INTERIOR BOARD OF INDIAN APPEALS

Vincent Garcia, Chester Knight, and Floyd Bill v.
Western Regional Director, Bureau of Indian Affairs

62 IBIA 43 (12/14/2015)

Related Board case:
58 IBIA 42

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

VINCENT GARCIA, CHESTER KNIGHT, and FLOYD BILL, Appellants,	)	Order Dismissing Appeal
v.	)	Docket No. IBIA 14-033
WESTERN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	December 14, 2015

Vincent Garcia, Chester Knight, and Floyd Bill (collectively, Appellants), appealed to the Board of Indian Appeals (Board) from a September 19, 2013, decision of the Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA), leaving in place BIA's Eastern Nevada Agency Superintendent's (Superintendent) July 11, 2013, decision denying Garcia's request for clarification and a decision from BIA concerning the cancellation and reissuance by the South Fork Band Council (Band Council) of Bill's and Knight's tribal land assignments on the South Fork Reservation. Appellants seek to obtain BIA's review of the tribal land assignment decisions, as provided for under the constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada (Tribe). Appellants also seek relief from decisions of the Te-Moak Court of Indian Offenses upholding the reissuance of the tribal land assignments. The Regional Director and Superintendent have declined to do so, explaining that tribal land assignment authority resides solely with tribal governments and therefore any recourse for tribal members is with tribal forums, in this case the Band Council, not BIA. For the reasons discussed below, we dismiss this appeal.

Background

This appeal stems from the July 2010 cancellation by the South Fork Band Council of tribal land assignments held by Appellants Knight and Bill. *See* Resolution of the Governing Body of the South Fork Band Indian Reservation (Resolution) No. 10-SF-17, July 6, 2010 (regarding Chester Knight land assignment) and Resolution No. 10-SF-18, July 6, 2010 (regarding Floyd Bill land assignment) (Administrative Record (AR) Tab

17).[1] The resolutions cancelling the land assignments explained that tribal land assignments were for the use of the tribal member head of family and his or her immediate family only, and that the Tribe's Standard Assignment of Land, signed by Appellants Knight and Bill, required that use of the land was to be by "[assignee's] own efforts and the efforts of the members of [assignee's] immediate family." Resolution 10-SF-17 at 1-2 and Resolution 10-SF-18 at 1-2 (citing Standard Assignment of Land § II(b) (AR Tab 17)). Temporary absences for a period not to exceed 2 years could be granted by the Band Council "for a justifiable reason" but required that the assignee contact the Band in person to make the arrangements, and leasing or transferring the land assignment was prohibited except under limited circumstances, and then only with the approval of the Band Council. Resolution 10-SF-17 at 2 and Resolution 10-SF-18 at 2 (citing Standard Assignment of Land § II(d)).

In the resolutions cancelling the land assignments held by Appellants Knight and Bill, the Band Council determined that, in each case, the assignee had been absent from the assignment for more than 3 years, the assigned land had not been put to use by a member of the assignee's immediate family, and that no lease agreement had been presented to the Band Council for approval. Resolution 10-SF-17 at 2 and Resolution 10-SF-18 at 2. In regard to Appellant Bill's land assignment, the Band Council also observed that it had received a notarized Letter of Authorization signed by Bill and "stating that [Bill] had leased his assignment to Mr. Vince Garcia; that he intended to turn his land assignment over to Mr. Garcia[;] and . . . that Mr. Garcia had authority to represent Mr. Bill at the hearing." Resolution 10-SF-18 at 2. Each resolution concluded by announcing cancellation of the land assignment and stated that the resolution would be "submitted forthwith to the Secretary of [the] Interior for any required approval or certification." Resolution 10-SF-17 at 3; Resolution 10-SF-18 at 3. Use of the Tribe's trust land was subsequently made available for application by other qualified tribal members, and the land assignments were reissued to other tribal members following a review of applications and hearing by the Band Council. *See* Resolution 10-SF-24, Sept. 23, 2010 (former Floyd Bill

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[1] The documents located in AR Tab 17 were submitted to the Regional Director on June 30, 2013, as part of Appellant Garcia's appeal from inaction of the Superintendent following Appellant Garcia's June 11, 2013, request for clarification and a decision concerning the cancellation and reissuance of land assignments held by Appellants Knight and Bill. The documents submitted by Appellant Garcia include copies of communications with BIA and tribal officials, as well as copies of council resolutions, tribal court decisions, and tribal land assignment records.

assignment) and Resolution 10-SF-23, Sept. 23, 2010 (former Chester Knight assignment) (AR Tab 17).[2]

Roughly 1 year after the land assignments were issued, the tribal members receiving the land assignments brought suit against Appellants in the Te-Moak Court of Indian Offenses (CFR Court) alleging that the assignments had been properly issued by the Band Council but that Appellants refused to vacate and cease their use of the land, and that Appellants remained in wrongful possession of the land assignments. *See William Turk Knight v. Vince Garcia*,[3] Case No. SF-CV-03-11, Feb. 1, 2012, at 1-2 (unnumbered) (former Chester Knight assignment) (AR Tab 17); *Harley Reynolds v. Vince Garcia*, Case No. SF-CV-04-11, Feb. 1, 2012 at 1-2 (unnumbered) (former Floyd Bill assignment) (AR Tab 17). Following an evidentiary hearing held September 27, 2011, the CFR Court determined that Appellant Garcia, who had used the land "for grazing and hay production" while the land assignments were held by Appellants Knight and Bill, continued to use the land after receiving notice that those land assignments had been cancelled and reissued to other tribal members. *See Knight*, SF-CV-03-11, at 2 (unnumbered); *Reynolds*, SF-CV-04-11, at 2 (unnumbered).

In each case, the CFR Court rejected the defendants' argument that the reissued assignment was invalid for lack of BIA approval. The Court stated that: "[BIA] does not recognize Tribal land assignments as individual trust interests. They are temporary possessory interests. The [BIA] or the Secretary does not approve land assignments on Tribal trust land." *Knight*, SF-CV-03-11, at 2 (unnumbered); *Reynolds*, SF-CV-04-11, at 2 (unnumbered). The Court determined that the plaintiffs had been issued proper land assignments by the Band Council and entered judgments in their favor on the trespass claims. *Knight*, SF-CV-03-11, at 3 (unnumbered); *Reynolds*, SF-CV-04-11, at 3 (unnumbered).

In a June 11, 2013, letter to the BIA Superintendent, Appellant Garcia requested "clarification and a DECISION . . . regarding the ongoing cancellation and reassignment of the Chester Knight and Floyd Bill land assignments on the South Fork Reservation."

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[2] Only page 1 of 2 of Resolution 10-SF-23 (former Chester Knight assignment) is included in the administrative record. The date of the resolution granting the reissuance of the former Chester Knight assignment by the Band Council was supplied as September 23, 2010, in an Order issued by the Te-Moak Court of Indian Offenses. *See William Turk Knight v. Vince Garcia, et al.*, Case No. SF-CV-03-11, Feb. 1, 2012 (AR Tab 17).

[3] The case caption identifies defendants as "Vince Garcia, et al." and refers to defendants as plural throughout the opinion, but only identifies defendant Garcia by name.

Letter from Garcia to Superintendent, June 11, 2013 (AR Tab 16). On June 30, 2013, Appellant Garcia submitted a notice of appeal from inaction of the Superintendent to the Regional Director concerning this matter, apparently pursuant to regulations governing such appeals at 25 C.F.R. § 2.8. *See* Letter from Appellant Garcia to Regional Director, June 30, 2013 (AR Tab 17). On July 11, 2013, the Superintendent responded to Appellant Garcia. *See* Letter from Superintendent to Appellant Garcia, July 11, 2013 (Superintendent's Decision) (AR Tab 16). The Superintendent referred Appellant to "prior correspondence" regarding the cancellation and reassignment of land assignments on the South Fork Reservation and stated that BIA maintained government-to-government relations with tribal councils, that councils made decisions based on tribal sovereignty and self-determination, and that BIA respected the right of tribes to do so. *Id.* at 1. The Superintendent also advised that tribal members dissatisfied with decisions made by tribal entities should address their concerns to "other forums" than BIA.[4] *Id.*

The Regional Director responded in a September 19, 2013, letter to Appellant in which he explained, consistent with the Superintendent's Decision, that "BIA has no role in the land assignment process including both approval and cancellation." Letter from Regional Director to Appellant Garcia, Sept. 19, 2013, at 1 (Decision) (AR Tab 8). In response to the claim that the Superintendent had failed to take action on Appellant's demand for a decision on the Band Council's cancellation of land assignments, the Regional Director noted that since BIA had no role in the land assignment process, "there is no action and conversely no inaction by the BIA regarding your inquiry." *Id.* He concluded that "[a]ll land assignment authority rests with the Tribe or in this case the South Fork Band Council" and noted that "[a]ny concerns you have with this process need to be addressed to the Council for their disposition." *Id.* It is from this Decision that Appellants now appeal. Appellants filed an opening brief and supplemental brief. No other briefs were filed.

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[4] On September 6, 2013, Appellant Garcia wrote the Board, explaining that he was "forwarding this Administrative Appeal from inaction of official" on behalf of Appellants Bill and Knight because he had received no response from the Regional Director to his appeal from inaction of the Superintendent. Letter from Appellant Garcia to Board, Sept. 6, 2013 (AR Tab 11). Appellant Garcia included a copy of the Superintendent's Decision with his appeal. *Id.* On September 26, the Board dismissed Appellant Garcia's appeal as premature and referred the appeal to the Regional Director. 58 IBIA 42 (2013).

Discussion

Central to Appellants' appeal now before the Board are provisions in the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada (Constitution), which Appellants contend require Secretarial approval of certain decisions concerning tribal land assignments. *See* Opening Brief (Br.), Feb. 10, 2014, attachment 1, Constitution. In particular, the Tribe's Constitution at Article 10, section 4 provides: "All leases, permits, assignments or contracts of any kind pertaining to Tribal land or Tribal real property are subject to the approval of the Secretary of the Interior, or his authorized representative." Constitution, art. 10, § 4.

In a letter to Appellant Garcia dated September 22, 2010, the Superintendent stated that "it is the policy of [BIA] that the Secretary or his/her designee shall not approve land assignments on tribal trust land." Letter from Superintendent to Garcia, Sept. 22, 2010, at 1 (AR Tab 17); *see also* Memorandum from Superintendent to Regional Director, June 12, 2013 (AR Tab 13) (stating that Appellant Garcia's land assignment issues had been addressed in a response dated Sept. 22, 2010). He explained that a tribal land assignment does not constitute an individual trust interest and that the holder of a land assignment "only has whatever privileges the tribe allows or recognizes." Letter from Superintendent to Garcia at 1. The Superintendent referenced this correspondence with Appellant Garcia in the Superintendent's Decision, explaining further BIA's position that authority over tribal land assignments rested with tribal institutions, not BIA. *See* Superintendent's Decision at 1.

The Regional Director affirmed the Superintendent's position that "BIA has no role in the land assignment process including both approval and cancellation" in his September 19, 2013, decision. Decision at 1. Rather, the Regional Director continued, "[a]ll land assignment authority rests with the Tribe or in this case the South Fork Band Council . . . ." *Id.* The Regional Director advised Appellants that any concerns they had with the land assignment process needed to be addressed to the Band Council. *Id.*

We agree with the Regional Director that tribal land assignments that convey a temporary right to use tribal land to a tribal member are not subject to Secretarial approval under Federal law. *See Faulkner v. Acting Northwest Regional Director*, 39 IBIA 62, 64 (2003) ("[U]nlike leases of tribal land, tribal land assignments are not subject to BIA approval under Federal law.").[5] The Board has consistently held that "[a]bsent express

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[5] BIA regulations governing leasing of tribal lands and approval of contracts that encumber tribal lands for a period of 7 years or more expressly exclude tribal land assignments from their application. *See* 25 C.F.R. § 162.006(b)(1) (providing that Part 162 does not apply

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authority for BIA to become involved in the assignment of tribal land, this is an internal matter for resolution by the [tribe]." *Candelaria v. Sacramento Area Director*, 27 IBIA 137, 140 (1995), and cases cited there; *see also Faulkner*, 39 IBIA at 64-65 (tribal land assignment issues are to be addressed by the appropriate tribal forum where tribe's constitution made no provision for BIA involvement).

In the matter now before us, "express authority" to approve tribal land assignment decisions made by Band Councils was granted in the Tribe's Constitution and subsequently approved by the Secretary. *See* Constitution, art. 15—Approval (signed Aug. 26, 1982, by the Deputy Assistant Secretary—Indian Affairs), Te-Moak Tribe of Western Shoshone Indians of Nevada, *available at* http://www.temoaktribe.com/temoaktribe.shtml. That limited authority is not sufficient, however, to grant Appellants standing to bring this appeal. Standing is a threshold issue governing an appellant's entitlement to appeal to the Board. *See Bighorse v. Southern Plains Regional Director*, 59 IBIA 1, 4 (2014). Although the Board is not bound by the case or controversy requirement of Article III of the U.S. Constitution, as a matter of prudence and in the interest of administrative economy, the Board limits its jurisdiction to cases in which the appellant can show standing. *See LeCompte v. Acting Great Plains Regional Director*, 45 IBIA 135, 146 (2007); *Skagit County, Washington v. Northwest Regional Director*, 43 IBIA 62, 69 (2006). To evaluate standing, the Board relies on the analysis provided in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Appellants have the burden of showing: (1) an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest has occurred; (2) the injury is causally connected with or fairly traceable to the actions of the appellee and not caused by the independent action of a third party; and (3) that it is likely that the injury will be redressed by a favorable decision. *Lujan*, at 560-61; *Skagit County*, 43 IBIA at 70.

As noted *supra*, any interest Appellants may have in the tribal land assignments are found under tribal, not Federal law. *See also Faulkner,* 39 IBIA at 64. Even if we were to accept that Appellants have a legally protected interest under tribal law and therefore meet the first element of standing, any injury to that putative interest was the result of actions taken by the Band Council pursuant to the Tribe's Constitution, not by BIA. Appellants therefore fail to meet the causation requirement of the second element of standing under

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to "[t]ribal land assignments and similar instruments authorizing uses of tribal land . . . which are covered by . . . tribal laws"); *see also* 25 C.F.R. § 84.004(d) (providing that "[c]ontracts or agreements that convey to tribal members any rights for temporary use of tribal lands, assigned by Indian tribes in accordance with tribal laws or custom" do not require Secretarial approval).

Lujan. *See Skagit County*, 43 IBIA at 71 (holding that causation element of standing failed because alleged injury would result from actions of a third party, the tribe, not BIA action).

Although we need not consider the third element of standing since Appellants have failed to meet their burden under the second element, we do so to demonstrate that BIA's action or inaction neither caused the alleged injury, nor in this case would its action be likely to redress the injury, or provide the relief, that Appellants seek. Appellants rely on Article 10, section 4, of the Tribe's Constitution, which provides that tribal land assignments issued by a Band Council are subject to BIA approval, but it does not follow that BIA was also granted authority to countermand tribal decisions concerning land assignments. Section 1(d) of Article 10 clearly grants the authority to issue and cancel tribal land assignments to the Band Council and lays out detailed rules governing its actions in this regard. Constitution, art. 10, § 1(d)(1)-(7). Section 4 of Article 10 makes certain tribal decisions concerning tribal lands "subject to the approval of the Secretary of the Interior, or his authorized representative," but does not grant to BIA authority to issue or cancel land assignments or, as particularly relevant to Appellants' request for BIA action, to adjudicate intra-tribal disputes concerning such assignments. This authority is retained by tribal forums, including the Band Council and CFR Court. BIA's role under the Tribe's Constitution is limited; it is not adjudicatory. The Regional Director did not err in advising Appellants that any concerns they had with the tribal land assignment process needed to be addressed to the Band Council for resolution. *See* Decision at 1.

Under the third element of standing, redressability, it must be likely rather than merely speculative that the injury will be redressed by a favorable decision from BIA. *Lujan*, 504 U.S. at 561. The Band Council, and the Tribe, are third parties with authority over tribal trust land. Appellants have not shown that BIA approval or disapproval of the Band Council's decisions in this matter would restore or redress any injury they have suffered to interests which are subject to the Tribe's sovereign authority under tribal law. Determining the validity of assignments of tribal land to tribal members is ultimately within the power of the Tribe to decide, not BIA. Appellants fail, therefore, to meet their burden on this element of standing as well. *See Citizens for Safety and Environment v. Acting Northwest Regional Director*, 40 IBIA 87, 94 (2004) (because tribe can take independent action "causing" alleged harm, appellants failed to show BIA action would redress injury); *see also Evitt v. Acting Pacific Regional Director*, 38 IBIA 77, 83 (2002) (appellants failed to show BIA denial of trust petition would prevent tribe's intended use of land).

In their appeal to the Board, Appellants request that the Board vacate CFR Court orders SF-CV-03-11 and SF-CV-04-11, which found Appellants in trespass on the Knight and Bill land assignments following their reissuance. Opening Br. at 9-10; Supplemental Br., Mar. 1, 2014, at 4. Appellants argue that the CFR Court lacked authority to adjudicate an "internal tribal government dispute," *see* Opening Br. at 6, and questioned

whether the magistrate of the court had been properly appointed, *id.* at 7. While Appellant Garcia referred to CFR Court actions in his June 11, 2013, letter to the Superintendent, which was included in Garcia's appeal from inaction to the Regional Director, *see* Notice of Appeal from Inaction, Appellants did not seek any specific remedy from either the Superintendent or the Regional Director, nor did the Regional Director address the CFR Court's orders in his Decision. It is well-established that the scope of the Board's review is limited to those issues properly before the BIA official whose decision has been appealed. *See*, *e.g., Hicks v. Northwest Regional Director*, 59 IBIA 285, 294 (2015). Because relief from the CFR Court's orders was neither before the Regional Director nor addressed in the Decision, it is also outside the scope of review of this Board on appeal. *See* 43 C.F.R. § 4.318 ("An appeal will be limited to those issues that were before the . . . BIA official on review.").

Other demands for BIA action, such as determining whether the Band Council's land assignment termination decisions were consistent with tribal law, are outside the scope of authority accorded by the Constitution to the Secretary and therefore outside the Board's jurisdiction as well. *Burlington Northern Railroad v. Acting Billings Area Director*, 25 IBIA 79, 80 (1993) (where BIA's review authority is found in tribal, not Federal, law, the Board's jurisdiction can be no broader than that of BIA). Moreover, as the Board has stated on numerous occasions, "it does not have authority to review the actions of duly constituted tribal governing bodies." *Hunt v. Aberdeen Area Director*, 27 IBIA 173, 179 (1995); *see also Anderson v. Great Plains Regional Director*, 52 IBIA 327, 334 (2010) ("[I]t is well established that neither the Board nor BIA has jurisdiction over the [t]ribal [c]ouncil.").

Conclusion

Appellants have challenged BIA's refusal to review tribal land assignment decisions made by the Band Council which, Appellants contend, require approval of the Secretary or her authorized representative. However, any interest Appellants may hold in a tribal land assignment is found under tribal, not Federal, law. Moreover, BIA lacks authority under both Federal law and the Tribe's Constitution to issue or cancel assignments of the Tribe's trust lands for use by tribal members. BIA's decision not to review the Band Council's cancellation and reissuance of the tribal land assignments at issue here resulted in no injury to any protected legal interest held by Appellants, nor would BIA's review or approval redress the injury alleged by Appellants because only the Tribe, through the Band Council, holds the authority to issue, and cancel, tribal land assignments. Appellants have therefore failed to meet the minimum requirements for standing to bring this appeal before the Board.

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 Appellants' appeal.

I concur:

// original signed	//original signed
Robert E. Hall	Thomas A. Blaser
Administrative Judge	Administrative Judge