



## INTERIOR BOARD OF INDIAN APPEALS

Cora Simmons v. Central California Agency Superintendent and Pacific Regional Director,  
Bureau of Indian Affairs

55 IBIA 278 (09/20/2012)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ARLINGTON, VA 22203

CORA SIMMONS,	)	Order Docketing and Dismissing
Appellant,	)	Appeal
	)	
v.	)	
	)	
CENTRAL CALIFORNIA AGENCY	)	Docket No. IBIA 12-157
SUPERINTENDENT AND PACIFIC	)	
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS,	)	
Appellees.	)	September 20, 2012

On September 13, 2012, the Board of Indian Appeals (Board) received a notice of appeal from Cora Simmons (Appellant), through Nicholas Mazanec, Esq., of California Indian Legal Services. Appellant seeks review by the Board, pursuant to 25 C.F.R. § 2.8, of alleged inaction of the Central California Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), and of BIA’s Pacific Regional Director (Regional Director), concerning Appellant’s request for renewal of a homesite lease for a one-acre portion of Round Valley Allotment 565 (Allotment).<sup>1</sup> We dismiss this appeal for lack of jurisdiction. The Board does not have jurisdiction over an appeal from alleged inaction by a BIA superintendent. And Appellant’s appeal from the Regional Director’s alleged inaction was rendered moot when the Regional Director issued a decision directing the Superintendent to either approve or disapprove a modification to Appellant’s lease.

## Background

For some time, Appellant has been seeking action by BIA on what Appellant characterizes as an option to renew a 2-year residential lease on the Allotment for a 25-year period. In a letter to the Superintendent dated May 25, 2012, Appellant demanded a decision pursuant to 25 C.F.R. § 2.8. Notice of Appeal, Ex. 22. On June 15, 2012,

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<sup>1</sup> Section 2.8 is an action-prompting mechanism that allows a party, following certain procedural requirements, to request action from a BIA official. 25 C.F.R. § 2.8(a). If the BIA official fails to respond in accordance with § 2.8, the official’s inaction becomes appealable to the next level in the administrative appeal process. *Id.* § 2.8(b).

Appellant filed an appeal with the Regional Director, pursuant to § 2.8, alleging that the Superintendent had failed to respond to Appellant's request for action.

On September 11, 2012, Appellant filed this appeal with the Board from the purported inaction of both the Superintendent and the Regional Director. Subsequently, Appellant notified the Board that on September 6, 2012, the Regional Director had issued a decision on Appellant's appeal from the Superintendent's inaction, in which the Regional Director instructed the Superintendent to issue a decision to approve or disapprove a modification to the lease no later than September 21, 2012. Appellant concedes that the Regional Director's response renders her appeal moot, in part, but Appellant "reserves the right to reinstate the appeal if the [Superintendent] continues to fail to act and does not comply with the instructions of the [Regional Director]." Letter from Nicholas Mazanec, Esq. to Board, Sept. 12, 2012.

### Discussion

We agree with Appellant that the Regional Director's September 6, 2012, decision renders moot Appellant's appeal from the Regional Director's purported inaction. See *Goodwin v. Pacific Regional Director*, 55 IBIA 8 (2012), and cases cited therein.<sup>2</sup>

We do not agree, however, that Appellant may reserve the right to reinstate the appeal if the Superintendent fails to act or does not comply with the instructions of the Regional Director. Letter from Nicholas Mazanec, Esq. to Board, Sept. 12, 2012. Appellant may not "reinstate" this appeal from the Superintendent's alleged inaction because the Board never had jurisdiction over that portion of the appeal. It is well-established that the Board lacks jurisdiction to review the alleged inaction of a superintendent. See *Geary v. Central California Agency Superintendent*, 54 IBIA 234, 234 (2012); *Gardner v. Uintah and Ouray Agency Superintendent*, 51 IBIA 166, 167 (2010). Moreover, the Board lacks general supervisory authority over BIA, and thus would have no authority to intervene if the Superintendent were to fail to comply with the Regional Director's instructions. See *Menominee Indian Tribe v. Midwest Regional Director*, 55 IBIA

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<sup>2</sup> Even if that were not the case, it appears that this appeal was prematurely filed. Nothing in the notice of appeal or accompanying exhibits shows that Appellant submitted a § 2.8 demand for action to the Regional Director, which would be a prerequisite to filing an appeal with the Board from alleged inaction by the Regional Director. See 25 C.F.R. § 2.8(a); *O'Connor v. Rocky Mountain Regional Director*, 55 IBIA 96, 96-97 (2012); *Zuni Tribe v. Southwest Regional Director*, 54 IBIA 135, 135 n.1 (2011); *Forest County Potawatomi Community v. Deputy Assistant Secretary – Indian Affairs*, 48 IBIA 259, 265-66 & n.9 (2009).

14, 15 (2012) (denying a motion because it asked the Board “to assume a supervisory role over BIA that the Board does not have”).

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 for lack of jurisdiction.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Debora G. Luther  
Administrative Judge