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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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CALIFORNIA VALLEY MIWOK  
TRIBE, a federally-recognized  
Indian tribe, THE GENERAL  
COUNCIL, SILVIA BURLEY,  
RASHEL REZNOR; ANJELICA  
PAULK; and TRISTIAN WALLACE,

Plaintiffs,

v.

SALLY JEWEL, in her official  
capacity as U.S. Secretary of  
Interior; LAWRENCE S.  
ROBERTS, in his official  
capacity as Acting Assistant  
Secretary of Interior-Indian  
Affairs; MICHAEL BLACK, in  
his official capacity as  
Director of the Bureau of  
Indian Affairs,

Defendants.

CIV. NO.: 2:16-01345 WBS CKD  
MEMORANDUM AND ORDER RE: MOTION  
TO STAY

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Plaintiffs Silvia Burley, Rashel Reznor, Anjelica  
Paulk, and Tristian Wallace brought this action against  
defendants Secretary of Interior Sally Jewell, Acting Assistant

1 Secretary of Interior Lawrence Roberts, and Director of the  
2 Bureau of Indian Affairs ("BIA") Michael Black for declaratory  
3 relief, injunctive relief, and due process violations arising out  
4 an administrative decision on the membership and leadership of  
5 the California Valley Miwok Tribe ("Tribe"). The matter is now  
6 before the court on plaintiffs' motion to stay enforcement of the  
7 Assistant Secretary's December 30, 2015, decision ("December 2015  
8 Decision").<sup>1</sup> (Docket No. 10.)

9 I. Factual and Procedural Background

10 This action is part of a long-running leadership  
11 dispute over the Tribe between the Burley Faction--made up of  
12 Burley, Reznor, Paulk, and Wallace--and Yakima Dixie. See Cal.  
13 Valley Miwok Tribe v. United States, 424 F. Supp. 2d 197 (D.D.C.  
14 2006) (hereinafter "Miwok I"); Cal. Valley Miwok Tribe v. United  
15 States, 515 F.3d 1262 (D.C. Cir. 2008) (hereinafter "Miwok II");  
16 Cal. Valley Miwok Tribe v. Jewell, 5 F. Supp. 3d 86 (D.D.C. 2013)  
17 (hereinafter "Miwok III"). The Tribe is a federally recognized  
18 tribe.

19 In 1916, the United States acquired a parcel of land  
20 for the Tribe's benefit. (Corrales Decl. Ex. 4 ("Dec. 2015  
21 Decision") at 2 (Docket No. 11).) In 1958, the California  
22 Rancheria Act terminated federal recognition of rancherias, and  
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24 <sup>1</sup> Plaintiffs caption their motion as seeking an order  
25 staying the December 2015 Decision, but plaintiffs are actually  
26 seeking preliminary injunctive relief from the court to prevent  
27 the BIA from taking certain actions pending a decision on the  
28 merits. See Nken v. Holder, 556 U.S. 418, 428-29 (2009). The  
terminology does not change the court's standard of review.  
Leiva-Perez v. Holder, 640 F.3d 962, 966 (9th Cir. 2011)  
(applying the four injunction factors to a stay request).

1 Mabel Dixie--the sole Miwok Indian resident on the land--acquired  
2 title to the land. (Id. at 3.)

3 Mabel Dixie's son, Yakima Dixie, was the only tribal  
4 member living on the property in 1998. (Id. at 1-2.) The Burley  
5 Faction obtained his permission to enroll into the Tribe. (Id.  
6 at 2.) The BIA, Dixie, and Burley drafted a Resolution ("1998  
7 Resolution") stating that the Tribe consisted of at least Dixie  
8 and the Burley Faction and establishing a general council ("1998  
9 General Council"). Miwok III, 5 F. Supp. 3d at 91. In 1999, a  
10 leadership dispute began between Dixie and Burley, and the BIA  
11 entered into a contract with Burley to provide funding for the  
12 Tribe's organization. Id. Later, the BIA found Burley did not  
13 attempt to involve all tribal members, and it ceased recognizing  
14 Burley as the Tribe representative. Id. at 93. The California  
15 Gaming Control Commission, which provides funding to certain  
16 tribes, also suspended its payments to the Tribe and is currently  
17 holding the money in trust. Id. at 94.

18 In a 2005 hearing, the BIA refused to accept a  
19 constitution submitted by Burley that alleged that the Burley  
20 Faction were the only Tribe members because the constitution did  
21 not reflect the participation of the whole community. Id. at 93-  
22 94. This decision was upheld by the district court in Miwok I  
23 and the D.C. Circuit in Miwok II. Id. at 94.

24 While Miwok II was pending, the BIA notified Dixie and  
25 Burley that it would move forward with facilitating the Tribe's  
26 organization. Id. In December 2010, the Assistant Secretary  
27 determined that the tribal government was organized under the  
28 1998 Resolution and General Council. Id. at 95. In August 2011,

1 the Assistant Secretary issued a revised decision that reached  
2 the same conclusion. Id. He found (1) the citizenship of the  
3 Tribe consisted solely of Dixie and the Burley Faction and (2)  
4 the 1998 General Council was the Tribe's government. Id. Dixie  
5 challenged the August 2011 Decision. (Dec. 2015 Decision at 2.)

6 Based on the record, the Miwok III court held the  
7 August 2011 Decision was arbitrary and capricious. (Id.) The  
8 court held that the Assistant Secretary ignored substantial  
9 evidence in the record and assumed conclusions without providing  
10 a factual basis. Miwok III, 5 F. Supp. 3d at 97-100. The court  
11 remanded the case to the Assistant Secretary. Id. at 100-01.

12 The Assistant Secretary issued his December 2015  
13 Decision in response to the Miwok III remand. He held, based on  
14 the record and previous federal decisions, that the Tribe's  
15 membership was not limited to five members and the 1998 General  
16 Council was not a tribal government. (Dec. 2015 Decision at 3-  
17 5.) Finally, the Assistant Secretary found Dixie's 2013  
18 Constitution did not establish a tribal government, but he  
19 allowed Dixie to submit additional evidence to a Regional  
20 Director in order to determine whether the 2013 Constitution was  
21 validly ratified. (Id. at 6.)

22 Plaintiffs challenged the December 2015 Decision and  
23 brought this suit against the federal defendants. Several  
24 potential Tribe members, including Dixie, intervened. (Docket  
25 No. 30.) Plaintiffs now move to stay the December 2015 Decision  
26 pending final resolution of this case. (Docket No. 10.)

## 27 II. Discussion

28 In order to obtain a preliminary injunction, the moving

1 party must establish (1) he is likely to succeed on the merits,  
2 (2) he is likely to suffer irreparable harm in the absence of  
3 preliminary relief, (3) the balance of equities tips in his  
4 favor, and (4) an injunction is in the public interest. Winter  
5 v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20-21 (2008);  
6 Humane Soc. of the U.S. v. Gutierrez, 558 F.3d 896, 896 (9th Cir.  
7 2009). When the United States is the non-moving party, the third  
8 and fourth factors merge. Nken v. Holder, 556 U.S. 418, 435  
9 (2009). Injunctive relief is “an extraordinary and drastic  
10 remedy, one that should not be granted unless the movant, by a  
11 clear showing, carries the burden of persuasion.” Mazurek v.  
12 Armstrong, 520 U.S. 968, 972 (1997) (per curiam).

13 “[A] preliminary injunction will not be issued simply  
14 to prevent the possibility of some remote future injury.”  
15 Winter, 555 U.S. at 21. A plaintiff “must establish that  
16 irreparable harm is likely, not just possible, in order to obtain  
17 a preliminary injunction.” All. for the Wild Rockies v.  
18 Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (emphasis in  
19 original) (citing Winter, 555 U.S. at 22). Plaintiffs must  
20 demonstrate the harm is both irreparable and imminent. Caribbean  
21 Marine Servs. Co., Inc. v. Baldrige, 844 F.2d 668, 674 (9th Cir.  
22 1988). “Speculative injury does not constitute irreparable  
23 injury sufficient to warrant granting a preliminary injunction.”  
24 Id.

25 Plaintiffs argue they will be irreparably harmed by the  
26 December 2015 Decision because the Regional Director “is poised  
27 to give the Tribe over to the Dixie Faction in the immediate  
28 future” by recognizing Dixie’s 2013 Constitution. Plaintiffs

1 argue that once the 2013 Constitution is recognized, Dixie will  
2 request and obtain the \$13 million the Gambling Control  
3 Commission is holding in trust for the Tribe pending resolution  
4 of the leadership dispute. (Pls.' Mot. at 10 (Docket No. 10).)

5           The possibility of injury to plaintiffs is speculative  
6 because it is uncertain whether the Regional Director will  
7 recognize Dixie's 2013 Constitution in the first place. (See  
8 Dutschke Aff. ¶¶ 9-11 (Docket No. 34-1).) The December 2015  
9 Decision only authorized the Regional Director to accept  
10 additional submissions from Dixie to determine whether the 2013  
11 Constitution is valid. (Dec. 2015 Decision at 6.) Even if the  
12 Regional Director approves Dixie's 2013 Constitution, this  
13 decision is subject to administrative appeal and would be stayed  
14 pending appeal. 25 C.F.R. §§ 2.1-.21 (describing the appeal  
15 procedures). Only then, after the Regional Director approved  
16 Dixie's 2013 Constitution and the administrative appeals are  
17 exhausted, could Dixie petition the Gambling Control Commission  
18 for any money. Absent a showing that the money will immediately  
19 and certainly be released, any harm is speculative and not  
20 immediate.

21           For the foregoing reasons, because plaintiffs have not  
22 established that the Regional Director's future decision  
23 regarding the 2013 Constitution and any subsequent issuance of  
24 tribal money is imminent or likely to occur, they have not met  
25 the irreparable harm prong of the preliminary injunction  
26 standard.

27           Plaintiffs have also failed to meet the merged third  
28 and fourth prongs of the preliminary injunction standard. First,

1 "tribal self-government may be a matter of public interest."  
2 Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1234, 1253  
3 (10th Cir. 2001). Issuing an injunction preventing the BIA from  
4 determining the Tribe's proper government undermines the public  
5 policy favoring the promotion of tribal self-governance.

6 Second, since plaintiffs have not shown irreparable  
7 injury, the balance of the equities cannot be in favor of  
8 plaintiffs over the United States or intervenor-defendants.  
9 Earth Island Inst. v. Carlton, Civ. No. 2:09-2020 FCD EFB, 2009  
10 WL 9084754, at \*28 (E.D. Cal. Aug. 20, 2009), aff'd 626 F.3d 462  
11 (9th Cir. 2010) ("[W]here plaintiff has not made the requisite  
12 showing on the merits which, in turn, undermines the likelihood  
13 of irreparable injury, the balance of equities cannot be found in  
14 plaintiff's favor."). Preventing the implementation of the  
15 December 2015 Decision would also impair the interests of the  
16 United States and Tribe members in establishing legitimate  
17 government-to-government relations, and preventing the Regional  
18 Director from determining the validity of other potential tribal  
19 governments would prevent Tribe members from receiving the  
20 benefits of a duly-recognized government.


21 Because plaintiffs have failed to meet the second and  
22 third prongs for a preliminary injunction, the court thus does  
23 not need to address the likelihood of success on the merits. See  
24 Winter, 555 U.S. at 20-21 (holding a plaintiff must establish  
25 that all four prongs are met and irreparable harm is likely, not  
26 just possible). Accordingly, the court must deny plaintiffs'  
27 motion.

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IT IS THEREFORE ORDERED that plaintiffs' motion to stay the Assistant Secretary's December 2015 Decision pending final resolution of this case, considered as a motion for a preliminary injunction, be, and the same hereby is, DENIED.

Dated: October 24, 2016

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**WILLIAM B. SHUBB**  
**UNITED STATES DISTRICT JUDGE**