



INTERIOR BOARD OF INDIAN APPEALS

Voices for Rural Living and Shingle Springs Neighbors for Quality Living;
El Dorado County, California, and El Dorado County Board of Supervisors
v. Pacific Regional Director, Bureau of Indian Affairs

38 IBIA 124 (10/15/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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VOICES FOR RURAL LIVING and SHINGLE SPRINGS NEIGHBORS FOR QUALITY LIVING, Appellants	:	Order Dismissing Appeals Without Prejudice
	:	
	:	
EL DORADO COUNTY, CALIFORNIA, and EL DORADO COUNTY BOARD OF SUPERVISORS, Appellants	:	Docket Nos. IBIA 02-143-A IBIA 02-149-A
	:	
v.	:	
	:	
PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	October 15, 2002

These are appeals from a June 26, 2002, Finding of No Significant Impact (FONSI) signed by the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), under the National Environmental Policy Act (NEPA). The FONSI concerns proposed BIA actions related to the Shingle Springs Rancheria Interchange Project. 1/

On August 23, 2002, the Board received a letter from the Acting Assistant Secretary - Indian Affairs. The letter stated that the Assistant Secretary - Indian Affairs intends to issue decisions on the proposed BIA actions to which the June 26, 2002, FONSI relates. The letter described the proposed actions as:

1/ The Appellants in Docket No. IBIA 02-143-A (Voices for Rural Living and Shingle Springs Neighbors for Quality Living) also sought to appeal a January 22, 2002, FONSI issued by the Chairman of the National Indian Gaming Commission, concerning the approval of a management agreement for the construction and operation of a hotel/casino complex on the Shingle Springs Rancheria.

The Appellants were advised in a July 29, 2002, order that the Board does not have authority to review decisions made by members of the National Indian Gaming Commission.

1. Designation of the proposed interchange under the Indian Reservation Roads program and associated changes to the existing road network on Shingle Springs;
2. Acquiring Federal title to the property or a right-of-way or easement for the interchange from Shingle Springs Rancheria; and
3. Issuing a 638 contract for design and construction management.

Acting Assistant Secretary's Aug. 19, 2002, Letter at 1.

The Acting Assistant Secretary argued in her letter that, in light of the Assistant Secretary's intent, these appeals are moot and should be dismissed. By order of August 26, 2002, the Board gave all parties an opportunity to respond to that argument. Responses have been received from the Shingle Springs Band of Miwok Indians (Tribe) and from both groups of Appellants.

The Tribe contends that the Acting Assistant Secretary has effected a timely assumption of jurisdiction over these appeals under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b). That is not the case. The Acting Assistant Secretary's letter was not a timely assumption of jurisdiction with respect to either of these appeals. In any event, it did not purport to assume jurisdiction over the appeals. Rather, as indicated above, it asked the Board to dismiss the appeals as moot.

Both groups of Appellants express concern over the status of the FONSI if the Board dismisses these appeals, and Appellants in Docket No. IBIA 02-149-A ask the Board to require clarification from the Assistant Secretary as to his intended actions with regard to the FONSI.

As Appellants observe, the Acting Assistant Secretary's letter is not clear as to whether the Assistant Secretary intends to address NEPA issues in connection with his decision on the proposed BIA actions. It is arguable that, in order to ensure that the NEPA issues are addressed, the Board should retain jurisdiction over these appeals but stay them until the Assistant Secretary issues his decision. However, that procedure would deprive the Assistant Secretary of the ability to address this matter as a unified whole.

The Board was recently faced with a similar situation when, after two appeals from a FONSI concerning a proposed trust acquisition had been filed with the Board, the Assistant Secretary stated that he intended to issue a decision on the trust acquisition itself. After considering the options, the Board concluded that the best procedure was to dismiss the FONSI appeals without prejudice. The Board explained:

Neither the Board nor the parties know at this time if the Assistant Secretary's decision will address the NEPA issues that Appellants wish to raise. If the appeals are dismissed, Appellants will not need to return to the Board if the Assistant Secretary's decision on the underlying trust acquisition does deal

with the NEPA issues. If, however, the Assistant Secretary's decision does not deal with those issues, Appellants will be able to refile appeals on the NEPA issues with the Board.

Viejas Band of Mission Indians v. Pacific Regional Director, 38 IBIA 73, 74 (2002).

The same is true here. Because the Regional Director did not provide appeal instructions with his June 26, 2002, FONSI, the FONSI will remain appealable to the Board until the Regional Director issues appeal instructions, 25 C.F.R. § 2.7(b), or the Assistant Secretary addresses the NEPA issues. 25 C.F.R. § 2.6(c).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these appeals are dismissed without prejudice.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge