

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CALIFORNIA VALLEY MIWOK TRIBE,  
formerly SHEEP RANCH OF ME-WUK  
INDIANS OF CALIFORNIA  
10601 Escondido Place  
Stockton, CA 95212,

Plaintiff,

vs.

UNITED STATES OF AMERICA  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

UNITED STATES DEPARTMENT OF THE  
INTERIOR  
GALE A. NORTON, Secretary of the Interior,  
18<sup>th</sup> Street & C Street, NW  
Washington, DC 20240

UNITED STATES DEPARTMENT OF THE  
INTERIOR  
MICHAEL D. OLSEN, Acting Assistant  
Secretary -- Indian Affairs  
18<sup>th</sup> Street & C Street, NW  
Washington, DC 20240

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY RELIEF**

This is an action for declaratory relief against the United States and officials within the United States Department of the Interior, acting in their official capacity, to prohibit the United States from interfering with internal tribal matters.

The California Valley Miwok Tribe ("Plaintiff" or "Tribe") by and through its undersigned attorneys, upon personal knowledge as to itself, its own acts and its allegations of the contents of documents referred to herein, and upon information and belief as to all other matters, for its Complaint herein allege as follows:

**INTRODUCTION**

The Tribe, on their own behalf, brings this action to address the Bureau of Indian Affairs' ("BIA") unlawful attempts to interfere with the Tribe's internal affairs.

The Tribe's lands were distributed pursuant to the California Rancheria Act in 1967. The Tribe is now landless, and the Tribe's status between 1967 and 1994 is a matter of dispute. In approximately 1998, the Tribe attempted to organize its government pursuant to the BIA's direction. The Tribe requested BIA assistance in conducting a secretarial election pursuant to the Indian Reorganization Act. When the BIA ignored the Tribe's request, the Tribe moved forward to organize on its own. The Tribe exercised its inherent authority to adopt its own governing documents and to organize its government. Since at least June 25, 1999, the BIA recognized the government, its documents and its chairperson, Silvia Burley, in its course of dealing with the Tribe, to include providing funding to the Tribe pursuant to Public Law 93-638. Now, the BIA is attempting to reverse the position it had taken from 1999 to 2004 with respect to the recognition of the Tribe's government.

The BIA's actions are unlawful, intrude upon the Tribe's sovereign authority, and violate the clear congressional intent of the 2004 amendment to the Indian Reorganization Act relating to inherent tribal sovereignty and the legitimacy of tribal documents approved after 1935. Accordingly, the Tribe seeks declaratory relief affirming that 1) the Tribe possesses the inherent authority to adopt governing documents outside of the Indian Reorganization Act pursuant to 25 U.S.C. § 476(h); 2) pursuant to 25 U.S.C. § 476, the documents that the Tribe has adopted are valid governing documents; and 3) the Tribe has lawfully organized pursuant to their inherent sovereign authority.

#### **JURISDICTION**

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 1361 and 1362, and 5 U.S.C. § 701, *et seq.* Plaintiff is an Indian tribe recognized by the Secretary of the Interior. The matter in controversy arises under the Constitution, laws, or treaties of the United States. Plaintiff has been adversely affected and aggrieved by the unlawful actions of agencies of the United States.

2. A real and actual controversy now exists between Plaintiff and Defendants relating to Tribal sovereignty for which Plaintiff desires a declaration of rights.

3. A declaratory judgment is necessary in that Plaintiff contends that it has the inherent sovereign power to adopt governing documents under procedures other than those specified in 25 U.S.C. § 476(a)-(g), pursuant to 25 U.S.C. § 476(h). Defendants dispute this contention.

#### RELIEF SOUGHT

4. Plaintiff seeks declaratory relief against Defendants pursuant to 5 U.S.C. §§ 701, et seq., 28 U.S.C. §§ 2201 and 2202, and FRCP 57.

#### VENUE

5. Venue is properly laid in this district pursuant to 28 U.S.C. § 1391(e), in that Defendant is located in this judicial district.

#### PARTIES

6. Plaintiff is a federally recognized Tribe in that its name was published in the federal register pursuant to Section 104 of the Act of November 2, 1994, Pub. L. 103-454; 108 Stat. 4791, 4791.

7. The United States of America is a governmental entity organized under the provisions of the Constitution of the United States.

8. Defendant, United States Department of the Interior (“DOI”), is an administrative agency of the United States of America, which has overall responsibility for administering the relationship between the United States and American Indian tribes and is primarily responsible for fulfilling the trust responsibility owed by the United States to American Indian tribes.

9. Defendant, Gale A. Norton, is the Secretary of DOI and the Chief Executive Officer of the DOI and has ultimate responsibility for administering the DOI. Defendant Norton is sued herein in her official capacity.

10. Defendant Michael D. Olsen is the Acting Assistant Secretary – Indian Affairs. In such capacity, Defendant Olsen is the administrative head of the Bureau of Indian Affairs

("BIA"), a bureau within DOI. The BIA is the bureau within DOI that is primarily responsible for fulfilling DOI's administrative responsibilities for managing the federal relationship with American Indian tribes and the trust responsibility of the United States to American Indian Tribes. Defendant Olsen is sued herein in his official capacity.

#### GENERAL ALLEGATIONS

11. On or about September 24, 1998, the Superintendent of the BIA Central California Agency sent a letter to Yakima Dixie as Tribal Chairman, following a meeting between the Tribe, Mr. Raymond Fry and Mr. Brian Golding. In that letter the BIA recognized that Yakima Dixie, Melvin Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristan Wallace "possess the right to participate in the initial organization of the Tribe." The letter goes on to recommend a General Council form of Government.

12. On or about April 20, 1999, Yakima Dixie called a meeting for the purpose of resigning as Chairperson for the Tribe.

13. On or about April 20, 1999, Yakima Dixie presented his resignation as tribal chairperson to the Tribal Council. Yakima Dixie participated in the unanimous vote of the tribal council to accept his resignation.

14. On or about May 8, 1999, the Tribe held a general election. Yakima Dixie participated in the unanimous vote to elect Silvia Burley as Chairperson, himself as Vice Chairperson, and to ratify the Tribe's constitution. Yakima Dixie then participated in several more Tribal Council meetings and signed several documents as the Vice-Chairman of the California Valley Miwok Tribe.

15. In a June 25, 1999 letter, the Superintendent of the BIA Central California Agency recognized Silvia Burley as Tribal Chairperson.

16. On or about July 30, 1999, the Secretary of the Interior and the Sheep Ranch Band of Mc-Wuk Indians of California entered into a Self-Determination Contract to provide funding to the Tribe for tribal government activities.

17. On October 9, 1999, the Sheep Ranch Band of Me-Wuk Indians adopted an Interim Operating Authority and Rights Resolution, R-2-10/09/99.

18. On or about September 30, 1999, the Tribe became a "contracting Tribe" pursuant to the Indian Self Determination Act, Public Law 93-638 ("638). Public Law 638 provides for federal funding to organized tribes to support and assist tribes in the development of tribal government, tribal programs, and tribal economic development.

19. In a February 4, 2000 letter from the Superintendent BIA Central California Agency Office to Vice-Chairperson Yakima Dixie, the BIA makes several critical findings:

- (1) Prior to August 1998, Mr. Dixie was recognized as the spokesperson for the Tribe.
- (2) On August 5, 1998, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristan Wallace were accepted as members of the Tribe enjoying all benefits, privileges, rights and responsibilities of Tribal membership, including right to participate in organizing the Tribe.
- (3) That as of that date, only those members over the age of 18 (Mr. Dixie, Ms. Burley and Ms. Reznor) were entitled to participate in the organization of the Tribe.
- (4) That on or about November 5, 1998, Resolution #GC-98-01 was adopted by the Tribe which established a Tribal General Council.
- (5) That issues involving the leadership of the Tribe are internal matters to be resolved by the Tribe.

20. On or about February 9, 2000, the Tribal Council notified Yakima Dixie that he had 30 days to initiate review of claims regarding his resignation. Mr. Dixie did not respond by the expiration of the 30 day period.

21. On March 6, 2000, the Tribe ratified its Constitution.

22. In a March 7, 2000 letter from the Superintendent of the Central California Agency to Silvia Burley, Chairperson, the BIA makes the following critical findings:

- (1) That the General Council of the Tribe consisted of Mr. Dixie, Ms. Burley and Ms. Reznor.
- (2) That all members of the Tribe possess full rights of membership.
- (3) That the leadership dispute between Mr. Dixie and Ms. Burley was an internal tribal matter.
- (4) That the appropriate forum for resolving a tribal leadership dispute is the Tribal General Council.
- (5) That the rights of others to participate in the governance of the Tribes are to be determined by the appropriate Tribal Forum.
- (6) That the BIA acknowledged that as a matter of Federal law and policy, there is no basis for agency involvement in a leadership dispute.

23. In a March 9, 2000 letter from Superintendent, BIA Central California Agency to Silvia Burley, Chairperson, the BIA confirmed receipt of the attached Tribal Council Resolution requesting a review of the Tribe's Constitution and a Secretarial Election under the Indian Reorganization Act.

24. The Indian Reorganization Act, 25 U.S.C. § 476, sets forth the procedure for the review and approval of a tribe's constitution and the conduct of a Secretarial Election. The Act requires that the Secretarial Election be conducted within 180 days after a tribe's request, no later than September 7, 2000.

25. On March 16, 2000, the Tribal Council passed Resolution R-2-3-16-2000, which resolved that pursuant to Resolution R-2-10/9/99 (Interim Operations Authorities and Rights), Yakima Dixie waived his right to contest his resignation by failing to respond to the Tribal Council within the prescribed 30-day period.

26. On or about March 16, 2000, the Tribal Council informed Yakima Dixie of the Tribal Council's final determination of his claims.

27. In a July 12, 2000 letter from the Superintendent of the Central California Agency office to Silvia Burly, Chairperson, the BIA confirmed their recognition of Silvia Burley as Chairperson of the Tribe, with the Vice-Chairperson position being vacant and Rashel Reznor as Secretary/Treasurer of the Tribe.

28. In a July 26, 2000 letter from the Superintendent of the Central California Agency to the Secretary of Indian Affairs, the BIA confirmed that Silvia Burley was Chairperson of the Tribe and that she was an elected official of the Tribe. Attached hereto as **Exhibit "1,"** and incorporated herein by this reference, is a true and correct copy of the July 20, 2000 letter.

29. In a June 7, 2001 letter from the Deputy Commissioner of Indian Affairs to Silvia Burley, Chairperson, the BIA approved the Tribe's name change from "Sheep Ranch Rancheria of Mi-Wuk Indians" to "California Valley Miwok Tribe." The letter confirmed that that Tribe has a tribal council which can and does conduct business on behalf of the Tribe through resolutions.

30. In a June 7, 2001 letter from Chairperson Burley to the BIA Central California Agency office, the Tribe withdrew its request for a Secretarial Election, approximately 15 months after the Tribes' initial request.

31. On or about July 18, 2001, Yakima Dixie filed a civil suit against the Tribe in federal district court challenging the Tribe's membership and leadership.

32. In an October 31, 2001 letter from Dale Risling, Superintendent of the Central California Agency, to Silvia Burley, the BIA confirmed receipt of the September, 2001 version of the Tribe's constitution, which amended the constitution ratified on March 6, 2000, which the BIA confirmed receipt of on March 9, 2000. Mr. Risling stated the following:

"The Agency will continue to recognize the Tribe as an unorganized Tribe and its elected officials as an interim Tribal Council until the Tribe takes the necessary steps to complete the Secretarial election process. Agency staff is available to provide technical assistance in this matter upon receipt of the Tribe's written request. We are returning the original document to the Tribe without any action."

33. On or about January 24, 2002, the federal district court dismissed Yakima Dixie's lawsuit for lack of jurisdiction by virtue of tribal sovereignty and failure to exhaust administrative remedies. No. CIV S-01-1389 LKK/DAD. The Court took judicial notice of evidence that Silvia Burley and Rashel Reznor were recognized by the BIA as the sole members of the governing body of the Tribe.

34. In an April 9, 2002 letter from Dale Risling, Superintendent of the Central California Agency of the BIA, to Silvia Burley, Chairperson, the BIA stated that the provision of the Tribe's 638 Contract regarding the development of a tribal constitution subject to IRA would be deleted until a Federal Solicitors opinion supporting the requirement was rendered. To date, no such opinion has been provided.

35. On or about October 30, 2003, Yakima Dixie notified the Tribe of his filing of an Administrative Appeal in violation of 25 C.F.R. Part 2, to the Deputy Assistant Secretary – Indian Affairs at the U.S. Department of the Interior. In this Appeal, Mr. Dixie raised the same issues as were originally raised to the BIA at the December 28, 1999 meeting, and in his legal action filed on January 18, 2001 and dismissed by the Court on January 24, 2002.

36. On or about November 24, 2003, the BIA released a recognition letter acknowledging that the BIA maintains a government to government relationship with the Tribe through the tribal council chaired by Silvia Burley. Attached hereto as **Exhibit "2,"** and incorporated herein by this reference, is a true and correct copy of the November 24, 2003 recognition letter.

37. In a January 5, 2004 letter from the Superintendent Central California Agency to Silvia Burley, Chairperson, the BIA granted the Tribe "Mature Contract Status" under the FY-04 Mature Status-Consolidated Tribal Government Program. A "Mature Contract" is a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization. 25 U.S.C. § 450b.

38. On or about February 4, 2004, the Tribe passed Resolution R-1-02-04-2004 assuming jurisdiction and establishing an administrative forum to address Yakima Dixie's appeal.

39. On or about February 5, 2004, the Tribe notified the BIA that they had assumed jurisdiction over Yakima Dixie's claims.

40. On February 10, 2004, Mr. Dale Risling, Superintendent, BIA Central California Agency, testified under oath that Silvia Burly is the recognized Chairperson of the California Valley Miwok Tribe.

41. On February 10, 2004, Mr. Raymond Fry, Tribal Operations Officer, BIA Central California Agency Office testified under oath that the BIA recognizes Silvia Burley as Tribal Chairperson.

42. In a February 11, 2004 letter from the Chairperson of the California Valley Miwok Tribe to the Superintendent of the BIA Central California Agency, the Tribe, relying on Mr. Fry's testimony, provided a copy of its Tribal Constitution to the BIA for its records, and not for review.

43. On March 2, 2004, the Native American Technical Corrections Act of 2004 ("NATCA") became law. The Act amends Section 16 of IRA by stating that Tribes have the inherent sovereign power to adopt governing document outside the scope of IRA, and that nothing in IRA invalidates any constitution or governing document adopted by a Tribe after June 18, 1934. 25 U.S.C. § 476(h).

44. On March 22, 2004, the Tribe's Administrative Hearing Officer, acting pursuant to Tribal Council Resolution R-1-02-04-2004, forwarded a notification of an Administrative Hearing in Yakima K. Dixie v. California Valley Miwok Tribe, Case No. CVMT-AH-2004-001 to Silvia Burley and Yakima Dixie relating to the issue raised by Yakima Dixie regarding the Tribal Chairmanship.

45. On or about March 26, 2004, Dale Risling, Sr., Superintendent of the Central California Agency, prepared a letter addressed to Ms. Silvia Burley, Chairperson, California

Valley Miwok Tribe. The letter stated that despite the fact that they Tribe has a constitution, that the BIA considers the Tribe to be “unorganized.” The letter further stated that “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.” Attached hereto as **Exhibit “3,”** and incorporated herein by this reference, is a true and correct copy of the March 26, 2004 letter.

46. On February 11, 2005, Michael D. Olsen, Acting Assistant Secretary – Indian Affairs, sent a letter addressed to Yakima Dixie, of the “Sheep Ranch Rancheria of MiWok Indians of California.” In this letter, the Assistant Secretary dismissed Yakima Dixie’s appeal as untimely. The Assistant Secretary went on to state that:

- (1) the BIA had rejected the Tribe’s constitution;
- (2) the BIA did not recognize Silvia Burley as tribal chairperson, but as a “person of authority within the California Valley Miwok Tribe.”
- (3) the BIA would not recognize anyone as the tribal chairperson until the tribe has organized as described in the letter of March 26, 2004.
- (4) the BIA did not recognize the tribal hearing process as a legitimate tribal forum. Attached hereto as **Exhibit “4,”** and incorporated herein by this reference is a true and correct copy of the February 11, 2005 letter.

47. Plaintiff has exhausted any and all available administrative remedies in that no administrative appeal is available to remedy the actions of the Assistant Secretary of Indian Affairs.

**First Claim For Relief**

**(Violation of the 2004 Native American Technical Corrections Act**

**[25 U.S.C. § 476(h)])**

48. Plaintiff incorporates paragraphs 1 – 47 as if fully incorporated herein.

49. The Native American Technical Corrections Act of 2004 (“NATCA”) clarified the inherent sovereign power of Indian tribes by amending the Indian Reorganization Act (“Act”) with the following addition:

(h) Tribal Sovereignty. Notwithstanding any other provision of this Act—  
(1) each Indian Tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and  
(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1). 25 U.S.C. § 476(h).

Defendants violated NATCA as follows:

a) By declining to recognize the Tribe’s constitution, adopted by the Tribe in September, 2001.

b) By declining to recognize the Tribe’s resolution establishing a Tribal Forum, Tribal Council Resolution, R-1-02-04-2004, adopted by the Tribe on February 4, 2004.

50. As a direct and proximate result of these violations of NATCA, Defendants have infringed upon the Tribe’s sovereign authority, impaired the Tribe’s ability to govern itself, and severely damaged the Tribe’s ability to conduct business with state and local governments as a sovereign entity.

51. The Tribe prays for relief as further provided below.

### **Second Claim For Relief**

#### **(Administrative Procedure Act [5 U.S.C. §§ 701-706])**

52. Plaintiff incorporates paragraphs 1 – 51 as if fully incorporated herein.

53. The actions of the Defendant in declining to recognize the validity and effect of the Tribe’s governing documents violates 25 U.S.C. § 476(h) in that it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

54. The actions of the Defendant in declining to recognize the tribal hearing process lawfully adopted through the Tribe’s governing documents as a legitimate tribal forum violates 25 U.S.C. § 476(h) in that it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

55. The actions of the Defendant in declining to recognize the tribal hearing process as a legitimate tribal forum constitutes a showing of bad faith or improper behavior by Defendants.

56. The actions of the Defendant in declining to recognize the tribal hearing process as a legitimate tribal forum went beyond Defendants' delegated authority and therefore constitute ultra vires acts.

57. The actions of the Defendant in declining to recognize Silvia Burley as tribal chairperson after her election pursuant to the Tribe's constitution is a departure from prior precedent that is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

58. The actions of the Defendant in declining to recognize Silvia Burley as tribal chairperson after her election pursuant to the Tribe's constitution constitutes a showing of bad faith or improper behavior by Defendants.

59. The actions of the Defendant in declining to recognize Silvia Burley as tribal chairperson after her election pursuant to the Tribe's constitution went beyond Defendant's delegated authority, and therefore, constitute ultra vires acts.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

1. Plaintiff requests that this Court issue declaratory relief pursuant to 28 U.S.C. § 2201 that the Tribe retains inherent sovereign power to adopt governing documents under procedures other than those specified in 25 U.S.C. §476(a-g);

2. Plaintiff requests that this Court issue declaratory relief pursuant to 28 U.S.C. § 2201 that the Constitution of the California Valley Miwok Tribe, adopted by the Tribe in September, 2001, is a valid governing document for the Tribe;

3. Plaintiff requests that this Court issue declaratory relief pursuant to 28 U.S.C. § 2201 that Tribal Council Resolution R-2-3-16-2000, adopted by the Tribe on March 16, 2000, is a valid governing document for the Tribe;

4. Plaintiff requests that this Court issue declaratory relief pursuant to 28 U.S.C. § 2201 that Tribal Council Resolution R-1-02-04-2004, adopted by the Tribe on February 4, 2004, is a valid governing document for the Tribe;

5. Plaintiff requests that this Court issue declaratory relief pursuant to 28 U.S.C. § 2201 that the Tribe has lawfully organized pursuant to 25 U.S.C. § 476.

6. Plaintiff requests that this Court issue declaratory relief pursuant to 28 U.S.C. § 2201 that the February 11, 2005 letter from the Acting Assistant Secretary – Indian Affairs is invalid;

7. That Plaintiff be awarded its costs, expenses and attorney fees incurred herein; and

8. For such other and further relief as the Court deems just and proper.

Dated: April 12, 2005

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