



INTERIOR BOARD OF INDIAN APPEALS

Shivwits Band of Paiutes v. Western Regional Director, Bureau of Indian Affairs

44 IBIA 2 (10/18/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

SHIVWITS BAND OF PAIUTES,	:	Order Dismissing Appeal
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 06-63-A
WESTERN REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	October 18, 2006

The Shivwits Band of the Paiute Indian Tribe of Utah (Band) appeals from the alleged failure of the Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to respond to the Band's March 17, 2006 request for a decision on the Band's pending request for the United States to accept a 16.2-acre parcel of land, located in Washington County, Utah, in trust for the Band. The Band made its March 17 request for a decision pursuant to 25 C.F.R. § 2.8, which provides procedures under which the inaction of a BIA official may be made subject to appeal.

On June 1, 2006, at the request of the Board, the Regional Director filed a status report, which indicated that an asbestos and lead paint assessment needed to be completed before the trust acquisition request would be ripe for a decision. The status report also stated that the Regional Director anticipated issuance of a decision on or before August 15, 2006. On August 18, 2006, the Board contacted the Regional Office to inquire about the status of this matter and was informed that the Regional Director had not yet issued a decision. On August 31, 2006, the Board received by facsimile an updated status report from the Regional Director. In it, the Regional Director reported that a contract for asbestos and lead-based paint assessments was awarded on July 28, 2006. The resulting report, which was due on or before October 10, 2006, must then be reviewed by BIA. The Regional Director stated that "provided the [asbestos and lead-based paint] assessment does not require an extraordinary amount of remedial work, we anticipate issuance of a decision on subject application on or before November 15, 2006." Aug. 31, 2006 Letter from Regional Director to Board.

On September 6, 2006, the Board issued an order allowing the Band to respond to the Regional Director's updated status report within 10 days of receipt of the order.

The Board has received no response from the Band.

In general, when it is apparent that BIA is working on an appellant's request and the matter is not yet ripe for final BIA action, the Board will dismiss a section 2.8 appeal to allow BIA to continue to address the request. See, e.g., Paiute Indian Tribe of Utah v. Acting Western Regional Director, 40 IBIA 208 (2005) (dismissing section 2.8 appeal when matter was not ripe for a final BIA decision); Paiute Indian Tribe of Utah v. Western Regional Director, 40 IBIA 163 (2004) (dismissing section 2.8 appeal when the Regional Director needed additional information to issue a decision).

The Regional Director's status reports indicate that the Band's fee-to-trust acquisition request was not ripe for the Regional Director's review and decision when the Band made its section 2.8 request. The reports also indicate that BIA is working on the Tribe's request and that the timing of a final decision depends on the results of the asbestos and lead-based paint assessment and any resulting remediation requirements. Under the circumstances, the Board concludes that dismissal is appropriate.

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 Board dismisses this appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge