

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

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,**) **PLAINTIFFS' OPPOSITION TO**
SILVIA BURLEY, RASHEL REZNOR;) **FEDERAL DEFENDANTS' MOTION**
ANJELICA PAULK; and TRISTIAN) **FOR SUMMARY JUDGMENT**
WALLACE)

Plaintiffs,) Date: May 30, 2017
Time: 1:30 p.m.

vs.) Judge: Hon. William B. Shubb
Courtroom 5

SALLY JEWELL, in her official)
capacity as U.S. Secretary of)
Interior, et al.,)

Defendants)

THE CALIFORNIA VALLEY MIWOK)
TRIBE, et al.)

Intervenor-Defendants.)

TABLE OF CONTENTS

TABLE OF AUTHORITIES vi

I. INTRODUCTION 1

II. STATEMENT OF FACTS 4

A. HISTORY OF THE TRIBE 4

B. DIXIE’S FRAUD AND TRIBAL LEADERSHIP
DISPUTE 11

C. THE JANUARY 28, 2010 IBIA DECISION 12

D. AS-IA LARRY ECHO HAWK’S AUGUST 31, 2011
DECISION 13

E. U.S. DISTRICT COURT DECEMBER 2013
ORDER REMANDING TO AS-IA FOR
RECONSIDERATION 15

F. THE BURLEY FACTION’S INABILITY TO
APPEAL THE DISTRICT COURT ORDER
OF REMAND 16

G. AS-IA WASHBURN’S DECEMBER 30, 2015
DECISION 17

III. ARGUMENT 20

A. PLAINTIFFS’ CHALLENGE TO THE DECEMBER
2015 AS-IA DECISION IS NOT BARRED BY
ISSUE PRECLUSION (COLLATERAL ESTOPPEL) 20

1. The issues are not identical 20

2. No final judgment as to Miwok III 21

B. PLAINTIFFS’ CHALLENGE TO THE
AS-IA DECEMBER 2015 DECISION IS
NOT BARRED BY RES JUDICATA 22

1. The prior litigation did not
involve the same claims 22

2. No final judgment as to Miwok III 22

C. THE RECORD DOES NOT SUPPORT THE AS-IA'S CONCLUSION THAT THE TRIBE WAS COMPRISED OF MORE THAN FIVE (5) MEMBERS WHO WERE ENTITLED TO PARTICIPATE IN THE ORGANIZATION OF THE TRIBE IN 1998	22
D. THE FEDERAL DISTRIBUTION REGULATIONS FOR TERMINATED RANCHERIAS IN CALIFORNIA CONFIRM THAT RESIDENCE ON THE SUBJECT 0.92 ACRE LAND WAS EQUATED WITH ACTUAL MEMBERSHIP IN THE SHEEPRANCH BAND OF INDIANS	25
E. THE AS-IA'S 2015 DECISION'S USE OF THE PHRASE "NOT LIMITED" WITH RESPECT TO CVMT MEMBERSHIP IS NOT SUPPORTED IN THE RECORD	31
F. THE AS-IA'S 2015 DECISION ERRONEOUSLY CONCLUDED THAT THE 1998 RESOLUTION WAS INVALID	32
G. AS-IA WASHBURN'S 2015 DECISION IS ERRONEOUSLY PREDICATED ON A <u>TIME-BARRED</u> CLAIM THAT THE 1998 RESOLUTION ESTABLISHING THE GENERAL COUNCIL WAS INVALID AT THE OUTSET	33
H. THE U.S. DISTRICT COURT IMPROPERLY DIRECTED THAT THE AS-IA RECONSIDER HIS 2015 DECISION BASED ON A <u>TIME-BARRED CLAIM</u>	44
I. PLAINTIFFS PRESERVED THE STATUTE OF LIMITATIONS ISSUE BEFORE THE U.S DISTRICT COURT IN DIXIE'S FEDERAL ACTION	45
J. THE ISSUE OF THE VALIDITY OF THE 1998 RESOLUTION ESTABLISHING THE GENERAL COUNCIL WAS NEVER REFERRED TO THE AS-IA FOR REVIEW BY THE INTERIOR BOARD OF INDIAN APPEALS	48
K. THE 2015 DECISION ERRONEOUSLY CONCLUDED THAT THE 1998 GENERAL COUNCIL WAS ESTABLISHED MERELY TO "MANAGE THE PROCESS "OR REORGANIZING THE TRIBE"	50

L. THE 2015 DECISION INCORRECTLY CONCLUDES THAT PRIOR FEDERAL COURT DECISIONS HAVE HELD THAT THE TRIBE'S MEMBERSHIP IS LARGER THAN FIVE MEMBERS AND HAS MISCONSTRUED THE HISTORY OF THE CALIFORNIA RANCHERIAS	52
M. THE "ELIGIBLE GROUP SYSTEM" IMPROPERLY FORCES THE TRIBE TO "RE-ORGANIZE"	54
N. THE DIXIE FACTION IS ESTOPPED FROM CHALLENGING THE 1998 RESOLUTION	55
O. AS-IA ECHO HAWK'S SHOULD BE REINSTATED AND ADOPTED AS THE MOST LEGALLY CORRECT DECISION ON THE TRIBE'S GOVERNING BODY AND MEMBERSHIP	56
P. EVERONE AND THE DIXIE FACTION HAVE COMMITTED FRAUD UPON THE COURT AND THE BIA BY FALSELY CREATING A TRIBAL LEADERSHIP DISPUTE TO JUSTIFY RE-ORGANIZING THE TRIBE	57
1. Dixie's Last Will and Testament.	61
2. Everone's team sought to influence the Commission to "freeze" the Tribe's RSTF money.	61
3. Everone is soliciting "investment money" for the building of a casino, and is offering the Tribe's RSTF money as security.	62
Q. DIXIE'S FALSE ASSERTION THAT HIS RESIGNATION WAS FORGED AND THAT HE NEVER RESIGNED IS HIGHLY RELEVANT	64
R. DIXIE'S DEPOSITION TESTIMONY WAS NOT COERCED AND STANDS AS AN UNREFUTED ADMISSION OF FRAUD	65

1	1. Dixie is a convicted murderer	
2	with a life history of extreme	
3	violence and incarceration for	
4	violent crimes	66
5	2. Dixie never expressed on the	
6	record that he was feeling	
7	coerced to have to admit he	
8	resigned as Tribal Chairman	70
9	3. Dixie's damaging admission	
10	that he resigned as Tribal	
11	Chairman was confirmed under	
12	examination by his own lawyer	71
13	IV. CONCLUSION	74

TABLE OF AUTHORITIES

CASES

Acri v. Int’l Ass’n of Machinists & Aerospace Workers

(9th Cir. 1986) 781 F.2d 1393, 139635

Alan-Wilson v. Sacramento Area Dir.

(1997) 30 IBIA 241, 25554

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(N.D.Cal. July 28, 2005) 2005 WL 180636854

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31, 36, 45, 52-53

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49-50

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(Dec. 22, 1983) Civ. No. C-79-17107-9

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(N.D.Cal. 2012) 2012 WL 652460018,
32, 34

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18 (1978) 436 U.S. 49, 55-56, 72, fn. 3230, 55

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22 (9th Cir. 1990) 895 F.2d 588, 59243

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24 (D.C.Cir.1987) 824 F.2d 52, 5635

25 Stanton v. D.C. Court of Appeals

(D.C. Cir. 1997) 127 F.3d 72, 78	22
<u>United States v. Kubrick</u>	
(1979) 444 U.S. 111, 122	35
<u>Wilk v. Vencill</u>	
(1947) 30 Cal.2d 104, 107	56
<u>Williams v. Gover</u>	
(9 th Cir. 2007) 490 F.3d 785	29-30
<u>Wilton Miwok Rancheria v. Salazar</u>	
(N.D.Cal. June 8, 2009) No. C-07-02681	53-54
<u>Wind River Min. Corp. v. U.S.</u>	
(9 th Cir. 1991) 946 F.2d 710, 713	34
<u>OTHER AUTHORITIES</u>	
25 C.R. 242	26-28
25 U.S.C. §476	6, 30
33, 48, 51, 55	
25 U.S.C. §478	6
28 U.S.C. § 1291	17, 21,
32, 34-36, 46	
Act of Aug. 18, 1958, Pub.L. No. 85-671, 72 Stat. 619	6
Cal. Evid. Code §623	56
COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, 2012 ed.	32
FRE 801(d) (2) (A)	64

1 Plaintiffs CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or
2 "the Miwok Tribe"), THE GENERAL COUNCIL, SILVIA BURLEY
3 ("Burley"), RASHEL REZNOR ("Rashel"), ANJELICA PAULK
4 ("Angelica"), and TRISTIAN WALLACE ("Tristian") (collectively
5 "the Burley Faction"), submit the following Memorandum of Points
6 and Authorities in Opposition to Federal Defendants' Motion for
Summary Judgment.

7 **I.**

8 **INTRODUCTION**

9 In 1998, Yakima Dixie ("Dixie") enrolled Burley, his
10 distant cousin, and her two family members into the Tribe. At
11 the time, the Tribe had dwindled down to Yakima Dixie and his
12 brother, Melvin Dixie, as the last known remaining Tribal
13 members. Melvin Dixie's whereabouts were unknown at the time.
14 The Bureau of Indian Affairs ("BIA") recognized this and
15 encouraged Dixie and his newly adopted Tribal members to
16 organize the Tribe with a governing body known as a "General
17 Council." The BIA directed that Dixie do so by resolution and
18 provided Dixie with a sample resolution to follow. Both Dixie
19 and Burley prepared the document and called it Resolution #GC-
20 98-01 (herein after sometimes called "the 1998 Resolution"),
21 which established the General Council as the governing body of
22 the Tribe. The Tribe had only five (5) members and the General
23 Council was comprised of Dixie as Tribal Chairman, Burley as
24 Vice Chairperson, and Rashel Reznor as Secretary.

25 Sometime after the General Council was established and the
26 Tribe began engaging in government-to-government relations with
27 the federal government, Dixie voluntarily resigned as Tribal
28 Chairman, and signed a written resignation to that effect.
Burley was elected as the new Tribal Chairperson, and Dixie
signed a written document consenting to that as well. Soon
after Dixie's resignation, a white, non-Indian by the name of

1 Chadd Everone contacted Dixie and told him about the new 1999
2 California State Compacts the Governor had signed, allowing
3 various tribes in California to build and operate gambling
4 casinos and generate high amounts of income. Because the Tribe
5 was a federally-recognized tribe and qualified to have a
6 gambling casino, no matter how small it was, Everone was
7 interested in using Dixie's name to build and operate a gambling
8 casino to enrich Everone and other non-Indian investors. The
9 only problem at the time was that Dixie had already resigned,
and control of the Tribe was with Burley.

10 To accomplish his scheme of taking over control of the
11 Tribe for his own personal, financial gain of building a casino,
12 Everone conspired with Dixie to have him falsely claim that he
13 never resigned as Tribal Chairman, and that Dixie's resignation
14 was forged. This created the Tribal leadership dispute that
15 Everone used to further his scheme of creating uncertainty in
16 the Tribal governing body and working toward trying to get the
17 Tribe "re-organized" through the Dixie faction which he
18 continues to control. This Tribal leadership dispute has
19 crippled the Tribe over the years and has caused havoc in its
20 ability to function and operate as a federally-recognized tribe.
21 Dixie ultimately admitted in 2012 in a sworn deposition that he
22 in fact resigned and that his resignation was never forged. By
23 the time Dixie was forced to admit he in fact resigned, he had
24 filed numerous declarations, pleadings and other documents in
25 both state and federal court falsely stating under penalty of
perjury that he never resigned and that his resignation was
forged.

26 Faced with this damning evidence, the Dixie faction has
27 attempted to downplay Dixie's false statements about his
28 resignation and fraud he perpetrated on the courts, by arguing
the issue is "irrelevant," because the General Council

1 established under the 1998 Resolution was purportedly invalid at
2 the outset. This argument misses the point that but for Everone
3 and Dixie's fraud in creating a false and fraudulent Tribal
4 leadership dispute, the Tribe would be functioning today under
5 the General Council and receiving federal contract funding and
6 Revenue Sharing Trust Fund ("RSTF") payments under the
7 California State Compacts without interruption.

8 Everone sought and obtained sympathy from the BIA, which
9 was led to believe, falsely, that Burley "stole" the Tribe from
10 Dixie. The BIA sought to accommodate Everone's claims, and took
11 it upon itself to "re-organize" the Tribe in an attempt to
12 indirectly resolve the ongoing Tribal leadership dispute. The
13 Burley faction challenged the BIA's efforts to do so, and the
14 matter was taken up to the Interior Board of Indian Appeals
15 ("IBIA") who then in turn referred the issue to the Assistant
16 Secretary of Interior, Indian Affairs ("AS-IA"). The AS-IA
17 Larry Echo Hawk decided the issue in August 2011 and concluded
18 that the BIA had no right to attempt to re-organize the Tribe
19 against its wishes, that the Tribe was not required to re-
20 organize under the Indian Reorganization Act of 1934 ("IRA") in
21 order to receive federal funding, or for any reason, that its
22 governing body comprising of the General Council established
23 under the 1998 Resolution would be recognized as the Tribe's
24 governing body having a government-to-government relationship
25 with the federal government, and that the Tribe consisted of
26 five (5) enrolled members subject to enlargement as to be
27 determined by the General Council without interference by the
28 BIA.

26 The Dixie faction controlled by Everone challenged Echo
27 Hawk's 2011 decision, and the U.S. District Court ordered the
28 AS-IA reconsider its decision. By the time the U.S. District
Court made its order, AS-IA Echo Hawk has retired and was

1 replaced by Kevin Washburn. On his last day in office on
2 December 31, 2015, before he, too, retired, AS-IA Washburn
3 reversed AS-IA Echo Hawk's decision and concluded that the Tribe
4 was not limited to five (5) members and that the General Council
5 was never properly organized by the 1998 Resolution, because it
6 did not consist of valid representatives of the Tribe. He
7 refused to recognize the General Council as the governing body
8 of the Tribe, and then directed that unenrolled, "potential"
9 (but not actual) members be allowed to participate in re-
10 organizing the Tribe under the IRA. In short, Washburn did a
11 complete 180-degree turn on the Echo Hawk decision.

12 The Burley faction then filed this action challenging
13 Washburn's decision, because it is erroneous as a matter of law
14 and an arbitrary and capricious final agency action. The 2011
15 Echo Hawk decision should be reinstated, because it is based
16 upon correct principles of Indian law.

17 II.

18 STATEMENT OF FACTS

19 A. HISTORY OF THE TRIBE

20 In 1915, the United States government purchased
21 approximately 0.92 acres of land in Calaveras County,
22 California, for the benefit of twelve (12) named Indians living
23 on the Sheep Ranch Rancheria. (AR-CVMT-2011-001687). The Indian
24 agent who recommended the purchase of the land for these Indians
25 described the group as "the remnant of once quite a large band
26 of Indians in former years living in and near the old decaying
27 mining town known and designated on the map as 'Sheepranch.'" (Id.).
28 However, the Indian Agent specifically stated that this
0.92 acre land would be purchased only for "this small band" of
12 or 13 Sheepranch Indians. (CVMT-2011-000001-002). While the
Indian Agent observed that "to some extent" this little band of
12 or 13 Sheepranch Indians were "interchangeable in their

relations" with four other small band of Indians in the area, he never stated that these other band of Indians were members of the 12 or 13 Sheepranch band of Indians, and never stated that the 0.92 acre land was to be purchased for anyone other than this "little band" of 12 or 13 Sheepranch Indians. (CVMT-2011-000001-002). The phrase "interchangeable in their relations" does not equate to Tribal membership, but can only be understood to mean that these distinct band of Indians were simply neighbors who enjoyed peaceful, social intercourse and trade. Otherwise, the Indian Agent would have recommended the purchase of a larger parcel of land to accommodate all of these neighboring bands. But he did not do so. For example, the Indian Agent himself distinguished members of these neighboring bands as follows:

"[T]he two Indians, 'Abe Lincoln' & 'Jeff Davis,' Abe at Murpheys & Jeff at Sheepranch, were c[h]ristened their respective names by the early miners during the progress of the civil war, they then being quite chunks of boys, spending much of their time around the mining camps."

(CVMT-2011-000002). During the Civil War, these two Indian boys, both from different band of Indians in the area, "hung out" at the mining camps, but maintained their identity to their own band of Indians. Thus, even though these bands interacted with each other, they still maintained their identity to their own respective bands.

Over the years, it became apparent that whoever actually resided on the 0.92 parcel of land had the authority to enroll Indians as members and organize the Tribe.

For example, in 1934, Congress passed the Indian reorganization Act ("IRA"), which, among other things, required the U.S. Secretary of Interior ("the Secretary") to hold elections through which the adult Indians of a reservation decided whether to accept or reject the applicability of certain

1 provisions of the IRA to their reservation, including provisions
2 authorizing tribes to organize and adopt a constitution under
3 the IRA. 25 U.S.C. Sections 476 and 478. (AR-CVMT-2011-001687).
4 In 1935, Jeff Davis, the only Indian living on the Rancheria,
5 voted in favor of the Tribe being organized under the IRA.
6 (Id.). However, the process was never followed through, and as
7 a result the Tribe was never organized under the IRA. (Id.).

8 Also in 1958, in keeping with the then-popular policy of
9 assimilating Native Americans into American society, Congress
10 enacted the California Rancheria Act, which authorized the
11 Secretary to terminate the federal trust relationship with
12 several California tribes, including several Rancherias, and to
13 transfer tribal lands from federal trust ownership to individual
14 fee ownership. (Act of Aug. 18, 1958, Pub.L. No. 85-671, 72
15 Stat. 619). To this end, the BIA prepared a plan in 1966 to
16 distribute the assets of the Sheep Ranch Rancheria as a prelude
17 to termination. (AR-CVMT-2011-001687). At that time, Mabel
18 Hodge Dixie was the only adult Indian living on the Rancheria
19 who was entitled to receive the assets of the Rancheria. (Id.).
20 She, therefore, voted to accept the distribution plan and was
21 issued a deed to the land in 1966. (AR-CVMT-2011-001687-88).

22 Although the Sheep Ranch Rancheria land had been
23 distributed to Mabel Dixie pursuant to a distribution plan, the
24 Secretary never published a final notice of termination and had
25 accepted the land back from Mabel Dixie through a quitclaim
26 deed. As a result, the Tribe was administratively
27 "unterminated" before it could be formally terminated. In other
28 words, the Tribe was never terminated. (AR-CVMT-2011-002051,
1399, 1689).

When Mabel Dixie died in 1971, the 0.92 parcel of land,
originally purchased for the 12 or 13 band of Indians identified
by the Indian Agent in 1915, went into probate in California

1 State court. The probate order listed Yakima Dixie and his
2 brother, Melvin Dixie, as the only surviving heirs of Mabel
3 Dixie, and awarded them their respective interest in the land.
4 (CVMT-2011-000172-173). The probate order had the effect of
5 confirming and ratifying the BIA's longstanding policy that
6 whoever resided on the land had the authority to enroll Indians
7 as members of the Tribe and organize the Tribe. It had the
8 effect of excluding any claim of any other Indians who may have
9 lived in the area, and who did not reside on the land, as having
10 any interest or authority over the land. It solidified Mabel
11 Dixie and her family as the sole members of the Sheep ranch band
12 of Indians. When Melvin left and Dixie remained on the land,
13 the probate order solidified Dixie's sole authority, like what
14 the BIA extended to Jeff Davis back in 1935, as the sole member
15 of the Sheep ranch band who, because he alone resided on the
16 property, had the authority to enroll Indians as members and
17 organize the Tribe.

18 In 1979, individuals from a number of terminated Rancherias
19 filed an action in the U.S. District Court, Northern District,
20 styled Hardwick v. U.S. (Civ. No. C-79-1710). The Hardwick
21 plaintiffs sought restoration of their status as Indians,
22 entitlement to federal Indian benefits, and the right to re-
23 establish their tribes as formal government entities.
24 Specifically, the Hardwick plaintiffs sought by injunction to
25 undo the effects of the California Rancheria Act and to require
26 the Secretary to "unterminate" each of the subject Rancherias
27 and to "treat all of the subject Rancherias as Indian
28 reservations in all respects." The Hardwick lawsuit ended in a
settlement between the tribes and the federal government,
culminating in a series of stipulated judgments. In the
settlement, the Secretary agreed to restore "any of the benefits
or services provided or performed by the United States for

1 Indians because of their status as Indians" and to "recognize
2 the Indian Tribes, Bands, Communities or groups of the seventeen
3 Rancherias...as Indian entities with the same status as they
4 possessed prior to distribution of the assets of these
5 Rancherias under the California Rancheria Act." (Stipulation and
6 Order, Hardwick v. United States, No. C-79-1710 (Dec. 22,
1983)).

7 In 1994, Yakima Dixie ("Dixie"), the son of Mabel Dixie,
8 wrote to the BIA asking for BIA assistance for home repairs on
9 the Rancheria, and described himself as "the only descendent and
10 recognized...member" of the Tribe. (AR-CVMT-2011-001688). At
11 that time Dixie and his brother, Melvin Dixie, were the only
12 surviving children of Mabel Dixie, but Melvin Dixie's
13 whereabouts were unknown. (AR-CVMT-2011-000177). Melvin later
14 died in 2008. (AR-CVMT-2017-001400, fn. 20).

15 In the mid-1990s, Burley contacted the BIA for information
16 related to her Indian heritage. (AR-CVMT-2011-001688). The BIA
17 provided her with information that showed she was related to
18 Jeff Davis who had initially voted in favor of the Tribe being
19 organized under the IRA. (Id.). Burley was also related to
20 Dixie. (Id.). Thereafter, Burley contacted Dixie and told him
21 about her interest in her Indian heritage that ultimately led to
22 him and his dwindling Tribe. (Id.).

23 On August 5, 1998, Dixie, as "Spokesperson/Chairman" of the
24 Tribe, signed a statement accepting Burley as an enrolled member
25 of the Tribe, and also enrolled Burley's two daughters and her
26 granddaughter. (AR-CVMT-2011-001688). As a result of Dixie's
27 actions, the Tribe in 1998 consisted of six enrolled members:
28 (1) Yakima Dixie; (2) Melvin Dixie; (3) Silvia Burley; (4)
Anjelica Paulk; (5) Rashel Reznor; and (6) Tristian Wallace.
(Id.).

1 In September of 1998, Yakima Dixie and Burley met at the
2 Rancheria with BIA staff to discuss organizing the Tribe. (AR-
3 CVMT-2011-001688). One of the issues discussed was developing
4 criteria for membership in the Tribe. (Id.). At the time, the
5 whereabouts of Melvin Dixie, Yakima's brother, were unknown. As
6 a result, the BIA staff told Yakima Dixie that he had both the
7 authority and the broad discretion to decide the criteria for
8 membership. According to the BIA, Yakima Dixie, his brother
9 Melvin Dixie, Burley and Burley's adult daughter were the
10 "golden members" of the Tribe. (Id.). And because Melvin Dixie's
11 whereabouts were unknown, the BIA concluded that the three adult
12 members consisting of Yakima Dixie, Burley and her adult
13 daughter were the General Council of the Tribe that had the
14 authority to take actions on behalf of the Tribe. (AR-CVMT-2011-
15 001688-89).

16 Because the Tribe was never formally terminated, there was
17 no court decision, like Hardwick, supra, that affected the
18 Tribe, and to which the Tribe and the BIA could look to so as to
19 determine who was a member of the Tribe or otherwise entitled to
20 organize it. Typically, California tribes who had been
21 unlawfully terminated by the federal government regained federal
22 recognition through litigation like Hardwick, supra, and the
23 court judgment in that litigation identified the class of
24 persons entitled to organize the tribe, e.g., the distributes
25 and their dependents, and their lineal descendants. However, in
26 the case of the Sheep Ranch Rancheria, although the land had
27 been distributed to Mabel Dixie pursuant to a distribution plan
28 preparatory to termination, the Secretary never actually
followed through and published a final notice of termination.
Instead, the Secretary accepted the land back from Mabel Dixie
through a quitclaim deed, thus essentially administratively

1 "unterminating" the Tribe before it had ever been formally
2 terminated. (AR-CVMT-2011-001689).

3 Therefore, because of the unique circumstance that the
4 Sheep Ranch Rancheria found itself in never being terminated,
5 the BIA concluded that "for purposes of determining the initial
6 membership of the Tribe," Yakima Dixie and Melvin Dixie must be
7 included, because they were the remaining heirs of Mabel Dixie.
8 (Id.). In addition to these two initial members, the BIA
9 recognized that Yakima Dixie had adopted Burley, her two
10 daughters, and her granddaughter, into the Tribe. As a result,
11 the BIA concluded that Burley and her adult daughter, together
12 with Yakima and Melvin Dixie had "the right to participate in
13 the initial organization of the Tribe." (Id.). The BIA's
14 actions were consistent with its long-standing practice and
15 policy of treating whoever resided on the 0.92 acre plot of land
16 as having sole authority to enroll Indians as members and
17 organize the Tribe.

18 On September 24, 1998, the BIA told Yakima and Burley that
19 it "recommend[ed] the Tribe operate as a General Council,"
20 because of its "small size," so that they could elect or appoint
21 a chairperson and conduct business. (Id.). To this end, the BIA
22 offered the Tribe \$50,000.00 in grant money for purposes of
23 improving its tribal government, and provided Dixie and Burley
24 with a draft resolution "form" for them to use in requesting the
25 grant. (Id.). The draft resolution contained language
26 establishing the General Council.

27 Using the draft resolution form prepared by the BIA, Dixie
28 and Burley prepared and signed a resolution on November 5, 1998,
establishing a General Council consisting of all adult members
of the Tribe, to serve as the governing body of the Tribe. (AR-
CVMT-2011-001690, 00172-176). The resolution became known as
Resolution #CG-98-01, which the BIA accepted as the governing

1 document of the Tribe. (AR-CVMT-2011-000179). The document was
2 signed by Yakima Dixie and Silvia Burley, and later by Rashel
3 Reznor, and specifically noted that the whereabouts of Melvin
4 Dixie were at that time unknown. Resolution #GC-98-01 vested
5 the General Council with the governmental authority of the Tribe
6 to conduct the full range of government-to-government relations
with the United States. (AR-CVMT-2011-000178).

7 Pursuant to Resolution #GC-98-01, Yakima Dixie was
8 appointed and elected as the Tribal Chairman. (AR-CVMT-2011-
9 002052).

10 **B. DIXIE'S FRAUD AND TRIBAL LEADERSHIP DISPUTE**

11 On April 20, 1999, Yakima Dixie signed a notice of
12 resignation as Tribal Chairman. (RJN "32", Letter to Washburn
13 from Corrales, 6/6/2014, Ex. "46" to Decl. of MCJ). On the same
14 date, Yakima Dixie also signed a document confirming his
15 resignation as Tribal Chairman and agreeing to the appointment
16 of Silvia Burley to replace him as the new Tribal Chairperson.
(Id.).

17 Sometime after he resigned, Yakima Dixie was approached by
18 a non-Indian, Chadd Everone, who sought Yakima's cooperation in
19 taking control of the Tribe in order to build a gambling casino
20 using the name and status of the Tribe. (AR-CVMT-2017-000955-
21 56). The problem was that Yakima Dixie had already expressly
22 resigned. To regain control of the Tribe, Everone conspired
23 with Yakima to have Yakima falsely say that he never resigned
24 and that his written resignation was a forgery. Yakima Dixie
25 then thereafter falsely told the BIA and others that he never
26 resigned and that his resignation was forged. This then created
27 a Tribal leadership dispute between Yakima Dixie and Burley that
28 has since 1999 caused havoc with the Tribe and crippled the
Tribe's ability to operate effectively over the years. (AR-CVMT-
2011-002051, 001573-75). Yakima maintained that claim from 1999

1 up through February 7, 2012, when he was deposed and testified
2 in a California state action that he in fact resigned in April
3 of 1999, that his resignation was not forged as he had
4 previously claimed, and that the signatures on the Tribal
5 resignation documents were in fact his. (RJN "33", Letter to
6 Washburn from Corrales, 7/9/2014).

7 Despite Dixie's claim that he never resigned, the BIA chose
8 to acknowledge Burley as the Chairperson of the Tribe, and, as a
9 result, accepted and honored numerous Tribal resolutions passed
10 by the General Council under Burley's leadership from 1999
11 through July 2005. (AR-CVMT-2011-001691). For example, from
12 1999 through July 2005, the BIA entered into annual P.L. 638
13 federal contracts with the Tribe under Burley's leadership, and
14 awarded the Tribe federal contract funding. (*Id.*). The
15 California State Gambling Control Commission ("the CGCC")
16 followed the BIA's lead and acknowledged Burley as the
17 authorized Tribal representative to receive \$1.1 million in
18 annual RSTF payments for the Tribe. However, behind the scenes,
19 Everone continued to stir up false claims of a Tribal leadership
20 dispute between Dixie and Burley, causing the BIA to stop
21 awarding the Tribe 638 federal contract funding in August 2005,
22 which in turn caused the CGCC to withhold RSTF payments to the
23 Tribe as well. (AR-CVMT-2017-000958-963).

24 **C. THE JANUARY 28, 2010 IBIA DECISION**

25 Because of the ongoing Tribal leadership dispute was not
26 coming to an end, the BIA took it upon itself, through the
27 urging of Everone and the Dixie faction, to begin a process of
28 "re-organizing" the Tribe under the IRA. (AR-CVMT-2011-001684-
85). It invited several nonmembers it called "potential" or
"putative" members to participate in a general council meeting
in this re-organization process, which included enrolling new
members. (AR-CVMT-2011-001684). The BIA claimed these actions

1 were necessary, because, according to the Interior Board of
2 Indian Appeals ("IBIA") it felt "until the tribal organization
3 and membership issues were resolved, a leadership dispute
4 between Burley and Yakima...could not be resolved, and the
5 resolution of that dispute was necessary for a functioning
6 government-to-government relationship with the Tribe." CVMT v.
7 Pacific Regional Director, BIA (Jan. 28, 2010) 51 IBIA 103, 103-
104. (AR-CVMT-2011-001684-85).

8 The Burley faction appealed the Pacific regional Director's
9 decision to the IBIA. (AR-CVMT-2011-001684). The IBIA, however,
10 deemed the matter to be a membership enrollment dispute, because
11 it involved the issue of whether the BIA could re-organize the
12 Tribe under the IRA without the Tribe's consent and force the
13 enrollment of nonmembers to participate in that re-organization.
14 (AR-CVMT-2011-001703). Because the IBIA did not have
15 jurisdiction over enrollment disputes, it referred the issue to
16 the Assistant Secretary of Interior, Indian Affairs ("AS-IA").
(Id.).

17 The IBIA did not refer to the AS-IA any issue concerning
18 whether the 1998 Resolution establishing the General Council was
19 invalid for any reason. Nor did the Burley faction raise that
20 as an issue before the IBIA. (AR-CVMT-2011-001684-1705).

21 **D. AS-IA LARRY ECHO HAWK'S AUGUST 31, 2011 DECISION**

22 On August 31, 2011, the AS-IA Larry Echo Hawk, in response
23 to the IBIA's referral of the enrollment dispute, made the
24 following decisions concerning the Tribe:

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

28 2. The 1998 Resolution established a General Council form
of government, comprised of all the adult citizens of the Tribe,

1 with whom the Department may conduct government-to-government
2 relations;

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

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

9 5. Although the Tribe's General Council does not render
10 the Tribe organized under the IRA, as a federally recognized
11 tribe, the Tribe is not required to "organize" under the IRA.

12 6. It is impermissible to treat the Tribe, as a non-IRA
13 tribe, differently from tribes organized under the IRA and not
14 allow it to receive federal benefits. (AR-CVMT-2011-002049-50).

15 Echo Hawk, therefore, determined that there was "no need
16 for the BIA to continue its previous efforts to organize the
17 Tribe's government, because it is already organized as a General
18 Council, pursuant to the 1998 General Council Resolution it
19 adopted at the suggestion of the BIA." (AR-CVMT-2011-002049).
20 It concluded further that there was "no need for the BIA to
21 continue its previous efforts to ensure that the Tribe confers
22 tribal citizenship upon other individual Miwok Indians in the
23 surrounding area." (Id.).

24 In his decision, Echo Hawk observed that the BIA wrongly
25 concluded it had an obligation to potential members in the
26 surrounding community. (AR-CVMT-2011-002050-51). He made it
27 clear that only the Tribe's General Council has the exclusive
28 authority to decide who can be enrolled as members. He stated:

"...the BIA clearly understood in 1998 that the
acknowledged CVMT citizens had the right to exercise the
Tribe's inherent sovereign power in a manner they chose.
It is unfortunate that soon after the 1998 General Council
resolution was enacted, an intra-tribal leadership dispute

erupted, and both sides of the dispute found, at various points in time in the intervening years, that it served their respective interests to raise the theory that the BIA had a duty to protect the rights of approximately 250 'potential citizens' of the Tribe. A focus on that theory has shaped the BIA's and the Departments' position on the citizenship question ever since. By contrast, today's decision clears away the misconceptions that these individuals have inchoate citizenship rights that the Secretary has a duty to protect. They do not. The Tribe is not comprised of both citizens and potential citizens. Rather, the five acknowledged citizens are the only citizens of the Tribe, and the General Council of the Tribe has the exclusive authority to determine the citizenship criteria for the Tribe...."

(Id.).

E. U.S. DISTRICT COURT DECEMBER 2013 ORDER REMANDING TO AS-IA FOR RECONSIDERATION

Dixie challenged the Echo Hawk 2011 decision in federal court. (AR-CVMT-2011-000024). 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. CVMT v. Jewell (U.S.D.C. 2013) 5 F.Supp.3d 86, 100-101. 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. (Id.). 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

1 Yakima Dixie taken in the California State case, wherein he
2 admits resigning as Tribal Chairman, because it was not part of
3 the administrative record.

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

9 Here, the August 2011 Decision fails to address
10 *whatsoever* the numerous factual allegations in the
11 administrative record that raise significant doubts
12 about the legitimacy of the General Council. From as
13 early as April 1999, Yakima contested the validity of the
14 Council. See AR 000182 (April 21, 1999 letter from
15 Yakima to the BIA stating that he "cannot and will not
16 resign as chairman of the Sheep Ranch Indian Rancheria");
17 see also, AR 000205 (October 10, 1999 letter from Yakima
18 to BIA raising questions about Burley's authority); AR
19 001690, 000231 (Yakima notifying the BIA of "fraud and
20 misconduct" with respect to the Tribe's leadership).

21 5 F.Supp.3d 86, 100-101. Accordingly, based solely on the
22 administrative record, the U.S. District Court concluded that
23 Dixie's claim that his resignation was forged and that he never
24 resigned raised doubts about the validity of the General Council
25 under the Burley Faction.

26 Moreover, the U.S. District Court's order was largely based
27 on Dixie's time-barred claim that the 1998 Resolution was
28 invalid at the outset, and therefore was erroneous as a matter
of law. (*Id.*)

**F. THE BURLEY FACTION'S INABILITY TO APPEAL THE DISTRICT COURT
ORDER OF REMAND**

29 The Dixie Faction has argued that Plaintiffs "cannot re-
30 litigate" the U.S. District Court decision granting summary
31 judgment in the Dixie Faction's favor, because Plaintiffs "did
32 not appeal that decision." This is inaccurate and misleading.

1 The Burley Faction were Intervenor-Defendants in the Dixie
2 Faction's suit challenging AS-IA Echo Hawk's August 31, 2011
3 Decision. The Federal Defendants in that suit chose not to
4 appeal the decision. When the Burley Faction attempted to
5 appeal, the Federal Defendants moved to dismiss the appeal for
6 lack of jurisdiction, pointing out that "a private party -
7 unlike the government - may not appeal a district court's order
8 remanding to an agency because it is not final within the
9 meaning of 28 U.S.C. § 1291." (Ex. "1," Motion to Dismiss
10 Appeal for Lack of Jurisdiction, RJN "1"). The Burley Faction
11 conceded this point and stipulated to voluntarily dismiss their
12 appeal. (Ex. "2" Stipulation of Voluntary Dismissal, RJN "2").

13 Accordingly, Plaintiffs here are not "re-litigating" issues
14 decided by the U.S. District Court that remanded the matter back
15 to the AS-IA to "reconsider" his 2011 Decision. That remand
16 order was not final. Plaintiffs' suit instead is against the
17 AS-IA relative to his December 30, 2015 Decision.

18 **G. AS-IA WASHBURN'S DECEMBER 30, 2015 DECISION**

19 On remand, the AS-IA Kevin Washburn erroneously concluded
20 that the Tribe's membership is more than five people, and that
21 the 1998 General Council does not consist of valid
22 representatives of the Tribe. (AR-CVMT-2017-001402). He
23 erroneously concluded that the Tribe was never properly
24 "reorganized" back in 1998, leaving questions as to the overall
25 membership of the Tribe, and therefore the Tribe must be
26 reorganized. (AR-CVMT-2017-001401). He then wrongfully directed
27 that un-enrolled, potential members be allowed to participate in
28 reorganizing the Tribe. (AR-CVMT-2017-001402). He 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. (AR-CVMT-2017-001401). His decision 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].

(AR-CVMT-2017-001401). However, these conclusions are based upon Dixie's time-barred claim that the 1998 resolution was invalid at the outset. Moreover, the IBIA never referred that issue to the AS-IA for resolution.

SUMMARY OF ARGUMENT

Contrary to the Federal Defendants' assertions, Plaintiffs' challenge to the AS-IA Kevin Washburn's December 31, 2015 Decision ("AS-IA December 2015 Decision") is not barred by the principles of res judicata or issue preclusion (collateral estoppel), as a result of *Miwok I, II and III*. The issues in *Miwok I and II* are not identical to the issues to be decided in this action. Specifically, those courts did not decide the merits of whether the 1998 Resolution is invalid or whether the Tribal membership is limited to five (5) enrolled members. With respect to *Miwok III*, there is no final judgment, and therefore res judicata does not apply.

The AS-IA December 2015 Decision is arbitrary and capricious, because it is erroneously predicated on Dixie's time-barred claim that the 1998 Resolution establishing the General Council was invalid at the outset. See Hardwick v. U.S. (N.D.Cal. 2012) 2012 WL 6524600 (Plaintiff's challenge of

1 legitimacy and validity of the Tribe's governing body was held
2 barred by the six-year statute of limitations). The U.S.
3 District Court erred in remanding for reconsideration this time-
4 barred claim. Moreover, the validity of the 1998 Resolution was
5 not an issue that the IBIA referred to the AS-IA for resolution,
6 and the Burley Faction did not raise it in their appeal before
7 the IBIA.

8 The General Council established under Resolution 1998 was
9 not created to "manage the process of reorganization," as the
10 AS-IA December 2015 Decision erroneously concludes. The 1998
11 Resolution organized the Tribe. The BIA had previously
12 erroneously determined that in order to qualify for federal
13 benefits, the Tribe was required to "re-organize" under the IRA,
14 and sought to "re-organize" the Tribe for this purpose and for
15 purposes of trying to resolve the long-standing Tribal
16 leadership dispute. The August 2011 AS-IA Decision resolved
17 this issue, and correctly concluded that the Tribe was not
18 required to "re-organize" under the IRA in order to receive
19 federal benefits, and that the BIA could not force the Tribe to
20 "re-organize" its governing body, because it is already
21 organized under the 1998 Resolution. The August 2011 AS-IA
22 Decision further concluded that BIA could not force the Tribe to
23 expand its membership without its consent, and that, until the
24 Tribe provides otherwise, the Tribal membership presently
25 consists of five (5) enrolled members. The December 2015 AS-IA
26 Decision concluded otherwise, contrary to well-settled Indian
27 law principles of self-governance. The August 2011 AS-IA
28 Decision should be reinstated as the controlling decision.

Contrary to the December 2015 AS-IA Decision, no prior
federal court has ever held that the Tribe's membership is
larger than five (5) enrolled members.

The Dixie Faction should be estopped from challenging the 1998 Resolution, based on fraud. The Tribal leadership dispute that has thrust the two competing factions into this 16 year dispute, was contrived and fabricated by Dixie and Everone, so that Everone, a non-Indian, could take over control of the Tribe and build a casino using the Tribe's name and status as a federally-recognized Indian tribe, and the Tribe's RSTF payments from the State Gambling Commission. Dixie ultimately admitted in 2012 that his resignation was never forged. But for Dixie and Everone's fraud, the Tribe would be functioning and operating under the 1998 Resolution and receiving the federal benefits and RSTF payments from the State Gambling Commission without interruption.

III.

ARGUMENT

A. PLAINTIFFS' CHALLENGE TO THE DECEMBER 2015 AS-IA DECISION IS NOT BARRED BY ISSUE PRECLUSION (COLLATERAL ESTOPPEL)

1. The issues are not identical.

The Federal Defendants take up the same argument the Dixie Faction raised before the U.S. District in challenging the AS-IA August 2011 Decision, namely that based on the rulings in *Miwok I and II* (i.e., *CVMT I* and *CVMT II*) Plaintiffs are barred by the doctrine of issue preclusion, i.e., collaterally estoppel, from challenging the AS-IA December 2015 Decision concluding that the 1998 Resolution establishing the General Council is invalid and that the Tribe's membership is presently limited to five (5) enrolled members. This contention was expressly rejected by the U.S. District Court, and the same reasoning applies here. In footnote 15 of the U.S. District Court Order remanding to the AS-IA for reconsideration, the Court stated:

Plaintiffs [the Dixie Faction] challenge the August 2011 Decision on several other legal grounds. However, each of these arguments fails. First, relying on the *CVMT I* and

CVMT II decisions, Plaintiffs [the Dixie Faction] argue that the Secretary is barred by the doctrine of issue preclusion and/or judicial estoppel from recognizing the General Council as the governing body of the Tribe. [Citation]. This argument is without merit because CVMT I and CVMT II do not share the same contested issue with this case. See *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). **The only issue before the courts CVMT I and CVMT II was whether the Secretary had the authority to refuse to approve a constitution submitted under IRA §476(h)(1). The courts did not directly address the issues raised here, namely whether the Tribe's membership consists of five members and whether the General Council is the duly constituted government of the Tribe...**(Emphasis added).

5 F.Supp.3d at 101, fn. 15. The issues have not changed, since the U.S. District Court ruling. Plaintiffs here have likewise challenged the same issues, but in reverse, i.e., whether the AS-IA's December 2015 decision is correct in concluding that the Tribe does not consist of five members and also concluding that the 1998 Resolution establishing the General Council was invalid at the outset. Those issue were never decided in the prior CVMT I and CVMT II cases. As a result, Plaintiff is not barred from litigating them here. *Dodd v. Hood River County* (9th Cir. 1998) 136 F.3d 1219, 1224-1225; *Allen v. McCurry*, supra.

2. No final judgment as to *Miwok III*.

Collateral estoppel or "issue preclusion" under federal law requires that there be a final judgment before it can apply. *In re Palmer* (9th Cir. 2000) 207 F.3d 566, 568. Since the Federal Defendants have conceded that, when they chose not to appeal the U.S. District Court Order, the Burley Faction could not appeal it as a "private party," because the order remanding to an agency "was not final within the meaning of 28 U.S.C. §1291." (Ex. "1," Motion to Dismiss Appeal for Lack of Jurisdiction, RJN "1"). As a result, collateral estoppel or "issue preclusion" does not apply to *Miwok III*.

B. PLAINTIFFS' CHALLENGE TO THE AS-IA DECEMBER 2015 DECISION IS NOT BARRED BY RES JUDICATA

1. The prior litigation did not involve the same claims.

Res judicata applies when there is: (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between parties. Owens v. Kaiser Found. Health Plan, Inc. (9th Cir. 2001) 244 F.3d 708, 713. As stated, the claims raised in *Miwok I* and *II* are not identical to the claims being litigated here. As a result, res judicata does bar the litigation of the claims in this action. See Stanton v. D.C. Court of Appeals (D.C. Cir. 1997) 127 F.3d 72, 78 (two cases must share the same nucleus of facts for res judicata to apply).

2. No final judgment as to *Miwok III*.

Because the order in *Miwok III* does not involve a final judgment on the merits, there can be no res judicata effect of that case on the present claims being made in this case. Owens, *supra*.

C. THE RECORD DOES NOT SUPPORT THE AS-IA'S CONCLUSION THAT THE TRIBE WAS COMPRISED OF MORE THAN FIVE (5) MEMBERS WHO WERE ENTITLED TO PARTICIPATE IN THE ORGANIZATION OF THE TRIBE IN 1998

The Federal Defendants argue that the AS-IA's 2015 Decision was not arbitrary and capricious in determining that the Tribe is composed of more than five (5) members that purportedly must include the "lineal descendants" of the Sheepranch band of Indians first identified in 1915 by a BIA Indian Agent. This contention lack merit, given the fact that the administrative record does not support this conclusion. Instead, the administrative record shows historically and overwhelmingly that the 0.92 acre piece of land was purchased solely for the 12 or 13 "little band" of Sheepranch Indians, and for them alone, and that whoever actually resided on the property would alone have

1 the authority to enroll Indians as members and organize the
2 Tribe.

3 For example, the Indian Agent specifically stated that this
4 0.92 acre land would be purchased only for "this small band" of
5 12 or 13 Sheepranch Indians. (CVMT-2011-000001-002). While the
6 Indian Agent observed that "to some extent" this little band of
7 12 or 13 Sheepranch Indians were "interchangeable in their
8 relations" with four other small band of Indians in the area, he
9 never stated that these other band of Indians were members of
10 the 12 or 13 Sheepranch band of Indians, and never stated that
11 the 0.92 acre land was to be purchased for anyone other than
12 this "little band" of 12 or 13 Sheepranch Indians. (CVMT-2011-
13 000001-002). The phrase "interchangeable in their relations"
14 does not equate to Tribal membership, but can only be understood
15 to mean that these distinct band of Indians were simply
16 neighbors who enjoyed peaceful, social intercourse and trade.
17 Otherwise, the Indian Agent would have recommended the purchase
18 of a larger parcel of land to accommodate all of these
19 neighboring bands. But he did not do so. For example, the
20 Indian Agent himself distinguished members of these neighboring
21 bands as follows:

22 "[T]he two Indians, 'Abe Lincoln' & 'Jeff Davis,' Abe at
23 Murpheys & Jeff at Sheepranch, were c[h]ristened their
24 respective names by the early miners during the progress of
25 the civil war, they then being quite chunks of boys,
26 spending much of their time around the mining camps."

27 (CVMT-2011-000002). During the Civil War, these two Indian
28 boys, both from different band of Indians in the area, "hung
out" at the mining camps, but maintained their identity to their
own band of Indians. In addition, the Indian Agent described
this "small band of Sheepranch Indians" as having a "long and
strong attachment" to their own band. (CVMT-2011-000001). Thus,
even though these neighboring bands interacted with each other,

1 they still maintained their identity to their own respective
2 bands.

3 Over the years, it became apparent that whoever actually
4 resided on the 0.92 parcel of land had the authority to enroll
5 Indians as members and organize the Tribe. This was the case in
6 1935 with Jeff Davis, who, by virtue of being the sole resident
7 on the property, voted for an IRA government, and was the one
8 the BIA recognized as having the sole authority to organize the
9 Tribe under the IRA, which for some unknown reason never took
10 place. (CVMT-2011-001687). This was also the case with Mabel
11 Dixie who, being the sole adult resident on the property in
12 1966, voted for termination and, as a result, the BIA gave her
13 alone the deed to the property as a prelude to termination,
14 which administratively never occurred. (CVMT-2011-001687-1688).
15 When Mabel died, the interest to the property went to Yakima
16 Dixie and his brother, Melvin. (CVMT-2011-000173).

17 Significantly, it was the "Department of Interior" who "probated
18 the property." (CVMT-2011-001688). However, because Melvin
19 left and Yakima was the only resident on the property in 1998,
20 Yakima Dixie alone had the authority to enroll Burley and her
21 family as adopted members of the Tribe and organize the Tribe.

22 The probate order listed Yakima Dixie and his brother,
23 Melvin Dixie, as the only surviving heirs of Mabel Dixie, and
24 awarded them their respective interest in the land. (CVMT-2011-
25 000172-173). The probate order had the effect of confirming and
26 ratifying the BIA's longstanding policy that whoever resided on
27 the land had the authority to enroll Indians as members of the
28 Tribe and organize the Tribe. It had the effect of excluding
any claim of any other Indians who may have lived in the area,
and who did not reside on the land, as having any interest or
authority over the land. It solidified Mabel Dixie and her
family as the sole members of the Sheepranch band of Indians.

1 When Melvin left and Dixie remained on the land, the probate
2 order solidified Dixie's sole authority, like what the BIA
3 extended to Jeff Davis back in 1935, as the sole member of the
4 Sheepranch band who, because he alone resided on the property,
5 had the authority to enroll Indians as members and organize the
6 Tribe.

7 In addition, the AS-IA's assumption that the 0.92 acre land
8 "was not large enough for all members of the band to take up
9 residence" when it was first purchased in 1915 (CVMT-2017-
10 001400) is not supported in the administrative record. In fact,
11 the Indian Agent taking the census in 1915 found only three (3)
12 "old little Indian cabins" in the Sheepranch area. The 12 or 13
13 Indians he identified were actually comprised of three or four
14 families (CVMT-2011-000002), with Peter Hodges as the band's
15 leader. (CVMT-2011-CVMT-2011-000001). Under the circumstances,
16 the 0.92 acre plot of land was large enough to accommodate these
17 12 or 13 band of Indians, given their custom of living in
18 "little Indian cabins" and spending their time usually "in the
19 nearby streams panning for gold." (CVMT-2011-000001).

20 Finally, Dixie himself admitted in September 1999, when
21 interviewed by the Los Angeles Times, that he was the last
22 remaining member of the Sheepranch band. (LA Times Article,
23 9/28/1999, Ex. "24", RJN #11 [After his relatives either left
24 the reservation or died, the resident population of Dixie's
25 branch of the Sierra Miwok dwindled to just him."]).

26 **D. THE FEDERAL DISTRIBUTION REGULATIONS FOR TERMINATED**
27 **RANCHERIAS IN CALIFORNIA CONFIRM THAT RESIDENCE ON THE**
28 **SUBJECT 0.92 ACRE LAND WAS EQUATED WITH ACTUAL MEMBERSHIP**
IN THE SHEEPRANCH BAND OF INDIANS

The Dixie Faction argues that the 2015 Decision "reasonably
determined that the Sheep Ranch distribution plan prepared in
1966 did not define or limit the Tribal community" in accordance
with federal regulations in effect at that time. (Page 18 of

1 Dixie PAs). The Federal Defendants' motion is predicated on
2 this assertion. However, this contention is without merit, and
3 ignores the plain language of the federal regulations governing
4 distribution of assets of Rancherias in 1966, and case law
5 interpreting those regulations.

6 As part of its policy of assimilating Indians into American
7 society, the United States sought to terminate its federal trust
8 relationship with several tribes beginning in 1958, including
9 the California Rancherias. Congress later passed 25 C.R. 242
10 which provided for policies and procedures governing
11 distribution of assets of the California Rancherias. As
12 indicated, Mabel Dixie was the only adult Indian from the
13 Sheepranch band living on the 0.92 acre plot of land, and
14 therefore she alone was entitled to receive the assets of the
15 0.92 acre Rancheria (or reservation), even though the Sheepranch
16 band was "unorganized" at the time. 25 C.R. 242.3(a)(3).
17 Because she presumably made a written request for distribution
18 of assets of the 0.92 acre Rancheria, the BIA was required to
19 include her in a final list of distributees to be published in
20 the FEDERAL REGISTER. 25 C.R. 242.12. And because Mabel voted
21 to accept the distribution plan, the BIA gave her the deed to
22 the 0.92 acre Rancheria as a prelude to the final termination of
23 the Sheepranch band of Indians. However, the BIA never
24 published a final notice of termination in accordance with 25
25 C.R. 242.12, and thereafter accepted the land back from Mabel
26 Dixie through a quit claim deed. The result was the Sheepranch
27 band was never formally terminated. (AR-CVMT-2011-002051, 1399,
28 1689).

26 However, had the BIA published notice of termination, the
27 Sheepranch band would have been terminated by virtue of the
28 single act of Mabel Dixie alone, and all members of the
Sheepranch band would have lost their status and rights and

1 privileges as Indians, and would have no longer been entitled to
2 receive federal benefits and federal assistance. In other
3 words, by Mabel Dixie's name appearing on the distribution list,
4 all of the members of the Sheepranch band would have lost their
5 status as Indians, because the Sheepranch band's relationship
6 with the federal government would have been terminated. To this
end, 25 C.R. 242.4 provided:

7 When the provisions of a plan have been carried out to the
8 satisfaction of the Secretary, he shall publish in the
9 FEDERAL REGISTER a notice declaring that the special
10 relationship of the United States to the Rancheria or
11 reservation and to the distributees and the dependent
12 members of their immediate families is terminated. The
13 notice shall list the names of the distributes and the
14 dependent members of their immediate families who are no
15 longer entitled to any services performed by the United
16 States for Indians because of their status as Indians, the
17 fact that all restrictions and tax exemptions applicable to
18 trust or restricted land or interests therein owned by them
19 are terminated, the fact that all statutes of the United
20 States which affect Indians because of their status as
21 Indians shall be inapplicable to them, and that State laws
22 shall apply to them in the same manner as they apply to
23 other citizens. (Emphasis added)

24 It would be unreasonable, therefore, to have terminated Mabel
25 Dixie's rights as an Indian residing on the Sheepranch 0.92 acre
26 Rancheria, but not other purported members living off of the
27 Rancheria (even assuming that were the case). Thus, termination
28 of the Sheepranch band would have applied to only those who
lived on the Rancheria, and only those who lived on the
Rancheria would have been considered members of the Sheepranch
band. Most importantly, since the Sheepranch band was
"unorganized" at the time Mable Dixie voted to accept the
distribution plan as a prelude to termination, it had no "list"
of "membership" identifying those who belonged to its band. For
example, 25 C.R. 242.2 (j) provided:

1 "Unorganized Rancheria or reservation" means any tribe,
2 band, or community of Indians, which does not have an
3 organic document containing membership criteria approved by
4 the Secretary.

5 As a result, only those Indians who actually resided on the
6 0.92 acre Sheepranch Rancheria were considered members of the
7 band who were entitled to services, rights and privileges
8 because of their status as Indians. This is because this
9 particular plot of land was purchased specifically for a small
10 band of 12 or 13 band of Indians, not for Indians generally
11 residing in the area. (CVMT-2011-000001-002). Thus, a
12 preparation of a membership roll at the time Mabel Dixie voted
13 to accept the distribution plan under 25 C.R. 242 was not
14 "impracticable," largely because this particular group was in
15 fact "well defined." Thus, the following language from the
16 Senate Report, cited by the Dixie Faction, has no application to
17 the Sheepranch band of Indians:

18 "Attention is directed to the fact that no provision is
19 made for preparing a membership roll for each Rancheria or
20 reservation. The preparation of such rolls would be
21 impracticable because the groups are not well defined.
22 Moreover, the lands were **for the most part** acquired and set
23 aside by the United States for Indians in California,
24 generally, rather than for a specific group of Indians and
25 the consistent practice has been to select by
26 administrative action the individual Indians who may use
27 the land..." (Emphasis added).

28 See Kelly v. U.S. Dept. of Interior (E.D.Cal. 1972) 339 F.Supp.
1095, fn. 8. The key phrase here is "for the most part," which
leaves room for an exception to the general rule or practice.
As shown, the Sheepranch little band of 12 or 13 Indians
specifically targeted by the Indian Agent in 1915 were an
exception to this general rule. The land was specifically
acquired for them, and them alone, not the other band of Indians
in the surrounding community. See also Hardwick v. U.S.

1 (N.D.Cal. 2014) 2014 WL 1006576, page 1 (observing that the 1958
2 Rancheria Act "provided that the lands of forty-one enumerated
3 California Rancherias were to be removed from trust status and
4 distributed to the individual Indians of those Rancherias").

5 In fact, the Dixie Faction concedes that tribes covered
6 under the stipulated judgment in the Tillie Hardwick case
7 "use[d] distribution plans to identify the individuals entitled
8 to participate in the subsequent 'reorganization' of those
9 tribes." (Page 19 of Intervenor PAs, lines 8-11). Thus, had the
10 Sheepranch Rancheria been terminated and subsequently restored
11 under the Tillie Hardwick stipulation/order, only Mabel Dixie or
12 her descendants would have the right to organize the Sheepranch
13 band, because she was the only one listed for the Sheepranch
14 Rancheria that was residing on the property. Moreover, Mabel or
15 her descendants would not have been required to organize under
16 the IRA and be forced to enroll other Indians in the surrounding
17 area, as the BIA improperly attempted to do in this case, and
18 which the AS-IA 2015 decision unlawfully directs. By restoring
19 these previously terminated Rancherias, the Hardwick order
20 defined the individual Indians who were entitled to "reorganize"
21 or "organize" these terminated Rancherias. They were those
22 listed in the distribution plan who either had an allotment,
23 assignment or who actually resided on the property. The fact
24 that the Sheepranch Rancheria was never terminated is
25 irrelevant.

26 The case of Williams v. Gover (9th Cir. 2007) 490 F.3d 785,
27 cited by the Dixie Faction is controlling on this point. There,
28 the Mooretown Rancheria, consisting of two separated 80 acre
parcels, was terminated under the Rancheria Act in 1959, after
the two families that resided on those parcels voted for
termination. The Hardwick stipulated class action judgment
restored the Mooretown Rancheria as federally-recognized

1 Rancheria and Indian tribe. 490 F.3d at 788. Consistent with a
2 tribe's right to define its own membership for tribal purposes
3 under Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 56, the
4 Mooretown Rancheria used the distribution list, their
5 dependents, and their lineal descendants as a starting point for
6 determining its Tribal membership roll when it organized a
7 tribal government in 1987. 490 F.3d at 790. Significantly, the
8 Mooretown Rancheria did not organize its tribal government under
9 the IRA. Id., fn. 11. Then, in 1998, the Mooretown Rancheria
10 decided to limit Tribal membership to "only those members who
11 are direct *Lineal Descendants* of the four distributees." 490 F.3d
12 at 790. As a result, other Indians living in the surrounding
13 community who were "Concow-Maidu Indians [that] descended from
14 people who had lived at Mooretown Rancheria" got "squeezed out"
15 of full membership. The Court held that the Mooretown Rancheria
16 had the right to define its membership when it organized in 1987
17 after termination and restoration, without any interference by
18 the BIA, even though its membership decision had the effect of
19 "squeezing out" some of its members who it felt were not direct
20 descendants of the four 1959 distributees. 490 F.3d at 791.

21 For the same reasons, only Mabel Dixie's descendants, i.e.,
22 Yakima Dixie and his brother, Melvin Dixie, alone had the right
23 to define membership and organize the Sheepbranch band in 1998,
24 so long as they remained on the Rancheria. Because Melvin had
25 left, Yakima was the only one with that authority, and he
26 properly exercised that authority in 1998 when he enrolled
27 Burley and her family and organized the Tribe. As what occurred
28 with the Mooretown Rancheria in Gover, supra, the Sheepbranch
band was not required to be organized under the IRA. 25 U.S.C.
§476(h). Accordingly, the AS-IA's 2015 Decision concluding that
the Tribe must be "re-organized" with membership drawn from the

1 Mewuk Indians in the Sheepranch area is erroneous as a matter of
2 law and arbitrary and capricious.

3 **E. THE AS-IA'S 2015 DECISION'S USE OF THE PHRASE "NOT LIMITED"**
4 **WITH RESPECT TO CVMT MEMBERSHIP IS NOT SUPPORTED IN THE**
5 **RECORD**

6 The AS-IA's 2015 Decision makes repeated use of the phrase
7 "the Tribe is not limited to five individuals," and that other
8 federal court decisions have purportedly stated the Tribe is
9 "not limited to five individuals." (CVMT-2017-001399). First of
10 all, no federal court decision has ever made such a statement or
11 even held that that is the case. Even the U.S. District Court
12 that remanded to the AS-IA for reconsideration acknowledged this
13 when it stated:

14 The only issue before the courts *CVMT I* and *CVMT II* was
15 whether the Secretary had the authority to refuse to
16 approve a constitution submitted under IRA §476(h)(1). The
17 courts did not directly address the issues raised here,
18 namely whether the Tribe's membership consists of five
19 members and whether the General Council is the duly
20 constituted government of the Tribe...(Emphasis added).

21 *CVMT v. Jewell* (D.D.C.2013) 5 F.Supp.3d 86, 101, fn. 15.

22 Secondly, the AS-IA's August 2011 Decision which the Dixie
23 Faction had challenged merely concluded that the Tribe
24 "consists" or is presently comprised of five (5) members. It
25 never stated or concluded that it was limited to only five
26 members. For example it stated:

27 "While I believe that it is *equitably* appropriate for the
28 CVMT General Council to reach out to potential citizens of
the Tribe, I do not believe it is proper, *as a matter of*
law, for the Federal government to attempt to impose such a
requirement on a federally recognized tribe."

(CVMT-2011-002054). The AS-IA's 2015 Decision erroneously
creates an issue where none exists, and thus drew an erroneous
conclusion without any support in the administrative record.
Clearly, the AS-IA's August 2011 Decision concluded that the

1 Tribe had the right to expand its membership beyond the five (5)
 2 presently constituted membership, and never concluded that was
 3 to remain or be "limited" to these five individuals.

4 **F. THE AS-IA'S 2015 DECISION ERRONEOUSLY CONCLUDED THAT THE**
 5 **1998 RESOLUTION WAS INVALID**

6 As stated in more detail below, the Dixie Faction's
 7 challenge of the 1998 Resolution establishing the Tribe's
 8 General Council is barred by the six-year statute of
 9 limitations. 28 U.S.C. §2401(a); see Hardwick v. U.S. (N.D.Cal.
 10 2012) 2012 WL 6524600 (Plaintiff's challenge of the legitimacy
 11 and validity of the Tribe's governing body was held barred by
 12 the six-year statute of limitations). As a result, the AS-IA's
 13 2015 Decision granting the Dixie Faction's challenge of the AS-
 14 IA's 2011 decision and concluding that the 1998 Resolution
 15 establishing the Tribe's General Council is invalid is erroneous
 16 as a matter of law and arbitrary and capricious.

17 Even if the Dixie Faction's challenge were timely (which it
 18 is not), the above-referenced history of the Tribe demonstrates
 19 that Yakima Dixie alone had the authority to enroll Burley and
 20 her family as members and organize the Tribe when he did in
 21 1998. The Tribe was not organized under the IRA at that time,
 22 nor did it need to be. As stated in Cohen's Handbook of Federal
 23 Indian Law:

24 "Today, at least 160 Indian nations have constitutions
 25 adopted pursuant to the IRA, more than 75 have established
 26 constitutions outside its framework, and still others
 27 remain without written constitutions, either because they
 28 continue to be governed by customs and traditions, or
 because their basic laws are in the form of statutes. **No
 federal law, including the IRA itself, requires tribes to
 adopt any particular kind of constitution.** The decision
 whether to have an IRA constitution, or any written
 constitution at all, is a matter of tribal sovereignty and
 tribal initiative." (Emphasis added).

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, 2012 ed., §405[3], page
 271.

1 Accordingly, based on recognized Indian law, Dixie could
2 have organized the Tribe orally and outside the IRA framework.
3 As further stated in Cohen's Handbook of Federal Indian Law:

4 "Tribes may thus adopt constitutions outside the IRA
5 process.

6 * * *

7 "...Some tribes operate without a written constitution.
8 **The absence of a written constitution does not affect the**
9 **self-governing powers of Indian nations under federal law.**"
10 (Emphasis added).

11 Id. at §4.04[3][b], page 260.

12 However, even though he chose to organize the Tribe in a written
13 document, Indian law did not require it to be in any particular
14 form. Thus, the Dixie Faction's attack of Dixie's own written
15 constitution as "invalid" lacks merit.

16 Factually, the 1998 Resolution establishing the General
17 Council was outside the IRA framework. The BIA could not later
18 force the Tribe to "re-organize" under the IRA, or in any
19 fashion, as the AS-IA's 2015 Decision dictates. (CVMT-2011-
20 002054); see Cohen's Handbook on Federal Indian Law, *supra* at
21 §4.04[3][b], page 260 ("tribes today may revoke their IRA
22 constitutions," citing 25 U.S.C. §476(b)).

23 **G. AS-IA WASHBURN'S 2015 DECISION IS ERRONEOUSLY PREDICATED ON**
24 **A TIME-BARRED CLAIM THAT THE 1998 RESOLUTION ESTABLISHING**
25 **THE GENERAL COUNCIL WAS INVALID AT THE OUTSET**

26 The issue of whether the validity of the 1998 Resolution
27 was barred by the statute of limitations was raised before AS-IA
28 Washburn upon reconsideration of the AS-IA's decision. (Ex.
"47", RJN "33").

Dixie filed a Complaint against the federal government on
January 24, 2011, challenging the AS-IA's December 22, 2010
decision recognizing the General Council established under the
1998 Resolution. After the AS-IA withdrew his December 22, 2010

1 decision, he issued another decision on August 31, 2011,
2 reaffirming his December 2010 decision. Dixie then amended his
3 Complaint on October 17, 2011 challenging the AS-IA's August 31,
4 2011 decision. (AR-CVMT-2017-000023, 53). Dixie's original
5 Complaint included a claim that the 1998 Resolution establishing
6 the Tribal Council was invalid at the outset, even though that
7 was not an issue referred to the AS-IA to decide. In his
8 amended Complaint, Dixie reasserted that claim. (Id. At 000032-
9 33). Specifically, Dixie's attack on the validity of the 1998
10 Resolution was that "the identification of the Burleys as
11 members was incorrect because Yakima Dixie did not have the
12 authority to enroll them into the Tribe without the consent of
13 the Tribe's existing members," which Dixie alleged to be members
14 who were "living in the vicinity of the Sheep Ranch Rancheria in
15 1998" who "were readily identifiable as Tribal members, and were
16 known or should have been known to the BIA." (AR-CVMT-2017-
17 000032). Dixie's claim in his federal action attacking the
18 validity of the 1998 Resolution was, however, time-barred, and
19 the AS-IA's decision based upon that claim was, therefore,
20 erroneous as a matter of law. Hardwick v. U.S. (N.D.Cal. 2012)
21 2012 WL 6524600 (Plaintiff's challenge of legitimacy and
22 validity of the Tribe's governing body was held barred by the
23 six-year statute of limitations).

24 Actions for judicial review of final agency actions brought
25 under the Administrative Procedure Act are subject to a **six-year**
26 statute of limitations. Wind River Min. Corp. v. U.S. (9th Cir.
27 1991) 946 F.2d 710, 713; 28 U.S.C. § 2401(a). Generally, a
28 claim subject to the six-year statute of limitations period
under § 2401(a) first accrues when the plaintiff comes into
possession "of the critical facts that he has been hurt and who
has inflicted the injury." United States v. Kubrick (1979) 444
U.S. 111, 122. Under federal law, a cause of action accrues

1 when the plaintiff is aware of the wrong and can successfully
2 bring a cause of action. Acri v. Int'l Ass'n of Machinists &
3 Aerospace Workers (9th Cir. 1986) 781 F.2d 1393, 1396. Stated
4 another way, "[t]he moment at which a cause of action first
5 accrues within the meaning of Section 2401(a) is when 'the
6 person challenging the agency action can institute and maintain
7 a suit in court.'" Muwekma Ohlone Tribe v. Salazar
8 (D.D.C.2011) (quoting Spannaus v. U.S. Dep't of Justice
(D.C.Cir.1987) 824 F.2d 52, 56).

9 In Muwekma, supra, the U.S. District Court concluded that
10 the Tribe's claims under the APA against the Department of
11 Interior ("DOI") and its agency officials for purportedly
12 terminating its tribal status was barred by the six year statute
13 of limitations under 28 U.S.C. § 2401(a). It found that the
14 Tribe's claim first accrued and thus it could have pursued a
15 cause of action against the agency on the following three
16 occasions:

17 (1) in 1927, when the Muwekma contends that "the
18 Department provided [it with only] a fraction of the federal
19 funding and services allocated to ... Indian tribes;

20 (2) in 1979, when the Muwekma "was not listed on the
21 Federal Register list of entities recognized by the Secretary of
22 Interior as a tribe;" and

23 (3) in 1989, when the Muwekma filed its petition for
24 federal acknowledgment.

25 813 F.Supp.2d at 191. The Court then stated:

26 Of these three dates, the Court finds that the most obvious
27 point at which the Muwekma **could have brought suit** against
28 the agency for purportedly terminating its tribal status
was in 1989, when it was clear that it was aware that it
was not a federally recognized tribe. Given that the
Muwekma did not bring this action against the Department
until 2001, approximately twelve years after it undoubtedly
possessed knowledge that it lacked acknowledgment by the

1 **federal government as a tribe**, its unlawful termination of
2 tribal status claim is plainly barred by the limitations
3 period of 28 U.S.C. § 24001(a). (Emphasis added).

813 F.Supp.2d at 191.

4 For the same reasons, the Dixie Faction's claim that the
5 1998 Resolution was purportedly invalid is barred by the six
6 year statute of limitations, because Dixie knew more than six
7 years before he and his Faction filed suit against the DOI and
8 its agencies on January 24, 2011, that the DOI and the BIA were
9 acknowledging and accepting the General Council established
10 under the 1998 Resolution while he was simultaneously objecting
11 to it. As in the case of Muwekma, supra, there were several
12 dates that Dixie could have brought suit against the DOI and the
13 AS-IA for purportedly acknowledging and recognizing the General
14 Council established under the 1998 Resolution which the Dixie
15 Faction claimed in its 2011 suit was invalid at the outset.

These dates are as follows:

16 (1) The U.S. District Court noted that "from as early as
17 April 1999" Dixie "contested the validity of the [General]
18 Council." It stated:

19 Here, the August 2011 Decision fails to address *whatsoever*
20 the numerous factual allegations in the administrative
21 record that raises significant doubts about the legitimacy
22 of the General Council. **From as early as April 1999,**
23 **Yakima [Dixie] contested the validity of the Council.** See
24 AR 000182 (April 21, 1999 letter from Yakima to the BIA
25 stating that he "cannot and will not resign as chairman of
26 the Sheep Ranch Indian Rancheria"); see also, AR 000205
27 (October 10, 1999 letter from Yakima to BIA raising
28 questions about Burley's authority); AR 001690, 000231
29 (Yakima notifying the BIA of "fraud and misconduct" with
30 respect to the Tribe's leadership). (Emphasis added).

31 California Valley Miwok Tribe v. Jewell (D.D.C.2013) 5 F.Supp.3d
32 86, 100.

1 (2) On February 4, 2000, the BIA wrote to Dixie in
2 response to his allegations of "fraud or misconduct" concerning
3 the change in Tribal leadership that Dixie claims occurred in
4 April and May of 1999. The BIA letter memorialized a meeting
5 between BIA personnel and Dixie that occurred in December 1999.
6 The letter recounts that Dixie presented the BIA with his own
7 "constitution" for governing the Tribe that was purportedly
8 adopted by Dixie and his Faction on December 11, 1999. The BIA
9 returned the document to Dixie in its letter and stated that:

10 "...the body that acted on December 11, 1999, upon the
11 document **does not appear to be the proper body to so act.**"
12 (Emphasis added).

13 (AR-CVMT-2011-000241, 245). In short, the BIA unequivocally
14 informed Dixie that it was recognizing the General Council
15 established under the 1998 Resolution, and not the Dixie
16 Faction's Tribal Council, despite Dixie's claim of fraud in
17 connection with its formation.

18 (3) On March 7, 2000, the BIA wrote Silvia Burley, as the
19 Chairperson of the Tribe, and summarized discussions its
20 personnel had with Dixie on February 4, 2000. The letter
21 recounts that Dixie was challenging his enrollment of Burley and
22 her family into the Tribe. (Ex. "5," BIA letter to Burley dated
23 March 7, 2000, page 2). His argument was obviously that if he
24 never intended to enroll them as Tribal members, then the
25 General Council established under the 1998 Resolution was
26 invalid at the outset. The BIA indicated that it rejected
27 Dixie's claims and requested he submit his grievances to the
28 Tribe's General Council, thus reaffirming the BIA's recognition
of the General Council established under the 1998 Resolution.
The letter stated:

**"We also reiterated [to Dixie] our view, notwithstanding a
Tribal decision to the contrary, that the appropriate
Tribal forum is the General Council [established under the**

1 **1998 Resolution]**. At present, we view, again
2 notwithstanding a Tribal decision to the contrary, the
3 General Council as comprised of Yakima Dixie, Rashel
4 Reznor, and you [Burley]..." (Emphasis added).

5 (AR-CVMT-2011-000249-250).

6 (4) On July 18, 2001, Dixie filed suit in the U.S.
7 District Court, Eastern District of California, alleging fraud
8 against Burley in connection with the formation of the General
9 Council established under the 1998 Resolution. Dixie alleged
10 that the Tribe was "small," and that he, his brother Melvin and
11 his son "Rocky" were the only members of the Tribe by virtue of
12 being "lineal descendants of the Sheep Ranch Miwok Tribe." (Ex.
13 "6," Complaint, "Sheep Ranch Miwok Tribe v. Burley, et al.,"
14 Case No. CIV.S-01-1389 MLS-DAD, pp. 14, 27, 30-31, filed July
15 18, 2001, RJN "3"). He alleged that his enrollment of Burley
16 and her family was conditioned on them "following his
17 leadership." Id. He alleged that Burley and her family by fraud
18 voted her to become the Tribal Chairperson and that they never
19 intended to follow his leadership. Id. He alleged that had he
20 known of Burley's true intentions, he would have never accepted
21 her and her family as members. Id.

22 The U.S. District Court dismissed Dixie's suit and observed
23 as follows:

24 As an initial matter, the court may take judicial notice of
25 evidence that defendants Silvia Burley and Rashel Reznor
26 are **recognized by the BIA as the sole members of the**
27 **governing body of the Sheep Ranch Rancheria of Me-Wuk**
28 **Indians.** See BIA July 12, 2000 Letter of Recognition,
Burley Decl. Exh. C. (Emphasis added).

(Ex. "23," Order, January 24, 2002, No. CIV. S-01-1389 LKK/DAD,
page 3, lines 12-16, AR-CVMT-2011-000278, 280). Dixie never
appealed this order of dismissal. The BIA letter of July 12,
2000, which was attached to the motion to dismiss, and which

1 Dixie obviously got a copy of during the briefing of the motion,
2 explicitly states:

3 "The Bureau of Indian Affairs, Central California Agency,
4 recognizes the following individuals as members of the
5 Tribal Council, governing body, of the Sheep Ranch
6 Rancheria of Me-Wuk Indians:

- 7 1. Silvia F. Burley, Chairperson
- 8 2. Vacant, Vice-Chairperson
- 9 3. Rashel K. Reznor, Secretary/Treasurer

10 "Please contact Raymond Fry, Tribal Operations Officer, at
11 (916) 566-7124 should you require additional information
12 with regard to this matter."

13 (Ex. "7," BIA letter of July 12, 2000, to Burley, AR-CVMT-2011-
14 000257). As stated, Dixie got a copy of this letter during the
15 briefing of the motion to dismiss, and was therefore put on
16 notice of the BIA's position with respect to the validity of the
17 General Council established under the 1998 Resolution, at least
18 as far back as January 24, 2000, the date of the order.

19 (5) On October 30, 2003, Dixie wrote a letter to the U.S.
20 Department of the Interior ("DOI") attempting to appeal the
21 BIA's 1999 recognition of Burley as the Chairperson of the
22 Tribe, and requesting that the DOI "nullify her appointment and
23 her and her families' adoption as member of the Tribe." His
24 appeal states in pertinent part:

25 "In this appeal, I Yakima K. Dixie, as Appellant, am
26 contesting the administrative action (without my knowledge
27 and consent) by agents of the Bureau of Indian Affairs, in
28 which Silvia Burley fraudulently came to be the recognized
authority for and Chairperson of my ancestral tribe, of
which I am the hereditary Chief and rightful Chairperson by
lineal descent. As explained herein, I was tricked by
Silvia Burley and others; and I, the Appellant, am
requesting the nullification of both her appointment as
Chairperson and the nullification of her original adoption
and the adoption of her daughter and two grand-daughters
into my tribe, which, again, I allege was fraudulent..."

(Emphasis added as to "hereditary" only; other emphasis in the original).

(Ex. "8," Dixie Notice of Appeal, dated October 30, 2003, page 1, RJN "4"). Here, Dixie is claiming to have hereditary rights and powers as the "hereditary chief" of the Tribe, notwithstanding the 1998 Resolution, which specifically provides:

"RESOLVED, That all other inherent rights and powers not specifically listed herein shall vest in the General Council..." (Emphasis added).

(Ex. "9," Resolution #GC-98-01, "Establishing a General Council to Serve as the Governing Body of the Sheep Ranch Band of Me-Wuk Indians," dated November 5, 1998, page 1, AR-CVMT-2011-000177). Accordingly, Dixie's 2003 Notice of Appeal is clear evidence that he was attempting to challenge the validity of the General Council established under the 1998 Resolution, and thus was aware of the existence of such a claim more than six years from the time he filed his Complaint against the AS-IA on January 24, 2011.

In any event, Dixie's appeal was dismissed on procedural grounds and as untimely. In a letter dated February 11, 2005, the BIA wrote to Dixie as follows:

"I am writing in response to your appeal filed with the office of the Assistant Secretary-Indian Affairs on October 30, 2003...In that appeal, you challenged the Bureau of Indian Affairs' ("BIA") recognition of Sylvia Burley as tribal Chairman and sought to 'nullify' her admission, and the admission of her daughter and granddaughters into your Tribe. Although your appeal raises many difficult issues, I must dismiss it on procedural grounds.

* * *

"In addition, your appeal appears to be untimely. In 1999, you first challenged the BIA's recognition of Ms. Burley as Chairman of the Tribe. In February 2000, the BIA informed you that it defers to tribal resolution of such

1 issues. On July 18, 2001, you filed a lawsuit against Ms.
2 Burley in the United States District court for the Eastern
3 District of California challenging her purported leadership
4 of the Tribe. **On January 24, 2002, the district court**
5 **dismissed your lawsuit, without prejudice and with leave to**
6 **amend, because you had not exhausted your administrative**
7 **remedies by appealing the BIA's February 2000 decision.**
8 After the court's January 24, 2002, order, you should have
9 pursued your administrative remedies with the BIA.
10 Instead, you waited almost a year and a half, until June
11 2003, before raising your claim with the Bureau. As a
12 result of your delay in pursuing your administrative appeal
13 after the court's January 24, 2002, order, your appeal
14 before me is time barred." (Emphasis added).

15 (Ex. "10," BIA letter to Dixie, dated February 11, 2005, pages
16 1-2, AR-CVMT-2011-000610). As the BIA explained to Dixie in
17 this letter of February 11, 2005, Dixie could have challenged
18 the BIA's recognition of the General Council established under
19 the 1998 Resolution as far back as 1999, by first exhausting his
20 administrative remedies and then filing suit in the U.S.
21 District Court. The District Court nevertheless gave Dixie
22 another chance and allowed him to proceed with his claims after
23 exhausting his administrative remedies, but he never followed
24 through with that requirement. In the same way he was time-
25 barred in February 2002, he was also time-barred under the six-
26 year statute of limitations when he attempted to challenge the
27 validity of the General Council established under the 1998
28 Resolution in his January 24, 2011 suit in federal court.

In addition, Dixie's attempt to "nullify" Burley and her
family's adoption as members of the Tribe goes to the heart of
the validity of the 1998 Resolution establishing the General
Council, which states in pertinent part:

"RESOLVED, That Yakima Dixie, Silvia Fawn Burley, and
Rashel Kawehilani Reznor, as a majority of the adult
members of the Tribe, hereby establishes a General Council
to serve as the governing body of the Tribe..."

1 (Ex. "9," Resolution #GC-98-01, "Establishing a General Council
2 to Serve as the Governing Body of the Sheep Ranch Band of Me-Wuk
3 Indians," dated November 5, 1998, page 2, AR-CVMT-2011-000178).
4 Without these adopted members, there could be no General
5 Council, and the Tribe would not have been organized with a
6 General Council governing body.

7 (6) On May 5, 2004, Yakima Dixie executed a "Will &
8 Testament." In this document, Dixie reiterates he is the "Chief
9 and rightful authority of the Sheep Ranch Rancheria of MiWok
10 Indians of California a.k.a. California Valley Miwok Tribe,"
11 because of his "hereditary and lineal descent." (Ex. "11,"
12 Yakima Dixie Will & Testament, May 5, 2004, page 1). The
13 document also references the establishment of a Tribal Council,
14 separate and apart from the "General Council" established under
15 the 1998 Resolution, and states:

16 "At the time of this signing, the only member of the
17 Tribal Council is Velma WhiteBear, who is designated as the
18 Executive Director of the Tribe."

19 (Ex. "11," Yakima Dixie Will & Testament, May 5, 2004, page 2,
20 RJN "5", AR-CVMT-2017-000957). The document then lists ten (10)
21 persons as the only members of the Tribe, but does not name
22 Burley and her three family members Dixie adopted into the Tribe
23 in 1998. (He was also contradicting his claims that the Tribe
24 consists of more than 200 members). Thus, at the time of the
25 execution of his Last Will & Testament, dated May 5, 2004, Dixie
26 was denying the validity of the General Council established
27 under the 1998 Resolution. Together with his October 30, 2003
28 letter to the DOI and previous letters to the BIA objecting to
the BIA's recognition of Burley as Chairperson of the Tribe and
the BIA's recognition of Burley and her family as adopted
members of the Tribe, Dixie therefore knew he had a claim
against the federal government for recognizing the Tribe's

General Council that was purportedly invalid at the outset, more than six years from the date he filed suit on January 24, 2011.

(7) Notice that the Tribe had changed its name to the California Valley Miwok Tribe was published in the July 12, 2002 Federal Register. (See Ex. "12," copy of 2002 Federal Register and Ex. "13," June 7, 2001, letter from BIA to Burley accepting new name for publication, RJN "7"). The placement of the new name of the Tribe was an act of recognition by the DOI of the validity of the General Council established under the 1998 Resolution, after the General Council passed a resolution to change the name of the Tribe and submitted it to the BIA for approval. As the DOI stated in a letter to Silvia Burley on June 7, 2001:

"The *Sheep Ranch Rancheria* (Tribe) is a small tribe that does not have a tribal constitution. The tribe has a tribal council and conducts tribal business through resolution. A tribal resolution, such a resolution No. R-1-5-07-201, enacted by the Tribal council on May 7, 2001, is sufficient to effect the tribal name change. The Tribe's new name has been included on the Tribal Entities list that will be published in the FEDERAL REGISTER later this year."

(Ex. "13," Letter from Sharon Blackwell at BIA to Burley, dated June 7, 2001, RJN "7").

The DOI's publication of the Tribe's new name in the FEDERAL REGISTER was adequate notice to Dixie and his followers that on July 12, 2002, the DOI recognized the validity of the General Council established under the 1998 Resolution, thereby giving Dixie critical facts to institute a lawsuit.

"[S]tatute of limitations are to be applied against the claims of Indian tribes in the same manner as against any other litigant seeking legal redress or relief from the government." *Hopland Band of Pomo Indians v. United States* (Fed.Cir.1988) 855 F.2d 1573, 1576; *Sissten-Wahpeton Sioux Tribe v. United States*

(9th Cir. 1990) 895 F.2d 588, 592 (“Indian Tribes are not exempt from statute of limitations governing actions against the United States”). Also, [a]ctual knowledge of government action...is not required for a statutory period to commence.” Shiny Rock Mining Corp. v. United States (9th Cir. 1990) 906 F.2d 1362, 1364. Instead, “[p]ublication in the Federal Register is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance.” Id. Accordingly, the notice published in the Federal Register on July 12, 2002, was adequate to apprise Dixie and his followers that the federal government was acknowledging the validity of the General Council established under the 1998 Resolution. Thus, based on the Federal Register publication alone, a timely action challenging the validity of the 1998 Resolution establishing the General Council should have been filed before July 12, 2008, six years after the 2002 FEDERAL REGISTER publication.

H. THE U.S. DISTRICT COURT IMPROPERLY DIRECTED THAT THE AS-IA RECONSIDER HIS 2015 DECISION BASED ON A TIME-BARRED CLAIM

As indicated, the Burley Faction, as an Intervenor-Defendant in Dixie’s federal suit challenging the August 2011 AS-IA’s decision, was unable to appeal the U.S. District Court’s order granting summary judgment in favor of the Dixie Faction, because the Federal Defendants chose not to appeal and the remand order was not final. As a result, the AS-IA reconsidered its August 2011 decision based on erroneous remand instructions that included an order that the AS-IA address the issue of whether the General Council as established under the 1998 Resolution was valid at the outset, as pled in the Dixie Faction’s complaint.

The U.S. District Court stated:

1 The August 2011 Decision declares: "[t]he [November] 1998
2 Resolution established a General council form of
3 government, comprised of all adult citizens of the Tribe,
4 with whom the [BIA] may conduct government-to-government
5 relations. AR 002056. Once again, in reaching this
6 conclusion, the Assistant Secretary simply assumes, without
7 addressing, the validity of the General Council...

8 The Court finds that the August 2011 Decision is
9 unreasonable in light of the facts contained in the
10 administrative record...Before invoking the principle of
11 tribal self-governance, it was incumbent on [the Assistant
12 Secretary] to first determine whether a duly constituted
13 government actually exists...

14 Here, the August 2011 Decision fails to address *whatsoever*
15 the numerous factual allegations in the administrative
16 record that raise significant doubts about the legitimacy
17 of the General Council. From as early as April 1999,
18 Yakima contested the validity of the Council...

19 ...Accordingly, the Court will remand this issue to the
20 Secretary for reconsideration. (Emphasis added).

21 California Valley Miwok Tribe v. Jewell (2013) 5 F.Supp.3d 86,
22 99-101.

23 However, as stated, the issue of whether the General
24 Council was invalid at the outset was barred by the six-year
25 statute of limitations.

26 **I. PLAINTIFFS PRESERVED THE STATUTE OF LIMITATIONS ISSUE**
27 **BEFORE THE U.S DISTRICT COURT IN DIXIE'S FEDERAL ACTION**

28 On March 26, 2012, the Burley Faction filed a motion to
dismiss the Dixie Faction's FAC in the federal action
challenging the AS-IA's 2011 Decision. Among other things, the
Burley Faction alleged that the Dixie Faction's claims were
barred by the six-year statute of limitations, including the
claim challenging the validity of the General Council
established under the 1998 Resolution. The motion stated in
pertinent part as follows:

1 "...Claims which arise under the APA are subject to the
2 statute of limitations governed by 28 U.S.C. §2401(a),
3 which bars civil actions against the United States that are
4 not filed within six years after the right of action first
5 accrues...

6 * * *

7 "Plaintiffs' Amended Complaint also very clearly challenges
8 the September 24, 1998 BIA final agency action which first
9 recognized the tribe's five member citizenship and their
10 authority to establish a Tribal government, alleging that
11 the BIA acted 'erroneously'...Neither the Non-Members...nor
12 Mr. Dixie ever challenged the 1998 Final Agency Action.
13 Nor did Plaintiffs challenge subsequent BIA final agency
14 actions issued on February 2000 and March 2000, which
15 reaffirmed the authority of the Tribe's governing body,
16 pursuant to Resolution #GC-98-01, and its five federally
17 recognized members...."

18 (Ex. "14," PAs in Support of Intervenor-Defendant's Motion to
19 Dismiss, filed 3/26/2012, pages 18-19, RJN "8").

20 The U.S. District Court's Order denying the motion to
21 dismiss on these grounds was factually and legally erroneous.
22 It stated:

23 It is true that in February 2000, the Secretary accepted
24 the "General Council...as the governing body of the Tribe,"
25 A.R. at 236, and the Dixie Faction could have challenged
26 his determination then. Any such challenge would have been
27 mooted, however, by the Secretary's reversal in February
28 2005, when he held "the [Bureau] does not recognize any
tribal government." Non-Recognition Letter, A.R. at 611.
Because the Secretary's decision on review "mark[ed] a 180-
degree change of course" by once again recognizing the
General Council as the Tribe's government, the Dixie
Faction's challenge is timely. Decision Letter, A.R. at
2050.

29 (Ex. "15," Memorandum Opinion Denying Motion to Dismiss,
30 9/06/2013, pages 13-14, AR-CVMT-2017-000762, 774-775). This
31 conclusion is erroneous. First of all, the February 11, 2005
32 letter relied upon by the Court states that because the Tribe
33 was at that time not "organized" under the IRA, the BIA did not

1 recognize its governing body, but it did "recognize" Silvia
2 Burley as a "person of authority within the California Miwok
3 Tribe." The letter further stated that the BIA would not
4 recognize either Burley or Dixie as "Chairman" of the Tribe,
5 until the Tribe organized itself under the Indian Reorganization
6 Act of 1934 ("IRA"). The BIA was clearly trying to get the
7 Tribe to "re-organize" itself under the IRA, but was continuing
8 to recognize Burley as a person with authority with whom the BIA
9 was at that time conducting government-to-government relations.
10 The letter never stated that the BIA considered the General
11 Council established under the 1998 Resolution to be invalid.
12 Indeed, recognizing Burley as a person of "authority" within the
13 Tribe would seem to contradict that notion, since her authority
14 was derived from the General Council. Thus, the statute of
15 limitations issue was not mooted by the BIA's February 2005
16 letter.

17 Secondly, the February 11, 2005 letter did not address the
18 issue of whether the General Council was invalid or not
19 recognized, but simply made passing reference to a letter from
20 the BIA dated March 26, 2004 that indicated the Tribe was not
21 organized, and, because of that, the BIA stated in its February
22 11, 2005 letter that it therefore could not "defer to any tribal
23 dispute resolution process at [that] time" with respect to the
24 BIA's recognition of Burley as the Tribal Chairperson and the
25 admission of Burley's family as Tribal members.

26 Third, the AS-IA's 2011 Decision was not a "180-degree
27 change of course" which "once again" "recognize[ed] the General
28 Council as the Tribe's government," as the U.S. District Court
characterized it in its Order. Rather, the 2011 Decision made
it clear that its "180-degree change of course" was only with
respect to its "finding (6)" that stated:

1 "Under the IRA, as amended, it is impermissible for the
2 Federal government to treat tribes not 'organized' under
3 the IRA differently from those 'organized' under the IRA
4 (25 U.S.C. §§ 476(f)-(h))."

5 (Ex. "16," AS-IA's August 31, 2011 Decision, page 2, AR-CVMT-
6 2011-002050). Up to that point, the DOI was requiring the Miwok
7 Tribe to "reorganize" itself under the IRA in order for it to be
8 eligible to receive federal benefits. The 2011 Decision further
9 stated:

10 "I reject as contrary to § 476(h) the notions that a tribe
11 can be compelled to 'organize' under the IRA and that a
12 tribe not so organized can have 'significant federal
13 benefits' withheld from them. Either would be a clear
14 violation of 25 U.S.C. § 476(f)."

15 (Id. At 2054). This different (180 degree) policy direction was
16 that the BIA should no longer require the Tribe to re-organize
17 its governing body under the IRA, in order to be eligible to
18 receive federal benefits, including P.L. 638 federal contract
19 funding. The "policy" was not whether the General Council was
20 to be recognized as a valid governing body or whether it was
21 invalid at the outset, as the Court was suggesting.

22 Dixie's claim that the General Council established under
23 the 1998 Resolution was invalid at the outset was time-barred,
24 and the Burley Faction's motion to dismiss this claim should
25 have been granted. Instead, the Court allowed this time-barred
26 claim to proceed against the federal government and improperly
27 ordered the AS-IA to re-evaluate on remand whether the 1998
28 Resolution establishing the General Council was invalid at the
29 outset.

30 **J. THE ISSUE OF THE VALIDITY OF THE 1998 RESOLUTION**
31 **ESTABLISHING THE GENERAL COUNCIL WAS NEVER REFERRED TO THE**
32 **AS-IA FOR REVIEW BY THE INTERIOR BOARD OF INDIAN APPEALS**

33 The issue of improper referral was also raised before
34 Washburn on reconsideration. (Ex. "47", RJN "33").

1 The issue the Interior Board of Indian Appeals ("IBIA")
2 referred to the AS-IA for resolution was limited to an
3 "enrollment dispute," i.e., whether the BIA could force the
4 Tribe to organize under the IRA and convene a "general council"
5 meeting without the Tribe's consent and have non-members in the
6 surrounding community participate in that "re-organization." Ex.
7 "17," California Valley Miwok Tribe v. Pacific Director, BIA
8 (01/28/2010) 51 IBIA 103, 120. (AR-CVMT-2011-001701). As
9 stated, the BIA was forcing this issue, not because it felt the
10 General Council was invalid at the outset, but rather because it
11 felt the Tribe could not qualify for federal benefits without
12 being re-organized under the IRA. The IBIA did not refer any
13 issue concerning the validity of the General Council. It
14 referred this "enrollment" dispute to the AS-IA because the IBIA
15 lacked jurisdiction to decide that issue. It stated:

16 "...In this appeal, Burley contends that BIA exceeded
17 its authority in determining who would constitute the
18 'greater tribal community,' or class of 'putative members,'
19 and in deciding that they could participate as part of a
20 'general council' meeting of the Tribe, to decide
21 membership and organizational issues.

22 "As evidenced by the decisions of the Superintendent
23 and the Regional Director, and the public notices published
24 by BIA in 2007, BIA apparently has decided to create a base
25 roll of individuals who satisfy criteria that BIA has
26 determined to be appropriate and who will be entitled to
27 participate-effectively as members (albeit in a somewhat
28 undefined capacity)-in a 'general council' meeting of the
29 Tribe to organize the Tribe. Although the facts of this
30 case render BIA's decision far from a typical enrollment
31 adjudication, we conclude [...], in substance, that is what
32 it is. Whether or not some or all of the individuals BIA
33 would determine, under the Decision, to be 'putative
34 members' of the Tribe will ultimately be enrolled, BIA's
35 determination of their 'putative membership' apparently
36 will effectively 'enroll' them as members of the 'general
37 council' that is to meet. And that general council, as
38 apparently envisioned by BIA, will have the authority to
39 determine permanent membership criteria.

1 "Understood in the context of the history of this
 2 Tribe, and BIA's dealings with the Tribe since
 3 approximately 1999, **this case is properly characterized as**
 4 **an enrollment dispute...**Because the Board lacks
 5 jurisdiction to adjudicate tribal enrollment disputes, we
 6 dismiss this claim and refer it to the Assistant
 7 Secretary." (Emphasis added).

8 51 IBIA at 120-121, AR-CVMT-2011-001701-1702.

9 In the same way the AS-IA observed as undisputed that the
 10 Tribe was a federally-recognized Tribe (AS-IA August 31, 2011
 11 Decision, page 1), the AS-IA in his August 2011 Decision
 12 observed as undisputed the fact that the Tribe "operates under a
 13 General Council form of government, pursuant to Resolution #CG-
 14 98-01." (Id. at page 2). Whether the General Council was
 15 invalid at the outset was not referred to him for resolution.
 16 Nor could it have been, because **Burley was not disputing that**
 17 **issue in her appeal before the IBIA.** Nor was the BIA. As
 18 stated, the issue first came up when Dixie, not Burley, raised
 19 it in his January 24, 2011 complaint he filed in federal court
 20 challenging the AS-IA's December 22, 2010 Decision, and again on
 21 October 17, 2011, when he challenged the August 31, 2011 AS-IA's
 22 Decision.

23 Accordingly, it was improper and erroneous for the AS-IA to
 24 entertain and decide that issue in his December 30, 2015
 25 Decision.

26 **K. THE 2015 DECISION ERRONEOUSLY CONCLUDED THAT THE 1998**
 27 **GENERAL COUNCIL WAS ESTABLISHED MERELY TO "MANAGE THE**
 28 **PROCESS "OR REORGANIZING THE TRIBE"**

29 In his 2015 Decision, the AS-IA concluded that the 1998
 30 Resolution establishing the General Council was enacted merely
 31 to "manage the process of re-organizing the Tribe." (2015
 32 Decision, page 5, AR-CVMT-2017-001401). The AS-IA used this
 33 erroneous statement to justify its further determination that

1 the Tribe was required to re-organize under the IRA with the
2 participation of non-members ("putative members") in the
3 surrounding community, all in opposition to the determinations
4 made by the previous AS-IA in his August 2011 Decision. In
5 truth and fact, nowhere in the 1998 Resolution is there any
6 mention that it was established to "manage the process of re-
organizing the Tribe."

7 While the Tribe had the option of re-organizing under the
8 IRA, and the record reflects the Tribe pursued that option for a
9 while but decided against it, the 1998 Resolution clearly
10 provides that it "establishe[d] a General Council to serve as
11 the governing body of the Tribe." (Page 2 of Resolution). It
12 was not established to "manage the process of reorganizing the
13 Tribe" under the IRA. Indeed, the title of the Resolution
clearly states:

14 "ESTABLISHING A GENERAL COUNCIL TO SERVE AS THE GOVERNING
15 BODY OF THE SHEEP RANCH BAND OF ME-WUK INDIANS"

16 (Ex. "9," Resolution #GC-98-01, page 1, AR-CVMT-2011-000177).
17 If, pursuant to 25 U.S.C. § 476(h), the Tribe is not required to
18 "organize" under the IRA, and the Tribe decides not to pursue
19 that option, then the General Council remains as the governing
body of the Tribe. As stated in the 1998 Resolution:

20 "**RESOLVED**, That the General Council shall exist until a
21 Constitution is formally adopted by the Tribe and approved
22 by the Secretary of the Interior or his authorized
23 representative, unless this resolution is rescinded through
subsequent resolution of the General Council." (Emphasis
added).

24 (Ex. "9," Resolution #GC-98-01, AR-CVMT-2011-000179).

25 In addition, the BIA initially suggested the Tribe operate
26 either as a General Council or an Interim Tribal Council, but
27 the Tribe chose the first option, strongly suggesting that it
28 did not want to be tied to the idea of having to re-organize

under the IRA if it later decided against it. (Ex. "18," BIA letter to Dixie, dated September 24, 1998, pages 2-3). Indeed, the Tribe ultimately chose to simply operate as a General Council outside the IRA, and that's where the trouble began with the BIA later trying to force the Tribe to re-organize under the IRA.

L. THE 2015 DECISION INCORRECTLY CONCLUDES THAT PRIOR FEDERAL COURT DECISIONS HAVE HELD THAT THE TRIBE'S MEMBERSHIP IS LARGER THAN FIVE MEMBERS AND HAS MISCONSTRUED THE HISTORY OF THE CALIFORNIA RANCHERIAS

The 2015 Decision states that "[a]ll of the Federal court decisions examining the CVMT dispute make clear that the Tribe is not limited to five individuals." (Page 3 of AS-IA December 30, 2015 Decision, AR-CVMT-2017-001399). This is inaccurate.

No federal court decision involving the Tribe directly addressed the issue of whether the Tribe's membership consists of five members and whether the General Council is the duly constituted government of the Tribe. Indeed, the U.S. District Court remanding the AS-IA's 2011 Decision for reconsideration made the same observation. In rejecting the Dixie Faction's argument that collateral estoppel bars the Secretary from recognizing the General Council, the Court observed in a footnote as follows:

...CVMT I and CVMT II do not share the same contested issue with this case. (citation). The only issue before the courts CVMT I and CVMT II was whether the Secretary had the authority to refuse to approve a constitution submitted under IRA § 476(h)(1). The courts did not directly address the issues raised here, namely whether the Tribe's membership consists of five members and whether the General Council is the duly constituted government of the Tribe...

5 F.Supp.3d at 101, fn. 15. The U.S District Court remanding the 2011 Decision for reconsideration merely criticized the AS-IA for simply assuming that the Tribe consists of five members, but made no ruling or holding itself that it was. 5 F.Supp.3d

1 at 99 ("...rather than simply assume that the Tribe consists of
2 five members, the Assistant Secretary was required to first
3 determine whether the membership had been properly limited to
4 these five individuals"). Thus, no Court has ever held that the
5 Tribe includes more than five members.

6 In addition, the AS-IA recounted an inaccurate history of
7 the California Rancherias to further support its erroneous
8 conclusion that the Tribe is not limited to five members. It
9 stated without any evidentiary support as follows:

10 "When a parcel on a Rancheria came available, BIA would
11 assign the land to such a non-resident Indian who was
12 associated with the band, if possible...Thus, such
13 associated band Indians who were non-residents were
14 potential residents. And since membership in an
15 unorganized Rancheria was tied to residence, potential
16 residents equated to potential members."

17 (Ex. "19," AS-IA's December 30, 2015 Decision, page 4, AR-CVMT-
18 2017-001400). There has never been an occasion where the BIA
19 has determined that the membership lists of unorganized
20 California Rancherias should be culled from "potential
21 residents," and neither the AS-IA nor the Dixie Faction can
22 provide evidence of such instances.

23 In most instances, the California Rancherias were
24 terminated by the Rancheria Termination Act, i.e., P.L. 85-671.
25 Thereafter, many unorganized Rancherias sought restoration of
26 their status as federally recognized tribes through litigation.
27 In those instances, following restoration of these Rancherias
28 through stipulated judgments, the BIA looked to the **actual**
residents and relied on distributee lists created during the
termination period as the most accurate representation of the
active members of a particular tribe and determined that only
those individuals were entitled to participate in the tribes'
reorganization. See Stipulated Judgment, Paragraph 6, Wilton

1 Miwok Rancheria v. Salazar (N.D.Cal. June 8, 2009) No. C-07-
 2 02681, Dkt. 61 (stipulation between the United States and the
 3 Wilton Miwok Rancheria that "the initial tribal organization of
 4 the Tribe shall be a General Council consisting of all
 5 distributes and dependent members listed in the Distribution
 6 Plan...."); Alvarado v. Table Mountain Rancheria (N.D.Cal. July
 7 28, 2005) 2005 WL 1806368, at *1 (noting that the restoration of
 8 the Table Mountain Rancheria involved reference to "Indians
 9 named in the distribution plan of the assets of the Table
 10 Mountain Rancheria and their successors in interests"), *aff'd on*
 11 *other grounds*, (9th Cir. 2007) 509 F.3d 1008; Alan-Wilson v.
 12 Sacramento Area Dir. (1997) 30 IBIA 241, 255 (concluding that
 13 the individuals entitled to participate in the organization of
 14 the Cloverdale Rancheria was based on the list of distributees
 15 and the distributees' lineal descendants). These cases show
 16 that when the BIA has had to determine who is eligible to
 17 reorganize a tribe, it has looked to the distribute list—
 18 reflecting actual residence on the Rancheria—as a reliable
 19 record to determine membership. There is no legal basis
 20 whatsoever—in the case of terminated tribes or tribes that
 21 maintained federal recognition—for treating **potential** residents
 22 as members for purposes of reorganization as the AS-IA's 2015
 23 decision states.

24 Accordingly, the AS-IA relied upon these inaccurate facts
 25 to support its erroneous conclusion that the Tribe is not
 26 limited to five members.

27 **M. THE "ELIGIBLE GROUP SYSTEM" IMPROPERLY FORCES THE TRIBE TO**
 28 **"RE-ORGANIZE"**

The AS-IA's 2015 Decision establishing the novel "Eligible
 Group" system creates a system contrary to federal precedent and
 the requirements of the IRA that equates potential membership
 with actual membership.

1 When Burley and her family were adopted into the Tribe by
2 Dixie, their enrollment changed their status from individuals
3 with Miwok ancestry to members of a small tribe. In fact, the
4 2015 Decision recognizes that at the time of the Burley family's
5 enrollment the Tribe was suffering from the effects of a
6 "dwindling tribe." (Ex. "19," AS-IA's December 30, 2015
7 Decision, page 4, fn. 20, AR-CVMT-2017-001400). Inexplicably,
8 the 2015 Decision rejects the 1998 Resolution establishing the
9 General Council on the purported ground that "the people who
10 approved the 1998 Resolution...are not the majority of those
11 eligible to take part in the reorganization of the Tribe." (Id.
12 at page 5). The 2015 decision then erroneously creates an
13 "Eligible group" system to facilitate the reorganization of the
14 Tribe that includes a larger pool of eligible people based not
15 upon membership, but based upon descent, contrary to well
16 established Indian law.

17 To be sure, the purported "Eligible group" system
18 improperly places persons with only Miwok ancestry on par with
19 enrolled members. See Santa Clara Pueblo v. Martinez (1978) 436
20 U.S. 49, 55-56, 72, fn. 32. It also violates the provisions of
21 25 U.S.C. § 476(f) and (h), because it forces the Tribe to
22 reorganize under the IRA in order to receive federal benefits.

23 **N. THE DIXIE FACTION IS ESTOPPED FROM CHALLENGING THE 1998**
24 **RESOLUTION**

25 The record is clear that Dixie participated in the drafting
26 and approval of the 1998 Resolution establishing the General
27 Council. He now claims the whereabouts of his brother, Melvin
28 Dixie, were known at the time of the 1998 Resolution, even
though he represented to the BIA and to Burley and others that
his whereabouts were unknown. To now contend that the 1998
Resolution is now defective or invalid because Dixie in fact

1 knew where he could be contacted, but that he may have simply
2 lied about it, runs contrary to the principles of equity.

3 As stated in Menominee Indian Tribe of Wisconsin v.
4 Thompson (W.D.Wis.1996) 943 F.Supp 999, "it is inaccurate to say
5 that equitable defenses can never apply to Indian tribes." 943
6 F.Supp at 1021 (the court also stating that it is aware of no
7 cases holding that collateral estoppel or res judicata can never
8 apply to an Indian tribe). The doctrine of equitable estoppel
9 provides that "whenever a party has, by his own statement or
10 conduct, intentionally and deliberately led another to believe a
11 particular thing is true and to act upon such belief, he is not,
12 in any litigation arising out of such statement or conduct,
13 permitted to contradict it." Cal. Evid. Code §623; Wilk v.
14 Vencill (1947) 30 Cal.2d 104, 107. California equitable
15 estoppel is thus similar to and not inconsistent with federal
16 common law. Lukovsky v. City and County of San Francisco (9th
17 Cir. 2008) 535 F.3d 1044, 1052.

18 Accordingly, Dixie is equitably estopped from attacking the
19 validity of the 1998 Resolution establishing the General Council
20 on the grounds that his brother, Melvin did not sign the
21 resolution and could have been contacted, because he expressly
22 misled the BIA and Burley into believing that the whereabouts of
23 Melvin were unknown at the time the parties executed and passed
24 the resolution.

25 **O. AS-IA ECHO HAWK'S SHOULD BE REINSTATED AND ADOPTED AS THE**
26 **MOST LEGALLY CORRECT DECISION ON THE TRIBE'S GOVERNING BODY**
27 **AND MEMBERSHIP**

28 The AS-IA's August 2011 Decision is clearly a correct
statement of Indian law and should be re-instated as the final
agency action resolving the dispute between the two factions.

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1 **P. EVERONE AND THE DIXIE FACTION HAVE COMMITTED FRAUD UPON THE**
2 **COURT AND THE BIA BY FALSELY CREATING A TRIBAL LEADERSHIP**
3 **DISPUTE TO JUSTIFY RE-ORGANIZING THE TRIBE**

4 As stated, Everone conspired with Dixie to concoct a Tribal
5 leadership dispute, so that the BIA would question the governing
6 body of the Tribe and, at the urging of the Everone and Dixie,
7 reorganize the Tribe's governing body. The sole purpose of
8 these actions was to "hijack" or take over control of the Tribe
9 from Burley, so that Everone and his non-Indian investors can
10 build a gambling casino and enrich themselves at the expense of
11 the Tribe. These issues were raised before AS-IA Washburn when
12 the 2011 AS-IA decision was remanded for him to reconsider. (AR-
13 CVMT-2017-000954 [Memo 1/17/2014: Origination of the CVMT
14 Dispute]; Letter to Washburn 6/6/2014 from Corrales, RJN "32"
15 Ex. "46").

16 Everone sowed confusion with the BIA and the DOI which he
17 used to implement his casino plans and build a casino.

18 In 1999, two non-Indian California developers named Bill
19 Martin ("Martin" and Leroi Chapelle ("Chapelle") read a
20 newspaper article about Yakima Dixie and the Tribe's plight.
21 (AR-CVMT-2017-000955). The Governor had just signed various
22 state-Compacts allowing various federally-recognized tribes to
23 own and operate gambling casino in California. Since the Tribe
24 was federally-recognized and had very few members, it was an
25 easy target to use for this venture. Shortly after reading the
26 newspaper article, Martin and Chapelle quickly headed up to
27 Calaveras County, California, to sign up Dixie to represent him
28 in developing an Indian casino. Thinking they could profit from
Dixie's situation, they contacted Dixie and entered into an
agreement with him to build a tribal gambling casino.
Unfortunately, Dixie had already resigned as Chairperson of the
Tribe, and Burley was the current Chairperson. Martin and

1 Chapelle then contacted Everone who agreed to take over and help
2 formulate a plan. (AR-CVMT-2017-000956).

3 Everone then took over control of Dixie's affairs, and made
4 himself Dixie's and the Dixie Faction's Tribal "Deputy & Consul
5 General". (AR-CVMT-2017-000956). Everone is white and is not an
6 Indian, and is not a member of any Indian tribe. As the Dixie
7 Faction's "Deputy and Consul General," Everone is the managing
8 agent and "officer" of that organization. Everone manages all
9 loaned money for this scheme through an entity called "Friends
10 of Yakima." (Id.). He also managed and directed Dixie's
11 litigation in the state and federal cases and manages the
12 "Tribal Organization," known as the "Dixie Faction."

13 Everone himself admits he "controls" Dixie. For example,
14 he stated:

15 "They [Chadd Everone and Bill Martin] asked for investment
16 monies and provided me with a prospectus without asking how
17 much I could give. They said my return would be by
18 November 2006. I then asked them why would I give monies
19 to Yakima who can't stay out of jail, and how is he going
20 to run an Indian Casino? Both laughed and **Everone stated**
21 **he controlled Yakima and the casino venture** and told me not
22 to worry about that..." (Emphasis added)

23 (August 31, 2006 Email quoting Everone in meeting).

24 Thus, in light of Dixie's instability, serious criminal history,
25 including murder and alcohol problems, Everone was easily able
26 to manipulate and control Dixie, and use him for his own
27 personal, financial benefit. (Id.).

28 When he met Dixie in late 1999, one of the first things
Everone did was to tackle the problem of Burley being the
Chairperson of the Tribe as a result of Dixie's resignation.
(Id.). He told someone he thought was a potential investor
that he "went to work using the UC Berkeley Law Library to study
up on Indian Law to begin his quest for removing Burley as
Chairperson of the Tribe." For his scheme to take over control

1 of the Miwok Tribe to work, however, he needed Dixie to be the
2 Chairperson, not Burley. His plan was simply to fabricate a
3 forgery claim with respect to Dixie's letter of resignation.

4 The fact that the issue of forgery relative to Dixie's
5 resignation letter was never raised until after the Everone team
6 became involved strongly suggests that it was, and continues to
7 be, a sham claim as part of Everone's scheme to take over the
8 Tribe for his own financial purposes. Indeed, Everone admitted
9 as much, when he was interviewed by someone he thought was a
10 potential investor. He is reported to have said the following:

11 "Only after signing up Yakima did Chapelle (later) find out
12 (from the BIA) that the Tribe was under the control of
13 Silvia Burley. That was when Martin enlisted the help of
14 Everone who came up with a plan to take the tribe out of
15 Silvia's control by saying Yakima only gave up [the]
16 'spokesperson' role to Silvia and not the Chair."
17 (Emphasis added).

18 (Email from C. Ray, dated August 31, 2006, AR-CVMT-2017-000955).
19 Dixie's ultimate admission in his deposition on February 7, 2012
20 that he in fact resigned, and that his signature on his
21 resignation was not forged after all, only further supports the
22 view that Everone in fact concocted this false claim to the
23 detriment of the Tribe, and conspired with Dixie to assert it in
24 the litigation and thwart the Tribe's efforts to govern under
25 the General Council.

26 Moreover, Dixie's false claim that his resignation letter
27 is a forgery is contradicted by several other documents he
28 admits signing thereafter. For example, after resigning, Dixie
admits signing another Tribal document appointing Burley as the
new Chairperson. Then, ten (10) days after resigning, Dixie
signs a document for the development of a casino with the Tribe.
However, he signs as "Tribal Member" under the signature of
Silvia Burley who signed as "Chairperson" of the Tribe. On July

1 7, 1999, Dixie wrote the BIA, through his attorney who had a
2 power of attorney, and referred to himself as the "Vice
3 President" of the Tribe, not the Chairman (RJN "33"). Later, on
4 July 23, 1999, Dixie signed an Addendum to the Development
5 Agreement. He again signed as "Tribal Member," not as Tribal
6 Chairperson, under the signature of Burley who signed as
7 "Chairperson" of the Tribe. (RJN "33"). Dixie obviously signed
8 these documents before he met with Bill Martin and Everone who
9 most likely convinced Dixie that he could develop a casino
10 without Burley. It is also clear that he knew that Burley was
11 signing as the Chairperson of the Tribe, since that her
12 signature block appears directly above his, yet he signed these
13 documents as a mere Tribal member, not as the Tribe's Chairman.
14 The false notion that Dixie never resigned and that his
15 resignation was forged were then concocted by Everone and Dixie,
16 and that has been their "story," though false, up until February
2012, when Dixie ultimately recanted his story under oath at his
deposition.

17 Thus, by the time Everone and his group came up with the
18 false notion that Dixie's "resignation letter" could be claimed
19 as a purported forgery in late 1999, Dixie had already confirmed
20 Burley's right to be Tribal Chairperson by signing multiple
21 documents to that effect from April 10, 1999 through the end of
July 1999.

22 This forgery claim was carried over into the recent state
23 court actions and against the California Gambling Control
24 Commission by Dixie's litigation team controlled by Everone. In
25 addition to the forgery claim being alleged in the Complaint in
26 Intervention in the recent action against the Commission, Dixie
27 submitted a false declaration in support of the motion to
28 intervene, stating that his resignation letter from the Tribe
was a purported "forgery."

1. Dixie's Last Will and Testament.

In an obvious attempt to protect his financial interests, in the event Dixie should die, Everone and his team arranged to have Dixie sign a "Will and Testament", wherein Dixie confirms his agreements with the Everone group to allow them to build a casino, in the event their scheme succeeds in stealing the Tribe away from Burley, after he dies. (AR-CVMT-2017-000957).

2. Everone's team sought to influence the Commission to "freeze" the Tribe's RSTF money.

As part of his plan, Everone contacted and hired Arlo Smith, a former California Gambling Control Commissioner, and Pete Melnicoe, a former Chief Counsel for the Commission. (AR-CVMT-2017-000961). His plan was to get the Commission to stop paying Revenue Sharing Trust Fund ("RSTF") money to the Tribe under Burley's leadership, and to have the money paid to Dixie instead. (AR-CVMT-2017-000961). RSTF money are licensing payments made by Compact tribes which are shared with Non-Compact tribes. The Miwok Tribe is a non-Compact Tribe entitled to receive \$1.1 million per year from the Commission. Those payments have been suspended since 2005 because of the current Tribal leadership dispute. Everone is planning on using the Tribe's RSTF money "as security" to convince other non-Indians to invest in his scheme to take the Tribe away from Burley and place it under Everone's control with Dixie as the "puppet" Tribal Chairman. (*Id.*).

To this end, Everone wrote an Email boasting that his hired team was successful in "influencing" the then Chief Counsel for the Commission, Cyrus Rickards, to stop RSTF payments to the Tribe, beginning in 2005. He stated:

"I have hired Peter Melnicoe and Arlo Smith (the former Chief Counsel and the former Commissioner of that agency, respectively); and they were instrumental in getting the money frozen." (Emphasis added).

(AR-CVMT-2017-000961, September 11, 2006 Email from Everone).

3. Everone is soliciting "investment money" for the building of a casino, and is offering the Tribe's RSTF money as security.

In connection with his strategy to solicit investment money from non-Indians to finance his scheme, Everone prepared a "Bridge-loan Agreement & Prospectus" in 2004, which states in pertinent part as follows:

"...[A]dministrative procedures and litigation are now in progress to return control of the tribe to Yakima so that he may receive about \$1.2 million in income that currently accrues to the tribe from the California Gambling Control Commission and so that the tribe can be position[ed] to create a casino.

"A sum, not to exceed \$250,000.00 is being sought, in the form of Bridge Loans, to pay for the expenses that are necessary to regain control of the tribe to Yakima, to reorganize the tribe, and to negotiate the location and financial backing for a casino..."

(AR-CVMT-2017-000957, Bridge Loan document, dated February 26, 2004). In addition, the prospective investors were promised a "bonus interest" which would be paid to them "from gambling revenue to the tribe...for a period of 5 years after the casino is created." The prospectus then adds that Burley is still the target, stating:

"This \$1.2 million royalty [RSTF money on deposit in 2004] presently goes to the tribe but is under the control of the Chairperson whose appointment we are attempting to nullify in administrative appeal and litigation." (Emphasis added).

(AR-CVMT-2017-000957, Bridge Loan prospectus). Thus, Everone and his group of investors are not concerned at all about membership or the welfare of other potential Tribal members. They are only concerned about "nullifying" Burley as Chairperson, and stealing the Tribe, so that they can build a

1 casino for their own financial gain. Dixie is just a tool for
2 their plans.

3 In fact, the Dixie faction's claims that the Tribe consists
4 of over 200 adults and their children is contradicted by
5 statements made in Yakima Dixie's "Bridge-loan Agreement and
6 Prospectus" under his letterhead purportedly on behalf of the
7 Tribe, which states:

8 " 'Sheep Ranch...' is a **very small (<10 members)**, long-
9 established (1916), federally recognized California
10 Indian tribe that is qualified to receive benefits,
11 including the right to establishment a Class III gambling
12 facility..." (Emphasis added).

13 (Yakima Dixie "Bridge-loan Agreement & Prospectus, 2/26/2004,
14 RJN "33"). The sign "<" means "less than." Thus, Dixie's
15 statement here is that the Tribe consists of "less than 10
16 members," not "over 200 adults and their children" as falsely
17 stated by him to the AS-IA and the courts.

18 Everone has made it clear that any outcome of the
19 litigation favorable to Dixie means ultimate control of the
20 Tribe for his group of investors, not any potential members of
21 the Tribe. Getting control of the Tribe means, to Everone,
22 control for him. For example, in 2006, he wrote in an Email the
23 following:

24 "[Burley's] last two court maneuvers were dismissed; and
25 the BIA is moving forward with its determination on the
26 authority for the tribe, which almost certainly will give
27 control to Yakima's faction, and that means to us."
28 (Emphasis added).

(AR-CVMT-2017-000958, Everone Email dated September 29, 2006).
In short, it is not about control of the Tribe for Dixie, but
control of the Tribe for Everone and his investors bent on
stealing the Tribe so they can build a casino. Finally, Everone
puts it all in context, when he stated:

1 "There are few opportunities to 'make a financial
2 killing' and this, I sincerely believe, is one of
3 them." (Emphasis added).

4 (AR-CVMT-2017-000958, Everone Email dated September 29, 2006).

5 **Q. DIXIE'S FALSE ASSERTION THAT HIS RESIGNATION WAS FORGED AND**
6 **THAT HE NEVER RESIGNED IS HIGHLY RELEVANT**

7 The Dixie Faction argues that the issue of whether Dixie
8 resigned as Tribal Chairman is irrelevant, because the 1998
9 Resolution establishing the General Council is purportedly
10 invalid. This contention is without merit and misses the point
11 of Dixie's false and fraudulent claims that his resignation was
12 forged and that he never resigned. The Federal Defendants'
13 position turns of the relevancy of Dixie's deposition testimony.

14 This issue was tendered to AS-IA Washburn after the U.S.
15 District Court remanded the previous 2011 Decision for
16 reconsideration. (CVMT-2017-001044-1046; CVMT-2017-001028-1029).

17 Dixie's 2012 deposition testimony admitting that he did in
18 fact resign as Tribal Chairman in 1999 and that his claim of his
19 resignation being forged was never true, is highly relevant.
20 First of all, it explains the fraud perpetrated by Dixie and
21 Chadd Everone in fabricating a Tribal leadership dispute in
22 order to maneuver themselves to oust Burley from being the
23 Tribal Chairperson, and take over control of the Tribe so they
24 can build a casino.

25 Second, Dixie's deposition testimony is an admission of a
26 party opponent under FRE 801(d)(2)(A); Gilbrook v. City of
27 Westminster (9th Cir. 1999) 177 F.3d 839, 859 (in action against
28 Mayor for retaliatory firing, Mayor's hearsay statement ["I'll
have your ass"] admissible as express admission). Dixie's 16
year-long false assertion caused an unnecessary leadership
dispute which in turn caused havoc with the Tribe in its
relations with the BIA. It is relevant and admissible to show

1 that Dixie accepted the 1998 Resolution establishing the General
2 Council as the Tribe's valid governing body. Otherwise, why
3 would he persist over a 16-year period that his resignation was
4 forged and that he never resigned? It was only after the AS-
5 IA's 2010 and 2011 Decisions came down that the Dixie Faction's
6 lawyers first came up with the idea to attack the 1998
7 Resolution establishing the General Council as purportedly
8 invalid. However, as stated above, that claim is time-barred by
9 the six-year statute of limitations.

10 Dixie's admission is also admissible to show that Dixie
11 believed he was one of the last remaining members of the Tribe.
12 As indicated above, Dixie's mother, Mabel Dixie was the last
13 remaining adult member of the Sheepranch band who was living on
14 the 0.92 acre Rancheria given to the band in 1915. She alone
15 was listed as the only one authorized to vote for termination
16 and receive a deed to the property. Even though the termination
17 never took effect, the property was probated upon her death in
18 1971 and all interest in the property went to Yakima and Melvin
19 Dixie. When Melvin left the Rancheria, all authority to enroll
20 new members and organize the band fell to Yakima. By claiming
21 he never resigned and that his resignation was purportedly
22 forged, Dixie was in fact ratifying the validity of the General
23 Council which he alone was authorized to organize as one of the
24 last remaining members of the Sheepranch band residing on the
25 0.92 acre Rancheria.

26 **R. DIXIE'S DEPOSITION TESTIMONY WAS NOT COERCED AND STANDS AS**
27 **AN UNREFUTED ADMISSION OF FRAUD**

28 The Dixie Faction argues that Dixie's admission during his
deposition that he in fact resigned and there was no forged
resignation after all was coerced by Attorney Corrales who
purportedly "threatened Mr. Dixie's life on the record." (Page
24 Dixie Faction PAs, lines 2-3). This contention is without

merit. The Federal Defendants' position here in defending the AS-IA's 2015 Decision turns on the reliability and relevance of Dixie's admission of fraud. The relevant portions of Dixie's deposition testimony, which was given to AS-IA Washburn to consider on remand is set forth below. It highlights Dixie's violent outbursts during the deposition and Mr. Corrales' comments to Dixie in response. There is nothing in the transcript even hinting or suggesting that Dixie's deposition testimony was unreliable because he was threatened by counsel.

1. Dixie is a convicted murderer with a life history of extreme violence and incarceration for violent crimes

Contrary to the Dixie Faction's assertion, it was Plaintiff's counsel, not Dixie, whose life was threatened by Dixie during the deposition. Portions of Dixie's criminal history from a Probation Report were read into the record to impeach Dixie on his claim that he had never participated in a scheme to lie about something to try and get an advantage in a situation. (Pages 184-185 of Dixie deposition, CVMT-2017-000153). The question was probative of Plaintiff's theory that Dixie fabricated the claim of his resignation being forged, after he met with investors in late 1999 who were interested in building a casino under the Tribe's name, but because Dixie had already resigned, he had to agree to lie about resigning, so that he and his investors could remove Burley and take over the Tribe. In addition, his criminal history is relevant, because it explains why he resigned as Tribal Chairman back in 1999. He was in and out of prison, was habitually intoxicated, and thus was not able or competent to function as the Tribal leader.

Dixie's violent murder of a one-legged man (Silvia Burley's uncle) is detailed in this Probation Report in part as follows:

"Such arguing is alleged to have continued [between Dixie and the victim] for approximately thirty minutes,

1 concluding with defendant getting a gun from a cabinet
2 and shooting victim.

3 "Defendant is alleged to have dragged victim into the
4 kitchen, stating to Vivian [his common law wife], 'I told
5 you I could kill; I can kill...I will show you I can do
6 something else, too.'

7 "Defendant is then alleged to have taken a big knife from a
8 kitchen cabinet and to have started stabbing victim on the
9 kitchen floor.

10 "Defendant is alleged to have pushed and threatened Vivian
11 to assist in placing victim in the car, to have demanded
12 that she go with him to get rid of the body.

13 * * *

14 "Defendant is alleged to have become suspicious that his
15 sixty-seven year old father might have told someone of the
16 instant offense, and defendant beat his father in the face,
17 stating that defendant was going to shoot anybody that got
18 in his way. He reloaded the gun and took off in the car."
19 (Emphasis added).

20 (Page 6 of Probation Report, Exhibit "38" to Dixie Deposition,
21 CVMT-2017-000153).

22 The Probation Report quotes the District Attorney as
23 describing the crime as involving acts of "high degree of
24 viciousness or callousness." (Page 8, Exhibit "38" to Dixie
25 Deposition, CVMT-2017-00153). Dixie also attempted to interfere
26 with the judicial process by writing letters to a witness asking
27 that she commit perjury. (CVMT-2017-00153). Given Dixie's prior
28 convictions and prior, multiple prison terms, the probation
officer concluded this about Dixie:

"...[Dixie] is capable and willing to commit acts of coercion
and violence upon individuals. It would appear that
Society needs protection from defendant for the longest
period of time possible."

(Page 11 of Probation Report, Exhibit "38" to Dixie Deposition,
CVMT-2017-00153).

1 It was based upon this information that Plaintiff's counsel
2 responded to Dixie violent outburst and physical threats at his
3 deposition, thinking that Dixie would indeed carry out his
4 physical threats. The exchange, selectively edited by
5 Intervenor, correctly and fully was as follows, when
6 Plaintiff's counsel attempted to inquire whether Dixie was
7 changing his testimony about his signatures on the resignation
8 documents, after Dixie had conferred with his counsel during a
break:

9 Q: Are you changing your testimony, yes or no? Answer
10 the question.

11 MR. McCONNELL: Same objections. Do you understand the
question?

12 MR. CORRALES: He understands the question. He's just
13 refusing to answer. He just said uh-huh. Is that what you
14 said? Answer the question, sir.

15 Are you changing your testimony with respect to Exhibit
16 Number 34?

17 WITNESS: We can sit here all night. Are you getting
18 hungry?

19 MR. CORRALES: We will if we have to.

20 THE WITNESS: We will.

21 BY MR. CORRALES:

22 Q: Earlier, before we took a break, you testified that
23 the signature that is on Exhibit 34 was your signature. After
24 the break, after you had a chance to talk to your lawyer, you
now say that that is not your signature.

25 Are you changing the testimony that you gave before
26 the break?

27 MR. McCONNELL: Vague. Asked and answered. Compound.

28 BY MR. CORRALES:

Q: Yes or no, sir?

1 A: We can sit here all night.

2 Q: I'm asking you to answer the question, sir.

3 A: What did I say? I said we can sit here all night. [As
4 recorded by the video camera, it is at this point that Dixie
5 becomes violent and starts pounding his hands on the table in a
6 threatening manner].

7 Q: I heard what you said. You don't have to slap your
8 hand on the desk.

9 A: I'll slap you in the face.

10 Q: Do you want to do that?

11 A: Yeah.

12 Q: You'll be a dead man. Nobody threatens me, including
13 you, Mr. Dixie—

14 A: Don't tell me—

15 Q: I would be very careful about that. And, Mr.
16 McConnell, I would advise you to tell your client not to make
17 physical threats against me.

18 A: Don't make a comment about you can be somebody will
19 kill you.

20 Q: I'm sorry, Mr. Dixie. I have an obligation to protect
21 myself. If you want to try and physically assault me, I will
22 protect myself.

23 The question is: Exhibit Number 34, the signature that's
24 on Exhibit 34, before we took a break you said that was your
25 signature. After you consulted with your lawyer, you now say
26 it's not your signature. Are you changing your deposition
27 testimony, yes or no?

28 MR. MCCONNELL: Same objections.

THE WITNESS: We can sit here all night.

MR. CORRALES: I'd like an answer to my question, sir.

THE WITNESS: That's what you're going to get, pointblank,
(indicating).

(Deposition of Dixie, pages 212-214, CVMT-2017-000160).

As can be seen, it was Dixie, not Plaintiff's counsel who was becoming violent and was threatening to assault counsel. Plaintiff's counsel was simply telling Dixie that if he tried to hit him, he (Plaintiff's counsel) would have to protect himself. Since Dixie is a convicted murderer with a violent past, Plaintiff's counsel's response was understandable. In fact, Plaintiff's counsel apologized to Dixie ("I'm sorry, Mr. Dixie", page 214, line 10, CVMT-2017-000160), and promptly asked Mr. McConnell to tell his client not to make physical threats towards him. (Deposition of Dixie, page 214, CVMT-2017-000160). The deposition transcript shows that Mr. McConnell ignored that request, and said nothing to Dixie.

2. Dixie never expressed on the record that he was feeling coerced to have to admit he resigned as Tribal Chairman

The above-cited deposition transcript clearly shows that Dixie was not under duress at all. Neither the witness nor Mr. McConnell requested to take a break, but instead the witness continued on with his rude and obstinate behavior in refusing to answer a simple question. The witness, without any intervention by Mr. McConnell, continued to say that they would "sit there all night," but he will not answer the question. Finally, Mr. Corrales stated that he intended to break for the day, and reconvene the next day with an emergency telephone call to Judge Styn in San Diego (the deposition was being taken in Sacramento). He suggested they take a break and asked that Mr. McConnell talk to Dixie, and see if he could get him to answer the question. (Pages 215-16 of Dixie Deposition, CVMT-2017-000160-161).

After a seven (7) minute break and a chance to confer with his attorney, Dixie finally testified as follows:

1 Q: Okay. Before the break, the first break that we had,
2 you testified in the deposition that the signature that appears
3 on Exhibit 34 was your signature. After we took a break and you
4 consulted with your attorney, you then said that is not your
signature.

5 So my question is: Are you changing your testimony?

6 A: It appears not to be my signature.

7 Q: That's not the question. Move to strike.

8 **Are you changing your testimony, yes or no?**

9 A: **No.**

10 (Deposition of Dixie, page 216, lines 20-25, page 217, lines 1-
11 5, CVMT-2017-000161).

12 At no time did Dixie indicate that he was under duress when
13 he gave his previous testimony that Exhibit 34 contained his
14 signature. It was clear that his attorney tried to get him to
15 change his testimony, but, when pressed, Dixie ultimately
16 conceded that he was not changing his testimony about the
document containing his signature.

17 **3. Dixie's damaging admission that he resigned as Tribal**
18 **Chairman was confirmed under examination by his own**
19 **lawyer**

20 It was at this point in the deposition that Mr. McConnell,
21 knowing that his client gave damaging testimony, began to
22 examine his own witness in an attempt to get Dixie to say that
23 Exhibits 33 (his resignation notice) and Exhibit 34 (his consent
24 to Burley becoming the new Tribal Chairperson) did not contain
25 his signatures. (CVMT-2017-000565-566). The fact that Mr.
26 McConnell alone examined his own witness on this subject
27 vitiates any claim of duress. What followed was Dixie's
28 admission that he resigned as Tribal Chairman, and that the
signatures on Exhibits 33 and 34 were in fact his, all elicited
by his own attorney. Dixie testified as follows:

1 BY MR. McCONNELL:

2 Q: Mr. Dixie, I know this has been a long day, but again
3 turning to Exhibits 33 and 34, both of these documents
4 purporting to show your resignation, the two signatures [on]
5 Exhibit 33 and 34, did you write those signatures?

6 A: It appears.

7 Q: Exhibit 33, is that a signature that you believe you
8 wrote on Exhibit 33?

9 A: Uh-huh.

10 Q: You believe that's your signature?

11 A: Umm, I don't-umm, they're pretty close.

12 Q: This is the document indicating on Tuesday, April 20th,
13 1999, that you are resigning as chairperson. Do you believe
14 that you wrote the signature on Exhibit 33 resigning as
15 chairperson?

16 A: I don't remember that one.

17 Q: On Exhibit 34-

18 A: Okay. Yeah. Yeah. [*referring to his signature on*
19 *Exhibit 33*].

20 Q: Okay. Yeah. This is or is not your signature?
21 [*referring again to Exhibit 33*].

22 MR. CORRALES: I'll object to the question.

23 THE WITNESS: It is. [*referring to Exhibit 33*].

24 Q: You think it is?

25 A: Yeah.

26 Q: And on Exhibit 34, do you think that's your signature?
27 Again, this is-

28 A: Yes.

Q: -accepting the resignation of chairperson?

A: Uh-huh.

Q: **And did you resign as chairperson of the Miwok Sheep
Ranch Tribe?**

1 **A: Yeah. Yes.**

2 **Q: You did. Were you able to resign as chairperson?**

3 **A: Yeah.**

4 MR. McCONNELL: No further questions.

5 (Dixie deposition, pages 217-218, CVMT-2017-000161) (Emphasis
6 added).

7 Contrary to Intervenor's assertion, Dixie's testimony that
8 he resigned as Tribal Chairman was not made under duress, and
9 was not contradictory. Dixie clearly testified that Exhibits 33
10 and 34 contain his signatures, before his attorney tried to get
11 him to change his testimony. For example, early on in the
12 deposition Dixie testified as follows:

13 BY MR. CORRALES:

14 Q: And this [Exhibit 33] purports to be a Formal Notice
15 of Resignation signed by Yakima Kenneth Dixie. Have you seen
16 that before, sir?

17 * * *

18 Q: Is that your signature?

19 A: Yeah, that's my signature.

20 * * *

21 Q: ...Now, next in order is Exhibit Number 34. This
22 purports to be a General Council Governing Body Special Meeting.

23 * * *

24 Q: Is that your signature on the document?

25 A: That is yes.

26 (Dixie deposition pages 170-173, CVMT-2017-000149-000150).

27 The parties then later took a break for fifteen (15)
28 minutes, which gave Dixie a chance to consult with his attorney
 about his damaging testimony. (Dixie deposition, page 188,
 lines 1-4, CVMT-2017-000154). After the break, Plaintiff's
 counsel finished up his examination on other topics, and Mr.
 McConnell went right in and asked Dixie questions about his
 signatures on Exhibit's 33 and 34, in an attempt to get Dixie to

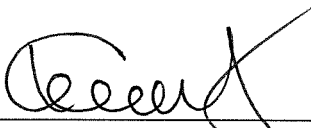
change his testimony, presumably based upon a discussion they had had during the break. His efforts were awkward at best. For example, when Mr. McConnell asked Dixie if Exhibit "33" contained his signature, Dixie said he did not believe so, but pointed to Exhibit "34" as his signature. (Dixie deposition, page 200, CVMT-2017-000157). Frustrated, Mr. McConnell showed Dixie another document that bore his signature, and Dixie said he did not think it was his signature, because the "Y" in that signature was not like his "Y" as depicted in Exhibit "33" (his formal resignation). (Dixie deposition, page 201, CVMT-2017-000157). Thus, any confusion was generated by Mr. McConnell's efforts to get Dixie to change his testimony. However, as stated, Dixie later conceded that he was not changing his testimony the first time he was asked the question about his resignation, and then, under the examination of his own attorney, specifically testified that he resigned and that the signatures on documents showing that he resigned were his.

IV.

CONCLUSION

For the foregoing reasons, the Federal Defendants' motion for summary judgment should be denied. Summary judgment should be entered in favor of the Burley faction. The AS-IA should be ordered to reconsider his 2015 decision, and specifically reconsider reinstating his August 2011 decision.

DATED: March 31, 2017



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