



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 Taking Statement from
TRIBE,)	Appellant's Counsel of Record Under
Appellant,)	Advisement and Order Concerning
)	Appellant's Substitution of Counsel
v.)	
)	
PACIFIC REGIONAL DIRECTOR,)	Docket No. IBIA 07-100-A
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	October 29, 2009

The California Valley Miwok Tribe (Tribe or Appellant) 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).¹ The Regional Director rejected an appeal by Silvia Burley 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.

Order Concerning Statement of Counsel and Responses

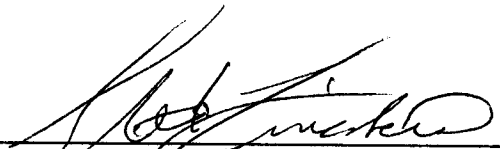
On October 15, 2009, the Board issued an Order for Statement from Appellant's Counsel of Record regarding a "Request for Judicial Notice" filed with the Board and signed by Silvia Burley, which the Board received on October 13, 2009. On October 29, 2009, the Board received from Appellant's counsel a response to the Board's order. The Board takes counsel's statement under advisement. If the Board deems it appropriate to allow responses to counsel's statement, it will issue an order accordingly, but pending further order by the Board, no responses to counsel's statement shall be allowed.

¹ Whether the individual tribal member(s) who support this appeal, and associated counsel, were in fact authorized by the Tribe to bring this appeal, is the subject of dispute, and as noted in previous orders of the Board, neither the caption for this case nor the Board's description of the appeal in this order shall be construed as a determination on the merits by the Board regarding the authority of either counsel or Silvia Burley to pursue this appeal on behalf of the Tribe.

Order Concerning Appellant's Substitution of Counsel

In the Board's October 15 order, the Board noted that on September 28, 2009, the Board received a notice of change in counsel and entry of appearance by Robert A. Rosette, Esq., Kevin Cochrane, Esq., and Saba Bazzazich, Esq., of Rosette & Associates, PC, on behalf of Appellant. Consequently, the Board's distribution list was revised and all orders issued after September 28, 2009, have reflected Appellant's new counsel of record.

In counsel's response to the Board's October 15 order, counsel expresses concern that the Board "has yet to formally acknowledge" his firm as counsel of record, and requests that the Board "remove Mr. Thompson" from this action. The latter request is moot because as already noted, Mr. Thompson was removed from the Board's distribution list upon receipt of new counsel's notice of change in counsel. To the extent new counsel may be concerned that a formal order by the Board is required before he may sign pleadings, that is not the case. In practice before the Board, it is sufficient for a party to file a notice of substitution of counsel, after which the Board serves orders on the new counsel and the parties are expected to do likewise. Unless it appeared that different counsel disagreed about which one represented the same party, the Board generally would not find it necessary to issue orders to address or effectuate a party's substitution of counsel. The Board does note, however, that its introductory description of the appeal in orders issued after September 28 continued to reference the action as having been brought by the Tribe "through" Burley, and to the extent this language may have caused confusion, the Board has revised the introduction to this order accordingly.



Steven K. Linscheid
Chief Administrative Judge

Distribution: See attached list.

Distribution: IBIA 07-100-A

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