



INTERIOR BOARD OF INDIAN APPEALS

Margene Bullcreek, Delford Moon, Lisa Bullcreek, Thomas Wash,  
Marlinda Moon, Edgar Moon, Daniel Moon, and Ohngo Gaudedah Devia  
v. Western Regional Director, Bureau of Indian Affairs

39 IBIA 100 (08/14/2003)



# 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

MARGENE BULLCREEK, DELFORD : Notice of Docketing and Order Affirming  
MOON, LISA BULLCREEK, : Decision  
THOMAS WASH, MARLINDA :  
MOON, EDGAR MOON, DANIEL :  
MOON, and OHNGO GAUDEDAAH :  
DEVIA, :  
Appellants : Docket No. IBIA 03-127-A  
v. :  
WESTERN REGIONAL DIRECTOR, :  
BUREAU OF INDIAN AFFAIRS, :  
Appellee : August 14, 2003

Appellants Margene Bullcreek, Delford Moon, Lisa Bullcreek, Thomas Wash, Marlinda Moon, Edgar Moon, Daniel Moon, and Ohngo Gaudedah Devia seek review of a June 9, 2003, decision of the Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA), denying reconsideration of a decision he had issued on August 20, 2001. The August 2001 decision upheld the Superintendent's, Uintah and Ouray Agency, BIA (Superintendent), May 23, 1997, conditional approval of a proposed lease between the Skull Valley Band of Goshute Indians (Band) and Private Fuel Storage L.L.C. for the storage of nuclear waste on the Skull Valley Reservation. For the reasons below, the Board of Indian Appeals (Board) docketed this appeal and affirms the Regional Director's decision as discussed in this opinion.

On September 24, 2001, Abby Bullcreek, Lisa Bullcreek, Margene Bullcreek, Lena Knight, Daniel Moon, Delford Moon, and Ohngo Gaudedah Devia Awareness appealed the Regional Director's August 20, 2001, decision to the Board. This appeal was assigned Docket No. IBIA 02-8-A.

Meanwhile, Margene Bullcreek, Lisa Bullcreek, and Ohngo Gaudedah Devia appealed to the Board a November 14, 2002, decision of the Regional Director concerning a leadership dispute within the Band. This case was assigned Docket No. IBIA 03-46-A.

While Docket No. IBIA 02-8-A was pending before the Board, on December 16, 2002, Appellants asked the Superintendent to reconsider his May 23, 1997, decision. The Board was not notified of the request for reconsideration. However, the Regional Director's June 9, 2003, decision indicates that the Superintendent denied reconsideration on January 31, 2003. Appellants appealed the denial to the Regional Director.

On May 19, 2003, the Board referred the parties in Docket No. IBIA 03-46-A to the Department of the Interior's Office of Collaborative Action and Dispute Resolution for an assessment conference. On June 2, 2003, the Board stayed Docket No. IBIA 02-8-A pending the outcome of the assessment conference in Docket No. IBIA 03-46-A.

On June 9, 2003, the Regional Director issued a decision affirming the Superintendent's decision denying reconsideration of his May 23, 1997, decision. The Board received Appellants' notice of appeal of the Regional Director's June 9, 2003, decision on July 21, 2003.

The Board issues this decision without briefing because it finds that the appeal raises procedural questions in an area of settled precedent.

When an appeal concerning the Superintendent's May 23, 1997, decision and the Regional Director's August 20, 2001, decision was filed with the Board, those officials lost jurisdiction over the matter. The Board has long held that

once an appeal is filed with [it] from a decision issued by a BIA official, BIA loses jurisdiction over the matter except to participate in the appeal as a party. As the Board stated in Tonkawa Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 370, 371 (1990):

In Interim Ad Hoc Committee of the Karok Tribe v. Sacramento Area Director, 13 IBIA 76, 83-85, 92 I.D. 46, 50-51 (1985), the Board held that under long established Departmental precedents, BIA lost jurisdiction over a matter once it was notified that an appeal had been filed. This rule was established to prevent the obvious confusion that would result if two offices of the Department were to exercise jurisdiction over the same matter simultaneously. Under this rule, when [BIA] received appellant's original notice of appeal, [it] lost authority to take further action in this matter, except to participate as a party to the appeal.

This rule \* \* \* is part of every orderly review system, \* \* \* and is intended to ensure that only one forum has authority to act at any particular point in time so that the parties involved know exactly where they stand.

Raymond v. Acting Aberdeen Area Director, 19 IBIA 41, 42-43 (1990). Therefore, neither the Superintendent nor the Regional Director had authority to reconsider the decisions which were on appeal to the Board.

The situation normally presented to the Board is one in which a BIA official has improperly taken further action in a matter pending before the Board. Here, outside individuals requested that the BIA officials take inappropriate action. In his June 9, 2003, decision, the Regional Director declined to take that action, correctly stating that the matter was pending before the Board and that any request should have been raised in the context of the existing appeals.

Because it finds that the Superintendent and the Regional Director lacked authority to reconsider their decisions in a matter pending before it, the Board affirms the Regional Director's declination to reconsider his decision. Any other substantive matter addressed in the Regional Director's June 9, 2003, decision must be raised in the context of the existing appeals.

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 the Regional Director's June 9, 2003, decision is affirmed in accordance with this opinion. 1/

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//original signed  
Kathleen R. Supernaw  
Acting Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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1/ Stephen L. Simpson, Esq., has filed an appearance on behalf of the Western Regional Director in this case. He is responsible to advise other attorneys in the Office of the Solicitor of this decision.