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

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

CALIFORNIA VALLEY MIWOK TRIBE, a) Case No.: 2:16-cv-01345-WBS-CKD
federally-recognized Indian)
tribe, **THE GENERAL COUNCIL,**) **PLAINTIFFS' OPPOSITION TO**
SILVIA BURLEY, RASHEL REZNOR;) **INTERVENOR-DEFENDANTS' MOTION**
ANJELICA PAULK; and TRISTIAN) **FOR SUMMARY JUDGMENT**
WALLACE)

Plaintiffs,) Date: May 30, 2017
Time: 1:30 p.m.

vs.) Judge: Hon. William B. Shubb
Courtroom 5

SALLY JEWELL, in her official)
capacity as U.S. Secretary of)
Interior, et al.,)

Defendants)

THE CALIFORNIA VALLEY MIWOK)
TRIBE, et al.)

Intervenor-Defendants.)

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1 Plaintiffs CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or
2 "the Miwok Tribe"), THE GENERAL COUNCIL, SILVIA BURLEY
3 ("Burley"), RASHEL REZNOR ("Rashel"), ANJELICA PAULK
4 ("Angelica"), and TRISTIAN WALLACE ("Tristian") (collectively
5 "the Burley Faction"), submit the following Memorandum of Points
6 and Authorities in Opposition to Intervenor-Defendants' ("Dixie
Faction) Motion for Summary Judgment.

7 **I.**

8 **INTRODUCTION**

9 In 1998, Yakima Dixie ("Dixie") enrolled Burley, his
10 distant cousin, and her two family members into the Tribe. At
11 the time, the Tribe had dwindled down to Yakima Dixie and his
12 brother, Melvin Dixie, as the last known remaining Tribal
13 members. Melvin Dixie's whereabouts were unknown at the time.
14 The Bureau of Indian Affairs ("BIA") recognized this and
15 encouraged Dixie and his newly adopted Tribal members to
16 organize the Tribe with a governing body known as a "General
17 Council." The BIA directed that Dixie do so by resolution and
18 provided Dixie with a sample resolution to follow. Both Dixie
19 and Burley prepared the document and called it Resolution #GC-
20 98-01 (herein after sometimes called "the 1998 Resolution"),
21 which established the General Council as the governing body of
22 the Tribe. The Tribe had only five (5) members and the General
23 Council was comprised of Dixie as Tribal Chairman, Burley as
24 Vice Chairperson, and Rashel Reznor as Secretary.

25 Sometime after the General Council was established and the
26 Tribe began engaging in government-to-government relations with
27 the federal government, Dixie voluntarily resigned as Tribal
28 Chairman, and signed a written resignation to that effect.
Burley was elected as the new Tribal Chairperson, and Dixie
signed a written document consenting to that as well. Soon
after Dixie's resignation, a white, non-Indian by the name of

1 Chadd Everone contacted Dixie and told him about the new 1999
2 California State Compacts the Governor had signed, allowing
3 various tribes in California to build and operate gambling
4 casinos and generate high amounts of income. Because the Tribe
5 was a federally-recognized tribe and qualified to have a
6 gambling casino, no matter how small it was, Everone was
7 interested in using Dixie's name to build and operate a gambling
8 casino to enrich Everone and other non-Indian investors. The
9 only problem at the time was that Dixie had already resigned,
and control of the Tribe was with Burley.

10 To accomplish his scheme of taking over control of the
11 Tribe for his own personal, financial gain of building a casino,
12 Everone conspired with Dixie to have him falsely claim that he
13 never resigned as Tribal Chairman, and that Dixie's resignation
14 was forged. This created the Tribal leadership dispute that
15 Everone used to further his scheme of creating uncertainty in
16 the Tribal governing body and working toward trying to get the
17 Tribe "re-organized" through the Dixie faction which he
18 continues to control. This Tribal leadership dispute has
19 crippled the Tribe over the years and has caused havoc in its
20 ability to function and operate as a federally-recognized tribe.
21 Dixie ultimately admitted in 2012 in a sworn deposition that he
22 in fact resigned and that his resignation was never forged. By
23 the time Dixie was forced to admit he in fact resigned, he had
24 filed numerous declarations, pleadings and other documents in
25 both state and federal court falsely stating under penalty of
perjury that he never resigned and that his resignation was
forged.

26 Faced with this damning evidence, the Dixie faction has
27 attempted to downplay Dixie's false statements about his
28 resignation and fraud he perpetrated on the courts, by arguing
the issue is "irrelevant," because the General Council

1 established under the 1998 Resolution was purportedly invalid at
2 the outset. This argument misses the point that but for Everone
3 and Dixie's fraud in creating a false and fraudulent Tribal
4 leadership dispute, the Tribe would be functioning today under
5 the General Council and receiving federal contract funding and
6 Revenue Sharing Trust Fund ("RSTF") payments under the
7 California State Compacts without interruption.

8 Everone sought and obtained sympathy from the BIA, which
9 was led to believe, falsely, that Burley "stole" the Tribe from
10 Dixie. The BIA sought to accommodate Everone's claims, and took
11 it upon itself to "re-organize" the Tribe in an attempt to
12 indirectly resolve the ongoing Tribal leadership dispute. The
13 Burley faction challenged the BIA's efforts to do so, and the
14 matter was taken up to the Interior Board of Indian Appeals
15 ("IBIA") who then in turn referred the issue to the Assistant
16 Secretary of Interior, Indian Affairs ("AS-IA"). The AS-IA
17 Larry Echo Hawk decided the issue in August 2011 and concluded
18 that the BIA had no right to attempt to re-organize the Tribe
19 against its wishes, that the Tribe was not required to re-
20 organize under the Indian Reorganization Act of 1934 ("IRA") in
21 order to receive federal funding, or for any reason, that its
22 governing body comprising of the General Council established
23 under the 1998 Resolution would be recognized as the Tribe's
24 governing body having a government-to-government relationship
25 with the federal government, and that the Tribe consisted of
26 five (5) enrolled members subject to enlargement as to be
27 determined by the General Council without interference by the
28 BIA.

26 The Dixie faction controlled by Everone challenged Echo
27 Hawk's 2011 decision, and the U.S. District Court ordered the
28 AS-IA reconsider its decision. By the time the U.S. District
Court made its order, AS-IA Echo Hawk has retired and was

1 replaced by Kevin Washburn. On his last day in office on
2 December 31, 2015, before he, too, retired, AS-IA Washburn
3 reversed AS-IA Echo Hawk's decision and concluded that the Tribe
4 was not limited to five (5) members and that the General Council
5 was never properly organized by the 1998 Resolution, because it
6 did not consist of valid representatives of the Tribe. He
7 refused to recognize the General Council as the governing body
8 of the Tribe, and then directed that unenrolled, "potential"
9 (but not actual) members be allowed to participate in re-
10 organizing the Tribe under the IRA. In short, Washburn did a
11 complete 180 degree turn on the Echo Hawk decision.

12 The Burley faction then filed this action challenging
13 Washburn's decision, because it is erroneous as a matter of law
14 and an arbitrary and capricious final agency action. The 2011
15 Echo Hawk decision should be reinstated, because it is based
16 upon correct principles of Indian law.

17 II.

18 STATEMENT OF FACTS

19 A. HISTORY OF THE TRIBE

20 In 1915, the United States government purchased
21 approximately 0.92 acres of land in Calaveras County,
22 California, for the benefit of twelve (12) named Indians living
23 on the Sheep Ranch Rancheria. (AR-CVMT-2011-001687). The Indian
24 agent who recommended the purchase of the land for these Indians
25 described the group as "the remnant of once quite a large band
26 of Indians in former years living in and near the old decaying
27 mining town known and designated on the map as 'Sheepranch.'" (Id.).
28 However, the Indian Agent specifically stated that this
0.92 acre land would be purchased only for "this small band" of
12 or 13 Sheepranch Indians. (CVMT-2011-000001-002). While the
Indian Agent observed that "to some extent" this little band of
12 or 13 Sheepranch Indians were "interchangeable in their

1 relations" with four other small band of Indians in the area, he
2 never stated that these other band of Indians were members of
3 the 12 or 13 Sheepranch band of Indians, and never stated that
4 the 0.92 acre land was to be purchased for anyone other than
5 this "little band" of 12 or 13 Sheepranch Indians. (CVMT-2011-
6 000001-002). The phrase "interchangeable in their relations"
7 does not equate to Tribal membership, but can only be understood
8 to mean that these distinct bands of Indians were simply
9 neighbors who enjoyed peaceful, social intercourse and trade.
10 Otherwise, the Indian Agent would have recommended the purchase
11 of a larger parcel of land to accommodate all of these
12 neighboring bands. But he did not do so. For example, the
13 Indian Agent himself distinguished members of these neighboring
14 bands as follows:

15 "[T]he two Indians, 'Abe Lincoln' & 'Jeff Davis,' Abe at
16 Murpheys & Jeff at Sheepranch, were c[h]ristened their
17 respective names by the early miners during the progress of
18 the civil war, they then being quite chunks of boys,
19 spending much of their time around the mining camps."

20 (CVMT-2011-000002). During the Civil War, these two Indian
21 boys, both from different band of Indians in the area, "hung
22 out" at the mining camps, but maintained their identity to their
23 own band of Indians. Thus, even though these bands interacted
24 with each other, they still maintained their identity to their
25 own respective bands.

26 Over the years, it became apparent that whoever actually
27 resided on the 0.92 parcel of land had the authority to enroll
28 Indians as members and organize the Tribe.

29 For example, in 1934, Congress passed the Indian
30 reorganization Act ("IRA"), which, among other things, required
31 the U.S. Secretary of Interior ("the Secretary") to hold
32 elections through which the adult Indians of a reservation
33 decided whether to accept or reject the applicability of certain

1 provisions of the IRA to their reservation, including provisions
2 authorizing tribes to organize and adopt a constitution under
3 the IRA. 25 U.S.C. Sections 476 and 478. (AR-CVMT-2011-001687).
4 In 1935, Jeff Davis, the only Indian living on the Rancheria,
5 voted in favor of the Tribe being organized under the IRA.
6 (Id.). However, the process was never followed through, and as
7 a result the Tribe was never organized under the IRA. (Id.).
8 Significantly, the BIA did not reach out to anyone other than
9 Jeff Davis for this purpose, largely because he was the only one
10 residing on the 0.92 acre lot. Neither did the BIA reach out to
11 the other bands of Indians identified by the Indian Agent in
12 1915 as "Morpheys, Six-Mile, Avery and Angles." (CVMT-2011-
13 000002).

14 Also, in 1958, in keeping with the then-popular policy of
15 assimilating Native Americans into American society, Congress
16 enacted the California Rancheria Act, which authorized the
17 Secretary to terminate the federal trust relationship with
18 several California tribes, including several Rancherias, and to
19 transfer tribal lands from federal trust ownership to individual
20 fee ownership. (Act of Aug. 18, 1958, Pub.L. No. 85-671, 72
21 Stat. 619). To this end, the BIA prepared a plan in 1966 to
22 distribute the assets of the Sheep Ranch Rancheria as a prelude
23 to termination. (AR-CVMT-2011-001687). At that time, Mabel
24 Hodge Dixie was the only adult Indian living on the Rancheria
25 who was entitled to receive the assets of the Rancheria. (Id.).
26 She, therefore, voted to accept the distribution plan and was
27 issued a deed to the land in 1966. (AR-CVMT-2011-001687-88).

28 Although the Sheep Ranch Rancheria land had been
distributed to Mabel Dixie pursuant to a distribution plan, the
Secretary never published a final notice of termination and had
accepted the land back from Mabel Dixie through a quitclaim
deed. As a result, the Tribe was administratively

1 "unterminated" before it could be formally terminated. In other
2 words, the Tribe was never terminated. (AR-CVMT-2011-002051,
3 1399, 1689).

4 When Mabel Dixie died in 1971, the 0.92 parcel of land,
5 originally purchased for the 12 or 13 band of Indians identified
6 by the Indian Agent in 1915, went into probate in California
7 State court. The probate order listed Yakima Dixie and his
8 brother, Melvin Dixie, as the only surviving heirs of Mabel
9 Dixie, and awarded them their respective interest in the land.
10 (CVMT-2011-000172-173). The probate order had the effect of
11 confirming and ratifying the BIA's longstanding policy that
12 whoever resided on the land had the authority to enroll Indians
13 as members of the Tribe and organize the Tribe. It had the
14 effect of excluding any claim of any other Indians who may have
15 lived in the area, and who did not reside on the land, as having
16 any interest or authority over the land. It solidified Mabel
17 Dixie and her family as the sole members of the Sheepranch band
18 of Indians. When Melvin left and Dixie remained on the land,
19 the probate order solidified Dixie's sole authority, like what
20 the BIA extended to Jeff Davis back in 1935, as the sole member
21 of the Sheepranch band who, because he alone resided on the
22 property, had the authority to enroll Indians as members and
23 organize the Tribe.

24 In 1979, individuals from a number of terminated Rancherias
25 filed an action in the U.S. District Court, Northern District,
26 styled Hardwick v. U.S. (Civ. No. C-79-1710). The Hardwick
27 plaintiffs sought restoration of their status as Indians,
28 entitlement to federal Indian benefits, and the right to re-
establish their tribes as formal government entities.
Specifically, the Hardwick plaintiffs sought by injunction to
undo the effects of the California Rancheria Act and to require
the Secretary to "unterminate" each of the subject Rancherias

1 and to "treat all of the subject Rancherias as Indian
2 reservations in all respects." The Hardwick lawsuit ended in a
3 settlement between the tribes and the federal government,
4 culminating in a series of stipulated judgments. In the
5 settlement, the Secretary agreed to restore "any of the benefits
6 or services provided or performed by the United States for
7 Indians because of their status as Indians" and to "recognize
8 the Indian Tribes, Bands, Communities or groups of the seventeen
9 Rancherias...as Indian entities with the same status as they
10 possessed prior to distribution of the assets of these
11 Rancherias under the California Rancheria Act." (Stipulation and
12 Order, Hardwick v. United States, No. C-79-1710 (Dec. 22,
13 1983)).

14 In 1994, Yakima Dixie ("Dixie"), the son of Mabel Dixie,
15 wrote to the BIA asking for BIA assistance for home repairs on
16 the Rancheria, and described himself as "the only descendent and
17 recognized...member" of the Tribe. (AR-CVMT-2011-001688). At
18 that time Dixie and his brother, Melvin Dixie, were the only
19 surviving children of Mabel Dixie, but Melvin Dixie's
20 whereabouts were unknown. (AR-CVMT-2011-000177). Melvin later
21 died in 2008. (AR-CVMT-2017-001400, fn. 20).

22 In the mid-1990s, Burley contacted the BIA for information
23 related to her Indian heritage. (AR-CVMT-2011-001688). The BIA
24 provided her with information that showed she was related to
25 Jeff Davis who had initially voted in favor of the Tribe being
26 organized under the IRA. (Id.). Burley was also related to
27 Dixie. (Id.). Thereafter, Burley contacted Dixie and told him
28 about her interest in her Indian heritage that ultimately led to
him and his dwindling Tribe. (Id.).

On August 5, 1998, Dixie, as "Spokesperson/Chairman" of the
Tribe, signed a statement accepting Burley as an enrolled member
of the Tribe, and also enrolled Burley's two daughters and her

1 granddaughter. (AR-CVMT-2011-001688). As a result of Dixie's
2 actions, the Tribe in 1998 consisted of six enrolled members:
3 (1) Yakima Dixie; (2) Melvin Dixie; (3) Silvia Burley; (4)
4 Anjelica Paulk; (5) Rashel Reznor; and (6) Tristian Wallace.
(Id.).

5 In September of 1998, Yakima Dixie and Burley met at the
6 Rancheria with BIA staff to discuss organizing the Tribe. (AR-
7 CVMT-2011-001688). One of the issues discussed was developing
8 criteria for membership in the Tribe. (Id.). At the time, the
9 whereabouts of Melvin Dixie, Yakima's brother, were unknown. As
10 a result, the BIA staff told Yakima Dixie that he had both the
11 authority and the broad discretion to decide the criteria for
12 membership. According to the BIA, Yakima Dixie, his brother
13 Melvin Dixie, Burley and Burley's adult daughter were the
14 "golden members" of the Tribe. (Id.). And because Melvin Dixie's
15 whereabouts were unknown, the BIA concluded that the three adult
16 members consisting of Yakima Dixie, Burley and her adult
17 daughter were the General Council of the Tribe that had the
18 authority to take actions on behalf of the Tribe. (AR-CVMT-2011-
001688-89).

19 Because the Tribe was never formally terminated, there was
20 no court decision, like Hardwick, supra, that affected the
21 Tribe, and to which the Tribe and the BIA could look to so as to
22 determine who was a member of the Tribe or otherwise entitled to
23 organize it. Typically, California tribes who had been
24 unlawfully terminated by the federal government regained federal
25 recognition through litigation like Hardwick, supra, and the
26 court judgment in that litigation identified the class of
27 persons entitled to organize the tribe, e.g., the distributes
28 and their dependents, and their lineal descendants. However, in
the case of the Sheep Ranch Rancheria, although the land had
been distributed to Mabel Dixie pursuant to a distribution plan

1 preparatory to termination, the Secretary never actually
2 followed through and published a final notice of termination.
3 Instead, the Secretary accepted the land back from Mabel Dixie
4 through a quitclaim deed, thus essentially administratively
5 "unterminating" the Tribe before it had ever been formally
6 terminated. (AR-CVMT-2011-001689).

7 Therefore, because of the unique circumstance that the
8 Sheep Ranch Rancheria found itself in never being terminated,
9 the BIA concluded that "for purposes of determining the initial
10 membership of the Tribe," Yakima Dixie and Melvin Dixie must be
11 included, because they were the remaining heirs of Mabel Dixie.
12 (Id.). In addition to these two initial members, the BIA
13 recognized that Yakima Dixie had adopted Burley, her two
14 daughters, and her granddaughter, into the Tribe. As a result,
15 the BIA concluded that Burley and her adult daughter, together
16 with Yakima and Melvin Dixie had "the right to participate in
17 the initial organization of the Tribe." (Id.). The BIA's
18 actions were consistent with its long-standing practice and
19 policy of treating whoever resided on the 0.92 acre plot of land
20 as having sole authority to enroll Indians as members and
21 organize the Tribe.

22 On September 24, 1998, the BIA told Yakima and Burley that
23 it "recommend[ed] the Tribe operate as a General Council,"
24 because of its "small size," so that they could elect or appoint
25 a chairperson and conduct business. (Id.). To this end, the BIA
26 offered the Tribe \$50,000.00 in grant money for purposes of
27 improving its tribal government, and provided Dixie and Burley
28 with a draft resolution "form" for them to use in requesting the
grant. (Id.). The draft resolution contained language
establishing the General Council.

Using the draft resolution form prepared by the BIA, Dixie
and Burley prepared and signed a resolution on November 5, 1998,

1 establishing a General Council consisting of all adult members
2 of the Tribe, to serve as the governing body of the Tribe. (AR-
3 CVMT-2011-001690, 00172-176). The resolution became known as
4 Resolution #CG-98-01, which the BIA accepted as the governing
5 document of the Tribe. (AR-CVMT-2011-000179). The document was
6 signed by Yakima Dixie and Silvia Burley, and later by Rashel
7 Reznor, and specifically noted that the whereabouts of Melvin
8 Dixie were at that time unknown. Resolution #GC-98-01 vested
9 the General Council with the governmental authority of the Tribe
10 to conduct the full range of government-to-government relations
11 with the United States. (AR-CVMT-2011-000178).

12 Pursuant to Resolution #GC-98-01, Yakima Dixie was
13 appointed and elected as the Tribal Chairman. (AR-CVMT-2011-
14 002052).

15 **B. DIXIE'S FRAUD AND TRIBAL LEADERSHIP DISPUTE**

16 On April 20, 1999, Yakima Dixie signed a notice of
17 resignation as Tribal Chairman. (RJN "32", Letter to Washburn
18 from Corrales, 6/6/2014, Ex. "46" to Decl. of MCJ). On the same
19 date, Yakima Dixie also signed a document confirming his
20 resignation as Tribal Chairman and agreeing to the appointment
21 of Silvia Burley to replace him as the new Tribal Chairperson.
22 (Id.).

23 Sometime after he resigned, Yakima Dixie was approached by
24 a non-Indian, Chadd Everone, who sought Yakima's cooperation in
25 taking control of the Tribe in order to build a gambling casino
26 using the name and status of the Tribe. (AR-CVMT-2017-000955-
27 56). The problem was that Yakima Dixie had already expressly
28 resigned. To regain control of the Tribe, Everone conspired
with Yakima to have Yakima falsely say that he never resigned
and that his written resignation was a forgery. Yakima Dixie
then thereafter falsely told the BIA and others that he never
resigned and that his resignation was forged. This then created

1 a Tribal leadership dispute between Yakima Dixie and Burley that
2 has since 1999 caused havoc with the Tribe and crippled the
3 Tribe's ability to operate effectively over the years. (AR-CVMT-
4 2011-002051, 001573-75). Yakima maintained that claim from 1999
5 up through February 7, 2012, when he was deposed and testified
6 in a California state action that he in fact resigned in April
7 of 1999, that his resignation was not forged as he had
8 previously claimed, and that the signatures on the Tribal
9 resignation documents were in fact his. (RJN "33", Letter to
10 Washburn from Corrales, 7/9/2014).

11 Despite Dixie's claim that he never resigned, the BIA chose
12 to acknowledge Burley as the Chairperson of the Tribe, and, as a
13 result, accepted and honored numerous Tribal resolutions passed
14 by the General Council under Burley's leadership from 1999
15 through July 2005. (AR-CVMT-2011-001691). For example, from
16 1999 through July 2005, the BIA entered into annual P.L. 638
17 federal contracts with the Tribe under Burley's leadership, and
18 awarded the Tribe federal contract funding. (*Id.*). The
19 California State Gambling Control Commission ("the CGCC")
20 followed the BIA's lead and acknowledged Burley as the
21 authorized Tribal representative to receive \$1.1 million in
22 annual RSTF payments for the Tribe. However, behind the scenes,
23 Everone continued to stir up false claims of a Tribal leadership
24 dispute between Dixie and Burley, causing the BIA to stop
25 awarding the Tribe 638 federal contract funding in August 2005,
26 which in turn caused the CGCC to withhold RSTF payments to the
27 Tribe as well. (AR-CVMT-2017-000958-963).

28 **C. THE JANUARY 28, 2010 IBIA DECISION**

Because of the ongoing Tribal leadership dispute was not coming to an end, the BIA took it upon itself, through the urging of Everone and the Dixie faction, to begin a process of "re-organizing" the Tribe under the IRA. (AR-CVMT-2011-001684-

85). It invited several nonmembers it called "potential" or "putative" members to participate in a general council meeting in this re-organization process, which included enrolling new members. (AR-CVMT-2011-001684). The BIA claimed these actions were necessary, because, according to the Interior Board of Indian Appeals ("IBIA") it felt "until the tribal organization and membership issues were resolved, a leadership dispute between Burley and Yakima...could not be resolved, and the resolution of that dispute was necessary for a functioning government-to-government relationship with the Tribe." CVMT v. Pacific Regional Director, BIA (Jan. 28, 2010) 51 IBIA 103, 103-104. (AR-CVMT-2011-001684-85).

The Burley faction appealed the Pacific regional Director's decision to the IBIA. (AR-CVMT-2011-001684). The IBIA, however, deemed the matter to be a membership enrollment dispute, because it involved the issue of whether the BIA could re-organize the Tribe under the IRA without the Tribe's consent and force the enrollment of nonmembers to participate in that re-organization. (AR-CVMT-2011-001703). Because the IBIA did not have jurisdiction over enrollment disputes, it referred the issue to the Assistant Secretary of Interior, Indian Affairs ("AS-IA"). (Id.).

The IBIA did not refer to the AS-IA any issue concerning whether the 1998 Resolution establishing the General Council was invalid for any reason. Nor did the Burley faction raise that as an issue before the IBIA. (AR-CVMT-2011-001684-1705).

D. AS-IA LARRY ECHO HAWK'S AUGUST 31, 2011 DECISION

On August 31, 2011, the AS-IA Larry Echo Hawk, in response to the IBIA's referral of the enrollment dispute, made the following decisions concerning the Tribe:

1 1. He reaffirmed that the Tribe is a federally recognized
2 tribe whose entire citizenship, as of August 31, 2011, consists
3 of five acknowledged citizens;

4 2. The 1998 Resolution established a General Council form
5 of government, comprised of all the adult citizens of the Tribe,
6 with whom the Department may conduct government-to-government
7 relations;

8 3. The Department shall respect the validly enacted
9 resolutions of the General Council; and

10 4. Only upon a request from the General Council will the
11 Department assist the Tribe in refining or expanding its
12 citizenship criteria, or developing and adopting other governing
13 documents.

14 5. Although the Tribe's General Council does not render
15 the Tribe organized under the IRA, as a federally recognized
16 tribe, the Tribe is not required to "organize" under the IRA.

17 6. It is impermissible to treat the Tribe, as a non-IRA
18 tribe, differently from tribes organized under the IRA and not
19 allow it to receive federal benefits. (AR-CVMT-2011-002049-50).

20 Echo Hawk, therefore, determined that there was "no need
21 for the BIA to continue its previous efforts to organize the
22 Tribe's government, because it is already organized as a General
23 Council, pursuant to the 1998 General Council Resolution it
24 adopted at the suggestion of the BIA." (AR-CVMT-2011-002049).
25 It concluded further that there was "no need for the BIA to
26 continue its previous efforts to ensure that the Tribe confers
27 tribal citizenship upon other individual Miwok Indians in the
28 surrounding area." (Id.).

 In his decision, Echo Hawk observed that the BIA wrongly
concluded it had an obligation to potential members in the
surrounding community. (AR-CVMT-2011-002050-51). He made it

clear that only the Tribe's General Council has the exclusive authority to decide who can be enrolled as members. He stated:

"...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 Departments' position on the citizenship question ever 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...."

(Id.).

E. U.S. DISTRICT COURT DECEMBER 2013 ORDER REMANDING TO AS-IA FOR RECONSIDERATION

Dixie challenged the Echo Hawk 2011 decision in federal court. (AR-CVMT-2011-000024). In December 2013, the federal district court ("the District Court" or "U.S. District Court") granted summary judgment in favor of Dixie and his Tribal Faction and remanded to the AS-IA for him to "reconsider" his August 31, 2011 decision, because he "assumed" certain factual issues rather than determined them factually. CVMT v. Jewell (U.S.D.C. 2013) 5 F.Supp.3d 86, 100-101. Specifically, the U.S. District Court remanded back to the AS-IA for him to reconsider his August 31, 2011 decision, because, according to the U.S. District Court, the AS-IA merely assumed the Tribe's membership is limited to five persons and further merely assumed that the Tribe is governed by a duly constituted General Council, without

1 setting forth its reasons for these conclusions, in light of the
2 administrative record that questioned the validity of those
3 assumptions. (Id.). Indeed, although much of the decision is
4 predicated on an existing Tribal leadership dispute, the court
5 there did not have the benefit of the deposition transcript of
6 Yakima Dixie taken in the California State case, wherein he
7 admits resigning as Tribal Chairman, because it was not part of
8 the administrative record.

9 As a result, the U.S. District Court was misled into
10 thinking that Dixie still maintained that he never resigned as
11 Tribal Chairman, and the court relied upon that on-going claim
12 in her court as a basis for her ruling. For example, the U.S.
13 District Court stated:

14 Here, the August 2011 Decision fails to address
15 *whatsoever* the numerous factual allegations in the
16 administrative record that raise significant doubts
17 about the legitimacy of the General Council. From as
18 early as April 1999, Yakima contested the validity of the
19 Council. See AR 000182 (April 21, 1999 letter from
20 Yakima to the BIA stating that he "cannot and will not
21 resign as chairman of the Sheep Ranch Indian Rancheria");
22 see also, AR 000205 (October 10, 1999 letter from Yakima
23 to BIA raising questions about Burley's authority); AR
24 001690, 000231 (Yakima notifying the BIA of "fraud and
25 misconduct" with respect to the Tribe's leadership).

26 5 F.Supp.3d 86, 100-101. Accordingly, based solely on the
27 administrative record, the U.S. District Court concluded that
28 Dixie's claim that his resignation was forged and that he never
resigned raised doubts about the validity of the General Council
under the Burley Faction.

Moreover, the U.S. District Court's order was largely based
on Dixie's time-barred claim that the 1998 Resolution was
invalid at the outset, and therefore was erroneous as a matter
of law. (Id.)

F. THE BURLEY FACTION'S INABILITY TO APPEAL THE DISTRICT COURT ORDER OF REMAND

The Dixie Faction has argued that Plaintiffs "cannot re-litigate" the U.S. District Court decision granting summary judgment in the Dixie Faction's favor, because Plaintiffs "did not appeal that decision." This is inaccurate and misleading.

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

Accordingly, Plaintiffs here are not "re-litigating" issues decided by the U.S. District Court that remanded the matter back to the AS-IA to "reconsider" his 2011 Decision. That remand order was not final. Plaintiffs' suit instead is against the AS-IA relative to his December 30, 2015 Decision.

G. AS-IA WASHBURN'S DECEMBER 30, 2015 DECISION

On remand, the AS-IA Kevin Washburn erroneously concluded 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. (AR-CVMT-2017-001402). He erroneously concluded that the Tribe was never properly "reorganized" back in 1998, leaving questions as to the overall membership of the Tribe, and therefore the Tribe must be reorganized. (AR-CVMT-2017-001401). He then wrongfully directed

1 that un-enrolled, potential members be allowed to participate in
2 reorganizing the Tribe. (AR-CVMT-2017-001402). He refused to
3 acknowledge the Tribe's governing document, Resolution #GC-98-
4 01, which established the Tribe's General Council, despite the
5 fact that this governing document has been in place for over 18
6 years. (AR-CVMT-2017-001401). His decision stated:

7 At the time of its enactment, the 1998 Resolution
8 undoubtedly seemed a reasonable, practical mechanism for
9 establishing a tribal body to *manage the process* of
10 reorganizing the Tribe. But the actual reorganization of
11 the Tribe can be accomplished only via a process open to
12 the whole tribal community. Federal courts have
13 established, and my review of the record confirms, the
14 people who approved the 1998 Resolution (Mr. Dixie, Ms.
15 Burley, and possibly Ms. Burley's daughter Rashel Reznor)
16 are not a majority of those eligible to take part in the
17 reorganization of the Tribe. Accordingly, I cannot
18 recognize the actions to establish a tribal governing
19 structure taken pursuant to the 1998 Resolution. Ms.
20 Burley and her family do not represent the CVMT [the
21 Tribe].

22 (AR-CVMT-2017-001401). However, these conclusions are based upon
23 Dixie's time-barred claim that the 1998 resolution was invalid
24 at the outset. Moreover, the IBIA never referred that issue to
25 the AS-IA for resolution.

26 SUMMARY OF ARGUMENT

27 Contrary to the Dixie Faction's argument, the 2015 Decision
28 unreasonably concluded that the Tribe is comprised of more than
five (5) members, including "members" in the surrounding Indian
community. The administrative record does not support the AS-
IA's conclusion that there were other adult members in the
surrounding Indian community, other than Yakima Dixie, Burley
and Rashel Reznor, who were entitled to participate in the
organization of the Tribe in 1998. The historical record
refutes the AS-IA's determination in this regard. For example,
the Indian Agent in 1915 specifically recommended purchasing the

1 0.92 acre land for the "little band" of 12 or 13 Sheepbranch
2 Indians he found in the area, and recommended the land be
3 purchased for them alone. The other band of Indians in the area
4 in 1915, the "Morpheys, Six-Mile, Avery and Angles," were
5 identified as distinctly different bands who identified
6 themselves with their own band and not the Sheepbranch band of 12
7 or 13 Indians discovered by the Indian Agent in 1915.
8 Thereafter, the BIA initiated a policy and practice that whoever
9 actually resided on the 0.92 acre land would have the sole
10 authority to enroll Indians as members and organize the Tribe.
11 This was the case in 1935 with Jeff Davis, who, by virtue of
12 being the sole resident on the property, voted for an IRA
13 government, and was the one the BIA recognized as having the
14 sole authority to organize the Tribe under the IRA, which for
15 some unknown reason never took place. This was also the case
16 with Mabel Dixie who, being the sole adult resident on the
17 property in 1966, voted for termination and, as a result, the
18 BIA gave her alone the deed to the property as a prelude to
19 termination, which administratively never occurred. When Mabel
20 died, the interest to the property went to Yakima Dixie and his
21 brother, Melvin. However, because Melvin left and Yakima was
22 the only resident on the property in 1998, he alone had the
23 authority to enroll Burley and her family as adopted members of
24 the Tribe and organize the Tribe.

25 The AS-IA December 2015 Decision is likewise arbitrary and
26 capricious, because it is erroneously predicated on Dixie's
27 time-barred claim that the 1998 Resolution establishing the
28 General Council was invalid at the outset. The U.S. District
Court erred in remanding for reconsideration this time-barred
claim. Moreover, the validity of the 1998 Resolution was not an
issue that the IBIA referred to the AS-IA for resolution, and

1 the Burley Faction did not raise it in their appeal before the
2 IBIA.

3 The General Council established under Resolution 1998 was
4 not created to "manage the process of reorganization," as the
5 AS-IA December 2015 Decision erroneously concludes. The 1998
6 Resolution organized the Tribe. The BIA had previously
7 erroneously determined that in order to qualify for federal
8 benefits, the Tribe was required to "re-organize" under the IRA,
9 and sought to "re-organize" the Tribe for this purpose and for
10 purposes of trying to resolve the long-standing Tribal
11 leadership dispute. The August 2011 AS-IA Decision resolved
12 this issue, and correctly concluded that the Tribe was not
13 required to "re-organize" under the IRA in order to receive
14 federal benefits, and that the BIA could not force the Tribe to
15 "re-organize" its governing body, because it is already
16 organized under the 1998 Resolution. The August 2011 AS-IA
17 Decision further concluded that BIA could not force the Tribe to
18 expand its membership without its consent, and that, until the
19 Tribe provides otherwise, the Tribal membership presently
20 consists of five (5) enrolled members. The December 2015 AS-IA
21 Decision concluded otherwise, contrary to well-settled Indian
22 law principles of self-governance. The August 2011 AS-IA
23 Decision should be reinstated as the controlling decision.

24 Contrary to the December 2015 AS-IA Decision, no prior
25 federal court has ever held that the Tribe's membership is
26 larger than five (5) enrolled members.

27 The Dixie Faction should be estopped from challenging the
28 1998 Resolution, based on fraud. The Tribal leadership dispute
that has thrust the two competing factions into this 16 year
dispute, was contrived and fabricated by Dixie and Everone, so
that Everone, a non-Indian, could take over control of the Tribe
and build a casino using the Tribe's name and status as a

1 federally-recognized Indian tribe, and the Tribe's RSTF payments
2 from the State Gambling Commission. Dixie ultimately admitted
3 in 2012 that his resignation was never forged. But for Dixie
4 and Everone's fraud, the Tribe would be functioning and
5 operating under the 1998 Resolution and receiving the federal
6 benefits and RSTF payments from the State Gambling Commission
7 without interruption.

8 III.

9 ARGUMENT

10 **A. THE RECORD DOES NOT SUPPORT THE AS-IA'S CONCLUSION THAT
11 THE TRIBE WAS COMPRISED OF MORE THAN FIVE (5) MEMBERS WHO
12 WERE ENTITLED TO PARTICIPATE IN THE ORGANIZATION OF THE
13 TRIBE IN 1998**

14 The Dixie Faction argues that the AS-IA's 2015 Decision was
15 not arbitrary and capricious in determining that the Tribe is
16 composed of more than five (5) members that purportedly must
17 include the "lineal descendants" of the Sheepbranch band of
18 Indians first identified in 1915 by a BIA Indian Agent. This
19 contention lack merit, given the fact that the administrative
20 record does not support this conclusion. Instead, the
21 administrative record shows historically and overwhelmingly that
22 the 0.92 acre piece of land was purchased solely for the 12 or
23 13 "little band" of Sheepbranch Indians, and for them alone, and
24 that whoever actually resided on the property would alone have
25 the authority to enroll Indians as members and organize the
26 Tribe.

27 For example, the Indian Agent specifically stated that this
28 0.92 acre land would be purchased only for "this small band" of
12 or 13 Sheepbranch Indians. (CVMT-2011-000001-002). While the
Indian Agent observed that "to some extent" this little band of
12 or 13 Sheepbranch Indians were "interchangeable in their
relations" with four other small band of Indians in the area, he

1 never stated that these other band of Indians were members of
2 the 12 or 13 Sheepranch band of Indians, and never stated that
3 the 0.92 acre land was to be purchased for anyone other than
4 this "little band" of 12 or 13 Sheepranch Indians. (CVMT-2011-
5 000001-002). The phrase "interchangeable in their relations"
6 does not equate to Tribal membership, but can only be understood
7 to mean that these distinct band of Indians were simply
8 neighbors who enjoyed peaceful, social intercourse and trade.
9 Otherwise, the Indian Agent would have recommended the purchase
10 of a larger parcel of land to accommodate all of these
11 neighboring bands. But he did not do so. For example, the
12 Indian Agent himself distinguished members of these neighboring
13 bands as follows:

14 " [T]he two Indians, 'Abe Lincoln' & 'Jeff Davis,' Abe at
15 Murpheys & Jeff at Sheepranch, were c[h]ristened their
16 respective names by the early miners during the progress of
17 the civil war, they then being quite chunks of boys,
18 spending much of their time around the mining camps."

19 (CVMT-2011-000002). During the Civil War, these two Indian
20 boys, both from different band of Indians in the area, "hung
21 out" at the mining camps, but maintained their identity to their
22 own band of Indians. In addition, the Indian Agent described
23 this "small band of Sheepranch Indians" as having a "long and
24 strong attachment" to their own band. (CVMT-2011-000001). Thus,
25 even though these neighboring bands interacted with each other,
26 they still maintained their identity to their own respective
27 bands.

28 Over the years, it became apparent that whoever actually
resided on the 0.92 parcel of land had the authority to enroll
Indians as members and organize the Tribe. This was the case in
1935 with Jeff Davis, who, by virtue of being the sole resident
on the property, voted for an IRA government, and was the one
the BIA recognized as having the sole authority to organize the

1 Tribe under the IRA, which for some unknown reason never took
2 place. (CVMT-2011-001687). This was also the case with Mabel
3 Dixie who, being the sole adult resident on the property in
4 1966, voted for termination and, as a result, the BIA gave her
5 alone the deed to the property as a prelude to termination,
6 which administratively never occurred. (CVMT-2011-001687-1688).
7 When Mabel died, the interest to the property went to Yakima
8 Dixie and his brother, Melvin. (CVMT-2011-000173).
9 Significantly, it was the "Department of Interior" who "probated
10 the property." (CVMT-2011-001688). However, because Melvin
11 left and Yakima was the only resident on the property in 1998,
12 Yakima Dixie alone had the authority to enroll Burley and her
13 family as adopted members of the Tribe and organize the Tribe.

14 The probate order listed Yakima Dixie and his brother,
15 Melvin Dixie, as the only surviving heirs of Mabel Dixie, and
16 awarded them their respective interest in the land. (CVMT-2011-
17 000172-173). The probate order had the effect of confirming and
18 ratifying the BIA's longstanding policy that whoever resided on
19 the land had the authority to enroll Indians as members of the
20 Tribe and organize the Tribe. It had the effect of excluding
21 any claim of any other Indians who may have lived in the area,
22 and who did not reside on the land, as having any interest or
23 authority over the land. It solidified Mabel Dixie and her
24 family as the sole members of the Sheepbranch band of Indians.
25 When Melvin left and Dixie remained on the land, the probate
26 order solidified Dixie's sole authority, like what the BIA
27 extended to Jeff Davis back in 1935, as the sole member of the
28 Sheepbranch band who, because he alone resided on the property,
had the authority to enroll Indians as members and organize the
Tribe.

In addition, the AS-IA's assumption that the 0.92 acre land
"was not large enough for all members of the band to take up

1 residence" when it was first purchased in 1915 (CVMT-2017-
2 001400) is not supported in the administrative record. In fact,
3 the Indian Agent taking the census in 1915 found only three (3)
4 "old little Indian cabins" in the Sheepranch area. The 12 or 13
5 Indians he identified were actually comprised of three or four
6 families (CVMT-2011-000002), with Peter Hodges as the band's
7 leader. (CVMT-2011-CVMT-2011-000001). Under the circumstances,
8 the 0.92 acre plot of land was large enough to accommodate these
9 12 or 13 band of Indians, given their custom of living in
10 "little Indian cabins" and spending their time usually "in the
11 nearby streams panning for gold." (CVMT-2011-000001).

12 Finally, Dixie himself admitted in September 1999, when
13 interviewed by the Los Angeles Times, that he was the last
14 remaining member of the Sheepranch band. (LA Times Article,
15 9/28/1999, Ex. "24", RJN #11 [After his relatives either left
16 the reservation or died, the resident population of Dixie's
17 branch of the Sierra Miwok dwindled to just him."]).

18 **B. THE FEDERAL DISTRIBUTION REGULATIONS FOR TERMINATED
19 RANCHERIAS IN CALIFORNIA CONFIRM THAT RESIDENCE ON THE
20 SUBJECT 0.92 ACRE LAND WAS EQUATED WITH ACTUAL MEMBERSHIP
21 IN THE SHEEPRANCH BAND OF INDIANS**

22 The Dixie Faction argues that the 2015 Decision "reasonably
23 determined that the Sheep Ranch distribution plan prepared in
24 1966 did not define or limit the Tribal community" in accordance
25 with federal regulations in effect at that time. (Page 18 of
26 Dixie PAs). This contention is without merit, and ignores the
27 plain language of the federal regulations governing distribution
28 of assets of Rancherias in 1966, and case law interpreting those
regulations.

As part of its policy of assimilating Indians into American
society, the United States sought to terminate its federal trust
relationship with several tribes beginning in 1958, including

1 the California Rancherias. Congress later passed 25 C.R. 242
2 which provided for policies and procedures governing
3 distribution of assets of the California Rancherias. As
4 indicated, Mabel Dixie was the only adult Indian from the
5 Sheepranch band living on the 0.92 acre plot of land, and
6 therefore she alone was entitled to receive the assets of the
7 0.92 acre Rancheria (or reservation), even though the Sheepranch
8 band was "unorganized" at the time. 25 C.R. 242.3(a)(3).
9 Because she presumably made a written request for distribution
10 of assets of the 0.92 acre Rancheria, the BIA was required to
11 include her in a final list of distributees to be published in
12 the FEDERAL REGISTER. 25 C.R. 242.12. And because Mabel voted
13 to accept the distribution plan, the BIA gave her the deed to
14 the 0.92 acre Rancheria as a prelude to the final termination of
15 the Sheepranch band of Indians. However, the BIA never
16 published a final notice of termination in accordance with 25
17 C.R. 242.12, and thereafter accepted the land back from Mabel
18 Dixie through a quit claim deed. The result was the Sheepranch
19 band was never formally terminated. (AR-CVMT-2011-002051, 1399,
20 1689).

21 However, had the BIA published notice of termination, the
22 Sheepranch band would have been terminated by virtue of the
23 single act of Mabel Dixie alone, and all members of the
24 Sheepranch band would have lost their status and rights and
25 privileges as Indians, and would have no longer been entitled to
26 receive federal benefits and federal assistance. In other
27 words, by Mabel Dixie's name appearing on the distribution list,
28 all of the members of the Sheepranch band would have lost their
status as Indians, because the Sheepranch band's relationship
with the federal government would have been terminated. To this
end, 25 C.R. 242.4 provided:

1 When the provisions of a plan have been carried out to the
2 satisfaction of the Secretary, he shall publish in the
3 FEDERAL REGISTER a notice declaring that the special
4 relationship of the United States to the Rancheria or
5 reservation and to the distributees and the dependent
6 members of their immediate families is terminated. The
7 notice shall list the names of the distributes and the
8 dependent members of their immediate families who are no
9 longer entitled to any services performed by the United
10 States for Indians because of their status as Indians, the
11 fact that all restrictions and tax exemptions applicable to
12 trust or restricted land or interests therein owned by them
13 are terminated, the fact that all statutes of the United
14 States which affect Indians because of their status as
15 Indians shall be inapplicable to them, and that State laws
16 shall apply to them in the same manner as they apply to
17 other citizens. (Emphasis added)

18 It would be unreasonable, therefore, to have terminated Mabel
19 Dixie's rights as an Indian residing on the Sheepranch 0.92 acre
20 Rancheria, but not other purported members living off of the
21 Rancheria (even assuming that were the case). Thus, termination
22 of the Sheepranch band would have applied to only those who
23 lived on the Rancheria, and only those who lived on the
24 Rancheria would have been considered members of the Sheepranch
25 band. Most importantly, since the Sheepranch band was
26 "unorganized" at the time Mable Dixie voted to accept the
27 distribution plan as a prelude to termination, it had no "list"
28 of "membership" identifying those who belonged to its band. For
example, 25 C.R. 242.2 (j) provided:

"Unorganized Rancheria or reservation" means any tribe,
band, or community of Indians, which does not have an
organic document containing membership criteria approved by
the Secretary.

As a result, only those Indians who actually resided on the
0.92 acre Sheepranch Rancheria were considered members of the
band who were entitled to services, rights and privileges
because of their status as Indians. This is because this

1 particular plot of land was purchased specifically for a small
2 band of 12 or 13 band of Indians, not for Indians generally
3 residing in the area. (CVMT-2011-000001-002). Thus, a
4 preparation of a membership roll at the time Mabel Dixie voted
5 to accept the distribution plan under 25 C.R. 242 was not
6 "impracticable," largely because this particular group was in
7 fact "well defined." Thus, the following language from the
8 Senate Report, cited by the Dixie Faction, has no application to
9 the Sheepranch band of Indians:

9 "Attention is directed to the fact that no provision is
10 made for preparing a membership roll for each Rancheria or
11 reservation. The preparation of such rolls would be
12 impracticable because the groups are not well defined.
13 Moreover, the lands were **for the most part** acquired and set
14 aside by the United States for Indians in California,
15 generally, rather than for a specific group of Indians and
16 the consistent practice has been to select by
17 administrative action the individual Indians who may use
18 the land..." (Emphasis added).

15 See Kelly v. U.S. Dept. of Interior (E.D.Cal. 1972) 339 F.Supp.
16 1095, fn. 8. The key phrase here is "for the most part," which
17 leaves room for an exception to the general rule or practice.
18 As shown, the Sheepranch little band of 12 or 13 Indians
19 specifically targeted by the Indian Agent in 1915 were an
20 exception to this general rule. The land was specifically
21 acquired for them, and them alone, not the other band of Indians
22 in the surrounding community. See also Hardwick v. U.S.
23 (N.D.Cal. 2014) 2014 WL 1006576, page 1 (observing that the 1958
24 Rancheria Act "provided that the lands of forty-one enumerated
25 California Rancherias were to be removed from trust status and
26 distributed to the individual Indians of those Rancherias").

26 In fact, the Dixie Faction concedes that tribes covered
27 under the stipulated judgment in the Tillie Hardwick case
28 "use[d] distribution plans to identify the individuals entitled

1 to participate in the subsequent 'reorganization' of those
2 tribes." (Page 19 of Intervenor PAs, lines 8-11). Thus, had the
3 Sheepranch Rancheria been terminated and subsequently restored
4 under the Tillie Hardwick stipulation/order, only Mabel Dixie or
5 her descendants would have the right to organize the Sheepranch
6 band, because she was the only one listed for the Sheepranch
7 Rancheria that was residing on the property. Moreover, Mabel or
8 her descendants would not have been required to organize under
9 the IRA and be forced to enroll other Indians in the surrounding
10 area, as the BIA improperly attempted to do in this case, and
11 which the AS-IA 2015 decision unlawfully directs. By restoring
12 these previously terminated Rancherias, the Hardwick order
13 defined the individual Indians who were entitled to "reorganize"
14 or "organize" these terminated Rancherias. They were those
15 listed in the distribution plan who either had an allotment,
16 assignment or who actually resided on the property. The fact
17 that the Sheepranch Rancheria was never terminated is
18 irrelevant.

19 The case of Williams v. Gover (9th Cir. 2007) 490 F.3d 785,
20 cited by the Dixie Faction is controlling on this point. There,
21 the Mooretown Rancheria, consisting of two separated 80 acre
22 parcels, was terminated under the Rancheria Act in 1959, after
23 the two families that resided on those parcels voted for
24 termination. The Hardwick stipulated class action judgment
25 restored the Mooretown Rancheria as federally-recognized
26 Rancheria and Indian tribe. 490 F.3d at 788. Consistent with a
27 tribe's right to define its own membership for tribal purposes
28 under Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 56, the
Mooretown Rancheria used the distribution list, their
dependents, and their lineal descendants as a starting point for
determining its Tribal membership roll when it organized a
tribal government in 1987. 490 F.3d at 790. Significantly, the

Mooretown Rancheria did not organize its tribal government under the IRA. *Id.*, fn. 11. Then, in 1998, the Mooretown Rancheria decided to limit Tribal membership to "only those members who are direct *Lineal Descendants* of the four distributes." 490 F.3d at 790. As a result, other Indians living in the surrounding community who were "Concow-Maidu Indians [that] descended from people who had lived at Mooretown Rancheria" got "squeezed out" of full membership. The Court held that the Mooretown Rancheria had the right to define its membership when it organized in 1987 after termination and restoration, without any interference by the BIA, even though its membership decision had the effect of "squeezing out" some of its members who it felt were not direct descendants of the four 1959 distributees. 490 F.3d at 791.

For the same reasons, only Mabel Dixie's descendants, i.e., Yakima Dixie and his brother, Melvin Dixie, alone had the right to define membership and organize the Sheepranch band in 1998, so long as they remained on the Rancheria. Because Melvin had left, Yakima was the only one with that authority, and he properly exercised that authority in 1998 when he enrolled Burley and her family and organized the Tribe. As what occurred with the Mooretown Rancheria in *Gover*, supra, the Sheepranch band was not required to be organized under the IRA. 25 U.S.C. §476(h). Accordingly, the AS-IA's 2015 Decision concluding that the Tribe must be "re-organized" with membership drawn from the Mewuk Indians in the Sheepranch area is erroneous as a matter of law and arbitrary and capricious.

C. THE AS-IA'S 2015 DECISION'S USE OF THE PHRASE "NOT LIMITED" WITH RESPECT TO CVMT MEMBERSHIP IS NOT SUPPORTED IN THE RECORD

The AS-IA's 2015 Decision makes repeated use of the phrase "the Tribe is not limited to five individuals," and that other federal court decisions have purportedly stated the Tribe is

1 "not limited to five individuals." (CVMT-2017-001399). First of
2 all, no federal court decision has ever made such a statement or
3 even held that that is the case. Even the U.S. District Court
4 that remanded to the AS-IA for reconsideration acknowledged this
when it stated:

5 The only issue before the courts *CVMT I* and *CVMT II* was
6 whether the Secretary had the authority to refuse to
7 approve a constitution submitted under IRA §476(h)(1). The
8 courts did not directly address the issues raised here,
9 namely whether the Tribe's membership consists of five
members and whether the General Council is the duly
constituted government of the Tribe...(Emphasis added).

10 CVMT v. Jewell (D.D.C.2013) 5 F.Supp.3d 86, 101, fn. 15.

11 Secondly, the AS-IA's August 2011 Decision which the Dixie
12 Faction had challenged merely concluded that the Tribe
13 "consists" or is presently comprised of five (5) members. It
14 never stated or concluded that it was limited to only five
members. For example it stated:

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

19 (CVMT-2011-002054). The AS-IA's 2015 Decision erroneously
20 creates an issue where none exists, and thus drew an erroneous
21 conclusion without any support in the administrative record.
22 Clearly, the AS-IA's August 2011 Decision concluded that the
23 Tribe had the right to expand its membership beyond the five (5)
24 presently constituted membership, and never concluded that was
to remain or be "limited" to these five individuals.

25 **D. THE AS-IA'S 2015 DECISION ERRONEOUSLY CONCLUDED THAT THE**
26 **1998 RESOLUTION WAS INVALID**

27 As stated in more detail below, the Dixie Faction's
28 challenge of the 1998 Resolution establishing the Tribe's

General Council is barred by the six-year statute of limitations. 28 U.S.C. §2401(a); see Hardwick v. U.S. (N.D.Cal. 2012) 2012 WL 6524600 (Plaintiff's challenge of the legitimacy and validity of the Tribe's governing body was held barred by the six-year statute of limitations). As a result, the AS-IA's 2015 Decision granting the Dixie Faction's challenge of the AS-IA's 2011 decision and concluding that the 1998 Resolution establishing the Tribe's General Council is invalid is erroneous as a matter of law and arbitrary and capricious.

Even if the Dixie Faction's challenge were timely (which it is not), the above-referenced history of the Tribe demonstrates that Yakima Dixie alone had the authority to enroll Burley and her family as members and organize the Tribe when he did in 1998. The Tribe was not organized under the IRA at that time, nor did it need to be. As stated in Cohen's Handbook of Federal Indian Law:

"Today, at least 160 Indian nations have constitutions adopted pursuant to the IRA, more than 75 have established constitutions outside its framework, and still others remain without written constitutions, either because they continue to be governed by customs and traditions, or because their basic laws are in the form of statutes. **No federal law, including the IRA itself, requires tribes to adopt any particular kind of constitution.** The decision whether to have an IRA constitution, or any written constitution at all, is a matter of tribal sovereignty and tribal initiative." (Emphasis added).

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, 2012 ed., §405[3], page 271.

Accordingly, based on recognized Indian law, Dixie could have organized the Tribe orally and outside the IRA framework. As further stated in Cohen's Handbook of Federal Indian Law:

"Tribes may thus adopt constitutions outside the IRA process.

* * *

1 "...Some tribes operate without a written constitution.
 2 **The absence of a written constitution does not affect the**
 3 **self-governing powers of Indian nations under federal law.**"
 (Emphasis added).

4 Id. at §4.04[3][b], page 260.

5 However, even though he chose to organize the Tribe in a written
 6 document, Indian law did not require it to be in any particular
 7 form. Thus, the Dixie Faction's attack of Dixie's own written
 8 constitution as "invalid" lacks merit.

9 Factually, the 1998 Resolution establishing the General
 10 Council was outside the IRA framework. The BIA could not later
 11 force the Tribe to "re-organize" under the IRA, or in any
 12 fashion, as the AS-IA's 2015 Decision dictates. (CVMT-2011-
 13 002054); see Cohen's Handbook on Federal Indian Law, *supra* at
 14 §4.04[3][b], page 260 ("tribes today may revoke their IRA
 constitutions," citing 25 U.S.C. §476(b)).

15 **E. AS-IA WASHBURN'S 2015 DECISION IS ERRONEOUSLY PREDICATED ON**
 16 **A TIME-BARRED CLAIM THAT THE 1998 RESOLUTION ESTABLISHING**
 17 **THE GENERAL COUNCIL WAS INVALID AT THE OUTSET**

18 The issue of whether the validity of the 1998 Resolution
 19 was barred by the statute of limitations was raised before AS-IA
 20 Washburn upon reconsideration of the AS-IA's decision. (Ex.
 "47", RJN "33").

21 Dixie filed a Complaint against the federal government on
 22 January 24, 2011, challenging the AS-IA's December 22, 2010
 23 decision recognizing the General Council established under the
 24 1998 Resolution. After the AS-IA withdrew his December 22, 2010
 25 decision, he issued another decision on August 31, 2011,
 26 reaffirming his December 2010 decision. Dixie then amended his
 27 Complaint on October 17, 2011 challenging the AS-IA's August 31,
 28 2011 decision. (AR-CVMT-2017-000023, 53). Dixie's original
 Complaint included a claim that the 1998 Resolution establishing

1 the Tribal Council was invalid at the outset, even though that
2 was not an issue referred to the AS-IA to decide. In his
3 amended Complaint, Dixie reasserted that claim. (Id. At 000032-
4 33). Specifically, Dixie's attack on the validity of the 1998
5 Resolution was that "the identification of the Burleys as
6 members was incorrect because Yakima Dixie did not have the
7 authority to enroll them into the Tribe without the consent of
8 the Tribe's existing members," which Dixie alleged to be members
9 who were "living in the vicinity of the Sheep Ranch Rancheria in
10 1998" who "were readily identifiable as Tribal members, and were
11 known or should have been known to the BIA." (AR-CVMT-2017-
12 000032). Dixie's claim in his federal action attacking the
13 validity of the 1998 Resolution was, however, time-barred, and
14 the AS-IA's decision based upon that claim was, therefore,
15 erroneous as a matter of law.

16 Actions for judicial review of final agency actions brought
17 under the Administrative Procedure Act are subject to a **six-year**
18 statute of limitations. Wind River Min. Corp. v. U.S. (9th Cir.
19 1991) 946 F.2d 710, 713; 28 U.S.C. § 2401(a). Generally, a
20 claim subject to the six-year statute of limitations period
21 under § 2401(a) first accrues when the plaintiff comes into
22 possession "of the critical facts that he has been hurt and who
23 has inflicted the injury." United States v. Kubrick (1979) 444
24 U.S. 111, 122. Under federal law, a cause of action accrues
25 when the plaintiff is aware of the wrong and can successfully
26 bring a cause of action. Acri v. Int'l Ass'n of Machinists &
27 Aerospace Workers (9th Cir. 1986) 781 F.2d 1393, 1396. Stated
28 another way, "[t]he moment at which a cause of action first
accrues within the meaning of Section 2401(a) is when 'the
person challenging the agency action can institute and maintain
a suit in court.'" Muwekma Ohlone Tribe v. Salazar (D.D.C.

2011) (quoting Spannaus v. U.S. Dep't of Justice (D.C.Cir.1987)
824 F.2d 52, 56).

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

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

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

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

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

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

813 F.Supp.2d at 191.

For the same reasons, the Dixie Faction's claim that the 1998 Resolution was purportedly invalid is barred by the six year statute of limitations, because Dixie knew more than six years before he and his Faction filed suit against the DOI and

1 its agencies on January 24, 2011, that the DOI and the BIA were
2 acknowledging and accepting the General Council established
3 under the 1998 Resolution while he was simultaneously objecting
4 to it. As in the case of Muwekma, *supra*, there were several
5 dates that Dixie could have brought suit against the DOI and the
6 AS-IA for purportedly acknowledging and recognizing the General
7 Council established under the 1998 Resolution which the Dixie
8 Faction claimed in its 2011 suit was invalid at the outset.

These dates are as follows:

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

12 Here, the August 2011 Decision fails to address *whatsoever*
13 the numerous factual allegations in the administrative
14 record that raises significant doubts about the legitimacy
15 of the General Council. **From as early as April 1999,**
16 **Yakima [Dixie] contested the validity of the Council.** See
17 AR 000182 (April 21, 1999 letter from Yakima to the BIA
18 stating that he "cannot and will not resign as chairman of
the Sheep Ranch Indian Rancheria"); see also, AR 000205
(October 10, 1999 letter from Yakima to BIA raising
questions about Burley's authority); AR 001690, 000231
(Yakima notifying the BIA of "fraud and misconduct" with
respect to the Tribe's leadership). (Emphasis added).

19 California Valley Miwok Tribe v. Jewell (D.D.C.2013) 5 F.Supp.3d
20 86, 100.

21 (2) On February 4, 2000, the BIA wrote to Dixie in
22 response to his allegations of "fraud or misconduct" concerning
23 the change in Tribal leadership that Dixie claims occurred in
24 April and May of 1999. The BIA letter memorialized a meeting
25 between BIA personnel and Dixie that occurred in December 1999.
26 The letter recounts that Dixie presented the BIA with his own
27 "constitution" for governing the Tribe that was purportedly
28 adopted by Dixie and his Faction on December 11, 1999. The BIA
returned the document to Dixie in its letter and stated that:

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

3 (AR-CVMT-2011-000241, 245). In short, the BIA unequivocally
4 informed Dixie that it was recognizing the General Council
5 established under the 1998 Resolution, and not the Dixie
6 Faction's Tribal Council, despite Dixie's claim of fraud in
7 connection with its formation.

8 (3) On March 7, 2000, the BIA wrote Silvia Burley, as the
9 Chairperson of the Tribe, and summarized discussions its
10 personnel had with Dixie on February 4, 2000. The letter
11 recounts that Dixie was challenging his enrollment of Burley and
12 her family into the Tribe. (Ex. "5," BIA letter to Burley dated
13 March 7, 2000, page 2). His argument was obviously that if he
14 never intended to enroll them as Tribal members, then the
15 General Council established under the 1998 Resolution was
16 invalid at the outset. The BIA indicated that it rejected
17 Dixie's claims and requested he submit his grievances to the
18 Tribe's General Council, thus reaffirming the BIA's recognition
19 of the General Council established under the 1998 Resolution.
20 The letter stated:

21 **"We also reiterated [to Dixie] our view, notwithstanding a**
22 **Tribal decision to the contrary, that the appropriate**
23 **Tribal forum is the General Council [established under the**
24 **1998 Resolution].** At present, we view, again
25 notwithstanding a Tribal decision to the contrary, the
26 General Council as comprised of Yakima Dixie, Rashel
27 Reznor, and you [Burley]..." (Emphasis added).
28

(AR-CVMT-2011-000249-250).

(4) On July 18, 2001, Dixie filed suit in the U.S.
District Court, Eastern District of California, alleging fraud
against Burley in connection with the formation of the General
Council established under the 1998 Resolution. Dixie alleged
that the Tribe was "small," and that he, his brother Melvin and

1 his son "Rocky" were the only members of the Tribe by virtue of
2 being "lineal descendants of the Sheep Ranch Miwok Tribe." (Ex.
3 "6," Complaint, "Sheep Ranch Miwok Tribe v. Burley, et al.,"
4 Case No. CIV.S-01-1389 MLS-DAD, pp. 14, 27, 30-31, filed July
5 18, 2001, RJN "3"). He alleged that his enrollment of Burley
6 and her family was conditioned on them "following his
7 leadership." Id. He alleged that Burley and her family by fraud
8 voted her to become the Tribal Chairperson and that they never
9 intended to follow his leadership. Id. He alleged that had he
10 known of Burley's true intentions, he would have never accepted
11 her and her family as members. Id.

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

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

20 (Ex. "23," Order, January 24, 2002, No. CIV. S-01-1389 LKK/DAD,
21 page 3, lines 12-16, AR-CVMT-2011-000278, 280). Dixie never
22 appealed this order of dismissal. The BIA letter of July 12,
23 2000, which was attached to the motion to dismiss, and which
24 Dixie obviously got a copy of during the briefing of the motion,
25 explicitly states:

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

1. Silvia F. Burley, Chairperson
2. Vacant, Vice-Chairperson
3. Rashel 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."

1 (Ex. "7," BIA letter of July 12, 2000, to Burley, AR-CVMT-2011-
2 000257). As stated, Dixie got a copy of this letter during the
3 briefing of the motion to dismiss, and was therefore put on
4 notice of the BIA's position with respect to the validity of the
5 General Council established under the 1998 Resolution, at least
6 as far back as January 24, 2000, the date of the order.

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

13 "In this appeal, I Yakima K. Dixie, as Appellant, am
14 contesting the administrative action (without my knowledge
15 and consent) by agents of the Bureau of Indian Affairs, in
16 which Silvia Burley fraudulently came to be the recognized
17 authority for and Chairperson of my ancestral tribe, of
18 which I am the hereditary Chief and rightful Chairperson by
19 lineal descent. As explained herein, I was tricked by
20 Silvia Burley and others; and I, the Appellant, am
21 requesting the nullification of both her appointment as
22 Chairperson and the nullification of her original adoption
23 and the adoption of her daughter and two grand-daughters
24 into my tribe, which, again, I allege was fraudulent..."
25 (Emphasis added as to "hereditary" only; other emphasis in
26 the original).

27 (Ex. "8," Dixie Notice of Appeal, dated October 30, 2003, page
28 1, RJN "4"). Here, Dixie is claiming to have hereditary rights
and powers as the "hereditary chief" of the Tribe,
notwithstanding the 1998 Resolution, which specifically
provides:

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

(Ex. "9," Resolution #GC-98-01, "Establishing a General Council to Serve as the Governing Body of the Sheep Ranch Band of Me-Wuk Indians," dated November 5, 1998, page 1, AR-CVMT-2011-000177). Accordingly, Dixie's 2003 Notice of Appeal is clear evidence that he was attempting to challenge the validity of the General Council established under the 1998 Resolution, and thus was aware of the existence of such a claim more than six years from the time he filed his Complaint against the AS-IA on January 24, 2011.

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

"I am writing in response to your appeal filed with the office of the Assistant Secretary-Indian Affairs on October 30, 2003...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.

* * *

"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

1 after the court's January 24, 2002, order, your appeal
before me is time barred." (Emphasis added).

2 (Ex. "10," BIA letter to Dixie, dated February 11, 2005, pages
3 1-2, AR-CVMT-2011-000610). As the BIA explained to Dixie in
4 this letter of February 11, 2005, Dixie could have challenged
5 the BIA's recognition of the General Council established under
6 the 1998 Resolution as far back as 1999, by first exhausting his
7 administrative remedies and then filing suit in the U.S.
8 District Court. The District Court nevertheless gave Dixie
9 another chance and allowed him to proceed with his claims after
10 exhausting his administrative remedies, but he never followed
11 through with that requirement. In the same way he was time-
12 barred in February 2002, he was also time-barred under the six-
13 year statute of limitations when he attempted to challenge the
14 validity of the General Council established under the 1998
Resolution in his January 24, 2011 suit in federal court.

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

19 **"RESOLVED,** That Yakima Dixie, Silvia Fawn Burley, and
20 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..."

21 (Ex. "9," Resolution #GC-98-01, "Establishing a General Council
22 to Serve as the Governing Body of the Sheep Ranch Band of Me-Wuk
23 Indians," dated November 5, 1998, page 2, AR-CVMT-2011-000178).
24 Without these adopted members, there could be no General
25 Council, and the Tribe would not have been organized with a
26 General Council governing body.

27 (6) On May 5, 2004, Yakima Dixie executed a "Will &
28 Testament." In this document, Dixie reiterates he is the "Chief

1 and rightful authority of the Sheep Ranch Rancheria of MiWok
2 Indians of California a.k.a. California Valley Miwok Tribe,"
3 because of his "hereditary and lineal descent." (Ex. "11,"
4 Yakima Dixie Will & Testament, May 5, 2004, page 1). The
5 document also references the establishment of a Tribal Council,
6 separate and apart from the "General Council" established under
7 the 1998 Resolution, and states:

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

11 (Ex. "11," Yakima Dixie Will & Testament, May 5, 2004, page 2,
12 RJN "5", AR-CVMT-2017-000957). The document then lists ten (10)
13 persons as the only members of the Tribe, but does not name
14 Burley and her three family members Dixie adopted into the Tribe
15 in 1998. (He was also contradicting his claims that the Tribe
16 consists of more than 200 members). Thus, at the time of the
17 execution of his Last Will & Testament, dated May 5, 2004, Dixie
18 was denying the validity of the General Council established
19 under the 1998 Resolution. Together with his October 30, 2003
20 letter to the DOI and previous letters to the BIA objecting to
21 the BIA's recognition of Burley as Chairperson of the Tribe and
22 the BIA's recognition of Burley and her family as adopted
23 members of the Tribe, Dixie therefore knew he had a claim
24 against the federal government for recognizing the Tribe's
25 General Council that was purportedly invalid at the outset, more
26 than six years from the date he filed suit on January 24, 2011.

27 (7) Notice that the Tribe had changed its name to the
28 California Valley Miwok Tribe was published in the July 12, 2002
Federal Register. (See Ex. "12," copy of 2002 Federal Register
and Ex. "13," June 7, 2001, letter from BIA to Burley accepting
new name for publication, RJN "7"). The placement of the new
name of the Tribe was an act of recognition by the DOI of the

1 validity of the General Council established under the 1998
2 Resolution, after the General Council passed a resolution to
3 change the name of the Tribe and submitted it to the BIA for
4 approval. As the DOI stated in a letter to Silvia Burley on
5 June 7, 2001:

6 "The *Sheep Ranch Rancheria* (Tribe) is a small tribe
7 that does not have a tribal constitution. The tribe has a
8 tribal council and conducts tribal business through
9 resolution. A tribal resolution, such a resolution No. R-
10 1-5-07-201, enacted by the Tribal council on May 7, 2001,
11 is sufficient to effect the tribal name change. The
12 Tribe's new name has been included on the Tribal Entities
13 list that will be published in the FEDERAL REGISTER later
14 this year."

15 (Ex. "13," Letter from Sharon Blackwell at BIA to Burley, dated
16 June 7, 2001, RJN "7").

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

22 "[S]tatute of limitations are to be applied against the
23 claims of Indian tribes in the same manner as against any other
24 litigant seeking legal redress or relief from the government."
25 Hopland Band of Pomo Indians v. United States (Fed.Cir.1988) 855
26 F.2d 1573, 1576; Sissten-Wahpeton Sioux Tribe v. United States
27 (9th Cir. 1990) 895 F.2d 588, 592 ("Indian Tribes are not exempt
28 from statute of limitations governing actions against the United
States"). Also, [a]ctual knowledge of government action...is
not required for a statutory period to commence." Shiny Rock
Mining Corp. v. United States (9th Cir. 1990) 906 F.2d 1362,
1364. Instead, "[p]ublication in the Federal Register is
legally sufficient notice to all interested or affected persons
regardless of actual knowledge or hardship resulting from

1 ignorance." Id. Accordingly, the notice published in the
2 Federal Register on July 12, 2002, was adequate to apprise Dixie
3 and his followers that the federal government was acknowledging
4 the validity of the General Council established under the 1998
5 Resolution. Thus, based on the Federal Register publication
6 alone, a timely action challenging the validity of the 1998
7 Resolution establishing the General Council should have been
8 filed before July 12, 2008, six years after the 2002 FEDERAL
REGISTER publication.

9 **F. THE U.S. DISTRICT COURT IMPROPERLY DIRECTED THAT THE AS-IA
10 RECONSIDER HIS 2015 DECISION BASED ON A TIME-BARRED CLAIM**

11 As indicated, the Burley Faction, as an Intervenor-
12 Defendant in Dixie's federal suit challenging the August 2011
13 AS-IA's decision, was unable to appeal the U.S. District Court's
14 order granting summary judgment in favor of the Dixie Faction,
15 because the Federal Defendants chose not to appeal and the
16 remand order was not final. As a result, the AS-IA reconsidered
17 its August 2011 decision based on erroneous remand instructions
18 that included an order that the AS-IA address the issue of
19 whether the General Council as established under the 1998
20 Resolution was valid at the outset, as pled in the Dixie
Faction's complaint.

21 The U.S. District Court stated:

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

26 The Court finds that the August 2011 Decision is
27 unreasonable in light of the facts contained in the
28 administrative record...Before invoking the principle of
tribal self-governance, it was incumbent on [the Assistant

1 Secretary] to first determine whether a duly constituted
2 government actually exists...

3 Here, the August 2011 Decision fails to address *whatsoever*
4 the numerous factual allegations in the administrative
5 record that raise significant doubts about the legitimacy
6 of the General Council. From as early as April 1999,
7 Yakima contested the validity of the Council...

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

10 California Valley Miwok Tribe v. Jewell (2013) 5 F.Supp.3d 86,
11 99-101.

12 However, as stated, the issue of whether the General
13 Council was invalid at the outset was barred by the six-year
14 statute of limitations.

15 **G. PLAINTIFFS PRESERVED THE STATUTE OF LIMITATIONS ISSUE**
16 **BEFORE THE U.S DISTRICT COURT IN DIXIE'S FEDERAL ACTION**

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

25 "...Claims which arise under the APA are subject to the
26 statute of limitations governed by 28 U.S.C. §2401(a),
27 which bars civil actions against the United States that are
28 not filed within six years after the right of action first
accrues...

* * *

29 "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'...Neither the Non-Members...nor

1 Mr. Dixie ever challenged the 1998 Final Agency Action.
2 Nor did Plaintiffs challenge subsequent BIA final agency
3 actions issued on February 2000 and March 2000, which
4 reaffirmed the authority of the Tribe's governing body,
pursuant to Resolution #GC-98-01, and its five federally
recognized members...."

5 (Ex. "14," PAs in Support of Intervenor-Defendant's Motion to
6 Dismiss, filed 3/26/2012, pages 18-19, RJN "8").

7 The U.S. District Court's Order denying the motion to
8 dismiss on these grounds was factually and legally erroneous.
9 It stated:

10 It is true that in February 2000, the Secretary accepted
11 the "General Council...as the governing body of the Tribe,"
12 A.R. at 236, and the Dixie Faction could have challenged
13 his determination then. Any such challenge would have been
14 mooted, however, by the Secretary's reversal in February
15 2005, when he held "the [Bureau] does not recognize any
16 tribal government." Non-Recognition 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.

17 (Ex. "15," Memorandum Opinion Denying Motion to Dismiss,
18 9/06/2013, pages 13-14, AR-CVMT-2017-000762, 774-775). This
19 conclusion is erroneous. First of all, the February 11, 2005
20 letter relied upon by the Court states that because the Tribe
21 was at that time not "organized" under the IRA, the BIA did not
22 recognize its governing body, but it did "recognize" Silvia
23 Burley as a "person of authority within the California Miwok
24 Tribe." The letter further stated that the BIA would not
25 recognize either Burley or Dixie as "Chairman" of the Tribe,
26 until the Tribe organized itself under the Indian Reorganization
27 Act of 1934 ("IRA"). The BIA was clearly trying to get the
28 Tribe to "re-organize" itself under the IRA, but was continuing
to recognize Burley as a person with authority with whom the BIA

1 was at that time conducting government-to-government relations.

2 The letter never stated that the BIA considered the General
3 Council established under the 1998 Resolution to be invalid.

4 Indeed, recognizing Burley as a person of "authority" within the
5 Tribe would seem to contradict that notion, since her authority
6 was derived from the General Council. Thus, the statute of
7 limitations issue was not mooted by the BIA's February 2005
8 letter.

9 Secondly, the February 11, 2005 letter did not address the
10 issue of whether the General Council was invalid or not
11 recognized, but simply made passing reference to a letter from
12 the BIA dated March 26, 2004 that indicated the Tribe was not
13 organized, and, because of that, the BIA stated in its February
14 11, 2005 letter that it therefore could not "defer to any tribal
15 dispute resolution process at [that] time" with respect to the
16 BIA's recognition of Burley as the Tribal Chairperson and the
17 admission of Burley's family as Tribal members.

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

24 "Under the IRA, as amended, it is impermissible for the
25 Federal government to treat tribes not 'organized' under
26 the IRA differently from those 'organized' under the IRA
27 (25 U.S.C. §§ 476(f)-(h))."

28 (Ex. "16," AS-IA's August 31, 2011 Decision, page 2, AR-CVMT-
2011-002050). Up to that point, the DOI was requiring the Miwok
Tribe to "reorganize" itself under the IRA in order for it to be
eligible to receive federal benefits. The 2011 Decision further
stated:

"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 them. Either would be a clear violation of 25 U.S.C. § 476(f)."

(Id. At 2054). This different (180 degree) policy direction was that the BIA should no longer require the Tribe to re-organize its governing body under the IRA, in order to be eligible to receive federal benefits, including P.L. 638 federal contract funding. The "policy" was not whether the General Council was to be recognized as a valid governing body or whether it was invalid at the outset, as the Court was suggesting.

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

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

The issue of improper referral was also raised before Washburn on reconsideration. (Ex. "47", RJN "33").

The issue the Interior Board of Indian Appeals ("IBIA") referred to the AS-IA for resolution was limited to an "enrollment dispute," i.e., whether the BIA could force the Tribe to organize under the IRA and convene a "general council" meeting without the Tribe's consent and have non-members in the surrounding community participate in that "re-organization." Ex. "17," California Valley Miwok Tribe v. Pacific Director, BIA (01/28/2010) 51 IBIA 103, 120. (AR-CVMT-2011-001701). As

1 stated, the BIA was forcing this issue, not because it felt the
2 General Council was invalid at the outset, but rather because it
3 felt the Tribe could not qualify for federal benefits without
4 being re-organized under the IRA. The IBIA did not refer any
5 issue concerning the validity of the General Council. It
6 referred this "enrollment" dispute to the AS-IA because the IBIA
lacked jurisdiction to decide that issue. It stated:

7 "...In this appeal, Burley contends that BIA exceeded
8 its authority in determining who would constitute the
9 'greater tribal community,' or class of 'putative members,'
10 and in deciding that they could participate as part of a
11 'general council' meeting of the Tribe, to decide
12 membership and organizational issues.

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

29 "Understood in the context of the history of this
30 Tribe, and BIA's dealings with the Tribe since
31 approximately 1999, **this case is properly characterized as**
32 **an enrollment dispute...** Because the Board lacks
33 jurisdiction to adjudicate tribal enrollment disputes, we
34 dismiss this claim and refer it to the Assistant
35 Secretary." (Emphasis added).

36 51 IBIA at 120-121, AR-CVMT-2011-001701-1702.

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

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

18 **I. THE 2015 DECISION ERRONEOUSLY CONCLUDED THAT THE 1998**
 19 **GENERAL COUNCIL WAS ESTABLISHED MERELY TO "MANAGE THE**
 20 **PROCESS "OR REORGANIZING THE TRIBE"**

21 In his 2015 Decision, the AS-IA concluded that the 1998
 22 Resolution establishing the General Council was enacted merely
 23 to "manage the process of re-organizing the Tribe." (2015
 24 Decision, page 5, AR-CVMT-2017-001401). The AS-IA used this
 25 erroneous statement to justify its further determination that
 26 the Tribe was required to re-organize under the IRA with the
 27 participation of non-members ("putative members") in the
 28 surrounding community, all in opposition to the determinations
 made by the previous AS-IA in his August 2011 Decision. In
 truth and fact, nowhere in the 1998 Resolution is there any
 mention that it was established to "manage the process of re-
 organizing the Tribe."

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

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

11 (Ex. "9," Resolution #GC-98-01, page 1, AR-CVMT-2011-000177).
12 If, pursuant to 25 U.S.C. § 476(h), the Tribe is not required to
13 "organize" under the IRA, and the Tribe decides not to pursue
14 that option, then the General Council remains as the governing
15 body of the Tribe. As stated in the 1998 Resolution:

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

22 (Ex. "9," Resolution #GC-98-01, AR-CVMT-2011-000179).

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

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

5 The 2015 Decision states that "[a]ll of the Federal court
6 decisions examining the CVMT dispute make clear that the Tribe
7 is not limited to five individuals." (Page 3 of AS-IA December
8 30, 2015 Decision, AR-CVMT-2017-001399). This is inaccurate.

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

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

26 5 F.Supp.3d at 101, fn. 15. The U.S District Court remanding
27 the 2011 Decision for reconsideration merely criticized the AS-
28 IA for simply assuming that the Tribe consists of five members,
but made no ruling or holding itself that it was. 5 F.Supp.3d
at 99 ("...rather than simply assume that the Tribe consists of
five members, the Assistant Secretary was required to first
determine whether the membership had been properly limited to
these five individuals"). Thus, no Court has ever held that the
Tribe includes more than five members.

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

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

12 (Ex. "19," AS-IA's December 30, 2015 Decision, page 4, AR-CVMT-
13 2017-001400). There has never been an occasion where the BIA
14 has determined that the membership lists of unorganized
15 California Rancherias should be culled from "potential
16 residents," and neither the AS-IA nor the Dixie Faction can
17 provide evidence of such instances.

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

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

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

K. THE "ELIGIBLE GROUP SYSTEM" IMPROPERLY FORCES THE TRIBE TO "RE-ORGANIZE"

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

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

1 "dwindling tribe." (Ex. "19," AS-IA's December 30, 2015
2 Decision, page 4, fn. 20, AR-CVMT-2017-001400). Inexplicably,
3 the 2015 Decision rejects the 1998 Resolution establishing the
4 General Council on the purported ground that "the people who
5 approved the 1998 Resolution...are not the majority of those
6 eligible to take part in the reorganization of the Tribe." (Id.
7 at page 5). The 2015 decision then erroneously creates an
8 "Eligible group" system to facilitate the reorganization of the
9 Tribe that includes a larger pool of eligible people based not
10 upon membership, but based upon descent, contrary to well
11 established Indian law.

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

18 **L. THE DIXIE FACTION IS ESTOPPED FROM CHALLENGING THE 1998**
19 **RESOLUTION**

20 The record is clear that Dixie participated in the drafting
21 and approval of the 1998 Resolution establishing the General
22 Council. He now claims the whereabouts of his brother, Melvin
23 Dixie, were known at the time of the 1998 Resolution, even
24 though he represented to the BIA and to Burley and others that
25 his whereabouts were unknown. To now contend that the 1998
26 Resolution is now defective or invalid because Dixie in fact
27 knew where he could be contacted, but that he may have simply
28 lied about it, runs contrary to the principles of equity.

As stated in Menominee Indian Tribe of Wisconsin v.
Thompson (W.D.Wis.1996) 943 F.Supp 999, "it is inaccurate to say
that equitable defenses can never apply to Indian tribes." 943
F.Supp at 1021(the court also stating that it is aware of no

cases holding that collateral estoppel or res judicata can never apply to an Indian tribe). The doctrine of equitable estoppel provides that "whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing is true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." Cal. Evid. Code §623; Wilk v. Vencill (1947) 30 Cal.2d 104, 107. California equitable estoppel is thus similar to and not inconsistent with federal common law. Lukovsky v. City and County of San Francisco (9th Cir. 2008) 535 F.3d 1044, 1052.

Accordingly, Dixie is equitably estopped from attacking the validity of the 1998 Resolution establishing the General Council on the grounds that his brother, Melvin did not sign the resolution and could have been contacted, because he expressly misled the BIA and Burley into believing that the whereabouts of Melvin were unknown at the time the parties executed and passed the resolution.

M. AS-IA ECHO HAWK'S SHOULD BE REINSTATED AND ADOPTED AS THE MOST LEGALLY CORRECT DECISION ON THE TRIBE'S GOVERNING BODY AND MEMBERSHIP

The AS-IA's August 2011 Decision is clearly a correct statement of Indian law and should be re-instated as the final agency action resolving the dispute between the two factions.

N. EVERONE AND THE DIXIE FACTION HAVE COMMITTED FRAUD UPON THE COURT AND THE BIA BY FALSELY CREATING A TRIBAL LEADERSHIP DISPUTE TO JUSTIFY RE-ORGANIZING THE TRIBE

As stated, Everone conspired with Dixie to concoct a Tribal leadership dispute, so that the BIA would question the governing body of the Tribe and, at the urging of the Everone and Dixie, reorganize the Tribe's governing body. The sole purpose of these actions was to "hijack" or take over control of the Tribe

1 from Burley, so that Everone and his non-Indian investors can
2 build a gambling casino and enrich themselves at the expense of
3 the Tribe. These issues were raised before AS-IA Washburn when
4 the 2011 AS-IA decision was remanded for him to reconsider. (AR-
5 CVMT-2017-000954 [Memo 1/17/2014: Origination of the CVMT
6 Dispute]; Letter to Washburn 6/6/2014 from Corrales, RJN "32"
7 Ex. "46").

8 Everone sowed confusion with the BIA and the DOI which he
9 used to implement his casino plans and build a casino.

10 In 1999, two non-Indian California developers named Bill
11 Martin ("Martin" and Leroi Chapelle ("Chapelle") read a
12 newspaper article about Yakima Dixie and the Tribe's plight.
13 (AR-CVMT-2017-000955). The Governor had just signed various
14 state-Compacts allowing various federally-recognized tribes to
15 own and operate gambling casino in California. Since the Tribe
16 was federally-recognized and had very few members, it was an
17 easy target to use for this venture. Shortly after reading the
18 newspaper article, Martin and Chapelle quickly headed up to
19 Calaveras County, California, to sign up Dixie to represent him
20 in developing an Indian casino. Thinking they could profit from
21 Dixie's situation, they contacted Dixie and entered into an
22 agreement with him to build a tribal gambling casino.
23 Unfortunately, Dixie had already resigned as Chairperson of the
24 Tribe, and Burley was the current Chairperson. Martin and
25 Chapelle then contacted Everone who agreed to take over and help
26 formulate a plan. (AR-CVMT-2017-000956).

27 Everone then took over control of Dixie's affairs, and made
28 himself Dixie's and the Dixie Faction's Tribal "Deputy & Consul
General". (AR-CVMT-2017-000956). Everone is white and is not an
Indian, and is not a member of any Indian tribe. As the Dixie
Faction's "Deputy and Consul General," Everone is the managing
agent and "officer" of that organization. Everone manages all

1 loaned money for this scheme through an entity called "Friends
2 of Yakima." (Id.). He also managed and directed Dixie's
3 litigation in the state and federal cases and manages the
4 "Tribal Organization," known as the "Dixie Faction."

5 Everone himself admits he "controls" Dixie. For example,
6 he stated:

7 "They [Chadd Everone and Bill Martin] asked for investment
8 monies and provided me with a prospectus without asking how
9 much I could give. They said my return would be by
10 November 2006. I then asked them why would I give monies
11 to Yakima who can't stay out of jail, and how is he going
12 to run an Indian Casino? Both laughed and **Everone stated**
13 **he controlled Yakima and the casino venture** and told me not
14 to worry about that..." (Emphasis added)

15 (August 31, 2006 Email quoting Everone in meeting).

16 Thus, in light of Dixie's instability, serious criminal history,
17 including murder and alcohol problems, Everone was easily able
18 to manipulate and control Dixie, and use him for his own
19 personal, financial benefit. (Id.).

20 When he met Dixie in late 1999, one of the first things
21 Everone did was to tackle the problem of Burley being the
22 Chairperson of the Tribe as a result of Dixie's resignation.
23 (Id.). He told someone he thought was a potential investor
24 that he "went to work using the UC Berkeley Law Library to study
25 up on Indian Law to begin his quest for removing Burley as
26 Chairperson of the Tribe." For his scheme to take over control
27 of the Miwok Tribe to work, however, he needed Dixie to be the
28 Chairperson, not Burley. His plan was simply to fabricate a
forgery claim with respect to Dixie's letter of resignation.

The fact that the issue of forgery relative to Dixie's
resignation letter was never raised until after the Everone team
became involved strongly suggests that it was, and continues to
be, a sham claim as part of Everone's scheme to take over the
Tribe for his own financial purposes. Indeed, Everone admitted

as much, when he was interviewed by someone he thought was a potential investor. He is reported to have said the following:

"Only after signing up Yakima did Chapelle (later) find out (from the BIA) that the Tribe was under the control of Silvia Burley. That was when Martin enlisted the help of Everone who came up with a plan to take the tribe out of Silvia's control by saying Yakima only gave up [the] 'spokesperson' role to Silvia and not the Chair."
(Emphasis added).

(Email from C. Ray, dated August 31, 2006, AR-CVMT-2017-000955).
Dixie's ultimate admission in his deposition on February 7, 2012 that he in fact resigned, and that his signature on his resignation was not forged after all, only further supports the view that Everone in fact concocted this false claim to the detriment of the Tribe, and conspired with Dixie to assert it in the litigation and thwart the Tribe's efforts to govern under the General Council.

Moreover, Dixie's false claim that his resignation letter is a forgery is contradicted by several other documents he admits signing thereafter. For example, after resigning, Dixie admits signing another Tribal document appointing Burley as the new Chairperson. Then, ten (10) days after resigning, Dixie signs a document for the development of a casino with the Tribe. However, he signs as "Tribal Member" under the signature of Silvia Burley who signed as "Chairperson" of the Tribe. On July 7, 1999, Dixie wrote the BIA, through his attorney who had a power of attorney, and referred to himself as the "Vice President" of the Tribe, not the Chairman (RJN "33"). Later, on July 23, 1999, Dixie signed an Addendum to the Development Agreement. He again signed as "Tribal Member," not as Tribal Chairperson, under the signature of Burley who signed as "Chairperson" of the Tribe. (RJN "33"). Dixie obviously signed these documents before he met with Bill Martin and Everone who

1 most likely convinced Dixie that he could develop a casino
2 without Burley. It is also clear that he knew that Burley was
3 signing as the Chairperson of the Tribe, since that her
4 signature block appears directly above his, yet he signed these
5 documents as a mere Tribal member, not as the Tribe's Chairman.
6 The false notion that Dixie never resigned and that his
7 resignation was forged were then concocted by Everone and Dixie,
8 and that has been their "story," though false, up until February
9 2012, when Dixie ultimately recanted his story under oath at his
10 deposition.

11 Thus, by the time Everone and his group came up with the
12 false notion that Dixie's "resignation letter" could be claimed
13 as a purported forgery in late 1999, Dixie had already confirmed
14 Burley's right to be Tribal Chairperson by signing multiple
15 documents to that effect from April 10, 1999 through the end of
16 July 1999.

17 This forgery claim was carried over into the recent state
18 court actions and against the California Gambling Control
19 Commission by Dixie's litigation team controlled by Everone. In
20 addition to the forgery claim being alleged in the Complaint in
21 Intervention in the recent action against the Commission, Dixie
22 submitted a false declaration in support of the motion to
23 intervene, stating that his resignation letter from the Tribe
24 was a purported "forgery."

25 **1. Dixie's Last Will and Testament.**

26 In an obvious attempt to protect his financial interests,
27 in the event Dixie should die, Everone and his team arranged to
28 have Dixie sign a "Will and Testament", wherein Dixie confirms
his agreements with the Everone group to allow them to build a
casino, in the event their scheme succeeds in stealing the Tribe
away from Burley, after he dies. (AR-CVMT-2017-000957).

1 **2. Everone's team sought to influence the Commission to**
2 **"freeze" the Tribe's RSTF money.**

3 As part of his plan, Everone contacted and hired Arlo
4 Smith, a former California Gambling Control Commissioner, and
5 Pete Melnicoe, a former Chief Counsel for the Commission. (AR-
6 CVMT-2017-000961). His plan was to get the Commission to stop
7 paying Revenue Sharing Trust Fund ("RSTF") money to the Tribe
8 under Burley's leadership, and to have the money paid to Dixie
9 instead. (AR-CVMT-2017-000961). RSTF money are licensing
10 payments made by Compact tribes which are shared with Non-
11 Compact tribes. The Miwok Tribe is a non-Compact Tribe entitled
12 to receive \$1.1 million per year from the Commission. Those
13 payments have been suspended since 2005 because of the current
14 Tribal leadership dispute. Everone is planning on using the
15 Tribe's RSTF money "as security" to convince other non-Indians
16 to invest in his scheme to take the Tribe away from Burley and
17 place it under Everone's control with Dixie as the "puppet"
18 Tribal Chairman. (Id.).

19 To this end, Everone wrote an Email boasting that his hired
20 team was successful in "influencing" the then Chief Counsel for
21 the Commission, Cyrus Rickards, to stop RSTF payments to the
22 Tribe, beginning in 2005. He stated:

23 "I have hired Peter Melnicoe and Arlo Smith (the former
24 Chief Counsel and the former Commissioner of that agency,
25 respectively); and they were instrumental in getting the
26 money frozen." (Emphasis added).

27 (AR-CVMT-2017-000961, September 11, 2006 Email from Everone).

28 **3. Everone is soliciting "investment money" for the**
 building of a casino, and is offering the Tribe's
 RSTF money as security.

 In connection with his strategy to solicit investment money
 from non-Indians to finance his scheme, Everone prepared a

1 "Bridge-loan Agreement & Prospectus" in 2004, which states in
2 pertinent part as follows:

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

9 "A sum, not to exceed \$250,000.00 is being sought, in the
10 form of Bridge Loans, to pay for the expenses that are
11 necessary to regain control of the tribe to Yakima, to
12 reorganize the tribe, and to negotiate the location and
13 financial backing for a casino..."

14 (AR-CVMT-2017-000957, Bridge Loan document, dated February 26,
15 2004). In addition, the prospective investors were promised a
16 "bonus interest" which would be paid to them "from gambling
17 revenue to the tribe...for a period of 5 years after the casino
18 is created." The prospectus then adds that Burley is still the
19 target, stating:

20 "This \$1.2 million royalty [RSTF money on deposit in 2004]
21 presently goes to the tribe but is under the control of the
22 Chairperson whose appointment we are attempting to nullify
23 in administrative appeal and litigation." (Emphasis
24 added).

25 (AR-CVMT-2017-000957, Bridge Loan prospectus). Thus, Everone
26 and his group of investors are not concerned at all about
27 membership or the welfare of other potential Tribal members.
28 They are only concerned about "nullifying" Burley as
Chairperson, and stealing the Tribe, so that they can build a
casino for their own financial gain. Dixie is just a tool for
their plans.

In fact, the Dixie faction's claims that the Tribe consists
of over 200 adults and their children is contradicted by
statements made in Yakima Dixie's "Bridge-loan Agreement and

Prospectus" under his letterhead purportedly on behalf of the Tribe, which states:

"'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 establish a Class III gambling facility..." (Emphasis added).

(Yakima Dixie "Bridge-loan Agreement & Prospectus, 2/26/2004, RJN "33"). The sign "<" means "less than." Thus, Dixie's statement here is that the Tribe consists of "less than 10 members," not "over 200 adults and their children" as falsely stated by him to the AS-IA and the courts.

Everone has made it clear that any outcome of the litigation favorable to Dixie means ultimate control of the Tribe for his group of investors, not any potential members of the Tribe. Getting control of the Tribe means, to Everone, control for him. For example, in 2006, he wrote in an Email the following:

"[Burley's] last two court maneuvers were dismissed; and the BIA is moving forward with its determination on the authority for the tribe, which almost certainly **will give control to Yakima's faction, and that means to us.**" (Emphasis added).

(AR-CVMT-2017-000958, Everone Email dated September 29, 2006). In short, it is not about control of the Tribe for Dixie, but control of the Tribe for Everone and his investors bent on stealing the Tribe so they can build a casino. Finally, Everone puts it all in context, when he stated:

"There are few opportunities to 'make a financial killing' and this, I sincerely believe, is one of them." (Emphasis added).

(AR-CVMT-2017-000958, Everone Email dated September 29, 2006).

O. DIXIE'S FALSE ASSERTION THAT HIS RESIGNATION WAS FORGED AND THAT HE NEVER RESIGNED IS HIGHLY RELEVANT

1 The Dixie Faction argues that the issue of whether Dixie
2 resigned as Tribal Chairman is irrelevant, because the 1998
3 Resolution establishing the General Council is purportedly
4 invalid. This contention is without merit and misses the point
5 of Dixie's false and fraudulent claims that his resignation was
6 forged and that he never resigned.

7 This issue was tendered to AS-IA Washburn after the U.S.
8 District Court remanded the previous 2011 Decision for
9 reconsideration. (CVMT-2017-001044-1046; CVMT-2017-001028-1029).

10 Dixie's 2012 deposition testimony admitting that he did in
11 fact resign as Tribal Chairman in 1999 and that his claim of his
12 resignation being forged was never true, is highly relevant.
13 First of all, it explains the fraud perpetrated by Dixie and
14 Chadd Everone in fabricating a Tribal leadership dispute in
15 order to maneuver themselves to oust Burley from being the
16 Tribal Chairperson, and take over control of the Tribe so they
17 can build a casino.

18 Second, Dixie's deposition testimony is an admission of a
19 party opponent under FRE 801(d)(2)(A); Gilbrook v. City of
20 Westminster (9th Cir. 1999) 177 F.3d 839, 859 (in action against
21 Mayor for retaliatory firing, Mayor's hearsay statement ["I'll
22 have your ass"] admissible as express admission). Dixie's 16
23 year-long false assertion caused an unnecessary leadership
24 dispute which in turn caused havoc with the Tribe in its
25 relations with the BIA. It is relevant and admissible to show
26 that Dixie accepted the 1998 Resolution establishing the General
27 Council as the Tribe's valid governing body. Otherwise, why
28 would he persist over a 16-year period that his resignation was
forged and that he never resigned? It was only after the AS-
IA's 2010 and 2011 Decisions came down that the Dixie Faction's
lawyers first came up with the idea to attack the 1998
Resolution establishing the General Council as purportedly

1 invalid. However, as stated above, that claim is time-barred by
2 the six-year statute of limitations.

3 Dixie's admission is also admissible to show that Dixie
4 believed he was one of the last remaining members of the Tribe.
5 As indicated above, Dixie's mother, Mabel Dixie was the last
6 remaining adult member of the Sheepranch band who was living on
7 the 0.92 acre Rancheria given to the band in 1915. She alone
8 was listed as the only one authorized to vote for termination
9 and receive a deed to the property. Even though the termination
10 never took effect, the property was probated upon her death in
11 1971 and all interest in the property went to Yakima and Melvin
12 Dixie. When Melvin left the Rancheria, all authority to enroll
13 new members and organize the band fell to Yakima. By claiming
14 he never resigned and that his resignation was purportedly
15 forged, Dixie was in fact ratifying the validity of the General
16 Council which he alone was authorized to organize as one of the
17 last remaining members of the Sheepranch band residing on the
18 0.92 acre Rancheria.

19 **P. THE DIXIE FACTION'S ASSERTION THAT DIXIE'S DEPOSITION**
20 **TESTIMONY WAS NEVERTHELESS UNRELIABLE BECAUSE ATTORNEY**
21 **CORRALES THREATENED DIXIE'S LIFE IS WITHOUT MERIT AND FALSE**

22 The Dixie Faction argues that Dixie's admission during his
23 deposition that he in fact resigned and there was no forged
24 resignation after all was coerced by Attorney Corrales who
25 purportedly "threatened Mr. Dixie's life on the record." (Page
26 24 Dixie Faction PAs, lines 2-3). This contention is without
27 merit. The relevant portions of Dixie's deposition testimony,
28 which was given to AS-IA Washburn to consider on remand is set
forth below. It highlights Dixie's violent outbursts during the
deposition and Mr. Corrales' comments to Dixie in response.
There is nothing in the transcript even hinting or suggesting

1 that Dixie's deposition testimony was unreliable because he was
2 threatened by counsel.

3 ///

4 ///

5 ///

6 **1. Dixie is a convicted murderer with a life history of
7 extreme violence and incarceration for violent crimes**

8 Contrary to the Dixie Faction's assertion, it was
9 Plaintiff's counsel, not Dixie whose life was threatened by
10 Dixie during the deposition. Portions of Dixie's criminal
11 history from a Probation Report were read into the record to
12 impeach Dixie on his claim that he had never participated in a
13 scheme to lie about something to try and get an advantage in a
14 situation. (Pages 184-185 of Dixie deposition, CVMT-2017-
15 000153). The question was probative of Plaintiff's theory that
16 Dixie fabricated the claim of his resignation being forged,
17 after he met with investors in late 1999 who were interested in
18 building a casino under the Tribe's name, but because Dixie had
19 already resigned, he had to agree to lie about resigning, so
20 that he and his investors could remove Burley and take over the
21 Tribe. In addition, his criminal history is relevant, because
22 it explains why he resigned as Tribal Chairman back in 1999. He
23 was in and out of prison, was habitually intoxicated, and thus
24 was not able or competent to function as the Tribal leader.

25 Dixie's violent murder of a one-legged man (Silvia Burley's
26 uncle) is detailed in this Probation Report in part as follows:

27 "Such arguing is alleged to have continued [between Dixie
28 and the victim] for approximately thirty minutes,
concluding with defendant getting a gun from a cabinet
and shooting victim.

"Defendant is alleged to have dragged victim into the
kitchen, stating to Vivian [his common law wife], 'I told

1 you I could kill; I can kill...I will show you I can do
2 something else, too.'

3 "Defendant is then alleged to have taken a big knife from a
4 kitchen cabinet and to have started stabbing victim on the
5 kitchen floor.

6 "Defendant is alleged to have pushed and threatened Vivian
7 to assist in placing victim in the car, to have demanded
8 that she go with him to get rid of the body.

9 * * *

10 "Defendant is alleged to have become suspicious that his
11 sixty-seven year old father might have told someone of the
12 instant offense, and defendant beat his father in the face,
13 stating that defendant was going to shoot anybody that got
14 in his way. He reloaded the gun and took off in the car."
15 (Emphasis added).

16 (Page 6 of Probation Report, Exhibit "38" to Dixie Deposition,
17 CVMT-2017-000153).

18 The Probation Report quotes the District Attorney as
19 describing the crime as involving acts of "high degree of
20 viciousness or callousness." (Page 8, Exhibit "38" to Dixie
21 Deposition, CVMT-2017-00153). Dixie also attempted to interfere
22 with the judicial process by writing letters to a witness asking
23 that she commit perjury. (CVMT-2017-00153). Given Dixie's prior
24 convictions and prior, multiple prison terms, the probation
25 officer concluded this about Dixie:

26 "...[Dixie] is capable and willing to commit acts of coercion
27 and violence upon individuals. It would appear that
28 Society needs protection from defendant for the longest
period of time possible."

(Page 11 of Probation Report, Exhibit "38" to Dixie Deposition,
CVMT-2017-00153).

It was based upon this information that Plaintiff's counsel
responded to Dixie violent outburst and physical threats at his
deposition, thinking that Dixie would indeed carry out his
physical threats. The exchange, selectively edited by

1 Intervenor, correctly and fully was as follows, when
2 Plaintiff's counsel attempted to inquire whether Dixie was
3 changing his testimony about his signatures on the resignation
4 documents, after Dixie had conferred with his counsel during a
break:

5 Q: Are you changing your testimony, yes or no? Answer
6 the question.

7 MR. McCONNELL: Same objections. Do you understand the
8 question?

9 MR. CORRALES: He understands the question. He's just
10 refusing to answer. He just said uh-huh. Is that what you
11 said? Answer the question, sir.

12 Are you changing your testimony with respect to Exhibit
Number 34?

13 WITNESS: We can sit here all night. Are you getting
14 hungry?

15 MR. CORRALES: We will if we have to.

16 THE WITNESS: We will.

17 BY MR. CORRALES:

18 Q: Earlier, before we took a break, you testified that
19 the signature that is on Exhibit 34 was your signature. After
20 the break, after you had a chance to talk to your lawyer, you
now say that that is not your signature.

21 Are you changing the testimony that you gave before
22 the break?

23 MR. McCONNELL: Vague. Asked and answered. Compound.

24 BY MR. CORRALES:

25 Q: Yes or no, sir?

26 A: We can sit here all night.

27 Q: I'm asking you to answer the question, sir.

28 A: What did I say? I said we can sit here all night. [As
recorded by the video camera, it is at this point that Dixie

1 *becomes violent and starts pounding his hands on the table in a*
2 *threatening manner].*

3 Q: I heard what you said. You don't have to slap your
4 hand on the desk.

5 A: I'll slap you in the face.

6 Q: Do you want to do that?

7 A: Yeah.

8 Q: You'll be a dead man. Nobody threatens me, including
9 you, Mr. Dixie—

10 A: Don't tell me—

11 Q: I would be very careful about that. And, Mr.
12 McConnell, I would advise you to tell your client not to make
13 physical threats against me.

14 A: Don't make a comment about you can be somebody will
15 kill you.

16 Q: I'm sorry, Mr. Dixie. I have an obligation to protect
17 myself. If you want to try and physically assault me, I will
18 protect myself.

19 The question is: Exhibit Number 34, the signature that's
20 on Exhibit 34, before we took a break you said that was your
21 signature. After you consulted with your lawyer, you now say
22 it's not your signature. Are you changing your deposition
23 testimony, yes or no?

24 MR. McCONNELL: Same objections.

25 THE WITNESS: We can sit here all night.

26 MR. CORRALES: I'd like an answer to my question, sir.

27 THE WITNESS: That's what you're going to get, pointblank,
28 (indicating).
(Deposition of Dixie, pages 212-214, CVMT-2017-000160).

As can be seen, it was Dixie, not Plaintiff's counsel who
was becoming violent and was threatening to assault counsel.
Plaintiff's counsel was simply telling Dixie that if he tried to

1 hit him, he (Plaintiff's counsel) would have to protect himself.
2 Since Dixie is a convicted murderer with a violent past,
3 Plaintiff's counsel's response was understandable. In fact,
4 Plaintiff's counsel apologized to Dixie ("I'm sorry, Mr. Dixie",
5 page 214, line 10, CVMT-2017-000160), and promptly asked Mr.
6 McConnell to tell his client not to make physical threats
7 towards him. (Deposition of Dixie, page 214, CVMT-2017-000160).
8 The deposition transcript shows that Mr. McConnell ignored that
9 request, and said nothing to Dixie.

9 **2. Dixie never expressed on the record that he was**
10 **feeling coerced to have to admit he resigned as Tribal**
11 **Chairman**

11 The above-cited deposition transcript clearly shows that
12 Dixie was not under duress at all. Neither the witness nor Mr.
13 McConnell requested to take a break, but instead the witness
14 continued on with his rude and obstinate behavior in refusing to
15 answer a simple question. The witness, without any intervention
16 by Mr. McConnell, continued to say that they would "sit there
17 all night," but he will not answer the question. Finally, Mr.
18 Corrales stated that he intended to break for the day, and
19 reconvene the next day with an emergency telephone call to Judge
20 Styn in San Diego (the deposition was being taken in
21 Sacramento). He suggested they take a break and asked that Mr.
22 McConnell talk to Dixie, and see if he could get him to answer
23 the question. (Pages 215-16 of Dixie Deposition, CVMT-2017-
24 000160-161).

24 After a seven (7) minute break and a chance to confer with
25 his attorney, Dixie finally testified as follows:

26 Q: Okay. Before the break, the first break that we had,
27 you testified in the deposition that the signature that appears
28 on Exhibit 34 was your signature. After we took a break and you

1 consulted with your attorney, you then said that is not your
signature.

2 So my question is: Are you changing your testimony?

3 A: It appears not to be my signature.

4 Q: That's not the question. Move to strike.

5 **Are you changing your testimony, yes or no?**

6 A: **No.**

7 (Deposition of Dixie, page 216, lines 20-25, page 217, lines 1-
8 5, CVMT-2017-000161).

9 At no time did Dixie indicate that he was under duress when
10 he gave his previous testimony that Exhibit 34 contained his
signature. It was clear that his attorney tried to get him to
11 change his testimony, but, when pressed, Dixie ultimately
12 conceded that he was not changing his testimony about the
13 document containing his signature.

14 **3. Dixie's damaging admission that he resigned as Tribal**
15 **Chairman was confirmed under examination by his own**
16 **lawyer**

17 It was at this point in the deposition that Mr. McConnell,
18 knowing that his client gave damaging testimony, began to
19 examine his own witness in an attempt to get Dixie to say that
20 Exhibits 33 (his resignation notice) and Exhibit 34 (his consent
to Burley becoming the new Tribal Chairperson) did not contain
21 his signatures. (CVMT-2017-000565-566). The fact that Mr.
22 McConnell alone examined his own witness on this subject
23 vitiates any claim of duress. What followed was Dixie's
24 admission that he resigned as Tribal Chairman, and that the
signatures on Exhibits 33 and 34 were in fact his, all elicited
25 by his own attorney. Dixie testified as follows:

26 BY MR. McCONNELL:

27 Q: Mr. Dixie, I know this has been a long day, but again
28 turning to Exhibits 33 and 34, both of these documents

1 purporting to show your resignation, the two signatures [on]
2 Exhibit 33 and 34, did you write those signatures?

3 A: It appears.

4 Q: Exhibit 33, is that a signature that you believe you
5 wrote on Exhibit 33?

6 A: Uh-huh.

7 Q: You believe that's your signature?

8 A: Umm, I don't-umm, they're pretty close.

9 Q: This is the document indicating on Tuesday, April 20th,
10 1999, that you are resigning as chairperson. Do you believe
11 that you wrote the signature on Exhibit 33 resigning as
12 chairperson?

13 A: I don't remember that one.

14 Q: On Exhibit 34-

15 A: Okay. Yeah. Yeah. [*referring to his signature on*
16 *Exhibit 33*].

17 Q: Okay. Yeah. This is or is not your signature?
18 [*referring again to Exhibit 33*].

19 MR. CORRALES: I'll object to the question.

20 THE WITNESS: It is. [*referring to Exhibit 33*].

21 Q: You think it is?

22 A: Yeah.

23 Q: And on Exhibit 34, do you think that's your signature?
24 Again, this is-

25 A: Yes.

26 Q: -accepting the resignation of chairperson?

27 A: Uh-huh.

28 Q: **And did you resign as chairperson of the Miwok Sheep**
Ranch Tribe?

A: **Yeah. Yes.**

Q: You did. **Were you able to resign as chairperson?**

A: **Yeah.**

1 MR. McCONNELL: No further questions.
2 (Dixie deposition, pages 217-218, CVMT-2017-000161) (Emphasis
3 added).

4 Contrary to Intervenor's assertion, Dixie's testimony that
5 he resigned as Tribal Chairman was not made under duress, and
6 was not contradictory. Dixie clearly testified that Exhibits 33
7 and 34 contain his signatures, before his attorney tried to get
8 him to change his testimony. For example, early on in the
9 deposition Dixie testified as follows:

10 BY MR. CORRALES:

11 Q: And this [Exhibit 33] purports to be a Formal Notice
12 of Resignation signed by Yakima Kenneth Dixie. Have you seen
13 that before, sir?

14 * * *

15 Q: Is that your signature?

16 A: Yeah, that's my signature.

17 * * *

18 Q: ...Now, next in order is Exhibit Number 34. This
19 purports to be a General Council Governing Body Special Meeting.

20 * * *

21 Q: Is that your signature on the document?

22 A: That is yes.

23 (Dixie deposition pages 170-173, CVMT-2017-000149-000150).

24 The parties then later took a break for fifteen (15)
25 minutes, which gave Dixie a chance to consult with his attorney
26 about his damaging testimony. (Dixie deposition, page 188,
27 lines 1-4, CVMT-2017-000154). After the break, Plaintiff's
28 counsel finished up his examination on other topics, and Mr.
McConnell went right in and asked Dixie questions about his
signatures on Exhibit's 33 and 34, in an attempt to get Dixie to
change his testimony, presumably based upon a discussion they
had had during the break. His efforts were awkward at best.

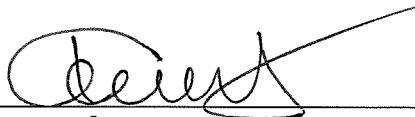
For example, when Mr. McConnell asked Dixie if Exhibit "33" contained his signature, Dixie said he did not believe so, but pointed to Exhibit "34" as his signature. (Dixie deposition, page 200, CVMT-2017-000157). Frustrated, Mr. McConnell showed Dixie another document that bore his signature, and Dixie said he did not think it was his signature, because the "Y" in that signature was not like his "Y" as depicted in Exhibit "33" (his formal resignation). (Dixie deposition, page 201, CVMT-2017-000157). Thus, any confusion was generated by Mr. McConnell's efforts to get Dixie to change his testimony. However, as stated, Dixie later conceded that he was not changing his testimony the first time he was asked the question about his resignation, and then, under the examination of his own attorney, specifically testified that he resigned and that the signatures on documents showing that he resigned were his.

IV.

CONCLUSION

For the foregoing reasons, the Dixie Faction's motion for summary judgment should be denied. Summary judgment should be entered in favor of the Burley faction. The AS-IA should be ordered to reconsider his 2015 decision, and specifically reconsider reinstating his August 2011 decision.

DATED: 3/31/2017



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