



INTERIOR BOARD OF INDIAN APPEALS

Friends of Our Pyramid Lake Reservation v. Western Regional Director,
Bureau of Indian Affairs

55 IBIA 272 (09/18/2012)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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FRIENDS OF OUR PYRAMID LAKE)	Order Docketing and Dismissing
RESERVATION,)	Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 12-120
WESTERN REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	September 18, 2012

Friends of Our Pyramid Lake Reservation (Appellant) appealed to the Board of Indian Appeals (Board) from an April 5, 2012, decision (Decision) by the Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Decision authorized BIA’s Western Nevada Agency Superintendent to conduct a Secretarial election requested by the Pyramid Lake Paiute Tribe’s (Tribe) Tribal Council, for the Tribe’s membership to vote on proposed amendments to the Tribe’s Constitution and By-Laws.¹ Appellant objects to the substance of the proposed amendments and contends that the Decision authorizing the requested election is flawed.

We dismiss this appeal for lack of standing because the Board’s regulations require that an appellant have a legally protected interest that is adversely affected by the decision being appealed. Appellant has not shown that the Decision granting the request by the Tribal Council to authorize a Secretarial election adversely affected any legally protected interest held by Appellant as an organization or by one or more of its members.²

¹ A Secretarial election is a Federal election conducted by BIA acting pursuant to authority delegated to BIA by the Secretary of the Interior; the Decision authorized the election to be held pursuant to 25 C.F.R. Part 81.

² The Secretarial election was scheduled for July 14, 2012, and because it appeared that Appellant lacked standing, and that a stay might cause disruption and confusion, the Board concluded that it was in the public interest to allow the election to proceed, and placed the Decision into effect pursuant to 25 C.F.R. § 2.6. *See* Pre-Docketing Notice and Orders to Complete Service, to Show Cause, and Placing Regional Director’s Decision into Effect (OSC), June 19, 2012, at 4. The Board has been informed by BIA that the election was

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Discussion

I. Order to Show Cause

Upon receipt of the appeal, the Board ordered Appellant to show cause why its appeal should not be dismissed for lack of standing. The Board explained the doctrine of standing, and its application by the Board to matters involving disagreements between tribal members and a tribe's leadership. See OSC at 2-3 (citing *Wadena v. Midwest Regional Director*, 47 IBIA 21, 27 (2008); *Bullcreek v. Western Regional Director*, 40 IBIA 191, 194 (2005)).

Appellant responded to the OSC but, as discussed below, we conclude that Appellant has failed to demonstrate that it, either as an organization or through its members, has standing to appeal the Decision.

II. Principles of Standing

An appellant has the burden to establish that it has standing to appeal from a decision. *Reeves v. Great Plains Regional Director*, 54 IBIA 207, 213 (2012).

In order to have a right to appeal to the Board, an appellant must show that it has an interest that is adversely affected by the decision being appealed. See 25 C.F.R. § 2.2 (definitions of "appellant" and "interested party"); 43 C.F.R. § 4.331 (Who may appeal). "To be 'adversely affected,' within the meaning of the regulations, the injury must be caused by the challenged decision and the injury must be to a legally protected interest held by the appellant." *Reeves*, 54 IBIA at 212; see also *Trenton Indian Service Area v. Great Plains Regional Director*, 54 IBIA 298, 303-04 (2012). "Without an injury to an appellant's legally protected interest, an appeal will be dismissed." *Biegler v. Great Plains Regional Director*, 54 IBIA 160, 164 (2011).

The injury must also be concrete and particularized to some individual interest. See *Shelbourn v. Acting Great Plains Regional Director*, 54 IBIA 75, 79 (2011). Thus, as the Board explained in the OSC, even though Appellant's members may be members of the

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held in July and that some of the proposed amendments apparently were approved in the election. Thus, it appears that the current appeal is not moot, although we emphasize that we express no view on the validity of the election itself. The scope of the present appeal is limited to the Decision that authorized the election to take place.

Tribe who disagree with the Tribal Council's decision to request the election and with BIA's decision to authorize it, and who may believe that the election results would harm the Tribe, it does not follow that Appellant has standing to appeal the Decision authorizing the election. See OSC at 3. "Tribal members, as individuals, as well as organizations composed of individual tribal members, do not have standing to bring an action based on a personal assessment of what is or what is not in the best interests of the tribe." *Bullcreek*, 40 IBIA at 194; see also *Wadena*, 47 IBIA at 27 ("to the extent that [a]ppellants do not believe that it was in the best interests of the [t]ribe to seek a Secretarial election, it is well established that individual tribal members lack standing to pursue action on behalf of the [t]ribe").

III. Appellant Has Not Demonstrated That It Has Standing.

None of the arguments that Appellant makes in response to the Board's OSC demonstrates that Appellant has standing. Appellant has identified no particularized injury to any legally protected interest held by Appellant as an organization or by its members, resulting from the Decision to authorize the Secretarial Election requested by the Tribal Council. Appellant's members, as members of the Tribe, have no legally protected interest in the decision whether to grant the Tribal Council's request. And Appellant has failed to show that the Decision allowing the election to proceed caused any particularized injury to any individual right or interest held by Appellant or its members.

Appellant contends that "[w]e are not the *general public*, but are members of a tribe." Response to OSC at 2 (unnumbered) (emphasis in original); see also *id.* at 1 (unnumbered) (Appellant is made up of individuals who are direct descendants of those living on the Pyramid Lake Reservation on January 1, 1935; "[i]f that does not represent 'standing[,] . . . what does?"). But in the context of this case, standing does not depend upon a distinction between being part of some broader "general public" beyond a tribe and being members of the tribe. For matters involving internal tribal affairs, being a member of the tribe *is* being part of the general *tribal* public. Standing depends upon whether Appellant, or in this context any of its members, have identified any personal or individual right or interest—*distinct from the general rights and interests of all tribal members*—that has been adversely affected in a concrete and particularized way by the Decision authorizing an election in which tribal members may vote on the proposed amendments. Appellant has not done so, and thus it has not demonstrated that it has standing based on the fact that it is composed of tribal members.

Appellant argues that its members have a "personal stake" in this matter and that they "stand to lose, at any time by the stroke of the pen by a misguided or ill-informed tribal official, not only our valuable resources, but our entire reservation." Response to OSC at 2 (unnumbered). Again, Appellant has not shown that its members' "personal stake" in the matter is any different than the stake of any other tribal member for whom the

election may (or may not) result in amendments to the Tribe's governing documents, depending on the vote. Appellant may well believe that the Tribal Council, or other members of the Tribe, are "sell outs," *id.* at 3 (unnumbered), and thus cannot be trusted to do what Appellant and its members believe to be in the best interest of the Tribe. But Appellant's members' "stake" is no different than that of any other members of the Tribe.³ As noted above, tribal members "do not have standing to bring an action based on a personal assessment of what is or what is not in the best interests of the tribe." *Bullcreek*, 40 IBIA at 194.⁴

Conclusion

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 for lack of standing.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge

³ Appellant does not identify any of its members, but its notice of appeal was submitted by Edna Benner as spokesperson, whom we assume is a member of Appellant. Appellant's response to the OSC included information indicating that Benner was on the official registered voters list for the election. *See* Response to OSC, Ex. 5.

⁴ To the extent that Appellant seeks to challenge actions taken by tribal officials, the Board lacks authority to review such actions. *See Geary v. Central California Agency Superintendent*, 54 IBIA 234, 234 (2012).