Case No. D061811

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

CALIFORNIA VALLEY MIWOK TRIBE,
Plaintiff/Petitioner,

vs.

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

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

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

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

REPLY
TO OPPOSITION TO PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF

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I.

INTRODUCTION

This brief will reply to the opposition briefs filed by both the Defendant CALIFORNIA GAMBLING CONTROL COMMISSION ("the

Commission") and the Intervenors/Real Parties-in-Interest ("the Intervenors") (collectively "opposing parties").

In the present writ proceeding, this Court has issued an order to show cause as to why the relief requested by the Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe") should not be granted. The Tribe is requesting that the stay imposed by the Respondent SUPERIOR COURT ("the trial court") be lifted, so that the Tribe may file dispositive motions against the Commission, in light of the recent deposition testimony of Intervenor YAKIMA DIXIE ("Dixie") who admitted under oath that he had resigned as Tribal Chairman and that Silvia Burley ("Burley") is the recognized Tribal leader, thus resolving a twelve (12) year Tribal leadership dispute between Burley and Dixie, and providing no further independent basis for the Commission to continue to withhold Revenue Sharing Trust Fund ("RSTF") payments it has set aside for the Tribe since July of 2005.

Contrary to Dixie's contention, his deposition testimony is highly relevant to the issues in this case, and there is no credible evidence that his deposition testimony was given under duress. In fact, his specific admission that his signature resigning as Tribal Chairman was not forged, that he in fact resigned as Tribal Chairman, and that he consented to Burley as being the new Tribal Chairperson, was elicited by his own lawyer during his deposition. All of the reasons the Commission have given in the past for withholding the Tribe's RSTF money can be traced back to this Tribal leadership dispute, which Dixie's recent deposition testimony now puts to rest. The Commission

can no longer claim that it does not know which of the two, Burley or Dixie, is authorized to receive the RSTF payments for the Tribe.

Alternatively, the Tribe is requesting that the trial court be directed to enter judgment against the Commission in accordance with an order granting judgment on the pleadings. Since the disputed "stay of implementation" language in the Assistant Secretary of Interior's ("ASI") August 31, 2011 decision does not apply to the Commission, largely because the Commission can do nothing to implement that decision, there is nothing preventing the trial court from entering judgment against the Commission in accordance with its signed order granting judgment on the pleadings.

Most importantly, the opposing parties and the trial court have overlooked a key provision in the ASI's August 31, 2011 decision, which clarifies the context of his stay language and permits the trial court to enter judgment as it originally intended to do against the Commission. At the conclusion of his decision, the ASI strongly encouraged both Dixie and Burley "to work within the Tribe's existing government structure" to resolve their longstanding leadership dispute. (Bates 0188)(Emphasis added). Obviously, Burley and Dixie could not do this, if the Tribe's existing governing body under Burley's leadership is not recognized or does not exist, as argued by the opposing parties. The clear and plain meaning of this key provision is that despite Dixie's federal suit challenging the ASI's August 31, 2011 decision, the Tribe's governing body, as recognized by the ASI's August 31, 2011 decision, continues to be a recognized governing body.

Moreover, the ASI's December 22, 2010 decision upon which the trial court relied to grant judgment on the pleadings against the Commission was never stayed, by implementation or otherwise, but instead was expressly affirmed by the ASI's subsequent August 31, 2011 decision. Thus, the phrase "implementation is stayed" with respect to the August 31, 2011 decision does not bar entry of judgment against the Commission. The phrase is merely akin to a "stay of execution" on any other judgment or order, and does not affect the merits of the decision or its effect.

The opposing parties have also falsely stated that the ASI "stipulated" with the Intervenors' federal litigation counsel that his August 31, 2011 decision would have "no force and effect" pending resolution of the federal litigation. To be sure, there exists no federal court order adopting any such purported "stipulation," and the "joint status report" to which the opposing parties refer is not a stipulation. There is also no evidence that the ASI's attorney of record in the federal case had any authority to alter the language of the ASI's decision itself. Thus, the trial court was seriously misled by these assertions, resulting in an erroneous conclusion that the ASI had purportedly clarified that his August 31, 2011 decision was of no value for any purpose.

Nevertheless, the federal litigation brought by Dixie's financial backers challenging the ASI's August 31, 2011 decision is irrelevant to the issues to be decided in this California state court proceeding. First, the issue of whether the Commission is incorrectly withholding the Tribe's RSTF money was not decided by the ASI, and is not being litigated in the federal case. Second, the trial court still has jurisdiction

to decide whether the Commission has a basis to withhold the Tribe's RSTF payments, no matter what occurs in the federal court. The trial court can decide whether Dixie's recent deposition testimony admitting that he resigned as Tribal Chairman is sufficient to defeat the Commission's assertion that a Tribal leadership dispute prevents it from distributing the funds to the Tribe under Burley's leadership. The trial court also has jurisdiction to decide whether the Commission's "conditions" for release of the RSTF money to the Tribe are appropriate and called for by the language of the Compact, including requiring that the Tribe have a recognized governing body, requiring that the Tribe have certain membership criteria satisfactory to the Commission, and requiring that the Tribe qualify for P.L. 638 federal contract funding with the BIA, when the only express condition for payment of RSTF funds under the Compact is that the Non-Compact tribe be a federally-recognized tribe. The trial court can take judicial notice of the fact that the Tribe is indeed federally-recognized.

II.

THE ADMISSION OF YAKIMA DIXIE THAT HE RESIGNED AS TRIBAL CHAIRMAN IN FAVOR OF SILVIA BURLEY IS HIGHLY RELEVANT AND DISPOSITIVE OF THE ISSUES IN THIS CASE

The opposing parties' efforts to downplay the significance of Dixie's deposition testimony as irrelevant are unavailing. His admission opens the door for the Commission to release the RSTF money to an authorized representative for the Tribe, and removes any claim of a competing tribe or a competing Tribal representative vying for the same funds. Indeed, the Complaint-in-Intervention specifically

alleges that, "the essence of this action is the tribal dispute regarding the leadership of the Tribe." (Bates 0599,lines 10-11).

In October 2010, Dixie signed a declaration under penalty of perjury in support of his motion for leave to intervene, stating:

> "In 1999, I allowed Ms. Burley into the Tribe. Shortly thereafter, Ms. Burley alleged that I resigned as Tribal Chairman, that she represented that she spoke for the Sheep Ranch Miwok people and that she was the leader and chairperson of the Tribe. I have never consented to her claim of leadership. The document allegedly showing my resignation as Tribal Chairman is a forgery." (Emphasis added). (Bates 0584, lines 20-25).

As pointed out in the Plaintiff's Writ of Mandate, this declaration was proven to be false. Dixie testified in a subsequent deposition, under the examination of his own counsel, that he in fact resigned as Tribal Chairman, and that the signature appearing on a document notifying of his resignation he had earlier claimed to be a forgery was genuinely his. (Writ, page 18, Bates 0037, 0040). He further testified that his signature appeared on a document confirming Burley as the new Tribal Chairperson. (Writ, page 18, Bates 0037, 0040). These documents were all signed in 1999, and, up until now, Dixie has plagued the Tribe with false allegations of a Tribal leadership dispute that caused havoc within the Bureau of Indian Affairs ("the BIA"), the U.S. Department of Interior ("the DOI") and the Commission. This Tribal leadership dispute was the reason why the BIA, for example, wrongfully sought to force the Tribe to reorganize and bring in new members against the Tribe's will, until the ASI corrected those erroneous actions in his recent decisions. As stated by the ASI in his August 31, 2011 decision:

> "This decision is necessitated by a long and complex tribal leadership dispute that resulted in extensive administrative and judicial litigation." (Emphasis added).

(Bates 0183).

More significantly, this is the reason why the Commission has claimed in public records it cannot release the RSTF money to the Tribe. (See Bates 0625, footnote 1: "Distribution to the California Valley Miwok Tribe is withheld pending resolution of Tribal leadership dispute"; Bates 0639, bottom paragraph: "Once the BIA has recognized a Tribal government and Tribal leadership, the Commission will take immediate steps to distribute the funds"). Its assertion that there are competing tribes, and it does not know who is authorized to receive the funds, can be traced back to Dixie's false claim of never having resigned as the Tribal Chairman.

Accordingly, contrary to the opposing parties' contention, Dixie's admission that he resigned as Tribal Chairman is highly relevant to the disposition of the issues in this case against the Commission.

III.

DIXIE'S DEPOSITION TESTIMONY WAS NOT GIVEN UNDER DURESS SO AS TO VITIATE DIXIE'S DAMNING ADMISSION THAT HE RESIGNED AS TRIBAL CHAIRMAN

In an effort to downplay the significance of Dixie's deposition testimony that he resigned as Tribal Chairman, thus refuting his false claim that his resignation signature was forged, the Intervenors assert that Dixie's deposition is of no value because it was taken under duress. The Intervenors then falsely claim that Dixie is purportedly "elderly

and frail," and that Plaintiff's counsel purportedly "threatened his life," citing numerous pages to Dixie's deposition. (Intervenor Return ("IR") 29, 56). These contentions are false and seriously misleading, as shown by a complete copy of the deposition transcript attached from which the Intervenors cite.

A. DIXIE IS A CONVICTED MURDERER WITH A LIFE HISTORY OF EXTREME VIOLENCE AND INCARCERATION FOR VIOLENT CRIMES

Contrary to the Intervenors' assertions, it was Plaintiff's counsel, not Dixie whose life was threatened by Dixie during the deposition. Portions of Dixie's criminal history from a Probation Report were read into the record to impeach Dixie on his claim that he had never participated in a scheme to lie about something to try and get an advantage in a situation. (Pages 184-185 of Dixie deposition). The question was probative of Plaintiff's theory that Dixie fabricated the claim of his resignation being forged, after he met with investors in late 1999 who were interested in building a casino under the Tribe's name, but because Dixie had already resigned, he had to agree to lie about resigning, so that he and his investors could remove Burley and take over the Tribe. In addition, his criminal history is relevant, because it explains why he resigned as Tribal Chairman back in 1999. He was in and out of prison, was habitually intoxicated, and thus was not able or competent to function as the Tribal leader.

Dixie's violent murder of a one-legged man (Silvia Burley's uncle) is detailed in this Probation Report in part as follows:

"Such arguing is alleged to have continued [between Dixie and the victim] for approximately thirty minutes, concluding with defendant getting a gun from a cabinet and shooting victim.

"Defendant is alleged to have dragged victim into the kitchen, stating to Vivian [his common law wife], **'I told you I could kill; I can kill...I will show you I can do something else, too.'**

"Defendant is then alleged to have taken a big knife from a kitchen cabinet and to have **started stabbing victim on the kitchen floor**.

"Defendant is alleged to have pushed and threatened Vivian to assist in placing victim in the car, to have demanded that she go with him to get rid of the body.

* * *

"Defendant is alleged to have become suspicious that his sixty-seven year old father might have told someone of the instant offense, and defendant **beat his father in the face**, stating that defendant **was going to shoot anybody that got in his way**. He reloaded the gun and took off in the car." (Emphasis added).

(Page 6 of Probation Report, Exhibit "38" to Dixie Deposition).

The Probation Report quotes the District Attorney as describing the crime as involving acts of "high degree of viciousness or callousness." (Page 8, Exhibit "38" to Dixie Deposition). Dixie also attempted to interfere with the judicial process by writing letters to a witness asking that she commit perjury. Given Dixie's prior convictions and prior, multiple prison terms, the probation officer concluded this about Dixie:

"...[Dixie] is capable and willing to commit acts of coercion and violence upon individuals. It would appear that Society needs protection from defendant for the longest period of time possible."

(Page11 of Probation Report, Exhibit "38" to Dixie Deposition).

It was based upon this information that Plaintiff's counsel responded to Dixie's violent outburst and physical threats at his deposition, thinking that Dixie would indeed carry out his physical threats. The exchange, selectively edited by Intervenors, correctly and fully was as follows, when Plaintiff's counsel attempted to inquire whether Dixie was changing his testimony about his signatures on the resignation documents, after Dixie had conferred with his counsel during a break:

Q: Are you changing your testimony, yes or no? Answer the question.

MR. McCONNELL: Same objections. Do you understand the question?

MR. CORRALES: He understands the question. He's just refusing to answer. He just said uh-huh. Is that what you said? Answer the question, sir.

Are you changing your testimony with respect to Exhibit Number 34?

WITNESS: We can sit here all night. Are you getting hungry?

MR. CORRALES: We will if we have to.

THE WITNESS: We will.

BY MR. CORRALES:

Q: Earlier, before we took a break, you testified that the signature that is on Exhibit 34 was your signature. After the break,

after you had a chance to talk to your lawyer, you now say that that is not your signature.

Are you changing the testimony that you gave before the break?

MR. McCONNELL: Vague. Asked and answered. Compound.

BY MR. CORRALES:

Q: Yes or no, sir?

A: We can sit here all night.

Q: I'm asking you to answer the question, sir.

A: What did I say? I said we can sit here all night. [*As recorded by the video camera, it is at this point that Dixie becomes violent and starts pounding his hands on the table in a threatening manner*].

Q: I heard what you said. You don't have to slap your hand on the desk.

A: I'll slap you in the face.

Q: Do you want to do that?

A: Yeah.

Q: You'll be a dead man. Nobody threatens me, including you, Mr. Dixie—

A: Don't tell me—

Q: I would be very careful about that. And, Mr. McConnell, I would advise you to tell your client not to make physical threats against me.

A: Don't make a comment about you can be somebody will kill you.

Q: I'm sorry, Mr. Dixie. I have an obligation to protect myself. If you want to try and physically assault me, I will protect myself.

The question is: Exhibit Number 34, the signature that's on Exhibit 34, before we took a break you said that was your signature. After you consulted with your lawyer, you now say it's not your signature. Are you changing your deposition testimony, yes or no?

MR. McCONNELL: Same objections.

THE WITNESS: We can sit here all night.

MR. CORRALES: I'd like an answer to my question, sir.

THE WITNESS: That's what you're going to get, pointblank, (indicating).

(Deposition of Dixie, pages 213-214).

As can be seen, it was Dixie, not Plaintiff's counsel who was becoming violent and was threatening to assault counsel. Plaintiff's counsel was simply telling Dixie that if he tried to hit him, he (Plaintiff's counsel) would have to protect himself. Since Dixie is a convicted murderer with a violent past, Plaintiff's counsel's response was understandable. In fact, Plaintiff's counsel apologized to Dixie ("I'm sorry, Mr. Dixie", page 214, line 10), and promptly asked Mr. McConnell to tell his client not to make physical threats towards him. The deposition transcript shows that Mr. McConnell ignored that request, and said nothing to Dixie.

B. DIXIE NEVER EXPRESSED ON THE RECORD THAT HE WAS FEELING COERCED TO HAVE TO ADMIT HE RESIGNED AS TRIBAL CHAIRMAN

The above-cited deposition transcript clearly shows that Dixie was not under duress at all. Neither the witness nor Mr. McConnell requested to take a break, but instead the witness continued on with his rude and obstinate behavior in refusing to answer a simple question. The witness, without any intervention by Mr. McConnell, continued to say that they would "sit there all night," but he will not answer the question. Finally, Mr. Corrales stated that he intended to break for the day, and reconvene the next day with an emergency telephone call to Judge Styn in San Diego (the deposition was being taken in Sacramento). He suggested they take a break and asked that Mr. McConnell talk to Dixie, and see if he could get him to answer the question. (Pages 215-16 of Dixie Deposition).

After a seven (7) minute break and a chance to confer with his attorney, Dixie finally testified as follows:

Q: Okay. Before the break, the first break that we had, you testified in the deposition that the signature that appears on Exhibit 34 was your signature. After we took a break and you consulted with your attorney, you then said that is not your signature.

So my question is: Are you changing your testimony?

A: It appears not to be my signature.

Q: That's not the question. Move to strike.

Are you changing your testimony, yes or no?

A: **No.**

(Deposition of Dixie, page 216, lines 20-25, page 217, lines 1-5).

At no time did Dixie indicate that he was under duress when he gave his previous testimony that Exhibit 34 contained his signature. It was clear that his attorney tried to get him to change his testimony, but, when pressed, Dixie ultimately conceded that he was not changing his testimony about the document containing his signature.

C. DIXIE'S DAMAGING ADMISSION THAT HE RESIGNED AS TRIBAL CHAIRMAN WAS CONFIRMED UNDER EXAMINATION BY HIS OWN LAWYER

It was at this point in the deposition that Mr. McConnell, knowing that his client gave damaging testimony, began to examine his own witness in an attempt to get Dixie to say that Exhibits 33 (his resignation notice) and Exhibit 34 (his consent to Burley becoming the new Tribal Chairperson) did not contain his signatures. The fact that Mr. McConnell alone examined his own witness on this subject vitiates any claim of duress. What followed was Dixie's admission that he resigned as Tribal Chairman, and that the signatures on Exhibits 33 and 34 were in fact his, all elicited by his own attorney. Dixie testified as follows:

BY MR. McCONNELL:

Q: Mr. Dixie, I know this has been a long day, but again turning to Exhibits 33 and 34, both of these documents purporting to show your resignation, the two signatures [on] Exhibit 33 and 34, did you write those signatures?

A: It appears.

Q: Exhibit 33, is that a signature that you believe you wrote on Exhibit 33?

A: Uh-huh.

Q: You believe that's your signature?

A: Umm, I don't—umm, they're pretty close.

Q: This is the document indicating on Tuesday, April 20th, 1999, that you are resigning as chairperson. Do you believe that you wrote the signature on Exhibit 33 resigning as chairperson?

A: I don't remember that one.

Q: On Exhibit 34—

A: Okay. Yeah. Yeah. [*referring to his signature on Exhibit 33*].

Q: Okay. Yeah. This is or is not your signature? [*referring again to Exhibit 33*].

MR. CORRALES: I'll object to the question.

THE WITNESS: It is. [*referring to Exhibit 33*].

Q: You think it is?

A: Yeah.

Q: And on Exhibit 34, do you think that's your signature? Again, this is—

A: Yes.

Q: —accepting the resignation of chairperson?

A: Uh-huh.

Q: **And did you resign as chairperson of the Miwok Sheep Ranch Tribe?**

A: **Yeah. Yes.**

Q: You did. **Were you able to resign as chairperson?**

A: **Yeah.**

MR. McCONNELL: No further questions.

(Dixie deposition, pages 217-218) (Emphasis added).

Contrary to Intervenors' assertion, Dixie's testimony that he resigned as Tribal Chairman was not made under duress, and was not contradictory. Dixie clearly testified that Exhibits 33 and 34 contain his signatures, before his attorney tried to get him to change his testimony. For example, early on in the deposition Dixie testified as follows:

BY MR. CORRALES:

Q: And this [Exhibit 33] purports to be a Formal Notice of Resignation signed by Yakima Kenneth Dixie. Have you seen that before, sir?

* * *

Q: Is that your signature?

A: Yeah, that's my signature.

* * *

Q: ...Now, next in order is Exhibit Number 34. This purports to be a General Council Governing Body Special Meeting.

* * *

Q: Is that your signature on the document?

A: That is yes.

(Dixie deposition pages 170-173).

The parties then later took a break for fifteen (15) minutes, which gave Dixie a chance to consult with his attorney about his damaging

testimony. (Dixie deposition, page 188, lines 1-4). After the break, Plaintiff's counsel finished up his examination on other topics, and Mr. McConnell went right in and asked Dixie questions about his signatures on Exhibit's 33 and 34, in an attempt to get Dixie to change his testimony, presumably based upon a discussion they had had during the break. His efforts were awkward at best. For example, when Mr. McConnell asked Dixie if Exhibit "33" contained his signature, Dixie said he did not believe so, but pointed to Exhibit "34" as his signature. (Dixie deposition, page 200). Frustrated, Mr. McConnell showed Dixie another document that bore his signature, and Dixie said he did not think it was his signature, because the "Y" in that signature was not like his "Y" as depicted in Exhibit "33" (his formal resignation). (Dixie deposition, page 201). Thus, any confusion was generated by Mr. McConnell's efforts to get Dixie to change his testimony. However, as stated, Dixie later conceded that he was not changing his testimony the first time he was asked the question about his resignation, and then, under the examination of his own attorney, specifically testified that he resigned and that the signatures on documents showing that he resigned were his.

IV.

THE INTERVENORS HAVE NO STANDING TO CHALLENGE THE PENDING WRIT

The Opposition to the writ filed by the Intervenors should be rejected. There is an order dismissing the Complaint-in-Intervention, the "effect" of which has been stayed by the trial court, pending further order of the court. The intent of the trial court's stay order was merely

to allow the Intervenors to participate in discovery pending the issuance of the ASI's reconsidered decision. As the trial court explained:

> "...I'm not staying the case. I'm only staying the effect of the two orders, the JOP and the reconsideration order [with respect to dismissing the Complaint-in-Intervention] and staying any entry of judg[ment]—both staying the effect of the order and staying any entry of judgment and allowing the parties to proceed with discovery, but I am going to stay any further motions.
>
> * * *
>
> "...and—so again so it's clear, the status of the Intervenors is having the reconsideration motion not effective; that the Intervenors are part of the case and so the parties need to do—I mean if there's other things you need to do like discovery, I think that should be done because I don't want this case to get delayed forever..." (Emphasis added).

(RT of Hearing, April 6, 2011, Exhibit "25," Bates 0371, lines 12-17; Bates 372, lines 24-28, Bates 0373, line 1).

Had the Intervenors not challenged the ASI's August 31, 2011 decision, the trial court would have lifted its stay, resulting in the order dismissing the Complaint-in-Intervention taking effect, and the trial court entering judgment against the Commission.

Should the stay be lifted to permit dispositive motions against the Commission, the Intervenors should be be dismissed, since the order dismissing the Complaint-in-Intervention was merely stayed but not vacated. The Intervenors' only option would be a motion for reconsideration or a separate appeal. Since they may appeal and attempt to obtain a stay of the proceedings pending their appeal, this Court should rule on the merits of that issue, i.e., whether they have

any rights to the subject RSTF directly as individuals, where the Compact provides distribution only to Non-Compact tribes, so that the Intervenors do not seek other avenues to delay release of the RSTF to the Tribe. Alternatively, should the trial court be directed to enter judgment against the Commission in accordance with the order granting judgment on the pleadings, the trial court should likewise be directed to lift the stay of the order dismissing the Complaint-in-Intervention.

The individual Intervenors never had a right to intervene in light of well-settled Indian law holding that even tribal members have no standing to sue on behalf of a tribe. Timbisha Shoshone Tribe v. Salazar (D.C. Cir., May 15, 2012) 2012 U.S. App. LEXIS 9740. Here, none of the Intervenors, except Dixie, are members of the Tribe. With the exception of Dixie they only claim to be "potential" members. But, at the same time, the clear language of the Compact provides that RSTF money is to be paid to an eligible Non-Compact tribe, not to individual members or individual Indians. (Compact §§4.3.2 and 4.3.2.1, Bates 0620-0621).

In light of Dixie's admission that he resigned as tribal Chairman, the Intervenor "California Valley Miwok Tribe" is not a proper party in intervention. Dixie has no authority to act on behalf of the Tribe. It is only a "copy-cat" tribe for litigation purposes.

Moreover, Dixie's admission now trumps any claim by the individual Intervenors that Dixie is the leader of the Tribe of which they falsely claim to be members.

V.

THE STAY LANGUAGE OF THE ASSISTANT SECRETARY'S AUGUST 31, 2011 DECISION DOES NOT BAR THE TRIAL COURT FROM ENTERING JUDGMENT AGAINST THE COMMISSION

A. THE ASSISTANT SECRETARY OF THE INTERIOR NEVER "STIPULATED" TO CHANGE THE STAY LANGUAGE OF HIS DECISION

The opposing parties argue that the stay language of the ASI's August 31, 2011 decision in favor of the Tribe bars the trial court in this case from entering judgment in accordance with its order granting judgment on the pleadings, because the ASI purportedly "stipulated" that his decision would have "no force and effect." This contention is false and without any factual basis.

Contrary to the opposing parties' assertion, there is no evidence that the ASI ever stipulated that his August 31, 2011 decision would have "no force and effect," and the opposing parties have provided none. For example, the Intervenors have repeatedly stated throughout their briefs that the ASI has purportedly "stipulated" in a joint status report that his August 31, 2011 decision would have "no force and effect." (Page 27 of IR). Yet, nowhere in this joint status report do the words "stipulate," "stipulation," or "agree" appear. In fact, the federal court never adopted the language "of no force and effect" in any order he signed. The "proposed order" the Intervenors included in their Appendix in this writ proceeding (Intervenors' Appendix, Tab "5," Bates 109-110) was never signed. Instead, the federal court simply issued a minute order on September 9, 2011, directing the parties to propose a

schedule, but said nothing about the ASI's decision having "no force and effect." (Bates 0782, Ex. "68"). Had the federal court signed off on the "proposed order," you can be sure that the opposing parties would have attached it to their opposition papers, and would have quoted it throughout their briefs. But they didn't.

Indeed, a joint status report is not a stipulation, and the Intervenors' representation to the state court that it was so was an improper attempt to mislead the court on a material issue in violation of the applicable cannon of ethics.

Moreover, the joint status report the opposing parties rely upon for their argument was filed in the federal court before the Tribe here was allowed to intervene in that case, and the document was never characterized as, nor deemed to be, a stipulation by the court at any time. And because the Plaintiff was not yet an intervening party at the time the joint status report was signed in the federal action, the document can have no collateral estoppel effect in these state court proceedings. Lucido v. Superior Court (1990) 51 Cal.3d 335, 341(among other requirements, the parties must be the same in both proceedings). Moreover, there is no evidence that the attorney of record for the ASI had the authority to modify the language of the August 31, 2011 decision in any way.

B. THE TERM "STAYING IMPLEMENTATION" IN THE ASI's AUGUST 31, 2011 DECISION IS MERELY ANALOGOUS TO "STAYING EXECUTION" OF A JUDGMENT OR ORDER

The August 31, 2011 decision by its own terms merely stayed the implementation of that decision. It was merely a procedural remedy,

not a substantive change in the merits of the decision itself. There is no language anywhere in the decision that says that pending resolution of the federal litigation the decision would have "no force and effect." That was language that Dixie's Washington, D.C., lawyers cunningly inserted in the federal action back east, taking full advantage of the fact that the Plaintiff's motion to intervene was still pending so that Plaintiff could not object, and doing so, so that the lawyers in their San Diego office could use it to block entry of judgment in this state court action.

Because the Commission can do nothing to "implement" the ASI's August 31, 2011 decision, releasing the RSTF money to the Tribe, or an order directing the Commission to do so, cannot be viewed as implementing that decision. This is because the Commission is not subject to the jurisdiction of the BIA, DOI or the ASI with respect to the RSTF money, and there is nothing in the August 31, 2011 decision that ruled on the Commission's actions in withholding the Tribe's RSTF money. For the same reason, the trial court did not implement the December 22, 2010 ASI decision (which the ASI affirmed in his August 31, 2011 decision) when it granted judgment on the pleadings based exclusively on that decision. It merely took judicial notice of that decision for purposes of granting the motion.

Staying implementation of the August 31, 2011 decision is analogous to staying execution of a judgment after it is rendered. The stay of execution does not render the judgment or order void, or "of no force and effect." It merely means the judgment creditor cannot enforce it (i.e., implement it) and collect on it by garnishing a judgment debtor's

wages, bank accounts, etc. For the same reason, staying implementation of the August 31, 2011 decision does not render the decision of "no force and effect." It only means that the persons and entities who are subject to the jurisdiction of the BIA and DOI cannot make decisions or take actions in accordance with that decision, i.e., put the decision into effect. And since the Commission is not subject to the jurisdiction of the BIA or DOI, it can do nothing to implement that decision in any way. The Commission does not award tribes federal grants.

As explained, the ASI made a final agency action on the disputed issue. Its subordinate agency departments, including the BIA, and BIA employees, have been directed, by virtue of the stay language, not to implement the decision, pending resolution of the federal litigation. This means, for example, that the BIA cannot enter into federal contracts with the Tribe for federal contract funding and other federal grants that may be awarded to the Tribe, because to do so would be implementing the August 31, 2011 decision, contrary to the stay provision of the decision. In contrast, the Commission is not an arm of the DOI, nor is it subject to the jurisdiction, direction or control of that federal, executive Department. It is subject to the authority and control of the California State Governor, not the federal government. Thus, an order from the State Superior Court directing the Commission to release the RSTF money to the Tribe, based on the conclusions reached by the ASI in his August 31, 2011 decision, is not an act of implementing that decision, and thus does not violate that stay.

If the Intervenors wanted to stay the ASI's August 31, 2011 decision, they could have filed a motion in the federal court action to request such an order. However, they simply made a strategic decision not to do so, for fear of having the federal court deny the request or otherwise interpret the ASI's stay language not to apply to the present pending state court proceeding seeking release of RSTF payments to the Tribe.

C. BY IT OWN TERMS, THE ASI's AUGUST 31, 2011 DECISION STATES THAT THE TRIBE HAS A RECOGNIZED AND FUNCTIONING GOVERNING BODY, DESPITE THE STAY

Immediately after stating that "implementation" of his decision was "stayed" pending resolution of the federal litigation, the ASI in his August 31, 2011 decision requested that the parties, i.e., Burley and Dixie, attempt to resolve their long-standing Tribal leadership dispute within the Tribe's "existing government structure." He stated:

> "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." (Emphasis added).

(Bates 0188). The parties cannot do this, if the stay language is erroneously interpreted to mean that the Tribe has no present, recognized governing body. Had the ASI intended that his decision be completely stayed pending the resolution of the federal case, he would have either left this out or modified it by saying that in light of his stay, the Tribe has no governing body, and therefore, once the federal litigation is concluded the parties can resume to work out their Tribal leadership dispute within the Tribe's governing body. But he did not

say that. Clearly, the ASI concluded that despite the stay language in his decision, the Tribe still had an "existing government structure" to which they can resort to address internal Tribal matters.

Significantly, this key provision comes immediately after the ASI's stay paragraph, and is the last provision of the decision, thus emphasizing the fact that the Tribe continues to have a recognized governing body despite the fact that implementation of the decision with respect to any BIA actions is stayed.

This language also cuts against the opposing parties' argument that because the ASI's decision applies "prospectively," the prior erroneous BIA actions against the Tribe have somehow been "resurrected," including the prior erroneous statements that the Tribe has no recognized governing body and no recognized leader. (IR at 49). This statement further supports the Tribe's position that the phrase "implementation shall be stayed" only means that the decision cannot be carried out to, for example, award federal contract funding to the Tribe, or take any other actions by the BIA. It does not, and from this statement cannot mean, that the ASI's decision is of "no force and effect." Clearly, the ASI has stated here that the Tribe's "existing government structure," i.e., the resolution form of government established under Resolution #GC-98-01, will continue to be recognized and function for purposes of resolving internal Tribal matters despite the pending federal litigation brought by Dixie.

Accordingly, there is no basis for the Commission to refuse to release the Tribe's RSTF money because the Tribe purportedly has no recognized governing body. In this key provision, the ASI has stated

that it does, even during the pendency of Dixie's challenge to the August 31, 2011 decision in federal court. Short of Dixie's team of lawyers getting a stay from the federal court, the August 31, 2011 decision expressly provides that the Tribe's existing governing body will continue to be recognized and to function, pending resolution of the federal case.

Moreover, based on this key provision alone, the trial court could enter judgment against the Commission, since, in addition to expressly affirming the ASI's December 22, 2010 decision, it states that the Tribe's existing government structure will continue to be recognized during the pendency of the federal litigation for purposes of allowing the Tribe to resolve internal Tribal matters. This trumps the opposing parties' assertion that as a result of the ASI's stay language there is presently no existing Tribal governing body or leadership.

This key provision explains the following ruling in the ASI's August 31, 2011 decision, repeated several times throughout the decision:

> "...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." (Emphasis added).

(Bates 0187). Thus, because the ASI's stay does not affect the existing governing body of the Tribe, the individual Intervenors, as well as any other "potential" citizens, can apply for tribal membership with the

currently recognized Tribal Council, without having to wait for the resolution of the pending federal action. This is because, as recognized by this Court in its prior decision, "[a]n Indian tribe has the power to define membership as it chooses, subject to the plenary power of Congress." (Bates 0197, page 8, footnote 9 of the Opinion, citing Williams v. Gover (9th Cir. 2007) 490 F.3d 785, 789. That is not to say that the Tribe will accept them as members, since that decision is the Tribe's alone to make. Williams v. Gover, supra.

D. THE ASI's DECEMBER 22, 2010 DECISION, WHICH THE ASI'S AUGUST 31, 2011 DECISION EXPRESSLY AFFIRMED, HAS NEVER BEEN STAYED

Significantly, the ASI's December 22, 2010 decision upon which the trial court relied to grant judgment on the pleadings against the Commission was never stayed by its own terms, by the August 31, 2011 decision, or by court order. Instead, the ASI's August 31, 2011 decision expressly affirmed the merits of that decision in all material respects, stating in various places through his decision as follows:

> "Obviously, the December 2010 decision, and today's reaffirmation of that decision... (Bates 182A).
>
> * * *
>
> "My review of the history of the CVMT compels the conclusion set out in the December decision and reaffirmed here... (Bates 0187).
>
> * * *
>
> "Based on the foregoing analysis, I reaffirm the following... (Bates 0188).

(August 31, 2011 ASI decision, pages 2, 7, and 8). Thus, because the December 22, 2010 decision was not ultimately vacated, but was

instead "reaffirmed," and the trial court's order granting judgment on the pleadings against the Commission was based exclusively on that decision, entry of judgment can still be accomplished as originally contemplated by the trial court.

VI.

THE FEDERAL LITIGATION IS IRRELEVANT TO THE ISSUES TO BE DECIDED IN THIS CASE AGAINST THE COMMISSION

The opposing parties argue that the stay of this action should continue until final resolution of the pending federal action challenging the ASI's August 31, 2011 decision, because the federal litigation is "likely to be dispositive of this case." This contention is without merit, because it ignores this Court's decision reversing the judgment of dismissal that was based on the same grounds. The stay effectively puts this case back to where it was before when the trial court made the same erroneous ruling. Moreover, the outcome of the federal litigation has no bearing on the trial court's independent duty to judicially determine whether the Commission in this case is properly withholding RSTF money from the Tribe based upon the language of the Compact and the California Government Code.

To the extent the ASI's August 31, 2011 decision may be looked at to refute any of the Commission's defenses and reasons for refusing to release the RSTF to the Tribe, it still does not relieve the trial court from deciding independently whether the Commission's actions are proper. The trial court has jurisdiction to decide whether the Commission's reasons for withholding RSTF money from the Tribe are proper, notwithstanding the outcome of the federal litigation.

For example, the relevant California Government Code and the operative 1999 California Tribal-State Gaming Compact ("the Compact") require that the Commission distribute quarterly payments of $275,000.00 to the Tribe from the RSTF. Gov. Code §12012.90(a)(2)(the Commission "shall make quarterly payments from the Indian Gaming Revenue Sharing Trust Fund to each eligible recipient Indian Tribe within 45 days of the end of each fiscal quarter"); Compact §4.3.2.1(b)("Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund"). However, since July 2005, the Commission has not been making these distribution payments, explaining that it is prevented from doing so because:

(1) There is a Tribal leadership dispute that calls into question who (i.e., Burley or Dixie) is authorized to receive these quarterly payments on behalf of the Tribe;

(2) There is no recognized Tribal governing body;

(3) The Tribal membership does not comprise of all potential members in the surrounding community; and

(4) The Tribe presently does not qualify for federal contract funding with the BIA (not actually one of the Commission's pled affirmative defenses, but has been recently asserted by the Commission after the deposition testimony of Yakima Dixie admitting that he resigned as Tribal Chairman and acknowledging Burley as the new Chairperson).

As stated, the ASI's August 31, 2011 decision (affirming his December 22, 2010 decision) refuted each one these defenses asserted

by the Commission in its Answer to the Complaint, resulting in a ruling of judgment on the pleadings against it. However, the trial court has jurisdiction to determine independently whether these are proper grounds for the Commission to withhold the subject RSTF money from the Tribe, especially in light of Dixie's deposition testimony that he resigned as the Tribal Chairman in favor of Burley.

A. THERE IS NO LONGER A TRIBAL LEADERSHIP DISPUTE PREVENTING RELEASE OF RSTF MONEY TO THE TRIBE

Because of Dixie's recent admission, there can be no Tribal leadership dispute preventing the Commission from determining who is authorized to receive the RSTF money for the Tribe, and therefore the first reason is no longer a legitimate basis to continue withholding the funds. The trial court has jurisdiction to make this determination without having to decide the merits of a Tribal leadership dispute, since it rules on what is reasonable from the Commission's standpoint. In other words, it asks whether Dixie's admission is sufficient information from which the Commission can reasonably conclude that Burley, not Dixie, is authorized to receive the RSTF payments on behalf of the Tribe.

In fact, the Commission had previously taken the position that Burley was the authorized representative for the Tribe for purposes of receiving the Tribe's RSTF payments, against Dixie's claim that he was the rightful Chairman, since the BIA had at that time recognized Burley as a "person of authority." It stated:

> "The Commission has been faced on more than one occasion with the prospect of making a RSTF disbursement to a tribe in the midst of a leadership dispute. In the past, it has been the practice of the Commission to refrain from disbursing the RSTF funds until the resolution of the tribal leadership dispute, in order to ensure that the funds were submitted to the proper party and address. [citation omitted]. However, the Commission has recently determined that it should change this practice, in conformity with the practice of the Bureau of Indian Affairs, by disbursing funds to the tribal representative with which the federal government carries on its government-to-government relationship with the tribe. [citation omitted]. It appears to the State that the tribe's representative for such purposes remains Silvia Burley ("Burley"), notwithstanding what may or may not be a meritorious challenge to her leadership." (Emphasis added).

(Bates 0679, Ex. "65", Memo P/As in Opposition to TRO by Dixie, October 22, 2004).

While such a policy set a bad precedent, since nothing in the Compact requires that the Commission condition RSTF payments on actions taken by the BIA, the point is that the Commission asserted in court documents that the existence of a leadership dispute should not prevent it from distributing RSTF to a Non-Compact tribe, so long as the Commission is able to identify an appropriate Tribal representative. Accordingly, Dixie's deposition testimony has paved the way for the Commission to make that determination and disburse the subject RSTF payments to Burley, the rightful representative of the Tribe.

The opposing parties' contention that the BIA or the ASI must decide the Tribal leadership dispute is ill-conceived and misleading. It is a "bedrock principle of federal Indian law that every tribe is 'capable of managing its own affairs and governing itself.'" Timbisha Shoshone

Tribe v. Salazar, supra at 9746; see also Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 62. To this end, resolutions of tribal leadership disputes are internal tribal matters that must be decided by the tribe, not the BIA, the federal government or any court. Timbisha Shoshone Tribe, supra. Again, as further recognized by the ASI in his August 31, 2011 decision:

> "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." (Emphasis added).

(Bates 0188, last paragraph). This was written before Dixie testified in deposition that he resigned as Tribal Chairman and acknowledged Burley as the new Tribal leader. Thus, neither the BIA, the ASI, nor the judge in the pending federal litigation could have ever decided the merits of the now-resolved Tribal leadership dispute. It was a thorn in the side of the Tribe for many years that has now been removed. Thus, for purposes of determining whether the Commission can continue to withhold RSTF payments from the Tribe, Dixie's deposition testimony is sufficient for the trial court in this action to decide whether the Commission can continue to legitimately claim that it does not know who is authorized to receive RSTF payments for the Tribe.

B. A NON-COMPACT TRIBE IS NOT REQUIRED TO HAVE A RECOGNIZED GOVERNING BODY AS A CONDITION OF RECEIVING RSTF PAYMENTS

The other three reasons can be decided by the trial court based on the language of the Compact. For example, with respect to the second reason, the Commission claims it is further prevented from releasing

the RSTF money to the Tribe, because the BIA does not recognize the Tribe's governing body. Aside from the ASI's decision that it does, i.e., that it is (and always has been since 1998) governed by a resolution form of government established under Resolution #GC-98-01, the trial court has jurisdiction to determine whether the language of the Compact permits the Commission to withhold RSTF money from a Non-Compact tribe because it purportedly has no recognized governing body. A review of the Compact shows that no such requirement exists, most likely because, under Indian law, an Indian tribe pursuant to its inherent power of self-government, may establish any form of government that best suits its own practical, cultural, or religious needs, outside the IRA framework, and without any written constitution at all. Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 62-63; Pueblo of Santa Rosa v. Fall (1927) 273 U.S. 315. In order for a Non-Compact tribe to be eligible to receive RSTF payments, all that the Compact requires is that the Non-Compact tribe be a federally-recognized tribe, i.e., that it be on the list of federally-recognized tribes in the FEDERAL REGISTER. It is undisputed that the Tribe meets this minimum requirement.

Moreover, as recognized by the ASI's August 31, 2011 decision, the Tribe has since 1998 had a resolution form of government, under Resolution #GC-98-01. Since then, the Tribe, under Burley's leadership, has passed and adopted numerous resolutions in connection with the operation of the Tribe, including the resolution changing the name of the Tribe to the present name of the California Valley Miwok Tribe, which the BIA accepted and then made the change in the Federal

Register. Even the Commission itself has issued checks to the California Valley Miwok Tribe, and has purportedly "set aside" RSTF payments on behalf of the California Valley Miwok Tribe, and thus by its own actions has recognized the very same Tribal Council that changed the Tribe's name. Significantly, the Commission refused to answer written interrogatories asking if it contends that the Tribe had no authority to make that name change. (Bates 0611-0612, Special Interrogatory No. 20).

Likewise, the Intervenors acknowledge the Tribe's authority under Burley's leadership to change the Tribe's name by purporting to sue in the Tribe's new name in this lawsuit, and in the federal litigation. It is important to note that the ASI did not decide the issue of whether the Tribe had a resolution form of government under Resolution #GC-98-01. The ASI merely observed that as an undisputed fact.

Nevertheless, as this Court observed:

> "[A] tribe may choose not to organize under the IRA, and many tribes have accordingly adopted constitutions using procedures not set forth in the IRA, and several tribes exist without any written constitution. (citations omitted)." (Emphasis added).

(Court of Appeal decision, page 8, Bates Stamp 0197). Thus, for purposes of being eligible for receipt of RSTF payments, it is irrelevant whether the Tribe's current resolution form of government is "recognized" by the BIA, since, under well-settled Indian law, an Indian tribe may function and operate without a written constitution at all.

Indeed, the Compact by its own terms recognizes this fundamental point of law in its definition of the term "Tribal Chairperson" as follows:

> "Tribal Chairperson" means the person duly elected or selected under the Tribe's organic documents, customs, or traditions to serve as the primary spokesperson for the Tribe." (Emphasis added).

(Compact §2.19, Bates 0618, Ex. "55").

In any event, even the federal court observed the Tribal Council under Burley's leadership is "currently recognized," despite Dixie's challenge of the ASI's August 31, 2011 decision, when it stated:

> "[R]esolution of the matter in the plaintiff's favor would directly interfere with the governance of the Tribe **as currently recognized** and preclude access to federal funds. (Emphasis added).

(Memorandum Opinion and Order, March 26, 2012, page 10, Bates 0163); (See also last sentence of ASI's August 31, 2011 decision: "...work within the Tribe's existing government structure...," Bates 0188).

C. THE COMPACT DOES NOT REQUIRE THAT A NON-COMPACT TRIBE MUST SATISFY ANY MEMBERSHIP CRITERIA IN ORDER TO BE ELIGIBLE FOR RSTF PAYMENTS

As to the third point, the trial court clearly has jurisdiction to decide whether the Compact requires that a Non-Compact tribe demonstrate certain membership criteria in order to qualify for RSTF distribution payments. There is no such requirement. In fact, the Compact specifies that RSTF payments are to be made only to a Non-Compact tribe, not to any of its individual members. Thus, the Commission has no duty to "potential" members of a Non-Compact

tribe, and the Compact does not require that the Commission withhold RSTF payments for the benefit of any "potential" members of a Non-Compact tribe. Membership enrollment is to be decided solely by an Indian tribe under well-settled Indian law, as recognized by the ASI in his recent August 31, 2011 decision, and by this Court in its previous decision reversing the trial court's dismissal on demurrer. (Ct. of Appeal Decision, April 16, 2010, footnote 9, page 8, Bates Stamp 0197, citing Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 72, fn. 32, for the proposition that "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community...", and Williams v. Gover (9th Cir. 2007) 490 F.3d 785, 789, for the proposition that "[a]n Indian tribe has the power to define membership as it chooses, subject to the plenary power of Congress").

D. THE COMPACT DOES NOT PROVIDE THAT A NON-COMPACT TRIBE MUST QUALIFY FOR P.L. 638 FEDERAL CONTRACT FUNDING THROUGH THE BIA AS A CONDITION FOR RSTF PAYMENTS

Lastly, the trial has jurisdiction to decide whether the Commission's policy is correct or reasonable with respect to the fourth point, specifically that a Non-Compact tribe's right to receive RSTF payments is contingent upon it qualifying for federal contract funding with the BIA. There is no such language in the Compact making this a condition of receipt of RSTF payments. There could be a number of reasons why federal contract funding would not be available to a particular federally-recognized tribe that would have nothing to do with

eligibility to receive RSTF payments. There is no relationship between the two sources of revenue payments, and the Commission's position that it is required to withhold RSTF from the tribe on this ground is wrong, and the trial court has jurisdiction to determine whether that policy is consistent with the language of the Compact.

Accordingly, notwithstanding the pending federal litigation challenging the ASI's August 31, 2011 decision, the trial court has independent jurisdiction to decide whether the reasons given by the Commission for withholding the Tribe's RSTF payments are correct, and the Tribe has a right to have the trial court make that determination, and enter judgment against the Commission, without having to wait for the outcome of the pending federal litigation, including the exhaustion of what is forecast to be several years of federal, appellate review.

VII.

THE PLAINTIFF HAS SHOWN IT IS ENTITLED TO THE REQUESTED RELIEF

The opposing parties argue that the Plaintiff is not entitled to mandamus relief. The Commission only contends that the Plaintiff has failed to show the trial court has abused its discretion, while the Intervenors take it a step further and contend that the Plaintiff has neither shown its remedies at law are inadequate nor shown any irreparable injury absent a writ. These contentions are without merit.

First, the Plaintiff has clearly shown that the trial court abused its discretion in not lifting its stay so as to permit dispositive motions to be filed and considered, in light of Dixie's recent deposition testimony

that he had resigned as Tribal Chairman and that he signed documents confirming that and confirming his acknowledgment of Burley as the new Chairperson for the Tribe. The trial court's belief that it would be deciding a Tribal leadership dispute by lifting the stay for this purpose was erroneous.

Second, the trial court's stay order runs contrary to the express ruling of this Court when it reversed the trial court's erroneous judgment of dismissal which was based on the erroneous conclusion that the Plaintiff would have to wait for the BIA to recognize the governing body of the Tribe and the Tribal leadership dispute. The trial court's stay order effectively puts the parties back to where they were before this Court reversed that judgment of dismissal, as if there were no reversal at all.

Third, as made clear by this Court's decision of reversal, the trial court must permit the parties to litigate whether the Commission is properly withholding RSTF money from the Tribe, and in particular, "explore the legal impact of the tribal leadership dispute." (Bates 0208). Dixie's deposition testimony provides a perfect opportunity for the trial court to do just that, and, accordingly, the trial court abused its discretion in refusing to lift its own stay to consider the impact of Dixie's deposition testimony.

Fourth, the trial court has an independent obligation to make a judicial determination of whether the Commission's actions in withholding the subject RSTF payments from the Tribe are correct, separate and apart from what happens in the federal court where Dixie is challenging the ASI's August 31, 2011 decision, especially since the

issue of the Tribe's entitlement to RSTF payments, and the Commission's actions in refusing to pay them out to the Tribe, were not decided by the ASI, and are not presently before the federal court.

Fifth, the trial court incorrectly interpreted the procedural "stay of implementation" language in the ASI's August 31, 2011 decision to preclude entry of judgment against the Commission, and to require a stay in this state court action. Since the Commission is not subject to the jurisdiction of the ASI, the BIA or the DOI, it can do nothing to "implement" that decision. Therefore, the trial court abused its discretion in staying this action based on the stay language of the ASI's decision.

These and other points were discussed in Plaintiff's Petition for Writ of Mandate, and show that the trial court abused its discretion.

These points also show that the Plaintiff has no adequate remedy at law. The Plaintiff has a right to have judgment entered now, and not have to wait for litigation to conclude in the federal case challenging an ASI decision that need not be relied upon to judicially resolve the Plaintiff's claims against the Commission in this action. It would be intolerable to require the Tribe to endure continued delay in releasing the subject RSTF money it is entitled to receive, because Dixie and his team of lawyers bent on using Dixie to take over the Tribe to build a casino want to use the judicial system to block distribution of those funds and try and starve out the tribe. See Kawaski Motors Corp. v. Superior court (2000) 85 CA4th 200, 205-206. Because of the stay language of the ASI's August 31, 2011 decision, the Tribe cannot get P.L. 638 federal contract funding. And since the Tribe does not have a

casino, it looks to receiving RSTF payments under the Compact, which the Commission has admitted "was designed to ensure prompt disbursement of RSTF assets to those tribes in most desperate need of funding—tribes with small or no gaming operation." (Bates 0678, lines 17-18).

The Intervenors argue that the Tribe nonetheless will suffer no irreparable injury absent a writ, because the Tribe under Burley's leadership is merely the Tribal Chairperson, Burley, and her immediate family, as opposed to the purported 242 adult members they claim are the real members of the Tribe, as if to suggest the Tribe is a mere sham. This contention is frivolous and flies in the face of two (2) well-reasoned decisions by the ASI, rejecting the Intervenors' legally and factually erroneous claims that they are members of the Tribe.

The Tribal membership, as ruled by the ASI, consists solely of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristain Wallace. (Bates 0182). This is the legally determined base membership of the Tribe, which has the potential of expanding as determined solely by the Tribal Council. The ASI, in his August 31, 2011 decision understood this when he wrote:

> "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."

(Bates 0186).

Thus, the purported "242 adult members" mentioned in the Intervenors' opposition brief are simply fabricated for litigation purposes, and are

not members at all. As explained by the ASI in his August 31, 2011 decision, these individuals have no "inchoate citizenship rights that the Secretary has a duty to protect...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." (citing Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 57).

Accordingly, the Intervenors' claim that they, not the Tribe, whose member consist of five adult persons, are purportedly in desperate need of these funds is irrelevant.

VIII.

THE WRIT IS TIMELY

The opposing parties argue the writ is untimely, because it was purportedly filed one year after the trial court imposed the stay. The Intervenors contend, for example, that the trial court imposed the stay on April 6, 2011, after the ASI set aside his December 22, 2010 decision for further briefing and reconsideration, implying that Plaintiff should have file the writ back then. These contentions are without merit.

Clearly, the Plaintiff sought and was denied a request that the trial court lift its stay on March 7, 2012, when the Plaintiff brought new facts and circumstances before the trial court that warranted the requested relief. On April 6, 2011, Dixie's deposition had not been taken, and it was not until February 7, 2012 that Dixie testified for the first time that he had resigned as Tribal Chairman and admitted his resignation signature had not been forged. This gave rise for the need to lift the stay in order to have dispositive motions filed and considered.

In fact, Plaintiff sought to take Dixie's deposition earlier, and had to get an order to that effect, because Dixie's lawyers objected to it. When Plaintiff's counsel drove up to San Andreas, California, to take Dixie's deposition on June 28, 2011, Dixie refused to answer any substantive questions, including questions concerning his resignation and claim of forgery, asserting false claims of 5th Amendment privilege, forcing Plaintiff to have to file a motion to compel. (Bates 0432-0433). After obtaining the order compelling Dixie to testify, and obtaining monetary sanctions, Plaintiff's counsel drove up again, this time to Sacramento, 20 minutes away from the last deposition location, and took Dixie's deposition on February 7, 2012. (Bates 0031). It was at this second deposition that Dixie testified for the first time that he had resigned as Tribal Chairman, and had signed documents to that effect. (Bates 0031). Thirty days later, after getting the deposition transcript, Plaintiff sought but was denied the requested ex parte relief. (Bates 0001-0012). Approximately 45 days later, Plaintiff filed this writ. Under the circumstances, it can hardly be said that Plaintiff delayed filing this writ.

Thus, the challenged order is the March 7, 2012 order denying Plaintiff's request to lift the stay so dispositive motions can be filed and considered, in light of Dixie's recent deposition testimony. The appropriateness of the stay order remaining in place arose at the time of the March 7, 2012 ex parte hearing. This is well within the 60-day rule. Cal West Nurseries, Inc. v. Superior Court (2005) 129 CA4th 1170, 1173. However, since this is a common law writ, there are no deadlines at all. Common law writs are equitable in nature, and

therefore relief is merely subject to the doctrine of laches, if the petitioner has unreasonably delayed filing the writ to the opposing party. Thus, an appellate court may consider a petition for an extraordinary writ at any time, even after the 60 day rule, where extraordinary circumstance justify the delay. Volkswagen of America, Inc. v. Superior Court (2001) 94 CA4th 695, 701-702. Here, the opposing parties have not shown, and cannot show, that they will be prejudiced by any delay factor with respect to the filing of this writ. Indeed, because the writ seeks an order directing the trial court to lift a stay of the action, there can be no prejudice on account of delay. It is ludicrous to assert that a party suffered prejudiced because the opposing party delayed its attempt to stop further delay of the proceedings, especially where the opposing party would benefit from that delay. However, as stated, the challenged order is the March 7, 2012 order, and thus the writ is well within the 60 day rule.

For these reasons, the writ was timely filed.

IX

CONCLUSION

For the foregoing reasons, and for the reasons expressed in Plaintiff's petition for writ of mandate and/or prohibition, Plaintiff's writ should be granted directing the trial court to set aside and vacate it order staying the underlying action, and allow Plaintiff to file, and the trial court to consider, dispositive motions, and if necessary proceed to trial.

Alternatively, the trial court should be directed to enter judgment against the Commission based upon the trial court's order granting judgment on the pleadings.

Dated: 6/28/2012

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

VERIFICATION

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

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

2. I have read the foregoing Reply to Opposition to Petition for Writ of Mandate and/or Prohibition or Other Appropriate relief and know its contents. The facts alleged in the Petition are true of my own knowledge.

3. Exhibit "67" attached to the Appendix to the Reply is a true and correct copy of the deposition transcript, with exhibits, of Yakima Dixie, Vol. II, dated February 7, 2012.

4. Exhibit "68" attached to the Appendix to the Reply is a true and correct copy of the civil docket for California Valley Miwok Tribe v. Salazar, for September 9, 2011 through May 18, 2012, as downloaded from Pacers, Case No. 1:11-cv-00160-RWR, the federal case to which the opposing parties refer in their opposition briefs.

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

Executed this 28 day of June, 2012, at San Diego, California.

MANUEL CORRALES, JR.

CERTIFICATE OF WORD COUNT

The text of this reply consists of 11,129 words as counted by the Microsoft Office Word software word-processing program used to generate this petition.

Date: June 28, 2012

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

CERTIFICATE OF SERVICE

California Valley Miwok Tribe v. California Gambling Control Commission
San Diego Superior Court Case No. 37-2008-00075326-CU-CO-CTL
Court of Appeal Case No. D061811

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

DOCUMENTS SERVED

REPLY TO OPPOSITION TO PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF; AND APPENDIX IN SUPPORT OF REPLY

PERSONS SERVED

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

   Manner of service: U.S. Priority Mail.

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

Attorney for Defendant California Gambling Control Commission

Manner of service: U.S. Priority Mail.

3. Neil D. Houston, Esq.
Deputy Attorney General
CALIFORNIA ATTORTNEY GENERAL'S OFFICE
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Email: neil.houston@doj.ca.gov
Attorney for Defendant California Gambling Control Commission

Manner of service: U.S. Priority Mail.

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

Manner of service: U.S. Priority Mail.

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

Manner of service: U.S. Priority Mail.

6. Terry Singleton, Esq.
SINGLETON & ASSOCIATES
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Fax: (619) 702-5592
Email: terry@terrysingleton.com
Attorney for Plaintiff California Valley Miwok Tribe

Manner of service: U.S. Priority Mail.

7. Robert Rosette, Esq.
ROSETTE & ASSOCIATES
193 Blue Ravine Road, Suite 255
Folsom, California 95630
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Email: rosette@rosettelaw.com
Attorney for Plaintiff California Valley Miwok Tribe

Manner of Service: U.S. Priority Mail.

I enclosed the above described documents in a sealed envelope or package addressed to the persons at the addresses listed above, and I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

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

Executed this 30th day of June, 2012 at San Diego, California.

MANUEL CORRALES, JR.