NEEDLES LODGE,	:	Order Docketing and Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 97-140-A
ACTING PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 7, 1997

On June 20, 1997, the Board of Indian Appeals (Board) received a Notice of Appeal from the Needles Lodge (Appellant). Appellant's Notice of Appeal stated that it concerned Appellant's right to occupy Lot 100 located at the Colony area of Lake Havasu, and charges of trespass against Appellant's members based on their presence on Lot 100.

The Board takes official notice of the long history of disputes and litigation over ownership and rights of occupancy of certain lakeshore areas on Lake Havasu. In particular, there has been litigation over ownership of the Havasu Landing and Havasu Colony areas. The Department of the Interior has taken the position that these areas are held in trust by the United States for the Chemehuevi Indian Tribe (Tribe). Appellant, among others, has argued that these areas are not Indian land. Recent litigation has resulted in an affirmance of orders of ejectment against individuals claiming the right of occupancy of these areas (United States v. Jorgensen, No. 93-55296, 1997 WL 355849 (9th Cir. June 27, 1997)), and a dismissal of a suit on grounds of Federal sovereign immunity (Havasu Landing Homeowners Association v. Babbitt, No. 94-55842, 1996 WL 21598 (9th Cir. Jan. 22, 1997) (present Appellant was a named Plaintiff in Havasu Landing)). 1/

For purposes of issuing a June 25, 1997, Order to Show Cause, the Board assumed that Appellant was seeking review of a May 21, 1997, letter from the Area Director which was included in the materials Appellant submitted to the Board

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1/ In its response to a June 25, 1997, Order to Show Cause, Appellant recounts much of this history. Although Appellant admits that it was a named plaintiff in one suit--presumably Havasu Landing--it asserts that that case "was ultimately dismissed solely on jurisdictional grounds without addressing the merits of the case as put forth by the Plaintiffs." Appellant's Response to Order to Show Cause at 2. Appellant appears to believe that a dismissal on grounds of Federal sovereign immunity does not constitute a final decision.

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Board. The Area Director's letter was written in response to a May 8, 1997, letter from Appellant which, inter alia, demanded at page 2 that BIA

> immediately instruct and advise the Chemehuevi Tribe that it is not to occupy Lot 100 and that it should recognize [Appellant's] right to possession and quiet enjoyment of Lot 100 until due process is observed as required. Further, that the Tribe shall not deny access to Lot 100 by [Appellant's] members unless and until a valid order of eviction is obtained through proper means.

In a May 21, 1997, letter, the Area Director provided background information relating to BIA's involvement in the events which precipitated Appellant's May 8, 1997, letter. In summary, the Area Director stated that on April 24, 1997, BIA and the Department of the Interior Field Solicitor's Office in Phoenix received telephone calls concerning a possible confrontation between the Tribe and Appellant's members over the right to occupy Lot 100. There were references to a California State Attorney General's Opinion, which was purportedly being interpreted as holding that the State of California could not enforce the California penal trespass law on Indian lands. The Departmental officials obtained a copy of the Attorney General's Opinion, and discussed the interpretation of the Opinion with an attorney in the State Attorney General's Office. Departmental concern focused on the fact that California has criminal jurisdiction over Indian country within the State under the Act of August 15, 1953, Pub. L. No. 83-280, 67 Stat. 588, as amended, 18 U.S.C. § 1162, 28 U.S.C. § 1360 (1994). The State attorney either agreed with the BIA officials or independently concluded that the Opinion dealt with the issue of whether the State could enforce a tribal exclusion ordinance, not the issue of whether the State could enforce State criminal statutes on Indian lands, and apparently so informed local law enforcement officials. Local law enforcement officials subsequently responded to a Tribal request for assistance in removing a trespasser by arresting one of Appellant's members.

In its Notice of Appeal, Appellant stated that it sought four specific items of relief. On June 25, 1997, the Board required Appellant to show cause why its appeal should not be dismissed for one or more of several reasons. The Board also allowed a response by the Area Director.

The Board received responses from the Area Director on July 21, 1997, and from Appellant on July 29, 1997.

The Area Director raises additional grounds for concluding that this appeal should be dismissed. Also, the Area Director's attorney states that he participated in the telephone conversation with the State Attorney General's Office. Counsel repeats that BIA asked an attorney in that Office for an interpretation of the Attorney General's Opinion and that the attorney agreed that the Opinion only prohibited the State from enforcing tribal exclusion ordinances, and did not apply to enforcement of the State's penal trespass statutes on Indian lands. Counsel states that BIA took no further action in this matter, but that he understands that the Tribe subsequently contacted the County Sheriff and reported a trespass on Lot 100, that the Sheriff responded, and that an arrest was made.

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The Area Director contends that "Appellant's real claim goes far beyond application of the State of California's penal code to Chemehuevi lands and the alleged wrongful 'advice' given to the State [Attorney General] by the Area Director. The Appellant argues that the lands in question are not Chemehuevi lands." Id. at 3. The Area Director asks the Board to take official notice of two documents: (1) an August 15, 1974, Secretarial Order restoring lands to the Tribe that had originally been withdrawn for construction of the Parker Dam, and (2) the June 27, 1997, Memorandum Decision in Jorgensen.

In its response Appellant makes it clear that it is attempting to appeal from the telephone conversation which BIA and Solicitor's Office officials had with employees of the California State Attorney General's Office. To the extent the Area Director's May 21, 1997, letter is raised in this matter at all, it is raised only because of Appellant's contention that the letter did not respond to the charges Appellant raised in the May 8, 1997, letter, i.e., charges concerning the conversations with the State Attorney General's Office. Appellant contends:

> The precise contents of the telephone conversations which the Acting [Area] Director admits occurred between BIA and state officials are currently unknown to Appellant. The result, however, is clear. The May 8, 1997, letter states that in Appellant's view, ". . . the change in position by the police would not have occurred without directions from your office." The response of the Acting Area Director does not deny, or even address, that statement. Nor does his response deny or refute the chronology of events set forth in the May 8, 1997, letter or claim to have no knowledge of such events. It is clear that a criminal trespass requires, among other things, a finding of "unlawful" occupancy. The May 8, 1997, letter clearly states that there has been "no valid court order" evicting the Lodge or its members. The Acting [Area] Director does not deny that no court order exists nor address any other basis upon which an eviction or a finding of unlawful occupancy can be found. Appellant's letter asserts a failure of due process in making the determination that Appellant's occupation of Lot 100 is "unlawful." Again the response fails to deny or even address the issue. The instant appeal is not intended to deal directly with the arrest. Appellant contends that the arrest was the result of a failure of due process.
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> The Appellant's contention is that BIA provided advice upon which an arrest for trespassing was based. The charge of trespass requires a determination of "unlawful occupancy." Therefore, the Phoenix Office necessarily had to acknowledge and approve such a determination by the Tribe and/or make such a finding itself and so advise the State officials. Appellant does not know at this time whether or not the Tribe was consulted in this matter. Appellant has never been contacted by a BIA official with respect to this matter. The thrust of the May 8, 1997, letter and this appeal is to challenge the determination (or approval) that was

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> necessarily made by BIA regarding Appellant's "unlawful" occupancy as being a violation of due process and exceeding the BIA official's authority. Appellant contends such a determination is erroneous and requests that it be corrected in accordance with due process principles. In Appellant's view, the arrest would not have happened without the input and advice as to such a determination from the Phoenix Office. Moreover, the participation by BIA in this matter logically leads to the inevitable conclusion that, unless the advice is withdrawn, BIA approves and condones "self-help" solutions by Indian Tribes contrary to all concepts of due process.

Appellant's Response to Order to Show Cause at 4-5.

The Board concludes that, under the circumstances of this case, BIA has not issued an appealable decision. As much as Appellant believes that BIA is responsible for a change in the interpretation of the Attorney General's Opinion, BIA is at most responsible for bringing a question concerning the proper interpretation and application of a State Opinion to the attention of the appropriate State officials and--giving Appellant the benefit of the doubt--for informing those officials of BIA's interpretation of the Opinion. Although Appellant appears to attribute omnipotence to the BIA officials, the decision to which Appellant objects involves an interpretation of the proper application of State law by a State official.

Furthermore, the actual arrest to which Appellant refers was made at the behest of the Tribe, not BIA. State law enforcement officials responded to a request from citizens of the State for assistance in removing an individual alleged to be in trespass on private property. Although Appellant asserts that its member was denied due process in that a decision on whether or not its member was in trespass had been made in advance of the arrest, the Board has every confidence that Appellant's member will receive full due process during the State court proceedings against him. 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed and dismissed on the grounds that there is no appealable BIA decision.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

2/ The Board finds it unnecessary to address whether Appellant has standing to assert the rights of one of its members.

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