KAMALA D. HARRIS
Attorney General of California
SYLVIA A. CATES
Senior Assistant Attorney General
RANDALL A. PINAL
Deputy Attorney General
State Bar No. 192199
SYLVIA A. CATES
Deputy Attorney General
State Bar No. 111408
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-5484
Fax: (916) 327-2319
E-mail: Sylvia.Cates@doj.ca.gov
Attorneys for Defendant
California Gambling Control Commission

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 OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION AND DECLARATION OF SYLVIA A. CATES IN SUPPORT THEREOF** Date: September 7, 2011 Time: 2:30 p.m. Dept: 62 Judge: The Honorable Ronald L. Styn Trial Date: None Set Action Filed: January 8, 2008

Defendant California Gambling Control Commission (Commission) hereby objects to and opposes Plaintiff's Ex Parte Application. For the reasons set forth herein, the Commission respectfully requests that the Court deny Plaintiff's ex parte application, vacate its previous orders granting Plaintiff's motion for judgment on the pleadings and motion for reconsideration, and

stay this case in its entirety pending resolution of the litigation in the District Court for the District of Columbia, *California Valley Miwok Tribe v. Salazar*, No. 1:11-cv-00160-RWR (D.D.C. filed March 16, 2011) (hereafter federal litigation).

THE ASSISTANT SECRETARY'S RECONSIDERED DECISION IS OF NO FORCE OR EFFECT EXCEPT FOR PURPOSES OF JUDICIAL REVIEW

On August 31, 2011, Assistant Secretary of Indian Affairs, Larry Echo Hawk (Assistant Secretary), issued his reconsidered decision (hereafter Reconsidered Decision or Decision) regarding the membership and organization of the California Valley Miwok Tribe (Miwok Tribe). (Declaration of Sylvia A. Cates (Cates Decl.), Ex. A.) In the Reconsidered Decision, the Assistant Secretary reaffirmed aspects of his December 22, 2010, decision. However, diverging from his December 22, 2010, decision, he did not rescind any of the previous orders and decisions made by his predecessor and other officials with the Department of the Interior and the Bureau of Indian Affairs. Instead, he determined that the Reconsidered Decision shall apply prospectively. (Cates Decl., Ex. A, p. 8.) Further, while he confirmed that the Reconsidered Decision is "final for the Department and effective immediately," he stayed its implementation pending resolution of the federal litigation. (*Ibid.*) Accordingly, the Reconsidered Decision has no force or effect for purposes of this state court action.

Counsel for Plaintiff, the Burley faction of the Miwok Tribe, argues that the Reconsidered Decision is in effect and that the stay of its implementation is irrelevant for purposes of this action.[1] (Cates Decl., Ex. B.) Plaintiff misconstrues the meaning of the phrase "final for the Department and effective immediately" in the Reconsidered Decision, which only serves to ensure the Decision is immediately subject to judicial review, and reads the word "stay" entirely out of the Decision.

Decisions of federal agencies are not subject to judicial review unless they are final. (5 U.S.C. § 704.) A component of finality for purposes of judicial review of decisions of officials of

[1] As of 12:30 p.m. on Tuesday, September 6, 2011, the Commission has not yet received any ex parte papers from Plaintiff, except for a request for judicial notice. However, Plaintiff's counsel explained in an email, Exhibit B to the Cates Declaration herein, his views of the Reconsidered Decision and what he would ask of the Court at the ex parte hearing.

the Department of the Interior (Department) and Bureau of Indian Affairs is that the decisions be "effective" for that purpose. This can be seen by a careful review of section 2.6 of title 25 of the Code of Federal Regulations (Cates Decl., Ex. C), which addresses the "finality of decisions" of officials of the Bureau of Indian Affairs, and section 4.314 of title 43 of the Code of Federal Regulations (Cates Decl., Ex. D), which addresses exhaustion of administrative remedies for matters subject to review by the Interior Board of Indian Appeals. Title 25 C.F.R. § 2.6 provides that no decision, which at the time of its rendition is subject to appeal to a superior authority within the Department, is final for purposes of judicial review unless the deciding official makes the decision "effective immediately." (25 C.F.R. § 2.6(a) (2011).) Otherwise, such decisions become "effective" (and subject to judicial review) when the time for filing a notice of appeal has expired and no notice of appeal has been filed. (25 C.F.R. § 2.6(b) (2011).) Section 2.6 further provides that decisions of the Assistant Secretary are final for the Department and "effective immediately" unless he provides otherwise. (25 C.F.R. § 2.6(c) (2011).) Title 43 C.F.R. § 4.314 provides that no decision of an administrative law judge, Indian probate judge, or Bureau of Indian Affairs official that is subject to appeal to the Interior Board of Indian Appeals will be considered final agency action subject to judicial review under 5 U.S.C. § 704 "unless it has been made effective pending a decision on appeal by order of the Board." (43 C.F.R. § 4.313(a) (2011); see also *Miami Tribe of Oklahoma v. United States* (D.Kan. . uly 24, 2008, Civ. A. No. 03-2220-DJW) 2008 U.S. Dist. LEXIS 60365 [decision that has not been made effective pending a decision on appeal to the Interior Board of Indian Appeals is not yet a final agency action for purposes of review under 5 U.S.C. § 704].)

Because the Assistant Secretary did not provide that the Reconsidered Decision is not effective for purposes of judicial review, the federal litigation challenging the decision may proceed. However, that does not mean that the Reconsidered Decision is in effect for any other purpose. In a joint status report dated September 1, 2011, filed in the federal litigation, the Assistant Secretary and the other parties to that litigation have confirmed that except for purposes of judicial review, the Reconsidered Decision is stayed and "will have no force or effect" until

such time as the federal court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the federal defendants in the action. (Cates Decl., Ex. E, ¶ 13.)[2]

Because the Reconsidered Decision has no force or effect pending resolution of the federal litigation, it cannot form the basis for this Court to lift the stay of the orders granting judgment on the pleadings and the motion for reconsideration, nor can it form the basis for entry of judgment against the Commission.

THE PREVIOUS ORDERS SHOULD BE VACATED AND THE PROCEEDINGS STAYED PENDING RESOLUTION OF THE FEDERAL LITIGATION

The underpinning of this Court's previous rulings was the December 22, 2010, decision of the Assistant Secretary. The Assistant Secretary set aside that decision, and his Reconsidered Decision has no force or effect at present. In the Reconsidered Decision, the Assistant Secretary explained why he was not rescinding the prior decisions of his predecessor and other Bureau of Indian Affairs officials, noting that attempts to rewrite history are fraught with the risk of "unintended consequences." (Cates Decl., Ex. A, p. 8.) He stated that 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." (*Ibid.*) Accordingly, he confirmed that the Reconsidered Decision will be prospective only. (*Ibid.*)

In withholding the distribution of Revenue Sharing Trust Fund monies to the Miwok Tribe, the Commission relied in good faith on those prior decisions of the federal officials. Those decisions made clear that the Bureau of Indian Affairs and the Department of the Interior did not recognize a government or leader for the Miwok Tribe and were of the view that the Miwok Tribe was unorganized. (Cates Decl., Exs. G, H, I, J & K.) Because the Assistant Secretary's Reconsidered Decision has no force or effect, it appears that those decisions are still operative. Accordingly, at present, the United States does not recognize a leader or government for the Miwok Tribe.

[2] The court docket in that proceeding shows that Assistant Secretary Echo Hawk is one of three federal defendants. (Cates Decl., Ex. F.) The joint status report was signed by counsel for the Assistant Secretary and the other federal defendants. (Cates Decl., Exs. E, F.)

This Court has the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency. (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) The Commission requests that the Court vacate its previous orders and stay this entire case pending resolution of the federal litigation. (See *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107 [a trial court has inherent power to reevaluate its orders on its own motion and enter a new and different order prior to entry of judgment].) A stay of this action will ensure that neither Plaintiff's nor Intervenors' interests are compromised pending resolution of the federal litigation, which is a prerequisite to the Assistant Secretary's Reconsidered Decision being implemented. It would be a waste of judicial and client resources for this case to proceed at this time. Because the Commission has consistently stated that it will turn over all Revenue Sharing Trust Fund monies due the Miwok Tribe, the decision of the federal court regarding the Reconsidered Decision likely will render moot any actions and discovery taken between now and resolution of the federal litigation.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that Plaintiff's ex parte application be denied. The Commission further requests that the Court vacate its previous order and stay this case in its entirety pending resolution of the federal litigation.

Dated: September 6, 2011

Respectfully Submitted,

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

SYLVIA A. CATES
Deputy Attorney General
Attorneys for Defendant
California Gambling Control Commission

REQUEST FOR JUDICIAL NOTICE

The Commission respectfully requests that the Court take judicial notice of the following documents described below, true and correct copies of which are attached as exhibits to the declaration of Sylvia A. Cates:

A. Letter dated August 31, 2011, from Larry Echo Hawk, Assistant Secretary - Indian Affairs, United State Department of the Interior, to Ms. Silvia Burley and Mr. Yakima Dixie;

C. Section 2.6 of title 25 of the Code of Federal Regulations;

D. Section 4.314 of title 43 of the Code of Federal Regulations;

E. Joint Status Report and Proposed Order Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs, filed in *California Valley Miwok Tribe v. Salazar*, No. 1:11-cv-00160-RWR (D.D.C. filed March 16, 2011);

F. U.S. District Court Civil Docket as of September 2, 2011, *California Valley Miwok Tribe v. Salazar*, No. 1:11-cv-00160-RWR (D.D.C. filed March 16, 2011);

G. Letter dated March 26, 2004, from Dale Risling, Sr., Superintendent, Central California Agency, Bureau of Indian Affairs, to Ms. Sylvia [sic] Burley;

H. Letter dated February 11, 2005, from Michael D. Olsen, Principal Deputy, Acting Assistant Secretary – Indian Affairs, to Mr. Yakima Dixie.

I. Letter dated November 6, 2006, from Troy Burdick, Superintendent, Central California Agency, Bureau of Indian Affairs, to Ms. Silvia Burley and Mr. Yakima Dixie;

J. Letter dated December 12, 2008, from Edith R. Blackwell, Associate Solicitor, Indian Affairs, United States Department of the Interior, to Peter Kaufman, Esq., Deputy Attorney General;

K. Letter dated January 14, 2009, from Edith R. Blackwell, Associate Solicitor, Indian Affairs, United States Department of the Interior, to Peter Kaufman, Esq., Deputy Attorney General.

This request is made pursuant to Evidence Code sections 452 and 453. The Court may take judicial notice, under Evidence Code section 452, subdivisions (c) and (d), of the official acts of the executive departments of the United States and of the records of any court of record of the

United States. Section 453 of the Evidence Code provides that judicial notice of the matters set forth in section 452 is mandatory if properly requested by a party. The requesting party must give sufficient notice of the request to enable the adverse party to prepare to meet it, and furnish the court with sufficient information to enable the Court to take judicial notice of the matter. (Evid. Code, § 453, subds. (a) & (b).)

The documents in Exhibits A, G, H, I, J, and K are official records of the United States Department of the Interior and the Bureau of Indian Affairs. "The records and files of an administrative board are properly the subject of judicial notice." (See *Western States Petroleum Ass'n v. Department of Health Services* (2002) 99 Cal.App.4th 999, 1002 [judicial notice taken of federal Environmental Protection Agency's materials pursuant to Evidence Code section 452, subdivision (c)].)

The documents in Exhibits C and D are regulations issued by or under the authority of the United States or any public entity in the United States. (Evid. Code, § 452, subd. (b).)

The documents in Exhibits E and F are records of the federal courts and are subject to judicial notice pursuant to Evidence Code section 452, subdivision (d). (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 877 [judicial notice taken of certain pleadings from federal action].)

The Commission respectively requests judicial notice be taken of the exhibits listed above pursuant to Evidence Code section 452, subdivisions (b), (c), and (d).

Dated: September 6, 2011

Respectfully Submitted,

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

SYLVIA A. CATES
Deputy Attorney General
Attorneys for Defendant
California Gambling Control Commission

DECLARATION OF SYLVIA A. CATES

I, SYLVIA A. CATES, declare:

1. I am a Deputy Attorney General with the California Department of Justice, Office of the Attorney General, and am one of the attorneys of record for the California Gambling Control Commission (Commission) in this matter. I am an attorney at law duly licensed to practice before all courts within the State of California. I have personal knowledge of the facts set forth below and if called as a witness, I could and would competently testify to them.

2. Attached hereto to Exhibit A is a true and correct copy of a letter dated August 31, 2011, from Larry Echo Hawk, Assistant Secretary - Indian Affairs, United States Department of the Interior, to Ms. Silvia Burley and Mr. Yakima Dixie. I received Exhibit A by e-mail from counsel for Plaintiffs and from counsel for Intervenors in this action.

3. Attached hereto as Exhibit B is a true and correct copy of an email communication to me from Manuel Corrales, Jr., counsel for Plaintiff in this action, which states the matters that will be the subject of Plaintiff's ex parte application. As of 12:30 p.m. on Tuesday, September 6, 2011, the Commission has not received any ex parte papers from Plaintiff, except for a request for judicial notice.

4. Attached hereto as Exhibit C is a true and correct copy of section 2.6 of title 25 of the Code of Federal Regulations. Exhibit C was obtained through the LexisNexis electronic research service by the Office of the Attorney General of California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

5. Attached hereto as Exhibit D is a true and correct copy of section 4.314 of title 43 of the Code of Federal Regulations. Exhibit D was obtained through the LexisNexis electronic research service by the Office of the Attorney General of California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

6. Attached hereto as Exhibit E is a true and correct copy of Joint Status Report and Proposed Order Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs, filed in *California Valley Miwok Tribe v. Salazar*, No 1:11-cv-00160-RWR (D.D.C. filed March 16, 2011). Exhibit E was obtained by the Office of the Attorney General of

California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

7. Attached hereto as Exhibit F is a true and correct copy of the United States District Court Civil Docket as of September 2, 2011, *California Valley Miwok Tribe v. Salazar*, No. 1:11-cv-00160-RWR (D.D.C. filed March 16, 2011). Exhibit F was obtained through the LexisNexis CourtLink electronic research service by the Office of the Attorney General of California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

8. Attached hereto as Exhibit G is a true and correct copy of a letter dated March 26, 2004, from Dale Risling, Sr., Superintendent, Central California Agency, Bureau of Indian Affairs, to Ms. Sylvia [sic] Burley. Exhibit G was received or obtained by the Office of the Attorney General of California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

9. Attached hereto as Exhibit H is a true and correct copy of a letter dated February 11, 2005, from Michael D. Olsen, Principal Deputy, Acting Assistant Secretary – Indian Affairs, to Mr. Yakima Dixie. Exhibit H was received or obtained by the Office of the Attorney General of California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

10. Attached hereto as Exhibit I is a true and correct copy of a letter dated November 6, 2006, from Troy Burdick, Superintendent, Central California Agency, Bureau of Indian Affairs, to Ms. Silvia Burley and Mr. Yakima Dixie. Exhibit I was received or obtained by the Office of the Attorney General of California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

11. Attached hereto as Exhibit J is a true and correct copy of a letter dated December 12, 2008, from Edith R. Blackwell, Associate Solicitor, Indian Affairs, United States Department of the Interior, to Peter Kaufman, Esq., Deputy Attorney General. Exhibit J was received by the Office of the Attorney General of California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

12. Attached hereto as Exhibit K is a true and correct copy of a letter dated January 14, 2009, from Edith R. Blackwell, Associate Solicitor, Indian Affairs, United States Department of the Interior, to Peter Kaufman, Esq., Deputy Attorney General. Exhibit K was received by the Office of the Attorney General of California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

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

Executed this 6th day of September, 2011, in Sacramento, California.

Sylvia A. Cates

SA2008300115
31337960.doc

EXHIBIT A

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 3 1 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 Sheepranch 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 'Sheepranch.'" *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

cc: 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, California 95825

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

Karen Koch, Attorney-Advisor
Office of the Solicitor, Pacific Southwest Region
2800 Cottage Way, E-1712
Sacramento, California 95825

EXHIBIT B

Sylvia Cates - CVMT v. CGCC: Assistant Secretary's August 31, 2011 Decision

From: Manuel Corrales <mannycorrales@yahoo.com>
To: Sylvia Cates <sylvia.cates@doj.ca.gov>, Matthew McConnell <mmcconnell@sheppardmullin.com>, "rfreeman@sheppardmullin.com" <rfreeman@sheppardmullin.com>, Thomas Wolfrum <twolfrum@wolfrumlaw.com>, Randy Pinal <randy.pinal@doj.ca.gov>
Date: 8/31/2011 3:43 PM
Subject: CVMT v. CGCC: Assistant Secretary's August 31, 2011 Decision
CC: Rob Rosette <rosette@rosettelaw.com>, Saba Bazzazieh <sbazzazieh@rosettelaw.com>, Terry Singleton <terry@terrysingleton.com>, Tiger Paulk <tigerplk@yahoo.com>
Attachments: AsstSecAug31DecLetterMiwok31Aug11.pdf

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 Intervenors,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 teh Intervenors, because, as the Court stated, the Commission is protected by the Assistant Secretary's decision, despite Dixie and the Intervenors' appeal and challenge of that decision in federal court. So long as the decison is final, that is enough. Whether and to what extent the decison 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 decison 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 decison, as previously ordered by the Court, and then to have the Court enter judgment against the Commission and sign the order dismissing the Intervenors' 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 Intervenors. 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

EXHIBIT C

1 of 1 DOCUMENT

*** THIS SECTION IS CURRENT THROUGH THE AUGUST 25, 2011 ***
*** ISSUE OF THE FEDERAL REGISTER ***

TITLE 25 -- INDIANS
CHAPTER I -- BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR
SUBCHAPTER A -- PROCEDURES AND PRACTICE
PART 2 -- APPEALS FROM ADMINISTRATIVE ACTIONS

Go to the CFR Archive Directory

25 CFR 2.6

§ 2.6 Finality of decisions.

(a) No decision, which at the time of its rendition is subject to appeal to a superior authority in the Department, shall be considered final so as to constitute Departmental action subject to judicial review under *5 U.S.C. 704*, unless when an appeal is filed, the official to whom the appeal is made determines that public safety, protection of trust resources, or other public exigency requires that the decision be made effective immediately.

(b) Decisions made by officials of the Bureau of Indian Affairs shall be effective when the time for filing a notice of appeal has expired and no notice of appeal has been filed.

(c) Decisions made by the Assistant Secretary--Indian Affairs shall be final for the Department and effective immediately unless the Assistant Secretary--Indian Affairs provides otherwise in the decision.

HISTORY: *[54 FR 6480,* Feb. 10, 1989; *54 FR 7666,* Feb. 22, 1989]

AUTHORITY: R.S. 463, 465; *5 U.S.C. 301, 25 U.S.C. 2*, 9.

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.
Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.
Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.
Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

EXHIBIT D

*** THIS SECTION IS CURRENT THROUGH THE AUGUST 25, 2011 ***
*** ISSUE OF THE FEDERAL REGISTER ***

TITLE 43 -- PUBLIC LANDS: INTERIOR
SUBTITLE A -- OFFICE OF THE SECRETARY OF THE INTERIOR
PART 4 -- DEPARTMENT HEARINGS AND APPEALS PROCEDURES
SUBPART D -- RULES APPLICABLE INDIAN AFFAIRS HEARINGS AND APPEALS
GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

Go to the CFR Archive Directory

43 CFR 4.314

§ 4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge, Indian probate judge, or BIA official that at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under *5 U.S.C. 704*, unless it has been made effective pending a decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

HISTORY: *[54 FR 6485*, Feb. 10, 1989; *54 FR 7504*, Feb. 21, 1989; *66 FR 67652, 67666*, Dec. 31, 2001; *70 FR 11804, 11825*, Mar. 9, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE SUBPART:
5 U.S.C. 301; *25 U.S.C. 2, 9*, 372-74, *410*; Pub. L. 99-264, *100 Stat. 61*, as amended.

NOTES: [EFFECTIVE DATE NOTE: *70 FR 11804, 11825*, Mar. 9, 2005, revised this section effective Mar. 9, 2005.]

NOTES APPLICABLE TO ENTIRE SUBPART:
[PUBLISHER'S NOTE: Nomenclature changes affecting Subpart D appear at *67 FR 4367, 4368*, Jan. 30, 2002.]
Cross reference: For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the probate of Indian trust estates within the Probate Hearings Division, Office of Hearings and Appeals, see 43 CFR part 30. For regulations pertaining to the authority, jurisdiction,

and membership of the Board of Indian Appeals, Office of Hearings and Appeals, see subpart A of this part. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see subpart B of this part.

99 words

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

THE CALIFORNIA VALLEY MIWOK TRIBE, *et al.*, Plaintiffs, v. KEN SALAZAR, in his official capacity as Secretary of the United States Department of the Interior, *et al,* Defendants.	Case No. 1:11-cv-00160-RWR Hon. Richard W. Roberts

JOINT STATUS REPORT AND PROPOSED ORDER REGARDING THE STATUS OF THE RECONSIDERED DECISION OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS

Pursuant to this Court's order of August 15, 2011, the parties provide the following status report to the Court.

1. On January 24, 2011, Plaintiffs brought suit challenging the December 22, 2010 decision of the Assistant Secretary - Indian Affairs of the United States Department of the Interior ("Assistant Secretary"). *See* Dkt. No. 1.

2. On March 16, 2011, Plaintiffs filed a Motion for Preliminary Injunction, Dkt. No. 8, and, after granting the Defendants' Consent Motion for an Extension of Time, Dkt. No. 17, this Court ordered the Defendants to file their opposition to Plaintiffs' Motion for a Preliminary Injunction by April 5, 2011.

3. However, on April 1, 2011, the Assistant Secretary - Indian Affairs of the United States Department of the Interior set aside the prior December 22, 2010 decision

regarding the organization and governance of the California Valley Miwok Tribe. *See* Joint Motion to Stay Litigation, Dkt. No. 22, ex. 1.

4. On April 8, 2011, the Assistant Secretary sent letters to both Mr. Yakima Dixie and Ms. Silvia Burley requesting responsive briefing pertaining to a number of issues. Joint Motion to Stay Litigation, Dkt. No. 22, ex. 3.

5. The April 8, 2011, letter set May 3, 2011, as the deadline for the respective parties' submission of briefs responding to the Assistant Secretary's inquiries. Both Mr. Dixie and Ms. Burley submitted briefs on May 3, 2011.

6. On April 19, 2011, the parties jointly requested this Court stay the litigation and all attendant deadlines so that the Assistant Secretary could prepare and issue the reconsidered decision. *See* Joint Motion to Stay Litigation, Dkt. No. 22.

7. On April 25, 2011, this Court issued a minute order granting the parties' joint motion to stay until July 7, 2011, and ordered the parties to file a joint status report and proposed order on July 7, 2011 as well.

8. On July 7, 2011, the parties filed a joint status report and requested this Court stay the litigation and all attendant deadlines until August 15, 2011, to accommodate the Assistant Secretary's ongoing preparation of the reconsidered decision. *See* Joint Status Report Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Motion for Extension of the Temporary Stay of Litigation, Dkt. No. 23.

9. Plaintiffs consented to the extension on the condition that it was the final extension and that this Court order the Assistant Secretary to issue his reconsidered decision by August 15, 2011. *Id.* §§ 9, 9(a).

10. Defendants would not consent, however, to a condition mandating final agency action, and requested that should the Assistant Secretary not issue a reconsidered decision by August 15, 2011, that the result be a release of the voluntary stay. *Id.* §§ 9, 9(b). Accordingly, the parties each submitted a separate proposed order. *See id.*, Attachment 1-2.

11. On July 11, 2011, this Court granted the Joint Motion for Temporary Stay of Litigation and adopted Plaintiffs' proposed order. *See* Order Granting Joint Motion for Temporary Stay of Litigation, Dkt. No. 24. This Court's order struck paragraph 2, which requested, "This extension of the temporary stay shall be the final one granted by the Court and is conditioned upon the Assistant Secretary issuing his decision on reconsideration of the December 22, 2010 Decision on or before August 15, 2011." *Id.*

12. On August 12, 2011, the parties again requested the Court to extend the stay anticipating the issuance of the decision on August 26, 2011. This Court granted that request and stayed the litigation until September 2, 2011. *See* Order, Staying case until 09/02/11, Dkt. No. 26.

13. The Assistant Secretary issued the decision on Wednesday August 31, 2011. The Assistant Secretary reinstated his prior decision. While the August 31, 2011 decision is final for the Department for purpose of judicial review, the Assistant Secretary stayed the effectiveness of the August 31, 2011 decision pending resolution of this matter. As a result, the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the Federal Defendants.

14. Accordingly, no further temporary stay of the litigation is required.

15. Plaintiffs and Defendants request that the stay of the litigation be terminated and that a joint Status Report be filed by September 16, 2011 and that the Proposed Order be adopted.

Respectfully submitted this 1st day of September, 2011.

Respectfully submitted,

/s/ *M Roy Goldberg*
M. ROY GOLDBERG
(D.C. Bar No. 416953)
CHRISTOPHER M. LOVELAND
(D.C. Bar No. 473969)
ATTORNEYS FOR PLAINTIFFS
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W., 11th Floor East
Washington, DC 20005-3314
Tel: (202) 218-0007
Fax: (202) 312-9425
Email: rgoldberg@sheppardmullin.com
cloveland@sheppardmullin.com

ROBERT J. URAM (*admitted pro hac vice*) Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
Tel: (415) 434-9100
Fax: (415) 434-3947
Email: ruram@sheppardmullin.com

COUNSEL FOR PLAINTIFFS

/s/ Kenneth Rooney
KENNETH D. ROONEY
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
Phone: (202) 514-9269
Fax: (202) 305-0506
E-mail: kenneth.rooney@usdoj.gov

OF COUNSEL
James W. Porter
Attorney-Advisor
Branch of Tribal Government and Alaska
Division of Indian Affairs
Office of the Solicitor, Department of the Interior
1849 C Street, N.W. Washington, D.C. 20240
Mail stop 6518

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on September 1, 2011, I filed a copy of the foregoing Joint Status Report and Proposed Order Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs was filed with the Court pursuant to the electronic filing rules. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

/s/
Roy Goldberg

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

THE CALIFORNIA VALLEY MIWOK TRIBE, *et al.*, Plaintiffs, v. KEN SALAZAR, in his official capacity as Secretary of the United States Department of the Interior, *et al*, Defendants.	Case No. 1:11-cv-00160-RWR Hon. Richard W. Roberts

ORDER

Having reviewed and considered the "Joint Status Report Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs" filed by the Plaintiffs and Defendants in this case, it is hereby ORDERED that the temporary stay of this litigation is terminated.

It is hereby FURTHER ORDERED that:

1. The Decision of the Assistant Secretary dated August 31, 2011 is stayed and will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the Federal Defendants.

2. Plaintiffs and Defendants will file a Joint Status Report on or before September 16, 2011.

3. Defendants shall not be required to file a responsive pleading to the Complaint until further Order of this Court.

4. Any applicable deadline for the issuance of a scheduling order under Rule 16(b), Fed. R. Civ. P., is stayed pending further Order of this Court.

Dated this ___ day of _____, 2011.

By the Court:

_____
United States District Judge

EXHIBIT F

US District Court Civil Docket

U.S. District - District of Columbia
(Washington DC)

1:11cv160

California Valley Miwok Tribe et al v. Salazar et al

This case was retrieved from the court on Friday, September 02, 2011

Date Filed: 01/24/2011
Assigned To: Judge Richard W Roberts
Referred To:
Nature of suit: Other Statutory Actions (890)
Cause: Administrative Procedure Act
Lead Docket: None
Other Docket: None
Jurisdiction: U.S. Government Defendant

Class Code: CLOSED
Closed: Yes
Statute: 05:702
Jury Demand: None
Demand Amount: $0
NOS Description: Other Statutory Actions

Litigants	Attorneys
California Valley Miwok Tribe Plaintiff	Christopher Michael Loveland [COR LD NTC] Sheppard, Mullin, Richter & Hampton LLP 1300 I Street, NW 11TH Floor East Washington , DC 20005 USA (202) 772-5313 Fax: (202) 218-0020 Email: CLOVELAND@SHEPPARDMULLIN.COM M Roy Goldberg [COR LD NTC] Sheppard Mullin Richter & Hampton LLP 1300 I Street, NW 11TH Floor East Washington , DC 20005-3314 USA (202) 218-0007 Fax: (202) 312-9425 Email: RGOLDBERG@SHEPPARDMULLIN.COM Robert J Uram [COR LD NTC] Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center San Francisco , CA 94111 USA (415) 434-9100 Fax: 415-434-3947 <I>pro Hac Vice</ I>
Tribal Council	Christopher Michael Loveland

Plaintiff	[COR LD NTC] Sheppard, Mullin, Richter & Hampton LLP 1300 I Street, NW 11TH Floor East Washington , DC 20005 USA (202) 772-5313 Fax: (202) 218-0020 Email: CLOVELAND@SHEPPARDMULLIN.COM M Roy Goldberg [COR LD NTC] Sheppard Mullin Richter & Hampton LLP 1300 I Street, NW 11TH Floor East Washington , DC 20005-3314 USA (202) 218-0007 Fax: (202) 312-9425 Email: RGOLDBERG@SHEPPARDMULLIN.COM Robert J Uram [COR LD NTC] Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center San Francisco , CA 94111 USA (415) 434-9100 Fax: 415-434-3947 <i>pro Hac Vice</ I>
Yakima Dixie Plaintiff	Christopher Michael Loveland [COR LD NTC] Sheppard, Mullin, Richter & Hampton LLP 1300 I Street, NW 11TH Floor East Washington , DC 20005 USA (202) 772-5313 Fax: (202) 218-0020 Email: CLOVELAND@SHEPPARDMULLIN.COM M Roy Goldberg [COR LD NTC] Sheppard Mullin Richter & Hampton LLP 1300 I Street, NW 11TH Floor East Washington , DC 20005-3314 USA (202) 218-0007 Fax: (202) 312-9425 Email: RGOLDBERG@SHEPPARDMULLIN.COM Robert J Uram [COR LD NTC] Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center San Francisco , CA 94111 USA (415) 434-9100 Fax: 415-434-3947 <I>pro Hac Vice</ I>
Velma Whitebear Plaintiff	Christopher Michael Loveland [COR LD NTC]

Sheppard, Mullin, Richter & Hampton LLP
1300 I Street, NW
11TH Floor East
Washington , DC 20005
USA
(202) 772-5313
Fax: (202) 218-0020
Email: CLOVELAND@SHEPPARDMULLIN.COM

M Roy Goldberg
[COR LD NTC]
Sheppard Mullin Richter & Hampton LLP
1300 I Street, NW
11TH Floor East
Washington , DC 20005-3314
USA
(202) 218-0007
Fax: (202) 312-9425
Email: RGOLDBERG@SHEPPARDMULLIN.COM

Robert J Uram
[COR LD NTC]
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center
San Francisco , CA 94111
USA
(415) 434-9100
Fax: 415-434-3947
<i>pro Hac Vice</ I>

Antonia Lopez
Plaintiff

Christopher Michael Loveland
[COR LD NTC]
Sheppard, Mullin, Richter & Hampton LLP
1300 I Street, NW
11TH Floor East
Washington , DC 20005
USA
(202) 772-5313
Fax: (202) 218-0020
Email: CLOVELAND@SHEPPARDMULLIN.COM

M Roy Goldberg
[COR LD NTC]
Sheppard Mullin Richter & Hampton LLP
1300 I Street, NW
11TH Floor East
Washington , DC 20005-3314
USA
(202) 218-0007
Fax: (202) 312-9425
Email: RGOLDBERG@SHEPPARDMULLIN.COM

Robert J Uram
[COR LD NTC]
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center
San Francisco , CA 94111
USA
(415) 434-9100
Fax: 415-434-3947
<i>pro Hac Vice</ I>

Michael Mendibles
Plaintiff

Christopher Michael Loveland
[COR LD NTC]
Sheppard, Mullin, Richter & Hampton LLP

1300 I Street, NW
11TH Floor East
Washington , DC 20005
USA
(202) 772-5313
Fax: (202) 218-0020
Email: CLOVELAND@SHEPPARDMULLIN.COM

M Roy Goldberg
[COR LD NTC]
Sheppard Mullin Richter & Hampton LLP
1300 I Street, NW
11TH Floor East
Washington , DC 20005-3314
USA
(202) 218-0007
Fax: (202) 312-9425
Email: RGOLDBERG@SHEPPARDMULLIN.COM

Robert J Uram
[COR LD NTC]
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center
San Francisco , CA 94111
USA
(415) 434-9100
Fax: 415-434-3947
<i>pro Hac Vice</ I>

Evelyn Wilson
Plaintiff

Christopher Michael Loveland
[COR LD NTC]
Sheppard, Mullin, Richter & Hampton LLP
1300 I Street, NW
11TH Floor East
Washington , DC 20005
USA
(202) 772-5313
Fax: (202) 218-0020
Email: CLOVELAND@SHEPPARDMULLIN.COM

M Roy Goldberg
[COR LD NTC]
Sheppard Mullin Richter & Hampton LLP
1300 I Street, NW
11TH Floor East
Washington , DC 20005-3314
USA
(202) 218-0007
Fax: (202) 312-9425
Email: RGOLDBERG@SHEPPARDMULLIN.COM

Robert J Uram
[COR LD NTC]
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center
San Francisco , CA 94111
USA
(415) 434-9100
Fax: 415-434-3947
<i>pro Hac Vice</ I>

Antoine Azevedo
Plaintiff

Christopher Michael Loveland
[COR LD NTC]
Sheppard, Mullin, Richter & Hampton LLP
1300 I Street, NW

	11TH Floor East Washington , DC 20005 USA (202) 772-5313 Fax: (202) 218-0020 Email: CLOVELAND@SHEPPARDMULLIN.COM M Roy Goldberg [COR LD NTC] Sheppard Mullin Richter & Hampton LLP 1300 I Street, NW 11TH Floor East Washington , DC 20005-3314 USA (202) 218-0007 Fax: (202) 312-9425 Email: RGOLDBERG@SHEPPARDMULLIN.COM Robert J Uram [COR LD NTC] Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center San Francisco , CA 94111 USA (415) 434-9100 Fax: 415-434-3947 <I>pro Hac Vice</ I>
Ken Salazar in His Official Capacity as Secretary of The United States Department of The Interior Defendant	Kenneth Dean Rooney [COR LD NTC] US Department of Justice Enrd/Natural Resources Section 601 D Street, NW Washington , DC 20004 USA (202) 514-9269 Fax: (202) 305-0506 Email: KENNETH.ROONEY@USDOJ.GOV
Larry Echo Hawk in His Official Capacity as Assistant Secretary-Indian Affairs of The United States Department of The Interior Defendant	Kenneth Dean Rooney [COR LD NTC] US Department of Justice Enrd/Natural Resources Section 601 D Street, NW Washington , DC 20004 USA (202) 514-9269 Fax: (202) 305-0506 Email: KENNETH.ROONEY@USDOJ.GOV
Michael Black in His Official Capacity as Director of The Bureau of Indian Affairs Within The United States Department of The Interior Defendant	Kenneth Dean Rooney [COR LD NTC] US Department of Justice Enrd/Natural Resources Section 601 D Street, NW Washington , DC 20004 USA (202) 514-9269 Fax: (202) 305-0506 Email: KENNETH.ROONEY@USDOJ.GOV
California Valley Miwok Tribe Movant	Robert A Rosette [COR LD NTC] Rosette & Associates, PC 565 West Chandler Boulevard Suite 212

Chandler , AZ 85225
USA
(480) 889-8990
Fax: (480) 889-8997
Email: ROSETTE@ROSETTELAW.COM

M Roy Goldberg
[COR LD NTC]
Sheppard Mullin Richter & Hampton LLP
1300 I Street, NW
11TH Floor East
Washington , DC 20005-3314
USA
(202) 218-0007
Fax: (202) 312-9425
Email: RGOLDBERG@SHEPPARDMULLIN.COM

Date	#	Proceeding Text	Source
01/24/2011	1	COMPLAINT against MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Filing fee $ 350, receipt number 4616035910) filed by MICHAEL MENDIBLES, YAKIMA DIXIE, EVELYN WILSON, TRIBAL COUNCIL, ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, VELMA WHITEBEAR, ANTONIA LOPEZ. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Civil Cover Sheet)(rdj) (Attachment 1 replaced on 1/25/2011) (dr) (Entered: 01/25/2011)	
01/24/2011	--	SUMMONS (5) Issued as to MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR, U.S. Attorney and U.S. Attorney General (rdj) (Entered: 01/25/2011)	
01/24/2011	2	NOTICE OF RELATED CASE by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. Case related to Case No. 05-739. (rdj) (Entered: 01/25/2011)	
02/03/2011	3	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. Date of Service Upon U.S. Attorney 1/27/2011. (Answer due for ALL FEDERAL DEFENDANTS by 3/28/2011.), RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. MICHAEL BLACK served on 1/27/2011; LARRY ECHO HAWK served on 1/27/2011; KEN SALAZAR served on 1/27/2011 (Goldberg, M.) (Entered: 02/03/2011)	
02/03/2011	4	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 01/27/2011. (Goldberg, M.) (Entered: 02/03/2011)	
02/03/2011	5	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to MICHAEL BLACK served on 1/27/2011; LARRY ECHO HAWK served on 1/27/2011; KEN SALAZAR served on 1/27/2011. (See Docket Entry 3 to view document) (jf,) (Entered: 02/04/2011)	
03/07/2011	6	NOTICE of Appearance by Kenneth Dean Rooney on behalf of All Defendants (Rooney, Kenneth) (Main Document 6 replaced to correct case number on 3/8/2011) (jf,). (Entered: 03/07/2011)	
03/08/2011	7	Consent MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Robert J. Uram, :Firm- Sheppard Mullin Richter & Hampton LLP, :Address- 4 Embarcadero Center, 17th Floor, San Francisco, CA 94111. Phone No. - (415) 434-9100. Fax No. - (415) 434-3947 by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Exhibit Declaration of Robert J. Uram, # 2 Text of Proposed Order) (Goldberg, M.) (Entered: 03/08/2011)	
03/16/2011	8	WITHDRAWN BY COUNSEL (SEE DOCKET ENTRY 19)..... MOTION for Preliminary Injunction by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Affidavit Exhibit 1 to Motion, # 2 Exhibit Exhibit A to Affidavit of Robert Uram, # 3 Exhibit Exhibit B to Affidavit of Robert Uram, # 4 Exhibit Exhibit C to Affidavit of Robert Uram, # 5 Exhibit Exhibit D to Affidavit of Robert Uram, # 6 Exhibit Exhibit E to Affidavit of Robert Uram, # 7 Exhibit Exhibit F to Affidavit of Robert Uram, # 8 Exhibit Exhibit G to Affidavit of Robert Uram, # 9 Exhibit Exhibit H to Affidavit of Robert	

		Uram, # 10 Exhibit Exhibit I to Affidavit of Robert Uram, # 11 Exhibit Exhibit J to Affidavit of Robert Uram, # 12 Exhibit Exhibit K to Affidavit of Robert Uram, # 13 Exhibit Exhibit L to Affidavit of Robert Uram, # 14 Exhibit Exhibit M to Affidavit of Robert Uram, # 15 Exhibit Exhibit N to Affidavit of Robert Uram, # 16 Exhibit Exhibit O to Affidavit of Robert Uram to, # 17 Affidavit Exhibit 2 to Motion, # 18 Affidavit Exhibit 3 to Motion, # 19 Affidavit Exhibit 4 to Motion, # 20 Affidavit Exhibit 5 to Motion, # 21 Affidavit Exhibit 6 to Motion, # 22 Affidavit Exhibit 7 to Motion, # 23 Affidavit Exhibit 8 to Motion, # 24 Affidavit Exhibit 9 to Motion, # 25 Affidavit Exhibit 10 to Motion, # 26 Text of Proposed Order)(Goldberg, M.) Modified on 4/8/2011 (jf,). (Entered: 03/16/2011)
03/17/2011	9	First MOTION for Extension of Time to File Answer by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/17/2011)
03/17/2011	--	MINUTE ORDER: It is hereby ORDERED that the defendants file by April 1, 2011 their opposition to plaintiffs' motion for a preliminary injunction. Plaintiffs shall file by April 8, 2011 their reply. Signed by Judge Richard W. Roberts on 3/17/11. (lcrwr1) (Entered: 03/17/2011)
03/17/2011	--	MINUTE ORDER: It is hereby ORDERED that the defendants' motion 9 for an extension of time be, and hereby is, GRANTED. Defendants shall file an answer or other response to the plaintiffs' complaint by April 27, 2011. Signed by Judge Richard W. Roberts on 3/17/11. (lcrwr1) (Entered: 03/17/2011)
03/17/2011	--	Set/Reset Deadlines: Defendant's Answer to the Complaint due by 4/27/2011. (hs) (Entered: 03/17/2011)
03/17/2011	--	Set/Reset Deadlines: Defendant's Response to Motion for Preliminary Injunction due by 4/1/2011; Plaintiff's Reply due by 4/8/2011. (hs) (Entered: 03/17/2011)
03/17/2011	10	NOTICE of Appearance by Robert A. Rosette on behalf of CALIFORNIA VALLEY MIWOK TRIBE (znmw,) (Entered: 03/22/2011)
03/17/2011	11	MOTION to Intervene as a Defendant by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Text of Proposed Order re Motion to Intervene, # 2 Declaration re Motion to Intervene, # 3 Motion to Dismiss, # 4 Text of Proposed Order re Motion to Dismiss, # 5 Declaration re Motion to Dismiss, # 6 Exhibit A to Declarations re Motion to Intervene and Dismiss, # 7 Exhibit B to Declarations re Motion to Intervene and Dismiss, # 8 Exhibit C to Declarations re Motion to Intervene and Dismiss, # 9 Exhibit D to Declarations re Motion to Intervene and Dismiss, # 10 Exhibit E to Declarations re Motion to Intervene and Dismiss, # 11 Exhibit F to Declarations re Motion to Intervene and Dismiss, # 12 Exhibit G to Declarations re Motion to Intervene and Dismiss)(znmw,) (Entered: 03/22/2011)
03/22/2011	12	NOTICE of Appearance by Christopher Michael Loveland on behalf of All Plaintiffs (Loveland, Christopher) (Entered: 03/22/2011)
03/22/2011	13	MOTION to Expedite Time to Rule on the California Valley Miwok's Motion for Leave to Intervene as Defendant by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Affidavit of Robert A. Rosette)(Rosette, Robert) (Entered: 03/22/2011)
03/25/2011	--	MINUTE ORDER: It is hereby ORDERED that the parties file by March 29, 2011 responses to the motion 11 to intervene. Signed by Judge Richard W. Roberts on 3/25/11. (lcrwr1) (Entered: 03/25/2011)
03/25/2011	--	Set/Reset Deadlines: Parties Responses to Motion to Intervene due by 3/29/2011. (hs) (Entered: 03/25/2011)
03/29/2011	14	Memorandum in opposition to re 11 MOTION to Intervene filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Exhibit 1 -Affidavit of Robert Uram, # 2 Exhibit A to Robert Uram Affidavit, # 3 Exhibit B to Robert Uram Affidavit)(Goldberg, M.) (Entered: 03/29/2011)
03/29/2011	15	ENTERED IN ERROR.....MEMORANDUM re 11 MOTION to Intervene filed by CALIFORNIA VALLEY MIWOK TRIBE by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Rooney, Kenneth) Modified on 3/30/2011 (jf,). (Entered: 03/29/2011)
03/29/2011	16	RESPONSE re 11 MOTION to Intervene filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (jf,) (Entered: 03/30/2011)
03/30/2011	--	NOTICE OF CORRECTED DOCKET ENTRY: Document No. re 15 Memorandum was entered in error and will be refiled by the clerk's office under the correct category.(jf,) (Entered: 03/30/2011)

03/30/2011	--	MINUTE ORDER: It is hereby ORDERED that the California Valley Miwok Tribe file by April 4, 2011 a reply in support of its motion to intervene. Signed by Judge Richard W. Roberts on 3/30/11. (lcrwr1) (Entered: 03/30/2011)
03/31/2011	--	Set/Reset Deadlines: Plaintiff's Reply to Motion to Intervene due by 4/4/2011. (hs) (Entered: 03/31/2011)
03/31/2011	17	Consent MOTION for Extension of Time to File Response/Reply as to 8 MOTION for Preliminary Injunction by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/31/2011)
03/31/2011	18	MOTION for Extension of Time to Modify Briefing Schedule by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Affidavit of Robert A. Rosette, # 2 Text of Proposed Order)(Rosette, Robert) (Entered: 03/31/2011)
04/01/2011	--	MINUTE ORDER: It is hereby ORDERED that the defendants' consent motion 17 for an extension of time be, and hereby is, GRANTED. Defendants' opposition to plaintiffs' motion for a preliminary injunction is due by April 5, 2011, and plaintiffs' reply is due by April 12, 2011. Signed by Judge Richard W. Roberts on 4/1/11. (lcrwr1) (Entered: 04/01/2011)
04/01/2011	--	MINUTE ORDER: It is hereby ORDERED that the plaintiffs' consent motion 7 be, and hereby is, GRANTED, and Robert J. Uram is admitted to appear pro hac vice. Signed by Judge Richard W. Roberts on 4/1/11. (lcrwr1) (Entered: 04/01/2011)
04/01/2011	19	NOTICE OF WITHDRAWAL OF MOTION by CALIFORNIA VALLEY MIWOK TRIBE re 8 MOTION for Preliminary Injunction as Moot (Attachments: # 1 Exhibit 2011 Decision) (Goldberg, M.) (Entered: 04/01/2011)
04/04/2011	--	Set/Reset Deadlines: Defendant's Response due by 4/5/2011; Plaintiff's Reply due by 4/12/2011. (hs) (Entered: 04/04/2011)
04/04/2011	20	REPLY to opposition to motion re 11 MOTION to Intervene filed by CALIFORNIA VALLEY MIWOK TRIBE. (Attachments: # 1 Affidavit of Robert A. Rosette, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G) (Rosette, Robert) (Entered: 04/04/2011)
04/07/2011	--	MINUTE ORDER: In light of the plaintiffs' notice of withdrawal of their motion for a preliminary injunction, it is hereby ORDERED that the California Valley Miwok Tribe's motion 18 for an extension of time be, and hereby is, DENIED as moot. Signed by Judge Richard W. Roberts on 4/7/11. (lcrwr1) (Entered: 04/07/2011)
04/22/2011	21	Second MOTION for Extension of Time to File Answer re 1 Complaint, by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Text of Proposed Order) (Rooney, Kenneth) (Main Document 21 replaced on 4/26/2011) (jf,). (Entered: 04/22/2011)
04/25/2011	--	MINUTE ORDER: It is hereby ORDERED that the defendants' unopposed motion 21 for an extension of time be, and hereby is, GRANTED. Defendants' answer or other response to the complaint is due by May 27, 2011. Signed by Judge Richard W. Roberts on 4/25/11. (lcrwr1) (Entered: 04/25/2011)
04/25/2011	--	NOTICE OF ERROR re 21 Motion for Extension of Time to File Answer; emailed to kenneth.rooney@usdoj.gov, cc'd 8 associated attorneys -- The PDF file you docketed contained errors: 1. Incorrect header/caption/case number, 2. Please refile document, 3. Entered in Error; please refile with correct case number. (znmw,) (Entered: 04/25/2011)
04/26/2011	--	Set/Reset Deadlines: Answer/Response to the Complaint due by 5/27/2011. (hs) (Entered: 04/26/2011)
05/19/2011	22	Joint MOTION to Stay Litigation by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Text of Proposed Order) (Goldberg, M.) (Entered: 05/19/2011)
05/25/2011	--	MINUTE ORDER: It is hereby ORDERED that the parties' joint motion 22 to stay be, and hereby is, GRANTED. The case is stayed and administratively closed until July 7, 2011, by which date the parties shall file a joint status report and proposed order. Signed by Judge Richard W. Roberts on 5/25/11. (lcrwr1) (Entered: 05/25/2011)
07/07/2011	23	STATUS REPORT Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Motion for Extension of the Temporary Stay of Litigation by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Plaintiffs' Proposed Order, # 2 Defendants' Proposed Order)(Rooney, Kenneth) (Entered:

		07/07/2011)
07/11/2011	24	ORDER; Granting Joint Motion for Temporary Stay of Litigation, Joint Status Report due by 8/15/2011, Signed by Judge Richard W. Roberts on 7/11/2011. (hs) (Entered: 07/11/2011)
08/12/2011	25	STATUS REPORT Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Unopposed Motion for Extension of the Temporary Stay of Litigation by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 08/12/2011)
08/15/2011	26	ORDER, Staying case until 09/02/11; Joint Status Report due by 9/2/2011. Signed by Judge Richard W. Roberts on 8/12/11. (See Order for detail) (gdf) (Entered: 08/15/2011)
09/01/2011	27	STATUS REPORT AND PROPOSED ORDER REGARDING THE STATUS OF THE RECONSIDERED DECISION OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 09/01/2011)
09/02/2011	28	NOTICE of Filing Emergency Supplement to Motion to Intervene by CALIFORNIA VALLEY MIWOK TRIBE re 15 Memorandum (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Rosette, Robert) (Entered: 09/02/2011)

EXHIBIT G

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 6-500
Sacramento, CA 95814

IN REPLY REFER TO

MAR 26 2004

Certified Mail No.7003 1680 0002 3896 9127
Return Receipt Requested

Ms. Sylvia Burley, Chairperson
California Valley Miwok Tribe
10601 Escondido Pl.
Stockton, California 95121

Dear Ms. Burley:

This letter acknowledges our February 11, 2004, receipt of a document represented to be the tribal constitution for the California Valley Miwok Tribe. It is our understanding that the Tribe has shared this tribal constitution with the Bureau of Indian Affairs (BIA) in an attempt to demonstrate that it is an "organized" tribe. Regretfully, we must disagree that such a demonstration is made.

Although the Tribe has not requested any assistance or comments from this office in response to your document, we provide the following observations for your consideration. As you know, the BIA's Central California Agency (CCA) has a responsibility to develop and maintain a government-to-government relationship with each of the 54 federally recognized tribes situated within CCA's jurisdiction. This relationship, includes among other things, the responsibility of working with the person or persons from each tribe who either are rightfully elected to a position of authority within the tribe or who otherwise occupy a position of authority within an unorganized tribe. To that end, the BIA has recognized you, as a person of authority within the California Valley Miwok Tribe. However, the BIA does not yet view your tribe to be an "organized" Indian Tribe and this view is borne out not only by the document that you have presented as the tribe's constitution but additionally, by our relations over the last several decades with members of the tribal community in and around Sheep Ranch Rancheria.(Let me emphasize that being an organized vis-à-vis unorganized tribe ordinarily will not impact either your tribe's day-to-day operations but could impact your tribe's continued eligibility for certain grants and services from the United States).

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. We are unaware of any efforts to involve Yakima Dixie or Mr. Dixie's brother Melvin Dixie or any offspring of Merle Butler, Tillie Jeff or Lenny Jeff, all persons who are known to have resided at Sheep Ranch Rancheria at various times in the past 75 years and persons who have inherited an interest in the Rancheria. We are also not aware of any efforts to involve Indians(such as Lena Shelton) and their descendents who once lived adjacent to Sheep Ranch Rancheria or to investigate the possibility of involving a neighboring group. We are aware that the Indians of Sheep Ranch Rancheria were in fact, part of a larger group of Indians residing less then 20 miles away at West Point. Indeed, at your February 23, 2004 deposition, you yourself testified you were at one time of the West Point Indian Community; we understand as well, that you had siblings residing there for many years. The BIA remains available, upon your request, to assist you in identifying the members of the local Indian community, to assist in disseminating both individual and pubic notices, facilitating meetings, and otherwise providing logistical support.

It 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. We are very concerned about the designated "base roll" for the tribe as identified in the submitted tribal constitution; this "base roll" contains only the names of five living members all but one whom were born between 1960 and 1996, and therefore would imply that there was never any tribal community in and around Sheep Ranch Rancheria until you met with Yakima Dixie, asking for his assistance to admit you as a member. The base roll, thus, suggests 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,

Base membership rolls are used to establish a tribe's cohesiveness and community at a point in time in history. They would normally contain the names of individuals listed on historical documents which confirm Native American tribal relationships in a specific geographical region. Since tribes and bands themselves did not usually possess such historical documents, therefore, tribal base rolls have included persons listed on old census rolls, Indian Agency rolls, voters rolls, etc. Our experience with your sister Miwok tribes (e.g., Shingle Springs Rancheria, Tuolumne Rancheria, Ione Band, etcetera) leads us to believe that Miwok tradition favors base rolls identifying persons found in Miwok tribes stretching from Amador County in the North to Calavaras and Mariposa Counties in the South. The Base and Enrollment criteria for these tribes vary; for example, Amador County tribes use the 1915 Miwok Indian Census of Amador County, El Dorado County tribes utilize the 1916 Indian Census Roll, tribe(s) in Tuolumne County utilize a 1934 IRA voters' list. The base roll typically constitutes the

cornerstone of tribal membership and based upon our experience, has been the basic starting point and foundation for each of the Miwok tribes in our jurisdiction, i.e., the Jone Band of Miwok Indians, Shingle Springs Rancheria and Tuolumne Rancheria.

We must continue to emphasis the importance of the participation of a greater tribal community in determining membership criteria. We reiterate our continued availability and willingness to assist you in this process and that via PL 93-638 contracts intended to facilitate the organization or reorganization of the tribal community, we have already extended assistance. We urge you to continue the work that you have begun towards formal organization of the California Valley Miwok Tribe.

If we can assist your efforts in any way , please contact Raymond Fry, Manager, Tribal Services, at (916) 930-3794.

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, 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 or notice is the date it is post marked or the date it is personally delivered to this office. Your notice of appeal must include your 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 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 you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal.

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,

Sgd. Dale Risling, Sr.

Dale Risling, Sr.
Superintendent

CC: Pacific Regional Director
Debora Luther, Assistant US Attorney
Myra Spicker, Deputy Solicitor
Yakima Dixie-Tribal Member

EXHIBIT H

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 I

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

CERTIFIED MAIL NO. 7003 1680 0002 3892 1019
RETURN RECEIPT REQUESTED

NOV - 6 2006

Ms. Silvia Burley
10601 Escondido Place
Stockton, California 95212

CERTIFIED MAIL NO. 7003 1680 0002 3892 1002
RETURN RECEIPT REQUESTED

Mr. Yakima K. Dixie
c/o Mr. Chadd Everone
2054 University Avenue, #407
Berkeley, California 94704

Dear Ms. Burley and Mr. Dixie:

The Bureau of Indian Affairs (BIA) remains committed to assist the California Valley Miwok Tribe (Tribe) (formerly Sheep Ranch Rancheria of the Me-Wuk Indians of California) in its 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. We are writing you because of your claim of leadership of the Tribe.

The Central California Agency (Agency) has been meeting with both of you and your representatives for some time to discuss issues and to offer assistance in your organizational efforts for the Tribe. It is evident, however, that the ongoing leadership dispute is at an impasse and the likelihood of this impasse changing soon seems to be remote. Therefore, we renew our offer to assist the Tribe in the organizational process. Our intention is not to interfere with the Tribe's right to govern itself. Rather, we make this offer consistent with the well-established principle that the BIA has a responsibility to determine that it is dealing with a government that is representative of the Tribe as a whole. The authority and responsibility to take this action becomes evident once there is clear evidence that the dispute between competing leadership factions, such as yours, threatens to impair the government-to-government relationship between the Tribe and the United States.

The Agency, therefore, 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 potential members to the meeting where the members will discuss the issues and needs confronting the Tribe. We have used this sort of general council meeting approach in other instances to help tribes reorganize when for various reasons the tribes lacked an organized tribal government that represented the entire membership.

It appears that you each have determined your membership criteria, and membership, and developed constitutions or governing documents. We understand, however, you do not agree on certain issues that are fundamental to the process of building an organized government. We propose to discuss the following issues that are preventing you from moving forward as a unified tribe:

- form of government;
- organization under a federal statute (should the tribe decide to adopt a constitution);
- should the tribe adopt a constitution, what constitution will be used: the Dixie or Burley constitution, combination of both, or another;
- determining the census where membership is first listed, i.e., 1916 Sheep Ranch Rancheria census or other document;
- determining leadership of the tribe, i.e., holding a transitional election or agreeing to some type of power sharing.

The general council first needs to determine the type of government your tribe will adopt. Tribes do not always adopt constitutions; some govern according to the tribe's tradition or have some sort of power sharing in an open participatory type of government. 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.

The Agency will coordinate the meeting by setting the date, time, location and other arrangements, but we would appreciate your suggestions, date, time, location, and possible agenda items. The BIA offers the assistance of an independent observer/mediator to facilitate the meeting or meetings. Please respond to the Agency concerning your willingness to participate in a meeting to discuss the issues in depth and begin the resolution process.

We very much desire that you both participate. We intend to conduct a fair and open process in which supporters of each of you can participate and be heard. We will proceed with this process, however, even if one or both of you declines to participate.

Please contact Carol Rogers-Davis, Acting Tribal Operations Officer, Central California Agency, at (916) 930-3764, to work with her on setting up the meeting.

Sincerely,

Troy Burdick
Superintendent

cc: Director, Pacific Region
Regional Solicitor
Director, Bureau of Indian Affairs
Assistant Solicitor, Branch of Tribal Government & Alaska

EXHIBIT J

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 K

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 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On September 6, 2011, I served the attached **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION AND DECLARATION OF SYLVIA A. CATES IN SUPPORT THEREOF; REQUEST FOR JUDICIAL NOTICE** by:

OVERNIGHT MAIL: by placing a true copy thereof enclosed in a sealed envelope and causing such envelope to be personally delivered by a Golden State Overnight courier service to the office of the addressee listed below:

E-MAIL TRANSMISSION: by causing such document listed above to be served via e-mail transmission on the parties in this action at the e-mail address listed below:

Robert A. Rosette Rosette & Associates 193 Blue Ravine Road, Suite 255 Folsom, CA 95630 rosette@rosettelaw.com	Manuel Corrales, Jr. 11753 Avenida Sivrita San Diego, CA 92128 mannycorrales@yahoo.com
Terry Singleton Singleton & Associates 1950 Fifth Avenue, Suite 200 San Diego, CA 92101 terry@terrysingleton.com	Thomas W. Wolfrum 1333 North California Blvd., Suite 150 Walnut Creek, CA 94596 twolfrum@wolfrumlaw.com
Matthew McConnell Sheppard, Mullin, Richter & Hampton 12275 El Camino Real, Suite 200 San Diego, CA 92130 mmcconnell@sheppardmullin.com	

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 September 6, 2011, at Sacramento, California.

Linda Thorpe
Declarant

Linda Thorpe
Signature

KAMALA D. HARRIS
Attorney General of California
SYLVIA A. CATES
Senior Assistant Attorney General
RANDALL A. PINAL
Deputy Attorney General
State Bar No. 192199
SYLVIA A. CATES
Deputy Attorney General
State Bar No. 111408
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-5484
Fax: (916) 327-2319
E-mail: Sylvia.Cates@doj.ca.gov
Attorneys for Defendant
California Gambling Control Commission

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 NOTICE OF LODGMENT OF FEDERAL AUTHORITIES IN SUPPORT OF OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION** Date: September 7, 2011 Time: 2:30 p.m. Dept: 62 Judge: The Honorable Ronald L. Styn Trial Date: None Set Action Filed: January 8, 2008

The Commission hereby submits the following federal authorities relied upon in its opposition to Plaintiff's ex parte application:

1. *Miami Tribe of Oklahoma v. United States* (D.Kan. July 24, 2008, Civ. A. No. 03-2220-DJW) 2008 U.S. Dist. LEXIS 60365.

Dated: September 6, 2011

Respectfully Submitted,

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

SYLVIA A. CATES
Deputy Attorney General
Attorneys for Defendant
California Gambling Control Commission

SA2008300115
31337960.doc

ATTACHMENT 1

MIAMI TRIBE OF OKLAHOMA, Plaintiff, v. UNITED STATES OF AMERICA, et al, Defendants.

Civil Action Case No. 03-2220-DJW

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

2008 U.S. Dist. LEXIS 60365

July 24, 2008, Decided
July 24, 2008, Filed

SUBSEQUENT HISTORY: Injunction denied by, Request denied by, Claim dismissed by *Miami Tribe of Okla. v. United States, 2010 U.S. Dist. LEXIS 240 (D. Kan., Jan. 4, 2010)*

PRIOR HISTORY: *Miami Tribe of Okla. v. United States, 2006 U.S. Dist. LEXIS 94569 (D. Kan., Dec. 29, 2006)*

COUNSEL: [*1] For Miami Tribe of Oklahoma, Plaintiff: Kip A. Kubin, LEAD ATTORNEY, Bottaro, Morefield & Kubin, LC, Kansas City, MO; Christopher J. Reedy, Olathe, KS.

For USA, Department of Interior, Secretary, Gail A. Norton, Bureau of Indian Affairs, Assistant Secretary of Interior, Aurene Martin, Defendants: David D. Zimmerman, LEAD ATTORNEY, Office of United States Attorney -- Kansas City, Kansas City, KS.

JUDGES: David J. Waxse, United States Magistrate Judge.

OPINION BY: David J. Waxse

OPINION

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Miami Tribe's Motion for Remand of Defendants' Response to Count I (doc. 98) and Defendants' Motion for Order Establishing Case Resolution Procedure (doc. 100). Miami Tribe requests in its motion that the Court remand Defendants' October 23, 2007 decision, issued by Defendants pursuant to the Court's previous remand on Defendants' decision denying James Smith's application to gift convey one-third of his 3/38 interest in the Maria Christiana Reserve No. 35 to the Miami Tribe of Oklahoma. Defendants have filed their motion asking the Court to issue an order directing Miami Tribe to exhaust the administrative appeal procedures with regard to the October 23, 2007 decision [*2] before seeking review of that post-remand decision. As explained below, Plaintiff Miami Tribe's Motion for Remand is denied and Defendants' Motion for Order Establishing Case Management Resolution Procedure is granted in part and denied in part.

I. Background [1]

1 See the Court's previous rulings on June 22, 2005(doc. 29), and November 23, 2005 (doc. 37) for more detailed background and historical information.

James E. Smith ("Smith"), a member of the Miami Tribe of Oklahoma ("Miami Tribe"), holds a 3/38 restricted undivided interest in the Maria Christiana allotment, Miami No. 35 ("Miami Reserve"), located in

Miami County, Kansas. In 2001, Smith submitted his application to the BIA for approval to gift transfer one-third of his 3/38 undivided interest to Miami Tribe. The Bureau of Indian Affairs ("BIA") denied Smith's application for gift conveyance on January 10, 2002.

On May 5, 2003, Miami Tribe commenced the present action in this Court. Miami Tribe's Complaint asserts three Counts: Count I of the Complaint seeks judicial review of the BIA's decision under the Administrative Procedures Act ("APA"). [2] Count II alleges that Defendants breached their fiduciary and trust duties to Miami [*3] Tribe. Count III alleges that Defendants have violated substantive and procedural due process and property rights of Miami Tribe. Early in the case, the parties agreed to bifurcate Count I (APA, Injunctive Relief, and Violation of *25 U.S.C. § 2216*) of Plaintiff's Complaint from Counts II (Breaches of Trust) and III (Constitutional Violations) and to proceed first with Count I. [3]

2 *5 U.S.C. § 702.*

3 *See* Scheduling Order (doc. 6).

On June 22, 2005, the Court issued its Memorandum and Order reversing the BIA's January 11, 2002 decision that denied Smith's application for approval to gift convey one-third of his interest in Miami Reserve to Miami Tribe and instructed the BIA to forthwith approve Smith's application.

On July 7, 2005, Defendants filed their Motion for Reconsideration of the Court's June 22, 2005 Memorandum and Order, requesting that the Court reconsider its decision and affirm the BIA's denial of Smith's application. Defendants alternatively requested the Court remand the matter to the BIA rather than reversing the BIA's decision with directions to approve Smith's application. On November 23, 2005, the Court granted Defendants' Motion for Reconsideration as to the portion of [*4] the Court's Memorandum and Order that directed the BIA to forthwith approve Smith's application to transfer one-third of his 3/38 interest in Miami Reserve to Miami Tribe. Upon reconsideration, the Court remanded the case back to the BIA for further proceedings consistent with the Court's June 22, 2005 Memorandum and Order. Specifically, the Court remanded the matter for the BIA to consider the proposed transfer's long-term impact on further fractionation upon Miami Reserve.

On May 22, 2006, the Court entered a Memorandum and Order staying Counts II and III pending administrative agency disposition of the remand proceedings previously ordered on Count I. It further ordered the parties to file status reports with the Court at 120-day intervals advising the Court of the status of the BIA's remand proceedings.

In October 2007, the parties filed their Status Reports advising the Court that the BIA had issued a decision dated October 23, 2007, which notified Mr. Smith that his application for gift deed was approved. The letter further provided:

> Your letter dated April 23, 2007, provided clarification that you wish to transfer 1/3 or your undivided interest to the Tribe with the interest to [*5] the Tribe to remain in "trust status." Therefore, the proposed gift conveyance will be processed as a two-part transaction consisting of a disposal by your and an acquisition by the Tribe in trust status. The disposal portion is considered in accordance with *25 CFR 152.17* and the acquisition portion will be processed in accordance with 25 CFR 151 upon the receipt of an application for a trust acquisition from the Tribe. In this regard, by copy of this letter, the Tribe is advised of the Bureau's findings that consideration will be given to the acquisition upon receipt of the application from the Tribe.

In its Status Report, Miami Tribe advised the Court that it objected to the portion of the BIA's October 23, 2007 decision that changed the "trust status" of the interest sought to be transferred by Mr. Smith to Miami Tribe. It requested remand of the BIA's October 23, 2007 Determination Letter "to conclude that the Miami Reserve Indian Land, particularly that interest transferred by Smith to the Miami Tribe, unequivocally remains held in trust by the United States of America for the benefit of the Miami Tribe of Oklahoma consistent with the May 3, 1989 Court Order." [4]

4 Status Report [*6] of Miami Tribe - Oct. 29, 2007 (doc. 93), p. 3.

The Court held status conferences on December 17,

2007 and January 24, 2008 regarding the parties' dispute as to the status of the interest in Miami Reserve to be transferred by Mr. Smith to Miami Tribe, as set forth in the Bureau of Indian Affair's October 23, 2007 letter to Mr. Smith. The Court set a deadline for the parties to file motions if they were not able to resolve their dispute by agreement. Miami Tribe thereafter filed its Motion for Remand of Defendants' Response to Count I (doc. 98) and Defendants filed their Motion for Order Establishing Case Resolution Procedure (doc. 100).

After the parties filed their motions, the Regional Director of the BIA issued a notice of administrative appeal rights on February 6, 2008. Mr. Smith filed a notice of administrative appeal to the Interior Board of Indian Appeals on February 14, 2008. The Interior Board of Indian Appeals ("IBIA") thereafter issued a Pre-Docketing Notice on February 21, 2008.

II. Summary of the parties' positions

In its Motion for Remand of Defendants' Response to Count I, Miami Tribe requests that the Court remand the BIA's October 23, 2007 decision and mandate that Defendants [*7] recognize the trust status of Miami Reserve as set forth in Judge O'Connor's partition order entered in *Midwest Inv. Properties v. DeRome*, No. 86-2487-0 (D. Kan. May 3, 1989). It further asks that the Court order Defendants to comply with *25 U.S.C. § 2216(d)* in processing Mr. Smith's transfer "in trust" to Miami Tribe. It argues that the BIA's October 23, 2007 decision is unreasonable, arbitrary, capricious, and an abuse of discretion in that Defendants failed to express any reason why Mr. Smith's interest should not be transferred to the United States to be held in trust for the benefit of the Miami Tribe consistent with the 1989 Order partitioning Miami Reserve and *25 U.S.C. § 2216(d)*. Miami Tribe further requests that the Court set a deadline of no more than sixty days for Defendants to approve the transfer in trust for the benefit of the Miami Tribe or otherwise show their determination is supported by reason and not in violation of the law or the 1989 partition order. It finally requests an award of its attorneys fees pursuant to *28 U.S.C. § 2412(d)(1)*.

Defendants assert two main arguments in their response to Miami Tribe's motion and in their Motion for Order Establishing Case [*8] Resolution Procedure. First, they argue that the Court should require Miami Tribe to exhaust its administrative remedies on remand before seeking judicial review of the BIA's October 23, 2007 decision. This would allow the BIA, through the administrative appeal process, to address Miami Tribe's objections to the Regional Director's October 23, 2007 decision and develop a full administrative record. They ask that the Court stay all further action with regard to Count I until the available administrative appeal procedures have been exhausted.

Second, they argue that, contrary to Miami Tribe's claim that Mr. Smith's interest in the land is held in trust, Mr. Smith's property interest in Miami Reserve to be transferred to Miami Tribe is held only in restricted fee status and is not trust property. They ask the Court to reject Miami Tribe's request that the Court enter any instruction that would require them to take Miami Reserve in trust.

III. Should the Court require exhaustion of administrative remedies of the agency's post-remand decision?

Defendants request that the Court require Miami Tribe to exhaust the available administrative procedures for review of the BIA's October 23, 2007 and [*9] February 6, 2008 Regional Office letters. They argue that the Court should follow the agency's regulations, *25 C.F.R. § 2.6(a)* and *43 C.F.R. § 1.314(a)*, and assure that the remand is administratively exhausted before the Court attempts to review a decision that federal regulations have explicitly deemed non-final agency action and not reviewable under the APA. They further argue that requiring Miami Tribe to exhaust its available remedies will allow the agency with its expertise review and address the objections of Miami Tribe and, to the extent that there may be any errors in the Regional Director's decision, correct such errors. Additionally, if the Court respects the mandated administrative review procedure, it will allow Miami Tribe and the agency to develop a complete administrative record on the issue of whether Mr. Smith's interest in the Miami Reserve is trust property or restricted fee property.

Miami Tribe points out that the BIA's October 23, 2007 decision was issued by the BIA upon remand from this Court. This is not the first time the parties have been through the administrative process. It argues that requiring it to re-circulate through the administrative process after [*10] a prior remand from the Court gives Defendants the ability to put in Miami Tribe in an endless administrative loop having to exhaust each agency decision. It claims that the purpose behind administrative

exhaustion is to give officials and agencies in the administrative chain an opportunity to consider the issues and claims before submitting the matter to the court. It further claims that purpose has already been satisfied in this case.

Administrative exhaustion of agency action as a prerequisite to judicial review has its grounds in *5 U.S.C. § 704*, which applies to all challenges to agency action brought under the APA. [5] It provides that:

> Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, [*11] or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority. [6]

5 *Darby v. Cisneros, 509 U.S. 137, 154, 113 S. Ct. 2539, 125 L. Ed. 2d 113 (1993).*

6 *5 U.S.C. § 704.*

Applying *§ 704*, the Supreme Court, in *Darby v. Cisneros*, held that, when the APA applies, appeal to "superior agency authority" is a prerequisite to judicial review only when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review. [7] Courts are not free to impose an exhaustion requirement as a rule of judicial administration where the agency action has already become "final" under *§ 10(c)*. [8] Under *Darby*, exhaustion of administrative remedies is a prerequisite to judicial review only if (1) a statute or regulation explicitly requires an administrative appeal; and (2) there is a stay of the challenged action during the administrative review. [9]

7 *Darby, 509 U.S. at 154.*

8 *Id.*

9 *Id.*

The Court finds that the two relevant federal regulations cited by Defendants, *25 C.F.R. § 2.6(a)* and *43 C.F.R. § 4.314(a)*, require administrative appeal to superior agency authority before review. Under *25 C.F.R. § 2.4(e)*, [*12] the Interior Board of Indian Appeals ("IBIA"), pursuant to the provisions of 43 C.F.R. Part 4, Subpart D, decides appeals from a decision made by an Area Director. Finality of BIA decisions is governed by *25 C.F.R. § 2.6(a)*, which provides that:

> No decision, which at the time of its rendition is subject to appeal to a superior authority in the Department, shall be considered final so as to constitute Departmental action subject to judicial review under *5 U.S.C. 704*, unless when an appeal is filed, the official to whom the appeal is made determines that public safety, protection of trust resources, or other public exigency requires that the decision be made effective immediately. [10]

Furthermore, the federal regulation applicable to IBIA appeals, *43 C.F.R. § 4.314(a)*, provides that:

> No decision of an administrative law judge, Indian probate judge, or *BIA official* that at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under *5 U.S.C. 704*, unless it has been made effective pending a decision on appeal by order of the Board. [11]

10 *25 C.F.R. § 2.6(a).*

11 *43 C.F.R. § 4.314(a)* (emphasis added).

Applying [*13] these regulations, the Court finds that the October 23, 2007 decision of the Regional Director of the BIA is subject to appeal to the IBIA and has not been made effective pending a decision on appeal. As such, the decision is not yet a final agency action for purposes of APA review under *5 U.S.C. § 704*. Although the BIA's decision is made in a remand posture

from the Court, which retains jurisdiction over the remand proceedings, this does not render the regulations requiring administrative exhaustion of agency decisions inapplicable to the BIA's post-remand decision. The Court remanded the BIA's original decision denying Mr. Smith's application to transfer his interest to Miami Tribe. The BIA has now issued its decision upon remand approving Mr. Smith's transfer. Miami Tribe's objections to the BIA's process for Mr. Smith to dispose his interest and Miami Tribe to acquire the interest have never been considered or reviewed by the IBIA. It would be premature for the Court to review Miami Tribe's previously unheard objections to the BIA's October 23, 2007 decision without the agency first having the opportunity to consider those objections and to rule on them. Moreover, allowing administrative [*14] exhaustion will further permit the application of agency expertise on this area, the development of a factual record, and provide an opportunity for possible, if unlikely, resolution of the dispute without further involvement by the Court.

As the Court has determined that Miami Tribe must administratively exhaust the BIA's October 23, 2007 decision before seeking review of that decision, the Court need not address Defendants' second argument that the land interest sought to be transferred by Mr. Smith to Miami Tribe is only a restricted fee interest and is not held "in trust."

The Court therefore denies Miami Tribe's Motion for Remand of Defendants' Response to Count I (doc. 98) as premature and grants in part and denies in part Defendants' Motion for Order Establishing Case Resolution Procedure. Mr. Smith has filed his Notice of Appeal of the BIA's October 23, 2007 and February 6, 2008 decision letters and the IBIA has issued its Pre-Docketing Notice indicating that it has received Mr. Smith's Notice of Appeal. The administrative appeals procedures thus have already commenced. To address Miami Tribe's concerns with further delay associated with the agency appeals process, the Court [*15] orders that Defendants issue a final decision on Mr. Smith's appeal of the BIA's October 23, 2007 and February 6, 2008 decision letters **within ninety (90) days of the date of this Memorandum and Order**, unless Defendants show good cause why they cannot comply with this deadline. Defendants' request for additional time to renew their motion for entry of Rule 54(b) judgment on Count I and motion to dismiss counts II and III is denied without prejudice to refiling after Defendants issue a final decision on Mr. Smith's Notice of Appeal of the BIA's October 23, 2007 and February 6, 2008 decision letters.

IT IS THEREFORE ORDERED THAT Plaintiff Miami Tribe's Motion for Remand of Defendants' Response to Count I (doc. 98) is denied as premature, as set forth herein.

IT IS FURTHER ORDERED THAT Defendants' Motion for Order Establishing Case Resolution Procedure (doc. 100) is granted in part and denied in part. Defendants shall issue a final decision on Mr. Smith's appeal of the BIA's October 23, 2007 and February 6, 2008 decision letters **within ninety (90) days of the date of this Memorandum and Order**, unless Defendants show good cause why they cannot comply with this deadline.

IT IS FURTHER ORDERED [*16] **THAT** Defendants' request for additional time to renew their motion for entry of Rule 54(b) judgment on Count I and motion to dismiss counts II and III is denied without prejudice to refiling after Defendants issue a final decision on Mr. Smith's Notice of Appeal of the BIA's October 23, 2007 and February 6, 2008 decision letters.

IT IS SO ORDERED.

Dated at Kansas City, Kansas on this 24th day of July, 2008.

/s/ David J. Waxse

David J. Waxse

United States Magistrate Judge

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 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On September 6, 2011, I served the attached **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S NOTICE OF LODGMENT OF FEDERAL AUTHORITIES IN SUPPORT OF OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION** by:

OVERNIGHT MAIL: by placing a true copy thereof enclosed in a sealed envelope and causing such envelope to be personally delivered by a Golden State Overnight courier service to the office of the addressee listed below:

E-MAIL TRANSMISSION: by causing such document listed above to be served via e-mail transmission on the parties in this action at the e-mail address listed below:

Robert A. Rosette Rosette & Associates 193 Blue Ravine Road, Suite 255 Folsom, CA 95630 rosette@rosettelaw.com	Manuel Corrales, Jr. 11753 Avenida Sivrita San Diego, CA 92128 mannycorrales@yahoo.com
Terry Singleton Singleton & Associates 1950 Fifth Avenue, Suite 200 San Diego, CA 92101 terry@terrysingleton.com	Thomas W. Wolfrum 1333 North California Blvd., Suite 150 Walnut Creek, CA 94596 twolfrum@wolfrumlaw.com
Matthew McConnell Sheppard, Mullin, Richter & Hampton 12275 El Camino Real, Suite 200 San Diego, CA 92130 mmcconnell@sheppardmullin.com	

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 September 6, 2011, at Sacramento, California.

Linda Thorpe
Declarant

Signature