



INTERIOR BOARD OF INDIAN APPEALS

Jenny Lynn Rampey, Laura Downum, Billy Hank Downum, and Jan Killough v.
Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs

55 IBIA 50 (05/18/2012)



United States Department of the Interior

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

JENNY LYNN RAMPEY, LAURA)	Order Dismissing Appeals
DOWNUM, BILLY HANK)	
DOWNUM, and JAN KILLOUGH,)	
Appellants,)	
)	
v.)	Docket Nos. IBIA 12-032
)	12-033
ACTING EASTERN OKLAHOMA)	12-034
REGIONAL DIRECTOR, BUREAU)	12-035
OF INDIAN AFFAIRS,)	
Appellee.)	May 18, 2012

Jenny Lynn Rampey, Laura Downum, Billy Hank Downum, and Jan Killough (collectively, Appellants) appealed to the Board of Indian Appeals (Board) from a September 29, 2011, decision of the Acting Eastern Oklahoma Regional Director (Regional Director), Bureau of Indian Affairs (BIA).¹ The Regional Director affirmed BIA's Miami Agency Superintendent's decision to approve a chat sales agreement with Bingham Sand and Gravel Company, Inc. (Bingham), for the Western Chat Pile.² The Board dismisses these appeals as moot because Bingham has withdrawn its bid to purchase chat from the Western Chat Pile and Killough's opposition to dismissal is unconvincing.

¹ Appellants each received a separate decision addressed to him or her, dated September 29, 2011.

² According to the Regional Director's decision, the Western Chat Pile is located on the Anna Beaver and John Beaver allotments in Section 19, Township 29 North, Range 23 East, Ottawa County, Oklahoma.

"Chat" refers to the waste material generated from milling operations to recover lead and zinc from metal-bearing ore in the Tri-State Mining District of Southwest Missouri, Southeast Kansas, and Northeast Oklahoma. *See* 40 C.F.R. § 278.1(b); Final Rule, 72 Fed. Reg. 39,331, 39,334 (July 18, 2007) (Criteria for the Safe and Environmentally Protective Use of Granular Mine Tailings Known as "Chat").

Discussion

On March 19, 2012, the Board received notice from Bingham that it had withdrawn its bid to purchase chat on the Western Chat Pile. The Board allowed the parties to respond and to address whether Bingham's withdrawal of its bid renders the appeals moot. Of the four Appellants, only Killough responded.³ Killough characterizes Bingham's withdrawal of its bid as having "removed itself from being an interested party to this matter." Killough's Response, Apr. 6, 2012, at 1. But Killough argues that his appeal should be allowed to continue to focus on the issue of whether BIA has authority to approve chat sale agreements.

The Board does not issue advisory opinions, and adheres to the principle that an active case or controversy must be present at all stages of an appeal before the Board. *See Forest County Potawatomi Community v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 264 (2009), and cases cited therein. Killough effectively concedes that there is no longer an actual controversy because the chat sales agreement with Bingham is no longer at issue, and argues only that the Board should continue his appeal in order to address whether BIA had authority to approve the agreement. But for the Board to decide that question in the abstract, i.e., in the absence of an active controversy, would be to issue an advisory opinion. We also reject as without merit Killough's argument that BIA's failure to respond to the suggestion of mootness provides a basis for allowing his appeal to continue. Non-opposition to a suggestion of mootness provides no jurisdictional basis for the Board to continue an appeal. Thus, Killough fails to demonstrate that his appeal from the Decision should not be dismissed as moot.⁴

³ Bingham filed a separate suggestion of mootness. The Regional Director did not file a response.

Before submitting its notice of withdrawal of its bid and suggestion of mootness on that ground, Bingham moved to dismiss three of the appeals — those from Jenny Lynn Rampey, Laura Downum, and Billy Hank Downum — because, while the appeals were pending, each had agreed to the chat sales agreement, accepted a lease with Bingham, and waived appeal rights regarding the sales agreement. While none of these three appellants argued that their appeals were not rendered moot by their actions, Bingham's withdrawal of its bid is relevant to all four appeals, and thus we need not address this additional ground for dismissing these three appeals as moot.

⁴ Killough also seeks monetary sanctions against BIA, Bingham, and Bingham's counsel. The Board lacks authority to impose such sanctions, even assuming grounds existed, which they do not.

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 these appeals as moot.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge