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

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

<p>CALIFORNIA VALLEY MIWOK TRIBE, a federally-recognized Indian tribe, THE GENERAL COUNCIL, SILVIA BURLEY, RASHEL REZNOR; ANJELICA PAULK; and TRISTIAN WALLACE</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>S.M.R. JEWEL, in her official capacity as U.S. Secretary of Interior, et al.,</p> <p style="text-align: center;">Defendants,</p> <p>THE CALIFORNIA VALLEY MIWOK TRIBE, et al.,</p> <p style="text-align: center;">Intervenor-Defendants.</p>	<p>) Case No.: 2:16-cv-01345-WBS-CKD</p> <p>) JOINT STATUS REPORT</p> <p>) Date: November 21, 2016</p> <p>) Time: 1:30 p.m.</p> <p>) Courtroom No. 5, 14th Floor</p> <p>) Hon. William B. Shubb</p>
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The parties to the above-entitled action respectfully submit the following Joint Status Report.

A. Summary of the Action

Plaintiffs filed this action seeking to set aside the December 30, 2015, decision of the Assistant Secretary – Indian Affairs (“2015 Decision”) finding that the California Valley Miwok Tribe’s (“Tribe”) membership is not limited to five individuals, that the General Council set up

1 by a 1998 Resolution was not the valid government for the Tribe, and that the Assistant
2 Secretary had not received sufficient evidence demonstrating that a constitution purportedly
3 ratified in 2013 was validly ratified. In his 2015 Decision, the Assistant Secretary authorized the
4 Regional Director to receive additional submissions for the purpose of establishing whether the
5 2013 constitution was validly ratified. As an alternative, the Assistant Secretary encouraged the
6 Tribe to petition for a Secretarial election under 25 C.F.R. Part 81 within 90 days of the 2015
7 Decision.
8

9 B. Service

10 All defendants have been served. Federal Defendants and Intervenor-Defendants filed
11 their respective answers and affirmative defenses on September 16, 2016 (ECF Nos. 31, 32).
12

13 C. Joinder of Additional Parties

14 On August 25, 2016, Intervenor-Defendants were granted leave to file their answer in
15 intervention in this case. (ECF No. 29.) The parties do not anticipate joinder of additional
16 parties.
17

18 D. Amendment to the Pleadings

19 The parties do not anticipate amendment of the pleadings.

20 E. Jurisdiction and Venue

21 Plaintiffs allege subject matter jurisdiction based upon 28 U.S.C. § 1331; 28 U.S.C.
22 § 1361; and 28 U.S.C. § 1362. Plaintiffs allege that Defendants have waived sovereign
23 immunity pursuant to the Administrative Procedure Act, 5 U.S.C. § 701, et seq. (“APA”).
24

25 Defendants assert that Plaintiffs fail to provide an unequivocal waiver of sovereign
26 immunity and base their claims on several statutes, 28 U.S.C. § 1331; 28 U.S.C. § 1361; and 28
27 U.S.C. § 1362, that do not constitute a waiver of sovereign immunity.
28

1 Venue is appropriate in the Eastern District of California because Plaintiffs reside in this
2 district and no real property is involved in the action.

3 F. Discovery

4 The parties agree that no discovery is necessary in this APA challenge to final agency
5 action.

6 G. Discovery Dates

7 The parties agree that no discovery is necessary in this APA challenge to final agency
8 action.

9 The parties have agreed that Federal Defendants shall prepare and submit the
10 administrative record by January 13, 2017. The parties shall file any motion to supplement the
11 administrative record, or any other challenge to the contents of the record prepared by Federal
12 Defendants, no later than 30 days after the record is submitted.

13 H. Motion Deadlines

14 The parties anticipate that this Court will resolve the entire dispute via cross-motions for
15 summary judgment under Federal Rule of Civil Procedure 56 on the basis of the administrative
16 record. *Nw. Motorcycle Ass'n v. U.S. Dept. of Agric.* (9th Cir. 1994) 18 F.3d 1468, 1481.

17 The parties propose the following schedule for summary judgment motions:

18 (1) Each of the parties shall file its motion for summary judgment by the later of (i) 75
19 days after Federal Defendants have submitted the administrative record, or (ii) 30 days after the
20 Court rules on any motion to supplement the administrative record or other challenge to the
21 contents of the record as described in Section G above.

22 (2) Each of the parties shall file any opposition to the motions for summary judgment
23 within 30 days after the deadline for filing said motions set forth in paragraph (1) above.
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1 Each of the parties shall file any reply in support of its motion for summary judgment
2 within 30 days after the deadline for filing its opposition set forth in paragraph (2) above.

3 I. Modification of Standard Pretrial Procedures

4 The standard pretrial procedures are not applicable to this case because the parties
5 anticipate that this Court can resolve the entire dispute via cross-motions for summary judgment
6 without the need for a trial. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973) (“[T]he focal point for
7 judicial review should be the administrative record already in existence, not some new record
8 made initially in the reviewing court.”).

9
10 J. Estimated Trial Time

11 The parties anticipate that this Court can resolve the entire dispute via cross-motions for
12 summary judgment without the need for a trial for the claims. *Nw. Motorcycle Ass’n, supra*. The
13 district court “is not required to resolve any facts in a review of an administrative proceeding.”
14 *Occidental Eng’g Co. v. I.N.S.* (9th Cir. 1985) 753 F.2d 766, 769. In ruling on cross-motions for
15 summary judgment in this case, the court must determine “whether or not as a matter of law the
16 evidence in the record permitted the agency to make the decision it did.” *Id.*

17
18 K. Related Case

19 The parties are unaware of any related case.

20
21 L. Additional Matters

22 The parties have discussed alternative dispute resolution. They do not request a
23 settlement conference at this time. The parties will notify the Court if they request a settlement
24 conference.

25
26 M. Nongovernmental Corporate Party

27 None.
28

1 N. Appearance at Status Conference

2 The parties do not request to appear at a status conference and request that the Court issue
3 a scheduling order adopting the schedule proposed above for preparation of the administrative
4 record and motions for summary judgment.

5 Dated: November 4, 2016

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7 Respectfully submitted,

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20 *General Council, Silvia Burley, Rashel Reznor, Anjelica Paulk and*
21 *Tristian Wallace*

22 */s/ Jody H. Schwarz*
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Affairs, and Michael Black in his Official Capacity as Director of
the Bureau of Indian Affairs*

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CERTIFICATE OF SERVICE

Case

Name: **Paulk, et al. v. Jewell, et al.**

No. **2:16-cv-01345-WBS-CKD**

I hereby certify that on November 4, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

1. JOINT STATUS REPORT

I, the undersigned, declare that I am over the age of 18 years and not a party to this action; I am employed in, and am a resident of, the County of San Diego, California. My business address is 17140 Bernardo Center Drive, Suite 358, San Diego, California 92128.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I caused the foregoing documents to be served in the manner indicated below on the following persons:

PERSONS SERVED

(Served by electronic mail):

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

Executed on November 4, 2016 at San Diego, California.

/s/ Heather Skanchy
HEATHER SKANCHY