

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

**CALIFORNIA VALLEY MIWOK TRIBE,**

Petitioner,

Case No. D061811

v.

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

Respondent.

**CALIFORNIA GAMBLING CONTROL  
COMMISSION**

Real Party in Interest,

**"CALIFORNIA VALLEY MIWOK TRIBE,  
CALIFORNIA"; YAKIMA K. DIXIE;  
VELMA WHITEBEAR; ANTONIA LOPEZ;  
ANTONE AZEVEDO; MICHAEL  
MENDIBLES; and EVELYN WILSON,**

Real Party in Interest.

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

**APPENDIX IN SUPPORT OF RETURN TO  
PETITION FOR WRIT OF MANDATE AND/OR  
PROHIBITION OR OTHER APPROPRIATE RELIEF**

KAMALA D. HARRIS  
Attorney General of California  
SARA J. DRAKE  
Senior Assistant Attorney General  
WILLIAM L. WILLIAMS, JR.  
Deputy Attorney General  
RANDALL A. PINAL  
Deputy Attorney General

NEIL D. HOUSTON  
Deputy Attorney General  
State Bar No. 168058  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 322-5476  
Fax: (916) 327-2319  
E-mail: Neil.Houston@doj.ca.gov  
*Attorneys for Real Party in Interest  
California Gambling Control Commission*

## INDEX

<u>Tab No.</u>	<u>Description</u>	<u>Bates Nos.</u>
A	Defendant California Gambling Control Commission's Request for Judicial Notice in Support of Opposition to Plaintiff's Motion for Judgment on the Pleadings (RJN), filed February 28, 2011	001-007
A-1	San Diego Superior Court Minute Order, dated March 11, 2011	008-009
A-2	Letter from Dale Risling, Sr., Bureau of Indian Affairs, to Sylvia Burley, dated March 26, 2004 (Exhibit T to RJN)	010-013
A-3	Letter from Michael D. Olsen, Department of the Interior, to Yakima K. Dixie, dated February 11, 2005 (Exhibit S to RJN)	014-015
A-4	Letter from Troy Burdick, Bureau of Indian Affairs, to Sylvia Burley and Yakima K. Dixie, dated November 6, 2006 (Exhibit R to RJN)	016-017
A-5	Letter from Edith R. Blackwell, Department of the Interior, to Peter Kaufman, dated December 12, 2008 (Exhibit H to RJN)	018-020
A-6	Letter from Edith R. Blackwell, Department of the Interior, to Peter Kaufman, dated January 14, 2009 (Exhibit I to RJN)	021
A-7	Complaint for Declaratory and Injunctive Relief, filed January 24, 2011 in <i>California Valley Miwok Tribe v. Ken Salazar, et al.</i> , No. 1:11-cv-00160, in the United States District Court for the District of Columbia (Exhibit L to RJN)	022-064

Dated: June 15, 2012

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
SARA J. DRAKE  
Senior Assistant Attorney General  
WILLIAM L. WILLIAMS, JR.  
Deputy Attorney General  
RANDALL A. PINAL  
Deputy Attorney General



NEIL D. HOUSTON  
Deputy Attorney General  
*Attorneys for Real Party in Interest*  
*California Gambling Control Commission*

SA2012106086  
31474219.doc

COPY

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

FILED  
Clerk of the Superior Court

FEB 28 2011

By: P. WOODS, Deputy

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

13 CALIFORNIA VALLEY MIWOK TRIBE,  
14 Plaintiff,

15 v.

16 THE CALIFORNIA GAMBLING  
17 CONTROL COMMISSION; and DOES 1  
18 THROUGH 50, Inclusive,  
19 Defendants.

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

DEFENDANT CALIFORNIA  
GAMBLING CONTROL  
COMMISSION'S REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS

Date: March 11, 2011  
Time: 2:00 p.m.  
Dept: C-62  
Judge: Hon. Ronald L. Styn  
Trial Date: May 13, 2011  
Action Filed: January 8, 2008

22  
23  
24 Defendant the California Gambling Control Commission (Commission) respectfully  
25 requests this Court take judicial notice of the following, true and correct copies of which are  
26 attached as exhibits to the declaration of Sylvia A. Cates, filed in support of the Commission's  
27 opposition to the Plaintiff's motion for judgment on the pleadings:  
28

Defendant's Request for Judicial Notice in Support of Defendant's Opposition to  
Plaintiff's Motion for Judgment on the Pleadings (37-2008-00075326-CU-CO-CTL)

VIA FAX

1           A.    Gaming Compact between the State of California and the Dry Creek Rancheria of  
2 Pomo Indians, executed on September 10, 1999;

3           B.    Declaration of Yakima Dixie in Support of Motion to Intervene as Defendants, filed  
4 in this matter (Nov. 8, 2010);

5           C.    Declaration of Antonia Lopez in Support of Motion to Intervene as Defendants, filed  
6 in this matter (Nov. 8, 2010);

7           D.    Declaration of Velma Whitebear in Support of Motion to Intervene as Defendants,  
8 filed in this matter (Nov. 8, 2010);

9           E.    Declaration of Michael Mendibles in Support of Motion to Intervene as Defendants,  
10 filed in this matter (Nov. 8, 2010);

11          F.    Declaration of Antone Azevedo in Support of Motion to Intervene as Defendants,  
12 filed in this matter (Nov. 8, 2010);

13          G.    Declaration of Evelyn Wilson in Support of Motion to Intervene as Defendants, filed  
14 in this matter (Nov. 8, 2010);

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

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

21          J.    Letter dated December 22, 2010, from Larry Echo Hawk, Assistant Secretary -  
22 Indian Affairs, United States Department of the Interior, to Ms. Sylvia [sic] Burley;

23          K.    Notice of Appeal dated February 9, 2011, of the California Valley Miwok Tribe, The  
24 Tribal Council, Yakima Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn  
25 Wilson, and Antoine Azevedo to Amy Dutschke, Pacific Regional Director of the Bureau of  
26 Indian Affairs.

1 L. Complaint filed on January 24, 2011, in the United States District Court for the  
2 District of Columbia, *The California Valley Miwok Tribe, et al., v. Ken Salazar, et al.*, No. 1:11-  
3 cv-00160;

4 M. Supplemental Declaration of Yakima Dixie in Opposition to Plaintiff's Motion for  
5 Summary Judgment and/or Summary Adjudication, filed in this matter (January 11, 2011).

6 N. Judgment of Dismissal, filed August 1, 2006, and June 16, 2006, minute order upon  
7 which judgment was based, *California Gambling Control Commission v. Sylvia Burley, et al.*,  
8 No. 05AS05385 (Sup. Ct. Sacramento);

9 O. Reporter's Transcript of Hearing Re Ex Parte Application, *California Valley Miwok*  
10 *Tribe v. California Gambling Control Commission*, filed in this matter, No. 37-2008-00075326  
11 (Feb. 1, 2011.)

12 P. Intervenor's Memorandum of Points and Authorities in Opposition to (1) Plaintiff's  
13 Demurrer to Complaint in Intervention; and (2) Plaintiff's Motion for Reconsideration of Prior  
14 Ruling Granting Intervention, filed in this matter (January 14, 2011).

15 Q. April 11, 2007 public notice of the Bureau of Indian Affairs, Central California  
16 Agency, to "assist the California Valley Miwok Tribe, aka, Sheep Ranch Rancheria (Tribe) in its  
17 efforts to organize a formal governmental structure that is acceptable to all members."

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

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

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

24 U. Report of the California State Auditor issued February 15, 2011, "Indian Gaming  
25 Special Distribution Fund, Local Governments Continue to have Difficulty Justifying  
26 Distribution Fund Grants, February 2011 Report 2010-036."

1 V. United States District Court Civil Docket, U.S. District – District of Columbia, for the  
2 case *California Valley Miwok Tribe v. United States of America*, No. 1:05cv739, filed April 12,  
3 2005;

4 W. Tentative Ruling, *California Valley Miwok Tribe v. California Gambling Control*  
5 *Commission*, No. 37-2008-00075326 (Sup. Ct. San Diego, Dec. 17, 2010.);

6 X. Declaration of Joginder Dhillon in Support of Defendant's Opposition to Plaintiff's  
7 Motion for Summary Judgment, or, in the Alternative, for Summary Adjudication, filed in this  
8 matter (January 14, 2011).

9 Y. Decision of the Interior Board of Indian Appeals in *California Valley Miwok Tribe v.*  
10 *Pacific Regional Director, Bureau of Indian Affairs* (Jan. 28, 2010) 51 IBIA 103.

11 Z. Section 2.6 of title 25 of the Code of Federal Regulations, issued by the Bureau of  
12 Indian Affairs, United States Department of the Interior.

13 AA. Order Granting Defendants' Motion to Dismiss, *Rincon Band of Luiseno Mission*  
14 *Indians v. Schwarzenegger* (S.D. Cal. Sep. 21, 2004, No. 04-CV-1151 W (WMc)).

15 This request is made pursuant to Evidence Code sections 452 and 453. The Court may take  
16 judicial notice, under Evidence Code section 452, subdivisions (b), (c), and (d), of the regulations  
17 issued under the authority of the United States or any public entity in the United States, of the  
18 official acts of the executive departments of the United States, and of the records of any court of  
19 record of the United States. Section 453 of the Evidence Code provides that judicial notice of the  
20 matters set forth in section 452 is mandatory if properly requested by a party. The requesting  
21 party must give sufficient notice of the request to enable the adverse party to prepare to meet it,  
22 and furnish the court with sufficient information to enable the Court to take judicial notice of the  
23 matter. (Evid. Code, § 453, subd. (a) & (b).)

24 The documents in Exhibits A, Exhibits H through K, Exhibits Q through T, and Exhibit Y  
25 are official records of the United States Department of the Interior, Bureau of Indian Affairs and  
26 Board of Indian Appeals. "The records and files of an administrative board are properly the  
27 subject of judicial notice." (*Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125; see also  
28 *Western States Petroleum Ass'n v. Department of Health Services* (2002) 99 Cal.App.4th 999,

1 1002 [judicial notice taken of federal Environmental Protection Agency's materials pursuant to  
2 Evidence Code section 452, subdivision (c)].)

3 The documents in Exhibit L and Exhibit V are records of the federal courts and are subject  
4 to judicial notice pursuant to Evidence Code section 452, subdivision (d). (*Mills v. U.S. Bank*  
5 (2008) 166 Cal.App.4th 871, 877 [judicial notice taken of certain pleadings from federal action].)  
6 The documents in Exhibits B through G, Exhibit M, Exhibit O, Exhibit P, Exhibit W, and Exhibit  
7 X are records of this Court, filed in this matter, and are also subject to judicial notice pursuant to  
8 Evidence Code section 452, subdivision (d). The document in Exhibit N is a record of the  
9 Sacramento Superior Court, and also is subject to judicial notice pursuant to Evidence Code  
10 section 452, subdivision (d).

11 The document in Exhibit Z is a regulation issued under the authority of the United States by  
12 a public entity in the United States, and is subject to judicial notice pursuant to Evidence Code  
13 section 452, subdivision (b).

14 The document in Exhibit AA is a record of a federal court and is subject to judicial notice  
15 pursuant to Evidence Code section 452, subdivision (d). It also is decisional law of a court of the  
16 United States and is subject to judicial notice pursuant to Evidence Code section 451, subdivision  
17 (a).

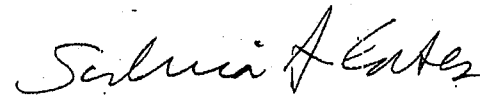
18 The Commission respectfully requests judicial notice be taken of the exhibits listed above  
19 pursuant to Evidence Code section 452, subdivisions (b), (c), and (d) and Evidence Code section  
20 451, subdivision (a).



1 Dated: February 28, 2011

Respectfully Submitted,

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



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

9  
10 SA2008300115  
31205746\_2.docx

DECLARATION OF SERVICE

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

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

I declare:

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

On February 28, 2011, I served the attached **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS** by placing a true copy thereof enclosed in a sealed envelope and causing such envelope to be personally delivered by a Golden State Overnight courier service to the office of the addressee listed below:

Robert A. Rosette  
Rosette & Associates  
193 Blue Ravine Road, Suite 255  
Folsom, CA 95630

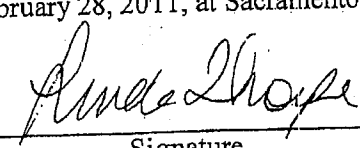
Manuel Corrales, Jr.  
11753 Avenida Sivrita  
San Diego, CA 92128

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

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 28, 2011, at Sacramento, California.

Linda Thorpe  
Declarant

  
Signature

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL

MINUTE ORDER

DATE: 03/11/2011

TIME: 02:00:00 PM

DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn

CLERK: Kim Mulligan

REPORTER/ERM: Susan Holthaus CSR# 6959

BAILIFF/COURT ATTENDANT: M. Chadwell

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

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

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

**EVENT TYPE:** Motion Hearing (Civil)

**MOVING PARTY:** California Valley Miwok Tribe

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

**APPEARANCES**

SEE SIGN-IN SHEET FOR APPEARANCES.

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

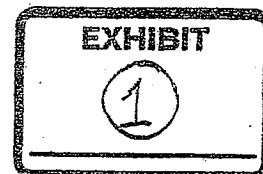
**The court addresses the evidentiary issues.** Plaintiff California Valley Miwok Tribe's request for judicial notice is granted. Defendant California Gambling Control Commission's request for judicial notice is granted. The Commission's objections to Plaintiff's request for judicial notice are overruled.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

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

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

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

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



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

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

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

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

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



Judge Ronald L. Styn



# 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

attempted or has occurred with the purported organization of your tribe. For example, we have not been made aware of any efforts to reach out to the Indian communities in and around the Sheep Ranch Rancheria, or to persons who have maintained any cultural contact with Sheep Ranch. To our knowledge, the only persons of Indian descent involved in the tribe's organization efforts, were you and your two daughters. We are unaware of any efforts to involve Yakima Dixie or Mr. Dixie's brother Melvin Dixie or any offspring of Merle Butler, Tillie Jeff or Lenny Jeff, all persons who are known to have resided at Sheep Ranch Rancheria at various times in the past 75 years and persons who have inherited an interest in the Rancheria. We are also not aware of any efforts to involve Indians (such as Lena Shelton) and their descendants who once lived adjacent to Sheep Ranch Rancheria or to investigate the possibility of involving a neighboring group. We are aware that the Indians of Sheep Ranch Rancheria were in fact, part of a larger group of Indians residing less than 20 miles away at West Point. Indeed, at your February 23, 2004 deposition, you yourself testified you were at one time of the West Point Indian Community; we understand as well, that you had siblings residing there for many years. The BIA remains available, upon your request, to assist you in identifying the members of the local Indian community, to assist in disseminating both individual and public notices, facilitating meetings, and otherwise providing logistical support.

It is only after the greater tribal community is initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified. The participation of the greater tribal community is essential to this effort. We are very concerned about the designated "base roll" for the tribe as identified in the submitted tribal constitution; this "base roll" contains only the names of five living members all but one whom were born between 1960 and 1996, and therefore would imply that there was never any tribal community in and around Sheep Ranch Rancheria until you met with Yakima Dixie, asking for his assistance to admit you as a member. The base roll, thus, suggests that this tribe did not exist until the 1990's, with the exception of Yakima Dixie. However, BIA's records indicate with the exception not withstanding, otherwise.

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

Page 3 of 4

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 Lone 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,

*Sgd. Dale Risling, Sr.*  
Dale Risling, Sr.  
Superintendent

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





# 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



## United States Department of the Interior

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

IN REPLY REFER TO

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

NOV - 6 2006

Ms. Silvia Burley  
10601 Escondido Place  
Stockton, California 95212

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

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

Dear Ms. Burley and Mr. Dixie:

The Bureau of Indian Affairs (BIA) remains committed to assist the California Valley Miwok Tribe (Tribe) (formerly Sheep Ranch Rancheria of the Me-Wuk Indians of California) in its efforts to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to the clear majority of those Indians. We are writing you because of your claim of leadership of the Tribe.

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

The Agency, therefore, will publish a notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process. The notice shall invite the members of the Tribe and potential members to the meeting where the members will discuss the issues and needs confronting the Tribe. We have used this sort of general council meeting approach in other instances to help tribes reorganize when for various reasons the tribes lacked an organized tribal government that represented the entire membership.

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

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

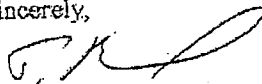
The general council first needs to determine the type of government your tribe will adopt. Tribes do not always adopt constitutions; some govern according to the tribe's tradition or have some sort of power sharing in an open participatory type of government. Next, the general council needs to agree to the census or other documents that establishes the original members of the Rancheria. That census should be the starting point from which the tribe develops membership criteria. The immediate goal is determining membership of the tribe. Once membership is established and the general council determines the form of government, then the leadership issues can be resolved.

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

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

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

Sincerely,



Troy Burdick  
Superintendent

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



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

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

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

DEC 12 2008

Dear Mr. Kaufman:

This letter is in response to your telephone inquiry requesting information on the status of the leadership for the California Valley Miwok Tribe (CVMT). CVMT presents the Bureau of Indian Affairs (BIA) with a unique situation. The following summarizes the history of the Tribe and the current leadership dispute.

CVMT began as a rancheria set up for 12 individual Indians in 1916. The government set aside .92 acres of land on which those twelve individuals could live. In 1935, the sole adult member of the rancheria voted not to reject the Indian Reorganization Act (IRA).<sup>1</sup> In 1966, the Federal government undertook to terminate the rancheria by, among other things, distributing the assets of the rancheria to the rancheria's residents. Ultimately, the Federal government failed to take the steps necessary to complete terminate of the Federal relationship with the rancheria and the rancheria continued to exist. There was one resident, Mabel Hodge Dixie. For reasons that are not relevant to your inquiry, the government did not convey the property to Ms. Dixie successfully and ultimately held it in trust for her. When she died, her heirs inherited the 0.92 acre held in trust by the government. In 1998, Ms. Dixie's son, Yakima Dixie, resided on the rancheria land and was its only known member. That same year, Silvia Burley, a distant relative of Mr. Dixie, approached Mr. Dixie about adopting her, her two daughters, and her granddaughter into the Tribe so that they would be eligible for Indian health and education benefits. Mr. Dixie adopted Ms. Burley and her family.

Mr. Dixie and Ms. Burley became interested in organizing the tribe formally— that is establishing a tribal government. In 1999, the two of them approached the BIA for assistance. At that time, Mr. Dixie acted as the Tribe's leader and he held the title of "Chairman." On April 20, 1999, Ms. Burley submitted a purported letter of resignation from Mr. Dixie. The next day, Mr. Dixie asserted he never resigned his position and refused to do so. He claims that Ms. Burley forged his name on the resignation letter. After Mr. Dixie's purported resignation, Ms. Burley became leader of the Tribe, having been elected by herself and one of her daughters. Ms. Burley claimed the title of

<sup>1</sup> While it is common for people to refer to the Indians of a reservation as voting to accept the IRA, the act applied to a reservation unless a majority of the Indians voted against its application within a year, later extended for another year. See 25 U.S.C. § 478.

"Chairman." The BIA accepted her in this position but noted the leadership dispute between her and Mr. Dixie. On March 7, 2000, the BIA wrote in a letter to Ms. Burley that it would not interfere in the dispute unless the dispute continued without resolution and the government-to-government relationship between the United States and the Tribe became threatened. If the government-to-government relationship were to become threatened, the BIA advised, it would advise the Tribe to resolve the dispute within a reasonable period of time.

Ms. Burley and her daughters responded by attempting to organize the Tribe. Initially, they sought to organize the government under the provisions of the Indian Reorganization Act, but the BIA failed to call the requisite election on the proposed constitution.

In 2002, counsel purporting to represent the California Valley Miwok Tribe and Ms. Burley filed suit in the United States District Court for the Eastern District of California claiming the United States had breached its trust responsibilities and violated the California Rancheria by conveying the less than one acre of land to Ms. Dixie in 1967 when the tribe had potentially 250 members. The court dismissed the suit on grounds that it was filed beyond the six-year statute of limitations. The Ninth Circuit Court of Appeals affirmed in an unpublished opinion. *See California Valley Miwok Tribe v. United States*, No. 04-16676, 2006 WL 2373434 (9<sup>th</sup> Cir., Aug. 17, 2006)

Ultimately, in 2003, Ms. Burley tried to organize the Tribe under the Tribe's inherent sovereign authority without the supervision of the BIA. Ms. Burley submitted the Tribe's constitution to the BIA for informational purposes. The BIA reviewed the constitution and determined that it was not valid because Ms. Burley had failed in the process of developing and adopting the constitution to include other Indians with legitimate ties to the Tribe. On March 26, 2004, the BIA informed Ms. Burley that the Tribe remained unorganized and had no government. Because the Tribe had no government, it could not have a governmental leader. The BIA would not recognize Ms. Burley as Chairman, that is, the governmental leader of the Tribe. Instead the BIA would deal with her as a "spokesperson" or "person of authority" for the Tribe for the purposes of awarding Federal contracts.

Meanwhile, Mr. Dixie continued to assert that he was the hereditary leader of the Tribe and that he had never resigned his position. In March 2005, a representative of the Assistant Secretary - Indian Affairs decided Mr. Dixie's appeal of the BIA's acceptance of Ms. Burley as tribal Chairman. In the letter dismissing Mr. Dixie's appeal, the Deputy Assistant Secretary informed Mr. Dixie that Ms. Burley was not the governmental leader of the Tribe. In fact, the letter explained, the Tribe could have no governmental leader until it had a government developed through an organizational process that included the broader tribal community of other Indians with legitimate ties to the Tribe.

Thus, the BIA faced a stand-off between Ms. Burley, who insisted the Tribe had organized properly under her constitution, and Mr. Dixie, who claimed to be the hereditary leader of the Tribe. Ms. Burley sued the BIA in Federal district court in the District of Columbia, claiming that the BIA improperly denied her constitution's validity.

The district court granted the BIA's motion to dismiss for failure to state a claim. The Court of Appeals affirmed. See *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006), *aff'd* 515 F.3d 1262 (D.C. Cir. 2008).

When the district court granted its motion to dismiss, the BIA worked with both Ms. Burley and Mr. Dixie to assist the Tribe in organizing itself. After initial efforts by the BIA to find a mutually agreeable solution, Ms. Burley chose not to cooperate. The BIA decided to initiate the organization process by identifying those persons who are lineal descendants of the original twelve Indians for whom the government established the rancheria, the single resident who voted in 1935 on the IRA, and the sole distributee, Mabel Hodge Dixie. Ms. Burley appealed the BIA's decision to the Interior Board of Indian Appeals (IBIA), *California Valley Miwok Tribe v. Pacific Regional Director*, Docket No.: IBIA 07-100-A. Under the Departments regulations, a decision of a Regional Director that has been appealed to IBIA is not final and effective except under certain circumstances, not present here, which effectively stayed the BIA's effort to assist the Tribe in organizing itself. See 25 C.F.R. § 2.6(a).

When the BIA is faced with a situation such as this, when it cannot determine who the legitimate leader of the Tribe is, the BIA must first defer to the Tribe to resolve the dispute. See, e.g., *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65 (1978); *Fisher v. District Court*, 424 U.S. 382, 386-89 (1976); *Smith v. Babbitt*, 100 F.3d 556, 559 (8<sup>th</sup> Cir. 1996); *Wheeler v. Department of the Interior*, 811 F.2d 549 (10<sup>th</sup> Cir. 1987). The difficulty with CVMT is that because it has no government, it has no governmental forum for resolving the dispute. In similar situations, the BIA would turn to a tribe's general council, that is, the collective membership of the tribe. *Johannes Wanatee v. Acting Minneapolis Area Director*, 31 IBIA 93 (1997). But because CVMT has not even taken the initial step of determining its membership, a general council meeting is not possible.

The only answer is for the BIA to wait for the Tribe to organize itself. The Tribe will be able to do so once the IBIA decides Ms. Burley's appeal. The IBIA has a significant workload but the briefing on Ms. Burley's appeal was completed essentially a year ago and the D.C. Circuit Court opinion of earlier this year has been served as supplemental authority in the IBIA proceedings so we could expect a decision at any time. In the meantime, neither the BIA nor any court has authority to resolve the leadership dispute that is crippling the Tribe. See, *Goodface v. Grassrope*, 708 F.2d 335 (8<sup>th</sup> Cir. 1983).

I hope that this letter provides all the information you need. Should you need additional information or have further questions, please contact Jane Smith (202-208-5808), the member of my staff handling this matter.

Sincerely,



Edith R. Blackwell  
Associate Solicitor, Indian Affairs



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

JAN 14 2009

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

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

Dear Mr. Kaufman:

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

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

Sincerely,

Edith R. Blackwell  
Associate Solicitor, Indian Affairs



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 Carriebee 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.

#### **PRAYER 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,

---

M. ROY GOLDBERG  
(D.C. Bar No. 416953)  
CHRISTOPHER M. LOVELAND  
(D.C. Bar No. 473969)  
Sheppard Mullin Richter & Hampton LLP  
1300 I Street, N.W., 11th Floor East  
Washington, DC 20005-3314  
Tel: (202) 772-5313  
Fax: (202) 218-0020  
[rgoldberg@sheppardmullin.com](mailto:rgoldberg@sheppardmullin.com)  
[cloveland@sheppardmullin.com](mailto:cloveland@sheppardmullin.com)

Dated: January \_\_, 2011

Of Counsel:

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

# **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-a-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

Oct-25-04 02:43 PM FROM U.S. ATTORNEY'S OFFICE 0882 554 2880 1-478 P 002/282-805 F-114

attempted or has occurred with the purported organization of your tribe. For example, we have not been made aware of any efforts to reach out to the Indian communities in and around the Sheep Ranch Rancheria, or to persons who have maintained any cultural contact with Sheep Ranch. To our knowledge, the only persons of Indian descent involved in the tribe's organization efforts, were you and your two daughters. We are unaware of any efforts to involve Yakima Dixie or Mr. Dixie's brother Melvin Dixie or any offspring of Merle Butler, Tillie Jeff or Lenny Jeff, all persons who are known to have resided at Sheep Ranch Rancheria at various times in the past 75 years and persons who have inherited an interest in the Rancheria. We are also not aware of any efforts to involve Indians (such as Lena Shelton) and their descendants who once lived adjacent to Sheep Ranch Rancheria or to investigate the possibility of involving a neighboring group. We are aware that the Indians of Sheep Ranch Rancheria were in fact, part of a larger group of Indians residing less than 20 miles away at West Point. Indeed, at your February 23, 2004 deposition, you yourself testified you were at one time of the West Point Indian Community; we understand as well, that you had siblings residing there for many years. The BIA remains available, upon your request, to assist you in identifying the members of the local Indian community, to assist in disseminating both individual and public notices, facilitating meetings, and otherwise providing logistical support.

It is only after the greater tribal community is initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified. The participation of the greater tribal community is essential to this effort. We are very concerned about the designated "base roll" for the tribe as identified in the submitted tribal constitution; this "base roll" contains only the names of five living members all but one whom were born between 1960 and 1996, and therefore would imply that there was never any tribal community in and around Sheep Ranch Rancheria until you met with Yakima Dixie, asking for his assistance to admit you as a member. The base roll, thus, suggests that this tribe did not exist until the 1990's with the exception of Yakima Dixie. However, BIA's records indicate with the exception not withstanding, otherwise.

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

Page 3 of 4

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 Lone 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.

115-1 587/785 827-1 1-514

0087 755-915

301330-5, 1000014 U.S. ATTORNEY'S OFFICE

82-4328 10-25-74



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 Luther, Assistant US Attorney  
Myra Spicker, Deputy Solicitor  
Yakima Dixie Tribal Member

2015-11-10 10:10:10

2015-11-10 10:10:10

2015-11-10 10:10:10

2015-11-10 10:10:10

2015-11-10 10:10:10

2015-11-10 10:10:10

## **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 C**



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

DEC 22 2010

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

Dear Mr. Dixie:

This letter is to inform you of the Department of the Interior's response to the decision of the Interior Board of Indian Appeals (IBIA) in *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIA 103 (January 28, 2010) (Decision).

The Decision stemmed from Sylvia Burley's appeal of the Bureau of Indian Affairs Pacific Regional Director's April 2, 2007 decision to affirm the Central California Agency Superintendent in his efforts to "assist" the Tribe in organizing a tribal government. In the Decision, the IBIA dismissed each of Ms. Burley's three complaints for lack of jurisdiction.<sup>1</sup> The IBIA did, however, refer Ms. Burley's second claim to my office, because it was in the nature of a tribal enrollment dispute. *Decision*, 51 IBIA at 122.

This letter is intended to address the limited issues raised by Ms. Burley's second complaint, as referred to my office by the IBIA: the BIA's involvement in the Tribe's affairs related to government and membership.

### Background

This difficult issue is rooted in the unique history of the California Valley Miwok Tribe. A relatively small number of tribal members had been living on less than 1 acre of land in Calaveras County, California known as the Sheep Ranch Rancheria, since 1916. In 1966, the Department was preparing to terminate the Tribe pursuant to the California Rancheria Termination Act, as part of that dark chapter of Federal Indian policy known as the "Termination Era." As part of this effort, the Department had intended to distribute the assets of the Sheep Ranch Rancheria to Ms. Mabel Dixie, as the only eligible person to receive the assets.

The Department never completed the process of terminating the Tribe, and the Tribe never lost its status as a sovereign federally-recognized tribe.

<sup>1</sup> Ms. Burley's complaints were: 1.) The BIA Pacific Regional Director's April 2, 2007 decision violated the Tribe's FY 2007 contract with the BIA under the Indian Self-Determination and Education Assistance Act, or the Regional Director's decision constituted an unlawful reassumption of the contract; 2.) the Tribe is already organized, and the BIA's offer of assistance constitutes an impermissible intrusion into tribal government and membership matters that are reserved exclusively to the Tribe; and, 3.) the Regional Director erred in stating that the Tribe was never terminated and thus is not a "restored" tribe. *Decision*, 51 IBIA at 104.

In 1998, Yakima Dixie, a tribal member acting as the leader of the Tribe, adopted Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as members of the Tribe. At that time, the Department recognized those five individuals, along with Yakima Dixie's brother Melvin, as members of the Tribe. *Decision*, 51 IBIA at 108.

On September 24, 1998, the Superintendent of the Bureau of Indian Affairs Central California Agency advised Yakima Dixie, then serving as Tribal Chairman, that Yakima Dixie, Melvin Dixie, Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristan Wallace were able to participate in an effort to reorganize under the Indian Reorganization Act. *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d. 197, 198 (D.D.C. 2006). In that same letter, the Superintendent also recommended that the Tribe establish a general council form of government for the organization process, and provided the Tribe with a draft version of a resolution to implement such a form of government. On November 5, 1998, by Resolution # GC-98-01, the Tribe established the General Council. *Id.*

Several months afterwards, in April 1999, Yakima Dixie resigned as Tribal Chairman. On May 8, 1999, the Tribe held a general election, in which Yakima Dixie participated, and elected Sylvia Burley as its new chairperson. The BIA later recognized Sylvia Burley as Chairperson of the California Valley Miwok Tribe. *Id.*

Shortly thereafter, the Tribe developed a draft constitution, and submitted it to the BIA for Secretarial review and approval in May 1999.<sup>2</sup> During this effort, it is apparent that a leadership dispute developed between Ms. Burley and Mr. Dixie.

On March 6, 2000, the Tribe ratified its Constitution and later requested that the BIA conduct a review and hold a secretarial election pursuant to the Indian Reorganization Act. *Id.* at 199. In the interim, on March 7, 2000, the Superintendent issued a letter to Sylvia Burley stating that the BIA "believed the Tribe's General Council to consist of the adult members of the tribe, i.e., Mr. Dixie, Ms. Burley, and Ms. Reznor,"<sup>3</sup> and stated that the leadership dispute between Mr. Dixie and Ms. Burley was an internal tribal matter." *Id.*

In February 2004, Ms. Burley submitted a document to the BIA purporting to serve as the Tribe's constitution. The BIA declined to approve the constitution because it believed that Ms. Burley had not involved the entire tribal community in its development and adoption. Letter from Dale Risling, Sr. to Sylvia Burley (March 26, 2004). The BIA noted that there were other Indians in the local area who may have historical ties to the Tribe. In that same letter, the BIA indicated that it did not view the Tribe as an "'organized' Indian Tribe," and that it would only recognize Ms. Burley as a "person of authority" within the Tribe, rather than the Chairperson. Letter from Dale Risling, Sr. to Sylvia Burley (March 26, 2004). The Office of the Assistant Secretary - Indian Affairs affirmed this position in a letter stating:

[T]he BIA made clear [in its decision of March 26, 2004] that the Federal government did not recognize Ms. Burley as the tribal Chairman. Rather, the BIA would recognize her as a 'person of

<sup>2</sup> The Tribe withdrew its original request for Secretarial review of its constitution in July 1999.

<sup>3</sup> Pursuant to the Tribe's Resolution # GC-98-01, the General Council shall consist of all adult members of the Tribe.

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.

Letter from Acting Assistant Secretary – Indian Affairs Michael D. Olsen to Yakima Dixie (February 11, 2005). At that point, the BIA became focused on an effort to organize the Tribe under the Indian Reorganization Act, and to include a number of people who were not officially tribal members in that effort.<sup>4</sup>

In 2005, the BIA suspended a contract with the Tribe, and later asserted that there was no longer a government-to-government relationship between the United States and the Tribe. 424 F. Supp. 2d, at 201.

Sylvia Burley, on behalf of the Tribe, filed a complaint against the United States in the United States District Court for the District of Columbia seeking declaratory relief affirming that it had the authority to organize under its own procedures pursuant to 25 U.S.C. § 476(h), and that its proffered constitution was a valid governing document. *Id.* The United States defended against the claim by arguing that its interpretation of the Indian Reorganization Act was not arbitrary and capricious, and that it had a duty to protect the interests of all tribal members during the organization process – which included those individual Miwok Indians who were eligible for enrollment in the tribe. See *Id.* at 202. The District Court ruled that the Tribe failed to state a claim for which relief could be granted, which was affirmed by the United States Court of Appeals for the District of Columbia Circuit. *Id.* at 202; 515 F.3d 1262.

On November 6, 2006, the Superintendent of the BIA Central California Agency issued letters to Sylvia Burley and Yakima Dixie, stating, “[i]t is evident, however, that the ongoing leadership dispute is at an impasse and the likelihood of this impasse changing soon seems to be remote. Therefore, we renew our offer to assist the Tribe in the organizational process.” Letter from Troy Burdick to Sylvia Burley and Yakima Dixie (November 6, 2006). The Superintendent then stated “[t]he Agency, therefore, will publish notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process.” *Id.*

Sylvia Burley appealed this decision to the BIA Pacific Regional Director, who affirmed the Superintendent’s decision on April 2, 2007. That same month, the BIA Pacific Regional Office published notice of the reorganizational meeting in a newspaper in the region. Sylvia Burley appealed the Regional Director’s decision to the IBIA, which subsequently dismissed her claims, while referring the second claim to my office.

## Discussion

---

<sup>4</sup> The BIA, Yakima Dixie, and Sylvia Burley all agreed that there was a number of additional people who were potentially eligible for membership in the Tribe. See, *California Valley Miwok Tribe v. United States*, 515 F.3d 1267 - 1268 (D.C. Cir. 2008) (noting that the Tribe has admitted it has a potential membership of 250) (emphasis added).



I must decide whether to move forward with the BIA's previous efforts to organize the Tribe's government, or to recognize the Tribe's general council form of government – consisting of the adult members of the tribe – as sufficient to fulfill our nation-to-nation relationship.

The Department of the Interior is reluctant to involve itself in these internal tribal matters. To the extent that Department must touch upon these fundamental internal tribal matters, its actions must be limited to upholding its trust responsibility and effectuating the nation-to-nation relationship.

#### A. Tribal Citizenship.

In this instance, the facts clearly establish that the Tribe is a federally recognized tribe which shares a nation-to-nation relationship with the United States. Moreover, the facts also establish that Mr. Dixie adopted Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as members of the Sheep Ranch Rancheria in 1998.

The California Valley Miwok Tribe, like all other federally recognized tribes, is a distinct political community possessing the power to determine its own membership, and may do so according to written law, custom, intertribal agreement, or treaty with the United States. See, Cohen's Handbook of Federal Indian Law, § 4.01[2][b] (2005 Edition); see also, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 54 (1978) ("To abrogate tribal decisions, particularly in the delicate area of membership, for whatever 'good' reasons, is to destroy cultural identity under the guise of saving it") quoting *Santa Clara Pueblo v. Martinez*, 402 F.Supp. 5, 18-19 (D.N.M. 1975).

I understand the difficult circumstances facing those individual Miwok Indians living in Calaveras County, California and who lack an affiliation with a federally recognized tribe. Affiliation with a tribe lies at the core of Indian identity. This is one reason why the Department is working to improve the process by which tribes can become federally recognized, and have their nation-to-nation relationship with the United States restored.

Nevertheless, the United States cannot compel a sovereign federally recognized tribe to accept individual Indians as tribal citizens to participate in a reorganization effort against the Tribe's will. See *Santa Clara Pueblo*, supra. It is possible that there are other individual Indians in the area surrounding Sheep Ranch who are eligible to become members of the Tribe. Mr. Dixie and Ms. Burley, along with the BIA, have previously indicated such. See 515 F.3d at 1267-68 (D.C. Cir. 2008).

There is a significant difference, however, between eligibility for tribal citizenship and actual tribal citizenship. Only those individuals who are actually admitted as citizens of the Tribe are entitled to participate in its government. The proper recourse for those individuals eligible for tribal citizenship, but who are not yet enrolled, is to work through the Tribe's internal process for gaining citizenship.

It is indisputable that Mr. Dixie adopted Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as citizens of the Tribe. Moreover, it is indisputable that the BIA previously accepted the Tribe's decision to enroll these individuals as tribal citizens, as evidenced by its letter of September 24, 1998.

Whatever good reasons the BIA may have had for requiring the Tribe to admit new citizens to participate in its government are not sufficient to overcome the longstanding principles of reserving questions of enrollment to the Tribe.

#### **B. Tribal Government**

As with matters of enrollment, each tribe is vested with the authority to determine its own form of government. This authority is a quintessential attribute of tribal sovereignty. Cohen's Handbook of Federal Indian Law, § 4.01[2][a] (2005 Edition).

The Department recommended in a letter to the Tribe, that it "operate as a General Council," which would serve as its governing body. Letter from BIA Central California Superintendent Dale Rislung to Yakima K. Dixie, Spokesperson for the Sheep Ranch Rancheria (September 24, 1998). In its letter to the Tribe, the Department advised the Tribe that, "[t]he General Council would then be able to proceed with the conduct of business, in a manner consistent with the authorizing resolution." *Id.* The Department previously considered this form sufficient to fulfill the government-to-government relationship. See award of P.L. 93-638 Contract CTJ51T62801 (February 8, 2000).

The determination of whether to adopt a new constitution, and whether to admit new tribal citizens to participate in that effort, must be made by the Tribe in the exercise of its inherent sovereign authority, and not by the Department.

#### **Conclusion**

I have reviewed the documents referenced in this letter, as well as the numerous submissions made by Mr. Dixie and Ms. Burley to my office since the issuance of the IBIA Decision in January 2010.

I conclude that there is no need for the BIA to continue its previous efforts to organize the Tribe's government, because it is organized as a General Council, pursuant to the resolution it adopted at the suggestion of the BIA. Consequently, there is no need for the BIA to continue its previous efforts to ensure that the Tribe confers tribal citizenship upon other individual Miwok Indians in the surrounding area.

Based upon the foregoing principles of tribal sovereignty, and our government-to-government relationship with the Tribe, I am directing that the following actions be undertaken:

1. The BIA will rescind its April 2007 public notice to, "assist the California Valley Miwok Tribe, aka, Sheep Ranch Rancheria (Tribe) in its efforts to organize a formal governmental structure that is acceptable to all members."
2. The BIA will rescind its November 6, 2006 letters to Sylvia Burley and Yakima Dixie stating that the BIA will initiate the reorganization process for the California Valley Miwok Tribe.

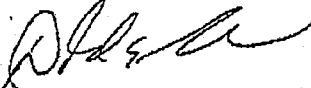
3. I am rescinding the February 11, 2005 letter from the Office of the Assistant Secretary to Yakima Dixie stating that the BIA does not recognize any government of the California Valley Miwok Tribe.
4. The BIA will rescind its letter of March 26, 2004 to Sylvia Burley stating that it "does not yet view your tribe to be an 'organized' Indian Tribe," and indicating that Ms. Burley is merely a "person of authority" within the Tribe.
5. My office and the BIA will work with the Tribe's existing governing body – its General Council, as established by Resolution # GC-98-01 – to fulfill the government-to-government relationship between the United States and the California Valley Miwok Tribe.

My decision addresses those issues referred to my office by the decision of the IBIA.

Lastly, I recognize that issues related to membership and leadership have been significant sources of contention within the Tribe in recent years. I strongly encourage the Tribe's governing body, the General Council, to resolve these issues through internal processes so as to mitigate the need for future involvement by the Department in these matters. To this point, I understand that Resolution #GC-98-01 provides for proper notice and conduct of meetings of the General Council. I likewise encourage the Tribe's General Council to act in accord with its governing document when settling matters relating to leadership and membership, so as to bring this highly contentious period of the Tribe's history to a close.

A similar letter has been transmitted to Ms. Sylvia Burley, and her legal counsel.

Sincerely,



*For* Larry Echo Hawk  
Assistant Secretary – Indian Affairs

cc: Mike Black, Director of the Bureau of Indian Affairs  
Amy Dutschke, BIA Pacific Regional Director  
Elizabeth Walker, Walker Law LLC

## 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 June 15, 2012, I served the attached **APPENDIX IN SUPPORT OF RETURN TO PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF** 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:

Court of Appeal  
Fourth Appellate District  
750 B Street, Suite 300  
San Diego, CA 92101

Original

Robert A. Rosette  
Rosette, LLP  
193 Blue Ravine Road, Suite 255  
Folsom, CA 95630

1 copy

*Attorney for Plaintiff*

Manuel Corrales, Jr.  
17140 Bernardo Center Drive, Suite 370  
San Diego, CA 92128

1 copy

*Attorney for Plaintiff*

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

1 copy

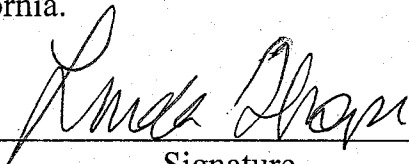
*Attorney for Plaintiff*

Thomas W. Wolfrum 1 copy  
1333 North California Blvd., Suite 150  
Walnut Creek, CA 94596  
*Attorney for Real Party in Interest*

Matthew McConnell 1 copy  
Sheppard, Mullin, Richter & Hampton  
12275 El Camino Real, Suite 200  
San Diego, CA 92130  
*Attorney for Real Party in Interest*

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  
June 15, 2012, at Sacramento, California.

\_\_\_\_\_  
Linda Thorpe  
Declarant

\_\_\_\_\_  
  
Signature