

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

**CALIFORNIA VALLEY MIWOK TRIBE,)
Formerly, SHEEP RANCH OF ME-WUK)
INDIANS OF CALIFORNIA,)**

Plaintiff,

v.

**No. 1:05CV00739
Judge James Robertson**

**UNITED STATES OF AMERICA,)
GALE A. NORTON, Secretary of the)
Interior,)**

**JAMES E. CASON, Associate Deputy)
Secretary of the Interior,¹)**

Defendants.

THIRD DECLARATION OF RAYMOND FRY

¹ David W. Anderson, formerly the Assistant Secretary - Indian Affairs, is no longer with the Department of the Interior. The position of Assistant Secretary - Indian Affairs is vacant. The duties of the Assistant Secretary have been delegated by the Secretary of the Interior to the Associate Deputy Secretary by Secretarial Order 3259, dated February 8, 2005, as amended on August 11, 2005. James E. Cason, Associate Deputy Secretary is substituted for Mr. Anderson pursuant to Fed. R. Civ. P. 25(d).

I, Raymond Fry, declare:

1. I am the Tribal Operations Officer for the Central California Agency (CCA), Bureau of Indian Affairs, located in Sacramento, California and I have personal knowledge of the facts set forth in this Declaration.
2. I have held that position since June of 1991, and I have worked and continue to work extensively with a large number of the 54 federally recognized tribes in our service area to organize their tribes and develop and strengthen their governmental infrastructures by conducting training conferences for all tribes covering a variety of subjects and by providing technical support and assistance to these tribes resulting in an enhanced government-to-government relationship between these tribes and the BIA.
3. It was and continues to be the practice within the BIA's Pacific Region in California, that if a tribe is federally recognized but has not formally re-organized by adopting a written governing document at an election duly noticed and open to all adults who are eligible for membership in the tribe, that the BIA would identify a spokesperson for the tribe whom we could maintain contact with on behalf of the tribe until such re-organization occurred.
4. On September 7, 1994, I assisted the California Valley Miwok Tribe, then known as the Sheep Ranch Rancheria, by preparing two documents for the Tribal Spokesperson Mr. Yakima K. Dixie, to consider and if acceptable sign and I have been working with

the California Valley Miwok Tribe since July of 1994, and on tribal leadership issues since 1998.

5. Mr. Yakima K. Dixie was a son of Mabel Hodges Dixie, the last occupant of the groups small, 0.9 of an acre Rancheria. As one of four heirs to Ms. Dixie's estate, Mr. Dixie is considered a divided interest holder of the former Rancheria land.
6. The other initial members of the group were Ms. Silvia Burley, her two daughters and minor granddaughter. Ms. Burley's ties to the Rancheria are remote. In a deposition taken in an earlier case brought to challenge the transfer of the land to Mr. Dixie, which Ms. Burley has appealed to the Ninth Circuit Court of Appeals where it is awaiting a decision, Ms. Burley indicated that Mabel Dixie's mother was her grandfather's sister.
7. By certified letter dated March 26, 2004, from the BIA, to Ms. Silvia Burley (see Exhibit No. 1), the Superintendent stated that he recognized Ms. Burley as a person of some authority within the Indian Community, but he did not recognize the Tribe as being organized or as having any dully adopted governing document. In accordance with provisions of 25 CFR Part 2, Administrative Appeals, Ms. Burley was provided notice of her appeal rights and a copy of the regulations, but she failed to file a Notice of Appeal or an Appeal within the prescribed 30-day timeframe.
8. By letter dated February 11, 2005, to Mr. Yakima Dixie, of the Sheep Ranch Rancheria of Miwok Indians of California, Michael D. Olsen, Principal Deputy, Acting Assistant Secretary-Indian Affairs, addressed Mr. Dixie's appeal as well as referencing the Central California Agency's March 26, 2004, correspondence which indicated that

the tribe was not organized and that the BIA did not recognize any tribal government or governing document being in effect. (See Exhibit No. 2) Mr. Olsen further stated:

I encourage you to continue, either in conjunction with Ms. Burley, other tribal members, or potential tribal members to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004, letter so that the tribe can become organized and enjoy the full benefits of Federal recognition.

9. By letter dated March 7, 2005, addressed to the BIA, CCA, Yakima Dixie made a formal request for action from Ray Fry, BIA, CCA Tribal Operations Officer "in the form of a written acknowledgement of his right to organize the tribe . . . in such terms as may be mutually agreeable. (See Exhibit No. 3)
10. In an April 8, 2005, letter to the Superintendent of the Central California Agency, Ms. Burley acknowledged the efforts by Judge Kathryn Lynn, administrative law judge from the Department's Office of Hearings and Appeals, to mediate the dispute between the tribe and Mr. Dixie. Ms. Burley's response to Judge Lynn's efforts was to state that Mr. Dixie was a tribal member and that the Tribe had no dispute with him. (See Exhibit No. 4) While Ms. Burley stated her belief that the Bureau was interfering in the internal matter of the Tribe, she also stated that the Tribe believed it could work out solutions that address the core concerns of the BIA while protecting the sovereignty of the Tribe.
11. By letter of August 30, 2005, Mr. Dixie, was notified that he had been dis-enrolled in accordance with the Miwok Customs and Traditions and with the California Valley Miwok Tribe's Enrollment Ordinance.(See Exhibit No. 5).

12. Principal Deputy, Acting Assistant Secretary Olsen's February 11, 2005, letter included the observation that the first step in organizing the Tribe is identifying putative tribal members and the offer that [i]f you need guidance or assistance, Ray Fry (916) 930-3794, of the Central California Agency of the BIA can advise you how to go about doing this. Based upon this suggestion, the BIA was contacted by both tribal factions to set up meetings to discuss the organization of the Tribe. (See Exhibit No. 2).
13. On March 10, 2005, at 2:00 pm, Mr. Gregory, the Pacific Regional Director, members of his staff, Mr. Morris, Central California Agency Acting Superintendent, and members of his staff including myself met with Ms. Silvia Burley, her attorneys, and tribal staff at the Pacific Regional Office, to discuss Mr. Olsen's February 11, 2005, letter. Prior to setting up this meeting, the BIA continuously encouraged each group to work together in this organization effort, but Ms. Burley indicated that she did not want Mr. Dixie or his representatives to be present at this meeting. The central theme of this meeting was to define roles and responsibilities of the tribe and the BIA in the overall organization efforts of the tribe.
14. On March 14, 2005, a meeting took place at the Central California Agency between the Acting Superintendent, Mr. Morris, BIA staff and representatives of both tribal factions including Yakima Dixie, Melvin Dixie (Yakima's brother) their representatives and a representative for Ms. Burley. The primary topic of discussion was again, the organization of the tribe and who would constitute the putative member class.

15. On July 8, 2005, BIA's Central California Agency staff met with Mr. Yakima Dixie's consultants, attorneys, Ms. Dequita Boire (daughter to Merle Butler, also a divided interest holder of the Rancheria), Ms. Velma Whitebear and other local Miwok Indians and Ms. Carla Bell, attorney for Ms. Burley. Mr. Yakima Dixie was unable attend this meeting. The Yakima Dixie group requested that Ms. Bell not be allowed to participate in the meeting as they wanted Ms. Burley there as they believed that at this juncture of time, she was the only individual who could make positive contributions to the discussions. To accommodate all, the BIA's Agency Superintendent, Mr. Burdick and myself met separately with both Mr. Dixie's group as well as with Ms. Bell. Mr. Dixie's group was asked by the BIA to submit a proposal for organizing the tribe. This request was passed on to Ms. Bell, who indicated that she would relay this information back to Ms. Burley. There were no documents provided by Ms. Burley to have Ms. Bell be the designated representative for Ms. Burley's group.
16. The main topics of discussion at these meetings included identifying the putative members of the Tribe, organizational processes that should be considered and concerns the Dixie group had regarding the use of P.L. 93-638 funds by the Tribe, under Ms. Burley's leadership, the use of the non-gaming revenue by Ms. Burley's faction and the lack of involvement at these multiple meetings by Ms. Burley herself.
17. The Bureau's efforts to assist in the organization of the Tribe are reflected in part in the attached collection of correspondence, meeting sign-in sheets and minutes. (See Exhibit No. 6)

18. The enhancement of self-determination by federally recognized tribes was captured in P.L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. ' 450 *et seq.*)(commonly referred to simply as "638"), which stated the following purposes:

This Act is to provide maximum Indian participation in the Government and education of the Indian people: to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people: to establish a program of assistance to upgrade Indian education: to support the right of Indian citizens to control their own educational activities: and for other purposes.

19. The regulations implementing the Indian Self-Determination and Education Assistance Act, contained in 25 CFR Part 900, prescribe the contracting process and the roles and responsibilities of the tribes, as well as the federal government in the tribal self-determination process contained in P.L. 93-638. The Act and these federal regulations provide significant latitude to tribes who are proposing to enter into a contractual relationship with the federal government. For instance, a tribe may contract to administer all or part of a BIA authorized program, for periods of time ranging from one to three years in length. These programs may be redesigned to meet the tribe's needs as long as they do not violate federal law or regulation. Once the contracts are reviewed and awarded by the BIA, the provisions of those contracts must be met. An example of non-compliance may occur if specific funding is set aside by BIA for the administration of a particular program and the tribe attempts to reprogram those earmarked funds for other purposes, without first BIA approval for revising or

modifying their contract, which is a process required to redefine the use of those funds.

20. The Fee-To-Trust Consortium that the California Valley Miwok Tribe had proposed to join in FY 2006, 2007 and 2008, was initially developed by the tribes located within the service area of BIA's Central California Agency in 2000, for the express purpose of assisting tribes who had or who had anticipated acquiring land in fee, put into trust.

Although the process by which the United States puts land into trust for the benefit of Indians and tribes is a BIA responsibility, BIA's Central California Agency, with 54 federally recognized tribes covering 26 counties in its service area, could not promptly process all of the pending fee-to-trust applications with the Realty staff and resources available. To remedy this, the tribes agreed to enter into a Memorandum of Understanding (MOU) with the BIA and to provide funding to the BIA to hire additional staff to carryout this process. (See Exhibit No. 7)

21. With the lack of sufficient staff to perform realty and environmental services required to process fee-to-trust land applications throughout the entire Pacific Region, the Fee-To-Trust consortium was expanded in 2001, to federally recognized tribes located throughout the state of California. The administrative oversight was elevated to the BIA's Pacific Regional Office. Requirements for tribes to join this Fee-To-Trust Consortium, included adopting a separate resolution, contributing a minimum of \$3,000.00 to the consortium and entering into an MOU. As of August 2005, there were 56 tribes participating in this Fee-To-Trust Consortium throughout the State of California. (See Exhibit No. 8 - sample resolution).

22. I am advised by the Solicitor's office in Washington, D.C., that the Department has initiated a review of the authority for and appropriateness of this fee to trust program in California generally.
23. California Valley Miwok Tribal Resolution No. R-1-09-26-2005, was enacted by Ms. Silvia Burley, Chairperson; Ms. Anjelica Paulk, Vice-Chairperson; and Ms. Rashel Reznor, Secretary-Treasurer, on September 26, 2005. (See Exhibit No. 9) Resolution R-1-09-26-2005, was received by the Agency on October 7, 2005. I reviewed the resolution to determine whether it was properly authorized (role of the Branch of Tribal Operations) by the recognized tribal government and prepared a response for the signature of BIA's Central California Agency Superintendent, which was issued October 26, 2005. (See Exhibit No. 10).
24. The reasons stated for returning the tribal resolution was that 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." Although I did not reference the March 26, 2004, letter of Superintendent Dale Risling to Ms. Silvia Burley, the reasons I gave for taking no action on the resolution were based upon the decision contained in that letter. Superintendent Risling decided, based upon a review of a copy of the tribal constitution sent to the BIA (and other information available to the Superintendent), that the Tribe was not "organized" because it had not identified the members of the "greater tribal community," and, thus, the Tribe's organizational efforts up to that point "did not reflect the involvement of the whole tribal community." The Superintendent concluded that the BIA could neither recognize the

tribal constitution nor Ms. Burley as the Tribal Chairperson. I believe that my statement that the "BIA does not recognize any governing body for the Tribe" accurately reflects the language and intent of the March 26, 2004, letter. The March 26th letter does not appear to support the second stated reason for taking no action on the Tribal resolution, that is, that there is no "government-to-government relationship" between the Tribe and the federal government. There is a government-to-government relationship between the Tribe and the federal government but that relationship can not function fully in the absence of duly authorized representatives of the entire tribal community.

25. The BIA advised Ms. Silvia Burley by letter dated October 28, 2005, it was scheduling an annual on-site monitoring visit for November 28, 2005 (30 day Notice provided) and that the monitoring team would be composed of four individuals. (See Exhibit No. 11). The monitoring visit was agreed upon by the Tribe and BIA through the FY 2005 Annual Funding Agreement that was a part of the PL 93-638 which states:

The Secretary shall provide monitoring services to ensure the proper delivery of program services to Indian people, compliance to Contract terms, and to the Act, pursuant to 1(b)(7)(C)(i) and (ii) and Attachment 2 (V) (a) and (c) of this contract.

26. The October 28, 2005, letter informed the Tribe of the purpose of the monitoring visit and provided a copy of the standard guidelines for such visits entitled Purpose and Strategy - Official Monitoring Visit. (See Exhibit No. 12).

27. A November 7, 2005, letter from Ms. Burley to the Agency Superintendent BIA, Central California Agency, stated that [u]ntil we can reach agreement on the composition of a new monitoring team or appointment of a Special Master, the Tribe respectfully declines your request to schedule an on-site monitoring visit on November 28, 2005. (See Exhibit No. 13).
28. By letter dated November 15, 2005, the Agency acknowledged receipt of Ms. Burley's November 7, 2005, response and request. In the spirit of cooperation the BIA changed the makeup of the monitoring team and reaffirmed the scheduled monitoring trip date of November 28, 2005, at 10:00AM. (See Exhibit No. 14).
29. By letter dated November 17, 2005, Ms. Burley requested to reschedule the November 28, 2005, monitoring meeting to December 20, 2005, at 10:00 AM. (See Exhibit No. 15). Ms. Burley also stated in her letter that she would have a councilmember, tribal staff and legal counsel in attendance at the monitoring meeting and informed the BIA that the monitoring visit would be video taped.
30. By letter to Ms. Burley dated November 23, 2005, the Superintendent, BIA Central California Agency, indicated that the proposed December 20, 2005, date for monitoring was not feasible due to the our team's schedule, but that BIA would be willing to meet on either December 5, 2005, or December 12, 2005, at 10:00 am..(See Exhibit No. 16). The Superintendent agreed to having the tribe's proposed participants in attendance and video taping of the meeting.

31. By facsimile dated November 18, 2005, Ms. Burley, confirmed her availability for meeting with the Superintendent on December 12, 2005, at 1:00 pm. (See Exhibit No. 17).
32. By facsimile dated November 28, 2005, Ms. Burley agreed to the December 12, 2005, monitoring meeting date. Ms. Burley also requested to meet with the Superintendent of the BIA Central California Agency, to discuss issues prior to the monitoring visit. (See Exhibit No. 18).
33. In a letter dated December 6, 2005, the BIA Agency reminded Ms. Burley that she had cancelled the December 12, 2005, monitoring visit via a facsimile dated December 6, 2005. (See Exhibits No. 19 and 20). The Agency also indicated to Ms. Burley that it was imperative that monitoring take place and that December 20, 2005, would be a good date to complete this process.
34. By letter dated December 14, 2005, Ms. Burley cancelled without explanation the monitor meeting scheduled for December 20, 2005. (See Exhibit No. 21).

Pursuant to the provisions of 28 U.S.C. ' 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 3rd day of January 2006


RAYMOND FRY