



INTERIOR BOARD OF INDIAN APPEALS

Reynold Allgood, et al. v. Portland Area Director, Bureau of Indian Affairs

29 IBIA 180 (05/02/1996)

Denying reconsideration of:

29 IBIA 153

Further request for reconsideration:

29 IBIA 190



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

REYNOLD ALLGOOD, et al.,	:	Order Denying Petition for
Appellants	:	Reconsideration and Request
	:	for Sanctions
v.	:	
	:	
PORTLAND AREA DIRECTOR,	:	Docket No. IBIA 96-42-A
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 2, 1996

By order of April 5, 1996, the Board affirmed trespass notices issued on December 12, 1995, by the Portland Area Director, Bureau of Indian Affairs. 29 IBIA 153. The Board modified the trespass notices by postponing the dates upon which appellants would be required to vacate Nez Perce Allotment 1417a until after final action by the Secretary on appellants' request to review the Interior Board of Land Appeals' decision in Lorna L. Boykin, 130 IBLA 301 (1994), upon which the trespass notices were based.

On April 29, 1996, the Board received a filing from some of the Indian landowners-- i.e., Sarah Jabeth; Harrison Jabeth; Victor Parsons; Vicki Jo Parsons Salisbury; Robert Stafford; and Susie Jabeth and her heirs Sheila Taylor, Doneta Higheagle, and Randall Higheagle--through their attorney, Robert J. McCarthy, Esq., Lewiston, Idaho. The landowners object to postponement of the dates for vacating the property, contending that the Board lacks authority to stay its own order. The Board treats the landowners' objection as a petition for reconsideration under 43 CFR 4.315.

As a technical matter, the Board did not stay its order. Rather, as noted above, it modified the Area Director's decision by altering the time periods given in that decision for vacating the property. If the landowners are contending that the Board lacks authority to modify the Area Director's decision in this regard, i.e., by changing the dates upon which certain future actions are to be taken, the Board rejects that contention. Except as limited in 43 CFR 4.330(b), or by regulations concerning specific kinds of decisions, the Board has full authority to review decisions of BIA Area Directors issued under 25 CFR Chapter I, including authority to modify those decisions.

The landowners also request the Board to impose sanctions upon appellants' attorneys for failing to serve the landowners or their attorney with copies of appellants' January 16, 1996, letter to the Secretary requesting review of the Boykin decision. Since that matter is pending before the Secretary, the landowners must address their request for sanctions to the Secretary, not this Board.

In any event, the landowners fail to certify that they served their present filing on the other parties to this appeal, or even upon appellants' attorneys, against whom they seek sanctions. 1/ Thus, the landowners' attorney appears to be guilty of the same sin he accuses appellants' attorneys of committing.

For the reasons discussed, and pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the landowners' petition for reconsideration and request for sanctions are denied.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ The landowners complied with the Board's service and certification requirements, 43 CFR 4.310(b), during earlier proceedings in this matter.