



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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CALIFORNIA VALLEY MIWOK)	Order Soliciting Response from
TRIBE,)	Regional Director to Appellant's
)	Motion to Vacate
Appellant,)	
)	
v.)	
)	Docket No. IBIA 19-088
CENTRAL CALIFORNIA AGENCY)	
SUPERINTENDENT, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	October 2, 2020

The California Valley Miwok Tribe of California (Tribe or Appellant)¹ has appealed to the Board from a July 23, 2019, decision (Decision) of the Central California Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), to return without action an Indian Self-Determination Act (ISDA) contract proposal submitted by Silvia Burley as the Tribal Representative, for Fiscal Year (FY) 2019, FY 2020, and FY 2021. The Superintendent stated that the Department of the Interior (Department) has not recognized a governing body for the Tribe since issuance of a December 30, 2015, decision by the Assistant Secretary – Indian Affairs (Assistant Secretary), and therefore Appellant's contract proposal failed to meet the threshold requirements for contracting by a recognized tribal government in accordance with 25 U.S.C. § 5321 and its implementing regulations at 25 C.F.R. Part 900. Appellant alleges that the Decision is arbitrary, capricious, and contrary to law. Merits briefing in this matter has been completed.

¹ The appeal was filed in the name of the Tribe, and the Board has captioned the case accordingly. Silvia Burley is identified as the "Tribal Representative" authorized by the Tribe to conduct the Tribe's government-to-government relationship with the United States, including for ISDA contracting purposes. *See* Notice of Appeal (NOA), Aug. 16, 2019, at 2; NOA, Exhibit A, Tribal Resolution Approving the Request for a Multi-Activity, Three Year Contract for FY2019, FY2020, 2021, at 1-2 (recognizing Silvia Burley as Tribal Representative for BIA-authorized programs available to be contracted by the Tribe). The Board's caption of this case and its reference to the "Tribe" as the appellant shall not be construed as a determination on the merits regarding the authority of Burley to serve as the Tribal Representative or that of the individuals said to be serving as the Tribe's General Council to bring an appeal in the name of the Tribe.

Order Soliciting Response from Regional Director to Appellant's Motion to Vacate

On September 29, 2020, the Board received from Appellant an emergency motion to vacate a “recent BIA Decision and Notice” that Appellant alleges concerns the subject matter of the instant appeal.² Appellant identifies a public notice received by Appellant’s counsel on September 23, 2020, as the “Decision and Notice” it urges the Board to vacate, and attaches a copy of the notice to its motion. Motion to Vacate at 1 & Exhibit A, Public Notice, California Valley Miwok Tribe, aka Sheep Ranch Rancheria Organization, undated (Public Notice). The Public Notice states that BIA’s Central California Agency “plans to assist the [Tribe], aka Sheep Ranch Rancheria [] with organization of a formal government structure by individuals who are eligible to participate in such a process.” Public Notice. According to the Public Notice, an “initial meeting,” to be held virtually on October 8, 2020, due to the ongoing COVID-19 pandemic, “will provide information concerning the organization process and procedures that will be used to determine eligibility to participate in organization of the Tribe” *Id.* Appellant contends that the “Decision and Notice” and the instant appeal from the Superintendent’s July 23, 2019, ISDA decision share the same subject matter, and argues that under Board precedent, the instant appeal divests BIA of jurisdiction to undertake any deliberation or actions concerning that subject matter while the appeal is pending. *Id.* at 2-5 (citing, *inter alia*, *Alturas Indian Rancheria v. Pacific Regional Director*, 53 IBIA 100, 101-02 (2011)). In the alternative, should the Board find that BIA has jurisdiction to undertake the challenged actions identified in the Public Notice, Appellant appeals the “Decision and Notice” to the Board pursuant to 25 C.F.R. § 2.4(e) and 43 C.F.R. Part 4, and concurrently to the Regional Director pursuant to 25 C.F.R. § 2.4(a). *See id.* at 6; *see also id.* Attachment: Notice of Appeal to Regional Director.

Appellant’s filing raises a number of issues, including (1) whether BIA lacks jurisdiction to undertake the deliberation and action associated with the October 8, 2020, meeting identified in the Public Notice due to the instant appeal; (2) if BIA has jurisdiction, whether the purported Decision and Notice is a final agency action subject to administrative review; and (3) if BIA has jurisdiction and the purported Decision and Notice is appealable, which reviewing authority, the Regional Director or Board, would provide the appropriate forum. The Board notes that, under the third scenario, the effectiveness of the “Decision

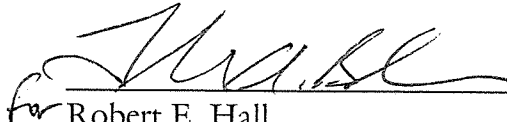
² Appellant’s Motion for Leave and Motion to Vacate Appellees’ September 2020 Decision and Notice for Lack of Jurisdiction over the Subject Matter; And Alternatively, Notice of Appeal of the Appellees’ September 2020 Decision and Notice, Sept. 29, 2020, at 1 (Motion to Vacate). The reference to “Appellees” appears to be based on Appellant’s uncertainty whether the “Decision and Notice” was issued by the Superintendent or BIA’s Pacific Regional Director (Regional Director).

and Notice” would be automatically stayed due to Appellant’s concurrent appeals to the Regional Director and the Board. *See* 25 C.F.R. § 2.6(a); 43 C.F.R. § 4.314(a).

The Board has preliminary determined that BIA lacks jurisdiction to undertake the challenged actions identified in the Public Notice, due to the subject matter and pendency of the instant appeal of the Superintendent’s July 23, 2019, ISDA decision. Accordingly, the challenged actions are stayed until the Board resolves Appellant’s motion. Before resolving Appellant’s motion, the Board will provide an opportunity to the Regional Director to respond to the motion.

On or before October 9, 2020, the Regional Director is requested to file a response to Appellant’s Motion to Vacate. Appellant may file a reply within 5 days of receipt of the Regional Director’s response.

The parties are advised that—independent of the issues raised by Appellant’s motion and the Public Notice—the Board is inclined to expedite its consideration of the instant appeal of the Superintendent’s July 23, 2019, ISDA decision. The parties may address whether the Board should expedite its consideration of the instant appeal in their briefing concerning Appellant’s Motion to Vacate.


for Robert E. Hall
Administrative Judge

Distribution: See attached list.

Distribution: IBIA 19-088

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