



## INTERIOR BOARD OF INDIAN APPEALS

Executive Branch of the Cheyenne and Arapaho Tribes of Oklahoma v.  
Southern Plains Regional Director, Bureau of Indian Affairs

59 IBIA 36 (07/22/2014)

### Related Board cases:

53 IBIA 121  
54 IBIA 117  
54 IBIA 167  
54 IBIA 276  
54 IBIA 332  
59 IBIA 1  
59 IBIA 39  
59 IBIA 97  
62 IBIA 216



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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EXECUTIVE BRANCH OF THE	)	Order Vacating Decision and
CHEYENNE AND ARAPAHO TRIBES	)	Remanding
OF OKLAHOMA	)	
Appellant,	)	
	)	
v.	)	Docket No. IBIA 14-095
	)	
SOUTHERN PLAINS REGIONAL	)	
DIRECTOR, BUREAU OF INDIAN	)	
AFFAIRS,	)	
Appellee.	)	July 22, 2014

The Executive Branch of the Cheyenne and Arapaho Tribes of Oklahoma (Appellant),<sup>1</sup> appealed to the Board of Indian Appeals (Board) from an April 1, 2014, decision (Decision) of the Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), affirming a decision of the Concho Agency Superintendent to deny a request made on behalf of the Cheyenne and Arapaho Tribes (Tribe) to withdraw tribal trust funds held by the Office of Trust Funds Management. On June 13, 2014, the Board received a request from the Regional Director to remand the matter for reconsideration.

The Board allowed responses to the Regional Director's request, advising the parties that a party opposing a voluntary remand request has the burden to provide compelling reasons why the request should not be granted. *See* Order, June 16, 2014; *see also Protect the Peninsula's Future v. Northwest Regional Director*, 57 IBIA 225, 226 (2013), and cases cited therein.

Appellant supports the Regional Director's request for a remand, and asks the Board to vacate the Decision, consistent with the Board's practice in granting BIA requests for voluntary remands. Appellant also asks the Board to remand the matter "with instructions

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<sup>1</sup> This case involves a tribal dispute. The Board's references to actions taken by or on behalf of the Tribe, tribal entities, or tribal officials, 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, or on whether the dispute has been resolved as a matter of tribal law, as Appellant contends.

that the Regional Director: (1) adhere to the policy of federal non-interference by deferring to the recent decisions of the Tribal Supreme Court, and (2) cease further suggestions that a tribal leadership dispute currently exists,” in formulating a new decision on remand. Appellant’s Response to Regional Director’s Request for Remand, July 7, 2014, at 3 (footnote omitted).

Darrell Flyingman, who contends that he is the Governor of the Tribe,<sup>2</sup> filed an objection to the Regional Director’s remand request. Flyingman contends that it is “obvious” that a remand will result in a reversal by the Regional Director of the conclusion reached in the Decision, which will, in turn, simply result in an appeal by Flyingman of the new decision. Flyingman Response and Objection, July 7, 2014, at 2 (unnumbered).<sup>3</sup> Flyingman identifies the objections he would raise in an appeal from a new decision by the Regional Director if, as Flyingman assumes, the Regional Director reverses the conclusion presently embodied in the Decision for which the Regional Director seeks a remand.

As was the case in *United Keetoowah Band of Cherokee Indians v. Eastern Oklahoma Regional Director*, 47 IBIA 87, 88 (2008), we question whether Flyingman even has standing to oppose the motion for a remand. Assuming that Flyingman would be an interested party, if these appeal proceedings were to continue, or is an interested party in the proceedings below, it does not follow that a remand and a return to the proceedings before the Regional Director adversely affect Flyingman in any legally cognizable sense.

But even assuming that Flyingman would have standing to oppose the voluntary remand request, we find his arguments no more convincing—and perhaps less so—than those made by the Cherokee Nation in *United Keetoowah*. The possibility, or even likelihood, that a regional director will reach a different conclusion on reconsideration after a voluntary remand is not a “compelling circumstance” for denying a regional director’s motion for a remand. See *Village of Hobart v. Acting Midwest Regional Director*, 53 IBIA 269, 270 (2011) (“a hallmark of administrative law [is] that, in the course of

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<sup>2</sup> Flyingman contends that he became Governor in January 2014. Appellant Executive Branch contends that Eddie Hamilton and Cornell Sankey became Governor and Lieutenant Governor in January 2014, and that a leadership dispute that existed during the administration of Hamilton’s predecessor has been settled within the Tribe.

<sup>3</sup> A group identifying itself as the “Fifth Legislature” of the Tribe, through Robert J. Lyttle, Esq., filed a response in opposition to the motion for a remand, which raises essentially the same objections to the remand request as those raised by Flyingman. The Fifth Legislature is represented by the same counsel, and thus appears to be composed of the same individuals, as the Appellant Legislature whose appeals were dismissed by the Board for lack of standing in *Bighorse v. Southern Plains Regional Director*, 59 IBIA 1, 4, 18-21 (2014).

governmental decision making, agencies and officials should be able, without penalty, to revisit their decisions”). Engaging in conjecture, as Flyingman does, about what the Regional Director may decide on remand, the merits of such a decision, and the merits of a future appeal by Flyingman, does not meet the compelling-circumstances test for denying the Regional Director an opportunity to reconsider the Decision. Even where, as may be the case here, a party argues that resolution of a dispute rests on a question of law, the Board has recognized a presumptive right by BIA to address the matter in the first instance. *Lubenau v. Acting Northwest Regional Director*, 56 IBIA 45, 46 (2012). As we recognized in *United Keetoowah*, the issues that ultimately may need to be resolved by the Board, if the matter comes before the Board again, may differ depending on the new decision issued by BIA—not only the conclusion, but the reasoning and the supporting record. 47 IBIA at 89.

Thus, we grant the Regional Director’s request for a remand, and, consistent with the Board’s practice, we vacate the Decision before sending the matter back for further consideration. We deny, however, Appellant’s request that we remand the matter with the “instructions” to the Regional Director proposed by Appellant. When the Board vacates a BIA decision and remands a matter, in response to a voluntary remand request from BIA, we do so without deciding, directly or indirectly, issues that may (or may not) implicate the merits of the matter being remanded.

On remand, the Regional Director shall address, as necessary and appropriate, the arguments raised by Appellant in its notice of appeal and in its response in support of the remand, and the arguments raised by Flyingman in his objections to the remand that purport to relate to the merits of the matter.

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 vacates the Decision and remands the matter to the Regional Director for further consideration.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Thomas A. Blaser  
Administrative Judge