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Peter Kaufman, Esq.
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DEC 12 2008

Dear Mr. Kaufman:

This letter is in response to your telephone inquiry requesting information on the status of the leadership for the California Valley Miwok Tribe (CVMT). CVMT presents the Bureau of Indian Affairs (BIA) with a unique situation. The following summarizes the history of the Tribe and the current leadership dispute.

CVMT began as a rancheria set up for 12 individual Indians in 1916. The government set aside .92 acres of land on which those twelve individuals could live. In 1935, the sole adult member of the rancheria voted not to reject the Indian Reorganization Act (IRA).[1] In 1966, the Federal government undertook to terminate the rancheria by, among other things, distributing the assets of the rancheria to the rancheria's residents. Ultimately, the Federal government failed to take the steps necessary to complete terminate of the Federal relationship with the rancheria and the rancheria continued to exist. There was one resident, Mabel Hodge Dixie. For reasons that are not relevant to your inquiry, the government did not convey the property to Ms. Dixie successfully and ultimately held it in trust for her. When she died, her heirs inherited the 0.92 acre held in trust by the government. In 1998, Ms. Dixie's son, Yakima Dixie, resided on the rancheria land and was its only known member. That same year, Silvia Burley, a distant relative of Mr. Dixie, approached Mr. Dixie about adopting her, her two daughters, and her granddaughter into the Tribe so that they would be eligible for Indian health and education benefits. Mr. Dixie adopted Ms. Burley and her family.

Mr. Dixie and Ms. Burley became interested in organizing the tribe formally– that is establishing a tribal government. In 1999, the two of them approached the BIA for assistance. At that time, Mr. Dixie acted as the Tribe's leader and he held the title of "Chairman." On April 20, 1999, Ms. Burley submitted a purported letter of resignation from Mr. Dixie. The next day, Mr. Dixie asserted he never resigned his position and refused to do so. He claims that Ms. Burley forged his name on the resignation letter. After Mr. Dixie's purported resignation, Ms. Burley became leader of the Tribe, having been elected by herself and one of her daughters. Ms. Burley claimed the title of

[1] While it is common for people to refer to the Indians of a reservation as voting to accept the IRA, the act applied to a reservation unless a majority of the Indians voted against its application within a year, later extended for another year. *See* 25 U.S.C. § 478.

"Chairman." The BIA accepted her in this position but noted the leadership dispute between her and Mr. Dixie. On March 7, 2000, the BIA wrote in a letter to Ms. Burley that it would not interfere in the dispute unless the dispute continued without resolution and the government-to-government relationship between the United States and the Tribe became threatened. If the government-to-government relationship were to become threatened, the BIA advised, it would advise the Tribe to resolve the dispute within a reasonable period of time.

Ms. Burley and her daughters responded by attempting to organize the Tribe. Initially, they sought to organize the government under the provisions of the Indian Reorganization Act, but the BIA failed to call the requisite election on the proposed constitution.

In 2002, counsel purporting to represent the California Valley Miwok Tribe and Ms. Burley filed suit in the United States District Court for the Eastern District of California claimed the United States had breached its trust responsibilities and violated the California Rancheria by conveying the less than one acre of land to Ms. Dixie in 1967 when the tribe had potentially 250 members. The court dismissed the suit on grounds that it was filed beyond the six-year statute of limitations. The Ninth Circuit Court of Appeals affirmed in an unpublished opinion. *See California Valley Miwok Tribe v. United States*, No. 04-16676, 2006 WL 2373434 (9th Cir., Aug. 17, 2006))

Ultimately, in 2003, Ms. Burley tried to organize the Tribe under the Tribe's inherent sovereign authority without the supervision of the BIA. Ms. Burley submitted the Tribe's constitution to the BIA for informational purposes. The BIA reviewed the constitution and determined that it was not valid because Ms. Burley had failed in the process of developing and adopting the constitution to include other Indians with legitimate ties to the Tribe. On March 26, 2004, the BIA informed Ms. Burley that the Tribe remained unorganized and had no government. Because the Tribe had no government, it could not have a governmental leader. The BIA would not recognize Ms. Burley as Chairman, that is, the governmental leader of the Tribe. Instead the BIA would deal with her as a "spokesperson" or "person of authority" for the Tribe for the purposes of awarding Federal contracts.

Meanwhile, Mr. Dixie continued to assert that he was the hereditary leader of the Tribe and that he had never resigned his position. In March 2005, a representative of the Assistant Secretary – Indian Affairs decided Mr. Dixie's appeal of the BIA's acceptance of Ms. Burley as tribal Chairman. In the letter dismissing Mr. Dixie's appeal, the Deputy Assistant Secretary informed Mr. Dixie that Ms. Burley was not the governmental leader of the Tribe. In fact, the letter explained, the Tribe could have no governmental leader until it had a government developed through an organizational process that included the broader tribal community of other Indians with legitimate ties to the Tribe.

Thus, the BIA faced a stand-off between Ms. Burley, who insisted the Tribe had organized properly under her constitution, and Mr. Dixie, who claimed to be the hereditary leader of the Tribe. Ms. Burley sued the BIA in Federal district court in the District of Columbia, claiming that the BIA improperly denied her constitution's validity.

The district court granted the BIA's motion to dismiss for failure to state a claim. The Court of Appeals affirmed. *See California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006), *aff'd* 515 F.3d 1262 (D.C. Cir. 2008)

When the district court granted its motion to dismiss, the BIA worked with both Ms. Burley and Mr. Dixie to assist the Tribe in organizing itself. After initial efforts by the BIA to find a mutually agreeable solution, Ms. Burley chose not to cooperate. The BIA decided to initiate the organization process by identifying those persons who are lineal descendents of the original twelve Indians for whom the government established the rancheria, the single resident who voted in 1935 on the IRA, and the sole distributee, Mabel Hodge Dixie. Ms. Burley appealed the BIA's decision to the Interior Board of Indian Appeals (IBIA), *California Valley Miwok Tribe v. Pacific Regional Director*, Docket No.: IBIA 07-100-A. Under the Departments regulations, a decision of a Regional Director that has been appealed to IBIA is not final and effective except under certain circumstances, not present here, which effectively stayed the BIA's effort to assist the Tribe in organizing itself. *See* 25 C.F.R. § 2.6(a).

When the BIA is faced with a situation such as this, when it cannot determine who the legitimate leader of the Tribe is, the BIA must first defer to the Tribe to resolve the dispute. *See, e.g., Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65 (1978); *Fisher v. District Court*, 424 U.S. 382, 386-89 (1976); *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996); *Wheeler v. Department of the Interior*, 811 F.2d 549 (10th Cir. 1987). The difficulty with CVMT is that because it has no government, it has no governmental forum for resolving the dispute. In similar situations, the BIA would turn to a tribe's general council, that is, the collective membership of the tribe. *Johannes Wanatee v. Acting Minneapolis Area Director*, 31 IBIA 93 (1997). But because CVMT has not even taken the initial step of determining its membership, a general council meeting is not possible.

The only answer is for the BIA to wait for the Tribe to organize itself. The Tribe will be able to do so once the IBIA decides Ms. Burley's appeal. The IBIA has a significant workload but the briefing on Ms. Burley's appeal was completed essentially a year ago and the D.C. Circuit Court opinion of earlier this year has been served as supplemental authority in the IBIA proceedings so we could expect a decision at any time. In the meantime, neither the BIA nor any court has authority to resolve the leadership dispute that is crippling the Tribe. *See*, *Goodface v. Grassrope*, 708 F.2d 335 (8th Cir. 1983).

I hope that this letter provides all the information you need. Should you need additional information or have further questions, please contact Jane Smith (202-208-5808), the member of my staff handling this matter.

Sincerely,

Edith R. Blackwell
Associate Solicitor, Indian Affairs