



INTERIOR BOARD OF INDIAN APPEALS

Alturas Indian Rancheria v. Pacific Regional Director,
Bureau of Indian Affairs

53 IBIA 100 (03/14/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ALTURAS INDIAN RANCHERIA,)	Order Vacating Decision and
Appellant,)	Dismissing Appeal
)	
v.)	
)	Docket No. IBIA 11-078
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	March 14, 2011

On March 7, 2011, the Board of Indian Appeals (Board) received an appeal from the Alturas Indian Rancheria (Tribe or Appellant), through the Rose Faction, seeking review of a March 4, 2011, letter (Decision) from the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA).¹ The Decision is addressed to the opposing Del Rosa Faction within the Tribe, and purports to clarify an October 22, 2010, decision of the Regional Director, which is the subject of a pending appeal before the Board. *See Alturas Indian Rancheria v. Acting Pacific Regional Director*, Docket No. IBIA 11-033.² We docket

¹ This appeal involves an ongoing tribal government dispute. The Tribe is split into two factions embroiled in a governance and membership dispute. The Rose Faction consists of Darren Rose, Jennifer Chrisman, and Joseph Burrell. The Del Rosa Faction consists of Phillip Del Rosa, Wendy Del Rosa, Calvin Phelps, and Donald Packerham. The membership of Phelps and Packerham is disputed, and determines whether the Tribe consists of a total of five or seven voting members.

The Board's identification of the Alturas Indian Rancheria as the appellant shall not be construed as expressing any view on the merits of the underlying dispute or on the authority of the Rose Faction to file the appeal on behalf of the Tribe.

² In the October 22, 2010, decision, the Regional Director decided, among other things, to recognize "in the interim" the Tribe's last undisputed Business Committee, in which the Del Rosas constitute a 2-1 majority. On the other hand, the Regional Director also decided, "in the interim," that BIA should accept an Indian Self-Determination and Education Assistance Act (ISDA) contract proposal submitted by the Rose Faction because that faction constitutes a 3-2 majority of the Tribe's last undisputed General Council (which

(continued...)

this appeal and summarily vacate the Decision because the pending appeal from the October 22 decision divested the Regional Director of jurisdiction over the matter.

It is well-established that when an appeal is filed with the Board from a decision of a BIA official, BIA loses jurisdiction over the matter, except to participate as a party to the appeal. *See Committee to Organize the Cloverdale Rancheria v. Pacific Regional Director*, 52 IBIA 124, 125 (2010) (and cases cited therein); *Yakama Nation v. Northwest Regional Director*, 51 IBIA 187, 187 (2010) (and cases cited therein). This rule is intended to avoid “the obvious confusion that would result if two offices of the Department [of the Interior] were to exercise jurisdiction over the same matter simultaneously.” *Yakama Nation*, 51 IBIA at 187, quoting *Tonkawa Tribe of Oklahoma v. Acting Anadarko Area Director*, 18 IBIA 370, 371 (1990).

The present appeal illustrates the soundness of the above rule. Whatever the Regional Director may have intended by issuing a letter “to clarify” her position, it is clear that Appellant construed the letter as possibly having (intentionally or otherwise) some separate effect unless appealed to the Board, or as departing in some respect from the October 22, 2010, decision.³ If the Regional Director or either faction believes that further explanation or clarification of the October 22, 2010, decision is warranted, the proper mechanism is through a pleading filed in the pending appeal.⁴ And if the Regional Director wishes to reconsider the October 22 decision, she may formally request that the Board remand the matter to BIA for further consideration. *See generally Yakama Nation*, 51 IBIA

²(...continued)

consists of the Tribe’s voting members). In Docket No. IBIA 11-033, the Del Rosa Faction has appealed to the Board from the October 22, 2010, decision.

The Regional Director’s March 4, 2011, Decision states that, “to clarify” her position, the Business Committee “will be recognized to represent the Tribe for purposes of carrying out the federal relationship with the [Tribe].”

³ We express no opinion on whether or not the language in the Regional Director’s Decision departs in substance from the October 22, 2010, decision. The fact that the Regional Director’s Decision addresses the same subject matter as the October 22 decision that is already on appeal is sufficient for us to summarily vacate the Decision.

⁴ The Del Rosa’s appeal in Docket No. 11-033 currently is in briefing on the merits, and the Rose Faction has filed a motion, which is also in briefing, to place the Regional Director’s October 22 decision into immediate effect.

at 187 (when BIA determines that a decision on appeal should be clarified, amended, or withdrawn, BIA may either address the issue in a brief or request a remand from the Board).

Because an appeal from the October 22, 2010, decision is pending before the Board, the Regional Director lacked jurisdiction to issue the March 4, 2011, Decision.

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 appeal, summarily vacates the Regional Director's March 4, 2011, Decision, and dismisses the appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge