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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CAHTO TRIBE OF THE LAYTONVILLE)
RANCHERIA,)
)
Plaintiff,)
)
v.)
)
AMY DUTSCHKE, Regional Director)
for the Pacific Region, Bureau)
of Indian Affairs, United States)
Department of the Interior,)
KEN SALAZAR, Secretary of the)
Interior, United States)
Department of the Interior,)
LARRY ECHO HAWK, Assistant)
Secretary - Indian Affairs,)
United States Department of the)
Interior,)
)
Defendants.*)
)
_____)

2:10-cv-01306-GEB-GGH

TENTATIVE RULING ON CROSS
MOTIONS FOR SUMMARY JUDGMENT
ON THE ONLY ISSUES THAT ARE
NOT SUBMITTED FOR DECISION

Cahto Tribe (the "Tribe") seeks an order under the Administrative Procedures Act ("APA") vacating and reversing the Bureau of Indian Affairs' ("BIA") administrative decision that ordered the Tribe to re-enroll 22 members of the Sloan/Hecker family who were disenrolled by the Tribe in 1995.

* The caption has been amended to substitute Amy Dutschke for Dale Risling under Federal Rule of Civil Procedure 25(d) following the appointment of Amy Dutschke as Regional Director for the Pacific Region.

1 **A. STANDARD OF REVIEW**

2 The BIA's decision may be vacated and reversed under the APA
3 only if it is "arbitrary, capricious, an abuse of discretion, or
4 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

5 **B. WHETHER THE BIA HAD AUTHORITY TO REVIEW THE TRIBE'S DIS-ENROLLMENT**
6 **DECISION**

7 The Tribe argues the BIA's re-enrollment decision is unlawful
8 because its governing documents, consisting of its Articles of
9 Association and Ordinance Number 1, do not authorize the BIA to review
10 the Tribe's dis-enrollment decision. (Pl.'s Mot. 25:10-13.)

11 The BIA counters that the tribal governing documents do
12 authorize its review of the Tribe's dis-enrollment decision that was
13 appealed; the BIA relies on provisions in the Tribe's governing
14 documents as support for its position. Specifically, the BIA argues that
15 sections 6 through 8 of Ordinance Number 1, "read together",
16 "unquestionably provide for an appeal to the [BIA] for determinations by
17 the Tribe as to eligibility or ineligibility for tribal membership."
18 (Defs.' Reply 4:25; Defs.' Mot. 13:21-14:1.)

19 Section 6 of Ordinance Number 1 provides: "[a] person
20 disapproved for enrollment" may appeal to the BIA; section 7 states the
21 membership roll is to "be prepared with a certification as to its
22 correctness by the . . . [BIA][;]" and section 8 states the membership
23 roll is to be kept current by "making corrections as necessary,
24 including deleting of names of persons on the roll who were placed there
25 erroneously, fraudulently, [or] otherwise incorrectly[.]"
26 (Administrative Record ("AR") 282, 285.) These sections read in their
27 context provide the BIA authority to review the subject dis-enrollment
28 decision.

1 **C. WHETHER BIA'S REVERSAL OF THE TRIBE'S DECISION WAS CONTRARY TO LAW**

2 The Tribe also argues its dis-enrollment decision is based on
3 its interpretation of its own tribal governing documents, and therefore,
4 is an interpretation based on its tribal sovereign authority to which
5 the BIA must give deference. (Pl.'s Mot. 27:3-6.) "[U]nder the doctrines
6 of tribal sovereignty and self-determination, a tribe has the right
7 initially to interpret its own governing documents in resolving internal
8 disputes, and the [BIA] must give deference to a tribe's reasonable
9 interpretation of its own laws." Ransom v. Babbitt, 69 F. Supp. 2d 141,
10 150 (D.D.C. 1999) (internal quotation marks omitted).

11 The BIA counters the Tribe's dis-enrollment decision is not
12 based on the Tribe's interpretation of its governing documents, but
13 rather the Tribe's misinterpretation of federal law prescribed in 25
14 U.S.C. § 1300i et. seq., the Hoopa Yurok Settlement Act, and the Initial
15 Yurok Voter List prepared by the BIA in 1979, prior to the enactment of
16 the Hoopa Yurok Settlement Act. (Defs.' Mot. 23:9-10.)

17 The Tribe based its decision on Article III(A)(3) of the
18 Tribe's Articles of Association which prescribes: "[p]ersons who meet
19 the requirements [of membership] . . . , shall be ineligible for
20 membership if they have been affiliated with any other tribe, group or
21 band to the extent of (a) being included on a formal membership roll, .
22 . . [or] (c) having been named as a distributee or dependent of a
23 distributee in a reservation distribution plan." (AR 286-87.) "In its
24 September 19, 1995 decision, the [Tribe] found that the [Sloan/Heckers]
25 'have been affiliated with other tribes by being included on formal
26 membership rolls and/or . . . have been a distributee of a reservation
27 distribution plan, namely the Hoopa/Yurok settlement' and thus were
28 ineligible for membership under Article III.A.3 of the Tribe's Articles

1 of Association." (Pl.'s SUF ¶ 7; Defs.' SUF ¶ 2.) The Tribe relied on
2 the "'Initial Yurok Voter List' dated June 21, 1979" for its conclusion
3 that the Sloan/Heckers "were . . . on the membership rolls of the Yurok
4 Tribe[.]" (Pl.'s Mot. 33:1; AR 223.)

5 The Tribe argues the Hoopa Yurok Settlement Act is a
6 "distribution of Reservation assets" within the meaning of "reservation
7 distribution plan" in its Articles of Association. (Pl.'s Mot. 32:5.)

8 However, what the Tribe characterizes as a distribution of
9 reservation assets is a legal settlement with the United States
10 government, which federal law has not defined as a distribution of
11 reservation assets as the Tribe argues. As explained in the Senate
12 Report on the Hoopa Yurok Settlement Act, the Act is intended to
13 "resolve long standing litigation between the United States, the Hoop
14 Valley Tribe and a large number of individual Indians[.]" S. Rep. No.
15 100-564, at 1 (1988).

16 25 U.S.C. § 1300i-3 prescribes that the Hoopa Yurok Settlement
17 Act establish the Hoopa-Yurok Settlement Fund, which is composed of
18 "monies derived from the joint reservation which are held in trust" (25
19 U.S.C. § 1300i (b)(1)) and a federal government monetary settlement
20 contribution of \$10,000,000 (25 U.S.C. § 1300i-4(e)). The Senate Report
21 explains "[t]he Fund, with the Federal share and with any earned income,
22 is to be available to make the payments authorized by [25 U.S.C. §
23 1300i-5(d)]." S. Rep. No. 100-564, at 20.

24 25 U.S.C. § 1300i-5(d) provides a lump sum payment option;
25 "[t]he option to elect a lump sum payment under this section is provided
26 solely as a mechanism to resolve the complex litigation[.]" 25 U.S.C. §
27 1300i-5(d)(2).

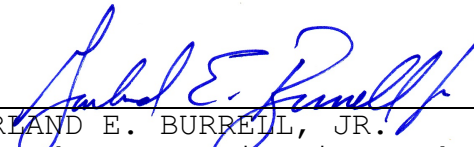
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1 Therefore, the Sloan/Hecker family members who received the
2 lump sum payment option under 25 U.S.C. § 1300i-5(d) did not receive a
3 distribution of reservation assets.

4 Further, contrary to the Tribe's argument, the Initial Yurok
5 Voter List does not constitute a membership roll since the federal
6 register comments state: "the voters' list clearly is not a membership
7 roll for the Yurok Tribe and inclusion on or exclusion from the list is
8 not determinative of whether a person will be eligible for membership in
9 the Yurok Tribe." Organization of the Yurok Tribe-Voting for Interim
10 Tribal Governing Committee; Qualification and Procedures for Preparing
11 a Voting List, 44 Fed. Reg. 24536 (Apr. 25, 1979) (to be codified at 25
12 CFR pt. 55).

13 For the stated reasons, the BIA's decision to order the
14 re-enrollment of the Sloan/Hecker Family is not contrary to law.

15 Dated: May 20, 2011

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GARLAND E. BURRELL, JR.
United States District Judge