

Manuel Corrales, Jr., Esq. SBN 117647  
**ATTORNEY AT LAW**  
17140 Bernardo Center Drive, Suite 358  
San Diego, California 92128  
Tel: (858) 521-0634  
Fax: (858) 521-0633  
Email: [mannycorrales@yahoo.com](mailto:mannycorrales@yahoo.com)

Attorney for Plaintiffs  
CALIFORNIA VALLEY MIWOK TRIBE,  
THE GENERAL COUNCIL, SILVIA BURLEY,  
RASHEL REZNOR, ANJELICA PAULK and  
TRISTIAN WALLACE

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**CALIFORNIA VALLEY MIWOK TRIBE**, a ) Case No.: 2:16-cv-01345-WBS-CKD  
federally-recognized Indian )  
tribe, **THE GENERAL COUNCIL**, ) **MEMORANDUM OF POINTS AND**  
**SILVIA BURLEY**, **RASHEL REZNOR**; ) **AUTHORITIES IN SUPPORT OF**  
**ANJELICA PAULK**; and **TRISTIAN** ) **MOTION FOR AN ORDER STAYING**  
**WALLACE** ) **AS-IA'S DECEMBER 30, 2015**  
 ) **DECISION**

Plaintiffs,

vs.

**SALLY JEWEL**, in her official ) Date: August 8, 2016  
capacity as U.S. Secretary of ) Time: 1:30 p.m.  
Interior; **LAWRENCE S. ROBERTS**, in ) Judge: William B. Shubb  
his official capacity as Acting )  
Assistant Secretary of Interior - )  
Indian Affairs; **MICHAEL BLACK**, in )  
his official capacity as Director )  
of the Bureau of Indian Affairs. )

Defendants.

Plaintiffs CALIFORNIA VALLEY MIWOK TRIBE, THE GENERAL  
COUNCIL, SILVIA BURLEY, RASHEL REZNOR, ANJELICA PAULK and  
TRISTIAN WALLACE submit the following Memorandum of Points and  
Authorities in Support of Motion for an Order Staying the  
Assistant Secretary-Indian Affairs' December 30, 2015 Decision.

I.

INTRODUCTION

Plaintiffs seek to set aside an erroneous decision by the Assistant Secretary of Interior-Indian Affairs ("AS-IA") of the U.S. Department of Interior ("DOI" or "the Department") that illegally disavowed recognition of the existing governing body of the California Valley Miwok Tribe ("the Tribe") that was established in 1998, and illegally directed that the Tribe be reorganized with participation by unenrolled members beyond the five (5) existing enrolled members.

AUGUST 31, 2011 AS-IA DECISION

On August 31, 2011, the AS-IA Larry Echo Hawk made the following decision concerning the Tribe:

a. He reaffirmed that the Tribe is a federally recognized tribe whose entire citizenship, as of August 31, 2011, consists of five acknowledged citizens;

b. The 1998 Resolution established a General Council form of government, comprised of all the adult citizens of the Tribe, with whom the Department may conduct government-to-government relations;

c. The Department shall respect the validly enacted resolutions of the General Council; and

d. Only upon a request from the General Council will the Department assist the Tribe in refining or expanding its citizenship criteria, or developing and adopting other governing documents.

Echo Hawk then **stayed** implementation of his decision pending resolution of the Dixie Faction's federal litigation challenging that decision. (Ex. "9", page 8, Echo Hawk decision).

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**U.S. DISTRICT COURT DECISION REMANDING TO AS-IA**

Dixie challenged that decision in federal court. In December 2013, the federal district court ("the District Court" or "U.S. District Court") granted summary judgment in favor of Dixie and his Tribal Faction and remanded to the AS-IA for him to "reconsider" his August 31, 2011 decision, because he "assumed" certain factual issues rather than determined them factually. Specifically, the U.S. District Court remanded back to the AS-IA for him to reconsider his August 31, 2011 decision, because, according to the U.S. District Court, the AS-IA merely assumed the Tribe's membership is limited to five persons and further merely assumed that the Tribe is governed by a duly constituted General Council, without setting forth its reasons for these conclusions, in light of the administrative record that questioned the validity of those assumptions. 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 Yakima Dixie taken in the California State case, wherein he admits resigning as Tribal Chairman, because it was not part of the administrative record.

As a result, the U.S. District Court was misled into thinking that Dixie still maintained that he never resigned as Tribal Chairman, and the court relied upon that on-going claim in her court as a basis for her ruling. For example, the U.S. District Court stated:

Here, the August 2011 Decision fails to address *whatsoever* the numerous factual allegations in the administrative record that raise significant doubts about the legitimacy of the General Council. From as early as April 1999, Yakima contested the validity of the Council. See AR 000182 (April 21, 1999 letter from Yakima to the BIA stating that he "cannot and will not resign as chairman of the Sheep Ranch Indian Rancheria"); see also, AR 000205 (October 10, 1999 letter from Yakima to BIA raising questions about Burley's authority); AR

001690, 000231 (Yakima notifying the BIA of "fraud and misconduct" with respect to the Tribe's leadership).

CVMT v. Jewell (formerly Salazar) (D.C. Dist. Ct. 2013) 2013 U.S. Dist. LEXIS 174535. Accordingly, based solely on the administrative record, the U.S. District Court concluded that Dixie's claim that his resignation was forged and that he never resigned raised doubts about the validity of the General Council under the Burley Faction.

**AS-IA DECEMBER 30, 2015 DECISION**

On remand, the AS-IA erroneously concluded that the Tribe's membership is more than five people, and that the 1998 General Council does not consist of valid representatives of the Tribe. It erroneously concluded that the Tribe was never properly "reorganized" back in 1998, leaving questions as to the overall membership of the Tribe, and therefore the Tribe must be reorganized. It then wrongfully directed that unenrolled, potential members be allowed to participate in reorganizing the Tribe. It refused to acknowledge the Tribe's governing document, Resolution #GC-98-01, which established the Tribe's General Council, despite the fact that this governing document has been in place for over 18 years. It stated:

At the time of its enactment, the 1998 Resolution undoubtedly seemed a reasonable, practical mechanism for establishing a tribal body to *manage the process* of reorganizing the Tribe. But the actual reorganization of the Tribe can be accomplished only via a process open to the whole tribal community. Federal courts have established, and my review of the record confirms, the people who approved the 1998 Resolution (Mr. Dixie, Ms. Burley, and possibly Ms. Burley's daughter Rashel Reznor) are not a majority of those eligible to take part in the reorganization of the Tribe. Accordingly, I cannot recognize the actions to establish a tribal governing structure taken pursuant to the 1998 Resolution. Ms. Burley and her family do not represent the CVMT [the Tribe].

(Page 5 of Washburn Decision). This conclusion is erroneous and arbitrary and capricious for the reasons alleged herein.

**PRESENT SUIT CHALLENGING WASHBURN'S DECEMBER 30, 2015 DECISION**

Plaintiffs filed suit on June 17, 2016 challenging the Washburn decision as arbitrary and capricious, or otherwise unlawful. The decision is a final agency action and allows the competing tribal faction to submit documentation to support its own constitution for purposes or "reorganizing" the Tribe. The BIA has recently sought to implement the Washburn decision by notifying Plaintiffs that the competing tribal faction has in fact submitted documentation to support its own constitution, and further notifying Plaintiffs that it intends to act on the submission by July 12, 2016. (See Ex. "1," BIA letter to Silvia Burley).

Plaintiffs requested in their complaint an immediate stay of the Washburn decision pending resolution of their suit in federal court. (See First Amended Complaint attached as Ex. "5").

The Defendants were served by formal process on June 29, 2016 with the summons and complaint. In addition, Plaintiffs' counsel sent a separate letter to Defendants enclosing the complaint and requesting that they voluntarily stay the implementation of the Washburn decision. (See letter dated June 29, 2016 to Lawrence Roberts, AS-IA, Ex. "2"). To date, the Defendants have not responded, and the July 12, 2016 date is fast approaching.

Plaintiffs will be irreparably harmed if a stay is not imposed, since once the competing faction's constitution is approved by the BIA, then the competing faction will take over the Tribe and submit their approved constitution to the California Gambling Control Commission ("the Commission") which

1 is presently withholding over \$12.5 million in Revenue Sharing  
2 Trust Fund ("RSTF") payments belonging to the Tribe. (See Ex.  
3 "3" attached Report from the Commission regarding RSTF payments  
4 withheld from the Tribe "pending identification of Tribal  
5 government"). In particular, the Commission's recent report  
6 states:

7 "Staff continues to recommend that the distribution to the  
8 California Valley Miwok Tribe be allocated but withheld.  
9 On December 30, 2015, Kevin Washburn, the Assistant  
10 Secretary )of the Department of the Interior) for Indian  
11 Affairs (AS-IA), issued a final agency decision that  
12 unequivocally states that the United States does not  
13 recognize leadership for the California Valley Miwok  
14 government. A decision by AS-IA is final for the  
15 Department, effective immediately, and unlike decisions  
16 rendered by subordinate Bureau of Indian Affairs (BIA)  
17 officials, is not automatically stayed upon appeal.  
18 Accordingly, there continues to be no California Valley  
19 Miwok Tribe government to which the Commission can make an  
20 RSTF payment."

21 (Ex. "3," Commission Report, dated April 25, 2016 regarding RSTF  
22 payments to various Tribes, page 1).

23 In the same way that the Echo Hawk decision was stayed  
24 pending resolution of the federal litigation by the Dixie  
25 Faction challenging that decision, the court should similarly  
26 stay the implementation of the Washburn decision, so as to  
27 maintain the status quo of the parties and allow the court to  
28 resolve the issues raised in the First Amended Complaint  
challenging the Washburn decision.

## 23 II.

### 24 ARGUMENT

#### 25 A. THE COURT SHOULD STAY THE WASHBURN DECISION IN THE SAME WAY 26 THE PRIOR ECHO HAWK DECISION WAS STAYED

27 As stated, on August 31, 2011, AS-IA Echo Hawk issued a  
28 final agency decision stating that the Tribe comprises of five  
(5) enrolled members, and that the General Council established

1 by the Tribe in 1998 was the recognized governing body of the  
2 Tribe with whom the Department of Interior may conduct  
3 government-to-government relations. Because the Dixie Faction  
4 was challenging his decision in federal court, Echo Hawk then  
5 stayed the implementation of his decision pending the outcome of  
6 the federal litigation. His decision stated:

7 "This decision is final for the Department and effective  
8 immediately, but implementation shall be stayed pending  
9 resolution of the litigation in the District court for the  
10 District of Columbia. *California Valley Miwok Tribe v.*  
11 *Salazar*, C.A. No. 1:11-cv-00160-RWR (filed 03/16/11)."

12 (Ex. "9", Page 8, Echo Hawk decision). The Court should do  
13 likewise. Inherent in Echo Hawks' stay is the fact that  
14 implementation of his decision would frustrate the pending  
15 federal litigation. Similarly, a stay of Washburn's decision is  
16 necessary, because the BIAS is already implementing Washburn's  
17 decision by accepting for review the Dixie Faction's  
18 constitution. Once accepted, the BIA will turn over the Tribe  
19 to the Dixie Faction, and the Dixie Faction will then turn  
20 around and collect the \$13 million in RSTF payments being  
21 withheld for the Tribe. Once released, the Tribe cannot  
22 retrieve those funds, and, if the Washburn Decision is set  
23 aside, then the funds would be irretrievable lost. Prudence  
24 dictates that the Washburn Decision be stayed pending the  
25 conclusion of this litigation.

26 Accordingly, without a stay Plaintiffs will be irreparably  
27 harmed.

28 **B. A STAY IS WARRANTED SO AS TO PRESERVE THE STATUS QUO  
PENDING RESOLUTION OF THIS LITIGATION**

The Court's decision on whether to grant a stay under the  
circumstances is to be guided by four factors: "(1) the  
likelihood that the party seeking the stay will prevail on the  
merits of the appeal; (2) the likelihood that the moving party

will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.” In re E.P.A. (6<sup>th</sup> Cir. 2015) 803 F.3d 804, 806 (citing Mich. Coalition of Radioactive Material Users, Inc. v. Griepentrog (6<sup>th</sup> Cir. 1991) 945 F.2d 150, 153. These factors are not prerequisites that must be met. Rather, they are “interrelated considerations that must be balanced.” Griepenttrog, supra at 153.

A motion to stay an agency decision pending a challenge in federal court is addressed to the court’s sound discretion, is made early on in the case “based on incomplete factual development and legal research,” and is done “for the purpose of preserving the status quo pending further proceedings.” United States v. Edward Rose & Sons (6<sup>th</sup> Cir. 2004) 384 F.3d 258, 261.

In addition, the party seeking a stay bears the burden of showing that the circumstances of the particular case justify the exercise of the court’s discretion, guided by sound legal principles, to maintain the status quo pending conclusive determination of the legality of the action. Nken v. Holder (2009) 556 U.S. 418, 433.

**1. There is a likelihood of success on the merits.**

The Washburn decision is erroneous as a matter of law for the following reasons:

**a. Yakima Dixie’s enrollment of the Burleys in 1998 was appropriate.**

Yakima Dixie (“Dixie”) enrolled the Burley family into the CVMT voluntarily and only after Dixie and Silvia Burley (“Burley”) had corresponded for some years. There is no evidence that Dixie’s decision to enroll the Burleys was subject to undue or inappropriate influence or was fraudulent in any respect. To the contrary, the contemporaneous evidence is unequivocal—Dixie freely chose to enroll the Burleys and promptly involved them in

1 Tribal governance.

2 **b. Dixie's enrollment of the Burleys did not**  
3 **compromise Melvin Dixie's interests.**

4 It is true that Yakima Dixie enrolled the Burleys into the  
5 Tribe and involved them in Tribal governance, but did not  
6 consult his brother, Melvin Dixie. At that time, however,  
7 Melvin had not been involved in Tribal matters for decades and  
8 had not been in touch with Yakima for 30 years. Indeed, neither  
9 Yakima nor the Department then knew where Melvin lived. When  
10 Melvin was found a couple of years later, he was invited to  
11 participate in Tribal affairs and was encouraged to avail  
12 himself of Tribal benefits to which he was entitled. Under the  
13 circumstances, Yakima's decision to enroll the Burleys without  
14 consulting Melvin was reasonable. Moreover, Melvin is now  
15 deceased, and any supposed impairment of his interests is  
16 consequently moot.

17 **c. Enrolling the Burleys in 1998 did not impair the**  
18 **interests of unenrolled potential Tribal members.**

19 As discussed by the District Court, there is broad  
20 agreement that there are a number of unenrolled potential Tribal  
21 members. Those potential members had not sought to join the  
22 Tribe when Dixie enrolled the Burleys; nor did those potential  
23 members apply to the General Council for membership. The  
24 potential members have instead emerged following and as a  
25 consequence of a Tribal leadership dispute between Dixie and  
26 Burley. Because none of the potential members has been denied  
27 the opportunity to enroll in the Tribe, none of their interests  
28 have been impaired. The proper course for the Department was to  
encourage the potential members to apply to join the Tribe and  
for the Tribe to assess and evaluate each of their applications,  
not to unlawfully dismantle Tribal membership and require the  
Tribe to "reorganize" with participation of these non-members.

**d. The Tribe's 1998 General Council is the authorized and legitimate Tribal government.**

Following enrollment of the Burleys in 1998, Dixie and Burley worked with the Department to organize the Tribe. To that end, the CVMT passed resolution #GC-98-01, which established a Tribal General Council. The Department recognized the General Council and compacted with it for a number of years. There is no record evidence that the formation of the General Council was tainted by fraud or in any way inappropriate. Moreover, the Department's years-long dealings with the General Council caused it and the enrolled members of the Tribe to develop reasonable and settled expectations that the Department would continue to maintain government-to-government relations with the Tribe through the General Council. As a consequence, the Department should have resumed recognition of the General Council, which can resolve any outstanding membership issues.

Thus, the CVMT is properly comprised of five members and is governed by the 1998 General Council. Washburn's decision to the contrary is erroneous as a matter of law and arbitrary and capricious. The Echo Hawk Decision should have been reaffirmed in its entirety.

**2. Plaintiffs will be irreparably harmed absent a stay.**

For the reasons set forth above, Plaintiffs will be irreparably harmed if a stay of Washburn's decision is not imposed. The BIA is poised to give the Tribe over to the Dixie Faction in the immediate future, based upon the Washburn decision. Once that occurs, the Dixie Faction will request and obtain \$13 million in RSTF payments belonging to the Tribe.

**3. No others will be harmed if the court grants a stay.**

Since the purpose of the requested stay is to maintain and preserve the status quo pending review by this court of the Washburn decision, none of the parties or any other persons will

1 be harmed by a stay. Indeed, the accrued \$13 million in RSTF  
2 payments being withheld by the California Commission will  
3 continue to be withheld and safeguarded until a final resolution  
4 of this matter in this case.

4 **4. It is in the public interest to grant a stay.**

5 The "public interest" factor is not directly implicated,  
6 given the fact that the issues to be decided affect an Indian  
7 Tribe and its members.


8 Accordingly, the court should weigh the above-mentioned  
9 "interrelated considerations", and, on balance, conclude that a  
10 stay of the Washburn decision is warranted, and that a stay of  
11 that decision should remain in place pending the final  
12 resolution of this case. In re E.P.A., supra.

12 **III.**

13 **CONCLUSION**

14 For the foregoing reasons, Plaintiff motion for an order  
15 staying AS-IA's December 30, 2015 decision should be granted.

16  
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18  
19 Dated: July 2, 2016

20   
21 Manuel Corrales, Jr., Esq.  
22 Attorney for Plaintiffs  
23 CALIFORNIA VALLEY MIWOK  
24 TRIBE, THE GENERAL COUNCIL,  
25 SILVIA BURLEY, RASHEL REZNOR,  
26 ANJELICA PAULK and TRISTIAN  
27 WALLACE  
28