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Attorneys for Plaintiff

CALIFORNIA VALLEY MIWOK TRIBE

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

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

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL
COMMISSION,**

Defendant.

**DECLARATION OF MANUEL
CORRALES, JR., IN SUPPORT OF
REPLY TO OPPOSITION BY
INTERVENORS TO MOTION FOR
ORDER LIFTING STAY OF MARCH
11, 2011 ORDER**

Date: April 26, 2013

Time: 2:00 p.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: June 4, 2013

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

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

9 2. Attached herewith and marked as Exhibit "35" is a
10 true and correct copy of the Remittitur dated February 22,
11 2013, issued from the California Court of Appeal in this
12 case with respect to the decision granting Plaintiff's writ
13 of mandate.

14 3. Attached herewith and marked as Exhibit "36" is a
15 true and correct copy of this Court's minute order dated
16 March 1, 2013, stating that the Court was lifting the stay
17 in accordance with the Court of Appeal's decision.

18 4. Attached herewith and marked as Exhibit "37" is a
19 true and correct copy of the Notice of Ruling: Motion for
20 Reconsideration and Motion for Leave to Intervene," with an
21 accompanying proof of service showing that it was served on
22 March 14, 2011.

23 5. Attached herewith and marked as Exhibit "38" is a
24 true and correct copy of "Intervenors' Notice of Motion and
25 Motion for Reconsideration; and Memorandum of Points and
26 Authorities Thereof," with a proof of service showing that
27 it was mailed on April 1, 2011.

1 6. With the exception of Exhibit "37" (Notice of
2 Ruling), the above-referenced documents were served on me
3 in due course as the attorney of record in this case. I
4 prepared and served Exhibit "37" upon all parties,
5 including the attorneys for the Intervenors.

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

9 Executed this 2 day of April, 2013, at San Diego,
10 California.

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MANUEL CORRALES, JR.

EXHIBIT “35”

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

San Diego County Superior Court - Main
P.O. Box 120128
San Diego, CA 92112

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

*** * * REMITTITUR * * ***

I, Stephen M. Kelly, Clerk of the Court of Appeal of the State of California, for the Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on December 18, 2012, and that this opinion or decision has now become final.

 Other (See Below)

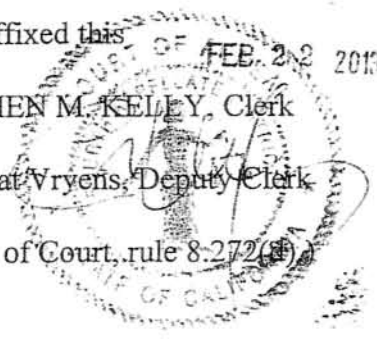
Petitioner is entitled to recover the costs it incurred in this writ proceeding.

Witness my hand and the seal of the Court affixed this

STEPHEN M. KELLEY, Clerk

By: Pat Vryens, Deputy Clerk

cc: All Parties (Copy of remittitur only, Cal. Rules of Court, rule 8.272(b))



AFFIDAVIT OF TRANSMITTAL

I am a citizen of the United States, over 18 years of age, and not a party to the within action; that my business address is 750 B Street, Suite 300, San Diego, CA 92101; that I served a copy of the attached material in envelopes addressed to those persons noted below.

That said envelopes were sealed and shipping fees fully paid thereon, and thereafter were sent as indicated via the U.S. Postal System from San Diego, CA 92101.

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

Stephen M. Kelly, Clerk of the Court

Deputy Clerk

CASE NUMBER: D061811

Office of the Clerk
San Diego County Superior Court - Main
P.O. Box 120128
San Diego, CA 92112

Manuel Corrales Jr.
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Randall Anthony Pinal
Office Attorney General
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Office of the Attorney General
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Sacramento, CA 94244

Matthew Scott McConnell
Sheppard Mullin et al LLP
12275 El Camino Real, Suite 200
San Diego, Calif. 92130-3057

Dated: FEB 14 2011

Material Sent YES:

Material Sent YES:

Material Sent YES:

Material Sent YES:

Material Sent YES:

Material Sent YES:

San Diego, CA 92130-3051

Thomas William Wolfrum
1333 N California Blvd Ste 150
Walnut Creek, CA 94596

Material Sent YES:

EXHIBIT “36”

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.

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. Mulligan
K. Mulligan

, Deputy

WILLIAM L WILLIAMS
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☐ Additional names and address attached.

EXHIBIT “37”

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Attorneys for Plaintiff

CALIFORNIA VALLEY MIWOK TRIBE

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

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

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

Plaintiff,

vs.

Date: March 11, 2011

Time: 2:00 p.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: May 13, 2011

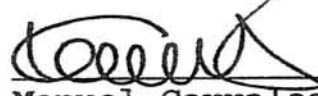
**CALIFORNIA GAMBLING CONTROL
COMMISSION,**

Defendant.

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

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

12
13
14 Dated: March 14, 2011


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

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

MINUTE ORDER

DATE: 03/11/2011

TIME: 02:00:00 PM

DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn

CLERK: Kim Mulligan

REPORTER/ERM: Susan Holthaus CSR# 6959

BAILIFF/COURT ATTENDANT: M. Chadwell

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

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

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

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: California Valley Miwok Tribe

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

APPEARANCES

SEE SIGN-IN SHEET FOR APPEARANCES.

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

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

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



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

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

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

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

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

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

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

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

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

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

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



Judge Ronald L. Styn

PP

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

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

EVENT TYPE: Demurrer / Motion to Strike

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

JUDGE: Ronald L. Styn

DEPARTMENT: C-62

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

SHORT TITLE: California Valley Miwok Tribe v. California Gambling
Control Commission

CASE NUMBER:
37-2008-00075326-CU-CO-CTL

ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (DOCUMENTS SERVED)

(This Attachment is for use with form POS-030)

The documents that were personally served by first-class mail are as follows *(describe each document specifically)*:

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

NOTICE OF RULING: MOTION FOR JUDGMENT ON THE PLEADINGS

NOTICE OF RULING: MOTION TO QUASH DEPOSITION SUBPOENA FOR DEAN SHELTON

NOTICE OF RULING: DEMURRER TO COMPLAINT IN INTERVENTION

SHORT TITLE: California Valley Miwok Tribe v. California Gambling
Control Commission

CASE NUMBER:
37-2008-00075326-CU-CO-CTL

ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)

(This Attachment is for use with form POS-030)

NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:

<u>Name of Person Served</u>	<u>Address (number, street, city, and zip code)</u>
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Terry Singleton, Esq. SINGLETON & ASSOCIATES	1950 Fifth Avenue, Suite 200 San Diego, California 92101
Robert A. Rosette, Esq. ROSETTE & ASSOCIATES	193 Blue Ravine Road, Suite 255 Folsom, California 95630
Randy Pinal, Esq. Deputy Attorney General	110 West "A" Street, Suite 1100 San Diego, California 92101
Richard Freeman, Esq. SHEPPARD, MULLIN, RICHTER, et al.	12275 El Camino Real, Suite 200 San Diego, California 92130-2006

EXHIBIT “38”

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Including Professional Corporations
5 JOHN D. COLLINS, Cal. Bar No. 45055
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6 MATTHEW S. MCCONNELL, Cal. Bar No. 209672
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7 San Diego, California 92130-2006
Telephone: 858-720-8900
8 Facsimile: 858-509-3691

9 Attorney for Intervenorors

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

13
14 **CALIFORNIA VALLEY MIWOK TRIBE,**

15 Plaintiff,

16 v.

17 **CALIFORNIA GAMBLING CONTROL**
COMMISSION, *et al.*,

18 Defendants.

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

23 Intervenorors.
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No: 37-2008-00075326-CU-CO-CTL

**INTERVENORS' NOTICE OF
MOTION AND MOTION FOR
RECONSIDERATION; AND
MEMORANDUM OF POINTS AND
AUTHORITIES THEREOF**

Law and Motion

Hearing Date: May 13, 2011

Hearing Time: 8:30 a.m.

Hearing Place: C-62

Trial Judge: The Hon. Ronald L. Styn

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2
3 PLEASE TAKE NOTICE that on May 13, 2011 at 8:30 a.m., in Department
4 62 of the San Diego County Superior Court, the Honorable Ronald L. Styn Presiding,
5 Intervenor California Valley Miwok Tribe, California (A.K.A. Sheep Ranch Rancheria
6 Of Me-Wuk Indians, California), Yakima K. Dixie, Velma Whitebear, Antonia Lopez,
7 Antone Azevedo, Michael Mendibles, and Evelyn Wilson ("Intervenors") hereby move
8 pursuant to Code of Civil Procedure Section 1008(b) for an order vacating the Court's
9 March 11, 2011 order denying Intervenor's motion for intervention and enter a new order
10 reaffirming the Court's original order granting Intervenor's motion for intervention.

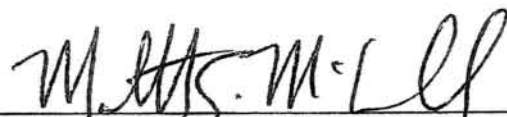
11
12 This motion is based upon the fact that by letter dated April 1, 2011, the
13 Assistant Secretary of the Interior – Indian Affairs set aside his prior letter dated December
14 22, 2010. As a result of the Assistant Secretary's action, the entire underlying basis for the
15 Court's denial of Intervenor's motion to intervene has been vacated, meaning that the
16 Court's order should be reversed in favor of allowing Intervenor the right to intervene in
17 this action.

1 This motion is based upon this Notice of Motion, the accompanying
2 Memorandum of Points and Authorities, the Declaration of Matthew S. McConnell, the
3 Request for Judicial Notice, all matters of which the Court may take judicial notice, the
4 complete records and files in this action, and the oral argument of counsel at the hearing.

5
6 Dated: April 1, 2011

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

8
9 By


MATTHEW S. MCCONNELL

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11 Attorneys for Intervenors
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1 MEMORANDUM OF POINTS AND AUTHORITIES

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3 I.

4 INTRODUCTION

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6 On March 11, 2011, this Court granted reconsideration of its prior order
7 allowing Intervenors to intervene and entered a new order denying Intervenors the right to
8 intervene into this lawsuit. At the same time, this Court granted Plaintiff's motion for
9 judgment on the pleadings. The Court's orders were entirely premised upon a letter dated
10 December 22, 2010 by the Assistant Secretary of the Interior – Indian Affairs which
11 purported to give control over the Miwok Tribe to Sylvia Burley.

12
13 On April 1, 2011, the Assistant Secretary formally set aside its December 22,
14 2010 letter. As a result, the entire basis for the Court's prior orders no longer exists.

15
16 II.

17 ARGUMENT

18
19 Code of Civil Procedure section 1008(b) provides that a party who originally
20 made an application for an order which was refused in whole or in part may make a
21 subsequent application for the same order upon new or different facts, circumstances, or
22 law.

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24 Intervenors previously filed a motion to intervene into this matter pursuant to
25 Code of Civil Procedure sections 387 and 389. The Court initially granted the motion. On
26 March 11, 2011, however, the Court granted plaintiff's motion for reconsideration and
27 entered a new order denying Intervenors' motion to intervene. The Court's decision
28

1 denying intervention is based exclusively on the December 22, 2010 letter by Larry Echo
2 Hawk, the Assistant Secretary of the Interior – Indian Affairs.

3
4 On April 1, 2011, Mr. Echo Hawk, acting in his capacity as the Assistant
5 Secretary of the Interior – Indian Affairs, issued a new letter to Yakima Dixie in which he
6 officially set aside his December 22, 2010 letter. (Ex. 1 to McConnell Decl.) The letter
7 reads in full as follows:

8
9 On December 22, 2010, my office issued a letter setting out the
10 Department of the Interior's decision on a question respecting
11 the composition of the California Valley Miwok Tribe. The
12 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.

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

16 I believe that the longstanding problems within the Tribe need
17 prompt resolution, and I remain committed to the timely
18 issuance of my reconsidered decision. I am mindful, however,
19 that additional briefing may inform my analysis of the problems
20 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.

21 (Ex. 1 to McConnell Decl.; emphasis added.)

22
23 There is no question that Mr. Echo Hawk's letter constitutes "new or different
24 facts, circumstances, or law" under Code of Civil Procedure section 1008(b). There is also
25 no question that Mr. Echo Hawk's letter completely eliminates the basis upon which
26 Plaintiff moved for reconsideration of the Court's initial order granting intervention and
27 upon which this Court on March 11, 2011 denied Intervenor's motion for intervention.

Intervenors therefore respectfully submit that this Court should vacate its order dated March 11, 2011 denying Intervenors' motion for intervention and instead reaffirm its original order granting intervention. As previously set forth in detail in Intervenors' original motion for intervention and subsequent briefs in opposition to reconsideration, Intervenors easily meet the definition of interested, necessary, and indispensable parties under Code of Civil Procedure sections 387 and 389, thereby entitling them to intervene in this matter.

III.

THE COURT SHOULD EXERCISE ITS INHERENT AUTHORITY TO RECONSIDER ITS ORDER GRANTING JUDGMENT ON THE PLEADINGS

Because Mr. Echo Hawk's letter setting aside the December 22 letter occurred more than 10 days after notice of the Court's ruling granting judgment on the pleadings, Intervenors are unable to move for reconsideration of this order under Code of Civil Procedure section 1008(a). The 10 day time limit, however, only limits a party's ability to move for reconsideration. It does not limit the court's ability to exercise its inherent authority to reconsider its own prior orders. Le Francois v. Goel, 35 Cal.4th 1094, 1107 (2005); Montegani v. Johnson, 162 Cal.App.4th 1231, 1238 (2008).

Intervenors therefore respectfully submit that in light of Mr. Echo Hawk's official decision to set aside his December 22, 2010 letter, this Court should sua sponte reconsider all of its prior orders in this case including its order granting judgment on the pleadings. See Marriage of Barthold, 158 CA4th 1301, 1308 (2008); Marriage of Herr, 174 CA4th 1463, 1468–1470 (2009); Nieto v. Blue Shield of Calif. Life & Health Ins. Co., 181 CA4th 60, 73 (2010).

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IV.

CONCLUSION

Based on the foregoing, Intervenor respectfully request that the Court vacate its March 11, 2011 order denying intervention and instead enter a new order reaffirming its original decision to grant Intervenor's motion for intervention.

Dated: April 1, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



MATTHEW S. MCCONNELL

Attorneys for Intervenor

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Executed on April 1, 2011, at San Diego, California.


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