



## INTERIOR BOARD OF INDIAN APPEALS

Seminole Nation of Oklahoma v. Eastern Oklahoma Regional Director,  
Bureau of Indian Affairs

51 IBIA 217 (04/09/2010)



# 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

SEMINOLE NATION OF	)	Order Dismissing Appeal
OKLAHOMA,	)	
Appellant,	)	
	)	
v.	)	Docket No. IBIA 10-058
	)	
EASTERN OKLAHOMA REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	April 9, 2010

The Seminole Nation of Oklahoma (Nation) appealed to the Board of Indian Appeals (Board) from the failure of the Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to issue a decision either to approve or disapprove a Constitutional referendum held by the Nation on September 20, 2008. The Nation had submitted a demand for action to the Regional Director, under 25 C.F.R. § 2.8 (Appeal from inaction of official),<sup>1</sup> and the Regional Director had responded that a decision would be issued by January 12, 2010. When no decision issued, the Nation appealed the Regional Director's inaction to the Board, as allowed by 25 C.F.R. § 2.8(b), asking that the Board approve the referendum in its entirety.

Upon receipt of the Nation's appeal, the Board requested a status report from the Regional Director, and also explained that a section 2.8 appeal from inaction does not encompass review of the underlying merits of the Nation's request for approval of the referendum. In a response dated March 12, 2010, the Regional Director stated that the requested decision regarding changes to the Nation's Constitution is being discussed at the highest levels within the Department, that no decision has yet been reached, and that a decision should be made within the next 90 days. The Nation filed a reply, opposing

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<sup>1</sup> Section 2.8 provides, in relevant part, that when a request for action is made pursuant to subsection 2.8(a), the BIA official receiving the request "must either make a decision on the merits of the initial request within 10 days from receipt of the request for a decision 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).

further delay, asserting that the Regional Director has given no reason or justification for delay, and that therefore the Board should order the Regional Director to issue a decision “with all due haste.” Nation’s Response at 3.

As a general rule, when it is apparent that BIA is actively working on an appellant’s request for action, the Board has dismissed section 2.8 appeals, reasoning that BIA should be allowed to complete its review and issue a decision. *See, e.g., Shivwits Band of Paiutes v. Western Regional Director*, 44 IBIA 2, 3 (2006); *Paiute Indian Tribe of Utah v. Western Regional Director*, 40 IBIA 163, 164 (2004); *Hackford v. Phoenix Area Director*, 30 IBIA 270 (1997); *Shaahook Group of Capitan Grande Band of Diegueno Mission Indians v. Director, Office of Tribal Services*, 27 IBIA 43, 45 (1994). In such cases, even though BIA has not satisfied the timetable set forth in section 2.8, evidence that BIA is making a good faith effort to respond, coupled with the limited scope of the Board’s jurisdiction and authority in a section 2.8 appeal, counsel in favor of dismissal.<sup>2</sup>

In the present case, we construe the Regional Director’s status report as representing that Departmental officials in Washington have become involved.<sup>3</sup> Thus, in practical effect, it appears that issuance of a decision by the Regional Director is contingent upon completion of those internal deliberations. The Nation argues that the Regional Director has given no reason or justification for delay, but we think the Regional Director’s response is sufficient to pass muster. Under the circumstances, we conclude that dismissal of this appeal is appropriate and that continuing Board oversight is not warranted at this time. Even though the timetable now provided by the Regional Director exceeds the 60-day period allowed under section 2.8, it appears that the timetable may no longer be under the control of the Regional Director. *Cf. Paiute Tribe of Utah v. Western Regional Director*, 40 IBIA 208, 209 (2005) (Board dismissed section 2.8 appeal when the official’s ability to issue a final decision was contingent upon action by a third party). In the event a decision is not forthcoming, the Nation may again seek Board involvement through a new section 2.8 appeal. And, of course, the Nation is not precluded from seeking the involvement of the

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<sup>2</sup> In rare cases, the Board has ordered BIA to issue a decision, but even in such cases, the Board has not imposed a timetable on the issuance of a decision. *See, e.g., Wasson v. Western Regional Director*, 50 IBIA 342 (2009); *Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258 (2006).

<sup>3</sup> It is unclear whether the Assistant Secretary - Indian Affairs is involved in the matter, but the Nation’s notice of appeal does indicate that in September of 2009, Principal Chief Kelly Haney met with Assistant Secretary Echo Hawk regarding the Nation’s request for approval of the referendum. *See* Notice of Appeal at 4.

Assistant Secretary in the matter, either directly or through his supervisory authority over the Regional Director.

Finally, we note that in bringing this appeal, the relief sought by the Nation was an order from the Board approving the referendum. But as explained previously by the Board, the Board's authority in a section 2.8 appeal does not encompass the underlying merits of an appellant's request. See Order for Status Report, Feb. 24, 2010, at 2 (citing *Forest County Potawatomi Community v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 265-66 (2009); *Midthun v. Rocky Mountain Regional Director*, 43 IBIA at 264 n.7). Thus, the relief initially sought by the Nation in bringing this appeal is not available through these proceedings.

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 dismisses this appeal.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Sara B. Greenberg  
Administrative Judge\*

\*Interior Board of Land Appeals, sitting by designation.