



## INTERIOR BOARD OF INDIAN APPEALS

Amber J. Bighorse, Cheyenne and Arapaho Tribal Council, and Governor Janice Prairie Chief-Boswell; Executive Branch of the Cheyenne and Arapaho Tribes, and Housing Authority of the Cheyenne-Arapaho Tribes of Oklahoma; Governor Leslie Wandrie-Harjo and Third Legislature, Cheyenne and Arapaho Tribes v. Southern Plains Regional Director, Bureau of Indian Affairs

Governor Leslie Wandrie-Harjo and Third Legislature v. Southern Plains Regional Director, Bureau of Indian Affairs

Third Legislature v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

59 IBIA 97 (08/18/2014)

Denying Petition for Reconsideration of:  
59 IBIA 1

Related Board cases:  
53 IBIA 121  
54 IBIA 117  
54 IBIA 167  
54 IBIA 276  
54 IBIA 332  
59 IBIA 36  
59 IBIA 39  
62 IBIA 216



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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AMBER J. BIGHORSE, CHEYENNE )  
AND ARAPAHO TRIBAL COUNCIL, )  
AND GOVERNOR JANICE PRAIRIE )  
CHIEF-BOSWELL, )  
Appellants, )  
EXECUTIVE BRANCH OF THE )  
CHEYENNE AND ARAPAHO )  
TRIBES, AND HOUSING )  
AUTHORITY OF THE )  
CHEYENNE-ARAPAHO TRIBES OF )  
OKLAHOMA, )  
Appellants, and )  
GOVERNOR LESLIE WANDRIE- )  
HARJO AND THIRD LEGISLATURE, )  
CHEYENNE AND ARAPAHO TRIBES, )  
Appellants, )  
v. )  
SOUTHERN PLAINS REGIONAL )  
DIRECTOR, BUREAU OF INDIAN )  
AFFAIRS, )  
Appellee. )

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GOVERNOR LESLIE WANDRIE- )  
HARJO and THIRD LEGISLATURE, )  
Appellants, )  
v. )  
SOUTHERN PLAINS REGIONAL )  
DIRECTOR, BUREAU OF INDIAN )  
AFFAIRS, )  
Appellee. )

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THIRD LEGISLATURE, )  
Appellant, )  
v. )  
ACTING SOUTHERN PLAINS )  
REGIONAL DIRECTOR, BUREAU OF )  
INDIAN AFFAIRS, )  
Appellee. )

Order Denying Petition for Reconsideration

Docket No. IBIA 12-020-1

(On petition for reconsideration of decision in Docket Nos. IBIA 12-020, 12-021, 12-051, 12-065, 12-066, 12-123, 12-126, and 13-002)

August 18, 2014

On July 10, 2014, the Board of Indian Appeals (Board) issued a decision in this consolidated set of eight appeals from two tribal factions challenging various decisions of the Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). 59 IBIA 1. The Regional Director's decisions implicated a tribal government dispute within the Cheyenne and Arapaho Tribes (Tribe).

On August 11, 2014, the Board received a timely petition for reconsideration from Darrell Flyingman, pro se, as Governor and on behalf of the Executive Branch of the Tribe.<sup>1</sup> Flyingman seeks reconsideration of the Board's decision, apparently for purposes of correcting what he construes as a determination by the Board on the merits regarding the dueling factions' election proceedings in 2013. Flyingman also seeks reconsideration of the Board's dismissal of Appellant Legislature's appeals for lack of standing,<sup>2</sup> and, although not entirely clear, seeks reconsideration of the Board's decision in the appeals by the Boswell faction from BIA decisions to recognize the composition of the Tribe's Supreme Court and trial court.<sup>3</sup> Finally, it appears that Flyingman seeks reconsideration based on his (mis)understanding that the Board's decision in these eight consolidated appeals also summarily dismissed several other appeals before the Board involving the tribal dispute.

The Board's regulations allow "[a]ny party to the decision" to petition for reconsideration within 30 days of the decision. 43 C.F.R. § 4.315(a). "Reconsideration of a decision of the Board will be granted only in extraordinary circumstances." *Id.* Although Flyingman makes a colorable argument that he should be considered a "party to the decision," at least for certain purposes for filing a petition for reconsideration, we conclude that even if that is the case, he has not demonstrated that extraordinary circumstances exist to warrant reconsideration of our decision.

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<sup>1</sup> Flyingman's Executive Branch consists of himself and Adrianna Dee (Gould) Harris as his Lieutenant Governor, and should not be confused with the Appellant Executive Branch in these appeals, which refers to the Executive Branch headed by Janice Prairie Chief-Boswell (Boswell), and later by Eddie Hamilton who, like Flyingman, contends that he became the Tribe's current Governor in January 2014.

As we stated in the decision, 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.

<sup>2</sup> Docket Nos. IBIA 12-066, 12-126, and 13-002.

<sup>3</sup> Docket Nos. IBIA 12-020 and 12-021.

Flyingman concedes that he was not an original party to these consolidated appeals, but contends that he is a successor in interest to Leslie Wandrie-Harjo (Harjo)<sup>4</sup> as the Governor and also has standing to seek reconsideration as a former member of the Appellant Legislature. We assume for purposes of his petition that Flyingman's claim to be the successor in interest to Harjo is sufficient for us to treat him as a "party" within the meaning of § 4.315. On the other hand, Flyingman's claim that he is a former member of the Appellant Legislature does not make him a "party" because it was the Legislature as a body that was a party, not its members individually.<sup>5</sup>

With respect to our treatment of the competing tribal election proceedings held in the fall of 2013, Flyingman contends that reconsideration is warranted because the Board improperly intruded into tribal affairs, allegedly by interpreting tribal law and "recognize[ing] as undisputed the 2013 election in favor of Eddie Hamilton." Petition for Reconsideration (Petition) at 15. Flyingman's characterization of our decision as stating a legal conclusion or as determining the validity of either of the 2013 election proceedings is mistaken. In our decision, we recognized, as facts, that Hamilton had been elected in one election proceeding and that Flyingman had been declared elected in another election proceeding, and we also recognized that each of them disputed the legal validity of the other's election. The language of our decision does not support Flyingman's contention that we rendered any interpretations of tribal law regarding either faction's 2013 election proceedings.

Although Flyingman apparently also seeks reconsideration of the Board's decision vacating BIA's tribal court composition decisions, it is not entirely clear on what grounds he contends that reconsideration is warranted. Flyingman does not dispute, as the Board found, that the Regional Director's decision on this issue was arbitrary and capricious. *See* Petition at 11 (Regional Director's "failure to make a reasoned decision" on the court composition issue "is reversible error"). Nor does Flyingman contend that the Board erred in finding that the Superintendent had not justified the issuance of his court composition decision. Instead, Flyingman appears to contend that the tribal parties should not suffer the consequences of BIA's flawed decisions, arguing that tribal citizens "relied" on the BIA

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<sup>4</sup> Harjo contended that Boswell was removed from office during Boswell's term and that Harjo had become Governor for the remainder of that term, ending when a successor was inaugurated in January 2014.

<sup>5</sup> For this reason, we are not convinced that Flyingman has standing to seek reconsideration of the Board's decision to dismiss the Appellant Legislature's appeals for lack of standing, and we do not address his contentions on that issue further. We note, however, that Flyingman fails to address the specific grounds upon which the Board dismissed the Legislature's appeals for lack of standing.

decisions for the several year period while the appeals to the Board were pending. *Id.* at 6.<sup>6</sup> We fail to see how this argument presents any extraordinary circumstances for granting reconsideration, particularly when the specific relief sought by Flyingman is vague. *See id.* at 21 (asking the Board to grant reconsideration “and take further actions as necessary”).

It appears that Flyingman’s petition may have been prompted, in part, by his misunderstanding of which appeals were decided in our July 10, 2014, decision. *See* Petition at 20. Only the eight appeals, identified by the docket numbers listed in the caption, were decided. Two other appeals that also involve the tribal dispute were subsequently decided by the Board. *See Executive Branch of the Cheyenne and Arapaho Tribes v. Acting Southern Plains Regional Director*, 59 IBIA 39 (2014); *Executive Branch of the Cheyenne and Arapaho Tribes of Oklahoma v. Southern Plains Regional Director*, 59 IBIA 36 (2014). Three consolidated appeals remain pending. *See Executive Branch of the Cheyenne and Arapaho Tribes of Oklahoma; Fifth Legislature of the Cheyenne and Arapaho Tribes; and Darrell Flyingman v. Acting Southern Plains Regional Director*, Docket Nos. IBIA 14-076, 14-077, and 14-078 (appeals from Regional Director’s Feb. 10, 2014, decision regarding funding of Indian Self-Determination Act contracts with the Tribe).

We have considered all of the arguments raised in Flyingman’s petition for reconsideration, and conclude that Flyingman has not demonstrated that extraordinary circumstances exist for granting reconsideration.

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 denies the petition for reconsideration.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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

<sup>6</sup> It is unclear which tribal citizens purportedly “relied” on the BIA court composition decisions, or in what way, but the parties to these appeals undoubtedly knew that the BIA court composition decisions never became effective, as a matter of law. *See* 25 C.F.R. § 2.6; 43 C.F.R. § 4.314. Early in the proceedings Harjo filed a motion for the Board to place BIA’s court composition decisions into effect, and late in the proceedings Appellant Legislature also made such a motion. Neither motion was granted.