



## INTERIOR BOARD OF INDIAN APPEALS

William H. Richards, Sr., Florene Travis, Pam Davis, Janelle Owings Brown,  
Lisa Richards, Venus Cornelis, and Marilyn Bray v. Acting Pacific Regional Director,  
Bureau of Indian Affairs

45 IBIA 187 (08/21/2007)

Related Board case:

40 IBIA 277



# 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

WILLIAM H. RICHARDS, SR.,	)	Order Affirming Decision in Part and
FLORENE TRAVIS, PAM DAVIS,	)	Dismissing in Part
JANELLE OWINGS BROWN, LISA	)	
RICHARDS, VENUS CORNELIS,	)	
and MARILYN BRAY,	)	
Appellants,	)	
	)	Docket No. IBIA 05-55-A
v.	)	
	)	
ACTING PACIFIC REGIONAL	)	
DIRECTOR, BUREAU OF INDIAN	)	
AFFAIRS,	)	
Appellee.	)	August 21, 2007

William H. Richards, Sr., Florene Travis, Pam Davis, Janelle Owings Brown, Lisa Richards, Venus Cornelis, and Marilyn Bray (Appellants), who bring this appeal collectively as the “interim tribal council,” seek recognition from the Bureau of Indian Affairs (BIA) as the properly elected governing body of the Smith River Rancheria (Tribe). Appellants appeal from the February 10, 2005, decision (Decision) of the Acting Pacific Regional Director, BIA (Regional Director), in which the Regional Director declined to recognize Appellants as the Tribe’s governing body. The Regional Director also determined that Appellants’ appeal was moot as to membership issues and recognition of the tribal council elected in May 2002.

In their appeal to the Board of Indian Appeals (Board), Appellants contend that the Regional Director erroneously concluded that they were not entitled to recognition as the Tribe’s governing body. Appellants maintain that they were elected as the interim tribal council pursuant to a properly called election at which only eligible tribal members were permitted to vote and, therefore, they — collectively as the “interim tribal council” — are entitled to recognition by BIA as the duly elected governing body for the Tribe. Appellants also argue that the Regional Director lacked evidence to determine that Appellants’ remaining concerns regarding the Tribe’s regularly scheduled election in May 2002 have been addressed by the Tribe. We conclude that the Regional Director properly declined to recognize Appellants’ “interim tribal council” and we dismiss Appellants’ remaining claims for lack of standing.

## Facts

This appeal grew out of an election held by a group within the Tribe that called itself the Committee for Constitutional Rights of the Smith River Rancheria (CCR). The group maintained that certain amendments to the Tribe's Constitution were improperly adopted by the Tribal Council during the 1990's and that these amendments affected the membership criteria set forth in the Tribe's Constitution. CCR maintained, as do Appellants herein, that numerous persons were enrolled in the Tribe pursuant to the allegedly illegal constitutional amendments, that the new enrollees were permitted to run for tribal office and vote in tribal elections, and, therefore, the resulting tribal councils were also "illegal."<sup>1</sup> Dissatisfied with the Tribe's response to their concerns, CCR proceeded to hold its own election for an "interim tribal council."

By notice dated June 13, 2001, CCR invited "registered voters that were enrolled with [the Tribe] prior to May 21, 1994" to a meeting on July 14, 2001, of the "General Membership" of the Tribe.<sup>2</sup> The purpose of the meeting, set forth in the announcement, was to elect an interim tribal council, and to appoint an enrollment committee and an election board. CCR apparently established its own registered voter roll, consisting only of those persons it believed to be enrolled as tribal members prior to May 21, 1994.<sup>3</sup> CCR then sent separate notices, dated June 14, 2001, to those members enrolled on or after

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<sup>1</sup> It appears that Appellants believe that the Tribe must consist only of persons of Tolowa Indian blood and, instead, persons of Chetco and other Oregon Indian descent were being enrolled as tribal members. *See* Letter from Appellants L. Richards and Davis to Regional Director, June 25, 2002, at 7. According to Appellants, the recognized Tribal Council met with Appellants in March 2002 and explained that there were several historic "statements" supporting Tolowa Indian ancestry for the members challenged by Appellants; Appellants claim that the "statements" are not "conclusive evidence" of Tolowa Indian ancestry and Appellants claim to "have proof that these . . . members descending from Sarah Channon Brown Farnham Payne and Jessamine Brown Bravo do not descend from Tolowa blood." *Id.*

<sup>2</sup> Appellants Davis and L. Richards were identified as contacts for CCR on the meeting announcement.

<sup>3</sup> Apparently, CCR selected May 21, 1994, as the cut-off date because CCR believed that, beginning on that date, the Tribe has not had "a legal Tribal Council to take membership applications from anyone." Notice from CCR to "Registered Voters Not Enrolled before May 21, 1994," June 14, 2001.

May 21, 1994, informing them that they would not be permitted to vote in the July 14 election. The notice also advised the recipients not to “panic” because “nothing is being done with enrollment at the present time, *you just won’t have the privilege to vote for one day.* If you meet the enrollment criteria set forth in [the Tribe’s] 1987 Constitution, you have nothing to worry about with regards to enrollment.” Notice from CCR to “Registered Voters Not Enrolled before May 21, 1994,” June 14, 2001 (emphasis added).

On July 14, 2001, the CCR meeting went forward, an election was held, and Appellants apparently were elected as the new “interim tribal council” of the Tribe. In three letters, dated September 18, October 5, and December 31, 2001, Appellants sought recognition from the Superintendent, Northern California Agency, BIA (Superintendent).

In response to Appellants’ letters, the Superintendent repeatedly informed Appellants that the tribal governance dispute was an internal tribal matter rather than one for decision by BIA. According to Appellants, by letter dated February 5, 2002, they demanded a decision from the Superintendent on their request for recognition.<sup>4</sup> On May 1, 2002, Appellants appealed to the Regional Director pursuant to 25 C.F.R. § 2.8,<sup>5</sup> claiming that the Superintendent had refused to render a decision. Appellants sought the following relief from the Regional Director: (1) an order directing the Superintendent to recognize Appellants as the Tribe’s interim governing body; (2) a finding that past tribal councils had improperly amended the Tribe’s Constitution to alter the Tribe’s membership criteria; (3) an order directing all members enrolled pursuant to the illegal membership changes to show cause why they should not be disenrolled; (4) an order directing the Tribe’s Enrollment Committee to certify a final membership roll that consists only of persons meeting the original membership criteria set forth in the Tribe’s Constitution; (5) an order directing the Tribe to hold new tribal elections following the certification of a new membership roll; and (6) a determination that the presently recognized Tribal Council is “not lawfully convened.” Letter from Appellants to Regional Director, May 1, 2002, at 3.

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<sup>4</sup> The February 5 letter is not found in the administrative record and none of the parties has provided the Board with a copy.

<sup>5</sup> Section 2.8 provides an administrative procedure for aggrieved parties to obtain a response from BIA to a request for action. Pursuant to subsection 2.8(b), the BIA official receiving the request for a response is required to make a decision within 10 days of receipt of the section 2.8 request *or* “establish a reasonable later date by which the decision shall be made, not to exceed 60 days from the date of request.” 25 C.F.R. § 2.8(b).

In October 2003, when the Regional Director had not yet responded to their appeal, Appellants filed their first appeal with the Board, seeking an order to compel BIA to respond to their demand for recognition. *Richards v. Acting Pacific Regional Director*, 40 IBIA 277 (2005) (*Richards I*). On February 10, 2005, during the pendency of *Richards I* before the Board, the Regional Director issued the decision that is the subject of this appeal and, on March 10, 2005, the Board dismissed *Richards I*. *Id.*

Based on information provided by the Tribe, the Regional Director dismissed Appellants' appeal on the grounds that it was mooted by intervening actions of the Tribal Council and by the May 2002 tribal election. In particular, the Regional Director determined that "the Constitutional amendments opposed by [Appellants] have been struck down and a comprehensive review of the membership rolls ha[s] been completed by the enrollment committee headed by Ms. Barbara Fullum." Decision at 2. The Regional Director further observed that Appellants had also appointed Fullum to review the tribal enrollment records on behalf of the "interim tribal council." As a result of the Tribe's review of its membership rolls, the Regional Director noted that the Tribe commenced disenrollment proceedings in Tribal Court against several individuals, some or all of whom were ultimately disenrolled. The Regional Director also noted that, with respect to the May 2002 election, the recognized Tribal Council represented that those persons disenrolled were not permitted to vote. In contrast, the Regional Director observed that Appellants did not explain how their July 14, 2001, election was conducted or how voter eligibility for that election was determined. The Regional Director also observed that "the process established by [CCR for voting in its election] did not incorporate any due process protection for tribal members." *Id.* The Regional Director concluded that the recognized Tribal Council's actions comported with tribal law, appropriately addressed Appellants' concerns, and mooted the appeal to BIA.

This appeal followed. Appellants submitted a brief on the merits as well as a brief in response to the Board's Order of March 6, 2007, in which the Board inquired whether any events in the past two years since the filing of Appellants' appeal with the Board may have rendered the appeal moot. Appellants maintain that the appeal remains ripe for review and has not been mooted by any intervening events. The Regional Director has not submitted a brief on the merits but did respond to the Board's March 6 Order to state that, in her opinion, the appeal remains moot.

## Discussion<sup>6</sup>

On the record before us, we agree with the Regional Director that Appellants are not entitled to recognition as the Tribe's duly elected governing body: The election was not held in accordance with the Tribe's governing Constitution because eligible voters were disenfranchised. With respect to the remaining issues raised by Appellants in this appeal, i.e., challenges to the Tribe's membership, the Tribe's electorate, and the recognized Tribal Council, we conclude that Appellants — as the "interim tribal council" — lack standing. Therefore, we affirm the Regional Director's decision declining to recognize Appellants as the legitimate tribal government and we dismiss Appellants' remaining issues.

### 1. CCR Election

Appellants contend that the Regional Director improperly declined to recognize them as the "interim tribal council." Appellants err.

Because the United States and its agencies often are engaged in ongoing government-to-government relations with any given recognized tribe, BIA has the authority

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<sup>6</sup> At the outset, we address the Regional Director's dismissal on mootness grounds. "Mootness" occurs when the relief sought has been obtained or the dispute has otherwise been reduced to a matter of hypothetical or academic interest and is no longer of any practical significance. *See* Black's Law Dictionary 1029 (8th ed. 2004); *Poe v. Pacific Regional Director*, 43 IBIA 105, 111 (2006) ("Mootness may occur when nothing turns on the outcome of an appeal"). When the merits of an appeal are reached — as they were by the Regional Director when she concluded that "actions taken by the Tribal Council were in accordance with [t]ribal [l]aw, and consistent with . . . Federal law," Decision at 2, and concluded that Appellants were not entitled to recognition as the duly elected tribal governing body — the appeal is no longer dismissed on mootness grounds but is disposed of on its merits. This tenet holds true even where the resolution of some issues on the merits may moot other issues in the same appeal.

In other words, to dismiss on mootness grounds, the deciding official should identify the issue(s) that have been mooted, identify the events or circumstances that have rendered the issue(s) moot, and dismiss without addressing the merits of the mooted issue(s). *See, e.g., Brown v. Navajo Regional Director*, 41 IBIA 314 (2005) (appellant's appeal of BIA's denial of a permit to erect a billboard on trust land became moot and was dismissed without reaching the merits when the landowners informed Board that permission for appellant to use the land had been withdrawn).

and responsibility to identify the duly chosen or elected tribal governing body to facilitate relations between a tribe and Federal agencies. *See Greendeer v. Minneapolis Area Director*, 22 IBIA 91, 95 (1992). Where an internal tribal dispute exists with different individuals or factions claiming to be the lawful governing body, as is the case here, BIA properly must look to the tribe's governing documents, and interpret their provisions, to determine who appears to be the lawful tribal governing body. Thus, our review of the Regional Director's decision here necessarily requires us to apply the provisions of the Tribe's Constitution.

CCR held its July 14, 2001, election in clear violation of the Tribe's Constitution, which explicitly provides that *no* tribal member who is believed to have been enrolled *in violation of the Constitution shall be deprived of their rights under the Constitution* unless and until the member has been given notice of disenrollment proceedings, an opportunity to refute charges of improper enrollment, and a determination is made concerning that member's enrollment status. *See* Tribal Constitution, Art. II, § 5(b). One of the rights secured to tribal members by the Tribe's Constitution is the right to vote in tribal elections. *Id.*, Art. IX, § 4(a). Even assuming that CCR was somehow empowered to hold its own tribal election, which itself is highly doubtful, CCR ignored these Constitutional rights and disenfranchised a number of tribal members on the strength of CCR's belief that certain individuals were improperly enrolled. For CCR to advise the disenfranchised members that they would only be denied the right to vote "for one day" disregarded the Constitutional due process rights of those individuals. Appellants have directed our attention to no provision of tribal law that would authorize a duly recognized governing body, let alone CCR — an ad hoc group within the Tribe — to summarily determine that duly enrolled members may be deprived of their right to vote in a tribal election.

Therefore, we affirm the Regional Director's decision to decline to recognize Appellants as the legitimate tribal government of the Tribe because the July 14, 2001, election was not held in conformity with tribal law.

## 2. Standing to Raise Remaining Claims

Appellants sought a decision from the Regional Director and brought this appeal in their collective capacity as the "interim tribal council." As we set forth above, we agree with the Regional Director that Appellants are not entitled to recognition as the interim tribal council. Because of this conclusion and because Appellants expressly did not pursue their remaining claims as individual tribal voters or as candidates in the 2002 regularly scheduled tribal election, we now dismiss for lack of standing Appellants' remaining claims concerning the May 2002 election and tribal membership.

“Interested parties” have the right to appeal to the Board from a decision by a Regional Director. 43 C.F.R. § 4.320(a). But, an “interested party” must have a legally-protected interest that is affected by a final administrative action or decision. *See Hall v. Great Plains Regional Director*, 43 IBIA 39, 44 (2006); 43 C.F.R. § 4.331. Because we have determined that Appellants are not entitled to recognition as the tribal governing body, they do not possess, as the “interim tribal council,” a legally protected interest that is affected or injured by the remainder of BIA’s decision, which rejected Appellants’ other demands and in effect recognized the Tribal Council that Appellants argued was illegal. *Cf. Displaced Elem Lineage Emancipated Members Alliance v. Sacramento Area Director*, 34 IBIA 74, 76-77 (1999) (organization lacked standing to challenge tribal election).

Turning to the appeal before us, we conclude that it is prosecuted by Appellants collectively, as the “interim tribal council.” Appellants’ Notice of Appeal characterizes the issues concerning the May 2002 regularly scheduled tribal election as “underlying issues *essential* to” the determination not to recognize the interim council, thus underscoring not only the relief sought but the very purpose of the appeal: to secure recognition for the “interim tribal council.” Notice of Appeal at 2 (emphasis added). Moreover, in the first sentence of their opening brief, Appellants identify themselves collectively as the “interim tribal council,” Opening Brief at 1, and refer to themselves solely as the “interim tribal council” throughout their brief.

With respect to their standing to challenge BIA’s failure to declare that the Tribal Council elected in 2002 was unlawful, Appellants argue that the effect of counting the votes of allegedly wrongfully enrolled tribal members who were allowed to run for office and vote in the regularly scheduled tribal elections was “to dilute the *Interim Tribal Council’s* right to cast a meaningful vote and to receive tribal benefits,” to impair “the *Interim Tribal Council’s* right to vote and receive tribal benefits . . . in direct violation of the Indian Civil Rights Act, [25 U.S.C. § 1302]” and to “dilut[e] the amount of per capita payment received by the *Interim Tribal Council.*” Opening Brief at 11 (emphasis added). But the right to receive tribal benefits, including per capita payments, or to vote in tribal elections are rights that flow to individuals, not to a tribal council as an institution. Therefore, Appellants lack standing to challenge the remaining portions of the Regional Director’s decision denying Appellants’ additional demands.

Because we have concluded that Appellants, as an “interim tribal council,” are not entitled to recognition by BIA, we further conclude that Appellants lack standing to challenge the remainder of the Regional Director’s decision. Therefore, we dismiss the Appellants’ remaining claims.

Conclusion

For the reasons set forth above, we affirm the Regional Director's February 10, 2005, decision declining to recognize Appellants as the Tribe's "interim tribal council" and we dismiss, for lack of standing, Appellants' remaining claims. 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 affirms the Regional Director's decision in part and dismisses this appeal in part.<sup>7</sup>

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>7</sup> Given our disposition of this appeal, we need not address the arguments made with respect to whether events during the pendency of this appeal may have mooted Appellants' appeal.