

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

CALIFORNIA VALLEY MIWOK TRIBE,
formerly SHEEP RANCH OF ME-WUK
INDIANS OF CALIFORNIA,

Plaintiff,

vs.

UNITED STATES OF AMERICA, UNITED
STATES DEPARTMENT OF THE
INTERIOR, GALE A. NORTON, Secretary of
the Interior, DAVID W. ANDERSON,
Assistant Secretary – Indian Affairs,

Defendants.

) Case No.: CIV 05CV 739

) Date:

) Time:

PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff, California Valley Miwok Tribe (“CVMT” or “Tribe”), by its undersigned attorneys, respectfully moves for an entry of a preliminary injunction against Defendants United States of America, United States Department of the Interior, Gale A. Norton, Secretary of the Interior, David W. Anderson, Assistant Secretary – Indian Affairs (“Defendants”), pursuant to the Administrative Procedures Act, 5 U.S.C. §§ 702 and 706, Fed. R. Civ. P. 65 and Local Civil Rule 65.1. The immediate relief sought is necessitated because of Defendants’ arbitrary and unlawful attempt to suspend the government-to-government relationship between CVMT and the United States. This action has interfered with the Tribe’s self-governance and caused the California Gambling Control Commission to withhold CVMT’s rightful share of California Indian gaming revenues, and to bring a suit against the Chairperson of the Tribe in state court. Because the harm to CVMT’s self-governance is irreparable, it therefore has no adequate administrative remedy or remedy at law except to seek an immediate injunctive relief against Defendants in this Court.

CVMT seeks an order preliminarily enjoining Defendants from suspending government-to-government relations with CVMT through the governing tribal council chaired by Silvia Burley.

As detailed in the accompanying Memorandum of Points and Authorities, CVMT is entitled to a preliminary injunction against Defendants because (1) CVMT will likely succeed on the merits of its claims, since Defendants’ actions are arbitrary and capricious and violate statutory law, case law and Defendants’ own regulations regarding tribal self-governance; (2) CVMT and its members face substantial, imminent and irreparable injury due to Defendants’ actions; (3) granting injunctive relief will not harm other interested parties; and (4) the public interest supports a preliminary injunction in this case.

In support of its Motion, CVMT submits the accompanying Memorandum of Points and Authorities, together with the Declarations of George L. Steele and Silvia Burley, attached exhibits and a Proposed Order.

CVMT and Defendants have agreed upon a briefing schedule whereby CVMT would file this motion on December 23, 2005 and Defendants would file their opposition on January 3, 2006. CVMT respectfully requests oral argument on the Motion on either January 5, 6, or 9, 2006. Defendants have indicated that they are available for oral argument on those dates as well. CVMT has given actual notice to Defendants of the time of application, and have furnished all pleadings and papers to them.

NATURE OF THE CASE

The purpose of this Motion is to enjoin Defendants from using their power to commit acts for which they lack lawful authority. CVMT is a recognized tribe pursuant to Section 104 of the Act of November 2, 1994, Pub.L. 103-454, 108 Stat. 4791, 4792. In 1999, CVMT ratified its Constitution, and elected Silvia Burley as the chairperson of its governing tribal council pursuant to Constitutional requirements. Since that time, Ms. Burley has been reelected, and CVMT has maintained a continuous government-to-government relationship with the federal government through the tribal council chaired by Ms. Burley. The government-to-government relationship has included CVMT's classification by Defendants as a "mature status" contracting tribe pursuant to the Indian Self-Determination Act, Public Law 93-638 ("P.L. 638"). In February 2005, Defendants embarked on a series of unlawful acts designed to systematically erode CVMT's ability to self-govern. On February 11, 2005, the Acting Assistant Secretary declared CVMT's constitution and tribal forum invalid, and that Defendants would not recognize CVMT's elected leadership until the Tribe had "organized" as directed by Defendants.

In July 2005, Defendants unlawfully suspended the Tribe's self-determination contract without the Tribe's consent. After agreeing to reinstate the contract in response to CVMT's protests, Defendants partially reinstated the contract.

On or about October 28, 2005, BIA employee Ray Fry rejected a tribal resolution to assign \$3,000 of tribal funds to the BIA Fee-to-Trust Program, a program which CVMT has been a participant of in the past. In so doing, Ray Fry asserted that Defendants do not currently have a government-to-government relationship with CVMT.

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However, the government-to-government relationship is mandated by 25 U.S.C. § 3601, and can only be suspended or terminated by the mutual consent of CVMT, and Congress.

CVMT seeks to preserve the status quo as defined by 25 U.S.C. § 3601(1) pending a final resolution of this case on the merits.

THE FACTS OF THE CASE

1. On or about September 30, 1999, CVMT became a “contracting Tribe” pursuant to the Indian Self-Determination Act, Public Law 93-638 (P.L. 638). CVMT was restored to federal recognition pursuant to Section 104 of the Act of November 2, 1994, Pub.L. 103-454; 108 Stat. 4791, 4792. Decl. of Silvia Burley in Support of Plaintiff’s Motion for a Preliminary Injunction, attached to the concurrently filed Declaration of George L. Steele as **Exhibit 1**.

2. On or about May 8, 1999, CVMT held a general election. CVMT elected Silvia Burley as Chairperson, and ratified the Tribe’s Constitution. *Id.*

3. On or about July 12, 2000, the BIA stated in official correspondence that they recognized Silvia Burley as Chairperson, and Rashel K. Reznor as Secretary/Treasurer. *Id.*

4. On or about July 26, 2000, through official correspondence, the BIA introduced Silvia Burley to Kevin Gover, Assistant Secretary – Indian Affairs, as the Chairperson of CVMT, and confirmed that she was an elected official of a federally recognized tribe. *Id.*

5. The BIA and other Federal Agencies have continuously sent correspondence to the Tribe clearly recognizing Silvia Burley as the Tribal Chairperson since March 7, 2000, including an August 30, 2004 letter approving the Tribe's P.L. 638 funding for FY-04. *Id.*

6. On or about January 24, 2002, the federal district court dismissed a suit against the Tribe 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 the BIA recognized Silvia Burley and Rashel Reznor as the sole members of the governing body of the Tribe. *Id.*

7. On or about January 5, 2004, the BIA modified the Tribe's 638 contract to reflect "mature status." 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. *Id.*

8. On or about January 8, 2003, Acting Assistant Secretary – Indian Affairs Aureen Martin transmitted official correspondence to the Tribe addressed to Silvia Burley, Chairperson, Tribal Council. *Id.*

9. 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. *Id.*

10. On or about February 4, 2004, CVMT passed resolution R-1-02-04-2004 assuming jurisdiction and establishing an administrative forum for intra-tribal disputes. *Id.*

11. On February 10, 2004, Dale Risling, Superintendent of the Central California Agency, Bureau of Indian Affairs testified under oath that the Central California Agency recognized Silvia Burley as CVMT's tribal chairperson, and had so recognized her as such since at least 1999.

12. On February 10, 2004, Raymond Fry, Tribal Operations Officer, Central California Agency, Bureau of Indian Affairs testified under oath that he understood his agency's position to be that Silvia Burley is CVMT's tribal chairperson.

13. CVMT is a non-gaming Tribe, and therefore has a right to payments from the Indian Gaming Revenue Sharing Trust fund pursuant to the Tribal-State Gaming Compacts entered into between the State of California and gaming tribes within the state of California. *Id.*

14. The Gambling Control Commission is responsible for making distributions to the non-gaming tribes from the Indian Gaming Revenue Sharing Trust Fund as required under the compacts between the state of California and the gaming tribes within the state of California. Since July 1, 2000, the Gambling Control Commission has made approximately 12 distribution payments to CVMT without incident. *Id.*

15. On or about September 3, 2004, the California Gambling Control Commission contacted Defendants requesting the following information so that they could distribute gambling revenue funds:

- (a) Who the BIA currently recognizes as the tribal chairperson of CVMT; and
- (b) What is the address of record for CVMT?

Defendants did not respond.

16. Mr. Qualset's letter was in response to the May 20, 2004 letter from Scott Keep, Assistant Solicitor, Branch of Tribal Government and Alaska, Division of Indian Affairs. In his letter, Mr. Keep states that "the Department of the Interior does have pending before it an Appeal from Yakima Dixie contesting the Department's recognition of Silvia Burley as **spokesperson** of the California Valley Miwok Tribe" [emphasis added]. Mr. Keep apparently adopts a statement from the declaration of a former BIA employee offered by the BIA in an unrelated litigation matter, which states:

“At the present time, the Bureau of Indian Affairs acknowledges Silvia Burley as the authorized representative of the California Valley Miwok Tribe with whom government-to-government business is conducted. However, the BIA does not view the Tribe to be an organized Tribe and, therefore declines to recognize Ms. Burley as a “tribal chairperson” in the traditional sense as one who exercises authority over an organized Indian tribe.”

17. On or about August 24, 2004, Defendants sent official correspondence to CVMT confirming CVMT’s Mature Contract Status regarding 638 contract funding. The correspondence was addressed to Silvia Burley, Chairperson, California Valley Miwok Tribe, and 10601 Escondido Place, Stockton, CA 95212. *Id.*

18. 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:

- (a) the BIA had rejected the Tribe’s constitution;
- (b) the BIA did not recognize Silvia Burley as tribal chairperson, but as a “person of authority within the California Valley Miwok Tribe.”
- (c) the BIA would not recognize anyone as the tribal chairperson until the tribe has organized as described in the letter of March 26, 2004.
- (d) the BIA did not recognize the tribal hearing process as a legitimate tribal forum.

Id.

19. On April 12, 2005, CVMT filed a Complaint for Declaratory Relief seeking, *inter alia*, to have the February 11, 2005 letter declared invalid. *Id.*

20. On July 19, 2005, Defendants implemented Modification No. Fourteen to Contract No. CTJ51T62802, the Tribe’s 638 contract. The Modification suspended the contract. Defendants implemented this modification without the Tribe’s consent, and

cited the February 11, 2005 letter of Michael D. Olsen as the reason for the modification.

Id.

21. On August 4, 2005, the Commission notified the Tribe that it was withholding all future distributions to the Tribe from the Revenue Sharing Trust Fund (“RSTF”). Referring to Defendants’ July 19, 2005 letter, the Commission stated:

“This most recent action and the position of the BIA regarding tribal leadership and organization leave us with no alternative, but to withhold funds until such time as there exists sufficient tribal government organization and leadership to allow the BIA to conduct government-to-government relations with the Tribe – either through a recognized tribal chair or representative.”

Id.

22. On August 12, 2005, Defendants sent a letter to the Tribe that stated:

“This letter is to inform you that the Superintendent of the BIA Central California Agency, Troy Burdick, has today authorized me to inform you that the BIA Central California Agency has agreed to revoke the July 19, 2005, suspension of the current P.L.93-638 contract between BIA and the California Valley Miwok Tribe.”

Id.

23. On August 19, 2005, Defendants implemented a second modification that only partially revoked the July 19, 2005 modification, contrary to Defendants’ representation in their August 12, 2005 letter. *Id.*

24. On August 24, 2005, the Commission informed the Tribe that they intended to reinstate the distribution to the Tribe in view of Defendants’ August 19, 2005 letter, despite the letter’s equivocality. *Id.*

25. On August 29, 2005, the Commission informed the Tribe that they were once again suspending the RSTF funds to the Tribe. In their letter, the Commission stated:

“In our letter of August 24, 2005, we indicated that it was our intention to make the RSTF distribution for the quarter ending June 30, 2005 to the California Valley Miwok Tribe (the Tribe). In the interim, however, we

have had several conversations with the Bureau of Indian Affairs (BIA) regarding their view of Ms. Burley's status and have internally reviewed the matter, including all of the correspondence attached to our August 4, 2005 letter. Based on this review we have determined that at this time, such distribution is inappropriate."

Exhibit 2.

26. On September 22, 2005, Defendants' Reply to CVMT's Opposition to Defendants' Motion to Dismiss included declarations from BIA employees Scott Keep, Raymond Fry and Janice Whipple-DePina. *Id.*

27. On September 26, 2005, CVMT passed a resolution to reprogram \$3,000 of tribal funds into the BIA Fee-to-Trust Program. The purpose of this program is to assist tribes by consolidating many of the requirements for taking land into trust, rather than duplicatory tasks for multiple tribes. CVMT had previously participated in the program. **Exhibit 3.**

28. On September 29, 2005, CVMT filed a Motion for a First Supplemental Complaint alleging, *inter alia*, that Defendants' modifications to CVMT's PL 93-638 contract were unlawful. **Exhibit 1.**

29. On October 19, 2005, Cy Rickards, Chief Counsel for the California Gambling Control Commission, announced the following via correspondence:

"Please reference my letters of August 4, August 17, August 24, and August 29, 2005, and attachments thereto. As my letter of August 29, 2005 indicated, we have withheld payment of the RSTF distribution for the quarter ending June 30, 2005 to the California Valley Miwok Tribe (the Tribe) based on our understanding of the views of the Bureau of Indian Affairs (BIA, the Bureau) regarding Ms. Silvia Burley's status within the Tribe. Specifically, we withheld payment based on our understanding, at that time, that Ms. Burley was not considered by the BIA to be a person of authority within the Tribe with whom the BIA conducted government-to-government relations.

Since that time, documents have been provided to us, which, when viewed in conjunction with the above referenced correspondence, indicate that our understanding was mistaken, and that Ms. Burley is the person with whom the BIA/Department of Interior (DOI, the Department) conducts government-to-government relations on behalf of the Tribe, and, contrary to our understanding, remains a person recognized by the BIA as a "person of influence within the Tribe", or a "spokesperson" for the Tribe, with whom such government-to-government relations are appropriate."

Mr. Rickards went on to state:

“On balance, the above referenced declarations and correspondence demonstrate that, however reluctant BIA and Department of Interior officials may be when it comes to characterizing Ms. Burley’s status, she remains, whether characterized as a spokesperson, or person of authority, the Tribe’s contact person with whom the Bureau conducts government-to-government relations.

Therefore, in accord with the Commission’s policy regarding such matters, Ms. Burley is the person to whom RSTF distributions should be directed, on behalf of the Tribe.

Accordingly, it is the Commission’s intention, not later than October 31, 2005, to initiate the process leading to sending checks to the California Valley Miwok Tribe for the RSTF payment for the quarter ending June 30, 2005, as well as the annual RSTF shortfall payment. These checks, made payable to the Tribe, will be sent to Silvia Burley as tribal representative.”

Exhibit 2.

30. On or about October 28, 2005, Ray Fry issued a letter rejecting a tribal resolution to reprogram \$3,000 of Tribal funds into the BIA Fee-to-Trust Program, stating: “Since the BIA does not recognize any governing body for the Tribe, nor do we currently have a government-to-government relationship with the California Valley Miwok Tribe, we are returning this resolution without action.” **Exhibit 4.**

31. On November 2, 2005, George Steele, counsel for CVMT, spoke with Jim Upton, counsel for Defendants, seeking a retraction of the October 28, 2005 Ray Fry letter. Mr. Upton stated that Scott Keep had seen a draft of Ray Fry’s letter before it was signed. He indicated that he would find out something fairly quickly. Decl. of George L. Steele.

32. On November 21, 2005, Mr. Steele spoke with Mr. Upton again about the issue. Mr. Upton stated that he had nothing to report, but that Scott Keep wanted a deadline to respond. Messrs. Steele and Upton agreed on December 1, 2005. *Id.*

33. On December 5, 2005, Mr. Upton informed Mr. Steele that Defendants would not retract Ray Fry’s letter and reiterated Defendants’ position set forth in the letter. *Id.*

34. Later on December 5, 2005, Mr. Steele received a phone call from Marc LeForestier, Deputy Attorney General for the State of California, informing him that Mr. LeForestier had filed an interpleader in California Superior Court in order to have the state court determine the Tribe's leadership. Of the four defendants named in the complaint, only Silvia Burley is a member of CVMT. *Id.* **Exhibit 5.**

35. Plaintiff has a substantial likelihood of success on the merits.

36. There will continue to be irreparable injury if injunctive relief is not granted.

37. The injury to CVMT and its members outweighs any harm an injunction could cause Defendants.

STANDARD OF RELIEF

The purpose of a preliminary injunction is to preserve the status quo pending either a permanent injunction or a trial on the merits. Univ. of Tex. v. Camenisch, 451 U.S. 390, 395 (1981).

In order to obtain preliminary relief, plaintiffs must show (1) a substantial likelihood of success on the merits; (2) that they will suffer irreparable harm if injunctive relief is denied; (3) that an injunction would not substantially injure other interested parties; and (4) that the public interest would be furthered by an injunction. MOVA Pharm. Corp. v. Shalala, 140 F.3d 1060, 1066 (D.C. Cir. 1998) citing CityFed Fin. Corp. v. Office of Thrift Supervision, 58 F.3d 738, 746 (D.C. Cir. 1995).

Application of this standard involves a balancing test whereby the court will examine each request for temporary relief to determine if an injunction is proper based on the issue(s) raised. Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 842-43 (D.C. Cir. 1977). A court may issue an injunction when the arguments for one factor are particularly strong even if the arguments in other areas are rather weak. CityFed Fin. Corp. at 747.

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A. CVMT IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS UNDER THE APA AND 25 U.S.C. § 476(h)

1. CVMT Possesses Exclusive Jurisdiction And Control Over Its Internal Affairs

The primary issues in this case are: 1) whether CVMT possesses the right to make its own laws and be governed by them; and 2) whether Defendants are acting unlawfully by interfering with CVMT's self-governance. The answer to each of these questions is a resounding "yes."

It is a settled matter in Federal law that Indian tribes possess the right and responsibility to resolve their internal matters based upon their inherent sovereign authority. Tribes have the power to make their own substantive law in internal matters. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55 (1978); Ransom v. Babbitt, 69 F. Supp. 2d 141 (D.D.C. 1999).

In Ransom, the court observed the following

Supreme Court jurisprudence has recognized the right to self-government as a fundamental aspect of tribal existence. n9 *See e.g., White Mountain Apache Tribe v. Bracker*; 448 U.S. 136, 142-45, 65 L. Ed. 2d 665, 100 S. Ct. 2578 (1980); *Wheeler v. Department of Interior*, 811 F.2d 549, 551 (10th Cir. 1987). This Court also has noted that the right to self-government remains a key to tribal identity and federal-tribal relations. *See Harjo*, 420 F. Supp. 1110 at 1143.

Id at 150.

The Ransom court further noted, with respect to tribal governing documents, that the government has a responsibility to interpret tribal laws and procedures in a reasonable manner in order to carry out their duty to recognize a tribal government. *Id* at 153.

The court in Ransom made clear that defendants have the responsibility to interpret, not approve or reject, tribal laws.

Congress clarified the rights of tribes even further with the passage of the Native American Technical Corrections Act of 2004, which modifies the Indian Reorganization Act (“IRA”) as follows:

“(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).

While the plain language of the statute is clear, the section analysis submitted by the act’s sponsor confirms Congress’ intent.

Section 103. Tribal sovereignty Section 103 clarifies that Indian tribes that accepted the Indian Reorganization Act (IRA), 25 U.S.C. 476 are not required to adopt constitutions pursuant to the IRA and remain free to organize their governing bodies pursuant to organizational governing documents that they determine.

108 S. Rpt. 49, attached hereto as **Exhibit 6**.

While Defendants may attempt to argue that IRA allows them to disregard CVMT’s governing documents and Constitution, the United States Congress has specifically legislated that they may not. *Id.* The language of statute is unambiguous. If any ambiguities did exist, they would have to be resolved with the application of the canons of construction applicable in Indian law. Mont. v. Blackfeet Tribe of Indians, 471 US 759, 766 (1985). The canon requires that “statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit,…” *Id.*

Moreover, Congress has previously legislated that tribes possess inherent authority in 25 U.S.C. § 3601: “(4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems.” 25 U.S.C.

§ 3601(4). Since Congress has stated that position in at least two statutes, it cannot be reasonably argued that Congress did not intend for tribes to have the inherent authority to establish their own forms of government. *Id.* As a result, CVMT's Constitution and tribal forum are valid as ratified by CVMT. Since neither its governing documents nor its Constitution provide for any BIA involvement, there is no authorization in either federal or tribal law for the agency to interfere in any internal CVMT matter whatsoever. At the extreme, Defendants are permitted to interpret tribal laws, but only when there is a dispute where the resolution depends on a reasonable interpretation of the laws adopted by the tribe. No other involvement is consistent with Congress' policy of Indian Self-Determination. Santa Clara Pueblo at 66; Ransom at 150-153.

As shown above, it is beyond reasonable dispute that in view of statutory law, case law, and Defendants' own interpretations that CVMT possesses the inherent right to make its own laws and be governed by them, and that Defendants violate the law when they interfere with CVMT's self-governance.

For the above stated reasons, it is clear that in view of the law and the facts, that CVMT has a strong likelihood of prevailing on the merits, and that this Court should grant CVMT the requested injunctive relief.

2. **Defendants Cannot Arbitrarily Terminate Or Suspend CVMT's Government-To-Government Relationship – Only Congress And CVMT Can Do So**
 - a) **Under Statutory Law, Being A Federally Recognized Tribe Means That The Tribe Has A Government-To-Government Relationship**

There is no dispute that CVMT is a federally recognized tribe. 70 FR 71194, attached hereto as **Exhibit 7**. As a matter of law, CVMT is an organized Tribe, since being the recognized governing body of an Indian tribe is a prerequisite for Mature Contract Status, which CVMT has maintained since January, 2004. 25 U.S.C.

§ 450b(h);(l). Congress has legislated that “[t]he Congress finds and declares that--(1) there is a government-to-government relationship between the United States and each

Indian tribe...” 25 U.S.C. § 3601(1). The Federal Register explains that the government-to-government relationship and the immunities and privileges available to tribes are inseparable components of Federal recognition as follows: “The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes.” 70 FR 71194 at 1.

Numerous courts have confirmed these aspects of federal recognition, relying on Defendants’ own regulations. “‘Federal recognition is a process by which the United States acknowledges a government-to-government relationship with a historic tribe’; 25 CFR §§ 83.2, 83.12 (2003).” United States v. Washington, 394 F.3d 1152, 1153, n1 (9th Cir. 2005).

“Inclusion on DOI’s list entitles tribes to the ‘immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such tribes.’ 25 CFR § 83.2.” Burt Lake Band of Ottawa & Chippewa Indians v. Norton, 217 F. Supp. 2d 76, 77 (DDC 2002) and *see* Ramapough Mt. Indians v. Babbitt, 2000 US Lexis 14479.

In addition to federal recognition being synonymous with a government-to-government relationship as described above, federal recognition has also been found to be “...determinative of the issue of tribal organization...” Washington at 1161.

Thus, Congress, the courts and Defendants, through statutory law, case law, federal regulations, and the Federal Register agree that federal recognition entails a government-to-government relationship between CVMT and the United States.

b) CVMT’s Federal Recognition Can Only Be Terminated By Congress

Congress' power over Indian affairs is complete and exclusive, and has been described by the Supreme Court as follows: "First, the Constitution grants Congress broad general powers to legislate in respect to Indian Tribes, powers that we have consistently described as "plenary and exclusive." United States v. Lara, 541 US 193-200 (2004).

This exclusive power includes the power to restrict tribal authority as it sees fit. *Id.* at 202. The power to restrict tribal authority naturally includes the power to interrupt the tribe's government-to-government relationship, which courts have found to be part of Congress' exclusive power. United States v. Nice, 241 US 591, 698 (1916) ("...the tribal relation may be dissolved and the national guardianship brought to an end, but it rests with Congress to determine when and how this should be done..."); Maspee Tribe v. New Seabury Corp., 592 F.2d 575, 586 (1st Cir. 1979) ("We agree that if a group of Indians has a set of legal rights by virtue of its status as a Tribe, then it ought not to lose those rights absent a voluntary decision made by the tribe and by its guardian, Congress, on its behalf.")

Here, CVMT has a set of legal rights by virtue of its status as a recognized tribe. One of those rights is a government-to-government relationship with the United States. CVMT made no voluntary decision to surrender those rights. However, BIA employee Ray Fry, assuming the authority of his superior, Superintendent Troy Burdick, attempted to do that which the Constitution reserves solely for Congress. Specifically, Ray Fry attempted to unilaterally suspend the government-to-government relationship between a tribe and the United States, in defiance of the Constitution, and settled law. As such, Ray Fry's infringement on congressional authority is patently unlawful, meaning that CVMT has a substantial likelihood of prevailing on the merits. Accordingly, this Court should grant the relief that CVMT seeks, in order to maintain the status quo pending a final determination on the merits.

B. UNLAWFUL INTERFERENCE WITH TRIBAL SELF GOVERNANCE

CONSTITUTES IRREPARABLE HARM

Courts have repeatedly held that interference with a sovereign's self-government is an irreparable injury that warrants the issuance of a preliminary injunction. Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1234 (10th Cir. 2001); Kiowa Indian Tribe of Okla. v. Hoover, 150 F.3d 1163 (10th Cir. 1998); Seneca-Cayuga Tribe v. Oklahoma, 874 F.2d 709 (10th Cir. 1989).

In Prairie Band, a Kansas tribe enacted its own vehicle code to regulate the transportation system within its reservation. *Id* at 1237. The state of Kansas refused to recognize the tribe's registration laws. *Id* at 1238. The tribe filed a complaint against a Kansas state official alleging that the state was compelled to grant recognition to tribal motor vehicle regulations and titles. *Id* at 1239. The tribe also filed a motion for a temporary restraining order and preliminary injunction seeking to enjoin the state from enforcing Kansas Motor Vehicle and titling laws against those who owned or operated vehicles registered and titled under the Tribal Code. *Id*.

The court granted both a temporary restraining order and a preliminary injunction. *Id*. In upholding the lower court's finding that absent the injunction, the tribe would suffer irreparable harm, the court found that the threat of continued citation by the state created the prospect of significant interference with tribal self-government. *Id* at 1250.

In Seneca, the state of Oklahoma sued a tribe in order to enjoin tribal bingo games the tribe operated. *Id* at 740. The tribe sought and obtained a preliminary injunction that enjoined the state court judge from proceeding with the state court suit between the state and the tribes, and enjoined the state from interfering with the operation of the bingo games. *Id* at 711. In affirming the grant of a preliminary injunction below, the court stated:

“Without the preliminary injunction, the Tribes would face the prospect of significant interference with their self-government. They would lose income used to support social services for which federal funds have been reduced or are non-existent, and lose jobs employing Indians who face a rate of unemployment ranging from thirty-five percent (the Seneca-Cayuga Tribe) to close to fifty percent (the Quapaw Tribe). The Tribes

would also be forced to expend time and effort on litigation in a court that does not have jurisdiction over them, and risk inconsistent binding judgments from state and federal courts.” [citations omitted]

In Kiowa, a tribe was subjected to a series of suits in state court concerning the tribe’s commercial activity. *Id* at 1168. In these actions, the state courts repeatedly rejected the tribe’s assertion of sovereign immunity. *Id*. The tribe then sought relief in federal court that included a preliminary injunction to restrain two parties from using state court processes to enforce judgments entered against them in state court. *Id* at 1171. The district court concluded that the tribe had “failed in its burden of showing irreparable injury.” The 10th Circuit disagreed. *Id*. The court’s finding of irreparable harm was based on the following:

“Recognizing the sovereign status of the Kiowa Tribe, we are convinced the Tribe has made a sufficient showing of irreparable harm as a matter of law. First, the seizure of tribal assets, including severance taxes owed to the Tribe, and the concomitant prohibition against full enforcement of tribal laws, significantly interferes with the Tribe’s self-government. *See Seneca-Cayuga Tribe v. Oklahoma*, 874 F.2d 709, 716 (10th Cir. 1989) (finding irreparable injury where *threatened* loss of revenues and jobs created “prospect of significant interference with [tribal] self-government”). Second, the Tribe should not be compelled “to expend time and effort on litigation in a court that does not have jurisdiction over them.”

Here, as in Prairie Band, Seneca and Kiowa, the Tribe has suffered significant interference with tribal self-government. Defendants have unlawfully rejected each and every tribal law, constitution and forum that they have become aware of. Defendants have also made it their mission to inform those doing business with the Tribe that they have made these rejections. As in Seneca and Kiowa, Defendants’ interference has caused interruptions or complete stoppages of income lawfully due to the Tribe, and upon which the Tribe depends. And as in Seneca and Kiowa, CVMT has been exposed to litigation in a state court that lacks jurisdiction over CVMT. Despite the state court’s obvious lack of jurisdiction, CVMT will be forced to expend time, effort and money to contest the matter. To make matters worse, CVMT will have to do so while its income has been shut off by Defendants’ interference with CVMT’s self-government. This

constitutes irreparable harm, as found in Prairie Band, Seneca and Kiowa. In fact, the harm here is more insidious than that in any of those cases because here, there is no underlying dispute such as vehicle registration, gambling or commercial contracts giving rise to hostile action. Here, the hostile action against the Tribe is an unprovoked attack from the Tribe's supposed guardian agency. CVMT is inherently more vulnerable to this sort of attack, and therefore, is more in need of judicial intervention than they would be against a perpetrator lacking the power of the federal government.

CVMT asks this Court for nothing more than to preserve the status quo that has existed for years with respect to the government-to-government relationship between CVMT through its lawfully elected government and the United States by enjoining Defendants' unlawful suspension of the government-to-government relationship between CVMT and the United States. Defendants' unchecked interferences with CVMT's self-government will result in immediate and irreparable harm to the Tribe.

C. GRANTING THE REQUESTED RELIEF WILL NOT BURDEN OTHER PARTIES' INTERESTS

Preliminarily enjoining Defendants from suspending the Tribe's government-to-government relationship will not harm Defendants or those with whom CVMT conducts business. Defendants have continuously maintained a government-to-government relationship with CVMT and recognized its current government and the Chairperson Silvia Burley since at least 1999. Granting the requested relief will merely preserve the status quo. Rather than creating a burden, preservation of the status quo will reassure the state and local agencies with whom CVMT does business that they will not expose themselves to allegations of dealing with unauthorized representatives of CVMT. It will also facilitate these same agencies in honoring their legal obligations to CVMT, which they are declining to honor because of Defendants' activities.

In view of Defendants' prior course of conduct with respect to recognizing CVMT's leadership, there is no conceivable interest of Defendants that can be burdened

by the Court granting the requested relief, and any assertion to the contrary would be absurd. Thus, CVMT respectfully requests that Defendants be preliminarily enjoined as outlined above.

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D. PUBLIC INTEREST FAVORS THE REQUESTED RELIEF

This case is, above all, about protecting tribal sovereignty. Congress has specifically legislated 1) that there is a government-to-government relationship between the United States and each Indian tribe, and 2) that the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government. 25 U.S.C. § 3601(1), (2). The Supreme Court has recognized that “subjecting a dispute among Indians to a forum other than the one they have established for themselves”...may “undermine the authority of the tribal cour[t]...and hence...infringe on the right of Indians to govern themselves.” Santa Clara Pueblo v. Martinez, 436 U.S. 49 (citations omitted).

This public interest objective will be furthered by an order-enjoining Defendants from unlawfully suspending government-to-government relationship between the United States and CVMT in violation of 25 U.S.C. § 3601. Such an order will insure that CVMT can continue to operate an orderly government, and mitigate the current disruption to CVMT’s governmental activities caused by Defendants’ actions. Further, granting the requested relief will also advance a principal goal of Federal Indian Policy, which is to promote tribal economic development, tribal self-sufficiency, and strong tribal government. Findings, 25 U.S.C. § 2701 [Sec 2]. These goals require that there is no impairment of CVMT’s legitimacy due to improper actions of Defendants. Thus, the public interest favors that this Court grant the requested relief.

E. CONCLUSION

The purpose of this Motion is to prohibit Defendants from arbitrarily changing the status quo and preventing immediate harm from occurring to the Tribe. That is, to

