INTERIOR BOARD OF INDIAN APPEALS

Committee to Organize the Cloverdale Rancheria Government, Javier Martinez, Sarah Goodwin, Lenette Laiwa-Brown, Gerad Santana, and John Trippo v. Pacific Regional Director, Bureau of Indian Affairs

52 IBIA 124 (09/27/2010)

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

COMMITTEE TO ORGANIZE THE CLOVERDALE RANCHERIA GOVERNMENT, JAVIER MARTINEZ, SARAH GOODWIN, LENETTE LAIWA-BROWN, GERAD SANTANA, AND JOHN TRIPPO, Appellants,	)	Order Docketing and Dismissing Appeal
v.	)	Docket No. IBIA 10-140
PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	September 27, 2010

On September 16, 2010, the Board of Indian Appeals (Board) received a notice of appeal from the Committee to Organize the Cloverdale Rancheria Government (Committee), Javier Martinez, Sarah Goodwin, Lenette Laiwa-Brown, Gerad Santana, and John Trippo,[1] (collectively "Appellants"), through Steven J. Bloxham, Esq., of Fredericks Peebles & Morgan LLP. Appellants seek review of the failure of the Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to respond to their August 13, 2010, request, purportedly made under 25 C.F.R. § 2.8, that he "reconsider and amend" his June 3, 2010, decision. The Committee has a pending appeal before the Board from the June 3 decision, *see Committee to Organize the Cloverdale Rancheria v. Acting Pacific Regional Director*, Docket No. IBIA 10-122, and as Appellants well knew when they made their § 2.8 demand, the Regional Director has no jurisdiction to "reconsider and amend" his

[1] Appellant individuals aver that they are Tribal Council members of the Cloverdale Rancheria of Pomo Indians of California (Tribe). It appears that Appellant individuals claim to have been elected to the Tribal Council in an election that the Regional Director declined to recognize in a June 3, 2010, decision, which the Committee separately appealed to the Board.

decision while that appeal is pending. We summarily dismiss this appeal because there is no basis for the Board to order the Regional Director to respond to Appellants' request.[2]

Section 2.8 of 25 C.F.R. is an action-prompting mechanism, and one which triggers certain requirements on the part of BIA to take action or issue a decision on the merits of a request for action. *See* 25 C.F.R. § 2.8(b); *Castillo v. Pacific Regional Director*, 46 IBIA 209, 209 n.1 (2008). But § 2.8 presumes that BIA has jurisdiction to take action or issue a decision on the merits of the matter that is the subject of the request. Thus, if a § 2.8 request asks BIA to take action, but there is no plausible basis upon which it could seriously consider the request, the Board will not order BIA to issue a "decision." *See Sandy Point Improvement Co. v. Northwest Regional Director*, 51 IBIA 277 (2010) (requester asked Regional Director to "vacate" a tribe's constitution).

It is well-established that when an appeal to the Board is filed, BIA loses jurisdiction over the matter, except to participate as a party to the appeal. *See Alturas Indian Rancheria v. Northern California Agency Superintendent*, 52 IBIA 7, 8-9 (2010); *Spicer v. Eastern Oklahoma Regional Director*, 50 IBIA 328, 332 n.5 (2009); *Forest County Potawatomi Community v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 268 (2009). Applying this principle in the context of § 2.8, the Board has affirmed BIA when BIA rejects a § 2.8 request to "reconsider" a decision that is on appeal to the Board, and is thus a matter over which BIA lacks jurisdiction. *See Bullcreek v. Western Regional Director*, 39 IBIA 100, 101-102 (2003) (Regional Director appropriately declined a request that BIA official take inappropriate action).

In the present case, as Appellants knew, the Regional Director lacked jurisdiction to reconsider or amend the June 3 decision. *See* Letter from Steven J. Bloxham to Regional Director, July 13, 2010 (the appeal from the June 3 decision "removes the matter from your jurisdiction"). Appellants' initial correspondence to the Regional Director stopped short of asking the Regional Director to actually purport to amend the June 3 decision, and did not invoke § 2.8. *Id*. Instead, Appellants asked that he request a remand from the Board for further consideration and issuance of a new decision. But when the Regional Director apparently failed to respond, Appellants then purported to invoke § 2.8 and to demand the very action that they knew the Regional Director lacked jurisdiction to take — amending the June 3 decision. And when the Regional Director still failed to respond, Appellants sought intervention by the Board through this appeal.

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[2] On September 20, 2010, the Board received a motion to dismiss this appeal, filed on behalf of the Tribe through Rose M. Weckenmann, Esq. Because this appeal is suitable for summary dismissal on the Board's own motion, we do not consider the Tribe's motion.

Section 2.8 was intended to be a mechanism through which an individual or entity could prompt a BIA decision on the merits of a request, but it was not intended to allow a party to a pending appeal to invoke the authority of the Board to force BIA, as a party to the appeal, to respond to inter-party communications. When an appeal is pending before the Board, a party is free to ask BIA to request a remand to further consider the matter, and BIA is free, as a party, to either make that request to the Board, or decline to do so. *Alturas Indian Rancheria*, 52 IBIA at 9 n.5. But a party that is frustrated by BIA's refusal to ask for a remand cannot use § 2.8 to force BIA to take further action while the appeal is pending. Thus, it was within the sole discretion of the Regional Director, as a party to the appeal, to decide whether to respond to Appellants' initial July 13 request that he seek a remand from the Board. And in the absence of a response, it was improper for Appellants to attempt to invoke § 2.8 to force a response.

In *Sandy Point Improvement Co.*, the Board stated that, consistent with § 2.8, BIA should have responded to the appellant's demand for action, even if only to explain that the § 2.8 demand was baseless. 52 IBIA at 278. In the present case, when Appellants invoked § 2.8 in their August 13 request to the Regional Director, it would have been advisable for him to respond, if only to reiterate that he lacked jurisdiction to take the action requested. But although the Regional Director apparently failed to respond to Appellants' August 13 demand for action, we find no basis to order him to do so now.[3]

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 dockets and dismisses this appeal.

I concur:

// original signed	// original signed
Steven K. Linscheid	Debora G. Luther
Chief Administrative Judge	Administrative Judge

[3] We note that counsel for Appellants in the present case also represented the appellant that made a similar request in *Alturas Indian Rancheria*, 52 IBIA at 8-9 (summarily affirming the portion of the Superintendent's decision declining to take action on a matter that fell within the scope of a pending appeal to the Board), which we decided on July 6, 2010. Thus, counsel knew or should have known that Appellants' § 2.8 demand to the Regional Director was improper, based on clear Board precedent.