

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

CALIFORNIA VALLEY MIWOK)	Notice of Receipt of Appeal, Order
TRIBE,)	to Show Cause, and Order
Appellant,)	Concerning Service
)	
v.)	
)	Docket No. IBIA 08-58-A
CENTRAL CALIFORNIA AGENCY)	
SUPERINTENDENT, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	April 3, 2008

On March 31, 2008, the Board of Indian Appeals (Board) received a notice of appeal from the California Valley Miwok Tribe (Tribe), through Paul A. Ross, Esq., of McAfee & Taft. The Tribe seeks review of a December 14, 2007, decision of the Central California Agency Superintendent, Bureau of Indian Affairs (Superintendent; BIA), which returned an Indian Self-Determination Act (ISDA) contract proposal submitted by Silvia Burley for Fiscal Year 2008, on the grounds that BIA does not recognize any current governing body for the Tribe.¹ The appeal was filed with the Board pursuant to the regulations governing appeals from certain decisions regarding ISDA contract proposals, 25 C.F.R. § 900.158.

This appeal has been assigned the above case name and docket number, which should be cited in all future correspondence and pleadings concerning this case.

Under 25 C.F.R. § 900.160(a), within 5 days of receiving an Indian tribe's notice of appeal, the Board must decide whether the subject matter of the appeal falls within the

¹ The appeal was filed in the name of the Tribe, and the Board has captioned the case accordingly. The Board is well-aware that the authority of Sylvia Burley or the Burley tribal council to submit an ISDA contract proposal on behalf of the Tribe is the subject of the dispute between Burley and the Superintendent that gave rise to this appeal. The Board's caption of this case and its references to the "Tribe" as the appellant shall not be construed as a determination on the merits regarding the authority of Burley or the Burley tribal council to represent the Tribe or to bring an appeal in the name of the Tribe.

scope of 25 C.F.R. § 900.150. In the present case, however, a threshold jurisdictional issue exists as to whether the appeal is timely. If the appeal is not timely, the Board lacks jurisdiction to proceed to make a determination under subsection 900.160(a).

Order to Show Cause

In its notice of appeal, the Tribe addresses the timeliness issue, but only with respect to the time period that lapsed between a January 17, 2008, request to the Superintendent for an informal conference and the date that the appeal with the Board was filed. The Notice of Appeal does not address the apparent lack of timeliness in requesting an informal conference, and therefore the Board will allow the Tribe to address this issue and will order the Tribe to show cause why this appeal should not be dismissed on that ground.

A request for an informal conference must be filed with the office of the person whose decision the tribe or tribal organization is appealing within 30 days of the date it received the decision. 25 C.F.R. § 900.154. In the present case, the Tribe states that it received the Superintendent's decision on December 17, 2007, and that on January 17, 2008, it requested that BIA commence an informal conference. January 17, 2008, is 31 days past December 17, 2007, and therefore it appears that the Tribe's request for an informal conference was untimely.²

On or before April 18, 2008, the Tribe is ordered to show cause why its appeal should not be dismissed as untimely. Within 10 days of receipt of the Tribe's response, the Superintendent may file an answer on the issues of timeliness raised in the Tribe's notice of appeal, in this order, and in the Tribe's response.³

² The Superintendent's December 14, 2007, decision provided a notice of appeal rights under 25 C.F.R. Part 2, and not under 25 C.F.R. § 900.150. The 30-day time period for challenging a decision is the same under either 25 C.F.R. Part 2 or 25 C.F.R. § 900.158, although under Part 2, jurisdiction to review a Superintendent's decision would lie with the Regional Director, and not with the Board. Until the Board determines whether this appeal, as filed under 25 C.F.R. Part 900, is timely, the Board declines to address or request briefing on whether the appeal otherwise properly falls under Part 900.

³ In ordering the Tribe to show cause with respect to the timeliness of its request for an informal conference, the Board expresses no opinion on the timeliness arguments made in its Notice of Appeal.

Failure by the Tribe to respond to this order may result in dismissal of this appeal without further notice.

Copies of all pleadings filed with the Board must be served on all interested parties. 43 C.F.R. §§ 4.310(b), 4.333(a). If U.S. mail is used for service and filing, it does not need to be by certified mail; parties may use regular first-class mail, unless they wish to obtain a receipt for their own records. If counsel is appearing for an interested party, counsel should enter an appearance, after which service should be made on counsel. A certificate or affidavit evidencing service shall be filed concurrently with the document furnished to the Board.

The parties are advised that the Board will not accept any filing by facsimile transmission (fax) unless the Board has first granted permission for the filing of that particular document by fax. The Board may grant permission to file by fax in extraordinary circumstances. Because documents filed with the Board are filed as of the date of mailing, extraordinary circumstances do not include the fact that a filing is due that day. Any document filed by fax without permission will not be accepted.

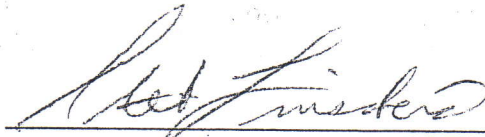
Order Concerning Service

The underlying issue in this case — whether BIA could properly return an ISDA contract proposal from Burley on the grounds that BIA does not recognize any current governing body for the Tribe — necessitates a special order concerning service. Ordinarily in an ISDA appeal, the only interested parties are the Tribe and the Federal agency whose decision is being appealed, and the service requirements in the regulations are drafted accordingly. See 25 C.F.R. § 900.158(d).

In the present case, however, there is a dispute over whether Burley is authorized to act in the name of the Tribe, and there are others who either claim to represent the Tribe instead or claim standing to challenge Burley's authority. See *California Valley Miwok Tribe v. United States*, No. 06-5203, slip op. at 2 n.1 (D.C. Cir. Feb. 15, 2008); *California Valley Miwok Tribe v. Pacific Regional Director*, Docket No. IBIA 07-100-A (Burley's pending appeal from a April 2, 2007, decision of the Regional Director regarding BIA assistance to the Tribe in efforts to organize a tribal government). The Board expresses no opinion on whether any other individuals or groups, in fact, constitute "interested parties" to this proceeding, but finds that under the circumstances it is appropriate to require that they be served as potentially interested parties.

Therefore, the Board orders the Tribe, on or before April 18, 2008, to serve its notice of appeal on the potentially interested parties that are included on the attached

distribution list who have not previously been served. By that same date, the Tribe shall certify to the Board that it has done so. Failure by the Tribe to comply with this order may result in dismissal of this appeal without further notice.



Steven K. Linscheid
Chief Administrative Judge

Distribution: See attached list.

Distribution: IBIA 08-58-A

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