



## INTERIOR BOARD OF INDIAN APPEALS

Chris Reeves v. Great Plains Regional Director, Bureau of Indian Affairs

49 IBIA 126 (04/30/2009)



# 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

CHRIS REEVES,	)	Order Docketing and Dismissing
Appellant,	)	Appeal
	)	
v.	)	
	)	Docket No. IBIA 09-071
GREAT PLAINS REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	April 30, 2009

On April 20, 2009, the Board of Indian Appeals (Board) received a notice of appeal from Chris Reeves (Appellant), through Thomas W. Fredericks, Esq., of Fredericks Peebles & Morgan LLP. Appellant seeks review, pursuant to 25 C.F.R. § 2.8 (appeal from inaction of official) of the alleged failure by the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to respond to an April 3, 2009, letter from Appellant to the Regional Director. We docket this appeal, but dismiss it because the relief sought by Appellant from the Board in this appeal from alleged inaction is not the action that he sought from the Regional Director in his section 2.8 demand.

In his April 3 letter to the Regional Director, Appellant contended that the Tribal Council of the Cheyenne River Sioux Tribe (Tribe) had violated the Tribe’s Grazing Ordinance when it allocated and awarded grazing permits to individuals other than Appellant for Range Units 48 and 279 on the Tribe’s reservation.<sup>1</sup> Appellant requested that BIA “begin an immediate investigation into this matter,” Letter from Fredericks to Regional Director, Apr. 3, 2009 (April 3 Letter), at 2, and when the Regional Director

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<sup>1</sup> Appellant had previously written a letter to the Regional Director, outlining his complaints that the Tribal Council had violated tribal law, asking BIA to “take [no] action to . . . acknowledge, enforce, or effectuate the terms of the unlawful permits” that were issued by the Tribal Council, and asking BIA to “investigate the [Tribe’s] allocation process.” Letter from Thomas W. Fredericks to Regional Director, Nov. 12, 2008 (November 12 Letter), at 2 . In that letter, Appellant contended that by violating tribal law, the Tribal Council had violated the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302.

allegedly failed to respond within the 10-day time period provided in section 2.8, Appellant filed this appeal. In this appeal, Appellant requests an order from the Board “requiring the Tribal Council to follow the [Tribe’s] Ordinance preference requirements, as established in Ordinance No. 71.” Notice of Appeal (NOA) at 4.<sup>2</sup>

A section 2.8 appeal to the Board is limited to deciding *whether* BIA must take action or issue a decision at the request of an appellant, and does not extend to directing BIA *how* to act or decide a matter in the first instance. *Forest County Potawatomi v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 266 (2009); *Midtlun v. Rocky Mountain Regional Director*, 43 IBIA 258, 264 (2006). It is clear from Appellant’s notice of appeal to the Board that Appellant does not seek, pursuant to section 2.8, to have the Board determine whether BIA must undertake the “investigation” demanded of it in the April 3 letter.<sup>3</sup> Instead, Appellant seeks to have the Board decide the merits of his complaint against the Tribal Council, or to direct BIA to take some action against the Tribe. But the merits of Appellant’s complaint against the Tribal Council, or even a request that BIA take some specified action against the Tribal Council, is outside the scope of the action demanded of BIA by Appellant in his April 3 letter — a demand for an investigation. Thus, the relief sought in this appeal is outside the scope of a section 2.8 appeal from the Regional Director’s alleged failure to respond to Appellant.

Of course, even if Appellant’s April 3 letter to the Regional Director could fairly be construed as asking BIA to issue a decision on the merits of Appellant’s request for BIA, apparently pursuant to ICRA, to “require” the Tribal Council to comply with tribal law in granting tribal grazing permits, this appeal would still face two insurmountable obstacles.

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<sup>2</sup> The NOA also requests an order “vacating BIA’s decision to grant the grazing permits for Range Units #48 and 279 to the unqualified permittees,” *id.*, but Appellant repeatedly states in the NOA that the *Tribal Council* awarded the permits, which is also what Appellant stated in his November 12 and April 3 letters to BIA. Nowhere, except in the request for relief, is there any suggestion that it was BIA, rather than the Tribal Council, that made the decision to grant the permits. And, of course, Appellants expressly filed this appeal pursuant to section 2.8, and a section 2.8 appeal is necessarily premised upon and limited to alleged *inaction*; it is not premised upon nor does it seek relief from an allegedly wrongful action or decision by BIA.

<sup>3</sup> We assume, solely for purposes of this decision, that a demand for “an investigation” could be encompassed within the scope of a demand under section 2.8 for action or a decision on the merits.

First, Appellant acknowledges that he has filed an action in tribal court, which is still pending, and therefore he has not exhausted tribal remedies.<sup>4</sup> *Cf. Burlington Northern Railroad v. Crow Tribal Council*, 940 F.2d 1239, 1246 (9th Cir. 1991) (exhaustion of tribal remedies is required when a regulatory tribal ordinance is challenged because the Tribe must itself first interpret its own ordinance); *Peltier v. Great Plains Regional Director*, 46 IBIA 16, 21 (2007) (issues governed by tribal law must be determined in the first, if not the only, instance by the Tribe itself absent a compelling Federal reason to do otherwise). Second, ICRA does not, as Appellant suggests, give rise to an obligation by BIA to intervene in tribal grazing allocation decisions whenever someone complains that a tribe has not followed its own law. *See Frank v. Acting Great Plains Regional Director*, 46 IBIA 133, 147 n.20 (2007) (nothing in ICRA requires BIA to police the actions of tribes with respect to allocations for grazing permits); *see also Siemion v. Rocky Mountain Regional Director*, 48 IBIA 249, 255 (2009) (neither BIA nor the Board is authorized to review tribal grazing allocation decisions; the appellant's complaints about leases awarded by the Crow Tribe belonged in a tribal forum).

We conclude that the appeal filed by Appellant requests relief that is outside the scope of the section 2.8 demand for action that Appellant submitted 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 but dismisses this appeal.

I concur:

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

          // original signed            
Debora G. Luther  
Administrative Judge

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<sup>4</sup> Appellant complains that his action in Tribal Court has “languished,” April 3 Letter at 1, but it appears that the action has only been pending for a few months. *See* November 12 Letter at 2 (“Our firm is preparing to initiate an action in Tribal Court”).