



## INTERIOR BOARD OF INDIAN APPEALS

Trenton Indian Service Area v. Turtle Mountain Agency Superintendent,  
Bureau of Indian Affairs

47 IBIA 60 (05/20/2008)



# 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

TRENTON INDIAN SERVICE AREA,	)	Order Granting Reconsideration,
Appellant,	)	Vacating in Part Order Making
	)	Determination, and Dismissing
v.	)	Appeal
	)	
TURTLE MOUNTAIN AGENCY	)	Docket No. IBIA 08-37-A
SUPERINTENDENT, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	May 20, 2008

The Trenton Indian Service Area (Appellant) filed this appeal seeking review of a January 30, 2008, letter (January 30 letter) from the Superintendent, Turtle Mountain Agency, Bureau of Indian Affairs (Superintendent; BIA). The Superintendent advised Appellant that because the Turtle Mountain Band of Chippewa Indians (Tribe) had suspended, through Tribal Resolution No. TMBC0521-01-08, its delegation of authority to Appellant to contract directly with BIA under the Indian Self-Determination Act (ISDA), 25 U.S.C. §§ 450-450n, for services to the Indians residing in the Trenton Indian Service Area, the Tribe would “assume signature authority on all contractual issues and pay requests between the BIA and [Appellant] until further notice.” January 30 letter. Appellant appealed to the Board of Indian Appeals (Board) from the January 30 letter through the appeal processes set forth at 25 C.F.R. Part 900, Subpart L. Appellant also sought a temporary restraining order, apparently to temporarily block the Superintendent from implementing or applying his decision.

Initially, on February 28, 2008, the Board determined that it had jurisdiction, pursuant to 25 C.F.R. § 900.150(i), to determine whether the January 30 letter had effectively and properly refused, based on Resolution No. TMBC0521-01-08, to treat Appellant as authorized to submit certain requests for contract modifications that appeared to be pending at the time of the January 30 letter. *See* Order Making Determination Under 25 C.F.R. § 900.160(a) (February 28 Determination), Feb. 28, 2008, at 2-3. BIA now moves the Board to reconsider its February 28 Determination on the grounds that each of Appellant’s requested contract modifications were granted prior to the January 30 letter and there are no pending requests. After further briefing by the parties, the Board now concludes that it lacks jurisdiction over Appellant’s appeal. It is undisputed that Appellant

has no proposals pending before BIA to modify any existing ISDA contracts. To the extent that Appellant continues to claim that BIA has reassumed the contracts, it has failed to allege facts to support this claim or to warrant reconsideration of the Board's February 28 Determination that the appeal does not fall within the scope of 25 C.F.R. § 900.150(e), which governs claims of rescission and reassumption. Therefore, we grant BIA's motion for reconsideration, vacate that portion of our February 28 Determination finding Appellant stated a claim under 25 C.F.R. § 900.150(i), and dismiss this appeal. In light of our decision, we do not reach BIA's alternate grounds for its motion to dismiss — based on Appellant's lack of standing — nor do we decide Appellant's motion for a temporary restraining order.

## Background

### A. Factual History

Appellant serves tribal members residing in a six-county area, known as the Trenton Indian Service Area (TISA),<sup>1</sup> that straddles the boundary between the states of Montana and North Dakota where a significant number of members of the Tribe reside. *See generally* 25 U.S.C. § 1680e(a). TISA is served by a council of seven members that apparently are elected pursuant to an election code by the Tribe's members who reside in TISA. *See* Tribe's Ordinance 28-B at 1-2. According to Appellant, it has been contracting with BIA to provide services to Indians in TISA since the 1970's and asserts it is a tribal organization independent of the Tribe; BIA contends that Appellant is established by, and receives its authority from, the Tribe. Thus, one of the issues in dispute is whether Appellant has any independent authority to enter into and maintain ISDA contracts with BIA or whether Appellant's authority to do so is derived entirely from the Tribe. We need not resolve this dispute because, as we discuss below, Appellant has failed to show that the January 30 letter constitutes a decision that may be appealed to the Board pursuant to 25 C.F.R. § 900.150.

It is undisputed that the following six ISDA contracts with BIA for services to TISA have been in place since sometime prior to the beginning of the current calendar year:

Contract No. CTA 11X33740	Johnson O'Malley Program
Contract No. CTA 11X33741	Home Improvement Program
Contract No. CTA 11X33742	Aid to Tribal Government

---

<sup>1</sup> We will refer to the Trenton Indian Service Area elected council as "Appellant;" we will refer to the service area or population known as the Trenton Indian Service Area as "TISA."

Contract No. CTA 11X33743	Job Placement & Training Program
Contract No. CTA 11X33744	Wildlife & Parks Program
Contract No. CTA 11X33745	Youth Work Learn Program

Appellant is the signatory on each of the contracts as the contractor. Contract No. CTA 11X33742 replaced Contract No. CTA 11X33732, which expired by its own terms on September 30, 2007. In August 2007, Appellant submitted its Resolution No. 08-22-07-01 to the Great Plains Regional Office as a proposed modification of Contract No. CTA 11X33732 and did not receive a response from BIA; according to the declaration of Yvonne LaRocque, BIA's ISDA Contract Awarding Official, Resolution No. 08-22-07-01 was never received by the Turtle Mountain Agency.<sup>2</sup> Also, with respect to Contract No. CTA 11X33732, Appellant claims that it wrote to BIA in March 2007 to request technical assistance with the revision of its election code and characterizes this request for assistance as "a proposal to change a program, service, function or activity." Appellant's Additional Statement and Response to BIA's Motion for Reconsideration at 2.<sup>3</sup> Appellant also submitted copies of several proposals to modify its current contracts — each dated January 8, 2008, and signed only by Appellant — that were submitted to BIA.<sup>4</sup> According to the LaRocque declaration, these contract proposals were approved by BIA on January 14, 2008, and BIA has not received any further contract modification proposals from Appellant. Appellant does not dispute this evidence.

On January 23, 2008, the Tribe passed Resolution No. TMBC0521-01-08, which purports to suspend Appellant's authority immediately, to order a forensic audit to be scheduled, and to require "all funds [to] be redirected to the Tribe." Resolution No. TMBC0521-01-08. The Tribe subsequently wrote to BIA and characterized its resolution as "suspend[ing] all authority of [Appellant] to handle any and all [ISDA] programs and financial responsibilities." Letter from Tribe to BIA, Feb. 5, 2008. The Tribe stated that it would "assume the authority and responsibilities of overseeing" the ISDA programs for TISA. *Id.*

---

<sup>2</sup> Resolution No. 08-22-07-01 sought a modification only of Contract No. CTA 11X33732 (Aid to Tribal Government) to delete references in the contract to the Tribe and the tribal council, and to insert language identifying Appellant as "organized and authorized to contract for funds the Secretary receives to be administered to Indians because of their status as Indians" and substituting "TISA Council" in place of "tribal council." Resolution No. 08-22-07-01.

<sup>3</sup> Appellant states that BIA claims it never received this written request.

<sup>4</sup> We will refer to the January 8 contract modifications collectively as "Modifications #2."

Meanwhile, on January 30, 2008, in response to Resolution No. TMBC0521-01-08, the Superintendent issued the letter that is the subject of Appellant's appeal to the Board. The Superintendent advised Appellant that, as a result of the Tribe's Resolution, "all payments and contractual issues [related to the TISA ISDA contracts] are to be directed through the [Tribe]" and the Tribe "will assume signature authority on all contractual issues and pay requests between the BIA and Appellant until further notice." January 30 letter. This appeal followed.

## B. Procedural History

Upon receipt of Appellant's appeal, the Board was unable to discern from it whether the Board had jurisdiction inasmuch as the January 30 letter itself did not provide any information concerning the contracts that would be affected or their present status and the information found in Appellant's notice of appeal also was insufficient. Therefore, on February 8, 2008, the Board issued an Order Requesting Additional Statements from Parties (February 8 Order) in which the Board *inter alia* advised Appellant to review 25 C.F.R. § 900.150 and identify any provision(s) therein that apply to Appellant's claims and to provide the factual basis for each such claim.<sup>5</sup>

In response to the Board's February 8 Order, Appellant submitted copies of its proposed Modifications #2 that had not been approved by BIA, thus suggesting that the January 30 letter effectively "declined" the proposed amendments within the meaning of 25 C.F.R. § 900.150(c). In addition, Appellant argued that the January 30 letter was a "reassumption" of the ISDA contracts within the meaning of 25 C.F.R. § 900.150(e). BIA also responded to the February 8 Order, denying that there were any grounds for the Board's jurisdiction over this appeal. BIA moved to dismiss the appeal for lack of jurisdiction as well as for lack of standing based on the Tribe's suspension of Appellant's authority.<sup>6</sup>

---

<sup>5</sup> The Board observed in its order that claims concerning the withholding of funds and breach of contract claims are not within the Board's jurisdiction but have separate remedial schemes found at 25 C.F.R. § 900.170 and Part 900, Subpart N.

<sup>6</sup> Although BIA submitted evidence in support of its motion to dismiss on standing grounds, BIA did not submit any evidence in support of its motion to dismiss for failure to state a claim under 25 C.F.R. § 900.150, e.g., a declaration stating that there were no contract proposals or proposed modifications pending before BIA, that BIA had not canceled or rescinded any of Appellant's ISDA contracts, etc.

Following the Board's consideration of the parties' responses to the February 8 Order, the Board issued its February 28 Determination. The Board determined that the information submitted by Appellant was insufficient for the Board to determine that the January 30 letter constituted a decision to rescind and reassume one or more contracts. However, because Appellant had proffered evidence of contract proposals submitted to BIA in January 2008 and suggested that they were effectively declined by the January 30 letter, the Board concluded that Appellant had stated a claim within the Board's jurisdiction. The Board did not, however, determine that the claim fell under section 900.150(c), which authorizes the Board to decide appeals concerning declinations of requests to modify an ISDA contract. Instead, the Board concluded that the claim properly lay under section 900.150(i), which is a catch-all provision for "all other appealable pre-award decisions," because the crux of Appellant's appeal lay not in an actual declination of a contract modification but in the Superintendent's apparent threshold determination that "Appellant is not a 'tribe' or 'tribal organization' that is 'authorized,' within the meaning of 25 U.S.C. § 450f(a) to submit contract proposals" to BIA. February 28 Determination at 2. The Board denied BIA's motion to dismiss for lack of jurisdiction but ordered Appellant to respond to the second basis for BIA's motion, i.e., Appellant's standing to bring this appeal.

While BIA's motion to dismiss on standing grounds was being briefed, BIA filed a motion for reconsideration of the February 28 Determination on the grounds that Modifications #2 had all been approved prior to the January 30 letter. BIA supported this motion with LaRocque's declaration. On March 27, 2008, the Board issued an Order Requesting Responses to BIA's motion for reconsideration (March 27 Order). In addition, the Board observed in its March 27 Order that in its response to BIA's motion to dismiss on standing grounds, Appellant had argued that its August 2007 requests to modify Contract No. CTA 11X33732 had also been effectively denied by the January 30 letter. Therefore, the Board's March 27 Order also sought a response to this new allegation, particularly requesting the parties to inform the Board whether Contract No. CTA 11X33732 remained current or had expired.

Briefing is now complete on both motions with opposition briefs from Appellant and reply briefs from BIA.<sup>7</sup> The Tribe has not participated in this appeal.

---

<sup>7</sup> Appellant submitted the affidavit of Cheryl Donovan in support of its opposition. The affidavit refers to several attached documents concerning Appellant's request for technical assistance from BIA in revising TISA's election code. There were no documents attached to the Board's copy of the Donovan affidavit. Because we determine that the request for technical assistance became moot with the expiration of Contract No. CTA 11X33732 in 2007, the absence of these documents from the Donovan affidavit is immaterial.

## Discussion

We grant BIA's motion for reconsideration, vacate our determination of jurisdiction under 25 C.F.R. § 900.150(i), and dismiss this appeal. Given this disposition, we also determine that we need not address BIA's motion to dismiss on standing grounds and we decline to rule on Appellant's motion for a temporary restraining order.

Appellant does not dispute BIA's evidence that (1) Modifications #2 were approved and processed before January 30, and (2) Contract No. CTA 11X33732 expired by its terms on September 30, 2007. Nor does Appellant oppose BIA's contention that the expiration of Contract No. CTA 11X33732 mooted any requests to modify that contract that were pending at the time it expired. Therefore, the original claim that the Board determined was properly before it — whether BIA improperly refused to treat Appellant as authorized to submit Modifications #2 — does not, in fact, exist.

Instead, Appellant reiterates its argument that the January 30 letter constitutes a reassumption of the contracts from Appellant and urges the Board to find jurisdiction pursuant to 25 C.F.R. § 900.150(e). As a matter of law, Appellant misinterprets the meaning of "reassumption" under the regulations; as a factual matter, Appellant fails to allege facts to support its argument that the January 30 letter constitutes a reassumption of the contracts at issue in this appeal. Therefore and because Appellant does not assert any other claims under section 900.150, we vacate that portion of our February 28 Determination finding that a proper claim had been presented under section 900.150(i), and dismiss this appeal.

### 1. Declination of Contract Modification Requests<sup>8</sup>

#### a. Modifications #2

In her declaration, LaRocque asserts that on January 14, 2008, BIA approved Modifications #2. LaRocque further asserts that BIA has no other contract modification

---

<sup>8</sup> As explained above, the Board determined in its February 28 Determination that, pursuant to section 900.150(i), it could review whether the Superintendent properly determined that Appellant was not a "tribe" or "tribal organization" for purposes of submitting modification requests to its ISDA proposals and, thus, whether the January 30 letter effectively declined all pending modification proposals. Implicit in this jurisdictional determination is the existence of contract modification requests submitted by Appellant and not acted upon by the Superintendent.

requests pending from Appellant. Appellant does not dispute this evidence. Therefore, the original basis under which the Board determined it had jurisdiction under section 900.150(i) — i.e., to determine whether BIA properly refused to approve Modifications #2 because the Tribe had assumed signature authority for contractual issues — does not exist.

Instead, Appellant appears to argue that once the contract modifications for funding have been approved, BIA “usually” submits pay request forms to Appellant for signature without a request from Appellant for the forms. Affidavit of Linda Turcotte, Aug. 4, 2007, at ¶ 2. In essence, Appellant argues that it is not receiving funds to which it believes it is entitled under the ISDA contracts; BIA agrees that the January 30 letter “announces the Superintendent’s intention to transfer contract funds to the Tribe,” Reply Brief at 4. The Board does not have jurisdiction over appeals from decisions concerning the suspension, withholding, or delay of funds for an ISDA contract. *Compare* 25 C.F.R. §§ 900.150-900.151 *with id.* § 900.170(a) and *id.* Part 900, Subpart N. Therefore, the Board’s jurisdiction cannot be predicated upon a claim concerning the suspension or withholding of ISDA funds.

b. Proposed Modifications to Aid to Tribal Government Contract No. CTA 11X33732

Appellant argues that the January 30 letter effectively declined two separate requests to modify the Aid to Tribal Government Contract No. CTA 11X33732: One modification (Resolution No. 08-22-07-01) asked BIA to delete references to the Tribe and to substitute references to Appellant while the other modification sought BIA’s technical assistance with Appellant’s election code. Without deciding whether either of these alleged proposals are requests to modify the contract within the meaning of ISDA, we conclude that we do not have jurisdiction because it is undisputed that Contract No. CTA 11X33732 expired on September 30, 2007. Consequently, to the extent that any modification requests were pending at the time of the contract’s expiration, they then became moot.

Mootness occurs when nothing turns on the outcome of a decision. *See, e.g., Poe v. Pacific Regional Director*, 43 IBIA 105, 111 (2006); *Brown v. Navajo Regional Director*, 41 IBIA 314, 318 (2005). Pursuant to 25 U.S.C. § 450f(a)(2), BIA is to approve or decline a proposed contract modification within 90 days after receipt of the proposal. *See also* 25 C.F.R. § 900.16 (same).<sup>9</sup>

---

<sup>9</sup> This time period may be extended with the consent of the contracting party. *Id.* § 900.17.

Appellant contends that it submitted Resolution No. 08-22-07-01, which sought only to modify Contract No. CTA 11X33732, to BIA on August 22, 2007, which was less than six weeks before the expiration of the contract. Appellant also claims that in March 2007 it formally requested technical assistance in revising TISA's election code, which Appellant characterizes as a request to modify Contract No. CTA 11X33732.<sup>10</sup> Appellant maintains that because it did not receive a declination letter for these two modification requests prior to January 30, the January 30 letter effectively rejected the proposed modifications.

It is undisputed that Contract No. CTA 11X33732 expired on September 30, 2007. The contract was not extended, but was replaced by a new Aid to Tribal Government Contract No. CTA 11X33742.<sup>11</sup> Because no purpose would be served by considering a modification request once the contract expired, we conclude that any such proposals pending when the contract expired were rendered moot.

In conclusion, it is undisputed that the modification requests that the Board initially believed had not been approved by BIA were, in fact, approved by BIA prior to the January 30 letter. In addition and to the extent that Appellant also contends that the January 30 letter effected a denial of Appellant's requests to modify Contract No. CTA 11X33732, we conclude that those requests, to the extent they remained pending at the time of the contract's expiration, were rendered moot and, thus, were not affected by the January 30 letter. We now turn to a discussion of Appellant's argument that its appeal falls under 25 C.F.R. § 900.150(e).

## 2. Reassumption

Appellant reasserts its argument, which the Board previously rejected, that the January 30 letter constitutes a decision to reassume Appellant's ISDA contracts and, therefore, the Board has jurisdiction over this appeal pursuant to 25 C.F.R. § 900.150(e). We disagree. The letter does not remotely purport to say that BIA will reassume the

---

<sup>10</sup> LaRocque testifies that the Agency did not receive Resolution No. 08-22-07-01; Appellant states that BIA has denied receiving Appellant's March 2007 request for assistance with its election code. Given our disposition of these claims, we need not determine whether BIA received either of these requests.

<sup>11</sup> Although it appears that a new Aid to Tribal Government contract was approved, Contract No. CTA 11X33742, Appellants have not alleged that these same modification proposals have been raised with respect to the new contract.

control or operation of any contracted programs. The letter only addresses the signatory authority for contractual issues and for pay requests. Appellant alleges no other facts, much less adduces evidence of, BIA's reassumption of the control or operation of the contracted programs. In fact, it is not evident that Appellant has been deprived of its authority to perform the obligations required under its contracts.

The reassumption of ISDA contract functions is governed by 25 U.S.C. § 450m and 25 C.F.R. Part 900, Subpart P, and is a term of art under ISDA. *See Kaw Nation of Oklahoma v. Acting Southern Plains Regional Director*, 39 IBIA 73, 74 n.1 (2003). "Reassumption," for purposes of section 450m, is defined as the "rescission, in whole or in part, of a contract *and* assuming or resuming control or operation of the contracted program *by the Secretary* without consent of the [contracting party]." 25 C.F.R. §§ 900.6, 900.246 (emphasis added); *see also Navajo Nation v. Office of Indian Education Programs*, 40 IBIA 2, 12 (2004). Thus, "reassumption" within the meaning of ISDA consists of two actions: A rescission of some or all of an ISDA contract *and* BIA's unilateral assumption or resumption of the "control or operation" of the program for which BIA contracted. *See Navajo Nation*, 40 IBIA at 12.<sup>12</sup>

The January 30 letter acknowledged that the Tribe authorized Appellant "to work directly with [BIA] on [ISDA] contracts, [which] *includes* signature authority on all awards, modifications and pay requests." Emphasis added. The letter further acknowledged that the Tribe "suspended [Appellant's] delegation of authority" and, therefore, "all payments and contractual issues are to be directed through the [Tribe, which] will assume signature authority on all contractual issues and pay requests." Even assuming that the January 30 letter effected a partial or total rescission of Appellant's ISDA contracts, nothing in the letter addresses or suggests any reassumption by BIA of the control or operation of any contracted programs. What is evident and undisputed in this appeal is that the Tribe, and not Appellant, is the recognized entity from which BIA will accept awards, pay requests, modifications, and other contract matters requiring the signature of the contracting party.

---

<sup>12</sup> The statute also distinguishes between emergency reassumptions and non-emergency reassumptions. 25 U.S.C. § 450m. The Board is authorized only to accept initial appeals from non-emergency reassumptions, 25 C.F.R. § 900.150(e), which occur following BIA's determination that one of the following exigencies exists: (1) there are serious deficiencies in the administration of the contract, (2) individual rights have been violated, (3) the health, safety, or welfare of any individual has been endangered, or (4) there has been gross negligence or mismanagement of contract funds or trust assets, 25 U.S.C. § 450m, 25 C.F.R. § 900.247(b). In contrast, an emergency reassumption occurs where there is an immediate threat of imminent harm to an individual or to trust assets. 25 C.F.R. § 900.247(a).

Appellant essentially concedes that BIA has not reassumed the control or operation of the contracted programs when it claims in conclusory terms that BIA “reassumed it to [the Tribe]” and “gave it to the [Tribe].” Appellant’s Additional Statement and Response to BIA’s Motion for Reconsideration at 1. Appellant also claims that “[t]he Superintendent took control of [Appellant’s] contracts . . . and put the control of those contracts in the hands of [the Tribe].” *Id.* at 2. Although Appellant neither explains what was “reassumed” or “given” to the Tribe or what is meant by “control of [the] contracts,” it is nevertheless evident that Appellant understands that it is the Tribe that is acting in some capacity with respect to the contracts, not BIA. Even assuming that BIA acquiesced in the Tribe’s control of programs under the existing contracts, such acquiescence is not a reassumption within the meaning of ISDA.<sup>13</sup> Therefore, Appellant’s allegations do not present a claim under section 900.150(e) for reassumption: Both the statute and the regulations clearly require *the Secretary* to assume the control and operation of the contracted program(s).<sup>14</sup>

Therefore, we reaffirm our earlier conclusion that Appellant has not met its burden of establishing that the January 30 letter constitutes a decision to reassume an ISDA contract, and therefore this appeal does not fall within the scope of 25 C.F.R. § 900.150(e). To the extent that Appellant remains convinced that BIA has breached the ISDA contracts between Appellant and BIA and to the extent that Appellant can demonstrate standing, Appellant has not been left without a remedy: The contracts themselves provide a remedy for disputes as do the governing regulations, *see, e.g.*, 25 C.F.R. Part 900, Subpart N. However, Appellant’s remedy does not lie under 25 C.F.R. § 900.150.

### Conclusion

Because we conclude that there is no underlying basis — i.e., no decision to decline a proposal to modify — for the Board to exercise its jurisdiction under 25 C.F.R. § 900.150(i) and because we conclude that BIA has not reassumed the control or operation of any of Appellant’s contracts, the Board lacks jurisdiction to entertain this appeal. Consequently, we grant BIA’s motion for reconsideration, vacate in part our February 28

---

<sup>13</sup> Even assuming that the Tribe’s control of the contracts were relevant, there is no evidence in the record that the Tribe has assumed an active role in controlling or operating the contracted programs.

<sup>14</sup> In addition, the reason provided by BIA for the shift in signatory authority from Appellant to the Tribe also is not consistent with a reassumption: BIA relied upon the Tribe’s suspension of Appellant’s authority and not on one of the bases under which BIA may reassume an ISDA contract. *See* 25 U.S.C. § 450m; 25 C.F.R. § 900.247.

Determination, and dismiss this appeal for lack of jurisdiction. We do not reach the merits of BIA's alternate argument in support of dismissal, based on Appellant's lack of standing, nor do we decide Appellant's motion for a temporary restraining order.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we dismiss for lack of jurisdiction Appellant's appeal from the January 30, 2008, decision of the Turtle Mountain Agency Superintendent.

I concur:

\_\_\_\_\_  
// original signed  
Debora G. Luther  
Administrative Judge

\_\_\_\_\_  
// original signed  
Steven K. Linscheid  
Chief Administrative Judge