




# United States Department of the Interior

OFFICE OF THE SECRETARY  
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## Memorandum

To: Amy Dutschke  
Regional Director, Pacific Region

From: Bryan Newland   
Assistant Secretary – Indian Affairs

Subject: California Valley Miwok Tribe leadership dispute

For many years, the federally-recognized California Valley Miwok Tribe (CVMT or the “Tribe”) has been embroiled in a leadership dispute.

In the early 2000s, a leadership dispute between factions led by Yakima Dixie and Silvia Burley (the “Dixie Faction” and the “Burley Faction,” respectively) resulted in an initial decision by the Superintendent, Central California Agency (Agency), dated March 26, 2004. The Superintendent concluded: (1) there was no evidence that the Tribe had ever formally organized; (2) the greater Tribal community must be provided an opportunity to participate in any such organization; and, (3) Mr. Dixie and Burley Family collectively were not representative of the greater tribal community.<sup>1</sup>

The 2004 Superintendent decision and the points identified therein have given rise to multiple challenges and decisions at every level of the Department of the Interior (Department), and administrative, state, and federal tribunals. In 2015, then-Assistant Secretary – Indian Affairs (AS – IA) Kevin Washburn issued a decision (the “Washburn Decision”) identifying the criteria that individuals must satisfy to be eligible to take part in the initial organization of the Tribe.<sup>2</sup> The Washburn Decision provided that the Regional Director would “work with the Eligible Groups to help the Tribe attain its manifest goal of reorganizing.”<sup>3</sup> The Department has successfully defended the Washburn Decision.<sup>4</sup>

In 2019, various parties challenged the factual conclusions underpinning the Washburn Decision during a Secretarial Election conducted to organize the Tribe. In light of these challenges, the

<sup>1</sup> Letter, Superintendent Dale Risling to Silvia Burley, at 1 (Mar. 26, 2004).

<sup>2</sup> Decision Letter, Kevin Washburn, Assistant Sec’y – Indian Affairs, to Yakima Dixie and Silvia Burley (Dec. 30, 2015) [*hereinafter* Washburn Decision].

<sup>3</sup> AS – IA Washburn’s Decision letter refers to *reorganization* rather than *organization*. See generally Washburn Decision. Reviewing courts found and appellate courts have affirmed that the tribe has never in fact organized. *Cal. Valley Miwok Tribe v. Zinke*, No. 2:16-cv-01345, 2017 WL 2379945 at \*6 (E.D. Cal. June 1, 2017). *aff’d*, Ninth Cir. No. 17-16321, 2018 WL 6519507 (9th Cir. Dec. 11, 2018). With the benefit of hindsight, the Washburn Decision should have used the term *organization* to clearly denote the fact that the Tribe’s status as not having organized.

<sup>4</sup> *E.g.*, *Cal. Valley Miwok Tribe v. Zinke*, No. 2:16-cv-01345, 2017 WL 2379945 (E.D. Cal. June 1, 2017), *aff’d*, Ninth Cir. No. 17-16321, 2018 WL 6519507 (9th Cir. Dec. 11, 2018).

Office of Federal Acknowledgment (OFA) reviewed the genealogical record and determined that AS – IA Washburn relied on factually inaccurate genealogy in issuing the Washburn Decision. As a result, many individuals whom AS – IA Washburn sought to include as part of the greater Tribal community and as eligible to participate in the Tribe’s organization were barred from participation.

I have reviewed this matter and I hereby revise the Washburn Decision to include the descendants of the Miwok Indians listed on the Indian Census Roll for Calaveras County, dated June 30, 1929 (the “1929 Census”) among the “Eligible Groups” able to take part in the initial organization of the Tribe for the reasons set out below. Except for this single revision, I reiterate and endorse the Washburn Decision in full as an authoritative statement of the Department’s position regarding the Tribe’s legal status and eligibility for initial organization. I further incorporate the entirety of the Washburn Decision by reference, except as superseded by this narrow revision.

The Washburn Decision recognized the Tribe’s “manifest goal” of organizing. It identified the criteria for eligibility to take part in the initial organization process. After reciting the history of the Tribe, Mr. Washburn concluded:

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).

The record also indicates that the Indians named on the 1915 Terrell Census had relatives in other Calaveras County communities. 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 of 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.” 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.<sup>5</sup>

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<sup>5</sup> Washburn Decision at 4-5.

In October 2018, the greater Tribal community petitioned for a Secretarial election pursuant to 25 C.F.R. Part 81 (Part 81).<sup>6</sup> Mindful of AS – IA Washburn’s directive that descendants of individuals listed on the 1929 Census would only be permitted to take part in the organizational effort if the Eligible Groups chose to allow them, the Bureau of Indian Affairs (BIA) Pacific Regional Office studied the eligible voters list that the petitioners presented. The Region found that nearly all the people on the list, including Ms. Burley and her family, are descendants of an individual named John Jeff. The BIA found evidence in its records showing that John Jeff was the son of Jeff Davis, the sole Indian residing on the Rancheria in 1935, and thus that the descendants of John Jeff qualified as members of the Eligible Groups under the Washburn Decision by virtue of their descendancy from Jeff Davis. Additionally, the actions of the greater Tribal community evidenced a widespread belief that the descendants of John Jeff constituted a portion of the greater Tribal community, such as including descendants of John Jeff in both a 2013 tribal election to adopt a constitution and the 2018 Part 81 petition. The BIA thus proceeded with the regulatory process to call and to conduct a Secretarial election.

The evidence before the Department in 2015 indicated that John Jeff’s descendants comprise nearly the entirety of the greater Tribal community. The record clarifies that the greater Tribal community has considered and do consider John Jeff’s descendants to be members.<sup>7</sup> Many of John Jeff’s descendants have participated in Tribal affairs for decades.

In January 2019, two descendants of the Eligible Groups, descended from the 1915 Terrell Census, wrote to then-AS – IA Tara Sweeney, challenging BIA’s determination that John Jeff was the son of Jeff Davis and alleging that an election carried out with participation by the John Jeff descendants would be invalid under the Washburn decision.<sup>8</sup> In response, AS – IA Sweeney directed the OFA to scrutinize the record. The OFA found substantial, credible evidence showing that Jeff Davis had one child, a son who died without issue. The OFA also found credible evidence showing that John Jeff was the son of a man named “Indian Jeff,” who was a different individual than Jeff Davis. The OFA therefore concluded that John Jeff was not the son of Jeff Davis and that, as a result, a significant number of individuals who had participated in the Secretarial election were not members of an Eligible Group. Instead, those individuals were

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<sup>6</sup> Letter, James F. Rusk, to Superintendent Troy Burdick (Oct. 26, 2018).

<sup>7</sup> E.g., *Cal. Valley Miwok Tribe v. United States*, Case No. CIV S-02-0912, Deposition of Silvia Burley (Feb. 23, 2004), at 40:10-22 (Mrs. Burley stating “...my grandfather’s father was Johnny Jeff ...”); *Cal. Valley Miwok Tribe v. United States*, No. 2:02-cv-0912, Dkt. No. 65 (E.D. Cal. May 11, 2004); See Brief of Chief Yakima Dixie and the Tribal Council of the California Valley Miwok Tribe at 24 (on file with AS-IA, submitted May 3, 2011) (“Because membership is defined by descent from known Tribe members, all of the descendants of these individuals have a legitimate claim to Tribal membership and are entitled to participate in the initial organization of the Tribe. There is no basis for restricting participation to any subset of these descendants.”); See First Amended Complaint, *Cal. Valley Miwok Tribe v. Salazar*, No. 1:11-cv-160 (D.D.C.), (Dkt. 32), ¶ 6 (“all lineal descendants of the Tribe’s original 11 members (circa 1915) were members of the Tribe in 1998 and were entitled to participate in any organization effort”); See Regional Director’s decision letter, Sep. 11, 2017 at 2 (“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”).

<sup>8</sup> See Letter, Leon Mendibles, to Tara Sweeney, Assistant Sec’y – Indian Affairs (Jan. 18, 2019). The record contains similar letters from parties who identified neither their own enrollment status nor interest in the proceedings. In March 2019, Senator Dianne Feinstein (D-CA) wrote to AS – IA Sweeney, urging the importance of validating the genealogy, and eligibility, of the persons voting in the Secretarial election, attaching the Mendibles letter and others. See Letter, Sen. Dianne Feinstein (D-CA) to Tara Sweeney, Assistant Sec’y – Indian Affairs (Mar. 6, 2019).

descendants of John Jeff who appeared on the 1929 Census and were only eligible to participate with the permission of the Eligible Groups.<sup>9</sup> The Regional Director accordingly issued a decision invalidating the Secretarial election.<sup>10</sup>

In late 2021, the BIA again initiated the organizational process.<sup>11</sup> In early December, the Department received arguments from the descendants of John Jeff that disqualification of this group based on newly corrected genealogical information was contrary to the plain intent of the Washburn Decision.<sup>12</sup> On March 28, 2022, I instructed the Pacific Region to pause the Tribe's organizational process pending consideration as to whether to revise the Washburn Decision to reflect the updated facts.<sup>13</sup>

A factual inaccuracy has manifested in this process. Until OFA's 2019 review of the record, AS-IA proceeded under the factually inaccurate assumption that John Jeff was the son of Jeff Davis. The evidence before AS – IA Washburn showed, *incorrectly*, that the descendants of John Jeff were descendants of Jeff Davis. Nothing in the record, nor in the Washburn Decision, indicates that AS – IA Washburn understood that many of the people whom the BIA identified as the greater Tribal community were not descendants of Jeff Davis. Rather, the record is replete with evidence indicating that John Jeff was a descendant of Jeff Davis – including judicial admissions and statements under oath by individuals from the greater Tribal community indicating their understanding that John Jeff was a descendant of Jeff Davis.<sup>14</sup>

Former AS – IA Washburn concluded “the record shows that there are far more than five people eligible to take part in the organization of the Tribe.”<sup>15</sup> Yet, excluding John Jeff's descendants severely reduces who can take part in the organizational process. Thus, AS – IA Washburn assumed that the descendants of John Jeff comprise a portion of the greater Tribal community based upon the facts before him. Both the record and his decision indicate his understanding that these individuals would be included in the organizational process.

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<sup>9</sup> Memorandum, Lee Fleming, Dir., Office of Federal Acknowledgment to Amy Dutschke, BIA Pac. Reg'l Dir. (May 30, 2019).

<sup>10</sup> Decision, Amy Dutschke, BIA Pac. Reg'l Dir. to Michael Mendibles and Marie Aranda (May 30, 2019).

<sup>11</sup> Letter, Peter Lepsch to Bryan Newland, Assistant Sec'y – Indian Affairs (Nov. 3, 2021). An attached Tribal Resolution claims, without evidence, that the Tribe's membership comprises Silvia Burley, her two daughters, her granddaughter, four other people with the last name “Burley,” and one other person. The letter urged the Department to cease any organizational efforts on the basis that the Burley Faction already exist as an organized Tribe. The Washburn Decision, the United States District Court for the Eastern District of California, the United States Court of Appeals for the Ninth Circuit, and the Interior Board of Indian Appeal have unanimously rejected the Burley Faction's arguments.

<sup>12</sup> Meeting Request, Arnold Samuel to Bryan Newland, Assistant Sec'y – Indian Affairs (Jun. 7, 2021); E-mail, Arnold Samuel to Samuel Kohn, Senior Counselor, Assistant Sec'y – Indian Affairs (Dec. 6, 2021).

<sup>13</sup> Memorandum, Bryan Newland, Assistant Sec'y – Indian Affairs to Amy Dutschke, BIA Pac. Reg'l Dir. (Mar. 28, 2022).

<sup>14</sup> In a 2011 First Amended Complaint, the Dixie Faction asserted that the Tribe comprised 242 adult members, all of whom were “lineal descendant[s] of one or more historical members of the Tribe.” *California Valley Miwok Tribe v. Salazar*, D.D.C. No. 1:11-cv-00160, ¶ 68 (filed Oct. 18, 2011); cf. *California Valley Miwok Tribe v. United States*, Case No. CIV S-02-0912, Deposition of Silvia Burley (Feb. 23, 2004), at 40:10-22 (Mrs. Burley stating “...my grandfather's father was Johnny Jeff ...”).

<sup>15</sup> Washburn Decision at 4.

As such, I conclude that I must modify Mr. Washburn's decision to effectuate Mr. Washburn's intent.

This decision revises only that portion of the Washburn Decision that enabled descendants of the Miwok Indians on the 1929 Census to take part in the initial organization of the Tribe conditioned upon approval of the Eligible Groups. When the BIA returns to the task of assisting the Tribe with its initial organization, the descendants of the Miwok Indians on the 1929 Census shall be included among the Eligible Groups, able to take part in the initial organization of the Tribe. The Department's goal in narrowly revising the number of eligible voters is to include those individuals that AS – IA Washburn understood to be eligible voters in the Tribe's Organizational Process.<sup>16</sup> By revising the Washburn Decision to include the descendants of individuals on the 1929 Census as an eligible group, the Department again recognizes the greater Tribal community eligible to organize the Tribe based on the Eligible Groups' previous efforts to organize. Except as otherwise inconsistent with the inclusion of this group as an Eligible Group, I endorse and reaffirm the Washburn Decision in its entirety. This decision does not reflect any change in the Department's policy. This decision is a final agency action and shall take effect 30 days after the date of issuance.

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<sup>16</sup> *Cf. Resolute Forest Prod. Inc. v. U.S. Dep't of Agric.*, 130 F. Supp. 3d 81, 94-96 (D.D.C. 2015) (neither arbitrary nor capricious for the Department of Agriculture to correct an error in the number of voters in a referendum before it became material where the Department's correction did not exclude eligible voters from participation in the referendum).

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