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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

DEPARTMENT 62
Kimberly Mulligan, Courtroom Clerk
Pat Woods, IC Clerk
Sue L. Holthaus, RMR, CRR, CSR 6959
Court Reporter

HON. RONALD L. STYN

**CALIFORNIA VALLEY MIWOK
TRIBE,**

Plaintiff,

vs.

**THE CALIFORNIA GAMBLING
CONTROL COMMISSION; and
DOES 1 through 50, inclusive,**

Defendants.

**CALIFORNIA VALLEY MIWOK
TRIBE, CALIFORNIA (aka
SHEEP RANCH RANCHERIA OF
ME-WUK INDIANS,
CALIFORNIA, YAKIMA K.
DIXIE, VELMA WHITEBEAR,
ANTONIA LOPEZ, ANTONE,
AZEVEDO, MICHAEL
MENDIBLES and EVELYN
WILSON,**

Applicant Intervenors.

**CASE NO. 37-2008-00075326-CU-CO-CTL
HEARING RE EX PARTE APPLICATION
(telephonic)**

REPORTER'S TRANSCRIPT

Tuesday, December 28, 2010

APPEARANCES:

For the Plaintiff: **ROSETTE & ASSOCIATES**
By: Robert A. Rosette, Esq.
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1 APPEARANCES (continued):

2 For the Plaintiff: MANUEL CORRALES, JR.
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4 SINGLETON & ASSOCIATES
5 By: Terry Singleton, Esq.
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7 For the Defendants: OFFICE OF THE ATTORNEY GENERAL
8 By: T. Michelle Laird, Deputy
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10 (Appearing telephonically): OFFICE OF THE ATTORNEY GENERAL
11 By: Sylvia A. Cates, Deputy
12 1300 I Street
Suite 125
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14 For the Intervenors: THOMAS W. WOLFRUM, ESQ.
(appearing telephonically): 1333 North California Boulevard
15 Suite 150
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1 **SAN DIEGO, CALIFORNIA, TUESDAY, DECEMBER 28, 2010, 8:32 AM**

2 (The following telephonic hearing was reported pursuant to
3 CRC 3.670. The record will reflect proceedings that were
4 telephonically transmitted. Failures in transmission or lack
5 of speaker identification might be noted)

6 THE COURT: Good morning.

7 MS. LAIRD: Good morning, Your Honor.

8 THE COURT: This is --

9 MR. WOLFRUM: Good morning, Your Honor.

10 THE COURT: -- California Miwok Tribe vs. California Gambling
11 Control Commission. Sorry, who's here?

12 MS. LAIRD: I'm Michelle Laird on behalf of Defendant
13 Gambling Control Commission.

14 THE COURT: All right. Who's on the phone, please?

15 MS. CATES: Sylvia Cates. I'm attorney for the Gambling
16 Control Commission.

17 MR. WOLFRUM: Good morning, Your Honor. Thomas Wolfrum on
18 behalf of the Intervenors.

19 THE COURT: And who's representing the Plaintiffs?

20 MR. SINGLETON: We're having a substitution of attorneys
21 filed today, Your Honor. This is Terry Singleton and Manny Corrales
22 on behalf of the Plaintiffs. We're substituting out.

23 THE COURT: Okay. Who's substituting in?

24 MR. ROSETTE: My name is Robert Rosette appearing on behalf
25 of the California Valley Miwok Tribe.

26 THE COURT: Do you have a substitution?

27 MR. ROSETTE: Yes, I do.

28 THE COURT: All right. Would you hand it to the bailiff,

1 please?

2 Okay. All right. I have reviewed the -- let's see. There's
3 a request to continue the trial. There's an application for order
4 directing Defendant to release the money and an application for order
5 shortening time to file a motion for reconsideration of the order
6 granting intervention. The two by the Plaintiff all arise out of a
7 decision which has been attached from the Department of the Interior.

8 And I -- well, let me just let the Plaintiff say what all
9 this means. Mr. Rosette?

10 MR. ROSETTE: Yes, Your Honor. Basically a lot of this
11 dispute stems from an Interior Board of Indian Appeals ruling whereby
12 the issues at hand were whether or not -- who the leadership of the
13 tribe was and whether or not the tribe was organized. In effect last
14 January the Interior Board of Indian Appeals held in a ruling that
15 this ruling really didn't have anything to do -- or this case didn't
16 really have anything to do with leadership, it really didn't have
17 anything to do with whether the tribe was organized but instead it had
18 to do with regard to who the membership of the tribe was and who
19 the -- who consisted of the tribe's general membership and, therefore,
20 their general council or their governing body.

21 He further held that because he didn't have jurisdiction over
22 membership issues, he was going to punt this entire matter to the
23 Assistant Secretary of the Department of Interior over Indian Affairs
24 to make a decision.

25 It took the Department nearly twelve months, but on December
26 22nd they issued a letter that affirmatively states that, in fact, the
27 tribe is an organized tribe, that they have a stated membership of
28 five recognized members, that they maintain a resolution form of

1 government and that, in fact, because they are an organized tribe with
2 an established membership with five members and a general council,
3 that they can work through their membership issues as well as their
4 leadership and any other government issues themselves as the
5 five-member general council.

6 It further went on to rescind all of the prior correspondence
7 that they had sent to the tribe going down this path of
8 reorganization. It rescinded, for example, the November 6, 2006,
9 letter which basically held that the tribe needed to be reorganized.

10 It rescinded the February 11, 2005, letter that stated --
11 affirmed a prior decision that Sylvia Burley was not the chairperson
12 but, rather, a person of authority within the California Miwok Tribe
13 and recommended that the tribe go through an organization process.

14 And then very importantly it also rescinded the March 26,
15 2004, letter which was a challenge to Sylvia Burley's authority within
16 the tribe as chairperson, so it rescinded all of those prior
17 correspondence and held that, in fact, not only is this tribe
18 recognized, not only is it organized, but that it does have a tribal
19 membership of these five members and that the governing body remains
20 intact.

21 It effectively makes moot all of the issues that have led to
22 the California Gambling Control Commission withholding funds in the
23 first place.

24 THE COURT: Okay. What's the position of the Gambling
25 Commission?

26 MR. ROSETTE: The Gambling --

27 THE COURT: No, they're here.

28 MR. ROSETTE: Oh, sorry.

1 MS. CATES: Thank you, Your Honor. This is Sylvia Cates for
2 the Commission. We believe that the Plaintiff's application and
3 Intervenors' opposition really highlight why we should get all --
4 (failure in transmission)

5 THE REPORTER: I'm sorry, I can't understand you.

6 THE COURT: Stop. We can't understand anything you're
7 saying. You might try it more slowly.

8 MS. CATES: Oh, okay. Thank you. Sorry. The Commission's
9 interest here is to insure that the appropriate parties receive the
10 funds. The Intervenors have the Assistant Secretary's decision,
11 arguably a significant unanticipated change in the status of the case.

12 The Intervenors have indicated they intend to contest that
13 action, both administratively and through judicial review. We assume
14 we have -- we don't know what -- whether they will seek a stay of the
15 Assistant Secretary's decision pending that review or whether one is
16 automatic.

17 In light of that, we think the Plaintiff's *ex parte*
18 application is premature. It's in the nature of a request for
19 injunctive relief which can't really be decided through this *ex parte*
20 process, so our view is that the pending summary judgment motion
21 should be taken off calendar. The dates for filing the opposing
22 motion should be pushed out in order to allow time for any action
23 regarding the Assistant Secretary's decision to -- (failure in
24 transmission). The funds will continue to be held in an
25 interest-bearing account. They're not going anywhere --

26 THE COURT: Can I hear from Mr. Wolfrum?

27 MS. CATES: -- so that's -- that's the --

28 THE COURT: I'm sorry. Is Intervenor's counsel on the phone?

1 Mr. Wolfrum?

2 MR. WOLFRUM: Judge, this is Mr. Wolfrum. Can you hear me?

3 THE COURT: Yes.

4 MR. WOLFRUM: Did you receive my written opposition that I
5 filed and served yesterday?

6 THE COURT: I did.

7 MR. WOLFRUM: I'm sorry, you did?

8 THE COURT: Yes.

9 MR. WOLFRUM: Thank you. I agree with what the Defendant has
10 said. We will -- we are seeking administrative and possibly judicial
11 review and a stay. This is not a matter that needs to be heard *ex*
12 *parte* which really doesn't provide either us, the Intervenors and
13 Mr. Dixie with an opportunity to appear in court. There is a motion
14 for summary judgment that I believe is on January 28th. I -- the
15 Intervenors agree with the Defendant the State of California Gambling
16 Control Commission that the motion for summary judgment can be
17 continued. We did not get 75 days' notice because you allowed us to
18 intervene. We were willing to work with less notice on that; however,
19 if in your wisdom you grant the Defendant's motion, we would
20 appreciate that and, therefore, we support that. I don't know if you
21 want me to get into the merits of the December 22nd letter from the
22 BIA, but we think there are some obvious errors that will result in
23 changes to that letter. I don't want to go into them now because --
24 unless I have to because it seems to me this is just not an *ex*
25 *parte* -- *ex parte* matter, that is, releasing the funds to Sylvia
26 Burley is not an *ex parte* matter and I don't see that there's any need
27 to shorten time. I don't see any emergency or other reason to shorten
28 time. Mr. Rosette may file his motion and we'll timely appear on your

1 law and motion calendar. There are more than sixteen court days
2 between now and January 28.

3 THE COURT: Something that has been raised that I am not
4 familiar with and that is the procedures. We have this letter from an
5 assistant secretary. What happens next or does anything happen next?

6 MR. ROSETTE: Well, this is a -- what's deemed a final agency
7 action by the Department of Interior. The Assistant Secretary is
8 charged with final decision making with regard to matters dealing with
9 Indian Affairs and Indian Country, so this is what's deemed a final
10 agency action, and, as you know, our first request is to take judicial
11 notice of a final agency action. California Evidence Code 452(c)
12 permits Your Honor to take judicial notice of the official acts of the
13 executive departments of the United States. Pursuant to 25 CFR
14 2.6(c), decisions made by the Assistant Secretary of Indian Affairs
15 shall be final for the Department and effective immediately unless the
16 Assistant Secretary of Indian Affairs provides otherwise in the
17 decision.

18 He does not provide otherwise anywhere in this decision. It
19 is a final decision. It is to take effect immediately and, in fact,
20 Your Honor, we have already received written correspondence from the
21 superintendent of the Bureau of Indian Affairs in California also
22 expressing their intent and willingness to move forward with the
23 government-to-government relationship with my client Sylvia Burley
24 with regard to awarding her a 638 contract which is the federal
25 appropriations to the tribal government. I do have an email that I
26 could submit if you wish with regard to that correspondence as well,
27 so it is a final agency action. It is deemed final and it is supposed
28 to take effect immediately.

1 THE COURT: Mr. Wolfrum, do you agree with that?

2 MR. WOLFRUM: I did not get much of that, Your Honor.

3 THE COURT: Counsel has said that this is a final action, and
4 it takes place immediately, that is to say, this letter from the
5 Assistant Secretary.

6 MR. WOLFRUM: It's difficult to read on the letter to who --
7 this happened December 22nd -- who signed it under Assistant Secretary
8 Echo Hawk, but I don't -- I don't know, I haven't had time to research
9 whether or not the Under Secretary's order is reviewable
10 administratively or judicially or not. We've undertaken to do that,
11 but this is the week between Christmas and New Year's. It's going to
12 take a few more days to get that down. And I just -- in response to
13 that, whether it is or not, I don't know that given that there are
14 statutory times for -- for notice and this is really a motion for
15 summary judgment or injunctive relief that decides the entire case.

16 And there not being any protections in place, if the money is
17 paid to the Plaintiff in care of Sylvia Burley, that absent some
18 showing of emergency or necessity or irreparable harm, the application
19 for release of the money should be denied because if it is released to
20 her, to Ms. Burley, it'll never be made available to the larger,
21 whether it's five or 500, and so there is no prejudice to Plaintiff
22 but there is great possibility of prejudice to Intervenors, and we
23 need 30 or more days to distribute that money. Just doesn't seem to
24 be an act that the Court can or would want to do *ex parte*.

25 THE COURT: The summary judgment which is set on the 28th, I
26 assume, has to be based on something other than this letter 'cause the
27 letter didn't exist. There's a summary judgment pending. What was
28 the basis of that?

1 MR. CORRALES: I can address that, Your Honor, with your
2 permission.

3 MR. ROSETTE: Yes.

4 MR. CORRALES: We filed a motion --

5 THE COURT: State your name for the record.

6 MR. CORRALES: Manuel Corrales. I'm the former attorney with
7 Mr. Singleton for the tribe. We filed a motion for summary judgment
8 based upon the language of the contract that the contract -- the
9 compact, excuse me, that the compact does not require the tribe to be
10 organized. There are specific requirements that the tribe be
11 federally recognized and have a representative sufficient to receive
12 the revenue sharing trust fund money. It had nothing to do with
13 whether or not the BIA approved a federal funding contract. In fact,
14 we argued in the summary judgment motion that the BIA -- rather, the
15 Commission doesn't need the BIA's approval in order to distribute the
16 money, and it's based -- strictly it's based upon the interpretation
17 of the compact, not about anything to do with --

18 MR. WOLFRUM: Judge, if anyone's speaking, I cannot hear
19 them.

20 THE COURT: Mr. Corrales, why --

21 MS. CATES: I can't -- I can't either.

22 THE COURT: -- don't you come forward.

23 MR. CORRALES: I apologize. To the microphone? Can you hear
24 me now? Can you hear me now? Counsel?

25 THE COURT: Is that microphone on?

26 THE BAILIFF: It's on.

27 MR. WOLFRUM: Thank you, Judge. I can now hear you.

28 MR. CORRALES: Okay, all right. My point was that the -- my

1 point was that the summary judgment motion is based upon the
2 interpretation of the compact, the language of the compact which
3 doesn't require BIA approval. It's strictly Section 4.1 that says
4 that the Commission has an obligation to release the money to a
5 federally -- to a noncompact tribe who is federally recognized and has
6 a representative sufficient to receive the money. Nothing else.
7 There's no requirement that the tribe be organized under the IRA. Has
8 nothing to do with federal funding and so it's strictly a state
9 compact interpretation, and that's the basis for the summary judgment
10 motion.

11 THE COURT: I guess you're not the attorney anymore, but
12 would -- Mr. Rosette, would you want to go forward with that summary
13 judgment, or would you want to file a new one based on the letter or
14 at least with the additional ammunition provided by this December 22nd
15 letter?

16 MR. ROSETTE: Well, Your Honor, I specifically -- I know
17 we're sort of mixing several issues here, but my original intent today
18 was to very specifically get judicial notice of this final agency
19 action from the administration; and secondly, because the letter is so
20 clear and specific as to who the general council members are and that
21 nobody can decide --

22 THE COURT: Well, where -- okay. Help me with that. Where
23 does it say that? I mean everything is in the negative. It's they --
24 the -- the Bureau rescinds this letter. It says they will work with
25 the tribe, and they rescind their notice to assist the tribe and all
26 of this, and I -- I -- I was having trouble finding affirmatively what
27 they had done.

28 MR. ROSETTE: It's specifically in the background section of

1 the letter, and as you go through it on page 2 in the -- I suppose
2 that would be the second full paragraph where it discusses and
3 recognizes that "On September 24th, 1998, the superintendent of the
4 Bureau of Indian Affairs Central California advised Yakima Dixie, then
5 serving as tribal chairman that Yakima Dixie, Melvin Dixie"--

6 THE REPORTER: You're going to have to slow down.

7 MR. ROSETTE: "Sylvia Burley, Rashel Reznor, Anjelica Paulk
8 and Tristan Wallace were able to participate in the effort to
9 reorganize under the IRA" and, in fact, as you read through that
10 paragraph, at the end it says, "On November 5th, 1998, by Resolution
11 No. GC-98-01, the tribe established the general council," okay?
12 That's where it identifies whom the general council is, and if you go
13 to the conclusion on page 6, specifically No. 5, it states that "Both
14 my office and the BIA will work with the tribe's existing governing
15 body, its general council as established by Resolution GC-98-01 to
16 fulfill the government-to-government relationship between the United
17 States and the California Valley Miwok Tribe."

18 The letter is very specific who the governing body is which
19 is the general council. The letter is also specific that the general
20 council consists of five specific people. So --

21 THE COURT: Where do I get that?

22 MR. ROSETTE: From the facts section that I had previously
23 read to you on page 2.

24 THE COURT: Oh, I see. That -- "then serving advised."

25 MR. ROSETTE: These five.

26 THE COURT: "Advised Yakima Dixie."

27 MR. ROSETTE: Correct. And then these five --

28 THE COURT: That Yakima Dixie was able to participate.

1 MR. ROSETTE: Correct. With Yakima Dixie, Melvin Dixie, who
2 is now deceased --

3 THE COURT: Right. Well, I thought that Yakima Dixie is one
4 of the intervenors.

5 MR. WOLFRUM: He is.

6 MR. ROSETTE: Correct, Your Honor. The other intervenors are
7 clearly not members of this tribe. Now, with regard to Yakima Dixie
8 and some of the comments that were made earlier, what this letter is
9 doing is it's recognizing who the government is, and it is a
10 resolution form of government operated by those five tribal members.
11 The resolution form of government went on to conduct the business of
12 the tribe, and it wasn't until that resolution form of government was
13 challenged through the various correspondence and letters that were
14 subsequently sent that said we're not recognizing your resolution form
15 of government, we're not sure who has the authority of the tribe, et
16 cetera. It came back through the IBIA, Judge, and to the Assistant
17 Secretary that these are membership decisions. What the Assistant
18 Secretary is doing is saying this -- we do not have jurisdiction to
19 decide membership issues. Those issues are already decided with these
20 five members. It's the general council that is the governing body.
21 The general council shall determine not only what their membership is
22 going forward but what their leadership is and so on and so forth. We
23 will have a government-to-government relationship with this general
24 council.

25 It then went on to rescind every single correspondence that
26 it sent to that general council pursuant to that resolution form of
27 government, Sylvia Burley as chair, and it rescinded all of that
28 correspondence. You know, which follows that that general council and

1 that governing body to which the United States recognizes and wants to
2 resume its government-to-government relationship with is the general
3 council for purposes of any and all other proceedings.

4 MR. CORRALES: And, Your Honor, that was one of the
5 affirmative defenses that we addressed in the summary judgment motion,
6 summary adjudication because the Commission raised that issue that
7 there's no governing body, and we argued that the BIA had recognized
8 this governing body that had a resolution form of government when it
9 changed its name initially and the secretary -- secretary's letter
10 addresses that issue and says this resolution form of government is
11 now recognized and so that's part of the summary judgment motion as
12 well.

13 MR. ROSETTE: Now, if I could just make two quick points.
14 The first being that the tribe's general council, the governing body,
15 which is represented by Sylvia Burley, consists of a super majority of
16 the tribe, four of the five members. So it's not as though a single
17 individual is going to be receiving a check for their own benefit.
18 The tribe itself, the governing body to which Yakima Dixie is a member
19 would be receiving the check for tribal government purposes as
20 designated by their governing body.

21 Secondly, Your Honor, I would let you know that exigent
22 circumstances do exist because of the financial and human hardship
23 placed upon this tribe. By wrongfully withholding these funds for so
24 long, the bank has foreclosed on the tribal office building and house,
25 and the sheriff has been out there more than once to evict the tribe,
26 and it's only been through our efforts to explain the process that
27 we're engaged in and involved in with the Federal Government to
28 resolve all of these issues that we've been able to stay within the

1 tribal office and home.

2 So exigent circumstances do exist. This tribe is facing
3 eviction every single day.

4 THE COURT: Okay. Well, that's --

5 MS. CATES: This is Sylvia Cates for the Gambling Control
6 Commission. I -- Mr. Rosette is raising a whole host of new issues
7 that we haven't had a chance to review. My understanding is the issue
8 with the house has been resolved with the sheriff and maybe there's
9 new information. I also am confused by his statement that the
10 governing body is four individuals given the Assistant Secretary's
11 letter which states it's the entire general council so I think some
12 clarification may be in order there.

13 I'd also like to add -- because there are a lot of new issues
14 being raised today, perhaps the best approach would be to schedule a
15 new -- a scheduling conference after some of these preliminary issues
16 regarding the Assistant Secretary's letter and in a request for review
17 of it are taken care of.

18 THE COURT: Okay. Well, I'm not comfortable with this at
19 all. It may be that this letter goes into effect immediately. Based
20 on the history of this litigation, people find ways to appeal and --
21 every issue that's been raised for the last ten years, and also the
22 issues of the exigencies of the present situation are all new to me.
23 Those are not --

24 MR. WOLFRUM: Judge, I'm again unable to hear anything.

25 THE COURT: Well, I'm sorry. My microphone's on and if you
26 can't hear me, that's too bad.

27 MR. WOLFRUM: I now hear you.

28 THE COURT: All right. I'm not sure my mike is working

1 but -- anyway the -- I'm going to deny all of the *ex parte*
2 applications without prejudice, and I think there needs to be further
3 briefing, particularly on -- well, on some of the issues that were
4 raised today, on the finality of this letter, on whether there is
5 another -- I'll use the word "appeal" in its generic sense because I
6 don't hope to understand the administrative procedures of the BIA and
7 all these things that have gone on before. I mean I've read all this
8 material in the context of the previous motion, and this does seem to
9 be a radical departure from the previous position of the BIA, although
10 this Assistant Secretary's not part of the BIA, correct?

11 MR. ROSETTE: Yes, he is.

12 THE COURT: He is? He is part of the BIA?

13 MR. ROSETTE: Yes. Yeah.

14 MR. WOLFRUM: Yes.

15 MR. ROSETTE: He's the Assistant Secretary of Indian Affairs
16 which is the -- under the Bureau of Indian Affairs which is part of
17 the Department of Interior.

18 THE COURT: But it's a radical -- I mean it's basically
19 saying -- it looks to me like it's saying everything we said before is
20 out.

21 MR. ROSETTE: Correct.

22 THE COURT: We're changing everything we said before, and
23 their previous position had been consistently to say we're not going
24 to decide any of these issues. That seemed to be what they were
25 saying in all their letters, and substantively it looks like a major
26 change in the case, but I'm very uncomfortable in effect granting
27 summary judgment on an *ex parte* order, and I think it needs to be
28 either a summary judgment or some other kind of -- and I think that

1 probably, and unfortunately, is the remedy because you're dealing with
2 outside documents unless you can find some other procedural way. I
3 didn't hear any objection to my taking judicial notice of the
4 document. No one is questioning that's an official document, so in
5 light of that, I will take judicial notice of the December 22nd letter
6 which is attached to the *ex parte* application. In fact, I think it's
7 attached to several of the applications, but I'm not quite sure how
8 to -- procedurally I'm not sure that the January 28th motion deals
9 with the issues that are -- will best resolve this case at this point.
10 Seems to me that this letter resolves some of the issues that
11 concerned me, particularly who the appropriate representative
12 was 'cause I'm not sure with all due respect to Mr. Corrales that
13 the -- even if I were to grant his motion or at least agree with his
14 motion, that that would necessarily resolve the underlying dispute
15 because the relief being sought was that the payments be made to
16 Sylvia Burley, and this letter appears that it might resolve that
17 issue.

18 And so I think everybody needs to figure out procedurally the
19 best way to do it. And the other question is whether there is some
20 kind of review. I mean whether there could be a stay or a review of
21 this letter. I just don't know. I have absolutely no idea what the
22 procedures are and where this fits into that series of letters other
23 than the person who wrote it seems to think he has quite a bit of
24 authority because he is rescinding everything else they said.

25 MR. ROSETTE: That's correct.

26 THE COURT: So maybe this is very high up in the
27 administrative hierarchy, I just don't know, and I don't have any
28 authority in front of me and obviously it's not something I deal with

1 every day. This is not the kind of issues I deal with.

2 So I'm trying to think procedurally of the best way to do
3 this.

4 MR. CORRALES: Your Honor, we have -- at least I put on
5 calendar a demurrer for the 28th, and this thing came up, and I -- and
6 I think it would be appropriate to maybe put a motion for
7 reconsideration on calendar instead, and that's up to Mr. Rosette.

8 MR. ROSETTE: Yeah, that was precisely what I was going to
9 ask. I really do -- I really did want the Court to focus today
10 specifically on the request for judicial notice first and secondly,
11 the motion for reconsideration of the order granting intervention.
12 Just because clearly I mean even on page 4 of this same letter, tribal
13 citizenship, it also states, "It is indisputable," and it names the
14 five members of the tribe. To me I think that that would be the --
15 the most important issue with regard to understanding whether or not
16 these people who the letter clearly does not recognize as members of
17 this tribe to -- to be allowed as intervenors in this case with the
18 exception, of course, of Yakima Dixie.

19 THE COURT: Right. Right. And that may be a -- well --
20 okay. I agree with that. I will -- we'll add a motion -- we'll set a
21 motion for reconsideration. If it's on the 28th, okay, you need to
22 file a motion then. Do they have time?

23 MS. WOODS: They do.

24 THE COURT: When --

25 MR. WOLFRUM: I point out in my moving papers that they have
26 time, Your Honor.

27 THE COURT: All right. So --

28 MR. WOLFRUM: And I give the dates. I think they've got

1 about another week to file to bring them within Code of Civil Code
2 Procedure Section 1005(b).

3 THE COURT: To fit within the ten days or whatever it is.

4 MS. WOODS: Sixteen.

5 MR. WOLFRUM: Have to file and personally serve sixteen days
6 before the hearing and --

7 THE COURT: All right. Well --

8 MR. WOLFRUM: There's about 21 court days because Friday --

9 THE COURT: Wait, wait, wait, wait. That's not the issue.
10 The issue is whether it's timely filed --

11 MR. CORRALES: Your Honor?

12 THE COURT: -- from going the other way. And I know you make
13 an argument that there was no notice of ruling --

14 MR. CORRALES: Correct.

15 THE COURT: -- et cetera, and what I'm going to do is I'm
16 going to -- just to make sure there's no problem with that, I'm going
17 to deem the *ex parte* application to be a -- to be the motion for
18 reconsideration and filed as of the date the *ex parte* was filed, and
19 I'm going to allow you to file a supplemental *Points & Authorities* and
20 a supplemental motion and that will be done in the statutory period
21 counting backward from the 28th. That way there's no problem of --
22 the issue isn't the notice to the 28th. The issue is whether you
23 filed within the statutory period after the previous ruling.

24 MR. CORRALES: And the supplemental papers would be in
25 conformance with the statute requiring the declaration and so forth
26 of --

27 THE COURT: Correct.

28 MR. CORRALES: Yes, okay.

1 THE COURT: Correct.

2 MR. ROSETTE: Thank you, Your Honor.

3 THE COURT: All right. We'll do that and -- very interesting
4 development. Thank you.

5 MS. LAIRD: Your Honor?

6 MS. CATES: Your Honor?

7 THE COURT: Yes.

8 MS. CATES: Your Honor, this is Sylvia Cates again with the
9 Gambling Control Commission. Just a point of clarification. The
10 pending summary judgment motion, the opposition would be due for us to
11 file, I believe, around January 13th. If I understand what you want
12 us to do is to not deal with the issues in that pending motion and
13 just deal with the --

14 THE COURT: I didn't actually address that. Do you want to
15 still go forward with that summary judgment, Mr. Rosette?

16 MR. ROSETTE: Yes. Yeah.

17 THE COURT: That's still on.

18 MS. CATES: All right.

19 THE COURT: So you will need to file your opposition in a
20 timely fashion.

21 MS. CATES: And also, Your Honor, with the current trial
22 date, any oppo -- any motions for summary judgment to be filed by
23 Intervenors or Defendant would be due to be filed, I believe, January
24 19th counting back from the May 13th trial date.

25 THE COURT: Whatever it is, it is. I see no reason to
26 continue the trial. The Intervenors were aware of the trial date when
27 they intervened so they have to deal with that. All right. Thank
28 you.

1 MR. ROSETTE: Thank you.

2 MR. WOLFRUM: Yes.

3 MS. CATES: Thank you.

4 MR. WOLFRUM: Mr. Rosette, will you prepare the order?

5 MR. ROSETTE: Sure.

6 MR. WOLFRUM: And if you will get back to me if you have
7 the --

8 THE COURT: It's basically giving notice of all these dates.

9 MR. WOLFRUM: The proposed order following the December 17th
10 hearing on the motion for Intervenors by and for intervention. If you
11 don't have that, I'll get it to you so you can review it and we can
12 get -- we can work it out and get it signed by the judge so it's in
13 the record.

14 THE COURT: Counsel, if -- this is a court. If you want to
15 talk to Mr. Rosette, give him a call.

16 MR. WOLFRUM: Thank you. Thank you, Judge.

17 THE COURT: We're in recess.

18 MR. WOLFRUM: Bye.

19 THE COURT: Actually -- I want to talk to Mr. Singleton about
20 a matter -- we went to the same college, and it involves somebody that
21 went to our college. Nothing to do with this case. Does anyone have
22 any objection to that?

23 Mr. Singleton.

24 (9:11 a.m., end of proceedings)

25

26

27

28

Hanna, Jeanette

From: Hanna, Jeanette on behalf of Echohawk, Larry
Sent: Friday, January 07, 2011 7:23 AM
To: Tsosie, Paul; Laverdure, Del
Subject: FW: Request for Stay and Reconsideration of Determination by Assistant Secretary for Indian Affairs Regarding Organization of California Valley Miwok Tribe
Attachments: Attachment 3 Transcript of ex parte Hearing.pdf; Attachment 2 Miwok 515 F3d 1262.pdf; Attachment 1 December 22 Determination.pdf; 1-6-11 Letter to Ken Salazar.pdf

From: Susan Lenzi [<mailto:SLenzi@sheppardmullin.com>] **On Behalf Of** Robert Uram
Sent: Thursday, January 06, 2011 5:04 PM
To: Echohawk, Larry; Burdick, Troy; SLV
Cc: Robert Uram; Susan Lenzi
Subject: Request for Stay and Reconsideration of Determination by Assistant Secretary for Indian Affairs Regarding Organization of California Valley Miwok Tribe

Dear Secretary Salazar,

On behalf of our clients Yakima Dixie and the Tribal Council of the California Valley Miwok Tribe, please find attached a letter requesting an immediate stay and reconsideration of the December 22, 2010 decision of the Assistant Secretary for Indian Affairs concerning the status and organization of the Tribe. A copy of the letter will follow by certified mail.

Best regards,

Robert J. Uram
Sheppard Mullin Richter & Hampton LLP
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111
ruram@sheppardmullin.com
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Hanna, Jeanette

From: Gillette, Jodi [Jodi_A_Gillette@who.eop.gov]
Sent: Monday, December 13, 2010 7:19 PM
To: Thomas, Pilar; Tompkins, Hilary C; Black, Michael; Tsosie, Paul
Cc: Green, Jason; Laverdure, Del; Tompkins, Hilary C; Tribal Nations Conference
Subject: RE: RESPONSE TO TRIBES WHO ARE IN LEADERSHIP DISPUTES

Thanks all! I have emailed Silvia, and spoken to her, and also spoke to George Gholson of Timbisha (Death Valley) Shoshone Tribe with the message below. They both appreciated the call back, and said they understand.

From: Thomas, Pilar [mailto:Pilar.Thomas@sol.doi.gov]
Sent: Monday, December 13, 2010 7:01 PM
To: Gillette, Jodi; Tompkins, Hilary C; Black, Michael; Tsosie, Paul
Cc: Green, Jason; Laverdure, Del; Tompkins, Hilary C
Subject: RE: RESPONSE TO TRIBES WHO ARE IN LEADERSHIP DISPUTES

Jodi, based on our call tonight, the short time frame we are working with, and additional information received from the BIA, we do not (and given the nature of these disputes, cannot) recognize current tribal leadership from either CVMT or Timbisha Shoshone. Therefore, Mike and I suggest that the email be revised as shown below:

We have received your response to our invitation to the Tribal Nations Conference that will be held in Washington D.C on December 16, 2010. The President extended this invitation to recognized leadership of federally recognized tribes to further maintain and strengthen the government-to-government relationship with the U.S. Government.

According to the Bureau of Indian Affairs, Department of the Interior, the BIA does not recognize you as the official leader of your Tribe. Therefore, we regret to advise you that you will not be able to participate in the conference. We apologize for any inconvenience this may cause.

From: Gillette, Jodi [mailto:Jodi_A_Gillette@who.eop.gov]
Sent: Monday, December 13, 2010 5:28 PM
To: Tompkins, Hilary C; Black, Michael; Thomas, Pilar; Tsosie, Paul
Cc: Green, Jason
Subject: RE: RESPONSE TO TRIBES WHO ARE IN LEADERSHIP DISPUTES

+ WH Counsel

Just so everyone is on the same page, last month we asked BIA to provide us with an updated list of tribal leaders from each of the federally recognized tribes to use as a starting point for inviting leadership to the WH Tribal Nations Conference. California Valley Miwok Tribe, Timbi-sha Shoshone Tribe, and Apache Tribe of Oklahoma did not have contact information, and when I asked why, the verbal answer was that these tribes were in the middle of tribal disputes. Now two are waiting for confirmations to attend the TNC this week.

We are happy to follow your lead on what will work best. We are not interested in recognizing one faction over another, and would appreciate any guidance you can provide.

We'll visit with Pilar shortly.

From: Tompkins, Hilary C [mailto:Hilary.Tompkins@sol.doi.gov]
Sent: Monday, December 13, 2010 4:43 PM

To: Black, Michael; Thomas, Pilar; Gillette, Jodi; Tsosie, Paul
Subject: RE: RESPONSE TO TRIBES WHO ARE IN LEADERSHIP DISPUTES

We'll let you know. Pilar is working on it. HT

From: Black, Michael
Sent: Monday, December 13, 2010 4:36 PM
To: Tompkins, Hilary C; Thomas, Pilar; 'Jodi_A._Gillette@who.eop.gov'; Tsosie, Paul
Subject: Re: RESPONSE TO TRIBES WHO ARE IN LEADERSHIP DISPUTES

The language looks ok with me but I would like Hillary and Pilars input on who they should talk too!

Mike

From: Tompkins, Hilary C
To: Thomas, Pilar; 'Jodi_A._Gillette@who.eop.gov' <[Jodi A. Gillette@who.eop.gov](mailto:Jodi_A._Gillette@who.eop.gov)>; Black, Michael; Tsosie, Paul
Sent: Mon Dec 13 16:13:20 2010
Subject: RE: RESPONSE TO TRIBES WHO ARE IN LEADERSHIP DISPUTES

Pilar: Can you contact me quickly about this—I have a question. HT

From: Thomas, Pilar
Sent: Monday, December 13, 2010 3:50 PM
To: 'Jodi_A._Gillette@who.eop.gov'; Tompkins, Hilary C; Black, Michael; Tsosie, Paul
Subject: Re: RESPONSE TO TRIBES WHO ARE IN LEADERSHIP DISPUTES

The language looks fine to me, but it would be helpful to know who this is going to.

Delivered by SOL Blackberry Services

From: Gillette, Jodi <[Jodi A. Gillette@who.eop.gov](mailto:Jodi_A._Gillette@who.eop.gov)>
To: Tompkins, Hilary C; Thomas, Pilar; Black, Michael; Tsosie, Paul
Sent: Mon Dec 13 15:32:47 2010
Subject: RESPONSE TO TRIBES WHO ARE IN LEADERSHIP DISPUTES

Hi, I would like to get clearance from you all to use this language to respond to tribes who are going through leadership disputes. Mike Black has a list, but I haven't seen which tribes are on it. We do have two tribes who are wanting to come, and we haven't gotten back to them. **Please respond by 5:00 PM today**, or we will assume that you are ok with the language. We need a contact name for who folks should contact at the BIA, if not, I can enter Mike's email.

Thanks! Jodi

“We have received your response to our invitation to the Tribal Nations Conference that will be held in Washington D.C. on December 16, 2010. The President extended this invitation to recognized leadership of federally recognized tribes to further maintain and strengthen the government-to-government relationship with the U.S. Government.

According to the Bureau of Indian Affairs, Department of Interior, there is an on-going leadership dispute within your Tribe. Unfortunately, because the BIA is not able to identify a recognized leader of your Tribe, your Tribe will not be able to participate in the conference. Please contact **Mike Black for further questions.”**

Jodi Gillette
White House Office of Intergovernmental Affairs