

INTERIOR BOARD OF INDIAN APPEALS

California Valley Miwok Tribe)	
)	
Appellant,)	Docket No.: IBIA 07-100-A
)	
vs.)	
)	
Pacific Regional Director,)	
)	
Appellee.)	
)	

APPELLEE'S OPPOSITION TO APPELLANT'S MOTION TO ENFORCE STAY

The Appellant seeks to enforce the stay imposed by 25 C.F.R. § 2.6 and 43 C.F.R. § 3.14 to prohibit the Bureau of Indian Affairs (BIA) from undertaking to organize the California Valley Miwok Tribe (CVMT or Tribe). To clarify, the BIA has no intention of organizing the Tribe before or after this Board decides the Appellant's appeal. The Tribe will organize the Tribe. The BIA recognizes that cannot even take any action to assist the Tribe until this Board issues an opinion in the BIA's favor.

There are three reasons that the Board should deny this motion. First, this motion, indeed the entire appeal before this Board, was filed in the name of the Tribe, but the Tribe is not the proper party. Second, the Board should deny the motion because the BIA is respecting the stay. Finally, this appeal is untimely.

A. Silvia Burley Cannot File This Motion In The Name Of The Tribe

Silvia Burley claims to be the elected leader of CVMT with the authority to organize the Tribe. She, not the Tribe, appealed the Superintendent's decision to initiate a process by which the Tribe could organize itself to the Regional Director. The Regional Director affirmed the Superintendent's decision. That decision, which is the subject of this motion, was directed at Ms. Burley, as an individual. It was not directed at

the Tribe itself because the Tribe did not appeal. Ms. Burley filed this motion in the name of the Tribe. But the Tribe does not have any decision within the BIA from which to appeal. Because the Tribe has not participated in the process by which Ms. Burley appealed the Superintendent's decision, it cannot now step into the shoes of Ms. Burley and pursue this motion against the BIA.

As was explained more fully in the Appellee's Opposition to Appellant's Statement of Appeal, the Tribe lacks standing to pursue this appeal because in doing so, it is advancing Silvia Burley's interest at the expense Yakima Dixie, her political rival. The Tribe is in the midst of an internal tribal dispute with both Ms. Burley and Mr. Dixie claiming to be the legitimate leader of the Tribe with authority to organize it. Burdick Declaration, para. 4. (Exhibit A). If the Board allows Ms. Burley to pursue this motion and the entire appeal in the name of the Tribe, it is essentially sanctioning Ms. Burley as the Tribe's leader and allowing her to use the Tribe to advocate on behalf of herself. The Tribe can only pursue the interests of the Tribe as a whole. *Darrell Doney and Fort Belknap Community Council v. Rocky Mountain Regional Director*, 43 IBIA 231 (2006). When a tribe is divided into two groups with divergent interests, the tribe cannot choose to advance the interests of just one group. *Id.* The tribe must remain neutral.

Moreover, the BIA does not recognize Ms. Burley, or anyone else, as the governmental leader of the tribe. Burdick Declaration, para. 3. Even if Yakima Dixie's interest did not diverge from hers in this appeal, she lacks authority to file this motion in the name of the Tribe.

B. The BIA Is Not Violating The Automatic Stay

The Regional Director's April 2, 2007 decision remanded the issue of the Tribe's organization to the Superintendent to proceed with his plans to assist the Tribe in organizing itself. The first step in the Superintendent's plan, as outlined in the November 6, 2006, letter, was to call a general council meeting of the Tribe. Burdick Declaration, para. 5-6. The Superintendent has not proceeded with his plans to call a general council meeting. Burdick Declaration, para. 7. Instead, the Superintendent took a preliminary step in preparation of calling the general council meeting, namely soliciting applications from persons who believe they are eligible to participate in organizing the Tribe. *Id.* The BIA will not notify applicants of their status as putative members or take any action to assist the Tribe in organizing itself until this Board has rendered a decision denying Ms. Burley's appeal. Burdick Declaration, para. 10. Because the Superintendent is not proceeding with his plan for assisting the Tribe by notifying applicants of their status or by calling a general council meeting of the Tribe's members and putative members, the BIA is not violating the stay.

C. Appellant's Motion Is Untimely

Appellant's motion makes clear that at the time Ms. Burley filed her appeal on July 27, 2007, she knew the BIA had undertaken the actions of which she complains, namely publishing in local newspapers announcements soliciting applications for the class of putative members. Yet she did nothing to challenge the BIA's action. Instead, she waited months to complain. The BIA's action did not offend Ms. Burley at the time she appealed. Months later, however, she filed the present motion claiming that that same action, that was unobjectionable in July, now runs afoul of the regulations

governing appeals of BIA decisions. As a matter of judicial management, this Board should not let Ms. Burley "wait and see." She should have filed this motion in July when she filed her appeal.

D. Conclusion

For the foregoing reasons, this Board should deny Silvia Burley motion to enforce the stay.

Submitted, December 12, 2007



Jane M. Smith
Attorney Advisor

EXHIBIT A

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DECLARATION OF TROY BURDICK

I, Troy Burdick, do hereby state as follows:

1. I am employed by the Bureau of Indian Affairs (BIA) within the United States Department of the Interior as the Superintendent of the Central California Agency.
2. In my capacity as Superintendent, I am responsible for managing the government-to-government relationship between the United States and the California Valley Miwok Tribe (CVMT or Tribe).
3. CVMT is an unorganized tribe, meaning the BIA does not recognize that the tribe has a functioning government or a governmental leader.
4. On November 6, 2006 I sent a letter to Silvia Burley and Yakima Dixie, both of whom claim to be the legitimate leader of CVMT with authority to organize the Tribe. Both Silvia Burley and Yakima Dixie were working separately to organize the Tribe.
5. My letter indicated that their dispute had reached an impasse and threatened the Tribe's government-to-government relationship with the United States. It further indicated that the BIA would assist the Tribe in organizing itself. As

the first step in the Tribe's effort to organize itself, the BIA would call a general council meeting of the Tribe's members and potential members

6. Silvia Burley appealed that decision to the Regional Director. On April 2, 2007, the Regional Director affirmed the November 6, 2006, letter and remanded the matter back to me to proceed with the plans to assist the Tribe organize itself by first calling a general council meeting of the Tribe's member's and putative members.
7. I did not call a general council meeting. Instead, I took a step in preparation of calling a general council meeting. On April 10, 2007, I had published in local newspapers a notice that the BIA was accepting applications from persons who claim lineal decedency from a list of 14 historic members of the Tribe and who sought to be included in the class of putative members who would be eligible to participate in the Tribe's organizational process.
8. By May 25, 2007, the BIA received 503 applications. Between the dates of May 25, 2007, and April 20, 2007, the BIA was only engaged in the internal review of these applications.
9. On April 20, 2007, Silvia Burley, allegedly acting in the name of the Tribe, appealed the Regional Director's April 2 2007, letter to the Interior Board of Indian Appeals (IBIA)
10. The BIA reviewed those applications and determined which applicants qualify as lineal descendents and which do not. The BIA drafted letters to send to all applicants notifying them of their status and, as needed, informing them of their rights of appeal, after completing that review.

11. Because of the stay in this case, the BIA has not and will not send those letter to the applicants until the IBIA issues a decision in Silvia Burley's appeal in the BIA's favor. Moreover, the BIA will not initiate the process by which the Tribe will organize itself by calling a general council meeting of the Tribe until IBIA issues a decision in Silvia Burley's appeal in the BIA's favor. The BIA will not take any action to assist the Tribe organize itself until IBIA decides Silvia Burley's appeal in the BIA's favor.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on the 6th day of December, 2007.



Troy Burdick
Superintendent, BIA
Central California Agency

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2007 I caused to be served on Phillip E.


Thompson and Chad Everone a copy of the Appellee's Opposition to Appellant's Motion

to Enforce Stay by regular first-class mail at the following addresses:

Phillip E. Thompson, Esq.
9450 Pennsylvania Avenue, Suite 4
Upper Marlboro, MD 20772

Chad Everone
2140 Shattuch Ave., # 602
Berkley, CA 94704

Dated: December 12, 2007



Jane M. Smith
Counsel for Appellee