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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 **REQUEST FOR JUDICIAL NOTICE AND SUPPORTING DECLARATION OF NEIL D. HOUSTON IN SUPPORT OF DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS** Date: April 26, 2013 Time: 2:00 p.m. Dept: 62 Judge: The Honorable Ronald L. Styn Trial Date: June 4, 2013 Action Filed: January 8, 2008

Defendant California Gambling Control Commission respectfully requests that the Court take judicial notice pursuant to Evidence Code sections 452 and 453 of each of the following documents in support of its opposition to Plaintiff's motion for judgment on the pleadings:

A. The Cover Sheet, Table of Contents, and pages 1 through 7 of the Tribal-State Compact between the State of California and the Dry Creek Rancheria of Pomo Indians, executed on September 10, 1999 (available at http://www.cgcc.ca.gov/?pageID=compacts).

B. Letter dated December 22, 2010, from Larry Echo Hawk, Assistant Secretary – Indian Affairs, United States Department of the Interior, to Ms. Sylvia [sic] Burley.

C. Complaint filed on January 24, 2011, in the United States District Court for the District of Columbia, The California Valley Miwok Tribe, et al., v. Ken Salazar, et al., No. 1:11-cv-00160 RWR (*Salazar*).

D. Letter dated April 1, 2011, from Larry Echo Hawk, Assistant Secretary – Indian Affairs, United States Department of the Interior, to Mr. Yakima Dixie.

E. Letter dated August 31, 2011, from Larry Echo Hawk, Assistant Secretary – Indian Affairs, United States Department of the Interior, to Mr. Yakima Dixie and Ms. Silvia Burley.

F. The Cover Sheet, Table of Contents, and pages 1 through 15 of the Tribal-State Compact between the State of California and the Pinoleville Pomo Nation, executed on October 2, 2011 (available at http://www.cgcc.ca.gov/?pageID=compacts).

G. U.S. District Court, District of Columbia (Washington, DC), CIVIL DOCKET FOR CASE #: 1:11-cv-00160-RWR, Dated March 27, 2013 (available at https://ecf.dcd.uscourts.gov/cgi-bin/DktRpt.pl?313875599490286-L_1_0-1).

H. Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief, The *California Valley Miwok Tribe, et al. v. Salazar, et al.*, (filed 10/17/11) (D.D.C.) Case No. 1:11-cv-00160-RWR.

I. Cover Sheet, Table of Contents, and pages 1 to 26, Tribal-State Compact Between the State of California and the Federated Indians of Graton Rancheria (executed 3/27/12; ratified 5/17/12; published in the Federal Register 7/12/12) (available at http://www.cgcc.ca.gov/?pageID=compacts).

J. Minute Order, April 6, 2011, Case No. 37-2008-00075326-CU-CO-CTL, imposing stay on "any future motion hearings."

K. Court of Appeal, Fourth Appellate District, Division One, State of California, unpublished decision in California Valley Miwok Tribe v. Superior Court of San Diego County (California Gambling Control Commission), Case No. D061811, filed December 18, 2012.

L. Minute Order, March 1, 2013, Case No. 37-2008-00075326-CU-CO-CTL, lifting stay to allow the parties to file dispositive motions and, if necessary, proceed to trial.

M. Joint Status Report and Proposed Order Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs, Document 27, filed September 1, 2011, in California Valley Miwok Tribe v. Salazar, D.D.C. Case No. 1:11-cv-00160-RWR.

N. Letter from Dale Risling, Sr. (BIA) to Sylvia [sic] Burley, dated March 26, 2004.

O. Letter from Michael D. Olsen (BIA) to Yakima K. Dixie, dated February 11, 2005.

P. Letter from Troy Burdick (BIA) to Silvia Burley and Yakima K. Dixie, dated November 6, 2006.

Q. Letter from Edith R. Blackwell (Department of the Interior) to Peter Kaufman, Esq., dated January 14, 2009.

Each of the foregoing documents is attached to this Request.

The Court may take judicial notice, under Evidence Code section 452, subdivisions (c), and (d), of the official acts of the legislative and executive departments of the United States and of any state, and of the records of any court of record of the United States. Section 453 of the Evidence Code provides that judicial notice of the matters set forth in section 452 is mandatory if properly requested by a party. The requesting party must give sufficient notice of the request to enable the adverse party to prepare to meet it, and furnish the court with sufficient information to enable the Court to take judicial notice of the matter. (Evid. Code, § 453, subd. (a) & (b).)

The documents in Exhibits A, B, D, E, F, H, N, O, P, and Q are official records of the United States Department of the Interior, and/or Bureau of Indian Affairs. "The records and files of an administrative board are properly the subject of judicial notice." (*Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125; see also *Western States Petroleum Ass'n v. Dept. of Health Services* (2002) 99 Cal.App.4th 999, 1002 [judicial notice taken of federal Environmental

Protection Agency's materials pursuant to Evidence Code section 452, subdivision (c)].) Exhibits A, F and H also are official records of the legislative and executive departments of the State of California in that Exhibits A, F and H were executed by the Governor of California and ratified by the Legislature.

The document in Exhibits C, G, H, and M are records of the federal courts and are subject to judicial notice pursuant to Evidence Code section 452, subdivision (d). (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 877 [judicial notice taken of certain pleadings from federal action].)

The document in Exhibit K is a record of the Court of Appeal for the Fourth Appellate District of the State of California, and is subject to judicial notice pursuant to Evidence Code section 452, subdivision (d), and, moreover, is the law of the case herein.

The documents in Exhibits J and L are Minute Orders of this Court in this case.

Each of the items requested to be noticed is relevant to the Commission's opposition to Plaintiff's motion for judgment on the pleadings, and the relevance of each is set forth in the memorandum of points and authorities filed in opposition thereto.

Dated: March 27, 2013

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
WILLIAM L. WILLIAMS, JR.
Deputy Attorney General
T. MICHELLE LAIRD
Deputy Attorney General

NEIL D. HOUSTON
Deputy Attorney General
Attorneys for Defendant

SUPPORTING DECLARATION OF NEIL D. HOUSTON

I, NEIL D. HOUSTON, declare:

1. I am a Deputy Attorney General with the California Department of Justice, Office of the Attorney General, and am one of the attorneys of record for the California Gambling Control Commission (Commission) in this matter. I am an attorney at law duly licensed to practice before all within the State of California. I have personal knowledge of the facts set forth below and if called as a witness, I could and would competently testify to them.

2. This declaration is made in support of the Commission's request for judicial notice in support of its opposition to Plaintiff's motion for judgment on the pleadings.

3. Exhibit A attached hereto is a true and correct copy of the Cover Sheet, Table of Contents, and pages 1 through 7 of the Tribal-State Compact between the State of California and the Dry Creek Rancheria of Pomo Indians, executed on September 10, 1999 (available at http://www.cgcc.ca.gov/?pageID=compacts). It was received by the Office of the Attorney General of California in the regular course of business and is being maintained in the file for this matter over which I have responsibility.

4. Exhibit B attached hereto is a true and correct copy of a letter dated December 22, 2010, from Larry Echo Hawk, Assistant Secretary – Indian Affairs, United States Department of the Interior, to Ms. Sylvia [sic] Burley. It was received by the Office of the Attorney General of California in the regular course of business and is being maintained in the file for this matter over which I have responsibility.

5. Exhibit C attached hereto is a true and correct copy of the Complaint filed on January 24, 2011, in the United States District Court for the District of Columbia, *California Valley Miwok Tribe, et al., v. Ken Salazar, et al.*, No. 1:11-cv-00160 RWR. It was received by the Office of the Attorney General of California in the regular course of business and is being maintained in the file for this matter over which I have responsibility. This document is a public record available by download from the court as Document 1 in the above identified case.

6. Exhibit D attached hereto is a true and correct copy of a letter dated April 1, 2011, from Larry Echo Hawk, Assistant Secretary – Indian Affairs, United States Department of the Interior, to Mr. Yakima Dixie. It was received by the Office of the Attorney General of California in the regular course of business and is being maintained in the file for this matter over which I have responsibility.

7. Exhibit E attached hereto is a true and correct copy of a letter dated August 31, 2011, from Larry Echo Hawk, Assistant Secretary – Indian Affairs, United States Department of the Interior, to Mr. Yakima Dixie and Ms. Silvia Burley. It was received by the Office of the Attorney General of California in the regular course of business and is being maintained in the file for this matter over which I have responsibility.

8. Exhibit F attached hereto is a true and correct copy of the Cover Sheet, Table of Contents, and pages 1 through 15 of the Tribal-State Compact between the State of California and the Pinoleville Pomo Nation, executed on October 2, 2011 (a public record available at http://www.cgcc.ca.gov/?pageID=compacts). It was received by the Office of the Attorney General of California in the regular course of business and is being maintained in the file for this matter over which I have responsibility.

9. Exhibit G attached hereto is a true and correct copy of the Civil Docket for The *California Valley Miwok Tribe, et al. v. Salazar, et al.,* Case No. 1:11-cv-00160-RWR, United States District Court, District of Columbia. It is available at available at https://ecf.dcd.uscourts.gov/cgi-bin/DktRpt.pl?313875599490286-L_1_0-1 and was downloaded on March 27, 2013, and printed out, pursuant to my instructions. Exhibit G was received by the Office of the Attorney General of California in the regular course of business and is being maintained in the case file for this matter over which I have responsibility.

10. Exhibit H attached hereto is a true and correct copy of Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief, filed on October 17, 2011, which was filed in *California Valley Miwok Tribe, et al. v. Salazar, et al.*, (filed 10/17/11) (D.D.C.) Case No. 1:11-cv-00160-RWR. Exhibit H was received by the Office of the Attorney General of California in

the regular course of business and has been maintained in the case file for this matter over which I have responsibility. This document is a public record available by download from the court as Document 32 in the above identified case.

11. Exhibit I attached hereto is a true and correct copy of the Cover Sheet, Table of Contents, and pages 1 through 26 of the Tribal-State Compact between the State of California and the Federated Indians of Graton Rancheria, executed on March 27, 2012 and ratified May 17, 2012 (available at http://www.cgcc.ca.gov/?pageID=compacts). It was received by the Office of the Attorney General of California in the regular course of business and is being maintained in the file for this matter over which I have responsibility. This document is a public record available for download from the website identified above.

12. Exhibit J attached hereto is a true an correct copy of a Minute Order dated April 6, 2011, in this case, which imposed a stay on motions.

13. Exhibit K attached hereto is a true and correct copy of the appellate court decision dated December 18, 2012 granting Plaintiff's petition for a writ of mandate directing this Court to lift the stay on motions in this case. This document was received by the Office of the Attorney General of California in the regular course of business and is being maintained in the file for this matter over which I have responsibility.

14. Exhibit L attached hereto is a true and correct copy a Minute Order dated March 1, 2013, in this case, which lifted the stay on motions.

15. Exhibit M attached hereto is a true and correct copy of a Joint Status Report and Order Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs, filed September 1, 2011 as Document 27 in *California Valley Miwok Tribe v. Salazar*, D.D.C. Case No. 1:11-cv-00160-RWR. This document is a public record available for download from the court.

16. Exhibits N, O, and P are true and correct copies of letters from officials of the BIA to Silvia Burley and/or Yakima Dixie. These letters were received by the Office of the Attorney

General of California in the ordinary course of business and are being maintained in the file for this matter over which I have responsibility.

17. Exhibit Q is a true and correct copy of a letter from the Department of the Interior to Peter Kaufman, Esq., an attorney in the Office of the Attorney General of California. This document was received in the ordinary course of business and is being maintained in the file for this matter over which I have responsibility.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of March 2013 at Sacramento, California.

NEIL D. HOUSTON

EXHIBIT A

TRIBAL-STATE COMPACT

BETWEEN

THE STATE OF CALIFORNIA

AND THE

DRY CREEK RANCHERIA OF POMO INDIANS

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MODEL TRIBAL LABOR RELATIONS ORDINANCE

TRIBAL-STATE GAMING COMPACT
Between the DRY CREEK RANCHERIA, 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 Dry Creek Rancheria, a federally-recognized sovereign Indian tribe (hereafter "Tribe"), and the State of California, a sovereign State of the United States (hereafter "State"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) (hereafter "IGRA"), and any successor statute or amendments.

PREAMBLE

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

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

C. 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 Sonoma County of California.

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

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

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

Section 1.0. PURPOSES AND OBJECTIVES.

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

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

(b) Develop and implement a means of regulating Class III gaming, and only Class III gaming, on the Tribe's Indian lands to ensure 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.

Sec. 2.0. DEFINITIONS.

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

Sec. 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.

Sec. 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.

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

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

Sec. 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.

Sec. 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.

Sec. 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 II gaming (as defined under IGRA) therein.

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

Sec. 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.

Sec. 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.

Sec. 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.

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

Sec. 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.

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

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

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

Sec. 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).

Sec. 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.

Sec. 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.

Sec. 2.21. "Tribe" means the Dry Creek Rancheria, a federally-recognized Indian tribe, or an authorized official or agency thereof.

Sec. 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.

Sec. 4.0. SCOPE OF CLASS III GAMING.

Sec. 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.

(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.

Sec. 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.

Sec. 4.3. Sec. 4.3. Authorized number of Gaming Devices

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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 Sec. 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:

EXHIBIT B

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

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EXHIBIT C

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

THE CALIFORNIA VALLEY MIWOK TRIBE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

THE TRIBAL COUNCIL,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

YAKIMA DIXIE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

VELMA WHITEBEAR,
213 Downing Drive
Galt, CA 95632

ANTONIA LOPEZ,
P.O. Box 1432
Jackson, CA 95642

MICHAEL MENDIBLES,
P.O. Box 266
West Point, CA 95255

EVELYN WILSON,
4104 Blagen Blvd.
West Point, CA 95255

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

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as Secretary of the United States Department of the Interior,
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

LARRY ECHO HAWK, in his official capacity as Assistant Secretary-Indian Affairs of the United States Department of the Interior,
Department of the Interior
1849 C Street, N.W.

Case: 1:11-cv-00160
Assigned To : Roberts, Richard W.
Assign. Date : 1/24/2011
Description: Admn Agency Review

Washington DC 20240

MICHAEL BLACK, in his official capacity as Director of the Bureau of Indian Affairs within the United States Department of the Interior,
Bureau of Indian Affairs
MS-4606
1849 C Street, N.W.
Washington, D.C. 20240

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Yakima Dixie ("Chief Dixie"), the California Valley Miwok Tribe ("Tribe"), and Tribe members Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo, individually and as members of the Tribal Council ("Council"), submit this Complaint against the Defendants, Ken Salazar, Secretary of the United States Department of the Interior ("Department"), Larry Echo Hawk, Assistant Secretary– Indian Affairs of the Department, and Michael Black, Director of the Bureau of Indian Affairs within the Department, and state and allege as follows:

INTRODUCTION

1. In *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008), the Court of Appeals for the District of Columbia Circuit upheld the Secretary of the Interior's ("Secretary") decision that Sylvia Burley ("Burley") and her two daughters (collectively, the "Burley Faction") were not the legitimate government of the Tribe. The court held that the Secretary, in 2004 and 2005, properly rejected a purported tribal constitution that the Burley Faction had submitted "without so much as consulting [the Tribe's] membership." The Secretary therefore properly refused to recognize Ms. Burley as Chairperson of the Tribe, and properly refused to recognize the Tribe as "organized" under the Indian Reorganization

Act of 1934 ("IRA"). *See* Letter from Dale Risling Sr., Superintendent, Bureau of Indian Affairs Central California Agency, to Silvia Burley (Mar. 26, 2004) (the "2004 Decision") (a true and correct copy of which is attached hereto as Exhibit "A"); Letter from Michael Olsen, Acting Assistant Secretary – Indian Affairs, to Yakima Dixie, (Feb. 11, 2005) (the "2005 Decision) (a true and correct copy of which is attached hereto as Exhibit "B"). The Court of Appeals thus affirmed a decision by the District Court for the District of Columbia, dismissing Ms. Burley's challenge to the Secretary's decisions.

2. In briefs submitted to the Court of Appeals, the Secretary took the position that, "for an 'Indian tribe' to organize under the IRA, action by the tribe as a whole is required; action by an unrepresentative faction is insufficient." The Secretary argued, in support of the 2004 and 2005 Decisions, that she could not recognize Burley's purported tribal government, or its constitution, because "the undisputed facts show that the Burley Government was elected, and its governing documents adopted, by just three people and without the participation of the vast majority of the potential members of the Tribe." The Secretary also recognized that she had not only the authority but the obligation to "ensure the legitimacy of any purported tribal government that seeks to engage in [a] government-to-government relationship with the United States."

3. The Court of Appeals agreed with the Secretary, holding that "as Congress has made clear, tribal organization under the [IRA] must reflect majoritarian values," and that "[Burley's] antimajoritarian gambit deserves no stamp of approval from the Secretary."

4. Following the Court of Appeals' decision, on November 6, 2006, the Bureau of Indian Affairs ("BIA") issued a decision describing how it would assist the Tribe in organizing under the IRA. The Burley Faction appealed this decision to the BIA's Regional Director. On April 2, 2007, the Regional Director affirmed the decision.

5. On April 10 and 17, 2007, the BIA published a notice seeking personal genealogies and other information from potential Tribe members, which was to be used to identify those who were entitled to participate in the initial organization of the Tribe. More than 500 people responded. The BIA has taken no action as to these submittals.

6. The Burley Faction did not participate in the process initiated by the BIA, but instead appealed the Regional Director's April 2, 2007 decision to the Interior Board of Indian Appeals ("Board"). *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIA 103 (Jan. 28, 2010).

7. The Board held that the Secretary's previous, judicially approved decisions regarding the status of the Burley Faction and the requirement of majority participation were not subject to further review. It therefore dismissed all but one of Burley's claims for lack of jurisdiction. The Board referred a single, narrow issue from Burley's appeal to the Assistant Secretary – Indian Affairs (the "Assistant Secretary"): the process for identifying which members of the Tribal community were entitled to participate in the initial organization of the Tribe.

8. On December 22, 2010, the Assistant Secretary acted on Burley's appeal Letter from Assistant Secretary—Indian Affairs to Yakima Dixie (December 22, 2010) (the "December 22 Decision"), (a true and correct copy of which is attached hereto as Exhibit "C"). The Assistant Secretary did not address the narrow issue over which he had jurisdiction. Instead, he inexplicably repudiated each of the arguments that the Secretary had made before the District Court and the Court of Appeals. Without any reasoned explanation, he reversed each and every one of the Secretary's prior decisions that those courts had upheld. The Assistant Secretary rescinded the 2004 and 2005 Decisions denying recognition of the Burley Faction and its constitution. He declared that the Tribe was "organized" under a General

Council form of government, pursuant to a 1998 tribal resolution that was not signed by a majority of the Tribe's adult members (the "1998 Resolution"). He directed the BIA to carry on government-to-government relations with the Burley Faction. And he ordered the BIA to rescind its efforts to help the Tribe organize according to majoritarian principles.

9. Plaintiffs challenge the Assistant Secretary's action as arbitrary, capricious, and not in accordance with law. The December 22 Decision exceeds the scope of the issue referred to the Assistant Secretary on appeal, improperly revisits and overturns long-settled, judicially approved decisions, addresses issues barred by failure to file timely appeals with the Board, and violates the Secretary's responsibility to ensure that the United States conducts government-to-government relations only with valid representatives of the Tribe.

10. The December 22 Decision directly contradicts the Secretary's prior representations to this Court and cedes complete control of the Tribe to the Burley Faction, who have fought for more than a decade to deny the benefits of Tribe membership to anyone but themselves.

11. Plaintiffs therefore file this action, asking this Court to invalidate the Assistant Secretary's decision and to enjoin and invalidate its implementation.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the asserted claims arise under the Constitution and laws of the United States.

13. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1361 in that the Tribe seeks to compel officers and employees of the United States and its agencies to perform duties owed to the Tribe.

14. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1362 because the Tribe is an Indian tribe duly recognized by the Secretary of the Interior, and the matter in controversy arises under the Constitution, laws or treaties of the United States.

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

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

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

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

19. An actual case and controversy has arisen and now exists between the parties with regard to the Assistant Secretary's violations of the statutes and regulations cited herein.

PARTIES

20. Plaintiff California Valley Miwok Tribe, also known as the "Sheep Ranch Rancheria," the "Sheep Ranch Rancheria of Me-Wuk Indians of California," and the "Sheep Ranch Band of Me-wuk Indians of the Sheep Ranch Rancheria," is a federally recognized Indian tribe situated in Sheep Ranch, California, in Calaveras County. (The Burley Faction purported to enact a tribal resolution in 2001, changing the name of the Tribe from the Sheep Ranch Band of Me-wuk Indians to the California Valley Miwok Tribe. Plaintiffs dispute that the Burley Faction had the authority to enact such a resolution. But because the BIA now refers to the Tribe as the California Valley Miwok Tribe, Plaintiffs and members of the larger tribal community have used that name to avoid confusion. This Complaint will do the same.)

The Tribe consists of Indian members and their descendants, and/or their Indian successors in interest, for whose benefit the United States acquired and created the Sheep Ranch Rancheria. There is an ongoing dispute regarding the true membership and leadership of the Tribe.

21. Plaintiff Yakima Dixie is the Hereditary Chief and Traditional Spokesperson, and the historical Chairperson, of the California Valley Miwok Tribe.

22. Plaintiff Tribal Council is the duly authorized and legitimate governing body of the Tribe, appointed by Chief Dixie. The Council consists of Chief Dixie and Tribe members Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo.

23. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo are members of the Tribe and of the Tribal Council. Each is a lineal descendant of a historical member or members of the Tribe.

24. Defendant Ken Salazar is the Secretary of the United States Department of the Interior. Mr. Salazar is responsible for the supervision of the various federal agencies and bureaus within the Department, including the BIA. Mr. Salazar is an officer or employee of the United States and has a direct statutory duty to carry out the provisions of the Indian Reorganization Act of 1934 ("IRA") and other relevant laws. Mr. Salazar is sued in his official capacity only.

25. Defendant Larry Echo Hawk is the Assistant Secretary – Indian Affairs of the Department and head of the Bureau of Indian Affairs. Mr. Echo Hawk issued the December 22 Decision that is challenged in this action. Mr. Echo Hawk is sued in his official capacity only.

26. Michael Black is the Director of the Bureau of Indian Affairs within the Department. Mr. Black is responsible or the day-to-day operations of the BIA, including its relations with federally recognized Indian tribes. Mr. Black is sued in his official capacity only.

RELEVANT FACTS

Tribal History and Indian Reorganization Act

27. In 1916, the United States purchased approximately one to two acres of land and created the Sheep Ranch Rancheria for the benefit of a small cluster of twelve to fourteen Miwok Indians that were found living in or near Sheep Ranch, California. The United States subsequently recognized the Sheep Ranch Band of Me-wuk Indians as a federal Indian Tribe.

28. In 1935, the Tribe voted to accept the IRA. The IRA allows Indian tribes to adopt a constitution, form a tribal government, and elect tribal officials, subject to substantive and procedural requirements in the IRA. Tribes thus "organized" under the IRA are eligible for certain federal benefits and services. Although it accepted the IRA, the Tribe did not take action to become "organized."

29. Under the IRA, the Secretary has a duty to ensure that the Department recognizes only a legitimate tribal government that reflects the participation of a majority of the Tribe's membership. This duty is informed and strengthened by the United States' trust obligations to Indian tribes and their members.

The California Rancheria Act and Failure to Terminate the Tribe

30. In 1958, Congress enacted the California Rancheria Act, which authorized the Secretary to terminate the lands and trust status of enumerated Indian tribes on California Rancherias under certain conditions. Under the Act, tribes could accept termination in exchange for fee title to Rancheria assets and the provision of certain services by the federal government.

31. In 1965, the BIA listed Mabel Hodge Dixie as the only Indian living on Sheep Ranch Rancheria.

32. On or about 1966, the BIA began proceedings to "terminate" the Tribe pursuant to the California Rancheria Act, and the United States conveyed fee title in the Sheep Ranch Rancheria to Mabel Hodge Dixie. The BIA never completed the requirements for termination. In 1967, Ms. Dixie quitclaimed the Rancheria back to the United States, thereby preventing termination of the Tribe from becoming effective.

33. In 1971, Ms. Dixie died, and her son Yakima Dixie inherited the position of Hereditary Chief and Traditional Spokesperson of the Tribe.

34. In 1994, Congress enacted the Tribe List Act, Pub. L. 103-454; 108 Stat. 4791, 4792, which requires the Secretary annually to publish a list of federally recognized Indian Tribes. The Tribe was included on the 1994 list and has been included on each list published since that time. Inclusion of a tribe on the list does not mean that the tribe is "organized" under the IRA or that its membership has been determined.

Burley Seeks Control of the Tribe

35. In 1998, Chief Dixie was the only Indian living on the Sheep Ranch Rancheria. Burley contacted Chief Dixie and asked him to enroll Burley, her two daughters, and her granddaughter in the Tribe so they could receive federal education and health benefits available to Indian tribe members. Chief Dixie agreed. Chief Dixie, Ms. Burley and her daughters then began preliminary efforts to organize the Tribe under the IRA.

36. Soon thereafter, a series of disputes ensued as Burley attempted to gain sole control of the Tribe. In 1998, Burley submitted the 1998 Resolution, which purported to establish a General Council to serve as the governing body of the Tribe. The 1998 Resolution was invalid, however, because it was not signed by a majority of the Tribe's adult members. Burley then filed a document purporting to be the resignation of Chief Dixie as Tribal Chairperson. Chief Dixie immediately denied the validity of the document and continues to do

so. Over the next few years, Burley tried several times, unsuccessfully, to gain BIA approval of various Tribal constitutions that would have recognized her as the Tribe's leader and limited Tribe membership to Burley and a few others.

Chief Dixie's Efforts to Organize the Tribe

37. After several years of failed efforts to resolve the leadership disputes that had arisen with Burley, Chief Dixie began efforts in 2003 to organize the Tribe without Burley's assistance and with the participation of the entire Tribal community. Since late 2003, the Tribe has held open meetings each month. Attendance at the meetings ranges from approximately 30 to more than 100 members. Attendance records are kept, and meetings are recorded and archived. Although Burley was specifically invited to the initial meetings and has never been excluded from any meeting, she has never attended.

38. In addition to the general Tribal meetings, Chief Dixie convened a group of individuals who were recognized within the Tribal community as figures of authority, in order to form a Tribal Council. In addition to Chief Dixie, the Council consists of Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo. Each of the members of the Tribal Council is a lineal descendant of a historical member or members of the Tribe. The Council met with the BIA in September 2003 and presented the BIA with documentation of their legitimate claims to Tribal membership and authority.

39. At the September 2003 meeting, Chief Dixie and the Council presented the BIA with a list of Tribal community members who should be allowed to participate in the initial organization of the Tribe, and requested that the BIA call an election pursuant to the IRA to select a Tribal government that could be recognized by the United States. The BIA did not act on the Council's request but continued to meet regularly with Chief Dixie and the Council to discuss efforts to organize the Tribe. Since its formation, the Tribal Council has met

approximately every other month to discuss Tribal policy, enact resolutions, and conduct other Tribe business.

40. Under the leadership of the Council, the Tribe has established many programs aimed at benefiting the full Tribal membership, strengthening the tribal community, and reestablishing historic ties with the larger Indian community. Extensive information about the Tribe's activities is available on the Tribe's website at http://californiavalleymiwok.com/x-index.html. Tribal activities include:

a. Involvement in approximately ten Indian Child Welfare Act cases, in an effort to have children of Tribe members who are in protective services placed with families that have ties to Indian traditions. Burley has opposed the Tribe's efforts in these cases.

b. Issuance of Tribal identification cards.

c. Involvement in Indian health services, emergency services and food distribution programs, including the MACT Indian health services program, that benefit members of the Tribe and other Indian tribes.

d. Participation, with other Miwok tribes, in an intratribal Miwok Language Restoration Group. Plaintiff Evelyn Wilson is the senior Miwok member who still speaks the Miwok language.

e. A ceremonial Indian dance group (through Tribe members Gilbert Ramirez and his son Pete) that represents the Tribe at events throughout California.

f. Consultation with Caltrans regarding possible Indian remains found at development sites.

g. Consultation with the U.S. Forest Service to help identify native plants on state and federal land that have been used by Indians for medicinal and other purposes.

h. Classes in traditional crafts and skills, such as basket weaving, and continuing efforts to revive the gathering of native plants, pine nuts, and other materials for such crafts, as well as to protect the sites where those materials are gathered,

i. Potential involvement, in collaboration with Calaveras County and other local and state agencies, in the Collaborative Forest Landscape Restoration Program, a federally supported forest rehabilitation program.

j. Participation in a variety of other economically and socially beneficial programs and activities, including but not limited to the Calaveras Healthy Impact Products Solutions program.

Each of these activities will be harmed if the December 22 Decision is allowed to stand and the federal government recognizes the Burley Faction as the government of the Tribe.

The BIA Repudiates the Burley Faction

41. Burley responded to Chief Dixie's efforts to organize the Tribe around its legitimate members by submitting yet another proposed constitution, in February 2004, to the BIA—purportedly to demonstrate that the Tribe was already "organized" with Ms. Burley as its leader.

42. In a March 26, 2004 letter to Burley, the BIA declined to approve her latest constitution. The BIA explained that efforts to organize a Tribe must reflect the involvement of the whole tribal community: "Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was attempted or has occurred with the purported organization of your tribe. . . . To our knowledge, the only persons of Indian descent involved in the tribe's organization efforts, were you and your two daughters . . . . It is only after the greater tribal community is

initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified."

43. The BIA's letter identified several groups of Tribe members and segments of the tribal community who should be involved in the initial organization efforts. These groups included Chief Dixie and his brother Melvin Dixie; other individuals who had resided at Sheep Ranch Rancheria in the past, and their offspring; persons who had inherited an interest in the Sheep Ranch Rancheria; Indians who had once lived adjacent to Sheep Ranch Rancheria, and their descendants; and neighboring groups of Indians, of which the Tribe may once have been a part.

44. The BIA's letter also stated that "the BIA does not yet view your tribe to be an 'organized' Indian Tribe" and that, as a result, the BIA could not recognize Burley as the Tribe's Chairperson.

45. On February 11, 2005, the Assistant Secretary – Indian Affairs sent a letter to Chief Dixie and Burley in which he reiterated the decisions expressed in the BIA's March 26, 2004 letter. The Assistant Secretary stated, "In that letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. . . . Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you . . . to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004 letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members."

46. After the Assistant Secretary's 2005 determination, the BIA sought to work with Chief Dixie's Tribal Council and the Tribe to complete the organization process. Chief Dixie

and the BIA invited Burley to participate, but she again refused and instead filed suit challenging the Assistant Secretary's decision.

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

47. In April 2005, the Burley Faction filed suit in the federal district court for the District of Columbia. The suit challenged the BIA's and Assistant Secretary's refusal to approve the Burley Faction's proposed constitution and to recognize its purported Tribal government, and sought a judgment that the Tribe was "organized." Notably, Burley did not contest in federal court the BIA's specific decision not to recognize her as the Tribal Chairperson. She thereby waived any challenge to that decision.

48. Around the same time, the Burley Faction also purported to disenroll Chief Dixie from the Tribe, for the purpose of denying him status to participate in the federal lawsuit. Ironically, in 2009, the Burley Faction purported to reinstate Chief Dixie as a member of the Tribe, in an attempt to deny him a basis to intervene in state court litigation in which Burley sought access to funds held in trust for the Tribe.

49. The district court dismissed the Burley Faction's claims in March 2006. The court found that the Secretary has "a responsibility to ensure that [she] deals only with a tribal government that actually represents the members of a tribe." *California Valley Miwok Tribe v. United States*, 424 F.Supp.2d 197 (D.D.C. Mar. 31, 2006). Likewise, the court found that the BIA has a "duty to ensure that the interests of all tribe members are protected during organization and that governing documents reflect the will of a majority of the Tribe's members." The court found the BIA's decisions consistent with that duty.

50. The district court noted that the Burley Faction had submitted a constitution that "conferred tribal membership only upon them and their descendants . . . [but] the government estimates that the greater tribal community, which should be included in the organization

process, may exceed 250 members." In light of the fact that the Tribe was receiving approximately $1.5 million per year in state and federal funds at the time, the court concluded that Burley's motivation was self-evident: "As H.L. Mencken is said to have said: 'When someone says it's not about the money, it's about the money.'"

51. Burley challenged the district court's decision, and the Court of Appeals for the District of Columbia Circuit affirmed. *California Valley Miwok Tribe, supra*, 515 F.3d 1262. According to the Court of Appeals, the rejection of the Burley government and constitution fulfilled a cornerstone of the United States' trust obligation to Indian tribes: to "promote a tribe's political integrity, which includes ensuring that the will of tribal members is not thwarted by rogue leaders when it comes to decisions affecting federal benefits."

52. The Court of Appeals further explained: "In Burley's view, the Secretary has no role in determining whether a tribe has properly organized itself. . . . That cannot be. . . . [T]he Secretary has the power to manage *'all* Indian affairs and *all* matters *arising out of Indian relations*.' . . . The exercise of this authority is especially vital when, as is the case here, the government is determining whether a tribe is organized, and the receipt of significant federal benefits turns on the decision. The Secretary suggests that her authority . . . includes the power to reject a proposed constitution that does not enjoy sufficient support from a tribe's membership. Her suggestion is reasonable, particularly in light of the federal government's unique trust obligation to Indian tribes." (emphasis in original). The court concluded: "Although [the Tribe], by its own admission, has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary."

The BIA Attempts to Assist the Tribe In Organizing

53. On November 6, 2006, after the district court had dismissed Burley's claims, the BIA informed the Burley Faction that it would assist the Tribe in organizing according to majoritarian principles, consistent with the decisions upheld by the court. The Superintendent of the BIA's Central California Agency wrote to Burley and Chief Dixie that the BIA "remain[ed] committed to assist the [Tribe] in its efforts to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to a clear majority of those Indians." To help achieve that goal, the BIA would facilitate a public meeting of existing members and Putative Members—i.e., those members of the tribal community with a legitimate claim to Tribal membership based on their lineal descent from original members of the Tribe.

54. Instead of cooperating in this effort to organize the Tribe, the Burley Faction appealed the Superintendent's November 6, 2006 decision to the BIA's Pacific Regional Director. On April 2, 2007, the Regional Director affirmed the decision and remanded the matter back to the Superintendent to implement the actions mentioned in the November 6, 2006 decision. The Regional Director wrote, "We believe the main purpose [of the November 6, 2006 decision] was to assist the Tribe in identifying the whole community, the 'putative' group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. . . . It is our belief that until the Tribe has identified the 'putative' group, the Tribe will not have a solid foundation upon which to build a stable government."

55. On April 10 and April 17, 2007, the BIA published public notice of an upcoming meeting to organize the Tribe. The notice requested that Putative Members submit documentation of their membership claim to the BIA (e.g., personal genealogies). The public

notice defined the Putative Members as lineal descendants of: (1) individuals listed on the 1915 Indian Census of Sheep-ranch Indians; (2) Jeff Davis (the only Indian listed as an eligible voter on the federal government's 1935 voting list for the Rancheria); and (3) Mabel Hodge Dixie.

56. According to the BIA, approximately 580 persons submitted personal genealogies to the BIA in response to the April 2007 public notices. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo each submitted genealogies and other documentation to the BIA in response to the public notices. No member of the Burley Faction submitted documentation in response to the public notices. The BIA has taken no action on the information submitted.

Burley Attempts to Relitigate Her Claims Before the Board

57. Burley appealed the Regional Director's April 2, 2007 decision to the Interior Board of Indian Appeals. Among other claims not relevant here, Burley argued that the BIA's decision to involve the Tribal community in the initial organization of the Tribe was an impermissible intrusion into Tribal government and membership matters, because the Tribe was *already* "organized"—an issue that the district court and Court of Appeals had already decided adversely to Burley in her earlier federal suit.

58. In January 2010, the Board decided Burley's appeal. The Board recognized that the Assistant Secretary's February 11, 2005 decision and the ensuing federal litigation had already finally determined the following issues: (1) that the BIA did not recognize the Tribe as being organized; (2) that the BIA did not recognize any tribal government that represents the Tribe; (3) that the Tribe's membership was not necessarily limited to the Burley Faction and Yakima Dixie; and (4) that the BIA had an obligation to ensure that a "greater tribal community" was allowed to participate in organizing the Tribe. The Board recognized that, to the extent Burley's appeal attempted to relitigate those issues, it had no jurisdiction over her

claims. Accordingly, the Board dismissed all of Burley's claims (including those claims not discussed here), except for a single, narrow issue.

59. According to the Board, the Burley appeal raised a solitary issue that had not already been decided by the Assistant Secretary: the process for deciding "who BIA will recognize, individually and collectively, as members of the 'greater tribal community' that BIA believes must be allowed to participate in the general council meeting of the Tribe for organizational purposes." The Board characterized this as a "tribal enrollment dispute" and therefore referred the issue to the Assistant Secretary for resolution.

The Assistant Secretary's December 22 Decision

60. The Assistant Secretary issued his decision in the Burley appeal on December 22, 2010. But instead of deciding the issue referred to him, the Assistant Secretary inexplicably, and without any reasoned explanation, reopened issues long settled and not subject to further appeal. The Assistant Secretary rescinded the March 26, 2004 and February 11, 2005 decisions by the BIA and Assistant Secretary, which had denied recognition of the Burley Faction and its constitution and declared that the larger Tribal community must be involved in the organization of the Tribe. Assistant Secretarial review of both decisions is time barred under binding regulations. Contrary to the Court of Appeals ruling, the Assistant Secretary declared that the Tribe was already "organized as a General Council" pursuant to the 1998 Resolution. He ordered the BIA to rescind its 2006 and 2007 decisions to help the Tribe organize according to majoritarian principles. And he directed the BIA to carry on government-to-government relations with the sham government headed by Burley.

Consequences of the Secretary's Unlawful Decision

61. As a result of the Assistant Secretary's unlawful December 22 Decision, the Plaintiffs have suffered and will continue to suffer great injury, including but not limited to the following:

62. Chief Dixie and the members of the Tribal council have been denied the opportunity to participate in the organization and governance of the Tribe.

a. Immediately after the Secretary issued his December 22 Decision, the Burley Faction issued a public notice calling for a "special election" to elect tribal officers. The public notice stated that only Ms. Burley, her two daughters, and Chief Dixie would be allowed to participate in the election of the Tribe's government. The public notice relied on the December 22 Decision as the basis for the Burley Faction's right to call the election.

b. On January 7, 2011, the Burley Faction conducted its "special election" among the three members of the Burley family. Neither Chief Dixie nor any member of the Tribal Council participated in the "special election." Except for Chief Dixie, the other individual plaintiffs were barred from participating.

c. On January 12, 2011, the BIA acknowledged receipt of the results of the Burley Faction's January 7 "special election" and recognized a "tribal council" consisting of Burley as Chairperson and her daughter, Rashel Reznor, as Secretary/Treasurer. It is telling that the BIA's letter does not mention the number of voters participating in this "election." Under the government recognized by the BIA, none of the Plaintiffs has any voice in the organization or governance of the Tribe.

63. . Chief Dixie and the members of the Tribal Council have been and will be denied the benefits of Tribe membership, because the December 22 Decision allows the Burley

Faction to withhold funds, benefits and services that should be made available to them as Tribe members. Among other things:

a. The December 22 Decision allows the Burley Faction to exercise complete control over Tribe membership and to exclude Chief Dixie and the members of the Tribal Council from membership in the Tribe.

b. As a result of being denied Tribe membership, the members of the Tribal Council are not and will not be eligible to receive federal health, education and other benefits provided to members of recognized Indian Tribes.

64. The December 22 Decision, if upheld, could provide a basis for allowing Burley to divert funds held in trust for the Tribe by the State of California. Beginning in 1999, Burley represented to the California Gambling Control Commission ("Commission") that she was the authorized representative of the Tribe and entitled to collect funds paid by the state to tribes that do not operate casinos or gaming devices. Burley received funds from the Commission, which were meant for the Tribe, between 1999 and 2005 (the "State Funds"). The State Funds totaled approximately $1 million or more per year.

a. None of the Plaintiffs received any of the State Funds. The Plaintiffs do not know of any members of the Tribe who received or benefited from any of the State Funds except for Burley and her immediate family. The Plaintiffs do not know of any programs for the benefit of the Tribe or its members that were created or supported with the Funds.

b. In 2005, the Commission ceased distribution of the State Funds to Burley on the ground that the federal government did not recognize her as the appropriate representative of the Tribe. Burley has filed litigation in California Superior Court, seeking to compel the Commission to resume distribution of the State Funds to her, including approximately $6.6 million of the State Funds that the Commission has withheld since 2005.

California Valley Miwok Tribe v. California Gambling Control Commission, No. 37-2008-00075326 (Sup. Ct. San Diego). Burley seeks to introduce the December 22 Decision as evidence that she is entitled to receive the State Funds.

c. If Burley receives the State Funds, Chief Dixie and the members of the Tribal Council will be denied the benefit of the State Funds, because the State of California has no control over the use of the State Funds once they are paid to a tribe.

d. If Ms. Burley receives the State Funds, the Tribe will be denied the Funds, because Ms. Burley is not a legitimate representative of the Tribe.

65. The December 22 Decision will allow Burley to divert federal funds intended for the Tribe. Beginning in 1999, and continuing through 2007, Burley received federal grant money intended for the Tribe, based on her representation that she was an authorized representative of the Tribe. The grant money was provided through a "self-determination contract" pursuant to Public Law 93-638 ("PL 638") to assist the Tribe in organizing under the IRA. Burley received from $400,000 to $600,000 per year.

a. Burley did not use the PL 638 funds to organize the Tribe consistent with the IRA. Instead, she sought to disenfranchise Plaintiffs and other members of the Tribal community and secured the benefits of Tribe membership only for herself and her immediate family.

b. The BIA has indicated its intent, based on the Secretary's decision, to enter into a new PL 638 contract with the Burley Faction to provide funds for organization of the Tribe. The Tribe will be denied its rightful use of the PL 638 funds, because those funds will be paid to Burley and her illegitimate government instead.

Plaintiffs' Request for Reconsideration

66. On January 6, 2011, the Plaintiffs requested that the Secretary immediately reconsider and stay the Assistant Secretary's December 22 Decision. The Secretary did not respond, and on January 21, 2011, Plaintiffs withdrew the request for reconsideration.

FIRST CAUSE OF ACTION

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

67. Plaintiffs re-allege paragraphs 1 through 66, and incorporate those paragraphs herein as if set forth in full.

68. The APA provides that a court must hold unlawful and set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A).

69. The Assistant Secretary's December 22 Decision constitutes "final agency action."

70. The December 22 Decision violates APA section 706(2)(A) because it unlawfully reopened and addressed issues not within the scope or jurisdiction of the Board appeal from which the decision arose, including the status of the Tribe as not "organized," the BIA's and Department's refusal to recognize the tribal government led by Burley, and the BIA's decision to involve the entire tribal community in the organization of the Tribe. Under binding regulations of the Department, those issues were final, not subject to the jurisdiction of the Board, not subject to appeal, and not referred to the Assistant Secretary by the Board.

71. The December 22 Decision violates APA section 706(2)(A) because it fails to provide a reasoned analysis explaining why the decision completely reverses judicially approved, longstanding BIA and Department policy and prior BIA and Department

determinations in this case, regarding the status of the Tribe and the Burley government and the requirements for organization under the IRA.

72. The December 22 Decision violates APA section 706(2)(A) because it is precluded by the doctrine of *res judicata*. The status of the Tribe and of Burley's purported government are issues that were previously litigated and finally decided by a court of competent jurisdiction in a prior dispute between Burley and the Department. The Court of Appeals for the District of Columbia Circuit held that the Secretary properly refused to recognize the tribe as organized under the Burley Faction. *Res judicata* therefore bars Burley from attempting to relitigate those issues in another forum. The Assistant Secretary's December 22 Decision is precluded by the district court's and Court of Appeals' resolution of those issues.

73. The December 22 Decision violates APA section 706(2)(A) because it is barred by the doctrine of judicial estoppel, because the Secretary previously argued, before the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit, that the Tribe was not organized and that she could not recognize Burley's purported government. The December 22 Decision reverses the very same actions that the Secretary defended before the district court and the Court of Appeals.

74. The December 22 Decision violates APA section 706(2)(A) because it fails to address a prior appeal by Chief Dixie. In October 2003, Chief Dixie filed an appeal with the Assistant Secretary – Indian Affairs, challenging the BIA's recognition (at that time) of Ms. Burley as Chairperson. On February 11, 2005, the Assistant Secretary – Indian Affairs dismissed the appeal on procedural grounds. The Assistant Secretary found that the BIA's 2004 Decision had rendered Chief Dixie's appeal moot, because that decision made clear that the BIA did not recognize Ms. Burley as Tribal Chairperson, that the Tribe was not

"organized;" and that the United States did not recognize any Tribal government. Because the December 22 Decision purports to rescind the final 2004 Decision, the Assistant Secretary must reinstate and decide Chief Dixie's appeal before recognizing any Tribal government.

75. The December 22 Decision violates APA section 706(2)(A) because it does not fulfill the Secretary's trust obligation to the Tribe and its members. The Secretary has a fiduciary duty to ensure that any tribal government he recognizes represents a majority of the tribal community. By recognizing a purported government that represents only three members of the Tribe, the Secretary (acting through his subordinate the Assistant Secretary) has breached his duty to the Tribe, the Tribal Council and the individual Plaintiffs.

76. The December 22 Decision violates APA section 706(2)(A) because it is inconsistent with the IRA. The IRA imposes substantive and procedural requirements that must be met before the Secretary may recognize a tribal government. By recognizing a tribal government that was not elected or ratified pursuant to those requirements, the Secretary (acting through the Assistant Secretary) has violated the IRA.

77. The December 22 Decision violates APA section 706(2)(A) because it unlawfully recognizes a tribal government based on the 1998 Resolution, which is invalid on its face. The 1998 Resolution identifies "at least" five individuals who are Tribe members, and recites that it was authorized by a majority of the Tribe's adult members. But it bears only two signatures. Moreover, one of those signatures purports to be that of Chief Dixie, who disputes the validity of the signature. Therefore, the 1998 Resolution cannot be the basis for a valid government recognized by the United States.

78. As a direct and proximate result of the December 22 Decision, Chief Dixie, the Tribal Council, and Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied their rightful opportunity to

participate in the organization and governance of the Tribe and will suffer irreparable injury and financial loss.

79. As a direct and proximate result of the December 22 Decision, Chief Dixie, Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied the benefits of Tribe membership and will suffer irreparable injury and financial loss.

80. As a direct and proximate result of the December 22 Decision, the Tribe and the members of the Tribe, including Chief Dixie, Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo, have been and will continue to be denied the use of the PL 638 funds available through the BIA, and the State Funds provided by the Commission, and will suffer irreparable injury and financial loss.

81. As a direct and proximate result of the December 22 Decision, the Tribe will be denied recognition to conduct traditional Tribal activities and official acts, and to intervene in legal and regulatory proceedings to protect its interests and those of its members, and will suffer irreparable injury and financial loss.

SECOND CAUSE OF ACTION

(Agency Action Unlawfully Withheld and Unreasonably Delayed in Violation of the APA)

82. Plaintiffs re-allege paragraphs 1 through 66, and incorporate those paragraphs herein as if set forth in full.

83. An agency's "failure to act" constitutes "agency action." 5 U.S.C § 551(13). The APA therefore provides that a court shall "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C §706(1).

84. The BIA's failure to adjudicate the status of the 580 Putative Members of the Tribe who submitted genealogies and other documentation to the BIA in response to the April 2007 public notices constitutes "agency action unlawfully withheld or unreasonably delayed."

85. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo submitted genealogies and other documentation to the BIA in response to the April 2007 public notices.

86. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied their rightful opportunity to participate in the organization and governance of the Tribe and will suffer irreparable injury and financial loss.

87. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, the Tribe will be denied the opportunity to organize itself and elect a legitimate representative government under the IRA and will suffer irreparable injury and financial loss.

88. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have been and will continue to be denied the benefits of Tribe membership and will suffer irreparable injury and financial loss.

89. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson, Antoine Azevedo and the Tribe have been and will continue to be denied the use of the PL 638 funds available through the BIA, and the State Funds provided by the Commission and will suffer irreparable injury and financial loss.

90. As a direct and proximate result of the BIA's failure to act on the information submitted by the Putative Members and to publish the names of those Putative Members who meet the criteria to participate in the initial organization of the Tribe, the Tribe will be denied recognition to conduct traditional Tribal activities and official acts, and to intervene in legal and regulatory proceedings to protect its interests and those of its members, and will suffer irreparable injury and financial loss.

PRAYER FOR RELIEF

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

A. Declaring that the Assistant Secretary acted arbitrarily, capriciously and otherwise not in accordance with law by acting to recognize the Tribe as "organized," to recognize the Burley Faction as the Tribe's government, to abandon the BIA's efforts to involve the tribal community in organizing the Tribe, and to rescind prior final determinations regarding the Tribe;

B. Vacating the December 22 Decision and directing the Assistant Secretary and the BIA to resume efforts to involve the entire tribal community in organizing the Tribe;

C. Preliminarily and permanently enjoining the Secretary, Assistant Secretary and BIA from taking any action to implement the December 22 Decision;

D. Directing the BIA to adjudicate the status of the Putative Members who submitted documentation of their claims to Tribe membership, and to publish the names of those Putative Members eligible to participate in the initial organization of the Tribe;

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

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

Respectfully submitted,

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(D.C. Bar No. 416953)
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(D.C. Bar No. 473969)
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Dated: January ___, 2011

Of Counsel:

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EXHIBIT A

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

IN REPLY REFER TO

MAR 26 2004

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

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

Dear Ms. Burley:

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

[redacted]

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Dale Risling, Sr.
Superintendent

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

EXHIBIT B

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 11 2005

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

Dear Mr. Dixie:

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

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

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

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

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

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

Sincerely,

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

Enclosure

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

EXHIBIT C

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 22 2010

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

Dear Mr. Dixie:

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 Rising 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. 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 Ms. Sylvia Burley, and her 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
Elizabeth Walker, Walker Law LLC

EXHIBIT D

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 01 2011

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

Dear Mr. Dixie:

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

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

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

Sincerely,

Larry Echo Hawk
Assistant Secretary – Indian Affairs

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

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EXHIBIT E

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 31 2011

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

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

Dear Ms. Burley and Mr. Dixie:

Introduction and Decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

Analysis

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

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

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

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

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

Application of Specific Legal Authorities

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

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

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

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

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

30 IBIA 241, 248.

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

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

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

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

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

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

Conclusion

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

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

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

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

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

Sincerely,

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EXHIBIT F

TRIBAL-STATE COMPACT

BETWEEN

THE STATE OF CALIFORNIA

AND THE

PINOLEVILLE POMO NATION

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Appendix A - Minimum Internal Control Standards

TRIBAL-STATE COMPACT
BETWEEN THE STATE OF CALIFORNIA AND THE PINOLEVILLE POMO NATION

The Pinoleville Pomo Nation ("the Tribe"), a federally recognized Indian tribe listed in the Federal Register as the Pinoleville Pomo Nation, California (formerly the Pinoleville Rancheria of Pomo Indians of California), and the State of California (hereinafter "the State") enter into this tribal-state compact pursuant to the Indian Gaming Regulatory Act of 1988 (hereinafter "IGRA").

PREAMBLE

WHEREAS, the State and the Tribe executed a tribal-state class III gaming compact on March 10, 2009, which was ratified by the California Legislature with the passage of Assembly Bill No. 122, and subsequently submitted to the United States Department of the Interior for approval (hereinafter the "2009 Compact"); and

WHEREAS, on February 25, 2011, the United States Department of the Interior disapproved the 2009 Compact; and

WHEREAS, any potential federal court review of the Department of the Interior's disapproval of the 2009 Compact could take a significant amount of time, with uncertain outcome; and

WHEREAS, in light of the Tribe's significant needs and investment of resources in furtherance of its proposed gaming project, the State and the Tribe wish to enter into a new compact rather than await the outcome of any potential federal court review of the February 25, 2011, decision of the Department of the Interior; and

WHEREAS, the State and the Tribe have conducted good faith negotiations for the purpose of agreeing upon terms for a new tribal-state Class III Gaming Compact (hereinafter the "Compact"); and

WHEREAS, this Compact includes terms that are intended to address concerns raised by the United States Department of the Interior in disapproving the 2009 Compact, without expressing agreement or disagreement with those concerns, in accommodation of the unique circumstances of the Tribe; and

WHEREAS, the Special Distribution Fund created by the California Legislature is at risk of experiencing shortfalls in the foreseeable future, and this Compact provides revenue to that fund; and

WHEREAS, the State and the Tribe recognize that the exclusive rights that the Tribe will enjoy under this Compact create a unique opportunity for the Tribe to operate a Gaming Facility in an economic environment free of competition from the operation of slot machines on non-Indian lands in California and that this unique economic environment is of great value to the Tribe; and

WHEREAS, in consideration of the exclusive rights enjoyed by the Tribe to engage in certain Gaming Activities and to operate the number of Gaming Devices specified herein, and the other meaningful concessions offered by the State in good faith negotiations, the Tribe has agreed, inter alia, to provide to the State, on a sovereign-to-sovereign basis, a fair revenue contribution from the Gaming Devices operated pursuant to this Compact; and

WHEREAS, the Tribe and the State share an interest in mitigating the off-reservation impacts of the Tribe's Gaming Facility, affording meaningful consumer and employee protections in connection with the operations of the Gaming Facility, fairly regulating the Gaming Activities conducted at the Gaming Facility, and fostering a good-neighbor relationship; and

WHEREAS, the Tribe has expended considerable resources and incurred significant financial obligations in connection with the project it is pursuing under this Compact and the 2009 Compact; and

WHEREAS, the Tribe and the State share a joint sovereign interest in ensuring that tribal Gaming Activities are free from criminal and other undesirable elements; and

WHEREAS, this Compact will afford the Tribe primary responsibility over the regulation of its Gaming Facility and will enhance tribal economic development and self-sufficiency; and

WHEREAS, the State and the Tribe have therefore concluded that this Compact protects the interests of the Tribe and its members, the surrounding community, and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits;

WHEREAS, the State and the Tribe agree that all terms of this Compact are intended to be binding and enforceable; and

WHEREAS, upon approval by the United States Department of the Interior, this Compact shall supersede the 2009 Compact;

NOW, THEREFORE, the Tribe and the State agree as set forth herein:

SECTION 1.0. PURPOSES AND OBJECTIVES.

The terms of this Compact are designed to:

(a) Foster a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

(b) Develop and implement a means of regulating the Class III Gaming to ensure its fair and honest operation in a way that protects the interests of the Tribe, the State, its citizens, and local communities 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 its governmental services and programs.

(c) Promote ethical practices in conjunction with that Class III Gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's Gaming Operation, protect 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, and protect the patrons and employees of the Gaming Operation and the local communities.

(d) Achieve the objectives set forth in the preamble.

SECTION 2.0. DEFINITIONS.

Sec. 2.1. "Applicable Codes" means the California Building Code and the California Public Safety Code applicable to the County of Mendocino, as set forth in Titles 19 and 24 of the California Code of Regulations, as those regulations

may be amended during the term of this Compact, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire and safety.

Sec. 2.2. "Applicant" means an individual or entity that applies for a tribal gaming license or for a State Gaming Agency determination of suitability.

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

Sec. 2.4. "Compact" means this compact.

Sec. 2.5. "County" means the County of Mendocino, California, a political subdivision of the State.

Sec. 2.6. "Financial Source" means any person or entity who, directly or indirectly, extends financing to the Gaming Facility or Gaming Operation.

Sec. 2.7. "Gaming Activity" or "Gaming Activities" means the Class III Gaming activities authorized under this Compact in section 3.1.

Sec. 2.8. "Gaming Device" means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution. For purposes of calculating the number of Gaming Devices, each player station or terminal on which a game is played constitutes a separate Gaming Device, irrespective of whether it is part of an interconnected system to such terminals or stations. "Gaming Device" includes, but is not limited to, video poker, but does not include electronic, computer, or other technological aids that qualify as class II gaming (as defined under IGRA).

Sec. 2.9. "Gaming Employee" means any natural person who (a) conducts, operates, maintains, repairs, accounts for, or assists in any Class III Gaming Activities, or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, maintain, repair, account for, assist, or supervise any such Gaming Activities, (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.

Sec. 2.10. "Gaming Facility" or "Facility" means any building in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or other funds of the Gaming Operation are maintained (excluding offsite facilities dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation.

Sec. 2.11. "Gaming Operation" means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

Sec. 2.12. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on the Tribe's Indian lands in California and approved under IGRA.

Sec. 2.13. "Gaming Resources" means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, Gaming Devices and ancillary equipment, implements of Gaming Activities such as playing cards, furniture designed primarily for Gaming Activities, maintenance or security equipment and services, and Class III Gaming consulting services. "Gaming Resources" does not include professional accounting or legal services.

Sec. 2.14. "Gaming Resource Supplier" means any person or entity who, directly or indirectly, does, or is deemed likely to, manufacture, distribute, supply, vend, lease, purvey, or otherwise provide, to the Tribe's Gaming Operation or Facility at least twenty-five thousand dollars ($25,000) in Gaming Resources in any twelve (12)-month period, or who, directly or indirectly, receives, or is deemed likely to receive, in connection with the Tribe's Gaming Operation or Facility, at least twenty-five thousand dollars ($25,000) in any consecutive twelve (12)-month period, 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, but for the purveyance, the purveyor is not otherwise a Gaming Resource Supplier, 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 Gaming Operation.

Sec. 2.15. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. § 1166 et seq. and 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

Sec. 2.16. "Interested Persons" means (i) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, (ii) any city with a nexus to the Project, and (iii) persons, groups, or agencies that request in writing a notice of preparation of a draft Tribal Environmental Impact Report ("TEIR") or have commented on the Project in writing to the Tribe or the County.

Sec. 2.17. "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.

Sec. 2.18. "Net Win" is drop, plus the redemption value of expired tickets, less fills, less payouts, less that portion of the Gaming Operation's payments to a third-party wide-area progressive jackpot system provider that is contributed only to the progressive jackpot amount.

Sec. 2.19. "NIGC" means the National Indian Gaming Commission.

Sec. 2.20. "Project" means any activity occurring on Indian lands, a principal purpose of which is to serve the Tribe's Gaming Activities or Gaming Operation, and which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect physical change in the off-reservation environment. This definition shall be understood to include, but not be limited to, the addition of Gaming Devices within an existing Gaming Facility, the impacts of which have not previously been addressed in a Tribal Environmental Impact Report, construction or planned expansion of any Gaming Facility and any other construction or planned expansion, a principal purpose of which is to serve a Gaming Facility, including, but not limited to, access roads, parking lots, a hotel, utility, or waste disposal systems, or water supply, as long as such construction or expansion causes a direct or indirect physical change in the off-reservation environment. For purposes of this definition, section 11.0, and Exhibit A, "reservation" refers to the Tribe's Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.

Sec. 2.21. "Significant Effect(s) on the Off-Reservation Environment" is the same as "Significant Effect(s) on the Environment" and occur(s) if any of the following conditions exist:

(a) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or achieve short-term, to the disadvantage of long-term, environmental goals.

(b) The possible effects of a Project on the off-reservation environment are individually limited but cumulatively considerable. As used herein, "cumulatively considerable" means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(c) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

For purposes of this definition, "reservation" refers to the Tribe's Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.

Sec. 2.22. "State" means the State of California or an authorized official or agency thereof designated by this Compact or by the Governor.

Sec. 2.23. "State Gaming Agency" means the entities authorized to investigate, approve, regulate and license gaming pursuant to the Gambling Control Act (Chapter 5 (commencing with section 19800) of Division 8 of the Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.

Sec. 2.24. "State Designated Agency" means the entity or entities designated or to be designated by the Governor to exercise rights and fulfill responsibilities established by this Compact.

Sec. 2.25. "Tribe" means the Pinoleville Pomo Nation, a federally recognized Indian tribe listed in the Federal Register as the Pinoleville Pomo

Nation, California (formerly the Pinoleville Rancheria of Pomo Indians of California), or an authorized official or agency thereof.

Sec. 2.26. "Tribal Chairperson" means the person duly elected under the Tribe's Constitution to perform the duties specified therein, including serving as the Tribe's official representative.

Sec. 2.27. "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 NIGC, 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 3.0. SCOPE OF CLASS III GAMING AUTHORIZED.

Sec. 3.1. Authorized and Permitted Class III Gaming.

(a) The Tribe is hereby authorized to operate only the following Gaming Activities under the terms and conditions set forth in this Compact:

(1) Gaming Devices.

(2) Any banking or percentage card games.

(3) 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.

(b) Nothing herein shall be construed to preclude the Tribe from offering class II gaming or preclude the negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.

(c) Nothing herein shall be construed to authorize the operation of the game known as roulette, whether or not played with or on a mechanical, electro-mechanical, electrical, or video device, or cards,

or any combination of such devices, or the operation of any game that incorporates the physical use of die or dice.

(d) The Tribe shall not engage in Class III Gaming that is not expressly authorized in this section.

SECTION 4.0. AUTHORIZED LOCATION OF GAMING FACILITY, NUMBER OF GAMING DEVICES, AND REVENUE CONTRIBUTION.

Sec. 4.1. Authorized Number of Gaming Devices. Subject to section 3.1, subdivision (b), and section 4.2, the Tribe is entitled to operate up to a total of 900 Gaming Devices pursuant to the conditions set forth in sections 4.2 and 4.3.1.

Sec. 4.2. Authorized Gaming Facility. The Tribe may engage in Class III Gaming only on eligible Indian lands owned by the Tribe, at a single Gaming Facility located within the boundaries of the Pinoleville Rancheria as those boundaries exist as of the execution date of this Compact.

Sec. 4.3.1. Revenue Contribution.

(a) The Tribe shall pay quarterly to the State Gaming Agency for deposit into the Special Distribution Fund created by the Legislature, in accordance with the following schedule:

Number of Gaming Devices in Quarterly Device Base	Percentage of Average Gaming Device Net Win
1-100	0%
101-350	7%
351-750	10%
751-900	15%

The payment specified herein has been negotiated between the parties as a fair contribution, based upon the Tribe's market conditions, its circumstances, and the rights afforded under this Compact.

(b) (1) The Tribe shall remit to the State Gaming Agency for deposit into the Special Distribution Fund the payments referenced in

subdivision (a) in quarterly payments. The quarterly payments shall be based on the Net Win generated during that quarter from the Gaming Devices, which payments shall be due on the thirtieth day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter).

(2) If the Gaming Activities authorized by this Compact commence during a calendar quarter, the first payment shall be due on the thirtieth day following the end of the first full quarter of the Gaming Activities and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter.

(3) All quarterly payments shall be accompanied by the certification specified in subdivision (d).

(c) The quarterly payments due under section 4.3.1 shall be determined by first determining the total number of all Gaming Devices operated by the Tribe during a given quarter ("Quarterly Device Base"). The "Average Device Net Win" is calculated by dividing the total Net Win from all Gaming Devices during the quarter by the Quarterly Device Base. The Quarterly Device Base is equal to the sum total of the number of Gaming Devices in operation for each day of the calendar quarter divided by the number of days in the calendar quarter that the Gaming Operation operates any Gaming Devices during the given calendar quarter.

(d) At the time each quarterly payment is due, regardless of whether any monies are owed, the Tribe shall submit to the State a certification (the "Quarterly Net Win Contribution Report") that specifies the following:

(1) calculation of the Quarterly Device Base;

(2) the Net Win calculation reflecting the quarterly Net Win from the operation of all Gaming Devices (broken down by Gaming Device);

(3) the Average Device Net Win;

(4) the percentage(s) applied to the Average Device Net Win pursuant to subdivision (a); and

(5) the total amount of the quarterly payment paid to the State.

The Quarterly Net Win Contribution Report shall be prepared by the chief financial officer of the Gaming Operation and shall also be sent to the State Gaming Agency.

(e) (1) At any time after the fourth quarter, but in no event later than April 30 of the following calendar year, the Tribe shall provide to the State Gaming Agency and the agency, trust, fund, or entity to which quarterly payments are made pursuant to subdivision (b) an audited annual certification of its Net Win calculation from the operation of Gaming Devices. The audit shall be conducted in accordance with generally accepted auditing standards, as applied to audits for the gaming industry, by an independent certified public accountant who is not employed by the Tribe, the Tribal Gaming Agency, the Management Contractor, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits or independent audits of the Gaming Operation, and has no financial interest in any of these entities. The auditor used by the Tribe for this purpose shall be approved by the State Gaming Agency, or other State Designated Agency, but the State shall not unreasonably withhold its consent.

(2) If the audit shows that the Tribe made an overpayment from its Net Win to the State during the year covered by the audit, the Tribe's next quarterly payment may be reduced by the amount of the overage. Conversely, if the audit shows that the Tribe made an underpayment to the State during the year covered by the audit, the Tribe's next quarterly payment shall be increased by the amount owing.

(3) The State Gaming Agency shall be authorized to confer with the auditor at the conclusion of the audit process and to review all of the independent certified public accountant's work papers and documentation relating to the audit. The Tribal Gaming Agency shall be notified of and provided the opportunity to

participate in and attend any such conference or document review.

(f) The State Gaming Agency may audit the Quarterly Device Base and Net Win calculations specified in subdivision (c). The State Gaming Agency shall have access to all records deemed necessary by the State Gaming Agency to verify the Quarterly Device Base and Net Win calculations, including access to the Gaming Device accounting systems and server-based systems and software and to the data contained therein. If the State Gaming Agency determines that the Net Win is understated or the deductions overstated, it will promptly notify the Tribe and provide a copy of the audit. The Tribe within twenty (20) days will either accept the difference or provide a reconciliation satisfactory to the State Gaming Agency. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe must immediately pay the amount of the resulting deficiency, plus accrued interest thereon at the rate of one percent (1.0%) per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less. If the Tribe does not accept the difference but does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under section 13.0. The parties expressly acknowledge that the certifications provided for in subdivision (d) are subject to section 8.4, subdivision (h).

(g) Notwithstanding anything to the contrary in section 13, any failure of the Tribe to remit the payments referenced in subdivision (a) pursuant to subdivisions (b), (c), (d), (e) and (f) will entitle the State to immediately seek injunctive relief in federal or state court, at the State's election, to compel the payments, plus accrued interest thereon at the rate of one percent (1.0%) per month, or the maximum rate permitted by State law for delinquent payments owed to the State, whichever is less; and further, the Tribe expressly consents to be sued in either court and waives its right to assert sovereign immunity against the State in any such proceeding. Failure to make timely payment shall be deemed a material breach of this Compact.

(h) 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:

(1) Grants, including any administrative costs, for programs designed to address gambling addiction;

(2) Grants, including any administrative costs and environmental review costs, for the support of state and local government agencies impacted by tribal government gaming;

(3) 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;

(4) Payment of shortfalls that may occur in the Revenue Sharing Trust Fund; and

(5) Any other purposes specified by the Legislature. It is the intent of the parties that California Indian tribes with class III gaming compacts with the State obligating them to pay into the Special Distribution Fund will be consulted in the process of identifying purposes for grants made to local governments from the Special Distribution Fund.

Sec. 4.4. Exclusivity.

In recognition of the Tribe's agreement to make the payments specified in section 4.3.1, the Tribe shall have the following rights:

(a) 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, the Tribe shall have the right to exercise one of the following options:

(1) Terminate this Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III Gaming authorized by this Compact; or

(2) Continue under the Compact with an entitlement to a reduction of the rate specified in section 4.3.1, subdivision (a), following conclusion of negotiations, to provide for (i) compensation to the State for the actual and reasonable costs of regulation, as determined by the State Director of Finance; (ii) reasonable payments to local governments impacted by tribal government gaming, the amount to be determined based upon any Intergovernmental Agreement entered into pursuant to section 11.8.7, if such Intergovernmental Agreement is in effect; (iii) grants for programs designed to address gambling addiction; and (iv) such assessments as may be permissible at such time under federal law. Such negotiations shall commence within fifteen (15) days after receipt of a written request by a party to enter into the negotiations, unless both parties agree in writing to an extension of time. If the Tribe and State fail to reach agreement on the amount of reduction of the rate of payments within sixty (60) days following commencement of the negotiations specified in this section, the amount shall be determined by arbitration pursuant to section 13.2 of the Compact.

(b) Nothing in this section is intended to preclude the State Lottery from offering any lottery games or devices that are currently or may hereafter be authorized by state law.

SECTION 5.0. REVENUE SHARING WITH NON-GAMING TRIBES.

Sec. 5.1. Definitions.

For purposes of this section 5.0, the following definitions apply:

(a) "Revenue Sharing Trust Fund" is a fund created by the Legislature and administered by the California Gambling Control Commission, as trustee, with no duties or obligations except as set forth in this Compact, for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes. The Commission shall have no discretion with respect to the use or disbursement by recipient tribes of the Revenue Sharing Trust Fund monies. Its authority shall be to serve as a depository of the trust funds and to allocate and disburse them on a quarterly basis to eligible Non-Gaming and Limited-Gaming Tribes as specified in the tribal-state compacts. In no event shall the State's general fund be obligated to make up any shortfall in the Revenue Sharing Trust Fund or to pay any unpaid claims connected therewith, and, notwithstanding any provision of law including any existing provision of law implementing the Commission's obligations related to the Revenue Sharing Trust Fund under any class III gaming compact, Non-Gaming Tribes and Limited-Gaming Tribes are not third party beneficiaries of this Compact and shall have no right to seek any judicial order compelling disbursement of any Revenue Sharing Trust monies to them.

(b) A "Non-Gaming Tribe" is a California federally recognized tribe, with or without a tribal-state compact, which has not engaged in, or offered, class II, or Class III Gaming in any location whether within or without California, as of the date of distribution to such tribe from the Revenue Sharing Trust Fund or during the immediately preceding three hundred sixty-five (365) days.

(c) A "Limited-Gaming Tribe" is a California federally recognized tribe that has a class III gaming compact with the State but is operating fewer than a combined total of three hundred fifty (350) Gaming Devices in all of its gaming operations wherever located.

Sec. 5.2. Revenue Sharing Trust Fund.

(a) The Tribe agrees that it will pay into the Revenue Sharing Trust Fund on January 30 of the following year for distribution on an equal basis to Non-Gaming and Limited-Gaming Tribes the following amounts:

EXHIBIT G

TYPE-C

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

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

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

Plaintiff

CALIFORNIA VALLEY MIWOK TRIBE

represented by **Christopher Michael Loveland**
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M. Roy Goldberg
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V.

Defendant

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

represented by **Kenneth Dean Rooney**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

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

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

Defendant

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

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Intervenor Defendant

CALIFORNIA VALLEY MIWOK TRIBE

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TERMINATED: 04/17/2012
ATTORNEY TO BE NOTICED

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PRO HAC VICE
ATTORNEY TO BE NOTICED

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

03/16/2011	8	WITHDRAWN BY COUNSEL (SEE DOCKET ENTRY 19)..... MOTION for Preliminary Injunction by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Affidavit Exhibit 1 to Motion, # 2 Exhibit Exhibit A to Affidavit of Robert Uram, # 3 Exhibit Exhibit B to Affidavit of Robert Uram, # 4 Exhibit Exhibit C to Affidavit of Robert Uram, # 5 Exhibit Exhibit D to Affidavit of Robert Uram, # 6 Exhibit Exhibit E to Affidavit of Robert Uram, # 7 Exhibit Exhibit F to Affidavit of Robert Uram, # 8 Exhibit Exhibit G to Affidavit of Robert Uram, # 9 Exhibit Exhibit H to Affidavit of Robert Uram, # 10 Exhibit Exhibit I to Affidavit of Robert Uram, # 11 Exhibit Exhibit J to Affidavit of Robert Uram, # 12 Exhibit Exhibit K to Affidavit of Robert Uram, # 13 Exhibit Exhibit L to Affidavit of Robert Uram, # 14 Exhibit Exhibit M to Affidavit of Robert Uram, # 15 Exhibit Exhibit N to Affidavit of Robert Uram, # 16 Exhibit Exhibit O to Affidavit of Robert Uram to, # 17 Affidavit Exhibit 2 to Motion, # 18 Affidavit Exhibit 3 to Motion, # 19 Affidavit Exhibit 4 to Motion, # 20 Affidavit Exhibit 5 to Motion, # 21 Affidavit Exhibit 6 to Motion, # 22 Affidavit Exhibit 7 to Motion, # 23 Affidavit Exhibit 8 to Motion, # 24 Affidavit Exhibit 9 to Motion, # 25 Affidavit Exhibit 10 to Motion, # 26 Text of Proposed Order)(Goldberg, M.) Modified on 4/8/2011 (jf,). (Entered: 03/16/2011)
03/17/2011	9	First MOTION for Extension of Time to File Answer by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/17/2011)
03/17/2011		MINUTE ORDER: It is hereby ORDERED that the defendants file by April 1, 2011 their opposition to plaintiffs' motion for a preliminary injunction. Plaintiffs shall file by April 8, 2011 their reply. Signed by Judge Richard W. Roberts on 3/17/11. (lcrwr1) (Entered: 03/17/2011)
03/17/2011		MINUTE ORDER: It is hereby ORDERED that the defendants' motion 9 for an extension of time be, and hereby is, GRANTED. Defendants shall file an answer or other response to the plaintiffs' complaint by April 27, 2011. Signed by Judge Richard W. Roberts on 3/17/11. (lcrwr1) (Entered: 03/17/2011)
03/17/2011		Set/Reset Deadlines: Defendant's Answer to the Complaint due by 4/27/2011. (hs) (Entered: 03/17/2011)
03/17/2011		Set/Reset Deadlines: Defendant's Response to Motion for Preliminary Injunction due by 4/1/2011; Plaintiff's Reply due by 4/8/2011. (hs) (Entered: 03/17/2011)
03/17/2011	10	NOTICE of Appearance by Robert A. Rosette on behalf of CALIFORNIA VALLEY MIWOK TRIBE (znmw,) (Entered: 03/22/2011)
03/17/2011	11	MOTION to Intervene as a Defendant by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Text of Proposed Order re Motion to Intervene, # 2 Declaration re Motion to Intervene, # 3 Motion to Dismiss, # 4 Text of Proposed Order re Motion to Dismiss, # 5 Declaration re Motion to Dismiss, # 6 Exhibit A to Declarations re Motion to Intervene and Dismiss, # 7 Exhibit B to Declarations re Motion to Intervene and Dismiss, # 8 Exhibit C to

		Declarations re Motion to Intervene and Dismiss, # 9 Exhibit D to Declarations re Motion to Intervene and Dismiss, # 10 Exhibit E to Declarations re Motion to Intervene and Dismiss, # 11 Exhibit F to Declarations re Motion to Intervene and Dismiss, # 12 Exhibit G to Declarations re Motion to Intervene and Dismiss)(znmw,) (Entered: 03/22/2011)
03/22/2011	12	NOTICE of Appearance by Christopher Michael Loveland on behalf of All Plaintiffs (Loveland, Christopher) (Entered: 03/22/2011)
03/22/2011	13	MOTION to Expedite *Time to Rule on the California Valley Miwok's Motion for Leave to Intervene as Defendant* by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Affidavit of Robert A. Rosette)(Rosette, Robert) (Entered: 03/22/2011)
03/25/2011		MINUTE ORDER: It is hereby ORDERED that the parties file by March 29, 2011 responses to the motion 11 to intervene. Signed by Judge Richard W. Roberts on 3/25/11. (lcrwr1) (Entered: 03/25/2011)
03/25/2011		Set/Reset Deadlines: Parties Responses to Motion to Intervene due by 3/29/2011. (hs) (Entered: 03/25/2011)
03/29/2011	14	Memorandum in opposition to re 11 MOTION to Intervene filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Exhibit 1 -Affidavit of Robert Uram, # 2 Exhibit A to Robert Uram Affidavit, # 3 Exhibit B to Robert Uram Affidavit)(Goldberg, M.) (Entered: 03/29/2011)
03/29/2011	15	ENTERED IN ERROR.....MEMORANDUM re 11 MOTION to Intervene filed by CALIFORNIA VALLEY MIWOK TRIBE by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Rooney, Kenneth) Modified on 3/30/2011 (jf,). (Entered: 03/29/2011)
03/29/2011	16	RESPONSE re 11 MOTION to Intervene filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (jf,) (Entered: 03/30/2011)
03/30/2011		NOTICE OF CORRECTED DOCKET ENTRY: Document No. re 15 Memorandum was entered in error and will be refiled by the clerk's office under the correct category.(jf,) (Entered: 03/30/2011)
03/30/2011		MINUTE ORDER: It is hereby ORDERED that the California Valley Miwok Tribe file by April 4, 2011 a reply in support of its motion to intervene. Signed by Judge Richard W. Roberts on 3/30/11. (lcrwr1) (Entered: 03/30/2011)
03/31/2011		Set/Reset Deadlines: Plaintiff's Reply to Motion to Intervene due by 4/4/2011. (hs) (Entered: 03/31/2011)
03/31/2011	17	Consent MOTION for Extension of Time to File Response/Reply as to 8 MOTION for Preliminary Injunction by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/31/2011)
03/31/2011	18	MOTION for Extension of Time to *Modify Briefing Schedule* by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Affidavit of

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

		LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Text of Proposed Order)(Goldberg, M.) (Entered: 05/19/2011)
05/25/2011		MINUTE ORDER: It is hereby ORDERED that the parties' joint motion 22 to stay be, and hereby is, GRANTED. The case is stayed and administratively closed until July 7, 2011, by which date the parties shall file a joint status report and proposed order. Signed by Judge Richard W. Roberts on 5/25/11. (lcrwr1) (Entered: 05/25/2011)
07/07/2011	23	STATUS REPORT *Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Motion for Extension of the Temporary Stay of Litigation* by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Plaintiffs' Proposed Order, # 2 Defendants' Proposed Order)(Rooney, Kenneth) (Entered: 07/07/2011)
07/11/2011	24	ORDER; Granting Joint Motion for Temporary Stay of Litigation, Joint Status Report due by 8/15/2011, Signed by Judge Richard W. Roberts on 7/11/2011. (hs) (Entered: 07/11/2011)
08/12/2011	25	STATUS REPORT *Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Unopposed Motion for Extension of the Temporary Stay of Litigation* by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 08/12/2011)
08/15/2011	26	ORDER, Staying case until 09/02/11; Joint Status Report due by 9/2/2011. Signed by Judge Richard W. Roberts on 8/12/11. (See Order for detail) (gdf) (Entered: 08/15/2011)
09/01/2011	27	STATUS REPORT *AND PROPOSED ORDER REGARDING THE STATUS OF THE RECONSIDERED DECISION OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS* by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 09/01/2011)
09/02/2011	28	NOTICE *of Filing Emergency Supplement to Motion to Intervene* by CALIFORNIA VALLEY MIWOK TRIBE re 11 MOTION to Intervene (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Rosette, Robert) Modified on 9/6/2011 to correct document number (jf,). (Entered: 09/02/2011)
09/06/2011	29	RESPONSE re 28 Notice (Other) *Emergency Supplement* filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Exhibit A)(Goldberg, M.) (Entered: 09/06/2011)
09/09/2011		MINUTE ORDER: In light of the parties' September 1, 2011 joint status report, it is hereby ORDERED that the parties submit by September 16, 2011 a proposed order and joint status report proposing a schedule on which the case

		should proceed. Signed by Judge Richard W. Roberts on 9/9/11. (lcrwr1) (Entered: 09/09/2011)
09/09/2011		Set/Reset Deadlines: Joint Status Report due by 9/16/2011 (hs) (Entered: 09/09/2011)
09/13/2011	30	STATUS REPORT *(Joint)* by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Goldberg, M.) (Entered: 09/13/2011)
09/15/2011	31	NOTICE of Proposed Order by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON re 30 Status Report (Goldberg, M.) (Entered: 09/15/2011)
09/20/2011		MINUTE ORDER: In light of the parties' September 13, 2011 joint status report, it is hereby ORDERED that plaintiffs file amended complaint by October 17, 2011, that defendants answer or otherwise respond to the first amended complaint and lodge the administrative record by December 1, 2011, and that plaintiffs shall have 30 days to review the administrative record and request supplementation or discovery. Signed by Judge Richard W. Roberts on 9/20/11. (lcrwr1) (Entered: 09/20/2011)
10/17/2011	32	FIRST AMENDED COMPLAINT against MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR filed by MICHAEL MENDIBLES, YAKIMA DIXIE, EVELYN WILSON, TRIBAL COUNCIL, ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, VELMA WHITEBEAR, ANTONIA LOPEZ.(znmw,) (Entered: 10/18/2011)
12/01/2011	33	ADMINISTRATIVE RECORD *Notice of Lodging* by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Certificate of Service)(Rooney, Kenneth) (Entered: 12/01/2011)
12/01/2011	34	ANSWER to 32 Amended Complaint by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. Related document: 32 Amended Complaint filed by TRIBAL COUNCIL, ANTONIA LOPEZ, YAKIMA DIXIE, MICHAEL MENDIBLES, CALIFORNIA VALLEY MIWOK TRIBE, EVELYN WILSON, VELMA WHITEBEAR, ANTOINE AZEVEDO.(Rooney, Kenneth) (Entered: 12/01/2011)
12/13/2011	35	Amended MOTION to Intervene by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Statement of Points and Authorities in Support of Proposed Intervenor-Defendant's Motion For Leave to Intervene, # 2 Proposed Order Granting Proposed Intervenor-Defendant's Motion to Intervene, # 3 Motion to Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief, # 4 Statement of Points and Authorities in Support of Intervenor-Defendant's Motion to Dismiss, # 5 Declaration of Robert A. Rosette in Support of Intervenor-Defendant's Motion to Dismiss, # 6 Exhibits A-R to Declaration of Robert A. Rosette in Support of Motion to Dismiss, # 7 Proposed Order Granting Intervenor-Defendant's Motion to Dismiss)(Rosette, Robert) (Entered:

		12/13/2011)
12/13/2011	36	MOTION to Expedite *Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)* by CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Proposed Order Granting Intervenor-Defendant's Motion to Expedite Motion For Leave to Intervene As Defendant)(Rosette, Robert) (Entered: 12/13/2011)
12/13/2011	37	AFFIDAVIT re 35 Amended MOTION to Intervene, 36 MOTION to Expedite *Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)* MOTION to Expedite *Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35) Declaration of Robert A. Rosette in Support of Amended Motion For Leave to Intervene and Motion to Expedite Consideration of Motion For Leave to Intervene* by CALIFORNIA VALLEY MIWOK TRIBE. (Attachments: # 1 Exhibits A-B to Declaration of Robert A. Rosette in Support of Proposed Intervenor-Defendant's Motion to Intervene and Motion to Expedite Consideration of Motion to Intervene) (Rosette, Robert) (Entered: 12/13/2011)
12/28/2011	38	Joint MOTION for Briefing Schedule *for Cross Motions for Summary Judgment* by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 12/28/2011)
12/29/2011	39	Memorandum in opposition to re 36 MOTION to Expedite *Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)* MOTION to Expedite *Consideration of Proposed Intervenor-Defendant's Motion For Leave to Intervene As Defendant (related to Docket No. 35)* filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 12/29/2011)
12/29/2011	40	Memorandum in opposition to re 35 Amended MOTION to Intervene filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 12/29/2011)
01/03/2012	41	Joint MOTION for Extension of Time to *For Plaintiffs to Request Supplementation of the Administrative Record* by ANTOINE AZEVEDO, MICHAEL BLACK, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, LARRY ECHO HAWK, ANTONIA LOPEZ, MICHAEL MENDIBLES, KEN SALAZAR, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Text of Proposed Order) (Goldberg, M.) (Entered: 01/03/2012)
01/09/2012	42	REPLY to opposition to motion re 35 Amended MOTION to Intervene filed by

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

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

		Injunctive Relief by Intervenor-Defendant CALIFORNIA VALLEY MIWOK TRIBE (Attachments: # 1 Declaration of Robert A. Rosette, # 2 Exhibit A-R to Declaration of Robert A. Rosette, # 3 Text of Proposed Order)(jf,) (Entered: 04/05/2012)
03/27/2012	55	STATUS REPORT *reflecting deadlines for briefing Intervenor's Motion to Dismiss* by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/27/2012)
03/29/2012	56	Cross MOTION for Summary Judgment by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR (Attachments: # 1 Memorandum in Support of Federal Defendants' Cross-Motion for Summary Judgment, # 2 Text of Proposed Order)(Rooney, Kenneth) (Entered: 03/29/2012)
03/29/2012	57	RESPONSE re 51 MOTION for Leave to File *Supplement to Administrative Record* filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Rooney, Kenneth) (Entered: 03/29/2012)
04/16/2012		MINUTE ORDER: It is hereby ORDERED that the consent motion 53 be, and hereby is, GRANTED and Saba Bazzazieh is admitted to appear pro hac vice. Signed by Judge Richard W. Roberts on 4/12/2012. (lcrwr1) (Entered: 04/16/2012)
04/16/2012		MINUTE ORDER: In light of the parties' March 27, 2012 status report, it is hereby ORDERED that responses to the intervenor's motion to dismiss are due April 20, 2012 and the intervenor's reply is due April 27, 2012. Signed by Judge Richard W. Roberts on 4/12/2012. (lcrwr1) (Entered: 04/16/2012)
04/17/2012		Set Deadlines: Responses due by 4/20/2012, Reply due by 4/27/2012. (hs) (Entered: 04/17/2012)
04/20/2012	59	Memorandum in opposition to re 58 MOTION to Dismiss filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Goldberg, M.) (Entered: 04/20/2012)
04/20/2012	60	RESPONSE re 58 MOTION to Dismiss filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Attachments: # 1 Exhibit 1)(Rooney, Kenneth) (Entered: 04/20/2012)
04/27/2012	61	REPLY to opposition to motion re 49 MOTION for Summary Judgment <filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) Modified on 4/30/2012 (jf,). (Entered: 04/27/2012)
04/27/2012	62	REPLY to opposition to motion re 51 MOTION for Leave to File *Supplement to Administrative Record* filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (Goldberg, M.) (Entered: 04/27/2012)

04/27/2012	63	REPLY to opposition to motion re 58 MOTION to Dismiss *Plaintiff's First Amended Complaint (Related to Dkt Nos. 58 and 60)* filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 04/27/2012)
04/27/2012	64	REPLY to opposition to motion re 58 MOTION to Dismiss *Plaintiffs' First Amended Complaint (Related to Dkt. Nos. 58 and 59)* filed by CALIFORNIA VALLEY MIWOK TRIBE. (Rosette, Robert) (Entered: 04/27/2012)
04/30/2012		NOTICE OF ERROR re 61 Reply to opposition to Motion; emailed to rgoldberg@sheppardmullin.com, cc'd 8 associated attorneys -- The PDF file you docketed contained errors: 1. Two-part docket entry, 2. Please refile document, 3. refile same pleading using the Opposition Event (jf,) (Entered: 04/30/2012)
04/30/2012	65	Memorandum in opposition to re 56 Cross MOTION for Summary Judgment filed by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL. (Attachments: # 1 Text of Proposed Order)(Goldberg, M.) (Entered: 04/30/2012)
05/11/2012	66	NOTICE *Filing and Service of Appendix of 33 Administrative Record Documents Relied upon in Briefing on Intervenors' Motion to Dismiss* by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Goldberg, M.) Modified on 5/14/2012 (jf,). (Entered: 05/11/2012)
05/18/2012	67	REPLY to opposition to motion re 56 Cross MOTION for Summary Judgment filed by MICHAEL BLACK, LARRY ECHO HAWK, KEN SALAZAR. (Rooney, Kenneth) (Entered: 05/18/2012)
06/01/2012	68	NOTICE by ANTOINE AZEVEDO, CALIFORNIA VALLEY MIWOK TRIBE, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON re 33 Administrative Record (Attachments: # 1 Exhibit 1 - Index to Appendix, # 2 Exhibit 2 Part 1, # 3 Exhibit 2 Part 2, # 4 Exhibit 2 Part 3, # 5 Exhibit 2 Part 4, # 6 Exhibit 2 Part 5)(Goldberg, M.) (Entered: 06/01/2012)
06/01/2012	69	ADMINISTRATIVE RECORD by ANTOINE AZEVEDO, YAKIMA DIXIE, ANTONIA LOPEZ, MICHAEL MENDIBLES, TRIBAL COUNCIL, VELMA WHITEBEAR, EVELYN WILSON. (See Docket Entry 68 to view document). (znmw,) (Entered: 06/04/2012)

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Billable Pages:	13	Cost:	1.30

EXHIBIT H

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

THE CALIFORNIA VALLEY MIWOK TRIBE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

THE TRIBAL COUNCIL,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

YAKIMA DIXIE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

VELMA WHITEBEAR,
213 Downing Drive
Galt, CA 95632

ANTONIA LOPEZ,
P.O. Box 1432
Jackson, CA 95642

MICHAEL MENDIBLES,
P.O. Box 266
West Point, CA 95255

EVELYN WILSON,
4104 Blagen Blvd.
West Point, CA 95255

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

v.

KEN SALAZAR, in his official capacity as Secretary of the United States Department of the Interior,
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

LARRY ECHO HAWK, in his official capacity as Assistant Secretary-Indian Affairs of the United States Department of the Interior,
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

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

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

Hon. Richard W. Roberts

CGCC - RJN - 001

DEF'S EXH - 0119

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

Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

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

INTRODUCTION AND SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

11. The Court of Appeals for the District of Columbia Circuit affirmed in a published opinion, holding that, "Although [the Tribe], by its own admission, has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary." *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267 (D.C. Cir. 2008).

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

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

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

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

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

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

JURISDICTION AND VENUE

17. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the asserted claims arise under the Constitution and laws of the United States.

18. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1361 in that the Tribe seeks to compel officers and employees of the United States and its agencies to perform duties owed to the Tribe.

19. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1362 because the Tribe is an Indian tribe duly recognized by the Secretary of the Interior, and the matter in controversy arises under the Constitution, laws or treaties of the United States.

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

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

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

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

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

PARTIES

25. Plaintiff California Valley Miwok Tribe, also known as the "Sheep Ranch Rancheria," the "Sheep Ranch Rancheria of Me-Wuk Indians of California," and the "Sheep Ranch Band of Me-wuk Indians of the Sheep Ranch Rancheria," is a federally recognized Indian tribe situated in Sheep Ranch, California, in Calaveras County. The Tribe consists of Indian members and their descendants, and/or their Indian successors in interest, for whose benefit the United States acquired and created the Sheep Ranch Rancheria. As of April 30, 2011, the membership of the Tribe consisted of 242 adult members and their children ("Current Members"). At least 83 members of the Tribe were alive and at least 18 years old on November 5, 1998 ("1998 Adult Members").

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

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

28. Plaintiffs Velma WhiteBear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo are members of the Tribe and of the Tribal Council. Each is a lineal descendant of a historical member or members of the Tribe.

29. Defendant Ken Salazar is the Secretary of the United States Department of the Interior. Mr. Salazar is responsible for the supervision of the various federal agencies and bureaus within the Department, including the BIA. Mr. Salazar is an officer or employee of the United States and has a direct statutory duty to carry out the provisions of the IRA and other relevant laws. Mr. Salazar is sued in his official capacity only.

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

31. Michael Black is the Director of the Bureau of Indian Affairs within the Department. Mr. Black is responsible for the day-to-day operations of the BIA, including its relations with federally recognized Indian tribes. Mr. Black is sued in his official capacity only.

RELEVANT FACTS

Tribal History and Membership

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

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

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

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

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

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

The Indian Reorganization Act

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

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

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

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

membership. This duty is informed and strengthened by the United States' trust obligations to Indian tribes and their members.

The California Rancheria Act and Failure to Terminate the Tribe

41. In 1958, Congress enacted the California Rancheria Act, which authorized the Secretary to terminate the lands and trust status of enumerated Indian tribes on California Rancherias under certain conditions.

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

The Invalid 1998 Resolution

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

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

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

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

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

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

Burley Seeks Control of the Tribe

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

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

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

The BIA Rejects Burley's 2004 Constitution

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

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

53. In a March 26, 2004 letter to Burley, the BIA declined to approve her latest constitution. The BIA explained that efforts to organize a Tribe must reflect the involvement of the whole tribal community:

> Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was attempted or has occurred with the purported organization of your tribe. . . . To our knowledge, the only persons of Indian descent involved in the tribe's organization

> efforts, were you and your two daughters . . .. It is only after the greater tribal community is initially identified that governing documents should be drafted and the Tribe's base roll and membership criteria identified.

The BIA's letter identified several groups of Tribe members and segments of the tribal community who should be involved in the initial organization efforts.

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

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

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

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

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

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

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

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

59. The district court dismissed Burley's claims in March 2006. The court noted that the Burleys had submitted a constitution that "conferred tribal membership only upon them and their descendants . . . [but] the government estimates that the greater tribal community, which should be included in the organization process, may exceed 250 members." The court found that the Secretary has "a responsibility to ensure that [she] deals only with a tribal government that actually represents the members of a tribe" and that the BIA has a "duty to ensure that the interests of all tribe members are protected during organization and that governing documents reflect the will of a majority of the Tribe's members." *California Valley Miwok Tribe, supra*, 424 F.Supp.2d 197. This is true "whether or not [a tribe] choose[s] to organize under the IRA procedures [of section 476(a)]." The court found the BIA's decisions consistent with that duty.

60. Burley challenged the district court's decision, and the Court of Appeals for the District of Columbia Circuit affirmed. *California Valley Miwok Tribe, supra*, 515 F.3d 1262. According to the Court of Appeals, the rejection of the Burley government and constitution fulfilled a cornerstone of the United States' trust obligation to Indian tribes: to "promote a tribe's political integrity, which includes ensuring that the will of tribal members is not thwarted by rogue leaders when it comes to decisions affecting federal benefits."

61. The Court of Appeals further explained:

> In Burley's view, the Secretary has no role in determining whether a tribe has properly organized itself . . . . That cannot be. . . . [T]he Secretary has the power to manage *"all* Indian affairs and *all* matters *arising out of Indian relations*." . . . The exercise of this authority is especially vital when, as is the case here, the government is determining whether a tribe is organized, and the receipt of significant federal benefits turns on the decision. The Secretary suggests that her authority . . . includes the power to reject a proposed constitution that does not enjoy sufficient support from a tribe's membership. Her suggestion is reasonable, particularly in light of the federal government's unique trust obligation to Indian tribes. (Emphasis in original.)

The court concluded:

> Although [the Tribe], by its own admission, has a potential membership of 250, only Burley and her small group of supporters had a hand in adopting her proposed constitution. This antimajoritarian gambit deserves no stamp of approval from the Secretary.

The Department's Representations in Federal Court

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

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

63. The United States further stated in its brief:

> Section 476(h) does not impose a duty on BIA to recognize a tribal government or governing documents where, as here, they are adopted without the consent or participation of a majority of the tribal community. Nothing in Section 476(h) suggests that Congress intended to alter the substantive standards that apply when a tribe seeks to organize, including Section 476(a)(1)'s requirement that governing documents be "ratified by a majority of adult members of the tribe." In addition, for an "Indian tribe" to organize under the IRA, action by the tribe as a whole is required; action by an unrepresentative faction is insufficient.

The government added that "nothing in Section 476(h) limits the Secretary's broad authority – *independent of the IRA* – to ensure the legitimacy of any purported tribal government that seeks to engage in that government-to-government relationship with the United States" (emphasis added).

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

that the Burley Government was elected, and its governing documents adopted, by just three people and without the participation of the vast majority of the potential members of the Tribe."

Mr. Dixie's Efforts to Organize the Tribe

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

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

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

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

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

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

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

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

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

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

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

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

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

j. The Tribe is involved in Indian health services, emergency services and food distribution programs, including the MACT Indian health services program, that benefit members of the Tribe and other Indian tribes.

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

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

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

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

The BIA Attempts to Assist the Tribe In Organizing

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

72. Ms. Burley appealed the Superintendent's November 6, 2006 decision to the BIA's Pacific Regional Director. On April 2, 2007, the Regional Director affirmed the decision and remanded the matter back to the Superintendent to implement the actions mentioned in the November 6, 2006 decision. The Regional Director wrote, "We believe the main purpose [of the November 6, 2006 decision] was to assist the Tribe in identifying the whole community, the 'putative'

group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. . . . It is our belief that until the Tribe has identified the 'putative' group, the Tribe will not have a solid foundation upon which to build a stable government."

73. On April 10 and April 17, 2007, the BIA published public notice of an upcoming meeting to organize the Tribe. The notice requested that Putative Members submit documentation of their membership claim to the BIA (e.g., personal genealogies). The public notice defined the Putative Members as lineal descendants of: (1) individuals listed on the 1915 Indian Census of Sheep-ranch Indians; (2) individuals listed as eligible voters on the federal government's 1935 IRA voting list for the Rancheria; and (3) individuals listed on the plan for distribution of the assets of Sheep Ranch Rancheria (which included only Mabel Hodge Dixie).

74. According to the BIA, approximately 580 persons submitted personal genealogies to the BIA in response to the April 2007 public notices. Plaintiffs Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo each submitted genealogies and other documentation to the BIA in response to the public notices. None of the Burleys submitted documentation in response to the public notices. The BIA has not released the genealogies or the results of its analysis of the information submitted. The Tribe has separately obtained genealogies from each of its members.

Burley Attempts to Re-Litigate Her Claims Before the Board

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

76. In January 2010, the Board decided Burley's appeal. The Board recognized that the AS-IA's February 11, 2005 decision and the ensuing federal litigation had already finally determined the following issues: (1) that the BIA did not recognize the Tribe as being organized; (2) that the BIA did not recognize any tribal government that represents the Tribe; (3) that the Tribe's membership was

not necessarily limited to the Burleys and Yakima Dixie; and (4) that the BIA had an obligation to ensure that a "greater tribal community" was allowed to participate in organizing the Tribe. The Board recognized that, to the extent Burley's appeal attempted to relitigate those issues, it had no jurisdiction over her claims. Accordingly, the Board dismissed all of Burley's claims (including those claims not discussed here), except for a single, narrow issue.

77. According to the Board, the Burley appeal raised a solitary issue that had not already been decided by the AS-IA: the process for deciding "who BIA will recognize, individually and collectively, as members of the 'greater tribal community' that BIA believes must be allowed to participate in the general council meeting of the Tribe for organizational purposes." The Board erroneously characterized this as a "tribal enrollment dispute," because it failed to recognize that the lineal descendants of historical Tribal members are *already* Tribal members and therefore that the BIA's 2007 proposed assistance with Tribal organization would not confer membership on these people. Because it lacks jurisdiction over "enrollment disputes," the Board referred the issue to the AS-IA for resolution.

The AS-IA's August 31 Decision

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

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

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

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

Consequences of the Secretary's Unlawful Decision

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

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

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

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

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

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

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

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

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

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

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

88. The August 31 Decision, if upheld by the Court, could provide a basis for allowing Burley to divert funds held in trust for the Tribe by the State of California. Beginning in 1999, Burley represented to the California Gambling Control Commission ("Commission") that she was the authorized representative of the Tribe and entitled to collect funds paid by the state to tribes that do not operate casinos or gaming devices. Burley received millions of dollars from the Commission, which were meant for the Tribe, between 1999 and 2005 (the "State Funds").

a. None of the Plaintiffs received any of the State Funds. The Plaintiffs do not know of any members of the Tribe who received or benefited from any of the State Funds except for Burley and her immediate family. The Plaintiffs do not know of any programs for the benefit of the Tribe or its members that were created or supported with the Funds.

b. In 2005, the Commission ceased distribution of the State Funds to Burley on the ground that the federal government did not recognize her as the appropriate representative of the Tribe. Burley has filed litigation in California Superior Court, seeking to compel the Commission to resume distribution of the State Funds to her, including approximately $7.5 million of the State Funds that the Commission has withheld since 2005. *See California Valley Miwok Tribe v. California Gambling Control Commission*, No. 37-2008-00075326 (Sup. Ct. San Diego). Burley seeks to introduce the August 31 Decision as evidence that she is entitled to receive the State Funds.

c. If Burley receives the State Funds, Mr. Dixie and the members of the Tribal Council will be denied the benefit of the State Funds, because the State of California has no control over the use of the State Funds once they are paid to a tribe.

d. If Ms. Burley receives the State Funds, the Tribe will be denied the Funds, because Ms. Burley is not a legitimate representative of the Tribe.

89. The August 31 Decision will allow Burley to divert federal funds intended for the Tribe. Beginning in 1999, and continuing through 2007, Burley received federal grant money

intended for the Tribe, based on her representation that she was an authorized representative of the Tribe. The grant money was provided through a "self-determination contract" pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* ("PL 638"), to assist the Tribe in organizing under the IRA. Burley received as much as $400,000 to $600,000 per year under this contract.

a. Burley did not use the PL 638 funds to organize the Tribe consistent with the IRA. Instead, she sought to disenfranchise Plaintiffs and other members of the Tribal community and to secure the benefits of Tribe membership only for herself and her immediate family.

b. The BIA previously indicated its intent, based on the AS-IA's December 22 Decision, to enter into a new PL 638 contract with the Burleys. If the August 31 Decision is allowed to stand, the Tribe will be denied its rightful use of the PL 638 funds, because those funds will be paid to Burley and her illegitimate government instead.

FIRST CAUSE OF ACTION

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

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

91. The APA provides that a court must hold unlawful and set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A).

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

93. The August 31 Decision violates APA section 706(2)(A) because it unlawfully reopened and addressed issues not within the scope or jurisdiction of the Board appeal from which the decision arose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

108. As a direct and proximate result of the August 31 Decision, Mr. Dixie, the Tribal Council, and Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo have been and will continue to be denied their rightful opportunity to participate in the organization and governance of the Tribe and will suffer irreparable injury and financial loss.

109. As a direct and proximate result of the August 31 Decision, the Tribe, the Tribal Council and the members of the Tribe, including Mr. Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antone Azevedo, have been and will continue to be denied the

use of the PL 638 funds available through the BIA, and the State Funds provided by the Commission, and will suffer irreparable injury and financial loss.

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

SECOND CAUSE OF ACTION

(Violation of Substantive Due Process)

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

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

THIRD CAUSE OF ACTION

(Violation of Procedural Due Process)

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

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

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

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

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

FOURTH CAUSE OF ACTION

(Violation of the Indian Civil Rights Act)

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

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

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

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EXHIBIT A

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 31 2011

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

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

Dear Ms. Burley and Mr. Dixie:

Introduction and Decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

Analysis

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

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

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

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

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

Application of Specific Legal Authorities

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

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

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

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

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

30 IBIA 241, 248.

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

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

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

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

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

---

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

Conclusion

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

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

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

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

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

Sincerely,

Larry Echo Hawk
Assistant Secretary – Indian Affairs

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DECLARATION OF SERVICE

Case Name: California Valley Miwok Tribe v. Superior Court

Case No.: D061811

I declare:

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

On June 15, 2012, I served the attached **MOTION THAT THE COURT TAKE JUDICIAL NOTICE, SUPPORTING DECLARATION, AND SUPPORTING MEMORANDUM** by placing a true copy thereof enclosed in a sealed envelope and causing such envelope to be personally delivered by Golden State Overnight courier service to the office of the addressee listed below:

Court of Appeal Fourth Appellate District 750 B Street, Suite 300 San Diego, CA 92101	Original + 1 copy
Robert A. Rosette Rosette, LLP 193 Blue Ravine Road, Suite 255 Folsom, CA 95630 *Attorney for Plaintiff*	1 copy
Manuel Corrales, Jr. 17140 Bernardo Center Drive, Suite 370 San Diego, CA 92128 *Attorney for Plaintiff*	1 copy
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Attorney for Real Party in Interest

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San Diego, CA 92130
Attorney for Real Party in Interest

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 15, 2012, at Sacramento, California.

Linda Thorpe
Declarant

Signature

EXHIBIT I

TRIBAL-STATE COMPACT

BETWEEN

THE STATE OF CALIFORNIA

AND THE

FEDERATED INDIANS OF GRATON RANCHERIA

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TRIBAL-STATE COMPACT
BETWEEN THE STATE OF CALIFORNIA AND THE FEDERATED INDIANS OF GRATON RANCHERIA

The Federated Indians of Graton Rancheria (the "Tribe"), a federally recognized Indian tribe listed in the Federal Register as the Federated Indians of Graton Rancheria, California, and the State of California (the "State") enter into this tribal-state compact pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA").

PREAMBLE

WHEREAS, the Tribe consists of approximately 1,300 members of Coast Miwok and Southern Pomo descent; and

WHEREAS, in 1966, the federal government terminated its relationship with the Tribe pursuant to the California Rancheria Act of 1958 (Pub. L. 88-453) and transferred title to the lands known as the Graton Rancheria into private ownership; and

WHEREAS, in 2000, Congress restored federal recognition to the Tribe pursuant to the Graton Rancheria Restoration Act (Pub. L. 106-568, 25 U.S.C. § 1300n et seq.); and

WHEREAS, the Restoration Act required the Secretary of the Interior (the "Secretary") to take real property identified by the Tribe and located in Marin or Sonoma counties into trust as the Tribe's reservation; and

WHEREAS, in April 2003, the Tribe identified property located on Highway 37 in southern Sonoma County (the "Highway 37 Property") for its reservation and announced plans to develop a resort hotel and gaming facility on a portion of the Highway 37 Property once in trust and deemed eligible for gaming; and

WHEREAS, at the urging of community representatives and environmentalists, the Tribe reconsidered its plans for the Highway 37 Property and, thereafter, donated its rights to a large portion of the Highway 37 Property to the Sonoma Land Trust for perpetual preservation; and

WHEREAS, the Tribe, after consultation with Sonoma County (the "County") and the City of Rohnert Park (the "City"), acquired rights to purchase alternative

property located on Stony Point Road just outside the City's urban growth boundary (the "Stony Point Road Property") for its reservation and proposed project; and

WHEREAS, in August 2005, the Tribe abandoned its plans for the Stony Point Road Property and, once again, moved its proposed location in order to address local land use and environmental concerns and, thereafter, purchased approximately 254 acres of land for its reservation, a portion of which will be used for its proposed project and which is located within the City's urban growth boundary and outside the 100-year flood plain (the "254 Acre Parcel"); and

WHEREAS, the Tribe agreed to wait until the environmental review of the proposed Gaming Facility was completed before exercising its right under the Graton Rancheria Restoration Act to have the 254 Acre Parcel placed into trust; and

WHEREAS, the National Indian Gaming Commission (the "NIGC") conducted four public hearings and provided over 160 days for public comment in preparing an environmental impact statement with respect to the construction and operation of the Tribe's project on the 254 Acre Parcel pursuant to the National Environmental Policy Act, including an analysis of eight different project alternatives, and a Notice of Availability of a Final Environmental Impact Statement was published in the Federal Register on February 19, 2009; and

WHEREAS, in October 2010, the NIGC issued its Record of Decision for the Tribe's project, concluding that the 254 Acre Parcel is eligible for gaming under IGRA and adopting a reduced intensity casino and hotel project as the preferred action alternative that is significantly smaller than the project initially proposed by the Tribe; and

WHEREAS, in October 2010, the Bureau of Indian Affairs of the United States Department of the Interior accepted the 254 Acre Parcel into trust on behalf of the Tribe; and

WHEREAS, the State and the Tribe have conducted good faith negotiations for the purpose of agreeing upon terms for a tribal-state compact for Class III Gaming (the "Compact"); and

WHEREAS, the State and Tribe agree that the initial construction of a tribal gaming facility is an exceptional event in the history of a tribe's gaming efforts; and

WHEREAS, the State understands that the Tribe has expended considerable resources and incurred unprecedented pre-development costs in connection with efforts to reestablish its reservation and develop a Gaming Facility; and

WHEREAS, the State recognizes the need for the Tribe to develop a Gaming Facility capable of generating sufficient revenue to service the debt associated with the high predevelopment and construction costs of the Gaming Facility, and

WHEREAS, the construction of the Gaming Facility by the Tribe, while benefiting the California economy and the economies of the surrounding communities, will result in significant additional tribal debt that in turn will reduce the income available to the Tribe for a number of years; and

WHEREAS, in October 2003, the Tribe entered into an enforceable and binding agreement with the City to mitigate the potential impacts of the operation of its proposed Gaming Facility on the City and to establish mechanisms for sustained charitable giving designed to benefit the City and the Tribe; and

WHEREAS, in November 2004, the Tribe entered into an enforceable and binding agreement with the County in which the parties agreed to negotiate in good faith to mitigate the potential impacts of the operation of the Tribe's proposed Gaming Facility on the County and to establish mechanisms for sustained charitable giving designed to benefit the County and the Tribe; and

WHEREAS, the Tribe and the County have entered into negotiations concerning such binding agreement; and

WHEREAS, the Tribe is committed to improving the environment, education status, and the health, safety and general welfare of its members and local residents; and

WHEREAS, the State and the Tribe recognize that the exclusive rights that the Tribe will enjoy under this Compact create a unique opportunity for the Tribe to operate a Gaming Facility in an economic environment free of competition from the operation of slot machines and banked card games on non-Indian lands in

California and that this unique economic environment is of great value to the Tribe; and

WHEREAS, in consideration of the exclusive rights enjoyed by the Tribe to engage in the Gaming Activities and to operate the number of Gaming Devices specified herein, and the other meaningful concessions offered by the State in good faith negotiations, and pursuant to IGRA, the Tribe has agreed, inter alia, to provide to the State, on a sovereign-to-sovereign basis, and to local jurisdictions, fair cost reimbursement and mitigation from revenues from the Gaming Devices operated pursuant to this Compact on a payment schedule, which payment schedule takes into consideration the significant cost of the Tribe's initial investment in its Gaming Facility and the concomitant benefit to the State and local communities during the period of construction of the Gaming Facility; and

WHEREAS, in recognition of the Tribe's investment, including the significant accrued interest on predevelopment costs, and in exchange for significant economic benefits to surrounding communities during the construction of the Gaming Facility, and in consideration of the significant number of Tribal Member beneficiaries of the Gaming Facility, the State has agreed to reduce the amount of revenues the Tribe would otherwise pay under this Compact for a time certain immediately following the commencement of Gaming Activities; and

WHEREAS, the parties acknowledge that if the Tribe were required to pay a large share of its revenues from the Gaming Devices following the commencement of Gaming Activities, then the positive impact of the Tribe's investment would not be fully realized under this Compact, the Tribe would not materially benefit from this Compact, and the Gaming Facility itself would not be economically viable; and

WHEREAS, the parties believe that the Tribe's revenue contribution to the State is fair in light of the need for the Tribe to retain sufficient revenues in the initial years of its Gaming Activities in order to promote strong tribal government and self-sufficiency, provide services for its approximately 1,300 Tribal Members, and significantly reduce the debt incurred in the pre-development phase of its Gaming Facility as a result of the Tribe's efforts to address local concerns; and

WHEREAS, the Tribe and the State share an interest in mitigating the off-reservation impacts of the Gaming Facility, affording meaningful consumer and employee protections in connection with the operations of the Gaming Facility, fairly regulating the Gaming Activities conducted at the Gaming Facility, and fostering a good-neighbor relationship; and

WHEREAS, the Tribe and the State share a joint sovereign interest in ensuring that tribal Gaming Activities are free from criminal and other undesirable elements; and

WHEREAS, this Compact will afford the Tribe primary responsibility over the regulation of its Gaming Facility and will enhance the Tribe's economic development and self-sufficiency; and

WHEREAS, the State and the Tribe have therefore concluded that this Compact protects the interests of the Tribe and its members, the surrounding community, and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

WHEREAS, the State and the Tribe agree that all terms of this Compact are intended to be binding and enforceable;

NOW, THEREFORE, the Tribe and the State agree as set forth herein:

SECTION 1.0. PURPOSES AND OBJECTIVES.

The terms of this Compact are designed to:

(a) Foster a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

(b) Develop and implement a means of regulating the Class III Gaming to ensure its fair and honest operation in a way that protects the interests of the Tribe, the State, its citizens, and local communities 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 its governmental services and programs.

(c) Promote ethical practices in conjunction with the Class III Gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Gaming Operation, protect 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, and protect the patrons and employees of the Gaming Operation and the local communities.

(d) Achieve the objectives set forth in the preamble.

SECTION 2.0. DEFINITIONS.

Sec. 2.1. "Applicable Codes" means the California Building Code and the California Public Safety Code applicable to the County, as set forth in Titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Compact, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire and safety.

Sec. 2.2. "Applicant" means an individual or entity that applies for a tribal gaming license or for a State Gaming Agency determination of suitability.

Sec. 2.3. "City" means the City of Rohnert Park, California.

Sec. 2.4. "Class III Gaming" means the forms of class III gaming defined in 25 U.S.C. § 2703(8) and by the regulations of the NIGC.

Sec. 2.5. "Commission" means the California Gambling Control Commission, or any successor agency of the State.

Sec. 2.6. "Compact" means this compact.

Sec. 2.7. "County" means the County of Sonoma, California, a political subdivision of the State.

Sec. 2.8. "Financial Source" means any person or entity who, directly or indirectly, extends financing to the Gaming Facility or Gaming Operation.

Sec. 2.9. "Gaming Activity" or "Gaming Activities" means the Class III Gaming activities authorized under this Compact in section 3.1.

Sec. 2.10. "Gaming Device" means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution. For purposes of calculating the number of Gaming Devices, each player station or terminal on which a game is played constitutes a separate Gaming Device, irrespective of whether it is part of an interconnected system to such terminals or stations.

"Gaming Device" includes, but is not limited to, video poker, but does not include electronic, computer, or other technological aids that qualify as class II gaming (as defined under IGRA).

Sec. 2.11. "Gaming Employee" means any natural person who (a) conducts, operates, maintains, repairs, accounts for, or assists in any Gaming Activities; or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, maintain, repair, account for, assist, or supervise any such Gaming Activities, (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 in which Gaming Activities are conducted that are not open to the public.

Sec. 2.12. "Gaming Facility" or "Facility" means any building in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or funds of the Gaming Operation are maintained (excluding offsite facilities dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation rather than providing that operation with an incidental benefit.

Sec. 2.13. "Gaming Operation" means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

Sec. 2.14. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on the Tribe's Indian lands in California and approved under IGRA.

Sec. 2.15. "Gaming Resources" means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, Gaming Devices and ancillary equipment, implements of Gaming Activities such as playing cards, furniture designed primarily for Gaming Activities, maintenance or security equipment and services, and Class III Gaming consulting services. "Gaming Resources" does not include professional accounting or legal services.

Sec. 2.16. "Gaming Resource Supplier" means any person or entity who, directly or indirectly, does, or is deemed likely to, manufacture, distribute, supply, vend, lease, purvey, or otherwise provide, to the Gaming Operation or Facility at

least twenty-five thousand dollars ($25,000) in Gaming Resources in any twelve (12)-month period, or who, directly or indirectly, receives, or is deemed likely to receive, in connection with the Gaming Operation or Facility, at least twenty-five thousand dollars ($25,000) in any consecutive twelve (12)-month period, 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, but for the purveyance, the purveyor is not otherwise a Gaming Resource Supplier, 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 Gaming Operation.

Sec. 2.17. "Graton Mitigation Fund" means an account established by the State Gaming Agency for the receipt of revenues paid by the Tribe pursuant to section 4.5 of this Compact and for the distribution of such revenues as described in section 4.5.1 of this Compact.

Sec. 2.18. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. § 1166 et seq. and 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

Sec. 2.19. "Interested Persons" means (a) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, (b) any city with a nexus to the Project, and (c) persons, groups, or agencies that request in writing a notice of preparation of a draft tribal environmental impact report described in section 11, or have commented on the Project in writing to the Tribe or the County.

Sec. 2.20. "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.

Sec. 2.21. "Net Win" is drop, plus the redemption value of expired tickets, less fills, less payouts, less that portion of the Gaming Operation's payments to a third-party wide-area progressive jackpot system provider that is contributed only to the progressive jackpot amount.

Sec. 2.22. "NIGC" means the National Indian Gaming Commission.

Sec. 2.23. "Project" means any activity occurring on Indian lands, a principal purpose of which is to serve the Gaming Activities or Gaming Operation, and which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect physical change in the off-reservation environment. This definition shall be understood to include, but not be limited to, the addition of Gaming Devices within an existing Gaming Facility, the impacts of which have not previously been addressed in a tribal environmental impact report described in section 11, and construction or planned expansion of any Gaming Facility and related improvement thereto, a principal purpose of which is to serve the Gaming Facility rather than provide that facility with an incidental benefit, as long as such construction or expansion causes a potentially significant direct or indirect physical change in the off-reservation environment. For purposes of this definition, section 11.0, and Appendix B, "reservation" refers to the Tribe's Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.

Sec. 2.24. "Significant Effect(s) on the Off-Reservation Environment" is the same as "Significant Effect(s) on the Environment" and occur(s) if any of the following conditions exist:

(a) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or achieve short-term, to the disadvantage of long-term, environmental goals.

(b) The possible effects of a Project on the off-reservation environment are individually limited but cumulatively considerable. As used herein, "cumulatively considerable" means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(c) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

For purposes of this definition, "reservation" refers to the Tribe's Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.

Sec. 2.25. "State" means the State of California or an authorized official or agency thereof designated by this Compact or by the Governor.

Sec. 2.26. "State Gaming Agency" means the entities authorized to investigate, approve, regulate and license gaming pursuant to the Gambling Control Act (Chapter 5 (commencing with section 19800) of Division 8 of the California Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.

Sec. 2.27. "State Designated Agency" means the entity or entities designated or to be designated by the Governor to exercise rights and fulfill responsibilities established by this Compact.

Sec. 2.28. "Tribe" means the Federated Indians of Graton Rancheria, a federally recognized Indian tribe listed in the Federal Register as the Federated Indians of Graton Rancheria, California, or an authorized official or agency thereof.

Sec. 2.29. "Tribal Chair" means the person duly elected under the Tribe's constitution to perform the duties specified therein, including serving as the Tribe's official representative.

Sec. 2.30. "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 NIGC, 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.

Sec. 2.31. "Tribal Member" means a tribal citizen enrolled in the Tribe and eligible to receive all benefits entitled to other tribal citizens, including, but not limited to, any per capita payments in an amount no less than any other tribal citizen, and to exercise all rights of other tribal citizens, including the right to vote in all tribal elections if eighteen years of age or older, and is a person certified by the Tribe as being enrolled as a member pursuant to criteria and standards specified in the Constitution of the Federated Indians of Graton Rancheria, approved by the Secretary of the Interior on December 23, 2002, and any amendments thereto.

Sec. 2.32. "254 Acre Parcel" means the approximately 254 acres of land in Sonoma County, California, as legally described in, and represented on the map at Appendix A hereto, that has been taken into trust for the benefit of the Tribe pursuant to the Graton Rancheria Restoration Act (P.L. 106-568, 25 U.S.C. § 1300n et seq.) and determined to be eligible for gaming pursuant to IGRA.

SECTION 3.0. SCOPE OF CLASS III GAMING AUTHORIZED.

Sec. 3.1. Authorized Class III Gaming.

(a) The Tribe is hereby authorized to operate only the following Gaming Activities under the terms and conditions set forth in this Compact:

(1) Gaming Devices.

(2) Any banking or percentage card games.

(3) 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.

(b) Nothing herein shall be construed to preclude the Tribe from offering class II gaming or preclude the negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.

(c) Nothing herein shall be construed to authorize the operation of the game known as roulette, whether or not played with or on a mechanical, electro-mechanical, electrical, or video device, or cards, or any combination of such devices, or the operation of any game that incorporates the physical use of die or dice.

(d) The Tribe shall not engage in Class III Gaming that is not expressly authorized in this section and section 4.1.

SECTION 4.0. AUTHORIZED LOCATION OF GAMING FACILITY, NUMBER OF GAMING DEVICES, COST REIMBURSEMENT, AND MITIGATION.

Sec. 4.1. Authorized Number of Gaming Devices. The Tribe is entitled to operate up to a total of three thousand (3,000) Gaming Devices pursuant to the conditions set forth in section 3.1 and sections 4.2 through and including 5.2.

Sec. 4.2. Authorized Gaming Facility. The Tribe may engage in Class III Gaming only on eligible Indian lands held in trust for the Tribe, at a single Gaming Facility located within the boundaries of the 254 Acre Parcel as those boundaries exist as of the execution date of this Compact.

Sec. 4.3. Cost Reimbursement and Mitigation to the State. The Tribe shall pay quarterly to the State Gaming Agency for deposit into the Special Distribution Fund created by the Legislature, in accordance with the following schedule:

(a) During the first twenty-eight (28) quarters in which Gaming Activities occur, three hundred fifty thousand dollars ($350,000) per quarter.

(b) Beginning with the twenty-ninth (29th) quarter in which Gaming Activities occur, three percent (3%) of the Net Win from all Gaming Devices operated in the Gaming Facility.

The foregoing payments have been negotiated between the parties as a fair contribution, based upon the State's costs of regulating tribal Class III Gaming activities, as well as the Tribe's market conditions, its circumstances, and the rights afforded under this Compact.

Sec. 4.3.1. Use of Special Distribution Funds. Revenue placed in the Special Distribution Fund shall be 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 and environmental review 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 this Compact; and

(d) Any other purposes specified by the Legislature that are consistent with IGRA.

Sec. 4.4. Cost Reimbursement and Mitigation to Local Governments. Before the commencement of a Project, the Tribe shall follow those procedures, and enter into those agreements, required pursuant to section 11, to mitigate Significant Effects on the Off-Reservation Environment that any tribal environmental impact report described in section 11 identifies may occur as a result of the Gaming Facility. In addition, the Tribe shall enter into agreements with the City and the County for such undertakings and services that mitigate the impacts of the Gaming Facility and thereby benefit the Gaming Facility, the Tribe, the City, the County, other affected jurisdictions, and the California Department of Transportation upon terms satisfactory to the Governor. By executing this Compact, the Governor represents that he has reviewed such agreements and they meet this condition.

Sec. 4.5. Graton Mitigation Fund

(a) Subject to certain deductions set forth below, the Tribe shall pay quarterly to the State Gaming Agency for deposit into the Graton Mitigation Fund fifteen percent (15%) of the Net Win from all Gaming Devices operated in the Facility for the first twenty-eight (28) quarters in which Gaming Activities occur, and twelve percent (12%) thereafter. The payment to the Graton Mitigation Fund has been negotiated between the parties as a fair contribution for the rights afforded under this Compact, and given the need to ensure that the Tribe is the primary beneficiary of this Compact, taking into account the Tribe's population, the Tribe's economic needs, and the significant and unprecedented pre-development costs the Tribe has and will incur to develop and operate a Gaming Facility.

As part of the negotiations of this Compact, the Tribe represents that it has to date incurred in excess of two hundred million dollars

($200,000,000) in predevelopment costs (inclusive of interest) to enable it to commence the Gaming Activities described in this Compact. The Tribe has submitted documentation to the State supporting the Tribe's representation. All documents submitted to the State pursuant to this section 4.5, subdivision (a), shall be subject to the confidentiality protections and assurances set forth in section 8.4, subdivision (h) of this Compact. If upon reviewing the Tribe's documents and other financial information the State discovers that the Tribe has not in fact incurred in excess of two hundred million dollars ($200,000,000) in predevelopment costs (inclusive of interest) as of the effective date of this Compact, the Tribe shall cease making the deductions of debt incurred by the Tribe set forth in subdivision (b) and shall immediately repay all deductions taken.

(b) During Years One through Seven, as defined below, the Tribe shall, prior to making the payments required in subdivision (a), deduct (i) payments the Tribe makes to the State Gaming Agency for deposit into the Special Distribution Fund pursuant to section 4.3, subdivision (a), and (ii) the amounts set forth in the following schedule:

(1) Year One (constituting the first four (4) quarters in which Gaming Activities occur):

(A) Nine thousand dollars ($9,000) per Tribal Member, up to a maximum of eleven million six hundred fifty thousand dollars ($11,650,000), for the benefit of the Tribe and Tribal Members; and

(B) Thirteen thousand dollars ($13,000) per Tribal Member, up to a maximum of seventeen million dollars ($17,000,000), for payment of debt incurred by the Tribe for the predevelopment costs of the Gaming Facility.

(2) Year Two (constituting the second four (4) quarters in which Gaming Activities occur):

(A) Ten thousand dollars ($10,000) per Tribal Member, up to a maximum of twelve million eight hundred fifty

thousand dollars ($12,850,000), for the benefit of the Tribe and Tribal Members; and

(B) Twelve thousand seven hundred fifty dollars ($12,750) per Tribal Member, up to a maximum of sixteen million five hundred thousand dollars ($16,500,000), for payment of debt incurred by the Tribe for the predevelopment costs of the Gaming Facility.

(3) Year Three (constituting the third four (4) quarters in which Gaming Activities occur):

(A) Thirteen thousand dollars ($13,000) per Tribal Member, up to a maximum of sixteen million seven hundred fifty thousand dollars ($16,750,000), for the benefit of the Tribe and Tribal Members; and

(B) Ten thousand nine hundred dollars ($10,900) per Tribal Member, up to a maximum of fourteen million two hundred thousand dollars ($14,200,000), for payment of debt incurred due to the predevelopment costs of the Gaming Facility.

(4) Year Four (constituting the fourth four (4) quarters in which Gaming Activities occur):

(A) Thirteen thousand dollars ($13,000) per Tribal Member, up to a maximum of sixteen million seven hundred fifty thousand ($16,750,000), for the benefit of the Tribe and Tribal Members; and

(B) Nine thousand two hundred sixty-nine dollars ($9,269) per Tribal Member, up to a maximum of twelve million dollars ($12,000,000), for payment of debt incurred by the Tribe for the predevelopment costs of the Gaming Facility.

(5) Year Five (constituting the fifth four (4) quarters in which Gaming Activities occur):

(A) Sixteen thousand dollars ($16,000) per Tribal Member, up to a maximum of twenty-one million dollars ($21,000,000), for the benefit of the Tribe and Tribal Members; and

(B) Six thousand two hundred seventy-five dollars ($6,275) per Tribal Member, up to a maximum of eight million one hundred fifty dollars ($8,150,000), for payment of debt incurred by the Tribe for the predevelopment costs of the Gaming Facility.

(6) Year Six (constituting the sixth four (4) quarters in which Gaming Activities occur):

(A) Nineteen thousand six hundred dollars ($19,600) per Tribal Member, up to a maximum of twenty-five million five hundred thousand dollars ($25,500,000), for the benefit of the Tribe and Tribal Members; and

(B) Three thousand two hundred fifty dollars ($3,250) per Tribal Member, up to a maximum of four million two hundred twenty-five thousand dollars ($4,225,000), for payment of debt incurred by the Tribe for the predevelopment costs of the Gaming Facility.

(7) Year Seven (constituting the seventh four (4) quarters in which Gaming Activities occur):

(A) Twenty-one thousand dollars ($21,000) per Tribal Member, up to a maximum of twenty-seven million five hundred thousand dollars ($27,500,000), for the benefit of the Tribe and Tribal Members; and

(B) Two thousand two hundred twenty-five dollars ($2,225) per Tribal Member, up to a maximum of two million nine hundred thousand dollars ($2,900,000), for payment of debt incurred by the Tribe for the predevelopment costs of the Gaming Facility.

(c) The deductions described in subdivision (b) apply only to Years One through Seven as defined in that subdivision. Throughout the term of this Compact, including Years One through Seven, the Tribe shall, prior to making payments to the State Gaming Agency pursuant to subdivision (a) for deposit into the Graton Mitigation Fund, deduct payments the Tribe makes to the State Gaming Agency pursuant to section 5.2, subdivision (a), for deposit into the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund, as defined in section 5.1. Payments made to the State Gaming Agency pursuant to section 4.3, subdivision (b) for deposit into the Special Distribution Fund, which commence with the twenty-ninth (29th) quarter in which Gaming Activities occur, are not deductible from the Graton Mitigation Fund.

Sec. 4.5.1. Use of Funds Deposited in the Graton Mitigation Fund.

(a) Funds deposited with the State Gaming Agency into the Graton Mitigation Fund pursuant to section 4.5 shall be paid by the State Gaming Agency in the following descending order, until exhausted:

(1) To the City pursuant to the agreement referenced in section 4.4.

(2) To the County pursuant to the agreement referenced in section 4.4.

(3) To the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund. The funds paid pursuant to this subdivision shall be in addition to the Tribe's payments required to be made pursuant to section 5.2, subdivisions (a) and (b).

(b) The State Gaming Agency's obligation to make the payments from the Graton Mitigation Fund pursuant to this section shall be limited to

the amount actually deposited by the Tribe into the Graton Mitigation Fund and the State has no additional obligations beyond those of the State Gaming Agency as stated in this subdivision.

Sec. 4.6 Quarterly Payments.

(a) (1) The Tribe shall remit quarterly to the State Gaming Agency (i) the payments described in section 4.3, for deposit into the Special Distribution Fund, and (ii) the payments described in section 4.5, for deposit into the Graton Mitigation Fund. The quarterly payments shall be based on the Net Win generated during that quarter from the Gaming Devices (less the deductions set forth in section 4.5, subdivisions (b) and (c), in equal quarterly amounts), which payments shall be due on the thirtieth day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter).

(2) If the Gaming Activities authorized by this Compact commence during a calendar quarter, the first payment shall be due on the thirtieth day following the end of the first full quarter of the Gaming Activities and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter.

(3) All quarterly payments shall be accompanied by the certification specified in subdivision (b).

(b) At the time each quarterly payment is due, regardless of whether any monies are owed, the Tribe shall submit to the State Gaming Agency a certification (the "Quarterly Net Win Contribution Report") that specifies the following:

(1) calculation of the Quarterly Device Base pursuant to subdivision (c) of section 5.2;

(2) the Net Win calculation reflecting the quarterly Net Win from the operation of all Gaming Devices in the Facility;

(3) the amount due pursuant to section 4.3;

(4) the amount due pursuant to subdivision (a) of section 4.5 after deducting the amounts set forth in subdivisions (b) and (c) of section 4.5;

(5) calculation of the amount due, if any, pursuant to subdivisions (a) and (b) of section 5.2; and

(6) the total amount of the quarterly payment paid to the State.

The Quarterly Net Win Contribution Report shall be prepared by the chief financial officer of the Gaming Operation.

(c) (1) At any time after the fourth quarter, but in no event later than April 30 of the following calendar year, the Tribe shall provide to the State Gaming Agency an audited annual certification of its Net Win calculation from the operation of Gaming Devices. The audit shall be conducted in accordance with generally accepted auditing standards, as applied to audits for the gaming industry, by an independent certified public accountant who is not employed by the Tribe, the Tribal Gaming Agency, the Management Contractor, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits or independent audits of the Gaming Operation, and has no financial interest in any of these entities. The auditor used by the Tribe for this purpose shall be approved by the State Gaming Agency, or other State Designated Agency, but the State shall not unreasonably withhold its consent.

(2) If the audit shows that the Tribe made an overpayment from its Net Win to the State during the year covered by the audit, the Tribe's next quarterly payment may be reduced by the amount of the overage. Conversely, if the audit shows that the Tribe made an underpayment to the State during the year covered by the audit, the Tribe's next quarterly payment shall be increased by the amount of the underpayment.

(3) The State Gaming Agency shall be authorized to confer with the auditor at the conclusion of the audit process and to review

all of the independent certified public accountant's work papers and documentation relating to the audit. The Tribal Gaming Agency shall be notified of and provided the opportunity to participate in and attend any such conference or document review.

(d) The State Gaming Agency may audit the Quarterly Device Base and Net Win calculations specified in the audit provided pursuant to subdivision (c). The State Gaming Agency shall have access to all records deemed necessary by the State Gaming Agency to verify the Quarterly Device Base and Net Win calculations, including access to the Gaming Device accounting systems and server-based systems and software, and to the data contained therein on a read only basis. If the State Gaming Agency determines that the Net Win is understated or the deductions overstated, it will promptly notify the Tribe and provide a copy of the audit. The Tribe within twenty (20) days will either accept the difference or provide a reconciliation satisfactory to the State Gaming Agency. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe must immediately pay the amount of the resulting deficiency, plus accrued interest thereon at the rate of one percent (1%) per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less. If the Tribe does not accept the difference but does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under section 13.0. The parties expressly acknowledge that the certifications provided for in subdivision (b) are subject to section 8.4, subdivision (h).

(e) Notwithstanding anything to the contrary in section 13.0, any failure of the Tribe to remit the payments referenced in sections 4.3 and 4.5, pursuant to this section 4.6, will entitle the State to immediately seek injunctive relief in federal or state court, at the State's election, to compel the payments, plus accrued interest thereon at the rate of one percent (1%) per month, or the maximum rate permitted by State law for delinquent payments owed to the State, whichever is less; and further, the Tribe expressly consents to be sued in either court and waives its right to assert sovereign immunity against the State in any such proceeding. Failure to make timely payment shall be deemed a material breach of this Compact.

(f) If any portion of the payments under subdivision (a) herein is overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least fifteen (15) business days, and if more than sixty (60) calendar days have passed from the due date, then the Tribe shall cease operating all of its Gaming Devices until full payment is made.

Sec. 4.7. Exclusivity.

In recognition of the Tribe's agreement to make the payments specified in sections 4.3 and 4.5, the Tribe shall have the following rights:

(a) 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) within California, the Tribe shall have the right to exercise one of the following options:

(1) Terminate this Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III Gaming authorized by this Compact; or

(2) Continue under this Compact with an entitlement to a reduction of the rates specified in sections 4.3 and 4.5 following conclusion of negotiations, to provide for: (A) compensation to the State for the actual and reasonable costs of regulation, as determined by the State Director of Finance; (B) reasonable payments to local governments impacted by tribal government gaming, the amount to be determined based upon any intergovernmental agreement entered into pursuant to sections 4.4 or 11.8.7; (C) grants for programs designed to address gambling addiction; and (D) such assessments as may be permissible at such time under federal law. Such negotiations shall commence within fifteen (15) days after receipt of a written request by a party to enter into the negotiations, unless

both parties agree in writing to an extension of time. If the Tribe and State fail to reach agreement on the amount of reduction of such payments within sixty (60) days following commencement of the negotiations specified in this section, the amount shall be determined by arbitration pursuant to section 13.2.

(b) Nothing in this section is intended to preclude the California State Lottery from offering any lottery games or devices that are currently or may hereafter be authorized by state law.

SECTION 5.0. REVENUE SHARING WITH NON-GAMING AND LIMITED-GAMING TRIBES.

Sec. 5.1. Definitions.

For purposes of this section 5.0, the following definitions apply:

(a) The "Revenue Sharing Trust Fund" is a fund created by the Legislature and administered by the State Gaming Agency, as limited trustee, with no duties or obligations hereunder except for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes. The State Gaming Agency shall allocate and disburse the Revenue Sharing Trust Fund monies on a quarterly basis as specified by the Legislature. Each eligible Non-Gaming Tribe and Limited-Gaming Tribe in the State shall receive the sum of one million one hundred thousand dollars ($1,100,000) per year from the Revenue Sharing Trust Fund. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay one million one hundred thousand dollars ($1,100,000) per year to each eligible Non-Gaming Tribe and Limited-Gaming Tribe, any available monies in that fund shall be distributed to eligible Non-Gaming Tribes and Limited-Gaming Tribes in equal shares. Monies in excess of the amount necessary to distribute one million one hundred thousand dollars ($1,100,000) to each eligible Non-Gaming Tribe and Limited-Gaming Tribe shall remain in the Revenue Sharing Trust Fund available for disbursement in future years. In no event shall the State's general fund be obligated to make up any shortfall in the Revenue Sharing Trust Fund or to pay any unpaid claims connected therewith, and, notwithstanding any

provision of law, including any existing provision of law implementing the State Gaming Agency's obligations related to the Revenue Sharing Trust Fund under any Class III Gaming compact, Non-Gaming Tribes and Limited-Gaming Tribes are not third party beneficiaries of this Compact and shall have no right to seek any judicial order compelling disbursement of any Revenue Sharing Trust Fund monies to them.

(b) The "Tribal Nation Grant Fund" is a fund created by the Legislature to make discretionary distribution of funds to Non-Gaming Tribes and Limited-Gaming Tribes upon application of such tribes for purposes related to effective self-governance, self-determined community, and economic development. The fiscal operations of the Tribal Nation Grant Fund are administered by the State Gaming Agency, which acts as limited trustee, with no duties or obligations hereunder except for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes, as those payments are directed by a State Designated Agency. The State Gaming Agency shall allocate and disburse the Tribal Nation Grant Fund monies as specified by a State Designated Agency to one or more eligible Non-Gaming and Limited-Gaming Tribes upon a competitive application basis. The State Gaming Agency shall exercise no discretion or control over, nor bear any responsibility arising from, the recipient tribes' use or disbursement of Tribal Nation Grant Fund monies. The State Designated Agency shall perform any necessary audits to ensure that monies awarded to any tribe are being used in accordance with their disbursement in relation to the purpose of the Tribal Nation Grant Fund. In no event shall the State's general fund be obligated to pay any monies into the Tribal Nation Grant Fund or to pay any unpaid claims connected therewith, and, notwithstanding any provision of law, including any existing provision of law implementing the State's obligations related to the Tribal Nation Grant Fund or the Revenue Sharing Trust Fund under any Class III Gaming compact, Non-Gaming Tribes and Limited-Gaming Tribes are not third party beneficiaries of this Compact and shall have no right to seek any judicial order compelling disbursement of any Tribal Nation Grant Fund monies to them.

(c) A "Non-Gaming Tribe" is a federally recognized tribe in California, with or without a tribal-state Class III Gaming compact, that has not

engaged in, or offered, class II gaming or Class III Gaming in any location whether within or without California, as of the date of distribution to such tribe from the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund, or during the immediately preceding three hundred sixty-five (365) days.

(d) A "Limited-Gaming Tribe" is a federally recognized tribe in California that has a Class III Gaming compact with the State but is operating fewer than a combined total of three hundred fifty (350) Gaming Devices in all of its gaming operations wherever located, or does not have a Class III Gaming compact but is engaged in class II gaming, whether within or without California, during the immediately preceding three hundred sixty-five (365) days.

Sec. 5.2. Payments to the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund.

(a) The Tribe agrees that it will pay to the State Gaming Agency, for deposit into the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund, for distribution to Non-Gaming and Limited-Gaming Tribes the annual payment due pursuant to the following schedule:

Number of Gaming Devices Operated	Annual Payment
0-350 Gaming Devices	$0 per Gaming Device
351-750 Gaming Devices	$900 per Gaming Device
751-1250 Gaming Devices	$1950 per Gaming Device
1251- 2000 Gaming Devices	$4350 per Gaming Device
2001-3000 Gaming Devices (Years One through Seven, as defined in section 4.5, subdivision (b))	$4350 per Gaming Device
2001-3000 Gaming Devices (Years Eight through the expiration of this Compact, commencing with the conclusion of Year Seven, as defined in	

section 4.5, subdivision (b)(7)) $7500 per Gaming Device

(b) In addition to the payments referenced in subdivision (a), in Years One through Seven (as defined in section 4.5, subdivision (b)), if the Net Win from all Gaming Devices in operation in the Gaming Facility for the year exceeds the amount set forth in the following schedule, the Tribe shall pay the State Gaming Agency, for deposit into the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund for distribution to Non-Gaming Tribes and Limited-Gaming Tribes, twenty-five percent (25%) of the difference between the Net Win and the corresponding amount for that year as follows:

Year of Gaming Activities	Amount Net Win
Year One	$350,000,000
Year Two	$360,000,000
Year Three	$371,000,000
Year Four	$382,000,000
Year Five	$394,000,000
Year Six	$406,000,000
Year Seven	$418,000,000

Thus, for instance, if the annual Net Win in Year One was three hundred seventy million dollars ($370,000,000), then the Tribe would pay the State Gaming Agency twenty-five percent (25%) of the twenty million dollar ($20,000,000) difference between three hundred seventy million dollars ($370,000,000) and three hundred fifty million dollars ($350,000,000), or five million dollars ($5,000,000).

(c) The Tribe shall remit the payments referenced in subdivision (a) and (b) to the State Gaming Agency in quarterly payments, which payments shall be due thirty (30) days following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter).

(d) The quarterly payments referenced in subdivision (c) required by subdivision (a) shall be determined by first determining the total number of all Gaming Devices operated by the Tribe during a given quarter ("Quarterly Device Base"). The Quarterly Device Base is equal to the sum total of the number of Gaming Devices in operation

for each day of the calendar quarter divided by the number of days in the calendar quarter that the Gaming Operation operates any Gaming Devices during the given calendar quarter.

(e) If any portion of the payments under subdivisions (a) or (b) herein is overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least fifteen (15) business days, and if more than sixty (60) calendar days have passed from the due date, then the Tribe shall cease operating all of its Gaming Devices until full payment is made.

(f) All payments made by the Tribe to the State Gaming Agency pursuant to sections 5.1 and 5.2 shall be deposited into the Revenue Sharing Trust Fund and the Tribal Nation Grant Fund in a proportion to be determined by the Legislature.

SECTION 6.0. LICENSING.

Sec. 6.1. Gaming Ordinance and Regulations.

(a) All Gaming Activities conducted under this Compact shall, at a minimum, comply (i) with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, (ii) with all rules, regulations, procedures, specifications, and standards duly adopted by the NIGC, the Tribal Gaming Agency, and the State Gaming Agency, and (iii) with the provisions of this Compact.

(b) The Tribal Gaming Agency shall transmit a copy of the Gaming Ordinance, and all of its rules, regulations, procedures, specifications, ordinances, or standards applicable to the Gaming Activities and Gaming Operation, to the State Gaming Agency within twenty (20) days following execution of this Compact, or within twenty (20) days following their adoption or amendment.

(c) The Tribe and the Tribal Gaming Agency shall make available an electronic or hard copy of the following documents to any member of the public upon request and in the manner requested: NIGC minimum internal control standards, the Gaming Ordinance, this Compact, including appendices hereto, the rules of each Class III game operated by the Tribe, the Tribe's constitution or other governing document(s),

EXHIBIT J

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 04/06/2011 TIME: 09:00:00 AM 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: Ex Parte

APPEARANCES

SEE SIGN-IN SHEET FOR APPEARANCES.

Court and counsel confer re: Ex-Parte Applications for Stay.

The Court grants the ex-parte applications for stay as follows: The Court stays entry of judgment and stays the effect of the orders regarding the Motion for Judgment on the Pleadings ruling and the Motion for Reconsideration ruling.

The case is not stayed, but the Court stays any future motion hearings at this time.

The Court hereby vacates all future dates and sets a Case Management Conference.

Plaintiff's Motion for Prejudgment Interest that was set on 04/22/11 and Intervenor's Motion for Reconsideration that was set on 05/13/11 are now vacated.

The Trial Readiness Conference (05/06/11) and Civil Court Trial (05/13/11) are now vacated.

The Court sets a Case Managment Conference for 07/15/11 at 10:00 am in Dept. 62.

Plaintiff's counsel is directed to prepare an order.

Judge Ronald L. Styn

EXHIBIT K

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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.


DEC

EXHIBIT L

HLI3225

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 03/01/2013 TIME: 03:00:00 PM DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn
CLERK: Kim Mulligan
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

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

APPEARANCES

Re: Remittitur on Appeal #D061811

The Court has received and reviewed the remittitur.

Petition granted.

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Following remittitur, the court vacates its March 7, 2012 order denying Plaintiff's ex parte application, and lifts the stay to allow the parties to file dispositive motions and, if necessary, proceed to trial.

Judge Ronald L. Styn

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

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

CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: 37-2008-00075326-CU-CO-CTL

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 03/04/2013.

Clerk of the Court, by: K. Williams, Deputy

WILLIAM L WILLIAMS
1300 I STREET, SUITE 125
SACRAMENTO, CA 94244

ROBERT A ROSETTE
193 BLUE RAVINE ROAD # 255
FOLSOM, CA 95630

SYLVIA A CATES
1300 I STREET, SUITE 125
SACRAMENTO, CA 95814

THOMAS W WOLFUM
1333 NORTH CALIFORNIA BOULEVARD # SUITE 150
WALNUT CREEK, CA 94596

NEIL D HOUSTON
1300 I ST STE 125
SACRAMENTO, CA 94244-2550

RANDALL A PINAL
110 WEST A STREET, SUITE 1100
SAN DIEGO, CA 92101

MANUEL CORRALES
17140 BERNARDO CENTER DRIVE # 370
SAN DIEGO, CA 92128

TERRY SINGLETON
SINGLETON & ASSOCIATES
1950 FIFTH AVENUE # 200
SAN DIEGO, CA 92101

RICHARD M FREEMAN
12275 EL CAMINO REAL SUITE 200
SAN DIEGO, CA 92130-2006

☐ Additional names and address attached.

EXHIBIT M

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

THE CALIFORNIA VALLEY MIWOK TRIBE, *et al.*, Plaintiffs, v. KEN SALAZAR, in his official capacity as Secretary of the United States Department of the Interior, *et al*, Defendants.	Case No. 1:11-cv-00160-RWR Hon. Richard W. Roberts

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

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

1. On January 24, 2011, Plaintiffs brought suit challenging the December 22, 2010 decision of the Assistant Secretary - Indian Affairs of the United States Department of the Interior ("Assistant Secretary"). *See* Dkt. No. 1.

2. On March 16, 2011, Plaintiffs filed a Motion for Preliminary Injunction, Dkt. No. 8, and, after granting the Defendants' Consent Motion for an Extension of Time, Dkt. No. 17, this Court ordered the Defendants to file their opposition to Plaintiffs' Motion for a Preliminary Injunction by April 5, 2011.

3. However, on April 1, 2011, the Assistant Secretary - Indian Affairs of the United States Department of the Interior set aside the prior December 22, 2010 decision

regarding the organization and governance of the California Valley Miwok Tribe. *See* Joint Motion to Stay Litigation, Dkt. No. 22, ex. 1.

4. On April 8, 2011, the Assistant Secretary sent letters to both Mr. Yakima Dixie and Ms. Silvia Burley requesting responsive briefing pertaining to a number of issues. Joint Motion to Stay Litigation, Dkt. No. 22, ex. 3.

5. The April 8, 2011, letter set May 3, 2011, as the deadline for the respective parties' submission of briefs responding to the Assistant Secretary's inquiries. Both Mr. Dixie and Ms. Burley submitted briefs on May 3, 2011.

6. On April 19, 2011, the parties jointly requested this Court stay the litigation and all attendant deadlines so that the Assistant Secretary could prepare and issue the reconsidered decision. *See* Joint Motion to Stay Litigation, Dkt. No. 22.

7. On April 25, 2011, this Court issued a minute order granting the parties' joint motion to stay until July 7, 2011, and ordered the parties to file a joint status report and proposed order on July 7, 2011 as well.

8. On July 7, 2011, the parties filed a joint status report and requested this Court stay the litigation and all attendant deadlines until August 15, 2011, to accommodate the Assistant Secretary's ongoing preparation of the reconsidered decision. *See* Joint Status Report Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Motion for Extension of the Temporary Stay of Litigation, Dkt. No. 23.

9. Plaintiffs consented to the extension on the condition that it was the final extension and that this Court order the Assistant Secretary to issue his reconsidered decision by August 15, 2011. *Id.* §§ 9, 9(a).

10. Defendants would not consent, however, to a condition mandating final agency action, and requested that should the Assistant Secretary not issue a reconsidered decision by August 15, 2011, that the result be a release of the voluntary stay. *Id.* §§ 9, 9(b). Accordingly, the parties each submitted a separate proposed order. *See id.*, Attachment 1-2.

11. On July 11, 2011, this Court granted the Joint Motion for Temporary Stay of Litigation and adopted Plaintiffs' proposed order. *See* Order Granting Joint Motion for Temporary Stay of Litigation, Dkt. No. 24. This Court's order struck paragraph 2, which requested, "This extension of the temporary stay shall be the final one granted by the Court and is conditioned upon the Assistant Secretary issuing his decision on reconsideration of the December 22, 2010 Decision on or before August 15, 2011." *Id.*

12. On August 12, 2011, the parties again requested the Court to extend the stay anticipating the issuance of the decision on August 26, 2011. This Court granted that request and stayed the litigation until September 2, 2011. *See* Order, Staying case until 09/02/11, Dkt. No. 26.

13. The Assistant Secretary issued the decision on Wednesday August 31, 2011. The Assistant Secretary reinstated his prior decision. While the August 31, 2011 decision is final for the Department for purpose of judicial review, the Assistant Secretary stayed the effectiveness of the August 31, 2011 decision pending resolution of this matter. As a result, the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the Federal Defendants.

14. Accordingly, no further temporary stay of the litigation is required.

15. Plaintiffs and Defendants request that the stay of the litigation be terminated and that a joint Status Report be filed by September 16, 2011 and that the Proposed Order be adopted.

Respectfully submitted this 1st day of September, 2011.

Respectfully submitted,

/s/ M Roy Goldberg

M. ROY GOLDBERG
(D.C. Bar No. 416953)
CHRISTOPHER M. LOVELAND
(D.C. Bar No. 473969)
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COUNSEL FOR PLAINTIFFS

/s/ Kenneth Rooney
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Environment & Natural Resources Division
Natural Resources Section
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OF COUNSEL
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Attorney-Advisor
Branch of Tribal Government and Alaska
Division of Indian Affairs
Office of the Solicitor, Department of the Interior
1849 C Street, N.W. Washington, D.C. 20240
Mail stop 6518

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

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

/s/
Roy Goldberg

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

THE CALIFORNIA VALLEY MIWOK TRIBE, *et al.*, Plaintiffs, v. KEN SALAZAR, in his official capacity as Secretary of the United States Department of the Interior, *et al,* Defendants.	Case No. 1:11-cv-00160-RWR Hon. Richard W. Roberts

ORDER

Having reviewed and considered the "Joint Status Report Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs" filed by the Plaintiffs and Defendants in this case, it is hereby ORDERED that the temporary stay of this litigation is terminated.

It is hereby FURTHER ORDERED that:

1. The Decision of the Assistant Secretary dated August 31, 2011 is stayed and will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the Federal Defendants.

2. Plaintiffs and Defendants will file a Joint Status Report on or before September 16, 2011.

3. Defendants shall not be required to file a responsive pleading to the Complaint until further Order of this Court.

4. Any applicable deadline for the issuance of a scheduling order under Rule 16(b), Fed. R. Civ. P., is stayed pending further Order of this Court.

Dated this ___ day of _____, 2011.

By the Court:

_____
United States District Judge

EXHIBIT N

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

IN REPLY REFER TO

MAR 26 2004

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

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

Dear Ms. Burley:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Sgd. Dale Risling, Sr.

Dale Risling, Sr.
Superintendent

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

EXHIBIT O

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 11 2005

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

Dear Mr. Dixie:

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

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

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

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

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

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

Sincerely,

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

Enclosure

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

EXHIBIT P

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

CERTIFIED MAIL NO. 7003 1680 0002 3892 1019
RETURN RECEIPT REQUESTED

NOV - 6 2006

Ms. Silvia Burley
10601 Escondido Place
Stockton, California 95212

CERTIFIED MAIL NO. 7003 1680 0002 3892 1002
RETURN RECEIPT REQUESTED

Mr. Yakima K. Dixie
c/o Mr. Chadd Everone
2054 University Avenue, #407
Berkeley, California 94704

Dear Ms. Burley and Mr. Dixie:

The Bureau of Indian Affairs (BIA) remains committed to assist the California Valley Miwok Tribe (Tribe) (formerly Sheep Ranch Rancheria of the Me-Wuk Indians of California) in its efforts to reorganize a formal governmental structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to the clear majority of those Indians. We are writing you because of your claim of leadership of the Tribe.

The Central California Agency (Agency) has been meeting with both of you and your representatives for some time to discuss issues and to offer assistance in your organizational efforts for the Tribe. It is evident, however, that the ongoing leadership dispute is at an impasse and the likelihood of this impasse changing soon seems to be remote. Therefore, we renew our offer to assist the Tribe in the organizational process. Our intention is not to interfere with the Tribe's right to govern itself. Rather, we make this offer consistent with the well-established principle that the BIA has a responsibility to determine that it is dealing with a government that is representative of the Tribe as a whole. The authority and responsibility to take this action becomes evident once there is clear evidence that the dispute between competing leadership factions, such as yours, threatens to impair the government-to-government relationship between the Tribe and the United States.

The Agency, therefore, will publish a notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process. The notice shall invite the members of the Tribe and potential members to the meeting where the members will discuss the issues and needs confronting the Tribe. We have used this sort of general council meeting approach in other instances to help tribes reorganize when for various reasons the tribes lacked an organized tribal government that represented the entire membership.

It appears that you each have determined your membership criteria, and membership, and developed constitutions or governing documents. We understand, however, you do not agree on certain issues that are fundamental to the process of building an organized government. We propose to discuss the following issues that are preventing you from moving forward as a unified tribe:

- form of government;
- organization under a federal statute (should the tribe decide to adopt a constitution);
- should the tribe adopt a constitution, what constitution will be used: the Dixie or Burley constitution, combination of both, or another;
- determining the census where membership is first listed, i.e., 1916 Sheep Ranch Rancheria census or other document;
- determining leadership of the tribe, i.e., holding a transitional election or agreeing to some type of power sharing.

The general council first needs to determine the type of government your tribe will adopt. Tribes do not always adopt constitutions; some govern according to the tribe's tradition or have some sort of power sharing in an open participatory type of government. Next, the general council needs to agree to the census or other documents that establishes the original members of the Rancheria. That census should be the starting point from which the tribe develops membership criteria. The immediate goal is determining membership of the tribe. Once membership is established and the general council determines the form of government, then the leadership issues can be resolved.

The Agency will coordinate the meeting by setting the date, time, location and other arrangements, but we would appreciate your suggestions, date, time, location, and possible agenda items. The BIA offers the assistance of an independent observer/mediator to facilitate the meeting or meetings. Please respond to the Agency concerning your willingness to participate in a meeting to discuss the issues in depth and begin the resolution process.

We very much desire that you both participate. We intend to conduct a fair and open process in which supporters of each of you can participate and be heard. We will proceed with this process, however, even if one or both of you declines to participate.

Please contact Carol Rogers-Davis, Acting Tribal Operations Officer, Central California Agency, at (916) 930-3764, to work with her on setting up the meeting.

Sincerely,

Troy Burdick
Superintendent

cc: Director, Pacific Region
Regional Solicitor
Director, Bureau of Indian Affairs
Assistant Solicitor, Branch of Tribal Government & Alaska

EXHIBIT Q

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

JAN 14 2009

In reply, please address to:
Main Interior, Room 6513

Peter Kaufman, Esq.
Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

Dear Mr. Kaufman:

I write in response to your telephone inquiry concerning the letter of November 10, 2008 addressed to Silvia Burley as Chairman of the California Valley Miwok Tribe (CVMT). You asked whether the letter reflects that the United States recognizes Ms. Burley as the governmental leader of the CVMT. The letter was an administrative oversight. The Bureau of Indian Education sent the letter to 583 tribes based on a list of tribal leaders which had not been updated to reflect that the Federal government does not recognize Ms. Burley as the Chairperson of the CVMT. In fact, because the CVMT is in the midst of a leadership dispute between Ms. Burley and Yakima Dixie, the United States does not recognize any tribal government or governmental leader of the Tribe.

If you have additional questions, please feel free to contact Jane Smith (202-208-5808), the person on my staff handling this matter.

Sincerely,

Edith R. Blackwell
Associate Solicitor, Indian Affairs