



INTERIOR BOARD OF INDIAN APPEALS

Picayune Rancheria of the Chukchansi Indians; and Morris Reid, Dora Jones, Dixie Jackson, and Harold Hammond v. Pacific Regional Director, Bureau of Indian Affairs

58 IBIA 255 (05/21/2014)

Related Board cases:

58 IBIA 259

62 IBIA 103



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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PICAYUNE RANCHERIA OF THE)	Order Dismissing Appeal
CHUKCHANSI INDIANS; AND)	
MORRIS REID, DORA JONES, DIXIE)	
JACKSON, AND HAROLD)	
HAMMOND,)	
Appellants,)	Docket No. IBIA 13-045
)	
v.)	
)	
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	May 21, 2014

The Picayune Rancheria of the Chukchansi Indians (Tribe),¹ and Morris Reid, Dora Jones, Dixie Jackson, and Harold Hammond, as Tribal Council members (collectively, Appellants),² appealed to the Board of Indian Appeals (Board) from a November 21, 2012, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Decision dismissed an appeal filed by Appellants challenging a series of actions taken by BIA's Central California Agency Superintendent, beginning in January 2012, involving the renewal for Fiscal Year 2012, and the administration of, the Tribe's Indian Self-Determination and Education Assistance Act (ISDA) contract, without issuing

¹ This case involves a tribal dispute. The Board's references to actions taken by or on behalf of tribal officials, tribal entities, or the Tribe, and the Board's use of titles claimed by various individuals, shall not be construed as expressing any view on the underlying merits of the dispute.

² In their notice of appeal, Reid, Jones, Jackson, and Hammond identified themselves as members and a majority of the Picayune Rancheria Tribal Council, who were elected on December 3, 2011. Appellants separately appealed to the Board from various other alleged actions or decisions by the Regional Director that purportedly recognized a "Lewis" faction; or a third group, the "Ayala" faction; or a "Lewis/Ayala" faction, as the Tribal Council. That appeal is also being dismissed today at Appellants' request. *Picayune Rancheria of the Chukchansi Indians v. Pacific Regional Director*, 58 IBIA 259 (2014) (Docket No. IBIA 13-081).

a decision recognizing a governing body of the Tribe. *See* Decision at 1-2. In dismissing the appeal, the Regional Director concluded that the Superintendent's actions did not require a recognition decision and thus there was no recognition decision that was subject to appeal. On appeal to the Board, Appellants contended, *inter alia*, that BIA necessarily had to make such a recognition decision in renewing the ISDA contract for FY 2012, and that by failing to do so BIA was improperly unofficially recognizing the Lewis faction as the governing body or was improperly administering the ISDA contract through unauthorized individuals.³

On March 18, 2014, the Board received from Appellants a "Notice of Dismissal of Appeal" (Notice of Dismissal), in which Appellants state that a tribal election resolved the intra-tribal election dispute, that there are no longer separate "Reid" and "Lewis" factions, and that "it appears to Appellants" that the election rendered this appeal moot. Notice of Dismissal at 2. Appellants' Notice of Dismissal also states that Appellants dismiss the appeal "without prejudice."

In response to Appellants' Notice of Dismissal, the Board issued an order explaining to Appellants that the Board does not have regulations or procedures that permit an appellant whose appeal has been dismissed, whether or not at the appellant's own request, to file (or re-file) the appeal outside the 30-day jurisdictional time period for filing an appeal. *See* 43 C.F.R. § 4.332(a) (30-day time period for filing an appeal); *id.* § 4.310(d)(1) (Board cannot extend the deadline for filing an appeal). Thus, the Board explained that dismissal of an appeal that challenges a BIA regional director's decision on the merits ordinarily would be with prejudice. *See, e.g., State of Oklahoma v. Acting Eastern Oklahoma Regional Director*, 58 IBIA 212 (2014); *Kiowa, Comanche & Apache Intertribal Land Use Committee v. Acting Anadarko Area Director*, 18 IBIA 229, 231 (1990). The Board sought clarification from Appellants whether they still wished to have this appeal dismissed.⁴

Appellants submitted a response in which they contend that "the facts have superseded the actions or inactions of the BIA in response to the election dispute over the December 3, 2011 election." Appellants' Response, Apr. 18, 2014, at 2. Appellants contend that because subsequent tribal events have superseded the prior dispute between the Reid and Lewis factions, the Board no longer has jurisdiction to afford the relief once

³ At the time the Superintendent approved a request to renew the ISDA contract for FY 2012, Reid apparently claimed to have become Chairman of the Tribe.

⁴ The Board also noted that to the extent Appellants contend that the appeal is moot, dismissal with prejudice to Appellant's ability to re-file the same appeal presumably would be of no concern to Appellants.

sought by Appellants—an order directing BIA to issue a decision recognizing a Tribal governing body for government-to-government purposes. *Id.* Appellants contend that their claim has become moot, and thus the Board has been divested of jurisdiction and dismissal for lack of jurisdiction “*must be without prejudice.*” *Id.* Thus, Appellants confirm their intent to have the appeal dismissed, although they seek to set forth their position on the consequences, or lack thereof, of dismissal.

Appellants also contend in their response that they only sought to dismiss “the portion” of the appeal “that requested relief . . . specific to” the Decision, and “[t]here remains available relief outside the Board’s jurisdiction in relation to the larger [tribal] dispute, and Appellants do not dismiss the requests for such available relief.” *Id.* at 3. With respect to the “larger dispute,” Appellants note that they have requested “an order directing the BIA to identify all individuals who are Chukchansi Indians using a reasonable and lawful criteria and call and conduct an election of those identified Chukchansi Indians to elect a new Tribe Council.” *Id.* at 3-4. Acknowledging that this relief and the “larger dispute” involves an enrollment dispute, over which the Board lacks jurisdiction, *see* 43 C.F.R. § 4.330(b)(1), Appellants seek an order from the Board referring the “remaining portions” of the appeal to the Assistant Secretary – Indian Affairs. Appellants’ Response at 4.

Discussion

With respect to Appellants’ mootness argument, the Board first clarifies that it applies the mootness doctrine as a matter of prudence and in the interest of administrative economy, not because the Board’s *jurisdiction* is constrained by the case-or-controversy language in the U.S. Constitution that limits the jurisdictional power of Federal courts, or constrained by equivalent language in the Board’s regulations. *See County of Santa Barbara, California v. Pacific Regional Director*, 58 IBIA 57, 59 (2013); *Van Mechelen v. Northwest Regional Director*, 56 IBIA 111, 112 (2013); *Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005). Except for subject matter limitations, the Board has jurisdiction over timely appeals filed from final decisions of BIA officials. Nevertheless, even in the absence of a true jurisdictional constraint, the Board adheres strongly to the doctrine of mootness, and thus looks to judicial decisions as guidance, including judicial decisions regarding the effect of the dismissal of a case that has become moot.

In the present case, the dismissal of Appellants’ appeal undoubtedly is with prejudice with respect to Appellants’ ability to re-file their appeal from the Decision, because the expiration of the appeal deadline precludes them from doing so, and Appellants do not contend otherwise. Beyond that, however, we leave for another day any issues regarding

the effect, or lack thereof, of Appellants' decision not to pursue their appeal from the Decision, and we express no opinion on whether this appeal, in fact, is moot.⁵

With respect to the “larger issue” that Appellants ask us to refer to the Assistant Secretary, we decline to grant the request. Appellants' right to appeal to the Board was and remains dependent upon a final decision of the Regional Director—in this case the November 21, 2012, Decision. If, as Appellants contend, the Decision has become moot, then Appellants no longer have a right to raise or have adjudicated issues that Appellants may have sought to raise in their appeal from the Decision.⁶ Whether or not the *relief* sought by Appellants in this appeal was outside of the Board's jurisdiction, their right to seek relief was dependent upon a continuing controversy over the Decision that served as the basis for their right of appeal. Having withdrawn the “portion” of their appeal “specific to” the Decision, Appellants are not entitled to have the relief sought serve as some independent “claim” that the Board will refer to the Assistant Secretary.

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.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

⁵ In *Parker v. Southern Plains Regional Director*, 45 IBIA 310, 319 (2007), the Board reasoned that in light of the burden that falls on a party opposing a suggestion of mootness, Parker's suggestion that her own appeal was moot “effectively constitute[ed] a voluntary withdrawal of her appeal.”

Our dismissal of this appeal does not, of course, constitute any determination by the Board on the merits of any issues that might otherwise have been raised in this appeal.

⁶ We express no opinion on whether the larger issues Appellants seek to have addressed were within the scope of this appeal.