



## 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 )  
TRIBE, )  
Appellant, )  
v. )  
PACIFIC REGIONAL DIRECTOR, )  
BUREAU OF INDIAN AFFAIRS, )  
Appellee. )

Order Concerning BIA Jurisdiction  
Docket No. IBIA 07-100-A  
June 26, 2007

The California Valley Miwok Tribe (Tribe), through Phillip E. Thompson, Esq., has appealed from an April 2, 2007, decision of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director rejected Sylvia Burley's appeal from a November 6, 2006, decision of the Central California Agency Superintendent (Agency; Superintendent), BIA, to assist the Tribe in its efforts to organize, and remanded the matter back to the Superintendent to allow him to continue with his plans to assist the Tribe with its organizational efforts. This appeal is now in briefing.

On June 21, 2007, the Board received a copy of correspondence dated June 19, 2007, from the Superintendent to Burley, stating that the Agency would be unable to meet with Burley to discuss the Regional Director's April 2 decision because the appeal before the Board has divested BIA of authority to take further action.

The Superintendent properly exercised caution in responding to an inquiry from Burley to meet with the Agency concerning the Regional Director's decision. However, in order to ensure that BIA does not feel constrained from engaging in discussions with Burley that could lead to settlement of the dispute within the Tribe, the Board on its own motion issues this clarifying order to allow discussions between BIA and the interested parties to this appeal, including Burley.

It is well-established that when an appeal is filed with the Board, BIA loses jurisdiction over the matter, except to participate as a party to the appeal. *See, e.g., Winters v. Acting Northwest Regional Director*, 43 IBIA 219 (2006); *Bullcreek v. Western Regional Director*, 39 IBIA 100 (2003); *Burlington Northern Railroad Co. v. Acting Billings Area Director*, 31 IBIA 180, 180-81 (1997). Thus, for example, when an appeal is filed, BIA does not have authority or jurisdiction to reconsider or modify, directly or indirectly, the decision that is the subject of the appeal. *See Bullcreek*, 39 IBIA at 102.



As a party to the appeal however, BIA is not prohibited from engaging in communications with an appellant or with other interested parties, including communications that might lead to settlement of the appeal. The Board, of course, encourages the voluntary settlement of disputes among interested parties to an appeal.

In the present case, given the procedural nature of the Regional Director's decision — a remand to provide BIA's assistance to the Tribe in organizing and resolving the internal fractionalism — the Superintendent understandably was concerned that discussions with Burley might constitute an improper exercise of BIA's authority over this matter. On the other hand, a strict application of the no-BIA-jurisdiction rule may interfere with communication between BIA and the interested parties to this appeal, which in turn could undermine efforts to settle the underlying dispute.

Therefore, on its own motion, the Board issues this order to authorize BIA, to the extent such authorization may be required, to communicate freely with all interested parties to this appeal, including Burley, regarding the Regional Director's decision and related matters. This authorization does *not* extend to allowing BIA to modify the Regional Director's decision or to issue a new decision on the matter that is the subject of this appeal. As a party to the appeal, however, BIA may, if it chooses, communicate with the other interested parties.

Steven K. Linscheid  
Chief Administrative Judge

Distribution: See attached list.