



INTERIOR BOARD OF INDIAN APPEALS

Dean C. Gentry v. Northwest Regional Director, Bureau of Indian Affairs

51 IBIA 170 (03/19/2010)

Denying Reconsideration of:
51 IBIA 152

Related Board case:
49 IBIA 117



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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DEAN C. GENTRY,)	Order Denying Reconsideration
Appellant,)	
)	
v.)	Docket No. IBIA 08-091-1
)	
NORTHWEST REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	March 19, 2010

On February 25, 2010, the Board dismissed appeals filed by Dean C. Gentry (Appellant) and Rogers and Antonia M. Hardy challenging a March 31, 2008, Record of Decision (ROD) issued by the Northwest Regional Director (Regional Director), Bureau of Indian Affairs, adopting Alternative B of the Final Programmatic Environmental Impact Statement for implementation through a not-yet developed Integrated Resource Management Plan (IRMP) for the Coeur d'Alene Tribe. *Hardy v. Northwest Regional Director*, 51 IBIA 152 (2010). We dismissed the appeals for lack of standing, finding that the ROD did not authorize any specific actions or provide any new regulatory or jurisdictional authority over Appellants' private fee land and that, therefore, Appellants had not shown that they could be adversely affected by the ROD.

Appellant has sought reconsideration of our dismissal.¹ He questions the Board's apparent acceptance of the Regional Director's argument that no adverse affect exists because the IRMP has not yet been completed, when the Regional Director also stated in the ROD that any person adversely affected by the ROD could appeal the decision to the Board. Appellant further objects to the Board's failure to refer to his listing of the potential adverse affects of the ROD and IRMP on areas near tribal headquarters and various cities; on the economic viability of public entities, businesses, landowners, and residents; and on growth related to economic development, housing, business, recreation, and population, all

¹ The Hardys have not joined in this request for reconsideration, nor have they filed a separate request for reconsideration.

of which, he asserts, could precipitate decreasing property values, business failures, a declining property tax base, and stagnant or regressive growth.

Reconsideration of a Board decision will be granted only in extraordinary circumstances. 43 C.F.R. § 4.315(a); *Gardner v. Acting Western Regional Director*, 46 IBIA 105 (2007); *Jacobs v. Great Plains Regional Director*, 43 IBIA 272 (2006). Appellant has not shown the requisite extraordinary circumstances warranting reconsideration, and we deny his request for reconsideration.

Appellant had the burden of establishing that *he* personally could be adversely affected by the ROD and thus had standing to appeal. *See Hardy*, 51 IBIA at 158. The generic appeal language in the ROD cannot be construed as a determination that *Appellant*, or anyone else, would, in fact, be adversely affected by the ROD. Instead, it simply comports with the requirement to advise potentially interested parties of their appeal rights. *See 25 C.F.R. § 2.7*. Nor does Appellant's reiteration of the potential adverse effects of the not-yet developed *IRMP* on various entities show that the Board erred in deciding that he had not shown that he would be adversely affected by the *ROD*.² In fact, those purported negative impacts, which relate to area communities as a whole and not to Appellant's specific interests, rest on sheer speculation.³ In any event, the mere repetition of arguments raised and considered by the Board does not demonstrate extraordinary circumstances justifying reconsideration. *See Jacobs*, 43 IBIA at 273 (extraordinary circumstances not present when party seeking reconsideration merely reiterated the same arguments previously raised and considered); *Lira v. Acting Pacific Regional Director*, 38 IBIA 107 (2002) (same).

² Although Appellant complains that the Board failed to explicitly respond to these potential impacts in its decision, the Board addressed the particular arguments raised to the extent necessary to its decision; any arguments not specifically addressed should be considered either rejected or unnecessary to the decision. *Jacobs v. Eastern Area Director*, 20 IBIA 142 (1991).

³ Nothing in the record indicates that Appellant is authorized to represent the interests of the communities in the potentially affected areas.

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 denies the request for reconsideration.

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Steven K. Linscheid
Chief Administrative Judge

*Interior Board of Land Appeals, sitting by designation.