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 TRIBE, Appellant,	)	Order Denying Request for Dismissal, Notice of Docketing, and Order Setting Briefing Schedule
v.	)	Docket No. IBIA 07-100-A
PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	June 13, 2007

On April 20, 2007, the Board of Indian Appeals (Board) received a notice of appeal from the California Valley Miwok Tribe (Tribe or Appellant), through Phillip E. Thompson, Esq. The appeal seeks review of an April 2, 2007, decision of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director rejected Sylvia Burley's appeal from a November 6, 2006, decision of the Central California Agency Superintendent (Superintendent), BIA, to assist the Tribe in its efforts to organize, and remanded the matter back to the Superintendent to allow him to continue with his plans to assist the Tribe with its organizational efforts. The Board issued a Pre-Docketing Notice and Order Concerning Service on May 1, 2007.

In this order, the Board (1) declines to dismiss this appeal based on Appellant's failure to comply with the Board's May 1 order, and (2) gives notice of docketing of this appeal and schedules briefing, with special briefing instructions.

Compliance with the Board's May 1, 2007, Order

In its May 1 order, the Board ordered Appellant, on or before May 18, 2007, to serve its notice of appeal on Chadd Everone, Velma WhiteBear, and Yakima Dixie "and by that date [to] file a statement with the Board that it has done so." Order at 2 (emphasis in original).

The Board has never received a statement from Appellant certifying that it complied with the service requirements of the Board's May 1 order, and therefore the Board finds that Appellant failed to comply with that portion of the Board's order. On June 4, 2007, the Board received from Chadd Everone a request that the appeal be dismissed on the grounds that Appellant's service to Everone, WhiteBear, and Dixie had been incomplete — and

therefore failed to comply with the Board's order — because it failed to include a copy of the attachment referenced in the notice of appeal. Included with Everone's request were copies of the notice of appeal served on Everone, WhiteBear, and Dixie, and declarations from those individuals that they did not receive the attachment.

Appellant's failure to comply with the Board's order is troubling, given the clear instructions from the Board. However, the evidence submitted by Everone indicates that Appellant did comply, except for the attachment, with the portion of the Board's May 1 requiring service the notice of appeal on Everone, WhiteBear, and Dixie. Although Appellant should have included the attachment, the referenced attachment was to a copy of the Regional Director's April 2, 2007, letter. The Regional Director had provided Everone, WhiteBear, and Dixie with a copy of that letter when it was issued, and therefore they were not prejudiced by Appellant's failure to send them another copy. Appellant also failed to comply with the portion of the Board's order requiring that certification of completion of service be filed with the Board, thus risking summary dismissal of this appeal. However, because it is now clear that Appellant did serve the notice of appeal on Everone, WhiteBear, and Dixie, the Board finds that Appellant's failure to comply with this portion of the Board's order does not warrant dismissal of this appeal.[1]

Notice of Docketing and Order Setting Briefing Schedule with Special Briefing Instructions

The Board received the administrative record in this case on May 30, 2007, including a including a table of contents for the record. A copy of the table of contents is enclosed for the benefit of the parties. The administrative record in this case is available for inspection at the Board's office and also in the office of the Regional Director. The Board is not able to handle large-volume copying requests. Therefore, if a party desires to obtain copies of documents in the administrative record, and the volume of the documents sought exceeds 100 pages, the Board requests that the party make arrangements with the Regional Director to obtain the desired copies.

Pursuant to 43 C.F.R. § 4.336, on May 10, 2007, the appeal was assigned the above case name and docket number, which should be cited in all future correspondence or inquiries regarding the matter.

Regulations governing appeals to the Board are found in 43 C.F.R. Part 4. A copy of these regulations was mailed to non-Federal parties with the Board's May 1, 2007, pre-docketing notice.

---

[1] In effect, Everone's filing saved Appellant's appeal from summary dismissal.

CVMT-2011-001515

Copies of all pleadings filed with the Board must be served on all interested parties. 43 C.F.R. §§ 4.310(b), 4.333(a). If U.S. mail is used for service and filing, it does not need to be by certified mail; parties may use regular first-class mail, unless they wish to obtain a receipt for their own records. If counsel is appearing for an interested party, counsel should enter an appearance, after which service should be made on counsel. A certificate or affidavit evidencing service shall be filed concurrently with the document furnished to the Board.

The parties are advised that the Board will not accept any filing by facsimile transmission (fax) unless the Board has first granted permission for the filing of that particular document by fax. The Board may grant permission to file by fax in extraordinary circumstances. Because documents filed with the Board are filed as of the date of mailing, extraordinary circumstances do not include the fact that a filing is due that day. Any document filed by fax without permission will not be accepted.

Briefing Schedule

In accordance with 43 C.F.R. § 4.311(e), Appellant's opening brief is due on or before July 27, 2007. Appellant is advised that it bears the burden of demonstrating jurisdiction for this appeal and for proving error in the decision being appealed.

Opposing parties or their counsel may file an answer(s) within 30 days from receipt of Appellant's opening brief or statement. Appellant shall have 15 days from receipt of any answer brief(s) in which to file a reply brief.

Special Briefing Instructions

This appeal apparently involves a dispute within the Tribe, and raises several jurisdictional issues that will likely need to be addressed.

First, the appeal was filed in the name of the California Valley Miwok Tribe as the appellant, through counsel. Silvia Burley, to whom the Regional Director's decision letter was addressed, did not appeal either individually or in an official capacity as an officer of the Tribe, but either she or someone else apparently instructed counsel to file this appeal in the name of the Tribe itself. While Burley may well have had standing to file an appeal in an official capacity based on a claim of the status as an officer or representative, it is unclear what legal or factual basis exists for this appeal to be brought in the name of the Tribe itself.

Therefore, the Board orders that during briefing, the parties address whether there is a factual or legal basis for the Board to consider this appeal in the name of the Tribe as Appellant.

Second, it is not clear whether or how the Regional Director's decision caused injury to the Tribe, thus raising a question of standing. Although the Board, as an Executive Branch forum, is not limited by the same constitutional and prudential constraints that apply to the exercise of judicial authority, the Board has a well-established practice of adhering to those jurisdictional constraints as a matter of prudence in the interest of administrative economy. *See Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005). These constraints include the requirement that an appellant demonstrate that it has standing. *Arizona State Land Dep't v. Western Regional Director*, 43 IBIA 158, 163 (2006). The Board follows the three elements of standing described in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992): an appellant must show that (1) it has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally-protected interest; (2) the injury is fairly traceable to the challenged action; and (3) the injury will likely be redressed by a favorable decision.

The Regional Director remanded the matter to the Superintendent to "allow the Agency to continue with its plans to assist the Tribe with its organizational efforts." Decision at 1. It is not clear, however, whether or how this decision caused the Tribe "actual or imminent, concrete and particularized injury to or invasion of a legally-protected interest." *See Lujan*, 504 U.S. at 560-61.

Therefore, the Board orders that during briefing, the parties address whether the Tribe has standing to bring this appeal.

Third, given the procedural character of the Regional Director's decision, it is not clear whether this appeal is ripe for Board review. *Cf. U&I Redevelopment LLC v. Acting Northwest Regional Director,* 44 IBIA 240 (2007) (dismissing appeal for lack of ripeness); *Wind River Resources Corp. v. Western Regional Director*, 43 IBIA 1, 3 (2006) (describing the considerations for determining ripeness). Thus, even if the Tribe can demonstrate standing, it may be appropriate for the Board to consider whether the appeal is ripe.

Therefore, the Board orders that during briefing, the parties address whether this matter is ripe for Board review.

Briefing for the above issues will not be bifurcated from briefing on the merits, and therefore the above issues shall be addressed in the parties' briefs in addition to any arguments they may wish to make on the merits of the appeal.

The Board's Internet website, containing a searchable database of its decisions, is currently off-line, due to a court order. However, its decisions can be searched on the free, private website www.ibiadecisions.com and on the for-fee websites of WestLaw and Lexis-Nexis. Although there is some delay in providing Board decisions to the operators of these sites, they are relatively current.

Alternative Dispute Resolution

The Board understands that this appeal may involve disputed issues that are not subject to easy resolution. However, in keeping with long-standing policy, the Board strongly encourages the real parties in interest to consider whether voluntary resolution of this dispute may be possible. Such efforts toward resolution might take the form of traditional settlement discussions, or might involve the use of some form of alternative dispute resolution (ADR), such as mediation.

If the parties wish to discuss the possibility of settling this dispute or engaging in ADR, they should so inform the Board. Upon receiving such notification, the Board may stay further proceedings before it while the parties are exploring other possibilities.

If the parties would like to use mediation or another form of ADR, but have questions about the process, would like assistance in locating a neutral, or have other concerns, they may contact either the Board, which will refer them to the Department's Office of Collaborative Action and Dispute Resolution (CADR), or they may contact CADR directly. CADR does not normally provide neutrals, but can answer questions about ADR processes and assist parties in locating a mutually acceptable neutral.

The parties are also advised that the Board reviews all appeals, usually on several occasions, to determine whether it believes that the parties might benefit from the use of ADR. If it believes that the parties might benefit from the use of ADR, the Board may order them to participate in an assessment conference to determine whether ADR is likely to be successful. The Board will not, however, order the parties to mediation or any other form of ADR over their objections.

Steven K. Linscheid
Chief Administrative Judge

Enclosure

Distribution: See attached list.