



INTERIOR BOARD OF INDIAN APPEALS

Ernest Merrifield v. Acting Pacific Regional Director, Bureau of Indian Affairs

62 IBIA 52 (12/17/2015)

Related Board case:
64 IBIA 12



United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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ERNEST MERRIFIELD,)	Order Docketing Appeal, Vacating
Appellant,)	Decision, and Remanding
)	
v.)	
)	Docket No. IBIA 16-018
ACTING PACIFIC REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	December 17, 2015

Ernest Merrifield (Appellant) appealed to the Board of Indian Appeals (Board) from an October 9, 2015, decision (Decision) of the Acting Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), accepting a recommendation from BIA's Central California Agency Superintendent for a proposed partition of Round Valley Allotment No. 227, consisting of 9.339 acres, more or less. On November 20, 2015, the Board issued a pre-docketing notice and order for the administrative record.¹

On December 11, 2015, the Board received a motion from the Regional Director to have the Decision vacated and the matter remanded for further consideration and issuance of a new decision.

As a general rule, the Board will grant a BIA regional director's motion for a voluntary remand. *See, e.g., Froelich v. Acting Great Plains Regional Director*, 51 IBIA 173, 173 (2010); *Birdbear v. Acting Great Plains Regional Director*, 51 IBIA 273, 273 (2010). The Board has recognized that a BIA official has a broad right to seek a remand to permit further consideration of a matter and issuance of a new decision. *Protect the Peninsula's Future v. Northwest Regional Director*, 57 IBIA 225, 226 (2013), and cases cited therein. We have held that BIA need not justify a request for a voluntary remand. *Froelich*, 51 IBIA at 173.

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 the appeal, grants the

¹ Our decision renders the order for the record moot.

Regional Director's motion, vacates the Decision, and remands the matter to the Regional Director for further consideration and issuance of a new decision.²

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

² On November 30, 2015, the Board received a letter from Karen Burdick, an interested party and co-owner of Round Valley Allotment No. 227, arguing that Appellant's appeal is untimely. Because timeliness is a jurisdictional issue, we address Burdick's letter. Burdick notes that the Decision was issued on October 9, 2015, and the Board did not receive Appellant's appeal until more than 30 days later, on November 17, 2015. Thus, according to Burdick, the appeal is untimely. But the 30 day deadline for appealing to the Board, *see* 43 C.F.R. § 4.332(a), is triggered by an appellant's *receipt* of the decision being appealed, which in this case, was October 14, 2015, as shown on the U.S. Postal Service's track-and-confirm service for certified mail on its website. And the date of filing, for a notice of appeal that is mailed to the Board, is the *date of mailing*, which in this case was November 12, 2015, as shown by the postmark. Thus, Appellant filed the appeal within 30 days from the date he received the decision, and the appeal is timely.