IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

CALIFORNIA VALLEY MIWOK TRIBE, Petitioner, **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.	Case No. D061811

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

MOTION THAT THE COURT TAKE JUDICIAL NOTICE, SUPPORTING DECLARATION, AND SUPPORTING MEMORANDUM

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MOTION THAT THE COURT TAKE JUDICIAL NOTICE

A. Real Party in Interest California Gambling Control Commission moves this Court for an Order that it take judicial notice pursuant to Evidence Code section 452, subdivision (d) of the following matter: Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief (FAC) filed in *California Valley Miwok Tribe, et al., v. Ken Salazar, et al.*, No. 1:11-cv-00160, in the United States District Court for the District of Columbia.

B. Judicial notice of this document is relevant because it sets forth the scope of issues before the United States District Court and goes to the propriety of relief sought in the Petition for Writ of Mandate.

C. This document was not presented to the trial court.

D. This motion is based on the accompanying supporting memorandum and the supporting declaration of Neil D. Houston.

MEMORANDUM

Section 452, subdivision (d) allows for the taking of judicial notice of the "[r]ecords of . . . any court of record of the United States or of any state of the United States." The FAC is such a record of the United States District Court for the District of Columbia. Section 453 of the Evidence Code provides that judicial notice of the matters set forth in section 452 is mandatory if properly requested by a party. The requesting party must give sufficient notice of the request to enable the adverse party to prepare to

meet it, and furnish the court with sufficient information to enable the Court to take judicial notice of the matter. (Evid. Code, § 453, subd. (a) & (b).)

Dated: June 15, 2012

Respectfully submitted,

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SUPPORTING DECLARATION OF NEIL D. HOUSTON

I, NEIL D. HOUSTON, declare:

This declaration is submitted in support of this motion that the court take judicial notice.

1. I am a Deputy Attorney General with the California Department of Justice, Office of the Attorney General, and am one of the attorneys of record for the California Gambling Control Commission (Commission) in this matter. I am an attorney at law duly licensed to practice before all

courts within the State of California. From May, 2007 to the present, I have been employed in the Indian and Gaming Law Section of the Office of the Attorney General of California which has responsibility for representing state agencies in tribal gaming matters. I have personal knowledge of the facts set forth below and if called as a witness, I could and would competently testify to them.

2. Exhibit A attached hereto is a true and correct copy of the FAC filed on October 17, 2011, in the United States District Court for the District of Columbia, *California Valley Miwok Tribe, et al., v. Ken Salazar, et al.*, No. 1:11-cv-00160. Exhibit A was received by the Office of the Attorney General of California in the regular course of business and has been maintained in the case file for this matter over which I have custody.

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

NEIL D. HOUSTON

ORDER

The request that judicial notice be taken in this cause pursuant to section 452, subdivision (c) of the Evidence Code, of the Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief is hereby granted.

_____

Presiding Judge

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EXHIBIT A

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

ANTONE AZEVEDO,
4001 Carriebee Ct.
North Highlands, CA 95660

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.
Washington DC 20240

MICHAEL BLACK, in his official capacity as Director of the Bureau of Indian Affairs within the

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

Hon. Richard W. Roberts

United States Department of the Interior,
Bureau of Indian Affairs
MS-4606
1849 C Street, N.W.
Washington, D.C. 20240

Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs ask the Court to vacate an erroneous decision of the Assistant Secretary – Indian Affairs for the United States Department of the Interior ("Department") that arbitrarily limits the membership of a federally recognized Indian tribe to five people and disenfranchises 242 adult members of the tribe plus their children, without due process and in violation of the Department's trust responsibilities to Indian tribes and their members. Because the decision knowingly recognizes a tribal government based on a tribal document adopted without the knowledge, participation or consent of the vast majority of the tribe's members, it violates federal law and must be reversed.

Plaintiffs Yakima Dixie, the California Valley Miwok Tribe ("Tribe"), and Tribe members Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo, individually and as members of the Tribal Council ("Council"), therefore submit this First Amended Complaint against the Defendants, Ken Salazar, Secretary of the Department, Larry Echo Hawk, Assistant Secretary– Indian Affairs ("AS-IA") of the Department, and Michael Black, Director of the Bureau of Indian Affairs ("BIA") within the Department, and state and allege as follows:

INTRODUCTION AND SUMMARY

1. The Tribe is a federally recognized Indian tribe that was recognized around 1915 when the United States purchased the Sheep Ranch Rancheria for the benefit of a small band of Miwok Indians living near Sheep Ranch, California. Today the Tribe has approximately 242 adult members,

and approximately 350 members under the age of 18, who are lineal descendants of the original 1915 members.

2. In 1935, the Tribe voted to accept the Indian Reorganization Act of 1934 ("IRA"), which allowed tribes to assume the responsibility of self-government by adopting governing documents and establishing a tribal government. The process of creating a tribal government is known as "organization," or sometimes "reorganization." For tribes that have accepted the IRA, organization must comply with the substantive and procedural requirements of the IRA.

3. Despite accepting the IRA, the Tribe has never organized itself. For many years its members maintained only an informal Tribal community, although many lived on the Rancheria at various times or in the surrounding area and maintained familial and community ties.

4. In 1998, at the BIA's urging, a woman named Silvia Burley approached Yakima Dixie, whom the BIA recognized as a Tribal spokesperson at that time. Ms. Burley, a resident of a neighboring Indian community, asked to be enrolled into the Tribe along with her two daughters and her granddaughter (collectively, the "Burleys"). The BIA erroneously told Mr. Dixie that he had the authority to enroll the Burleys into the Tribe, and he agreed to do so. The BIA thereafter treated the Burleys as Tribal members, although their enrollment was invalid without Tribal consent.

5. Around September 1998, Mr. Dixie and Ms. Burley began discussions with the BIA about organizing the Tribe. The BIA erroneously told Mr. Dixie that the people entitled to participate in the initial organization of the Tribe were determined by a plan for distribution of tribal assets that had been approved in 1966 as part of an unsuccessful attempt to "terminate" the Tribe under the California Rancheria Act. The BIA concluded that these people included Mr. Dixie, his brother Melvin Dixie, and the Burleys (by virtue of their purported enrollment), and that those individuals were entitled to decide who else might participate in Tribal organization. This conclusion was and is incorrect.

6. Contrary to the BIA's conclusion, all lineal descendants of the Tribe's original members (circa 1915) were members of the Tribe in 1998 and were entitled to participate in any organization effort. Of the Tribe's current members, at least 83 were alive and over the age of 18 in 1998 and were entitled to participate in any organization of the Tribe (the "1998 Adult Members"). Other, now-deceased members were also alive in 1998 and entitled to participate.

7. The BIA suggested to Mr. Dixie that the Tribe form a general council as an interim step in order to manage itself until it had adopted a constitution and completed the organization process as defined in the IRA. A general council is a form of government consisting of all of a tribe's members. The BIA supplied a resolution purporting to create such a general council, and Mr. Dixie and Ms. Burley signed the resolution on November 5, 1998 (the "1998 Resolution"). The adoption of the 1998 Resolution was invalid.

8. The Tribe never completed the organization process that the 1998 Resolution was intended to facilitate. A dispute erupted between Ms. Burley and Mr. Dixie over control of the organization process, with both sides pursuing organization under separate documents.

9. The BIA rejected constitutions that Ms. Burley submitted in the name of the Tribe in 1999, 2000, 2001 and 2004, which essentially would have limited Tribal membership to Mr. Dixie, the Burleys and their descendants. The BIA, reversing the erroneous advice it provided Mr. Dixie in 1999, informed Ms. Burley that organization must involve the entire Tribal community, and it identified a number of other people who must be allowed to participate, including the lineal descendants of historical Tribe members. Ms. Burley responded by filing a series of administrative appeals and federal court challenges seeking to compel the BIA to recognize the Tribe as organized under her constitution and with her as its leader.

10. Ms. Burley's appeals culminated in a 2006 decision by the federal district court for the District of Columbia, which upheld the BIA's rejection of Ms. Burley's 2004 constitution. The court

held that the IRA imposes fundamental requirements on tribal organization, including notice, a defined process, and minimum levels of participation. *California Valley Miwok Tribe v. United States*, 424 F.Supp.2d 197 (D.D.C. Mar. 31, 2006). The federal government argued 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," and the court agreed. Because the BIA estimated that the Tribal community entitled to participate in organization "may exceed 250 members," while Ms. Burley had involved only herself and her daughters, rejection of the Burley constitution was consistent with the BIA's duty.

11. The Court of Appeals for the District of Columbia Circuit affirmed in a published opinion, holding that, "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." *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267 (D.C. Cir. 2008).

12. Following the district court's decision, in 2006, the BIA attempted to assist the Tribe in identifying its entire membership by asking descendents of the 1915 members to submit genealogies showing their status as lineal descendants of historical Tribe members. Once the lineal descendants were identified, the BIA planned to arrange a meeting so the members could proceed with Tribal organization if they wished to do so. Ms. Burley filed administrative appeals, essentially attempting to re-litigate her previous position that the Tribe was already organized under her leadership. Those appeals eventually led to a decision on August 31, 2011 by the AS-IA (Exhibit "A") (the "August 31 Decision").

13. In the August 31 Decision, the AS-IA found, without any explanation or support, that the membership of the Tribe is limited to five people. In doing so, he ignored the overwhelming

evidence before him that the Tribe's membership currently includes 242 adult members and their children, who are lineal descendants of historical Tribe members.

14. In the August 31 Decision, the AS-IA found that those five people had established a valid Tribal government under the 1998 Resolution. The 1998 Resolution was void *ab initio* as a Tribal action and could not be a valid governing document because it was adopted without notice to, or consent of, a vast majority of the Tribe and did not comply with the IRA.

15. In the August 31 Decision, the AS-IA explicitly repudiated and failed to carry out the BIA's duty to ensure that the interests of all Tribal members are protected during organization, and that the governing documents for the Tribe reflect the will of a majority of the members, as required by the IRA and binding decisional law of this Circuit. The AS-IA has no authority to do so.

16. The August 31 Decision cedes complete control of the Tribe to the Burleys and deprives Plaintiffs and the Tribe's other members of fundamental rights in violation of the U.S. Constitution, the Indian Civil Rights Act, the IRA, the Department's trust responsibility to the Tribe and its members, and other federal laws.

JURISDICTION AND VENUE

17. 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.

18. 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.

19. 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.

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

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

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

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

24. An actual case and controversy has arisen and now exists between the parties with regard to the AS-IA's violations of the constitutional provisions, statutes and regulations cited herein.

PARTIES

25. 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 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. As of April 30, 2011, the membership of the Tribe consisted of 242 adult members and their children ("Current Members"). At least 83 members of the Tribe were alive and at least 18 years old on November 5, 1998 ("1998 Adult Members").

26. Plaintiff Yakima Dixie is the Traditional Spokesperson, and the historical Chairperson, of the California Valley Miwok Tribe and a member of its Tribal Council. Miwok tribes use the term "spokesperson" rather than "chief" to describe their traditional leaders, reflecting the Miwok tradition of consensus-based government.

27. Plaintiff Tribal Council is the legitimate governing body of the Tribe as recognized by a majority of Tribal members. The Council consists of Mr. Dixie and Tribe members Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson, Antone Azevedo, Shirley Wilson and Iva Carsoner.

28. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone 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.

29. 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 IRA and other relevant laws. Mr. Salazar is sued in his official capacity only.

30. Defendant Larry Echo Hawk is the AS-IA of the Department and head of the Bureau of Indian Affairs. Mr. Echo Hawk issued the August 31 Decision that is challenged in this action. Mr. Echo Hawk is sued in his official capacity only.

31. 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 Membership

32. In 1915, a United States Indian Service official discovered a small cluster of Miwok Indians living in or near Sheep Ranch, California, which was a remnant of a once-larger band. In 1916 the United States purchased approximately one acre of land near Sheep Ranch and created the Sheep

Ranch Rancheria for the benefit of those Indians. The United States subsequently recognized the Sheep Ranch Band of Me-wuk Indians as a federal Indian tribe.

33. The initial members of the Tribe were those listed in the 1915 Sheep Ranch Indian census. Their names were: Peter Hodge, Annie Hodge, Malida Hodge, Lena Hodge, Tom Hodge, Andy Hodge, Jeff Davis, Betsey Davis, Mrs. Limpey, John Tecumchey, Pinkey Tecumchey and Mamy Duncan. Peter Hodge was their leader.

34. In 1935, the United States held an election in which Tribal members voted on whether to accept or reject the application of the IRA to the Tribe. The United States' 1935 IRA approved voter list for the Tribe listed one Tribe member: Jeff Davis.

35. The individuals listed in the 1915 Sheep Ranch Indian census and in the 1935 IRA approved voter list for the Tribe were members of the Tribe.

36. The lineal descendants of the individuals listed in the 1915 Sheep Ranch Indian census and in the 1935 IRA approved voter list for the Tribe were, and are, members of the Tribe at all times relevant to this litigation.

The Indian Reorganization Act

37. The Tribe voted to accept the IRA in 1935.

38. The IRA allows Indian tribes to "organize," or form a tribal government, by adopting a written constitution or other governing documents. Successful organization allows a tribe to establish government-to-government relations with the United States and with state and local governments.

39. For Tribes that have accepted it, the IRA establishes procedural and substantive requirements for organization. These requirements include notice, a defined process, and minimum levels of participation by a tribe's members.

40. Under the IRA, the Secretary has a duty to ensure that the Department recognizes only a legitimate tribal government that reflects the participation and consent 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

41. 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.

42. The Tribe was never terminated pursuant to the California Rancheria Act. The United States has recognized the Tribe as an Indian Tribe since its inception and continues to do so.

The Invalid 1998 Resolution

43. The 1998 Resolution recites that it was signed by a majority of the Tribe's adult members. That is incorrect. A "majority" means more than one-half. Only two people signed the 1998 Resolution.

44. The 1998 Resolution identified four Tribal members who were adults in 1998: Yakima Dixie, Melvin Dixie, Silvia Burley and Rashel Reznor. The 1998 Resolution did not state that these were the only members of the Tribe. It recited that that Tribe consisted of "at least" those members. The identification of the Burleys as members was incorrect because Yakima Dixie did not have the authority to enroll them into the Tribe without the consent of the Tribe's existing members.

45. The 1998 Adult Members were also members of the Tribe in November 1998. There were also many other members in 1998 who have died since then. Except for Yakima Dixie, none of the 1998 Adult members or the now-deceased members signed the 1998 Resolution.

46. Neither Melvin Dixie nor any of the 1998 Adult Members (except for Yakima Dixie) or the now-deceased members received actual or constructive notice of the 1998 Resolution prior to its adoption or were provided with an opportunity to participate in the process of drafting or voting on the 1998 Resolution. Most or all of these members were living in the vicinity of the Sheep Ranch

Rancheria in 1998, were readily identifiable as Tribal members, and were known or should have been known to the BIA.

47. The 1998 Resolution was invalid and of no force and effect because it was adopted without notice to, participation by, or consent of a majority of the Tribe's adult members.

Burley Seeks Control of the Tribe

48. Shortly after her purported enrollment, Ms. Burley sought to take control of the Tribe. The 1998 Resolution named Mr. Dixie as the Tribe's chairperson. But in April 1999, Burley claimed that she was the Chairperson. That claim was and is false.

49. Burley submitted proposed Tribal constitutions to the BIA in 1999, 2000 and 2001. The constitutions would have limited Tribal membership to the Burleys, their descendants and, in some cases, Mr. Dixie. No Tribal member except for the Burleys had any part in the development or ratification of these constitutions.

50. The BIA did not approve any of the constitutions that Burley submitted.

The BIA Rejects Burley's 2004 Constitution

51. Burley submitted another proposed constitution to the BIA in February 2004, purportedly to demonstrate that the Tribe was already organized with Ms. Burley as its leader.

52. Although Burley had acknowledged in federal court in 2002 that the Tribe had a potential citizenship of "nearly 250 people," her proposed constitution recognized only five members.

53. 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 roll and membership criteria identified.

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.

54. The BIA's letter stated that "the BIA does not yet view [the Tribe] to be an 'organized' Indian Tribe" and that, because the Tribe was unorganized, the BIA could not recognize Burley as the Tribe's chairperson.

55. On February 11, 2005, the AS-IA sent a letter to Mr. Dixie and Burley in which he reiterated many of the decisions made in the BIA's March 26, 2004 letter. The AS-IA stated:

> In that [2004] 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.

56. The AS-IA's 2005 letter made clear that the BIA's rejection of Ms. Burley's constitution implicitly encompassed any and all tribal governing documents submitted prior to that date, and any purported Tribal government created by any such documents: "In light of the BIA's letter of March 26, 2004 . . . the BIA does not recognize *any Tribal government* . . .." (emphasis added).

57. After the AS-IA's 2005 determination, the BIA sought to work with Mr. Dixie's Tribal Council and the Tribe to complete the organization process. Mr. Dixie and the BIA invited Burley to participate, but she again refused and instead filed suit challenging the AS-IA's decision.

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

58. In April 2005, Burley filed suit in the federal district court for the District of Columbia, in the name of the Tribe. The suit challenged the BIA's rejection of the constitution submitted by Burley and its refusal to recognize any governing documents or governing body of the Tribe. Burley

sought a judgment that the Tribe had the inherent sovereign authority to adopt governing documents outside of the IRA and that the Tribe was lawfully organized pursuant to that authority. Burley did not contest the BIA's specific decision not to recognize her as the Tribal Chairperson.

59. The district court dismissed Burley's claims in March 2006. The court noted that the Burleys 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." 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" and 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." *California Valley Miwok Tribe, supra*, 424 F.Supp.2d 197. This is true "whether or not [a tribe] choose[s] to organize under the IRA procedures [of section 476(a)]." The court found the BIA's decisions consistent with that duty.

60. 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."

61. 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 Department's Representations in Federal Court

62. In its brief to the D.C. Circuit, the United States Department of Justice, on behalf of the Department of the Interior, stated, *inter alia*:

> [T]he Burley Government does not dispute that the vast majority of the potential membership of the Tribe did not have an opportunity to participate in the election of Burley as chairperson or in the adoption of the government documents. Instead, the Burley Government argues that BIA was required, under 25 U.S.C. § 476(h), to recognize the Tribe as organized, and to recognize the Burley Government and its proffered governing documents, notwithstanding this lack of participation. The district court properly rejected this argument, reasoning that while Section 476(h) recognizes the "inherent sovereign power" of "each Indian tribe" to "adopt governing documents under procedures other than those specified in" the IRA, Section 476(h) does not eliminate the IRA's requirements that governing documents be ratified by a majority vote of the adult members of the tribe.

63. The United States further stated in its brief:

> Section 476(h) does not impose a duty on BIA to recognize a tribal government or governing documents where, as here, they are adopted without the consent or participation of a majority of the tribal community. Nothing in Section 476(h) suggests that Congress intended to alter the substantive standards that apply when a tribe seeks to organize, including Section 476(a)(1)'s requirement that governing documents be "ratified by a majority of adult members of the tribe." In addition, 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 government added that "nothing in Section 476(h) limits the Secretary's broad authority – *independent of the IRA* – to ensure the legitimacy of any purported tribal government that seeks to engage in that government-to-government relationship with the United States" (emphasis added).

64. The government also stated in its brief that "the Burley Government [cannot] speak[] for the Tribe in the exercise of [the Tribe's] sovereign power . . . 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."

Mr. Dixie's Efforts to Organize the Tribe

65. While the Burleys were attempting to limit the Tribe to their immediate family, Mr. Dixie and other Tribal members began to identify and bring together all of the Tribe's members. Beginning in 2003, they held open meetings of the Tribe's membership each month, which have been held ever since. They also formed the Tribal Council.

66. The Council met with the BIA in September 2003 and requested that the BIA call an election pursuant to the IRA to adopt a Tribal constitution and establish government-to-government relations with the United States. The BIA did not act on the Council's request but continued to meet regularly with Mr. Dixie and the Council to discuss efforts to organize the Tribe.

67. With the support and participation of the Tribe's members, the Tribal Council has met approximately every other month since its formation to discuss Tribal policy, enact resolutions, and conduct other Tribal business. The Council has made great strides in rebuilding a functioning Tribal community. Since at least 2004, the Tribe and its members have engaged in a variety of cultural, religious, economic and social activities that benefit the full Tribal membership, strengthen the Tribal community and restore historic ties with the larger Indian community. Tribal activities include:

a. The Tribe intervenes in child custody proceedings under the Indian Child Welfare Act, on behalf of children of Tribe members. In those cases where a child is removed from its family, the Tribe seeks to have the child placed with an Indian family or a family with ties to Indian traditions, so that the child is not deprived of its cultural heritage and place in the Indian community. Burley has opposed the Tribe's efforts in these cases.

b. The California Native American Heritage Commission has recognized the Tribe's Cultural Preservation Committee. Several Tribe members have been trained to serve as

cultural monitors on behalf of the Tribe and have performed monitoring at construction sites that may affect Native American cultural and religious artifacts.

c. The Tribe participates, with other Miwok tribes, in an intertribal Miwok Language Restoration Group that teaches the Miwok language to younger tribe members so that the language and the tribal traditions are not lost. Plaintiff Evelyn Wilson is the senior Miwok member who still speaks the Miwok language.

d. The Sheep Ranch Rancheria Me-wuk Dancers ("Me-wuk Dancers"), a ceremonial Indian dance and cultural preservation group, represent the Tribe at native American events throughout California. Tribe members Gilbert Ramirez and his son Pete Ramirez organized the Me-wuk Dancers group at the request of Tribal elders. The Me-wuk Dancers play an important role in preserving the language, cultural identity and religious traditions of the Tribe.

e. The Tribe has been negotiating with the United States Forest Service ("USFS") regarding construction of a traditional Indian "brush house" on USFS land near the Tribe's ancestral village. A brush house is an open-roofed building for conducting dances and other traditional ceremonies. It is a key element in Indian cultural and religious traditions, equivalent to a tribe's church.

f. Since 2004, the Tribe has been participating in the Calaveras Healthy Impact Products Solutions project ("CHIPS"), a community supported project that seeks to reduce wildfire hazards to local communities while providing economic opportunity for local workers. CHIPS received a grant from the United States Department of Agriculture in 2007 to support retraining for workers to participate in new jobs within the forestry and vegetation control industry. Among other things, CHIPS has trained Native American workers, including Tribe members, to perform restoration work on federal lands that contain sensitive Native American heritage resources.

g. Through CHIPS and the Amador-Calaveras Consensus Group ("ACCG"), a community coalition, the Tribe has been engaged in efforts to participate in the USFS Collaborative Forest Landscape Restoration Program ("CFLRP"). Participation in the CFLRP would allow local workers to work with the USFS and Bureau of Land Management ("BLM") on landscape restoration and forest stewardship projects. In particular, the USFS is seeking Native American crews (such as those trained by CHIPS) to participate in programs to reintroduce fire as a management technique on federal lands with sensitive Native American heritage resources. The participation of the Tribe is important to the success of the community's CFLRP proposal.

h. Tribe members gather certain materials, such as raptor feathers, that are needed for cultural and religious ceremonies. Only members of Indian tribes can legally possess these materials. Tribe members also gather materials, such as native plants and willow roots, used in traditional crafts such as basket weaving, and offer classes in those crafts to ensure that the skills are not lost.

i. The Tribe participates in the annual Salmon Distribution Project in which it obtains several tons of fresh salmon from the Oroville Dam hatchery and distributes it to Tribe members.

j. The Tribe is involved 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.

68. In 2006, the Tribal Council adopted a Tribal constitution, which established that the Tribe's first priority was to identify and enroll all Tribal members—i.e., those who are lineal descendants of one or more historical members of the Tribe, as documented by personal genealogies, birth records and other documents. Under the Council's leadership, the Tribe has identified several hundred members who wish to participate in the organization of the Tribe. The Tribal roster as of

April 30, 2011, consists of 242 adult members and approximately 350 children under the age of 18. Each of these members is a lineal descendant of one or more historical members of the Tribe, as documented by personal genealogies, birth records and other records.

69. Since 2006, the members of the Tribe have devoted countless hours to drafting a revised constitution through an open and transparent process. The contents of the constitution have been read and debated in many Tribal meetings, including special meetings called specifically for that purpose. All such meetings were open to the entire Tribal community. The Tribe has provided the Burleys with notice and an opportunity to participate, but they refused to do so.

70. On July 26, 2011, the Tribe adopted Resolution 2011-07-16(b), establishing an Election Committee and providing for voter registration in order to facilitate a Tribal election to adopt and ratify the revised constitution. The Tribe provided the Assistant Secretary and the BIA with notice of Resolution 2011-07-16(b) and of its intent to hold an election. The only action that remains to complete the Tribal organization process is final ratification and adoption of the constitution by the entire Tribal membership. The Tribe plans on holding an election for that purpose, consistent with the IRA.

The BIA Attempts to Assist the Tribe In Organizing

71. On November 6, 2006, after the district court had dismissed Burley's claims, the BIA informed Ms. Burley that it would assist the Tribe in organizing according to majoritarian principles, consistent with the decisions upheld by the court.

72. Ms. Burley 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."

73. 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) individuals listed as eligible voters on the federal government's 1935 IRA voting list for the Rancheria; and (3) individuals listed on the plan for distribution of the assets of Sheep Ranch Rancheria (which included only Mabel Hodge Dixie).

74. 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 Antone Azevedo each submitted genealogies and other documentation to the BIA in response to the public notices. None of the Burleys submitted documentation in response to the public notices. The BIA has not released the genealogies or the results of its analysis of the information submitted. The Tribe has separately obtained genealogies from each of its members.

Burley Attempts to Re-Litigate Her Claims Before the Board

75. Burley appealed the Regional Director's April 2, 2007 decision to the Interior Board of Indian Appeals.

76. In January 2010, the Board decided Burley's appeal. The Board recognized that the AS-IA'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 Burleys 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.

77. According to the Board, the Burley appeal raised a solitary issue that had not already been decided by the AS-IA: 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 erroneously characterized this as a "tribal enrollment dispute," because it failed to recognize that the lineal descendants of historical Tribal members are *already* Tribal members and therefore that the BIA's 2007 proposed assistance with Tribal organization would not confer membership on these people. Because it lacks jurisdiction over "enrollment disputes," the Board referred the issue to the AS-IA for resolution.

The AS-IA's August 31 Decision

78. The AS-IA issued his initial decision in the Burley appeal on December 22, 2010. Plaintiffs challenged the December 22 Decision before this Court, and the AS-IA withdrew the decision on April 1, 2011. The AS-IA stated in his April 1 letter that he planned to issue a new decision.

79. On April 6, 2011, in a related California state court proceeding, attorneys for Ms. Burley stated in open court that they had been informed that the AS-IA planned to issue a new decision reaffirming the substance of the December 22 Decision and making that decision invulnerable to legal challenge.

80. After briefing by Ms. Burley and the Plaintiffs, the AS-IA issued his August 31 Decision on August 31, 2011.

81. In the August 31 Decision, the AS-IA reached substantially the same conclusions as he had in his December 22 Decision, again purporting to decide issues long settled and not subject to further appeal. Contrary to the Court of Appeals ruling, the AS-IA declared that the Tribe can organize itself without complying with the IRA; that the Tribe has already established a valid government under the 1998 Resolution, which was signed by only two people; and that the United States must carry on government-to-government relations with Burley's anti-majoritarian council. In addition, the AS-IA grossly exceeded his authority over Tribal matters by purporting to determine that the membership of the Tribe is limited to five people, and by erroneously characterizing the other 242 members of the Tribe as "potential," rather than actual, members.

Consequences of the Secretary's Unlawful Decision

82. As a result of the AS-IA's unlawful August 31 Decision, the Plaintiffs have suffered and will continue to suffer great injury, including but not limited to the following:

83. Plaintiffs have been and will be denied the benefits of Tribe membership.

a. The August 31 Decision finds that "the citizenship of the [Tribe] consists solely of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace.[1]" Thus, individual Plaintiffs (except for Mr. Dixie) are denied membership in the Tribe by the decision. Denial of Tribal membership is a violation of fundamental rights.

b. The August 31 Decision gives the Burleys complete control over Tribal membership and governance, including the power to exclude Mr. Dixie from membership. The Burleys have already purported to disenroll Mr. Dixie once, in 2005, although it purported to re-enroll him in 2009 for litigation purposes.

[1] Reznor, Paulk and Wallace are Burley's daughters and granddaughter, respectively.

84. As a result of the August 31 Decision, Plaintiffs are denied their rightful place in the larger Indian community and culture.

85. As a result of the August 31 Decision, Plaintiffs are not and will not be eligible to receive federal health, education and other benefits provided to members of recognized Indian Tribes.

86. As a result of the August 31 Decision, Plaintiffs have been and will be denied the opportunity to participate in the organization and governance of the Tribe.

a. Because the August 31 Decision erroneously finds that individual Plaintiffs (except for Mr. Dixie) are not members of the Tribe, it denies deny them any role in the organization of the Tribe. Indeed, the August 31 Decision specifically finds that none of the Tribe's members except for the Burleys and Mr. Dixie have any citizenship rights, including the right to participate in the Tribe's government.

b. The August 31 Decision finds that the Tribe "is not required to 'organize' in accord with the procedures of the IRA" and that its general council as defined under the 1998 Resolution is "vested with the full authority of the Tribe, and may conduct the full range of government-to-government relations with the United States." Because the Decision disavows any requirement that the Tribe form a government that is representative of its entire membership, neither Plaintiffs nor any of the Tribe's other members will ever have the opportunity to participate in the Tribe's self-government.

87. By denying Plaintiffs' membership in the Tribe and recognizing the Burley government under the 1998 Resolution, the August 31 Decision strips the Tribal Council of legitimacy and interferes with the vital programs that the Council has established to benefit the Tribe and its members, strengthen Tribal culture and traditions, and restore Tribal ties with the larger Native American community.

88. The August 31 Decision, if upheld by the Court, 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 millions of dollars from the Commission, which were meant for the Tribe, between 1999 and 2005 (the "State Funds").

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 $7.5 million of the State Funds that the Commission has withheld since 2005. *See California Valley Miwok Tribe v. California Gambling Control Commission,* No. 37-2008-00075326 (Sup. Ct. San Diego). Burley seeks to introduce the August 31 Decision as evidence that she is entitled to receive the State Funds.

c. If Burley receives the State Funds, Mr. 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.

89. The August 31 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 the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* ("PL 638"), to assist the Tribe in organizing under the IRA. Burley received as much as $400,000 to $600,000 per year under this contract.

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 to secure the benefits of Tribe membership only for herself and her immediate family.

b. The BIA previously indicated its intent, based on the AS-IA's December 22 Decision, to enter into a new PL 638 contract with the Burleys. If the August 31 Decision is allowed to stand, 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.

FIRST CAUSE OF ACTION

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

90. Plaintiffs re-allege the above paragraphs and incorporate those paragraphs herein as if set forth in full.

91. 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).

92. The AS-IA's August 31 Decision constitutes "final agency action."

93. The August 31 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.

94. The August 31 Decision violates APA section 706(2)(A) because, without reasoned decision making or foundation in the record, it reverses judicially approved, longstanding Department policy and prior Department determinations regarding the status of the Tribe, the Burley government, the application of the IRA to the Tribe, and the Department's obligation to ensure that it deals only with legitimate representatives of a tribe's members.

95. The August 31 Decision violates APA section 706(2)(A) because the agency failed to consider the Plaintiffs' legitimate reliance on Defendants' prior interpretations of their governing statutes.

96. The August 31 Decision violates APA section 706(2)(A) because it is unsupported by substantial evidence in the record before the agency.

97. The August 31 Decision is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because BIA failed to carry out its duty to ensure that the interests of all Tribal members were protected during the process for organizing the Tribe and choosing its leadership, and to ensure that the governing documents for the Tribe reflect the will of a majority of such members.

98. The August 31 Decision violates APA section 706(2)(A) because it is precluded by the doctrine of *res judicata.*

99. The August 31 Decision violates APA section 706(2)(A) because it is barred by the doctrine of judicial estoppel.

100. The August 31 Decision violates APA section 706(2)(A) because it is barred by the doctrine of litigation estoppel.

101. The August 31 Decision violates APA section 706(2)(A) because it is inconsistent with the IRA.

102. The August 31 Decision violates APA section 706(2)(A) because it concludes that the Tribe only has five members, relies on the 1998 Resolution which is invalid because it was not adopted by a majority of the Tribe's members, and relies on an enrollment of the Burleys into the Tribe which was not approved by a majority of the Tribe's members.

103. The August 31 Decision violates APA section 706(2)(A) because it abdicates the Secretary's fiduciary duty to the Tribe and its members. 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. In addition, under section 450J of PL 638, the Secretary has a fiduciary duty to ensure that any tribal organization that receives federal funds to support tribal government, programs and services actually uses those funds to provide services and assistance to the tribe's members in a fair and uniform manner.

104. The August 31 Decision is arbitrary and capricious because the AS-IA failed to consider relevant evidence bearing on the issues before him and ignored evidence contradicting his position. This evidence includes, but is not limited to:

a. Personal genealogies and other information submitted to the BIA in response to the BIA's 2007 public notice regarding Tribal organization, which demonstrate that there are currently several hundred adult members of the Tribe;

b. The Tribe's current roster of adult members submitted with Plaintiffs' May 3, 2011 briefing, which demonstrates that there are currently several hundred adult members of the Tribe;

c. Information showing that the 1998 Resolution was adopted without the participation or consent of a majority of the Tribe's adult members at that time; and

d. Evidence of irregularities and improprieties in Burley's attempt to displace Mr. Dixie as Tribal chairperson and take control of the Tribe for herself.

105. The August 31 Decision violates APA section 706(2)(A) because, on information and belief, the AS-IA and personnel involved in the decisional process for the August 31 Decision engaged in improper ex parte contacts with representatives of Ms. Burley prior to the issuance of the August 31 Decision, and prejudged the issues involved in the August 31 Decision, in violation of the Department's regulations at 43 C.F.R. Part 4, including 43 C.F.R. section 4.27.

106. The August 31 Decision violates APA section 706(2)(A) because, on information and belief, the AS-IA and personnel involved in the decisional process for the August 31 Decision engaged in improper ex parte contacts prior to the issuance of the August 31 Decision with BIA employees or representatives who represented the BIA in Ms. Burley's appeal before the Board, and prejudged the issues involved in the August 31 Decision, in violation of the Department's regulations at 43 C.F.R. Part 4, including 43 C.F.R. section 4.27.

107. As a direct and proximate result of the August 31 Decision, Mr. Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo have been and will continue to be denied the benefits of Tribe membership and will suffer irreparable injury and financial loss.

108. As a direct and proximate result of the August 31 Decision, Mr. Dixie, the Tribal Council, and Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone 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.

109. As a direct and proximate result of the August 31 Decision, the Tribe, the Tribal Council and the members of the Tribe, including Mr. Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone 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.

110. As a direct and proximate result of the August 31 Decision, the Tribe and its members will be denied recognition to conduct traditional Tribal activities and official acts, and to intervene in legal and regulatory proceedings to protect the Tribe's interests and those of its members, and will suffer irreparable injury and financial loss.

SECOND CAUSE OF ACTION

(Violation of Substantive Due Process)

111. Plaintiffs re-allege the above paragraphs and incorporate those paragraphs herein as if set forth in full.

112. The August 31 Decision violates the Due Process Clause of the Fifth Amendment to the United States Constitution because it arbitrarily deprives Plaintiffs of their fundamental rights as Tribal members, including the rights to Tribal citizenship, political representation, and self-government. Because the August 31 Decision knowingly and deliberately strips Plaintiffs of these rights without regard for bedrock principles of democratic self-government and majority rule, the AS-IA's egregious conduct shocks the conscience and must be reversed.

THIRD CAUSE OF ACTION

(Violation of Procedural Due Process)

113. Plaintiffs re-allege the above paragraphs and incorporate those paragraphs herein as if set forth in full.

114. The August 31 Decision violates the Due Process Clause of the Fifth Amendment to the United States Constitution because it erroneously deprives Plaintiffs of constitutionally protected liberty and property interests without adequate procedural protections, including a pre-deprivation hearing. These interests include, but are not limited to, the right to education, health and other benefits

to which individual Plaintiffs are entitled as members of the Tribe, and the right to the State Funds and the PL 638 funds to which the Tribe is legally entitled.

115. The August 31 Decision violates the Due Process Clause of the Fifth Amendment to the United States Constitution because, on information and belief, the AS-IA and/or other Department personnel involved in the decisional process for the August 31 Decision engaged in improper ex parte contacts with representatives of Ms. Burley prior to the issuance of the August 31 Decision and prejudged the issues involved in the Decision.

116. The August 31 Decision violates the Due Process Clause of the Fifth Amendment to the United States Constitution because, on information and belief, the AS-IA and/or other Department personnel involved in the decisional process for the August 31 Decision engaged in improper ex parte contacts prior to the issuance of the August 31 Decision with BIA employees or representatives who represented the BIA in Ms. Burley's appeal before the Board, and prejudged the issues involved in the Decision.

FOURTH CAUSE OF ACTION

(Violation of the Indian Civil Rights Act)

117. Plaintiffs re-allege the above paragraphs and incorporate those paragraphs herein as if set forth in full.

118. The August 31 Decision violates the Indian Civil Rights Act, 25 U.S.C. 1301 *et seq.*, ("ICRA") because, by recognizing the 1998 Resolution and Burley government, it deprives Plaintiffs and other Tribal members of fundamental political rights and protected liberty and property interests without due process of law.

119. The August 31 Decision violates the ICRA because, by recognizing the 1998 Resolution and Burley government, it denies individual Plaintiffs and other Tribal members equal

protection by depriving them of fundamental rights that are granted to other Tribal members, without a legitimate basis.

PRAYER FOR RELIEF

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

A. Vacating and setting aside the August 31 Decision as arbitrary, capricious, unsupported by substantial evidence in the record, an abuse of discretion and otherwise not in accordance with law;

B. Declaring that the Secretary (acting through his subordinate, the AS-IA) violated his fiduciary duty to the Tribe and its individual members by adopting the August 31 Decision and allowing the Burleys to obtain federal funding intended to benefit the Tribe and its members;

C. Declaring that the AS-IA's August 31 Decision denied Plaintiffs substantive due process;

D. Declaring that the AS-IA's August 31 Decision denied Plaintiffs procedural due process;

E. Declaring that the AS-IA's August 31 Decision violated the ICRA by recognizing a Tribal governing document and governing body that deprive Plaintiffs and other Tribal members of equal protection and due process of law;

F. Directing the AS-IA and the BIA to establish government-to-government relations only with a Tribal government that reflects the participation of the entire Tribal community, including individual Plaintiffs and all other Current Members;

G. Preliminarily and permanently enjoining the Secretary, AS-IA and BIA from taking any action to implement the August 31 Decision, including any award of federal funds to the Burleys under PL 638 or any other federal law or program;

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

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

Respectfully submitted,

/s/ M. Roy Goldberg
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Dated: October 17, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2011, I caused a true and accurate copy of the foregoing First Amended Complaint to be served via first class mail, postage prepaid and via email on the following persons:

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/s/ M. Roy Goldberg
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EXHIBIT A

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 31 2011

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

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

Dear Ms. Burley and Mr. Dixie:

Introduction and Decision

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

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

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

(1) The California Valley Miwok Tribe (CVMT) is a federally recognized tribe, and has been continuously recognized by the United States since at least 1916;

(2) At the present date, the citizenship of the CVMT consists solely of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace;

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

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

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

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

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

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

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

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

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

Background

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

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

- The CVMT is a federally recognized tribe, 74 Fed. Reg. 40,218, 40,219 (Aug. 11, 2009);
- In 1916, the United States purchased approximately 0.92 acres in Calaveras County, California, for the benefit of 12 named Indians living on the Sheepranch Rancheria (now Sheep Ranch)(Rancheria) (51 IBIA at 106);
- The Indian Agent, who in 1915 recommended the purchase of the 0.92 acres, described the group of 12 named individuals as "the remnant of once quite a large band of Indians in former years living in and near the old decaying mining town known and designated on the map as 'Sheepranch.'" *Id.*;
- The record shows only one adult Indian lived on the Rancheria in 1935, a Jeff Davis, who voted "in favor of the IRA." *Id.*;
- In 1966, the record shows only one adult Indian, Mabel Hodge Dixie, Yakima Dixie's mother, lived on the Rancheria, when the BIA crafted a plan for distribution of tribal assets pursuant to the California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, *as amended by* Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390;
- Mabel Hodge Dixie was to be the sole distributee of tribal assets under the 1966 Rancheria distribution plan;
- While the Bureau initiated the process to terminate the Tribe, it never declared the Tribe terminated and has never treated the Tribe as if it had been terminated;
- In 1994, Yakima Dixie wrote the BIA asking for assistance with home repairs and describing himself as "the only descendant and recognized . . . member of the Tribe." (51 IBIA at 107);
- At some point during the 1990s, Silvia Burley "contacted BIA for information related to her Indian heritage, which BIA provided, and by 1998—at BIA's suggestion—Burley had contacted Yakima[]" Dixie (as the IBIA has noted, "it appears that Burley may trace her ancestry to a 'Jeff Davis' who was listed on the 1913 census. . . .") 51 IBIA at 107, including footnote 7;
- On August 5, 1998, Mr. Dixie "signed a statement accepting Burley as an enrolled member of the Tribe, and also enrolling Burley's two daughters and her granddaughter." *Id.*;

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

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

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

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

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

Analysis

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

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

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

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

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

Application of Specific Legal Authorities

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

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

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

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

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

30 IBIA 241, 248.

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

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

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

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

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

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

Conclusion

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

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

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

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

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

Sincerely,

Larry Echo Hawk
Assistant Secretary – Indian Affairs

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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 **MOTION THAT THE COURT TAKE JUDICIAL NOTICE, SUPPORTING DECLARATION, AND SUPPORTING MEMORANDUM** 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 + 1 copy
Robert A. Rosette Rosette, LLP 193 Blue Ravine Road, Suite 255 Folsom, CA 95630 *Attorney for Plaintiff*	1 copy
Manuel Corrales, Jr. 17140 Bernardo Center Drive, Suite 370 San Diego, CA 92128 *Attorney for Plaintiff*	1 copy
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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

Linda Thorpe
Signature