

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - July 03, 2013

EVENT DATE: 07/05/2013

EVENT TIME: 08:30:00 AM

DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

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

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

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for New Trial, 06/04/2013

The court addresses the evidentiary issues. Plaintiff's request for judicial notice is granted as to Exhibits 41-47 and denied as to 48 and 49. Plaintiff's objection to Intervenor's opposition to Plaintiff's motion for new trial is overruled.

The court then rules as follows. Plaintiff's motion for new trial is denied.

As set forth in this court's ruling on Defendant California Gambling Control Commission's motion for summary judgment, 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 as follows.

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.

In ruling on the Commission's motion, the court addressed the issue as framed by the Court of Appeal.

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 RSFT 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.

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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.

No further findings are required. Plaintiff's argument that there is no uncertainty as to the leadership of the Tribe is addressed by the court in its ruling on the Commission's motion. The evidence Plaintiff refers to was considered by the court in ruling on the Commission's motion. The court's ruling was based on the Department of Interior, Bureau of Indian Affairs' (BIA) suspension of PL 638 contract funding to the Miwok Tribe. As such, nothing in the letters Plaintiff references (e.g., letters to Sylvia Burley as "Chairperson") would cause the court to change its ruling. The "new evidence" Plaintiff relies on (the May, 2013 Federal Register) is essentially duplicative of evidence before the court on the Commission's motion and does not provide a basis for the court to change its findings. Plaintiff argues that this court has jurisdiction to independently decide whether the Tribe has a governing body for purposes of receiving RSTF payments. Such a determination is both beyond the issue as framed by the Court of Appeal and outside of this court's jurisdiction. Plaintiff's argument that the Tribe has a right to release of all of the accumulated RSTF monies on deposit as of January, 2011, was not raised in Plaintiff's motion and, as such, cannot be a basis for granting of a new trial. Plaintiff fails to establish that this court's disregard of the testimony of Yakima Dixie was in error.

For these reasons, the court finds Plaintiff fails to establish any of the stated grounds for new trial.