



INTERIOR BOARD OF INDIAN APPEALS

Uintah and Uncompahgre Descendants v. Uintah and Ouray Agency Superintendent,
Bureau of Indian Affairs; and Deputy Assistant Secretary for Policy and
Economic Development - Indian Affairs

51 IBIA 220 (04/09/2010)

Related Board cases:

50 IBIA 201

51 IBIA 166



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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UINTAH AND UNCOMPAHGRE)	Order Docketing and
DESCENDANTS,)	Dismissing Appeal
Appellants,)	
)	
v.)	
)	
UINTAH AND OURAY AGENCY)	
SUPERINTENDENT, BUREAU OF)	Docket No. IBIA 10-061
INDIAN AFFAIRS; AND DEPUTY)	
ASSISTANT SECRETARY FOR)	
POLICY AND ECONOMIC)	
DEVELOPMENT - INDIAN)	
AFFAIRS,)	
Appellees.)	April 9, 2010

Edson G. Gardner, Uintah Indian Advocate, and Lynda M. Kozlowicz, Ute Tribal Advocate, of Kozlowicz & Gardner Advocate, Inc., filed an appeal, describing it as “Ability to Reaffirm Federal Recognition of Uintah Valley Band is Reason of Appeal, to conduct land acquisition activities in Utah.” Notice of Appeal at 1-2.¹ The Board ordered Appellants to show cause why the appeal should not be dismissed because the Board was unable to determine from the Notice of Appeal (1) the identity of the intended appellant(s), (2) the identity of the intended appellee(s), (3) what action or inaction is the intended subject of the appeal, and (4) what regulation, if any, would provide a basis for the Board to assert jurisdiction. *See* Pre-Docketing Notice and Order to Show Cause, *In re Kozlowicz & Gardner Appeal to Reaffirm Federal Recognition of Uintah Valley Band*, Mar. 4, 2010. The Board explained that it is not a court of general jurisdiction, *see In re Ute Tribal Water Compact*, 50 IBIA 250 (2009), and noted that unless Appellants articulated a factual and legal basis for the Board to assert jurisdiction, the Board would be required to dismiss the appeal. The Board specifically ordered Appellants to identify the decision or action from

¹ The appeal was addressed to the Departmental Cases Hearings Division of the Office of Hearings and Appeals (OHA), which forwarded it to the Board as a matter possibly within the Board’s jurisdiction.

which they seek to appeal, or if they were appealing from alleged inaction, *see* 25 C.F.R. § 2.8 (appeal from inaction of official), to demonstrate that they had complied with the requirements of section 2.8 before bringing this appeal.

We docket and dismiss this appeal because although Appellants responded to our show cause order, and have now identified the purported appellants² and appellees, they have nevertheless failed to demonstrate any factual or legal basis for us to consider their appeal further, or otherwise to assert jurisdiction.

Appellants' response to the Board's show cause order appears to revisit matters raised in *Kozlowicz & Gardner Advocates, Inc. v. Superintendent, Uintah and Ouray Agency, and Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs*, 50 IBIA 201 (2009), and more recently in *Gardner v. Uintah and Ouray Agency Superintendent and Uintah and Ouray Tribal Business Committee of the Ute Indian Tribe*, 51 IBIA 166 (2010). We dismissed both of those appeals for lack of jurisdiction. Appellants may not relitigate the same jurisdictional issues decided in those appeals. *See Choctaw Nation of Florida v. Director, Office of Federal Acknowledgment*, 50 IBIA 335, 336 (2009) (summary dismissal of appeal against Director because issue was decided in previous appeal by same appellants); *Estate of Martha Marie Vielle Gallineaux*, 44 IBIA 230, 238 n.15 (2007), (describing the doctrine of collateral estoppel).³ But even to the extent that Appellants seek to raise new

² The response received from Kozlowicz & Gardner is captioned with "Uintah and Uncompahgre Descendants" as the "Appellant(s)," and we have thus captioned this decision accordingly. The caption does not, however, constitute any determination whether Kozlowicz & Gardner Advocates, Inc., is, in fact, authorized to have brought this appeal on behalf of a group of Uintah and Uncompahgre descendants. Edson Gardner apparently is a Uintah mixed-blood descendant and not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation. *See Gardner v. Acting Western Regional Director*, 46 IBIA 79 (2007); *see also Gardner v. Uintah and Ouray Agency Superintendent*, 51 IBIA 166, 167 & n.3 (2010) (explaining distinction between full-blood and mixed-blood Utes). In their response to the Board's show cause order, Gardner identified himself as a "Uintah Descendent Advocate" and Kozlowicz identified herself as an "Uncompahgre Advocate."

³ Appellants characterize the Board's decision in *Kozlowicz & Gardner Advocates*, 50 IBIA 201, as finding that the Board "has jurisdiction," *see* Appellant's Response at 6, ¶ 14, but our conclusion in that appeal was precisely the opposite.

issues in this latest appeal, we remain unable to identify any BIA action or inaction over which we would have jurisdiction.⁴

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 this appeal but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Sara B. Greenberg
Administrative Judge*

* Interior Board of Land Appeals, sitting by designation.

⁴ Although it does not appear to be the case, to the extent Appellants seek review of some alleged inaction that was not subsumed by our ruling in *Kozlowicz & Gardner Advocates*, 50 IBIA 201, they have not shown that they complied with the requirements of 25 C.F.R. § 2.8 prior to filing this appeal.