



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 08 2011

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

Ms. Silvia Burley
10601 Escondido Place
Stockton, California 95212

Dear Mr. Dixie and Ms. Burley:

The Bureau of Indian Affairs (BIA) and the California Valley Miwok Tribe (Tribe) have worked for years to reach a shared understanding of the structure and composition of the Tribe, its government, and its relationship with the Federal government. Disputes within the Tribe, and between the Tribal factions and the BIA, have led to several administrative appeals as well as federal court litigation. On January 28, 2010, the Interior Board of Indian Appeals (IBIA) issued a decision respecting one of the administrative appeals. The IBIA remanded to my office one of the issues raised in that appeal, as being an enrollment question and thus beyond the IBIA's jurisdiction. On December 22, 2010, my office issued a letter attempting to set out a clear and final answer to the referred question.

After the December 22, 2010, decision, a number of issues were raised in litigation that challenged that decision; therefore, I have withdrawn it for reconsideration. I would like to ensure that I consider all issues in my reconsideration of this matter. To ensure full and fair review, I am asking the parties to brief the issues. Parties may submit any legal arguments they wish for me to consider. In addition, the parties should consider addressing the following issues.

1. It is undisputed that the Federal government currently recognizes five people as members of the tribe. The September 24, 1998, letter from Superintendent Risling to Yakima Dixie, mentioned the development of enrollment criteria that "will be used to identify other persons eligible to participate in the initial organization of the Tribe" (emphasis added). Please brief your views on whether the Secretary has an obligation to ensure that potential tribal members participate in an election to organize the Tribe.
2. It is undisputed that the Tribe is federally recognized, being included on the Department's list of recognized tribes. The Tribal Resolution of November 5, 1998, signed by Ms. Burley and Mr. Dixie, said: "The Tribe, on June 12, 1935, voted to accept the terms of the Indian Reorganization Act . . . but never formally organized pursuant to federal statute, and now desires to pursue the formal organization of the Tribe." Please explain your position regarding the status of the Tribe's organization and the Federal Governments' duty to assist the Tribe in organizing.

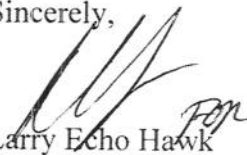
3. It is undisputed that the position taken in the December 22 decision letter represented a change in direction regarding the Bureau's relations with the Tribe. Courts have found the BIA's past actions to be permissible under the APA, but did not state that those actions were mandatory under federal Indian law. Some statements in court opinions, however, must be read as statements of law with which my decisions must comply. In particular, the D.C. Circuit stated that (paraphrased for clarity): "It cannot be that the Secretary has no role in determining whether a tribe has properly organized itself to qualify for the federal benefits provided in the [Indian Reorganization] Act and elsewhere." 515 F.3d 1262, 1267 (D.C. Cir. 2008). Please brief your views on what the Secretary's role is in "determining whether a tribe has properly organized itself."

To ensure the promptness of my reconsidered decision, please provide your submission so that it is received by the Department no later than 9:00 am, eastern daylight savings time, Tuesday, May 3, 2011.

My office will give your submissions careful and objective consideration. No outcome in this matter will resolve all the disputes between the parties, but my duty under the APA is to reach, and explain, a carefully-considered decision that is not "arbitrary and capricious," and is "in accordance with law" (5 U.S.C. § 706(2)(a)).

Please limit your submissions to no more than 30 pages. We prefer, for timeliness and convenience, that you submit your response documents in pdf format via email to Mr. Brian Newland, one of my advisors, at bryan_newland@ios.doi.gov, and Mr. Jim Porter, an attorney in Solicitor's Office, at james.porter@sol.doi.gov. Please also transmit your response documents to each other at the same time you send them to this office.

Sincerely,



Larry Echo Hawk
Assistant Secretary – Indian Affairs

cc: Robert A. Rosette, Esq.
565 West Chandler Boulevard, Suite 212
Chandler, Arizona 85225

Roy Goldberg, Esq.
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W., 11th Floor East
Washington, D.C. 20005-3314

Elizabeth Walker, Esq.
Walker Law LLC
429 North St. Asaph Street
Alexandria, Virginia 22314

Kenneth D. Rooney
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 663
Washington, D.C. 20044-0663

Mike Black, Director, Bureau of Indian Affairs
MS-4513-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Amy Dutschke, Director
Pacific Regional Office, Bureau of Indian Affairs
2800 Cottage Way, Room W-820
Sacramento, CA 95825

Troy Burdick, Superintendent
Central California Agency, Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814