



INTERIOR BOARD OF INDIAN APPEALS

Arnie and Ramona Guimont; Todd Hall; Edwin A. Hall; Tex G. Hall; Pete Fredericks; Dennis Huber; Mike Huber; Tom Breuer; Melvin J. Johnson; Ethan Hall; Morgan Fettig; Gabriel L. Fettig; Howard Fettig; Casey Fredericks; Shane Johnson; Edward S. Danks, Sr.; Edward S. Danks, Jr.; Claryca Mandan; Keith Mandan, Shasta Mandan, and Forest Mandan; and Leo N. Baker v. Acting Great Plains Regional Director, Bureau of Indian Affairs

40 IBIA 47 (07/08/2004)

Related Board case:

35 IBIA 266

Judicial review of this case:

Dismissed for failure to exhaust administrative remedies,

Fort Berthold Land and Livestock Ass'n v. Anderson,
361 F. Supp. 2d 1045 (D.N.D. 2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ARNIE AND RAMONA GUIMONT;	:	Order Vacating Decision and Remanding
TODD HALL;	:	for Further Consideration
EDWIN A. HALL;	:	
TEX G. HALL;	:	Docket Nos. IBIA 04-41-A
PETE FREDERICKS;	:	04-42-A
DENNIS HUBER;	:	04-43-A
MIKE HUBER;	:	
TOM BREUER;	:	04-46-A
MELVIN J. JOHNSON;	:	04-47-A
ETHAN HALL;	:	
MORGAN FETTIG;	:	04-49-A
GABRIEL L. FETTIG;	:	04-50-A
HOWARD FETTIG;	:	
CASEY FREDERICKS;	:	04-52-A
SHANE JOHNSON;	:	04-53-A
EDWARD S. DANKS, SR.;	:	04-54-A
EDWARD S. DANKS, JR.;	:	
CLARYCA MANDAN;	:	04-58-A
KEITH MANDAN, SHASTA MANDAN,	:	04-59-A
AND FOREST MANDAN; and	:	04-60-A
LEO N. BAKER,	:	04-61-A
Appellants,	:	04-62-A
	:	04-63-A
v.	:	04-64-A
	:	04-65-A
ACTING GREAT PLAINS REGIONAL	:	04-66-A
DIRECTOR, BUREAU OF INDIAN	:	04-67-A
AFFAIRS,	:	
Appellee.	:	
	:	July 8, 2004

These consolidated appeals seek review of a December 16, 2003, decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director), concerning the minimum grazing rental rate for allotted lands on the Fort Berthold Reservation. In Fort Berthold Land and Livestock Association v. Great Plains Regional Director, 35 IBIA 266 (2000), the Board of Indian Appeals (Board) vacated and remanded an earlier decision of the

Regional Director increasing the minimum annual grazing rental rate for the Reservation. The Regional Director's December 16, 2003, decision was issued in response to that remand. For the reasons discussed below, the Board grants a request from the Regional Director to vacate the December 16, 2003, decision and remand the matter for further consideration.

On June 30, 2004, the Board received a request from Department Counsel, on behalf of the Regional Director, requesting that the matter be remanded to the Regional Director for further consideration and compliance with the Board's instructions in Fort Berthold Land and Livestock Association. The Regional Director's request recognizes the length of time that has elapsed since the Board's previous remand, and states that issuing a new decision will be a priority upon remand.

Appellants and interested party Fort Berthold Land and Livestock Association (collectively "Appellants"), through counsel, filed a response to the Regional Director's request, strongly objecting to a remand. Appellants contend that the Regional Director ignored the Board's prior decision, and that, for several reasons, the Regional Director is precluded from imposing any retroactive grazing rental rate increase. Appellants argue that a remand would be inefficient and wasteful both for Appellants and for this Board. Appellants further contend that no remand should be made unless they are afforded an opportunity to research whether the Equal Access to Justice Act (EAJA) or a similar rule or statute would provide a sanction for the Regional Director's delay or authorize reimbursement for expenses incurred by Appellants.

After considering Appellants' objections, the Board grants the Regional Director's request that the matter be vacated and remanded for further consideration. The Board disagrees with Appellants that there is no point in remanding the matter without a ruling from the Board on the merits. The Regional Director recognizes that further consideration is necessary, and it is therefore now appropriate for the Regional Director to have the first opportunity to consider and address Appellants' arguments, and also to ensure that any new decision fully complies with the Board's instructions in Fort Berthold Land and Livestock Association. On remand, the Regional Director shall consider the arguments raised by Appellants in their notices of appeal and their objection to a remand, with respect to a rental rate adjustment. ^{1/} The Regional Director shall also afford Appellants a reasonable opportunity to present any additional arguments or evidence, so that the issues may be fully considered and addressed in any new decision issued by the Regional Director.

No useful purpose would be served by delaying a remand in order to allow Appellants an opportunity to research whether EAJA or other statutes might authorize them to make a

^{1/} The Regional Director's request for a remand was filed shortly before Appellants' opening brief would have been due. Upon receipt of the Regional Director's request for a remand and of Appellants' objections, the Board stayed the briefing schedule.

claim for attorney fees, expenses, or sanctions. If Appellants believe they are entitled to an award of attorney fees, expenses, or sanctions, associated with this appeal, they may submit an application to the Board, identifying the law they believe is applicable. If Appellants choose to file an application under EAJA, however, they must address the Department's regulations implementing EAJA, 43 C.F.R. §§ 4.601 - 4.619, and prior Board decisions interpreting those regulations. See, e.g., Jackson County, Oregon v. Phoenix Area Director, 31 IBIA 271 (1997); Abbott v. Billings Area Director, 21 IBIA 137 (1992).

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 vacates the Regional Director's December 16, 2003, decision, and remands the matter for further consideration consistent with this decision.

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Colette J. Winston
Administrative Judge