

INTERIOR BOARD OF INDIAN APPEALS

CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff,

BUREAU OF INDIAN AFFAIRS,

Defendant.

Case No. _____

NOTICE OF APPEAL

The California Valley Miwok Tribe (the "Tribe") hereby provides notice of its intent to appeal the letter decision of the United States Bureau of Indian Affairs, Central California Agency ("BIA") dated December 14, 2007. That letter decision purports to reject the Tribe's renewal application for its annual PL-93-638 self-determination contract. Pursuant to 25 C.F.R. §900.150 *et seq.*, the Tribe requests a briefing schedule and a formal hearing.

INTRODUCTION

As early as January 1, 2002, the Tribe began entering into annual self-determination agreements with the BIA pursuant to PL-93-638 and the associated regulations. On October 1, 2007, the Tribe submitted its annual renewal application for 2008. See Application; Ex. "1."

In an abrupt change of its course of dealings with the Tribe, the BIA did not approve the Tribe's annual renewal application for 2008. On December 14, 2007, Troy Burdick, Superintendent of the Central California Agency of the BIA, informed the Tribe via letter that its annual contract would not be renewed (the "December 2007 Letter") (attached as Ex. "2"). According to the December 2007 Letter, the BIA no longer recognizes the Tribe as having a recognized governing body, and therefore, the BIA rejected the renewal application. The December 2007 letter clearly declines to award the Tribe a self-determination contract, triggering the appeal procedures of 25 C.F.R. §900.150, *et seq.* See, 25 C.F.R. §900.150(a).

After receiving the December 2007 Letter on December 17, 2007, the Tribe attempted to resolve the dispute via the agency's informal dispute resolution regulations. On January 17, 2008, the Tribe requested that the BIA commence an informal conference pursuant to 25 C.F.R. §900.154. See January 2008 Letter; Ex. "3." The BIA failed to commence such a conference, or otherwise respond to the Tribe's concerns, necessitating the present formal appeal.

**BRIEF STATEMENT OF INCORRECT NATURE OF THE BIA'S DECISION
AND ISSUES FOR APPEAL**

Pursuant to 25 C.F.R. §900.158(c), this Notice of Appeal is intended only to briefly state the Tribe's position regarding the incorrect nature of the BIA's letter decision, and briefly identify the issues to be addressed in the appeal. This Notice of Appeal should not be considered to be an exhaustive list or presentation of the Tribe's factual or legal arguments. The Tribe reserves the right to fully present those arguments pursuant to a briefing schedule and/or at a hearing on the merits.

The BIA's decision to reject the Tribe's 2008 application for renewal of its PL-93-638 contract, as articulated by its December 2007 Letter, is incorrect for multiple reasons. First, the application at issue herein is merely a proposal for a successor annual funding agreement that was to be substantially similar to the Tribe's prior annual funding agreement. Pursuant to 25 C.F.R. §900.32, the BIA is prohibited from rejecting any such an application:

Can the Secretary decline an Indian tribe or tribal organization's proposed successor annual funding agreement?

No. If it is substantially the same as the prior annual funding agreement (except for funding increases included in appropriations acts or funding reductions as provided in section 106(b) of the Act) and the contract is with DHHS or the BIA, the Secretary shall approve and add to the contract the full amount of funds to which the contractor is entitled, and may not decline, any portion of a successor annual funding agreement. Any portion of an annual funding agreement proposal which is not substantially the same as that which was funded previously (e.g., a redesign proposal; waiver proposal; different proposed funding amount; or

different program, service, function, or activity), or any annual funding agreement proposal which pertains to a contract with an agency of DOI other than the BIA, is subject to the declination criteria and procedures in subpart E. If there is a disagreement over the availability of appropriations, the Secretary may decline the proposal in part under the procedure in subpart E.

25 C.F.R. §900.32 (emp. added).

Second, even if the BIA's decision were not expressly prohibited by 25 C.F.R. §900.32, additional regulations prohibit the decision announced in the December 2007 Letter. 25 C.F.R. §900.22 provides that the BIA may only decline the present application for one of five specific reasons:

For what reasons can the Secretary decline a proposal?

The Secretary may only decline to approve a proposal for one of five specific reasons:

- (a) The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;
- (b) Adequate protection of trust resources is not assured;
- (c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;
- (d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or
- (e) The program, function, service, or activity (or a portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

25 C.F.R. §900.22 (emp. added).

Here, the December 2007 Letter rejects the Tribe's 2008 renewal proposal because the BIA purportedly no longer considers the Tribe to have a recognized governing body. This

reason is not identified in the regulations' list of five permissible reasons for declining such a proposal.¹ Thus, for this reason too, the BIA's rejection decision was incorrect.

Furthermore, the December 2007 Letter stands in stark contrast to the BIA's previous treatment of the same Tribe and its current governing body. Again, the December 2007 Letter states that the BIA purportedly does not recognize the Tribe's governing body. This reason for rejection of the Tribe's proposal is nearly identical to language in a similar letter sent in December of 2005. In that letter, Mr. Burdick also attempted to reject the Tribe's successor annual funding agreement, stating that he did not recognize the Tribe's governing body. In that case, the Regional Director immediately overturned the Superintendent's action and ordered him to award the contract. The Regional Director stated that the Superintendent's December 2005 decision was "a mistake." The Regional Director's decision was appealed to this Board and recently dismissed. *Everone v. Pacific Regional Director*, 46 IBIA 249 (Feb. 11, 2008). Because the Regional Director's decision on this issue is final for the Department and has not been overturned or repudiated by the Regional Director or this Board, the BIA and the Superintendent are bound it.

Furthermore, in this appeal, the Tribe will submit evidence that establishes that the BIA has in fact recognized the Tribe's governing body. In addition to this course of conduct, the Tribe's government is recognized by virtue of the automatic approval of the Tribe's constitution in 2001.

¹ It is important to note that the December 2007 Letter wholly fails to reference 25 C.F.R. §900.22 – a provision which places explicit limits upon the BIA's ability to reject self-determination contract applications. Furthermore, the December 2007 Letter fails to inform the Tribe of the appeal procedures that govern such a rejection, namely those identified in 25 C.F.R. §900.150 *et seq.* Of course, those appeal procedures provide that the BIA bears the burden to prove, by clear demonstration, that its rejection of the proposal was valid. See 25 C.F.R. §900.163.

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2008, copies of this Notice of Appeal were served via Certified Mail to the following addressees.

Assistant Secretary, Indian Affairs
U.S. Department of the Interior
MTB 4140
1849 C Street, NW
Washington, D.C. 20240

Troy Burdick
Superintendent
Central California Agency
650 Capital Mall
Suite 8-500
Sacramento, CA 95825

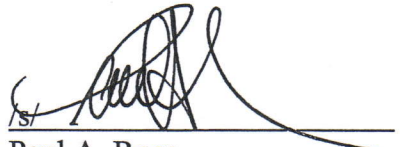

/s/ _____
Paul A. Ross

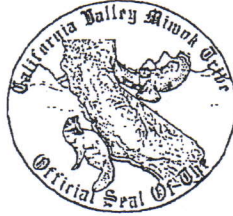
Exhibit 1

SUPT. orig. Ting
ADMIN. _____
ROUTE 438/07
RESPONSE REQUIRED _____
DUE DATE _____
MEMO LTR _____
Fax: (209) 931-4333

CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Place, Stockton, California 95212 Bus: (209) 931-4567

<http://www.californiavalleymiwoktribe.us> or <http://www.californiavalleymiwoktribe-nsn.gov>



*Joan
Ack. em*

October 1, 2007

Mr. Troy Burdick, Superintendent
Bureau of Indian Affairs
Central California Agency
650 Capital Mall, Suite 8-500
Sacramento, Ca 95814

Dear Mr. Burdick,

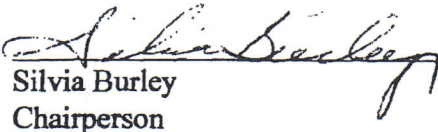
On behalf of the California Valley Miwok Tribe, I have enclosed the Aid to Tribal Government budget for 2008 for contract number CTJ51T62802, Mature Status. The Tribe has not received TPA information for 2008, so the budget is based on the 2007 funding amounts and the Tribe's history of contracting with the Federal Government.

The Tribe is once again requesting that funds be allocated to the Realty Program for 2008. The Resolution authorizing this contribution is enclosed. The Tribe will continue with the ICWA program for 2008 and we have included the budget for this program.

Finally, we are requesting a single lump sum payment for 2008. The Tribe has had another successful audit for 2006 and has met all reporting requirements for its 'Mature Status contract. To continue quarterly payments is unjustified.

If you have any questions, please do not hesitate to contact me or our Financial Administrator, Colleen Petty.

Respectfully,


Silvia Burley
Chairperson

Cc: Tribal Council

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CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333
<http://californiavalleymiwoktribe.us> or <http://www.californiavalleymiwoktribe-nsn.gov>



TRIBAL COUNCIL GOVERNING BODY OF THE CALIFORNIA VALLEY MIWOK TRIBE

RESOLUTION OF OCTOBER 1, 2007

R-1-10-01-2007

RESOLUTION APPROVING AND AUTHORIZING THE TRIBAL CHAIRPERSON TO SUBMIT THE TRIBES FY 2008 BUDGET AND MULTI-PROGRAM – MATURE STATUS CONTRACT NO. CTJ51T62802 FOR CONTRACT YEAR 2008 UNDER PUBLIC LAW 93-638

- Whereas,** the California Valley Miwok Tribe is a sovereign governing Indian tribe recognized by the United States Government, and
- Whereas,** [Article VI, Section 1 (a)], of the Constitution of the California Valley Miwok Tribe invest in the Tribal Council the authority to negotiate and contract with agencies of the Federal, State, Local, Tribal Governments, private entities and individuals on behalf of the Tribe, and
- Whereas,** the Tribal Council is the Governing Body of the California Valley Miwok Tribe, and
- Whereas,** the Tribe has determined that it desires to continue to contract for a mature status contract under Public Law 93-638 for 2008; and
- Whereas,** the Tribal Council has determined that it wishes to operate a Multi-Activity Program-Mature Status Contract No. CTJ51T62802; and
- Whereas,** the Tribal Council of the California Valley Miwok Tribe has reviewed the Proposed P.L. 93-638 budget for FY 2008 in the amount of \$214, 710.00 with \$3,000.00 to be retained by the Bureau of Indian Affairs for Realty until such time a determination is made as to the Tribe joining the Fee to Trust Consortium and \$11,000.00 to be placed in the Child Welfare Program, and also understands that Indirect Cost and Contract Support will be determined at a later date; and
- Whereas,** the Tribe does not agree to quarterly payments and is reserving all rights to appeal; and
-

R-1-10-01-2007

Whereas, the Tribal Council of the California Valley Miwok Tribe will review annual budgets as proposed and authorizes the Tribal Chairperson to approve any subsequent changes or modifications to the annual budget.

NOW THEREFORE BE IT RESOLVED that the Tribal Council of the California Valley Miwok Tribe hereby approves the Multi-Activity Program which includes the Aid to Tribal Government \$200,710.00 of which \$3,000.00 will be retained by the Bureau of Indian Affairs for Realty and the Indian Child Welfare Program \$11,000.00, total contract amount is \$214,710.00; and

BE IT FURTHER RESOLVED that the program year FY-2008 shall be January 1, 2008 to December 31, 2008, and the Tribe does not agree to quarterly payments and is reserving all rights to appeal; and

BE IT FURTHER RESOLVED that the Tribal Council of the California Valley Miwok Tribe authorizes the Tribal Chairperson to contract for or reprogram any and all Bureau of Indian Affairs authorized programs available to be contracted by the Tribe, as they are made available

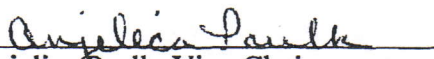
CERTIFICATION

This is to certify that the above matter was considered and heard at a duly noticed meeting of the California Valley Miwok Tribe Tribal Council at which time a quorum was present, held on this day, of Monday, October 1, 2007, and that this resolution was adopted by a vote of 3 in favor, 0 opposed, and 0 abstaining.

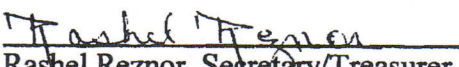
ATTEST:


Silvia Burley, Chairperson

Oct 1, 2007
Date


Anjelica Paulk, Vice-Chairperson

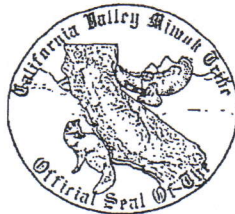
10-01-2007
Date


Rashel Reznor, Secretary/Treasurer

10-01-2007
Date

CALIFORNIA VALLEY MIWOK TRIBE

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TRIBAL COUNCIL GOVERNING BODY OF THE CALIFORNIA VALLEY MIWOK TRIBE

RESOLUTION OF OCTOBER 1, 2007

R-2-10-01-2007

RESOLUTION APPROVING THE REPROGRAMING OF THE TPA FUNDS IN THE AMOUNT OF \$3,000.00 ANNUALLY FOR THE NEXT THREE YEARS FOR THE PURPOSE OF FUNDING THE CALIFORNIA FEE-TO-TRUST PROGRAM

- Whereas,** the California Valley Miwok Tribe is a sovereign governing Indian tribe recognized by the United States Government, and
- Whereas,** [Article VI, Section 1 (a)], of the Constitution of the California Valley Miwok Tribe invest in the Tribal Council the authority to negotiate and contract with agencies of the Federal, State, Local, Tribal Governments, private entities and individuals on behalf of the Tribe, and
- Whereas,** the Tribal Council is the Governing Body of the California Valley Miwok Tribe, and
- Whereas,** the Tribe has identified land acquisition as a priority and desires to preserve land by putting fee land into trust for the Tribe and/or Tribal members; and
- Whereas,** the Tribe and other California Indian Tribes presently have fee-to-trust applications or are contemplating filing applications within the near future with the Bureau of Indian Affairs; and
- Whereas,** the Bureau of Indian Affairs has limited resources due to staffing cutbacks and other Internal problems that has resulted in a back log of fee-to-trust applications; and
- Whereas,** the Tribal Council has met with other California Tribes and developed a strategy to assist in the timely processing of applications; and
-

R-2-10-01-2007

Whereas, the strategy requires the Tribe to reprogram \$3,000.00 of its TPA for years 2008, 2009, 2010 into a special Bureau account for the express purpose of expanding the Realty and Environmental Services in the area of fee-to-trust acquisitions by funding the California Fee-to-Trust Program.

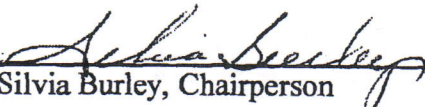
NOW THEREFORE BE IT RESOLVED that the Tribal Council has authorized the Chairperson who is the "Person of Authority Within The Tribe" to officially request that \$3,000.00 of the tribal budget be placed in the Realty Program for years 2008, 2009, and 2010; and

BE IT FURTHER RESOLVED that the activities conducted with these funds will be in accordance with the Fee-to-Trust Project Memorandum of Understanding, which the Tribe shall become a signatory of and be bound by its terms.

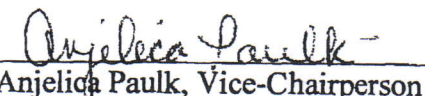
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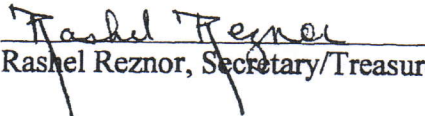
ATTEST:


Silvia Burley, Chairperson

Oct 1, 2007
Date


Anjelica Paulk, Vice-Chairperson

10-01-2007
Date


Rashel Reznor, Secretary/Treasurer

10-01-2007
Date

**California Valley Miwok Tribe
Individual Tribal Budget FY 2008**

	Program Title			
	Aid to Tribal Government	Direct Cost	Indirect Cost	Total
Salaries	Tribal Administrator	98,938.00		\$ 98,938.00
	Secretary/Receptionist	9,772.00	19,544.00	\$ 29,316.00
	Maintenance/Custodial	13,104.00		\$ 13,104.00
	Total Salaries	121,814.00	19,544.00	\$ 141,358.00
Benefits & Taxes	Social Security @6.2%	7,552.59	1,211.73	\$ 8,764.32
	Medicare Insurance @1.45%	1,766.30	283.39	\$ 2,049.69
	State Unemployment @3.6%	4,385.30	703.58	\$ 5,088.88
	Employment Tax @.1%	121.81	19.54	\$ 141.35
	Medical/Dental Benefits	5800.00	2,900.00	\$ 8,700.00
	Total Benefits & Taxes	19,626.00	5,118.24	\$ 24,744.24
Contracts	Audit	3,500.00	3,500.00	\$ 7,000.00
	Consulting	4,000.00		\$ 4,000.00
	Financial Administrator	42,000.00	7,000.00	\$ 49,000.00
	Enrollment	6,000.00		\$ 6,000.00
	Total Contract Expenses	55,500.00	10,500.00	\$ 66,000.00
Operating Expenses	Office Supplies	1,000.00	1,000.00	\$ 2,000.00
	Postage	700.00	400.00	\$ 1,100.00
	Office Equipment/Furniture	570.00	800.00	\$ 1,370.00
	Communication	1,100.00	600.00	\$ 1,700.00
	Travel	400.00	200.00	\$ 600.00
	Tribal Property Insurance		3,100.00	\$ 3,100.00
	Total Operating Expenses	3,770.00	6,100.00	\$ 9,870.00
	Total Aid to Tribal Government	200,710.00	41,262.24	\$ 241,972.24
Other Programs	ICWA	11,000.00		\$ 11,000.00
	Realty	3,000.00		\$ 3,000.00
	Total Other Programs	14,000.00		\$ 14,000.00
	FY 2008 Proposed Budget	\$ 214,710.00	\$ 41,262.24	\$ 255,972.24

California Valley Miwok Tribe Aid to Tribal Government Program

SCOPE OF WORK:

1. This program will continue to support, through its personnel, office equipment, office supplies and communications, the day to day operations of the Tribal office and the services it provides to Tribal members and the general Indian community. All telephone calls and/or inquiries will be handled appropriately. All correspondence will be reviewed and will be processed accordingly.
2. The Tribal Council will continue to conduct monthly Tribal Council meetings and any necessary General Council meetings.
3. The Tribal Council in conjunction with the Enrollment Committee will continue to research and identify individuals that may be eligible to become a member of the Tribe. The Enrollment Committee will continue to receive and process enrollment inquiries and applications. The Enrollment Committee will research lineage, heritage and relevant connection to the Tribe through the use of genealogy records and/or records obtained through the National Archives and Records Administration, Pacific Region.
4. Continue to research and locate a land base, locate funding and start the process for placing the land in a fee to trust status and work with the Bureau of Indian Affairs pursuant to 25 CFR Section 81.6(c) to establish a Reservation for the Tribe. Develop an economic development plan.
5. The financial management system will be maintained and utilized according to the Financial policy and procedures of the Tribe. All Federal and State employer reports will be filed. All reports required by contract with the Bureau of Indian Affairs will be submitted. An annual audit will be performed per contract requirements by a reputable auditing firm.
6. Appropriate meetings, seminars and training sessions will be attended by tribal personnel. Tribal property insurance will be purchased for all federal property and maintained according to tribal policies and procedures.

Total Aid to Tribal Government Budget: \$200,710.00

California Valley Miwok Tribe ICWA Budget

SCOPE OF WORK:

This program will support the goal of ensuring that individual Indians residing in or near tribal property or reservations who need assistance will receive assistance. They will receive aid for basic essentials such as food, clothing, shelter and other services that improve the conditions of individual Indians. It will enable the Tribe to work with law enforcement and the court system in locating potential relatives for Indian children left in the hands of Child Protective Services with the hope of reuniting these children with their families or Tribe. This program provides the resources to protect Indian Children and prevent separation of Indian families, as authorized under Public Law 95-606, the Indian Child Welfare Act of 1978 (ICWA).

PROGRAM STANDARDS:

Family assistance, including family/child support counselors, protective day care, after school care and child recreational activities. Employment support services with the goal of strengthening Indian families and contributing to family stability. Assistance will be given to Child Protective Services and the court system in identifying tribal association to homeless Indian Children or Indian Children that are under the care of Child Protective Services.

Personnel:

ICWA Coordinator Salary:	\$ 7,200.00
Payroll Taxes:	817.00
Total:	\$ 8,017.00

Family Assistance:	\$ 2,983.00
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To provide services to Indian families and children on an as needed basis for day care, after school services, family counseling, employment support.

TOTAL BUDGET:	\$11,000.00
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**California Valley Miwok Tribe
Realty (BIA Realty Initiative)**

Personnel:

N/A

BIA Services:

BIA Realty Initiative program to assist Tribe with Land Acquisition programs	\$3,000.00
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Total Budget:	\$3,000.00
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Exhibit 2



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

DEC 14 2007

CERTIFIED MAIL NO. 7001 2510 0009 4494 1906
RETURN RECEIPT REQUESTED

Silvia Burley
10601 Escondido Place
Stockton, California 95212

Dear Ms. Burley:

In accordance with 25 CFR Part 900.6, Subpart B, Definitions, we are returning your application to contract FY 2008 funding from the Bureau of Indian Affairs, under P.L. 93-638, as amended as it does not meet the definition stated below:

“Tribal Organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which included the maximum participation of Indians in all phases of its activities: provided, that , in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract of grant.”

Under this Part, consideration to contract federal funds to operate Bureau of Indian authorized programs will only be given to an application submitted by federally recognized tribe with a recognized governing body. The Department of the Interior does not recognize that the California Valley Miwok Tribe has a governing body. The District Court for the District of Columbia has upheld that determination, California Valley Miwok Tribe v. United States, 424 F Supp. 2d 197 (D.C.D.C. 2006). That decision is now on appeal.

Because we do not recognize any current governing body for the California Valley Miwok Tribe, we are unable to accept the proposal for the above stated reason. We are hereby returning the proposal.

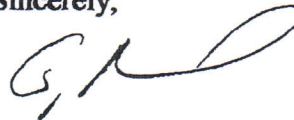
Should you wish to appeal any portion of this letter, you are advised that you may do so by complying with the following:

This decision may be appealed to the Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, W-2820, Sacramento, California 95825. In accordance with the regulations in 25 CFR Part 2 (copy enclosed), your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone number. It should clearly identify the decision to be appealed. If possible attach a copy of the decision. The notice of appeal and the envelope which it is mailed, should be clearly labeled "NOTICE OF APPEAL." The notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice.

You must also send a copy of your notice to the Regional Director, at the address given above.

If no timely appeal is filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,



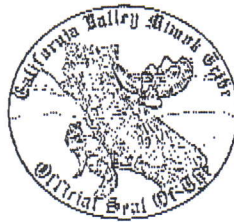
Troy Burdick
Superintendent

Enclosure

Exhibit 3

CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333
601 Pennsylvania Ave., NW, Suite 9100, Washington D.C. 20004
<http://www.californiavallevmiwoktribe-nsn.gov>



Transmitted Via Fax and Express Mail (Certified Return Receipt)

January 17, 2008

Troy Burdick, Superintendent
Janice Whipple-DePina, Awarding Official
Bureau of Indian Affairs
Central California Agency
650 Capital Mall
Suite 8-500
Sacramento, CA 95814-4710

Re: Contract No. CTJ51T62802 (FY 07 Multi-Activity Program, Mature Status),
California Valley Miwok Tribe

Dear Superintendent Burdick and Awarding Official Whipple-DePina:

Pursuant to 25 CFR § 900.154, the California Valley Miwok hereby requests an informal conference with the Central California Agency. The purpose of the informal conference is to attempt to resolve the Superintendent's assertion that the Bureau of Indian Affairs may not continue to contract with the Tribe. Specifically, the Tribe desires to resolve or appeal the assertions made by Superintendent Burdick that:

[t]he Department of the Interior does not recognize that the California Valley Miwok Tribe has a governing body. The District Court for the District of Columbia has upheld that determination, California Valley Miwok Tribe v. United States, 424 F Supp. 2d 197 (D.C.D.C. 2006). That decision is now on appeal.

Because we do not recognize any current governing body for the California Valley Miwok Tribe, we are unable to accept the proposal for the above stated reason. We are hereby returning the proposal.