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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

CIV. NO.: 2:16-01345 WBS CKD
MEMORANDUM AND ORDER RE: MOTION
TO STAY

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Plaintiffs Silvia Burley, Rashel Reznor, Anjelica
Paulk, and Tristian Wallace brought this action against
defendants Secretary of Interior Sally Jewell, Acting Assistant

1 Secretary of Interior Lawrence Roberts, and Director of the
2 Bureau of Indian Affairs ("BIA") Michael Black for declaratory
3 relief, injunctive relief, and due process violations arising out
4 an administrative decision on the membership and leadership of
5 the California Valley Miwok Tribe ("Tribe"). The matter is now
6 before the court on plaintiffs' motion to stay enforcement of the
7 Assistant Secretary's December 30, 2015, decision ("December 2015
8 Decision").¹ (Docket No. 10.)

9 I. Factual and Procedural Background

10 This action is part of a long-running leadership
11 dispute over the Tribe between the Burley Faction--made up of
12 Burley, Reznor, Paulk, and Wallace--and Yakima Dixie. See Cal.
13 Valley Miwok Tribe v. United States, 424 F. Supp. 2d 197 (D.D.C.
14 2006) (hereinafter "Miwok I"); Cal. Valley Miwok Tribe v. United
15 States, 515 F.3d 1262 (D.C. Cir. 2008) (hereinafter "Miwok II");
16 Cal. Valley Miwok Tribe v. Jewell, 5 F. Supp. 3d 86 (D.D.C. 2013)
17 (hereinafter "Miwok III"). The Tribe is a federally recognized
18 tribe.

19 In 1916, the United States acquired a parcel of land
20 for the Tribe's benefit. (Corrales Decl. Ex. 4 ("Dec. 2015
21 Decision") at 2 (Docket No. 11).) In 1958, the California
22 Rancheria Act terminated federal recognition of rancherias, and
23

24 ¹ Plaintiffs caption their motion as seeking an order
25 staying the December 2015 Decision, but plaintiffs are actually
26 seeking preliminary injunctive relief from the court to prevent
27 the BIA from taking certain actions pending a decision on the
28 merits. See Nken v. Holder, 556 U.S. 418, 428-29 (2009). The
terminology does not change the court's standard of review.
Leiva-Perez v. Holder, 640 F.3d 962, 966 (9th Cir. 2011)
(applying the four injunction factors to a stay request).

1 Mabel Dixie--the sole Miwok Indian resident on the land--acquired
2 title to the land. (Id. at 3.)

3 Mabel Dixie's son, Yakima Dixie, was the only tribal
4 member living on the property in 1998. (Id. at 1-2.) The Burley
5 Faction obtained his permission to enroll into the Tribe. (Id.
6 at 2.) The BIA, Dixie, and Burley drafted a Resolution ("1998
7 Resolution") stating that the Tribe consisted of at least Dixie
8 and the Burley Faction and establishing a general council ("1998
9 General Council"). Miwok III, 5 F. Supp. 3d at 91. In 1999, a
10 leadership dispute began between Dixie and Burley, and the BIA
11 entered into a contract with Burley to provide funding for the
12 Tribe's organization. Id. Later, the BIA found Burley did not
13 attempt to involve all tribal members, and it ceased recognizing
14 Burley as the Tribe representative. Id. at 93. The California
15 Gaming Control Commission, which provides funding to certain
16 tribes, also suspended its payments to the Tribe and is currently
17 holding the money in trust. Id. at 94.

18 In a 2005 hearing, the BIA refused to accept a
19 constitution submitted by Burley that alleged that the Burley
20 Faction were the only Tribe members because the constitution did
21 not reflect the participation of the whole community. Id. at 93-
22 94. This decision was upheld by the district court in Miwok I
23 and the D.C. Circuit in Miwok II. Id. at 94.

24 While Miwok II was pending, the BIA notified Dixie and
25 Burley that it would move forward with facilitating the Tribe's
26 organization. Id. In December 2010, the Assistant Secretary
27 determined that the tribal government was organized under the
28 1998 Resolution and General Council. Id. at 95. In August 2011,

1 the Assistant Secretary issued a revised decision that reached
2 the same conclusion. Id. He found (1) the citizenship of the
3 Tribe consisted solely of Dixie and the Burley Faction and (2)
4 the 1998 General Council was the Tribe's government. Id. Dixie
5 challenged the August 2011 Decision. (Dec. 2015 Decision at 2.)

6 Based on the record, the Miwok III court held the
7 August 2011 Decision was arbitrary and capricious. (Id.) The
8 court held that the Assistant Secretary ignored substantial
9 evidence in the record and assumed conclusions without providing
10 a factual basis. Miwok III, 5 F. Supp. 3d at 97-100. The court
11 remanded the case to the Assistant Secretary. Id. at 100-01.

12 The Assistant Secretary issued his December 2015
13 Decision in response to the Miwok III remand. He held, based on
14 the record and previous federal decisions, that the Tribe's
15 membership was not limited to five members and the 1998 General
16 Council was not a tribal government. (Dec. 2015 Decision at 3-
17 5.) Finally, the Assistant Secretary found Dixie's 2013
18 Constitution did not establish a tribal government, but he
19 allowed Dixie to submit additional evidence to a Regional
20 Director in order to determine whether the 2013 Constitution was
21 validly ratified. (Id. at 6.)

22 Plaintiffs challenged the December 2015 Decision and
23 brought this suit against the federal defendants. Several
24 potential Tribe members, including Dixie, intervened. (Docket
25 No. 30.) Plaintiffs now move to stay the December 2015 Decision
26 pending final resolution of this case. (Docket No. 10.)

27 II. Discussion

28 In order to obtain a preliminary injunction, the moving

1 party must establish (1) he is likely to succeed on the merits,
2 (2) he is likely to suffer irreparable harm in the absence of
3 preliminary relief, (3) the balance of equities tips in his
4 favor, and (4) an injunction is in the public interest. Winter
5 v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20-21 (2008);
6 Humane Soc. of the U.S. v. Gutierrez, 558 F.3d 896, 896 (9th Cir.
7 2009). When the United States is the non-moving party, the third
8 and fourth factors merge. Nken v. Holder, 556 U.S. 418, 435
9 (2009). Injunctive relief is “an extraordinary and drastic
10 remedy, one that should not be granted unless the movant, by a
11 clear showing, carries the burden of persuasion.” Mazurek v.
12 Armstrong, 520 U.S. 968, 972 (1997) (per curiam).

13 “ [A] preliminary injunction will not be issued simply
14 to prevent the possibility of some remote future injury.”
15 Winter, 555 U.S. at 21. A plaintiff “must establish that
16 irreparable harm is likely, not just possible, in order to obtain
17 a preliminary injunction.” All. for the Wild Rockies v.
18 Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (emphasis in
19 original) (citing Winter, 555 U.S. at 22). Plaintiffs must
20 demonstrate the harm is both irreparable and imminent. Caribbean
21 Marine Servs. Co., Inc. v. Baldrige, 844 F.2d 668, 674 (9th Cir.
22 1988). “Speculative injury does not constitute irreparable
23 injury sufficient to warrant granting a preliminary injunction.”
24 Id.

25 Plaintiffs argue they will be irreparably harmed by the
26 December 2015 Decision because the Regional Director “is poised
27 to give the Tribe over to the Dixie Faction in the immediate
28 future” by recognizing Dixie’s 2013 Constitution. Plaintiffs

1 argue that once the 2013 Constitution is recognized, Dixie will
2 request and obtain the \$13 million the Gambling Control
3 Commission is holding in trust for the Tribe pending resolution
4 of the leadership dispute. (Pls.' Mot. at 10 (Docket No. 10).)

5 The possibility of injury to plaintiffs is speculative
6 because it is uncertain whether the Regional Director will
7 recognize Dixie's 2013 Constitution in the first place. (See
8 Dutschke Aff. ¶¶ 9-11 (Docket No. 34-1).) The December 2015
9 Decision only authorized the Regional Director to accept
10 additional submissions from Dixie to determine whether the 2013
11 Constitution is valid. (Dec. 2015 Decision at 6.) Even if the
12 Regional Director approves Dixie's 2013 Constitution, this
13 decision is subject to administrative appeal and would be stayed
14 pending appeal. 25 C.F.R. §§ 2.1-.21 (describing the appeal
15 procedures). Only then, after the Regional Director approved
16 Dixie's 2013 Constitution and the administrative appeals are
17 exhausted, could Dixie petition the Gambling Control Commission
18 for any money. Absent a showing that the money will immediately
19 and certainly be released, any harm is speculative and not
20 immediate.

21 For the foregoing reasons, because plaintiffs have not
22 established that the Regional Director's future decision
23 regarding the 2013 Constitution and any subsequent issuance of
24 tribal money is imminent or likely to occur, they have not met
25 the irreparable harm prong of the preliminary injunction
26 standard.

27 Plaintiffs have also failed to meet the merged third
28 and fourth prongs of the preliminary injunction standard. First,

1 "tribal self-government may be a matter of public interest."
2 Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1234, 1253
3 (10th Cir. 2001). Issuing an injunction preventing the BIA from
4 determining the Tribe's proper government undermines the public
5 policy favoring the promotion of tribal self-governance.

6 Second, since plaintiffs have not shown irreparable
7 injury, the balance of the equities cannot be in favor of
8 plaintiffs over the United States or intervenor-defendants.
9 Earth Island Inst. v. Carlton, Civ. No. 2:09-2020 FCD EFB, 2009
10 WL 9084754, at *28 (E.D. Cal. Aug. 20, 2009), aff'd 626 F.3d 462
11 (9th Cir. 2010) ("[W]here plaintiff has not made the requisite
12 showing on the merits which, in turn, undermines the likelihood
13 of irreparable injury, the balance of equities cannot be found in
14 plaintiff's favor."). Preventing the implementation of the
15 December 2015 Decision would also impair the interests of the
16 United States and Tribe members in establishing legitimate
17 government-to-government relations, and preventing the Regional
18 Director from determining the validity of other potential tribal
19 governments would prevent Tribe members from receiving the
20 benefits of a duly-recognized government.

21 Because plaintiffs have failed to meet the second and
22 third prongs for a preliminary injunction, the court thus does
23 not need to address the likelihood of success on the merits. See
24 Winter, 555 U.S. at 20-21 (holding a plaintiff must establish
25 that all four prongs are met and irreparable harm is likely, not
26 just possible). Accordingly, the court must deny plaintiffs'
27 motion.

28 ///

1 IT IS THEREFORE ORDERED that plaintiffs' motion to stay
2 the Assistant Secretary's December 2015 Decision pending final
3 resolution of this case, considered as a motion for a preliminary
4 injunction, be, and the same hereby is, DENIED.

5 Dated: October 24, 2016

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7 WILLIAM B. SHUBB
8 UNITED STATES DISTRICT JUDGE
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