



INTERIOR BOARD OF INDIAN APPEALS

No More Slots, Santa Ynez Valley Concerned Citizens, Preservation of Los Olivos,
and Preservation of Santa Ynez v. Pacific Regional Director, Bureau of Indian Affairs

56 IBIA 233 (03/18/2013)

Related Board cases:

42 IBIA 189

45 IBIA 98

58 IBIA 278



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SUITE 300
ARLINGTON, VA 22203

NO MORE SLOTS, SANTA YNEZ)	Order Dismissing Appeals
VALLEY CONCERNED CITIZENS,)	
PRESERVATION OF LOS OLIVOS, and)	
PRESERVATION OF SANTA YNEZ)	
Appellants,)	
)	Docket Nos. IBIA 12-140
v.)	12-141
)	12-148
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	March 18, 2013

No More Slots (NMS), Santa Ynez Valley Concerned Citizens (SYVCC), and Preservation of Los Olivos and Preservation of Santa Ynez (POLO/POSY)¹ (collectively, Appellants) appealed from a June 13, 2012, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), which addressed the authority of BIA to accept land in trust for the Santa Ynez Band of Chumash Indians (Tribe).² The Decision advised potential appellants that any appeal from the Decision must be filed with the Board of Indian Appeals (Board) within 30 days of receipt, it provided the Board's address, and it cited the Board's appeal regulations, which include the requirements for filing an appeal with the Board. None of the Appellants filed an appeal with the Board within the 30-day deadline, which is jurisdictional, and therefore we dismiss the appeals.

¹ POLO and POSY jointly filed a single appeal, and thus the Board will refer to POLO/POSY in the singular.

² The appeals of NMS (Docket No. IBIA 12-140) and SYVCC (Docket No. IBIA 12-141) were received by the Board on July 30, 2012, and were consolidated in an order dated August 8, 2012. POLO/POSY's appeal (Docket No. IBIA 12-148) was received on August 16, 2012. The Board consolidates POLO/POSY's appeal with the other two appeals for purposes of this decision.

Background

I. POLO/POSY's Appeal from 2005 Decision, the Board's Limited Remand, and These Appeals

Although the relevant facts and applicable law for deciding that these appeals are untimely are relatively simple and straightforward, POLO/POSY argues that the context in which the Decision was issued makes this case procedurally complicated, and renders its appeal timely. While we disagree with POLO/POSY's characterization and its conclusion, we summarize the context in which the Decision was issued to provide background for understanding the arguments made by NMS and by POLO/POSY.

In 2005, POLO/POSY appealed to the Board from a January 14, 2005, decision (2005 Decision) of the Regional Director to accept a 6.9-acre parcel of land into trust for the Tribe. *Preservation of Los Olivos and Preservation of Santa Ynez v. Pacific Regional Director*, Docket Nos. IBIA 05-050-A and 05-050-1 (*Los Olivos*). At the request of the Regional Director, the Board vacated in part the 2005 Decision and remanded a single issue—whether BIA has authority to accept the land in trust for the Tribe—to the Regional Director for issuance of a new and separately appealable decision. See *Los Olivos*, No. 05-050-1 (May 17, 2010) (Order Vacating Decision in Part and Remanding in Part (Remand Order)) (copy added to record). The issue of whether the Secretary of the Interior has authority to accept land in trust for a tribe is a threshold legal determination that BIA must make under its trust land acquisition regulations. See 25 C.F.R. § 151.10(a). In *Los Olivos*, the Board remanded that issue to the Regional Director for further consideration, and issuance of a new decision, in light of two Supreme Court decisions, *Carcieri v. Salazar*, 555 U.S. 379 (2009), and *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009).³ The Remand Order stated:

Because the Regional Director's decision on remand will be addressing issues that were not previously considered or decided by BIA, and must take into account intervening Supreme Court decisions, interested parties are entitled to a right of appeal from that decision, without regard to whether

³ During the proceedings in *Los Olivos*, POLO/POSY argued that those Supreme Court decisions, both of which post-dated the 2005 Decision, necessarily required a determination that BIA lacks authority to accept land in trust for the Tribe. At the direction of the Assistant Secretary – Indian Affairs (Assistant Secretary), the Regional Director requested a limited remand on that single issue to allow BIA to address it in the first instance.

they are parties to [*Los Olivos*]. In issuing the decision, the Regional Director shall comply with the requirements of 25 C.F.R. § 2.7.

Remand Order at 3. Section 2.7 requires that a BIA official making a decision must give written notice of the decision to known interested parties, and that an appealable BIA decision must “identify the official to whom [the decision] may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal.” 25 C.F.R. § 2.7(a) & (c). The Board stayed the remainder of POLO/POSY’s appeal, i.e., from the portion of the 2005 Decision that had not been vacated.

On June 13, 2012, the Regional Director issued the Decision, in which she concluded, based upon a legal opinion received from the Department’s Associate Solicitor for Indian Affairs (Associate Solicitor) that neither *Carciere* nor *Hawaii* limits BIA’s authority under the Indian Reorganization Act, 25 U.S.C. § 465, to accept land into trust for the Tribe. The Decision advised that

an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

. . . Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary . . . ; (2) each interested party . . . ; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. . . .

Decision at 2.

As relevant to these appeals, 43 C.F.R. § 4.332(a) provides that a notice of appeal “shall be . . . filed with the Board . . . within 30 days after receipt by the appellant of the decision from which the appeal is taken.” A copy of a notice of appeal to the Board must “simultaneously be filed with the Assistant Secretary.” *Id.* “A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.” *Id.*

The Regional Director sent copies of the Decision by certified mail to POLO/POSY through its counsel of record in *Los Olivos*, who received it on June 18, 2012, and to SYVCC, which received it on June 18, 2012.⁴ NMS, which was not included on the distribution list for the Decision, states that it “learn[ed] of” the Decision through informal

⁴ Receipt of the Decision by POLO/POSY and SYVCC is documented on the U.S. Postal Service’s Track & Confirm feature on its website (copies of webpages added to record).

channels. NMS Response to OSC at 7. NMS does not disclose when it first received a copy of the Decision.

NMS and SYVCC sent their notices of appeal to the Regional Director, who transmitted them to the Board, which received them on July 30, 2012.⁵ POLO/POSY mailed its appeal to the Board on August 14, 2012, with the following explanation:

On July 12, 2012, we filed a[n] . . . appeal of the [Decision]. As instructed in the [D]ecision, we appealed to the Regional Director and Assistant Secretary of Indian Affairs

It was our understanding that this . . . Notice of Appeal would be transmitted to the [Board] by the Regional Director or the Assistant Secretary. However, it came to my attention earlier today, that our . . . Notice of Appeal was not transmitted to the [Board] by the Regional Director or the Assistant Secretary. Consequently, I am transmitting a copy of [the] appeal with this letter.

Letter from Kenneth R. Williams, Esq. to Board, Aug. 14, 2012.

II. Orders to Show Cause on Timeliness

Upon receipt of the appeals, the Board issued orders for Appellants to show cause why their appeals should not be dismissed as untimely on the ground that they were not filed with the Board, either by mail or by personal delivery, within 30 days from receipt of the Decision. *See* Order for Appellants to Show Cause, *No More Slots and Santa Ynez Valley Concerned Citizens v. Pacific Regional Director*, Docket Nos. IBIA 12-140 and 12-141 (Aug. 8, 2012) (NMS OSC); Order for Appellants to Show Cause, *Preservation of Los Olivos and Preservation of Santa Ynez v. Pacific Regional Director*, Docket No. IBIA 12-148 (Aug. 21, 2012) (POLO OSC). With respect to the appeals of NMS and SYVCC, the Board noted that “in the absence of evidence that either or both [of the appeals] were mailed by

⁵ NMS and SYVCC also addressed their appeals to the Secretary of the Interior (Secretary), but it is unclear whether either of them mailed a copy to the Secretary and neither argues that mailing a copy to the Secretary would constitute filing with the Board. Nor has the Board ever held that mailing a notice of appeal to the Secretary, rather than to the Board, would constitute filing an appeal with the Board under the regulations.

NMS sometimes uses the title “Secretary” to refer to BIA, e.g., in asserting that the “Secretary” referred its appeal to the Board, while citing the transmittal memorandum from the Regional Director. The Board has not received any notices of appeal in this matter from either the Secretary or the Assistant Secretary.

Appellants to the Board, the date of filing is July 30, when the appeals were received by, i.e., delivered to, the Board by transmittal from the Regional Director.” NMS OSC at 3 (citing *Estate of Arlen D. Houle*, 42 IBIA 253, 253 (2006)). For POLO/POSY, the Board noted that the Decision had been received by POLO/POSY’s counsel on June 18, 2012, which was more than 30 days before POLO/POSY filed its appeal by mailing it to the Board on August 14, 2012. See POLO OSC at 2. The Board advised Appellants that they have the burden to demonstrate that their appeals were timely filed with the Board. See NMS OSC at 3, POLO OSC at 2 (citing *Saguaro Chevrolet, Inc. v. Western Regional Director*, 43 IBIA 85, 85 (2006)).

SYVCC did not respond to the Board’s OSC. NMS and POLO/POSY responded, arguing that their appeals are timely.

NMS and POLO/POSY argue that they properly filed their appeals by complying with appeal procedures contained in BIA’s appeal regulations, specifically 25 U.S.C. § 2.9, which provides that an appeal is to be filed in the office of the official whose decision is being appealed, in this case the Regional Director. See NMS Response to OSC at 7; POLO/POSY Response to OSC at 6-8.

POLO/POSY, building on the premise that § 2.9 applies, also argues that the Board’s Remand Order included two separate directives to BIA. One directive, according to POLO/POSY, was that BIA must return jurisdiction to the Board after issuing the Decision, at which time POLO/POSY would be entitled to challenge the Decision in the context of its existing (presently stayed) appeal from the remaining portions of the 2005 Decision. POLO/POSY does not cite any language from the Remand Order as the source of this directive, but argues that BIA “still has not returned jurisdiction” to the Board, thus apparently suggesting that the Board does not have authority to dismiss the appeal, which POLO/POSY contends is properly lodged with the Assistant Secretary. POLO/POSY Response to OSC at 5. The second remand directive, according to POLO/POSY, was for BIA to comply with the requirements of 25 C.F.R. § 2.7. POLO/POSY apparently contends that BIA compliance with § 2.7 means that BIA’s appeal procedures, including 25 C.F.R. § 2.9, apply. POLO/POSY states that after it received notice of its appeal rights pursuant to § 2.7, it filed its notice of appeal “with BIA, and sent a copy to the Assistant Secretary pursuant to 25 C.F.R. § 2.9.” POLO/POSY Response to OSC at 5-6. In POLO/POSY’s view, these two directives created a “dual track” for appealing from the Decision, resulting in POLO/POSY having two separate but almost identical appeals—its 2005 pending appeal before the Board, waiting for BIA to “return jurisdiction” to the Board; and its new appeal “pending before the Assistant Secretary.” *Id.* at 5-6. POLO/POSY insists that its two appeals are governed by different regulations: Its 2005 appeal is governed by the Board’s regulations in 43 C.F.R. Part 4, and its new appeal from

the Decision is governed by BIA's appeal regulations, specifically 25 C.F.R. §§ 2.4 and 2.9(a).⁶

Lastly, POLO/POSY argues that the Assistant Secretary is the proper official to review the Decision because the Regional Director relied on, and essentially adopted, a legal opinion from the Associate Solicitor, and the Board has held that it lacks authority to directly review a determination by the Associate Solicitor. POLO/POSY Response to OSC at 7-8.

The Tribe filed a brief arguing that all three appeals should be dismissed as untimely. POLO/POSY filed a reply.

Discussion

I. Burden of Proof and the Applicable Regulations

The burden is on an appellant to establish that its notice of appeal was timely filed with the Board. *Saguaro Chevrolet*, 43 IBIA at 85. Untimely appeals must be dismissed for lack of jurisdiction. 43 C.F.R. § 4.332(a); *see also Greening v. Acting Northwest Regional Director*, 54 IBIA 188, 189 (2011) (“the Board has no authority to extend the deadline for filing an appeal”). The effective date for filing a notice of appeal with the Board is the date of mailing the appeal *to the Board* or the date of personal delivery of the appeal *to the Board*. *See* 43 C.F.R. § 4.310(a); *Saguaro Chevrolet, Inc.*, 43 IBIA at 91 (copy of appeal sent to BIA within appeal period *but not to the Board* does not render appeal timely within the meaning of § 4.332(a)).

As noted earlier, BIA officials are required by 25 C.F.R. § 2.7 to provide written notice of appeal rights, which must “indicate the appeal procedures.” BIA’s failure to include accurate appeal instructions for a decision may toll the appeal period, *see id.* § 2.7(b), but an appellant who has been given correct appeal instructions, and then files its

⁶ Although POLO/POSY cites 25 C.F.R. § 2.4, it does not explain how that section aids POLO/POSY. It appears that POLO/POSY may be relying on § 2.4(c), which provides that the Assistant Secretary decides appeals “pursuant to the provisions of § 2.20 of this part.” As we explain below, § 2.20 first requires that an appeal be properly filed *with the Board*, after which the Assistant Secretary has a short period of time in which he has authority to assume jurisdiction over the appeal, which he did not do for POLO/POSY’s appeal. Section 2.4(e) of 25 C.F.R. provides that the Board may decide appeals, “pursuant to the provisions of 43 CFR part 4, subpart D, if the appeal is from a decision made by an Area [now “Regional”] Director.”

appeal with the wrong office, bears the risk of delay in the transmittal of the appeal to the Board by a third party, such as a BIA official. *See, e.g., Siemion v. Rocky Mountain Regional Director*, 48 IBIA 249, 256 (2009); *Baumann v. Acting Aberdeen Area Director*, 21 IBIA 279, 280 (1992). The Board is not part of BIA, nor is the Board within the Office of the Assistant Secretary, and sending an appeal to either a BIA regional director or the Assistant Secretary—both of whom must be served with their own copy—is not the same as filing an appeal with the Board. *See LeCompte v. Acting Great Plains Regional Director*, 46 IBIA 242, 243 (2008) (appellant’s assertion that she served BIA and the Assistant Secretary “does not satisfy the regulatory requirement that she timely file her notice of appeal with the Board”).

II. Appellants Have Failed to Demonstrate that their Appeals Are Timely

Appellants do not contend that they mailed or delivered their appeals to the Board within 30 days of their receipt of the Decision.⁷ As noted, SYVCC did not respond to the OSC, and thus we summarily dismiss its appeal as untimely and for failure to prosecute. NMS and POLO/POSY argue that they were not required to file their appeals with the Board in order for the appeals to be timely. Appellants are incorrect. POLO/POSY’s argument that the Board’s Remand Order created a dual track, and caused confusion, is also incorrect: any purported confusion is of POLO/POSY’s own making. The Remand Order, the Regional Director’s appeal instructions, 25 C.F.R. §§ 2.4 and 2.7, and the Board’s appeal regulations, are all fully consistent.

First, contrary to Appellants’ arguments, § 2.9 of BIA’s appeal regulations has no applicability to appeals from a BIA regional director’s decision. Section 2.9 contains the procedures for filing an appeal *within* BIA, e.g., for appealing a superintendent’s decision to a regional director. In contrast, the procedures for filing an appeal from a regional director’s decision are found in the Board’s appeal regulations. BIA’s regulations expressly

⁷ NMS asserts that it received “no official notice nor any instructions concerning where and with whom [its] appeal should be filed.” NMS Response to OSC at 7. As noted earlier, NMS has declined to disclose when it first received a copy of the Decision, but it does not contend, nor provide any evidence, that it received a copy less than 30 days before the Board received NMS’s appeal. *See Valley Center-Pauma Unified School District v. Pacific Regional Director*, 53 IBIA 155, 159 (2011) (“When Appellant received a copy of the Decision, the appeal period began to run and Appellant had 30 days—just like any other potentially interested party—to file an appeal with the Board.”). When the timeliness of an appeal is an issue, an appellant may not demonstrate that the Board has jurisdiction by simply refusing to provide relevant factual information. Timeliness of the appeal must be affirmatively established by the evidence, and appellants bear the burden of establishing the timeliness of their appeals.

provide that the *Board* decides appeals from a BIA regional director's decision, "pursuant to" the Board's appeal regulations in 43 C.F.R. Part 4—the appeal regulations referred to in the Decision. *See Siemion*, 48 IBIA at 257 ("The appeal procedures in 25 C.F.R. § 2.9 have no applicability to the Board, whose rules appear at 43 C.F.R. Part 4."); *see also* 25 C.F.R. § 2.3(b) (BIA's appeal procedures in 25 C.F.R. Part 2 do not apply if any other regulation provides different applicable appeal procedures). After an appeal has been properly filed with the Board, the Assistant Secretary has a limited opportunity to assume jurisdiction over the appeal, *id.* § 2.20, but in no event do the procedures in § 2.9 apply to such an appeal.

POLO/POSY seeks to attach great importance to the sentence in the Remand Order that states: "In issuing the decision, the Regional Director shall comply with the requirements of 25 C.F.R. § 2.7." *See* POLO/POSY's Response to OSC at 4-6; POLO/POSY's Reply at 3, 5, 7. But as noted earlier, § 2.7 requires that a BIA official give written notice of a decision and advise interested parties of their appeal rights. Section 2.7 is separate and distinct from § 2.9 (to which § 2.7 does not even refer). Here, the Regional Director complied with § 2.7—and the Remand Order—by including in her Decision accurate notice to interested parties of their appeal rights *to the Board*, providing the Board's address, and expressly identifying the Board's appeal regulations. Section 2.7 is fully consistent with the fact that appeals to the Board are governed by 43 C.F.R. Part 4, Subpart D, not by the procedures in § 2.9 for filing an appeal within BIA. Nothing in the Remand Order or in the Decision suggested that § 2.9 would apply to an appeal from the Decision to the Board. The Regional Director complied with the Board's instructions, and with the regulations, by advising Appellants that any appeal must be filed "with the . . . Board . . . in accordance with the regulations in 43 CFR 4.310-4.340"—i.e., the Board's appeal regulations.⁸

The fact that none of the Appellants chose to follow the appeal instructions spelled out in the Decision, or to review the Board's appeal regulations cited in the Decision, may be its own source of puzzlement, but we find no basis to attribute any purported confusion on the part of Appellants to either the Board's Remand Order or the Decision. *See also Blackhawk v. Billings Area Director*, 24 IBIA 275, 280 (1993) (parties are charged with knowledge of the Board's regulations and precedent).⁹ In this regard, we note that when

⁸ The Decision indicates that a copy of the Board's appeal regulations was enclosed, and if that was indeed the case, then POLO/POSY was even provided with a copy of the Board's regulations.

⁹ POLO/POSY's cover letter to the Board for its appeal, *supra* at 236, asserts that it was POLO/POSY's "understanding" that the Regional Director or the Assistant Secretary would transmit POLO/POSY's appeal to the Board. POLO/POSY provides no citation for
(continued...)

POLO/POSY filed its appeal from the 2005 Decision, it apparently had no difficulty properly and timely filing an appeal with the Board, and serving copies on the Regional Director and the Assistant Secretary. The appeal instructions in the 2005 Decision were in all relevant respects identical to those included in the Decision. *Compare* 2005 Decision at 11 (copy added to record), *with* Decision at 2; *see also* *Los Olivos*, No. 05-050-A (Feb. 22, 2005) (POLO/POSY’s Notice of Appeal and certificate of service) (copy added to record).

POLO/POSY’s related argument—that we cannot dismiss its appeal from the Decision because the appeal is properly lodged with the Assistant Secretary, and “BIA still has not returned jurisdiction” to the Board, POLO/POSY Response to OSC at 5—is equally unavailing. Under the regulations, appeals from a BIA regional director’s decision must be filed with the Board, not with the Assistant Secretary; the Board is the “official” that decides such appeals, 25 C.F.R. § 2.4(e). Section 2.4 only provides that the Assistant Secretary may decide appeals from a BIA regional director’s decision “pursuant to the provisions of [25 C.F.R.] § 2.20.” And § 2.20 only applies after an appeal has been properly filed with the Board, after which the Assistant Secretary has a limited window of time to assume jurisdiction over the appeal. *See* 25 C.F.R. § 2.20(c); 43 C.F.R. §§ 4.332(b) and 4.336; *Hendry County, Florida v. Eastern Regional Director*, 40 IBIA 135, 135 (2004). The Assistant Secretary has made no attempt in the present case to assume jurisdiction over any of these appeals.

POLO/POSY also cites 43 C.F.R. § 4.331(a), *see* POLO/POSY Reply at 3-4, which precludes Board review if a BIA official’s decision is subject to appeal to a higher official within BIA. In other words, a party must first have exhausted administrative appeal remedies *within* BIA before the Board may assert jurisdiction over an appeal. But there is no higher level of appeal within BIA from a BIA regional director’s decision; instead it is subject to appeal to the Board, as is made clear by 25 C.F.R. § 2.4(e). Section 4.331(a)

(...continued)

the source of that “understanding.” As noted earlier, both the Regional Director and the Assistant Secretary must be served with their own copies of an appeal filed with the Board, neither accepts filings on behalf of the Board, and at most a BIA official is obligated to transmit to the appropriate office a “misdirected appeal document.” 25 C.F.R. § 2.13(b). Even in such a case, an appellant who was provided correct appeal instructions bears the risk of any delay in transmittal of an appeal to the Board. *Siemion*, 48 IBIA at 256, *Baumann*, 21 IBIA at 280. Here, of course, POLO/POSY does not suggest that it knew that it was filing a misdirected appeal with the Regional Director, and thus understood that § 2.13(b) would require the Regional Director to transmit it to the Board.

does not provide POLO/POSY with a right to appeal the Decision to the Assistant Secretary who, in any event, is in the Office of the Secretary, and is not a BIA official.¹⁰

POLO/POSY's assertion that our Remand Order required BIA to "return jurisdiction" to the Board has no foundation in the language of the Remand Order, or elsewhere, nor does POLO/POSY cite any language to support its argument. In vacating the 2005 Decision in part, remanding one issue to the Regional Director for issuance of a new decision, and expressly requiring that the new decision provide interested parties with appeal rights from that decision, the Board divested itself of jurisdiction over that issue, which is no longer part of the remainder of POLO/POSY's appeal in *Los Olivos*. It was the responsibility of the interested parties who wished to challenge the Decision, i.e., *Appellants* (not BIA), to invoke the Board's jurisdiction to obtain review of such a challenge.

Finally, POLO/POSY argues that the Assistant Secretary is the only appropriate official to review its appeal because the Decision, in effect, adopted a legal opinion issued by the Associate Solicitor, and the Board has held that it lacks authority to directly review a determination by the Associate Solicitor. See *County of Amador v. Associate Deputy Secretary*, 44 IBIA 4, 4 (2006). POLO/POSY's reliance on *Amador* is misplaced. In *Amador*, the appellant sought to appeal to the Board from actions by the Associate Deputy Secretary and the Associate Solicitor, neither of whose decisions are made subject to appeal to the Board. *Amador* did not involve an appeal from a decision of a BIA regional director. The Board has never held that a BIA regional director's legal determination is insulated from Board review simply because it adopts or incorporates legal advice from the Solicitor's Office. We review legal determinations in a BIA decision *de novo*, regardless of whether they rely on or incorporate an opinion of the Associate Solicitor. *Jackson County, Kansas v. Southern Plains Regional Director*, 47 IBIA 222, 227-28 (2008); *Paiute Indian Tribe of Utah v. Western Regional Director*, 38 IBIA 128, 128-29 (2002) (the Board may review legal conclusions reached by a field solicitor to the extent that they form the basis of a decision issued by a BIA regional director).

Conclusion

None of the Appellants has met its burden to show that its notice of appeal was timely filed as required by the regulations. Therefore, pursuant to the authority delegated

¹⁰ Section 4.331(a) complements 25 C.F.R. § 2.4(e) by making clear, e.g., that a party challenging the decision of a BIA superintendent must first appeal to a BIA regional director, and may not directly appeal the superintendent's decision to the Board. See, e.g., *Logan v. Taholah Agency Superintendent*, 48 IBIA 165, 166 (2008).

to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses these appeals.¹¹

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge

¹¹ The dismissal of POLO/POSY's appeal from the Decision does not affect POLO/POSY's pending appeal from the portion of the 2005 Decision that was not vacated and remanded. Now that these appeals from the Decision are resolved, a separate order will be issued to address further proceedings in that appeal.