

CALIFORNIA VALLEY MIWOK TRIBE

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December 13, 2006

Mr. Troy Burdick
Superintendent
Central California Agency
650 Capital Mall
Suite 8-500
Sacramento, CA 95814

**Re: California Valley Miwok Tribe
NOTICE OF APPEAL AND STATEMENT OF REASONS**

Dear Superintendent Burdick:

In accordance with the letter from Mr. Clay Gregory, Director, BIA Pacific Region Office, dated November 30, 2006, which is attached to this letter, the California Valley Miwok Tribe is forwarding the following **Statement of Reasons** to its **Notice of Appeal** of your letter dated November 6, 2006 also attached to this letter. (*Attachments 1 and 2*) In an attempt to comply with Mr. Gregory's letter and the requirements of 25 C.F.R. Part 2, we provide the following statements.

I. STATEMENT OF THE DECISION BEING APPEALED

In your November 6, 2006-letter, you made what we believe are the following decisions:

1. You determined that the California Valley Miwok Tribe is seeking "to reorganize a formal government structure that is representative of all Miwok Indians who can establish a basis for their interest in the Tribe and is acceptable to the clear majority of Indians."
2. You determined that there is an ongoing leadership dispute within the California Valley Miwok Tribe.

3. You determined that the Central California Agency Office efforts to reorganize the California Valley Miwok Tribe are not in violation of the Tribe's right to govern itself.
4. You determined that there is more than one faction with a legitimate claim of leadership of the California Valley Miwok Tribe.
5. You determined that the BIA intends to convene a general council meeting for the California Valley Miwok Tribe.
6. You determined that the BIA has reorganized other Federally recognized Indian Tribes that have maintained a government-to-government relationship with the BIA for over six years through among other things their Public Law 638 Contracts and over which the BIA has not made a formal finding of a disputed election or leadership.
7. You determined that the BIA has established a new class of Tribal members for a Federally recognized Indian Tribe outside the process setout by that Tribe.
8. You determined that the BIA will recognize the attendees at this meeting being called by the BIA as the "General Council" of the California Valley Miwok Tribe with no clear criteria set for:
 - a. Which individuals will comprise the "General Council";
 - b. Who can attend this meeting;
 - c. Who will be allowed to speak at this meeting;
 - d. Who can participate in the decisions at this meeting;
 - e. Who will make final determinations at this meeting;
 - f. Whether the BIA will recognize the determinations made at any such meeting;
9. You determined that the BIA has the authority to allow a non-Indian and non-Tribal supporters to participate in a meeting regarding the government and membership of a Federally recognized Indian Tribe.

II. STATEMENT OF REASONS

The Bureau of Indian Affairs lacks the authority to involve itself in the internal affairs of a Native American Tribe. In Lewis v. Norton, 424 F.3d 959, 960 (9th Cir.2005), the Ninth Circuit of the United States Court of Appeals, reaffirmed a long standing principal of Federal Indian Law which was clearly delineated in the United States Supreme Court's decision in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978): that "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." Santa Clara, 436 U.S. at 72 n. In Lewis v. Norton, the Ninth Circuit clearly states that Federal agencies are limited from dealing with issues of membership. This doctrine has not only been reaffirmed in numerous other Court decision, both inside and outside of the State of California, it has also been adopted by the Central California Agency Office for this Tribe. (See Attachments 3, 4, 5 and 6)¹

This prohibition has also been extended by the Interior Board of Indian Appeals in numerous decisions relating to tribal rights and BIA intervention into tribal membership issues. (See Cahto Tribe of the Laytonville Rancheria v. Pacific Regional Director, 38 IBIA 244 (2002) (vacating a BIA decision which declined to recognize a tribal disenrollment action, and finding that BIA lacked jurisdiction under the circumstances to render a decision); Alan-Wilson, Sr. v. Sacramento Area Director, 30 IBIA 241 (1997) (vacating a BIA decision withdrawing recognition of a tribal council, and involving membership entitlement issues); United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director, 22 IBIA 75 (1992) (affirming a BIA decision declining to recognize in part the results of a tribal election tainted by ICRA violations involving enrollment); and Potter v. Acting Deputy Assistant Secretary - Indian Affairs, 10 IBIA 33 (1982), (Dismissed an appeal from a BIA decision denying an application for a grazing privilege allocation, after finding that the underlying issue in the case was a tribal enrollment dispute)

Besides the clear lack of legal and/or administrative authority to conduct any of the steps outlined in your November 6, 2006 letter, the Tribe has not made any statements, request or other communication to the BIA or any other Federal Agency requesting their assistance in the reorganization of the California Valley Miwok Tribe. As a matter of litigation, the Tribe's position is that the Tribe has organized itself pursuant to its own governing documents which therefore makes any discussion of reorganization of the Tribe moot. As you may be aware, the Tribe has agreed to enter Court monitored mediation with the Federal Government regarding

¹ The United States District Court for the Eastern District of California in was rather clear in Sheep Ranch v. Silvia Burley, CIV-S_01-1389 (January 24, 2002) (See Attachment 6) in citing the United States Supreme Courts' unambiguous language in Montana v. United States, 430 U.S. 544, 564 (1981) in stating that "Indian Tribes retain their inherent power to determine tribal membership.", The Court goes on to rely on the BIA's clear pronouncement that Silvia Burley is the recognized Chairperson of the California Valley Miwok Tribe.

the matter pending before the United States Court of Appeals in Washington, D.C., a process we hope can help to resolve the differing legal positions of the Tribe and the Federal Government. In entering that process, it was agreed that the Tribe would talk with Yakima and Melvin Dixie. In addition, it was agreed that the BIA would forward a letter clarifying its letter of November 30th. To date, we have not received this communication.

On the other hand, the Tribe has made numerous requests to the BIA for technical assistance relating to the Tribe's enrollment process. Such assistance has not been afforded to us. The BIA has failed to provide any information on the Tribe's requests, despite privacy waivers being forward to the BIA by prospective applicants requesting that their information be released to the Tribe. The Tribe believes that had the BIA worked with the Tribe on its enrollment efforts, much of the current debate would have been averted. The Tribe believes its enrollment process is a far better and a legally sufficient method of dealing with internal tribal enrollment matters.

There is no ongoing dispute of leadership within the California Valley Miwok Tribe. Mr. Yakima Dixie has made several attempts to raise this leadership conflict. To its credit, the BIA has dismissed all of Mr. Dixie's claims in 2000, 2002, 2003 and 2005. (*See Attachments 3, 4, 5 and 7*) His claims have also been dismissed by both Federal, State and Tribal Courts. (*See Attachments 6 and 8*) Since 1999, the BIA has not recognized any other person except Silvia Burley as the leader of the California Valley Miwok Tribe. Even in its infamous February 11, 2005 letter which is the subject of the litigation in Washington, D.C., the BIA recognized Silvia Burley as the person of authority within the California Valley Miwok Tribe.

In his January 6, 2006 letter, your immediate supervisor again reaffirmed that Silvia Burley was the person of authority within the California Valley Miwok Tribe. Nothing has changed within the California Valley Miwok Tribe as far as the leadership of the Tribe is concerned. The only change is that certain elements within the BIA have been working in concert with Mr. Chad Everone, a non-Indian and non-tribal member seeking financial gain. Treating Mr. Everone as a person of authority within the California Valley Miwok Tribe or a person that the BIA should communicate with regarding to internal tribal membership matters is personally offensive and intolerable. Furthermore, the BIA's continued communications with Mr. Everone only inflames and impedes what could be an honest and trustworthy resolution to complex legal issues. Therefore, we are requesting that the BIA reserve its communications regarding internal tribal matters to the Tribe.

Besides the lack of legal authority and the fact that the Tribe has not made any requests to the BIA for reorganization assistance, the notion that the BIA can convene an open meeting in which anyone can declare themselves a potential tribal member; attend this meeting; and participate in the organization and governance of Federally Recognized Indian Tribe without presenting any evidence or meeting any criteria for determining Indian heritage or connection to that Tribe is completely objectionable to the Tribe and its members. Unless this meeting is conducted by proper tribal officials, it will constitute a clear violation of tribal sovereignty.

Your letter sets out no criteria for attending this meeting. As you are well aware, besides the seven Federally recognized Miwok Tribes located within a small area in Central California, there are at least three non-Federally recognized Miwok Indian groups and an unknown number of individuals who claim Indian ancestry or heritage. While these individuals and Indian communities may well deserve some sort of action by the Federal Government to address their issues, this does not mean that these people can participate in any internal matter involving the California Valley Miwok Tribe.

To date, outside the mediation process that is occurring in Washington, D.C., the BIA has presented no criteria for who or whom they will allow in such an open meeting or the criteria for who will be allowed to address and/or participate in such a meeting. What your letter is currently doing is setting off a frenzy in which people with no documented Indian ancestry or heritage and/or no connection to the California Valley Miwok Tribe are preparing to come to this meeting with the hope of finally being allowed to join a Tribe regardless of the fact that the Tribe they are seeking to join is not their Tribe. The Tribe strongly objects to this process as not only being illegal, but, lacking clear planning and oversight. We find his letter and the process being put forward in this letter to be an affront to our sovereignty; a violation of Federal legal precedent and standards; contrary to the stated positions of the BIA regarding tribal leadership and membership; inconsistent with the Tribe's requests for technical assistance; and lacking clear criteria and methodology for determining participation in this meeting.

The fact that the BIA has problems with the composition of the California Valley Miwok Tribe does not escape us. It is ironic and troubling that the two points in history where the BIA set out to determine Tribal membership in first organizing the Tribe in 1916 and then terminating the Tribe in 1966, your dedicated employees could only find one tribal member. Your assertion that there is a large group of potential members to the California Valley Miwok Tribe is wholly inconsistent with historical records as it relates to this Tribe. Thus, the size and composition of our Tribe should not be a surprise to anyone.

However, we have and will continue to do what the BIA has requested. We have sent numerous letters to the BIA requesting your assistance. We have met with BIA staff to discuss our enrollment process. We have sent our information to individuals who have requested it or to individuals who we believed were interested in enrolling in the Tribe. We have placed ads in local papers and contacted groups and individuals who may be interested in applying for membership to our Tribe. We have notified individuals who have forwarded applications of the need to send privacy waivers to the BIA so that their information can be forwarded to the Tribe. *(See Attachments 9 to 20)*

We believe that this is the way to address the membership issue. Before any of the current members joined this Tribe, our Indian heritage and connection to the Tribe was researched in detail by the BIA Central California Agency Office. Every potential member should receive the same analysis by the BIA and this is what we have consistently requested from the BIA. The Tribe sees this as the proper role for the BIA. If after this process has been completed, the BIA still has problems with the composition of the Tribe, then we should be able to sit down

and work these issues out. However, to open the membership and the governance of this or any other Federally recognized Tribe to anyone coming in off the street is a complete affront to Tribal sovereignty and should be vigorously opposed by all Tribes and tribal members.

The Tribe again requests that the BIA provide the information that we and the individuals seeking to join the Tribe have requested over the last three years. We will not participate in an open ended meeting which will only lead to chaos and possibly violence. We ask that you please show us where a "walk off the street process" as has been outlined in your letter has been applied in any other instance. Not only does the BIA have no authority to designate such a group as the General Council of a Federally Recognized Indian Tribe, there is no way such an environment can be controlled by the BIA.

Please attach this Statement of Reasons to our original appeal letter. In addition, please provide some sort of explanation as to how the BIA intends to interpret 25 C.F.R. Section 81.6 (c) as it relates to the California Valley Miwok Tribe. If you have any questions, please let me know.

Sincerely,

Silvia Burley
Chairperson
California Valley Miwok Tribe

Enc (5)

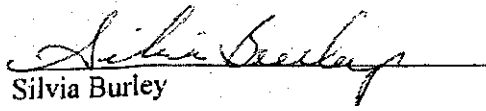
Cc: Tribal Council
Clay Gregory
Phillip E. Thompson
Steve Altman, Mediator
Yakima Dixie
Mike Olsen
Office of the Inspector General
Senator Barbara Boxer
Senator Diane Feinstein
Rep. Nancy Polesi
Rep. Henry Waxman
Rep. Mike Cardoza

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Silvia Burley
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