



INTERIOR BOARD OF INDIAN APPEALS

Emory Tendoy, et al.; and Ernestine Broncho Werelus, et al.
v. Portland Area Director, Bureau of Indian Affairs

30 IBIA 224 (03/04/1997)

Reconsideration denied:
30 IBIA 269

Related Board cases:
32 IBIA 18
33 IBIA 303



United States Department of the Interior

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

EMORY TENDROY, et al.,	:	Order Docketing Appeals,
Appellants	:	Vacating Decision, and
	:	Remanding Matter to Area
ERNESTINE BRONCHO WERELUS, et al.,	:	Director
Appellants	:	
	:	
v.	:	Docket Nos. IBIA 97-96-A
	:	IBIA 97-97-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 4, 1997

These are appeals from a December 31, 1996, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), which interpreted Lease 91-53 on the Fort Hall Reservation to allow grazing as well as dry farming. The Area Director's decision reversed a September 12, 1996, decision of the Superintendent, Fort Hall Agency, BIA, holding that the lease did not include grazing privileges.

Appellants in Docket No. IBIA 97-96-A are Emory Tendoy, Lena Stone, Alfreda Denny, Mary Warren, and Gladys Mosho. Appellants in Docket No. 97-97-A are Ernestine Broncho Werelus, Carlino Broncho, Sr., Delphine A. Eagle, Louise Johnson, and Delphine D. Martinez. All appellants are lessors under the lease. In their notices of appeal and statements of reasons, appellants contended that they were not informed that an appeal of the Superintendent's decision had been made to the Area Director and were not given an opportunity to participate in the proceedings before the Area Director, even though their interests were affected by his decision. Appellants also challenged the Area Director's decision on the merits.

The Board issued a pre-docketing notice in these appeals on February 4, 1997, requesting the administrative record. On February 27, 1997, the Board received a request for remand from the Area Director. The Area Director acknowledges that no notice was provided to the lessors when this matter was pending before him. Further, he states: "If the remand is issued, all interested parties will be afforded an opportunity to participate as provided in the regulations prior to this office issuing a new decision."

Appellants object to the Area Director's request for remand. They contend that a remand will result in needless delay because, among other things, the Area Director's request fails to address certain of the arguments appellants made in their notice of appeal and statement of reasons. Appellants further contend that, "[u]nless the Area Director is willing to indicate that he is going to reverse his substantive decision on the interpretation of the lease terms, a remand should not be granted."

The Area Director has not stated that he will reverse his earlier decision. He has, however, indicated that he will consider appellants' arguments, as well as those of the lessee, before he issues a new decision. Under these circumstances, the Board finds that it would be in the interest of all parties to remand this matter to the Area Director for further proceedings and issuance of a new decision. If any party disagrees with the Area Director's new decision, he/she may appeal it to the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed, the Area Director's December 31, 1996, decision is vacated, and this matter is remanded to him for further proceedings.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge