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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL BRANCH

CALIFORNIA VALLEY MIWOK TRIBE, Plaintiff, **v.** **THE CALIFORNIA GAMBLING CONTROL COMMISSION; and DOES 1 THROUGH 50, Inclusive,** Defendants.	Case No. 37-2008-00075326-CU-CO-CTL **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S OBJECTIONS TO PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE RE: OPPOSITION TO MOTION TO INTERVENE** Date: December 17, 2010 Time: 8:30 a.m. Dept: 62 Judge: The Honorable Ronald L. Styn Trial Date: May 13, 2010 Action Filed: January 8, 2008

Defendant California Gambling Control Commission (Commission) asserts the following objections to Plaintiff California Valley Miwok Tribe's (Burley or Plaintiff) Request for Judicial Notice Re: Opposition to Motion to Intervene. Throughout these objections references to Plaintiff are to Silvia Burley (Burley), who purports to bring this action on behalf of the "California Valley Miwok Tribe." References in these objections to the California Valley Miwok

Tribe are to the entity named California Valley Miwok Tribe that appears on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. (See Exh. B attached hereto, 75 Fed.Reg. 60810 (Oct. 1, 2010).) Contrary to Burley's contention in her Opposition to the Motion to Intervene, the Court of Appeal did not rule that the California Valley Miwok Tribe "under Silvia Burley's leadership" has standing to bring this action. There have been no factual findings that Burley is authorized to bring this action on behalf of the California Valley Miwok Tribe. Indeed, her authority to act on behalf of the California Valley Miwok Tribe is disputed by the Commission, the United States government and by proposed Intervenor.

1. Objection to Exhibit 1, letter dated July 12, 2000, from Dale Risling of the Bureau of Indian Affairs to Silvia Burley. Plaintiff's request should be denied because the document is irrelevant to any issue in this action. (*American Cemwood Corp. v. American Home Assurance Co.* (2001) 87 Cal. App. 4th 431, 441, fn. 7 [matters to be judicially noticed must be relevant to the issues in the case].) Whether the United States Bureau of Indian Affairs (BIA) may have recognized Silvia Burley for certain purposes in the distant past has no bearing on BIA's official positions at the time periods relevant in this matter. Further, the United States has explained that BIA's initial recognition of the purported tribal government headed by Burley occurred before the problematic nature of Burley's purported government was fully apparent. (See Exh. A attached hereto, Brief and Supplemental Appendix of Appellees, *California Valley Miwok Tribe v. United States*, No. 06-5203 (D.C. Cir. June 8, 2007), 2007 WL 1700313 at *14.) Plaintiff's request also should be denied because it seeks improperly to judicially notice the truth of facts contained in documents, which are open to interpretation and/or dispute. (See *Fremont Indemnity Co. v. Fremont Gen. Corp.* (2007) 148 Cal. App. 4th 97, 113 [although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable].)

2. Objection to Exhibit 2, letter dated July 26, 2000, from Dale Risling, BIA, to Kevin Gover. Plaintiff's request should be denied because the document is irrelevant to any issue in this action. (*American Cemwood Corp. v. American Home Assurance Co., supra*, 87 Cal. App. 4th at

p. 441, fn. 7 [matters to be judicially noticed must be relevant to the issues in the case].) Whether BIA may have recognized Silvia Burley for certain purposes in the distant past has no bearing on BIA's official positions at the time periods relevant in this matter. Further, the United States has explained that BIA's initial recognition of the purported tribal government headed by Burley occurred before the problematic nature of Burley's purported government was fully apparent. (See Exh. A.) Plaintiff's request also should be denied because it seeks improperly to judicially notice the truth of facts contained in documents, which are open to interpretation and/or dispute. (See *Fremont Indemnity Co. v. Fremont Gen. Corp.*, *supra*, 148 Cal.App.4th at p. 113 [although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable].)

3. Objection to Exhibit 3, letter dated November 24, 2003, from Dale Risling, BIA, to To Whom It May Concern. Plaintiff's request should be denied because the document is irrelevant to any issue in this action. (*American Cemwood Corp. v. American Home Assurance Co.*, *supra*, 87 Cal. App. 4th at p. 441, fn. 7 [matters to be judicially noticed must be relevant to the issues in the case].) Whether BIA may have recognized Silvia Burley for certain purposes in the distant past has no bearing on BIA's official positions at the time periods relevant in this matter. Further, the United States has explained that BIA's initial recognition of the purported tribal government headed by Burley occurred before the problematic nature of Burley's purported government was fully apparent. (See Exh. A.) Plaintiff's request also should be denied because it seeks improperly to judicially notice the truth of facts contained in documents, which are open to interpretation and/or dispute. (See *Fremont Indemnity Co. v. Fremont Gen. Corp.*, *supra*, 148 Cal. App. 4th at p. 113 [although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable].)

4. Objection to Exhibit 5, letter dated July 19, 2005, from Janis L. Whipple-DePina to Silvia Burley. The Commission objects to Plaintiff's request to the extent that Plaintiff seeks judicial notice of the interpretation of facts contained in Exhibit 5. (See *Fremont Indemnity Co. v.*

Fremont Gen. Corp., *supra*, 148 Cal. App. 4th at p. 113 [although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable].)

5. Objection to Exhibit 15, letter dated December 21, 2007, from Manuel Corrales, Jr. to the Commission. Plaintiff's request should be denied because Exhibit 15 is not judicially noticeable under Evidence Code section 452, subdivision (c), which allows a court to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Papers prepared by private parties and filed with state and federal agencies do not fall within the ambit of subdivision (c) of section 452 of the Evidence Code. (*Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 608 (*Stevens*).) In *Stevens*, the defendants requested that the court take judicial notice of filings they submitted to the Department of Insurance to show that the insurance program at issue in the lawsuit did not involve the "transaction of insurance." (*Id.* at p. 607.) The court denied the request in part because documents merely on file with a state agency do not constitute an "official act" under subdivision (c) of section 452 of the Evidence Code. (*Id.* at p. 608.)

6. Objection to Exhibit 16, letter dated January 2, 2008, from Manuel Corrales, Jr., to Cyrus Rickards, Chief Counsel, California Gambling Control Commission. Plaintiff's request should be denied because Exhibit 16 is not judicially noticeable under Evidence Code section 452, subdivision (c), which allows a court to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Papers prepared by private parties and filed with state and federal agencies do not fall within the ambit of subdivision (c) of section 452 of the Evidence Code. (*Stevens*, *supra*, 75 Cal.App.4th at p. 608.)

7. Objection to Exhibit 18, letter dated January 4, 2008, from Manuel Corrales, Jr., to Cyrus Rickards, Esq., Chief Counsel, California Gambling Control Commission. Plaintiff's request should be denied because Exhibit 18 is not judicially noticeable under Evidence Code section 452, subdivision (c), which allows a court to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United

States." Papers prepared by private parties and filed with state and federal agencies do not fall within the ambit of subdivision (c) of section 452 of the Evidence Code. (*Stevens*, *supra*, 75 Cal.App.4th at p. 608.)

8. Objection to Exhibit 19, titled "Tribal Council Governing Body of the California Valley Miwok Tribe, Resolution of August 14, 2009," R-1-08-14-2009. Plaintiff's request should be denied because Exhibit 19 is not judicially noticeable under Evidence Code section 452, subdivision (c), which allows a court to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." The California Valley Miwok Tribe is not a state or a department of the United States. Although there is case authority for treating a federally recognized Indian tribe as a state under the Evidence Code (see *Big Valley Band of Pomo Indians v. Superior Court* (2005) 133 Cal.App.4th 1185), the Commission has found no authority for doing so where the legitimacy of the tribal government and tribal departments is disputed. Here, there are no facts in the record that demonstrate that the purported "Tribal Council" that signed Exhibit 19 is or was the legitimate Tribal Council of the California Valley Miwok Tribe. Further, there are no facts in the record that demonstrate that the entity named the "California Valley Miwok Tribe" that Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. (See Exh. B, 75 Fed.Reg. 60810 (Oct. 1, 2010).) Presently, there not only is a leadership dispute within the California Valley Miwok Tribe, but there also is an enrollment dispute. (See Exh. C, *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs* (Jan. 28, 2010) 51 IBIA 103.) That is, the body politic which comprises the California Valley Miwok Tribe and which may select its government is currently unknown. Thus, no one has authority to represent the California Valley Miwok Tribe, and there is no authorized tribal government. (See Exh. D, Appellee's Supplement to its Opposition to Appellant's Motion to Enforce Stay, filed with the United States Department of the Interior Board of Indian Appeals in the matter of California Valley Miwok Tribe vs. Pacific Regional Director, Docket No. IBIA 07-100-A; Exh. E, Letter dated February 11, 2005, from Michael D. Olson,

Principal Deputy, Acting Assistant Secretary- Indian Affairs, to Mr. Yakima K. Dixie; Exh. F, Letter dated December 12, 2008, from Edith R. Blackwell, Associate Solicitor, Indian Affairs, to Peter Kaufman, Esq, Deputy Attorney General; Exh. G, Letter dated January 14, 2009, from Edith R. Blackwell, Associate Solicitor, Indian Affairs, to Peter Kaufman, Esq., Deputy Attorney General.) Accordingly, there is no governmental entity that may undertake "official acts" on behalf of the California Valley Miwok Tribe within the meaning of subdivision (c) of section 452 of the Evidence Code.

9. Objection to Exhibit 20, titled "Tribal Council Governining [sic] Body of the California Valley Miwok Tribe aka 'Sheep Ranch Rancheria of Me-Wuk Indians of California, Resolution of May 07, 2001, R-1-05-2001. Plaintiff's request should be denied because Exhibit 20 is not judicially noticeable under Evidence Code section 452, subdivision (c), which allows a court to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." The California Valley Miwok Tribe is not a state or a department of the United States. Although there is case authority for treating a federally recognized Indian tribe as a state under the Evidence Code (see *Big Valley Band of Pomo Indians v. Superior Court, supra*, 133 Cal.App.4th 1185), the Commission found no authority for doing so where the legitimacy of the tribal government and tribal departments is disputed. Here, there are no facts in the record that demonstrate that the purported "Tribal Council" that signed Exhibit 20 is or was the legitimate Tribal Council of the California Valley Miwok Tribe. Further, there are no facts in the record that demonstrate that the entity named the "California Valley Miwok Tribe" that Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. (See Exh. B.) Presently, there not only is a leadership dispute within the California Valley Miwok Tribe, but there also is an enrollment dispute. (See Exh. C.) That is, the body politic which comprises the California Valley Miwok Tribe and which may select its government is currently unknown. Thus, no one has authority to represent the California Valley Miwok Tribe, and there is no authorized tribal government. (See Exhs. D, E, F, and G.) Accordingly, there is no governmental entity that may

undertake "official acts" on behalf of the California Valley Miwok Tribe within the meaning of subdivision (c) of section 452 of the Evidence Code. Plaintiff's request also should be denied because it seeks improperly to judicially notice the truth and interpretation of facts contained in the document, which are open to interpretation and/or dispute. (See *Fremont Indemnity Co. v. Fremont Gen. Corp.*, *supra*, 148 Cal. App. 4th at p. 113 [although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable].)

10. Objection to Exhibit 21, letter dated June 7, 2001, from Sharon Blackwell, BIA, to Silvia Burley. Plaintiff's request should be denied because this document is irrelevant to any issue in this action. (*American Cemwood Corp. v. American Home Assurance Co.*, *supra*, 87 Cal. App. 4th at p. 441 n. 7 [matters to be judicially noticed must be relevant to the issues in the case].) Whether BIA may have recognized Silvia Burley or the purported government headed by Burley for certain purposes in the distant past has no bearing on BIA's official positions at the time periods relevant in this matter. Further, the United States has explained that BIA's initial recognition of the purported tribal government headed by Burley occurred before the problematic nature of Burley's purported government was fully apparent. (See Exh. A.) Plaintiff's request also should be denied because it seeks improperly to judicially notice the truth and interpretation of facts contained in the document, which are open to interpretation and/or dispute. (See *Fremont Indemnity Co. v. Fremont Gen. Corp.*, *supra*, 148 Cal. App. 4th at p. 113 [although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable].)

11. Objection to Exhibit 22, titled "Tribal Council Governining [sic] Body of the California Valley Miwok Tribe, Resolution of February 4, 2004, R-1-02-04-2004. Plaintiff's request should be denied because Exhibit 22 is not judicially noticeable under Evidence Code section 452, subdivision (c), which allows a court to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." The California Valley Miwok Tribe is not a state or a department of the United States.

Although there is case authority for treating a federally recognized Indian tribe as a state under the Evidence Code (see *Big Valley Band of Pomo Indians v. Superior Court*, *supra*, 133 Cal.App.4th 1185), the Commission has found no authority for doing so where the legitimacy of the tribal government and tribal departments is disputed. Here, there are no facts in the record that demonstrate that the purported "Tribal Council" that signed Exhibit 22 is or was the legitimate Tribal Council of the California Valley Miwok Tribe. Further, there are no facts in the record that demonstrate that the entity named the "California Valley Miwok Tribe" that Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. (See Exh. B.) Presently, there not only is a leadership dispute within the California Valley Miwok Tribe, but there also is an enrollment dispute. (See Exh. C.) That is, the body politic which comprises the California Valley Miwok Tribe and which may select its government is currently unknown. Thus, no one has authority to represent the California Valley Miwok Tribe, and there is no authorized tribal government. (See Exhs. D, E, F, and G.) Accordingly, there is no governmental entity that may undertake "official acts" on behalf of the California Valley Miwok Tribe within the meaning of subdivision (c) of section 452 of the Evidence Code.

12. Objection to Exhibit 23, dated April 29, 2005, titled "In the California Valley Miwok Tribal Court . . . Decision and Order". Plaintiff's request should be denied because Exhibit 23 is not judicially noticeable under Evidence Code section 452, subdivision (c), which allows a court to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States," or subdivision (d), which allows a court to take judicial notice of the records of any court of this state, the United States, or any state of the United States. The California Valley Miwok Tribe is not a state or a department of the United States. Although there is case authority for treating a federally recognized Indian tribe as a state under the Evidence Code (see *Big Valley Band of Pomo Indians v. Superior Court*, *supra*, 133 Cal.App.4th 1185), the Commission has found no authority for doing so where the legitimacy of the tribal government and tribal departments is disputed. Here, there are no facts in the record

that demonstrate that the purported "Tribal Court" is or was the legitimate Tribal Court of a federally recognized Indian tribe. Further, there are no facts in the record that demonstrate that the entity named the "California Valley Miwok Tribe" that Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. (See Exh. B.) Presently, there not only is a leadership dispute within the California Valley Miwok Tribe, but there also is an enrollment dispute. (See Exh. C.) That is, the body politic which comprises the California Valley Miwok Tribe and which may select its government is currently unknown. Thus, no one has authority to represent the California Valley Miwok Tribe, and there is no authorized tribal government. (See Exhs. D, E, F, and G.) Accordingly, there is no governmental entity that may undertake "official acts" on behalf of the California Valley Miwok Tribe within the meaning of subdivision (c) of section 452 of the Evidence Code and no recognized tribal court whose records may be judicially noticed under subdivision (d) of section 452 of the Evidence Code.

13. Objection to Exhibit 24, titled "General Council Governining [sic] Body of the California Valley Miwok Tribe, Resolution of February 24, 2010, R-1-02-24-2010. Plaintiff's request should be denied because Exhibit 24 is not judicially noticeable under Evidence Code section 452, subdivision (c), which allows a court to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." The California Valley Miwok Tribe is not a state or a department of the United States. Although there is case authority for treating a federally recognized Indian tribe as a state under the Evidence Code (see *Big Valley Band of Pomo Indians v. Superior Court*, *supra*, 133 Cal.App.4th 1185), the Commission has found no authority for doing so where the legitimacy of the tribal government and tribal departments is disputed. Here, there are no facts in the record that demonstrate that the purported "Tribal Council" that signed Exhibit 24 is or was the legitimate Tribal Council of the California Valley Miwok Tribe. Further, there are no facts in the record that demonstrate that the entity named the "California Valley Miwok Tribe" that Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the

list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. (See Exh. B.) Presently, there not only is a leadership dispute within the California Valley Miwok Tribe, but there also is an enrollment dispute. (See Exh. C.) That is, the body politic which comprises the California Valley Miwok Tribe and which may select its government is currently unknown. Thus, no one has authority to represent the California Valley Miwok Tribe, and there is no authorized tribal government. (See Exhs. D, E, F and G.) Accordingly, there is no governmental entity that may undertake "official acts" on behalf of the California Valley Miwok Tribe within the meaning of subdivision (c) of section 452 of the Evidence Code.

14. Objection to Exhibit 25, titled "California Tribal-State Gaming Compact," dated February 2002. Plaintiff's request should be denied because Exhibit 25 is not a record of any court of this state within the meaning of subdivision (d) of section 452 of the Evidence Code. Further, contrary to paragraph 27 of the Declaration of Manuel Corrales, Jr. in Support of Opposition to Motion to Intervene, Exhibit 25 is not a "true and correct copy" of any executed California Tribal-State Gaming Compact, nor does Exhibit 25 accurately reflect the language "of all of the signed compacts." In fact, Exhibit 25 differs in at least one substantive respect, and perhaps more, from the signed compacts. No signed compact of which the Commission is aware contains the language set forth in Section 2.21 of Exhibit 25. The signed compacts do not define the term "Tribe" as applied to Indian tribes generally. Rather, Section 2.21 of the signed compacts defines the signatory tribe, and that section is only relevant to the signatory tribe. Unexecuted compacts have no force and effect. The executed compacts may be downloaded from the Commission's website (http://www.cgcc.ca.gov).

Dated: December 10, 2010

Respectfully Submitted,

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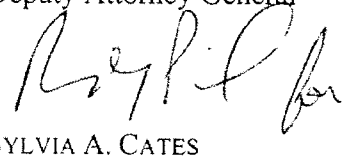

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EXHIBIT A

For Opinion See 515 F.3d 1262

United States Court of Appeals,

District of Columbia Circuit.

CALIFORNIA VALLEY MIWOK TRIBE, formerly Sheep Ranch Rancheria of Me-Wuk Indians of California, Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; Dirk Kempthorne, Secretary of the Interior; and Michael D. Olsen, Principal Deputy, Acting Assistant Secretary-Indian Affairs, Defendants-Appellees.

No. 06-5203.

June 8, 2007.

On appeal from the United States District Court for the District of Columbia, No. 05-CV-739 (Honorable James Robertson, Jr., Judge)

Not Yet Scheduled for Oral Argument

Brief and Supplemental Appendix of Appellees

Of Counsel, Jane M. Smith, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240.Ronald J. Tenpas, Acting Assistant Attorney General.James Merritt Upton, Katherine J. Barton, Mark R. Haag, Attorneys, Environment & Natural Resources Division, Department of Justice, Washington, D.C. 20020, 202-514-2748.

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TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

FN* Authorities upon which we chiefly rely are marked with asterisks

JURISDICTION

A. District court - The district court had jurisdiction under 28 U.S.C. § 1331 (federal question).

B. Court of Appeals - The district court entered final judgment on all claims on March 30, 2006. Dkt. 37; A211. On April 10, 2006, the United States filed a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e). Dkt. 38. The district court granted the motion on May 2, 2006. Dkt. 41; A212. Plaintiff-Appellant timely filed its notice of appeal on June 16, 2006. Dkt. 42; A213. This Court has jurisdiction under 28 U.S.C. § 1291.

STATUTES AND REGULATIONS

The pertinent statutes and regulations are included in the attached addendum.

ISSUES ON APPEAL

Silvia Burley and her two daughters, who purport to be the elected government (the "Burley Government") of the California Valley Miwok Tribe (the "Tribe")[FN1] appeal the district court's judgment dismissing its claims that the United States, the Secretary of the Interior, and the Assistant Secretary-Indian Affairs (collectively the "United States") violated (1) the Administrative Procedure Act ("APA"), and (2) 25 U.S.C. § 476(h), a provision of the Indian Reorganization Act ("IRA")[FN2] by declining to recognize the Tribe as "organized" under the IRA, declining to recognize Silvia Burley as chairperson of the Tribe, and declining to accept the tribal constitution and other governing documents proffered by the Burley Government to the Bureau of Indian Affairs

("BIA"). The issues on appeal are:

> FN1. Throughout this brief we refer to Plaintiff-Appellant as the "Burley Government" when necessary to distinguish it from the larger entity - the Tribe - that the Burley Government purports to represent.
>
> FN2. Act of June 18, 1934, Ch. 576, 48 Stat. 984, codified at 25 U.S.C. §§ 461 through 479.

1. Whether, under 25 U.S.C. § 476(h), BIA was required to recognize the Tribe as organized and recognize the Burley Government and its governing documents, where the vast majority of the Tribe's potential membership did not have the opportunity to participate in Burley's election or the adoption of the documents.
II. Whether the district court abused its discretion when it denied the Burley Government's motions for leave to file supplemental complaints.

STATEMENT OF THE CASE

A. Introduction

This case arises out of a long-running leadership dispute within a federally-recognized Tribe which, in the view of BIA, has never been "organized" or "reorganized."[FN3] The current appeal involves a challenge to BIA decisions finding that the Tribe is not organized and declining to recognize the tribal government and governing documents proffered by Silvia Burley, who claims to be the chairperson of the Tribe. The district court dismissed for failure to state a claim, finding that Plaintiff-Appellant could not demonstrate that the Burley Government and its governing documents reflect the will of a majority of the tribal community as required by the IRA.[FN4]

> FN3. A "reorganized tribe" is a tribe that has adopted a constitution pursuant to the IRA or certain other federal statutes. An "organized tribe" is a tribe that has adopted a constitution outside of those statutes. 25 C.F.R. § 81.1(p); 25 C.F.R. § 82.1(g), (k), (l).
>
> FN4. The district court also found that summary judgment would be available on the Burley Government's APA claim. Supp. App. 44, Slip Op. 14 n.8.

On appeal, the Burley Government does not dispute that the vast majority of the potential membership of the Tribe did not have an opportunity to participate in the election of Burley as chairperson or in the adoption of the governing documents. Instead, the Burley Government argues that BIA was required, under 25 U.S.C. § 476(h), to recognize the Tribe as organized, and to recognize the Burley Government and its proffered governing documents, notwithstanding this lack of participation. The district court properly rejected this argument, reasoning that while Section 476(h) recognizes the "inherent sovereign power" of "each Indian tribe" to "adopt governing documents under procedures other than those specified in" the IRA, Section 476(h) does not eliminate the IRA's requirement that governing documents be ratified by a majority vote of the adult members of the tribe.

B. Statutory Framework - The Indian Reorganization Act

Congress enacted the IRA to improve the economic status of Indians by, among other things, ending the United States' prior policy of "allotment" of tribal land, and permitting and encouraging each tribe to "organize for its common welfare."[FN5] 25 U.S.C. § 476(a); see *Morton v. Mancari*, 417 U.S. 535, 542 (1974). Sections 476(a) through (d) set out standards and procedures by which a federally-recognized tribe that wishes to organize "may adopt an appropriate constitution and bylaws" and secure the Secretary's approval of those documents. Specific-

ally, Section 476(a) provides:

> FN5. From the 1870's until passage of the IRA in 1934, the United States followed a policy of dismantling the tribal land base, allotting parcels of tribal land to individual members, and conveying "surplus" tribal land to non-Indians. See General Allotment Act, ch. 119, 24 Stat. 388; *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation,* 502 U.S. 251, 253-254 (1992); *Hodel v. Irving,* 481 U.S. 704, 707-708 (1987).

Any Indian tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when -
(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and
(2) approved by the Secretary pursuant to [25 U.S.C. § 476(d)]

25 U.S.C. § 476(a).

The IRA does not require tribes to organize (or reorganize), however, and it allows tribes and the residents of Indian reservations to exclude themselves from the application of most of the Act's provisions through "a majority vote of the adult Indians[.]" 25 U.S.C. §§ 478, 478a, 478b.

In 2004, Congress enacted the Native American Technical Corrections Act, Pub. L. No. 108-204, 118 Stat. 542 (2004), which, among other things, amended Section 476 by adding a new Subsection (h). It states:
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).

25 U.S.C. § 476(h). Thus, this section merely codifies the right to organize that tribes inherently posses independent of the IRA.

C. Facts

1. Background

The California Valley Miwok Tribe, formerly known as the Sheep Ranch Rancheria of Me-Wuk Indians of California,[FN6] is a federally recognized tribe.[FN7] 44 Fed. Reg. 7235, 7236 (Feb. 6, 1979); 60 Fed. Reg. 9250, 9253 (Feb. 16, 1995). While the parties dispute the legitimacy of the current (purported) tribal government, there is no dispute that, prior to 1999, the Tribe was never organized and never had a government or governing documents that were recognized by the United States. A12, A96.

> FN6. The Burley Government purported to re-name the Tribe in June 2001. A15.

> FN7. Recognized tribes and their members are eligible for various federal services and benefits. *See, e.g.,* 25 U.S.C. §§ 450f, 450b(e) (recognized tribes eligible for certain self-determination contracts). In addition, only recognized tribes are eligible to operate gaming facilities under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.*

The land known as the Sheep Ranch Rancheria, which consists of 0.92 acres located in Calaveras County, California, was purchased by the United States in 1916 for the benefit of approximately 14 landless and homeless California Indians in the area. A96; Supp. App. 3. Those Indians had rights to the Rancheria's land and the right to participate in its governance. See A96. In 1967, title to the Rancheria land passed to the Rancheria's sole Indian resident, Mabel Hodge Dixie.[FN8] Supp. App. 9. Ms. Dixie died in 1971, and the Rancheria land is now held in trust by the United States for Ms. Dixie's heirs. See Supp. App. 6. As discussed below, the Rancheria land was the subject of separate litigation brought by the Burley Government in the Eastern District of California.

FN8. The United States transferred title to Ms. Dixie pursuant to California Rancheria Act, Pub. L. 85-671, 72 Stat. 619 (1958), as amended, Pub. L. 88-419, 78 Stat. 390 (1964), which provided for the distribution of the land and assets of certain Indian reservations and rancherias in California.

2. The Tribe's initial efforts to organize

Ms. Dixie's heirs included four sons, one of whom - Yakima Dixie ("Dixie") - claims to be a hereditary chief of the Tribe. Supp. App. 33, Slip Op. 3. In August 1998, Dixie "adopted" Silvia Burley, her daughters Rashel Reznor and Anjelica Paulk, and her granddaughter, Tristan Wallace, as members of the Tribe. See A13; Supp. App. 33, Slip Op. 3 n.2. On September 24, 1998, BIA advised Dixie that he, his brother Melvin Dixie, Burley, and Burley's daughters and granddaughter "possess the right to participate in the initial organization of the Tribe" under the IRA. See A12. This group then formed an "unorganized" tribal government - that is, a government without a constitution. A13; see 25 C.F.R. § 81.1 (g), (p), (v); 25 C.F.R. § 82.1(e), (k), (l), (p). The group named Dixie as Chairperson. A 13. Shortly thereafter, Dixie allegedly resigned that position, and on May 8, 1999, the group held a "general election" at which Burley was elected Chairperson and Dixie was elected Vice Chairperson. A12.

BIA recognized Burley as tribal Chairperson in June, 1999. A 12. The following month, BIA and the Tribe entered into a self-determination contract (also known as a Public Law 93-638 contract) pursuant to 25 U.S.C. § 450f.[FN9] A12. Under this contract, BIA provides funding to support and assist the Tribe in becoming organized through the development of a tribal constitution and organized government. A12, A16, A30.[FN10] The amount of this funding has been approximately $400,000 per year.[FN11]

FN9. Dixie contends that he did not resign as Chairperson and disputes Burley's claim to be Chairperson; his claims have been the subject of separate administrative appeals and litigation. In 1999, Dixie asked BIA to reverse its recognition of Burley and the award of the self-determination contract to her tribal government. On February 4, 2000, BIA informed Dixie that this was an internal leadership dispute that should be resolved by the Tribe. A13. Dixie then filed suit in the United States District Court for the Eastern District of California, challenging Burley's claim to be Chairperson. *Sheep Ranch Miwok v. Silvia Burley,* No. 01-1389 (E.D. Cal. Jan. 24, 2002). A15, A34. On January 24, 2002, the district court dismissed without prejudice, holding that Dixie had failed to exhaust his administrative remedies because he had not administratively appealed BIA's February 4, 2000 decision. A34. As discussed below, Dixie then waited until June 2003 before attempting to raise his claim with BIA. A34.

FN10. BIA suspended the contract on June 19, 2005, but reinstated it on August 19, 2005. A119, A204. BIA disputes the Burley Government's characterization (A189) of the reinstatement as "partial[]."

FN11. As the district court noted, the Tribe receives additional funding from the California Gambling

Control Commission, a state agency that makes payments to non-gaming tribes from the California Revenue Sharing Trust Fund. These payments are made on a per-tribe basis - the amount does not change based on the number of tribe members - and amounted to over $1 million in 2005. Supp. App. 43, Slip Op. at 13 n. 7.

3. BIA's October 31, 2001 letter finding the Tribe to be unorganized and its elected officials to be only an interim tribal council

On March 6, 2000, the Burley Government ratified a proposed tribal constitution. CITE. The Burley Government forwarded the proposed constitution to BIA and requested that BIA review and approve it and conduct a Secretarial election under the procedures of the IRA. A14; 25 U.S.C. § 476 (c), (d). On June 7, 2001, before BIA had taken action,[FN12] the Burley Government withdrew its request for a Secretarial election. A15.

FN12. Section 476(c) provides that the Secretary "shall call and hold an election" within 180 days of a tribal request.

In September 2001, the Burley Government submitted an amended version of the tribal constitution to BIA for approval under the IRA. A15. On October 31, 2001, BIA returned the amended constitution without taking action on it, and advised that

[t]he Agency will continue to recognize the Tribe as an unorganized Tribe and its elected officials as an interim Tribal Council until the Tribe takes the necessary steps to complete the Secretarial election process. Agency staff is available to provide technical assistance in this matter[.]

A15

4. The Burley Government's "land-into-trust" litigation

On April 29, 2002, the Burley Government filed a complaint in the Eastern District of California alleging the United States violated the California Rancheria Act and breached a fiduciary duty to the Tribe when it transferred title to the Rancheria to Mable Hodge Dixie in 1967. *California Valley Miwok Tribe v. United States,* No. 02-0912 (E.D. Cal.), Supp. App. 1. The complaint[FN13] sought an order compelling the Department of the Interior to (1) declare the Tribe a "restored tribe" within the meaning of the Indian Gaming Regulatory Act; and (2) to take land into trust for the Tribe. *Id.* As the district court explained, the apparent goal of the lawsuit was to use the land taken into trust to build and operate a casino.[FN14] Supp. App. 12. Of particular relevance here, the Burley Government's complaint asserted that, as of April 2002, the Tribe had "a potential membership of 250 people." Supp. App. 1, 2.

FN13. This Court may take judicial notice of the allegations in the Burley Government's complaint. *Veg-Mix, Inc. v. U.S. Dept. of Agriculture,* 832 F, 2d 601, 607 (D.C. Cir. 1987) (courts may take judicial notice of official court records); *Trudeau v. Federal Trade Com'n.,* 456 F.3d 178, 183 (D.C. Cir. 2006) (court may consider matters subject to judicial notice when deciding motion to dismiss for failure to state a claim).

FN14. The Indian Gaming Regulatory Act generally does not authorize gaming on lands acquired by the Secretary in trust for an Indian tribe after October 17, 1988. 25 U.S.C. § 2719(a). The Act provides an exception, however, for certain land of an Indian tribe "that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii).

The district court dismissed for lack of a waiver of sovereign immunity and, in the alternative, on statute of limitations grounds. Supp. App. 7. The Burley Government appealed and the Ninth Circuit affirmed in an unpublished decision. *California Valley Miwok Tribe v. United States,* 197 Fed. Appx. 678 (9th Cir. 2006).

5. BIA's March 26, 2004, decision finding the Tribe to be unorganized.

On February 11, 2004, the Burley Government again provided a copy of the tribal constitution to BIA, but stated that it was doing so only for BIA's records, and not for Secretarial review. A17. BIA responded on March 26, 2004, stating that it still considered the Tribe to be unorganized and Burley to be only a "person of authority" within the Tribe. A28. BIA explained that "this view is borne out not only by the document that you have presented as the tribe's constitution," but also by BIA's "relations over the last several decades with members of the tribal community in and around Sheep Ranch Rancheria." A28. BIA further explained that
Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was attempted or has occurred with the purported organization of your tribe. For example, we have not been made aware of any efforts to reach out to the Indian communities in and around the Sheep Ranch Rancheria, or to persons who have maintained any cultural contact with Sheep Ranch. To our knowledge, the only persons of Indian descent involved in the tribe's organization efforts were you and your two daughters.

A29. After identifying several other individuals and groups with known or potential ties to Sheep Ranch, BIA advised that the Tribe's governing documents, base rolls, and membership criteria should not be drafted until "after the greater tribal community is initially identified." A29. BIA concluded by emphasizing "the importance of the participation of a greater tribal community in determining membership criteria," and reiterated the agency's continued willingness to "facilitate the organization or reorganization of the tribal community" through Public Law 93-638 self-determination contracts and other forms of assistance. A30.

The March 26, 2004 letter stated that it was subject to administrative appeal under 25 C.F.R. Part 2, and that the decision contained in the letter would become final for the Department of the Interior in 30 days unless an administrative appeal was filed. A30-A31. Neither the Burley Government nor any other person filed an administrative appeal.

6. The February 11, 2005, decision in Dixie's administrative appeal

In October 2003, Dixie filed an administrative appeal challenging BIA's June 1999 recognition of Burley as tribal Chairperson; Dixie also sought to nullify his 1998 adoption of BurLey, her daughters and granddaughter into the Tribe. See A33; see also n. 9 above. On February 11, 2005, the Principal Deputy, Acting Assistant Secretary-Indian Affairs dismissed Dixie's appeal on multiple procedural grounds. A33-34. Among other things, the decision found that Dixie's challenge to BIA's recognition of Burley as tribal Chairperson was rendered moot by the BIA's decision of March 26, 2004, rejecting the Tribe's proposed constitution. The decision explained that
In that letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. Rather, the BIA would recognize her as "a person of authority within California Valley Miwok Tribe." Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you, either in conjunction with Ms. Burley, other tribal members, or potential tribal members, to continue your efforts to organize the Tribe along the lines outlines in the March 26, 2004, letter[.]

A33.

D. Proceedings below

On April 12, 2005, the Burley Govemment filed its complaint in this case, naming the United States, the Department of the Interior, the Secretary of the Interior, and the Acting Assistant Secretary-Indian Affairs (collectively, the "United States") as defendants. A9. The complaint alleged that by declining to recognize the Burley Government, constitution, and other governing documents, the United States had violated 25 U.S.C. § 476(h) and the APA. The Burley Government sought declaratory judgment that

- the Tribe "retains inherent sovereign power to adopt governing documents under procedures other than those specified" in 25 U.S.C. § 476(a) through (g);
- the constitution and various resolutions of the Burley Government are "valid governing document [s] for the Tribe";
- the Tribe is lawfully organized pursuant to the IRA, 25 U.S.C. § 476; and
- the February 11, 2005 decision of the Principal Deputy, Acting Assistant Secretary - Indian Affairs is invalid.

A20-A21.

On August 5, 2005, the United States moved to dismiss. Dkt. 15; A35. On September 29, 2005, after briefing was completed on that motion, the Burley Government moved for leave to file a supplemental complaint under Federal Rule of Civil Procedure 15(d), alleging an additional claim based on events that occurred after the complaint was filed. The supplemental complaint alleged that BIA violated 25 U.S.C. § 450m-1, a provision of the Indian Self-Determination and Education Assistance Act (the "Self-Determination Act"), by allegedly modifying the Tribe's self-determination contract in July and August 2005 without the Tribe's consent. A131. On January 11, 2006, the Burley Government moved for leave to file a second supplemental complaint adding two more claims based on post-complaint events: specifically, that BIA violated (1) the Self-Determination Act by allegedly failing to approve the Tribe's 2006 budget proposal; and (2) the Indian Tribal Justice Act, 25 U.S.C. § 3601, by allegedly suspending government-to-government relations with the Tribe and declining to recognize the Tribe's inherent authority to establish a tribal justice system. A193-A194.

On March 30, 2006, the district court dismissed. Dkt. 36, 37; Supp. App. 31. The court reasoned that the Burley Government's claims were all predicated on the mistaken view that, under 25 U.S.C. § 476(h), the Secretary was required to recognize the Burley Government and its government documents even though Burley was elected, and the governing documents were adopted, without the participation of the majority of the Tribe's potential membership. Supp. App. 41-42, Slip Op. 11-12. The court rejected that view, holding that while Section § 476(h) recognizes the power of Indian tribes "to adopt governing documents under procedures other than those specified" elsewhere in Section 476, its references to documents adopted by a tribe must be understood as references to documents that have been "ratified by a majority vote of the adult members," as required by Section 476(a). Supp. App. 43, Slip Op. 13. The court further reasoned that "[s]ubsection 476(h) did not repeal the provisions of subsection 476(a), nor will it be construed to repeal or water down the protections afforded by the IRA when tribes organize: notice, a defined process, and minimum levels of tribal participation." *Id.*

Accordingly, the court concluded that both the first count, alleging a violation of 25 U.S.C. § 476(h), and the second count, asserting arbitrary, capricious, or unlawful action under the APA, failed to state a claim upon which relief could be granted. Supp. App. 44, Slip Op. 14. In addition, the court found the second count was subject to summary judgment. Supp. App. 44, Slip Op. 14 and n.8. Finally, the court denied the Burley Government's motions for leave to file supplemental complaints, reasoning that the proposed claims were "derivative of [the Burley Government's] subsection 476(h) theory and would also fail to state a claim if leave to file them

were granted." Supp. App. 45, Slip Op. 15.

This appeal followed.

SUMMARY OF ARGUMENT

The district court correctly dismissed the Burley Government's complaint for failure to state a claim. Section 476(h) does not impose a duty on BIA to recognize a tribal government or governing documents where, as here, they are adopted without the consent or participation of a majority of the tribal community. Nothing in Section 476(h) suggests that Congress intended to alter the substantive standards that apply when a tribe seeks to organize, including Section 476(a)(1)'s the requirement that governing documents be "ratified by a majority of adult members of the tribe." In addition, for an "Indian tribe" to organize under the IRA, action by the tribe as a whole is required; action by an unrepresentative faction is insufficient. Finally, nothing in Section 476(h) limits the Secretary's broad authority - independent of the IRA - to ensure the legitimacy of any purported tribal government that seeks to engage in that government-to-government relationship with the United States.

STANDARD OF REVIEW

This Court's review of the district court's order granting the motion to dismiss for failure to state a claim is *de novo. Trudeau v. Federal Trade Com'n.,* 456 F.3d 178, 183 (D.C. Cir. 2006). In determining whether a complaint fails to state a claim, this Court, like the district court, may consider only the facts alleged in the complaint, and documents either attached to or incorporated in the complaint and matters of which the court may take judicial notice. *Id.* While the Court must treat the complaint's factual allegations as true and grant plaintiff the benefit of all reasonable inferences from the facts alleged, it is "not bound to accept as true a legal conclusion couched as a factual allegation," or to "accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint." *Id.* at 193 (internal quotation marks and citations omitted).

The district court's alternative holding that the Burley Government's APA claim was subject to summary judgment is also reviewed *de novo. Brubaker v. Metropolitan Life Ins. Co.,* 482 F.3d 586, 588 (D.C. Cir. 2007).

The district court's denial of the Burley Government's motions for leave to file supplemental complaints is reviewed for abuse of discretion. *See Belizan v. Hershon,* 434 F.3d 579, 582 (D.C. Cir. 2006).

ARGUMENT

I. Section 476(h) does not require BIA to recognize a tribe as organized or to accept a tribal government or governing documents created without the participation of a majority of the tribal community.

The district court correctly concluded that the Burley Government,s complaint fails to state a claim, because both counts[FN15] of the complaint are entirely dependent on a misreading of Section 476(h). Section 476(h) provides that "each Indian tribe shall retain inherent sovereign power to adopt governing documents under *procedures* other than those specified in" the IRA: 25 U.S.C. § 476(h) (emphasis added). The term "procedures" in Section 476(h) is a reference to the Secretarial election procedures described in 25 U.S.C. §§ 476(a), (c) and (d), which include mandatory schedules for Secretarial elections and for the Secretary to approve or disapprove governing documents ratified in those elections. In addition, regulations promulgated by the Secretary pursuant to Section 476(a)(1) include detailed provisions on election notices, voter registration, voting procedures, and other matters. 25 C.F.R. Parts 81 and 82. In other words, Section 476(h) confirms that a tribe may adopt or revoke

governing documents without following the IRA's Secretarial election procedures. But nothing is Section 476(h) suggests that Congress also intended to alter the substantive standards that apply when a tribe seeks to organize, including the requirement in Section 476(a)(1) that governing documents be "ratified by a majority of adult members of the tribe."

> FN15. The first count purports to assert a claim under Section 476(h). A18. Section 476(h) does not create a private cause of action, however, so the Burley Government must rely on the "generic cause of action" supplied by the APA. *See Trudea,* 456 F.3d at 188. The second count is an APA claim. A19. Thus, both claims are subject to the APA's "final agency action" requirement, 5 U.S.C. § 704, which protects agencies from "judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Abbott Laboratories v. Gardner,* 387 U.S. 136, 148-149 (1967); *see also Bennett v. Spear,* 520 U.S. 154, 177-78 (1997) (action must be one by which rights or obligations have been determined, or from which legal consequences will flow); *IPAA v. Babbitt,* 235 F.3d 588, 594 (D.C. Cir. 2001). Furthermore, even final agency action may be unripe for judicial review if "consideration of the issue would benefit from a more concrete setting." *General Electric Co. v. EPA,* 290 F.3d 377, 380 (D.C. Cir. 2001) (quoting *Abbott Labs.,* 387 U.S. at 149).
> The district court assumed, consistent with the standards applicable to a motion to dismiss for failure to state a claim, that BIA's March 26, 2004 letter and February 11, 2005 decision were final agency action. Supp. App. 40, Slip Op. 10 n.5; See *Trudea,* 456 F.3d at 193. That assumption remains appropriate for purposes of this appeal. In the event this Court declines to affirm the judgment of dismissal and remands for further proceedings, however, the United States believes the evidence would show that neither claim satisfies the final agency action requirement and that neither claim is ripe.

In the guise of a "plain meaning" analysis (Br. at 12-15), the Burley Government attempts to expand Section 476(h) from what it is - a exception from the otherwise required procedures - into a complete repeal of the IRA's substantive standards and a mandate that the Secretary recognize any purported tribal government or governing documents when Section 476(h) is invoked. This interpretation is without merit, for several reasons.

First, it ignores Congress's use of the word "procedures" in Section 476(h). Black's Law Dictionary (5th ed.) defines that term as "[t]he mode of proceeding by which a legal right is enforced, as distinguished from the substantive law which gives or defines the right," and "the machinery, as distinguished from its product." Thus, the requirement in Section 476(a)(1) for "a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe," the requirement in Section 476(a)(2) for "approv[al] by the Secretary pursuant to [Section 476(d)]," and the timetables and default rules of Sections 476(c) and (d) are procedures, and are not mandatory when a tribe seeks to organize under Section 476(h).

In contrast, Section 476(a)'s basic requirement that governing documents be "ratified by a majority of adult members of the tribe" is not merely a "procedure" it is also a substantive requirement that members of a tribe be allowed to vote on fundamental questions of tribal organization when the tribe seeks to organize under the IRA. See *Shays v. FEC,* 414 F.3d 76, 91 (D.C. Cir. 2005) (describing litigants' interests in fair administrative decisionmaking and fair elections as both procedural and substantive). This requirement that fundamental matters of tribal organization under the IRA be ratified by majority vote is reflected in other sections of the IRA as well, such as the provisions governing a decision by a tribe or reservation to exclude itself from the Act's coverage. 25 U.S.C. § 478 ("This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary *** shall vote against its application."); see also 25 U.S.C. 478a (requiring majority vote, and total vote of not less than 30 percent of those entitled to vote, on questions of ad-

option of a constitution, bylaws, or amendments). If, as the Burley Government contends, Congress had intended to alter the substantive standards by which tribes may organize under the IRA, Congress would not have used the word "procedures" in Section 476(h). Further, the Burley Government's reading of Section 476(h) would produce the anomalus result that a majority vote is required for a tribe to exclude itself from application of the IRA under Sections 478, while no majority vote is required for a tribe to adopt or amend a constitution under the IRA.

Second, the Burley Government's interpretation ignores the fact that Section 476(h) refers to the "inherent sovereign power" of an "Indian tribe" to adopt governing documents. 25 U.S.C. §§ 476(h)(1), (h)(2). Similarly, Section 476(a) addresses the right of "[a]ny Indian tribe" to organize. This requirement for action by the "tribe" means that action by a mere subset or faction of a tribe is not enough, and is also consistent with a requirement for a majority vote, since such a vote is an obvious way in which a tribe can exercise its inherent sovereign power. See *Harjo v. Andrus,* 581 F.2d 949, 951-52 (D.C. Cir. 1978) (affirming district court remedial order requiring "a referendum among all Creek adults on certain issues raised by a recently drafted, proposed constitution for the tribe" so that "democratic self-government could be restored to the Creek Nation with maximum participation by tribal members and minimum intrusion by the court."); *Morris v. Watt,* 640 F.2d 404, 406, 415 (D.C. Cir. 1981) (referenda conducted by governments of the Choctaw and Chickasaw Nations of Indians were insufficient to "ensure fair elections that will accurately reflect the desires of the tribal members" because they did not "fully and fairly involve the tribal members in the proceedings leading to constitutional reform."). [FN16] Moreover - and even if Section 476(a)'s requirement for majority ratification were deemed a "procedure" for purposes of Section 476(h) - Section 476(h)'s reference to the "inherent sovereign power" of an "Indian tribe" would still require, at a minimum, action by a legitimate tribal government that is authorized to act on behalf of the tribe, because anything less would render those terms meaningless. [FN17]

> FN16. The right to vote is a fundamental attribute of self-government that is protected under the equal protection clauses of the U.S. Constitution, see *Reynolds v. Sims,* 377 U.S. 533, 555 (1964) and the Indian Civil Rights Act, 25 U.S.C. § 1302(8) ("No Indian tribe in exercising powers of self-government shall *** deny to any person within its jurisdiction the equal protection of its laws").

> FN17. The Burley Government attempts to buttress its "plain meaning" argument by relying on the canon of statutory construction that requires that ambiguities be resolved in the Indians' favor. Br. at 20-21; see, *e.g., Bryan v. Itasca County,* 426 U.S. 373, 392 (1976). That canon has no application here, in the context of a leadership dispute when Indians are on all sides of an issue. Nor does the Burley Government explain how BIA's refusal to recognize governing documents adopted without the participation of the majority of the potential Tribal membership could be contrary to the canon. See *Shakopee Mdewakanton v. Babbitt,* 107 F.3d 667, 670 (8th Cir. 1997).

Third and more broadly, nothing in Section 476(h) suggests that Congress intended to limit the Secretary's authority - independent of the IRA - to ensure the legitimacy of any purported tribal government that seeks to engage in that government-to-government relationship with the United States. The federal-tribal relationship is a government-to-government relationship, and the right of tribal self-government is a fundamental aspect of that relationship. See, *e.g., United States v. Lara,* 541 U.S. 193, 202 (2004); *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 142-45 (1980). While deference to principles of self governance typically weighs against federal involvement in internal tribal matters, "courts have recognized that the Secretary of the Interior occasionally is forced to identify which of two or more competing tribal political groups to recognize as the proper representative of the tribe." Felix Cohen, *Handbook of Federal Indian Law* 290 (2005 ed.). See, *e.g., Wheeler v. U.S.*

Dept' of Int., 811 F.2d 549, 552 (10th Cir. 1987); *Goodface v. Grassrope*, 708 F.2d 335, 339 (8th Cir. 1983) ("BIA, in its responsibility for carrying on government to government relations with the Tribe, is obliged to recognize and deal with some tribal governing body"); *Seminole Nation v. Norton*, 223 F. Supp. 2d 122, 140 (D.D.C. 2002) ("DOI has the authority and the responsibility to ensure that the Nations's representatives, with whom it must conduct government-to-government relations, are valid representatives of the Nation as a whole").

BIA's refusal to recognize the Burley Government is consistent with the foregoing principles, particularly given the unusual facts of the case and the history of the Sheep Ranch Rancheria. As the Interior Board of Indian Appeals explained in another case involving the efforts of competing factions to organize a California Rancheria, "[t]his is not an ordinary tribal government dispute, arising *** in an already existing tribal entity. *** Rather, this case concerns, in essence, the creating of a tribal entity from a previously unorganized group. In such a case, BIA and this Board have a responsibility to ensure that the initial tribal government is organized by individuals who properly have the right to do so." *Jeffrey Alan-Wilson, Sr., v. Sacremento Area Director*, 30 I.B.I.A. 241, 252 (1997). See also *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 150 (D.D.C. 1999) ("In situations of federal-tribal government interaction where the federal government must decide what tribal entity to recognize as the government, it must do so in harmony with the principles of tribal self-determination.")

Thus, the issue in this case is not, as the Burley Government would have it (see, *e.g.*, Br. at 8, 14, 21), whether the California Valley Miwok Tribe has the sovereign power to adopt governing documents without employing the IRA's procedures. The Tribe plainly has that power. Rather, the issue is whether the Burley Government in fact speaks for the Tribe in the exercise of that sovereign power. The answer to that question is no, because the undisputed facts show that the Burley Government was elected, and its governing documents adopted, by just three people and without the participation of the vast majority of the potential members of the Tribe.

The Burley Government implies that its legitimacy is beyond question because BIA has on several occasions recognized Burley as chairperson of the Tribe and has continued to fund the Tribe's self-determination contract. See Br. at 3-5. The Burley Government's brief mischaracterizes BIA's actions, however. BIA's initial recognition of Burley as Chairperson occurred in 1999 and 2000, before the problematic nature of the Burley Government and its proposed constitution were fully apparent. See A12-A13. In October, 2001, in response to those issues, BIA announced that it would "continue to recognize the Tribe as an unorganized Tribe and its elected officials as an interim Tribal Council until the Tribe takes the necessary steps to complete the Secretarial election process." A15. Thereafter, consistent with the Self-Determination Act's strong policy in favor of self-determination funding, BIA continued to acknowledge Burley as Chairperson and continued to fund the Tribe's self-determination contract - awarded to support the organization of the tribe - in order to encourage the organization process. See 25 U.S.C. § 450a; A30 (BIA March 26, 2004 letter to Burley Government stating "the importance of the participation of the greater tribal community" in the tribal organization process, and that the agency's Public Law 93-638 contracts are "intended to facilitate organization or reorganization of the tribal community"). When, after several more years of this funding, the Burley Government submitted a purported tribal constitution that was developed by Burley and her two daughters without the participation of the many persons with documented connections to the Sheep Ranch Rancheria, BIA on March 26, 200-4 reaffirmed its view that the Tribe was unorganized. A28-A29. This conclusion was repeated in the Principal Deputy, Acting Assistant Secretary's February 11, 2005 decision in Dixie's administrative appeal. A33-A34. Thus, far from demonstrating the legitimacy of the Burley Government, this course of events confirms that it is not representative of the majority of the potential membership of the Tribe.

In sum, the district court correctly dismissed the second count of the Burley Government's complaint for failure

to state a claim. Section 476(h) does not impose a duty on BIA to recognize a tribal government or governing documents where, as here, they are adopted without the consent or participation of a majority of the tribal community.

II. The district court did not abuse its discretion when it denied the Burley Government's motions for leave to file supplemental complaints.

Federal Rule of Civil Procedure 15(d) provides, in relevant part:
Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.

Fed. R. Civ. P. 15(d).

The Burley Government's proposed third claim for relief, filed September 29, 2005, alleged that BIA violated the Self-Determination Act, 25 U.S.C. § 450m-1, by modifying the Tribe's self-determination contract in July and August 2005 without the Tribe's consent. A131. The proposed fourth and fifth claims, filed January 11, 2006, alleged that BIA violated (1) the Self-Determination Act by allegedly failing to approve the Tribe's 2006 budget proposal; and (2) the Indian Tribal Justice Act, 25 U.S.C. § 3601, by allegedly suspending government-to-government relations with the Tribe and declining to recognize the Tribe's inherent authority to establish a tribal justice system. A193-A194. The district court denied leave to supplement on the ground that the new claims in the Burley Government's proposed supplemental complaints were "derivative of plaintiffs' subsection (h) theory" and would, like the claims in the original complaint, "fail to state a claim if leave to file them were granted." Supp. App. 44-45, Slip Op. 14-15.

We disagree with the district court's rationale for denying leave to supplement. In our view, the standards for organization under the IRA are distinct from the standards applicable to the Burley Government's proposed supplemental claims under the Self-Determination Act and Indian Tribal Justice Act.[FN18] Nevertheless, the district court would have been justified in denying leave to supplement on the ground that the supplemental claims could be the subject of a separate action, because they are based on events that post-date the original complaint. 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure;* Civil 2D § 1509 (1990); *Planned Parenthood of Southern Arizona v. Neely,* 130 F.3d 400, 402 (9th Cir. 1997). And in any event, even if it were error for the district court to deny leave to supplement, that error would be harmless, because the district court's denial does not prevent the Burley Government from bringing the supplemental claims as a separate action. *See Los Angeles Branch NAACP v. Los Angeles Unified Sch. Dist.,* 750 F.2d 731,739 (9th Cir. 1984) (for purposes of *res judicata,* "[t]he scope of litigation is framed by the complaint at the time it is filed"); *Computer Associates International, Inc., v. Altai, Inc.,* 126 F.3d 365,369-70 (2d Cir. 1997) (the filing of a supplemental complaint based on events occurring after filing of the original complaint is not mandatory, and *res judicata* "does not apply to new rights acquired during the action which might have been, but which were not, litigated.").

FN18. The United States did not oppose the Burley Government's motions for leave to file the supplemental complaints.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Appendix not available.

CALIFORNIA VALLEY MIWOK TRIBE, formerly Sheep Ranch Rancheria of Me-Wuk Indians of California, Plaintiff-Appellant, v. UNITED STATES OF AMERICA; Dirk Kempthorne, Secretary of the Interior; and Michael D. Olsen, Principal Deputy, Acting Assistant Secretary-Indian Affairs, Defendants-Appellees.
2007 WL 1700313 (C.A.D.C.) (Appellate Brief)

END OF DOCUMENT

EXHIBIT B

Dated: August 5, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–24668 Filed 9–30–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 564 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on August 11, 2009 (74 FR 40218).

FOR FURTHER INFORMATION CONTACT: Elizabeth Colliflower, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513–MIB, 1849 C Street, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska.

Amendments to the list include name changes and name corrections. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name. We will continue to list the tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: September 22, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana

Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma
Delaware Tribe of Indians, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe (formerly the Karuk Tribe of California)
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Kewa Pueblo, New Mexico (formerly the Pueblo of Santo Domingo)
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Tribes, Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Indians, California (formerly the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla and Cupeno Indians, California (formerly the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mashpee Wampanoag Tribe, Massachusetts
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations:
Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island

Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe, Idaho (previously listed as Nez Perce Tribe of Idaho)
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Nation, Oklahoma (formerly the Osage Tribe)
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (formerly the Pinoleville Rancheria of Pomo Indians of California)
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Tribe, California
Prairie Band of Potawatomi Nation, Kansas
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band of Cahuilla, California (formerly the Ramona Band or Village of Cahuilla Mission Indians of California)
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation)
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santee Sioux Nation, Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington

Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge Munsee Community, Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Wilton Rancheria, California
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation, Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yocha Dehe Wintun Nation, California (formerly the Rumsey Indian Rancheria of Wintun Indians of California)
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Native Village of Afognak
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (formerly the Native Village of Chignik)
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope

Iqurmuit Traditional Council
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Kasigluk Traditional Elders Council
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe
Native Village of Nunam Iqua (formerly the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak)
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island))
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiut Native Village (previously listed as Umkumiute Native Village)
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

[FR Doc. 2010–24640 Filed 9–30–10; 8:45 am]
BILLING CODE 4310–4J–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–308–310, 520, and 521 (Third Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–224, expiration date June 30, 2011. Public reporting

EXHIBIT C

INTERIOR BOARD OF INDIAN APPEALS

California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs

51 IBIA 103 (01/28/2010)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

CALIFORNIA VALLEY MIWOK TRIBE, Appellant, v. PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	Order Dismissing Appeal in Part and Referring Appeal in Part to the Assistant Secretary - Indian Affairs Docket No. IBIA 07-100-A January 28, 2010

The California Valley Miwok Tribe (Tribe) (formerly known as Sheep Ranch Rancheria, and Sheep Ranch of Me-wuk Indians of California), under the direction of Silvia Burley as the Tribe's Chairperson,[1] appealed to the Board of Indian Appeals (Board) from an April 2, 2007, decision (Decision) of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director affirmed a November 6, 2006, decision of the BIA Central California Agency Superintendent (Superintendent) that BIA would "assist" the Tribe in organizing a tribal government. To do so, the Superintendent announced that BIA would sponsor a "general council meeting of the Tribe," to which BIA would invite tribal members (apparently numbering six) as well as "potential" or "putative" members (apparently numbering in the several hundreds). BIA decided the criteria for (and intends to make individual eligibility determinations for) the class of "putative" members who would be allowed to participate in the general council meeting, and whose involvement BIA deemed necessary in order to include the "whole tribal community" in the tribal organization and membership decisions. BIA concluded that these actions were necessary because until the tribal organization and membership

[1] Our caption of the appeal reflects the entity in whose name the appeal was filed. As will become apparent, Burley's position and authority to bring this appeal in the name of the Tribe is disputed by both BIA and by Yakima Dixie (Yakima), a tribal member who claims to be the "Hereditary Chief" of the Tribe. Our references in this decision to Burley as the "appellant" are simply for the sake of identifying actions and positions with the individuals involved, and do not imply a decision by the Board, one way or the other, on the underlying dispute over whether Burley has authority to bring this appeal on behalf of the Tribe.

issues were resolved, a leadership dispute between Burley and Yakima, *see supra* note 1, could not be resolved, and resolution of that dispute was necessary for a functioning government-to-government relationship with the Tribe.

Burley appealed from the Decision, objecting on three grounds: (1) the Decision, as partially implemented, violated the Tribe's Fiscal Year (FY) 2007 contract with BIA under the Indian Self-Determination and Education Assistance Act (ISDA), *see* Pub. L. No. 93-638, 25 U.S.C. § 450 *et seq.*, through which the Tribe performed governmental and enrollment functions; or, in the alternative, that the Decision constituted an unlawful reassumption of that contract, *see* 25 C.F.R. Part 900, Subpart P (Retrocession and Reassumption Procedures); (2) the Tribe is already organized, BIA's proffered "assistance" was not requested by the Tribe, and thus BIA's action constitutes an impermissible intrusion into tribal government and membership matters that are reserved exclusively to Indian tribes; and (3) the Regional Director erred in stating that the Tribe was never terminated and thus is not a "restored" tribe, which is a status that is relevant to the Tribe for purposes of Indian gaming. The Regional Director and Yakima[2] seek dismissal of this appeal on the grounds that Burley lacks authority to represent the Tribe, and that intervening Federal court decisions, in litigation brought by Burley against the Department of the Interior, are dispositive against her in this appeal.

We need not decide whether Burley has authority to represent the Tribe in claiming that the Decision, as partially implemented, violated the Tribe's FY 2007 ISDA contract because another jurisdictional bar precludes us from considering the claim: the Board does not have jurisdiction to review an ISDA breach-of-contract claim against BIA. Burley's assertion that the Decision constituted an illegal "reassumption" of the ISDA contract suffers the same fate because it is, in substance, simply a recharacterization of her breach-of-contract claim, and it rests on a misunderstanding of the applicable regulations concerning ISDA contract reassumption.

Burley's authority to represent the Tribe with respect to its second claim is closely related to the underlying merits of those claims, and because we conclude that we do not have jurisdiction over the subject matter of those claims, we also dismiss them on

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[2] Yakima claims to represent a class of "putative" tribal members, but the record contains no basis upon which the Board can make a determination of which, if any, individuals have authorized Yakima to represent their interests in this appeal, or whether any other individuals would in fact qualify as interested parties. Yakima does qualify as an interested party, and whether or not he represents other individuals is not relevant to our consideration of his pleadings or our disposition of this appeal.

jurisdictional grounds, independent of whether or not Burley is authorized to represent the Tribe in this appeal. In 2005, before the Decision was issued, the Acting Assistant Secretary confirmed as final for the Department a decision made by BIA in 2004 that BIA does not consider the Tribe to be organized. With exceptions not relevant here, the Board does not have authority to review a decision of the Assistant Secretary. Moreover, the Department's position declining to recognize the Tribe as organized was upheld in Federal court.

The Regional Director's Decision, however, goes beyond what was decided or confirmed by the Assistant Secretary. To the extent that it does, our review would not necessarily be precluded by the Assistant Secretary's action. But another jurisdictional hurdle exists: the Decision decides what is effectively and functionally a tribal enrollment dispute, for purposes of determining who BIA will recognize, individually and collectively, as members of the "greater tribal community" that BIA believes must be allowed to participate in the general council meeting of the Tribe for organizational purposes. The Board lacks jurisdiction over tribal enrollment disputes. Thus, we lack jurisdiction over Burley's appeal regarding BIA's actions to assist the Tribe in organizing itself. Because this portion of the Decision effectively implicates a tribal enrollment dispute, we refer Burley's second claim to the Assistant Secretary.

With respect to Burley's third claim — that the Tribe is a "restored" tribe and that the Regional Director erred in stating otherwise — we conclude that Burley has not shown that the Tribe has been adversely affected by this statement in the Decision. Thus, the Tribe lacks standing to raise that claim in this appeal. Even assuming that the Tribe had standing, we would nevertheless dismiss this claim because it is not ripe for our review. By dismissing this claim, we leave for another day resolution of this issue regarding the Tribe's status.

Background

This appeal involves an Indian tribe whose legal status as a tribal political entity is undisputed as a matter of Federal law, *see* 74 Fed. Reg. 40,218, 40,219 (Aug. 11, 2009) (Federally recognized tribes list), but whose polity in fact — who or what individuals collectively constitute, or are entitled to constitute, the "Tribe" for purposes of participating in organizing a tribal government and establishing membership criteria — is bitterly disputed within the handful of individuals who have been recognized by BIA as the Tribe's currently enrolled members. Some background on the Sheep Ranch Rancheria and the history leading up to the present dispute will provide context for understanding our characterization of this appeal and, in particular, our conclusion that the Tribe's second claim should be referred to the Assistant Secretary.

I. Historical Background

In 1915, an Indian Agent forwarded to the Commissioner of Indian Affairs a census "of the Indians designated 'Sheepranch-Indians' . . . aggregating 12 in number," which the Agent described as constituting "the remnant of once quite a large band of Indians in former years living in and near the old decaying mining town known and designated on the map as 'Sheepranch.'" Administrative Record (AR), Tab 94. The Indian Agent recommended purchasing land for the Indians, and in 1916, the United States purchased approximately 0.92 acres in Calaveras County, California, which became known as the Sheep Ranch Rancheria. *See* AR, Tab 93.

In 1934, Congress passed the Indian Reorganization Act (IRA), which, among other things, required the Secretary to hold elections through which the adult Indians of a reservation decided whether to accept or reject the applicability of certain provisions of the IRA to their reservation, including provisions authorizing tribes to organize and adopt a constitution under the IRA. *See* 25 U.S.C. §§ 476 and 478. The IRA voter list for Sheep Ranch Rancheria identified only a single eligible voter, Jeff Davis, who voted in favor of the IRA.[3] AR, Tabs 90-92. Neither Davis, nor any subsequent residents of the Rancheria, organized a tribal government pursuant to the IRA.

In 1966, during a period in which the Federal government sought to terminate the Federal trust relationship with various Indians and Indian tribes, BIA prepared a plan to distribute the assets of the Sheep Ranch Rancheria as a prelude to termination. *See* AR, Tab 88; *see generally* California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, *as amended by* Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390. The distribution plan recited that several Indian families (not identified) had lived on the Rancheria since it was purchased, but none of the land had been allotted or formally assigned to individuals, and for the 8 years preceding, the only house had been occupied by Mabel Hodge Dixie.[4] BIA determined that Mabel was the only Indian entitled to receive the assets of the

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[3] The IRA defined "tribe" as referring to "any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." 25 U.S.C. § 479.

[4] The 1915 census identified a Peter Hodge and his family as among the Sheepranch Indians, although any relationship between Mabel and Peter is not shown in the record.

Rancheria, and she voted to accept the distribution plan and was issued a deed to the land. AR, Tabs 86-88.[5]

II. BIA Dealings with the Tribe Between 1994 and 2003.

Mabel was the mother of Yakima, who grew up on the Rancheria. *See* AR, Tab 73 at 5-6. In 1994,[6] Yakima wrote to the Superintendent, expressing a need for BIA assistance for home repairs, and describing himself as "the only descendant and recognized . . . member" of the Tribe. AR, Tab 76.

Sometime during the 1990s, Burley contacted BIA for information related to her Indian heritage, which BIA provided, and by 1998 — at BIA's suggestion — Burley had contacted Yakima.[7] On August 5, 1998, Yakima, "[a]s Spokesperson/Chairman" of the Tribe, signed a statement accepting Burley as an enrolled member of the Tribe, and also enrolling Burley's two daughters and her granddaughter. AR, Tab 75.

In September of 1998, Yakima and Burley met at the Rancheria with BIA staff from the Sacramento Area (now "Pacific Regional") Office to discuss organizing the Tribe. Among the issues discussed was developing criteria for membership in the Tribe. BIA staff suggested during the meeting that Yakima had both the authority and broad discretion to decide that issue. *See, e.g.*, AR, Tab 73 at 7-8, 24-25. Brian Golding, a BIA Tribal Operations Officer, characterized Yakima and his brother, Melvin, along with Burley and her adult daughter, as the "golden members" of the Tribe. Because Melvin's whereabouts were unknown at the time, Golding stated: "that basically leaves us with three people." AR, Tab 73 at 32. Golding continued, "usually what we'll do is we'll call that group of

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[5] In 1967, Mabel executed a quit claim deed to convey the land back to the United States, and following her death, the Department of the Interior probated the property and determined that it passed to Mabel's husband and her four sons, as her heirs.

[6] We cannot determine with certainty the date of the letter, but a barely legible portion of a date stamp appears to read "94."

[7] It appears that Burley may trace her ancestry to a "Jeff Davis" who was listed on the 1913 census: his age (58) in 1913 is consistent with his date of birth (1855) identified in genealogical information sent to Burley by BIA. *See* AR, Tabs 77 & 94. As noted, the sole eligible voter for the Sheep Ranch Rancheria IRA vote in 1935 was also a "Jeff Davis," but the date of birth listed for him is not the same as that for the Jeff Davis identified in the genealogical information sent to Burley. *Compare* AR, Tab 92 *with* AR, Tab 77.

people a general council. They're the body. They're the tribe. They're the body that has the authority to take actions on behalf of the tribe. So in this case, we'd be looking at, possibly, three people." *Id.*

In a followup letter to Yakima, dated September 24, 1998, the Superintendent described what BIA considered to be the unusual circumstances in which the Tribe and BIA found themselves. Typically, according to the Superintendent, California tribes that had been unlawfully terminated by the Federal government regained Federal recognition through litigation, and a court judgment identified the class of persons entitled to organize the tribe — e.g., the distributees and their dependents, and their lineal descendants. Although the Sheep Ranch Rancheria land had been distributed to Mabel pursuant to a distribution plan, the Department apparently never published a final notice of termination and had accepted the land back from Mabel through a quit claim deed, thus essentially administratively "unterminating" the Tribe before it had been formally terminated. Unlike terminated tribes that were restored through litigation, there was no court decision for Sheep Ranch Rancheria to which the Tribe and BIA could look to determine who was a member of the Tribe or otherwise entitled to organize it.

Under the circumstances, BIA concluded that "for purposes of determining the initial membership of the Tribe," BIA must include Yakima and Melvin, as the remaining heirs of Mabel Hodge Dixie. AR, Tab 72 at 2 (unnumbered). In addition to those two, BIA recognized that Yakima had adopted Burley, her two daughters, and her granddaughter, into the Tribe, and therefore those adoptees who were of majority age also had "the right to participate in the initial organization of the tribe." *Id.* The Superintendent continued:

> At the conclusion of [the meeting with BIA staff], you were going to consider *what enrollment criteria should be applied to future prospective members. Our understanding is that such criteria will be used to identify other persons eligible to participate in the initial organization of the Tribe*. Eventually, such criteria would be included in the Tribe's Constitution.

Id. (emphasis added).

The Superintendent stated that "given the small size of the Tribe, we recommend that the Tribe operate as a General Council," *id.* at 3, which could elect or appoint a chairperson and conduct business. In order to provide assistance, the Superintendent offered a $50,000 ISDA grant available for improving tribal governments, and provided a draft resolution for the Tribe to use in requesting the grant. *Id.*

On November 5, 1998, Yakima and Burley signed a resolution establishing a General Council, consisting of all adult members of the Tribe, to serve as the governing body of the Tribe. AR, Tab 71. In less than 5 months, however, a leadership dispute arose between Burley and Yakima. In April of 1999, Yakima purportedly resigned as chairperson of the Tribe, concurred in General Council action appointing Burley as Chairperson, and then repudiated his resignation, while still giving Burley "the right to act as a delegate to represent" the Tribe, subject to his orders. *See* AR, Tabs 68-70.

There was sufficient cooperation, however, for Yakima, Burley, and the elder of Burley's daughters, Rashel Reznor, to submit a petition to BIA asking for a Secretarial election to be held, pursuant to the IRA, 25 U.S.C. § 476, to vote on a proposed constitution. AR, Tab 66. The proposed constitution (1999 Yakima-Burley Constitution) identified the "base enrollees" as Yakima, Burley, Burley's two daughters, Burley's granddaughter, and (prospectively) the direct lineal descendants of these base enrollees. It also provided that all descendants of base enrollees and all descendants of any person who became a member subsequent to the adoption of the constitution "shall automatically become members of the Band at birth." *Id.*, 1999 Yakima-Burley Constitution, Art. II, Sec. 3(B). Other persons "of Sheep Ranch blood" could also be adopted into membership by a 2/3 majority vote of the General Council, which consisted of all members 18 years of age or older. *Id.*, 1999 Yakima-Burley Constitution, Art. II, Sec. 3(C) & Art. III, Sec. 2. BIA did not call a Secretarial election to vote on the 1999 Yakima-Burley Constitution.

By October of 1999, any remaining cooperation between Yakima and Burley appears to have evaporated, and Yakima sought assistance from BIA to expel Burley and her family from the Tribe. *See* AR, Tabs 57, 62. In December of 1999, Yakima provided BIA with a tribal constitution, purportedly adopted on December 11, 1999 (1999 Yakima Constitution). Enclosed with the constitution were documents by which Yakima, as Chairperson, purported to enroll seven additional individuals as members of the Tribe. The 1999 Yakima Constitution identified the Tribe's membership as (1) all persons who were listed as distributees and dependent members of their immediate families in the Sheep Ranch Rancheria Distribution Plan, (2) lineal descendants of those falling into the first category, (3) all persons enrolled by Yakima, and (4) all persons approved in the future by the Chairperson and Tribal Council to become members.

By letter dated February 4, 2000, the Superintendent returned the 1999 Yakima Constitution to Yakima without action, observing that the body that approved it did not appear to be the proper body to do so. The Superintendent agreed to a meeting with Yakima later in the month, with notice to Burley.

Burley and her daughter declined to participate in the meeting between BIA and Yakima, and on March 7, 2000, the Superintendent sent her a summary of the meeting. AR, Tab 8. The Superintendent reaffirmed BIA's view that the General Council consisted of Yakima, Burley, and Rashel. The Superintendent reported that BIA had rejected an assertion by Yakima that he had only given "limited enrollment" to Burley and her family, and also reported that BIA had advised Melvin, with whom BIA was now in contact, that as an heir of Mabel Hodge Dixie for the Rancheria land, he was entitled to participate in the organization of the Tribe.

Meanwhile, Burley and her daughter Rashel adopted their own tribal constitution, on March 6, 2000 (2000 Burley Constitution). The 2000 Burley Constitution identified the membership of the Tribe as Yakima, Burley, her two daughters, and her granddaughter, and provided that any further membership would be decided by a subsequent enrollment ordinance to be adopted by 2/3 majority vote of the Tribal Council. On October 31, 2001, the Superintendent wrote to Burley to "acknowledge receipt" of the 2000 Burley Constitution, as amended and corrected in September 2001. The Superintendent stated that BIA could not act on it without a formal request. The Superintendent concluded his letter by stating that "[t]he Agency will continue to recognize the Tribe as an unorganized Tribe and its elected officials as an interim Tribal Council until the Tribe takes the necessary steps to complete the Secretarial election process." AR, Tab 49 at 2 (unnumbered).

Between 1999 and 2003, BIA corresponded with Burley by addressing and recognizing her as the Tribe's Chairperson, or sometimes as "Interim Chairperson." *See, e.g.*, AR Tabs 8, 14 (Nov. 24, 2003, Letter from Superintendent), and 52. Eventually, as discussed in Part IV of this Background, BIA began to refer to Burley as a "person of authority" whom BIA considered as representing the Tribe for government-to-government purposes.

III. The Tribe's ISDA Contract

Beginning in 1999, and continuing through FY 2007, BIA executed an ISDA contract with the Tribe for improving tribal government, which apparently included such functions as developing a tribal enrollment ordinance and membership lists. Initially, BIA seems to have treated Burley as the Tribe's Chairperson for purposes of executing the contract. Later, when BIA began referring to her as a "person of authority," it continued to relate to the Tribe through Burley for purposes of executing annual funding agreements for the ISDA contract. The Decision that is the subject of this appeal was issued during FY 2007, when an ISDA contract funded for that year was in effect.

For FY 2008, the Superintendent returned without action a proposal from Burley to renew or re-fund the Tribe's ISDA contract, after concluding (in light of several court decisions) that Burley had not shown that the Tribe had authorized her to submit the ISDA contract proposal. *See California Valley Miwok Tribe v. Central California Agency Superintendent*, 47 IBIA 91 (2008). Burley's attempt to challenge, in court, BIA's decision not to renew the Tribe's ISDA contract for FY 2008, was unsuccessful. *See* Memorandum and Order, *California Valley Miwok Tribe v. Kempthorne*, No. Civ. S-08-3164 FCD/EFB (E.D. Cal. Feb. 23, 2009), *appeal docketed*, No. 09-15466 (9th Cir. Mar. 12, 2009).

For FY 2009, Burley again submitted a contract proposal and BIA again returned it without action on the same grounds relied upon for returning the FY 2008 proposal. The Tribe, through Burley, appealed that decision, and that appeal is pending before the Board in *California Valley Miwok Tribe v. Central California Agency Superintendent*, Docket No. IBIA 09-13-A.

IV. Superintendent's 2004 Decision and Acting Assistant Secretary's 2005 Decision

On March 26, 2004, in a letter that the Acting Assistant Secretary later relied upon as a final Departmental decision, the Superintendent wrote to Burley, acknowledging receipt on February 11, 2004, of a document purporting to be the Tribe's constitution, which the Superintendent understood had been submitted to demonstrate that the Tribe is an "organized" tribe. Although the letter was addressed to "Silvia Burley, Chairperson," in the text the Superintendent stated that BIA recognized Burley as "a person of authority" within the Tribe, but did "not yet view [the] tribe to be an 'organized' Indian Tribe." AR, Tab 40 at 1 (2004 Decision). The Superintendent stated that when a tribe that has not previously organized seeks to do so, BIA has a responsibility to determine that the organizational efforts "reflect the involvement of the whole tribal community." *Id.* He noted a lack of evidence of any outreach to Indian communities in and around Sheep Ranch or to persons who have maintained any cultural contact with Sheep Ranch. *Id.* at 2. The Superintendent further stated that "[i]t is only after the greater tribal community is initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified. The participation of the greater tribal community is essential to this effort." *Id.*

The Superintendent expressed concern that the "base roll" submitted by Burley contained only five names, "thus, suggest[ing] that this tribe did not exist until the 1990's, with the exception of Yakima Dixie. However, BIA's records indicate with the exception not withstanding, otherwise." *Id.* According to the Superintendent, BIA's experience with

the Tribe's "sister Miwok tribes" led BIA to believe that "Miwok tradition favors base rolls identifying persons found in Miwok tribes," noting that the Amador County tribes used the 1915 Miwok Indian Census for that County; El Dorado County tribes used a 1916 Indian census; and Tuolumne County tribes used a 1934 IRA voter list. *Id.* The Superintendent emphasized "the importance of the participation of a greater tribal community in determining membership criteria." *Id.* at 3. The Superintendent advised Burley of her right to appeal the letter to the Regional Director. No appeal was filed.

On February 11, 2005, Principal Deputy and Acting Assistant Secretary - Indian Affairs Michael D. Olsen dismissed an "appeal" that Yakima had filed in 2003 with the Office of the Assistant Secretary to challenge BIA's recognition of Burley as Chairperson of the Tribe (2005 Decision). The 2005 Decision dismissed Yakima's appeal on procedural grounds, finding, among other things, that the 2004 Decision had rendered the appeal moot.[8] The Assistant Secretary interpreted the 2004 Decision as making clear that BIA did not recognize Burley as chairperson, and that until the Tribe has organized itself, the Department could not recognize anyone as the Tribe's chairperson. The Assistant Secretary stated that "the Tribe is not an organized tribe," "BIA does not recognize any tribal government," and "[t]he first step in organizing the Tribe is identifying the putative tribal members." 2005 Decision at 1-2.

Burley, in the name of the Tribe, filed suit against the Department, challenging the 2004 Decision and the 2005 Decision, and the court accepted the two decisions as final Departmental action for purposes of judicial review. *See California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 201 n.5 (D.D.C. 2006). The court rejected Burley's claim that the Department's refusal to recognize as valid the constitution proffered by Burley, the Department's refusal to consider the Tribe as organized, and the Department's insistence on participation of a "greater tribal community" in organizational efforts, constituted unlawful and improper interference in the internal affairs of the Tribe. The

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[8] Perhaps because he concluded that Yakima's appeal was moot, Olsen did not otherwise address his jurisdiction to consider such an appeal. Under 25 C.F.R. Part 2, an appeal from a Regional Director's decision ordinarily must be filed with the Board, after which the Assistant Secretary has a 20-day window in which to assume jurisdiction over the appeal. *See* 25 C.F.R. §§ 2.4(e), 2.20(c). Yakima did not file his appeal with the Board.

court dismissed Burley's suit for failure to state a claim, thus leaving the 2004 and 2005 Decisions intact.[9]

On appeal, the U.S. Court of Appeals affirmed the District Court's decision. *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008). The court found reasonable the Department's position that the Secretary's authority under the IRA included the power to refuse to recognize the validity of Burley's proffered tribal constitution when it "does not enjoy sufficient support from [the] tribe's membership." *Id.* at 1267. The court noted that, by Burley's own admission, the Tribe had a potential membership of 250, and upheld the Secretary's decision to reject what the court characterized as the "antimajoritarian gambit" by Burley and her small group of supporters. *Id.*

V. BIA Decisions in 2006 and 2007 and Subsequent Actions

After the District Court had issued its decision in *California Valley Miwok Tribe v. United States*, but while Burley's appeal to the Court of Appeals was pending, the Superintendent issued his November 6, 2006, decision, AR, Tab 19, and, following Burley's appeal, the Regional Director upheld the Superintendent, in the April 2, 2007, Decision, AR, Tab 3, that is the subject of this appeal.

The Superintendent's 2006 decision was addressed to both Burley and Yakima, and characterized BIA's action as an offer to assist the Tribe in the Tribe's efforts "to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to the clear majority of those Indians." AR, Tab 19 at 1. The Superintendent disclaimed any intent to interfere with the Tribe's right to govern itself, but found that the leadership dispute between Burley and Yakima threatened the government-to-government relationship between the United States and the Tribe. The Superintendent announced that the Agency

> will publish a notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process. The notice shall invite the members of the Tribe and

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[9] The development of competing constitutions has not abated. In 2006, an 11-person group of 12 "initial members" of the Tribe aligned with Yakima purported to adopt a constitution, which recognized Burley as the 12th "initial member," but did not recognize Burley's daughters or granddaughter as members.

> potential members to the meeting where the members will discuss the issues and needs confronting the Tribe.

Id.

The Superintendent listed several proposed issues for the general council to discuss, and described the necessary tasks for the general council as follows:

> The general council first needs to determine the type of government your tribe will adopt. . . . Next, the general council needs to agree to the census or other documents that establishes the original members of the Rancheria. That census should be the starting point from which the tribe develops membership criteria. The immediate goal is determining membership of the tribe. Once membership is established and the general council determines the form of government, then the leadership issues can be resolved.

Id. at 2. The Superintendent concluded his letter by stating that BIA very much wished to have both Burley and Yakima participate, but that BIA would proceed with the process even if one or both of them declined to participate. *Id.*

Burley appealed the Superintendent's 2006 decision to the Regional Director, arguing that BIA had recognized her as a person of authority and thus there was no leadership dispute; that BIA previously had already decided which individuals had the right to organize the Tribe; that BIA lacked authority to organize an Indian tribe unless requested to do so by the tribe's government; and that BIA lacked authority to establish a class of individuals entitled to participate in organizing the Tribe as members of a "general council" convened by BIA. AR, Tabs 14, 17. The Superintendent responded to Burley's arguments by stating that

> [i]t is not the goal of the Agency to determine membership of the Tribe. The purpose of the [Agency's] letter was to bring together the 'putative group' who believe that they have the right to participate in the organization of the Tribe . . . . It was not, and is not, the intent of the Agency to determine who the members of the Tribe will be. Then the 'putative' group can define the criteria for membership. . . .

AR, Tab 13 at 4.

In the Decision, the Regional Director first concluded that because BIA did not recognize a tribal government for the Tribe and because Burley and Yakima were at an

impasse, the government-to-government relationship was threatened, and thus it was necessary for BIA to assist the Tribe with the Tribe's organizational efforts. The Regional Director recounted the history of the Tribe, and in the course of that background, stated that a notice of termination was never published in the Federal Register or otherwise issued for the Sheep Ranch Rancheria, that the Tribe was included in a 1972 list of Federally recognized tribes, and therefore that BIA has never viewed the Tribe as having been terminated and then "restored" to Federal recognition. Decision at 2.

The Regional Director also recounted BIA's dealings with both Yakima and Burley, concluding that "both [had] failed to identify the whole community who are entitled to participate in the Tribe's efforts to organize." Decision at 4. The Regional Director agreed that it was not the Superintendent's goal to determine the membership of the Tribe, but instead to

> bring together the "putative group" who believe that they have the right to participate in the organization of the Tribe . . . . We believe the main purpose was to assist the Tribe in identifying the whole community, the "putative" group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. A determination of who is a tribal member must, however, [precede] any determination of who is a tribal leader.

Id. at 5. The Regional Director stated that "[i]n all fairness to the current tribal membership and the 'putative' group," he agreed with the Superintendent's proposed course of action. *Id.* Thus, the Regional Director affirmed the Superintendent's decision and remanded the matter for implementation.

On April 10 and 17, 2007, shortly after the Decision was issued and before Burley filed this appeal, BIA published notices in local newspapers announcing its plans

> to assist the [Tribe] in its efforts to organize a formal governmental structure that is acceptable to all members. The first step in the organizational process is to identify putative members of the Tribe who may be eligible to participate in all phases of the organizational process of the Tribe. Therefore, if you believe you are a lineal descendant of a person(s) listed below, you will need to [submit specified documentation to BIA] . . . that will assist the Bureau Team in determining your eligibility.

Calaveras Enterprise, April 10 and 17, 2007, Ex. 1 to Appellant's Opening Brief.[10] The notice described the putative members as lineal descendants of (1) individuals listed on the 1915 census of the Sheepranch Indians, (2) Jeff Davis (the sole individual on the IRA voter list in 1935), and (3) Mabel Hodge Dixie (the sole distributee under the 1964 Distribution Plan). The notice continued:

> All individuals who have been determined to be eligible to participate in the organization of the Tribe will be notified by letter from the Agency. All individuals not determined eligible will be noticed of their right to appeal to the BIA, Pacific Regional Director within 30 days of receipt of decision. Upon rendering final decisions regarding appeals filed, the Agency will notify all individuals determined to be eligible of the organizational meeting which will include an agenda of the next actions to be taken by the group.

Id.

Burley, in the name of the Tribe, and represented by counsel, appealed the Decision to the Board. Burley, the Regional Director, and Yakima filed briefs.

VI. Arguments on Appeal

Burley characterizes the appeal as "rais[ing] the permissible scope of BIA involvement in internal Tribal government functions through unlawful reassumption of [ISDA] contract functions involving enrollment." Opening Brief at 3. According to Burley, the issues raised include the Regional Director's findings that BIA, rather than the Tribe, can determine tribal membership; that BIA may designate a putative class of membership; that the Tribe is an unorganized Tribe; that BIA can determine the make up of tribal government and refuse to recognize the Tribe's judicial forum; that BIA can hold a general council meeting for the Tribe without permission from the Tribe's governing body; and "lastly," that the Tribe was never terminated and restored. *Id.* at 3-4. Burley contends

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[10] Burley objected to the Board that BIA's public notices violated the automatic stay that attaches to BIA decisions, *see* 25 C.F.R. § 2.6, and were issued after BIA no longer had jurisdiction over the matter. While not conceding a violation, BIA has represented to the Board that it has refrained from taking any further action to convene a general council meeting. Independent of BIA's authority to publish them, the notices reflect, as a factual matter, BIA's understanding of the nature, scope, and intent of the Superintendent's November 6, 2006, decision and the Regional Director's Decision upholding the Superintendent.

that she was elected Chairperson of the Tribe and has been so recognized by BIA; that the five adult members of the Tribe adopted a general council form of government and thereafter the Tribe was no longer an "unorganized" tribe; that the Tribe is a party to an ISDA contract with BIA; and that BIA's actions to implement the Decision by publishing the newspaper notices constitute an unlawful reassumption of contract functions because BIA "has engaged its own process of promulgating enrollment standards that differ from those of the Tribe," which violates the terms of the ISDA contract. *Id.* at 11. Burley argues that BIA has overstepped its authority and impermissibly interfered with decisions on tribal membership and tribal governance that are reserved exclusively to Indian tribes. Burley also argues that the Regional Director erred in stating that the Tribe is not a "restored" tribe, because once fee title to the Rancheria land passed to Mabel Dixie, the Tribe was terminated, and therefore the Tribe necessarily must be a "restored" tribe.

The Regional Director contends that the appeal should be dismissed because the appeal cannot properly be brought in the name of the Tribe. The Regional Director argues that (1) the Decision was directed at Burley, as a person claiming to be the leader of the Tribe, and was not directed at the Tribe; (2) the appeal seeks to vindicate Burley's own rights as an alleged elected official, and does not represent the interests of the Tribe as a whole; and (3) the Tribe lacks standing to appeal because it was not adversely affected by the Decision. In making the standing argument, the Regional Director contends that the Decision did not violate the ISDA contract or the Tribe's right to determine its own membership, and that until the organizational process is complete, it is not possible to determine whether the Tribe was injured. The Regional Director also defends the Decision on the merits.

Yakima argues that the Superintendent's 2004 Decision and the Assistant Secretary's 2005 Decision, as final Departmental decisions, are dispositive of the issues raised in this appeal and thus prevent the Board from considering the appeal on the merits. Yakima also contends that this matter constitutes an enrollment dispute, and the Board lacks jurisdiction to adjudicate tribal enrollment disputes. *See* 43 C.F.R. § 4.330(b)(1).

Discussion

I. Jurisdictional Principles

The Board has jurisdiction to review an appeal from a non-emergency rescission and reassumption of an ISDA contract, *see* 25 C.F.R. § 900.150(e), but the Board does not have general jurisdiction over disputes that arise after an ISDA contract has been awarded, *id.* § 900.151(a) & (b), including claims that a Federal agency has violated an ISDA

contract. *See id.* Part 900, Subpart N (Post-Award Contract Disputes). As a general rule, the Board has jurisdiction to review a decision of a BIA Regional Director. *See* 25 C.F.R. § 2.4(e);[11] 43 C.F.R. § 4.330(a). But, except by special delegation or request from the Secretary or Assistant Secretary, the Board is expressly precluded from adjudicating tribal enrollment disputes, *see* 43 C.F.R. § 4.330(b)(1), or stated more precisely, from adjudicating challenges to BIA actions deciding tribal enrollment disputes. *See Vedolla v. Acting Pacific Regional Director*, 43 IBIA 151, 154 n.4 (2006).[12] In addition, the Board does not have jurisdiction to review a decision by the Assistant Secretary. *Ramah Navajo Chapter v. Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs*, 49 IBIA 10, 11-12 (2009), and cases cited therein; *Felter v. Acting Western Regional Director*, 37 IBIA 247, 250 (2002).

With these jurisdictional principles in mind, we address each argument raised by Appellant in this appeal.[13]

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[11] BIA's appeal regulations refer to decisions made by an "Area Director," but the position is now titled "Regional Director."

[12] In *Vedolla*, the Board noted that regardless of section 4.330(b), the Board lacks jurisdiction to directly review enrollment (or other) actions by Indian tribes.

[13] Another jurisdictional principle applied by the Board is that it will only consider matters that are ripe for review. *See, e.g., U&I Redevelopment LLC v. Acting Northwest Regional Director*, 44 IBIA 240 (2007) (dismissing appeal for lack of ripeness); *Wind River Resources Corp. v. Western Regional Director*, 43 IBIA 1, 3 (2006) (describing the considerations for determining ripeness). The Board solicited briefing on this issue, and both the Tribe and the Regional Director contend that this appeal is ripe. Yakima contends that the appeal is not ripe because Burley is objecting only to a *process*, and not an outcome, and no definitive determinations "have . . . been made with respect to denominating the particular putative members and the broader community who might qualify as members." Answer of Interested Parties at 11. Yakima later contradicts himself, however, by asserting that "BIA has, now, formally defined the class of individuals with whom it will [meet] to organize the Tribe." *Id.* at 14. Except with respect to the Decision's conclusion that the Tribe is not a "restored" Tribe, *see infra* at 122-23, we agree that this appeal is ripe, and that no purpose would be served by dismissal without deciding those issues.

II. Analysis

A. Claims Based on Tribe's ISDA Contract

1. Does the Decision Violate the Tribe's ISDA Contract?

Burley contends that the Decision, and subsequent notices identifying the class of putative members whom BIA would invite to a general council meeting of the Tribe, violated the Tribe's ISDA contract because the contract includes enrollment functions. As noted above, the Board lacks jurisdiction to consider claims that BIA breached a tribe's ISDA contract, and thus we dismiss this claim without addressing whether Burley would otherwise be authorized to bring such a claim on behalf of the Tribe.[14]

2. Does the Decision Constitute an Impermissible Reassumption of the ISDA Contract?

Burley argues that the Decision, as partially implemented by the newspaper notices announcing criteria for "putative" members of the Tribe and announcing BIA's intent to convene a general council meeting, constitutes an impermissible "reassumption" of the Tribe's ISDA contract. The Regional Director argues that Burley does not have authority to represent the Tribe in asserting this claim and that the Tribe itself lacks standing because "until the organizational process is complete, we cannot know whether there has been an actual injury." Appellee's Opposition Brief at 9. We need not address the Regional Director's contentions because we conclude that Burley's impermissible-reassumption argument is simply a restatement of her breach-of-contract claim, over which we lack jurisdiction.

Under the ISDA regulations, "reassumption" means "*rescission*, in whole or in part, of a contract *and* assuming or resuming control or operation of the contracted program by

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[14] We note that an appeal was filed with the Civilian Board of Contract Appeals (CBCA) in the name of the Tribe, from the same actions challenged in this appeal (Superintendent's November 6, 2006, decision; Regional Director's April 2, 2007, Decision; and April 2007 newspaper notices), arguing that BIA's actions constituted an impermissible revision and/or amendment of the contract in violation of the contract and governing statute. The CBCA dismissed the appeal for lack of jurisdiction because the Tribe had made no claim to the awarding official and the awarding official had issued no decision. *See California Valley Miwok Tribe v. Department of the Interior*, CBCA 817-ISDA (Sept. 27, 2007) (dismissing appeal for lack of jurisdiction).

the Secretary without consent of the Indian tribe or tribal organization pursuant to the notice and other procedures set forth in subpart P." 25 C.F.R. § 900.6 (emphases added). The "rescission" of a contract by one party refers to the "unilateral *unmaking* of a contract for a legally sufficient reason." Black's Law Dictionary 1332 (8th ed. 2004) (emphasis added). Subpart P of 25 C.F.R. Part 900 prescribes the specific circumstances under which an agency may rescind an ISDA contract, the specific procedural steps that must be followed, and the effective date of the rescission and reassumption. *See* 25 C.F.R. §§ 900.247 -.253.

In the present case, the Decision did not purport to rescind or terminate the Tribe's ISDA contract for FY 2007, and the Regional Director does not argue on appeal that the contract was rescinded or terminated. Nor does Burley contend that BIA followed the proper procedures for rescinding the contract. Instead, Burley contends that BIA's actions constituted unlawful interference with the Tribe's ability to perform under the contract by essentially taking over enrollment activities. Burley describes this as a "reassumption," but the actions described, in substance, do not fall within the regulatory definition of that term. In effect, Burley's contention is a restatement of her allegation that BIA's actions either breached or unlawfully interfered with the Tribe's still-effective and still-valid FY 2007 ISDA contract.

Thus, for the same reason that we have dismissed Burley's express breach-of-contract claim, we also dismiss Burley's unlawful-reassumption claim: the Board lacks jurisdiction to consider what is in substance an ISDA breach-of-contract claim.

B. BIA's Decision to Convene a General Council Meeting of the Tribe's Current and Putative Membership and to Determine Criteria for Putative Membership

Burley contends that the Regional Director erred in stating that the Tribe is unorganized, and that because the Tribe (i.e., Burley's faction) did not request assistance from BIA, BIA has no authority to convene a "general council" meeting of the Tribe, or to determine the class(es) of individuals who may participate in such a meeting. We conclude, based on the Assistant Secretary's 2005 Decision, which included his acceptance of the Superintendent's 2004 Decision as final for the Department, that the following determinations are not subject to further review by the Board in this appeal: (1) the Department does not recognize the Tribe as being organized or having any tribal government that represents the Tribe; (2) the Department does not recognize the Tribe as necessarily limited to Yakima, Melvin, Burley, her two daughters, and her granddaughter, for purposes of who is entitled to organize the Tribe and determine membership criteria; and (3) the Department has determined that it has an obligation to ensure that a "greater tribal community" be allowed to participate in organizing the Tribe. Each of these

determinations was either explicitly or implicitly accepted in the Assistant Secretary's 2005 Decision as final for the Department, *see supra* at 111-12, and the Board lacks jurisdiction to review a decision by the Assistant Secretary.

That does not end our inquiry, however, because the Regional Director's Decision arguably went beyond the above determinations by deciding more specifically what BIA would do to implement those determinations. In this appeal, Burley contends that BIA exceeded its authority in determining who would constitute the "greater tribal community," or class of "putative members," and in deciding that they could participate as part of a "general council" meeting of the Tribe, to decide membership and organizational issues.[15]

As evidenced by the decisions of the Superintendent and the Regional Director, and the public notices published by BIA in 2007,[16] BIA apparently has decided to create a base roll of individuals who satisfy criteria that BIA has determined to be appropriate and who

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[15] On October 13, 2009, Burley filed a request that the Board "take judicial notice of the United States Supreme Court's October 5, 2009, denial of [a petition for a writ of certiorari] in the *Hendrix v. Coffey* matter." *See Hendrix v. Coffey*, No. Civ. 08-605-M, 2008 WL 2740901 (W.D. Okla. July 10, 1008), *aff'd*, 305 Fed.Appx. 495 (10th Cir. 2008) (unpublished), *cert. denied*, 130 S. Ct. 61, 2009 WL 1106742 (U.S. Oct. 5, 2009). Burley characterized the *Hendrix* decisions as reaffirming well-settled principles of law that Indian tribes have complete authority to determine all questions of their own membership, and ascribed significance to the Supreme Court's recent denial of Hendrix's petition for a writ of certiorari. Counsel for the Tribe, Kevin M. Cochrane, Esq., of Rosette & Associates, PC, subsequently certified that he had reviewed and endorsed Burley's request as one made in good faith and for which a reasonable legal justification exists. Because we lack jurisdiction to consider the merits of Burley's second claim, we decline to further consider Burley's request or Cochrane's certification. *But see Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950) (Opinion of Justice Frankfurter) ("This Court has rigorously insisted that such a denial [of certiorari] carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review.").

[16] BIA published the newspaper notices after the Regional Director issued the Decision, but before the Tribe timely filed this appeal. Subsequently, the Tribe objected to BIA's action as violating the automatic stay. *See* 25 C.F.R. § 2.6. We agree with the Tribe that BIA should not have begun to implement a decision that was not effective and that was subject to appeal. BIA subsequently confirmed with the Board that it cannot take any action to assist the Tribe in organizing while Burley's appeal remains pending. *See* Appellee's Opposition to Appellant's Motion to Enforce Stay at 1; *see also supra*, note 10.

will be entitled to participate — effectively as members (albeit in a somewhat undefined capacity) — in a "general council" meeting of the Tribe to organize the Tribe. Although the facts of this case render BIA's decision far from a typical enrollment adjudication, we conclude that, in substance, that is what it is. Whether or not some or all of the individuals BIA would determine, under the Decision, to be "putative members" of the Tribe will ultimately be enrolled, BIA's determination of their "putative membership" apparently will effectively "enroll" them as members of the "general council" that is to meet. And that general council, as apparently envisioned by BIA, will have the authority to determine permanent membership criteria.

Understood in the context of the history of this Tribe, and BIA's dealings with the Tribe since approximately 1999, this case is properly characterized as an enrollment dispute. *Cf. Vedolla v. Acting Pacific Regional Director*, 43 IBIA at 155 (Board lacks jurisdiction over what is, at its core, a tribal enrollment dispute, notwithstanding an appellant's characterization to the contrary; matter referred to the Assistant Secretary); *Walsh v. Acting Eastern Area Director*, 30 IBIA 180 (1997) (dismissing appeal from alleged actions and inactions regarding the development of a proposed final base membership roll for the Catawba Indian Tribe of South Carolina, and referring matter to Assistant Secretary); *Deardorff v. Acting Portland Area Director*, 18 IBIA 411 (1990) (dismissing appeal from BIA decision holding that 58 individuals were qualified to be enrolled in the Crow Creek Band of Umpqua Tribe of Indians, and referring matter to the Assistant Secretary). Because the Board lacks jurisdiction to adjudicate tribal enrollment disputes, we dismiss this claim and refer it to the Assistant Secretary.[17]

C. Did the Regional Director Err in Stating that the Tribe is Not a "Restored" Tribe?

A determination whether a tribe is a "restored" tribe may have significant gaming-related implications when land is taken into trust for such a tribe. *See Butte County v. Hogen*, 609 F. Supp. 2d 20, 24 (D.D.C. 2009). It is unclear, however, whether the Regional Director intended the statement in his Decision that the Tribe is not a "restored" tribe to constitute a "decision," or whether it was intended only as background. We

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[17] Even if we did not conclude that Burley's second claim presents an enrollment dispute over which we lack jurisdiction, referral of this claim might still be required because of the discretionary character of BIA's decision. *See* 43 C.F.R. § 4.330(b)(2). The Department has determined that a "greater tribal community" must be included in organizing the Tribe, but even if we limited our review to the *classes* of individuals that BIA decided to include, it is unclear what legal standard we would apply.

conclude that the Tribe lacks standing to appeal this portion of the Decision because there is no showing, on this record, that the Tribe was adversely affected by the statement on this issue in the Decision. *See* 25 C.F.R. § 2.3 (administrative appeals regulations apply to appeals by persons who may be adversely affected by a BIA decision). The Decision is directed at neither gaming on tribal lands nor taking land into trust for the Tribe. And although the statement that the Tribe is not a "restored" Tribe may well have been intended to signal BIA's position on the subject, the Decision itself presents no context, nor any action that BIA intends to take to implement that position in a way that might have an actual adverse effect.

Even if we were to conclude that the Tribe had shown that it was adversely affected by the statement, we would nevertheless conclude on this record that the matter is not ripe for our review. The Board applies the doctrine of ripeness, and three considerations are relevant for determining whether a matter is ripe: will a delay cause hardship, will Board intervention interfere with further administrative action, and is further factual development of the issues required? *Wind River Resources, Corp. v. Western Regional Director*, 43 IBIA 1, 3 (2005). In the present case, the first and third criteria weigh in favor of dismissal for lack of ripeness. Because there is no indication in the record that BIA intends to take any action to "implement" the statement, delay will not cause hardship; nor has a factual record been developed for this issue. Given the lack of context for the Decision's statement that the Tribe is not a "restored" tribe, it is unclear whether Board intervention would interfere with further administrative action, but considering the three factors together, we would conclude that this claim is not ripe. Thus, whether viewed as an issue of standing or of ripeness,[18] we conclude that this claim should be dismissed, and review on the merits must wait.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board (1) dismisses Burley's claims related to the Tribe's FY 2007 ISDA contract; (2) dismisses Burley's claims that BIA improperly determined that the Tribe is "unorganized," failed to recognize her as the Tribe's Chairperson, and is improperly intruding into tribal affairs by determining the criteria for a class of putative tribal members and convening a general council meeting that will include such individuals; and (3) dismisses Burley's claim that the Regional Director erred in stating

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[18] In *Wind River Resources*, we noted that the doctrines of standing and ripeness are closely related. *See* 43 IBIA at 3 n.2.

that the Tribe is not a "restored" tribe. We refer Burley's second claim to the Assistant Secretary.[19]

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Sara B. Greenberg
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.

[19] In this appeal, briefs filed on behalf of Yakima and purportedly other interested parties, *see supra* note 2, have been filed by Chadd Everone, a non-attorney who does not claim to be a member or putative member of the Tribe but who claims to serve as the "Deputy" to Yakima. *See, e.g.*, Interested Parties' Response in Opposition to Appellant's Request to Reopen Briefing at 1 (Oct. 5, 2009). On November 30, 2009, more than a year after briefing on the merits had concluded and after the Board had advised the parties that it had taken this case under consideration, Burley, through counsel, filed a Motion to Institute Disciplinary Proceedings Against Chadd Everone, asserting that Everone is not authorized to practice before the Board and that therefore all pleadings filed on behalf of Yakima should be stricken and not considered by the Board. Burley's motion, at this late stage of the proceedings, is untimely and we decline to consider it further. We note that Burley's motion selectively quotes 43 C.F.R. § 1.3, and does not address the Board's interpretation of that provision. *See, e.g., Estate of Benjamin Kent, Sr.*, 13 IBIA 21, 23 (1984). Moreover, the motion apparently assumes that Yakima did not sign any of the pleadings himself. *But cf.* Interested Parties' Answer Brief at 15. Finally, even were we to strike all pleadings filed on behalf of Yakima, we would not resolve this appeal differently.

EXHIBIT D

INTERIOR BOARD OF INDIAN APPEALS

California Valley Miwok Tribe Appellant, vs. Pacific Regional Director, Appellee.	)	Docket No.: IBIA 07-100-A

APPELLEE'S SUPPLEMENT TO ITS OPPOSITION TO APPELLANT'S MOTION TO ENFORCE STAY

Appellee Regional Director hereby submits the attached letter in support of its Opposition to Appellants Motion to Enforce Stay. This letter makes clear that Silvia Burley cannot act in the name of the California Valley Miwok Tribe because the Bureau of Indian Affairs does not recognize that the Tribe has a governing body and no longer contracts with Silvia Burley as a person of authority on behalf of the Tribe. Because Ms. Burley lacks authority to act on the Tribe's behalf, the Board should deny her motion to enforce stay.

Submitted December 19, 2007

Jane M. Smith
Attorney Advisor

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

DEC 14 2007

CERTIFIED MAIL NO. 7001 2510 0009 4494 1906
RETURN RECEIPT REQUESTED

Silvia Burley
10601 Escondido Place
Stockton, California 95212

Dear Ms. Burley:

In accordance with 25 CFR Part 900.6, Subpart B, Definitions, we are returning your application to contract FY 2008 funding from the Bureau of Indian Affairs, under P.L. 93-638, as amended as it does not meet the definition stated below:

> "Tribal Organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which included the maximum participation of Indians in all phases of its activities: provided, that, in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract of grant."

Under this Part, consideration to contract federal funds to operate Bureau of Indian authorized programs will only be given to an application submitted by federally recognized tribe with a recognized governing body. The Department of the Interior does not recognize that the California Valley Miwok Tribe has a governing body. The District Court for the District of Columbia has upheld that determination, California Valley Miwok Tribe v. United States, 424 F Supp. 2d 197 (D.C.D.C. 2006). That decision is now on appeal.

Because we do not recognize any current governing body for the California Valley Miwok Tribe, we are unable to accept the proposal for the above stated reason. We are hereby returning the proposal.

Should you wish to appeal any portion of this letter, you are advised that you may do so by complying with the following:

This decision may be appealed to the Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, W-2820, Sacramento, California 95825. In accordance with the regulations in 25 CFR Part 2 (copy enclosed), your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appea must include you name, address and telephone number. It should clearly identify the decision to be appealed. If possible attach a copy of the decision. The notice of appeal and the envelope which it is mailed, should be clearly labeled "NOTICE OF APPEAL." The notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice.

You must also send a copy of your notice to the Regional Director, at the address given above.

If no timely appeal is filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

Troy Burdick
Superintendent

Enclosure

EXHIBIT E

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 11 2005

Mr. Yakima K. Dixie
Sheep Ranch Rancheria of MiWok Indians of California
11178 Sheep Ranch Rd.
P.O. Box 41
Sheep Ranch, California 95250

Dear Mr. Dixie:

I am writing in response to your appeal filed with the office of the Assistant Secretary – Indian Affairs on October 30, 2003. In deciding this appeal, I am exercising authority delegated to me from the Assistant Secretary – Indian Affairs pursuant to 209 DM 8.3 and 110 DM 8.2. In that appeal, you challenged the Bureau of Indian Affairs' ("BIA") recognition of Sylvia Burley as tribal Chairman and sought to "nullify" her admission, and the admission of her daughter and granddaughters into your Tribe. Although your appeal raises many difficult issues, I must dismiss it on procedural grounds.

Your appeal of the BIA's recognition of Ms. Burley as tribal Chairman has been rendered moot by the BIA's decision of March 26, 2004, a copy of which is enclosed, rejecting the Tribe's proposed constitution. In that letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. Rather, the BIA would recognize her as "a person of authority within California Valley Miwok Tribe." Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you, either in conjunction with Ms. Burley, other tribal members, or potential tribal members, to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004, letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members. If you need guidance or assistance, Ray Fry, (916) 930-3794, of the Central California Agency of the BIA can advise you how to go about doing this.

In addition, your appeal to my office was procedurally defective because it raised issues that had not been raised at lower levels of the administrative appeal process. In May 2003, you contacted the BIA to request assistance in preparing an appeal of the BIA's recognition of Ms. Burley as tribal Chairman. You specifically stated that you were not filing a formal Notice of Appeal. In June 2003, you filed an "Appeal of inaction of official," pursuant to 25 C.F.R. §2.8, with the Central California Agency Superintendent challenging the BIA's failure to respond to your request for assistance. In August 2003, you filed another "Appeal of inaction of official"

with the Acting Regional Director challenging the failure of the Superintendent to respond to your appeal of the BIA's inaction. Your appeal with my office, however, was not an "Appeal of inaction of official." Rather, your "Notice of Appeal" challenged the BIA's recognition of Ms. Burley as tribal Chairman and sought to nullify the Tribe's adoption of her and her family members. Those issues were not raised below. They are not, therefore, properly before me.

In addition, your appeal appears to be untimely. In 1999, you first challenged the BIA's recognition of Ms. Burley as Chairman of the Tribe. In February 2000, the BIA informed you that it defers to tribal resolution of such issues. On July 18, 2001, you filed a lawsuit against Ms. Burley in the United States District Court for the Eastern District of California challenging her purported leadership of the Tribe. On January 24, 2002, the district court dismissed your lawsuit, without prejudice and with leave to amend, because you had not exhausted your administrative remedies by appealing the BIA's February 2000 decision. After the court's January 24, 2002, order, you should have pursued your administrative remedies with the BIA. Instead, you waited almost a year and a half, until June 2003, before raising your claim with the Bureau. As a result of your delay in pursuing your administrative appeal after the court's January 24, 2002, order, your appeal before me is time barred.

In light of the BIA's letter of March 26, 2004, that the Tribe is not an organized tribe, however, the BIA does not recognize any tribal government, and therefore, cannot defer to any tribal dispute resolution process at this time. I understand that a Mr. Troy M. Woodward has held himself out as an Administrative Hearing Officer for the Tribe and purported to conduct a hearing to resolve your complaint against Ms. Burley. Please be advised that the BIA does not recognize Mr. Woodward as a tribal official or his hearing process as a legitimate tribal forum. Should other issues arise with respect to tribal leadership or membership in the future, therefore, your appeal would properly lie exclusively with the BIA.

Sincerely,

Michael D. Olsen
Principal Deputy
Acting Assistant Secretary - Indian Affairs

Enclosure

cc: Sylvia Burley
Troy M. Woodward, Esq.
Thomas W. Wolfrum, Esq.
Chadd Everone

EXHIBIT F

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

In reply, please address to:
Main Interior, Room 6513

Peter Kaufman, Esq.
Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

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

EXHIBIT G

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO

JAN 14 2009

In reply, please address to:
Main Interior, Room 6513

Peter Kaufman, Esq.
Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

Dear Mr. Kaufman:

I write in response to your telephone inquiry concerning the letter of November 10, 2008 addressed to Silvia Burley as Chairman of the California Valley Miwok Tribe (CVMT). You asked whether the letter reflects that the United States recognizes Ms. Burley as the governmental leader of the CVMT. The letter was an administrative oversight. The Bureau of Indian Education sent the letter to 583 tribes based on a list of tribal leaders which had not been updated to reflect that the Federal government does not recognize Ms. Burley as the Chairperson of the CVMT. In fact, because the CVMT is in the midst of a leadership dispute between Ms. Burley and Yakima Dixie, the United States does not recognize any tribal government or governmental leader of the Tribe.

If you have additional questions, please feel free to contact Jane Smith (202-208-5808), the person on my staff handling this matter.

Sincerely,

Edith R. Blackwell
Associate Solicitor, Indian Affairs

DECLARATION OF SERVICE

Case Name: **California Valley Miwok Tribe v. California Gambling Control Commission**

Case No.: **37-2008-00075326-CU-CO-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, San Diego, CA 92101.

On December 10, 2010, I served the attached **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S OBJECTIONS TO PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE RE: OPPOSITION TO MOTION TO INTERVENE** by placing a true copy thereof enclosed in a sealed envelope and causing such envelope to be personally delivered by Golden State Overnight courier service to the office of the addressee listed below:

Manuel Corrales, Jr.
11753 Avenida Sivrita
San Diego, CA 92128

Terry Singleton
Singleton & Associates
1950 Fifth Avenue, Suite 200
San Diego, CA 92101

Thomas W. Wolfrum
Diana Corbin
1333 North California Blvd., Suite 150
Walnut Creek, CA 94596

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 10, 2010, at San Diego, California.

Gail Nolan
Declarant

Signature