

**EXHIBIT “27”**

**In the California Valley Miwok  
Tribal Court**

Yakima Kenneth Dixie,	:	Case No.: CVMT-AH-2004-001
	:	
Appellant,	:	Decision and Order
	:	
vs.	:	
	:	
California Valley Miwok Tribe,	:	
	:	
Appellee	:	
	:	

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This matter is before the Court at the behest of Yakima K. Dixie, a member of the California Valley Miwok Tribe (hereafter "Tribe" or "the Tribe").<sup>1</sup> Mr. Dixie challenges the Tribe's recognition of Silvia Burley as Chairperson of the Tribe. This matter came on for a hearing on January 18, 2005 at 2:00 p.m. in Sacramento, California pursuant to notice to the parties. The parties in this action have been represented by attorneys. The parties were duly notified of the date, time and location of the hearing.<sup>2</sup> Each party submitted statements, including evidence supporting its position, to this tribunal detailing its relative position in this matter.

In reviewing this case, the documents and evidence from the parties submitted to this tribunal have been reviewed and listed in the Appendix to this Decision and Order. The Exhibits are comprised entirely of documents

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<sup>1</sup> The California Valley Miwok Tribe was formerly known as the Sheep Ranch Rancheria of Me-Wuk Indians.

<sup>2</sup> By letter to this tribunal, Mr. Dixie notified the Court that he would neither attend the hearing nor send his attorney. The Court responded to this as notice that Mr. Dixie will proceed on the written documents and evidence he submitted in this case. While Mr. Dixie has been given the opportunity to attend the hearing and provide additional evidence, there is no procedural requirement that he do so.

and evidence submitted by Yakima K. Dixie and by the California Valley Miwok Tribe.

### Jurisdiction

This court is convened pursuant to the inherent sovereign authority of the California Valley Miwok Tribe.<sup>3</sup> The Constitution of the California Valley Miwok Tribe provides that the Tribal Council has the power to establish Tribal courts or courts of Indian offenses or dispute resolution processes, and to establish procedures and methods for the selection of judges, upon a two-thirds (2/3) majority vote of the Tribal Council. Article VI, Section 2, Paragraph 15.<sup>4</sup> On March 8, 2004, the Tribal Council of the California Valley Miwok Tribe established this tribunal and appointed the Administrative Hearing Officer pursuant to California Valley Miwok Tribal Council Resolution Number R-1-02-04-2004.

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<sup>3</sup> The California Valley Miwok Tribe was formerly known as the Sheep Ranch Rancheria of Me-Wuk Indians.

<sup>4</sup> This forum takes judicial notice of P.L. 108-204, March 2, 2004, 118 Stat. 542, wherein the Congress of the United States amended Section 16 of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 476, to clarify that an Indian tribe may organize without recourse to the IRA:

(h) TRIBAL SOVEREIGNTY--Notwithstanding any other provision of this Act--

(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).

See also, *Kerr McGee Corporation v. Navajo Tribe of Indians*, 731 F. 2d 597, 603-604 (9<sup>th</sup> Cir. 1984) *affirmed*, 471 U.S. 195 (1985) (noting that the Navajo Tribe never adopted a constitution and that the choice of government is, itself, an act of self-government). The California Valley Miwok Tribe adopted its constitution pursuant to its inherent sovereign authority.

The law is clear that the California Valley Miwok Tribe has the inherent authority to establish this tribunal to hear this appeal. Congress has determined that "Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems<sup>5</sup> and that tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments." 25 U.S.C. § 3601 (4-5).

Along with their inherent power to establish tribal justice systems, Indian tribes possess the inherent sovereign power to regulate internal domestic affairs. *Montana v. United States*, 450 U.S. 544 (1981); *United States v. Wheeler*, 435 U.S. 313 (1978). Indian tribes possess attributes of sovereignty over both their members and their territory. *United States v. Mazurie*, 419 U.S. 544 (1979). However, California is one of the "mandatory" states named in P.L. 280<sup>6</sup> as receiving Congress's delegation of jurisdiction

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<sup>5</sup> Tribal justice systems, as recognized by Congress, means "the entire judicial branch, and employees thereof, of an Indian tribe, including (but not limited to) traditional methods and forums for dispute resolution, lower courts, appellate courts (including intertribal appellate courts), alternative dispute resolution systems, and circuit rider systems, established by inherent tribal authority whether or not they constitute a court of record." 25 U.S.C. § 3602(8).

<sup>6</sup> In P.L. 93-280, Act of Aug. 15, 1953, 67 Stat. 588, (codified as amended at 25 U.S.C. §§ 1321-1326), Congress delegated its jurisdiction over Indian Country to several states. However, this act did not divest the tribes in those states of their inherent sovereign authority. See *Cabazon, supra*; Felix S. Cohen's Handbook of Federal Indian Law at 344-345 (1982 Ed.); Vanessa Jimenez & Soo Song, *Current Tribal and State Jurisdiction Under P.L. 280*, 47 Am. U. L. Rev. 1627 (1988) (Indian Tribes retain concurrent jurisdiction under P.L. 280, having never been divested of jurisdiction); Carol Goldberg, *Public Law 280: The Limits Of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A. L. Rev. (1975).

in Indian Country so we must determine whether the State of California has jurisdiction over this matter.<sup>7</sup>

In analyzing whether the State of California has jurisdiction over civil matters occurring within Indian Country, the Supreme Court of the United States has been very specific:

[T]his case turns on whether state authority is pre-empted by the operation of federal law; and '[s]tate jurisdiction is pre-empted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority.' *Mescalero*, 462 U.S. 324, at 333, 334. The inquiry is to proceed in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development. *Id.*, at 334-335.

*California v. Cabazon Band of Mission Indians*, 480 U.S. 202 at 217 (1987) (citations omitted). The matter before this Court is civil in nature, rather than criminal. The issues in this case involve internal tribal matters essential to tribal self-government. These fall squarely within the rubric of tribal self-government and self-determination. There is no state interest implicated in this matter. Even had we been able to find any California law implicated in resolving an Indian tribe's leadership question, which we have not, state jurisdiction in this case is "pre-empted" because it "interferes

<sup>7</sup> P.L. 280's Section 4(a) was codified at 28 U.S.C. 1360(a) (1982 ed. and Supp. III). It provides:

"Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed . . . to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"California ..... All Indian country within the State."

or is incompatible with federal and tribal interests reflected in federal law." *Id.* Moreover, the state interests at stake are nonexistent and thus insufficient to "justify the assertion of state authority" over this matter. *Mescalero*, 462 U.S. 325, at 333, 334. As noted earlier in this Opinion, there is a substantial body of federal law aimed at achieving the goal of fostering tribal self-government, tribal court systems and tribal jurisdiction over members.

In any event, P.L. 280 was amended to include the following provision:

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section. 28 U.S.C. § 1360 (c).

Thus, the jurisdictional reach of P.L. 280 is preempted by federal law through the operation of tribal law intended to foster tribal self-government and self-determination.

Specifically, state law is preempted in this case by tribal law adopted to settle internal tribal disputes. California Valley Miwok Tribal Council Resolution No. R-1-02-04-2004 (March 8, 2004). We have determined that the Tribal law adopted to settle internal disputes is not inconsistent with any applicable civil law of the state and thus will be "given full force and effect" in this case. *Cabazon, supra*.

Yakima Dixie is a member of the California Valley Miwok Tribe. See Appellant's Exhibits 2003-10-30; Constitution of the California Valley Miwok Tribe, Article III, Section 1 (list of tribal members including Yakima Kenneth Dixie (Hernandez) (Jeff)). Yakima Dixie resides within Indian Country

over which the California Valley Miwok Tribe exercises sovereign authority<sup>8</sup>. Appellant's Exhibit 1971-11-01 (U.S. Department of Interior Order determining Yakima Dixie's inheritance of a 1/6 interest in trust or restricted property); Appellant's Exhibit 1999-04-30 (Yakima Dixie certifying that he resides at Sheep Ranch Rancheria, Calaveras County, California).

As a member of the California Valley Miwok Tribe and as a resident within Indian Country over which the Tribe exercises governmental authority, Yakima Dixie is subject to the jurisdiction of the California Valley Miwok Tribe in general and this court in particular.

The Interior Board of Indian Appeals has held that "[I]t is a well established principle of Federal law that intra-tribal disputes should be resolved in tribal forums. This rule applies with particular force to intra-tribal disputes concerning the proper composition of a tribe's governing body." *Darrell Wadena, Tony Wadena, Jerry Rawley, Paul Williams, Rick Clark, and Doyle Turner v. Acting Minneapolis Area Director*, 30 IBIA 130 (1996) citing *Bucktooth v. Acting Eastern Area Director*, 29 IBIA 144, 149 (1996). We believe the reasoning in that case is persuasive and we hereby adopt the same rationale in this case.

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<sup>8</sup> Indian Country includes "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation," "all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state" and "all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." 18 U.S.C. § 1151(a)-(c). Though the definition of Indian Country is contained in federal criminal statutes, it "generally applies as well to questions of civil jurisdiction." *De Coteau v. District County Court*, 420 U.S. 425, 429 n.2 (1975).

In this case, Mr. Dixie's appeal of this issue has been time-barred before the Bureau of Indian affairs, see letter of February 11, 2005, from Michael D. Olsen, Principal Deputy Acting Assistant Secretary-Indian Affairs, to Yakima K. Dixie (on file). Mr. Dixie also had his claims dismissed by a federal district court for failing to exhaust tribal remedies. *Sheep Ranch Rancheria v. Burley*, No. S-01-1389 LKK/DAD (E. D. Cal. Jan. 24, 2002). Finally, Mr. Dixie was notified by the Bureau of Indian Affairs, by letter dated February 4, 2004, that:

the appointment of Tribal leadership and the conduct of Tribal elections are internal matters. Tribal members reasonably believing such actions to be invalid have the right to appeal as a matter of due process. Appeals are to be made within a reasonable time after the election and in an appropriate manner as defined by Tribal law. Appeals are to be made directly to and resolved within the appropriate Tribal forum designated and empowered under Tribal law to process and decide such appeals.

Appellant's Exhibit 2000-02-04 at 4. Thus, every forum that has considered this matter has directed Mr. Dixie to bring his concerns to the Tribe's forum.

Though Mr. Dixie's appeal was time-barred from being heard by the BIA, dismissed by the federal district court for failure to exhaust tribal remedies, and previously dismissed by the Tribal Council of the California Valley Miwok Tribe, the Tribe agreed to give Mr. Dixie yet another opportunity to be heard in a tribal forum. See California Valley Miwok Tribal Council Resolution R-2-3-16-2000 (March 6, 2000) (referencing thirty-day period afforded Mr. Yakima Dixie to prosecute his allegation of fraud and/or misconduct on the part of the Tribal Council and noting the failure of Mr. Dixie to pursue his allegations during the time allotted); Appellee's Exhibit 12 (California Valley Miwok Tribal Council Resolution No. R-1-02-04-



2004 (March 8, 2004) (tribal forum established to hear allegations of Yakima Dixie).

The Tribe has made extensive efforts to provide Mr. Dixie due process in his appeal. Pursuant to the Tribe's Resolution establishing a forum to hear the appeal of Mr. Dixie, this tribunal established and sent to Mr. Dixie the Rules for Conducting Administrative Hearing.<sup>9</sup> As stated in correspondence to the parties, the purpose of the Administrative Hearing Process is to "provide a fair and impartial proceeding to both the Complainant/Appellant and the Respondent/Appellee." Rules for Conducting Administrative Hearings, California Valley Miwok Tribe (on file).

In Mr. Dixie's September 19, 2004 submission to this office, he challenged the "venue, jurisdiction and authority for these proceedings." Appellant's Exhibit 2004-09-19. Mr. Dixie initially stated that he would not participate in this dispute resolution process. In response, this tribunal determined it would give him additional time in which to submit evidence to the Court. Mr. Dixie eventually took that opportunity and submitted substantial amounts of evidence to this tribunal dated September 19, 2004. Appellant's Exhibit 2004-09-19.

#### Position of the Parties

Yakima Dixie claims that he, not Silvia Burley, is the authorized representative of the California Valley Miwok Tribe. See Appellant's Exhibit 2004-09-19 at 6 ("Yakima is the legitimate authority for the tribe; and he

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<sup>9</sup> Mr. Dixie has been represented by attorneys in this litigation. He was represented by Thomas W. Wolfrum and the firm of Akin, Gump, Straus, Hauer and Feld, LLP. Appellant's Exhibit 2004-09-19. Upon service of process upon that firm, Akin Gump Straus Hauer and Feld notified this tribunal that as of November 9, 2004, their firm "no longer represents Mr. Yakima Dixie and thus have no further attorney-client relationship" (on file with the Court).

and/or his Executive Director (Velma Whitebear) should be determined by the BIA to be the "authorized representative(s)" for the tribe as the agents to organize the tribe). In the materials submitted, Mr. Dixie also asserts that Silvia Burley is not a member of his Tribe.

The California Valley Miwok Tribe asserts that Silvia Burley was appointed Chairperson by the General Council of the Tribe simultaneously with the Council's acceptance of the resignation of Yakima Dixie, that Silvia Burley was subsequently duly elected Chairperson of the Tribe and that Mr. Dixie's claims are without merit. The Tribe also asserts that its position reflects the position of both the Federal Government and the State of California. See Cover Letter to Exhibits from California Valley Miwok Tribe to Administrative Hearing Officer (October 30, 2004)(on file). The Tribe also asserts that Silvia Burley is an enrolled member of the California Valley Miwok Tribe.

#### Holding

We hold that Silvia Burley is an enrolled member of the California Valley Miwok Tribe. We hold that Yakima K. Dixie has failed to prove his allegations that he was unlawfully replaced as Chairperson of the California Valley Miwok Tribe. We hold that Yakima K. Dixie resigned his position as Chairperson, and Silvia Burley was appointed to the position of Chairperson by the Tribal Council. We hold that Yakima K. Dixie was duly elected as the Vice-Chairperson of the California Valley Miwok Tribe in the same election where Silvia Burley was elected as the Chairperson of the Tribe; and, that both Mr. Dixie and Ms. Burley acted in those offices, as evidenced by both their signatures above these respective titles, on official tribal documents and correspondence with the government of the United States, subsequent to