WILSON HUNTER, JR. and WILLIAM HUNTER, Appellants	: : : :	Order Docketing and Dismissing Appeal
v.	: :	Docket No. IBIA 99-66-A
ACTING NAVAJO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	: : :	June 10, 1999

Appellants Wilson Hunter, Jr., and William Hunter seek review of a March 29, 1999, decision of the Acting Navajo Area Director, Bureau of Indian Affairs (Area Director; BIA), declaring null and void an Agricultural Land Use Permit (ALUP) issued to Appellants by the Natural Resource Manager, Chinle Agency, BIA (Manager) on December 4, 1998. For the reasons discussed below, the Board of Indian Appeals (Board) concludes that it should abstain from exercising jurisdiction over this matter in deference to the tribal forums available to Appellants. It further concludes that expedited consideration of this appeal is appropriate in order to allow Appellants to proceed promptly to those forums.

The Board requested specific information concerning this matter. Copies of the materials requested were provided by the Area Director and by Appellants.

The ALUP covers 17.3 acres of land about 1/2 mile east of the Thunderbird Lodge in Chinle, Arizona. According to the Navajo Area Realty Officer, the land at issue here is identified in BIA records as Tract No. G-29, whose approximate location is in secs. 15 and 22, T. 5 N., R. 10 W., Navajo Baseline Meridian, Apache County, Arizona. The Realty Officer stated that BIA records further show this tract as being within the original area of the Navajo Treaty of 1868, 15 Stat. 677, and within the Canyon De Chelly National Monument, which was authorized by 16 U.S.C. §§ 445-445b. The Realty Officer stated that, because the lands are in fee status, BIA could not provide a title status report as the Board had requested.

The information before the Board shows that there is a controversy as to use rights for this land between Appellants and Theodore Nez. The following facts, however, do not appear to be disputed. In September 1987, Appellants sought an ALUP for 70 acres, which included the 17.3 acres covered by the present ALUP. On September 9, 1987, the Navajo Nation District 10 Grazing Committee (Committee) recommended approval of the application. BIA took no action on the tribal recommendation until 1998.

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The controversy between Appellants and Nez resulted in Appellant William Hunter filing a petition for a temporary restraining order (TRO) against Nez in Navajo Tribal Court. Hunter v. Nez, No. CH-CV-355-98 (Navajo Tribal Ct., Chinle Dist.). On September 18, 1998, Judge LaVerne Johnson issued a TRO. On November 24, 1998, after a hearing on Hunter's request for a preliminary injunction, Judge Johnson dissolved the TRO and denied the requested preliminary injunction. The Judge concluded that Hunter had failed to show that he had a protectable right or interest in the land, and held that he had "an adequate remedy at law to resolve the land dispute; through the District 10, Grazing Committee, although, he failed to file his complaint with the committee." Slip Op. at 3.

With admitted full knowledge of the tribal court order, on December 4, 1998, the Manager approved an ALUP to Appellants covering 17.3 acres.

The Department has authority to issue ALUPs under Article V of the Treaty with the Navajo Tribe of Indians of June 1, 1868, 15 Stat. 667, 668. However, the use of the lands at issue here is primarily a matter of tribal concern. In similar situations, the Board has cited the Federal policy of respect for tribal courts and other tribal decisionmaking forums in abstaining from exercising whatever authority it might have in favor of allowing resolution of intra-tribal disputes within a tribal forum. Risse v. Acting Aberdeen Area Director, 27 IBIA 304 (1995); Simpson v. Acting Billings Area Director, 27 IBIA 300 (1995); Zinke & Trumbo, Ltd. v. Phoenix Area Director, 27 IBIA 105 (1995); Burlington Northern Railroad v. Acting Billings Area Director, 25 IBIA 79 (1993). See also Iowa Mutual Insurance Co. v. LaPlante, 480 U.S. 9 (1987); National Farmers Union Insurance Co. v. Crow Tribe, 471 U.S. 845 (1985); United States v. Plainbull, 957 F.2d 724 (9th Cir. 1992).

The Board holds that, once BIA became aware of a dispute over this land, it should have refrained from taking any action on Appellants' 1987 application, and should instead have allowed tribal decisionmaking forums to resolve this dispute between tribal members.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Acting Navajo Area Director's March 29, 1999, decision is docketed and dismissed in favor of resolution of this intra-tribal dispute by a tribal forum. 1/

Kathryn A. Lynn Chief Administrative Judge	Anita Vogt Administrative Judge

1/ Nez requested that Appellants be required to file an appeal bond. Based on the Board's disposition of this appeal, Nez' request is denied.

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