



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.
Pacific Regional Director, Bureau of Indian Affairs

63 IBIA 174 (06/23/2016)

Related Board case:
63 IBIA 34



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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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,)	Docket No. IBIA 16-082
)	
v.)	
)	
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	June 23, 2016

On June 20, 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 Seden Garcia, and Kiuya Brown (collectively, Appellants), through Little Fawn Boland, Esq., of Ceiba Legal, LLP.¹ Appellants appeal from the alleged failure of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to respond within 10 days to a May 12, 2016, appeal filed by Appellants from the alleged inaction of BIA’s Central California Agency Superintendent (Superintendent), concerning Appellants’ request for clarification that a disenrollment ordinance, no. GCORD08412 (Ordinance), is invalid for lack of Secretarial approval. Appellants’ appeal to the Board is filed pursuant to 25 C.F.R. § 2.8 (Appeal from inaction of official). We summarily dismiss this appeal as premature.

¹ This appeal involves a tribal government dispute. The Board’s identification of the Tribe and Executive Committee, in whose name the notice of appeal was 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.

Appellants' May 12, 2016, letter to the Regional Director, which is enclosed with their notice of appeal to the Board, purports to be an appeal from inaction of the Superintendent on the subject Ordinance.² Under 25 C.F.R. Part 2, when an appeal is taken to the Regional Director from action (or inaction, as made ripe for appeal pursuant to 25 C.F.R. § 2.8) of a Superintendent, an interested party (including the Superintendent) has 30 days from receipt of the appeal to file an answer with the Regional Director. 25 C.F.R. § 2.11(a) & (c). Thus, assuming that Appellants' appeal to the Regional Director was filed with the Superintendent on May 12, 2016, the Superintendent (and other interested parties) would have had until June 13, 2016, to file an answer. Unless briefing was extended or further briefing allowed, it would appear that the time for pleadings thus expired on or around June 13, 2016.

For appeals to a Regional Director, 25 C.F.R. Part 2 requires that the Regional Director render a written decision "within 60 days after all time for pleadings (including all extensions granted) has expired." *Id.* § 2.19(a); see *Castillo v. Pacific Regional Director*, 41 IBIA 190 (2005). As applied to this case, based on the information contained in the notice of appeal filed with the Board, the Regional Director would have at least until August 12, 2016, to issue a written decision on Appellants' appeal from the Superintendent's April 29, 2016, response. Thus, Appellants' appeal to the Board from the alleged inaction of the Regional Director is premature. See *Quapaw Tribe of Oklahoma v. Acting Eastern Oklahoma Regional Director*, 61 IBIA 118, 120 n.4 (2015) (citing *Steward v. Pacific Regional Director*, 61 IBIA 70, 72 (2015) ("An appellant cannot use § 2.8 to shorten the normal regulatory timelines for a BIA official to decide an appeal.")).

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.³

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

² In fact, on April 29, 2016, the Superintendent *did* take action on Appellants' request, though he did not grant the relief they requested.

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