

Case No. D054912  
(San Diego County Superior Court Case No. 37-2008-00075326-CU-CO-CTL)

**IN THE CALIFORNIA COURT OF APPEAL**  
**FOURTH APPELLATE DISTRICT**  
**DIVISION ONE**

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CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff/Appellant,

v.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant/Respondent.

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On Appeal from the Superior Court  
of the State of California, San Diego County,  
Hon. Joan M. Lewis

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**APPELLANT'S REPLY BRIEF**

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Plaintiff/Appellant CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or "Plaintiff") submits the following in reply to the Respondent's Brief ("RB") filed by Defendant/Respondent CALIFORNIA GAMBLING CONTROL COMMISSION ("the Commission" or "Defendant").

## I.

### THE TRIBE UNDER BURLEY'S LEADERSHIP HAS STANDING/CAPACITY TO SUE BY VIRTUE OF ITS OWN TRIBAL RESOLUTION AUTHORIZING THIS LAWSUIT

The Tribe asserts that judicial resolution of the “standing” issue will resolve the Tribe’s right under Silvia Burley’s (hereinafter “Burley”) leadership to receipt of Revenue Sharing Trust Fund (“RSTF”) money currently being withheld by the Commission. This is because the Commission’s standing argument is premised on two erroneous assumptions: (1) The Tribe’s right to receive State RSTF money is conditioned on the Tribe’s right to receive federal contract funding from the Bureau of Indian Affairs (“BIA”); and (2) The Tribe cannot exist and operate as a federally-recognized tribe without a constitution “organized” under the Indian Reorganization Act (“IRA”). Overlapping, and somewhat muddled in these two incorrect propositions, are the Commission’s other unmeritorious contentions that the Tribe has somehow lost its right to exist because: (1) the BIA will not recognize the Tribal government under Burley’s leadership (even though that lack of recognition can only be limited to determining eligibility for federal contract funding as a result of not being organized under the IRA); and (2) a “leadership dispute” calls into question the Tribe’s right to receive RSTF money under Burley’s leadership.

The Respondent’s Brief ignores fundamental Indian law, specifically tribal sovereignty, which completely refutes the Commission’s position on each of these issues.

“Indian governmental powers, with some exceptions, are not delegated powers granted by express acts of Congress, but are inherent powers of a limited sovereignty that have never been extinguished.” Charles Wilkinson, *INDIAN TRIBES AS SOVEREIGN GOVERNMENTS*, 2d ed., 2004, page 31 (citing United States v. Winans (1905) 198 U.S. 371); see also Worcester v. Georgia (1832) 31 U.S. 515. This is the “most basic principle of all Indian law”. Felix S. Cohen, *HANDBOOK OF FEDERAL INDIAN LAW* 122 (1942); see also United States v. Winans, *supra*. Thus, the doctrine of tribal sovereignty gives the Tribe under Burley’s leadership the right to function and exist as a

tribe outside the IRA. Kerr-McGee Corp. v. Navajo Tribe of Indians (1985) 471 U.S. 195. “The power to establish a form of government is a basic element of sovereignty. Federal law recognizes that Indian tribes may adopt whatever form of government best suits their own practical, cultural, or religious needs.” Wilkinson, *supra* at 33; *see also* Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 62-63; Pueblo of Santa Rosa v. Fall (1927) 273 U.S. 315. “Tribes are not required to adopt governments patterned after the United States government.” Wilkinson, *supra* at 33. And as noted by one Indian law scholar: “Other tribes have organized their formal governments pursuant to their inherent power of sovereignty, outside the IRA framework, and courts have upheld the validity of such governments, whether or not a written constitution has been developed.” Wilkinson, *supra* at 33 (citing Kerr-McGee Corp., *supra*).

An inherent attribute of tribal sovereignty is the power to pass “resolutions” or ordinances governing the affairs of tribal business, including the right to prosecute lawsuits. *See Williams v. Gover* (9<sup>th</sup> Cir. 2007) 490 F.3d 785, 788; *see also* Santa Clara Pueblo, *supra* at 52, fn. 2 (Santa Clara Pueblo Tribal Council passed and enacted “membership ordinance” pursuant to its legislative authority under its constitution). For example, in Gover, *supra*, the Mooretown Rancheria Tribe, after adopting its own constitution outside the IRA, passed a “tribal resolution” which “narrowed full tribal membership” to only “direct lineal descendents” of the original four tribal members existing as of 1959. 490 F.3d at 491, fn. 12 (noting the Resolution as “Mooretown Rancheria, Resolution 98-218, Reclassification of Membership in Accordance With the Constitution of the Mooretown Rancheria, February 18, 1998”). The Court of Appeal observed this was an act and inherent right of the tribe “central to its existence as an independent political community”. 490 F.3d at 791 (citing Santa Clara Pueblo v. Martinez, *supra* at 72). Significantly, the Mooretown Rancheria Tribe was “unorganized”, i.e., was not organized under the IRA, but had its own constitution outside the IRA. 490 F.3d at 490, fn. 11.

Similar to the Mooretown Rancheria Tribe in Williams v. Gover, *supra*, the Tribe here has organized itself outside the IRA, which, in accordance with its inherent power of



self-government under tribal sovereignty, gives it the right to adopt its own constitution which “best suits [its] own practical, cultural, or religious needs.” Santa Clara Pueblo, supra at 62-63. As was the case with the Mooretown Rancheria Tribe in Williams v. Gover, supra, the Tribe’s non-IRA constitution gives it the authority to pass resolutions governing the Tribe’s affairs. Indeed, even before the Tribe adopted its own organic constitution, the BIA recognized that the Tribe had the inherent power to conduct tribal business through resolutions, when the BIA accepted and approved the Tribe’s “Resolution No. R-1-5-07-200” changing the name of the Tribe from “Sheep Ranch Rancheria of Me-Wuk Indians of California” to “California Valley Miwok Tribe” in 2001. CT 640. Based upon this resolution, the BIA placed the new name in the FEDERAL REGISTER which listed the Tribe under its new name as a “federally-recognized tribe”. CT 640.

Under this same inherent power, the Tribal Council has passed a resolution permitting the prosecution of this lawsuit against the Commission. CT 546:6-11.

## II.

### **THE TRIBE HAS ALSO REMOVED ANY “CLOUD” OVER BURLEY’S LEADERSHIP BY TRIBAL COURT ACTION AND TRIBAL RESOLUTION AGAINST YAKIMA DIXIE**

The Commission further argues that a leadership dispute exists within the Tribe calling into question Burley’s right to represent the Tribe and casting doubt on the legitimacy of the Tribe’s governing body. This contention is without merit and again ignores the Tribe’s inherent right to resolve that dispute itself. Williams v. Gover, supra at 789; see, e.g., CT 318-319 (In denying Yakima Dixie’s TRO preventing the Commission from distributing RSTF money to the Tribe via Burley because Burley was not the rightful leader of the Tribe, the Sacramento Superior Court on October 27, 2004, ruled that Dixie’s claims must be resolved by either the Tribe or the appropriate federal agency, as the Court had no jurisdiction to decide any leadership dispute issue).

A. THE TRIBAL COURT DECISION RESOLVING THE LEADERSHIP DISPUTE

For the same reasons stated above, this Court must accept the Tribe's right to resolve that leadership dispute itself, without any outside interference from either the courts or the BIA. As explained in Santa Clara Pueblo, supra:

“'[S]ubject[ing] a dispute arising on the reservation among reservation Indians to a forum other than the one they have established for themselves' [citation omitted], may 'undermine the authority of the tribal cour[t]...and hence infringe on the right of the Indians to govern themselves.'" (citing Williams v. Lee (1959) 358 U.S. 217, 223).

436 U.S. at 59. In Williams v. Lee, supra, the U.S. Supreme Court held that a non-Indian merchant could not invoke the jurisdiction of a state court to collect a debt owed by a reservation Indian and arising out of the merchant's activities on the reservation, but instead must seek relief exclusively through tribal remedies. Thus, disputes between Indians relative to pure Indian matters are to be resolved exclusively by the applicable Tribal forum or Tribal Court. Santa Clara Pueblo, supra at 72 (noting that "the role of courts in adjusting relations between and among tribes and their members [is] restrained"); see also Lone Wolf v. Hitchcock (1903) 187 U.S. 553, 565. This is because "Indian tribes are 'distinct, independent political communities, retaining their original natural rights' in matters of local self-government". Santa Clara Pueblo, supra at 55 (citing Worcester v. Georgia, supra). "[Indian tribes further remain] a 'separate people, with the power of regulating their internal and social relations'". Santa Clara Pueblo, supra at 55 (citing United States v. Kagama (1897) 118 U.S. 375, 381-382). "They have the power to make their own substantive law in internal matters [citations omitted], and to enforce that law in their own forum." Santa Clara Pueblo, supra at 55-56; see also Roff v. Burney (1897) 168 U.S. 218 (membership); Jones v. Meehan (1899) 175 U.S. 1, 28 (inheritance rules); United States v. Quiver (1916) 241 U.S. 602 (domestic relations).

Against this backdrop of well-settled Indian law, this Court (and the trial court below) must acknowledge and recognize the Tribe's Tribal Court action on April 29, 2005, concluding the Yakima Dixie effectively resigned as Chairperson of the Tribe [CT



535-536], and that Burley was lawfully appointed as the succeeding Chairperson of the Tribe upon his resignation [CT 536], and the subsequent September 5, 2005 Tribal Resolution removing Dixie from the membership rolls of the Tribe. CT 557, 634-635.

Despite the BIA's statement to the contrary (see RB 25, fn. 11), the Tribal Court Decision of April 29, 2005, is entitled to "full faith and credit". As stated in Santa Clara Pueblo, *supra*:

"[As of 1978] [t]here [were] 287 tribal governments in operation in the United States, of which 117 had operating tribal courts in 1976. [citation omitted]. In 1973 these courts handled approximately 70,000 cases. [citation omitted]. Judgments of tribal courts, as to matters properly within their jurisdiction, have been regarded in some circumstances as entitled to full faith and credit in other courts. See, e.g., United States ex rel. Mackey v. Coxe (1856) 18 How. 100; Standley v. Roberts (8<sup>th</sup> Cir. 1894) 59 F. 836, 845, appeal dismissed, 17 S.Ct. 999, 41 L.Ed. 1177 (1896)."

436 U.S. at 65, fn. 21. The Tribe's inherent right of self-government extends to its right to administer civil and criminal justice, especially when Indians are involved. United States v. Wheeler (1978) 435 U.S. 313; Ex Parte Crow Dog (1883) 109 U.S. 556. Thus, without having to decide the so-called Tribal leadership dispute between Dixie and Burley, this Court can, and should, afford the Tribal Court Decision of April 29, 2005, "full faith and credit", and conclude that the issue has already been decided. Indeed, the Commission has not, and cannot, offer any evidence that the Tribal Court Decision was incorrect or not final in any way. Its only attack is that the BIA has chosen not to recognize it. However, the letter the Commission points to [CT 750] was not made in the context of a judicial forum. Moreover, the self-serving "remark" was made by an employee of the BIA in the midst of an ongoing dispute between the Tribe and the BIA over federal contract funding, and is therefore inherently biased.

By giving the Tribal Court Decision "full faith and credit", no actual leadership dispute will exist to call into question the Tribe's right to bring this action against the Commission, or its right under Burley's leadership to the RSTF money being withheld by the Commission.

**B. THE TRIBAL RESOLUTION REMOVING YAKIMA DIXIE FROM THE MEMBERSHIP ROLLS**

It is undisputed that the Tribal Council passed a resolution removing Yakima Dixie from its membership rolls on September 5, 2005, after the Tribal Court Decision ruled against Dixie's challenge of Burley's leadership. CT 557, 634-635. For the reasons stated above, this resolution (Resolution R-1-09-05-2005) was an act of self-government which the Tribe had every right to do. Santa Clara Pueblo, supra at 52, 55-56, 72 ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community."); Williams v. Gover, supra at 788, 790, fn. 12 ("Mooretown Rancheria, Resolution 98-218, Reclassification of Membership in Accordance With the Constitution of the Mooretown Rancheria, February 18, 1998"). Indeed, "unless limited by treaty or statute, a Tribe has the power to determine tribal membership." Adams v. Morton (9<sup>th</sup> Cir. 1978) 581 F.2d 1314, 1320.

The effect of this resolution was to make any future challenges by Dixie "external". No longer would Dixie's challenges be considered a leadership dispute "within" the Tribe, since Dixie is no longer a Tribal member. This effectively thwarts Dixie's efforts to "tie up" the RSTF money by making it appear that there is an "internal" squabble over who is the rightful, authorized representative of the Tribe capable of receiving those funds. A non-member of the Tribe has no standing to challenge Tribal Council decisions, including decisions selecting the Tribal Chairperson. See Williams v. Gover, supra at 788 (Concow-Maidu Indians who merely descended from people who have lived at Mooretown Rancheria were by Tribal resolution reclassified as "adoptive members" without the full rights of full membership of the Mooretown Rancheria Tribe, and thus had no tribal voting rights). This resolution also thwarts Dixie's attempts to preclude the Tribe under Burley's leadership from pursuing this action against the Commission. The trial court's refusal to recognize this resolution and the Tribal Court Decision that preceded it, as lawful self-governing acts by the Tribe pursuant to well-recognized tribal sovereignty, only perpetuates the so-called "leadership dispute", which



the Commission continues to use as basis (though wrongfully) to withhold RSTF distribution payments from the Tribe. CT 469 (July 24, 2008 RSTF Report from Deputy Director of Compliance Division to the Commission, footnote on bottom of page, stating: “Distribution to California Valley Miwok Tribe is withheld pending resolution of tribal leadership dispute”). The “merry-go-round” will continue unless this Court recognizes the Tribal Court Decision rejecting Dixie’s leadership challenge and the Tribal resolution “disenrolling” Dixie’s membership.

### III.

#### **THE COMMISSION’S ACTION’S IN DEPOSITING RSTF PAYMENTS IN A SEPARATE INTEREST BEARING ACCOUNT IN THE NAME OF “CALIFORNIA VALLEY MIWOK TRIBE” ARE ACTS OF RECOGNITION OF THE TRIBE UNDER BURLEY’S LEADERSHIP**

The Commission has conceded that it regularly deposits RSTF money into a separate, interest bearing account earmarked, and in the name of, “California Valley Miwok Tribe”. RB at 9. In its regular reports on RSTF distribution payments to various non-compact tribes, the Commission states that the RSTF distribution payments due and owing to the Tribe here are being placed in a interest-bearing account in the name of “California Valley Miwok Tribe” pending resolution of a “tribal leadership dispute”. CT 469, 472. Since this name was the new name changed by Tribal Resolution under Burley’s leadership on May 7, 2001 [CT 637], the Commission’s acts of deposits under this new name can only be construed as recognizing the Tribe under Burley’s leadership.

Moreover, the Commission cannot recognize the Tribe’s resolution under Burley’s leadership establishing the name of the Tribe as “California Valley Miwok Tribe”, and then reject a resolution by the same Tribal Council “disenrolling” Yakima Dixie as a Tribal member, and a Tribal Court established under Burley’s leadership resolving the very leadership dispute the Commission claims prevents it from distributing RSTF money to the Tribe. It cannot pick and choose which resolutions or Tribal acts it will honor.

#### IV.

### **THE TRIBE UNDER BURLEY'S LEADERSHIP HAS STANDING AS A "NON-COMPACT" TRIBE UNDER THE COMPACT TO COMPEL THE COMMISSION TO DISCHARGE ITS DUTY TO DISTRIBUTE RSTF MONEY**

The Tribe is qualified to receive the subject RSTF payments under the Tribal-State Gambling Compact ("the Compact"), because it fits the Compact definition of a "Non-Compact Tribe" eligible to receive those funds. For example, Section 4.3.2(a)(i) states:

"Federally-recognized tribes that are operating fewer than 350 Gaming Devices are 'Non-Compact Tribes.'"

CT 022. It is undisputed that the Tribe is "federally-recognized" and has no gambling casinos of any kind. RB at 5; CT 143:7-11. The Tribe is thus eligible to receive RSTF distribution payments under the Compact. Indeed, the Commission acknowledges as much, because it lists the Tribe as an "eligible recipient Indian Tribe" in its regular reports on RSTF distribution payments. CT 470 (Tribe number 12 on the list). Section 4.3.2.1(a) further provides that "each Non-Compact Tribe in the State shall receive the sum of \$1.1 million per year." CT 022. As alleged, and as acknowledged by the Commission, the Commission has been withholding RSTF distribution payments from the Tribe since 2005. CT 170:27; 469.

The Commission previously distributed RSTF money to the Tribe under Burley's leadership claiming it had an obligation to do so under the Compact. CT 371:3-7; 372:15-18.

In addition, the word "Tribe" is defined under the Compact as "as a federally-recognized Indian tribe, or an authorized official or agency thereof." (Section 2.21 of Compact); CT 021. The term "Tribal Chairperson" is defined under Section 2.19 of the Compact as:

"[T]he person duly elected or selected under the Tribe's organic documents, customs, or traditions to serve as the primary spokesperson for the Tribe."

CT 020. Under this provision of the Compact, Burley qualifies as the representative of the Tribe and thus eligible to receive RSTF payments for the Tribe, because the Tribe has



selected her to do so under its own constitution. The phrase “organic documents, customs, or traditions” encompasses those tribal constitutions established outside the IRA, such as the current one under which the Tribe is operating. CT 544.

Accordingly, standing/capacity to receive RSTF distributions, and sue the Commission for not making those distributions, can also be established under the Compact, because the Tribe fits the Compact definition of a Non-Compact Tribe eligible to receive those funds. Nowhere in the Compact does it require the Tribe to be recognized by the BIA, have a constitution formed under the IRA, be eligible for federal contract funding, or have BIA approval, before being eligible to receive State RSTF money. The Compact sets forth the eligibility requirements which the Tribe meets in every degree. The Commission’s corresponding duty to disburse those funds is grounded under Gov. Code Section 12012.90(a)(2) which provides that the Commission “shall make quarterly payments from the Indian Gaming Revenue Sharing Trust Fund to each eligible recipient Indian Tribe within 45 days of the end of each fiscal quarter.” (Emphasis added). This language matches Section 4.3.2.1(b) of the Compact which states:

“Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund...”

CT 023.

Thus, the Tribe’s right to seek a writ of mandate under CCP Section 1085(a), while grounded under Gov. Coded Section 12012.90(a)(2), is complimented and explained under the provisions of the Compact defining eligibility of Non-Compact Tribes to receive RSTF money, as described above.

## V.

### **THE TRIBE HAS A MERITORIOUS CLAIM FOR MANDAMUS RELIEF UNDER CCP SECTION 1085(a)**

The U.S. District Court went to great lengths to explain why the Tribe had a potential claim for mandamus relief under CCP Section 1085(a). CT 160-162. It was the basis for the Court to remand back to the State Superior Court, in light of the Tribe’s

contention that only State law claims were afoot against the Commission with respect to the subject RSTF money. Otherwise, it would have entertained the Commission's motion to dismiss for lack of capacity/standing. The U.S. District Court would not have remanded back to the State Court, had it felt the Tribe under Burley's leadership lacked the capacity/standing to sue the Commission for unpaid RSTF money.

The Tribe's writ of mandamus is based largely on the Commission's failure and/or refusal to distribute RSTF money to the Tribe under Gov. Code Section 12012.90(a)(2), mandating the Commission to make quarterly RSTF payments to Non-Compact Tribes "within 45 days of the end of the fiscal quarter." The Commission's reasons for refusing to discharge this mandatory duty are flawed for the following reasons.

**A. THE COMMISSION CANNOT CONDITION PAYMENT OF STATE RSTF MONEY TO THE TRIBE ON THE BIA'S ACCEPTANCE OR RECOGNITION OF THE TRIBE'S GOVERNING CONSTITUTION**

The Commission's duty to make quarterly RSTF payments to the Tribe under Gov. Code Section 12012.90(a)(2) is tempered by the plain language of the Compact, specifically Sections 4.3.2 and 4.3.2.1. Nowhere in those sections, or elsewhere in the Compact, is there any language permitting the Commission to condition payment of RSTF payments to Non-Compact Tribes on the BIA approving or recognizing the Non-Compact Tribe's constitution. In fact, the Compact as a whole never mentions the BIA. The reason for this is obvious. RSTF distributions are not federal funds awarded by the federal government or the BIA. Their source flows directly from the California State Treasury. Gov. Code Section 12012.75 ("There is hereby created in the State Treasury a special fund called the 'Indian Gaming Revenue Sharing Trust Fund'...").

Despite the fact that RSTF distribution payments are derived from the State Treasury, and thus regulated by State law, the Commission has erroneously concluded that they are "federally derived benefits", and therefore, like federal contract funds, the Tribe must abide by BIA policy and have a "recognized" constitution organized under the IRA, before the Commission will distribute those payments to the Tribe. It argued this point below as follows:



“[The] Tribe can have any kind of organization it wants. If it wants federally derived benefit[s], which is what the RSTF is, it needs to have a federally recognized government. There is no federally recognized government...In the absence of that, there is nobody authorized to ask for federally derived benefits. And what we’re talking about is a federally derived benefit. You, in the absence of federal recognition, there’s no right....There is no right to this Revenue Sharing Trust Fund unless you’re a federally recognized tribe. So it is a federally drawn benefit.”

RT 14:22-25;15:1-5;16:12-14. These contentions are factually and legally without merit, aside from being misleading and confusing. They underscore the flawed premise the Commission has been operating under in denying RSTF to the Tribe. RSTF payments are not paid from the federal government, nor are they derived from any federal fund. The Commission has characterized the RSTF payments as “federally derived” money, so as to bolster its erroneous position that the Tribe is entitled to RSTF payments only insofar as it qualifies for federal contract funding from the BIA. However, it is the BIA’s position that Indian tribes who desire federal contract funding must “organize” their constitution under the IRA. CT 549-550, 569. No such requirement exists for Non-Compact Tribes seeking RSTF money from the State of California. Thus, when the Tribe ultimately declined to “organize” under the IRA at the BIA’s urging, the BIA refused to renew federal contract funding for the Tribe and notified the Tribe it would not recognize its Tribal government under Burley’s leadership (clearly for federal contract funding purposes). CT 551-552, 574-576. The Commission has seized upon this dispute between the BIA and the Tribe to wrongfully withhold RSTF payments to the Tribe, which have nothing to do with federal contract funds or actions taken by the BIA toward the Tribe.

The Commission’s duty of distribution is limited by the following language in Section 4.3.2.1(b) of the Compact:

“Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund. The Commission shall serve as the trustee of the fund. The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes....”

CT 023. The Commission cannot add to this provision, or any provision in the Compact, by requiring the Tribe to first have a constitution organized under the IRA before being entitled to receive RSTF payments. The Compact does not allow the Commission to do that. Indeed, the Compact specifically states that the<sup>4</sup> Commission “shall have no discretion with respect to the use or disbursement of the trust funds.” (Section 4.3.2.1(b)).

**B. THE COMMISSION CANNOT REQUIRE THE TRIBE TO “ORGANIZE” ITS GOVERNMENT UNDER THE IRA AS A CONDITION OF ELIGIBILITY FOR RSTF PAYMENTS**

For the same reasons above, the Commission has no authority under the Compact to require the Tribe, or any Non-Compact Tribe in California, to organize its government under the IRA, before it will release to it RSTF payments. The Commission is not the BIA, and the source of the RSTF money does not come from the federal government or the BIA.

**C. THE TRIBE’S PURPORTED LOSS OF ELIGIBILITY TO RECEIVE FEDERAL CONTRACT FUNDING FROM THE BIA DOES NOT AFFECT ITS RIGHT TO RECEIVE RSTF PAYMENTS UNDER THE COMPACT**

RSTF money does not belong to the Commission. It is not the Commission’s money. It belongs to all eligible Non-Compact Tribes. It is paid by other Compact Tribes who operate casinos. The Commission is merely a “depository” of those funds. CT 023 (Section 4.3.2.1(b) of Compact).

The Commission has not offered any proof, through judicial notice or otherwise, that any of the Compact Tribes have objected to the Tribe receiving RSTF payments simply because it will not organize under the IRA or because the BIA will not recognize the Tribe’s government under Burley’s leadership.

Under the Compact, the Tribe’s eligibility to receive RSTF payments is not affected by the BIA’s decision to suspend federal contract funding to the Tribe, because the Tribe will not organize its constitution under the IRA. There is no such requirement anywhere in the Compact.

VI.

**THE COMMISSION FILED NO CROSS APPEAL ON WHETHER NECESSARY PARTIES TO THE SO-CALLED LEADERSHIP DISPUTE SHOULD BE JOINED**

The Commission's argument that the First Amended Complaint ("FAC") should have been dismissed for failure to join necessary parties to the so-called leadership dispute is not before the Court, since the Commission failed to file any cross appeal on that issue. People v. Lyons, B212253 (Cal. App. 11-5-2009); People v. Mendez (1999) 19 Cal.4<sup>th</sup> 1084, 1094-1095.

VII.

**THE COMMISSION'S THIRD-PARTY BENEFICIARY ARGUMENT IS MOOT, SINCE THE TRIBE DISMISSED ALL BREACH OF CONTRACT CLAIMS**

Since the Tribe dismissed its breach of contract claims, the Commission's claim that the Tribe, as a Non-Compact Tribe, may not seek to enforce the Compact, is moot.

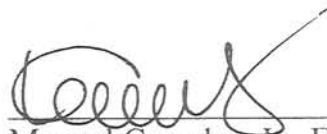
VIII.

**CONCLUSION**

For the foregoing reasons, and for the reasons set forth in the Appellant's Opening Brief, the judgment of dismissal should be reversed.

Dated: November 30, 2009

Respectfully submitted,



Manuel Corrales, Jr., Esq.  
Attorney for Plaintiff/Appellant  
California Valley Miwok Tribe



CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 14(c)(1))

The text of this Appellant's Reply Brief consists of 4,385 words as counted by Microsoft Office Word processing program used to generate this appeal.

I certify that the above is true and correct.

Dated: November 30, 2009.

A handwritten signature in black ink, appearing to read 'Manuel Corrales, Jr.', is written over a horizontal line.

Manuel Corrales, Jr., Esq.  
Attorney for Plaintiff/Appellant  
California Valley Miwok Tribe





SHORT TITLE: California Valley Miwok Tribe v. California Gambling  
Control Commission

CASE NUMBER:  
37-2008-00075326-CU-CO-CTL

# ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)

(This Attachment is for use with form POS-030)

## NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:

Name of Person Served

Address (number, street, city, and zip code)

Peter H. Kaufman/Randall Pinal Deputy Attorneys General	110 West "A" Street, Suite 1100 San Diego, CA 92101
Terry Singleton, Esq. SINGLETON & ASSOCIATES	1950 Fifth Avenue, Suite 200 San Diego, CA 912101
Hon. Joan M. Lewis San Diego Superior Court, Dept. 65	330 West Broadway San Diego, CA 92101
California Supreme Court Ronald Reagan Building	300 S. Spring Street, Floor 2 Los Angeles, CA 90013-1233 (5 copies)