



## INTERIOR BOARD OF INDIAN APPEALS

Citizens for Safety & Environment v. Northwest Regional Director,  
Bureau of Indian Affairs

37 IBIA 282 (06/20/2002)

Related Board cases:

31 IBIA 183

Reconsideration denied, 31 IBIA 217

40 IBIA 87

Related court case:

*Citizens for Safety & Environment v. Bill Graham Enterprises, et al.*, No. C97-1775C  
(W.D. Wash. Mar. 20, 2003), appeal filed, *United States v. Bill Graham*,  
No. 03-35792 (9th Cir.)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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CITIZENS FOR SAFETY & ENVIRONMENT, : Order Dismissing Appeal Without  
Appellant : Prejudice  
: :  
v. : :  
: Docket No. IBIA 02-100-A  
NORTHWEST REGIONAL DIRECTOR, : :  
BUREAU OF INDIAN AFFAIRS, : :  
Appellee : June 20, 2002

Appellant Citizens for Safety & Environment sought review of a March 14, 2002, decision of the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning an Environmental Impact Statement (EIS) for the White River Amphitheatre on the Muckleshoot Indian Reservation. For the reasons discussed below, the Board of Indian Appeals dismisses this appeal without prejudice.

The Muckleshoot Tribe requested that BIA take certain land into trust status for it. The Tribe intends to construct and operate an amphitheatre on the property. BIA initially issued a Finding of No Significant Impact (FONSI) relating to this proposed trust acquisition and development. Appellant and others challenged the FONSI before the Board. City of Auburn, Washington v. Portland Area Director, 31 IBIA 183, recon. denied, 31 IBIA 217 (1997). Appellant also filed suit in Federal court. The present EIS was issued pursuant to an order of the court in United States ex rel. Citizens for Safety & Environment v. Bill Graham Enterprises, Inc., No. C97-1775C (W.D. Wash. Apr. 17, 1998). In addition to filing this administrative appeal concerning the EIS, Appellant has also challenged the adequacy of the EIS in its court case. Despite the issuance of the EIS, no decision has yet been made as to whether the underlying land should be acquired in trust status.

The Regional Director moved to dismiss this appeal as premature because no trust acquisition decision had been made. By order dated May 21, 2002, the Board gave Appellant an opportunity to respond to the Regional Director's motion. The Board stated:

In the recent past, the Board has received several appeals from actions taken under the National Environmental Policy Act (NEPA), such as the issuance of Findings of No Significant Impact. In each of these cases, BIA had not yet determined whether or not to acquire the land impacted in trust. The Board did not realize when it issued its April 29, 2002, pre-docketing notice in this appeal that it also fell into this category. In each of the other cases, the Board has

stayed the NEPA aspect of the appeal pending a decision on the underlying trust acquisition.

It appears that this case is, however, in a slightly different posture because the issue of NEPA compliance is already in Federal court, and the court has ordered the submission of a briefing schedule in response to Appellant's assertion that the EIS is inadequate. Under these circumstances, dismissal without prejudice might be more appropriate than staying this case because the entire issue may be resolved in court. However, should the court decline to address NEPA compliance further until Appellant has exhausted its administrative remedies, such a dismissal would allow Appellant to refile an appeal with the Board.

The Board received Appellant's response on June 17, 2002. At page 2 of its response, Appellant states:

Appellant \* \* \* has no objection to either staying the matter or dismissal without prejudice as described in the May 21, 2002 Order. Appellant felt compelled to file an appeal of the [EIS] because of an ambiguity in the [BIA] regulations with respect to whether such an appeal was required even though the decision on whether to take the land into trust had not been made. [Appellant] filed this appeal in the interest of protecting against any potential challenges on the basis of failure to exhaust administrative remedies. If this Board rules as it described in its May 21, 2002 Order, it will be clear that [Appellant] will not have failed to exhaust administrative remedies. With that understanding, [Appellant] has no objection to either a stay or dismissal without prejudice.

The Board does not necessarily agree with Appellant that dismissal of this appeal without prejudice will make it clear that Appellant has not failed to exhaust administrative remedies. It is up to the Department of Justice attorneys handling the court case to decide whether or not to make such an argument, and up to the court to decide the question either if it is argued or if it raises the issue sua sponte. However, dismissal without prejudice will allow Appellant to refile an appeal with the Board if the court should determine that further administrative action should precede its decision. Appellant will therefore still have the opportunity to make its arguments against the EIS in an administrative forum should that be required.

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 from the Regional Director's March 13, 2002, EIS is dismissed without prejudice.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge