INTERIOR BOARD OF INDIAN APPEALS

Sharon Wasson, Thomas Wasson, William Bills, Judy Rojo, and Elverine Castro v.
Western Regional Director, Bureau of Indian Affairs

50 IBIA 342 (11/19/2009)

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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

SHARON WASSON, THOMAS WASSON, WILLIAM BILLS, JUDY ROJO, AND ELVERINE CASTRO, Appellants,	)	Order Remanding Matter to Regional Director With Instructions to Issue Decision on the Merits
v.	)	Docket No. IBIA 08-28-A
WESTERN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS Appellee.	)	November 19, 2009

Sharon Wasson, Thomas Wasson, William Bills, Judy Rojo, and Elverine Castro, in their capacities both as Members of the Winnemucca Indian Colony (Colony) Council and as individuals (Appellants), have appealed the failure of the Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to respond to their request for action or decision made pursuant to 25 C.F.R. § 2.8. Appellants contend that the Regional Director did not respond at all to their request and thus failed "to recognize the Council of the Winnemucca Indian Colony, Thomas Wasson, Chairman, William Bills, Vice-Chairman, Elverine Castro, Sharon Wasson, and Judy Rojo, members." Appeal at 2-3.[1]

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[1] This is the fifth appeal the Board has entertained concerning the recognition issue. The Board dismissed the first appeal, *Wasson v. Western Regional Director*, 38 IBIA 205 (2002) (*Wasson I*), when the appellants failed to respond to an order to show cause; the Board dismissed the second appeal, *Wasson v. Western Regional Director*, 38 IBIA 255 (2002) (*Wasson II*), without prejudice, citing the pendency of a Federal court proceeding arising out of the same intra-tribal dispute giving rise to the appeal before the Board. *Id.* at 256. In the third appeal, *Wasson v. Acting Western Regional Director*, 39 IBIA 174 (2003) (*Wasson III*), the Board denied the appellants' request for an extension of time to file a notice of appeal, thus rendering the Acting Regional Director's decision final for the

(continued...)

The Regional Director contends that it is premature for him to decide whether Appellants are the governing body of the Colony because they have not provided adequate information to justify their claimed election as Colony Council members. Appellants, on the other hand, maintain that they have produced more than sufficient information to prove that they have both complied with the requirements set out in the Colony Constitution and Bylaws and fulfilled all the Federal and tribal court-imposed prerequisites for recognition of their status as the Colony Council, and assert that the Regional Director does not need any additional information to make his recognition decision. Given Appellants' insistence that the record is complete and the matter is ripe for a decision on the merits by BIA, and because the Regional Director appears to confuse the requirement in section 2.8 to take action with the request for a particular outcome, no purpose would be served by allowing the Regional Director to await the submission of further evidence from Appellants, which apparently will not be forthcoming. We therefore remand the matter to the Regional Director with instructions to issue a decision on the merits of Appellants' recognition request. In so doing, we express no opinion on the merits of that request.

Regulatory Background

Section 2.8 of 25 C.F.R. is an action-prompting regulation. It allows a person "whose interests are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request" to make that official's inaction the subject of an appeal by following the prescribed procedures. Under these procedures, the party must submit a written demand to the BIA official to take the action originally requested; describe the interest adversely affected and the loss, impairment, or impediment of that interest created by that official's inaction; and state that if the official does not take action on the merits within 10 days of receipt of the request, or establish a date for taking such action, the inaction will be appealed. 25 C.F.R. § 2.8(a). If, within those 10 days, the BIA official receiving the request for action neither makes a decision on the merits nor establishes a reasonable date no later than 60 days from the date of the request by which the decision will be made, "the official's inaction shall be appealable to the next official in the process . . . ."

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[1](...continued)
Department. *Id.* at 179. And on January 24, 2006, the Board affirmed two decisions of the Regional Director, one rejecting an application to contract BIA programs under the Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 25 U.S.C. § 450 *et seq.*, partially because BIA does not recognize the appellants as the tribal governing council, and the second expressly declining to recognize the appellants as the Colony Council. *See Wasson v. Western Regional Director*, 42 IBIA 141 (2006) (*Wasson IV*). Three of the appellants in the present appeal were also appellants in the other four appeals.

25 C.F.R. § 2.8(b). *See Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258 n.1 (2006).

Factual and Procedural Background

This appeal is the latest chapter in a longstanding dispute over the proper composition of the Colony Council. Only the facts relevant to the section 2.8 appeal now before us will be summarized here; a more comprehensive recitation of the history of this dispute can be found in *Wasson IV*, 42 IBIA at 141-52.

The United States created the Colony by Executive Order on June 18, 1917. Between 1917 and 1928, the United States set aside a total of 340 acres near the town of Winnemucca, Nevada, for homeless Shoshone and Paiute Indians living in the area. In 1970, the Indians living on the land adopted a Constitution and Bylaws, which were approved by the Assistant Secretary - Indian Affairs in 1971. Under Article II of the Constitution, which sets out the requirements for membership in the Colony, all persons of at least 1/4 Paiute and/or Shoshone blood whose names appear on, or who are descendants of persons whose names appear on, the December 9, 1916, census of the Winnemucca Shoshone Indians are eligible for membership unless that person has received land or money as a result of having been enrolled as a member of some other tribe, band, or community of Indians. Colony Constitution, Art. IV, Secs. 1 and 2.[2] Article IV of the Colony Constitution addresses nominations and elections and provides that all Colony members 21 years old or older are qualified to vote and that voting shall be by secret ballot.

The current dispute began in February 2000. At that time, the Colony Council consisted of Chair Glenn Wasson, Vice-Chair William Bills, and members-at-large Thomas Wasson, Elverine Castro, and Lucy (Wasson) Lowery. Chair Glenn Wasson was murdered on February 22, 2000, and, in accordance with the Colony Constitution, Vice-Chair William Bills ascended to the position of Acting Chair. The Superintendent of the Western Nevada Agency (Agency), BIA (Superintendent), recognized Bills as the Council's Chair on March 3, 2000. The Council members then split into two factions: one faction, known as the Wasson Group, consisted of Thomas Wasson, Elverine Castro, and Lucy Lowery; the

[2] Section 3 of Article II grants the Colony Council the power to enact ordinances, subject to Secretarial approval, governing procedures for when a member becomes ineligible for continued membership, when a person wishes to be adopted into membership, and when an eligible member requests to be officially enrolled.

other faction, known as the Bills group, included only William Bills.[3] Each faction claimed to constitute the official Colony Council, and held its own election, the results of which supported each faction's claim.

Throughout the years, the two factions were involved in several tribal and Federal court actions, which raised the questions of who comprises the official, duly elected Colony Council, and what procedures are necessary to determine the Colony's membership, for purposes of electing a Council. This litigation has produced conflicting outcomes. For example, on January 18, 2001, in *Bills v. Wasson*, tribal court Judge Kyle Swanson determined that Bills was the Acting Tribal Chair and should remain seated until a list of eligible voters was approved and certified and a valid election held. The Wasson group first sought to dismiss the Judge, and then appealed his order to the Inter-Tribal Court funded by BIA to provide appellate review for Nevada tribes. The Inter-Tribal Court held that the matter was not ripe for appeal because there were undetermined issues of fact pertinent to the appeal. *Wasson v. Bills* (*In re: Kyle Swanson)*, Case No. AP 1.01 (Order, June 29, 2001). The Court remanded the matter for trial before a mutually agreed upon *pro tem* tribal court judge for, *inter alia*, identification of the names of the Colony members eligible for enrollment and determination of the members of the legitimate Colony Council.

On remand, Judge Steven Haberfeld issued an order dated May 9, 2002, in which he (1) concluded that there was no properly seated Council, (2) ordered that an election be held no later than October 30, 2002, (3) set forth the procedures for that election, and (4) declared 49 individuals as members of the Colony eligible to vote in the election. Both factions appealed Judge Haberfeld's order. The Inter-Tribal Court, however, was in hiatus due to a lack of funding. As a result of a mediation effort conducted under the auspices of the U.S. Court of Appeals for the Ninth Circuit, the parties agreed to an alternative mechanism for the appeal, and the appeal was heard by an appellate panel composed of three tribal judges from Minnesota (the Minnesota panel). On August 16, 2002, that panel reversed and vacated Judge Haberfeld's decision; ruled that the legal members of the Council were Sharon Wasson (who had been appointed after Glenn Wasson's death), Thomas Wasson, Elverine Castro, and William Bills, plus one vacancy; and directed that this Council should serve until its successors were duly elected. The Minnesota panel also determined that it was the role of the Council, not the courts, to determine the Colony's membership. The panel found that an existing list of 77 members was valid, and that

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[3] Additional members have been identified with both groups as this dispute has progressed. *See Wasson IV*, 42 IBIA at 142 nn.2, 3. Appellants, who include Bills, are the current members of the Wasson group; Bills is no longer affiliated with the group that bears his name. The Bills group has participated in this appeal as an interested party.

certain new memberships were also valid. The panel ordered procedures for revising the enrollment list.

The Bills group filed a petition for rehearing which was ultimately heard by the re-funded Inter-Tribal Court. *Wasson v. Bills (In re: Kyle Swanson)*. That court issued a decision on September 16, 2004, finding that none of the post-February 2000 elections were valid and reinstating the Council that was in place in February 2000, which included Thomas Wasson, Elverine Castro, and William Bills.

Several Federal court actions had been pursued while these tribal court proceedings were pending, one of which, *Magiera v. Norton*, No. CV-N-01-0467-LRH (VPC) (D. Nev. Nov. 7, 2002), *aff'd* 108 Fed. Appx. 542 (9th Cir. 2004), was dismissed without prejudice for failure to exhaust administrative remedies. A second Federal court proceeding, *Bank of America v. Bills*, No. CV-N-00-450-HDM (VPC) (D. Nev. Aug. 29, 2003), which was an interpleader action filed by Bank of America on August 28, 2000, to determine who was entitled to control of the Colony's money and finances, was administratively closed on August 29, 2003, subject to being re-opened upon disposition of the matter before the Inter-Tribal Court or upon application of the parties.[4]

The Wasson group filed a Federal lawsuit against the Inter-Tribal Court and the three judges who participated in the September 16, 2004, decision. *Wasson v. Inter-Tribal Court of Appeals of Nevada*, No. CV-N-04-573-HDM (VPC) (D. Nev.). On December 20, 2004, the parties, which did not include the Bills group, entered into a written Stipulation to settle the case. The Stipulation provided that the Council would be reinstated according to the finding of the Minnesota panel and would serve as long as the members were able or until another Council was elected at a valid tribal election by a membership determined by the Council. The Stipulation also set out procedures for accepting membership applications, for issuing written decisions on membership applications, and for appealing membership denials.[5] In light of this Stipulation, which the court modified slightly on March 9, 2005, to provide that objections to the Council's membership decisions would

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[4] Both of these Federal court proceedings recognized that determinations of tribal membership and the composition of the tribe's governing body are matters for tribal, not Federal judicial, determination. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 (1978); *Williams v. Gover*, 490 F.3d 785, 789, 791 (9th Cir. 2007).

[5] The Stipulation differed from the order issued by the Inter-Tribal Court by recognizing two additional Council members (Sharon Wasson and Andrea Davidson), by assigning the Council rather than the Inter-Tribal Court the task of determining members, and by not requiring Inter-Tribal Court oversight of an election.

proceed pursuant to the Colony's Constitution and Bylaws (including consideration by the tribal court before possible appeal to the Inter-Tribal Court), the District Court dismissed the case on March 11, 2005.[6]

Thus, as of January 2006, when the Board decided *Wasson IV*, there were three different procedures, all arguably tribally-based, for determining the Colony's membership and for holding elections to determine the Colony Council. *See Wasson IV*, 42 IBIA at 155-56. These procedures included: (1) the process set forth in the December 20, 2004, Stipulation entered by the District Court in *Wasson v. Inter-Tribal Court*, by which Appellants were to determine the Colony's membership, a determination subject to appeal under tribal processes; (2) the procedure set out in the September 16, 2004, order issued by the Inter-Tribal Court in *Wasson v. Bills (In re: Kyle Swanson)*, by which the two factions represented on the February 2002 Council were to submit proposed membership lists to the Inter-Tribal Court for its determination of membership and subsequent oversight of an election;[7] and (3) the process outlined in the July 5, 2005, District Court order in *Bank of America*, by which the parties were to submit proposed membership lists to the stipulated Minnesota panel. *See Wasson IV*, 42 IBIA at 155-56.

Appellants contend that they pursued the steps necessary to comply with the Stipulation entered in *Wasson v. Inter-Tribal Court*. In response to various inquiries regarding the status of the Colony's membership and governing body issues, BIA advised

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[6] The Wasson group moved for summary judgment in the *Bank of America* interpleader case based on the Stipulation in *Wasson v. Inter-Tribal Court*. The District Court denied the motion on April 1, 2005, and ordered each party to certify a list of enrolled members to the Minnesota panel within 60 days. The Bills group moved for relief from that order. On May 28, 2005, the Council as identified in the Stipulation approved a revised membership list which it submitted to the attorney who served as the chief judge of the Minnesota panel. The Court denied the Bills group's motion on July 5, 2005. *Bank of America v. Bills*, No. CV-01-0045-HDM-VPC (D. Nev. July 5, 2005). The record contains no evidence indicating that the Minnesota panel has taken any action since the issuance of its August 16, 2002, order.

[7] Although the Appellants had argued in *Wasson IV* that this procedure had been rendered ineffective by the December 20, 2004, Stipulation, the Board noted both that nothing in the record indicated that the Inter-Tribal Court had dismissed *Wasson v. Bills* or taken any action to vacate, reverse, or modify the September 16, 2004, order, and that the Bills group had filed a motion for default on May 26, 2005, before the Inter-Tribal Court that was awaiting action. The Board therefore concluded that the Inter-Tribal Court's order was still effective. *Wasson IV*, 42 IBIA at 155.

Appellants of the steps they would need to follow to obtain BIA acknowledgment of a Council. Appeal, Attachment 4, Letter from Superintendent to Appellants, Feb. 23, 2007, at 1. Citing the Stipulation, BIA advised Appellants that to carry out the objectives of the District Court, the written Stipulation, and the tribal Constitution and Bylaws and ordinances, Appellants were required to (1) initiate enrollment proceedings according to the Constitution and Bylaws and tribal ordinances by holding meetings, providing notice to eligible applicants of enrollment procedures, approving or disapproving membership applications, processing appeals through available tribal forums, and approving a membership roll by Council resolution, upon completion of which they were to report their accomplishments to the Federal and tribal appellate courts, and (2) upon conclusion of the initial enrollment process (which BIA noted would be continuous), schedule a tribal election in conformance with the Constitution and Bylaws and tribal ordinances and submit a report to both the appellate court and the Agency. *Id.* at 1-2. BIA stated that it would establish a government-to-government relationship with the Colony's elected Council when these processes had been completed and had been determined to meet the requirements of the courts. *Id.* at 2.

By letter dated February 26, 2007 (Appeal, Attachment 5), Appellants informed BIA of the steps they had taken to fulfill the Stipulation. Addressing the enrollment procedure, Appellants stated that they posted signs complying with the Constitution and Bylaws, published notice in the local newspaper, gave notice to counsel for the Bills group, and posted notices at the Inter-Tribal Council of Nevada office and at BIA offices. They averred that they then provided documents evidencing the completion of these activities (which they also appended to the letter[8]) to the Minnesota panel, the Federal District Court judge, the Bills group, and the BIA Regional Office. Appellants indicated that they had sent applications to individuals responding to the enrollment notice and had received a total of 36 applications; that the enrollment application process was ongoing; and that they expected the number of applications to increase once the Council gained BIA recognition. According to Appellants, review of these applications had resulted in 18 applications approved by tribal resolution with the applicants enrolled as members of the Colony; 10 applications awaiting tribal action pending receipt of requested additional information; and 8 applications from applicants who do not meet the 1/4 blood quantum but whose applications had not yet been denied. Appellants stated that they had reported their accomplishments to the Federal District Court, the Inter-Tribal Court, and the Minnesota panel.

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[8] The copy of the letter attached to the Appeal does not include these documents; however at least some of them have been provided as parts of other attachments to the Appeal and as Exhibits included with Appellants' Response to BIA Status Report.

Appellants further informed BIA that in October 2006, after completion of the initial enrollment process, tribal elections in accordance with the Colony's Constitution and Bylaws had been held, with all enrolled members of the Colony participating by consensus. Appellants advised BIA that the members of the Council elected through these procedures were Thomas Wasson, Chairman; William Bills, Vice-Chairman; and Elverine Castro, Sharon Wasson, and Judy Rojo, Members. Appellants also informed BIA that they had asked the Court to dismiss all the matters before it.[9] Appellants stated that the Council was ready to act as the government of the Colony and asked BIA to recognize a government-to-government relationship with the elected Council.

BIA responded by letter dated April 13, 2007 (Appeal, Attachment 6), recapping the gist of its February 23, 2007, letter and again requesting that Appellants follow the procedures established by the Federal and tribal court systems.[10]

By letter dated April 24, 2007 (Appeal, Attachment 7), Appellants stated that they had provided all the requested information to both the Agency and the courts and that they were awaiting the Inter-Tribal Court's dismissal of the appeal before it, which would complete all tribal court processes. Appellants questioned the impartiality of the Agency and asked that the Agency refer the recognition determination to the Regional Office.

On May 17, 2007, the Inter-Tribal Court dismissed the appeal in *Wasson v. Bills*, finding, *sua sponte*, that it had no jurisdiction over the matter. Appeal, Attachment 3. The order withdrew the mandates of all orders and rulings in the case.

By letter dated July 26, 2007 (Appeal, Attachment 8), Appellants advised the Regional Director of the May 17, 2007, dismissal of the only tribal appeal pending in this matter. They averred that all tribal appeals had been resolved; that no appeals regarding membership determinations had been filed; that all prior opinions of the Inter-Tribal Court had been withdrawn, which left standing only the Minnesota panel's August 16, 2002, decision; and that all membership lists had been submitted to the Minnesota panel as required by the District Court in *Bank of America*. Since nothing remained to be done, Appellants reiterated their April 24, 2007, request that the Regional Director recognize the elected Council as the Colony government and issue a decision on the request by August 1,

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[9] It is unclear which court Appellants are referring to — the Federal District Court or the Inter-Tribal Court.

[10] The BIA letter also refers to an April 3, 2007, letter from Appellants requesting recognition of the Council. The April 3, 2007, letter has not been provided to the Board.

2007, absent which Appellants stated they would appeal the Regional Director's failure to issue the requested decision.

When no decision was forthcoming, Appellants filed this appeal.

The Board ordered a status report from the Regional Director, which he submitted and to which Appellants and the Bills group responded. Appellants subsequently submitted to the Board a copy of the March 6, 2008, decision issued by the District Court in *Bank of America*. In that decision, the court found "that the decision by the Minnesota Panel is in full force and effect following the Inter-Tribal Court of Appeals' dismissal for lack of jurisdiction." *Bank of America*, Mar. 6, 2008, order at 9. In response to Appellants' submission, the Regional Director argues that the court's decision is not determinative, and has been appealed by the Bills group.

Standard of Review

In a section 2.8 appeal, the Board's review is limited to deciding *whether* BIA must take action or issue a decision at the request of the appellant; that review does not extend to directing *how* BIA should act or decide a matter in the first instance. *Reeves v. Great Plains Regional Director*, 49 IBIA 126, 127 (2009); *Forest County Potawatomi v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 266 (2009); *Midthun*, 43 IBIA at 264 n.7. Thus, the Board typically examines whether BIA's alleged failure to take action or issue a decision is excusable, and does not review the underlying merits of the matter on which action is requested. *Id.* at 261. The Board has dismissed section 2.8 appeals when it appears that the matter is not ripe for final action by the Regional Director because he or she is awaiting further information that is clearly necessary for a making a decision; thus the Board does not allow a party to use section 2.8 to force BIA to issue a decision on the merits if such a decision would be based on incomplete information. *Id.* at 261-62. In a section 2.8 appeal, however, the burden is on BIA to demonstrate that its failure to act is justified. *See United Auburn Indian Community v. Sacramento Area Director*, 24 IBIA 33, 40 (1993).[11]

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[11] In *United Auburn Indian Community*, the Board added that it was BIA's burden, in the alternative, to "support a position that could have been taken." 24 IBIA at 40. In subsequent cases, the Board has not followed *United Auburn Indian Community*, and instead has drawn a bright line for the Board's scope of review for a section 2.8 appeal, holding that the underlying merits are not within the scope of a section 2.8 appeal. *See Reeves*, 49 IBIA at 127; *Forest County Potawatomi*, 48 IBIA at 266; *Midthun*, 43 IBIA at 264 n.7.

Discussion

With these principles in mind, we turn to the issues raised in this section 2.8 appeal. Appellants insist that they have provided all the information necessary to enable BIA to render a decision on their recognition request.[12] The Regional Director, on the other hand, maintains that the record is insufficient to allow BIA to issue a decision on the recognition request. Specifically, the Regional Director asserts that Appellants must provide BIA with a complete, documented, written report supported by pertinent government documents showing the family trees of persons asserting membership in the Colony, including baseline historical government records pertinent to membership denials and recognitions. He further contends that only after Appellants have recognized the appropriate membership of the Colony, provided appropriate notice to Colony membership of a planned election, held a proper election at which all members defined by the Colony Constitution are entitled to run for office and vote, and informed BIA of these actions will BIA respond to Appellants' request to acknowledge the election as valid. *See* BIA Status Report at 7-8. In reply, Appellants insist that they submitted all the information identified by the Regional Director when they responded to BIA's February 23, 2007, letter. They maintain that they have produced more than sufficient information to prove that they have both complied with the requirements set out in the Colony Constitution and Bylaws and fulfilled all the Federal and tribal court-imposed prerequisites for recognition of their status as the Colony Council, and deny that BIA needs any additional information in order to make a recognition decision.

In defending his inaction, the Regional Director misses the point: Appellants demanded a decision from him on the merits, contending that they have complied with all necessary requirements and submitted all necessary information in order to be recognized as the Colony Council. On the merits, Appellants clearly seek a decision from the Regional Director that is favorable to them, but the outcome on the merits that is sought by Appellants must not be confused with the nature of their request, which was a demand under section 2.8 for a decision — their request for a decision is distinct from their assertion that they should be recognized as the Colony Council. Thus, regardless of whether Appellants' actions and the record are sufficient to support a decision to recognize

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[12] Appellants also extensively argue the merits of their request, which include a claim of bias by BIA and a request for a hearing by a panel of three impartial judges; the Regional Director and the Bills group also discuss the merits of the request. As noted above, none of these arguments are relevant to the appeal now before us and will not be addressed. The Bills group has also moved for dismissal of the appeal on the ground that Appellants failed to timely provide it with a copy of the notice of appeal. The Bills group has participated fully in this appeal and has not been disadvantaged by any alleged deficiencies in service. We therefore deny its motion to dismiss.

Appellants as the Colony Council, we are convinced that the matter is ripe for issuing a decision either accepting or rejecting, on the available record, Appellants' claim that they constitute the Council and are entitled to be recognized as such.

We note that in his response to Appellants' filing with the Board of the Federal District Court's most recent decision in *Bank of America*, the Regional Director also contends that he need not issue any decision because there is no need for Federal recognition of a tribal government for purposes of the government-to-government relationship. In *Wasson IV*, the Appellants failed to timely identify a context requiring issuance of a BIA decision for government-to-government purposes, *see* 42 IBIA at 154 n.17, and thus the Board declined to consider a possible justification offered on appeal. In the present case, however, Appellants' demand for action from BIA expressly contended that BIA's failure to recognize them as the Colony Council has resulted in illegal occupation of tribal lands. Appellants contend that BIA is in charge of law enforcement on the Colony's reservation, and by failing to recognize them as the Council, BIA has allowed criminal activity on those lands. Without evaluating the underlying veracity of these claims, we conclude that Appellants' allegations are at least sufficient to refute the Regional Director's argument that Appellants have stated no grounds to justify a request for a decision on the merits.

Given Appellants' insistence that no further proof is needed and concomitant unwillingness to provide any additional information, no purpose would be served by allowing the Regional Director to await the submission of further proof, which apparently will not be forthcoming. We therefore remand the matter to the Regional Director with instructions to issue a decision on the merits of Appellants' recognition request based on the information currently available. As noted earlier, we express no opinion on the merits of Appellants' request.

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 remands the matter to the Regional Director with instructions to issue a decision on the merits of Appellants' request for recognition as the governing entity of the Colony.

I concur:

// original signed	// original signed
Sara B. Greenberg	Steven K. Linscheid
Administrative Judge*	Chief Administrative Judge

*Interior Board of Land Appeals, sitting by designation.