



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

CALIFORNIA VALLEY MIWOK)	Order Dismissing Appeal in Part and
TRIBE,)	Referring Appeal in Part to the
Appellant,)	Assistant Secretary - Indian Affairs
)	
v.)	
)	Docket No. IBLA 07-100-A
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	January 28, 2010

The California Valley Miwok Tribe (Tribe) (formerly known as Sheep Ranch Rancheria, and Sheep Ranch of Me-wuk Indians of California), under the direction of Silvia Burley as the Tribe's Chairperson,¹ appealed to the Board of Indian Appeals (Board) from an April 2, 2007, decision (Decision) of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director affirmed a November 6, 2006, decision of the BIA Central California Agency Superintendent (Superintendent) that BIA would "assist" the Tribe in organizing a tribal government. To do so, the Superintendent announced that BIA would sponsor a "general council meeting of the Tribe," to which BIA would invite tribal members (apparently numbering six) as well as "potential" or "putative" members (apparently numbering in the several hundreds). BIA decided the criteria for (and intends to make individual eligibility determinations for) the class of "putative" members who would be allowed to participate in the general council meeting, and whose involvement BIA deemed necessary in order to include the "whole tribal community" in the tribal organization and membership decisions. BIA concluded that these actions were necessary because until the tribal organization and membership

¹ Our caption of the appeal reflects the entity in whose name the appeal was filed. As will become apparent, Burley's position and authority to bring this appeal in the name of the Tribe is disputed by both BIA and by Yakima Dixie (Yakima), a tribal member who claims to be the "Hereditary Chief" of the Tribe. Our references in this decision to Burley as the "appellant" are simply for the sake of identifying actions and positions with the individuals involved, and do not imply a decision by the Board, one way or the other, on the underlying dispute over whether Burley has authority to bring this appeal on behalf of the Tribe.

issues were resolved, a leadership dispute between Burley and Yakima, *see supra* note 1, could not be resolved, and resolution of that dispute was necessary for a functioning government-to-government relationship with the Tribe.

Burley appealed from the Decision, objecting on three grounds: (1) the Decision, as partially implemented, violated the Tribe's Fiscal Year (FY) 2007 contract with BIA under the Indian Self-Determination and Education Assistance Act (ISDA), *see* Pub. L. No. 93-638, 25 U.S.C. § 450 *et seq.*, through which the Tribe performed governmental and enrollment functions; or, in the alternative, that the Decision constituted an unlawful reassumption of that contract, *see* 25 C.F.R. Part 900, Subpart P (Retrocession and Reassumption Procedures); (2) the Tribe is already organized, BIA's proffered "assistance" was not requested by the Tribe, and thus BIA's action constitutes an impermissible intrusion into tribal government and membership matters that are reserved exclusively to Indian tribes; and (3) the Regional Director erred in stating that the Tribe was never terminated and thus is not a "restored" tribe, which is a status that is relevant to the Tribe for purposes of Indian gaming. The Regional Director and Yakima² seek dismissal of this appeal on the grounds that Burley lacks authority to represent the Tribe, and that intervening Federal court decisions, in litigation brought by Burley against the Department of the Interior, are dispositive against her in this appeal.

We need not decide whether Burley has authority to represent the Tribe in claiming that the Decision, as partially implemented, violated the Tribe's FY 2007 ISDA contract because another jurisdictional bar precludes us from considering the claim: the Board does not have jurisdiction to review an ISDA breach-of-contract claim against BIA. Burley's assertion that the Decision constituted an illegal "reassumption" of the ISDA contract suffers the same fate because it is, in substance, simply a recharacterization of her breach-of-contract claim, and it rests on a misunderstanding of the applicable regulations concerning ISDA contract reassumption.

Burley's authority to represent the Tribe with respect to its second claim is closely related to the underlying merits of those claims, and because we conclude that we do not have jurisdiction over the subject matter of those claims, we also dismiss them on

² Yakima claims to represent a class of "putative" tribal members, but the record contains no basis upon which the Board can make a determination of which, if any, individuals have authorized Yakima to represent their interests in this appeal, or whether any other individuals would in fact qualify as interested parties. Yakima does qualify as an interested party, and whether or not he represents other individuals is not relevant to our consideration of his pleadings or our disposition of this appeal.

jurisdictional grounds, independent of whether or not Burley is authorized to represent the Tribe in this appeal. In 2005, before the Decision was issued, the Acting Assistant Secretary confirmed as final for the Department a decision made by BIA in 2004 that BIA does not consider the Tribe to be organized. With exceptions not relevant here, the Board does not have authority to review a decision of the Assistant Secretary. Moreover, the Department's position declining to recognize the Tribe as organized was upheld in Federal court.

The Regional Director's Decision, however, goes beyond what was decided or confirmed by the Assistant Secretary. To the extent that it does, our review would not necessarily be precluded by the Assistant Secretary's action. But another jurisdictional hurdle exists: the Decision decides what is effectively and functionally a tribal enrollment dispute, for purposes of determining who BIA will recognize, individually and collectively, as members of the "greater tribal community" that BIA believes must be allowed to participate in the general council meeting of the Tribe for organizational purposes. The Board lacks jurisdiction over tribal enrollment disputes. Thus, we lack jurisdiction over Burley's appeal regarding BIA's actions to assist the Tribe in organizing itself. Because this portion of the Decision effectively implicates a tribal enrollment dispute, we refer Burley's second claim to the Assistant Secretary.

With respect to Burley's third claim — that the Tribe is a "restored" tribe and that the Regional Director erred in stating otherwise — we conclude that Burley has not shown that the Tribe has been adversely affected by this statement in the Decision. Thus, the Tribe lacks standing to raise that claim in this appeal. Even assuming that the Tribe had standing, we would nevertheless dismiss this claim because it is not ripe for our review. By dismissing this claim, we leave for another day resolution of this issue regarding the Tribe's status.

Background

This appeal involves an Indian tribe whose legal status as a tribal political entity is undisputed as a matter of Federal law, *see* 74 Fed. Reg. 40,218, 40,219 (Aug. 11, 2009) (Federally recognized tribes list), but whose polity in fact — who or what individuals collectively constitute, or are entitled to constitute, the "Tribe" for purposes of participating in organizing a tribal government and establishing membership criteria — is bitterly disputed within the handful of individuals who have been recognized by BIA as the Tribe's currently enrolled members. Some background on the Sheep Ranch Rancheria and the history leading up to the present dispute will provide context for understanding our characterization of this appeal and, in particular, our conclusion that the Tribe's second claim should be referred to the Assistant Secretary.

I. Historical Background

In 1915, an Indian Agent forwarded to the Commissioner of Indian Affairs a census “of the Indians designated ‘Sheepranch-Indians’ . . . aggregating 12 in number,” which the Agent described as constituting “the remnant of once quite a large band of Indians in former years living in and near the old decaying mining town known and designated on the map as ‘Sheepranch.’” Administrative Record (AR), Tab 94. The Indian Agent recommended purchasing land for the Indians, and in 1916, the United States purchased approximately 0.92 acres in Calaveras County, California, which became known as the Sheep Ranch Rancheria. *See* AR, Tab 93.

In 1934, Congress passed the Indian Reorganization Act (IRA), which, among other things, required the Secretary to hold elections through which the adult Indians of a reservation decided whether to accept or reject the applicability of certain provisions of the IRA to their reservation, including provisions authorizing tribes to organize and adopt a constitution under the IRA. *See* 25 U.S.C. §§ 476 and 478. The IRA voter list for Sheep Ranch Rancheria identified only a single eligible voter, Jeff Davis, who voted in favor of the IRA.³ AR, Tabs 90-92. Neither Davis, nor any subsequent residents of the Rancheria, organized a tribal government pursuant to the IRA.

In 1966, during a period in which the Federal government sought to terminate the Federal trust relationship with various Indians and Indian tribes, BIA prepared a plan to distribute the assets of the Sheep Ranch Rancheria as a prelude to termination. *See* AR, Tab 88; *see generally* California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619, *as amended by* Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390. The distribution plan recited that several Indian families (not identified) had lived on the Rancheria since it was purchased, but none of the land had been allotted or formally assigned to individuals, and for the 8 years preceding, the only house had been occupied by Mabel Hodge Dixie.⁴ BIA determined that Mabel was the only Indian entitled to receive the assets of the

³ The IRA defined “tribe” as referring to “any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.” 25 U.S.C. § 479.

⁴ The 1915 census identified a Peter Hodge and his family as among the Sheepranch Indians, although any relationship between Mabel and Peter is not shown in the record.

Rancheria, and she voted to accept the distribution plan and was issued a deed to the land. AR, Tabs 86-88.⁵

II. BIA Dealings with the Tribe Between 1994 and 2003.

Mabel was the mother of Yakima, who grew up on the Rancheria. *See* AR, Tab 73 at 5-6. In 1994,⁶ Yakima wrote to the Superintendent, expressing a need for BIA assistance for home repairs, and describing himself as “the only descendant and recognized . . . member” of the Tribe. AR, Tab 76.

Sometime during the 1990s, Burley contacted BIA for information related to her Indian heritage, which BIA provided, and by 1998 — at BIA’s suggestion — Burley had contacted Yakima.⁷ On August 5, 1998, Yakima, “[a]s Spokesperson/Chairman” of the Tribe, signed a statement accepting Burley as an enrolled member of the Tribe, and also enrolling Burley’s two daughters and her granddaughter. AR, Tab 75.

In September of 1998, Yakima and Burley met at the Rancheria with BIA staff from the Sacramento Area (now “Pacific Regional”) Office to discuss organizing the Tribe. Among the issues discussed was developing criteria for membership in the Tribe. BIA staff suggested during the meeting that Yakima had both the authority and broad discretion to decide that issue. *See, e.g.*, AR, Tab 73 at 7-8, 24-25. Brian Golding, a BIA Tribal Operations Officer, characterized Yakima and his brother, Melvin, along with Burley and her adult daughter, as the “golden members” of the Tribe. Because Melvin’s whereabouts were unknown at the time, Golding stated: “that basically leaves us with three people.” AR, Tab 73 at 32. Golding continued, “usually what we’ll do is we’ll call that group of

⁵ In 1967, Mabel executed a quit claim deed to convey the land back to the United States, and following her death, the Department of the Interior probated the property and determined that it passed to Mabel’s husband and her four sons, as her heirs.

⁶ We cannot determine with certainty the date of the letter, but a barely legible portion of a date stamp appears to read “94.”

⁷ It appears that Burley may trace her ancestry to a “Jeff Davis” who was listed on the 1913 census: his age (58) in 1913 is consistent with his date of birth (1855) identified in genealogical information sent to Burley by BIA. *See* AR, Tabs 77 & 94. As noted, the sole eligible voter for the Sheep Ranch Rancheria IRA vote in 1935 was also a “Jeff Davis,” but the date of birth listed for him is not the same as that for the Jeff Davis identified in the genealogical information sent to Burley. *Compare* AR, Tab 92 *with* AR, Tab 77.

people a general council. They're the body. They're the tribe. They're the body that has the authority to take actions on behalf of the tribe. So in this case, we'd be looking at, possibly, three people." *Id.*

In a followup letter to Yakima, dated September 24, 1998, the Superintendent described what BIA considered to be the unusual circumstances in which the Tribe and BIA found themselves. Typically, according to the Superintendent, California tribes that had been unlawfully terminated by the Federal government regained Federal recognition through litigation, and a court judgment identified the class of persons entitled to organize the tribe — e.g., the distributees and their dependents, and their lineal descendants. Although the Sheep Ranch Rancheria land had been distributed to Mabel pursuant to a distribution plan, the Department apparently never published a final notice of termination and had accepted the land back from Mabel through a quit claim deed, thus essentially administratively “unterminating” the Tribe before it had been formally terminated. Unlike terminated tribes that were restored through litigation, there was no court decision for Sheep Ranch Rancheria to which the Tribe and BIA could look to determine who was a member of the Tribe or otherwise entitled to organize it.

Under the circumstances, BIA concluded that “for purposes of determining the initial membership of the Tribe,” BIA must include Yakima and Melvin, as the remaining heirs of Mabel Hodge Dixie. AR, Tab 72 at 2 (unnumbered). In addition to those two, BIA recognized that Yakima had adopted Burley, her two daughters, and her granddaughter, into the Tribe, and therefore those adoptees who were of majority age also had “the right to participate in the initial organization of the tribe.” *Id.* The Superintendent continued:

At the conclusion of [the meeting with BIA staff], you were going to consider *what enrollment criteria should be applied to future prospective members. Our understanding is that such criteria will be used to identify other persons eligible to participate in the initial organization of the Tribe.* Eventually, such criteria would be included in the Tribe’s Constitution.

Id. (emphasis added).

The Superintendent stated that “given the small size of the Tribe, we recommend that the Tribe operate as a General Council,” *id.* at 3, which could elect or appoint a chairperson and conduct business. In order to provide assistance, the Superintendent offered a \$50,000 ISDA grant available for improving tribal governments, and provided a draft resolution for the Tribe to use in requesting the grant. *Id.*

On November 5, 1998, Yakima and Burley signed a resolution establishing a General Council, consisting of all adult members of the Tribe, to serve as the governing body of the Tribe. AR, Tab 71. In less than 5 months, however, a leadership dispute arose between Burley and Yakima. In April of 1999, Yakima purportedly resigned as chairperson of the Tribe, concurred in General Council action appointing Burley as Chairperson, and then repudiated his resignation, while still giving Burley "the right to act as a delegate to represent" the Tribe, subject to his orders. *See* AR, Tabs 68-70.

There was sufficient cooperation, however, for Yakima, Burley, and the elder of Burley's daughters, Rashel Reznor, to submit a petition to BIA asking for a Secretarial election to be held, pursuant to the IRA, 25 U.S.C. § 476, to vote on a proposed constitution. AR, Tab 66. The proposed constitution (1999 Yakima-Burley Constitution) identified the "base enrollees" as Yakima, Burley, Burley's two daughters, Burley's granddaughter, and (prospectively) the direct lineal descendants of these base enrollees. It also provided that all descendants of base enrollees and all descendants of any person who became a member subsequent to the adoption of the constitution "shall automatically become members of the Band at birth." *Id.*, 1999 Yakima-Burley Constitution, Art. II, Sec. 3(B). Other persons "of Sheep Ranch blood" could also be adopted into membership by a 2/3 majority vote of the General Council, which consisted of all members 18 years of age or older. *Id.*, 1999 Yakima-Burley Constitution, Art. II, Sec. 3(C) & Art. III, Sec. 2. BIA did not call a Secretarial election to vote on the 1999 Yakima-Burley Constitution.

By October of 1999, any remaining cooperation between Yakima and Burley appears to have evaporated, and Yakima sought assistance from BIA to expel Burley and her family from the Tribe. *See* AR, Tabs 57, 62. In December of 1999, Yakima provided BIA with a tribal constitution, purportedly adopted on December 11, 1999 (1999 Yakima Constitution). Enclosed with the constitution were documents by which Yakima, as Chairperson, purported to enroll seven additional individuals as members of the Tribe. The 1999 Yakima Constitution identified the Tribe's membership as (1) all persons who were listed as distributees and dependent members of their immediate families in the Sheep Ranch Rancheria Distribution Plan, (2) lineal descendants of those falling into the first category, (3) all persons enrolled by Yakima, and (4) all persons approved in the future by the Chairperson and Tribal Council to become members.

By letter dated February 4, 2000, the Superintendent returned the 1999 Yakima Constitution to Yakima without action, observing that the body that approved it did not appear to be the proper body to do so. The Superintendent agreed to a meeting with Yakima later in the month, with notice to Burley.

Burley and her daughter declined to participate in the meeting between BIA and Yakima, and on March 7, 2000, the Superintendent sent her a summary of the meeting. AR, Tab 8. The Superintendent reaffirmed BIA's view that the General Council consisted of Yakima, Burley, and Rashel. The Superintendent reported that BIA had rejected an assertion by Yakima that he had only given "limited enrollment" to Burley and her family, and also reported that BIA had advised Melvin, with whom BIA was now in contact, that as an heir of Mabel Hodge Dixie for the Rancheria land, he was entitled to participate in the organization of the Tribe.

Meanwhile, Burley and her daughter Rashel adopted their own tribal constitution, on March 6, 2000 (2000 Burley Constitution). The 2000 Burley Constitution identified the membership of the Tribe as Yakima, Burley, her two daughters, and her granddaughter, and provided that any further membership would be decided by a subsequent enrollment ordinance to be adopted by 2/3 majority vote of the Tribal Council. On October 31, 2001, the Superintendent wrote to Burley to "acknowledge receipt" of the 2000 Burley Constitution, as amended and corrected in September 2001. The Superintendent stated that BIA could not act on it without a formal request. The Superintendent concluded his letter by stating that "[t]he 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." AR, Tab 49 at 2 (unnumbered).

Between 1999 and 2003, BIA corresponded with Burley by addressing and recognizing her as the Tribe's Chairperson, or sometimes as "Interim Chairperson." *See, e.g.*, AR Tabs 8, 14 (Nov. 24, 2003, Letter from Superintendent), and 52. Eventually, as discussed in Part IV of this Background, BIA began to refer to Burley as a "person of authority" whom BIA considered as representing the Tribe for government-to-government purposes.

III. The Tribe's ISDA Contract

Beginning in 1999, and continuing through FY 2007, BIA executed an ISDA contract with the Tribe for improving tribal government, which apparently included such functions as developing a tribal enrollment ordinance and membership lists. Initially, BIA seems to have treated Burley as the Tribe's Chairperson for purposes of executing the contract. Later, when BIA began referring to her as a "person of authority," it continued to relate to the Tribe through Burley for purposes of executing annual funding agreements for the ISDA contract. The Decision that is the subject of this appeal was issued during FY 2007, when an ISDA contract funded for that year was in effect.

For FY 2008, the Superintendent returned without action a proposal from Burley to renew or re-fund the Tribe's ISDA contract, after concluding (in light of several court decisions) that Burley had not shown that the Tribe had authorized her to submit the ISDA contract proposal. See *California Valley Miwok Tribe v. Central California Agency Superintendent*, 47 IBLA 91 (2008). Burley's attempt to challenge, in court, BIA's decision not to renew the Tribe's ISDA contract for FY 2008, was unsuccessful. See Memorandum and Order, *California Valley Miwok Tribe v. Kempthorne*, No. Civ. S-08-3164 FCD/EFB (E.D. Cal. Feb. 23, 2009), *appeal docketed*, No. 09-15466 (9th Cir. Mar. 12, 2009).

For FY 2009, Burley again submitted a contract proposal and BIA again returned it without action on the same grounds relied upon for returning the FY 2008 proposal. The Tribe, through Burley, appealed that decision, and that appeal is pending before the Board in *California Valley Miwok Tribe v. Central California Agency Superintendent*, Docket No. IBLA 09-13-A.

IV. Superintendent's 2004 Decision and Acting Assistant Secretary's 2005 Decision

On March 26, 2004, in a letter that the Acting Assistant Secretary later relied upon as a final Departmental decision, the Superintendent wrote to Burley, acknowledging receipt on February 11, 2004, of a document purporting to be the Tribe's constitution, which the Superintendent understood had been submitted to demonstrate that the Tribe is an "organized" tribe. Although the letter was addressed to "Silvia Burley, Chairperson," in the text the Superintendent stated that BIA recognized Burley as "a person of authority" within the Tribe, but did "not yet view [the] tribe to be an 'organized' Indian Tribe." AR, Tab 40 at 1 (2004 Decision). The Superintendent stated that when a tribe that has not previously organized seeks to do so, BIA has a responsibility to determine that the organizational efforts "reflect the involvement of the whole tribal community." *Id.* He noted a lack of evidence of any outreach to Indian communities in and around Sheep Ranch or to persons who have maintained any cultural contact with Sheep Ranch. *Id.* at 2. The Superintendent further stated that "[i]t 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. The participation of the greater tribal community is essential to this effort." *Id.*

The Superintendent expressed concern that the "base roll" submitted by Burley contained only five names, "thus, suggest[ing] that this tribe did not exist until the 1990's, with the exception of Yakima Dixie. However, BIA's records indicate with the exception not withstanding, otherwise." *Id.* According to the Superintendent, BIA's experience with

the Tribe's "sister Miwok tribes" led BIA to believe that "Miwok tradition favors base rolls identifying persons found in Miwok tribes," noting that the Amador County tribes used the 1915 Miwok Indian Census for that County; El Dorado County tribes used a 1916 Indian census; and Tuolumne County tribes used a 1934 IRA voter list. *Id.* The Superintendent emphasized "the importance of the participation of a greater tribal community in determining membership criteria." *Id.* at 3. The Superintendent advised Burley of her right to appeal the letter to the Regional Director. No appeal was filed.

On February 11, 2005, Principal Deputy and Acting Assistant Secretary - Indian Affairs Michael D. Olsen dismissed an "appeal" that Yakima had filed in 2003 with the Office of the Assistant Secretary to challenge BIA's recognition of Burley as Chairperson of the Tribe (2005 Decision). The 2005 Decision dismissed Yakima's appeal on procedural grounds, finding, among other things, that the 2004 Decision had rendered the appeal moot.⁸ The Assistant Secretary interpreted the 2004 Decision as making clear that BIA did not recognize Burley as chairperson, and that until the Tribe has organized itself, the Department could not recognize anyone as the Tribe's chairperson. The Assistant Secretary stated that "the Tribe is not an organized tribe," "BIA does not recognize any tribal government," and "[t]he first step in organizing the Tribe is identifying the putative tribal members." 2005 Decision at 1-2.

Burley, in the name of the Tribe, filed suit against the Department, challenging the 2004 Decision and the 2005 Decision, and the court accepted the two decisions as final Departmental action for purposes of judicial review. *See California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 201 n.5 (D.D.C. 2006). The court rejected Burley's claim that the Department's refusal to recognize as valid the constitution proffered by Burley, the Department's refusal to consider the Tribe as organized, and the Department's insistence on participation of a "greater tribal community" in organizational efforts, constituted unlawful and improper interference in the internal affairs of the Tribe. The

⁸ Perhaps because he concluded that Yakima's appeal was moot, Olsen did not otherwise address his jurisdiction to consider such an appeal. Under 25 C.F.R. Part 2, an appeal from a Regional Director's decision ordinarily must be filed with the Board, after which the Assistant Secretary has a 20-day window in which to assume jurisdiction over the appeal. *See* 25 C.F.R. §§ 2.4(e), 2.20(c). Yakima did not file his appeal with the Board.

court dismissed Burley's suit for failure to state a claim, thus leaving the 2004 and 2005 Decisions intact.⁹

On appeal, the U.S. Court of Appeals affirmed the District Court's decision. *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008). The court found reasonable the Department's position that the Secretary's authority under the IRA included the power to refuse to recognize the validity of Burley's proffered tribal constitution when it "does not enjoy sufficient support from [the] tribe's membership." *Id.* at 1267. The court noted that, by Burley's own admission, the Tribe had a potential membership of 250, and upheld the Secretary's decision to reject what the court characterized as the "antimajoritarian gambit" by Burley and her small group of supporters. *Id.*

V. BIA Decisions in 2006 and 2007 and Subsequent Actions

After the District Court had issued its decision in *California Valley Miwok Tribe v. United States*, but while Burley's appeal to the Court of Appeals was pending, the Superintendent issued his November 6, 2006, decision, AR, Tab 19, and, following Burley's appeal, the Regional Director upheld the Superintendent, in the April 2, 2007, Decision, AR, Tab 3, that is the subject of this appeal.

The Superintendent's 2006 decision was addressed to both Burley and Yakima, and characterized BIA's action as an offer to assist the Tribe in the Tribe's efforts "to reorganize a formal governmental 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 those Indians." AR, Tab 19 at 1. The Superintendent disclaimed any intent to interfere with the Tribe's right to govern itself, but found that the leadership dispute between Burley and Yakima threatened the government-to-government relationship between the United States and the Tribe. The Superintendent announced that the Agency

will publish a notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process. The notice shall invite the members of the Tribe and

⁹ The development of competing constitutions has not abated. In 2006, an 11-person group of 12 "initial members" of the Tribe aligned with Yakima purported to adopt a constitution, which recognized Burley as the 12th "initial member," but did not recognize Burley's daughters or granddaughter as members.

potential members to the meeting where the members will discuss the issues and needs confronting the Tribe.

Id.

The Superintendent listed several proposed issues for the general council to discuss, and described the necessary tasks for the general council as follows:

The general council first needs to determine the type of government your tribe will adopt. . . . Next, the general council needs to agree to the census or other documents that establishes the original members of the Rancheria. That census should be the starting point from which the tribe develops membership criteria. The immediate goal is determining membership of the tribe. Once membership is established and the general council determines the form of government, then the leadership issues can be resolved.

Id. at 2. The Superintendent concluded his letter by stating that BIA very much wished to have both Burley and Yakima participate, but that BIA would proceed with the process even if one or both of them declined to participate. *Id.*

Burley appealed the Superintendent's 2006 decision to the Regional Director, arguing that BIA had recognized her as a person of authority and thus there was no leadership dispute; that BIA previously had already decided which individuals had the right to organize the Tribe; that BIA lacked authority to organize an Indian tribe unless requested to do so by the tribe's government; and that BIA lacked authority to establish a class of individuals entitled to participate in organizing the Tribe as members of a "general council" convened by BIA. AR, Tabs 14, 17. The Superintendent responded to Burley's arguments by stating that

[i]t is not the goal of the Agency to determine membership of the Tribe. The purpose of the [Agency's] letter was to bring together the 'putative group' who believe that they have the right to participate in the organization of the Tribe It was not, and is not, the intent of the Agency to determine who the members of the Tribe will be. Then the 'putative' group can define the criteria for membership. . . .

AR, Tab 13 at 4.

In the Decision, the Regional Director first concluded that because BIA did not recognize a tribal government for the Tribe and because Burley and Yakima were at an

impasse, the government-to-government relationship was threatened, and thus it was necessary for BIA to assist the Tribe with the Tribe's organizational efforts. The Regional Director recounted the history of the Tribe, and in the course of that background, stated that a notice of termination was never published in the Federal Register or otherwise issued for the Sheep Ranch Rancheria, that the Tribe was included in a 1972 list of Federally recognized tribes, and therefore that BIA has never viewed the Tribe as having been terminated and then "restored" to Federal recognition. Decision at 2.

The Regional Director also recounted BIA's dealings with both Yakima and Burley, concluding that "both [had] failed to identify the whole community who are entitled to participate in the Tribe's efforts to organize." Decision at 4. The Regional Director agreed that it was not the Superintendent's goal to determine the membership of the Tribe, but instead to

bring together the "putative group" who believe that they have the right to participate in the organization of the Tribe We believe the main purpose was to assist the Tribe in identifying the whole community, the "putative" group, who would be entitled to participate in the Tribe's efforts to organize a government that will represent the Tribe as a whole. A determination of who is a tribal member must, however, [precede] any determination of who is a tribal leader.

Id. at 5. The Regional Director stated that "[i]n all fairness to the current tribal membership and the 'putative' group," he agreed with the Superintendent's proposed course of action. *Id.* Thus, the Regional Director affirmed the Superintendent's decision and remanded the matter for implementation.

On April 10 and 17, 2007, shortly after the Decision was issued and before Burley filed this appeal, BIA published notices in local newspapers announcing its plans

to assist the [Tribe] in its efforts to organize a formal governmental structure that is acceptable to all members. The first step in the organizational process is to identify putative members of the Tribe who may be eligible to participate in all phases of the organizational process of the Tribe. Therefore, if you believe you are a lineal descendant of a person(s) listed below, you will need to [submit specified documentation to BIA] . . . that will assist the Bureau Team in determining your eligibility.

Calaveras Enterprise, April 10 and 17, 2007, Ex. 1 to Appellant's Opening Brief.¹⁰ The notice described the putative members as lineal descendants of (1) individuals listed on the 1915 census of the Sheepranch Indians, (2) Jeff Davis (the sole individual on the IRA voter list in 1935), and (3) Mabel Hodge Dixie (the sole distributee under the 1964 Distribution Plan). The notice continued:

All individuals who have been determined to be eligible to participate in the organization of the Tribe will be notified by letter from the Agency. All individuals not determined eligible will be notified of their right to appeal to the BIA, Pacific Regional Director within 30 days of receipt of decision. Upon rendering final decisions regarding appeals filed, the Agency will notify all individuals determined to be eligible of the organizational meeting which will include an agenda of the next actions to be taken by the group.

Id.

Burley, in the name of the Tribe, and represented by counsel, appealed the Decision to the Board. Burley, the Regional Director, and Yakima filed briefs.

VI. Arguments on Appeal

Burley characterizes the appeal as "rais[ing] the permissible scope of BIA involvement in internal Tribal government functions through unlawful reassumption of [ISDA] contract functions involving enrollment." Opening Brief at 3. According to Burley, the issues raised include the Regional Director's findings that BIA, rather than the Tribe, can determine tribal membership; that BIA may designate a putative class of membership; that the Tribe is an unorganized Tribe; that BIA can determine the make up of tribal government and refuse to recognize the Tribe's judicial forum; that BIA can hold a general council meeting for the Tribe without permission from the Tribe's governing body; and "lastly," that the Tribe was never terminated and restored. *Id.* at 3-4. Burley contends

¹⁰ Burley objected to the Board that BIA's public notices violated the automatic stay that attaches to BIA decisions, *see* 25 C.F.R. § 2.6, and were issued after BIA no longer had jurisdiction over the matter. While not conceding a violation, BIA has represented to the Board that it has refrained from taking any further action to convene a general council meeting. Independent of BIA's authority to publish them, the notices reflect, as a factual matter, BIA's understanding of the nature, scope, and intent of the Superintendent's November 6, 2006, decision and the Regional Director's Decision upholding the Superintendent.

that she was elected Chairperson of the Tribe and has been so recognized by BIA; that the five adult members of the Tribe adopted a general council form of government and thereafter the Tribe was no longer an “unorganized” tribe; that the Tribe is a party to an ISDA contract with BIA; and that BIA’s actions to implement the Decision by publishing the newspaper notices constitute an unlawful reassumption of contract functions because BIA “has engaged its own process of promulgating enrollment standards that differ from those of the Tribe,” which violates the terms of the ISDA contract. *Id.* at 11. Burley argues that BIA has overstepped its authority and impermissibly interfered with decisions on tribal membership and tribal governance that are reserved exclusively to Indian tribes. Burley also argues that the Regional Director erred in stating that the Tribe is not a “restored” tribe, because once fee title to the Rancheria land passed to Mabel Dixie, the Tribe was terminated, and therefore the Tribe necessarily must be a “restored” tribe.

The Regional Director contends that the appeal should be dismissed because the appeal cannot properly be brought in the name of the Tribe. The Regional Director argues that (1) the Decision was directed at Burley, as a person claiming to be the leader of the Tribe, and was not directed at the Tribe; (2) the appeal seeks to vindicate Burley’s own rights as an alleged elected official, and does not represent the interests of the Tribe as a whole; and (3) the Tribe lacks standing to appeal because it was not adversely affected by the Decision. In making the standing argument, the Regional Director contends that the Decision did not violate the ISDA contract or the Tribe’s right to determine its own membership, and that until the organizational process is complete, it is not possible to determine whether the Tribe was injured. The Regional Director also defends the Decision on the merits.

Yakima argues that the Superintendent’s 2004 Decision and the Assistant Secretary’s 2005 Decision, as final Departmental decisions, are dispositive of the issues raised in this appeal and thus prevent the Board from considering the appeal on the merits. Yakima also contends that this matter constitutes an enrollment dispute, and the Board lacks jurisdiction to adjudicate tribal enrollment disputes. *See* 43 C.F.R. § 4.330(b)(1).

Discussion

I. Jurisdictional Principles

The Board has jurisdiction to review an appeal from a non-emergency rescission and reassumption of an ISDA contract, *see* 25 C.F.R. § 900.150(c), but the Board does not have general jurisdiction over disputes that arise after an ISDA contract has been awarded, *id.* § 900.151(a) & (b), including claims that a Federal agency has violated an ISDA

contract. *See id.* Part 900, Subpart N (Post-Award Contract Disputes). As a general rule, the Board has jurisdiction to review a decision of a BIA Regional Director. *See* 25 C.F.R. § 2.4(c);¹¹ 43 C.F.R. § 4.330(a). But, except by special delegation or request from the Secretary or Assistant Secretary, the Board is expressly precluded from adjudicating tribal enrollment disputes, *see* 43 C.F.R. § 4.330(b)(1), or stated more precisely, from adjudicating challenges to BIA actions deciding tribal enrollment disputes. *See Vedolla v. Acting Pacific Regional Director*, 43 IBIA 151, 154 n.4 (2006).¹² In addition, the Board does not have jurisdiction to review a decision by the Assistant Secretary. *Ramah Navajo Chapter v. Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs*, 49 IBIA 10, 11-12 (2009), and cases cited therein; *Felter v. Acting Western Regional Director*, 37 IBIA 247, 250 (2002).

With these jurisdictional principles in mind, we address each argument raised by Appellant in this appeal.¹³

¹¹ BIA's appeal regulations refer to decisions made by an "Area Director," but the position is now titled "Regional Director."

¹² In *Vedolla*, the Board noted that regardless of section 4.330(b), the Board lacks jurisdiction to directly review enrollment (or other) actions by Indian tribes.

¹³ Another jurisdictional principle applied by the Board is that it will only consider matters that are ripe for review. *See, e.g., U&I Redevelopment LLC v. Acting Northwest Regional Director*, 44 IBIA 240 (2007) (dismissing appeal for lack of ripeness); *Wind River Resources Corp. v. Western Regional Director*, 43 IBIA 1, 3 (2006) (describing the considerations for determining ripeness). The Board solicited briefing on this issue, and both the Tribe and the Regional Director contend that this appeal is ripe. Yakima contends that the appeal is not ripe because Burley is objecting only to a *process*, and not an outcome, and no definitive determinations "have . . . been made with respect to denominating the particular putative members and the broader community who might qualify as members." Answer of Interested Parties at 11. Yakima later contradicts himself, however, by asserting that "BIA has, now, formally defined the class of individuals with whom it will [meet] to organize the Tribe." *Id.* at 14. Except with respect to the Decision's conclusion that the Tribe is not a "restored" Tribe, *see infra* at 122-23, we agree that this appeal is ripe, and that no purpose would be served by dismissal without deciding those issues.

II. Analysis

A. Claims Based on Tribe's ISDA Contract

1. Does the Decision Violate the Tribe's ISDA Contract?

Burley contends that the Decision, and subsequent notices identifying the class of putative members whom BIA would invite to a general council meeting of the Tribe, violated the Tribe's ISDA contract because the contract includes enrollment functions. As noted above, the Board lacks jurisdiction to consider claims that BIA breached a tribe's ISDA contract, and thus we dismiss this claim without addressing whether Burley would otherwise be authorized to bring such a claim on behalf of the Tribe.¹⁴

2. Does the Decision Constitute an Impermissible Reassumption of the ISDA Contract?

Burley argues that the Decision, as partially implemented by the newspaper notices announcing criteria for "putative" members of the Tribe and announcing BIA's intent to convene a general council meeting, constitutes an impermissible "reassumption" of the Tribe's ISDA contract. The Regional Director argues that Burley does not have authority to represent the Tribe in asserting this claim and that the Tribe itself lacks standing because "until the organizational process is complete, we cannot know whether there has been an actual injury." Appellee's Opposition Brief at 9. We need not address the Regional Director's contentions because we conclude that Burley's impermissible-reassumption argument is simply a restatement of her breach-of-contract claim, over which we lack jurisdiction.

Under the ISDA regulations, "reassumption" means "*rescission*, in whole or in part, of a contract *and* assuming or resuming control or operation of the contracted program by

¹⁴ We note that an appeal was filed with the Civilian Board of Contract Appeals (CBCA) in the name of the Tribe, from the same actions challenged in this appeal (Superintendent's November 6, 2006, decision; Regional Director's April 2, 2007, Decision; and April 2007 newspaper notices), arguing that BIA's actions constituted an impermissible revision and/or amendment of the contract in violation of the contract and governing statute. The CBCA dismissed the appeal for lack of jurisdiction because the Tribe had made no claim to the awarding official and the awarding official had issued no decision. See *California Valley Miwok Tribe v. Department of the Interior*, CBCA 817-ISDA (Sept. 27, 2007) (dismissing appeal for lack of jurisdiction).

the Secretary without consent of the Indian tribe or tribal organization pursuant to the notice and other procedures set forth in subpart P.” 25 C.F.R. § 900.6 (emphases added). The “rescission” of a contract by one party refers to the “unilateral *unmaking* of a contract for a legally sufficient reason.” Black’s Law Dictionary 1332 (8th ed. 2004) (emphasis added). Subpart P of 25 C.F.R. Part 900 prescribes the specific circumstances under which an agency may rescind an ISDA contract, the specific procedural steps that must be followed, and the effective date of the rescission and reassumption. *See* 25 C.F.R. §§ 900.247 -.253.

In the present case, the Decision did not purport to rescind or terminate the Tribe’s ISDA contract for FY 2007, and the Regional Director does not argue on appeal that the contract was rescinded or terminated. Nor does Burley contend that BIA followed the proper procedures for rescinding the contract. Instead, Burley contends that BIA’s actions constituted unlawful interference with the Tribe’s ability to perform under the contract by essentially taking over enrollment activities. Burley describes this as a “reassumption,” but the actions described, in substance, do not fall within the regulatory definition of that term. In effect, Burley’s contention is a restatement of her allegation that BIA’s actions either breached or unlawfully interfered with the Tribe’s still-effective and still-valid FY 2007 ISDA contract.

Thus, for the same reason that we have dismissed Burley’s express breach-of-contract claim, we also dismiss Burley’s unlawful-reassumption claim: the Board lacks jurisdiction to consider what is in substance an ISDA breach-of-contract claim.

B. BIA’s Decision to Convene a General Council Meeting of the Tribe’s Current and Putative Membership and to Determine Criteria for Putative Membership

Burley contends that the Regional Director erred in stating that the Tribe is unorganized, and that because the Tribe (i.e., Burley’s faction) did not request assistance from BIA, BIA has no authority to convene a “general council” meeting of the Tribe, or to determine the class(es) of individuals who may participate in such a meeting. We conclude, based on the Assistant Secretary’s 2005 Decision, which included his acceptance of the Superintendent’s 2004 Decision as final for the Department, that the following determinations are not subject to further review by the Board in this appeal: (1) the Department does not recognize the Tribe as being organized or having any tribal government that represents the Tribe; (2) the Department does not recognize the Tribe as necessarily limited to Yakima, Melvin, Burley, her two daughters, and her granddaughter, for purposes of who is entitled to organize the Tribe and determine membership criteria; and (3) the Department has determined that it has an obligation to ensure that a “greater tribal community” be allowed to participate in organizing the Tribe. Each of these

determinations was either explicitly or implicitly accepted in the Assistant Secretary's 2005 Decision as final for the Department, *see supra* at 111-12, and the Board lacks jurisdiction to review a decision by the Assistant Secretary.

That does not end our inquiry, however, because the Regional Director's Decision arguably went beyond the above determinations by deciding more specifically what BIA would do to implement those determinations. In this appeal, Burley contends that BIA exceeded its authority in determining who would constitute the "greater tribal community," or class of "purative members," and in deciding that they could participate as part of a "general council" meeting of the Tribe, to decide membership and organizational issues.¹⁵

As evidenced by the decisions of the Superintendent and the Regional Director, and the public notices published by BIA in 2007,¹⁶ BIA apparently has decided to create a base roll of individuals who satisfy criteria that BIA has determined to be appropriate and who

¹⁵ On October 13, 2009, Burley filed a request that the Board "take judicial notice of the United States Supreme Court's October 5, 2009, denial of [a petition for a writ of certiorari] in the *Hendrix v. Coffey* matter." *See Hendrix v. Coffey*, No. Civ. 08-605-M, 2008 WL 2740901 (W.D. Okla. July 10, 1008), *aff'd*, 305 Fed.Appx. 495 (10th Cir. 2008) (unpublished), *cert. denied*, 130 S. Ct. 61, 2009 WL 1106742 (U.S. Oct. 5, 2009). Burley characterized the *Hendrix* decisions as reaffirming well-settled principles of law that Indian tribes have complete authority to determine all questions of their own membership, and ascribed significance to the Supreme Court's recent denial of Hendrix's petition for a writ of certiorari. Counsel for the Tribe, Kevin M. Cochrane, Esq., of Rosette & Associates, PC, subsequently certified that he had reviewed and endorsed Burley's request as one made in good faith and for which a reasonable legal justification exists. Because we lack jurisdiction to consider the merits of Burley's second claim, we decline to further consider Burley's request or Cochrane's certification. *But see Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950) (Opinion of Justice Frankfurter) ("This Court has rigorously insisted that such a denial [of certiorari] carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review.").

¹⁶ BIA published the newspaper notices after the Regional Director issued the Decision, but before the Tribe timely filed this appeal. Subsequently, the Tribe objected to BIA's action as violating the automatic stay. *See* 25 C.F.R. § 2.6. We agree with the Tribe that BIA should not have begun to implement a decision that was not effective and that was subject to appeal. BIA subsequently confirmed with the Board that it cannot take any action to assist the Tribe in organizing while Burley's appeal remains pending. *See* Appellee's Opposition to Appellant's Motion to Enforce Stay at 1; *see also supra*, note 10.

will be entitled to participate — effectively as members (albeit in a somewhat undefined capacity) — in a “general council” meeting of the Tribe to organize the Tribe. Although the facts of this case render BIA’s decision far from a typical enrollment adjudication, we conclude that, in substance, that is what it is. Whether or not some or all of the individuals BIA would determine, under the Decision, to be “putative members” of the Tribe will ultimately be enrolled, BIA’s determination of their “putative membership” apparently will effectively “enroll” them as members of the “general council” that is to meet. And that general council, as apparently envisioned by BIA, will have the authority to determine permanent membership criteria.

Understood in the context of the history of this Tribe, and BIA’s dealings with the Tribe since approximately 1999, this case is properly characterized as an enrollment dispute. *Cf. Vedolla v. Acting Pacific Regional Director*, 43 IBIA at 155 (Board lacks jurisdiction over what is, at its core, a tribal enrollment dispute, notwithstanding an appellant’s characterization to the contrary; matter referred to the Assistant Secretary); *Walsh v. Acting Eastern Area Director*, 30 IBIA 180 (1997) (dismissing appeal from alleged actions and inactions regarding the development of a proposed final base membership roll for the Catawba Indian Tribe of South Carolina, and referring matter to Assistant Secretary); *Deardorff v. Acting Portland Area Director*, 18 IBIA 411 (1990) (dismissing appeal from BIA decision holding that 58 individuals were qualified to be enrolled in the Crow Creek Band of Umpqua Tribe of Indians, and referring matter to the Assistant Secretary). Because the Board lacks jurisdiction to adjudicate tribal enrollment disputes, we dismiss this claim and refer it to the Assistant Secretary.¹⁷

C. Did the Regional Director Err in Stating that the Tribe is Not a “Restored” Tribe?

A determination whether a tribe is a “restored” tribe may have significant gaming-related implications when land is taken into trust for such a tribe. *See Butte County v. Hogen*, 609 F. Supp. 2d 20, 24 (D.D.C. 2009). It is unclear, however, whether the Regional Director intended the statement in his Decision that the Tribe is not a “restored” tribe to constitute a “decision,” or whether it was intended only as background. We

¹⁷ Even if we did not conclude that Burley’s second claim presents an enrollment dispute over which we lack jurisdiction, referral of this claim might still be required because of the discretionary character of BIA’s decision. *See* 43 C.F.R. § 4.330(b)(2). The Department has determined that a “greater tribal community” must be included in organizing the Tribe, but even if we limited our review to the *classes* of individuals that BIA decided to include, it is unclear what legal standard we would apply.

conclude that the Tribe lacks standing to appeal this portion of the Decision because there is no showing, on this record, that the Tribe was adversely affected by the statement on this issue in the Decision. See 25 C.F.R. § 2.3 (administrative appeals regulations apply to appeals by persons who may be adversely affected by a BIA decision). The Decision is directed at neither gaming on tribal lands nor taking land into trust for the Tribe. And although the statement that the Tribe is not a “restored” Tribe may well have been intended to signal BIA’s position on the subject, the Decision itself presents no context, nor any action that BIA intends to take to implement that position in a way that might have an actual adverse effect.

Even if we were to conclude that the Tribe had shown that it was adversely affected by the statement, we would nevertheless conclude on this record that the matter is not ripe for our review. The Board applies the doctrine of ripeness, and three considerations are relevant for determining whether a matter is ripe: will a delay cause hardship, will Board intervention interfere with further administrative action, and is further factual development of the issues required? *Wind River Resources, Corp. v. Western Regional Director*, 43 IBLA 1, 3 (2005). In the present case, the first and third criteria weigh in favor of dismissal for lack of ripeness. Because there is no indication in the record that BIA intends to take any action to “implement” the statement, delay will not cause hardship; nor has a factual record been developed for this issue. Given the lack of context for the Decision’s statement that the Tribe is not a “restored” tribe, it is unclear whether Board intervention would interfere with further administrative action, but considering the three factors together, we would conclude that this claim is not ripe. Thus, whether viewed as an issue of standing or of ripeness,¹⁸ we conclude that this claim should be dismissed, and review on the merits must wait.

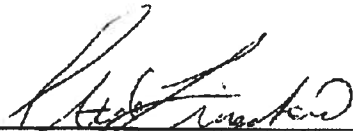
Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board (1) dismisses Burley’s claims related to the Tribe’s FY 2007 ISDA contract; (2) dismisses Burley’s claims that BIA improperly determined that the Tribe is “unorganized,” failed to recognize her as the Tribe’s Chairperson, and is improperly intruding into tribal affairs by determining the criteria for a class of putative tribal members and convening a general council meeting that will include such individuals; and (3) dismisses Burley’s claim that the Regional Director erred in stating

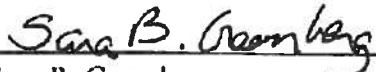
¹⁸ In *Wind River Resources*, we noted that the doctrines of standing and ripeness are closely related. See 43 IBLA at 3 n.2.

that the Tribe is not a “restored” tribe. We refer Burley’s second claim to the Assistant Secretary.¹⁹

I concur:



Steven K. Linscheid
Chief Administrative Judge



Sara B. Greenberg
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.

¹⁹ In this appeal, briefs filed on behalf of Yakima and purportedly other interested parties, *see supra* note 2, have been filed by Chadd Everone, a non-attorney who does not claim to be a member or putative member of the Tribe but who claims to serve as the “Deputy” to Yakima. *See, e.g.*, Interested Parties’ Response in Opposition to Appellant’s Request to Reopen Briefing at 1 (Oct. 5, 2009). On November 30, 2009, more than a year after briefing on the merits had concluded and after the Board had advised the parties that it had taken this case under consideration, Burley, through counsel, filed a Motion to Institute Disciplinary Proceedings Against Chadd Everone, asserting that Everone is not authorized to practice before the Board and that therefore all pleadings filed on behalf of Yakima should be stricken and not considered by the Board. Burley’s motion, at this late stage of the proceedings, is untimely and we decline to consider it further. We note that Burley’s motion selectively quotes 43 C.F.R. § 1.3, and does not address the Board’s interpretation of that provision. *See, e.g., Estate of Benjamin Kent, Sr.*, 13 IBLA 21, 23 (1984). Moreover, the motion apparently assumes that Yakima did not sign any of the pleadings himself. *But cf.* Interested Parties’ Answer Brief at 15. Finally, even were we to strike all pleadings filed on behalf of Yakima, we would not resolve this appeal differently.

California Valley Miwok Tribe v. Pacific
Regional Director, BIA
Docket No. IBLA 07-100-A
Order Dismissing Appeal in Part and
Referring Appeal in Part to the Assistant
Secretary - Indian Affairs
Issued January 28, 2010
51 IBLA 103

Distribution:

Robert A. Rosette, Esq.
Kevin M. Cochrane, Esq.
Saba Bazzazieh, Esq.
for California Valley Miwok Tribe
(and Silvia Burley)
Rosette & Associates, PC
565 W. Chandler Blvd., Suite 212
Chandler AZ 85225
BY CERTIFIED MAIL.

Yakima Dixie
11178 Sheep Ranch Road
Mtn Ranch, CA 95246-9761

Chadd Everone
2140 Shattuck Ave. #602
Berkeley, CA 94704

Velma WhiteBear
213 Downing Dr.
Galt, CA 95632

Superintendent
Central California Agency, BIA
650 Capitol Mall 8-500
Sacramento, CA 95814

Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Regional Solicitor
Pacific Southwest Regional Office
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

Jane M. Smith, Esq.
Branch of Tribal Government
& Alaska, Division of Indian Affairs
Office of the Solicitor
MS-6513-MIB
1849 C Street, N.W.
Washington, DC 20240

Assistant Secretary - Indian Affairs
MS 4141-MIB
U.S. Department of the Interior
1849 "C" Street, N.W.
Washington, DC 20240

RECEIVED

BY:



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 22 2010

Mr. Yakima Dixie
1231 E. Hazelton Avenue
Stockton, California 95205

Dear Mr. Dixie:

This letter is to inform you of the Department of the Interior's response to the decision of the Interior Board of Indian Appeals (IBIA) in *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIA 103 (January 28, 2010) (Decision).

The Decision stemmed from Sylvia Burley's appeal of the Bureau of Indian Affairs Pacific Regional Director's April 2, 2007 decision to affirm the Central California Agency Superintendent in his efforts to "assist" the Tribe in organizing a tribal government. In the Decision, the IBIA dismissed each of Ms. Burley's three complaints for lack of jurisdiction.¹ The IBIA did, however, refer Ms. Burley's second claim to my office, because it was in the nature of a tribal enrollment dispute. *Decision*, 51 IBIA at 122.

This letter is intended to address the limited issues raised by Ms. Burley's second complaint, as referred to my office by the IBIA: the BIA's involvement in the Tribe's affairs related to government and membership.

Background

This difficult issue is rooted in the unique history of the California Valley Miwok Tribe. A relatively small number of tribal members had been living on less than 1 acre of land in Calaveras County, California known as the Sheep Ranch Rancheria, since 1916. In 1966, the Department was preparing to terminate the Tribe pursuant to the California Rancheria Termination Act, as part of that dark chapter of Federal Indian policy known as the "Termination Era." As part of this effort, the Department had intended to distribute the assets of the Sheep Ranch Rancheria to Ms. Mabel Dixie, as the only eligible person to receive the assets.

The Department never completed the process of terminating the Tribe, and the Tribe never lost its status as a sovereign federally-recognized tribe.

¹ Ms. Burley's complaints were: 1.) The BIA Pacific Regional Director's April 2, 2007 decision violated the Tribe's FY 2007 contract with the BIA under the Indian Self-Determination and Education Assistance Act, or the Regional Director's decision constituted an unlawful reassumption of the contract; 2.) the Tribe is already organized, and the BIA's offer of assistance constitutes an impermissible intrusion into tribal government and membership matters that are reserved exclusively to the Tribe; and, 3.) the Regional Director erred in stating that the Tribe was never terminated and thus is not a "restored" tribe. *Decision*, 51 IBIA at 104.

In 1998, Yakima Dixie, a tribal member acting as the leader of the Tribe, adopted Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as members of the Tribe. At that time, the Department recognized those five individuals, along with Yakima Dixie's brother Melvin, as members of the Tribe. *Decision*, 51 IBIA at 108.

On September 24, 1998, the Superintendent of the Bureau of Indian Affairs Central California Agency advised Yakima Dixie, then serving as Tribal Chairman, that Yakima Dixie, Melvin Dixie, Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristan Wallace were able to participate in an effort to reorganize under the Indian Reorganization Act. *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d. 197, 198 (D.D.C. 2006). In that same letter, the Superintendent also recommended that the Tribe establish a general council form of government for the organization process, and provided the Tribe with a draft version of a resolution to implement such a form of government. On November 5, 1998, by Resolution # GC-98-01, the Tribe established the General Council. *Id.*

Several months afterwards, in April 1999, Yakima Dixie resigned as Tribal Chairman. On May 8, 1999, the Tribe held a general election, in which Yakima Dixie participated, and elected Sylvia Burley as its new chairperson. The BIA later recognized Sylvia Burley as Chairperson of the California Valley Miwok Tribe. *Id.*

Shortly thereafter, the Tribe developed a draft constitution, and submitted it to the BIA for Secretarial review and approval in May 1999.² During this effort, it is apparent that a leadership dispute developed between Ms. Burley and Mr. Dixie.

On March 6, 2000, the Tribe ratified its Constitution and later requested that the BIA conduct a review and hold a secretarial election pursuant to the Indian Reorganization Act. *Id.* at 199. In the interim, on March 7, 2000, the Superintendent issued a letter to Sylvia Burley stating that the BIA "believed the Tribe's General Council to consist of the adult members of the tribe, i.e., Mr. Dixie, Ms. Burley, and Ms. Reznor,³ and stated that the leadership dispute between Mr. Dixie and Ms. Burley was an internal tribal matter." *Id.*

In February 2004, Ms. Burley submitted a document to the BIA purporting to serve as the Tribe's constitution. The BIA declined to approve the constitution because it believed that Ms. Burley had not involved the entire tribal community in its development and adoption. Letter from Dale Risling, Sr. to Sylvia Burley (March 26, 2004). The BIA noted that there were other Indians in the local area who may have historical ties to the Tribe. In that same letter, the BIA indicated that it did not view the Tribe as an "organized" Indian Tribe," and that it would only recognize Ms. Burley as a "person of authority" within the Tribe, rather than the Chairperson. Letter from Dale Risling, Sr. to Sylvia Burley (March 26, 2004). The Office of the Assistant Secretary – Indian Affairs affirmed this position in a letter stating:

[T]he BIA made clear [in its decision of March 26, 2004] that the Federal government did not recognize Ms. Burley as the tribal Chairman. Rather, the BIA would recognize her as a 'person of

² The Tribe withdrew its original request for Secretarial review of its constitution in July 1999.

³ Pursuant to the Tribe's Resolution # GC-98-01, the General Council shall consist of all adult members of the Tribe.

authority within California Valley Miwok Tribe.’ Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman.

Letter from Acting Assistant Secretary – Indian Affairs Michael D. Olsen to Yakima Dixie (February 11, 2005). At that point, the BIA became focused on an effort to organize the Tribe under the Indian Reorganization Act, and to include a number of people who were not officially tribal members in that effort.⁴

In 2005, the BIA suspended a contract with the Tribe, and later asserted that there was no longer a government-to-government relationship between the United States and the Tribe. 424 F. Supp. 2d. at 201.

Sylvia Burley, on behalf of the Tribe, filed a complaint against the United States in the United States District Court for the District of Columbia seeking declaratory relief affirming that it had the authority to organize under its own procedures pursuant to 25 U.S.C. § 476(h), and that its proffered constitution was a valid governing document. *Id.* The United States defended against the claim by arguing that its interpretation of the Indian Reorganization Act was not arbitrary and capricious, and that it had a duty to protect the interests of all tribal members during the organization process – which included those individual Miwok Indians who were eligible for enrollment in the tribe. See *Id.* at 202. The District Court ruled that the Tribe failed to state a claim for which relief could be granted, which was affirmed by the United States Court of Appeals for the District of Columbia Circuit. *Id.* at 202; 515 F.3d. 1262.

On November 6, 2006, the Superintendent of the BIA Central California Agency issued letters to Sylvia Burley and Yakima Dixie, stating, “[i]t is evident, however, that the ongoing leadership dispute is at an impasse and the likelihood of this impasse changing soon seems to be remote. Therefore, we renew our offer to assist the Tribe in the organizational process.” Letter from Troy Burdick to Sylvia Burley and Yakima Dixie (November 6, 2006). The Superintendent then stated “[t]he Agency, therefore, will publish notice of a general council meeting of the Tribe to be sponsored by the BIA in the newspapers within the Miwok region. This will initiate the reorganization process.” *Id.*

Sylvia Burley appealed this decision to the BIA Pacific Regional Director, who affirmed the Superintendent’s decision on April 2, 2007. That same month, the BIA Pacific Regional Office published notice of the reorganizational meeting in a newspaper in the region. Sylvia Burley appealed the Regional Director’s decision to the IBIA, which subsequently dismissed her claims, while referring the second claim to my office.

Discussion

⁴ The BIA, Yakima Dixie, and Sylvia Burley all agreed that there was a number of additional people who were potentially eligible for membership in the Tribe. See, *California Valley Miwok Tribe v. United States*, 515 F.3d 1267 - 1268 (D.C. Cir. 2008) (noting that the Tribe has admitted it has a *potential* membership of 250) (emphasis added).

I must decide whether to move forward with the BIA's previous efforts to organize the Tribe's government, or to recognize the Tribe's general council form of government – consisting of the adult members of the tribe – as sufficient to fulfill our nation-to-nation relationship.

The Department of the Interior is reluctant to involve itself in these internal tribal matters. To the extent that Department must touch upon these fundamental internal tribal matters, its actions must be limited to upholding its trust responsibility and effectuating the nation-to-nation relationship.

A. Tribal Citizenship

In this instance, the facts clearly establish that the Tribe is a federally recognized tribe which shares a nation-to-nation relationship with the United States. Moreover, the facts also establish that Mr. Dixie adopted Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as members of the Sheep Ranch Rancheria in 1998.

The California Valley Miwok Tribe, like all other federally recognized tribes, is a distinct political community possessing the power to determine its own membership, and may do so according to written law, custom, intertribal agreement, or treaty with the United States. See, Cohen's Handbook of Federal Indian Law, § 4.01[2][b] (2005 Edition); see also, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 54 (1978) (“To abrogate tribal decisions, particularly in the delicate area of membership, for whatever ‘good’ reasons, is to destroy cultural identity under the guise of saving it”) quoting *Santa Clara Pueblo v. Martinez*, 402 F.Supp. 5, 18-19 (D.N.M. 1975).

I understand the difficult circumstances facing those individual Miwok Indians living in Calaveras County, California and who lack an affiliation with a federally recognized tribe. Affiliation with a tribe lies at the core of Indian identity. This is one reason why the Department is working to improve the process by which tribes can become federally recognized, and have their nation-to-nation relationship with the United States restored.

Nevertheless, the United States cannot compel a sovereign federally recognized tribe to accept individual Indians as tribal citizens to participate in a reorganization effort against the Tribe's will. See *Santa Clara Pueblo*, supra. It is possible that there are other individual Indians in the area surrounding Sheep Ranch who are eligible to become members of the Tribe. Mr. Dixie and Ms. Burley, along with the BIA, have previously indicated such. See 515 F.3d at 1267-68 (D.C. Cir. 2008).

There is a significant difference, however, between eligibility for tribal citizenship and actual tribal citizenship. Only those individuals who are actually admitted as citizens of the Tribe are entitled to participate in its government. The proper recourse for those individuals eligible for tribal citizenship, but who are not yet enrolled, is to work through the Tribe's internal process for gaining citizenship.

It is indisputable that Mr. Dixie adopted Sylvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as citizens of the Tribe. Moreover, it is indisputable that the BIA previously accepted the Tribe's decision to enroll these individuals as tribal citizens, as evidenced by its letter of September 24, 1998.

Whatever good reasons the BIA may have had for requiring the Tribe to admit new citizens to participate in its government are not sufficient to overcome the longstanding principles of reserving questions of enrollment to the Tribe.

B. Tribal Government

As with matters of enrollment, each tribe is vested with the authority to determine its own form of government. This authority is a quintessential attribute of tribal sovereignty. Cohen's Handbook of Federal Indian Law, § 4.01[2][a] (2005 Edition).

The Department recommended in a letter to the Tribe, that it "operate as a General Council," which would serve as its governing body. Letter from BIA Central California Superintendent Dale Risling to Yakima K. Dixie, Spokesperson for the Sheep Ranch Rancheria (September 24, 1998). In its letter to the Tribe, the Department advised the Tribe that, "[t]he General Council would then be able to proceed with the conduct of business, in a manner consistent with the authorizing resolution." *Id.* The Department previously considered this form sufficient to fulfill the government-to-government relationship. See award of P.L. 93-638 Contract CTJ51T62801 (February 8, 2000).

The determination of whether to adopt a new constitution, and whether to admit new tribal citizens to participate in that effort, must be made by the Tribe in the exercise of its inherent sovereign authority, and not by the Department.

Conclusion

I have reviewed the documents referenced in this letter, as well as the numerous submissions made by Mr. Dixie and Ms. Burley to my office since the issuance of the IBIA Decision in January 2010.

I conclude that there is no need for the BIA to continue its previous efforts to organize the Tribe's government, because it is organized as a General Council, pursuant to the resolution it adopted at the suggestion of the BIA. Consequently, there is no need for the BIA to continue its previous efforts to ensure that the Tribe confers tribal citizenship upon other individual Miwok Indians in the surrounding area.

Based upon the foregoing principles of tribal sovereignty, and our government-to-government relationship with the Tribe, I am directing that the following actions be undertaken:

1. The BIA will rescind its April 2007 public notice to, "assist the California Valley Miwok Tribe, aka, Sheep Ranch Rancheria (Tribe) in its efforts to organize a formal governmental structure that is acceptable to all members."
2. The BIA will rescind its November 6, 2006 letters to Sylvia Burley and Yakima Dixie stating that the BIA will initiate the reorganization process for the California Valley Miwok Tribe.


3. I am rescinding the February 11, 2005 letter from the Office of the Assistant Secretary to Yakima Dixie stating that the BIA does not recognize any government of the California Valley Miwok Tribe.
4. The BIA will rescind its letter of March 26, 2004 to Sylvia Burley stating that it “does not yet view your tribe to be an ‘organized’ Indian Tribe,” and indicating that Ms. Burley is merely a “person of authority” within the Tribe.
5. My office and the BIA will work with the Tribe’s existing governing body – its General Council, as established by Resolution # GC-98-01 – to fulfill the government-to-government relationship between the United States and the California Valley Miwok Tribe.

My decision addresses those issues referred to my office by the decision of the IBIA.

Lastly, I recognize that issues related to membership and leadership have been significant sources of contention within the Tribe in recent years. I strongly encourage the Tribe’s governing body, the General Council, to resolve these issues through internal processes so as to mitigate the need for future involvement by the Department in these matters. To this point, I understand that Resolution #GC-98-01 provides for proper notice and conduct of meetings of the General Council. I likewise encourage the Tribe’s General Council to act in accord with its governing document when settling matters relating to leadership and membership, so as to bring this highly contentious period of the Tribe’s history to a close.

A similar letter has been transmitted to Ms. Sylvia Burley, and her legal counsel.

Sincerely,



Fax Larry Echo Hawk
Assistant Secretary – Indian Affairs

cc: Mike Black, Director of the Bureau of Indian Affairs
Amy Dutschke, BIA Pacific Regional Director
Elizabeth Walker, Walker Law LLC