

EXHIBIT A



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 30 2015

Mr. Yakima Dixie
c/o Robert Uram, Esquire
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109

Dear Mr. Dixie:

The California Valley Miwok Tribe (CVMT, Tribe) has been the subject of an internal leadership dispute for years. In December 2013, the U.S. District Court for the District of Columbia (District Court) vacated and remanded a 2011 decision by the Assistant Secretary – Indian Affairs (AS-IA) to review questions of tribal membership and government.

The Department of the Interior (Department) is loath to become involved in tribal membership disputes because of potential interference with tribal self-determination and inherent sovereignty. However, in many instances the Department has assisted in the initial organization of an unorganized tribe. In this case, the reorganization of the Tribe has never properly occurred, leaving questions as to the overall membership of the Tribe.

The factual and procedural history of this dispute has been described at length in decisions by the Interior Board of Indian Appeals (IBIA), the District Court, and the U.S. Court of Appeals for the District of Columbia Circuit (Circuit Court).¹ For purposes of this decision, I set out only the essential facts.

Background

In 1916, the United States acquired a parcel of approximately one acre in Sheep Ranch, California, for the benefit of Mewuk² Indians living in that area of Calaveras County. The land became the Sheep Ranch Rancheria (Rancheria). The lone Indian residing on the Rancheria in 1935, Jeff Davis, was allowed to vote on whether to accept the Indian Reorganization Act (IRA). An Indian residing on the Rancheria in 1967, Mabel Hodge Dixie, was identified as the distributee of the Rancheria assets. Mabel's son, Yakima Dixie (Mr. Dixie), has been the

¹ See *CVMT v. Pacific Regional Director*, BIA, 51 IBIA 103 (IBIA 2010); *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006) (“*CVMT I*”); *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008) (“*CVMT II*”); *California Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86 (D.D.C. 2013) (“*CVMT III*”).

² Also spelled Miwok, Mi-Wuk, or Me-Wuk. Writing in 1906, Special Agent C.E. Kelsey used “Miwak.” The former name of the federally recognized Tribe was “Sheep Ranch Rancheria of Me-Wuk Indians of California.” The current name is the “California Valley Miwok Tribe.”

only Indian resident of the Rancheria since Mabel's death. Mr. Dixie purported to enroll Silvia Burley (Ms. Burley) and her family (Burley Family)³ in the Tribe in 1998. Since 1999, Mr. Dixie and Ms. Burley have competed for control of the Tribe, which has resulted in protracted litigation. In 2010, IBIA referred to AS-IA a claim by Ms. Burley that "effectively implicate[d] a tribal enrollment dispute."⁴ In 2011, the AS-IA issued a decision stating that the Tribe had five members and was governed by a General Council comprising the adults among those five members. In 2013, the District Court vacated and remanded the AS-IA's decision, directing AS-IA to "determine whether the [Tribe's] membership had been properly limited" to just Mr. Dixie and the Burley family,⁵ and ensure that the tribal government consists of "valid representatives of the [tribe] as a whole."⁶

The Sheep Ranch Rancheria

In 1915, Special Agent John Terrell sent the Commissioner of Indian Affairs a letter with "a census of the Indians designated 'Sheepranch Indians,'" (sic), describing the group as "the remnant of once quite a large band of Indians in former years living in and near the old decaying mining town known and designated on the map as 'Sheepranch.'"⁷ Importantly, Agent Terrell also noted that "to some extent the Indians of Sheepranch, Murphys, Six-Mile, Avery and Angles are interchangeable in their relations."⁸ All of those towns are located in Calaveras County, California.

In 1916, the Federal Government purchased a one acre lot in the town of Sheep Ranch for the benefit of the Indians identified by Terrell.⁹ Because the parcel was so small, only a few members of the group could reside on it at any one time; many Indians associated with the community did not reside on the Rancheria.

In 1929, the Bureau of Indian Affairs (BIA) conducted a census of the Indians of Calaveras County, which identified 147 Indians, mostly Miwuk, but also some Tuolumne.¹⁰ The census included children of mixed Miwuk/Tuolumne, and mixed Indian/non-Indian, ancestry.

In 1935, pursuant to the mandate of the Indian Reorganization Act (IRA),¹¹ BIA held referendum elections in which the adult Indians of reservations voted on whether to reject the application of the IRA. The BIA found only one eligible adult Indian, Jeff Davis, to be residing on the Rancheria.

³ Silvia Burley, her daughters Rashel Reznor and Anjelica Paulk, and Rashel's daughter Tristian Wallace.

⁴ 51 IBIA 103, 105 (IBIA 2010).

⁵ *CVMT III* at 99.

⁶ *Id.* at 100, quoting *Seminole Nation v. Norton*, 223 F. Supp. 2d 122, 140 (D.D.C. 2002).

⁷ Attachment A: 1915 Terrell Census

⁸ Presumably "Angles" referred to Angel's Camp, about 5 miles southwest of Murphys and 15 miles southwest of Sheep Ranch.

⁹ In 2006, the District Court suggested that the Sheep Ranch Rancheria was the same parcel occupied by Peter Hodge and his family in 1915. *CVMT I* at 197-98 (D.D.C. 2006). The record shows that Hodge resided two and a half miles north of Sheep Ranch, while the parcel acquired by the United States was within the town itself.

¹⁰ Attachment B: 1929 Census.

¹¹ 48 Stat. 984 (1934).

The California Rancheria Act of 1958, amended in 1964,¹² authorized the termination of Federal recognition of California Rancherias by distributing each rancheria's assets to the Indians of the rancheria. The process required the development of a distribution plan identifying the distributees. At that time, the Rancheria was occupied by Mr. Dixie's mother, Mabel Hodge Dixie, along with Merle Butler.¹³ On February 9, 1967, Mabel Dixie, as the sole eligible Indian resident, voted to terminate the Rancheria. The BIA transferred title of the Rancheria's land to Mabel in April or May of 1967. In September of 1967, however, the BIA asked Mabel to quitclaim the parcel back to the United States, apparently to ensure that all of BIA's duties under the California Rancheria Act were completed before BIA transferred title to Mabel. Mabel executed the quitclaim on September 6, 1967, but no other action was taken with respect to the title prior to Mabel's death on July 1, 1971. The Tribe was never terminated.¹⁴

On November 1, 1971, the Office of Hearings and Appeals (OHA) issued its "Determination of Heirs" of Mabel Dixie.¹⁵ The OHA determined that Merle Butler, as Mabel's husband, inherited 2/6 of Mabel's trust or restricted estate, and each of her 4 sons inherited 1/6. Accordingly, the title to the Rancheria land is held in trust by the United States for Mabel Dixie's heirs, who have an undivided, inheritable, beneficial interest in the land.

Membership in CVMT is not limited to five people.

All of the Federal court decisions examining the CVMT dispute make clear that the Tribe is not limited to five individuals. The BIA decision under review in *CVMT I* plainly rejected the 1998 CVMT Constitution offered by Ms. Burley as controlling the Tribe's organization because it had not been ratified by the "whole tribal community."¹⁶ This conclusion necessarily reflected the court's consideration and rejection of the contention that the Tribe consisted solely of five people.

In affirming *CVMT I*, the Circuit Court in *CVMT II* emphasized that the Tribe had more than five people:

This case involves an attempt by a small cluster of people within the California Valley Miwok tribe ("CVM") to organize a tribal government under the Act. CVM's chairwoman, Silvia Burley, and a group of her supporters adopted a constitution to govern the tribe without so much as consulting its membership.¹⁷

¹² 72 Stat. 619 (1958). 78 Stat. 390 (1964).

¹³ The record indicates that Merle Butler was the common-law husband of Mabel Dixie. According to a memorandum dated January 5, 1966, signed by the BIA Tribal Operations Officer, Mr. Butler agreed that Mabel Dixie should receive title to the Rancheria. Attachment D.

¹⁴ "The Sheep Ranch Rancheria of Me-Wuk Indians of California" was included on every list of federally recognized tribes published in the Federal Register from the first such publication in 1979, at 44 Fed. Reg. 7235. Silvia Burley and Rashel Reznor, as the Tribal Council, adopted a Resolution changing the name of the Tribe to the California Valley Miwok Tribe on March 6, 2000. The BIA began using the new name no later than October 31, 2001. The list published in 2002 noted that the Tribe had changed its name to California Valley Miwok Tribe, and it has been identified as such in every subsequent list of federally recognized tribes.

¹⁵ Attachment C.

¹⁶ March 26, 2004, letter, Superintendent to Burley; cited in *CVMT I* at 200 - 203; quoted in *CVMT II* at 1265-66; and quoted in *CVMT III* at 93.

¹⁷ *CVMT II* at 1263.

Lastly, in *CVMT III*, the District Court vacated the AS-IA's 2011 determination that the Tribe comprised just five people. It is true that the District Court remanded to the AS-IA the question of tribal membership, but only after noting that "the record is replete with evidence that the Tribe's membership is potentially significantly larger than just these five individuals."¹⁸ As suggested by the District Court in *CVMT III*, and held by *CVMT I and II*, the record shows that there are far more than five people eligible to take part in the organization of the Tribe.

The term "rancheria" has been used to refer both to the land itself, and to the Indians residing thereon; which is to say, "rancheria" is synonymous with both "reservation" and "tribe." Few rancherias organized under the IRA prior to passage of the California Rancheria Act in 1958. In most instances, lands were acquired for the benefit of a band of Indians identified by Indian Agents C.E. Kelsey and John Terrell. In many instances, as in the circumstance for Sheep Ranch, a rancheria was not large enough for all members of the band to take up residence. Nonetheless, BIA field officials remained cognizant of the Indians of a band associated with, but not residing upon, each rancheria.¹⁹ When a parcel on a rancheria came available, BIA would assign the land to such a non-resident Indian who was associated with the band, if possible. Thus, such associated band Indians who were non-residents were potential residents. And since membership in an unorganized rancheria was tied to residence, potential residents equated to potential members.

With this understanding of the Department's dealings with the California Rancherias and in light of the rulings in *CVMT I, II* and *III*, I conclude that the Tribe's membership is not properly limited to Mr. Dixie and the Burley family. Given Agent Terrell's 1915 census of the "Indians designated 'Sheep Ranch Indians,'" and the 1916 acquisition of land by the United States for the benefit of the Mewuk Indians residing in the Sheep Ranch area of Calaveras County, California, I find that for purposes of reorganization, the Tribe's membership is properly drawn from the Mewuk Indians for whom the Rancheria was acquired and their descendants. The history of the Rancheria, supported by the administrative record, demonstrates that this group consists of: (1) the individuals listed on the 1915 Terrell Census and their descendants; (2) the descendants of Rancheria resident Jeff Davis (who was the only person on the 1935 IRA voters list for the Rancheria); and (3) the heirs of Mabel Dixie (the sole Indian resident of the Rancheria eligible to vote on its termination in 1967) as identified by OHA in 1971 and their descendants (Dixie Heirs) (all three groups collectively identified herein as the Eligible Groups).²⁰

¹⁸ *CVMT III* at 98.

¹⁹ A January 3, 1935, memorandum from the Indian Office provided population information for many Rancherias. It listed the "total population" at Sheep Ranch as 16. Attachment E. Yet the following June, only one adult Indian was found to be *residing on* the Reservation and thus eligible to vote in the IRA referendum.

²⁰ As one of the Dixie Heirs, Mr. Dixie is part of the group of individuals from whom the Tribe's membership is drawn. He would also be eligible for membership given that for years, he has been the only Indian residing on the Rancheria. See 25 U.S.C. § 479 (IRA's defining "tribe" as, inter alia, "the Indians residing on one reservation"). The *CVMT III* court expressed concern that the enrollment of the Burley family prejudiced the interests of Mr. Dixie's brother Melvin. The BIA's decision to strengthen a dwindling tribe by facilitating the enrollment of a family of relatives was an appropriate step to the benefit of Mr. Dixie and Melvin as well as to the Burley family. The ensuing difficulties were unforeseeable, and do not convert a reasonable agency decision into a lapse of trust duty. Melvin passed away in 2009 without issue. Attachment F.

The record also indicates that the Indians named on the 1915 Terrell Census had relatives in other Calaveras County communities.²¹ In 1929, the BIA conducted a census (1929 Census) of the Indians of Calaveras County, which identified 147 Indians – mostly Miwok, but also some Tuolumne. The census included children of mixed Miwok/Tuolumne, and mixed Indian/non-Indian ancestry. Accordingly, including the descendants of the Miwok Indians identified on the 1929 Census as eligible to take part in the organization of the Tribe may be proper in light of Agent Terrell’s conclusion that “to some extent the Indians of Sheepranch, Murphys, Six-Mile, Avery and Angles are interchangeable in their relations.”²² Whether the descendants of the Miwoks identified in the 1929 Census shall be included in the organization of the CVMT is an internal tribal decision that shall be made by the individuals who make up the Eligible Groups.

To the extent the Burley Family is among the individuals who make up the Eligible Groups, I encourage them to participate in the Tribe’s reorganization efforts as discussed below.²³ If the Burley Family cannot demonstrate that they are part of the Eligible Groups, I leave to the Tribe, as a matter of self-governance and self-determination to clarify the membership status of the Burley Family.

The United States does not recognize leadership for the CVMT government.

For purposes of administering the Department’s statutory responsibilities to Indians and Indian tribes, I must ensure that CVMT leadership consists of valid representatives of the Tribe as a whole. Both parties point to documents supporting their claim to be valid representatives of the Tribe. I find I cannot accept either party’s claims.

Ms. Burley points to the 1998 Resolution as the basis for her leadership.²⁴ 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.²⁵ 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.²⁶ 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.

²¹ Attachment A.

²² Attachment A.

²³ The district court expressed concerns about Mr. Dixie’s 1998 enrollment of the Burley family. *CVMT III* at 99. Testimony evidence in the record shows that Mr. Dixie required evidence of Ms. Burley’s connection to the Miwok Indians of Sheep Ranch and suggests that the Burley family qualifies for inclusion in the Eligible Groups. In a 2004 deposition, Ms. Burley testified that “It was confirmed that his grandma and my grandpa were brother and sister.” Attachment G, at 106. If documentary evidence supports Ms. Burley’s testimony, the Burley family must be accorded the same right to take part in the reorganization of the Tribe as all other persons in the Eligible Groups.

²⁴ Attachment I.

²⁵ *CVMT II* at 44; *CVMT III* at 97.

²⁶ *CVMT II* at 44; *CVMT III* at 98.

In 2006, Mr. Dixie and others purported to ratify a Constitution, Attachment J, which set out membership criteria (Part 6) and a list of twelve people (including Ms. Burley) as the “Base Enrollment of the Tribe” (Part 7). The last section of the 2006 Constitution, “Part 11, Ratification and Confirmation,” lists thirteen people, twelve of whom signed the document. There is no other text in Part 11 to explain the significance of the signatures or to shed light on whether or how the 2006 Constitution was ratified. Thus, there is nothing in the text of the 2006 Constitution that shows it was ratified via a process that provided broad notice to persons eligible to take part in the Tribe’s organization. I cannot, therefore, find the 2006 Constitution to be validly enacted.

In July 2013, Mr. Dixie and others purported to ratify a new Constitution.²⁷ Under the 2013 Constitution, tribal membership eligibility criteria included anyone whose name appeared on, or anyone descended from someone whose name appeared on: the Terrell Census, the list of Miwok Indians on the 1929 Census, the 1935 IRA voters list for the Rancheria, or the list of Dixie Heirs. However, the record is silent on the effort to notify all those eligible to take part in the organization of the Tribe to ratify the 2013 Constitution.²⁸ For purposes of this decision, I find that Mr. Dixie has not demonstrated that the 2013 Constitution was validly ratified.²⁹ But I do not foreclose the possibility that Mr. Dixie may provide additional evidence that could demonstrate adequate notice for BIA’s acceptance of the 2013 Constitution.

Conclusion

Responding to the court’s remand, I conclude that the Tribe’s membership is more than five people, and that the 1998 General Council does not consist of valid representatives of the Tribe. I further conclude that the individuals who make up the Eligible Groups must be given opportunity to take part in the reorganization of CVMT. At the discretion of the Eligible Groups, the Miwok Indians named on the 1929 Census and their descendants may be given that opportunity to participate in the reorganization of CVMT.

I find that Mr. Dixie has not proven that the 2013 Constitution was validly ratified. I authorize the BIA Pacific Regional Director (RD) to receive additional submissions from Mr. Dixie for the purpose of establishing whether the 2013 Constitution was validly ratified. As an alternative, I encourage the Tribe to petition for a Secretarial election under 25 C.F.R. Part 81 within 90 days of this decision.

Pursuant to today’s decision, the RD will work with the Eligible Groups to help the Tribe attain its manifest goal of reorganizing. This is a role that BIA has undertaken in other situations involving California Rancherias.

²⁷ Attachment K.

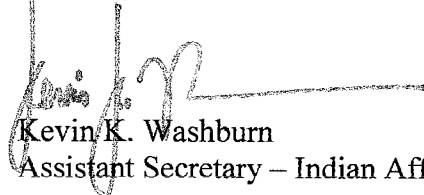
²⁸ Mr. Dixie did not provide evidence that outreach to the greater tribal community was part of the drafting or ratification of the Constitution. Rather, the text of the Constitution itself indicates that the organizers had established a tribal membership roll *prior* to ratifying the Constitution (Section II(a); II(e)), had defined the “electorate” as adults on the membership roll (Section IV(a)), and had purported to ratify the Constitution via a vote of the electorate (Section XVIII(a)).

²⁹ The “Certificate of Results of Election” within Article XIII, “Adoption of Constitution,” suggests that the adoption of the 2013 Constitution was “pursuant to the 2006 Constitution.” Having rejected the 2006 Constitution, I cannot accept that the 2013 Constitution was validated by a process in the 2006 Constitution.

The Pacific Regional Office has suggested a number of revisions to the 2013 Constitution submitted by Mr. Dixie.³⁰ If the RD concludes that the 2013 Constitution was validly ratified, I urge the Tribe to work with BIA to revise and amend its Constitution, as appropriate.

This decision is a final agency action.

Sincerely,



Kevin K. Washburn
Assistant Secretary – Indian Affairs

Attachments:

- A. 1915 Terrell Census
- B. 1929 Census
- C. 1971 OHA determination of heirs
- D. 1966 BIA memo re Mabel and Merle
- E. 1935 Indian Office Memo with Rancheria censuses
- F. 2009 Melvin Dixie Death Index
- G. 2004 Burley deposition, selection
- H. 2015 Wilmer Hale letter
- I. 1998 GC resolution
- J. 2006 Dixie Constitution
- K. 2013 Dixie Constitution
- L. 2013 BIA comments on Dixie 2013 Constitution

³⁰ Attachment L.

Distribution list:

Representing Silvia Burley:

Jacqueline De Armas, Esq.
Wilmer Cutler Pickering Hale and Dorr
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006

Thomas L. Strickland, Esq.
Wilmer Cutler Pickering Hale and Dorr
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006

Robert A. Rosette, Esq.
Rosette, LLP
565 W. Chandler Boulevard, Suite 212
Chandler, Arizona 85225

Saba Bazzazieh, Esq.
Rosette, LLP
1100 H Street N.W.
Suite 400
Washington, D.C. 20005

Representing Yakima Dixie:

Robert Uram, Esq.
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109

James Rusk, Esq.
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109

Director, BIA

Regional Director, Pacific Regional Office

Regional Solicitor, Pacific Southwest Regional Office