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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CALIFORNIA VALLEY MIWOK TRIBE,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

CALIFORNIA GAMBLING CONTROL
COMMISSION et al.,

Real Parties in Interest.

D061811

(San Diego County Super. Ct. No.
37-2008-00075326-CU-CO-CTL)

PROCEEDINGS in mandate after superior court denied plaintiff's application to lift the order staying the litigation. Ronald L. Styn, Judge. Petition granted.

In its petition for writ of mandate, the California Valley Miwok Tribe (the Miwok Tribe) seeks a ruling requiring the trial court to lift its order staying dispositive motions

to allow the Miwok Tribe to proceed with the litigation of the merits of its action against the California Gambling Control Commission (the Commission). As we will explain, we conclude that the stay should be lifted to allow the Miwok Tribe to litigate the issue presented by its complaint, which is whether — under the present circumstances — the Commission has a duty to release funds to the Miwok Tribe. Accordingly, we will direct a writ of mandate to issue requiring the trial court to lift the stay and allow the parties to file dispositive motions and, if necessary, proceed to trial.

I

FACTUAL AND PROCEDURAL BACKGROUND

As we explained in a previous opinion in this action (*California Valley Miwok Tribe v. California Gambling Control Commission* (Apr. 16, 2010, No. D054912) (2010 Opinion)), the instant lawsuit seeks mandamus, injunctive and declaratory relief regarding the Commission's decision to withhold funds from the Miwok Tribe that are payable to certain Indian Tribes in California who operate less than 350 gaming devices.

As set forth in the 2010 Opinion, the Miwok Tribe — located in central California — is identified in the Federal Register as a federally recognized Indian tribe.

Pursuant to the Indian Gaming Regulatory Act of 1988 (18 U.S.C. § 1166 et seq.; 25 U.S.C. § 2701 et seq.), the State of California entered into tribal-state gaming compacts with the various tribes in California authorized to operate gambling casinos (collectively, the Compacts). (See Gov. Code, §§ 12012.25-12012.53 [ratifying tribal-state gaming compacts].) The Compacts set forth a revenue-sharing mechanism under which tribes who operate less than 350 gaming devices share in the license fees paid by

the tribes entering into the Compacts, with each "Non-Compact Tribe" in the State receiving the sum of \$1.1 million per year. (Compacts, § 4.3.2.1.) "Non-Compact Tribes" are defined as "[f]ederally recognized tribes that are operating fewer than 350 Gaming Devices" (Compacts, § 4.3.2.(a)(i).) It is undisputed that the Miwok Tribe is a Non-Compact Tribe, as it operates no gaming devices and is federally recognized.

The annual payment of \$1.1 million to each Non-Compact Tribe is drawn from the Revenue Sharing Trust Fund (RSTF) described in the Compacts. The Commission administers the RSTF as a trustee. (Compacts, § 4.3.2.1(b).) According to the Compacts, "[t]he Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes." (Compacts, § 4.3.2.1(b).) Further, a provision in the Government Code directs that the Commission "shall make quarterly payments from the Indian Gaming Revenue Sharing Trust Fund to each eligible recipient Indian tribe within 45 days of the end of each fiscal quarter." (Gov. Code, § 12012.90, subd. (e)(2).)

There is no dispute that, as a Non-Compact Tribe, the Miwok Tribe is eligible for an annual amount of \$1.1 million under the terms of the Compacts. However, starting in 2005, the Commission, acting as trustee of the RSTF, suspended its quarterly disbursements to the Miwok Tribe and decided to hold the funds indefinitely for later distribution. In support of its decision, the Commission cited "the lack of a recognized tribal government or leadership," and explained that "in situations involving tribal leadership disputes," the Commission "take[s its] lead" from the federal Bureau of Indian

Affairs (BIA). (2010 Opn., *supra*, D054912.) Citing the BIA's decision in July 2005 to suspend the Miwok Tribe's contract to receive federal benefits under the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 et seq.) (ISDEAA), on the ground that "'there is no recognized tribal government with which to take action on behalf of the tribe or to sustain a government[-]to[-]government relationship with,'" the Commission adopted the practice of depositing the funds to which the Miwok Tribe is entitled into an interest bearing account until "'the Tribe's leadership and organizational status is resolved to a degree sufficient to allow the BIA to resume government-to-government relations.'" (2010 Opn., *supra*, D054912.)

Explaining its position in a recent letter to the Miwok Tribe, the Commission stated that its "designation as trustee of the RSTF impliedly requires it to take reasonable steps to ensure that RSTF funds are disbursed to individuals or groups properly authorized to receive and administer the funds on behalf of their respective tribes." According to the Commission, it "does not independently decide the merits of the claims of individuals or groups concerning the disbursement of RSTF funds" and therefore distributes RSTF funds "only to those individuals or leadership bodies recognized by the BIA for the government-to-government business of the disbursement and receipt of federal [ISDEAA] contract funds." The Commission states that it "will release the accrued RSTF funds promptly upon the BIA's recognition of the legitimate leadership body of the Tribe." As of December 31, 2011, the Commission was holding in trust \$7,663,001.99, exclusive of interest, of the RSTF funds payable to the Miwok Tribe.

For several years the federal government has been involved in litigation concerning the leadership and membership of the Miwok Tribe. The genesis of the federal dispute was the Miwok Tribe's challenge to the BIA's refusal to approve a tribal constitution that was adopted by the Miwok Tribe, with Silvia Burley acting as chairperson for the tribe. (*California Valley Miwok Tribe v. United States* (D.D.C. 2006) 424 F.Supp.2d 197; *California Valley Miwok Tribe v. United States* (D.C. Cir. 2008) 515 F.3d 1262.) On one side of the leadership dispute is the Miwok Tribe as led by Burley. On the other side of the dispute is a faction led by another tribal member, Yakima Dixie, who claims that Burley's tribal government should not be recognized and that the tribe should include additional members. As we understand the current status, the BIA continues to withhold the ISDEAA benefits from the Miwok Tribe while the tribal leadership and membership issues are litigated in federal court. The Commission accordingly continues to withhold the RSTF funds under its policy of following the BIA's lead.

The Miwok Tribe filed this action against the Commission in January 2008. The operative complaint seeks (1) a writ of mandate under Code of Civil Procedure section 1085; (2) an injunction; and (3) declaratory relief. All three causes of action seek the same fundamental relief, namely an order requiring the Commission to pay over the RSTF funds to the Miwok Tribe *at the present time*, despite the ongoing federal proceedings concerning the Miwok Tribe's leadership and membership. Specifically, all three causes of action present the common issue of whether, in carrying out its fiduciary duty as a trustee of the RSTF, the Commission is legally justified in maintaining a policy

of withholding the RSTF funds from the Miwok Tribe until the federal government establishes a government-to-government relationship with a tribal leadership body of the tribe for the purpose of distributing ISDEAA benefits. The complaint was verified by Burley, who declared, "I am the selected spokesperson for [the Miwok Tribe], and I am authorized to make this verification on its behalf."

The trial court sustained a demurrer filed by the Commission, holding that because of the tribal leadership dispute and lack of a federally recognized tribal government the Miwok Tribe lacked the standing and capacity to bring this action. In the 2010 Opinion, we reversed the trial court's ruling on the demurrer and remanded the action to the trial court. We clarified that we were not reaching the merits of the issues raised by the complaint, which we characterized as whether the Commission has a duty, under the applicable law and facts, to immediately disburse the RSTF funds to the Miwok Tribe, as represented by Burley as the chairperson of its tribal council. We stated, "Our decision in no way touches upon whether the Commission is properly withholding funds from the Miwok Tribe. That is a separate issue that must be litigated upon remand of this action to the trial court. The Commission contends that because it has a fiduciary duty as trustee of the RSTF, the current uncertainties regarding the Miwok Tribe's government and membership require it to withhold the RSTF funds and hold them in trust until it can be assured that the funds, if released, will be going to the proper parties. Nothing in our decision is intended to foreclose the Commission from pursuing such an argument in the trial court. Indeed, the trial court will be better able to explore the legal impact of the tribal leadership dispute and the BIA's relationship with the Miwok Tribe when the

pertinent facts are more fully developed later in the litigation, rather than in the context of the scant facts available in connection with the Commission's demurrer."¹ (2010 Opn., *supra*, D054912.)

Upon remand, the trial court considered a motion to intervene filed by (1) "the California Valley Miwok Tribe, California," which purports to be the Miwok Tribe as represented by a competing tribal government; and (2) the following individuals: Dixie, who claims to be the hereditary chief of the Miwok Tribe; and Velma WhiteBear, Antonia Lopez, Antone Azevedo, Michael Mendibles and Evelyn Wilson, all of whom claim to be members or tribal council members of the tribe as led by Dixie (collectively, Intervenor). On December 17, 2010, the trial court granted the Intervenor's motion for leave to intervene.

On December 22, 2010, the Assistant Secretary of Indian Affairs for the United States Department of the Interior (the Assistant Secretary) issued a decision concerning the BIA's relationship with the Miwok Tribe (the December 22, 2010 decision). The Assistant Secretary concluded that "there is no need for the BIA to continue its previous efforts to organize the Tribe's government, because it is already organized as a General Council," and "there is no need for the BIA to continue its previous efforts to ensure that

¹ As the parties have expressed some uncertainty about the meaning of our statement, we clarify that when observing that the pertinent facts would be more fully developed later in the litigation, we were referring to the fact that the record presented in connection with the demurrer consisted primarily of pleadings, and the parties had not yet had the opportunity to bring a dispositive motion or conduct a trial to present all of the relevant evidence to the trial court. We were not referring to the independent development of events in the federal system relating to the tribal leadership and membership dispute.

the Tribe confers tribal citizenship upon other individual Miwok Indians in the surrounding area." In the December 22, 2010 decision, the Assistant Secretary rescinded previous statements refusing to recognize a government for the Miwok Tribe and refusing to recognize Burley as the tribal chairperson. The Assistant Secretary indicated that the BIA would work with the Miwok Tribe's existing governing body to "fulfill" a government-to-government relationship.

Based on the Assistant Secretary's December 22, 2010 decision, the Miwok Tribe filed a motion for judgment on the pleadings in the trial court, which the trial court granted in March 2011. The trial court concluded that in light of the Assistant Secretary's December 22, 2010 decision, "the Commission's answer does not state facts sufficient to constitute a defense to the complaint." It explained that the December 22, 2010 decision "definitely establishes the [Miwok Tribe's] membership, governing body and leadership, including . . . Burley's status as representative and Chairperson of the [Miwok Tribe]. In doing so, the decision establishes Plaintiff's right to the RSTF monies held by the Commission."²

As of April 1, 2011, the parties were in the process of preparing a judgment for entry by the trial court when the Assistant Secretary set aside the December 22, 2010 decision and set up a briefing schedule to give the parties a chance to offer their views prior to the issuance of a reconsidered decision, citing "[s]ubsequent actions by the

² The trial court also granted a motion to reconsider its earlier ruling permitting Intervenor to intervene in the action. It explained that "[t]he December 22, 2010 decision removes the bases for the court's finding that Intervenor has an interest in this action"

parties involved in this [federal] dispute" One of the subsequent actions cited by the Assistant Secretary was a lawsuit filed January 24, 2011, by the Intervenors in federal district court in the District of Columbia challenging the Secretary's December 22, 2010 decision. (*California Valley Miwok Tribe v. Salazar*, No. 11-160 (RWR) (the *Salazar* case).)

On April 6, 2011, in an ex parte hearing in this action, the trial court considered the impact of the Assistant Secretary's April 1, 2010 decision that he was setting aside the December 22, 2010 decision. The trial court stayed the entry of judgment and the effect of its other prior rulings. The trial court allowed the parties to continue to conduct discovery, but stated that except for discovery-related motions, no motions would be permitted without leave from the court.

On August 31, 2011, the Secretary issued a new decision to replace the December 22, 2010 decision (the August 31, 2011 decision). Reaching a similar conclusion as earlier, the Assistant Secretary decided that the Miwok Tribe's entire citizenship is composed of five citizens; that the tribe operates under a General Council form of government, with Burley as the chairperson; and that the tribe's General Council is vested with the governmental authority of the tribe and may conduct the full range of government-to-government relations with the United States. The Assistant Secretary concluded that there was no authority for the Department of the Interior to interfere with the Miwok Tribe's internal governance. The implementation of the August 31, 2011 decision was stayed, with the Assistant Secretary stating that "[t]his decision is final for the Department and effective immediately, but implementation shall be stayed pending

the resolution of [the *Salazar* case]." The complaint in the *Salazar* case was amended to challenge the Assistant Secretary's August 31, 2011 decision.³

The Miwok Tribe made an ex parte application to the trial court asking it to reinstate the ruling granting judgment on the pleadings based on the Assistant Secretary's August 31, 2011 decision in place of the December 22, 2010 decision, as both decisions similarly resolved the federal government's position with respect to the Miwok Tribe's leadership and membership dispute, allowing the Commission to disburse the RSTF funds under the Commission's chosen approach of following the lead of the federal government on tribal issues. The trial court denied the ex parte application on September 7, 2011.

The Miwok Tribe then filed a noticed motion for entry of judgment on the same basis, which the trial court denied on October 21, 2011. The trial court explained that the August 31, 2011 decision did not have the same legal effect as the December 22, 2010 decision because the Assistant Secretary had stayed implementation of the August 31, 2011 decision pending resolution of the *Salazar* case. The trial court stated that "[t]he court's ruling on Plaintiff's motion for judgment on the pleadings is dependent on the final outcome of the judicial review of the decisions by [the Assistant Secretary]. Therefore, the court orders that this matter remain stayed, with all previous orders remaining in effect, pending final resolution of [the *Salazar* case]."

³ The Commission has requested that we take judicial notice of the first amended complaint in the *Salazar* case. We grant the request to take judicial notice.

On March 5, 2012, the Miwok Tribe filed an ex parte application in which it sought "an order lifting the stay, so that it can file a motion for judgment on the pleadings or a motion for summary adjudication." The ex parte application focused on recent statements that Dixie made during a deposition, which the Miwok Tribe described as an admission that Dixie had resigned as tribal chairman in 1999 and that his signature on his notice of resignation was not a forgery as he had previously claimed. The Miwok Tribe argued that Dixie's purported admission resolved the tribe's leadership dispute and therefore was relevant to whether the Commission was justified in withholding the RSTF funds.

In opposition, the Commission took the position that the stay should remain in place until the *Salazar* case is over because it is the federal government's position on recognizing Burley's tribal government, not Dixie's statements as to his tribal leadership status, that guides the Commission's decision whether to disburse the RSTF funds. The Commission reiterated its position that "it will disburse the accrued RSTF monies to whatever individual or leadership group is finally recognized by the BIA for the purpose of disbursing federal [ISDEAA] funds to the [Miwok Tribe]." Intervenors took the position that the stay should remain in place while the *Salazar* case is pending because "[t]he [*Salazar* case] will determine whether the 1998 Resolution established a government the United States will recognize" and "in turn will determine to whom the trust monies should be paid."

On March 7, 2012, the trial court heard the Miwok Tribe's ex parte application to lift the stay. At the hearing, counsel for the Miwok Tribe argued that the trial court

should not stay the litigation until the *Salazar* case is resolved because the tribe seeks a ruling on an issue not presented in that case. Counsel explained that the tribe seeks a determination of whether the Commission has the legal discretion, as trustee of the RSTF, to withhold the RSTF funds until the BIA recognizes a tribal leadership body, which is *not* a determination dependent on the ultimate outcome of the *Salazar* case.

The trial court disagreed and denied the application. It stated, "[I]f I were to lift the stay and go forward, I would in effect be deciding who is the proper representative of the tribe and who is the tribe, precisely the issues that are within the exclusive jurisdiction of the tribe and the federal courts." The trial court explained that "[u]ntil the federal court decides, the ultimate issue won't be resolved and I don't see how I could issue a final judgment, so I'm going to deny the application."

The Miwok Tribe filed the instant petition for writ of mandate challenging the trial court's denial of its request to lift the stay to allow the parties to file dispositive motions. The Miwok Tribe contends that it "is entitled to have the trial court determine whether the Commission is properly withholding RSTF payments . . . , despite the [Assistant Secretary's] decision being under review in federal court." Both the Commission and Intervenors have filed returns to the petition.

II

DISCUSSION

A. *The Petition Is Timely*

As an initial matter, we address Intervenors' contention that we should reject the Miwok Tribe's petition as untimely.

"As a general rule, a writ petition should be filed within the 60-day period that is applicable to appeals. [Citations.] 'An appellate court *may* consider a petition for an extraordinary writ at any time [citation], but has discretion to deny a petition filed after the 60–day period applicable to appeals, and *should* do so absent "extraordinary circumstances" justifying the delay.'" (*Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701.) Intervenors argue that, in substance, the Miwok Tribe's writ petition challenges the stay in proceedings that the trial court implemented in October 2011 when it denied the Miwok Tribe's renewed motion for judgment on the pleadings based on the Assistant Secretary's August 31, 2011 decision. According to Intervenors, if the Miwok Tribe wanted to challenge the stay implemented in October 2011, it should have filed a writ petition within 60 days of that date.

We reject Intervenors' argument because we do not perceive the Miwok Tribe as challenging a ruling that the trial court made in October 2011. Although the trial court ordered that the action remain stayed in October 2011, it was not until the Miwok Tribe's ex parte application in March 2012 that the trial court ruled on whether it would lift the stay to allow the Miwok Tribe to file a dispositive motion based on a ground independent of the Assistant Secretary's decision. The trial court ruled for the first time in March 2012 that it would not allow a dispositive motion putting into issue whether, *under present circumstances*, while the federal government's relationship to the Miwok Tribe is still unsettled, the Commission as trustee of the RSTF is legally justified in relying on the position of the BIA in deciding whether to release the RSTF funds. The writ petition

challenging that March 2012 ruling was filed within 60 days of the ruling and is therefore timely under the general rule.

B. *The Trial Court Improperly Denied the Miwok Tribe's Application to File a Dispositive Motion Based on a Ground Other than the Assistant Secretary's Decision*

The fundamental relief that the Miwok Tribe requested in its ex parte application, and that it seeks by this writ proceeding, is a lifting of the stay on proceedings so that it may file a dispositive motion. The Miwok Tribe requests that we grant relief requiring the trial court to adjudicate this action on the merits despite the pendency of the *Salazar* case.

A writ of mandate is available if there is no "plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.) "Although pretrial writ relief is sparingly granted, where the trial court's ruling may properly be evaluated as to its correctness or erroneousness as a matter of law, and where leaving it in place may substantially prejudice the petitioner's case, appellate courts may entertain a writ petition. [Citation.] If the petitioner lacks an adequate means for seeking timely relief, such as a direct appeal, or where the petitioner may incur prejudice that is not correctable on appeal due to the challenged ruling, the appellate courts may decide to intervene. [Citation.] The criteria for allowing writ relief will be applied depending upon the facts and circumstances of the particular case." (*Ochoa v. Superior Court* (2011) 199 Cal.App.4th 1274, 1277-1278.)

"In order to confine the use of mandamus to its proper office, the Supreme Court, in various cases, has stated general criteria for determining the propriety of an

extraordinary writ: (1) the issue tendered in the writ petition is of widespread interest [citation] or presents a significant and novel constitutional issue [citation]; (2) the trial court's order deprived petitioner of an opportunity to present a substantial portion of his cause of action [citation]; (3) conflicting trial court interpretations of the law require a resolution of the conflict [citation]; (4) the trial court's order is both clearly erroneous as a matter of law and substantially prejudices petitioner's case [citations]; (5) the party seeking the writ lacks an adequate means, such as a direct appeal, by which to attain relief [citation]; and (6) the petitioner will suffer harm or prejudice in a manner that cannot be corrected on appeal [citations].'" (*Roden v. AmerisourceBergen Corp.* (2005) 130 Cal.App.4th 211, 218 (*Roden*).

One of the circumstances justifying mandamus relief is where the trial court has erroneously entered a stay of the action based on the belief that it lacked jurisdiction to proceed. "The law is well settled that a trial court is under a duty to hear and determine the merits of all matters properly before it which are within its jurisdiction, and that mandate may be used to compel the performance of this duty. This is so even where the trial court's refusal to pass on the merits is based on the considered but erroneous belief that it has no jurisdiction as a matter of law to grant the relief requested." (*Robinson v. Superior Court* (1950) 35 Cal.2d 379, 383; see also *Morrison Drilling Co. v. Superior Court* (1962) 208 Cal.App.2d 740, 744 [mandamus to compel trial court to lift stay imposed on mistaken belief that absent party was indispensable]; *James v. Superior Court* (1968) 261 Cal.App.2d 415, 417 [mandamus ordered to require trial court to

consider the defendant's demurrer and lift a stay that it imposed in a malicious prosecution action while the underlying lawsuit was being appealed].)

Here, the trial court declined to allow the Miwok Tribe to file a dispositive motion because it determined that to do so would require it to decide "issues that are within the exclusive jurisdiction of the tribe and the federal courts." On that basis the trial court denied the *ex parte* application to lift the stay and refused to proceed on the merits of the action.

The issue before us, therefore, is whether the trial court improperly refused to perform its duty to hear and determine the merits of the matter properly before it based on its jurisdictional concerns. As we will explain, we conclude that based on an apparent misunderstanding of the nature of the ruling necessary to resolve the issues presented by the Miwok Tribe's complaint, the trial court erroneously concluded that it would be intruding on the exclusive jurisdiction of the Miwok Tribe or the federal courts if it proceeded with this action while the *Salazar* case was pending.

To understand how the trial court erred, it is important to focus on the nature of this action and the Miwok Tribe's reason for filing it. As we have explained, there is no dispute that the Miwok Tribe is entitled to the RSTF funds. The disputed issue is whether the Commission, as trustee of those funds, is required to pay them over to the Miwok Tribe *now*, or whether it may instead *wait* to pay those funds until the federal government has recognized a tribal leadership body to receive the ISDEAA benefits. The Miwok Tribe's complaint seeks a ruling that the Commission is not legally justified in *waiting* until the federal issues are resolved, and that accordingly injunctive, mandamus

and declaratory relief is warranted in its favor. The Commission takes the position that, under its fiduciary duty as trustee of the RSTF funds, it is legally permissible for it to withhold the RSTF funds. Similarly, in their complaint in intervention, the Intervenors request relief in the form of a declaration that "the Commission shall continue to hold the [RSTF funds] in trust for the Tribe until such time as the Tribe is duly organized as overseen by the BIA."

Based on the gravamen of the complaint, the fundamental issue presented to the trial court for resolution on the merits is whether the current uncertainty in the federal government's relationship to the Miwok Tribe — including the pendency of the *Salazar* case — constitutes a legally sufficient basis for the Commission, as trustee of the RSTF, to withhold the RSTF funds from the Miwok Tribe. To resolve that issue the trial court need not determine the issues presented in the *Salazar* case or determine the proper tribal leadership body. The trial court need only *acknowledge* that the federal dispute is ongoing, and based on that factual predicate, determine whether the Commission has a legally sufficient basis for withholding the RSTF funds.

Put simply, the issue for the trial court to resolve is limited to whether the Commission is justified in withholding the RSTF funds *because* the *Salazar* case is pending and the BIA has not recognized a tribal leadership body for the distribution of ISDEAA benefits. It need not decide the issues being considered in federal court or resolve an internal tribal dispute. The trial court thus incorrectly concluded that it would be deciding issues within the exclusive jurisdiction of the Miwok Tribe or the federal courts if it were to proceed to resolve this action on the merits while the *Salazar* case is

pending. Based on that incorrect conclusion, the trial court improperly denied the Miwok Tribe's request to file a dispositive motion and proceed with the litigation of this action on the merits.

Although pretrial mandamus relief is sparingly granted, several factors that typically justify the issuance of an extraordinary writ are present here. (*Roden, supra*, 130 Cal.App.4th at p. 218.) As we have noted, writ relief is proper when "'the trial court's order deprive[s] petitioner of an opportunity to present a substantial portion of his cause of action,'" "'the party seeking the writ lacks an adequate means, such as a direct appeal, by which to attain relief,'" and "'the petitioner will suffer harm or prejudice in a manner that cannot be corrected on appeal.'" (*Ibid.*) These circumstances will exist if the stay remains in place and the Miwok Tribe is forced to wait until the *Salazar* case is over to litigate the merits of the Commission's policy of withholding the RSTF funds. In that event, the Miwok Tribe's challenge to the Commission's policy will evade review and be rendered moot before it can be decided. Without pretrial mandamus requiring the trial court to lift the stay, the trial court will fail to litigate this action while the relief sought in the complaint is still meaningful to the Miwok Tribe. (Cf. *Hayward Area Planning Assn. v. Superior Court* (1990) 218 Cal.App.3d 53, 56 [mandamus relief appropriate because remedy would be moot by time of appeal]; *Taylor v. Superior Court* (1990) 218 Cal.App.3d 1185, 1190 [mandamus warranted when eventual appeal is not an adequate remedy because the estate in a child support action allegedly would be dissipated before the appeal could be resolved].)

To be clear, we express no view on the merits of the Miwok Tribe's claims, as the issues presented in this action must be decided by the trial court in the first instance based on a thorough review of the applicable law and evidence, including an understanding that the issues presented in the *Salazar* case have not yet been resolved. The important point for our present discussion is that the Miwok Tribe has filed this action to obtain a ruling that the Commission is not fulfilling its duty as trustee with respect to the RSTF funds *under the present circumstances*, including the BIA's lack of recognition of a tribal leadership body for the distribution of ISDEAA benefits. To carry out its role of adjudicating this litigation, the trial court must allow the Miwok Tribe to file a dispositive motion and, if necessary, proceed to trial.

DISPOSITION

Let a writ of mandate issue commanding the San Diego County Superior Court to vacate its March 7, 2012 order denying the Miwok Tribe's ex parte application, and to lift the stay to allow the parties to file dispositive motions and, if necessary, proceed to trial. Petitioner is entitled to recover the costs it incurred in this writ proceeding. (Cal. Rules of Court, rule 8.493(a)(2).)

IRION, J.

WE CONCUR:

NARES, Acting P. J.

MCINTYRE, J.