



INTERIOR BOARD OF INDIAN APPEALS

Larry and Beverly Hudson v. Acting Eastern Oklahoma Regional Director,
Bureau of Indian Affairs

35 IBIA 25 (04/17/2000)



United States Department of the Interior

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

LARRY and BEVERLY HUDSON,	:	Order Vacating Decision in Part and
Appellants	:	Remanding Case
	:	
v.	:	
	:	
ACTING EASTERN OKLAHOMA	:	Docket No. IBIA 00-54-A
REGIONAL DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee	:	April 17, 2000

Larry and Beverly Hudson (Appellants), appearing pro sese, seek review of a March 9, 2000, decision issued by the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA), finding that the Superintendent, Osage Agency, BIA (Superintendent), had not issued an appealable decision. Based on its review of the materials before it, which include both the Superintendent's and the Regional Director's decisions, the Board finds that it can address this matter without further briefing. For the reason discussed below, the Board vacates the Regional Director's decision in part and remands this case to him for further consideration.

On November 3, 1999, the Superintendent wrote to Appellants concerning the right of a mineral lessee to use a road which apparently crosses land that is either owned by Appellants or otherwise under their control. The Superintendent referred Appellants to 25 C.F.R. § 226.19(a), which states in pertinent part:

Lessee or his/her authorized representative shall have the right to use so much of the surface of the land within the Osage Mineral Estate as may be reasonable for operations and marketing. This includes but is not limited to * * * the right-of-way for ingress and egress to any point of operations. If Lessee and surface owner are unable to agree as to the routing of pipelines, electric lines, etc., said routing shall be set by the Superintendent.

After quoting this regulation, the Superintendent stated: "The regulations clearly state that the mineral lessee may use the surface of the land for various purposes, including the right-of-way to any point of operations. Thus, the lessee may use the existing road." The Superintendent then informed Appellants of their right to appeal his decision to the Regional Director.

At page 1 of his March 9, 2000, decision, the Regional Director stated:

Despite the appeal language cited in the Superintendent's letter, no action appealable under 25 CFR 2, "Appeals from Administrative Actions," has actually

occurred. To merely quote regulations is not a decision; rather, it is informational only. Your Notice of Appeal * * * cites several complaints and unresolved issues regarding the location of roads and pipelines on your property by the oil and gas lessee * * *, and damages relating thereto. 25 CFR 226.19(a) describes the right of the lessee to use so much of the surface of the land as may be reasonable for operations and marketing. The subpart further provides that if the lessee and the surface owner are unable to agree on the routing of necessary rights-of-way, the Superintendent shall set the routing. The record does not show that the Superintendent has taken such action.

Although the Regional Director denied the appeal, he nevertheless directed the Superintendent "to address the issues raised in [Appellants'] appeal letter and ensure that the damage claim settlement is completed within the time frames specified in 25 CFR 226.21." Mar. 9, 2000, Decision at 2. He further directed the Superintendent "to submit weekly reports * * * on the status of the issues and damage settlement until they are resolved." Id.

The Board cannot fully agree with the Regional Director's determination that the Superintendent's letter merely quoted regulations. Instead, the Board finds that the letter appears to contain two decisions: (1) that there is an existing road (a fact which Appellants appear to contest in their notice of appeal), and (2) that the mineral lessee has the right to use that road. The Board bases this finding on the Superintendent's statement: "Thus, the lessee may use the existing road." In the context of the Superintendent's letter, this statement appears to constitute a decision under 25 C.F.R. § 226.19(a) as to the routing of a right-of-way after the surface owner and the lessee were unable to reach agreement. It was incumbent upon the Regional Director either to address the substance of this statement or to explain why it did not constitute a decision.

The Board therefore vacates that part of the Regional Director's decision which held that the Superintendent had not issued an appealable decision, and remands this case to the Regional Director for further consideration. This decision does not affect the Regional Director's remaining instructions to the Superintendent.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, the March 9, 2000, decision is vacated in part, and this matter is remanded to the Regional Director.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge