



INTERIOR BOARD OF INDIAN APPEALS

Paiute Indian Tribe of Utah v. Western Regional Director, Bureau of Indian Affairs

40 IBIA 163 (12/13/2004)



United States Department of the Interior

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

PAIUTE INDIAN TRIBE OF UTAH,	:	Order Dismissing Appeal
Appellant,	:	
	:	
v.	:	Docket No. IBIA 05-5-A
	:	
WESTERN REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	December 13, 2004

The Paiute Indian Tribe of Utah (Tribe) sought review of the failure of the Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to respond to a request for action or decision made pursuant to 25 C.F.R. § 2.8, on a fee-to-trust acquisition application submitted on March 2, 2004, regarding a 6.8-acre parcel of land located in Cedar City, Utah.

Section 2.8 of 25 C.F.R. allows an appeal from the inaction by a BIA official, after an appellant has requested action in compliance with the requirements of that section. The Tribe alleged that the Regional Director failed to respond to its letter to him dated September 1, 2004, in which the Tribe asked the Regional Director for a decision on its fee-to-trust acquisition application. On October 4, 2004, when the Regional Director failed to respond, the Tribe filed this appeal with the Board of Indian Appeals (Board). For the reasons discussed below, the Board dismisses this appeal.

On October 6, 2004, after receiving the Tribe's appeal, the Board issued an order requiring the Regional Director to provide the Board with a status report on his consideration of the pending request, including a timetable for taking appropriate action.

The Regional Director responded, stating that, as of the date of the Tribe's appeal, he had not received the Tribe's fee-to-trust application, which the Tribe had submitted to the Superintendent of the Southern Paiute Agency and which was still under review by the Superintendent. The Regional Director also explained that his practice is not to review or consider a fee-to-trust application until a recommendation to approve or disapprove it has been received from the Superintendent. No recommendation had been sent to him by the Superintendent when the Regional Director received the Tribe's September 1, 2004, request for a decision. In addition, the Regional Director noted that when the Tribe filed its appeal on October 4, 2004, it had not submitted the required Environmental Assessment, which it submitted to BIA on October 26, 2004. The Regional Director's status report included

documentation which supports his position that the fee-to-trust acquisition application is not yet ripe for his review and decision.

The Board agrees with the Regional Director. It is premature for the Tribe to request that the Regional Director issue a decision on an application when he is still waiting for the Superintendent to process it and submit a recommendation. An appeal under section 2.8 does not provide a basis for forcing BIA action on the merits of a fee-to-trust application when the matter is simply not yet ripe for a decision from the BIA official to whom the 2.8 demand is directed. The Board therefore dismisses this appeal.

Dismissal is also consistent with the Board's practice to dismiss appeals brought under 25 C.F.R. § 2.8, in order to permit BIA to continue with its efforts. See, e.g., Williams v. Phoenix Area Director, 33 IBIA 22 (1998), and cases cited therein. As the Board reasoned in Shaahook Group of Capitan Grande Band of Diegueno Mission Indians v. Director, Office of Tribal Services, 27 IBIA 43, 45 (1994), "it is more beneficial to the parties to allow BIA to complete its review and issue a decision."

In the present case, however, it bears mention that a simple response from the Regional Director to the Tribe's September 1, 2004, letter, pointing out that the fee-to-trust application was not yet ripe for his decision, could have altogether removed the Tribe's basis for filing this appeal or, at the very least, could have obviated the need for the Regional Director to prepare a status report. In short, as the Board has previously noted in a similar appeal, the Regional Director should have responded to the Tribe's September 1, 2004, letter, as required by 25 C.F.R. § 2.8. See Paiute Indian Tribe of Utah v. Western Regional Director, 39 IBIA 263 (2004).

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 dismissed.

// original signed
Colette J. Winston
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge