



INTERIOR BOARD OF INDIAN APPEALS

Dan Van Mechelen, et al. v. Acting Portland Area Director,  
Bureau of Indian Affairs

34 IBIA 202 (01/03/2000)

Reconsideration denied:  
34 IBIA 234



# United States Department of the Interior

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

DAN VAN MECHELEN and DON	:	Order Docketing and Dismissing
VAN MECHELEN,	:	Appeal
Appellants	:	
	:	
v.	:	
	:	Docket No. IBIA 99-106-A
ACTING PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 3, 2000

This is an appeal from the May 5, 1999, approval given by the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), to a document titled "AN AGREEMENT BETWEEN THE QUINAULT INDIAN NATION [(Nation)] AND QUINAULT LAND AND TIMBER ENTERPRISE [(QLTE)]." In a notice of appeal received by the Board on September 13, 1999, Appellants Dan Van Mechelen and Don Van Mechelen stated that they sought to have the Agreement declared null and void, indicating that they objected in particular to a provision of the Agreement (subsec. 4(a)) in which BIA "agrees to the QLTE purchase of advertised [timber] sales with the right to meet the high bid where QLTE submits a minimum bid." 1/

On September 13, 1999, the Board ordered Appellants to show that they had standing to pursue this appeal. It also authorized opposing parties to respond to Appellants' filing.

Appellants' initial response was received on September 30, 1999. The Area Director and the Nation filed answers. Appellants filed two replies, one to the Area Director's answer and one to the Nation's answer. Although the Board's September 13, 1999, order did not authorize replies from Appellants, the Board accepts and considers them.

Appellants base their claim to standing on their ownership of interests in forested trust lands on the Quinault Reservation which may be scheduled for timber sales during the term of the Agreement. They contend that allowing QLTE to meet the high bid will discourage other bidders and will thus affect the amount of income Appellants will receive from the sale of their timber.

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1/ All parties agree that a similar agreement was approved in 1988 for a 10-year term which ended in 1998. The present Agreement has a 5-year term.

According to a November 12, 1999, declaration of the Forest Manager, Olympic Peninsula Agency, BIA, no trust lands in which Appellants hold interests are presently advertised for timber sale, although two allotments in which they hold interests are "scheduled to be considered for presale planning process to begin in 2002, with the actual sale of timber one to two years thereafter." Nov. 12, 1999, Declaration of Michael C. Kupka, ¶ 5. Appellants concede that they do not hold interests in any land presently being advertised for sale.

Sales of Indian timber are governed by the regulations in 25 C.F.R. Part 163. 25 C.F.R. § 163.13 authorizes the initiation and organization of Indian forest enterprises and requires BIA approval for certain actions taken by such enterprises. The Agreement states that it was intended to be undertaken in accordance with sec. 163.13.

25 C.F.R. § 163.15(a) provides that an advertisement of sale "may limit sales of Indian forest products to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a non-member."

It is apparent that the approval action taken by the Area Director was taken under Part 163)) that is, he granted approval under sec. 163.13 for the purpose of implementing authority set out in subsec. 163.15(a).

Administrative actions taken under Part 163 are appealable under sec. 163.33, which provides in part:

[A]ppeal(s) shall be filed in accordance with the provisions of 25 CFR part 2, Appeals from administrative actions, except that an appeal of any action under part 163 of this title shall:

\* \* \* \* \*

(b) Define "interested party" for purposes of bringing such an appeal or participating in such an appeal as any person whose own direct economic interest is adversely affected by an action or decision. [2/]

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2/ The regulation drafters made it clear that they intended by this provision to establish a tighter standing requirement than is included in the present version of 25 C.F.R. Part 2, BIA's general appeal regulations. See the preamble to the final rulemaking document for the 1995 revision of Part 163, 60 Fed. Reg. 52250, 52258 (Oct. 5, 1995).

In 25 C.F.R. Part 2, "interested party" is defined as "any person whose interests could be affected by a decision in an appeal," 25 C.F.R. § 2.2, and the regulations are made applicable to "appeals from decisions by officials of the Bureau of Indian Affairs by persons who may be adversely affected by such decisions." 25 C.F.R. § 2.3(a).

Under this provision, Appellants must demonstrate that their "own direct economic interest is adversely affected" by the Area Director's approval of the Agreement.

Contrary to Appellants' assertions, the Agreement does not have any immediate effect on their economic interests. In order for Appellants to be affected, the Agreement would have to be applied to a sale of timber in which Appellants hold interests. That may never happen. The sales now expected to occur in 2002-2004 may be postponed, as Appellants contend has happened before. Thus, they may not take place during the five-year term of the Agreement.

Further, it is possible that the Agreement will not survive for its entire term because, under subsec. 4(d), the Area Director may rescind his approval of the Agreement if he determines, pursuant to an annual review authorized by him, that there is a lack of competition.

3/

Finally, BIA has undertaken to impose a majority consent requirement upon QLTE's exercise of its right to meet the high bid in any particular timber sale. 4/ Pursuant to this practice, BIA seeks the views of the affected landowners and declines to allow QLTE to meet the high bid where the majority of landowners object. Thus, Appellants would not be affected by the Agreement, in a sale of timber in which Appellants hold interests, unless the majority of the landowners favored (or at least did not object to) QLTE's exercise of the right to meet the high bid.

Given all the conditions that must be met before Appellants could be affected by the Agreement, it is apparent that Appellants' "direct economic interest" is not adversely affected at this point. The Board finds that Appellants do not fall within the definition of "interested party" in 25 C.F.R. § 166.33(b) for purposes of appealing the Area Director's approval of the Agreement.

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3/ Subsec. 4(d) provides in part:

"This entire Agreement may be reviewed annually to provide for any reorganization or revision mutually agreeable to the parties. The Approving Officer may call for an annual review. If said review determines a lack of competition the Approving Officer reserves the right to rescind approval."

4/ The Nation and QLTE apparently do not object to this requirement, even though it has not been incorporated into the Agreement. The Kupka declaration indicates that the Agreement may be modified to incorporate the requirement. Kupka Declaration, ¶ 6.

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 standing. 5/

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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5/ After briefing was completed, the Board received a request from Evelyn M. Blaylock to join this appeal as a co-appellant. Although her request is untimely as to this appeal, Blaylock is not precluded from filing her own notice of appeal. If she decides to do so, she should be prepared to show that she is not bound by the decision in this case.