



## INTERIOR BOARD OF INDIAN APPEALS

Nelvette Siemion, d/b/a White Buffalo Ranch v. Rocky Mountain Regional Director,  
Bureau of Indian Affairs

48 IBIA 249 (02/05/2009)

Motion for reconsideration denied:

49 IBIA 194

Judicial Review:

Dismissed without prejudice for failure to prosecute, *Siemion v. U.S. Dept. of the Interior*  
CV-08-74-BLG-RFC (D. Mont., Dec. 28, 2009)

Refiled and affirmed, *Siemion v. Stewert*, CV-11-120-RFC-CSO (D. Mont. May 25, 2012)



# 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

|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| NELVETTE SIEMION, d/b/a WHITE | ) | Order Affirming Decision (Docket  |
| BUFFALO RANCH,                | ) | No. IBIA 08-134-A) and Dismissing |
| Appellant,                    | ) | Appeal (Docket No. IBIA 09-14-A)  |
|                               | ) |                                   |
| v.                            | ) |                                   |
|                               | ) |                                   |
| ROCKY MOUNTAIN REGIONAL       | ) | Docket Nos. IBIA 08-134-A         |
| DIRECTOR, BUREAU OF           | ) | IBIA 09-14-A                      |
| INDIAN AFFAIRS,               | ) |                                   |
| Appellee.                     | ) | February 5, 2009                  |

Appellant Nelvette Siemion, d/b/a White Buffalo Ranch, seeks review by the Board of Indian Appeals (Board) of a July 30, 2008, decision of the Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA), in which he rejected Appellant’s challenges to 21 leases of Tribal lands allegedly awarded by the Crow Agency Superintendent (Superintendent), BIA, in 2006 and 2007.<sup>1</sup> Docket No. IBIA 08-134-A. The lands at issue are all owned by the Crow Tribe (Tribe), which awards leases for Tribal lands. Because the Tribe, not BIA, awards leases for Tribal lands, the Regional Director denied Appellant’s request to “reverse” the Superintendent’s decision and “reinstate” her leases. We docket this appeal and affirm the Regional Director’s July 30, 2008, decision because Appellant’s remedy lies with the Tribe and not with BIA.

In Docket No. IBIA 09-14-A, Appellant appeals from the September 5, 2008, decision of the Acting Rocky Mountain Regional Director,<sup>2</sup> BIA, in which he affirmed the

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<sup>1</sup> The leases at issue are not in the Administrative Record. However, Appellant identifies the individual parcels subject to the 21 leases as Allotment Nos. T-129-A, T-231-F, T-313-A, T-364-C-D-E, T-431, T-1336-B, T-1753, T-1795-H, T-1796-C, T-1915-C, T-2331A-B-C-D, T-2331-D, T-2337A, T-3097, T-3376, T-3392-A-B, T-3394-C-D-E, T-3398, T-3532-A, T-6175-J, and T-6178-E on the Crow Reservation. Three of the leases, for Allotment Nos. T-1753, T-3097, and T-6178-E, were readvertised for lease in 2008.

<sup>2</sup> For ease of reference, we will refer in our decision to both the Acting Rocky Mountain Regional Director and the Rocky Mountain Regional Director as “Regional Director.”

decision of the Superintendent to assess trespass penalties, damages, and costs against Appellant in connection with Appellant's allegedly unauthorized use of trust lands. We docket this appeal, but dismiss it for lack of jurisdiction because it is untimely.

## Background

### 1. Facts

Appellant represents that she is a member of the Tribe, and that she and her husband have been in business since 1969 as the White Buffalo Ranch, raising bison on the Crow Reservation. Appellant further represents that their livestock are grazed on their own property as well as on leased individual and Tribal grazing lands.

On March 22, 2006, at the request of and on behalf of the Tribe, BIA advertised the sale of leases of 194 tracts of Tribal farming and grazing lands, including lands previously subject to leases held by Appellant that apparently had expired or were about to expire.<sup>3</sup> According to the advertisement issued by BIA, the last day to submit bids was April 24, 2006. The advertisement expressly noted that the Tribe "will be responsible for the awarding of the tracts in the advertisement," Notice of Sale, No. 2006-1, Mar. 22, 2006, at unpaginated 2, and that "[t]he Superintendent reserves the right to reject any and all bids and to waive informality or technical defect in the bids received whenever such rejection or waiver is in the interest of the Crow Tribe and the United States," *id.* at unpaginated 3. Finally, the advertisement provided notice of a right to appeal within the Tribe from the Tribe's decisions to award leases. *Id.*<sup>4</sup> An addendum to the advertisement, in which leases for additional tracts were offered for sale, advised that "ALL BIDS MUST MEET (FRV) FAIR RENTAL VALUE." Addendum to Notice of Sale No. 2006-1, Apr. 14, 2006, at unpaginated 1.<sup>5</sup> The leases to be awarded pursuant to the advertisement would commence

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<sup>3</sup> The record does not contain copies of the leases for which Appellant was the lessee and which were advertised for sale in 2006.

<sup>4</sup> In its entirety, the notice of appeal rights states: "In cases of disagreement with the Crow Tribal Executive Branch decision in awarding of leases, participating bidders shall have a right to appeal the decision by submitting a written appeal within sixty (60) days from the date the Executive Branch files the awarding letter with [BIA]."

<sup>5</sup> The record contains a copy of an electronic message (email) that suggests that the FRV for a lease in 2005 was \$3.00 per acre. However, we cannot determine whether this amount was also the FRV for the 2006-1 lease sale and the record does not contain any other mention of the FRV.

on November 1, 2006, and run for 5 years. On April 14, 2006, an additional 24 tracts were added to the lease sale, but the deadline for submitting bids remained April 24, 2006.

Appellant submitted bids and bid bonds for leases for 11 of the original 194 tracts that were advertised on March 22 and for 10 of the 24 tracts subsequently added to the lease sale. Appellant's bid sheets are dated April 24, 2006. The record reflects that on April 24, 2006, BIA transmitted the bids to the Tribe for its consideration and decision. On May 5, 2006, BIA received a bid sheet dated May 3, 2006, from another bidder, William He Does It, with bids for leases for 8 of the 24 additional tracts that were added to the sale.<sup>6</sup> Appellant's April 24 bid sheet included bids on the same eight tracts. BIA forwarded the late-submitted bid sheet to the Tribe.

Appellant claims that in May 2008, she learned for the first time from the Superintendent that the Tribe had not awarded leases to her for any of the 21 tracts on which she bid in 2006. On May 28, 2008, Appellant appealed to the Regional Director from the Superintendent's purported decisions to "award" leases for these tracts to lessees other than Appellant, 4 in 2007 and 17 in 2006.<sup>7</sup> She argued that BIA failed to adhere to "the rules and regulations relating to bid leasing" and sought to have the Superintendent's "decision" reversed, and the leases declared void and readvertised.

Meanwhile, and according to the record, BIA repeatedly informed Appellant between 2004 and 2008 that her bison were trespassing on trust lands. It is unclear from the record what, if any, action Appellant took in response to these trespass notices. Matters apparently came to a head when, on May 12, 2008, BIA posted public notice of its immediate seizure and impounding of approximately 200 bison of "undetermined

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<sup>6</sup> The Administrative Record also contains what appear to be work sheets on which the names of bidders and their bid amounts are listed. Because He Does It is shown as having bid on additional parcels beyond the eight reflected on the bid sheet in the record, it appears that he may have submitted more than one bid sheet. However, only the one bid sheet from He Does It is found in the record.

<sup>7</sup> Because there are no leases or letters awarding or approving leases in the administrative record, it is not clear whether or to whom leases were awarded for those tracts on which Appellant bid nor do we know when or even if the leases were approved by BIA after being awarded by the Tribe. For purposes of our decision, we accept Appellant's assertions that none of her bids was accepted and that other individuals were awarded the leases for each of the 21 tracts on which she bid.

ownership [with] no brands.” It subsequently was determined that the bison belonged to Appellant.

When Appellant sought the release of her livestock, she was informed that she would have to remit penalties and costs associated with the trespass and impoundment. Appellant appealed to the Regional Director from the Superintendent’s decision to charge her with trespass, to impound her livestock, and to demand payment of penalties and costs.

## 2. Proceedings Before the Regional Director

In his decision of July 30, 2008, the Regional Director rejected Appellant’s appeal from the Superintendent’s purported decision to award the challenged leases and explained:

The Superintendent does not have the authority to grant or award leases on Tribal lands. Rather, the Tribe has the exclusive right to grant and/or award leases on Tribal lands pursuant to 25 CFR 162.207. Nor does the BIA have any authority to monitor or ensure that the Tribe follows [its] own laws or ordinances regarding the granting or awarding of leases on Tribal lands.

In fact, the Tribe has developed a process wherein your clients could have appealed the decision of awarding leases to their Land Resources Committee in accordance with Resolution No. 2001-37(16).

Therefore, your request to our office to reverse a decision made by the Superintendent awarding leases on Tribal lands is denied. The Superintendent did not award or grant any leases on any Tribal lands as this action was done by the Crow Tribe, subject to the Superintendent’s approval.

In his subsequent decision of September 5, 2008, the Regional Director also rejected Appellant’s appeal from the Superintendent’s decision to charge Appellant with livestock trespass and impose penalties and costs. Both of the Regional Director’s decisions contained appeal instructions that informed Appellant that she could appeal by filing a notice of appeal directly with the Board within 30 days from her receipt of the Regional Director’s decision. The instructions also included the Board’s correct address. Appellant avers that she received the Regional Director’s September 5, 2008, decision on September 8, 2008.

### 3. Proceedings Before the Board

Appellant filed a timely notice of appeal to the Board from the Regional Director's July 30 decision. After it received the administrative record from the Regional Director, the Board issued an order to show cause why the Regional Director's July 30, 2008, decision should not be summarily affirmed because, as the Regional Director observed, the Tribe selected the lessees and awarded the leases, not the Superintendent.

As to the Regional Director's September 5, 2008, decision, the Board did not receive a notice of appeal from Appellant. However, Appellant did send her appeal notice to the Regional Director and he, in turn, delivered his copy to the Board where it was received on October 15, 2008.<sup>8</sup> On October 30, 2008, the Board issued an order to show cause why the appeal should not be dismissed as untimely because it was received more than 30 days after Appellant received the Regional Director's September 5, 2008, decision. *See* 43 C.F.R. § 4.332(a).

Appellant submitted timely responses to both orders to show cause.

### **Discussion**

#### 1. Appellant's Challenges to the Leases (Docket No. 08-134-A)

The Regional Director correctly observes that BIA does not select the lessees for Tribal lands nor does BIA award the leases. It is the Tribe that decides to whom it will lease its lands, and Appellant does not dispute this determination. *See* 25 C.F.R. § 162.207 (the Tribes grant leases of tribally-owned agricultural lands). Instead, Appellant attempts to recast her argument on appeal by finding fault with BIA's handling of the lease sale. She argues that BIA committed errors in its conduct of the lease sale, and contends that her challenge "is totally separate and apart from any decision of the Crow Tribe." Response to Order to Show Cause at 2. We affirm the Regional Director's July 30, 2008, decision because Appellant has not shown that it was in error, and we reject her attempt to recast her argument on appeal.

Tribes grant leases for tribally-owned agricultural lands. 25 C.F.R. § 162.207(a). The Crow Tribe "awards leases of [its] Tribal lands to qualified bidders following advertisement of Tribal lands by [BIA]." Tribal Resolution No. 2001-37. It is well

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<sup>8</sup> The Regional Director did not mail his copy to the Board but used an alternate method of delivery. Thus, the copy bears no postmark.

established that neither BIA nor this Board is authorized to review or upset decisions rendered by a duly constituted tribal body. *See Frank v. Acting Great Plains Regional Director*, 46 IBIA 133, 144 (2007); *Hunt v. Aberdeen Area Director*, 27 IBIA 173, 179 (1995).

Once the Tribe awards a lease for Tribal lands, BIA's approval is required before the lease becomes valid. 25 U.S.C. § 415, 25 C.F.R. § 162.604(a). BIA's decision whether to approve a lease is based on the best interest of the Tribe. *See* 25 U.S.C. § 415; 25 C.F.R. §§ 162.107, 162.214, 162.222.

Appellant does not argue (nor would she have standing to argue) that BIA's approval of the leases was not in accordance with 25 C.F.R. §§ 162.107(b), 162.214, or 162.222.<sup>9</sup> She also pointedly does not challenge the Tribe's choice of lessees, and admits that the Tribe "rejected" her bids while "direct[ing] the BIA to issue" leases to certain other bidders, including one who submitted late bids. Response to Order to Show Cause at 4, 7; *see also id.* at 1 ("Appellant is not seeking to review the decision[s] of the Crow Tribe [to lease its lands to certain individuals or entities].").

Instead of directing her arguments to alleged errors in the Regional Director's decision, Appellant now argues that the bidding process, which BIA conducted on behalf of the Tribe, was flawed and she contends she sustained "great harm and damage" as a result. *Id.* at 1. First, Appellant contends that she had a "clear preference" to lease these lands, which she maintains entitled her to match the high bids of other bidders for these same tracts, and argues that she was never given the opportunity to match. Next, Appellant argues that He Does It was permitted to submit his bid sheet several days after the bidding ended and was awarded tracts for which she submitted the only other bids. Third, Appellant claims that, despite "numerous inquiries" by her, neither BIA nor the Tribe informed her that her bids had been rejected. *Id.* at 4. She claims that she first became aware that she was not the successful bidder when she was charged in 2008 with trespassing on allotments that she previously had leased and for which she bid in 2006. Finally, Appellant also claims that she was never provided an opportunity to challenge the bids

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<sup>9</sup> Leasing of tribal lands is a two-part process. *David v. Northwest Regional Director*, 47 IBIA 129, 130-31 (2008). First, the tribe will "grant" leases of its lands to its selected lessees, as an exercise of the tribe's ownership rights. *See* 25 C.F.R. § 162.207(a). The tribe then requests BIA to "approve" the leases with the Tribe's chosen lessees, which process BIA undertakes pursuant to its duty as trustee for the lands. *See id.* §§ 162.207(a), 162.214.

submitted by He Does It, whom she claims is ineligible to bid because he was not acting on his own behalf, but on behalf of “a large non-Indian ranching company.” *Id.* at 5.

But none of these arguments refutes or undercuts the Regional Director’s conclusion that he would not and could not “reverse” a decision by the Superintendent to “award” the leases to third parties because it is the *Tribe*, and not the Superintendent, who awarded the leases. Appellant’s arguments properly belong before the Tribe because the Tribe is the entity that both rejected Appellant’s bids and awarded the leases to others. These are the actions that allegedly injured Appellant.

Even assuming that Appellant’s procedural objections were preserved for this appeal, they provide no basis for reversing the Regional Director’s decision. For example, Appellant claims that BIA was required to act as a gatekeeper by refusing to forward He Does It’s late bid sheet to the Tribe. Appellant argues that the integrity of the bidding process requires BIA to perform this gatekeeping function, citing generally *California v. Watt*, 712 F.2d 584, 607 (D.C.Cir. 1983), *DeMat Air, Inc. v. United States*, 2 Cl.Ct. 197, 202 (Cl.Ct. 1983), *JGB Enterprises, Inc. v. United States*, 921 F. Supp. 91, 97 (N.D.N.Y. 1996), *Keco Industries, Inc. v. Laird*, 318 F. Supp. 1361, 1364 (D.D.C. 1970), *Simpson Electric Company v. Seamans*, 317 F. Supp. 684, 688 (D.C.D.C. 1970). Nothing in these decisions governs the conduct by BIA of a lease sale on behalf of a tribe or requires BIA to perform a gatekeeping function. He Does It’s bid sheet bears a date of May 3, 2006, and is stamped as received by BIA on May 5. Therefore, the Tribe would have been aware that this particular bid sheet was untimely when it made its lease decisions. Appellant cites no law prohibiting BIA from transmitting late bids to the Tribe.<sup>10</sup>

Also of no avail is Appellant’s argument that BIA bore the responsibility of informing her that her bids were not accepted by the Tribe. There is no injury resulting from this omission nor is there any relief available: Appellant was bidding on leases for certain tracts and they were not hers unless and until she had signed and approved leases. Finally, and to the extent that Appellant asserts that she was not given the opportunity to challenge the bids submitted by He Does It, BIA owes Appellant no duty to assist her in making any such challenge. Moreover, such a challenge is made to the Tribe, not to BIA.

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<sup>10</sup> We note that the sale advertisement expressly stated that BIA reserved the right to waive “technical defects” in a bid, which arguably could include untimeliness in some circumstances. However, and assuming the leases were issued to He Does It, the decision to waive untimeliness in this circumstance was made by the Tribe, not by BIA.

With one exception,<sup>11</sup> it is the Tribe that decides who may bid on Tribal lands, not BIA. See Tribal Resolution No. 2001-37.

The Regional Director correctly concluded that the Superintendent did not award the leases and that BIA had no jurisdiction or authority to overturn the Tribe's decisions to award the leases to other parties. Therefore, we affirm the Regional Director's July 30, 2008, Decision.

## 2. Appellant's Challenge to Trespass Penalties, Damages, and Costs (Docket No. 09-14-A)

We dismiss as untimely Appellant's appeal from the Regional Director's September 5, 2008, decision, in which he upheld the Superintendent's finding of trespass against Appellant and imposition of penalties, damages, and costs. A notice of appeal from a decision of a BIA Regional Director must be filed with the Board within 30 days after receipt by the appellant of the decision from which the appeal is taken. 43 C.F.R. § 4.332(a). The effective date for filing a notice of appeal with the Board is the date of mailing or the date of personal delivery, if not mailed, *id.* § 4.310(a)(1), and the 30-day deadline for filing a notice of appeal is jurisdictional, *id.* § 4.332(a), *Wick v. Midwest Regional Director*, 44 IBIA 20 (2006), *Claymore v. Great Plains Regional Director*, 43 IBIA 274 (2006). Untimely appeals must be dismissed. *Claymore*, 43 IBIA 274; *Saguaro Chevrolet, Inc. v. Western Regional Director*, 43 IBIA 85 (2006). The Board consistently has held that appellants bear the risk of any delay in transmitting their appeals to the Board where the appeal is forwarded by a third party, such as a BIA official. *SiJohn v. Northwest Regional Director*, 46 IBIA 304, 305 (2008); *Wick*, 44 IBIA at 21.

Appellant avers that she received the Regional Director's September 5, 2008, decision on September 8, 2008. The letter contained correct instructions for appealing the decision to the Board, including the 30-day appeal period and the Board's address. Therefore and pursuant to 43 C.F.R. § 4.332(a), Appellant had until October 5, 2008, to file her notice of appeal. The Regional Director delivered a copy of the notice of appeal to the Board, where it was received on October 15, 2008, 10 days after the filing deadline.

Upon receipt of a copy of the notice of appeal, the Board issued an order to Appellant to show cause why her appeal should not be dismissed as untimely. Appellant

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<sup>11</sup> Federal employees must obtain a conflict-of-interest waiver prior to participating in a lease sale. See 5 C.F.R. § 3501.103(c) & (e). If a Federal employee does not obtain a waiver, BIA may, consistent with Federal law, refuse to communicate or transmit the employee's bid.

submitted a timely response in which she concedes that the original notice of appeal “*may* not have been placed in the mail,” Response to Order to Show Cause at 1, and Appellant’s counsel conceded that he has “no documentary proof that it was or was not sent,” Affidavit of Thomas E. Towe at 2. However, the burden rests with Appellant to establish that she did deposit her notice of appeal into the postal mailstream to the Board, *see American Land Development Corp. v. Acting Phoenix Area Director*, 25 IBIA 120, 130 (1994), and she has not stated that she did so.

Appellant argues that her appeal nevertheless is timely. First, she argues that, pursuant to 25 C.F.R. § 2.9(a), she appropriately filed a timely appeal with the Regional Director. Section 2.9(a) provides that a “notice of appeal must be filed in the office of the official whose decision is being appealed.” We reject this argument. The appeal procedures in 25 C.F.R. § 2.9 have no applicability to the Board, whose rules appear at 43 C.F.R. Part 4. The Regional Director’s decision expressly cited the regulations that are applicable to appeals to the Board, 43 C.F.R. §§ 4.310 – 4.340. These regulations specifically require that appeals from decisions of BIA’s regional directors must be filed *with the Board* within 30 days of receipt. 43 C.F.R. § 4.332(a); *Conley v. Pacific Regional Director*, 36 IBIA 289, 290 (2001). Appellant clearly was aware of this requirement, given her compliance with the Board’s procedures in filing her notice of appeal in Docket No. IBIA 08-134-A. Therefore, we conclude that Appellant’s appeal is untimely.

Next, Appellant requests that the Board waive the untimeliness of the appeal, citing 25 C.F.R. § 2.13(c) and 43 C.F.R. § 4.401(a). But neither of these sections has any applicability here.<sup>12</sup> The Board’s own regulations not only expressly provide that the time for filing a notice of appeal is jurisdictional, 43 C.F.R. § 4.332(a), they also provide that no extension of time may be granted for the filing of a notice of appeal, *id.* §§ 4.310(d)(1), 4.334.

Appellant has not demonstrated that she timely filed her notice of appeal from the Regional Director’s September 8, 2008, decision to the Board. Because the copy delivered

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<sup>12</sup> Section 2.13(c), which governs appeals filed with the BIA, permits “late filing of a misdirected document, including a notice of appeal, where . . . the misdirection is the fault of the government.” Even assuming that this regulation could apply to appeals before the Board, Appellant has not shown that the delay in filing her appeal was caused by the government. Section 4.401(a) governs appeals before the Board of Land Appeals and provides a 10-day grace period for late-filed documents, provided that it is shown that the document was or likely was mailed to the proper office prior to the filing deadline. That section simply does not apply to proceedings before this Board.

to the Board by the Regional Director was not received by the Board until 10 days after the close of the jurisdictional period for appealing the Regional Director's decision, we must dismiss this appeal as untimely.

### Conclusion

As explained above, we conclude that BIA and this Board lack authority to address Appellant's challenges to the Tribe's award of leases of Tribal lands and therefore we affirm the Regional Director's July 30, 2008, decision. While Appellant attempts to recharacterize her challenge to the Regional Director's decision as a procedural challenge to the lease sale advertised by BIA, it nevertheless remains that it was the Tribe that selected those to whom it would lease and it was the Tribe that awarded the leases. Thus, the challenges raised by Appellant properly belong in the appropriate Tribal forum. With respect to Appellant's appeal from the Regional Director's September 8, 2008, decision to uphold a finding of trespass and an award of damages against Appellant, we find that Appellant's appeal to this Board is untimely and we dismiss.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we affirm the Regional Director's July 30, 2008, decision (Docket No. IBIA 08-13-A). Appellant's appeal from the Regional Director's September 8, 2008, decision is docketed as appeal No. IBIA 09-14-A, but is dismissed as untimely.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge