



INTERIOR BOARD OF INDIAN APPEALS

Harold J. Lewis v. Acting Pacific Regional Director, Bureau of Indian Affairs

34 IBIA 289 (03/24/2000)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

HAROLD J. LEWIS,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 00-49-A
ACTING PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 24, 2000

This is an appeal from a January 18, 2000, decision of the Acting Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), terminating Permit No. HRP-525, a land use permit held by Appellant for a .81-acre tract on the Yurok Reservation. Appellant's notice of appeal was received by the Board on March 16, 2000.

Appellant did not include a copy of the Regional Director's decision with his notice of appeal. The Board obtained a copy of the decision and a copy of Permit HRP-525 from the Regional Office.

In light of information provided by the Regional Office concerning Appellant's belated receipt of the decision, the Board accepts the appeal as timely filed. For the reasons discussed below, however, the Board finds that it must dismiss the appeal for lack of jurisdiction.

The Regional Director's decision states:

On October 18, 1999, we were notified that you unearthed artifacts and skeletal remains with a bulldozer on the Yurok Indian Reservation. This has resulted in considerable archaeological damage to the Ancient Yurok Village of Wah sek.

The Native American Graves Protection and Repatriation Act [, 25 U.S.C. §§ 3001-3013,] requires that any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands shall notify, in writing, the Secretary of the [Interior] \* \* \* and the appropriate Indian tribe. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. [See 25 U.S.C. § 3002(d)(1).]

Item Number 8 of your permit states that this permit is subject to cancellation without notice if it is determined by the Secretary that Permittee has not used the land for the purpose of a permanent homesite and related activities within 60 (sixty) days of approval of this permit, or may be terminated upon breach of any of the conditions or at the discretion of the Secretary. We have been requested by the Yurok Tribe to terminate your Homesite Land Use Permit. Therefore, the Permit Number HRP-525 is terminated. You are requested to remove all personal property and vacate the premises. As stated in your Permit, upon termination the Permittee will be allowed ninety (90) days within which to move or otherwise dispose of said buildings.

In his notice of appeal to the Board, Appellant states (1) that he was not aware that the ancient Yurok village was near his homesite; (2) that he believed a tribal official had authorized him in April 1999 to level off the area for a homesite; (3) that he was in the process of improving the homesite; and (4) that he and his brother will be homeless if his permit is cancelled. He summarizes his arguments thus:

I make improvements to my homesite lease as a condition of the lease; during the improvement process, evidence of human remains are unearthed, i.e., ancient village is discovered, I have no knowledge this is indeed an ancient village until I am issued a temporary restraining order to refrain from work, now ordered to vacate the premises with no alternative land to homestead. This is an unethical way of doing business, especially in Indian Country!

It is my hope that we can resolve this matter in a fashion that offers alternatives and assistance in a respectful way.

Permit No. HRP-525, titled "REVOCABLE LAND USE PERMIT, Hoopa Extension Reservation," was issued to Appellant by the Sacramento Area Director, BIA, on August 29, 1978. Several sections of the permit are of interest here.

Section 2, "AUTHORIZED USE," provides: "Permittee shall use the above described land solely for the purpose of a permanent homesite and related activities."

Section 4, "TERM," provides: "This permit shall take effect and begin on the date of approval by the Secretary and shall continue so long as beneficial use is made of the premises as specified herein, but in no event shall it extend beyond 25 years from the date of its approval." 1/

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1/ Thus, had it not been terminated by the Regional Director, the permit would have expired by its own terms on Aug. 28, 2003.

Section 5, "AMENDMENTS," provides:

In the event that a governing body should be organized and elected to represent the Hoopa Extension Indians (Yurok Indians of Upper Klamath River) under an approved constitution and bylaws, said governing body shall become Permitter under this permit in place of the Secretary and shall have the prerogative of confirming the terms and conditions of this permit, or by amendment thereto, adjusting it to long-range objectives of the Hoopa Extension group as a whole; however, any amendment of this permit will be subject to the approval of the Secretary.

Section 6, "PERMITTEE'S RIGHTS," provides:

It is understood and agreed that this instrument is not a lease and is not to be taken or construed as granting any leasehold interest. This permit does not grant Permittee any vested interest in the property but is merely a permit to occupy or utilize the land described herein.

Section 7, "BUILDINGS," provides:

Ownership of any buildings placed upon the land will vest in Permittee or Permittee's heirs, it being hereby understood and agreed, however, that Permitter is in no way obligated to assist in building a house or otherwise improving the property. Upon termination of this permit, Permittee or Permittee's heirs will be allowed ninety (90) days within which to remove or otherwise dispose of said buildings.

Section 8, "CANCELLATION," provides:

This permit is subject to cancellation without notice if it is determined by the Secretary that Permittee has not used the land for the purpose specified in this permit within 60 (sixty) days of approval of this permit, or if Permittee subsequently vacates the property for an uninterrupted period of one year.

Section 9, "TERMINATION," provides: "This permit may be terminated upon breach of any of the conditions herein or at the discretion of the Secretary."

These provisions make clear that Appellant has no vested right in the permit and that the Regional Director has broad discretionary authority to terminate the permit. The Regional Director exercised that discretionary authority in this case. In addition, she did so at the request of the Yurok Tribe. <sup>2/</sup>

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<sup>2/</sup> The Hoopa Extension Reservation is now the Yurok Reservation, and the unallotted land therein is now held in trust for the Yurok Tribe. 25 U.S.C. § 1300i-1(c).

The Board has only limited review authority over BIA discretionary decisions. The Board does not substitute its judgment for BIA's but, rather, reviews a discretionary decision to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion. E.g., Marvin v. Acting Sacramento Area Director, 32 IBIA 64 (1998); Blackhawk v. Billings Area Director, 24 IBIA 275 (1993). In this case, the only legal restraint on BIA's authority to terminate the permit was the requirement that Appellant be given 90 days to remove or dispose of buildings. The Regional Director's decision recognized Appellant's right in this regard. Thus, there is no legal issue which is subject to Board review here. Cf. Imperial County, California v. Acting Phoenix Area Director, 17 IBIA 271 (1989), affirming a BIA decision to revoke a permit made revocable by its terms when BIA's decision was in accordance with all requirements of the revocation clause.

Further, in accordance with section 5 of the permit, the Yurok Tribe is now the Permitter. The Regional Director's decision carried out the Tribe's determination that the permit should be revoked. The Board lacks jurisdiction to review decisions made by tribal officials. E.g., Hilliard v. Portland Area Director, 34 IBIA 272, 274 (2000); Hunt v. Aberdeen Area Director, 27 IBIA 173, 178 (1995), and cases cited therein.

Thus, there are two reasons why the Board lacks jurisdiction over this appeal. Not only was the Regional Director's January 18, 2000, decision based on the exercise of discretion given to her in the permit, it was a decision made to implement a revocation determination made by the Tribe.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but is dismissed for lack of jurisdiction.

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge