



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

IN REPLY REFER TO:

Tribal Government Services

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Robert Uram, Attorney at Law
for Yakima Dixie
Sheppard, Mullin, Richter and Hampton, LLP
4 Embarcadero Center, 17th Floor
San Francisco, California 94133

Certified Mail No: 7015 3010 0000 3622 3304
Return Receipt Requested

Manuel Corrales, Jr., Attorney at Law
for Sylvia Burley
17140 Bernardo Center Drive, Suite 358
San Diego, California 92128

Certified Mail No: 7015 3010 0000 3622 3311
Return Receipt Requested

Robert Rosette, Attorney at Law
for Sylvia Burley
565 West Chandler Boulevard, Suite 212
Chandler, Arizona 85225

The purpose of this correspondence is to inform you that the Bureau of Indian Affairs, Pacific Region, is taking action consistent with the Assistant Secretary - Indian Affairs' (AS-IA) decision of December 30, 2015 (2015 AS-IA Decision), by determining whether the 2013 Constitution of the California Valley Miwok Tribe (2013 Constitution) was properly ratified by the tribal community of the California Valley Miwok Tribe (Tribe).

The Tribe has been embroiled in multiple long-standing disputes dating back to 1999, at the center of which are two factions claiming to represent the tribal community: one consisting of Yakima Dixie and his representatives (Dixie Group) and the other consisting of Silvia Burley and her representatives (Burley Group). These disputes have been discussed at length in decisions by the Central California Agency, this Office, the Interior Board of Indian Appeals, the AS-IA, the District Court, and the United States Court of Appeals. Consequently, due to these in depth decisions, I will only reference the essential facts necessary to determine the validity of the election ratifying the 2013 Constitution.

The 2015 AS-IA Decision found that the Dixie Group had not demonstrated that the 2013 Constitution was validly ratified, and authorized this Office to receive additional submissions from the Dixie Group for the purpose of establishing the validity of the 2013 Constitution. In the alternative, the Tribe was encouraged by the AS-IA to petition for a Secretarial Election under 25 Code of Federal Regulations Part 81.

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Further, the Assistant Secretary concluded that the Tribe's membership is more than five people, and that the 1998 General Council does not consist of valid representatives of the Tribe. The AS-IA found that for purposes of reorganization the Tribe's membership is properly drawn from: (1) 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 are collectively identified herein as the Eligible Groups). There is no dispute that there may be as many as 250 individuals who fall within the Eligible Groups as defined above, which is inclusive of the Burley Group and a portion of the Dixie Group.

The Burley Group challenged the 2015 AS-IA Decision in *California Valley Miwok Tribe v. Zinke*, Civ. No. 2:16-01345 WBS CKD (E.D.Cal., May 31, 2017). The Court found the AS-IA was not arbitrary and capricious in this decision, holding:

The federal government has a 'distinctive obligation of trust' in its dealings with Indians. *See, e.g., United States v. Jicarilla Apache Nation*, 564 U.S. 162, 192 (2011)." Part of this obligation includes ensuring that the United States is "conducting government-to-government relations with 'valid representatives of the [tribe] as a whole.' *Seminole Nation of Okla. v. Norton*, 223 F. Supp. 2d 122, 140 (D.D.C. 2002); *see Aguayo v. Jewell*, 827 F.3d 1213, 1224 (9th Cir. 2016) ('The [Assistant] Secretary properly exercises discretion not to approve a governing document when it does not 'reflect the involvement of the whole tribal community.'); *cf. Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).

On January 27, 2016, and March 9, 2016, my staff and I met with the Burley and Dixie Groups, respectively, to discuss each Group's position as it related to the 2015 AS-IA Decision. During the January 27, 2016, meeting the Burley Group detailed their position that the 2013 Constitution is not valid as they were not provided the opportunity to participate in its creation and/or election. The Burley Group reiterated this position in its February 22, 2016, letter submitted by Robert Rosette, Attorney for the Burley Group. In addition, the Burley Group contended that the Dixie Group allowed individuals to participate who are not members of the Eligible Groups.

As authorized by the 2015 AS-IA Decision and following their March 9, 2016, meeting with me and my staff, the Dixie Group chose not to request a Secretarial Election, and on April 18, 2016, submitted a detailed report (Election Report) outlining the modified Secretarial Election process they utilized to ratify the 2013 Constitution. My staff reviewed the Dixie Group's files of those individuals who were provided the opportunity to vote on the 2013 Constitution. In addition, this Office reviewed the family history of the Burley Group. It appears that a majority of those who participated in the 2013 constitutional election and all of the Burley Group descend from Rancheria resident Jeff Davis. Following a review of the Election Report, it appears the Dixie Group notified 183 individuals who qualify as members of the Eligible Groups, and 17 individuals who descend from the 1929 Census of Calaveras County. The 2013 Constitution extended membership eligibility to the Eligible Groups and, in addition, the descendants of the 1929 Census of Calaveras County.

However, the cornerstone of a successful organizational election is ensuring every known eligible individual is afforded their inherent right to participate. Through their attorneys, the Burley Group maintained contact with the Dixie Group as evidenced by multiple filings in federal court and correspondence with the Bureau; however, they were not included on the list of Adult, Enrolled Members, Eligible to Vote in Election of July 6, 2013, created by the Dixie Group. According to the Election Report the Dixie Group noticed the 200 individuals they deemed eligible to participate in the impending 2013 constitutional election by:

- Mailing an election notice and voting materials to each documented adult member of the Dixie Group
- Posting notice of the election at U.S. Post Offices in West Point, California and San Andreas, California
- Mailing multiple election reminders to the known members of the Dixie Group
- Announcing the election at each of the Dixie Group's monthly meetings
- Making the voter list available at the Dixie Group's monthly meetings
- Posting the eligible voter list at the Dixie Group's headquarters in Sheep Ranch

Organizing under the Indian Reorganization Act of June 18, 1934, 25 U.S.C. § 461 et. seq., requires a majoritarian participation of those individuals eligible to participate, and an eligible individual should not be denied the right to participate. The Bureau of Indian Affairs has the authority and responsibility to decline to recognize the results of tribal actions when those results are tainted by violations of the Indian Civil Rights Act (ICRA). See *United Keetoowah Band of Cherokee Indians v. Muskogee Area Director*, 22 IBIA 75 (1992). Further, the ICRA provides that no Indian tribe, in exercising powers of self-government, "shall deny any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." 25 U.S.C. § 1302 (a) (8). In this instance, due process includes proper notice of the election to all known members of the Eligible Groups. My staff made a specific effort to consult with the Dixie Group and their attorneys to determine what, if any, effort was made to notify the Burley Group. The Dixie group was unable to provide any documentation showing the Burley group was provided notice of the election.

Consequently, this Office cannot endorse or approve this tribal action adopting the 2013 Constitution of the California Valley Miwok Tribe as the process in which it was ratified violated the civil rights of the Burley Group. I encourage the Tribe to consider turning its efforts to working together in coordination with the Superintendent, Central California Agency, in petitioning for a Secretarial Election under 25 C.F.R. Part 81.

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, Arlington, Virginia 22203, in accordance with regulations in 43 CFR § 4.310 4.349. Your Notice of Appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) The Assistant Secretary-Indian Affairs, 4160 MIB, U.S. Department of the Interior, 1849 C Street, N.W. Washington, D.C. 20240, (2) each interested party known to you, and (3) this Office. Your Notice of Appeal sent to the Board must certify that you have sent copies to these parties. If you file a Notice of Appeal, the Board will notify you of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extensions of time may be granted for filing a Notice of Appeal.

Sincerely,



Regional Director

cc: Superintendent, Central California Agency
 Director, Bureau of Indian Affairs
 Assistant Secretary – Indian Affairs, Department of the Interior