



INTERIOR BOARD OF INDIAN APPEALS

Tabeguache/Uncompahgre Indian Tribal Members, and Uinta Indian Tribal Members v.
Western Regional Director, Bureau of Indian Affairs

54 IBIA 158 (11/28/2011)



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

TABEGUACHE/UNCOMPAHGRE)	Order Dismissing Appeal
INDIAN TRIBAL MEMBERS, AND)	
UINTA INDIAN TRIBAL)	
MEMBERS,)	
Appellants,)	
)	Docket No. IBIA 11-138
v.)	
)	
WESTERN REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	November 28, 2011

Lynda M. Kozlowicz, Ute Tribal Advocate, and Edson G. Gardner, Uintah Descendant Advocate, of Kozlowicz & Gardner Advocate, Inc. (Kozlowicz & Gardner) filed an appeal to the Board of Indian Appeals (Board) on behalf of “Tabeguache/Uncompahgre Indian Tribal Members” and “Uinta Indian Tribal Members” (collectively, Appellants).¹ Appellants captioned their notice of appeal as a “Notice of Remanding Appeal and for Reason,” and identified the docket numbers for two earlier appeals that the Board had dismissed on March 30, 2011, and had referred to the Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA) for consideration. *See Tabeguache/Uncompahgre Indian Tribal Members, and Uinta Tribal Members v. Uintah and Ouray Agency Superintendent*, 53 IBIA 129 (2011) (Docket Nos. IBIA 11-088, 11-089).²

¹ The notice of appeal does not identify any member-individuals comprising Appellants. Because we summarily dismiss this appeal, we need not require Kozlowicz & Gardner to further identify the individuals on whose behalf the appeal was filed, nor do we need to determine whether Kozlowicz & Gardner has authority to represent Appellants in the appeal.

² Appellants’ earlier appeals were dismissed because they challenged a February 9, 2011, letter of BIA’s Uintah and Ouray Agency Superintendent (Superintendent), responding to several letters from Kozlowicz & Gardner, and the Board lacks jurisdiction over an appeal from the Superintendent’s action. Both of the earlier appeals sought review of the February 9, 2011, letter, but IBIA 11-088 was filed on behalf of Tabeguache/Uncompahgre Indian Tribal Members, and IBIA 11-089 was filed on behalf of Uinta Indian Tribal Members.

On August 24, 2011, the Board ordered Appellants to complete service of the appeal on the Regional Director, as required by 43 C.F.R. §§ 4.310(b) and 4.332(a), and to notify the Board that they had done so. The Board also ordered Appellants to show cause why this appeal should not be summarily dismissed because any attempt by Appellants to resurrect their earlier appeals, e.g., through reconsideration, would be untimely, *see* 43 C.F.R. § 4.315, and it was not otherwise apparent that there was any intervening appealable action or inaction that was the subject of the appeal.

The Board set a deadline of September 26, 2011, for Appellants to comply with the Board's order, and advised Appellants that if they failed to comply or to respond to the Board's order, their appeal might be dismissed without further notice.

The U.S. Postal Service's Track-and-Confirm service on its website indicates that Appellants received the Board's order on August 29, 2011.

The Board has received no response from Appellants.

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 but dismisses this appeal for failure to prosecute.³

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ The Board recently received an appeal by Appellants from an October 31, 2011, decision by the Western Regional Director, affirming the Superintendent's February 9, 2011, decision. Our dismissal of this appeal does not affect that pending new appeal.