

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - April 25, 2013

EVENT DATE: 04/26/2013

EVENT TIME: 02:00:00 PM

DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

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

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

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Contract - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED:

The court addresses the evidentiary issues. Defendant California Gambling Control Commission's request for judicial notice and reply request for judicial notice are granted. Plaintiff's request for judicial notice is denied as to 8 (because the document is missing), denied as to 22, 25 and 33, and granted as to the remainder.

The court then rules as follows. Defendant California Gambling Control Commission's motion for summary judgment is granted.

The decision in *California Valley Miwok Tribe v. The Superior Court of San Diego County* (Cal. Ct. App., Dec. 18, 2012, D061811) 2012 WL 6584030 frames the central issue on this motion.

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.

California Valley Miwok Tribe v. The Superior Court of San Diego County (Cal. Ct. App., Dec. 18, 2012, D061811) 2012 WL 6584030 at *7.

Government Code § 12012.75 provides:

There is hereby created in the State Treasury a special fund called the "Indian Gaming Revenue Sharing Trust Fund" for the receipt and deposit of moneys derived from gaming device license fees that are paid into the fund pursuant to the terms of tribal-state gaming compacts for the purpose of making distributions to noncompact tribes. **Moneys in the Indian Gaming Revenue Sharing Trust Fund shall**

be available to the California Gambling Control Commission, upon appropriation by the Legislature, for the purpose of making distributions to noncompact tribes, in accordance with distribution plans specified in tribal-state gaming compacts.

Section 4.3.2.1(b) of the Compact provides

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 fund. 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.

Gov. Code, § 12012.90 provides:

(a)(1) For each fiscal year commencing with the 2002-03 fiscal year to the 2004-05 fiscal year, inclusive, the California Gambling Control Commission shall determine the aggregate amount of shortfalls in payments that occurred in the Indian Gaming Revenue Sharing Trust Fund pursuant to Section 4.3.2.1 of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution as determined below:

....

(2) For purposes of this section, **"eligible recipient Indian tribe"** means a noncompact tribe, as defined in Section 4.3.2(a)(i) of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution.

....

(d) Upon a transfer of moneys from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund and appropriation from the trust fund, **the California Gambling Control Commission shall distribute the moneys without delay to eligible recipient Indian tribes** for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding.

California Constitution, Article IV, § 19(f) provides:

Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

The Commission construes its duty under the Compacts and these statutes to include a duty to ascertain the identity of the tribal representative authorized by the tribe to receive and administer the tribe's RSTF payments. "[T]he construction of an act by the agency charged with its enforcement is entitled to considerable deference from the courts ' and will be followed if not clearly erroneous. [Citations.] ' '(*Judson Steel Corp. v. Workers' Comp. Appeals Bd.*, *supra*, 22 Cal.3d 658, 668, quoting from *Bodinson Mfg. Co. v. California E. Com.*, *supra*, 17 Cal.2d 321, 325-326.)" *League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529, 557. The court finds the Commission's construction that its duty includes the obligation to take reasonable steps to distribute RSTF payments to the authorized representative of the tribe is not clearly erroneous. The court is persuaded that, implicit in the Commission's duty under the Compacts to distribute RSTF funds, is the Commission's duty to ascertain the identity of representatives authorized by their respective tribes to receive and administer the tribe's RSTF payments. The court agrees that the Commission cannot

reasonably be deemed to discharge its responsibility to make a RSTF distribution to a tribe by making the payment to a person or group other than the one properly authorized to receive and administer the payment pursuant to a tribe's directives. The court also finds that the Commission's reliance on the BIA's decisions as to a tribe's authorized leadership, as fulfilling the Commission's duty under the Compact and accompanying statutes, is not clearly erroneous. The Commission's decision to discharge its duty by disbursing RSTF funds only to those individuals or leadership bodies recognized by the BIA for the government-to-government business of the disbursement and receipt of federal PL 638 contract funds is reasonable. It is the Department of the Interior, Bureau of Indian Affairs that "has the authority and responsibility to ensure that the Nation's representatives, with whom it must conduct government-to-government relations, are the valid representatives of the Nation as a whole. See *Seminole Nation v. United States*, 316 U.S. 286, 296, 62 S.Ct. 1049, 86 L.Ed. 1480 (1942)." *Seminole Nation of Oklahoma v. Norton* (D.D.C. 2002) 223 F.Supp.2d 122, 140. Given the BIA's authority with respect to the validity of tribal representatives, it is reasonable for the Commission to rely on the BIA for a determination of the authorized representative of a tribe for purposes of distribution of RSTF funds.

The Commission submits evidence that, at the present time, a dispute exists as to the composition and leadership of the Miwok Tribe, as evidenced by the pending *Salazar* matter [SSUMF 9]. The Commission also submits evidence that, when uncertainty exists as to a Non-compact Tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the Department of Interior, Bureau of Indian Affairs' (BIA) determinations [SSUMF 14]; because the BIA suspended PL 638 contract funding to the Miwok Tribe in 2005, the Commission suspended its disbursement RSTF payments, pending the BIA's resumption of PL 638 funding, or other BIA action [SSUMF 15]; as of this date the BIA has not resumed disbursing PL 638 funds to the Miwok Tribe, and has not recognized an authorized leader or leadership group for the Miwok Tribe [SSUMF 16]; the Commission will promptly disburse the accrued RSTF payments to the Miwok Tribe once the BIA has identified the Miwok Tribe's authorized leader or leadership group [SSUMF 18].

Since the BIA, the agency to which the Commission defers as to a tribe's authorized leadership, has suspended its PL 638 payments to the Miwok Tribe based on a leadership dispute, the court finds the Commission's suspension of disbursement of quarterly RSTF payments, pending the BIA's resumption of PL 638 funding or other BIA action recognizing the authorized representative of the Miwok Tribe, is justified. Such circumstances provide a legally sufficient basis for the Commission to withhold RSTF funds. Therefore, the court finds that, because the *Salazar* case is pending and because the BIA has not recognized a tribal leadership body for the distribution of PL 638 (ISDEAA) benefits, the Commission is justified in withholding the RSTF funds. As such, each of Plaintiff's claims fail as a matter of law.

The court is not persuaded by Plaintiff's argument that there is no dispute as to the composition and leadership of the Miwok Tribe [SSUMF 9]. Plaintiff argues that *Salazar* is irrelevant "per the Court of Appeal decision." However, the Court of Appeal decision specifically directs this court to consider *Salazar* in determining whether the Commission's conduct is justified. Plaintiff also argues that "[t]here is no dispute concerning the leadership of the Tribe, in light of recent deposition testimony of Yakima Dixie confirming that he had resigned as Tribal Chairman and acknowledging that Burley is the new Chairperson." [Plaintiff's response to SSUMF 9.] While Dixie does testify that he resigned as chairperson of the Tribe, it is not Dixie's resignation and/or Dixie's purported recognition of Burley as the new Chairperson that is at issue. Rather, it is the BIA's recognition of Burley, or another person or entity, as the authorized representative of the Miwok Tribe that is the determining factor. A determination as to the effect of the Dixie's testimony on the issue of the authorized representative of the Miwok Tribe is beyond the jurisdiction of this court.

The evidence Plaintiff offers to dispute SSUMF 14 and 15 is not sufficient to establish triable issue of material fact as to the Commission's policy that, "when uncertainty exists as to a Non-compact Tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the Department of Interior, Bureau of Indian Affairs' (BIA) determinations" [SSUMF 14] and that because the BIA suspended PL 638 contract funding to the Miwok Tribe in 2005, the Commission suspended its disbursement of quarterly RSTF payments, pending the BIA's resumption of PL 638 funding, or other BIA action [SSUMF 15]. The evidence Plaintiff offers to dispute SSUMF 16 does not establish triable

issues of material fact as to whether, as of this date the BIA has not resumed disbursing PL 638 funds to the Miwok Tribe, and has not recognized an authorized leader or leadership group for the Miwok Tribe [SSUMF 16]. The court is not persuaded by Plaintiff's analogy to a stay of execution and argument that the stay does not affect the "declaration of rights" contained in the August 31, 2011, decision of the Assistant Secretary of the Interior. In light of the stay, there is no final decision of the BIA recognizing an authorized leader or leadership group for the Miwok Tribe. This is evidenced by the fact that the BIA has not resumed PL 638 funding to the Tribe. Plaintiff relies on the fact that the BIA has not resumed efforts to reorganize the Miwok Tribe to demonstrate that the stay has no effect on the ASI's recognition of the Tribal Council under Burley's leadership as the authorized representative of the Miwok Tribe. However, such conduct is consistent with the BIA staying any action based on the August 21, 2011, decision – i.e., either resuming these efforts, or resuming PL 638 funding.

As recognized in *California Valley Miwok Tribe v. Salazar* (D.D.C. 2012) 281 F.R.D. 43,

If the plaintiffs prevail in this action, the Assistant Secretary's August 31 decision will be vacated, the Bureau will be ordered to cease government-to-government relationships with the Tribe as organized in the form of the General Council, and the defendants will be enjoined from awarding any federal funds to Burley.

California Valley Miwok Tribe v. Salazar (D.D.C. 2012) 281 F.R.D. at 47. Given this potential, the court finds the Commission's suspension of RSTF payments is justified. Also supporting this conclusion is the Joint Status Report signed in *Salazar* wherein all parties, including the BIA, agreed that "the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' [intervenor here] claims or grants a dispositive motion of the Federal Defendants [Secretary of the United States Department of the Interior, et al.]. Via this Joint Status Report the BIA itself recognizes that the August 21, 2011 decision is of no force and effect. Such recognition provides further justification for the Commission's action in suspending RSTF payments. Whether the district court signed or adopted the Report is not relevant to the court's analysis. It is the BIA's interpretation that is at issue.

Plaintiff offers no evidence to dispute SSUMF 18 "the Commission will promptly disburse the accrued RSTF payments to the Miwok Tribe once the BIA has identified the Miwok Tribe's authorized leader or leadership group." Instead Plaintiff offers argument that the Compact does not require that the actions of the BIA dictate the conditions of disbursement of RSTF funds and that the Commission is wrong in conditioning payment on this basis. For the reasons set forth above, the court finds the Commission's deference to BIA's decisions as to a tribe's authorized leadership in instances of a leadership dispute is justified.

The court is not deciding whether the August 31, 2011 decision is final. Rather, as directed by the Court of Appeal, the court *acknowledges* that a federal dispute is ongoing, and based on this dispute, determines that the Commission has a legally sufficient basis for withholding the RSTF funds. As long as *Salazar* is remains pending, and the August 31, 2011, decision remains stayed, Plaintiff cannot establish that it is the recognized tribe and entitled to receive RSTF monies.

The court orders the Commission to submit a judgment, consistent with this ruling, within 10 days of this ruling.

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

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 02/21/2013

In light of this court's granting of Defendant California Gambling Control Commission's motion for summary judgment, Plaintiff's motion for order lifting effect of March 11, 2011, order granting reconsideration and denying intervention is moot.

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CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings, 02/21/2013

For the reasons set forth in this court's ruling granting Defendant California Gambling Control Commission's motion for summary judgment, Plaintiff's motion for judgment on the pleadings is denied.

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CASE CATEGORY: Civil - Unlimited

CASE TYPE: Contract - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 03/06/2013

In light of this court's granting of Defendant California Gambling Control Commission's motion for summary judgment, Intervenor California Valley Miwok Tribe, California, Yakima K. Dixie, Velma WhiteBear, Antonia Lopez, Antone Azevedo, Michael Mendibles and Evelyn Wilson's motion for summary judgment/summary adjudication is moot.