



## INTERIOR BOARD OF INDIAN APPEALS

California Valley Miwok Tribe v. Central California Agency Superintendent,  
Bureau of Indian Affairs

53 IBIA 51 (02/23/2011)

Related Board cases:

51 IBIA 103

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# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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CALIFORNIA VALLEY MIWOK	)	Order Vacating Decision and
TRIBE,	)	Remanding
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 09-13-A
CENTRAL CALIFORNIA AGENCY	)	
SUPERINTENDENT, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	February 23, 2011

The California Valley Miwok Tribe (Tribe), through Silvia Burley, appealed to the Board of Indian Appeals (Board) from an October 16, 2008, decision (Decision) of the Central California Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA).<sup>1</sup> The Superintendent returned, without approval, an Indian Self-Determination and Education Assistance Act (ISDA) contract proposal submitted by Burley on behalf of the Tribe for Fiscal Year 2009. The Superintendent refused to accept the proposal on the ground that “the Department of the Interior does not recognize that the [Tribe] has a governing body,” and the proposal was not submitted by a “tribal organization,” as defined in the ISDA regulations. Decision at 1 (citing 25 C.F.R. § 900.6). The Superintendent did not otherwise evaluate the contract proposal.

On December 22, 2010, the Assistant Secretary - Indian Affairs (Assistant Secretary), in response to the referral by the Board in *California Valley Miwok Tribe v. Pacific Regional Director*, 51 IBIA 103 (2010), rescinded a February 11, 2005, letter of former Principal Deputy and Acting Assistant Secretary - Indian Affairs Michael D. Olsen, which had stated that BIA does not recognize any government of the Tribe. See Letter from Assistant Secretary to Yakima Dixie, Dec. 22, 2010 (Assistant Secretary’s Decision), at 6 (rescinding Olsen letter); see also *California Valley Miwok Tribe*, 51 IBIA at 112-113 (discussing Olsen letter). The Assistant Secretary also rescinded a related letter, dated

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<sup>1</sup> Our caption of the appeal reflects the entity in whose name the appeal was filed. We express no opinion on Burley’s authority to bring the appeal in the name of the Tribe.

March 26, 2004, in which the Superintendent had advised Burley that BIA “does not yet view your tribe to be an ‘organized’ Indian Tribe.” Assistant Secretary’s Decision at 6.

As relevant to this appeal, the context in which the Superintendent issued his decision makes clear that he relied on the same position that was reflected in the Olsen letter and the March 26, 2004, letter.<sup>2</sup> Thus, in light of the Assistant Secretary’s December 22, 2010, decision to rescind those letters, the Board vacates the Superintendent’s decision and remands the matter to the Superintendent for further consideration and to determine in the first instance what, if any, effect the Assistant Secretary’s decision may have on whether the contract proposal for FY 2009 should be approved.<sup>3</sup>

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Superintendent’s October 16, 2008, decision and remands the case for further proceedings.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
// original signed  
Janet A. Goodwin  
Acting Administrative Judge

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<sup>2</sup> The Superintendent cited, as support for his decision, *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006). In that case, the Tribe challenged the Department’s position that the Tribe is “unorganized.” The court accepted, for purposes of its decision, that the Olsen Letter and the March 26, 2004, letter were final agency actions. *See id.* at 201 n.5. The court granted a motion by the Department to dismiss the litigation. *See id.* at 203 n.8; *see also California Valley Miwok Tribe*, 51 IBIA at 110-113 (discussing Tribe’s ISDA proposals; Olsen letter; March 26, 2004, letter; and the litigation).

<sup>3</sup> It is possible that the issue may be moot, but we leave it for the Superintendent to consider that on remand.