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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 Loudermilk<sup>1</sup> ("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.)<sup>2</sup>

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23  
24 <sup>1</sup> Federal defendants are automatically substituted for  
25 their predecessors pursuant to Federal Rule of Civil Procedure  
26 25(d).

27 <sup>2</sup> Because the administrative decision challenged here is  
28 a reconsideration of a prior 2011 administrative decision  
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.<sup>3</sup> (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 

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

26           <sup>3</sup> 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.)<sup>4</sup> 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

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<sup>4</sup> 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.<sup>5</sup> Miwok I and

27 \_\_\_\_\_  
28 <sup>5</sup> The issue here is not identical to the issue in Miwok  
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."<sup>6</sup> 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

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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 <sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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

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23 <sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup> (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

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27 <sup>9</sup> 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.<sup>10</sup>

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

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26           <sup>10</sup> 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.<sup>11</sup> 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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22  
23  
24  
25 <sup>11</sup> 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.