INTERIOR BOARD OF INDIAN APPEALS

First Mesa Consolidated Villages v. Phoenix Area Director, Bureau of Indian Affairs

26 IBIA 18 (05/27/1994)
Appeal from a decision declining to approve a lease.

Affirmed in part; vacated and remanded in part.


Although Secretarial approval of tribal leases is required by statute, and the Bureau of Indian Affairs must review and approve such leases in accordance with the trust responsibility, the Bureau must also undertake its approval role in such a way as to avoid unnecessary interference with tribal self-government.

2. Indians: Leases and Permits: Generally

Where the Bureau of Indian Affairs has approved a lease which grants the lessee a right to renew, and the lease is not in conflict with governing regulations, the Bureau is bound by the lease and must recognize the lessee's right to renew it.

APPEARANCES: Catherine Baker Stetson, Esq, Albuquerque, New Mexico, for appellant; Wayne C. Nordwall, Esq. Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Area Director.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant First Mesa Consolidated Villages (First Mesa) seeks review of an August 2, 1993, decision of the Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to approve a lease between First Mesa as lessor and the Arizona Public Service Company (APS) as lessee. For the reasons discussed below, the Board affirms the Area Director's decision in part, vacates it in part, and remands this matter to him for further consideration.
Background

First Mesa is comprised of the consolidated Hopi villages of Walpi, Shitchumovi, and Tewa. It is one of nine "self-governing villages" recognized under the Constitution of the Hopi Tribe (Tribe). 1/

On October 1, 1992, First Mesa and APS entered into a lease covering a 0.63-acre tract of trust land within an area traditionally occupied by First Mesa. The lease was executed, on behalf of First Mesa, by its Kikmongwi. On May 3, 1993, the Hopi Tribal Council approved the lease. 2/

The same tract had been the subject of a lease dated September 27, 1984, in which the named lessor was "the HOPI TRIBE, * * * in behalf of the First Mesa Consolidated Villages." The 1984 lease was executed by the Tribal Chairman and approved by the Superintendent, Hopi Agency, BIA. It provided that rentals were to be paid to First Mesa through the Tribal Treasurer. The lease term was 10 years beginning May 15, 1982. APS was given a right to renew the lease for a period not to exceed 10 years. 3/

1/ The Hopi Constitution was adopted on Oct. 24, 1936, and approved by the Secretary of the Interior on Dec. 19, 1936. Article III provides:

"SECTION 1. The Hopi Tribe is a union of self-governing villages sharing common interests and working for the common welfare of all. It consists of the following recognized villages: First Mesa (consolidated villages of Walpi, Shitchumovi, and Tewa) * * *

** * 

"SECTION 3. Each village shall decide for itself how it shall be organized. Until a village shall decide to organize in another manner, it shall be considered as being under the traditional Hopi organization, and the Kikmongwi of such village shall be recognized as its leader."

2/ Hopi Tribal Council Resolution H-76-93, dated May 3, 1993, states:

"WHEREAS, the First Mesa Consolidated Villages is a union of self-governing villages sharing common interest and working for the common welfare of all villagers; and

"WHEREAS, the First Mesa Consolidated Villages is under a traditional form of government where the Kikmongwi and clan leaders are recognized by the Hopi Tribe and the Hopi Constitution; and

"WHEREAS, under Article III, Section 3 of the Constitution and By-Laws of the Hopi Tribe, each village shall decide for itself how it shall be organized; and

"WHEREAS, this lease has now expired since May 15, 1992; and

"WHEREAS, the First Mesa Consolidated Villages, Kikmongwi and clan leaders have approved a lease for 10 years with Arizona Public Service Company commencing May 15, 1992 to May 15, 2002.

"NOW THEREFORE BE IT RESOLVED that the Hopi Tribal Council hereby approves the lease between the First Mesa Consolidated Villages and the Arizona Public Service company."

3/ A 1962 lease named “First Mesa Villages” as lessor and was executed by officials of First Mesa. The lease was also signed by the Tribal Chairman, in a space designated for the signature of a witness, under the statement “Approved per Resolution No. H-6-62.”
APS apparently gave proper notice of its intent to renew the 1984 lease. 4 First Mesa and APS executed the 1992 lease with the understanding that it would constitute a renewal of the 1984 lease. However, the Superintendent declined to approve the 1992 lease, stating in a letter to the Tribal Chairman:

1. No appraisal report was submitted with the lease. 25 CFR 162 Leasing and Permitting does not authorize the Secretary to approve a lease below the fair annual rental value. Therefore, an estimate of the fair annual rental value is required. The fair annual rental can be estimated by (1) an Appraisal Report - an estimate of value based on an analysis of recent leases of similar type properties; or (2) Public Advertisement for Bids - there must be at least two bids. Either method would be acceptable.

2. There is some question concerning who signs as the Lessor. The title of the land is held in trust by the United States Government for the benefit of the Hopi people. Hopi Tribal Council members are the elected representatives of the people. The Chairman is an elected representative of the people who receives direction from the tribal council. Therefore, the Chairman of the Hopi Tribal Council signs for the people as lessor.

There is an opinion, if a village has a traditional Hopi self-government that included the power to lease lands or a village constitution that does not expressly or impliedly prohibit leasing of village land, leases would be valid if properly executed and not contrary to Federal law or regulations concerning leasing of Indian lands.

With more and more villages getting directly involved in negotiating leases involving village or clan lands, I am requesting an opinion from the solicitor concerning who is authorized to sign as the Lessor.

I have two other concerns: (1) our government-to-government relationship is with the recognized governing body (Tribal Council) of the Hopi Tribe as reflected in the political agree-

fn. 3 (continued)

The 1962 lease covered a 1.9-acre tract, including the tract covered by the 1984 and 1992 leases; was for a term of 20 years; and was approved by the Superintendent on June 22, 1962.

Under all three leases, the leased tract was to be used and occupied by an employee of APS. The 1984 and 1992 leases also authorize “warehouse storage of equipment and supplies.”

4/ No copy of the notice is included in the record. However, the parties appear to agree that proper notice was given.
ment between the Tribe and the United States Government; and
(2) disagreements often exist between villages concerning, which lands belong
[to] each respective village. The probability of continuing disagreements between
villages concerning land issues are real. There exists the need for a single figure
to act for the Hopi people. Therefore, until the Agency is advised to the contrary,
the Chairman of the Hopi Tribal Council will sign as the lessor. We have no
objection [to] a representative from the village signing the document; but the
obligor, signing as the Lessor, must be the Chairman of the Hopi Tribal Council.
The council must enact a resolution authorizing the Chairman to sign as the lessor.
[Emphasis in original.]

(Superintendent's June 10, 1993, Letter to Tribal Chairman at 1-2).

Appellant sought reconsideration from the Superintendent. The Superintendent
forwarded appellant's request to the Area Director, who treated it as an appeal and, on August 2,
1993, affirmed the Superintendent's decision. 5/ The Area Director acknowledged that the
Department had, at one time, recognized the authority of the Hopi villages to enter into leases.
He continued however:

While First Mesa's traditional power of self-government may have
included the power to lease "village" land, we believe that this power was limited
by the secretarial delegation of general leasing powers to the Hopi Tribal Council
in 1965. [In a September 27, 1965, letter to this office, the Assistant Secretary of
the Interior delegated the "power to . . . enter into surface leases covering Hopi
tribal lands" to the Hopi Tribal Council, pursuant to Article VI, Section 3, of the
tribal constitution; * * * ].

Since 1965, when broad leasing powers were granted to the Tribal Council,
we believe that First Mesa's power over tribally-owned lands has been limited to
that described in Article VII, Section 1, as follows:

5/ As First Mesa notes in its appeal to the Board, the Area Director issued his decision prior
to expiration of the briefing period allowed under 25 CFR Part 2. He apparently did so because
appellant had expressed a need for a prompt decision. The Area Director should not have issued
a decision before the briefing period was concluded. However, under the circumstances of this
case, the Board finds that the Area Director's error has been cured during these proceedings, in
which all parties have had an opportunity to present their views. Cf., e.g., Cheyenne River Sioux
“Assignment of use of farming land within the traditional clan holdings of the villages of First Mesa * * *, as in effect at the time of approval of this Constitution, shall be made by each village according to its established custom . . . .”

While we acknowledge that the payment of rentals may be apportioned between the tribe and the village, and that the tribe may require the execution of the lease by a village representative, we agree with the Acting Superintendent's conclusion that the lease must also be executed on behalf of the tribe (as the landowner/lessor) prior to approval. (A tribal resolution “approving” the lease, such as that adopted on May 3, 1993, will not suffice.)

* * * * [Y]ou also questioned the Acting Superintendent's assertion that an appraisal would be needed to establish a "fair annual rental" under the lease. Specifically, you argued that the lease rental was established in the renewal clause of a predecessor lease between the tribe and APS, and that an appraisal report would not strictly be required in any case. Although the lessee's option to renew the former lease was apparently exercised, the previous rental would clearly not be binding if the lessee agrees to enter into a new lease with the tribe. [Bracketed material and emphasis in original.]

(Area Director's Aug. 2, 1993, Decision at 2-3).

First Mesa's notice of appeal from this decision was received by the Board on September 9, 1993. Briefs were filed by First Mesa and the Area Director.6/

Discussion and Conclusions

There are three issues in this appeal: (1) Whether the tract under lease is the property of the Tribe or the property of First Mesa, (2) whether, even if the tract is the property of the Tribe, it may be leased by First Mesa, and (3) whether the 1992 lease is a renewal lease or a new lease requiring an appraisal.

First Mesa contends that both it and the Tribe have historically recognized the tract at issue as belonging to First Mesa. This recognition is evidenced, First Mesa argues, by the terms of the 1984 lease providing for payment of rentals to First Mesa and by the Tribal Council's enactment Of Resolution H-76-93, approving the 1992 lease. First Mesa further contends:

6/ Neither the Tribe nor APS has participated in this appeal although both have been informed of these proceedings and have been served with First Mesa's pleadings and briefs.
"The land was set aside by [the Act of July 22, 1958,] P. L. 85-547[, 72 Stat. 403] ‘in trust for the Hopi Indians and such other Indians, if any, as heretofore have been settled thereon . . . .’ Clearly, the members of First Mesa are Hopi Indians for whom the lands are held in trust. Title is not in the Hopi Tribe [Emphasis in original]” (Notice of Appeal at 4).

The Area Director contends that appellant reads P.L. 85-547 incorrectly and takes the quoted language out of context.

P.L. 85-547 provided: "[L]ands described in the Executive order dated December 16, 1882, are hereby declared to be held by the United States in trust for the Hopi Indians and such other Indians, if any, as heretofore have been settled thereon by the Secretary of the Interior pursuant to such Executive order." The statute authorized the Hopi and Navajo Tribes, as well as the United States, to bring suit "for the purpose of determining the rights and interests of said parties in and to said lands and quieting title thereto in the tribes or Indians establishing such claim pursuant to such Executive order as may be just and fair in law and equity." It provided further that “[l]ands, if any, in which the Hopi Indian Tribe, including any Hopi village or clan thereof, or individual Hopi Indians are determined by the court to have the exclusive interest shall thereafter be a reservation for the Hopi Indian Tribe.”

As a result of the litigation authorized by P.L. 85-547, title to certain lands, including the tract at issue here, was quieted in the Hopi Tribe. Healing v. Jones, Civ. No. 58-579, Findings of Fact, Conclusions of Law, and Judgment (D. Ariz. Sept. 28, 1962). Accordingly, under Healing the tract is held in trust by the United States for the Tribe, not First Mesa and/or the members of First Mesa. The Tribe and First Mesa are clearly free, as between themselves, to treat the tract as the property of First Mesa. However, for purposes of a lease to an outside party, the tract must be deemed the property of the Tribe.

First Mesa next contends that, even if the tract is tribal property, the Tribe has given First Mesa the authority to manage it, including the authority to lease it.

7/ Paragraph 2 of the judgment stated:

"Title in and to the part of the 1882 reservation described in the preceding paragraph of this judgment is quieted in the Hopi Indian Tribe for the common use and benefit of the Hopi Indians, subject to the trust title of the United States, and such land is henceforth a reservation for the Hopi Indian Tribe."

8/ The Board finds the language of Healing clear in this regard. However, if there were a title issue here, the Board could not resolve it. Cf. Leon v. Albuquerque Area Director, 23 IBIA 248 (1993), affirmed, Leon v. Babbitt, No. 93-664-M Civil (D.N.M. Apr. 18, 1994) (The Board lacks authority to determine the validity of title to Indian land).
Questions concerning leasing authority over Hopi tribal land have arisen on a number of occasions in the past. The questions have arisen, evidently, because of the lack of any specific language in the Hopi Constitution authorizing the Tribal Council, or any other entity, to lease tribal land. The Constitution specifically authorizes the Council only "[t]o prevent the sale, disposition, lease or encumbrance of tribal lands, or other tribal property" (Emphasis added). Article VI, sec. 1(c). See 25 U.S.C. S 476 (1988). 9/

Article III, sec. 2, of the Constitution provides:

The following powers which the Tribe now has under existing law or which have been given by the Act of June 18, 1934 (48 Stat. 984) and acts amendatory thereof or supplemental thereto, are reserved to the individual villages:

* * * * * *

(d) To assign farming land, subject to the provisions of Article VII.

Article VII, sec. 1, provides:

Assignment of use of farming land within the traditional clan holdings of the villages of First Mesa * * *, as in effect at the time of approval of this Constitution, shall be made by each village according to its established custom, or such rules as it may lay down under a village Constitution adopted according to the provisions of Article III, section 4. Unoccupied land beyond the clan and village holdings mentioned shall be open to the use of any member of the Tribe, under the supervision of the Tribal Council.

In 1955, the Area Director sought advice from the Commissioner of Indian Affairs concerning the authority of Kyakotsmovi Village to enter into a lease of village lands for trading post purposes. The Acting Commissioner interpreted the constitutional provisions quoted above, together with Article VI, sec. 1(e), 10/ to authorize the village to enter into the lease. He stated in part:

While the Constitution and Bylaws is primarily concerned with the assignment of farming land, it cannot be so narrowly

9/ All further references to the United States Code are to the 1988 edition.

10/ Article VI, sec. 1(e), authorizes the Tribal Council "[t]o raise and take care of a tribal council fund by accepting grants or gifts from any person, state, or the United States Government, or by charging persons doing business within the Reservation reasonable license fees, subject to the approval of the Secretary of the Interior."
interpreted as to preclude the usage of land for nonagricultural purposes. There is no specific prohibition of such usage and Article VI[1, sec. 1](e) contemplates business being conducted on the reservation. Therefore, in this instance, the governor of the village is the proper person to execute the contract upon approval by the village in a town meeting. This appears to have been done.

3. Under the provisions of the Constitution and Bylaws, the management of the land within established village holdings is specifically reserved to the villages. The resolution of the Tribal Council in this instance was therefore not necessary but was desirable to prevent any misunderstandings that might arise because of Article VI[1, sec. 1](e). The question of extending full recognition to the Hopi Council as presently constituted is under consideration in this office. [11/]

(July 1, 1955, Letter from Acting Commissioner to Area Director at 2).

Five years later, the question again arose, this time causing the Commissioner to seek an opinion from the Solicitor's Office. The Assistant Solicitor, Indian Legal Activities, responded:

You request an opinion concerning the extent of leasing authority vested in the Hopi Tribal Council and in the separate village governing bodies.

It appears from the Hopi constitution that the Hopi Tribe intended to restrict the powers delegated to the Tribal Council, and to retain in the Tribe all tribal powers not specifically delegated. * * *

The powers of the Villages are of a different nature. The January 1, 1954 lease to which you refer was made by the Kyakotsmovi Village, not by the Tribal Council. The Tribal

[11/ Full recognition was extended to the Tribal Council on Dec. 1, 1955, following a prolonged period during which the Council was, at best, only partially functional, owing to the refusal of some of the villages to participate.

In his brief before the Board, the Area Director suggests that the position taken by the Acting Commissioner in 1955 was influenced by the fact that the Tribal Council was not fully recognized at the time. Unless village leasing authority had been acknowledged, the Area Director contends, no entity would have been able to execute leases. Area Director's Brief at 4.

As discussed immediately below, the Acting Commissioner's position was confirmed in a legal opinion issued in 1960, by which time the Tribal Council was fully recognized. Presumably, the status of the Tribal Council was not a factor influencing the 1960 opinion, even if it influenced the Acting Commissioner in 1955.

26 IBIA 25
Constitution provides that villages which do not "possess the traditional Hopi self-government, or which wish to make a change in that government * * * may adopt a village constitution * * *." The implication is that villages continue their self-government functions. The resolution of the Tribal Council of September 28, 1954, which "approved, ratified, and confirmed" that lease, was not an exercise of authority. It was a specific expression of opinion that the Village "has the property rights of the land within said Village" which was being leased, and that the Council recognized the right of the villages "to lease the land described in said lease." Therefore, it should not be assumed that there is an inconsistency in the governmental approval of this lease. If a Hopi village's traditional power of self-government included the power to lease village land, or the village has adopted a constitution which does not expressly or impliedly prohibit leasing of village land, such a lease would be valid provided it is properly executed and is not contrary to the provisions of Federal law or regulations concerning the leasing of Indian lands.

(May 23, 1960, Memorandum from Assistant Solicitor, Indian Legal Activities, to Commissioner of Indian Affairs at 1-2).

Five years after this, the Assistant Secretary of the Interior wrote to the Area Director stating:

In accordance with Article VI, Section 3 of the Hopi Tribe's Constitution and Bylaws [12/] and pursuant to Hopi Tribal Resolution No. H-16-65 and your recommendation, the Hopi Tribal Council is hereby delegated and granted the power to consent to rights-of-way and enter into surface leases covering Hopi tribal lands pursuant to the regulations contained in 25 CFR 161 and 25 CFR 131, respectively, and the constitution of the Hopi Tribe.

This authority is in addition to that delegated by our letter of May 24, 1961, as supplemented by our letter of November 18, 1964. This delegation shall continue until it is revoked by this Department.

(Sept. 27, 1965, Letter from Assistant Secretary to Area Director). This is the letter cited by the Area Director in his August 2, 1993, decision.

No background documents concerning the Assistant Secretary's letter are included in the administrative record. Therefore, it is not possible to know what events led the Area Director and the Tribe to request that

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[12/] Article VI, sec. 3, provides: "The Hopi Tribal Council may exercise such further powers as may in the future be delegated to it by the members of the Tribe or by the Secretary of the Interior, or any other duly authorized official or agency of the State or Federal Government."
it be issued. 13/ Nor is it possible to determine precisely what authority concerning surface
leases the Assistant Secretary intended to delegate. Clearly, however, he could not have
degraded or granted to the Tribal Council any authority which the Secretary of the Interior did
not possess. Because the Secretary had no authority to exercise the Tribe's leasing authority, he
could not have delegated that authority to the Tribal Council. 14/

Although the Board remains somewhat puzzled about this letter, it realizes that the Tribe
and BIA have granted and approved leases over the last 30 years in reliance upon an assumption
that the Tribal Council possesses the authority to grant leases of tribal land. Thus, even though
the nature of the "delegation" in the 1965 letter may be unclear, the Board accepts the letter as
a recognition by the Department of the Interior that the Tribe has granted the Tribal Council
the power to lease tribal lands.

As First Mesa points out, however, the 1965 letter does not purport to withdraw or limit
the leasing authority of the villages. It does not, for instance, state that the Tribal Council
possesses the sole authority to grant leases of tribal land. Nor does it disapprove the view
expressed by the Acting Commissioner in 1955 and the Assistant Solicitor in 1960 that the Hopi
villages possess the authority to grant leases. In light of the Department's prior explicit
recognition of the leasing authority of the villages, and the absence of any reference to the villages
in the 1965 letter, the Board declines to construe the 1965 letter as having impliedly withdrawn
that recognition. 15/

13/ It is conceivable that the 1965 letter was related to the judgment in Healing v. Jones.
However, nothing in the record here suggests that the earlier questions concerning tribal and
village leasing authority were in any way derived from uncertainties over land title. Rather,
the Acting Commissioner's 1955 letter and the Assistant Solicitor's 1960 memorandum both
indicate that the questions arose from the language of the Hopi Constitution. Both officials
appear to have assumed that land title was in the Tribe.

14/ Most statutes authorizing the surface leasing of tribal land vest leasing authority in the
§ 635, affecting only the Navajo and Hopi Tribes and their members. In all cases, tribal leasing
authority is made subject to the approval of the Secretary.

The Board is aware of one statutory provision, 25 U.S.C. § 402a, which might be
construed as authorizing the Secretary to grant surface leases of tribal land, as long as tribal
consent is obtained. However, in leasing regulations promulgated in 1961 to implement the
statutory provisions cited, including 25 U.S.C. § 402a, the Secretary is given no authority to
grant leases of tribal land. The 1961 regulations are still in place today. See 25 CFR 162.2.

15/ Because the 1965 letter fails to mention the villages, it appears possible that the problem
at hand concerned leasing authority over "unoccupied land beyond the clan and village holdings."
Under Article VII, sec. 1, of
In his brief before the Board, the Area Director disagrees with the interpretation of the Hopi Constitution put forth in the Acting Commissioner's 1955 letter. He contends that the power to “assign” land, as that term is usually understood in Indian affairs, encompasses only the power to allocate the use of communal tribal lands among tribal members, not the power to lease the lands. Thus, in his view, the power of the villages to assign land under Article III, sec. 2(d) and Article VII, sec. 1, of the Constitution, should not be interpreted to include the power to lease. (Area Director's Brief at 4-5).

While, for purposes of this appeal, the Area Director may express disagreement with the position taken by the Acting Commissioner in 1955, he lacks authority to overrule or rescind that position. As far as the record in this appeal shows, neither the Acting Commissioner's 1955 letter nor the Assistant Solicitor's 1960 memorandum has ever been rescinded. It appears, therefore, that the Department has recognized the authority of both the Tribal Council and First Mesa to enter into leases of tribal land within the traditional clan holdings of First Mesa.

Although the Tribe has not participated in this appeal, it has, through enactment of Tribal Council Resolution H-76-93, expressed its view that First Mesa has the authority to enter into a lease of the tract at issue. The Board has frequently stated that the Department of the Interior must defer to an Indian tribe's reasonable interpretation of its own governing document. E.g., Pinoleville Indian Community v. Sacramento Area Director, 22 IBIA 176 (1992), and cases cited therein. Given the fact that the Department has twice interpreted the Tribe's Constitution to authorize the villages to enter into leases, the Board would be hard put to find the Tribe's similar interpretation of its Constitution unreasonable. The Board finds that BIA has a duty to show deference to the Tribe's interpretation of its constitution in this case.

[1] Clearly, however, BIA also has other duties in this matter. BIA approval of tribal leases is required by statute. Further, BIA must perform its lease approval function in a manner consistent with the trust responsibility of the United States for the management of tribal lands. In light of its trust duty, BIA has both the authority and the obligation to ensure that leases of tribal land are properly authorized under tribal law. To this end, BIA may impose requirements reasonably designed to ensure that a tribe's governing body has given its approval to a lease and that an authorized official has executed it. However, as in other cases where BIA approval of tribal actions is required by statute, BIA review here should be conducted in such a way as to avoid unnecessary interference with tribal self-government. Cf. Ottawa Indian Tribe of Oklahoma v. Muskogee Area Director, 24 IBIA 92 (1993) (approval of judgment fund distribution plan);

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fn. 15 (continued)

the Hopi Constitution, this land was beyond the control of the villages and under the supervision of the Tribal Council. Therefore, unless the Tribal Council had authority to lease it, this land could not be leased at all.

The Superintendent noted in his decision that Hopi tribal lands are sometimes subject to the conflicting claims of different villages. In view of the possibility of such disputes between villages, it would clearly be reasonable for BIA to require that the Tribal Council approve each lease of tribal land, even where the lease is to be granted by a village. Such an approval requirement would represent, not only the Tribal Council's imprimatur upon a village's asserted authority over a particular tract, but also its acknowledgment that the lease conforms with tribal policy. Further, because the Tribal Council has the power under the Constitution to prevent the lease of tribal land, Article VI, sec. 1(c), Tribal Council approval of a lease may be required by BIA as an assurance that the Council does not intend to exercise its “prevention” power in that case.

BIA may also require that the Tribal Council's approval be sufficiently specific to ensure that the official who executes a lease is authorized to do so. Judging from the record in this appeal, the practice in the past has been for a Tribal Council resolution which approves a lease also to authorize a particular official to execute it. That official has normally been the Tribal Chairman. However, if Tribal Council action is viewed, in accordance with the discussion above, as an approval of the grant of a lease by a village, then the Tribal Council need do no more than acknowledge the authority of a village official, such as its Kikmongwi, to execute the lease. The Board does not dictate any particular form which the Tribal Council's approval must take. It holds, however, that BIA's requirements concerning Tribal Council action should be narrowly tailored to require no more than is necessary to ensure that the Tribal Council has approved the lease and has granted or acknowledged signing authority with respect to the official who signs it.

16/ The Tribal Council is the body empowered under tribal law to resolve disputes between villages. See Constitution, Article VIII.

17/ The method employed in the 1962 lease, see note 3, wherein the Tribal Chairman signed the lease to evidence Tribal Council approval, is another way in which the Tribal Council and/or Tribal Chairman might acknowledge the signing authority of a village official.

18/ Where a lease is granted by a village, BIA may also require evidence that the village has approved it and has authorized a village official to sign it. In this case, the record includes a certification that First Mesa's General Council approved the lease and authorized its Kikmongwi to sign it.

Tribal Council Resolution H-76-93 neither authorizes a tribal official to sign the lease nor acknowledges the authority of a village official to sign it. On remand of this matter, as ordered below, BIA may require First Mesa to obtain a supplemental resolution from the Tribal Council, setting out such an authorization or acknowledgment.
In the end, it does not appear that First Mesa is as much concerned with the identity of the signing official as with management authority over the lease. First Mesa believes that it will be able to manage the lease more effectively than either BIA or the Tribe. The Tribe is clearly willing to have First Mesa manage the lease. BIA has not expressed any concern with respect to First Mesa's management capabilities. Therefore, the Board sees no reason why First Mesa should not be permitted to assume management responsibilities for this lease.

In accordance with the above discussion, the Board makes the following findings:

(1) Because title is in the Tribe, the Tribe should be named as lessor in any lease of the tract at issue;
(2) a lease may be granted by First Mesa, in accordance with approval given by the Tribal Council;
(3) the lease may be executed by a village official whose authority has been acknowledged by the Tribal Council and/or by a tribal official authorized by the Tribal Council, as appropriate under tribal law; and
(4) First Mesa may manage the lease in accordance with approval given by the Tribal Council. This management authority should be set out in the lease.

The final issue in this appeal is whether the October 1, 1992, lease is a renewal lease or a new lease. First Mesa contends that it is a renewal lease which, under paragraph 6 of the 1984 lease, is "subject to the same terms and conditions as are contained [in the 1984 lease]," including the rental provisions. Because the rental provisions are controlled by the 1984 lease, First Mesa contends, there is no need for an appraisal.

[2] Absent a conflict between the 1984 lease and the regulations governing leasing of tribal land, BIA is bound to recognize the contractual right of APS to renew the lease. See American Indian Land Development Corp. v. Sacramento Area Director, 23 IBIA 208 (1993); Pittsburg & Midway Coal Mining Co. v. Acting Navajo Area Director, 21 IBIA 45 (1991); Abbott v. Billings Area Director, 20 IBIA 268 (1991) (BIA is bound by the terms of leases it has approved, when the leases are not in conflict with governing regulations).

Under 25 U.S.C. § 415 and 25 CFR 162.8(a), a lease may be renewed for one additional term not to exceed 25 years. The renewal provision of the 1984 lease clearly does not conflict with either the statute or the regulation in this regard.

The 1984 lease provides that rent may be increased under a formula based on increases in the Consumer Price Index. It is perhaps arguable that this provision is in conflict with the rental adjustment provision of 25 CFR 162.8, which requires that, "unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the

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19/ First Mesa was named as lessor in the 1962 lease. See footnote 3. However, that lease predated the 1965 decision in Healing v. Jones.
equities involved." BIA commonly interprets this provision to require that appraisals be performed at five-year intervals. See, e.g., Strain v. Acting Portland Area Director, 23 IBIA 114 (1992), and cases cited therein. However, the 1984 lease provides a method of adjusting the rental to reflect changed economic conditions. Thus it accomplishes by another means the same purpose as would be served by periodic appraisals. The Board finds no conflict between the 1984 lease and the regulations with respect to rental adjustments. Cf. American Indian Land Development Corp., 23 IBIA at 214 (leases of trust land are contracts which may be tailored to the desires of the parties).

The Board finds that, because BIA approved the 1984 lease, and no conflict between the lease and the governing regulations has been shown, BIA is bound by the lease and therefore must recognize the right of APS to renew it. Accordingly, the Board finds that the 1992 lease must be deemed a renewal lease.20/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's August 2, 1993, decision is affirmed insofar as it found that the tract at issue is the property of the Tribe. In other respects, his decision is vacated, and this matter is remanded to him for further proceedings in accordance with this opinion.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge

20/ The 1992 lease appears to be nearly identical to the 1984 lease. To the extent that provisions of the 1992 lease differ from those in the 1984 lease, they should be deemed lease modifications and approved or disapproved in accordance with BIA's usual review standards.