



INTERIOR BOARD OF INDIAN APPEALS

County of Colusa, California, and Greg Amaral  
v. Pacific Regional Director, Bureau of Indian Affairs

38 IBIA 274 (01/17/2003)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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COUNTY OF COLUSA, CALIFORNIA,	:	Order Affirming Decision
Appellant	:	
	:	
and	:	
	:	
GREG AMARAL,	:	Docket Nos. IBIA 01-32-A
Appellant	:	IBIA 01-36-A
	:	
v.	:	
	:	
PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 17, 2003

The County of Colusa, California (County; Docket No. IBIA 01-32-A) and Greg Amaral (Amaral; Docket No. IBIA 01-36-A) seek review of an October 27, 2000, decision issued by the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning a lease between the Cortina Indian Rancheria of Wintun Indians of California (Band) and Cortina Integrated Waste Management, Inc. (CIWMI). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

### Background

The Band is a Federally recognized Indian tribe. Its reservation, located in the southwest corner of Colusa County, California, was established in 1907 and consists of 640 acres, more or less. According to the Regional Director, the Band's reservation is located about fifty miles northwest of Sacramento, eighty miles north of San Francisco, and sixty miles inland from the Pacific coast. The reservation is accessible by only one all-weather road that terminates at the reservation. The Band has 161 members, about 15 percent of whom live on the reservation. In 1997, the unemployment rate for persons living on the reservation was around 62 percent.

CIWMI is a California for-profit corporation. It is a wholly owned subsidiary of Earthworks Industries, Inc., of Vancouver, British Columbia, Canada.

Due to several factors, including the location of its reservation, the Band determined in the early 1990s that its best opportunity for economic development was to use a portion of its

reservation for solid waste management. In 1995, the Band and CIWMI entered into a “Business Lease Between Cortina Band of Wintun Indians and Cortina Integrated Waste Management, Inc.” and an “Environmental Certification and Indemnity Agreement.” These documents were amended and restated on October 19, 2000. The documents will be referred to in this decision as “the Lease.”

Under the Lease, the Band proposed to lease approximately 443 acres of its reservation to CIWMI for the development, construction, and operation of an integrated waste management facility, consisting of a municipal solid waste landfill, a materials recovery facility, a composting facility, and a petroleum-contaminated soil bioremediation project. The Lease would have a term of 25 years, with a 25-year renewal term. In order to take effect, the Lease required BIA approval.

In support of the Lease and its proposed business venture, the Band adopted the Cortina Band of Wintun Indians Environmental Policy Act of 1999, which established the Wintun Environmental Protection Agency (WEPA). It also adopted the Cortina Band of Wintun Indians Solid Waste Management Code.

In accordance with the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (NEPA), BIA published a Notice of Intent to prepare an environmental impact statement (EIS). 60 Fed. Reg. 55587 (Nov. 1, 1995). A public scoping meeting was held on November 16, 1995. A Scoping Report was made available in March 1996. Notice of the availability of a draft EIS and of the comment period was published at 65 Fed. Reg. 3473 (Jan 21, 2000). After an extension of the comment period, BIA responded to comments and prepared a final EIS. Notice of the availability of the final EIS was published at 65 Fed. Reg. 53295 (Sept. 1, 2000).

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Amaral filed his appeal as an individual. The Board addressed the standing of individuals and organizations seeking to appeal NEPA decisions in several cases that were decided after briefing in Docket No. IBIA 01-36-A was concluded. Shawano County Concerned Property Taxpayers Association v. Midwest Regional Director, 38 IBIA 156 (2002); Evitt v. Acting Pacific Regional Director, 38 IBIA 77 (2002); Friends of East Willits Valley v. Acting Pacific Regional Director, 37 IBIA 213 (2002). Amaral has not had an opportunity to address his standing in light of those decisions. For purposes of this decision only, the Board assumes that Amaral has standing. <sup>1/</sup>

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<sup>1/</sup> The fact that Amaral’s standing was not previously challenged distinguishes this case from Shawano County Concerned Property Taxpayers Association, *supra*, in which the Board affirmed the Regional Director’s conclusion that the appellants lacked standing.

The Board advised Amaral that he bore the burden of proving the error in the Regional Director's decision as it pertained to his appeal. Although Amaral filed several lengthy documents in support of his appeal, he did not dispute that the Regional Director addressed the concerns he raised in regard to the draft EIS, but argued only that the Regional Director did not give adequate consideration to those comments.

Under these circumstances, the Board finds that Amaral has shown that he disagrees with the Regional Director's ultimate conclusions, but has failed to carry his burden of proving error in the Regional Director's decision. 2/

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The County grouped its arguments under three main headings: (1) The BIA erroneously concluded, without analysis, that California State law does not apply to the proposed project; (2) the EIS is inadequate under NEPA; and (3) BIA acted arbitrarily and capriciously in violation of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. (APA).

The County first contends that BIA failed to consider the application of state and local laws to the proposed landfill project. It alleges four separate bases for this contention: (1) Federal law provides for the application of State law; (2) compliance with the California Environmental Quality Act (CEQA) is mandated because the project requires the issuance of State discretionary permits; (3) the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., requires that the project be constructed, operated, and maintained in accordance with State law; and (4) Federal environmental laws require compliance with State and local laws.

In regard to its first contention, the County argues that 25 C.F.R. § 1.4 is Congressional authorization for the application of California law to Indian country in California. 3/

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2/ The Board notes that, had it not reached this conclusion, it would have examined Amaral's appeal under the same standards as are discussed in regard to the County's appeal, with the same result.

3/ Section 1.4 provides:

“(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band,

In making this argument, the County repeatedly characterizes section 1.4 as a Congressional enactment.

The Board summarily rejects the County's characterization of this regulation. 25 C.F.R. § 1.4 is a regulation promulgated by the Department of the Interior. It is not a Congressional enactment, and does not constitute Congressional authorization for the application of State law in Indian country.

Either alternatively or in conjunction with the prior argument, the County contends that the Secretary of the Interior has exercised the authority granted under 25 C.F.R. § 1.4(b) and has affirmatively applied California law to Indian country in California. In support of this argument, the County cites a 1965 Secretarial Order issued by the Under Secretary of the Interior.

The Band argues that the Board need not consider this argument because the County raised it for the first time in this appeal.

The Board has a well-established practice of declining to address issues and arguments raised for the first time on appeal. See, e.g., Smith v. Acting Eastern Oklahoma Regional Director, 38 IBIA 182, 185 (2002), and cases cited there. It sees no reason to depart from this precedent here.

The Board notes, however, that, in Morongo Band of Mission Indians v. Sacramento Area Director, 7 IBIA 299, 86 I.D. 680 (1979), it rejected a similar argument for the application of California State law to Indian country in California. Nothing in the County's argument demonstrates that the Board was wrong in Morongo Band.

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fn. 3 (continued)

or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

“(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.”

The County continues this main argument by contending that California law applies to a project on the reservation because State law does not interfere with Federal and Tribal interests and is not incompatible with those interests. In support of this argument, the County cites California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987); New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983); and White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980). In making this argument, the County specifically asserts that the application of California law on the reservation will not undermine the Band's sovereignty.

Although each of the cases the County cites includes dicta which states that there may be circumstances under which state laws may be applied on an Indian reservation, not one of them found such circumstances to exist. In Cabazon Band of Mission Indians, the State of California and Riverside County, California, sought to apply their gambling laws on two Indian reservations. In holding that the application of State law was not authorized, the Supreme Court recognized that tribal self-government and self-sufficiency, including economic development, were important Federal interests which could be disrupted by the application of state and local governmental laws and regulations.

In Mescalero Apache Tribe, the State of New Mexico alleged that it had concurrent jurisdiction with the Tribe to enforce its hunting and fishing laws against non-Indians on the Mescalero Apache Reservation. The Court rejected this claim, stating: "Concurrent jurisdiction would empower New Mexico wholly to supplant tribal regulations. The State would be able to dictate the terms on which nonmembers are permitted to utilize the reservation's resources. The Tribe would thus exercise its authority over the reservation only at the sufferance of the State." 462 U.S. at 338. The Court further noted that accepting the State's concurrent jurisdiction argument would not only "completely 'disturb and disarrange' \* \* \* the comprehensive scheme of federal and tribal management [of the reservation resources] established pursuant to federal law," id., but also "would threaten Congress' overriding objective of encouraging tribal self-government and economic development." 462 U.S. at 341.

In White Mountain Apache Tribe, the State of Arizona sought to apply its motor carrier license and use fuel taxes to an enterprise consisting of two non-Indian corporations authorized to do business in Arizona, but operating solely on the Fort Apache Reservation of the White Mountain Apache Tribe. In conducting logging and timber hauling operations on the reservation, the enterprise used only BIA and tribal roads. The Court found that comprehensive Federal regulation of Indian timber harvesting and provision of roads pre-empted application of state tax laws.

The Board finds that the cases which the County has cited do not support its argument that California law applies to the proposed landfill project.

As a subargument, the County contends that the application of only Federal and Tribal law to the Band's proposed landfill project would allow the Band to lure a private foreign

enterprise to the reservation under the guise of doing business beyond the reach of State law. As did the Supreme Court in Cabazon Band of Mission Indians, 480 U.S. at 219-220, and Mescalero Apache Tribe, 462 U.S. at 341, the Board rejects this argument. In the Court's terms, the Band is marketing value generated on its reservation; *i.e.*, the provision of landfill and recycling services to its customers.

In another subargument, the County contends that Federal and Tribal interests coincide with the objectives of State regulation of the project. In context, the County's argument is that the State and/or the County is a better entity than the Band and/or the Federal government to enforce environmental regulations on the reservation. The Board rejects this argument. Whatever the County may believe about its own abilities to supervise this project as opposed to those of the Band is irrelevant. The question is whether or not Federal law allows the application of State law to this particular project on the reservation. The County has not shown that Federal law allows this.

As with the cases just discussed, the proposed project here will be extensively regulated under Federal and Tribal law. Application of California State law is not clearly authorized and will interfere with Federal and Tribal regulation. Application of California State law will also interfere with Tribal sovereignty, self-determination, and economic development. Under these circumstances, the Board rejects each of the County's arguments that Federal law authorizes the application of California State law on the reservation.

The County's next argument under its first heading is that CEQA applies to this project because State discretionary action is required in regard to some off-reservation aspects of the project. Even assuming that the County is completely correct in all of its assertions as to the applicability of CEQA to off-reservation aspects of the project, that fact does not authorize the application of that statute, or any other State law, to on-reservation aspects of the project. The Board rejects this argument.

The County's next argument under its first main heading is that RCRA requires that the proposed landfill be constructed, operated, and maintained in accordance with State law. It bases this argument on RCRA's inclusion of tribes under the definition of "municipality," 42 U.S.C. § 6903(13), rather than treating tribes as the equivalent of states, as do some other Federal environmental statutes. It asserts that this "is a clear expression of Congressional intent to provide for the application of state law to tribal activity." County's Opening Brief at 16. In support of this argument, the County cites Backcountry Against Dumps v. Environmental Protection Agency, 100 F.3d 147 (D.C. Cir. 1996).

In Backcountry Against Dumps, the Campo Band of Mission Indians had applied to the Environmental Protection Agency (EPA) for approval of its solid waste permitting plan pursuant to RCRA. The United States Court of Appeals for the District of Columbia Circuit held that EPA erred in approving the Band's application as if it were classified as a state. However,

nothing in that case authorized the application of State laws to the Campo Band's proposed on-reservation landfill project.

The Board also rejects this argument for the application of State law to the Band's proposed project.

The County next argues that California State law applies to the project because the Clean Water Act, 33 U.S.C. §§ 1251 et seq., Clean Air Act, 42 U.S.C. §§ 7401 et seq., and RCRA require Federal agencies, departments, and instrumentalities to comply with state and local laws regulating, respectively, water quality, air quality, and solid waste disposal. In support of this argument, the County relies on Parola v. Weinberger, 848 F.2d 956 (9th Cir. 1988).

The Clean Water Act provides at 33 U.S.C. § 1323(a):

Each department, agency, or instrumentality of the executive \* \* \* branch[] of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants \* \* \* shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity \* \* \*.

Substantially similar provisions are found in the Clean Air Act at 42 U.S.C. § 7418(a) and in RCRA at 42 U.S.C. § 6961(a).

Under 33 U.S.C. § 1377(a) and 42 U.S.C. § 7601(d), Indian tribes are treated as states for purposes of the Clean Water Act and Clean Air Act, respectively. Because of this, the Board reads these two acts as requiring the Federal department, agency, or instrumentality to comply with "tribal" (rather than "state") requirements, administrative authority, and process and sanctions. It thus rejects the County's argument that BIA must comply with State laws by virtue of these two acts.

As to RCRA, the County's argument must be approached differently because of RCRA's treatment of tribes as municipalities rather than as states. The argument is, in essence, merely another way of stating the argument which the Board has already rejected for the application of State law to the proposed project. Under 42 U.S.C. § 6961(a), a Federal department, agency, or instrumentality either generating solid waste (which BIA does not do in the context of approving a lease) or having jurisdiction over a solid waste management facility or disposal site is subject to state and other requirements "in the same manner, and to the same extent, as any person is subject to such requirements." As discussed above, the County has failed to show that any provision of RCRA authorizes the application of State law to a facility on an Indian

reservation. The County has also failed to show that “any person” is subject to State requirements on the reservation. The Board concludes that the County has failed to show that BIA is subject to those requirements in the context of this case.

Parola does not change this conclusion. In Parola, an individual holding an exclusive garbage-collection franchise from the City of Monterey, California, challenged decisions by the Navy and Army, respectively, to contract competitively for garbage collection services for the Naval Postgraduate School and the Presidio of Monterey. After examining both RCRA and its legislative history, the United States Court of Appeals for the Ninth Circuit concluded that RCRA required Federal installations that generated solid waste to comply with locally adopted and EPA-approved arrangements for solid waste disposal. Parola says nothing about the application of State law to a project on an Indian reservation or about a facility that collects solid waste rather than generating it.

Based on the preceding discussion, the Board rejects each of the County’s contentions that California State law applies on the Band’s reservation.

The County’s next group of arguments deals with the alleged inadequacy of BIA’s review of the proposed project under NEPA. The County presents six reasons why it believes the EIS was inadequate: The EIS (1) failed to consider whether proposed alternatives would serve the stated purpose and need; (2) inadequately evaluated alternatives; (3) did not include sufficient mitigation measures; (4) provided an inadequate analysis of the environmental impacts of the proposed project; (5) failed to consider the project’s inconsistency with local plans and ordinances; and (6) failed to respond adequately to comments.

The Board first notes that, in general, NEPA analysis, including an EIS, is intended to provide “a record upon which a decision-maker could arrive at an informed decision.” <sup>4/</sup> An EIS “must be sufficiently detailed to allow a responsible executive to arrive at a reasonably accurate decision regarding the environmental benefits and detriments to be expected from program implementation.” <sup>5/</sup> “N.E.P.A., although rigorous in its requirements, does not require

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<sup>4/</sup> Environmental Defense Fund v. Corps of Engineers, 342 F.Supp. 1211, 1217 (E.D.Ark. 1972), aff’d, 470 F.2d 289 (8th Cir.), quoted in City of Des Plaines v. Metropolitan Sanitary District of Chicago, 552 F.2d 736, 738 (7th Cir. 1977).

<sup>5/</sup> Environmental Defense Fund v. Hardin, 325 F.Supp. 1401, 1403-04 (D.D.C. 1971), quoted in City of Des Plaines, supra, 552 F.2d at 737.

perfection, nor the impossible. In assessing the adequacy of [an EIS], practicality and reasonableness \* \* \* are to be taken into account along with the broad purposes of [NEPA.] \* \* \* This involves of course a balancing process.” 6/

An EIS is intended to raise awareness of possible environmental consequences of a proposed project, but does not require a particular outcome. “If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.” 7/

The Board addresses the County’s NEPA arguments in light of this precedent. The County contends that NEPA requires a discussion of the purpose and need for action, and that economic development was the stated purpose and need here. Based on this stated purpose and need, the County further contends that NEPA required BIA to consider both the economic viability of the proposed landfill, and other alternatives to a landfill which the County believes would promote economic development. The County appears to concede that a proposed project’s economic viability might not normally be a topic for consideration in an EIS, but contends that it must be considered when the stated purpose of developing any project at all is economic development. Although the County does not cite any support for its assertion that a proposed project’s economic viability must be considered under the circumstances here, it cites Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991), in support of the general proposition that reasonable alternatives that would fulfill the purpose and need must be considered.

The Board does not disagree with the general proposition that reasonable alternatives to the proposed project must be considered in an EIS. It finds, however, that Appellant has not shown that the economic viability of the proposed project must be addressed in the EIS. As noted, the County cited no authority for this proposition. The Board’s independent research did not reveal any such authority. NEPA addresses environmental impacts of proposed decisions, not economic impacts or economic viability. The Board declines to broaden NEPA beyond its language and historical construction to include a requirement for an analysis of possible economic impacts and/or economic viability.

The County expands on its economic development alternatives discussion by contending that the evaluation of alternatives in the EIS was inadequate. Although the County concedes that the EIS discussed the “no-action” alternative and reduced landfill operations, it asserts that, because the stated purpose and need for any action are economic development,

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6/ Environmental Defense Fund v. Tennessee Valley Authority, 492 F.2d 466, 468 n.1 (6th Cir. 1974), quoted in Natural Resources Defense Council, Inc. v. Tennessee Valley Authority, 502 F.2d 852, 854 (6th Cir. 1974).

7/ Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989).

“the EIS must seriously consider other reasonable alternatives that can foster economic development.” County’s Opening Brief at 20. In particular, the County argues that the EIS should have considered such other options as a recreational vehicle park, gaming, cattle grazing, raising game elk or deer, and a land exchange.

In fact, the EIS does discuss these alternatives. See Cortina Integrated Waste Management Project Final Environmental Impact Statement at 2-39--2-42. In addition to its discussion of these alternatives, the EIS notes that the Band determined that the alternatives would not meet its objectives. The County’s arguments on appeal amount to a statement that it does not agree with the Band’s determination. That disagreement does not render the EIS’ discussion of alternatives inadequate.

The County next argues that the discussion of mitigation measures in the EIS is not sufficient. The County contends: “Rather than discussing appropriate mitigation measures, the EIS relies on other future permit requirements as mitigation for significant impacts. \* \* \* [T]his improperly segments the project and results in a piecemeal analysis.” County’s Opening Brief at 21. It further asserts that the discussion of mitigation measures is inadequate “because it relies on ‘project design’ to mitigate potentially significant impacts.” Id. at 22. The County contends that the EIS’ failure to provide detailed engineering or design information in regard to several aspects of the project makes the described mitigation “illusory.” Id.

The Board disagrees. The regulations implementing NEPA published by the Council on Environmental Quality (CEQ) specifically authorize and encourage the use of “tiering,” which is defined in 40 C.F.R. § 1508.28:

*Tiering* refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

In addition, 40 C.F.R. § 1502.20 provides:

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). \* \* \* Tiering may also be appropriate for different stages of actions.

As applied in this case, 40 C.F.R. §§ 1502.20 and 1508.28(b) authorize, and in fact encourage, consideration of those issues raised by a project which are ripe for decision, while allowing for the consideration of additional issues as the project progresses.

Furthermore, mitigation is specifically mentioned in the CEQ NEPA regulations as an issue to be discussed in a subsequent NEPA analysis under the tiering approach. The Board finds that BIA's discussion of mitigation is not inadequate because it anticipates further analysis when the mitigation issue is ripe for decision.

The County next attacks the technical abilities of WEPA employees and the viability and integrity of CIWMI and its parent corporation. The County cites no support for its contention that these are issues that must be addressed in an EIS. The Board is not aware of any such requirement.

The County contends that the decision is deficient because the BIA did not adopt a monitoring and enforcement program in connection with the decision. Again, these are issues that, under the tiering approach, should be addressed as they are ripe for decision. The Board rejects this argument.

The County's next major argument is that the EIS provides an inadequate analysis of the environmental impacts of the proposed project. The County specifically takes issue with the alleged failure of the EIS to consider "off-site" <sup>8/</sup> impacts of the project and to analyze adequately potentially significant off-reservation impacts. It contends that the analysis of potential environmental impacts in the EIS is not adequate to serve as the basis for future permitting decisions.

The Board has carefully reviewed the County's asserted inadequacies in the environmental analysis. It finds that the essence of the County's argument is that the project was not halted because of the environmental analysis and that the EIS employs the tiering process. The Board rejects these arguments. NEPA analysis that reveals the possibility of adverse environmental impacts is not inadequate merely because a decision is ultimately made to proceed with

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<sup>8/</sup> The Board takes this to mean "off-reservation."

the project. BIA considered these matters and concluded that they would be addressed as the project progressed, including in one or more additional NEPA documents. The County has not shown that the EIS presented an inadequate analysis of environmental impacts.

The County next argues that the EIS was inadequate because it failed to consider the fact that the proposed project was inconsistent with local land use plans and ordinances. This is another attempt to impose local and/or State law on the reservation. The Board has already rejected this argument.

The County's last challenge to the EIS is that BIA failed to respond adequately to comments. The County argues:

NEPA requires that BIA respond to comments by: (1) modifying alternatives including the proposed action; (2) developing and evaluating alternatives not previously given serious consideration; (3) supplementing, improving, or modifying its analyses; (4) making factual corrections; (5) explaining why the comments do not warrant further agency response, with sources, authorities or reasons that support the agency's position. 40 C.F.R. § 1503.4. The BIA failed to adequately respond to comments by issuing dismissive responses without support or citation to relevant authorities. *See, e.g.,* Response to Comments, L.4.4, L.417 [sic, probably should be L.4.7], L.4.8, L.4.22, L.9.3, I.1.3, I.1.4, I.1.5, I.1.6, I.1.17.

County's Opening Brief at 30.

Comment L.4.4 asserts that the discussion of potential impacts to the human environment are not adequately addressed. BIA's response is that all of the issues raised in the comment are addressed in the EIS. The Board agrees with the response. The County has not shown otherwise.

Comment L.4.7 contends that a cost-benefit analysis should have been prepared for the proposed project and for each alternative, including those proposed by the County. BIA's response is that NEPA does not require cost-benefit analyses. 40 C.F.R. § 1502.23 relates to cost-benefit analyses. That regulation makes it clear that such analyses may be prepared in relation to NEPA analysis, but are not required. At most the County has shown that it disagrees with BIA's response. It has not shown that the response is incorrect or inadequate.

Comment L.4.8 contends that detailed design drawings should have been presented in the EIS. BIA's response is that detailed design drawings are not required in order to provide adequate information for an environmental analysis. The County has not shown that

such drawings were required at this stage of this proposed project or that BIA's response was inadequate.

Comment L.4.22 is an ad hominem attack on WEPA staff. BIA's response is that the staff was enlarged and the EIS was being amended to show the new staffing. The County has shown that it does not have high regard for the WEPA staff. It has not shown that BIA's response was inadequate.

Comment L.9.3 relates to the possibility that there may be an accidental spill of solid waste into the Colusa Canal from garbage trucks, and that a spill might involve leachate that might not decompose for thousands of years. BIA's response is that such a spill would involve a cleanup of garbage, but not a cleanup of hazardous waste. The County has not shown that this is an inadequate response.

Comment I.1.3 contends that the EIS does not include economic issues and project viability studies. BIA's response is that there is no requirement under NEPA for such analyses. The Board has specifically rejected the County's attempt to assert that such analyses are required.

Comment I.1.4 attacks the integrity of CIWMI. BIA's response is that this issue is not a NEPA issue, although BIA might choose to consider it in the lease approval process. The County has not shown that the response inadequately addresses the comment.

Comment I.1.5 again questions the economic viability of the proposed project. This issue has been addressed.

Comment I.1.6 contends that WEPA is in a conflict of interest situation because it is composed of tribal members, and its employees are tribal members. BIA's response is that the Band is a sovereign nation with the right to govern itself and establish its own regulatory process. The County has not shown that BIA did not adequately respond to this comment. 9/

Comment I.1.17 asks what economic value will be generated from the leased land following the expiration of the 50-year lease term. BIA's response is that additional opportunities for socioeconomic advancement for the Band in 50 years are speculative and not within the purview of the EIS. The comment presents another attempt to require discussion of economic issues in the EIS. The Board has rejected the County's attempt to assert that such analyses are required.

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9/ In fact, this argument is the equivalent of a contention that the Federal government is in a conflict of interest in enforcing environmental laws because its regulatory agencies and their employees are citizens of the United States.

The County's real objection in this discussion is that the proposed project was not halted. However, it has cited nothing that stands for the proposition that responses to comments are inadequate if the proposed project is not halted.

The Board rejects the County's contentions that BIA's analysis under NEPA was inadequate.

Finally, in its last main argument, the County contends that the arguments it has presented show that BIA's decision was arbitrary and capricious in violation of the APA. Based on its rejection of the County's arguments as set forth above, the Board also rejects this final argument.

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 Regional Director's October 27, 2000, decision is affirmed. 10/

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge

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10/ Arguments raised but not specifically addressed were considered and rejected.