



INTERIOR BOARD OF INDIAN APPEALS

Arthur Morgan, Scott J. Shelbourn, and Ruth Morgan Linabery v.
Rosebud Agency Superintendent, Bureau of Indian Affairs

53 IBIA 85 (03/03/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

ARTHUR MORGAN, SCOTT J.)	Order Docketing and Dismissing Appeals,
SHELBOURN, AND)	and Referring Appeals to Regional
RUTH MORGAN LINABERY,)	Director
Appellants,)	
)	
v.)	
)	Docket Nos. IBIA 11-039
ROSEBUD AGENCY)	11-041
SUPERINTENDENT,)	11-042
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	March 3, 2011

Arthur Morgan, Scott J. Shelbourn, and Ruth Morgan Linabery (Appellants), separately appealed to the Board of Indian Appeals (Board) seeking review of grazing permit bills that they received from the Rosebud Agency (Agency), Bureau of Indian Affairs (BIA), or, alternatively, possibly appealing from the Agency’s alleged failure to provide Appellants with information on the breakdown within their respective range units between amounts due for individually owned Indian lands and those due for tribally owned lands.¹ By order dated December 10, 2010, the Board consolidated these appeals. The Board docketed these appeals but dismisses them as premature because Appellants have not exhausted their administrative remedies by first appealing to the Great Plains Regional Director (Regional Director), BIA. We refer the appeals to the Regional Director for consideration.

Upon receipt of these appeals, the Board issued an order to show cause (OSC), which noted that it did not appear that Appellants had identified any action, decision, or alleged inaction by a BIA official that would be appealable to the Board. *See* Pre-Docketing Notice, Order Consolidating Appeals, and Order to Show Cause, Dec. 10, 2010 (citing 25 C.F.R. § 2.4(e) (Board’s general jurisdiction over administrative appeals)). Specifically, the Board explained: “[i]t is well-established, with exceptions not relevant here, that the

¹ Appellants did not submit to the Board copies of any decision or decisions that are the subject of their appeals. To assist in determining the nature of these appeals, the Board separately obtained copies of payment invoices sent by the Agency to Appellants Morgan and Shelbourn.

Board lacks jurisdiction over an appeal from action or alleged inaction by a Superintendent or a BIA Agency office.” *Id.* at 1-2 (citing *Gardner v. Uintah and Ouray Agency Superintendent*, 51 IBIA 166, 167 (2010); *Demery v. Standing Rock Agency Superintendent*, 50 IBIA 136 (2009)). Further, the Board stated that to “the extent [Appellants] seek review of either action or alleged inaction . . . by the [Rosebud] Superintendent, [BIA,] their notices of appeal do not demonstrate that they have exhausted their remedies by first appealing to the . . . Regional Director.” *Id.* at 2. Accordingly, the Board ordered Appellants to show cause why their appeals should not be summarily dismissed for lack of jurisdiction.

The Board received no response from Appellants Morgan and Shelbourn.

Appellant Linabery responded to the Board’s OSC, but she does not directly contest it. Instead, she reiterates the substantive complaints contained in her notice of appeal and asks the Board to direct her to the proper forum if the Board lacks jurisdiction. *See* Letter from Appellant Linabery to Board, Jan. 3, 2011.

Because the subject of these appeals appears to be action or alleged inaction by the Agency and Superintendent, and because Appellants have not identified any action or alleged inaction that is appealable the Board, their appeals to the Board are premature and the Board lacks jurisdiction to consider them. *See* 25 C.F.R. § 166.3 (grazing permit regulations incorporate 25 C.F.R. Part 2 appeals procedures except as otherwise provided); 25 C.F.R. § 2.4(e) (Board decides appeals from Regional Director action or inaction); 43 C.F.R. § 4.331(a) (must exhaust appeal remedies within BIA before appealing to the Board); *Gardner*, 51 IBIA at 167 (Board lacks jurisdiction over a Superintendent’s action or inaction); *Demery*, 50 IBIA at 137 (decision made by BIA official subordinate to a Regional Director must first be appealed to the Regional Director).

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 docketed these appeals but dismisses them for lack of jurisdiction, and refers the appeals to the Regional Director for consideration.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge