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CALIFORNIA VALLEY MIWOK TRIBE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DISTRICT

CALIFORNIA VALLEY MIWOK TRIBE

Plaintiff,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant.

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

PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE RE: PLAINTIFF'S OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT BY DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION AND BY INTERVENORS; DECLARATION OF MANUEL CORRALES, JR.

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

Pursuant to California Evidence Code Section 451 and 452, Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe") requests that the Court take judicial notice of the following documents in connection with Plaintiff's Opposition to the summary judgment motions filed by Defendant CALIFORNIA GAMBLING CONTROL COMMISSION ("the Commission") and by the Intervenors set for April 29, 2013, at 2:00 p.m. in Department 62 of the above-referenced court:

1. The Commission's Answer to the First Amended Complaint, attached herewith and marked as Exhibit "1". California Evidence Code Section 452(d)(court records).

2. Letter dated December 22, 2010, from the U.S. Department of the Interior to Silvia Burley, attached herewith and marked as Exhibit "2". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

3. Letter dated August 31, 2011, from the U.S. Department of the Interior to Silvia Burley, attached herewith and marked as Exhibit "3". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records). California Evidence Code Section 452(c)(official acts).

4. Letter dated June 26, 2007 from Dean Shelton, Chairman of the Commission, to Karla Bell, Esq., attached herewith and marked as Exhibit "4". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

5. Relevant portions of the California 1999 Tribal-State Gaming Compact printed by the Division of Gambling Control of the Department of Justice, including Section relating to RSTF payments to Non-Compact tribes, which was marked as an exhibit to the deposition of Charles Wood of the Commission on February 7, 2012, attached herewith and marked as Exhibit "5". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

6. Letter dated January 3, 2008, from Chairman Dean Shelton of the Commission, to Manuel Corrales, Jr., attached herewith and marked as Exhibit "6". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

7. Letter dated March 2, 2012 from Deputy AG Neil Houston to Manuel Corrales, Jr., Esq., attached herewith

and marked as Exhibit "7". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

8. Declaration of Manuel Corrales, Jr., Esq., authenticating the Commission's written discovery responses in this case, attached herewith and marked as Exhibit "8". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(d)(court records); Sebago, Inc. v. City of Alameda (1989) 211 CA3d 1372, 1380-1381 (taking judicial notice of interrogatory responses).

9. Memorandum of Points and Authorities in Opposition to Dixie's TRO, filed by the Commission in the Sacramento Superior Court, attached herewith and marked as Exhibit "9". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(d)(court records).

10. Declaration of Gary Qualset in Opposition to Application for TRO, filed by the Commission in the Sacramento Superior Court, attached herewith and marked as Exhibit "10". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(d)(court records).

11. Official Report from the Commission dated January 24, 2013, concerning an accounting and status of the RSTF distributions to Non-Compact tribes for the quarter ended December 31, 2012, attached herewith and marked as Exhibit "11." California Evidence Code Section 452(c)(official acts).

12. Lists of eligible Non-Compact tribes and federally-recognized tribes, as posted on the Commission's website as of October 24, 2012, and August 10, 2012, respectively, attached herewith and marked as Exhibit "12". California Evidence Code Section 452(c)(official acts).

13. Letter dated September 24, 1998, from the BIA to Yakima Dixie, attached herewith and marked as Exhibit "13". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

14. Miwok Tribal Resolution #GC-98-01, dated November 5, 1998, attached herewith and marked as Exhibit "12". California Evidence Code Section 452(f)(law of foreign nation) and 452(h)(facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy). This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate, and with the

Superior Court. California Evidence Code Section 452(d)(court records).

15. Letter dated March 7, 2000, from the BIA to Silvia Burley, Chairperson of the Tribe, attached herewith and marked as Exhibit "15". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate, and with the Superior Court. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

16. Tribal Resolution No. R-1-5-07-2001, dated May 7, 2001, changing the name of the Tribe to the California Valley Miwok Tribe, attached herewith and marked as Exhibit "16". California Evidence Code Section 452(f)(law of foreign nation) and 452(h)(facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy). This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate, and with the Superior Court. California Evidence Code Section 452(d)(court records).

17. Letter dated June 7, 2001, from the BIA in Washington, D.C., to Chairperson Silvia Burley accepting the Tribe's Resolution changing the Name of the Tribe, attached herewith and marked as Exhibit "17". This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate,

and with the Superior Court. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

18. Letter dated June 22, 2001, from Chairperson Silvia Burley to the Commission advising of the Tribe's name change, attached herewith and marked as Exhibit "18". California Evidence Code Section 452(h)(facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy). This document was also filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate, and with the Superior Court. California Evidence Code Section 452(d)(court records).

19. Declaration of Yakima Dixie in Support of Motion to Intervene as Defendants, dated October 2010, attached herewith and marked as Exhibit "19". This document was filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate, and with the Superior Court. California Evidence Code Section 452(d)(court records).

20. A copy of the Complaint in Intervention in this case, attached herewith and marked as Exhibit "20". California Evidence Code Section 452(d)(court records).

21. Declaration of Manuel Corrales, Jr., [ERRATA] Re Exhibits attached to the Deposition of Yakima Dixie, attached herewith and marked as Exhibit "21". This

document was filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate, and with the Superior Court. California Evidence Code Section 452(d)(court records).

22. The complete deposition of Yakima Dixie, Vol. 2, taken February 7, 2012, in this case, together with exhibits, attached herewith and marked as Exhibit "22". This document was filed with the Court of Appeal in connection with Plaintiff's petition for a writ of mandate. California Evidence Code Section 452(d)(court records).

23. The Court of Appeal Decision in this case, Case No. D061811, granting Plaintiff's petition for writ of mandate, dated December 18, 2012, attached herewith and marked as Exhibit "23". California Evidence Code Section 452(d)(court records).

24. The Court of Appeal Decision in this case, Case No. D061811, reversing judgment, dated April 16, 2010, attached herewith and marked as Exhibit "24". California Evidence Code Section 452(d)(court records).

25. Notice of Ruling: Motion for Judgment on the Pleadings, dated March 14, 2011, attached herewith and marked as Exhibit "25". California Evidence Code Section 452(d)(court records).

26. Order Staying Enforcement of Judgment Under CCP Section 918(b) and (c), attached herewith and marked as Exhibit "26". California Evidence Code Section 452(d)(court records).

27. Order Granting in Part Ex Parte Applications for Stay of Entry of Judgment, dated April 20, 2011, attached herewith and marked as Exhibit "27". California Evidence Code Section 452(d)(court records).

28. The Federal Register dated August 10, 2012, showing that the California Valley Miwok Tribe as a federally-recognized tribe, attached herewith and marked as Exhibit "28". California Evidence Code Section 452(c)(official acts).

29. The federal decision of Timbisha Shoshone Tribe v. Salazar (D.C. Cir. 2012) 678 F.3d 935, attached herewith and marked as Exhibit "29". Evidence Code Section 451(a).

30. A complete copy of the California 1999 Tribal-State Gaming Compact printed by the Division of Gambling Control of the Department of Justice (printed August 2008), which Deputy Attorney General Neil Houston stipulated on the record at the deposition of Charles Wood could be used as the operative version for purposes of this case.

31. Letter dated January 12, 2011, from Troy Burdick of the BIA to the Honorable Silvia Burley, Chairperson of the California Valley Miwok Tribe, affirming the BIA's commitment to work with the Tribe, attached herewith and marked as Exhibit "31". This document was filed with the Superior Court. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

32. Letter dated January 12, 2011, from Troy Burdick of the BIA to the Honorable Silvia Burley, Chairperson of the California Valley Miwok Tribe, acknowledging the Tribe's report of its recent election re-electing Silvia Burley as Chairperson of the Tribe, and congratulating all elected officials, attached herewith and marked as Exhibit "32". This document was filed with the Superior Court. California Evidence Code Section 452(c)(official acts); California Evidence Code Section 452(d)(court records).

33. Notice of Ruling: Motion for Reconsideration and Motion for Leave to Intervene containing this court's minute order of March 11, 2011, attached herewith and marked as Exhibit "33".

34. Order Granting in Part Ex Parte Applications for Stay of Entry of Judgment, filed April 20, 2011, attached herewith and marked as Exhibit "34".

Evidence Code Section 452(c) permits the Court to take judicial notice of official acts of the legislative, executive, and judicial departments of the United States and any state of the United States. It is undisputed that the acts of United States Department of Interior fall under this section.

Evidence Code Section 452(d) permits the court to take judicial notice of court records. Evidence Code Section 452(h) permits the court to take judicial notice of laws of foreign nations. Evidence Code Section 451(a) requires the

court to take judicial notice of federal decisional and statutory law.

Dated: March ____, 2013

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

DECLARATION OF MANUEL CORRALES, JR.

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

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

2. I am familiar with the pleadings and record of this case. With the exception of Exhibits "11", "12" and "30", all of the exhibits referenced above were filed with the Court of Appeal and/or with the Superior Court, which I caused to be filed in connection with a recent petition for writ of mandate I filed with the Court of Appeal. Exhibits "11" and "12" were taken from the Commission's website and are official records of the Commission. Exhibit "30" is

the operative version of the Compact which the Commission stipulated could be used for this case.

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

Executed this 18 day of March 2013 at San Diego, California.

MANUEL CORRALES, JR.

EXHIBIT "1"

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Attorneys for Defendant
California Gambling Control Commission

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL BRANCH

CALIFORNIA VALLEY MIWOK TRIBE, Plaintiff, v. **THE CALIFORNIA GAMBLING CONTROL COMMISSION; and DOES 1 THROUGH 50, Inclusive,** Defendants.	Case No. 37-2008-00075326-CU-CO-CTL **ANSWER AND RETURN OF CALIFORNIA GAMBLING CONTROL COMMISSION TO VERIFIED FIRST AMENDED COMPLAINT COMBINED WITH PETITION FOR WRIT OF MANDATE** Dept: C-62 Judge: Hon. Ronald L. Styn Trial Date: May 13, 2011

COMES NOW defendant California Gambling Control Commission (Commission), a State agency, and for its answer and return to plaintiff California Valley Miwok Tribe's verified First Amended Complaint Combined with Petition for Writ of Mandate dated July 28, 2008, and filed on August 20, 2008 (FAC), defendant hereby admits, denies, and affirmatively alleges as follows:

1. In answer to paragraph one of the FAC, the Commission admits that an entity named the California Valley Miwok Tribe is included on a list of Indian entities published in the Federal

Register, recognized as eligible to receive services from the Bureau of Indian Affairs. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph one of the FAC.

2. In answer to paragraph two of the FAC, the Commission admits that it is the trustee of the Revenue Sharing Trust Fund (RSTF). Further answering paragraph two, the Commission avers that Senate Bill No. 8 (1997-1998 Reg. Sess.) and the Gambling Control Act (Bus. & Prof. Code, § 19800 et seq.) speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph two. The Commission lacks information or belief sufficient to answer the remaining allegations of paragraph two and on that basis denies each and every said allegation. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph two of the FAC.

3. In answer to paragraph three of the FAC, the Commission lacks sufficient information or belief to either admit or deny the allegations contained therein and, on that basis, denies each and every allegation set forth in paragraph three of the FAC.

4. In answer to paragraph four of the FAC, the Commission avers that Business and Professions Code section 19807 speaks for itself and requires no admission or denial with respect to the allegation of its meaning set forth in paragraph four. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph four of the FAC.

5. In answer to paragraph five of the FAC, the Commission admits that in 1999 and 2000, the State of California (State) entered into separate bilateral Tribal-State Gaming Compacts with various federally recognized Indian tribes in California (collectively referred to herein as the 1999 Compact). Further answering paragraph five, the Commission avers that the 1999 Compact speaks for itself and requires no admission or denial with respect to the allegation of its meaning set forth in paragraph five. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph five of the FAC.

6. In answer to paragraph six of the FAC, the Commission admits that it is the trustee of the RSTF and it makes distributions from the RSTF on a quarterly basis to "Non-Compact Tribes" as such are defined in the 1999 Compact. Further answering paragraph six, the

Commission avers that the 1999 Compact and Government Code section 12012.90, subdivision (d) speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph six. The Commission lacks information or belief sufficient to answer the remaining allegations of paragraph six and on that basis denies each and every said allegation. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph six of the FAC.

7. In answer to paragraph seven of the FAC, the Commission avers that Government Code sections 12012.75 and 12012.90, and section 4.3.2.1(a) of the 1999 Compact speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph seven. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph seven of the FAC.

8. In answer to paragraph eight of the FAC, the Commission admits that Congress enacted the Federally Recognized Indian Tribe List Act of 1994 (Pub.L. No. 103-454 (Nov. 2, 1994) 108 Stat. 4791 (List Act) in 1994). Further answering paragraph eight, the Commission avers that the Federally Recognized Indian Tribe List Act of 1994 speaks for itself and requires no admission or denial with respect to the allegation of its meaning set forth in paragraph eight. The Commission lacks information or belief sufficient to answer the remaining allegations of paragraph eight of the FAC and on that basis denies each and every said allegation. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph eight of the FAC.

9. In answer to paragraph nine of the FAC, the Commission lacks sufficient information or belief to either admit or deny the allegations contained therein and, on that basis, denies each and every allegation set forth in paragraph nine of the FAC.

10. In answer to paragraph ten of the FAC, the Commission lacks sufficient information or belief to either admit or deny the allegations contained therein and, on that basis, denies each and every allegation set forth in paragraph ten of the FAC.

11. In answer to paragraph eleven of the FAC, the Commission lacks sufficient information or belief to either admit or deny the allegations contained therein and, on that basis, denies each and every allegation set forth in paragraph eleven of the FAC.

12. In answer to paragraph twelve of the FAC, the Commission avers that the Bureau of Indian Affairs' letter referenced in paragraph twelve speaks for itself and requires no admission or denial with respect to the allegation of its meaning set forth in paragraph twelve of the FAC. Further answering paragraph twelve, the Commission lacks information or belief sufficient to answer the remaining allegations of paragraph twelve and on that basis denies each and every said allegation. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph twelve of the FAC.

13. In answer to paragraph thirteen of the FAC, the Commission lacks sufficient information or belief to either admit or deny the allegations contained therein and, on that basis, denies each and every allegation set forth in paragraph thirteen of the FAC.

14. In answer to paragraph fourteen of the FAC, the Commission lacks sufficient information or belief to either admit or deny the allegations contained therein and, on that basis, denies each and every allegation set forth in paragraph fourteen of the FAC.

15. In answer to paragraph fifteen of the FAC, the Commission admits that on August 4, 2005, the Commission's Chief Counsel sent a letter regarding RSTF distributions to Ms. Silvia Burley and to Mr. Yakima Dixie. Further answering paragraph fifteen, the Commission avers that the Commission's letter to Ms. Burley and Mr. Dixie speaks for itself and requires no admission or denial with respect to the allegation of its meaning set forth in paragraph fifteen. The Commission lacks information or belief sufficient to answer the remaining allegations of paragraph fifteen and on that basis denies each and every said allegation. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph fifteen of the FAC.

16. In answer to paragraph sixteen of the FAC, the Commission denies each and every allegation set forth in paragraph sixteen of the FAC.

17. In answer to paragraph seventeen of the FAC, the Commission avers that the decisions of the United States District Court for the District of Columbia in *California Valley Miwok Tribe v. United States* (D.D.C., No. 1:05CV00739), and the pleadings filed therein, speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph seventeen. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph seventeen of the FAC.

18. In answer to paragraph eighteen of the FAC, the Commission avers that Government Code sections 12012.75 and 12012.90, subdivision (e), and section 4.3.2.1(b) of the 1999 Compact speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph eighteen of the FAC. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph eighteen of the FAC.

19. In answer to paragraph nineteen of the FAC, the Commission incorporates by this reference its responses to paragraphs one through eighteen, above, as though set forth here in full.

20. In answer to paragraph twenty of the FAC, the Commission avers that Government Code sections 12012.75 and 12012.90, subdivision (e), speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph twenty. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph twenty of the FAC.

21. In answer to paragraph twenty-one of the FAC, the Commission avers that section 4.3.2.1 (a) of the 1999 Compact and Government Code section 12012.90, subdivision (d), speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph twenty-one of the FAC. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph twenty-one of the FAC.

22. In answer to paragraph twenty-two of the FAC, the Commission avers that section 4.3.2.1 (b) of the 1999 Compact and Government Code section 12012.90, subdivision (e), speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph twenty-two of the FAC. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph twenty-two of the FAC.

23. In answer to paragraph twenty-three of the FAC, the Commission admits that it has withheld certain RSTF payments to an entity named the California Valley Miwok Tribe. Further answering paragraph twenty-three of the FAC, the Commission avers that sections 2.12 and 4.3.2.1(b) of the 1999 Compact speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph twenty-three of the FAC. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph twenty-three of the FAC.

24. In answer to paragraph twenty-four of the FAC, the Commission avers that sections 2.19 and 2.21 of the 1999 Compact speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph twenty-four of the FAC. The Commission lacks information or belief sufficient to answer the remaining allegations of paragraph twenty-four and on that basis denies each and every said allegation. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph twenty-four of the FAC.

25. In answer to paragraph twenty-five of the FAC, the Commission admits that it was not a party to *California Valley Miwok Tribe v. United States* (D.D.C. 2006) 424 F.Supp.2d 197. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph twenty-five of the FAC.

26. In answer to paragraph twenty-six of the FAC, the Commission denies each and every allegation set forth in paragraph twenty-six of the FAC.

27. Answering paragraph twenty-seven of the FAC, the Commission avers that Silvia Burley, purportedly acting on behalf of an entity named the California Valley Miwok Tribe, has requested the distribution of certain monies to said entity by the Commission and that the Commission has refused to make such distributions. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph twenty-seven of the FAC

28. In answer to paragraph twenty-eight of the FAC, the Commission denies each and every allegation set forth in paragraph twenty-eight of the FAC.

29. In answer to paragraph twenty-nine of the FAC, the Commission avers that section 4.3.2.1(b) of the 1999 Compact and Code of Civil Procedure section 526, subdivision (a)(7) speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph twenty-nine of the FAC. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph twenty-nine of the FAC.

30. In answer to paragraph thirty of the FAC, the Commission avers that section 2.19 of the 1999 Compact speaks for itself and requires no admission or denial with respect to the allegation of their meaning set forth in paragraph thirty of the FAC. Except as expressly averred herein, the Commission denies each and every allegation set forth in paragraph thirty of the FAC.

31. In answer to paragraph thirty-one of the FAC, the Commission incorporates by this reference its responses to paragraphs one through thirty, above, as though set forth here in full.

32. In answer to paragraph thirty-two of the FAC, the Commission admits that an actual controversy has arisen and now exists between the plaintiff in this action and the Commission concerning the distribution of monies to an entity named the California Valley Miwok Tribe from the RSTF. Further answering paragraph thirty-two of the FAC, the Commission avers that Government Code sections 12012.75 and 12012.90, subdivisions (d) and (e), Code of Civil Procedure section 1060, and section 2.19 of the 1999 Compact speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph thirty-two of the FAC. The Commission lacks information or belief sufficient to answer the remaining allegations of paragraph thirty-two and on that basis denies each and every said allegation. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph thirty-two of the FAC.

33. In answer to paragraph thirty-three of the FAC, the Commission avers that section 4.3.2.1(a)(1) of the 1999 Compact speaks for itself and requires no admission or denial with respect to the allegation of its meaning set forth in paragraph thirty-three of the FAC. The Commission lacks information or belief sufficient to answer the remaining allegations of paragraph thirty-three and on that basis denies each and every said allegation. Except as

expressly admitted herein, the Commission denies each and every allegation set forth in paragraph thirty-three of the FAC.

34. In answer to paragraph thirty-four of the FAC, the Commission admits that the 1999 Compact is a written compact between sovereign entities. Further answering paragraph thirty-four of the FAC, the Commission avers that Code of Civil Procedure section 1060, sections 2.19, 2.21 and 4.3.2.1 of the 1999 Compact, and the decisions and pleadings in *California Valley Miwok Tribe v. United States* (D.D.C., No. 1:05CV00739), speak for themselves and require no admission or denial with respect to the allegations of their meaning set forth in paragraph thirty-four of the FAC. The Commission lacks information or belief sufficient to answer the remaining allegations of paragraph thirty-four and on that basis denies each and every said allegation. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph thirty-four of the FAC.

35. In answer to paragraph thirty-five of the FAC, the Commission denies each and every allegation set forth in paragraph thirty-five of the FAC.

36. In answer to paragraph thirty-six of the FAC, the Commission denies each and every allegation set forth in paragraph thirty-six of the FAC.

37. In answer to paragraph thirty-seven of the FAC, the Commission incorporates by this reference its responses to paragraphs one through thirty-six, above, as though set forth here in full.

38. In answer to paragraph thirty-eight of the FAC, the Commission lacks sufficient information or belief to either admit or deny said allegations, and, on that basis, denies each and every allegation set forth in paragraph thirty-eight of the FAC.

39. In answer to paragraph thirty-nine of the FAC, the Commission lacks sufficient information or belief to either admit or deny said allegations, and, on that basis, denies each and every allegation set forth in paragraph thirty-nine of the FAC.

40. In answer to paragraph forty of the FAC, the Commission lacks sufficient information or belief to either admit or deny said allegations, and, on that basis, denies each and every allegation set forth in paragraph forty of the FAC.

41. In answer to paragraph forty-one of the FAC, the Commission lacks sufficient information or belief to either admit or deny said allegations, and, on that basis, denies each and every allegation set forth in paragraph forty-one of the FAC.

42. In answer to paragraph forty-two of the FAC, the Commission incorporates by this reference its responses to paragraphs one through forty-one, above, as though set forth here in full.

43. In answer to paragraph forty-three of the FAC, the Commission avers that Government Code sections 12012.75 and 12012.90, subdivision (e)(2), and the 1999 Compact speak for themselves and require no admission or denial with respect to the allegation of their meaning set forth in paragraph forty-three of the FAC. Except as expressly admitted herein, the Commission denies each and every allegation set forth in paragraph forty-three of the FAC.

44. In answer to paragraph forty-four of the FAC, the Commission denies each and every allegation set forth in paragraph forty-four of the FAC.

45. In answer to paragraph forty-five of the FAC, the Commission denies each and every allegation set forth in paragraph forty-five of the FAC.

46. In answer to paragraph forty-six of the FAC, the Commission denies each and every allegation set forth in paragraph forty-six of the FAC.

AFFIRMATIVE DEFENSES

I. Plea In Abatement

As a first separate and complete affirmative defense to the FAC and to each cause of action thereof, the Commission avers that the claims made in the FAC are barred and should be dismissed because plaintiff has failed to join parties necessary to a full and complete adjudication of the rights and duties of the parties herein.

II. No Jurisdiction

As a second separate and complete affirmative defense to the FAC and to each cause of action thereof, the Commission avers that the claims made in the FAC are barred and should be dismissed because the Court lacks jurisdiction to adjudicate whether this plaintiff is a federally recognized Indian tribe, to adjudicate the identity of the members of the entity known as the

California Valley Miwok Tribe, or to adjudicate the identity of the person(s) authorized to act on behalf of, or to receive and administer funds on behalf of the entity known as the California Valley Miwok Tribe.

III. Unclean Hands

As a third separate and complete affirmative defense to the FAC and to each cause of action thereof, the Commission avers that the claims made in the FAC are barred and should be dismissed under the doctrine of unclean hands because plaintiff has acted inequitably in and about the matters alleged in the FAC.

IV. Res Judicata

As a fourth separate and complete affirmative defense to the FAC and to each cause of action thereof, the Commission avers that the claims made in the FAC are barred by res judicata.

V. Collateral Estoppel

As a fifth separate and complete affirmative defense to the FAC and to each cause of action thereof, the Commission avers that the claims made in the FAC are barred by collateral estoppel.

VI. Lack of Standing

As a sixth separate and complete affirmative defense to the FAC and to each cause of action thereof, the Commission avers that the FAC and each cause of action thereof is barred and should be dismissed because plaintiff, as constituted in this action, lacks standing to bring any claim on behalf of the entity known as the California Valley Miwok Tribe that appears on a list of Indian entities, published in the Federal Register, recognized as eligible to receive services from the Bureau of Indian Affairs.

Because the FAC is couched in conclusory terms, the Commission cannot anticipate fully all affirmative defenses that may be applicable to this matter. Accordingly, the Commission reserves the right to assert additional affirmative defenses, if and to the extent such affirmative defenses are applicable and may hereafter be rendered discernable.

WHEREFORE, the Commission prays for relief as follows:

1. That the California Valley Miwok Tribe take nothing by its pursuit of the FAC;
2. That the FAC be dismissed with prejudice;

3. That this Court enter judgment on the FAC in favor of the Commission and against the California Valley Miwok Tribe;

4. That the Commission be awarded its costs of suit herein; and

5. That this Court grant such other and further relief as it may deem appropriate.

Dated: October 14, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
RANDALL A. PINAL
Deputy Attorney General

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

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DECLARATION OF SERVICE

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

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

I declare:

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

On October 14, 2010, I served the attached **ANSWER AND RETURN OF CALIFORNIA GAMBLING CONTROL COMMISSION TO VERIFIED FIRST AMENDED COMPLAINT COMBINED WITH PETITION FOR WRIT OF MANDATE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

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

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 14, 2010, at Sacramento, California.

Linda Thorpe
Declarant


Signature

EXHIBIT "2"

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 has 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 "3"

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. *See Calif. 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 CVMI is a federally recognized tribe. 74 Fed. Reg. 40,218, 40,219 (Aug. 11, 2009).
- In 1916, the United States purchased approximately 0.92 acres in Calaveras County, California, for the benefit of 12 named Indians living on the Sheepranch Rancheria (now Sheep Ranch)(Rancheria) (51 IBIA at 106).
- The Indian Agent, who in 1915 recommended the purchase of the 0.92 acres, described the group of 12 named individuals as "the remnant of once quite a large band of Indians in former years living in and near the old decaying mining town known and designated on the map as 'Sheepranch.'" *Id.*
- The record shows only one adult Indian lived on the Rancheria in 1935, a Jeff Davis, who voted "in favor of the IRA." *Id.*
- In 1966, the record shows only one adult Indian, Mabel Hodge Dixie, Yakima Dixie's mother, lived on the Rancheria, when the BIA crafted a plan for distribution of tribal assets pursuant to the California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, *as amended by* Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390.
- Mabel Hodge Dixie was to be the sole distributee of tribal assets under the 1966 Rancheria distribution plan.
- While the Bureau initiated the process to terminate the Tribe, it never declared the Tribe terminated and has never treated the Tribe as if it had been terminated.
- In 1994, Yakima Dixie wrote the BIA asking for assistance with home repairs and describing himself as "the only descendant and recognized member of the Tribe." (51 IBIA at 107).
- At some point during the 1990s, Silvia Burley "contacted BIA for information related to her Indian heritage, which BIA provided, and by 1998 at BIA's suggestion Burley had contacted Yakima[]" Dixie (as the IBIA has noted, "it appears that Burley may trace her ancestry to a 'Jeff Davis' who was listed on the 1915 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;[1]
- 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

[1] 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(h).

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 *equitable* 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

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EXHIBIT "4"

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(916) 263-0700 Phone
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Arnold Schwarzenegger, Governor
DEAN SHELTON, CHAIRMAN
JOHN CRUZ
STEPHANIE SHIMAZU
ALEXANDRA VUKSICH

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

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

DEAN SHELTON
Chairman

Cc: Silvia Burley
1061 Escondido Place
Stockton, CA 95212

Chadd Everone
2140 Shattuck Ave., #602
Berkeley, CA 94704

Yakima Dixie
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Superintendent, Central California Agency
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Sacramento, CA 95814

Regional Director
Pacific Regional Office
Bureau of Indian Affairs
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Sacramento, CA 95825

EXHIBIT "5"

ORIGINAL EXHIBIT

Enclosed please find the original exhibit from the deposition of Charles Wood, taken on February 7, 2012.

CALIFORNIA VALLEY MIWOK TRIBE

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION

KRAMM COURT REPORTING

2224 THIRD AVENUE, SAN DIEGO, CALIFORNIA 92101

800.939.0080 619

CALIFORNIA

1999

TRIBAL-STATE

GAMING

COMPACT

Division of
Gambling Control
California Department of Justice

(Printed August 2008)

PENGAD 800-631-6989
EXHIBIT
4
2-7-12

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.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO - CENTRAL DISTRICT

--oOo--

CALIFORNIA VALLEY MIWOK TRIBE,)
Plaintiff,)
) Case No.
vs.)
CALIFORNIA GAMBLING CONTROL) 37-2008-00075326-
COMMISSION,) CU-CO-CTL
Defendant.)
) VOLUME I

Deposition of

CHARLES G. WOOD

February 7, 2012

--oOo--

Reported by: MARY BARDELLINI, CSR No. 2976

KRAMM COURT REPORTING

2224 THIRD AVENUE, SAN DIEGO, CALIFORNIA 92101

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DISC ENCLOSED

DISC CONTAINS:
ASCII of Transcript - PDF of Transcript - PDF of Exhibits - Condensed Transcript with Word Index

Q. When you say this big --

A. That all our auditors have.

Q. This thick?

A. About this size by about this thick, (indicating).

Q. When you say this size, talking about the size of a half of a -- eight and a half by eleven sheet?

A. Yes.

Q. Okay. And then it's bound?

A. Yes.

MR. HOUSTON: Mr. Corrales, to sort of cut to the chase, I'd be happy to give you a copy of this book. It's widely available.

MR. CORRALES: That would be fine. Do you have one available right now?

MR. HOUSTON: Yes.

MR. CORRALES: We'll take a half minute.

(Recess taken.)

MR. CORRALES: Let's go on the record.

MR. HOUSTON: I'm giving Mr. Corrales a copy of the California 1999 Tribal State Gaming Compact printed by the Division of Gambling Control of the Department of Justice. This particular copy was printed August 2008.

MR. CORRALES: 2008. Okay. I'm going to mark this as exhibit next in order, 4.

EXHIBIT "6"

F OF CALIFORNIA
BLING CONTROL COMMISSION
Gateway Oaks Drive, Suite 100
ento, CA 95833-4231
263-0700 Phone
263-0499 Fax
gcc.ca.gov

Arnold Schwarzenegger, Governor
DEAN SHELTON, CHAIRMAN
SHERYL SCHMIDT
STEPHANIE SHIMAZU
ALEXANDRA VUKSICH

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.

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6-2-11
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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,

Dean Shelton

DEAN SHELTON
Chairman

cc: Silvia Burley
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EXHIBIT "7"

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

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March 2, 2012

Via E-mail Transmission
& U.S. Mail

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

Re: ***California Valley Miwok Tribe v. CGCC***
San Diego County Superior Court Case No. 37-2008-00075326-CU-CO-CTL

Dear Mr. Corrales:

I am writing in response to your letter dated February 10, 2012, which you sent to me by fax and e-mail on February 13, 2012. Your letter consists of two unrelated parts: first, a demand for the release of Revenue Sharing Trust Fund (RSTF) monies based upon Yakima Dixie's purported admission during his deposition on February 8, 2012, that he resigned as chairman of the Tribe in 1999, upon which you assert that there is no longer a tribal leadership dispute; and second, your initial effort to meet and confer concerning the adequacy of the California Gambling Control Commission's (Commission) responses to your client's second set of requests for admissions, and Charles Wood's competency to verify those responses. I will address these issues in the order in which they appear in your letter.

The Demand for Release of the RSTF Funds Based Upon Dixie's Purported Admission

As you are aware from our conversations, the Commission takes the position that it lacks the authority or jurisdiction to independently assess the legitimacy of a purported tribal leader or tribal leadership group, and instead relies upon the assessments and conclusions of the Department of the Interior, acting through the Bureau of Indian Affairs (BIA), as reflected in the final administrative actions of that agency. As the Commission's public records reflect, the Commission has withheld RSTF payments from the California Valley Miwok Tribe because the Department of the Interior has not yet made a final and operative determination of the identity of the tribal leadership. (See, e.g., Commission Memorandum re Revenue Sharing Trust Fund Report of Distribution of Funds to Eligible Recipient Indian Tribes for the Quarter Ended December 31, 2011, dated January 26, 2012, available for download at the Commission's website.) As the Commission has previously stated, it will release the accrued RSTF funds promptly upon the BIA's recognition of the legitimate leadership body of the Tribe.

As you know, Assistant Secretary Echo Hawk issued a decision on December 22, 2010 that constituted a 180 degree reversal of several earlier BIA decisions and effected a recognition of the Tribal Council headed by Ms. Burley. That decision was appealed, however, and is the subject of *California Valley Miwok Tribe v. Salazar*, CA. No. 1:11-cv-00160-RWR, which was filed on March 16, 2011, and is currently pending in the District Court for the District of Columbia. On August 31, 2011, the Assistant Secretary reconsidered and reiterated his December 22, 2010 decision, but specifically stayed implementation of the decision pending resolution of the litigation pending in the district court. (Echo Hawk letter to Burley and Dixie, dated August 31, 2011, at p. 8.)

As a result of the litigation concerning the Echo Hawk decision, Judge Styn stayed entry of the judgment your client obtained in this case based upon the Assistant Secretary's December 22, 2010 decision, and also stayed any further motion hearings. (Minute Order, April 6, 2011.) Judge Styn subsequently took judicial notice of the Assistant Secretary's August 31, 2011 letter decision, and reaffirmed the stay of motion hearings. (Minute Order, September 7, 2011.)

While Mr. Dixie's recent purported admission that he resigned as Tribal Chairman in 1999 may conceivably affect the BIA's eventual recognition of a legitimate leadership body for the Tribe, until it has done so, it is immaterial to the Commission's position with regard to disbursing RSTF funds to your client because the Commission does not independently decide the merits of the claims of individuals or groups concerning the disbursement of RSTF funds. At the limited continuation of his deposition on February 7, 2012, the Commission's former chief counsel, Cy Rickards, confirmed that in its previous decisions concerning the disbursement of RSTF funds to your client, the Commission had "relied on information from the federal government" and "did not conduct an independent investigation." (Deposition of Cyrus Rickards, Vol. 2, at p. 168:18-25.)

The Commission disagrees with your characterization of what the Compact requires with regard to the disbursement of RSTF funds, and contends that its designation as trustee of the RSTF impliedly requires it to take reasonable steps to ensure that RSTF funds are disbursed to individuals or groups properly authorized to receive and administer the funds on behalf of their respective tribes. In order to discharge this duty in a manner requiring the least possible discretion on its part, the Commission has reasonably chosen to do so by disbursing RSTF funds only to those individuals or leadership bodies recognized by the BIA for the government-to-government business of the disbursement and receipt of federal P.L. 638 contract funds. By applying this standard, the Commission has implicitly adopted the same fiduciary standard applied by the BIA with respect to the disbursement of such funds to federally recognized Indian tribes.

With the foregoing in mind, the Commission will consider the effect, if any, of Yakima Dixie's purported recent admission that he resigned as Tribal Chairman in 1999, upon its ongoing decision to withhold RSTF payments from the California Valley Miwok Tribe until such time as the BIA has recognized an individual or leadership group for purposes of disbursing P.L. 638 funds. The Commission has been provided with a copy of your February 10th letter,

and will take up this matter in closed session at its next meeting, which will be held on March 8, 2012. Shortly thereafter, you will be advised of the Commission's response to your client's demand that it release the accrued RSTF funds to your client.

The Commission's Responses to Requests for Admission

The remainder of your letter consists of your characterizations of the Commission's responses to your client's second set of requests for admission, your generalized contentions as to their purported inadequacy, and threats as to the penalties that may ensue if the Commission does not provide you with amended responses consisting of admissions rather than denials. You also demand that the Commission provide "another more knowledgeable person for a deposition at the Commission's expense" concerning the underlying subject matter of your client's requests for admission and the Commission's responses. Your contentions, threats, and demands are inapposite for a variety of reasons.

As a preliminary matter, you have provided no detail concerning the specific requests for admission that your objections pertain to, and why further responses should be provided to them. As you know, your client's second set of requests for admission contained 91 requests. The Commission provided a variety of responses ranging from admissions to denials, in addition to providing a substantial number of denials based specifically upon a lack of sufficient information or belief to *either* admit or deny the matter in question, and several refusals to respond on the ground that certain of the requests for admission in your client's second set of requests were substantively identical to requests contained in your client's first set of 35 requests. Your February 10th letter is so general that the Commission cannot reasonably respond on a request-by-request basis at this point of the meet and confer process.

In general terms, your objections appear to be that the Commission should have admitted more things and denied fewer, and that Charles Wood, who was authorized to verify the responses on behalf of the Commission, should have had personal knowledge of the underlying subject matter so you could interrogate him with follow-up questions of the sort that would appropriately be directed to a deponent designated as a "PMK." Neither of these objections has merit.

When responding to a request for admission, a party cannot be compelled to admit a fact that it has denied. "In the event . . . that the defendant denies a request for admission by the plaintiff, he cannot be forced to admit the fact prior to trial despite its obvious truth." (*Smith v. Circle P Ranch Co.* (1978) 87 Cal.App.3d 267, 273, citing *Holguin v. Superior Court* (1972) 22 Cal.App.3d 812, 820.) A propounding party's remedy for denials later proven to be improper is "cost-of-proof" sanctions, provided applicable requirements are met. (See *Circle P. Ranch Co., supra*, 87 Cal.App.3d at pp. 273-274.) You have provided no contrary legal authority to support your demand that the Commission provide amended responses replacing its denials with admissions.

If your client nonetheless wishes to continue the meet and confer process by providing an itemization of the specific responses in dispute, please note that many of the Commission's denials based on insufficient information to either admit or deny arise in connection with requests for admission that contain the defined terms, "the Tribe," "CALIFORNIA VALLEY MIWOK TRIBE," and "CVMT," all of which have been defined by you to mean and refer to your client, the faction of the California Valley Miwok Tribe currently led by Silvia Burley. (See Request for Admission No. 36 ["Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("CVMT" or "the Tribe") is a federally recognized tribe.].) The inclusion of any one of these three defined terms in a request caused the Commission to interpose the following typical qualifications in its responses:

> For the purpose of responding to RFA No. 37, Responding Party construes the defined term "CVMT" to mean and refer to the BURLEY FACTION, as to which Responding Party has made a reasonable inquiry, and the information readily obtainable by Responding Party is insufficient to enable Responding Party to either admit or deny that the BURLEY FACTION constitutes the tribe named the "Central Valley Miwok Tribe" that appears on the BIA LIST, or that the BURLEY FACTION constitutes a federally-recognized tribe.

and,

> Responding Party further objects to this request on the ground that "the Tribe" purports to be a defined term identifying the plaintiff (see RFA No. 36, above), but this defined term is not capitalized, and is therefore vague and ambiguous. For the purpose of responding to RFA No. 40, Responding Party construes the improper defined term "the Tribe" to mean and refer to the BURLEY FACTION, as to which Responding Party has made a reasonable inquiry, and the information readily obtainable by Responding Party is insufficient to enable Responding Party to either admit or deny that the BURLEY FACTION constitutes the tribe named the "Central Valley Miwok Tribe" that appears on the BIA LIST, or that the BURLEY FACTION constitutes a federally-recognized tribe.

The Commission's qualification of its responses in this manner arises from the existence of a dispute between the "Burley Faction" and the "Dixie Faction" concerning the true identity and leadership of the tribe. This dispute is integral to the matter currently pending in the District Court for the District of Columbia, and, in turn, integral to Assistant Secretary Echo Hawk's decision to stay implementation of his August 31, 2011 decision until this dispute has been resolved. In light of the unusual circumstances of this case, the Commission's denials based on its inability to either admit or deny requests for admission that either explicitly or implicitly require an admission as to the identity of the "true" California Valley Miwok Tribe is entirely reasonable, and cannot be cured by any degree of research or investigation—the uncertainty will exist until a final action issues from the BIA, at which time the discovery presently in dispute

will have either been rendered moot, or will then be capable of factual admission or denial by the Commission.

The foregoing being said, it does appear that many of your client's requests for admission could be redrafted in a more neutral and less argumentative way, thus eliminating the problem described above, and permitting the Commission to provide admissions. The following is an example of a request improved simply by deleting the defined term "the Tribe."

> **Request for Admission No. 42:** In his September 24, 1998 letter to Yakima Dixie, Risling 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." [Existing Version.]
>
> **Request for Admission No. 42:** In his September 24, 1998 letter to Yakima Dixie, Risling advised Dixie that, "[t]he General Council would then be able to proceed with the conduct of business, in a manner consistent with the authorizing resolution." [Revised Version.]

This modification of Request for Admission No. 42 would remove the uncertainty created by incorporating an admission as to the identity of "the Tribe," and would arguably permit the Commission to provide the following response:

> **Response to Request for Admission No. 42:** Responding to RFA No. 42, Responding Party objects to this request to the extent that it may reasonably be construed to call for the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, or any other cognizable legal privilege or protection. Subject to, and without waiving the foregoing objections, Responding Party admits that it has in its possession a copy of a letter from Dale Risling to Yakima Dixie, dated September 24, 1998, and that this letter contains the statement that "[t]he General Council would then be able to proceed with the conduct of business, in a manner consistent with the authorizing resolution."

With respect to the adequacy of Charles Wood's testimony at his deposition, Code of Civil Procedure section 2033.240, subdivision (b), provides that if a party is a governmental agency, "one of its officers or agents shall sign the response under oath on behalf of the party." This is precisely what Charles Wood did. By so doing, his verification served to bind the Commission to its responses. Mr. Wood's verification states that he had read the responses, and "[was] informed and believe[d] the matters therein to be true and on that ground allege[d] that the matters stated there are true." As is most often the case when responses are provided by a large organization, the tasks related to investigating and preparing the responses are delegated to personnel with appropriate expertise. In this case, the Commission's legal staff was appropriately tasked with responding to the requests for admission propounded by your client,

nearly all of which contained either express or implied legal conclusions and arguments. Mr. Wood permissibly relied upon the work of his colleagues, and appropriately and repeatedly, disclosed the source of the responses to you during his deposition. Mr. Wood was not required to have personal knowledge of the underlying subject matter of the requests, or of the reasons for responses, nor was Mr. Wood required to know how those who prepared the responses did so, or what sources they consulted before preparing responses stating that the information readily available to them was insufficient to permit the Commission to either admit or deny a particular request and, on that basis, to deny it. These observations concerning the verification of responses to requests for admissions are consistent with the principle that "[R]equests for admissions are aimed primarily at setting at rest a triable issue so it will not have to be tried. A request for admissions is not a discovery device." (*International Harvester Co. v. Superior Court* (1969) 273 Cal.App.2d 652, 655.)

For the foregoing reasons, the Commission declines your client's blanket demand that the Commission provide admissions in place of the denials that were made on the basis of insufficient information or belief to either admit or deny, and declines to offer any person for another deposition concerning the substance of its responses to your client's requests for admission.

In the event your client wishes to continue the meet and confer process with regard to the Commission's responses to your client's second set of requests for admission, please provide me with an itemization of the responses in dispute and the reasons, supported by applicable legal authority, why further responses should be provided. If your client instead wishes to explore the alternative of factual stipulations, please identify the requests your client believes might be converted to stipulations, keeping in mind the example of Request for Admission No. 42, above, and I will then prepare a proposed introductory statement and several proposed stipulations for your review and comment.

Sincerely,

Neil Houston

NEIL D. HOUSTON
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

NDH/lit

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE
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March 8, 2012

Via E-mail Transmission
& U.S. Mail

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

Re: ***California Valley Miwok Tribe v. CGCC***
San Diego County Superior Court Case No. 37-2008-00075326-CU-CO-CTL

Dear Mr. Corrales:

As I previously advised you it would, the Commission met in closed session on March 8, 2012, to consider the request made in your letter of February 10, 2012, that the Commission reconsider its position and release all accrued Revenue Sharing Trust Fund (RSTF) monies and resume quarterly payments to your client on the basis of Yakima Dixie's purported admission that he had resigned as Tribal Chairman on April 20, 1999. The Commission considered your client's request and concluded that Mr. Dixie's admission, which, for the purposes of this decision, the Commission deems true, is an insufficient basis for the Commission to change its position with regard to withholding and accruing RSTF payments for the benefit of the California Valley Miwok Tribe (Tribe) until such time as the identity and leadership of the Tribe has finally been determined by the Bureau of Indian Affairs. The Commission declines to disburse the accrued RSTF monies, or to resume making quarterly payments, to your client at this time.

Sincerely,

NEIL D. HOUSTON
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

EXHIBIT "8"

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Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

FILED
Clerk of the Superior Court
JAN 21 2011
By: P. WOODS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DISTRICT

CALIFORNIA VALLEY MIWOK TRIBE

Plaintiff,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant.

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

DECLARATION OF MANUEL CORRALES, JR., IN SUPPORT OF PLAINTIFF'S REPLY TO OPPOSITION TO SUMMARY JUDGMENT/SUMMARY ADJUDICATION MOTION

Date: January 28, 2011
Time: 8:30 a.m.
Dept: 62
Judge: Hon. Ronald Styn
Trial Date: May 13, 2011

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

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

2. Attached herewith and marked as Exhibit "37" is a true and correct copy of pages 11-12 of the Defendant CALIFORNIA GAMBLING CONTROL COMMISSION's ("the Commission") responses to Plaintiff's Special Interrogatories, Set One, which the Commission's attorney of record served on me in this case.

3. Attached herewith and marked as Exhibit "38" is a true and correct copy of pages 11-12 of the Commission's responses to Plaintiff's Form Interrogatories, Set One, which the Commission's attorney of record served on me in this case.

4. Attached to Plaintiff's Request for Judicial Notice and marked as Exhibit "39" is a true and correct copy of a letter dated December 22, 2010, from Larry Echo Hawk, the Assistant Secretary—Indian Affairs, U.S. Department of the Interior, to Sylvia Burley of the California Valley Miwok Tribe.

5. Attached to Plaintiff's Request for Judicial Notice and marked as Exhibit "40" is a true and correct copy of a minute order from the Sacramento Superior Court, dated October 27, 2004, in Case No. C4AS04205, Yakima Dixie, et al. v. State of California, et al.

6. Attached to Plaintiff's Request for Judicial Notice and marked as Exhibit "41" is a true and correct copy of as letter dated January 12, 2011, from Troy Burdick of the BIA to Silvia Burley.

7. Attached to Plaintiff's Request for Judicial Notice and marked as Exhibit "42" is a true and correct copy of a second letter dated January 12, 2011, from Troy Burdick of the BIA to Silvia Burley.

8. Attached to Plaintiff's Request for Judicial Notice and marked as Exhibit "43" is a true and correct copy of a report dated October 21, 2010 from the Commission reporting on RSTF distribution payments (pages 1 and 8 only)

9. Attached to Plaintiff's request for Judicial Notice and marked as Exhibit "44" is a true and correct copy of the Minutes of the October 21, 2010 Commission Meeting (pages 1, and 10-12 only).

10. Attached to Plaintiff's Request for Judicial Notice and marked as Exhibit "45" is a true and correct copy of a letter dated January 13, 2011 from the Bureau of Gambling Control to Silvia Burley, Chairperson of the

California Valley Miwok Tribe.

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

Executed this 20 day of January, 2011, at San Diego, California.

MANUEL CORRALES, JR.

EXHIBIT "37"

EDMUND G. BROWN JR.
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
RANDALL A. PINAL
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Attorneys for Defendant
California Gambling Control Commission

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL BRANCH

CALIFORNIA VALLEY MIWOK TRIBE, Plaintiff, v. **THE CALIFORNIA GAMBLING CONTROL COMMISSION; and DOES 1 THROUGH 50, Inclusive,** Defendants.	Case No. 37-2008-00075326-CU-CO-CTL **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S RESPONSE TO CALIFORNIA VALLEY MIWOK TRIBE'S SPECIAL INTERROGATORIES, SET ONE**

PROPOUNDING PARTY: Plaintiff, CALIFORNIA VALLEY MIWOK TRIBE

RESPONDING PARTY: Defendant, CALIFORNIA GAMBLING CONTROL COMMISSION

SET NUMBER: ONE

the terms "withheld," "Tribe" and "trust account" are not defined. Defendant interprets and understands this interrogatory as referring to the entity named "California Valley Miwok Tribe" that Silvia Burley purports to represent and in whose name she purports to bring this action. Defendant lacks sufficient information to determine whether the entity referred to in the interrogatory named "California Valley Miwok Tribe" that Silvia Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the BIA List. All references to the California Valley Miwok Tribe in this response are to the entity of that name that appears on the BIA List and not to Plaintiff. Defendant further objects to this interrogatory in that it exceeds the permissible scope of discovery because it seeks information that is not relevant to the subject matter of this action, and it seeks information that is equally available to Plaintiff. Without waiving these objections, Defendant responds:

Information as to the management of accounts holding RSTF monies can be obtained by Plaintiff through inquiries to the State Treasurer's Office or the Department of General Services.

SPECIAL INTERROGATORY NO. 12:

Do you contend that the Tribe as presently constituted is not entitled to receive RSTF money?

RESPONSE TO SPECIAL INTERROGATORY NO. 12:

Objection. The number of special interrogatories is burdensome and oppressive, and the declaration filed with the interrogatories does not set forth adequate justification for the number of interrogatories. Further, this interrogatory is conjunctive and compound and is vague and ambiguous in that the terms "Tribe," "presently constituted" and "receive" are not defined. Without waiving these objections, Defendant interprets and understands this interrogatory as referring to the entity named "California Valley Miwok Tribe" that Silvia Burley purports to represent and in whose name she purports to bring this action. Defendant lacks sufficient information to determine whether the entity referred to in the interrogatory named "California Valley Miwok Tribe" that Silvia Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the BIA List. All references to the California Valley Miwok Tribe in this response are to the entity of that name that appears on the BIA List and not to

Plaintiff. Based on information and belief, Defendant understands that the California Valley Miwok Tribe is unorganized, and its membership, i.e., the body politic which comprises the California Valley Miwok Tribe and which may select its government, is currently unknown. Thus, no one has authority to represent the California Valley Miwok Tribe, and there is no authorized tribal government.

SPECIAL INTERROGATORY NO. 13:

If your answer to Special Interrogatory No. 12 is in the affirmative, please state all facts which support your contention.

RESPONSE TO SPECIAL INTERROGATORY NO. 13:

Objection. The number of special interrogatories is burdensome and oppressive, and the declaration filed with the interrogatories does not set forth adequate justification for the number of interrogatories. Without waiving this objection, Defendant responds:

Not applicable.

SPECIAL INTERROGATORY NO. 14:

If your answer to Special Interrogatory No. 12 is in the affirmative, please identify all persons who have knowledge of the facts supporting your contention.

RESPONSE TO SPECIAL INTERROGATORY NO. 14:

Objection. The number of special interrogatories is burdensome and oppressive, and the declaration filed with the interrogatories does not set forth adequate justification for the number of interrogatories. Without waiving this objection, Defendant responds:

Not applicable.

SPECIAL INTERROGATORY NO. 15:

If your answer to Special Interrogatory No. 12 is in the affirmative, please identify all documents which support your contention.

RESPONSE TO SPECIAL INTERROGATORY NO. 15:

Objection. The number of special interrogatories is burdensome and oppressive, and the declaration filed with the interrogatories does not set forth adequate justification for the number of interrogatories. Defendant further objects to this interrogatory on the basis that it is vague and

Not applicable.

SPECIAL INTERROGATORY NO. 20:

On or about May 7, 2001, the Tribe under Silvia Burley's leadership passed a Resolution authorizing the Tribe's name to be changed from "Sheep Ranch Rancheria of Me-Wuk Indians of California" to "California Valley Miwok Tribe". Do you contend that the Tribe had no authority to make that name change?

RESPONSE TO SPECIAL INTERROGATORY NO. 20:

Objection. The number of special interrogatories is burdensome and oppressive, and the declaration filed with the interrogatories does not set forth adequate justification for the number of interrogatories. Further, this interrogatory is conjunctive and compound and is vague and ambiguous in that the terms "under Silvia Burley's leadership," "passed a Resolution," and "Tribe" are not defined. Defendant interprets and understands this interrogatory as referring to the entity named "California Valley Miwok Tribe" that Silvia Burley purports to represent and in whose name she purports to bring this action. Defendant lacks sufficient information to determine whether the entity referred to in the interrogatory named "California Valley Miwok Tribe" that Silvia Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the BIA List. All references to the California Valley Miwok Tribe in this response are to the entity of that name that appears on the BIA List and not to Plaintiff. Defendant further objects to this interrogatory in that it exceeds the permissible scope of discovery because it seeks information that is not relevant to the subject matter of this action or calculated to lead to the discovery of admissible evidence. Defendant further lacks sufficient information or belief regarding a resolution that the entity named "California Valley Miwok Tribe" that Silvia Burley purports to represent may or may not have passed, and on that basis cannot respond to this interrogatory.

SPECIAL INTERROGATORY NO. 21:

If your answer to Special Interrogatory No. 21 is in the affirmative, please state all facts which support your contention.

SPECIAL INTERROGATORY NO. 133:

If your answer to Special Interrogatory No. 130 is in the negative, please identify all documents which support your answer.

RESPONSE TO SPECIAL INTERROGATORY NO. 133:

Objection. The number of special interrogatories is burdensome and oppressive, and the declaration filed with the interrogatories does not set forth adequate justification for the number of interrogatories. Defendant further objects to this interrogatory on the basis that it is vague and ambiguous because the term "document" is not defined. Defendant further objects to the extent this interrogatory seeks information that is protected from disclosure by the attorney work product doctrine, attorney-client privilege, deliberative process privilege, Evidence Code section 1040, Government Code section 6254, and/or the right to privacy. Without waiving these objections, Defendant responds:

Not applicable.

Dated: December 22, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
RANDALL A. PINAL
Deputy Attorney General

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

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IN RE: California Valley Miwok Tribe v. California Gambling Control Commission
San Diego Superior Court Case No. 37-2008-00075326-CU-CO-CTL

VERIFICATION

The undersigned hereby asserts as follows:

I, Charles Wood, am the Manager of the Tribal Audit and Inspection Program for the California Gambling Control Commission and I am authorized to and make this verification for and on behalf of said entity: I have read the foregoing **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S RESPONSE TO CALIFORNIA VALLEY MIWOK TRIBE'S SPECIAL INTERROGATORIES, SET ONE** and am informed and believe the matters therein to be true and on that ground allege that the matters stated there are true.

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

Executed on December 21, 2010, Sacramento, California.

By: _____
[Name]

Title: Manager of the Tribal Audit and Inspection Program

DECLARATION OF SERVICE

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

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

I declare:

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

On December 22, 2010, I served the attached **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S RESPONSE TO CALIFORNIA VALLEY MIWOK TRIBE'S SPECIAL INTERROGATORIES, SET ONE** by placing a true copy thereof enclosed in a sealed envelope and causing such envelope to be personally delivered by a Golden State Courier service to the office of the addressee listed below:

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

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

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 22, 2010, at Sacramento, California.

Linda Thorpe
Declarant

Signature

EXHIBIT "38"

EDMUND G. BROWN JR.
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
RANDALL A. PINAL
Deputy Attorney General
SYLVIA A. CATES
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Attorneys for Defendant
California Gambling Control Commission

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL BRANCH

CALIFORNIA VALLEY MIWOK TRIBE, Plaintiff, v. **THE CALIFORNIA GAMBLING CONTROL COMMISSION; and DOES 1 THROUGH 50, Inclusive,** Defendants.	Case No. 37-2008-00075326-CU-CO-CTL **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S RESPONSE TO CALIFORNIA VALLEY MIWOK TRIBE'S FORM INTERROGATORIES, SET ONE**

PROPOUNDING PARTY: Plaintiff, CALIFORNIA VALLEY MIWOK TRIBE

RESPONDING PARTY: Defendant, CALIFORNIA GAMBLING CONTROL COMMISSION

SET NUMBER: ONE

Denial of Complaint Paragraph 28 Allegations:

Defendant denied that Plaintiff has no adequate remedy at law.

(a) At such time as the United States government recognizes a legitimate government and leader for the entity named California Valley Miwok Tribe that appears on the BIA list. Plaintiff may have the right to appeal the federal government's decision through the applicable administrative and judicial appeal process.

(b) Not applicable.

(c) Not applicable.

Denial of Complaint Paragraph 35 Allegations:

Defendant denied that it has wrongfully withheld over $3 million and allegations related to a purported duty of Defendant to pay these funds to "the Miwok Tribe via its authorized representative. Silvia Burley."

(a) Defendant has allocated and continues to allocate RSTF monies for the entity named California Valley Miwok Tribe that appears on the BIA List. and is holding such funds until the government of that entity is identified by BIA. There are no facts in the record of this matter that demonstrate that the entity named "California Valley Miwok Tribe" that Silvia Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the BIA List. The federal government has stated that the entity named California Valley Miwok Tribe that appears on the BIA List is not organized, and the United States does not recognize any tribal government or governmental leader of the California Valley Miwok Tribe.

(b) Cindy Thompson and Charles Wood. California Gambling Control Commission. Edith R. Blackwell, Associate Solicitor, Indian Affairs, Office of the Solicitor, Washington. D.C. 20240, is identified in the identified documents.

(c) The quarterly reports regarding RSTF distributions that are posted on Defendant's website at: http://www.cgcc.ca.gov/?pageID=rstfi. The original of the reports, to the extent they currently exist, are held by the California Gambling Control Commission. Its address and phone number is: 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833; 916/263-0700. Lette dated December 12, 2008, to Peter Kaufman, Esq. from Edith R. Blackwell; letter dated January

14, 2009, to Peter Kaufman, Esq., from Edith R. Blackwell. These two letters are held by Sylvia A. Cates, attorney of record for Defendant. In addition, numerous letters from BIA and DOI employees addressed to Silvia Burley and/or Yakima Dixie support Defendant's denial. Documents comprising the administrative record filed by BIA with the IBIA in the matter California Valley Miwok Tribe (Appellant) v. Pacific Regional Director, Bureau of Indian Affairs, appealing from the decision dated April 2, 2007, of the Pacific Regional Director, BIA, which is equally available to Plaintiff.

Denial of Complaint Paragraph 44 Allegations:

Defendant denied allegations that it violated its legal duties and continues to violate its legal duties with respect to distribution of RSTF money to Plaintiff.

(a) Defendant has allocated and continues to allocate RSTF monies for the entity named California Valley Miwok Tribe that appears on the BIA List, and is holding such funds until the government of that entity is identified by BIA. There are no facts in the record of this matter that demonstrate that the entity named "California Valley Miwok Tribe" that Silvia Burley purports to represent is the same entity named California Valley Miwok Tribe that appears on the BIA List. The federal government has stated that the entity named California Valley Miwok Tribe that appears on the BIA List is not organized, and the United States does not recognize any tribal government or governmental leader of the California Valley Miwok Tribe.

(b) Cindy Thompson and Charles Wood, California Gambling Control Commission. Edith R. Blackwell, Associate Solicitor, Indian Affairs, Office of the Solicitor, Washington, D.C. 20240, is identified in the identified documents.

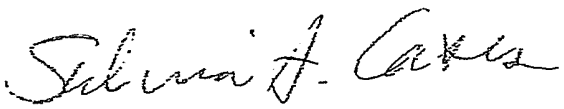
(c) The quarterly reports regarding RSTF distributions that are posted on Defendant's website at: http://www.cgcc.ca.gov/?pageID=rstfi. The original of the reports, to the extent they currently exist, are held by the California Gambling Control Commission. Its address and phone number is: 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833; 916/263-0700. Letter dated December 12, 2008, to Peter Kaufman, Esq. from Edith R. Blackwell; letter dated January 14, 2009, to Peter Kaufman, Esq., from Edith R. Blackwell. These two letters are held by Sylvia A. Cates, attorney of record for Defendant. In addition, numerous letters from BIA and DOI

each compact may contain ambiguities is not justified in light of the minimal utility of the information sought.

Dated: December 22, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
RANDALL A. PINAL
Deputy Attorney General



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

SA2008300115
31164562.doc

IN RE: California Valley Miwok Tribe v. California Gambling Control Commission
San Diego Superior Court Case No. 37-2008-00075326-CU-CO-CTL

VERIFICATION

The undersigned hereby asserts as follows:

I, Charles Wood, am the Manger of the Tribal Audit and Inspection Program for the California Gambling Control Commission and I am authorized to and make this verification for and on behalf of said entity; I have read the foregoing **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S RESPONSE TO CALIFORNIA VALLEY MIWOK TRIBE'S FORM INTERROGATORIES, SET ONE** and am informed and believe the matters therein to be true and on that ground allege that the matters stated there are true.

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

Executed on December 21, 2010, Sacramento, California.

By: _____
[Name]

Title: Manger of the Tribal Audit and Inspection Program

DECLARATION OF SERVICE

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

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

I declare:

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

On December 22, 2010, I served the attached **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S RESPONSE TO CALIFORNIA VALLEY MIWOK TRIBE'S FORM INTERROGATORIES, SET ONE** by placing a true copy thereof enclosed in a sealed envelope and causing such envelope to be personally delivered by a Golden State Courier service to the office of the addressee listed below:

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

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

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 22, 2010, at Sacramento, California.

Linda Thorpe
Declarant

Signature

EXHIBIT "9"

COPY

BILL LOCKYER
Attorney General of the State of California
ROBERT L. MUKAI
Senior Assistant Attorney General
SARA J. DRAKE
Supervising Deputy Attorney General
MARC A. LE FORESTIER, State Bar No. 178188
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 322-5452
Fax: (916) 322-5609

Attorneys for Defendants State of California and the California Gambling Control Commission

FILED
ENDORSED
2004 OCT 22 PM 2:29
SACRAMENTO COUNTY COURTS
DEPT. #53 #54

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

YAKIMA DIXIE, an individual; and, CALIFORNIA VALLEY MIWOK TRIBE fka SHEEP RANCH RANCHERIA OF ME-WUK INDIANS OF CALIFORNIA, an unorganized tribe,

Plaintiffs,

v.

STATE OF CALIFORNIA, CALIFORNIA GAMBLING CONTROL COMMISSION, an Agency of the State of California, and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 04AS04205

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

Date: October 27, 2004
Time: 2:00 p.m.
Dept: 53
Judge: The Honorable Loren E. McMaster
Trial Date: Not Set
Action Filed: October 18, 2004

INTRODUCTION

Plaintiff Yakima Dixie ("Dixie") seeks to enjoin the defendants California Gambling Control Commission ("the Commission") and the State of California ("the State") from issuing a disbursement check to the California Valley Miwok Tribe that would be drawn on the Revenue Sharing Trust Fund ("RSTF") established by the 1999 tribal-state gaming compacts entered into between the State of California and sixty-one signatory Indian tribes. Because the defendants have no substantial interest in this litigation, or the subject funds, other than ensuring that the Commission meets its obligations under the 1999 Compacts, this response to the pending application for a temporary restraining order is limited to the identification of issues that may be of importance to this Court, and which may not be emphasized by Dixie, or by the real party in interest, the California Valley Miwok Tribe,[1] which may or may not be represented at the October 27, 2004, hearing. This memorandum will explain the Commission's role with respect to the RSTF and its current practice with respect to the distribution of funds to Indian tribes in the midst of leadership disputes.

DISCUSSION

In September 1999, the State of California entered into a series of tribal-state class III gaming compacts ("1999 Compacts"), the core of which provided that the State granted the tribes the exclusive right to conduct lucrative Las Vegas-style class III gaming, free from non-tribal competition in the State. (*In re Indian Gaming Related Cases (Coyote Valley)* (9th Cir. 2003) 331 F.3d 1094, 1104.) These compacts established the Revenue Sharing Trust Fund that is at the heart of this litigation.

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1. The California Valley Miwok Tribe ("the Tribe") is named as a plaintiff in this lawsuit. However, as is discussed below, the Tribe is apparently represented by Silvia Burley, and her legal counsel, not by Dixie. Accordingly, if the Court determines that the Tribe is absent from this litigation, Code of Civil Procedure section 389 is implicated. Section 389 requires a plaintiff to join as parties to an action all whose interests are so directly involved that the court cannot render a fair adjudication in their absence. (Code Civ. Proc., § 389, subd. (a); see *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 808-809.) If such a party cannot be joined, a court must then determine whether "in equity and good conscience," the action should proceed among the parties before it, or should be dismissed. (Code Civ. Proc., § 389, subd. (b); see also *Quileute Indian Tribe v. Babbitt* (9th Cir. 1994) 18 F.3d 1456, 1458.)

The preamble to the 1999 Compacts[2] recite that the "State has an interest in promoting the purposes of IGRA for all federally-recognized Indian tribes in California, whether gaming or non-gaming." In furtherance of this interest, Section 4.3.2.1 of the 1999 Compact creates the RSTF, which grants a maximum of $1.1 million dollars annually to each of the State's Non-Compact tribes, as defined by the 1999 Compacts. (1999 Compact, § 4.3.2.1, subd. (a); *see also Coyote Valley, supra*, 331 F.3d at 1105.) Under Section 4.3.2.2 of the 1999 Compacts, gaming tribes fund the RSTF by purchasing "licenses" on a graduated fee schedule to acquire and maintain gaming devices beyond the number they are authorized to use under Section 4.3.1. (*Coyote Valley, supra*, 331 F.3d at 1105.)

Under the 1999 Compacts, the Commission has a ministerial duty to distribute the corpus of the RSTF to "Non-Compact Tribes,"[3] on the following terms.

> (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.

(1999 Compact, § 4.3.2.1, subd. (b), emphasis added; see also Qualset Decl.[4], ¶¶ 2-5.) This provision of the 1999 Compacts was designed to ensure prompt disbursement of RSTF assets to those tribes in most desperate need of funding–tribes with small or no gaming operation. The granting of the relief sought by Dixie here would subvert this important objective of the 1999 Compacts.

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2. Relevant provisions of the 1999 Compacts are appended to this memorandum.

3. The 1999 Compacts define a "Non-Compact Tribe as follows:

> 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.

(1999 Compacts, § 4.3.2, subd. (a)(i).) Notably, a Non-Compact Tribe must be federally-recognized, as is the California Valley Miwok Tribe. (68 Fed. Reg. 68180-01 (Dec. 5, 2003).)

4. The Declaration of Gary Qualset is submitted with this memorandum.

The Commission has been faced on more than one occasion with the prospect of making a RSTF disbursement to a tribe in the midst of a leadership dispute. In the past, it has been the practice of the Commission to refrain from disbursing the RSTF funds until the resolution of the tribal leadership dispute, in order to ensure that the funds were submitted to the proper party and address. (Qualset Decl., ¶¶ 6-10.) However, the Commission has recently determined that it should change this practice, in conformity with the practice of the Bureau of Indian Affairs, by disbursing funds to the tribal representative with which the federal government carries on its government-to-government relationship with the Tribe. (Qualset Decl., ¶¶ 11-14.) It appears to the State that the Tribe's representative for such purposes remains Silvia Burley ("Burley"), notwithstanding what may or may not be a meritorious challenge to her leadership. In a March 26, 2004, letter, the Bureau of Indian Affairs' Superintendent for the California Central District, Dale Risling, wrote to Burley as follows:

> 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.*

(Risling-Burley Letter, Mar. 26, 2004, emphasis added, Everone Decl.[5], Ex. 7.) The BIA has also indicated that Burley is the proper representative of the Tribe on other occasions. (Qualset Decl., ¶¶ 15-17.) The Commission's determination that it should issue a RSTF disbursement check to Burley is rooted in the practice of the federal government to continue the government-to-government relationship, notwithstanding the existence of a leadership dispute, and in the BIA's representations that at this time, Burley is the proper representative of the Tribe.

CONCLUSION

The defendants contend that the Commission's determination to issue a RSTF disbursement check to Burley is correct and that the application for a temporary restraining order ought to be

---

5. The Declaration of Chadd Everone has been submitted by Dixie in support of his application.

denied because granting the application would not serve the interests of the Tribe, and because the Court should refuse to exercise jurisdiction over this action because the Tribe, whose interests are most affected, is likely absent from the litigation.

Dated: October 22, 2004

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

ROBERT L. MUKAI
Senior Assistant Attorney General

SARA J. DRAKE
Supervising Deputy Attorney General

MARC A. LE FORESTIER
Deputy Attorney General
Attorneys for Defendants State of California, California Gambling Control Commission

10095928.wpd

EXHIBIT "10"

COPY

ENDORSED

2004 OCT 22 PM 2:30

SACRAMENTO COURTS
DEPT. #53 #54

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Attorneys for Defendants State of California, and the California Gambling Control Commission

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

YAKIMA DIXIE, an individual; and, CALIFORNIA VALLEY MIWOK TRIBE fka SHEEP RANCH RANCHERIA OF ME-WUK INDIANS OF CALIFORNIA, an unorganized tribe,

Plaintiffs,

v.

STATE OF CALIFORNIA, CALIFORNIA GAMBLING CONTROL COMMISSION, an Agency of the State of California, and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 04AS04205

DECLARATION OF GARY QUALSET IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

Date: October 27, 2004
Time: 2:00 p.m.
Dept: 53
Judge: The Honorable Loren E. McMaster
Trial Date: Not Set
Action Filed: October 18, 2004

I, Gary Qualset, hereby declare:

1. I am the Deputy Director of the Licensing and Compliance Division of the California Gambling Control Commission ("the Commission").

2. The Commission is charged with the responsibility of being the "Trustee" of the Revenue Sharing Trust Fund ("RSTF") pursuant to section 4.3.2(a)(ii) of the tribal-state class III

gaming compacts completed between the State of California and sixty-one Indian tribes in 1999 ("the 1999 Compacts").

3. My staff and I administer the Commission's responsibilities with regard to the RSTF, pursuant to section 4.3.2.1 of the 1999 Compacts.

4. Pursuant to the 1999 Compacts, my staff and I ensure that quarterly payments are made from the RSTF to eligible Non-Compact Tribes as defined in section 4.3.2(a)(i) of the 1999 Compact.

5. RSTF payment checks are made payable to the name of the recipient Tribes rather than to the name of an individual representative of the Tribe.

6. The Commission relies upon the records of the United States Department of the Interior, Bureau of Indians Affairs (BIA), to verify the tribal address of record and the recognized tribal chairperson or authorized representative with whom the BIA is conducting government-to-government relations on an ongoing basis.

7. RSTF payment checks are mailed to the Tribe at its official address of record to the attention of the Tribal Chairperson, or representative, and it has been the practice of the Commission to mail RSTF distribution checks via United States Postal Service Priority Mail, with signature verification service, to ensure the establishment of a record of delivery and receipt.

8. On occasion over the past years, the Commission has been contacted by tribal members, tribal officials, and their legal representatives to advise the Commission of internal tribal disputes regarding a number of issues such as inappropriate use of funds, dis-enrollment of tribal members, and other tribal government problems and membership disputes. In many of these instances, the Commission was requested to withhold the distribution of funds from the RSTF to the tribe or was requested to mail the check to a different address from that on record with the BIA.

9. If each of these request had been honored, a substantial sum of money, running into the millions of dollars of RSTF funds would not have been distributed in a timely manner to an otherwise eligible tribe or may have been sent to the address of a person not authorized to receive the funds.

10. Because of these requests, the Commission established procedures to avoid becoming involved in tribal leadership disputes and to properly carry out its duties regarding RSTF funds in a manner that would, in the vast majority of cases, allow for the proper distribution of funds as quickly as possible, while exercising due care in performing its trustee responsibilities under the 1999 Compacts.

11. Until recently, when a tribal leadership dispute has arisen, and a BIA leadership decision has been administratively appealed, it has been the practice of the Commission to hold RSTF checks during the pendency of that appeal.

12. Recently, the Commission determined that it should change this practice to conform to the practice of the BIA and send the RSTF funds to the Tribe via the tribal representative with whom the BIA conducts government-to-government relations on an ongoing basis, regardless of whether there is a challenge to tribal leadership.

13. It appears to the Commission that Sylvia Burley is presently recognized as the tribal representative for the California Valley Miwok Tribe.

14. The Commission has determined to send the checks payable to the Tribe. to the attention of Ms. Burley, based on the fact that the BIA has indicated on several occasions that the tribal representative with whom its conducts government-to-government relations is Ms. Burley. That the BIA continues to recognize Ms. Burley has been indicated on several occasions.

15. In a March 26, 2004, letter, the BIA's Superintendent for the California Central District, Dale Risling ("Risling"), wrote to Burley as follows:

> 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.

A copy of this letter is appended to the Declaration of Chadd Everone, in Exhibit 7, which has been submitted to the Court by plaintiff Yakima Dixie.

16. On August 26, 2004, Risling addressed correspondence to Burley as "Chairperson" of the California Valley Miwok Tribe. A true and accurate copy of this letter is appended hereto as Exhibit 1.

17. Moreover, I was informed by staff that on October 18, 2004, Ray Fry, Tribal Liaison Officer of the BIA's Central California Agency, confirmed, in response to a telephonic inquiry, that "at the present time" Ms. Burley is recognized as the Tribal Chairperson.

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

Executed this 22nd day of October, 2004, at Sacramento, California.

GARY QUALSET

10092971.wpd

EXHIBIT "11"

CALIFORNIA GAMBLING CONTROL COMMISSION
Address: 2399 Gateway Oaks Drive, Suite 220 • Sacramento, CA 95833-4231
Phone: (916) 263-0700 • FAX: (916) 263-0452

Memorandum

DATE: January 24, 2013

TO: Chairman Lopes
Commissioner Conklin
Commissioner Hammond
Commissioner Schuetz

FROM: TINA M. LITTLETON
Executive Director

SUBJECT: Revenue Sharing Trust Fund Report of Distribution of Funds to Eligible Recipient Indian Tribes for the Quarter Ended December 31, 2012

All eligible Tribes will receive a total of $275,000.00, which consists of $146,748.10 from license fees and interest income and $128,251.90 from shortfall funds that have been transferred into the Revenue Sharing Trust Fund (RSTF) from the Special Distribution Fund (SDF) as shown in Exhibit 1.

License fees of $10,544,093.00 and interest income of $28,821.30, for a total of $10,572,914.30, was received into the RSTF for the quarterly period ended December 31, 2012. A portion of the interest income is allocated to previously approved distributions held in the RSTF on behalf of two (2) Tribes in the amount of $7,051.10. The quarterly amount of the shortfall in payments to all eligible recipient Indian Tribes for the quarter totals $9,234,136.80.

Staff recommends that the distribution to the California Valley Miwok Tribe be allocated but withheld. The issue of whether the Assistant Secretary's decision to recognize the five members of the Sylvia Burley faction as the tribe was valid is still pending resolution before the U.S. District Court for the District of Columbia. The matter has been submitted to Judge Roberts who could issue a decision at any time.

Staff also recommends allocating but withholding the distribution to the Iipay Nation of Santa Ysabel. While there has been some activity in both the state and federal litigation, neither court has answered the question of whether the distributions should be paid to Yavapai Apache Nation due to a judgment recognized in their favor in Sacramento Superior Court or the Iipay.

A listing of the amount of revenue received from each Compact Tribe is attached as Exhibit 2. The receipts are equally distributed to seventy-two (72)[1] of the eighty-eight (88) Tribes listed in Exhibit 1 as eligible recipient Tribes (pending receipt of outstanding eligibility certification forms, if any).

At the end of the calendar quarter, the amount of outstanding license fee payments due into the RSTF from one (1) Tribe was $78,750.00. If the total license fee payments due at the end of this quarter had been paid into the RSTF, each recipient Tribe would have received $1,093.75 in additional RSTF money with this quarter's distribution in lieu of an equal amount of SDF transferred shortfall funds. Total outstanding and due license fee payments for the quarter ended December 31, 2012, are summarized in the following Table 1:

Table 1

Indian Gaming Revenue Sharing Trust Fund License Fee Payment Aging Schedule as of December 31, 2012

Period(s) in Arrears[2]	Number of Tribes	Amount of License Fees Due
One (1) Quarter (Section 4.3.2.3)	**1**	**$78,750.00**
Exceeds 30 days after the calendar quarter (Section 4.3.2.2)	**0**	**.00**
Totals	**1**	**$78,750.00**

A fund condition statement for the RSTF through December 31, 2012, for the fiscal year 2012-13 is attached as Exhibit 3.

[1] Distribution to the California Valley Miwok Tribe is withheld pending resolution of Tribal leadership dispute and Iipay Nation of Santa Ysabel is withheld pending federal court litigation.

[2] Periods in Arrears are categorized according to the applicable Compact provisions of either 4.3.2.2 or 4.3.2.3.

Attachments:

- Exhibit 1 – RSTF Distribution List
- Exhibit 2 – RSTF Received From Compacted Tribes
- Exhibit 3 – RSTF Fund Condition Statement

Exhibit 1

Revenue Sharing Trust Fund Distribution

Total Amount of Distribution for the Quarter Ended December 31, 2012

	Recipient Indian Tribe	Quarterly Distribution from Revenue Received	Quarterly Shortfall	Total Potential Quarterly Distribution	Distributions Inception to December 31, 2012
1	Alturas Indian Rancheria[1]	146,748.10	128,251.90	$275,000.00	$12,238,385.42
2	Augustine Band of Cahuilla Indians[2]	.00	.00	.00	1,238,385.42
3	Bear River Band of the Rohnerville Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
4	Big Lagoon Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
5	Big Pine Paiute Tribe of the Owens Valley	146,748.10	128,251.90	275,000.00	12,238,385.42
6	Big Sandy Rancheria of Western Mono Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
7	Big Valley Band of Pomo Indians of the Big Valley Rancheria	146,748.10	128,251.90	275,000.00	4,950,000.00
8	Bishop Paiute Tribe	146,748.10	128,251.90	275,000.00	12,238,385.42
9	Blue Lake Rancheria [2]	.00	.00	.00	1,788,385.42
10	Bridgeport Indian Colony	146,748.10	128,251.90	275,000.00	12,238,385.42
11	Buena Vista Rancheria of Me-Wuk Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
12	Cahto Tribe	146,748.10	128,251.90	275,000.00	12,238,385.42
13	Cahuilla Band of Mission Indians of the Cahuilla Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
14	California Valley Miwok Tribe [1]	146,748.10	128,251.90	275,000.00	12,238,385.42
15	Campo Band of Diegueno Mission Indians of the Campo Indian Reservation [2]	.00	.00	.00	538,034.21
16	Cedarville Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
17	Chemehuevi Indian Tribe of the Chemehuevi Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
18	Cher-Ae Heights Indian Community of the Trinidad Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
19	Chicken Ranch Rancheria of Me-Wuk Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
20	Cloverdale Rancheria of Pomo Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
21	Cold Springs Rancheria of Mono Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42

Exhibit 1

Revenue Sharing Trust Fund Distribution

Total Amount of Distribution for the Quarter Ended December 31, 2012

	Recipient Indian Tribe	Quarterly Distribution from Revenue Received	Quarterly Shortfall	Total Potential Quarterly Distribution	Distributions Inception to December 31, 2012
22	Colorado River Indian Tribes of the Colorado River Indian Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
23	Cortina Indian Rancheria of Wintun Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
24	Coyote Valley Reservation	146,748.10	128,251.90	275,000.00	8,250,000.00
25	Death Valley Timbi-Sha Shoshone Tribe	146,748.10	128,251.90	275,000.00	12,238,385.42
26	Dry Creek Rancheria of Pomo Indians of California[2]	.00	.00	.00	1,513,385.42
27	Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria [1]	146,748.10	128,251.90	275,000.00	12,238,385.42
28	Elk Valley Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
29	Enterprise Rancheria of Maidu Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
30	Ewiiaapaayp Band of Kumeyaay Indians	146,748.10	128,251.90	275,000.00	12,238,385.42
31	Federated Indians of Graton Rancheria	146,748.10	128,251.90	275,000.00	11,817,594.03
32	Fort Bidwell Indian Community of the Fort Bidwell Reservation of California	146,748.10	128,251.90	275,000.00	12,238,385.42
33	Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
34	Fort Mojave Indian Tribe of Arizona, California & Nevada	146,748.10	128,251.90	275,000.00	12,238,385.42
35	Greenville Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
36	Grindstone Indian Rancheria of Wintun-Wailaki Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
37	Guidiville Rancheria of California	146,748.10	128,251.90	275,000.00	12,238,385.42
38	Habematolel Pomo of Upper Lake	146,748.10	128,251.90	275,000.00	12,238,385.42
39	Hoopa Valley Tribe	146,748.10	128,251.90	275,000.00	12,238,385.42
40	Hopland Band of Pomo Indians of the Hopland Rancheria[2]	.00	.00	.00	441,306.53

Exhibit 1

Revenue Sharing Trust Fund Distribution

Total Amount of Distribution for the Quarter Ended December 31, 2012

	Recipient Indian Tribe	Quarterly Distribution from Revenue Received	Quarterly Shortfall	Total Potential Quarterly Distribution	Distributions Inception to December 31, 2012
41	Iipay Nation of Santa Ysabel[1]	146,748.10	128,251.90	275,000.00	12,238,385.42
42	Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
43	Ione Band of Miwok Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
44	Jamul Indian Village of California	146,748.10	128,251.90	275,000.00	12,238,385.42
45	Karuk Tribe of California	146,748.10	128,251.90	275,000.00	12,238,385.42
46	Kashia Band of Pomo Indians of the Stewarts Point Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
47	La Jolla Band of Luiseno Indians	146,748.10	128,251.90	275,000.00	12,238,385.42
48	La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
49	Lone Pine Paiute-Shoshone Tribe	146,748.10	128,251.90	275,000.00	12,238,385.42
50	Los Coyotes Band of Cahuilla and Cupeno Indians	146,748.10	128,251.90	275,000.00	12,238,385.42
51	Lower Lake Rancheria	146,748.10	128,251.90	275,000.00	11,817,594.03
52	Lytton Rancheria of California	146,748.10	128,251.90	275,000.00	12,238,385.42
53	Manchester Band of Pomo Indians of the Manchester Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
54	Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
55	Mechoopda Indian Tribe of Chico Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
56	Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
57	Middletown Rancheria of Pomo Indians of California[2]	.00	.00	.00	482,578.08
58	Northfork Rancheria of Mono Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42

Exhibit 1

Revenue Sharing Trust Fund Distribution

Total Amount of Distribution for the Quarter Ended December 31, 2012

	Recipient Indian Tribe	Quarterly Distribution from Revenue Received	Quarterly Shortfall	Total Potential Quarterly Distribution	Distributions Inception to December 31, 2012
59	Pala Band of Luiseno Mission Indians of the Pala Reservation[2]	.00	.00	.00	482,578.08
60	Paskenta Band of Nomlaki Indians of California[2]	.00	.00	.00	688,385.42
61	Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation[2]	.00	.00	.00	482,578.08
62	Picayune Rancheria of Chukchansi Indians of California[2]	.00	.00	.00	1,513,385.42
63	Pinoleville Pomo Nation	146,748.10	128,251.90	275,000.00	12,238,385.42
64	Pit River Tribe (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)	146,748.10	128,251.90	275,000.00	12,238,385.42
65	Potter Valley Tribe	146,748.10	128,251.90	275,000.00	12,238,385.42
66	Quartz Valley Indian Community of the Quartz Valley Reservation of California	146,748.10	128,251.90	275,000.00	12,238,385.42
67	Quechan Tribe of the Fort Yuma Indian Reservation[2]	.00	.00	.00	7,838,385.42
68	Ramona Band of Cahuilla	146,748.10	128,251.90	275,000.00	12,238,385.42
69	Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California	146,748.10	128,251.90	275,000.00	12,238,385.42
70	Resighini Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
71	Rincon Band of Luiseno Mission Indians of the Rincon Reservation[2]	.00	.00	.00	441,306.53
72	Round Valley Indian Tribes, Round Valley Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
73	San Pasqual Band of Diegueno Mission Indians of California[2]	.00	.00	.00	482,578.08
74	Santa Rosa Band of Cahuilla Indians	146,748.10	128,251.90	275,000.00	12,238,385.42

Exhibit 1

Revenue Sharing Trust Fund Distribution

Total Amount of Distribution for the Quarter Ended December 31, 2012

	Recipient Indian Tribe	Quarterly Distribution from Revenue Received	Quarterly Shortfall	Total Potential Quarterly Distribution	Distributions Inception to December 31, 2012
75	Scotts Valley Band of Pomo Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
76	Sherwood Valley Rancheria of Pomo Indians of California	146,748.10	128,251.90	275,000.00	12,238,385.42
77	Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract)[2]	.00	.00	.00	7,563,385.42
78	Smith River Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
79	Susanville Indian Rancheria	146,748.10	128,251.90	275,000.00	12,238,385.42
80	Tejon Indian Tribe	146,748.10	128,251.90	275,000.00	1,084,890.00
81	Torres Martinez Desert Cahuilla Indians	146,748.10	128,251.90	275,000.00	12,238,385.42
82	Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California[2]	.00	.00	.00	482,578.08
83	United Auburn Indian Community of the Auburn Rancheria of California[2]	.00	.00	.00	1,513,385.42
84	Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
85	Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)	146,748.10	128,251.90	275,000.00	12,238,385.42
86	Wilton Rancheria	146,748.10	128,251.90	275,000.00	3,919,505.49
87	Wiyot Tribe	146,748.10	128,251.90	275,000.00	12,238,385.42
88	Yurok Tribe of the Yurok Reservation	146,748.10	128,251.90	275,000.00	12,238,385.42
	Total	**$10,565,863.20**	**$9,234,136.80**	**$19,800,000.00**	**$877,063,642.30**

Footnotes:

[1] Distribution to the California Valley Miwok Tribe is withheld pending resolution of Tribal leadership dispute and Iipay Nation of Santa Ysabel is withheld pending federal court litigation.

[2] No longer an eligible recipient Tribe, however previously received RSTF distributions.

Exhibit 2

Revenue Sharing Trust Fund

Amount of Revenue from Each Compact Tribe Received by the Commission through the Quarter Ending December 31, 2012

	Compact Tribe	Revenue Received Fiscal Year to Date	Revenue Received Inception to Date
1	Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation	$1,000,000.00	$14,327,953.20
2	Alturas Indian Rancheria	0.00	375,000.00
3	Augustine Band of Cahuilla Indians	45,000.00	631,741.27
4	Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation	368,175.00	9,297,175.27
5	Bear River Band of the Rohnerville Rancheria	0.00	0.00
6	Berry Creek Rancheria of Maidu Indians of Califomia	97,200.00	1,228,270.68
7	Big Sandy Rancheria of Western Mono Indians of California	0.00	0.00[1]
8	Big Valley Band of Pomo Indians of the Big Valley Rancheria	22,500.00	568,171.23
9	Blue Lake Rancheria	0.00	566,250.00
10	Buena Vista Rancheria of Me-Wuk Indians of California	0.00	0.00[1]
11	Cabazon Band of Mission Indians	1,030,612.50	13,759,781.91
12	Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria	180,000.00	1,165,808.22
13	Cahto Tribe	0.00	0.00
14	Cahuilla Band of Mission Indians of the Cahuilla Reservation	0.00	125,000.00
15	Campo Band of Diegueno Mission Indians of the Campo Indian Reservation	22,500.00	568,171.23
16	Chemehuevi Indian Tribe of the Chemehuevi Reservation	0.00	0.00[1]
17	Cher-Ae Heights Indian Community of the Trinidad Rancheria	0.00	0.00
18	Chicken Ranch Rancheria of Me-Wuk Indians of California	0.00	0.00
19	Dry Creek Rancheria of Pomo Indians of California	667,500.00	16,855,746.58
20	Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria	0.00	0.00

Exhibit 2

Revenue Sharing Trust Fund

Amount of Revenue from Each Compact Tribe Received by the Commission through the Quarter Ending December 31, 2012

	Compact Tribe	Revenue Received Fiscal Year to Date	Revenue Received Inception to Date
21	Elk Valley Rancheria	0.00	62,500.00
22	Ewiiaapaayp Band of Kumeyaay Indians	0.00	2,437,433.22
23	Hoopa Valley Tribe	0.00	0.00
24	Hopland Band of Pomo Indians of the Hopland Rancheria	0.00	3,368,042.68
25	Jackson Rancheria of Me-Wuk Indians of California	571,400.50	10,704,216.86
26	Jamul Indian Village of California	0.00	0.00
27	La Jolla Band of Luiseno Indians	0.00	0.00
28	Manchester Band of Pomo Indians of the Manchester Rancheria	0.00	0.00
29	Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation	0.00	0.00
30	Middletown Rancheria of Pomo Indians of California	0.00	437,500.00
31	Mooretown Rancheria of Maidu Indians of California	63,500.00	2,169,632.22
32	Morongo Band of Mission Indians	1,000,000.00	9,462,104.14
33	Bishop Paiute Tribe	0.00	0.00
34	Pala Band of Luiseno Mission Indians of the Pala Reservation	1,000,000.00	29,375,896.37
35	Paskenta Band of Nomlaki Indians of California	63,000.00	683,523.48
36	Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation	157,500.00	6,219,911.71
37	Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation	1,000,000.00	11,506,120.11
38	Picayune Rancheria of Chukchansi Indians of California	1,102,500.00	27,895,869.86
39	Pit River Tribe (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)	0.00	0.00
40	Quechan Tribe of the Fort Yuma Indian Reservation	0.00	0.00
41	Redding Rancheria	50,625.00	1,827,647.64
42	Resighini Rancheria	0.00	0.00

Exhibit 2

Revenue Sharing Trust Fund

Amount of Revenue from Each Compact Tribe Received by the Commission through the Quarter Ending December 31, 2012

	Compact Tribe	Revenue Received Fiscal Year to Date	Revenue Received Inception to Date
43	Rincon Band of Luiseno Mission Indians of the Rincon Reservation	768,750.00	22,493,229.46
44	Robinson Rancheria of Pomo Indians of California	0.00	337,500.00
45	San Manuel Band of Mission Indians	1,000,000.00	16,298,240.41
46	San Pasqual Band of Diegueno Mission Indians of California	1,537,500.00	21,358,366.84
47	Santa Rosa Indian Community of the Santa Rosa Rancheria	1,272,150.00	32,124,401.51
48	Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation	657,750.00	16,609,539.04
49	Sherwood Valley Rancheria of Pomo Indians of California	0.00	0.00
50	Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract)	2,300,000.00	18,481,194.25
51	Smith River Rancheria	0.00	0.00
52	Soboba Band of Luiseno Indians	432,525.00	10,346,605.59
53	Susanville Indian Rancheria	0.00	0.00
54	Sycuan Band of the Kumeyaay Nation	1,169,925.00	29,543,010.21
55	Table Mountain Rancheria of California	584,625.00	14,762,982.53
56	Tule River Indian Tribe of the Tule River Reservation	357,450.00	10,130,874.04
57	Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California	355,705.00	3,544,083.02
58	Twenty-Nine Palms Band of Mission Indians of California	689,250.00	17,404,978.77
59	United Auburn Indian Community of the Auburn Rancheria of California	1,000,000.00	21,950,312.20
60	Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation	1,000,000.00	18,694,230.34
61	Yocha Dehe Wintun Nation	1,000,000.00	20,137,524.18
	Totals	**$22,567,643.00**	**$439,836,540.27**
	Interest	111,941.48	9,136,206.38
	Grand Totals	**$22,679,584.48**	**$448,972,746.65**

Footnotes:

1. Prepayment receipts were returned to payor Tribes for the return of unused putative gaming device licenses issued by Sides Accountancy Corporation. Licenses in equal number were issued by the Commission on September 5, 2002 resulting in $2,137,500 in prepayment fees to the Fund.

EXHIBIT 3
CALIFORNIA GAMBLING CONTROL COMMISSION
0366 - INDIAN GAMING REVENUE SHARING TRUST FUND
FUND CONDITION STATEMENT
For the Six Months Ended December 31, 2012
Cash Basis

BEGINNING BALANCE	$	33,848,201.52
REVENUES AND TRANSFERS		
Revenues:		
150300 Income from surplus money investments		111,941.48
216900 License fees held in trust		22,567,643.00
Transfer from the SDF to the RSTF for shortfall per Item 0855-111-0367, Budget Act of 2012		33,500,000.00
Totals, Revenues		56,179,584.48
Totals, Resources		90,027,786.00
EXPENDITURES		
Disbursements to Eligible Indian Recipient Tribes		38,500,000.00
Totals, Expenditures		38,500,000.00
FUND BALANCE, prior to distribution		51,527,786.00
Pending distribution		19,250,000.00
Disbursements held on behalf of the California Valley Miwok Tribe pending identification of Tribal government		8,763,001.99
Disbursements held on behalf of the Iipay Nation of Santa Ysabel		825,000.00
Interest due to Tribes[1]		420,769.21
Assembly Bill No. 673 (Chapter 210, Statutes of 2003) and Government Code Section 12012.90 reserve pending resolution		275,000.00
FUND BALANCE, after distribution[2]	$	21,994,014.80

Footnotes:
1. Accrued interest on previously held distributions in the amount of $420,247.17 and $522.04 as of Quarter Ending December 31, 2012 for California Valley Miwok Tribe and Iipay Nation of Santa Ysabel, pending distribution.

2. The fund balance represents the cash basis balance as identified by the Commission since inception of the Fund. This balance may not agree with the State Controller's fund balance, which is reported on an accrual basis. Additional reconciling items may exist that have not been identified.

EXHIBIT "12"

CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES
October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
1	Alturas Indian Rancheria	Desert Rose Casino	Alturas	Modoc
2	Bear River Band of the Rohnerville Rancheria	Bear River Casino	Loleta*	Humboldt
3	Big Lagoon Rancheria	N/A	Arcata*	Humboldt
4	Big Pine Paiute Tribe of the Owens Valley *(previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation)*	N/A	Big Pine*	Inyo
5	Big Sandy Rancheria of Western Mono Indians of California *(previously listed as the Big Sandy Rancheria of Mono Indians of California)*	Mono Wind Casino	Auberry*	Fresno
6	Big Valley Band of Pomo Indians of the Big Valley Rancheria	Konocti Vista Casino	Lakeport*	Lake
7	Bishop Paiute Tribe *(previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony)*	Paiute Palace Casino	Bishop*	Inyo
8	Bridgeport Indian Colony *(previously listed as the Bridgeport Paiute Indian Colony of California)*	N/A	Bridgeport*	Mono
9	Buena Vista Rancheria of Me-Wuk Indians of California	N/A	Sacramento*	Sacramento
10	Cahto Tribe *(previously listed as the Cahto Indian Tribe of the Laytonville Rancheria)*	Red Fox Casino	Laytonville*	Mendocino
11	Cahuilla Band of Mission Indians of the Cahuilla Reservation	Cahuilla Casino	Anza	Riverside
12	California Valley Miwok Tribe	N/A	Stockton*	San Joaquin
13	Cedarville Rancheria	N/A	Alturas*	Modoc
14	Chemehuevi Indian Tribe of the Chemehuevi Reservation	Havasu Landing Resort & Casino	Lake Havasu*	San Bernardino
15	Cher-Ae Heights Indian Community of the Trinidad Rancheria	Cher-Ae Heights Casino	Trinidad	Humboldt
16	Chicken Ranch Rancheria of Me-Wuk Indians of California	Chicken Ranch Bingo & Casino	Jamestown*	Tuolumne
17	Cloverdale Rancheria of Pomo Indians of California	N/A	Cloverdale	Sonoma
18	Cold Springs Rancheria of Mono Indians of California	N/A	Tollhouse*	Fresno
19	Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California	N/A	Parker, AZ[1]	
20	Cortina Indian Rancheria of Wintun Indians of California	N/A	Williams*	Colusa
21	Coyote Valley Reservation *(formerly Coyote Valley Band of Pomo Indians of California)*	Coyote Valley Casino	Redwood Valley	Mendocino
22	Death Valley Timbi-sha Shoshone Tribe *(previously listed as the Death Valley Timbi-Sha Shoshone Band of California)*	N/A	Death Valley	Inyo
23	Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria	N/A	Clearlake Oaks	Lake
24	Elk Valley Rancheria	Elk Valley Casino	Crescent City	Del Norte
25	Enterprise Rancheria of Maidu Indians of California	N/A	Oroville*	Butte

*Tribal Headquarters.

[1] The Colorado Valley Indian Tribes are located in California and Arizona. Tribal Headquarters are located in Parker, Arizona.

CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES
October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
26	Ewiiaapaayp Band of Kumeyaay Indians	N/A	Alpine*	San Diego
27	Federated Indians of Graton Rancheria	N/A	Rohnert Park*	Sonoma
28	Fort Bidwell Indian Community of the Fort Bidwell Reservation of California	N/A	Fort Bidwell*	Modoc
29	Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation	N/A	Fort Independence	Inyo
30	Fort Mojave Indian Tribe of Arizona, California & Nevada	N/A	Needles*	San Bernardino
31	Greenville Rancheria *(previously listed as the Greenville Rancheria of Maidu Indians of California)*	N/A	Greenville*	Plumas
32	Grindstone Indian Rancheria of Wintun-Wailaki Indians of California	N/A	Elk Creek*	Glenn
33	Guidiville Rancheria of California	N/A	Talmage*	Mendocino
34	Habematolel Pomo of Upper Lake	Running Creek Casino	Upper Lake	Lake
35	Hoopa Valley Tribe	Lucky Bear Casino	Hoopa	Humboldt
36	Iipay Nation of Santa Ysabel *(previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)*	Santa Ysabel Casino	Santa Ysabel*	San Diego
37	Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation	N/A	Escondido*	San Diego
38	Ione Band of Miwok Indians of California	N/A	Plymouth*	Amador
39	Jamul Indian Village of California	N/A	Jamul*	San Diego
40	Karuk Tribe *(previously listed as the Karuk Tribe of California)*	N/A	Happy Camp*	Siskiyou
41	Kashia Band of Pomo Indians of the Stewarts Point Rancheria	N/A	Santa Rosa*	Sonoma
42	La Jolla Band of Luiseno Indians *(previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)*	N/A[2]	Pauma Valley	San Diego
43	La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation	La Posta Casino[3]	Boulevard*	San Diego
44	Lone Pine Paiute-Shoshone Tribe *(previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation)*	N/A	Lone Pine*	Inyo
45	Los Coyotes Band of Cahuilla and Cupeno Indians *(previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)*	N/A	Warner Springs*	San Diego
46	Lower Lake Rancheria	N/A	Healdsburg*	Sonoma
47	Lytton Rancheria of California	N/A[4]	Healdsburg	Sonoma
48	Manchester Band of Pomo Indians of the Manchester Rancheria *(previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria)*	Garcia River Casino	Point Arena	Mendocino

*Tribal Headquarters.
[2] La Jolla Band of Luiseno Indians' casino closed in August 2004.
[3] La Posta Band of Diegueno Mission Indians' casino closed on October 22, 2012.
[4] The Lytton Rancheria operates a card room (Casino San Pablo) with Class II gaming.

CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES
October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
49	Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation	N/A	Boulevard*	San Diego
50	Mechoopda Indian Tribe of Chico Rancheria	N/A	Chico	Butte
51	Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation	N/A	Santa Ysabel*	San Diego
52	Northfork Rancheria of Mono Indians of California	N/A	North Fork*	Madera
53	Pinoleville Pomo Nation *(previously listed as the Pinoleville Rancheria of Pomo Indians of California)*	N/A	Ukiah*	Mendocino
54	Pit River Tribe (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek, and Roaring Creek Rancherias)	Pit River Casino	Burney	Shasta
55	Potter Valley Tribe	N/A	Ukiah*	Mendocino
56	Quartz Valley Indian Community of the Quartz Valley Reservation of California	N/A	Fort Jones	Siskiyou
57	Ramona Band of Cahuilla *(previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)*	N/A	Anza	Riverside
58	Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California *(previously listed as the Redwood Valley Rancheria of Pomo Indians of California)*	N/A	Redwood Valley	Mendocino
59	Resighini Rancheria	N/A[5]	Klamath	Del Norte
60	Round Valley Indian Tribes, Round Valley Reservation *(previously listed as the Round Valley Indian Tribes of the Round Valley Reservation)*	N/A	Covelo	Mendocino
61	Santa Rosa Band of Cahuilla Indians *(previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)*	N/A	Hemet*	Riverside
62	Scotts Valley Band of Pomo Indians of California	N/A	Kelseyville*	Lake
63	Sherwood Valley Rancheria of Pomo Indians of California	Sherwood Valley Rancheria Casino	Willits	Mendocino
64	Smith River Rancheria	Lucky 7 Casino	Smith River	Del Norte
65	Susanville Indian Rancheria	Diamond Mountain Casino & Hotel	Susanville*	Lassen
66	Tejon Indian Tribe[6]	N/A	Bakersfield	Kern
67	Torres Martinez Desert Cahuilla Indians *(previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)*	Red Earth Casino	Thermal*	Riverside
68	Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation	N/A	Benton*	Mono
69	Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)	N/A	Gardnerville, NV[7]	

*Tribal Headquarters.

[5] The Resighini Rancheria's casino closed in July 2007.

[6] The Tejon Indian Tribe was federally recognized on January 6, 2012 and is RSTF eligible tribe.

[7] The Washoe Tribe of Nevada and California is located in both states. Tribal Headquarters is located in Gardnerville, Nevada.

CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES
October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
70	Wilton Rancheria	N/A	Sacramento Valley	Sacramento
71	Wiyot Tribe *(previously listed as the Table Bluff Reservation—Wiyot Tribe)*	N/A	Loleta	Humboldt
72	Yurok Tribe of the Yurok Reservation	N/A	Klamath	Del Norte

Note: Each eligible RSTF recipient receives $275,000.00 per quarter, for a sum of $1.1 million per fiscal year.

Federally Recognized Tribes in California
by the Department of Interior/Bureau of Indian Affairs
August 10, 2012

Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation
Alturas Indian Rancheria
Augustine Band of Cahuilla Indians (previously listed as the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation
Bear River Band of the Rohnerville Rancheria
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria
Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation)
Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California)
Big Valley Band of Pomo Indians of the Big Valley Rancheria
Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony)
Blue Lake Rancheria
Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California)
Buena Vista Rancheria of Me-Wuk Indians of California
Cabazon Band of Mission Indians
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria
Cahto Tribe (previously listed as the Cahto Indian Tribe of the Laytonville Rancheria)
Cahuilla Band of Mission Indians of the Cahuilla Reservation
California Valley Miwok Tribe
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation
Cedarville Rancheria
Chemehuevi Indian Tribe of the Chemehuevi Reservation
Cher-Ae Heights Indian Community of the Trinidad Rancheria
Chicken Ranch Rancheria of Me-Wuk Indians of California
Cloverdale Rancheria of Pomo Indians of California
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Cortina Indian Rancheria of Wintun Indians of California
Coyote Valley Reservation (formerly Coyote Valley Band of Pomo Indians of California)
Death Valley Timbi-sha Shoshone Tribe (previously listed as Death Valley Timbi-Sha Shoshone Band of California)
Dry Creek Rancheria Band of Pomo Indians (previously listed as the Dry Creek Rancheria of Pomo Indians of California)
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria
Elk Valley Rancheria
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians
Federated Indians of Graton Rancheria
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation
Fort Mojave Indian Tribe of Arizona, California & Nevada
Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California)
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake
Hoopa Valley Tribe

Federally Recognized Tribes in California
by the Department of Interior/Bureau of Indian Affairs
August 10, 2012

Hopland Band of Pomo Indians (formerly Hopland Band of Pomo Indians of the Hopland Rancheria)
Iipay Nation of Santa Ysabel (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation
Ione Band of Miwok Indians of California
Jackson Rancheria of Me-Wuk Indians of California
Jamul Indian Village of California
Karuk Tribe (previously listed as the Karuk Tribe of California)
Kashia Band of Pomo Indians of the Stewarts Point Rancheria
La Jolla Band of Luiseno Indians (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation
Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation)
Los Coyotes Band of Cahuilla and Cupeno Indians (previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
Lower Lake Rancheria
Lytton Rancheria of California
Manchester Band of Pomo Indians of the Manchester Rancheria (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria)
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation
Mechoopda Indian Tribe of Chico Rancheria
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation
Middletown Rancheria of Pomo Indians of California
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Mission Indians (previously listed as the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
Northfork Rancheria of Mono Indians of California
Pala Band of Luiseno Mission Indians of the Pala Reservation
Paskenta Band of Nomlaki Indians of California
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation (previously listed as the Pinoleville Rancheria of Pomo Indians of California)
Pit River Tribe (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Potter Valley Tribe
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Ramona Band of Cahuilla (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)
Redding Rancheria
Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California)
Resighini Rancheria
Rincon Band of Luiseno Mission Indians of the Rincon Reservation
Robinson Rancheria Band of Pomo Indians (previously listed as the Robinson Rancheria of Pomo Indians of California)
Round Valley Indian Tribes, Round Valley Reservation (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation)

Federally Recognized Tribes in California
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San Manuel Band of Mission Indians (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation)
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Band of Cahuilla Indians (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
Santa Rosa Indian Community of the Santa Rosa Rancheria
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation
Scotts Valley Band of Pomo Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract)
Smith River Rancheria
Soboba Band of Luiseno Indians
Susanville Indian Rancheria
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria of California
Tejon Indian Tribe[1]
Torres Martinez Desert Cahuilla Indians (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tule River Indian Tribe of the Tule River Reservation
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
Wilton Rancheria
Wiyot Tribe (previously listed as the Table Bluff Reservation—Wiyot Tribe)
Yocha Dehe Wintun Nation (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California)
Yurok Tribe of the Yurok Reservation

[1] Tejon Indian Tribe was federally recognized by the Department of Interior, Bureau of Indian Affairs on January 6, 2012. The Federal Register published a Notice, *Indian Entities Recognized and Eligible To Receive Services From the Bureau of Indian Affairs* on August 10, 2012.

EXHIBIT "13"

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
1824 Tribute Road, Suite J
Sacramento, CA 95815-4308

IN REPLY REFER TO:

SEP 24 1998

Yakima K. Dixie, Spokesperson
Sheep Ranch Rancheria
11178 School Street
Sheep Ranch, California 95250

Dear Mr. Dixie:

The purpose of this correspondence is to summarize the issues discussed during a meeting held with you and Silvia Burley on September 8, 1998, at your residence on the Sheep Ranch Rancheria in Sheep Ranch, California. The purpose of the meeting was to discuss the process of formally organizing the Tribe. In attendance at this meeting from my staff was Mr. Raymond Fry, Tribal Operations Officer, and Mr. Brian Golding, Sr., Tribal Operations Specialist.

Status of the Tribe

The Sheep Ranch Rancheria is a federally recognized Tribe, as it was not lawfully terminated pursuant to the provisions of the California Rancheria Act. The California Rancheria Act provided for the termination of specific Tribes by distributing the assets of the Tribes to those persons determined eligible, and in exchange, the recipients of the assets would no longer be eligible to receive services and benefits available to Indian people. The Plan of Distribution of the Assets of the Sheep Ranch Rancheria, approved by the Associate Commissioner of Indian Affairs on October 12, 1966, identified your mother, Mabel (Hodge) Dixie as the sole distributee entitled to participate in the distribution of the assets of the Sheep Ranch Rancheria. The Distribution Plan has not been revoked.

Membership

In those situations where an "unterminated" Tribe is pursuing reorganization, the persons possessing the right to reorganize the Tribe is usually specified by the decision of the court, as the majority of "unterminated" Tribes regain federal recognition through litigation. Usually, the court decision will state that the persons possessing the right to reorganize the Tribe are those persons still living who are listed as distributees or dependent members on the federally approved Distribution Plan. In some cases the courts have extended this right of participation to the lineal descendents of distributees or dependent members, whether living or deceased.

In this case, the usual manner of determining who may reorganize the Tribe does not apply here as there is no such court decision. However, with the passing of Mabel (Hodge) Dixie, a probate was ordered, and the Administrative Law Judge issued an Order of Determination of Heirs on October 1, 1971, as reaffirmed by subsequent Order issued on April 14, 1993. The Order listed the land comprising the Sheep Ranch Rancheria as part of the estate of Mabel (Hodge) Dixie. The Order then listed the following persons as possessing a certain undivided interest in the Sheep Ranch Rancheria:

Merle Butler, husband	Undivided 1/3 interest	Deceased
Richard Dixie, son	Undivided 1/6 interest	Deceased
Yakima Dixie, son	Undivided 1/6 interest	
Melvin Dixie, son	Undivided 1/6 interest	
Tommy Dixie, son	Undivided 1/6 interest	Deceased

During our meeting, you explained to us that three of the heirs were deceased, and that the whereabouts of your brother, Melvin Dixie, were presently unknown.

We believe that for the purposes of determining the initial membership of the Tribe, we are held to the Order of the Administrative Law Judge. Based upon your statement that three of the heirs were deceased, the two remaining heirs are those persons possessing the right to initially organize the Tribe.

On August 5, 1998, as the Spokesperson of the Tribe, you accepted Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as enrolled members of the Tribe. Therefore, these persons as well, provided that they are at least eighteen years of age, possess the right to participate in the initial organization of the Tribe.

At the conclusion of our meeting, you were going to consider what enrollment criteria should be applied to future prospective members. Our understanding is that such criteria will be used to identify other persons eligible to participate in the initial organization of the Tribe. Eventually, such criteria would be included in the Tribe's Constitution.

<u>Governance</u>

Tribes that are in the process of initially organizing usually consider how they will govern themselves until such time as the Tribe adopts a Constitution through a Secretarial Election, and Secretarial approval is obtained. Agency staff explained two options for the consideration of the General Membership:

1) the members could operate as a General Council, retaining all powers and authorities, and delegating specific limited powers to a Chairperson, and

2) the members could form an interim Tribal Council, and delegate from the General Council various general powers and authorities to the interim Tribal Council.

In this case, given the small size of the Tribe, we recommend that the Tribe operate as a General Council, as described in the first option above. Enclosed for your consideration, is a draft General Council resolution (Resolution #GC-98-01) specifying general powers of the General Council and rules for governing the Tribe.

A number of the provisions of the draft resolution may be changed by the Tribe to reflect the manner in which it desires to conduct business. For instance, the first "Resolved" clause on the second page lists seven (7) specific powers to be exercised by the General Council. For the most part, this list involves those powers that the General Council would exercise in order to accomplish the initial organization process. There is no mention of other powers, such as the power to purchase land, since such a power most likely would not be used during the organization process. Rather, such a power would be used after the Tribe organizes, and would be included in the Tribe's Constitution.

Another example of a change to consider is the fourth "Resolved" clause on the second page. This clause states that regular meetings of the General Council will be held on the second Saturday of each month. The Tribe may wish to change this to a day of the week that will best meet the Tribe's needs.

Once the General Council adopted such a resolution, the General Council would then proceed to elect or appoint a Chairperson. The General Council would then be able to proceed with the conduct of business, in a manner consistent with the authorizing resolution. Additional powers can be specified by the General Council through either an amendment to the authorizing resolution, or adoption of another authorizing resolution.

Grant Funding

We discussed the fact that the Bureau of Indian Affairs makes grants, under the provisions of the Indian Self-Determination and Education Assistance Act, as amended, to Tribes for the purpose of strengthening or improving Tribal government and developing Tribal capacity to enter into future contracts. Such grants can be used to cover costs incurred by the Tribe in establishing a Tribal office, equipment and furniture, supplies, and legal assistance. In this case, we advised the Tribe that the first grant would be made in the amount of $50,000.

In order to apply for and receive funding from the Bureau, the Self-Determination Act requires that a Tribe indicate by resolution its desire to receive grant funding. Enclosed is a draft General Council resolution (Resolution #GC-98-02) which fulfills this requirement.

We discussed the nature of congressional appropriations regarding the funding that Tribes receive. We recommended that the Tribe consider reprogramming funds from various programs into the Consolidated Tribal Government program. Such reprogramming would then provide the Tribe with the greatest flexibility in using the funds in the upcoming year. As a result of our discussion, you provided the Agency staff present with a letter proscribing your reprogramming preferences. A copy of this letter is enclosed for your records.

Bureau Costs Associated with Organizing

We discussed the Bureau's role in providing technical assistance to Tribes in the process of organizing the Tribe. The Bureau receives some funding from each of the Tribes in our jurisdiction as a means of providing a minimum amount of technical assistance. But in those cases where a Tribe is pursuing formal organization, such funds are insufficient to cover all costs.

We request that the Tribe consider the adoption of the enclosed draft General Council resolution (Resolution #GC-98-03). The purpose of this resolution is to authorize the Bureau to charge expenses related to the organization of the Tribe to the Tribe's FY 1998 Tribal Priority Allocation funding. One example of a cost supporting the organization process is the purchase of death certificates for the three deceased heirs. The death certificates are necessary for the initiation of the probate process. Another example of such costs is the hiring of a new Bureau employee, or the temporary assignment of an existing Bureau employee, to work directly with the Tribe in the organization process. Such work may focus on the enrollment process, development of administrative management systems, or on issues related to governance.

Other Issues

Probates: We discussed the status of the land, and the need for additional probates to be completed to determine the status of the estates of deceased heirs. We agreed to obtain copies of the death certificates of the deceased heirs. A request for death certificates was prepared, and we expect the processing of the request by the State Office of Vital Records within the next month. Once received, we will then proceed with preparing the probates.

The fact that there are probate actions remaining to be taken directly impacts your ability to enter into a homesite lease. This is relevant to the question you asked regarding Silvia's eligibility for assistance under the Housing Improvement Program (HIP). An applicant under the HIP must demonstrate ownership or control over land, either through an assignment or a homesite lease. In this case, as the land is considered as individually-owned trust land, you and the other heirs would have to enter into a homesite lease with Ms. Burley. Other eligibility criteria exists for the HIP that are beyond the purview of this letter. We have requested that the HIP send an application to Ms. Burley for her review.

Septic Tank: With regard to the septic tank issue you brought to our attention, we researched our files and found that the house you are currently occupying was constructed under the HIP in 1967. The issue is addressed in a memorandum from the Agency Realty Officer to the Area Realty Officer, dated August 12, 1971, which states, "The 20' x 24' house was constructed in 1967 at a cost of $8,500.00 and the septic tank, installed by Phoenix Health Service, would cost about $1,500.00." We contacted the Indian Health Service, California Area Office, here in Sacramento, and inquired whether they will be able to provide maintenance services to you. We obtained their commitment to perform the work within the next couple of months. We will work with you to ensure that the work is completed in an appropriate manner.

Access to Rancheria: We discussed the notion that the driveway leading up to the Sheep Ranch Rancheria was not within the Rancheria. We agreed to look into the ownership of the driveway. Please find enclosed an Assessor's Parcel Map of a portion of the Sheep Ranch Townsite. This map shows a number of "paper" roads that do not exist today. We are currently researching the ownership of the paper roads to determine what rights the Tribe may have to assert a use right to the driveway.

Next Meeting: We agreed that another meeting was necessary to discuss the draft resolutions and additional details of the organization process. We propose that we meet on Friday, October 2, 1998, at 11:00 a.m., to be held at your residence in Sheep Ranch, California.

I thank you for your concern and positive participation in the organization process. I am certain that if we continue to work together, the organization process will be completed without undue delay. Toward this end, I extend the assistance of my staff, upon your written request.

Sincerely,

Dale Rising, Sr.
Superintendent

EXHIBIT "14"

RESOLUTION #GC-98-01

ESTABLISHING A GENERAL COUNCIL TO SERVE AS THE GOVERNING BODY OF THE SHEEP RANCH BAND OF ME-WUK INDIANS

WHEREAS, The Sheep Ranch Band of Me-Wuk Indians of the Sheep Ranch Rancheria of California ("the Tribe") was not terminated pursuant to the provisions of the Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat/ 390 ("the Rancheria Act"), and is a federally recognized Indian Tribe as confirmed by the inclusion of the Tribe in the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, as published in the Federal Register on October 23, 1997.

WHEREAS, The plan of Distribution of the Assets of the Sheep Ranch Rancheria, approved by the Associate Commissioner of Indian Affairs on October 12, 1966, identified Mabel (Hodge) Dixie as the sole distributee entitled to participate in the distribution of the assets of the Sheep Ranch Rancheria;

WHEREAS, The Bureau of Indian Affairs did not completely implement the steps necessary to effect the termination of the Tribe prior to the passing of Mabel (Hodge) Dixie;

WHEREAS, The estate of Mabel (Hodge) Dixie was probated and Order of Determination of Heirs was issued on October 1, 1971, listing the following persons as possessing a certain undivided interest in the Sheep Ranch Rancheria:

Merle Butler, husband	Undivided 1/3 interest
Richard Dixie, son	Undivided 1/6 interest
Yakima Dixie, son	Undivided 1/6 interest
Melvin Dixie, son	Undivided 1/6 interest
Tommy Dixie, son	Undivided 1/6 interest

and this Order was reaffirmed by another Order issued on April 14, 1993;

WHEREAS, The surviving heirs are believed to be Yakima and Melvin Dixie, as the other heirs are or are believed to be deceased, and their heirs are in the process of requesting the estates of the deceased heirs be probated, and it is believed that the deceased heirs had no issue;

WHEREAS, The whereabouts of Melvin Dixie are unknown;

WHEREAS, The membership of the Tribe currently consists of at least the following individuals; Yakima Dixie, Silvia Fawn Burley, Rashel Kawehilani Reznor, Anjelica Josett Paulk, and Tristian Shawnee Wallace; this membership may change in the future consistent with the Tribe's ratified constitution and any duly

enacted Tribal membership statutes.

WHEREAS, The Tribe, on June 12, 1935, voted to accept the terms of the Indian Reorganization Act (P.L. 73-383; 48 Stat. 984) but never formally organized pursuant to federal statute, and now desires to pursue the formal organization of the Tribe; now, therefore, be it

RESOLVED, That Yakima Dixie, Silvia Fawn Burley, and Rashel Kawehilani Reznor, as a majority of the adult members of the Tribe, hereby establishes a General Council to serve as the governing body of the Tribe;

RESOLVED, That the General Council shall consist of all members of the Tribe who are at least eighteen years of age, and each member shall have one vote;

RESOLVED, That the General Council shall have the following specific powers to exercise in the best interest of the Tribe and its members:

(a) To consult, negotiate, contract, or conclude agreements with the Bureau of Indian Affairs, for the purpose of furthering the development and adoption of a Constitution;
(b) To administer assets received from such agreements specified in (a) above, including the power to establish bank accounts and designate signers thereupon;
(c) To administer the day-to-day affairs related to such agreements specified in (a) above;
(d) To develop and adopt policies and procedures regarding personnel, financial management, procurement and property management, and other such policies and procedures necessary to comply with all laws, regulations, rules, and policies related to funding received from such agreements specified in (a) above;
(e) To employ legal counsel for the purpose of assisting in the development of the Constitution and the policies and procedures specified in (d) above, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior or his authorized representative;
(f) To receive advice from and make recommendations to the Secretary of the Interior with regard to all appropriation estimates or federal projects for the benefit of the Tribe prior to the submission of such estimates to the Office of Management and Budget and to Congress;
(g) To faithfully advise the General Council of all activities provided for in this resolution at each regularly scheduled meeting of the General Council;
(h) To purchase real property and put such real property into trust with the United States government for the benefit of the Tribe;

RESOLVED, That all other inherent rights and powers not specifically listed herein shall vest in the General Council, provided that the General Council may specifically list such other rights and powers through subsequent resolution of the General Council;

RESOLVED, That 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, provided that in the absence of the Chairperson, a Chairperson Pro Tem shall be appointed from members convening the meeting;

RESOLVED, That the Chairperson shall notice and convene regular meetings of the General Council on the second Saturday of each month following the adoption of this resolution, provided that special meetings of the General Council may be called by the Chairperson upon providing a least fifteen (15) days notice stating the purpose of the meeting;

RESOLVED, That the Chairperson shall call a special meeting of the General Council, within thirty (30) days of receipt of a petition stating the purpose of the meeting, signed by at least fifty-one percent (51%) of the General Council, and the Chairperson shall provide at least fifteen (15) days notice stating the purpose of the meeting, provided that at such meeting, it shall be the first duty of the General Council to determine the validity of the petition;

RESOLVED, That the General Council shall elect from among its members 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;

RESOLVED, That the quorum requirement for meetings of the General Council shall be conducted pursuant to Robert's Rules of Order;

RESOLVED, That the General Council shall exist until a Constitution is formally adopted by the Tribe and approved by the Secretary of the Interior or his authorized representative, unless this resolution is rescinded through subsequent resolution of the General Council.

CERTIFICATION

We, the undersigned as a majority of the adult members of the General Council of the Sheep Ranch Band of Me-Wuk Indians of the Sheep Ranch Rancheria of California ("the Tribe"), do hereby certify that at a duly noticed, called, and convened special meeting of the General Council held on Thursday, in Sheep Ranch, California, where a quorum was present, this resolution was adopted by a vote of 2 in favor, 0 opposed, and 0 abstaining. We further certify that this resolution has not been rescinded, amended, or modified in any way.

Dated this 5 day of November, 1998:

Yakima Dixie
Yakima Dixie

Silvia Burley
Silvia Burley

Rashel Reznor

EXHIBIT "15"

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
1824 Tribute Road, Suite J
Sacramento, CA 95815-4308

IN REPLY REFER TO:

MAR -7 2000

Silvia Burley, Chairperson
Sheep Ranch Rancheria
1055 Winter Court
Tracy, California 95376

Dear Ms. Burley:

The purpose of this correspondence is to provide you with a summary of the discussion that occurred during a meeting on February 15, 2000, held at the Central California Agency (Agency), with Yakima Dixie, Vice-Chairperson of the Sheep Ranch Rancheria (Tribe), his brother Melvin Dixie, and other interested parties. The summary responds to the concerns you expressed in your letter dated February 15, 2000. We also respond to your requests expressed in your letter dated February 24, 2000.

The Meeting of February 15, 2000

At the request of Yakima Dixie, Vice-Chairperson, which he made during a meeting at the Agency with him and other interested parties on December 28, 1999, we scheduled a meeting to be held at the Agency on February 15, 2000. As explained in our February 4, 2000, letters to you and to Mr. Dixie, the purpose of that meeting was to discuss the issues raised in those letters, as well as steps the Tribe may take to resolve this matter internally. Mr. Dixie also requested that only members of the General Council and one non-attorney representative for each side participate in that meeting. We understood Mr. Dixie's request as a desire to ensure a free exchange of ideas among those persons comprising the body possessing authority to decide the issues.

By letters dated February 9, 2000, you informed the Agency that the Tribe concluded that the February 15, 2000, meeting was inconsistent with Tribal management of its own affairs. On that basis, you and Rashel Reznor declined to participate in that meeting.

On February 15, 2000, we informed Yakima Dixie, his brother Melvin Dixie, and other interested parties, of the decision of Rashel Reznor and you not to participate in the scheduled meeting. However, Yakima Dixie requested a brief meeting with us to address general questions arising from our February 4, 2000, letter to him. We agreed to meet for that limited purpose. The following is a summary of the ensuing discussion.

At the outset of the meeting, we reiterated to the parties present the Agency's position that the issues raised in our letter of February 4, 2000, are internal matters. As such, the parties present needed to seek redress within the appropriate Tribal forum empowered to process and decide such issues. We also reiterated our view, notwithstanding a Tribal decision to the contrary, that the appropriate Tribal forum is the General Council. At present, we view, again notwithstanding

a Tribal decision to the contrary, the General Council as comprised of Yakima Dixie, Rashel Reznor, and you. The rights of Melvin Dixie, Rocky McKay, and other interested parties, to participate in the governance of the Tribe are to be determined by the appropriate Tribal forum, and are further discussed below.

Your Membership Status

The discussion then turned to the assertion by Yakima Dixie that his act of August 5, 1998, to accept Rashel Reznor, Anjelica Paulk, Tristian Wallace, and you, as enrolled members of the Tribe was a limited enrollment. He explained that he intended only to grant to the four of you such membership rights necessary to qualify the four of you for services offered by the Bureau of Indian Affairs to members of federally recognized tribes. Yakima Dixie stated that his intent was consistent with the context in which you originally approached him, seeking a means of obtaining additional assistance after such assistance previously provided to you by the Jackson Rancheria was discontinued. As evidence of his position, Yakima Dixie produced videotape of a meeting held at Yakima Dixie's residence on or about October 16, 1998, at which representatives from the Agency and the California Indian Legal Services were present. We viewed a portion of the videotape documenting a discussion of your potential eligibility as a member of the Tribe to receive scholarship, housing, and other assistance. Afterward, we expressed our view that it was unlikely that the Tribe would find such a limitation on your enrollment expressed in the videotape. Further, we pointed out the fact, as stated in our letter of February 4, 2000, that the documents signed by Yakima Dixie to effect your enrollment expressed no such limitation. Moreover, we explained that Yakima Dixie's subsequent actions tended to establish the contrary view that you possess full rights of membership, since Mr. Dixie only objected to your participation in the deliberations of the decision-making body of the Tribe many months after the transition in leadership.

Allegations of Fraud or Misconduct

The discussion then turned to the allegations of fraud or misconduct relative to the change in Tribal leadership during April and May 1999. Yakima Dixie asked what action we were going to take. We explained that there was no action for the Agency to take, consistent with our position as expressed in our letter of February 4, 2000, that the allegations are issues properly decided within the appropriate Tribal forum. Thus, we explained, in light of federal law and policy, there was no basis for Agency involvement, since this situation is a dispute of an internal nature.

Your Decision Not to Participate in the Meeting

Yakima Dixie then asked why you and Rashel Reznor did not attend the meeting, and whether we were going to do something about your lack of participation. We explained that attendance at the meeting was not mandatory. Our reasons for fulfilling Mr. Dixie's request were threefold. First, we believed fulfilling the request was appropriate to provide a safe neutral location for the meeting. Second, by hosting a meeting at the Agency, we would assure our availability to answer general questions regarding steps the Tribe may take to resolve this matter internally. Third, we believed the meeting would assure a free exchange of ideas among the persons comprising the body possessing authority to decide the issues. However, we believed that requiring the mandatory participation of the parties would likely be viewed as an intrusion into an internal matter of the Tribe.

We also discussed your letter to Yakima Dixie, dated February 9, 2000, wherein you informed Mr. Dixie of the Tribe's decision to extend to him a thirty-day period within which to raise his concerns and present his issues to the Tribe. We reiterated to Mr. Dixie of our position that, where issues are internal in nature, their resolution must be sought within the appropriate Tribal forum. In light of your letter and consistent with our position, we suggested that Mr. Dixie send to the Tribe a letter stating his claims and requesting a hearing. Moreover, we recommended Mr. Dixie provide the Tribe with notice of that address where he expected delivery of notices of Tribal meetings and other correspondence to occur. We also suggested that Mr. Dixie inform the Tribe of any circumstances which may limit his ability to participate in Tribal affairs, such as a lack of access to transportation or an inability to pay out-of-pocket costs of transportation. If Mr. Dixie believes such circumstances exist, he should request financial assistance from the Tribe or suggest alternatives he believes may reduce or eliminate potential barriers to his participation in Tribal affairs. We also suggested that Mr. Dixie provide the Agency with a courtesy copy of such a notice. To date, no such courtesy copy has been received at the Agency.

Ability of Rocky McKay to Participate

During the meeting, Rocky McKay presented us with an original affidavit from his mother, Wanda Lewis, wherein she states that Yakima Dixie is the true father of Mr. McKay. We briefly reviewed the document. We then expressed our view that Mr. McKay may be entitled to participate in the organization of the Tribe, if he can establish that he is a lineal descendant of Yakima Dixie, one of the heirs now living listed in the Order of Determination of Heirs issued on November 1, 1971, as reaffirmed by subsequent Order issued on April 14, 1993. Further, we informed Mr. McKay that the subject of what evidence is acceptable for establishing his lineal descendancy is an internal matter to be determined by the Tribe. Thus, Mr. McKay's ability to participate in the organization of the Tribe also depends upon whether he can provide that type of evidence determined by the Tribe to be acceptable for purposes of establishing lineal descendancy.

We then recommended that Rocky McKay provide to the Tribe a written request to be enrolled as a member of the Tribe. We also recommended that Mr. McKay enclose with his request any documents and other evidence he believed to be acceptable for establishing his lineal descendancy.

By way of a letter dated February 25, 2000, we informed Rocky McKay that the Tribe would likely view the affidavit from Wanda Lewis as insufficient evidence of Yakima Dixie's paternity. In general, where the Bureau of Indian Affairs is performing enrollment functions, a valid affidavit from the purported father is acceptable evidence of paternity. However, as stated previously, the subject of what evidence is acceptable for establishing paternity is an internal matter to be determined by the Tribe. Thus, we recommended that Mr. McKay obtain from Yakima Dixie a notarized affidavit asserting his paternity. We also recommended that Mr. McKay seek an amendment to his birth certificate, since Yakima Dixie is not named therein as the father. We further recommended that Mr. McKay request financial and technical assistance from the Tribe in obtaining an affidavit or any other evidence the Tribe may determine to be necessary to establish his eligibility for enrollment and membership in the Tribe.

In our February 25, 2000, letter to Rocky McKay, we expressed the view that the letter accompanying his correspondence dated November 22, 1999, from Yakima Dixie declaring his adoption of Mr. McKay as a member of the Tribe would likely be viewed by the Tribe as ineffective. Copies of these documents were faxed by the Agency to you on December 7, 1999. We also informed Mr. McKay that in general, only the Tribe, acting at a duly noticed, called, and convened meeting at which a quorum is present, is the proper body to consider and effect his enrollment in the Tribe.

Ability of Melvin Dixie to Participate

Also during the February 15, 2000, meeting, we discussed the right of Melvin Dixie to participate in the organization of the Tribe. We advised Melvin Dixie that he is entitled to participate in the organization of the Tribe because he is one of the heirs now living listed in the Order of Determination of Heirs issued on November 1, 1971, as reaffirmed by subsequent Order issued on April 14, 1993. We then recommended Mr. Dixie provide to the Tribe written notice of his present address and telephone number, as the present leadership and administration of the Tribe must have such information in order to deliver proper and timely notice of Tribal meetings. We further advised Mr. Dixie to inform the Tribe of any circumstances which may limit his ability to participate in Tribal affairs, such as a lack of access to transportation or an inability to pay out-of-pocket costs of transportation. If Mr. Dixie believes such circumstances exist, he should request financial assistance from the Tribe or suggest alternatives he believes may reduce or eliminate potential barriers to his participation in Tribal affairs.

In connection with Melvin Dixie's right to participate in the organization of the Tribe, we expressed the view that he would likely be requested to provide to the Tribe proof of his identity. We explained that the subject of what evidence is acceptable for establishing identity is an internal matter to be determined by the Tribe. Therefore, we suggested that Mr. Dixie provide written notice to the Tribe of his assertion of entitlement to participate in the organization of the Tribe, and to enclose documents and other evidence he believed to be acceptable for establishing his identity.

In a subsequent letter dated February 25, 2000, we further recommended that Melvin Dixie request financial and technical assistance from the Tribe in obtaining any other evidence the Tribe might determine to be necessary.

In the aforementioned letter, we also discussed our views related to an affidavit by Melvin Dixie. The affidavit was received at the Agency on February 1, 2000. In the affidavit, among other assertions, Melvin Dixie stated that he is the father of a son. In our letter, we recommended that Melvin Dixie provide to the Tribe a written request that his son be enrolled as a member of the Tribe. We suggested Mr. Dixie enclose with his request a photocopy of the birth certificate or provide other evidence establishing that he is the father of his son. We further suggested that Mr. Dixie obtain, if not already in his possession, a certified copy of the birth certificate naming Mr. Dixie as the father of his son. Moreover, we recommended that Melvin Dixie, should he not be named in the birth certificate, complete an affidavit asserting his paternity of his son, and have the affidavit notarized. We also suggested that Melvin Dixie seek an amendment to the birth certificate if he is not named as the father in the birth certificate. We then recommended that Melvin Dixie request assistance from the Tribe in obtaining a certified birth certificate, an affidavit, or any other evidence the Tribe might determine to be necessary to establish his son's eligibility for enrollment and membership in the Tribe.

Your Letter of February 15, 2000

As for your concern expressed in your letter of February 15, 2000, that the meeting of the same day with Yakima and Melvin Dixie and other interested parties was improper, we assure you that the meeting was completely proper. First and foremost, we agreed to meet, at the request of an officer of the Tribe's governing body, for the limited purpose of addressing general questions arising from our letter of February 4, 2000. Moreover, we reiterated to the parties present our position as expressed in our letter of February 4, 2000, that these issues are internal matters to be considered and acted upon by the appropriate Tribal forum. Thus, we believe that our actions were consistent with our responsibility to provide technical assistance, and with established policies of non-interference, deference to Tribal decision-making, and respect for Tribal self-determination and sovereignty.

Your Letter of February 24, 2000

In your letter of February 24, 2000, you requested copies of the "sworn affidavits" submitted to the Agency by Yakima Dixie "alleging fraud on the part of the Tribal Council and that Rocky McKay is his son." Unfortunately, we cannot fulfill your request, as no such documents by Mr. Dixie are maintained within the records of the Agency.

As to your statement that the Agency "refused" to provide the Tribe with information as to the address and location of Melvin Dixie, we have no record of a Tribal request for such information. Further, such information is contained in a system of records covered by the Privacy Act (5 USC § 552a). As such, we are unable to release this information to you without the express consent of Melvin Dixie. As stated above, we also suggested in our letter of February 25, 2000, that Mr. Dixie provide this information to the Tribe.

Your Letter Postmarked February 2, 2000

As for your undated letter, postmarked February 2, 2000, requesting that we forward a letter to Yakima Dixie regarding the Regular Tribal Meeting scheduled for February 7, 2000, we were unable to fulfill your request. The letter was received at the Agency on Thursday afternoon, February 3, 2000. Even if the Agency, within a twenty-four hour period, had processed and forwarded the letter via overnight mail, the meeting day of Monday, February 7, 2000, would likely be the earliest Yakima Dixie would have received the letter. Thus, we return to you the enclosed sealed envelope addressed to Yakima Dixie.

Conclusion

The issues surrounding the present leadership and membership of the Tribe are internal matters to be resolved within the appropriate Tribal forum. As a matter of policy, the Agency will not interfere in the internal matters of the Tribe. However, if in time a dispute regarding the composition of the governing body of the Tribe continues without resolution, the government-to-government relationship between the Tribe and the United States may be compromised. In such situations, the Agency will advise the Tribe to resolve the dispute internally within a reasonable period of time. The Agency will also inform the Tribe that its failure to do so may result in sanctions against the Tribe, up to and including the suspension of the government-to-government.

The Tribe, in the letter dated February 9, 2000, granted a thirty-day period of time to Yakima Dixie within which to raise his concerns and present his issues to the Tribe. This fact demonstrates that the Tribe is attempting to resolve this internal matter. We respectfully request that the Tribe inform us in writing of the action taken by the appropriate Tribal forum to resolve the dispute. We further request the Tribe's written response clearly explain what action was taken to resolve the dispute, the legal authority in Tribal law for the action, and the rationale for the action.

As always, Agency staff is available to the extent resources permit to provide the Tribe with technical assistance, upon your written request.

Should you have any questions with regard to this matter, please contact Mr. Raymond Fry, Tribal Operations Officer, at (916) 566-7124.

Sincerely,

Dale Risling, Sr.
Superintendent

Enclosure

EXHIBIT "16"

California Valley Miwok Tribe
aka: Sheep Ranch Rancheria of Me-Wuk Indians of California
1055 Winter Court, Tracy, California 95376
Phone: (209) 834-0197 srrancheria@thegrid.net Fax: (209) 834-0318
CaliforniaValleyMiwokTribe@thegrid.net

Tribal Council

GOVERNINING BODY
OF THE
CALIFORNIA VALLEY MIWOK TRIBE
aka
"Sheep Ranch Rancheria of Me-Wuk Indians of California"

RESOLUTION OF May 07, 2001

R-1-5-07-2001

RESOLUTION AUTHORIZING SUBMISSION OF A REQUEST
TO CHANGE THE NAME OF THE TRIBE
"SHEEP RANCH RANCHERIA OF ME-WUK INDIANS OF CALIFORNIA"
TO THE
"CALIFORNIA VALLEY MIWOK TRIBE" AND TO REQUEST THAT IT
BE PUBLISHED INTO THE FEDERAL REGISTER

Whereas, The Sheep Rancheria of Me-Wuk Indians is a federally recognized Tribe as acknowledged in the Federal Register/Vol. 63, No. 250/Wednesday, December 30, 1998/Notices 71941 and having the immunities and privileges available to them by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations as a tribe, and

Whereas, The Tribal Council of the Sheep Ranch Rancheria of Me-Wuk Indians of California has adopted "Draft B of March 6, 2000, Constitution of the California Valley Miwok Tribe formerly known as the ("Sheep Ranch Rancheria of Me-Wuk Indians of California") (Constitution) as its interim Tribal Constitution and governing document of the Tribe; and

Whereas, The Tribal Council of the Sheep Ranch Rancheria of Me-Wuk Indians of California desires to formally change the name of the Tribe from "Sheep Ranch Rancheria of Me-Wuk Indians of California" to the "California Valley Miwok Tribe; and

Whereas, The Tribal Council of the Sheep Ranch Rancheria of Me-Wuk Indians of California has declared under ARTICLE I - NAME of "Draft B of March 6, 2000, Constitution of the California Valley Miwok Tribe formerly known as the ("Sheep Ranch Rancheria of Me-Wuk Indians of California") (Constitution) that it's name shall be the "California Valley Miwok Tribe", and

8.1

R-1-5-07-2001

Whereas, The Tribal Council of the Sheep Ranch Rancheria of Me-Wuk Indians of California desires to effect this name change as soon as is possible.

NOW THEREFORE BE IT RESOLVED that the Sheep Ranch Rancheria of Me-Wuk Indians of California hereby requests that the United States, Department of the Interior, Bureau of Indian Affairs formally change the name of the Tribe from "Sheep Ranch Rancheria of Me-Wuk Indians of California" to the "California Valley Miwok Tribe" and that all appropriate agencies be notified and that the name change be appropriately published in the Federal Register, and.

BE IT FURTHER RESOLVED that until the Tribe's name is formally changed and included into the Federal Register, the Tribe will continue to operate and be known as the California Valley Miwok Tribe aka "Sheep Ranch Rancheria of Me-Wuk Indians of California, and

BE IT FINALLY RESOLVED the Tribal Council of the California Valley Miwok Tribe aka "Sheep Ranch Rancheria of Me-Wuk Indians of California" hereby authorizes Silvia F. Burley, Chairperson, to take whatever action is necessary to effect the name change of the Tribe.

CERTIFICATION

This is to certify that the above matter was considered and heard at a duly noticed meeting of the California Valley Miwok Tribe aka "Sheep Ranch Rancheria of Me-Wuk Indians of California", Tribal Council at which time a quorum was present, held on this day, May 07, 2001, and that this resolution was adopted by a vote of __3__ in favor, __0__ opposed, and __0__ abstaining.

ATTEST:

Silvia Burley, Chairperson — 5/07/2001 Date
California Valley Miwok Tribe aka "Sheep Ranch Rancheria of Me-Wuk Indians of California"

Angelica Faulk, Vice-Chairperson — 05/07/01 Date
California Valley Miwok Tribe aka "Sheep Ranch Rancheria of Me-Wuk Indians of California"

Rashel Reznor, Secretary/Treasurer — 05/07/2001 Date
California Valley Miwok Tribe
aka "Sheep Ranch Rancheria of Me-Wuk Indians of California"

EXHIBIT "17"

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Tribal Government Services
BCCO 01792

JUN 7 2001

Honorable Silvia Burley
Chairperson, California Valley Miwok Tribe
aka "Sheep Ranch Rancheria of Me-Wuk
Indians of California"
1055 Winter Court
Tracy, California 95376

Dear Chairperson Burley:

Thank you for your letter dated April 9, 2001, regarding the Tribal Council's desire to change the name of the *Sheep Ranch Rancheria of Me-Wuk Indians of California* to the *California Valley Miwok Tribe*. You have received conflicting information on how to accomplish the name change so you've requested us to clarify the matter.

The *Sheep Ranch Rancheria* (Tribe) is a small tribe that does not have a tribal constitution. The Tribe has a tribal council and conducts tribal business through resolution. A tribal resolution, such as resolution No. R-1-5-07-201, enacted by the Tribal Council on May 7, 2001, is sufficient to effect the tribal name change. The Tribe's new name has been included on the Tribal Entities List that will be published in the FEDERAL REGISTER later this year.

Some tribes have constitutions that contain a provision that specifically states the tribe's official name. In that situation, the tribe will have to amend that particular provision in the constitution before the new name will be published in the FEDERAL REGISTER. On the other hand, if the tribal constitution does not contain a provision that sets out the tribe's official name, an amendment to the constitution is unnecessary. In such instances, the tribe can change its name by enacting a tribal ordinance to establish its official name.

We hope that this information resolves the matter for you.

Sincerely,

Deputy Commissioner of Indian Affairs

cc: Regional Director, Pacific Region w/copy of incoming
Superintendent, Central California Agency w/copy of incoming

EXHIBIT "18"

California Valley Miwok Tribe

1055 Winter Court, Tracy, California 95376

Phone: (209) 834-0197 CaliforniaValleyMiwokTribe@thegrid.net Fax: (209) 834-0318

June 22, 2001

CALIFORNIA GAMBLING CONTROL COMMISSION
300 Capitol Mall, Suite 300
P.O. Box 526013
Sacramento, California 95852-6013

Re: FYI - Official Tribal Name Change
California Valley Miwok Tribe (Formerly Sheep Ranch Rancheria)

Dear California Gambling Control Commission Reps.

This correspondence is to inform your organization of our current official name change. We are requesting that your staff be made aware of this new information. Thank you for your time and patience. Feel free to contact our office if you have any questions.

Sincerely,

Silvia Burley, Chairperson

EXHIBIT "19"

Thomas W. Wolfrum, Esq.
California State Bar No. 54837
1333 North California Blvd., Suite 150
Walnut Creek, California 94596
Tel: (925) 930-5645
Fax: (925) 930-6208

Attorney for Applicant Intervenors

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff,

v.

CALIFORNIA GAMBLING CONTROL COMMISSION, *et al.*,

Defendants.

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

Applicant Intervenors.

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

DECLARATION OF YAKIMA K. DIXIE IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS

Law and Motion
Hearing Date: December 17, 2010
Hearing Time: 8:30 a.m.
Hearing Place: C-62

Trial Date: May 13, 2011
Trial Dept: C-62
Trial Judge: The Hon. Ronald L. Styn

First Amended Complaint Filed 8/20/08

Code of Civil Procedure §387

I, Yakima K. Dixie, am over the age of 18 and a resident of Calaveras County, California. I have actual and personal knowledge of the following facts and am competent to testify to the same. This Declaration is being offered in support of the Motion to Intervene.

1. Sheep Ranch Rancheria has been my domicile for almost my entire life and the title to the Rancheria is held by the federal government in trust for my benefit.

2. I am seeking to intervene in this litigation because I am the Hereditary Chief and Traditional Authority for the Federally Recognized Tribe known as California Valley Miwok Tribe (formerly, the Sheep Ranch Rancheria of Me-Wuk Indians of California) (the "Tribe"). I inherited the position of Hereditary Chief upon the death of my mother, Mabel Hodge Dixie, on July 11, 1971. My tribal lineal descent through my mother goes back to the Hodge family of the 1915 census of the Sheepranch Indians.

3. I also seek to intervene in this litigation, which was filed by Silvia Burley because Ms. Burley is not recognized as the authority for the Tribe by the BIA, by the putative members of the Tribe or the State of California. If the Court orders the Revenue Sharing Trust Fund ("RSTF") funds to be disbursed, the Court must also determine who is the authority of the Tribe to receive the Funds.

4. In 1996, Ms. Burley approached me seeking assistance in obtaining medical and education benefits for herself and her two daughters.

5. In 1999, I allowed Ms. Burley into the Tribe. Shortly thereafter, Ms. Burley alleged that I resigned as Tribal Chairman, that she represented that she spoke for the Sheepranch Miwok people and that she was the leader and chairperson of the Tribe. I have never consented to her claim of leadership. The document allegedly showing my resignation as Tribal Chairman is a forgery.

6. Ms. Burley purported to set up a "Tribal Council," made up of herself and her two daughters. But, on information and belief, she otherwise made no effort to organize the Tribe around the lineal descendants of the Me-Wuk people who had lived at the Rancheria.

7. From 1999 to 2005, Ms. Burley collected federal grant and RSTF money meant for the Tribe based on her baseless claim to be the leader of the Tribe. On information and belief, she, her two daughters and their immediate family, have been the only beneficiaries of those substantial monies. On information and belief, these sums were used to purchase a home for her and her daughters, on which Ms. Burley subsequently took out a $500,000 line of credit. I have never received any of that money, I do not know anyone who has received any of that money other than Ms. Burley, her husband, and her children, nor do I know of any programs Ms. Burley set up for the benefit of the Tribe.

8. In September 2005, Ms. Burley and her "Tribal Council" purported to disenroll me from the Tribe, based on the alleged ground that I had held myself out to be a member of another Indian Tribe, namely the Sheep Ranch Rancheria of Me-Wuk Indians which, of course, is simply another name for the California Valley Me-Wuk Indians.

9. My being "Hereditary Chief" and "Traditional Authority" for the Tribe do not, at present, denote a legal relationship with the U.S. Federal government. Hereditary chiefdom is, however, provided by Miwok traditions. The Tribe is "recognized" by the U.S. government but is it not yet considered "organized" by the Bureau of Indian Affairs ("BIA"). Until the Tribe is recognized by the BIA as "organized" no one and no group has a right to the RTSF funds. The Tribe is currently working with the BIA to become "organized" around the putative members. Until the Tribe becomes formally organized, the BIA has stated that it holds neither Ms. Burley nor me as the recognized authority. Although the federal government does not recognize an

authority for the Tribe at present I, as the Hereditary Chief and Traditional Authority, am the only person who rightfully may receive funds on behalf of the Tribe.

10. On April 11, 2007, to assist the Tribe to organize and to identify current putative members of the Tribe, the BIA issued a public notice identifying 14 putative members of the Tribe and called for descendants of those persons to submit documentation to the BIA. One of the listed putative members is my mother, Mable Hodge Dixie, and, therefore, I submitted supporting documentation to the BIA and am a putative member of the Tribe.

11. On information and belief, 580 persons (including myself) submitted personal genealogies to the BIA in response to the BIA's April 11, 2007 public notice. According to the BIA and on information and belief, neither Ms. Burley nor any member of her immediate family submitted documentation to the BIA in response to the April 11, 2007 public notice.

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

October , 2010

Yakima K. Dixie

EXHIBIT "20"

Thomas W. Wolfrum, Esq.
California State Bar No. 54837
1333 North California Blvd., Suite 150
Walnut Creek, California 94596
Tel: (925) 930-5645
Fax: (925) 930-6208

Attorney for Applicant Intervenors

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff,

v.

CALIFORNIA GAMBLING CONTROL COMMISSION, *et al.*,

Defendants.

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

Applicant Intervenors.

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

[*PROPOSED*] COMPLAINT IN INTERVENTION

Law and Motion

Hearing Date: December 27, 2010
Hearing Time: 8:30 a.m.
Hearing Place: Department -62

First Amended Complaint filed August 20. 2008

Trial Date: May 13, 2011
Trial Dept: C-62
Trial Judge: The Hon. Ronald L. Styn

Code of Civil Procedure §387

By leave of Court, the Intervenors, California Valley Miwok Tribe, California (a.k.a. Sheep Ranch Rancheria of Me-Wuk Indians, California), Yakima K. Dixie, Velma WhiteBear, Antonia Lopez, Antone Azevedo, Michael Mendibles and Evelyn Wilson (collectively, the "Intervenors"), submit this COMPLAINT IN INTERVENTION and join with defendants in opposing plaintiff's claims.

On August 20, 2008, plaintiff, Silvia Burley, purportedly on behalf of the California Valley Miwok Tribe, filed a First Amended Complaint Combined with Petition for Writ of Mandate ("Complaint") in the above-entitled action against defendants, California Gambling Control Commission and DOES 1 through 50, seeking injunctive, declaratory relief and a Writ of Mandate regarding distribution of certain funds from the Revenue Sharing Trust Fund ("RSTF") and the Special Distribution Fund (collectively with RSTF, the "Funds") to Silvia Burley and alleging intentional interference with prospective economic advantage against certain unnamed DOES 21 through 50. Defendant California Gambling Control Commission ("CGCC") has appeared in this action and placed plaintiff's claims at issue by filing an answer denying plaintiff's allegations and raising affirmative defenses.

INTRODUCTION

1. Intervenor Yakima K. Dixie, is, and at all times relevant to this action was, domiciled in Sheep Ranch, California. Mr. Dixie is a member, the Hereditary Chief, the tribal chairman and the tribal authority of the California Valley Miwok Tribe, California, formerly known as the Sheep Ranch Rancheria of Me-Wuk Indians of California (the "Tribe"). Mr. Dixie inherited the position of Hereditary Chief and tribal authority of the Tribe from his mother, Mabel Louise Hodge Dixie. The action is of particular interest to Mr. Dixie because of

his pecuniary interest in the Funds and his fiduciary duty as the Hereditary Chief, tribal chairman and tribal authority to preserve the Funds for the legitimate members of the Tribe.

2. Intervenors Velma WhiteBear, Antonia Lopez, Antone Azevedo, Michael Mendibles, and Evelyn Wilson, (with Yakima K. Dixie the "Member Intervenors") are lineal descendants of historic members of the Tribe. Mr. Dixie and each of the Member Intervenors is a lineal descendant of a historical member or members of the Tribe listed in the 1929 Indian Census Roll of Calaveras County.

3. The Member Intervenors recognize Mr. Dixie as the Hereditary Chief and the tribal authority of the Tribe.

4. Neither Mr. Dixie nor the Member Intervenors recognize Ms. Burley as any authority for the Tribe. Ms. Burley alleges that she is a member of the Tribe by virtue of Mr. Dixie allowing Ms. Burley, her two daughters and her granddaughter into the Tribe in 1999 to obtain medical and education benefits. Soon thereafter, Ms. Burley alleged that Mr. Dixie resigned as tribal chairperson and that she was elected to the position. The resignation is a forgery. Mr. Dixie remains the Hereditary Chief, tribal authority, and tribal chairperson of the Tribe.

5. As shown by the facts alleged below, the Intervenors have the right to intervene in this action under the mandatory intervention provisions of California Code of Civil Procedure §387(b) because the Intervenors claim pecuniary and tribal interests in the Funds, the subject of this action, and the adjudication of the parties' claims in the Intervenors' absence will impair or impede the Intervenors' ability to protect those interests. The Intervenors' interests are not represented by the current parties to this action.

6. CGCC holds the Funds in trust for the Tribe pending its "organization" as contemplated by the Bureau of Indian Affairs (the "BIA") so that a properly constituted governing body in accord with Federal Indian law and policy may accept the Funds. Therefore, the rightful members of the Tribe are the beneficiaries of the Funds and the Funds may be distributed only after the Tribe is "organized" so the Funds will only be paid to the legitimate Tribe members. Plaintiff, Silvia Burley, and her purported tribal council, at best, represent only a tiny fraction of the Tribe and consist almost exclusively of her immediate family. The BIA currently does not recognize anyone as the authority for the Tribe.

7. As members of the Tribe, the Intervenors all have an interest in the Funds as the intended beneficiaries of the Funds. As discussed above, as the Hereditary Chief, traditional authority and the tribal chairperson of the Tribe, Mr. Dixie also has an interest and fiduciary duty to protect the Funds for his tribe members.

8. If this matter is adjudicated without the Intervenors and the Funds are distributed to Ms. Burley, the Intervenors' ability to protect their interests will be lost. Ms. Burley brought this action to have the Funds paid to her as the alleged spokesperson or leader of the Tribe. From 1999 through 2005, Ms. Burley collected substantial sums from the CGCC that were meant for the Tribe. On information and belief, no legitimate member of the Tribe ever received any of that money and no program was ever established for their benefit. On information and belief, the only beneficiaries of the substantial gaming revenue funds and federal grant monies meant for the Tribe have been Ms. Burley and her immediate family. Should the Funds be distributed to Ms. Burley, the Intervenors will be unable to protect the Funds for themselves and the other members of the Tribe.

9. The Intervenors' interests are not adequately represented by the existing parties because should the Court find for the plaintiff, the CGCC's interest in holding the Funds in trust ends while the Intervenors would have an additional interest in to *whom* the Funds are distributed. Furthermore, none of the existing parties to the litigation could represent the Intervenors' interests. Plaintiff's interest is contrary to Intervenors' interest. The CGCC has maintained that it is not in a position to defend the Intervenors' interests as it has argued that the Tribe and, presumably its legitimate members, may not bring the current action.

10. As shown by the facts alleged below, the Intervenors may also intervene under the permissive intervention provisions of California Code of Civil Procedure §387(a) because the Intervenors have direct and immediate interests in the Funds. Adjudication of the Intervenors' interests will not unduly expand the trial of this action and the strong justifications for intervention outweigh any opposition by the existing parties.

11. The Intervenors have direct pecuniary interests in the Funds as the intended beneficiaries thereof and direct tribal interests in preserving the Funds for the benefit of the legitimate members of the Tribe. The interests are immediate because if the Funds are paid to Ms. Burley, those Funds will be lost to them, as discussed above.

12. Allowing the Intervenors to intervene would not expand the trial of this action as the Intervenors seek to maintain the *status quo* by preserving the Funds under control of the CGCC and, in fact, intervention would serve to clarify the facts for the Court. The significant pecuniary and tribal interests of the Intervenors and the interest of ensuring that the Funds are properly disbursed outweighs Ms. Burley's desire to have the Funds paid immediately to her and her false claim that the Funds are needed for basic survival needs of the Tribe since, on

information and belief, the Funds would not be shared with the full tribal membership should the Funds be distributed to Ms. Burley.

13. Ms. Burley has no authority within the Tribe. Currently, there is no tribal government, tribal constitution or government recognized leader of the Tribe and, therefore, the CGCC maintains that no person is authorized to accept the Funds for the Tribe. Recently, the BIA has proceeded to assist the Tribe in "organizing" around its members. Once the Tribe is so "organized," CGCC may release to the Funds to authorized authority. Following the BIA and CGCC's procedures will preserve the Funds for the rightful members of the Tribe and prevent misuse of such substantial Funds. Any distribution of the Funds prior to the organization of the Tribe is premature at best.

RESPONSE TO SPECIFIC ALLEGATIONS ASSERTED IN PLAINTIFF'S COMPLAINT

14. General Denial: To the extent that the allegations of the Complaint are not expressly admitted by this Complaint in Intervention, they should be considered denied.

15. Intervenors admit the statement in Paragraph 1 of the Complaint that the California Valley Miwok Tribe is a federally-recognized Indian tribe, but deny that the Tribe is situated in Stockton, California, where Silvia Burley, who is pursuing this suit purportedly in the name of the Tribe, apparently resides. The Tribe is also known as the Sheep Ranch Mi-Wuk Indians of Sheep Ranch Rancheria, which is in Calaveras County, California. Intervenors deny that the Tribe is currently the plaintiff and regard Silvia Burley to be the plaintiff in this action.

16. Paragraph 2 of the Complaint is admitted.

17. The Intervenors are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 3 of the Complaint, namely that plaintiff

Silvia Burley is "ignorant of the true names and capacities" of certain unnamed persons, and therefore deny the same.

18. Paragraph 4 of the Complaint regarding venue is denied.

19. Paragraph 5 of the Complaint is admitted.

20. Paragraph 6 of the Complaint is a mix of legal conclusions and factual allegations. The first sentence of the paragraph is admitted. The rest of the paragraph contains sentences with legal conclusions which need not be admitted or denied. The allegations of Paragraph 6 are otherwise denied.

21. Paragraph 7 of the Complaint consists of a series of legal conclusions which need not be admitted or denied.

22. The statement in Paragraph 8 of the Complaint that the Tribe was placed on the list of federally-recognized tribes in 1994 pursuant to Public Law 103-454 is admitted. The allegations in Paragraph 8 are otherwise denied.

23. The allegations in Paragraph 9 of the Complaint are denied.

24. The allegations in Paragraph 10 of the Complaint are denied.

25. The allegations in Paragraph 11 of the Complaint are denied.

26. The BIA letter referred to in Paragraph 12 of the Complaint speaks for itself. The allegations in Paragraph 12 are otherwise denied.

27. The allegations in Paragraph 13 of the Complaint are denied.

28. The allegations in Paragraph 14 of the Complaint are denied.

29. The CGCC's letter to Silvia Burley, referred to in Paragraph 15 of the Complaint, speaks for itself. The allegations in Paragraph 15 are otherwise denied.

30. The allegations in Paragraph 16 of the Complaint are denied.

31. The decisions of the United States District Court for the District of Columbia in *California Valley Miwok Tribe v. U.S. Department of the Interior*, No. 1:05CV00739-JR, and the pleadings therein, speak for themselves. The allegations in Paragraph 17 of the Complaint are otherwise denied. The Intervenors aver that on February 15, 2008, the U.S. Court of Appeals rendered its decision affirming the U.S. District Court's orders, 515 F.3d 1262 (D.C. Cir. 2008), and that after a petition for rehearing was denied, a mandate was issued to the U.S. District Court.

32. The first sentence of Paragraph 18 of the Complaint is a legal conclusion which need not be admitted or denied. The Intervenors are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 18 of the Complaint, and therefore deny the same.

33. The Intervenors respond to Paragraph 19 of the Complaint by realleging their responses to the allegations in Paragraphs 1 through 18 of the Complaint.

34. Paragraph 20 of the Complaint states legal conclusions which are neither admitted nor denied.

35. Paragraph 21 of the Complaint states legal conclusions which are neither admitted nor denied.

36. Paragraph 22 of the Complaint states legal conclusions which are neither admitted nor denied.

37. Paragraph 23 of the Complaint contains a mix of legal conclusions and factual allegations. At any rate, the allegations of Paragraph 23 are denied.

38. The allegations in Paragraph 24 of the Complaint are denied.

39. Paragraph 25 of the Complaint contains a mix of legal conclusions and factual allegations. Because the Intervenors regard the plaintiff in this action to be Silvia Burley, not the California Valley Miwok Tribe, they deny the allegations of Paragraph 25. The legal conclusions are neither admitted nor denied.

40. Paragraph 26 of the Complaint states a legal conclusion which is neither admitted nor denied.

41. Intervenors are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 27 of the Complaint, and therefore deny the same.

42. Paragraph 28 of the Complaint states a legal conclusion which is neither admitted nor denied.

43. Paragraph 29 of the Complaint states a legal conclusion which is neither admitted nor denied.

44. Paragraph 30 of the Complaint states a legal conclusion which is neither admitted nor denied.

45. Intervenors respond to Paragraph 31 of the Complaint by re-alleging their responses to the allegations in Paragraphs 1 through 30 of the Complaint.

46. Paragraph 32 of the Complaint states a number of legal conclusions which are neither admitted nor denied. To the extent that a response to Paragraph 32 is required, the allegations therein are denied because plaintiff Silvia Burley has no authority to speak on behalf of the Tribe.

47. Paragraph 33 of the Complaint states a legal conclusion which is neither admitted nor denied. The Compact, which is partially quoted in Paragraph 33, speaks for itself.

48. The Code provision quoted at the beginning of Paragraph 34 of the Complaint speaks for itself. The rest of the paragraph is a mix of legal conclusions and argument, which require no response. To the extent that a response to Paragraph 34 is required, the allegations therein are denied because plaintiff Silvia Burley has no authority to speak on behalf of the Tribe.

49. The allegations in Paragraph 35 of the Complaint are denied.

50. Paragraph 36 of the Complaint states a legal conclusion which is neither admitted nor denied. To the extent that a response to Paragraph 36 is required, the allegations therein are denied.

51. The Intervenors respond to Paragraph 37 of the Complaint by realleging their responses to the allegations in Paragraphs 1 through 36 of the Complaint.

52. The allegations in Paragraph 38 of the Complaint are denied. Plaintiff Silvia Burley has no authority to speak on behalf of the Tribe.

53. Paragraph 39 of the Complaint states a legal conclusion which need not be admitted nor denied.

54. The allegation/conclusion in Paragraph 40 of the Complaint is denied because plaintiff Silvia Burley has no authority to speak on behalf of the Tribe.

55. The allegations in Paragraph 41 of the Complaint are denied because plaintiff Silvia Burley has no authority to speak on behalf of the Tribe.

56. Paragraph 42 of the Complaint states a legal conclusion which need not be admitted nor denied.

57. Paragraph 43 of the Complaint states a legal conclusion which need not be admitted nor denied. To the extent that a response to Paragraph 43 is required, the allegations

therein are denied because plaintiff Silvia Burley has no authority to speak on behalf of the Tribe.

58. Paragraph 44 of the Complaint states a legal conclusion which need not be admitted nor denied.

59. Paragraph 45 of the Complaint states a legal conclusion which need not be admitted nor denied.

60. Intervenors respond to Paragraph 46 of the Complaint by realleging their responses to Paragraphs 1 through 45 of the Complaint.

61. Paragraph 47 of the Complaint states a legal conclusion which need not be admitted nor denied.

62. Paragraph 48 of the Complaint states a legal conclusion which need not be admitted nor denied. To the extent that a response to Paragraph 48 is required, the allegations are denied because plaintiff Silvia Burley has no authority to speak on behalf of the Tribe

63. Intervenors respond to Paragraph 49 of the Complaint by realleging their responses to Paragraphs 1-48 of the Complaint.

64. The allegations in Paragraph 50 of the Complaint are denied.

65. The allegations in Paragraph 51 of the Complaint are denied.

66. The allegations in Paragraph 52 of the Complaint are denied.

67. Paragraph 53 of the Complaint states legal conclusions which need not be admitted nor denied. To the extent that a response to Paragraph 53 is required, the allegations therein are denied.

68. WHEREFORE, the Intervenors pray the Court to dismiss plaintiff's Complaint in this case, and all claims therein, for the reasons set forth above and below, and for such other reasons as may be correct and just.

AFFIRMATIVE DEFENSES

I. First Defense for Lack of Jurisdiction Against Plaintiff

As a first and separate and complete affirmative defense, Intervenors respectfully request that the Court dismiss plaintiff's Complaint in this action, and all claims therein, for want of jurisdiction. In addition to the justifications for lack of jurisdiction averred by CGCC's in its ANSWER AND RETURN OF CALIFORNIA GAMBLING CONTROL COMMISSION TO VERIFIED FIRST AMENDED COMPLAINT COMBINED WITH PETITION FOR WRIT OF MANDATE, this Court also lacks jurisdiction to adjudicate an internal tribal dispute, to determine the proper spokespersons for the Tribe, to adjudicate whether the Tribe is "organized," to adjudicate the identity of the Tribe or to adjudicate a matter barred by sovereign immunity.

II. Second Defense for Failure to State a Claim Against Plaintiff

As a second and separate and complete affirmative defense, the Intervenors respectfully request that the Court dismiss plaintiff's Complaint in this action, and all claims therein, because plaintiff has failed to state a claim for which the Court may grant relief.

III. Third Defense for No Basis to Name DOE Defendants Against Plaintiff

As a third and separate and complete affirmative defense, the Intervenors respectfully request that the Court dismiss plaintiff's Complaint in this action, and all claims therein, because plaintiff has no basis under which it may name DOE defendants consistent with the Rules of Court.

IV. Fourth Defense for Failure to Exhaust Administrative and Tribal Remedies Against Plaintiff

As a forth and separate and complete affirmative defense, the Intervenors respectfully request that the Court dismiss plaintiff's Complaint in this action, and all claims therein, because the plaintiff has failed to exhaust its administrative and tribal remedies. The Intervenors, with the aid of the BIA, have attempted to mediate with Ms. Burley. Ms. Burley refused to cooperate with such requests until 2010, when mediation was no longer possible because there was no longer an intertribal remedy. Further, the BIA is currently reviewing the leadership dispute matter and is expected to provide a determination shortly. The essence of this action is the tribal dispute regarding the leadership of the Tribe.

In addition to the affirmative defenses above, the Intervenors join with CGCC in asserting the following affirmative defenses already asserted in CGCC's ANSWER AND RETURN OF CALIFORNIA GAMBLING CONTROL COMMISSION TO VERIFIED FIRST AMENDED COMPLAINT COMBINED WITH PETITION FOR WRIT OF MANDATE: I. Plea In Abatement; II. No Jurisdiction (except as provided above); III. Unclean Hands; IV. Res Judicata; V. Collateral Estoppel; VI. Lack of Standing.

As the Complaint fails to provide sufficient information concerning the allegations, the facts and the identity of the DOES, the Intervenors reserve their right to assert additional affirmative defenses. The Intervenors have not asserted defenses to the plaintiff's Third Cause of Action against DOES 21-50 because no Intervenor is named a DOE.

The Intervenors respectfully request the Court enter judgment:

1. Dismissing plaintiff's Complaint in this action, and all claims therein, with prejudice;

2. Declaring that the Commission shall continue to hold the Funds in trust for the Tribe until such time as the Tribe is duly organized as overseen by the BIA;

3. Awarding the Intervenors their costs; and granting such further relief as the Court deems appropriate.

Respectfully submitted, October 30, 2010.

Thomas Wolfrum
Attorney for Interventors

VERIFICATION

We, the undersigned Intervenors in the above-entitled action have read the foregoing Complaint in Intervention and know the contents thereof. The same is true of each of our own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, each of us believes it to be true.

Each of us declares under penalty of perjury that the foregoing is true and correct and that this declaration was executed in California.

Dated this _____ day of _____, 2010.

_____
Yakima K. Dixie

_____
Velma WhiteBear

_____
Antonia Lopez

_____
Antone Azevedo

_____
Michael Mendibles

_____
Evelyn Wilson

EXHIBIT "21"

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Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DISTRICT

CALIFORNIA VALLEY MIWOK TRIBE

Plaintiff,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant.

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

ERRATA: DECLARATION OF MANUEL CORRALES, JR., RE: EXHIBITS ATTACHED TO DEPOSITION OF YAKIMA DIXIE

Date: March 7, 2012
Time: 8:30
Dept: 62
Judge: Hon. Ronald Styn

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

1. That I am an attorney at law duly licensed to practice law in the State of California, the State of Utah and the State of New Mexico, and I am one of the attorneys of record for Plaintiff herein. I have personal knowledge of the facts set forth herein.

2. I took the deposition of Yakima Dixie on February 7, 2012 in Sacramento, California. In his deposition, Mr. Dixie admitted that he resigned as the Chairman of the Tribe, and that Silvia Burley became the new Tribal Chairperson. He also testified that the signature in his Notice of Resignation was in fact his signature. Dixie had previously claimed through his attorneys and Mr. Chadd Everone that his signature was a forgery. Mr. Dixie refuted that claim in his deposition. **Attached herewith and marked as Exhibit "1" is a true and correct copy of Dixie's deposition transcript and Exhibits "33" and "34" to that transcript containing his signature of resignation.**

3. Attached herewith and marked as Exhibit "2" is a true and correct copy of a letter dated March 2, 2012 from me to all counsel advising that Plaintiff would be appearing ex parte in Department 62, on March 7, 2012, at 8:30 a.m. for purposes of obtaining an order lifting the stay in this case in light of Dixie's deposition testimony

admitting that he resigned as Tribal Chairperson, so that dispositive motions can be filed.

4. A copy of this Errata Declaration has been served on all parties electronically via Email delivery, so as to expedite service.

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

Executed this 6 day of March, 2012, at San Diego, California

MANUEL CORRALES, JR.

EXHIBIT "1"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO - CENTRAL DISTRICT

--oOo--

CALIFORNIA VALLEY MIWOK TRIBE,	)	
Plaintiff,	)	
vs.	)	Case No.
CALIFORNIA GAMBLING CONTROL	)	37-2008-00075326-
COMMISSION,	)	CU-CO-CTL
Defendant.	)	
	)	VOLUME II

Continued Deposition of

YAKIMA KENNETH DIXIE

February 7, 2012

--oOo--

Reported by: MARY BARDELLINI, CSR No. 2976

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Videographer:

JORDAN MEDIA, INCORPORATED
By: TERI WEESNER
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Also Present:

Silvia Burley
Tiger Paulk
Michael Mendibles

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BE IT REMEMBERED that, pursuant to Notice of Taking Deposition, on Tuesday, the 7th day of February, 2012, commencing at the hour of 3:15 p.m., at the Offices of CALIFORNIA ATTORNEY GENERAL, 1300 I Street, Sacramento, California, before me, Mary Bardellini, a Certified Shorthand Reporter in and for the State of California, personally appeared

YAKIMA KENNETH DIXIE,

called as a witness by the Plaintiff herein, pursuant to all applicable sections of the Code of Civil Procedure of the State of California, and, who, being by the Certified Shorthand Reporter first duly and regularly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE VIDEOGRAPHER: We are on the record. This is the digital video deposition of Yakima Dixie, testifying in the matter of California Valley Miwok Tribe versus the California Gambling Control Commission, et al., in the Superior Court of the State of California, County of San Diego, Central Branch, Case Number 37-2008-00075326-CU-CO-CTL.

This deposition is being held at 1300 I Street, 15th Floor, Sacramento, California.

Today is February 7th, 2012. The time is 3:15. My name is Teri Weesner, Legal Video Specialist with

Jordan Media, Incorporated, at 1228 Madison Avenue in San Diego, California.

The certified shorthand reporter today is Mary Bardellini in association with Kramm Court Reporting, San Diego, California.

Would counsel please state their appearances for the record.

MR. CORRALES: Yes. My name is Manuel Corrales. I represent plaintiff, California Valley Miwok Tribe.

MR. McCONNELL: Matthew McConnell on behalf of intervenors.

MR. RUSK: James Rusk also on behalf of intervenors.

THE VIDEOGRAPHER: Would you please swear the witness.

(Whereupon the witness was sworn to tell the truth and testified as follows.)

MR. McCONNELL: Before we start, I'm going to lodge an objection to the presence of Tiger Paulk. The Court's order regarding Mr. Dixie's deposition was clear; it was limited to counsel and parties only. That was directly in response to the arguments raised by intervenors that Mr. Paulk's presence at the last deposition was harassing.

So I'm going to have you and Mr. McConnell take a break and confer about that for the next couple of minutes and come back and see if we can have you answer the question without having to have that done.

We'll take a couple of minutes.

THE VIDEOGRAPHER: We're off the record at 5:27.

(Recess taken.)

THE VIDEOGRAPHER: We're back on the record at 5:36.

BY MR. CORRALES:

Q. Okay. Mr. Dixie, did you have an opportunity to speak with your attorney during the break?

A. Yeah.

Q. Okay. And are you prepared to answer my question?

A. Hum?

Q. Are you prepared to answer my question?

A. Yeah.

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

So my question is: Are you changing your

testimony?

A. It appears not to be my signature.

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

Are you changing your testimony, yes or no?

A. No.

MR. CORRALES: Okay. Those are all the questions I have.

FURTHER EXAMINATION

BY MR. McCONNELL:

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

A. It appears.

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

A. Uh-huh.

Q. You believe that's your signature?

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

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

A. I don't remember on that one.

Q. On Exhibit 34 --

A. Okay. Yeah. Yeah.

Q. Okay. Yeah. This is or is not your signature?

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

THE WITNESS: It is.

BY MR. McCONNELL:

Q. You think it is?

A. Yeah.

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

A. Yes.

Q. -- accepting the resignation of chairperson?

A. Uh-huh.

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

A. Yeah. Yes.

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

A. Yeah.

MR. McCONNELL: No further questions.

MR. CORRALES: Any stipulations? Same stipulations as last time?

MR. McCONNELL: Okay. Thank you.

MR. CORRALES: Thank you, Mr. Dixie.

THE REPORTER: Counsel, do you want this

transcribed, I take it?

MR. CORRALES: Yes, we do want it transcribed.

THE REPORTER: Counsel, do you want a copy?

MR. McCONNELL: Sure.

THE REPORTER: How about this morning's depositions, do you want any copies?

MR. HOUSTON: Of this? Not of this at this point. The deposition from this morning is continued until tomorrow.

THE VIDEOGRAPHER: We're off the record at 5:40. This is the end of Disk Number 2 of today's proceedings.

(Time noted: 5:40 p.m.)

YAKIMA KENNETH DIXIE

--oOo--

State of California)
)ss.
County of Placer)

I, Mary Bardellini, Certified Shorthand Reporter No. 2976, State of California, do hereby certify:

That said proceedings were taken at the time and place therein named and were reported by me in shorthand and transcribed by means of computer-aided transcription, and that the foregoing 98 pages is a full, complete, and true record of said proceedings.

And I further certify that I am a disinterested person and am in no way interested in the outcome of said action, or connected with or related to any of the parties in said action, or to their respective counsel.

The dismantling, unsealing, or unbinding of the original transcript will render the reporter's certificate null and void.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of February 2012.

MARY BARDELLINI, CSR No. 2976

Sheep Ranch Tribe of Me-Wuk Indians

Formal notice of resignation

I Yakima K. Dixie being of sound mind and body on this date of Tuesday April 20th, 1999, am resigning as Chairperson of the Sheep Ranch Tribe of Me-Wuk Indians Sheep Ranch, California. This written document shall serve as a formal notice within the Tribe and to the United States Government and/or any other powers that may be.

Signed Yakima Kenneth Dixie

YAKIMA K. DIXIE

Cc: Mr. Yakima K. Dixie
11178 School Road
P.O. BOX 41
Sheep Ranch, CA 95250
(209) 728-8625

EXHIBIT Dixie
33
2-7-12

GENERAL COUNCIL GOVERNING BODY OF THE SHEEP RANCH TRIBE OF ME-WUK INDIANS

RE: ***Chairperson***

SPECIAL MEETING CALLED TO ORDER ON THE 20TH OF APRIL 1999.

Time Beginning: 12:00 NOON

The General Council as the Governing Body of the Sheep Ranch Tribe of Me-Wuk Indians has agreed to accept the resignation of Chairperson from Mr. Yakima K. Dixie.
The General Council has appointed Silvia Burley as Chairperson.

Signed Yakima Kenneth Dixie
Yakima K. Dixie (Chairperson)
Sheep Ranch Tribe of Me-Wuk Indians

Signed Silvia Burley
Silvia Burley (Secretary/Treasurer)
Sheep Ranch Tribe of Me-Wuk Indians

Signed Rachel K. Reznor
Rachel K. Reznor (Tribal Member)
Sheep Ranch Tribe of Me-Wuk Indians

RESOLVED: ***That the General Council is in agreement to the acceptance of the resignation of Mr. Yakima K. Dixie as Chairperson and has officially appointed Silvia Burley as Chairperson of the Sheep Ranch Tribe of Me-Wuk Indians, now, therefore be it.***

This Special Meeting is now adjourned.

Time Ending: 12:30 PM

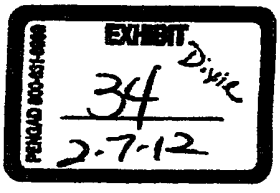


EXHIBIT "2"

ADMITTED TO
PRACTICE IN:
CALIFORNIA, UTAH
AND NEW MEXICO

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March 2, 2012

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Via Fax, Email and U.S. Mail
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Re: California Valley Miwok Tribe v. Calif. Gambling C. C.
Case No. 37-2008-00075326-CU-CO-CTL

Dear Mr. Houston:

Please be advised that I will be appearing ex parte in Department 62 of the San Diego Superior Court (Judge Styn), on Wednesday, March 7, 2012, at 8:30 a.m. The purpose of the ex parte hearing is to obtain an order lifting the stay, so that Plaintiff can file dispositive motions, in light of Mr. Dixie's recent deposition testimony admitting that he had resigned from the Tribe and that he signed documents to that effect, and that he signed documents to the effect that Silvia Burley became the Tribal Chairperson upon his resignation.

I will be sending you and the other parties my ex parte papers possibly Monday.

Very truly yours,

Manuel Corrales, Jr.

Cc: **Matthew McConnell, Esq.**
Thomas Wolfrum, Esq.
William Williams, Esq.
Terry Singleton, Esq.
Robert Rosette, Esq.
Saba Bazzazieh, Esq.
Randy Pinal, Esq.
Tiger Paulk

EXHIBIT "22"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO - CENTRAL DISTRICT

--oOo--

CALIFORNIA VALLEY MIWOK TRIBE, Plaintiff,	)	
vs.	)	Case No.
CALIFORNIA GAMBLING CONTROL COMMISSION, Defendant.	)	37-2008-00075326-CU-CO-CTL
	)	VOLUME II

Continued Deposition of

YAKIMA KENNETH DIXIE

February 7, 2012

--oOo--

Reported by: MARY BARDELLINI, CSR No. 2976

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Also Present:
Silvia Burley
Tiger Paulk
Michael Mendibles

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BE IT REMEMBERED that, pursuant to Notice of Taking Deposition, on Tuesday, the 7th day of February, 2012, commencing at the hour of 3:15 p.m., at the Offices of CALIFORNIA ATTORNEY GENERAL, 1300 I Street, Sacramento, California, before me, Mary Bardellini, a Certified Shorthand Reporter in and for the State of California, personally appeared

YAKIMA KENNETH DIXIE,

called as a witness by the Plaintiff herein, pursuant to all applicable sections of the Code of Civil Procedure of the State of California, and, who, being by the Certified Shorthand Reporter first duly and regularly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE VIDEOGRAPHER: We are on the record. This is the digital video deposition of Yakima Dixie, testifying in the matter of California Valley Miwok Tribe versus the California Gambling Control Commission, et al., in the Superior Court of the State of California, County of San Diego, Central Branch, Case Number 37-2008-00075326-CU-CO-CTL.

This deposition is being held at 1300 I Street, 15th Floor, Sacramento, California.

Today is February 7th, 2012. The time is 3:15. My name is Teri Weesner, Legal Video Specialist with

Jordan Media, Incorporated, at 1228 Madison Avenue in San Diego, California.

The certified shorthand reporter today is Mary Bardellini in association with Kramm Court Reporting, San Diego, California.

Would counsel please state their appearances for the record.

MR. CORRALES: Yes. My name is Manuel Corrales. I represent plaintiff, California Valley Miwok Tribe.

MR. McCONNELL: Matthew McConnell on behalf of intervenors.

MR. RUSK: James Rusk also on behalf of intervenors.

THE VIDEOGRAPHER: Would you please swear the witness.

(Whereupon the witness was sworn to tell the truth and testified as follows.)

MR. McCONNELL: Before we start, I'm going to lodge an objection to the presence of Tiger Paulk. The Court's order regarding Mr. Dixie's deposition was clear; it was limited to counsel and parties only. That was directly in response to the arguments raised by intervenors that Mr. Paulk's presence at the last deposition was harassing.

I have asked counsel, Mr. Corrales, to -- about not having Mr. Paulk present, and he has refused to do so.

MR. CORRALES: Okay. Counsel's statement is incorrect. Mr. Paulk is here under my direction as my paralegal. And let's proceed.

CONTINUED EXAMINATION

BY MR. CORRALES:

Q. Could you please give us your full name, sir. Your full name, could you give us your full name?

MR. McCONNELL: Asked and answered.

THE WITNESS: Yakima Kenneth Dixie.

BY MR. CORRALES:

Q. Mr. Dixie, are you -- are you under the influence of alcohol?

A. No.

Q. Are you taking any form of medication that would make it hard for you to answer the questions today?

A. I take epileptic seizure medication.

Q. Are you taking that today?

A. No.

Q. Okay. Is there any reason why we can't have your deposition today?

A. No.

Q. Mr. Dixie, I'm going to be asking you questions slowly because I want you to understand my questions. Okay? Okay?

A. Okay. But, first, before we get started, who are you?

Q. My name is Manuel Corrales. I'm an attorney. I represent the plaintiff in this case, the California Valley Miwok Tribe. I took your deposition last time in San Andreas. Do you remember me?

A. I remember your face, I mean, but I didn't remember your name.

Q. Okay. All right. We're here to answer questions that you refused to answer on Fifth Amendment. Do you remember that?

A. Don't I have that right? Isn't that my right?

Q. Not today, sir. We had a hearing, and the judge has ordered you to answer the questions, and so we're here to ask you those questions. Do you understand that, sir?

A. You say -- you just stated that a judge ordered it?

Q. Yes. We went to Court, and the judge ordered you to answer these questions and said that you have no Fifth Amendment right to refuse. Do you understand that, sir?

A. But that is my right.

Q. The judge said that you don't have that right, and that's why we're here.

A. So therefore with that, the way you put it, I'm going to refuse to answer any questions here.

Q. You're going to refuse to answer any questions that I ask of you today?

A. True.

Q. Why is that, sir? Why would you refuse to answer my questions?

Let the record reflect that Mr. Dixie is not responding to my questions.

Mr. Dixie, is your silence an indication that you have now refused to answer any of my questions?

A. Very true.

Q. Okay. So if I were to ask you a questions that the judge ordered you to answer, you would refuse to answer any of those questions?

MR. McCONNELL: I'm just going --

THE WITNESS: Let me ask you.

MR. McCONNELL: Hold on. We'll talk in a minute. I'll object. This entire line of questions is not what we're here to do. We're here to go through the 19 questions that were compelled. This preceding monologue by you is improper and inappropriate.

We'll take a break, and I will talk to my client. He clearly doesn't understand because you're talking about court orders and so forth and so on.

MR. CORRALES: Clearly, Counsel, you need to talk to your client because that's why we're here. The judge has ordered him to answer these questions, so you might want to talk to him.

We'll take a break, and he can explain that to you.

THE VIDEOGRAPHER: We're off the record at 3:20.

(Recess taken.)

THE VIDEOGRAPHER: We're back on the record at 3:24.

MR. HOUSTON: Also appearing, Neil Houston, Deputy Attorney General, appearing for California Gambling Control Commission.

BY MR. CORRALES:

Q. Okay. Mr. Dixie, you've had an opportunity to -- by the way, Mr. Dixie, we're having -- I'm having some difficulty -- could you remove your hat, please, so we can see your face.

A. Anything else?

Q. No, sir. Are you ready to proceed, or are you upset? Do you want to take a couple of minutes? Are

you okay?
A. I'm ready. Go ahead.
Q. Okay. Mr. Dixie, I'm going to ask you some questions concerning the questions that we asked you last time that you declined to answer. So let's proceed. Are you ready, sir?
A. Proceed.
Q. Okay. Last time I asked you about Mr. Chadd Everone. Do you remember that?
MR. McCONNELL: Objection. Let's ask the 19 questions.
BY MR. CORRALES:
Q. Do you remember that, sir, I asked you about Mr. Everone? Do you remember that?
MR. McCONNELL: This is beyond the scope.
THE WITNESS: No, I don't.
BY MR. CORRALES:
Q. You don't?
A. No.
Q. Last time I asked you questions about Chadd Everone, and I'm going to ask you a question about your understanding of his role.
What do you understand his title deputy to be?
A. I don't know.
Q. Have you ever had a conversation with Mr.

Everone about his title as deputy?
A. Not to my knowledge, no.
Q. What did Mr. Everone tell you about his title, his work for you?
MR. McCONNELL: Objection. It's compound. Can you please rephrase.
THE WITNESS: Does that have something to do with this thing?
BY MR. CORRALES:
Q. Yes. What did he tell you about the work that he was doing for you?
MR. McCONNELL: It's been asked and answered.
THE WITNESS: I don't remember.
BY MR. CORRALES:
Q. When I showed you last time a document that had his title as deputy – this is Exhibit Number 29. I'll show that to you, sir. This is your deposition. Exhibit Number 29, we talked about that, and you signed it. And it's an appointment for Mr. Everone to be your deputy. Do you see that, sir?
MR. McCONNELL: It's been asked and answered. You can answer it again.
THE WITNESS: I don't remember. I don't know even if that's my signature.
BY MR. CORRALES:

Q. You doubt that's your signature? Is that a yes?
A. Hum?
Q. Is that a yes, you doubt that that's your signature?
A. I don't know if it's mine or not, if I signed that or not.
Q. The document says that you are appointing Mr. Everone as your deputy. Do you remember doing that?
A. Not that I can recall. Only thing I got him for is like an attorney, tribal attorney.
Q. So you believe him to be the tribal attorney?
MR. McCONNELL: Asked and answered.
THE WITNESS: Uh-huh.
BY MR. CORRALES:
Q. Did Mr. Everone ever tell you that he was your deputy and not your attorney?
A. Not that I know of.
Q. The document – let me see the transcript there, sir. Thank you.
The document says that Mr. Everone is appointed as deputy for myself, meaning you, and the tribe. Did you understand that Mr. Everone was the deputy for the tribe as well?
MR. McCONNELL: Objection. Goes beyond the

scope of Question Number 1.
BY MR. CORRALES:
Q. Your answer?
A. I don't recollect.
Q. Okay. The document says: He is authorized to receive, discuss, and communicate all information to which I would be entitled. Have you ever heard of that before, sir?
A. But he come to every tribal meeting we have. He brings me what he gets from the Bureau of Indian Affairs and other little things.
Q. What do you consider him to be in relation to you and the tribe?
MR. McCONNELL: Asked and answered.
THE WITNESS: He's our tribal attorney.
BY MR. CORRALES:
Q. Okay. Do you have other tribal attorneys besides him?
MR. McCONNELL: Objection. And I'm instructing you not to answer. It's beyond the scope of Question Number 1.
BY MR. CORRALES:
Q. Is Mr. Everone the only attorney that you understand the tribe has, that you have?
MR. McCONNELL: Objection. It's beyond the

scope of Question Number 1, and I instruct you not to answer.
BY MR. CORRALES:
Q. When you say that Mr. Everone is your attorney and not your deputy, do you view him as -- do you view the term deputy as the same thing as an attorney?
MR. McCONNELL: It's compound, vague. Calls for a legal conclusion. You can answer.
THE WITNESS: I wish he could be in here, and he could answer that question himself. I mean ...
BY MR. CORRALES:
Q. We'll ask him questions about this later on. I'm asking you now. Do you view him as your attorney as the same as the title deputy?
A. At this time I'm going to refuse --
MR. McCONNELL: No, just answer.
THE WITNESS: -- to answer that question.
MR. McCONNELL: Just answer the question as best as you can. Just answer the questions.
BY MR. CORRALES:
Q. Your attorney has told you you should answer the question, so can I get an answer to my question.
Do you view his role that you perceive to be your attorney as the same as the title deputy?
MR. McCONNELL: Compound. Vague. Calls for a

legal conclusion.
THE WITNESS: Yeah, uh-huh, he's both.
BY MR. CORRALES:
Q. All right. So when you say he's both your attorney and your deputy, have you used that term interchangeably when you speak about him?
MR. McCONNELL: Vague. Overbroad.
THE WITNESS: I'm not too sure.
BY MR. CORRALES:
Q. Sometimes you say he's my deputy, sometimes he's my attorney, meaning the same thing?
MR. McCONNELL: Same objections.
THE WITNESS: I still call him my attorney, tribal attorney.
BY MR. CORRALES:
Q. Have you ever referred to him as your deputy, meaning that he's your attorney?
MR. McCONNELL: Compound. It's vague.
THE WITNESS: I don't recollect that at this time.
BY MR. CORRALES:
Q. Okay. Let's go to Question Number 2. I think we answered that question. You've answered the question, but I want some clarification. Question Number 2, do you understand what Mr. Everone's role is

with the tribe? You mentioned a couple of things. He's your attorney, but what do you understand his role is with the tribe, what does he do?
A. He's our tribal attorney.
Q. What does he do as your tribal attorney?
A. He does a lot of things.
Q. Give me some examples of what he does, sir.
MR. McCONNELL: Calls for speculation. You can answer.
THE WITNESS: With that question you asked me, I'm going to have my attorneys answer that for me. Okay?
BY MR. CORRALES:
Q. I don't think he can, sir. He's not a witness.
MR. McCONNELL: Yakima, just --
BY MR. CORRALES:
Q. Tell me what you believe Mr. Everone does.
MR. McCONNELL: For the tribe.
THE WITNESS: I'll refuse to answer that on the ground that I may incriminate myself.
MR. McCONNELL: Yakima, just answer the question. Listen to the question and give the best answer you can. It's okay.
BY MR. CORRALES:
Q. Based upon what your attorney just told you,

could you answer the question.
MR. McCONNELL: Could we have it read back.
MR. CORRALES: I'll rephrase the question.
BY MR. CORRALES:
Q. What do you understand Mr. Everone's role is? What does he do for the tribe?
A. Again, I'm going to refuse to answer that question on the grounds it may incriminate me.
MR. McCONNELL: Yakima, just listen to the question and go ahead and give your best answer. You don't need to take the Fifth Amendment. Just give him the best answer you can from what you know.
BY MR. CORRALES:
Q. Based upon what your attorney has told you, can you answer the question, sir?
A. The question on that one, I don't know.
Q. What has Mr. Everone done for the tribe?
MR. McCONNELL: Lacks foundation and calls for speculation, but can you answer if you know.
THE WITNESS: He has done a lot. I mean, he's done a lot of legal work for us. And with that, that's all I'm going to answer that question.
BY MR. CORRALES:
Q. So you decline to answer any more about that question?

A. Anything concerning him.
Q. Mr. Dixie, the Court has ordered you to answer questions concerning Mr. Everone's role with the tribe. You gave me an example of him --
A. This guy's my attorney. When he says the Court ordered him -- ordered me to answer these questions, is that on a piece of paper?
MR. McCONNELL: It is. We're here to answer these 19 questions and any reasonable follow-up. So that's why you just need to listen to the questions and answer to the best of your ability. You don't need to -- just from what you know, go ahead and answer the question. You answered it in part. So if you know more about Mr. Everone's role, then go ahead and give that answer.
THE WITNESS: Okay. Continue.
BY MR. CORRALES:
Q. Yes. What has Mr. Everone done for the tribe?
MR. McCONNELL: Other than legal work, as you mentioned.
THE WITNESS: He had done a lot of legal work for us.
BY MR. CORRALES:
Q. Yes, you told us that. Give us some specifics as to the kind of legal work he's done.

A. Well, I'm not going to go into detail. I'll just put it that way. A lot of legal work that helped our tribe.
Q. Give me an example of the kind of legal work he's done for the tribe.
A. What did I say just a second ago?
Q. I heard you, sir. I'd like to have you tell me what kind of legal work he's done for the tribe.
A. I don't believe I should answer that. I don't want to incriminate myself, so therefore ...
MR. McCONNELL: Yakima, do you know of any particular legal work that Mr. Everone has done for the tribe?
THE WITNESS: Yeah, like the money situation.
BY MR. CORRALES:
Q. Money situation, what do you mean by that?
A. And then he stopped all the money from going to different places where they don't supposed to go.
Q. What else?
A. That's about all.
Q. Okay. When you say the money situation, what do you mean by that?
A. Well, we got -- right now I think we got, what, 1,800,000 I think it is at the Bureau of Indian Affairs office.

Q. What about that? When you say we have, what do you mean by that?
A. And that come from the casinos that they put money into it.
Q. Are you talking about the Revenue Sharing Trust Fund money that's --
A. Yeah.
Q. That's close to $8 million. You said 1,800,000. Did you mean 8 million?
A. We've got a pretty good-sized chunk there.
Q. And when you said money situation, you're referring to the Revenue Sharing Trust Fund money with the Commission when you said that statement?
A. The Bureau of Indian Affairs.
Q. Do you understand the difference between the Bureau of Indian Affairs and the California Gambling Control Commission?
A. Yeah. I believe that they work together, and they give money, and it's just setting there.
Q. The money that's sitting there is, as you understand it, money with the State Commission; is that fair?
A. Yeah. And the state puts money in it, too, so we got, what, the last time was 1 million something.
Q. Okay. All right. And so when you say he does

legal work with the money situation, that involves the Commission's holding that money. What kind of things did he do with that?
MR. McCONNELL: Lacks foundation. Calls for speculation, but you can answer if you know.
THE WITNESS: Hum?
MR. McCONNELL: You can answer if you know. If you have an answer, go ahead.
THE WITNESS: Yeah, would you repeat again.
BY MR. CORRALES:
Q. Yeah. When you say he deals with the money situation, and based upon your follow-up answers with respect to the Commission, the money that's being held with the Commission, what specific things did he do?
MR. McCONNELL: Same objections, but you can --
THE WITNESS: He does a lot of legal work for me.
BY MR. CORRALES:
Q. Yeah. Did he contact the Commission about stopping the money?
MR. McCONNELL: Same objections.
THE WITNESS: I'm going to stand on the Fifth on that one.
BY MR. CORRALES:
Q. Okay.

MR. McCONNELL: Yakima, just go ahead and answer. If you know, give him an answer. If you don't know, just say so. You don't need to use the Fifth Amendment. Just give him your best honest answer, the best you can recall.

BY MR. CORRALES:

Q. So the record is clear, Mr. Dixie, the Court has already ruled on your Fifth Amendment assertions and said you don't have a Fifth Amendment, so you have to answer the questions.

A. Hum, I don't have to answer anything.

Q. The Court has ordered you to answer the questions, sir, and has said that you do not have a Fifth Amendment --

A. I didn't see anything on a documentation where I have to.

MR. McCONNELL: Yakima, just give him the best answer you can based on what you know. That's all you have to do. So just listen to the question, and if you know an answer, then it's okay to say it.

So let's have that question back, please.

MR. CORRALES: I'll rephrase the question.

BY MR. CORRALES:

Q. What specifically did Mr. Everone do in communicating, if at all, with the Commission?

MR. McCONNELL: Lacks foundation. Calls for speculation. You can answer if you know.

THE WITNESS: He does a lot of legal work for me.

BY MR. CORRALES:

Q. You said that. Did Mr. Everone contact the Commission to tell them to stop payments?

A. Not that I know of.

Q. What did he do about this money situation that you're refering to as it has to do with legal work for you?

MR. McCONNELL: Calls for speculation and lacks foundation, but you can answer if you know.

THE WITNESS: At the time, I don't know. I mean ...

BY MR. CORRALES:

Q. So you don't know of any examples right now as relates to the money situation you mentioned that he did for you?

MR. McCONNELL: Other than what he's testified to?

THE WITNESS: Well, why is this money situation keeps coming up?

BY MR. CORRALES:

Q. You mentioned it, sir. I asked you what kind of legal work he does for you. You said money situation, and he stops money from going to different places. So I'm focusing right now on the statement that you made that he does something with money situation, and I'm trying to figure out what you mean by that specifically.

What kinds of things did he do for you that had to do with the money situation that you mentioned?

A. Umm, he had nothing to do with the money situation.

Q. So, okay. You said that he stops money from going different places. What did you mean by that?

A. Well, if I -- there was a lot of money taking out of the Bureau of Indian affairs, millions. I'm not talking about hundreds. I'm talking about millions. And where did it all go?

Q. Anything else that he does --

A. I got a check.

Q. Yes.

A. But I refuse to sign it, refused to cash it.

Q. What check is that, sir?

A. But I don't remember the amount and stuff on it.

Q. What was it for?

A. Umm -- ask these two guys right there.

Q. I'm asking you, sir, what was the check for?

A. Ask those two guys right there. They know.

MR. McCONNELL: Just go ahead, if you have an answer, then go ahead and give it. Do you remember what the check was for?

THE WITNESS: No, I don't.

BY MR. CORRALES:

Q. Okay. So have you told us everything that you meant by when you said that Mr. Everone stops money from going different places?

A. I don't recollect -- it was either him or Tom Wolfrum, the other tribal attorney.

Q. Either him or Mr. Wolfrum doing what, sir?

A. Put a stop on that money from going -- being given out.

Q. Talking about putting the stop on the Revenue Sharing Trust Fund money going to the California Valley Miwok Tribe?

A. Is there a California Valley Miwok Tribe?

Q. Yes.

A. And who are they?

Q. I'm talking about the plaintiff in this case, the California Valley Miwok Tribe, formerly known as the Sheep Ranch Rancheria. Did Mr. Wolfrum or Mr. Everone ever stop money going to that tribe?

A. You use that word pretty frequently about formally. There ain't no formally. There's only one Sheep Ranch, Indian Rancheria.

Q. Okay. Now, going back to my question. What did you understand Mr. Wolfrum or Mr. Everone to be stopping money for or on behalf of?

MR. McCONNELL: Compound. It's vague. You can answer.

THE WITNESS: Again, I'm going to stand on the Fifth Amendment.

MR. McCONNELL: Just go ahead and listen to that question again and go ahead and give your best answer. He's just asking you about who you believed the money was being stopped – being sent to. Who was the money going to that either Mr. Everone or Mr. Wolfrum stopped, stopped that money going to? Who was it going to?

THE WITNESS: It didn't go to nobody. It's still over there.

MR. McCONNELL: Before it got stopped, who was the money going to?

THE WITNESS: I don't know.

BY MR. CORRALES:

Q. Who did you understand, sir, that the money Mr. Wolfrum or Mr. Everone was stopping was supposed to be

going to?

A. I don't know.

Q. Okay. So when you make reference to either Mr. Everone or Mr. Wolfrum stopping the money, what money are you referring to?

MR. McCONNELL: It's asked and answered.

THE WITNESS: The Bureau of Indian Affairs, Bureau of Indian Affairs.

BY MR. CORRALES:

Q. The BIA. Okay. Okay. Anything else that you understand Mr. Everone's role to be, the things that he's done for the tribe?

A. He's my tribal attorney.

Q. I'm looking for specifics, things he's done for the tribe.

MR. McCONNELL: Other than what you've already testified to, is there anything else?

THE WITNESS: Hum?

MR. McCONNELL: Other than what you've already been talking about, is there anything else?

THE WITNESS: No.

BY MR. CORRALES:

Q. Okay. Now, did you understand that Mr. – Mr. Everone was helping you to claim that you were cheated out of your chairmanship of the tribe?

MR. McCONNELL: Objection. What question are we on?

MR. CORRALES: We're still on Number 2.

MR. McCONNELL: Okay. That has nothing to do with Question Number 2.

BY MR. CORRALES:

Q. Did you understand that, sir?

MR. McCONNELL: Can I hear that question back, please.

(Record read by the Reporter.)

MR. McCONNELL: You've asked and answered ad nauseam what Mr. Everone's role with the tribe is.

BY MR. CORRALES:

Q. Your answer, sir? Was that one of the things that he did for you?

A. Again, I'm going to stand on the Fifth Amendment. I don't want to mess everything up here.

MR. McCONNELL: Yakima, just listen to the question, and if you have an answer, then go ahead and give your best answer.

Would you read that back again.

THE WITNESS: I don't remember.

BY MR. CORRALES:

Q. Okay. You don't remember Mr. Everone helping you to get back your chairmanship of the tribe?

MR. McCONNELL: Misstates the evidence.

MR. CORRALES: Right.

MR. McCONNELL: Lacks foundation.

BY MR. CORRALES:

Q. Your answer?

MR. McCONNELL: It's been asked and answered.

THE WITNESS: I never did lose it. How can they get something back for me when I didn't lose it.

BY MR. CORRALES:

Q. Was one of the things that you hired or asked Mr. Everone to help you with, was one of the things to get back your chairmanship of the tribe?

MR. McCONNELL: He just answered that question, and this is no longer –

MR. CORRALES: You can answer the question, sir.

MR. McCONNELL: I'm going to make my objection, and you're not going to cut me off. My objections are that this has been asked and answered. And this is well beyond the scope of any reasonable follow-up to Question Number 2, which is: Do you understand what Mr. Everone's role is with the tribe? That's the question.

So I'm going to instruct you not to answer that question.

BY MR. CORRALES:

Q. Mr. Dixie, as part of your understanding of Mr. Everone's role with the tribe, did it include him helping you get your chairmanship back from the tribe?

MR. McCONNELL: It's been asked and answered. You can answer.

THE WITNESS: Not that I know of, no.

BY MR. CORRALES:

Q. As part of Mr. Everone's role with the tribe, things that you've asked him to help you with, did it include trying to figure out whether or not your resignation from the tribe was a forgery?

MR. McCONNELL: Asked and answered.

THE WITNESS: I do believe that was a proven fact by a handwriting expert.

BY MR. CORRALES:

Q. Did you ask Mr. Everone to help you with that?

A. No.

Q. Did he help you with that?

A. No.

Q. Has he consulted with you on that?

A. No.

Q. In your last deposition you said that you spoke with Mr. Everone about that. Does that refresh your recollection that you talked to Mr. Everone about your claim that your resignation was a forgery?

A. I don't remember.

Q. Okay.

A. Anything in there behind that?

MR. McCONNELL: Just let's hear what he's going to say.

BY MR. CORRALES:

Q. Okay. We're going to get into this line of questioning in a minute, but let's go to Question Number 3. Question Number 3 is found on Page 28 of your deposition.

The question was: Do you understand what that means by substitution? This is after we talked about your belief that you were substituted out of the chairmanship, meaning, as I understand it, that the chairmanship being substituted by Miss Burley. How is it that you understand it, sir?

And then you said: In fact, who are you? And I told you who I was.

And then – so the Court has heard your refusal. You said: Who are you? I told you who I was. You said: I have nothing to do with the California Valley Miwok.

Question: I don't know. I'm here to ask questions. You are here to answer questions. On those grounds I'm going to refuse to answer any more

questions.

Okay. So we won't go into the tirade there, but the question here is: Do you understand what it means by substitution, meaning, as I understand it, the chairmanship being substituted by Miss Burley?

So could we have an answer to that question, sir.

MR. McCONNELL: Do you need to hear the question?

THE WITNESS: Help –

MR. McCONNELL: Why don't we have the question read back and just listen to it and answer the best you can. She is going to read back the question and listen carefully to her and answer the best you can.

(Record read by the Reporter.)

THE WITNESS: No. Huh-uh.

BY MR. CORRALES:

Q. Okay. On Page 28 of your deposition, if you want to follow along – actually, it starts on Page 27. I believe we're talking about – I don't know what document we're talking about, but it says: This document says in 1999 Mr. Dixie accidentally discovered his substitution.

And I said on Page 28: Is that a correct statement, sir?

Answer: In 1995 what?

Question: In 1999, it says, in 1999 Mr. Dixie accidentally discovered his substitution. Is that a correct statement? Not that I know of.

And then I asked again: So did you ever accidentally discover your substitution?

The witness: Not that I know of.

Okay. And that's what I mean by the question substitution. So that gives you some background of what is meant by the question substitution.

So I'll ask you again: Do you understand what it means by substitution, that terminology that I used?

MR. McCONNELL: Objection. It's asked and answered. It's vague. It lacks foundation, and it calls for speculation.

And, for the record, you indicated you didn't know what document you were referring to. You were referring to Exhibit 25, a document that Mr. Dixie, in his prior deposition, testified he had never seen before in his life. He has no knowledge about –

MR. CORRALES: Let's have the witness testify.

MR. McCONNELL: No, I'm going to put this objection on the record.

MR. CORRALES: It's not a proper objection.

MR. McCONNELL: It is a proper objection.

MR. CORRALES: Mr. Dixie, can I have you answer the question.

MR. McCONNELL: Don't answer yet.

MR. CORRALES: Do you understand what it means by substitution, meaning, as I understand it, the chairmanship being substituted by Miss Burley?

MR. McCONNELL: I'm not done –

MR. CORRALES: Do you understand that the word substitution means in the context of this question, that Miss Burley is being substituted?

MR. McCONNELL: My objection, you're asking the witness about a phrase in a document that he has no fingerprints on, has never seen before –

MR. CORRALES: Okay.

MR. McCONNELL: – has no knowledge of.

MR. CORRALES: Let's stop the gamesmanship, sir. We're here to get answers – and don't smile. This is not funny –

MR. McCONNELL: You're right, it's not funny.

MR. CORRALES: And, Counsel, Mr. – your associate here is laughing, too. This is not a funny matter.

MR. McCONNELL: You're asking questions –

MR. CORRALES: I want Mr. Dixie to answer the questions, and I don't want you to sit here –

MR. McCONNELL: He answered the question.

MR. CORRALES: – interrupting the question with your stupid, stupid objections.

MR. McCONNELL: He answered the question.

MR. CORRALES: Those are speaking objections. They're not allowed in depositions.

MR. McCONNELL: You're giving 10-minute soliloquies about what –

MR. CORRALES: Speaking objections are not permitted. Now, you're smiling again. This is not funny. All right. And so are you. This is not funny.

Now, if you want to smile in front of Judge Styn, let's go in front of Judge Styn, and you smile and laugh at Judge Styn, but this is not funny.

MR. McCONNELL: You're misstating the record and you're –

MR. CORRALES: This is not appropriate.

MR. McCONNELL: You can characterize however you want. They are not true.

MR. CORRALES: This is unprofessional. You're bating. You're trying to cause trouble.

MR. McCONNELL: That's –

MR. CORRALES: The first thing you said here was Mr. Paulk cannot be in this deposition. Of course, that's incorrect. We're here to ask this witness questions without you trying to interrupt.

So, starting back to my question, Madam Court Reporter, will you please read back my question.

(Record read by the Reporter.)

MR. McCONNELL: I'm relodging all the objections that I previously made, and this has been asked and answered. You can answer it again.

BY MR. CORRALES:

Q. Your answer?

A. I know this is not the Court at all here. I'm still going to stand on the Fifth Amendment.

MR. McCONNELL: Yakima, just go ahead and give your answer. You've been asked this question before. You can answer it again. Do you understand what it means by substitution? Do you understand what that means?

THE WITNESS: Yeah, substitution – on my part or whose part?

MR. McCONNELL: The question is: Do you understand what it means by substitution, meaning, as I understand it, the chairmanship being substituted by Miss Burley? That's the question.

THE WITNESS: Umm... okay. Again, can I have a couple of words with my attorneys here?

MR. CORRALES: After you answer the question,

you can talk to your lawyer.

THE WITNESS: I didn't say that. I didn't say that. I said could I have a couple minutes with my two attorneys outside a minute.

MR. CORRALES: After you answer the question.

THE WITNESS: I refuse –

MR. McCONNELL: Yakima –

THE WITNESS: I refuse.

MR. McCONNELL: Do you understand what it means by substitution?

THE WITNESS: Uh-huh.

MR. McCONNELL: Do you understand what it means by substitution?

THE WITNESS: Uh-huh.

MR. McCONNELL: What does it mean?

THE WITNESS: Somebody taking my position and substituting.

MR. CORRALES: Now, you wanted to talk to your lawyers, go ahead. Take a couple of minutes.

THE WITNESS: I'm going to bypass that because you're too ignorant. You're stupid. When I asked something to stop, I want to stop right then.

BY MR. CORRALES:

Q. Okay.

A. I don't want to keep on going.

Q. Is it your understanding that Miss Burley took over the chairmanship that you're disputing?

MR. McCONNELL: Calls for a legal conclusion. You can answer.

THE WITNESS: That's what I understood. I mean, you know, I do believe that's -- at this living day, I do believe that's the way it's still going.

BY MR. CORRALES:

Q. Okay. So when you say that you believe that Miss Burley took over the chairmanship by substitution, is it your belief that it was done by forgery?

MR. McCONNELL: Compound. Misstates the testimony of the evidence, and it's been asked and answered repeatedly in round one.

BY MR. CORRALES:

Q. Your answer?

A. Yeah. Uh-huh.

Q. Okay. And in what way?

MR. McCONNELL: Asked and answered beyond the scope of this particular question. I instruct you not to answer.

BY MR. CORRALES:

Q. And I take it you're following his instructions? I'll accept your silence as a yes.

Going to Question Number 4, quote, you said

somebody that had to go to the hospital had the files. Are you saying that the document that you claim to be a forgery is in those files? And you answered yes.

The question is: Do you remember what that document was?

A. I do believe it was about resigning.

Q. Okay. And what files are you talking about, whose files?

A. And I do believe that my attorney from Washington -- not Washington, D.C., but Washington -- I don't remember -- oh, yeah, Mary Wynne took that document down to San Andreas, and she's an expert handwriting expert, and they looked at it, and it was true, that was not my signing. That was not my writing.

Q. Okay. So Mary Wynne, is she a lawyer?

A. Hum?

Q. Who is Mary Wynne?

A. She's an attorney.

Q. And she said that the resignation was a forgery?

A. Yeah.

Q. She told you that. Did she ever tell you that you -- that you were still the chairman because you didn't resign because of the forgery?

MR. McCONNELL: Compound and vague.

THE WITNESS: I don't recollect on that thing that you're talking about.

BY MR. CORRALES:

Q. Well, when you said that Mary Wynne said that the document, the resignation letter was a forgery --

A. Yeah --

Q. What did that mean to you? That you were still the chairman of the tribe?

A. No. It was where somebody had forged my name.

Q. So when you say forged your name --

A. On the resignation.

Q. So you didn't resign; is that what you're saying?

MR. McCONNELL: Asked and answered.

THE WITNESS: No.

BY MR. CORRALES:

Q. So if you didn't resign, you'd still be the chairman?

MR. McCONNELL: Asked and answered.

THE WITNESS: I still am the chairman.

BY MR. CORRALES:

Q. Now, did you ever -- so if you weren't the chairman -- let me ask you this: Were you ever the vice chairman of the tribe?

MR. McCONNELL: Objection. It's beyond the

scope of any question at issue here. I instruct you not to answer.

BY MR. CORRALES:

Q. Okay. So you mentioned that the document was a forgery, and you said that the attorney from Washington, Mary Wynne, told you it was a forgery, and therefore you're still the chairman.

I'm going to show you what I will have marked as exhibit next in order to your deposition, which I believe is Exhibit Number -- excuse me -- 32.

(Plaintiff's Exhibit 32 was marked for identification.)

BY MR. CORRALES:

Q. This purports to be a letter from Mary Wynne to the Bureau of Indian Affairs, and it has a cc file, Reisling, Silvia, Charles, and Yakima -- I assume that's you -- dated July 7, 1999.

Have you ever seen this before, sir?

MR. McCONNELL: I object. This is beyond the scope of the questions. You can answer.

THE WITNESS: No. The fact is this is the first time I've seen this piece of paper.

BY MR. CORRALES:

Q. This document purports to be a document that was sent on your behalf to the Bureau of Indian Affairs

saying that you are the vice president of the Sheep Ranch Band of Miwok Indians General Council and a member of the tribe. It refers to tribal chairperson Silvia Burley, and it's signed by Mary Wynne, but it's signed as the attorney appointed representative, power of attorney, oral request by Yakima Dixie. And so the second page says Yakima Dixie, vice chairperson.

Have you ever seen -- let me rephrase the question.

Do you doubt the authenticity of this letter?

MR. McCONNELL: Objection. Lacks foundation. Calls for speculation. He's already testified he's never seen this document before. It's also completely beyond the scope of what we're here to talk about today.

MR. CORRALES: Your answer, sir?

MR. McCONNELL: On that ground, I instruct him not to answer.

BY MR. CORRALES:

Q. So when it says here: As vice president of the Sheep Ranch Band of Miwok Indians General Council and as a member of the tribe, I am requesting that the BIA assist the tribe in its efforts to conduct its tribal business.

Did you ever ask Mary Wynne, the person that you just mentioned in your testimony, to send that

information to the BIA?

MR. McCONNELL: Same objection. In addition, it's an attorney-client privileged communication. And on that ground, as well as being beyond the scope, I instruct you not to answer.

BY MR. CORRALES:

Q. Did you authorize Miss Wynne to send this letter?

MR. McCONNELL: Same objections and again instruct you not to answer.

BY MR. CORRALES:

Q. Did you ever refer to yourself as the vice president or vice chairman of the Sheep Ranch Band of Miwok Indians?

MR. McCONNELL: Objection. It's beyond the scope of this deposition and instruct you not to answer.

MR. CORRALES: Just for the record, Counsel, we're going to be back, because Mr. Dixie has answered questions in a reasonable follow-up to these specific questions, and he's mentioned the resignation issue. He's mentioned Mary Wynne, and he stated that he was -- he's always is the chairperson. Always has been designated as the chairperson of the tribe.

So this is perfectly within the scope, and we're just going to have to come back.

BY MR. CORRALES:

Q. Now, let me ask you this question, Mr. Dixie, since we're on a roll here. You claim the document was forgery. I'll show you what is marked -- what will be marked as Exhibit 33 to your deposition.

(Plaintiff's Exhibit 33 was marked for identification.)

BY MR. CORRALES:

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

MR. McCONNELL: What question is this in follow up to?

MR. CORRALES: He just told me that he did not sign a resignation, and that the resignation is a forgery, and that his attorney, Mary Wynne, took it to a forensic handwriting expert and said it was a forgery. So I want to know if this is the document he's referring to.

MR. McCONNELL: Okay.

BY MR. CORRALES:

Q. Is this the document you're referring to?

A. Hum -- if it concerns the resignation.

Q. That's what it says, Formal Notice of Resignation signed -- appears to be -- purports to be

the signature of Yakima Kenneth Dixie. Was this the document you were referring to in your deposition testimony moments ago?

A. I'm not too sure.

Q. Can you look at the document, sir.

A. I can see it from right here.

Q. You can see it from there. Do you have any trouble seeing from there?

A. No. In fact, I don't have any copies of these piece of papers you're bringing out.

Q. Okay. So you say you're not sure if this is the document that you were just referring to in your deposition testimony, correct?

MR. McCONNELL: Asked and answered.

THE WITNESS: Correct.

BY MR. CORRALES:

Q. Is that your signature?

A. Yeah, that's my signature.

Q. Okay. Next document --

A. On that first one over there, that's not my signature.

Q. I'm not referring to Exhibit Number 32. Okay.

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

(Plaintiff's Exhibit 34 was marked for identification.)

BY MR. CORRALES:

Q. It purports to be signed by Yakima Dixie, Silvia Burley, and Rashel Reznor. Let the record reflect that I'm giving counsel copies.

Now, have you ever seen this before, sir?

A. Yes, I have.

Q. Is that your signature?

A. Hum?

Q. Is that your signature on the document?

A. That is, yes.

Q. The next documents is Exhibit Number 35, and it purports to be a General Council Meeting for 8 May 1999, and it purports to have the signature of Yakima Dixie, Silvia Burley, and Rashel Reznor.

(Plaintiff's Exhibit 35 was marked for identification.)

BY MR. CORRALES:

Q. Do you see that document, sir?

A. Yes, that's true.

Q. Is that your signature?

MR. McCONNELL: I'll object. What is this a reasonable follow up to?

MR. CORRALES: That his testimony was that he

did not resign. That his resignation was a forgery.

MR. McCONNELL: What does this document have to do with that?

MR. CORRALES: His signature.

BY MR. CORRALES:

Q. Is that your signature, sir?

A. Yeah.

Q. Now, the other – let me see. I want to show you what's been marked next in order as Exhibit 36.

(Plaintiff's Exhibit 36 was marked for identification.)

BY MR. CORRALES:

Q. It purports to be a Development Agreement. Here's a copy.

Mr. Dixie, the Exhibit Number 36 – could you hand that to Mr. Dixie. It purports to be a Development Agreement dated April 30th, 1999, with an addendum attached to it. And it's an agreement between the Sheep Ranch Tribe of Miwok Indians and BBC Entertainment.

I want you to look at this document and tell me if you've ever seen it before. Have you seen this document before, sir?

A. I don't know if I seen this one at all.

Q. Okay. Look it over.

A. I see our attorney down there, Mary Wynne.

Q. Mary Wynne, okay. Look on Page 15. Do you see on Page 15 the signature – your signature there, sir?

MR. McCONNELL: Objection. What is this – again, what follow up is this? Where is this falling into the line of questioning here? This is not a wide open you can ask whatever you want deposition.

MR. CORRALES: He said that his resignation was a forgery.

MR. McCONNELL: And what does this have to do with that?

MR. CORRALES: Well, you'll see.

MR. McCONNELL: I'd like to hear an offer of proof or he's not going to be answering.

MR. CORRALES: Why don't you look at the document I gave you. Look on Page 15.

BY MR. CORRALES:

Q. On Page 15, sir, you signed the document as Yakima Dixie, and Silvia Burley signed as chairperson of the general council. Do you see that, sir?

A. I don't recollect on that one.

Q. All right. Is that your signature?

A. It's the first time I seen that.

Q. Okay. Well, turn to Page 15. Could you turn to Page 15, sir, and look at your signature and see if that's yours.

MR. McCONNELL: Go ahead and take a look at Page 15.

BY MR. CORRALES:

Q. Is that your signature, sir?

A. Yeah, that's my signature.

Q. Okay. And there's an addendum here. Could you assist him in going to Page 2 of the addendum, which is dated July 23rd, 1999. There are various signatures. Mary Wynne signed. And then you signed, Yakima Dixie, tribal member. Silvia Burley signed as chairperson.

Is that your signature? Can you see that?

A. I don't know.

Q. You're not sure if that's your signature?

A. Huh?

Q. You're not sure or you don't know?

A. I'm not sure.

Q. Okay. Can you take a look again. Pick up the document and look at it.

A. I can see it from right here.

Q. Okay. It doesn't look like your signature, or does it look like your signature?

A. It does not look like my signature.

Q. Okay. All right. Do you doubt that's your signature?

MR. McCONNELL: Asked and answered.

THE WITNESS: I'm not going to doubt it, but I'm not sure.
BY MR. CORRALES:
Q. Do you recognize Mary Wynne's signature next to yours, what purports to be yours?
A. Umm, I don't recognize her writing. I mean ...
Q. Did you authorize her to sign this document?
A. Not that I know of.
Q. Did you understand that when you -- when she signed this document or when the signatures were put on this document that the document was being signed by Silvia Burley as chairperson?
MR. McCONNELL: Calls for speculation.
THE WITNESS: Not that I know of.
BY MR. CORRALES:
Q. At the time this document was signed -- there's actually two dates, the one in April of 1999. Did you -- let's refer to that one. On April 30th, 1999, did you have any discussions with Miss Burley about her signing the document? Did you?
A. I don't remember.
Q. Okay. All right. I want to show you next in order 37, and this purports to be a letter dated March 7, 2000, from Dale Risling to Silvia Burley, chairperson.

(Plaintiff's Exhibit 37 was marked for identification.)
BY MR. CORRALES:
Q. And I want to read you something in this document and ask you if that refreshes your recollection or if you remember this happening.
Dear Miss Burley. The purpose of this correspondence is to provide you with a summary of the discussion that occurred during a meeting on February 15, 2000, held at the Central California Agency with Yakima Dixie, vice chairperson of the Sheep Ranch Rancheria Tribe, his brother Melvin Dixie and other interested parties.
Do you remember that meeting?
A. No, I don't.
Q. Do you remember attending a meeting with Mr. Risling on February 2000, Dale Risling of the BIA, in which you referred to yourself as the vice chairperson of the Sheep Ranch Rancheria?
A. No, I don't.
Q. And then the next paragraph says: At the request of Yakima Dixie, vice chairperson, which he made during a meeting at the agency with him and other interested parties on December 28, 1999, we scheduled a meeting to be held at the agency on February 15, 2000.

Do you remember making a request of the BIA, that is Mr. Risling, as -- in your capacity as vice chairperson of the tribe?
MR. McCONNELL: Compound. Misstates the testimony of the evidence.
THE WITNESS: No.
BY MR. CORRALES:
Q. Okay. Let's go to Question Number 5. In brackets it says: In your Declaration, when you say the documents showing my resignation is a forgery, is it a letter saying that you resigned that you claim is a forgery? I believe that is what it was, yeah.
And then it says: When did you discover that? When did you find out about that?
Do you understand the question, sir? I'm asking when did you find out that the resignation letter was what you believed to be a forgery, when did you discover that?
A. I don't recollect.
Q. Okay. Now, on page -- what did I do with that -- there it is. Page 36 of your deposition transcript, you say -- actually, Page 34, in your Declaration, when you say the document showing my resignation is a forgery, is that a letter saying that you resigned, that you claim is a forgery? I believe

that it was -- okay, that's not what I'm looking for. Page 36, I was right.
Now, did you meet Mr. Everone before or after you found out about what you believed to be this forgery?
Answer: Before, I do believe, yeah.
And then the question is: And did he help you discover the forgery? That's the Question Number 6.
And you refused to answer on the grounds that it might incriminate you. The Court has ruled on that and ordered you to answer the question.
The question is: Did Mr. Everone help you to find out about the forgery that you claimed to be?
A. Again, I'm going to stand on the Fifth Amendment of the Constitution.
MR. McCONNELL: Yakima, listen to the question. The question is: Did Mr. Everone help you discover the forgery? And go ahead and give your best answer.
BY MR. CORRALES:
Q. Can we get an answer, sir?
MR. McCONNELL: Did Mr. Everone help you discover the forgery?
THE WITNESS: I'm going to refuse to answer that question.
MR. McCONNELL: Go ahead, it's okay. Just go

ahead and give your best recollection as far as what your answer would be to whether Mr. Everone helped you discover the forgery.

THE WITNESS: I don't know.

BY MR. CORRALES:

Q. You don't know. Okay. Going to Question Number 7: What did Mr. Everone tell you about the forged document?

A. I don't recollect.

Q. Question Number 8: What discussions did you have with Everone about the document you believe to be forged at the time that you first discovered it to be forged? What did he tell you? What discussions did you have with him?

A. Again, I don't remember.

Q. Did you have any kind of discussions with Mr. Everone about the fact that you believe that your resignation was unjust, improper, that you should be the chairperson? Did you have any kind of discussions with him about that?

MR. McCONNELL: It's compound and asked and answered, but you can answer again.

THE WITNESS: I don't know.

BY MR. CORRALES:

Q. Do you know why Mr. Everone is claiming that

you should be the chairperson because the document is forged?

MR. McCONNELL: Hold on. Could you --

MR. CORRALES: I'll withdraw the question.

THE WITNESS: All these questions --

MR. CORRALES: I'm withdrawing the question, sir.

BY MR. CORRALES:

Q. What meetings did you have with Mr. Everone about the fact that Miss Burley was the chairperson and not you when you first met Mr. Everone?

MR. McCONNELL: It's compound. It's vague. It's been asked and answered. Lacks foundation.

THE WITNESS: I'm -- I don't recollect. I don't know.

BY MR. CORRALES:

Q. Well, did Mr. Everone tell you that you had to claim that the document, your resignation was a forgery in order for him to help you get a casino?

MR. McCONNELL: I'm going to object. Sounds like you're moving on to one of the questions, and if so you need to read the question as it was originally asked.

BY MR. CORRALES:

Q. Your answer, sir?

MR. McCONNELL: I'm going to instruct you not to answer. I believe you're asking Question Number --

MR. CORRALES: I'm not. I'm asking follow-up questions on Number 8.

MR. McCONNELL: Question 12. That's not a follow-up question.

MR. CORRALES: Are you going to instruct him not to answer?

MR. McCONNELL: The question on the record --

MR. CORRALES: Instruct him not to answer and we'll move on.

MR. McCONNELL: The question on the record is what discussions did you have with Everone about the document you believed to be forged at the time you first discovered it to be forged. And his testimony is that he doesn't remember such discussions.

BY MR. CORRALES:

Q. Sir, when you had discussions with Mr. Everone when you first met him, did you discuss Miss Burley's chairmanship in relationship to his desire to build a casino?

MR. McCONNELL: It's compound and vague.

THE WITNESS: I don't know.

BY MR. CORRALES:

Q. Okay. All right. Question Number 9. Why is

it that you claim that the document to be a forgery that says Miss Burley is the chairperson and not you? Why do you claim that to be a forgery?

So why do you claim the document that says that you resigned as chairperson, why do you claim that be a forgery?

A. I do believe that document was tooken in front of a handwriting expert in Sacramento. Again, it was forged.

Q. Okay.

A. It was not my writing.

Q. So you believe it to be a forgery based upon some handwriting expert saying that it wasn't your handwriting; is that the only reason?

A. No.

Q. What's the other reason?

A. No.

Q. Did Mr. Everone, for example, tell you that the document appears to be forged?

A. No.

Q. Did Mr. Everone tell you that you had to say the document was a forgery in order for him to help you?

A. No, nobody told me anything.

Q. All right. Question Number 10. Is it correct that when you first discovered that your resignation was

forged that you said nothing to Miss Burley about you being the hereditary chief? Do you understand that question, sir?

A. Repeat that again.

Q. Certainly. Is it correct that when you first discovered that your resignation was forged that you said nothing to Miss Burley about you being the hereditary chief?

A. Not that I know.

Q. Question Number 11. And the communication to Miss Burley about this resignation being a forgery was actually created by Everone.

Is that right?

A. Not that I know.

Q. Is it correct that Mr. Everone actually fabricated this forgery issue and forced you to go along with it in order to assist him in getting a casino built?

A. Not that I know of.

Q. Number 12 says: Mr. Everone told you that in order for his plans that he had for the tribe to work that you had to say that the resignation was a forgery.

Is that correct?

A. No. Huh-uh.

Q. Did you -- did you ever participate in any kind

of scheme to lie about something that wasn't true in order to -- in order to try to get an advantage in a situation?

MR. McCONNELL: Vague.

THE WITNESS: No.

BY MR. CORRALES:

Q. Your answer is no?

A. Uh-huh. No.

Q. So this would have been out of character for you to participate in something with Mr. Everone like this, to lie about this?

MR. McCONNELL: Vague. Overly broad.

THE WITNESS: No. Meeting adjourned?

BY MR. CORRALES:

Q. No.

A. Man, I can't sit here all day listening to this crap.

Q. All right. The next document, Exhibit 38, purports to be -- well, I'll just read it and ask you if this is true. I'm not so sure if I want to -- well, let's see. It says here, Exhibit Number 38, Report of Probation Officer.

(Plaintiff's Exhibit 38 was marked for identification.)

BY MR. CORRALES:

Q. People versus Yakima Dixie. It says here that, on Page 9, this is about the murder of Mr. Jeff, and it recites how the murder occurred and the victim had -- didn't have a leg.

And it said: Defendant appears to have attempted to suborn perjury. The contents of the two letters appear to be clearly an attempt to shift blame to defendant's father, Vivian's son, or anyone that Vivian could find at the insistence of the defendant.

And that you -- did you ever try and get -- here it is. Here's another one. The defendant attempted to interfere with the judicial process in that he attempted to get letters delivered to a witness in which letters he tried to persuade a witness to commit perjury. Did you ever do that, sir?

MR. McCONNELL: Objection. I'll instruct him not to answer. That is a Fifth Amendment type question, number one.

Number two, it's completely outside the scope of the purpose of this deposition, and it's entirely and absolutely irrelevant. It's pure hearsay. You don't have to answer that.

MR. CORRALES: Okay. Just for the record, the witness made a statement that he never participated in such activity, and yet the probation report, which is

dated 1978, which could not possibly ever be a basis for a Fifth Amendment assertion, contradicts what the witness just said. So I disagree with that, and we'll come back and perhaps have you answer questions about that.

Okay. Now, let's see. Question Number 12 --

MR. McCONNELL: You already asked it.

MR. CORRALES: Okay.

BY MR. CORRALES:

Q. Everone -- Number 13. And Mr. Everone told you that in order to get control of the tribe you had to be the chairperson, but the problem was Miss Burley. You had resigned, and Miss Burley was the chairperson. Is that what he told you?

Your answer, sir?

A. No. Huh-uh.

Q. You didn't say that. Okay.

Question Number 14. So he said to you, Mr. Dixie, that you had to say that document was forged, that is, your resignation was forged, and you agreed to do that. You agreed to say that. Isn't that correct?

A. No, that's not true.

MR. CORRALES: Okay. Let's take a couple of minutes. I have to use the rest room.

THE VIDEOGRAPHER: We're off the record at

4:40. This is the end of Video Disk Number 1.
(Recess taken.)
THE VIDEOGRAPHER: We are back on the record at 4:55. This is the beginning of Video Disk Number 2.
BY MR. CORRALES:
Q. Okay. Mr. Dixie, you understand that you're still under oath?
A. Yes, I do.
Q. Okay. Going to Question Number 15. What did Mr. Everone tell you what the word consul means or meant? C-O-N-S-U-L. Do you understand the question, sir?
A. No, I don't.
Q. I want you to look at Exhibit Number 31 to your deposition. It's a Resolution, California Valley Miwok Tribe, California, Sheep Ranch Rancheria of Miwok Indians, and it's got the 11178 Sheep Ranch Road address.
And it's signed by -- purportedly signed by you and others, and it says: Chadd Everone is appointed as deputy and consul general. Do you see that, sir? And I want to ask you if that means anything to you, that term consul general? That's what I mean by the word consul.
A. I -- I don't think anybody ever brought that up to my attention what that means. I mean ...

Q. The document here, did you type or draft that document, Exhibit Number whatever it is?
MR. McCONNELL: 31.
MR. CORRALES: Thank you.
BY MR. CORRALES:
Q. Exhibit Number 31, did you draft or type that document?
MR. McCONNELL: Did you prepare Exhibit 31, the typewritten part?
THE WITNESS: Did I type it or write it?
BY MR. CORRALES:
Q. Type it or write it.
A. No, not that I know of.
Q. Who did?
A. I don't know.
Q. Did you read it before you signed it?
A. Huh?
Q. Did you read it before you signed it?
A. I usually read everything before I sign it.
Q. When you read that part that said Everone was being appointed as the deputy and consul general, what did you understand the word consul to mean?
MR. McCONNELL: It's been asked and answered.
THE WITNESS: I don't know.
BY MR. CORRALES:

Q. Have you ever heard of the term consul general before, before today?
A. Not that I know of, no.
Q. So when you hear that Chadd Everone was appointed by the tribe to be its deputy and consul general, the term consul general doesn't mean anything to you?
MR. McCONNELL: Asked and answered.
THE WITNESS: That part, no, but a deputy, I know what a deputy is, but I don't know about the other part.
BY MR. CORRALES:
Q. Okay. And I believe you told us what the deputy means. Okay. All right. And did Mr. Everone ever tell you that his title as general consul meant that he was the tribe's attorney?
MR. McCONNELL: Asked and answered.
THE WITNESS: Not that I know of, no.
MR. CORRALES: Okay.
BY MR. CORRALES:
Q. Question Number 16. What kind of oversight of the litigation strategy is Mr. Everone appointed to? What does he do?
MR. McCONNELL: It's been asked and answered.
MR. CORRALES: Asked and answered. This is

Question Number 16.
MR. McCONNELL: I know, but we spent the first 30 minutes of this deposition talking about that.
MR. CORRALES: Well, this is a little more specific.
BY MR. CORRALES:
Q. Litigation strategy, what do you understand litigation strategy to mean?
MR. McCONNELL: Let's just stick to the question. What kind of --
MR. CORRALES: This is my question, my deposition.
MR. McCONNELL: And this is --
MR. CORRALES: I'll withdraw the question and lay a foundation if you please.
BY MR. CORRALES:
Q. What do you understand the word litigation or term litigation strategy to mean?
A. I don't know.
Q. Okay. If I were to tell you that litigation strategy has to do with this case, this lawsuit, making decisions about this lawsuit, would that help you?
MR. McCONNELL: Calls for speculation. Assumes facts.
THE WITNESS: No.

BY MR. CORRALES:
Q. Okay. So the question: What kind of oversight of the litigation strategy is Mr. Everone appointed to, what does he do, you can't answer that question because you don't understand what the term litigation strategy means; is that correct?
A. True.
Q. Okay. To your knowledge, what does Mr. Everone do with respect to this lawsuit, the case that is going on, what does he do?
A. What he does?
Q. Yeah. I mean, does he type stuff? Does he meet with —
A. No —
Q. What does he do?
MR. McCONNELL: Lacks foundation. Calls for speculation. Asked and answered. Answer again.
BY MR. CORRALES:
Q. Go ahead.
A. Something to do about extending life.
Q. Okay. Explain.
A. That's all I know.
Q. Extending life in terms of the case?
A. Longer living.
Q. Longer living for whom? You?

A. For everybody.
Q. Okay. So his role in assisting in litigation strategy extends the life expectancy of everybody involved with the case?
MR. McCONNELL: Calls for speculation. Misstates.
THE WITNESS: That's what he does. I mean, you know ...
BY MR. CORRALES:
Q. All right.
A. Lives in Berkeley, and he does that.
Q. He lives in Berkeley. Are you suggesting that he has something to do with an aging society?
A. Yeah, I guess you could say aging, extending of life.
Q. Okay. What does that have to do with the litigation in this case?
A. I don't believe it has anything to do with it.
Q. Okay. Why did you mention it?
MR. McCONNELL: Argumentative.
THE WITNESS: Because you asked me about Chadd.
BY MR. CORRALES:
Q. Okay. So when you think about Chadd and this lawsuit, you think about the aging and life expectancy and not this case?

MR. McCONNELL: Argumentative.
THE WITNESS: Yeah. Uh-huh.
MR. CORRALES: Okay. All right.
BY MR. CORRALES:
Q. Did you understand that Mr. Everone confers with attorneys in this case, like with Mr. McConnell and perhaps Mr. Wolfrum, did you understand that he confers, meets with them?
A. I don't know.
Q. Okay. Did Mr. Everone ever talk to you about any discussions he may have had with Mr. McConnell or Mr. Wolfrum about this case?
A. I don't know.
Q. For example, your deposition had to resume today. You came here to your deposition. You were told that you had to come to your deposition again. Did Mr. Everone have any involvement in communicating that to you?
A. Not that I know of.
Q. Okay. So when you say that Mr. Everone is your attorney, has that stopped with respect to this case?
A. He's my deputy attorney for way over 10 years.
Q. Okay. But with respect to this case, the ongoing litigation with the intervenors, we've got Velma White Bear and others who want to come into the case,

what, to your knowledge, does Mr. Everone do with that part of the litigation?
A. He don't.
Q. Does he meet with the intervenors, to your knowledge?
A. No.
Q. Have you given Mr. Everone authorization to meet with parties in this lawsuit like the intervenors?
A. Yeah. Uh-huh.
Q. And has he reported to you that he has done that?
A. Yeah.
Q. Let's go to Question Number 17. It says that Mr. Everone is responsible for contracting with attorneys. I was referring to a document in your deposition last time.
Did Mr. Everone contract with Mr. Wolfrum to be your attorney? You know who Mr. Wolfrum is?
A. Mr. Wolfrum is my tribal attorney.
Q. Did Mr. Everone sign a paper with him to have him help in this case?
A. I'm not too sure. They both live down in Berkeley real close — they live right next to each other in an office where Mr. Everone works, and our tribal attorney, Wolfrum, he lives there, too.

Q. How did Mr. Wolfrum become the tribal attorney in this case?

A. I do think it was through Chadd, and he suggested -- I got a good attorney for you.

Q. And of course Mr. Everone is your tribal attorney or deputy; you followed that suggestion?

A. Yeah, deputy.

Q. Now, Question Number 18. How did Sheppard Mullin come about to represent you in this case? Do you know who Sheppard Mullin is? Lawyers?

A. I think -- aren't they right here?

Q. These two guys work for Sheppard Mullin, a law firm?

A. Yes.

Q. Mr. Wolfrum also works for that law firm. The question is how did that law firm come to be your lawyers like Wolfrum is your lawyer?

A. Here's one of the guys, you could ask him that question.

Q. Wish I could.

A. And he can answer it.

Q. Wish I could, but he's not a witness.

MR. McCONNELL: Just answer. Either you know or you don't.

BY MR. CORRALES:

Q. Just tell me your best recollection. Doesn't have to be precise. Tell me the best you can about how they came about to be one of the other lawyers in the case.

A. I don't know.

Q. To your knowledge, did Mr. Everone meet with them to get them to be one of the lawyers in the case, like did he recommend them?

A. It's a possibility there, yeah.

Q. What discussions did you have with Mr. Everone about Sheppard Mullin being your lawyers?

MR. McCONNELL: Lacks foundation.

THE WITNESS: None.

BY MR. CORRALES:

Q. Okay. All right. You just basically let Mr. Everone handle that part of the responsibilities in contracting with lawyers?

MR. McCONNELL: Argumentative. Misstates.

BY MR. CORRALES:

Q. His job to handle that?

MR. McCONNELL: Lacks foundation.

THE WITNESS: I don't know.

BY MR. CORRALES:

Q. Okay. All right. Other than yourself, who else has the responsibility to ask or oversee what Mr. Everone is doing for the tribe?

MR. McCONNELL: Lacks foundation.

MR. CORRALES: Other than yourself.

MR. McCONNELL: Lacks foundation. Calls for speculation. You can answer.

THE WITNESS: My tribal council.

BY MR. CORRALES:

Q. Your tribal council is listed there -- what is that?

MR. McCONNELL: 31.

BY MR. CORRALES:

Q. On Exhibit 31, is that your tribal council list on 31?

MR. McCONNELL: Are those the names of all the tribal council members?

THE WITNESS: Uh-huh.

MR. McCONNELL: Are these the names of the tribal council members on Exhibit 31?

THE WITNESS: That's Michael -- and who is this one?

MR. McCONNELL: Antonio Lopez?

THE WITNESS: Yes.

MR. McCONNELL: And Velma White Bear?

THE WITNESS: Yes.

MR. McCONNELL: Evelyn Wilson?

THE WITNESS: Yes.

MR. McCONNELL: Anton Azevedo?

THE WITNESS: Yeah, that's my counsel.

BY MR. CORRALES:

Q. Question Number 19. Do you believe that one of the reasons they, meaning the plaintiff, are not entitled to that money or Revenue Sharing Trust Fund money is because they don't have a recognized government?

We're talking about the tribe that's headed by Silvia Burley down in the Valley. Do you believe that one of the reasons that they're not entitled to the money that's being stopped --

A. Uh-huh.

Q. -- is because they don't have a recognized government?

A. Well, it's not no federal property. There's nothing there. I mean, you know, what they got, three or four people, maybe five at the most?

Q. Any other reason?

MR. McCONNELL: It's been asked and answered. You can answer.

THE WITNESS: Not that I can -- no.

MR. CORRALES: Okay. Mr. Dixie, those are all the questions I have. We may or may not see you again

but –
THE WITNESS: I'm glad and I'm happy about that.
MR. CORRALES: That's fine. I will propose that we have the same stipulation –
MR. McCONNELL: I have a couple of questions.
MR. CORRALES: Okay.

EXAMINATION

BY MR. McCONNELL:
Q. Mr. Dixie, earlier you were shown what was marked as Exhibit 33, a document that reads Formal Notice of Resignation. And it says: I, Yakima K. Dixie, being of sound mind and body on this date of Tuesday, April 20, 1999, am resigning as chairperson of the Sheep Ranch Tribe of Miwok Indians Sheep Ranch, California.
There's a signature on that document, Exhibit 33. Did you write the signature that's on Exhibit 33?
A. I don't believe I did. And in fact, this is the first time I seen this – well, maybe second time, if, you know – but here's my signature here.
MR. CORRALES: You say here's my signature here, let the record reflect that the witness is pointing to Exhibit Number 34.

BY MR. McCONNELL:
Q. Let's take a look here, Mr. Dixie. Exhibit 31 we've looked at a number of times, the resolution appointing Mr. Everone on behalf of the tribe. There's a signature next to your name on that document. Do you see where I'm pointing to?
A. Hum?
Q. Is that a signature that you wrote on the resolution appointing Chadd Everone?
A. Yeah, I think so. I see my Y there.
MR. CORRALES: Okay. Let the record reflect when the witness said can you see how my Y's are, he was referring to Exhibit 33, which is the resignation, the Formal Notice of Resignation.
MR. McCONNELL: That misstates.
MR. CORRALES: That is exactly what the video camera will show, Mr. McConnell. You can't say it misstates.
BY MR. McCONNELL:
Q. Taking a look at Exhibit 31, the signature on Exhibit 31, is that how you write your signature? This is again the resolution for Chadd Everone to be made the deputy and consul general for the tribe. Is that how you normally sign your name?
A. Uh-huh.

Q. Is that a yes?
A. Uh-huh.
Q. We need to hear a yes.
A. Yeah.
Q. Uh-huhs don't work well.
A. Okay.
Q. Okay. And you said, as far as Exhibit 33 goes, that that is not your signature, correct?
MR. CORRALES: Objection. Leading and suggestive.
THE WITNESS: That's true.
MR. McCONNELL: Okay.
BY MR. McCONNELL:
Q. And if you take a look at what you previously were shown as Exhibit 34, this is a document that indicates that the General Council as the Governing Body of the Sheep Ranch Tribe of the Miwok Indians has agreed to accept the resignation of chairperson from Mr. Yakima K. Dixie.
Now, did you ever resign as chairperson of the Miwok Tribe?
A. Well, in the Miwok Tribe, in our tradition, if you got – you hold a position, you cannot resign –
Q. So did you ever resign?
A. – until you die or whatever.

Q. And did you ever resign?
A. Not that I know of, no.
Q. And you were asked about this signature. Did you write the signature that's on Exhibit 34 that says that you're resigning as chairperson? Did you write this signature?
A. I don't believe I did.
MR. McCONNELL: I have no further questions.
MR. CORRALES: Okay. Let me see those two documents.

FURTHER EXAMINATION

BY MR. CORRALES:
Q. Mr. Dixie, before we took a break – before we took a break you were asked questions about Exhibit Number 33 and 34, correct? Before we took a break, do you remember that, sir?
MR. McCONNELL: Earlier today.
BY MR. CORRALES:
Q. Earlier today, when we took a break, before we took a break you were asked questions about 33 and 34; is that right?
A. I believe so.
Q. Okay. And before we took a break you said – the record will reflect this – that Exhibit Number 33 contained your signature. Do you remember saying that?

MR. McCONNELL: It's asked and answered and argumentative.
THE WITNESS: I don't believe that —
BY MR. CORRALES:
Q. You don't believe you said that? The record will reflect that you said that. Do you remember saying that, sir?
A. I don't remember.
Q. Okay. So if the record reflects that you said that, would you dispute that?
MR. McCONNELL: Argumentative.
BY MR. CORRALES:
Q. Sir, if the record — if she reads it back and says that you actually said that, would you dispute that?
MR. McCONNELL: Argumentative and irrelevant. You can answer.
THE WITNESS: Are you listening to my attorney?
BY MR. CORRALES:
Q. Yes or no, would you dispute that?
MR. McCONNELL: Same objections.
BY MR. CORRALES:
Q. If the record says that you acknowledged this was your signature, would you disagree with that?
MR. McCONNELL: Same objections. It's also

vague. You can answer.
BY MR. CORRALES:
Q. Yes or no, sir?
MR. McCONNELL: Same objections.
THE WITNESS: I do believe there was some forgery here somewhere, but I'm not sure that's my signature.
BY MR. CORRALES:
Q. Sir, before we took the break you testified that this was your signature.
A. I don't remember whether I said I did or —
Q. The record will reflect you did say that. Do you disagree with that, what the record would say?
MR. McCONNELL: Argumentative and irrelevant.
BY MR. CORRALES:
Q. Do you disagree with what you said earlier?
MR. McCONNELL: Argumentative.
THE WITNESS: Are you listening to my attorney?
BY MR. CORRALES:
Q. Do you disagree that what you said earlier that this was your signature? Are you changing your testimony, sir?
MR. McCONNELL: Argumentative. Asked and answered.
BY MR. CORRALES:

Q. Yes or no? Are you changing your testimony?
MR. McCONNELL: Same objections.
THE WITNESS: It's getting late. Almost time for supper.
BY MR. CORRALES:
Q. Mr. Dixie, please answer the question. You said Exhibit Number 33 contained your signature. Are you now changing your testimony?
A. I don't know whether I said it was my signature or looked like my signature.
Q. You said it was your signature. Are you changing your testimony?
MR. McCONNELL: Asked and answered. Argumentative.
THE WITNESS: I don't remember.
MR. CORRALES: That's not the question.
BY MR. CORRALES:
Q. The question is: Are you changing your testimony?
MR. McCONNELL: Same objections.
THE WITNESS: No, I said what I said.
BY MR. CORRALES:
Q. Okay. And Exhibit Number 34, you previously said that this was your testimony — that this was your signature. Are you changing your testimony there, too?

MR. McCONNELL: Argumentative. Vague.
BY MR. CORRALES:
Q. Are you changing your testimony?
MR. McCONNELL: Same objections.
BY MR. CORRALES:
Q. That you said that this was your signature, Exhibit 34. Are you changing your testimony, sir?
MR. McCONNELL: Argumentative and vague.
THE WITNESS: Are you listening to my attorney? He's talking to you.
BY MR. CORRALES:
Q. I'm asking you, sir, answer the question.
A. And he's speaking up for me.
Q. I understand that, but you have to answer the question. Earlier you said Exhibit Number 34 contained your signature. Are you now changing your testimony? Yes or no.
MR. McCONNELL: Argumentative.
THE WITNESS: I refuse to say any more words due to the grounds it may incriminate me.
BY MR. CORRALES:
Q. You need to answer the question. Are you refusing — excuse me, I know you're refusing. You need to answer the question.
Are you changing your testimony that you gave

earlier which stated that this was your signature? Are you changing that?
MR. McCONNELL: It's argumentative. It's been asked and answered.
BY MR. CORRALES:
Q. Yes or no?
MR. McCONNELL: The witness has testified to what his belief.
MR. CORRALES: Answer the question. Don't coach. Are you changing your testimony, sir. You previously said this was your signature. Are you changing your testimony?
MR. McCONNELL: Your question is vague. It's been asked and answered and it's argumentative.
BY MR. CORRALES:
Q. Your answer?
MR. McCONNELL: Do you understand the question?
MR. CORRALES: He understands the question. Let him answer the question.
BY MR. CORRALES:
Q. Are you changing your testimony that this was your signature?
MR. McCONNELL: It's vague —
MR. CORRALES: Exhibit 34.
THE WITNESS: You're saying you know —

MR. CORRALES: It's vague.
THE WITNESS: Well, if you know, why ask me?
BY MR. CORRALES:
Q. I want you to tell me. Are you changing your testimony?
A. I'm going to stand on the Fifth Amendment.
Q. It's not a Fifth Amendment issue. Exhibit 34, you told us earlier this was your signature. Now, after the break, after you had a chance to talk to your lawyer, you now say this is not your signature.
Are you changing your testimony, sir?
MR. McCONNELL: Vague and argumentative.
MR. CORRALES: Yes or no?
THE WITNESS: I don't know.
BY MR. CORRALES:
Q. You don't know if you are or not?
A. No, I don't know if that's my signature or not.
Q. You stand by the testimony that you gave before —
A. What the heck are you saying?
Q. Do you stand by the testimony that you gave before the break?
A. Here's your goddamn thing.
MR. McCONNELL: It's asked and answered. He just said that he doesn't know if it's his signature.

MR. CORRALES: I know what he said.
THE WITNESS: I don't want it on me.
MR. CORRALES: I need you to answer the question.
THE WITNESS: I'm not going to answer.
BY MR. CORRALES:
Q. Are you standing by the testimony that you gave before the break about Exhibit 34 being your signature?
MR. McCONNELL: It's vague. Argumentative. Asked and answered. He just testified he doesn't believe that's his signature.
MR. CORRALES: Answer the question, please.
BY MR. CORRALES:
Q. Are you changing your testimony that you gave before the break that the signature that's on Exhibit 34 is your signature? Are you changing that testimony?
MR. McCONNELL: Same objections.
BY MR. CORRALES:
Q. Yes or no?
A. Are you listening to my attorney?
Q. I'm trying to listen to you, and I want an answer.
A. And I just got through saying I'm not going to answer any more questions.
Q. You need to answer the question or we're coming

right back and the judge will make you pay another sanction, like he made you pay before.
A. I'm not coming back.
Q. Answer the question. Are you changing your testimony from your earlier testimony where you said that Exhibit Number 34 contains your signature? Are you changing that now?
MR. McCONNELL: It's vague. Argumentative. It's been asked and answered. And he already answered that he doesn't believe that's his signature. You can answer yet again.
MR. CORRALES: That's not the question.
BY MR. CORRALES:
Q. I'm not asking you the question that Mr. McConnell is trying to confuse you on.
The question is this: Earlier you testified that the signature contained on Exhibit Number 34 was your signature. After the break, when you had a chance to talk to your attorneys outside in the corridor, you now come and say, in response to examination by your own lawyer, that this signature is not your signature.
Are you changing your testimony?
MR. McCONNELL: Same objections.
MR. CORRALES: Yes or no?
MR. McCONNELL: Same objections.

BY MR. CORRALES:
Q. Mr. Dixie, we'll stay here as long as we can or have to in order for you to answer the question. Are you changing your testimony from previously given?
A. I'm going to stand on the Fifth Amendment.
Q. This has nothing to do with the Fifth Amendment. I'm asking you: Earlier you said that this was your signature before we took a break. After you consulted with your attorney, you now say that this is not your signature, and I'm referring to Exhibit Number 34.
Are you changing your previous testimony? Yes or no?
MR. McCONNELL: Same objections.
THE WITNESS: We can sit here all night.
BY MR. CORRALES:
Q. Are you changing your testimony, yes or no? Answer the question.
MR. McCONNELL: Same objections. Do you understand the question?
MR. CORRALES: He understands the question. He's just refusing to answer. He just said uh-huh. Is that what you said? Answer the question, sir.
Are you changing your testimony with respect to Exhibit Number 34?

MR. McCONNELL: Same objections.
THE WITNESS: We can sit here all night. Are you getting hungry?
MR. CORRALES: We will if we have to.
THE WITNESS: We will.
BY MR. CORRALES:
Q. Earlier, before we took a break, you testified that the signature that is on Exhibit 34 was your signature. After the break, after you had a chance to talk to your lawyer, you now say that that is not your signature.
Are you changing the testimony that you gave before the break?
MR. McCONNELL: Vague. Asked and answered. Compound.
BY MR. CORRALES:
Q. Yes or no, sir?
A. We can sit here all night.
Q. I'm asking you to answer the question, sir.
A. What did I say? I said we can sit here all night.
Q. I heard what you said. You don't have to slap your hand on the desk.
A. I'll slap you in your face.
Q. Do you want to do that?

A. Yeah.
Q. You'll be a dead man. Nobody threatens me, including you, Mr. Dixie --
A. Don't tell me --
Q. I would be very careful about that. And, Mr. McConnell, I would advise you to tell your client not to make physical threats against me.
A. Don't make a comment about you can be somebody will kill you.
Q. I'm sorry, Mr. Dixie. I have an obligation to protect myself. If you want to try and physically assault me, I will protect myself.
The question is: Exhibit Number 34, the signature that's on Exhibit 34, before we took a break you said that was your signature. After you consulted with your lawyer, you now say it's not your signature. Are you changing your deposition testimony, yes or no?
MR. McCONNELL: Same objections.
THE WITNESS: We can sit here all night.
MR. CORRALES: I'd like an answer to my question, sir.
THE WITNESS: That's what you're going to get, pointblank, (indicating).
BY MR. CORRALES:
Q. If you don't answer the question, sir, we'll

come right back. The judge will make you answer the question. Mr. Dixie, will you please answer the question. I'll repeat the question.
Before we took a break you testified that your signature on Exhibit Number 34 was your signature. After consulting with your lawyer during the break, we got back on the record, and you testified that this was not your signature.
My question to you is: Are you changing your deposition testimony that this is your signature?
MR. McCONNELL: Same objections.
BY MR. CORRALES:
Q. Mr. Dixie, I have the option of reconvening the deposition tomorrow at 9:30.
A. I'm not coming back.
Q. Since it's after hours, and I will make a phone call to Judge Styn on an ex parte basis, emergency basis, and ask him whether or not you are required to answer the question in order to save the expense of all the parties to come back and have you answer the question after we go through another round of motions.
Now, I will do that, reconvene, because the deposition notice says it will continue from time to time -- from day to day until completed. And I will certainly do that if you do not answer the question.

So I'm going to have you and Mr. McConnell take a break and confer about that for the next couple of minutes and come back and see if we can have you answer the question without having to have that done.

We'll take a couple of minutes.

THE VIDEOGRAPHER: We're off the record at 5:27.

(Recess taken.)

THE VIDEOGRAPHER: We're back on the record at 5:36.

BY MR. CORRALES:

Q. Okay. Mr. Dixie, did you have an opportunity to speak with your attorney during the break?

A. Yeah.

Q. Okay. And are you prepared to answer my question?

A. Hum?

Q. Are you prepared to answer my question?

A. Yeah.

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

So my question is: Are you changing your

testimony?

A. It appears not to be my signature.

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

Are you changing your testimony, yes or no?

A. No.

MR. CORRALES: Okay. Those are all the questions I have.

FURTHER EXAMINATION

BY MR. McCONNELL:

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

A. It appears.

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

A. Uh-huh.

Q. You believe that's your signature?

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

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

A. I don't remember on that one.

Q. On Exhibit 34 –

A. Okay. Yeah. Yeah.

Q. Okay. Yeah. This is or is not your signature?

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

THE WITNESS: It is.

BY MR. McCONNELL:

Q. You think it is?

A. Yeah.

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

A. Yes.

Q. – accepting the resignation of chairperson?

A. Uh-huh.

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

A. Yeah. Yes.

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

A. Yeah.

MR. McCONNELL: No further questions.

MR. CORRALES: Any stipulations? Same stipulations as last time?

MR. McCONNELL: Okay. Thank you.

MR. CORRALES: Thank you, Mr. Dixie.

THE REPORTER: Counsel, do you want this

transcribed, I take it?

MR. CORRALES: Yes, we do want it transcribed.

THE REPORTER: Counsel, do you want a copy?

MR. McCONNELL: Sure.

THE REPORTER: How about this morning's depositions, do you want any copies?

MR. HOUSTON: Of this? Not of this at this point. The deposition from this morning is continued until tomorrow.

THE VIDEOGRAPHER: We're off the record at 5:40. This is the end of Disk Number 2 of today's proceedings.

(Time noted: 5:40 p.m.)

YAKIMA KENNETH DIXIE

--oOo--

State of California)
)ss.
County of Placer)

I, Mary Bardellini, Certified Shorthand Reporter No. 2976, State of California, do hereby certify:

That said proceedings were taken at the time and place therein named and were reported by me in shorthand and transcribed by means of computer-aided transcription, and that the foregoing 98 pages is a full, complete, and true record of said proceedings.

And I further certify that I am a disinterested person and am in no way interested in the outcome of said action, or connected with or related to any of the parties in said action, or to their respective counsel.

The dismantling, unsealing, or unbinding of the original transcript will render the reporter's certificate null and void.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of February 2012.

MARY BARDELLINI, CSR No. 2976

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Delivered Via fax on 7/7/99

July 7, 1999

Bureau of Indian Affairs Superintendent
Central California Agency
1824 Tribute Road, Suite J
Sacramento, CA 95815-4308

RE: Historical Copy of the file of the Sheep Ranch Tribe of Me-Wuk Indians

Dear Superintendent:

The Sheep Ranch Band of Me-Wuk Indians have a regular General Council Meeting scheduled for the 10th day of July, 1999. On the agenda are issues that require a full and complete historical file of that Tribe, including all resolutions or other votes taken by either the membership of any governing body of the Tribe, the minutes of each meeting where any vote was taken, copies of actual ballots where available, any and all contracts signed by or on behalf of the Tribe and any other correspondence or records on file with the BIA at the Agency or Regional Offices. Also on the agenda is Brian Golding, who has agreed to assist the Tribe in its efforts regarding these matters.

As Vice President of the Sheep Ranch Band of Me-Wuk Indians General Council and as a member of that Tribe, I am requesting that the BIA assist the Tribe in it's efforts to conduct its Tribal business. In or to assist the Tribe in reaching its goal of self governance and organization, please send the complete file described above with Mr. Golding for delivery to the Tribal Chairperson, Silvia Burley, by July 10, 1999.

Should there be any questions regarding this request, please feel free to contact Mary T. Wynne, who is acting as a legal consultant for the Sheep Ranch Tribe.

Sincerely,

32.1



Yakima Dixie, Vice Chairperson,
Signed by Mary T. Wynne
Attorney at Law- WSBA 12441
Appointed representative by
Power of Attorney and Oral
request of Yakima Dixie
(See attached Power of Attorney)

cc: file, Reisling, Silvia, Charles, Yakima

Enclosure: 1

Sheep Ranch Tribe of Me-Wuk Indians

Formal notice of resignation

I Yakima K. Dixie being of sound mind and body on this date of Tuesday April 20th, 1999, am resigning as Chairperson of the Sheep Ranch Tribe of Me-Wuk Indians Sheep Ranch, California. This written document shall serve as a formal notice within the Tribe and to the United States Government and/or any other powers that may be.

Signed Yakima Kenneth Dixie

YAKIMA K. DIXIE

Cc: Mr. Yakima K. Dixie
11178 School Road
P.O. BOX 41
Sheep Ranch, CA 95250
(209) 728-8625

PENGAD 800-631-6989
EXHIBIT Dixie
33
2-7-12

GENERAL COUNCIL GOVERNING BODY OF THE SHEEP RANCH TRIBE OF ME-WUK INDIANS

RE: ***Chairperson***

SPECIAL MEETING CALLED TO ORDER ON THE 20TH OF APRIL 1999.

Time Beginning: 12:00 NOON

The General Council as the Governing Body of the Sheep Ranch Tribe of Me-Wuk Indians has agreed to accept the resignation of Chairperson from Mr. Yakima K. Dixie.
The General Council has appointed Silvia Burley as Chairperson.

Signed Yakima Kenneth Dixie
Yakima K. Dixie (Chairperson)
Sheep Ranch Tribe of Me-Wuk Indians

Signed Silvia Burley
Silvia Burley (Secretary/Treasurer)
Sheep Ranch Tribe of Me-Wuk Indians

Signed Rashel K. Reznor
Rashel K. Reznor (Tribal Member)
Sheep Ranch Tribe of Me-Wuk Indians

RESOLVED: ***That the General Council is in agreement to the acceptance of the resignation of Mr. Yakima K. Dixie as Chairperson and has officially appointed Silvia Burley as Chairperson of the Sheep Ranch Tribe of Me-Wuk Indians, now, therefore be it.***

This Special Meeting is now adjourned.

Time Ending: 12:30 PM

PENGAD 800-631-6989
EXHIBIT Dixie
34
2-7-12

GENERAL COUNCIL GOVERNING BODY
OF THE
SHEEP RANCH TRIBE OF ME-WUK INDIANS

GENERAL COUNCIL MEETING:

There will be a meeting of all voting members of the Sheep Ranch Tribe of Me-Wuk Indians on the 8th day of May, 1999, at the Sheep Ranch Rancheria, starting at 2 pm and continuing until all the below agenda items are finished:

√RATIFICATION OF CONSTITUTION;
√ORGANIZATION OF PROVISIONAL GOVERNMENT;
√ELECTION OF OFFICERS;
√DEVELOPMENT AGREEMENT;
√SELECTION OF ATTORNEY & CONTRACT APPROVAL

CERTIFICATION OF NOTICE

I certify by my signature below that I have received actual notice of the above meeting all agenda items a minimum of one week prior to attending the meeting and waive any objection to any notice requirements through my attendance and participation in the meeting:

Yakima L. Dixie
Yakima Dixie 5-8-99

Silvia Burley 5-8-99
Silvia Burley

Rashel Reznor 5-8-99
Rashel Reznor

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EXHIBIT Dixie
35
2-7-12

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into this 30 day of April, 1999 by and between the Sheep Ranch Tribe of Me-Wuk Indians, a Federally recognized Indian Tribe, hereinafter referred to as "Tribe," acting by and through its duly authorized Officers, who hereby certify and represent that they are empowered to so act, and BBC Entertainment, Inc,. A Minnesota corporation, with a business address of P.O. Box 21, Mission, SD, 57555 hereinafter referred to as "BBC" and/or "Developer."

WHEREAS, the Tribe desires to acquire land for a tribal land base and to establish physical boundaries of its closed reservation and development of a Gaming Project;

WHEREAS, the Tribe desires to establish an Enterprise for development and gaming purposes to provide income, training, employment, and the betterment of life for the people of the Tribe; and

WHEREAS, Developer has the expertise, experience, resources, and personnel who are experienced in the various fields required; and

WHEREAS, Developer desires to provide for the Tribe certain required , legal infrastructure, resources and financing in order to acquire a site for a gaming facility on tribal land, and for other purposes; and

WHEREAS, the Tribe desires to engage the Developer to perform the services and provide the necessary resources for the development and construction of a gaming facility in return for the payment of the development fee specified herein, and to provide the Enterprise financing for the same; and

WHEREAS, the Tribe is a sovereign entity, as that term is defined by the laws and Courts of this nation and will do nothing to diminish that sovereignty, but realizes that the investment of the substantial amounts of funds contemplated by this Agreement requires that the rights and interests of those who provide such funds need to be protected; and

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36-1

EXHIBIT 36 Dixie 2-7-12

PENGAD 800-631-6989

WHEREAS, Tribe has the right and authority to establish a separate entity, wholly-owned and controlled by the Tribe for that purpose, which can and shall secure to those parties in need of assurance the full force of Tribal and Federal law in the protection of those rights, without infringing upon the sovereignty and independence of the Tribe;

NOW THEREFORE, in consideration of the mutual promises and covenants of the parties it is understood and agreed as follows:

A. RESPONSIBILITIES OF BBC

1. BBC has agreed to provide the following services:

   i. Pursue and receive 25 U.S.C. Section 81 development agreement approval from the U.S. Department of the Interior, Bureau of Indian Affairs (BIA);

   ii. The drafting, development, and refinement of a Tribal Constitution and assistance in the passage of said constitution by the Tribal membership, and approval by the BIA;

   iii. The drafting, development, and refinement of Tribal By-Laws and assistance in the passage of said by-laws by the Tribal membership and approval by the BIA;

   iv. Development of gaming ordinances, rules, and regulations, job descriptions, internal controls, operations manuals and employee handbook

   v. Acquire option on land parcel in the name of BBC Entertainment, Inc. for gaming development, with assignment rights to the Tribe;

   vi. Undertake and complete and Environmental Impact Study (EIS), and State Historic Preservation review on land parcel;

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vii. Negotiate preliminary draft of management agreement for both Class II and Class III casino gaming with the Tribe;

viii. Undertake and complete a market assessment for Class II and Class III gaming developments

ix. The submission, negotiation and execution of a fully prepared package for Class II gaming to the National Indian Gaming Commission (NIGC) for approval.

x. Purchase land parcel in the name of BBC Entertainment, Inc. and assign land parcel to Tribe (held by bank trust department or Title Company in escrow), submit to BIA for trust approval;

xi. Negotiate Class II project financing, complete due diligence and obtain commitments

xii. Work in conjunction with the NIGC and BIA to pursue and obtain simultaneous approval of Class II management agreement (from the NIGC) and land parcel trust status (from the BIA)

xiii. Close Class II project financing

xiv. Commence and complete project construction and open to the public;

xv. Negotiate Class III gaming compact with the State of California.

2. Upon approval of this agreement by the Secretary of the Interior, BBC has agreed to advance the sum of $500,000 to Tribe for purposes of paying start-up expenses for the gaming project and agrees to provide Tribe with additional funds with which to acquire land for a gaming site at a sum to be set upon agreement of the parties at a future date after selection of appropriate land as agreed upon by both parties. The initial advance of $500,000 will be used for the

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payment of all expenses, including legal, travel, and administrative expenses reasonably related to achieving the goals of this agreement, including but not limited to obtaining necessary approvals and site selection for the facility. Additional advances shall be for any additional items, including design and land purchase, and shall be disbursed subject to mutual written agreement, signed by both parties. No profits shall be disbursed prior to repayment in full of all sums advanced by BBC from initial long term financing.

i. The land shall consist of a minimum of 100 acres, or as otherwise agreed on by Developer and Tribe and shall be selected upon an agreement of the parties, with approval evidenced in writing, signed by both parties. Said selection process shall be completed within 90 days of May 8th, 1999 or by August 8th, 1999. Prior to disbursement of funds for the real estate Developer shall have the right to approve of the size, topography and all other geographic or environmental aspects of the development of the Gaming Facility. Developer shall further have the right to approve the designation of the property as well as the terms and conditions of its acquisition. Title to the property must vest in Tribe, or in the United States of America for the benefit of the Tribe, free of any lien or other encumbrance, except easements, restrictions and other encumbrances satisfactory to Developer and Tribe.

ii. Within 90 days of May 8th, 1999, or by August 8th, 1999, BBC shall evidence its ability to pay the required sum for the purchase price and all related costs for the land acquisition, expenses and costs via cash or other financial assurances from a financial institution that is in form satisfactory to Tribe. Except for the release of the first $ 500,000 as specifically set forth in Paragraph 2, release of the funds shall be conditioned upon the occurrence of all of the following:

a. Receipt of an approved Tribal-State Compact to regulate Class III Gaming between Tribe and the State of California, and approval of the Compact by the Secretary of the Interior; and

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b. Receipt of approval of a management contract by the NIGC or acceptance of this Development Agreement approved by the Bureau of Indian Affairs, and the agreement of all parties hereto to continue to pursue the approval of a management contract; and

c. Tribal gaming ordinance adopted and published in form acceptable to Developer.

3. Developer shall arrange project financing to cover all costs of land acquisition, facility design and construction, equipment purchases, and all other costs associated with the daily operation of the gaming facility. Those funds will be utilized for the repayment of the pre-development loan of $500,000 to BBC, acquisition of land for development and construction of a gaming facility, together with all incidentals and development necessary thereto or desired by the Tribe. Within 90 days of May 8th, 1999, or by August 8th, 1999, Developer shall submit an acceptable total project budget for approval by the Tribe. Project budget estimates included in the development budget are estimates for loan advances for the following incidentals:

a. Site acquisition

b. Design

c. Site development

d. Construction

e. Gaming equipment

f. Environmental impact assessments and any and all other studies required by Federal regulation

g. All required permits and licenses

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All funds referred to herein shall be expended for purposes of construction of the project as set forth in the total project budget proposed by the developer and approved by Tribe. Within 90 days of May 8th, 1999, or by August 8th, 1999, Developer shall provide evidence satisfactory to Tribe that Developer has the financial capacity to perform the financial and other obligations required of Developer.

4. Developer shall provide the services necessary to allow Tribe to oversee the project construction and to locate qualified candidates for employment by the Enterprise for the following positions:

   i. An Executive Director, who shall be responsible for the day-to-day management and operation of the Enterprise's Gaming Facility, subject to the oversight of the Enterprise's Board of Directors and who shall have had prior experience in such capacity in the gaming industry;

   ii. A Director of Marketing, who shall be responsible for all publicity and marketing of the Gaming Facility;

   iii. A Director of Accounting, who shall be responsible for the maintenance of the books and accounts of the Enterprise, and who shall have experience in the accounting field;

   iv. A Director of Security, who shall be responsible for ensuring the security of the Enterprise and its operations, and who shall have prior experience in providing security in the gaming industry; and

   v. Such other employees as the parties agree are necessary to accomplish the economic success of the Enterprise.

5. Developer shall assist the Enterprise in training, investigating, and instructing the Executive Director, Director of Marketing, Director of Accounting, and Director of Security.

6. Developer shall also assist the Enterprise in locating and training

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qualified staff and other employees for the Enterprise, and shall submit names and full information for qualified candidates for key personnel so recommended to Enterprise so that the choices may be investigated further and made by the Enterprise.

B. COMPENSATION OF BBC

1. In consideration of the services referenced in Section A, the Developer shall receive no compensation until the gaming facility is opened for business. Thereafter, and throughout the term of this Agreement, Developer's sole remuneration shall be compensation set at a division of profits from the casino at a division of 70% to Tribe and 30% to Developer. All other terms defining profit, its calculation and division shall be set consistent with such terms and considerations as are acceptable to NIGC and approved in writing by both parties at a future date.

2. As further consideration of the financing and services provided by Developer, Tribe and Enterprise agree that Developer is hereby granted the exclusive right to all gaming on the Tribe's lands, including all real estate hereinafter acquired.

C. RESPONSIBILITIES OF TRIBE AND ENTERPRISE

1. Within 90 days of May 8th, 1999, or by August 8th, 1999, the tribe shall create, and throughout the term hereof maintain, a tribally-owned entity known as the Sheep Ranch Tribe of Me-Wuk Indians Gaming Enterprise, hereinbefore and hereinafter referred to as "Enterprise" or "Gaming Enterprise" for the purpose of operating the Gaming Enterprise separate and apart from the traditional governmental functions. The Gaming Enterprise shall be subject to all the Tribe's obligations under this Agreement.

2. The Tribe shall utilize funds provided by Developer to purchase and place in trust and assign or lease to Enterprise certain real property. The assignment or lease shall be for gaming purposes, guaranteed and non-revocable for the term and period of not more than 50 years. The Tribe shall determine those areas, within and outside of the assigned

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space of the gaming facility, which are open to the general public, and shall at all times, permanently or temporarily, have the right to close to any or all persons any part of lands of the Tribe, other than the assigned acreage of the facility and the public access thereto, and the Tribe shall provide and maintain signs, fences, gates or other facilities which will aid in maintaining the physical integrity of those spaces not open to the general public. The Tribe shall assign or lease additional lands related to the Enterprise as the Enterprise and the Tribe deem appropriate from time to time for additional development related to the Enterprise.

3. From the date of this Agreement Tribe agrees that the sole consideration to be received by it shall be as outlined herein for purposes of acquiring the site, and paying costs associated with obtaining the Compact and necessary governmental approvals payable as set forth in the Agreement. Any monthly payments for the Tribe which shall be necessary for it to continue with the project development shall be set forth in budgets to be provided by Tribe and agreed upon is by Developer.

   i. In consideration of the payments, and the other agreements herein by Developer, Tribe hereby further grants Developer the exclusive right to develop a motel project on the site in conjunction with Tribe.

4. The term and period of this Agreement shall commence and terminate as set forth in paragraph 4, E. Other Provisions, set forth here and after.

5. The Tribe shall have and maintain all of its jurisdiction over the assigned property, both civil and criminal as well as governmental, but the Tribe pledges that (a) no statutes, law, rules or ordinances shall be brought to bear against the property, Developer or its associates, in any discriminatory manner, and (b) no taxes, levies, or impositions of a any type shall be levied upon the Enterprise here contemplated or on Developer, and (c) a waiver of sovereign immunity as needed to interpret or enforce this agreement.

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6. The Enterprise shall be given the power to sue and be sued. The Tribe agrees that the Enterprise shall be given the power to sue and be sued in its Charter, which waver of sovereign immunity shall be limited to the assets and income of the gaming operation established herein.

7. Notwithstanding anything to the contrary in this Agreement, or in other laws or statutes of the Tribe, the Tribe and the Enterprise, by this Agreement, agree to and do hereby expressly and unequivocally waive their sovereign immunity from suit as to both jurisdiction and liability and consent to arbitration or to be sued in a court of competent jurisdiction for the purpose of enforcement of the terms of this Agreement, and any agreement or document executed in connection herewith or therewith, subject to the following express and specific limitations.

The action seeks:

a. Recovery or foreclosure of Collateral as describe in Section D of this Agreement;

b. Injunctive relief;

c. Payment of amounts owing by Tribe and/or Enterprise under this Development Agreement, the Loan Agreement referenced and described in Section D of this Agreement and/or any agreement or document executed in connection herewith or therewith; and/or

d. Specific performance of any obligation owing by Tribe and/or Enterprise under the terms of this Agreement, the Loan Agreement referenced and described in Section D of this Agreement and/or any agreement or document executed in connection herewith or therewith; and/or

e. Damages for breach of contract, tortuous interference with contract, or any other actions arising out of the failure to perform this Agreement in accordance with its

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terms.

8. The Tribe shall authorize the Enterprise to offer food, beverage and liquor service and other incidentals related to the business of the Enterprise.

9. The gaming facility's construction, which will be constructed on the property assigned or leased to the Enterprise, shall be dictated by standard practice in the gaming industry and shall be performed in keeping with the architectural and cultural norms and customs of the people of the Tribe.

D. FINANCING THE DEVELOPMENT OF THE GAMING ENTERPRISE AND OTHER ACTIVITIES

1. The Development shall, as set forth in Part A, lend, or arrange for the lending, to the Enterprise sufficient funds to cover the development budget. Tribe and Enterprise shall execute such documents as may be necessary to obtain the project financing which loan shall be evidenced by a Promissory Note payable to the lender by the Gaming Enterprise. Documents might include but shall not be limited to, in addition to the Promissory Note, a Loan Agreement and grant a first security interest in all project revenues generated by the Gaming Facility, securing first the payment to lender, and then the payment of slot machine fees, together with a Depository Agreement, Leasehold Mortgage and Security Agreement and Financing Statement, and further together with such other documents as are necessary in order for the lender to perfect the security interests referenced herein. The execution, effectiveness and enforce ability of said Note, Loan Agreement, Leasehold Mortgage and Security Agreement, as well as the Lease of the subject real property from the Tribe to the Gaming Enterprise, shall constitute express conditions precedent to Developer's obligations under this Agreement.

2. The project loan shall bear interest at no more than 400 basis points (four percent) over the floating treasury rate for loans of the same term and maturity that shall exist at the time of the loan.

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3. Advances of the initial pre-development funds shall be made in accordance with the Agreement. Subsequent advances shall be made, upon obtaining all final building permits and other permits and approvals required for the development of the Gaming Facility and pursuant to budgets agreed upon by the parties.

4. Neither Tribe nor Enterprise shall obligate or spend funds made available by this Agreement without following the agreed upon budgets, with the exception of the $500,000 paid over for start-up expenses set forth in paragraph A2 of this development agreement. With regard to said $500,000, expenditures of this sum shall be incurred for all costs reasonably related to approval and implementation of this development agreement, and all activities reasonably related to defining, achieving, or expanding said purpose.

E. OTHER PROVISIONS

1. The construction, equipping, staffing and commencement of operations of the facility shall be performed in a timely manner, save as a result of foce majeure, strike, change in civil law, or the delay in obtaining any required approval of government or regulatory agencies, act of God or other unforseen and unavoidable cause.

2. This agreement is not a management agreement. All management decisions relating to the gaming operation shall be made by the Tribe or the Enterprise, not the Developer. The Developer shall have no authority to bind the Enterprise or the Tribe with respect to any matter. Trib, to achieve the best possible project results desires to have a management contract with Developer, and the parties agree to enter into a management agreement and seek its approval. In the event of the receipt of a management contract approved by the NIGC the parties agree that it shall supersede and replace this Agreement. Prior to that time the parties further agree and acknowledge that Developer can not provide management services to the gaming Facility as those terms are defined in IGRA and applicable regulations. Tribe has concluded that the only way for it to build the project is to enter into this Development Agreement which provides the Tribe with the ability to build the project and to acquire the

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necessary land. Tribe understand that if the NIGC determines that this Agreement is a Management Contract , then there can be no land acquisition or project development until such time as the parties have been able to actually develop and agree on a management contract and then submit it for agency approval. During that time the Tribe will have to forego providing the employment and benefits to its members which are contemplated if it can proceed with the development.

3. The Developer shall not interfere with or otherwise attempt to influence the internal political affairs or government decisions of the Tribe. This provision shall not be construed to prohibit the Developer from recommending a member of the Tribe or employment of the Enterprise.

4. This Agreement shall commence on May 8th, 1999 and shall remain in effect for five (5) years, or until May 8th, 2004. The agreement may be extended for an additional two (2) years upon written request of either party delivered by certified mail to the address of the parties as set forth in paragraph 1 of this document provided that neither party enters a written objection to extending the agreement, within 10 days of receipt of the notice of intent to renew. may be terminated upon written consent and approval of all parties.

5. Tribe and Developer agree to resolve all disputes, claims and differences arising between them as to any matter under this Agreement by arbitration between the Tribe or Enterprise and Developer. Each party to such arbitration shall select one arbitrator and the two arbitrators thus selected shall select a third arbitrator. The arbitration panel so selected shall apply such rules of procedure and render such award by majority vote as the panel shall deem appropriate. In the event that the tribe or Enterprise fails to agree to arbitration, or raises any defenses to arbitration the dispute shall proceed to the appropriate court of competent jurisdiction.

6. Any notice permitted or required to be given under this Agreement shall be sufficient if it is in writing and sent registered mail, return receipt requested, to Developer at BBC Entertainment, Inc., P.O. Box

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21, Mission, South Dakota 57555, Attention Charlie Colombe, (605)856-2143, Fax (605)856-4585 and to Tribe at 1018 SITKA ST SE Olympia WA 98513 and to Enterprise at the tribal address until such time as notice of a different address shall have been provided to the parties hereto. Upon any change of address, such party shall notify the other party hereto by registered mail, return receipt requested. Thereafter, the new address will be appropriate for dispatch of all notices to that party.

7. This Agreement contains the entire agreement of the parties on the subject matter herein, and any prior agreements of understanding, whether oral or written, on the subject matter herein are merged into this Agreement. This Agreement may be modified by written agreement, signed by both parties. This Agreement may not be modified or amended except in writing, signed by both parties.

8. This Agreement shall be governed, construed and enforced in accordance with the laws of the United States of America and the laws of the State of California. Any construction within the gaming facility and related development shall be constructed in accordance with the 1992 Uniform Building code or any subsequent updates thereof.

9. No waiver of any term or condition of this Agreement shall be effective unless in writing and signed by the parties and any waiver shall be limited solely to the circumstances to which it applies and shall not imply and future waiver, or any waiver of any other term or condition of this Agreement.

10. In any legal action to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees. This Agreement and each and every one of its provisions is specifically enforceable.

11. Nothing in this Agreement, express or implied, is intended to confer on any person or entities other than the parties hereto any right, power, remedy, obligation or duty under or by reason of this Agreement.

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12. On the date of the Agreement, Class III gaming activities many not be conducted by the Tribe due to lack of a Tribal-State Class III gaming compact as required by the Indian Gaming Regulatory Act. The parties anticipate that the requisite Compact will be negotiated in the months ahead. In the event that Class III gaming cannot be conducted by Tribe, then the parties hereby agree that this Agreement shall, subject to the concurrence of the Developer, continue in full force and effect with respect to the operation of a Class II facility by the Tribe. Neither party shall be obligated to perform any unlawful act.

13. This Agreement, and any interest of Developer hereunder, may be assigned and/or transferred by Developer with the prior written consent of the Tribe and the Enterprise, which consent shall not be unreasonable withheld.

F. TIME IS OF THE ESSENCE

1. The parties agree that time is of the essence for performance of each obligation set forth by the terms of this agreement. In the event that any obligation is not timely performed consistent with the terms set forth in this agreement, including securing approval by the Tribe for all component development stages, including but not limited to, project budgets, land selection, start-up expenses, project design, etc. as set for by this agreement, parties agree that the agreement shall be null and void and shall have no further force and effect and that there shall be no liability by the Tribe for any funds advanced consistent with the terms of this agreement.

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IN WITNESS THEREOF, this Agreement was signed, sealed and entered into the day and year above first written, in duplicate originals by the undersigned parties who represent and warrant that they have the authority so to do.

By: _____
SILVIA BURLEY
Its: CHAIRPERSON OF THE GENERAL COUNCIL

By: _____
RASHEL K. REZNOR
Its: TRIBAL MEMBER

By: _____
YAKIMA DIXIE
Its: TRIBAL MEMBER

BBC ENTERTAINMENT, INC.

By: _____
Charles C. Colombe
Its: PRESIDENT

By: _____

Its: SECRETARY

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AUG 06 1999

ADDENDUM TO
DEVELOPMENT AGREEMENT

NOTICE OF ACTIONS TAKEN UNDER DEVELOPMENT AGREEMENT.

The parties agree that time is of the essence for performance of each obligation set forth by the terms of this agreement. Not withstanding the foregoing, the parties agree to mutually set and approve development schedules to be approved including, but are not limited to the following: project budgets, land selection, start up expenses, project design, etc., as set forth in this agreement.

In the event the Tribe believes that the Developer is not proceeding in good faith to set mutually acceptable development schedules, or to abide by those development schedules that have been approved by the parties, then the parties shall proceed to mediation with a recognized state licensed mediators selected by the Tribe. In the event that any dispute is not fully resolved through this mediation process, all issues remaining unresolved shall be set forth by the mediator in writing and the Tribe and the Developer shall have 45 days to cure any unresolved issue. In the event that the Tribe and Developer fail to cure the default to the satisfaction of both parties, then the Tribe shall have the right to declare the cancellation of this agreement and the agreement shall be deemed canceled upon full reimbursement to the Developer of all project development expenses accrued to that date.

Not withstanding any other provisions in this agreement, Developer agrees that in the event that the Developer wishes to terminate this agreement for any reason that is not the fault of the Tribe, then this agreement shall be deemed

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canceled without any reimbursement to the Developer of any project development expenses accrued to date. Should a dispute regarding the existence of fault arise, then this dispute shall be submitted to arbitration pursuant to Section E, Other Provisions, paragraph 5, of this Agreement.

Further, it is understood between below signed parties that any actions taken pursuant to the authority granted by this Addendum shall only be taken upon written notice to all parties.

Executed on this 23 day of July, 1999 at Sheep Ranch (City), Calaveras County (County), California (State).

Silvia Burley, Chairperson

Rashel K. Reznor, Tribal Member

Yakima Dixie, Tribal Member

Mary T. Wynne, Attorney at Law

Charles Colombe, BBC Entertainment

BBC SECRETARY/Witness

MARY T WYNNE
ATTORNEY AT LAW
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(509) 422-6367
(509) 422-6362 (FAX)

36-17

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
1824 Tribute Road, Suite J
Sacramento, CA 95815-4308

IN REPLY REFER TO:

MAR -7 2000

Silvia Burley, Chairperson
Sheep Ranch Rancheria
1055 Winter Court
Tracy, California 95376

Dear Ms. Burley:

The purpose of this correspondence is to provide you with a summary of the discussion that occurred during a meeting on February 15, 2000, held at the Central California Agency (Agency), with Yakima Dixie, Vice-Chairperson of the Sheep Ranch Rancheria (Tribe), his brother Melvin Dixie, and other interested parties. The summary responds to the concerns you expressed in your letter dated February 15, 2000. We also respond to your requests expressed in your letter dated February 24, 2000.

The Meeting of February 15, 2000

At the request of Yakima Dixie, Vice-Chairperson, which he made during a meeting at the Agency with him and other interested parties on December 28, 1999, we scheduled a meeting to be held at the Agency on February 15, 2000. As explained in our February 4, 2000, letters to you and to Mr. Dixie, the purpose of that meeting was to discuss the issues raised in those letters, as well as steps the Tribe may take to resolve this matter internally. Mr. Dixie also requested that only members of the General Council and one non-attorney representative for each side participate in that meeting. We understood Mr. Dixie's request as a desire to ensure a free exchange of ideas among those persons comprising the body possessing authority to decide the issues.

By letters dated February 9, 2000, you informed the Agency that the Tribe concluded that the February 15, 2000, meeting was inconsistent with Tribal management of its own affairs. On that basis, you and Rashel Reznor declined to participate in that meeting.

On February 15, 2000, we informed Yakima Dixie, his brother Melvin Dixie, and other interested parties, of the decision of Rashel Reznor and you not to participate in the scheduled meeting. However, Yakima Dixie requested a brief meeting with us to address general questions arising from our February 4, 2000, letter to him. We agreed to meet for that limited purpose. The following is a summary of the ensuing discussion.

At the outset of the meeting, we reiterated to the parties present the Agency's position that the issues raised in our letter of February 4, 2000, are internal matters. As such, the parties present needed to seek redress within the appropriate Tribal forum empowered to process and decide such issues. We also reiterated our view, notwithstanding a Tribal decision to the contrary, that the appropriate Tribal forum is the General Council. At present, we view, again notwithstanding

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a Tribal decision to the contrary, the General Council as comprised of Yakima Dixie, Rashel Reznor, and you. The rights of Melvin Dixie, Rocky McKay, and other interested parties, to participate in the governance of the Tribe are to be determined by the appropriate Tribal forum, and are further discussed below.

Your Membership Status

The discussion then turned to the assertion by Yakima Dixie that his act of August 5, 1998, to accept Rashel Reznor, Anjelica Paulk, Tristian Wallace, and you, as enrolled members of the Tribe was a limited enrollment. He explained that he intended only to grant to the four of you such membership rights necessary to qualify the four of you for services offered by the Bureau of Indian Affairs to members of federally recognized tribes. Yakima Dixie stated that his intent was consistent with the context in which you originally approached him, seeking a means of obtaining additional assistance after such assistance previously provided to you by the Jackson Rancheria was discontinued. As evidence of his position, Yakima Dixie produced videotape of a meeting held at Yakima Dixie's residence on or about October 16, 1998, at which representatives from the Agency and the California Indian Legal Services were present. We viewed a portion of the videotape documenting a discussion of your potential eligibility as a member of the Tribe to receive scholarship, housing, and other assistance. Afterward, we expressed our view that it was unlikely that the Tribe would find such a limitation on your enrollment expressed in the videotape. Further, we pointed out the fact, as stated in our letter of February 4, 2000, that the documents signed by Yakima Dixie to effect your enrollment expressed no such limitation. Moreover, we explained that Yakima Dixie's subsequent actions tended to establish the contrary view that you possess full rights of membership, since Mr. Dixie only objected to your participation in the deliberations of the decision-making body of the Tribe many months after the transition in leadership.

Allegations of Fraud or Misconduct

The discussion then turned to the allegations of fraud or misconduct relative to the change in Tribal leadership during April and May 1999. Yakima Dixie asked what action we were going to take. We explained that there was no action for the Agency to take, consistent with our position as expressed in our letter of February 4, 2000, that the allegations are issues properly decided within the appropriate Tribal forum. Thus, we explained, in light of federal law and policy, there was no basis for Agency involvement, since this situation is a dispute of an internal nature.

Your Decision Not to Participate in the Meeting

Yakima Dixie then asked why you and Rashel Reznor did not attend the meeting, and whether we were going to do something about your lack of participation. We explained that attendance at the meeting was not mandatory. Our reasons for fulfilling Mr. Dixie's request were threefold. First, we believed fulfilling the request was appropriate to provide a safe neutral location for the meeting. Second, by hosting a meeting at the Agency, we would assure our availability to answer general questions regarding steps the Tribe may take to resolve this matter internally. Third, we believed the meeting would assure a free exchange of ideas among the persons comprising the body possessing authority to decide the issues. However, we believed that requiring the mandatory participation of the parties would likely be viewed as an intrusion into an internal matter of the Tribe.

We also discussed your letter to Yakima Dixie, dated February 9, 2000, wherein you informed Mr. Dixie of the Tribe's decision to extend to him a thirty-day period within which to raise his concerns and present his issues to the Tribe. We reiterated to Mr. Dixie of our position that, where issues are internal in nature, their resolution must be sought within the appropriate Tribal forum. In light of your letter and consistent with our position, we suggested that Mr. Dixie send to the Tribe a letter stating his claims and requesting a hearing. Moreover, we recommended Mr. Dixie provide the Tribe with notice of that address where he expected delivery of notices of Tribal meetings and other correspondence to occur. We also suggested that Mr. Dixie inform the Tribe of any circumstances which may limit his ability to participate in Tribal affairs, such as a lack of access to transportation or an inability to pay out-of-pocket costs of transportation. If Mr. Dixie believes such circumstances exist, he should request financial assistance from the Tribe or suggest alternatives he believes may reduce or eliminate potential barriers to his participation in Tribal affairs. We also suggested that Mr..Dixie provide the Agency with a courtesy copy of such a notice. To date, no such courtesy copy has been received at the Agency.

Ability of Rocky McKay to Participate

During the meeting, Rocky McKay presented us with an original affidavit from his mother, Wanda Lewis, wherein she states that Yakima Dixie is the true father of Mr. McKay. We briefly reviewed the document. We then expressed our view that Mr. McKay may be entitled to participate in the organization of the Tribe, if he can establish that he is a lineal descendant of Yakima Dixie, one of the heirs now living listed in the Order of Determination of Heirs issued on November 1, 1971, as reaffirmed by subsequent Order issued on April 14, 1993. Further, we informed Mr. McKay that the subject of what evidence is acceptable for establishing his lineal descendancy is an internal matter to be determined by the Tribe. Thus, Mr. McKay's ability to participate in the organization of the Tribe also depends upon whether he can provide that type of evidence determined by the Tribe to be acceptable for purposes of establishing lineal descendancy.

We then recommended that Rocky McKay provide to the Tribe a written request to be enrolled as a member of the Tribe. We also recommended that Mr. McKay enclose with his request any documents and other evidence he believed to be acceptable for establishing his lineal descendancy.

By way of a letter dated February 25, 2000, we informed Rocky McKay that the Tribe would likely view the affidavit from Wanda Lewis as insufficient evidence of Yakima Dixie's paternity. In general, where the Bureau of Indian Affairs is performing enrollment functions, a valid affidavit from the purported father is acceptable evidence of paternity. However, as stated previously, the subject of what evidence is acceptable for establishing paternity is an internal matter to be determined by the Tribe. Thus, we recommended that Mr. McKay obtain from Yakima Dixie a notarized affidavit asserting his paternity. We also recommended that Mr. McKay seek an amendment to his birth certificate, since Yakima Dixie is not named therein as the father. We further recommended that Mr. McKay request financial and technical assistance from the Tribe in obtaining an affidavit or any other evidence the Tribe may determine to be necessary to establish his eligibility for enrollment and membership in the Tribe.

In our February 25, 2000, letter to Rocky McKay, we expressed the view that the letter accompanying his correspondence dated November 22, 1999, from Yakima Dixie declaring his adoption of Mr. McKay as a member of the Tribe would likely be viewed by the Tribe as ineffective. Copies of these documents were faxed by the Agency to you on December 7, 1999. We also informed Mr. McKay that in general, only the Tribe, acting at a duly noticed, called, and convened meeting at which a quorum is present, is the proper body to consider and effect his enrollment in the Tribe.

Ability of Melvin Dixie to Participate

Also during the February 15, 2000, meeting, we discussed the right of Melvin Dixie to participate in the organization of the Tribe. We advised Melvin Dixie that he is entitled to participate in the organization of the Tribe because he is one of the heirs now living listed in the Order of Determination of Heirs issued on November 1, 1971, as reaffirmed by subsequent Order issued on April 14, 1993. We then recommended Mr. Dixie provide to the Tribe written notice of his present address and telephone number, as the present leadership and administration of the Tribe must have such information in order to deliver proper and timely notice of Tribal meetings. We further advised Mr. Dixie to inform the Tribe of any circumstances which may limit his ability to participate in Tribal affairs, such as a lack of access to transportation or an inability to pay out-of-pocket costs of transportation. If Mr. Dixie believes such circumstances exist, he should request financial assistance from the Tribe or suggest alternatives he believes may reduce or eliminate potential barriers to his participation in Tribal affairs.

In connection with Melvin Dixie's right to participate in the organization of the Tribe, we expressed the view that he would likely be requested to provide to the Tribe proof of his identity. We explained that the subject of what evidence is acceptable for establishing identity is an internal matter to be determined by the Tribe. Therefore, we suggested that Mr. Dixie provide written notice to the Tribe of his assertion of entitlement to participate in the organization of the Tribe, and to enclose documents and other evidence he believed to be acceptable for establishing his identity.

In a subsequent letter dated February 25, 2000, we further recommended that Melvin Dixie request financial and technical assistance from the Tribe in obtaining any other evidence the Tribe might determine to be necessary.

In the aforementioned letter, we also discussed our views related to an affidavit by Melvin Dixie. The affidavit was received at the Agency on February 1, 2000. In the affidavit, among other assertions, Melvin Dixie stated that he is the father of a son. In our letter, we recommended that Melvin Dixie provide to the Tribe a written request that his son be enrolled as a member of the Tribe. We suggested Mr. Dixie enclose with his request a photocopy of the birth certificate or provide other evidence establishing that he is the father of his son. We further suggested that Mr. Dixie obtain, if not already in his possession, a certified copy of the birth certificate naming Mr. Dixie as the father of his son. Moreover, we recommended that Melvin Dixie, should he not be named in the birth certificate, complete an affidavit asserting his paternity of his son, and have the affidavit notarized. We also suggested that Melvin Dixie seek an amendment to the birth certificate if he is not named as the father in the birth certificate. We then recommended that Melvin Dixie request assistance from the Tribe in obtaining a certified birth certificate, an affidavit, or any other evidence the Tribe might determine to be necessary to establish his son's eligibility for enrollment and membership in the Tribe.

Your Letter of February 15, 2000

As for your concern expressed in your letter of February 15, 2000, that the meeting of the same day with Yakima and Melvin Dixie and other interested parties was improper, we assure you that the meeting was completely proper. First and foremost, we agreed to meet, at the request of an officer of the Tribe's governing body, for the limited purpose of addressing general questions arising from our letter of February 4, 2000. Moreover, we reiterated to the parties present our position as expressed in our letter of February 4, 2000, that these issues are internal matters to be considered and acted upon by the appropriate Tribal forum. Thus, we believe that our actions were consistent with our responsibility to provide technical assistance, and with established policies of non-interference, deference to Tribal decision-making, and respect for Tribal self-determination and sovereignty.

Your Letter of February 24, 2000

In your letter of February 24, 2000, you requested copies of the "sworn affidavits" submitted to the Agency by Yakima Dixie "alleging fraud on the part of the Tribal Council and that Rocky McKay is his son." Unfortunately, we cannot fulfill your request, as no such documents by Mr. Dixie are maintained within the records of the Agency.

As to your statement that the Agency "refused" to provide the Tribe with information as to the address and location of Melvin Dixie, we have no record of a Tribal request for such information. Further, such information is contained in a system of records covered by the Privacy Act (5 USC § 552a). As such, we are unable to release this information to you without the express consent of Melvin Dixie. As stated above, we also suggested in our letter of February 25, 2000, that Mr. Dixie provide this information to the Tribe.

Your Letter Postmarked February 2, 2000

As for your undated letter, postmarked February 2, 2000, requesting that we forward a letter to Yakima Dixie regarding the Regular Tribal Meeting scheduled for February 7, 2000, we were unable to fulfill your request. The letter was received at the Agency on Thursday afternoon, February 3, 2000. Even if the Agency, within a twenty-four hour period, had processed and forwarded the letter via overnight mail, the meeting day of Monday, February 7, 2000, would likely be the earliest Yakima Dixie would have received the letter. Thus, we return to you the enclosed sealed envelope addressed to Yakima Dixie.

Conclusion

The issues surrounding the present leadership and membership of the Tribe are internal matters to be resolved within the appropriate Tribal forum. As a matter of policy, the Agency will not interfere in the internal matters of the Tribe. However, if in time a dispute regarding the composition of the governing body of the Tribe continues without resolution, the government-to-government relationship between the Tribe and the United States may be compromised. In such situations, the Agency will advise the Tribe to resolve the dispute internally within a reasonable period of time. The Agency will also inform the Tribe that its failure to do so may result in sanctions against the Tribe, up to and including the suspension of the government-to-government.

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The Tribe, in the letter dated February 9, 2000, granted a thirty-day period of time to Yakima Dixie within which to raise his concerns and present his issues to the Tribe. This fact demonstrates that the Tribe is attempting to resolve this internal matter. We respectfully request that the Tribe inform us in writing of the action taken by the appropriate Tribal forum to resolve the dispute. We further request the Tribe's written response clearly explain what action was taken to resolve the dispute, the legal authority in Tribal law for the action, and the rationale for the action.

As always, Agency staff is available to the extent resources permit to provide the Tribe with technical assistance, upon your written request.

Should you have any questions with regard to this matter, please contact Mr. Raymond Fry, Tribal Operations Officer, at (916) 566-7124.

Sincerely,

Dale Risling, Sr.
Superintendent

Enclosure

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FILED

FEB 21 1978

CALAVERAS COUNTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CALAVERAS

--- ooo ---

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff -vs- YAKIMA KENNETH DIXIE Defendant	No. 1707 REPORT OF PROBATION OFFICER

APPEARANCES:

For the People: Office of the District Attorney of Calaveras County

For the Defendant: RICHARD A. ROBYN, ESQ. Public Defender of Calaveras County

REFERRAL DATE: January 30, 1978
SENTENCING DATE: February 21, 1978, at 9:00 a.m.
DATE OF ARREST: December 12, 1977
CHARGE: Section 187, Murder, a felony
PLEA: Guilty to Murder in the Second Degree, with use of firearm in commission of felony admitted

NAME: YAKIMA KENNETH DIXIE, age 38 years
ADDRESS: Box 41, Sheep Ranch, California
BIRTHDATE: February 1, 1940
BIRTHPLACE: Angels Camp, California

TO THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT:

The Probation Officer of Calaveras County makes and tenders this report concerning the above-named defendant:

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38.1

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PENGAD 800-631-6989

[redacted] California [redacted] years of age [redacted] ing at [redacted] there until 1973, when she died at the age of 34. Defendant's parents were married on June 17, 1935, in San Andreas, California, and they separated in 1957. Of this union four children were born, including the defendant, Richard B. Dixie, age 40, a laborer living in Stockton; Melvin L. Dixie, age 36, a laborer by trade, whereabouts unknown at this time, and Thomas E. Dixie, age 32, a laborer living in Stockton, California.

School: Defendant states he entered school at the age of six years and left at the age of thirteen after completing the seventh grade at Angels CAmp Elementary School.

Occupation: Defendant states he last worked for Tone Airola in Angels Camp from November, 1975, to October, 1976, in irrigation work for a salary of $10.00 a day. He states the job ended in October, and that since that time he has had no steady work but has held several small part-time jobs from that time to the present. From July, 1974, to November, 1975, he was in the County Jail and Prison on parole violation. From June, 1973 to August, 1973, he was a farm laborer in the Riverbank area, and from June, 1972, to June, 1973, in the Stockton area. From March, 1970, to June, 1972, he was in the Duell Vocational Institute. From November, 1966, to March, 1970, he was in Folsom State Prison. From December, 1962, to November, 1966, he was in San Quentin State Prison. From November, 1958, to November, 1962, he was in Soledad State Prison, and from 1954 to November, 1958, he was in Preston CYA.

Health: Defendant states his health is good and that he has no handicaps.

Habits: Defendant states he averages three six-packs of beer and three half-gallons of wine a month; that he drinks no hard liquor and uses no marijuana or drugs.

Hobbies and Organizations: Defendant states he is interested in playing and in watching sports, including basketball and football. He states he is a member of the American Indian Movement (A.I.M.) of South Dakota.

Financial Status: Defendant states he owns no real or personal property, that he is existing on food stamps.

Marital Status: Defendant states he has been living in a common-law relationship with Viviana A. Miller since 1973.

Military Status: Defendant states he has never served in any of the Armed Services of the United States.

[redacted] The California Department of Justice, Bureau of Criminal Identification, and the California Youth Authority Division records the following record for defendant:

JUVENILE:

6-3-53	Calaveras Juvenile Court	Beyond Parental Control	6-3-53--Received California Youth Authority. 9-1-54--Paroled
9-12-55	Calif. Youth Authority Perkins	Parole Violation	9-12-55--Returned to Youth Authority custody. 8-1-56--Paroled
11-19-56	Calif. Youth Authority	Parole Violation	11-19-56--Returned to Youth Authority custody. 11-26-57--Paroled 11-1-58--Discharged from Parole

ADULT:

9-16-58	Placerville SO	Burglary, 1st degree	11-6-58--State Prison 5 yrs to life; 10-29-62--Release on parole
12-3-62	San Andreas SO	Parole Violation	12-20-62--Return to State Prison to finish term of 11-6-58; Release on Parole 6-5-72
7-29-72	San Andreas SO	Burglary	9-18-72--3 mos Co Jl
11-2-72	Calif Dept of Corrections	Parole Violation	Returned to State Prison to finish term of 11-6-58; released on parole 5-29-73
4-2-74	San Andreas SO	Possess Stolen Propty	7-8-74--1 yr Co Jl
8-15-74	Calif Dept of Corrections	Parole Violation	Returned to State Prison to finish term or 11-6-58
10-1-77	San Andreas SO	Possess Stolen Propty	11-28-77--Dismissed in interest of just.
10-13-77	San Andreas SO	Robbery	12-19-77--1 yr Co Jl w/credit for 18 days
12-12-77	San Andreas SO	Murder	Pending Instant Offense

[redacted] On January 3, 1978, an Amended Information was filed by the District Attorney of Calaveras County, alleging Defendant violated Section 187 of the Penal Code of California, Murder, a felony, with special Allegations that Defendant used a firearm in the commission of the felony within the provisions of Section 12022.5 of the Penal Code and committed the felony while personally armed with a deadly weapon, within the provisions of Section 12022 of the Penal Code.

On January 30, 1978, defendant entered his plea to guilty of Murder in the Second Degree. Defendant also admitted the allegation of the use of a firearm in the commission of a felony, and the Court accepted defendant's admission.

The matter was referred to the Probation Department for report and recommendation, with hearing thereon set for February 21, 1978, at 9:00 a.m.

Calaveras Sheriff's Report No 77-4281 and transcript of Calaveras Justice Court preliminary hearing No C77-201 state, in part:

Sheriff's Deputy responded to call that a subject wanted to talk to that officer at the White Pines Lodge in Arnold. The officer was advised by this subject that he had seen the body of a man he personally knew, naked, with a large amount of stab wounds in the chest and covered with blood, in the rear seat of defendant's vehicle at the Avery Hotel. Also, that a .22 calibre rifle was between the two front seats of defendant's vehicle.

The officer found defendant's vehicle at the Avery Hotel, without occupants. He looked into the vehicle with the aid of a flashlight and alleged observing a shovel and a large amount of blood of the rear seat and a .22 calibre rifle between the two front seats.

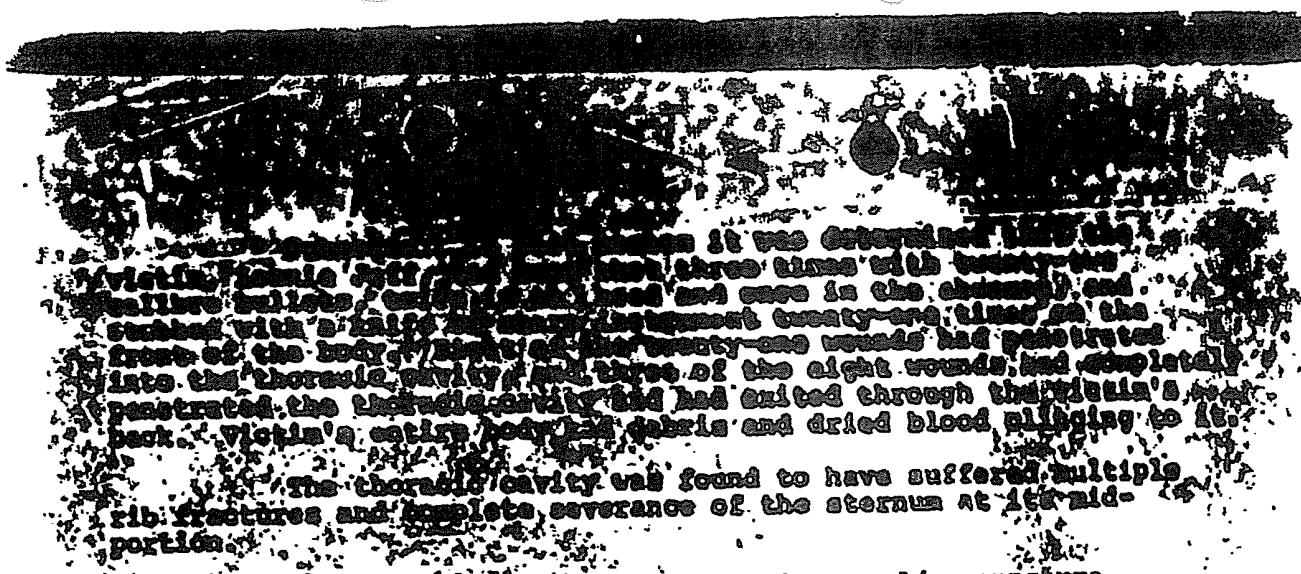
The officer parked at a distance from defendant's vehicle to await defendant's possible exit from the hotel.

Approximately thirty minutes later, defendant and his female companion came out of the hotel and drove the vehicle away.

The officer stopped defendant's vehicle and is alleged to have informed defendant that he had information that defendant had a body in his car and that the body was reported to be that of Lennie Jeff, to which defendant is alleged to have remarked that he had not seen Lennie Jeff in a long time.

After defendant allowed the officer to view the interior of the car trunk and allegedly explained that the blood on the vehicle rear seat was from a deer, the officer allowed defendant to drive away.

Subsequently that night the deceased body of Lennie Jeff was found near the old Avery dumpsite.



The thoracic cavity was found to have suffered multiple rib fractures and complete severance of the sternum at its mid-portion.

The heart showed seven lacerations and/or puncture wounds. The pericardial sac was torn and/or lacerated. All vessels entering and those leaving the heart were distorted and only partially intact. The inferior vena cava had been completely severed.

Both lungs were tremendously distorted and were literally shredded in some areas, apparently due to the effects of a sharp instrument.

The parietal pleura was distorted, not only by adhesions but also by multiple lacerations on the anterior and also on the posterior aspects.

There were lacerations of the thoracic aorta at the level of the fourth, fifth and sixth vertebrae. Two of these lacerations had nearly completely severed the aorta, and the third laceration, at the level of the sixth vertebra, had only partially severed this vessel. On the anterior aspects of the bodies of vertebrae four, five and six, defects that would be consistent with nicks and/or marks caused by a sharp instrument were found.

Two shots entered victim from the inshoot wounds, causing multiple fractures of the right and left maxillary bones, distortion, fracturing and shattering of the bones constituting the foramen magnum. The occipital bone and portions of the sphenoid and ethmoid bones were also fractured. Both metallic objects came to rest in the occipital lobe of the brain.

The third shot entered victim's abdomen, with the metallic object coming to rest in the upper right thoracic cavity near the right clavicle.

Victim's drug abuse screening was negative, and his blood alcohol level was determined to be 0.37%.

Cause of death was exsanguination.

The post mortem pathologist testified that either the gunshot wounds or the other wounds could cause death, and that, in his opinion, the gunshot wounds were the cause of death.

[redacted] is alleged to have been drinking the day before and the day of the present offense with his father, his female companion, [redacted], and his uncle, victim in the instant offense.

Defendant is alleged to have been arguing with victim, who was lying [redacted] defendant's father's bed. That defendant was making remarks to victim that he did not like victim, and that defendant stated: "I have a good idea I could kill you right here." Victim is alleged to have stated, "You wouldn't want to do that to your uncle," and then to have laughed.

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

Defendant is alleged to have dragged victim into the kitchen, stating to Vivian, "I told you I could kill; I can kill... I will show you I can do something else, too."

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

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

Defendant is alleged to have driven wildly to Avery, to have seen a friend, then to have driven to the Avery dump, where the victim was left. That he returned to the Avery Hotel, where defendant is alleged to have instructed Vivian to act naturally while they went into the hotel bar and had a couple of drinks.

Defendant and Vivian are then alleged to have been returning to Sheep Ranch when stopped by the officer inquiring about the victim, and to have then gone home, where defendant ordered Vivian to clean up the blood on the place.

Vivian is alleged to have obeyed because of defendant's previous and continuing threats to her and her fear of defendant.

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

Defendant was taken into custody in Sheep Ranch shortly thereafter, and officers also took Vivian and defendant's father into custody at defendant's home.

INTERVIEW WITH DEFENDANT: Defendant was interviewed by the Probation Officer on February 13, 1978. Defendant states he does not feel that he will get probation and states he will not make it in the penetentiary.

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[redacted] Institute in 1975 or 1976 [redacted] be told the authorities [redacted] states he will not survive [redacted] incident involved the [redacted] system.

Defendant states that his letters to Vivian were only an attempt to find out if he were really guilty or not. Defendant states he does not think he committed the instant offense; that he was pretty drunk.

Defendant states he has never acted like this before, either in or out of custody. Defendant states that this issue is just not like him.

Defendant states he could stop drinking, would join Alcoholics Anonymous and could behave himself if he were released on seven, five or nine years of probation.

INTERVIEW WITH CALIFORNIA DEPARTMENT OF CORRECTIONS:

Defendant's original commitment to State Prison on November 6, 1958, resulted in defendant being placed in the Correctional Training Facility at Soledad and released on parole on October 29, 1962.

Defendant was violated on parole for not reporting, being drunk, failing to find employment and apparently violating most or all conditions of parole on December 20, 1962, and was returned to San Quentin. In April, 1965, defendant was moved to Folsom Prison, and in May, 1970, defendant was moved to the Duell Vocational Institution.

From February, 1963, through June, 1970, defendant is reported to have experienced twenty-seven disciplinary actions, including at least one period of solitary confinement in October, 1963, when defendant is alleged to have written a love letter to a homosexual inmate resulting in defendant's life being in jeopardy.

At least one parole date was postponed due to defendant's disciplinary actions.

Defendant has been evaluated as an aggressive homosexual and is resistive to therapy.

Defendant was paroled from the Duell Vocational Institute on June 5, ~~1962~~ 1972.

A burglary conviction caused defendant's parole to be revoked in November, 1972, and defendant was returned to San Quentin. On March 30, 1973, defendant was moved to D.V.I., where he was paroled on May 29, 1973.

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[redacted] A conviction for receiving stolen property [redacted] parole to be revoked on August 13, 1974. On [redacted] returned to P.V.T.C. and served 30 days in San Quentin. On August 14, 1974, [redacted] September 10, 1974, defendant was returned to P.V.T.C. On July 24, 1975, defendant assaulted a Correctional Officer and was sentenced to six months in County Jail, to be concurrent with his present prison sentence. On September 16, 1975, defendant was moved to Folsom, where he was discharged on November 6, 1975.

There is no mention in defendant's prison file regarding defendant's witnessing and reporting a homicide in any of the various institutions in which he was placed.

STATEMENT IN AGGRAVATION: The District Attorney has submitted a Statement in Aggravation, the specifics of which are:

The crime involved acts disclosing a high degree of viciousness or callousness.

The victim was particularly vulnerable.

The defendant induced others to participate in the commission of the crime.

The defendant attempted to interfere with the judicial process in that he attempted to get letters delivered to a witness in which letters he tried to persuade a witness to commit perjury.

With reference to defendant's personal history:

The defendant's prior convictions as an adult are of increasing seriousness.

The defendant has served prior prison terms.

I attach copies of letters intercepted at the jail written by the defendant in which he attempted to suborn perjury.

I believe that the defendant should for the reasons stated herein be sentenced to the upper level term in this case in that circumstances in aggravation are present and they outweigh circumstances in mitigation.

STATEMENT IN MITIGATION: The Public Defender has submitted a Statement in Mitigation, the specifics of which are:

At the time of the incident the defendant, YAKIMA KENNETH DIXIE, was under the influence of alcohol and intoxicated and, therefore, not in control of his emotions. In the supplemental police officer's report of Robert

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Carson [illegible] dated December 12, 1977, this officer reports he gave the defendant an intoxilyzer test to determine alcohol content of defendant's blood at approximately 0045 hours with the result being a .18 reading. A copy of the page of said report is attached hereto. This test was given several hours after the crime was committed. During the course of the preliminary hearing held December 29, 1977, the chief witness for the prosecution who was with the defendant for the period of time between the criminal act and his arrest testified that the defendant had nothing to drink during that period of time except 3 glasses of beer (Page 56, line 22 through Page 57, line 18 of Reporter's Transcript). In addition, said witness, Mrs Viviana Miller, testified that defendant was pretty well drunk at the time of the incident (Page 52, lines 21 and 22 of Reporter's Transcript). It can quite reasonably be concluded from a reading of the officer's reports and the transcript of the preliminary hearing that the defendant had been drinking continuously for approximately 2 days (Reporter's Transcript, page 53, lines 4 through 9) prior to the incident, and, at the time he committed the crime, he was under the influence of alcohol to an extremely substantial degree.

The deceased and the defendant had been arguing for 25-30 minutes immediately prior to the commission of the crime. (Reporter's Transcript, page 42, line 7 through page 43, line 16.). Mrs Miller testified that the defendant, as a result of the argument, got "real mad" at the deceased.

I believe that the defendant was emotionally upset and under the influence of alcohol at the time of the commission of the crime and that these are circumstances of mitigation outweighing circumstances of aggravation.

EVALUATION OF STATEMENTS IN AGGRAVATION AND MITIGATION:

The viciousness of the instant offense appears to be clearly outlined in the above Present Offense.

Victim in this issue was minus one leg, requiring crutches to be ambulatory, and had a blood alcohol level of 0.37% at post mortem examination.

Defendant apparently did induce others to participate in the instant offense, as testified to in the preliminary hearing. Viviana Miller appeared to have been coerced by defendant to assist in disposing of the body.

Defendant appears to have attempted to suborn perjury. The contents of the two letters appear to be clearly an attempt to shift blame to defendant's father, Viviana's son or anyone that Viviana could find, at the insistence of defendant.

Pg 9-1

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[redacted] fully and was given [redacted] any in such [redacted] testimony. [redacted]

[redacted] clearly outlined in the prior record and the [redacted] Department of Corrections above, including his performance while on parole.

Defendant's convictions appear to be increasing in severity. Defendant was awaiting sentencing on an extortion conviction when the instant offense was committed. Defendant's convictions prior to the extortion issue, at least while defendant was free in society, were crimes involving property, not persons.

It is not known what defendant's blood alcohol level was at the time of the shooting and stabbing. Testimony did support the fact that defendant was "pretty well drunk" and that defendant "got real mad" at the deceased.

However, immediately after the stabbing, defendant is shown with clear intent to dispose of the body and did "drive rapidly" from Sheep Ranch to Avery on one of the most treacherous oiled roads in this county and apparently arrived in Avery without mishap, did dispose of the body, returned to Avery, consumed additional alcoholic drinks, was able to identify the danger that he was in when stopped by the officer after leaving the Avery Hotel Bar, was released by the officer and did drive back to Sheep Ranch, again apparently without mishap.

It would appear that points in aggravation grossly outweigh points in mitigation.

SUMMARY: Before the Court is a thirty-eight year old male adult, who states he has lived in a common law relationship since July, 1973. Defendant has no children and states that his employment consists of periodic, short-term, part-time jobs.

Defendant's prior record as an adult begins with his being sentenced to State Prison for First degree burglary on November 6, 1958. Three successive parole violations caused defendant to return to State Prison three additional times to finish his original term.

Defendant has served a total of fifteen years and one month in State Prison in multiple movements between four Prison institutions, at least partially motivated by defendant's discipline violations in the institutions.

Defendant has been sentenced on three occasions to County Jail for a total of two years and three months; however, the sentences to jail of September 18, 1972, and July 8, 1974, resulted in parole violations, and the full sentence was not served in the County Jail.

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[redacted] was ordered sworn [redacted] the instant offense. [redacted] Defendant does not appear [redacted] candidate for release on probation, pursuant to Section [redacted] of the Penal Code.

The circumstances surrounding the instant offense and defendant's recent conviction for [redacted] appear to indicate that defendant has now stepped beyond property crimes and is capable and willing to commit acts of coercion and violence upon individuals.

It would appear that Society needs protection from defendant for the longest period of time possible.

It appears that the statements in aggravation outweigh the statements in mitigation, and the highest base term would be appropriate.

The enhancement of personal use of a firearm has been charged and admitted.

Defendant was arrested for the instant offense on December 12, 1977, and has remained in continuous custody since that date. Defendant was sentenced to one year in the County Jail by the Calaveras Justice Court on December 19, 1977, subsequent to conviction.

On February 21, 1978, defendant will have served seventy-two (72) days in regard to the instant offense. The last sixty-four (64) days will have been concurrent with defendant's one year County Jail sentence.

RECOMMENDATION: It is respectfully recommended that defendant be sentenced to State Prison at the higher base term of eighty-four (84) months, and that the enhancement of twenty-four (24) months be added.

DATED this 14th day of February, 1978.

Respectfully submitted,

E. B. Noble

E. B. NOBLE, Probation Officer

The foregoing report has been read and considered

Joseph S. Hubert

Judge of the above-entitled Court

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EXHIBIT "23"

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CALIFORNIA VALLEY MIWOK TRIBE, Petitioner, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent; CALIFORNIA GAMBLING CONTROL COMMISSION et al., Real Parties in Interest.	D061811 (San Diego County Super. Ct. No. 37-2008-00075326-CU-CO-CTL)

PROCEEDINGS in mandate after superior court denied plaintiff's application to lift the order staying the litigation. Ronald L. Styn, Judge. Petition granted.

In its petition for writ of mandate, the California Valley Miwok Tribe (the Miwok Tribe) seeks a ruling requiring the trial court to lift its order staying dispositive motions

to allow the Miwok Tribe to proceed with the litigation of the merits of its action against the California Gambling Control Commission (the Commission). As we will explain, we conclude that the stay should be lifted to allow the Miwok Tribe to litigate the issue presented by its complaint, which is whether — under the present circumstances — the Commission has a duty to release funds to the Miwok Tribe. Accordingly, we will direct a writ of mandate to issue requiring the trial court to lift the stay and allow the parties to file dispositive motions and, if necessary, proceed to trial.

I

FACTUAL AND PROCEDURAL BACKGROUND

As we explained in a previous opinion in this action (*California Valley Miwok Tribe v. California Gambling Control Commission* (Apr. 16, 2010, No. D054912) (2010 Opinion)), the instant lawsuit seeks mandamus, injunctive and declaratory relief regarding the Commission's decision to withhold funds from the Miwok Tribe that are payable to certain Indian Tribes in California who operate less than 350 gaming devices.

As set forth in the 2010 Opinion, the Miwok Tribe — located in central California — is identified in the Federal Register as a federally recognized Indian tribe.

Pursuant to the Indian Gaming Regulatory Act of 1988 (18 U.S.C. § 1166 et seq.; 25 U.S.C. § 2701 et seq.), the State of California entered into tribal-state gaming compacts with the various tribes in California authorized to operate gambling casinos (collectively, the Compacts). (See Gov. Code, §§ 12012.25-12012.53 [ratifying tribal-state gaming compacts].) The Compacts set forth a revenue-sharing mechanism under which tribes who operate less than 350 gaming devices share in the license fees paid by

the tribes entering into the Compacts, with each "Non-Compact Tribe" in the State receiving the sum of $1.1 million per year. (Compacts, § 4.3.2.1.) "Non-Compact Tribes" are defined as "[f]ederally recognized tribes that are operating fewer than 350 Gaming Devices . . . ." (Compacts, § 4.3.2.(a)(i).) It is undisputed that the Miwok Tribe is a Non-Compact Tribe, as it operates no gaming devices and is federally recognized.

The annual payment of $1.1 million to each Non-Compact Tribe is drawn from the Revenue Sharing Trust Fund (RSTF) described in the Compacts. The Commission administers the RSTF as a trustee. (Compacts, § 4.3.2.1(b).) According to the Compacts, "[t]he 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." (Compacts, § 4.3.2.1(b).) Further, a provision in the Government Code directs that the Commission "shall make quarterly payments from the Indian Gaming Revenue Sharing Trust Fund to each eligible recipient Indian tribe within 45 days of the end of each fiscal quarter." (Gov. Code, § 12012.90, subd. (e)(2).)

There is no dispute that, as a Non-Compact Tribe, the Miwok Tribe is eligible for an annual amount of $1.1 million under the terms of the Compacts. However, starting in 2005, the Commission, acting as trustee of the RSTF, suspended its quarterly disbursements to the Miwok Tribe and decided to hold the funds indefinitely for later distribution. In support of its decision, the Commission cited "the lack of a recognized tribal government or leadership," and explained that "in situations involving tribal leadership disputes," the Commission "take[s its] lead" from the federal Bureau of Indian

Affairs (BIA). (2010 Opn., *supra*, D054912.) Citing the BIA's decision in July 2005 to suspend the Miwok Tribe's contract to receive federal benefits under the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 et seq.) (ISDEAA), on the ground that "'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,'" the Commission adopted the practice of depositing the funds to which the Miwok Tribe is entitled into an interest bearing account until "'the Tribe's leadership and organizational status is resolved to a degree sufficient to allow the BIA to resume government-to-government relations.'" (2010 Opn., *supra*, D054912.)

Explaining its position in a recent letter to the Miwok Tribe, the Commission stated that its "designation as trustee of the RSTF impliedly requires it to take reasonable steps to ensure that RSTF funds are disbursed to individuals or groups properly authorized to receive and administer the funds on behalf of their respective tribes." According to the Commission, it "does not independently decide the merits of the claims of individuals or groups concerning the disbursement of RSTF funds" and therefore distributes RSTF funds "only to those individuals or leadership bodies recognized by the BIA for the government-to-government business of the disbursement and receipt of federal [ISDEAA] contract funds." The Commission states that it "will release the accrued RSTF funds promptly upon the BIA's recognition of the legitimate leadership body of the Tribe." As of December 31, 2011, the Commission was holding in trust $7,663,001.99, exclusive of interest, of the RSTF funds payable to the Miwok Tribe.

For several years the federal government has been involved in litigation concerning the leadership and membership of the Miwok Tribe. The genesis of the federal dispute was the Miwok Tribe's challenge to the BIA's refusal to approve a tribal constitution that was adopted by the Miwok Tribe, with Silvia Burley acting as chairperson for the tribe. (*California Valley Miwok Tribe v. United States* (D.D.C. 2006) 424 F.Supp.2d 197; *California Valley Miwok Tribe v. United States* (D.C. Cir. 2008) 515 F.3d 1262.) On one side of the leadership dispute is the Miwok Tribe as led by Burley. On the other side of the dispute is a faction led by another tribal member, Yakima Dixie, who claims that Burley's tribal government should not be recognized and that the tribe should include additional members. As we understand the current status, the BIA continues to withhold the ISDEAA benefits from the Miwok Tribe while the tribal leadership and membership issues are litigated in federal court. The Commission accordingly continues to withhold the RSTF funds under its policy of following the BIA's lead.

The Miwok Tribe filed this action against the Commission in January 2008. The operative complaint seeks (1) a writ of mandate under Code of Civil Procedure section 1085; (2) an injunction; and (3) declaratory relief. All three causes of action seek the same fundamental relief, namely an order requiring the Commission to pay over the RSTF funds to the Miwok Tribe *at the present time*, despite the ongoing federal proceedings concerning the Miwok Tribe's leadership and membership. Specifically, all three causes of action present the common issue of whether, in carrying out its fiduciary duty as a trustee of the RSTF, the Commission is legally justified in maintaining a policy

of withholding the RSTF funds from the Miwok Tribe until the federal government establishes a government-to-government relationship with a tribal leadership body of the tribe for the purpose of distributing ISDEAA benefits. The complaint was verified by Burley, who declared, "I am the selected spokesperson for [the Miwok Tribe], and I am authorized to make this verification on its behalf."

The trial court sustained a demurrer filed by the Commission, holding that because of the tribal leadership dispute and lack of a federally recognized tribal government the Miwok Tribe lacked the standing and capacity to bring this action. In the 2010 Opinion, we reversed the trial court's ruling on the demurrer and remanded the action to the trial court. We clarified that we were not reaching the merits of the issues raised by the complaint, which we characterized as whether the Commission has a duty, under the applicable law and facts, to immediately disburse the RSTF funds to the Miwok Tribe, as represented by Burley as the chairperson of its tribal council. We stated, "Our decision in no way touches upon whether the Commission is properly withholding funds from the Miwok Tribe. That is a separate issue that must be litigated upon remand of this action to the trial court. The Commission contends that because it has a fiduciary duty as trustee of the RSTF, the current uncertainties regarding the Miwok Tribe's government and membership require it to withhold the RSTF funds and hold them in trust until it can be assured that the funds, if released, will be going to the proper parties. Nothing in our decision is intended to foreclose the Commission from pursuing such an argument in the trial court. Indeed, the trial court will be better able to explore the legal impact of the tribal leadership dispute and the BIA's relationship with the Miwok Tribe when the

pertinent facts are more fully developed later in the litigation, rather than in the context of the scant facts available in connection with the Commission's demurrer."[1] (2010 Opn., *supra*, D054912.)

Upon remand, the trial court considered a motion to intervene filed by (1) "the California Valley Miwok Tribe, California," which purports to be the Miwok Tribe as represented by a competing tribal government; and (2) the following individuals: Dixie, who claims to be the hereditary chief of the Miwok Tribe; and Velma WhiteBear, Antonia Lopez, Antone Azevedo, Michael Mendibles and Evelyn Wilson, all of whom claim to be members or tribal council members of the tribe as led by Dixie (collectively, Intervenors). On December 17, 2010, the trial court granted the Intervenors' motion for leave to intervene.

On December 22, 2010, the Assistant Secretary of Indian Affairs for the United States Department of the Interior (the Assistant Secretary) issued a decision concerning the BIA's relationship with the Miwok Tribe (the December 22, 2010 decision). The Assistant Secretary concluded that "there is no need for the BIA to continue its previous efforts to organize the Tribe's government, because it is already organized as a General Council," and "there is no need for the BIA to continue its previous efforts to ensure that

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1 As the parties have expressed some uncertainty about the meaning of our statement, we clarify that when observing that the pertinent facts would be more fully developed later in the litigation, we were referring to the fact that the record presented in connection with the demurrer consisted primarily of pleadings, and the parties had not yet had the opportunity to bring a dispositive motion or conduct a trial to present all of the relevant evidence to the trial court. We were not referring to the independent development of events in the federal system relating to the tribal leadership and membership dispute.

the Tribe confers tribal citizenship upon other individual Miwok Indians in the surrounding area." In the December 22, 2010 decision, the Assistant Secretary rescinded previous statements refusing to recognize a government for the Miwok Tribe and refusing to recognize Burley as the tribal chairperson. The Assistant Secretary indicated that the BIA would work with the Miwok Tribe's existing governing body to "fulfill" a government-to-government relationship.

Based on the Assistant Secretary's December 22, 2010 decision, the Miwok Tribe filed a motion for judgment on the pleadings in the trial court, which the trial court granted in March 2011. The trial court concluded that in light of the Assistant Secretary's December 22, 2010 decision, "the Commission's answer does not state facts sufficient to constitute a defense to the complaint." It explained that the December 22, 2010 decision "definitely establishes the [Miwok Tribe's] membership, governing body and leadership, including . . . Burley's status as representative and Chairperson of the [Miwok Tribe]. In doing so, the decision establishes Plaintiff's right to the RSTF monies held by the Commission."[2]

As of April 1, 2011, the parties were in the process of preparing a judgment for entry by the trial court when the Assistant Secretary set aside the December 22, 2010 decision and set up a briefing schedule to give the parties a chance to offer their views prior to the issuance of a reconsidered decision, citing "[s]ubsequent actions by the

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2 The trial court also granted a motion to reconsider its earlier ruling permitting Intervenors to intervene in the action. It explained that "[t]he December 22, 2010 decision removes the bases for the court's finding that Intervenors have an interest in this action . . . ."

parties involved in this [federal] dispute . . . ." One of the subsequent actions cited by the Assistant Secretary was a lawsuit filed January 24, 2011, by the Intervenors in federal district court in the District of Columbia challenging the Secretary's December 22, 2010 decision. (*California Valley Miwok Tribe v. Salazar*, No. 11-160 (RWR) (the *Salazar* case).)

On April 6, 2011, in an ex parte hearing in this action, the trial court considered the impact of the Assistant Secretary's April 1, 2010 decision that he was setting aside the December 22, 2010 decision. The trial court stayed the entry of judgment and the effect of its other prior rulings. The trial court allowed the parties to continue to conduct discovery, but stated that except for discovery-related motions, no motions would be permitted without leave from the court.

On August 31, 2011, the Secretary issued a new decision to replace the December 22, 2010 decision (the August 31, 2011 decision). Reaching a similar conclusion as earlier, the Assistant Secretary decided that the Miwok Tribe's entire citizenship is composed of five citizens; that the tribe operates under a General Council form of government, with Burley as the chairperson; and that the tribe'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. The Assistant Secretary concluded that there was no authority for the Department of the Interior to interfere with the Miwok Tribe's internal governance. The implementation of the August 31, 2011 decision was stayed, with the Assistant Secretary stating that "[t]his decision is final for the Department and effective immediately, but implementation shall be stayed pending

the resolution of [the *Salazar* case]." The complaint in the *Salazar* case was amended to challenge the Assistant Secretary's August 31, 2011 decision.[3]

The Miwok Tribe made an ex parte application to the trial court asking it to reinstate the ruling granting judgment on the pleadings based on the Assistant Secretary's August 31, 2011 decision in place of the December 22, 2010 decision, as both decisions similarly resolved the federal government's position with respect to the Miwok Tribe's leadership and membership dispute, allowing the Commission to disburse the RSTF funds under the Commission's chosen approach of following the lead of the federal government on tribal issues. The trial court denied the ex parte application on September 7, 2011.

The Miwok Tribe then filed a noticed motion for entry of judgment on the same basis, which the trial court denied on October 21, 2011. The trial court explained that the August 31, 2011 decision did not have the same legal effect as the December 22, 2010 decision because the Assistant Secretary had stayed implementation of the August 31, 2011 decision pending resolution of the *Salazar* case. The trial court stated that "[t]he 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 [the Assistant Secretary]. Therefore, the court orders that this matter remain stayed, with all previous orders remaining in effect, pending final resolution of [the *Salazar* case]."

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3 The Commission has requested that we take judicial notice of the first amended complaint in the *Salazar* case. We grant the request to take judicial notice.

On March 5, 2012, the Miwok Tribe filed an ex parte application in which it sought "an order lifting the stay, so that it can file a motion for judgment on the pleadings or a motion for summary adjudication." The ex parte application focused on recent statements that Dixie made during a deposition, which the Miwok Tribe described as an admission that Dixie had resigned as tribal chairman in 1999 and that his signature on his notice of resignation was not a forgery as he had previously claimed. The Miwok Tribe argued that Dixie's purported admission resolved the tribe's leadership dispute and therefore was relevant to whether the Commission was justified in withholding the RSTF funds.

In opposition, the Commission took the position that the stay should remain in place until the *Salazar* case is over because it is the federal government's position on recognizing Burley's tribal government, not Dixie's statements as to his tribal leadership status, that guides the Commission's decision whether to disburse the RSTF funds. The Commission reiterated its position that "it will disburse the accrued RSTF monies to whatever individual or leadership group is finally recognized by the BIA for the purpose of disbursing federal [ISDEAA] funds to the [Miwok Tribe]." Intervenors took the position that the stay should remain in place while the *Salazar* case is pending because "[t]he [*Salazar* case] will determine whether the 1998 Resolution established a government the United States will recognize" and "in turn will determine to whom the trust monies should be paid."

On March 7, 2012, the trial court heard the Miwok Tribe's ex parte application to lift the stay. At the hearing, counsel for the Miwok Tribe argued that the trial court

should not stay the litigation until the *Salazar* case is resolved because the tribe seeks a ruling on an issue not presented in that case. Counsel explained that the tribe seeks a determination of whether the Commission has the legal discretion, as trustee of the RSTF, to withhold the RSTF funds until the BIA recognizes a tribal leadership body, which is *not* a determination dependent on the ultimate outcome of the *Salazar* case.

The trial court disagreed and denied the application. It stated, "[I]f I were to lift the stay and go forward, I would in effect be deciding who is the proper representative of the tribe and who is the tribe, precisely the issues that are within the exclusive jurisdiction of the tribe and the federal courts." The trial court explained that "[u]ntil the federal court decides, the ultimate issue won't be resolved and I don't see how I could issue a final judgment, so I'm going to deny the application."

The Miwok Tribe filed the instant petition for writ of mandate challenging the trial court's denial of its request to lift the stay to allow the parties to file dispositive motions. The Miwok Tribe contends that it "is entitled to have the trial court determine whether the Commission is properly withholding RSTF payments . . . , despite the [Assistant Secretary's] decision being under review in federal court." Both the Commission and Intervenors have filed returns to the petition.

II

DISCUSSION

A. *The Petition Is Timely*

As an initial matter, we address Intervenors' contention that we should reject the Miwok Tribe's petition as untimely.

"As a general rule, a writ petition should be filed within the 60-day period that is applicable to appeals. [Citations.] 'An appellate court *may* consider a petition for an extraordinary writ at any time [citation], but has discretion to deny a petition filed after the 60–day period applicable to appeals, and *should* do so absent "extraordinary circumstances" justifying the delay.'" (*Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701.) Intervenors argue that, in substance, the Miwok Tribe's writ petition challenges the stay in proceedings that the trial court implemented in October 2011 when it denied the Miwok Tribe's renewed motion for judgment on the pleadings based on the Assistant Secretary's August 31, 2011 decision. According to Intervenors, if the Miwok Tribe wanted to challenge the stay implemented in October 2011, it should have filed a writ petition within 60 days of that date.

We reject Intervenors' argument because we do not perceive the Miwok Tribe as challenging a ruling that the trial court made in October 2011. Although the trial court ordered that the action remain stayed in October 2011, it was not until the Miwok Tribe's ex parte application in March 2012 that the trial court ruled on whether it would lift the stay to allow the Miwok Tribe to file a dispositive motion based on a ground independent of the Assistant Secretary's decision. The trial court ruled for the first time in March 2012 that it would not allow a dispositive motion putting into issue whether, *under present circumstances*, while the federal government's relationship to the Miwok Tribe is still unsettled, the Commission as trustee of the RSTF is legally justified in relying on the position of the BIA in deciding whether to release the RSTF funds. The writ petition

challenging that March 2012 ruling was filed within 60 days of the ruling and is therefore timely under the general rule.

B. *The Trial Court Improperly Denied the Miwok Tribe's Application to File a Dispositive Motion Based on a Ground Other than the Assistant Secretary's Decision*

The fundamental relief that the Miwok Tribe requested in its ex parte application, and that it seeks by this writ proceeding, is a lifting of the stay on proceedings so that it may file a dispositive motion. The Miwok Tribe requests that we grant relief requiring the trial court to adjudicate this action on the merits despite the pendency of the *Salazar* case.

A writ of mandate is available if there is no "plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.) "Although pretrial writ relief is sparingly granted, where the trial court's ruling may properly be evaluated as to its correctness or erroneousness as a matter of law, and where leaving it in place may substantially prejudice the petitioner's case, appellate courts may entertain a writ petition. [Citation.] If the petitioner lacks an adequate means for seeking timely relief, such as a direct appeal, or where the petitioner may incur prejudice that is not correctable on appeal due to the challenged ruling, the appellate courts may decide to intervene. [Citation.] The criteria for allowing writ relief will be applied depending upon the facts and circumstances of the particular case." (*Ochoa v. Superior Court* (2011) 199 Cal.App.4th 1274, 1277-1278.)

"'In order to confine the use of mandamus to its proper office, the Supreme Court, in various cases, has stated general criteria for determining the propriety of an

extraordinary writ: (1) the issue tendered in the writ petition is of widespread interest [citation] or presents a significant and novel constitutional issue [citation]; (2) the trial court's order deprived petitioner of an opportunity to present a substantial portion of his cause of action [citation]; (3) conflicting trial court interpretations of the law require a resolution of the conflict [citation]; (4) the trial court's order is both clearly erroneous as a matter of law and substantially prejudices petitioner's case [citations]; (5) the party seeking the writ lacks an adequate means, such as a direct appeal, by which to attain relief [citation]; and (6) the petitioner will suffer harm or prejudice in a manner that cannot be corrected on appeal [citations].'" (*Roden v. AmerisourceBergen Corp.* (2005) 130 Cal.App.4th 211, 218 (*Roden*).)

One of the circumstances justifying mandamus relief is where the trial court has erroneously entered a stay of the action based on the belief that it lacked jurisdiction to proceed. "The law is well settled that a trial court is under a duty to hear and determine the merits of all matters properly before it which are within its jurisdiction, and that mandate may be used to compel the performance of this duty. This is so even where the trial court's refusal to pass on the merits is based on the considered but erroneous belief that it has no jurisdiction as a matter of law to grant the relief requested." (*Robinson v. Superior Court* (1950) 35 Cal.2d 379, 383; see also *Morrison Drilling Co. v. Superior Court* (1962) 208 Cal.App.2d 740, 744 [mandamus to compel trial court to lift stay imposed on mistaken belief that absent party was indispensable]; *James v. Superior Court* (1968) 261 Cal.App.2d 415, 417 [mandamus ordered to require trial court to

consider the defendant's demurrer and lift a stay that it imposed in a malicious prosecution action while the underlying lawsuit was being appealed].)

Here, the trial court declined to allow the Miwok Tribe to file a dispositive motion because it determined that to do so would require it to decide "issues that are within the exclusive jurisdiction of the tribe and the federal courts." On that basis the trial court denied the ex parte application to lift the stay and refused to proceed on the merits of the action.

The issue before us, therefore, is whether the trial court improperly refused to perform its duty to hear and determine the merits of the matter properly before it based on its jurisdictional concerns. As we will explain, we conclude that based on an apparent misunderstanding of the nature of the ruling necessary to resolve the issues presented by the Miwok Tribe's complaint, the trial court erroneously concluded that it would be intruding on the exclusive jurisdiction of the Miwok Tribe or the federal courts if it proceeded with this action while the *Salazar* case was pending.

To understand how the trial court erred, it is important to focus on the nature of this action and the Miwok Tribe's reason for filing it. As we have explained, there is no dispute that the Miwok Tribe is entitled to the RSTF funds. The disputed issue is whether the Commission, as trustee of those funds, is required to pay them over to the Miwok Tribe *now*, or whether it may instead *wait* to pay those funds until the federal government has recognized a tribal leadership body to receive the ISDEAA benefits. The Miwok Tribe's complaint seeks a ruling that the Commission is not legally justified in *waiting* until the federal issues are resolved, and that accordingly injunctive, mandamus

and declaratory relief is warranted in its favor. The Commission takes the position that, under its fiduciary duty as trustee of the RSTF funds, it is legally permissible for it to withhold the RSTF funds. Similarly, in their complaint in intervention, the Intervenors request relief in the form of a declaration that "the Commission shall continue to hold the [RSTF funds] in trust for the Tribe until such time as the Tribe is duly organized as overseen by the BIA."

Based on the gravamen of the complaint, the fundamental issue presented to the trial court for resolution on the merits is whether the current uncertainty in the federal government's relationship to the Miwok Tribe — including the pendency of the *Salazar* case — constitutes a legally sufficient basis for the Commission, as trustee of the RSTF, to withhold the RSTF funds from the Miwok Tribe. To resolve that issue the trial court need not determine the issues presented in the *Salazar* case or determine the proper tribal leadership body. The trial court need only *acknowledge* that the federal dispute is ongoing, and based on that factual predicate, determine whether the Commission has a legally sufficient basis for withholding the RSTF funds.

Put simply, the issue for the trial court to resolve is limited to whether the Commission is justified in withholding the RSTF funds *because* the *Salazar* case is pending and the BIA has not recognized a tribal leadership body for the distribution of ISDEAA benefits. It need not decide the issues being considered in federal court or resolve an internal tribal dispute. The trial court thus incorrectly concluded that it would be deciding issues within the exclusive jurisdiction of the Miwok Tribe or the federal courts if it were to proceed to resolve this action on the merits while the *Salazar* case is

pending. Based on that incorrect conclusion, the trial court improperly denied the Miwok Tribe's request to file a dispositive motion and proceed with the litigation of this action on the merits.

Although pretrial mandamus relief is sparingly granted, several factors that typically justify the issuance of an extraordinary writ are present here. (*Roden, supra*, 130 Cal.App.4th at p. 218.) As we have noted, writ relief is proper when "'the trial court's order deprive[s] petitioner of an opportunity to present a substantial portion of his cause of action,'" "'the party seeking the writ lacks an adequate means, such as a direct appeal, by which to attain relief,'" and "'the petitioner will suffer harm or prejudice in a manner that cannot be corrected on appeal.'" (*Ibid.*) These circumstances will exist if the stay remains in place and the Miwok Tribe is forced to wait until the *Salazar* case is over to litigate the merits of the Commission's policy of withholding the RSTF funds. In that event, the Miwok Tribe's challenge to the Commission's policy will evade review and be rendered moot before it can be decided. Without pretrial mandamus requiring the trial court to lift the stay, the trial court will fail to litigate this action while the relief sought in the complaint is still meaningful to the Miwok Tribe. (Cf. *Hayward Area Planning Assn. v. Superior Court* (1990) 218 Cal.App.3d 53, 56 [mandamus relief appropriate because remedy would be moot by time of appeal]; *Taylor v. Superior Court* (1990) 218 Cal.App.3d 1185, 1190 [mandamus warranted when eventual appeal is not an adequate remedy because the estate in a child support action allegedly would be dissipated before the appeal could be resolved].)

To be clear, we express no view on the merits of the Miwok Tribe's claims, as the issues presented in this action must be decided by the trial court in the first instance based on a thorough review of the applicable law and evidence, including an understanding that the issues presented in the *Salazar* case have not yet been resolved. The important point for our present discussion is that the Miwok Tribe has filed this action to obtain a ruling that the Commission is not fulfilling its duty as trustee with respect to the RSTF funds *under the present circumstances*, including the BIA's lack of recognition of a tribal leadership body for the distribution of ISDEAA benefits. To carry out its role of adjudicating this litigation, the trial court must allow the Miwok Tribe to file a dispositive motion and, if necessary, proceed to trial.

DISPOSITION

Let a writ of mandate issue commanding the San Diego County Superior Court to vacate its March 7, 2012 order denying the Miwok Tribe's ex parte application, and to lift the stay to allow the parties to file dispositive motions and, if necessary, proceed to trial. Petitioner is entitled to recover the costs it incurred in this writ proceeding. (Cal. Rules of Court, rule 8.493(a)(2).)

IRION, J.

WE CONCUR:

NARES, Acting P. J.

McINTYRE, J.

EXHIBIT "24"

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

ornia Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for ication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication dered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal Fourth District
FILED
APR 16 2010
Stephen M. Kelly, Clerk
DEPUTY

LIFORNIA VALLEY MIWOK TRIBE, Plaintiff and Appellant, v. LIFORNIA GAMBLING CONTROL MMISSION, Defendant and Respondent.	D054912 (Super. Ct. No. 37-2008-00075326-CU-CO-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Joan M. ws, Judge. Reversed.

The California Valley Miwok Tribe (the Miwok Tribe) appeals from a judgment ismissal following an order sustaining the demurrer filed by the California Gambling trol Commission (the Commission) on the basis that the Miwok Tribe lacked capacity anding to pursue its action against the Commission. As we will explain, we conclude the trial court improperly concluded that the Miwok Tribe lacked capacity or

standing, and further that none of the other grounds for demurrer asserted by the Commission have merit. Accordingly, we reverse the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The Miwok Tribe — located in central California — is identified in the Federal Register as a federally recognized Indian tribe. (Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed.Reg. 40218-02 (Aug. 11, 2009) [listing "California Valley Miwok Tribe, California"].)[1] According to the Miwok Tribe's appellate briefing, the enrolled membership of the Miwok Tribe is currently five persons.[2]

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1 The list appearing in the Federal Register is updated annually. It constitutes "a list of all Indian tribes which the Secretary [of the Interior] recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." (25 U.S.C. § 479a-1(a).) As stated in the Federal Register, "[t]he listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes." (Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed. Reg. 40218-02, *supra.*)

2 The history of the Miwok Tribe — originally identified as the "Sheep Ranch Rancheria of Me-Wuk Indians of California" — was summarized by the federal district court in *California Valley Miwok Tribe v. United States* (D.D.C. 2006) 424 F.Supp.2d 197 (*California Valley Miwok I*). "In 1915, a federal Indian Agent located a cluster of thirteen Miwok living on 160 acres in or near the city of Sheep Ranch, California. . . . The government purchased two of the 160 acres, in trust for the Miwok, in April 1916. The two-acre parcel came to be known as 'Sheep Ranch Rancheria.' The number of people living there dwindled, to the point that, when the 1934 Indian Reorganization Act, 25 U.S.C. §§ 461-479, was adopted, the government recognized only one individual as a Tribe member. . . . [¶] In 1965, the government . . . began investigating the possibility, under the federal legislation known as the Rancheria Act, of terminating the Sheep Ranch

This lawsuit challenges the Commission's decision to withhold funds from the Miwok Tribe that are payable to certain Indian tribes in California who operate less than 350 gaming devices. As a first step to understanding the instant dispute, we review the background facts concerning the disputed funds.

A. *Funds Payable to Non-Compact Tribes in California*

Pursuant to The Indian Gaming Regulatory Act of 1988 (18 U.S.C. § 1166 et seq.; 25 U.S.C. § 2701 et seq.), the State of California entered into tribal-state gaming compacts with the various tribes in California authorized to operate gambling casinos (collectively, the Compacts).[3] (See Gov. Code, §§ 12012.25-12012.53 [ratifying tribal-state gaming compacts]; see also *Cachil Dehe Band of Wintun Indians v. California* (9th Cir. 2008) 547 F.3d 962, 966-967 (*Cachil Dehe Band*) [explaining that in 1999, 63 tribes entered into gaming compacts with the State of California].)

Rancheria of Miwok Indians. . . . A December 30, 1965 list, prepared pursuant to the Rancheria Act, named Mabel Hodge Dixie as the only Indian living on Sheep Ranch. . . . In 1966, . . . the government . . . conveyed Sheep Ranch to Mabel Dixie by deed, and terminated the Tribe. . . . [¶] In 1994, Congress enacted the Federally Recognized Indian Tribe List Act of 1994, Pub. Law 103-454, and the Tribe's name was placed on the list of federally recognized tribes. . . . On September 24, 1998, the Superintendent of the Bureau of Indian Affairs Central California Agency . . . advised Yakima Dixie, as tribal chairman, that Yakima Dixie, Melvin Dixie, Silvia Burley, . . . Rashel Reznor, Anjelica Paulk, and Tristan Wallace 'possessed the right to participate in the initial organization of the Tribe.'" (*California Valley Miwok I*, at pp. 197-198, citations and fns. omitted.)

3 A generic form of the Compacts (with the heading "Generic Tribal-State — Compact 09-10-99," but dated February 2002 on the title page) is contained in the record as an exhibit to the first amended complaint. Our citations to the "Compacts" are necessarily based on the contents of the generic form contained in the record.

As relevant here, the Compacts set forth a revenue-sharing mechanism under which tribes who operate less than 350 gaming devices share in the license fees paid by the tribes entering into the Compacts. (Compacts, § 4.3.2.1; see also *Cachil Dehe Band, supra*, 547 F.3d at p. 967.) Specifically, the Compacts provide that "each Non-Compact Tribe in the State shall receive the sum of $1.1 million per year," with payments made on a quarterly basis. (Compacts, § 4.3.2.1.) "Non-Compact Tribes" are defined as "federally recognized tribes that are operating fewer than 350 Gaming Devices." (Compacts, § 4.3.2.(i)(a).) It is undisputed that the Miwok Tribe is a Non-Compact Tribe, as it operates no gaming devices and is federally recognized.

The annual payment of $1.1 million to each Non-Compact Tribe is drawn from the Revenue Sharing Trust Fund (RSTF) described in the Compacts, which is funded by license fees paid by the gaming tribes to the State.[4] The Commission administers the RSTF as a trustee. (Compacts, § 4.3.2.1(b).) According to the Compacts, "[t]he 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." (Compacts, § 4.3.2.1(b).)

The Compacts provide that if there are insufficient funds in the RSTF to cover the annual $1.1 million payment to the Non-Compact Tribes, the funds are to be drawn from

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4 According to the Compacts, gaming tribes make a one-time payment into the RSTF of $1,250 per each gaming device being licensed, and, in accordance with a predetermined fee schedule, must pay annual fees into the RSTF for each licensed gaming device. (Compacts, § 4.3.2.2(a)(2), (e).)

the Indian Gaming Special Distribution Fund (Special Distribution Fund), which the Legislature created by enacting Government Code section 12012.85.[5] According to a schedule set forth in the Compacts, gaming tribes are required to make quarterly contributions to the Special Distribution Fund based on the average net win associated with their gaming devices. (Compacts, § 5.1(a).) Although the moneys in the Special Distribution Fund are to be applied to a variety of purposes,[6] their priority use is to cover the shortfalls in the RSTF in making the annual $1.1 million payment to the Non-Compact Tribes. (Gov. Code, § 12012.85, subd. (d).) A provision in the Government Code provides for the transfer of money from the Special Distribution Fund to the RSTF to cover shortfalls (Gov. Code, § 12012.90, subd. (e)) and directs that the Commission "shall make quarterly payments from the Indian Gaming Revenue Sharing Trust Fund to each eligible recipient Indian tribe within 45 days of the end of each fiscal quarter." (Gov. Code, § 12012.90, subd. (e)(2).)

B. *The Commission Withholds Funds from the Miwok Tribe*

There is no dispute that, as a Non-Compact Tribe, the Miwok Tribe is eligible for an annual amount of $1.1 million under the terms of the Compacts. Nevertheless, in

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5 Evidence in the record shows that, at least in 2007 and 2008, the Commission has been required to draw on the Special Distribution Fund to make up a shortfall in the RSTF.

6 The purposes to which the moneys in the Special Distribution Fund may be applied include grants for programs to address gambling addiction or for the support of local and state government agencies impacted by tribal gaming. (Gov. Code, § 12012.85, subds. (a), (b); Compacts, § 5.2.)

August 2005, the Commission, acting as trustee of the RSTF, suspended its quarterly disbursements to the Miwok Tribe, and instead decided to hold the funds indefinitely for later distribution. The Commission cited "the lack of a recognized tribal government or leadership," and explained that "in situations involving tribal leadership disputes," the Commission "take[s its] lead" from the federal Bureau of Indian Affairs (BIA).[7] Citing the BIA's decision in July 2005 to suspend the Miwok Tribe's contract to receive federal benefits under the Indian Self-Determination and Education Assistance Act (Pub.L. No. 93-638, § 2 (Jan. 4, 1975) 88 Stat. 2203; see also 25 U.S.C. § 450 et seq.) (ISDEAA), on the ground that "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," the Commission adopted the practice of depositing the funds to which the Miwok Tribe is entitled into an interest bearing account until "the Tribe's leadership and organizational status is resolved to a degree sufficient to allow the BIA to resume government-to-government relations."

It appears from evidence in the record that the BIA at one point resumed its provision of federal benefits under the ISDEAA to the Miwok Tribe on an interim basis,

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7 Although this appeal concerns a demurrer to the first amended complaint, there are numerous evidentiary documents in the record. Those documents consist of (1) documents that were the subject of the parties' requests for judicial notice in the trial court in connection with the demurrer, and (2) those documents that were submitted by the parties in response to the trial court's request for additional briefing on whether the Miwok Tribe should be given leave to amend the first amended complaint. Accordingly, in setting forth the factual background of the parties' dispute, we refer to certain evidence outside of those facts pled in the first amended complaint.

in connection with which it recognizes tribal member Silvia Burley as a "'person of authority'" within the Miwok Tribe for the purposes of receiving funding under the ISDEAA, but that it still does not recognize a tribal government.[8] The Commission, however, persisted in withholding the RSTF funds from the Miwok Tribe, citing the BIA's ongoing refusal to recognize a tribal government, as well as the litigation between the Miwok Tribe and the BIA in federal court (the federal litigation), which has resulted in published opinions from the federal district and appellate courts in the District of Columbia. (*California Valley Miwok I, supra*, 424 F.Supp.2d 197; *California Valley Miwok Tribe v. United States* (D.C. Cir. 2008) 515 F.3d 1262 (*California Valley Miwok II*).)

C. *The Federal Litigation*

Because the Commission relies on the federal litigation in support of its decision to withhold the RSTF funds from the Miwok Tribe, the details of that litigation are pertinent here. The federal litigation was filed by the Miwok Tribe as a challenge to the BIA's refusal to approve a tribal constitution that was adopted by the Miwok Tribe, with Burley acting as chairperson for the tribe. (*California Valley Miwok II, supra*, 515 F.3d

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8 Shortly before oral argument, the Commission submitted a request that we take judicial notice of a January 28, 2010 order, issued by the Interior Board of Indian Appeals, ruling on an appeal by the Miwok Tribe of a decision by the BIA's Pacific Regional Director. We grant the request to take judicial notice. We note that the January 28, 2010 order contains more up-to-date background information about the dispute between the BIA and the Miwok Tribe. Based on the discussion in the January 28, 2010 order, it appears that in fiscal years 2008 and 2009, the BIA did *not* enter into a contract with the Miwok Tribe to provide it funds under the ISDEAA, although it did so in prior fiscal years.

at p. 1265; *California Valley Miwok I, supra*, 424 F.Supp.2d at p. 199.) Specifically, the Miwok Tribe had sought approval for its constitution from the BIA under the Indian Reorganization Act of 1934 (25 U.S.C. § 461 et seq.) (the IRA).[9] Under the IRA, the Secretary of the Interior may call and hold a special election for ratification of a tribe's constitution under procedures detailed in that statute and applicable federal regulations. (25 U.S.C. § 476; 25 C.F.R. § 81 (2009); *California Valley Miwok II, supra*, 515 F.3d at p. 1264 [describing applicable regulations].) A tribe's constitution becomes effective under the IRA when ratified in the election by a majority vote of the adult members of the tribe and approved by the Secretary of the Interior. (25 U.S.C. § 476(a).) However, the IRA also provides that "[n]otwithstanding any other provision of this Act — (1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section . . . ." (25 U.S.C. § 476(h)(1).) Here, the Miwok Tribe's constitution was indisputably not adopted pursuant to a special election called and held by the Secretary of the Interior, and the BIA accordingly informed the Miwok Tribe that it considered the tribe to be "unorganized" under the IRA.

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9 However, a tribe may chose not to organize under the IRA, and many tribes have accordingly adopted constitutions using procedures not set forth in the IRA, and several tribes exist without any written constitution. (Cohen, Handbook of Federal Indian Law (2005 ed.) § 4.04[3][b], pp. 257-258.) It is also pertinent to the background of the dispute between the Miwok Tribe and the BIA that "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community . . ." (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 72, fn. 32 (*Santa Clara Pueblo*)), and "[a]n Indian tribe has the power to define membership as it chooses, subject to the plenary power of Congress." (*Williams v. Gover* (9th Cir. 2007) 490 F.3d 785, 789.)

(*California Valley Miwok II*, at p. 1265.) The BIA explained that it "'has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community,'" and it had "'not seen evidence that such general involvement was attempted or occurred with the purported organization'" of the Miwok Tribe. (*Id.* at pp. 1265-1266.)

In the federal litigation, the Miwok Tribe argued that the BIA was nevertheless required to recognize the tribe as "organized" under the IRA based on the provision in the statute stating that tribes "shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section." (25 U.S.C. § 476(h)(1); see *California Valley Miwok II*, *supra*, 515 F.3d at pp. 1266-1267.) Both the district court and the appellate court concluded that the BIA was not required to recognize the Miwok Tribe as organized under the IRA. As the appellate court explained, the BIA has "the power to reject a proposed constitution that does not enjoy sufficient support from a tribe's membership." (*California Valley Miwok II*, at p. 1267.) In reaching its decision the court relied on the fact that "[a]lthough [the Miwok 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." (*Ibid.*)

D. *Litigation over the Withheld Funds*

1. *The Commission's Interpleader Action*

In December 2005 the Commission filed an interpleader action in superior court concerning the proper disposition of the RSTF funds payable to the Miwok Tribe. That suit was dismissed on demurrer.

2. *The Instant Litigation*

In January 2008 the Miwok Tribe filed the instant lawsuit against the Commission. After a removal of the action to federal court by the Commission and an order remanding it back to superior court, the Miwok Tribe filed the operative first amended complaint, combined with a petition for writ of mandate (the complaint). Against the Commission, the complaint seeks (1) a writ of mandate under Code of Civil Procedure section 1085 ordering the Commission to pay the RSTF funds to the Miwok Tribe; (2) an injunction requiring the Commission to perform its duty as trustee of the RSTF by distributing the RSTF funds to the Miwok Tribe; and (3) declaratory relief concerning the Commission's duty to distribute the RSTF funds to the Miwok Tribe. The complaint was verified by Burley, who declared, "I am the selected spokesperson for [the Miwok Tribe], and I am authorized to make this verification on its behalf."

The complaint provides a brief description of the factual background that gave rise to the Commission's decision to withhold the RSTF funds from the Miwok Tribe. The complaint explains (1) that "[i]n 1998 the Miwok Tribe established a tribal council"; (2) that "[o]n June 25, 1999, the [BIA] recognized [Burley] of the Miwok Tribe as tribal chairperson"; (3) that "[i]n late 1999, a leadership dispute developed within the Miwok Tribe," but that in July 2000 "the BIA again recognized Burley as chairperson of the Miwok Tribe"; (4) that in October 2001 the BIA declined to approve the proposed new constitution sent to it by the Miwok Tribe in September 2001, but recognized the Miwok Tribe as an "'unorganized Tribe'"; (5) that in November 2003 "the BIA acknowledged the existence of a 'government-to-government relationship' with the Miwok Tribe through the

tribal council that Burley chaired"; (6) that in March 2004 the BIA advised that it still considered the Miwok Tribe to be unorganized, and although it recognized Burley as "'a person of authority'" within the tribe, "asked the Miwok Tribe to draft a constitution that identified more of its membership base;" (7) that "[i]n March 2005, the BIA met with the Miwok Tribe in an effort to resolve the tribe's ongoing leadership disputes";[10] and finally (8) that "[t]he BIA has continued to recognize the Miwok Tribe only as an 'unorganized' tribe, because it has not adopted a governing constitution that identified other putative members of the tribe" and "will only recognize Burley as a 'person of authority' for the Miwok Tribe, rather than its tribal chairperson."

The Commission demurred to the complaint on several grounds, including that "[a]bsent a federally recognized constitution, government, membership, or chairperson, there is no individual or entity with *the capacity or standing to file suit* to enforce any

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10 The nature of the "ongoing leadership dispute[]" is not explained in the complaint. However, other evidence in the record, as well as statements in the opinions in the federal litigation, provide detail. Apparently, the leadership dispute involves Yakima Dixie, who resigned as tribal chairperson in 1999 and later complained about his removal from the tribal leadership. (*California Valley Miwok I, supra,* 424 F.Supp.2d at p. 198.) Documents submitted by Burley in connection with the trial court's request for briefing on whether it should grant leave to amend indicate (1) that in April 2005, in an extensive written decision, the Miwok Tribe's tribal court, through an administrative hearing officer, considered and rejected Yakima Dixie's claim that he, rather than Burley, is the authorized representative of the Miwok Tribe; and (2) that in September 2005, Yakima Dixie was disenrolled from the Miwok Tribe by resolution of the tribal council on the ground that he was enrolled in another federally recognized Indian tribe and had not relinquished that enrollment. In the trial court during the instant litigation, Yakima Dixie and Melvin Dixie — both claiming to be tribal members — filed an application for leave to file an amicus brief, but stated that they did not desire to intervene at this stage of the litigation. The trial court denied the application.

rights the [Miwok Tribe] may possess as a result of that entity's placement on the list of federally recognized tribes." (Italics added.) As the basis for this argument, the Commission relied on facts set forth in the federal litigation concerning the BIA's refusal to approve the Miwok Tribe's constitution.

The trial court sustained the demurrer to each cause of action on the ground that "the Tribe, as currently represented in this lawsuit, lacks the capacity and/or standing to bring this action." In support of its decision, the trial court observed that both the federal litigation and the complaint in this action mentioned a leadership dispute within the Miwok Tribe, and that "without a recognized government and leader this action cannot proceed." According to the trial court, the Miwok Tribe "offered no persuasive authority that would support allowing this action to proceed when, as acknowledged, there clearly is an ongoing leadership dispute within the Tribe."

After receiving supplemental briefing as to whether it should grant leave to file an amended complaint, the trial court sustained the demurrer without leave to amend and entered an order of dismissal.

II

DISCUSSION

A. *Standard of Review*

"'On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.'" (*Los Altos El Granada Investors v. City of Capitola* (2006) 139 Cal.App.4th 629, 650.) "A judgment of

dismissal after a demurrer has been sustained without leave to amend will be affirmed if proper on any grounds stated in the demurrer, whether or not the court acted on that ground." (*Carman v. Alvord* (1982) 31 Cal.3d 318, 324 (*Carman*).) In reviewing the complaint, "we must assume the truth of all facts properly pleaded by the plaintiffs, as well as those that are judicially noticeable." (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 814.)

Further, "[i]f the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. . . . If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. . . . The plaintiff has the burden of proving that an amendment would cure the defect." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081, citations omitted.) "[S]uch a showing can be made for the first time to the reviewing court." (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.)

B. *Lack of Capacity or Standing*

The trial court dismissed the action on the ground that, under the circumstances described in the complaint and the opinions in the federal litigation, the Miwok Tribe lacked "capacity and/or standing" to bring this action because of a leadership dispute within the Miwok Tribe. However, in connection with the demurrer, neither the trial court nor the parties cited any authority establishing that the doctrines of standing and capacity have any application to a situation in which the entity that filed suit is

undergoing a leadership dispute and the BIA refuses to approve its constitution under the IRA. Thus, we focus on the doctrines of capacity and standing to determine whether they have any application here.

1. *Standing*

We first examine the doctrine of standing. The requirement that a party must have standing to bring an action is based on Code of Civil Procedure section 367, which requires that, in general, "[e]very action must be prosecuted in the name of the real party in interest . . . ." A party who is not the real party in interest lacks standing to bring suit. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 1004.) "'Generally, "the person possessing the right sued upon by reason of the substantive law is the real party in interest."'" (*Gantman v. United Pacific Ins. Co.* (1991) 232 Cal.App.3d 1560, 1566.) A party has standing if it has "'the requisite interest to support an action or the right to relief.'" (*Windham at Carmel Mountain Ranch Assn. v. Superior Court* (2003) 109 Cal.App.4th 1162, 1172, fn. 10.)

Applying these principles here, there is no basis to question to Miwok Tribe's standing to bring this lawsuit, even if it is involved in a leadership dispute. Regardless of who is the proper leader of the Miwok Tribe and whether the BIA approves of the Miwok Tribe's constitution, it is undisputed that the lawsuit was brought by the Miwok Tribe itself as the sole plaintiff. The Miwok Tribe is undoubtedly a real party in interest because of its stake in the outcome of a dispute over whether the Commission must make payments to it from the RSTF. Thus, we conclude that there is no defect in the standing in this action sufficient to support an order sustaining a demurrer.

2. *Capacity*

Next, we consider the doctrine of capacity. "The question of standing to sue is different from that of capacity. Incapacity is merely a *legal disability*, such as minority or incompetency, which deprives a party of the right to represent his or her own interests in court. (*American Alternative Energy Partners II v. Windridge, Inc.* (1996) 42 Cal.App.4th 551, 559, italics added.) "In general, any person or entity has capacity to sue or defend a civil action in the California courts. This includes artificial 'persons' such as corporations, partnerships and associations. [Citation.] A partnership or other unincorporated association has capacity both to sue and be sued in the name it has assumed or by which it is known." (*Ibid.*)[11]

In certain instances, however, an entity will lack capacity to sue. Most notably, a California corporation suspended under California law lacks the capacity to sue in a California court. (Rev. & Tax. Code, § 23301 [suspension for nonpayment of corporate franchise tax]; *Palm Valley Homeowners Assn. Inc. v. Design MTC* (2000) 85 Cal.App.4th 553, 559 [suspension for failure to file the information statement required by Corp. Code, § 1502].) Further, a foreign corporation whose powers have been suspended in its home state also lacks the capacity to sue in a California court. (*CM Record Corp. v. MCA Records, Inc.* (1985) 168 Cal.App.3d 965, 968-969 ["Appellant lacked the capacity

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11 According to Code of Civil Procedure section 369.5, "[a] partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known." (*Ibid.*)

to sue, because of lack of corporate status, in Missouri. It likewise lacked the capacity to sue in California."].)[12]

The parties have cited no applicable authority suggesting that a federally recognized Indian tribe involved in an internal leadership dispute, or whose constitution is not approved under the IRA by the BIA, is the type of entity that lacks the legal capacity to bring suit in its own name in a California court. The Commission relies on federal case law dealing with unrecognized governmental regimes of foreign countries. Those cases hold that "unrecognized regimes are generally precluded from appearing as plaintiffs in an official capacity without the Executive Branch's consent." (*Klinghoffer v. S.N.C. Achille Lauro* (2d Cir. 1991) 937 F.2d 44, 48 (*Klinghoffer*), citing *Banco Nacional v. Sabbatino* (1964) 376 U.S. 398, 410-411, and *National Petrochemical Co. v. M/T Stolt Sheaf* (2d Cir. 1988) 860 F.2d 551, 554-555.) Specifically, these cases concern executive branch recognition of the governments of Cuba, Iran and the Palestinian Liberation Organization (the PLO). (*Banco Nacional*, at p. 410 [severance of diplomatic relations, commercial embargo, and freezing of Cuban assets in this country did not preclude an instrumentality of the Cuban government from bringing suit in a United States court]; *National Petrochemical*, at p. 552 [a corporation wholly owned by the government of Iran was permitted to bring suit due to position of the Executive Branch of the United

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12 In addition, a foreign corporation does not have the capacity to "maintain" an action in a California court concerning an intrastate business without obtaining a certificate of qualification from the Secretary of State. (Corp. Code, § 2203, subd. (c).)

States government that Iran should be given access to court]; *Klinghoffer*, at p. 46 [considering whether the PLO is immune from suit].)

We infer that the Commission believes these cases would apply because "tribes remain quasi-sovereign nations" (*Santa Clara Pueblo*, *supra*, 436 U.S. at p. 71) and "are 'domestic dependent nations' that exercise inherent sovereign authority over their members and territories." (*Oklahoma Tax Comm'n v. Potawatomi Tribe* (1991) 498 U.S. 505, 509.) However, we need not, and do not, decide whether *Klinghoffer* and the cases it cites are in any way applicable to the situation of a federally recognized Indian tribe. That is because we find no indication that the Executive Branch of the United States government has withheld consent for the Miwok Tribe to appear as a plaintiff in a United States court. Indeed, as shown by the history of the federal litigation, the Miwok Tribe, under its current disputed leadership and while in a dispute with the BIA about its constitution, has been granted access to the federal courts as a plaintiff in a federal lawsuit with the United States as a defendant. (*California Valley Miwok I*, *supra*, 424 F.Supp.2d 197; *California Valley Miwok II*, *supra*, 515 F.3d 1262.) The Commission points to no evidence that the United States ever took the position that under the current circumstances the Miwok Tribe should be denied access to United States courts.[13]

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13 In an attempt to support its argument that the Miwok Tribe lacks the capacity to sue, the Commission also cites a federal statutory provision indicating that the federal district courts "shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." (28 U.S.C § 1362.) We find this provision inapposite because it is does not purport to define the instances in which a federally recognized Indian tribe will lack

Relying also on *Miami Nation of Indians v. U.S. Dept. of Interior* (7th Cir. 2001) 255 F.3d 342, 345-346, to support its argument, the Commission contends that "[a]bsent federal recognition of a tribal government, no one has the capacity to sue on behalf of a federally recognized tribe." According to the Commission, *Miami Nation* establishes that "[r]ecognition of a tribal government and the officials entitled to act on a tribe's behalf are matters wholly within the exclusive purview of the executive branch . . . ," and that "those questions are essentially political in nature." However, *Miami Nation* provides no support, as it dealt with initial *federal recognition* of an Indian tribe. (*Id.* at pp. 345-346 [challenging the U.S. Dept. of the Interior's decision to deny a tribe's petition for recognition].) It has no bearing on whether a tribe, such as the Miwok Tribe, *that is already federally recognized* might lack the capacity to sue in a situation where (1) the BIA fails to approve its constitution under the IRA; and (2) it is involved in an internal leadership dispute.

In sum, the Commission has identified no authority, and we are aware of none, to support a finding that the Miwok Tribe lacks the capacity to bring suit. It is undisputed that the Miwok Tribe is a federally recognized Indian tribe, and the complaint sufficiently alleges that despite the BIA's refusal to approve the tribe's constitution and despite the ongoing leadership dispute, the complaint was filed by a "'person of authority'" in the tribe who is the tribe's "selected spokesperson." Under these circumstances, we find no

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the legal capacity to bring suit, and instead defines the scope of a federal court's original jurisdiction.

basis to conclude that the Miwok Tribe is under any legal disability that would prevent it from filing suit on its behalf.

We accordingly conclude that the trial court erred in determining that the Miwok Tribe lacked "capacity and/or standing" to bring suit.

Before we leave this subject, however, it is important to point out that much of the parties' briefing, while purporting to address issues of capacity and standing, veers off into the merits of the underlying dispute of whether the Commission is entitled to withhold the RSTF funds from the Miwok Tribe. In our view, the issues of standing and capacity are separate from the issue of whether the Miwok Tribe should prevail on the merits of its lawsuit. We reject the Miwok Tribe's suggestion that if it establishes standing to bring this lawsuit, it is automatically entitled to payment of the RSTF funds. Our decision in no way touches upon whether the Commission is properly withholding funds from the Miwok Tribe. That is a separate issue that must be litigated upon remand of this action to the trial court. The Commission contends that because it has a fiduciary duty as trustee of the RSTF funds, the current uncertainties regarding the Miwok Tribe's government and membership require it to withhold the RSTF funds and hold them in trust until it can be assured that the funds, if released, will be going to the proper parties. Nothing in our decision is intended to foreclose the Commission from pursuing such an argument in the trial court. Indeed, the trial court will be better able to explore the legal impact of the tribal leadership dispute and the BIA's relationship with the Miwok Tribe when the pertinent facts are more fully developed later in the litigation, rather than in the context of the scant facts available in connection with the Commission's demurrer.

C. *The Status of the Miwok Tribe as Third Party Beneficiary of the Compacts Does Not Provide a Basis for Affirmance of the Order Sustaining the Commission's Demurrer*

As another basis for demurrer, the Commission argues that the Miwok Tribe, as a third party beneficiary of the Compacts, is prevented by the terms of the Compacts, from bringing suit to enforce obligations created under the Compacts.[14] The Commission contends that the causes of action for injunctive and declaratory relief fail to state a claim for relief because they impermissibly seek an order enforcing the terms of the Compacts.

The Compacts contain the following provisions relevant to the Commission's argument. First, the Compacts state that Non-Compact Tribes "shall be deemed third party beneficiaries" of the Compacts. (Compacts, § 4.3.2(a)(i).) Second, in a section titled "Third Party Beneficiaries," the Compacts provide that "[e]xcept 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." (Compacts, § 15.1.)

We agree with the Commission that the foregoing provisions unambiguously prevent a third party beneficiary from bringing suit to enforce the terms of the Compacts. The issue presented, therefore, is whether the Miwok Tribe's claims for declaratory and injunctive relief are properly classified as attempts to enforce the terms of the Compacts.

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14 As we have explained, in ruling on the appeal from the order sustaining the Commission's demurrer, we must consider all of the grounds raised in the demurrer, not just that ground reached by the trial court. (*Carman, supra*, 31 Cal.3d at p. 324.)

As we will explain, we conclude that the causes of action for declaratory and injunctive relief do not depend on attempts to enforce the terms of the Compacts.

As we have discussed, the parties to the Compacts are the state's gaming tribes and the State of California. By entering into the Compacts, the gaming tribes agreed that they would pay over certain of the moneys to the State, and that from those funds, the Non-Compact Tribes would be entitled to the amount of $1.1 million annually. (Compacts, §§ 4.3.2.1, 4.3.2.2(a)(2), 5.1.) The State of California agreed that the Commission would serve as trustee to the RSTF. (Compacts, § 4.3.2.1(b).) Based on our reading of the complaint, while the provisions of the Compacts are relevant, the causes of action for declaratory and injunctive relief are not dependent on the enforcement of any contractual terms. Instead, the complaint repeatedly cites the Government Code as the source of the Commission's duty to pay over the RSTF funds. Specifically, the complaint cites Government Code section 12012.90, subdivision (e)(2), which provides that the Commission "shall make quarterly payments from the Indian Gaming Revenue Sharing Trust Fund to each eligible recipient Indian tribe within 45 days of the end of each fiscal quarter." (*Ibid.*) Because the causes of action for declaratory and injunctive relief depend on a statutory provision rather than the terms of the Compacts, we conclude that those causes of action are not precluded by the contractual provision precluding suits brought by third party beneficiaries to enforce the terms of the Compacts.[15]

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15 The Commission further argues that although the Miwok Tribe relies on Government Code section 12012.90, subdivision (e) for its causes of action, that statutory provision does not create a private cause of action. However, the Commission's

D. *The Petition for Mandamus Is Not Precluded on the Ground That It Seeks to Enforce a Contractual Obligation*

The Commission raises two additional arguments in support of its demurrer to the cause of action seeking a writ of mandamus. As we will explain, both of the arguments lack merit.

First, the Commission relies on the principle that mandamus is not available to enforce contractual obligations against a public entity. (*300 DeHaro Street Investors v. Department of Housing & Community Development* (2008) 161 Cal.App.4th 1240, 1254 ["'As a general proposition, mandamus is not an appropriate remedy for enforcing a contractual obligation against a public entity.'"].) However, as we have explained, we do not view the complaint as solely an attempt to enforce contractual obligations. Instead, the complaint, including the cause of action seeking a writ of mandamus, is premised on the Commission's statutory duty under Government Code section 12012.90, subdivision (e)(2) to "make quarterly payments from the Indian Gaming Revenue Sharing

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argument is misplaced because the procedural basis for the causes of action at issue are the statutes permitting a party to seek "a declaration of his or her rights or duties with respect to another" (Code. Civ. Proc., § 1060), and to seek injunctive relief concerning a trustee (Code. Civ. Proc., § 526, subd. (a)(7)). In general, a party may rely on such generally applicable statutes to seek injunctive and declaratory relief against the State. (See *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1000.) Further, because the Miwok Tribe seeks only declaratory and injunctive relief, and not damages, it is not relevant whether, as the Commission discusses, Government Code section 12012.90, subdivision (e) creates *liability* for breach of a "mandatory duty" as discussed in Government Code section 815.6.

Trust Fund to each eligible recipient Indian tribe within 45 days of the end of each fiscal quarter."[16] (Gov. Code, § 12012.90, subd. (e)(2).)

Second, the Commission argues that it has already performed its obligation under Government Code section 12012.90, subdivision (e)(2) to make quarterly payments to the Miwok Tribe by depositing the RSTF funds in a separate interest bearing account. Citing the principle that "[m]andate will . . . not lie to compel an act that has already been performed," the Commission argues that it "has in fact performed its duty under the Government Code and, therefore, mandamus is unnecessary." (See *State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, 742 [if evidence demonstrates the respondent's "'willingness to perform without coercion, the writ [of mandate] may be denied as unnecessary'" and if the evidence "'shows actual compliance, the proceeding will be dismissed as moot'"].) This argument fails because the act that the Miwok Tribe seeks to compel is *not* the same act that the Commission has already performed. The Miwok Tribe does not seek an order requiring payment into an interest bearing account controlled by the Commission. On the contrary, it seeks an order requiring the Commission to *pay over* and *relinquish control of* the RSTF funds.

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16 In a related argument, the Commission contends that ordering relief in mandamus based on Government Code section 12012.90, subdivision (e)(2) would be an "illegal act or one against public policy" because it would amend the terms of the Compacts without following the proper procedures for making amendments. We disagree. An order enforcing the Commission's duties under Government Code section 12012.90, subdivision (e)(2) would not serve to amend the contractual provision at issue. Instead, it would serve to enforce an *independent statutory duty*.

E. *The Commission's Contention That Indispensible Parties Have Not Been Joined*

The Commission also demurred to the complaint on the basis in "[t]here is a defect in the parties in that [the Miwok Tribe] has failed to join necessary parties." Specifically, the Commission contends that because there are "other parties" who "claim a right to represent the Miwok [Tribe] and, hence, claim a right to distributions from the RSTF," those parties "should be joined pursuant to Code of Civil Procedure section 389, subdivision (a)." The trial court did not address this issue, as it sustained the demurrer on other grounds.

Code of Civil Procedure section 389 provides in part:

> "(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.
>
> "(b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder."

Although the Commission's argument is not completely clear, it appears to contend that (1) that the trial court should have determined, pursuant to Code of Civil Procedure section 389, subdivision (a), that certain parties are necessary to the adjudication of this action; and (2) that this action should be dismissed pursuant to Code of Civil Procedure section 389, subdivision (b), because those parties cannot be joined.

We conclude that, for several reasons, the Commission has not carried its burden of establishing this ground for demurrer to the complaint.

First, the Commission has not clearly identified the parties that it claims are necessary to the action. Instead, it only vaguely refers to "other parties" who "claim a right to represent the Miwok [Tribe]." Although (based on other materials in the record) one might surmise that Yakima Dixie is one of the parties at issue, the Commission is simply not clear about who it believes should be joined in this action. Further, the identity of the parties that the Commission claims should be joined in this action is not cleared up by the complaint, which refers only vaguely to a leadership dispute. Under these circumstances, an order sustaining a demurrer for misjoinder of parties would not be proper. "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings. More specifically, a defendant may not make allegations of defect or misjoinder of parties in the demurrer if the pleadings do not disclose the existence of the matter relied on; such objection must be taken by plea or answer." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429 (*Harboring Villas*).)

Second, a decision that an absent party is necessary to a resolution of the action is "'"a discretionary power or a rule of fairness"'" (*Deltakeeper v. Oakdale Irrigation Dist.* (2001) 94 Cal.App.4th 1092, 1105), and we review such a decision under an abuse of discretion standard of review. (*Id.* at p. 1106.) Accordingly, the trial court, in the first instance, should be given an opportunity to exercise its discretion as to the joinder of parties. It would be improper for us to make such a determination for the first time on appeal rather than to review an exercise of the trial court's discretion.

Third, even if the Commission had identified the parties that it believed should be joined and the trial court had exercised its discretion to decide that joinder was necessary, a dismissal would nevertheless be improper because the Commission has not shown that it is impossible to join the parties at issue. Pursuant to Code of Civil Procedure section 389, subdivision (b), a court may not dismiss an action for failure to join an indispensible party unless it first determines that the person "cannot be made a party." (*Ibid.*)

For all of these reasons, we conclude that the absence of certain parties to this action is not a ground on which we may affirm the trial court's ruling sustaining the Commission's demurrer.[17]

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17 We note that our ruling does not prohibit the Commission from moving to join certain parties at a later stage in the proceedings or from seeking to dismiss the action if those parties cannot be joined; nor does it foreclose the trial court from exercising its discretion to grant any future motion to intervene by third parties. (See *Harboring Villas, supra,* 63 Cal.App.4th at p. 432.)

DISPOSITION

The judgment of dismissal is reversed, and the action is remanded for further proceedings consistent with this opinion.

IRION, J.

WE CONCUR:

NARES, Acting P.J.

McINTYRE, J.

EXHIBIT "25"

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CALIFORNIA VALLEY MIWOK TRIBE

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

CALIFORNIA VALLEY MIWOK TRIBE

Plaintiff,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant.

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

NOTICE OF RULING: MOTION FOR JUDGMENT ON THE PLEADINGS

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

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

PLEASE TAKE NOTICE that on March 11, 2010, in Department 62 of the above-entitled Court, the Hon. Ronald L. Styn presiding, the San Diego County Superior Court entered an order granting Plaintiff's Motion for Judgment on the Pleadings. A copy of the order is attached herewith and marked as Exhibit "1", and is incorporated into this notice by this reference.

Dated: March 14, 2011

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

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

TE: 03/11/2011 TIME: 02:00:00 PM DEPT: C-62

)ICIAL OFFICER PRESIDING: Ronald L. Styn
ERK: Kim Mulligan
PORTER/ERM: Susan Holthaus CSR# 6959
JLIFF/COURT ATTENDANT: M. Chadwell

SE NO: **37-2008-00075326-CU-CO-CTL** CASE INIT.DATE: 01/08/2008
SE TITLE: **California Valley Miwok Tribe vs. The California Gambling Control Commission**
SE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

/ENT TYPE: Motion Hearing (Civil)
OVING PARTY: California Valley Miwok Tribe
AUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings, 02/07/2011

PPEARANCES

EE SIGN-IN SHEET FOR APPEARANCES.

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

he court addresses the evidentiary issues. Plaintiff California Valley Miwok Tribe's request for dicial notice is granted. Defendant California Gambling Control Commission's request for judicial otice is granted. The Commission's objections to Plaintiff's request for judicial notice are overruled. laintiff's reply request for judicial notice is granted. Intervenors' objections to Plaintiff's evidence in eply are overruled.

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

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

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

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

EXHIBIT
1

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

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

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

Judge Ronald L. Styn

PY 0261

Superior Court of California County of San Diego SIGN-IN SHEET	Calendar No.: 32, 33, 34, 35 Court Use Only

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

EVENT TYPE: Demurrer / Motion to Strike

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

JUDGE: Ronald L. Styn

DEPARTMENT: C-62

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

MOCS # : 37

EXHIBIT "26"

FILED
Clerk of the Superior Court
MAR 25 2011
By: K. Mulligan, Deputy

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

CALIFORNIA VALLEY MIWOK TRIBE

Plaintiff,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant.

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

ORDER STAYING ENFORCEMENT OF JUDGMENT UNDER CCP SECTION 918(b) and (c)

Dept: 62
Judge: Hon. Ronald Styn
Trial Date: May 13, 2011

This action came on regularly for hearing on March 11, 2011, in Department 62 of the above-referenced court, before the undersigned, upon Plaintiff CALIFORNIA VALLEY MIWOK TRIBE's ("the Tribe" or Plaintiff) motion for judgment on the pleadings as to Defendant CALIFORNIA GAMBLING CONTROL COMMISSION's ("the Commission" or Defendant); Robert A. Rosette, Esq., of ROSETTE & ASSOCIATES, and Manuel Corrales, Jr., Esq., appearing for

Plaintiff; Sylvia Cates of the Attorney General's Office appearing for Defendant Commission.

After having read and considered the papers submitted, including judicially noticeable evidence; and having heard the argument of counsel, the Court granted Plaintiff's motion for judgment on the pleadings as to Defendant Commission's answer, as set forth in the Court's Order of March 11, 2011, which is incorporated herein by reference. (Ex. "1").

It appearing by reason of said order that Plaintiff CALIFORNIA VALLEY MIWOK TRIBE is entitled to judgment against Defendant CALIFORNIA GAMBLING CONTROL COMMISSION, and good cause appearing therefor:

IT IS HEREBY ORDERED as follows:

1. Execution of the judgment shall be stayed until ten (10) days after the deadline for filing a notice of appeal of the judgment, as provided under CCP Section 918(b).

2. This stay applies whether or not an appeal will be taken from the judgment and whether or not a notice of appeal has been filed, as provided under CCP Section 918(c).

IT IS SO ORDERED.

RONALD L. STYN

Dated: MAR 25 2011

Hon. Ronald L. Styn
SUPERIOR COURT JUDGE

APPROVED AS TO FORM:

Date:

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

SYLVIA A. CATES, Esq.
Deputy Attorney General
Attorneys for Defendant
CALIFORNIA GAMBLING CONTROL
COMMISSION

Date:

ROSETTE & ASSOCIATES

Robert A. Rosette

Robert A. Rosette, Esq.
Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

Date:

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

Date:

SINGLETON & ASSOCIATES

for

Terry Singleton, Esq.
Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 03/11/2011 TIME: 02:00:00 PM DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn
CLERK: Kim Mulligan
REPORTER/ERM: Susan Holthaus CSR# 6959
BAILIFF/COURT ATTENDANT: M. Chadwell

CASE NO: **37-2008-00075326-CU-CO-CTL** CASE INIT.DATE: 01/08/2008
CASE TITLE: **California Valley Miwok Tribe vs. The California Gambling Control Commission**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)
MOVING PARTY: California Valley Miwok Tribe
CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings. 02/07/2011

APPEARANCES

SEE SIGN-IN SHEET FOR APPEARANCES.

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

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

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

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

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

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

EXHIBIT
1

CASE TITLE: California Valley Miwok Tribe vs. The California Gambling Control Commission CASE NO: 37-2008-00075326-CU-CO-CTL

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

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

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

Judge Ronald L. Styn

PY

Calendar No.: 32, 33, 34, 35

Court Use Only

Superior Court of California
County of San Diego

SIGN-IN SHEET

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

EVENT TYPE: Demurrer / Motion to Strike

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

JUDGE: Ronald L. Styn

DEPARTMENT: C-62

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

EXHIBIT "27"

FILED
Clerk of the Superior Court
APR 20 2011
By: H. CHAVARIN, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DISTRICT

CALIFORNIA VALLEY MIWOK TRIBE

Plaintiff,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant.

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

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

Date: April 6, 2011
Time: 9:00 a.m.
Dept: 62
Judge: Hon. Ronald Styn
Trial Date: May 13, 2011

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

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

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

3. The effect of the Court's prior rulings shall likewise be stayed pending further order of this Court. These rulings include: (1) Order of March 11, 2011, granting reconsideration and denying intervention; (2) Order of March 11, 2011, granting judgment on the pleadings as against the Commission; and (3) Order ruling Plaintiff's demurrer to the Complaint in Intervention is moot, in light

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

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

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

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

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

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

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

IT IS SO ORDERED.

Dated: 9-20-11

Hon. Ronald L. Styn
Superior Court Judge

APPROVED AS TO FORM:

Date:

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

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

Date:

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

Date:

SINGLETON & ASSOCIATES

Terry Singleton, Esq.
Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

Date:

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

Matthew S. McConnell, Esq.
Attorneys for Intervenors

Date:

THOMAS W. WOLFRUM

Attorney for Intervenors

EXHIBIT "28"

and animal activity as part of a project called *Nature's Notebook*. The *Nature's Notebook* forms are used to record phenology (e.g., timing of leafing or flowering of plants and reproduction or migration of animals) as part of a nationwide effort to understand and predict how plants and animals respond to environmental variation and changes in weather and climate. Contemporary data collected through *Nature's Notebook* are quality-checked, described and made publicly available; data are used to inform decision-making in a variety of contexts, including agriculture, drought monitoring, and wildfire risk assessment. Phenological information is also critical for the management of wildlife, invasive species, and agricultural pests, and for understanding and managing risks to human health and welfare, including allergies, asthma, and vector-borne diseases. Participants may contribute phenology information to *Nature's Notebook* through a browser-based web application or via mobile applications for iPhone and Android operating systems, meeting GPEA requirements. The web application interface consists several components: User registration, a searchable list of 877 plant and animal species which can be observed; a "profile" for each species that contains information about the species including its description and the appropriate monitoring protocols; a series of interfaces for registering as an observer, registering a site, registering plants and animals at a site, generating datasheets to take to the field, and a data entry page that mimics the datasheets.

Frequency of Collection: On occasion. During the Spring and Fall seasons when phenology is changing quickly, we recommend respondents make observations twice per week.

Estimated Number and Description of Respondents: In addition to those users already registered, we expect an additional 1,027 users will register each year. These respondents are members of the public, registered with *Nature's Notebook*.

Estimated Annual Responses: 501,130.

Estimated Annual burden hours: 17,032.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We estimate the non-hour cost burden to be $3.34. This cost applies to new observers and includes material used to mark sites or plants during the first observation. Marking helps to ensure reporting consistency for future observations.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Dated: August 3, 2012.

William Lellis,

Deputy Associate Director, Ecosystems Mission Area.

[FR Doc. 2012–19626 Filed 8–9–12; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 566 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on October 1, 2010 (75 FR 60810) and the October 27, 2010 (75 FR 66124—Supplemental).

FOR FURTHER INFORMATION CONTACT: Gail Veney, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513–MIB, 1849 C Street NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska. This list updates the list published on October 1, 2010, to reflect an addition published in an October 27, 2010 Notice, and one other addition and various name changes and corrections. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name. We will continue to list the tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: August 6, 2012.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas)
Alabama-Quassarte Tribal Town
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapaho Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians)
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana

Augustine Band of Cahuilla Indians, California (previously listed as the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California)
Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California)
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California)
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California)
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon)
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahto Tribe (previously listed as the Cahto Indian Tribe of the Laytonville Rancheria, California)
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
California Valley Miwok Tribe, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California: (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation
Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho)
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish and Kootenai Tribes of the Flathead Reservation
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
Confederated Tribes of the Chehalis Reservation
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon)
Confederated Tribes of the Warm Springs Reservation of Oregon
Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon)
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon)
Cowlitz Indian Tribe
Coyote Valley Reservation (formerly Coyote Valley Band of Pomo Indians of California)
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Crow Tribe of Montana
Death Valley Timbi-sha Shoshone Tribe (previously listed as the Death Valley Timbi-Sha Shoshone Band of California)
Delaware Nation, Oklahoma
Delaware Tribe of Indians
Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California)
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California)
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington)
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California)

Houlton Band of Maliseet Indians
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe
Jamul Indian Village of California
Jena Band of Choctaw Indians
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation
Karuk Tribe (previously listed as the Karuk Tribe of California)
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo)
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town
Kickapoo Traditional Tribe of Texas
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kiowa Indian Tribe of Oklahoma
Klamath Tribes
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Indians, California (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California)
Los Coyotes Band of Cahuilla and Cupeno Indians, California (previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington)
Lower Lake Rancheria, California
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation
Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California)
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Indian Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut)
Mashpee Wampanoag Indian Tribal Council, Inc. (previously listed as the Mashpee Wampanoag Tribe, Massachusetts)
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Mission Indians, California (previously listed as the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington)
Narragansett Indian Tribe
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe (previously listed as Nez Perce Tribe of Idaho)
Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington)
Nooksack Indian Tribe
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation (previously listed as the Northwestern Band of Shoshoni Nation of Utah (Washakie)
Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.)
Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota)
Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation
Otoe-Missouria Tribe of Indians, Oklahoma
Ottawa Tribe of Oklahoma
Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Nation (previously listed as the Penobscot Tribe of Maine)
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (previously listed as the Pinoleville

Rancheria of Pomo Indians of California)
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama)
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Band of S'Klallam Indians (previously listed as the Port Gamble Indian Community of the Port Gamble Reservation, Washington)
Potter Valley Tribe, California
Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas)
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation
Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington)
Ramona Band of Cahuilla, California (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California)
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria Band of Pomo Indians, California (previously listed as the Robinson Rancheria of Pomo Indians of California)
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California)
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Sac & Fox Tribe of the Mississippi in Iowa
Saginaw Chippewa Indian Tribe of Michigan
Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington)
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation)
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Band of Cahuilla Indians, California (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santee Sioux Nation, Nebraska
Sauk-Suiattle Indian Tribe
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations))
Seneca Nation of Indians (previously listed as the Seneca Nation of New York)
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shinnecock Indian Nation
Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington)
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington)
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation
Squaxin Island Tribe of the Squaxin Island Reservation
St. Croix Chippewa Indians of Wisconsin
Standing Rock Sioux Tribe of North & South Dakota
Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington)
Stockbridge Munsee Community, Wisconsin
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation of Washington
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria of California
Tejon Indian Tribe
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
The Muscogee (Creek) Nation
The Osage Nation (previously listed as the Osage Tribe)
The Seminole Nation of Oklahoma
Thlopthlocco Tribal Town
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota

Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York)
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington)
Tule River Indian Tribe of the Tule River Reservation, California
Tunica-Biloxi Indian Tribe
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah)
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Wilton Rancheria, California
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California (previously listed as the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona)
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California)
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Agdaagux Tribe of King Cove
Akiachak Native Community
Akiak Native Community
Alatna Village
Algaaciq Native Village (St. Mary's)
Allakaket Village
Angoon Community Association
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe
Atqasuk Village (Atkasook)
Beaver Village
Birch Creek Tribe
Central Council of the Tlingit & Haida Indian Tribes
Chalkyitsik Village
Cheesh-Na Tribe (previously listed as the Native Village of Chistochina)
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (previously listed as the Native Village of Chignik)
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Chuloonawick Native Village
Circle Native Community
Craig Tribal Association (previously listed as the Craig Community Association)
Curyung Tribal Council
Douglas Indian Association
Egegik Village
Eklutna Native Village
Ekwok Village
Emmonak Village
Evansville Village (aka Bettles Field)
Galena Village (aka Louden Village)
Gulkana Village
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council
Ivanoff Bay Village
Kaguyak Village
Kaktovik Village (aka Barter Island)
Kasigluk Traditional Elders Council
Kenaitze Indian Tribe
Ketchikan Indian Corporation
King Island Native Community
King Salmon Tribe
Klawock Cooperative Association
Knik Tribe
Kokhanok Village
Koyukuk Native Village
Levelock Village
Lime Village
Manley Hot Springs Village
Manokotak Village
McGrath Native Village
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Naknek Native Village
Native Village of Afognak
Native Village of Akhiok
Native Village of Akutan
Native Village of Aleknagik
Native Village of Ambler
Native Village of Atka
Native Village of Barrow Inupiat Traditional Government
Native Village of Belkofski
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Native Village of Chignik Lagoon
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Native Village of Council
Native Village of Deering
Native Village of Diomede (aka Inalik)
Native Village of Eagle
Native Village of Eek
Native Village of Ekuk
Native Village of Elim
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Native Village of Hamilton
Native Village of Hooper Bay
Native Village of Kanatak
Native Village of Karluk
Native Village of Kiana
Native Village of Kipnuk
Native Village of Kivalina
Native Village of Kluti Kaah (aka Copper Center)
Native Village of Kobuk
Native Village of Kongiganak
Native Village of Kotzebue
Native Village of Koyuk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
Native Village of Mekoryuk
Native Village of Minto
Native Village of Nanwalek (aka English Bay)

Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Native Village of Nightmute
Native Village of Nikolski
Native Village of Noatak
Native Village of Nuiqsut (aka Nooiksut)
Native Village of Nunam Iqua (previously listed as the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Native Village of Ouzinkie
Native Village of Paimiut
Native Village of Perryville
Native Village of Pilot Point
Native Village of Pitka's Point
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Native Village of Ruby
Native Village of Saint Michael
Native Village of Savoonga
Native Village of Scammon Bay
Native Village of Selawik
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Native Village of Stevens
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Native Village of Teller
Native Village of Tetlin
Native Village of Tuntutuliak
Native Village of Tununak
Native Village of Tyonek
Native Village of Unalakleet
Native Village of Unga
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Native Village of Wales
Native Village of White Mountain
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Nikolai Village
Ninilchik Village
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Nulato Village
Nunakauyarmiut Tribe
Organized Village of Grayling (aka Holikachuk)
Organized Village of Kake
Organized Village of Kasaan
Organized Village of Kwethluk
Organized Village of Saxman
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Pauloff Harbor Village
Pedro Bay Village
Petersburg Indian Association
Pilot Station Traditional Village
Platinum Traditional Village
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Seldovia Village Tribe
Shageluk Native Village
Sitka Tribe of Alaska
Skagway Village
South Naknek Village
Stebbins Community Association
Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak)
Takotna Village
Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island))
Telida Village
Traditional Village of Togiak
Tuluksak Native Community
Twin Hills Village
Ugashik Village
Umkumiut Native Village (previously listed as Umkumiute Native Village)
Village of Alakanuk
Village of Anaktuvuk Pass
Village of Aniak
Village of Atmautluak
Village of Bill Moore's Slough
Village of Chefornak
Village of Clarks Point
Village of Crooked Creek
Village of Dot Lake
Village of Iliamna
Village of Kalskag
Village of Kaltag
Village of Kotlik
Village of Lower Kalskag
Village of Ohogamiut
Village of Old Harbor
Village of Red Devil
Village of Salamatoff
Village of Sleetmute
Village of Solomon
Village of Stony River
Village of Venetie (See Native Village of Venetie Tribal Government)
Village of Wainwright
Wrangell Cooperative Association
Yakutat Tlingit Tribe
Yupiit of Andreafski

[FR Doc. 2012–19588 Filed 8–9–12; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice of meeting.

SUMMARY: The Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children (Advisory Board) will hold its next meeting in Washington, DC The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

DATES: The Advisory Board will meet on Thursday, September 27, 2012, from 8:30 a.m. to 4:30 p.m. and Friday, September 28, 2012 from 8:30 a.m. to 4:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held at 1849 C Street, NW., MS 3609–Main Interior Building, Room 3624, Washington, DC; telephone number (202) 208–6123.

FOR FURTHER INFORMATION CONTACT: Sue Bement, Designated Federal Officer, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road NW., Suite 332, Albuquerque, NM 87104; telephone number (505) 563–5274.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, the BIE is announcing that the Advisory Board will hold its next meeting in Washington, DC. The Advisory Board was established under the Individuals with Disabilities Act of 2004 (20 U.S.C. 1400 *et seq.*) to advise the Secretary of the Interior, through the Assistant Secretary—Indian Affairs, on the needs of Indian children with disabilities. The meetings are open to the public.

The following items will be on the agenda:

- Report from Acting BIE Director
- Report from Supervisory Education Specialist, Special Education, BIE, Division of Performance and Accountability
- Updates from the BIE, Division of Performance and Accountability
- Group work on Annual Report
- Discussion on Consultation Opportunity
- Public Comment (via conference call, September 28, 2012, meeting only*).
- BIE Advisory Board-Advice and Recommendations

EXHIBIT "29"

United States District of Columbia Circuit Court of Appeals Reports

TIMBISHA SHOSHONE TRIBE v. SALAZAR, 678 F.3d 935 (D.C. 5-15-2012)

TIMBISHA SHOSHONE TRIBE, et al., Appellants v. Kenneth Lee SALAZAR, Secretary of the Interior, et al., Appellees.

No. 11-5049.

United States Court of Appeals, District of Columbia Circuit.

Argued November 17, 2011.

Decided May 15, 2012.

Appeal from the United States District Court for the District of Columbia (No. 1:10-cv-00968).

Before: SENTELLE, Chief Judge, GRIFFITH and KAVANAUGH, Circuit Judges.

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Robert T. Coulter argued the cause for appellants. With him on the briefs were Philomena Kebec and David M. Kairys.

Brian C. Toth, U.S. Department of Justice, argued the cause for appellees. With him on the briefs were Maureen E. Rudolph and Aaron P. Avila. R. Craig Lawrence, Assistant U.S. Attorney, entered an appearance.

GRIFFITH, Circuit Judge:

Opinion for the Court filed by Circuit Judge GRIFFITH.

Individuals claiming to be the Tribal Council of the Timbisha Shoshone appeal the district court's dismissal of their case for failure to state a claim. but we do not reach that issue because we conclude the plaintiffs lack standing. We vacate the judgment of the district court and remand with instructions to dismiss their complaint for lack of jurisdiction.

I

In 1951, certain members of the Shoshone tribes sued the United States over the loss of their lands. *See United States v. Dann*, **470 U.S. 39**, 41,105 S.Ct. 1058, 84 L.Ed.2d 28 (1985). In proceedings stretching over twenty-six years, the Indian Claims Commission, a now-defunct independent agency created in 1946 to assess claims brought by Indians against the United States, awarded the Western Shoshone approximately $26 million in compensation, concluding that its members had been "deprived of their lands" by the "gradual encroachment by whites, settlers and others" and the "acquisition, disposition or taking of their lands by the United States." *Shoshone Tribe v. United States*, 11 Ind. CI. Comm. 387, 416 (1962); *see also W. Shoshone Identifiable Grp. v. United States*, 40 Ind. CI. Comm. 318 (1977). Pending distribution, the funds were placed in an interest-bearing trust account in the United States Treasury. *Dann*, **470 U.S. at 42**, **105 S.Ct. 1058**. The Western Shoshone did not seek the funds, but in-stead demanded partial return of the lands. *Timbisha Shoshone Tribe v. Salazar*, **766 F.Supp.2d 175**, **179** (D.D.C.2011). The United States rejected this demand,

and the money remained in trust for two more decades, awaiting congressional legislation creating a disbursement scheme. *See* **25 U.S.C. § 1402**(d) ("In cases where the Secretary has to submit a plan dividing judgment funds between two or more beneficiary entities, he shall obtain the consent of the tribal governments involved to the proposed division. If the Secretary cannot obtain such consent . . . he shall submit proposed legislation to the Congress.").

In 2004, Congress passed the Western Shoshone Claims Distribution Act (Distribution Act), directing the Secretary of the Interior to distribute the funds on a per capita basis to all living U.S. citizens who were at least "1/4 degree of Western Shoshone blood" and who were not receiving other Indian Claims Commission awards. Pub.L. No. **108-270**, § 3, 118 Stat. 805, 806. Individuals claiming to be the Tribal Council of the Timbisha Shoshone, a tribe of the Western Shoshone, sued, arguing that the Distribution Act was an unconstitutional taking of tribal property. The district court granted the Government's motion to dismiss, holding that the Distribution Act was constitutional. *Timbisha Shoshone Tribe*, **766 F.Supp.2d 175**. The plaintiffs now appeal that decision.

II

Before we assess the plaintiffs' constitutional claims, we must first determine whether they have standing to sue on behalf of the Tribe. *See Bender v. Williams-port Area Sch. Dist*, **475 U.S. 534**, 541,106 S.Ct. 1326, 89 L.Ed.2d 501 (1986) ("[E]very, federal appellate court has a special obligation to `satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review. . . .'" (quoting *Mitchell v. Maurer*, **293 U.S. 237**, **244**, 55 S.Ct. 162, 79 L.Ed. 338 (1934)); *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663 (D.C.Cir.1996) (en banc) (stating
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that standing is a necessary "predicate to any exercise of our jurisdiction"). The Plaintiffs concede they lack standing to bring suit as individuals, but allege they are the Tribal Council acting in its official capacity to protect the interests of the Tribe. *See Timbisha Shoshone Tribe*, **766 F.Supp.2d at 182** n. 3 ("All of the individual Plaintiffs sue only on behalf of the Tribe, not on their own behalf as individual members of the Tribe." (quoting Pls.' Reply in Supp. of Mot. for Prelim. Inj. 7) (internal quotation marks and brackets omitted)). But whether they are has been called into question by circumstances arising after their appeal was taken.

The Government recognized the Timbisha Shoshone Tribe in 1983. For years, however, the Tribe has been embroiled in an internal leadership dispute, with two factions claiming to be the Tribal Council. One faction, plaintiffs here, is led by Joe Kennedy, the other by George Gholson. At the time the Kennedy faction filed this suit, the Government did not recognize a Tribal Council. The Kennedy faction claimed it was the Tribal Council authorized to bring suit on behalf of the Tribe. The Gholson faction countered with an amicus brief in the district court opposing the suit and arguing the Kennedy faction could not sue on the Tribe's behalf. According to the Gholson faction, "currently the Tribe has two elected Councils, neither of which is recognized by the [United States Government]," and therefore "there is no Tribal government for outside purposes." Br. Amicus Curiae of George Gholson in Supp. of Def.'s Mot. to Dismiss 1, *Timbisha Shoshone Tribe*, **766 F.Supp.2d 175** (No. 1:10-cv-00968-GK), ECF No. 16. The Government adopted the Gholson argument. *Timbisha Shoshone Tribe*, **766 F.Supp.2d at 182-83** (citing' Defs.' Opp'n to Pls.' Prelim. Inj. Mot. 9).

On March 1, 2011, the district court concluded that the failure of the Government to recognize any Tribal Council did not bar a group from suing on behalf of the Tribe. *Id.* at 183-84 (citing *Golden Hill Paugussett Tribe of*

Indians v. Weicker, **39 F.3d 51**, **58-61** (2d Cir.1994)). The district court then took as true the factual allegations of the Kennedy faction "that they are members of the governing Tribal Council of the Timbisha Shoshone," but rejected their claims as a matter of law, holding the Distribution Act constitutional. *Id.* at 184, 187, 189. The plaintiffs appealed to us on March 8, 2011.

Shortly after the district court's decision, circumstances changed. First, the Government recognized the Gholson faction for "a limited time and for the limited purpose of conducting government-to-government relations necessary for holding a special election" to determine who constituted the Tribal Council. Appellees' 28(j) Ltr. Attach. 1, at 2. An election was held on April 29, 2011, and the Tribe's Election Committee issued a preliminary vote count that day showing that the Gholson faction had soundly defeated the Kennedy faction. *Id.* At least one member of the Kennedy faction filed an appeal with the Tribe's Election Committee, which ruled against him and then certified the results. *Id.* The newly-elected Gholson faction then requested recognition as the Tribal Council from the Government. On July 29, 2011, Assistant Secretary for Indian Affairs Larry Echo Hawk, "exercising by delegation the Secretary's authority over the relations between Indian tribes and the United States," *id.* at 3, recognized the Gholsonled Tribal Council in a letter stating:

> The April 29 election . . . constituted the resolution of an internal tribal dispute in a valid tribal forum. The Timbisha Shoshone people embraced a tribal government by means of an election compliant with their Constitution. The Federal
>
> **Page 938**
>
> Government may not ignore or reject the results of a tribal election that clearly states the will of a sovereign Indian nation. Therefore, the Department should recognize the Timbisha Shoshone Tribal government consisting of the five people identified in the Election Committee's report as having received the most votes in the April 29 election. . . . [T]his letter provides the Bureau with an expeditious recognition of the Tribe's leadership.

Id. The Kennedy faction challenged Echo Hawk's decision in an action filed and still pending in the Eastern District of California. *Timbisha Shoshone Tribe v. U.S. Dep't of Interior*, 2:11-cv-00995 (E.D.Cal. filed Apr. 13, 2011).

We were first made aware of these developments on November 9, 2011, when the Government filed a letter informing us of this pursuant to Rule 28(j). FED. R. APP. P. **28**(j). We ordered supplemental briefing on whether the Kennedy faction still had standing to bring this suit on behalf of the Tribe and heard oral argument on the same. We now conclude they lack standing.

It is a "bedrock principle of federal Indian law that every tribe is `capable of managing its own affairs and governing itself.'" *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C.Cir.2008) (quoting *Cherokee Nation v. Georgia*, **30 U.S. (5 Pet.) 1**, **16**, 8 L.Ed. 25 (1831)); *see also Santa Clara Pueblo v. Martinez*, **436 U.S. 49**, **62**, **98 S.Ct. 1670**, 56 L.Ed.2d 106 (1978) (discussing the "well-established federal policy of furthering Indian self-government" (quoting *Morton v. Mancari*, **417 U.S. 535**, **551**, **94 S.Ct. 2474**, 41 L.Ed.2d 290 (1974)) (internal quotation marks omitted)). The Echo Hawk letter acknowledges that the Timbisha Shoshone resolved their *own* leadership dispute through a valid *internal* tribal process. *See* Appellees' 28(j) Ltr. Attach. 1, at 3 ("The April 29 election — not my March 1 Order — constituted the resolution of an internal tribal dispute in a valid tribal forum.").

The Second Circuit has noted that "[t]he [Government's] determination that [a certain member] does not represent . . . [a tribe] may well moot plaintiffs' claims." *Shenandoah v. U.S. Dep't of Interior*, **159 F.3d 708**, **713** (2d Cir.1998). We agree. In these circumstances, we owe deference to the judgment of the Executive Branch as to who represents a tribe. *See Miwok*, 515 F.3d at 1267 ("Although the sovereign nature of Indian tribes cautions the Secretary not to exercise freestanding authority to interfere with a tribe's internal governance, the Secretary has the power to manage *all* Indian affairs and . . . *all* matters *arising out of Indian relations.*'" (quoting **25 U.S.C. § 2**)); *see also United States v. Holliday*, **70 U.S. (3 Wall.) 407**, **419**, 18 L.Ed. 182 (1866) ("In reference to [matters of tribal recognition], it is the rule of this court to follow the action of the executive and other political departments of the government, whose more special duty it is to determine such affairs."). There is no dispute here that Assistant Secretary Echo Hawk's letter is authentic and constitutes final agency action. *See United States v. Chemical Found, Inc.*, **272 U.S. 1**, **14-15**, **47 S.Ct. 1**, 71 L.Ed. 131 (1926) ("The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. Under that presumption, it will be taken that [officials have] acted upon knowledge of the material facts." (internal citations omitted)).

The Kennedy faction is unhappy with how the election was run, who voted, and the results, but ours is not the forum for that debate. Both parties agreed at oral argument that we have all the necessary

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facts to decide whether the plaintiffs have standing to bring this suit, and we need not remand to the district court. Oral Arg. Tr. 14,17. The fact is that we have a letter from the Executive Branch recognizing the Gholson faction, and we must not turn a blind eye to facts in assessing jurisdiction. *See Land v. Dollar*, **330 U.S. 731**, **735** n. 4, **67 S.Ct. 1009**, 91 L.Ed. 1209 (1947) ("In passing on a motion to dismiss because the complaint fails to state a cause of action, the facts set forth in the complaint are assumed to be true. . . . But when a question of the District Court's jurisdiction is raised, . . . the court may inquire, by affidavits or otherwise, into the facts as they exist."). As John Adams famously observed, "Facts are stubborn things," DAVID MCCULLOUGH, JOHN ADAMS 68 (2001), and the facts here are stubbornly clear.

Our decision has no impact on the litigation in the Eastern District of California or, if that litigation is successful, on the plaintiffs' ability to re-file this lawsuit. *See Kasap v. Folger Nolan Fleming & Douglas, Inc.*, 166 F.3d 1243, 1248 (D.C.Cir.1999) ("[Dismissals for lack of jurisdiction are not decisions on the merits and therefore have no *res judicata* effect on subsequent attempts to bring suit in a court of competent jurisdiction."). We only consider standing, and we conclude that the Kennedy faction has none.

III

The district court's order dismissing the case for failure to state a claim is *vacated* and the case is *remanded* with instructions to dismiss the complaint for lack of jurisdiction.

So ordered.

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EXHIBIT "30"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO - CENTRAL DISTRICT

--oOo--

CALIFORNIA VALLEY MIWOK TRIBE,	)	
Plaintiff,	)	
vs.	)	Case No.
CALIFORNIA GAMBLING CONTROL	)	37-2008-00075326-
COMMISSION,	)	CU-CO-CTL
Defendant.	)	
	)	VOLUME I

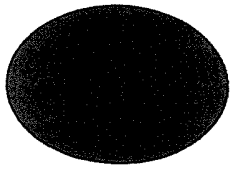
Deposition of

CHARLES G. WOOD

February 7, 2012

--oOo--

Reported by: MARY BARDELLINI, CSR No. 2976



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DISC CONTAINS:

.txt/ASCII of Transcript » PDF of Transcript » PDF of Exhibits » Condensed Transcript with Word Index

Q. When you say this big --

A. That all our auditors have.

Q. This thick?

A. About this size by about this thick, (indicating).

Q. When you say this size, talking about the size of a half of a -- eight and a half by eleven sheet?

A. Yes.

Q. Okay. And then it's bound?

A. Yes.

MR. HOUSTON: Mr. Corrales, to sort of cut to the chase, I'd be happy to give you a copy of this book. It's widely available.

MR. CORRALES: That would be fine. Do you have one available right now?

MR. HOUSTON: Yes.

MR. CORRALES: We'll take a half minute.

(Recess taken.)

MR. CORRALES: Let's go on the record.

MR. HOUSTON: I'm giving Mr. Corrales a copy of the California 1999 Tribal State Gaming Compact printed by the Division of Gambling Control of the Department of Justice. This particular copy was printed August 2008.

MR. CORRALES: 2008. Okay. I'm going to mark this as exhibit next in order, 4.

(Plaintiff's Exhibit 4 was marked for identification.)

BY MR. CORRALES:

Q. I want to ask you, sir, is this the Compact that you say the basic version that's at the Commission's office -- I don't know -- that you referred to in your deposition?

A. It looks like it.

Q. Looks like it. When you say basic version, this is printed in August of 2008. Prior to August of 2008, I know you weren't working there, but was there another version that was floating around the office?

A. I don't know for sure. I've seen a version dated 2005.

Q. Okay. And is that still at the office?

A. I don't know.

Q. And did the version look like this in a booklet form?

A. Yes.

Q. Okay. What color was the cover?

A. Tan.

Q. Okay. So if I were to ask you to preserve that and provide it through your attorney to me, would you be able to do that?

A. I'd have to see if I could still locate it.

Q. Okay.

A. Because the copies tend to go very fast.

Q. Very fast. Okay. In terms of what, employees taking them for their work stations?

A. And each of the employees has one.

Q. Each of the Commission employees has one?

A. Well, each of the -- each of my staff that does audits had one at one time. I can't verify that they all still have it, but they had one at one time.

Q. Do you know if this version that was printed in 2008 differed from the one that you saw for 2005?

MR. HOUSTON: I'll object. He hasn't had time to review that. It's a lengthy document. I'll represent to you that it's my understanding the model Compact, which is how we refer to that, has been printed on numerous occasions since 2000, and there have not been substantive changes made to it, just different editions of the booklet.

MR. CORRALES: I asked for the edition that was used since 2005 in my request for production of documents. All I got was check the website. This is what I'm looking for. And if you say there's a version out there that's 2005, I would very much like for you to look for that if you could. Okay?

BY MR. CORRALES:

CALIFORNIA

1999

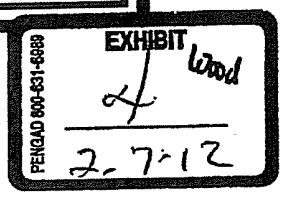
TRIBAL-STATE

GAMING

COMPACT

Division of
Gambling Control
California Department of Justice

(Printed August 2008)



THIS PUBLICATION IS NOT A LEGAL DOCUMENT

This publication was designed as an aid to gambling facilities and other interested parties by providing the text, current as of the date publication of the Tribal-State Gaming Compact. There is no representation, warranty, or guarantee that this compilation is error free or comprehensive; and this publication is not a substitute for the advice of an attorney

FOR ADDENDUMS AND NEW OR AMENDED COMPACTS, PLEASE VISIT

www.cgcc.ca.gov/compacts.asp



4-2

1999 COMPACT TRIBES (GAMING AND NON-GAMING)

Compact Tribes:	Casino Name:
Agua Caliente Band of Cahuilla Indians	Agua Caliente Casino + The Spa Resort Casino
Alturas Rancheria	Desert Rose Casino
Augustine Band of Cahuilla Mission Indians	Augustine Casino
Barona Band of Mission Indians	Barona Valley Ranch Resort and Casino
Bear River Band of Rohnerville Rancheria	Bear River Casino
Berry Creek Rancheria	Gold Country Casino
Big Sandy Rancheria	Mono Wind Casino
Big Valley Rancheria of Pomo Indians	Konocti Vista Casino
Bishop Paiute Tribe	Paiute Palace Casino
Blue Lake Rancheria	Blue Lake Casino
Buena Vista Rancheria	N/A
Cabazon Band of Mission Indians	Fantasy Springs Resort Casino
Cahto of Laytonville Rancheria	Red Fox Casino
Cahuilla Band of Mission Indians	Cahuilla Creek Casino
Campo Band of Diegueno Indians	Golden Acorn Casino & Travel Center
Chemehuevi Indian Tribe	Havasu Landing Resort and Casino
Cher-Ae Heights Indian Community	Cher-Ae-Heights Casino
Chicken Ranch Band of Me-Wuk Indians	Chicken Ranch Bingo and Casino
Colusa Band of Wintun Indians	Colusa Casino Resort

1999 COMPACT TRIBES
(GAMING AND NON-GAMING)

Compact Tribes:	Casino Name:
Ewiiaapaayp Band of Kumeyaay Indians	N/A
Dry Creek Rancheria	River Rock Casino
Elem Indian Colony	N/A
Elk Valley Rancheria	Elk Valley Casino
Hoopa Valley Tribal Council	Lucky Bear Casino
Hopland Band of Pomo Indians	Hopland Shokawah Casino & Bingo
Jackson Rancheria Band of Me-Wuk Indians	Jackson Rancheria Casino & Hotel
Jamul Indian Village	N/A
La Jolla Band of Luiseno Indians	Slot Arcade
Manchester-Point Arena Rancheria	N/A
Manzanita Band of Mission Indians	N/A
Middletown Rancheria	Twin Pine Casino
Mooretown Rancheria	Feather Falls Casino
Morongo Band of Mission Indians	Morongo Casino, Resort & Spa
Pala Band of Mission Indians	Pala Casino Spa Resort
Paskenta Band of Nomlaki Indians	Rolling Hills Casino
Pauma/Yuima Band of Mission Indians	Casino Pauma
Pechanga Band of Mission Indians	Pechanga Resort & Casino
Picayune-Chuckchansi Indians	Chukchansi Gold Resort & Casino
Pit River Tribal Council	Pit River Casino
Quechan Indian Nation	Paradise Casino

1999 COMPACT TRIBES
(GAMING AND NON-GAMING)

Compact Tribes:	Casino Name:
Redding Rancheria	Win-River Casino
Resighini Rancheria	Gold Bear
Rincon Band of Mission Indians	Harrah's Rincon Casino & Resort
Robinson Rancheria of Pomo Indians	Robinson Rancheria Resort & Casino
Rumsey Indian Rancheria	Cache Creek Casino Resort
San Manuel Band of Mission Indians	San Manuel Indian Bingo & Casino
San Pasqual Band of Diegueno Indians	Valley View Casino Resort
Santa Rosa Band of Tachi Indians	Tachi Palace Hotel and Casino
Santa Ynez Band of Indians	Chumash Casino Resort
Sherwood Valley Rancheria	Black Bart Casino
Shingle Springs Rancheria	N/A
Smith River Rancheria	Lucky 7 Casino
Soboba Band of Mission Indians	Soboba Legends Casino
Susanville Indian Rancheria	Diamond Mountain Casino aka Susanville Casino
Sycuan Band of Mission Indians	Sycuan Resort & Casino
Table Mountain Rancheria	Table Mountain Casino
Tule River Indian Reservation	Eagle Mountain Casino
Tuolumne Rancheria	Black Oak Casino
Twenty-Nine Palms Band of Mission Indians	Spotlight 29 Casino
United Auburn Indian Community	Thunder Valley Casino
Viejas Band of Mission Indians	Viejas Casino & Turf Club

1999 COMPACT TRIBES
(GAMING AND NON-GAMING)

TRIBAL-STATE GAMING COMPACT

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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.

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.

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

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. 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.

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 its 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.

4.7

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:

Number of Licensed Devices	Fee Per Device Per Annum
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)), may 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:

Number of Terminals in Quarterly Device Base	Percent of Average Gaming Device Net Win
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 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

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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, to the extent required by the state Department of Alcoholic Beverage Control.

Section 6.4. Licensing Requirements and Procedures

Section 6.4.1. Summary of Licensing Principles.
All persons in any way connected with the Gaming Operation or Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Gaming Compact, including, but not limited to, all Gaming Employees and Gaming Resource Suppliers, and any other person having a significant influence over the Gaming Operation must be licensed by the Tribal Gaming Agency. The parties intend that the licensing process provided for in this Gaming Compact shall involve joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

Section 6.4.2. Gaming Facility.
(a) The Gaming Facility authorized by this Gaming Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Gaming Compact, the Tribal Gaming Ordinance and IGRA. The license shall be reviewed and renewed, if appropriate, every two years thereafter. Verification that this requirement has been met shall be provided by the Tribe to the State Gaming Agency every two years. The Tribal Gaming Agency's certification to that effect shall be posted in a conspicuous and public place in the Gaming Facility at all times.

(b) In order to protect the health and safety of all Gaming Facility patrons, guests, and employees, all Gaming Facilities of the Tribe constructed after the effective date of this Gaming Compact, and all expansions or modifications to a Gaming Facility in operation as of the effective date of this Compact, shall meet the building and safety codes of the Tribe, which, as a condition for engaging in that construction, expansion, modification, or renovation, shall amend its existing building and safety codes if necessary, or enact such codes if there are none, so that they meet the standards of either the building and safety codes of any county within the boundaries of which the site of the Facility is located, or the Uniform Building

Codes, including all uniform fire, plumbing, electrical, mechanical, and related codes then in effect provided that nothing herein shall be deemed to confer jurisdiction upon any county or the State with respect, to any reference to such building and safety codes. Any such construction, expansion or modification will also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 et seq.

(c) Any Gaming Facility in which gaming authorized by this Gaming Compact is conducted shall be issued a certificate of occupancy by the Tribal Gaming Agency prior to occupancy if it was not used for any Gaming Activities under IGRA prior to the effective date of this Gaming Compact, or, if it was so used, within one year thereafter. The issuance of this certificate shall be reviewed for continuing compliance every two years thereafter. Inspections by qualified building and safety experts shall be conducted under the direction of the Tribal Gaming Agency as the basis for issuing any certificate hereunder. The Tribal Gaming Agency shall determine and certify that, as to new construction or new use for gaming, the Facility meets the Tribe's building and safety code, or, as to facilities or portions of facilities that were used for the Tribe's Gaming Activities prior to this Gaming Compact, that the facility or portions thereof do not endanger the health or safety of occupants or the integrity of the Gaming Operation. The Tribe will not offer Class III gaming in a Facility that is constructed or maintained in a manner that endangers the health or safety of occupants or the integrity of the gaming operation.

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(d) The State shall designate an agent or agents to be given reasonable notice of each inspection by the Tribal Gaming Agency's experts, which state agents may accompany any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in an inspection that does not meet the standards set forth in subdivisions (b) and (c). The Tribal Gaming Agency and the State's designated agent or agents shall exchange any reports of an inspection within 10 days after completion of the report, which reports shall also be separately and simultaneously forwarded by both agencies to the Tribal Chairperson. Upon certification by the Tribal Gaming Agency's experts that a Gaming Facility meets applicable standards, the Tribal Gaming Agency shall forward the experts' certification to the State within 10 days of issuance. If the State's agent objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.

Section 6.4.3. Suitability Standard Regarding Gaming Licenses. (a) In reviewing an application for a gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe's Gaming Operations, or tribal government gaming generally, are free from criminal and dishonest elements and would be conducted honestly. A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the applicant is all of the following, in addition to any other criteria in IGRA or the Tribal Gaming Ordinance:

(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of

gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gambling, or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person who is in all other respects qualified to be licensed as provided in this Gaming Compact, IGRA, the Tribal Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe. An applicant shall not be found to be unsuitable solely on the ground that the applicant was an employee of a tribal gaming operation in California that was conducted prior to the effective date of this Compact.

Section 6.4.4. Gaming Employees.
(a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, which shall be subject to biennial renewal; provided that in accordance with Section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process.

(b) Except as provided in subdivisions (c) and (d), the Tribe will not employ or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability, or for a renewal of such a determination, has been denied or has expired without renewal.

(c) Notwithstanding subdivision (b), the Tribe may retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if: (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (ii) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; (iii) the person is not an employee or agent of any other gaming operation; and (iv) the person has been in the continuous

employ of the Tribe for at least three years prior to the effective date of this Compact.

(d) Notwithstanding subdivision (b), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe, as defined in this subdivision, and if (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (ii) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; and (iii) the person is not an employee or agent of any other gaming operation. For purposes of this subdivision, "enrolled member" means a person who is either (a) certified by the Tribe as having been a member of the Tribe for at least five (5) years, or (b) a holder of confirmation of membership issued by the Bureau of Indian Affairs.

(e) Nothing herein shall be construed to relieve any person of the obligation to apply for a renewal of a determination of suitability as required by Section 6.5.6.

Section 6.4.5. Gaming Resource Supplier.
Any Gaming Resource Supplier who, directly or indirectly, provides, has provided, or is deemed likely to provide at least twenty-five thousand dollars ($25,000) in Gaming Resources in any 12-month period, or who has received at least twenty-five thousand dollars ($25,000) in any consecutive 12-month period within the 24-month period immediately preceding application, shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any such Gaming Resources to or in connection with the Tribe's Operation or Facility. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Supplier to update all

information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of Gaming Resources with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal. Any agreement between the Tribe and a Gaming Resource Supplier shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or non-renewal of the Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency.

Section 6.4.6. Financial Sources.
Any person extending financing, directly or indirectly, to the Tribe's Gaming Facility or Gaming Operation shall be licensed by the Tribal Gaming Agency prior to extending that financing, provided that any person who is extending financing at the time of the execution of this Compact shall be licensed by the Tribal Gaming Agency within ninety (90) days of such execution. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with

any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal. A Gaming Resource Supplier who provides financing exclusively in connection with the sale or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers. The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section, financing provided by a federally regulated or state-regulated bank, savings and loan, or other federally - or state-regulated lending institution; or any agency of the federal, state, or local government; or any investor who, alone or in conjunction with others, holds less than 10% of any outstanding indebtedness evidenced by bonds issued by the Tribe.

Section 6.4.7. Processing Tribal Gaming License Applications. Each applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency. At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees. For applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than 10% of the shares of the corporation, if a corporation; and (v) each person or entity (other than a financial institution that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any gaming authorized under this Gaming Compact, if that person or entity provided more than 10% of (a) the start-up capital, (b) the

operating capital over a 12-month period, or (c) a combination thereof. For purposes of this Section, where there is any commonality of the characteristics identified in clauses (i) to (v), inclusive, between any two or more entities, those entities may be deemed to be a single entity. Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

Section 6.4.8. Background Investigations of Applicants. The Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the applicant is qualified for a gaming license under the standards set forth in Section 6.4.3, and to fulfill all requirements for licensing under IGRA, the Tribal Gaming Ordinance, and this Gaming Compact. The Tribal Gaming Agency shall not issue other than a temporary license until a determination is made that those qualifications have been met. In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribal Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a state certification of non-objection previously issued under a gaming compact involving another tribe, or may rely on a State gaming license previously issued to the applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligation. An applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the applicant. The State Gaming Agency shall cooperate in furnishing to the Tribal Gaming Agency that information, unless doing so would violate any agreement the State Gaming Agency has with a source of the information other than the applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential or that provision of the information would violate state or federal law. If the Tribe adopts

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an ordinance confirming that Article 6 (commencing with section 11140) of Chapter 1 of Title 1 of Part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this Section, the Tribal Gaming Agency shall be considered to be an entity entitled to receive state summary criminal history information within the meaning of subdivision (b)(12) of section 11105 of the California Penal Code. The California Department of Justice shall provide services to the Tribal Gaming Agency through the California Law Enforcement Telecommunications System (CLETS), subject to a determination by the CLETS advisory committee that the Tribal Gaming Agency is qualified for receipt of such services, and on such terms and conditions as are deemed reasonable by that advisory committee.

Section 6.4.9. Temporary Licensing of Gaming Employees. Notwithstanding anything herein to the contrary, if the applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the applicant has a criminal history or other information in his or her background that would either automatically disqualify the applicant from obtaining a license or cause a reasonable person to investigate further before issuing a license, or is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a temporary license and may impose such specific conditions thereon pending completion of the applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine. Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary license. A temporary license shall remain in effect until suspended or revoked, or a final determination is made on the application. At any time after issuance of a temporary license, the Tribal Gaming Agency may suspend or revoke it in accordance with Sections 6.5.1 or 6.5.5, and the State Gaming Agency may request suspension or revocation in accordance with

subdivision (d) of Section 6.5.6. Nothing, herein shall be construed to relieve the Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

Section 6.5. Gaming License Issuance.
Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an applicant in an opportunity to be licensed, or in a license itself, both of which shall be considered to be privileges granted to the applicant in the sole discretion of the Tribal Gaming Agency.

Section 6.5.1. Denial, Suspension, or Revocation of Licenses.
(a) Any application for a gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the applicant is determined to be unsuitable or otherwise unqualified for a gaming license. Pending consideration of revocation, the Tribal Gaming Agency may suspend a license in accordance with Section 6.5.5. All rights to notice and hearing shall be governed by tribal law, as to which the applicant will be notified in writing along with notice of an intent to suspend or revoke the license.

(b) (i) Except as provided in paragraph (ii) below, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall promptly revoke any license that has theretofore been issued to the person; provided that the Tribal Gaming Agency may, in its discretion, re-issue a license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Civil Code.

(ii) Notwithstanding a determination of unsuitability by the State Gaming Agency, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal license issued to a person employed by the Tribe pursuant to Section 6.4.4(c) or Section 6.4.4(d).

Section 6.5.2. Renewal of Licenses; Extensions; Further Investigation.
The term of a tribal gaming license shall not exceed two years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an additional background investigation may be required at any time if the Tribal Gaming Agency determines the need for further information concerning the applicant's continuing suitability or eligibility for a license. Prior to renewing a license, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in connection with the application for renewal.

Section 6.5.3. Identification Cards.
The Tribal Gaming Agency shall require that all persons who are required to be licensed wear, in plain view at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency. Identification badges must display information including, but not limited to, a photograph and an identification number that is adequate to enable agents of the Tribal Gaming Agency to readily identify the person and determine the validity and date of expiration of his or her license.

Section 6.5.4. Fees for Tribal License.
The fees for all tribal licenses shall be set by the Tribal Gaming Agency.

Section 6.5.5. Suspension of Tribal License.
The Tribal Gaming Agency may summarily suspend the license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may violate the Tribal Gaming Agency's licensing or other standards. Any right to notice or hearing in regard thereto shall be governed by Tribal law.

Section 6.5.6. State Certification Process.
(a) Upon receipt of a completed license application and a determination by the Tribal Gaming Agency that it intends to issue the earlier of a temporary or permanent license, the Tribal Gaming Agency shall transmit to the State Gaming Agency a notice of intent to license the applicant, together with all of the following: (i) a copy of all tribal license application materials and information received by the Tribal Gaming Agency from the applicant; (ii) an original set of fingerprint cards; (iii) a current photograph; and (iv) except to the extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency. Except for an applicant for licensing as a non-key Gaming Employee, as defined by agreement between the Tribal Gaming Agency and the State Gaming Agency, the Tribal Gaming Agency shall require the applicant also to file an application with the State Gaming Agency, prior to issuance of a temporary or permanent tribal gaming license, for a determination of suitability for licensure under the California Gambling Control Act. Investigation and disposition of that application shall be governed entirely by state law, and the State Gaming Agency shall determine whether the applicant would be found suitable for licensure in a gambling establishment subject to that Agency's jurisdiction. Additional information may be required by the State Gaming Agency to assist in its background investigation, provided that such State Gaming

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Agency requirement shall be no greater than that which may be required of applicants for a State gaming license in connection with nontribal gaming activities and at a similar level of participation or employment. A determination of suitability is valid for the term of the tribal license held by the applicant, and the Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability at such time as the licensee applies for renewal of a tribal gaming license. The State Gaming Agency and the Tribal Gaming Agency (together with tribal gaming agencies under other gaming compacts) shall cooperate in developing standard licensing forms for tribal gaming license applicants, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof.

(b) Background Investigations of Applicants.
Upon receipt of completed license application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the applicant would be suitable to be licensed for association with a gambling establishment subject to the jurisdiction of the State Gaming Agency. If further investigation is required to supplement the investigation conducted by the Tribal Gaming Agency, the applicant will be required to pay the statutory application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19941(a), but any deposit requested by the State Gaming Agency pursuant to section 19855 of that Code shall take into account reports of the background investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to pay the application fee or deposit maybe grounds for denial of the application by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs. Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a

notice to the Tribal Gaming Agency certifying that the State has determined that the applicant would be suitable, or that the applicant would be unsuitable, for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency and, if unsuitable, stating the reasons therefor.

(c) The Tribe shall monthly provide the State Gaming Agency with the name, badge identification number, and job descriptions of all, non-key Gaming Employees.

(d) Prior to denying an application for a determination of suitability, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard. If the State Gaming Agency denies an application for a determination of suitability, that Agency shall provide the applicant with written notice of all appeal rights available under state law.

Section 7.0. COMPLIANCE ENFORCEMENT

Section 7.1. On-Site Regulation.
It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Section 7.2. Investigation and Sanctions.
The Tribal Gaming Agency shall investigate any reported violation of this Gaming Compact and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary. The Tribal Gaming Agency shall be empowered by the Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees or other persons who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, the Tribal Gaming Ordinance, or this Gaming Compact. The Tribal Gaming Agency shall report significant or continued violations of this Compact or failures to comply with its orders to the State Gaming Agency.

Section 7.3. Assistance by State Gaming Agency.
The Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in Section 7.1, or otherwise to protect public health, safety, or welfare. If requested by the Tribe or Tribal Gaming Agency, the State Gaming Agency shall provide requested services to ensure proper compliance with this Gaming Compact. The State shall be reimbursed for its actual and reasonable costs of that assistance, if the assistance required expenditure of extraordinary costs.

Section 7.4. Access to Premises by State Gaming Agency; Notification; Inspections.
Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto, subject to the following conditions:

Section 7.4.1. Inspection of public areas of a Gaming Facility may be made at any time without prior notice during normal Gaming Facility business hours.

Section 7.4.2. Inspection of areas of a Gaming Facility not normally accessible to the public may be made at any time during normal Gaming Facility business hours, immediately after the State Gaming Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. The Tribal Gaming Agency, in its sole discretion, may require a member of the Tribal Gaming Agency to accompany the State Gaming Agency inspector at all times that the State Gaming Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member to be available at all times for those purposes and shall ensure that the member has the ability to gain

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immediate access to all non-public areas of the Gaming Facility. Nothing in this Compact shall be construed to limit the State Gaming Agency to one inspector during inspections.

Section 7.4.3.
(a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time, immediately after notice to the Tribal Gaming Agency, during the normal hours of the Gaming Facility's business office, provided that the inspection and copying of those papers, books or records shall not interfere with the normal functioning of the Gaming Operation or Facility. Notwithstanding any other provision of California law, all information and records that the State Gaming Agency obtains, inspects, or copies pursuant to this Gaming Compact shall be, and remain, the property solely of the Tribe; provided that such records and copies may be retained by the State Gaming Agency as reasonably necessary for completion of any investigation of the Tribe's compliance with this Compact.

(b) (i) The State Gaming Agency will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe, and will apply the highest standards of confidentiality expected under state law to preserve such information and documents from disclosure. The Tribe may avail itself of any and all remedies under state law for improper disclosure of information or documents. To the extent reasonably feasible, the State Gaming Agency will consult with representatives of the Tribe prior to disclosure of any documents received from the Tribe, or any documents compiled from such documents or from information received from the Tribe, including any disclosure compelled by judicial process, and, in the case of any disclosure compelled by judicial process, will endeavor to give the Tribe immediate notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.

(ii) The Tribal Gaming Agency and the State Gaming Agency shall confer and agree upon protocols for release to other law enforcement agencies of information obtained during the course of background investigations.

(c) Records received by the State Gaming Agency from the Tribe in compliance with this Compact, or information compiled by the State Gaming Agency from those records, shall be exempt from disclosure under the California Public Records Act.

Section 7.4.4. Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact.

Section 7.4.5.

(a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's land except in accordance with procedures established by agreement between the State Gaming Agency and the Tribal Gaming Agency and upon at least 10 days' notice to the Sheriff s Department for the county in which the land is located.

(b) Transportation of a Gaming Device from the Gaming Facility within California is permissible only if: (i) The final destination of the device is a gaming facility of any tribe in California that has a compact with the State; (ii) The final destination of the device is any other state in which possession of the device or devices is made lawful by state law or by tribal-state compact; (iii) The final destination of the device is another country, or any state or province of another country, wherein possession of the device is lawful; or (iv) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Gaming Agency.

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(c) Gaming Devices transported off the Tribe's land in violation of this Section 7.4.5 or in violation of any permit issued pursuant thereto is subject to summary seizure by California peace officers.

Section 8.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION

Section 8.1. Adoption of Regulations for Operation and Management; Minimum Standards. In order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations or specifications governing the following subjects, and to ensure their enforcement in an effective manner:

Section 8.1.1. The enforcement of all relevant laws and rules with respect to the Gaming Operation and Facility, and the power to conduct investigations and hearings with respect thereto, and to any other subject within its jurisdiction.

Section 8.1.2. Ensuring the physical safety of Gaming Operation patrons and employees, and any other person while in the Gaming Facility. Nothing herein shall be construed to make applicable to the Tribe any state laws, regulations, or standards governing the use of tobacco.

Section 8.1.3. The physical safeguarding of assets transported to, within, and from the Gaming Facility.

Section 8.1.4. The prevention of illegal activity from occurring within the Gaming Facility or with regard to the Gaming Operation, including, but not limited to, the maintenance of employee procedures and a surveillance system as provided below.

Section 8.1.5. The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereafter "incidents"). The procedure for recording incidents shall: (1) specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing); (2) require the assignment of a sequential number to each report; (3) provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and by which entries are made on each side of each page; and (4) require that each report include, at a minimum, all of the following:

(a) The record number.
(b) The date.
(c) The time.
(d) The location of the incident..
(e) A detailed description of the incident.
(f) The persons involved in the incident.
(g) The security department employee assigned to the incident.

Section 8.1.6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.

Section 8.1.7. Maintenance of a list of persons barred from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the Tribe or to the integrity of regulated gaming within the State.

Section 8.1.8. The conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

Section 8.1.9. Submission to, and prior approval from, the Tribal Gaming Agency of the rules and regulations of each Class III game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III game may be played that has not received Tribal Gaming Agency approval.

Section 8.1.10. Addressing all of the following:
(a) Maintenance of a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners;

(b) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations shall be visibly displayed or available to patrons in written form in the Gaming Facility;

(c) Specifications ensuring that betting limits applicable to any gaming station shall be displayed at that gaming station;

(d) Procedures ensuring that in the event of a patron dispute over the application of any gaming rule or regulation, the matter shall be handled in accordance with, industry practice and principles of fairness, pursuant to the Tribal Gaming Ordinance and any rules and regulations promulgated by the Tribal Gaming Agency.

Section 8.1.11. Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated by the Tribe, which system shall be approved by, and may not be modified without the approval of the Tribal Gaming Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Agency.

Section 8.1.12. Maintenance of a cashier's cage in accordance with industry standards for such facilities.

Section 8.1.13. Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.

Section 8.1.14. Technical standards and specifications for the operation of Gaming Devices and other games authorized herein to be conducted by the Tribe, which technical specifications may be no less stringent than those approved by a recognized gaming testing laboratory in the gaming industry.

Section 8.2. State Civil and Criminal Jurisdiction. Nothing in this Gaming Compact affects the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Section 1162; 28 U.S.C. Section 1360) or IGRA, to the extent applicable. In addition, criminal jurisdiction to enforce state gambling laws is transferred to the State pursuant to 18 U.S.C. § 1166(d), provided that no Gaming Activity conducted by the Tribe pursuant to this Gaming Compact may be deemed to be a civil or criminal violation of any law of the State.

Section 8.3.
(a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under this Compact; shall adopt a conflict-of-interest code to that end; and shall ensure the prompt removal of any member of the Tribal Gaming Agency who is found to have acted in a corrupt or compromised manner.

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(b) The Tribe shall conduct a background investigation on a prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a management contractor under IGRA; provided that, if such official is elected through a tribal election process, that official may not participate in any Tribal Gaming Agency matters under this Compact unless a background investigation has been concluded and the official has been found to be suitable. If requested by the tribal government or the Tribal Gaming Agency, the State Gaming Agency may assist in the conduct of such a background investigation and may assist in the investigation of any possible corruption or compromise of a member of the agency.

Section 8.4. In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1. Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency in respect to tribal gaming operations under this Section.

Section 8.4.1.
(a) Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.

(b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

(c) Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation in respect to the Tribe's Gaming Operation before the expiration of 30 days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.

(d) In exigent circumstances (e.g., imminent. threat to public health and safety), the State Gaming Agency may adopt a regulation that becomes effective immediately. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Association for consideration. If the regulation is disapproved by the Association, it shall cease to be effective, but may be re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections, and thereafter submitted to the Tribe for comment as provided in subdivision (c).

(e) The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0.

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Section 9.0. DISPUTE RESOLUTION PROVISIONS

Section 9.1. Voluntary Resolution; Reference to Other Means of Resolution. In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that occur under this Gaming Compact by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the State first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Gaming Compact, as follows:
(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(b) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time.

(c) If the dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.

(d) Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in Section 9.3 may be resolved in the United States District Court where the Tribe's Gaming Facility is located, or is to be located, and the Ninth Circuit Court of Appeals (or, if those federal courts lack jurisdiction, in any state court of competent jurisdiction and its related courts of

appeal). The disputes to be submitted to court action include, but are not limited to, claims of breach or violation of this Compact, or failure to negotiate in good faith as required by the terms of this Compact. In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the State on the grounds that the Tribe has failed to exhaust its state administrative remedies. The parties agree that, except in the case of imminent threat to the public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resort to judicial process.

Section 9.2. Arbitration Rules.
Arbitration shall be conducted in accordance with the policies and procedures of the Commercial Arbitration Rules of the American Arbitration Association, and shall be held on the Tribe's land or, if unreasonably inconvenient under the circumstances, at such other location as the parties may agree. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. Only one neutral arbitrator may be named, unless the Tribe or the State objects, in which case a panel of three arbitrators (one of whom is selected by each party) will be named. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding. Judgment on the award may be entered in any federal or state court having jurisdiction thereof.

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Section 9.3. No Waiver or Preclusion of Other Means of Dispute Resolution.
This Section 9.0 may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this Section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

Section 9.4. Limited Waiver of Sovereign Immunity.
(a) In the event that a dispute is to be resolved in federal court or a state court of competent jurisdiction as provided in this Section 9.0, the State and the Tribe expressly consent to be sued therein and waive any immunity therefrom that they may have provided that:

(1) The dispute is limited solely to issues arising under this Gaming Compact;

(2) Neither side makes any claim for monetary damages (that is, only injunctive, specific performance, including enforcement of a provision of this Compact requiring payment of money to one or another of the parties, or declaratory relief is sought); and

(3) No person or entity other than the Tribe and the State is party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(b) In the event of intervention by any additional party into any such action without the consent of the Tribe and the State, the waivers of either the Tribe or the State provided for herein may be revoked, unless joinder is required to preserve the court's jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(c) The waivers and consents provided for under this Section 9.0 shall extend to civil actions authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued, either express or implied, are granted by either party.

Section 10.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY

Section 10.1. The Tribe will not conduct Class III gaming in a manner that endangers the public health, safety, or welfare; provided that nothing herein shall be construed to make applicable to the Tribe any state laws or regulations governing the use of tobacco.

Section 10.2. Compliance.
For the purposes of this Gaming Compact, the Tribal Gaming, Operation shall:
(a) Adopt and comply with standards no less stringent than state public health standards for food and beverage handling. The Gaming Operation will allow inspection of food and beverage services by state or county health inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California; the Gaming Operation will allow for inspection and testing of water quality by state or county health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections and testing are made by an agency of the United States pursuant to, or by the Tribe under express authorization of, federal law, to ensure compliance with federal water quality and safe drinking water standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(c) Comply with the building and safety standards set forth in Section 6.4.

(d) Carry no less than five million dollars ($5,000,000) in public liability insurance for patron claims, and that the Tribe provide reasonable assurance that those claims will be promptly and fairly adjudicated, and that legitimate claims will be paid; provided that nothing herein requires the Tribe to agree to liability for punitive damages or attorneys' fees. On or before the effective date of this Compact or not less than 30 days prior to the commencement of Gaming Activities under this Compact, whichever is later, the Tribe shall adopt and make available to patrons a tort liability ordinance setting forth the terms and conditions, if any, under which the Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, including procedures for processing any claims for such money damages; provided that nothing in this Section shall require the Tribe to waive its immunity to suit except to the extent of the policy limits set out above.

(e) Adopt and comply with standards no less stringent than federal workplace and occupational health and safety standards; the Gaming Operation will allow for inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are regularly made by an agency of the United States government to ensure compliance with federal workplace and occupational health and safety standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(f) Comply with tribal codes and other applicable federal law regarding public health and safety.

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(g) Adopt and comply with standards no less stringent than federal laws and state laws forbidding employers generally from discriminating in the employment of persons to work for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability; provided that nothing herein shall preclude the tribe from giving a preference in employment to Indians, pursuant to a duly adopted tribal ordinance.

(h) Adopt and comply with standards that are no less stringent than state laws prohibiting a gaming enterprise from cashing any check drawn against a federal, state, county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.

(i) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting a gaming enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging for no charge or at reduced prices at a gambling establishment or lodging facility as an incentive or enticement.

(j) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting extensions of credit.

(k) Provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. Section 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to casinos.

Section 10.2.1. The Tribe shall adopt and, not later than 30 days after the effective date of this Compact, shall make available on request the standards described in subdivisions (a)-(c) and (e)-(k) of Section 10.2 to which the Gaming Operation is held. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, or the express adoption of an applicable federal statute or regulation in lieu of a tribal standard in

respect to any such matter, the applicable state statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

Section 10.3. Participation in state statutory programs related to employment.

(a) In lieu of permitting the Gaming Operation to participate in the state statutory workers' compensation system, the Tribe may create and maintain a system that provides redress for employee work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, availability of an independent medical examination, right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits comparable to those mandated for comparable employees under state law. Not later than the effective date of this Compact, or 60 days prior to the commencement of Gaming Activities under this Compact, the Tribe will advise the State of its election to participate in the statutory workers' compensation system or, alternatively, will forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth above. The parties agree that independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.

(b) The Tribe agrees that its Gaming Operation will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Facility, including compliance with the provisions of the California Unemployment Insurance Code, and the Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.

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(c) As a matter of comity, with respect to persons employed at the Gaming Facility, other than members of the Tribe, the Tribal Gaming Operation shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and the Revenue and Taxation Code, and shall forward such amounts as provided in said Codes to the State.

Section 10.4. Emergency Service Accessibility.

The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

Section 10.5. Alcoholic Beverage Service.

Standards for alcohol service shall be subject to applicable law.

Section 10.6. Possession of firearms shall be prohibited at all times in the Gaming Facility except for state, local, or tribal security or law enforcement personnel authorized by tribal law and by federal or state law to possess firearms at the Facility.

Section 10.7. Labor Relations.

Notwithstanding any other provision of this Compact, this Compact shall be null and void if, on or before October 13, 1999, the Tribe has not provided an agreement or other procedure acceptable to the State for addressing organizational and representational rights of Class III Gaming Employees and other employees associated with the Tribe's Class III gaming enterprise, such as food and beverage, housekeeping, cleaning, bell and door services, and laundry employees at the Gaming Facility or any related facility, the only significant purpose of which is to facilitate patronage at the Gaming Facility.

Section 10.8. Off-Reservation Environmental Impacts.

Section 10.8.1. On or before the effective date of this Compact, or not less than 90 days prior to the commencement of a Project, as defined herein, the Tribe shall adopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts of any and all Projects to be commenced on or after the effective date of this Compact. In fashioning the environmental protection ordinance, the Tribe will make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act and the California Environmental Quality Act consistent with the Tribe's governmental interests.

Section 10.8.2.

(a) Prior to commencement of a Project, the Tribe will:

(1) Inform the public of the planned Project;

(2) Take appropriate actions to determine whether the project will have any significant adverse impacts on the off-Reservation environment;

(3) For the purpose of receiving and responding to comments, submit all environmental impact reports concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research and the county board of supervisors, for distribution to the public.

(4) Consult with the board of supervisors of the county or counties within which the Tribe's Gaming Facility is located, or is to be located, and, if the Gaming Facility is within a city, with the city council, and if requested by the board or council, as the case may be, meet with them to discuss mitigation of significant adverse off-Reservation environmental impacts;

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(5) Meet with and provide an opportunity for comment by those members of the public residing off-Reservation within the vicinity of the Gaming Facility such as might be adversely affected by proposed Project.

(b) During the conduct of a Project, the Tribe shall:

(1) Keep the board or council, as the case may be, and potentially affected members of the public apprized of the project's progress; and

(2) Make good faith efforts to mitigate any and all such significant adverse off-Reservation environmental impacts.

(c) As used in Section 10.8.1 and this Section 10.8.2, the term "Project" means any expansion or any significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the Tribe's Gaming Facility or proposed Gaming Facility and the term "environmental impact reports" means any environmental assessment, environmental impact report, or environmental impact statement, as the case may be.

Section 10.8.3.

(a) The Tribe and the State shall, from time to time, meet to review the adequacy of this Section 10.8, the Tribe's ordinance adopted pursuant thereto, and the Tribe's compliance with its obligations under Section 10.8.2, to ensure that significant adverse impacts to the off-Reservation environment resulting from projects undertaken by the Tribe may be avoided or mitigated.

(b) At any time after January 1, 2003, but not later than March 1, 2003, the State may request negotiations for an amendment to this Section 10.8 on the ground that, as it presently reads, the Section has proven to be inadequate to protect the off-Reservation environment from significant adverse impacts resulting from Projects undertaken by the Tribe or to ensure adequate mitigation by the Tribe of significant adverse off-Reservation environmental impacts and, upon such a request, the Tribe will enter into such negotiations in good faith.

(c) On or after January 1, 2004, the Tribe may bring an action in federal court under 25 U.S.C. Section 2710(d)(7)(A)(i) on the ground that the State has failed to negotiate in good faith, provided that the Tribe's good faith in the negotiations shall also be in issue. In any such action, the court may consider whether the State's invocation of its rights under subdivision (b) of this Section 10.8.3 was in good faith. If the State has requested negotiations pursuant to subdivision (b) but, as of January 1, 2005, there is neither an agreement nor an order against the State under 25 U.S.C. Section 2710(d)(7)(B)(iii), then, on that date, the Tribe shall immediately cease construction and other activities on all projects then in progress that have the potential to cause adverse off-Reservation impacts, unless and until an agreement to amend this Section 10.8 has been concluded between the Tribe and the State.

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Section 11.0. EFFECTIVE DATE AND TERM OF COMPACT

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.

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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	Tribal Chairperson
State Capitol	*1
Sacramento, California 95814	*4

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

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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 15.6. 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

4.25

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EXHIBIT "31"

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 Syliva Burley
Chairperson, California Valley
Miwok Tribe
10601 Escondido Place
Stockton, California 95212

Dear Ms. Burley:

This letter is being sent as a follow-up to a meeting held on January 6, 2011. In that meeting, you had requested that the Agency send a letter to the Tribe affirming our commitment to work with the Tribe in light of the recent decision by the Assistant Secretary – Indian Affairs (AS-IA), dated December 22, 2010.

As I have stated in a previous email to your legal counsel, as a result of the recent decision by the AS-IA, I am committed to working with the Tribe's existing governing body – it's 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, consistent with the AS-IA's direction.

In the spirit of tribal self-determination, Agency staff are available to provide any technical assistance you may need to that end.

Sincerely,

Troy Burdick
Superintendent

EXHIBIT "32"

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 "33"

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Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

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

CALIFORNIA VALLEY MIWOK TRIBE

Plaintiff,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant.

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

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

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

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

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

Dated: March 14, 2011

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

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 03/11/2011 TIME: 02:00:00 PM DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn
CLERK: Kim Mulligan
REPORTER/ERM: Susan Holthaus CSR# 6959
BAILIFF/COURT ATTENDANT: M. Chadwell

CASE NO: **37-2008-00075326-CU-CO-CTL** CASE INIT.DATE: 01/08/2008
CASE TITLE: **California Valley Miwok Tribe vs. The California Gambling Control Commission**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)
MOVING PARTY: California Valley Miwok Tribe
CAUSAL DOCUMENT/DATE FILED: Motion for Reconsideration, 12/30/2010

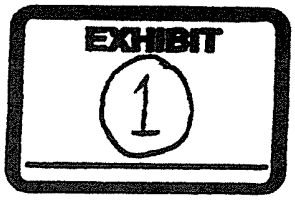
APPEARANCES

SEE SIGN-IN SHEET FOR APPEARANCES.

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

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

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



Upon reconsideration, Intervenors' motion for leave to intervene is denied.

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

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

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

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

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

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

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

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

Judge Ronald L. Styn

PP

Superior Court of California
County of San Diego

SIGN-IN SHEET

Calendar No.: 32, 33, 34 35

Court Use Only

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

EVENT TYPE: Demurrer / Motion to Strike

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

DEPARTMENT: C-62

JUDGE: Ronald L. Styn

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

EXHIBIT "34"

FILED
Clerk of the Superior Court
APR 20 2011
By: H. CHAVARIN, Deputy

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

CALIFORNIA VALLEY MIWOK TRIBE

Plaintiff,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant.

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

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

Date: April 6, 2011
Time: 9:00 a.m.
Dept: 62
Judge: Hon. Ronald Styn
Trial Date: May 13, 2011

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

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

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

3. The effect of the Court's prior rulings shall likewise be stayed pending further order of this Court. These rulings include: (1) Order of March 11, 2011, granting reconsideration and denying intervention; (2) Order of March 11, 2011, granting judgment on the pleadings as against the Commission; and (3) Order ruling Plaintiff's demurrer to the Complaint in Intervention is moot, in light

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

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

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

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

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

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

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

IT IS SO ORDERED.

Dated: 9-20-11

Hon. Ronald L. Styn
Superior Court Judge

APPROVED AS TO FORM:

Date:

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

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

Date:

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

Date:

SINGLETON & ASSOCIATES

Terry Singleton, Esq.
Attorneys for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

Date:

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

Matthew S. McConnell, Esq.
Attorneys for Intervenors

Date:

THOMAS W. WOLFRUM

Attorney for Intervenors