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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.

RYAN ZINKE, in his official
capacity as U.S. Secretary of
Interior; MICHAEL BLACK, in
his official capacity as
Acting Assistant Secretary of
Interior-Indian Affairs;
WELDON LOUDERMILK, in his
official capacity as Director
of the Bureau of Indian
Affairs,

Defendants.

CIV. NO. 2:16-01345 WBS CKD
MEMORANDUM AND ORDER RE: CROSS-
MOTIONS FOR SUMMARY JUDGMENT

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Plaintiffs Silvia Burley, Rashel Reznor, Anjelica
Paulk, and Tristian Wallace ("Burley faction") brought this
action against defendants Secretary of Interior Ryan Zinke,

1 Acting Assistant Secretary of Interior Michael Black, and
2 Director of the Bureau of Indian Affairs ("BIA") Weldon
3 Loudermilk¹ ("federal defendants") for violation of the
4 Administrative Procedures Act ("APA"), declaratory relief,
5 injunctive relief, and due process violations arising out of a
6 BIA decision on the tribal membership and recognized government
7 of the California Valley Miwok Tribe ("Tribe"). Several alleged
8 Tribe members, including Yakima Dixie, intervened ("intervenor
9 defendants"). (Docket No. 30.) Plaintiffs, federal defendants,
10 and intervenor defendants now move for summary judgment. (Docket
11 Nos. 44, 46-47.)

12 I. Factual and Procedural Background

13 This action is part of a long-running leadership
14 dispute over the Tribe between the Burley faction and Yakima
15 Dixie that has resulted in actions in state courts, federal
16 courts, and administrative agencies. See Cal. Valley Miwok Tribe
17 v. United States, 424 F. Supp. 2d 197 (D.D.C. 2006) ["Miwok I"];
18 Cal. Valley Miwok Tribe v. United States, 515 F.3d 1262 (D.C.
19 Cir. 2008) ["Miwok II"]; Cal. Valley Miwok Tribe v. Jewell, 5 F.
20 Supp. 3d 86 (D.D.C. 2013) ["Miwok III"]. The Tribe is a
21 federally recognized tribe, formerly known as the "Sheep Ranch
22 Rancheria of Me-Wuk Indians of California." (2015 AR 1397.)²

23 ¹ Federal defendants are automatically substituted for
24 their predecessors pursuant to Federal Rule of Civil Procedure
25 25(d).

26 ² Because the administrative decision challenged here is
27 a reconsideration of a prior 2011 administrative decision
28 following remand in Miwok III, there are two administrative
records. The court will refer to the 2011 Decision's
administrative record with the citation (2011 AR XX) and the 2015

1 In 1915, John Terrell of the Office of Indian Affairs
2 conducted a census of "Sheepranch Indians" in Calaveras County,
3 California. (2011 AR 3-5.) At the time of the census, there
4 were thirteen Sheepranch Indians. (2011 AR 3.) In 1916, the
5 United States acquired a 0.92 acre parcel of land, known as
6 "Sheep Ranch Rancheria," for these Indians. (2011 AR 3-6.)

7 In 1934, Congress passed the Indian Reorganization Act
8 ("IRA"), which required the BIA to hold elections where a tribe
9 would decide whether to accept provisions of the IRA, including
10 provisions permitting tribes to organize and adopt a
11 constitution. 25 U.S.C. §§ 5123, 5125. The BIA found that there
12 was only one eligible adult Miwok Indian, Jeff Davis, living on
13 the rancheria in 1935.³ (2011 AR 13, 20.) He voted in favor of
14 adopting the IRA but the Tribe never pursued formal organization.
15 (2011 AR 13, 20.)

16 Amended in 1964, the California Rancheria Act
17 authorized the termination of federal recognition of California
18 Rancherias by distributing each rancheria's assets to the Indians
19 residing on the rancheria. (2011 AR 1687; 2015 AR 1399.) At
20 that time, Mabel Dixie was the sole Miwok resident on the land.
21 (2011 AR 38.) She voted to accept the land distribution plan and
22 terminate the trust relationship between the federal government
23 and the Tribe. (2011 AR 47-51.) The BIA failed, however, to
24 take the necessary steps to complete the termination of the
25

Decision's administrative record with the citation (2015 AR XX).

26 ³ The Department of the Interior's 1935 census found that
27 the Sheep Ranch Rancheria had an approximate population of
28 sixteen members, but only Davis lived on the property. (See 2011
AR 2062.)

1 rancheria. (2011 AR 83-84.)

2 Mabel Dixie died in 1971 and an Administrative Law
3 Judge ordered the distribution of her estate. (2011 AR 61.) Her
4 common law husband and four sons, including Yakima Dixie,
5 received an undivided interest in the land. (Id.) By 1994,
6 Yakima Dixie represented that he was the only living descendant
7 of Mabel and recognized Tribe member. (2011 AR 82.)

8 A. Leadership Dispute

9 In 1998, the Burley faction received Dixie's permission
10 to enroll in the Tribe. (2011 AR 110-14.) In September 1998,
11 the BIA met with Dixie and Burley in order to discuss formal
12 organization of the Tribe. (2011 AR 172-76.) The BIA noted that
13 it believed that the original tribal membership was limited to
14 the heirs of Mabel Dixie because of the land distribution during
15 probate. (2011 AR 173.) The Tribe's membership then expanded
16 with the addition of the Burley faction. (2011 AR 173.)

17 In November 1998, the BIA drafted, and Dixie and Burley
18 signed, Resolution #GC-98-01 ("1998 Resolution"). (2011 AR 177-
19 79.) The 1998 Resolution listed Dixie and the four member Burley
20 faction as Tribe members. (2011 AR 177.) It also established "a
21 General Council to serve as the governing body of the Tribe."
22 (2011 AR 178.) In 1999, Burley submitted Dixie's resignation as
23 tribal chairman to the BIA, but Dixie claimed he did not resign.
24 (2011 AR 180, 1573.) The BIA affirmed the General Council's
25 authority as the governing body of the Tribe in February 2000 and
26 continued to recognize the General Council and Burley's
27 leadership through 2005. (2011 AR 249-54, 2691.)

28 In February 2004, Burley submitted a tribal

1 constitution to the BIA "in an attempt to demonstrated that it is
2 an 'organized' Tribe" under the IRA. (2011 AR 1095.) The BIA
3 rejected the constitution because it did not reflect the
4 involvement of "the greater tribal community." (2011 AR 1095-
5 96.) The BIA restated this position in February 2005 when it
6 concluded that it did not recognize any tribal government or
7 tribal chairperson for the Tribe. (2011 AR 610-11.)

8 B. Miwok I and Miwok II

9 The Burley faction challenged the denial of their
10 proposed constitution. Miwok I, 424 F. Supp. 2d at 201. The
11 court reasoned that while the Tribe has flexibility in organizing
12 under the IRA, the BIA has an obligation to ensure that governing
13 documents "have been 'ratified by a majority vote of adult
14 members.'" Id. at 202. Because the Tribe "failed to take
15 necessary steps to protect the interests of its potential
16 members," the court dismissed the complaint. Id. at 202-03.

17 The D.C. Circuit affirmed the district court. Miwok
18 II, 515 F.3d at 1268. The court reasoned that "tribal
19 organization under the [IRA] must reflect majoritarian values,"
20 the Burley faction admits the Tribe has a potential membership of
21 250, and the proposed constitution did not involve the majority
22 of those members. Id. at 1267-68.

23 C. 2010 Decision and Miwok III

24 While Miwok II was pending, the BIA met with the
25 parties in order to promote organization under the IRA. (2011 AR
26 1261.) In November 2006, the BIA published notice of a General
27 Council meeting in order to initiate the reorganization process.
28 (Id.) The Burley faction appealed this decision. The Regional

1 Director affirmed the November 2006 notice, reasoning that the
2 purpose of the meeting was to identify the putative group who has
3 a right to participate in the Tribe's organization. (2011 AR
4 1494-98.)

5 Burley appealed this decision to the Interior Board of
6 Indian Appeals ("IBIA"), who affirmed, in part, the Regional
7 Director. (2011 AR 1502, 1684-705.) The IBIA also noted that
8 the April 2007 decision involved an "enrollment dispute." (2011
9 AR 1703.) Because the IBIA lacks jurisdiction over enrollment
10 disputes, it referred this issue to the Assistant Secretary for
11 Indian Affairs. (Id.)

12 In August 2011, the Assistant Secretary issued a
13 decision ("2011 Decision") that was "a 180-degree change of
14 course" from the BIA's previous position on the Tribe. (2011 AR
15 2049-50.) The Assistant Secretary concluded: (1) the Tribe is a
16 federally recognized tribe; (2) the Tribe's citizenship consists
17 solely of Dixie and the Burley faction; (3) the Tribe operates
18 under a General Council government under the 1998 Resolution; (4)
19 the "General Council is vested with the governmental authority of
20 the Tribe"; (5) the Tribe is not organized under the IRA and is
21 not required to organize under it; and (6) the United States
22 cannot treat tribes not organized under the IRA differently than
23 tribes organized under the IRA. (2011 AR 2049-50.) Dixie
24 challenged this decision in federal district court.

25 The district court in Miwok III focused on the Tribe's
26 citizenship and the recognition of the General Council as the
27 Tribe's government. Miwok III, 5 F. Supp. 3d at 96. The court
28 held that the 2011 Decision was arbitrary and capricious because

1 the Assistant Secretary assumed, without explanation, that the
2 Tribe was comprised of only five members and the General Council
3 was the recognized tribal government. Id. at 97-100. The record
4 was replete with contrary evidence, but the Assistant Secretary
5 “ma[de] no effort to address any of this evidence in the record.”
6 Id. at 98. The court vacated the 2011 Decision and remanded the
7 case to the Assistant Secretary to reconsider the number of
8 tribal members and validity of the General Council. Id. at 100-
9 01.

10 D. December 2015 Decision

11 The Assistant Secretary issued his December 2015
12 Decision in response to the Miwok III remand. He held, based on
13 the record and previous federal court decisions, “that the
14 Tribe’s membership is more than five people, and that the 1998
15 General Council does not consist of valid representatives of the
16 Tribe.” (2015 AR 1402.) He further concluded that the General
17 Council was a tribal body that could manage the process of
18 reorganizing the Tribe, but the majority of eligible Tribe
19 members did not approve the General Council. (2015 AR 1401.)

20 Plaintiffs challenged the December 2015 Decision and
21 brought this suit against federal defendants under the APA. The
22 court granted intervenor defendants’ Motion to intervene on
23 August 25, 2016. (Docket No. 29.) The court previously denied
24 plaintiffs’ Motion to stay enforcement of the December 2015
25 Decision. (Oct. 24, 2016 Order 8:1-4 (Docket No. 37).)

26 II. Legal Standard

27 The APA governs judicial review of administrative
28 agency actions. In reviewing the administrative decision, the

1 district court "is not required to resolve any facts" that may
2 exist in the underlying administrative record. Occidental Eng'g
3 Co. v. I.N.S., 753 F.2d 766, 769 (9th Cir. 1985). Rather, the
4 court must "determine whether or not, as a matter of law, the
5 evidence in the administrative record permitted the agency to
6 make the decision it did." Nehemiah Corp. v. Jackson, 546 F.
7 Supp. 2d 830, 838 (E.D. Cal. 2008) (Karlton, J.); see also
8 Occidental Eng'g, 753 F.2d at 769-70.

9 Under the APA, the reviewing court must set aside
10 agency actions that are "arbitrary, capricious, an abuse of
11 discretion, or otherwise not in accordance with law." 5 U.S.C. §
12 706(2) (A). An agency acts in an arbitrary and capricious manner
13 when it "offer[s] an explanation for its decision that runs
14 counter to the evidence before the agency[] or is so implausible
15 that it c[an]not be ascribed to a difference in view or the
16 product of agency expertise." Motor Vehicle Mfrs. Ass'n of the
17 U.S. v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983).
18 "The arbitrary and capricious standard of review is 'highly
19 deferential; the agency's decision is entitled to a presumption
20 of regularity, and [the court] may not substitute [its] judgment
21 for that of the agency.'" Aguayo v. Jewell, 827 F.3d 1213, 1226
22 (9th Cir. 2016) (quoting San Luis & Delta-Mendota Water Auth. v.
23 Jewell, 747 F.3d 581, 601 (9th Cir. 2014)).

24 "Even when an agency explains its decision with 'less
25 than ideal clarity,' a reviewing court will not upset the
26 decision on that account 'if the agency's path may be reasonably
27 discerned.'" Ala. Dep't of Env'tl. Conservation v. E.P.A., 540
28 U.S. 461, 497 (2004) (quoting Bowman Transp. Inc. v. Ark.-Best

1 Freight Sys., Inc., 419 U.S. 281, 286 (1974)). A court will
2 "sustain an agency action if the agency has articulated a
3 rational connection between the facts found and the conclusions
4 made." Pac. Coast Fed'n of Fishermen's Ass'ns v. U.S. Bureau of
5 Reclamation, 426 F.3d 1082, 1090 (9th Cir. 2005).

6 III. Supplementing the Administrative Record and Judicial Notice

7 Plaintiffs request that the court take judicial notice
8 of over forty documents, many of which are not part of the
9 administrative record. (See Docket Nos. 44-3, 45, 48-1.)
10 Plaintiffs filed these requests almost one month after the
11 deadline to file a motion to supplement the administrative
12 record. (See Status Order 2:28-3:1 (Docket No. 41).)

13 Generally, the reviewing court is limited to the
14 administrative record. Great Basin Mine Watch v. Hankins, 456
15 F.3d 955, 975 (9th Cir. 2006). When asking for judicial notice
16 of documents in a case where the court is reviewing an agency
17 action, the requesting party must meet one of four exceptions:

18 (1) admission is necessary to determine
19 whether the agency has considered all
20 relevant factors and has explained its
21 decision; (2) if the agency has relied on
22 documents not in the record, (3) when
supplementing the record is necessary to
explain technical terms or complex subject
matter, or (4) when plaintiffs make a showing
of agency bad faith.

23 Lands Council v. Powell, 395 F.3d 1019, 1030 (9th Cir. 2005); see
24 Rybachek v. E.P.A., 904 F.2d 1276, 1296 n.25 (9th Cir. 1990)
25 (construing a motion for judicial notice as a motion to
26 supplement the record).

27 Plaintiffs do not mention these exceptions, let alone
28 discuss how the supplemented documents qualify under any

1 exception. They only argue that these documents are relevant to
2 their various arguments. Plaintiffs have not “met [their] heavy
3 burden to show that the additional materials . . . are necessary
4 to adequately review” the Assistant Secretary’s decision. See
5 Fence Creek Cattle Co. v. U.S. Forest Serv., 602 F.3d 1125, 1131
6 (9th Cir. 2010). The court denies plaintiffs’ request for
7 judicial notice of extra-record materials.

8 IV. Discussion

9 The December 2015 Decision reached two conclusions that
10 plaintiffs argue are arbitrary and capricious. First, membership
11 in the Tribe is not limited to five people. (See 2017 AR 1399.)
12 Second, the United States does not recognize a valid government
13 for the Tribe. (See 2017 AR 1401.)

14 A. Whether Tribe is Made up of More than Five People

15 The December 2015 Decision found that membership in the
16 Tribe is not limited to five people. (2015 AR 1399.) Instead,
17 the Tribe’s membership consists of:

18 (1) the individuals listed on the 1915
19 Terrell Census and their descendants; (2) the
20 descendants of Rancheria resident Jeff Davis
21 (who was the only person on the 1935 IRA
22 voters list for the Rancheria); and (3) the
23 heirs of Mabel Dixie (the sole Indian
24 resident of the Rancheria eligible to vote on
25 its termination in 1967).

26 (2015 AR 1400.)⁴ The Assistant Secretary based this conclusion
27 on: (1) the Miwok I and Miwok II decisions that held the Tribe
28 consisted of more than five people; (2) the Miwok III conclusion
that “the record is replete with evidence that the Tribe’s

⁴ The December 2015 Decision refers to these categories
of members as the “Eligible Groups.”

1 membership is potentially significantly larger than just the[]
2 five individuals"; and (3) the meaning of the term "rancheria"
3 and the Department of Interior's treatment of the California
4 Rancherias. (2015 AR 1399-400.) Plaintiffs argue that the
5 administrative record does not support this conclusion.

6 Federal defendants argue that preclusion prevents
7 plaintiffs from now attempting to re-litigate the issue of Tribe
8 members because this issue was resolved in a prior proceeding. A
9 prior court decision will have preclusive effect under the
10 doctrine of issue preclusion where:

11 (1) the issue necessarily decided at the
12 previous proceeding is identical to the one
13 which is sought to be relitigated; (2) the
14 first proceeding ended with a final judgment
15 on the merits; and (3) the party against whom
collateral estoppel is asserted was a party
or in privity with a party at the first
proceeding.

16 Hydranautics v. FilmTec Corp., 204 F.3d 880, 885 (9th Cir. 2000)
17 (quoting Younan v. Caruso, 51 Cal. App. 4th 401, 406-07 (2d Dist.
18 1996)). The party asserting issue preclusion bears the burden of
19 showing what the prior judgment determined. Id. "[T]he concept
20 of collateral estoppel cannot apply when the party against whom
21 the earlier decision is asserted did not have a 'full and fair
22 opportunity' to litigate that issue in the earlier case." Allen
23 v. McCurry, 449 U.S. 90, 95 (1980) (quoting Montana v. United
24 States, 440 U.S. 147, 153 (1979)).

25 First, Miwok I and Miwok II necessarily decided whether
26 three members constituted a majority of the Tribe.⁵ Miwok I and

27 ⁵ The issue here is not identical to the issue in Miwok
28 III. Miwok III did not determine the number of tribal members;

1 Miwok II affirmed the Secretary's decision not to approve a
2 proposed tribal constitution submitted by the Burley faction.
3 See Miwok II, 515 F.3d at 1263. Only three Burley members
4 approved the proposed constitution they submitted. Id. at 1266.
5 The courts held that the three Burley members who approved the
6 constitution did not constitute a majority of the Tribe, and
7 therefore, their proposed constitution was an "antimajoritarian
8 gambit [that] deserve[d] no stamp of approval from the
9 Secretary."⁶ Id. at 1267. Because the Burley faction did not
10 represent "anything close to a majority of the [T]ribe," the
11 courts in Miwok I and Miwok II denied the Burley faction's
12 proposed constitution. Id.

13 The issue here is whether the Tribe consists of more
14 than five members--the four Burley members plus Dixie. The Miwok
15 I and Miwok II determination that the three Burley members were
16 not a majority of the Tribe necessarily means that the Tribe must
17 also consist of more than five members, which is the challenged
18 issue here.

19 Plaintiffs, relying on Miwok III dicta, argue the issue
20 here is different than in Miwok I and Miwok II because the issue
21 there "was whether the Secretary had the authority to refuse to
22 approve a constitution submitted under IRA § 476(h)(1)." See

23 it found that the Assistant Secretary was arbitrary and
24 capricious for failing to address any evidence regarding tribal
25 membership size. See Miwok III, 5 F. Supp. 3d at 98-99.

26 ⁶ The Miwok II court also took judicial notice of the
27 fact that the Burley faction alleged in another action that the
28 Tribe has a potential membership of 250. Miwok II, 515 F.3d at
1265 n.5; (see 2011 AR 299.)

1 Miwok III, 5 F. Supp. 3d at 101 n.15. The court recognizes that
2 Miwok III stated that Miwok I and Miwok II did not address
3 whether the Tribe's membership consists of five members. This
4 is, however, an inaccurate and incomplete characterization of
5 Miwok I and Miwok II.

6 Miwok I and Miwok II decided that the Secretary had the
7 authority to deny the proposed constitution because the
8 constitution did "not enjoy sufficient support from [the T]ribe's
9 membership" and it was only approved by "Burley and her small
10 group of supporters." Miwok II, 515 F.3d at 1267. If the three
11 Burley members did not constitute a majority of the Tribe, the
12 Tribe must necessarily consist of more than five individuals.
13 Thus, Miwok I and Miwok II did decide the issue of whether the
14 Tribe consists of more than five members when denying a proposed
15 constitution approved by only three Burley members.

16 Second, the prior proceeding ended with a final
17 judgment on the merits. The prior proceeding resulted in a
18 dismissal of the Burley faction's complaint for failure to state
19 a claim upon which relief could be granted. Miwok I, 424 F.
20 Supp. 2d at 197. The Burley faction had the opportunity to, and
21 did, appeal the Miwok I decision, which resulted in the Miwok II
22 decision. There is no indication that the Burley faction "did
23 not have a 'full and fair opportunity' to litigate" this issue in
24 Miwok I or Miwok II. See Allen, 449 U.S. at 95.

25 Third, the party against whom preclusion is asserted
26 was a party at the first proceeding. The Burley faction brought
27 suit on behalf of the Tribe in Miwok I and Miwok II. This is the
28 group that defendants argue are precluded from litigating the

1 issue of tribal membership here.

2 Issue preclusion prevents plaintiffs from relitigating
3 whether the Tribe consists of more than five members.⁷

4 Accordingly, the December 2015 Decision was not arbitrary and
5 capricious on this basis.

6 B. Whether United States Recognizes Tribal Leadership

7 The December 2015 Decision found that the United States
8 does not recognize any leadership for the Tribe, including the
9 General Council established by the 1998 Resolution. (2015 AR
10 1401.) In reaching this conclusion, the Assistant Secretary
11 noted that he "must ensure that [tribal] leadership consists of
12 valid representatives of the Tribe as a whole," which requires "a
13 process open to the whole tribal community." (Id.) Neither
14 Burley nor Dixie established that a majority of eligible Tribe
15 members ratified their form of tribal government, however.⁸

16 (2015 AR 1401-02.) The December 2015 Decision's that the United
17 States does not recognize a tribal government is reasonable in
18 light of the facts contained in the administrative record.

19 The federal government has a "distinctive obligation of
20 trust" in its dealings with Indians. See, e.g., United States v.
21 Jicarilla Apache Nation, 564 U.S. 162, 192 (2011). As part of
22 this obligation, the Assistant Secretary must ensure that the

23 ⁷ Federal defendants also argue that claim preclusion
24 prevents challenging the entire decision. Claim preclusion does
25 not apply because the claim litigated in this action is whether
26 the December 2015 Decision was arbitrary and capricious. This
27 was not a claim that the parties could have previously litigated
28 because all other cases preceded the December 2015 Decision.

⁸ The Burley faction is the only party that challenges
this conclusion.

1 United States is conducting government-to-government relations
2 with "valid representatives of the [tribe] as a whole." Seminole
3 Nation of Okla. v. Norton, 223 F. Supp. 2d 122, 140 (D.D.C.
4 2002); see Aguayo v. Jewell, 827 F.3d 1213, 1224 (9th Cir. 2016)
5 ("The [Assistant] Secretary properly exercises discretion not to
6 approve a governing document when it does not 'reflect the
7 involvement of the whole tribal community.'"); cf. Seminole
8 Nation v. United States, 316 U.S. 286, 296-97 (1942) ("Payment of
9 funds at the request of a tribal council which . . . was composed
10 of representative faithless to their own people . . . would be a
11 clear breach of the Government's fiduciary obligation.").

12 As previously discussed, other federal court decisions
13 have held that the Tribe consists of more than five people. (See
14 2017 AR 1401.) Only two individuals, Dixie and Burley, approved
15 the 1998 Resolution that established the General Council.⁹ (2011
16 AR 179.) Plaintiffs cannot show that these two individuals were
17 "a majority of those eligible to take part in a reorganization of
18 the Tribe." (2017 AR 1401.) Because plaintiffs have not shown
19 that the majority of adult members approved the General Council
20 and the Assistant Secretary has an obligation to ensure that the
21 United States interacts with valid tribal representatives, the
22 Assistant Secretary was not arbitrary and capricious in declining
23 to recognize a tribal government.

24 Plaintiffs argue that, consistent with BIA policy, a
25 majority of Tribe members approved the 1998 Resolution because

27 ⁹ Reznor was an adult at the enactment of the 1998
28 Resolution, but did not sign it. (See 2011 AR 179.)

1 only Dixie and the Burley faction were eligible to form a tribal
2 government. Under plaintiffs' argument, Dixie was the only
3 original eligible Tribe member because he resided on the
4 rancheria, until he adopted the Burley faction into the Tribe.
5 This argument is flawed for several reasons.

6 First, "[a]n Indian tribe has the power to define
7 membership as it chooses." Williams v. Gover, 490 F.3d 785, 789
8 (9th Cir. 2007). "[G]iven a tribe's sovereign authority to
9 define its own membership, it is unclear how the BIA could have
10 any [] policy" limiting original tribal membership to those
11 residing on the land. See id. at 791.

12 Second, residence on the rancheria was a membership
13 requirement only for rancherias restored under the Hardwick
14 settlement. In those instances, the United States agreed to
15 restore illegally terminated rancherias and defined original
16 membership on the restored rancherias as those listed on the
17 "distribution plans," who were the individuals who lived on the
18 land at the time of termination. See Alan-Wilson v. Acting
19 Sacramento Area Director, 33 IBIA 55, 57 (1998). That approach
20 is inapplicable in this case because the Tribe was never
21 terminated.

22 Third, the BIA has previously treated lineal
23 descendants of individuals listed on census base rolls as the
24 eligible members for organizational purposes. (See Apr. 24, 2012
25 Memorandum (Docket No. 50-2) (declining "to decide who are the
26 current citizens of the [Tejon Indian] Tribe," but noting that
27 the tribe's citizens are those who "were enumerated on and are
28 descended from the 1915 Terrell BIA Census")); Alan-Wilson v.

1 Bureau of Indian Affairs, 30 IBIA 241, 249-50 (1997)
2 (“Unorganized Federally recognized tribes would look to
3 historical records and rolls to determine recognized membership
4 for organizational purposes.”); cf. Lewis v. Norton, 424 F.3d
5 959, 960-61 (9th Cir. 2005) (noting that a tribe’s governing
6 documents defined membership as all lineal descendants of persons
7 named on base rolls with a certain percentage of “Indian blood”).
8 The December 2015 Decision applies the same approach.

9 Plaintiffs also argue that Dixie’s challenge to the
10 1998 Resolution in Miwok III was time-barred and therefore the
11 December 2015 Decision resulting from the Miwok III remand is
12 based on a time-barred claim. Under 28 U.S.C. § 2401(a), “every
13 civil action commenced against the United States shall be barred
14 unless the complaint is filed within six years after the right of
15 action first accrues.” When challenging an agency action, “[t]he
16 right of action generally accrues at the time the agency action
17 becomes final.” Aguayo, 827 F.3d at 1226.

18 Even if Dixie’s claim was time-barred, this does not
19 deprive the Assistant Secretary of his obligation to ensure the
20 United States interacts with a majoritarian government. “A
21 cornerstone of this obligation is to promote a tribe’s political
22 integrity, which includes ensuring that the will of tribal
23 members is not thwarted by rogue leaders” Miwok II, 515
24 F.3d at 1267; see also Seminole Nation, 223 F. Supp. 2d at 140
25 (“[T]he [BIA] has the authority and responsibility to ensure that
26 the [tribe]’s representatives, with whom it must conduct
27 government-to-government relations, are the valid representatives
28 of the [tribe] as a whole.”); cf. 25 U.S.C. § 2.

1 The Assistant Secretary was fulfilling his obligation
2 to "ensure that [tribal] leadership consists of valid
3 representatives of the Tribe as a whole" in the December 2015
4 Decision. (2015 AR 1401.) The Assistant Secretary's obligation
5 to ensure that the United States is interacting with valid tribal
6 representatives was the basis for the December 2015 Decision, not
7 a time-barred claim.¹⁰

8 Plaintiffs also argue that because the purpose of the
9 General Council is to serve as the governing body of the Tribe
10 and the BIA once recognized the General Council, the BIA must now
11 recognize the General Council as the valid tribal government.
12 (See 2011 AR 177-78.) First, the stated purpose of General
13 Council is not dispositive as to whether the United States must
14 recognize it as the valid tribal government. See Seminole
15 Nation, 223 F. Supp. 2d at 140. Second, the fact that the BIA
16 once recognized the General Council does not preclude the BIA
17 from later questioning its legitimacy. Cf. F.C.C. v. Fox
18 Television Stations, Inc., 556 U.S. 502, 514-15 (2009) (holding
19 "agency action representing a policy change" is not subject to a
20 heightened standard than agency action adopting a policy in the
21 first place). Doing so "is not consistent with the 'distinctive
22 obligation of trust' the federal government must employ when
23 dealing with Indian Tribes." Miwok III, 5 F. Supp. 3d at 100.

24 In light of the record, the court finds that the
25 Assistant Secretary was not arbitrary and capricious in finding

26 ¹⁰ Further, the statute of limitations applies to "civil
27 action[s] commenced against the United States"; it does not bar
28 an administrative official from considering an issue in an
administrative proceeding. See 28 U.S.C. § 2401(a).

1 that the 1998 Resolution and General Council did not
2 "sufficiently reflect[] the will of the [Tribe] in order to
3 warrant the acknowledgement of the federal government." Cf.
4 Aguayo, 827 F.3d at 1228 (holding the Assistant Secretary was not
5 arbitrary and capricious in accepting a tribal constitution where
6 it reflected the will of the tribe).

7 Plaintiffs have failed to show how the Assistant
8 Secretary was arbitrary and capricious in issuing the December
9 2015 Decision.¹¹ Because plaintiffs cannot show that the
10 Assistant Secretary was arbitrary and capricious, plaintiffs'
11 claims must fail. Accordingly, the court must grant defendants'
12 Motions for summary judgment and deny plaintiffs' Motion for
13 summary judgment.

14 IT IS THEREFORE ORDERED that plaintiffs' Motion for
15 summary judgment (Docket No. 44) be, and the same hereby is,
16 DENIED; and

17 IT IS FURTHER ORDERED that defendants' Motions for
18 summary judgment (Docket Nos. 46, 47) be, and the same hereby
19 are, GRANTED.

20 Dated: May 31, 2017



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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25 ¹¹ Plaintiffs devote substantial time arguing that Dixie
26 and a non-party to this suit, Chadd Everone, committed fraud upon
27 the court and falsely created the tribal leadership dispute.
28 This issue is not relevant to whether the December 2015 Decision
was arbitrary and capricious. The December 2015 Decision did not
turn on whether Dixie or Burley was the leader of the Tribe, and
it found that neither Dixie nor Burley was the recognized leader.