

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.

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

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

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

24 In this case, when the Tribe appealed the April 2, 2007 decision issued by the Pacific
25 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 112.

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 Additional information obtained by the Tribe also points to the fact that the BIA is continuing
12 to move forward with its membership and organization efforts. This fact is supported by the recent
13 letter from Velma Whitebear, an interested intervener in this action. (Exhibit1) In that letter she
14 states that she spoke with the BIA as late as September 25, 2007. She states that the BIA has
15 informed her that the BIA (we believe the Central California Agency) is in the process writing letters
16 to the applicants that have responded to their above-mentioned correspondence to make
17 determinations as to whether they are putative members of the Tribe. Again, this goes to the heart of
18 the Tribe's appeal and again demonstrates that the BIA is moving forward with its activities despite
19 the appeal and requirement that this action must be stayed during the pendency of the appeal.

20 Contrary to the regulations and the clear holding of the Board, the Pacific Regional
21 Director has directed the Superintendent to proceed with the actions of "reorganizing" the Tribe
22 or the Superintendent has made a unilateral decision to move forward on its own. The
23 Superintendent's acknowledgement of the Board automatic stay provisions in the June 19, 2007
24 letter shows that the BIA is well aware of the effect of the Board's regulations. However, the
25 Superintendent has continued to send letters publish notices and encourage individuals to submit

1 membership applications to the BIA. The BIA's continued actions to "reorganize" are at the
2 heart of the Tribe's appeal to this Board. The BIA's continued action in moving forward with
3 these actions violates its regulations and this Board's specific holdings regarding the application
4 of the automatic stay on BIA actions being appealed to this Board. Both the Regional Director
5 and the Superintendent have failed to heed the BIA and Department of the Interior's regulations
6 and this Board's direction. Because the Board declined to place the decision into immediate
7 effect, the decision is not in effect for any purpose, including further proceedings by the
8 Superintendent.

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

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

4 Dated this 17th day of November, 2007

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EXHIBIT 1

CERTIFICATE OF SERVICE



served by First (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California) 11178 Sheep Ranch Rd. (Sheep Ranch) Mountain Ranch, California 95246 209-728-8726 {www.californiavalleymiwok.com}

Assistant Secretary - Indian Affairs U.S. Department of the Interior MIB 4140 1549 C Street, N.W. Washington, D.C. 20240

September 29, 2007

Chadd Everone, Deputy 2140 Shattuck Ave. #602 Berkeley, California 94704 510-486-1314

Clay Gregory Regional Director Pacific Regional Office 2800 Cottage Way Sacramento, CA 95825

Troy Bundick Superintendent

tribal organization and 2) the Dance Group.

Tribal Organization 650 Capital Mall

As you know, the BIA issued a public notice in April 2007 regarding the formal organization of The Tribe. The Bureau identified some 14 historic individuals and pronounced that if a person could demonstrate that he or she is a lineal descendant of one of those historic persons, then that person could participate in the organization of The Tribe. The cut-off date for filing a genealogy was May 25, 2007. Since that date, the BIA has been busy verifying a large number of applications. Recently, on September 27, we spoke with the BIA and were told that they are in the process of writing the letters to the applicants and, when done, will send all of them at the same time. This should happen very soon. In that letter, they will only say whether or not you personally qualify as a putative member. Apart from that, they will not say who the qualifying group is. We would like to know what the BIA says to each person, and we request that you send us a copy of the BIA's letter to us in the enclosed envelope. In particular, if you are identified as a putative member, then we would like to know that so that an advanced meeting can be held prior to the meeting with the BIA.

The Dance Group (See the enclosed flyer for details.)

Yakima Dixie

11178 Sheep Ranch Rd. P.O. Box 100 Sheep Ranch, CA 95250

Velma Whitebear 211 Downing Dr. Galt, CA 95632

[Signature] Agency for Appellants

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November 17, 2007

Steven K. Linscheid
Chief Administrative Judge
Interior Board of Indian Appeals
801 North Quincy Street
Arlington, VA 22203

Re: California Valley Miwok Tribe v. Pacific Regional Director.
(Docket No. IBIA 07-100-A)

Dear Judge Linscheid:

Please find a copy of the Appellant's Amended Motion to Enforce Stay, along with its attachment and Certificate of Service. We are not sure what occurred with regard to the Certificate of Service on the original Motion to Enforce Stay, but, a copy of the Certificate of Service and receipts relating to the service of that Motion are included with this letter. We are also including additional receipts for the service of this document.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,



Phillip E. Thompson, Esq.
General Counsel
California Valley Miwok Tribe

Enc: (5)

Cc: California Valley Miwok Tribe
File