



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)	Order Denying Appellant's
TRIBE,)	Request to Reopen Briefing,
Appellant,)	Conduct Discovery, and
)	File Supplemental Brief
v.)	
)	Docket No. IBIA 07-100-A
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	September 30, 2009

The California Valley Miwok Tribe (Tribe or Appellant), through Silvia Burley, has appealed to the Board of Indian Appeals (Board) from an April 2, 2007, decision of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director rejected Burley's appeal from a November 6, 2006, decision of the Central California Agency Superintendent, BIA, to assist the Tribe in organizing a tribal government by sponsoring a general council meeting of the Tribe, to which members and "potential" or "putative" members would be invited.

Briefing on the appeal is completed and it was recently taken under consideration by the Board. On September 28, 2009, the Board received from Appellant a Request to Reopen the Briefing Period and Receive an Extension of Time to Conduct Discovery and File a Supplemental Brief. As support for its request, Appellant relies on having "recently unearthed" an April 25, 2004, Declaration of Brian Golding, Sr., a BIA employee, which was filed on April 30, 2004, in *California Valley Miwok Tribe v. United States*, Civ. No. S-02-0912 FCD/GGH (E.D. Cal.). Appellant represents that it was "unable" to submit its request earlier because it was without the assistance of legal counsel for the past approximately 18 months.

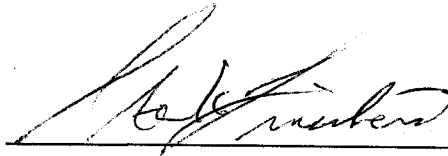
The Board denies Appellant's request, which provides no valid basis for reopening briefing or for considering the request to conduct discovery.¹ Appellant — the Tribe — had actual notice of the Golding's declaration over five years ago, as evidenced by the fact that

¹ The Board is an appellate review body, which decides appeals based on the administrative record. Thus, with rare exceptions, the Board does not allow parties to conduct discovery, even when a request is timely made (which is not the case here).

the declaration was filed in litigation in which the Tribe itself was the plaintiff. Indeed, the Tribe had the declaration even before either the Superintendent or the Regional Director issued their respective decisions underlying this appeal. Moreover, contrary to Appellant's assertion, it *was* represented by counsel when it filed the present appeal, *was* represented by counsel during the briefing period, and thus cannot contend that it was "unable" to submit the request earlier. Appellant was afforded a full opportunity to present all arguments that it wished to present during the briefing period, based on the administrative record² that was before the Regional Director when he made the decision that is the subject of this appeal.

Appellant recently retained new counsel, who has entered an appearance in this appeal, but the retention of new counsel is not justification for seeking to reopen briefing or to interject new arguments or evidence. As noted at the outset, briefing on this appeal is completed.

Therefore, Appellant's request to reopen, to conduct discovery, and to file a supplemental brief is denied.



Steven K. Linscheid
Chief Administrative Judge

Distribution: See attached list.

² Appellant also had an opportunity to object to the administrative record within 15 days of its receipt of the Board's June 13, 2007, notice of docketing. *See* 43 C.F.R. § 4.336.

Distribution: IBIA 07-100-A

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