

Case No. \_\_\_\_\_

**IN THE CALIFORNIA COURT OF APPEAL  
FOURTH APPELATE DISTRICT, DIVISION ONE**

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**CALIFORNIA VALLEY MIWOK TRIBE,**  
Plaintiff/Petitioner,  
vs.

**SUPERIOR COURT OF CALIFORNIA FOR THE  
COUNTY OF SAN DIEGO,**  
Respondent.

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**CALIFORNIA GAMBLING CONTROL COMMISSION,**  
Defendant/Real Party in Interest.

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**"CALIFORNIA VALLEY MIWOK TRIBE, CALIFORNIA"; YAKIMA K. DIXIE;  
VELMA WHITEBEAR; ANTONIA LOPEZ; ANTONE AZEVEDO; MICHAEL  
MENDIBLES; and EVELYN WILSON,**  
Intervenors/Real Parties in Interest.

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San Diego County Superior Court Case No. 37-2008-00075326-CU-CO-CTL  
Hon. Ronald L. Styn

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**PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER  
APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES  
[ACCOMPANIED BY SUPPORTING EXHIBITS]**

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

(Cal. Rules of Court, rule 8.208, 8.490, 8.494, 8.496 & 8.498)

There are no interested entities or persons to list in this certificate  
(Cal. Rules of Court, rule 8.208(e)(3)).

Date: April 20, 2012

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

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

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Intervenors/Real Parties in Interest.

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**INTRODUCTION**

This case presents issues of urgent importance.

After plaguing the Plaintiff CALIFORNIA VALLEY MIWOK TRIBE (“the Tribe”), misleading the CALIFORNIA GAMBLING CONTROL COMMISSION (“the Commission”), and the BUREAU OF INDIAN AFFAIRS (“the BIA”), with the false claim that he did not resign as Tribal Chairman, and that his 1999 written resignation was a forgery, thus plunging the Tribe into a 12 year Tribal leadership dispute, Intervenor Yakima Dixie (“Dixie”) finally admitted in a recent deposition in this case that he in fact resigned and that his signed

resignation was genuinely his. This crucial development was brought to the trial court's attention at an ex parte hearing on March 7, 2012, with a request for an order lifting the previously imposed stay of the litigation, so that the Tribe can file a dispositive motion or receive a trial date, but the trial court denied the application. Since 2005, over \$8 million in Tribal-State Gaming Compact, Revenue Sharing Trust Fund ("RSTF") quarterly payments have been withheld from the Tribe, with no end in sight for the lawyers representing Dixie and other Intervenorors to do all they can to delay and block the release of those and future funds rightfully belonging to the Tribe.

After this Court reversed the trial court's order of dismissal and ordered on remand that the trial court decide whether the Commission is properly withholding funds from the Tribe, the trial court instead issued a stay order (except for discovery) on the action below, pending resolution of federal litigation by the Intervenorors challenging a decision by the Assistant Secretary of Indian Affairs ("ASI") for U.S. Department of Interior ("DOI") in favor of the Tribe bearing on federal contract funding. The Commission is not a party to the federal action, and a determination of whether the Commission is properly withholding RSTF money from the Tribe was not before the ASI, and is not presently before the federal court.

The trial court had granted judgment on the pleadings against the Commission and dismissed the Intervenorors, based on a December 22, 2010 decision by the ASI that the Tribe has a recognized governing body, that it need not "reorganize" its governing body under the Indian Reorganization Act of 1934 ("the IRA") in order to qualify for federal

contract funding under P.L. 638, and its order that the BIA refrain from arranging to have Tribal membership conferred on other Indians in the surrounding community against the Tribe's will. The ASI decision also ruled that the Tribe is a federally-recognized tribe comprised of five members (which include Silvia Burley, Dixie and three others), and that the BIA is to respect the validly enacted resolutions of the Tribal Council. By implication, the ASI decision recognized Silvia Burley ("Burley") as the Chairperson of the Tribe, and resolved the ongoing Tribal leadership dispute.

In April of 2011, the ASI set aside its decision, and requested further detailed briefing on the matter, prompting the trial court here to stay this action and hold off on entering judgment against the Commission until the ASI issues its reconsidered decision. On August 31, 2011, the ASI affirmed its December 22, 2010 decision, but stayed "implementation" of its decision pending federal litigation that had already commenced challenging that decision. As a result, the trial court in this case continued to stay this action and continued to hold off on entering judgment against the Commission.

If they lose their challenge in the federal litigation, the Intervenors have vowed to appeal and continue litigating the issues for many more years to come. As a result, the trial court's stay order effectively gives the Intervenors exclusive control over this case while they litigate in federal court, unless the stay order is lifted and the Tribe is allowed to file dispositive motions or proceed to trial for declaratory and injunctive relief with respect to the Commission's duties and actions in withholding the RSTF money from the Tribe,

notwithstanding the federal litigation. The stay order effectively resurrects the trial court's previous ruling granting the Commission's demurrer based on lack of capacity and lack of standing, until the BIA recognizes a governing body and leader of the Tribe, all of which this Court reversed on appeal.

The trial court also misinterpreted the stay language of the ASI's decision to mean that it cannot be relied on in the present case to decide the issues in this case and enter judgment against the Commission. The ASI only stayed "implementation" of its decision pending resolution of the federal litigation, but that does not affect the validity of the decision itself for purposes of the issues in this action, since the Commission is not subject to the jurisdiction of the DOI, and the ASI never ordered that the Commission is stayed from releasing RSTF money to the Tribe. Indeed, the two ASI decisions never decided the Commission's duties concerning RSTF payments to the Tribe.

The Commission has explained that a Tribal leadership dispute and a lack of a recognized governing body have prevented it from releasing RSTF money it is presently withholding from the Tribe. It claims that because of the Tribal leadership dispute, there are two competing tribes who claim they are entitled to the funds, one headed by Burley, and the other headed by Dixie who has claimed that his resignation as Tribal Chairman was a forgery, and that he is still the Chairman. However, as stated, Dixie has now admitted that he resigned and that Burley is the present authorized Tribal Chairperson. Nevertheless, the trial court has erroneously concluded that it is being asked to decide the same issues that are being litigated in the federal

litigation, which it claims it has no jurisdiction to decide. While some issues in the federal case may overlap in this State action, a resolution of the Tribe's claims against the Commission is not dependent on the outcome of the federal litigation challenging the DOI decision in favor of the Tribe, which, if upheld, will result in the Tribe being entitled to federal contract funding. The Tribe's claims against the Commission can be decided by the trial court independently. This Court has already expressly ruled that the trial court has jurisdiction to decide whether the Commission is properly withholding RSTF money from the Tribe under the circumstances.

As ordered by this Court in its April 16, 2010 decision, the issue of “whether the Commission is properly withholding funds from the Miwok Tribe...must be litigated upon remand of this action to the trial court.” (Page 19 of Court of Appeal decision) (Emphasis added). This Court also stated that “the trial court will be better able to explore the legal impact of the tribal leadership dispute and the BIA's relationship with the Miwok Tribe when the pertinent facts are more fully developed later in the litigation...” *Ibid.* (Emphasis added). The Tribe and the trial court cannot do this, if litigation in the case is stayed. Under the “law of the case”, the Court of Appeal decision is binding on the trial court and must be followed.

Unless this Court issues a writ of mandate directing the trial court to lift the stay and allow dispositive motions to be filed, or, alternatively, directing the trial court to enter judgment on its order granting judgment on the pleadings against the Commission, this case will remain stayed for several years while Dixie and the Intervenors



litigate and appeal in the federal court. The stay order effectively gives back to the Commission the position it prevailed on when the trial court granted its demurrer without leave to amend on the grounds that “...the only impact of [an order sustaining the demurrer without leave to amend] would be to preclude further litigation of the Tribe’s claims to RSTF funds ‘until such time as the BIA has acted to recognize’ the Tribe’s government and leader.” This Court reversed that ruling, and held that this case must go forward and be litigated, notwithstanding what the BIA does.

The urgent importance is that Dixie and the other Intervenor are attempting to starve out the Tribe. No federal contract funding is forthcoming pending resolution of the federal litigation, and the trial court’s stay order freezes up the only other source of financial revenue for the Tribe in the form of RSTF payments.

### **PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF**

By this verified petition, the California Valley Miwok Tribe alleges:

#### **AUTHENTICITY OF EXHIBITS**

1. Each of the exhibits accompanying this petition is a true copy of the original document on file with Respondent Court, except the reporter’s transcript of the hearing of March 7, 2012, the reporter’s transcript of the hearing of April 21, 2011, and the reporter’s transcript of the hearing of October 21, 2011, and except Exhibits 54-57 and 60-62,



which are included for background information purposes only. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits are paginated consecutively, and page references in this petition are to the consecutive pagination.

**BENEFICIAL INTEREST OF PETITIONER; CAPACITY OF  
RESPONDENT AND REAL-PARTY-IN-INTEREST**

2. Petitioner is the plaintiff in an action filed in Respondent Court entitled California Valley Miwok Tribe v. California Gambling Control Commission, San Diego Superior Court Case No. 37-2008-00075326-CU-CO-CTL. Defendant in that action, the CALIFORNIA GAMBLING CONTROL COMMISSION (“the Commission”) is named in this petition as Real-Party-In-Interest. Also named as Real-Parties-In-Interest are Intervenor California Valley Miwok Tribe, California; Yakima Dixie; Velma Whitebear; Antonia Lopez; Antone Azevedo; Michael Mendibles; and Evelyn Wilson (“Real Parties Intervenor” or “Intervenor”). The Commission and the Intervenor are collectively referred to as “Real Parties.”

3. In a prior decision by this Court, the Petitioner/Plaintiff CALIFORNIA VALLEY MIWOK TRIBE (“the Tribe”) was held to have the capacity and standing to bring the action below. (Ex. “10”, Bates 0208).

**TIMELINESS OF THE PETITION**

4. The subject challenged ruling occurred on March 7, 2012. (Ex. “1” and “2”, Bates 0001-0013). There are no absolute deadlines for petitioning for a common law writ, and petitioner here has not unreasonably delayed the filing of the petition to the prejudice of the

Real Parties. Wagner v. Superior Court (1993) 12 CA4th 1314, 1317. Indeed, the Tribe's writ is well within the historically acceptable 60 day time frame. Popelka, Allard, McCowan & Jones v. Superior Court (1980) 107 CA3d 496, 499.

5. No trial date has been set.

### **CHRONOLOGY OF EVENTS**

6. On April 16, 2010, this Court issued a decision reversing a judgment of dismissal from the Superior Court (Judge Joan M. Lewis). (Ex. "10"). The judgment followed an order sustaining a demurrer without leave to amend filed by the Commission on the basis that the Tribe lacked capacity or standing to pursue this action against the Commission. (Ex. "12", Bates 0767).

7. In its April 16, 2010 decision, this Court ordered that the issue of "whether the Commission is properly withholding funds from the Miwok Tribe...must be litigated upon remand of this action to the trial court." (Ex. "10", pg. 19, Bates 0208) (Emphasis added). The decision also stated that "the trial court will be better able to explore the legal impact of the tribal leadership dispute and the BIA's relationship with the Miwok Tribe when the pertinent facts are more fully developed later in the litigation..." Ibid. (Emphasis added). This is the "law of the case" and must be followed by the Superior Court on remand.

8. In footnote 8 of its April 16, 2010 decision, and in response to the Commission's request, this Court took judicial notice of a January 28, 2010 order, issued by the Interior Board of Indian Appeals ("IBIA"), ruling on an appeal by the Tribe of a decision by the BIA that it (the

BIA) would “assist” the Tribe in organizing a Tribal government by sponsoring a “general council meeting of the Tribe,” and invite several hundred “potential” members in the surrounding community to participate and become Tribal members. (Bates 0196). According to the IBIA decision, the “BIA concluded these actions were necessary because until the Tribal organization and membership issues were resolved, a leadership dispute between Burley and Dixie could not be resolved, and resolution of that dispute was necessary for a functioning government-to-government relationship with the Tribe.” (Ex. “11”, Bates 0221-0222). The BIA had taken the position that this was necessary, so that the Tribe could be “organized” under the IRA, and thus qualify for P.L. 638 federal contract funding.

9. The IBIA decision referred the Tribe’s second claim, characterized as a “tribal enrollment dispute,” to the Assistant Secretary of Indian Affairs (“ASI”) of the U.S. Department of Interior (“DOI”), since the IBIA has no jurisdiction over tribal enrollment disputes, specifically the Tribe’s challenges to the BIA actions deciding tribal enrollment disputes, including the BIA’s decision to create a base roll of individuals who satisfy criteria that the BIA has determined to be appropriate and who will be entitled to participate—effectively as members—in a “general council” meeting of the Tribe to organize the Tribe. (Bates 0240).

10. This Court did not stay the Superior Court action pending resolution of the “enrollment dispute” issue by the ASI, but instead ordered that the issue of “whether the Commission is properly

withholding funds from the Miwok Tribe...must be litigated upon remand of this action the trial court.” (Bates 0208).

11. Upon remand, the Tribe exercised a peremptory challenge against the Hon. Joan M. Lewis, and the case was assigned to Judge Ronald L. Styn.

12. On December 17, 2010, the trial court granted Real Parties Intervenors’ motion for leave to file a Complaint in Intervention. (Bates 0246).

13. On December 22, 2010, the ASI, Larry Echo Hawk, issued a decision letter in response to the IBIA’s referral, finding that the Tribe (under Burley’s leadership) is a federally-recognized tribe consisting of five (5) members operating under a General Council form of government pursuant to Resolution #GC-98-01, which effectively recognized Burley as the Tribal Chairperson. (Bates 0248-0253). Echo Hawk further ruled that the Tribe, as currently recognized, is not required to expand its five (5) adult membership to so-called “potential citizens” in the surrounding community, and that it is further not required to organize its present form of government under the IRA. (Bates 0252).

14. The Commission’s defense in this action is that it cannot release the RSTF payments to the Tribe, because of the pending leadership dispute and because the BIA does not recognize the Tribe’s governing body. (Ex. “49”, “52”, “55”). Without having to ask the trial court to determine if the Commission’s position is a correct one, the Plaintiff chose instead to move for judgment on the pleadings with respect to the Commission’s Answer to the First Amended Complaint, including its affirmative defenses on these points, and asked the trial

court to take judicial notice of the ASI's December 22, 2010 decision letter. (Ex. "15", Bates 0254-0255).

15. On March 11, 2011, the trial court granted the motion for judgment on the pleadings as to the Commission, ruling that the Commission's Answer did not state facts sufficient to constitute a defense to the Complaint, in light of the Assistant Secretary's December 22, 2010 decision letter. (Bates 0254). The Commission's sole defense in withholding RSTF money paid out for the Tribe since 2005 was that the Tribe purportedly did not have a governing body recognized by the U.S. government, that a leadership dispute called into question Silvia Burley's right to act as Chairperson for the Tribe, and that the Tribe was required to be organized under the IRA and include within its membership other "potential" members in the surrounding community. (Ex. "49", "52", "55"). The Assistant Secretary's December 22, 2011 decision letter, however, refuted each one of these defenses. (Bates 0245-0255). The Court then took judicial notice of that decision and, on March 11, 2011, granted the motion, and directed Plaintiff's counsel to prepare the judgment. (Bates 0255). The Court also directed Plaintiff's counsel to prepare a separate order giving the Commission a statutory, temporary stay of execution on the judgment. (Bates 0255).

16. In light of the December 22, 2010 decision letter from the ASI, the trial court also granted the Plaintiff's motion for reconsideration with respect to its order granting the Intervenor's motion to file a Complaint in Intervention, and denied the motion to intervene. (Bates 0262-0264).

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

18. On March 25, 2011, the Court signed Plaintiff's proposed order staying enforcement of the judgment, and modified Plaintiff's proposed judgment. (Bates 0319). The modifying language dealt with how the Commission would release the presently withheld RSTF money. It then directed Plaintiff's counsel to submit a revised judgment reflecting this modifying language for signature, which Plaintiff's counsel did and resubmitted for the court's signature. (Bates 0319).

19. In accordance with the trial court's policy, the Court held the proposed, revised judgment for ten (10) days, so as to allow the opposing party an opportunity to object.

20. Before the Court could sign the judgment, the Assistant Secretary issued a letter dated April 1, 2011, setting aside his December 22, 2010, letter, and advised that he would issue a reconsidered decision letter, after giving the parties an opportunity to brief the issues before him in more detail. (Bates 0350). As a result, the parties appeared before the San Diego Superior Court on April 6, 2011, advising of this development, prompting the Court to hold off on signing the judgment against the Commission. (Bates 0352). In the event the Assistant Secretary reaffirmed his December 22, 2010 decision, the Court indicated that it was only staying the effect of the prior orders granting judgment on the pleadings and denying



intervention, and would therefore simply stay entry of judgment until the Assistant Secretary issued his new decision. (Bates 0371-0372). If the reconsidered decision reaffirmed the December 22, 2010 decision letter, then the Court indicated it would enter judgment. The Court, however, permitted the parties to conduct discovery, in the event the Assistant Secretary completely reverses himself.

21. When the parties could not decide on a proposed order with respect to the Court's April 6, 2011, ex parte ruling staying entry of judgment, they submitted their respective versions to the Court. The Court signed the Intervenor/Commission's proposed order, which provides, in part, that "[t]he entry of judgment against the Commission shall be stayed pending further order of this Court." (Bates 0381, 0382).

22. On August 31, 2011, the ASI, Larry Echo Hawk, issued his long-awaited reconsidered decision. In it, he reaffirmed his December 22, 2010, decision letter that the Tribe is a federally-recognized tribe consisting of five (5) members which operates under a General Council form of government pursuant to Resolution #CG-98-01, which effectively recognized Silvia Burley as the Chairperson of the Tribe. (Bates 0408-0409). He further reaffirmed that the Tribe is not required to expand its five (5) adult membership to so-called "potential citizens", and that it is not required to organize its present form of government under the Indian Reorganization Act of 1934 ("IRA"). (Bates 0412).

23. On September 7, 2011, Plaintiff sought, but was denied, an ex parte application for an order entering judgment against the Commission based on the August 31, 2011 ASI decision letter. (Bates

0417). The Commission and the Intervenor's opposed the application, arguing that the stay language in the decision prevented the court from doing so. The stay language in the ASI decision states: "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..." (Emphasis added). Plaintiff argued that this only meant that the BIA could not take government-to-government action with respect to the Tribe, including, for example, entering into P.L. 638 contract funding with the Tribe, pending resolution of the federal litigation. It did not mean that ASI did not decide the issues. The trial court, however, interpreted this language to mean that the ASI decision has no force and effect, and, as a result, it could not rely on the ASI decision to enter judgment against the Commission. It therefore denied the ex parte application for entry of judgment without prejudice. However, the trial court ordered that the Clerk still hold onto the proposed judgment. (Bates 0417). Plaintiff interpreted this to mean it was allowed to fully brief the matter by way of a formal, written motion. The trial court denied the request made by the Commission and by the Intervenor's that the entire case be stayed, and ordered that all previous orders remain in effect.

24. On October 21, 2011, the trial court denied Plaintiff's formal motion for entry of judgment against the Commission, which Plaintiff sought on independent grounds, other than the ASI's August 31, 2011 decision letter. (Bates 0418). It ruled that Plaintiff's motion was an improper motion for reconsideration, and nonetheless rejected Plaintiff's independent grounds argument. (Bates 0418). It clarified



that its prior order granting Plaintiff's motion for judgment on the pleadings as to the Commission's Answer was based exclusively on the ASI's December 22, 2010 decision letter, which the ASI's August 31, 2011 decision letter reaffirmed, but by its own terms stayed implementation pending resolution of the federal litigation. It reasoned that the ASI's attorney of record signing off on a joint status report in the federal litigation which stated that the ASI's decision has "no force and effect" was persuasive and was tantamount to the ASI himself having made the statement. (Bates 0419). It rejected Plaintiff's argument that the ASI's attorney of record in the federal litigation had no authority to alter the ASI's written decision. It stated:

Implementation of the August 31, 2011, decision is stayed pending resolution of the pending federal action brought by Intervenor. The Assistant Secretary, through his counsel of record, submitted a joint status report in *California Valley Miwok Tribe v. Salazar* stating that: "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." Both the December 20, 2010 decision and the August 31, 2011 decision are under judicial review in the federal action. This court's ruling on Plaintiff's motion for judgment on the pleadings is dependent on the final outcome of the judicial review of the decisions by Assistant Secretary Hawk. Therefore, the court orders that this matter remain stayed, with all previous orders remaining in effect, pending final resolution of *California Valley Miwok Tribe v. Salazar*.

(Minute Order 10/21/2011, page 2, Bates 0419). The federal court never adopted the joint status report, and never entered an order to the effect the August 31, 2011 decision letter has "no force and effect." Moreover, at the time the joint status report in the federal court was submitted,

Plaintiff had not yet received a ruling on its motion to intervene in the federal action, and thus did not participate in the drafting or signing of the joint status report the federal court ultimately rejected. The federal court only just recently granted the Plaintiff's motion to intervene. (See Memorandum and Opinion and Order, dated March 26, 2012, in federal suit, Bates 0154).

25. After the October 21, 2011 hearing denying Plaintiff's motion for entry of judgment, the Clerk returned the "judgment" the trial court was holding as "unsigned." (Ex. "63"). The Notice stated: "Per the Court's 10/21/11 Minute Order, Plaintiff's Motion for Entry of Judgment was denied. Therefore, the judgment that was submitted on 3/25/11 is not signed." (Notice to Filing Party, dated October 24, 2011). By this action, it was clear that the trial court was not going to enter judgment, should the federal court ultimately uphold the ASI's August 31, 2011 decision letter.

26. Plaintiff continued to pursue written and oral discovery against the Commission and the Intervenors.

27. On November 18, 2011, the trial court granted the Plaintiff's motion to compel Intervenor Yakima Dixie to answer deposition questions. (Bates 0430). Dixie refused to answer questions concerning his claim that his resignation as Tribal Chairman was a forgery, asserting such questions are irrelevant and claiming the Fifth Amendment. The trial court ruled that the information sought is relevant, since the Intervenors were given leave to intervene specifically because of the on-going leadership dispute, and because of Dixie's claims that he has a right to receive the RSTF payments from the

Commission as the rightful Tribal Chairman. (Bates 0432). The trial court imposed monetary sanctions against Dixie and ordered him to appear for a second deposition. (Bates 0433).

28. On December 23, 2011, the trial court denied non-party Chadd Everone's motion for protective order and awarded monetary sanctions to the Plaintiff in the amount of \$3,000.00. (Bates 0437-0438). Everone claims to be Intervenor Dixie's "Deputy" and "General Consul", and is controlling the Intervenor's claims and the litigation in this action and the federal action. Everone, who is not a lawyer, argued that he should not be deposed because the federal litigation challenging the ASI's August 31, 2011 decision has rendered this state action "moot." The trial court rejected this contention, and ruled as follows:

The court rejects Everone's contention that the issues in this case are "moot." The court's previous rulings are based on decisions by Assistant Secretary Larry Echo Hawk of the United States Department of the Interior—Indian Affairs and the pending appeal of this decision in federal court. However, Everone fails to establish how the court's reliance on the decisions by the Assistant Secretary, and the pending appeal render this case moot. Such matters are related to Plaintiff's claims against the California Gambling Control Commission in this action, but do not render Plaintiff's moot...

(Minute Order, 12/31/2011, Bates 0437).).

29. On February 7, 2012, Plaintiff took the deposition of Yakima Dixie in Sacramento, California. Dixie testified that he resigned as Chairman of the Tribe in 1999, and that the signature on the resignation document he had been claiming was a forgery over the years is in fact his signature. (Bates 0037). Specifically, Dixie

acknowledged that his signature appeared on a document marked as Exhibit "33" to his deposition, entitled "Formal notice of resignation," which states:

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

(Dixie deposition, February 7, 2012, Bates 0037, 0039). He also acknowledged that his signature appeared on a document marked as Exhibit "34" to his deposition, entitled "General Council Governing Body of the Sheep Ranch Tribe of Me-Wuk Indians," which states:

"The General Council as the Governing Body of the Sheep Ranch Tribe of Me-Wuk Indians has agreed to accept the resignation of Chairperson from Mr. Yakima K. Dixie. The General Counsel has appointed Silvia Burley as Chairperson."

(Dixie deposition, February 7, 2012, Bates 0037, 0040). Dixie's signature, which he acknowledged was his, appears directly beneath this written statement. The document goes on further to state: "That the General Council is in agreement to the acceptance of the resignation of Mr. Yakima K. Dixie as Chairperson and has officially appointed Silvia Burley as Chairperson of the Sheep Ranch Tribe of Me-Wuk Indians..." Ibid. (Bates 0040)

30. On March 7, 2012, Plaintiff sought an ex parte application for an order lifting the stay on this action, so that dispositive motions could be filed, in light of Dixie's deposition testimony that: (1) he resigned from the Tribe; (2) that Burley is the Chairperson of the Tribe

who took over upon his resignation; and (3) that the resignation document he had claimed was a forgery did in fact contain his signature. (Bates 0014). Plaintiff asserted that Dixie's admission resolved the Tribal leadership dispute which the Commission claimed prevented it from releasing the RSTF payments to the Tribe. (Bates 0015, 0008). The Commission opposed the ex parte application, arguing that it still had a policy of following whatever actions the BIA takes, and in this case the BIA has refused to enter into P.L. 638 contract funding with the Tribe, because it has no recognized governing body, no recognized leader, is not organized under the IRA, and because the Tribe does not comprise of Indians in the surrounding Indian community as part of its membership. (Bates 0044, 0047). The Plaintiff requested that the court rule on whether that policy is correct in connection with a dispositive motion, and asserted that the Compact only requires that a Non-Compact Tribe be a federally-recognized tribe in order to receive RSTF payments, and nothing more, and that the court can make a determination of whether the Commission's "policy" and decision to withhold RSTF money from the Tribe is correct, notwithstanding the pending federal litigation, since the pending federal litigation has nothing to do with RSTF money. (Bates 0008-0010). The court denied the application, and stated:

"...My reaction to this is if I were to lift the stay and go forward, I would in effect be deciding who is the proper representative of the Tribe and who is the Tribe, precisely the issues that are within the exclusive jurisdiction of the Tribe and the federal courts, so my tentative would be to deny the application..."



(Page 1, Reporter's Transcript of hearing, March 7, 2012, Bates 0004). With respect to Dixie's deposition testimony admitting he resigned as Tribal Chairman and that Burley is the successor Tribal Chairperson, the trial court concluded that such evidence did not "end the case." It ruled:

"...You already have that evidence [Dixie's deposition testimony], but it's not going to end the case, and that's what I'm concerned about. Until the federal court decides, the ultimate issue won't be resolved and I don't see how I could issue a final judgment, so I'm going to deny the application."

(Page 9, Reporter's Transcript of hearing, March 7, 2012, Bates 0012).

31. At the ex parte hearing, Plaintiff was not asking the trial court to rule on any dispositive motion, but was simply asking the court to lift the stay, so that a dispositive motion could be filed. In any event, the trial court's comments indicate a misunderstanding of this Court's directions on remand. The trial court is to decide whether the Commission's asserted reasons for withholding RSTF payments from the Tribe are correct, not the merits of a Tribal leadership dispute or whether the Tribe qualifies for federal contract funding because it is not organized under the IRA, or any of the issues decided by the ASI presently under judicial review in the federal court. The Compact only requires that a Non-Compact tribe be a federally-recognized tribe. (Ex. "54", Bates 0620). It does not require that a Non-Compact tribe have a particular form of governing body, whether recognized by the BIA or not. Nor does the Compact require that a Non-Compact tribe satisfy certain membership criteria in order to qualify for RSTF payments. Neither does it permit the Commission to condition payment on a Non-

Compact tribe's eligibility for federal contract funding. These are the issues the trial court has jurisdiction to decide for purposes of determining whether the Commission's reasons in withholding RSTF payments from the Tribe are correct. Dixie's admission that he resigned as Tribal Chairman is also a factor the trial court must consider, since it now refutes the Commission's defense that a Tribal leadership dispute prevents it from releasing the funds.

32. Accordingly, the trial court erred in at least not allowing the matter to be briefed on a formal motion, and imposing a stay that runs contrary to the specific instructions of this Court on remand.

### **WHY RELIEF IS APPROPRIATE AND NECESSARY**

33. Plaintiff has no adequate remedy at law. There is no right to appeal the ruling.

34. The trial court's stay order has deprived the Plaintiff of an opportunity to have its claims litigated and resolved in the Superior Court. It is contrary to this Court's decision that the issue of whether the Commission is properly withholding RSTF payments from the Tribe "must be litigated," including "exploring the legal impact of the tribal leadership dispute and the BIA's relationship with the Tribe." (Bates 0208). Prior to the appeal, the Commission sought to block the Tribe's efforts to pursue judicial resolution of this matter when it successfully demurred to the Complaint by arguing that the Tribe lacked the capacity and standing to bring this lawsuit, because of a pending Tribal leadership dispute and a purported lack of a recognized governing body. It argued, and the trial court ruled, that nothing can be done until the ASI resolves these issues. On appeal, the Commission asked this Court

to take judicial notice of the IBIA decision that referred part of the appeal to the ASI, and argued:

“...[T]he [IBIA]Order reconfirms the Commission’s argument that the United States has made explicit that it does not presently have a government-to-government relationship with Appellant California Valley Miwok Tribe (Tribe), and that no one presently represents the Tribe...The Order also represents the current procedural status of the Tribe’s administrative appeal concerning its ongoing leadership dispute that the Commission noted was pending before the interior Board of Indian Appeals when the Commission filed its brief.”

(Respondent’s Request for Judicial Notice, February 8, 2010, page 1, Bates 0218).

Even though this Court took judicial notice of the pending IBIA decision referring the Tribal “enrollment” issue and purported lack of governing body issue to the ASI, this Court still rejected the Commission’s contention that, until the ASI rules on these issues, the Plaintiff lacked standing or capacity to sue the Commission. However, the Superior Court’s stay order does what this Court has already ruled cannot be done. It essentially stops the prosecution of the Tribe’s claims until final judicial review of the ASI’s decision recognizing the Tribal governing body and Burley as the rightful Tribal leader.

35. The Plaintiff will also suffer irreparable injury if the writ is not granted. Smith v. Superior Court (1996) 41 CA4th 1014, 1020-1021. The Tribe cannot wait for the federal litigation to conclude. The ASI’s decision that the Intervenor’s are challenging in federal court was in the Plaintiff’s favor. (Bates 0182-0188). It was enough for the Superior Court to grant judgment on the pleadings as against the Commission,



order release of the RSTF money to the Plaintiff, and dismiss the Intervenor. Thus, it is in the Intervenor's interest to delay and drag out their challenges in federal court for years to come. They have the right, and the financial resources from developers who are interested in taking over the Tribe in order to build a gambling casino, to appeal to the U.S. Court of Appeals and the U.S. Supreme Court, and they have stated their intent to do so in pleadings filed in the Superior Court. The Intervenor is using the federal litigation to keep the stay in the State Court, and unless this Court corrects the trial court's stay ruling, they will continue to do so for years to come, and starve out the Tribe. If they can starve out the Tribe, they hope to take over. As stated in Science Applications Int'l Corp. v. Superior Court (1995) 39 CA4th 1095:

“When a piece of litigation has once journeyed the full and tiresome path of appellate review, gaining apparent resolution excepting only one post appellate trial court ruling, and that ruling is made erroneously, we believe the court of appeal should resolve the dangling issue promptly, using (as the only readily available measure) writ review to do so.”

39 CA4th at 1102. See also Kawasaki Motors Corp. v. Superior Court (2000) 85 CA4th 200, 205-206 (An appealable trial court judgment overturning agency termination of an automobile dealership's franchise was properly reviewed by writ given that the franchisor had already “been forced to sell its products through an undesirable dealer for over two years. It would be intolerable to require it to continue this relationship for another two years or more, the time required to complete an appeal.”); Zenide v. Superior court (1994) 22 CA4th 1287,

1293 (writ relief granted, because an international custody dispute had been ongoing for over three years, and the children had been deprived of any significant contact with their mother in violation of foreign court order, and it was “imperative that this matter be resolved as expeditiously as possible”).

36. The Tribe is suffering financially because of the stay. They cannot obtain any federal contract funding while the ASI’s decision is under federal judicial review (Bates 0169-0170), and now they cannot obtain their RSTF money from the Commission, because the Superior Court has refused to independently decide the issues in this case, and instead has imposed its own stay. As conceded by the Commission in a pleading filed in the Sacramento Superior Court in 2004 opposing Dixie’s efforts to stop the Commission from disbursing RSTF to the Tribe in care of Burley, the Commission cited Section 4.3.2.1(b) of the Compact stating the Commission has no discretion in disbursing RSTF payments, and stated:

“This provision of the 1999 Compacts was designed to ensure prompt disbursement of RSTF assets to those tribes in most desperate need of funding—tribes with small or no gaming operations. The granting of relief sought by Dixie here would subvert this important objective of the 1999 Compacts.”

(Commission’s P/A’s in Opposition to Application for TRO, filed October 22, 2004, page 2, lines 16-20, Bates 0678). The stay order is subverting the same objective with respect to the Tribe. It is in desperate need of funding, especially while the federal litigation has had the effect of precluding federal contract funding. To allow the stay to continue would only have the effect of financially starving out the Tribe.

37. The ASI has already decided, in two (2) separate, well-reasoned decisions, that the Tribe is a federally-recognized tribe consisting of five (5) adult members that function with a recognized resolution form of government, and that neither the BIA nor anyone else can force the Tribe to organize under the IRA or expand its membership. Dixie has now admitted he resigned as Tribal Chairman and that Burley is the rightful Tribal Chairperson. While the Intervenor seeks to challenge those decisions in federal court, the Plaintiff should not be penalized by the Intervenor's protracted litigation tactics, especially since the issue of whether the Commission is properly withholding RSTF money from the Tribe is not before the federal court.

38. Accordingly, the trial court's stay order is both clearly erroneous as a matter of law and substantially prejudices Plaintiff's case. Babb v. Superior Court (1971) 3 Cal.3d 841, 851. This Court's prior decision of April 16, 2010, is the law of the case, and must be followed by the trial court. Morohoshi v. Pacific Home (2004) 34 Cal.4th 482, 491. "This is true even if the court that issued the opinion becomes convinced in a subsequent consideration that the former opinion is erroneous." Santa Clarita Organization for Planning the Environment v. County of Los Angeles (2007) 157 CA4th 206, 213.

39. The trial court's ruling is also an abuse of discretion, for the same reasons stated herein.

40. As stated, Plaintiff will suffer irreparable injury if the writ is not granted.

41. As stated, writ relief is appropriate and necessary to correct the trial court's erroneous order.

### PRAYER


Wherefore, petitioner, CALIFORNIA VALLEY MIWOK TRIBE, prays that this Court:

1. Issue its peremptory writ of mandate directing Respondent Superior Court to set aside and vacate its order staying the underlying action, including its order denying Plaintiff the opportunity to file dispositive motions and, if necessary, proceed to trial, and issuing a new order instead granting Plaintiff's request to lift the stay and allow dispositive motions to be filed and proceed to trial on whether the Commission is properly withholding RSTF payments from the Tribe, as directed by the Court's April 16, 2010, decision reversing the judgment of dismissal following an order sustaining the Commission's demurrer.

2. Alternatively, issue its peremptory writ of mandate directing Respondent Superior Court to enter judgment against the Commission, as submitted and approved by the Respondent Superior Court, in accordance with the Respondent Superior Court's order granting judgment on the pleadings.

3. Award Petitioner CALIFORNIA VALLEY MIWOK TRIBE its costs incurred in this proceeding.

Dated: 4/20/2012

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

### VERIFICATION

I, Manuel Corrales, Jr., declare as follows:

1. That I am an attorney at law duly licensed to practice law in the State of California, the State of Utah and the State of New Mexico, and I am one of the attorneys of record for Plaintiff/Petitioner CALIFORNIA VALLEY MIWOK TRIBE herein.

2. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts alleged in the Petition are true of my own knowledge.

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

Executed this 20 day of April, 2012, at San Diego, California.



MANUEL CORRALES, JR.

**COMBINED STATEMENT OF FACTS**  
**AND STATEMENT OF THE CASE**

It was error and an abuse of discretion for the trial court to deny Plaintiff's request to lift the stay, so as to enable Plaintiff to file dispositive motions and proceed to trial. Plaintiff is entitled to have the trial court determine whether the Commission is properly withholding RSTF payments from the Tribe, despite the ASI's decision being under review in federal court. The instructions this Court gave on remand require the Respondent Superior Court make this determination.

The Compact only requires that a Non-Compact tribe be a federally-recognized tribe, in order to be eligible to receive RSTF payments. Dixie's recent admission at his deposition that he resigned as Tribal Chairman, and that Burley is the Tribal Chairperson, now refutes the Commission's defense that a Tribal leadership dispute prevents it from releasing the RSTF money to the Tribe in care of Burley. There is nothing in the Compact that requires that a Non-Compact tribe have a recognized governing body, or a specific governing body, in order to qualify for RSTF payments. Likewise, there is nothing in the Compact that requires a Non-Compact tribe meet certain membership criteria in order to be eligible for RSTF payments. Yet, the Commission has decided to withhold RSTF payments from the Tribe based on each of these reasons, despite Dixie's recent deposition testimony that he resigned as Tribal Chairman, and it has further recently explained that it has a policy of withholding RSTF payments from Non-Compact tribes who do not qualify for federal contract funding pursuant to P.L. 638. The Respondent Superior Court has



jurisdiction to decide these issues as it relates to the Commission's reasons for withholding the Tribe's RSTF payments, and it was error for it to simply stay the action, pending the outcome of the federal litigation challenging the ASI's decision finding that the Tribe under Burley's leadership is a federally-recognized tribe consisting of only five (5) members with a recognized resolution form of government that is not required to expand its membership. The issue of whether the Commission is properly withholding RSTF payments from the tribe is not before the court in the federal litigation, and can be decided independent of that federal action.

Alternatively, the Plaintiff is entitled to have judgment entered against the Commission based on the August 31, 2011 decision from the ASI, affirming his December 22, 2010 decision, since, as the trial court explained, it based its ruling granting judgment on the pleadings against the Commission exclusively on the ASI's December 22, 2010 decision. Language in the ASI's August 31, 2011 decision staying "implementation" of its decision does not equate with the decision having no force and effect. For purposes of the trial court's order granting judgment on the pleadings, the issues have been decided by the ASI.



## LEGAL DISCUSSION

### I.

#### THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN REFUSING TO LIFT ITS STAY OF THE ACTION TO ALLOW DISPOSITIVE MOTIONS TO BE FILED

##### A. THE TRIAL COURT'S STAY ORDER VIOLATES THE COURT OF APPEAL'S SPECIFIC INSTRUCTIONS ON REMAND

1. The trial court is to "explore the legal impact of the Tribal leadership dispute."

The judgment of dismissal was reversed, and the action was remanded "for further proceedings consistent with [the] opinion" of the Court of Appeal. (Page 27 of Court of Appeal decision, Bates 0216). Thus, consistent with the Court of Appeal decision, on remand, the trial court was directed to allow the Plaintiff to litigate "whether the Commission is properly withholding funds from the Miwok Tribe." (Bates 0208). To this end, the Court of Appeal stated:

"That is a separate issue [whether the Commission is properly withholding funds from the Tribe] that must be litigated upon remand of this action to the trial court. The Commission contends that because it has a fiduciary duty as trustee of the RSTF funds, the current uncertainties regarding the Miwok Tribe's government and membership require it to withhold the RSTF funds and hold them in trust until it can be assured that the funds, if released, will be going to the proper parties. Nothing in our decision is intended to foreclose the Commission from pursuing such an argument in the trial court. Indeed, the trial court will be better able to explore the legal impact of the tribal leadership dispute and the BIA's relationship with the Miwok Tribe when the pertinent facts are more fully developed later in the litigation..." (Emphasis added).

(Bates 0208). As stated, Dixie recently testified in his deposition that he resigned as Tribal Chairman, refuting his long-standing assertion that his signature was forged on a written notice of resignation as far back as 1999, and confirming that he signed Tribal documents showing that he consented to Burley taking over as the newly elected Tribal Chairperson. (Bates 0037). In accordance with the Court of Appeal's instructions on remand that the trial court is to "explore the legal impact of the tribal leadership dispute" in determining whether the Commission is properly withholding RSTF payments from the Tribe, Plaintiff sought an ex parte order lifting the stay, so that Plaintiff could file dispositive motions on how Dixie's deposition testimony "impacts" the Commission's continued refusal to release the funds. That request was denied. (Bates 0001).

The trial court's refusal to even have the matter briefed was an abuse of discretion, since the Court of Appeal's decision clearly requires that the trial determine whether the Commission is properly withholding RSTF payments, and "explore the legal impact of the tribal leadership dispute" in connection with that determination. (Bates 0208). Nothing in the Court of Appeal decision states that the trial court must stay the action to allow the ASI to decide the issues referred to it by the IBIA. Indeed, the Court of Appeal was aware of the IBIA referral of the "enrollment dispute" to the ASI when it issued its decision, as is evident by the fact that it granted the Commission's request for judicial notice of the IBIA's Order (Page 7, footnote 8 of Court of Appeal decision, Bates 0196), yet it said nothing about it when it directed the trial court to determine whether the Commission is

properly withholding RSTF payments from the Tribe. The Court of Appeal's decision clearly provides that the trial court is to determine whether the Commission is properly withholding RSTF payments independent of what the ASI decides.

**2. The trial court's stay order is tantamount to the trial court's prior order of dismissal, which was reversed.**

The trial court's previous order of dismissal, which was reversed, was based on the erroneous conclusion that the Plaintiff could later sue the Commission after the BIA has acted to recognize the Tribe's government and leader. The trial court adopted the Commission's argument on this point, which the Commission stated as follows:

"An order sustaining the Commission's demurrer without leave to amend will not jeopardize the Miwok's ability to obtain RSTF funds at such time as the BIA determines to recognize a Miwok government and an individual or entity authorized to receive funds on behalf of the Miwok on the basis of that tribe's status as a federally-recognized tribe. The Commission has approved the disbursement of RSTF funds to the Miwok pending satisfactory resolution of the tribe's internal disputes. Thus, when and if the current dispute is resolved through BIA recognition of an individual or entity authorized to receive monies on behalf of the tribe, the Miwok will be able to receive those funds independent of this suit pursuant to an action by the Commission. The only impact an order sustaining the Commission's demurrer without leave to amend will have is to preclude further litigation of any claims on behalf of the Miwok to RSTF funds until such time as the BIA has acted to recognize such an individual or entity."

(Commission's Supplemental Brief on Whether Leave to Amend Should Be Granted, page 7, lines 21-28, page 8, lines 1-3, Bates 0688).

The Court of Appeal rejected this argument. Despite this, the Commission argued it again on remand in the context of seeking a stay until the federal litigation challenging the ASI's decision is concluded. (Bates 0011). The trial court erroneously adopted the same argument in staying this action, and in doing so the trial court has acted contrary to the express instructions of the Court of Appeal. The trial court's stay order has in effect returned the posture of the case back to the prior order of dismissal, which erroneously concluded that no relief can be afforded to the Plaintiff until the BIA has acted to recognize a tribal government and leader, a conclusion the Court of Appeal has rejected.

The Intervenors have likewise advanced the same erroneous argument, claiming that there is no Tribe and that the Tribe is merely a name without members. (RT 8:1-5, March 7, 2012 ex parte hearing).

**B. THE PENDING FEDERAL LITIGATION IS IRRELEVANT TO THE TRIAL COURT'S INDEPENDENT DUTY TO DECIDE WHETHER THE COMMISSION IS PROPERLY WITHHOLDING RSTF MONEY FROM THE TRIBE**

Dixie's recent deposition testimony admitting that he resigned from the Tribe and that Burley is the Tribal Chairperson was clear evidence that there is no longer a Tribal leadership dispute precluding the Commission from releasing RSTF money to the Tribe. In light of this critical testimony, Plaintiff sought to have the trial court lift its stay, so as to permit dispositive motions to be filed. However, the trial court refused, because it felt it would be required to decide a leadership dispute or issues that are pending in the federal court over the

correctness of the ASI's August 31, 2011 decision. Judge Styn explained:

“...My reaction to this is if I were to lift the stay and go forward, I would in effect be deciding who is the proper representative of the Tribe and who is the Tribe, precisely the issues that are within the exclusive jurisdiction of the Tribe and the federal courts...”

(RT 1:16-17, Bates 0004). This is incorrect.

This lawsuit is not about seeking declaratory relief on who is the proper Tribal leader or “who is the Tribe.” This was the same argument the Commission previously made and lost on appeal. The Court of Appeal has already determined that the Plaintiff has standing and the capacity to sue the Commission for release of RSTF money. (Bates 0208). The Intervenor “tribe” or Dixie, on behalf of a competing tribe, has not sued the Commission claiming entitlement to the subject RSTF money. That is because there is only one federally-recognized California Valley Miwok Tribe. Whether it is being led by Dixie or Burley for purposes of releasing the RSTF money has now been resolved by Dixie’s deposition testimony. Dixie and all of the Intervenor have alleged that the RSTF money should not be released, because Dixie, not Burley, is the rightful Tribal Chairperson.

Plaintiff only seeks to have the trial court determine if, based upon Dixie’s recent deposition testimony, the Commission has any legitimate basis to continue to withhold the RSTF money from the Tribe. The trial court has jurisdiction to decide that issue. The trial court is not being asked to decide a leadership dispute. To the extent



Dixie still claims he is the Tribal leader, despite his deposition testimony to the contrary, the trial court need only decide if Dixie's deposition testimony is enough to refute the Commission's claim that a leadership dispute prevents it from releasing the RSTF money to the Tribe in care of Burley, as opposed to Dixie. The issue is whether the reasons the Commission has given for withholding the funds are correct, not whether those reasons are true.

For example, if the Commission maintains it cannot release the RSTF payments because of a Tribal leadership dispute, the court can decide if that is a legitimate reason, in light of Dixie's admission that he resigned as Tribal Chairman. In other words, the Commission's reason for withholding the funds is based on a claim that it does not know who is authorized to receive the funds on behalf of the Tribe. Without having to decide the Tribal leadership dispute, and strictly for purposes of determining the Commission's duties, the trial court can easily conclude that Dixie's deposition testimony refutes any claim by the Commission that it does not know who is authorized to receive the funds.

The same would hold true for the other reasons the Commission advances for withholding the funds. For example, the Commission also claims that it cannot release the funds, because the BIA does not recognize the Tribe's governing body. The trial court need not decide if that is true, i.e., that the Tribe does not have a governing body recognized by the BIA. The trial court only decides, for example, if the Compact requires a Non-Compact tribe to have a "recognized" governing body as a condition for payment. There is no such requirement.



Indeed, the Court of Appeal observed in a footnote of its decision the following:

“...[A] tribe may chose not to organize under the IRA, and many tribes have accordingly adopted constitutions using procedures not set forth in the IRA, and several tribes exist without any written constitution. (Cohen, Handbook of Federal Indian Law (2005 ed.) § 4.04[3][b], pp. 257-258.) It is also pertinent to the background of the dispute between the Miwok Tribe and the BIA that “[a] tribe’s right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community...” (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 72, fn. 32 (*Santa Clara Pueblo*)), and “[a]n Indian tribe has the power to define membership as it chooses, subject to the plenary power of Congress.” (*Williams v. Gover* (9<sup>th</sup> Cir. 2007) 490 F.3d 785, 789.)”

(Page 8 of Court of Appeal decision, footnote 9, Bates 0197). This is the law of the case. Based on this foregoing quote of Indian law, the Commission cannot claim that the Tribe exists in name only, because it has no recognized governing body. According to Indian law, the Tribe need not have any written constitution at all.

This clearly shows that the federal dispute is about whether the Tribe needs to be “reorganized” under the IRA in order to obtain certain federal benefits, including P.L. 638 federal contract funding. Whether that is correct or not, is irrelevant for purposes of determining whether the Tribe is entitled to RSTF payments from the California State treasury under the language of the Compacts and California law. The Superior Court need not decide whether the Tribe is organized or whether it needs to be organized. It only needs to decide whether the Commission’s claim that it cannot release the RSTF payments to the

Tribe because it has no recognized governing body is a legitimate and correct reason. There is no language in the Compact requiring a Non-Compact tribe to have a recognized governing body as a condition of receipt of RSTF money.

The Commission also claims that it cannot release the RSTF payments to the Tribe, because the Tribe does not comprise of the full membership of the surrounding Indian community. (Bates 0610, 0638, 0641). Again, the trial court need not decide whether the Plaintiff is required to include “potential” members of the surrounding Indian community as a matter of law. Although Indian law, as quoted by the Court of Appeal in this case, clearly states that the Tribe is not required to do so, which the ASI likewise determined in his August 31, 2011 decision presently under federal judicial review, that is irrelevant for purposes of the Commission’s duties under the Compact. The Compact does not require that a Non-Compact tribe meet certain membership criteria satisfactory to the Commission as a condition of RSTF payments. The trial court has jurisdiction to decide this issue, and need not wait for the resolution of the pending federal litigation.

Likewise, the Commission, confronted with the impact of Dixie’s recent deposition testimony that he resigned as Tribal Chairman, now asserts that its current policy is to withhold RSTF payments from a Non-Compact tribe who fails to obtain federal contract funding pursuant to P.L. 638. (Bates 0047). Again, the Superior Court has jurisdiction to determine if this policy is correct or inconsistent with the Commission’s duties under the Compact. There is nothing in the

Compact that permits the Commission to withhold RSTF from a Non-Compact tribe for this particular reason.

Accordingly, while the trial court may have felt that the issues decided by the ASI in his December 22, 2010 decision, later affirmed by the ASI's August 31, 2011 decision, were dispositive for purposes of granting Plaintiff's motion for judgment on the pleadings, it can still decide independently whether the Commission's refusal to release the Tribe's RSTF money is warranted under the circumstances, especially now that Dixie has admitted he resigned as Tribal Chairman and acknowledged and accepted Burley as the new leader.

**C. THE STAY LANGUAGE IN THE ASSISTANT SECRETARY'S AUGUST 31, 2011 DECISION IS NOT GROUNDS TO STAY THIS ACTION OR STAY ENTRY OF JUDGMENT AGAINST THE COMMISSION**

The ASI's August 31, 2011 decision contains the following language:

"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)."

(Page 8 of ASI's August 31, 2011 decision, Bates 0188). Because the trial court based its ruling granting judgment on the pleadings against the Commission exclusively on the ASI's December 22, 2010 decision, which was affirmed in the ASI's August 31, 2011 decision, it reasoned that the action must be stayed, and thus it cannot enter judgment, because the ASI's August 31, 2011 decision is under federal review.

(Bates 0419). Whether the ASI's decision is stayed by "implementation" or otherwise, is irrelevant for purposes of the trial court's independent duty to determine the issues in this case as against the Commission.

Moreover, the phrase "implementation shall be stayed" in the context of the ASI's August 31, 2011 decision does not necessarily mean that the decision cannot be relied on to refute the Commission's defenses in this case, as argued by the Commission and the Intervenors, and as concluded by the trial court below. The word "implement", as a verb, means to put into effect, like a decision, plan, agreement, etc. For example, *"the regulations implement a 1954 treaty."* (The New Oxford American Dictionary, Second Edition, Oxford University Press, 2005, p. 848). Many citizens and public agencies have a disaster emergency plan in the event of an earthquake, hurricane or other disaster. The fact that they have not implemented that plan, because they have yet to experience a disaster, does not mean their plan does not exist. Thus, staying implementation of the ASI's August 31, 2011 decision does not equate with the validity of the decision itself. The validity of the decision stands on its own.

To this end, making a judicial determination that the Commission's reasons for withholding RSTF payments from the Tribe, based on the ASI's August 31, 2011 decision is not an act of "implementing" that decision. This is because the ASI's decision did not involve, nor did it have jurisdiction over, the issue of whether the Commission was properly withholding RSTF payments from the Tribe. Thus, as a matter of law, the Commission can do nothing to "implement" the ASI's decision. It therefore follows that the trial court

could not equally “implement” the ASI’s decision by entering judgment against the Commission on the grounds that the Commission’s defenses are refuted by the ASI’s August 31, 2011 decision affirming its December 22, 2010 decision in favor of the Tribe. The ASI’s August 31, 2011 decision is still valid and can be properly relied on by the trial court in the context of the issues in this case.

The only parties that are affected by the stay of implementation language in the ASI’s decision are those persons and entities who are subject to the jurisdiction of the U.S. Department of Interior, including the BIA. As properly interpreted, the phrase “stay of implementation” merely means that the BIA cannot pass regulations, make decisions, or take any action, to put into effect the August 31, 2011 decision, until such time as the federal litigation concludes. Indeed, the U.S. Civilian Board of Contract Appeals (“CBCA”) reviewing the Tribe’s appeal of a denial of its federal contract funding has interpreted this language to mean that until the federal litigation challenging the ASI’s decision concludes, it cannot rule on whether the Tribe was properly denied federal contract funding. Had the BIA awarded the Tribe federal contract funding, it could be said to have implemented the ASI’s August 31, 2011 decision, in violation of the ASI’s August 31, 2011 stay language. Indeed, the U.S District Court, in its decision granting the Tribe leave to intervene in the federal litigation stated:

“If plaintiffs [Dixie’s group] prevail in this action, the Assistant Secretary’s August 31 decision will be vacated, the Bureau will be ordered to cease government-to-government relationships with the Tribe as organized in the form of the General Council, and the



defendants [BIA, Secretary of Interior] will be enjoined from awarding any federal funds...

\* \* \*

“[R]esolution of the matter in the plaintiffs’ favor would directly interfere with the governance of the Tribe as currently recognized and preclude access to federal funds.” (Emphasis added).

(Memorandum Opinion and Order, March 26, 2012, pages 9, 10, Bates 0162, 0163).

In contrast, the Commission is not subject to the jurisdiction of the U.S. Department of Interior, and therefore its act of releasing, or an order directing it to release, the Tribe’s RSTF money cannot be construed as an act of implementing the ASI’s August 31, 2011 decision.

Until it is overturned by the federal court, the ASI’s decision “is final for the Department and effective immediately.” (Page 8, ASI’s August 31, 2011 decision, Bates 0188). Accordingly, there is no reason why the trial court cannot take judicial notice of that decision and, as it indicated it would, enter judgment against the Commission based on its previous order granting judgment on the pleadings.

**D. THE INTERVENORS HAVE BEEN DISMISSED, BUT THAT ORDER HAS BEEN STAYED**

In the event judgment is entered against the Commission, the Intervenor will also be dismissed. The trial court has already signed an order dismissing their Complaint in Intervention (Bates 0266-0270), but that order was stayed when the trial court was informed that the ASI set aside its December 22, 2010 decision. (Bates 0381-0383).



As stated, the only reason the trial court has not followed through in entering judgment on its order granting judgment on the pleadings against the Commission is because of the language in the ASI's August 31, 2011 decision staying implementation of its decision. As explained, that stay language should not preclude the trial court from entering judgment. Once it does enter judgment, either because of having made a determination independent of the ASI's decision, or because of the ASI's decision, the Intervenor will be dismissed.

The RSTF payments belong to, and are paid to, the Tribe, not to individual members of the Tribe. (Bates 0621). Except for Dixie, none of the Intervenor is a member of the Tribe. Under the Compact, the Commission has no duty to "potential" members of the Tribe with respect to distribution of RSTF money. (Bates 0621). The Tribe decides how payments are to be made to its members, once payment is made to the Tribe.

Accordingly, the existence of the Intervenor in the present action does not, and should, prevent the trial court from entering judgment against the Commission.

## II.

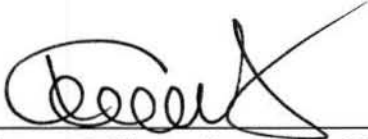
### CONCLUSION

For the foregoing reasons, the trial court erred and abused its discretion when it denied Plaintiff's motion to lift the stay of the action so that dispositive motions can be filed, in light of the recent deposition testimony of Intervenor Yakima Dixie admitting that he resigned as Tribal Chairman and acknowledging that Silvia Burley is the rightful Tribal Chairperson. This evidence refutes the Commission's claim that

a Tribal leadership dispute prevents it from releasing the now accumulated \$8 million in RSTF money it is withholding from the Tribe. The trial court has an independent obligation to determine whether the reasons the Commission has advanced for withholding these funds are correct, separate and apart from the Assistant Secretary of Interior's decision on an "enrollment dispute" and whether the Tribe has a recognized governing body for purposes of entitlement to federal contract funding and other federal benefits.

Alternatively, the trial court should be directed to enter judgment against the Commission, based on its order granting judgment on the pleadings. The phrase "implementation shall be stayed" in the Assistant Secretary of Interior's August 31, 2011 decision in favor of the Tribe does not preclude entry of judgment in this action, since the Commission is not subject to the jurisdiction of the U.S. Department of the Interior, and the Commission can do nothing to implement that decision.

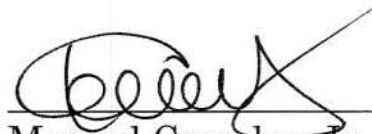
Dated: April 20, 2012

  
\_\_\_\_\_  
Manuel Corrales, Jr., Esq.  
Attorney for Plaintiff/Petitioner  
CALIFORNIA VALLEY MIWOK  
TRIBE

## CERTIFICATE OF WORD COUNT

The text of this petition consists of 11,203 words as counted by the Microsoft Office Word software word-processing program used to generate this petition.

Date: April 20, 2012

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

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

## **CERTIFICATE OF SERVICE**

California Valley Miwok Tribe v. California Gambling Control Commission  
San Diego Superior Court Case No. 37-2008-00075326-CU-CO-CTL

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

---

I, the undersigned, declare that I am over the age of 18 years and not a party to this action; I am employed in, and am a resident of, the County of San Diego, California. My business address is 17140 Bernardo Center Drive, Suite 370, San Diego, California 92128. I caused the following documents to be served in the manner indicated below and in the following manner on the following persons:

### **DOCUMENTS SERVED**

**PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER  
APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES  
[ACCOMPANIED BY SUPPORTING EXHIBITS]**

### **PERSONS SERVED**

1. Hon. Ronald L. Styn  
Department 62  
San Diego Superior Court  
330 West Broadway  
San Diego, California 92101

Manner of service: Personal service.

2. Randy Pinal, Esq.  
Deputy Attorney General  
CALIFORNIA ATTORNEY GENERAL'S OFFICE  
110 West "A" Street, Suite 1100  
San Diego, California 92101  
Tel: (619) 645-3075  
Fax: (619) 645-2012  
Email: [randy.pinal@doj.ca.gov](mailto:randy.pinal@doj.ca.gov)  
Attorney for Defendant California Gambling Control Commission

Manner of service: Personal service.

3. Neil D. Houston, Esq.  
Deputy Attorney General  
CALIFORNIA ATTORNEY GENERAL'S OFFICE  
1300 "I" Street, Suite 125  
Sacramento, California 95814  
Tel: (916) 322-5476  
Fax: (916) 327-2319  
Email: [neil.houston@doj.ca.gov](mailto:neil.houston@doj.ca.gov)  
Attorney for Defendant California Gambling Control Commission

Manner of service: Overnight mail.

4. Matthew McConnell, Esq.  
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP  
12275 El Camino Real, Suite 200  
San Diego, California 92130-2006  
Tel: (858) 720-8928  
Fax: (858) 509-3691  
Email: [mmcconnell@sheppardmullin.com](mailto:mmcconnell@sheppardmullin.com)  
Attorneys for Intervenors "California Valley Miwok Tribe, California";  
Yakima Dixie; Velma Whitebear; Antonia Lopez; Antone Azevedo;  
Michael Mendibles; and Evelyn Wilson

Manner of service: Personal service: Person service

5. Thomas Wolfrum, Esq.  
1333 North California Blvd., Suite 150  
Walnut Creek, California 94596  
Tel: (925) 930-5645  
Fax: (925) 930-6208  
Email: [twolfrum@wolfrumlaw.com](mailto:twolfrum@wolfrumlaw.com)  
Attorney for Intervenors "California Valley Miwok Tribe, California";  
Yakima Dixie; Velma Whitebear; Antonia Lopez; Antone Azevedo;  
Michael Mendibles; and Evelyn Wilson

Manner of service: Overnight mail.

6. Terry Singleton, Esq.  
SINGLETON & ASSOCIATES  
1950 Fifth Avenue, Suite 200  
San Diego, California 92101  
Tel: (619) 239-3225  
Fax: (619) 702-5592  
Email: [terry@terrysingleton.com](mailto:terry@terrysingleton.com)  
Attorney for Plaintiff California Valley Miwok Tribe

Manner of service: Personal service

7. Robert Rosette, Esq.  
ROSETTE & ASSOCIATES  
193 Blue Ravine Road, Suite 255  
Folsom, California 95630  
Tel: (916) 353-1084  
Fax: (916) 353-1085  
Email: [rosette@rosettelaw.com](mailto:rosette@rosettelaw.com)  
Attorney for Plaintiff California Valley Miwok Tribe

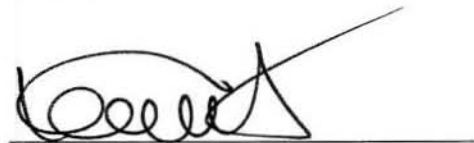
Manner of Service: Overnight Mail

With respect to service by overnight mail, I served the documents by placing them in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I caused the above documents to be personally served on the persons listed above, as stated in the attached declaration of messenger in the attached proof of service.

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

Executed this 13 day of April, 2012 at San Diego, California.

  
MANUEL CORRALES, JR.



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Manuel Corrales, Jr., Esq., SBN 117647 17140 Bernardo Center Drive, Suite 370 San Diego, California 92128 TELEPHONE NO.: (858) 521-0634 FAX NO. (Optional): (858) 521-0633 E-MAIL ADDRESS (Optional): mannycorrales@yahoo.com ATTORNEY FOR (Name): Plaintiff California Valley Miwok Tribe	FOR COURT USE ONLY          CASE NUMBER: 37-2008-00075326-CU-CO-C  JUDGE: DEPT.:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Central District	
PLAINTIFF/PETITIONER: California Valley Miwok Tribe DEFENDANT/RESPONDENT: California Gambling Control Commission	
<p style="text-align: center;"><b>PROOF OF SERVICE—CIVIL</b></p> <p><b>Check method of service (only one):</b></p> <p> <input type="checkbox"/> By Personal Service                <input type="checkbox"/> By Mail                <input checked="" type="checkbox"/> By Overnight Delivery  <input type="checkbox"/> By Messenger Service                <input type="checkbox"/> By Fax                <input type="checkbox"/> By Electronic Service         </p>	

*(Do not use this proof of service to show service of a Summons and complaint.)*

1. At the time of service I was over 18 years of age and **not a party to this action.**
2. My residence or business address is:  
17140 Bernardo Center Drive, Suite 370, San Diego, California 92128
3. ☐ The fax number or electronic service address from which I served the documents is *(complete if service was by fax or electronic service)*:
4. On (date): April 23, 2012 I served the following **documents** (specify):  
 PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES [ACCOMPANIED BY SUPPORTING EXHIBITS]  
☐ The documents are listed in the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)).
5. I served the documents on the **person or persons** below, as follows:
  - a. Name of person served:
  - b. ☐ *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*  
 Business or residential address where person was served:
  - c. ☐ *(Complete if service was by fax or electronic service.)*
    - (1) Fax number or electronic service address where person was served:
    - (2) Time of service:
- ☒ The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).
6. The documents were served by the following means (specify):
  - a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME:

California Valley Miwok Tribe v. California Gambling Control Comm.

CASE NUMBER:

37-2008-00075326-CU-CO-C

6. b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify one):

- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state):

- c. ☒ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. ☐ **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

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

Date: April 23, 2012

Mnauel Corrales, Jr., Esq.

(TYPE OR PRINT NAME OF DECLARANT)

  
(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

#### DECLARATION OF MESSENGER

- ☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date):

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

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

SHORT TITLE: California Valley Miwok Tribe v. California Gambling Control Comm.	CASE NUMBER: 37-2008-00075326-CU-CO-C
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### ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)

(This attachment is for use with form POS-040.)

#### NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

<u>Name of Person Served</u> <i>(If the person served is an attorney, the party or parties represented should also be stated.)</i>	<u>Where Served</u> <i>(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic service address, as applicable.)</i>	<u>Time of Service</u> <i>(Complete for service by fax transmission or electronic service.)</i>
Neil Houston, Esq. Deputy Attorney General	1300 "I" Street, Suite 125 Sacramento, California 95814	Time: _____
Thomas Wolfrum, Esq. Attorney at Law	1333 North California Blvd., Suite 150 Walnut Creek, California 94596	Time: _____
Robert Rosette, Esq. Rosette & Associates	193 Blue Ravine Road, Suite 255 Folsom, California 95630	Time: _____
		Time: _____
		Time: _____
		Time: _____
		Time: _____
		Time: _____
		Time: _____
		Time: _____
		Time: _____
		Time: _____

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Manuel Corrales, Jr., Esq., SBN 117647</b> <b>17140 Bernardo Center Drive, Suite 370</b> <b>San Diego, California 92128</b> TELEPHONE NO.: (858) 521-0634 FAX NO. (Optional): (858) 521-0633 E-MAIL ADDRESS (Optional): mannycorrales@yahoo.com ATTORNEY FOR (Name): Plaintiff California Valley Miwok Tribe		FOR COURT USE ONLY          CASE NUMBER: <b>37-2008-00075326-CU-CO-C</b>  JUDGE:  DEPT.:
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Central District		
PLAINTIFF/PETITIONER: California Valley Miwok Tribe DEFENDANT/RESPONDENT: California Gambling Control Commission		
<b>PROOF OF SERVICE—CIVIL</b> <b>Check method of service (only one):</b> <input checked="" type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service		

(Do not use this proof of service to show service of a Summons and complaint.)

1. At the time of service I was over 18 years of age and not a party to this action.

2. My residence or business address is:

**Pacific Southwest Investigation & Security, 1163 Broadway #214, El Cajon, CA 92021**

3. ☐ The fax number or electronic service address from which I served the documents is (complete if service was by fax or electronic service):

4. On (date): **4/23/12**

I served the following documents (specify): **Petition for Writ of Mandate and/or Prohibition or other Appropriate Relief; Memorandum of Points and Authorities [accompanied by Supporting Exhibits]**

☐ The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).

5. I served the documents on the person or persons below, as follows:

a. Name of person served: **Matthew McConnell, Esq.**

b. ☒ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)

Business or residential address where person was served:

**12275 El Camino Real, Ste 200, San Diego, CA 92130**

c. ☐ (Complete if service was by fax or electronic service.)

(1) Fax number or electronic service address where person was served:

(2) Time of service:

☒ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).

6. The documents were served by the following means (specify):

a. ☒ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME:

California Valley Miwok Tribe. v. California Gambling Control Comm

CASE NUMBER:

37-2008-00075326-CU-CO-C

6. b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):

(1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):

c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

f. ☐ **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

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

Date: April 23, 2012

Brenda J. Watton

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

#### DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

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

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

SHORT TITLE: California Valley Miwok Tribe v. California Gambling Control Commission	CASE NUMBER: 37-2008-00075326-CU-CO-CTL
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## ATTACHMENT TO PROOF OF PERSONAL SERVICE—CIVIL (PERSONS SERVED)

(This Attachment is for use with form POS-020)

Name of Person Served	Address (number, street, city, and zip code)	Date and Time of Service
Randy Pinal, Esq. Deputy Attorney General	110 West "A" Street, Suite 1100 San Diego, California 92101	Date: 4/23/12 Time: _____
Matthew McConnell, Esq. Sheppard, Mullin, etc	12275 El Camino Real, Suite 200 San Diego, California 92130-2006	Date: 4/23/12 Time: 12:20 pm
Hon. Ronald L. Styn Superior Court Judge	San Diego Superior Court, Dept. 62 330 West Broadway, San Diego CA 92101	Date: 4/23/12 Time: _____
Terry Singleton, Esq. Singleton & Associates	1950 Fifth Avenue, Suite 200 San Diego, California 92101	Date: 4/23/12 Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
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