



INTERIOR BOARD OF INDIAN APPEALS

Pueblo of San Felipe v. Southwest Regional Director, Bureau of Indian Affairs

58 IBIA 44 (09/27/2013)



# 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

PUEBLO OF SAN FELIPE,	)	Order Docketing and Dismissing
Appellant,	)	Appeal
	)	
v.	)	
	)	Docket No. IBIA 13-150
SOUTHWEST REGIONAL	)	
DIRECTOR, BUREAU OF INDIAN	)	
AFFAIRS,	)	
Appellee.	)	September 27, 2013

On September 9, 2013, the Board of Indian Appeals (Board) received a notice of appeal from the Pueblo of San Felipe (Appellant). Appellant seeks review of a July 5, 2013, letter (Decision) from the Southwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Decision states that, “[a]s a result of [a Solicitor’s M-Opinion<sup>1</sup>], the boundary [between the Pueblo of San Felipe and the Pueblo of Santa Ana] will require a resurvey as a next step toward resolving” a boundary dispute between the pueblos. The Decision further explains that the “[f]unds for the resurvey have been approved and the Bureau of Land Management [BLM] has indicated it will commence with the resurvey on August 26, 2013.”<sup>2</sup> We docket this appeal, but dismiss it for lack of jurisdiction. To the extent that the Solicitor’s M-Opinion requires a resurvey, the Board lacks jurisdiction to review that decision and, therefore, also lacks jurisdiction to review BIA’s ministerial request that BLM begin the resurvey. And to the extent that the M-Opinion only recommends a resurvey, the Regional Director’s decision to request the resurvey is not a decision that is appealable to the Board. In either case, the Board lacks jurisdiction to consider this appeal.

Appellant characterizes the Regional Director’s letter as “his . . . decision to order a resurvey of the Pueblo of San Felipe’s south boundary.” NOA at 1; *see id.* (“The decision of the Regional Director to order a resurvey . . . is an appealable decision”). But in her

---

<sup>1</sup> Sol. Op., “Boundary Dispute: Pueblo of Santa Ana Petition for Correction of the Survey of the South Boundary of the Pueblo of San Felipe Grant,” M-37027 (June 7, 2013).

<sup>2</sup> It appears that the Regional Director made a formal request to BLM for the resurvey on July 12, 2013. *See* Request for Cadastral Survey at 1 (Notice of Appeal (NOA), Ex. E.).

M-Opinion, the Solicitor states that “a resurvey of the disputed boundary is *necessary* . . . . [T]he BLM, in coordination with the BIA, *needs* to address this overlap and undertake a resurvey of the disputed boundary based on this Opinion.” Sol. Op. at 2 & 15 (emphases added); *see also* Decision (“As a result of th[e Solicitor’s] decision, the boundary will require a resurvey.”). If the Solicitor’s M-Opinion requires BLM, in coordination with BIA, to conduct a resurvey, then the Regional Director’s request that BLM begin the resurvey is only a ministerial decision, and Appellant’s grievance is actually with the M-Opinion.<sup>3</sup> However, we lack jurisdiction to review the M-Opinion. *See Chemehuevi Indian Tribe v. Western Regional Director*, 52 IBIA 192, 209 n.15 (2010), *aff’d*, *Chemehuevi Indian Tribe v. Salazar*, No. 11-4437 SVW (C.D. Cal. Aug. 6, 2012), *appeal pending*, No. 12-56836 (9<sup>th</sup> Cir.). In *Chemehuevi* we said: “The Solicitor’s ‘M-Opinions’ are binding on the Board. 212 Departmental Manual (DM) 13.8(c) (limitation on delegation of authority to Office of Hearings and Appeals); 209 DM 3.2A(11), 3.3 (delegation of authority to Solicitor); *see also* Solicitor’s Opinion M-37003 (Jan. 18, 2001) (Sec. Bruce Babbitt, concurring).” 52 IBIA at 209 n.15.

On the other hand, we do not ignore the Solicitor’s description of her own M-Opinion as “*recommend[ing]* that] a resurvey be conducted.” Letter from Solicitor to Appellant, July 30, 2013, at 1 (emphasis added); *see id.* (“My Opinion recognizes the Department’s authority to conduct a resurvey.”); *see also* Letter from BLM to Appellant, Aug. 26, 2013, at 1 (NOA, Ex. D) (“One of the reasons for the delay in starting the project is to allow time for [BIA] to provide us with an updated survey request.”). Were we to determine that the M-Opinion is only a recommendation to conduct a resurvey, we would still lack jurisdiction to review the Regional Director’s decision because it is a procedural interim action that is not appealable to the Board.

As relevant to this appeal, the Board’s jurisdiction is limited to appeals from *final* actions or decisions of certain BIA officials issued under the regulations in Title 25 of the Code of Federal Regulations. *See* 43 C.F.R. §§ 4.330(a), 4.331; 25 C.F.R. §§ 2.3, 2.4(e); *see also Preckwinkle v. Pacific Regional Director*, 44 IBIA 45, 45 (2006) (Board has jurisdiction to review decisions made by Regional Directors pursuant to 25 C.F.R. Chapter I); *Delmar v. Acting Navajo Regional Director*, 40 IBIA 184, 184 (2005) (discussing scope of the Board’s jurisdiction). Even for decisions made by BIA in a matter governed by Title 25 of the Code of Federal Regulations, the Board has held that the word “‘final’ denotes a dispositive decision on [a] *substantive* matter before BIA, and does not

---

<sup>3</sup> Apparently, during the month of July, Appellant made requests for a stay of the M-Opinion and the Solicitor responded that her “Opinion is final and is not subject to a stay in its application.” Letter from Solicitor to Appellant, July 30, 2013, at 1 (NOA, Ex. C).

contemplate review of an interim and purely procedural ruling.” *Trenton Indian Service Area v. Director, Bureau of Indian Affairs*, 54 IBIA 318, 318 (2012) (citing *Yakama Nation v. Northwest Regional Director*, 47 IBIA 117, 118 (2008)). As made plain in his “decision,” the Regional Director’s request for the resurvey is an intermediate action—“a next step toward resolving”—the boundary dispute, and does not decide the matter. Even Appellant acknowledges that “the adverse [e]ffect may not be evident on the face of the written decision” by the Regional Director. NOA at 1. In fact, as the Decision explains, only *after* BLM completes the resurvey will “a final survey determination [be] issued on the boundary dispute.” Accordingly, we dismiss this appeal for lack of jurisdiction.

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:

\_\_\_\_\_  
// original signed  
Thomas A. Blaser  
Administrative Judge

\_\_\_\_\_  
//original signed  
Steven K. Linscheid  
Chief Administrative Judge