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Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

CALIFORNIA VALLEY MIWOK TRIBE

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

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL
COMMISSION,**

Defendant.

**PLAINTIFF'S EX PARTE
APPLICATION FOR ENTRY OF
JUDGMENT AGAINST DEFENDANT
CALIFORNIA GAMBLING CONTROL
COMMISSION; DECLARATION OF
MANUEL CORRALES, JR.**

Date: September 7, 2011

Time: 8:30 a.m.

Dept. 62

Judge: Hon. Ronald Styn

1 Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or
2 "Plaintiff") hereby applies ex parte for entry of judgment
3 against the Defendant CALIFORNIA GAMBLING CONTROL
4 COMMISSION ("the Commission") on the following grounds:

5
6 **THE ASSISTANT SECRETARY OF THE U.S. DEPARTMENT OF INTERIOR,**
7 **LARRY ECHO HAWK, HAS ISSUED HIS RECONSIDERED DECISION**
8 **AFFIRMING HIS PRIOR DECEMBER 22, 2010 DECISION IN FAVOR OF**
9 **THE TRIBE**

10 1. On August 31, 2011, the Assistant Secretary of the
11 U.S. Department of Interior, Larry Echo Hawk, issued his
12 long-awaited reconsidered decision. In it, he reaffirmed
13 his December 22, 2010, decision letter that the Tribe is a
14 federally-recognized tribe consisting of five (5) members
15 which operates under a General Council form of government
16 pursuant to Resolution #CG-98-01, which effectively
17 recognized Silvia Burley as the Chairperson of the Tribe.
18 He further reaffirmed that the Tribe is not required to
19 expand its five (5) adult membership to so-called
20 "potential citizens", and that it is not required to
21 organize its present form of government under the Indian
22 Reorganization Act of 1934 ("IRA").

23 2. On March 11, 2011, Plaintiff successfully sought
24 and obtained an order granting judgment on the pleadings as
25 to the Commission. The Court ruled that the Commission's
26 Answer did not state facts sufficient to constitute a
27 defense to the Complaint, in light of the Assistant
28 Secretary's December 22, 2010 decision letter. The
Commission's sole defense in withholding Revenue Sharing

1 Trust Fund ("RSTF") money paid out for the Tribe since 2005
2 was that the Tribe purportedly did not have a governing
3 body recognized by the U.S. government, that a leadership
4 dispute called into question Silvia Burley's right to act
5 as Chairperson for the Tribe, and that the Tribe was
6 required to be organized under the IRA and include within
7 its membership other "potential" members in the surrounding
8 community. The Assistant Secretary's December 22, 2011
9 decision letter, however, refuted each one of these
10 defenses. The Court then took judicial notice of that
11 decision and, on March 11, 2011, granted the motion, and
12 directed Plaintiff's counsel to prepare the judgment. The
13 Court also directed Plaintiff's counsel to prepare a
14 separate order giving the Commission a statutory, temporary
15 stay of execution on the judgment.

16 3. In accordance with the Court's order, Plaintiff's
17 counsel circulated a proposed judgment to defense counsel
18 for the Commission. When the parties could not agree on
19 the language of both the proposed judgment and the proposed
20 order staying enforcement of the judgment, the parties
21 submitted their respective versions to the Court.

22 4. On March 25, 2011, the Court signed Plaintiff's
23 proposed order staying enforcement of the judgment, and
24 modified Plaintiff's proposed judgment. The modifying
25 language dealt with how the Commission would release the
26 presently withheld RSTF money. It then directed
27
28

1 Plaintiff's counsel to submit a revised judgment reflecting
2 this modifying language for signature.

3 5. On March 25, 2011, Plaintiff's counsel revised the
4 proposed judgment in accordance with the Court's order and
5 submitted it to the Court, together with a copy for the
6 Court Clerk to conform and return. Plaintiff's counsel
7 served a copy of the revised, proposed judgment on defense
8 counsel.

9 6. In accordance with the Court's policy, the Court
10 held the proposed, revised judgment for ten (10) days, so
11 as to allow the opposing party an opportunity to object.
12 Before the Court could sign the judgment, the Assistant
13 Secretary issued a letter dated April 1, 2011, setting
14 aside his December 22, 2010, letter, and advised that he
15 would issue a reconsidered decision letter, after giving
16 the parties an opportunity to brief the issues before him
17 in more detail. As a result, the parties appeared before
18 the San Diego Superior Court on April 6, 2011, advising of
19 this development, prompting the Court to hold off on
20 signing the judgment. In the event the Assistant Secretary
21 reaffirmed his December 22, 2010 decision, the Court
22 indicated that it was only staying the effect of the prior
23 orders granting judgment on the pleadings and denying
24 intervention, and would therefore simply stay entry of
25 judgment until the Assistant Secretary issued his new
26 decision. It indicated it would hold on to the unsigned
27 judgment papers until the Assistant Secretary issued his
28

1 reconsidered decision. If the reconsidered decision
2 reaffirmed the December 22, 2010 decision letter, then the
3 Court indicated it would enter judgment. The Court,
4 however, permitted the parties to conduct discovery, in the
5 event the Assistant Secretary completely reverses himself.
6 The parties estimated that the Assistant Secretary would
7 issue his reconsidered decision in mid-July 2011. As it
8 turned out, the decision came down on August 31, 2011.

9 7. When the parties could not decide on a proposed
10 order with respect to the Court's April 6, 2011, ex parte
11 ruling staying entry of judgment, they submitted their
12 respective versions to the Court. The Court signed the
13 Intervenor/Commission's proposed order, a copy of which is
14 attached and marked as Exhibit "4", which provides that
15 "[t]he entry of judgment against the Commission shall be
16 stayed pending further order of this Court."

17 8. That the August 31, 2011 letter from the Assistant
18 Secretary reaffirms his December 22, 2010 decision letter
19 is clear from the following language in the letter:

20 "Obviously, the December 2010 decision, and today's
21 reaffirmation of that decision..." (Page 2 of August 31st
22 Letter) (Emphasis added).

23 * * *

24 "Based upon the foregoing analysis, I re-affirm the
25 following:

1 * CVMT is a federally-recognized tribe whose entire
2 citizenship, as of this date, consists of the five
3 acknowledged citizens;

4 * The 1998 Resolution established a General Council
5 form of government, comprised of all the adult citizens of
6 the Tribe, with whom the Department may conduct government-
7 to-government relations;

8 * The Department shall respect the validly enacted
9 resolutions of the General Council; and

10 * Only upon a request from the General Council will
11 the Department assist the Tribe in refining or expanding
12 its citizenship criteria, or developing and adopting other
13 governing documents." (Page 8, August 31st Letter) (Emphasis
14 added).

15 9. Since the August 31, 2011 reconsidered decision by
16 the Assistant Secretary reaffirms his December 22, 2010,
17 decision letter, judgment should be entered against the
18 Commission forthwith.

19 **THE ASSISTANT SECRETARY'S STAY IMPLEMENTING HIS DECISION**
20 **DOES NOT PREVENT ENTRY OF JUDGMENT AGAINST THE COMMISSION**

21
22 The August 31, 2011, decision letter states that it is
23 "final for the Department and effective immediately."
24 (Page 8 of Letter). Contrary to what the Commission may
25 argue, this is a far cry from being of "no force and
26 effect." Because of Dixie's pending litigation in federal
27 court challenging the December 22, 2010, decision, the
28

1 Assistant Secretary stayed implementation of his August 31,
2 2011, decision pending resolution of that federal
3 litigation. The word "effective" means OPERATIVE (as the
4 tax becomes *effective* next year. (Merriam-Webster,
5 www.meriam-webster.com). Thus, by its own terms, the
6 August 31, 2011 letter is operative immediately, permitting
7 this Court to take judicial notice of the substance of that
8 decision with respect to this California State Court
9 action.

10 The word "implement" means CARRY OUT, ACCOMPLISH;
11 *especially*: to give practical effect to and ensure of
12 actual fulfillment by concrete measures. (Merriam-Webster,
13 www.meriam-webster.com). By taking judicial notice of the
14 August 31, 2011, decision letter, this Court is not
15 "implementing" the terms of that decision. The utility of
16 judicially noticing that decision for purposes this
17 California State litigation is to refute the affirmative
18 defenses asserted by the Commission on why it is
19 withholding RSTF money from the Tribe. There is now a
20 final agency action on those issues. Thus, all the
21 Assistant Secretary did was to stay the practical means of
22 carrying out his decision on the federal issues he decided,
23 pending resolution of Dixie's challenges to those issues in
24 federal court, something the federal court was going to do
25 anyway. However, the substance of his decision is still
26 effective and a final agency action. It was not a victory
27
28

1 for Dixie, because he chooses to appeal that decision ad
2 nauseam.

3 Neither the Assistant Secretary nor the federal court
4 hearing Dixie's challenge to the December 22, 2010 decision
5 letter has any authority to stay the present California
6 State Court action over Revenue Sharing Trust Fund ("RSTF")
7 money belonging to the Tribe.

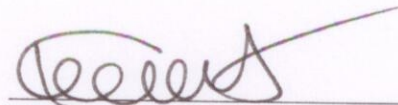
8 **CONCLUSION**

9 For the foregoing reasons, Plaintiff requests that this
10 Court take judicial notice of the August 31, 2011, letter
11 from the Assistant Secretary and enter judgment against the
12 Commission.

13 Plaintiff also requests that the Court put back on
14 calendar it motion for pre-judgment interest.

15
16 Dated:

9/5/2011



Manuel Corrales, Jr., Esq.
Attorney for Plaintiff
CALIFORNIA VALLEY MIWOK
TRIBE

20 **DECLARATION OF MANUEL CORRALES, JR.**

21
22 I, Manuel Corrales, Jr., declare that if called as a
23 witness in this case, I could and would testify as follows:

24 1. I am an attorney at law duly licensed to practice
25 in the State of California, the State of Utah and the State
26 of New Mexico, and I am one of the attorneys of record for
27 Plaintiff CALIFORNIA VALLEY MIWOK TRIBE. I have personal
28 knowledge of the facts set forth herein.

1 2. Attached herewith and marked as Exhibit "1" is a
2 true and correct copy of a letter dated March 25, 2011,
3 from me to the Honorable Ronald L. Styn, enclosing the
4 revised, proposed judgment for entry against the
5 Commission.

6 3. Attached herewith and marked as Exhibit "22" is a
7 true and correct copy of the "Order Staying Enforcement of
8 Judgment under CCP Section 918(b) and (c)", signed and
9 filed March 25, 2011.

10 4. Attached herewith and marked as Exhibit "3" is a
11 true and correct copy of a letter dated April 1, 2011, from
12 the Assistant Secretary setting aside his December 22,
13 2010, letter.

14 5. Attached herewith and marked as Exhibit "4" is a
15 true and correct copy of an "Order Granting in Part Ex
16 Parte Applications for Stay of Entry of Judgment", which
17 was prepared by Mr. Matthew McConnell and submitted to the
18 Court for signature. I never received a conformed copy of
19 this order, but the Court informed the parties at a hearing
20 thereafter that it had signed Mr. McConnell's proposed
21 order over the one submitted by Plaintiff.

22 6. Attached herewith and marked as Exhibit "5" is a
23 true and correct copy of an Email dated August 31, 2011,
24 from me to Ms. Sylvia Cates and other counsel, attaching
25 the August 31, 2011, letter from the Assistant Secretary,
26 and advising of the ex parte hearing on September 7, 2011,
27 at 8:30 a.m. in Department 62, for purposes of having
28 judgment entered against the Commission.

1 7. Attached herewith and marked as Exhibit "6" is a
2 true and correct copy of a letter dated September 1, 2011,
3 from me to Ms. Cates and all counsel further advising of
4 the ex parte hearing on September 7, 2011.

5 I declare under penalty of perjury under the laws of
6 the State of California that the foregoing is true and
7 correct.

8 Executed this 5 day of September, 2011, at San
9 Diego, California.

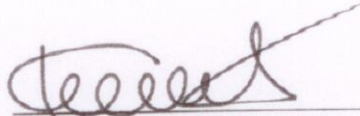
10 
11 _____
12 MANUEL CORRALES, JR.

EXHIBIT “1”

ADMITTED TO
PRACTICE IN:
CALIFORNIA, UTAH
AND NEW MEXICO

MANUEL CORRALES, JR.
ATTORNEY AT LAW

E-MAIL:
mannycorrales@yahoo.com

11753 AVENIDA SIVRITA
SAN DIEGO, CALIFORNIA 92128
TEL (858) 521-0634
FAX (858) 521-0633

March 25, 2011

The Honorable Ronald L. Styn
Superior Court Judge
SAN DIEGO COUNTY SUPERIOR COURT
Department 62
330 West Broadway
San Diego, California 92101

VIA HAND DELIVERY

Re: California Valley Miwok Tribe v. California Gambling Control Com.
Case No. 37-2008-00075326-CU-CO-CTL

Dear Judge Styn:

Pursuant to the Court's Order of March 25, 2011, Plaintiff encloses a revised proposed judgment with the modifications the Court ordered Plaintiff to make with respect to paragraph 1 of the submitted judgment. A copy of the Court's March 25th Order highlighting the ordered modifications is enclosed to assist the Court in verifying that the modifications were made exactly as the Court directed.

Also enclosed is a copy of the revised proposed judgment for the Clerk to conform and file stamp, and return to me in the enclosed, self-addressed, stamped envelope.

We again thank the Court's staff in advance for their assistance.

Respectfully submitted,


Manuel Corrales, Jr.

Enclosures

cc: Sylvia Cates, Esq.
Robert Rosette, Esq.
Terry Singleton, Esq.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 03/25/2011

TIME: 09:45:00 AM

DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn

CLERK: Kim Mulligan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2008-00075326-CU-CO-CTL CASE INIT.DATE: 01/08/2008

CASE TITLE: **California Valley Miwok Tribe vs. The California Gambling Control Commission**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

APPEARANCES

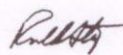
MINUTE ORDER RE: (1) ORDER ON MOTION FOR JUDGMENT ON PLEADINGS. (2) JUDGMENT

The court signs the Order Staying Enforcement of Judgment submitted by Plaintiff.

The court modifies paragraph 1 of the Judgment submitted by Plaintiff as follows:

"Defendant CALIFORNIA GAMBLING CONTROL COMMISSION shall cause to be released all Revenue Sharing Trust Fund ("RSTF") money it has withheld from the Plaintiff CALIFORNIA VALLEY MIWOK TRIBE, which is presently on deposit in an interest-bearing account, and which as of the quarter ended December 31, 2010 totaled \$6,563,001.99, plus \$362,542.78 in accrued interest paid thereon. Accordingly, Defendant CALIFORNIA GAMBLING CONTROL COMMISSION shall, within 5 business days, notify the California Department of General Services to issue a claim schedule to the California State Controller for issuance of a warrant to pay out such funds to Plaintiff CALIFORNIA VALLEY MIWOK TRIBE, 10601 Escondido Place, Stockton, California 95212, in care of its duly authorized representative, SILVIA BURLEY, or such other duly authorized representative as the Tribe may select."

The court orders Plaintiff to submit a revised Judgment consistent with this ruling.



Judge Ronald L. Styn

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

10 **CALIFORNIA VALLEY MIWOK TRIBE** Case No. 37-2008-00075326-CU-CO-CTL

11 **JUDGMENT**

12 Plaintiff,

13 vs.

Dept: 62
Judge: Hon. Ronald Styn
Trial Date: May 13, 2011

14
15 **CALIFORNIA GAMBLING CONTROL**
16 **COMMISSION,**

17 Defendant.
18
19

20 This action came on regularly for hearing on March 11,
21 2011, in Department 62 of the above-referenced court,
22 before the undersigned, upon Plaintiff CALIFORNIA VALLEY
23 MIWOK TRIBE's ("the Tribe" or Plaintiff) motion for
24 judgment on the pleadings as to Defendant CALIFORNIA
25 GAMBLING CONTROL COMMISSION's ("the Commission" or
26 Defendant); Robert A. Rosette, Esq., of ROSETTE &
27 ASSOCIATES, and Manuel Corrales, Jr., Esq., appearing for
28

1 Plaintiff; Sylvia Cates of the Attorney General's Office
2 appearing for Defendant Commission.

3 After having read and considered the papers submitted,
4 including judicially noticeable evidence; and having heard
5 the argument of counsel, the Court granted Plaintiff's
6 motion for judgment on the pleadings as to Defendant
7 Commission's answer, as set forth in the Court's Order of
8 March 11, 2011, which is incorporated herein by reference.
9 (Ex. "1").

10 It appearing by reason of said order that Plaintiff
11 CALIFORNIA VALLEY MIWOK TRIBE is entitled to judgment
12 against Defendant CALIFORNIA GAMBLING CONTROL COMMISSION,

13 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** as
14 follows:

15 1. Defendant CALIFORNIA GAMBLING CONTROL COMMISSION
16 shall cause to be released all Revenue Sharing trust Fund
17 ("RSTF") money it has withheld from Plaintiff CALIFORNIA
18 VALLEY MIWOK TRIBE, which is presently on deposit in an
19 interest-bearing account, and which as of quarter ended
20 December 31, 2010 totaled \$6,563,001.99, plus \$362,542.78
21 in accrued interest paid thereon. Accordingly, Defendant
22 CALIFORNIA GAMBLING CONTROL COMMISSION shall, within 5
23 business days, notify the California Department of General
24 Services to issue a claim schedule to the California State
25 Controller for issuance of a warrant to pay out such funds
26 to Plaintiff CALIFORNIA VALLEY MIWOK TRIBE, 10601 Escondido
27 Place, Stockton, California 95212, in care of its duly
28

1 authorized representative, SILVIA BURLEY, or such other
2 duly authorized representative as the Tribe may select.

3 2. Defendant CALIFORNIA GAMBLING CONTROL COMMISSION
4 shall resume its quarterly payments of RSTF money to
5 Plaintiff CALIFORNIA VALLEY MIWOK TRIBE, in care of its
6 duly authorized representative, SILVIA BURLEY, or such
7 other duly authorized representative as the Tribe may
8 select.

9 3. Plaintiff CALIFORNIA VALLEY MIWOK TRIBE shall have
10 and recover from Defendant CALIFORNIA GAMBLING CONTROL
11 COMMISSION prejudgment interest in the amount of
12 \$_____, less the amount of accrued interest
13 previously paid on the withheld funds.

14 4. Plaintiff CALIFORNIA VALLEY MIWOK TRIBE shall have
15 and recover from Defendant CALIFORNIA GAMBLING CONTROL
16 COMMISSION post-judgment interest at the rate of seven
17 percent (7%) per annum from the date of the entry of this
18 judgment until paid, on all amounts withheld, including any
19 future amounts withheld post-judgment, less the amount of
20 accrued interest, if any, which Defendant CALIFORNIA
21 GAMBLING CONTROL COMMISSION may continue to pay on withheld
22 RSTF money, together with costs and disbursements in the
23 amount of \$ _____.

24 IT IS SO ORDERED.

25
26 Dated:

27 _____
Hon. Ronald L. Styn
28 SUPERIOR COURT JUDGE

1 APPROVED AS TO FORM:

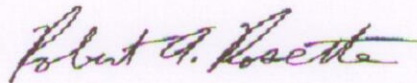
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3 Date:

KAMALA D. HARRIS
Attorney General of California
SARA J. DRAKE
Senior Asst. Attorney General
RANDALL A. PINAL
Deputy Attorney General

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SYLVIA A. CATES, Esq.
Deputy Attorney General
Attorneys for Defendant
CALIFORNIA GAMBLING CONTROL
COMMISSION

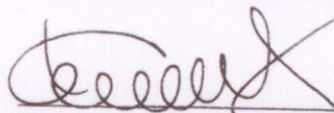
13 Date:

ROSETTE & ASSOCIATES



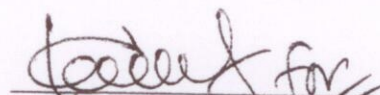
Robert A. Rosette, Esq.
Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

19 Date:


Manuel Corrales, Jr., Esq.
Attorney for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

23 Date:

SINGLETON & ASSOCIATES


Terry Singleton, Esq.
Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 03/11/2011

TIME: 02:00:00 PM

DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Slyn

CLERK: Kim Mulligan

REPORTER/ERM: Susan Holthaus CSR# 6959

BAILIFF/COURT ATTENDANT: M. Chadwell

CASE NO: **37-2008-00075326-CU-CO-CTL** CASE INIT.DATE: 01/08/2008

CASE TITLE: **California Valley Miwok Tribe vs. The California Gambling Control Commission**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: California Valley Miwok Tribe

CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings. 02/07/2011

APPEARANCES

SEE SIGN-IN SHEET FOR APPEARANCES.

The Court hears oral argument and CONFIRMS the tentative ruling as follows:

The court addresses the evidentiary issues. Plaintiff California Valley Miwok Tribe's request for judicial notice is granted. Defendant California Gambling Control Commission's request for judicial notice is granted. The Commission's objections to Plaintiff's request for judicial notice are overruled. Plaintiff's reply request for judicial notice is granted. Intervenor's objections to Plaintiff's evidence in reply are overruled.

The court then rules as follows. Plaintiff California Valley Miwok Tribe's motion for judgment on the pleadings as to Defendant California Gambling Control Commission's answer is granted.

The court finds the complaint alleges facts sufficient to state causes of action for declaratory and injunctive relief alleged against the Commission.

The court also finds that, in light of the December 22, 2010 decision by Assistant Secretary Larry Echo Hawk of the United States Department of the Interior -Indian Affairs, of which this court takes judicial notice, [Evidence Code § 452(c)], the Commission's answer does not state facts sufficient to constitute a defense to the complaint. CCP §438(c)(1)(A).

The December 22, 2010 decision definitively establishes the Tribe's membership, governing body and leadership, including Sylvia Burley's status as representative and Chairperson of the Tribe. In doing so, the decision establishes Plaintiff's right to the RSTF monies held by the Commission. As discussed in



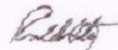
CASE TITLE: California Valley Miwok Tribe vs. The
California Gambling Control Commission

CASE NO: 37-2008-00075326-CU-CO-CTL

this court's ruling on Plaintiff's motion for reconsideration, the December 22, 2010 decision is final and effective immediately. Given the effect of the December 22, 2010 decision, the Commission's answer fails to state facts sufficient to establish both its denials and the affirmative defenses it asserts. The December 22, 2010 decision establishes the recognized leader of the Tribe as Burley thereby establishing her standing to bring this action against the Commission. For the reasons set forth in this court's ruling on Plaintiff's motion for reconsideration, the January 12, 2011 Troy Burdick letter does not keep open issues of Tribal government, membership and leadership. While the Commission argues that the Intervenor's administrative appeal from the January 12, 2011 letter stays the effectiveness of the January 12, 2011 letter, the Commission provides no authority establishing that this administrative appeal has any effect on the December 22, 2010 decision. The December 22, 2010 decision conclusively and finally resolved these issues. The issue the Commission raises with respect to joinder of the Compact Tribes, does not have any bearing on Plaintiff's right to the RSTF monies currently held in trust by the Commission. Moreover, the answer fails to allege facts setting forth how the Compact Tribes have standing to contest payment of RSTF monies by the Commission to the Tribe.

The court orders Plaintiff to submit a judgment within 10 days of this ruling.

Plaintiff's counsel to submit a separate order re: stay.



Judge Ronald L. Styn

PK

<p style="text-align: center;">Superior Court of California County of San Diego SIGN-IN SHEET</p>	Calendar No.: 32, 33, 34, 35
	Court Use Only

CASE: 37-2008-00075326-CU-CO-CTL - California Valley Miwok Tribe vs. The California Gambling Control Commission

EVENT TYPE: Demurrer / Motion to Strike

EVENT DATE/TIME: 03/11/2011 2:00 pm

DEPARTMENT: C-62

JUDGE: Ronald L. Slyn

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
Cates, Sylvia A	The California Gambling Control Commission et. al. [DFN]	<i>Sylvia Cates</i>
CORRALES JR, MANUEL	California Valley Miwok Tribe et. al. [PLN]	<i>Manuel Corrales</i>
FREEMAN, RICHARD M <i>JOHN COLLINS</i>	California Valley Miwok Tribe California et. al. [INV]	<i>John Collins</i>
Cates Gates, Sylvia A	The California Gambling Control Commission et. al. [DFN]	<i>Sylvia Gates</i>
KAUFMAN, PETER H	The California Gambling Control Commission et. al. [DFN]	
Rosette, Robert A	California Valley Miwok Tribe et. al. [PLN]	<i>Robert Rosette</i>
Singleton, Terry	California Valley Miwok Tribe et. al. [PLN]	
Wolfum, Thomas W	Azevedo, Antone et. al. [INP]	<i>Thomas Wolfum</i>

EXHIBIT “2”

FILED
Clerk of the Superior Court

MAR 25 2011

By: K. Mulligan, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DISTRICT

CALIFORNIA VALLEY MIWOK TRIBE

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

Plaintiff,

ORDER STAYING ENFORCEMENT OF
JUDGMENT UNDER CCP SECTION
918(b) and (c)

vs.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: May 13, 2011

CALIFORNIA GAMBLING CONTROL
COMMISSION,

Defendant.

This action came on regularly for hearing on March 11, 2011, in Department 62 of the above-referenced court, before the undersigned, upon Plaintiff CALIFORNIA VALLEY MIWOK TRIBE's ("the Tribe" or Plaintiff) motion for judgment on the pleadings as to Defendant CALIFORNIA GAMBLING CONTROL COMMISSION's ("the Commission" or Defendant); Robert A. Rosette, Esq., of ROSETTE & ASSOCIATES, and Manuel Corrales, Jr., Esq., appearing for

1 Plaintiff; Sylvia Cates of the Attorney General's Office
2 appearing for Defendant Commission.

3 After having read and considered the papers submitted,
4 including judicially noticeable evidence; and having heard
5 the argument of counsel, the Court granted Plaintiff's
6 motion for judgment on the pleadings as to Defendant
7 Commission's answer, as set forth in the Court's Order of
8 March 11, 2011, which is incorporated herein by reference.
9 (Ex. "1").

10 It appearing by reason of said order that Plaintiff
11 CALIFORNIA VALLEY MIWOK TRIBE is entitled to judgment
12 against Defendant CALIFORNIA GAMBLING CONTROL COMMISSION,
13 and good cause appearing therefor:

14 **IT IS HEREBY ORDERED** as follows:

15 1. Execution of the judgment shall be stayed until
16 ten (10) days after the deadline for filing a notice of
17 appeal of the judgment, as provided under CCP Section
18 918(b).

19 2. This stay applies whether or not an appeal will be
20 taken from the judgment and whether or not a notice of
21 appeal has been filed, as provided under CCP Section
22 918(c).

23 IT IS SO ORDERED.

24
25
26 Dated: MAR 25 2011

RONALD L. STYN

Hon. Ronald L. Styn
SUPERIOR COURT JUDGE

1 APPROVED AS TO FORM:

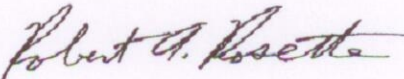
2 Date:

3 KAMALA D. HARRIS
4 Attorney General of California
5 SARA J. DRAKE
6 Senior Asst. Attorney General
7 RANDALL A. PINAL
8 Deputy Attorney General

9 SYLVIA A. CATES, Esq.
10 Deputy Attorney General
11 Attorneys for Defendant
12 CALIFORNIA GAMBLING CONTROL
13 COMMISSION

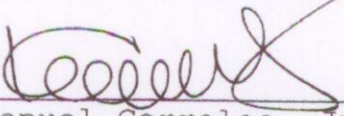
14 Date:

15 ROSETTE & ASSOCIATES

16 

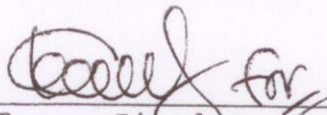
17 Robert A. Rosette, Esq.
18 Attorneys for Plaintiff
19 CALIFORNIA VALLEY MIWOK TRIBE

20 Date:

21 
22 Manuel Corrales, Jr., Esq.
23 Attorney for Plaintiff
24 CALIFORNIA VALLEY MIWOK TRIBE

25 Date:

26 SINGLETON & ASSOCIATES

27 
28 Terry Singleton, Esq.
Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 03/11/2011

TIME: 02:00:00 PM

DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn

CLERK: Kim Mulligan

REPORTER/ERM: Susan Holthaus CSR# 6959

BAILIFF/COURT ATTENDANT: M. Chadwell

CASE NO: 37-2008-00075326-CU-CO-CTL CASE INIT.DATE: 01/08/2008

CASE TITLE: California Valley Miwok Tribe vs. The California Gambling Control Commission

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: California Valley Miwok Tribe

CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings, 02/07/2011

APPEARANCES

SEE SIGN-IN SHEET FOR APPEARANCES.

The Court hears oral argument and CONFIRMS the tentative ruling as follows:

The court addresses the evidentiary issues. Plaintiff California Valley Miwok Tribe's request for judicial notice is granted. Defendant California Gambling Control Commission's request for judicial notice is granted. The Commission's objections to Plaintiff's request for judicial notice are overruled. Plaintiff's reply request for judicial notice is granted. Intervenor's objections to Plaintiff's evidence in reply are overruled.

The court then rules as follows. Plaintiff California Valley Miwok Tribe's motion for judgment on the pleadings as to Defendant California Gambling Control Commission's answer is granted.

The court finds the complaint alleges facts sufficient to state causes of action for declaratory and injunctive relief alleged against the Commission.

The court also finds that, in light of the December 22, 2010 decision by Assistant Secretary Larry Echo Hawk of the United States Department of the Interior -Indian Affairs, of which this court takes judicial notice, [Evidence Code § 452(c)], the Commission's answer does not state facts sufficient to constitute a defense to the complaint. CCP §438(c)(1)(A).

The December 22, 2010 decision definitively establishes the Tribe's membership, governing body and leadership, including Sylvia Burley's status as representative and Chairperson of the Tribe. In doing so, the decision establishes Plaintiff's right to the RSTF monies held by the Commission. As discussed in



CASE TITLE: California Valley Miwok Tribe vs. The
California Gambling Control Commission

CASE NO: 37-2008-00075326-CU-CO-CTL

this court's ruling on Plaintiff's motion for reconsideration, the December 22, 2010 decision is final and effective immediately. Given the effect of the December 22, 2010 decision, the Commission's answer fails to state facts sufficient to establish both its denials and the affirmative defenses it asserts. The December 22, 2010 decision establishes the recognized leader of the Tribe as Burley thereby establishing her standing to bring this action against the Commission. For the reasons set forth in this court's ruling on Plaintiff's motion for reconsideration, the January 12, 2011 Troy Burdick letter does not keep open issues of Tribal government, membership and leadership. While the Commission argues that the Intervenor's administrative appeal from the January 12, 2011 letter stays the effectiveness of the January 12, 2011 letter, the Commission provides no authority establishing that this administrative appeal has any effect on the December 22, 2010 decision. The December 22, 2010 decision conclusively and finally resolved these issues. The issue the Commission raises with respect to joinder of the Compact Tribes, does not have any bearing on Plaintiff's right to the RSTF monies currently held in trust by the Commission. Moreover, the answer fails to allege facts setting forth how the Compact Tribes have standing to contest payment of RSTF monies by the Commission to the Tribe.

The court orders Plaintiff to submit a judgment within 10 days of this ruling.

Plaintiff's counsel to submit a separate order re: stay.



Judge Ronald L. Styn

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<p style="text-align: center;">Superior Court of California County of San Diego</p> <p style="text-align: center;">SIGN-IN SHEET</p>	Calendar No.: 32, 33, 34, 35
	Court Use Only

CASE: 37-2008-00075326-CU-CO-CTL - California Valley Miwok Tribe vs. The California Gambling Control Commission

EVENT TYPE: Demurrer / Motion to Strike

EVENT DATE/TIME: 03/11/2011 2:00 pm

DEPARTMENT: C-62

JUDGE: Ronald L. Slyn

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
Cates, Sylvia A	The California Gambling Control Commission et. al. [DFN]	<i>Sylvia Cates</i>
CORRALES JR, MANUEL	California Valley Miwok Tribe et. al. [PLN]	<i>Manuel Corrales Jr</i>
FREEMAN, RICHARD M. <i>JOHN COLLINS</i>	California Valley Miwok Tribe California et. al. [INV]	<i>John Collins</i>
Cates Gates, Sylvia A	The California Gambling Control Commission et. al. [DFN]	<i>Sylvia Gates</i>
KAUFMAN, PETER H	The California Gambling Control Commission et. al. [DFN]	
Rosette, Robert A	California Valley Miwok Tribe et. al. [PLN]	<i>Robert A Rosette</i>
Singleton, Terry	California Valley Miwok Tribe et. al. [PLN]	
Wolfum, Thomas W	Azevedo, Antone et. al. [INP]	<i>Thomas Wolfum</i>

EXHIBIT “3”



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 01 2011

Mr. Yakima Dixie
1231 E. Hazelton Avenue
Stockton, California 95205

Dear Mr. Dixie:

On December 22, 2010, my office issued a letter setting out the Department of the Interior's decision on a question respecting the composition of the California Valley Miwok Tribe. The question had been referred to my office by the Interior Board of Indian Appeals. On January 24, 2011, you filed suit in Federal district court seeking to have the Department's decision vacated.

Subsequent actions by the parties involved in this dispute have led me to reconsider the matters addressed in the December 22, 2010, decision letter. By means of today's letter, the December 22 decision is set aside.

I believe that the longstanding problems within the Tribe need prompt resolution, and I remain committed to the timely issuance of my reconsidered decision. I am mindful, however, that additional briefing may inform my analysis of the problems presented in this dispute. To that end, I will issue a briefing schedule in the coming week, requesting submissions from you and from Ms. Silvia Burley on specific questions of fact and law relevant to the referred question.

Sincerely,

Larry Echo Hawk
Assistant Secretary – Indian Affairs

cc: Ms. Silvia Burley
10601 Escondido Place
Stockton, California 95212

Robert A. Rosette, Esq.
565 West Chandler Boulevard, Suite 212
Chandler, Arizona 85225

Roy Goldberg, Esq.
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W., 11th Floor East
Washington, D.C. 20005-3314

Elizabeth Walker, Esq.
Walker Law LLC
429 North St. Asaph Street
Alexandria, Virginia 22314

Kenneth D. Rooney
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 663
Washington, D.C. 20044-0663

Mike Black, Director, Bureau of Indian Affairs
MS-4513-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Amy Dutschke, Director
Pacific Regional Office, Bureau of Indian Affairs
2800 Cottage Way, Room W-820
Sacramento, CA 95825

Troy Burdick, Superintendent
Central California Agency, Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

EXHIBIT “4”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DISTRICT

CALIFORNIA VALLEY MIWOK TRIBE Case No. 37-2008-00075326-CU-CO-CTL

Plaintiff,

VS.

CALIFORNIA GAMBLING CONTROL
COMMISSION,

Defendant.

ORDER GRANTING IN PART EX
PARTE APPLICATIONS FOR STAY
OF ENTRY OF JUDGMENT

Date: April 6, 2011

Time: 9:00 a.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: May 13, 2011

This cause came on for hearing before the undersigned
on April 6, 2011, at 9:00 a.m., upon the ex parte
applications of Defendant CALIFORNIA GAMBLING CONTROL
COMMISSION ("the Commission") and Intervenors CALIFORNIA
VALLEY MIWOK TRIBE, CALIFORNIA (a.k.a. SHEEP RANCH
RANCHERIA OF ME-WUK INDIANS, CALIFORNIA), YAKIMA DIXIE,
VELMA WHITEBEAR, ANTONIA LOPEZ, ANTONE AZAVEDO, MICHAEL
MENDIBLES, and EVELYN WILSON ("Intervenors"), seeking an

1 order staying entry of judgment against the Commission with
2 respect to this Court's previous Order of March 11, 2011
3 granting judgment on the pleadings, and other relief, in
4 light of a letter dated April 1, 2011 from the Assistant
5 Secretary, Larry Echo Hawk, of the U.S. Department of the
6 Interior ("Assistant Secretary"), setting aside his
7 previous December 22, 2010 decision letter, and stating
8 that a reconsidered decision will be issued; Randall Pinal,
9 Deputy Attorney General, appearing for the Commission;
10 Matthew McConnell, Esq., appearing for the Intervenor;
11 Terry Singleton, Esq., and Manuel Corrales, Jr., Esq.,
12 appearing for Plaintiff CALIFORNIA VALLEY MIWOK TRIBE; and
13 due notice having been given to all interested parties; the
14 Court having read and considered the papers submitted; the
15 Court having heard and considered the argument of counsel;
16 and good cause appearing therefor:

17 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

18 1. The ex parte applications of Defendant and
19 Intervenor are granted in part, as set forth herein.

20 2. The entry of judgment against the Commission shall
21 be stayed pending further order of this Court;

22 3. The effect of the Court's prior rulings shall
23 likewise be stayed pending further order of this Court.
24 These rulings include: (1) Order of March 11, 2011,
25 granting reconsideration and denying intervention; (2)
26 Order of March 11, 2011, granting judgment on the pleadings
27 as against the Commission; and (3) Order ruling Plaintiff's
28 demurrer to the Complaint in Intervention is moot, in light

1 of the Court's ruling denying intervention. As a result of
2 these rulings being stayed, Intervenorors are reinstated as
3 fully participating parties to this case.

4 4. The parties (which includes Intervenorors) may
5 conduct discovery, unless and until otherwise ordered by
6 the Court.

7 5. Except for discovery related motions, no
8 dispositive motions are permitted, unless or until
9 otherwise ordered by the Court.

10 6. Plaintiff's motion for an award for pre-judgment
11 interest, set for April 22, 2011, is off calendar, without
12 prejudice to re-file, pending entry of judgment.

13 7. The Intervenorors' motion for reconsideration, set
14 for May 13, 2011, is off calendar, without prejudice.

15 8. The Court sets a Case Management Conference for
16 July 15, 2011, at 10:00 a.m., in Department 62. The
17 present trial date of May 13, 2011, and the pre-trial
18 conference, along with other previously set dates, are all
19 vacated.

20 9. Should the Assistant Secretary issue his
21 reconsidered decision before the Case Management Conference
22 of July 15, 2011, the parties shall immediately notify the
23 Court.

24 **IT IS SO ORDERED.**

25
26
27 Dated:

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Hon. Ronald L. Styn
Superior Court Judge

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4 APPROVED AS TO FORM:
5

6 Date:

KAMALA D. HARRIS
Attorney General of California
SARA J. DRAKE
Senior Asst. Attorney General
RANDALL A. PINAL
Deputy Attorney General

11
12

RANDALL A. PINAL, Esq.
13 Deputy Attorney General
14 Attorneys for Defendant
15 CALIFORNIA GAMBLING CONTROL
16 COMMISSION

17 Date:

18

Manuel Corrales, Jr., Esq.
19 Attorney for Plaintiff
20 CALIFORNIA VALLEY MIWOK TRIBE

21
22 Date:

SINGLETON & ASSOCIATES

23
24

Terry Singleton, Esq.
25 Attorneys for Plaintiff
26 CALIFORNIA VALLEY MIWOK TRIBE
27
28

1
2 Date:

SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP

3
4
5
6 Matthew S. McConnell, Esq.
Attorneys for Intervenors

7 Date:

8 THOMAS W. WOLFRUM

9
10 Attorney for Intervenors
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EXHIBIT “5”

Subject: CVMT v. CGCC: Assistant Secretary's August 31, 2011 Decision

From: Manuel Corrales (mannycorrales@yahoo.com)

To: sylvia.cates@doj.ca.gov; mmccconnell@sheppardmullin.com; rfreeman@sheppardmullin.com; twolfrum@wolfrumlaw.com; randy.pinal@doj.ca.gov;

Cc: rosette@rosettela.com; sbazzazieh@rosettela.com; terry@terrysingleton.com; tigerplk@yahoo.com;

Date: Wednesday, August 31, 2011 3:42 PM

Ms. Cates:

Attached is the Assistant Secretary's August 31, 2011 decision reaffirming his December 22, 2010 decision (see page 2: "Obviously, the December 2010 decision, and today's reaffirmation of that decision..."). As can be seen, the decision reaffirms that the Tribe consists solely of five (5) members and that the Department of Interior ("DOI") recognizes the Tribe's General Council form of government pursuant to Resolution #CG-98-01. Specifically, for purposes of litigation in the California State Court, the DOI effectively recognizes Silvia Burley as the Chairperson of the Tribe, and the Tribe's government under Burley's leadership "may conduct the full range of government-to-government relations with the United States." Contrary to the Commission's position, the Tribe is not required to expand its membership to so-called "potential citizens" (i.e., including the Intervenor, except for Dixie). Under the circumstances, the Commission has no further basis to withhold the Revenue Sharing Trust Fund ("RSTF") money from the Tribe. The Court has rejected the Commission's claim that it still runs the risk of paying multiple claims if it were to pay the Tribe at the exclusion of the Intervenor, because, as the Court stated, the Commission is protected by the Assistant Secretary's decision, despite Dixie and the Intervenor's appeal and challenge of that decision in federal court. So long as the decision is final, that is enough. Whether and to what extent the decision is stayed or implemented is irrelevant for purposes of this California State litigation over RSTF money belonging to the Tribe. It is the substance of the Assistant Secretary's decision that is binding on the Commission, of which the Court may properly take judicial notice.

Based upon the August 31, 2011 decision letter, Plaintiff will be appearing ex parte in Department 62 before the Hon. Ronald Styn of the San Diego Superior Court on Wednesday, September 7, 2011, at 8:30 a.m. The purpose of the ex parte hearing will be first to apprise the Court of this recent decision, as previously ordered by the Court, and then to have the Court enter judgment against the Commission and sign the order dismissing the Intervenor's Complaint. As you know, the Court was staying entry of those orders until it heard back from the Assistant Secretary. In the event the December 22, 2010 letter decision was reaffirmed, the Court indicated it would then enter judgment against the Commission and dismiss the Intervenor. We will also be asking the Court to put back on calendar Plaintiff's motion for prejudgment interest.

Thank you.

Manuel Corrales, Jr., Esq.
17140 Bernardo Center Drive, Suite 370
San Diego, California 92128
Tel: (858) 521-0634
Fax: (858) 521-0633
mannycorrales@yahoo.com



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 31 2011

Ms. Silvia Burley
10601 N. Escondido Place
Stockton, California 95212

Mr. Yakima Dixie
1231 E. Hazelton Avenue
Stockton, California 95295

Dear Ms. Burley and Mr. Dixie:

Introduction and Decision

On December 22, 2010, I sent you a letter setting out my decision in response to a question referred to me by the Interior Board of Indian Appeals (IBIA) in *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIA 103 (January 28, 2010) (IBIA decision). I determined that there was "no need for the BIA to continue its previous efforts to organize the Tribe's government, because it is organized as a General Council, pursuant to the [1998 General Council Resolution] it adopted at the suggestion of the BIA." I concluded further that there was "no need for the BIA to continue its previous efforts to ensure that the Tribe confers tribal citizenship upon other individual Miwok Indians in the surrounding area."

I issued my December decision without providing the parties a formal opportunity to brief me on the facts and issues as they saw them. As a result of subsequent actions by both parties, I determined to withdraw the December decision, and, on April 8, 2011, I requested briefing from the parties. Counsel for the parties provided detailed responses with numerous exhibits. I appreciate the time and effort that went into providing these responses. I have considered them carefully.

Based on the litigation records in the prior Federal court actions in both California and Washington, D.C., the proceedings before the Department's Interior Board of Indian Appeals, and the material submitted in response to my April 8 letter, I now find the following:

- (1) The California Valley Miwok Tribe (CVMT) is a federally recognized tribe, and has been continuously recognized by the United States since at least 1916;
- (2) At the present date, the citizenship of the CVMT consists solely of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace;

(3) The CVMT today operates under a General Council form of government, pursuant to Resolution #CG-98-01, which the CVMT passed in 1998, facilitated by representatives of the Bureau of Indian Affairs (Bureau or BIA)(1998 General Council Resolution);

(4) Pursuant to the 1998 General Council Resolution, the CVMT's General Council is vested with the governmental authority of the Tribe, and may conduct the full range of government-to-government relations with the United States;

(5) Although this current General Council form of government does not render CVMT an "organized" tribe under the Indian Reorganization Act (IRA) (*see e.g.*, 25 U.S.C. 476(a) and (d)), as a federally recognized tribe it is not required "to organize" in accord with the procedures of the IRA (25 U.S.C. § 476(h));

(6) Under the IRA, as amended, it is impermissible for the Federal government to treat tribes not "organized" under the IRA differently from those "organized" under the IRA (25 U.S.C. §§ 476(f)-(h)); and

(7) As discussed in more detail below, with respect to finding (6), on this particular legal point, I specifically diverge with a key underlying rationale of past decisions by Department of the Interior (Department) officials dealing with CVMT matters, apparently beginning around 2004, and decide to pursue a different policy direction.¹ Under the circumstances of this case, it is inappropriate to invoke the Secretary's broad authority to manage "all Indian affairs and [] all matters arising out of Indian relations," 25 U.S.C. § 2, or any other broad-based authority, to justify interfering with the CVMT's internal governance. Such interference would run counter to the bedrock Federal Indian law principles of tribal sovereignty and tribal self-government, according to which the tribe, as a distinct political entity, may "manag[e] its own affairs and govern[] itself." *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1832); and would conflict with this Administration's clear commitment to protect and honor tribal sovereignty.

Obviously, the December 2010 decision, and today's reaffirmation of that decision, mark a 180-degree change of course from positions defended by this Department in administrative and judicial proceedings over the past seven years. This change is driven by a straightforward correction in the Department's understanding of the California Valley Miwok Tribe's citizenship and a different policy perspective on the Department's legal obligations in light of those facts.

As discussed below, the BIA clearly understood in 1998 that the acknowledged CVMT citizens had the right to exercise the Tribe's inherent sovereign power in a manner they chose. It is unfortunate that soon after the 1998 General Council Resolution was enacted, an intra-tribal leadership dispute erupted, and both sides of the dispute found, at various points in time in the intervening years, that it served their respective interests to raise the theory that the BIA had a duty to protect the rights of approximately 250 "potential citizens" of the Tribe. A focus on that theory has shaped the BIA's and the Department's position on the citizenship question ever

¹ I recognize that the D.C. Circuit Court of Appeals' 2008 opinion upholding prior Department efforts to organize the CVMT pursuant to the IRA afforded broad deference to the Department's prior decisions and interpretations of the law. *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1264-68 (D.C. Cir. 2008).

since. By contrast, today's decision clears away the misconceptions that these individuals have inchoate citizenship rights that the Secretary has a duty to protect. They do not. The Tribe is not comprised of both citizens and potential citizens. Rather, the five acknowledged citizens are the only citizens of the Tribe, and the General Council of the Tribe has the exclusive authority to determine the citizenship criteria for the Tribe. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57 (1978). I believe this change in the Department's position is the most suitable means of resolving this decade-long dispute and is in accord with principles of administrative law. *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

Background

This decision is necessitated by a long and complex tribal leadership dispute that resulted in extensive administrative and judicial litigation. Much of the factual background is set out in the prior decisions, so it is not necessary to repeat or even summarize all of it here.

The history of this Tribe, and the record of this case to date, demonstrates the following:

- The CVMT is a federally recognized tribe, 74 Fed. Reg. 40,218, 40,219 (Aug. 11, 2009);
- In 1916, the United States purchased approximately 0.92 acres in Calaveras County, California, for the benefit of 12 named Indians living on the Sheep Ranch Rancheria (now Sheep Ranch)(Rancheria) (51 IBIA at 106);
- The Indian Agent, who in 1915 recommended the purchase of the 0.92 acres, described the group of 12 named individuals as "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 'Sheep Ranch.'" *Id.*;
- The record shows only one adult Indian lived on the Rancheria in 1935, a Jeff Davis, who voted "in favor of the IRA" *Id.*;
- In 1966, the record shows only one adult Indian, Mabel Hodge Dixie, Yakima Dixie's mother, lived on the Rancheria, when the BIA crafted a plan for distribution of tribal assets pursuant to the 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;
- Mabel Hodge Dixie was to be the sole distributee of tribal assets under the 1966 Rancheria distribution plan;
- While the Bureau initiated the process to terminate the Tribe, it never declared the Tribe terminated and has never treated the Tribe as if it had been terminated;
- In 1994, Yakima Dixie wrote the BIA asking for assistance with home repairs and describing himself as "the only descendant and recognized . . . member of the Tribe." (51 IBIA at 107);
- At some point during the 1990s, Silvia Burley "contacted BIA for information related to her Indian heritage, which BIA provided, and by 1998—at BIA's suggestion—Burley had contacted Yakima[]" Dixie (as the IBIA has noted, "it appears that Burley may trace her ancestry to a 'Jeff Davis' who was listed on the 1913 census. . . .") 51 IBIA at 107, including footnote 7;
- On August 5, 1998, Mr. Dixie "signed a statement accepting Burley as an enrolled member of the Tribe, and also enrolling Burley's two daughters and her granddaughter." *Id.*;

- The Tribe was not organized pursuant to the IRA prior to 1998 and did not have organic documents setting out its form of government or criteria for tribal citizenship;
- In September of 1998, BIA staff met with Mr. Dixie and Ms. Burley "to discuss organizing the Tribe," and on September 24, 1998 sent follow-up correspondence recommending that, "given the small size of the Tribe, we recommend that the Tribe operate as a General Council," which could elect or appoint a chairperson and conduct business. *Id.* at 108;
- On November 5, 1998, Mr. Dixie and Ms. Burley signed a resolution establishing a General Council, which consisted of all adult citizens of the Tribe, to serve as the governing body of the Tribe. *Id.* at 109;
- Less than five months later, leadership disputes arose between Mr. Dixie and Ms. Burley—and those conflicts have continued to the present day;²
- Initially the BIA recognized Mr. Dixie as Chairman, but later recognized Ms. Burley as Chairperson based primarily upon the April 1999 General Council action appointing Ms. Burley as Chairperson - an action concurred in by Mr. Dixie. *Id.*;
- Mr. Dixie later challenged Ms. Burley's 1999 appointment;
- In 2002, Ms. Burley filed suit in the name of the Tribe alleging that the Department had breached its trust responsibility to the Tribe by distributing the assets of the Rancheria to a single individual, Mabel Dixie, when the Tribe had a potential citizenship of "nearly 250 people[.]" See Complaint for Injunctive and Declaratory Relief at 1, *Cal. Valley Miwok Tribe v. United States*, No. 02-0912 (E.D. Cal. Apr. 29, 2002);
- In March, 2004, the BIA Superintendent rejected a proposed constitution from Ms. Burley because she had not involved the "whole tribal community" in the governmental organization process;
- On February 11, 2005, the Acting Assistant Secretary - Indian Affairs issued a decision on Mr. Dixie's 1999 appeal, ruling that the appeal of the Bureau's 1999 decision to recognize Ms. Burley as Chairperson was moot and that the BIA would recognize Ms. Burley only as a person of authority within the Tribe;
- Ms. Burley sued in D.C. District Court challenging the February 2005 decision;
- After the District Court dismissed her challenge, *Cal. Valley Miwok Tribe v. United States*, 424 F.Supp. 2d 197 (D.D.C. 2006), the D. C. Circuit Court of Appeals affirmed, *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008);
- In January 2010, the IBIA rejected Ms. Burley's appeal objecting to, among other matters, the Superintendent's decision to continue to assist the Tribe in organizing its government according to the IRA because it viewed the matter as "effectively and functionally a tribal enrollment dispute," and then referred the matter to me on jurisdictional grounds.

In response to the Board's referral, I issued my December 22, 2010 decision letter. I intended that decision to resolve the citizenship question referred to me by the IBIA by finding that the current Tribe's citizenship consisted of the five acknowledged citizens noted above and recognizing the Tribe's General Council as a tribal government with which the United States may

² I note that the Department repeatedly has offered to assist in mediating this dispute—to no avail. The amount of time and resources focused on these disputes reflects poorly on all the parties, and they must be mindful that continuing this imprudent dispute risks potential adverse consequences well beyond the Tribe and its citizens.

conduct government-to-government relations. Almost immediately, Mr. Dixie filed suit in the D.C. District Court challenging that decision. Recognizing the complex and fundamental nature of the underlying issues, and because I desired the benefit of submissions from the interested parties, I set aside that decision and requested formal briefing.

The submissions by the parties in response to my request were thorough. I have carefully reviewed the submissions and find they were most helpful in enhancing my understanding of the parties' positions.

Analysis

It is clear to me that the heart of this matter is a misapprehension about the nature and extent of the Secretary's role, if any, in determining tribal citizenship of a very small, uniquely situated tribe. Related to this issue is the Tribe's current reluctance to "organize" itself under the IRA, choosing instead to avail itself of the provisions in 25 U.S.C. § 476(h), first enacted in 2004, which recognizes the inherent sovereign powers of tribes "to adopt governing documents under procedures other than those specified . . . [in the IRA.]"

Applicability of General Legal Authorities of the Secretary of the Interior in Indian Affairs

The D.C. Circuit viewed § 476(h) as ambiguous, and then granted *Chevron* deference to the then-Secretary's interpretation of that provision. 513 F.3d at 1266-68. The D.C. Circuit put great weight on the Secretary's broad authority over Indian affairs under 25 U.S.C. § 2, writing that "[w]e have previously held that this extensive grant of authority gives the Secretary broad power to carry out the federal government's unique responsibilities with respect to Indians." *Id.* at 1267, *citations omitted*. In addition to § 2, 25 U.S.C. §§ 9, and 13, and 43 U.S.C. § 1457, are often cited as the main statutory bases for the Department's general authority in Indian affairs. *Cal. Valley Miwok Tribe v. United States*, 424 F.Supp. 2d 197, 201 (D.D.C. 2006); *see also* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 5.03[2] at 405 (2005 ed.) [hereinafter COHEN]. The D.C. Circuit also cited two cases involving separate bands of the Seminole Nation for the general propositions that the United States has an "obligation" "to promote a tribe's political integrity" as well as "the responsibility to ensure that [a tribe's] representatives, with whom [it] must conduct government-to-government relations, are valid representatives of the [tribe] as a whole." 513 F.3d at 1267 (*emphasis added by the Court*), *citing*, *Seminole Nation v. United States*, 313 U.S. 286, 296 (1942), and *Seminole Nation of Oklahoma v. Norton*, 223 F.Supp. 2d 122, 140 (D.D.C. 2002).

In my view, prior Department officials misapprehended their responsibility when they: (1) took their focus off the fact that the CVMT was comprised a five individuals, and (2) mistakenly viewed the Federal government as having particular duties relating to individuals who were not citizens of the tribe. I decline to invoke the broad legal authorities cited above to further intrude into internal tribal citizenship and governance issues in the instant case. In making this decision, I also am mindful of the Supreme Court's recent guidance concerning: (1) the importance of identifying "specific rights creating or duty-imposing statutory or regulatory prescriptions" before concluding the United States is obligated to act in a particular manner in Indian affairs.

and (2) the central role Federal policy plays in administering Indian affairs. *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2323-24, 2326-27 (June 13, 2011).

Application of Specific Legal Authorities

In my view, prior Department officials (from 2003 to the present) fundamentally misunderstood the role of the Federal government in addressing the CVMT citizenship and governance issues: (1) they misunderstood and ignored the legal authority of CVMT to govern itself through its General Council structure without being compelled to “organize” under the IRA; and (2) they confused the Federal government’s obligations to *possible* tribal citizens with those owed to *actual* tribal citizens.

The February 11, 2005, decision of Acting Assistant Secretary – Indian Affairs Michael D. Olsen stated that, until the Tribe organized itself, the Department could not recognize anyone as the Tribe’s Chairperson, and that the “first step in organizing the Tribe is identifying the putative tribal members.” (2005 Decision at 1-2, *discussed in* 51 IBIA at 112). The D.C. Circuit, after citing the Secretary’s broad authority under 25 U.S.C. § 2, endorsed this approach as a reasonable interpretation of 25 U.S.C. § 476(h) because “[t]he exercise of this authority is especially vital when, as is the case here, the government is determining whether a tribe is organized, and the receipt of significant federal benefits turns on the decision.” 515 F.3d at 1267. As I have stated above, I reject as contrary to § 476(h) the notions that a tribe can be compelled to “organize” under the IRA and that a tribe not so organized can have “significant federal benefits” withheld from it. Either would be a clear violation of 25 U.S.C. § 476(f).

The CVMT currently consists of the five citizens identified above. Under the current facts, the Department does not have a legitimate role in attempting to force the Tribe to expand its citizenship.³ Department officials previously referred to “the importance of participation of a greater tribal community in determining citizenship criteria.” (Superintendent’s 2004 Decision at 3, *discussed in* 51 IBIA at 111-112). The D.C. Circuit, referring to the Tribe’s governance structure that arguably would maintain a limited citizenship, stated “[t]his antimajoritarian gambit deserves no stamp of approval from the Secretary.” 515 F.3d at 1267. However, I know of no *specific statutory or regulatory authority* that warrants such intrusion into a federally recognized tribe’s internal affairs. (As to the more general sources of authority cited in support of Federal oversight of tribal matters, I have explained my views on the proper scope of those authorities above). “Courts have consistently recognized that one of an Indian tribe’s most basic powers is the authority to *determine questions of its own membership*.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57, 72 n.32 (1978); *United States v. Wheeler*, 435 U.S. 313, 322 n.18 (1978); COHEN § 3.03[3] at 176, *citations omitted*. “[I]f the issue for which the determination is important involves internal affairs of the Indian nation, it is more consistent with principles of tribal sovereignty to defer to that nation’s definition.” *Id.* at 180. As discussed in the previous paragraph, I also believe that, based on an incorrect interpretation of § 476(h), the previous Administration’s views on the IRA’s application to this case were erroneous and led to an improper focus on expanding the size of the Tribe and altering the form of its government.

³ While I believe that it is *equitably* appropriate for the CVMT General Council to reach out to potential citizens of the Tribe, I do not believe it is proper, *as a matter of law*, for the Federal government to attempt to impose such a requirement on a federally recognized tribe.

Mr. Dixie invokes the *Alan-Wilson* IBIA cases to support the theory that the Secretary has a duty to ensure that the potential citizens are involved in the organization of an unorganized, but federally recognized tribe.⁴ 30 IBIA 241. But, in fact, *Alan-Wilson* works directly against Mr. Dixie's position, and this distinction provides additional support for my decision. Unlike CVMT, the Cloverdale Rancheria was a federally recognized tribe terminated under the California Rancheria Act. It was later restored pursuant to the *Tillie Hardwick* litigation and settlement, which required the Rancheria to organize its tribal government under the IRA.

30 IBIA 241, 248.

My review of the history of the CVMT compels the conclusion set out in the December decision and reaffirmed here: the CVMT has been continuously recognized, and its political relationship with the Federal government has not been terminated. The five acknowledged citizens are the only current citizens of the Tribe, and the Tribe's General Council is authorized to exercise the Tribe's governmental authority. In this case, again, the factual record is clear: there are only five citizens of CVMT. The Federal government is under no duty or obligation to "potential citizens" of the CVMT. Those potential citizens, if they so desire, should take up their cause with the CVMT General Council directly.

Given both parties' acknowledgment of the existence of other individuals who could potentially become tribal citizens, the Department's prior positions are understandable. The Department endeavored to engage both parties in a resolution of the tribal citizenship issues, including offers of assistance from the Department's Office of Collaborative Action and Dispute Resolution (CADR) – to no avail. By the time this matter was referred to me by the IBIA in January 2010, serious doubts existed about the likelihood of the parties ever being able to work together to resolve the issues involving the citizenship and governance of the Tribe.

Absent an express commitment from the parties to formally define tribal citizenship criteria, any further effort by the Department to do so would result in an unwarranted intrusion into the internal affairs of the Tribe. Moreover, given the unfortunate history of this case, most likely such efforts would not succeed in accomplishing this objective. While there may be rare circumstances in which such an intrusion would be warranted in order for the Secretary to discharge specific responsibilities, no such specific law or circumstances exist here.

Accordingly, unless asked by the CVMT General Council, the Department will make no further efforts to assist the Tribe to organize and define its citizenship. I accept the Resolution #GC-98-01 as the interim governing document of the Tribe, and as the basis for resuming government-to-government relations between the United States and the Tribe.

While I appreciate that the General Council Resolution may prove lacking as to certain aspects of tribal governance, I also recognize that this tribe is very small and uniquely situated. Many tribes have been able to govern effectively with limited or no written governing documents.

⁴ Mr. Dixie also invokes the case of *Seminole Nation of Oklahoma v. Norton*, 223 F.Supp.2d 122 (D.D.C. 2002) in support of his position. *Seminole Nation* involved a dispute where a particular faction of the Tribe asserted rights to tribal citizenship under an 1866 treaty. *Id.* at 138. There is no overriding treaty or congressional enactment governing tribal citizenship at issue in this dispute.

Conclusion

Based upon the foregoing analysis, I re-affirm the following:

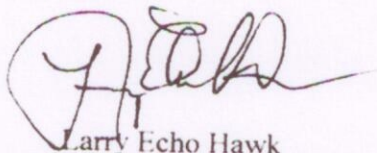
- CVMT is a federally recognized tribe whose entire citizenship, as of this date, consists of the five acknowledged citizens;
- The 1998 Resolution established a General Council form of government, comprised of all the adult citizens of the Tribe, with whom the Department may conduct government-to-government relations;
- The Department shall respect the validly enacted resolutions of the General Council; and
- Only upon a request from the General Council will the Department assist the Tribe in refining or expanding its citizenship criteria, or developing and adopting other governing documents.

In my December 2010 decision letter I rescinded several earlier decisions. I am persuaded that such attempts to rewrite history are fraught with the risk of unintended consequences. Past actions, undertaken in good faith and in reliance on the authority of prior Agency decisions, should not be called into question by today's determination that those prior Agency decisions were erroneous. Thus, today's decision shall apply prospectively.

This decision is final for the Department and effective immediately, but implementation shall be stayed pending resolution of the litigation in the District Court for the District of Columbia. *California Valley Miwok Tribe v. Salazar*, C.A. No. 1:11-cv-00160-RWR (filed 03/16/11).

Finally, I strongly encourage the parties to work within the Tribe's existing government structure to resolve this longstanding dispute and bring this contentious period in the Tribe's history to a close.

Sincerely,



Larry Echo Hawk
Assistant Secretary - Indian Affairs

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EXHIBIT “6”

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Re: CVMT v. CGCC: NOTICE OF EX PARTE HEARING

Dear Counsel:

As stated in my email communication to you yesterday, please take notice that on September 7, 2011, at 8:30 a.m., Plaintiff's counsel will be appearing ex

parte before the Hon. Ronald Styn in Department 62 of the San Diego Superior Court for purposes of having judgment entered against the Defendant CALIFORNIA GAMBLING CONTROL COMMISSION ("the Commission") and having the stay order lifted with respect to the effect of following prior orders: (1) Order of March 11, 2011, granting reconsideration and denying intervention; (2) Order of March 11, 2011, granting judgment on the pleadings as against the Commission; and (3) Order of March 11, 2011, ruling Plaintiff's demurrer to the Complaint in Intervention is moot, in light of the Court's ruling denying intervention. Plaintiff will be asking the Court to reconfirm these prior orders, so that judgment can be entered.

As you know, prior to entry of judgment, the Court stayed entry of judgment against the Commission, and stayed the effect of these prior orders with respect to the Intervenor, when the Assistant Secretary wrote on April 1, 2011, that he was reconsidering his December 22, 2010, decision. On August 31, 2011, the Assistant Secretary issued his reconsidered decision and reconfirmed his December 22, 2010 decision. Inter alia, the Assistant Secretary recognizes the Tribe's General Council form of government established pursuant to Resolution #CG-98-01, which effectively recognizes Silvia Burley as the Chairperson of the Tribe, and ruled that the Tribe is not required to expand its five (5) adult membership to so-called "potential citizens," and that it is not required to organize its present form of government under the Indian Reorganization Act of 1934 ("IRA"). Since the Commission had stated under oath in sworn written discovery, and repeated recently in sworn deposition testimony, that these were the sole grounds for its decision to withhold Revenue Sharing Trust Fund ("RSTF") money from the Tribe, Plaintiff's motion for judgment on the pleadings was properly granted, and the Commission has no legal basis to continue to withhold these funds.

Also, as stated, Plaintiff will be asking the Court to put back on calendar its motion for an award of pre-judgment interest.

Very truly yours,



Manuel Corrales, Jr.

Cc: Terry Singleton, Esq.
Robert Rosette, Esq.
Saba Bazzazieh, Esq.
Tiger Paulk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert A. Rosette, Esq., SBN 224437 ROSETTE & ASSOCIATES 193 Blue Ravine Road, Suite 255 Folsom, California 95630 TELEPHONE NO.: (916) 353-1084 FAX NO. (Optional): (916) 353-1085 E-MAIL ADDRESS (Optional): rosette@rosettela.com ATTORNEY FOR (Name): Plaintiff California Valley Miwok Tribe	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Central District	
PETITIONER/PLAINTIFF: California Valley Miwok Tribe RESPONDENT/DEFENDANT: California Gambling Control Commission	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	CASE NUMBER: 37-2008-00075326-CU-CO-CTL

(Do not use this Proof of Service to show service of a Summons and Complaint.)

- I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
- My residence or business address is:
 17140 Bernardo Center Drive, Suite 370
 San Diego, California 92128
- On (date): September 6, 2011 I mailed from (city and state): emailed and/or faxed the following **documents** (specify):
 (1) Plaintiff's Ex Parte Application for Entry of Judgment against Defendant California Gambling Control Commission; Declaration of Manuel Corrales, Jr.; (2) Plaintiff's request for Judicial Notice: August 31, 2011 Letter Decision from Assistant Secretary of Interior
☐ The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).
- I served the documents by enclosing them in an envelope and (check one):
 a. ☐ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 b. ☐ **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
- The envelope was addressed and mailed as follows:
 a. **Name of person served:** Persons receiving copies via email and/or fax as follows:
 b. **Address of person served:**
 (1) sylvia.cates@doj.ca.gov; (2) mmconnell@sheppardmullin.com; (3) rfreeman@sheppardmullin.com;
 (4) twolftrum@wolftrumlaw.com; (5) randy.pinal@doj.ca.gov; (6) rosette@rosettela.com; (7) terry@terrysingleton.com

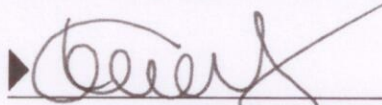
☐ The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 6, 2011

Manuel Corrales, Jr., Esq.

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)