



INTERIOR BOARD OF INDIAN APPEALS

Scotts Valley Band of Pomo Indians v. Pacific Regional Director, Bureau of Indian Affairs

59 IBIA 56 (07/28/2014)

Petition for Reconsideration Denied:

59 IBIA 114



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SCOTTS VALLEY BAND OF POMO)	Order Dismissing Appeal
INDIANS,)	
Appellant,)	
)	
v.)	Docket No. IBIA 14-066
)	
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	July 28, 2014

The Scotts Valley Band of Pomo Indians (Appellant or Tribe), through Leslie A. Miller, appealed to the Board of Indian Appeals (Board) from a January 22, 2014, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA).¹ Miller contends that he became the Tribe’s Chairman at a March 2013 tribal meeting. The Regional Director affirmed a July 16, 2013, decision by BIA’s Central California Agency Superintendent not to intervene in tribal affairs, thus declining Miller’s request to review the tribal meeting and issue a tribal recognition decision, because at the time of Miller’s request, no separate matter was pending before BIA that required BIA action.

On March 31, 2014, while this appeal was pending, the Superintendent issued a decision in which he concluded that a November 2013 proposal made on behalf of the Tribe for an Indian Self-Determination and Education Assistance Act contract required BIA action which, in turn, necessitated a tribal recognition decision.² For purposes of taking

¹ This case involves a tribal dispute. The Board’s references to actions taken by or on behalf of tribal officials, tribal entities, or the Tribe, and the Board’s use of titles claimed by various individuals, shall not be construed as expressing any view on any individual’s status or authority, or on the underlying merits of the dispute.

² In the Pre-Docketing Notice for this appeal, the Board included an order providing that to the extent this appeal from BIA’s alleged failure to make a tribal recognition decision might be construed to preclude BIA from making such a decision, if and when BIA determined that issuance of such a decision was justified in order to take action on a separate matter, the Board granted BIA jurisdiction to issue such a decision. *See* Pre-Docketing Notice and Order, Feb. 27, 2014.

action on the ISDA matter, the Superintendent recognized a November 2013 tribal election in which Gabriel Ray was elected Chairman of the Tribe.

Subsequently, and before Appellant filed its opening brief, the Regional Director filed a motion to dismiss this appeal as moot on the grounds that the Superintendent's recognition decision rendered moot the issue in this appeal—whether BIA was required to make a tribal recognition decision. The Board allowed the parties to respond to the Regional Director's motion in their merits briefs.

In its opening brief, Appellant argues that at the time the Regional Director issued the Decision, there was a matter pending that required BIA action and a tribal recognition decision.³ Appellant does not, however, respond to the Regional Director's motion to dismiss this appeal on mootness grounds. Appellant's only mention of mootness is in its "Summary of Argument," which states: "The Regional Director erred in ruling that no Federal Action was pending and that the appeal is moot." Opening Brief at 2. The "Questions presented on appeal" by Appellant, *id.* at 4, do not even mention the mootness issue, and Appellant never makes any argument for why BIA's intervening tribal recognition decision does not render this appeal moot. The Tribe, through the Tribal Council headed by Gabriel Ray, filed an answer brief supporting the motion to dismiss the appeal as moot. Appellant did not file a reply brief.

The Board adheres to the doctrine of mootness as a matter of prudence and in the interest of administrative economy. *Picayune Rancheria v. Pacific Regional Director*, 58 IBIA 255, 257 (2014); *Alcantra v. Pacific Regional Director*, 58 IBIA 252, 253 (2014); *Van Mechelen v. Northwest Regional Director*, 56 IBIA 111, 112 (2013); *Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005). An appeal becomes moot when nothing turns on the outcome. *See Pueblo of Tesuque*, 40 IBIA at 274. When a suggestion of mootness has been made, the burden is on a party opposing the suggestion of mootness to demonstrate that an appeal is not moot. *Van Mechelen*, 56 IBIA at 112.

In the present case, Appellant challenged a BIA decision in which BIA concluded that, at the time Appellant requested recognition as the Tribe's Chairman, no separate matter was pending before BIA that required or warranted BIA action which, in turn, would necessitate a BIA recognition decision. BIA subsequently issued a tribal recognition decision when BIA concluded that a separate matter required BIA action, and required a recognition decision in order to take action on the separate matter.

³ Appellant does not argue, however, that the matter it relies on as requiring a BIA tribal recognition decision was pending at the time the Superintendent issued his July 16, 2013, decision.

Appellant makes no argument to dispute the Regional Director's suggestion of mootness, and BIA's intervening decision supports a finding that this appeal is moot.⁴

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 as moot.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

⁴ Although not relevant to our finding of mootness, the Board notes that Appellant filed an appeal from the Superintendent's recognition decision to the Regional Director. We express no opinion, of course, on the merits of the March 31, 2014, tribal recognition decision issued by the Superintendent.