

**INTERIOR BOARD OF INDIAN APPEALS**

CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff,

BUREAU OF INDIAN AFFAIRS,

Defendant.

Docket No. IBIA 08-58-A

**RESPONSE TO SHOW CAUSE ORDER**

The California Valley Miwok Tribe (the "Tribe") hereby submits its response to this Board's Order to Show Cause dated April 3, 2008. As explained herein, this Board's precedent mandates that the Tribe's request for an "informal conference" with the Superintendent of the Central California Agency of the United States Bureau of Indian Affairs ("BIA") should be deemed timely filed.

**INTRODUCTION**

In a letter dated December 14, 2007, the BIA informed the Tribe that it had rejected the Tribe's renewal application for its annual PL-93-638 self-determination contract (the "December 2007 Letter"). In addition to announcing its rejection of the proposal, the BIA's December 2007 Letter purported to notify the Tribe of its appeal rights, referring the Tribe to the provisions of 25 C.F.R. Part 2.

Despite the undeniable fact that the December 2007 Letter announced the BIA's decision to "decline to award a self-determination contract," the letter did not notify the tribe of the specific and particular appeal procedures applicable to such a decision. See 25 C.F.R. §900.150(a). Thus, despite the BIA's regulatory duty to inform the Tribe of

such rights, the Tribe was not informed of its right to request an “informal conference” or the timing and procedures applicable to such a request. See 25 C.F.R. §900.152 (requiring that any decision declining to award a self-determination contract be accompanied by a statement referring the affected tribe to its right to an informal conference and an appeal under 25 C.F.R. §900, Subpart L).

The Tribe received the BIA’s December 2007 Letter on December 17, 2007, and the Tribe subsequently learned of its right to request an “informal conference.” On January 17, 2008, thirty-one (31) days after receiving the deficient rejection letter, the Tribe requested an informal conference pursuant to 25 C.F.R. §900.154. The Tribe received no response of any kind from the BIA. Therefore, on March 31, 2008, the Tribe submitted a Notice of Appeal (the “Notice”) to this Board detailing the events necessitating the present appeal.

On April 3, 2008, this Board issued an Order to Show Cause (the “Order”) regarding the timeliness of the Tribe’s Notice. Particularly, the Order notes an “apparent lack of timeliness in requesting an informal conference.” See Order, p. 2. The Board continued by stating that the Tribe’s request to the BIA for an informal conference occurred thirty-one (31) days following its receipt of the BIA’s rejection letter, one (1) day beyond the regulatory deadline for such a request.

The following authority establishes that, under Board precedent, the Tribe’s request for an “informal conference,” should nevertheless be deemed timely. This Board has routinely refused to dismiss appeals that appear untimely on their face, where an accurate statement of appeal procedures was not provided to the appellant with the

underlying decision. Because the BIA did not provide such an accurate statement to the Tribe in its December 2007 letter, the same treatment by the Board is mandated here.

### ARGUMENT AND AUTHORITY

First, this Board requires strict adherence to regulatory provisions that require BIA officials to provide appeal notifications with their written decisions. See, e.g., Central Council of Tlingit and Haida Indian Tribes of Alaska v. BIA, 28 IBIA 206, 208 (Sept. 26, 1995). In the Tlingit decision, the Board considered an appeal from alleged BIA inaction, brought pursuant to 25 C.F.R. Part 2. Although that appeal appeared to be untimely on its face, the Board refused to dismiss the appeal.

In considering the timeliness of the appeal, the Board first noted that 25 C.F.R. §2.7 expressly requires that BIA decision makers “inform interested parties of the right to appeal, the identity of the official to whom an appeal may be taken, and the 30-day time limit on the filing of an appeal.” Id. The Board concluded that the appellants in that case had not been provided the required information, and therefore, the appeal would be considered timely. Id.

Similarly, in Johnson v. BIA, 28 IBIA 104, 105 (July 11, 1995), the Board again concluded that a facially untimely appeal would not be dismissed, where the BIA official had failed to provide “proper appeal information.” Id. In Johnson, interested parties argued that the BIA’s omission of appeal information should be ignored. According to their arguments, the appellants had personal knowledge of the relevant appeal information, such that the BIA’s communication of that information was unnecessary. Id. at 105-06. In rejecting such arguments, the Board concluded:

25 C.F.R. §2.7(c) plainly requires the BIA deciding official to include in “[a]ll written decisions” an identification of the official to whom appeal may be taken and a statement concerning the 30-day time limitation for filing an appeal (emp. added). The regulation does not authorize any exceptions to this requirement. The Board declines to create judicially a “personal knowledge” exception from the requirement that BIA deciding officials inform persons affected by their decisions of the appeal procedures. Accordingly, this appeal is considered timely filed.

Id. at 106 (emp. added). See also, Wilson v. BIA, 30 IBIA 241, 253 (April 1, 1997) (BIA’s failure to provide notice of appeal right tolled 30-day appeal deadline).

In the present case, a similar explicit, unqualified directive has been placed upon the BIA by regulation. 25 C.F.R. §900.152 provides that every decision of the BIA to decline a self-determination contract must include a specific notice of appeal rights and informal conference rights:

Every decision in any of the ten areas listed above [25 C.F.R. §900.150] shall contain information which shall tell the Indian tribe or tribal organization where and when to file the Indian tribe or tribal organization's appeal. Each decision shall include the following statement:

Within 30 days of the receipt of this decision, you may request an informal conference under 25 CFR 900.154, or appeal this decision under 25 CFR 900.158 to the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the IBIA under 25 CFR 900.158 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

25 C.F.R. §900.152. This regulation, like 25 C.F.R. §7.4, provides an unqualified burden upon the BIA, identifying no exceptions. See Johnson at 106.

There is no dispute in the present case that the BIA failed to provide the notice required by §900.152. See Order, p. 2. Thus, pursuant to the Board's previously asserted policies, as identified in the written precedents above, the Tribe's filing of its request for an informal conference should be deemed timely.

The application of this policy to appeals under 25 C.F.R. §900.150, as opposed to solely appeals brought under 25 C.F.R. Part 2, is also established in Board precedent. In Quileute Indian Tribe v. BIA, 34 IBIA 98, 99 (Sept. 8, 1999), the Board recognized the requirement that accurate appeal information be reported to those affected by BIA decisions:

An appellant's responsibility for filing a timely notice of appeal under 25 C.F.R. § 900.158(a) includes responsibility for filing the notice in accordance with the deciding official's appeal instructions, when those instructions are consistent with 25 C.F.R. § 900.152. As in the case of appeals filed under 25 C.F.R. Part 2, a notice of appeal filed under 25 C.F.R. § 900.158(a) is not timely when an appellant is given correct appeal instructions but fails to follow them, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations.

Id. As stated above, the Tribe was neither provided "instructions consistent with 25 C.F.R. § 900.152" nor "correct appeal instructions." Thus, the Tribe's regulatory obligation to request an "informal conference" within thirty (30) days of an adverse decision was not and still has not been triggered.

The Tribe's request for an "informal conference" should also be deemed timely filed based upon this Board's holding in Pascua Yaqui Tribe v. Acting Director, Tucson Area Office, Indian Health Service, 32 IBIA 98 (1998). In Pascua Yaqui, this Board announced its ability to consider a filing to be timely where actions of the BIA

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**SPECIAL CERTIFICATE OF SERVICE**

The California Valley Miwok Tribe (the "Tribe") hereby submits this Special Certificate of Service in accordance with the Board's order dated April 3, 2008 (the "Order"). On April 9, 2008, the undersigned sent via certified mail a copy of the Tribe's Notice of Appeal to all "interested parties" as identified in the Order (unless such party had been previously served). Certified mail receipts reflecting such delivery are attached hereto as Ex. "1."

Respectfully submitted this 18<sup>th</sup> day of April, 2008,

  
\_\_\_\_\_  
/s/ James C. McMillin, OBA #17206  
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Tamara Schiffner Pullin, OBA #21462  
McAfee & Taft A Professional Corp.  
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211 North Robinson  
Oklahoma City, Oklahoma 73102-7103  
Telephone: (405) 235-9621  
Facsimile: (405) 235-0439

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that on April 18, 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

Jane M. Smith, Esq.  
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& Alaska, Division of Indian Affairs  
Office of the Solicitor  
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Washington, DC 20240

Troy Burdick  
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Suite 8-500  
Sacramento, CA 95825

Velma WhiteBear  
213 Downing Dr.  
Galt, CA 95632

Chadd Everone  
2140 Shattuck Ave. #602  
Berkeley, CA 94704

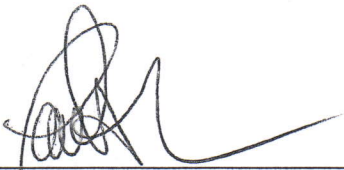
Regional Director  
Pacific Regional Office  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

Regional Solicitor  
Pacific Southwest Regional Office  
U.S. Department of the Interior  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825

Yakima Dixie  
11178 Sheep Ranch Road  
Mtn Ranch, CA 95246-9761

and

CDC #V96007  
California State Prison-Sacramento  
Folsom-A, P.O. Box 290066  
Represa, California 95671-0066

  
/s/ \_\_\_\_\_  
PAUL A. ROSS

RECEIPT

7107 4263 7080 0006 6809

FROM:

ROSS, PAUL  
RE: 69275.00002

DP: OS/TH  
PB: 4/9/08

SEND TO:

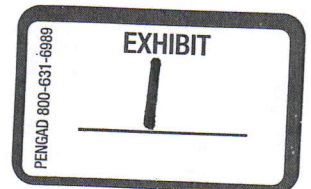
CHAD EVERONE  
2140 SHATTUCK AVENUE  
#602  
BERKELEY CA 94704

FEEES:

Postage	1.48
Certified Fee	2.65
Return Receipt	2.15
Restricted	0.00

TOTAL \$ 6.28

POSTMARK OR DATE



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RE: 69275.00002

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PB: 4/9/08

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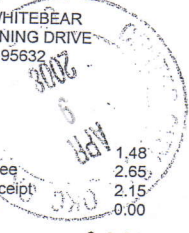
VELMA WHITEBEAR  
213 DOWNING DRIVE  
GALT CA 95632

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Restricted	0.00

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RECEIPT

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FROM:

ROSS, PAUL  
RE: 69275.00002

DP: OS/TH  
PB: 4/9/08

SEND TO:

REGIONAL DIRECTOR  
PACIFIC REGIONAL OFFICE  
BUREAU OF INDIAN AFFAIRS  
2800 COTTAGE WAY  
SACRAMENTO CCA 95825

FEEES:

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Certified Fee	2.65
Return Receipt	2.15
Restricted	0.00

TOTAL \$ 6.28

POSTMARK OR DATE

RECEIPT

7107 4263 7080 0006 6779

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ROSS, PAUL  
RE: 69275.00002

DP: OS/TH  
PB: 4/9/08

SEND TO:

REGIONAL SOLICITOR  
PACIFIC SOUTHWEST REGIONAL C  
U.S. DEPARTMENT OF THE INTERI  
2800 COTTAGE WAY, ROOM E-171  
SACRAMENTO CA 95825

FEE:

Postage 1.48  
Certified Fee 2.65  
Return Receipt 2.15  
Restricted 0.00

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RECEIPT

7107 4263 7080 0006 6755

FROM:

ROSS, PAUL  
RE: 69275.00002

DP: OS/TH  
PB: 4/9/08

SEND TO:

YAKIMA-DIXIE  
11178 SHEEP RANCH ROAD  
MOUNTAIN RANCH CA 95246-9761

FEE:

Postage	1.48
Certified Fee	2.65
Return Receipt	2.15
Restricted	0.00

OTAL \$ 6.28

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