

the date of this election. We hold that Mr. Dixie's objection to these actions came at a late date and have been duly heard by the court.

Past Procedural History

California Valley Miwok Appeal Process

On April 21, 1999 Yakima Dixie filed a letter of protest with the Bureau of Indian Affairs asserting that he never resigned his position of Chairperson.¹⁰ The Tribe treated this letter as an appeal and initially provided Mr. Dixie a 30-day period in which to pursue his appeal with the Tribe. Appellee's Exhibit 12 at 2 (Tribal Council Resolution R-2-3-16-2000, dated March 6, 2000, wherein the Tribal Council acknowledges having provided Mr. Dixie thirty days (Feb. 9, 2000-Mar. 10, 2000) to present his claims of fraud and misconduct to the Tribal Council). Mr. Dixie did not pursue this appeal and the Tribal Council voted to have this matter closed. Id. at 2. When Mr. Dixie continued to allege fraud on the part of the Tribal Council, the Council took action by California Valley Miwok Tribal Council Resolution Number R-1-02-04-2004, wherein the Council voted to provide Mr. Dixie due process whereby he could pursue his appeal rights. Pursuant to that Resolution, Mr. Dixie renewed his appeal with the Tribe in the instant case.

First Federal Case: United States District Court for the Eastern District of California

The California Valley Miwok Tribal Court is not the first judicial forum that has considered this matter. On January 24, 2002, the United States District Court for the Eastern District of California issued an Order dismissing the claim of plaintiffs who were listed as: Sheep Ranch Rancheria;

¹⁰ Mr. Dixie's initial letter of protest has not been presented as evidence by either party but is referenced in letters from the BIA.

Miwok Indian Tribe of California; Yakima Dixie (Chief); Melvin Dixie; and Rocky Dixie. The Defendants were listed as Silvia Burley; Tiger Burley and Rashel Reznor. See *Sheep Ranch Rancheria v. Burley*, No. S-01-1389 LKK/DAD (E. D. Cal. Jan. 24, 2002) (Appellee's Exhibit 13 herein; Appellant's Exhibit 2001-07-18 (complaint initiating lawsuit)).

The court dismissed the case but, before doing so, took judicial notice of "evidence that defendants Silvia Burley and Rashel Reznor are recognized by the BIA as the sole members of the governing body of the Sheep Ranch Rancheria of Me-Wuk Indians." Citing BIA July 12, 2000 Letter of Recognition (Appellee's Exhibit 6 at 2 herein). The Court further took judicial notice "that there is no federally recognized tribe known as the Sheep Ranch Rancheria of Miwok Indians." Citing 65 Fed. Reg. 49 at 13301. *Sheep Ranch Rancheria* slip op. at 3.

The Court characterized the suit by Mr. Dixie *et al.* as one "regarding the proper leadership, membership and use of funds in an Indian tribe." Slip op. at 4. The court noted that the plaintiffs have already taken their complaint regarding defendants' alleged fraud to the Bureau of Indian Affairs, which directed plaintiffs to first exhaust their tribal remedies. Slip op. at 5 citing BIA letter of February 4, 2000.

BIA Appeal

On October 30, 2003 Yakima Dixie filed an appeal with the Principal Deputy Assistant Secretary-Indian Affairs at the Department of the Interior in Washington, D.C, simultaneous to his appeal in federal court, and he renewed his appeal to the Tribe.¹¹ The "formal appeal" was made under Title

25 of the Code of Federal Regulations. In that appeal, Mr. Dixie contested "the administrative action (without [his] knowledge or consent) by agents of the Bureau of Indian Affairs, in which Silvia Burley fraudulently came to be recognized authority for and Chairperson of [his] tribe, of which [he is] the hereditary Chief. . . ." In that appeal, Mr. Dixie requested the nullification of both "her appointment as Chairperson and her original adoption into [his] tribe, which, again, [he] allege[s] was fraudulent." These are the same allegations Mr. Dixie made in his appeal to the California Valley Miwok Tribe.

In his appeal to the Deputy Assistant Secretary, Mr. Dixie alleged he appealed to that office because his attempt to "initiate the Appeal at the office of both the Area and Regional Directors have failed to receive any attention." Appellant's Exhibit 2003-10-30 at 2. Mr. Dixie states that on May 5, 2003 he sent a request to the Tribal Operations Officer at the Sacramento Area Office seeking "help in preparing this Appeal." *Id* at 2, citing Appellant's Exhibit 2003-05-05. He further asserted that on June 26, 2003 he "directed this same inquiry to Raymond Fry's supervisor, Dale Risling, Superintendent, Central California Area Office" who "likewise failed to respond to [his] request." *Id.* at 2, citing Appellant's Exhibit 2003-06-26. Mr. Dixie argued that because of his previous appeals to the various BIA offices, he had "exhausted [his] attempts to initiate [his]Appeal 'in the office of the official whose decisions is being appealed' as prescribed in Section 2.9 of the above cited code in the CFR." *Id* at 2. The Notice of Appeal then contains a statement of reasons for his appeal to the Deputy Assistant Secretary.

On February 11, 2005, Yakima Dixie's appeal to the Department of the Interior was dismissed. See letter from Michael D. Olsen, Principal Deputy Acting Assistant Secretary-Indian Affairs, to Yakima K. Dixie (On file--copy also sent by Michael D. Olsen to the California Valley Miwok Tribe and Mr. Dixie). We take judicial notice that Mr. Dixie's Appeal to the Department of the Interior on these issues has been dismissed.

**Second Federal Case: United States District Court
for the Eastern District of California**

Again, as recently as January 12, 2004, the parties were before a federal district court. *California Valley Miwok Tribe v. United States*, No. S-02-0912 FCD GGH (E. D. Cal. Jan. 12, 2004) (Appellee's Exhibit 14). In that case, the Tribe sought an injunction ordering the United States to acquire reservation lands for the Tribe's benefit. Mr. Dixie sought to intervene in the case. The Court determined that Mr. Dixie was not entitled to intervene as of right. Slip opinion at 9. The Court opined that Mr. Dixie's "real motivation for intervention is to import into [the] litigation his claim that Silvia Burley illegally usurped his position as Tribal Chairperson". Slip opinion at 9. Because the Court held that this contention was not the same question raised by the Tribe's claims in the case, Mr. Dixie was not entitled to permissive intervention in the case and denied Mr. Dixie's motion to intervene in the case. Slip opinion at 10.

Current Procedural Issues

On October 30, 2003, when Yakima Dixie submitted his appeal to the BIA and the California Valley Miwok Tribe, the Tribe began the process to grant Mr. Dixie an additional opportunity to present his case. See Appellant's Exhibit 2003-10-30. Despite having filed his appeal with the Tribe, the

Appellant questions whether the California Valley Miwok Tribe's tribal forum is the correct forum to hear this appeal. However, all other avenues of appeal have been foreclosed to Mr. Dixie: two federal courts and the Assistant Secretary-Indian Affairs have refused to hear his appeal. Only the California Valley Miwok Tribe has agreed to provide Mr. Dixie a forum to present his appeals. Both the Bureau of Indian Affairs and the federal courts acknowledge that the appropriate venue for judicial intervention regarding internal tribal affairs is a Tribal Court.

Standard of Review

Appellant must show by a preponderance of the evidence that his position is true and should be enforced by the judicial tribunal of the Tribe. This standard requires that the Administrative Hearing Officer must be persuaded that the facts are more probably plaintiff's way than the defendant's.

Analysis

The parties are in essential agreement that until April 20, 1999, Yakima Dixie was the undisputed leader of the California Valley Miwok Tribe (then known as the Sheep Ranch Rancheria). The parties disagree and have presented evidence regarding a purported resignation by Yakima Kenneth Dixie and the appointment of Silvia Burley as Chairperson. The Tribe has submitted additional evidence in support of a subsequent tribal election wherein Silvia Burley was elected Chairperson and Yakima Dixie was elected Vice-Chairperson of the Tribe. The Tribe has also submitted evidence supporting Silvia Burley's enrollment with the Tribe.

Silvia Burley's Membership Status

The California Valley Miwok Tribe makes several arguments in its submission advocating that Silvia Burley is an enrolled member of the Tribe. The membership status of Silvia Burley is well settled as recognized by administrative action of the BIA and by judicial notice of the Federal District Court for the Eastern District of California. See Appellant's Exhibit 2000-02-04 (February 4, 2000 letter from Dale Risling, Sr. to Yakima K. Dixie, Vice-Chairperson, Sheep Ranch Rancheria, stating that "on August 5, 1998 Mr. Dixie accepted as members of the Tribe Silvia Burley, Rashel Reznor, Anjelica Paulk and Tristian Wallace" and indicating "there are no restrictions" on the tribal rights of these members); Appellant's Exhibit 2004-04-300e1 (April 29, 2004 Declaration of Brian Golding, Sr. stating the BIA acknowledges Silvia Burley as the authorized representative of the California Valley Miwok Tribe with whom government-to-government business is conducted). See generally, *Sheep Ranch Rancheria v. Burley*, No. S-01-1389 LKK/DAD (E. D. Cal. Jan. 24, 2002)(slip opinion at 3)(the court may take judicial notice of evidence that defendants Silvia Burley and Rashel Reznor are recognized by the BIA as the sole members of the governing body of the Sheep Ranch Rancheria of Me-Wuk Indians).

We note that in the video-taped meeting held on September 8, 1998 attended by Mr. Dixie, Ms. Burley and BIA officials, which has been submitted to the Court on DVD by Appellant, Brian Golding of the BIA specifically states that the membership of the Tribe consists of Mr. Dixie, his brother [Melvin Dixie], Silvia Burley and her daughters. Appellant's Exhibit 1998-09-08. This is confirmed in a follow-up letter to that meeting from Dale Risling to Yakima K. Dixie. Appellee's Exhibit 4. In that letter Mr. Risling

specifically states that "on August 5, 1998, as the Spokesperson of the Tribe, you accepted Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as enrolled members of the Tribe." The enrollment of the above individuals in the Tribe was reiterated by the BIA in its February 4, 2000 letter from Dale Risling, Superintendent to Yakima K. Dixie, Vice-Chairperson. Appellee's Exhibit 5. The enrolled status of Silvia Burley is again confirmed by the BIA in its July 26, 2000 letter to Silvia Burley, Chairperson, wherein Dale Risling, Sr. states that "[t]he Bureau of Indian Affairs, Central California Agency, recognizes the following individuals as members of the Tribal Council, governing body, of the Sheep Ranch Rancheria of Me-Wuk Indians: 1. Silvia Burley, Chairperson, 2. Vacant, Vice-Chairperson, 3. Rashel K. Reznor, Secretary/Treasurer." Appellee's Exhibit 6. Although cumulative, yet another letter from Dale Risling to Kevin Gover again makes the point. The July 26, 2000 letter introduces Silvia Burley "as the Chairperson of the Sheep Ranch Rancheria of Me-Wuk Indians of California" and confirms "that Ms. Burley is an elected official of a federally recognized tribe." Appellee's Exhibit 6.

Thus, the overwhelming preponderance of the evidence supports the Tribe's position that Silvia Burley is an enrolled member of the Tribe and has been since at least August 5, 1998. We so hold.

Office of the Chairperson

At the heart of this controversy is whether the alleged resignation of Mr. Dixie from the office of Chairperson of the Tribe in fact occurred and whether he was unlawfully replaced by Silvia Burley. The California Valley Miwok Tribe has submitted a document dated April 20, 1999, which states: "the General Council is in agreement to the acceptance of the resignation of Mr.

Yakima K. Dixie as Chairperson and has officially appointed Silvia Burley as Chairperson of the Sheep Ranch Tribe of Me-Wuk Indians." Appellee's Exhibit 9; Appellant's Exhibit 1999-04-20. The Document is signed by Yakima Kenneth Dixie as Chairperson, Silvia Burley as Secretary-Treasurer and Rashel K. Reznor as a tribal member. The Tribe and Mr. Dixie have both submitted a document styled as "Formal notice of resignation"[sic]. This document is quoted here in its entirety:

I Yakima K. Dixie being of sound mind and body on this date of Tuesday April 20th, 1999, am resigning as Chairperson of the Sheep Ranch Tribe of Me-Wuk Indians Sheep Ranch, California. This written document shall serve as a formal notice within the Tribe and to the United States Government and/or any other powers that may be. Signed Yakima Kenneth Dixie.

Appellee's Exhibit 9. Mr. Dixie alleges that the resignation is a forgery and that therefore he retains the office of chairperson of the Tribe. The Tribe argues that the resignation is genuine and is supported by other contemporaneous documents. In support of his allegation of forgery, Mr. Dixie presents his own statements, and a letter by M. Patricia Fisher of Fisher Forensic Document Laboratory, Inc.¹² Patricia M. Fisher states that she has examined the letter of resignation and that while the questioned signature "initially looks like the known signatures," [of Yakima Kenneth Dixie] "on careful examination there are significant differences." Appellant's Exhibit 2003-06-22 at 1. Mrs. Fisher opines that "based on this examination, it is [her] preliminary opinion that Yakima Kenneth Dixie did not sign the questioned resignation letter." *Id.* at 1. However, Ms. Fisher further states that her opinion is "necessarily qualified because [she] examined a copy of

¹² The expert retained by Mr. Dixie notes that "there is currently no academic degree in the United States for the examination of questioned documents." See Statement of Qualifications of M. Patricia Fisher at http://www.doclab.com/qualif_set.html.

the signature, rather than the original." *Id.* She further requests a copy of an original signature for further testing purposes. *Id.*

No explanation or documentation is offered by Ms. Fisher or the Appellant to explain the standards used in arriving at her preliminary and qualified opinion. However, the Federal Bureau of Investigation ("FBI") has published a set of such standards. In the absence of any standards offered by Ms. Fisher, this tribunal adopts the standards published by the FBI. The FBI standards require comparison with a piece of known writing with a copy of a piece of writing. The standards also require the document examiner to conduct a side-by-side comparison of questioned writing and known writing:

4.8.1. *Comparability.* If the questioned writing and known writing are not comparable, discontinue comparison and request comparable known writing. If comparable known writing is made available, return to **Section 4.3** in this Guideline. If comparable writing is not made available, discontinue the comparison and report accordingly.

4.8.2. Determine whether or not there are *dissimilarities, absent characters,* and/or *similarities.* Evaluate their significance individually and in combination.

4.8.3. *Sufficient quantity.* If questioned and/or known writing is not sufficient in quantity for elimination or identification, continue the comparison to the extent possible. When appropriate, request more known writing. If more known writing is made available, return to **Section 4.3** in this Guideline.

4.9. Form an opinion using **Reporting Conclusions** in **Section 5** in this Guideline.

See Guideline for Forensic Document Examination at <http://www.fbi.gov/hq/lab/fsc/backissu/april2000/swgdoc4.htm>.

Section 5 of the FBI Guidelines provides a range of possible conclusions based on the side-by-side comparison. This range of possible conclusions consists of Identification, Highly Probable Did Write, Did Write, Indications Did Write, No Conclusion, Indications Did Not Write, Probable Did Not Write, Highly Probable Did Not Write and Elimination. Under the FBI

Guideline, the listed criteria should be met in order to reach the appropriate conclusion. Ms. Fisher conducted a side-by-side comparison as required by the FBI Guideline. However, under the FBI Guideline, Ms. Fisher's "preliminary opinion" that there are significant differences, without more comparison with original signatures rather than copies of signatures, does not lead to the conclusion that Yakima Kenneth Dixie did not sign the questioned resignation letter. Mrs. Fisher fails to indicate whether the comparison leads to an *elimination*, an *identification*, or something in between. The FBI Guideline suggests that if neither elimination nor identification is possible the examiner should then, when appropriate, request more known writing. Mrs. Fisher's preliminary and qualified opinion seems to indicate, but does not explicitly state, she has made an elimination of Mr. Dixie as the signer of that document; however, her request for original signature implies that she has been unable to conclusively make any determination. She makes the opinion preliminary, apparently anticipating she will do further analysis or testing. She then qualifies the preliminary opinion because she did not evaluate an original signature. Ms. Fisher's opinion is of very little probative value in light of her qualification that "she examined a copy of the signature, rather than the original" and her note that the opinion is "preliminary" rather than final. Appellant's Exhibit 2003-06-26.

The Tribe has submitted several additional documents which contradict the statements of Mr. Dixie that he did not resign and which shed light on the process. The first is a notice of a General Council Meeting of "all voting members of the Sheep Ranch Tribe of Me-Wuk Indians on the 8th day of May, 1999, at the Sheep Ranch Rancheria, starting at 2 pm and continuing