



# United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS  
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HOOPA VALLEY TRIBE,	:	Order Denying Reconsideration
Appellant,	:	
	:	
v.	:	
	:	
SPECIAL TRUSTEE FOR AMERICAN	:	Docket No. IBIA 07-90-A
INDIANS, DEPARTMENT OF	:	
THE INTERIOR,	:	
Appellee.	:	April 20, 2007

The Hoopa Valley Tribe (Tribe) filed a timely petition for reconsideration of the dismissal by the Board of Indian Appeals (Board), for lack of jurisdiction, the Tribe's appeal from two decisions issued by the Special Trustee for American Indians, U.S. Department of the Interior (Special Trustee; Department). 44 IBIA 210. Collectively, the decisions interpreted the 1988 Hoopa-Yurok Settlement Act (Settlement Act), 25 U.S.C. §§ 1300i to 1300i-11, and determined that the Yurok Tribe is entitled to the balance of funds remaining in the Hoopa-Yurok Settlement Fund (Settlement Fund). The Board summarily dismissed the Tribe's appeal, concluding that none of the regulatory provisions relied upon in the notice of appeal — 43 C.F.R. § 4.2(b)(2)(ii), 25 C.F.R. § 2.4(e), and 25 C.F.R. Part 1200 — provided the Board with jurisdiction.

In its petition, the Tribe submits three additional exhibits and contends that reconsideration is warranted because (1) the Board erred in concluding that it did not have jurisdiction to review the Special Trustee's decisions pursuant to 25 C.F.R § 1200.21, 1/ (2) the Board's review could prevent the United States from being subject to liability for breach of trust, and (3) Section 4.318 of 43 C.F.R. allows the Board to exercise the inherent authority of the Secretary of the Interior (Secretary) to correct "manifest injustice," which the Tribe contends would result from the Special Trustee's decisions and the Board's refusal to exercise jurisdiction. We deny the Tribe's petition because none of the stated

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1/ Section 1200.21 of 25 C.F.R. provides: "If we deny a request or do not approve an application within 90 days of a request, the tribe may address any problems that we identify and resubmit a revised request, seek technical assistance, or appeal the denial under 43 CFR part 4."

grounds for reconsideration satisfies the “extraordinary circumstances” standard for granting reconsideration. See 43 C.F.R. § 4.315. The first argument for reconsideration expands and refines the Tribe’s contentions in its notice of appeal that the Board has jurisdiction under 25 C.F.R. § 1200.21, but does not convince us that reconsideration of our substantive analysis is warranted. The second and third arguments for reconsideration do not identify any jurisdictional source of authority for the Board, and therefore do not state any basis to reconsider our finding that we lack jurisdiction over this appeal. We address each argument in turn. 2/

The Tribe first reargues its assertion that the Special Trustee’s decisions fall within the scope of 25 C.F.R. Part 1200. On this issue, the Tribe’s arguments in its petition for reconsideration are more detailed and extensive than those contained in its notice of appeal. We remain unconvinced that we erred in concluding that the Special Trustee’s decisions may not properly be characterized as falling within Part 1200, and more specifically as constituting the “denial” or failure to approve an application by the Tribe, submitted pursuant to section 1200.13, to withdraw its funds from Federal trust status.

The Tribe argues that the only possible legal basis for the Special Trustee’s exercise of authority must be found in the American Indian Trust Fund Management Reform Act of 1994 (Reform Act), 25 U.S.C. §§ 4001 et seq., and therefore his decisions necessarily must fall within the scope of 25 C.F.R. Part 1200, which implements Title II of the Reform Act. Title II of the Reform Act allows tribes to take funds that currently are held in Federal trust status on their behalf out of Federal trust status, and manage those funds on their own. See 25 C.F.R. § 1200.3; see also id. §§ 115.810, 115.815. From this, the Tribe extrapolates that a decision by the Special Trustee that may lead to the release of trust funds to a tribe — including a determination concerning which tribe or tribes may be entitled to certain funds — necessarily falls within the scope of Part 1200, and any “dispute” over the distribution or allocation of funds must fall within the appeal provisions of section 1200.21.

We disagree. Section 1200.21 grants the Board jurisdiction to review an appeal by a tribe when the Department has either denied or failed to approve its application, submitted pursuant to section 1200.13, to withdraw its funds from Federal trust status. It does not,

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2/ Although as a general rule the Board will not consider new evidence or new arguments raised for the first time in a petition for reconsideration, that rule carries less weight when the Board summarily dismisses an appeal on jurisdictional grounds based solely on a notice of appeal and without affording an appellant an opportunity to show cause why its appeal should not be dismissed. In light of our summary dismissal in this case, we will consider the Tribe’s three additional exhibits and its additional jurisdictional arguments.

as the Tribe suggests, vest the Board with jurisdiction to review any “dispute” that may in some way be related to or affect the withdrawal of trust funds. The Tribe quotes from the preamble language accompanying 25 C.F.R. Part 1200, which states that “any disagreements over application approvals are subject to the criteria and procedures in § 1200.21 of the regulation.” 61 Fed. Reg. 67,932 (Dec. 26, 1996), quoted in Petition for Reconsideration at 6. Even assuming, as the Tribe contends, that the Special Trustee’s decisions constituted “approval” of a section 1200.13 request from the Yurok Tribe to withdraw funds from Federal trust status, we would not read section 1200.21 as giving us jurisdiction. Section 1200.21 does not authorize appeals from decisions “approving” a section 1200.13 application. Instead it expressly authorizes only appeals from a “denial” or failure to approve an application. A reasonable reading of the preamble language quoted by the Tribe — and a reading that is consistent with the regulatory language itself — is that disagreements between the Department and a tribe that has requested approval of its application, i.e., disagreements arising from the Department’s denial or failure to approve that tribe’s application, are subject to appeal by that tribe to the Board.

We note that neither Title II of the Reform Act nor Part 1200 of 25 C.F.R. — nor for that matter, the related provisions in 25 C.F.R. Part 115, subpart G — addresses the resolution of disputes between tribes claiming entitlement to the same fund. 3/ While an entitlement issue arguably could arise in the context of an adverse decision on a tribe’s section 1200.13 application, it does not follow that all decisions by the Special Trustee concerning entitlement to trust funds arise under Part 1200. In the present case, the Board concluded that the Special Trustee’s decisions were properly characterized as action taken to interpret and administer the Settlement Act, or as the Tribe characterized it, to “administratively allocate the balance of the Settlement Fund” to the Yurok Tribe, 44 IBIA at 212 (quoting Tribe’s Notice of Appeal at 44). We concluded that the Special Trustee’s decisions could not properly be characterized as action to deny or fail to approve a section 1200.13 application submitted by the Tribe. 4/ The fact that the dispute in this case

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3/ The Tribe specifically cites to 25 C.F.R. § 115.806, but that provision only refers to the role of the Bureau of Indian Affairs (BIA) in providing assistance to tribes or reviewing tribal requests for distribution of judgment funds.

4/ The Tribe suggests that in reaching its jurisdictional determination, the Board improperly referred to the Special Trustee’s decisions as having been made pursuant to the Department’s administration of the Settlement Act, which according to the Tribe “is the ultimate issue on the merits.” Petition for Reconsideration at 2 n.2. The Tribe confuses the Board’s characterization of the Special Trustee’s decision as somehow suggesting that our  
(continued...)

revolves around the interpretation and administration of the Settlement Act, and not over whether a tribe's section 1200.13 application satisfies the requirements of sections 1200.13 through 1200.17, 5/ only reinforces our rejection of the Tribe's argument that the Special Trustee's decisions in this case "must" fall within the scope of Part 1200. See Petition for Reconsideration at 4.

As we noted in our order dismissing this appeal, the Tribe submitted no documents suggesting that the Special Trustee was denying or failing to approve a section 1200.13 application from the Tribe to remove its funds from Federal trust status pursuant to the Reform Act. 44 IBIA at 212. None of the exhibits to the Tribe's petition for reconsideration changes our assessment. Therefore, regardless of the Tribe's arguments concerning the source(s) of authority that may or may not exist for the Special Trustee's decisions to allocate the Settlement Fund, the Board's analysis and conclusion remain unaffected, and we find no basis for reconsidering our determination that this appeal does not arise under Part 1200 and that section 1200.21 does not provide a basis for the Board's jurisdiction.

The Tribe's second argument for reconsideration — the potential exposure of the United States to liability for monetary damages for breach of trust — does not state a basis for the Board to exercise jurisdiction. The Board's jurisdiction must be found in a specific regulation or delegation of authority. See California v. National Indian Gaming Commission, 44 IBIA 22 (2006) (dismissing appeal for lack of jurisdiction). No regulation or delegation grants the Board jurisdiction to review a decision of the Special Trustee on the

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4/(...continued)

jurisdictional determination was affected by the merits. In characterizing the Special Trustee's action as one to administer the Settlement Act by allocating the balance of the Settlement Fund, we expressed no opinion on the merits of whether or not the action was authorized by the Settlement Act.

5/ Section 1200.13 provides a detailed list of what must be included in an application submitted for approval by the Secretary when a tribe wishes to withdraw its funds from Federal trust status pursuant to Part 1200. Among other things, a tribe must submit a management plan for the funds that complies with requirements stated in subsection 1200.14, and a copy of a formal agreement between the tribe and the manager of the funds to be withdrawn, in which the manager agrees to comply with the management plan as approved by the Department under subsection 1200.15. See 25 C.F.R. § 1300.13(c) & (g).


ground that the decision may expose the United States to liability. Therefore, this argument provides no basis for reconsideration.

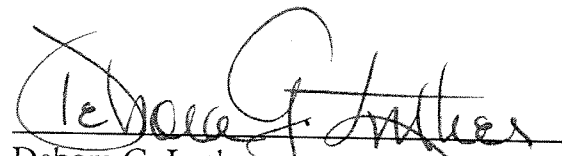
The Tribe's third argument for reconsideration fares no better. Section 4.318 of 43 C.F.R. pertains to the scope of review for appeals. Section 4.318 generally limits the scope of the Board's review to those issues that were before an official whose decision is being appealed, but also authorizes the Board to exercise the inherent authority of the Secretary to correct manifest error or injustice in the decision rendered by that official. Thus, within the context of an appeal over which the Board otherwise has jurisdiction, the Board has limited authority to address issues that would otherwise fall outside the scope of review. Section 4.318 does not, however, serve as an independent source of jurisdiction for the Board to review decisions of Department officials whenever a party alleges manifest error or injustice. Therefore, section 4.318 does not provide a source of jurisdiction for the Board to consider this appeal, and does not provide grounds for reconsideration of the Board's order of dismissal.

In summary, none of the arguments raised in the Tribe's petition convinces us that reconsideration of the Board's determination that it lacks jurisdiction over this appeal is warranted.

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 denies the Tribe's petition for reconsideration.

I concur:

  
Steven K. Linscheid  
Chief Administrative Judge

  
Debora G. Luther  
Administrative Judge

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