

Exhibit 10

Supplemental Pleadings of BIA in IBIA case  
#07-100-A

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



## INTERIOR BOARD OF INDIAN APPEALS

California Valley Miwok Tribe

Appellant,

vs.

Pacific Regional Director,

Appellee.

Docket No.: IBIA 07-100-A

## 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 decendency 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.

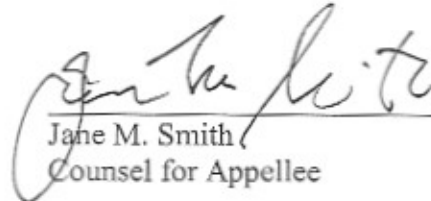
Thompson and Chad Everone a copy of the Appellee's Opposition to Appellant's Motion

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

INTERIOR BOARD OF INDIAN APPEALS

California Valley Miwok Tribe

Appellant,

vs.

Pacific Regional Director,

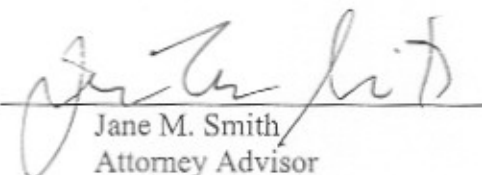
Appellee.

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

Appellee Regional Director hereby submits the attached letter in support of its Opposition to Appellants Motion to Enforce Stay. This letter makes clear that Silvia Burley cannot act in the name of the California Valley Miwok Tribe because the Bureau of Indian Affairs does not recognize that the Tribe has a governing body and no longer contracts with Silvia Burley as a person of authority on behalf of the Tribe. Because Ms. Burley lacks authority to act on the Tribe's behalf, the Board should deny her motion to enforce stay.

Submitted December 19, 2007

  
Jane M. Smith  
Attorney Advisor

**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 2007 I caused to be served on Phillip E. Thompson and Chad Everone a copy of the Appellee's Supplement to Its 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 19, 2007

  
Jane M. Smith  
Counsel for Appellee



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Central California Agency  
650 Capitol Mall, Suite 8-500  
Sacramento, CA 95814-4710

IN REPLY REFER TO

DEC 14 2007

**CERTIFIED MAIL NO. 7001 2510 0009 4494 1906**  
**RETURN RECEIPT REQUESTED**

Silvia Burley  
10601 Escondido Place  
Stockton, California 95212

Dear Ms. Burley:

In accordance with 25 CFR Part 900.6, Subpart B, Definitions, we are returning your application to contract FY 2008 funding from the Bureau of Indian Affairs, under P.L. 93-638, as amended as it does not meet the definition stated below:

"Tribal Organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which included the maximum participation of Indians in all phases of its activities; provided, that, in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract of grant."

Under this Part, consideration to contract federal funds to operate Bureau of Indian authorized programs will only be given to an application submitted by federally recognized tribe with a recognized governing body. The Department of the Interior does not recognize that the California Valley Miwok Tribe has a governing body. The District Court for the District of Columbia has upheld that determination, California Valley Miwok Tribe v. United States, 424 F Supp. 2d 197 (D.C.D.C. 2006). That decision is now on appeal.

Because we do not recognize any current governing body for the California Valley Miwok Tribe, we are unable to accept the proposal for the above stated reason. We are hereby returning the proposal.



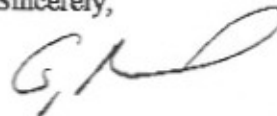
Should you wish to appeal any portion of this letter, you are advised that you may do so by complying with the following:

This decision may be appealed to the Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, W-2820, Sacramento, California 95825. In accordance with the regulations in 25 CFR Part 2 (copy enclosed), your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone number. It should clearly identify the decision to be appealed. If possible attach a copy of the decision. The notice of appeal and the envelope which it is mailed, should be clearly labeled "NOTICE OF APPEAL." The notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice.

You must also send a copy of your notice to the Regional Director, at the address given above.

If no timely appeal is filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,



Troy Burdick  
Superintendent

Enclosure