



INTERIOR BOARD OF INDIAN APPEALS

Chemehuevi Indian Tribe, on its own behalf, and on behalf of its Assignees, Debra Casanova, Jacqueline Gordon, Keith R. Lodge, Jr., Tina Marston, and Shirley M. Smith
v. Acting Western Regional Director, Bureau of Indian Affairs

45 IBIA 81 (06/18/2007)

Related Board cases:

46 IBIA 298

52 IBIA 192

52 IBIA 364



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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CHEMEHUEVI INDIAN TRIBE, ON)	Order Dismissing Appeal
ITS OWN BEHALF AND ON)	
BEHALF OF ITS ASSIGNEES,)	
DEBRA CASANOVA,)	
JACQUELINE GORDON, KEITH)	
R. LODGE, JR., TINA MARSTON,)	
AND SHIRLEY M. SMITH,)	
Appellants,)	
)	Docket No. IBIA 07-45-A
v.)	
)	
ACTING WESTERN REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	June 18, 2007

Appellant Chemehuevi Indian Tribe (Tribe), appearing on its own behalf and on behalf of Debra Casanova, Jacqueline Gordon, Keith R. Lodge, Jr., Tina Marston, and Shirley M. Smith (collectively, five assignees), seeks review of an August 10, 2005, decision (Decision) of the Acting Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA) in which he concluded that certain land assignments made by the Tribe “may not be approved” under 25 U.S.C. § 81 to 34 assignees, including the 5 assignees.¹ On November 16, 2006, the Board of Indian Appeals (Board) ordered the parties to show cause why this appeal should not be dismissed as untimely. The parties both responded and the Board has received the certified administrative record from the Regional Director. After reviewing the record and considering the parties’ arguments, we now dismiss this appeal as untimely.

Facts

In 2001, the Tribe adopted Ordinance No. 01-08-25-1-A (Ordinance), which established a residential land assignment program on the Tribe’s reservation lands, which are

¹ Only five of the land assignments — those of the individual appellants — are at issue in this appeal.

owned by the United States in trust for the Tribe. Amended Complaint, filed on or about Feb. 28, 2006, in *Casanova v. Norton*, No. CV 05-1273 PHX ROS (D.Ariz.) (Amended Complaint), ¶¶ 9, 12. In enacting the Ordinance, the Tribe sought “to establish a uniform procedure for determining when and under what conditions tribal members will be allowed to occupy unassigned tribal trust lands for residential purposes . . . in a manner similar to [fee simple ownership] in land off the Reservation.” Ordinance, § 1(E)-(F). The Ordinance authorizes tribal members to apply for a residential land assignment and sets out the criteria for the Tribe’s review and approval of applications. Section 14.08.015 of the Ordinance authorizes the Tribal Chairman to “submit the Assignment Deed to the Secretary of the Interior or the Secretar[y’s] designated representative for approval pursuant to 25 U.S.C. § 81.”

Initially, 34 individuals, including the 5 assignees, applied for and received land assignments from the Tribe. Pertinent to this appeal, the Tribe approved land assignment deeds for Casanova, Lodge, and Marston on April 12, 2004, and on May 12, 2004, for Gordon and Smith. Prior to the execution of each deed, the Tribe passed individual tribal resolutions approving each land assignment. By letter dated April 7, 2004, Smith, as Vice-Chairman of the Tribe, collectively submitted the land assignment deeds for Casanova, Lodge, and Marston to the Regional Director for approval under 25 U.S.C. § 81 (Section 81 approval); the Chairman of the Tribe submitted the deeds for Smith and Gordon to the Regional Director by letter dated May 12, 2004.² The five assignees acknowledge that the Tribe pursued Section 81 approval with the Regional Director on their behalf. Amended Complaint in *Casanova*, ¶¶ 1, 23; Stipulation Regarding Certification and Filing of Administrative Record (Stipulated Record), filed Dec. 14, 2006 with the Board, ¶ 19; *see also* Proposed Case Management Plan, filed Dec. 6, 2005, in *Casanova*, at 3.

When the Tribe did not receive a decision from the Regional Director in response to its request for Section 81 approval, the five assignees filed suit on April 28, 2005, in district court.³ Complaint in *Casanova*. Plaintiffs brought three claims: (1) the government’s failure to act on the Tribe’s request for Section 81 approval constituted a violation of

² The Tribe and the five assignees aver in their amended complaint in district court that Gordon submitted the deeds to BIA for approval. Amended Complaint, filed in *Casanova*, ¶ 23. Perhaps Gordon delivered the deeds to BIA but it is evident that the cover letters for the two packages, which contained the request for Section 81 approval, were signed by Smith and by the Chairman of the Tribe.

³ On or about February 28, 2006, plaintiffs amended their complaint to add the Tribe as a plaintiff.

Section 81 and its implementing regulations, 25 C.F.R. Part 84; (2) the government's "unreasonable delay" in issuing a decision constituted a violation of the Administrative Procedure Act; and (3) the government breached its trust obligations to the plaintiffs when it did not "carry out the duties" owed to plaintiffs by the government under 25 U.S.C. §§ 81, 177, and 25 C.F.R. Part 84. Amended Complaint in Casanova, ¶¶ 40-55.

During the pendency of the district court action, the Regional Director acted on the Tribe's requests for Section 81 approval. By letter dated August 10, 2005, the Regional Director determined that the 34 land assignments "may not be approved under Section 81," including those to the 5 assignees. Decision at 5. The Regional Director first distinguished between traditional tribal land assignments, which he described as exempt from approval under Section 81, *see* 25 C.F.R. § 84.004(d) (temporary use rights of tribal members), and the Assignment Deeds presented by the Tribe. The Regional Director concluded that the Assignment Deeds were not traditional tribal land assignments:

Whereas traditional tribal land assignments generally afford the Assignee a mere license or privilege to use tribal lands for stated purposes, and do not convey any property rights, it seems clear that the Assignment Deeds [given to the assignees] . . . are intended to grant the Assignee at least a possessory interest (and possibly more, in that the interest conveyed may continue indefinitely so long as certain conditions are satisfied).

Decision at 3. The Regional Director then determined that the land assignments conveyed "an exclusive, inheritable right to use, exclude and possess, tribal land [for residential purposes]," which may not be approved under Section 81. *Id.* at 4. As an alternative, the Regional Director proposed that the Tribe consider a 50-year residential lease pursuant to 25 U.S.C. § 4211, which would enable tribal members to obtain a mortgage as well as to assign the lease to heirs.

The Regional Director sent his Decision to the Tribe's Chairman and it appears that the Tribe received the decision some time prior to August 24, 2005, the date on which BIA received the signed certified mail receipt card.⁴ The decision contained accurate and complete appeal rights, including notice that an appeal must be filed with the Board within 30 days of receipt of the decision. At the time of the Tribe's receipt of the Decision, at least

⁴ The card was signed by "V, La'aa White" on behalf of the Tribe, but no date was written in Box C on the card to show the date of delivery of the Decision to the Tribe. When the card was received by BIA from the Postal Service, BIA stamped it received on August 24, 2005.

two of the five assignees — Casanova and Gordon — held positions on the Tribal Council. Declaration of Debra Casanova, filed on or about Oct. 29, 2005, in *Casanova*, ¶¶ 2, 21; Declaration of Jacqueline Gordon, filed on or about Oct. 29, 2005, in *Casanova*, ¶ 7. It is undisputed that the Regional Director did not send a copy of his Decision directly to any of the 34 assignees, including the 5 assignees. Stipulated Record, ¶ 23.

On December 6, 2005, the five assignees/plaintiffs acknowledged in *Casanova* that “[o]n August 10, 2005, . . . the [Regional] Director made a decision denying the Tribal Plaintiffs’ request to approve their [l]and [a]ssignments under 25 U.S.C. § 81[, which] decision is now a final decision for the United States Department of the Interior.” Proposed Case Management Plan, filed in *Casanova*, at 3. On January 5, 2006, counsel for the plaintiffs⁵ filed his declaration in *Casanova*, to which he attached a copy of the Decision. Declaration of Lester J. Marston, filed on or about Jan. 5, 2006, in *Casanova*, ¶ 10 & Exhibit 3. Ultimately, on September 18, 2006, the district court dismissed *Casanova* for failure to exhaust administrative remedies. *Casanova v. Norton*, No. CV 05-1273 PHX ROS, 2006 WL 2683514 (D. Ariz. Sept. 18, 2006).

On November 9, 2006, the Board received a Joint Stipulation Regarding Notice of Appeal and Notice of Appeal (Stipulation) signed by counsel for the Tribe and for the Regional Director, in which the Tribe on its behalf and on behalf of the five assignees appealed the Regional Director’s Decision. In the Stipulation, the parties “agreed to not dispute the timeliness of an administrative appeal by the [Tribe] and the assignees.” Stipulation at 2. The parties also agreed that “[t]his Stipulation shall constitute a timely Notice of Appeal filed on behalf of the Tribe and all the individual assignees from the August 10, 2005, decision of the [Regional Director].” *Id.* at 3.

On November 16, 2006, the Board issued an Order to Show Cause why the appeal should not be dismissed as untimely. The Order to Show Cause observed that the appeal appeared untimely, notwithstanding the parties’ Stipulation, and ordered the parties to brief two issues: “(1) Whether the parties may stipulate to the Board’s jurisdiction; and (2) [a]ny other bases upon which this appeal may be deemed timely or otherwise not subject to

⁵ Counsel for the five assignees/plaintiffs in *Casanova* is also counsel for the Tribe. Declaration of Lester J. Marston, filed in *Casanova*, ¶¶ 1-2.

dismissal for lack of jurisdiction.” Pre-Docketing Notice and Order to Show Cause at 2. The parties each submitted briefs in response to the Board’s Order.⁶

Discussion

1. Timeliness

We begin our analysis with a short discussion of the time for filing appeals with the Board. It cannot reasonably be disputed — and the parties do not attempt to dispute — that appeals to the Board must be filed “within 30 days after receipt by the appellant of the decision from which the appeal is taken.” 43 C.F.R. § 4.332(a); *see also O’Leary v. Acting Great Plains Regional Director*, 43 IBIA 266 (2006). Importantly, for our purposes here, subsection 4.332(a) continues and mandates, “[a] notice of appeal not timely filed *shall be dismissed* for lack of jurisdiction.” (Emphasis added.)⁷ The jurisdictional nature of the time constraint is further supported by 43 C.F.R. §§ 4.22(f), 4.334, both of which authorize the Board to grant extensions of time except for the time for filing a notice of appeal. In line with this jurisdictional mandate, the Board consistently has held that it is without jurisdiction to consider untimely appeals. *Peterson v. Acting Great Plains Regional Director*, 44 IBIA 31 (2006); *State of Kansas v. Southern Plains Regional Director*, 43 IBIA 229 (2006).

⁶ The Board also received, on December 20, 2006, a “Stipulated Record” from the parties. Subsection 4.335(a) of 43 C.F.R. requires the person whose decision is the subject of appeal to the Board to prepare and certify the contents and completeness of the record. The Regional Director may not, of course, waive that requirement and since the Stipulated Record contained no certification, the Board ordered the Regional Director to provide the Board with the complete record for the Decision and a proper certification.

⁷ The Regional Director attempts to explain this language by claiming that it “more closely represent[s] the point where the agency chooses to decline its jurisdiction, as opposed to that limitation being the point where agency jurisdiction is lost to the federal courts through some external authority.” Regional Director’s Brief at 5 (emphasis and footnote omitted). Regardless of whether the Department of the Interior, in promulgating its regulations, “chose to decline” jurisdiction once the 30 days had lapsed for appealing the Regional Director’s decision, the regulation is binding on this Board and we do not have the discretion to disregard a jurisdictional limitation on our authority to review the merits of a decision. Whether or not a Federal court would have jurisdiction, notwithstanding a party’s failure to timely exhaust administrative remedies, is a separate issue.

The Tribe makes two arguments in support of the timeliness of this appeal. First, the Tribe argues that the appeal is timely as to the five assignees because the Regional Director has not sent them a copy of his Decision, which they claim he is required to do under 25 C.F.R. § 2.7(a).⁸ That is, the Tribe maintains that, as “interested parties,” the five assignees are entitled to written notice of the Decision and that they did not receive notice of the Decision until the time of the Stipulation. Therefore, the Tribe maintains that the time for the five assignees to file their notice of appeal did not commence to run until November 2006 when they stipulated to notice of the Decision. We are not persuaded by this argument because the assignees concede that the Tribe sought Section 81 review and approval on behalf of itself and on behalf of the assignees. Therefore, the assignees and their interests were represented by the Tribe.

The Tribe’s second argument relies on a theory of “recurrence.” That is, the Tribe claims that “the Board has jurisdiction to hear an untimely appeal where there is a ‘reasonable expectation’ that the issues raised in the appeal present a ‘recurring question’ of law.” Tribe’s Brief at 5. We reject this argument as it disregards the jurisdictional 30-day period for appealing BIA’s decision to the Board.

We address these two issues below, after a brief discussion of whether the parties may stipulate to the Board’s jurisdiction.

2. Stipulated Jurisdiction

Both parties agree that the Stipulation was not intended to and does not confer jurisdiction on this Board. *See* Tribe’s Brief at 1 (“[t]he parties did not stipulate to the Board’s jurisdiction, so that issue is irrelevant to the present proceedings”); Regional Director’s Brief at 5 (“the parties’ statements in the . . . [Stipulation] that this appeal would be considered timely [were] not intended to serve as a crude attempt to confer jurisdiction on the Board”). Whatever the parties’ initial intent, we agree that the Stipulation could not confer jurisdiction on the Board. The regulations that appear at 43 C.F.R. Part 4, Subpart D, set forth the rules governing the authority of the Board, including its jurisdiction. There is no provision in either the regulations or the Board’s decisions for parties to stipulate to the Board’s jurisdiction.

⁸ Subsection 2.7(a) of 25 C.F.R. states, “[t]he [BIA] official making a decision shall give all interested parties known to the decisionmaker written notice of the decision by personal delivery or mail.” “Interested party” is defined as “any person whose interests could be adversely affected by a decision in an appeal.” 25 C.F.R. § 2.2.

3. Service of the Decision on the Assignees

The Tribe argues that the five assignees were entitled, as “interested parties,” to receive a copy of the Decision. Since it is undisputed that the five assignees did not personally receive a copy of the Decision, they contend that the appeal period did not commence as to them until the time of the parties’ Stipulation. We disagree. Setting aside the question of whether the assignees would have standing to appeal on their individual behalfs from the Regional Director’s Decision,⁹ we find that the assignees were represented by the Tribe at the time of the submission of the Assignment Deeds to BIA for review and, therefore, each had notice of the Decision when it was delivered to the Tribe in August 2005. Therefore, the decision became final for purposes of implementation in September 2005 when no appeal was filed. 25 C.F.R. § 2.6(b).¹⁰

If the assignees had personally submitted the Assignment Deeds for Section 81 approval, the assignees would have been entitled to notice of the Regional Director’s decision. 25 C.F.R. § 2.7(a). Under subsection 2.7(a), “[t]he official making a decision shall give all interested parties known to the decisionmaker written notice of the decision by personal delivery or mail.”¹¹ The time for interested parties to appeal from such a decision does not commence to run until they have received both the decision and appropriate appeal rights. 25 C.F.R. § 2.7(b), (c).

It is well-established that where a party is represented in a matter by an agent, service of documents on the party’s agent or representative satisfies the requirement of service on the party himself or herself. *See* 3 Am. Jur. 2d *Agency* § 273 (2002); Restatement (Second) of Agency §§ 9, 268, 272 (1958); *see also* Restatement (Second) of Agency § 275 (duty of

⁹ In *Quantum Entertainment, Ltd v. Acting Southwest Regional Director*, 44 IBIA 178, 190-91, 204 (2007), the Board held that a non-Indian party had standing to appeal from a BIA decision that former Section 81, 25 U.S.C. § 81 (1994), applied to a long-term agreement between the non-Indian and the tribe but lacked standing to appeal the merits of BIA’s decision declining to approve the agreement under Section 81 because the non-Indian party was not within the zone of interests protected by Section 81.

¹⁰ In December 2005, the Tribe and the five assignees conceded in *Casanova* that the Decision had become final. Proposed Case Management Plan, filed in *Casanova*, at 3.

¹¹ By personally submitting the Assignment Deeds, the assignees would presumptively have been interested parties even if it were eventually determined that they lacked standing. *See Hall v. Great Plains Regional Director*, 43 IBIA 39, 46 (2006).

agent to disclose knowledge to principal). It does not matter whether the agent or representative actually conveys knowledge or notice of the documents to the represented party — the represented party remains bound by notice given to the agent or representative. 3 Am. Jur. 2d *Agency* § 273; *see also* Restatement (Second) of Agency § 275.

When the Tribe promulgated its comprehensive land assignment ordinance, the Tribe provided in the ordinance that the Tribal Chairman must submit any tribally-approved land assignment deeds to BIA for Section 81 review and decision. Ordinance, § 4.08.015 (Tribe’s Chairman “*shall* submit the Assignment Deed to the Secretary of the Interior or the Secretar[y’s] designated representative for approval pursuant to 25 U.S.C. § 81”) (emphasis added); *see also* the Tribe’s Assignment Deed form (containing a page for the Secretary’s signature approving the deed under Section 81 and asserting that the Tribe submitted the Assignment Deed on behalf of the assignee for Section 81 review). There is no provision in the ordinance for the submission by individual tribal members of their Assignment Deeds to BIA for Section 81 review and decision. Therefore, it is implicit in the tribal regulatory scheme that tribal members who apply for a tribal land assignment agree that the Tribe bears the burden of seeking Section 81 review and approval from BIA.

That the Tribe represented the individual assignees in submitting the Assignment Deeds for Section 81 approval is expressly reflected in the five assignees’ averments to the district court in *Casanova* where they characterize the Decision as “a decision denying *the Tribal Plaintiffs’ request* to approve their Land Assignments under 25 U.S.C. § 81.” Proposed Case Management Plan, filed in *Casanova*, at 3 (emphasis added); *see also* Amended Complaint, filed in *Casanova*, ¶¶ 1 (“Federal Defendants . . . fail[ed] to act on the Tribe’s and *Tribal Plaintiffs’ request* to approve their Land Assignments”) (emphasis added), 23 (the Assignment Deeds were submitted to BIA for Section 81 review “[o]n behalf of the Tribe and *the assignees*”) (emphasis added). The Tribe has also made the same representation to the Board: “On behalf of the Tribe *and the assignees*, the [Tribe’s] Secretary-Treasurer submitted all of the [five assignees’] Assignment Deeds to [BIA for] approval . . . under 25 U.S.C. § 81.” Stipulated Record, ¶ 19. (Emphasis added.)¹²

¹² At least with their permission, a tribe may represent the individual interests of one or more of its members in matters before the Department of the Interior (Department). *See* 43 C.F.R. § 1.3. In particular, subsection 1.3(a) provides that “[o]nly those individuals who are eligible under the provisions of this section may practice before the Department, *but this provision shall not be deemed to restrict the dealings of Indian tribes or members of Indian tribes with the Department.*” (Emphasis added.) This regulation has been interpreted by the Board to mean that

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From a practical standpoint, it is appropriate for the Tribe to be the entity seeking Section 81 approval: Ultimately, it is the Tribe's trust land that is made available for assignment; it is the Tribe to whom BIA owes a duty in reviewing the land assignment deeds, not the individual assignees; and, therefore, it is appropriately the Tribe that seeks Section 81 approval.

Therefore, because it is undisputed that the five assignees were represented by the Tribe in the submission of the Assignment Deeds to BIA for Section 81 review and decision, we conclude that they each received a copy of Regional Director's Decision when it was delivered to the Tribe.¹³ The parties do not dispute that the Tribe received a copy of the Decision at the time it was issued in August 2005. Because the Decision contained correct and complete appeal instructions, including notice of the 30-day time period for submitting appeals to the Board, the Tribe's appeal to the Board in November 2006 is untimely.

4. Recurring Question of Law as a Basis for Jurisdiction

By analogy to the law of mootness, the Tribe argues that since the appeal raises a "recurring question of law," the Board should exercise jurisdiction and decide the merits of the appeal notwithstanding its untimeliness. Tribe's Brief at 5. The Tribe cites three decisions by this Board in which, through the passage of time or other intervening acts, an

¹²(...continued)

Indians should be given greater freedom in choosing representatives than other persons appearing before the Department. The Board recognizes that in many cases Indians appearing before it do not have the financial resources to obtain legal counsel . . . and do not feel competent to represent themselves. *Estate of Benjamin Kent, Sr. (Ben Nawanoway)*, 13 IBIA 21, 23 (1984); *see also Estate of Jeanette Little Light Adams*, 39 IBIA 32, 38 (2003) (same); *cf. Doney v. Rocky Mountain Regional Director*, 43 IBIA 231, 234 (2006) ("the Tribe cannot assert [in a nonrepresentative capacity] the legal rights or interests of others, and cannot assert *parens patriae* standing when it does not represent the collective interests of all its members").

¹³ Moreover, at least two of the five assignees, Casanova and Gordon, served on the Tribal Council at the time the Tribe received the Decision and, therefore, received notice of the decision in their official capacities as tribal governing officials. In addition, the five assignees had a copy of the Decision by January 5, 2006, when their attorney filed it in *Casanova*. The assignees either received the Decision from BIA, contrary to their stipulation in this appeal, or they received a copy from their representative, the Tribe.

appeal is rendered moot before a decision can be made. In such an event, the Board may still retain jurisdiction if it is likely that the issue will recur and again evade review through mootness or because the challenged action occurs before a decision can be issued. *See Northrup v. Acting Western Regional Director*, 42 IBIA 136, 139 (2006); *Rush v. Acting Navajo Area Director*, 25 IBIA 198, 199 n.1 (1994); *Estate of Mary Dodge Peshlakai v. Navajo Area Director*, 15 IBIA 24, 33-34 (1986). The exception to the mootness doctrine, however, presumes that the adjudicatory body would have jurisdiction *but for mootness*. It does not, as the Tribe suggests here, constitute an affirmative grant of jurisdiction where such jurisdiction would otherwise be lacking. None of the decisions cited by the Tribe involved untimely appeals to the Board. The Tribe argues that the Board’s “failure to accept jurisdiction will only result in the Tribe submitting another land assignment to the Western Regional Director for review and disapproval. Hence, the issue is far from moot.” Tribe’s Brief at 7. This statement does nothing more than invite the Board to issue an advisory opinion simply because the Tribe — having failed to file a timely appeal — intends to try again with a new request to BIA. The Tribe does not offer any support for the novel proposition that the Board has authority to ignore its own lack of jurisdiction over an appeal that is due solely to the inaction of the Tribe and its assignees.

The Tribe argues erroneously that *Cheyenne & Arapaho Tribes of Western Oklahoma v. Deputy Assistant Secretary - Indian Affairs (Operations)*, 11 IBIA 54 (1983), supports its contention that the Board has accepted untimely appeals in the past. In *Cheyenne & Arapaho Tribes*, the appeal to the Deputy Assistant Secretary was questionably untimely; the appeal to the Board was timely,¹⁴ and the Board noted that “BIA apparently found notice to appellants to have been defective or time limits for appeal were waived under authority of 25 CFR 1.2.” *Id.* at 57 n.2.¹⁵ Thus, the timeliness issue in *Cheyenne & Arapaho Tribes* was

¹⁴ In 1982, the time for appealing to the Board was 60 days from receipt of the challenged decision. 43 C.F.R. § 4.332(a) (1981). In *Cheyenne & Arapaho Tribes*, the decision appealed to the Board issued on February 9, 1982, and the appeal was received by the Board on April 12, 1982. 11 IBIA at 57. In 1982, April 12 fell on a Monday. Therefore, even assuming the appellant received the decision on the day the decision issued, February 9, the appeal was timely because the 60th day from February 9 fell on Saturday, April 10, 1982, in which case, the last day of the appeal period fell on the next business day, April 12. *See* 43 C.F.R. § 4.22 (e) (1981) (governing the computation of time for filing documents with the Board).

¹⁵ Later, on appeal to the Tenth Circuit, that court determined that even though the appellant was aware of the decision at the time it issued from an adverse party, the appellant
(continued...)

whether the appeal to BIA was timely, not, as it is here, whether the appeal to the Board was timely. Therefore, nothing in the *Cheyenne & Arapaho Tribes* decision supports the Tribe's position in the appeal before the Board.

The Regional Director argues that we must assert jurisdiction in order to prevent future claimants from circumventing the exhaustion doctrine. Whether this or any other claimant is able to obtain judicial review of the merits of an agency decision and thereby "circumvent the exhaustion doctrine" where no timely administrative appeal was filed is an issue for resolution in district court. However, like the Tribe, the Regional Director does not explain how this Board is free to disregard the regulations that govern the Board's jurisdiction or, for that matter, why the Tribe is entitled to be excused from the 30-day appeal period that applies to other appellants.¹⁶

If, as the Tribe argues, the issue will recur for purposes of administrative review, the Tribe can seek review at that time.¹⁷ In the meantime, the Tribe and — through the Tribe — its assignees were informed of their appeal rights in the Decision, including the time for submitting an appeal. Instead of filing their appeal with the Board in September 2005, no appeal was filed until November 2006. It is, therefore, untimely and, pursuant to 43 C.F.R. § 4.332(a), the Board lacks jurisdiction to decide the appeal.

¹⁵(...continued)

was not provided with written notice of the decision by BIA until several months after the decision was rendered. *Cheyenne-Arapaho Tribes of Oklahoma v. United States*, 966 F.2d 583, 588 (10th Cir. 1992). The Tenth Circuit held that the time to appeal did not commence until the appellant received a copy of the decision from BIA, and, therefore, the appeal was timely. *Id.*

¹⁶ Of course, the Secretary of the Interior or the Assistant Secretary - Indian Affairs may refer matters to the Board for administrative review and decision. 43 C.F.R. §§ 4.1(b)(2), 4.330(a). However, that has not occurred here.

¹⁷ We express no opinion on whether the issue would, in fact, recur in the future for purposes of an administrative appeal in the event the Tribe submits to BIA for Section 81 review another Assignment Deed that received tribal approval pursuant to the same tribal ordinance as the Assignment Deeds at issue here.

Conclusion

For the reasons set out above, we dismiss this appeal as untimely without expressing any opinion as to the merits of the 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, this appeal from the Regional Director's August 10, 2005, decision is dismissed for lack of jurisdiction.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge