



INTERIOR BOARD OF INDIAN APPEALS

Will Graven and Memorial Airfield Corporation v. Western Regional Director,
Bureau of Indian Affairs

54 IBIA 171 (12/08/2011)

Related Board case:

53 IBIA 27

53 IBIA 87

59 IBIA 202



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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WILL GRAVEN AND MEMORIAL)	Order Dismissing Appeals
AIRFIELD CORPORATION,)	
Appellants,)	
)	
v.)	Docket Nos. IBIA 11-047
)	11-079
WESTERN REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	December 8, 2011

Will Graven and Memorial Airfield Corporation (MAC) (collectively, Appellants) appealed to the Board of Indian Appeals (Board) from inaction by the Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA), after the Regional Director failed to issue a decision on the merits in response to Appellants' separate demands for a decision pursuant to 25 C.F.R. § 2.8 (appeal from inaction of official).¹ Both of the § 2.8 demands related to a dispute involving a master lease of Indian trust lands that collectively constitute the Memorial Airfield located on the Gila River Reservation.² Graven demanded a decision from BIA concerning his eviction in 2007 from Memorial Airfield property, to which he claimed to hold a sublease under the master lease. MAC, through its Acting Chairman, Lynford Wilson, demanded that BIA take action to protect the interests of MAC, as holder of the master lease for the Memorial Airfield lands, and the interests of the individual landowners, including Wilson, who leased their property to MAC.³

On November 17, 2011, the Regional Director issued a decision on the merits in response to Appellants' demands for action. Because the Regional Director has now

¹ Graven's appeal was assigned Docket No. IBIA 11-047; MAC's appeal was assigned Docket No. 11-079. The Board consolidated the appeals.

² Memorial Airfield apparently consists of approximately 1350 acres, most of which is individually owned allotted trust lands.

³ MAC's present status is a matter of dispute. The Board expresses no opinion on any issues regarding MAC's status.

responded to Appellants' requests for action by issuing a decision, and because the Board's jurisdiction in a § 2.8 appeal is limited to reviewing alleged inaction — i.e., failure to issue a decision — the Regional Director's decision renders these appeals moot. *See Mullins v. Northwest Regional Director*, 52 IBIA 231, 231 (2010) (Regional Director's decision responding to appellants' request for action rendered § 2.8 appeal moot), and cases cited therein.⁴ To the extent that either or both Appellants are dissatisfied with the Regional Director's decision, their recourse is to file a timely appeal with the Board for review of the merits of the action taken by the Regional Director through his decision. *Koontz v. Northwest Regional Director*, 51 IBIA 269, 270 (2010).⁵

Because Appellants have now received the relief available to them in these § 2.8 appeals — a decision from the Regional Director on the merits — we conclude that Appellants' appeals are moot.

Therefore, pursuant to the authority delegated to the Board by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses these appeals as moot.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁴ The Board's jurisdiction in a § 2.8 appeal does not encompass a review of the underlying merits of the dispute, nor does it divest BIA of jurisdiction to issue a decision on the merits in response to the § 2.8 demand for action from which an appeal from inaction has been taken. *See Trenton Indian Service Area v. Great Plains Regional Director*, 51 IBIA 130, 130-31 (2010); *Forest County Potawatomi Community v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 265-66 (2009).

⁵ On November 30 and December 1, 2011, the Board received from Graven objections to the Regional Director's decision, in which Graven asks the Board to vacate the decision, assume jurisdiction over the merits, and issue a proper decision. The Board accepts Graven's objections as an appeal from the decision, and our dismissal of his § 2.8 appeal as moot does not affect the pendency of his new appeal from the Regional Director's decision.