



INTERIOR BOARD OF INDIAN APPEALS

In Re Shingle Springs Band of Miwok Indians

54 IBIA 339 (04/24/2012)



## 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

IN RE SHINGLE SPRINGS BAND OF )      Order Docketing and Dismissing  
MIWOK INDIANS )      Petition  
)  
)      Docket No. IBIA 12-095  
)  
)      April 24, 2012

On March 26, 2012, the Board of Indian Appeals (Board) received a “petition” to “reconsider certain aspects” of the Assistant Secretary – Indian Affairs’ (Assistant Secretary) “determination of Federal Recognition of the Shingle Springs Band of Miwok Indians.” The petition was submitted by Benjamin Cadranel, Esq., on behalf of a group of individuals who apparently claim to be the “true Miwok descendants” (petitioners) whom the Federal government should recognize as the rightful members of the Federally recognized Shingle Springs Band of Miwok Indians (Tribe). Although the petition itself is addressed only to the Board,<sup>1</sup> petitioners request that the Bureau of Indian Affairs (BIA) and the Board (1) revise and correct Federal recognition of the Tribe to only recognize “lineal descendants of California Miwok Indians” as members of the Tribe; (2) “remove” certain persons from the Tribe’s current membership; (3) repatriate Federal benefits, including the Tribe’s reservation, to petitioners; and (4) award monetary damages. Petitioners demand a response in accordance with 25 C.F.R. §§ 2.8 (appeal from inaction of official) and 62.2(a) (procedures for appealing adverse enrollment actions by BIA).

We docket but dismiss the petition for lack of jurisdiction because it does not seek reconsideration of a Federal recognition determination made by the Assistant Secretary under 25 C.F.R. Part 83, it does not identify any action or inaction by a BIA official that is appealable to the Board, and the Board does not have jurisdiction to grant the relief requested.

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<sup>1</sup> Copies of the petition were mailed to various government officials, including the Assistant Secretary and the Director of the Office of Hearings and Appeals (Director). The Director’s copy was routed to the Board, which also received a substantially identical copy of the petition on April 2, 2012. This decision responds to the copies mailed to the Director and to the Board.

The Board is an administrative appellate review body located within the Office of Hearings and Appeals (OHA), Office of the Secretary, U.S. Department of the Interior. The Board is not part of BIA or the Office of the Assistant Secretary. The Board's jurisdiction is prescribed by regulation, and, as relevant to this case, is limited to reviewing petitions for reconsideration from final acknowledgment determinations made by the Assistant Secretary under 25 C.F.R. Part 83, adjudicating appeals from final decisions of certain BIA officials, adjudicating appeals from inaction by certain BIA officials that has been made appealable pursuant to § 2.8, and deciding matters referred to the Board by the Secretary of the Interior, Assistant Secretary, or Director of OHA. *See* 25 C.F.R. § 2.4(e); 43 C.F.R. §§ 4.1(b)(1), 4.330.

Although the petition refers to Part 83 and an Assistant Secretary's "determination," it is clear that petitioners do not seek review of any determination made by the Assistant Secretary pursuant to Part 83. Part 83 contains the procedures for establishing Federal acknowledgment as an Indian tribe of groups not currently acknowledged to be tribes. *See* 25 C.F.R. § 83.3(a); *see also id.* § 83.11 (Board review of final determinations made under Part 83). The Tribe is already Federally recognized, and not subject to Part 83. *See id.* § 83.3(b). Petitioners concede that they address "an area not specifically covered by the [Part 83] procedures," and they do not seek to set aside the Federal recognition of the Tribe.<sup>2</sup> Thus, Part 83 provides no jurisdiction for Board review of the petition.

With respect to potential appealable action or inaction by a BIA official, the petition identifies no action or decision by such an official that might be appealable to the Board pursuant to 25 C.F.R. Part 2 and 43 C.F.R. Part 4. Nor does the petition demonstrate that petitioners have complied with the procedures for making inaction by a BIA official appealable to the Board. Although the petition asserts that petitioners made a request through a letter dated August 13, 2010, "to engage participation" by BIA in the matter, the referenced letter does not comply with the requirements of 25 C.F.R. § 2.8 for making inaction by a BIA official appealable to the Board. *See* 25 C.F.R. § 2.8(a) (procedural requirements for submitting a § 2.8 demand for action or decision to a BIA official).<sup>3</sup> The

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<sup>2</sup> The Tribe was already Federally recognized when the Part 83 procedures were revised to include a review function for the Board. *See* 44 Fed. Reg. 7235, 7236 (Feb. 6, 1979) (Federally recognized tribes list); 59 Fed. Reg. 9280, 9299 (Feb. 25, 1994) (revising regulations to provide for Board review of final determinations made under Part 83).

<sup>3</sup> Although petitioners did not enclose a copy of their letter, and incorrectly identified the date as August 13, 2011, instead of August 13, 2010, the Board was able to obtain a copy of the letter from the BIA Central California Agency Superintendent. The letter is from Elizabeth T. Walker, Esq., to the BIA Pacific Regional Director, and was sent on behalf of Cesar Caballero, "representing the Historic Shingle Springs Miwok Indian Tribe."

letter asks for BIA assistance, but makes no demand for action or a decision pursuant to § 2.8.

It appears that the petition may be intended as a § 2.8 demand for action or a decision by the Board, but the § 2.8 procedures apply only to BIA officials, and not to the Board. *See* 25 C.F.R. § 2.3 (applicability of Part 2). As noted earlier, the Board is not part of, nor does it have supervisory authority over, BIA, and therefore if petitioners intended to present a § 2.8 demand to BIA, their petition to the Board is misdirected. If petitioners believe that their interests are adversely affected by the failure of a BIA official to act on a request, they may submit a demand for action to a BIA official that complies with the requirements of § 2.8.

Finally, none of the relief that petitioners request would be within the jurisdiction of the Board to grant, even if the petition were not otherwise defective. *See Quitiquit v. Acting Pacific Regional Director*, 51 IBIA 275, 276 (2010) (Board lacks jurisdiction over tribal enrollment disputes); *Oswalt v. Northwest Regional Director*, 42 IBIA 90, 90 (2005) (Board lacks jurisdiction over claims for damages against the Department).

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 docketed but dismisses the petition for lack of jurisdiction.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge