

October 7, 2008

The Honorable Joan M. Lewis
Superior Court Judge
Department 65, San Diego Superior Court
P.O. Box 122724
San Diego, California 92112-2724

Re: California Valley Miwok Tribe v. California Gambling Control Com.
Case No. 37-2008-00075326-CU-CO-CTL

TO THE HONORABLE JOAN M. LEWIS, SUPERIOR COURT JUDGE:

Plaintiff California Valley Miwok Tribe (“the Tribe” or “Miwok Tribe” or Plaintiff) opposes the “Application of Yakima K. Dixie and Melvin Dixie for Leave to File Brief Amicus Curiae”, and responds to the letter brief submitted by their attorney, Mr. Tim Vollmann, dated October 2, 2008, as follows:

**THE PROPOSED AMICUS CURIAE BRIEF
IS AN IMPROPER ATTEMPT TO INTERVENE
WITHOUT COMPLYING WITH CCP SECTION 387**

The proposed “Brief Amicus Curiae” is a disguised attempt to get around the requirements of CCP Section 387 for filing a motion to intervene.

Yakima K. Dixie and Melvin Dixie (“the Dixies”) previously sought to intervene in this case when it was pending in federal court, prior to remand. Attached is a copy of the Tribe’s opposition to that motion filed in federal court, which is incorporated herein by reference. The U.S. District Court, the Hon. William B. Shubb, declined to rule on the motion, instead remanding the case back to the San Diego Superior Court.

Rather than re-filing their motion to intervene under CCP Section 387, the Dixies instead seek a strategic advantage by simply filing a brief with the same arguments, and calling it a “Brief Amicus Curiae.” The Court should see it for what it is, and deny it without prejudice to seek leave to intervene. However, Plaintiff will oppose any such motion on the same grounds set forth in its opposition papers filed in federal court.

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The Dixies seek to improperly raise issues that are not pled in the First Amended Complaint. Specifically, the Dixies seek to litigate a tribal leadership dispute that is not alleged in Plaintiff's lawsuit. For this additional reason, their "Brief Amicus Curiae" is irrelevant and thus not helpful to the Court.

**THIS CASE IS ABOUT WHETHER THE CALIFORNIA
GAMBLING CONTROL COMMISSION CAN STOP
PAYING THE TRIBE ITS ENTITLED "REVENUE SHARING
TRUST FUND" MONEY, NOT ABOUT ANY TRIBAL
LEADERSHIP DISPUTE**

Contrary to the assertions in the proposed "Brief Amicus Curiae", there is nothing in the First Amended Complaint that seeks relief related to the resolution of a tribal leadership dispute. Plaintiff only seeks declaratory relief concerning the duty of the California Gambling Control Commission ("the Commission") in distributing to the Tribe its entitled share of Revenue Sharing Trust Fund ("RSTF") money under the Tribal-State Indian Gaming Compact ("the Compact"). The Commission has advanced various reasons for withholding those funds from the Tribe, including the fact that there is a tribal leadership dispute and the Tribe is "unorganized" in the eyes of the U.S. Department of Interior, Bureau of Indian Affairs ("BIA"). However, the Plaintiff argues that these are not legally valid reasons for withholding RSTF payments from the Tribe.

Indeed, as shown in the attached Memorandum of Points and Authorities and the Declaration of Commission employee Gary Qualset, filed in opposition to a "TRO" filed by Yakima Dixie in the Sacramento Superior Court in 2004, the Commission previously paid the Tribe its entitled share of RSTF money by sending those entitlement checks to the Tribe in care of Silvia Burley. The Commission successfully opposed Yakima Dixie's argument that Silvia Burley had no authority to represent the Tribe and receive the RSTF money for the Tribe, because of a tribal leadership dispute. Indeed, in those court papers, the Commission acknowledged that the Tribe was "unorganized" in the eyes of the BIA, but that, because the BIA still recognized Silvia Burley as a person of authority for the Tribe, it was going to continue making RSTF payments to the Tribe via Silvia Burley. While the Commission correctly concluded that it had to continue paying the RSTF money to the Tribe, despite Yakima Dixie's objections, its reasons for doing so were not entirely correct. The Commission's duty of disbursement of RSTF money to non-Compact tribes, like the Plaintiff, is not conditioned upon the BIA's recognition of the tribe. There is nothing in the Compact that mentions BIA approval of the tribe in any fashion as a condition of eligibility for RSTF money.

When the Tribe and the BIA got into a dispute of their own relative to the BIA wanting the Tribe to set up a constitution acceptable to the BIA, litigation ensued.

Inexplicably, the Commission used that as a reason to stop RSTF money to the Tribe. The Tribe contends that the Commission cannot legally do that, and that is the reason for this lawsuit. Plaintiff seeks a writ of mandate compelling the Commission to release the funds withheld from the Tribe and ordering the Commission to resume payments as it did before, based upon its mandatory duty under Gov. Code Section 12012.90(e)(2).

The Dixie's argument that the Court must resolve the tribal leadership dispute and that the BIA must approve the Tribe's constitution before ordering the Commission to release the RSTF money is fundamentally wrong and contrary to the holding of the recent case of Williams v. Gover (9th Cir. 2007) 490 F.3d 785, involving the "Mooretown Rancheria Indian Tribe." There, the Court of Appeals held that the Mooretown Tribe had the exclusive right to decide who is a member of its tribe, and that neither the courts nor the BIA can get involved. Like the Dixies here argue about the Miwok Tribe under Silvia Burley's leadership, the plaintiffs in Williams claimed that the Mooretown Tribe had no right to deny them membership in the tribe. Notably, the Mooretown Tribe was "unorganized" in the eyes of the BIA, but, like the Miwok Tribe here, it had its own governing constitution that was not BIA approved. Williams still recognized Mooretown as an existing tribe, despite it being "unorganized", i.e., unorganized in the eyes of the BIA. (See footnote 11 of the decision). Indeed, the Mooretown Tribe is listed as a Compact Tribe that pays money from its casino operations into the RSTF. (See attached Report from the Commission dated November 8, 2007, Exhibit 3 to that report, item 32). In other words, the Commission has no difficulty taking money from an "unorganized" tribe for placement in the RSTF, but it claims it can't distribute those same funds to the Miwok Tribe, an eligible recipient of RSTF money, because it is "unorganized" in the eyes of the BIA. In that same report, the Miwok Tribe is listed as an "Eligible Recipient Indian Tribe" for RSTF money. (See Exhibit 1 to that report, item 12).

Accordingly, the Dixies' "Brief Amicus Curiae" raises issues not properly before the Court, and for that reason the Court should deny the Dixie's application to file it.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Plaintiff's opposition to the Dixies' previous motion to intervene, Plaintiff respectfully requests that the Court deny the Dixies' request to file their "Brief Amicus Curiae."

Respectfully submitted,



Manuel Cortales, Jr.