



INTERIOR BOARD OF INDIAN APPEALS

Gene Sloan, Melody Sloan, Tammy Sloan, Deana Sloan Campbell, Tonya Sloan Rodriguez, Bert U. Sloan, Jeffrey Sloan, Linda Sloan Pulido, Alan Sloan, and Raymond H. Sloan v. Acting Pacific Regional Director, Bureau of Indian Affairs

51 IBIA 302 (06/11/2010)



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

GENE SLOAN, MELODY SLOAN,)	Order Dismissing Appeal
TAMMY SLOAN, DEANA)	Without Prejudice
SLOAN CAMPBELL, TONYA)	
SLOAN RODRIGUEZ, BERT U.)	
SLOAN, JEFFREY SLOAN, LINDA)	
SLOAN PULIDO, ALAN SLOAN,)	
AND RAYMOND H. SLOAN,)	
Appellants,)	
)	Docket No. IBIA 08-92-A
v.)	
)	
ACTING PACIFIC REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	June 11, 2010

In May of 2008, Gene Sloan, Melody Sloan, Tammy Sloan, Deana Sloan Campbell, Tonya Sloan Rodriguez, Bert U. Sloan, Jeffrey Sloan, Linda Sloan Pulido, Alan Sloan, and Raymond H. Sloan (Appellants)¹ appealed to the Board of Indian Appeals (Board), seeking review of a February 16, 2006, decision (Decision) by the Acting Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to approve a referendum adopting updated Articles of Association for the Cahto Tribe of the Laytonville Rancheria (Tribe). In the Decision, the Regional Director concluded that the Articles of Association had been duly adopted in a tribal referendum held on January 28, 2006.

Appellants filed this appeal to have the Decision reversed or vacated on the grounds that the 2006 referendum was invalid without their participation.² Appellants were not

¹ After filing the appeal, Appellants purported to add two individuals as appellants, Godfrey Sloan and John Omar Sloan. *See* Statement of Reasons and Appellants' Response to Order to Show Cause at 1 n.1. Given our disposition of the appeal, we express no opinion on whether these individuals could properly be added as appellants.

² Appellants explain the lapse of time between the Decision and the filing of their appeal by averring that they did not have notice of the referendum or the Decision until shortly before they filed this appeal.

included in the 2006 referendum because they were subject to a 1995 disenrollment action by the Tribe. The 1995 enrollment dispute has been and remains the subject of separate proceedings. *See Cabto Tribe of the Laytonville Rancheria v. Pacific Regional Director*, 38 IBIA 244 (2002); Letter from Regional Director to Tim Vollmann, Esq., Mar. 26, 2009.³

On receipt of this appeal, the Board, on its own motion, ordered briefing on several threshold issues: whether Appellants have standing to appeal the Decision, whether the Board has jurisdiction over the appeal, and whether Appellants exhausted tribal remedies for challenging the referendum and the adoption of the updated Articles of Association as a matter of tribal law. Subsequently, the Board took the threshold issues under advisement and ordered briefing on the merits; the Regional Director issued his March 26, 2009, decision in the Sloan appeals; and the Board vacated the briefing schedule and stayed the appeal to allow the parties to explore the possibility of settlement, an effort that was unsuccessful.

On May 17, 2010, after the Board lifted the stay and rescheduled briefing, the Board received from the Regional Director a motion to vacate his Decision and remand the matter to BIA for further consideration.

The Tribe opposes the motion on the ground that an order vacating the Decision could, as a practical matter, have the effect of granting Appellants' request for relief on the merits without full briefing. The Tribe contends that it has been operating under the updated Articles of Association for over four years, and that if the Decision is vacated, it would alter the status quo through a procedural ruling, to the prejudice of the Tribe. The

³ In *Cabto Tribe*, the Board vacated two decisions in which BIA announced that it would not recognize the disenrollment action by the Tribe. The Board concluded that BIA lacked decision making authority under the circumstances. 38 IBIA at 246. The Board declined to address whether separate appeals filed by Gene Sloan in 1999 from the disenrollment action, which were not addressed in either BIA decision, would be cognizable under 25 C.F.R. Part 62 (enrollment appeals), which excludes the Board from the appeals process.

The Regional Director's March 26, 2009, decision addressed the enrollment appeals filed by Gene Sloan in 1999, and concluded that BIA would not recognize the Tribe's decision to disenroll members of the Sloan/Hecker family. The Regional Director instructed the General Council to place the Sloan/Hecker family members' names on the tribal membership roll. On May 26, 2010, the Tribe filed suit in Federal court challenging the Regional Director's March 26, 2009, decision. *See Cabto Tribe of the Laytonville Rancheria v. Risling*, No. 2:10-cv-01306-GEB-GGH (E.D. Cal.).

Tribe suggests that if the Board concludes that a remand is warranted, the Board should simply dismiss the appeal. In the alternative, the Tribe proposes that the Board could stay this appeal pending resolution of the Tribe's litigation over the March 26, 2009, decision.

Appellants support vacatur and remand, arguing that prejudice to them may result if the Decision is not vacated. Appellants also suggest, however, that there would be no substantive difference between a dismissal without prejudice and an order vacating the Decision and remanding, because in neither case would the Board be expressing a view on the threshold issues of standing and jurisdiction, or on the merits.

It is true that, ordinarily, when BIA requests a voluntary remand, the Board will vacate the underlying decision. *See, e.g., Birdbear v. Acting Great Plains Regional Director*, 51 IBIA 273 (2010); *Froelich v. Acting Great Plains Regional Director*, 51 IBIA 173 (2010). Ordinarily, however, it is undisputed that an order of vacatur will not change the status quo, because the effectiveness of BIA's underlying decision has been automatically stayed, *see* 25 C.F.R. § 2.6, and an order vacating and remanding simply returns the matter to BIA for further consideration. Thus, the usual effect of a vacatur and remand, in response to a request from BIA, is as though the matter had not left BIA or been before the Board.

In the present case, however, what constitutes the "status quo," in relation to the updated Articles of Association, apparently is disputed, and may depend upon whether BIA's Decision became final in 2006 in the absence of notice to Appellants.⁴ That issue, in turn, may depend upon Appellants' status as "interested parties," *cf.* 25 C.F.R. §§ 2.2 and 2.7, and upon the enrollment dispute. An order by the Board vacating the Regional Director's Decision could be construed either as upsetting the status quo (if the Decision became final in 2006) or as not affecting the status quo (if the Decision never became final).

Under the circumstances of this case, and in light of the fact that an order dismissing the appeal is acceptable to Appellants and the Tribe, and is not inconsistent with the Regional Director's remand request, the Board concludes that dismissal without prejudice, without an order of vacatur, is appropriate. Dismissal without prejudice relies on no premise or implication regarding Appellants' standing, the Board's jurisdiction, or any tribal exhaustion requirement. Although dismissal does not provide the Regional Director with vacatur of his decision — the normal disposition when BIA seeks a voluntary remand — it is the most prudent course in this case to avoid any inference regarding potentially disputed

⁴ *See* 25 C.F.R. §§ 2.7 (failure to give notice to known interested parties tolls the appeal period) and 2.6 (decision not final if subject to appeal).

issues. And although we dismiss the appeal (rather than vacating and remanding), the Regional Director's remand request makes it incumbent on him to issue a new decision at the appropriate time to address Appellants' contentions regarding the 2006 approval Decision.⁵ We leave it for the Regional Director to address, in the first instance, the threshold issues raised in this appeal, including Appellants' standing and the finality of the 2006 Decision, and whether, on procedural or substantive grounds, the Decision should be left intact, amended, withdrawn, or rescinded.

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 without prejudice.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁵ The new decision must include appeal rights, as required by 25 C.F.R § 2.7.