



INTERIOR BOARD OF INDIAN APPEALS

In re Federal Acknowledgment of the Eastern Pequot Indians of Connecticut and the
Paucatuck Eastern Pequot Indians of Connecticut

42 IBIA 133 (01/13/2006)

Related Board cases:

41 IBIA 1

38 IBIA 144

Related litigation:

Historic Eastern Pequots v. Salazar, ___ F. Supp. 2d ___, 2013 WL 1289571
(D.D.C. Mar. 31, 2013)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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IN RE FEDERAL ACKNOWLEDGMENT : Order Docketing and Dismissing
OF THE EASTERN PEQUOT : Request for Reconsideration of
INDIANS OF CONNECTICUT AND : Reconsidered Final Determination
THE PAUCATUCK EASTERN :
PEQUOT INDIANS OF : Docket No. IBIA 06-30-A
CONNECTICUT :
: January 13, 2006

On January 12, 2006, the Board of Indian Appeals (Board) received a request from the Historic Eastern Pequot Tribe (HEP) for reconsideration of the Reconsidered Final Determination (RFD) to decline to acknowledge the Eastern Pequot Indians of Connecticut (EP) and the Paucatuck Eastern Pequot Indians of Connecticut (PEP) as an Indian tribe within the meaning of Federal law. The Board dismisses HEP's request for reconsideration for lack of jurisdiction.

The Assistant Secretary - Indian Affairs issued a Final Determination (FD) on June 24, 2002 to acknowledge the historical Eastern Pequot tribe, consisting of petitioners EP and PEP, as an Indian tribe. See 67 Fed. Reg. 44,234 (July 1, 2002). As allowed by 25 C.F.R. § 83.11(a)(1), several requests for reconsideration were filed with the Board. On May 12, 2005, the Board vacated and remanded the FD to the Assistant Secretary for further work and reconsideration. See In re Federal Acknowledgment of the Historical Eastern Pequot Tribe, 41 IBIA 1 (2005); 25 C.F.R. § 83.11(e)(10). Following the Board's decision, the Associate Deputy Secretary of the Interior issued the RFD, which declined to acknowledge either or both EP and PEP as an Indian tribe. See 70 Fed. Reg. 60,099 (Oct. 14, 2005). Notice of the RFD expressly stated that it was "final and effective upon the date of publication of this notice, pursuant to 25 C.F.R. § 83.11(h)(3)." Id.

HEP now seeks reconsideration by the Board of the RFD. HEP argues that the Board's Historical Eastern Pequot Tribe decision "opened up new issues and new interpretations of existing evidence which the EP and PEP petitioners were never given an opportunity to address." Request at 2. While recognizing that its request is unusual, HEP contends that the Board has authority to consider its request under 25 C.F.R. § 83.11(e)(2), which provides: "The Board may establish such procedures as it deems appropriate to provide a full and fair evaluation of a request for reconsideration under this section to the extent they are not inconsistent with these regulations."

The acknowledgment regulations distinguish between a final determination and a “reconsidered” final determination. The Board has jurisdiction under 25 C.F.R. § 83.11(a)(1) to consider timely requests for reconsideration of a final determination. Only if no timely request for reconsideration is filed by a petitioner or other interested party does a final determination become final and effective for the Department without further review. See id. § 83.11(a)(2) & (h)(1). In contrast, “[i]f a determination is reconsidered by the Assistant Secretary because of action by the Board remanding a decision or because the Secretary has requested reconsideration, the reconsidered determinations *shall be final and effective* upon publication of the notice of this reconsidered determination in the Federal Register.” Id. § 83.11(h)(3) (emphasis added).

In the present case, the Board remanded the FD for further work and reconsideration. The Associate Deputy Secretary, exercising authority delegated by the Secretary of the Interior, see 70 Fed. Reg. at 60,099, then issued the RFD. Under subsection 83.11(h)(3), the RFD was final and effective upon publication. The regulations do not give the Board authority to consider requests for reconsideration of a final and effective Departmental acknowledgment determination.

Subsection 83.11(e)(2) does not allow a different conclusion. Whatever its scope may be, that provision cannot be construed as a grant of subject matter jurisdiction to the Board to consider a request for reconsideration of a reconsidered final determination, particularly in light of subsection 83.11(h)(3).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1 and 25 C.F.R. § 83.11, the Board docketed the request for reconsideration but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Katherine J. Barton
Acting Administrative Judge