



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

RICHARD BOLAND, GRACE GOAD,
CINDY DAVIS, CHARLOTTE JAMES,
and JOE KENNEDY,
Appellants
v.
ACTING PACIFIC REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Pre-Docketing Notice; Order On
: Recognized Tribal Council;
: Order Consolidating Appeals;
: Order for Record; and Order
: to Show Standing
:
: Docket Nos. IBIA 03-82-A
: IBIA 03-119-A
: IBIA _____
: November 13, 2003

On November 10, 2003, the Board of Indian Appeals (Board) received a notice of appeal from Appellants Richard Boland, Grace Goad, Cindy Davis, Charlotte James, and Joe Kennedy, through counsel, Dorothy Alther, Esq., Bishop, California. Appellants seek review of an October 30, 2003, letter from the Acting Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), recognizing the results of an August 2, 2003, election for the Timbisha Shoshone Tribe (Tribe).

As far as appeals to the Board are concerned, this dispute began following the Tribe's attempt to hold an election in 2002. To date, the dispute has resulted in the filing of three appeals with the Board by present Appellants. In addition to this new appeal, the appeals already docketed are Docket Nos. IBIA 03-82-A and 03-119-A.

In the decision that resulted in the filing of Docket No. IBIA 03-119-A, the Regional Director remanded this matter to the Superintendent for the exhaustion of tribal remedies in regard to the leadership dispute. In the interest of promoting tribal self-determination and sovereignty, when it acknowledged the filing of this second appeal, the Board authorized BIA to continue with the remand. The remand ultimately resulted in the holding of the August 2, 2003, Tribal election, which Appellants now contest.

It appears that there are on-going questions concerning who is presently recognized by the Department as the Tribal Council. In an April 21, 2003, Amended Notice of Appeal in Docket No. IBIA 03-82-A, Appellants stated that on January 10, 2003, the Regional Director indicated that, pending resolution of the appeal, BIA would recognize the Tribal Council elected at the last uncontested election. According to an April 9, 2003, order in Timbisha Shoshone Tribe v. Bureau of Indian Affairs, No. CIV S-03-404 WBS/GGH (E.D. Calif.), slip

op. at 4, that Tribal Council consisted of "the Kennedy Council and plaintiff Goad." Although Appellants contest the Regional Director's January 10, 2003, decision as being an "unpublished policy," there must be some tribal leadership during the pendency of an appeal in a tribal leadership dispute or the government-to-government relationship between the Federal and tribal governments will not exist during that time period and the tribe and its members will be faced with a situation under which no tribal business of any kind can be conducted and no Federal assistance, including Indian Self-Determination Act contracts and other Federal programs and funding, will be available to the tribe and its members during the appeal. While such a situation might cause tribal leadership disputes to be resolved more quickly, it is not a situation in which the Board will lightly place tribal members.

Therefore, until such time as these appeals are resolved, the Tribal Council recognized for the Tribe is the one set out in the Regional Director's January 10, 2003, letter. Appellants will have their full opportunity to contest the legality of this decision during briefing in these appeals. The Board does not reach any conclusion on the merits of that, or any other, argument which Appellants have raised in their appeals.

The Board hereby consolidates Docket Nos. 03-82-A, 03-119-A, and this new appeal. The Regional Director is requested to take the following steps in accordance with the procedural regulations in 43 C.F.R. § 4.335. Within 20 days after receipt of a copy of the notice of appeal or after receipt of this notice from the Board:

1. Assemble and transmit a combined administrative record for the three appeals to the Board. The administrative record shall include, but not be limited to, copies of the decisions being appealed; all documents that were before the deciding official when he or she issued the decisions; all documents, petitions, or applications by which the appeals were initiated or which set forth claims of interested parties; and copies of any transcripts of testimony taken;
2. Prepare a table of contents to serve as an index to the record; and
3. Include as part of the record a written confirmation that it contains all information and documents utilized by the deciding official in rendering the decision appealed.

If the Regional Director is unable to transmit the record within 20 days, he should inform the Board and the parties when the record will be sent.

In accordance with 43 C.F.R. § 4.336, this new appeal will be assigned a docket number 20 days after the date of receipt noted above unless the Board has been properly notified before that date that the Assistant Secretary - Indian Affairs has assumed jurisdiction over the appeal. Upon receipt of the record, a Notice of Docketing, setting forth the parties' briefing

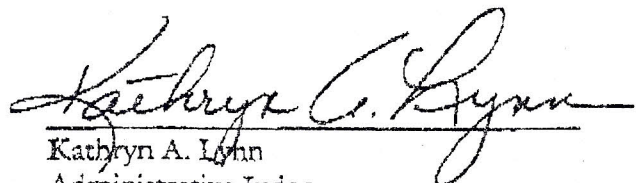
privileges or other procedures to be followed, will be sent to all interested parties as shown by the administrative record. If the Assistant Secretary - Indian Affairs properly notifies the Board of an assumption of jurisdiction under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b), the parties will be so informed, and the administrative record will be transmitted to him.

Appellants are advised that, in their opening brief, they will each be required to show that they have standing to bring each appeal. That is, Appellant Boland will be required to show that he has standing in Docket No. IBIA 03-82-A, in 03-119-A, and in this new appeal. Appellants Goad, Davis, James, and Kennedy will each be required to make the same showing of standing. Any Appellant who fails to show standing will be dismissed from the appeal in which standing was not shown. If no Appellant with standing remains in an appeal, that appeal will be dismissed. In order to assist Appellants in making this showing, they are directed to the following Board decisions: Cassadore v. Acting Phoenix Area Director, 29 IBIA 280 (1996); Amundsen v. Minneapolis Area Director, 28 IBIA 1 (1995); Feezor v. Minneapolis Area Director, 25 IBIA 296 (1994); Swab v. Sacramento Area Director, 25 IBIA 205 (1994); Stops v. Billings Area Director, 23 IBIA 282 (1993). The Board's Internet website is currently off-line by court order. However, these and other Board decisions can be found on the free Internet website www.ibiadections.com or the for-fee websites of WestLaw and Lexis-Nexis.

The Board has received a filing in Docket No. IBIA 03-119-A which is entitled "Motion to Endorse Brief of Amicus Curiae." The motion was filed by Marilyn Mayfarth, who identifies herself as "a General Council member of the Timbisha Shoshone Tribe of Death Valley." Motion at 1. Mayfarth seeks to participate in this matter, apparently in support of Appellants.

Mayfarth's filing does not show service on the interested parties in this matter. Accordingly, she is ordered to serve her filing on the persons shown on the attached distribution list. She shall serve interested parties and certify to the Board that she has done so on or before December 12, 2003. Failure to serve interested parties or to certify service to the Board will result in the filing not being considered.

Interested parties may address whether Mayfarth should be permitted to appear as an amicus curiae in their briefs. Parties are advised that the Board has not previously authorized amicus curiae status to a tribal member solely because of that person's status as a tribal member. The cases cited above may offer guidance in discussing this issue.


Kathryn A. Lynn
Administrative Judge

Distribution: See attached list.

Distribution: IBIA Nos. 03-82-A, 03-119-A,
and _____

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