



INTERIOR BOARD OF INDIAN APPEALS

Ewiiapaayp Band of Kumeyaay Indians v. Acting Pacific Regional Director,
Bureau of Indian Affairs

56 IBIA 163 (02/06/2013)



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

EWIIAAPAAYP BAND OF)	Order Affirming Decision
KUMEYAAY INDIANS,)	
Appellant,)	
)	
v.)	
)	Docket No. IBIA 11-062
ACTING PACIFIC REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	February 6, 2013

The resolution of this appeal by the Board of Indian Appeals (Board) turns on a question of law: Is the Bureau of Indian Affairs (BIA) required to approve (or disapprove) an extension of a lease when the extension occurs through a lessee’s exercise of a renewal option that was approved by BIA and permissible under 25 U.S.C. § 415(a)? Under the terms of the lease presented here, which was approved in 1987 by BIA, we conclude that the option to renew is solely at the discretion of the lessee, the Southern Indian Health Council, Inc. (SIHC), and neither the consent of the lessor tribe, the Ewiiapaayp Band of Kumeyaay Indians (Tribe), nor the approval of BIA is required. Therefore, we affirm the December 22, 2010, decision (Decision) of the Acting Pacific Regional Director (Regional Director), BIA, in which he explained that BIA was not required to approve or disapprove SIHC’s exercise of its renewal option.

Background

In 1986, the Tribe and SIHC entered into a business lease, Contract No. J54C14205720 (Lease),¹ under which SIHC would lease 8.6 acres of the Tribe’s trust land in Alpine, California, for the construction, development, and operation of a medical clinic to benefit members of the Tribe and several additional

¹ The Lease also is identified as No. MBL-71, and was recorded as Document No. 573 0001.

nearby tribes. Lease at 1-4, & Add. 1, 2, 4 (Administrative Record (AR) Tab 4).² According to the Tribe, SIHC is a healthcare organization formed in 1982 as a tribal organization by the Tribe along with several other local tribes. AR Tab 23, Ex. 2 at 7, 11. SIHC initially operated out of a facility on the Sycuan Indian Reservation,³ but the facility was considered to be inadequate, several departments were located 30 miles away on the Barona Reservation, the location was not centrally located for the member tribes, access in the wintertime was difficult, and there was no room for expansion. *Id.* at 7, 8. Therefore, SIHC and the Tribe apparently agreed that SIHC would provide funds to the Tribe to purchase land in Alpine on which to build a new medical clinic for SIHC. *Id.*, Ex. 4. Funds for the construction of the clinic were provided by the U.S. Department of Housing and Urban Development (HUD) pursuant to an application from the Tribe; the member tribes submitted statements to HUD declining to apply for funds to which they might each be entitled in order to secure funding for the clinic construction. The Tribe purchased the 8.6 acres with funds provided by SIHC, the land was taken into trust for the Tribe in 1986 by the United States, SIHC and the Tribe entered into the Lease to provide a new home for SIHC, and the clinic was built.

The Tribe enacted into two significant resolutions that emphasized its commitment to SIHC. First, the Tribe passed a tribal resolution granting SIHC a 99-year lease. *See* Tribal Resolution, No. SCA-CY-2-85, Jan. 9, 1985 (AR Tab 1). However, the Tribe did not have authority from Congress to lease its lands for 99 years; the longest lease term available to the Tribe was 25 years with a right to include an option to renew for an additional 25 years. *See* 25 U.S.C. § 415(a). Second, the Tribe agreed that it would not rescind the Lease “in any way [during] the full term of the lease and option (50 years).” *See* Tribal Resolution, No. SCA-CY-4-86, June 4, 1986). BIA rejected the Tribe’s attempt to relinquish rights to the land, explaining that such a relinquishment of rights “would conflict with federal regulations providing procedures to be followed by the Secretary of the Interior [Secretary] in the event of a violation of the lease.” Letter from BIA to SIHC, Mar. 4, 1987 (AR Tab 6).

² The other “member tribes” served by SIHC are the Campo Band of Diegueno Mission Indians, Jamul Indian Village, the Manzanita Band of Diegueno Mission Indians, La Posta Band of Diegueno Mission Indians, and the Capitan Grande Band of Diegueno Mission Indians (the Barona Group of the Barona Reservation and the Viejas Group of the Viejas Reservation).

³ The Sycuan Band of the Kumeyaay Nation apparently discontinued its relationship with SIHC and is not presently one of the member tribes.

The Tribe and SIHC completed their lease negotiations and executed a lengthy lease with five addenda. Pertinent to this appeal, the Lease specifies that

[t]he term of this lease shall be Twenty-Five (25) years with an option to renew for an additional 25 year period, beginning on the date this lease is approved by the Secretary which date shall be the anniversary date of this lease.

Lease at 2; *see also id.*, Add. 3 (the Lease is a “25 year lease with option to renew for [an] additional 25 year period.”).⁴ A final addendum was added to the Lease that provides,

Not less than one (1) year prior to the expiration of the initial twenty-five (25) year lease term, [SIHC] shall give the [Tribe] and the Secretary . . . written notice of its intention to exercise its option to extend the lease for an additional twenty-five (25) year period.

Id., Add. 5.⁵ The Lease and the first four addenda were executed as a single document by the Tribe and by SIHC. Addendum 5 was separately executed by SIHC and the Tribe after they had executed the Lease.

The Lease, including the five addenda, was approved by BIA on February 24, 1987:

The within Lease No. MBL-71, between [SIHC], Lessee, and the [Tribe], Lessor, consisting of pages 1 through 16, Addenda 1 through 5 and Exhibit A, is hereby approved on behalf of the Secretary. . . . The lease is approved at less than the fair annual rental pursuant to the Code of Federal Regulation, Title 25, Indians, [§] 162.5(b)(2).

Lease, Attach.⁶

⁴ Addendum 3 also provides that the rent will be “\$1.00 per 25 year period.”

⁵ In addition to the nominal rent payment, *see* n.4, the Lease further provided that ownership of all buildings and fixed improvements “would become the property of the Lessor” upon termination of the Lease, Lease at 7, but that during the course of the Lease, SIHC is responsible for all maintenance and repairs, *id.* at 8. The parties estimated that annual operations and maintenance expenses for the medical clinic would be \$37,268 in 1985. Grant Application, Feb. 14, 1985, at 44 (Member Tribes’ Answer Br., Ex. 1).

⁶ “Exhibit A”, which is not identified, is not included in the record with the Lease.

The new medical facility was constructed and SIHC apparently has operated the clinic on the leased premises continuously since completion of the facility.

By letter dated January 26, 2010, SIHC wrote to both the Tribe and to BIA “to exercise [SIHC’s] option to renew the Lease for the twenty-five year renewal period.” AR Tab 10. Enclosed with the letter to BIA was a check for \$1.00 to cover the renewal rental period. The Tribe responded by thanking SIHC for its letter, but declining SIHC’s offer to renew the Lease. Letter from Tribe to SIHC, Feb. 12, 2010 (AR Tab 11) (The Tribe unanimously agreed not to exercise “its option to renew the Lease and to disapprove SIHC’s request.”). The Tribe also informed BIA that it had disapproved SIHC’s request to renew its Lease. Letter from Tribe to BIA, Feb. 12, 2010 (AR Tab 12). The Tribe sought “written confirmation [from BIA] of the non-renewal of the Lease.” *Id.*

On December 22, 2010, the Regional Director responded to the Tribe and denied its request to disapprove the Lease renewal or to decline recognition of the Lease renewal. After reviewing the terms of the Lease and a brief history of the land acquisition and medical clinic, the Regional Director explained

Based on the foregoing [history] and our review of the subject lease, we could locate no provision that conditions renewal of [the] Lease . . . upon Tribal or Secretarial approval. Thus, it is held that the SIHC’s January 2010 notice of its intent to renew the lease is sufficient to evidence its intent to extend the lease term for an additional 25 years, and it shall be duly noted in our records.

Decision at 4. The Tribe has now appealed the Decision to the Board and contends that the Lease may not be extended without BIA’s explicit approval. The Tribe, SIHC, and the member tribes each submitted a brief;⁷ no brief was received from the Regional Director; the Tribe did not submit a reply brief.

Discussion

We agree with both the Regional Director and SIHC: The option to renew belongs exclusively to SIHC and is not subject to the concurrence or acceptance of the Tribe nor is it subject to the approval of BIA because both the Tribe and BIA agreed to and approved, respectively, the prospective exercise of the option by SIHC when the Lease, and its addenda, were executed by the parties and approved by BIA in 1987.

⁷ The member tribes jointly submitted a single brief.

We begin with the maxim that BIA is bound by the terms of the lease it has approved, *American Indian Land Development Corp. v. Sacramento Area Director*, 23 IBIA 208, 215 (1993), and neither BIA nor the Board may rewrite the provisions of an executed and approved lease, *Frye v. Acting Southern Regional Director*, 54 IBIA 183, 186-87 (2011) (BIA); *Tendoy v. Portland Area Director*, 33 IBIA 303, 311 (1999) (Board). The Board reviews *de novo* questions of law, which include the terms of a lease as well as the application of statutes and regulations. *A C Building and Supply Co. v. Western Regional Director*, 51 IBIA 59, 72 (2010). If the terms of a lease are clear and unambiguous, we need not look outside the four corners of the lease to determine the intent of the parties. *Midthun v. Acting Rocky Mountain Regional Director*, 48 IBIA 282, 289 (2009). Only if the material terms of the lease are unclear or subject to different meanings will we resort to extrinsic evidence to ascertain the parties' intent. *Id.* At all times, the burden remains with appellants to show error in BIA's decision. *A C Building and Supply*, 51 IBIA at 72.

The Indian Long-Term Leasing Act (Act), 25 U.S.C. § 415, authorizes Indian owners of restricted Indian land to lease their land with the approval of the Secretary for up to 25 years for public, religious, educational, recreational, residential, or business purposes. The Act also authorizes the contracting parties to include a clause in such leases authorizing their renewal for one additional term of up to 25 years.⁸ Nothing in the Act or in the implementing regulations at 25 C.F.R. Part 162 requires the exercise of a renewal option to be subject to the consent of the landowner-tribes nor the approval of the Secretary, provided that the lease and its renewal clause was executed by the Indian lessor and approved by the Secretary.

As explained in the history of the Act, without the assurance of a long-term interest in the land itself, Indians were restricted in their ability to utilize their lands for a great many purposes due to the difficulty for the Indian landowner as well as for the Indian landowner's tenant of securing financing for capital outlay to start a business, build a house, or purchase farm machinery. *See* H.R. Rep. No. 84-1093 (1955), *reprinted in* 1955 U.S.C.C.A.N. 2691, 2691-92 ("Because of existing limitations upon duration of leases many Indian lands which could be profitably developed under long-term leases are idle, and the Indians are deprived of much needed income."). Thus, Congress sought to alleviate these difficulties, promote the beneficial use of Indian lands, and generate income

⁸ Business purposes are broadly construed to include the development or utilization of natural resources, leases for grazing purposes, and leases for farming purposes that require a substantial investment. 25 U.S.C. § 415(a). Over the years since the enactment of the Act in 1955, Congress has amended the Act to grant authority to a number of tribes to lease tribally owned lands for up to 99 years. The Tribe has not been given authority to enter leases for more than 25 years plus a renewal option for up to another 25 years.

for the Indian owners by granting long-term leasing authority. In particular, Congress acknowledged that a lease for 25 years with an option to renew for one additional term of 25 years “is in effect a 50-year lease.” S. Rep. No. 91-832 (1970), *reprinted in* 1970 U.S.C.C.A.N. 3243, 3244.

In unambiguous terms and consistent with the Act, the Lease between SIHC and the Tribe authorizes an initial term of 25 years with a right of renewal for one additional term of 25 years. And Addendum 5 to the Lease provides further that SIHC “shall give the [Tribe] and the Secretary of the Interior written notice of its intention to exercise *its* option to extend the lease for an additional twenty-five (25) year period.” Emphasis added. This addendum was separately executed by both SIHC and the Tribe. Another addendum explicitly states that rent for *each* 25-year lease period would be \$1.00. Lease, Add. 3. The Lease and its five addenda were expressly approved by BIA on behalf of the Secretary.

This right to renew the lease presumably was part of the bargain struck by SIHC with the Tribe in return for (1) the funds given to the Tribe by SIHC to purchase the land for the clinic, (2) SIHC’s agreement to bear some of the costs associated with the construction, (3) SIHC’s agreement to bear all maintenance and operation costs, and (4) SIHC’s provision of medical treatment to the Tribe’s members. We conclude that the right to exercise the renewal option and extend the Lease for an additional 25 years is a unilateral right granted to SIHC, as contemplated by the plain language of Addendum 5 where the parties agreed that SIHC could exercise *its* option to renew the Lease. Nothing in the Lease, the Act, or the Act’s implementing regulations conditions SIHC’s exercise of the option on the consent of the Tribe or the approval of the Secretary or BIA, and we cannot nor will we rewrite the Lease to impose any such requirements. In addition and contrary to the arguments raised by the Tribe, which we discuss in greater detail below, nothing in the renewal option contravenes Federal law or regulations. *See First Mesa Consolidated Villages v. Phoenix Area Director*, 26 IBIA 18, 30 (1994) (“Absent a conflict between the 1984 lease [approved by BIA] and the regulations governing leasing of tribal land, *BIA is bound to recognize the contractual right of [the lessee] to renew the lease.*” Emphasis added.). Once SIHC gave notice of its intent to extend the Lease in the manner prescribed by Addendum 5 and tendered payment, the Lease automatically renewed for an additional 25 years.

Our decision is consistent with *Gronidal v. United States*, 682 F.Supp.2d 1203 (E.D.Wash. 2010). *Gronidal* concerned a lease of Indian restricted land that also included a renewal option nearly identical to the provisions found in Article 4 of the Lease and in

Addendum 5.⁹ The lessee in *Gronidal* apparently gave notice to BIA that he was exercising his right to renew the lease, but he did not give notice to the Indian landowners. In describing the renewal option in *Gronidal*, the court stated, “Under the terms of the . . . Lease, obtaining the renewal could not have been simpler. The consent of either the [lessors] or the BIA was *not* required. There was just one condition to be met: giving timely and proper notice of the exercise of the option.” 682 F.Supp. 2d at 1229 (emphasis added). The same is true here. All that was required was for SIHC to give timely and proper notice of the exercise of its option. There is no dispute that SIHC did so.

Although we need not look to extrinsic evidence to define the parties’ intentions, doing so only confirms our determination because it is abundantly clear that the Tribe intended to provide a long-term home for SIHC by initially seeking a 99-year lease for SIHC and by attempting to waive or relinquish any right it may have to cancel the Lease. BIA informed the Tribe that it could not approve a resolution that would inhibit the Secretary from following applicable regulations “in the event of a violation of the [L]ease.” Letter from BIA to SIHC, Mar. 4, 1987 (AR Tab 6).¹⁰ While the provisions proposed by the Tribe could not be approved, they do underscore the Tribe’s intent to ensure the longest permissible tenure for SIHC free from interference from the Tribe.

In essence, the Tribe executed, and BIA approved, a 50-year lease, subject only to SIHC’s exercise of its renewal option. If we were to read the renewal option as the Tribe would have us do, i.e., that the extension of the Lease is subject to the approval of BIA,¹¹

⁹ The renewal clause in the lease in *Gronidal* stated

The term of this lease shall be twenty-five (25) years, beginning on the date that the lease is approved by the Secretary.

This lease may be renewed at the option of the Lessee for a further term of not to exceed twenty[-]five (25) years, commencing at the expiration of the original term, upon the same conditions and terms as are in effect at the expiration of the original term, provided that notice of the exercise of such option shall be given by the Lessee to the Lessor and the Secretary in writing at leas[t] twe[1]ve (12) months prior to said expiration of original term.

682 F.Supp. 2d at 1209.

¹⁰ The Tribe mischaracterizes this letter as saying that BIA disapproved the renewal option. Opening Br. at 10. The Tribe errs. Nothing in BIA’s March 4, 1987, letter is directed at the renewal option.

¹¹ Presumably, the Tribe would also argue that BIA is required to defer to the Tribe’s wishes *not* to approve the Lease because, *inter alia*, use of the land for a medical clinic now conflicts with the Tribe’s land use plan or because BIA is required to maximize the revenue

(continued...)

the effect would be to write the renewal option out of the Lease. After all, any party to a lease has the “right” to try to negotiate an extension or renewal of a lease when there is no renewal clause in the lease. Therefore, the existence in a lease of a renewal clause must mean something more than the right to seek an extension or renewal of the lease. We conclude that it means the right of renewal rests exclusively with SIHC.

The Tribe maintains that other language in the Act dictates that the Secretary must approve any and all extensions of leases, including the renewal exercised by SIHC. The Tribe relies on language in the Act that specifies various items that the Secretary should consider “[p]rior to approval of any lease or extension of an existing lease pursuant to this section.” 25 U.S.C. § 415(a). The Tribe argues that this statutory language is unambiguous, that there is nothing to interpret, and that it must be given effect. But the Act does not say *when* approval must be given to a lease extension. Here, BIA approved the lease renewal or extension (assuming SIHC elected to exercise its option) at the time it approved the Lease. Once the renewal option was approved by BIA, nothing in the Act or in the Lease itself *requires* BIA to approve the option a second time, i.e., when the renewal option is exercised before the end of the first term, nor does the Act *prohibit* BIA from approving the additional 25-year term at the time it approved the Lease, e.g., at the commencement of the initial term. *See* S. Rep. No. 91-832 (1970), *reprinted in* 1970 U.S.C.C.A.N. 3243, 3244 (A lease for a term of 25 years with an option to renew for one additional term of 25 years “is in effect a 50-year lease.”)¹² Of course, if the parties were to make substantive changes to the terms of the lease or if the rental amount for the second term was not defined in the renewal option, any such new terms require the approval of the Secretary. *See Smith v. Billings Area Director*, 34 IBIA 114, 116 (1999) (“It is an elementary proposition of Indian law that leases of trust land cannot be modified without BIA approval.”).

(...continued)

potential of the land. *See* Opening Br. at 3, 8; *see also* 25 U.S.C. § 415(a) (in approving leases or extensions, the Secretary should consider whether “the relationship between the use of the leased lands and the use of neighboring lands”), 25 C.F.R. § 162.607(a) (leases granted or approved should “allow the highest economic return [reasonably feasible]”).

¹² We also reject the Tribe’s contention that 25 C.F.R. § 162.5(b)(2) (1986) (now found at 25 C.F.R. § 162.604(b)(2)), “plainly” subjects the exercise of the renewal option to the written approval of the Secretary, as provided in § 162.5(a), now found at § 162.604(a). Opening Br. at 2. Again, approval was given to the extension at the time BIA approved the Lease and its five addenda in 1987. Contrary to the Tribe’s argument, nothing in § 162.604(b)(2) requires the Secretary to approve, in writing or otherwise, the *exercise* of a renewal option where the option provision itself was approved.

Next, the Tribe maintains that we must distinguish between the Act’s use of the words “renewal” and “extension”. We disagree. The Act itself specifically authorizes leases of restricted lands to “*include* provisions authorizing their renewal for one additional term.” 25 U.S.C. § 415(a) (emphasis added). Through rulemaking, BIA has construed the two words—renewal and extension—as synonymous in the context of the parties’ authority to include an *option* in a lease for renewal or extension: “Leases . . . shall not exceed 25 years but may include provisions authorizing *a renewal or an extension* for one additional term of not to exceed 25 years.” 25 C.F.R. § 162.8(a) (1986) (now found at § 162.607(a)) (emphasis added). As interpreted by BIA through rulemaking, Congress authorized the Secretary to approve *in advance* a one-time renewal or lease extension where the parties have incorporated a renewal clause into the base lease (or as a separate addendum, amendment, or modification). *See id.* § 162.8(a), now found at § 162.607(a). That is what a renewal *option* is in the context of long-term leasing of Indian restricted lands. On the other hand, a renewal or an extension of a lease that does *not* contain an approved renewal *option* necessarily requires both the consent of the Indian lessor and BIA approval. Whatever distinction may or may not exist between the words “renewal” and “extension” in another context simply does not apply here.

The Tribe also relies on 25 C.F.R. § 162.604(a) and our decision in *Merrill v. Portland Area Director*, 19 IBIA 81 (1990), to support its argument that the exercise of a renewal option must be approved by BIA. The Tribe errs. First, § 162.604(a) states in its entirety, “All *leases* made pursuant to the regulations in this part shall be in the form approved by the Secretary and subject to his written approval.” Emphasis added. There is no contention that the Lease was not “in the form approved by the Secretary” and it is evident that he *did* approve the Lease.¹³ And the exercise of the renewal option will not result in a new lease being drawn; rather, the existing Lease and its terms simply will continue. As for our decision in *Merrill*, BIA had declined to approve the renewal option itself. Thus, when the appellants attempted to exercise the “option,” they had no unilateral right to do so because *the option itself had never been approved*. *See Merrill*, 19 IBIA at 86 (“no renewal option was placed in the lease or [lease] assignment document that was approved by [BIA]”). In contrast, BIA’s approval of the Lease expressly included approval

¹³ For the same reason, we reject the Tribe’s argument that Article 33 of the Lease requires approval by the Secretary of the lease extension. Article 33 provides in its entirety: “Whenever under the terms of this lease the acceptance, consent or approval of the Lessor and/or the Secretary is required, said acceptance, consent or approval shall not be unreasonably withheld.” BIA approved the renewal option in 1987 and, in doing so, approved in advance the lease extension should SIHC elect to exercise its option. No further approval by BIA is required in the absence of a modification of a material term of the Lease.

not only of the Lease itself but of the five addenda to the Lease, including Addenda 5 that specified in greater detail SIHC's renewal option.

The Tribe urges us to examine the parties' conduct some 13 years after the approval of the Lease, which, the Tribe argues, shows that the parties anticipated that both Tribal consent and BIA approval were required to extend the Lease. The particular conduct cited by the Tribe is a contract executed on December 21, 2000, pursuant to which "the Tribe agree[d] to negotiate with the SIHC . . . regarding the 'renewal or extension of the 1986 [sic] Lease . . . for the maximum term allowed by law (currently 50 years, including an option to renew).'" Opening Br. at 10 (quoting Agreement, Dec. 21, 2000, at Art. 12.A (AR Tab 24, Ex. 1)). But, as the Tribe acknowledges, the full context of the provision reveals that the parties were in negotiations concerning another parcel of land. SIHC apparently had agreed that if it accepted \$5 million to surrender any rights it had to the parcel, it would negotiate with the Tribe whether the present Lease would be renewed or extended *or*, on the other hand, whether the parties would execute a new lease for the maximum term allowed by law. We do not interpret the excerpt as demonstrating that SIHC believed that Tribal consent and BIA approval was required for the exercise of the Lease's renewal option. In any event, the language of the Lease and the authorizing statute and regulations would not require us to look to the actions of the parties to determine whether such consent and approval were required: It is evident that they are not.

Finally, the Tribe argues that BIA is required to act on the Tribe's behalf to obtain the highest economic return for the land. While this tenet ordinarily is true, the Tribe itself agrees that the Lease fell within—and was approved pursuant to—a provision that authorizes BIA, in its discretion, to lease tribal lands for nominal rent. Opening Br. at 2; *see supra* at 165 (quoting BIA's approval of the Lease); 25 C.F.R. § 162.5(b)(2) (1986), now found at § 162.604(b)(2). Thus, under this provision, BIA approved the Lease with its *de minimis* rental payment of \$1.00 for *each* of the two 25-year terms of the Lease. *See* Lease, Add. 3 (The rent will be "\$1.00 per 25 year period."). Moreover, it is evident that SIHC has provided numerous benefits to the Tribe, including funding for the Tribe's purchase of the land that SIHC leases;¹⁴ and SIHC has been, and remains, entirely responsible for the maintenance of the buildings and grounds during the life of the Lease, Lease, Art. 15.

We conclude that the Regional Director correctly determined that BIA was not required to review, for purposes of approval or disapproval, the decision by SIHC to exercise its renewal option. BIA gave its approval to the extension in 1987 when it

¹⁴ It appears that the Tribe may have contributed \$2,500 towards the purchase price of \$85,000.

approved the Lease and the five addenda, which included SIHC's option to renew the Lease.

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 affirms the Regional Director's December 22, 2010, decision.¹⁵

I concur:

// original signed
Debora G. Luther
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

¹⁵ In its opening brief, the Tribe renewed its motion to have the Board reconsider its order granting intervention to the member tribes. Opening Br. at 9. The Tribe argues that the member tribes are not "interested parties" for purposes of this appeal. The Tribe argues that "California State law requires the member tribes act only through the SIHC, Inc. Board of Directors," citing Cal. Corp. Code § 300(a). We made no determination that the member tribes are "interested *parties*," only that they were "interested *tribes*" within the meaning of 43 C.F.R. § 4.313, which governs intervention in appeals before the Board. *See* Order Denying Reconsideration of Order Granting Tribes' Motion to Intervene, Apr. 14, 2011, at 2. We deny the Tribe's second motion for reconsideration.

The member tribes also move to supplement the record. No opposition to the motion was received. Therefore, the motion is granted.