

1 The Tribe filed its appeal of the Regional Director's April 2, 2007 decision and the Board
2 ordered briefing on the issues appealed by the Tribe as well as on standing and mootness.
3 Briefing in this case has been completed.

4 **II. The Filing of an Appeal Imposes an Automatic Stay Upon the Finality of the** 5 **Regional Director's Decision and BIA actions to Implement that Decision.**

6 Under the regulations of the Board governing appeals, "no decision, which at the time of
7 its rendition is subject to appeal to a Superior authority in the Department, shall be considered
8 final so as to constitute Departmental action subject to judicial review under 5 U.S.C. 704, unless
9 when an appeal is filed, the official to whom the appeal is made determines that public safety,
10 protection of trust resources, or other public exigency requires that the decision be made
11 effective immediately." 25 C.F.R. § 2.6. Similarly, the General Rules Applicable to Proceedings
12 on Appeal Before the IBIA provide that: "no decision of an administrative law judge, Indian
13 probate judge, or BIA official that at the time of its rendition is subject to appeal to the Board,
14 will be considered final so as to constitute agency action subject to judicial review under 5
15 U.S.C. 704, unless it has been made effective pending a decision on appeal by order of the
16 Board." 43 C.F.R. § 4.14(a).

17 The Board has interpreted the proper application of these regulations in *Wadena v.*
18 *Minneapolis Area Director*, 30 IBIA 130 (1996). In *Wadena*, the Board held that under 43
19 C.F.R. § 4.314 "[a]n Area [now Regional] Director's decision appealed to the Board is stayed
20 during the pendency of the appeal, unless placed into immediate effect by the Board. When the
21 Board declines to place an Area Director's decision into immediate effect, that decision is not in
22 effect for any purpose." *Wadena*, 30 IBIA 130, 139.

23 In this case, when the Tribe appealed the April 2, 2007 decision issued by the Pacific
24 Regional Director to the Board, an automatic stay imposed by 25 C.F.R. § 2.6 went into effect.

1 See *Michael Stone v. Blackfoot Area Director*, 40 IBIA 111 (2007)¹ That stay remains in effect,
2 according to the Board's holding in *Wadena* at 30 IBIA at 138, by operation of 43 C.F.R. §
3 3.14(a), unless the Board decides to place the decision into immediate effect. When the Board
4 declines to place such a decision into immediate effect, that decision is not in effect for any
5 purpose, which should include this case, posting membership and tribal organization meeting
6 notices and sending letters to individuals stating that have a right to participate in the
7 organization of the Tribe. In this appeal, there was no request by the Regional Director or the
8 BIA to place the decision into immediate effect and the Board did not place the decision into
9 immediate effect. Hence, by operation of the regulations and by this Board's holding, the April
10 2, 2007 decision of the Regional Director should not be in effect and not acted upon by the BIA
11 Agency Office "for any purpose." *Id.*

12 The BIA Agency Office has already begun the process of "reorganizing" the Tribe by
13 implementing the Regional Director's April 2, 2007 decision. The BIA Agency Office despite
14 knowing that the Tribe would probably appeal that decision did not wait for the appeal period which
15 was outlined in the Regional director's letter to run before immediately pushing forward with
16 implementing the proposal. The Regional Director's decision was issued on April 2, 2007, directing
17 the Superintendent to push forward with its efforts to "help" the Tribe reorganize. A mere eight days
18 later, on April 10, 2007, the Superintendent published its first notice in the local paper seeking
19 members of the Tribe and proclaiming the Secretary's intent to reorganize the Tribe.² (See Exhibit 1
20 in Appellant's Brief in Support of its Appeal)

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23 ¹ "Of course, the Superintendent's decision is subject to the automatic stay provision in
24 25 C.F.R. § 2.6, which provides that a BIA decision is neither final nor effective pending an
25 appeal" at 117

² The Superintendent published a notice in a local Californian newspaper on April 10th and 17th,
2007 announcing the Agency's plan to identify putative members of the Tribe and proceed with
his organizational efforts with these non-members Indians. Copy of the Notice filed with
Appellant's Brief in Support of Appeal.

1 The BIA has further demonstrated in writing that its intent to flout the stay in place. In its
2 June 19, 2007, responding to a letter from Yakima Dixie to withdraw its recognition of Silvia Burley
3 as an authorized representative of the Tribe; the BIA reaffirmed its recognition of Ms. Burley as a
4 person of authority in dealing with the Tribe's 638 contract. However, the Agency nevertheless
5 acknowledged that an appeal has been filed with this Board and that this appeal "has the effect of
6 suspending the Superintendent's decision pending resolution of the appeal by the IBIA." However,
7 the BIA stated that it would not halt the reorganization process in defiance of clear policy. Instead
8 the BIA stated that, "the Agency is going ahead with its assistance but will not recognize the results
9 of the organization process until the IBIA has issued its decision." (See Exhibit 2 in Appellant's
10 Brief in Support of its Appeal)

11 Contrary to the regulations and the clear holding of the Board, the Pacific Regional
12 Director has directed the Superintendent to proceed with the actions of "reorganizing" the Tribe
13 or the Superintendent has made a unilateral decision to move forward on its own. The
14 Superintendent's acknowledgement of the Board automatic stay provisions in the June 19, 2007
15 letter shows that the BIA is well aware of the effect of the Board's regulations. However, the
16 Superintendent has continued to send letters, publish notices and encourage individuals to submit
17 membership applications to the BIA. The BIA's continued actions to "reorganize" are at the
18 heart of the Tribe's appeal to this Board. The BIA's continued action in moving forward with
19 these actions violates its regulations and this Board's specific holdings regarding the application
20 of the automatic stay on BIA actions being appealed to this Board. Both the Regional Director
21 and the Superintendent have failed to heed the BIA and Department of the Interior's regulations
22 and this Board's direction. Because the Board declined to place the decision into immediate
23 effect, the decision is not in effect for any purpose, including further proceedings by the
24 Superintendent.

1 The Appellant are concerned that while this appeal is pending, the BIA as they have
2 stated in their own documents that they will continue to move forward with its organization and
3 membership efforts. The Appellants respectfully requests the Board to issue an Order clarifying
4 and enforcing the provisions of the automatic stay by clarifying the actions the BIA can take with
5 regard tribal membership and organization. Appellant requests that the Board specifically
6 inform the Regional Director and the Superintendent that neither may take any further actions to
7 reorganize or otherwise affect the functioning of the government of the California Valley Miwok
8 Tribe. In addition, that the Board order the BIA to rescind any actions taken by the BIA
9 subsequent to the April 2, 2007 letter from the Regional Director, including the notices published
10 by the BIA. The Appellant also respectfully requests that the Board require the BIA to publish
11 notices at the same places and duration as its previous notices, informing all interested parties
12 that the decision of the Regional Director has been appealed and that the notices published by
13 BIA are of no force and effect during the pendency of this appeal.

14 The Appellant also requests that the Board issue an Order to the BIA to publish the
15 requested notice and that the Board issue an Order for the BIA to show cause as to why it should
16 not be held in contempt for knowingly violating the automatic stay.

17 Dated this 7th day of November, 2007

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