



INTERIOR BOARD OF INDIAN APPEALS

Citation Oil & Gas, Ltd. v. Acting Billings Area Director, Bureau of Indian Affairs

21 IBIA 75 (12/17/1991)



# United States Department of the Interior

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

CITATION OIL & GAS, LTD.

v.

ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-68-A

Decided December 17, 1991

Appeal from an assessment for salt water disposal.

Affirmed in part; vacated and remanded in part.

1. Indians: Leases and Permits: Generally

An agreement which is, in essence, a lease of Indian trust land, although not so termed, is invalid unless approved by the Secretary of the Interior. Lacking approval, it grants no rights to either party.

2. Indians: Leases and Permits: Generally--Indians: Mineral Resources: Oil and Gas: Generally

In assessing an oil and gas lessee for past disposal of salt water on an off-lease tract of Indian land, the Bureau of Indian Affairs should determine the fair market value of the use by means of an appraisal.

3. Bureau of Indian Affairs: Administrative Appeals: Generally

A Bureau of Indian Affairs Area Director does not have authority to make his decision final for the Department of the Interior.

APPEARANCES: Ronald A. Hodge, President, for Citation Oil & Gas, Ltd.; Elayne Armstrong, pro se.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Citation Oil & Gas, Ltd., 1/ seeks review of a February 19, 1991, decision of the Acting Billings Area Director, Bureau of Indian

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1/ Appellant is also known as Citation Oilfield Supply & Leasing, Inc.

Affairs (Area Director; BIA), affirming an assessment of \$33,872.46 for disposal of salt water from an oil and gas operation. For the reasons discussed below, the Board affirms the Area Director's decision in part, vacates it in part, and remands this matter to him for further proceedings as discussed below.

### Background

Appellant formerly held a 45-percent interest in now-expired oil and gas lease 14-20-0256-3618 (lease 3618), on the Fort Peck Indian Reservation, covering Allotment No. 360, the N½ of sec. 27, T. 29 N., R. 50 E., Roosevelt County, Montana, which is held in trust for the heirs of Florence Goings. <sup>2/</sup> Appellant obtained its interest through three assignments, including one from Century Oil & Gas Corporation (Century), which was approved on March 3, 1987. The allotment contains a non-operating well, known as Goings 27-1; an operating well, known as Goings 27-3; and a salt water disposal (SWD) well.

Appellant continues to hold a 30-percent interest in oil and gas lease 14-20-0256-3601 (lease 3601), covering the allotment adjacent to the Goings allotment. Appellant apparently received all or part of its interest in this lease from Century. <sup>3/</sup> The operating well on the lease is known as Robbins 22-15. Salt water from this well has been routinely disposed of in the SWD well on the Goings allotment.

Prior to assignment of its interests to appellant, Century was the designated operator for both leases. In 1983, it entered into an agreement with the Goings heirs to use the SWD well on lease 3618 for disposal of salt water from locations off the lease and to pay them at the rate of \$0.06 per barrel for such disposition. The agreement, dated January 28, 1983, was not approved by BIA. On March 18, 1983, Century received approval from the Geological Survey (GS) to dispose of salt water from the Robbins 22-15 well in the SWD well on the Goings lease. A notation on the record copy of the approved application states: "Approval \* \* \* is granted for no more than one year from this date, and is subject to cancellation at

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<sup>2/</sup> On Sept. 26, 1990, the Superintendent, Fort Peck Agency, BIA, determined that lease 3618 had expired by its own terms because of failure to produce in paying quantities. At the time of expiration, the other interests in the lease were held by Fina Oil and Chemical Company (40 percent) and Aviva America, Inc. (15 percent).

<sup>3/</sup> There are no copies of this lease or its assignments in the administrative record. According to the Nov. 13 and 14, 1990, decisions of the Superintendent, discussed further below, the other present lessees are Aviva America, Inc. (15 percent), Pinnacle Oil Company (15 percent), and Fina Oil and Chemical Company (40 percent).

any time." 4/ There is no indication that Century ever renewed its application to GS or the Bureau of Land Management (BLM). 5/ However, during the time it was designated operator for the leases, Century apparently paid the Goings heirs a total of \$39,284.86 for disposal of salt water from the Robbins 22-15 well.

Appellant began operating the wells on both leases sometime in 1986, although neither its assignments nor its appointment as designated operator had been approved. 6/ As noted above, appellant's assignment from Century was approved on March 3, 1987. Appellant was apparently approved as designated operator shortly thereafter. On February 22, 1988, appellant sought approval from BLM to continue disposing of salt water from the Robbins 22-15 well into the Goings SWD well. Approval was granted on March 2, 1988. At no time during its operation of the Robbins 22-15 well has appellant made any payments to the Goings heirs for disposal of salt water from the well.

By late 1989, BIA and BLM had become dissatisfied with appellant's operation of the Goings 27-3 well. In a letter dated December 8, 1989, the Superintendent imposed a number of requirements on appellant. The letter concluded:

And finally, it has been determined that you are disposing of salt water from oil wells which are not part of the subject lease. This action requires that a business lease be in place which will compensate the trust mineral owners for the injection of waters into their disposal well. You are hereby notified that disposal of salt water from oil wells other than the well which is part of the subject lease is prohibited unless a business lease is approved between the trust owners and the lessees of the wells utilizing the disposal well. The business lease will require the approval of the Secretary of the Interior. Furthermore, you can expect that you will be assessed for the salt waters, from other wells, which have been disposed into the well.

Your failure to comply with this letter may result in the cancellation of the lease. You may appeal this decision and

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4/ Another copy of this document, submitted with appellant's notice of appeal, does not bear this notation.

5/ BLM now performs certain oil and gas related functions formerly performed by GS.

6/ Appellant's notice of appeal indicates that it began operating the leases in April 1986. Appellant was unable to secure approval because it had not submitted the required documents. Following several attempts to obtain the documents from appellant, the Superintendent informed appellant that it was in trespass, and requested BLM to shut in the wells. The wells were evidently shut in in December 1986. There is some indication that a temporary operator was appointed to operate the wells until appellant's approval in March 1987, but this is not entirely clear.

request an administrative hearing on the matter provided that you request such in writing on or before thirty (30) days from the date of this notice.

(Superintendent's Dec. 8, 1989, Letter at 2).

In a letter dated December 18, 1989, appellant stated that it had placed the Goings 27-3 well into full production. However, its reports to BLM showed no oil production in December 1989 or January 1990; those reports also showed that appellant had injected 6,500 barrels of water into the Goings SWD well in December 1989 and 15,000 barrels in January 1990. By letter of April 4, 1990, the Superintendent informed appellant that it had failed to comply with the conditions of his December 4, 1989, letter. He instructed appellant "to refrain from accessing the well location and from disposing any salt water production into the salt water injection well" (Superintendent's Apr. 4, 1990, Letter at 2).

Appellant requested an administrative hearing. A hearing was held on June 12, 1990, at which representatives of appellant, BIA, and BLM were present. At the hearing, appellant's representative, Ronald A. Hodge, stated, *inter alia*, that he had believed the BLM approval of appellant's salt water disposal application was all that was required and that he had been unaware of the agreement between Century and the Goings heirs. Hodge further stated that he was attempting to negotiate a new agreement with the heirs. Even so, he continued to argue that the approval he had obtained from BLM was sufficient to authorize the salt water disposal.

On July 12, 1990, the Superintendent issued a decision terminating lease 3618. The decision recited a number of reasons for the termination. Concerning salt water disposal, it stated:

4. You were told by letter dated December 8, 1989 that you were to cease the disposing of off-lease salt water into the Goings Salt Water Disposal Well until a business lease has been approved by the Secretary of the Interior. You ignored those instructions and continued to dispose of off-lease water into the No. 1 Goings Salt Water Disposal Well. The U.S.G.S. Sundry Notice dated March 18, 1983, incorrectly gives Century Oil and Gas permission to dispose of produced, off-lease salt water from the Robbins No. 22-15 oil well into the No. 1 Goings Salt Water Disposal Well. You repeatedly cite this document as giving [appellant] permission to dispose of off-lease water into the No. 1 Goings Salt Water Disposal Well. However this Sundry Notice specifically states, "Approval for disposal of produced water from Robbins #22-15 to the Goings #1 SWDW is granted for no more than one year from this date (March 18, 1983), and is subject to cancellation at any time." There has been no compensation to the trust mineral owners of [lease 3618] for the off-lease water disposal into the No. 1 Goings Salt Water Disposal

Well. A Business Use Permit to use the Goings No. 1 Salt Water Disposal Well must be filed for approval at the BIA, Fort Peck Agency, within thirty (30) days of the receipt of this letter. If for any reason you cannot furnish us with a Business Use permit by that time, you are to plug and abandon the Goings Salt Water Disposal Well No. 1 by September 1, 1990.

(Superintendent's July 12, 1990, Decision at 2).

Appellant apparently continued to use the Goings SWD well. On September 7, 1990, BLM wrote to appellant, stating:

On September 6, 1990, a field inspection by our personnel showed that production of the No. 22-15 Robbins well located on [lease 3601] has resumed and that the No. 1 Salt Water Disposal Well located on [lease 3618] is being used for disposal of produced water from the Robbins well.

You were instructed by letters to your office from the Bureau of Indian Affairs dated December 8, 1989 and April 4, 1990, to refrain from disposing any produced water from off-lease production into the Goings SWD No. 1 until an approved Business Use Permit was filed and approved by the Bureau of Indian Affairs.

You are directed to cease and desist in disposing any off-lease water into the Goings SWD No. 1 effective immediately. We hereby revoke your approved NTL-2B permit dated March 2, 1988 which approved the method of disposal for water produced from the Robbins 22-15 well. If you continue to produce the Robbins No. 22-15 well, you are required to submit another NTL-2B application for the proposed method of water disposal within 30 days of receipt of this letter. NTL-2B approval for disposal into the Goings No. 1 SWD well will not be approved until an approved Business Use Permit is in place.

Failure to comply with this written order may incur an assessment under 43 CFR 3163.1 and may also incur Civil Penalties under 43 CFR 3163.2.

(BLM's Sept. 7, 1990, Letter at 1). The record does not show whether BLM took any action against appellant following this letter.

Appellant appealed the Superintendent's July 12, 1990, decision to the Area Director, who vacated it on September 13, 1990, because notice had not been given to the landowners. Upon remanding the matter to the Superintendent, the Area Director recommended that the various matters discussed in the Superintendent's July 12 decision be addressed in separate decisions. <sup>7/</sup>

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<sup>7/</sup> Following remand, the Superintendent issued the decision mentioned in footnote 2, finding that lease 3618 had expired because of lack of production. The decision was sent to all three lessees. In addition to finding

On September 26, 1990, the Superintendent wrote to three of the four lessees under lease 3601 concerning the salt water disposal issue. <sup>8/</sup> He stated that he would be willing to serve as an intermediary between appellant and the Goings heirs, concerning the issuance of a business use permit, provided appellant's offer was adequate to protect the interest of the heirs. He continued:

The substance of any offer which in our view satisfactorily protects the Goings heirs would include the following as a minimum:

1. The provisions of the January 28, 1983, Salt Water Disposal Agreement negotiated between these heirs and [Century] is believed to reflect the current requirements of the heirs. We consider the terms of that agreement fair and acceptable.

2. Full compensation would be paid to the heirs for all usage of the Goings Salt Water Disposal Well No. 1 for wastewater disposal since April, 1986, through the current date, in accordance with the terms of the January 23, 1983 agreement. The amount of water involved and the proceeds due the heirs

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fn. 7 (continued)

the lease expired, the decision required appellant to plug and abandon the Goings 27-1 well and reclaim the site and to plug the Goings 27-3 well, all before Oct. 31, 1990. The decision informed the lessees of their right to appeal. No appeal was filed. However, appellant failed to comply with the decision's requirements concerning the Goings 27-1 well.

On Nov. 27, 1990, the Superintendent again wrote to the lessees, stating, *inter alia*, that appellant was required to file a Notice of Intent to Abandon (NIA) the Goings 27-1 well, to plug and abandon the well within 90 days of approval of the NIA, and to fully reclaim the wellsite. The letter stated that it could be appealed.

Appellant appealed the Nov. 27 letter with respect to the requirements to plug, abandon, and reclaim the Goings 27-1 well. In a Feb. 19, 1991, decision, the Area Director affirmed the Superintendent's Nov. 27, letter, stating:

"It is my position that the requirements in the Superintendent's letter to file an NIA and [plug and abandon] the Goings 27-1 Well and to [plug and abandon] the Goings 27-3 Well are not properly appealable decisions. The plugging and abandonment of a non-producing well is a regulatory requirement, 43 CFR 3162.3-4, for which non-compliance carries assessments and penalties, 43 CFR 3163. \* \* \* I, hereby, uphold the Superintendent's decision requiring you to plug and abandon the Goings 27-1 Well. In the protection of the trust resources involved, this decision is final for the Department and is effective immediately, pursuant to 25 CFR 2.6(a)."

<sup>8/</sup> The letter was apparently not sent to Pinnacle Oil Company.

will be determined by this office in conjunction with the Bureau of Land Management. Although it is not possible for us to determine the exact value of this water disposal at this time, we roughly estimate it to be between \$35,000.00 and \$55,000.00. The exact amount will be determined and transmitted to you within the next ten days. The proceeds due the heirs must be submitted to this office prior to my approval of the agreement. If an installment payment arrangement is required, it should be proposed for consideration.

(Superintendent's Sept. 26, 1990, Letter at 2).

Appellant made an offer concerning compensation to the Goings heirs, to which the Superintendent responded on October 17, 1990. The Superintendent stated, *inter alia*, that he would be willing to recommend to the heirs that appellant be given a 12-month period to make the payments. Apparently, however, no agreement was reached with the heirs. In letters dated November 13 and 14, 1990, to the lessees under lease 3601, the Superintendent stated:

Enclosed you will find Bill for Collection No. 12696610 assessing your designated operator, [appellant], for the sum of \$33,872.46. This amount is based on the provisions of the January 28, 1983 Salt Water Disposal Agreement, BIA Salt Water Disposal Lease Contract No. 14-20-0256-3618 [9/] between your previous designated operator, [Century], and the Goings heirs. This Agreement specified a .06¢ per barrel disposal fee for off-lease water disposed into the Goings Salt Water Disposal Well No. 1. In the three years [Century] operated the Goings SWDW No. 1, they paid the Goings heirs a total of \$39,284.86 for water disposed from the Robbins 22-15 Oil Well, into the Goings SWDW No. 1. In the four and one half years [appellant] has operated the same lease, they have paid the Goings heirs a total of \$490.00, an annual (1987) access fee. The amount assessed includes payment of \$32,402.46 for disposal from April, 1986 to May of 1990, based on official BLM production records, plus an annual Rental for Access of \$490.00 per year for 1988, 1989 and 1990, totalling \$1,470.00.

We are writing to the four co-lessees on the Robbins Lease and anticipate that an Agreement can be reached among you and this Bill paid within 30 days, without the necessity for going to your bonding companies.

(Superintendent's Nov. 13 and 14, 1990, Letters at 1).

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<sup>9/</sup> The Superintendent's decision incorrectly identified the oil and gas lease for the Goings allotment as a SWD lease.

Appellant appealed the assessment to the Area Director, who affirmed it on February 19, 1991, stating:

The Superintendent's assessment was based upon the term and provisions of the January 28, 1983, Salt Water Disposal Agreement executed between [Century] and the Goings heirs.

You appealed the Superintendent's determination the agreement was binding upon you. Although the agreement was not approved by the BIA, the Goings heirs negotiated the terms in the agreement with Century and continue to maintain the terms are those which they will minimally accept for the right to dispose of water in their land. You have been unsuccessful in your attempts to negotiate for less than the agreement terms. It is my position the compensation the allottees demand, which is the agreement terms, is the assessment the Bureau must make against you.

Appellant's notice of appeal from this decision was received by the Board on March 26, 1991. Appellant's notice of appeal included arguments in support of its appeal. A brief was filed by Elayne Armstrong. 10/

#### Discussion and Conclusions

Appellant states that "[f]rom 1 April 1986 until 8 December 1989 [11/, it] disposed of salt water from the Robbins 22-15 oil well to the Goings salt water disposal well \* \* \* under the legal conclusion that it was a part of a federal right of way and the fees had already been paid for the disposal uses thereof" (Appellant's Notice of Appeal at 2). Appellant argues that the Area Director erred in relying upon the Salt Water Disposal Agreement between Century and the Goings heirs, because appellant was not a party to the agreement and the agreement was never assigned to appellant.

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10/ Although the Area Director's decision informed appellant that it was required to serve all interested parties, appellant failed to serve its notice of appeal on any of the Goings heirs or on its co-lessees. The other parties, except for one, noted below, were informed by the Board of the pendency of the appeal, and Ms. Armstrong, one of the Goings heirs, has participated. Appellant is again advised that, under both BIA appeal regulations and the Board's regulations, an appellant is required to serve a notice of appeal on all interested parties.

Pinnacle Oil Company has not been listed as an interested party although it apparently holds an interest in lease 3601. It is hereby added to the distribution list. If it wishes to make an argument in this matter, it may do so through a request for reconsideration under 43 CFR 4.315.

11/ Appellant continued to dispose of salt water from the Robbins 22-15 well after this date, as evidenced by the Sept. 7, 1990, BLM letter, quoted supra. The Board interprets this statement as appellant's acknowledgment that it was aware, after Dec. 8, 1989, that it lacked authority to dispose of the water in the Goings SWD well.

Appellant also contends: (1) BIA was negligent in failing to notify it that it was required to enter into a business use permit for salt water disposal; (2) BIA erred in making the entire assessment against appellant because it held only a 45-percent interest in the lease; 12/ and (3) appellant has made every effort to obtain the agreement of the Goings heirs to the issuance of a business use permit.

Elayne Armstrong, one of the Goings heirs, contends that the heirs did not agree to the issuance of a business use permit to appellant because it appeared that they were being asked to sign a new agreement before they were paid for past use of the SWD well and were being asked to accept payment at lower rates than they had earlier agreed to. She further contends that appellant should be required to pay interest on the amount it owes them for past salt water disposal.

[1] The 1983 Salt Water Disposal Agreement between Century and the Goings heirs was not approved by BIA. Because it was an agreement purporting to authorize use of Indian trust land, which should have been approved by BIA but was not, it was invalid and granted no rights to any party. *See, e.g.,* 25 U.S.C. § 415 (1988); Bulletproofing, Inc. v. Acting Phoenix Area Director, 20 IBIA 179 (1991); Smith v. Acting Billings Area Director, 17 IBIA 231 (1989). Thus, the Goings heirs do not have a right to be compensated at the rate of \$0.06 per barrel simply because that is the rate specified in the unapproved agreement. They do, however, as appellant acknowledges, have a right to be compensated for the use of their property.

The Area Director's decision recognized that the agreement had not been approved by BIA but affirmed calculation of appellant's assessment in accordance with the agreement's terms because that was the lowest amount the Goings heirs would accept. In so doing, the Area Director failed to distinguish between the separate roles BIA played in this matter. BIA served both as intermediary in negotiations between appellant and the Goings heirs and as trustee/lease administrator, charged with seeking compensation for past unauthorized use of the Goings property.

[2] In its role as intermediary, BIA properly conveyed to appellant the Goings heirs' conditions for agreeing to the issuance of a business use permit, including the amount of compensation they sought for past use. Once negotiations had broken down, however, BIA no longer served as intermediary. Acting as trustee and administrator of the leases, BIA was required to assess the amount due for past use. The Board finds that, in this role, BIA should not have based its assessment upon the negotiating position of the Goings heirs but upon the fair market value of the use. Accordingly, while the Board affirms the Area Director's decision to impose an assessment against appellant, it finds that the matter must be remanded

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12/ As noted above, according to BIA, appellant holds only a 30-percent interest in lease 3601.

to him for preparation of an appraisal and issuance of a new bill for collection in the amount of the fair market value of appellant's use of the Goings SWD well to dispose of water from the Robbins 22-15 well.

Appellant's remaining arguments will be addressed briefly. Appellant appears to contend that it should not be required to compensate the Goings heirs for use of the SWD well prior to December 8, 1989, when BIA first notified appellant that its use of the well to dispose of off-lease salt water was unauthorized. The Board rejects this contention. It was appellant's responsibility to familiarize itself with its obligations as designated operator for the leases. Moreover, appellant was charged with knowledge of the law and regulations concerning use of Indian trust property. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Hays v. Muskogee Area Director, 18 IBIA 380 (1990). Appellant acknowledges that it simply assumed that there was a Federal right-of-way in place, which authorized the salt water disposal, and that any fees covering the use had already been paid. Such an assumption was, at best, negligence on appellant's part. Whether or not BIA should have notified appellant of its obligation at an earlier time, as appellant alleges, <sup>13/</sup> appellant is not relieved of the obligation to compensate the Goings heirs.

Further, BIA did not err in making the assessment against appellant only, rather than against all the lessees under lease 3601. Appellant, as designated operator, was the one who actually made the unauthorized salt water disposals. Of course, the co-lessees are undoubtedly also liable, and BIA will presumably assess them if appellant fails to pay. Further, as the Superintendent's November 13 and 14, 1990, letters noted, the co-lessees are free to agree among themselves to share the cost.

The Board cannot address the question of whether interest should be assessed against appellant, as Elayne Armstrong suggests, because the question was not addressed by either the Superintendent or the Area Director. However, on remand, Ms. Armstrong or any other party may raise the issue before BIA.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's

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<sup>13/</sup> It is not entirely clear why appellant's unauthorized use of the SWD well was not noticed earlier. It appears likely that the delay was the result of a combination of factors, e.g., (1) the original unapproved agreement with Century was not administered by BIA; (2) appellant operated the leases, essentially in trespass, for nearly a year before obtaining approval, thereby diverting BIA's attention to the seemingly larger problems caused by the unauthorized operations; and (3) responsibility for monitoring the leases was apparently divided between BIA and BLM.

February 19, 1991, decision is affirmed in part, vacated in part, and remanded for further proceedings in accordance with this opinion. 14/

//original signed

Anita Vogt  
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn  
Chief Administrative Judge

14/ [3] Although the Area Director's Feb. 19, 1991, decision concerning plugging, abandonment, and reclamation of the Goings 27-1 well (quoted in footnote 7) is not at issue in this appeal, the Board is compelled to address an error in that decision. Citing 25 CFR 2.6(a), the Area Director purported to make his decision final for the Department and effective immediately.

25 CFR 2.6(a) authorizes a BIA deciding official to put into immediate effect a decision of a lower BIA official which is pending on appeal before him. It does not authorize a BIA official to put his own decision into immediate effect. Only this Board and the Director, Office of Hearings and Appeals, have authority to put an Area Director's decision into immediate effect. See 43 CFR 4.21(a), 4.314(a).

Further, and most importantly, an Area Director has no authority, under 25 CFR 2.6(a) or otherwise, to make his own decision final for the Department (unless such finality is provided for by regulation, as it is, for example, with respect to certain tribal attorney contract matters, 25 CFR 88.1(c)). Even a decision which has been put into immediate effect under section 2.6(a) may still be appealed through the Departmental appeal process, if the appellant so chooses, although he normally will also be able to proceed directly to court if he chooses.

Under the particular circumstances of this case, the Board considers the Area Director's error harmless, because the Superintendent's decision appellant was attempting to appeal to the Area Director had already become final. The Superintendent's decision requiring appellant to plug, abandon, and reclaim the Goings 27-1 well was made in his letter dated Sept. 26, 1990, which also included complete appeal instructions. Appellant received the letter on Oct. 1, 1990, but did not appeal it. In accordance with 25 CFR 2.6(b) and 2.9(a), the decision became final when appellant failed to appeal it within 30 days after receiving it. The fact that the Superintendent repeated the substance of his earlier decision in his Nov. 27, 1990, letter had no effect on the finality of the earlier decision.