



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

COUNTY OF SANTA BARBARA,	)	Order Vacating Decision and
CALIFORNIA; NO MORE SLOTS;	)	Dismissing Case as Moot
NEIGHBORHOOD DEFENSE)	
LEAGUE OF CALIFORNIA; NANCY)	
CRAWFORD-HALL; CONCERNED)	
CITIZENS OF THE SANTA YNEZ)	
VALLEY, MEADOWLARK RANCHES)	
ASSOCIATION, and SANTA YNEZ)	
VALLEY ASSOCIATION OF	)	Docket Nos. IBIA 14-001
REALTORS; PRESERVATION OF	)	14-003
LOS OLIVOS and PRESERVATION	)	14-004
OF SANTA YNEZ; SAVE THE	)	14-005
VALLEY PLAN; W.E. WATCH, INC.;	)	14-006
SANTA YNEZ RANCHO ESTATES	)	14-007
MUTUAL WATER COMPANY, INC.;	)	14-009
MARY KIANI, TRUSTEE, KIANI	)	14-010
FAMILY REMAINDER TRUST; and	)	14-018
SANTA YNEZ RIVER WATER	)	14-019
CONSERVATION DISTRICT,	)	14-020
IMPROVEMENT DISTRICT NO. 1)	
Appellants,)	
)	
v.)	
)	
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.	)	October 24, 2013

Appellants seek review of a June 17, 2013, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA) approving a tribal Land Consolidation and Acquisition Plan (Plan) proposed by the Santa Ynez Band of Chumash Indians (Tribe). The Board now dismisses this case as moot because the Tribe has withdrawn its Plan.

Background

The Tribe submitted a “Land Consolidation and Acquisition Plan” to the Regional Director for approval under BIA’s land-into-trust regulations at 25 C.F.R. §§ 151.2(h) (definition of “tribal consolidation area”)¹ and 151.3(a)(1) (land acquisition policy).² The Plan identifies an approximately 11,500-acre area—which purportedly “was part of the Tribe’s ancestral territory and comprised most of its historic territory,” and which is outside the Tribe’s roughly 137-acre current reservation—as the Tribe’s area of focus for possible future trust acquisitions. Plan at 2-3, 8-9 & Ex. A (map). The Plan construes § 151.3(a)(1) as providing that “tribal consolidation areas, like on-reservation or adjacent lands, do not require the high level of scrutiny that off-reservation acquisitions do, and further affords such acquisitions a greater level of credibility as part of a plan which has already been reviewed and approved by the BIA.” Plan at 2.

The Regional Director approved the Plan pursuant to §§ 151.2(h) and 151.3(a)(1). *See* Decision. The Decision states that “[a]ll acquisition applications submitted pursuant to said plan shall be considered within the Secretary’s discretion and under all applicable laws and regulations, including the National Environmental Policy Act of 1969.” *Id.* Thus, BIA’s approval of the Plan did not signify its evaluation and approval of any application to place land into trust. *See id.* Through a letter dated June 19, 2013, the Acting Regional Director notified the Tribe that the Plan had been approved. It appears that BIA neither sought public comment on the Plan nor issued a public notice of the Decision.

¹ Section 151.2(h) defines a tribal consolidation area as “a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.”

² Section 151.3(a)(1) states that, “Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status: (1) When the property is located within the exterior boundaries of the tribe’s reservation or adjacent thereto, or within a tribal consolidation area.” For the sake of completeness, we note that under the policy, land may also be acquired in trust for a tribe “(2) [w]hen the tribe already owns an interest in the land; or (3) [w]hen the Secretary determines that the acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing.” 25 C.F.R. § 151.3(a)(2)-(3).

Numerous parties filed appeals of the Decision, alleging procedural and substantive errors.³ The Board consolidates all of the appeals and now dismisses this case as moot. After several of the appeals were filed, the Tribe sent to the Regional Director, with a copy to the Board, a letter in which the Tribe withdrew its Plan without prejudice. *See* Letter from Tribal Chairman to Regional Director, Oct. 11, 2013. The Tribe also requested that BIA “dismiss any appeals to such [tribal consolidation area] without prejudice.” *Id.*

Discussion

The Board, while recognizing that it is not bound by the case-or-controversy requirement set forth in the U.S. Constitution, art. III, § 2, has in the interest of administrative economy consistently applied the doctrine of mootness. *See Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005) (citing *Estate of Peshlakai v. Area Director, Navajo Area Office*, 15 IBIA 24, 32-33 (1986)). “Mootness may arise in various contexts, but each is based on the requirement that an active case or controversy be present at all stages of litigation.” *Pueblo of Tesuque*, 40 IBIA at 274 (citations omitted).

³ On September 26 the Board consolidated six appeals, after which five more were received. The appeals have been docketed as follows: County of Santa Barbara, California (Dkt. No. IBIA 14-001); No More Slots (Dkt. No. IBIA 14-003); Neighborhood Defense League of California (Dkt. No. IBIA 14-004); Nancy Crawford-Hall (Dkt. No. IBIA 14-005); Concerned Citizens of the Santa Ynez Valley, Meadowlark Ranches Association, and Santa Ynez Valley Association of Realtors (Dkt. No. IBIA 14-006); Preservation of Los Olivos and Preservation of Santa Ynez (Dkt. No. IBIA 14-007); Save the Valley Plan (Dkt. No. IBIA 14-009); W.E. Watch, Inc. (Dkt. No. IBIA 14-010); Santa Ynez Rancho Estates Mutual Water Company, Inc. (Dkt. No. IBIA 14-018); Mary Kiani, Trustee, “Kiani Family Rem[a]inder Trust” (Dkt. No. IBIA 14-019); and Santa Ynez River Water Conservation District, Improvement District No. 1 (Dkt. No. IBIA 14-020).

The Board received entries of appearance from the following parties: Charles Grimm, Grimm Investments, LLC, Michael Sinclair, Lynn Sinclair, Paul Skinner, Robin Hunt, Jr., Vicki Schuman Hunt, Thomas J. Barrack, Donald Petroni, Ann Petroni, Lawrence Grassini, Kathleen S. Grassini, Grassini Vineyard, LLC, Tom Stull, Deborah Stull, Aspen Properties, Michael Focht, Sandra Focht, Gerald Thomas, Janet Thomas, Priscilla Tamkin, James Vogelzang, Mary Beth Vogelzang, Julie McGinley, Jack McGinley, Shawn Addison, Antoinette Addison, Kentucky West, Donald Shackelford, Kim Shackelford, Santa Barbara Vineyards, LLC, Roger K. Bower, Joe E. Kiani, Mary Kiani, Santa Ynez River Water Conservation District, Improvement District No. 1, and the Tribe.

Additionally, we received a letter from Santa Ynez Valley Alliance providing “comments” in opposition to the Decision.

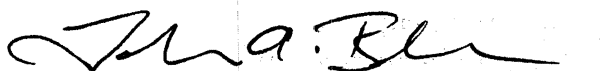
The Board may well dismiss an appeal as moot when, as a result of a change in the circumstances that gave rise to the appeal, the Board determines that “nothing turns on its outcome.” *Id.* (citation omitted). In *Pueblo of Tesuque*, the Board dismissed as moot an appeal, the aim of which was to terminate a utility right-of-way (ROW), when the utility informed the Board that it no longer intended to use the ROW. *Id.* at 274-75. The Board explained that, “whether or not the Regional Director’s decision was correct or incorrect, the active case or controversy over [the utility’s] use of Pueblo lands no longer exists.” *Id.* at 275. In accordance with *Pueblo of Tesuque*, in *Hamaatsa, Inc. v. Southwest Regional Director*, 55 IBIA 132, 134-35 (2012), we dismissed an appeal of a regional director’s decision to acquire land in trust as moot when the tribe withdrew its application.

Now that the Tribe has withdrawn the Plan, the Regional Director’s decision to approve the Plan has lost whatever significance, if any, it might otherwise have carried. We conclude that nothing may now turn on the outcome of a decision by the Board on Appellants’ appeal of the Regional Director’s decision. Accordingly, we dismiss this case as moot.

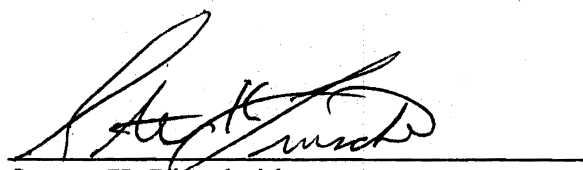
We recognize the possibility that issues could re-emerge in a new controversy. But that does not mean that the original controversy is not moot. Appellants’ filing of their appeals precluded the Decision from taking effect, *see* 25 C.F.R. § 2.6, and consequently should the Tribe resubmit its original Plan, or submit a new plan for approval, BIA must consider the situation with a “clean slate,” *Hamaatsa*, 55 IBIA at 135, without regard for the Decision. An order of vacatur is therefore unnecessary as a matter of law. *See id.* Nevertheless, in the interest of clarity and because parties sometimes seek to attach continuing significance to a moot decision, we vacate the Regional Director’s decision. *See id.* (citing *Pueblo of Tesuque*, 40 IBIA at 275; *Paul Spicer v. Eastern Oklahoma Regional Director*, 50 IBIA 328, 333 (2009)).

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 the appeals, vacates the Regional Director’s June 17, 2013, decision, and dismisses this case as moot.

I concur:



Thomas A. Blaser
Administrative Judge



Steven K. Linscheid
Chief Administrative Judge

County of Santa Barbara, et al. v. Pacific
Regional Director, Bureau of Indian Affairs
Docket Nos. IBIA 14-001, -003, -004, -005,
-006, -007, -009, -010, -018, -019, & -020
Order Vacating Decision and Dismissing
Case as Moot
Issued October 24, 2013
58 IBIA 57

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**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS**

COUNTY OF SANTA BARBARA,
CALIFORNIA; CONCERNED CITIZENS OF
THE SANTA YNEZ VALLEY,
MEADOWLARK RANCHES
ASSOCIATION, and SANTA YNEZ VALLEY
ASSOCIATION OF REALTORS; NANCY
CRAWFORD-HALL; NEIGHBORHOOD
DEFENSE LEAGUE OF CALIFORNIA; NO
MORE SLOTS; and PRESERVATION OF
LOS OLIVOS and PRESERVATION OF
SANTA YNEZ,
Appellants,

v.

PACIFIC REGIONAL DIRECTOR, BUREAU
OF INDIAN AFFAIRS; and SANA YNEZ
BAND OF CHUMASH MISSION INDIANS,
Appellee and Real Party in Interest.

SUGGESTION OF MOOTNESS

Docket Nos.

SUGGESTION OF MOOTNESS BY THE SANTA YNEZ BAND OF CHUMASH MISSION INDIANS

The Santa Ynez Band of Chumash Mission Indians, the real party in interest in this matter, submit that these appeals, and all other appeals of the Pacific Regional Director's June 17, 2013 approval of the Tribe's Proposed Land Consolidation and Acquisition Plan, became moot on October 11, 2013, when the Tribe withdrew the proposed plan. Because there is no longer any definite or concrete controversy over the approval of the Tribe's Land Consolidation and Acquisition Plan, the Board should dismiss these appeals as moot.

The appeals from the Pacific Regional Director's decision

In March 2013, the Tribe submitted to the Pacific Regional Director a Proposed Land Consolidation and Acquisition Plan, which encompassed approximately 11,500 acres of the Tribe's ancestral and historic territory in Santa Barbara County. On June 17, 2013, the Pacific Regional Director issued a decision approving that plan.¹

On September 18, 2013, the Board received a notice of appeal from the County of Santa Barbara, California, challenging the Pacific Regional Director's decision. On September 23, 2013, The Board received additional notices of appeal by Concerned Citizens of the Santa Ynez Valley, Meadowlark Ranches Association, the Santa Ynez Valley Association of Realtors, Nancy Crawford-Hall, the Neighborhood Defense League of California, No More Slots, and Preservation of Los Olivos and Preservation of Santa Ynez.

Three days later, the Board issued a Pre-Docketing Order that consolidated the appeals.² Since then, counsel for the Tribe have also received notices of appeal or answers from the Santa

¹ Approval of Proposed Land Consolidation & Acquisition Plan Santa Ynez Band of Chumash Indians (June 17, 2013).

² Pre-Docketing Notice, Order Consolidating Appeals, order for Appellants to Complete Service, Order Concerning Service List, and Order for Administrative Record (Sept. 26, 2013).

Ynez Rancho Estates Mutual Water Company, Inc.,³ Mary Kiani, trustee for the Kiani Family Reminder Trust,⁴ Charles Grimm, Grimm Investments, LLC, Michael Sinclair, Lynn Sinclair, Paul Skinner, Robin Hunt, Jr., Vicki Schuman Hunt, Thomas J. Barrack, Donald Petroni, Ann Petroni, Lawrence Grassini, Kathleen S. Grassini, Grassini Vineyard, LLC, Tom Stull, Deborah Stull, Aspen Properties, Michael Focht, Sandra Focht, Gerald Thomas, Janet Thomas, Priscilla Tamkin, James Vogelzand, Mary Beth Vogelzang, Julie McGinley, Jack McGinley, Shawn Addison, Antoinette Addison, Kentucky West, Donald Shackelford, Kim Shackelford, Santa Barbara Vineyards, LLC, Roger K. Bower, Joe E. Kiani, Mary Kiani (a second time),⁵ and the Santa Ynez River Water Conservation District, Improvement District No. 1.⁶

All of these appeals are moot

But even as the more recent appeal documents acknowledge,⁷ the Tribe withdrew the Land Consolidation and Acquisition Plan that is the subject of each of these appeals on October 11, 2013.⁸ Because the application has been withdrawn, the Regional Director's June 17, 2013 decision is moot. Therefore, all pending appeals should be dismissed.

"The Board follows the doctrine of mootness and normally declines to consider moot issues."⁹ Under the doctrine of mootness, "[t]he 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."¹⁰

³ Notice of Appeal and Statement of Basis for Appeal by Santa Ynez Rancho Estates Mutual Water Company, Inc. (Sept. 28, 2013).

⁴ Kiani's Notice of Appeal and Joinder in Notice of Appeal (Oct. 15, 2013).

⁵ Answer of Interested Parties (Oct. 16, 2013).

⁶ Santa Ynez River Water Conservation District's Notice of Appeal (Oct. 18, 2013); Santa Ynez River Water Conservation District's Answer of Interested Party (Oct. 18, 2013).

⁷ See Santa Ynez River Water Conservation District's Answer of Interested Party at page 2, n.3.

⁸ See *id.*, Ex. 1. A copy of the Tribal resolution withdrawing the plan and the cover letter sent with that resolution to the BIA are attached as Exhibit A.

⁹ *Nomee v. Acting Billings Area Dir.*, 18 IBIA 367, 367 (1990)

¹⁰ *Rampey v. Acting Eastern Okla. Reg'l Dir.*, 55 IBIA 50, 51 (2012); see, e.g., *Davis v. Great*

Conclusion

These appeals ask the Board to review a decision by the BIA that no longer has any effect, and by doing so, ask the Board to issue an advisory opinion on a matter where there is no active case or controversy. The Tribe has withdrawn the Land Consolidation and Acquisition Plan, mooting both the Regional Director's decision and these appeals. Because these appeals are now moot, the Board should dismiss all appeals of the Pacific Regional Director's June 17, 2013 decision approving the Tribe's Land Consolidation and Acquisition Plan. In the event that the Board concludes that these appeals are not moot, the Tribe respectfully requests an opportunity to respond to the merits of these appeals.

October 23, 2013

Respectfully submitted,

s/ Nancie G. Marzulla

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Plains RE'l Dir., 38 IBIA 89 (2002) (dismissing appeal as moot); *McKay v. Great Plains Reg'l Dir.*, 37 IBIA 157 (2002) (dismissing appeal as moot); *Kjerstad v. Aberdeen Area Dir.*, 36 IBIA 130 (2001) (dismissing appeal as moot); *Hall v. Billings Area Dir.*, 33 IBIA 290 (1999) (dismissing appeal as moot).

Exhibit A



Santa Ynez Band of Chumash Indians

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www.santaynezchumash.org



October 11, 2013

BUSINESS COMMITTEE
Vincent Armenta, *Chairman*
Richard Gomez, *Vice Chairman*
Kenneth Kahn, *Secretary/Treasurer*
David D. Dominguez, *Committee Member*
Gary Page, *Committee Member*

Ms. Army Dutschke, Director
BIA Pacific Region
2800 Cottage Way
Sacramento, CA 95825

~~IN RE: June 17, 2013 Decision by Pacific Regional Director to Approve Land Consolidation and Acquisition Plan of the Santa Ynez Band of Chumash Indians; REQUEST TO WITHDRAW PLAN WITHOUT PREJUDICE; AND DISMISS IBIA APPEAL WITHOUT PREJUDICE.~~

Dear Pacific Regional Director Dutschke:

The Santa Ynez Band of Chumash Indians hereby withdraws without prejudice the following:

That Tribal Consolidation Area (TCA) application dated March 27, 2013 as approved on June 17, 2013.

In addition, Resolution #926 Santa Ynez Band of Chumash Indians—Tribal Land Consolidation Area is hereby superseded by Resolution #926A Santa Ynez Band of Chumash Indians—Withdrawal Without Prejudice of Tribal Land Consolidation Area, an original of which is attached hereto.

Please dismiss any appeals to such TCA without prejudice also.

Sincerely,

Vincent P. Armenta
Tribal Chairman

CC:

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COUNTY OF SANTA BARBARA
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BOARD OF SUPERVISORS
2013 OCT 15 PM 12:03



Santa Ynez Band of Chumash Indians

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BUSINESS COMMITTEE

*Vincent Armenta, Chairman
Richard Gomez, Vice Chairman
Kenneth Kahn, Secretary/Treasurer
David D. Dominguez, Committee Member
Gary Pace, Committee Member*

RESOLUTION #926A

Re: **Santa Ynez Band of Chumash Mission Indians--
Tribal Land Consolidation Area;
~~WITHDRAWAL WITHOUT PREJUDICE~~**

- Whereas:** The Santa Ynez Band of Chumash Indians (the 'Tribe') is a federally recognized Indian Tribe under the United States Department of the Interior, Bureau of Indian Affairs; and
- Whereas:** The Tribal Business Committee of the Santa Ynez Band of Chumash Indians is the duly authorized body of the Tribe to exercise full governmental responsibilities, and is empowered to make tribal policy and carry out tribal business; and
- Whereas:** The Santa Ynez Chumash have an approximately 137 acre Reservation much of it is undevelopable wetlands and riverbanks of the Zanja De Cota Creek. Housing and government buildings cover the remainder of the Reservation.
- Whereas:** Such 137 acre Santa Ynez Reservation is part of a larger approximately 11,500 acre parcel that was the basis for a quiet title action by the Bishop of Monterey in 1897. Such quiet title action was against the individual members of the Santa Ynez Band of Chumash Indians and the Indian Agent at that time to cut off any legal rights they had as to such parcel.
- Whereas:** By Resolution #926, the Tribe requested the designation of such approximately 11,500 acre parcel as a Tribal Consolidation Area (TCA). The Tribe would now like to withdraw without prejudice such request to designate such TCA.

Now Therefore Be It Resolved that the Santa Ynez Band of Chumash Indians hereby requests that the application to the Secretary or his designee dated March 27, 2013 for a Tribal Consolidation Area pursuant to 25 CFR 151.2(h) and 25 CFR 151.3(a)(1) be **WITHDRAWN WITHOUT PREJUDICE**, and authorizes the Chairman of the Tribe (or the Vice Chairman if the Chairman is unavailable) to negotiate, sign, and execute any and all documents required or necessary to implement such **WITHDRAWAL WITHOUT PREJUDICE**.

This resolution supersedes any previous Tribal resolutions.

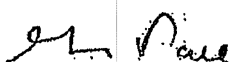
CERTIFICATION

This is to certify that the foregoing resolution was adopted by the Santa Ynez Business Committee at a duly called meeting of the Tribal Business Committee on Oct. 9, 2013 by a vote of 4 in FAVOR, 0 OPPOSED, and 0 ABSTAINING.

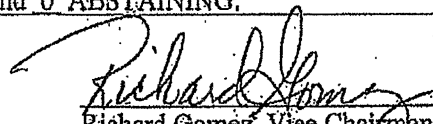
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Kenneth Kahn, Secretary-Treasurer



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**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS**

COUNTY OF SANTA BARBARA,
CALIFORNIA; CONCERNED CITIZENS OF
THE SANTA YNEZ VALLEY,
MEADOWLARK RANCHES
ASSOCIATION, and SANTA YNEZ VALLEY
ASSOCIATION OF REALTORS; NANCY
CRAWFORD-HALL; NEIGHBORHOOD
DEFENSE LEAGUE OF CALIFORNIA; NO
MORE SLOTS; and PRESERVATION OF
LOS OLIVOS and PRESERVATION OF
SANTA YNEZ,
Appellants,

v.

PACIFIC REGIONAL DIRECTOR, BUREAU
OF INDIAN AFFAIRS; and SANA YNEZ
BAND OF CHUMASH MISSION INDIANS,
Appellee and Real Party in Interest.

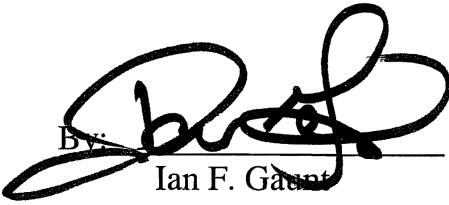
CERTIFICATE OF SERVICE

Docket Nos.

PROOF OF SERVICE

This certifies that on October 22, 2013, I filed the attached Suggestion of Mootness, and served the individuals and entities listed in the attached service list, by UPS, postage prepaid.

October 22, 2013

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