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DEPARTMENT OF JUSTICE



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May 2, 2012

The Presiding Justice
California Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101

Re: *California Valley Miwok Tribe v. Superior Court*
Appellate Case No. D061811 (Writ of Mandate/Prohibition)
San Diego County Superior Court Case No. 37-2008-00075326
Hon. Ronald L. Styn

PRELIMINARY OPPOSITION

Defendant and real party in interest California Gambling Control Commission, (Commission), submits the following informal preliminary opposition to the California Valley Miwok Tribe's petition for a writ of mandate and/or prohibition.

INTRODUCTION AND FACTUAL BACKGROUND

Two factions are vying for control of the California Valley Miwok Tribe (Tribe). The "Burley Faction"¹ is the petitioner and plaintiff in this action and is suing in the name of the Tribe in an effort to compel the Commission to disburse to the Burley Faction approximately \$8,000,000 in accrued Revenue Sharing Trust Fund payments that the Commission has set aside in an interest bearing account to be disbursed for the benefit of the Tribe when the Tribe's longstanding organizational and leadership dispute is finally resolved. The only entity other than the Tribe itself that has the authority and jurisdiction to resolve tribal organizational and leadership disputes is the United States Department of the Interior, acting through the Bureau of Indian Affairs (BIA). At various times during this Tribe's ongoing organizational and leadership dispute, the BIA has issued decisions stating that the Tribe remains "unorganized" and lacks a tribal chairperson. (See *California Valley Miwok Tribe v. Salazar*, Case No. 1:11-cv-160, United States District Court for the District of Columbia (*CVMT v. Salazar*), Compl. Exs. A & B;

¹ The Burley Faction, as it describes itself, consists of Silvia Burley, her two daughters, a granddaughter, and, without his cooperation or consent, Yakima Dixie.

Com's. Req. for Jud. Not. (CGCC RJN), Ex. I; Com's. Exs. in Opp'n. to Pet. (CGCC Exs.) Ex. 1.) However, on December 22, 2010, the United States Department of the Interior's Assistant Secretary for Indian Affairs, Larry Echo Hawk, issued a written decision containing various findings of fact and acknowledging the Burley Faction as the federally-recognized leadership group of the Tribe (Echo Hawk Decision). (Pet. for Writ of Mandate Exhibits (Pet. Exs.) vol. 1, Ex. 10, at pp. 0171-0176.) This decision had the effect of reversing the earlier BIA decisions. Shortly thereafter, the rival "Dixie Faction" consisting of Yakima Dixie and five other persons acting in the name of the Tribe,² its Tribal Council, and as individuals, filed suit against the Department of the Interior in the United States District Court for the District of Columbia, seeking to overturn the Echo Hawk Decision on several grounds. (*CVMT v. Salazar*, filed January 24, 2011.)³ On March 11, 2011, Judge Styn issued an order granting the plaintiff's motion for judgment on the pleadings in this case expressly on the basis of the Echo Hawk Decision. (Pet. Ex. vol. 2, Ex. 21, at pp. 0324-0325.) On April 1, 2011, and before judgment had been entered on Judge Styn's order, the Assistant Secretary set aside the Echo Hawk Decision for reconsideration. (Pet. Ex. vol. 1, Ex. 10, at pp. 0177-0178.) As a result of the withdrawal of the Echo Hawk Decision, on April 20, 2011, Judge Styn stayed entry of judgment and imposed a stay of all proceedings (except discovery) in this case pending the outcome of the Assistant Secretary's reconsideration of the Echo Hawk Decision. (Pet. Ex. vol. 2, Ex. 26, at pp. 0381-0385.) On August 31, 2011, the Assistant Secretary reissued his decision, concluding with the provision:

This decision is final for the Department [of the Interior] 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 3/16/11).

(Pets. Exs. vol I, Ex. 10, at pp. 0182-0189.) On September 7, 2011, Judge Styn took judicial notice of the Assistant Secretary's August 31, 2011 decision, declined to enter judgment against the Commission, and reaffirmed his previous orders, which included the stay on dispositive motions originally imposed on April 20, 2011. (Pet. Ex. vol 2, Ex. 30, at p. 0417.) On March 7, 2012, Judge Styn denied the Burley Faction's ex parte application for an order vacating the stay. (Pet. Exs. vol. 1, Ex. 1, at p. 0001.) This petition ensued.

² The individual plaintiffs in *California Valley Miwok Tribe v. Salazar* include Yakima Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson, and Antoine Azevedo.

³ The Complaint filed in *California Valley Miwok Tribe v. Salazar* is attached as Exhibit I to the Commission's Request for Judicial Notice, which is, in turn, attached as Exhibit 1 to the Commission's Exhibits in Opposition to Petition for Writ of Mandate, submitted concurrently herewith. On October 21, 2011, the trial court granted judicial notice pursuant to this request. (Pet. Exs. vol. 2, Ex. 31, at p. 0419.)

THE PETITION SHOULD BE SUMMARILY DENIED

The petition should be summarily denied because:

1. The Echo Hawk Decision⁴ has been stayed pending the outcome of *CVMT v. Salazar*. Accordingly, a writ should not issue to compel Judge Styn to enter judgment against the Commission on the basis of it at this time.
2. The outcome of *CVMT v. Salazar* is substantially likely to either be dispositive of this case, or to establish critical facts concerning the Tribe that will be essential to such further proceedings as may be needed in this case. Accordingly, good cause exists for Judge Styn's case management decision to order the stay in this case.
3. Yakima Dixie's purported admission that he resigned as Tribal Chairman in 1999 is immaterial to the issues raised in *CVMT v. Salazar*, and immaterial to the issues raised in this case.
4. Contrary to the Burley Faction's contention, this Court did not previously direct the trial court as to how to try this case.
5. The writ petition shows no irreparable injury.
6. The writ petition is untimely.

THE ECHO HAWK DECISION IS STAYED

By its own terms, implementation of the Echo Hawk Decision is stayed pending the outcome of *CVMT v. Salazar*. (Pet. Exs. vol 1, Ex. 10, at p. 0188.) Moreover, the Assistant Secretary stipulated in *CVMT v. Salazar* 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." (CGCC RJN, Ex. K, ¶ 12; see also Pet. Exs. vol. 2, Ex. 31, at p. 0419.) Accordingly, the Burley Faction's attempt to parse the language of the Echo Hawk Decision to distinguish its immediate use in this case from the "implementation" referred to in the Echo Hawk Decision should be disregarded, and judgment should not be entered against the Commission at this time on the basis of the Echo Hawk Decision.

⁴ The Assistant Secretary's August 31, 2011 decision and December 22, 2010 decision are substantively the same. The term "Echo Hawk Decision" is used interchangeably with respect to both of the documents.

***CVMT v. SALAZAR* IS LIKELY TO BE DISPOSITIVE OF THIS CASE**

If the Dixie Faction prevails in *CVMT v. Salazar*, the Echo Hawk Decision will be vacated, prior BIA decisions will be reinstated causing the BIA's position to be that the Tribe is "unorganized" and has no recognized tribal chairperson, and the BIA will resume efforts to identify the members of the tribe and assist in its organization. (See *CVMT v. Salazar* Compl., Prayer at pp. 27-28, CGCC RJN, Ex. I.) On the other hand, if the Department of the Interior and the Burley Faction prevail, and the Echo Hawk Decision is upheld, the BIA's position will be that the Burley Faction is the federally-recognized leadership of the Tribe, and the outcome of *CVMT v. Salazar* may result in the Commission's voluntary payment of the accrued RSTF payments to the Burley Faction on behalf of the Tribe, or in the entry of judgment against the Commission on the basis of the trial court's prior order granting the Burley Faction's motion for judgment on the pleadings based on the Echo Hawk Decision. Alternatively, the outcome of *CVMT v. Salazar* may result in the reinstatement of important prior BIA decisions concerning the status and leadership of the Tribe that contain facts that will be essential to the Commission's defense in this case if the Echo Hawk Decision is overturned.

As the docket indicates, dispositive cross-motions are pending in *CVMT v. Salazar*. (Docket, CGCC Exs. Ex. 2.) It is therefore substantially likely that relatively soon *CVMT v. Salazar* will either dispose of this case or provide the necessary factual foundation for such further proceedings as may be needed. "Mandate lies to control judicial discretion when that discretion has been abused. 'In a legal sense discretion is abused whenever in the exercise of discretion the court exceeds the bounds of reason, all of the circumstances before it being considered.'" (*State Farm Mutual Automobile Ins. Co. v. Super. Ct. of the City and County of San Francisco* (1956) 47 Cal.2d 428, 432, quoting *Berry v. Chaplin* (1946) 74 Cal.App.2d 669, 672.) As a result of the close and in some respects contingent relationship between the subject matter of *CVMT v. Salazar* and this case, Judge Styn's decision to stay proceedings pending the outcome of *CVMT v. Salazar* constitutes a reasonable expression of his discretion to manage the case in an efficient manner in order to conserve judicial and party resources, and should not be disturbed.

DIXIE'S PURPORTED ADMISSION IS IMMATERIAL

The dispute in *CVMT v. Salazar* extends well beyond whether Yakima Dixie resigned as Tribal Chairman in 1999. (See *CVMT v. Salazar*, *supra*, Compl., CGCC RJN, Ex. I.) In this case, the Commission is defending its policy and practice of deferring to the BIA with regard to findings of fact concerning federally-recognized tribes and the designation of representatives authorized to receive and administer money on behalf of those tribes. For this reason, the Commission's position in this litigation will be substantially affected by the outcome of *CVMT v. Salazar*, as that outcome will determine the BIA's position with regard to facts concerning the Tribe's organization and leadership. Contrary to the Burley Faction's assertion, the Commission has not withheld accrued RSTF payments on behalf of the Tribe solely due to doubt over

whether Silvia Burley or Yakima Dixie is the Tribal Chairperson. (See, e.g., *CVMT v. Salazar*, *supra*, Compl., Exs. A & B, CGCC RJN, Ex. I.)

**THIS COURT DID NOT DIRECT THE TRIAL COURT TO
LITIGATE SPECIFIC ISSUES ON REMAND**

Based apparently upon a very literal reading of this Court's 2010 decision in this case (No. D0544912, filed April 16, 2010), the Burley Faction contends that this Court specifically directed the trial court, on remand, to try the separate issue of whether the Commission is properly withholding funds from the Tribe (Petition p. 31), and that the stay prevents this and is therefore contrary to the law of the case. The portion of the appellate decision quoted by the Burley Faction, when read in context, more reasonably relates to this Court's effort to emphasize that it was deciding only the issues of the Tribe's standing and capacity rather than the merits of the underlying dispute, and does not reasonably appear to constitute a binding directive by this Court intended to limit the trial court's discretion to manage the case after remand. Moreover, while the stay may postpone the litigation of the limited issue of whether the Commission properly defers to the findings and determinations of the BIA, the stay will not *prevent* litigation of that issue if the outcome of *CVMT v. Salazar* is such to require the trial court to reach that issue. Moreover, it would be more appropriate and efficient to litigate that issue in concert with the Burley Faction's entitlement to the accrued RSTF payments under the facts that may be established by *CVMT v. Salazar* if the Echo Hawk Decision is vacated.

THE WRIT PETITION SHOWS NO IRREPARABLE INJURY

The only harm the Burley Faction will suffer if this Court denies the petition is that adjudication of one of its claims may take longer, and its potential recovery on that claim may be delayed. On this basis, the Burley Faction urges the Court to direct Judge Styn to vacate the stay so that the plaintiff may instead litigate its claims in piecemeal fashion, with the hope of securing the disbursement of the accrued RSTF payments on the basis of state law and irrespective of whatever determination the BIA eventually makes concerning the Burley Faction's legitimacy as a representative body of the Tribe.

Extraordinary relief is inappropriate in this instance because the Burley Faction has an adequate remedy at law in the form of a more efficient trial, and possibly appeal, after the issues in *CVMT v. Salazar* have been resolved. A remedy is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law than would be required in the use of an extraordinary writ. (*The Rescue Army v. Municipal Court of the City of Los Angeles* (1946) 28 Cal.2d 460, 466.)

THE WRIT PETITION IS UNTIMELY

The Burley Faction's primary rationale for seeking to compel Judge Styn to vacate the stay is so that the plaintiff may proceed to try the issue of the legitimacy of the Commission's policy and practice of deferring to the BIA. The Burley Faction contends that this issue may be tried separately and apart from the factual issues that will be affected by the outcome of *CVMT v. Salazar*.

To the extent that the issue of the Commission's policy and practice may be deemed separate and apart from the factual issues concerning the Tribe's organization and leadership, it is also separate and apart from Yakima Dixie's purported admission that he resigned as Tribal Chairman in 1999. Accordingly, the Burley Faction's alleged injury at the hands of the trial court did not first accrue on March 7, 2012, when Judge Styn denied its *ex parte* application to vacate the stay, but instead accrued when the stay was first imposed on April 20, 2011, a date more than a year prior to the filing of this petition on April 23, 2012.

CONCLUSION

The Commission has no partisan interest in the outcome of the dispute between the Burley and Dixie Factions. The Commission's only interest is in fulfilling its obligation as a limited trustee of the RSTF to take steps to reasonably ensure that RSTF funds are disbursed only to individuals or groups who are properly authorized to receive and administer them on behalf of their respective tribes. This position is consistent with the Commission's earlier, and, unfortunately unsuccessful, effort to interplead the accrued RSTF funds.

In its petition, the Burley Faction on the one hand relies upon the Echo Hawk Decision to urge this Court to summarily grant it relief by directing the trial court to enter judgment on the Tribe's earlier motion for judgment on the pleadings, notwithstanding the fact that the Echo Hawk Decision, on its own terms, has no force and effect pending judicial review which may result in the decision being overturned. On the other hand, the Burley Faction urges this Court to direct Judge Styn to vacate the stay so that it may proceed to litigate the Commission's policy and practice of deferring to the BIA for findings of fact and the designation of federally-recognized tribal leaders and leadership groups in the abstract, without reference to the BIA's findings and conclusions with regard to this particular Tribe. The Commission urges this Court that Judge Styn's case management decision to impose the stay is reasonable under the circumstances of this case, works to conserve judicial and party resources, is not beyond the bounds of reason, and therefore does not constitute an abuse of discretion. The Commission

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respectfully submits that the petition should be summarily denied. In the alternative, the Commission requests that it be permitted to file a more comprehensive opposition to the petition.

Sincerely,

A handwritten signature in black ink, appearing to read "NDH", with a long horizontal flourish extending to the right.

NEIL D. HOUSTON
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

NDH/lit
Enclosures

**COMMISSION'S EXHIBITS IN
OPPOSITION TO PETITION FOR
WRIT OF MANDATE**

**(Due to the voluminous size of this filed document,
only the cover page and relevant exhibits
referenced in the letter are attached)**

EXHIBIT 1

COPY

FILED

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California Gambling Control Commission

FILED
Clerk of the Superior Court

OCT 7 2011

By: P. WOODS, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO
12 CENTRAL BRANCH
13
14

15 CALIFORNIA VALLEY MIWOK TRIBE,

16 Plaintiff,

17 v.

18 THE CALIFORNIA GAMBLING
19 CONTROL COMMISSION; and DOES 1
20 THROUGH 50, Inclusive,

21 Defendants.
22
23
24

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

REQUEST FOR JUDICIAL NOTICE OF
DEFENDANT CALIFORNIA
GAMBLING CONTROL COMMISSION
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR ENTRY OF JUDGMENT
AGAINST DEFENDANT CALIFORNIA
GAMBLING CONTROL COMMISSION

Date: October 21, 2011
Time: 8:30 a.m.
Dept: C-62
Judge: Hon. Ronald L. Styn
Trial Date: May 13, 2011
Action Filed: January 8, 2008

25 In support of their Memorandum of Points and Authorities in Support of the Defendant's
26 Opposition to Plaintiffs Motion for Entry of Judgment, Defendant requests that the Court take
27 judicial notice of the following:
28

EXHIBIT I

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

THE CALIFORNIA VALLEY MIWOK TRIBE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

THE TRIBAL COUNCIL,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

YAKIMA DIXIE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

VELMA WHITEBEAR,
213 Downing Drive
Galt, CA 95632

ANTONIA LOPEZ,
P.O. Box 1432
Jackson, CA 95642

MICHAEL MENDIBLES,
P.O. Box 266
West Point, CA 95255

EVELYN WILSON,
4104 Blagen Blvd.
West Point, CA 95255

ANTOINE AZEVEDO,
4001 Carribee Ct.
North Highlands, CA 95660

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as
Secretary of the United States Department of the
Interior,
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

LARRY ECHO HAWK, in his official capacity as
Assistant Secretary-Indian Affairs of the United
States Department of the Interior,
Department of the Interior
1849 C Street, N.W.

Case: 1:11-cv-00160
Assigned To : Roberts, Richard W.
Assign. Date : 1/24/2011
Description: Admn Agency Review

Washington DC 20240

MICHAEL BLACK, in his official capacity as
Director of the Bureau of Indian Affairs within the
United States Department of the Interior,
Bureau of Indian Affairs
MS-4606
1849 C Street, N.W.
Washington, D.C. 20240

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Yakima Dixie ("Chief Dixie"), the California Valley Miwok Tribe ("Tribe"), and Tribe members Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo, individually and as members of the Tribal Council ("Council"), submit this Complaint against the Defendants, Ken Salazar, Secretary of the United States Department of the Interior ("Department"), Larry Echo Hawk, Assistant Secretary-- Indian Affairs of the Department, and Michael Black, Director of the Bureau of Indian Affairs within the Department, and state and allege as follows:

INTRODUCTION

1. In *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008), the Court of Appeals for the District of Columbia Circuit upheld the Secretary of the Interior's ("Secretary") decision that Sylvia Burley ("Burley") and her two daughters (collectively, the "Burley Faction") were not the legitimate government of the Tribe. The court held that the Secretary, in 2004 and 2005, properly rejected a purported tribal constitution that the Burley Faction had submitted "without so much as consulting [the Tribe's] membership." The Secretary therefore properly refused to recognize Ms. Burley as Chairperson of the Tribe, and properly refused to recognize the Tribe as "organized" under the Indian Reorganization

Act of 1934 ("IRA"). See Letter from Dale Risling Sr., Superintendent, Bureau of Indian Affairs Central California Agency, to Silvia Burley (Mar. 26, 2004) (the "2004 Decision") (a true and correct copy of which is attached hereto as Exhibit "A"); Letter from Michael Olsen, Acting Assistant Secretary – Indian Affairs, to Yakima Dixie, (Feb. 11, 2005) (the "2005 Decision") (a true and correct copy of which is attached hereto as Exhibit "B"). The Court of Appeals thus affirmed a decision by the District Court for the District of Columbia, dismissing Ms. Burley's challenge to the Secretary's decisions.

2. In briefs submitted to the Court of Appeals, the Secretary took the position that, "for an 'Indian tribe' to organize under the IRA, action by the tribe as a whole is required; action by an unrepresentative faction is insufficient." The Secretary argued, in support of the 2004 and 2005 Decisions, that she could not recognize Burley's purported tribal government, or its constitution, because "the undisputed facts show that the Burley Government was elected, and its governing documents adopted, by just three people and without the participation of the vast majority of the potential members of the Tribe." The Secretary also recognized that she had not only the authority but the obligation to "ensure the legitimacy of any purported tribal government that seeks to engage in [a] government-to-government relationship with the United States."

3. The Court of Appeals agreed with the Secretary, holding that "as Congress has made clear, tribal organization under the [IRA] must reflect majoritarian values," and that "[Burley's] antimajoritarian gambit deserves no stamp of approval from the Secretary."

4. Following the Court of Appeals' decision, on November 6, 2006, the Bureau of Indian Affairs ("BIA") issued a decision describing how it would assist the Tribe in organizing under the IRA. The Burley Faction appealed this decision to the BIA's Regional Director. On April 2, 2007, the Regional Director affirmed the decision.

5. On April 10 and 17, 2007, the BIA published a notice seeking personal genealogies and other information from potential Tribe members, which was to be used to identify those who were entitled to participate in the initial organization of the Tribe. More than 500 people responded. The BIA has taken no action as to these submittals.

6. The Burley Faction did not participate in the process initiated by the BIA, but instead appealed the Regional Director's April 2, 2007 decision to the Interior Board of Indian Appeals ("Board"). *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIA 103 (Jan. 28, 2010).

7. The Board held that the Secretary's previous, judicially approved decisions regarding the status of the Burley Faction and the requirement of majority participation were not subject to further review. It therefore dismissed all but one of Burley's claims for lack of jurisdiction. The Board referred a single, narrow issue from Burley's appeal to the Assistant Secretary – Indian Affairs (the "Assistant Secretary"): the process for identifying which members of the Tribal community were entitled to participate in the initial organization of the Tribe.

8. On December 22, 2010, the Assistant Secretary acted on Burley's appeal Letter from Assistant Secretary—Indian Affairs to Yakima Dixie (December 22, 2010) (the "December 22 Decision"), (a true and correct copy of which is attached hereto as Exhibit "C"). The Assistant Secretary did not address the narrow issue over which he had jurisdiction. Instead, he inexplicably repudiated each of the arguments that the Secretary had made before the District Court and the Court of Appeals. Without any reasoned explanation, he reversed each and every one of the Secretary's prior decisions that those courts had upheld. The Assistant Secretary rescinded the 2004 and 2005 Decisions denying recognition of the Burley Faction and its constitution. He declared that the Tribe was "organized" under a General

Council form of government, pursuant to a 1998 tribal resolution that was not signed by a majority of the Tribe's adult members (the "1998 Resolution"). He directed the BIA to carry on government-to-government relations with the Burley Faction. And he ordered the BIA to rescind its efforts to help the Tribe organize according to majoritarian principles.

9. Plaintiffs challenge the Assistant Secretary's action as arbitrary, capricious, and not in accordance with law. The December 22 Decision exceeds the scope of the issue referred to the Assistant Secretary on appeal, improperly revisits and overturns long-settled, judicially approved decisions, addresses issues barred by failure to file timely appeals with the Board, and violates the Secretary's responsibility to ensure that the United States conducts government-to-government relations only with valid representatives of the Tribe.

10. The December 22 Decision directly contradicts the Secretary's prior representations to this Court and cedes complete control of the Tribe to the Burley Faction, who have fought for more than a decade to deny the benefits of Tribe membership to anyone but themselves.

11. Plaintiffs therefore file this action, asking this Court to invalidate the Assistant Secretary's decision and to enjoin and invalidate its implementation.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the asserted claims arise under the Constitution and laws of the United States.

13. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1361 in that the Tribe seeks to compel officers and employees of the United States and its agencies to perform duties owed to the Tribe.

14. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1362 because the Tribe is an Indian tribe duly recognized by the Secretary of the Interior, and the matter in controversy arises under the Constitution, laws or treaties of the United States.

15. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Secretary, the Assistant Secretary, the Director of the BIA, and the Department are located in this district.

16. Judicial review of the agency action is authorized by the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 702, 704 and 706. The Assistant Secretary's decision is final agency action under the APA and 25 C.F.R. § 2.6(c).

17. The requested declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201-2202.

18. Plaintiffs have exhausted their administrative remedies and are not required to pursue additional administrative remedies before seeking and obtaining judicial relief.

19. An actual case and controversy has arisen and now exists between the parties with regard to the Assistant Secretary's violations of the statutes and regulations cited herein.

PARTIES

20. Plaintiff California Valley Miwok Tribe, also known as the "Sheep Ranch Rancheria," the "Sheep Ranch Rancheria of Me-Wuk Indians of California," and the "Sheep Ranch Band of Me-wuk Indians of the Sheep Ranch Rancheria," is a federally recognized Indian tribe situated in Sheep Ranch, California, in Calaveras County. (The Burley Faction purported to enact a tribal resolution in 2001, changing the name of the Tribe from the Sheep Ranch Band of Me-wuk Indians to the California Valley Miwok Tribe. Plaintiffs dispute that the Burley Faction had the authority to enact such a resolution. But because the BIA now refers to the Tribe as the California Valley Miwok Tribe, Plaintiffs and members of the larger tribal community have used that name to avoid confusion. This Complaint will do the same.)

The Tribe consists of Indian members and their descendants, and/or their Indian successors in interest, for whose benefit the United States acquired and created the Sheep Ranch Rancheria. There is an ongoing dispute regarding the true membership and leadership of the Tribe.

21. Plaintiff Yakima Dixie is the Hereditary Chief and Traditional Spokesperson, and the historical Chairperson, of the California Valley Miwok Tribe.

22. Plaintiff Tribal Council is the duly authorized and legitimate governing body of the Tribe, appointed by Chief Dixie. The Council consists of Chief Dixie and Tribe members Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo.

23. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo are members of the Tribe and of the Tribal Council. Each is a lineal descendant of a historical member or members of the Tribe.

24. Defendant Ken Salazar is the Secretary of the United States Department of the Interior. Mr. Salazar is responsible for the supervision of the various federal agencies and bureaus within the Department, including the BIA. Mr. Salazar is an officer or employee of the United States and has a direct statutory duty to carry out the provisions of the Indian Reorganization Act of 1934 ("IRA") and other relevant laws. Mr. Salazar is sued in his official capacity only.

25. Defendant Larry Echo Hawk is the Assistant Secretary - Indian Affairs of the Department and head of the Bureau of Indian Affairs. Mr. Echo Hawk issued the December 22 Decision that is challenged in this action. Mr. Echo Hawk is sued in his official capacity only.

26. Michael Black is the Director of the Bureau of Indian Affairs within the Department. Mr. Black is responsible for the day-to-day operations of the BIA, including its relations with federally recognized Indian tribes. Mr. Black is sued in his official capacity only.

RELEVANT FACTS

Tribal History and Indian Reorganization Act

27. In 1916, the United States purchased approximately one to two acres of land and created the Sheep Ranch Rancheria for the benefit of a small cluster of twelve to fourteen Miwok Indians that were found living in or near Sheep Ranch, California. The United States subsequently recognized the Sheep Ranch Band of Me-wuk Indians as a federal Indian Tribe.

28. In 1935, the Tribe voted to accept the IRA. The IRA allows Indian tribes to adopt a constitution, form a tribal government, and elect tribal officials, subject to substantive and procedural requirements in the IRA. Tribes thus "organized" under the IRA are eligible for certain federal benefits and services. Although it accepted the IRA, the Tribe did not take action to become "organized."

29. Under the IRA, the Secretary has a duty to ensure that the Department recognizes only a legitimate tribal government that reflects the participation of a majority of the Tribe's membership. This duty is informed and strengthened by the United States' trust obligations to Indian tribes and their members.

The California Rancheria Act and Failure to Terminate the Tribe

30. In 1958, Congress enacted the California Rancheria Act, which authorized the Secretary to terminate the lands and trust status of enumerated Indian tribes on California Rancherias under certain conditions. Under the Act, tribes could accept termination in exchange for fee title to Rancheria assets and the provision of certain services by the federal government.

31. In 1965, the BIA listed Mabel Hodge Dixie as the only Indian living on Sheep Ranch Rancheria.

32. On or about 1966, the BIA began proceedings to "terminate" the Tribe pursuant to the California Rancheria Act, and the United States conveyed fee title in the Sheep Ranch Rancheria to Mabel Hodge Dixie. The BIA never completed the requirements for termination. In 1967, Ms. Dixie quitclaimed the Rancheria back to the United States, thereby preventing termination of the Tribe from becoming effective.

33. In 1971, Ms. Dixie died, and her son Yakima Dixie inherited the position of Hereditary Chief and Traditional Spokesperson of the Tribe.

34. In 1994, Congress enacted the Tribe List Act, Pub. L. 103-454; 108 Stat. 4791, 4792, which requires the Secretary annually to publish a list of federally recognized Indian Tribes. The Tribe was included on the 1994 list and has been included on each list published since that time. Inclusion of a tribe on the list does not mean that the tribe is "organized" under the IRA or that its membership has been determined.

Burley Seeks Control of the Tribe

35. In 1998, Chief Dixie was the only Indian living on the Sheep Ranch Rancheria. Burley contacted Chief Dixie and asked him to enroll Burley, her two daughters, and her granddaughter in the Tribe so they could receive federal education and health benefits available to Indian tribe members. Chief Dixie agreed. Chief Dixie, Ms. Burley and her daughters then began preliminary efforts to organize the Tribe under the IRA.

36. Soon thereafter, a series of disputes ensued as Burley attempted to gain sole control of the Tribe. In 1998, Burley submitted the 1998 Resolution, which purported to establish a General Council to serve as the governing body of the Tribe. The 1998 Resolution was invalid, however, because it was not signed by a majority of the Tribe's adult members. Burley then filed a document purporting to be the resignation of Chief Dixie as Tribal Chairperson. Chief Dixie immediately denied the validity of the document and continues to do

so. Over the next few years, Burley tried several times, unsuccessfully, to gain BIA approval of various Tribal constitutions that would have recognized her as the Tribe's leader and limited Tribe membership to Burley and a few others.

Chief Dixie's Efforts to Organize the Tribe

37. After several years of failed efforts to resolve the leadership disputes that had arisen with Burley, Chief Dixie began efforts in 2003 to organize the Tribe without Burley's assistance and with the participation of the entire Tribal community. Since late 2003, the Tribe has held open meetings each month. Attendance at the meetings ranges from approximately 30 to more than 100 members. Attendance records are kept, and meetings are recorded and archived. Although Burley was specifically invited to the initial meetings and has never been excluded from any meeting, she has never attended.

38. In addition to the general Tribal meetings, Chief Dixie convened a group of individuals who were recognized within the Tribal community as figures of authority, in order to form a Tribal Council. In addition to Chief Dixie, the Council consists of Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo. Each of the members of the Tribal Council is a lineal descendant of a historical member or members of the Tribe. The Council met with the BIA in September 2003 and presented the BIA with documentation of their legitimate claims to Tribal membership and authority.

39. At the September 2003 meeting, Chief Dixie and the Council presented the BIA with a list of Tribal community members who should be allowed to participate in the initial organization of the Tribe, and requested that the BIA call an election pursuant to the IRA to select a Tribal government that could be recognized by the United States. The BIA did not act on the Council's request but continued to meet regularly with Chief Dixie and the Council to discuss efforts to organize the Tribe. Since its formation, the Tribal Council has met

approximately every other month to discuss Tribal policy, enact resolutions, and conduct other Tribe business.

40. Under the leadership of the Council, the Tribe has established many programs aimed at benefiting the full Tribal membership, strengthening the tribal community, and reestablishing historic ties with the larger Indian community. Extensive information about the Tribe's activities is available on the Tribe's website at <http://californiavalleymiwok.com/x-index.html>. Tribal activities include:

- a. Involvement in approximately ten Indian Child Welfare Act cases, in an effort to have children of Tribe members who are in protective services placed with families that have ties to Indian traditions. Burley has opposed the Tribe's efforts in these cases.
- b. Issuance of Tribal identification cards.
- c. Involvement in Indian health services, emergency services and food distribution programs, including the MACT Indian health services program, that benefit members of the Tribe and other Indian tribes.
- d. Participation, with other Miwok tribes, in an intratribal Miwok Language Restoration Group. Plaintiff Evelyn Wilson is the senior Miwok member who still speaks the Miwok language.
- e. A ceremonial Indian dance group (through Tribe members Gilbert Ramirez and his son Pete) that represents the Tribe at events throughout California.
- f. Consultation with Caltrans regarding possible Indian remains found at development sites.
- g. Consultation with the U.S. Forest Service to help identify native plants on state and federal land that have been used by Indians for medicinal and other purposes.

h. Classes in traditional crafts and skills, such as basket weaving, and continuing efforts to revive the gathering of native plants, pine nuts, and other materials for such crafts, as well as to protect the sites where those materials are gathered.

i. Potential involvement, in collaboration with Calaveras County and other local and state agencies, in the Collaborative Forest Landscape Restoration Program, a federally supported forest rehabilitation program.

j. Participation in a variety of other economically and socially beneficial programs and activities, including but not limited to the Calaveras Healthy Impact Products Solutions program.

Each of these activities will be harmed if the December 22 Decision is allowed to stand and the federal government recognizes the Burley Faction as the government of the Tribe.

The BIA Repudiates the Burley Faction

41. Burley responded to Chief Dixie's efforts to organize the Tribe around its legitimate members by submitting yet another proposed constitution, in February 2004, to the BIA—purportedly to demonstrate that the Tribe was already “organized” with Ms. Burley as its leader.

42. In a March 26, 2004 letter to Burley, the BIA declined to approve her latest constitution. The BIA explained that efforts to organize a Tribe must reflect the involvement of the whole tribal community: “Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was attempted or has occurred with the purported organization of your tribe. . . . To our knowledge, the only persons of Indian descent involved in the tribe's organization efforts, were you and your two daughters It is only after the greater tribal community is

initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified."

43. The BIA's letter identified several groups of Tribe members and segments of the tribal community who should be involved in the initial organization efforts. These groups included Chief Dixie and his brother Melvin Dixie; other individuals who had resided at Sheep Ranch Rancheria in the past, and their offspring; persons who had inherited an interest in the Sheep Ranch Rancheria; Indians who had once lived adjacent to Sheep Ranch Rancheria, and their descendants; and neighboring groups of Indians, of which the Tribe may once have been a part.

44. The BIA's letter also stated that "the BIA does not yet view your tribe to be an 'organized' Indian Tribe" and that, as a result, the BIA could not recognize Burley as the Tribe's Chairperson.

45. On February 11, 2005, the Assistant Secretary – Indian Affairs sent a letter to Chief Dixie and Burley in which he reiterated the decisions expressed in the BIA's March 26, 2004 letter. The Assistant Secretary stated, "In that letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. . . . Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you . . . to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004 letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members."

46. After the Assistant Secretary's 2005 determination, the BIA sought to work with Chief Dixie's Tribal Council and the Tribe to complete the organization process. Chief Dixie

and the BIA invited Burley to participate, but she again refused and instead filed suit challenging the Assistant Secretary's decision.

The District Court and Court of Appeals Uphold the BIA's Decision

47. In April 2005, the Burley Faction filed suit in the federal district court for the District of Columbia. The suit challenged the BIA's and Assistant Secretary's refusal to approve the Burley Faction's proposed constitution and to recognize its purported Tribal government, and sought a judgment that the Tribe was "organized." Notably, Burley did not contest in federal court the BIA's specific decision not to recognize her as the Tribal Chairperson. She thereby waived any challenge to that decision.

48. Around the same time, the Burley Faction also purported to disenroll Chief Dixie from the Tribe, for the purpose of denying him status to participate in the federal lawsuit. Ironically, in 2009, the Burley Faction purported to reinstate Chief Dixie as a member of the Tribe, in an attempt to deny him a basis to intervene in state court litigation in which Burley sought access to funds held in trust for the Tribe.

49. The district court dismissed the Burley Faction's claims in March 2006. The court found that the Secretary has "a responsibility to ensure that [she] deals only with a tribal government that actually represents the members of a tribe." *California Valley Miwok Tribe v. United States*, 424 F.Supp.2d 197 (D.D.C. Mar. 31, 2006). Likewise, the court found that the BIA has a "duty to ensure that the interests of all tribe members are protected during organization and that governing documents reflect the will of a majority of the Tribe's members." The court found the BIA's decisions consistent with that duty.

50. The district court noted that the Burley Faction had submitted a constitution that "conferred tribal membership only upon them and their descendants . . . [but] the government estimates that the greater tribal community, which should be included in the organization

process, may exceed 250 members." In light of the fact that the Tribe was receiving approximately \$1.5 million per year in state and federal funds at the time, the court concluded that Burley's motivation was self-evident: "As H.L. Mencken is said to have said: 'When someone says it's not about the money, it's about the money.'"

51. Burley challenged the district court's decision, and the Court of Appeals for the District of Columbia Circuit affirmed. *California Valley Miwok Tribe, supra*, 515 F.3d 1262. According to the Court of Appeals, the rejection of the Burley government and constitution fulfilled a cornerstone of the United States' trust obligation to Indian tribes: to "promote a tribe's political integrity, which includes ensuring that the will of tribal members is not thwarted by rogue leaders when it comes to decisions affecting federal benefits."

52. The Court of Appeals further explained: "In Burley's view, the Secretary has no role in determining whether a tribe has properly organized itself . . . That cannot be. . . [T]he Secretary has the power to manage 'all Indian affairs and all matters arising out of Indian relations.' . . . The exercise of this authority is especially vital when, as is the case here, the government is determining whether a tribe is organized, and the receipt of significant federal benefits turns on the decision. The Secretary suggests that her authority . . . includes the power to reject a proposed constitution that does not enjoy sufficient support from a tribe's membership. Her suggestion is reasonable, particularly in light of the federal government's unique trust obligation to Indian tribes" (emphasis in original). The court concluded: "Although [the Tribe], by its own admission, has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary."

The BIA Attempts to Assist the Tribe In Organizing

53. On November 6, 2006, after the district court had dismissed Burley's claims, the BIA informed the Burley Faction that it would assist the Tribe in organizing according to majoritarian principles, consistent with the decisions upheld by the court. The Superintendent of the BIA's Central California Agency wrote to Burley and Chief Dixie that the BIA "remain[ed] committed to assist the [Tribe] in its efforts to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to a clear majority of those Indians." To help achieve that goal, the BIA would facilitate a public meeting of existing members and Putative Members—i.e., those members of the tribal community with a legitimate claim to Tribal membership based on their lineal descent from original members of the Tribe.

54. Instead of cooperating in this effort to organize the Tribe, the Burley Faction appealed the Superintendent's November 6, 2006 decision to the BIA's Pacific Regional Director. On April 2, 2007, the Regional Director affirmed the decision and remanded the matter back to the Superintendent to implement the actions mentioned in the November 6, 2006 decision. The Regional Director wrote, "We believe the main purpose [of the November 6, 2006 decision] was to assist the Tribe in identifying the whole community, the 'putative' group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. . . . It is our belief that until the Tribe has identified the 'putative' group, the Tribe will not have a solid foundation upon which to build a stable government."

55. On April 10 and April 17, 2007, the BIA published public notice of an upcoming meeting to organize the Tribe. The notice requested that Putative Members submit documentation of their membership claim to the BIA (e.g., personal genealogies). The public

notice defined the Putative Members as lineal descendants of: (1) individuals listed on the 1915 Indian Census of Sheep-ranch Indians; (2) Jeff Davis (the only Indian listed as an eligible voter on the federal government's 1935 voting list for the Rancheria); and (3) Mabel Hodge Dixie.

56. According to the BIA, approximately 580 persons submitted personal genealogies to the BIA in response to the April 2007 public notices. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo each submitted genealogies and other documentation to the BIA in response to the public notices. No member of the Burley Faction submitted documentation in response to the public notices. The BIA has taken no action on the information submitted.

Burley Attempts to Relitigate Her Claims Before the Board

57. Burley appealed the Regional Director's April 2, 2007 decision to the Interior Board of Indian Appeals. Among other claims not relevant here, Burley argued that the BIA's decision to involve the Tribal community in the initial organization of the Tribe was an impermissible intrusion into Tribal government and membership matters, because the Tribe was *already* "organized"—an issue that the district court and Court of Appeals had already decided adversely to Burley in her earlier federal suit.

58. In January 2010, the Board decided Burley's appeal. The Board recognized that the Assistant Secretary's February 11, 2005 decision and the ensuing federal litigation had already finally determined the following issues: (1) that the BIA did not recognize the Tribe as being organized; (2) that the BIA did not recognize any tribal government that represents the Tribe; (3) that the Tribe's membership was not necessarily limited to the Burley Faction and Yakima Dixie; and (4) that the BIA had an obligation to ensure that a "greater tribal community" was allowed to participate in organizing the Tribe. The Board recognized that, to the extent Burley's appeal attempted to relitigate those issues, it had no jurisdiction over her

claims. Accordingly, the Board dismissed all of Burley's claims (including those claims not discussed here), except for a single, narrow issue.

59. According to the Board, the Burley appeal raised a solitary issue that had not already been decided by the Assistant Secretary: the process for deciding "who BIA will recognize, individually and collectively, as members of the 'greater tribal community' that BIA believes must be allowed to participate in the general council meeting of the Tribe for organizational purposes." The Board characterized this as a "tribal enrollment dispute" and therefore referred the issue to the Assistant Secretary for resolution.

The Assistant Secretary's December 22 Decision

60. The Assistant Secretary issued his decision in the Burley appeal on December 22, 2010. But instead of deciding the issue referred to him, the Assistant Secretary inexplicably, and without any reasoned explanation, reopened issues long settled and not subject to further appeal. The Assistant Secretary rescinded the March 26, 2004 and February 11, 2005 decisions by the BIA and Assistant Secretary, which had denied recognition of the Burley Faction and its constitution and declared that the larger Tribal community must be involved in the organization of the Tribe. Assistant Secretarial review of both decisions is time barred under binding regulations. Contrary to the Court of Appeals ruling, the Assistant Secretary declared that the Tribe was already "organized as a General Council" pursuant to the 1998 Resolution. He ordered the BIA to rescind its 2006 and 2007 decisions to help the Tribe organize according to majoritarian principles. And he directed the BIA to carry on government-to-government relations with the sham government headed by Burley.

Consequences of the Secretary's Unlawful Decision

61. As a result of the Assistant Secretary's unlawful December 22 Decision, the Plaintiffs have suffered and will continue to suffer great injury, including but not limited to the following:

62. Chief Dixie and the members of the Tribal council have been denied the opportunity to participate in the organization and governance of the Tribe.

a. Immediately after the Secretary issued his December 22 Decision, the Burley Faction issued a public notice calling for a "special election" to elect tribal officers. The public notice stated that only Ms. Burley, her two daughters, and Chief Dixie would be allowed to participate in the election of the Tribe's government. The public notice relied on the December 22 Decision as the basis for the Burley Faction's right to call the election.

b. On January 7, 2011, the Burley Faction conducted its "special election" among the three members of the Burley family. Neither Chief Dixie nor any member of the Tribal Council participated in the "special election." Except for Chief Dixie, the other individual plaintiffs were barred from participating.

c. On January 12, 2011, the BIA acknowledged receipt of the results of the Burley Faction's January 7 "special election" and recognized a "tribal council" consisting of Burley as Chairperson and her daughter, Rashel Reznor, as Secretary/Treasurer. It is telling that the BIA's letter does not mention the number of voters participating in this "election." Under the government recognized by the BIA, none of the Plaintiffs has any voice in the organization or governance of the Tribe.

63. Chief Dixie and the members of the Tribal Council have been and will be denied the benefits of Tribe membership, because the December 22 Decision allows the Burley

Faction to withhold funds, benefits and services that should be made available to them as Tribe members. Among other things:

a. The December 22 Decision allows the Burley Faction to exercise complete control over Tribe membership and to exclude Chief Dixie and the members of the Tribal Council from membership in the Tribe.

b. As a result of being denied Tribe membership, the members of the Tribal Council are not and will not be eligible to receive federal health, education and other benefits provided to members of recognized Indian Tribes.

64. The December 22 Decision, if upheld, could provide a basis for allowing Burley to divert funds held in trust for the Tribe by the State of California. Beginning in 1999, Burley represented to the California Gambling Control Commission ("Commission") that she was the authorized representative of the Tribe and entitled to collect funds paid by the state to tribes that do not operate casinos or gaming devices. Burley received funds from the Commission, which were meant for the Tribe, between 1999 and 2005 (the "State Funds"). The State Funds totaled approximately \$1 million or more per year.

a. None of the Plaintiffs received any of the State Funds. The Plaintiffs do not know of any members of the Tribe who received or benefited from any of the State Funds except for Burley and her immediate family. The Plaintiffs do not know of any programs for the benefit of the Tribe or its members that were created or supported with the Funds.

b. In 2005, the Commission ceased distribution of the State Funds to Burley on the ground that the federal government did not recognize her as the appropriate representative of the Tribe. Burley has filed litigation in California Superior Court, seeking to compel the Commission to resume distribution of the State Funds to her, including approximately \$6.6 million of the State Funds that the Commission has withheld since 2005.

California Valley Miwok Tribe v. California Gambling Control Commission, No. 37-2008-00075326 (Sup. Ct. San Diego). Burley seeks to introduce the December 22 Decision as evidence that she is entitled to receive the State Funds.

c. If Burley receives the State Funds, Chief Dixie and the members of the Tribal Council will be denied the benefit of the State Funds, because the State of California has no control over the use of the State Funds once they are paid to a tribe.

d. If Ms. Burley receives the State Funds, the Tribe will be denied the Funds, because Ms. Burley is not a legitimate representative of the Tribe.

65. The December 22 Decision will allow Burley to divert federal funds intended for the Tribe. Beginning in 1999, and continuing through 2007, Burley received federal grant money intended for the Tribe, based on her representation that she was an authorized representative of the Tribe. The grant money was provided through a "self-determination contract" pursuant to Public Law 93-638 ("PL 638") to assist the Tribe in organizing under the IRA. Burley received from \$400,000 to \$600,000 per year.

a. Burley did not use the PL 638 funds to organize the Tribe consistent with the IRA. Instead, she sought to disenfranchise Plaintiffs and other members of the Tribal community and secured the benefits of Tribe membership only for herself and her immediate family.

b. The BIA has indicated its intent, based on the Secretary's decision, to enter into a new PL 638 contract with the Burley Faction to provide funds for organization of the Tribe. The Tribe will be denied its rightful use of the PL 638 funds, because those funds will be paid to Burley and her illegitimate government instead.

Plaintiffs' Request for Reconsideration

66. On January 6, 2011, the Plaintiffs requested that the Secretary immediately reconsider and stay the Assistant Secretary's December 22 Decision. The Secretary did not respond, and on January 21, 2011, Plaintiffs withdrew the request for reconsideration.

FIRST CAUSE OF ACTION

(Arbitrary and Capricious Agency Action in Violation of the APA)

67. Plaintiffs re-allege paragraphs 1 through 66, and incorporate those paragraphs herein as if set forth in full.

68. The APA provides that a court must hold unlawful and set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A).

69. The Assistant Secretary's December 22 Decision constitutes "final agency action."

70. The December 22 Decision violates APA section 706(2)(A) because it unlawfully reopened and addressed issues not within the scope or jurisdiction of the Board appeal from which the decision arose, including the status of the Tribe as not "organized," the BIA's and Department's refusal to recognize the tribal government led by Burley, and the BIA's decision to involve the entire tribal community in the organization of the Tribe. Under binding regulations of the Department, those issues were final, not subject to the jurisdiction of the Board, not subject to appeal, and not referred to the Assistant Secretary by the Board.

71. The December 22 Decision violates APA section 706(2)(A) because it fails to provide a reasoned analysis explaining why the decision completely reverses judicially approved, longstanding BIA and Department policy and prior BIA and Department

determinations in this case, regarding the status of the Tribe and the Burley government and the requirements for organization under the IRA.

72. The December 22 Decision violates APA section 706(2)(A) because it is precluded by the doctrine of *res judicata*. The status of the Tribe and of Burley's purported government are issues that were previously litigated and finally decided by a court of competent jurisdiction in a prior dispute between Burley and the Department. The Court of Appeals for the District of Columbia Circuit held that the Secretary properly refused to recognize the tribe as organized under the Burley Faction. *Res judicata* therefore bars Burley from attempting to relitigate those issues in another forum. The Assistant Secretary's December 22 Decision is precluded by the district court's and Court of Appeals' resolution of those issues.

73. The December 22 Decision violates APA section 706(2)(A) because it is barred by the doctrine of judicial estoppel, because the Secretary previously argued, before the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit, that the Tribe was not organized and that she could not recognize Burley's purported government. The December 22 Decision reverses the very same actions that the Secretary defended before the district court and the Court of Appeals.

74. The December 22 Decision violates APA section 706(2)(A) because it fails to address a prior appeal by Chief Dixie. In October 2003, Chief Dixie filed an appeal with the Assistant Secretary – Indian Affairs, challenging the BIA's recognition (at that time) of Ms. Burley as Chairperson. On February 11, 2005, the Assistant Secretary – Indian Affairs dismissed the appeal on procedural grounds. The Assistant Secretary found that the BIA's 2004 Decision had rendered Chief Dixie's appeal moot, because that decision made clear that the BIA did not recognize Ms. Burley as Tribal Chairperson, that the Tribe was not

"organized;" and that the United States did not recognize any Tribal government. Because the December 22 Decision purports to rescind the final 2004 Decision, the Assistant Secretary must reinstate and decide Chief Dixie's appeal before recognizing any Tribal government.

75. The December 22 Decision violates APA section 706(2)(A) because it does not fulfill the Secretary's trust obligation to the Tribe and its members. The Secretary has a fiduciary duty to ensure that any tribal government he recognizes represents a majority of the tribal community. By recognizing a purported government that represents only three members of the Tribe, the Secretary (acting through his subordinate the Assistant Secretary) has breached his duty to the Tribe, the Tribal Council and the individual Plaintiffs.

76. The December 22 Decision violates APA section 706(2)(A) because it is inconsistent with the IRA. The IRA imposes substantive and procedural requirements that must be met before the Secretary may recognize a tribal government. By recognizing a tribal government that was not elected or ratified pursuant to those requirements, the Secretary (acting through the Assistant Secretary) has violated the IRA.

77. The December 22 Decision violates APA section 706(2)(A) because it unlawfully recognizes a tribal government based on the 1998 Resolution, which is invalid on its face. The 1998 Resolution identifies "at least" five individuals who are Tribe members, and recites that it was authorized by a majority of the Tribe's adult members. But it bears only two signatures. Moreover, one of those signatures purports to be that of Chief Dixie, who disputes the validity of the signature. Therefore, the 1998 Resolution cannot be the basis for a valid government recognized by the United States.

78. As a direct and proximate result of the December 22 Decision, Chief Dixie, the Tribal Council, and Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied their rightful opportunity to

participate in the organization and governance of the Tribe and will suffer irreparable injury and financial loss.

79. As a direct and proximate result of the December 22 Decision, Chief Dixie, Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied the benefits of Tribe membership and will suffer irreparable injury and financial loss.

80. As a direct and proximate result of the December 22 Decision, the Tribe and the members of the Tribe, including Chief Dixie, Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo, have been and will continue to be denied the use of the PL 638 funds available through the BIA, and the State Funds provided by the Commission, and will suffer irreparable injury and financial loss.

81. As a direct and proximate result of the December 22 Decision, the Tribe will be denied recognition to conduct traditional Tribal activities and official acts, and to intervene in legal and regulatory proceedings to protect its interests and those of its members, and will suffer irreparable injury and financial loss.

SECOND CAUSE OF ACTION

(Agency Action Unlawfully Withheld and Unreasonably Delayed in Violation of the APA)

82. Plaintiffs re-allege paragraphs 1 through 66, and incorporate those paragraphs herein as if set forth in full.

83. An agency's "failure to act" constitutes "agency action." 5 U.S.C § 551(13). The APA therefore provides that a court shall "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C § 706(1).

84. The BIA's failure to adjudicate the status of the 580 Putative Members of the Tribe who submitted genealogies and other documentation to the BIA in response to the April 2007 public notices constitutes "agency action unlawfully withheld or unreasonably delayed."

85. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo submitted genealogies and other documentation to the BIA in response to the April 2007 public notices.

86. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied their rightful opportunity to participate in the organization and governance of the Tribe and will suffer irreparable injury and financial loss.

87. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, the Tribe will be denied the opportunity to organize itself and elect a legitimate representative government under the IRA and will suffer irreparable injury and financial loss.

88. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied the benefits of Tribe membership and will suffer irreparable injury and financial loss.

89. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson, Antoine Azevedo and the Tribe have been and will continue to be denied the use of the PL 638 funds available through the BIA, and the State Funds provided by the Commission and will suffer irreparable injury and financial loss.

90. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, the Tribe will be denied recognition to conduct traditional Tribal activities and official acts, and to intervene in legal and regulatory proceedings to protect its interests and those of its members, and will suffer irreparable injury and financial loss.

PRAAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this court issue an order:

A. Declaring that the Assistant Secretary acted arbitrarily, capriciously and otherwise not in accordance with law by acting to recognize the Tribe as "organized," to recognize the Burley Faction as the Tribe's government, to abandon the BIA's efforts to involve the tribal community in organizing the Tribe, and to rescind prior final determinations regarding the Tribe;

B. Vacating the December 22 Decision and directing the Assistant Secretary and the BIA to resume efforts to involve the entire tribal community in organizing the Tribe;

C. Preliminarily and permanently enjoining the Secretary, Assistant Secretary and BIA from taking any action to implement the December 22 Decision;

D. Directing the BIA to adjudicate the status of the Putative Members who submitted documentation of their claims to Tribe membership, and to publish the names of those Putative Members eligible to participate in the initial organization of the Tribe;

E. Awarding the Plaintiffs attorneys fees and reasonable costs incurred in connection with this action; and

F. Granting such other relief as the Court deems just and proper.

Respectfully submitted,

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Dated: January __, 2011

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EXHIBIT A



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

IN REPLY REFER TO

MAR 26 2004

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

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

Dear Ms. Burley:

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

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

Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was

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

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

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

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

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

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

If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal.

Page 4 of 4

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

Sincerely,

Dale Rising, Sr.

Dale Rising, Sr.
Superintendent

CC: Pacific Regional Director
Debra Luffier, Assistant US Attorney
Myra Spicker, Deputy Solicitor
Yakima Dixie Tribal Member

EXHIBIT B



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 11 2005

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

Dear Mr. Dixie:

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

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

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

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

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

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

Sincerely,



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

Enclosure

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

EXHIBIT K

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

THE CALIFORNIA VALLEY MIWOK
TRIBE, *et al.*,

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as
Secretary of the United States Department of
the Interior, *et al.*,

Defendants.

Case No. 1:11-cv-00160-RWR

Hon. Richard W. Roberts

JOINT STATUS REPORT

Further to their September 1, 2011, Joint Status Report, Docket No. 27, the Parties state as follows for their new Joint Status Report:

1. On January 24, 2011, Plaintiffs brought suit challenging the December 22, 2010 decision of the Assistant Secretary - Indian Affairs of the United States Department of the Interior (the "Assistant Secretary"), regarding the organization and governance of the California Valley Miwok Tribe (the "December 22 Decision"). Docket No. 1.

2. On March 16, 2011, Plaintiffs filed a Motion for Preliminary Injunction seeking to enjoin the implementation of the December 22 Decision. Docket No. 8.

3. On March 17, 2011, Proposed Intervenor filed a Motion to Intervene. Docket No. 11. That motion is fully briefed, *see* Docket No. 14, 16, 20, and pending before this Court.

4. On April 1, 2011, however, the Assistant Secretary withdrew his December 22 Decision. *See* Exhibit 1 to Joint Motion to Stay Litigation, Docket No. 22. Plaintiffs therefore

withdrew their Motion for Preliminary Injunction as moot on the same day, April 1, 2011. Docket No. 19.

5. On April 8, 2011, the Assistant Secretary sent letters to both Mr. Yakima Dixie and Ms. Silvia Burley requesting responsive briefing pertaining to a number of issues relating to his reconsideration of his December 22 Decision. Joint Motion to Stay Litigation, Docket No. 22, Ex. 3.

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

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

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

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

10. On July 11, 2011, this Court granted the Joint Motion for Temporary Stay of Litigation. Docket No. 24. This Court subsequently extended the stay until September 2, 2011. Docket No. 26.

11. On August 31, 2011, the Assistant Secretary issued his reconsidered decision (the "August 31 Decision"). The Assistant Secretary stayed the effectiveness of the August 31 Decision pending resolution of this matter. Specifically, page 8 of the August 31 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, *California Valley Miwok Tribe v. Salazar*, C.A. No. 1:11-cv-00160-RWR (filed 03/16/11).

12. Consistent with the August 31 Decision, Plaintiffs and Defendants stated, in their Joint Status Report to this Court dated September 1, 2011, that "the Assistant Secretary stayed the effectiveness of the August 31, 2011 decision pending resolution of this matter. As a result, the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the Federal Defendants." Docket No. 27 (¶ 13).

13. In their status report dated September 1, 2011, the parties requested that the stay of the litigation be terminated and that the parties, on or before September 16, 2011, file a joint Status Report to address procedural issues arising out of the issuance of the August 31 Decision. Docket No. 27.

14. Plaintiffs anticipate filing an amended complaint by October 17, 2011 to address the issuance of the August 31 Decision. Defendants respectfully request they be allowed 45 days to file their responsive pleading to the amended complaint. Accordingly, Defendants will file an answer or other responsive pleading by December 1, 2011.

15. Defendants anticipate filing the administrative record by December 1, 2011.

16. The parties expect the matter to be resolved based on the administrative record. However, Plaintiffs reserve the right to seek discovery following their review of the administrative record. Accordingly, Plaintiffs seek to have 30 days to review the administrative record and file objections or requests for supplementation or discovery. Defendants maintain, however, that it is only in rare and exceptional circumstances where the courts of this circuit have permitted supplementation of an administrative record, and it is well established that a party who seeks to supplement the administrative record bears the burden of showing that supplementation is justified. Therefore, Defendants reserve the right to seek a protective order preventing either supplementation or discovery. After the administrative record is complete, the parties intend to file cross motions for summary judgment.

Respectfully submitted,

/s/ M Roy Goldberg

M. ROY GOLDBERG

(D.C. Bar No. 416953)

CHRISTOPHER M. LOVELAND

(D.C. Bar No. 473969)

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COUNSEL FOR DEFENDANTS

Dated September 13, 2011

CERTIFICATE OF SERVICE

I certify that on September 13, 2011, I caused to be filed a copy of the foregoing Joint Status Report with the Court pursuant to the electronic filing rules. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

/s/
Roy Goldberg

EXHIBIT 2

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Assigned To: Judge Richard W Roberts	Closed: No
Referred To:	Statute: 05:702
Nature of suit: Other Statutory Actions (890)	Jury Demand: None
Cause: Administrative Procedure Act	Demand Amount: \$0
Lead Docket: None	NOS Description: Other Statutory Actions
Other Docket: None	
Jurisdiction: U.S. Government Defendant	

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- Exhibit C, # 4 Civil Cover Sheet)(rdj) (Attachment 1 replaced on 1/25/2011) (dr)
(Entered: 01/25/2011)
- Runner -- 01/24/2011 SUMMONS (5) Issued as to MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR, U.S. Attorney and U.S. Attorney General (rdj) (Entered: 01/25/2011)
- ☐ Online 2 01/24/2011 NOTICE OF RELATED CASE by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. Case related to Case No. 05-739. (rdj) (Entered: 01/25/2011)
- ☐ Online 3 02/03/2011 RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. Date of Service Upon U.S. Attorney 1/27/2011. (Answer due for ALL FEDERAL DEFENDANTS by 3/28/2011.), RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. MICHAEL BLACK served on 1/27/2011; LARRY ECHO HAWK served on 1/27/2011; KEN SALAZAR served on 1/27/2011 (Goldberg, M.) (Entered: 02/03/2011)
- ☐ Online 4 02/03/2011 RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 01/27/2011. (Goldberg, M.) (Entered: 02/03/2011)
- Runner 5 02/03/2011 RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to MICHAEL BLACK served on 1/27/2011; LARRY ECHO HAWK served on 1/27/2011; KEN SALAZAR served on 1/27/2011. (See Docket Entry 3 to view document) (jf,) (Entered: 02/04/2011)
- ☐ Online 6 03/07/2011 NOTICE of Appearance by Kenneth Dean Rooney on behalf of All Defendants (Rooney, Kenneth) (Main Document 6 replaced to correct case number on 3/8/2011) (jf,). (Entered: 03/07/2011)
- ☐ Online 7 03/08/2011 Consent MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Robert J. Uram, :Firm - Sheppard Mullin Richter & Hampton LLP, :Address- 4 Embarcadero Center, 17th Floor, San Francisco, CA 94111. Phone No. - (415) 434-9100. Fax No. - (415) 434-3947 by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Exhibit Declaration of Robert J. Uram, # 2 Text of Proposed Order) (Goldberg, M.) (Entered: 03/08/2011)
- ☐ Online 8 03/16/2011 WITHDRAWN BY COUNSEL (SEE DOCKET ENTRY 19)..... MOTION for Preliminary Injunction by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Affidavit Exhibit 1 to Motion, # 2 Exhibit Exhibit A to Affidavit of Robert Uram, # 3 Exhibit Exhibit B to Affidavit of Robert Uram, # 4 Exhibit Exhibit C to Affidavit of Robert Uram, # 5 Exhibit Exhibit D to Affidavit of Robert Uram, # 6 Exhibit Exhibit E to Affidavit of Robert Uram, # 7 Exhibit Exhibit F to Affidavit of Robert Uram, # 8 Exhibit Exhibit G to Affidavit of Robert Uram, # 9 Exhibit Exhibit H to Affidavit of Robert Uram, # 10 Exhibit Exhibit I to Affidavit of Robert Uram, # 11 Exhibit Exhibit J to Affidavit of Robert Uram, # 12 Exhibit Exhibit K to Affidavit of Robert Uram, # 13 Exhibit Exhibit L to Affidavit of Robert Uram, # 14 Exhibit Exhibit M to Affidavit of Robert Uram, # 15 Exhibit Exhibit N to Affidavit of Robert Uram, # 16 Exhibit Exhibit O to Affidavit of Robert Uram to, # 17 Affidavit Exhibit 2 to Motion, # 18 Affidavit Exhibit 3 to Motion, # 19 Affidavit Exhibit 4 to Motion, # 20 Affidavit Exhibit 5 to Motion, # 21 Affidavit Exhibit 6 to Motion, # 22 Affidavit Exhibit 7 to Motion, # 23 Affidavit Exhibit 8 to Motion, # 24 Affidavit Exhibit 9 to Motion, # 25 Affidavit Exhibit 10 to Motion, # 26 Text of Proposed Order) (Goldberg, M.) Modified on 4/8/2011 (jf,). (Entered: 03/16/2011)
- ☐ Online 9 03/17/2011 First MOTION for Extension of Time to File Answer by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/17/2011)
- Runner -- 03/17/2011 MINUTE ORDER: It is hereby ORDERED that the defendants file by April 1, 2011 their opposition to plaintiffs' motion for a preliminary injunction. Plaintiffs shall file by April 8, 2011 their reply. Signed by Judge Richard W. Roberts on 3/17/11. (lcrwr1) (Entered: 03/17/2011)
- Runner -- 03/17/2011 MINUTE ORDER: It is hereby ORDERED that the defendants' motion 9 for an extension of time be, and hereby is, GRANTED. Defendants shall file an answer or other response to the plaintiffs' complaint by April 27, 2011. Signed by Judge Richard W. Roberts on 3/17/11. (lcrwr1) (Entered: 03/17/2011)
- Runner -- 03/17/2011 Set/Reset Deadlines: Defendant's Answer to the Complaint due by 4/27/2011. (hs) (Entered: 03/17/2011)
- Runner -- 03/17/2011 Set/Reset Deadlines: Defendant's Response to Motion for Preliminary Injunction due by 4/1/2011; Plaintiff's Reply due by 4/8/2011. (hs) (Entered: 03/17/2011)
- ☐ Online 10 03/17/2011 NOTICE of Appearance by Robert A. Rosette on behalf of CALIFORNIA VALLEY MIWOK TRIBE (znmw,) (Entered: 03/22/2011)

- ☐ Online 11 03/17/2011 MOTION to Intervene as a Defendant by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Text of Proposed Order re Motion to Intervene, # 2 Declaration re Motion to Intervene, # 3 Motion to Dismiss, # 4 Text of Proposed Order re Motion to Dismiss, # 5 Declaration re Motion to Dismiss, # 6 Exhibit A to Declarations re Motion to Intervene and Dismiss, # 7 Exhibit B to Declarations re Motion to Intervene and Dismiss, # 8 Exhibit C to Declarations re Motion to Intervene and Dismiss, # 9 Exhibit D to Declarations re Motion to Intervene and Dismiss, # 10 Exhibit E to Declarations re Motion to Intervene and Dismiss, # 11 Exhibit F to Declarations re Motion to Intervene and Dismiss, # 12 Exhibit G to Declarations re Motion to Intervene and Dismiss)(znmw,) (Entered: 03/22/2011)
- ☐ Online 12 03/22/2011 NOTICE of Appearance by Christopher Michael Loveland on behalf of All Plaintiffs (Loveland, Christopher) (Entered: 03/22/2011)
- ☐ Online 13 03/22/2011 MOTION to Expedite Time to Rule on the California Valley Miwok's Motion for Leave to Intervene as Defendant by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Affidavit of Robert A. Rosette)(Rosette, Robert) (Entered: 03/22/2011)
- Runner -- 03/25/2011 MINUTE ORDER: It is hereby ORDERED that the parties file by March 29, 2011 responses to the motion 11 to intervene. Signed by Judge Richard W. Roberts on 3/25/11. (lcrwr1) (Entered: 03/25/2011)
- Runner -- 03/25/2011 Set/Reset Deadlines: Parties Responses to Motion to Intervene due by 3/29/2011. (hs) (Entered: 03/25/2011)
- ☐ Online 14 03/29/2011 Memorandum in opposition to re 11 MOTION to Intervene filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Exhibit 1 -Affidavit of Robert Uram, # 2 Exhibit A to Robert Uram Affidavit, # 3 Exhibit B to Robert Uram Affidavit)(Goldberg, M.) (Entered: 03/29/2011)
- ☐ Online 15 03/29/2011 ENTERED IN ERROR.....MEMORANDUM re 11 MOTION to Intervene filed by CALIFORNIA VALLEY MIWOK TRIBE by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Rooney, Kenneth) Modified on 3/30/2011 (jf,). (Entered: 03/29/2011)
- ☐ Online 16 03/29/2011 RESPONSE re 11 MOTION to Intervene filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (jf,) (Entered: 03/30/2011)
- Runner -- 03/30/2011 NOTICE OF CORRECTED DOCKET ENTRY: Document No. re 15 Memorandum was entered in error and will be refiled by the clerk's office under the correct category.(jf,) (Entered: 03/30/2011)
- Runner -- 03/30/2011 MINUTE ORDER: It is hereby ORDERED that the California Valley Miwok Tribe file by April 4, 2011 a reply in support of its motion to intervene. Signed by Judge Richard W. Roberts on 3/30/11. (lcrwr1) (Entered: 03/30/2011)
- Runner -- 03/31/2011 Set/Reset Deadlines: Plaintiff's Reply to Motion to Intervene due by 4/4/2011. (hs) (Entered: 03/31/2011)
- ☐ Online 17 03/31/2011 Consent MOTION for Extension of Time to File Response/Reply as to 8 MOTION for Preliminary Injunction by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/31/2011)
- ☐ Online 18 03/31/2011 MOTION for Extension of Time to Modify Briefing Schedule by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Affidavit of Robert A. Rosette, # 2 Text of Proposed Order) (Rosette, Robert) (Entered: 03/31/2011)
- Runner -- 04/01/2011 MINUTE ORDER: It is hereby ORDERED that the defendants' consent motion 17 for an extension of time be, and hereby is, GRANTED. Defendants' opposition to plaintiffs' motion for a preliminary injunction is due by April 5, 2011, and plaintiffs' reply is due by April 12, 2011. Signed by Judge Richard W. Roberts on 4/1/11. (lcrwr1) (Entered: 04/01/2011)
- Runner -- 04/01/2011 MINUTE ORDER: It is hereby ORDERED that the plaintiffs' consent motion 7 be, and hereby is, GRANTED, and Robert J. Uram is admitted to appear pro hac vice. Signed by Judge Richard W. Roberts on 4/1/11. (lcrwr1) (Entered: 04/01/2011)
- ☐ Online 19 04/01/2011 NOTICE OF WITHDRAWAL OF MOTION by CALIFORNIA VALLEY MIWOK TRIBE re 8 MOTION for Preliminary Injunction as Moot (Attachments: # 1 Exhibit 2011 Decision) (Goldberg, M.) (Entered: 04/01/2011)
- Runner -- 04/04/2011 Set/Reset Deadlines: Defendant's Response due by 4/5/2011; Plaintiff's Reply due by 4/12/2011. (hs) (Entered: 04/04/2011)
- ☐ Online 20 04/04/2011 REPLY to opposition to motion re 11 MOTION to Intervene filed by CALIFORNIA VALLEY MIWOK TRIBE. (Attachments: # 1 Affidavit of Robert A. Rosette, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G)(Rosette, Robert) (Entered: 04/04/2011)
- Runner -- 04/07/2011 MINUTE ORDER: In light of the plaintiffs' notice of withdrawal of their motion for a preliminary injunction, it is hereby ORDERED that the California Valley Miwok Tribe's

- motion 18 for an extension of time be, and hereby is, DENIED as moot. Signed by Judge Richard W. Roberts on 4/7/11. (lcrwr1) (Entered: 04/07/2011)
- ☐ [Online](#) 21 04/22/2011 Second MOTION for Extension of Time to File Answer re 1 Complaint, by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Main Document 21 replaced on 4/26/2011) (jf,). (Entered: 04/22/2011)
- Runner -- 04/25/2011 MINUTE ORDER: It is hereby ORDERED that the defendants' unopposed motion 21 for an extension of time be, and hereby is, GRANTED. Defendants' answer or other response to the complaint is due by May 27, 2011. Signed by Judge Richard W. Roberts on 4/25/11. (lcrwr1) (Entered: 04/25/2011)
- Runner -- 04/25/2011 NOTICE OF ERROR re 21 Motion for Extension of Time to File Answer; emailed to kenneth.rooney@usdoj.gov, cc'd 8 associated attorneys -- The PDF file you docketed contained errors: 1. Incorrect header/caption/case number, 2. Please refile document, 3. Entered in Error; please refile with correct case number. (znmw,) (Entered: 04/25/2011)
- Runner -- 04/26/2011 Set/Reset Deadlines: Answer/Response to the Complaint due by 5/27/2011. (hs) (Entered: 04/26/2011)
- ☐ [Online](#) 22 05/19/2011 Joint MOTION to Stay Litigation by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Text of Proposed Order) (Goldberg, M.) (Entered: 05/19/2011)
- Runner -- 05/25/2011 MINUTE ORDER: It is hereby ORDERED that the parties' joint motion 22 to stay be, and hereby is, GRANTED. The case is stayed and administratively closed until July 7, 2011, by which date the parties shall file a joint status report and proposed order. Signed by Judge Richard W. Roberts on 5/25/11. (lcrwr1) (Entered: 05/25/2011)
- ☐ [Online](#) 23 07/07/2011 STATUS REPORT Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Motion for Extension of the Temporary Stay of Litigation by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Plaintiffs' Proposed Order, # 2 Defendants' Proposed Order)(Rooney, Kenneth) (Entered: 07/07/2011)
- ☐ [Online](#) 24 07/11/2011 ORDER; Granting Joint Motion for Temporary Stay of Litigation, Joint Status Report due by 8/15/2011, Signed by Judge Richard W. Roberts on 7/11/2011. (hs) (Entered: 07/11/2011)
- ☐ [Online](#) 25 08/12/2011 STATUS REPORT Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Unopposed Motion for Extension of the Temporary Stay of Litigation by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 08/12/2011)
- ☐ [Online](#) 26 08/15/2011 ORDER, Staying case until 09/02/11; Joint Status Report due by 9/2/2011. Signed by Judge Richard W. Roberts on 8/12/11. (See Order for detail) (gdf) (Entered: 08/15/2011)
- ☐ [Online](#) 27 09/01/2011 STATUS REPORT AND PROPOSED ORDER REGARDING THE STATUS OF THE RECONSIDERED DECISION OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 09/01/2011)
- ☐ [Online](#) 28 09/02/2011 NOTICE of Filing Emergency Supplement to Motion to Intervene by CALIFORNIA VALLEY MIWOK TRIBE re 11 MOTION to Intervene(Attachments: # 1 Exhibit A, # 2 Exhibit B) (Rosette, Robert) Modified on 9/6/2011 to correct document number (jf,). (Entered: 09/02/2011)
- ☐ [Online](#) 29 09/06/2011 RESPONSE re 28 Notice (Other) Emergency Supplement filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Exhibit A)(Goldberg, M.) (Entered: 09/06/2011)
- Runner -- 09/09/2011 MINUTE ORDER: In light of the parties' September 1, 2011 joint status report, it is hereby ORDERED that the parties submit by September 16, 2011 a proposed order and joint status report proposing a schedule on which the case should proceed. Signed by Judge Richard W. Roberts on 9/9/11. (lcrwr1) (Entered: 09/09/2011)
- Runner -- 09/09/2011 Set/Reset Deadlines: Joint Status Report due by 9/16/2011 (hs) (Entered: 09/09/2011)
- ☐ [Online](#) 30 09/13/2011 STATUS REPORT (Joint) by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Goldberg, M.) (Entered: 09/13/2011)
- ☐ [Online](#) 31 09/15/2011 NOTICE of Proposed Order by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL

MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON re 30 Status Report (Goldberg, M.) (Entered: 09/15/2011)

MINUTE ORDER: In light of the parties' September 13, 2011 joint status report, it is hereby ORDERED that plaintiffs file amended complaint by October 17, 2011, that defendants answer or otherwise respond to the first amended complaint and lodge the administrative record by December 1, 2011, and that plaintiffs shall have 30 days to review the administrative record and request supplementation or discovery. Signed by Judge Richard W. Roberts on 9/20/11. (lcrwr1) (Entered: 09/20/2011)

FIRST AMENDED COMPLAINT against MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR filed by MICHAEL MENDIBLES, YAKIMA DIXIE, EVELYN WILSON, TRIBAL COUNCIL, ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, VELMA WHITEBEAR, ANTONIA LOPEZ.(znmw,) (Entered: 10/18/2011)

ADMINISTRATIVE RECORD Notice of Lodging by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Certificate of Service)(Rooney, Kenneth) (Entered: 12/01/2011)

ANSWER to 32 Amended Complaint by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. Related document: 32 Amended Complaint filed by TRIBAL COUNCIL, ANTONIA LOPEZ, YAKIMA DIXIE, MICHAEL MENDIBLES, CALIFORNIA VALLEY MIWOK TRIBE, EVELYN WILSON, VELMA WHITEBEAR, ANTOINE AZEVEDO.(Rooney, Kenneth) (Entered: 12/01/2011)

Amended MOTION to Intervene by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Statement of Points and Authorities in Support of Proposed Intervenor-Defendant's Motion For Leave to Intervene, # 2 Proposed Order Granting Proposed Intervenor-Defendant's Motion to Intervene, # 3 Motion to Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief, # 4 Statement of Points and Authorities in Support of Intervenor-Defendant's Motion to Dismiss, # 5 Declaration of Robert A. Rosette in Support of Intervenor-Defendant's Motion to Dismiss, # 6 Exhibits A-R to Declaration of Robert A. Rosette in Support of Motion to Dismiss, # 7 Proposed Order Granting Intervenor-Defendant's Motion to Dismiss)(Rosette, Robert) (Entered: 12/13/2011)

MOTION to Expedite Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35) by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Proposed Order Granting Intervenor-Defendant's Motion to Expedite Motion For Leave to Intervene As Defendant)(Rosette, Robert) (Entered: 12/13/2011)

AFFIDAVIT re 35 Amended MOTION to Intervene, 36 MOTION to Expedite Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35) MOTION to Expedite Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35) Declaration of Robert A. Rosette in Support of Amended Motion For Leave to Intervene and Motion to Expedite Consideration of Motion For Leave to Intervene by CALIFORNIA VALLEY MIWOK TRIBE. (Attachments: # 1 Exhibits A-B to Declaration of Robert A. Rosette in Support of Proposed Intervenor-Defendant's Motion to Intervene and Motion to Expedite Consideration of Motion to Intervene)(Rosette, Robert) (Entered: 12/13/2011)

Joint MOTION for Briefing Schedule for Cross Motions for Summary Judgment by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Text of Proposed Order) (Goldberg, M.) (Entered: 12/28/2011)

Memorandum in opposition to re 36 MOTION to Expedite Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35) MOTION to Expedite Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35) filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 12/29/2011)

Memorandum in opposition to re 35 Amended MOTION to Intervene filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 12/29/2011)

Joint MOTION for Extension of Time to For Plaintiffs to Request Supplementation of the Administrative Record by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 01/03/2012)

Runner -- 09/20/2011

Online 32 10/17/2011

Online 33 12/01/2011

Online 34 12/01/2011

Online 35 12/13/2011

Online 36 12/13/2011

Online 37 12/13/2011

Online 38 12/28/2011

Online 39 12/29/2011

Online 40 12/29/2011

Online 41 01/03/2012

- ☐ Online 42 01/09/2012 REPLY to opposition to motion re 35 Amended MOTION to Intervene filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 01/09/2012)
- ☐ Online 43 01/09/2012 REPLY to opposition to motion re 36 MOTION to Expedite Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35) MOTION to Expedite Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35) filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 01/09/2012)
- ☐ Online 44 01/10/2012 NOTICE OF SUPPLEMENTATION OF ADMINISTRATIVE RECORD by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR re 33 Administrative Record (Attachments: # 1 Index to the Supplement of the Administrative Record, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H)(Rooney, Kenneth) (Entered: 01/10/2012)
- ☐ Online 45 01/12/2012 ERRATA Regarding Proposed Intervenor-Defendant's Reply to Plaintiffs' Opposition to its Amended Motion to Intervene as Defendant by CALIFORNIA VALLEY MIWOK TRIBE 42 Reply to opposition to Motion filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 01/12/2012)
- ☐ Online 46 01/17/2012 Memorandum in opposition to re 38 Joint MOTION for Briefing Schedule for Cross Motions for Summary Judgment filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 01/17/2012)
- ☐ Online 47 02/16/2012 Amended MOTION for Briefing Schedule (Joint Motion) for Briefing Schedule for Cross Motions for Summary Judgment by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 02/16/2012)
- ☐ Online 48 02/29/2012 Unopposed MOTION for Leave to Appear Pro Hac Vice :Attorney Name- James F. Rusk, :Firm- Sheppard Mullin Richter & Hampton LLP, :Address- 4 Embarcadero Center, 17th Floor, San Francisco, CA 94111. Phone No. - 415-774-3232. Fax No. - 415-434-3947 by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Exhibit Declaration of James F. Rusk, # 2 Text of Proposed Order) (Goldberg, M.) (Entered: 02/29/2012)
- ☐ Online 49 03/02/2012 MOTION for Summary Judgment by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Attachment, # 2 Text of Proposed Order)(Goldberg, M.) (Entered: 03/02/2012)
- ☐ Online 50 03/02/2012 ENTERED IN ERROR..... MOTION for Leave to File Supplement to Administrative Record by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Exhibit 1 Affidavit of Robert Uram, # 2 Exhibit 2 Affidavit of Velma WhiteBear, # 3 Text of Proposed Order)(Goldberg, M.) Modified on 3/5/2012 (dr). (Entered: 03/02/2012)
- ☐ Online 51 03/02/2012 MOTION for Leave to File Supplement to Administrative Record by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Exhibit 1 Affidavit of Robert Uram, # 2 Exhibit 2 Affidavit of Velma WhiteBear, # 3 Text of Proposed Order)(Goldberg, M.) (Entered: 03/02/2012)
- Runner -- 03/05/2012 NOTICE OF CORRECTED DOCKET ENTRY: re 50 MOTION for Leave to File Supplement to Administrative Record was entered in error and counsel has refiled corrected documents as Docket Entry 51 (dr) (Entered: 03/05/2012)
- Runner -- 03/21/2012 MINUTE ORDER: It is hereby ORDERED that the plaintiffs' unopposed motion 48 be, and hereby is, GRANTED, and James F. Rusk is admitted to appear pro hac vice. Signed by Judge Richard W. Roberts on 3/21/2012. (lcrwr1) (Entered: 03/21/2012)
- ☐ Online 52 03/26/2012 MEMORANDUM OPINION AND ORDER granting the proposed intervenor-defendant's amended motion 35 for leave to intervene as defendant, granting the proposed intervenor-defendant's motion 36 to expedite, granting nunc pro tunc the parties' joint motion 41 to extend time for plaintiffs to request supplementation of the administrative record, granting nunc pro tunc the parties' amended joint motion 47 for briefing schedule, denying as moot the parties' joint motion 38 for briefing schedule, and ordering the parties and the intervenor to meet and confer and file by April 4, 2012 a joint status report and proposed order reflecting deadlines for opposing and replying in support of the intervenor's motion to dismiss and proposing any necessary amendments to the briefing schedule for the parties' cross motions for summary judgment. The Clerk's Office is directed to DOCKET Exhibits 3 through 7 to the proposed intervenor-defendant's amended motion 35 for leave to intervene as the intervenor-defendant's Motion to Dismiss the Plaintiffs' First Amended

Complaint. Signed by Judge Richard W. Roberts on 3/26/2012. (lcrwr1) (Entered: 03/26/2012)

Consent MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Saba Bazzazieh, :Firm- Rosette, LLP, :Address- 565 W. Chandler Blvd., Suite 212, Chandler, AZ 85225. Phone No. - 480-889-8990. Fax No. - 480-889-8997 by CALIFORNIA VALLEY MIWOK TRIBE (Rosette, Robert) (Entered: 03/26/2012)

NOTICE of Proposed Order Granting Consent Motion to Admit Attorney Saba Bazzazieh, Esq. Pro Hac Vice by CALIFORNIA VALLEY MIWOK TRIBE re 53 Consent MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Saba Bazzazieh, :Firm- Rosette, LLP, :Address- 565 W. Chandler Blvd., Suite 212, Chandler, AZ 85225. Phone No. - 480-889-8990. Fax No. - 480-889-8997 (Rosette, Robert) (Entered: 03/26/2012)

MOTION to Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief by Intervenor-Defendant CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Declaration of Robert A. Rosette, # 2 Exhibit A-R to Declaration of Robert A. Rosette, # 3 Text of Proposed Order)(jf,) (Entered: 04/05/2012)

STATUS REPORT reflecting deadlines for briefing Intervenor's Motion to Dismiss by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/27/2012)

Cross MOTION for Summary Judgment by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Memorandum in Support of Federal Defendants' Cross-Motion for Summary Judgment, # 2 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/29/2012)

RESPONSE re 51 MOTION for Leave to File Supplement to Administrative Record filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Rooney, Kenneth) (Entered: 03/29/2012)

MINUTE ORDER: It is hereby ORDERED that the consent motion 53 be, and hereby is, GRANTED and Saba Bazzazieh is admitted to appear pro hac vice. Signed by Judge Richard W. Roberts on 4/12/2012. (lcrwr1) (Entered: 04/16/2012)

MINUTE ORDER: In light of the parties' March 27, 2012 status report, it is hereby ORDERED that responses to the intervenor's motion to dismiss are due April 20, 2012 and the intervenor's reply is due April 27, 2012. Signed by Judge Richard W. Roberts on 4/12/2012. (lcrwr1) (Entered: 04/16/2012)

Set Deadlines: Responses due by 4/20/2012, Reply due by 4/27/2012. (hs) (Entered: 04/17/2012)

Memorandum in opposition to re 58 MOTION to Dismiss filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Goldberg, M.) (Entered: 04/20/2012)

RESPONSE re 58 MOTION to Dismiss filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Exhibit 1)(Rooney, Kenneth) (Entered: 04/20/2012)

REPLY to opposition to motion re 56 Cross MOTION for Summary Judgment Reply in Support of Motion for Summary Judgment and Opposition to Crossmotion for Summary Judgment filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 04/27/2012)

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DECLARATION OF SERVICE

Case Name: California Valley Miwok Tribe v. Superior Court

Case No.: D061811

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On May 2, 2012, I served the attached **INFORMAL PRELIMINARY OPPOSITION (LETTER)** by placing a true copy thereof enclosed in a sealed envelope and causing such envelope to be personally delivered by Golden State Overnight courier service to the office of the addressee listed below:

Robert A. Rosette Rosette, LLP 193 Blue Ravine Road, Suite 255 Folsom, CA 95630 rosette@rosettela.com	Manuel Corrales, Jr. 17140 Bernardo Center Drive, Suite 370 San Diego, CA 92128 mannycorrales@yahoo.com
Terry Singleton Singleton & Associates 1950 Fifth Avenue, Suite 200 San Diego, CA 92101 terry@terrysingleton.com	Thomas W. Wolfrum 1333 North California Blvd., Suite 150 Walnut Creek, CA 94596 twolfrum@wolfruml.com
Matthew McConnell Sheppard, Mullin, Richter & Hampton 12275 El Camino Real, Suite 200 San Diego, CA 92130 mmcconnell@sheppardmullin.com	

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 2, 2012, at Sacramento, California.

Linda Thorpe
Declarant

Linda Thorpe
Signature