

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

CALIFORNIA VALLEY MIWOK TRIBE,
et al.,

Plaintiffs,

v.

KEN SALAZAR, et al.,

Defendants.

Case No. 1:11-CV-00160-BJR

Hon. Barbara Jacobs Rothstein

**MOTION TO EXPEDITE CONSIDERATION OF INTERVENOR-DEFENDANT’S
MOTION TO DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT**

Pursuant to 28 U.S.C. § 1657, Intervenor-Defendant, the California Valley Miwok Tribe (“Tribe”), a federally-recognized Indian tribe, respectfully moves to expedite consideration of the Tribe’s Motion to Dismiss Plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief (“Motion to Dismiss”), filed over eighteen (18) months ago on March 26, 2012 (Dkt. No. 56) and fully briefed as of April 27, 2012 (Dkt. No. 64). Expedited determination of the Tribe’s Motion to Dismiss is both necessary and appropriate in this instance because such action is well within this Court’s discretion upon the Tribe’s showing of good cause and because the Court may promptly consider the Tribe’s Motion in the interests of judicial economy and to prevent the Tribe from suffering further hardships and irreparable harm.

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Good cause exists pursuant to 28 U.S.C. § 1657, to warrant expedited relief in this matter for two distinct and compelling reasons. First, the federal government and all three of its branches – including the judiciary – owe a trust responsibility to all federally-recognized Indian tribes – including the California Valley Miwok – to ensure that the government to government relationship between the United States and Indian tribes are properly maintained, through providing federal benefits and otherwise. Second, Congress has codified such rights afforded to Indian tribes pursuant to Title 25 of the United States Code. While this matter remains pending, the federal government is unable to fulfill its trust obligations to the Tribe. As a result, the Tribe is unable to access federal or state funds – funds upon which it relies almost exclusively for the operation of its government and the provision of vital benefits to its members. The Tribe has suffered – and continues to suffer – devastating and debilitating, irreparable harm.

This motion is based on the accompanying Statement of Points and Authorities; the Declaration of Silvia Burley in Support of Intervenor-Defendant’s Motion to Expedite Consideration of its Motion to Dismiss Plaintiffs’ Amended Complaint; the Declaration of Saba Bazzazieh in Support of Intervenor-Defendant’s Motion to Expedite Consideration of its Motion to Dismiss Plaintiffs’ First Amended Complaint; a proposed Order granting the Tribe’s Motion to Expedite; any oral argument at permitted by the Court at a hearing on this matter; all pleadings and records heretofore filed in this action; and all relevant matters subject to judicial notice.

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Based on the foregoing, the Intervenor-Defendant respectfully requests – and implores – this Court to expedite consideration of its Motion to Dismiss.

Dated: July 5, 2013

Respectfully submitted,

By: /s/ Robert A. Rosette
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Attorneys for the Intervenor-Defendant,
California Valley Miwok Tribe

CERTIFICATE OF SERVICE

I certify that on July 5, 2013, I caused a true and correct copy of the foregoing Motion To Expedite Consideration of the Intervenor-Defendant's Motion To Dismiss Plaintiffs' First Amended Complaint For Declaratory and Injunctive Relief, the Supporting Statement of Points and Authorities, the Declaration of Saba Bazzazieh in Support Thereof, the Declaration of Silvia Burley in Support Thereof, and a proposed Order to be served on the following counsel via electronic filing:

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Counsel for Defendants

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/s/ Robert A. Rosette

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

CALIFORNIA VALLEY MIWOK TRIBE,
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KEN SALAZAR, et al.,

Defendants.

Case No. 1:11-CV-00160-BJR

Hon. Barbara Jacobs Rothstein

**STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF INTERVENOR
DEFENDANT’S MOTION TO EXPEDITE CONSIDERATION OF ITS MOTION TO
DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

Pursuant to 28 U.S.C. § 1657, Intervenor-Defendant, the California Valley Miwok Tribe (“Tribe”), a federally-recognized Indian tribe, respectfully submits the following statement of points and authorities for the purpose of seeking expedited consideration of the Tribe’s Motion to Dismiss Plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief (“Motion to Dismiss”), filed over one year ago on March 26, 2012 (Dkt. No. 56) (subsequent to this Court granting the Tribe’s request to intervene as a Defendant in this action) and fully briefed as of April 27, 2012 (Dkt. No. 64). On April 15, 2013, the instant action was reassigned by consent to the Honorable Judge Barbara Jacobs Rothstein (Dkt. No. 70). As set forth below, expedited determination of the Tribe’s Motion to Dismiss is both necessary and appropriate in this instance because such action is well within this Court’s discretion upon the Tribe’s showing of good

cause and because the Court may promptly consider the Tribe's Motion in the interests of judicial economy and to prevent the Tribe from suffering further hardships.

The instant action was first filed on January 24, 2011 – over two years ago – to challenge a final agency action of the Assistant Secretary - Indian Affairs (“AS-IA”) dated December 22, 2010 (“2010 Decision”) that recognized the legitimate composition of the Tribe's government and citizenship, pursuant to Tribal law (Dkt. No. 1). In response to the filing, the AS-IA, withdrew the 2010 Decision and requested parties to file briefs for even further and exhaustive consideration of all arguments (Dkt No. 22). After lengthy consideration of supplemental briefing by both parties, on August 31, 2011 the AS-IA, by a new final determination, recognized the Intervenor-Defendant as the only and true Tribe, comprised of a well-established government and recognized citizenship (“2011 Decision”). In the 2011 Decision, the AS-IA provides, “[t]his decision is final . . . and effective immediately, but implementation shall be stayed pending resolution of [the instant case].” Although the final decision has been made by the Department of the Interior - on not one but two occasions - to recognize the Tribe's form of government and citizenship, the Tribe is still unable to exercise the multiple rights granted to it under Title 25 of the United States Code. As stated above, the Tribe's Motion to Dismiss was fully briefed over one year ago, on April 27, 2012 (Dkt No. 64). ***There is no better instance where the need for expedited consideration is more real; an entire tribal government and all of the federal statutory rights it enjoys in a government-to-government relationship with the United States has been put on hold until a ruling is made on this case and the pending Motion to Dismiss.***

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II. ARGUMENT

The federal judiciary vests the district courts with the authority to manage their own dockets and calendars. *See Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-31 (1962) (federal courts have the necessary inherent powers to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases”); *Landis v. N. American Co.*, 299 U.S. 248, 254-55 (1936) (these inherent powers include controlling “the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). Pursuant to 28 U.S.C. § 1657, this authority includes expedited consideration “if good cause therefore is shown.”

The statute maintains that a showing of good cause may be made “if a right under the Constitution of the United States or a Federal Statute . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit.” 28 U.S.C. § 1657. The Tribe brings forth this motion to expedite consideration of the Motion to Dismiss in order to maintain the rights granted to the Tribe under multiple statutes contained in Title 25 of the United States Code, which are guaranteed to federally recognized tribes under the federal trust responsibility doctrine and granted by Congressional authority. Because the Tribe’s rights to benefits under Title 25 have been, in essence, terminated pending the outcome of this litigation, it has suffered and will continue to suffer irreparable harm for each and every day that this action is pending. As such and for the reasons set forth below, good cause exists and expedited consideration of the Tribe’s Motion to Dismiss is both necessary and appropriate.

A. Good Cause Exists Pursuant to the Federal Trust Doctrine

The federal government has historically recognized a federal trust responsibility owed to federally-recognized Indian tribes. *See Cherokee Nation v. Georgia*, 30 U.S. 1, 2 (1831) (“[Tribal] relations to the United States resemble that of a ward to his guardian.”); *United States*

v. Sandoval, 231 U.S. 28, 46 (1913) (“[A]n unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its border . . .”) The courts of these United States have time after time ensured this trust responsibility is met by the Executive and Legislative Branches by enforcing the trust responsibility through judicial order.

With regard to the instant action, United States federal case precedent provides that the federal courts should grant deference to the Secretary of the Interior in matters where the United States’ and tribal government to government relationships are at issue. *See Pierre v. Norton*, 498 F.Supp. 2d 214 (D.C. Cir 2007); *Smith v. Babbitt*, 875 F.Supp.1353 (D.Minn.1995). Indeed, federal courts, including this Court, have recognized the importance of timely resolution of tribal governance and membership disputes, brought vis-à-vis APA challenge to final agency action of the AS-IA, in order to ensure that the government to government relationships between federally-recognized tribes and the United States are not disrupted. (*See, e.g., Timbisha Shoshone Tribe, et al., v. Salazar, et al.*, 678 F.3d 935, 938 (D.C. Cir. 2012) (holding that individual tribal members lacked standing to sue on behalf of that tribe because the court owed “deference to the judgment of the Executive Branch as to who represents the tribe.”); *See also, Timbisha Shoshone Tribe, et al. v. U.S. Department of the Interior, et al.*, No. 2:11-cv-00995, 2013 WL 1451360 (ED CA, April 9, 2013) (holding that tribal faction was barred from challenging AS-IA final agency action regarding composition of the tribal government because the intervenor-defendant tribe was not and could not be made a party to the action, pursuant to Rule 19).

As properly concluded in the 2011 Decision, the Intervenor-Defendant is the **only** federally-recognized Indian tribe known as the California Valley Miwok Tribe, as recognized on not one, but **two** separate occasions by the Executive Branch through two final agency actions.

In this case, it is not the failure of the Executive Branch to recognize the Tribe that currently prevents the Tribe from exercising their recognized sovereign rights. Rather, they are the “stay” language contained in the 2011 Decision, coupled with the lack of movement toward resolution of the instant action, that are preventing the United States from fulfilling the codified trust obligations owed to the Tribe. Accordingly, the Tribe petitions this Court to expedite its ruling on the pending Motion to Dismiss in order to enforce the federal trust responsibility owed to the Tribe and to resume the long-halted government to government relationship between the Tribe and the United States.

B. Good Cause Exists Under Federal Law To Expedite Intervenor-Defendant’s Motion To Dismiss.

The federal trust responsibility owed to Indian tribes, as set forth above, has not only been established via judicial precedent, but also pursuant to Congressional authority and federal legislation. Among the statutory grants of tribal rights are those afforded pursuant to Title 25 of the United States Code, which includes: the Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. §450, *et seq.*), the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001, *et seq.*), Indian Health Services (IHS) (25 U.S.C. §1601, *et seq.*), Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. §4101, *et seq.*), and many more programs that fund tribal governments for the benefit of tribal members.

The inability of the Tribe to access federal funds afforded pursuant to federal statute – funds upon which the Tribe relies almost exclusively for operation of its Tribal government - has had very tangible and debilitating consequences on the Tribe, further demonstrating good cause for expedition of this court’s ruling on the Tribe’s Motion to Dismiss. (*See Declaration of Silvia Burley in Support of Intervenor-Defendant’s Motion to Expedite Consideration of its*

Motion to Dismiss Plaintiffs' Amended Complaint, filed concurrently herewith ("Burley Dec.")). By way of example only, the Tribal government currently lacks funds for basic governmental services, including education, fire service, tribal office supplies, tribal security, waste management, electricity, water services, tribal transportation, tribal housing and repairs, tribal social services, telecommunications, waste management, job training, child care services, and Tribal Indian Child Welfare services. (Burley Dec., ¶ 5). Moreover, the cessation of state and federal funding has resulted in the Tribal offices falling into foreclosure, making imminent the possibility of homelessness for the Tribe's citizens. (Burley Dec., ¶ 6). Most significantly, lack of federal funding has stripped the Tribe's ability to provide any health care benefits to its citizens, forcing Tribal citizens with serious medical conditions to forego surgery, medications, and other basic medical needs due the inability to access funding afforded to all federally-recognized Indian tribes by Congress for these very necessities. (Burley Dec., ¶ 9). Finally, the lack of federal funding has had a personal impact on the Tribal citizens, leaving many without jobs due to termination of Tribal governmental positions, and forcing them to sell personal belongings just to assist in funding Tribal governmental operations. (Burley Dec., ¶¶ 7-8, 14).

In addition, not only have the Tribe's federal grant funds been halted pending resolution of the instant action, but so has its ability to challenge previously withheld federal monies in fiscal years 2010 and 2011. (*See* Declaration of Saba Bazzazieh in Support of Motion to Expedite Consideration of the Intervenor-Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint ("Bazzazieh Dec."), ¶ 4). Thus, so long as this action remains unresolved, the government to government relationship ensured by federal statute and the accompanying health care and other vital services afforded to the Tribe will continue to be withheld, resulting in debilitating and irreparable harm to the Tribe and its citizens.

In addition to federal funding, the Tribe's ability to access monies granted by the state of California have also been halted pending resolution of the instant action. As a federally-recognized, "Non-Compact," Indian tribe located in the state of California, the Tribe is an eligible recipient of the Revenue Sharing Trust Fund monies administered by the California Gambling Control Commission ("CGCC"), a state agency which serves as trustee of these funds for eligible California tribes (*See Bazzazieh Dec.*, ¶ 3). In 2008, the Tribe initiated action in California state court against the CGCC for improperly withholding the RSTF funds from the Tribe since 2005, as a result of its internal governance dispute. (*See California Valley Miwok Tribe v. The California Gambling Control Commission*, 37-2008-00075326-CU-CO-CTL) (*See Bazzazieh Dec.*, ¶ 4). On April 26 2013, after two successful rulings from the California Court of Appeals, the court in this action ruled against the Tribe and granted the CGCC's motion for summary judgment, *solely* due to the fact that a final ruling has not yet been issued in this matter (*See Bazzazieh Dec.* ¶5, Exhibit B thereto)("the court finds that, because the [D.C. action] is still pending...the Commission is justified in withholding the RSTF funds"). Consequently, the Tribe is now left with *no recourse* in any venue, except for the instant action, to attempt to retrieve either its federal or state monies to which it is entitled and had previously and appropriately received.

As previously recognized by this Court, the Intervenor-Defendant "*possesses a distinct and weighty interest in protecting its governance structure and its entitlement and access to federal grant monies.*" (*See Memorandum Opinion and Order*, Dkt. 52, p.12, emphasis added). As set forth above, these interests are currently being harmed due to the length of time that has passed to consider the Tribe's Motion to Dismiss and bring final resolution to this matter. Accordingly, good cause clearly exists for the court to exercise its discretion and permit

expedited consideration of the Tribe's Motion to Dismiss. Only through expedited consideration of the pending Motion to Dismiss and resolution of the instant action can long-overdue federal and state funds - which are absolutely *critical* to the continuing operation of the Tribal government the provision of resources to Tribal members –finally be resumed to the Tribe.

III. CONCLUSION

For all of the foregoing reasons, good cause exists pursuant to 28 U.S.C. § 1657 for this Court to exercise its discretion to achieve the orderly and expeditious disposition of this case. As such, the Tribe respectfully requests that the Court grant expedited consideration of its Motion to Dismiss to ensure that the Tribe's federal rights guaranteed under the federal trust doctrine and granted by virtue of Congressional authority are not unjustly withheld.

Respectfully submitted this 5th day of July, 2013.

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CERTIFICATE OF SERVICE

I certify that on July 5, 2013, I caused a true and correct copy of the foregoing Motion To Expedite Consideration of the Intervenor-Defendant's Motion To Dismiss Plaintiffs' First Amended Complaint For Declaratory and Injunctive Relief, the Supporting Statement of Points and Authorities, the Declaration of Saba Bazzazieh in Support Thereof, the Declaration of Silvia Burley in Support Thereof, and a proposed Order to be served on the following counsel via electronic filing:

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**UNITED STATES DISTRICT COURT
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CALIFORNIA VALLEY MIWOK TRIBE,
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KEN SALAZAR, et al.,

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Case No. 1:11-CV-00160-BJR

Hon. Barbara Jacobs Rothstein

**DECLARATION OF SABA BAZZAZIEH IN SUPPORT OF MOTION TO EXPEDITE
CONSIDERATION OF THE INTERVENOR-DEFENDANT'S MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT**

I, Saba Bazzazieh, hereby declare:

1. I am an attorney licensed to practice in the United States District Court for the District of Columbia and admitted to practice *pro hac vice* in the instant action. I am a Partner at the law firm Rosette LLP, attorneys of record for the California Valley Miwok Tribe ("Tribe"), a federally-recognized Indian tribe and Intervenor-Defendant in the above-captioned matter. I make this declaration in support of the Tribe's Motion to Expedite Consideration of its Motion to Dismiss Plaintiff's First Amended Complaint For Declaratory and Injunctive Relief ("Motion to Expedite").

2. I have personal knowledge of the facts stated herein and would be competent to testify as to those facts if called upon to do so in a court of law.

3. As a federally-recognized "Non-Compact" Indian tribe located in the state of California, the Tribe is an eligible recipient of the Revenue Sharing Trust Fund monies administered by the California Gambling Control Commission ("CGCC"), a state agency which serves as trustee of these funds for eligible California tribes (*See* CGCC List of RSTF Eligible

tribes, dated October 24, 2012, attached hereto as Exhibit A).

4. On or around January 8, 2008, the Tribe initiated action in the Superior Court for the State of California, County of San Diego, Central District against the CGCC for improperly withholding the RSTF funds from the Tribe since 2005, as a result of its internal governance dispute. (*See California Valley Miwok Tribe v. The California Gambling Control Commission*, 37-2008-00075326-CU-CO-CTL) (“Tribe v. CGCC Action”).

5. After two successful rulings from the California Court of Appeals (Fourth Appellate District), on April 26 2013, the San Diego Superior Court ruled against the Tribe and granted the CGCC’s motion for summary judgment, which occurred, solely due to the fact that a final ruling has not yet been issued in this matter (*See Tentative Rulings in the Tribe v. CGCC Action*, dated April 25, 2013, attached hereto as Exhibit B)(“the court finds that, because the [D.C. action] is still pending...the Commission is justified in withholding the RSTF funds.” p.3 Opinion).

6. In addition, not only have the Tribe’s federal grant funds been halted, pending resolution of the instant action, but so have their ability to challenge previously withheld federal monies in fiscal years 2010 and 2011. Indeed, on April 3, 2012, the United States Civilian Board of Contract Appeals stayed the Tribe’s appeals for undistributed federal contract funds, “pending completion of the district court action.” (*See Order of the U.S. Civilian Board of Contract Appeals*, dated April 3, 2013, attached hereto as Exhibit C).

7. Consequently, the Tribe is now left with ***no recourse*** in any venue to attempt to retrieve either its federal or state monies to which it is entitled and had previously and appropriately received. This has led to and continues to inflict debilitating harm to the Tribe and its citizens (*See Declaration of Silvia Burley in Support of Intervenor-Defendant’s Motion to Expedite Consideration of its Motion to Dismiss Plaintiff’s Amended Complaint*, filed concurrently herewith).

8. Resolution of the outstanding federal and state monies owed to the Tribe can be had, from a legal standpoint, solely from a determination and decision issued by the Court in the instant action.

9. Pursuant to the requirements of Local Civil Rule 7(m) of the Rules of the United States District Court for the District of Columbia, on June 28, 2013, I contacted counsel to Plaintiffs, Roy Goldberg, as well as counsel to the Federal Defendants, Kenneth Rooney, to notify them of the Tribe's intention to file its Motion to Expedite in order to ascertain the parties' respective positions on this filing.

10. On June 28, 2013, Mr. Rooney represented that the Federal Defendants take no position as to the Motion to Expedite. Also on June 28, 2013, Mr. Goldberg represented that the Plaintiffs would oppose the Motion to Expedite.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of July, 2013.



Saba Bazzazieh

EXHIBIT A

**CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES**

October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
1	Alturas Indian Rancheria	Desert Rose Casino	Alturas	Modoc
2	Bear River Band of the Rohnerville Rancheria	Bear River Casino	Loleta*	Humboldt
3	Big Lagoon Rancheria	N/A	Arcata*	Humboldt
4	Big Pine Paiute Tribe of the Owens Valley (<i>previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation</i>)	N/A	Big Pine*	Inyo
5	Big Sandy Rancheria of Western Mono Indians of California (<i>previously listed as the Big Sandy Rancheria of Mono Indians of California</i>)	Mono Wind Casino	Auberry*	Fresno
6	Big Valley Band of Pomo Indians of the Big Valley Rancheria	Konocti Vista Casino	Lakeport*	Lake
7	Bishop Paiute Tribe (<i>previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony</i>)	Paiute Palace Casino	Bishop*	Inyo
8	Bridgeport Indian Colony (<i>previously listed as the Bridgeport Paiute Indian Colony of California</i>)	N/A	Bridgeport*	Mono
9	Buena Vista Rancheria of Me-Wuk Indians of California	N/A	Sacramento*	Sacramento
10	Cahto Tribe (<i>previously listed as the Cahto Indian Tribe of the Laytonville Rancheria</i>)	Red Fox Casino	Laytonville*	Mendocino
11	Cahuilla Band of Mission Indians of the Cahuilla Reservation	Cahuilla Casino	Anza	Riverside
12	California Valley Miwok Tribe	N/A	Stockton*	San Joaquin
13	Cedarville Rancheria	N/A	Alturas*	Modoc
14	Chemehuevi Indian Tribe of the Chemehuevi Reservation	Havasus Landing Resort & Casino	Lake Havasu*	San Bernardino
15	Cher-Ae Heights Indian Community of the Trinidad Rancheria	Cher-Ae Heights Casino	Trinidad	Humboldt
16	Chicken Ranch Rancheria of Me-Wuk Indians of California	Chicken Ranch Bingo & Casino	Jamestown*	Tuolumne
17	Cloverdale Rancheria of Pomo Indians of California	N/A	Cloverdale	Sonoma
18	Cold Springs Rancheria of Mono Indians of California	N/A	Tollhouse*	Fresno
19	Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California	N/A	Parker, AZ ¹	
20	Cortina Indian Rancheria of Wintun Indians of California	N/A	Williams*	Colusa
21	Coyote Valley Reservation (<i>formerly Coyote Valley Band of Pomo Indians of California</i>)	Coyote Valley Casino	Redwood Valley	Mendocino
22	Death Valley Timbi-sha Shoshone Tribe (<i>previously listed as the Death Valley Timbi-Sha Shoshone Band of California</i>)	N/A	Death Valley	Inyo
23	Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria	N/A	Clearlake Oaks	Lake
24	Elk Valley Rancheria	Elk Valley Casino	Crescent City	Del Norte
25	Enterprise Rancheria of Maidu Indians of California	N/A	Oroville*	Butte

*Tribal Headquarters.

¹ The Colorado Valley Indian Tribes are located in California and Arizona. Tribal Headquarters are located in Parker, Arizona.

**CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES**

October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
26	Ewiiapaayp Band of Kumeyaay Indians	N/A	Alpine*	San Diego
27	Federated Indians of Graton Rancheria	N/A	Rohnert Park*	Sonoma
28	Fort Bidwell Indian Community of the Fort Bidwell Reservation of California	N/A	Fort Bidwell*	Modoc
29	Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation	N/A	Fort Independence	Inyo
30	Fort Mojave Indian Tribe of Arizona, California & Nevada	N/A	Needles*	San Bernardino
31	Greenville Rancheria <i>(previously listed as the Greenville Rancheria of Maidu Indians of California)</i>	N/A	Greenville*	Plumas
32	Grindstone Indian Rancheria of Wintun-Wailaki Indians of California	N/A	Elk Creek*	Glenn
33	Guidiville Rancheria of California	N/A	Talmage*	Mendocino
34	Habematolel Pomo of Upper Lake	Running Creek Casino	Upper Lake	Lake
35	Hoopa Valley Tribe	Lucky Bear Casino	Hoopa	Humboldt
36	Ipai Nation of Santa Ysabel <i>(previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)</i>	Santa Ysabel Casino	Santa Ysabel*	San Diego
37	Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation	N/A	Escondido*	San Diego
38	Ione Band of Miwok Indians of California	N/A	Plymouth*	Amador
39	Jamul Indian Village of California	N/A	Jamul*	San Diego
40	Karuk Tribe <i>(previously listed as the Karuk Tribe of California)</i>	N/A	Happy Camp*	Siskiyou
41	Kashia Band of Pomo Indians of the Stewarts Point Rancheria	N/A	Santa Rosa*	Sonoma
42	La Jolla Band of Luiseno Indians <i>(previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)</i>	N/A ²	Pauma Valley	San Diego
43	La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation	La Posta Casino ³	Boulevard*	San Diego
44	Lone Pine Paiute-Shoshone Tribe <i>(previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation)</i>	N/A	Lone Pine*	Inyo
45	Los Coyotes Band of Cahuilla and Cupeno Indians <i>(previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)</i>	N/A	Warner Springs*	San Diego
46	Lower Lake Rancheria	N/A	Healdsburg*	Sonoma
47	Lytton Rancheria of California	N/A ⁴	Healdsburg	Sonoma
48	Manchester Band of Pomo Indians of the Manchester Rancheria <i>(previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria)</i>	Garcia River Casino	Point Arena	Mendocino

*Tribal Headquarters.

² La Jolla Band of Luiseno Indians' casino closed in August 2004.

³ La Posta Band of Diegueno Mission Indians' casino closed on October 22, 2012.

⁴ The Lytton Rancheria operates a card room (Casino San Pablo) with Class II gaming.

**CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES**

October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
49	Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation	N/A	Boulevard*	San Diego
50	Mechoopda Indian Tribe of Chico Rancheria	N/A	Chico	Butte
51	Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation	N/A	Santa Ysabel*	San Diego
52	Northfork Rancheria of Mono Indians of California	N/A	North Fork*	Madera
53	Pinoleville Pomo Nation <i>(previously listed as the Pinoleville Rancheria of Pomo Indians of California)</i>	N/A	Ukiah*	Mendocino
54	Pit River Tribe (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek, and Roaring Creek Rancherias)	Pit River Casino	Burney	Shasta
55	Potter Valley Tribe	N/A	Ukiah*	Mendocino
56	Quartz Valley Indian Community of the Quartz Valley Reservation of California	N/A	Fort Jones	Siskiyou
57	Ramona Band of Cahuilla <i>(previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)</i>	N/A	Anza	Riverside
58	Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California <i>(previously listed as the Redwood Valley Rancheria of Pomo Indians of California)</i>	N/A	Redwood Valley	Mendocino
59	Resighini Rancheria	N/A ⁵	Klamath	Del Norte
60	Round Valley Indian Tribes, Round Valley Reservation <i>(previously listed as the Round Valley Indian Tribes of the Round Valley Reservation)</i>	N/A	Covelo	Mendocino
61	Santa Rosa Band of Cahuilla Indians <i>(previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)</i>	N/A	Hemet*	Riverside
62	Scotts Valley Band of Pomo Indians of California	N/A	Kelseyville*	Lake
63	Sherwood Valley Rancheria of Pomo Indians of California	Sherwood Valley Rancheria Casino	Willits	Mendocino
64	Smith River Rancheria	Lucky 7 Casino	Smith River	Del Norte
65	Susanville Indian Rancheria	Diamond Mountain Casino & Hotel	Susanville*	Lassen
66	Tejon Indian Tribe ⁶	N/A	Bakersfield	Kern
67	Torres Martinez Desert Cahuilla Indians <i>(previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)</i>	Red Earth Casino	Thermal*	Riverside
68	Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation	N/A	Benton*	Mono
69	Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)	N/A	Gardnerville, NV ⁷	

*Tribal Headquarters.

⁵ The Resighini Rancheria's casino closed in July 2007.

⁶ The Tejon Indian Tribe was federally recognized on January 6, 2012 and is RSTF eligible tribe.

⁷ The Washoe Tribe of Nevada and California is located in both states. Tribal Headquarters is located in Gardnerville, Nevada.

CALIFORNIA GAMBLING CONTROL COMMISSION
REVENUE SHARING TRUST FUND (RSTF) ELIGIBLE TRIBES
October 24, 2012

	TRIBE	CASINO	TRIBAL CITY	TRIBAL COUNTY
70	Wilton Rancheria	N/A	Sacramento Valley	Sacramento
71	Wiyot Tribe <i>(previously listed as the Table Bluff Reservation—Wiyot Tribe)</i>	N/A	Loleta	Humboldt
72	Yurok Tribe of the Yurok Reservation	N/A	Klamath	Del Norte

Note: Each eligible RSTF recipient receives \$275,000.00 per quarter, for a sum of \$1.1 million per fiscal year.

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - April 25, 2013

EVENT DATE: 04/26/2013

EVENT TIME: 02:00:00 PM

DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

CASE NO.: 37-2008-00075326-CU-CO-CTL

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE VS. THE CALIFORNIA GAMBLING CONTROL COMMISSION

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Contract - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED:

The court addresses the evidentiary issues. Defendant California Gambling Control Commission's request for judicial notice and reply request for judicial notice are granted. Plaintiff's request for judicial notice is denied as to 8 (because the document is missing), denied as to 22, 25 and 33, and granted as to the remainder.

The court then rules as follows. Defendant California Gambling Control Commission's motion for summary judgment is granted.

The decision in *California Valley Miwok Tribe v. The Superior Court of San Diego County* (Cal. Ct. App., Dec. 18, 2012, D061811) 2012 WL 6584030 frames the central issue on this motion.

Based on the gravamen of the complaint, the fundamental issue presented to the trial court for resolution on the merits is whether the current uncertainty in the federal government's relationship to the Miwok Tribe-including the pendency of the *Salazar* case-constitutes a legally sufficient basis for the Commission, as trustee of the RSTF, to withhold the RSTF funds from the Miwok Tribe. To resolve that issue the trial court need not determine the issues presented in the *Salazar* case or determine the proper tribal leadership body. The trial court need only *acknowledge* that the federal dispute is ongoing, and based on that factual predicate, determine whether the Commission has a legally sufficient basis for withholding the RSTF funds.

Put simply, the issue for the trial court to resolve is limited to whether the Commission is justified in withholding the RSTF funds because the *Salazar* case is pending and the BIA has not recognized a tribal leadership body for the distribution of ISDEAA benefits.

California Valley Miwok Tribe v. The Superior Court of San Diego County (Cal. Ct. App., Dec. 18, 2012, D061811) 2012 WL 6584030 at *7.

Government Code § 12012.75 provides:

There is hereby created in the State Treasury a special fund called the "Indian Gaming Revenue Sharing Trust Fund" for the receipt and deposit of moneys derived from gaming device license fees that are paid into the fund pursuant to the terms of tribal-state gaming compacts for the purpose of making distributions to noncompact tribes. **Moneys in the Indian Gaming Revenue Sharing Trust Fund shall**

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE CASE NUMBER: 37-2008-00075326-CU-CO-CTL
VS. THE CALIFORNIA GAMBLING

be available to the California Gambling Control Commission, upon appropriation by the Legislature, for the purpose of making distributions to noncompact tribes, in accordance with distribution plans specified in tribal-state gaming compacts.

Section 4.3.2.1(b) of the Compact provides

Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund. **The Commission shall serve as the trustee of the fund. The Commission shall have no discretion with respect to the use or disbursement of the trust fund. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-compact Tribes.** In no event shall the State's General Fund be obligated to make up any shortfall or pay any unpaid claims.

Gov. Code, § 12012.90 provides:

(a)(1) For each fiscal year commencing with the 2002-03 fiscal year to the 2004-05 fiscal year, inclusive, the California Gambling Control Commission shall determine the aggregate amount of shortfalls in payments that occurred in the Indian Gaming Revenue Sharing Trust Fund pursuant to Section 4.3.2.1 of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution as determined below:

....

(2) For purposes of this section, **"eligible recipient Indian tribe"** means a noncompact tribe, as defined in Section 4.3.2(a)(i) of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution.

....

(d) Upon a transfer of moneys from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund and appropriation from the trust fund, **the California Gambling Control Commission shall distribute the moneys without delay to eligible recipient Indian tribes** for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding.

California Constitution, Article IV, § 19(f) provides:

Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

The Commission construes its duty under the Compacts and these statutes to include a duty to ascertain the identity of the tribal representative authorized by the tribe to receive and administer the tribe's RSTF payments. "[T]he construction of an act by the agency charged with its enforcement is entitled to considerable deference from the courts 'and will be followed if not clearly erroneous. [Citations.]' " (*Judson Steel Corp. v. Workers' Comp. Appeals Bd.*, *supra*, 22 Cal.3d 658, 668, quoting from *Bodinson Mfg. Co. v. California E. Com.*, *supra*, 17 Cal.2d 321, 325-326.)" *League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529, 557. The court finds the Commission's construction that its duty includes the obligation to take reasonable steps to distribute RSTF payments to the authorized representative of the tribe is not clearly erroneous. The court is persuaded that, implicit in the Commission's duty under the Compacts to distribute RSTF funds, is the Commission's duty to ascertain the identity of representatives authorized by their respective tribes to receive and administer the tribe's RSTF payments. The court agrees that the Commission cannot

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE CASE NUMBER: 37-2008-00075326-CU-CO-CTL
VS. THE CALIFORNIA GAMBLING

reasonably be deemed to discharge its responsibility to make a RSTF distribution to a tribe by making the payment to a person or group other than the one properly authorized to receive and administer the payment pursuant to a tribe's directives. The court also finds that the Commission's reliance on the BIA's decisions as to a tribe's authorized leadership, as fulfilling the Commission's duty under the Compact and accompanying statutes, is not clearly erroneous. The Commission's decision to discharge its duty by disbursing RSTF funds only to those individuals or leadership bodies recognized by the BIA for the government-to-government business of the disbursement and receipt of federal PL 638 contract funds is reasonable. It is the Department of the Interior, Bureau of Indian Affairs that "has the authority and responsibility to ensure that the Nation's representatives, with whom it must conduct government-to-government relations, are the valid representatives of the Nation as a whole. See *Seminole Nation v. United States*, 316 U.S. 286, 296, 62 S.Ct. 1049, 86 L.Ed. 1480 (1942)." *Seminole Nation of Oklahoma v. Norton* (D.D.C. 2002) 223 F.Supp.2d 122, 140. Given the BIA's authority with respect to the validity of tribal representatives, it is reasonable for the Commission to rely on the BIA for a determination of the authorized representative of a tribe for purposes of distribution of RSTF funds.

The Commission submits evidence that, at the present time, a dispute exists as to the composition and leadership of the Miwok Tribe, as evidenced by the pending *Salazar* matter [SSUMF 9]. The Commission also submits evidence that, when uncertainty exists as to a Non-compact Tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the Department of Interior, Bureau of Indian Affairs' (BIA) determinations [SSUMF 14]; because the BIA suspended PL 638 contract funding to the Miwok Tribe in 2005, the Commission suspended its disbursement RSTF payments, pending the BIA's resumption of PL 638 funding, or other BIA action [SSUMF 15]; as of this date the BIA has not resumed disbursing PL 638 funds to the Miwok Tribe, and has not recognized an authorized leader or leadership group for the Miwok Tribe [SSUMF 16]; the Commission will promptly disburse the accrued RSTF payments to the Miwok Tribe once the BIA has identified the Miwok Tribe's authorized leader or leadership group [SSUMF 18].

Since the BIA, the agency to which the Commission defers as to a tribe's authorized leadership, has suspended its PL 638 payments to the Miwok Tribe based on a leadership dispute, the court finds the Commission's suspension of disbursement of quarterly RSTF payments, pending the BIA's resumption of PL 638 funding or other BIA action recognizing the authorized representative of the Miwok Tribe, is justified. Such circumstances provide a legally sufficient basis for the Commission to withhold RSFT funds. Therefore, the court finds that, because the *Salazar* case is pending and because the BIA has not recognized a tribal leadership body for the distribution of PL 638 (ISDEAA) benefits, the Commission is justified in withholding the RSTF funds. As such, each of Plaintiff's claims fail as a matter of law.

The court is not persuaded by Plaintiff's argument that there is no dispute as to the composition and leadership of the Miwok Tribe [SSUMF 9]. Plaintiff argues that *Salazar* is irrelevant "per the Court of Appeal decision." However, the Court of Appeal decision specifically directs this court to consider *Salazar* in determining whether the Commission's conduct is justified. Plaintiff also argues that "[t]here is no dispute concerning the leadership of the Tribe, in light of recent deposition testimony of Yakima Dixie confirming that he had resigned as Tribal Chairman and acknowledging that Burley is the new Chairperson." [Plaintiff's response to SSUMF 9.] While Dixie does testify that he resigned as chairperson of the Tribe, it is not Dixie's resignation and/or Dixie's purported recognition of Burley as the new Chairperson that is at issue. Rather, it is the BIA's recognition of Burley, or another person or entity, as the authorized representative of the Miwok Tribe that is the determining factor. A determination as to the effect of the Dixie's testimony on the issue of the authorized representative of the Miwok Tribe is beyond the jurisdiction of this court.

The evidence Plaintiff offers to dispute SSUMF 14 and 15 is not sufficient to establish triable issue of material fact as to the Commission's policy that, "when uncertainty exists as to a Non-compact Tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the Department of Interior, Bureau of Indian Affairs' (BIA) determinations" [SSUMF 14] and that because the BIA suspended PL 638 contract funding to the Miwok Tribe in 2005, the Commission suspended its disbursement of quarterly RSTF payments, pending the BIA's resumption of PL 638 funding, or other BIA action [SSUMF 15]. The evidence Plaintiff offers to dispute SSUMF 16 does not establish triable

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE CASE NUMBER: 37-2008-00075326-CU-CO-CTL
VS. THE CALIFORNIA GAMBLING

issues of material fact as to whether, as of this date the BIA has not resumed disbursing PL 638 funds to the Miwok Tribe, and has not recognized an authorized leader or leadership group for the Miwok Tribe [SSUMF 16]. The court is not persuaded by Plaintiff's analogy to a stay of execution and argument that the stay does not affect the "declaration of rights" contained in the August 31, 2011, decision of the Assistant Secretary of the Interior. In light of the stay, there is no final decision of the BIA recognizing an authorized leader or leadership group for the Miwok Tribe. This is evidenced by the fact that the BIA has not resumed PL 638 funding to the Tribe. Plaintiff relies on the fact that the BIA has not resumed efforts to reorganize the Miwok Tribe to demonstrate that the stay has no effect on the ASI's recognition of the Tribal Council under Burley's leadership as the authorized representative of the Miwok Tribe. However, such conduct is consistent with the BIA staying any action based on the August 21, 2011, decision – i.e., either resuming these efforts, or resuming PL 638 funding.

As recognized in *California Valley Miwok Tribe v. Salazar* (D.D.C. 2012) 281 F.R.D. 43,

If the plaintiffs prevail in this action, the Assistant Secretary's August 31 decision will be vacated, the Bureau will be ordered to cease government-to-government relationships with the Tribe as organized in the form of the General Council, and the defendants will be enjoined from awarding any federal funds to Burley.

California Valley Miwok Tribe v. Salazar (D.D.C. 2012) 281 F.R.D. at 47. Given this potential, the court finds the Commission's suspension of RSTF payments is justified. Also supporting this conclusion is the Joint Status Report signed in *Salazar* wherein all parties, including the BIA, agreed that "the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' [intervenors here] claims or grants a dispositive motion of the Federal Defendants [Secretary of the United States Department of the Interior, et al.]. Via this Joint Status Report the BIA itself recognizes that the August 21, 2011 decision is of no force and effect. Such recognition provides further justification for the Commission's action in suspending RSTF payments. Whether the district court signed or adopted the Report is not relevant to the court's analysis. It is the BIA's interpretation that is at issue.

Plaintiff offers no evidence to dispute SSUMF 18 "the Commission will promptly disburse the accrued RSTF payments to the Miwok Tribe once the BIA has identified the Miwok Tribe's authorized leader or leadership group." Instead Plaintiff offers argument that the Compact does not require that the actions of the BIA dictate the conditions of disbursement of RSTF funds and that the Commission is wrong in conditioning payment on this basis. For the reasons set forth above, the court finds the Commission's deference to BIA's decisions as to a tribe's authorized leadership in instances of a leadership dispute is justified.

The court is not deciding whether the August 31, 2011 decision is final. Rather, as directed by the Court of Appeal, the court *acknowledges* that a federal dispute is ongoing, and based on this dispute, determines that the Commission has a legally sufficient basis for withholding the RSTF funds. As long as *Salazar* remains pending, and the August 31, 2011, decision remains stayed, Plaintiff cannot establish that it is the recognized tribe and entitled to receive RSTF monies.

The court orders the Commission to submit a judgment, consistent with this ruling, within 10 days of this ruling.

=

EXHIBIT C



**UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS**

ORDER CONSOLIDATING AND STAYING PROCEEDINGS: April 3, 2012

CBCA 2676-ISDA, 2756-ISDA

CALIFORNIA VALLEY MIWOK TRIBE,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Rebecca Chapman of Rosette LLP, Folsom, CA, counsel for Appellant.

Sabrina A. McCarthy, Office of the Solicitor, Department of the Interior, Washington, DC, counsel for Respondent.

ZISCHKAU, Board Judge.

ORDER

In CBCA 2676-ISDA, Silvia Burley, acting on behalf of the appellant, California Valley Miwok Tribe, filed a notice of appeal on December 22, 2011, seeking payment of Tribal Priority Allocation funds for fiscal years 2010 and 2011 pursuant to the Tribe's self-determination contract no. CTJ51T62802 with the Bureau of Indian Affairs. In CBCA 2756-ISDA, Ms. Burley, acting on behalf of the Tribe, filed another notice of appeal on February 28, 2012, seeking payment of Tribal Priority Allocation funds for fiscal year 2012 pursuant to the same contract.

The respondent has moved to consolidate the two appeals and to stay further proceedings in the captioned appeals pending final review by the district court of an

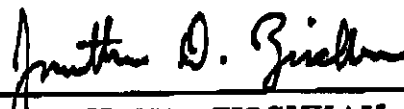
CBCA 2676, 2756

2

August 31, 2011 decision of the Assistant Secretary for Indian Affairs of the Department of Interior in *California Valley Miwok Tribe v. Salazar*, C.A. No. 1-11-cv-00160-RWR (D.D.C. filed Mar. 16, 2011). The appellant opposes both motions.

Having considered the record, we consolidate the two appeals for further proceedings and grant the respondent's motion for stay of the consolidated appeals pending completion of the district court action which is considering substantial issues concerning the organization and representation of the Tribe and the validity of the Assistant Secretary's August 31, 2011 decision.

The appellant and respondent shall each file a status report within 14 days of the final disposition in *California Valley Miwok Tribe v. Salazar*.



JONATHAN D. ZISCHKAU
Board Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALIFORNIA VALLEY MIWOK TRIBE,
et al.,

Plaintiffs,

v.

KEN SALAZAR, et al.,

Defendants.

Case No. 1:11-CV-00160-BJR

Hon. Barbara Jacobs Rothstein

**DECLARATION OF SILVIA BURLEY IN SUPPORT OF INTERVENOR-
DEFENDANT'S MOTION TO EXPEDITE CONSIDERATION OF ITS MOTION TO
DISMISS PLAINTIFFS' AMENDED COMPLAINT**

I, Silvia Burley, hereby declare:

1. I am the Chairperson of the California Valley Miwok Tribe ("Tribe"), a federally-recognized Indian tribe. I have personal knowledge of the facts relating to this matter except as to those stated upon information and belief, which I believe to be true. If called as a witness I could competently and truthfully testify to facts contained herein if called upon to do so in a court of law.

2. As this Court is aware, the Tribe has been involved in an inter-tribal dispute for over a decade. As a result of this inter-tribal dispute, the Tribe's monetary benefits from the State of California have ceased since 2005 and federal grant monies from the United States have ceased since 2008.¹

3. The Tribe is one of very modest means. As such, it relies extensively – if not *almost exclusively* – on these federal and state monies to administer its governmental operations

¹ Federal grant funding pursuant to P.L. 638 resumed temporarily in January 2011 following issuance of the Assistant Secretary's December 2010 decision but was halted shortly thereafter following reconsideration of the decision.

for its Tribal citizens.

4. As a direct result of the withholding of the Tribe's federal and state monies, the Tribe has experienced many severe and far-reaching hardships. Just some of these hardships are detailed herein.

5. The Tribe relies on these federal and state monies for basic, daily operations and governmental services, including: education, fire service, tribal office supplies, tribal security, waste management, electricity, water services, tribal transportation, tribal housing and repairs, tribal social services, telecommunications, waste management, job training, child care services, Tribal Indian Child Welfare services, maintenance and insurance on a single Tribal government vehicle. Currently, the Tribe is without the funds necessary to satisfy these basic governmental needs.

6. The Tribe relies on these federal and state monies to make mortgage payments to the Tribal government offices. The withholding of these funds has caused the Tribal offices to fall into foreclosure, with at least two (2) attempted physical evictions and the ongoing threat of eviction. The threat of eviction remains real and imminent, which would force the Tribe's citizens into homelessness, despite having two United States final agency actions in its favor. (See Letter from Meridian Foreclosure Services, dated June 25, 2013, attached hereto as Exhibit A).

7. In desperate attempts to save the Tribal governmental offices from foreclosure and to continue meeting operating expenses, individual Tribal members have been forced to exhaust their own personal finances to pay these expenses and honor the Tribe's financial commitments. Such actions have included Tribal members selling off their own personal property to meet these basic governmental commitments, which include monthly utilities, phone bills, internet service, fees for the official Tribal website, office supplies (such as postage, printer ink, copy paper, envelopes), maintenance of the Tribal property, and etc. Moreover, the Tribe has been force to cease cell phone services for Tribal governmental employees due to lack of

funding, leaving them vulnerable during travel and transportation in the single, malfunctioning Tribal governmental vehicle.

8. The Tribe further relies on these federal and state monies to compensate its governmental employees – not only administrative, but also employees such as social workers who work with State courts, adoption agencies and child protection services. The withholding of these funds has forced the Tribe to layoff or terminate previously paid positions of Tribal employees. Many Tribal members who have lost their jobs cannot pay their bills or meet their own basic needs, compelling them to resort to selling off their personal property just to try to avoid foreclosure of their homes. Those Tribal members who have already lost their homes to foreclosure have been compelled to reside at the Tribal governmental offices.

9. The Tribe further relies on these federal and state funds to provide much-needed health care to its members. The closest Indian Health Clinic is forty-five (45) miles away from the Tribe's governmental offices. The withholding of these funds has forced the Tribe to cease providing any and all health care benefits to its citizens. As a result, Tribal citizens have been forced to go without proper health care due to the lack of funds to meet their needs or provide proper services. Moreover, Tribal citizens with debilitating physical issues have had to forego surgery, medications, and other basic medical needs as the Tribe continues its fight for funding. I personally have gone for years without various medications for numerous ailments including but not limited to a severe thyroid condition and have not been able to undergo a needed knee surgery due to inadequate funding to pay for the procedure and the lack of health insurance. Another Tribal member has been suffering constant jaw pain due to the fact that the Tribe cannot assist her with funding for a basic and necessary dental surgery.

10. The Tribe further relies on these federal and state monies to be able to retain consultants to assist the Tribe in economic development in order to create its *own* economic opportunities such that the vast reliance on state monies and federal grant funds can be significantly reduced. The Tribe is currently unable to engage in any meaningful economic

development as a direct result of this pending litigation, which has now due to a recent bureaucratic error stripped the Tribe's identity on the federal government's Tribal Leader's Directory, leaving the Tribe incapable of furthering its Tribal self-determination. (*See Tribal Leader's Directory*, attached hereto as Exhibit B).

11. The Tribe further relies on these federal and state monies to send Tribal employees to seminars, conferences and meetings presented by governmental agencies such as the Bureau of Indian Affairs, Bureau of Land Management, Federal Emergency Management Agency, Environmental Protection Agency, the Department of Justice, and numerous others, pertaining to important tribal issues that directly impact the Tribe. The Tribe has been unable to attend numerous such seminars – and to have its voice heard – as it once again lacks the resources to do so.

12. The Tribe further relies on these federal and state monies to pay a Cultural Resource Consultant to represent the Tribe and provide guidance to it in its dealings with numerous federal agencies and rights under federal laws concerning its coveted resources, including the Native American Graves Protection and Repatriation Act, cultural resource preservation issues, Bureau of Land Management, National Park Service, U.S. Military Departments, Museums, Water Rights, United States Department of Agriculture, United States Forest Service, and a host of others. Currently, the Tribe does not have this vital representative, as it simply cannot afford to pay for such representation.

13. The Tribe also relies upon these federal and state monies to hire a consultant to assist it in preserving the Miwok language and cultural traditions – something of utmost importance to the Tribe. The Tribe currently does not have the resources to pay for such a consultant.

14. I am aware of numerous Tribal members who have experienced and continue to experience severe emotional and mental distress, anger and depression throughout this ordeal – mental health issues for which they cannot afford treatment. This has had a rippling effect and

has harmed these members not only physically and mentally, but spiritually as well, by taking away their hope.

15. On a personal level, I have suffered hardship as follows: As Chairperson of the Tribe, it is my signature that is needed on the Tribal credit card and, since the Tribe cannot pay its debts, I am personally accountable for them. This has resulted in a negative impact on my personal credit rating, as I have now maximized all of my available personal line of credit. I also have exhausted all of my unemployment benefits and personal savings in enabling the Tribe to be able to continue running on a daily basis.

16. Simply put, the Tribe cannot continue to operate without the requisite federal and state funding. As such, I, as Chairperson of the Tribe, implore this honorable Court to consider the Tribe's Motion to Dismiss on an expedited basis, or at the earliest possible date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 3 day of July, 2013.

By: *Silvia Burley, Chairperson*
Silvia Burley, Chairperson

EXHIBIT A

Doc #: 2013-082984
06/24/2013 02:15:32 PM
Page 1 of 4 Fee: \$26.00
Kenneth W. Blakemore
San Joaquin County Recorder
Paid By: SERVICELINK IRVINE

RECORDING REQUESTED BY

Meridian Foreclosure Service

AND WHEN RECORDED MAIL TO

Meridian Foreclosure Service
8485 W. Sunset Rd. Suite 205
Las Vegas, NV 89113
(702) 586-4500
(702) 586-4505 (Fax)

Space above this line for recorder's use

APN: 086-640-28 Trustee Sale No. 27125CA Title Order No. 1459667

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

ATTENTION RECORDER: THE FOLLOWING REFERENCE TO AN ATTACHED SUMMARY IS APPLICABLE TO THE NOTICE PROVIDED TO THE TRUSTOR ONLY

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED

注：本文件包含一个信息摘要

참고사항: 본 첨부 문서에 정보 요약서가 있습니다

NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND
IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION,**

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is **\$411,659.69** as of **06/21/13** and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.



Trustee Sale No. 27125CA Title Order No. 1459667

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the above paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of property by paying the entire amount demanded by your creditor.

To find out the amount you must pay or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

**Deutsche Bank National Trust Company, as Trustee of the IndyMac INDA Mortgage Loan Trust
2007-AR3, Mortgage Pass-Through Certificates, Series 2007-AR3 under the Pooling and
Servicing Agreement dated May 1, 2007
C/O Meridian Foreclosure Service
8485 W. Sunset Rd. Suite 205
Las Vegas, NV 89113
TEL: (702) 586-4500**

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE
PROMPT ACTION.**

Trustee Sale No. 27125CA Title Order No. 1459667

NOTICE IS FURTHER GIVEN that the beneficial interest under said Deed of Trust and the obligations secured thereby, including the note(s) for the sum of **\$1,000,000.00**, are presently held by or on behalf of the beneficiary; and that a breach of, and default in, the obligations for which said Deed of Trust is security has occurred in that the payment has not been made of:

THE INSTALLMENT OF PRINCIPAL AND/OR INTEREST WHICH BECAME DUE ON 05/01/2008 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL AND/OR INTEREST, TOGETHER WITH LATE CHARGES, IMPOUNDS, INSURANCE PREMIUMS AND/OR OTHER ADVANCES, TAXES, DELINQUENT PAYMENTS ON SENIOR LIENS, ASSESSMENTS, ATTORNEY'S FEES AND COURT COSTS ARISING FROM THE BENEFICIARY'S PROTECTION OF ITS SECURITY, AND ANY OTHER FEES AND COSTS PERMITTED UNDER THE DEED OF TRUST, PROMISSORY NOTE, AND RELATED DOCUMENTS AND ALL OF WHICH MUST BE CURED AS A CONDITION OF REINSTATEMENT.

That by reason thereof, the present Beneficiary under such Deed of Trust, or its authorized agent, has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Where required by law, a declaration pursuant to California Civil Code Section 2923.5 or 2923.55 is attached to this notice.

DATE: 06/21/13

MERIDIAN FORECLOSURE SERVICE f/k/a MTDS, INC., A CALIFORNIA CORPORATION DBA MERIDIAN TRUST DEED SERVICE, AS TRUSTEE


By: **RANDELL DENNEY, FORECLOSURE ASSISTANT**

MERIDIAN FORECLOSURE SERVICE IS ASSISTING THE BENEFICIARY TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.



EXHIBIT B

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

TRIBAL LEADERS DIRECTORY



The printing date appears on the lower left-hand corner of the pages in section 2.

A copy of the Microsoft Excel database file or Adobe Acrobat file can be obtained by regular mail or e-mail. Specify the file format you need and provide a mailing address to Kara John.

Phone: (202) 513-7640 Fax: (202) 208-5113
E-mail: kara.john@BIA.gov

This directory is posted on the Bureau of Indian Affairs website. Go to the internet address below, under "Frequently Requested Documents."

<http://www.bia.gov/DocumentLibrary/index.htm>

Tribal Leaders

Pacific Region

BIA Agency: **Central California Agency**
Self-Gov. Compact:
Term of Office - Exp Date:

Rhonda Morningstar Pope , Chairperson
Buena Vista Rancheria of Me-wuk Indians
1418 20th Street Suite 200,
Sacramento, CA 95811

Phone No: **(916) 491-0011** Fax No **(916) 491-0012**
E-mail: **Not Available**
Web Page:<http://www.buenavistatribe.com>

Express Mail/Package Delivery Services: FedEx - UPS - USPS
1418 20th Street Suite 200,
Sacramento, CA 95811

BIA Agency: **Central California Agency**
Self-Gov. Compact:
Term of Office - Exp Date:

,
California Valley Miwok Tribe

,
,
Phone No: Fax No
E-mail:
Web Page:

Express Mail/Package Delivery Services: FedEx - UPS - USPS
,
,

BIA Agency: **Central California Agency**
Self-Gov. Compact:
Term of Office - Exp Date:

Daniel Gomez , Chairman
Cachil DeHe Band of Wintun Indians (Colusa Rancheria)
3730 Highway 45,
Colusa, CA 95932

Phone No: **(530) 458-8231** Fax No **(530) 458-4186**
E-mail: cicc@colusa-nsn.gov
Web Page:<http://www.colusa-nsn.gov>

Express Mail/Package Delivery Services: FedEx - UPS - USPS
3730 Highway 45,
Colusa, CA 95932

BIA Agency: **Central California Agency**
Self-Gov. Compact:
Term of Office - Exp Date:

Lloyd Mathieson , Chairman
Chicken Ranch Rancheria of Me-wuk Indians
P.O. Box 1159,
Jamestown, CA 95327

Phone No: **(209) 984-4806** Fax No **(209) 984-5606**
E-mail: chixmch@mlode.com
Web Page:

Express Mail/Package Delivery Services: FedEx - UPS - USPS
16955 Nelson Road,
Jamestown, CA 95327

BIA Agency: **Central California Agency**
Self-Gov. Compact:
Term of Office - Exp Date:

Cristy Nelson , Chairperson
Cahto Indian Tribe of Laytonville Rancheria
P.O. Box 1239,
Laytonville, CA 95454

Phone No: **(707) 984-6197** Fax No **(707) 984-6201**
E-mail: **Not Available**
Web Page:<http://www.cahto.org>

Express Mail/Package Delivery Services: FedEx - UPS - USPS
300 Cahto Drive,
Laytonville, CA 95454

BIA Agency: **Central California Agency**
Self-Gov. Compact:
Term of Office - Exp Date:

Patricia Hermosillo , Chairperson
Cloverdale Rancheria of Pomo Indians
555 S. Cloverdale Blvd.,
Cloverdale, CA 95425

Phone No: **(707) 894-5775** Fax No **(707) 894-5727**
E-mail: **Not Available**
Web Page:<http://www.cloverdalerancheria.com>

Express Mail/Package Delivery Services: FedEx - UPS - USPS
555 S. Cloverdale Blvd.,
Cloverdale, CA 95425