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Attorneys for Plaintiff

CALIFORNIA VALLEY MIWOK TRIBE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

**CALIFORNIA VALLEY MIWOK TRIBE** Case No.37-2008-00075326-CU-CO-CTL

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL  
COMMISSION,**

Defendant.

**NOTICE OF HEARING AND MOTION  
FOR ORDER LIFTING THE EFFECT  
OF MARCH 11, 2011 ORDER  
GRANTING RECONSIDERATION AND  
DENYING INTERVENTION**

Date: April 26, 2013

Time: 2:00 p.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: June 4, 2013

1 TO INTERVENORS "CALIFORNIA VALLEY MIWOK TRIBE", YAKIMA  
2 DIXIE, VELMA WHITEBEAR, ANTONIA LOPEZ, ANTONE AZEVEDO,  
3 MICHAEL MENDIBLES AND EVELYN WILSON, AND THEIR ATTORNEYS OF  
4 RECORD, THOMAS W. WOLFRUM, ESQ., AND MATTHEW MCCONNELL OF  
5 SHEPPERD, MULLIN, RICHTER & HAMPTON, LLP, AND TO DEFENDANT  
6 CALIFORNIA GAMBLING CONTROL COMMISSION, AND ITS ATTORNEY OF  
7 RECORD, THE CALIFORNIA ATTORNEY GENERAL'S OFFICE, AND TO  
8 ALL INTERESTED PARTIES:

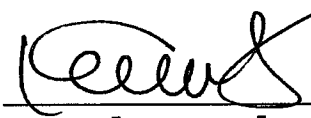
9 PLEASE TAKE NOTICE that on April 26, 2013, at 2:00  
10 p.m., or as soon thereafter as the matter can be heard in  
11 Department 62 of the above-entitled court located at 330  
12 West Broadway, San Diego, California 92101, Plaintiff  
13 CALIFORNIA VALLEY MIWOK TRIBE ("the Miwok Tribe" or "Tribe"  
14 or "Plaintiff") will, and hereby does, move this court for  
15 an order lifting the "effect" of its March 11, 2011 order  
16 granting reconsideration and denying intervention, on the  
17 grounds that the Intervenor do not have any legal standing  
18 to assert any claim to the subject Revenue Sharing Trust  
19 Fund ("RSTF") money being withheld from the Miwok Tribe,  
20 and that the factual basis for the court's March 11, 2011  
21 order denying intervention was correct at the time the  
22 order was made, and is still correct.

23 The December 22, 2010 letter from the Assistant  
24 Secretary of Interior ("ASI"), Larry Echo Hawk, upon which  
25 the court relied in its March 11, 2011 order, was  
26 reaffirmed by ASI Echo Hawk on August 31, 2011. Despite  
27 the ASI having stayed only the implementation of his August  
28

1 31, 2011 decision, the final agency action of that decision  
2 refutes the Intervenor's claim of standing to assert any  
3 claims on behalf of the Miwok Tribe being presently led by  
4 Chairperson Silvia Burley, according to the recent case of  
5 Timbisha Shonshone Tribe v. Salazar (D.C. Cir. 2012) 678  
6 F.3d 935.

7 This motion will be based upon this notice, the  
8 Memorandum of Points in Authorities attached hereto, the  
9 Request for Judicial Notice attached hereto, the complete  
10 files and records of this action, and such other oral and  
11 documentary evidence as may be presented at the time of  
12 hearing.

13  
14  
15 Dated: February 18, 2013

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

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Attorneys for Plaintiff

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

**CALIFORNIA VALLEY MIWOK TRIBE** Case No.37-2008-00075326-CU-CO-CTL

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL  
COMMISSION,**

Defendant.

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR ORDER LIFTING  
EFFECT OF March 11, 2011  
ORDER GRANTING  
RECONSIDERATION AND DENYING  
INTERVENTION**

Date: April 26, 2013

Time: 2:00 p.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: June 4, 2013

1 Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or  
2 "the Miwok Tribe" or "Plaintiff") submits the following  
3 Memorandum of Points and Authorities in Support of its  
4 Motion for Order Lifting the Effect of March 11, 2011 Order  
5 Granting Reconsideration and Denying Intervention.

6 I. INTRODUCTION

7 The Court of Appeal granted Plaintiff California Valley  
8 Miwok Tribe's ("Miwok Tribe") petition for a writ of  
9 mandate directing the trial court to lift its stay of these  
10 proceedings, so as to allow the parties to file dispositive  
11 motions and, if necessary, proceed to trial.

12 On March 11, 2011, the trial court granted the  
13 Plaintiff's motion for reconsideration of the court's  
14 previous order granting intervention and denied  
15 intervention. The ruling was based in part on a December  
16 22, 2010 decision from the Assistant Secretary of Interior  
17 ("ASI"), which had concluded that the Miwok Tribe is a  
18 federally-recognized tribe consisting of five members with  
19 a recognized governing body established under a 1998 Tribal  
20 Resolution. The ASI further ruled that the U.S. Bureau of  
21 Indian Affairs ("BIA") could not require the Tribe to  
22 expand its membership against its will.

23 After the March 11, 2011 order denying intervention,  
24 the ASI set aside its decision to allow for further  
25 briefing on the issues, which prompted the trial court in  
26 this case to enter an April 20, 2011 ex parte order staying  
27 the "effect" of the court's March 11, 2011 order denying  
28

1 intervention. When the ASI issued its final decision on  
2 August 31, 2011, affirming its December 22, 2010, decision,  
3 this court stayed all further proceedings in this case,  
4 except for discovery, pending resolution of a challenge to  
5 the ASI's August 31, 2011 decision by the Intervenor in  
6 this case, Yakima Dixie ("Dixie") and his followers.

7 The Court of Appeal decision granting Plaintiff's  
8 petition directing the trial court to lift its stay applies  
9 with equal force to the trial court's April 20, 2011 ex  
10 parte order staying the effect of its March 11, 2011 order.

11 Accordingly, the court should lift its stay with  
12 respect to its order denying intervention. The legal basis  
13 for the order denying intervention has not changed. The  
14 individual Intervenor do not have standing to assert a  
15 claim to RSTF money as a matter of law. Moreover, the  
16 factual basis for denying intervention on March 11, 2011  
17 was correct at the time, and it is still correct.

## 18 **II. ARGUMENT**

### 19 **A. THE LEGAL BASIS FOR THE ORDER DENYING INTERVENTION HAS** 20 **NOT CHANGED**

#### 21 **1. The Intervenor lack standing to assert a claim to** 22 **the RSTF as a matter of law.**

23 In its March 11, 2011 order granting the Plaintiff's  
24 motion for reconsideration and then denying intervention,  
25 the court ruled, separate and apart from the December 22,  
26 2010 decision from the Assistant Secretary of Interior  
27 ("ASI") as follows:  
28

1 It is the Tribe that has standing to assert its claim  
2 to the RSTF monies, not the individual members.  
3 (citation omitted). To the extent Intervenor are  
4 members of the Tribe, their rights are "adequately  
5 represented" by the Tribe thereby precluding  
6 intervention under CCP §387(b). Intervenor's remedies  
7 with respect to Tribal membership and Tribal use of the  
8 RSTF monies are via Tribal procedure.

9 (Minute Order 3/11/2011, page 2, Ex. "33"). The court also  
10 ruled that the Intervenor's right to judicial review of the  
11 ASI's December 22, 2010 decision is insufficient to  
12 establish their "interest" in this case, stating:

13 To adopt Intervenor's position would mean that any  
14 party who challenges a decision made by the Assistant  
15 Secretary-Indian Affairs could continuously file writs  
16 and appeals, effectively nullifying the finality  
17 provision of 25 C.F.R. §2.6(c).

18 (Minute Order 3/11/2011, page 3, Ex. "33").

19 The court's March 11, 2011 order is consistent with  
20 federal case law on the lack of standing of Tribal non-  
21 members and Tribal members alike to assert a claim on  
22 behalf of the Tribe. Timbisha Shoshone Tribe v. Salazar  
23 (D.C. Cir. 2012) 678 F.3d 935, 937-938.

24 In Timbisha, supra, the Shoshone Tribe was entitled to  
25 certain funds created by Congress ("Distribution Act") as a  
26 result of a 1946 ruling made by the now defunct Indian  
27 Claims Commission awarding the Shoshone Tribe \$24 million  
28 in compensation for their having been deprived of their  
land by the "gradual encroachment by whites, settlers and  
others" and the taking of their land by the U.S.  
government. Individuals claiming to be the Tribal Council

1 sued the federal government, challenging the Distribution  
2 Act as unconstitutional. They "concede[d] they lacked  
3 standing to bring suit as individuals, but alleg[ed] they  
4 are the Tribal Council acting in its official capacity to  
5 protect the interests of the Tribe." 678 F.3d at 937.

6 Like the Miwok Tribe here, the Shoshone Tribe was  
7 embroiled in an internal leadership dispute for many years,  
8 with two factions claiming to be the Tribal Council, one  
9 being led by Joe Kennedy ("Kennedy Faction") and the other  
10 being led by George Gholson ("Gholson Faction"). After the  
11 District court upheld the Distribution Act as  
12 constitutional, the Kennedy Faction appealed to the Court  
13 of Appeals for review. Soon after the district court's  
14 decision, however, ASI Larry Echo Hawk issued a decision  
15 letter recognizing the Gholson Faction for the limited  
16 purpose of conducting an election to determine who  
17 constituted the Tribal Council. The Kennedy Faction lost,  
18 and the Gholson Faction was elected the Tribal Council.  
19 Thereafter, upon request, ASI Larry Echo Hawk recognized  
20 the Gholson-led Tribal Council in a letter.

21 As did Dixie and his followers here, the Kennedy  
22 Faction challenged the ASI's decision letter recognizing  
23 the Gholson Faction who claimed to be the rightful Tribal  
24 Council for the Shoshone Tribe, by filing an action in the  
25 U.S. District Court. As a result of the Echo Hawk letter  
26 recognizing the Gholson-led Tribal Council, the Court of  
27 Appeal concluded that the Kennedy Faction lack standing,  
28 and dismissed the appeal and instructed the district court



1 to dismiss the complaint for lack of jurisdiction, despite  
2 the pending federal court challenge of Echo Hawk's decision  
3 recognizing the Gholson-led Tribal Council. It stated:

4 It is a "bedrock principle of federal Indian law that  
5 every tribe is 'capable of managing its own affairs and  
6 governing itself.'" (citations omitted) The Echo Hawk  
7 letter acknowledges that the Timbisha Shoshone resolved  
8 their own leadership dispute through a valid *internal*  
9 tribal process.

10 678 F.3d at 938.

11 For the same reasons, the Intervenors lack standing to  
12 assert any claim to the RSTF money on behalf of the Miwok  
13 Tribe. Indeed, the December 22, 2010 ASI decision  
14 recognized the Burley-led Tribal Council, and caused the  
15 BIA to acknowledge the January 2011 re-election of Burley  
16 as the Tribal Chairperson.

17 Specifically, on January 6, 2011, after the ASI's  
18 December 2, 2010 decision was issued, the Miwok Tribe  
19 conducted an election, with full notice to Dixie, and re-  
20 elected Burley as the Chairperson of the Tribe. Troy  
21 Burdick of the BIA, pursuant to the authority of the recent  
22 ASI decision, then wrote a letter dated January 12, 2011 to  
23 Chairperson Burley acknowledging the election results and  
24 congratulating all elected officials. (RJN, Ex. "32").  
25 Although the ASI later set aside his December 22, 2010  
26 decision solely to allow further briefing on the issue, he  
27 never reversed that decision, but in fact ultimately  
28 affirmed it. Accordingly, at the time the December 22,  
2010 ASI decision was in full force and effect, the Tribe  
conducted a valid election resolving the internal

1 leadership dispute with Dixie, which was accepted and  
2 acknowledged by the BIA. Troy Burdick never recalled or  
3 set aside his January 12, 2011 letter of acknowledgment.  
4 Indeed, the ASI's August 31, 2011 decision letter makes no  
5 mention of the Burdick letters.

6 Thus, despite Dixie's pending federal court challenge  
7 to the ASI's August 31, 2011 decision affirming the  
8 December 22, 2010 decision, the Burley-led Tribal Council's  
9 election results of January 2011 was, as still is,  
10 recognized by the ASI by final agency action. Timbisha  
11 Shoshone Tribe, supra at 938.

12 **2. Yakima Dixie likewise has admitted he resigned as**  
13 **Tribal Chairman as far back as 1999, which refutes**  
14 **his claim of authority for receipt of the RSTF**  
15 **money for the Miwok Tribe**

16 Dixie admitted in his deposition that he had resigned  
17 as Tribal Chairman in 1999 and that his signature on his  
18 notice of resignation was not a forgery as he had  
19 previously claimed. (RJN, Ex. "21" and "22"). This  
20 admission opens the door for the Commission to release the  
21 RSTF money to an authorized representative for the Tribe,  
22 and removes any claim of a competing tribe or a competing  
23 Tribal representative vying for the same funds. Indeed,  
24 the Complaint-in-Intervention specifically alleges that,  
25 "the essence of this action is the tribal dispute regarding  
26 the leadership of the Tribe." (RJN, Ex. "20", Page 13,  
27 lines 10-11).

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

1 intervene, stating: "The document allegedly showing my  
2 resignation as Tribal Chairman is a forgery." (Emphasis  
3 added). (RJN, Ex. "19", page 2, lines 20-25). This  
4 declaration was proven to be false. Dixie testified in a  
5 subsequent deposition, under the examination of his own  
6 counsel, that he in fact resigned as Tribal Chairman, and  
7 that the signature appearing on a document notifying of his  
8 resignation he had earlier claimed to be a forgery was  
9 genuinely his. (RJN, Ex. "21"). He further testified that  
10 his signature appeared on a document confirming Burley as  
11 the new Tribal Chairperson. (RJN, Ex. "21").

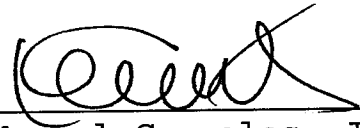
12 **B. THE MARCH 11, 2011 ORDER DENYING INTERVENTION SHOULD BE  
13 PUT INTO EFFECT**

14 The court specifically denied intervention in its March  
15 11, 2011 order. In light of the Court of Appeal's recent  
16 decision, that order should now be put into effect. It was  
17 correct when the court made it, and it is still correct,  
18 for the reasons stated above.

19 **III. CONCLUSION**

20 For the foregoing reasons, the court should put back  
21 into effect its March 11, 2011 order denying intervention.

22  
23 Dated: February 18, 2013

24   
25 Manuel Corrales, Jr., Esq.  
26 Attorney for Plaintiff  
27 CALIFORNIA VALLEY MIWOK  
28 TRIBE

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Attorneys for Plaintiff  
CALIFORNIA VALLEY MIWOK TRIBE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

**CALIFORNIA VALLEY MIWOK TRIBE** Case No.37-2008-00075326-CU-CO-CTL

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL  
COMMISSION,**

Defendant.

**DECLARATION OF MANUEL  
CORRALES, JR., IN SUPPORT OF  
MOTION FOR ORDER LIFTING  
EFFECT OF March 11, 2001  
ORDER**

Date: April 26, 2013  
Time: 2:00 p.m.  
Dept: 62  
Judge: Hon. Ronald Styn  
Trial Date: June 4, 2013

1 I, Manuel Corrales, Jr., declare that if called as a  
2 witness in this case I could and would competently testify  
3 as follows:

4 1. I am an attorney at law duly licensed to practice  
5 in the State of California, the State of New Mexico and the  
6 State of Utah, and I am one of the attorneys of record for  
7 Plaintiff CALFORNIA VALLEY MIWOK TRIBE ("the Miwok Tribe")  
8 herein. I have personal knowledge of the facts as set  
9 forth herein.

10 2. Attached herewith and marked as Exhibit "33" is a  
11 true and correct copy of the Notice of Ruling: Motion for  
12 Reconsideration and Motion for Leave to Intervene,  
13 containing this court's minute order of March 11, 2011.

14 3. Attached herewith and marked as Exhibit "34" is a  
15 true and correct copy of an Order Granting in Part Ex Parte  
16 Applications for Stay of Entry of Judgment, filed April 20,  
17 2011.

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

21 Executed this 18 day of February 2013 at San Diego,  
22 California.

23  
24   
25 \_\_\_\_\_  
26 MANUEL CORRALES, JR.  
27  
28

**EXHIBIT “33”**

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Attorneys for Plaintiff  
CALIFORNIA VALLEY MIWOK TRIBE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

**CALIFORNIA VALLEY MIWOK TRIBE** Case No.37-2008-00075326-CU-CO-CTL

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL  
COMMISSION,**

Defendant.

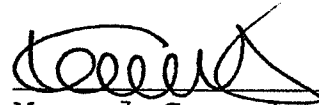
**NOTICE OF RULING: MOTION FOR  
RECONSIDERATION AND MOTION  
FOR LEAVE TO INTERVENE**

Date: March 11, 2011  
Time: 2:00 p.m.  
Dept: 62  
Judge: Hon. Ronald Styn  
Trial Date: May 13, 2011

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, AND TO  
2 ALL OTHER INTERESTED PARTIES:

3 PLEASE TAKE NOTICE that on March 11, 2010, in  
4 Department 62 of the above-entitled Court, the Hon. Ronald  
5 L. Styn presiding, the San Diego County Superior Court  
6 entered an order granting Plaintiff's Motion for  
7 Reconsideration of the Court's prior order granting  
8 intervention, and, upon reconsideration, denied the  
9 proposed Intervenor's Motion to Intervene. A copy of the  
10 order is attached herewith and marked as Exhibit "1", and  
11 is incorporated into this notice by this reference.

12  
13  
14 Dated: March 14, 2011

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



**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 03/11/2011

TIME: 02:00:00 PM

DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn

CLERK: Kim Mulligan

REPORTER/ERM: Susan Holthaus CSR# 6959

BAILIFF/COURT ATTENDANT: M. Chadwell

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

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

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

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

**MOVING PARTY:** California Valley Miwok Tribe

**CAUSAL DOCUMENT/DATE FILED:** Motion for Reconsideration, 12/30/2010

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**APPEARANCES**

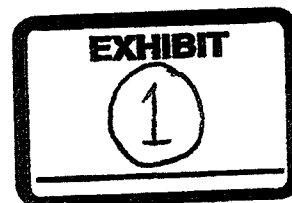
SEE SIGN-IN SHEET FOR APPEARANCES.

---

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

**The court addresses the evidentiary issues.** Plaintiff California Valley Miwok Tribe's request for judicial notice is granted as to 1 and denied as to 2. Intervenor's request for judicial notice is granted. Plaintiff's supplemental request for judicial notice is granted. Intervenor's supplemental request for judicial notice is granted. Plaintiff's combined request for judicial notice is granted. Intervenor's objection 4 is sustained; objections 1-3 are overruled; the court does not reach Intervenor's objection 5 because the court does not reach Plaintiff's demurrer. Plaintiff's objections to Intervenor's request for judicial notice are overruled. Plaintiff's objections to Defendant California Gambling Control Commission's request for judicial notice are overruled. Plaintiff's objections to Intervenor's supplemental request for judicial notice are overruled. The Commission's objections to Plaintiff's evidence submitted in reply are all overruled. Plaintiff's objections to Intervenor's request for judicial notice in support of Intervenor's supplemental brief in opposition to Plaintiff's motion for reconsideration are overruled. Intervenor's objections to Plaintiff's evidence in reply re motion for reconsideration are overruled. The Commission's objections to Plaintiff's evidence in reply in support of motion for reconsideration are overruled. The Commission's objections to Plaintiff's supplemental combined request for judicial notice are overruled.

**The court then rules as follows.** Plaintiff California Valley Miwok Tribe's motion for reconsideration is granted. The court finds Plaintiff establishes that the December 22, 2010, decision by Assistant Secretary Larry Echo Hawk of the United States Department of the Interior -Indian Affairs as "new or different facts, circumstances or law" supporting reconsideration under CCP §1008(a).



**Upon reconsideration,** Intervenor's motion for leave to intervene is denied.

The court previously found Intervenor established their "interest" in this matter, under CCP § 387(a), based on "evidence of the on-going Tribal leadership dispute, both Dixie and Burley's failure to involve the whole tribal community in the formation of a constitution and governing body for the Tribe, [see, *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIS 103 (1/28/10)] and the Bureau of Indian Affairs requirement of adoption of a Tribal government that "reflect[s] the involvement of the whole tribal community" [see, *California Valley Miwok Tribe v. U.S.* (D.C. Cir. 2008) 515 F.3d 1262, 1266] . . . ."

Via his December 22, 2010 decision the Assistant Secretary rescinded the BIA's public notice to "assist the California Valley Miwok Tribe, aka Sheep Ranch Rancheria (Tribe) in its efforts to organize a formal governmental structure that is acceptable to all members;" rescinded the BIA's "letters stating that the BIA will initiate the reorganization process for the California Valley Miwok Tribe;" rescinded the letter "stating that the BIA does not recognize any government of the California Valley Miwok Tribe;" rescinded the BIA's letter to Sylvia Burley "stating that it 'does not view your tribe to be an 'organized' Indian Tribe,' and indicating that Ms. Burley is merely a 'person of authority' within the Tribe;" and stated that "[b]oth my office and the BIA will work with the Tribe's existing governing body – its General Council, as established by Resolution # GC-98-01 – to fulfill the government-to-government relationship between the United States and the California Valley Miwok Tribe."

The December 22, 2010 decision removes the bases for the court's finding that Intervenor have an interest in this action under CCP § 387(a). Pursuant to the December 22, 2010 decision, the subsequent Special General Council meeting of the Tribe electing Burley as the Tribe's Chairperson, and the January 12, 2011, letter from Superintendent Burdick, the "on-going Tribal leadership" dispute has been resolved. The actions of the BIA disputing the formation of the Tribal government and leadership were rescinded. The BIA recognizes Burley as a representative of the Tribe. It is the Tribe that has standing to assert its claim to the RSTF monies, not the individual members. See, *Canadian St. Regis Band of Mohawk Indians v. State of New York* (N.D. N.Y. 1983) 573 F.Supp. 1530, 1537. To the extent Intervenor are members of the Tribe, their rights are "adequately represented" by the Tribe thereby precluding intervention under CCP § 387(b). Intervenor's remedies with respect to Tribal membership and Tribal use of the RSTF monies are via Tribal procedure.

Pursuant to 25 C.F.R. §2.6(c) the December 22, 2010, decision by the Assistant Superintendent is final and "effective immediately." Intervenor submit evidence of the filing of suit in the United States District Court for the District of Columbia seeking judicial review of the December 22, 2010 decision. However, Intervenor provide no authority holding that the filing of the federal court action vitiates the finality or immediate effectiveness of the decision of the Assistant Superintendent. Intervenor in essence are asking this court to stay the effect of the December 22, 2010, decision. This court is without jurisdiction to do so.

The court recognizes the long history of this dispute and that Intervenor continue to dispute whether the Miwok Tribe and its members have been organized and legally recognized, and whether Burley is the representative of the Tribe with standing to assert the Tribe's claim to the RSTF monies. The court also recognizes that even though the December 22, 2010 decision is a "final agency action" it is still subject to judicial review. 5 U.S.C. §704. See, e.g., *Bennett v. Spear* (1997) 520 U.S. 154, 175. However, the court finds such a right to judicial review is insufficient to establish Intervenor "interest" in this matter. To adopt Intervenor's position would mean that any party who challenges a decision made by the

Assistant Secretary--Indian Affairs could continuously file writs and appeals, effectively nullifying the finality provision of 25 C.F.R. § 2.6(c).

The court is not persuaded by Intervenor's argument that the subsequent Burdick January 12, 2011 letter is a non-final appealable decision which keeps open issues of Tribal government, membership and leadership. This letter simply reflects Burdick's acknowledgement of the December 22, 2010, decision and sets forth steps taken by Burdick to implement the December 22, 2010 decision. Moreover, even absent the subsequent January 12, 2011, Burdick letter and the subsequent Special General Council meeting of the Tribe electing Burley as the Tribe's Chairperson, the effect of the December 22, 2010, decision alone removes Intervenor's "interest" in this matter. The December 22, 2010, decision specifically rescinds action taken by the BIA requiring the Tribe "to organize in a formal governmental structure," rescinds action taken by the BIA in not recognizing any government for the Tribe, rescinds action taken by the BIA in not recognizing Sylvia Burley as Chairperson of the Tribe, and specifically recognizes the validity of Resolution GC 98-01 (which identifies the members of the Tribe as Yakima Dixie, Silvia Fawn Burley, Rashel Kawehilani Reznor, Anjelica Josett Paulk and Tristian Shawnee Wallace. Via such rescission, the BIA impliedly recognizes the Tribe's existing government, recognizes Burley as Chairperson and recognizes the validity of GC 98-01 – precisely the issues acknowledged by Burdick in his January 12, 2011 letter.

Nor is the court persuaded by the Commission's argument that Intervenor's are subject to mandatory joinder under CCP §389(a)(ii). As discussed above, it is the Tribe that has standing to assert a claim to the RSTF monies, not the individual members. Thus, Intervenor's, even if members of the Tribe, lack standing to assert individual claims to the RSTF monies both in this court and to the Commission. Intervenor's claims are dependent on both their membership in the Tribe and the BIA's recognition of Tribal government and leadership – both issues the parties agree the court is without jurisdiction to decide. Again, the court recognizes that the December 22, 2010 decision is subject to writ review in Federal court. However, the court finds the outcome of such review is speculative and does not create a "substantial risk of double, multiple, or otherwise inconsistent obligations" as required for compulsory joinder under CCP §389(a)(ii). The December 22, 2010 decision definitively establishes the Tribe's membership, governing body and leadership. In light of this decision, and the fact that Intervenor's lack standing to assert individual claims to RSTF monies, Intervenor's remedy following disbursement of RSTF monies by the Commission to the Tribe, is not against the Commission, but against the Tribe. The Commission is protected by December 22, 2010 decision.



Judge Ronald L. Styn

PP 35

<p style="text-align: center;"><b>Superior Court of California</b>  <b>County of San Diego</b>  <b>SIGN-IN SHEET</b></p>	Calendar No.: 32, 33, 34, 35
	Court Use Only

**CASE:** 37-2008-00075326-CU-CO-CTL - California Valley Miwok Tribe vs. The California Gambling Control Commission

**EVENT TYPE:** Demurrer / Motion to Strike

**EVENT DATE/TIME:** 03/11/2011 2:00 pm

**JUDGE:** Ronald L. Styn

**DEPARTMENT:** C-62

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
Cates, Sylvia A	The California Gambling Control Commission et. al. [DFN]	<i>Sylvia Cates</i>
CORRALES JR, MANUEL	California Valley Miwok Tribe et. al. [PLN]	<i>Manuel Corrales</i>
<del>-FREEMAN, RICHARD M</del> <i>JOHN COLLINS</i>	California Valley Miwok Tribe California et. al. [INV]	<i>John Collins</i>
<del>Cates</del> Gates, Sylvia A	The California Gambling Control Commission et. al. [DFN]	<i>Sylvia Gates</i>
KAUFMAN, PETER H	The California Gambling Control Commission et. al. [DFN]	
Rosette, Robert A	California Valley Miwok Tribe et. al. [PLN]	<i>Robert Rosette</i>
Singleton, Terry	California Valley Miwok Tribe et. al. [PLN]	
Wolfum, Thomas W	Azevedo, Antone et. al. [INP]	<i>Thomas Wolfum</i>

**EXHIBIT “34”**

**FILED**  
Clerk of the Superior Court

APR 20 2011

By: H. CHAVARIN, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

**CALIFORNIA VALLEY MIWOK TRIBE** Case No. 37-2008-00075326-CU-CO-CTL

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL  
COMMISSION,**

Defendant.

**ORDER GRANTING IN PART EX  
PARTE APPLICATIONS FOR STAY  
OF ENTRY OF JUDGMENT**

Date: April 6, 2011

Time: 9:00 a.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: May 13, 2011

This cause came on for hearing before the undersigned on April 6, 2011, at 9:00 a.m., upon the ex parte applications of Defendant CALIFORNIA GAMBLING CONTROL COMMISSION ("the Commission") and Intervenor CALIFORNIA VALLEY MIWOK TRIBE, CALIFORNIA (a.k.a. SHEEP RANCH RANCHERIA OF ME-WUK INDIANS, CALIFORNIA), YAKIMA DIXIE, VELMA WHITEBEAR, ANTONIA LOPEZ, ANTONE AZAVEDO, MICHAEL MENDIBLES, and EVELYN WILSON ("Intervenors"), seeking an

1 order staying entry of judgment against the Commission with  
2 respect to this Court's previous Order of March 11, 2011  
3 granting judgment on the pleadings, and other relief, in  
4 light of a letter dated April 1, 2011 from the Assistant  
5 Secretary, Larry Echo Hawk, of the U.S. Department of the  
6 Interior ("Assistant Secretary"), setting aside his  
7 previous December 22, 2010 decision letter, and stating  
8 that a reconsidered decision will be issued; Randall Pinal,  
9 Deputy Attorney General, appearing for the Commission;  
10 Matthew McConnell, Esq., appearing for the Intervenor;  
11 Terry Singleton, Esq., and Manuel Corrales, Jr., Esq.,  
12 appearing for Plaintiff CALIFORNIA VALLEY MIWOK TRIBE; and  
13 due notice having been given to all interested parties; the  
14 Court having read and considered the papers submitted; the  
15 Court having heard and considered the argument of counsel;  
16 and good cause appearing therefor:

17 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

18 1. The ex parte applications of Defendant and  
19 Intervenor are granted in part, as set forth herein.

20 2. The entry of judgment against the Commission shall  
21 be stayed pending further order of this Court;

22 3. The effect of the Court's prior rulings shall  
23 likewise be stayed pending further order of this Court.

24 These rulings include: (1) Order of March 11, 2011,  
25 granting reconsideration and denying intervention; (2)  
26 Order of March 11, 2011, granting judgment on the pleadings  
27 as against the Commission; and (3) Order ruling Plaintiff's  
28 demurrer to the Complaint in Intervention is moot, in light

1 of the Court's ruling denying intervention. As a result of  
2 these rulings being stayed, Intervenorors are reinstated as  
3 fully participating parties to this case.

4 4. The parties (which includes Intervenorors) may  
5 conduct discovery, unless and until otherwise ordered by  
6 the Court.

7 5. Except for discovery related motions, no  
8 dispositive motions are permitted, unless or until  
9 otherwise ordered by the Court.

10 6. Plaintiff's motion for an award for pre-judgment  
11 interest, set for April 22, 2011, is off calendar, without  
12 prejudice to re-file, pending entry of judgment.


13 7. The Intervenorors' motion for reconsideration, set  
14 for May 13, 2011, is off calendar, without prejudice.

15 8. The Court sets a Case Management Conference for  
16 July 15, 2011, at 10:00 a.m., in Department 62. The  
17 present trial date of May 13, 2011, and the pre-trial  
18 conference, along with other previously set dates, are all  
19 vacated.

20 9. Should the Assistant Secretary issue his  
21 reconsidered decision before the Case Management Conference  
22 of July 15, 2011, the parties shall immediately notify the  
23 Court.

24 **IT IS SO ORDERED.**

25  
26  
27 Dated: 4-20-11

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\_\_\_\_\_  
Hon. Ronald L. Styn  
Superior Court Judge



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4 APPROVED AS TO FORM:  
5

6 Date:

7 KAMALA D. HARRIS  
8 Attorney General of California  
9 SARA J. DRAKE  
10 Senior Asst. Attorney General  
11 RANDALL A. PINAL  
12 Deputy Attorney General

13 

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RANDALL A. PINAL, Esq.  
14 Deputy Attorney General  
15 Attorneys for Defendant  
16 CALIFORNIA GAMBLING CONTROL  
17 COMMISSION

18 Date:

19 

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

22 Date:

23 SINGLETON & ASSOCIATES

24 

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Terry Singleton, Esq.  
25 Attorneys for Plaintiff  
26 CALIFORNIA VALLEY MIWOK TRIBE  
27  
28

1  
2 Date:

SHEPPARD, MULLIN, RICHTER &  
HAMPTON, LLP

3  
4  
5  
6  
7 Date:

Matthew S. McConnell, Esq.  
Attorneys for Intervenors

THOMAS W. WOLFRUM

8  
9  
10 Attorney for Intervenors  
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1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:  
  
17140 Bernardo Center Drive, Suite 370  
San Diego, California 92128
3. On *(date)*: February 21, 2013 I mailed from *(city and state)*: San Diego, California  
the following **documents** *(specify)*:

4. I served the documents by enclosing them in an envelope and *(check one)*:

a. ☒ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.

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

5. The envelope was addressed and mailed as follows:

a. **Name** of person served:

b. **Address** of person served:

(SIGNATURE OF PERSON COMPLETING THIS FORM)

SHORT TITLE: CVMT v. CGCC

CASE NUMBER:  
37-2008-00075326-CU-CO-CTL**ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (DOCUMENTS SERVED)***(This Attachment is for use with form POS-030)***The documents that were personally served by first-class mail are as follows *(describe each document specifically)*:**

Notice of Hearing and Motion for Order Lifting the Effect of March 11, 2011 Order Granting Reconsideration and Denying Intervention

Memorandum of Points and Authorities in Support of Motion for Order Lifting the Effect of March 11, 2011 Order Granting Reconsideration and Denying Intervention

Declaration of Manuel Corrales, Jr. in Support of Motion for Order Lifting the Effect of March 11, 2011 Order

Plaintiff's Request for Judicial Notice Re: Plaintiff's Motion for Judgment on the Pleadings and Motion Lifting Stay Re Order Denying Intervention; Declaration of Manuel Corrales, Jr.

SHORT TITLE: CVMT v. CGCC	CASE NUMBER: 37-2008-00075326-CU-CO-CTL
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**ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)***(This Attachment is for use with form POS-030)***NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:**

<u>Name of Person Served</u>	<u>Address (number, street, city, and zip code)</u>
Neil D. Houston, Esq.	1300 "I" St. Suite 125 Sacramento, CA 95814
Matthew McConnell, Esq. Sheppard Mullin Ritcher&Hampton LLP	12275 El Camino Real, Suite 200 San Diego, CA 92130
Thomas Wolfrum, Esq. Attorney at Law	1333 North California Blvd., Suite 150 Walnut Creek, California 94596
Terry Singleton, Esq. SINGLETON & ASSOCIATES	1950 Fifth Ave., Suite 200 San Diego, CA 92101
Robert Rosette, Esq. ROSETTE & ASSOCIATES	193 Blue Ravine Rd., Suite 255 Folsom, California 95630