

1 of the BIA. Moreover, there is no time limit for requesting the Board to enforce a stay that the
2 BIA should have honored from the inception of this appeal.

3 Lastly, the December 14, 2007 letter, referred to in Appellee's supplemental filing, which
4 seeks to unlawfully decline the Tribe's Annual Funding Request for FY 2008 on its 638
5 Contract, is specific evidence contradicting Appellee's assertions that the BIA is not violating the
6 stay imposed by Departmental, Agency and Board regulations relating administrative actions and
7 automatic stays of pending actions. This letter along with the letter provided as Exhibit 1 to
8 Appellant's Motion to enforce Stay are strong indications that the BIA has never had any
9 intention of honoring the automatic stay which went into effect upon filing of the Appeal.
10 Therefore, the Board should impose a specific order requiring BIA to honor the stay and quash
11 any and all BIA actions taken after the imposition of the Stay including the December 14, 2007
12 letter declining the Tribe's Annual Funding Request.

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14 **II. THE TRIBE'S RECOGNIZED REPRESENTATIVE MAY ADVOCATE
FOR THE TRIBE'S LEGAL RIGHTS**

15 As outlined in detail in the Appellant's Brief in Support of the Appeal and documented
16 throughout the Administrative Record provided by the BIA, the BIA has again and again since
17 2001 accepted Silvia Burley's authority to act on behalf of the California Valley Miwok Tribe in
18 her capacity as tribal leader. This has included the authority to enter 638 contracts with the
19 federal Government on behalf of the Tribe. (See Appellant's Brief in Support of Appeal pages 6
20 thru 12 and AR 8c thru 8i; 14c, 14d, 14e, 14t, 23, 52, 54, 55, 57 and 65.) Chairperson's Burley
21 authority to bring legal action on behalf of the Tribe has successfully challenged in three United
22 States Federal District Court and two United States Court of Appeals actions. The issue of
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1 whether Ms. Burley is the lawful leader of the Tribe, was addressed in *Yakima Dixie v.*
2 *California Valley Miwok Tribe*, Case No CVMT AH-2004-001. (AR 14h).¹

3 The BIA has entered into a Mature Status 638 contract with the Tribe, signed by Silvia
4 Burley as Chairperson and renewed through 2007 by Successor Annual Funding Agreements.
5 The Secretary recognizes "that contracting under the Act is an exercise by Indian tribes of the
6 government-to-government relationship between the United States and the Indian Tribes." 25
7 CFR § 900.3(4) Indeed, Appellee concedes this fact in their Response to Interested Party's
8 Motion to Dismiss in *Everone v. Pacific Regional Director*, IBIA Docket no. IBIA 06-70-A², by
9 stating that:

10 "individuals . . . cannot have a legal interest in an ISDA contract. ISDA contracts are
11 between the United States government and tribal governments. It is a government-
12 to-government relationship. Because Appellants do not constitute the tribal
13 government they do not have a legally protected interest in the ISDA contract."

14 (Response at 3)

15 By entering the 638 Contract under the signature of Chairperson Burley, the BIA recognizes
16 her authority with regard to the Tribe. If the BIA accepts the signature of the Tribe's
17 Chairperson, Silvia Burley, to enter into, modify and administer the 638 contract, the BIA is
18 precluded from asserting as a defense in this action that Silvia Burley may not file an appeal on
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22 ¹ BIA casually dispensed with the Tribe's efforts by the simple expedient of saying they "do not recognize" the
23 results of the Tribal Court proceeding, contrary to the holding of this Board that the BIA must defer to the Tribe's
24 decisions regarding its internal tribal matters.¹ See *Wadena v. Acting Minneapolis Area Director*, 30 IBIA 130
(1996) citing *Bucktooth v. Acting Eastern Area Director*, 29 IBIA 144, 149 (1996) ("It is a well established principle
of Federal law that intra-tribal disputes should be resolved in tribal forums. This rule applies with particular force to
intra-tribal disputes concerning the proper composition of a tribe's governing body").

25 ² *Everone, supra*, involves an appeal by several individuals of the Regional Director's reversal of Superintendent
Burdick's last attempt to revoke the FY 2007 Successor Annual Funding Agreement of the California Valley Miwok
Tribe. That appeal is still pending before the Board.)

1 behalf of the Tribe to protect the Tribe's interests under that contract. BIA's assertions to the
2 contrary are not without merit.

3 III. BIA IS IN FLAGRANT VIOLATION OF THE AUTOMATIC STAY

4 In the Appellant's Brief in Support of Appeal, the issue of the BIA Central California
5 Agency Office Superintendent's actions in this case and the impact of those actions on the Tribe
6 were clearly raised. Appellant's statement on page 14 that, "the Superintendent is continuing
7 with his course of action, scheduling meetings to 'organize' the Tribe and engaging the
8 processing of approximately 485 applicants despite the Tribe's appeal of this matter to the
9 Board" clearly showed that the Appellee is violating the stay. This position is further supported
10 by Exhibit 1 to Appellant's Motion to Enforce Stay. Add to this the December 14, 2007 letter
11 illegally denying the Tribe's Annual Funding Agreement on the 638 Contract which is a subject
12 of this litigation. All these actions demonstrate that the BIA is violating the automatic stay
13 imposed by its own regulations and the holdings of this Board. The Board has held that "[a]n
14 Area Director's decision appealed to the Board is stayed during the pendency of the appeal,
15 unless placed into immediate effect by the Board. When the Board declines to place an Area
16 Director's decision into immediate effect, that decision is not in effect for any purpose." *Wadena*
17 *v. Acting Minneapolis Area Director*, 30 IBIA 130 at 139 (1996) Here the Board has not placed
18 the Regional Director's decision into immediate effect and hence it is not in effect for any
19 purpose, including authorizing the Superintendent to continue processing applications and
20 drafting letters and making determinations regarding who is or is not a member of the Tribe.
21 Moreover, because the Tribe is challenging the reassumption of the Tribe's enrollment functions
22 under its 638 contract as part of its appeal, the stay also prevents the BIA from taking any
23 additional steps that impact the Tribe's 638 Contract.

24 Appellant's Motion requests that the Board specifically inform the Regional Director and
25 the Superintendent that neither may take any further actions to reorganize or otherwise affect the

1 functioning of the government of the California Valley Miwok Tribe. The Tribe's appeal
2 specifically includes the issue of whether the BIA may constructively reassume the Tribe's
3 enrollment functions which are spelled out in the Tribe's 638 contract. (Appellant's Brief in
4 Support of Appeal at 9 thru 11) While BIA has given lip service to the Board's automatic stay, it
5 has in reality been working feverishly to "review" 503 applications, to "determine[...] which
6 applicants qualify as lineal descendents and which do not," and "draft[ing] letters to send to all
7 applicants." (Burdick Statement, Exhibit A to Appellee's Opposition to Motion to Enforce Stay,
8 at paragraphs 7-19) This frenetic activity hardly comports with the intended effect of the stay—
9 that the Regional Director's decision is not in effect for any purpose. Appellants argued this
10 issue in detailed in its Brief in Support of Appeal at 12 thru 14, knowing that the BIA was
11 moving in this direction.

12 Additionally, attached to Appellee's Supplement to its filing is a December 14, 2007
13 letter from Superintendent Burdick to the Tribe, purporting to rescind the 638 contract.
14 Burdick's letter flies in the face of the statement by the attorney for the BIA that "BIA is not
15 violating the stay." (Appellee's Opposition at 3) Rather than abide by the stay while the Board
16 decides whether BIA may constructively reassume the enrollment portion of the 638 contract, the
17 Burdick's letter asserts that it is unilaterally ending the contract. Not only does this violate the
18 stay, it clearly violates the 638 regulations which flatly prohibit the BIA from declining a
19 Successor Annual Funding Agreement.³ To date, the BIA has no made one findings as required
20 under 25 C.F.R. Part 900.22.

21 _____
22 ³Under 25 U.S.C. Section 900.22: The Secretary may only decline to approve a proposal for one of five specific
23 reasons:

24 (a) The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will
25 not be satisfactory;

(b) Adequate protection of trust resources is not assured;

1 As with the violation of the Stay, the BIA seems to believe that it can do what it wants,
2 when it wants no matter what the consequences are to the Tribe or no matter what the
3 regulations, laws or judicial precedents state. Without enforcement of the Automatic Stay, the
4 Tribe will be financially and politically decimated unless the BIA is prohibited from these
5 unilateral and unlawful actions. Even if BIA could rescind a Successor Annual Funding
6 Agreement, which it cannot under 25 C.F.R. Part 900, that action would violate the automatic
7 stay which went into affect in this case. In this case, BIA has provided no evidence or argument
8 to meet its burden of proof that its actions comport with the requirements of the contract or the
9 regulations. Because Appellee's actions violate the stay, the Board should quash those actions as
10 part of enforcing the automatic stay.

11 IV. THE MOTION IS TIMELY⁴

12 In answer to Appellee's allegations that the Tribe's Motion to enforce the automatic stay is
13 untimely, there is no time limit on seeking the Board's action in enforcing an existing stay.
14 Appellee asserts that the Tribe should have made this motion when it filed its appeal. In
15 Appellant's Brief in Support of Appeal, Appellants clearly note that the BIA's action with regard
16 to the notices sent out after the filing of the Appeal and the June 19, 2007 letter to Yakima Dixie
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18 (c) The proposed project or function to be contracted for cannot be properly completed or maintained by the
19 proposed contract;

20 (d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as
determined under section 106(a) of the Act; or

21 (e) The program, function, service, or activity (or a portion thereof) that is the subject of the proposal is beyond the
22 scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal
includes activities that cannot lawfully be carried out by the contractor.

23 ⁴ The Tribe received Appellee's Opposition to Appellant's Motion to Enforce Stay on December 17, 2007. Because
24 the 15th day after receipt falls on the 1st of January, a federal holiday, Appellant's Reply is due by January 2nd, 2008.
25 43 CFR § 4.310(c) (2). Appellant notes that Appellee's Supplement to its Opposition to Appellant's Motion to
Enforce Stay was not filed on or before December 17, 2007, as Ordered by the Board, nor did Appellee's timely
request an extension of time in which to file as required by 43 C.F.R. § 4.310(d)(2).

1 outlining BIA activities with regard to the identification of potential tribal members and steps to
2 be taken with regard to those potential members. Specifically, the Appellants on page 14 of its
3 Brief in Support of Appeal requested that "[a] delay in BIA's continued implementation of this
4 matter should be specifically ordered by the Board while this appeal is pending." The Appellants
5 also noted with rather clairvoyantly that, [t]he Regional Director's remand of this matter to the
6 Superintendent has encouraged the Superintendent to steamroll over the Tribe's protest and
7 permitted the BIA to ignore the Board's holdings that BIA has no jurisdiction while a matter is
8 on appeal."

9 Because of this request by Appellant along with the fact that an automatic stay is affected
10 when an appeal is filed, *See Wadena, supra*, and Appellant expected the United States to honor
11 that stay. Only with the passage of time and Appellee's continued flouting of the stay was the
12 Appellant required to seek enforcement of the stay to protect the status quo. Besides the
13 evidence provided in Appellant's Motion, the most recent example of Appellee's flouting the
14 stay is the December 14, 2007 letter purporting to rescind the very contract that is the subject of
15 the appeal.

16 The Board should note that because this case is an appeal by the Tribe of the BIA's
17 constructive reassumption of enrollment portions of the Tribe's 638 contract, the BIA has the
18 burden of proof to show that the reassumption is justified and that the BIA complied with the
19 regulations at 25 CFR § 900.150(e). The regulations must be "construed liberally for the benefit
20 of Indian tribes and tribal organizations to effectuate the strong Federal policy of self-
21 determination and, further, that any ambiguities herein be construed in favor of the Indian tribe
22 or tribal organization so as to facilitate and enable the transfer of services, programs, functions,
23 and activities, or portions thereof, authorized by the Act." 25 CFR § 900.3(a) (11) The
24 regulations provide that the contract will not be rescinded by the Secretary before the issuance of
25 a final decision in any administrative hearing or appeal. See 26 CFR § 900.251. However,


1 contrary to the regulations, and in direct violation of the automatic stay, Appellee continues to
2 act to implement the Regional Director's decision.

3 V. CONCLUSION

4 Based on its actions, it is clear that the Appellee will not voluntarily comply with the
5 stay. For the forgoing reasons, Appellant requests that the Board issue an Order:

- 6 1. Enforcing the automatic stay of the April 2, 2007 decision of the Pacific
7 Regional Director of the BIA;
- 8 2. Prohibit the Secretary and the BIA from further implementing actions to
9 "reorganize", identify or contact individuals who seek to become members
10 of the California Valley Miwok Tribe;
- 11 3. Quash the December 14, 2007 Burdick letter that purports to rescind the
12 Tribe's contract and/or Annual Funding Request;
- 13 4. Require the BIA to further supplement the administrative record by
14 providing any and all documents relating to enrollment and other activities
15 involving the California Valley Miwok Tribe; and
- 16 5. Issue a Show Cause Order as to why the BIA should not be sanctioned for
17 violating the terms of the automatic stay.

18 Respectfully submitted this 2nd day of January, 2008

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