



INTERIOR BOARD OF INDIAN APPEALS

Yakama Nation v. Northwest Regional Director, Bureau of Indian Affairs

47 IBIA 117 (06/26/2008)



# 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

YAKAMA NATION,	)	Order Docketing and Dismissing Appeal
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 08-101-A
NORTHWEST REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	June 26, 2008

The Confederated Tribes and Bands of the Yakama Nation (Nation) seeks review of a May 12, 2008, ruling by the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), through the Regional Solicitor’s Office, in which he denied the Nation’s request for a stay of appeal proceedings currently pending before the Regional Director. The underlying appeal concerns the 2008 operation and maintenance (O&M) bills by the Wapato Irrigation Project (WIP). We docket this interlocutory appeal, but we dismiss it for lack of jurisdiction.

## Background

The Nation has appealed its 2008 O&M bills from WIP to the Regional Director, where the appeal remains pending. Separately, on the docket of the Board of Indian Appeals (Board), there are pending appeals by the Nation from two decisions by the Regional Director upholding certain 2006 O&M bills from WIP. *Yakama Nation v. Northwest Regional Director*, Docket Nos. IBIA 07-132-A, 08-08-A. The Nation requested the Regional Director to stay the appeal proceedings concerning the 2008 O&M bills, pending the Board’s resolution of the Nation’s two appeals from the 2006 O&M bills.

By letter dated May 12, 2008, the Regional Office of the Solicitor for the Department of the Interior wrote to the Nation at the request of the Regional Director and informed the Nation that the Regional Director had denied the Nation’s request for a stay. This appeal followed, in which the Nation explains that it is appealing only the May 12 decision and that it is

not requesting a stay of any BIA action other than a stay under 25 CFR § 2.10 of the deadline for the filing of a Statement of Reasons [in its appeal

to the Regional Director from the 2008 O&M bills from WIP]. In other words, the motion requested *a stay of the actual appeal itself* — *a stay of proceedings* until the Board had a chance to rule on the merits of the Nation’s 2006 appeal.

Brief in Support of Motion for Stay at 8 (emphasis added).

### Discussion

We conclude that the Board lacks jurisdiction to consider an interlocutory appeal from a ruling denying a request to stay proceedings pending before a BIA official.<sup>1</sup> The Board’s jurisdiction extends only to final decisions by BIA officials as set forth in 43 C.F.R. § 4.331: “Any interested party affected by a *final* administrative action or decision of an official of the [BIA] . . . may appeal to the [Board].” Emphasis added. The word “final” denotes a dispositive decision on the substantive matter before BIA, and does not contemplate review of an interim and purely procedural ruling, such as whether to stay appeal proceedings, modify a briefing schedule, etc. The Regional Director’s procedural ruling may be a “decision,” but it is not a “final” decision or action that disposed of the Nation’s appeal. Taken as a whole, it is evident that the regulations governing appeals to the Board do not provide a role for the Board in the procedural aspects of appeals pending before BIA officials. Our conclusion today is consistent with the Board’s precedent. *See Interim Executive Council of the United Auburn Indian Community v. Acting Sacramento Area Director*, 28 IBIA 197, 197-98 (1995); *Navajo Nation v. Navajo Area Director*, 20 IBIA 118, 119-120 (1991); *see also Hannakville Indian Community v. Minneapolis Area Education Officer*, 34 IBIA 252, 252-53 (2000) (no jurisdiction over interlocutory appeals under the appeal procedures found at 25 C.F.R. Part 900, Subpart L); *In re Federal Acknowledgment of the Golden Hill Paugussett Tribe*, 34 IBIA 18, 19 (1999) (no jurisdiction over interlocutory appeal under appeal procedures found at 25 C.F.R. Part 83); *cf.* 43 C.F.R. § 4.28 (establishing a procedure for the review of interlocutory appeals from rulings of administrative law judges).<sup>2</sup>

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<sup>1</sup> Although the Board does not have jurisdiction to directly review decisions by the Solicitor’s Office, it is evident that the Regional Solicitor’s Office acted as an agent to convey, or as a conduit for conveying, a ruling made in this case by the Regional Director. Thus, we review this decision as if it came directly from the Regional Director under his signature.

<sup>2</sup> The Board’s review of such rulings may also expressly be precluded by the Board’s regulations. *See* 43 C.F.R. § 4.330(b)(2) (Board does not have jurisdiction to review “[m]atters decided by the [BIA] through exercise of its discretionary authority.”).

The Nation contends that the Board has authority pursuant to 43 C.F.R. § 4.21 to review BIA's denial of its request to stay the appeal proceedings and focuses much of its argument on the standard in section 4.21 for issuing a stay of decision. The Nation's focus is misplaced. First, section 4.21 does not confer any right of appeal. Rather, section 4.21 contains the general provisions of the Office of Hearings and Appeals (OHA) concerning the finality of agency decisions. Under subsection 4.21(a), agency decisions become final for purposes of implementation at the end of the appeal period. Subsection 4.21(b) then provides a mechanism for obtaining a stay of an agency decision that has been appealed to a board within OHA, during the pendency of that appeal.<sup>3</sup> However, because section 4.21 contains no jurisdictional grant of authority to any board, a party must look elsewhere in the regulations for jurisdiction. As discussed above, the Board is vested with jurisdiction only over *final* administrative actions or decisions and not interim rulings unless a specific regulation provides otherwise. *See, e.g.*, 25 C.F.R. § 2.5(d) (decisions imposing appeal bonds may be appealed to the Board).

Second — and to avoid any suggestion that section 4.21 actually applies as a general rule to BIA decisions — we note that BIA and the Board have more specific provisions that govern the finality and effectiveness of appealable BIA decisions. *See* 25 C.F.R. Part 2, 43 C.F.R. Part 4, Subpart D. The general OHA provisions, of which section 4.21(a) is part, are inapplicable where specific regulations otherwise control. *See Wadena v. Acting Minneapolis Area Director*, 30 IBIA 130, 138 (1996) (the general rules that appear in 43 CFR Part 4, Subpart B apply *if* there is no specific rule applicable to the decision or to the appeals board). In particular, both BIA's procedures and the Board's procedures provide that appealable BIA decisions are automatically stayed during the appeal period and during the pendency of an appeal. *See* 25 C.F.R. § 2.6(b), 43 C.F.R. § 4.314. Thus, the general provisions in subsection 4.21(a) and (b) — which make agency decisions effective at the end of the appeals period and provide a mechanism for obtaining a stay of effective agency decisions — are displaced by the specific BIA and Board regulations at sections 2.6(b) and 4.314 that impose an automatic stay on appealable BIA decisions.

Moreover, if the Regional Director's procedural ruling were appealable — that is, the ruling denying the Nation's request for a stay — it follows that that ruling would automatically be stayed under 25 C.F.R. § 2.6(b) with the same net result: The appeal before the Regional Director would go forward, which was the pre-ruling status quo. Another unintended and illogical result would occur in the following procedural example: If a party's statement of reasons were due in 5 days and the party obtained a 20-day extension from BIA, the ruling would remain ineffective during the appeal period, which

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<sup>3</sup> The Board, of course, is part of OHA. 43 C.F.R. § 4.1(b)(2).

would then cause the statement of reasons to remain due within the original 5 days. The point of seeking an extension of time would thus be frustrated, pointless, and clearly at cross purposes with the automatic stay provision. The purpose of the automatic stay is to preserve the status quo until the administrative appeals process is exhausted, not to interrupt each procedural ruling by automatically staying its effect and allowing an appeal.

Given the absence of any general grant of authority to the Board concerning the procedural aspects of appeals pending before BIA officials, we conclude that we lack jurisdiction to consider the Nation's appeal from the Regional Director's ruling or, alternatively, to stay proceedings before the Regional Director.<sup>4</sup> Clearly, the Nation is seeking to have the Board review an interlocutory, procedural ruling made by the Regional Director in an appeal that remains pending before him. The ruling is not a final decision on the appeal itself, which concerns the Nation's 2008 O&M bills, and nothing in section 4.21 or elsewhere in the Board's regulations purports to confer jurisdiction on the Board to review an interlocutory, procedural ruling by the Regional Director or, independently, to order a stay of appeal proceedings pending before a BIA official.

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 lack of jurisdiction.

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>4</sup> BIA's appeal bond provision, 25 C.F.R. § 2.5(d), supports the Board's conclusion because it demonstrates that the drafters understood the regulations to preclude appeals from interlocutory, procedural rulings — such as the imposition of an appeal bond — unless otherwise authorized.