



INTERIOR BOARD OF INDIAN APPEALS

Great Lakes Indian Fish & Wildlife Commission
v. Assistant Secretary - Indian Affairs

15 IBIA 87 (01/16/1987)

Denying reconsideration of:
15 IBIA 77



United States Department of the Interior

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

GREAT LAKES INDIAN FISH	:	Order Denying Reconsideration
AND WILDLIFE COMMISSION,	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 87-18-A
	:	
ASSISTANT SECRETARY--	:	
INDIAN AFFAIRS,	:	
Appellee	:	January 16, 1987

On December 29, 1986, the Board of Indian Appeals (Board) dismissed for lack of jurisdiction an appeal brought by the Great Lakes Indian Fish and Wildlife Commission (appellant) from an October 22, 1986, decision issued by the Assistant Secretary--Indian Affairs.

Appellant has filed a petition for reconsideration, which was received by the Board on January 13, 1987. Appellant seeks reconsideration on the grounds that the Assistant Secretary's characterization of his decision as based on the exercise of discretionary authority was erroneous. Citing Simmons v. Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 243 (1986), appellant argues that the Board should address the question whether the Assistant Secretary's decision was properly characterized as discretionary.

As discussed in the order dismissing this appeal, the Assistant Secretary (unlike the Deputy Assistant Secretary) has the authority to issue decisions final for the Department. Unless he specifically makes his decision subject to review by the Board, the Board lacks jurisdiction to review it, whether it is based on the exercise of discretionary authority or on the interpretation of law. Since the Board lacks authority to review the decision, it also lacks authority to review the characterization of the decision contained therein. In any event, since the decision is final for the Department in either case, the characterization is of no practical consequence for administrative review purposes.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Acting Chief Administrative Judge