



## INTERIOR BOARD OF INDIAN APPEALS

Yakama Nation v. Northwest Regional Director, Bureau of Indian Affairs

51 IBIA 187 (03/31/2010)

Related Board case:  
51 IBIA 175



## United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS  
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|                            |   |                                     |
|----------------------------|---|-------------------------------------|
| YAKAMA NATION,             | ) | Order Docketing Appeal and Vacating |
| Appellant,                 | ) | Decision                            |
|                            | ) |                                     |
| v.                         | ) |                                     |
|                            | ) |                                     |
| NORTHWEST REGIONAL         | ) | Docket No. IBIA 10-056              |
| DIRECTOR, BUREAU OF INDIAN | ) |                                     |
| AFFAIRS,                   | ) |                                     |
| Appellee.                  | ) | March 31, 2010                      |

The Board of Indian Appeals (Board) received a notice of appeal from the Yakama Nation (Nation), in which the Nation challenges the December 31, 2009, decision (December 31 decision) of the Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA). In his December 31 decision, the Regional Director purports to “amend” his prior decision of November 16, 2009, which had been appealed to the Board earlier in December. *Yakama Nation v. Northwest Regional Director*, No. IBIA 10-040 (*Yakama Nation I*). We docket this appeal, and summarily vacate the Regional Director’s December 31 decision because the Regional Director lacked authority to issue it.

It is well established that when an appeal is filed with the Board from a decision of a BIA official, BIA then loses jurisdiction over the matter that has been appealed. *Winters v. Acting Northwest Regional Director*, 43 IBIA 219, 219 (2006); *Bullcreek v. Western Regional Director*, 39 IBIA 100, 101 (2003); *Hammerberg v. Acting Portland Area Director*, 24 IBIA 78, 78 (1993). This rule maintains order in the processing of appeals and decisions in order to avoid any duplication of effort or inconsistent decisions. It further avoids “the obvious confusion that would result if two offices of the Department [of the Interior] were to exercise jurisdiction over the same matter simultaneously.” *Tonkawa Tribe of Oklahoma v. Acting Anadarko Area Director*, 18 IBIA 370, 371 (1990). When BIA determines that a decision it has issued should be clarified, amended, or withdrawn, and an appeal has already been filed with the Board, BIA has two options: BIA may (1) address the issue(s) it wants to explain or concede in its answer brief to the Board, or (2) formally request that the Board remand the matter to BIA for further consideration, if, as here, BIA intends to issue a different decision. What BIA cannot do is purport to exercise continuing jurisdiction over the issue at the same time that the Board has the matter on its docket.

Here, the Regional Director acknowledged in his December 31 decision that he knew that the Nation had already appealed his November 16 decision. *See* December 31 decision at 1 (unnumbered). Therefore, the Regional Director should have been aware that he lacked jurisdiction to alter or “amend” his November 16 decision, and we vacate the Regional Director’s December 31 decision for lack of jurisdiction. The Regional Director may request a remand from the Board in *Yakama Nation I* in order to issue a new decision.<sup>1</sup>

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 this appeal and summarily vacates the Regional Director’s December 31, 2009, decision on the grounds that the Regional Director was without jurisdiction to render the decision.

I concur:

\_\_\_\_\_  
// original signed  
Debora G. Luther  
Administrative Judge

\_\_\_\_\_  
// original signed  
Sara B. Greenberg  
Administrative Judge\*

\*Interior Board of Land Appeals, sitting by designation.

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<sup>1</sup> In light of our decision, we express no opinion on the merits. However, it is suggested that the parties review the Board’s decision in *Yakama Nation v. Northwest Regional Director*, 51 IBIA 175 (2010).