

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
RICHARD M. FREEMAN, Cal. Bar No. 61178
3 MATTHEW S. MCCONNELL, Cal. Bar No. 209672
12275 El Camino Real, Suite 200
4 San Diego, California 92130-2006
Telephone: 858-720-8900
5 Facsimile: 858-509-3691
JAMES F. RUSK, Cal. Bar. No. 253976
6 Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
7 Telephone: 415-434-9100
Facsimile: 415-434-3947

8 Attorneys for Intervenor
9

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

13 CALIFORNIA VALLEY MIWOK
14 TRIBE,

Plaintiff,

15 v.

16 CALIFORNIA GAMBLING CONTROL
COMMISSION, et al.,

17 Defendants.
18

19
20 CALIFORNIA VALLEY MIWOK
TRIBE, CALIFORNIA (a.k.a. SHEEP
RANCH RANCHERIA OF ME-WUK
21 INDIANS, CALIFORNIA), YAKIMA K.
DIXIE, VELMA WHITEBEAR,
22 ANTONIA LOPEZ, ANTONE
AZEVEDO, MICHAEL MENDIBLES,
23 AND EVELYN WILSON,

24 Intervenor.
25
26
27
28

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

NOTICE OF LODGMENT OF EXHIBITS
IN SUPPORT OF INTERVENORS'
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION

Date: April 26, 2013

Time: 2:00 p.m.

Dept.: C-62

Judge: The Hon. Ronald L. Styn

Intervenors hereby lodge the following exhibits in support of their motion for summary judgment or summary adjudication.

<u>Exhibit</u>	<u>Description</u>
1.	Plaintiff's First Amended Complaint Combined With Petition for Writ of Mandate ("FAC")
2.	Excerpts from the California Tribal-State Gaming Compact (Division of Gambling Control February 2002) ("Compact")
3.	Declaration of Chairwoman Silvia Burley in Support of Plaintiff's Reply to Defendant's and Intervenors' Opposition to Motion for Reconsideration
4.	Feb. 11, 2005 Letter from AS-IA Michael Olsen to Yakima Dixie ("2005 Decision")
5.	April 2, 2007 Letter from BIA Regional Director to Silvia Burley ("2007 Decision")
6.	July 19, 2005 Letter from BIA Awarding Official Janice Whipple-DePina to Silvia Burley
7.	Dec. 14, 2007 Letter from BIA Superintendent Troy Burdick to Silvia Burley
8.	December 22, 2010 Letter from AS-IA Larry Echo Hawk to Yakima Dixie ("December 22 Decision")
9.	December 23, 2010 Public Notice Re Special Meeting of the General Council of the California Valley Miwok Tribe
10.	January 12, 2011 Letter from BIA Superintendent Troy Burdick to Silvia Burley
11.	February 9, 2011 Notice of Appeal from Sheppard Mullin to BIA Regional Director Amy Dutschke
12.	April 1, 2011 Letter from AS-IA Larry Echo Hawk to Yakima Dixie
13.	August 31, 2011 Letter from AS-IA Larry Echo Hawk to Yakima Dixie

1		("August 31 Decision")
2	14.	Joint Status Report in <u>California Valley Miwok Tribe v. Salazar</u> , No. 1:11-cv-
3		00160-RWR (D.D.C.)
4	15.	Memorandum Opinion and Order in <u>California Valley Miwok Tribe v. Salazar</u> ,
5		<u>No. 1:11-cv-00160-RWR (D.D.C.)</u>
6	16.	October 21, 2011 Tentative Order Denying Plaintiff's Motion for Entry of
7		Judgment
8	17.	Civil Docket Report for <u>California Valley Miwok Tribe v. Salazar</u> , No. 1:11-
9		cv-00160-RWR (D.D.C.)
10	18.	Plaintiffs' Memorandum of Points and Authorities in Support of Their Motion
11		for Summary Judgment in <u>California Valley Miwok Tribe v. Salazar</u> , No. 1:11-
12		cv-00160-RWR (D.D.C.)
13	19.	Plaintiffs' First Amended Complaint in <u>California Valley Miwok Tribe v.</u>
14		<u>Salazar</u> , No. 1:11-cv-00160-RWR (D.D.C.)
15	20.	August 4, 2005 Letter from California Gambling Control Commission to Silvia
16		Burley
17	21.	June 27, 2006 Letter from California Gambling Control Commission to Silvia
18		Burley
19	22.	June 26, 2007 Letter from California Gambling Control Commission to Karla
20		Bell
21	23.	January 3, 2008 Letter from California Gambling Control Commission to Silvia
22		Burley
23	24.	December 12, 2008 Letter from Associate Solicitor of Indian Affairs Edith
24		Blackwell to California Deputy Attorney General Peter Kaufman
25	25.	January 14, 2009 Letter from Associate Solicitor of Indian Affairs Edith
26		Blackwell to California Deputy Attorney General Peter Kaufman
27	26.	First Amended Complaint in <u>California Gambling Control Commission v.</u>
28		

1		<u>Sylvia Burley, et al., No. 05AS05386 (Sac. Cnty Sup. Ct.)</u>
2	27.	Silvia Burley's Demurrer in <u>California Gambling Control Commission v.</u>
3		<u>Sylvia Burley, et al., No. 05AS05386 (Sac. Cnty Sup. Ct.)</u>
4	28.	Order Sustaining Demurrer in <u>California Gambling Control Commission v.</u>
5		<u>Sylvia Burley, et al., No. 05AS05386 (Sac. Cnty Sup. Ct.)</u>
6	29.	March 26, 2004 Letter from BIA Superintendent Dale Risling to Silvia Burley
7	30.	November 6, 2006 Letter from BIA Superintendent Troy Burdick to Silvia
8		Burley and Yakima Dixie
9	31.	April 11, 2007 Public Notice in Amador Ledger Dispatch Re Organization of
10		California Valley Miwok Tribe
11	32.	Declaration of Silvia Burley In Support of Plaintiff's Motion for Summary
12		Judgment, or, Alternatively, Summary Adjudication
13	33.	Sept. 24, 2007 Letter from California Gambling Control Commission to Silvia
14		Burley
15	34.	Excerpts from California Gambling Control Commission Response to CVMT
16		Form Interrogatories, Set Two

19 Dated: March 6, 2013

20 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

22 By



23 MATTHEW S. McCONNELL

24 Attorneys for Intervenors

EXHIBIT 1

1 Manuel Corrales, Jr., SBN 117647
2 **Attorney at Law**
3 11753 Avenida Sivrita
4 San Diego, CA 92128
5 Phone: (858) 521-0634
6 Fax: (858) 521-0633
7 E-mail: mannycorrales@yahoo.com

8 Terry Singleton, Esq. SBN 58316
9 **SINGLETON & ASSOCIATES**
10 1950 Fifth Avenue, Suite 200
11 San Diego, CA 92101
12 Phone: (619) 239-3225
13 Fax: (619) 702-5592
14 E-mail: terry@terrysingleton.com

15 Attorneys for Plaintiff
16 CALIFORNIA VALLEY MIWOK TRIBE

17
18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DISTRICT**
20

21 CALAIFORNIA VALLEY MIWOK
22 TRIBE,

23 Plaintiff,

24 v.

25 THE CALIFORNIA GAMBLING
26 CONTROL COMMISSION; and DOES
27 1 THROUGH 50, Inclusive,

28 Defendants.

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

**FIRST AMENDED COMPLAINT COMBINED
WITH PETITION FOR WRIT OF MANDATE**

1. INJUNCTIVE RELIEF (CCP SECTION 526)
2. DECLARATORY RELIEF (CCP SECTION 1060)
3. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE (DOE DEFENDANTS 21-50 ONLY)
4. WRIT OF MANDATE (CCP SECTION 1085)

ICJ: Hon. Joan Lewis

Dept: 65

Trial Date: None set

1
2
3
4
5
6
7 Plaintiff alleges as follows:

8 **PARTIES**

- 9 1. Plaintiff CALIFORNIA VALLEY MINOK TRIBE ("MIWOK TRIBE" or "PLAINTIFF")
10 is a federally recognized Indian Tribe situated in Stockton, California.
11 2. Defendant CALIFORNIA GAMBLING CONTROL COMMISSION (The
12 Commission) was created by enactment of Senate Bill 8 (Lockyer, Chapter 867,
13 Statutes of 1997), a measure that created the Gambling Control Act. The Commission
14 has jurisdiction over operation, concentration, and supervision of gambling
15 establishments and over all persons or things having to do with the operations of
16 gambling establishments in the State of California. In addition, The Commission
17 serves as Trustee and/or Administrator of various funds in the State Treasury,
18 including the Gambling Control Fund established in the Gambling Control Act, the
19 Indian Gaming Revenue Sharing Trust Fund ("RSTF"), and the Indian Gaming Special
20 Distribution Fund ("SDF").
21 3. Plaintiff is ignorant of the true names and capacities of the defendants named
22 herein as DOES, and will seek leave of court to amend the complaint to set forth their
23 true names when ascertained

24 **VENUE**

- 25 4. Pursuant to Cal. Bus. & Prof. Code section 19807, venue is established in San
26 Diego County, California.
27
28

GENERAL ALLEGATIONS

5. In September of 1999, the State of California ("the State") entered into a "Tribal-State Gambling Compact" ("Compact") with various Indian Tribes in the State, which enabled these Tribes to conduct gambling operations and build gambling casinos for that purpose. A copy of this Compact is attached and marked as Exhibit "1". In exchange, these Compact Tribes are required to contribute a percentage of their winnings to the RSTF and SDF.

6. At all times herein mentioned, the Miwok Tribe is and was a non-compact Tribe with no casinos or gambling operations. As a result, it qualifies as a recipient of funds from the RSTF. The Commission, as Trustee of the RSTF, distributes the monies received into the RSTF on a quarterly basis to non-compact Tribes, such as the Minok Tribe. Recipient Tribes, including the Miwok Tribe, are entitled to receive up to \$1.1 million per year from the RSTF. Section 4.3.2.1(a) of Compact. If the RSTF does not have sufficient funds to pay the non-compact Tribe \$1.1 million per year, Cal. Gov. Code § 12012.90(d) require The Commission to take funds from the SDF to make up any shortfall, and do so "without delay to eligible recipient Indian Tribes ...".

7. At all times herein mentioned, the Miwok Tribe was and is eligible to receive funds from the RSTF and shortfall funds from the SDF, so as to be given its entitled \$1.1 million per year pursuant to Section 4.3.2.1(a) of The Commission and Cal. Gov. Code §§ 12012.75 and 12012.90. Cal. Gov. Code Section 12012.90(e) mandates, i.e., requires, that the Commission "...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."

8. In 1994, Congress enacted the Federally Recognized Tribe List Act of 1994, Pub. La 103-454, and the Miwok Tribe's name was placed on the list of federally recognized tribes. In 1998, the Miwok Tribe established a tribal council, by Resolution No. GC-98-01. On June 25, 1999, the Bureau of Indian Affairs ("BIA") recognized

1 Silvia Burley ("Burley") of the Miwok Tribe as tribal chairperson.

2 9. In late 1999, a leadership dispute developed within the Miwok Tribe. On July 12,
3 2000, the BIA again recognized Burley as chairperson of the Miwok Tribe, amid the
4 Miwok Tribe's efforts to have the BIA approve its constitution, and the Miwok Tribe's
5 ongoing internal leadership disputes.

6 10. In September 2001, the Miwok Tribe adopted a new version of its constitution,
7 and sent it to the BIA for approval. On October 31, 2001, the BIA declined to approve
8 the proposed new constitution, but recognized the Miwok Tribe as an "unorganized
9 Tribe".

10 11. In November of 2003, the BIA acknowledged the existence of a "government-to-
11 government relationship" with the Miwok Tribe through the tribal council that Burley
12 chaired.

13 12. On March 26, 2004, the BIA advised the Miwok Tribe that it still considered the
14 tribe to be unorganized, despite the passage of the Native American Technical
15 Corrections Act of 2004, giving Tribes the power to adopt governing documents of their
16 own. In the letter, the BIA asked the Miwok Tribe to draft a constitution that identified
17 more of its membership base. However, the letter still recognized Burley as "a person
18 of authority" with respect to the Miwok Tribe.

19 13. In March 2005, the BIA met with the Miwok Tribe in an effort to resolve the tribe's
20 ongoing leadership disputes.

21 14. The BIA has continued to recognize the Miwok Tribe only as an "unorganized"
22 tribe, because it has not adopted a governing constitution that identified other putative
23 members of the tribe. It also will only recognize Burley as a "person of authority" for
24 the Miwok Tribe, rather than its tribal chairperson.

25 15. Because of the ongoing Miwok tribal leadership dispute and the BIA's decision to
26 recognize the Miwok Tribe as "unorganized" and Burley as mostly a "person of
27 authority", The Commission notified the Miwok Tribe in august of 2005, that it would be
28 withholding distributions from the RSTF. The Commission advised it would be doing

1 so, until the Miwok Tribe's leadership was formally established.

2 16. Despite repeated requests that The Commission distribute to the Miwok Tribe its
3 share of funds under the RSTF, The Commission has refused, and continues to refuse,
4 to do so.

5 17. In 2005, the Miwok Tribe filed suit in the U.S. District Court in Washington, D.C.,
6 seeking declaratory and injunctive relief against the BIA. The complaint alleged the
7 BIA was interfering with the Miwok Tribe's internal affairs by refusing to permit it to
8 adopt its own constitution. The District Court dismissed the complaint as failing to state
9 a claim, because under 25 U.S.C. § 476(h), the BIA can still require the tribe to
10 organize its tribe so as to identify and include all putative mandates. There was no
11 decision in the merits of whether the Miwok Tribe was "organized" or a recognized
12 Tribe. The decision is presently on appeal. Despite this, The Commission has
13 erroneously interpreted the District Court's Decision as a decision on the merits of
14 these issues, and has wrongfully asserted that as an additional basis to withhold
15 distribution of money to the Miwok Tribe from the RSTF.

16 18. Pursuant to Cal. Gov. Code § 12012.75 and 12012.90(e), The Commission has a
17 mandatory duty to distribute funds from the RSTF to the Miwok Tribe, and under
18 Section 4.3.2.1(b) it has no discretion in deciding whether a non-compact Tribe is
19 entitled to such funding.

20 21 **FIRST CAUSE OF ACTION**

22 **(Injunctive Relief Against Defendant The Commission**

23 **The California Gambling Control Commission and DOES 1-10)**

24 19. The allegations in paragraphs 1 through 18 are realleged and incorporated
25 herein by reference.

26 20. At all times herein mentioned, Cal. Gov. Code Section 12012.90(e) was and is in
27 full force and effect. It states that The Commission has a mandatory duty to distribute
28 RSTF payments to non-compact Tribes such as the Miwok Tribe. It specifically states:

1 "The California Gambling Control Commission shall make quarterly payments from the
2 Indian Gaming Revenue Sharing Trust Fund to each eligible recipient Indian Tribe
3 within 45 days of the end of each fiscal quarter." (Cal. Gov. Code Section
4 12012.90(e)(2))(Emphasis added). In addition, Cal. Gov. Code Section 12012.75
5 provides:

6 There is hereby created in the State Treasury a special fund
7 called the "Indian Gaming Revenue Sharing Trust Fund" for
8 the receipt and deposit of moneys derived from gaming
9 device license fees that are paid into the fund pursuant to
10 the terms of tribal-state gaming compacts for the purpose of
11 making distributions to noncompact tribes. Moneys in the
12 Indian Gaming Revenue Sharing Trust Fund shall be
13 available to the California Gambling Control Commission,
14 upon appropriation by the Legislature, for the purpose of
15 making distributions to non-compact tribes, in accordance
16 with distribution plans specified in tribal-state gaming
17 compacts (Emphasis added).

18 As stated, Cal. Gov. Code Section 12012.75 requires The Commission to distribute
19 RSTF payments in accordance with the terms of the Compact ("...shall be
20 available...for the purpose of making distributions to non-compact tribes...). In
21 addition, Cal. Gov. Code Section 12012.90(e)(2) specifically mandates and directs the
22 Commission to distribute RSTF money to non-compact tribes on a quarterly basis
23 ("...shall make quarterly [RSTF] payments...to each eligible [non-compact tribe]...).

24 21. Section 4.3.2.1(a) provides that non-compact tribes are to receive \$1.1 million
25 per year from the RSTF. It states in relevant part as follows:

26 The Tribe agrees with all other Compact Tribes that are
27 parties to compacts having this Section 4.3.2, that each Non-
28 Compact Tribe in the State shall receive the sum of \$1.1
million per year ...

29 Section 4.3.2.1(a) further provides that if there is not enough money in the RSTF to pay
30 each non-compact tribe \$1.1 million per year, then the funds are to be distributed in
31 equal share. However, Cal. Gov. Code Section 12012.90(d) requires The Commission
32 to take funds from the SDF to make up any shortfall, and that The Commission "shall
33 distribute [such] moneys without delay to eligible recipient Indian Tribes ..." (Emphasis

1 added).

2 22. Under the Compact (and pursuant to Cal. Gov. Code Section 12012.90(e)), the
3 RSTF payments are to be made quarterly, and The Commission is to be a trustee of
4 these funds for distribution purposes, having no discretion on whether to disburse the
5 funds or how each tribe uses the funds. Section 4.3.2.1(b) provides in pertinent part as
6 follows:

7 ... The Commission shall have no discretion with respect to
8 the use or disbursement of the trust funds. Its sole authority
9 shall be to serve as a depository of the trust funds and to
10 disburse them on a quarterly basis to Non-Compact Tribes
11 ...

12 23. Despite these clear statutory and Compact requirements, The Commission has
13 taken it upon itself, wrongfully, to withhold RSTF money to the Minok Tribe because it
14 is not "organized". Under Section 4.3.2.1(b), The Commission has no discretion to
15 make that determination. Moreover, nowhere in the Compact is there any requirement
16 that a Non-Compact Tribe be "organized" in order to be entitled to distribution
17 payments under the RSTF. To the contrary, all that the Compact requires is that the
18 Non-Compact Tribe be "recognized", either formally or informally, to be eligible for
19 payment. For example, Section 2.12 of the Compact states:

20 "Tribe" means a federally-recognized Indian tribe, or
21 an authorized official or agency thereof. (Emphasis
22 added.)

23 24. Despite the disputes involving the Minok Tribe's leadership, the BIA has
24 recognized, and continues to recognize, Burley as a 'person of authority', and the
25 Miwok Tribe as an "unorganized Tribe". The language of Section 2.21 of the Compact
26 requires only that the Tribe be federally recognized, not necessarily "organized". The
27 BIA has to date never stated that the Miwok Tribe was no longer recognized, or that
28 Burley is no longer a "person of authority". Moreover, Burley fits the definition of
"spokesperson" for the Tribe under Section 2.19 of the Compact which states: "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."

1 (Emphasis added). Under the existing Tribal "customs and traditions", Burley has been
2 "selected" to represent the Tribe, despite the BIA not yet approving the Tribe's
3 constitution. Nowhere in the Compact is there any requirement that the Tribe have a
4 constitution approved by the BIA in order to be eligible for RSTF money. Nor does the
5 Compact require that the selected Tribal spokesperson be acceptable to the BIA before
6 RSTF money can be distributed to the Tribe.

7 25. Accordingly, the plaintiff is entitled to continued distribution of moneys under the
8 RSTF, and The Commission's decision to withhold such funds is wrongful, an abuse of
9 its powers, and a breach of its fiduciary duties. The Commission's decision to withhold
10 such funds is based in part on its erroneous interpretation of the U.S. District Court
11 Decision in *California Valley Miwok Tribe v. The United States* (D.D.C. 2006)(424
12 F.Supp.2d 197, which made no ruling on the merits of the Miwok Tribe's entitlement to
13 RSTF money in California, or The Commission's fiduciary duties to distribute those
14 funds to plaintiff. Indeed, The Commission was not a party to that action.

15 26. To date, The Commission has wrongfully withheld from the Tribe over \$3 million
16 in RSTF money.

17 27. Plaintiff has repeatedly requested and demanded that The Commission distribute
18 such sums to Plaintiff, but The Commission has refused.

19 28. Plaintiff has no adequate remedy at law.

20 29. Grounds exist for injunctive relief under CCP § 526(a)(7), because the requested
21 relief involves an obligation arising from a trust. The RSTF is a "trust" fund, and The
22 Commission is contractually and statutorily designated to "serve as the trustee of the
23 fund." (Section 4.3.2.1(b) of Compact).

24 30. Accordingly, Plaintiff requests the court order The Commission to discharge its
25 fiduciary and mandatory, statutory duties, and distribute to the Plaintiff its entitled share
26 of RSTF money as herein alleged. Plaintiff is requesting that the Commission resume
27 payment of RSTF money to the Tribe (not Burley), as it did before, by sending RSTF
28 checks made out to the Tribe in care of Burley, the existing Tribe's spokesperson as

1 that term is defined under Section 2.19 of the Compact.

2 **SECOND CAUSE OF ACTION**

3 **(Declaratory Relief as Against Defendant The**

4 **California Gambling Control Commission and DOES 1-10)**

5 31. The allegations in paragraphs 1 through 30 are realleged and incorporated
6 herein by reference.

7 32. An actual controversy has arisen and now exists between Plaintiff and
8 Defendants concerning defendant Commission's (and relevant DOE defendants')
9 obligations under the Compact and under the California Government Code, including,
10 but not limited to, Cal. Gov. Code Section 12012.75 and Cal. Gov. Code Sections
11 12012.90(d) and (e), and other statutes and regulations, to distribute moneys to
12 Plaintiff under the RSTF, and Plaintiff's entitlement to such money. CCP § 1060. The
13 dispute requiring judicial determination under CCP § 1060, includes, but is not limited
14 to The Commission's decision to withhold such funding, because Plaintiff is purportedly
15 not an "organized" tribe. Plaintiff disputes The Commission's actions, and contends
16 that The Commission has no discretion to withhold the RSTF moneys on such
17 grounds, and alleges that the Tribe is entitled to RSTF payments, because the BIA still
18 recognizes it as an "unorganized" tribe and still recognizes Silvia Burley, a tribal
19 member, as an authorized representative of the Miwok Tribe. Moreover,
20 notwithstanding the BIA's position, Plaintiff contends it is entitled to distribution of
21 RSTF money, because it remains a federally recognized Tribe, by virtue of having
22 been placed on the federal list of recognized tribes, as herein alleged, because Burley
23 is an authorized selected spokesperson of the Tribe within the meaning of Section 2.19
24 of the Compact, and because the Tribe's status as "unorganized" does not disqualify it
25 from receiving those funds.

26 33. At all times herein mentioned, the Miwok Tribe was and is a third party
27 beneficiary under the Compact with respect to the RSTF payments, and with respect to
28 the SDF for shared full payments into the RSTF. Section 4.3.2.1(a)(1) states in

1 pertinent part as follows:

2 (a) For the purposes of this Section 4.3.2.1(b).3.2 and
3 section 5.0, the following definitions apply:

4 (i) Non-Compact Tribes shall be deemed
5 third party beneficiaries of this and other
6 compacts identical in all material
7 respects ...

8 34. Accordingly, Plaintiff is an “interested” person with a beneficial interest under the
9 Compact. CCP Section 1060 thus provides in pertinent part as follows:

10 Any person interested under a written instrument ... or under
11 a contract, or who desires a declaration of his or her rights or
12 duties with respect to another, ... may, in cases of actual
13 controversy relating to the legal rights and duties of the
14 respective parties, bring an original action ... in the superior
15 court for a declaration of his or her rights and duties ...,
16 including a determination of any question of construction or
17 validity arising under the instrument or contract ...
18 (Emphasis added.)

19 As a third party beneficiary under the Compact, Plaintiff Miwok Tribe is a “person
20 interested under a written instrument ... or under a contract ...” The Compact is a
21 written instrument or “contract”. Pursuant to CCP § 1060, the Plaintiff seeks a judicial
22 declaration of its rights under the Compact with respect to RSTF payments, and The
23 Commission duties as a “trustee” of the RSTF to make payments to Plaintiff. Plaintiff
24 further seeks a determination of a proper construction of Section 4.3.2.1, including, but
25 not limited to, the phrase: “The Commission shall have no discretion with respect to the
26 use or disbursement of the trust funds [RSTF].” The Commission contends that it can
27 withhold RSTF payment from the Miwok Tribe because it is “unorganized”. Plaintiff
28 disputes this, and contends that The Commission has made RSTF payments to it in
the past when it was purportedly not “organized”. Plaintiff contends The Commission
has no discretion to suddenly stop making payments, because the Miwok Tribe has an
ongoing tribal leadership dispute. Plaintiff further contends that The Commission has
no discretion to withhold RSTF payment based on The Commission’s interpretation of
an unrelated U.S. District Court Decision, and a subsequent U.S. Court of Appeals

1 Decision, between the Plaintiff and the BIA. In any event, Plaintiff contends The
2 Commission's interpretation of those Decisions is erroneous. Plaintiff contends The
3 Commission has breached its fiduciary duties under the Compact by wrongfully
4 withholding Plaintiff's entitled share of RSTF payments. The Commission disputes
5 Plaintiff's claims and contends it has a right to withhold RSTF payments because
6 Plaintiff is not an "organized" tribe and because of a Tribal leadership dispute. Plaintiff
7 contends, however, that the Compact does not require Plaintiff to be "organized", just
8 recognized through an "authorized representative". (Section 2.21 of the Compact).
9 Plaintiff contends that the BIA has recognized Burley as an "authorized representative"
10 of the Miwok Tribe while it is "unorganized". Moreover, Section 2.19 of the Compact
11 only requires that Burley be "selected" as the "primary spokesperson for the Tribe"
12 under the Tribe's "customs or traditions", and Plaintiff alleges that Burley fits that
13 definition and that the Compact requires nothing more for entitlement to RSTF
14 payments. The Commission has wrongfully imposed requirements which the federal
15 government imposes on Tribes who wish to contract with the federal government for
16 638 contact funding. One of those requirements is that the Tribe requesting 638
17 federal funding be organized under a constitution acceptable to the BIA. However, no
18 such requirement exists under the Compact in order for a non-compact Tribe to be
19 eligible to receive RSTF money. Indeed, non-compact Tribes do not "contract" with the
20 State of California or the Commission to get RSTF money. The Commission simply
21 distributes the funds to the Tribes from the State Treasury.

22 35. Plaintiff contends The Commission has wrongfully withheld, to date, over \$3
23 million, and desires a judicial determination of The Commission's duty to pay these
24 withheld funds to the Miwok Tribe via its authorized representative, Silvia Burley, as it
25 did before.

26 36. Plaintiff desires a judicial determination and declaration of Plaintiff's and The
27 Commission's (and relevant DOE defendants') rights and duties under the Compact
28 and relevant state law, including a proper and correct interpretation of the Compact

1 and relevant Cal. Gov. Code Sections and other statutory sections.

2
3
4 **THIRD CAUSE OF ACTION**

5 **(Intentional Interference With Prospective Economic**
6 **Advantage, As Against DOES 21-50)**

7 37. The allegations in paragraphs 1 through 48 are realleged and incorporated
8 herein by reference.

9 38. Upon information and belief, DOE defendants 21-50 have conspired with one
10 another to take over the Miwok Tribe, so they can build and operate a casino on its
11 land. To accomplish this, DOE defendants 21-50 have stirred up strife and contention
12 amid the Miwok Tribe leadership, making it difficult for the tribe to form an organized
13 constitution. This faction of conspirators have wrongfully influenced and persuaded
14 The Commission to withhold funding, because the Miwok Tribe is not "organized".
15 DOE defendants 21-50, upon further information and belief, have attacked the Miwok
16 Tribe's legitimacy through the BIA, hoping to form a coalition against Plaintiff to stop
17 funding and destroy the tribe as a constituted Native American Tribe. By doing so, this
18 faction of conspirators hope to take over the tribe and build and operate a tribal casino
19 for profit.

20 39. Accordingly, The Commission's decision to stop RSTF payments to Plaintiff is a
21 by-product of the efforts of DOE defendants 21-50 to take over the Tribe.

22 40. The actions of DOE defendants 21-50 were and are intentional, and have been,
23 and are, calculated to interfere with Plaintiff's rights and entitlement to distribution
24 payments under the RSTF. DOE defendants 21-50 have intentionally interfered with
25 Plaintiff's right to such funding, for the wrongful purposes as herein alleged.

26 41. As a legal result of DOE defendants 21-50's wrongful and intentional actions of
27 interfering with Plaintiff's prospective economic advantage relative to the RSTF
28 payments, Plaintiff suffered damages as herein alleged, including loss of RSTF money

1 in excess of \$1.1 million. To the extent such intentional interference involves private
2 (non-public entity) parties, Plaintiff will seek punitive damages against such individual,
3 because such conduct was and is despicable, fraudulent and oppressive.
4

5 **FOURTH CAUSE OF ACTION**

6 **(Writ of Mandate [CCP Section 1085] as Against Defendant**

7 **California Gambling Control Commission and DOES 1-10)**

8 42. The allegations in paragraphs 1 through 36 are realleged and incorporated
9 herein by reference.

10 43. Pursuant to Cal. Gov. Code Sections 12012.90(e)(2) and 12012.75, the
11 Commission has a legal ministerial duty to distribute RSTF to Plaintiff, a non-compact
12 Tribe eligible to receive such funds, and not to withhold RSTF money from Plaintiff on
13 grounds not provided for under the Compact.

14 44. The Commission violated its legal duties by withholding Plaintiff's entitled share
15 to RSTF money, and by refusing to distribute such funds to Plaintiff, for the reasons
16 alleged herein. The Commission intends to continue to violate its legal duties with
17 respect to distribution of RSTF money to Plaintiff, by refusing to release any RSTF
18 money to Plaintiff until Plaintiff settles its ongoing leadership dispute and obtains a
19 constitution acceptable to the BIA for 638 contract funding.

20 45. Plaintiff has a beneficial pecuniary interest in the issuance of a writ of mandate,
21 apart from that of the public at large, in that if this petition is granted, Plaintiff will receive
22 RSTF money that it is entitled to receive under the Compact, which Plaintiff needs for
23 education, medical care and other basic survival needs of the Tribe.

24 46. Plaintiff does not have a plain, speedy, and adequate remedy at law. Plaintiff is
25 informed and believes that there are no available legal procedures to redress the harm
26 that the Tribe will suffer if its requested relief is denied.

27 WHEREFORE, Plaintiff prays for judgment as follows:

28 1. For mandatory injunctive relief, ordering and commanding The Commission

1 and relevant DOE defendants to discharge their contractual and statutory
2 duties, and pay Plaintiff its entitled RSTF money, which the Commission is
3 wrongfully withholding.

- 4 2. For declaratory relief regarding the obligations of The Commission and
5 relevant DOE defendants to pay (and continue to pay) Plaintiff funds under
6 the RSTF, and the proper interpretation of the Compact with respect to those
7 duties, and Plaintiff's entitlement to the RSTF money withheld.
- 8 3. For a Writ of Mandate to be issued under CCP Section 1085, ordering the
9 Commission to pay withheld RSTF money to the Tribe, and to resume RSTF
10 payments to Plaintiff.
- 11 4. For punitive damages against DOE defendants 21-50 for actions amounting
12 to intentional interference with prospective economic advantage, according to
13 proof at trial.
- 14 5. For costs of suit and expenses of litigation.
- 15 6. For prejudgment interest.
- 16 7. For any relief consistent with the case made by the Complaint and embraced
17 within the issues, pursuant to CCP § 580(a).
- 18 8. For such other relief as the court deems just and proper.

19
20 DATED: July 28, 2008



21 Manuel Corrales, Jr., Esq.
22 Attorney for Plaintiff
23 The California Valley Miwok Tribe

24 **VERIFICATION**

25 I, Silvia Burley, the undersigned, say:

26 I am the selected spokesperson for Plaintiff CALIFORNIA VALLEY MIWOK
27 TRIBE, and I am authorized to make this verification on its behalf. I have read the
28 above **FOURTH CAUSE OF ACTION for Writ of Mandate [CCP Section 1085]** as

1 **Against the California Gambling Control Commission and DOES 1-10**, and I am
2 familiar with and its contents. I am informed and believe that the matters stated therein
3 are true and on that basis verify that the matters stated therein are true.

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

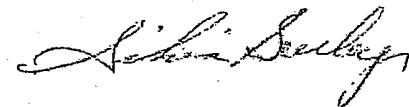
6 Executed this ____ day of July, 2008 at Stockton, California.

7
8
9 SILVIA BURLEY
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Against the California Gambling Control Commission and DOES 1-10, and I am
2 familiar with and its contents. I am informed and believe that the matters stated therein
3 are true and on that basis verify that the matters stated therein are true.

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

6 Executed this 26 day of July, 2008 at Stockton, California.

7
8 

9
10 SILVIA BURLEY
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

CALIFORNIA
TRIBAL-STATE
GAMING COMPACT

DIVISION OF GAMBLING CONTROL
FEBRUARY - 2002

**TRIBAL-STATE GAMING COMPACT
TABLE OF CONTENTS**

PREAMBLE		1
SECTION 1.0	PURPOSES AND OBJECTIVES	3
SECTION 2.0	DEFINITIONS	3
SECTION 3.0	CLASS III GAMING AUTHORIZED AND PERMITTED	6
SECTION 4.0	SCOPE OF CLASS III GAMING	6
SECTION 5.0	REVENUE DISTRIBUTION	10
SECTION 6.0	LICENSING	12
SECTION 7.0	COMPLIANCE ENFORCEMENT	24
SECTION 8.0	RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION	27
SECTION 9.0	DISPUTE RESOLUTION PROVISIONS	31
SECTION 10.0	PUBLIC AND WORKPLACE HEALTH, SAFETY AND LIABILITY	34
SECTION 11.0	EFFECTIVE DATE AND TERM OF COMPACT	40
SECTION 12.0	AMENDMENTS; RENEGOTIATIONS	40
SECTION 13.0	NOTICES	41
SECTION 14.0	CHANGES IN IGRA	42
SECTION 15.0	MISCELLANEOUS	42
INDEX		44



Generic Tribal-State - Compact 09-10-99
TRIBAL-STATE GAMING COMPACT
Between the * 1 (a Federally Recognized Indian Tribe)
and the STATE OF CALIFORNIA

This Tribal-State Gaming Compact is entered into on a government-to-government basis by and between the * 1, a federally-recognized sovereign Indian tribe (hereafter "Tribe"), and the State of California, a sovereign State of the United States (hereafter "State"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) (hereafter "IGRA"), and any successor statute or amendments.

PREAMBLE

A. In 1988, Congress enacted IGRA as the federal statute governing Indian gaming in the United States. The purposes of IGRA are to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; to provide a statutory basis for regulation of Indian gaming adequate to shield it from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; to ensure that gaming is conducted fairly and honestly by both the operator and players; and to declare that the establishment of an independent federal regulatory authority for gaming on Indian lands, federal standards for gaming on Indian lands, and a National Indian Gaming Commission are necessary to meet congressional concerns.

B. The system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III gaming activities lawful on the lands of federally-recognized Indian tribes only if such activities are: (1) authorized by a tribal ordinance, (2) located in a state that permits such gaming for any purpose by any person, organization or entity, and (3) conducted in conformity with a gaming compact entered into between the Indian tribe and the state and approved, by the Secretary of the Interior.

C-1. The Tribe is currently operating a tribal gaming casino offering Class III gaming activities on its land. On September 1, 1999, the largest number of Gaming Devices operated by the Tribe was *2.

C-2. (ALTERNATE PARAGRAPH) The Tribe does not currently operate a gaming facility that offers Class III gaming activities. However, on or after the effective date of this Compact, the Tribe intends to develop and operate a gaming facility offering Class III gaming activities on its reservation land, which is located in *3 County of California.

D. The State enters into this Compact out of respect for the sovereignty of the Tribe; in recognition of the historical fact that Indian gaming has become the single largest revenue-producing activity for Indian tribes in the United States; out of a desire to terminate pending "bad faith" litigation between the Tribe and the State; to initiate a new era of tribal-state cooperation in areas of mutual concern; out of a respect for the sentiment of the voters of California who, in approving Proposition 5, expressed their belief that the forms of gaming authorized herein should be allowed; and in anticipation of voter approval of SCA 11 as passed by the California legislature.

E. The exclusive rights that Indian tribes in California, including the Tribe, will enjoy under this Compact create a unique opportunity for the Tribe to operate its Gaming Facility in an economic environment free of competition from the Class III gaming referred to in Section 4.0 of this Compact on non-Indian lands in California. The parties are mindful that this unique environment is of great economic value to the Tribe and the fact that income from Gaming Devices represents a substantial portion of the tribes' gaming revenues. In consideration for the exclusive rights enjoyed by the tribes, and in further consideration for the State's willingness to enter into this Compact, the tribes have agreed to provide to the State, on a sovereign-to-sovereign basis, a portion of its revenue from Gaming Devices.

F. The State has a legitimate interest in promoting the purposes of IGRA for all federally-recognized Indian tribes in California, whether gaming or non-gaming. The State contends that it has an equally legitimate sovereign interest in regulating the growth of Class III gaming activities in California. The Tribe and the State share a joint sovereign interest in ensuring that tribal gaming activities are free from criminal and other undesirable elements.

Section 1.0. PURPOSES AND OBJECTIVES

The terms of this Gaming Compact are designed and intended to:

(a) Evidence the goodwill and cooperation of the Tribe and State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

(b) Develop and implement a means of regulating Class III gaming, and only Class III gaming, on the Tribe's Indian lands to ensure it's fair and honest operation in accordance with IGRA, and through that regulated Class III gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and governmental services and programs.

(c) Promote ethical practices in conjunction with that gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's Gaming Operation and protecting against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal government gaming.

Section 2.0. DEFINITIONS

Section 2.1. "Applicant" means an individual or entity that applies for a Tribal license or State certification.

Section 2.2. "Association" means an association of California tribal and state gaming regulators, the membership of which comprises up to two representatives from each tribal gaming agency of those tribes with whom the State has a gaming compact under IGRA, and up to two delegates each from the state Division of Gambling Control and the state Gambling Control Commission.

Section 2.3. "Class III gaming" means the forms of Class III gaming defined as such in 25 U.S.C. Sec. 2703(8) and by regulations of the National Indian Gaming Commission.

Section 2.4. "Gaming Activities" means the Class III gaming activities authorized under this Gaming Compact.

Section 2.5. "Gaming Compact" or "Compact" means this compact.

Section 2.6. "Gaming Device" means a slot machine, including an electronic, electromechanical, electrical, or video device that, for consideration, permits: individual play with or against that device or the participation in any electronic, electromechanical, electrical, or video system to which that device is connected; the playing of games thereon or therewith, including, but not limited to, the playing of facsimiles of games of chance or skill; the possible delivery of, or entitlement by the player to, a prize or something of value as a result of the application of an element of chance; and a method for viewing the outcome, prize won, and other information regarding the playing of games thereon or therewith.

Section 2.7. "Gaming Employee" means any person who (a) operates, maintains, repairs, assists in any Class III gaming activity, or is in any way responsible for supervising such gaming activities or persons who conduct, operate, account for, or supervise any such gaming activity, (b) is in a category under federal or tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

Section 2.8. "Gaming Facility" or "Facility" means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class III gaming (as defined under IGRA) therein.

Section 2.9. "Gaming Operation" means the business enterprise that offers and operates Class III Gaming Activities, whether exclusively or otherwise.

Section 2.10. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the Tribe's Indian lands and approved under IGRA.

Section 2.11. "Gaming Resources" means any goods or services provided or used in connection with Class III Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, gambling devices and ancillary equipment, implements of gaming activities such as playing cards and dice, furniture designed primarily for Class III gaming activities, maintenance or security equipment and services, and Class III gaming consulting services. "Gaming Resources" does not include

professional accounting and legal services.

Section 2.12. "Gaming Resource Supplier" means any person or entity who, directly or indirectly, manufactures, distributes, supplies, vends, leases, or otherwise purveys Gaming Resources to the Gaming Operation or Gaming Facility, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if the purveyor is not otherwise a Gaming Resource Supplier as described by of Section 6.4.5, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gambling Operation.

Section 2.13. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. Section 1166 et seq. and 25 U.S.C. Section 2701 et seq.) any amendments thereto, and all regulations promulgated thereunder.

Section 2.14. "Management Contractor" means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

Section 2.15. "Net Win" means "net win" as defined by American Institute of Certified Public Accountants.

Section 2.16. "NIGC" means the National Indian Gaming Commission.

Section 2.17. "State" means the State of California or an authorized official or agency thereof.

Section 2.18. "State Gaming Agency" means the entities authorized to investigate, approve, and regulate gaming licenses pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code).

Section 2.19. "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.

Section 2.20. "Tribal Gaming Agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill

those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any gaming activity may be a member or employee of the Tribal Gaming Agency.

Section 2.21. "Tribe" means a federally-recognized Indian tribe, or an authorized official or agency thereof.

Section 3.0 CLASS III GAMING AUTHORIZED AND PERMITTED

The Tribe is hereby authorized and permitted to engage in only the Class III Gaming Activities expressly referred to in Section 4.0 and shall not engage in Class III gaming that is not expressly authorized in that Section.

Section 4.0. SCOPE OF CLASS III GAMING

Section 4.1. Authorized and Permitted Class III gaming. The Tribe is hereby authorized and permitted to operate the following Gaming Activities under the terms and conditions set forth in this Gaming Compact:

- (a) The operation of Gaming Devices.
- (b) Any banking or percentage card game.
- (c) The operation of any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet unless others in the state are permitted to do so under state and federal law.
- (d) No (d) in the document.
- (e) Nothing herein shall be construed to preclude negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.

Section 4.2. Authorized Gaming Facilities. The Tribe may establish and operate not more than two Gaming Facilities, and only on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance.

Section 4.3. Authorized Number of Gaming Devices.

Section 4.3.1. The Tribe may operate no more Gaming Devices than the larger of the following:

- (a) A number of terminals equal to the number of Gaming Devices operated by the Tribe on September 1, 1999; or
- (b) Three hundred fifty (350) Gaming Devices.

Section 4.3.2. Revenue Sharing with Non-Gaming Tribes.

(a) For the purposes of this Section 4.3.2 and Section 5.0, the following definitions apply:

(i) A "Compact Tribe" is a tribe having a compact with the State that authorizes the Gaming Activities authorized by this Compact. Federally-recognized tribes that are operating fewer than 350 Gaming Devices are "Non-Compact Tribes." Non-Compact Tribes shall be deemed third party beneficiaries of this and other compacts identical in all material respects. A Compact Tribe that becomes a Non-Compact Tribe may not thereafter return to the status of a Compact Tribe for a period of two years becoming a Non-Compact Tribe.

(ii) The Revenue Sharing Trust Fund is a fund created by the Legislature and administered by the California Gambling Control Commission, as Trustee, for the receipt, deposit, and distribution of monies paid pursuant to this Section 4.3.2.

(iii) The Special Distribution Fund is a fund created by the Legislature for the receipt, deposit, and distribution of monies paid pursuant to Section 5.0.

Section 4.3.2.1. Revenue Sharing Trust Fund.

(a) The Tribe agrees with all other Compact Tribes that are parties to compacts having this Section 4.3.2 that each Non-Compact Tribe in the State shall receive the sum of \$1.1 million per year. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay \$1.1 million per year to each Non-Compact Tribe, any available monies in that Fund shall be distributed to Non-Compact Tribes in equal shares. Monies in excess of the amount necessary to \$1.1 million to each Non-Compact Tribe shall remain in the Revenue Sharing Trust Fund available

for disbursement in future years.

(b) Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund. The Commission shall serve as the trustee of the fund. The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes. In no event shall the State's General Fund be obligated to make up any shortfall or pay any unpaid claims.

Section 4.3.2.2. Allocation of Licenses.

(a) The Tribe, along with all other Compact Tribes, may acquire licenses to use Gaming Devices in excess of the number they are authorized to use under Section 4.3.1, but in no event may the Tribe operate more than 2,000 Gaming Devices, on the following terms, conditions, and priorities:

(1) The maximum number of machines that all Compact Tribes in the aggregate may license pursuant to this Section shall be a sum equal to 350 multiplied by the number of Non-Compact tribes as of September 1, 1999, plus the difference between 350 and the lesser number authorized under Section 4.3.1.

(2) The Tribe may acquire and maintain a license to operate a Gaming Device by paying into the Revenue Sharing Trust Fund, on a quarterly basis, in the following amounts:

<u>Number of Licensed Devices</u>	<u>Fee Per Device Per Annum</u>
1-350	\$0
351-750	\$900
751-1250	\$1950
1251-2000	\$4350

(3) Licenses to use Gaming Devices shall be awarded as follows:

(i) First, Compact Tribes with no Existing Devices (i.e., the number of Gaming Devices operated by a Compact Tribe as of September 1,

1999) may draw up to 150 licenses for a total of 500 Gaming Devices;

(ii) Next, Compact Tribes authorized under Section 4.3.1 to operate up to and including, 500 Gaming Devices as of September 1, 1999 (including tribes, if any, that have acquired licenses through subparagraph (i)), may draw up to an additional 500 licenses, to a total of 1000 Gaming Devices;

(iii) Next, Compact Tribes operating between 501 and 1000 Gaming Devices as of September 1, 1999 (including tribes, if any, that have acquired licenses through subparagraph (ii)), shall be entitled to draw up to an additional 750 Gaming Devices;

(iv) Next, Compact Tribes authorized to operate up to and including 1500 gaming devices (including tribes, if any, that have acquired licenses through subparagraph (iii)), shall be entitled to draw up to an additional 500 licenses, for a total authorization to operate up to 2000 gaming devices.

(v) Next, Compact Tribes authorized to operate more than 1500 gaming devices (including tribes, if any, that have acquired licenses through subparagraph (iv)), shall be entitled to draw additional licenses up to a total authorization to operate up to 2000 gaming devices.

(vi) After the first round of draws, a second and subsequent round(s) shall be conducted utilizing the same order of priority as set forth above. Rounds shall continue until tribes cease making draws, at which time draws will be discontinued for one month or until the Trustee is notified that a tribe desires to acquire a license, whichever last occurs.

(b), (c) & (d) these subdivisions are not in the document.

(e) As a condition of acquiring licenses to operate Gaming Devices, a non-refundable one-time pre-payment fee shall be required in the amount of \$1,250 per Gaming Device being licensed, which fees shall be deposited in the Revenue Sharing Trust Fund. The license for any Gaming Device shall be canceled if the Gaming Device authorized by the license is not in commercial operation within twelve months of issuance of the license.

Section 4.3.2.3. The Tribe shall not conduct any Gaming Activity authorized by this Compact if the Tribe is more than two quarterly contributions in arrears in its license fee payments to the Revenue Sharing Trust Fund.

Section 4.3.3. If requested to do so by either party after March 7, 2003, but not later than March 31, 2003, the parties will promptly commence negotiations in good faith with the Tribe concerning any matters encompassed by Sections 4.3.1 and Section 4.3.2, and their subsections.

Section 5.0 REVENUE DISTRIBUTION

Section 5.1.

(a) The Tribe shall make contributions to the Special Distribution Fund created by the Legislature, in accordance with the following schedule, but only with respect to the number of Gaming Devices operated by the Tribe on September 1, 1999:

<u>Number of Terminals in Quarterly Device Base</u>	<u>Percent of Average Gaming Device Net Win</u>
1-200	0%
201-500	7%
501-1000	7% applied to the excess over 200 terminals, up to 500 terminals, plus 10% applied to terminals over 500 terminals, up to 1000 terminals.
1000+	7% applied to excess over 200, up to 500 terminals, plus 10% applied to terminals over 500, up to 1000 terminals, plus 13% applied to the excess above 1000 terminals.

(b) The first transfer to the Special Distribution Fund of its share of the gaming revenue shall be made at the conclusion of the first calendar quarter following the second anniversary date of the effective date of this

Compact.

Section 5.2. Use of funds. The State's share of the Gaming Device revenue shall be placed in the Special Distribution Fund, available for appropriation by the Legislature for the following purposes:

- (a) grants, including any administrative costs, for programs designed to address gambling addiction;
- (b) grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming;
- (c) compensation for regulatory costs incurred by the State Gaming Agency and the state Department of Justice in connection with the implementation and administration of the Compact;
- (d) payment of shortfalls that may occur in the Revenue Sharing Trust Fund; and
- (e) any other purposes specified by the Legislature. It is the intent of the parties that Compact Tribes will be consulted in the process of identifying purposes for grants made to local governments.

Section 5.3.

(a) The quarterly contributions due under Section 5.1 shall be determined and made not later than the thirtieth (30th) day following the end of each calendar quarter by first determining the total number of all Gaming Devices operated by a Tribe during a given quarter ("Quarterly Device Base"). The "Average Device Net Win" is calculated by dividing the total Net Win from all terminals during the quarter by the Quarterly Terminal Base.

(b) Any quarterly contribution not paid on or before the date on which such amount is due shall be deemed overdue. If any quarterly contribution under Section 5.1 is overdue to the Special Distribution Fund, the Tribe shall pay to the Special Distribution Fund, in addition to the overdue quarterly contribution, interest on such amount from the date the quarterly contribution was due until the date such quarterly contribution (together with interest thereon) was actually paid at the rate of 1.0% per month or the maximum rate permitted by state law, whichever is less. Entitlement to such interest shall be in addition to any other remedies the State may have.

(c) At the time each quarterly contribution is made, the Tribe shall submit to the State a report (the "Quarterly Contribution Report") certified by an authorized representative of the Tribe reflecting the Quarterly Device Base, the Net Win from all terminals in the Quarterly Device Base (broken down by Gaming Device), and the Average Device Net Win.

(d) If the State causes an audit to be made pursuant to subdivision (c), and the Average Device Net Win for any quarter as reflected on such quarter's Quarterly Contribution Reports is found to be understated, the State will promptly notify the Tribe, and the Tribe will either accept the difference or provide a reconciliation satisfactory to the State. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State, the Tribe must immediately pay the amount of the resulting deficiencies in the quarterly contribution plus interest on such amounts from the date they were due at the rate of 1.0% per month or the maximum rate permitted by applicable law, whichever is less.

(e) The Tribe shall not conduct Class III gaming if more than two quarterly contributions to the Special Distribution Fund are overdue.

Section 6.0. LICENSING

Section 6.1. Gaming Ordinance and Regulations. All Gaming Activities conducted under this Gaming Compact shall, at a minimum, comply with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, and with all rules, regulations, procedures, specifications, and standards duly adopted by the Tribal Gaming Agency.

Section 6.2. Tribal Ownership, Management, and Control of Gaming Operation. The Gaming Operations authorized under this Gaming Compact shall be owned solely by the Tribe.

Section 6.3. Prohibition Regarding Minors.

(a) Except as provided in subdivision (b), the Tribe shall not permit persons under the age of 18 years to be present in any room in which Class III Gaming Activities are being conducted unless the person is en-route to a non-gaming area of the Gaming Facility.

(b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of 21 years from being present in any area in which Class III gaming activities are being conducted and in which alcoholic beverages may be consumed.

2124

Section 11.0. EFFECTIVE DATE AND TERM OF CONTACT

Section 11.1. Effective Date. This Gaming Compact shall not be effective unless and until all of the following have occurred:

- (a) The Compact is ratified by statute in accordance with state law;
- (b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. 2710(d)(3)(B); and
- (c) SCA 11 is approved by the California voters in the March 2000 general election.

Section 11.2. Term of Compact; Termination.

Section 11.2.1. Effective.

- (a) Once effective this Compact shall be in full force and effect for state law purposes until December 31, 2020.
- (b) Once ratified, this Compact shall constitute a binding and determinative agreement between the Tribe and the State, without regard to voter approval of any constitutional amendment, other than SCA 11, that authorizes a gaming compact.
- (c) Either party may bring an action in federal court, after providing a sixty (60) day written notice of an opportunity to cure any alleged breach of this Compact, for a declaration that the other party has materially breached this Compact. Upon issuance of such a declaration, the complaining party may unilaterally terminate this Compact upon service of written notice on the other party. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the superior court for the county in which the Tribe's Gaming Facility is located. The parties expressly waive their immunity to suit for purposes of an action under this subdivision, subject to the qualifications stated in Section 9.4(a).

Section 12.0. AMENDMENTS: RENEGOTIATIONS

Section 12.1. The terms and conditions of this Gaming Compact may be amended at any time by the mutual and written agreement of both parties.

Section 12.2. This Gaming Compact is subject to renegotiation in the event the Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for 12 months following the effective date of this Gaming Compact.

Section 12.3. Process and Negotiation Standards. All requests to amend or renegotiate this Gaming Compact shall be in writing, addressed to the Tribal Chairperson or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request. If the request meets the requirements of this Section, the parties shall confer promptly and determine a schedule for commencing negotiations within 30 days of the request. Unless expressly provided otherwise herein, all matters involving negotiations or other amendatory processes under Section 4.3.3(b) and this Section 12.0 shall be governed, controlled, and conducted in conformity with the provisions and requirements of IGRA, including those provisions regarding the obligation of the State to negotiate in good faith and the enforcement of that obligation in federal court. The Chairperson of the Tribe and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

Section 12.4. The Tribe shall have the right to terminate this Compact in the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact) within California.

Section 13.0. NOTICES

Unless otherwise indicated by this Gaming Compact, all notices required or authorized to be served shall be served by first-class mail at the following addresses:

Governor
State Capitol
Sacramento, California 95814

Tribal Chairperson
*1
*4

2426

Section 14.0. CHANGES IN IGRA

This Gaming Compact is intended to meet the requirements of IGRA as it reads on the effective date of this Gaming Compact, and when reference is made to the Indian Gaming Regulatory Act or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into this Compact as if set out in full. Subsequent changes to IGRA that diminish the rights of the State or the Tribe may not be applied retroactively to alter the terms of this Gaming Compact, except to the extent that federal law validly mandates that retroactive application without the State's or the Tribe's respective consent

Section 15.0. MISCELLANEOUS

Section 15.1. Third Party Beneficiaries. Except to the extent expressly provided under this Gaming Compact, this Gaming Compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

Section 15.2. Complete agreement; revocation of prior requests to negotiate. This Gaming Compact, together with all addenda and approved amendments, sets forth the full and complete agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

Section 15.3. Construction. Neither the presence in another tribal-state compact of language that is not included in this Compact, nor the absence in this Compact of language that is present in another tribal-state compact shall be a factor in construing the terms of this Compact.

Section 15.4. Most Favored Tribe. If, after the effective date of this Compact, the State enters into a Compact with any other tribe that contains more favorable provisions with respect to any provisions of this Compact, the State shall, at the Tribe's request, enter into the preferred compact with the Tribe as a superseding substitute for this Compact; provided that the duration of the substitute compact shall not exceed the duration of this Compact.

Section 15.5. No 15.5 in the document.

Section 15.6. Representations. By entering into this Compact, the Tribe expressly represents that, as of the date of the Tribe's execution of this Compact:

(a) the undersigned has the authority to execute this Compact on behalf of his or her tribe and will provide written proof of such authority and ratification of this Compact by the tribal governing body no later than October 9, 1999;

(b) the Tribe is

(i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and

(ii) recognized by the Secretary of the Interior as possessing powers of self-government. In entering into this Compact, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry into the Compact is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this Compact. Failure to provide written proof of authority to execute this Compact or failure to provide written proof of ratification by the Tribe's governing body will give the State the opportunity to declare this Compact null and void.

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the * 1.

Done at Sacramento, California, this 10th day of September 1999.

STATE OF CALIFORNIA

By Gray Davis

Governor of the State of California

By *5

Chairperson of the * 1

EXHIBIT 3

Robert A. Rosette, Esq. SBN 224437

ROSETTE & ASSOCIATES

193 Blue Ravine Road, Suite 255

Folsom, California 95630

Tel: (916) 353-1084

Fax: (916) 353-1085

Email: rosette@rosettela.com

Manuel Corrales, Jr., Esq. SBN 117647

Attorney at Law

11753 Avenida Sivrita

San Diego, California 92128

Tel: (858) 521-0634

Fax: (858) 521-0633

Email: mannycorrales@yahoo.com

Terry Singleton, Esq. SBN 58316

SINGLETON & ASSOCIATES

1950 Fifth Avenue, Suite 200

San Diego, California 92101

Tel: (619) 239-3225

Fax: (619) 702-5592

Email: terry@terrysingleton.com

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 CHAIRWOMAN
SILVIA BURLEY IN SUPPORT OF
PLAINTIFF'S REPLY TO
DEFENDANT'S AND INTERVENORS'
OPPOSITION TO MOTION FOR
RECONSIDERATION**

Date: January 28, 2011

Time: 8:30 a.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: May 13, 2011

1 Declaration of Chairwoman Silvia Burley

2 I, SILVIA BURLEY, declare that I am the Chairwoman of the
3 California Valley Miwok Tribe ("Tribe"). and that I have personal
4 knowledge of the facts giving rise to this matter, and if called
5 as a witness I can and will testify truthfully.

6 I hereby declare:

7 1. On June 26, 2007, I received a letter via "carbon-copy" that
8 was sent by Dean Shelton, Chairman of the Gambling Control
9 Commission ("Commission"), to Karla D. Bell regarding the
10 distribution of the Tribe's Revenue Sharing Trust Funds
11 ("RSTF"). Specifically, the correspondence states reasons for
12 the Commission's decision regarding distribution of the RSTFs,
13 yet acknowledges that the Commission has no authority to
14 determine the appropriate leadership or membership of the Tribe.
15 (Attached hereto as Exhibit A is a true and correct copy of the
16 June 26, 2007 correspondence from Dean Shelton, Chairman of the
17 Commission to Karla D. Bell detailing the issues described in
18 the paragraph herein).

19 2. On October 23, 2009, an Order was filed granting Defendant
20 Silvia Burley's Motion for Sanctions in the amount of \$3,750.00
21 against Plaintiff's counsel, Thomas W. Wolfrum, pursuant to
22 Federal Rule of Civil Procedure 11(b) for his failure to make a
23 reasonable pre-filing inquiry into the merits of the action,
24 thus filing a frivolous lawsuit resulting in a waste of judicial
25 resources and unnecessary costs to the Defendants. (Attached as
26 Exhibit B is a true and correct copy of the October 23, 2009
27 Order issuing sanctions against Thomas W. Wolfrum in the amount
28 of \$3,750.00 for filing a frivolous action).

DECLARATION OF CHAIRWOMAN SILVIA BURLEY IN SUPPORT OF REPLY

1 3. On December 23, 2010, the Tribe properly issued notice of a
2 Special Meeting of the Tribe's General Council stating that the
3 December 22, 2010 decision issued by Larry Echo Hawk, Assistant
4 Secretary - Indian Affairs, rescinded previous letters from the
5 Bureau of Indian affairs that had previously challenged the
6 authority, leadership and organizational status of the Tribe.
7 As such, the Tribe issued a public notice of a Special Meeting
8 in accordance with General Council Resolution #GC-98-01. This
9 notice also stated that the Tribe recognized Silvia Burley as
10 its Chairperson, with four adult federally recognized members:
11 Silvia Burley, Yakima Dixie, Anjelica Paulk and Rashel Reznor.
12 (Attached hereto as Exhibit C is a true and correct copy of the
13 December 23, 2010 Public Notice of a Special Meeting of the
14 General Council to all federally-recognized enrolled members of
15 the Tribe, which was noticed to take place at 10601 N. Escondido
16 Place, Stockton, California 95212 on January 7, 2011 at 10:00
17 a.m.).

18 4. The Special Notice (attached as Exhibit C in the above
19 paragraph) stated the purpose of the General Council Special
20 Meeting, which was to elect Tribal Officers, including but not
21 limited to a Chairperson and a Secretary/Treasurer pursuant to
22 General Council Resolution #GC-98-01 to assist in administering
23 the daily governmental affairs and operations of the Tribe and
24 not to pursue any efforts to formally organize the Tribe as that
25 had previously been verified by the December 22, 2010 decision
26 by the Assistant Secretary of Indian Affairs. (See Exhibit B to
27 this declaration).

28

1 5. On December 30, 2010, the Tribe issued a "Reminder Notice"
2 of the above-referenced Special Meeting of the Tribe's General
3 Council. The Special Meeting was set to take place at 10601 N.
4 Escondido Place, Stockton, California 95212 on January 7, 2011
5 at 10:00 a.m. (Attached hereto as Exhibit D is a true and
6 correct copy of the December 30, 2010 Reminder Notice of the
7 Special Meeting of the General Council to all federally-
8 recognized enrolled members of the Tribe).

9 6. On January 7, 2011, at the Special Meeting referenced above,
10 the Tribe's General Council issued a Resolution approving
11 election results and the election of myself, Silvia Burley, as
12 Chairperson and Rashel Reznor as Secretary/Treasurer. This
13 Resolution is signed and executed on January 7, 2011 by myself,
14 Angelica Paulk, and Rashel Reznor. (Attached hereto as Exhibit
15 E is a true and correct copy of the January 7, 2011 executed
16 Resolution signifying the General Council's Special Meeting
17 results).

18 7. On January 11, 2011, the Tribe received correspondence from
19 Troy Burdick, Superintendent of the Bureau of Indian Affairs,
20 Central California Agency, ("BIA") which was addressed to
21 "Honorable Silvia Burley, Chairperson, California Valley Miwok
22 Tribe." This correspondence stated that BIA was in receipt of
23 the Tribe's Indian Child Welfare Act Reports for Contract Number
24 CTJ51T62802, and that BIA was acknowledging the Child Protection
25 Team Reports for November 2009 and that January and February
26 2009 were previously acknowledged. (Attached hereto as Exhibit
27 F is a true and correct copy of the January 11, 2011
28

1 correspondence from Troy Burdick, BIA, to Honorable Chairperson
2 Silvia Burley).

3 8. On January 12, 2011, the Tribe received correspondence from
4 Troy Burdick, Superintendent of the Bureau of Indian Affairs,
5 Central California Agency, ("BIA") which was addressed to
6 "Honorable Silvia Burley, Chairperson, California Valley Miwok
7 Tribe." This correspondence was sent as a follow-up to a
8 meeting held on January 6, 2011 between the Tribe, (including
9 myself) and the BIA and explicitly stated BIA's commitment to
10 work with the Tribe. (Attached hereto as Exhibit G is a true
11 and correct copy of the January 12, 2011 correspondence from
12 Troy Burdick, BIA, to Honorable Chairperson Silvia Burley).

13 9. On January 12, 2011, the Tribe received correspondence from
14 Troy Burdick, Superintendent of the Bureau of Indian Affairs,
15 Central California Agency, ("BIA") which was addressed to
16 "Honorable Silvia Burley, Chairperson, California Valley Miwok
17 Tribe." This correspondence was sent to acknowledge receipt of
18 the Tribe's Report of Tribal Election and Addendum to Report of
19 Tribal Election by tribal correspondence dated January 7, 2011.
20 The correspondence acknowledges that, due to the January 7, 2011
21 Special Election, Chairperson Silvia Burley and
22 Secretary/Treasurer Rashel Reznor, currently represent and serve
23 as officials of the Tribe. (Attached hereto as Exhibit H is a
24 true and correct copy of the January 12, 2011 correspondence
25 from Troy Burdick, BIA, to Honorable Chairperson Silvia Burley).

26 10. On January 13, 2011, the Tribe received correspondence from
27 Martin J. Horan, IV, acting Bureau Chief (of the Bureau of
28 Gambling Control) for Kamala D. Harris, Attorney General, which

1 was addressed to "Silvia Burley, Chairperson [of] California
2 Valley Miwok Tribe." This correspondence confirms receipt of
3 the Tribe's letter dated December 23, 2010 informing the Bureau
4 of Gambling Control ("BGC") of the recent Resolution authorizing
5 Rosette & Associates to assist in the retrieval of funds and the
6 issues regarding the December 22, 2010 decision by the Assistant
7 Secretary of Indian Affairs. This January 13, 2011
8 correspondence further states that the BGC intends on forwarding
9 the California Commission of Gambling Control a copy of the
10 letter dated December 23, 2010 for their review and handling.
11 (Attached hereto as Exhibit I is a true and correct copy of the
12 January 13, 2011 correspondence from Martin J. Horan, IV, acting
13 Bureau Chief (of the Bureau of Gambling Control) for Kamala D.
14 Harris, Attorney General, to "Silvia Burley, Chairperson [of]
15 California Valley Miwok Tribe").

16
17
18 I HEREBY DECLARE, UNDER PENALTY OF PERJURY, UNDER THE LAWS OF
19 THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.
20 Executed this 20 day of January, 2011 at Stockton, Ct.

(Location)

21
22
23 

24 Chairwoman Silvia Burley

25 California Valley Miwok Tribe
26
27
28

EXHIBIT 4



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 11 2005

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

Dear Mr. Dixie:

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

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

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

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

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

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

Sincerely,



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

Enclosure

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



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

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

IN REPLY REFER TO

MAR 26 2004

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

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

Dear Ms. Burley:

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

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

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

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

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

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

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

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

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

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

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

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

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

Page 4 of 4

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

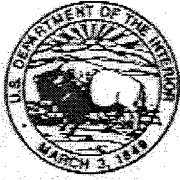
Sincerely,

Dale Risling, Sr.

Dale Risling, Sr.
Superintendent

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

EXHIBIT 5



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

APR - 2 2007

CERTIFIED MAIL NO. 7006 0810 0001 4950 9008
RETURN RECEIPT REQUESTED

Ms. Silvia Burley
10601 Escondido Place
Stockton, California 95212

Dear Ms. Burley:

The purpose of this correspondence is to inform you of my decision regarding your Notice of Appeal dated November 10, 2006, filed pursuant to 25 Code of Federal Regulation (CFR) Part 2, from the decision dated November 6, 2006 of the Bureau of Indian Affairs (BIA), Superintendent, Central California Agency (Agency), which noticed you and Yakima Dixie, because of your leadership claims, of the Agency's commitment to assist the California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California), with the Tribe's efforts to organize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe. Your Notice of Appeal, Statement of Reasons, Answer of Interested Party and the Administrative Record of the Superintendent were all received on January 11, 2007. The Superintendent has indicated that your Appeal was timely filed.

It is a well established BIA policy that the federal government not intervene in internal tribal disputes where there is no threat to government-to-government relationship. However, in this situation, where the BIA does not recognize a tribal government we feel that such a threat appears imminent, and we believe that the better course of action would be to allow the Agency to assist the Tribe to sort out the situation. Therefore, based on our analysis, it was concluded that I remand this matter back to the Superintendent and allow the Agency to continue with its plans to assist the Tribe with its organizational efforts. We present our analysis of the situation as follows.

BACKGROUND

An August 13, 1915 letter from Special Indian Agent to the Commissioner of Indian Affairs, Washington, D. C., reported his finding and in part, stated that, "The census the Indians designated Sheepbranch-Indians only aggregating 12 in number, constitutes the remnant of once a larger band of Indians". A census of the Indians at and near Sheep Ranch in Calaveras County, California was attached to the August 13 letter that listed the follows individuals; Peter Hodge (1/2 Indian blood), Annie, wife (4/4 Indian blood), their children Malida, Lena, Tom, and

TAKE PRIDE
IN AMERICA 

Andy, Jeff Davis (4/4 Indian blood), Betsey, wife (4/4 Indian blood), Mrs. Limpey (4/4 Indian blood), John Tecumchey (4/4 Indian blood) and his wife Pinkey (4/4 Indian blood), and Mamy Duncan, granddaughter of Jeff Davis (3/4 Indian blood). Further states that the "to some extent the Indians of Sheepranch, Murphys, Six-Mile, Avery and Angles are interchangeable in their relationships." These communities are all located in Calaveras County, California.

On April 5, 1916, the Sheep Ranch Rancheria, comprising of 0.92 acres located in Calaveras County, California was purchased and held in trust by the United States of America for the use and benefit of certain homeless California Indians.

On June 8, 1935, the approved list of Voters for Indian Reorganization Act (IRA) for the Sheep Ranch Rancheria, Calaveras County, only listed a Jeff Davis, who voted to accept the terms of the IRA. Although Mr. Davis voted in 1935 to accept the terms of the IRA, the Tribe never formally organized under a constitution approved by the Secretary of the Interior. There were no documents located that referenced Mr. Davis attempted to organize the Tribe under the IRA or any record requesting the Agency to assist in the Tribe's efforts to organize.

On August 18, 1966, pursuant to the Rancheria Act (P.L. 85-671, 72 Stat. 619), as amended, whereby the distribution of the Rancheria's assets were made to one distributee, a Mabel Hodge Dixie. On April 11, 1967, the property was deeded to Mrs. Dixie; however, the transfer of title was nullified by a quit claim deed executed by Mrs. Dixie on September 6, 1967, which reverted title of the property to the United States of America. Prior to the complete implementation of the distribution plan, Mabel Hodge Dixie passed away on July 11, 1971. As a result of a probate decision in 1990, the Rancheria was distributed to five heirs, listed as follows; Richard Dixie, and Merle Butler, Mrs. Dixie's common-law husband. Melvin Dixie and Yakima Edward Dixie are the only two remaining heirs. BIA records reflect that the Rancheria land is held in trust for the heirs of Mable Hodge Dixie.

A Notice of Termination was never published in the Federal Register or other letter or notice stating the federal government's intention to terminate services to and/or relations with the Sheep Ranch Rancheria. Furthermore, as evident by the earliest publication of federally recognized tribes in a booklet published in 1972 entitled "American Indians and Their Federal Relationship." The Sheep Ranch Rancheria was listed therein as a recognized tribe eligible for funding and services from the Bureau by virtue of their status as an Indian tribe. This notice and subsequent notices were published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792). The Federal Register, dated November 25, 2005; Sheep Ranch Rancheria is listed as the California Valley Miwok Tribe. For the above reasons, the BIA has never viewed this Tribe as a "restored" tribe, which is a term that refers to a tribe once acknowledged as a federally-recognized tribe, then was "terminated," and subsequently "restored" to federal recognition.

DISCUSSION

The BIA has recognized Mr. Yakima Dixie, one of the two remaining heirs, as the spokesperson of the Tribe until April 1999. This recognition was based on the fact that Yakima Dixie is a lineal descendant of the sole distributee, his mother Mable Hodge Dixie. Mrs. Dixie was

identified in the Plan for the Distribution of assets of the Sheep Ranch Rancheria, as approved by the Associate Commissioner of Indian Affairs on October 12, 1966. Yakima Dixie was also one of two remaining heirs identified in the Order of Determination of Heirs issued on November 1, 1971 and reaffirmed by a subsequent Order issued on April 14, 1993.

On August 5, 1998, by letter signed by Yakima Dixie, as Spokesperson/Chairman of the Sheep Ranch Rancheria informed the Agency that he had accepted you and your daughters; Rashel K. Reznor and Angelica J. Paulk, and granddaughter Tristian S. Wallace as enrolled members of the Tribe. However, he did not provide the criteria he used to determine your eligibility to be enrolled into the Tribe; what documentation that you provided to substantiate your eligibility to be enrolled and his authority to initiate this enrollment action. The above individuals, including Melvin Dixie, comprised the total membership of the Tribe.

On September 8, 1998, a meeting was held at the Rancheria between the Agency staff, you and Yakima Dixie, Spokesperson/Chairman of the Tribe. The purpose of the meeting was to discuss the process of formally organizing the Tribe, the status of the Tribe, membership, governance, grant funding and other issues. The Agency staff advised that Yakima Dixie, as the Spokesperson of the Tribe and as one of the two remaining heirs, had the right to choose the membership criteria, which may possibly, include a larger community.

Since the resignation letter dated April 20, 1999 of Yakima Dixie, which you submitted to the Agency, you had initiated a number of actions such as; to recognize yourself as Chairperson and your daughters as the only members of the Tribe. You provided Meeting Notices to the Agency indicating that the Tribe was proposing to adopt a Constitution and ordinances for the purpose of organizing the Tribe. Prior to this, the Tribe had never formally organized or requested assistance for the organization of the Tribe even though the Tribe voted to accept the provisions of the 1934 Indian Reorganization Act (IRA).

On April 21, 1999, by letter from Yakima Dixie, he notified you that he cannot and will not resign as Chairman of the Tribe; however, he gave you the right to act as a delegate to represent the Tribe. This began the constant dispute between you and Yakima Dixie as to who is the rightful Chairperson of the Tribe.

The Agency continued to provide technical assistance to the Tribe for the purpose of awarding a P.L.93-638 Contract. This process was to assist in the development of the Tribe and organization for the benefit of future tribal members. During this period, the Agency continued to work separately with you and Mr. Dixie by providing technical assistance for the purpose of organizing.

On March 7, 2000, by letter to you, the Agency stated that it would not interfere in the internal matters of the Tribe unless the dispute regarding the composition of the governing body of the Tribe continues without resolution, and the government-to-government relationship between the Tribe and the United States may be compromised and in such situations, the Agency will advise the Tribe to resolve the dispute internally within a reasonable period of time.

On March 26, 2004, by letter to you, the Agency addressed its concerns regarding the constitution you had submitted to the Agency in which you attempted to demonstrate that the Tribe is organized. The Agency advised you, that you were considered as a person of authority within an unorganized tribe, for the purpose of receiving P.L. 93-638 contract/grants and services from the United States Government. The Agency addressed the fact that the BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community and that the Constitution provided did not demonstrate involvement of a greater tribal community. In fact, a Constitution, ratified March 8, 2000, which you submitted, under Article III, Membership, identified the base roll, consisting of only five living members: Silvia Burley, Yakima Dixie, Rashel Reznor, Anjelica Paulk, and Tristian Wallace. In a document dated January 9, 2006, you submitted a revised Official Tribal Roll which excluded Yakima Dixie, indicating that he was disenrolled.

Since the purported resignation of Yakima Dixie and his disenrollment, for the purpose of organizing the Tribe, you and Yakima Dixie separately began initiating a number of actions such as; recognizing each of yourselves as Chairperson, proposing to adopt a Constitution and ordinances, and creating lists of potential members. The documents for which you both provided to the Agency were returned by the Agency without action or passed back for further information in order to process requests for which you requested.

The Agency has been meeting with the both of you and with your representatives to discuss and offer assistance in your organizational efforts of the Tribe. However, it is evident that the ongoing leadership dispute between you and Yakima Dixie is at an impasse and the likelihood of this changing soon seems to be remote. The Agency currently recognizes you as the authorized representative of the California Valley Miwok Tribe with whom government-related business is conducted; however, the Agency does not yet view the Tribe to be an "organized" Indian Tribe. This is due to the fact that both of you have failed to identify the whole community who are entitled to participate in the Tribe's efforts to organize, which the Agency has been mentioning in prior correspondences and meetings with you and Yakima Dixie.

CONCLUSION:

Please be advised that Federal Law requires that we know with whom we are dealing with when we contract on a government-to-government basis with tribes pursuant to, for example, the 1974 Indian Financing Act, 25 U.S.C. 1451; the 1975 Indian Self-Determination and Education Assistance Act, Public Law 93-638; the 1978 Indian Child Welfare Act, 25 U.S.C. 1901, and other federal statutes intended to benefit Indian tribal governments. In instances where there is a dispute as to the identity of the rightful tribal leaders empowered to conduct business on behalf of the tribe and it is apparent that no tribal resolution is forthcoming, we are authorized to determine whether or not to continue our government-to-government relationship with the tribe.

Congress has delegated to the Secretary of the Interior broad authority over "public business relating to ... Indians." 43 U.S.C. § 1457.¹ At the core of this authority is a responsibility to ensure that Secretary deals only with a tribal government that actually represents the members of

¹ In turn, the Secretary has delegated this responsibility to the BIA and the Principal Deputy Assistant Secretary - Indian Affairs.

a tribe. As early as 1942, when the government still held lands in trust for many tribes, the Supreme Court stated that the Department had a duty to conduct business only with lawfully-constituted governing bodies who represent the tribal membership.

It is the Agency's position that both factions are at an impasse and cannot come to an agreement for the organization of the Tribe. We believe it is not the goal of the Agency to determine membership of the Tribe or the intent of the Agency to determine who the members of the Tribe will be. The purpose of the November 6, 2006, letter was to bring together the "putative group" who believe that they have the right to participate in the organization of the Tribe, contrary to your assertions. We believe that the main purpose was to assist the Tribe in identifying the whole community, the "putative" group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. A determination of who is a tribal member must, however, preclude any determination of who is a tribal leader. It is our belief that until the Tribe has identified the "putative" group, the Tribe will not have a solid foundation upon which to build a stable government.

In all fairness to the current tribal membership and the "putative" group, and for the reasons stated above, I agree with the Superintendent's proposed actions as stated in his November 6th letter to assist the Tribal in its efforts to organize. Therefore, to further assist the Tribe regarding this matter, I am, by copy of this letter, remanding this matter back to the Superintendent, Central California Agency to implement the actions mentioned in his November 6th letter, and as soon as possible publish a Notice in the newspapers, within the Miwok region, of the Agency's plan to assist in identifying the "putative" group of the Tribe. Furthermore, the Superintendent will provide personal oversight to assure that the proposed actions outlined in his November 6th letter are fully implemented and completed.

This decision may be appealed to the Interior Board of Indian Appeal, 801 North Quincy Street, Arlington, Virginia 22203, in accordance with regulations in 43 CFR § 4.310 - 4.340. Your Notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) The Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 1849 C Street, N. W. Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your Notice of Appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. If you file a Notice of Appeal, the Board of Indian Appeals will notify you of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a Notice of Appeal.

Sincerely,



Regional Director

cc: See List of Interested Parties
TO/fdj/03/21/2007/1236-P5Burley

List of Interested Parties:

**CERTIFIED MAIL NO. 006 0810 0001 4950 8995
RETURN RECEIPT REQUESTED**

Chadd Everone, Deputy
c/o Yakima Dixie
2140 Shattuck Avenue, #602
Berkeley, CA 94704

Phillip Thompson, Esq.
601 Pennsylvania Ave., Suite 900
South Building
Upper Marlboro, MD 20772-3665

California Valley Miwok Tribe
c/o 11178 Sheep Ranch Rd.
P.O. Box 41
Sheep Ranch, CA 95250

Superintendent, Central California Agency
Bureau of Indian Affairs
650 Capitol Mall 8-500
Sacramento, CA 95814

Assistant Secretary - Indian Affairs
U.S. Department of the Interior,
1849 C Street, N. W., 4140 MIB
Washington, D.C. 20240

Director, Bureau of Indian Affairs
Attention: MS4606-MIB
1849 C Street, N.W. MS4513-MIB
Washington, D.C. 20240

Deputy Director-Field Operations
Bureau of Indian Affairs
1849 C Street, N.W. MS4513-MIB
Washington, D.C. 20240

Deputy Director, Tribal Services
Attention: Chief, Tribal Government
Services
Bureau of Indian Affairs
1951 Constitution Ave., N.W.
MS-320-SIB
Washington, D.C. 20240

Associate Solicitor
Division of Indian Affairs
Attention: Jane M. Smith,
Office of the Solicitor MS-6456-MIB
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Solicitor
Pacific Southwest Region
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

Office of Hearings and Appeals
Chief Administrative Judge
Interior Board of Indian Appeals
801 North Quincy Street, Suite 300
Arlington, VA 22203

EXHIBIT 6



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

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

IN REPLY, REFER TO

JUL 1 9 2005

Certified Mail No. 7003 1680 0005 5923 6359
Return Receipt Requested

Ms. Silvia Burley
10601 Escondido Place
Stockton, California 95212

Dear Ms. Burley:

In accordance with 25 CFR 900.6 Definitions – Indian Tribe means any Indian Tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

In light of correspondence addressed to Mr. Yakima K. Dixie dated February 11, 2005 (copy enclosed) and signed by Mr. Michael D. Olsen, Principal Deputy, Acting Assistant Secretary -- Indian Affairs, it states in part that the Bureau of Indian Affairs does not recognize any tribal government, and therefore, cannot defer to any tribal dispute resolution process at this time.

Therefore, based on the above and in accordance with Title I – Indian Self-Determination Act, Sec. 102. (a)(1) The Secretary is directed, upon the requests of any Indian Tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs --

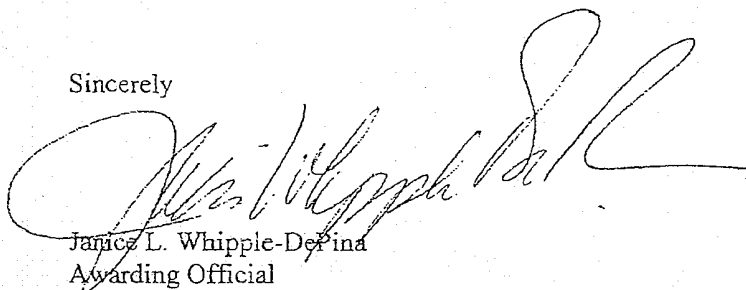
Whereas there is ~~no recognized tribal government with which to take action on behalf of the tribe or~~ to sustain a government to government relationship with, we must take appropriate action to safeguard federal funds and until such time as the tribe becomes formally organized and a tribal government is re-established, the following modification is issued.

Enclosed for your information is Modification No. Fourteen (14) to Contract No. CTJ51T62802 (FY 05/06 Mature Status – Aid to Tribal Government Program). This modification suspends the current contract in its entirety effective February 11, 2005.

0575

Should you have any questions regarding the above, please feel free to contact me at (916) 930-3742.

Sincerely

A handwritten signature in dark ink, appearing to read "Janice L. Whipple-DePina". The signature is fluid and cursive, with a large initial "J" and "W".

Janice L. Whipple-DePina
Awarding Official

cc: Mr. Yakima K. Dixie, c/o Chad Everone
Pacific Regional Director
Regional Solicitor, Pacific Southwest

Debora G. Luther, Esq.
Assistant United States Attorney

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT CODE

PAGE 1 OF 1

0576

AMENDMENT/MODIFICATION NO.

Fourteen (14)

3. EFFECTIVE DATE

2-14-05

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (If applicable)

ISSUED BY

CODE

7. ADMINISTERED BY (If other than Item 6)

CODE

Bureau of Indian Affairs
Federal California Agency
Capitol Mall, Suite 8-500
Sacramento, California 95814

SAME AS BLOCK #6

NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

CALIFORNIA VALLEY MIWOK TRIBE
31 ESCONDIDO PLACE
MCKINLEY, CALIFORNIA 95212

(X)

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

X

CTJ51T62802

10B. DATED (SEE ITEM 11)

FACILITY CODE

01/01/02

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not extended. must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your offer is changed, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

ACCOUNTING AND APPROPRIATION DATA (If required)

N/A

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM

ONE

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

D. OTHER (Specify type of modification and authority)

X

Public Law 638

IMPORTANT: Contractor X is not is required to sign this document and return N/A copy to the issuing office.

DESCRIPTION OF AMENDMENT/MODIFICATION (organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Amendment No. Fourteen (14) to Contract No. CTJ51T62802 (FY 05/06 Mature Status - Aid to Tribal Government Program) is issued to make the following change(s):

- The contract is hereby suspended in its entirety effective Feb. 11, 2005., due to the tribe no longer having a tribal government with which to sustain an effective government to government relationship.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

As provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

NAME AND TITLE OF SIGNER (Type or print)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

Janice Whipple-DePina, Awarding Official
BIA-2001-1-000024

CONTRACTOR/OFFEROR

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

BY (Signature of person authorized to sign)

04/01/04

BY

(Signature of Contracting Officer)

7540-01-152-8070
This edition unusable

STANDARD FORM 30 (REV. 10-83)
Prescribe by GSA FAR (48 CFR) 53.243

EXHIBIT 7



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

DEC 14 2007

CERTIFIED MAIL NO. 7001 2510 0009 4494 1906
RETURN RECEIPT REQUESTED

Silvia Burley
10601 Escondido Place
Stockton, California 95212

Dear Ms. Burley:

In accordance with 25 CFR Part 900.6, Subpart B, Definitions, we are returning your application to contract FY 2008 funding from the Bureau of Indian Affairs, under P.L. 93-638, as amended as it does not meet the definition stated below:

"Tribal Organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which included the maximum participation of Indians in all phases of its activities; provided, that, in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract of grant."

Under this Part, consideration to contract federal funds to operate Bureau of Indian authorized programs will only be given to an application submitted by federally recognized tribe with a recognized governing body. The Department of the Interior does not recognize that the California Valley Miwok Tribe has a governing body. The District Court for the District of Columbia has upheld that determination, California Valley Miwok Tribe v. United States, 424 F Supp. 2d 197 (D.C.D.C. 2006). That decision is now on appeal.

Because we do not recognize any current governing body for the California Valley Miwok Tribe, we are unable to accept the proposal for the above stated reason. We are hereby returning the proposal.

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

This decision may be appealed to the Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, W-2820, Sacramento, California 95825. In accordance with the regulations in 25 CFR Part 2 (copy enclosed), your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone number. It should clearly identify the decision to be appealed. If possible attach a copy of the decision. The notice of appeal and the envelope which it is mailed, should be clearly labeled "NOTICE OF APPEAL." The notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice.

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

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

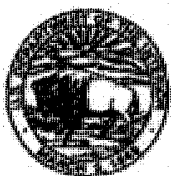
Sincerely,



Troy Burdick
Superintendent

Enclosure

EXHIBIT 8



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 22 2010

Ms. Sylvia Burley
California Valley Miwok Tribe
10601 Escondido Place
Stockton, California 95212

Dear Ms. Burley:

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

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

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

Background

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

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

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

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

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

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

Shortly thereafter, the Tribe developed a draft constitution, and submitted it to the BIA for Secretarial review and approval in May 1999.² During this effort, it is apparent that a leadership dispute developed between Ms. Burley and Mr. Dixie.

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

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

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

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

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

authority within California Valley Miwok Tribe.' Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman.

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

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

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

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

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

Discussion

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

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

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

A. Tribal Citizenship

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

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

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

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

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

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

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

B. Tribal Government

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

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

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

Conclusion

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

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

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

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

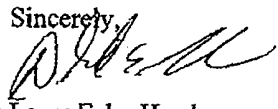
3. I am rescinding the February 11, 2005 letter from the Office of the Assistant Secretary to Yakima Dixie stating that the BIA does not recognize any government of the California Valley Miwok Tribe.
4. The BIA will rescind its letter of March 26, 2004 to Sylvia Burley stating that it "does not yet view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

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

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

A similar letter has been transmitted to Mr. Yakima Dixie, and his legal counsel.

Sincerely,


For Larry Echo Hawk
Assistant Secretary – Indian Affairs

cc: Mike Black, Director of the Bureau of Indian Affairs
Amy Dutschke, BIA Pacific Regional Director
Robert Rosette, Rosette and Associates, PC

EXHIBIT 9

CALIFORNIA VALLEY MIWOK TRIBE

10601 N. Escondido Pl., Stockton, CA 95212 Ph: (209) 931.4567 Fax: (209) 931.4333

<http://californiavalleymiwoktribe-nsn.gov>



December 23, 2010

PUBLIC NOTICE

**TO: ALL FEDERALLY-RECOGNIZED ENROLLED MEMBERS OF THE
CALIFORNIA VALLEY MIWOK TRIBE**

**Special Meeting of the General Council
Of the California Valley Miwok Tribe
January 7, 2010 at 10:00 am**

**TO BE HELD AT 10601 N. ESCONDIDO PLACE,
STOCKTON, CALIFORNIA 95212**

In correspondence dated December 22, 2010, the Assistant Secretary of Indian Affairs at the United States Department of Interior rescinded previous letters from the Bureau of Indian Affairs ("BIA"), which challenged the authority, leadership and organizational status of the Tribe. Therefore, the California Valley Miwok Tribe ("Tribe"), acting as an organized entity, wishes to take action to bring the highly contentious period of the Tribe's history to a close. The Assistant Secretary's recent decision also rescinded the BIA letter, dated March 26, 2004, which indicated that Sylvia Burley was "merely a 'person of authority' within the Tribe." Therefore, consistent with previous actions taken by the Tribe, the Tribe presently recognizes Sylvia Burley as its Chairperson.

In accordance with the General Council Resolution #GC-98-01, special meetings of the General Council may be called, upon providing requisite notice (15 days) and elaborating the purpose of the meeting.

Pursuant to General Council Resolution #GC-98-01 and reaffirmed in a recent decision of the Assistant Secretary of Indian Affairs at the United States Department of Interior, dated December 22, 2010, the General Council is the governing body of the Tribe, comprised of four (4) adult federally recognized members: Sylvia Burley; Yakima Dixie; Anjelica Paulk; and Rashel Reznor.

Further, pursuant to General Council Resolution #GC-98-01, the General Council "shall appoint from among its members a Chairperson, who shall preside over all meetings of the General Council and rights and powers through subsequent resolutions of the General Council..." as well as a Secretary/Treasurer, "who shall record the minutes of all General Council meetings, maintain the official records of the Tribe, certify the enactment of all resolutions, and disburse all funds as ordered by the General Council."

Therefore, the purpose of the special General Council meeting shall be for the governing body of the Tribe, the four (4) enrolled adult members referenced above, to elect Tribal Officers, including but not limited to a Chairperson and a Secretary/Treasurer, pursuant to General Council Resolution #GC-98-01, to assist in administering the daily governmental affairs/operations of the Tribe.

The purpose of the special General Council meeting **shall not** be to pursue any efforts to formally organize the Tribe, as all necessary actions for formal organization have previously taken place, pursuant to General Council Resolution #GC-98-01, and such actions have been verified as sufficient for the Tribe's formal organization in the recent decision of the Assistant Secretary of Indian Affairs at the United States Department of Interior, dated December 22, 2010.

In accordance with General Council Resolution #GC-98-01, this document serves as the required fifteen (15) day public notice.

EXHIBIT 10



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

JAN 12 2011

Honorable Silvia Burley
Chairperson, California Valley Miwok Tribe
10601 N. Escondido Place
Stockton, California 95212

Dear Chairperson Burley:

The purpose of this correspondence is to acknowledge receipt of the Tribe's Report of Tribal Election and Addendum to Report of Tribal Election by tribal correspondence dated January 7, 2011. On January 7, 2011, the following witnesses: Tiger Paulk, Colleen Pringle, Richard Windfeathers Muniz, and Ty Muniz certified the election results of the January 7, 2011, Tribal election for the Chairperson and Secretary-Treasurer to be true and correct.

Therefore, as reported in the Tribe's Report of Tribal Elections, the following individuals currently represent and serve as officials of the California Valley Miwok Tribal Council:

1. Silvia Burley, Chairperson
2. Rashel Reznor, Secretary/Treasurer

Congratulations are extended to all the elected officials. Please feel free to contact my office about any Bureau program or any questions you may have.

Should you have any questions pertaining to this matter, please do not hesitate to contact Carol Rogers-Davis, Tribal Operations Officer, at (916) 930-3794.

Sincerely,

Troy Burdick
Superintendent

EXHIBIT 11



Four Embarcadero Center | 17th Floor | San Francisco, CA 94111-4109
415-434-9100 office | 415-434-3947 fax | www.sheppardmullin.com

ROBERT J. URAM, Cal. Bar No. 122956
Telephone: 415-434-9100
Facsimile: 415-434-3947
ruram@sheppardmullin.com

February 9, 2011

VIA FACSIMILE AND U.S. MAIL

Amy Dutschke
Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way Suite W-2820
Sacramento, California 95825

Facsimile: (916) 978-6099

NOTICE OF APPEAL

Dear Regional Director Dutschke:

On January 12, 2011, Troy Burdick, Superintendent of the Central California Agency, United States Bureau of Indian Affairs, issued a decision recognizing the results of a purported special election of the California Valley Miwok Tribe ("Tribe") held on January 7, 2011. The Superintendent's decision was contained in a letter to Silvia Burley ("Burley"), a true and correct copy of which is attached as Exhibit "A" (the "January 12 Decision"). The January 12 Decision states that the Bureau of Indian Affairs ("BIA") recognizes Burley and Rashel Reznor ("Reznor") as representatives and officials of the Tribe, based on the results of the January 7, 2011 election. Specifically, the Superintendent's decision recognizes Burley as Chairperson and Reznor as Secretary/Treasurer of the California Valley Miwok Tribal Council.

Pursuant to 25 C.F.R. sections 2.2 and 2.4(a), Yakima Dixie ("Chief Dixie"), the California Valley Miwok Tribe, and Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo, individually and as members of the California Valley Miwok Tribe Tribal Council ("Tribal Council"), appeal the Superintendent's January 12 Decision to the BIA's Pacific Regional Director. Chief Dixie, the Tribe, the Tribal Council and Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo are collectively referred to as "Appellants." Appellants are interested parties who are adversely affected by the January 12 Decision. Appeal of the January 12 Decision to the Pacific Regional Director is authorized by 25 C.F.R. section 2.4(a). *See also LeCompte v. Superintendent, Cheyenne River Agency*, 38 IBIA 62, 62 (2002).

NOTICE OF APPEAL

February 9, 2011

Page 2

Appellants will file a separate STATEMENT OF REASONS within the time period prescribed by 25 C.F.R. section 2.10(c).

The filing of an appeal under 25 C.F.R. Part 2 triggers an automatic stay of the challenged action during the pendency of the appeal. *See* 25 C.F.R. § 2.6(b); *Yakama Nation v. Northwest Regional Director Bureau of Indian Affairs*, 47 IBIA 117, 119 (2008). Accordingly, the BIA may take no further action to implement the January 12 Decision, including any action to recognize or conduct business with Burley or Reznor as officials or representatives of the Tribe or of its Tribal Council, until this appeal is resolved.

Appellants note that they are interested parties within the meaning of 25 C.F.R. section 2.2 but were not served with notice of the January 12 Decision as required by 25 C.F.R. section 2.7(a). Therefore, the time for filing an appeal is tolled until the BIA provides proper notice to Appellants. 25 C.F.R. § 2.7(b); *Charlotte J. Begaye v. Navajo Regional Director Bureau of Indian Affairs*, 41 IBIA 109, 110 (2005); *Alonzo S. Gallegos et al. v. Southwest Regional Director Bureau of Indian Affairs*, 41 IBIA 286, 290 (2005). Nonetheless, and without waiving any objection to the lack of proper notice, this Notice of Appeal is timely because it is filed within 30 days of the date of the Superintendent's January 12 Decision. 25 C.F.R. § 2.9(a).

Any and all notices given or required to be given to Appellants in this matter, and all papers served or required to be served on Appellants in this matter, should be delivered and served upon the following:

Robert J. Uram, Esq.
Sheppard Mullin Richter & Hampton, LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
Telephone: 415-434-9100
Facsimile: 415-434-3947
ruram@sheppardmullin.com

CERTIFICATION OF SERVICE. Service of this document was made by U.S. Mail, return receipt requested, on February 9, 2011, in accordance with all applicable rules, including 25 C.F.R. Part 2 of the Code of Federal Regulations.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

NOTICE OF APPEAL

February 9, 2011

Page 3

Dated: February 9, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By


ROBERT J. URAM

*Attorneys for Appellants Yakima Dixie, the California
Valley Miwok Tribe, the Tribal Council, Velma
WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn
Wilson and Antoine Azevedo*

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is Four Embarcadero Center, 17th Floor, San Francisco, California 94111-4109.

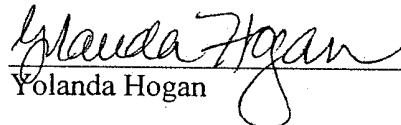
On **February 9, 2011**, I served the following document described as **NOTICE OF APPEAL** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes sent by certified mail, return receipt requested, addressed as follows:

Troy Burdick
Superintendent
Central California Agency
Bureau of Indian Affairs
650 Capital Mall, Suite 8-500
Sacramento, CA 95814
Facsimile: (916) 930-3780

Silvia Burley
10601 N. Escondido Pl.
Stockton, CA 95212

Robert Rosette, Esq.
Rosette & Associates
193 Blue Ravine Rd, Suite 255
Folsom, CA 95630
Facsimile: (916) 353-1085

Executed on February 9, 2011, at San Francisco, California.


Yolanda Hogan

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Exhibit A

The January 12 Decision



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

JAN 12 2011

Honorable Silvia Burley
Chairperson, California Valley Miwok Tribe
10601 N. Escondido Place
Stockton, California 95212

Dear Chairperson Burley:

The purpose of this correspondence is to acknowledge receipt of the Tribe's Report of Tribal Election and Addendum to Report of Tribal Election by tribal correspondence dated January 7, 2010. On January 7, 2011, the following witnesses: Tiger Paulk, Colleen Pringle, Richard Windfeathers Muniz, and Ty Muniz certified the election results of the January 7, 2010, Tribal election for the Chairperson and Secretary-Treasurer to be true and correct.

Therefore, as reported in the Tribe's Report of Tribal Elections, the following individuals currently represent and serve as officials of the California Valley Miwok Tribal Council:

1. Silvia Burley, Chairperson
2. Rashel Reznor, Secretary/Treasurer

Congratulations are extended to all the elected officials. Please feel free to contact my office about any Bureau program or any questions you may have.

Should you have any questions pertaining to this matter, please do not hesitate to contact Carol Rogers-Davis, Tribal Operations Officer, at (916) 930-3794.

Sincerely,

Troy Burdick
Superintendent

EXHIBIT 12



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 01 2011

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

Dear Mr. Dixie:

On December 22, 2010, my office issued a letter setting out the Department of the Interior's decision on a question respecting the composition of the California Valley Miwok Tribe. The question had been referred to my office by the Interior Board of Indian Appeals. On January 24, 2011, you filed suit in Federal district court seeking to have the Department's decision vacated.

Subsequent actions by the parties involved in this dispute have led me to reconsider the matters addressed in the December 22, 2010, decision letter. By means of today's letter, the December 22 decision is set aside.

I believe that the longstanding problems within the Tribe need prompt resolution, and I remain committed to the timely issuance of my reconsidered decision. I am mindful, however, that additional briefing may inform my analysis of the problems presented in this dispute. To that end, I will issue a briefing schedule in the coming week, requesting submissions from you and from Ms. Silvia Burley on specific questions of fact and law relevant to the referred question.

Sincerely,

Larry Echo Hawk
Assistant Secretary – Indian Affairs

cc: Ms. Silvia Burley
10601 Escondido Place
Stockton, California 95212

Robert A. Rosette, Esq.
565 West Chandler Boulevard, Suite 212
Chandler, Arizona 85225

Roy Goldberg, Esq.
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W., 11th Floor East
Washington, D.C. 20005-3314

Elizabeth Walker, Esq.
Walker Law LLC
429 North St. Asaph Street
Alexandria, Virginia 22314

Kenneth D. Rooney
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 663
Washington, D.C. 20044-0663

Mike Black, Director, Bureau of Indian Affairs
MS-4513-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Amy Dutschke, Director
Pacific Regional Office, Bureau of Indian Affairs
2800 Cottage Way, Room W-820
Sacramento, CA 95825

Troy Burdick, Superintendent
Central California Agency, Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

EXHIBIT 13



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 31 2011

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

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

Dear Ms. Burley and Mr. Dixie:

Introduction and Decision

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

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

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

- (1) The California Valley Miwok Tribe (CVMT) is a federally recognized tribe, and has been continuously recognized by the United States since at least 1916;
- (2) At the present date, the citizenship of the CVMT consists solely of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace;

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

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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

Analysis

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

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

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

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

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

Application of Specific Legal Authorities

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

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

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

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

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

30 IBIA 241, 248.

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

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

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

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

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

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

Conclusion

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

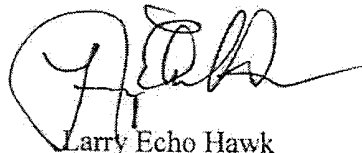
- CVMT is a federally recognized tribe whose entire citizenship, as of this date, consists of the five acknowledged citizens;
- The 1998 Resolution established a General Council form of government, comprised of all the adult citizens of the Tribe, with whom the Department may conduct government-to-government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

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

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

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

Sincerely,



Larry Echo Hawk
Assistant Secretary – Indian Affairs

cc: Robert A. Rosette, Esq.
565 West Chandler Boulevard, Suite 212
Chandler, Arizona 85225

Roy Goldberg, Esq.
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W., 11th Floor East
Washington, D.C. 20005-3314

Elizabeth Walker, Esq.
Walker Law LLC
429 North St. Asaph Street
Alexandria, Virginia 22314

Kenneth D. Rooney
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 663
Washington, D.C. 20044-0663

Mike Black, Director, Bureau of Indian Affairs
MS-4513-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Amy Dutschke, Director
Pacific Regional Office, Bureau of Indian Affairs
2800 Cottage Way, Room W-820
Sacramento, California 95825

Troy Burdick, Superintendent
Central California Agency, Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, California 95814

Karen Koch, Attorney-Advisor
Office of the Solicitor, Pacific Southwest Region
2800 Cottage Way, E-1712
Sacramento, California 95825

EXHIBIT 14

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

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

Plaintiffs,

v.

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

Defendants.

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

Hon. Richard W. Roberts

**JOINT STATUS REPORT AND PROPOSED ORDER REGARDING THE
STATUS OF THE RECONSIDERED DECISION OF THE ASSISTANT
SECRETARY - INDIAN AFFAIRS**

Pursuant to this Court's order of August 15, 2011, the parties provide the following status report to the Court.

1. On January 24, 2011, Plaintiffs brought suit challenging the December 22, 2010 decision of the Assistant Secretary - Indian Affairs of the United States Department of the Interior ("Assistant Secretary"). *See* Dkt. No. 1.
2. On March 16, 2011, Plaintiffs filed a Motion for Preliminary Injunction, Dkt. No. 8, and, after granting the Defendants' Consent Motion for an Extension of Time, Dkt. No. 17, this Court ordered the Defendants to file their opposition to Plaintiffs' Motion for a Preliminary Injunction by April 5, 2011.
3. However, on April 1, 2011, the Assistant Secretary - Indian Affairs of the United States Department of the Interior set aside the prior December 22, 2010 decision

regarding the organization and governance of the California Valley Miwok Tribe.

See Joint Motion to Stay Litigation, Dkt. No. 22, ex. 1.

4. On April 8, 2011, the Assistant Secretary sent letters to both Mr. Yakima Dixie and Ms. Silvia Burley requesting responsive briefing pertaining to a number of issues. Joint Motion to Stay Litigation, Dkt. No. 22, ex. 3.
5. The April 8, 2011, letter set May 3, 2011, as the deadline for the respective parties' submission of briefs responding to the Assistant Secretary's inquiries. Both Mr. Dixie and Ms. Burley submitted briefs on May 3, 2011.
6. On April 19, 2011, the parties jointly requested this Court stay the litigation and all attendant deadlines so that the Assistant Secretary could prepare and issue the reconsidered decision. *See* Joint Motion to Stay Litigation, Dkt. No. 22.
7. On April 25, 2011, this Court issued a minute order granting the parties' joint motion to stay until July 7, 2011, and ordered the parties to file a joint status report and proposed order on July 7, 2011 as well.
8. On July 7, 2011, the parties filed a joint status report and requested this Court stay the litigation and all attendant deadlines until August 15, 2011, to accommodate the Assistant Secretary's ongoing preparation of the reconsidered decision. *See* Joint Status Report Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Motion for Extension of the Temporary Stay of Litigation, Dkt. No. 23.
9. Plaintiffs consented to the extension on the condition that it was the final extension and that this Court order the Assistant Secretary to issue his reconsidered decision by August 15, 2011. *Id.* §§ 9, 9(a).

10. Defendants would not consent, however, to a condition mandating final agency action, and requested that should the Assistant Secretary not issue a reconsidered decision by August 15, 2011, that the result be a release of the voluntary stay. *Id.* §§ 9, 9(b). Accordingly, the parties each submitted a separate proposed order. *See id.*, Attachment 1-2.
11. On July 11, 2011, this Court granted the Joint Motion for Temporary Stay of Litigation and adopted Plaintiffs' proposed order. *See* Order Granting Joint Motion for Temporary Stay of Litigation, Dkt. No. 24. This Court's order struck paragraph 2, which requested, "This extension of the temporary stay shall be the final one granted by the Court and is conditioned upon the Assistant Secretary issuing his decision on reconsideration of the December 22, 2010 Decision on or before August 15, 2011." *Id.*
12. On August 12, 2011, the parties again requested the Court to extend the stay anticipating the issuance of the decision on August 26, 2011. This Court granted that request and stayed the litigation until September 2, 2011. *See* Order, Staying case until 09/02/11, Dkt. No. 26.
13. The Assistant Secretary issued the decision on Wednesday August 31, 2011. The Assistant Secretary reinstated his prior decision. While the August 31, 2011 decision is final for the Department for purpose of judicial review, the Assistant Secretary stayed the effectiveness of the August 31, 2011 decision pending resolution of this matter. As a result, the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the Federal Defendants.

14. Accordingly, no further temporary stay of the litigation is required.
15. Plaintiffs and Defendants request that the stay of the litigation be terminated and that a joint Status Report be filed by September 16, 2011 and that the Proposed Order be adopted.

Respectfully submitted this 1st day of September, 2011.

Respectfully submitted,

/s/ M Roy Goldberg

M. ROY GOLDBERG

(D.C. Bar No. 416953)

CHRISTOPHER M. LOVELAND

(D.C. Bar No. 473969)

ATTORNEYS FOR PLAINTIFFS

Sheppard Mullin Richter & Hampton LLP

1300 I Street, N.W., 11th Floor East

Washington, DC 20005-3314

Tel: (202) 218-0007

Fax: (202) 312-9425

Email: rgoldberg@sheppardmullin.com

cloveland@sheppardmullin.com

ROBERT J. URAM (*admitted pro hac vice*) Sheppard

Mullin Richter & Hampton LLP

Four Embarcadero Center, 17th Floor

San Francisco, California 94111-4109

Tel: (415) 434-9100

Fax: (415) 434-3947

Email: ruram@sheppardmullin.com

COUNSEL FOR PLAINTIFFS

/s/ Kenneth Rooney

KENNETH D. ROONEY

United States Department of Justice

Environment & Natural Resources Division

Natural Resources Section

P.O. Box 663

Washington, D.C. 20044-0663

Phone: (202) 514-9269

Fax: (202) 305-0506

E-mail: kenneth.rooney@usdoj.gov

OF COUNSEL

James W. Porter

Attorney-Advisor

Branch of Tribal Government and Alaska

Division of Indian Affairs

Office of the Solicitor, Department of the Interior

1849 C Street, N.W. Washington, D.C. 20240

Mail stop 6518

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on September 1, 2011, I filed a copy of the foregoing Joint Status Report and Proposed Order Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs was filed with the Court pursuant to the electronic filing rules. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

_____/s/
Roy Goldberg

EXHIBIT 15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____	)	
CALIFORNIA VALLEY MIWOK TRIBE,	)	
<u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 11-160 (RWR)
	)	
KEN SALAZAR, <u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

This matter is a dispute over the U.S. Department of the Interior's determination of the legitimate government and membership of the California Valley Miwok Tribe ("Tribe"), a federally recognized Indian tribe. Defendants are Secretary of the Interior Ken Salazar, Assistant Secretary for Indian Affairs Larry Echo Hawk, and Director of the Bureau of Indian Affairs Michael Black. Plaintiffs Yakima Dixie, Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson, and Antoine Azevedo bring suit individually and on behalf of the Tribe and its Tribal Council, arguing that the defendants' decision to recognize a General Council led by Sylvia Burley as the legitimate government of the Tribe, and to discontinue efforts to adjudicate the status of other putative tribal members, constituted arbitrary and capricious agency action, in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A), and also violated due process and the Indian Civil Rights Act ("ICRA"), 25 U.S.C.

- 2 -

§ 1301, *et seq.* Another group representing the Tribe, as organized in the form of the General Council, moves to intervene as a defendant in this action for the limited purpose of filing a motion to dismiss, arguing that intervention is necessary to protect its fundamental interests in defending its sovereignty and defining its citizenship.¹ Because the proposed intervenor satisfies the requirements for intervention as of right under Federal Rule of Civil Procedure 24(a)(2), the motion to intervene will be granted.²

BACKGROUND

The leadership and membership of the California Valley Miwok Tribe have been in dispute for over a decade. The Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103-454, included the California Valley Miwok Tribe as a federally recognized tribe. In 1998, the Department of the Interior's Bureau of Indian Affairs ("Bureau") initiated efforts to facilitate reorganizing the Tribe under the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. §§ 461-479. A tribe whose government is organized according to the IRA's procedural and substantive requirements qualifies for certain federal benefits

¹ Both the plaintiffs and the proposed intervenor use the name "California Valley Miwok Tribe." To avoid confusion, the terms "plaintiffs" and "proposed intervenor" will be used when discussing the respective parties' positions here.

² In light of the decision to grant the motion under Rule 24(a)(2), the parties' arguments regarding permissive intervention will not be addressed.

- 3 -

and may maintain government-to-government relations with the United States and with state and local governments. The Bureau identified plaintiff Yakima Dixie, then serving as tribal chairperson, Sylvia Burley, the present leader of the proposed intervenor, along with several others, as members of the Tribe who were able to participate in the reorganization (First Am. Compl., Ex. A., August 31, 2011 letter from Assistant Secretary of Indian Affairs ("August 31 decision") at 4). See also California Valley Miwok Tribe v. United States, 424 F. Supp. 2d 197, 198 (D.D.C. 2006) ("CVMT I") (reviewing Tribe's reorganization process). The Bureau recommended that the Tribe establish a general council form of government for the organization process. (August 31 decision at 4.) Following this recommendation, the Tribe established the General Council by resolution in 1998 and began to develop a draft constitution. (Id.) Plaintiffs dispute the validity of the resolution, alleging that it did not receive the approval of the required number of members. (First Am. Compl. ¶¶ 43-47.)

Soon afterwards, leadership disputes between Dixie and Burley developed within the Tribe. (August 31 decision at 4; First Am. Compl. ¶¶ 48-50.) In 2004, the Bureau declined to approve a constitution submitted by Burley because she had not involved the "whole tribal community" in the organizational process. (August 31 decision at 4; First Am. Compl. ¶¶ 51-53.) It also issued a communication stating that it did not view the

- 4 -

Tribe as "organized" under the IRA and that it did not recognize anyone as chairperson, though it recognized Burley as a "person of authority" within the Tribe. (See August 31 decision at 4; First Am. Compl. ¶¶ 54-56.) See also CVMT I, 424 F. Supp. 2d at 200 (D.D.C. 2006). In 2005, Burley and her supporters brought the CVMT I suit in the name of the Tribe challenging the Secretary of the Interior's refusal to approve the constitution. (See August 31 decision at 4; First Am. Compl. ¶ 58.) The D.C. Circuit upheld the district court's finding that the Secretary had the authority to decline to approve the constitution on the grounds that it did not enjoy support from the majority of the tribe's membership. California Valley Miwok Tribe v. United States, 515 F.3d 1262, 1263 (D.C. Cir. 2008). During the period of disputed leadership, Dixie and other members of a tribal council endeavored to identify and organize potential members of the tribe. (First Am. Compl. ¶¶ 65-70.) The Bureau assisted by publishing a notice seeking genealogies and other information from potential Tribal members, among other efforts to identify individuals entitled to participate in the reorganization process. (First Am. Compl. ¶¶ 71-74.) Burley and her supporters did not participate in these activities but challenged the reorganization process through administrative appeals within the Bureau. (First Am. Compl. ¶¶ 75-77.)

On December 22, 2010, the Assistant Secretary for Indian Affairs issued a decision, addressing Burley's appeals, in which

- 5 -

it concluded that the Tribe was organized as the General Council under the resolution adopted in 1998 and that the Bureau would cease efforts to facilitate reorganization. (Compl., Ex. C, December 22, 2010 letter from Assistant Secretary of Indian Affairs.) The plaintiffs then initiated this action challenging the legality of the decision. In April of 2011, the Assistant Secretary granted reconsideration and sought briefing from Dixie, Burley, and their respective supporters. (August 31 decision at 1.) The Assistant Secretary reinstated his prior decision on August 31, 2011, but stayed its effectiveness pending resolution of this litigation. (Id. at 8.) The Assistant Secretary represented that at present, the recognized citizenship of the Tribe consists of Dixie, Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace.³

The first amended complaint alleges that the Assistant Secretary presented no reasoned explanation for the Bureau's reversal of its previous positions that the Tribe was not yet organized in accordance with the IRA and in support of identifying additional tribal members to participate in reorganization. The plaintiffs therefore allege that the decision was arbitrary and capricious under the APA, as well as a violation of due process and ICRA. (First Am. Compl. ¶¶ 90-119.)

³ According to the plaintiffs, "Reznor, Paulk, and Wallace are Burley's daughters and granddaughter, respectively." (First Am. Compl. at 21 n.1.)

- 6 -

The plaintiffs allege that they have been harmed by the Assistant Secretary's action because they have been denied the opportunity to participate in reorganization and governance of the Tribe; they are not and will not be eligible to receive federal health, education and other benefits provided to members of recognized Indian Tribes; and the decision could provide a basis for Burley to divert funds held in trust for the Tribe by the State of California and paid by the California Gambling Control Commission to tribes that do not operate casinos or gaming devices, and to divert federal grant funds. (First Am. Compl. ¶¶ 82-89.) The plaintiffs seek declaratory and injunctive relief including an order vacating the August 31 decision and directing the Assistant Secretary "to establish government-to-government relations only with a Tribal government that reflects the entire Tribal community, including individual Plaintiffs and all other Current Members." (First Am. Compl. at 30.) The plaintiffs also seek an order enjoining the defendants from awarding any federal funds to Burley. (Id.) The defendants have answered the amended complaint.

The proposed intervenor moved to intervene as a defendant in the action for the limited purpose of filing a motion to dismiss for lack of subject matter jurisdiction, for failure to join an indispensable party, and for failure to state a claim.⁴

⁴ The proposed intervenor's first motion to intervene was fully briefed before the Assistant Secretary granted

- 7 -

The proposed intervenor argues that intervention as of right is warranted because the complaint "involves an attempt to forcibly expand the Tribe's citizen[ship] and alter its relationship with the United States, directly implicating the Tribe's sovereign responsibility to determine its own citizenship and resolve its own internal affairs." (Proposed Intervenor-Defendant's Am. Mot. for Leave to Intervene as Defendant ("Mot. to Intervene") at 3.) The plaintiffs oppose on the grounds that the proposed intervenor fails to demonstrate that its interests are not protected adequately by the federal defendants. (Pls.' Opp'n to Mot. to Intervene ("Pls.' Opp'n") at 3-4.) The federal defendants take no position on the motion to intervene. (Mot. to Intervene at 3 n.2.)

DISCUSSION

Intervention as a matter of right should be granted when the movant "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless

reconsideration of his December 22, 2010 decision. Following reinstatement of that decision, the proposed intervenor filed an amended motion to intervene. This opinion cites to the second round of briefing on intervention. In the amended motion to intervene, the proposed intervenor presents a lengthy recitation of the factual background, as well as arguments going to the merits of the motion to dismiss it intends to file. Because it is not necessary to the resolution of the motion to intervene, these arguments are not addressed.

- 8 -

existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Evaluating Rule 24(a)(2), the D.C. Circuit has "identified four prerequisites to intervene as of right: '(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests.'" Karsner v. Lothian, 532 F.3d 876, 885 (D.C. Cir. 2008) (quoting SEC v. Prudential Sec. Inc., 136 F.3d 153, 156 (D.C. Cir. 1998)). Importantly, "a party seeking to intervene as of right must demonstrate that it has standing under Article III of the Constitution." Fund For Animals, Inc. v. Norton, 322 F.3d 728, 731-32 (D.C. Cir. 2003); see Defenders of Wildlife v. Jackson, Civil Action No. 10-1915 (RWR), 2012 WL 896141, at *4 (D.D.C. March 18, 2012) (discussing view that Article III standing and Rule 24(a)(2) interest requirements are additive, and view that any party who satisfies Rule 24(a) will also meet Article III's standing requirement).

I. STANDING

The plaintiffs do not contest the proposed intervenor's standing to intervene. However, this threshold issue will be addressed since a party's Article III standing is a prerequisite to subject matter jurisdiction. See Fund For Animals, Inc., 322 F.3d at 732. "To establish standing under Article III, a prospective intervenor -- like any party -- must show: (1)

- 9 -

injury-in-fact, (2) causation, and (3) redressability." Id. at 732-33. The proposed intervenor easily meets these requirements. If the plaintiffs prevail in this action, the Assistant Secretary's August 31 decision will be vacated, the Bureau will be ordered to cease government-to-government relationships with the Tribe as organized in the form of the General Council, and the defendants will be enjoined from awarding any federal funds to Burley. These actions are concrete and particularized injuries to the proposed intervenor's financial resources and governmental integrity. The causation prong is satisfied because the threatened loss of sovereignty and funds is fairly traceable to the agency action that the plaintiffs seek to compel in the instant action. Finally, a decision in the proposed intervenor's favor would leave the August 31 decision undisturbed and thereby prevent the injuries from occurring, satisfying the redressability prong.

II. RULE 24(a)(2) REQUIREMENTS

The proposed intervenor also meets each of the four requirements for intervention as a matter of right. First, the proposed intervenor's motion was timely, as it was initially filed "less than two months after the plaintiffs filed their complaint and before the defendants filed an answer." Fund For Animals, Inc., 322 F.3d at 735. Second, the proposed intervenor has shown a legally protected interest in the matter since, in this Circuit, "satisfying constitutional standing requirements

- 10 -

demonstrates the existence of a legally protected interest." Jones v. Prince George's County, 348 F.3d 1014, 1019 (D.C. Cir. 2003) (citing Mova Pharm. Corp. v. Shalala, 140 F.3d 1060, 1076 (D.C. Cir. 1998)). Third, plaintiffs' action "threaten[s] to impair," Karsner, 532 F.3d at 885, the proposed intervenor's legally protected interest because resolution of the matter in the plaintiffs' favor would directly interfere with the governance of the Tribe as currently recognized and preclude access to federal funds. The plaintiffs appear to concede that the above three requirements are met as they presented no arguments on these points in their opposition.

The basis of the plaintiffs' opposition to intervention concerns the fourth requirement, the adequacy of existing parties' representation of the proposed intervenor's interests. The proposed intervenor argues that the federal defendants do not adequately represent its interests since the federal defendants may make different arguments from those of the proposed intervenor, the proposed intervenor's stake in the litigation differs from that of the defendants, the defendants may not choose to appeal an adverse judgment, and the proposed intervenor will provide necessary information to the proceedings that the defendants might neglect. (Stmt. of P. & A. in Supp. of Proposed Intervenor-Defendant's Mot. to Intervene ("Proposed Intervenor's Stmt.") at 22-23.) The plaintiffs counter that the federal defendants adequately represent the proposed-intervenor's

- 11 -

interests because both seek the same "ultimate objective," that is, upholding the August 2011 Decision. (Pls.' Opp'n at 3.)

The D.C. Circuit has emphasized repeatedly that the standard to demonstrate inadequacy of representation is lenient. See Fund For Animals, Inc., 322 F.3d at 736 n.7 (concluding that Supreme Court precedent "makes clear that the standard for measuring inadequacy of representation is low"); Dimond v. District of Columbia, 792 F.2d 179, 192 (D.C. Cir. 1986) (describing burden as "not onerous"); United States v. American Tel. & Tel. Co., 642 F.2d 1285, 1293 (D.C. Cir. 1980) (recognizing view that a movant "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee") (internal quotations omitted). In addition, the Circuit has expressed skepticism that United States governmental entities, with their unique obligations to the serve general public, can be found to adequately represent the interests of potential intervenors. See Fund For Animals, Inc., 322 F.3d at 736 & n.9 (collecting cases).

That skepticism is warranted here. The federal defendants' interest in this action is to defend the Assistant Secretary's decision as lawful agency action. By contrast, the proposed intervenor possesses a distinct and weighty interest in protecting its governance structure and its entitlement and access to federal grant monies. Because the federal defendants do not share these concerns, their defense of this action may not

- 12 -

adequately represent the proposed intervenor's interests. See Hardin v. Jackson, 600 F. Supp. 2d 13, 16 (D.D.C. 2009) ("The D.C. Circuit has frequently found 'inadequacy of governmental representation' when the government has no financial stake in the outcome of the suit.") (quoting Dimond, 792 F.2d at 192).⁵

The purpose for which the proposed intervenor seeks to participate in the case reflects the proposed intervenor's distinct aim of asserting its sovereign interests. The federal defendants, and the plaintiffs, anticipate that the case may be resolved on cross-motions for summary judgment and the administrative record. (See Joint Mot. for Briefing Schedule.) The proposed intervenor, however, seeks intervention for the limited purpose of moving to dismiss on several grounds, including lack of jurisdiction to adjudicate internal tribal disputes and failure to state a claim, a tactic the federal

⁵ Plaintiffs propose a different standard employed in the Ninth Circuit according to which "[w]here the party and the proposed intervenor share the same ultimate objective, a presumption of adequacy of representation applies, and the intervenor can rebut that presumption only with a compelling showing to the contrary." Perry v. Proposition 8 Official Proponents, 587 F.3d 947, 951 (9th Cir. 2009) (internal quotations omitted). The D.C. Circuit has not endorsed this articulation of the intervention standard, and cases in the Circuit have been "inconsistent as to who bears the burden with respect to [the adequacy of representation] factor." Fund For Animals, Inc., 322 F.3d at 736 n.7. Although both defendants and the proposed intervenor oppose invalidating the August 31 decision, they do so for different reasons and their respective stakes in the matter differ greatly. The standard for finding inadequate representation here is satisfied regardless of who bears the burden.

- 13 -

defendants have not pursued. See Proposed Intervenor-Defendant's Reply to Pls.' Opp'n ("Proposed Intervenor-Defendant's Reply") at 7 (asserting that defendants' representation is demonstrably not adequate because "[s]trong grounds exist for dismissal of Plaintiffs' Amended Complaint on Rule 12(b)(1) and Rule 12(b)(6) grounds, but the United States failed to seek such a dismissal"). The plaintiffs argue that the choice of a "different procedural mechanism for seeking judicial affirmance of the agency decision does not mean that the government is not adequately representing the prospective intervenor's interests." (Pls.' Opp'n at 4.)

A difference in litigation strategies does not always demonstrate an insufficiently coterminous relationship between a potential intervenor and an existing party. Here, however, the divergence highlights that the proposed intervenor's conceptualization of the action, as an internal tribal dispute not amenable to resolution in a federal judicial forum, is not shared by the defendants. In an important regard, then, the proposed-intervenor does not seek "judicial affirmance" that the agency decision was not arbitrary and capricious or otherwise unlawful; it seeks to persuade "this Court to refrain from presiding over a procedurally defective Amended Complaint and rendering a ruling on the merits in an action over which it lacks jurisdiction." (Proposed Intervenor-Defendant's Reply at 3.) For the foregoing reasons, the defendants do not adequately represent the proposed intervenor's interest in protecting its current

- 14 -

governmental structure and its ability to define its membership independently.

CONCLUSION AND ORDER

Because all four requirements of Rule 24(a)(2) are met, the proposed intervenor is entitled to intervention as of right. The plaintiffs ask that, if intervention is granted, the filing of the motion to dismiss be coordinated with the briefing and resolution of the parties' cross motions for summary judgment. (Pls.' Opp'n at 5.) Accordingly, it is hereby

ORDERED that the proposed intervenor-defendant's amended motion [35] for leave to intervene as defendant be, and hereby is, GRANTED. The Clerk's Office is directed to docket Exhibits 3 through 7 to the proposed intervenor-defendant's amended motion for leave to intervene as the intervenor-defendant's motion to dismiss the plaintiffs' first amended complaint. It is further

ORDERED that the proposed intervenor-defendant's motion [36] to expedite consideration of its motion for leave to intervene be, and hereby is, GRANTED. It is further

ORDERED that the parties' joint motion [41] to extend time for plaintiffs to request supplementation of the administrative record be, and hereby is, GRANTED nunc pro tunc. It is further

ORDERED that the parties' amended joint motion for briefing schedule [47] for cross motions for summary judgment be, and hereby is, GRANTED nunc pro tunc, and the parties' joint motion

- 15 -

[38] for briefing schedule for cross motions for summary judgment be, and hereby is, DENIED as moot. It is further

ORDERED that the parties and the intervenor shall meet and confer and file by April 4, 2012 a joint status report and proposed order reflecting deadlines for opposing and replying in support of the intervenor's motion to dismiss and proposing any necessary amendments to the briefing schedule for cross motions for summary judgment.

SIGNED this 26th day of March, 2012.

 /s/
RICHARD W. ROBERTS
United States District Judge

EXHIBIT 16

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - October 20, 2011

EVENT DATE: 10/21/2011

EVENT TIME: 08:30:00 AM

DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

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

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE VS. THE CALIFORNIA GAMBLING CONTROL COMMISSION

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 09/15/2011

Plaintiff California Valley Miwok Tribe's motion for entry of judgment against Defendant California Gambling Control Commission is denied.

The court finds Plaintiff's motion is jurisdictionally barred as an improper motion for reconsideration of this court's September 7, 2011, ex parte ruling via Minute Order. See, *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500. ["According to the plain language of the statute, a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon "new or different facts, circumstances, or law." Although Intervenor's raise this issue, Plaintiff fails to respond to this argument or to initially provide any "new or different facts, circumstances, or law" as required to support a motion for reconsideration under CCP § 1008(b).

Even if Plaintiff was able to overcome this jurisdictional hurdle, Plaintiff's motion would still be denied. On the merits, the court is not persuaded by Plaintiff's "independent grounds" argument. While the court took judicial notice of several other documents in its ruling, the March 11, 2011, Minute Order reflects that the court granted Plaintiff's motion for judgment on the pleadings based exclusively on the December 22, 2010, decision by Assistant Secretary Larry Echo Hawk. ["The court also finds that, in light of the December 22, 2010 decision by Assistant Secretary Larry Echo Hawk of the United States Department of the Interior - Indian Affairs, of which this court takes judicial notice, [Evidence Code § 452(c)], the Commission's answer does not state facts sufficient to constitute a defense to the complaint. CCP § 438(c)(1)(A)."] There is no other basis stated for the court's ruling. The court's reference to the January 12, 2011, letter Troy Burdick letter is only to demonstrate that it had no effect on the court's ruling.

The stay subsequently issued by this court, and still in effect, is based on the April 1, 2011, decision of Assistant Secretary Hawk rescinding the December 22, 2010, decision.

The August 31, 2011, decision by Assistant Secretary Hawk re-affirms certain portions of the December 22, 2010, decision but specifically provides that:

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

Implementation of the August 31, 2011, decision is stayed pending resolution of the pending federal action brought by Intervenor's. The Assistant Secretary also stipulated in *California Valley Miwok Tribe v.*

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE CASE NUMBER: 37-2008-00075326-CU-CO-CTL
VS. THE CALIFORNIA GAMBLING

Salazar that: "the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the Federal Defendants." Both the December 20, 2010 decision and the August 31, 2011, decision are under judicial review in the federal action. This court's ruling on Plaintiff's motion for judgment on the pleadings is dependent on the final outcome of the judicial review of the decisions by Assistant Secretary Hawk. Therefore, the court orders that this matter remain stayed, with all previous orders remaining in effect, pending final resolution of *California Valley Miwok Tribe v. Salazar*.

For these same reasons the court denies the Commission and the Intervenor's requests to vacate the court's previous rulings. Intervenor's request that the court ordered stay extend to discovery is denied. The court's order of April 20, 2011, allowing the parties to conduct discovery "unless and until otherwise ordered by the Court" remains in effect.

The court rejects Plaintiff's standing argument with respect to Intervenor. This court's April 20, 2011, order clearly provides that "Intervenor are reinstated as fully participating parties to this case."

Plaintiff fails to establish how the Intervenor's attorney's purported conflict of interest warrants the relief Plaintiff seeks via this motion – entry of judgment.

Plaintiff's request for judicial notice is granted. The Commission's request for judicial notice is granted. Intervenor's request for judicial notice is granted.

EXHIBIT 17

TYPE-C

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:11-cv-00160-RWR**

CALIFORNIA VALLEY MIWOK TRIBE et al v. SALAZAR et al
Assigned to: Judge Richard W. Roberts
Case: 1:05-cv-00739-JR
Cause: 05:702 Administrative Procedure Act
Plaintiff

Date Filed: 01/24/2011
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: U.S. Government Defendant

**CALIFORNIA VALLEY MIWOK
TRIBE**

represented by **Christopher Michael Loveland**
SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP
1300 I Street, NW
11th Floor East
Washington, DC 20005
(202) 218-0000
Fax: (202) 312-9432
Email: cloveland@sheppardmullin.com
ATTORNEY TO BE NOTICED

JAMES F. RUSK
SHEPPARD, MULLIN, RICHTER
& HAMPTON, LLP
Four Embarcadero Center
San Francisco, CA 94111
415-774-3232
Fax: 415-434-3947
PRO HAC VICE
ATTORNEY TO BE NOTICED

M. Roy Goldberg
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
1300 I Street, NW
11th Floor East
Washington, DC 20005-3314
(202) 218-0007
Fax: (202) 312-9425
Email: rgoldberg@sheppardmullin.com
ATTORNEY TO BE NOTICED

Robert J. Uram
SHEPPARD, MULLIN, RICHTER
& HAMPTON, LLP
Four Embarcadero Center
San Francisco, CA 94111
(415) 434-9100
Fax: 415-434-3947
PRO HAC VICE
ATTORNEY TO BE NOTICED

Saba Bazzazieh
ROSETTE, LLP
565 W. Chandler Blvd,
Suite-212
Chandler, AZ 85225
480-889-8990
Fax: 480-889-8997
TERMINATED: 04/17/2012
PRO HAC VICE

ATTORNEY TO BE NOTICED

Plaintiff

TRIBAL COUNCIL

represented by **Christopher Michael Loveland**
(See above for address)
ATTORNEY TO BE NOTICED

JAMES F. RUSK
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

M. Roy Goldberg
(See above for address)
ATTORNEY TO BE NOTICED

Robert J. Uram
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

YAKIMA DIXIE

represented by **Christopher Michael Loveland**
(See above for address)
ATTORNEY TO BE NOTICED

JAMES F. RUSK
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

M. Roy Goldberg
(See above for address)
ATTORNEY TO BE NOTICED

Robert J. Uram
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

VELMA WHITEBEAR

represented by **Christopher Michael Loveland**
(See above for address)
ATTORNEY TO BE NOTICED

JAMES F. RUSK
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

M. Roy Goldberg
(See above for address)
ATTORNEY TO BE NOTICED

Robert J. Uram
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

ANTONIA LOPEZ

represented by **Christopher Michael Loveland**
(See above for address)

ATTORNEY TO BE NOTICED

JAMES F. RUSK
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

M. Roy Goldberg
(See above for address)
ATTORNEY TO BE NOTICED

Robert J. Uram
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

MICHAEL MENDIBLES

represented by **Christopher Michael Loveland**
(See above for address)
ATTORNEY TO BE NOTICED

JAMES F. RUSK
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

M. Roy Goldberg
(See above for address)
ATTORNEY TO BE NOTICED

Robert J. Uram
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

EVELYN WILSON

represented by **Christopher Michael Loveland**
(See above for address)
ATTORNEY TO BE NOTICED

JAMES F. RUSK
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

M. Roy Goldberg
(See above for address)
ATTORNEY TO BE NOTICED

Robert J. Uram
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

ANTOINE AZEVEDO

represented by **Christopher Michael Loveland**
(See above for address)
ATTORNEY TO BE NOTICED

JAMES F. RUSK
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

M. Roy Goldberg
(See above for address)
ATTORNEY TO BE NOTICED

Robert J. Uram
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

V.

Defendant

KENNETH LEE SALAZAR
in his official capacity as Secretary of the
United States Department of the Interior

represented by **Kenneth Dean Rooney**
U.S. DEPARTMENT OF JUSTICE
ENRD/Natural Resources Section
601 D Street, NW
Washington, DC 20004
(202) 514-9269
Fax: (202) 305-0506
Email: kenneth.rooney@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

LARRY ECHO HAWK
in his official capacity as Assistant
Secretary-Indian Affairs of the United
States Department of the Interior

represented by **Kenneth Dean Rooney**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

MICHAEL BLACK
in his official capacity as Director of the
Bureau of Indian Affairs within the
United States Department of the Interior

represented by **Kenneth Dean Rooney**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Intervenor Defendant

CALIFORNIA VALLEY MIWOK
TRIBE

represented by **Robert A. Rosette**
ROSETTE & ASSOCIATES, PC
565 West Chandler Boulevard
Suite 212
Chandler, AZ 85225
(480) 889-8990
Fax: (480) 889-8997
Email: rosette@rosettelaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

M. Roy Goldberg
(See above for address)
TERMINATED: 04/17/2012
ATTORNEY TO BE NOTICED

Saba Bazzazieh
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/24/2011	<u>1</u>	COMPLAINT against MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Filing fee \$ 350, receipt number 4616035910) filed by MICHAEL MENDIBLES, YAKIMA DIXIE, EVELYN WILSON, TRIBAL COUNCIL, ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, VELMA WHITEBEAR, ANTONIA LOPEZ. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Civil Cover Sheet)(rdj) (Attachment 1 replaced on 1/25/2011) (dr) (Entered: 01/25/2011)
01/24/2011		SUMMONS (5) Issued as to MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR, U.S. Attorney and U.S. Attorney General (rdj) (Entered: 01/25/2011)
01/24/2011	<u>2</u>	NOTICE OF RELATED CASE by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. Case related to Case No. 05-739. (rdj) (Entered: 01/25/2011)
02/03/2011	<u>3</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. Date of Service Upon U.S. Attorney 1/27/2011. (Answer due for ALL FEDERAL DEFENDANTS by 3/28/2011.), RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. MICHAEL BLACK served on 1/27/2011; LARRY ECHO HAWK served on 1/27/2011; KEN SALAZAR served on 1/27/2011 (Goldberg, M.) (Entered: 02/03/2011)
02/03/2011	<u>4</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 01/27/2011. (Goldberg, M.) (Entered: 02/03/2011)
02/03/2011	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to MICHAEL BLACK served on 1/27/2011; LARRY ECHO HAWK served on 1/27/2011; KEN SALAZAR served on 1/27/2011. (See Docket Entry <u>3</u> to view document) (jf,) (Entered: 02/04/2011)
03/07/2011	<u>6</u>	NOTICE of Appearance by Kenneth Dean Rooney on behalf of All Defendants (Rooney, Kenneth) (Main Document 6 replaced to correct case number on 3/8/2011) (jf,). (Entered: 03/07/2011)
03/08/2011	<u>7</u>	Consent MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Robert J. Uram, :Firm- Sheppard Mullin Richter &Hampton LLP, :Address- 4 Embarcadero Center, 17th Floor, San Francisco, CA 94111. Phone No. - (415) 434-9100. Fax No. - (415) 434-3947 by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Exhibit Declaration of Robert J. Uram, # <u>2</u> Text of Proposed Order)(Goldberg, M.) (Entered: 03/08/2011)
03/16/2011	<u>8</u>	WITHDRAWN BY COUNSEL (SEE DOCKET ENTRY <u>19</u>)..... MOTION for Preliminary Injunction by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Affidavit Exhibit 1 to Motion, # <u>2</u> Exhibit Exhibit A to Affidavit of Robert Uram, # <u>3</u> Exhibit Exhibit B to Affidavit of Robert Uram, # <u>4</u> Exhibit Exhibit C to Affidavit of Robert Uram, # <u>5</u> Exhibit Exhibit D to Affidavit of Robert Uram, # <u>6</u> Exhibit Exhibit E to Affidavit of Robert Uram, # <u>7</u> Exhibit Exhibit F to Affidavit of Robert Uram, # <u>8</u> Exhibit Exhibit G to Affidavit of Robert Uram, # <u>9</u> Exhibit Exhibit H to Affidavit of Robert Uram, # <u>10</u> Exhibit Exhibit I to Affidavit of Robert Uram, # <u>11</u> Exhibit Exhibit J to Affidavit of Robert Uram, # <u>12</u> Exhibit Exhibit K to Affidavit of Robert Uram, # <u>13</u> Exhibit Exhibit L to Affidavit of Robert Uram, # <u>14</u> Exhibit Exhibit M to Affidavit of Robert Uram, # <u>15</u> Exhibit Exhibit N to Affidavit of Robert Uram, # <u>16</u> Exhibit Exhibit O to Affidavit of Robert Uram to, # <u>17</u> Affidavit Exhibit 2 to Motion, # <u>18</u> Affidavit Exhibit 3 to Motion, # <u>19</u> Affidavit Exhibit 4 to Motion, # <u>20</u> Affidavit Exhibit 5 to Motion, # <u>21</u> Affidavit Exhibit 6 to Motion, # <u>22</u> Affidavit Exhibit 7 to Motion, # <u>23</u> Affidavit Exhibit 8 to Motion, # <u>24</u> Affidavit Exhibit 9 to Motion, # <u>25</u> Affidavit Exhibit 10 to Motion, # <u>26</u> Text of Proposed Order)(Goldberg, M.) Modified on 4/8/2011 (jf,). (Entered: 03/16/2011)

03/17/2011	<u>9</u>	First MOTION for Extension of Time to File Answer by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # <u>1</u> Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/17/2011)
03/17/2011		MINUTE ORDER: It is hereby ORDERED that the defendants file by April 1, 2011 their opposition to plaintiffs' motion for a preliminary injunction. Plaintiffs shall file by April 8, 2011 their reply. Signed by Judge Richard W. Roberts on 3/17/11. (lcrwr1) (Entered: 03/17/2011)
03/17/2011		MINUTE ORDER: It is hereby ORDERED that the defendants' motion <u>9</u> for an extension of time be, and hereby is, GRANTED. Defendants shall file an answer or other response to the plaintiffs' complaint by April 27, 2011. Signed by Judge Richard W. Roberts on 3/17/11. (lcrwr1) (Entered: 03/17/2011)
03/17/2011		Set/Reset Deadlines: Defendant's Answer to the Complaint due by 4/27/2011. (hs) (Entered: 03/17/2011)
03/17/2011		Set/Reset Deadlines: Defendant's Response to Motion for Preliminary Injunction due by 4/1/2011; Plaintiff's Reply due by 4/8/2011. (hs) (Entered: 03/17/2011)
03/17/2011	<u>10</u>	NOTICE of Appearance by Robert A. Rosette on behalf of CALIFORNIA VALLEY MIWOK TRIBE (znmw,) (Entered: 03/22/2011)
03/17/2011	<u>11</u>	MOTION to Intervene as a Defendant by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # <u>1</u> Text of Proposed Order re Motion to Intervene, # <u>2</u> Declaration re Motion to Intervene, # <u>3</u> Motion to Dismiss, # <u>4</u> Text of Proposed Order re Motion to Dismiss, # <u>5</u> Declaration re Motion to Dismiss, # <u>6</u> Exhibit A to Declarations re Motion to Intervene and Dismiss, # <u>7</u> Exhibit B to Declarations re Motion to Intervene and Dismiss, # <u>8</u> Exhibit C to Declarations re Motion to Intervene and Dismiss, # <u>9</u> Exhibit D to Declarations re Motion to Intervene and Dismiss, # <u>10</u> Exhibit E to Declarations re Motion to Intervene and Dismiss, # <u>11</u> Exhibit F to Declarations re Motion to Intervene and Dismiss, # <u>12</u> Exhibit G to Declarations re Motion to Intervene and Dismiss)(znmw,) (Entered: 03/22/2011)
03/22/2011	<u>12</u>	NOTICE of Appearance by Christopher Michael Loveland on behalf of All Plaintiffs (Loveland, Christopher) (Entered: 03/22/2011)
03/22/2011	<u>13</u>	MOTION to Expedite <i>Time to Rule on the California Valley Miwok's Motion for Leave to Intervene as Defendant</i> by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # <u>1</u> Affidavit of Robert A. Rosette)(Rosette, Robert) (Entered: 03/22/2011)
03/25/2011		MINUTE ORDER: It is hereby ORDERED that the parties file by March 29, 2011 responses to the motion <u>11</u> to intervene. Signed by Judge Richard W. Roberts on 3/25/11. (lcrwr1) (Entered: 03/25/2011)
03/25/2011		Set/Reset Deadlines: Parties Responses to Motion to Intervene due by 3/29/2011. (hs) (Entered: 03/25/2011)
03/29/2011	<u>14</u>	Memorandum in opposition to re <u>11</u> MOTION to Intervene filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # <u>1</u> Exhibit 1 -Affidavit of Robert Uram, # <u>2</u> Exhibit A to Robert Uram Affidavit, # <u>3</u> Exhibit B to Robert Uram Affidavit)(Goldberg, M.) (Entered: 03/29/2011)
03/29/2011	<u>15</u>	ENTERED IN ERROR.....MEMORANDUM re <u>11</u> MOTION to Intervene filed by CALIFORNIA VALLEY MIWOK TRIBE by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Rooney, Kenneth) Modified on 3/30/2011 (jf,). (Entered: 03/29/2011)
03/29/2011	<u>16</u>	RESPONSE re <u>11</u> MOTION to Intervene filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (jf,) (Entered: 03/30/2011)
03/30/2011		NOTICE OF CORRECTED DOCKET ENTRY: Document No. re <u>15</u> Memorandum was entered in error and will be refiled by the clerk's office under the correct category.(jf,) (Entered: 03/30/2011)

03/30/2011		MINUTE ORDER: It is hereby ORDERED that the California Valley Miwok Tribe file by April 4, 2011 a reply in support of its motion to intervene. Signed by Judge Richard W. Roberts on 3/30/11. (lcrwr1) (Entered: 03/30/2011)
03/31/2011		Set/Reset Deadlines: Plaintiff's Reply to Motion to Intervene due by 4/4/2011. (hs) (Entered: 03/31/2011)
03/31/2011	<u>17</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>8</u> MOTION for Preliminary Injunction by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # <u>1</u> Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/31/2011)
03/31/2011	<u>18</u>	MOTION for Extension of Time to <i>Modify Briefing Schedule</i> by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # <u>1</u> Affidavit of Robert A. Rosette, # <u>2</u> Text of Proposed Order)(Rosette, Robert) (Entered: 03/31/2011)
04/01/2011		MINUTE ORDER: It is hereby ORDERED that the defendants' consent motion <u>17</u> for an extension of time be, and hereby is, GRANTED. Defendants' opposition to plaintiffs' motion for a preliminary injunction is due by April 5, 2011, and plaintiffs' reply is due by April 12, 2011. Signed by Judge Richard W. Roberts on 4/1/11. (lcrwr1) (Entered: 04/01/2011)
04/01/2011		MINUTE ORDER: It is hereby ORDERED that the plaintiffs' consent motion <u>7</u> be, and hereby is, GRANTED, and Robert J. Uram is admitted to appear pro hac vice. Signed by Judge Richard W. Roberts on 4/1/11. (lcrwr1) (Entered: 04/01/2011)
04/01/2011	<u>19</u>	NOTICE OF WITHDRAWAL OF MOTION by CALIFORNIA VALLEY MIWOK TRIBE re <u>8</u> MOTION for Preliminary Injunction <i>as Moot</i> (Attachments: # <u>1</u> Exhibit 2011 Decision)(Goldberg, M.) (Entered: 04/01/2011)
04/04/2011		Set/Reset Deadlines: Defendant's Response due by 4/5/2011; Plaintiff's Reply due by 4/12/2011. (hs) (Entered: 04/04/2011)
04/04/2011	<u>20</u>	REPLY to opposition to motion re <u>11</u> MOTION to Intervene filed by CALIFORNIA VALLEY MIWOK TRIBE. (Attachments: # <u>1</u> Affidavit of Robert A. Rosette, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G)(Rosette, Robert) (Entered: 04/04/2011)
04/07/2011		MINUTE ORDER: In light of the plaintiffs' notice of withdrawal of their motion for a preliminary injunction, it is hereby ORDERED that the California Valley Miwok Tribe's motion <u>18</u> for an extension of time be, and hereby is, DENIED as moot. Signed by Judge Richard W. Roberts on 4/7/11. (lcrwr1) (Entered: 04/07/2011)
04/22/2011	<u>21</u>	Second MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # <u>1</u> Text of Proposed Order)(Rooney, Kenneth) (Main Document 21 replaced on 4/26/2011) (jf,). (Entered: 04/22/2011)
04/25/2011		MINUTE ORDER: It is hereby ORDERED that the defendants' unopposed motion <u>21</u> for an extension of time be, and hereby is, GRANTED. Defendants' answer or other response to the complaint is due by May 27, 2011. Signed by Judge Richard W. Roberts on 4/25/11. (lcrwr1) (Entered: 04/25/2011)
04/25/2011		NOTICE OF ERROR re <u>21</u> Motion for Extension of Time to File Answer; emailed to kenneth.rooney@usdoj.gov, cc'd 8 associated attorneys — The PDF file you docketed contained errors: 1. Incorrect header/caption/case number, 2. Please refile document, 3. Entered in Error; please refile with correct case number. (znmw,) (Entered: 04/25/2011)
04/26/2011		Set/Reset Deadlines: Answer/Response to the Complaint due by 5/27/2011. (hs) (Entered: 04/26/2011)
05/19/2011	<u>22</u>	Joint MOTION to Stay <i>Litigation</i> by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Text of Proposed Order)(Goldberg, M.) (Entered: 05/19/2011)

05/25/2011		MINUTE ORDER: It is hereby ORDERED that the parties' joint motion <u>22</u> to stay be, and hereby is, GRANTED. The case is stayed and administratively closed until July 7, 2011, by which date the parties shall file a joint status report and proposed order. Signed by Judge Richard W. Roberts on 5/25/11. (lcrwr1) (Entered: 05/25/2011)
07/07/2011	<u>23</u>	STATUS REPORT <i>Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs and Motion for Extension of the Temporary Stay of Litigation</i> by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # <u>1</u> Plaintiffs' Proposed Order, # <u>2</u> Defendants' Proposed Order)(Rooney, Kenneth) (Entered: 07/07/2011)
07/11/2011	<u>24</u>	ORDER; Granting Joint Motion for Temporary Stay of Litigation, Joint Status Report due by 8/15/2011, Signed by Judge Richard W. Roberts on 7/11/2011. (hs) (Entered: 07/11/2011)
08/12/2011	<u>25</u>	STATUS REPORT <i>Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs and Unopposed Motion for Extension of the Temporary Stay of Litigation</i> by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # <u>1</u> Text of Proposed Order)(Rooney, Kenneth) (Entered: 08/12/2011)
08/15/2011	<u>26</u>	ORDER, Staying case until 09/02/11; Joint Status Report due by 9/2/2011. Signed by Judge Richard W. Roberts on 8/12/11. (See Order for detail) (gdf) (Entered: 08/15/2011)
09/01/2011	<u>27</u>	STATUS REPORT AND PROPOSED ORDER REGARDING THE STATUS OF THE RECONSIDERED DECISION OF THE ASSISTANT SECRETARY – INDIAN AFFAIRS by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # <u>1</u> Text of Proposed Order)(Goldberg, M.) (Entered: 09/01/2011)
09/02/2011	<u>28</u>	NOTICE of Filing Emergency Supplement to Motion to Intervene by CALIFORNIA VALLEY MIWOK TRIBE re <u>11</u> MOTION to Intervene(Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Rosette, Robert) Modified on 9/6/2011 to correct document number (jf,). (Entered: 09/02/2011)
09/06/2011	<u>29</u>	RESPONSE re <u>28</u> Notice (Other) <i>Emergency Supplement</i> filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # <u>1</u> Exhibit A)(Goldberg, M.) (Entered: 09/06/2011)
09/09/2011		MINUTE ORDER: In light of the parties' September 1, 2011 joint status report, it is hereby ORDERED that the parties submit by September 16, 2011 a proposed order and joint status report proposing a schedule on which the case should proceed. Signed by Judge Richard W. Roberts on 9/9/11. (lcrwr1) (Entered: 09/09/2011)
09/09/2011		Set/Reset Deadlines: Joint Status Report due by 9/16/2011 (hs) (Entered: 09/09/2011)
09/13/2011	<u>30</u>	STATUS REPORT (<i>Joint</i>) by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Goldberg, M.) (Entered: 09/13/2011)
09/15/2011	<u>31</u>	NOTICE of Proposed Order by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON re <u>30</u> Status Report (Goldberg, M.) (Entered: 09/15/2011)
09/20/2011		MINUTE ORDER: In light of the parties' September 13, 2011 joint status report, it is hereby ORDERED that plaintiffs file amended complaint by October 17, 2011, that defendants answer or otherwise respond to the first amended complaint and

		lodge the administrative record by December 1, 2011, and that plaintiffs shall have 30 days to review the administrative record and request supplementation or discovery. Signed by Judge Richard W. Roberts on 9/20/11. (lcrwr1) (Entered: 09/20/2011)
10/17/2011	<u>32</u>	FIRST AMENDED COMPLAINT against MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR filed by MICHAEL MENDIBLES, YAKIMA DIXIE, EVELYN WILSON, TRIBAL COUNCIL, ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, VELMA WHITEBEAR, ANTONIA LOPEZ.(znmw,) (Entered: 10/18/2011)
12/01/2011	<u>33</u>	ADMINISTRATIVE RECORD <i>Notice of Lodging</i> by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # <u>1</u> Certificate of Service)(Rooney, Kenneth) (Entered: 12/01/2011)
12/01/2011	<u>34</u>	ANSWER to <u>32</u> Amended Complaint by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. Related document: <u>32</u> Amended Complaint filed by TRIBAL COUNCIL, ANTONIA LOPEZ, YAKIMA DIXIE, MICHAEL MENDIBLES, CALIFORNIA VALLEY MIWOK TRIBE, EVELYN WILSON, VELMA WHITEBEAR, ANTOINE AZEVEDO.(Rooney, Kenneth) (Entered: 12/01/2011)
12/13/2011	<u>35</u>	Amended MOTION to Intervene by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # <u>1</u> Statement of Points and Authorities in Support of Proposed Intervenor-Defendant's Motion For Leave to Intervene, # <u>2</u> Proposed Order Granting Proposed Intervenor-Defendant's Motion to Intervene, # <u>3</u> Motion to Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief, # <u>4</u> Statement of Points and Authorities in Support of Intervenor-Defendant's Motion to Dismiss, # <u>5</u> Declaration of Robert A. Rosette in Support of Intervenor-Defendant's Motion to Dismiss, # <u>6</u> Exhibits A-R to Declaration of Robert A. Rosette in Support of Motion to Dismiss, # <u>7</u> Proposed Order Granting Intervenor-Defendant's Motion to Dismiss)(Rosette, Robert) (Entered: 12/13/2011)
12/13/2011	<u>36</u>	MOTION to Expedite <i>Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)</i> by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # <u>1</u> Proposed Order Granting Intervenor-Defendant's Motion to Expedite Motion For Leave to Intervene As Defendant)(Rosette, Robert) (Entered: 12/13/2011)
12/13/2011	<u>37</u>	AFFIDAVIT re <u>35</u> Amended MOTION to Intervene, <u>36</u> MOTION to Expedite <i>Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)</i> MOTION to Expedite <i>Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)</i> Declaration of Robert A. Rosette in Support of Amended Motion For Leave to Intervene and Motion to Expedite Consideration of Motion For Leave to Intervene by CALIFORNIA VALLEY MIWOK TRIBE. (Attachments: # <u>1</u> Exhibits A-B to Declaration of Robert A. Rosette in Support of Proposed Intervenor-Defendant's Motion to Intervene and Motion to Expedite Consideration of Motion to Intervene)(Rosette, Robert) (Entered: 12/13/2011)
12/28/2011	<u>38</u>	Joint MOTION for Briefing Schedule for Cross Motions for Summary Judgment by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Text of Proposed Order)(Goldberg, M.) (Entered: 12/28/2011)
12/29/2011	<u>39</u>	Memorandum in opposition to re <u>36</u> MOTION to Expedite <i>Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)</i> MOTION to Expedite <i>Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)</i> filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # <u>1</u> Text of Proposed Order)(Goldberg, M.) (Entered: 12/29/2011)

12/29/2011	<u>40</u>	Memorandum in opposition to re <u>35</u> Amended MOTION to Intervene filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # <u>1</u> Text of Proposed Order)(Goldberg, M.) (Entered: 12/29/2011)
01/03/2012	<u>41</u>	Joint MOTION for Extension of Time to <i>For Plaintiffs to Request Supplementation of the Administrative Record</i> by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Text of Proposed Order)(Goldberg, M.) (Entered: 01/03/2012)
01/09/2012	<u>42</u>	REPLY to opposition to motion re <u>35</u> Amended MOTION to Intervene filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 01/09/2012)
01/09/2012	<u>43</u>	REPLY to opposition to motion re <u>36</u> MOTION to Expedite <i>Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)</i> MOTION to Expedite <i>Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)</i> filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 01/09/2012)
01/10/2012	<u>44</u>	NOTICE OF SUPPLEMENTATION OF ADMINISTRATIVE RECORD by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR re <u>33</u> Administrative Record (Attachments: # <u>1</u> Index to the Supplement of the Administrative Record, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H)(Rooney, Kenneth) (Entered: 01/10/2012)
01/12/2012	<u>45</u>	ERRATA Regarding <i>Proposed Intervenor-Defendant's Reply to Plaintiffs' Opposition to its Amended Motion to Intervene as Defendant</i> by CALIFORNIA VALLEY MIWOK TRIBE <u>42</u> Reply to opposition to Motion filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 01/12/2012)
01/17/2012	<u>46</u>	Memorandum in opposition to re <u>38</u> Joint MOTION for Briefing Schedule for <i>Cross Motions for Summary Judgment</i> filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 01/17/2012)
02/16/2012	<u>47</u>	Amended MOTION for Briefing Schedule (<i>Joint Motion</i>) for <i>Briefing Schedule for Cross Motions for Summary Judgment</i> by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Text of Proposed Order)(Goldberg, M.) (Entered: 02/16/2012)
02/29/2012	<u>48</u>	Unopposed MOTION for Leave to Appear Pro Hac Vice :Attorney Name- James F. Rusk, :Firm- Sheppard Mullin Richter & Hampton LLP, :Address- 4 Embarcadero Center, 17th Floor, San Francisco, CA 94111. Phone No. - 415-774-3232. Fax No. - 415-434-3947 by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Exhibit Declaration of James F. Rusk, # <u>2</u> Text of Proposed Order)(Goldberg, M.) (Entered: 02/29/2012)
03/02/2012	<u>49</u>	MOTION for Summary Judgment by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Attachment, # <u>2</u> Text of Proposed Order)(Goldberg, M.) (Entered: 03/02/2012)
03/02/2012	<u>50</u>	ENTERED IN ERROR..... MOTION for Leave to File <i>Supplement to Administrative Record</i> by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Exhibit 1 Affidavit of Robert Uram, # <u>2</u> Exhibit 2 Affidavit of

		Velma WhiteBear, # <u>3</u> Text of Proposed Order)(Goldberg, M.) Modified on 3/5/2012 (dr). (Entered: 03/02/2012)
03/02/2012	<u>51</u>	MOTION for Leave to File <i>Supplement to Administrative Record</i> by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Exhibit 1 Affidavit of Robert Uram, # <u>2</u> Exhibit 2 Affidavit of Velma WhiteBear, # <u>3</u> Text of Proposed Order)(Goldberg, M.) (Entered: 03/02/2012)
03/05/2012		NOTICE OF CORRECTED DOCKET ENTRY: re <u>50</u> MOTION for Leave to File <i>Supplement to Administrative Record</i> was entered in error and counsel has refiled corrected documents as Docket Entry <u>51</u> (dr) (Entered: 03/05/2012)
03/21/2012		MINUTE ORDER: It is hereby ORDERED that the plaintiffs' unopposed motion <u>48</u> be, and hereby is, GRANTED, and James F. Rusk is admitted to appear pro hac vice. Signed by Judge Richard W. Roberts on 3/21/2012. (lcrwr1) (Entered: 03/21/2012)
03/26/2012	<u>52</u>	MEMORANDUM OPINION AND ORDER granting the proposed intervenor-defendant's amended motion <u>35</u> for leave to intervene as defendant, granting the proposed intervenor-defendant's motion <u>36</u> to expedite, granting nunc pro tunc the parties' joint motion <u>41</u> to extend time for plaintiffs to request supplementation of the administrative record, granting nunc pro tunc the parties' amended joint motion <u>47</u> for briefing schedule, denying as moot the parties' joint motion <u>38</u> for briefing schedule, and ordering the parties and the intervenor to meet and confer and file by April 4, 2012 a joint status report and proposed order reflecting deadlines for opposing and replying in support of the intervenor's motion to dismiss and proposing any necessary amendments to the briefing schedule for the parties' cross motions for summary judgment. The Clerk's Office is directed to DOCKET Exhibits 3 through 7 to the proposed intervenor-defendant's amended motion <u>35</u> for leave to intervene as the intervenor-defendant's Motion to Dismiss the Plaintiffs' First Amended Complaint. Signed by Judge Richard W. Roberts on 3/26/2012. (lcrwr1) (Entered: 03/26/2012)
03/26/2012	<u>53</u>	Consent MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Saba Bazzazieh, :Firm- Rosette, LLP, :Address- 565 W. Chandler Blvd., Suite 212, Chandler, AZ 85225. Phone No. - 480-889-8990. Fax No. - 480-889-8997 by CALIFORNIA VALLEY MIWOK TRIBE (Rosette, Robert) (Entered: 03/26/2012)
03/26/2012	<u>54</u>	NOTICE of Proposed Order <i>Granting Consent Motion to Admit Attorney Saba Bazzazieh, Esq. Pro Hac Vice</i> by CALIFORNIA VALLEY MIWOK TRIBE re <u>53</u> Consent MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Saba Bazzazieh, :Firm- Rosette, LLP, :Address- 565 W. Chandler Blvd., Suite 212, Chandler, AZ 85225. Phone No. - 480-889-8990. Fax No. - 480-889-8997 (Rosette, Robert) (Entered: 03/26/2012)
03/26/2012	<u>58</u>	MOTION to Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief by Intervenor-Defendant CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # <u>1</u> Declaration of Robert A. Rosette, # <u>2</u> Exhibit A-R to Declaration of Robert A. Rosette, # <u>3</u> Text of Proposed Order)(jf,) (Entered: 04/05/2012)
03/27/2012	<u>55</u>	STATUS REPORT <i>reflecting deadlines for briefing Intervenor's Motion to Dismiss</i> by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # <u>1</u> Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/27/2012)
03/29/2012	<u>56</u>	Cross MOTION for Summary Judgment by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # <u>1</u> Memorandum in Support of Federal Defendants' Cross-Motion for Summary Judgment, # <u>2</u> Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/29/2012)
03/29/2012	<u>57</u>	RESPONSE re <u>51</u> MOTION for Leave to File <i>Supplement to Administrative Record</i> filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Rooney, Kenneth) (Entered: 03/29/2012)

04/16/2012		MINUTE ORDER: It is hereby ORDERED that the consent motion <u>53</u> be, and hereby is, GRANTED and Saba Bazzazieh is admitted to appear pro hac vice. Signed by Judge Richard W. Roberts on 4/12/2012. (lcrwr1) (Entered: 04/16/2012)
04/16/2012		MINUTE ORDER: In light of the parties' March 27, 2012 status report, it is hereby ORDERED that responses to the intervenor's motion to dismiss are due April 20, 2012 and the intervenor's reply is due April 27, 2012. Signed by Judge Richard W. Roberts on 4/12/2012. (lcrwr1) (Entered: 04/16/2012)
04/17/2012		Set Deadlines: Responses due by 4/20/2012, Reply due by 4/27/2012. (hs) (Entered: 04/17/2012)
04/20/2012	<u>59</u>	Memorandum in opposition to re <u>58</u> MOTION to Dismiss filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Goldberg, M.) (Entered: 04/20/2012)
04/20/2012	<u>60</u>	RESPONSE re <u>58</u> MOTION to Dismiss filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # <u>1</u> Exhibit 1)(Rooney, Kenneth) (Entered: 04/20/2012)
04/27/2012	<u>61</u>	REPLY to opposition to motion re <u>49</u> MOTION for Summary Judgment <filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # <u>1</u> Text of Proposed Order)(Goldberg, M.) Modified on 4/30/2012 (jf,). (Entered: 04/27/2012)
04/27/2012	<u>62</u>	REPLY to opposition to motion re <u>51</u> MOTION for Leave to File <i>Supplement to Administrative Record</i> filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Goldberg, M.) (Entered: 04/27/2012)
04/27/2012	<u>63</u>	REPLY to opposition to motion re <u>58</u> MOTION to Dismiss <i>Plaintiff's First Amended Complaint (Related to Dkt Nos. 58 and 60)</i> filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 04/27/2012)
04/27/2012	<u>64</u>	REPLY to opposition to motion re <u>58</u> MOTION to Dismiss <i>Plaintiffs' First Amended Complaint (Related to Dkt. Nos. 58 and 59)</i> filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 04/27/2012)
04/30/2012		NOTICE OF ERROR re <u>61</u> Reply to opposition to Motion; emailed to rgoldberg@sheppardmullin.com, cc'd 8 associated attorneys — The PDF file you docketed contained errors: 1. Two-part docket entry, 2. Please refile document, 3. refile same pleading using the Opposition Event (jf,) (Entered: 04/30/2012)
04/30/2012	<u>65</u>	Memorandum in opposition to re <u>56</u> Cross MOTION for Summary Judgment filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL. (Attachments: # <u>1</u> Text of Proposed Order)(Goldberg, M.) (Entered: 04/30/2012)
05/11/2012	<u>66</u>	NOTICE <i>Filing and Service of Appendix of <u>33</u> Administrative Record Documents Relied upon in Briefing on Intervenors' Motion to Dismiss</i> by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Goldberg, M.) Modified on 5/14/2012 (jf,). (Entered: 05/11/2012)
05/18/2012	<u>67</u>	REPLY to opposition to motion re <u>56</u> Cross MOTION for Summary Judgment filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Rooney, Kenneth) (Entered: 05/18/2012)
06/01/2012	<u>68</u>	NOTICE by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON re <u>33</u> Administrative Record (Attachments: # <u>1</u> Exhibit 1 – Index to Appendix, # <u>2</u> Exhibit 2 Part 1, # <u>3</u> Exhibit 2 Part 2, # <u>4</u> Exhibit 2 Part 3, # <u>5</u> Exhibit 2 Part 4, # <u>6</u> Exhibit 2 Part 5)(Goldberg, M.) (Entered: 06/01/2012)

06/01/2012	69	ADMINISTRATIVE RECORD by ANTOINE AZEVEDO, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (See Docket Entry <u>68</u> to view document). (znmw,) (Entered: 06/04/2012)

EXHIBIT 18

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

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

v.

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

C.A. No. 1:11-cv-00160-RWR

Hon. Richard W. Roberts

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs The California Valley Miwok Tribe, *et al.* ("Plaintiffs"), pursuant to Rule 56 of the Federal Rules of Civil Procedure, move this Court for summary judgment against Defendants on the Causes of Action stated in the Complaint. Among other claims, Plaintiffs allege that the August 31, 2011 decision of the Department of the Interior, finding that membership of the California Valley Miwok Tribe is limited to five people and recognizing a Tribal government based on a 1998 Resolution signed by only two people, is arbitrary, capricious, unsupported by substantial evidence in the record, an abuse of discretion and otherwise not in accordance with law. Plaintiffs request the Court enter judgment in accordance with the attached Proposed Order.

The grounds for this Motion are set forth in the accompanying Plaintiffs' Memorandum of Points and Authorities in Support of Their Motion for Summary Judgment and all of the pleadings, records, and papers filed herein, deemed to be on file or of which this Court may take judicial notice at or before the time of the hearing of this Motion.

Dated: March 2, 2012

Respectfully submitted,

/s/

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

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

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2012, I caused the forgoing Motion for Summary Judgment and proposed Order which were filed through the ECF system, to be sent electronically to all registered participants. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

/s/ Roy Goldberg

Roy Goldberg

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

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

v.

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

C.A. No. 1:11-cv-00160-RWR

Hon. Richard W. Roberts

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

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

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

Dated: March 2, 2012

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. STATEMENT OF FACTS	4
A. The Tribe's Formal History Begins in 1915.....	4
B. The Initial Effort to Organize The Tribe With a Formal Government Began In 1998.....	6
C. The BIA Rejects the Burley Faction's Claim that They Control the Tribe and That Membership Is Limited to Five People.....	8
D. <i>CVMT I</i> and <i>II</i> : This Court and the Court of Appeals Uphold the Government's Decisions That Rejected Burley's 'Antimajoritarian Gambit'	11
E. The BIA Attempts to Assist the Tribe By Gathering Genealogies to Document Tribal Membership.....	12
F. The Burley Faction Attempts to Relitigate Its Claims to Control the Tribe, Before the Interior Board of Indian Appeals	13
G. While Burley's Appeal Was Pending, Plaintiffs' Actions Eliminated the Need for the BIA to Assist the Tribe	14
H. The AS-IA's 2011 Decision Makes a 180 Degree Change From Prior Administrative and Judicial Decisions and Approves Burley's Antimajoritarian Gambit.....	15
III. APPLICABLE LEGAL STANDARDS	17
A. Summary Judgment	17
B. Judicial Review Under the Administrative Procedure Act	17
C. The Indian Reorganization Act.....	18
IV. ARGUMENT	19
A. The 2011 Decision Depends Entirely On A Determination of the Tribe's Membership that Is Arbitrary, Capricious and Unlawful	20
1. The 2011 Decision Improperly Disregards Undisputed Evidence In The Record That The Tribe Consists Of More Than Five Members.....	20

a.	The 2011 Decision Ignores Testimony of BIA Officials and Legal Pleadings in Prior Cases	20
b.	The 2011 Decision Ignores Prior BIA Decisions and Analysis of Members' Genealogies.....	22
c.	The 2011 Decision Ignores Plaintiffs' Tribal Roster	23
2.	The Government Offers No Reasoned Explanation for Its Determination of Tribal Membership	24
3.	The 2011 Decision Is Unlawful because the Tribe, and Not the Government , Decides Who Is a Tribal Member.....	25
a.	The Tribe Acknowledges Members Based on Hereditary Descent and Participation in the Tribal Community.....	27
b.	The Tribe's Current Membership Can Be Determined From Historical Records.....	29
c.	The 1966 Distribution Plan Did Not Redefine the Tribe's Membership	30
B.	The 2011 Decision Violates the APA, and the Government's Trust Obligations to the Tribe, By Allowing Burley's 'Antimajoritarian Gambit' to Succeed	31
1.	The Secretary Must Ensure that a Tribe's Representatives With Whom He Deals Are Valid Representatives of the Tribe as a Whole, Even Under IRA § 476(h)	32
2.	The Government Does Not Deny Its Duty to Uphold Majoritarian Values	34
3.	The Undisputed Evidence Shows that the 1998 Resolution Was Not Adopted by a Majority of this Tribe's Members.....	35
C.	The Government Is Estopped from Recognizing Burley's 'Unrepresentative Faction'.....	37
1.	<i>CVMT I and II</i> Necessarily and Finally Decided that the Tribe Was Not Organized Under Burley's Antimajoritarian Government	37
a.	The 2011 Decision Addresses the Same Issue Previously Raised Before This Court.....	38
b.	This Court Actually and Necessarily Determined the Issues Addressed In the 2011 Decision	38

c.	Giving Preclusive Effect to This Court's Decision Would Not Work A 'Basic Unfairness'.....	39
D.	Judicial Estoppel Bars the Government From Denying the Rights of the Tribal Community.....	40
E.	The 2011 Decision Is Procedurally Invalid Because It Violates the DOI's Own Regulations	41
1.	The AS-IA Violated DOI Regulations By Deciding Burley's Appeal Based on Information Not Disclosed to Interested Parties.....	42
2.	The 2011 Decision Unlawfully Addressed Issues Not Within the Jurisdiction of the Appeal Referred by the Board	43
3.	The 2011 Decision Overturns Final DOI Decisions That Are Not Subject to Appeal or Reconsideration.....	44
4.	The AS-IA Should Have Dismissed Burley's Appeal As Moot	45
V.	CONCLUSION.....	45

TABLE OF AUTHORITIES

Federal Cases

<i>Alan-Wilson, Sr., v. Sacramento Area Director</i> 30 IBIA 241 (1997).....	28, 33
<i>Allen v. McCurry</i> 449 U.S. 90 (1980).....	37
<i>Anderson v. Liberty Lobby, Inc.</i> 477 U.S. 242 (1986).....	17
<i>Butte County, Cal. v. Hogen</i> 613 F.3d 190 (D.C. Cir. 2010).....	23, 24, 36
<i>California Valley Miwok Tribe v. Kempthorne</i> No. S-08-3164, (E.D. Cal. 2009)	39
<i>California Valley Miwok Tribe v. USA</i> 424 F.Supp.2d 197 (D.D.C. 2006), <i>affirmed</i> , 515 F.3d 1262	3, 19, 33, 38
<i>California Valley Miwok Tribe v. USA</i> 515 F.3d 1262 (D.C. Cir. 2008).....	passim
<i>Catholic Health Initiatives v. Sebelius</i> 617 F.3d 490 (D.C. Cir. 2010).....	26
<i>Celotex Corp. v. Catrett</i> 477 U.S. 317 (1986).....	16, 17
<i>Citizens to Preserve Overton Park v. Volpe</i> 401 U.S. 402 (1971).....	17
<i>Deerfield v. F.C.C.</i> 992 F.2d 420 (2d Cir. 1993).....	37
<i>Emily's List v. Fed. Election. Comm'n</i> 581 F.3d 1 (D.C. Cir. 2009).....	26
<i>F.C.C. v. Fox Television Stations</i> 129 S.Ct. 1800 (2009).....	25
<i>Fallon Paiute-Shoshone Tribe v. U.S. Bureau of Land Management</i> 455 F. Supp. 2d 1207 (D. Nev. 2006).....	23, 36
<i>Fund for Animals v. Norton</i> 294 F.Supp.2d 92 (D.D.C. 2003) <i>appeal dismissed</i> , 2005 WL 375622 (D.C. Cir. Feb. 16, 2005)	25

<i>Greater Boston Television Corp. v. FCC</i> 444 F.2d 841 (D.C. Cir. 1970)	18, 25
<i>Groundhog v. Keeler</i> 442 F.2d 674 (10th Cir. 1971)	26
<i>Hardwick v. United States</i> Civil No. C-79-1710 SW (N.D. Cal. Dec. 22, 1983)	28, 31
<i>Jicarilla Apache Nation v. DOI</i> 613 F.3d 1112 (D.C. Cir. 2010)	17, 25
<i>Laningham v. U. S. Navy</i> 813 F.2d 1236 (D.C. Cir. 1987)	17
<i>Lewis v. Norton</i> 424 F.3d 959 (9th Cir. 2005)	29
<i>Marsh v. Oregon Natural Resources Council</i> 490 U.S. 360 (1989)	17
<i>McKinley v. Board of Governors of Fed. Reserve</i> 647 F.3d 331 (D.C. Cir. 2011)	17
<i>Morris v. Watt</i> 640 F.2d 404 (D.C. Cir. 1981)	33
<i>Motor Vehicle Mfrs. Assn. v. State Farm Mut.</i> 463 U.S. 29 (1983)	20, 23, 24
<i>Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.</i> 545 U.S. 967 (2005)	34
<i>New Hampshire v. Maine</i> 532 U.S. 742 (2001)	40, 41
<i>Oglala Sioux Tribe v. Andrus</i> 603 F.2d 707 (8th Cir. 1979)	41, 44
<i>Ransom v. Babbitt</i> 69 F.Supp.2d 141 (D.D.C. 1999)	17, 33
<i>Santa Clara Pueblo v. Martinez</i> 436 U.S. 49 (1978)	25
<i>Seminole Nation of Oklahoma v. Norton</i> 223 F.Supp.2d 122 (D.D.C. 2002)	19, 33, 39

<i>Shakopee Mdewakanton Sioux (Dakota) Community v. Babbitt</i> 107 F.3d 667 (8th Cir. 1997)	33
<i>Smith v. Babbitt</i> 100 F.3d 556 (8th Cir. 1996)	29
<i>Spawr Optical Research, Inc. v. Baldrige</i> 649 F.Supp. 1366 (D.D.C. 1986)	37
<i>Starker v. United States</i> 602 F.2d 1341 (9th Cir. 1979)	38
<i>United States v. Mitchell</i> 436 U.S. 206 (1983)	19
<i>Valentine-Johnson v. Roche</i> 386 F.3d 800 (6th Cir. 2004)	40, 41
<i>Wheeler v. U.S. Dep't of the Interior</i> 811 F.2d 549 (10th Cir. 1987)	33
<i>Yamaha Corp. of America v. United States</i> 961 F.2d 245 (D.C. Cir. 1992)	37, 38, 39

State Case

<i>In RE Bridget R.</i> 41 Cal.App.4th 1483 (1996)	27, 28

Federal: Statutes, Rules, Regulations, Constitutional Provisions

25 C.F.R. pt. 2	42
25 C.F.R. pt. 61	26
25 C.F.R. pt. 81	18
25 C.F.R. 81.1(k)	28
25 C.F.R. § 2.2	44
25 C.F.R. §§ 2.4(c), 2.20(f)	42
25 C.F.R. § 2.6(b)	44
25 C.F.R. § 2.6(c)	44

25 C.F.R. § 2.9(a).....	44
25 C.F.R. § 2.21(a).....	41
25 C.F.R. § 2.21(b)	42
25 C.F.R. § 61.2	26
25 C.F.R. § 61.4	26
25 C.F.R. § 242.3(a).....	30
25 C.F.R. §§ 242.3(a), 242.3(b).....	5
43 C.F.R. pt. 4.....	42
43 C.F.R. § 4.1(b)	42
43 C.F.R. § 4.24	42
43 C.F.R. 4.318.....	44
44 Fed. Reg. 67584, 67586 (Nov. 26, 1979).....	27
75 Fed. Reg. 60810 (Oct. 1, 2010).....	6
5 U.S.C. § 706.....	17, 26, 31
25 U.S.C. §§ 2, 9, 13.....	32
25 U.S.C. §§ 461 <i>et seq.</i> ("Indian Reorganization Act")	5, 18
25 U.S.C. § 476.....	passim
25 U.S.C. § 1301 <i>et seq.</i>	33
25 U.S.C. § 1302(8)	33
Administrative Procedure Act, 5 U.S.C. § 706 ("APA").....	17, 23
Fed.R.Civ.P. 56(c)	16

Other Authorities

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 3.03(2) (2005 ed.)	27
COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 4.04(3)(b) n. 398 (2005 ed.) [2009 supplement]	34

I. INTRODUCTION AND SUMMARY

In 1916, the United States purchased approximately one acre of land near Sheep Ranch, California, creating the Sheep Ranch Rancheria for the benefit of 12 named Indians who were all that remained of a larger Miwok Indian band. Since then, those 12 Indians and their descendants have lived on and around the Rancheria property as an Indian community governed by Miwok customs and traditions, without formal governing documents. The community, now known as the California Valley Miwok Tribe ("Tribe"), was and is a federally recognized Indian tribe.

Undisputed evidence shows that, as of April 2011, this community included 242 adult Indians who were lineal descendants of the 12 Tribe members named in 1915 or of other historical Tribe members named on Indian census documents, voter registration lists or rolls (collectively, the "Lineal Descendants"). Undisputed evidence shows that each of the individual Plaintiffs¹ is a Lineal Descendent. Plaintiff Tribal Council represents all of the Lineal Descendants and their children, who together make up the current citizenship of this Tribe.

Plaintiffs challenge an August 31, 2011 decision ("2011 Decision") of the Assistant Secretary – Indian Affairs ("AS-IA"). The 2011 Decision rules that, except for Yakima Dixie, *none* of the individual Plaintiffs or the other Lineal Descendants is a member of the Tribe. Instead, the Lineal Descendants and their children are only "potential citizens." The 2011 Decision concludes that the Tribe has only five "actual citizens": Plaintiff Yakima Dixie, and Silvia Burley, her two daughters and her granddaughter (collectively the "Burley Faction").

The 2011 Decision also accepts a 1998 document, signed only by Silvia Burley and Yakima Dixie, as establishing a valid government for the Tribe. The AS-IA accepts this

¹ Plaintiffs are the Tribe, and Tribal Council members Yakima Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, and Evelyn Wilson, individually and as members of the Tribal Council. Antone Azevedo, a Tribal Council member who was one of the Plaintiffs at the inception of this action, is now deceased.

document, Resolution #GC-98-01 (the "1998 Resolution"), as expressing the will of the Tribe's "General Council" (*i.e.*, all adult members) even though it was adopted without the knowledge, participation or consent of Plaintiffs Velma WhiteBear, Antonia Lopez, Evelyn Wilson, Antone Azevedo and Michael Mendibles, or any of the other Lineal Descendants. The AS-IA also ignores the fact that the 1998 Resolution was not even signed by a majority of those whom the 2011 Decision would have recognized as Tribal members in 1998.

Based on the 1998 Resolution, the 2011 Decision recognizes a Tribal government controlled by the Burley Faction, openly disregarding a recent ruling by the Court of Appeals for the D.C. Circuit. Just four years ago, that court upheld the Secretary of the Interior's ("Secretary") *refusal* to recognize the Burley Faction as the Tribe's government, precisely because the Burley Faction and its governing documents did not represent the majority of the Tribe's members. Their claim to "govern the Tribe without so much as consulting its membership" violated the fundamental principle of majoritarian rule. *California Valley Miwok Tribe v. USA*, 515 F.3d 1262, 1263, 1267 (D.C. Cir. 2008) [*CVMT II*].

The Secretary and his delegate, the AS-IA (collectively the "Government"), cannot evade their "responsibility to ensure that a tribe's representatives, with whom [they] must conduct government-to-government relations, are valid representatives of the tribe *as a whole*." *CVMT II*, 515 F.3d at 1267 (emphasis in original; citation omitted). Yet that is exactly what the 2011 Decision seeks to do. It endorses the Burley Faction's "antimajoritarian gambit," which the Court of Appeals disapproved, and allows "the will of tribal members [to be] thwarted by rogue leaders." *Id.* (citation omitted). In so doing, the 2011 Decision violates the Indian Reorganization Act and the United States' "unique trust obligation to Indian tribes." *Id.* (citation omitted).

In his 2011 Decision, the AS-IA acknowledges that he is making a "180 degree change of course from positions defended by this [Interior] Department in administrative and judicial proceedings over the past seven years." He describes this reversal as being "driven by a straightforward correction in the Department's understanding of the [Tribe's] citizenship and a different policy perspective ... in light of those facts." The alleged "correction" to the Government's understanding is the AS-IA's novel conclusion that the Lineal Descendants are merely "potential" Tribal members and that the Government therefore has no obligation to them.

Plaintiffs will show that this "correction" lacks any legal or factual foundation and improperly usurps the Tribe's right to determine its own members. While the AS-IA claims that his predecessors "misapprehended their responsibility" and "fundamentally misunderstood the role of the Federal Government," the reverse is true. There is no proper basis for the AS-IA's conclusions that the Tribe has only five legitimate members, that the Lineal Descendants are only "potential" members, that the 1998 Resolution was validly adopted, or that it established a valid Tribal government controlled by the Burley Faction. In addition, the AS-IA is estopped from reaching those conclusions by the prior decisions of this Court in *California Valley Miwok Tribe v. USA*, 424 F.Supp.2d 197 (D.D.C. 2006) [*CVMT I*], *affirmed*, 515 F.3d 1262, and of the Court of Appeals in *CVMT II*, and by the Government's own representations before this and other federal courts.

The AS-IA compounds these substantive errors with egregious procedural violations. The 2011 Decision stems from Silvia Burley's administrative appeal of a decision that the Bureau of Indian Affairs ("BIA") issued in 2007, seeking to facilitate a meeting of the Tribe's members. The appeal process is governed by binding regulations that limit the scope of the appeal to issues that were timely raised. The AS-IA did not limit his review to those issues. Instead, he expanded his

review to issues that were not before him and overturned final decisions that were not subject to further appeal. In addition, the appeal process was tainted by illegal *ex parte* contacts.

The stakes here are high. The 2011 Decision not only would disenfranchise hundreds of Tribal members, it also would prevent Plaintiffs' Tribal government from performing cultural, economic and social services that include protection of children under the Indian Child Welfare Act, economic development and job creation, and work with state and local agencies to protect cultural and environmental resources. Access to more than nine million dollars that the State of California holds in trust for the Tribe is also at stake. Depending on the result of this Court's decision, that money will go either to the four members of the Burley family or to the 242 Lineal Descendants and their children. Plaintiffs will suffer concrete and particularized injury if the 2011 Decision is allowed to stand.

Plaintiffs ask the Court to find that the 2011 Decision is arbitrary, capricious and not in accordance with law and to declare it invalid.

II. STATEMENT OF FACTS

A. The Tribe's Formal History Begins in 1915

In 1915, a United States Indian Service official discovered a cluster of approximately 12 Miwok Indians living in or near Sheep Ranch, California, which was a remnant of a once-larger band [AR 000003]. In 1916, the United States purchased approximately one acre of land near Sheep Ranch for the benefit of those Indians and created the Sheep Ranch Rancheria. The United States thereafter recognized the Tribe as an Indian tribe [AR 000006, 000009, 000063-000065]. The members of the Tribe at that time, as listed in the 1915 Sheep Ranch Indian census, were: Peter Hodge, Annie Hodge, Malida Hodge, Lena Hodge, Tom Hodge, Andy

Hodge, Jeff Davis, Betsey Davis, Mrs. Limpey, John Tecumchey, Pinkey Tecumchey and Mamy Duncan (collectively, the "1915 Members") [AR 000005].

In 1934, Congress enacted the Indian Reorganization Act ("IRA"), P.L. 73-383, as amended, codified at 25 U.S.C. § 461 *et seq.* The IRA allowed Indian tribes to formally "organize" for the purpose of self-government, through the adoption of written governing documents such as a constitution and bylaws. *See* 25 U.S.C. § 476. The Tribe accepted the IRA in 1935 [AR 000021], but it did not take action to "organize" under the IRA [*e.g.*, AR 000048 (unorganized as of 1966)]. Instead, the Tribe continued to exist as a loose-knit community of families living on or near the Rancheria in Calaveras County, with only an informal governmental structure and no formal governing documents [AR 000507, 000510].

In 1965, the BIA began proceedings aimed at terminating the federal government's trust relationship with the Tribe pursuant to the California Rancheria Act, P.L. 85-671, as amended, by distributing the assets of the Rancheria [AR 000039]. As required by regulations in effect at that time, the BIA prepared a list of people entitled to vote on a "distribution plan" for the Rancheria [AR 000034-000035, 000038]. Because the Tribe was still unorganized, the regulations required the list to be based on who was currently using Rancheria lands through formal or informal allotments, and not on membership in the Tribe. *Compare* 25 C.F.R. §§ 242.3(a), 242.3(b) (1965) [AR 000035].

The distribution plan for the Rancheria's assets named Mabel Hodge Dixie (Yakima Dixie's mother) as the sole distributee, because she was the only Indian then living on the Rancheria [AR 000048-000051]. But the BIA never completed the steps necessary for termination under the Rancheria Act, and all parties agree that the Tribe was never terminated.

[e.g., AR 000509, 000517].² The United States continued to recognize the Tribe [see AR 000505, 000063-000064] and has done so ever since. See 75 Fed. Reg. 60810 (Oct. 1, 2010).

For unorganized tribes, the BIA has a practice of identifying a spokesperson through whom the BIA can maintain contact with the tribe until formal organization occurs [AR 001083]. After Ms. Dixie's death, Yakima Dixie eventually came to live on the Rancheria, and the BIA identified Mr. Dixie as a spokesperson for the Tribe [AR 000235].

B. The Initial Effort to Organize The Tribe With a Formal Government Began In 1998

In 1998, a tribeless part-Indian woman named Silvia Burley sought the BIA's assistance in becoming a member of a recognized tribe. BIA official Raymond Fry advised Ms. Burley to contact Yakima Dixie, and she did so [AR 000110]. Around August 1998, based on the BIA's advice, Mr. Dixie agreed to "adopt" Ms. Burley, her two daughters, and her granddaughter into the Tribe [AR 000110]. Based on the BIA's advice, Mr. Dixie did not consult other Tribal members about the adoption or seek their approval. The BIA accepted the Burleys as members of the Tribe, apparently based on the authority it had imputed to Yakima Dixie as spokesperson [AR 000173]. Nothing in the record supports the view that Mr. Dixie had the authority to adopt the Burleys into the Tribe without the consent of other Tribal members.

In September 1998, two BIA officials met with Yakima Dixie and Ms. Burley and discussed the process of formally organizing the Tribe [AR 000127-000171]. The BIA informed Mr. Dixie and Ms. Burley that the BIA could make federal funds available for the process of organization, including identifying the Tribe's full membership, drafting a constitution, and establishing a government [AR 000119].

² Silvia Burley unsuccessfully filed suit in federal court in 2002, seeking a determination that the Tribe had in fact been terminated and later restored [AR 000298]. Her suit was dismissed on statute of limitations and jurisdictional grounds [AR 000534-000557].

The BIA was aware at this time that the Tribe's membership included far more people than Yakima Dixie and (arguably) the Burleys. For example, BIA official Raymond Fry told Mr. Dixie during the meeting, "[W]e've done an awful lot of research on the Rancheria, or I have, and conceivably, it could be a pretty good size tribe, depending on what you're comfortable with" [AR 000119]. Brian Golding, the other BIA official present at the meeting, later testified that the BIA knew in November 1997 that the Tribe "consisted of a loosely knit community of Indians in Calaveras County," even though the Tribe "kept to itself" at that time [AR 000507]. The BIA also knew, specifically, that Yakima Dixie's brother Melvin Dixie was still alive and living nearby in Sacramento, California [AR 000127].

Despite this knowledge, the BIA told Yakima Dixie in 1998 that he, Ms. Burley and her adult daughter were the "golden members" of the Tribe [AR 000144] and that they could "pretty much determine the criteria for membership" and participation in Tribal organization. [AR 000136]. The advice was erroneous and violated the rights of the Lineal Descendants, including Plaintiffs. The BIA position was based on the BIA's erroneous assumption that membership and participation were limited to those persons named on the distribution plan prepared for the Rancheria, even though that standard applies only to certain tribes that were terminated and later restored to recognition through litigation [AR 000144, 000172-000173 (September 24, 1998 letter from BIA to Yakima Dixie re participation in Tribal organization process)³].

As a first step toward organization, the BIA suggested that Yakima Dixie and the Burleys adopt a draft resolution provided by the BIA, establishing a "general council" [AR 000173-000174]. A general council is a form of government that consists of all of the members of a Tribe acting jointly. This "interim tribal government" [AR 000770] would then adopt resolutions

³ Note that the BIA's letter to Mr. Dixie uses the confusing term "unterminated" to refer to tribes that *were* terminated but later restored to recognition [AR 000172].

(also provided by the BIA) requesting federal funds to defray the costs of organizing [AR 000174-000175]. The BIA described the general council resolution as "an initial document to get started from" which would facilitate the organization process [AR 000145]. After taking this initial step, the BIA expected Mr. Dixie and the Burleys to "identify other persons eligible to participate in the initial organization of the Tribe" and eventually, with the participation of those other members, to draft a constitution, hold elections and adopt a government [AR 000173-174].

Ms. Burley and Mr. Dixie apparently signed the draft resolution provided by the BIA to establish a general council, Resolution #CG-98-01 (the "1998 Resolution" discussed in the introduction) [AR 000177-000179]. The 1998 Resolution bore only Ms. Burley's and Yakima Dixie's signatures and was not signed by Ms. Burley's adult daughter Rashel Reznor, Mr. Dixie's brother Melvin, or any other member of the Tribe. No one made any effort to give Melvin Dixie or any of the Lineal Descendants any notice or opportunity to participate in the adoption of the 1998 Resolution. As discussed more fully below, the 1998 Resolution was invalid by its own terms since it was not adopted by a majority of the Tribe's members, or even by a majority of the four people whom the BIA believed at that time were entitled to participate.

C. The BIA Rejects the Burley Faction's Claim that They Control the Tribe and That Membership Is Limited to Five People

In April 1999, a leadership dispute erupted when Ms. Burley filed a document with the BIA purporting to be Yakima Dixie's resignation from the position of Tribal chairperson, along with a resolution appointing her as chairperson [AR 000180-000181]. Mr. Dixie denied the validity of the documents and challenged Ms. Burley's claims to leadership [AR 000182, 000205, 000241-000246]. The reason for the leadership dispute is clear. Ms. Burley hoped to limit Tribal membership to her family and to deprive the Lineal Descendants of membership.

The BIA at first took the position that the leadership dispute was an "internal matter" to be resolved within the Tribe [AR 000237]. The BIA improperly recognized Ms. Burley as the Tribal chairperson pending resolution of the dispute⁴ and even provided substantial annual funding to Ms. Burley to assist with Tribal organization. Contrary to the BIA's expectations, Ms. Burley did not use the funds to organize the Tribal community and in fact never spent a penny of the federal funds on any programs or services that benefited anyone outside of her immediate family [AR 002198, 002209, 002221, 002229, 002235, 002243].

Between 2000 and 2004 Ms. Burley submitted a series of tribal constitutions, signed only by herself and her daughters, which would have limited membership in the Tribe to the Burleys, their descendants and, in some cases, Yakima Dixie (who would have been outvoted and powerless and whom the Burley Faction purported to "disenroll" in 2005) [*see, e.g.*, AR 000255, 000261, 000864]. The BIA rejected or declined to act on each of these documents, growing increasingly concerned by Ms. Burley's failure to involve the rest of the Tribe [*see, e.g.*, AR 000261-000262 (2001 letter rejecting Burley constitution)].

In March 2004, Ms. Burley submitted another constitution for "informational purposes," claiming that she did not need the BIA's approval because the Tribe had the inherent authority to organize without regard to any requirements under the IRA [AR 001574]. The BIA responded by letter on March 26, 2004 (the "2004 Decision"), which informed Ms. Burley that Tribal organization must involve the entire Tribal community, and identified some members of the Tribal community who should be involved [AR 000499-000502]. The 2004 Decision also stated

⁴ Recognition of Ms. Burley violated the BIA's stated policy of "continu[ing] to recognize the Tribal government as constituted prior to the [contested] appointment or election," which in this case would have been Mr. Dixie [AR 000237].

that "the BIA does not yet view your tribe to be an 'organized' Indian Tribe" and that, as a result, the BIA could not recognize Burley as the Tribe's Chairperson [AR 000499].

A Sacramento BIA official explained the 2004 Decision during testimony in 2005: "[T]his office [was] troubled by the apparent creation of this Tribe solely for Ms. Burley's family. . . . [T]his office determined it was inappropriate to continue to acknowledge Ms. Burley as a tribal chairperson who leads an organized tribe or to acknowledge a governing council for the Tribe" [AR 000762-000763]. Ms. Burley did not timely appeal the 2004 Decision [AR 000763].

During this same time period, Yakima Dixie was separately pursuing Tribal organization. As early as 1999, he contacted other members of the Tribe, including Melvin Dixie, and attempted to create a constitution and government [AR 000210-000231]. The BIA disregarded these efforts [AR 000245] or simply ignored them, even when Yakima Dixie and other members formally requested in 2003 that a Secretarial election be called, as provided by the IRA, to allow the Tribe to vote on a constitution [AR 002245].

Simultaneously, Yakima Dixie pursued a series of administrative and judicial challenges to the BIA's recognition of Ms. Burley's Tribal government. Those challenges continued until 2005, when the AS-IA determined that the 2004 Decision had rendered Mr. Dixie's appeal moot because the BIA no longer recognized Ms. Burley's tribal government [AR 000610-000611]. In a decision dated February 11, 2005 (the "2005 Decision"), the AS-IA stated:

In [the 2004 Decision], the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. . . . Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you . . . to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004 letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members.

[AR 000610-000611.] Ms. Burley responded by challenging the 2005 Decision in federal court.

D. CVMT I and II: This Court and the Court of Appeals Uphold the Government's Decisions That Rejected Burley's 'Antimajoritarian Gambit'

In April 2005, Ms. Burley filed suit in this Court. *CVMT I*, 424 F.Supp.2d 197. Her suit challenged the Government's refusal to approve her governing documents and to recognize her purported Tribal government, and sought a judgment that the Tribe was organized pursuant to its inherent authority under IRA § 476(h), despite Burley's failure to involve the full Tribal community. *Id.* at 201. This Court dismissed Ms. Burley's claims and held that the Secretary has "a responsibility to ensure that [she] deals only with a tribal government that actually represents the members of a tribe." *Id.* The Court held that the Government's refusal to recognize the Burley government was consistent with its "duty to ensure that the interests of all tribe members are protected during organization and that governing documents reflect the will of a majority of the Tribe's members." *Id.* at 202-203.

The Court noted that the Burleys' constitution "conferred tribal membership only upon them and their descendants . . . [but] the [U.S.] government estimates that the greater tribal community, which should be included in the organization process, may exceed 250 members." *Id.* at 203 n. 7. Since the Tribe was eligible to receive approximately \$1.5 million per year in state and federal funds, the Court concluded that Ms. Burley's motivation for restricting membership was self-evident. *Id.*

Ms. Burley appealed this Court's decision. The Court of Appeals affirmed, stating that the 2005 Decision fulfilled a cornerstone of the Government's trust obligation to Indian tribes: to "promote a tribe's political integrity, which includes ensuring that the will of tribal members is not thwarted by rogue leaders when it comes to decisions affecting federal benefits." *CVMT II*, 515 F.3d. at 1267. The Court of Appeals further explained, "Although [the Tribe], by its own admission, has a potential membership of 250, only Burley and her small group of supporters

had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary." *Id.* at 1267.

E. The BIA Attempts to Assist the Tribe By Gathering Genealogies to Document Tribal Membership

On November 6, 2006, after this Court had dismissed Ms. Burley's claims, the BIA wrote to Burley and Yakima Dixie that the BIA "remains committed to assist the [Tribe] in its efforts to reorganize a formal governmental structure that is representative of all Miwok Indians" (the "2006 Decision") [AR 001261-001262]. The BIA offered to facilitate a public meeting of those with a legitimate claim to Tribal membership, and asked both Ms. Burley and Mr. Dixie to participate [AR 001261-001262]. Mr. Dixie agreed, but Ms. Burley refused and appealed the 2006 Decision to the BIA's Regional Director, who affirmed in a decision dated April 2, 2007 (the "2007 Decision") [AR 001494-001500].

The BIA then published a public notice requesting that "putative members"⁵ submit documentation of their membership to the BIA (*e.g.*, personal genealogies). The public notice defined the putative members as lineal descendants of known historical members: (1) individuals listed on the 1915 Indian Census of Sheep-ranch Indians; (2) eligible voters listed on the federal government's 1935 IRA voting list for the Rancheria; and (3) distributees under the Rancheria distribution plan prepared in 1966 [AR 001501].

According to the BIA, 503 persons submitted genealogies in response to the public notice [AR 002105]. The BIA reviewed all of the submissions and prepared a letter to each person,

⁵ First the Burleys, and now the AS-IA, have attempted to equate the term "putative member" with "potential member," to argue that these individuals are not current members of the Tribe and have no rights as citizens. "Putative" does not mean "potential." It means "generally accepted or deemed such; reputed [a putative ancestor]." Webster's New World Dictionary (bracketed language in quoted text). "Putative members" refers to persons who are accepted as Tribal members, not to people who merely have the potential to become members.

verifying their degree of Indian blood and lineage based on the BIA's genealogical research [AR 002105]. But the BIA has never released that information and refuses to acknowledge that the genealogies are part of the record in this case [Affidavit of Robert J. Uram, attached as Exhibit 1 to Plaintiffs' Motion to Supplement the Administrative Record).

F. The Burley Faction Attempts to Relitigate Its Claims to Control the Tribe, Before the Interior Board of Indian Appeals

Burley appealed the Regional Director's 2007 Decision to the Interior Board of Indian Appeals ("Board") [AR 001502]. Among other claims not relevant here,⁶ Burley claimed that the BIA's decision to involve the Tribal community in organization impermissibly intruded into Tribal affairs, because the Tribe was *already* organized under her leadership. *California Valley Miwok Tribe v. Pacific Regional Director*, 51 IBIA 103, 104 (2010) [CVMT III].

The Board held that the Government's 2005 Decision and *CVMT I* and *CVMT II* had already *finally* determined that: (1) the Government did not recognize the Tribe as being organized; (2) the Government did not recognize any tribal government that represents the Tribe; (3) the Tribe's membership was not necessarily limited to the Burley Faction and Yakima Dixie; and (4) the Government had an obligation to ensure that a "greater tribal community" was allowed to participate in organizing the Tribe. *Id.* at 120-121. The Board held that, to the extent Burley's appeal attempted to relitigate those issues, it had no jurisdiction over her claims. *Id.* at 104-105. The Board therefore dismissed all of Burley's claims except for a single, narrow issue.

According to the Board, Ms. Burley's appeal only raised new issues to the extent the 2007 Decision went beyond what was already decided and determined "more specifically what BIA would do to *implement* those [2004 and 2005] determinations." *CVMT III*, 51 IBIA at 121

⁶ Ms. Burley also claimed that the 2007 Decision violated a federal contract with the Tribe and that the Decision erroneously stated that the Tribe was never terminated. 51 IBIA at 104.

(emphasis added). Thus, the only issue properly raised by Ms. Burley's appeal concerned the BIA's authority to determine "who would constitute the 'greater tribal community,' or class of 'putative members,'" and to call a meeting of those members for organizational purposes. *Id.* The Board characterized this as a "tribal enrollment dispute." Because the Board lacks jurisdiction over enrollment questions, it referred this issue to the AS-IA for resolution. *Id.* The referral was improper, because the Board failed to recognize that the BIA's 2007 proposed actions would not and could not enroll anyone in the Tribe. Instead, the BIA merely identified those who were *already* recognized as Tribal members based on custom and tradition.

G. While Burley's Appeal Was Pending, Plaintiffs' Actions Eliminated the Need for the BIA to Assist the Tribe

Although Ms. Burley's appeal to the Board forced the BIA to stay its efforts to assist the Tribe in organizing, Plaintiffs moved forward on their own to organize the Tribe in a manner consistent with the judicially approved 2004 and 2005 Decisions. As the AS-IA had encouraged in his 2005 Decision [AR 000610-000611] and as outlined in the 2007 Decision, Plaintiffs set out to "bring together the . . . whole community, the 'putative' group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole" [AR 001498]. Plaintiffs invited all lineal descendants of the Tribe's known historical members—including all those identified in the BIA's 2007 public notice—to participate in organization and the drafting of a Tribal constitution [*see* AR 002259-002261, 002295-002296].

Several hundred people submitted genealogical information to the Tribe and have since participated in regular meetings and Tribal activities, including the drafting of a Tribal constitution that would formally define inclusive citizenship criteria, embracing all members of the Tribe [AR 002297-002313]. When the Plaintiffs filed their First Amended Complaint, the

Tribe's roster contained 242 adult members, along with approximately three hundred children (names of children withheld) [AR 002265-002275]. The Tribe will hold an election to ratify the Constitution and will ask the Secretary to recognize its government when that process is complete [AR 002142].⁷ As a result, there is no need for the BIA to convene a meeting or to take any other action. As discussed below, this renders the Burley's appeal moot.

H. The AS-IA's 2011 Decision Makes a 180 Degree Change From Prior Administrative and Judicial Decisions and Approves Burley's Antimajoritarian Gambit

In March 2010, while the AS-IA was considering Ms. Burley's appeal, Ms. Burley's lobbyist, Wilson Pipestem, provided top BIA officials with a letter containing the arguments that formed the basis for the AS-IA's eventual decision [AR 001997⁸]. The Government withheld this letter from Plaintiffs until filing the administrative record on December 1, 2011, in violation of the prohibitions on ex parte contacts for pending appeals.

The AS-IA issued his initial decision in Burley's appeal on December 22, 2010 (the "2010 Decision") [AR 001797-001893]. Plaintiffs challenged the 2010 Decision before this Court, and the AS-IA withdrew the decision on April 1, 2011 [AR 001998-001999]. The AS-IA stated in his April 1 letter that he would issue a new decision after briefing by both parties [AR 001998]. But five days later, before any briefing, Ms. Burley's attorney stated in open court, in a

⁷ To date, Plaintiffs' Tribal Council has derived its authority to represent the Tribe from consensus and tradition. The Tribe's members have recognized the Council's authority by their acceptance of its proposals and their participation in Tribal meetings and affairs. But the Tribe's draft constitution and election ordinances call for a general election to be held as soon as possible following the ratification of the constitution, in order to formally establish an elected government of the Tribe.

⁸ The letter is an attachment to the email bearing Bates number 001997. The letter itself is not Bates-stamped and can only be accessed by right-clicking the "Attachment" line in the electronic version of the email included in the DVD of the administrative record. Also, Defendants' index to the administrative record incorrectly dates this document as March 25, 2011, instead of March 25, 2010, the date the document was delivered.

related California court proceeding, that the Government had informed him it planned to reaffirm the substance of the December 22 Decision [AR 002013]. This additional ex parte communication supports the view that the reconsideration was not conducted in good faith.

After briefing by Ms. Burley and the Plaintiffs, the AS-IA issued the 2011 Decision. The AS-IA reached substantially the same conclusions as he had in his 2010 Decision. He reached far beyond the scope of the issues raised in Ms. Burley's appeal and purported to decide both issues beyond his authority (*i.e.*, Tribal membership) and issues that were already finally resolved by prior DOI decisions and *CVMT I* and *CVMT II* (*i.e.*, whether the Tribe was already organized).

The 2011 Decision finds that the Tribe's membership is limited to the five people whom the AS-IA recognizes as members: the Burley Faction and Yakima Dixie [AR 002049, 002051]. The 2011 Decision incorrectly describes all of the Tribe's other members as "potential citizens" and finds that they have no right to participate in the Tribe's governance [AR 002051].

The 2011 Decision finds that the Tribe is organized under the 1998 Resolution, a document signed by just two people [AR 002050]. In doing so, the 2011 Decision effectively overturns the 2004 and 2005 Decisions that determined the Tribe was not organized.⁹ The Decision finds that the "General Council" created by the 1998 Resolution consists solely of the five people whom the AS-IA acknowledges as Tribal members, and that it has the sole right to determine membership criteria for the Tribe and to "conduct the full range of government-to-government relations with the United States" [AR 002050-002051].

⁹ The AS-IA states that his ruling "shall apply prospectively" to avoid what he calls the "unintended consequences" of rescinding prior decisions [AR 002054]. This statement cannot be reconciled with his actions, which clearly overturn the Government's prior decisions.

III. APPLICABLE LEGAL STANDARDS

A. Summary Judgment

Summary judgment is appropriate where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *McKinley v. Board of Governors of Fed. Reserve*, 647 F.3d 331 (D.C. Cir. 2011). The movant bears the burden of showing that there is no genuine issue of material fact. *Celotex*, 477 U.S. at 325. But the mere existence of a factual dispute will not bar summary judgment. A factual assertion is *material* if it is capable of affecting the substantive outcome of the litigation, and an issue is *genuine* only if supported by sufficient admissible evidence that a reasonable trier of fact could find for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252 (1986); *Laningham v. U. S. Navy*, 813 F.2d 1236, 1242-1243 (D.C. Cir. 1987).

B. Judicial Review Under the Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. § 706 ("APA"), provides that a court must hold unlawful and set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). "To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971). Although the court should not substitute its judgment for that of the agency, its review must be "searching and careful." *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378 (1989) (citation omitted). "[W]here the agency has failed to provide a reasoned explanation, or where the record belies the agency's conclusion, [the court] must undo

its action." *Ransom v. Babbitt*, 69 F.Supp.2d 141, 149 (D.D.C. 1999) (quoting *Petroleum Communications, Inc., v. F.C.C.*, 22 F.3d 1164, 1172 (D.C. Cir. 1994)).

Whenever an agency changes its course it must "supply a reasoned analysis for the change." *Jicarilla Apache Nation v. DOI*, 613 F.3d 1112, 1119 (D.C. Cir. 2010) (citation and internal quotation marks omitted). "Reasoned decision making . . . necessarily requires the agency to acknowledge and provide an adequate explanation for its departure from established precedent, and an agency that neglects to do so acts arbitrarily and capriciously." *Id.* (citations and internal quotation marks omitted). An agency's "failure to come to grips with conflicting precedent constitutes an inexcusable departure from the essential requirement of reasoned decision making." *Id.* at 1120 (citations and internal quotation marks omitted); *see also Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) ("[I]f an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute").

C. The Indian Reorganization Act

The IRA, 25 U.S.C. § 461 *et seq.*, adopted in 1934, authorizes Indian tribes to "organize for [their] common welfare" by adopting a tribal constitution and bylaws. 25 U.S.C. § 476(a). Majoritarian values lie at the heart of the IRA. Among other things, the IRA provides that a constitution or bylaws adopted pursuant to the IRA must be (1) "ratified by a majority vote of the adult members of the tribe" in a special tribal election called by the Secretary,¹⁰ and (2) approved by the Secretary. *Id.* *See also* 2 Ops. Sol. Int. 1253, 1255 (Mar. 10, 1944) (tribal members are entitled to vote on membership criteria because, under the IRA, "the right to organize is given to the 'adult members of the tribe'").

¹⁰ The Secretary has also promulgated regulations that govern such elections. 25 C.F.R. Part 81.

A provision of the IRA added in 2004, subsection 476(h), also allows tribes to "adopt governing documents under *procedures* other than those specified in [Section 476]." 25 U.S.C. § 476(h) (emphasis added). But, as this Court has explained, subsection 476(h)'s reference to "governing documents"

must be understood as references to documents that have been 'ratified by a majority vote of the adult members,' as required by subsection 476(a). Subsection 476(h) did not repeal the provisions of 476(a), nor will it be construed to repeal or water down the protections afforded by the IRA when tribes organize: notice, a defined process, and minimum levels of tribal participation."

CVMT I, 424 F.Supp.2d at 202-203. *See also CVMT II*, 515 F.3d at 1267-1268 ("tribal organization under the [IRA] must reflect majoritarian values").

This interpretation of subsection 476(h) is informed by the United States' obligations as a trustee to Indian tribes and the Indian people. *Id.* at 1267. *See also, e.g., United States v. Mitchell*, 436 U.S. 206, 225 (1983) ("[o]ur construction of these statutes and regulations is reinforced by the undisputed existence of a general trust relationship between the United States and the Indian people"); *Seminole Nation of Oklahoma v. Norton*, 223 F.Supp.2d 122, 147 (D.D.C. 2002) (DOI's "distinctive obligation of trust" to Indian peoples required it to intervene in tribal elections to protect tribe members excluded from elections) (citation omitted).

IV. ARGUMENT

Plaintiffs are entitled to summary judgment under the APA because the undisputed facts in the administrative record show that the 2011 Decision was arbitrary, capricious and unlawful. The 2011 Decision purports to determine that the "Tribe as a whole" now consists of just five people, four of whom had no contact with the Tribe prior to approximately 1998. That determination is arbitrary and capricious because it ignores uncontroverted evidence proving the existence of a much larger body of Tribal members who are Lineal Descendants. In addition, the 2011 Decision lacks any reasoned explanation of how it reached its conclusions regarding Tribal membership.

Because the Tribe's membership is not limited to the Burley Faction and Yakima Dixie, the Government's recognition of a Tribal government that represents only those five people violates the IRA and the Government's trust responsibility to the Tribe and its members.

In addition to those fatal flaws, the Government's 2011 Decision is estopped by the prior decisions of this Court and the Court of Appeals in *CVMT I* and *II*, and by the Government's own representations before this and other federal courts. The 2011 Decision also violates the DOI's own appeals regulations by engaging in prohibited ex parte contacts, exceeding the proper scope of appeal, and purporting to overturn final decisions that are not subject to further appeal.

A. The 2011 Decision Depends Entirely On A Determination of the Tribe's Membership that Is Arbitrary, Capricious and Unlawful

The overwhelming weight of the evidence in the record shows that the Tribe's membership is not limited to the Burley Faction and Yakima Dixie. The AS-IA chose to ignore this information, making his 2011 Decision arbitrary and capricious. *See Motor Vehicle Mfrs. Assn. v. State Farm Mut.*, 463 U.S. 29, 43 (1983) (agency action is arbitrary and capricious if the agency "offered an explanation for its decision that runs counter to the evidence before the agency"). The 2011 Decision also violates the fundamental tenet that the Tribe, not the Government, is entitled to determine Tribal membership.

1. The 2011 Decision Improperly Disregards Undisputed Evidence In The Record That The Tribe Consists Of More Than Five Members

The BIA has been dealing with this Tribe for nearly 100 years. It has compiled a wealth of information proving that the Tribe's membership is not limited to the Burley Faction and Yakima Dixie. In finding that the Lineal Descendants are only "potential members," the 2011 Decision ignores this information.

a. The 2011 Decision Ignores Testimony of BIA Officials and Legal Pleadings in Prior Cases

Brian Golding of the BIA's Sacramento office testified in 2004 that the BIA's records demonstrated the existence of a larger Tribal community beyond the Burley Faction and Yakima Dixie. Explaining a letter that he had written in 1997 regarding the BIA's lack of a "government to government relationship" with the Tribe, Mr. Golding stated:

Based on the records of this office, the Tribe [as of 1997] consisted of a loosely knit community of Indians in Calaveras County. ... [N]o one affiliated with the Tribe had requested any services or assistance from this office, apart from a request from one individual for housing assistance. Essentially, at that time, the Tribe kept to itself. In no way was the [1997] letter intended to suggest that the Tribe had no members or that the Tribe did not exist or had been terminated or, in any way, was ineligible for services or recognition from the federal government as a tribe.

[AR 000507 (emphasis added.)]

The statement that the Tribe existed as a "loosely knit community" in 1997 that was eligible for "recognition from the federal government as a tribe" necessarily implies the existence of Tribal members other than Yakima Dixie and the Burley Faction, since the Burleys did not even enter the scene until 1998. The Government's pleadings in recent cases involving this Tribe, in which membership was a key issue, confirm this conclusion.

In 2002, Ms. Burley sued the Government in federal district court for the Eastern District of California, seeking to force the Government to take land into trust for the Tribe so she could build a casino [AR 000299]. Ms. Burley's claims turned on the erroneous assertion that the Tribe had been terminated under the California Rancheria Act and later restored [AR 000300]. To support her claim that the Tribe had been terminated, Ms. Burley argued that there were no tribal members in the 1980s and early 1990s [AR 000509-000510].

The Government denied Ms. Burley's claims regarding Tribal membership, relying on BIA records and the testimony of BIA officials. In a brief filed in 2004, the Government stated:

[Ms. Burley] argues that there were no tribal members until 1992 or thereabouts. ... However, the [BIA] consistently has had communications with members of

this tribe who have continued to live in the area. BIA recognizes this Tribe as a duly constituted, loose-knit Tribe that has not formally organized. **Based on nearly 100 years of interaction with the Tribe, BIA believes that the tribal community constituting this Tribe is substantially larger than is portrayed in the Burley constitution.**

[AR 000510 (emphasis added).] The district court agreed and dismissed Ms. Burley's claims, and the Ninth Circuit affirmed [AR 000555, 000557, 001259].

A year later, in 2005, Ms. Burley filed her claims before this Court in *CVMT I*. In its motion to dismiss, the Government noted that Ms. Burley had admitted in an earlier lawsuit that the Tribe could have a membership of 250 people. The Government then stated, "These 250 people, in our opinion, constitute the "whole" (or at least) "greater" tribal community discussed in the March 26th [2004] letter, which is not reflected in the *present* membership of the Tribe" [AR 000827 (emphasis in original)]. Note that the Government's reference to the "present membership" of the Tribe refers to the five members acknowledged by Ms. Burley in 2005 and is not a determination of the Tribe's *actual* membership [*see, e.g.*, AR 000830 (stating that "Ms. Burley had failed to identify the greater tribal membership and obtain its support")].

b. The 2011 Decision Ignores Prior BIA Decisions and Analysis of Members' Genealogies

BIA decisions contained in the record provide additional information about the Tribe's members. The 2004 Decision noted that Ms. Burley's proposed "base roll" for determining Tribal membership "contains only the names of five living members [i.e., the Burley Faction and Yakima Dixie]" and therefore "suggests that this tribe did not exist until the 1990s, with the exception of Yakima Dixie. *However, BIA's records indicate ... otherwise*" [AR 000500 (emphasis added)]. The BIA identified various individuals and groups that had resided on the Rancheria, lived adjacent to the Rancheria, or otherwise maintained cultural contact with the Tribal community, including Lena Shelton and her descendants, the offspring of Merle Butler,

Tillie Jeff and Lenny Jeff, and the Indians residing at nearby West Point. The BIA explained that northern California Miwok tribes typically defined their membership by reference to a historical census or other official rolls from the early twentieth century [AR 000500].

Subsequently, the BIA issued a public notice in April 2007, identifying the Tribe's known historical members and inviting descendants of those members to submit documentation to the BIA [AR 001501]. In response, the BIA received genealogies from more than five hundred individuals [AR 002139-002140]. The BIA analyzed those genealogies to confirm which of the individuals were lineal descendants of the historical members [AR 002105-002106]. Although the Government has not released those findings, has ignored the genealogies in reaching the 2011 Decision, and refuses to acknowledge that the genealogies are part of the record for this case, it cannot deny the existence of the information [AR 002139-002140].

c. The 2011 Decision Ignores Plaintiffs' Tribal Roster

Plaintiffs submitted uncontroverted evidence showing that the Tribe's current membership consists of the Lineal Descendants—242 adult members and their children [AR 002264-002275]. This evidence, which included a complete roster of the Tribe's adult members, was provided at the request of the AS-IA [AR 002004]. If the AS-IA did not believe that the individuals included on Plaintiffs' roster were Tribal members, he was required to explain why. He had all the evidence he needed to do so, because most or all of Plaintiffs' 242 adult members also submitted genealogies to the BIA in response to the 2007 public notice [AR 002139-002140]. But the AS-IA simply ignored the information.

"[A]n agency's refusal to consider evidence bearing on the issue before it constitutes arbitrary agency action within the meaning of [APA] § 706." *Butte County, Cal. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010) (citing *Motor Vehicle Mfrs. Assn.*, 463 U.S. at 43). *See also Fallon Paiute-Shoshone Tribe v. U.S. Bureau of Land Management*, 455 F. Supp. 2d 1207, 1223-

1224 (D. Nev. 2006) (arbitrary and capricious for Bureau of Land Management to ignore scientific evidence in the agency record that ancient human remains were affiliated with modern-day Native American tribe).

Remarkably, the 2011 Decision makes no effort to address any of the evidence contradicting its conclusions—neither the genealogies received by the BIA, nor the Plaintiffs' roster, nor the BIA's repeated statements that its records revealed the existence of a larger Tribe. As a result, the 2011 Decision is a quintessential example of arbitrary and capricious agency action.

2. The Government Offers No Reasoned Explanation for Its Determination of Tribal Membership

Not only does the 2011 Decision neglect to address evidence that contradicts its conclusions; it also fails to offer any reasoned explanation *supporting* its determination of the Tribe's membership. The APA requires an agency to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Assn.*, 463 U.S. at 43. If the agency itself does not supply a reasoned basis for its decision, the court cannot make up for that deficiency. *Id.* (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)).

Here, the 2011 Decision simply *assumes* that the Tribe is limited to five members and dismisses all others as merely "potential members" [AR 002051], without offering any clue as to how it reached that result. It defends this conclusion by arguing that "the General Council of the Tribe [*i.e.*, the five members recognized by the 2011 Decision] has the exclusive authority to determine the citizenship criteria for the Tribe" [AR 002051]. But this simply begs the question of how the AS-IA determined that the 1998 Resolution, which allegedly established the "General Council," was a valid Tribal action. The AS-IA's circular argument "provides no basis upon

which [the Court] could conclude that it was the product of reasoned decisionmaking" and therefore violates the APA. *Butte County*, 613 F.3d at 195 (Secretary of Interior violated APA §§ 555(e) and 706 by failing to offer any valid explanation for rejecting interested party's arguments in an informal adjudication concerning tribal trust lands).

The AS-IA's lack of explanation is glaring in light of the acknowledged "180 degree change of course" that the 2011 Decision represents and its failure to "come to grips" with the Government's prior decisions. *Jicarilla Apache Nation*, *supra*, 613 F.3d at 1120; *Greater Boston*, *supra*, 444 F.2d at 852. The D.C. Circuit has repeatedly explained that an "agency's unexplained 180 degree turn away from precedent [or] an agency's decision to reverse its position in the face of a precedent it has not persuasively distinguished is quintessentially arbitrary and capricious." *Brady Campaign to Prevent Gun Violence*, *supra*, 612 F.Supp.2d 1, 18 (D.D.C. 2009) (citing *La. Pub. Serv. Comm'n v. Fed. Energy Regulatory Comm'n*, 184 F.3d 892, 897 (D.C. Cir. 1999)) (quotation marks omitted). *See also F.C.C. v. Fox Television Stations*, 129 S.Ct. 1800 (2009) (a heightened need for explanation exists "when, for example, [an agency's] new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account"). In addition, an agency's reversal of position must be viewed in light of its statutory duties. *See Fund for Animals v. Norton*, 294 F.Supp.2d 92, 105 (D.D.C. 2003) *appeal dismissed*, 2005 WL 375622 (D.C. Cir. Feb. 16, 2005). Here, in light of the Government's prior decisions and its trust obligation to the Tribe, the 2011 Decision's unexplained membership determination is clearly arbitrary and capricious.

3. The 2011 Decision Is Unlawful because the Tribe, and Not the Government , Decides Who Is a Tribal Member

"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." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n. 32 (1978). As the Government stated before the Ninth Circuit in 2005, in another case involving this Tribe, "[U]nless limited by treaty or statute, a Tribe has the power to determine tribal membership" [AR 000649 (*quoting Adams v. Morton*, 581 F.2d 1314, 1320 (9th Cir. 1978))].

The Government does not suggest that this Tribe's inherent powers of self-government have been limited by any treaty. Nor has Congress acted to define or limit the Tribe's membership, as it has with certain other tribes where it defined a tribal membership roll or authorized the Secretary to do so. *See, e.g., Groundhog v. Keeler*, 442 F.2d 674, 679 (10th Cir. 1971) (discussing enrollment criteria imposed by Congress on the Five Civilized Tribes); 25 C.F.R. § 61.2 (explaining that rules prescribed in 25 C.F.R. Part 61 are to "govern the compilation of rolls of Indians by the Secretary of the Interior pursuant to statutory authority"); 25 C.F.R. § 61.4 (defining criteria for inclusion on tribal rolls prepared by Secretary for the purpose of distributing judgment funds to specific tribes).

Because Congress has not given the Secretary or his delegates the authority to determine the Tribe's membership, that power belongs to the Tribe alone. *Catholic Health Initiatives v. Sebelius*, 617 F.3d 490 (D.C. Cir. 2010) ("a federal agency does not have the power to act unless Congress, by statute, has empowered it to do so") (Brown, Circuit Judge, concurring) (citation omitted). Thus, the AS-IA's attempt to determine the Tribe's membership is *ultra vires* and violates the APA. 5 U.S.C. § 706(2)(C) (authorizing courts to set aside agency action "in excess of statutory jurisdiction, authority, or limitations"); *Emily's List v. Fed. Election. Com'n*, 581 F.3d 1, 21 (D.C. Cir. 2009) (FEC regulations exceeded agency's statutory and violated the APA).

a. The Tribe Acknowledges Members Based on Hereditary Descent and Participation in the Tribal Community

Generally speaking, "[i]n the absence of Congressional legislation, tribal membership is usually acquired by birth into, affiliation with, and recognition by the tribe." 2 Ops. Sol. Int. 1253, 1254 (Mar. 10, 1944). As explained in the foremost treatise on Indian law:

[T]ribal membership or citizenship typically turns on *descent from an individual on a base list or roll*, possession of a specified degree of ancestry from such an individual, domicile at the time of one's birth, or some combination of these criteria.

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 3.03(2) (2005 ed.) (emphasis added). Tribes may impose additional requirements, such as residence, but are not required to do so.

For example, a California Court of Appeal explained the traditional membership practices of the Pomo Indian Tribe of Northern California prior to organization: "Before the adoption of the articles of association in 1973, the Tribe was governed solely by custom and tradition, under which any lineal descendant of a historic tribal member was automatically a member of the Tribe and was recognized as such from birth." *In RE Bridget R.*, 41 Cal.App.4th 1483, 1493 (1996) (superseded by statute on other grounds). The court noted that the Pomo tribe had 225 members, of whom only 25 lived on the reservation. *Id.* at 1492.

A Senate Report prepared for the California Rancheria Act in 1958 shows that, in other California rancheria tribes, it was common for members to have only informal assignments of rancheria land and to come and go as residents of the rancheria properties, just as with this Tribe. Sen. Report 1874, pp. 13-50 (July 22, 1958). This arrangement did not prevent non-residents from being considered members. *Id.* at 39 (discussing Redwood Rancheria). Most of the 41

rancherias identified in the Rancheria Act¹¹ did not have approved membership rolls. *See id.* at 13-50.

Federal regulations and BIA guidance recognize that traditional tribal ways of defining membership are valid, and that formal enrollment is not required. The BIA's guidelines for implementing the Indian Child Welfare Act state, "Enrollment is not always required in order to be a member of a tribe. Some tribes do not have written rolls." 44 Fed. Reg. 67584, 67586 (Nov. 26, 1979). The BIA's regulations for implementing the IRA define a "member" as: "any Indian who is duly enrolled in a tribe who meets a tribe's written criteria for membership *or who is recognized as belonging to a tribe by the local Indians comprising the tribe.*" 25 C.F.R. 81.1(k) (emphasis added). *See also In RE Bridget R.*, 41 Cal.App.4th at 1493 ("although his name is not on the [BIA's] enrollment list for the Tribe, Richard, who was born in 1972, is recognized as a tribal member according to pre-1973 customs").

This Tribe's membership practices are consistent with those described above and are typical for unorganized tribes: Membership in the Tribe is determined by hereditary descent and acknowledgment by the Tribal community, in accordance with Miwok traditions. Residence on the Rancheria is not a condition of membership. Because of the small size of the Tribe's Rancheria property (0.92 acre), it has never been feasible for all of the Tribe's members to live there at any given time. The BIA has never maintained an "approved membership roll" for the Tribe [*see* AR 000649]. The 2011 Decision fails to address these traditional practices or to explain why they would be superseded now.

¹¹ This Tribe was not one of the 41 tribes that the Rancheria Act specifically singled out for termination.

b. The Tribe's Current Membership Can Be Determined From Historical Records

Because membership is derived from hereditary descent, the Tribe's current membership—and participation in any organization efforts—can best be determined by reference to historical lists of Tribal members. As the Board explained in a case involving the Cloverdale Rancheria in Northern California: "Unorganized Federally recognized tribes would look to historical records and rolls to determine recognized membership for organizational purposes." *Alan-Wilson, Sr., v. Sacramento Area Director*, 30 IBIA 241, 249-250 (1997).¹² See also, e.g., *Smith v. Babbitt*, 100 F.3d 556, 558 (8th Cir. 1996) (tribal constitution defining membership based on parentage or descent from tribal ancestors); *Lewis v. Norton*, 424 F.3d 959, 960 (9th Cir. 2005) (tribal constitution defining members as lineal descendants of persons named on base roll, with added requirement of one-quarter degree California Indian blood).

The record shows that the Tribe existed prior to 1915, when a BIA official identified a band of 12 Miwok Indians living at Sheepranch (the 1915 Members) who were the remnants of "once quite a large band" [AR 000003]. The Rancheria was "purchased for these Indians" [AR 000004], and the Tribe was federally recognized from that time forward [AR 000006, 000009, 000063-000065]. The United States recognized the 1915 Members as members; otherwise the Tribe would have had no members and would not have existed.

¹² In the case of the Cloverdale Rancheria, the Board explained that, although historical records were available, they did not determine membership because the Cloverdale Rancheria was a party to *Hardwick v. United States*, Civil No. C-79-1710 SW (N.D. Calif. Dec. 22, 1983). The stipulated judgment in that litigation restored to federal recognition 17 terminated California rancherias and specified who would be eligible to participate in subsequent organization efforts. See, e.g., *Jeffrey Alan-Wilson Sr. v. Sacramento Area Director*, 30 IBIA 241, 245-246 (1997) (explaining the application of the stipulated judgment to the Cloverdale Rancheria). Thus, for the Cloverdale Rancheria, "the [*Hardwick*] case govern[ed] the initial establishment of a tribal government." 30 IBIA at 250. But this Tribe was never terminated and was not a party to *Hardwick*, so historical rolls govern. For more discussion of *Hardwick*, see subsection (c), *infra*.

The 1915 census document thus forms the first known record of historical membership, from which the Lineal Descendants can be identified [*see* AR 000005]. Other available records that identify historical members of the Tribe include the 1935 IRA voter list for the Tribe [AR 000016] and the 1966 distribution plan [AR 001501].

The BIA recognized this in its 2004 Decision, which identified Indian census documents from 1915 and 1916, and IRA voter lists, as documents that Miwok tribes commonly use to begin constructing a membership roll [AR 000500]. The BIA's 2007 public notice was based on the same historical documents: the census of 1915 members, the 1935 IRA voter list, and the 1966 distribution plan [AR 001501]. The 2011 Decision offers no evidence or explanation for rejecting these normal sources of membership information and intruding into this Tribe's sovereignty by relegating the Lineal Descendants to "potential member" status.

When Plaintiffs set out to organize the Tribe, they invited all lineal descendants of historical Tribe members to participate. Subsequently, the Tribe prepared written rolls of all those who elected to participate. Every person on the Tribe's current roster is a lineal descendant of a known historical member [AR 002139-002140, 002253-002254]. The Tribe has drafted written criteria that formalize the membership traditions described above and that include all the people identified in the BIA's 2007 public notice and 2004 Decision¹³ [*see* AR 002253-002254].

c. The 1966 Distribution Plan Did Not Redefine the Tribe's Membership

The 2011 Decision provides no explanation or rationale in support of its conclusion that the membership of the Tribe is limited to five people. However, the Decision's focus on "distributees and their descendants" suggests that the Government is implicitly relying on the

¹³ These criteria do not exclude the Burley Faction from being members if they show that they are, in fact, lineal descendants, and desire to participate in the Tribal community. So far they have rejected all involvement with the Tribal community in favor of maintaining their own private "tribe" of four people.

theory that the Sheep Ranch distribution plan prepared in 1966 established the membership of the Tribe and determined who would be entitled to participate in any subsequent Tribal reorganization [AR 000048-000051]. If so, the Government's reliance is misplaced, because the distribution plan did not determine the membership of the Tribe.

The federal regulations in effect in 1966 explicitly provided that distribution plans for unorganized tribes were not based on tribal membership. Distribution plans reflected tribal membership rolls only for those tribes that were already organized and thus had written membership criteria and rolls. For unorganized tribes, such as this Tribe, distribution plans were required to include only those persons who were using Rancheria lands through formal or informal allotments. *Compare* 25 C.F.R. §§ 242.3(a) (1965) (organized tribes), 242.3(b) (1965) (unorganized tribes) [AR 000035]. Thus, the 1966 distribution plan does not define this Tribe's membership. At most, the plan identifies Tribal members who happened to live on the 0.92-acre Rancheria in 1966.

In certain cases, the BIA *has* made a practice of limiting tribal organization to people named on a rancheria distribution plan, and their descendants. *But that practice has no application here.* The practice is limited to the 17 terminated California rancherias that were restored to federal recognition under the stipulated judgment in *Hardwick v. United States*, Civil No. C-79-1710 SW (N.D. Calif. Dec. 22, 1983). This Tribe was never terminated and did not participate in the *Hardwick* litigation. As a result, the stipulated judgment in *Hardwick* does not apply and does not provide a basis for the 2011 Decision to limit this Tribe's membership.

For all the reasons set forth in this section IV.A, the AS-IA's determination of the Tribe's membership is arbitrary, capricious and unlawful.

B. The 2011 Decision Violates the APA, and the Government's Trust Obligations to the Tribe, By Allowing Burley's 'Antimajoritarian Gambit' to Succeed

As the official charged with overseeing the United States' government-to-government relationship with Indian tribes, the Secretary is both authorized and obligated to ensure that he deals only with tribal governments that actually represent the members of their tribes. The 2011 Decision violates the IRA and abdicates the Secretary's obligation to this Tribe by recognizing a Tribal government that does not represent the Tribe's members, based on a process from which all but one of the Lineal Descendants were excluded. As a result, the 2011 Decision is unlawful, and the APA requires this Court to set it aside. *See* 5 U.S.C. § 706(2)(A).

1. The Secretary Must Ensure that a Tribe's Representatives With Whom He Deals Are Valid Representatives of the Tribe as a Whole, Even Under IRA § 476(h)

IRA section 476(a), enacted in 1934, permits Indian tribes to organize by adopting a "constitution and bylaws," which must be ratified by a majority of a tribe's adult members at a special election called by the Secretary. 25 U.S.C. § 476(a); *see also id.* § 476(c) (prescribing election procedures). Subsection 476(h), added in 2004, clarifies that tribes also may adopt constitutions or other governing documents "under *procedures* other than those specified in [section 476]." 25 U.S.C. § 476(h) (emphasis added).

In *CVMT I* and *II*, the Government took the position that IRA 476(h)'s reference to documents adopted outside of the IRA's *procedures* did not repeal the IRA's *substantive* requirement that tribal governing documents must reflect the will of a majority of the tribe's adult members [AR 000846, 000848, 000851; *see also* 002090-002096.]. Thus, "[g]overning documents, whether adopted under Section 476(a) or recognized under 476(h), must, therefore, be adopted by a majority of the tribal members" [AR 000851]. This holds true whether the document in question is a constitution or a tribal resolution [AR 000846, 000848].

Importantly, the Government also acknowledged that the Secretary has the obligation— independent of the IRA—to "determine that he or she is dealing with a government that is

representative of the tribe as a whole" [AR 000849 (citing *Seminole Nation v. United States*, 316 U.S. 286, 295-296 (1942))]. This duty arises from the United States' trust relationship with Indian tribes, which the Secretary is bound to honor in exercising his broad authority over federal Indian relations [AR 000849 (citing 43 U.S.C. § 1457 and *Seminole Nation*, 316 U.S. at 295-296)]. See also 25 U.S.C. §§ 2, 9, 13 (granting Secretary power over various aspects of Indian affairs). "This duty to deal only with representative governments has made the majority the yardstick against which legitimacy of tribal governments are measured" [AR 000849]. As the Government argued, nothing in IRA § 476(h) suggests that Congress intended to modify this background principle of Indian law, which is "fundamental to the relationship between the federal government and a tribe" [AR 000849-000851, 002095].

The Government's interpretation of IRA § 476(h) was supported by the rules of statutory construction and by ample statutory authority¹⁴ [AR 000846-000851]. See, e.g., *Seminole Nation v. Norton*, 223 F.Supp.2d 122, 138-140 (D.D.C. 2002) (DOI upheld its trust obligation by refusing to recognize tribal elections from which members were excluded); *Ransom v. Babbitt*, 69 F.Supp.2d 141, 151 (D.D.C. 1999) (BIA acted arbitrarily and capriciously by recognizing a tribal government based on a constitution it should have realized was not validly adopted); *Wheeler v. U.S. Dep't of the Interior*, 811 F.2d 549, 552 (10th Cir. 1987) ("since the Department is sometimes required to interact with tribal governments, it may need to determine which tribal government to recognize"); *Shakopee Mdewakanton Sioux (Dakota) Community v. Babbitt*, 107

¹⁴ The Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1301 *et seq.*, reinforces the Government's duty to uphold majoritarian principles. The Board has repeatedly held that, "in maintaining the government-to-government relationship with Indian Tribes, BIA has the authority and the responsibility to decline to recognize a tribal action where it finds that the action is tainted by a violation of the [ICRA]." *Jeffrey Alan-Wilson, Sr.*, 30 IBIA 241, 260 (1997) [AR 000107] (citations omitted). Recognition of a Tribal government that excludes a majority of a Tribe's members from citizenship, voting or other fundamental rights would deny those members equal protection, a constitutional right guaranteed to Indian citizens by Congress. 25 U.S.C. § 1302(8).

F.3d 667, 669-670 (8th Cir. 1997) (Secretary has authority to disapprove constitutional amendments based on doubts about the "fundamental integrity and fairness" of tribal elections conducted under IRA § 476(a)); *Morris v. Watt*, 640 F.2d 404, 414-416 (D.C. Cir. 1981) (referenda on tribal constitution were invalid due to lack of meaningful opportunity for members to decide fundamental questions of tribal governance).

This Court agreed with the Government in *CVMT I*, finding that IRA§ 476(h) did not repeal the substantive protections afforded by the IRA, and that its reference to "governing document[s] adopted by a tribe" must be understood as references to documents that have been "ratified by a majority vote of the adult members." *CVMT I*, 424 F.Supp.2d at 202-203. The Court of Appeals held that, "[a]s Congress has made clear, tribal organization under the [IRA] must reflect majoritarian values." *CVMT II*, 515 F.3d at 1267-1268; *accord*, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 4.04(3)(b) n. 398 (2005 ed.) [2009 supplement] (citing to *CVMT II*). The Court of Appeals' holding is now the law of this Circuit.

2. The Government Does Not Deny Its Duty to Uphold Majoritarian Values

The 2011 Decision states that the Tribe has "chosen to avail itself of the provisions in [IRA] § 476(h) . . . which recognizes the inherent sovereign powers of tribes 'to adopt governing documents under procedures other than those specified [in the IRA].'" [AR 002053.] It goes on to state that previous DOI officials misinterpreted both 476(h) and the nature of the Government's general trust obligations to the Tribe [AR 002054]. According to the 2011 Decision, neither 476(h) nor any other law authorizes the Government to intrude into the Tribe's internal affairs by "attempting to force the Tribe to expand its citizenship" [AR 002054].

The 2011 Decision thus attempts to present the issue in this case as one of statutory interpretation, no doubt seeking deference from this Court. *See, e.g., Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 982 (2005) (applying *Chevron* deference to

agency's change in statutory interpretation). But the 2011 Decision does not dispute the Government's legal duty, even under 476(h), to deal only with tribal governments that actually represent their tribes' members.¹⁵ Instead, the Decision rests on a new finding that the Tribe's membership is limited to five people. For example, the Decision states, "this change [of course] is driven by a *straightforward correction in the Department's understanding of the [Tribe's] citizenship* and a different policy perspective on the Department's legal obligations in light of those facts" [AR 002050 (emphasis added)]. "In my view, prior [DOI] officials misapprehended their responsibility when they: (1) took their focus off the fact that the [Tribe] was comprised [of] five individuals, and (2) mistakenly viewed the Federal government as having particular duties relating to individuals who were not citizens of the tribe" [AR 002053].

This new membership determination, and not a change in statutory interpretation, distinguishes the 2011 Decision from the Government's position in *CVMT I* and *II*. In those prior cases, the Government recognized that the Tribe had a membership of approximately 250 people that had not yet been precisely determined, and that only after those members were specifically identified could the Secretary know whether a governing document enjoyed majority support [AR 000848]. Now, the Government argues that the Tribe's membership is limited to five people and that, *as a result*, the five-person "General Council" has the authority to govern the Tribe and cannot be "forced to expand its membership" [AR 002051, 002055].

3. The Undisputed Evidence Shows that the 1998 Resolution Was Not Adopted by a Majority of this Tribe's Members

As explained in Section IV.A of this brief, the Government's attempt to limit the Tribe to five members is arbitrary, capricious and unlawful. The Tribe is not a terminated tribe, and

¹⁵ If the Government does intend to argue that it can ignore the will of a tribe's members and recognize a tribal government that consists of an unrepresentative faction, Plaintiffs welcome the Government's clarification.

whatever membership standards may apply to terminated rancheria tribes do not apply here. Plaintiffs submitted undisputed evidence that the membership of the Tribe consists of 242 Lineal Descendants and their children. That evidence is corroborated by the BIA's own records, sworn testimony and legal filings that are part of the administrative record. The Government has offered no explanation for excluding the Lineal Descendants from this Tribe, and no theory under which it would have the authority to do so.

Because the 2011 Decision depends entirely on the Government's erroneous membership determination, the rest of the Decision must fall as well, including the recognition of a "General Council" based on the 1998 Resolution that was adopted by two people. Plaintiffs' current Tribal roster includes at least 83 members, including each of the individual Plaintiffs, who were 18 years old in 1998 and were entitled to vote on any governing document adopted then (other members then living have since died) [*see* AR 002268-002275; Affidavit of Velma Whitebear, attached as Exhibit "2" to Plaintiffs' Motion to Supplement the Administrative Record]. Two is not a majority of 83.

Even under the Government's view of membership, there were a minimum of four adult members in 1998: Yakima and Melvin Dixie (the two remaining heirs of Mabel Hodge Dixie) and Sylvia Burley and Rashel Reznor [AR 000172-000173, 000111-000114]. Only two persons signed: Yakima Dixie and Silvia Burley [AR 000179]. As the Government admits in its answer, two is not a majority of four. As a result, the 1998 Resolution is invalid on its face.¹⁶

Plaintiffs specifically challenged the validity of the 1998 Resolution in their briefing to the AS-IA [AR 002147-002149]. But the AS-IA chose to ignore the issue entirely, again making

¹⁶ Further, given the fact that Mr. Dixie was not the sole member of the Tribe in 1998, the Government cannot assume the validity of Ms. Burley's enrollment into the Tribe. It has made no explanation to support that enrollment. In our view, Ms. Burley was not properly admitted to the Tribe in 1998 and was not entitled to a vote on the 1998 Resolution.

his 2011 Decision arbitrary and capricious. *Butte County, Cal.*, *supra*, 613 F.3d at 194; *Fallon Paiute-Shoshone Tribe*, *supra*, 455 F. Supp. 2d at 1223-24.

Because the recognition of Burley's five-person "General Council" under the 1998 Resolution violates the IRA, the ICRA and the United States' trust duties to the Tribe, and is unsupported by the record, the 2011 Decision is arbitrary, capricious and unlawful.

C. The Government Is Estopped from Recognizing Burley's 'Unrepresentative Faction'

In addition to violating the APA, the 2011 Decision is precluded by the final decisions of this Court and the Court of Appeals in *CVMT I* and *CVMT II*. Those cases determined that the Tribe was not properly organized under Ms. Burley's antimajoritarian government and that organization must involve the entire Tribal community.

1. *CVMT I and II* Necessarily and Finally Decided that the Tribe Was Not Organized Under Burley's Antimajoritarian Government

Once a court has decided an issue of law or fact necessary to its judgment, the doctrine of issue preclusion prevents the relitigation of that issue in a subsequent proceeding involving a party to the first case.¹⁷ *Allen v. McCurry*, 449 U.S. 90, 94 (1980). A prior proceeding has preclusive effect when (1) the same issue was contested and submitted for judicial determination in a prior case, (2) the issue was actually and necessarily decided in that case, and (3) preclusion would not work a "basic unfairness" to the party bound by the prior judgment. *Yamaha Corp. of*

¹⁷ The Government was a party to *CVMT I and II*. Plaintiffs were not parties to those cases, but Yakima Dixie participated as a proposed intervenor in the *CVMT I* proceedings and as amicus curiae in *CVMT II*. *CVMT I*, 424 F.Supp.2d at 198 n. 2 (stating that Chief Dixie's motion to intervene was mooted by the court's decision dismissing Burley's claims); *CVMT II*, 515 F.3d at 1263. A party who would be precluded from relitigating an issue with the opposing party in the first action is also precluded from relitigating that issue with another person, unless some special circumstances make issue preclusion inappropriate. *Yamaha*, *infra*, 961 F.2d at 254 n.11 (citing Restatement (Second) of Judgments § 29 (1982)). Here, both the Government and Burley had a full and fair opportunity to litigate the issues related to Tribal organization in *CVMT I* and *II*. *E.g.*, *CVMT I*, 424 F.Supp.2d at 201. Thus, the fact that Plaintiffs were not parties in *CVMT I* and *II* does not prevent the Court from giving preclusive effect to that judgment here.

America v. United States, 961 F.2d 245, 254 (D.C. Cir. 1992). Issue preclusion applies to both judicial actions and administrative decisions. *Deerfield v. F.C.C.*, 992 F.2d 420, 424-428 (2d Cir. 1993); *Spawr Optical Research, Inc. v. Baldrige*, 649 F. Supp. 1366, 1369 (D.D.C. 1986).

a. The 2011 Decision Addresses the Same Issue Previously Raised Before This Court

The 2011 Decision revisits a key issue that is identical to an issue already decided by this Court. In *CVMT I*, the Burley Faction argued that they must be recognized as the Tribe's government because they had adopted valid governing documents under IRA § 476(h) and the Tribe's "inherent sovereign authority" [AR 000710 (Burley complaint)]. The Court rejected the Burleys' claims to authority, because their documents were adopted without involving the Tribal community. *CVMT I*, 424 F.Supp.2d at 201, 203 n. 7; *see also CVMT II*, 515 F.3d 1267-1268.

The 2011 Decision now states that the Burley Faction established a valid government by "avail[ing] itself of the provisions in [IRA] § 476(h)" and adopting the 1998 Resolution pursuant to its inherent authority [AR 002053]. Although the Burleys claimed in *CVMT I* that they had "organized" the Tribe, and the 2011 Decision strains to avoid using that word, the issue is the same. The Government's "switch in the verbal formula" cannot escape the binding effect of this Court's prior decision. *Starker v. United States*, 602 F.2d 1341, 1345 (9th Cir. 1979).

b. This Court Actually and Necessarily Determined the Issues Addressed In the 2011 Decision

The preclusive effect of a judgment extends to all issues "actually and necessarily determined" in the prior litigation, including both matters explicitly addressed by the prior court and matters that the court "must necessarily, albeit implicitly," have decided in order to reach its judgment. *Yamaha*, 961 F.2d at 254, 256. Furthermore, "once an *issue* is raised and determined, it is the entire *issue* that is precluded, not just the particular arguments raised in support of it in the first case." *Id.* at 254 (internal quotations and citations omitted) (emphasis in original).

In *CVMT I*, the Burley Faction claimed that it had established a legitimate Tribal government based on "valid, governing documents" adopted by the Tribe. *CVMT I*, 424 F.Supp.2d at 201. The Burley Faction relied on documents including the 1998 Resolution and subsequent resolutions and constitutions [AR 000713-000718]. In dismissing Burley's complaint, the Court necessarily determined that the Burley Faction had not established a legitimate Tribal government under *any* set of "valid governing documents" then in existence. *See id.* at 203. Although the Court focused on Ms. Burley's constitutions rather than on the 1998 Resolution, the Government itself stated that its "refusal to recognize the [Burleys Faction's] tribal constitution implicitly encompasses any and all tribal governing documents" [AR 000826].

The Court's prior determinations preclude *any* attempt to relitigate the validity of the Burley Faction's government, including both the particular arguments emphasized in *CVMT I*, and arguments based on the 1998 Resolution. *Yamaha*, 961 F.2d at 254; *Seminole Nation, supra*, 223 F.Supp.2d at 134, 133 n.14 (judicial finding that racial discrimination invalidated a tribal election applied equally to a later election not addressed in the first decision).

c. Giving Preclusive Effect to This Court's Decision Would Not Work A 'Basic Unfairness'

Issue preclusion applies unless giving preclusive effect to a prior judgment would work "a basic unfairness" on the party to be precluded. *Yamaha*, 961 F.2d at 254. Here, applying issue preclusion would not violate any overriding public policy or cause manifest injustice. In 2009, the Government argued that another federal court *should* give preclusive effect to *CVMT I* and *II*. In a lawsuit that Ms. Burley filed in the Eastern District of California, the Government urged that Ms. Burley was estopped from relitigating this Court's determinations of her claims to Tribal leadership [AR 001583-1584]. The court agreed, relying on *CVMT I* to establish that the Tribe did not have a recognized government. *California Valley Miwok Tribe v. Kempthorne*, No.

S-08-3164, *3-6 (E.D. Cal. 2009) [AR 001599]. The Government cannot have it both ways. Having relied on *CVMT I* in the previous litigation, it cannot claim unfairness if it is bound by *CVMT I* in this case. Moreover, applying issue preclusion would prevent manifest injustice to Plaintiffs and uphold the overriding public policy in favor of majoritarian rule. *CVMT I*, 424 F.Supp.2d at 202; *CVMT II*, 515 F.3d at 1267-1268.

D. Judicial Estoppel Bars the Government From Denying the Rights of the Tribal Community

Judicial estoppel is a separate equitable doctrine that prevents a party from adopting one argument to prevail in one phase of a case, and then adopting a contrary position to prevail in another phase of that case or in another proceeding. *New Hampshire v. Maine*, 532 U.S. 742, 749-750 (2001) (citations omitted). The doctrine avoids inconsistent court determinations. *Id.* at 750-751. Judicial estoppel applies to the government as well as to private parties. *See, e.g., Valentine-Johnson v. Roche*, 386 F.3d 800, 810-812 (6th Cir. 2004).

In briefs submitted to this Court and the Court of Appeals, the Government argued that it could not recognize the Burleys' tribal government because "the undisputed facts show that the Burley Government was elected, and its governing documents adopted, by just three people and without the participation of the vast majority of the potential members of the Tribe" [AR 002097]. Three people did not represent a majority of the Tribe, because "the BIA ha[d] records relating to a number of other Indian families who lived or are living in Calaveras County and who are believed to be part of the Indian community of Sheep Ranch, California" [AR 000775]. Yet the 2011 Decision takes the position that those other members have no right to a voice in Tribal governance, and that the Burley government is valid [AR 002051].

The Government's new position is not only inconsistent with its prior position before this Court; it is completely opposite. *New Hampshire*, 532 U.S. at 745-747, 752 (New Hampshire's

position that the "Middle of the [Piscataqua] River" meant the low water mark on the Maine shore was estopped by its previous litigation position that the phrase meant the middle of the River channel). Moreover, this Court and the Court of Appeals wholeheartedly accepted the Secretary's prior position. *CVMT II*, 515 F.3d at 1267-1268. If this Court were to let the Government reverse that position now and disenfranchise the Lineal Descendants, "the risk of inconsistent court determinations would become a reality." *New Hampshire*, 532 U.S. at 755.

Moreover, Plaintiffs would suffer an unfair detriment if the Government were not estopped from reversing its position. Plaintiffs have relied on the Government's prior position by making good faith efforts to organize the entire Tribal community, cooperating with the BIA and submitting genealogies to document their membership, all while Burley filed a series of lawsuits and administrative appeals [AR 002138-002142]. *Cf. Valentine-Johnson*, 386 F.3d at 810-811.

Finally, the Government has pointed to no change in the facts or law upon which *CVMT I* and *II* were decided, or any "broad interest of public policy," to justify its change in position. *See New Hampshire*, 532 U.S. at 755-756. The Government claims that its change of course is "driven by a straightforward correction in the DOI's *understanding* of the [Tribe's] citizenship" [AR 002050 (emphasis added)]. To paraphrase the Supreme Court in *New Hampshire*, "What has changed between [2005] and today is [the Government's] interpretation of the historical evidence." *Id.* at 756. Therefore, the Government is judicially estopped from reversing itself.

E. The 2011 Decision Is Procedurally Invalid Because It Violates the DOI's Own Regulations

An agency action that does not comply with the agency's own rules and procedures violates the APA. *Oglala Sioux Tribe v. Andrus*, 603 F.2d 707, 713 (8th Cir. 1979). Here, the AS-IA violated multiple DOI regulations by reopening issues not subject to appeal and by

relying on ex parte communications, without giving interested parties notice or an opportunity to comment on that information.

1. The AS-IA Violated DOI Regulations By Deciding Burley's Appeal Based on Information Not Disclosed to Interested Parties

In an administrative appeal of a BIA action, if the deciding official intends to consider information not contained in the record on appeal, *see* 25 C.F.R. § 2.21(a), the deciding official must "notify all interested parties of the information and they shall be given not less than 10 days to comment on the information before the appeal is decided." 25 C.F.R. § 2.21(b). *See also* 43 C.F.R. § 4.24 (prohibiting any decision based on material not open to inspection by all parties to an appeal).¹⁸ The AS-IA is a "deciding official" within the meaning of the regulations when he hears an appeal on referral from the Board. 25 C.F.R. §§ 2.4(c), 2.20(f). Plaintiff Yakima Dixie was an interested party to Ms. Burley's appeal [AR 001514, 001516, 001685].

On March 25, 2010, BIA Director Jerry Gidner and top officials in the AS-IA's office received a letter from Ms. Burley's lobbyist, Wilson Pipestem, that outlined Ms. Burley's latest theory of Tribal organization [AR 001997]. Even a cursory review of this letter reveals that it formed the template for the AS-IA's decision on Ms. Burley's appeal. The letter argues that (1) the Burley Faction and Yakima Dixie are the only members of the Tribe; (2) the Tribe is organized under the 1998 Resolution with a "General Council" consisting of those five members, and is not required to comply with the IRA; and (3) the five-person "General Council" is entitled to make all decisions regarding Tribal membership criteria and government [AR 001997].

¹⁸ The DOI's general procedures for administrative appeals, found in 43 C.F.R. Part 4, apply to all appeals within the DOI, including actions of the Board or the AS-IA, except where they conflict with the special rules for BIA appeals found in 25 C.F.R. Part 2. 43 C.F.R. § 4.1(b). Here, neither set of regulations would allow the AS-IA to consider information provided by a party to the appeal in secret and without notice to other interested parties.

The AS-IA withheld this document from the other interested parties to Ms. Burley's appeal, in violation of 25 C.F.R. § 2.21(b). As a result, the interested parties were denied the opportunity to "comment on the information before the appeal [wa]s decided," as the regulations require. 25 C.F.R. § 2.21(b). Since the AS-IA substantially adopted the letter's arguments, the violation of the regulations is not harmless and requires the reversal of the 2011 Decision.

2. The 2011 Decision Unlawfully Addressed Issues Not Within the Jurisdiction of the Appeal Referred by the Board

Ms. Burley's appeal to the Board, from which the 2011 Decision arose, challenged the BIA Regional Director's 2007 Decision. The 2007 Decision did not make any determinations about the organizational status of the Tribe, the recognition of any Tribal government, or the need to involve the entire Tribal community in the organization process. The 2004 Decision, which Ms. Burley never appealed, had already finally determined those issues [AR 000499-000501]. The 2005 Decision confirmed those determinations [AR 000611], and both this Court and the Court of Appeals upheld them. The Board therefore *dismissed* Ms. Burley's claims to the extent they attempted to relitigate those issues. *CVMT III*, 51 IBIA at 105, 120.

As the Board recognized, the 2007 Decision only raised new issues to the extent it went beyond what was determined by the 2004 and 2005 Decisions and determined "more specifically what BIA would do to *implement* those [2004 and 2005] determinations." *CVMT III*, 51 IBIA at 121 (emphasis added). Thus, the only issue properly raised by Ms. Burley's appeal was the BIA's authority to "determin[e] who would constitute the 'greater tribal community,' or class of 'putative members,'" and to call a "general council" meeting of those members for organizational purposes. *Id.* That is the issue that the Board referred to the AS-IA.

The 2011 Decision, however, reaches far beyond the scope of the issue referred by the Board and addresses issues that the Board properly dismissed: the organizational status of the

Tribe, the recognition of the Burley government, and the participation of the entire Tribal community in the organization process [AR 002050]. The 2011 Decision also claims to define the membership of the Tribe, an issue not even raised by Burley's appeal [AR 002049]. Because the 2007 Decision did not raise those issues, the AS-IA lacked jurisdiction to decide the issues in resolving Ms. Burley's challenge to the 2007 Decision. *See* 25 C.F.R. § 2.2 (defining "appeal" as a "written request for review of an action or the inaction of an official of the [BIA]").¹⁹

3. The 2011 Decision Overturns Final DOI Decisions That Are Not Subject to Appeal or Reconsideration

The AS-IA's 2011 Decision not only overturns the 2007 Decision, it effectively reverses the 2004 and 2005 Decisions as well. The 2011 Decision overturns each of the fundamental tenets of the 2004 and 2005 Decisions, which this Court upheld in *CVMT I*: that the Tribe is not organized, that the DOI does not recognize Ms. Burley's Tribal government, and that the entire Tribal community must participate in any Tribal organization [AR 000609-000611].

Reversal of the 2004 and 2005 Decisions was unlawful. The 2004 and 2005 Decisions were final for the DOI and not subject to further appeal within the DOI. The 2004 Decision became final when the time for appeal expired without the filing of a notice of appeal (30 days after receipt of notice of the administrative action). 25 C.F.R. § 2.6(b); 25 C.F.R. § 2.9(a). The 2005 Decision, as a decision of the Acting AS-IA, was final agency action upon its issuance. 25 C.F.R. § 2.6(c). The current AS-IA is bound by these duly adopted regulations and therefore did not have the authority to revisit the 2004 and 2005 Decisions in the context of Burley's appeal. *See Oglala Sioux Tribe*, 603 F.2d at 713 (an agency must comply with its own regulations).

¹⁹ 43 C.F.R. 4.318 also limits the scope of review to those issues before the reviewing official. While 43 C.F.R. 4.318 recognizes the Secretary's inherent authority to "correct a manifest injustice or error," this does not allow the Secretary to reopen final agency actions that have already been subject to appeal and judicial review, nor has the Government suggested that the 2004 and 2005 Decisions involved manifest injustice or error.

4. The AS-IA Should Have Dismissed Burley's Appeal As Moot

If the AS-IA had limited his review to the issues actually presented by Ms. Burley's appeal, it would have been proper to dismiss the appeal as moot. The 2007 Decision stated the BIA's intention to help the Tribe identify the members of the Tribal community and bring them together for purposes of organization [AR 001498]. Since 2007, the Tribe has identified all members of the Tribal community, involved them in an inclusive organization process, and drafted a Tribal constitution that establishes membership criteria [AR 002138-002142, 002265-002275, 002297-002313]. As a result, the assistance contemplated by the 2007 Decision is no longer needed, and Ms. Burley's challenge to that Decision is moot.

V. CONCLUSION

The AS-IA's decision works a serious injustice by attempting to turn this Tribe over to a rogue faction that seeks enrichment for itself at the expense of the Tribe's true membership, including Plaintiffs and the other Lineal Descendants. Plaintiffs have worked for many years to establish a Tribal government worthy of recognition by the United States. The AS-IA should not be allowed to cast aside those efforts, along with the reasoned determinations of his predecessors and the Courts, on spurious grounds. For the reasons set forth above and in Plaintiffs' Complaint, the Court should grant Plaintiffs' motion for summary judgment, declare the 2011 Decision invalid, and order the Government to recognize only a Tribal government that actually represents the 242 adult members of this Tribe, including each of the individual Plaintiffs. A proposed Order is attached.

Respectfully submitted,

/s/

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

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

Dated: March 2, 2012

W02-WEST:5JAR1\404510556.13

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2012, I caused the forgoing Memorandum of Points and Authorities in Support of Motion for Summary Judgment which was filed through the ECF system, to be sent electronically to all registered participants. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

/s/ Roy Goldberg
Roy Goldberg

EXHIBIT 19

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

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

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

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

VELMA WHITEBEAR,
213 Downing Drive
Galt, CA 95632

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

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

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

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

v.

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

LARRY ECHO HAWK, in his official capacity as
Assistant Secretary-Indian Affairs of the United
States Department of the Interior,
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

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

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

Hon. Richard W. Roberts

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

Defendants.

**PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF**

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

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

INTRODUCTION AND SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

11. The Court of Appeals for the District of Columbia Circuit affirmed in a published opinion, holding that, "Although [the Tribe], by its own admission, has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary." *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267 (D.C. Cir. 2008).

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

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

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

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

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

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

PARTIES

25. Plaintiff California Valley Miwok Tribe, also known as the "Sheep Ranch Rancheria," the "Sheep Ranch Rancheria of Me-Wuk Indians of California," and the "Sheep Ranch Band of Me-wuk Indians of the Sheep Ranch Rancheria," is a federally recognized Indian tribe situated in Sheep Ranch, California, in Calaveras County. The Tribe consists of Indian members and their descendants, and/or their Indian successors in interest, for whose benefit the United States acquired and created the Sheep Ranch Rancheria. As of April 30, 2011, the membership of the Tribe consisted of 242 adult members and their children ("Current Members"). At least 83 members of the Tribe were alive and at least 18 years old on November 5, 1998 ("1998 Adult Members").

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

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

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

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

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

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

RELEVANT FACTS

Tribal History and Membership

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

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

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

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

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

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

The Indian Reorganization Act

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

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

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

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

membership. This duty is informed and strengthened by the United States' trust obligations to Indian tribes and their members.

The California Rancheria Act and Failure to Terminate the Tribe

41. In 1958, Congress enacted the California Rancheria Act, which authorized the Secretary to terminate the lands and trust status of enumerated Indian tribes on California Rancherias under certain conditions.

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

The Invalid 1998 Resolution

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

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

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

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

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

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

Burley Seeks Control of the Tribe

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

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

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

The BIA Rejects Burley's 2004 Constitution

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

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

53. In a March 26, 2004 letter to Burley, the BIA declined to approve her latest constitution. The BIA explained that efforts to organize a Tribe must reflect the involvement of the whole tribal community:

Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was attempted or has occurred with the purported organization of your tribe. . . . To our knowledge, the only persons of Indian descent involved in the tribe's organization

efforts, were you and your two daughters It is only after the greater tribal community is initially identified that governing documents should be drafted and the Tribe's base roll and membership criteria identified.

The BIA's letter identified several groups of Tribe members and segments of the tribal community who should be involved in the initial organization efforts.

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

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

In that [2004] letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. . . . Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you . . . to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004 letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members.

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

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

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

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

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

59. The district court dismissed Burley's claims in March 2006. The court noted that the Burleys had submitted a constitution that "conferred tribal membership only upon them and their descendants . . . [but] the government estimates that the greater tribal community, which should be included in the organization process, may exceed 250 members." The court found that the Secretary has "a responsibility to ensure that [she] deals only with a tribal government that actually represents the members of a tribe" and that the BIA has a "duty to ensure that the interests of all tribe members are protected during organization and that governing documents reflect the will of a majority of the Tribe's members." *California Valley Miwok Tribe, supra*, 424 F.Supp.2d 197. This is true "whether or not [a tribe] choose[s] to organize under the IRA procedures [of section 476(a)]." The court found the BIA's decisions consistent with that duty.

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

61. The Court of Appeals further explained:

In Burley's view, the Secretary has no role in determining whether a tribe has properly organized itself That cannot be. . . . [T]he Secretary has the power to manage "*all* Indian affairs and *all* matters *arising out of Indian relations*." . . . The exercise of this authority is especially vital when, as is the case here, the government is determining whether a tribe is organized, and the receipt of significant federal benefits turns on the decision. The Secretary suggests that her authority . . . includes the power to reject a proposed constitution that does not enjoy sufficient support from a tribe's membership. Her suggestion is reasonable, particularly in light of the federal government's unique trust obligation to Indian tribes. (Emphasis in original.)

The court concluded:

Although [the Tribe], by its own admission, has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary.

The Department's Representations in Federal Court

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

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

63. The United States further stated in its brief:

Section 476(h) does not impose a duty on BIA to recognize a tribal government or governing documents where, as here, they are adopted without the consent or participation of a majority of the tribal community. Nothing in Section 476(h) suggests that Congress intended to alter the substantive standards that apply when a tribe seeks to organize, including Section 476(a)(1)'s requirement that governing documents be "ratified by a majority of adult members of the tribe." In addition, for an "Indian tribe" to organize under the IRA, action by the tribe as a whole is required; action by an unrepresentative faction is insufficient.

The government added that "nothing in Section 476(h) limits the Secretary's broad authority – *independent of the IRA* – to ensure the legitimacy of any purported tribal government that seeks to engage in that government-to-government relationship with the United States" (emphasis added).

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

that the Burley Government was elected, and its governing documents adopted, by just three people and without the participation of the vast majority of the potential members of the Tribe."

Mr. Dixie's Efforts to Organize the Tribe

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

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

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

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

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

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

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

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

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

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

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

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

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

j. The Tribe is involved in Indian health services, emergency services and food distribution programs, including the MACT Indian health services program, that benefit members of the Tribe and other Indian tribes.

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

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

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

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

The BIA Attempts to Assist the Tribe In Organizing

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

72. Ms. Burley appealed the Superintendent's November 6, 2006 decision to the BIA's Pacific Regional Director. On April 2, 2007, the Regional Director affirmed the decision and remanded the matter back to the Superintendent to implement the actions mentioned in the November 6, 2006 decision. The Regional Director wrote, "We believe the main purpose [of the November 6, 2006 decision] was to assist the Tribe in identifying the whole community, the 'putative'

group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. . . . It is our belief that until the Tribe has identified the 'putative' group, the Tribe will not have a solid foundation upon which to build a stable government."

73. On April 10 and April 17, 2007, the BIA published public notice of an upcoming meeting to organize the Tribe. The notice requested that Putative Members submit documentation of their membership claim to the BIA (e.g., personal genealogies). The public notice defined the Putative Members as lineal descendants of: (1) individuals listed on the 1915 Indian Census of Sheep-ranch Indians; (2) individuals listed as eligible voters on the federal government's 1935 IRA voting list for the Rancheria; and (3) individuals listed on the plan for distribution of the assets of Sheep Ranch Rancheria (which included only Mabel Hodge Dixie).

74. According to the BIA, approximately 580 persons submitted personal genealogies to the BIA in response to the April 2007 public notices. Plaintiffs Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo each submitted genealogies and other documentation to the BIA in response to the public notices. None of the Burleys submitted documentation in response to the public notices. The BIA has not released the genealogies or the results of its analysis of the information submitted. The Tribe has separately obtained genealogies from each of its members.

Burley Attempts to Re-Litigate Her Claims Before the Board

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

76. In January 2010, the Board decided Burley's appeal. The Board recognized that the AS-IA's February 11, 2005 decision and the ensuing federal litigation had already finally determined the following issues: (1) that the BIA did not recognize the Tribe as being organized; (2) that the BIA did not recognize any tribal government that represents the Tribe; (3) that the Tribe's membership was

not necessarily limited to the Burleys and Yakima Dixie; and (4) that the BIA had an obligation to ensure that a “greater tribal community” was allowed to participate in organizing the Tribe. The Board recognized that, to the extent Burley's appeal attempted to relitigate those issues, it had no jurisdiction over her claims. Accordingly, the Board dismissed all of Burley's claims (including those claims not discussed here), except for a single, narrow issue.

77. According to the Board, the Burley appeal raised a solitary issue that had not already been decided by the AS-IA: the process for deciding “who BIA will recognize, individually and collectively, as members of the ‘greater tribal community’ that BIA believes must be allowed to participate in the general council meeting of the Tribe for organizational purposes.” The Board erroneously characterized this as a “tribal enrollment dispute,” because it failed to recognize that the lineal descendants of historical Tribal members are *already* Tribal members and therefore that the BIA’s 2007 proposed assistance with Tribal organization would not confer membership on these people. Because it lacks jurisdiction over “enrollment disputes,” the Board referred the issue to the AS-IA for resolution.

The AS-IA’s August 31 Decision

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

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

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

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

Consequences of the Secretary's Unlawful Decision

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

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

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

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

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

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

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

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

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

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

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

88. The August 31 Decision, if upheld by the Court, could provide a basis for allowing Burley to divert funds held in trust for the Tribe by the State of California. Beginning in 1999, Burley represented to the California Gambling Control Commission (“Commission”) that she was the authorized representative of the Tribe and entitled to collect funds paid by the state to tribes that do not operate casinos or gaming devices. Burley received millions of dollars from the Commission, which were meant for the Tribe, between 1999 and 2005 (the “State Funds”).

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

b. In 2005, the Commission ceased distribution of the State Funds to Burley on the ground that the federal government did not recognize her as the appropriate representative of the Tribe. Burley has filed litigation in California Superior Court, seeking to compel the Commission to resume distribution of the State Funds to her, including approximately \$7.5 million of the State Funds that the Commission has withheld since 2005. *See California Valley Miwok Tribe v. California Gambling Control Commission*, No. 37-2008-00075326 (Sup. Ct. San Diego). Burley seeks to introduce the August 31 Decision as evidence that she is entitled to receive the State Funds.

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

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

89. The August 31 Decision will allow Burley to divert federal funds intended for the Tribe. Beginning in 1999, and continuing through 2007, Burley received federal grant money

intended for the Tribe, based on her representation that she was an authorized representative of the Tribe. The grant money was provided through a “self-determination contract” pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* (“PL 638”), to assist the Tribe in organizing under the IRA. Burley received as much as \$400,000 to \$600,000 per year under this contract.

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

b. The BIA previously indicated its intent, based on the AS-IA's December 22 Decision, to enter into a new PL 638 contract with the Burleys. If the August 31 Decision is allowed to stand, the Tribe will be denied its rightful use of the PL 638 funds, because those funds will be paid to Burley and her illegitimate government instead.

FIRST CAUSE OF ACTION

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

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

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

92. The AS-IA’s August 31 Decision constitutes “final agency action.”

93. The August 31 Decision violates APA section 706(2)(A) because it unlawfully reopened and addressed issues not within the scope or jurisdiction of the Board appeal from which the decision arose.

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

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

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

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

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

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

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

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

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

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

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

- a. Personal genealogies and other information submitted to the BIA in response to the BIA's 2007 public notice regarding Tribal organization, which demonstrate that there are currently several hundred adult members of the Tribe;
- b. The Tribe's current roster of adult members submitted with Plaintiffs' May 3, 2011 briefing, which demonstrates that there are currently several hundred adult members of the Tribe;
- c. Information showing that the 1998 Resolution was adopted without the participation or consent of a majority of the Tribe's adult members at that time; and

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

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

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

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

108. As a direct and proximate result of the August 31 Decision, Mr. Dixie, the Tribal Council, and Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo have been and will continue to be denied their rightful opportunity to participate in the organization and governance of the Tribe and will suffer irreparable injury and financial loss.

109. As a direct and proximate result of the August 31 Decision, the Tribe, the Tribal Council and the members of the Tribe, including Mr. Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo, have been and will continue to be denied the

use of the PL 638 funds available through the BIA, and the State Funds provided by the Commission, and will suffer irreparable injury and financial loss.

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

SECOND CAUSE OF ACTION

(Violation of Substantive Due Process)

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

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

THIRD CAUSE OF ACTION

(Violation of Procedural Due Process)

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

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

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

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

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

FOURTH CAUSE OF ACTION

(Violation of the Indian Civil Rights Act)

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

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

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

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

PRAYER FOR RELIEF

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

- A. Vacating and setting aside the August 31 Decision as arbitrary, capricious, unsupported by substantial evidence in the record, an abuse of discretion and otherwise not in accordance with law;
- B. Declaring that the Secretary (acting through his subordinate, the AS-IA) violated his fiduciary duty to the Tribe and its individual members by adopting the August 31 Decision and allowing the Burleys to obtain federal funding intended to benefit the Tribe and its members;
- C. Declaring that the AS-IA's August 31 Decision denied Plaintiffs substantive due process;
- D. Declaring that the AS-IA's August 31 Decision denied Plaintiffs procedural due process;
- E. Declaring that the AS-IA's August 31 Decision violated the ICRA by recognizing a Tribal governing document and governing body that deprive Plaintiffs and other Tribal members of equal protection and due process of law;
- F. Directing the AS-IA and the BIA to establish government-to-government relations only with a Tribal government that reflects the participation of the entire Tribal community, including individual Plaintiffs and all other Current Members;
- G. Preliminarily and permanently enjoining the Secretary, AS-IA and BIA from taking any action to implement the August 31 Decision, including any award of federal funds to the Burleys under PL 638 or any other federal law or program;

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

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

Respectfully submitted,

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

Dated: October 17, 2011

Of Counsel:

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

CERTIFICATE OF SERVICE

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

Kenneth D. Rooney
Trial Attorney
United States Department of Justice
Environmental and Natural Resources Division
P.O. Box 663
Washington, D.C. 20044
kennethrooney@usdoj.gov

Robert A. Rosette, Esq.
565 West Chandler Boulevard
Suite 212
Chandler, Arizona 85225
rosette@rosettela.com

/s/ M. Roy Goldberg
M. Roy Goldberg

EXHIBIT 20

0578



T E X A S F O R N A

ARNOLD SCHWARZENEGGER, GOVERNOR

GAMBLING CONTROL COMMISSION

DEAN SHELTON, CHAIR

JOHN D. OLSON

JANICE L. WHIPPLE

EDWARD J. HARRIS

August 4, 2005

Ms. Sylvia Burley
10601 Escondido Place
Stockton, California 95121

Yakima Dixie
P.O. Box 41
11178 Sheep Ranch Road
Sheep Ranch, California 95250

Re: Revenue Sharing Trust Fund (RSTF) Distributions

Dear Ms. Burley and Mr. Dixie:

This is to notify you that the California Gambling Control Commission will not release the current RSTF quarterly distribution to the California Valley Miwok Tribe for the quarter ending June 30, 2005, and any subsequent distributions. This action is based on information recently received from the Bureau of Indian Affairs (BIA) regarding the fact that the California Valley Miwok Tribe (the Tribe) does not have a recognized tribal government, nor a recognized tribal chairperson and that, based on the organizational governmental status of the Tribe, the BIA has taken action to suspend Contract No. CTJ51T62802 (FY 05-06 Mature Status - Aid to Tribal Government Program), pursuant to PL 93-638. We refer you to the following correspondence (copies enclosed):

March 26, 2004 letter from Dale Risling, Sr. (BIA) to Sylvia Burley, copy to Yakima Dixie

February 11, 2005 letter from the Department of Interior, Acting Assistant Secretary - Indian Affairs, Michael D. Olson to Yakima K. Dixie, copy to Sylvia Burley

July 19, 2005 letter from Janice L. Whipple-DePina, (BIA) to Sylvia Burley, copy to Yakima Dixie

These letters reflect, among other things, a long-standing effort to encourage the tribe to organize itself and establish tribal leadership. During the past year to 18 months, the Commission has made quarterly distributions and directed them to Ms. Burley, because she continued to be recognized as the chairperson (3-26-04 letter) or person of authority within the tribe (2-11-05 letter) with whom the BIA conducted business. The July 19, 2005 letter, however, reflects the BIA's decision that the lack of a recognized tribal government or leadership now causes it sufficient concern that it must suspend the above referenced PL 93-638 contract in order to

"safeguard federal funds and until such time as the tribes becomes formally organized and a tribal government is re-established."

This most recent action and the position of the BIA regarding tribal leadership and organization leave us with no alternative, but to withhold funds until such time as there exists sufficient tribal government organization and leadership to allow the BIA to conduct government-to-government relations with the tribe - either through a recognized tribal chair or representative.

We take this action pursuant to our RSTF trustee responsibilities under Section 4.3.2.1 of the Tribal-State Gaming Compact (the Compact). In taking this action, we want to be clear that there is no question of the tribe's eligibility to receive RSTF distributions, and that we have neither authority over nor responsibility for the composition of tribal government or leadership. However, we believe that our trustee status under the Compact demands that we ensure the RSTF distributions go to the Tribe for the benefit of the Tribe and not merely to an individual member. We have not received any direction in this regard from the BIA, but in situations involving tribal leadership disputes and or tribal organizational problems, we take our lead from the actions and positions of the BIA. We take no position regarding the future form of tribal government, nor the selection of tribal leadership. We look forward to being able to make distributions as soon as the Tribe's leadership and organizational status is resolved to a degree sufficient to allow the BIA to resume government-to-government relations.

Distributions from the RSTF will remain in the fund until such time as the current situation is resolved, and the Commission is notified of resolution, at which time withheld distributions will be forwarded to the Tribe with appropriate accrued interest.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Cyrus J. Rickards
Chief Counsel

Cc: Peter Glick

EXHIBIT 21

0581



STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

GAMBLING CONTROL COMMISSION

DEAN SHELTON, CHAIRMAN

JOHN CRUZ

ALEXANDRA VUKSICH

129 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231P.O. BOX 526013
Sacramento, CA 95852-6013(916) 263-0700
(916) 263-0499 Fax

June 27, 2006

Sylvia Burley
California Valley Miwok Tribe
10601 Escondido Place
Stockton, CA 95212Via Facsimile and U.S. Mail**Re: California Valley Miwok Tribe – Revenue Sharing Trust Fund Distribution**

Dear Ms. Burley:

Your June 19, 2006, letter to Chairman Dean Shelton has been referred to me for response.

For reasons that have been made clear in previous correspondence and in pleadings in the recent interpleader action filed by the California Gambling Control Commission (the Commission) regarding distributions from the Revenue Sharing Trust Fund (RSTF) designated for the benefit of the California Valley Miwok Tribe (the Tribe), the Commission cannot, in keeping with its Trustee responsibilities under the Tribal-State Gaming Compact (the Compact), Sections 4.3.2 (a)(ii) and 4.3.2.1 (b), send the distribution to you as the representative of the Tribe. The monies will continue to be held in the Revenue Sharing Trust Fund (RSTF) and will be sent to the Tribe as soon as there is either a federally-recognized Tribal government, or the Bureau of Indian Affairs recognizes a representative or person of authority within the Tribe, for all purposes.

In your letter you assert that the Tribe is being treated "unequally" in violation of the California and federal constitutions. However, as you are aware, the Tribe is not similarly situated with other RSTF tribes. The Tribe has no recognized tribal government nor representative or person of authority recognized for all purposes by the BIA. The copy of the BIA Tribal Leaders Directory, which you included in your letter, only serves to underline that fact. Unlike all the other tribes listed, the Tribe has no listed Tribal Chairperson. Moreover, as you are aware, there is an ongoing dispute as to who is the actual person of authority within the Tribe.

Again, let me make clear that the Commission has no interest in the RSTF funds being withheld. However, we do have a duty under the Compact to make our best efforts to see that the funds are sent to an authorized representative of the Tribe.

0582

California Valley Miwok Tribe - Revenue Sharing Trust Fund Distribution
June 27, 2006
Page 2

From our perspective, this is not presently possible. Therefore, we respectfully deny your request to forward the RSTF distribution to you as the Tribe's representative.

Sincerely,



Cyrus J. Rickards
Chief Counsel

cc: Dean Shelton
Philip E. Thompson

EXHIBIT 22



STATE OF CALIFORNIA

GAMBLING CONTROL COMMISSION

39 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231
(916) 263-0700 Phone
(916) 263-0499 Fax
www.cgcc.ca.gov

Arnold Schwarzenegger, Governor

DEAN SHELTON, CHAIRMAN
JOHN CRUZ
STEPHANIE CHEN, CLU
ALEXANDER J. BURCH

June 26, 2007

Via Facsimile and U.S. Mail

Ms. Karla D. Bell
Sanders Bell LLP
4712 Admiralty Way, Suite 580
Marina del Rey, CA 90292

Re: California Valley Miwok Tribe

Dear Ms. Bell:

Since we last wrote on June 4, 2007, the Commission staff (Commission) has had a chance to carefully review the District Court decision in *California Valley Miwok Tribe v. United States*, 424 F.Supp.2d 197 (D.D.C. 2006). As a result of this review, in particular the factual recitations regarding the status of the Tribe, we have come to the conclusion that our decision to distribute Revenue Sharing Trust Funds (RSTF) as articulated in the June 4, 2007 letter must be reconsidered.

In the above matter, the California Valley Miwok Tribe (the Tribe) filed suit against the federal government, alleging that the Bureau of Indian Affairs (BIA) violated the Indian Reorganization Act by not recognizing a proposed Tribal constitution. The court granted the government's motion to dismiss finding that the Tribe failed to state a claim upon which relief could be granted. The matter is on appeal to the Court of Appeals for the District of Columbia Circuit.

In our June 4, 2007 correspondence, we indicated that we would make distributions to the tribe if there were a person recognized by the BIA as an "authorized representative of the Tribe with whom government-to-government business is conducted." We have pointed to documents that indicate that Silvia Burley is such a person. Notwithstanding our past position, what gives us concern and what gave the trial court concern in the above case is that not only is there no recognized Tribal constitution, and hence no tribal leadership recognized by the BIA, but that the Tribe as claimed by Ms. Burley to be constituted fails to include or protect the interests of a significant number of potential members. The BIA has asserted in the above litigation that its refusal to recognize the tribal government is based on the ground

Ms. Karla D. Bell
June 26, 2007
Page 2

that the Tribe has failed to take necessary steps to protect the interests of its potential members. (See 424 F.Supp.2d at 202.) Further, this concern was shared by the court which pointed out: "At the inception of this suit, Ms. Burley and her two daughters were seeking approval of a tribal constitution that conferred tribal membership upon only them and their descendants. . . . The Tribe now proposes a revised constitution that includes non-Burley descendants, and it has submitted a list of 29 possible members, but the government estimates that the greater tribal community which should be included in the reorganization process may exceed 250 members." (424 F. Supp.2d 197 at 203, fn 7.) Thus it is clear that not only the BIA and the District Court, but also Ms. Burley herself, have concluded that the present Tribal membership is not representative of the potential membership.

We reiterate that we have no authority to determine the "appropriate" Tribal membership. We do not by this letter endorse or dispute Ms. Burley's right of membership or claim of Tribal leadership, nor do we endorse or dispute that of Mr. Yakima Dixie. In fact, the legitimacy or lack thereof of those respective positions has no direct bearing on our decision. As we have made clear in past correspondence, the Commission has absolutely no authority to determine the appropriate leadership or membership of the Tribe and takes no position on these matters. However, it is clear from the factual recitations contained in the District Court decision that not only is there no recognized Tribal government, there is no basis upon which to conclude that should RSTF money be sent to the Tribe its use will be determined by a Tribal government recognized by the BIA in carrying out its statutory responsibility that can "ensure that the interests of all tribe members are protected during organization and that governing documents reflect the will of a majority of the Tribe's members." (424 F.Supp.2d 197 at 202.)

The Commission would be derelict in its trust responsibilities under Section 4.3.2.1(b) of the Tribal-State Gaming Compact if it knowingly distributed the money to a group of individuals, however eligible, which did not comprise a representative Tribal membership. Withholding of the funds will not cause them to be dissipated. Once the BIA has recognized a Tribal government and Tribal leadership, the Commission will take immediate steps to distribute the funds.

Thank you for your patience in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



DEAN SHELTON
Chairman

Ms. Karla D. Bell
June 26, 2007
Page 3

Cc: Silvia Burley
1061 Escondido Place
Stockton, CA 95212

Chadd Everone
2140 Shattuck Ave., #602
Berkeley, CA 94704

Yakima Dixie
11178 Sheep Ranch Road
P.O. Box 41
Sheep Ranch, CA 95250

Superintendent, Central California Agency
Bureau of Indian Affairs
650 Capitol Mall 8-500
Sacramento, CA 95814

Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

EXHIBIT 23



STATE OF CALIFORNIA

GAMBLING CONTROL COMMISSION

2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231
(916) 263-0700 Phone
(916) 263-0499 Fax
www.ogcc.ca.gov

Arnold Schwarzenegger, Governor

DEAN SHELTON, CHAIRMAN
SHERYL SCHMIDT
STEPHANIE SHIMAZU
ALEXANDRA V. TICH

January 3, 2008

Via Facsimile and U.S. Mail

Mr. Manuel Corrales, Jr.
Attorney at Law
11753 Avenida Sivrita
San Diego, California 92128

Re: California Valley Miwok Tribe – Revenue Sharing Trust Fund Payments

Dear Mr. Corrales:

I am in receipt of your letter of December 21, 2007, regarding the above matter.

I have enclosed copies of a letter dated June 26, 2007, to Karla D. Bell, then counsel for Ms. Burley; a letter dated September 24, 2007, to Ms. Burley; and a letter dated December 14, 2007, from the Bureau of Indian Affairs (BIA) to Ms. Burley.

The letter of June 26, 2007, in particular, outlines the basis for the Commission withholding Revenue Sharing Trust Fund (RSTF) funds. In short, the Tribe has no recognized government or tribal leadership, nor does the BIA recognize Ms. Burley as "an authorized official" of the tribe. Further, as explained in our letter of June 26, 2007, there is every reason to believe, based on the position of the BIA and the U.S. District Court (*California Valley Miwok Tribe v. United States*, 424 F.Supp.2d 197, 202; 203, fn. 7. (D.D.C. 2006)), that those individuals aligned with Ms. Burley do not constitute the full membership of the tribe. These are not matters that the California Gambling Control Commission (Commission) has taken upon itself to determine. The determinations have been made by the BIA and the Federal court. Further, the BIA has recently indicated its unwillingness to continue funding under P.L. 93-638 because the Tribe does not have a recognized governing body.

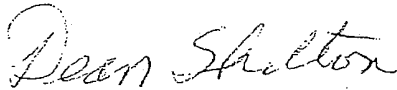
Therefore, under these circumstances, the Commission has no basis to conclude that should RSTF money be sent to the Tribe at Ms. Burley's address, it will be used for the benefit of all tribal members. The Commission would be derelict in its duties as a trustee under Compact Section 4.3.2.1(b) if it knowingly distributed RSTF funds to a group of individuals that did not comprise the tribal membership.

Mr. Manuel Corrales, Jr.
January 3, 2008
Page 2

As we have reiterated on numerous occasions, the Commission does not assert that it has the authority to grant recognition to a tribal government or to determine tribal leadership or membership. However, while the Compact states that the Commission has "no discretion with respect to the use or disbursement of trust funds," it also states that the Commission "shall serve as trustee of the fund." (Section 4.3.2.1(b).) Until such time as the BIA/Department of Interior or a court of competent jurisdiction determines that there is a recognized tribal membership or government or a person of authority who represents a legitimate tribal membership, we feel we have no choice but to withhold the funds.

As you may be aware, we sought judicial determination with regard to the distribution (*California Gambling Control Commission v. Sylvia Burley, et al.*, Sacramento County Superior Court, No. 05SA05386) and deposited the withheld funds with the court, pending resolution. However, Ms. Burley successfully opposed that lawsuit, and the amount withheld has since increased four-fold. In that regard, the total amount withheld (as of September 30, 2007) is \$3,121,397.76. This amount is held in the State's Surplus Money Investment Fund (SMIF), which draws interest. The SMIF interest rate adjusts quarterly.

Sincerely,

A handwritten signature in cursive script that reads "Dean Shelton".

DEAN SHELTON
Chairman

Mr. Manuel Corrales, Jr.
January 3, 2008
Page 3

cc: Silvia Burley
1061 Escondido Place
Stockton, CA 95212

Chadd Everone
2140 Shattuck Ave., #602
Berkeley, CA 94704

Yakima Dixie
11178 Sheep Ranch Road
P.O. Box 41
Sheep Ranch, CA 95250

Superintendent, Central California Agency
Bureau of Indian Affairs
650 Capital Mall 8-500
Sacramento, CA 95814

Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Pete Melnicoe
5660 Valley Oaks Ct.
Placerville, CA 95667

EXHIBIT 24



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

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

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

DEC 12 2008

Dear Mr. Kaufman:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Edith R. Blackwell
Associate Solicitor, Indian Affairs

EXHIBIT 25



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

JAN 14 2009

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

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

Dear Mr. Kaufman:

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

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

Sincerely,

Edith R. Blackwell
Associate Solicitor, Indian Affairs

EXHIBIT 26

COPY

1 BILL LOCKYER
Attorney General of the State of California
2 ROBERT L. MUKAI
Senior Assistant Attorney General
3 SARA J. DRAKE
Supervising Deputy Attorney General
4 MARC A. LE FORESTIER, State Bar No. 178188
Deputy Attorney General
5 1300 I Street, Suite 125
P.O. Box 944255
6 Sacramento, CA 94244-2550
Telephone: (916) 322-5452
7 Fax: (916) 322-5609

8 Attorneys for Plaintiff California Gambling
Control Commission

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

13 CALIFORNIA GAMBLING CONTROL
COMMISSION,

15 Plaintiff,

16 v.

17 SYLVIA BURLEY; YAKIMA DIXIE;
18 MELVIN DIXIE; DEQUITA BOIRE; and
VELMA WHITEBEAR,

19 Defendants.

CASE NO. 05AS05385

FIRST AMENDED
COMPLAINT IN INTERPLEADER

22 Plaintiff California Gambling Control Commission ("Plaintiff") alleges as follows:

23 1. Plaintiff is the California Gambling Control Commission, an agency of the State of
24 California, vested with jurisdiction over all persons or things having to do with the operation of
25 gambling establishments within the State of California. Plaintiff also has responsibilities defined
26 by certain tribal-state class III gaming compacts completed between the State of California and
27 various California Indian tribes, under which the Plaintiff is identified as "the State Gaming
28 Agency."

FILED
ENDORSED

2005 DEC 28 PM 3:22

LEGAL PROCESS #12

Cal. Civ. Pro. 12

2/1/06 CD 10
Respond
2/15/06

1 2. Plaintiff is informed and believes and thereon alleges, that Defendant Sylvia Burley
2 ("Burley") is an individual who claims to be a person of authority within the government of the
3 California Valley Miwok Tribe, and who claims a right to receive disputed funds, described more
4 fully in the paragraphs below.

5 3. Plaintiff is informed and believes and thereon alleges, that Defendant Yakima Dixie
6 ("Yakima Dixie") is an individual who claims to be a person of authority within the government
7 of the California Valley Miwok Tribe, and who claims a right to receive disputed funds,
8 described more fully in the paragraphs below.

9 4. Plaintiff is informed and believes and thereon alleges, that Defendant Melvin Dixie
10 ("Melvin Dixie") is an individual who claims to be a person of authority within the government
11 of the California Valley Miwok Tribe, and who claims a right to receive disputed funds,
12 described more fully in the paragraphs below.

13 5. Plaintiff is informed and believes and thereon alleges, that Defendant Dequita Boire
14 ("Boire") is an individual who claims to be a person of authority within the government of the
15 California Valley Miwok Tribe, and who claims a right to receive disputed funds, described more
16 fully in the paragraphs below.

17 6. Plaintiff is informed and believes and thereon alleges, that Defendant Velma Whitebear
18 ("Whitebear") is an individual who claims to be a person of authority within the government of
19 the California Valley Miwok Tribe, and who claims a right to receive disputed funds, described
20 more fully in the paragraphs below.

21 7. The California Valley Miwok Tribe ("CVMT") (fka Sheep Ranch Rancheria of Mi-
22 Wuk Indians) is a federally recognized Indian tribe, and Plaintiff is informed and believes, and
23 thereon alleges, that at present CVMT has few members, no recognized or functioning tribal
24 government, and does not conduct tribal gaming activities.

25 8. The tribal-state class III gaming compacts completed between the State of California
26 and various federally-recognized California Indian Tribes in 1999, and at other times
27 ("Compacts"), continue in effect, and provide for the creation and maintenance of a Revenue
28 Sharing Trust Fund ("RSTF"), under which fund California Indian tribes that either do not

1 engage in casino-style gambling at all, or do so only on a limited basis ("Non-Compact Tribes"),
2 are entitled to a share of revenue from California Indian tribes engaged in larger-scale casino
3 operations. CVMT is a Non-Compact Tribe within the meaning of the 1999 Compacts. An
4 exemplar of the 1999 Compacts is attached to this complaint at Exhibit A, and is incorporated by
5 reference here. The RSTF provisions are contained in section 4.3.2 of the 1999 Compacts.

6 9. The Compacts provide that Non-Compact Tribes are entitled to receive up to \$1.1
7 Million annually in distributions from the RSTF.

8 10. Plaintiff is identified by the Compacts as a limited "Trustee" of the RSTF, and in that
9 role is required to make RSTF distributions to Non-Compact Tribes, but has "no discretion with
10 respect to the use or disbursement of the trust funds." (Compacts, § 4.3.2.1, subd. (b).) The
11 Compacts provide that Plaintiff's sole authority "shall be to serve as a depository of the trust
12 funds and to disburse them on a quarterly basis to Non-Compact Tribes." (Compacts, § 4.3.2.1,
13 subd. (b).)

14 11. Plaintiff is now in possession of approximately SEVEN HUNDRED EIGHTY-EIGHT
15 THOUSAND and ONE DOLLARS and 99 CENTS (U.S. \$ 788,001.99) ("RSTF Money"),
16 derived from the RSTF, which is to be distributed to CVMT.

17 12. Burley, Yakima Dixie, Melvin Dixie, Boire and Whitebear have made conflicting
18 claims to leadership of the Tribe's government, and to distributions from the RSTF, including the
19 RSTF Money, on the Tribe's behalf.

20 13. Plaintiff is informed and believes, and thereon alleges, that the federal Department of
21 the Interior, Bureau of Indian Affairs ("BIA"), does not recognize any tribal government of the
22 CVMT, does not recognize any individual with authority to represent the CVMT for general
23 purposes, and at present does not conduct government-to-government relations with the CVMT.

24 14. It is Plaintiff's practice to make RSTF distributions to the federally recognized
25 government of each recipient Non-Compact Tribe.

26 15. Plaintiff lacks knowledge and authority to determine the validity of the defendants'
27 conflicting claims to control of the CVMT's government, or to the authority to represent it, and
28 so cannot determine to whom the RSTF monies should be distributed, on behalf of the CVMT.

1 16. Plaintiff claims no interest in the RSTF Money, or in future RSTF distributions to
2 which the CVMT will be entitled under the terms of the Compacts, except that it seeks a
3 determination of whether and to whom the RSTF Money should be distributed.

4 17. Concurrently with the filing of the original complaint in this action on December 5,
5 2005, Plaintiff deposited the RSTF Money with the clerk of this Court pursuant to Code of Civil
6 Procedure, section 386, subdivision (c).

7 18. Plaintiff has incurred costs and reasonable attorney's fees in connection with these
8 proceedings, and may incur additional costs and fees hereafter.

9 WHEREFORE Plaintiff prays for judgment as follows:

10 1. That defendants and each of them be ordered to interplead and litigate their claims to
11 receive the RSTF Money, and future RSTF distributions, on behalf of the CVMT;

12 2. That Plaintiff be discharged from liability to each of the defendants, if any, with respect
13 to the RSTF money;

14 3. That Plaintiff be permitted to deposit future RSTF distributions to the CVMT with the
15 clerk of this Court, until the defendants resolve this litigation, or until further Order of this Court.

16 4. That Plaintiff be awarded costs and reasonable attorney's fees to be paid to Plaintiff
17 from the funds deposited with the Court clerk as described above; and

18 5. For such other and further relief as the Court deems just and proper.

19 Dated: December 28, 2005

20 Respectfully submitted,

21 BILL LOCKYER
22 Attorney General of the State of California
23 ROBERT L. MUKAI
24 Senior Assistant Attorney General
25 SARA J. DRAKE
26 Supervising Deputy Attorney General

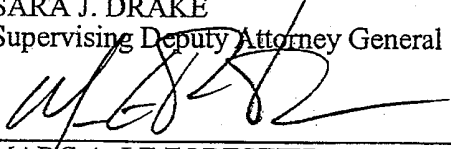
27 
28 MARC A. LE FORESTIER
Deputy Attorney General
Attorneys for the California Gambling Control
Commission

EXHIBIT 27

HL-8150

1 George L. Steele (189399)
2 Law Offices of George L. Steele
3 790 E. Colorado Boulevard, Suite 900
4 Pasadena, CA 91101
5 Telephone: (626) 240-0628
6 Facsimile: (206) 203-3847
7 Email: gsteele@glsllaw.net

8 Attorney for Specially-Appearing Defendant
9 SILVIA BURLEY, *erroneously sued as Sylvia Burley*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CALIFORNIA GAMBLING CONTROL
COMMISSION,

Plaintiff,

v.

SYLVIA BURLEY; YAKIMA DIXIE;
MELVIN DIXIE; DEQUITA BOIRE; and
VELMA WHITEBEAR,

Defendants.

) Case No. 05AS05385
)
) The Honorable Loren McMaster
)
) **DEMURRER OF SPECIALLY-**
) **APPEARING DEFENDANT SILVIA**
) **BURLEY TO FIRST AMENDED**
) **COMPLAINT; MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT THEREOF**
)
) [Filed Concurrently with Motion to
) Quash, Declaration of Silvia Burley,
) Request for Judicial Notice, and
) Appendix of Out-Of-State Authorities]
)
) DATE: April 21, 2006
) TIME: 2:00 p.m.
) DEPT: 53

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 21, 2006, at 2:00 p.m., or as soon thereafter as the matter may be heard in Department 53 of the above-entitled Court, located at 800 Ninth Street, 3rd Floor, Sacramento, California, the Specially-Appearing Defendant Silvia Burley ("Defendant," "Chairperson Burley," or "Ms. Burley") will, and hereby does, demur to the First Amended Complaint ("Complaint").

The Demurrer is based on Code of Civil Procedure Sections 430.10(a) and (e) on the following grounds:

1 1. This Court lacks subject matter jurisdiction of internal enrollment and
2 leadership matters of a sovereign Indian tribe.

3 2. The Complaint fails to state a cause of action against the Defendant in her
4 individual or official capacity. Defendant has no ability in her individual capacity to
5 receive funds for the benefit of a federally-recognized Indian Tribe, or otherwise afford
6 Plaintiff any relief sought in the Complaint. Defendant is immune from suit in her official
7 capacity.

8 This Demurrer is based on California Code of Civil Procedure Section 430 *et seq.*,
9 this Notice, the Memorandum of Points and Authorities, the Declaration of Silvia Burley,
10 the Request for Judicial Notice, the Appendix of Out-Of-State Authorities, the Motion to
11 Quash which is currently filed by Specially-Appearing Defendant, the pleadings and papers
12 on file herein, and upon such other evidence as may be presented to the Court by or at the
13 time of the hearing.

14
15 Dated: March 8, 2006

Respectfully submitted,

LAW OFFICES OF GEORGE L. STEELE

16
17
18
19 By: _____

George L. Steele
Attorney for Specially-Appearing Defendant
Silvia Burley *erroneously sued as*
Sylvia Burley

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 3

II. STATEMENT OF FACTS..... 3

III. ARGUMENT..... 4

A. A Pleading Is Subject To Demurrer When It Is Insufficient To
 State A Cause Of Action 4

B. This Court Lacks Subject Matter Jurisdiction Over Issues Of
 Tribal Self-Governance..... 5

C. Plaintiff Has Failed To State A Cause Of Action Upon Which
 Relief Can Be Granted..... 6

IV. CONCLUSION 7

TABLE OF AUTHORITIES

Federal Cases

<u>Lewis v. Norton</u> , 424 F.3d 959 (9th Cir. 2005).....	5-6
<u>Santa Clara Pueblo v. Martinez</u> , 436 U.S. 49 (1978)	5

State Cases

<u>Aubry v. Tri-City Hospital Dist.</u> , 2 Cal. 4th 962 (1992)	5
<u>Bohrer v. County of San Diego</u> , 104 Cal. App. 3d 155 (1980)	4
<u>Casterson v. Superior Court</u> , 101 Cal. App. 4th 177 (2002)	6
<u>City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</u> , 68 Cal. App. 4th 445 (1998).....	4
<u>Del. E. Webb Corp. v. Structural Materials Co.</u> , 123 Cal. App. 3d 593 (1981).....	4
<u>Friedland v. City of Long Beach</u> , 62 Cal. App. 4th 835 (1998).....	4
<u>Hill v. Miller</u> , 64 Cal. 2d 757 (1966).....	6
<u>Jager v. County of Alameda</u> , 8 Cal. App. 4th 294 (1992).....	5
<u>Lamere v. Superior Court</u> , 131 Cal. App. 4th 1059 (2005).....	5
<u>Miller v. R.K.A. Management Corp.</u> , 99 Cal. App. 3d 460 (1979).....	4-5
<u>Olcovich v. Grand Trunk Ry.</u> , 20 Cal. App. 349 (1912).....	7
<u>Young v. Gannon</u> , 97 Cal. App. 4th 209 (2002)	4

Statutes

25 U.S.C. § 450b	3
California Code of Civil Procedure Section 430 <i>et seq.</i>	2
California Code of Civil Procedure Section 430.10	7
California Code of Civil Procedure Section 430.10(a)	1
California Code of Civil Procedure Section 430.10(e)	4
California Code of Civil Procedure Section 430.30(a)	4
Indian Self-Determination Act, Public Law 93-638.....	5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

I. INTRODUCTION

Plaintiff, the California Gambling Control Commission ("Plaintiff" or "CGCC") has served a Summons and First Amended Complaint in Interpleader on several individual Defendants. The Defendants include Silvia Burley, the Chairperson of the California Valley Miwok Tribe ("CVMT"), a federally recognized Tribe, and the recipient of each of the prior distributions from the Revenue Sharing Trust Fund ("RSTF"). Specifically, since July 1, 2000, CGCC has made approximately 12 distribution payments to CVMT, through the Tribal Council chaired by Silvia Burley. The remaining Defendants are not members of the CVMT.

The Complaint purports to seek a determination of the proper recipient of funds from the RSTF. However, Plaintiff ignores the documents and course of conduct that clearly demonstrate the ongoing government-to-government relationship between the United States, and the tribal council chaired by Chairperson Burley, and is in reality, asking this Court to interfere with CVMT's self-governance by selecting the Tribe's leadership in this action. Accordingly, Chairperson Burley respectfully requests that this Court grant the Demurrer, with prejudice, in view of the Court's lack of subject matter jurisdiction, and the doctrine of sovereign immunity.

19
20
21
22
23
24
25
26
27
28

II. STATEMENT OF FACTS

CVMT is a federally recognized Indian Tribe. In September, 1999, CVMT became a contracting Tribe pursuant to the Indian Self-Determination Act, Public Law 93-638 ("638"). Public Law 638 provides for federal funding to organized Tribes to support and assist Tribes in the development of tribal government, tribal programs, and economic development.

In January 2004, CVMT was granted "Mature Contract Status." A Mature Contract is a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization. 25 U.S.C. § 450b. CVMT's contract was recently renewed for the 8th consecutive year on February 16, 2006.

1 Silvia Burley was elected Chairperson of the Tribal Council in 1999, and has held
2 that office continuously since that time. As Chairperson, Ms. Burley has the responsibility
3 of managing and supervising CVMT's accounting department. CVMT's accounting
4 department handles and accounts for receipt of all Tribal funds, makes all Tribal
5 disbursements, and insures compliance with federal laws and regulations concerning
6 financial matters as they apply to federally recognized Tribes.

7 **III. ARGUMENT**

8 **A. A Pleading Is Subject To Demurrer When It Is Insufficient To State A Cause** 9 **Of Action**

10 This Demurrer "tests the sufficiency of the plaintiffs' complaint, i.e., whether it
11 states facts sufficient to constitute a cause of action upon which relief may be based."
12 Young v. Gannon, 97 Cal. App. 4th 209, 220 (2002) (*citing* Code Civ. Proc., § 430.10(e);
13 Friedland v. City of Long Beach, 62 Cal. App. 4th 835, 841-842 (1998)). In determining
14 whether the complaint states facts sufficient to constitute a cause of action, "the trial court
15 may consider all material facts pleaded in the complaint and those arising by reasonable
16 implication therefrom." *Id.* The "court also may consider matters of which it may take
17 judicial notice." *Id.* (*citing* Code Civ. Proc. § 430.30(a); City of Atascadero v. Merrill
18 Lynch, Pierce, Fenner & Smith, Inc., 68 Cal. App. 4th 445, 459)). In adjudicating this
19 demurrer, the Court should take judicial notice of the inconsistent facts alleged in the
20 Complaint. *See Del. E. Webb Corp. v. Structural Materials Co.*, 123 Cal. App. 3d 593, 604
21 (1981) (pleading seemingly valid on its face is nevertheless subject to demurrer when
22 matters judicially noticed render the complaint meritless). The Court also should take
23 judicial notice of exhibits and admissions contained in Plaintiff's pleadings. *See Bohrer v.*
24 County of San Diego, 104 Cal. App. 3d 155, 163 (1980).

25 This demurrer may also be properly sustained for lack of "jurisdiction over the
26 subject matter of the cause of action" Miller v. R.K.A. Management Corp., 99 Cal.
27 App. 3d 460, 465 (1979) (*citing* Code Civ. Proc. § 430.10(e)). A demurrer is properly
28

1 granted where jurisdiction over the subject matter of an action exclusively belongs to
2 another sovereign under preemptive federal law. Id. Aubry v. Tri-City Hospital Dist.,
3 2 Cal. 4th 962, 967 (1992); Jager v. County of Alameda, 8 Cal. App. 4th 294, 297 (1992).

4 **B. This Court Lacks Subject Matter Jurisdiction Over Issues Of Tribal Self-**
5 **Governance**

6 The thrust of Plaintiff's actions is illustrated in its first prayer for judgment, in which
7 it requests "[T]hat Defendants and each of them be ordered to interplead and litigate their
8 claims to receive the RSTF Money, and future RSTF distributions, on behalf of CVMT."
9 In other words, Plaintiff wants this Court to decide leadership and membership of CVMT,
10 and in effect, challenge tribal membership on behalf of the non-Tribal member Defendants.
11 However, Plaintiff's attempt to end run the jurisdictional hurdles of sovereign immunity
12 and lack of jurisdiction over matters of tribal self-governance is impermissible as a matter
13 of law.

14 It is a settled matter that Indian Tribes possess the right to resolve their internal
15 matters based upon their inherent sovereign authority. Santa Clara Pueblo v. Martinez, 436
16 U.S. 49, 55 (1978). It is also settled that tribes are immune from federal and state court
17 jurisdiction in disputes regarding challenges to membership in the tribe. Santa Clara at 56;
18 Lewis v. Norton, 424 F.3d 959, 961 (9th Cir. 2005); Lamere v. Superior Court, 131 Cal.
19 App. 4th 1059, 1068. And the 9th Circuit made clear in Lewis that a party cannot end run
20 tribal immunity by bringing suit against non-tribal parties in an effort to put a tribal
21 governance issue before a court. Lewis at 963.

22 In Lewis, a group of siblings sought to compel the United States to enroll them as
23 members of a federally recognized tribe. The court held that their claim could not
24 withstand the "...double jurisdictional whammy of sovereign immunity and lack of federal
25 court jurisdiction to intervene in tribal membership disputes." Lewis at 960.

26 In the instant case, Plaintiff seeks to obtain a judicial determination of a tribal self-
27 governance matter by bringing suit against a group of individuals, all but one lacking tribal
28 membership, and alleging that each of their claims to be a "person of authority" within

1 CVMT. Here, as in Lewis, the claims cannot survive the obstacles of sovereign immunity
2 and lack of jurisdiction over tribal membership. Id. In addition, Plaintiff's allegations
3 regarding the non-tribal members' claims directly interfere with CVMT's sovereignty
4 because only tribes retain authority to determine tribal membership. Id. at 963.

5 Thus, despite Plaintiff's attempt to avoid the obvious legal obstacles to interfering
6 with matters of tribal self-governance, this Court should sustain Chairperson Burley's
7 Demurrer in view of the Court's lack of subject matter jurisdiction.

8 **C. Plaintiff Has Failed To State A Cause Of Action Upon Which Relief Can Be**
9 **Granted**

10 The Complaint does not, and cannot, allege any claim for relief against Chairperson
11 Burley in her individual capacity. Chairperson Burley in her individual capacity is without
12 any authority or ability to either have taken the acts alleged by Plaintiff or to afford Plaintiff
13 the relief they seek. Chairperson Burley's actions as an individual have no independent
14 significance. It is only the official action taken by the CVMT Tribal Council as a tribal
15 governmental entity that can lawfully claim RSTF distributions for CVMT. Plaintiff's
16 allegations in the Complaint make it clear that there cannot be a claim against Chairperson
17 Burley in her individual capacity. Paragraph 14 of the Complaint alleges that it is
18 Plaintiff's practice to make Revenue Sharing Trust Fund distributions to the federally
19 recognized government of each recipient tribe. Therefore, Chairperson Burley should be
20 dismissed in her individual capacity.

21 If this Court were to allow this interpleader, it would be ordering CVMT to litigate a
22 leadership dispute in state court. Obviously, CVMT is an indispensable party and cannot be
23 joined without its consent as a result of its sovereign immunity. Moreover, state courts
24 have no jurisdiction over tribal governance matters, as discussed above. A demurrer should
25 be granted because the complaint seeks relief which, as a matter of law, cannot be provided.
26 See Hill v. Miller, 64 Cal. 2d 757 (1966); Casterson v. Superior Court, 101 Cal. App. 4th
27 177, 183 (2002) ("a general demurrer will lie where the complaint has included allegations
28 that clearly disclose some defense or bar to recovery").

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

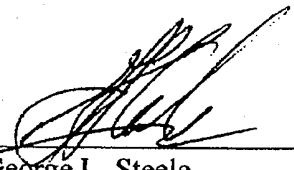
IV. CONCLUSION

The Complaint's allegations establish that the remedies Plaintiff seeks cannot be obtained from Defendant in her individual capacity. To the contrary, this dispute involves Defendant's alleged actions in her capacity as officials of a sovereign, federally-recognized Indian tribe. Only the California Valley Miwok Tribe, acting through its governmental entities, the Enrollment Committee and the Tribal Council, has the authority to adjudicate this issue. Pursuant to C.C.P. § 430.10, since the allegations of the Complaint and the matters judicially noticeable establish that jurisdiction of this matter lies exclusively with the California Valley Miwok Tribe, this honorable Court lacks subject matter jurisdiction. *See Olcovich v. Grand Trunk Ry.*, 20 Cal. App. 349 (1912) (demurrer based on lack of jurisdiction proper if allegations show that jurisdiction lies elsewhere). Specially-Appointed Defendant therefore respectfully requests this Court to grant the demurrer, with prejudice, as to any alleged cause of action asserted against Defendant in her individual capacity.

Dated: March 8, 2006

Respectfully submitted,

LAW OFFICES OF GEORGE L. STEELE

By: 

George L. Steele
Attorney for Specially-Appointed Defendant
Silvia Burley *erroneously sued as*
Sylvia Burley

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age
3 of 18 and not a party to the within action. My business address is 790 E. Colorado Blvd.,
Suite 900, Pasadena, California 91101.

4 On March 9, 2006, I served the document described as **DEMURRER OF**
5 **SPECIALLY-APPEARING DEFENDANT SILVIA BURLEY TO COMPLAINT;**
6 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on
the interested parties in this action, enclosed in a sealed envelope, addressed as follows:

7 **MARC A. LE FORESTIER**
8 Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
9 Fax: (916) 322-5609

10 ☒ (Via Mail) Following ordinary business practices, I placed the document for
11 collection and mailing at the Law Offices of George L. Steele, 790 E. Colorado Blvd., Suite
900, Pasadena, California 91101, in a sealed envelope. I am readily familiar with the
12 business's practice for collection and processing of correspondence for mailing with the
United States Postal Service, and, in the ordinary course of business, such correspondence
13 would be deposited with the United States Postal Service on the day on which it is collected
at the business.

14 ☐ (Via FedEx) Following ordinary business practices, I placed the document for
15 collection and FedEx delivery at the Law Offices of George L. Steele, 790 E. Colorado
Blvd., Suite 900, Pasadena, California 91101. I am readily familiar with the business's
16 practice for collection and processing of correspondence for delivery by FedEx, and, in the
ordinary course of business, such correspondence would be deposited with FedEx on the
day on which it is collected at the business.

17 Executed on March 9, 2006, at Pasadena, California.

18 ☒ (State) I declare under penalty of perjury under the laws of the State of
19 California that the above is true and correct.

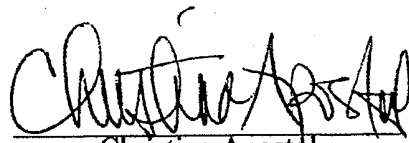
20 
21
22 Christina Apostol

EXHIBIT 28

NOTICE:

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 3.04.

Judge McMaster discloses that attorneys appearing in cases on today's calendar may have donated to the Committee for Judicial Independence which was formed to oppose the attempted recall of Judge McMaster. A list of donors and amounts donated is under the custody of court executive officer Jody Patel and can be reviewed at room 611, sixth floor, courthouse, 720 Ninth Street.

**Department 53
Superior Court of California
800 Ninth Street, 3rd Floor
LOREN E. MCMASTER, Judge
T. West, Clerk
V. Carroll, Bailiff**

Friday, June 16, 2006, 2:00 PM

Item 1 **01AS07723 ROBERT BURROWAY, JR., ET AL VS ELSIE FLEMMER, ET AL**
Nature of Proceeding: Motion To Compel Supplemental Interrogatories & Production of Documents
Filed By:

Advanced to and heard on June 1, 2006.

Item 2 **01AS07723 ROBERT BURROWAY, JR., ET AL VS ELSIE FLEMMER, ET AL**
Nature of Proceeding: Motion for Protective Order
Filed By: Ragan, Jennifer L.

Defendant's motion for a protective order quashing plaintiff's demand for Exchange of Expert Witnesses on the ground discovery is closed is denied.

Plaintiff's motion to continue the trial in this matter was granted and the trial court vacated all dates set for trial and MSC. Under such circumstances the discovery cut-off is generally tried to the original trial date.

Plaintiff points out that defendant has propounded discovery and insisted that she could do so because all discovery timelines were vacated when the trial date was vacated. The Court granted the unopposed motion to compel. It would be inequitable to allow defendant to obtain a court order compelling discovery while at the same time asserting that discovery is closed as to plaintiff.

The court views the conversations between the parties followed by defendant's discovery motion to constitute a stipulation that discovery remain open until closed by an arbitration or trial date.

This minute order is effective immediately and no formal order is required.

Item 3 **01AS07723 ROBERT BURROWAY, JR., ET AL VS ELSIE FLEMMER, ET AL**
Nature of Proceeding: Motion to Compel Deposition

Filed By:

The motion of Silvia Burley ("Burley") to quash service of summons issued upon the First Amended Complaint of California Gambling Control Commission ("Commission") is denied.

Burley's motion is based upon the premise that she is named in the action solely in her capacity as a person of authority over the California Valley Miwok Tribe ("Tribe"), and in that capacity, she is entitled to the sovereign immunity held by the Tribe. Commission disputes this claim, arguing that Burley is named simply as a private individual who has made a competing claim to the subject fund. Specifically, Commission argues that "because there is no recognized tribal government or representative with authority to represent the Tribe for general purposes, none of the defendants could be acting in an official representative capacity.

With this admission by Commission, and having no evidence that the service of summons was otherwise procedurally defective, Burley was properly served.

This minute order is immediately effective. A formal order pursuant to California Rules of Court, rule 391 is not necessary, and further notice of this ruling is not required.

Item 14 **05AS05385 CALIFORNIA GAMBLING CONTROL COMM VS. SYLVIA BURLEY ET AL**

Nature of Proceeding: Demurrer

Filed By:

The demurrer of Silvia Burley ("Burley") to the First Amended Complaint (FAC) of California Gambling Control Commission ("Commission") is sustained without leave to amend.

Burley demurs upon two related grounds: (1) the interpleader action necessarily requires a determination of the "federally recognized government" of the California Valley Miwok Tribe ("Tribe") and the authorized representative thereof - a determination over which this Court lacks subject matter jurisdiction and is otherwise unsettled with the federal government; and (2) since Burley is named in the action solely as a private individual (not an official representative of Tribe) with no potential claim of right to the subject fund, the complaint fails to state a cause of action as against her. Burley's demurrer is sustained upon both grounds.

Commission alleges that it is the Commission's "practice to make RSTF distributions to the federally recognized government of each recipient Non-Compact Tribe." (FAC, p.3:24-25.) Commission alleges that the U.S. Department of Interior, Bureau of Indian Affairs ("BIA") "does not recognize any tribal government of the [Tribe], does not recognize any individual with authority to represent the [Tribe] for general purposes, and at present does not conduct government-to-government relations with the [Tribe]." (FAC, p.3:20-23.) Commission asserts no interest in the subject fund except for its statutory and Compact obligation to act as trustee over the fund, and to distribute it to eligible recipient Indian tribes "without delay." (Gov't Code section 12012.90(d).) Thus, the Commission states that its interpleader action "seeks a judicial determination of which, if any, of the various interested parties it named as

defendants is entitled to the RSTF monies deposited with the court." (Opp. p.3:13-14.)

Based upon these allegations, it is an inescapable conclusion that the relief sought by Commission would compel the Court to determine which individual, or individuals, constitute the lawful governmental representatives of Tribe, if at all. That determination, based upon the Commission's "practice," requires the federal government to "recognize" a government of the Tribe. This Court has no jurisdiction to make either determination. Instead, those decisions lie entirely within the exclusive jurisdiction of the BIA, the federal government, or the federal courts.

As an alternative, Commission suggests that the Court may function as a warehouse, in perpetuity, for the subject funds until the federal government, or the Tribe, finally achieve a "federally recognized government." This is not the proper role of the Court, or the interpleader process.

Commission also contends that the Court has jurisdiction over this matter because the Court may avoid the "impermissible intrusion into issues of tribal self-governance" and "properly limit the scope of the litigation to the Commission's responsibilities and obligations related to distribution of the RSTF monies." (Opp. p.5:23-25.) However, the FAC does not seek such relief. The FAC does not seek a declaration of Commission's responsibilities and obligations as to the RSTF. Commission does not contend that there is a dispute over its legal obligations and responsibilities. Commission does not argue that there is a legitimate dispute that it may distribute the RSTF monies to someone or some entity other than the "federally recognized government" of the Tribe. Instead, Commission seeks a declaration of who or what constitutes the "federally recognized government" of the Tribe. Again, that declaration cannot issue from this Court.

Furthermore, Commission has admitted that it named Burley as a private individual, not as an official representative of the Tribe. Since Commission alleges that its trusteeship of the fund requires it to disburse the fund only to the "federal recognized government" of the Tribe, Burley could not be a proper recipient of the fund in her individual capacity under any circumstance.

Requests for judicial notice are denied.

This minute order is immediately effective. A formal order pursuant to California Rules of Court, rule 391 is not necessary, and further notice of this ruling is not required.

Item 15 **05AS05385 CALIFORNIA GAMBLING CONTROL COMM VS. SYLVIA BURLEY ET AL**

Nature of Proceeding: Miscellaneous Motion

Filed By:

The motion of California Gambling Control Commission ("Commission") for discharge of liability from interpleader action pursuant to Code of Civil Procedure section 386, is denied.

Commission has not established that this Court has jurisdiction to adjudicate the named defendants' alleged competing claims to the deposited fund.

EXHIBIT 29



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-520
Sacramento, CA 95814

MAR 26 2004

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

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

Dear Ms. Burley:

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

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

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

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

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

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

0571

Page 3 of 4

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

We must continue to emphasize the importance of the participation of a greater tribal community in determining membership criteria. We reiterate our continued availability and willingness to assist you in this process and that via PL 95-638 contracts intended to facilitate the organization or reorganization of the tribal community, we have already extended assistance. We urge you to continue the work that you have begun towards formal organization of the California Valley Miwok Tribe.

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

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

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

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

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

1-423 P 004/005 F-514

915 534 2800

0-1-25-24 32-43pe From-L S ATTORNEY'S OFFICE

0572

Page 4 of 4

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

Sincerely,

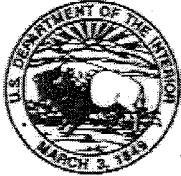
Dale Rising, Sr.

Dale Rising, Sr.
Superintendent

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

001-25-04 02:44pm From: S. ATTORNEY'S OFFICE 816 554 2920 T-423 2.005/505 F-514

EXHIBIT 30



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

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

NOV - 6 2006

Ms. Silvia Burley
10601 Escondido Place
Stockton, California 95212

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

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

Dear Ms. Burley and Mr. Dixie:

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

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

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

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

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

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

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

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

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

Sincerely,


Troy Burdick
Superintendent

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

EXHIBIT 31

Ledger Dispatch

Wednesday, April 11, 2007

Serving Amador County Since 1855

**LEDGER-DISPATCH
CLASSIFIEDS**Place your ad online - call
(209)223-4901**Browse & Buy:**

- [Announcements](#)
- [Apartments & Rentals](#)
- [Automotive](#)
- [Employment](#)
- [Farmer's Market](#)
- [Financial](#)
- [Legals](#)
- [Merchandise for Sale](#)
- [Real Estate for Sale](#)
- [Recreational](#)

Home : Legals : All Legal Announcements : View Item**THE BUREAU OF INDIAN AFFAIRS****Description**

PUBLIC NOTICE The Bureau of Indian Affairs, Central California Agency (Agency) plans 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. The first step in the organizational process is to identify putative members of the Tribe who may be eligible to participate in all phases of the organizational process of the Tribe. Therefore, if you believe you are a lineal descendant of a person(s) listed below, you will need to complete Form OMB#1076-0153, Bureau of Indian Affairs, Request for Certificate of Degree of Indian or Alaska Native Blood, and provide a certified copy of a birth certificate, death certificate, or other official documentation as required to establish your relationship to a person(s) listed below or other documents acceptable to the Secretary of the Interior (Secretary), and submit them to the Bureau of Indian Affairs, Central California Agency, 650 Capitol Mall, 8-500, Sacramento, California 95814, postmarked on or before May 25, 2007. You may contact Carol Rogers-Davis, Acting Tribal Operations Officer, at (916) 930-3764, or Tia Sam, Tribal Operations Specialist, at (916) 930-3765, Bureau of Indian Affairs, Central California Agency, for the necessary information and to obtain the forms that will assist the Bureau Team in determining your eligibility. 1. August 13, 1915 - Census of Indians at or near Sheepranch, Calaveras County, California, which listed the following: 1. Peter Hodge 2. Annie Hodge 3. Malinda Hodge (Daughter of Peter and Annie Hodge) 4. Lena Hodge (Daughter of Peter and Annie Hodge) 5. Tom Hodge (Son of Peter and Annie Hodge) 6. Andy Hodge (Son of Peter and Annie Hodge) 7. Jeff Davis 8. Betsey Davis 9. Mrs. Limpey 10. John Tecumchey 11. Pinkey Tecumchey 12. Mamy Duncan (Granddaughter of Jeff Davis) 2. June 6, 1935, Approved List of Voters for Indian Reorganization Act of Sheep Ranch Rancheria, Calaveras County, California, which listed the following: 1. Jeff Davis 3. August 11, 1964, Approved Plan for Distribution of the Assets of the Sheep Ranch Rancheria, in accordance with provisions of Public Law 85-671, approved August 18, 1958, and amended by Public Law 88-419, which listed the following: 1. Mabel Hodge Dixie All individuals who have been determined to be eligible to participate in the organization of the Tribe will be notified by letter from the Agency. All individuals not determined eligible will be noticed of their right to appeal to the BIA, Pacific Regional Director within 30 days of receipt of decision. Upon rendering final decisions regarding appeals filed, the Agency will notify all individuals determined to be eligible of the organizational meeting which will include an agenda of the next actions to be taken by the group. 4/11, 4/18/07 CNS-1116998# AMADOR LEDGER DISPATCH April 11, 18 2007-S473

Details**Posted By:** [Ad:217124](#)**Posted On:** 4/11/2007**Ad Expires:** 4/20/2007[Mail Ad to a Friend](#)[Printer Friendly Format](#)

[HOME](#) | [NEWS](#) | [SPORTS](#) | [LIFE](#) | [OPINION](#)
[SPECIAL SECTION](#) | [SUBSCRIBER CENTER](#) | [BULLETIN](#) | [PHOTOS](#)

EXHIBIT 32

Manuel Corrales, Jr., Esq. SBN 117647
Attorney at Law

11753 Avenida Sivrita
San Diego, California 92128

Tel: (858) 521-0634

Fax: (858) 521-0633

Email: mannycorrales@yahoo.com

Terry Singleton, Esq. SBN 58316

SINGLETON & ASSOCIATES

1950 Fifth Avenue, Suite 200

San Diego, California 92101

Tel: (619) 239-3225

Fax: (619) 702-5592

Email: terry@terrysingleton.com

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 SILVIA BURLEY
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT,
OR, ALTERNATIVELY, SUMMARY
ADJUDICATION

Date: January 28, 2011

Time: 8:30 a.m.

Dept: C-62

Judge: Hon. Ronald Styn

I, Silvia Burley, declare that if called as a witness
in this case, I would testify as follows:

1. I am over 18 years of age. I have personal knowledge of the facts contained in this declaration, and the documents attached hereto.

2. I am currently the Chairperson of the California Valley Miwok Tribe (hereinafter referred to as "the Tribe"), a federally-recognized Indian Tribe, and a party Plaintiff in this action. I am authorized by the Tribe to make the statements contained herein on behalf of the Tribe.

PRESENT TRIBAL GOVERNMENT

3. The Tribe is currently organized by "custom and tradition." This means that the Tribe has organized itself for governing purposes under its own inherent rights and laws without outside influences and/or interferences, and as a Tribe, continues to maintain its native Indian identity through generations of "passed down" cultural ceremonies, customs and tradition, language, education and dispute resolutions.

4. The Tribe has its own governing Constitution.

5. The Tribe holds a "General Council Meeting" once a year in January. The "General Council" consists of all enrolled members of the Tribe of voting age who are eligible to participate in the governmental affairs of the Tribe. The Tribe also holds regular "Tribal Council Meetings" on the first Monday of the month. The Tribal Council consists of three elected officials, including a "Chairperson", a "Vice-Chairperson", and a "Secretary-

1 Treasurer." The Tribal Council is the governing body of
2 the Tribe, except for the powers specifically retained by
3 the General Council.

4 6. The Tribal Council possesses certain enumerated
5 powers, subject only to those limitations imposed by its
6 Constitution and the laws of the United States. Those
7 powers include, among other things, the following:

8 a. To consult, negotiate, contract or conclude
9 agreements with federal, state, local and tribal
10 governments and with private persons and organizations.

11 b. To employ legal counsel of its choice on
12 behalf of the Tribe or for the benefit Tribal members and
13 to fix the fees for such counsel in accordance with federal
14 law.

15 c. To set aside and to spend Tribal funds for
16 Tribal purposes.

17 d. To enact ordinances upon a two-thirds (2/3)
18 vote of the Tribal Council establishing procedures for the
19 nomination, election, removal and recall of members and
20 officers of the Tribal Council.

21 These are just a few of the powers and authority the Tribe
22 has under its Constitution.

23 **TRIBAL AUTHORITY TO BRING THIS ACTION**

24 7. Pursuant to the Tribe's authority under its own
25 Constitution, it has retained Manuel Corrales, Jr., Esq.,
26 to represent the Tribe in connection with the Tribe's
27 claims against the California Gambling Control Commission
28

1 ("the Commission"), and to file suit in State or Federal
2 Court to prosecute those claims.

3
4 HISTORICAL GOVERNMENT-TO-GOVERNMENT RELATIONSHIP
5 WITH THE BIA

6 8. Previously, the Department of Interior, Bureau of
7 Indian Affairs ("the BIA"), sought to have the Tribe
8 establish a constitution under the Indian Reorganization
9 Act of 1934 ("IRA"), as a condition to awarding the Tribe
10 federal contract funds (638 funding). A dispute arose
11 between the BIA and the Tribe concerning the Tribe's
12 proposed constitution under the IRA, which the BIA would
13 not accept as drafted by the Tribe. To date, the dispute
14 between the BIA and the Tribe over an IRA governing
15 constitution has not resolved. As a result, the Tribe
16 continues to govern itself under its own existing
17 constitution founded on custom and tradition. The BIA has
18 characterized the Tribe as "unorganized", because the Tribe
19 does not have a governing constitution under the IRA which
20 the BIA has stated it requires as a condition for awarding
21 the Tribe federal contract funds, specifically federal
22 funds under P.L. 93-638 ("638 funding"), and which the
23 Tribe continues to dispute. However, as shown in the
24 attached correspondence, the BIA previously awarded the
25 Tribe "638 funding" while the Tribe was "unorganized" under
26 the IRA, and further recognized me, Silvia Burley, as the
27 Chairperson of the Tribe, and later as a "person of
28 authority" to speak and act for the Tribe, all during a

1 time when there was a internal tribal leadership dispute
2 with Yakima Dixie, the former Chairperson of the Tribe

3 9. Attached herewith and marked as Exhibit "1" is a
4 true and correct copy of a letter dated July 12, 2000, I
5 received from Dale Risling of the BIA, recognizing me as
6 the "Chairperson" of the Tribe. The Tribe was formerly
7 called the "Sheep Ranch Rancheria of Me-Wuk Indians", and
8 later changed its name, with BIA approval, to the
9 California Valley Miwok Tribe. The Tribe later passed a
10 resolution changing the name of the Tribe to the
11 "California Valley Miwok Tribe", which the BIA accepted. It
12 then placed the new name in the Federal Register listing
13 "California Valley Miwok Tribe" as a federally-recognized
14 tribe.

15 10. Attached herewith and marked as Exhibit "2", is a
16 true and correct copy of a letter dated July 26, 2000, from
17 Dale Risling of the BIA to Kevin Gover, Assistant
18 Secretary-Indian Affairs, U.S. Department of the Interior,
19 Bureau of Indian Affairs, in Washington, D.C. Mr. Risling
20 wrote to Mr. Gover stating that "the purpose of this
21 correspondence is to introduce Silvia Burley, Chairperson
22 of the Sheep Ranch Rancheria of Me-Wuk Indians of
23 California, and to confirm that Ms. Burley is an elected
24 official of a federally recognized tribe." I was copied on
25 this correspondence. I spoke with Mr. Risling before he
26 sent this letter out, and Mr. Risling told me that he
27 would be sending the letter. The letter fairly and
28

1 accurately depicts what Mr. Risling represented to me w...
2 he was going to write to Mr. Gover.

3 11. Attached herewith and marked as Exhibit "3" is a
4 true and correct copy of a letter dated November 24, 2003
5 from Mr. Dale Risling of the BIA "To Whom It May Concern".
6 The letter states that the BIA "maintains a government to
7 government relationship with the California Band of Miwok
8 Indians through the tribal council chaired by Ms. Silvia
9 Burley." Mr. Risling wrote this letter for me and sent it
10 to me for my use in connection with tribal business. At
11 the time Mr. Risling wrote this letter, the Tribe was not
12 organized under the IRA. Instead, the Tribe had, and still
13 has, its own governing constitution. Also, at that time,
14 the Tribe was still involved in an internal tribal
15 leadership dispute with Yakima Dixie. Despite these
16 specific circumstances, the BIA was awarding the Tribe 638
17 federal funding on a regular basis.

18
19 NEW CONSTITUTION ONLY FOR RECEIPT OF FEDERAL FUND-
20 NO IMPACT ON TRIBE'S EXISTENCE

21 12. Attached herewith and marked as Exhibit "4" is a
22 true and correct copy of a letter dated March 26, 2004,
23 from Dale Risling of the BIA to me, "Ms. Silvia Burley,
24 Chairperson" of the Tribe. This letter was perhaps the
25 beginning of the BIA's efforts to require the Tribe to form
26 a constitution under the IRA as a condition of receiving
27 638 federal funding. In this letter, however, the BIA
28

1 acknowledged a "government to government relationship" with
2 the Tribe, through me, Silvia Burley, as a "person of
3 authority within an unorganized tribe." In his letter, Mr.
4 Risling stated that not being organized under the IRA did
5 not mean that the Tribe could not function or exist as a
6 tribe. Instead, Mr. Risling suggested that that Tribe's
7 status as "unorganized" under the IRA only meant that the
8 Tribe's eligibility for federal funding could be impacted.
9 In this regard, Mr. Risling wrote:

10
11 "...[T]he BIA's Central California Agency (CCA) has a
12 responsibility to develop and maintain a government to
13 government relationship with each of the 54 federally
14 recognized tribes situated within CCA's jurisdiction.
15 This relationship, includes among other things, the
16 responsibility of working with the person or persons
17 from each tribe who are either rightfully elected to a
18 position of authority within the tribe or who otherwise
19 occupy a position of authority within an unorganized
20 tribe. To that end, the BIA has recognized you as a
21 person of authority within the California Valley Miwok
22 Tribe. However, the BIA does not yet view your tribe
23 to be an "organized" Indian tribe...(Let me emphasize
24 that being an organized vis-à-vis unorganized tribe
25 ordinarily will not impact either your tribe's day-to-
26 day operations but could impact your tribe's continued
27 eligibility for certain grants and services from the
28 United States)." (Page 1 of the Letter).

23 The BIA was willing to continue awarding federal 638
24 funding while we worked toward getting an IRA constitution
25 drafted which the BIA would accept. In this regard, Mr.
26 Risling then stated in his letter: "We urge you to
27 continue the work that you have begun towards formal
28

1 organization of the California Valley Miwok Tribe." (Page
2 3 of the Letter). However, the BIA never told me nor the
3 Tribe that if the Tribe did not obtain an IRA constitution,
4 that the Tribe would cease to exist as a federally
5 recognized Indian Tribe. To the contrary, I understood
6 from all of my conversations and correspondence with Mr.
7 Risling and other BIA representatives that if a tribe did
8 not have a governing constitution organized under the IRA,
9 it only meant that the Tribe's entitlement to federal funds
10 could be impacted. Neither Mr. Risling, nor anyone at the
11 BIA, ever told me that if the Tribe was not organized under
12 the IRA it could not receive State funds, specifically
13 California State RSTF money, or that the Tribe would be
14 terminated.

15 DISPUTE WITH BIA OVER FEDERAL FUNDING

16 13. After I received the BIA's March 26, 2004 letter
17 (Exhibit "4"), a dispute between the Tribe and the BIA
18 continued to grow. The Tribe finally filed a lawsuit
19 against the BIA over the issue of whether the BIA could
20 require the Tribe to have an IRA governing constitution as
21 a condition to receiving federal 638 funding. In response
22 to the lawsuit, the BIA suspended all federal 638 contract-
23 funding for the Tribe and took a very hostile and
24 adversarial position against the Tribe. Attached herewith
25 and marked as Exhibit "5" is a true and correct copy of a
26 letter dated July 19, 2005, from Ms. Janice L. Whipple-
27 DePina of the BIA, advising that 638 funding for the Tribe
28 had been suspended, on the grounds that there was "no

1 recognized tribal government with which to take action
2 behalf of the tribe or sustain a government to govern...
3 relationship with..." (Page 1 of the Letter). Since the
4 BIA had previously awarded the Tribe 638 contract funding
5 while the Tribe was "unorganized", I viewed this letter and
6 the BIA's decision to suspend 638 funding for the Tribe to
7 be retaliatory for the Tribe having filed a lawsuit against
8 the BIA.

9 14. The BIA's retaliatory actions, as perceived by me
10 as the Tribal Chairperson, extended to notifying the
11 Commission and influencing the Commission to cut off RSTF
12 money. I surmise that the BIA was trying to cut off the
13 Tribe's financial resources which supported the litigation
14 against the BIA. My belief is based on the attached letter
15 dated August 4, 2005, from the Commission to both me and
16 Yakima Dixie, which is attached and marked herewith as
17 Exhibit "6". In this letter, the Commission references Ms.
18 Whipple's letter to me, and states that the Commission was
19 suspending RSTF money to the Tribe, "based upon information
20 recently received from the [BIA]...that the [Tribe] does
21 not have a recognized tribal government, nor a recognized
22 tribal chairperson and that, based on the organizational
23 governmental status of the Tribe, the BIA has taken action
24 to suspend [the Tribe's federal 638 funding]. I am not
25 aware of anything in the Compact that makes this a
26 requirement to receive RSTF money. Prior to the date of
27 this letter, the Tribe was receiving RSTF money on a
28

1 regular basis from the Commission, when the Commission
2 that the Tribe did not have a governing constitution
3 organized under the IRA.

4
5 BIA'S AND COMMISSION'S PRIOR RECOGNITION
6 OF BURLEY AS A "PERSON OF AUTHORITY"

7 15. Attached herewith and marked as Exhibit "7" is a
8 true and correct copy of a letter dated June 27, 2006, from
9 the Commission to me. In responding to my objection to the
10 Commission's decision to stop RSTF payments to the Tribe,
11 the Commission stated in this letter as follows: "The
12 monies will continue to be held in the Revenue Sharing
13 Trust Fund (RSTF) and will be sent to the Tribe as soon as
14 there is either a federally-recognized Tribal government,
15 or the Bureau of Indian Affairs recognizes a representative
16 or person of authority within the Tribe, for all purposes."
17 At that time, the BIA still recognized me as the person of
18 authority for the Tribe, and to my knowledge there is
19 nothing in the Compact that requires the BIA to accept the
20 Tribe's constitution as a condition of receiving RSTF
21 money. Also, the Tribe at that time was, and presently is,
22 a federally-recognized tribe. It was apparent that the
23 Commission was misinterpreting the BIA's actions, and
24 erroneously concluding that because the BIA would not
25 recognize the Tribe's non-IRA constitution for federal
26 contract funding eligibility purposes, it meant the Tribe
27 was no longer a "federally-recognized tribe".
28

1 BIA PAYMENT OF FEDERAL FUNDS DESPITE
2 THE TRIBE NOT BEING "ORGANIZED"

3
4 16. Attached herewith and marked as Exhibit "8" is a
5 true and correct copy of a letter dated January 29, 2007
6 from the BIA to me, stating that although the Tribe is
7 "unorganized" under the IRA, the BIA still recognizes me,
8 Silvia Burley, as a "person of authority" for the Tribe.
9 The letter states: "The Bureau of Indian Affairs' (Bureau)
10 current position is that the Tribe lacks a governing body
11 duly recognized by the Bureau and that you are recognized
12 as a 'person of authority' within the Tribe." The letter
13 further added that the BIA was exercising its "discretion"
14 in continuing federal 638 funding to the Tribe, while the
15 Tribe worked with the BIA to come up with an IRA
16 constitution acceptable to both parties. After I received
17 this letter, the BIA resumed federal 638 funding for the
18 Tribe.

19 COMMISSION NOTIFIES THE TRIBE THAT IT WILL RESUME "RSTF"
20 PAYMENTS TO THE TRIBE

21 17. Attached herewith and marked as Exhibit "9" is a
22 true and correct copy of a letter dated June 4, 2007 from
23 the Commission to the Tribe's then attorney, Karla Bell,
24 advising that the Commission was resuming RSTF payments to
25 the Tribe, in light of the BIA's decision to resume federal
26 638 funding while the Tribe and the BIA worked on coming up
27 with an IRA constitution acceptable to the BIA.
28

COMMISSION AGAIN STOPS PAYING "RSTF"
MONEY TO THE TRIBE

18. Attached herewith and marked as Exhibit "10" is a true and correct copy of a letter dated June 26, 2007 from the Commission to the Tribe's then attorney, Karla Bell, advising that the Commission was now going to stop RSTF payments to the Tribe, based upon a U.S. District Court case in Washington, D.C., involving the Tribe and the BIA over whether the BIA could require the Tribe organize its constitution under the IRA as a condition of receiving federal 638 funding. To my knowledge, the Commission was not a party to that litigation. The Commission's decision to stop RSTF money again was based on the Tribe's failure to organize its governing constitution under the IRA, so that it could receive federal contract funding.

BIA'S REFUSAL TO WITHDRAW ITS RECOGNITION
OF BURLEY AS A "PERSON OF AUTHORITY" FOR THE TRIBE

19. Attached herewith and marked as Exhibit "11" is a true and correct copy of a letter dated June 19, 2007, from Troy Burdick of the BIA to Yakima Dixie. I received a copy of this letter. In the letter, Mr. Burdick declined Mr. Dixie's requests to withdraw the BIA's recognition of me, Silvia Burley, as a "person of authority" or an "authorized representative" for the Tribe. (Page 1 of Letter).

///

///

///

1
2 COMMISSION'S CONTINUED REFUSAL TO RESUME
3 "RSTF" PAYMENTS TO THE TRIBE
4

5 20. Attached herewith and marked as Exhibit "12" is a
6 true and correct copy of a letter dated September 24, 2007,
7 to me from Dean Shelton, the Commissioner of the
8 Commission. In the letter, Mr. Shelton reiterated the
9 Commission's position to continue to withhold RSTF money
10 from the Tribe.

11 21. Attached herewith and marked as Exhibit "13" is a
12 true and correct copy of the Commission's report dated
13 November 8, 2007. The report accurately depicts the amount
14 of RSTF money that was being withheld from the Tribe at
15 that time. The report also states that the Commission was
16 withholding RSTF money from the Tribe "pending resolution
17 of [a] tribal leadership dispute." This is inconsistent
18 with what the Commission was communicating to me concerning
19 its reasons for withhold the funds, when I inquired.

20 22. Attached herewith and marked as Exhibit "14" is a
21 true and correct copy of a letter dated December 14, 2007,
22 from the BIA to me, returning the Tribe's application for
23 federal 638 funding, because the Tribe was not "organized"
24 under the IRA. At the time this letter was written, the
25 BIA and the Tribe were still engaged in litigation.

26 23. Attached herewith and marked as Exhibit "15" is a
27 true and correct copy of a letter dated December 21, 2007
28 from Mr. Manuel Corrales to the Commission. I received a

1 copy of this letter and authorized Mr. Corrales to send
2 on behalf of the Tribe.

3 24. Attached herewith and marked as Exhibit "16" is a
4 true and correct copy of a letter dated January 2, 2008
5 from Mr. Corrales to the Commission. I received a copy of
6 the letter and authorized it to be sent.

7 25. Attached herewith and marked as Exhibit "17" is a
8 true and correct copy of a letter dated January 3, 2008,
9 from the Commission to Mr. Corrales. I received a copy of
10 this letter and reviewed it on behalf of the Tribe.

11 26. Attached herewith and marked as Exhibit "18" is a
12 true and correct copy of a letter dated January 4, 2008
13 from Mr. Corrales to the Commission. I received a copy of
14 the letter and authorized Mr. Corrales to send in on behalf
15 of the Tribe.

16 **NO PRESENT "INTERNAL" TRIBAL LEADERSHIP DISPUTE**

17 27. Attached herewith and marked as Exhibit "19" is a
18 true and correct copy of the Tribe' Resolution No. R-1-08-
19 14-2009, dated August 14, 2009, entitled "RESOLUTION
20 REINSTATING YAKIMA KENNETH DIXIE AS A TRIBAL MEMBER OF THE
21 CALIFORNIA VALLEY MIWOK TRIBE", which gave authorization to
22 the Enrollment Committee to reinstate Yakima Kenneth
23 Dixie's name into the Tribal rolls. As of August 14, 2009,
24 Yakima Dixie has been reinstated as a member of the Tribe.
25 However, he is not the Tribal Chairperson selected by the
26 Tribe. I am.

1 28. Attached herewith and marked as Exhibit "20" is a
2 true and correct copy of the Tribe's Resolution No. R-1-5
3 07-2001, dated May 7, 2001, entitled "RESOLUTION
4 AUTHORIZING SUBMISSION OF A REQUEST TO CHANGE THE NAME OF
5 THE TRIBE 'SHEEP RANCH RANCHERIA OF ME-WUK INDIANS OF
6 CALIFORNIA' TO THE 'CALIFORNIA VALLEY MIWOK TRIBE' AND TO
7 REQUEST THAT IT BE PUBLISHED INTO THE FEDERAL REGISTER".
8 By this Resolution, the Tribe was authorized to change its
9 name. This Resolution was submitted to the BIA which
10 accepted it and made the change in the Federal Register
11 containing a list of all federally-recognized tribes.
12 Attached herewith and marked as Exhibit "21" is a true and
13 correct copy of a letter dated June 7, 2001, from Sharon
14 Blackwell of the BIA advising that the BIA has accepted the
15 Resolution for the name change. Since the copy of the
16 letter may be difficult to read, the following is what was
17 written in the second paragraph of the letter:

18 "The Sheep Ranch Rancheria (Tribe) is a small tribe
19 that does not have a tribal constitution. The Tribe
20 has a tribal council and conducts tribal business
21 through resolution. A tribal resolution, such as
22 resolution No. R-1-5-07-2001, enacted by the Tribal
23 Council on May 7, 2001, is sufficient to effect the
24 tribal name change. The Tribe's new mane has been
included in the Tribal Entities List that will be
published in the FEDERAL REGISTER later this year."

25 Since the date of this letter, the Tribe has developed its
26 own written governing constitution based on custom and
27 traditions.
28

1 29. It was the same Tribal Council that passed a
2 resolution changing the Tribe's name, that later passed a
3 resolution establishing an administrative forum to decide
4 the leadership dispute between Yakima Dixie and me.

5 30. Attached herewith and marked as Exhibit "22" is a
6 true and correct copy of the Tribe's Resolution No. R-1-02-
7 04-2004, dated February 4, 2004, entitled "RESOLUTION
8 ESTABLISHING AN ADMINISTRATIVE FORUM TO HEAR THE DISPUTE
9 RAISED BY YAKIMA DIXIE RELATING TO HIS RESIGNATION AS
10 TRIBAL CHAIRMAN AND ELECTION OF SILVIA BURLEY AS TRIBAL
11 CHAIRPERSON". As stated in the Resolution, the Tribe had
12 by resolution established a dispute resolution process
13 which required that disputed matters between members be
14 heard by an administrative hearing officer. By this
15 Resolution, the Tribe was directed to retain an
16 Administrative Hearing Officer with significant Native
17 American law experience to hear the matter. Mr. Troy
18 Woodward was retained, and he heard the matter and rendered
19 a detailed decision. Attached herewith and marked as
20 Exhibit "23" is a true and correct copy of the Decision by
21 the Hearing Officer resolving the leadership dispute raised
22 by Yakima Dixie. I received a copy of this decision in my
23 capacity as Tribal Chairperson. As stated in the Decision,
24 Yakima Dixie's claims were rejected, and the Hearing
25 Officer concluded that I was the rightful Chairperson for
26 the Tribe. Yakima Dixie participated in the hearing.

27 31. Attached herewith and marked as Exhibit "24" is a
28 true and correct copy of the Tribe's Resolution No. R-1-02-

1 24-2010, dated February 24, 2010, entitled "GENERAL COUNCIL
2 RESOLUTION REAFFIRMING SILVIA BURLEY AS CHAIRPERSON OF THE
3 TRIBE FOR THE PURPOSE OF CONDUCTING GOVERNMENT-TO-
4 GOVERNMENT RELATIONS WITH THE UNITED STATES, THE STATE OF
5 CALIFORNIA, AND ALL OF THEIR INSTRUMENTALITIES AND
6 SUBDIVISIONS". This Resolution reaffirmed my authority to
7 act on behalf of the Tribe. Since the BIA accepted the
8 Resolution passed by the Tribal Council changing the name
9 of the Tribe back in 2001, and nothing has changed with
10 respect to the composition of the Tribal Council, there
11 should be no dispute that I have the authority to represent
12 the same Tribe that appears in the Federal Register as a
13 listed federally-recognized tribe. The same Tribal Council
14 which the BIA recognized as having the authority to change
15 the name of the Tribe, reaffirmed me as Chairperson of the
16 Tribe.

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

20 Executed this 25 day of October, 2010, at Stockton,
21 California.

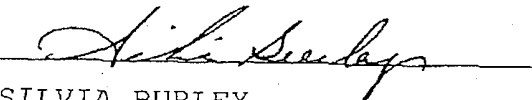
22
23
24
25 
26 SILVIA BURLEY

EXHIBIT 33



STATE OF CALIFORNIA

GAMBLING CONTROL COMMISSION

3 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231
(916) 263-0700 Phone
(916) 263-0499 Fax
www.cgcc.ca.gov

Arnold Schwarzenegger, Governor

DEAN SHELTON, CHAIRMAN
STEPHANIE SHIMAZU
ALEXANDRA VUKSICH

September 24, 2007

Ms. Sylvia Burley
California Valley Miwok Tribe
10601 Escondido Place
Stockton, California 95833

Re: Revenue Sharing Trust Fund Monies; Request for Meeting

Dear Ms. Burley:

This is in response to your letter of August 28, 2007, addressed to Executive Director Steven V. Giorgi.

I must say at the outset that I am surprised and dismayed at your request to meet with Mr. Giorgi and/or commission members and to exclude Chief Counsel Cyrus Rickards and myself, "due to the continued disrespect our officials have received from the aforementioned." Neither Mr. Rickards nor I have acted toward you or any individual representing you in other than a respectful and professional manner and I must respectfully, but unequivocally reject that allegation. The fact that we have not granted your continued requests to release Revenue Sharing Trust Fund (RSTF) monies does not constitute disrespect, but a difference of opinion. Further, the allegation that we have not been willing to inform you how much money is being withheld is simply not true. We have not denied such a request and will not deny such a request in the future. Currently that amount is \$2,810,954.80.

You are in receipt of our letter of June 26, 2007, which outlines in detail the reasons we continue to hold in trust, the RSTF monies. It was based not on "manipulation" by the Bureau of Indian Affairs (BIA), as your letter states, but because there is no tribal government or leadership recognized by the BIA and due to the concerns expressed by the U.S. District Court in the case, *California Valley Miwok Tribe v. United States*, 424 F. Supp.2d 197 (D.D.C. 2006), as outlined in our June 26, 2007, letter. Therefore, unless there is a change in situation regarding recognition of a tribal government and/or leadership, we will continue to withhold the RSTF Funds.

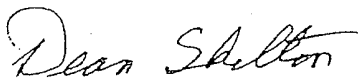
Ms. Sylvia Burley
September 24, 2007
Page 2

Despite what you may believe, we have no interest in the composition of the membership or leadership of the CVMT tribe. We have always regarded that as a tribal matter. However, both the court and the BIA have expressed concerns in that regard and resolution of those concerns would seem to be in the best interest of all the tribal members. Further, we have no desire to hold the RSTF monies. In that regard, I would remind you that in December 2005, we instituted a lawsuit specifically designed to allow a court of law to determine if we should continue to withhold the RSTF funds. (*California Gambling Control Commission v. Sylvia Burley, et al.*, Sacramento County Superior Court, No. 05AS05386.) We deposited all withheld funds with court pending resolution. At that time, the withheld RSTF monies deposited with the court totaled \$788,001.99. You vigorously and successfully opposed that lawsuit, the question whether we should continue to withhold the monies was not resolved, and since that time the amount withheld has more than tripled.

If you have new information that would bear on this situation, we are more than willing to review it. However, at this time, I see no reason to set a meeting with Mr. Giorgi or to put the matter on the Commission agenda. Nothing in your most recent letter suggests that the situation has changed.

In closing, I want to re-affirm that the Commission would like nothing more than to release the withheld funds; however, as we have explained, we do not believe that we can do so, consistent with our duties under the Tribal-State Gaming Compact.

Sincerely,



DEAN SHELTON
Chairman

Ms. Sylvia Burley
September 24, 2007
Page 3

cc: Chadd Everone
2140 Shattuck Avenue, #602
Berkeley, CA 94704

Yakima Dixie
11178 Sheep Ranch Road
P.O. Box 41
Sheep Ranch, CA 95250

Superintendent, Central California Agency
Bureau of Indian Affairs
650 Capitol Mall 8-500
Sacramento, CA 95814

Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

EXHIBIT 34

1 KAMALA D. HARRIS
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 RANDALL A. PINAL, State Bar No. 192199
Deputy Attorney General
4 WILLIAM L. WILLIAMS, JR., State Bar No. 99581
Deputy Attorney General
5 NEIL D. HOUSTON, State Bar No. 168058
Deputy Attorney General
6 1300 I Street, Suite 125
P.O. Box 944255
7 Sacramento, CA 94244-2550
Telephone: (916) 327-5484
8 Fax: (916) 327-2319
E-mail: Neil.Houston@doj.ca.gov
9 *Attorneys for Responding Party*
California Gambling Control Commission

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO

13 CENTRAL BRANCH

14
15 **CALIFORNIA VALLEY MIWOK TRIBE,**

16 Plaintiff,

17 v.

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

21 Responding Partys.

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

**RESPONDING PARTY CALIFORNIA
GAMBLING CONTROL
COMMISSION'S RESPONSE TO
CALIFORNIA VALLEY MIWOK
TRIBE'S FORM INTERROGATORIES,
SET TWO**

22
23 PROPOUNDING PARTY: Plaintiff, CALIFORNIA VALLEY MIWOK TRIBE

24 RESPONDING PARTY: Responding Party, CALIFORNIA GAMBLING CONTROL
25 COMMISSION

26 SET NUMBER: TWO

1 **Request for Admission No. 84:**

2 (a) 84

3 (b) The Commission's duties are not "limited to" the matters identified in this request.
4 The Compact also confers upon the Commission the duties of a limited trustee, which requires the
5 Commission to take actions consistent therewith.

6 (c) Not Applicable

7 (d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b).

8 **Request for Admission No. 85:**

9 (a) 85

10 (b) Under the Compact, the Commission also serves as a limited trustee of the RSTF, and
11 has the authority to act in a manner consistent therewith.

12 (c) Not Applicable

13 (d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b).

14 **Request for Admission No. 86:**

15 (a) 86

16 (b) The Commission has allocated, but not disbursed, RSTF payments to the California
17 Valley Miwok Tribe that appears on the BIA LIST since July 2005. The entitlement of the
18 CVMT to such payments has not been established because the CVMT lacks a federally-
19 recognized governing body to receive the funds. Accordingly, the RSTF funds have not been
20 "withheld" from the CVMT since 2005.

21 (c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd
22 Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shueltz, Lauren Hammond,
23 California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean
24 Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt.

25 (d) The quarterly reports regarding RSTF distributions that are posted on Responding
26 Party's website at: <http://www.cgcc.ca.gov/?pageID=rstfi>. The original of the reports, to the
27 extent they currently exist, are held by the California Gambling Control Commission. Its address
28

1 and phone number is: 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833; 916/263-
2 0700. Also see Preliminary Note above re the distinction between the California Valley Miwok
3 Tribe and the plaintiff in this action.

4 **Request for Admission No. 88:**

5 (a) 88

6 (b) Responding Party has no first-hand knowledge relating to this request and the
7 information reasonably available to Responding Party is insufficient to permit Responding Party
8 to either admit or deny.

9 (c) Not Applicable

10 (d) Jan. 14, 2009 letter from Edith Blackwell to Peter Kaufman; Dec. 12, 2008 letter from
11 Edith Blackwell to Peter Kaufman; Nov. 6, 2006 letter from Troy Burdick to Silvia Burley &
12 Yakima Dixie; Feb. 11, 2005 letter from Michael Olsen to Yakima Dixie; Mar. 26, 2004 letter
13 from Dale Risling, Sr., to Sylvia Burley; *California Valley Miwok Tribe v. Pacific Regional*
14 *Director, Bureau of Indian Affairs* (Jan. 28, 2010) 51 IBIA 103, 103, fn. 1, 105, 120-122;
15 *California Valley Miwok Tribe v. United States*, No. 06-5023 (D.C. Cir. June 8, 2007), Brief and
16 Supplemental Appendix of Appellees, p. 8; Minute Order Denying Request for Temporary
17 Restraining Order, *Dixie v. State of California*, No. 04AS04205 (Sup. Ct. Sacramento, Oct. 27,
18 2004); Minute Order Sustaining Demurrer, *California Gambling Control Commission v. Burley*,
19 No. 05AS05385 (Sup. Ct. Sacramento, June 16, 2006); Declarations in Support of Motion to
20 Intervene as Defendants, filed in this matter Nov. 8, 2010; *California Valley Miwok Tribe v.*
21 *United States* (D.C. Cir. 2008) 515 F.3d 1262, 1263-1268; *California Valley Miwok Tribe v.*
22 *United States* (D.D.C. 2006) 424 F.Supp.2d 197, 199-202.)

23 **Request for Admission No. 90:**

24 (a) 90

25 (b) See response re Requests for Admission Nos. 83-85, above.

26 (c) Not Applicable
27
28

1 (d) The quarterly reports regarding RSTF distributions that are posted on Responding
2 Party's website at: <http://www.cgcc.ca.gov/?pageID=rstfi>. The original of the reports, to the
3 extent they currently exist, are held by the California Gambling Control Commission. Its address
4 and phone number is: 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833; 916/263-
5 0700. Also see Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b). Also see
6 Preliminary Statement, above.

7 **Request for Admission No. 93:**

8 (a) 93

9 (b) Responding Party has no first-hand knowledge relating to this request and the
10 information reasonably available to Responding Party is insufficient to permit Responding Party
11 to either admit or deny.

12 (c) Not Applicable

13 (d) The quarterly reports regarding RSTF distributions that are posted on Responding
14 Party's website at: <http://www.cgcc.ca.gov/?pageID=rstfi>. The original of the reports, to the
15 extent they currently exist, are held by the California Gambling Control Commission. Its address
16 and phone number is: 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833; 916/263-
17 0700. Also see Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b). Also see
18 Preliminary Statement, above.

19 **Request for Admission No. 97:**

20 (a) 97

21 (b) In order to discharge its duty as a limited trustee of the RSTF under the Compact, the
22 Commission considers the existence of a federally-recognized governing body to be a necessary
23 incident of federal recognition for the purpose of ensuring the Non-Compact Tribe receives the
24 RSTF payments and not some unauthorized individual or organization. The recognition of a
25 tribe's governing body is a matter for the BIA to determine according to its criteria and
26 procedures.

1 (c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd
2 Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shuelztz, Lauren Hammond,
3 California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean
4 Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt.

5 (d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b). Also see Jan. 14,
6 2009 letter from Edith Blackwell to Peter Kaufman; Dec. 12, 2008 letter from Edith Blackwell to
7 Peter Kaufman; Nov. 6, 2006 letter from Troy Burdick to Silvia Burley & Yakima Dixie; Feb. 11,
8 2005 letter from Michael Olsen to Yakima Dixie; Mar. 26, 2004 letter from Dale Risling, Sr., to
9 Sylvia Burley; *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian*
10 *Affairs* (Jan. 28, 2010) 51 IBIA 103, 103, fn. 1, 105, 120-122; *California Valley Miwok Tribe v.*
11 *United States*, No. 06-5023 (D.C. Cir. June 8, 2007), Brief and Supplemental Appendix of
12 Appellees, p. 8; Minute Order Denying Request for Temporary Restraining Order, *Dixie v. State*
13 *of California*, No. 04AS04205 (Sup. Ct. Sacramento, Oct. 27, 2004); Minute Order Sustaining
14 Demurrer, *California Gambling Control Commission v. Burley*, No. 05AS05385 (Sup. Ct.
15 Sacramento, June 16, 2006); Declarations in Support of Motion to Intervene as Defendants, filed
16 in this matter Nov. 8, 2010; *California Valley Miwok Tribe v. United States* (D.C. Cir. 2008) 515
17 F.3d 1262, 1263-1268; *California Valley Miwok Tribe v. United States* (D.D.C. 2006) 424
18 F.Supp.2d 197, 199-202.)

19 **Request for Admission No. 98:**

20 (a) 98

21 (b) In order to discharge its duty as a limited trustee of the RSTF under the Compact, the
22 Commission considers the existence of a federally-recognized governing body to be a necessary
23 incident of federal recognition for the purpose of ensuring the Non-Compact Tribe receives the
24 RSTF payments and not some unauthorized individual or organization. The recognition of a
25 tribe's governing body is a matter for the BIA to determine according to its criteria and
26 procedures.
27
28

(c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shueltz, Lauren Hammond, California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt.

(d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b). Also see Jan. 14, 2009 letter from Edith Blackwell to Peter Kaufman; Dec. 12, 2008 letter from Edith Blackwell to Peter Kaufman; Nov. 6, 2006 letter from Troy Burdick to Silvia Burley & Yakima Dixie; Feb. 11, 2005 letter from Michael Olsen to Yakima Dixie; Mar. 26, 2004 letter from Dale Risling, Sr., to Sylvia Burley; *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs* (Jan. 28, 2010) 51 IBIA 103, 103, fn. 1, 105, 120-122; *California Valley Miwok Tribe v. United States*, No. 06-5023 (D.C. Cir. June 8, 2007), Brief and Supplemental Appendix of Appellees, p. 8; Minute Order Denying Request for Temporary Restraining Order, *Dixie v. State of California*, No. 04AS04205 (Sup. Ct. Sacramento, Oct. 27, 2004); Minute Order Sustaining Demurrer, *California Gambling Control Commission v. Burley*, No. 05AS05385 (Sup. Ct. Sacramento, June 16, 2006); Declarations in Support of Motion to Intervene as Defendants, filed in this matter Nov. 8, 2010; *California Valley Miwok Tribe v. United States* (D.C. Cir. 2008) 515 F.3d 1262, 1263-1268; *California Valley Miwok Tribe v. United States* (D.D.C. 2006) 424 F.Supp.2d 197, 199-202.)

Request for Admission No. 100:

(a) 100

(b) Responding Party admits the truth of this request as to Non-Compact Tribes, generally, but the information reasonably available to Responding Party is insufficient to enable it to admit or deny the truth of this request as to CVMT as a result of the uncertain status of CVMT as described in the documents identified in part (d), below.

(c) Not Applicable

(d) See Preliminary Note, above.

1 **Request for Admission No. 101:**

2 (a) 101

3 (b) In order to discharge its duty as a limited trustee of the RSTF under the Compact, the
4 Commission considers the existence of a federally-recognized governing body to be a necessary
5 incident of federal recognition for the purpose of ensuring the Non-Compact Tribe receives the
6 RSTF payments and not some unauthorized individual or organization. The recognition of a
7 tribe's governing body is a matter for the BIA to determine according to its criteria and
8 procedures.

9 (c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd
10 Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shueltz, Lauren Hammond,
11 California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean
12 Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt.

13 (d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b).

14 **Request for Admission No. 102:**

15 (a) 102

16 (b) In order to discharge its duty as a limited trustee of the RSTF under the Compact, the
17 Commission considers the existence of a federally-recognized governing body to be a necessary
18 incident of federal recognition for the purpose of ensuring the Non-Compact Tribe receives the
19 RSTF payments and not some unauthorized individual or organization. The recognition of a
20 tribe's governing body is a matter for the BIA to determine according to its criteria and
21 procedures.

22 (c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd
23 Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shueltz, Lauren Hammond,
24 California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean
25 Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt.

26 (d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b). Also see
27 Preliminary Note, above.
28

1 **Request for Admission No. 106:**

2 (a) 106

3 (b) In order to discharge its duty as a limited trustee of the RSTF under the Compact, the
4 Commission considers the existence of a federally-recognized governing body to be a necessary
5 incident of federal recognition for the purpose of ensuring the Non-Compact Tribe receives the
6 RSTF payments and not some unauthorized individual or organization. The recognition of a
7 tribe's governing body is a matter for the BIA to determine according to its criteria and
8 procedures. As of the date of this response, CVMT lacks a federally-recognized governing body
9 due either exclusively or in part to the existence of the leadership dispute that exists concerning
10 the California Valley Miwok Tribe that appears on the BIA LIST.

11 (c) Not Applicable.

12 (d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b). Also see Jan. 14,
13 2009 letter from Edith Blackwell to Peter Kaufman; Dec. 12, 2008 letter from Edith Blackwell to
14 Peter Kaufman; Nov. 6, 2006 letter from Troy Burdick to Silvia Burley & Yakima Dixie; Feb. 11,
15 2005 letter from Michael Olsen to Yakima Dixie; Mar. 26, 2004 letter from Dale Risling, Sr., to
16 Sylvia Burley; *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian*
17 *Affairs* (Jan. 28, 2010) 51 IBIA 103, 103, fn. 1, 105, 120-122; *California Valley Miwok Tribe v.*
18 *United States*, No. 06-5023 (D.C. Cir. June 8, 2007), Brief and Supplemental Appendix of
19 Appellees, p. 8; Minute Order Denying Request for Temporary Restraining Order, *Dixie v. State*
20 *of California*, No. 04AS04205 (Sup. Ct. Sacramento, Oct. 27, 2004); Minute Order Sustaining
21 Demurrer, *California Gambling Control Commission v. Burley*, No. 05AS05385 (Sup. Ct.
22 Sacramento, June 16, 2006); Declarations in Support of Motion to Intervene as Defendants, filed
23 in this matter Nov. 8, 2010; *California Valley Miwok Tribe v. United States* (D.C. Cir. 2008) 515
24 F.3d 1262, 1263-1268; *California Valley Miwok Tribe v. United States* (D.D.C. 2006) 424
25 F.Supp.2d 197, 199-202.)

26 **Request for Admission No. 112:**

27 (a) 112

28

1 (b) In order to discharge its duty as a limited trustee of the RSTF under the Compact, the
2 Commission considers the existence of a federally-recognized governing body to be a necessary
3 incident of federal recognition for the purpose of ensuring the Non-Compact Tribe receives the
4 RSTF payments and not some unauthorized individual or organization. The recognition of a
5 tribe's governing body is a matter for the BIA to determine according to its criteria and
6 procedures. The United States Department of the Interior, acting through the BIA, is the entity
7 that extends federal recognition to the governing bodies of tribes.

8 (c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd
9 Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shueltz, Lauren Hammond,
10 California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean
11 Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt.

12 (d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b).

13 **Request for Admission No. 113:**

14 (a) 113

15 (b) In order to discharge its duty as a limited trustee of the RSTF under the Compact, the
16 Commission considers the existence of a federally-recognized governing body to be a necessary
17 incident of federal recognition for the purpose of ensuring the Non-Compact Tribe receives the
18 RSTF payments and not some unauthorized individual or organization. The recognition of a
19 tribe's governing body is a matter for the BIA to determine according to its criteria and
20 procedures. Responding Party denies the truth of this request on the ground that "actions taken
21 by the BIA against the Tribe" may include either not extending federal recognition to CVMT's
22 governing body, or, if extended, subsequently revoking it.

23 (c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd
24 Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shueltz, Lauren Hammond,
25 California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean
26 Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt.

27 (d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b).

1 **Request for Admission No. 114:**

2 (a) 114

3 (b) See, without limitation, responses re RFA Nos. 36, 90, 97, 98, 101, 102, 105, 106,
4 111, 112, and 113, above. Further, the Commission's actions in allocating, but not disbursing
5 quarterly RSTF payments on behalf of the California Valley Miwok Tribe that appears in the BIA
6 LIST, based upon the absence of a federally-recognized governing body for that entity, is a
7 reasonable and necessary expression of the Commission's duty under the Compact as the trustee
8 of the RSTF.

9 (c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd
10 Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shueltz, Lauren Hammond,
11 California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean
12 Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt.

13 (d) Tribal-State Gaming Compact (1999), §§ 4.3.2(a)(ii); 4.3.2.1(b). See also Jan. 14,
14 2009 letter from Edith Blackwell to Peter Kaufman; Dec. 12, 2008 letter from Edith Blackwell to
15 Peter Kaufman; Nov. 6, 2006 letter from Troy Burdick to Silvia Burley & Yakima Dixie; Feb. 11,
16 2005 letter from Michael Olsen to Yakima Dixie; Mar. 26, 2004 letter from Dale Risling, Sr., to
17 Sylvia Burley; *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian*
18 *Affairs* (Jan. 28, 2010) 51 IBIA 103, 103, fn. 1, 105, 120-122; *California Valley Miwok Tribe v.*
19 *United States*, No. 06-5023 (D.C. Cir. June 8, 2007), Brief and Supplemental Appendix of
20 Appellees, p. 8; Minute Order Denying Request for Temporary Restraining Order, *Dixie v. State*
21 *of California*, No. 04AS04205 (Sup. Ct. Sacramento, Oct. 27, 2004); Minute Order Sustaining
22 Demurrer, *California Gambling Control Commission v. Burley*, No. 05AS05385 (Sup. Ct.
23 Sacramento, June 16, 2006); Declarations in Support of Motion to Intervene as Defendants, filed
24 in this matter Nov. 8, 2010; *California Valley Miwok Tribe v. United States* (D.C. Cir. 2008) 515
25 F.3d 1262, 1263-1268; *California Valley Miwok Tribe v. United States* (D.D.C. 2006) 424
26 F.Supp.2d 197, 199-202.)

1 **Request for Admission No. 119:**

2 (a) 119

3 (b) Since July 2005, the Commission has been placing quarterly RSTF payments set
4 aside on behalf of the California Valley Miwok Tribe that appears in the BIA LIST into an
5 interest-bearing account. It is undetermined whether the CVMT constitutes the California Valley
6 Miwok Tribe that appears in the BIA LIST.

7 (c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd
8 Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shueltz, Lauren Hammond,
9 California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean
10 Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt

11 (d) The quarterly reports regarding RSTF distributions that are posted on Responding
12 Party's website at: <http://www.cgcc.ca.gov/?pageID=rstfi>. The original of the reports, to the
13 extent they currently exist, are held by the California Gambling Control Commission. Its address
14 and phone number is: 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833; 916/263-
15 0700. Also see Preliminary Statement, above.

16 **Request for Admission No. 121:**

17 (a) 121

18 (b) The Commission has been placing the quarterly RSTF payments set aside on behalf
19 of the California Valley Miwok Tribe that appears in the BIA LIST into an interest-bearing
20 account. It is undetermined whether the CVMT constitutes the California Valley Miwok Tribe
21 that appears in the BIA LIST.

22 (c) Tina M. Littleton, Mary Khoshmashrab, Charles Wood, Norman Akiyama, Lloyd
23 Carter, Amy Norwood, Stephanie Shimazu, Tiffany Conklin, Richard Shueltz, Lauren Hammond,
24 California Gambling Control Commission; Richard Ross, Frank Lechner, Rachelle Ryan, Dean
25 Shelton, Alexa Vuksich, James Shelby, John Cruz, Sheryl A. Schmidt.

26 (d) Jan. 14, 2009 letter from Edith Blackwell to Peter Kaufman; Dec. 12, 2008 letter from
27 Edith Blackwell to Peter Kaufman; Nov. 6, 2006 letter from Troy Burdick to Silvia Burley &
28

1 Yakima Dixie; Feb. 11, 2005 letter from Michael Olsen to Yakima Dixie; Mar. 26, 2004 letter
2 from Dale Risling, Sr., to Sylvia Burley; *California Valley Miwok Tribe v. Pacific Regional*
3 *Director, Bureau of Indian Affairs* (Jan. 28, 2010) 51 IBIA 103, 103, fn. 1, 105, 120-122;
4 *California Valley Miwok Tribe v. United States*, No. 06-5023 (D.C. Cir. June 8, 2007), Brief and
5 Supplemental Appendix of Appellees, p. 8; Minute Order Denying Request for Temporary
6 Restraining Order, *Dixie v. State of California*, No. 04AS04205 (Sup. Ct. Sacramento, Oct. 27,
7 2004); Minute Order Sustaining Demurrer, *California Gambling Control Commission v. Burley*,
8 No. 05AS05385 (Sup. Ct. Sacramento, June 16, 2006); Declarations in Support of Motion to
9 Intervene as Defendants, filed in this matter Nov. 8, 2010; *California Valley Miwok Tribe v.*
10 *United States* (D.C. Cir. 2008) 515 F.3d 1262, 1263-1268; *California Valley Miwok Tribe v.*
11 *United States* (D.D.C. 2006) 424 F.Supp.2d 197, 199-202.)

12
13 **Response to FORM Interrogatory No. 50.6:**

14 Objection. This interrogatory is vague and ambiguous in that the only agreements alleged
15 in the First Amended Complaint ("Complaint") appears to be the tribal-state gaming compacts
16 entered into between the State of California ("State") and various Indian tribes in the State in
17 1999. This Interrogatory is overly burdensome and oppressive in that it is identical to Form
18 Interrogatory Set 1 question 50.6. However, the "copy" of a compact that is attached to the
19 Complaint is not a true and complete copy of any compact entered into in 1999. It also is unclear
20 which of the approximately 61 compacts entered into in 1999 the Complaint, and therefore the
21 interrogatory, refers to. Further, plaintiff is not a signatory to any compact. Responding Party
22 further objects because this interrogatory is irrelevant to this action because this action is not a
23 breach of Compact action. Responding Party also objects to this interrogatory because it is
24 burdensome and oppressive in that the 1999 Compacts are lengthy and comprehensive documents
25 that cover numerous subject areas that are irrelevant to this action, and the amount of work
26 required to evaluate whether each section of each compact may contain ambiguities is not
27
28

1 justified in light of the minimal utility of the information sought. On the basis of the foregoing
2 objections, Responding Party declines to provide a response to this interrogatory.

3 Dated: January 19, 2012

Respectfully Submitted,

4 KAMALA D. HARRIS
Attorney General of California
5 SARA J. DRAKE
Senior Assistant Attorney General
6 RANDALL A. PINAL
Deputy Attorney General
7 WILLIAM L. WILLIAMS, JR.
Deputy Attorney General
8

9 

10 NEIL D. HOUSTON
Deputy Attorney General
11 *Attorneys for Responding Party*
12 *California Gambling Control Commission*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28