



INTERIOR BOARD OF INDIAN APPEALS

Elem Indian Colony of Pomo Indians, Elem Indian Colony Executive Committee,
David Brown, Adrian John, Natalie Seden Garcia, and Kiuya Brown v.
Central California Agency Superintendent, Bureau of Indian Affairs

63 IBIA 34 (04/27/2016)

Related Board case:
63 IBIA 174



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

ELEM INDIAN COLONY OF POMO)	Order Docketing and Dismissing
INDIANS, ELEM INDIAN COLONY)	Appeal
EXECUTIVE COMMITTEE, DAVID)	
BROWN, ADRIAN JOHN, NATALIE)	
SEDENO GARCIA, AND KIUYA)	
BROWN,)	
Appellants,)	
v.)	Docket No. IBIA 16-059
CENTRAL CALIFORNIA AGENCY)	
SUPERINTENDENT, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	April 27, 2016

On April 22, 2016, the Board of Indian Appeals (Board) received a notice of appeal from the Elem Indian Colony of Pomo Indians (Tribe), the Elem Indian Colony Executive Committee (Executive Committee), David Brown, Adrian John, Natalie Sedeno Garcia, and Kiuya Brown (collectively, Appellants), through Little Fawn Boland, Esq., of Ceiba Legal, LLP.¹ Appellants seek review by the Board, pursuant to 25 C.F.R. § 2.8,² of alleged inaction of the Central California Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), concerning Appellants' request for clarification that a disenrollment

¹ This appeal involves a tribal government dispute. The Board's identification of the Tribe and Executive Committee, in whose name certain pleadings have been filed, shall not be construed as expressing any views on the merits of the dispute or on the authority of counsel to file pleadings on behalf of either the Tribe or the Executive Committee.

² Section 2.8 is an action-prompting mechanism that allows a party, following certain procedural requirements, to request action from a BIA official. 25 C.F.R. § 2.8(a). If the BIA official fails to respond in accordance with § 2.8, the official's inaction becomes appealable to the next level in the administrative appeal process. *Id.* § 2.8(b).

ordinance, no. GCORD08412 (Ordinance), is invalid for lack of Secretarial approval. We dismiss this appeal for lack of jurisdiction.³

Appellants first requested information from the Superintendent regarding the Ordinance on April 1, 2016. Notice of Inaction Appeal and Motion to Enforce Stay, Apr. 21, 2016 (Notice of Appeal), Exhibit (Ex.) A (Email from Boland to Superintendent). On April 4, 2016, the Superintendent responded that “we have no evidence that [the Ordinance] has been submitted to this office for review and approval.” *Id.*, Ex. A (Email from Superintendent to Boland). Later that same day, Appellants requested clarification from the Superintendent that the Ordinance is invalid for lack of Secretarial approval. *Id.*, Ex. A (Email from Boland to Superintendent). On April 8, 2016, Appellants submitted a § 2.8 request to the Superintendent to take action on their original April 4 request for clarification. *Id.*, Ex. B (Letter from Boland to Superintendent). Appellants now seek the Board’s review of the Superintendent’s alleged inaction.

It is well established that the Board does not have jurisdiction over an appeal from alleged inaction by a BIA superintendent. *See, e.g., Simmons v. Central California Agency Superintendent*, 55 IBIA 278, 279 (2012); *Geary v. Central California Agency Superintendent*, 54 IBIA 234, 234 (2012). Before Appellants may file an appeal with the Board regarding alleged inaction by BIA, Appellants must first appeal the Superintendent’s alleged inaction to the Pacific Regional Director. *See* 25 C.F.R. § 2.8(b) (“the official’s inaction shall be appealable to the next official in the process established in this part”); *see also id.* § 2.4(e) (the Board may decide appeals from decisions made by area directors (now regional directors) and certain higher-level officials).

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

³ Appellants have another appeal pending before the Board, Docket No. IBIA 16-037, which is not affected by our dismissal of the present appeal.