



INTERIOR BOARD OF INDIAN APPEALS

Noyo River Indian Community v. Acting Sacramento Area Director,
Bureau of Indian Affairs

19 IBIA 63 (11/14/1990)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

NOYO RIVER INDIAN COMMUNITY

v.

ACTING SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-87-A

Decided November 14, 1990

Appeal from a denial of applications for Housing Improvement Program grants.

Affirmed.

1. Administrative Procedure: Standing--Board of Indian Appeals:
Generally--Bureau of Indian Affairs: Administrative Appeals:
Generally

An unorganized group lacks standing to bring an appeal under
25 CFR Part 2.

2. Board of Indian Appeals: Jurisdiction--Indians: Lands: Aboriginal
Title

The Board of Indian Appeals is not a court of general jurisdiction
and has only those powers delegated to it by the Secretary of the
Interior. It has not been delegated authority to determine
aboriginal title to land.

APPEARANCES: Maureen H. Geary, Esq., Ukiah, California, for appellant; William M.
Wirtz, Acting Regional Solicitor, U.S. Department of the Interior, Sacramento, California,
for appellee.

OPINION BY ADMINISTRATIVE JUDGE VOGT

The Noyo River Indian Community seeks review of a March 29, 1990, decision of
the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), denying
Housing Improvement Program (HIP) grants on eligibility grounds. For the reasons discussed
below, the Board affirms the Area Director's decision.

Background

Leonard Campbell and Harriet Stanley, both members of the Sherwood Valley Band of
Pomo Indians, applied for HIP grants under 25 CFR

Part 256. 1/ Both applications indicated that the houses for which grants were sought were located on land owned by the Georgia-Pacific Corporation.

On August 1, 1989, the attorney for the Sherwood Valley Band wrote to the Central California Agency concerning the status of the land on which the houses were located. 2/ The attorney stated that a group of Indians known as the “Noyo River Indian Community” occupied the land, which was located along the northern border of the Noyo River in Mendocino County, California. He asserted that, although fee title was vested in Georgia-Pacific, the Noyo River Indian Community held aboriginal title to the land. The attorney’s letter was evidently written for the purpose of attempting to persuade BIA that the land was “owned” within the definition of “ownership” in the HIP regulations. That definition, found at 25 CFR 256.2(h), provides: “Ownership’ means having fee title, trust title (including participation in multiple ownership), leasehold interest, use permit, indefinite assignment or other exclusive possessory interest.”

By letter of January 10, 1990, the Acting Superintendent responded to the attorney, stating:

The information provided by you does not include sufficient facts to enable a determination as to aboriginal land title. Furthermore, it is the opinion of the Area Solicitor's Office that the responsibility for making a determination of the title lies with the United States Courts.

The Housing Improvement Program (HIP) at this time is unable to assist those families residing in the Noyo River Community, because eligibility requirements have not been fully met as established in 25 CFR 256.5. Our recommendation is to go to those individuals next on the Tribe's priority list, or make revisions to the current priority list. [3/]

This decision was appealed to the Area Director, apparently on behalf of the Noyo River Indian Community. 4/ On March 29, 1990, the Area Director affirmed the Acting Superintendent's decision, stating:

1/ Campbell's application indicates that it was received at the Central California Agency, BIA, on July 21, 1987. Stanley's application is dated Feb. 23, 1989, but does not show when it was received by BIA.

2/ Various attorneys have been involved in this matter since Aug. 1, 1989. All are associated with California Indian Legal Services (CILS).

3/ 25 CFR 256.5 sets out eligibility requirements including, at subsection 256.5(a)(4): “The applicant for assistance under one of the categories in § 256.4 meets the ownership requirements under that category.” Subsection 256.5(a) also provides: “Each application for assistance must be approved by the tribal housing authority or other officially designated housing entity of the tribe being served.” No evidence of tribal action on the Campbell and Stanley applications appears in the administrative record.

4/ The notice of appeal, filed by an attorney, does not specifically identify the appellant, but states: “The decision of the Acting Superintendent * * * denying Housing Improvement Program (HIP) assistance to the Noyo River Community is hereby appealed.”

The decision of the Superintendent is upheld on the following basis:

1. Bureau of Indian Affairs records disclose that the appellant (Noyo River Community) is not a federally recognized Tribe under definition section 25 CFR 256.2(f).

2. Appellant has failed to satisfy the HIP ownership requirements as defined in 25 CFR 256.2(h).

(a) Record title is in the name of another, Georgia Pacific.

(b) No evidence provided of ownership in Appellant (Legal argument concerning aboriginal title submitted without proof).

(c) BIA lacks authority to determine aboriginal title (adjudicative authority rests with the judicial system, not with the administration).

Appellant's appeal from this decision was received by the Board on May 1, 1990. Both appellant and the Area Director filed briefs.

Discussion and Conclusions

Two threshold issues are raised in this appeal: (1) whether the named appellant has standing to bring the appeal and (2) whether the Board has jurisdiction to make a determination concerning aboriginal title or "exclusive possessory interest" with respect to the Noyo River lands.

[1] The Area Director argues that appellant lacks standing to bring this appeal because it is not a Federally recognized Indian tribe. Appellant responds that the appeal was actually brought either by the individuals whose grant applications were denied, as residents of the Noyo River Community, or by the Sherwood Valley Band of Pomo Indians, a Federally recognized tribe.

After reviewing the record and the filings of the parties, the Board is of the view that appellant does not claim to be an Indian tribe or entity and, in fact, does not claim to be an organization at all. The term "Noyo River Indian Community" appears to have been used loosely to denote a group of Sherwood Valley Band members residing in the Noyo River area. As far as the record shows, the term was first used in the CILS attorney's August 1, 1989, letter; it appears to have been unfamiliar to BIA employees at that time. The Board concludes that the "Noyo River Indian Community" is simply a group of individuals who reside in the same area but who have not entered into any formal association with each other.

The Board must therefore consider whether such a group may be an "interested party" with standing to bring an appeal under the Board's

regulations. See 43 CFR 4.331. 5/ Although the Board's regulations do not define "interested party," the term is defined in 25 CFR Part 2, under which this appeal arises. 25 CFR 2.2 provides: "'Interested party' means any person who could be adversely affected by a decision in an appeal." Section 2.2 further provides: "'Person' includes any Indian or non-Indian individual, corporation, tribe or other organization." Under these definitions, an unorganized group cannot be an "interested party" and therefore lacks standing to bring an appeal under 25 CFR Part 2. Where the Board's jurisdiction is derived from 25 CFR Part 2, as it is here, a person without standing under Part 2 also lacks standing to pursue an appeal before the Board. The Board therefore holds that the "Noyo River Indian Community" lacks standing to bring this appeal.

The Board recognizes, however, that appellant's attorney may have intended to file the appeal on behalf of the individuals whose grant applications were denied. 6/ Appellant's opening brief identifies these individuals as Harriet and Clyde Stanley, Leonard Campbell, and Lucy Stanley. 7/ From the materials in the record, it appears that at least Leonard Campbell and Harriet Stanley would be proper appellants. Under the circumstances present here, in order to avoid dismissing this appeal for lack of standing, the Board will consider this appeal as if it had been filed by Leonard Campbell and Harriet Stanley.

[2] The Area Director argues that the Board lacks jurisdiction to determine aboriginal title to the Noyo River lands. Appellants argue that the Board need not determine aboriginal title but only that appellants, or the Sherwood Valley Band, have an "exclusive possessory interest" dating from before 1870 (Appellants' Opening Brief at 12).

While appellants indicate they have abandoned their claim of aboriginal title in this proceeding and now seek only a determination of "exclusive possessory interest," it is apparent from their arguments that they

5/ This section provides:

"Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in Title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, * * *."

6/ Appellant's notice of appeal and opening brief are both internally inconsistent in this regard. For instance, the notice of appeal begins:

"RE: Appeal of the Noyo River Indian Community from the Decision of the Acting Area Director Upholding the Acting Superintendent's Decision Denying Housing Improvement Grant to the Noyo River Indian Community.

"To the Board of Indian Appeals:

"PLEASE TAKE NOTICE that the residents of the Noyo River Indian Community, who are members of the Sherwood Valley Band of Pomo Indians, appeals [sic] to the Board of Indian Appeals * * *."

The Board notes that, after it issued pre-docketing and docketing notices identifying the intended appellant as the "Noyo River Indian Community," appellant offered no correction.

7/ No grant application from Lucy Stanley appears in the administrative record. Clyde Stanley is presumably the husband of Harriet Stanley. He is not shown as an applicant on her grant application.

continue to seek a recognition of their rights to the land under a theory of aboriginal title. The Board is not a court of general jurisdiction and has only those powers delegated to it by the Secretary of the Interior. E.g., Henderson v. Portland Area Director, 16 IBIA 169 (1988). It has not been delegated authority to determine aboriginal title to land.

Appellants do not specifically address other categories of "exclusive possessory interest" listed in 25 CFR 256.2(h), such as "use permit" and "indefinite assignment." They have asserted, however, that Georgia-Pacific allows the Noyo River Indians to reside on its property without paying rent. ^{8/} It is possible that, with adequate proof, appellants might be shown to have a use permit or analogous occupancy right sufficient to qualify as "ownership" under 25 CFR 256.2(h). Appellants' evidence concerning their occupancy rights, however, consisting in its entirety of Harriet Stanley's statements, is inadequate to show the existence of such rights, especially in the absence of any involvement in this matter by Georgia-Pacific. ^{9/} Any proceedings to clarify appellants' rights in this land must involve the fee owner.

The Area Director held, inter alia, that appellants failed to produce evidence to support their ownership claim. The Board agrees. Appellants have also failed to present such evidence to the Board. ^{10/}

^{8/} A May 19, 1987, letter from Harriet Stanley states:

"Before the year 1929 my ancestors resided on the Noyo river flats and beach area for centuries before the white man came. During the year 1929 (approximate) the then local lumber company chose to place a railroad line in this particular area. In that placement the lumber company traded property directly on the bluffs above the beach area for use of the beach and surrounding area. The bluff area then became the home for members of my family. It was determined by the then owners that the Indians of this particular enclave would be able to live on the bluff area forever. At this time four families of the original Cum-a-lul Pomo's still reside on the bluffs above the beach at Noyo. This property has passed from generation to generation.

"The now owners Georgia-Pacific Corp. hold the legal title to the bluff lands and also the beach areas. The company pays all taxes on the property but recognizes the fact that our families do have homestead rights."

Related statements are included in a June 27, 1990, affidavit from Ms. Stanley.

^{9/} As far as the record shows, Georgia-Pacific has not been given notice of any proceedings in this matter.

^{10/} In their reply brief, appellants contend for the first time that BIA has changed its position since 1980 and 1983 when it authorized HIP grants to two Noyo River residents. Since the Area Director had no opportunity to respond to this allegation, the Board makes no finding concerning it. Even if it were shown that BIA's position has changed, however, error in BIA's present position would not be established. Rather, such a change might be seen as a correction of past error. BIA has the authority, indeed the responsibility, to correct its interpretation of regulations when it discovers its prior interpretation to have been in error. Cf. Kiowa, Comanche & Apache Intertribal Land Use Committee v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 207, 214 (1986).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Sacramento Area Director's March 29, 1990, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge