Case No. D064271

IN THE CALIFORNIA COURT OF APPEAL
FOURTH APPELATE DISTRICT, DIVISION ONE

CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff/Appellant,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant/Respondent.

San Diego County Superior Court Case No. 37-2008-00075326-CU-CO-CTL
Hon. Ronald L. Styn

APPELLANT'S OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Fourth APPELLATE DISTRICT, DIVISION One	Court of Appeal Case Number: D064271
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APPELLANT/PETITIONER: California Valley Miwok Tribe RESPONDENT/REAL PARTY IN INTEREST: CA Gambling Control Commission	FOR COURT USE ONLY Court of Appeal Fourth Dist. FILED AUG 02 2013 DEPUTY

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Date: August 1, 2013

Manuel Corrales, Jr.

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I.

INTRODUCTION

A. SUMMARY

This is an appeal from a summary judgment, and subsequent order denying a motion for new trial with respect to the summary judgment order, in favor of the Defendant CALIFORNIA GAMBLING CONTROL COMMISSION ("the Commission") on the legal issue of whether the Commission is legally justified in withholding from the Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Miwok Tribe" or

"the Tribe") tribal-state gaming compact Revenue Sharing Trust Fund ("RSTF") proceeds the Commission has already "paid out" but is withholding (and continues to "pay out" and withhold) from the Miwok Tribe, since 2005. After "paying out" these quarterly RSTF proceeds, the Commission has refused to turn them over to the Tribe. Instead, it places them in a separate, interest-bearing account under its exclusive control. During this "pay out" and withholding period, the Miwok Tribe has been comprised of, and is presently comprised of, five (5) enrolled members.

The Assistant Secretary of Interior ("ASI") of the U.S. Department of Interior ("DOI") recognized the Plaintiff's Tribal Council as having a government-to-government relationship with the federal government in an August 31, 2011 decision presently being challenged in federal court by a competing Tribal Faction whose leader is one of the five enrolled members. The federal district court recently granted summary judgment in favor of the competing Tribal Faction and remanded to the ASI for him to "reconsider" his August 31, 2011 decision, because he "assumed" certain factual issues rather than determined them factually. Indeed, although much of the decision is predicated on an existing Tribal leadership dispute, the court there did not have the benefit of the deposition transcript of the leader of the competing Tribal Faction taken in this case, wherein he admits resigning as Tribal Chairman, because it was not part of the administrative record. The federal district court's decision, however, is being challenged on appeal as erroneous as a matter of law.

After his August 31, 2011 decision, the ASI made multiple official statements (and continues to make these statements) in the annual Federal Register that the federal government has a government-to-government relationship with the Miwok Tribe. These statements are necessarily predicated on the fact that the federal government presently recognizes the Miwok Tribe's governing body, as described in the ASI's August 31, 2011 decision. Otherwise, there could be no government-to-government relationship. These statements have never been challenged, and stand uncontested, despite the pending federal litigation.

Moreover, prior to the ASI's August 31, 2011 decision, the DOI accepted a resolution passed by the Plaintiff's Tribal Council changing the name of the Tribe to its present name, and thereafter placed, and continues to place, the new name in the Federal Register, which has likewise never been challenged.

The RSTF money at issue has already been "paid out" to the Tribe consisting solely of the current five (5) enrolled members. Plaintiff contends that even if the ASI's decision is vacated and a new Tribal government is organized and recognized, and additional persons are later enrolled, the presently released and yet withheld RSTF payments will still only belong to the five (5) currently enrolled Tribal members. As a result, the trial court's order concluding the Commission is legally justified in continuing to withhold these released funds on the grounds that the ASI's decision can "potentially" be vacated is erroneous as a matter of law. Future Tribal members yet to be enrolled have no

retroactive claim to past RSTF payments already released to the Tribe for the benefit of its existing Tribal membership.

Moreover, based on undisputed facts, and solely for purposes of determining who is authorized to receive for the Miwok Tribe the subject RSTF proceeds already "paid out," the trial court erred in concluding that no person with such authority can exist because the federal government purportedly does not currently recognize the Plaintiff's governing body. The only relevant determinative issue in this State action is who is currently authorized to receive the already "paid out" RSTF money for the presently constituted Tribe, and nothing more. The trial court failed to independently determine this issue under California law and under the terms of the Compacts governing the Commission's duties, separate and apart from the pending federal litigation, as directed by this Court. Instead, it erroneously concluded that as long as the ASI's decision remains stayed and challenged in federal court, the Plaintiff cannot show it is "authorized" to receive the subject RSTF proceeds for the Tribe.

The end result is that none of the existing enrolled Tribal members gets any of these funds, and this unjust result will continue *ad infinitum* until and unless this Court makes a decision that allows these funds to be released as the law requires.

B. FACTUAL BACKGROUND

Plaintiff Miwok Tribe, a federally-recognized tribe, is a Non-Compact tribe under the California tribal-state gaming compacts. CT 7670. Compact tribes operate casinos and pay licensing fees to the Commission which the Commission receives in a Revenue Sharing

Trust Fund ("RSTF"). CT 7668. The Commission is then required to distribute those funds in quarterly payments to each Non-Compact tribe. CT 7668, 7817.

Under the terms of the Compacts, the Commission is to function solely as a depository and is further forbidden to exercise any discretion on the use or distribution of those payments. CT 7817 (§4.3.2.1 (6)).

Under the Compacts, a Non-Compact tribe eligible to receive RSTF payments must be a federally-recognized tribe and operate fewer than 350 gaming devices. CT 7816 (§ 4.3.2 (a)(1)). The Miwok Tribe has no casino and is on the Federal Register list of federally-recognized tribes. CT 0169, 7227 (2012), 9472 (2013).

Federal law requires that the DOI publish annually a list of all federally-recognized tribes. 25 U.S.C. §479a(1). Federal recognition is the process by which the federal government acknowledges a government-to-government relationship with a tribe. Once conferred, recognition entitles the tribe to exercise the powers of self-government, to control land held in trust for the tribe, and to apply for the many federal services that Congress has made available only to federally recognized tribes. CT 9472. Being federally-recognized is an acknowledgement by the DOI of tribal existence, and is thus a "prerequisite to the protection, services and benefits from the Federal Government available to Indian tribes." 25 C.F.R. §83.2.

Notably, the present federal litigation does not include a challenge of the Tribe's status as a federally-recognized tribe.

From July 2000 until August 2005, the Commission made quarterly RSTF payments directly to the Miwok Tribe in the midst of a

Tribal leadership dispute between Silvia Burley ("Burley" or "the Burley Faction") and Yakima Dixie ("Dixie" or "the Dixie Faction"). CT 7837-7847; 7674. Checks for these quarterly amounts were made out to the "California Valley Miwok Tribe," and were delivered to Silvia Burley, Chairperson of the Tribe. CT 7846. Dixie claimed as far back as 1999 that he, not Burley, is the Chairman of the Tribe, and that his 1999 resignation was forged, and thus he had never resigned as Chairman of the Tribe. CT 7903 (Para. 5 Dixie Decl.); CT 7886 (March 7, 2000 BIA Letter to Chairperson Burley). At the suggestion and supervision of the Bureau of Indian Affairs ("the BIA"), the Tribe's governing body was originally organized in 1998 as a Tribal Council with Dixie as the initial Chairperson. CT 7873, 7875; 7880-7882 (Resolution #GC 98-01). However, in 2012, Dixie ultimately admitted in sworn deposition testimony that he in fact resigned, and that his written resignation was not forged as previously claimed. CT 7090 (deposition testimony); 7114 (signed notice of resignation); 7115 (signed appointment of Burley as new Chairperson).

In May 2001, the Burley Faction passed a Tribal resolution, pursuant to the authority of the Tribal Council, to officially change the name of the Tribe from the "Sheep Ranch Rancheria of Me-Wuk Indians of California" to the "California Valley Miwok Tribe." CT 7892-7893. The BIA accepted this resolution, thus acknowledging the authority of the Tribal Council under the Burley Faction, and made the name change in the official Federal Register. CT 7896. The name change has appeared in the Federal Register each year thereafter. CT 9472. The Burley Faction also notified the Commission of this change, and the

Commission then began to make out RSTF checks to the "California Valley Miwok Tribe." CT 7899. The BIA's acceptance of the Tribal Council's resolution to change the Tribe's name, and thereafter publish that change each year in the Federal Register, are multiple acts of recognition by the BIA of the Tribal Council under the Burley Faction. The Commission did (and presently does) likewise by issuing checks to the new name of the Tribe, and thereafter paying out and depositing RSTF payments in a separate account in the same name thereby recognizing the same Tribal Council.

Neither the Dixie Faction nor anyone else has ever challenged the DOI's decision to accept the Tribal Council's resolution, passed by the Burley Faction, changing the name of the Tribe.

In October 2004, Dixie unsuccessfully sought a temporary restraining order ("TRO") against the Commission in the California State Superior Court to stop it from paying RSTF money to the Miwok Tribe in care of Burley. CT 7837. The Commission opposed Dixie's request and stated that it had a policy of paying RSTF proceeds to a Tribal representative recognized by the BIA, despite a tribal leadership dispute. CT 7844-7847. It stated that since the BIA treated Burley at various times as both the Tribal Chairperson and a "person of authority," it would continue to send the checks to Burley for the Miwok Tribe. CT 7846.

The Commission ultimately stopped distributing the RSTF payments to the Miwok Tribe in care of Burley in August of 2005, based on the BIA's refusal to enter into any further P.L. 638 federal contract funding with the Miwok Tribe. CT 0170; 7828; 0974; 0578-0579. The

BIA's decision was based on a dispute with the Burley Faction over the governing body of the Tribe and membership issues. CT 0574. Despite these disputes, the DOI continued each year to list the Tribe as the "California Valley Miwok Tribe" in the Federal Register, the name change the BIA accepted by the authority of the Tribal Council headed by the Burley Faction, and continued to publish a statement by the ASI that the federal government has a government-to-government relationship with the Miwok Tribe. CT 7226-7227; 9472.

The nature of the manner in which the Commission suspended RSTF payments is significant. Instead of not making any distribution payments at all, the Commission actually has "paid out" (and continues to "pay out") the quarterly payments to the Miwok Tribe, but places those funds in a separate bank account under its exclusive control for the benefit of the Miwok Tribe. The Commission admitted engaging in this practice in its brief on the prior appeal of this action, which this Court addressed in its unpublished decision. CT 7197.

In 2007, the Commission promised the Miwok Tribe that it would "immediately" release the RSTF money it is paying out and depositing into a separate account, once the BIA recognized the governing body of the Tribe and the tribal leadership is resolved. CT 7808 (2nd to last paragraph). This condition was later met in January 2011. CT 8159; 8162.

In the meantime, the Burley Faction administratively appealed the BIA's efforts to "reorganize" the Miwok Tribe's governing body under the Indian Reorganization Act of 1934 ("IRA") and the BIA's attempt to enroll other persons as Tribal members against the will of

the Tribe. CT 7788 (2nd paragraph). On December 22, 2010, the Assistant Secretary of Interior ("ASI"), Larry Echo Hawk, issued a decision recognizing the Tribal Council established in 1998 currently headed by the Burley Faction. CT 7792-7793. The decision recognized that the Miwok Tribe consists of only five (5) enrolled members, concluded that the Miwok Tribe is not required to "re-organize" its current governing body under the IRA in order to qualify for 638 federal contract funding or any federal benefits, and ordered the BIA to stop its efforts to expand the membership of the Tribe. CT 7791-7792.

As a result of the ASI's December 22, 2010 decision, the BIA sent two letters to the Burley Faction in January 2011, acknowledging the Miwok Tribe's recent election of officers in which Burley was re-elected Tribal Chairperson, and acknowledging Burley as the Tribal Chairperson and the Tribal Council under the Burley Faction as the governing body with whom the federal government has a government-to-government relationship. CT 8159-8162. Thereafter, the BIA once again entered into P.L. 638 contract funding with the Miwok Tribe through the Burley Faction. CT 9292-9296. At the same time, the Dixie Faction sought to "administratively appeal" these two BIA acknowledgement letters, even though they were not "decisions" subject to an administrative appeal. CT 7626 (paragraph 2); 9648. As a result, the BIA has to date never acted on Dixie's purported appeals. CT 7626 (paragraph 3).

Despite its earlier promises, the Commission failed and refused to release to the Miwok Tribe in care of Burley the accumulated quarterly RSTF payments already "paid out" and placed on deposit in a separate

bank account for the benefit of the Tribe. CT 7833; 7827. The Commission had promised to release these moneys once the BIA recognizes the governing body of the Tribe and the Tribal leadership dispute is resolved. CT 7833.

Based on the December 22, 2010 ASI decision, the trial court on March 11, 2011, granted Plaintiff Miwok Tribe's motion for judgment on the pleadings (CT 7214-7215) and, upon reconsideration, denied the Dixie Faction's motion for leave to intervene. CT 8185-8189. Both the Dixie Faction and the Commission opposed the motion. CT 2763. The order denying intervention stated that, for purposes of release of the RSTF payments, the "ongoing Tribal-leadership dispute" has been resolved, because of the December 22, 2010 decision, the subsequent Tribal election results re-electing Burley as the Tribal Chairperson, and the BIA's January 2011 acknowledgement letters. CT 8188-8189. The Dixie Faction never appealed this order, making it binding on them.

On April 1, 2011, the ASI withdrew his December 22, 2010 decision to allow further briefing on the matter (CT 7439), which on April 20, 2011 prompted the trial court here to stay entry of judgment on the order granting judgment on the pleadings, and to stay the "effect" of its order denying intervention. CT 8193-8195. Except for discovery, the trial court stayed the state court action pending the forth-coming ASI's reconsidered decision. CT 8195 (paragraph 5).

On August 31, 2011, after further briefing was completed, the ASI reaffirmed his December 22, 2010 decision. CT 7443-7451; 7444 (2nd to last paragraph). Unlike his earlier decision, the ASI's August 31, 2011 decision contained language that stayed "implementation" of the

decision pending resolution of the Dixie Faction's action in federal court challenging the decision. CT 7450 (2nd to last paragraph). On September 1, 2011, the parties to the federal action (which excluded the Burley Faction that had yet to intervene) signed a "Joint Status Report" which incorrectly characterized the phrase "implementation shall be stayed" in the ASI's decision as meaning that the decision "will have no force and effect." CT 9081-9084 (paragraph 13). There was no stipulation to that effect, and the federal court never accepted that characterization in any subsequent order or ruling. CT 7487-7488.

After the ASI's August 31, 2011 decision was given, Plaintiff Miwok Tribe repeatedly requested that the trial court enter judgment against the Commission. Those requests were denied. CT 5301, 5495, 5497, 6231, 6653, 6795.

Solely as a result of the "implementing" stay language contained in the ASI's August 31, 2011 decision, the BIA denied the Burley Faction's request to enter into further 638 federal contract funding. (RJN #1). There is no evidence that the BIA did so because it believed the ASI's decision is "of no force and effect."

The ASI' August 31, 2011 decision did not rescind or revoke the BIA's January 2011 letters acknowledging the Burley Faction as the authorized governing body of the Miwok Tribe.

Despite the stay language in the ASI's August 31, 2011 decision, in November 2011, ASI Larry Echo Hawk, the author of the August 31, 2011 decision, personally wrote a letter to Burley, addressing her as Chairperson of the California Valley Miwok Tribe, and engaged in a

government-to-government dialogue on an unrelated matter. CT 9283-9284.

On February 7, 2012, Dixie was deposed and he testified for the first time that he in fact resigned as Tribal Chairman, and that his resignation was not forged as he had previously claimed. CT 7066, 7090 (pp. 217-218). Based upon this testimony, Plaintiff Miwok Tribe requested that the trial court lift the stay and allow it to file a dispositive motion or otherwise go to trial. CT 6653. The trial court denied that request, but, after granting Plaintiff's petition for a writ of mandate, the Court of Appeal directed the trial court to do so. CT 6795; 6810. Thereafter, the trial court granted the Commission's motion for summary judgment. CT 9130-9134.

In every annually published Federal Register, the ASI makes an official statement concerning the listed federal-recognized tribes that includes a statement that the federal government has a government-to-government relationship with each listed tribe. In 2012 and 2013, the Federal Register published its list of federally-recognized tribes that again included the California Valley Miwok Tribe. CT 7227; 9276. Despite the stay language in the ASI's August 31, 2011 decision, the ASI officially stated in the 2012 and the 2013 Federal Registers that the Miwok Tribe still currently has a government-to-government relationship with the federal government. CT 7227; 9276. The tribal government referred to in these official statements can only mean the Tribal Council identified in the ASI's August 31, 2011 decision headed by the Burley Faction. There is no qualifying language in either of these two ASI statements in the Federal Register with respect to the

Miwok Tribe, as a result of the ASI's August 31, 2011 decision. These two official ASI statements also explain the meaning of the term "implementation shall be stayed" in the August 31, 2011 decision, and do not support the trial court's conclusion that the ASI's decision has "no force and effect" for purposes of recognizing the Burley Faction as the authorized representative of the Miwok Tribe who can receive the subject RSTF proceeds for the Tribe.

II.

STATEMENT OF THE CASE

The Tribe's First Amended Complaint ("FAC") seeks declaratory and injunctive relief, and a writ of mandate, directing the Commission to release the subject "paid out" and withheld RSTF proceeds. CT 0167. The FAC alleges that Gov. Code §12012.90 requires the Commission to pay the Non-Compact tribes annually $1.1 million in quarterly payments "within 45 days of the end of each fiscal quarter." CT 0169. It also alleges that the Miwok Tribe is a Non-Compact tribe eligible to receive those payments on a quarterly basis, but that the Commission has wrongfully withheld those payments from the Tribe since August 2005. CT 0170; 0174. It also alleges that the Compacts forbid the Commission from exercising any discretion in the distribution of RSTF payments, but that it is to act solely as a depository. CT 0173. The FAC alleges that the Commission has wrongfully been withholding the Tribe's RSTF payments on grounds not authorized under the Compact, and that the Commission should be ordered and directed to release the RSTF proceeds it has already paid out and placed in a separate account

and resume quarterly payments directly to the Miwok Tribe in care of its authorized leader, Silvia Burley. CT 0174-0175.

Pending the prosecution of this action, the ASI issued a decision on December 22, 2010 stating that the Miwok Tribe has since 1998 been functioning under a Tribal Council form of government, that it has only five (5) enrolled members, and that the BIA was forbidden to try and expand its membership against the Tribe's will and force the Tribe to re-organize its governing body under an IRA government. CT 7384-7389. The ASI stated that it recognized the Miwok Tribe's current governing body under its Tribal Council as the governing body with which the federal government has a government-to-government relationship. The decision had the effect of recognizing the Burley Faction over the Dixie Faction.

Based on this decision, the BIA sent two letters to Burley in January 2011 acknowledging the Tribe's recent election results re-electing her as the Chairperson of the Tribe, and acknowledging the Tribal Council under her leadership as the governing body with whom the federal government has a government-to-government relationship. CT 8159; 8162. Based on this decision, and the two BIA acknowledgement letters, the trial court in this case granted judgment on the pleadings against the Commission and denied the Dixie Faction intervention. CT 7214-7215; 8185-8189. The Dixie Faction never appealed the order denying them intervention, and the order became binding on them in this action.

Prior to the trial court actually entering judgment, the ASI, on April 1, 2011, withdrew his December 22, 2010 decision and asked for

further briefing. CT 7439. This prompted the trial court to hold off entering judgment and to stay the "effect" of the order denying intervention, and to stay the proceedings except for discovery, pending the reconsidered decision from the ASI. CT 8193-8195.

On August 31, 2011, the ASI issued his reconsidered decision, which reaffirmed his December 22, 2010 decision. CT 7443-7451. However, he "stayed implementation" of his decision pending resolution of the pending federal court action brought by the Dixie Faction challenging his decision. CT 7450. As a result of the stay language in the ASI's decision, the trial court continued to stay the state court action with respect to the RSTF proceeds being withheld from the Miwok Tribe. CT 4595.

During discovery in the state court action, Dixie admitted in his deposition that he had resigned in 1999 from the Tribe after all, and that his signature on a document reflecting his resignation was not forged as he had previously claimed for many years. CT 7066, 7090 (pp. 217-218). He confirmed his signature appeared on documents approving the election of Burley as the new Tribal Chairperson. Despite this development, the trial court still refused to lift its stay to allow dispositive motions to be filed and decided. CT 6795. Thereafter, the Miwok Tribe sought and obtained a writ of mandate directing the trial court to lift its stay and allow dispositive motions to be filed, and, if necessary, allow the case to proceed to trial. CT 6810. The trial then granted summary judgment in favor of the Commission, concluding that as long as Dixie's federal action challenging the ASI's decision remains pending, and the ASI's decision remains "stayed", the "Plaintiff cannot

establish that it is the recognized tribe and entitled to receive RSTF monies." CT 9130-9134.

Plaintiff timely appealed.

III.

STATEMENT OF APPEALABILITY

This appeal is taken from a final judgment that resolves all of the issues between the parties. CCP §904.1(a)(1).

IV.

SCOPE OF REVIEW

Review of the subject summary judgment is subject to de novo review, for the following reasons.

Matters involving pure questions of law based on undisputed facts are subject to *independent* ("de novo") review on appeal. To this end, the appellate court gives no deference to the trial court's ruling or the reasons for its ruling, but instead decides the matter anew. Ghirardo v. Antonioli (1994) 8 Cal.4th 791, 799. This de novo appellate standard of review applies to review of the grant or denial of summary judgment. Weiner v. Southcoast Childcare Ctrs., Inc. (2004) 32 Cal.4th 1138, 1142. In reviewing a summary judgment, the appellate court *independently* determines the construction and effect of the facts presented to the trial court *as a matter of law*. Kolodge v. Boyd (2001) 88 CA4th 349, 355-356.

Likewise, the review of a summary judgment involving the interpretation of a written contract, the appellate court independently interprets the contract, and is not bound by the trial court's interpretation, so long as there is *no* conflicting extrinsic evidence or the

conflicting extrinsic evidence was of a written nature only. Milazo v. Gulf Ins. Co. (1990) 224 CA3d 1528, 1534. Here, the trial court's interpretation of the language of the Compacts, which forms the basis of the Commission's duties to distribute RSTF payments, is subject to this *de novo* standard of review.

In addition, the *application of law* to *undisputed facts* is subject to the appellate court's independent review. Crocker Nat'l Bank v. City & County of San Francisco (1989) 49 Cal.3d 881, 888. Here, the trial court's summary judgment ruling is based on its interpretation of the legal duties of the Commission under the Government Code and the Compacts in connection with the distribution of RSTF money to Plaintiff as a Non-Compact tribe, and the application of undisputed facts giving rise to those duties. Indeed, the appellate court *independently* determines the proper interpretation of a statute, and is not bound by the evidence on the question presented in the trial court or the trial court's interpretation. People ex re. Lockyer v. Shamrock Foods Co. (2000) 24 Cal.4th 415, 432.

The appellate court, like the trial court, strictly construes the moving papers and liberally construes the opposing papers; the moving papers are viewed in the light most favorable to the *appellant* (the party against whom summary judgment was entered) and all doubts are resolved in favor of it *denial*. Wilson v. 21st Century Ins. Co. (2007) 42 Cal.4th 713, 717.

With respect to an order denying a motion for new trial following a summary judgment, review is likewise de novo, because of the rule that any determination *underlying* the order must be scrutinized according

to the test applicable to that determination. Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 859. Accordingly, because the summary judgment is subject to de novo review, the trial court's order denying Plaintiff's motion for new trial with respect to the summary judgment ruling is also subject to de novo review.

V.

LEGAL DISCUSSION

A. THE COMMISSION IS NOT LEGALLY JUSTIFIED IN WITHHOLDING THE SUBJECT RSTF PROCEEDS BASED ON THE "POTENTIAL" THAT THE DIXIE FACTION MAY PREVAIL IN THE PENDING FEDERAL ACTION, SINCE THE PROCEEDS HAVE ALREADY BEEN "PAID OUT" TO THE TRIBE CONSISTING OF FIVE (5) ENROLLED MEMBERS, AND FUTURE ENROLLED MEMBERS CAN HAVE NO RETROACTIVE CLAIM TO THOSE PROCEEDS

The Commission argues, and the trial court concluded, that it is legally justified in withholding the subject RSTF money from the Miwok Tribe, because of the "potential" that the Dixie Faction may prevail in the pending federal action. CT 9126. This contention is without merit, and ignores the nature of the withheld funds and the lack of any right to any part of those proceeds by any future enrolled Tribal members, should the ASI's decision be vacated and the Tribe is forced to enroll additional members.

To understand why the trial court erred in making this conclusion, a description of the nature of the withheld RSTF payments is critical. The subject RSTF proceeds have actually been "paid out" and have been placed in a separate interest-bearing account for the

benefit of the Miwok Tribe. The Commission has been doing this since August 2005.

Indeed, the Commission has judicially admitted having paid out, i.e., distributed, these proceeds for the benefit of the Tribe in its Respondent Brief in the previous appeal in this case. The Commission thus stated:

> [After December 2005] the Commission began depositing the Miwok RSTF funds into a separate interest-bearing account, pending the federal government's resolution of the questions surrounding the Miwok's status and the identity of its membership, government and leadership. The Commission, thus, has distributed RSTF funds from the RSTF into an account of which the Miwok is a beneficiary. The Miwok's right to utilization of those funds, however, is dependent upon the federal government's exercise of its trust responsibility to determine who is eligible to withdraw those funds on the Miwok's behalf. (Emphasis added).

(Respondent's Brief, CVMT v. CGCC, Case No. D054912, page 9, 10/20/2009). The Commission further stated in its brief:

> In accord with its obligation to disburse RSTF funds and its trust obligation to assure the money goes to the correct recipient, the Commission has disbursed the monies due the Miwok into a special account to be accessed by the Miwok, pending a federal government determination as to who is entitled to withdraw the money on the Miwok's behalf. (Emphasis added).

(Respondent's Brief, CVMT v. CGCC, Case No. D054912, page 35, 10/20/2009; see also page 37 ["...the Commission has set up a separate interest bearing account in which it has deposited the Miwok RSTF distributions:], and page 41 ["...the Commission has approved the disbursement of RSTF funds to the Miwok pending satisfactory

resolution of the tribe's internal disputes"]). (The Commission refers to this practice as "allocating" after distributions are made. CT 7850).

This Court acknowledged these statements in its 2010 decision. CT 7197. (See page 23).

A judicial admission in a pleading or brief is entirely different from an evidentiary admission. It is "not merely evidence of fact; it is a conclusive concession of the truth of a matter and has the effect of removing it from the issues....[I]t may ...be relied upon and treated in argument as part of the case." Witkin, California Evidence, 4th ed., 2000, §97, page 799 (Emphasis added); Kirby v. Albert D.Seeno Const. Co. (1992) 11 CA 4th 1059, 1066, fn. 4. Indeed, this Court specifically held that statements made in appellate briefs constitute judicial admissions and are binding on the party asserting them. Electric Supplies Distrib. Co. v. Imperial Hot Min. Spa (4th Dist., Div. One 1981) 122 CA3d 131, 134 [Froehlich]; see also Brandwein v. Butler (4th Dist., Div. One 2013) D059413 [Cal. App. 8-23-2013] [O'Rourke], 43, fn. 19 (citing Electric Supplies Distrib. Co. v. Imperial Hot Spa, supra, and concluding that appellant's statements in his briefs on appeal are binding admissions).

It is undisputed that these distribution payments were made to the Miwok Tribe that, during this period of time, comprised of five (5) enrolled members. These five enrolled members are: (1) Yakima Dixie; (2) Silvia Burley; (3) Rashel Reznor; (4) Anjelica Paulk; and (5) Tristian Wallace. Accordingly, these five enrolled members, and these five enrolled members alone, have a vested interest and an exclusive claim to these "paid out" and separately deposited RSTF proceeds. Each and

every time the Commission distributed the RSTF quarterly payments "to the Miwok Tribe," as it admits doing, the Tribe constructively received these payments for its existing enrolled members, and thus each of these five enrolled members acquired a vested interest in those proceeds. Indeed, the Commission specifically states that the Miwok Tribe is the beneficiary of these deposited funds. (Respondent's Brief, page 9, 10/20/2009). Currently, these funds amount to over $10 million.

Accordingly, should the Dixie Faction prevail in the pending federal action and the ASI's decision is vacated and the Miwok Tribe is required to enroll more members, those future newly enrolled members would have no claim to the already paid out RSTF money presently on deposit in this special interest-bearing account. This is because they were not enrolled members at the time these RSTF proceeds were distributed. Once they become enrolled members, if at all, their right to share in RSTF distribution payments would not and could not be retroactive. They would only be entitled to future distribution payments, whether those payments are made as the Commission is making them now or are made directly to the Tribe in care of its authorized Tribal leader.

Accordingly, the trial court erred in concluding the Commission is justified in withholding the subject RSTF payments on the grounds that the ASI's decision may "potentially" be vacated. The trial court overlooked the fact that the subject RSTF proceeds have already been distributed to the Miwok Tribe composed of only five enrolled members and placed in a special account with the Tribe as a beneficiary, giving these five enrolled members exclusive rights to those proceeds, despite

the "potential" that the Tribe may be forced to add new members in the future should the Dixie Faction prevail in the federal action. These five enrolled members are thus entitled to the presently withheld RSTF money now, and as long as the Commission continues its practice of paying out these funds the way it is currently doing, these five enrolled members will continue to constructively receive them each and every time they are distributed. Waiting until the Dixie Faction's federal litigation concludes would serve no purpose other than to prejudice the rights of the presently five enrolled Tribal members, which includes Dixie.

The only question then is who is "authorized" to receive these funds for the Miwok Tribe. For the reasons set forth herein, that person can only be Burley.

B. THE COMMISSION IS NOT JUSTIFIED IN WITHHOLDING THE "PAID OUT" RSTF PROCEEDS BECAUSE THE BIA HAS NOT RENEWED WITH THE TRIBE P.L. 638 FEDERAL CONTRACT FUNDING, SINCE THE NATURE OF THE TWO SOURCES OF FUNDING ARE DIFFERENT, AND THE COMPACTS DO NOT CONDITION PAYMENT ON RECEIPT OF FEDERAL CONTRACT FUNDING

The Commission contends that since the BIA has chosen not to enter into further 638 federal contract funding with the Miwok Tribe, it, too, must withhold RSTF payments from the Tribe, because the BIA's actions in contracting with an Indian tribe for federal funds is an agency action that identifies an authorized tribal representative. CT 7828; 7337-7338. Thus, the Commission asserts that when the BIA "suspended" federal contract funding from the Miwok Tribe, it was, in

effect a manifestation that the BIA does not recognize any representative or governing body of the Tribe. CT 7337. This contention is without merit.

First of all, in light of the argument expressed above, whether the BIA has or has not renewed federal contract funding with the Miwok Tribe is irrelevant, since the subject RSTF proceeds have already been distributed to the Tribe comprised of five enrolled members.

Second, the process of entering into 638 federal contract funding with an Indian tribe is not a proceeding that determines whether the tribe requesting federal contract funds has a recognized governing body or authorized leader.

It is undisputed that the BIA has previously entered into 638 federal contract funding with the Miwok Tribe under the leadership of the Burley Faction prior to August 2005, and resumed that funding for a period of time in 2011 after the ASI's December 2010 decision. CT 0316; 9292-9296. But the reasons for denying federal contract funding to an Indian tribe has nothing to do with the limited reasons the Commission is permitted to give, if at all, for not distributing RSTF payments to a Non-Compact tribe.

The Commission "distributes", not awards, RSTF payments to Non-Compact tribes. CT 7850. They are licensing fees (CT 7850, 7861) paid by Compact tribes which the State of California has agreed to distribute to Non-Compact tribes through the Commission who serves solely as the depository for those distribution payments. The Commission has no discretion to make any decisions on whether to distribute these RSTF payments. CT 7817. As long as a tribe is

federally-recognized, is located in California and operates less than 350 gambling devices, it is qualified as a Non-Compact tribe to receive these payments. CT 7816-7817. Non-Compact tribes enter into no contracts with the State of California or the Commission for receipt of these proceeds.

In contrast, P.L. 638 federal contracts are awarded to Indian tribes under the Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA" or "the Act"), 25 U.S.C. §450, et seq., which allow tribes to take control of federal programs and schools for Indians. These contracts are popularly known as "638 contracts" after the original public law number. Pub. L. No. 93-638, 88 Stat. 2203 (1975). Under the ISDEAA, tribes and tribal organizations may enter into contracts with the federal government to take over administration of programs formerly administered by the federal government on their behalf. 25 U.S.C. §450f(a)(1). The DOI may only deny a tribal request to enter into a self-determination contract if the service to the Indian beneficiaries will not be satisfactory, the contract will jeopardize the trust resources of the tribe, the tribe cannot fulfill the contract, the proposed cost is more than that permitted under the Act (i.e., "the amount of funds proposed under the contract is in excess of the applicable funding level for the contract"), or the activity is outside the scope of the Act "because the proposal includes activities that cannot lawfully be carried out by the contractor." 25 U.S.C. §450f(a)(2). See Los Coyotes Band of Chuilla Cupeno Indians v. Jewell (formerly Salazar) (9th Cir. 2013) 729 F.3rd 1025; Hopland Band of Pomo Indians v. Norton (N.D. Cal. 2004) 324 F.Supp.2d 1067 (rejecting multiple

reasons for refusing to contract regarding law enforcement services). An even more stringent standard applies when the BIA refuses to renew existing contracts. 25 C.F.R. §§900.32-33 (providing criteria for reviewing proposals for renewed or successor contracts). The "applicable funding level" is the amount that the BIA would have spent on the program if it did not enter the contract with the tribe. 25 U.S.C. §450j-1(a). However, none of these reasons for denying federal contract funding apply to RSTF payments under the Compacts.

In addition, the ISDEAA requires that the contract provide services in a "fair and uniform" manner, and that the contracting tribe perform significant accounting and auditing. 25 U.S.C. §450c. In contrast, RSTF payments are not conditioned on Non-Compact tribes providing services to their enrolled members in a "fair and uniform manner," or in any manner at all, and the Compacts do not require Non-Compact tribes to give an account to the Commission or submit to an audit of RSTF payments disbursed to them.

Clearly, the reasons for denying 638 federal contract funds differ from the limited reasons a Non-Compact tribe may not qualify for RSTF payments. As a result, the Commission is not legally justified in withholding RSTF payments from a Non-Compact tribe who may have been denied 638 federal contract funding. Nothing in the Compacts conditions RSTF payments to Non-Compact tribes on whether the Non-Compact tribe recipient is receiving 638 federal contract funding.

Moreover, the undisputed facts establish that the BIA has presently declined to enter into 638 federal contract funding with the

Miwok Tribe solely because of the stay language in the ASI's August 31, 2011 decision. (RJN #1).

C. THE TRIAL COURT WAS PRESENTED WITH SUFFICIENT UNDISPUTED FACTS FOR IT TO CONCLUDE INDEPENDENTLY THAT BURLEY, NOT DIXIE, IS THE CURRENT AUTHORIZED TRIBAL REPRESENTATIVE SOLELY FOR PURPOSES OF RECEIVING RSTF PAYMENTS FOR THE TRIBE

As stated, it is undisputed that the Commission has already distributed the subject RSTF money to the Miwok Tribe composed of five (5) enrolled members, and has simply deposited those disbursements in a separate interest-bearing account with the Miwok Tribe as the beneficiary. Thus, the only question is who, on behalf of the Tribe, is authorized to receive those disbursed funds, so the money can be distributed to these five (5) enrolled members.

The Commission argues that it has a duty, but not a fiduciary one, to "take reasonable steps" to "ascertain the identity of representatives authorized by their respective tribes to receive and administer" RSTF payments. CT 7332; CT 7331-7332 (Commission not a true trustee). It claims, however, that it defers to the BIA for that determination and contends that the BIA has yet to "identify" the Miwok Tribe's authorized representative, in light of the Dixie Faction's pending challenge to the ASI's decision that has made that identity, and therefore it is reasonable for it to continue to withhold the subject RSTF payments from the Tribe. CT 7337. These contentions are without merit.

First of all, the Compact forbids the Commission to take these so-called "reasonable steps" it contends it must undertake to "identify" a Tribal representative who is authorized to both receive the funds and "administer" them for the Tribe. CT 7817. Its sole function is to be a depository and it shall not exercise any discretion with respect to the "use or disbursement" of those funds. CT 7817.

Moreover, the Commission does not need to rely on the BIA to determine for itself whether, for its own purposes, it has sufficient information for it to conclude that the Miwok Tribe has a current authorized representative to accept the RSTF payments for the Tribe. They are not federal funds. To defer to the BIA on the question of who the Tribal representative might be is to exercise discretion on the disbursement of RSTF payments, which the Commission is forbidden to do. The BIA will never authorize, and has never authorized, the disbursement or suspension of RSTF payments from the California State Treasury. Indeed Plaintiff's status as a Non-Compact tribe can never be altered, changed or affected by the BIA, DOI or any federal court.

The Commission and the trial court both refused to acknowledge that, under the unique circumstances of this case, Indian law dictates who the authorized Tribal representative should be, not for purposes of deciding the issues in the pending federal action, but solely for purposes of determining who is authorized to receive California State RSTF payments already released for the Tribe. Under the circumstances, the identity of a Tribal representative for RSTF distribution purposes

should be a ministerial act (i.e., no exercise of discretion) in line with accepted principles of Indian law.

1. Indian law, not the pending federal litigation, dictates whom the Commission should look to as authorized to receive the RSTF payments.

The case of Timbisha Shoshone Tribe v. Salazar (D.C. Cir. 2012) 678 F.3d 935, ignored by the Commission and the trial court, is dispositive on this critical issue. There, the Timbisha Shoshone Tribe was embroiled in an internal leadership dispute for many years, and the BIA did not recognize any of the two factions (the Gholson faction and the Kennedy faction) claiming to be the Tribal Council. One of the tribal factions sued in federal court over distribution of $26 million of distribution funds being held in an interest-bearing trust account in the U.S. Treasury, which had been awarded the Tribe in the early 1960's as a result of a land acquisition claim. While the federal litigation was pending, the BIA recognized one of the two competing factions "for a limited time and for the limited purpose of conducting government-to-government relations necessary for holding a special election" to determine who constituted the Tribal Council. An election was then held and the Gholson faction defeated the Kennedy faction. ASI Larry Echo Hawk then recognized the Gholson faction in a letter, which the Court of Appeal deferred to as "who represents the tribe." 678 F.3d at 938.

The same thing in principle and effect took place in this case. Like what occurred in Timbisha, supra, both the Burley Faction and the Dixie Faction have been embroiled in a leadership dispute for several

years. Similarly, the January 12, 2011 BIA acknowledgment letter, together with the December 22, 2010 ASI decision, had the same effect as what the BIA did in Timbisha, supra, when it recognized one of the two factions for "a limited time and for the limited purpose of conducting government-to-government relations necessary for holding a special election to determine who constituted the Tribal Council." 678 F.3d at 937. In Timbisha, supra, it was a window of opportunity for the two factions to resolve their leadership dispute, because the BIA could not get involved in intra-tribal affairs. Similarly, here ASI Larry Echo Hawk also recognized the Burley Faction's Tribal Council in his December 22, 2010 decision. But it is the January 12, 2011 BIA acknowledgment letter that had the effect of recognizing the election results that re-elected Burley as the Tribal Chairperson. Dixie was given notice of that election but he chose not to participate.

It is important to note that the Burley Faction did not lose recognition when the ASI's August 31, 2011 decision was rendered. In fact, the ASI specifically affirmed his December 22, 2010 decision, contrary to the Commission's assertion that it was purportedly "retracted". CT 9561. A retraction is a withdrawal of a statement as untrue or unjustified (New Oxford American Dictionary, 2005, 2nd edition, page 1447), but there is no evidence that the December 22, 2010 was ever withdrawn as false. In reality, the ASI's August 31, 2011 decision expressly affirmed the December 22, 2010 decision recognizing the Tribal Council under Burley's leadership. (Page 2 of August 31, 2011 decision: "Obviously, the December 2010 decision, and today's reaffirmation of that decision...").

2. The January 2011 BIA Acknowledgment Letter is not "automatically stayed," and confirms Burley's authority.

In order to avoid the effectiveness of Timbisha, supra, the Commission asserts that the Dixie Faction "administratively appealed" the January 2011 BIA acknowledgment letter, pursuant to 25 C.F.R. §2.6(b), thereby rendering it "automatically stayed" and of no force and effect. CT 9564. This contention is without merit, largely because the "letter" is not a "decision" subject to an administrative appeal under the federal regulations.

The Commission relies on the declaration of Robert J. Uram, the Intervenors' attorney, in support of its claim that the January 12, 2011 BIA letter is "stayed." CT 9564. In his declaration, Mr. Uram states that on February 9, 2011 he purportedly filed an administrative appeal to the BIA's January 12, 2011 letter (He self-servingly calls it a "decision"), and that as of March 13, 2013, the BIA "has not responded to" the so-called appeal. CT 7626. Nothing more is said about the status of this bogus appeal, which by itself should raise questions about its merits.

25 C.F.R. §2.6(b), cited by the Commission (CT 9564), applies only to decisions rendered by officials of the BIA. ("Decisions made by officials of the Bureau of Indian Affairs shall be effective when the time for filing a notice of appeal has expired and no notice of appeal has been filed"). For example, 25 C.F.R. §2.3(a), entitled "Applicability," states:

> Except as provided in paragraph (b) of this section, this part applies to all appeals from decisions made by officials of the Bureau of Indian Affairs by persons who may be adversely affected by such decisions. (Emphasis added)

25 C.F.R. §2.7(c) further provides:

> [A]ll written decisions...shall include a statement that the decision may be appealed pursuant to this part, identify the official to who it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal.

The January 12, 2011 BIA letter does not contain the foregoing statement concerning appeal procedures and the time in which to appeal (CT 8159 8162), which is strong evidence that the letter was never intended in any way to be a "decision" subject to an administrative appeal under the Code of Federal Regulations. It also has no characteristics of a "decision" of a contested matter.

The lapse of time of over two (2) years without the BIA taking any action on the "appeal," (CT 7626) and the Intervenors' failure to request the BIA act on their "appeal," supports the conclusion that the purported "administrative appeal" is a sham. 25 C.F.R. §2.8 provides that if the BIA fails to take any action on an appeal, then the person filing the appeal may "appeal the inaction" by requesting in writing that the BIA take action on the appeal within ten (10) days. The BIA then must either decide the matter within ten (10) days or set a time to do so within sixty (60) days. 25 C.F.R. §2.8(a)(b). The absence of any of this information in Mr. Uram's declaration leads one to assume that the Intervenors have not asked the BIA to take action on their so-called appeal, presumably because they know that the January 12, 2011 BIA acknowledgment letter is not really a decision at all within the meaning

of 25 C.F.R. §§2.3 and 2.6 from which they can legitimately appeal. There can be no doubt that the reason the BIA has not taken any action on their purported administrative appeal is because the letter is not a decision.

Accordingly, the January 12, 2011 BIA acknowledgment letter is not stayed, or otherwise "retracted", and stands as undisputed evidence that the BIA currently recognizes the Burley Faction over the Dixie Faction, and based on that determination, the Commission has no legal justification to assert that the Miwok Tribe has no authorized representative to receive the subject RSTF proceeds for the Tribe.

3. **Dixie's 2012 deposition testimony whereby he admits having resigned as Tribal Chairman further confirms that Burley is the authorized Tribal representative for receipt of the RSTF proceeds.**

The Commission argues that the trial court has no jurisdiction to pass on the meaning of Dixie's 2012 deposition testimony in this case. CT 8833; 9565. However, Dixie testified in this case that he had resigned as Tribal Chairman in 1999, and that the signature on a resignation document he claimed all of these years was forged was not forged after all. CT 7066, 7090 (pp. 217-218)), 7114 (written resignation). The Commission, nevertheless, asserts that the trial court cannot determine the significance of that testimony in the context of this action, because to do so would be an act of adjudicating an intra-tribal leadership dispute, beyond the court's jurisdiction. CT 8833. The Commission ultimately concluded that Dixie's deposition testimony is irrelevant, because it is the BIA, not Dixie, that decides who is the

authorized representative for the Tribe. CT 9133. The trial court accepted each of these contentions to conclude that a Tribal leadership dispute still exists preventing the Commission from releasing the RSTF proceeds, which only the BIA can resolve. These contentions and conclusions are without merit.

First of all, Dixie tendered the Tribal leadership dispute in this action, not for purposes of deciding who should be the Tribal leader, but rather solely for purposes of determining who is authorized to receive the RSTF proceeds for the Tribe. CT 1396 (Dixie declaration: "The document allegedly showing my resignation as Tribal Chairman is a forgery."); CT 1960 (resignation forgery). CT 1970 (Complaint-In-Intervention: "The essence of this action is the tribal dispute regarding the leadership of the Tribe.") Burley tendered the same fundamental issue, i.e., who should be authorized to receive the RSTF money for the Tribe.

Accordingly, and strictly for purposes of determining who is authorized to receive the subject RSTF proceeds for the Tribe, Dixie's deposition testimony is highly relevant. Dixie cannot resign as Tribal Chairman then still claim to be authorized to receive the subject RSTF proceeds for the Tribe. Dixie's admission is an <u>additional factor</u> the trial court was to consider in determining <u>independently</u> whether the Commission has enough factual information for it to conclude that Burley is authorized to accept the RSTF proceeds for the Miwok Tribe.

Moreover, the Commission is incorrect in asserting, and the trial court erroneously concluded, that it is only the BIA alone that determines a tribal leadership dispute so as to justify withholding the

funds until the pending federal action is decided. CT 7827, 7833; 8213; 9133 (trial court). Unless surrendered by the tribe, or abrogated by Congress, tribes possess inherent and exclusive power over matters of internal governance, which the Commission has admitted includes tribal leadership disputes. Nero v. Cheokee Nation (10th Cir. 1989) 892 F.2d 1457, 1463; Goodface v. Grassrope (8th Cir. 1983) 708 F.2d 335, 339. CT 7808. However, the Commission goes too far in asserting that the BIA or the federal courts always decide such issues, an assertion the trial court erroneously adopted. CT 9133. In general, the federal government lacks authority to interfere in these matters. Wheeler v. U.S. Dep't of Interior (10th Cir. 1987) 811 F.2d 549, 550-552; cf. Kaw Nation v. Norton (D.C. Cir. 2005) 405 F.3d 1317, 1325 ("Typically, the courts are reluctant to resolve...intra-tribal disputes at all because their resolution is viewed as an intrusion into tribal sovereignty"). Thus, federal common law generally prohibits federal interference in tribal election disputes or tribal leadership disputes. Shortbull v. Looking Elk (8th Cir. 1982) 677 F.2d 645, 650. Unless Congress has indicated otherwise, federal courts lack jurisdiction to review tribal elections or tribal leadership disputes. Sac & Fox Tribe of the Mississippi in Iowa v. Bur. of Indian Affairs (8th Cir. 2006) 439 F.3d 832.

However, on occasion, and purely out of necessity, federal involvement in tribal leadership disputes does occur. Because the United States has a government-to-government relationship with Indian tribes, courts have recognized that the DOI occasionally is forced to identify which of two or more competing tribal political groups to recognize as the proper representative of the tribe in order to carry on

government relations with the tribe. Wheeler, supra at 552; Goodface, supra at 339 ("The BIA, in its responsibility for carrying on government-to-government relations with the tribe, is obligated to recognize and deal with some tribal governing body"). In these limited circumstances, and with the understanding that the dispute will never be resolved internally, the DOI's authority arises out of necessity, so that the DOI can administer federal programs on behalf of the Indian tribes. Wheeler, supra at 552 (observing that even in circumstances involving special reason for federal involvement in internal tribe affairs, federal officials should err in favor of tribal self-government and against federal interference).

In fact, this was the reason for the BIA's actions in Timbisha, supra. Out of necessity, it recognized one faction over the other for the limited purpose of holding an election to determine who constituted the Tribal Council, so that federal funds could be distributed. After the election, ASI Echo Hawk wrote a letter acknowledging the tribe "resolved its *own* leadership dispute through a valid *internal* tribal process," and then acknowledged the prevailing faction as the authorized governing body. 678 F.3d at 937-938. Similarly, as a result of the December 22, 2010 decision, the Tribe held an election and resolved its own Tribal leadership dispute, and then the BIA acknowledged by letter the re-election of Burley in January 2011. Because of these facts, the trial court was never in a position to have to decide the Tribal leadership dispute between Dixie and Burley. In accordance with federal Indian law, the Tribe resolved that issue itself *internally* at a time, as in Timbisha, supra, when the BIA recognized

the Burley Faction as the authorized tribal government. These undisputed facts are relevant for purposes of determining Burley's authority to receive the subject RSTF proceeds, notwithstanding Dixie's persistence in challenging the ASI's August 31, 2011 decision affirming the December 2010 decision. If there is any doubt about that authority, Dixie's recent deposition testimony admitting that he in fact resigned provides further confirmation.

4. The Assistant Secretary of Interior's official statements in the 2012 and 2013 Federal Registers further confirm that the federal government continues to recognize the Burley Faction led Tribal Council.

a. The August 10, 2012 Federal Register.

The August 10, 2012 Federal Register specifically acknowledges the Miwok Tribe as a federally-recognized tribe and contains an official statement from the then acting ASI, Michael Black, who said:

> "The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes..."
> (Emphasis added).

CT 7226.

This is an official government statement verifying that the Miwok Tribe has a government-to-government relationship with the United States. The significance of this statement cannot be overly stated. The fact that it came after the ASI's August 31, 2011 decision is equally significant. The United States cannot have a government-to-

government relationship with a federally-recognized tribe unless that tribe has a recognized governing body. At no time has the federal government taken the Miwok Tribe off of the list of federally-recognized tribes in the Federal Register or modified this statement with respect to the Miwok Tribe.

Moreover, the use of the word "powers" in this official statement references the Tribe's inherent power to establish its own form of government, thus confirming it has a recognized governing body by whatever government it chooses to have. Cohen's Handbook of Federal Indian Law, 2012 ed., §4.01[2][a], page 213 ("A quintessential attribute of sovereignty is the power to constitute and regulate its form of government. An Indian nation is free to maintain or establish its own form of government..."); see Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 62-63. In this case, the Miwok Tribe has chosen to operate under a General Council form of government. See Cohen's Handbook of Federal Indian Law, 2012 ed., §4.04[3][c][ii], page 261 ("Some tribal constitutions, particularly in the case of smaller tribes, also recognize an entity known as the general council, usually comprised of all eligible voters"). This power was manifested over the years when, for example, the Tribal General Council passed a resolution in 2000 changing the name of the Tribe to the California Valley Miwok Tribe, which the BIA accepted as an act done in furtherance of the Tribe's power of self-governance.

Significantly, the statement in the 2012 Federal Register that the Miwok Tribe has a government-to-government relationship with the United States was made well after the September 1, 2011 Joint Status

Report signed by the ASI's attorneys in the federal litigation. It trumps the trial court's erroneous conclusion that the ASI, through his attorney of record, purportedly "stipulated" that, because of the stay language, his decision would have "no force and effect" until the federal litigation concludes, thereby rendering the current acknowledgment of the Miwok Tribal Council under Burley's leadership of no effect. CT 9134.

In Timbisha, supra, it was presumed that ASI Larry Echo Hawk acted upon knowledge of material facts when wrote a letter acknowledging one tribal faction over the other. The court there stated:

> The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. Under that presumption, it will be taken that [officials have] acted upon knowledge of the material facts. (Emphasis added). (citing United States v. Chemical Found, Inc. (1926) 272 U.S. 1, 14-15).

Similarly, it is presumed that ASI Michael Black knew of the August 31, 2011 decision and the "stay of the implementation" language of that decision when he authored the foregoing statement for official publication in the Federal Register. Yet, despite this knowledge he acknowledged that the Miwok Tribe still currently has a government-to-government relationship with the United States, i.e., the federal government and the Miwok Tribe's government. By doing so, he acknowledged that the recognized Tribal government is the governing body identified in the August 31, 2011 decision. Thus, despite the stay of the "implementation" of the ASI decision, the Federal Register, an official document of the United States government, confirms that the

U.S. government currently recognizes the Tribal Council under Burley's leadership.

b. The May 6, 2013 Federal Register.

On May 6, 2013, another Federal Register was published, with an official statement from the now current ASI, Kevin Washburn, identifying the Miwok Tribe again as a federally-recognized tribe that has a government-to-government relationship with the United States. CT 9276. Again, by acknowledging the federal government currently has a government-to-government relationship with the Miwok Tribe, the ASI Kevin Washburn was also acknowledging the fact that the Miwok Tribe has a current, recognized governing body. It is inconceivable that the United States would acknowledge having a government-to-government relationship with an Indian tribe that had no governing body.

5. ASI Kevin Washburn's December 19, 2013 handwritten note to Chairman Burley

On December 19, 2013, ASI Kevin Washburn wrote Burley, addressing her as "Chairman" of the Miwok Tribe, and thanked her for her participation in the White House Tribal Nations Conference. (RJN #4).

6. The November 28, 2011 letter from Echo Hawk to Burley.

In addition, ASI Larry Echo Hawk wrote and signed a letter to Burley on November 28, 2011, after his August 31, 2011 decision, and after the September 1, 2011 Joint Status Report, addressing her as "Chairwoman, California Valley Miwok Tribe." CT 9283-9284.

7. The BIA's and the DOI's acceptance of the Burley Faction's resolution changing the name of the Tribe and taking action on it likewise confirms federal recognition of the Burley Faction's authority.

As stated, in May of 2001, the Burley Faction passed a Tribal resolution, pursuant to the authority of the Tribal Council established in 1998, from which Dixie now admits he resigned, to officially change the name of the Tribe to its current name: the "California Valley Miwok Tribe." CT 7892-7893. It is undisputed that the BIA and the DOI accepted this resolution and changed the name of the Tribe by placing the newly accepted name in the Federal Register. CT 7896. That new name has been published in the Federal Register each year since then, and continues to be published each year by the DOI. CT 7276. By doing so, the DOI has recognized, and continues to recognize, the Tribal Council under the Burley Faction as the authorized governing body for the Miwok Tribe, each and every time it publishes that new name. At no time has the Dixie Faction ever challenged the DOI's actions it that regard, or challenged the right of the Burley Faction to pass a resolution to change the name of the Tribe. Thus, the DOI's publication of the Tribe's new name in the Federal Register each year since 2001 is a repeated act of recognition of not only the Miwok Tribe itself as an existing tribe, but also the recognition of the authority of the Burley Faction to pass a resolution to change the name of the Tribe.

As stated, federal recognition is the process by which the federal government acknowledges a government-to-government relationship with a tribe, and is an acknowledgement by the DOI of tribal existence.

25 C.F.R. §83.2; see also Cohen's Handbook of Federal Indian Law, 2012 edition, page 133-134, § 3.02[3].

D. BECAUSE THE COMMISSION IS LEGALLY PROHIBITED FROM EXERCISING ANY DISCRETION ON THE USE AND DISTRIBUTION OF RSTF PAYMENTS, IT IS NOT ENTITLED TO "AGENCY DEFERENCE" FOR ITS ACTIONS IN WITHHOLDING THOSE FUNDS FROM THE TRIBE

The Commission concedes that the Compacts contain language expressly prohibiting it from exercising any discretion in the "use or distribution" of RSTF payments to Non-Compact tribes. CT 7332. However, it argues that it should be allowed to interpret that language to permit it to "take reasonable steps" to ensure that those payments go to authorized representatives of Non-Compact tribes "identified" by the BIA, including only those Non-Compact tribes with whom the BIA has entered into 638 federal contracts. CT 7332; 8212-8213. It further contends, and the trial court concluded, that its interpretation should be given considerable "agency deference," because it is purportedly charged with the enforcement of a statute. CT 7333. These contentions are without merit.

First of all, the Commission is not charged with enforcement of any statute relative to RSTF payments. The Commission has not cited any such statute or code, and none exists. Moreover, the Compacts are not statutes and the Commission does not enforce them. The only relevant statute is Gov. Code §12012.90(e) directing the Commission to "make quarterly [RSTF] payments...within 45 days of the end of each fiscal year," but the Commission is not charged with enforcing that statute either. Rather, it must comply with it. If it does not make

payments as required, a Non-Compact tribe has no other legal remedy available other than to seek a writ of mandate and injunctive and declaratory relief in court.

Secondly, since the Commission is prohibited from exercising any discretion on the "use and distribution" of RSTF payments, but is to act solely as a depository, there can be no agency deference. Agency deference is given to agencies who exercise discretion, and the Commission has none to be deferred to.

In short, because the Commission is prohibited from exercising any discretion relative to RSTF payments, and is not charged with the enforcement of any statute that requires it to disburse those funds, agency deference does not apply. Accordingly, it was error for the trial court to defer to the Commission's interpretation of the Compacts to conclude that it was justified in withholding RSTF payments from the Miwok Tribe.

E. THE TRIAL COURT'S FINAL, UNAPPEALED ORDER AGAINST THE DIXIE FACTION DENYING INTERVENTION BARS THEM FROM CLAIMING THAT DIXIE IS THE ONLY ONE AUTHORIZED TO RECEIVE THE SUBJECT RSTF PROCEEDS FOR THE MIWOK TRIBE

As further justification for withholding the RSTF proceeds, the Commission argues that it would be subject to multiple claims by Dixie and his faction if it were to release the funds to the Burley Faction. CT 4418. This contention is without merit, largely because the Dixie Faction, as rejected Intervenors in this action, failed to timely appeal the order denying them intervention, thus making it binding on them in the context of this litigation. The order denying them intervention was

specifically based on the ASI's December 22, 2010 decision and the BIA's January 12, 2011 acknowledgment letter recognizing the Burley Faction. CT 4414-4419.

The Notice of Ruling of the March 11, 2011 Minute Order denying the rejected Intervenors leave to intervene was mailed to all parties on March 14, 2011. CT 4428-4430. Pursuant to CCP Section 1008(a), the rejected Intervenors had ten (10) days in which to file a motion for reconsideration, i.e., until March 24, 2011. The 10-day deadline seeking reconsideration is not extended under CCP Section 1013 for service by mail. The rejected Intervenors filed a motion for reconsideration on April 1, 2011, eighteen (18) days from the March 14th, 2011 date of service of the Notice of Ruling, which was untimely at the outset. CT 8722. The trial court's April 20, 2011 order, staying the proceedings except for discovery, and providing that the rejected Intervenor's motion for reconsideration was "off calendar, without prejudice," was therefore meaningless.

The trial court's order denying intervention was an appealable order. Bowles v. Superior Court (1955) 44 C.2d 574, 582 (order denying leave to file complaint in intervention by person claiming to be member of a class on whose behalf representative action was being prosecuted was an appealable order); Bame v. Del Mar (2001) 86 CA4th 1346, 1346 (order denying intervention was appealable). In addition, it is fundamental that **the time in which to file a notice of appeal is not tolled pending a stay of the proceedings.** ECC Const., Inc. v. Oak Park Calabasas Homeowners' Assn. (2004) 122 CA4th 994, 999. Thus,

despite the April 2011 stay order, the time for filing a Notice of Appeal of the March 11, 2011 order denying intervention continued to run.

As provided by CRC 8.104(b):

> Except as provided in rule 8.66 [public emergency, i.e., earthquake, etc.], no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.

Accordingly, the April 20, 2011 stay order did not relieve the Dixie Faction of their obligation to file a timely Notice of Appeal within sixty (60) days from the March 14, 2011 date of the Notice of Ruling, even during the time that the April 20, 2011 order stayed the "effect" of the March 11, 2011 order. The Dixie Faction, as rejected Intervenors, had until May 13, 2011 (60 days) to file their Notice of Appeal. CRC 8.104(a)(1)(B), (e).

The time to file a Notice of Appeal is jurisdictional and is strictly adhered to. It cannot be extended by waiver or estoppel, and the failure to timely file cannot be excused by excusable neglect of a party's attorney, actions taken by the opposing party, or even by the trial judge's mistake. Estate of Hanley (1943) 23 Cal.2d 120, 122.

Thus, having failed to file a timely appeal, the Dixie Faction, including Dixie, became bound by the March 11, 2011 order denying intervention, solely for purposes of who is authorized to receive the subject RSTF proceeds for the Tribe. To this end, the Dixie Faction, including Dixie, are bound by the specific language of that order concluding the following:

1. Pursuant to the December 22, 2010 decision, the subsequent Special General Council meeting of the Tribe electing Burley as the Tribe's Chairperson, and the January 12, 2011, letter from Superintendent Burdick, the "on-going Tribal leadership" dispute has been resolved. CT 4417 (3rd paragraph) (Emphasis added).

2. The BIA recognizes Burley as a representative of the Tribe. CT 4417 (3rd paragraph) (Emphasis added).

3. The December 22, 2010 decision definitely establishes the Tribe's membership, governing body and leadership. CT 4418 (last paragraph).

These judicial determinations, now final as to the Dixie Faction, operate as res judicata and collateral estoppel to bar the Dixie Faction from later judicially prosecuting any claim against the Commission for releasing the subject RSTF proceeds to the Burley Faction, and thus trump the Commission's contention that it would be exposed to multiple claims for releasing the funds to the Burley Faction. Lucido v. Superior Court (1990) 51 Cal.3d 335, 341.

F. THE STAY LANGUAGE IN THE ASI'S AUGUST 31, 2011 DECISION HAS NO RELEVANCE TO THE COMMISSION'S DUTY TO RELEASE THE WITHHELD RSTF PROCEEDS TO THE MIWOK TRIBE

The Commission argues, and the trial court concluded, that because of the phrase "implementation shall be stayed" used in the ASI's decision, the decision has no "force and effect" to allow it to accept the Burley Faction as the authorized representative of the Miwok Tribe for receipt of RSTF payments. CT 8829. It further contends that, even

though the decision does not specifically say so, the ASI's counsel of record in the federal litigation purportedly "stipulated" in a joint status report that the decision would nonetheless have "no force and effect." CT 8829. These contentions are without merit.

As stated above, the ASI's subsequent, personal actions taken toward the Burley Faction, including statements made by the ASI in two (2) official Federal Registers confirming that the federal government currently has a government-to-government relationship with the Miwok Tribe, rebut the Commission's assertions that the ASI has interpreted his decision to be of no force and effect. This is because the phrase "government-to-government relationship" necessarily assumes the listed recognized tribes have a "recognized" governing body. The fact that the ASI made no changes or modifications to its official statement in these subsequent years with respect to the Miwok Tribe, knowing that the ASI's August 31, 2011 decision contained this stay language, can only mean that the ASI continues to recognize the Tribal Council under the Burley Faction as the authorized governing body, despite this stay language and despite the pending federal litigation. See Timbisha, 678 F.3d at 938 ("[In matters involving tribal leadership disputes] we owe deference to the judgment of the Executive Branch as to who represents a tribe."). It is presumed that the ASI knew of his own decision containing this stay language when he made subsequent, official statement that the Miwok Tribe still enjoys a government-to-government relationship with the federal government. Timbisha supra at 938.

In addition, the ASI Larry Echo Hawk's own decision clarifies that his stay language was not meant to prohibit the Burley Faction from continuing to function as a recognized governing body pending the federal action. He states:

> "Finally, I strongly encourage the parties to work within the Tribe's existing government structure to resolve this longstanding dispute and bring this contentious period in the tribe's history to a close." (Emphasis added).

CT 8925. Obviously, the parties cannot do this, if the implementing stay language is erroneously interpreted to mean that the Tribe has no present, operative governing body. Had the ASI intended that his decision be completely ineffective pending the resolution of the federal case, he would have either left this language out or modified it by saying that in light of his implementing stay, the Tribe has no governing body, and therefore, once the federal litigation is concluded the parties can resume to work out their Tribal leadership dispute within the Tribe's governing body. But he did not say that, just as much as he and other ASIs did not say that in subsequent, annual, published Federal Registers. Clearly, the ASI concluded that despite the implementing stay language in his decision, the Tribe still had an "existing government structure" to which they can resort to address internal Tribal matters.

Significantly, this key provision comes immediately after the ASI's "implementing stay" paragraph, and is the last provision of the decision, thus emphasizing the fact that the Tribe continues to have a recognized

governing body despite the fact that implementation of the decision with respect to any BIA actions is stayed.

This key provision also explains the following ruling in the ASI's August 31, 2011 decision, repeated several times throughout his decision:

> "...The five acknowledged citizens are the only current citizens of the Tribe, and the Tribe's General Council is authorized to exercise the Tribe's governmental authority. In this case, again, the factual record is clear: there are only five citizens of CVMT. The Federal government is under no duty or obligation to 'potential citizens' of the CVMT. Those potential citizens, if they so desire, should take up their cause with the CVMT general Council directly." (Emphasis added).

CT 8924. Thus, because the ASI's implementing stay does not affect the operation of the existing governing body of the Tribe, the rejected Intervenors, as well as any other "potential" citizens, can apply for tribal membership with the currently recognized Tribal Council, without having to wait for the resolution of the pending federal action. This is because, as recognized by the Court of Appeal in its prior decision, "[a]n Indian tribe has the power to define membership as it chooses, subject to the plenary power of Congress." (Ct. App. Decision 4/16/2010, page 8, fn. 9, citing Williams v. Gover (9th Cir. 2007) 490 F.3d 785, 789). That is not to say that the Tribe will accept them as members, since that decision is the Tribe's alone to make. Williams v. Gover, supra. CT 8923 (footnote 3). The point here is that the "implementing stay" language cannot be interpreted to take away this fundamental right of self-government.

G. THE LANGUAGE OF THE COMPACTS DOES NOT SUPPORT THE COMMISSION'S POSITION OF WITHHOLDING THE SUBJECT RSTF PROCEEDS FROM THE TRIBE

The Commission concedes that its duties with respect to disbursement of RSTF payments are defined in the Compacts and Government Code. CT 7332 (lines 3-7). It argues, however, that its duties must be interpreted to include making discretionary decisions on and under what circumstances a Non-Compact tribe may collect RSTF payments. CT 7332-7333. This contention is without merit, and runs afoul of the express language in the Compacts.

As stated, the express language in the Compacts prohibits the Commission from exercising any discretion on the "use" or "distribution" of RSTF payments. Its sole function is to operate as a depository. It asserts, however, that it must "take reasonable steps to ensure that the payments are made only to those tribes' authorized representatives, rather than to potentially unauthorized and unrepresentative subsets of those tribes." CT 7333 (lines 10-12). (Emphasis added). But, it is the "taking of reasonable steps" that violates the express terms of the Compacts. The Commission has no discretionary authority to do so. It is improperly deciding that the "potential" exists for change in the present governing body of the Miwok Tribe and therefore the current governing body may ultimately not be authorized to receive the funds.

In this case, the Burley Faction has provided the Commission with enough information for it to conclude that it is the authorized representative to collect the funds for the Miwok Tribe. The language of the Compacts prohibits the Commission from going beyond that and

engaging in a discretionary decision-making process on whether the Burley Faction should be entitled to receive those funds for the Tribe.

The Commission nevertheless contends it is entitled to withhold the subject RSTF payments from the Miwok Tribe because the Tribe has no "recognized" governing body, because it is not "organized" under the IRA, because it does not include other "potential" members living in the surrounding community, because the Tribe is not receiving P.L. 638 federal contract funding, and because the Tribe is involved in a Tribal leadership dispute. CT 7822, 7827-7829, 7833. However, there is no provision in the Compacts that permits the Commission to withhold RSTF payments from a Non-Compact tribe for any of these stated reasons. Indeed, there is no provision at all in the Compacts addressing situations which permit the Commission to withhold RSTF payments from a Non-Compact tribe for any reason whatsoever, largely because it's "sole" function is confined to acting strictly as a depository of those funds.

H. THE TRIAL COURT ERRONEOUSLY APPLIED A "REASONABLENESS" STANDARD IN DETERMINING WHETHER, AS A MATTER OF LAW, THE COMMISSION HAS A LEGALLY SUFFICIENT BASIS FOR WITHHOLDING THE SUBJECT RSTF PROCEEDS

For the same reasons expressed above, the trial court was to determine whether the Commission's actions are legally correct, not whether they are a reasonable exercise of the Commission's purported discretion. As stated, the Commission has no discretion with respect to the disbursement of RSTF payments.

I. THE TRIAL COURT ERRONEOUSLY ASSUMED THAT THIS COURT MADE A DETERMINATION ON THE MERITS THAT THERE EXISTS A "CURRENT UNCERTAINTY" IN THE FEDERAL GOVERNMENT'S RELATIONSHIP WITH THE MIWOK TRIBE

The Commission argues, and the trial court assumed (CT 9130-9131), that the Court of Appeal had already decided that there is currently "uncertainty" in the federal government's relationship with the Miwok Tribe. CT 7326. This contention is without merit, and appears to have been the basis for the trial court's erroneous conclusions.

In its decision in granting Plaintiff's writ of mandate, this Court used the following language to frame the issues for resolution at the trial court level:

> 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. (Emphasis added).

CT 7170. However, this Court made it clear that it was expressing no view on the merits of the Miwok Tribe's claims. CT 7172 ("To be clear, we express no view on the merits of the Miwok Tribe's claims, as the issues presented in this action must be decided by the trial court in the first instance based on a thorough review of the applicable law and evidence..."). Thus, when read in the context of the Court of Appeal Decision, the phrase "current uncertainty" should be read to mean

"alleged current uncertainty," since whether and to what extent there is any uncertainty in that relationship goes to the merits of the dispute in this action. Indeed, for the reasons expressed herein, there is no "uncertainty" in that relationship sufficient to cause the Commission to withhold the subject RSTF payments.

Despite the stay language in the ASI's August 31, 2011 decision, the ASI continues to repeatedly confirm a government-to-government relationship with the Miwok Tribe, specifically with the Burley Faction. Likewise, based on the authority of Timbisha, supra, the January 12, 2011 BIA acknowledgement letter confirms that the federal government currently recognizes the Burley Faction as the authorized governing body for the Tribe, pending the federal litigation.

J. AT A MINIMUM, THE COMMISSION IS PRESENTLY REQUIRED TO RELEASE ALL OF THE RSTF MONEY IT HAS PAID OUT AND PLACED ON DEPOSIT AS OF JANUARY 2011

As stated, in 2007, the Commission promised that it would release all of the RSTF money it paid out and placed in a separate bank account, once the BIA recognizes the Burley Faction as the authorized governing body and the leadership dispute is resolved. CT 7808 (2nd to last paragraph); 7827 (last sentence). Those events occurred in January 2011 when the Burley Faction held an election re-electing Burley as the Tribal Chairperson, and the BIA acknowledged those election results and recognized the Burley Faction over the Dixie Faction. Thus, despite what may have occurred thereafter, the Commission had an obligation to release to the Burley Faction all of the RSTF money it had on deposit in January 2011.

K. THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS AGAINST THE COMMISSION

All of the judicially-noticed documents established that the Commission is not legally justified in withholding the RSTF money from the presently constituted Tribe with the five (5) enrolled members. As a result, for the same reasons expressed herein, judgment on the pleadings should have been granted, as it was previously.

L. THE TRIAL COURT ERRED ON DENYING PLAINTIFF'S MOTION FOR NEW TRIAL

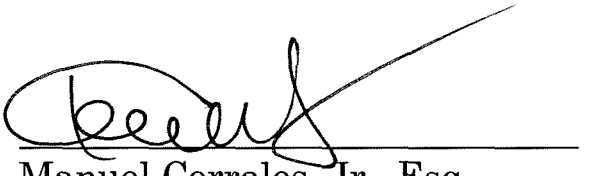
For the same reasons expressed herein, the trial court erred in granting Plaintiff's motion for a new trial with respect to the summary judgment ruling, which functioned as a request that the court reconsider its ruling, because it was erroneous as a matter of law.

VI.

CONCLUSION

For the foregoing reasons, summary judgment in favor of the Commission should be reversed.

Dated: 1/27/2014



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VII.

CERTIFICATE OF WORD COUNT

The text of this "Appellant's Opening Brief" consists of (13,619) words as counted by Microsoft Office Word 2010 word processing program used generate this brief.

Dated: 1/27/2014

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CALIFORNIA VALLEY MIWOK TRIBE

CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE

COURT OF APPEAL CASE NO. D064271
California Valley Miwok Tribe v. California Gambling Control Commission
Superior Court Case No. 37-2008-00075326-CU-CO-CTL

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare that I am over the age of 18 years and not a party to the action; I am employed and a resident of the County of San Diego and my business address is 17140 Bernardo Center Drive, Suite 210, San Diego, California 92128. I caused to be served the following document(s): **APPELLANT'S OPENING BRIEF** by placing a copy thereof in a separate envelope for each addressee respectively as follows:

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I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed January 27, 2014 at San Diego, California.

Heath Turner
Heather Turner

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Superior Court Case No. 37-2008-00075326-CU-CO-CTL

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