



INTERIOR BOARD OF INDIAN APPEALS

Benson-Montin-Greer Drilling Corp. v. Acting Albuquerque Area Director,
Bureau of Indian Affairs

7 IBIA 67 (05/31/1978)

Judicial review of this case:

Dismissed, *Benson-Montin-Greer Drilling Corp. v. Andrus*, No. 78-468
(D.N.M. June 30, 1978)



United States Department of the Interior

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

ADMINISTRATIVE APPEAL OF
BENSON-MONTIN-GREER DRILLING CORPORATION
v.
ACTING AREA DIRECTOR, ALBUQUERQUE AREA OFFICE,
BUREAU OF INDIAN AFFAIRS

IBIA 78-13-A

Decided May 31, 1978

Appeal from the decision of the Acting Area Director affirming Superintendent's cancellation of Jicarilla Tribal Oil and Gas Lease Contract Nos. 235 and 238 for failure to perfect appeal during the required 30-day period.

Docketed and Affirmed

1. Bureau of Indian Affairs: Administrative Appeals: Filing:
Mandatory Time Limit

The appellant shall file his appeal with the Area Director or the Assistant Secretary (formerly Commissioner) for Indian Affairs within 30 days after filing of the notice of appeal in the office of the official who made the decision being appealed.

APPEARANCES: Cooney and Curtis, by James B. Cooney, Esq., for appellant, Benson-Montin-Greer Drilling Corporation.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Acting Superintendent, Jicarilla Agency, Dulce, New Mexico, issued a decision on March 24, 1977, terminating Jicarilla Tribal Oil and Gas Lease Contract Nos. 235 and 238 for failure to produce oil and gas in paying quantities as required by Clause 1 of said leases. Notice of appeal was timely filed by Benson-Montin-Greer Drilling Corporation (hereinafter referred to as BMG) on April 25, 1977. However, because the appeal was not perfected within the 30-day period required under section 2.10(a) of Title 25 of the Code of Federal Regulations, the Superintendent, Jicarilla Agency, by letter of July 11, 1977, at the behest of the Area Director, Albuquerque Area Office, advised BMG that the lease terminations were now final.

In response to BMG's letter to the Superintendent, Jicarilla Agency, advising that the Superintendent's letter of July 11, 1977, referred to, supra, did not purport to be a decision of the Area Director, the Acting Director by letter of August 11, 1977, advised BMG that the cancellation of said leases was now final because of failure to perfect its appeal.

BMG appealed to the Commissioner of Indian Affairs by letter of October 12, 1977. The appeal was referred to the Board of Indian Appeals for disposition pursuant to 25 CFR 2.19(b).

Section 2.10(a) of Title 25 of the Code of Federal Regulations, among other things, states:

* * * The appellant shall file his appeal with the Area Director or the Commissioner within 30 days after filing of the notice of appeal in the office of the official who made the decision being appealed.

In substance, the appellant contends that the time for perfecting the appeal was tolled because of a purported geological study that was to be undertaken by the Jicarilla Agency; that the Jicarilla Agency was acting for and on behalf of the Area Director; and by law the Area Director and the Area Office were charged with knowledge of these negotiations. The record as presently constituted in no way substantiates appellant's allegations.

Assuming a purported geological study was in fact undertaken, we are of the opinion that this would not in and of itself toll the time for perfecting the appeal short of a written expression of same from the Area Director.

At any rate, the Board is not persuaded by the appellant's arguments.

Accordingly, the appeal should be dismissed and the decision of the Acting Director affirmed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the decision of the Acting Area Director is AFFIRMED and the appeal is DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Administrative Judge

//original signed
Alexander H. Wilson
Chief Administrative Judge