law by acting to recognize the Tribe as “organized,” to recognize the Burley Faction as the Tribe’s government, to abandon the BIA’s efforts to involve the tribal community in organizing the Tribe, and to rescind prior final determinations regarding the Tribe;

B. Vacating the December 22 Decision and directing the Assistant Secretary and the BIA to resume efforts to involve the entire tribal community in organizing the Tribe;

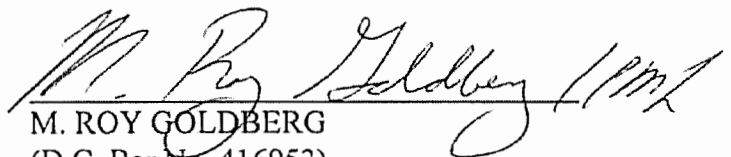
C. Preliminarily and permanently enjoining the Secretary, Assistant Secretary and BIA from taking any action to implement the December 22 Decision;

D. Directing the BIA to adjudicate the status of the Putative Members who submitted documentation of their claims to Tribe membership, and to publish the names of those Putative Members eligible to participate in the initial organization of the Tribe;

E. Awarding the Plaintiffs attorneys fees and reasonable costs incurred in connection with this action; and

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

Respectfully submitted,



M. ROY GOLDBERG

(D.C. Bar No. 416953)

CHRISTOPHER M. LOVELAND

(D.C. Bar No. 473969)

Sheppard Mullin Richter & Hampton LLP

1300 I Street, N.W., 11th Floor East

Washington, DC 20005-3314

Tel: (202) 772-5313

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rgoldberg@sheppardmullin.com

cloveland@sheppardmullin.com

Dated: January 24, 2011

Of Counsel:

ROBERT J. URAM (*pro hac vice* pending)

Sheppard Mullin Richter & Hampton LLP

Four Embarcadero Center, 17th Floor

San Francisco, California 94111-4109

Tel: 415-434-9100

Fax: 415-434-3947

ruram@sheppardmullin.com

EXHIBIT “21”

2005-16-30-Stay-memo



YAKIMA K. DIXIE

Sheep Ranch Rancheria of Miwok Indians of California
11178 Sheep Ranch Rd., Mail P.O. Box 41
Sheep Ranch California 95250
209-728-2102

December 12, 2003

**Appointment of
CHADD EVERONE
As Deputy**

Chadd Everone is hereby appointed as a deputy for myself and tribe, as above. He is authorized to receive, discuss, and communicate all information to which I would be entitled.

His authority is strictly to represent and discover for me and my tribe - NOT to confirm or commit me and my tribe. This is NOT a power-of-attorney nor conservatorship.

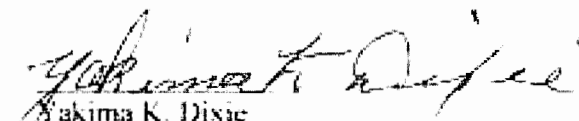

Yakima K. Dixie

EXHIBIT “22”



YAKIMA K. DIXIE

Sheep Ranch Rancheria of MiWok Indians of California
a.k.a. California Valley Miwok Tribe
11178 Sheep Ranch Rd., Mail P.O. Box 41
Sheep Ranch California 95250
209-728-2102

Bridge-loan Agreement & Prospectus

“Sheep Ranch ...” is a very small (<10 members), long-established (1916), federally recognized California Indian tribe that is qualified to receive benefits, including the right to establishment a Class III gambling facility.

Yakima K Dixie is the hereditary Chief and rightful Chairperson of the tribe by lineal descent. However, administrative control of the tribe was illegally transferred from him some time in 1999; and administrative procedures and litigation are now in progress to return control of the tribe to Yakima so that he may receive about \$1.2 million in income that currently accrues to the tribe from the California Gambling Commission and so that the tribe can be position to create a casino.

A sum, not to exceed \$250,000, is being sought, in the form of Bridge Loans, to pay for the expenses that are necessary to regain the control of the tribe to Yakima, to reorganize the tribe, and to negotiate the location and financial backing for a casino. \$2,500 is the minimum Loan amount. In addition to the repayment of the corpus of the loan and the interest thereon, a total of 50 basis points of the gross income to the tribe will be paid, as a Bonus Interest, on a *pro rata* basis to the lender(s) for a period of 5 years after the casino is created. Further, an additional 10 basis points is allocated as a Referral Bonus to lenders.

The offering is available to informed investor(s) who are capable of taking moderate degree of risk. It is assumed that a lender understands that one could loose the corpus of one's loan. This prospectus includes both the legal instrument and detailed background information.



YAKIMA K. DIXIE

Sheep Ranch Rancheria of Miwok Indians of California
a.k.a. California Valley Miwok Tribe
11178 Sheep Ranch Rd., Mail P.O. Box 41
Sheep Ranch California 95250
209-728-2102

Bridge-loan Prospectus

Synopsis. A sum, not to exceed \$250,000, is being sought, as a bridge-loan, to pay for the expenses that are necessary to regain the control of the tribe to Yakima, to reorganize the tribe, and to negotiate the location and financial backing for a casino. In addition to the repayment of the corpus of the loan, as a **Bonus Interest**, a total of 50 basis points or 0.50% of the gross income from gambling revenue to the tribe will be paid on a *pro rata* basis to the lender(s) for a period of 5 years after casino is created.

Security for the Loaned Money. Repayment of the loan is secured by the income which currently accrues to the tribe (about \$1.2 million annually) from the "Revenue Sharing Trust Fund" that is administered by the State of California under the California Gambling Control Commission¹. This money is paid from gambling revenue by the tribes, which currently have casinos, to "non-compact" tribes or tribes, which do not currently have casinos. This \$1.2 million royalty presently goes to the tribe but is under the control of the Chairperson whose appointment we are attempting to nullify in administrative appeal and litigation.

Estimated Time to the Repayment of the Loan. If our administrative appeal, which is currently in its final stage at the Bureau of Indian Affairs, is successful, then the loan can be retired within about 4 months, depending on the cycle of the disbursements from the Revenue Sharing Trust Fund. If a negotiated settlement is achieved, the time to repayment will be about the same. If our administrative appeal does not prevail and if we are forced to litigate the rightful Chairperson, then repayment may take about 1 year.

Management of the Loaned Money. The loaned money will be managed by an entity called "Friends of Yakima", which will be managed by Chadd Everone, who has been the chief coordinator for the efforts to date, in conjunction with Phil Peck, Bill Martin, and Yakima Dixie.

Referral Bonus. An additional 10 basis points (.001%) of Tribal gaming income for 5 years is allocated as a Referral Bonus to lenders who refer other investors.

¹ California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 100 • Sacramento, CA 95833-4231 • Sacramento, CA 95852-6013 • Phone: 916-263-0700.

Calculation of the Bonus Interest on Gambling Income. In addition to the repayment of the corpus of the loan, a total of 50 basis points or 0.5% of the gross income from gambling revenue to the tribe will be paid, as Bonus Interest, on a *pro rata* basis to the lender(s) for a period of 5 years after the casino begins full commercial operations.

Table I - A Pro Forma Calculation of Income, Expenses and Bonus Interest

(Note: the figures below are taken from figures which were attributed to Cash Creek Casino.)

1A	B	C	D	E
2	Line Item	Formula	Yearly	5 year aggregate
3	"Net Win" or net gaming income		\$500,000,000	\$2,500,000,000
4	minus 2% for Nongaming Tribal Assist. Fund	[D3-(D3*.02)]	490,000,000	2,450,000,000
5	minus 3% for Statewide Trust Fund (?)	[D4-(D3*.03)]	475,000,000	2,375,000,000
6	minus 1% for Local Benefits Grant Trust	[D5-(D3*.01)]	470,000,000	2,350,000,000
7	minus Operating Expenses of 40% of net win	[D3*.5]	250,000,000	1,250,000,000
8	Gross Income	[D6-D7]	220,000,000	1,100,000,000
9				
10	24% of Gross Income to Operator	[D8*.24]	52,800,000	264,000,000
11				
12	76% of Gross Income to Tribe		167,200,000	836,000,000
13				
14	Total Bonus Interest of Lenders	[D12*0.005]	\$836,000	\$4,180,000
15	Pro Rata Share of Bonus Interest at:			
16	\$2,500	[D14*(B16/250000)]	8,360	41,800
17	5,000	[D14*(B17/250000)]	16,720	83,600
18	7,500	[D14*(B18/250000)]	25,080	125,400
19	10,000	[D14*(B19/250000)]	33,440	167,200
20	100,000	[D14*(B20/250000)]	334,400	1,672,000
21	250,000	[D14*(B21/250000)]	\$836,000	\$4,180,000

Calculation of the Referral Bonus. For lenders who refer other lenders, a Referral Bonus is created as follows. In addition to the repayment of the corpus of the loan and the interest thereon and the Royalty on Gambling Income, a total of 0.001 of the loan corpus will be paid on a *pro rata* basis to the referring lenders for a period of 5 years after the casino is created.

The calculation is as follows. If \$250,000 loan equals a Interest Bonus of 0.005 (i.e., 0.5%) and if 20% of the \$250,000 is for Referral Bonus, then the bonus would be \$50,000 which equilibrates to 0.001 (i.e., 0.1%).

Table II - A Pro Forma Calculation of Referral Bonus

(Note: the figures below build on the calculations in Table I.)

1A	B	C	D	E
2	Line Item	Formula	Yearly	5 year aggregate
3	76% of Gross Income to Tribe		\$167,200,000	\$836,000,000
4	Total Referral Bonus	$0.001 * D3$	167,200	836,000
5	Referral Amounts (1 Unit = \$2,500)			
6	\$2,500	$1/100 * D4$	\$1,672	\$8,360
7	5,000	$2/100 * D4$	3,344	16,720
8	7,500	$3/100 * D4$	5,016	25,080
9	10,000	$4/100 * D4$	6,688	33,440
10	12,500	$5/100 * D4$	8,360	41,800
11	15,000	$6/100 * D4$	10,032	50,160
12	17,500	$7/100 * D4$	11,704	58,520
13	20,000	$8/100 * D4$	13,376	66,880
14	22,500	$9/100 * D4$	\$15,048	\$75,240
15	\$25,000	$10/100 * D4$	\$16,720	\$83,600
16				
17				
18				
19				
20				
21				

Pro Forma Allocation of Funds for 4 Months.

	Month 1	Month 2	Month 3	Month 4	Totals
Personnel:					
Chadd Everone - Virtually all aspects of this project are either done by or managed by Chadd. This includes: The Appeal of Chairmanship, Intervention in Suit, Probate of Estate, Tribal Organization, Negotiation with Investor. ²	\$4,000	\$4,000	\$4,000	\$4,000	\$16,000
Phil Peck - Expense associated with Investor liaison.	2,000	2,000	2,000	2,000	8,000
Bill Martin - Expenses associated with managing Yakima and implementing the objectives.	2,000	2,000	2,000	2,000	8,000
Velma Whitebear - Expenses associated with organizing the tribal membership.	2,000	1,000	1,000	1,000	5,000
<hr/> Yakima Personal:					
Expenses - Clothing, transportation, phone, utilities, etc.	500	500	500	500	2,000
<hr/> Yakima's Property:					
Property - Clean-up grounds, sewer repair, security doors, repair of porch, etc.	5,000	4,000			9,000
<hr/> Yakima's Health:					
Custodian - To cook and clean.	1,500	1,500	1,500	1,500	6,000
M.D. Internist - comprehensive examination and follow-up.	1,000	500			1,500

Yakima's Security:

² Chadd will restrict his draw to \$2000 per month and defer the other \$2000 of his \$4000 allocation, pending the successful performance of all the other obligations of Friends of Yakima in the projections. At the end of this, if there are not funds available, he could be authorized to exchange this deferred income into one of the Loan Agreements.

2004-02-26-LoanAgreement

Resident Guard - salary plus trailer rental	2,000	2,000	2,000	2,000	8,000
Surveillance Equipment - cameras, lights, alarms.	5,000				5,000
<hr/>					
Legal Services:					
Thomas Wolfrum - General oversight, specific representation in Intervention.	2,000	2,000	1,000	1,000	6,000
<hr/>					
Other Expenses:					
Web-site - construction and maintenance.	1,000	500	500	500	2,500
Totals	28,000	20,000	14,500	14,500	77,000

Due Diligence

Considerable due diligence has been done on this situation to insure that the tribe is real, that Yakima is, indeed, the rightful authority for the tribe, that the revenue does accrue to the tribe from "Revenue Sharing Trust Fund" under the California Gambling Control Commission, and that a casino can be obtained. The individuals who have done most of the due diligence and who have an economic vested interest in the success of the project are:

Chadd Everone
2054 University Ave. #407
Berkeley, California 94704
510-486-1314
E-mail: cae@fis.org

Phil Peck
637 Bridgewater Cir.
Danville CA 94526
925-831-2930
E-mail: endorfin@sbcglobal.net

Bill Martin
203 Plaza Dr.
Lodi California 95240
209-365-9139
E-mail: hitlock7@sbcglobal.net

In addition to the above, the project has been evaluated by 4 attorneys of a prospective casino developer with 3 of those attorneys being specialists in Indian law. Their task was to address 4 main issues, and a summary of their report of February 6, 2004 is below.

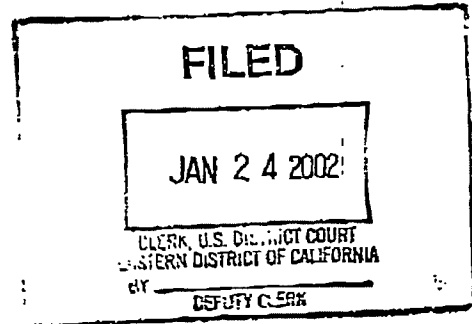
1. Is the Tribe federally recognized? Yes. The Tribe has been federally recognized since 1916. In the Federal Register of December 5, 2003 (Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs), it is identified as: "California Valley Miwok Tribe f.k.a Sheep Ranch Rancheria of MiWok Indians of California".

2. Does Yakima or Sylvia have the strongest claim to tribal leadership? Yakima clearly has the strongest historical claim to leadership. While the circumstances surrounding Yakima's purported renunciation of leadership to Sylvia are sufficiently ambiguous to permit interpretation favoring either party, it appears that Sylvia's assumption of leadership was fraudulently procured.

3. What is the status of the appeal process? The appeal submitted on Yakima's behalf appears to be well argued and placed in the proper hands. It is being considered by solicitor Keep as representative of the Secretary of Interior.

4. Does Yakima have the right and ability to enter into binding agreements on behalf of the Tribe? Yakima's position is that he is, and always has been, the leadership of the Tribe with the ability to bind the Tribe. The effectiveness of any contract will ultimately depend on federal recognition of Yakima's leadership, his ability to control whatever tribal membership results from the dispute resolution process, and his integrity and loyalty in continuing to abide by the contract.

EXHIBIT “23”



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHEEP RANCH (RANCHERIA) MIWOK
INDIAN TRIBE OF CALIFORNIA;
YAKIMA DIXIE (CHIEF); MELVIN
DIXIE; and ROCKY DIXIE,

Plaintiffs,

v.

SILVIA BURLEY; TIGER BURLEY; and
RASHEL REZNOR,

Defendants.

NO. CIV. S-01-1389 LKK/DAD

ORDER

Plaintiffs sue defendants for fraud and RICO violations based on the admission of two of the defendants as members of plaintiffs' tribe, their subsequent election to leadership positions, and use of tribal funds received from the U.S. government. Plaintiffs seek damages, an accounting, and declaratory relief. This case is before the court on defendants' motion to dismiss.

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I.

DISMISSAL STANDARDS UNDER FED. R. CIV. P. 12(b)(6)

On a motion to dismiss, the allegations of the complaint must be accepted as true. See Cruz v. Bero, 405 U.S. 319, 322 (1972). The court is bound to give the plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. See Retail Clerks Intern. Ass'n, Local 1625, AFL-CIO v. Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff need not necessarily plead a particular fact if that fact is a reasonable inference from facts properly alleged. See id.; see also Wheeldin v. Wheeler, 373 U.S. 647, 648 (1963) (inferring fact from allegations of complaint).

In general, the complaint is construed favorably to the pleader. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). So construed, the court may not dismiss the complaint for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him or her to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In spite of the deference the court is bound to pay to the plaintiff's allegations, however, it is not proper for the court to assume that "the [plaintiff] can prove facts which [he or she] has not alleged, or that the defendants have violated the . . . laws in ways that have not been alleged." Associated General Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983).

1 In deciding whether to dismiss the court may consider only the
2 facts alleged in the pleadings, documents attached as exhibits or
3 incorporated by reference in the pleadings, and matters of which
4 the judge may take judicial notice. See Mullis v. United States
5 Bankr. Ct., 828 F.2d 1385, 1388 (9th Cir. 1987). The court has
6 discretion to consider extrinsic materials offered in conjunction
7 with a 12(b)(6) motion, however, in considering such materials the
8 court must treat the motion as one for summary judgment. See
9 Rosales v. United States, 824 F.2d 799, 802 (1987).

10 II.

11 DEFENDANTS' MOTION TO DISMISS

12 As an initial matter, the court may take judicial notice of
13 evidence that defendants Silvia Burley and Rashel Reznor are
14 recognized by the BIA as the sole members of the governing body of
15 the Sheep Ranch Rancheria of Me-Wuk Indians. See BIA July 12, 2000
16 Letter of Recognition, Burley Decl. Exh. C. The court may also
17 take judicial notice of evidence that there is no federally
18 recognized tribe known as the Sheep Ranch Rancheria of Miwok
19 Indians, which is alleged to be plaintiff here. See 65 Federal
20 Register 49 at 13301. Plaintiffs appear to argue that, given their
21 chosen spelling of their name, they are not a federally recognized
22 tribe and the court need not be concerned with issues of tribal
23 sovereignty that would otherwise defeat jurisdiction here. I
24 cannot agree.

25 Plaintiffs clearly allege in their complaint that they allowed
26 defendants Burley and Reznor to become members of their tribe, and

1 that defendants conspired to place Burley and Reznor in leadership
2 positions and to take the federal funds directed to plaintiffs'
3 tribe. Moreover, if plaintiffs did not belong to a tribe that was
4 federally recognized, they would have no claim to the federal funds
5 that defendants allegedly fraudulently obtained. Thus, it appears
6 that this is a dispute regarding the proper leadership, membership,
7 and use of funds in an Indian tribe.

8 "Indian tribes retain elements of sovereign status, including
9 the power to protect tribal self government and to control internal
10 relations." Smith v. Babbitt, 100 F.3d 556, 558 (8th Cir. 1996)
11 (citing Montana v. United States, 450 U.S. 544, 564 (1981)).
12 Although Indian tribes have been divested of some sovereignty,
13 divestiture has occurred only in areas "involving the relations
14 between an Indian tribe and nonmembers of the tribe"
15 Montana, 450 U.S. at 564. That is not to say that the court has
16 jurisdiction here simply because plaintiffs allege that defendants
17 belong to a different tribe. Rather, "Indian tribes retain their
18 inherent power to determine tribal membership, to regulate domestic
19 relations among members, and to prescribe rules of inheritance for
20 members." Montana, 450 U.S. at 564. Nor can plaintiffs avoid the
21 issue of tribal sovereignty simply by couching their fraud
22 allegations in RICO terms. See Smith v. Babbitt, 100 F.3d 556, 558
23 (8th Cir. 1997) (RICO allegations were attempt to move dispute,
24 over which court would not otherwise have jurisdiction because of
25 tribal sovereignty, to federal court).

26 ////

1 On a final note, plaintiffs have already taken their complaint
2 regarding defendants' alleged fraud to the Bureau of Indian
3 Affairs, which directed plaintiffs to first exhaust their tribal
4 remedies. See BIA letter of February 4, 2000, Burley Decl. Exh.
5 D. Plaintiffs had the option of obtaining review of this agency
6 decision. See 25 C.F.R. § 2.8. However, by coming to court
7 instead, plaintiffs essentially seek judicial review of the
8 agency's action or inaction. BIA decisions are not "final so as
9 to constitute agency action subject to judicial review under
10 5 U.S.C. § 704, unless made effective pending decision on appeal
11 by order of the Board." 43 C.F.R. § 4.314.

12 Thus, by virtue of tribal sovereignty and the fact that
13 plaintiffs did not exhaust their administrative remedies, it
14 appears that this court lacks jurisdiction over plaintiffs'
15 claims.¹

16 Accordingly, the court hereby ORDERS as follows:

17 1. Defendants' motion to dismiss is GRANTED;

18 2. Plaintiffs' claims are dismissed with leave to file an
19 amended complaint not later than thirty (30) days from the date of
20 this order; and

21 ////

22 ////

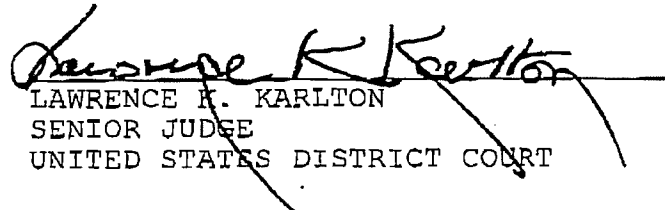
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24 ¹ The court is in receipt of the Declaration of James Askew
25 filed by plaintiffs on Friday, January 11, 2002. However, this
26 declaration and the attached documents do not demonstrate that
there is no tribal sovereignty nor that plaintiffs have exhausted
their administrative remedies with the BIA.

1 3. The Status Conference, currently set for January 28, 2002
2 is CONTINUED to March 25, 2002 at 4:00 p.m.

3 IT IS SO ORDERED.

4 DATED: January 23, 2002.

5
6 
7 LAWRENCE H. KARLTON
8 SENIOR JUDGE
9 UNITED STATES DISTRICT COURT
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ndd

United States District Court
for the
Eastern District of California
January 24, 2002

* * CERTIFICATE OF SERVICE * *

2:01-cv-01389

Sheep Ranch Miwok

v.

Burley

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

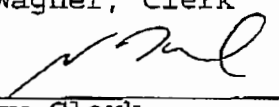
That on January 24, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

James A Askew
Askew and Archbold
1776 West March Lane
Suite 350
Stockton, CA 95207-6450

SJ/LKK

David J Rapport
Rapport and Marston
PO Box 488
405 West Perkins Street
Ukiah, CA 95482

Jack L. Wagner, Clerk

BY: 
Deputy Clerk

1 ASKEW & ARCHBOLD,
2 A PROFESSIONAL CORPORATION
3 JAMES A. ASKEW - SBN 60469
4 RICHARD M. ARCHBOLD - SBN 87784
5 1776 West March Lane, Suite 350
6 Stockton, California 95207-6450
7 Telephone: (209) 955-2260

8 Attorneys for Plaintiffs SHEEP RANCH
9 (RANCHERIA) MIWOK INDIAN TRIBE
10 OF CALIFORNIA; YAKIMA DIXIE,
11 MELVIN DIXIE, and ROCKY DIXIE

12 **LODGED**

13 UNITED STATES DISTRICT COURT

14 MAR 15 2002

15 EASTERN DISTRICT OF CALIFORNIA

16 CLERK, U.S. DISTRICT COURT
17 EASTERN DISTRICT OF CALIFORNIA

18 *Mek* ~~SHEEP RANCH (RANCHERIA) MIWOK~~
19 ~~INDIAN TRIBE OF CALIFORNIA;~~
20 ~~YAKIMA DIXIE (CHIEF), MELVIN~~
21 ~~DIXIE, and ROCKY DIXIE,~~

22 Plaintiffs,

23 vs.

24 SILVIA BURLEY, TIGER BURLEY; and
25 RASHEL REZNOR,

26 Defendants.

27 CIV. S-01-1389 LKK DAD

28 **NOTICE OF VOLUNTARY
DISMISSAL**

19 NOTICE IS HEREBY GIVEN that pursuant to Fed.R.Civ.Pro. 41(a), plaintiff voluntarily
20 dismisses the above-captioned action without prejudice.

21 DATED: March 14, 2002

22 ASKEW & ARCHBOLD
23 A PROFESSIONAL CORPORATION

24 By *James A. Askew*
25 JAMES A. ASKEW
26 Attorneys for Plaintiffs SHEEP RANCH
27 (RANCHERIA) MIWOK INDIAN TRIBE OF
28 CALIFORNIA; YAKIMA DIXIE; MELVIN
DIXIE, and ROCKY DIXIE

29 IT IS SO ORDERED

30 *James A. Askew*
31 *3/20/02 24*
32 **NOTICE OF VOLUNTARY DISMISSAL**

FILED

MAR 21 2002

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
DEPUTY CLERK

PROOF OF SERVICE

I, declare under penalty of perjury that:

I am a citizen of the United States and am employed in the County of San Joaquin. I am over the age of eighteen years and not a party to the within action. My business address is 1776 W. March Lane, Suite 350, Stockton, CA 95207-6450.

On the date set forth below, I caused the attached **NOTICE OF VOLUNTARY DISMISSAL** to be served on the parties to this action as follows:

☒ **BY MAIL.**

I placed a true copy thereof, enclosed in sealed envelope with postage thereon fully prepaid, in the United States mail at Stockton, California, addressed to the parties as set forth on the attached service list. C.C.P. §§1013(a), 2015.5.

☐ **BY COURIER SERVICE.**

I retained, to personally serve a true copy thereof on the parties as set forth on the attached service list. C.C.P. §§1011, 2015.5.

☐ **BY FEDERAL EXPRESS.**

I retained **Federal Express** to personally serve a true copy thereof on January 11, 2002 to the parties as set forth on the attached service list. C.C.P. §§1013(c), 2015.5.

☐ **BY FACSIMILE TRANSMISSION.**

I am readily familiar with this law firm's business practices for collection and processing of documents by way of facsimile. I telefaxed a true copy thereof at said facsimile number(s) as set forth on the attached service list. C.C.P. §§1013(e), 2015.5 and C.R.C. §2008.

☐ **BY PERSONAL SERVICE.**

I personally served a true copy thereof on the parties as set forth on the attached service list at Stockton. C.C.P. §1101, 2015.5.

Executed on March 14, 2002 at Stockton, California.



CELIA I. LAZO

NOTICE OF VOLUNTARY DISMISSAL

SERVICE LIST

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David J. Rapport
Rapport and Marston
P.O. Box 488
405 West Perkins Street
Ukiah, CA 9548

NOTICE OF VOLUNTARY DISMISSAL

ndd

United States District Court
for the
Eastern District of California
March 21, 2002

* * CERTIFICATE OF SERVICE * *

2:01-cv-01389

Sheep Ranch Miwok

v.

Burley

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on March 21, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.


James A Askew
Askew and Archbold
1776 West March Lane
Suite 350
Stockton, CA 95207-6450

SJ/LK

David J Rapport
Rapport and Marston
PO Box 488
405 West Perkins Street
Ukiah, CA 95482

SC 3/25/02 VAC

Jack L. Wagner, Clerk

BY: 
Deputy Clerk