



INTERIOR BOARD OF INDIAN APPEALS

Peak North Dakota, LLC v. Great Plains Regional Director, Bureau of Indian Affairs

47 IBIA 166 (07/31/2008)



# United States Department of the Interior

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

PEAK NORTH DAKOTA, LLC,	)	Order Dismissing Appeal
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 08-96-A
GREAT PLAINS REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	July 31, 2008

Peak North Dakota, LLC (Peak), appealed to the Board of Indian Appeals (Board), pursuant to 25 C.F.R. § 2.8, when the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA) failed to issue a decision (or set a timetable for doing so) on the merits of a request for action filed by Peak, dated April 15, 2008.<sup>1</sup> Peak’s request for action was filed during the course of an appeal by EOG Resources, Inc. (EOG), which was pending before the Regional Director, regarding an oil and gas lease sale on the Fort Berthold Reservation.<sup>2</sup>

After receiving Peak’s appeal, the Board requested a status report from the Regional Director, and, to the extent that Peak’s appeal otherwise divested him of jurisdiction over

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<sup>1</sup> Section 2.8 is an action-prompting provision, which allows a party to appeal from the “inaction” of a BIA official if the party has submitted a demand for action pursuant to section 2.8, and the BIA official has failed to issue a decision on the merits or otherwise respond to the demand.

<sup>2</sup> On November 15, 2007, the Superintendent, Fort Berthold Agency, BIA, conducted an oil and gas lease sale on behalf of individual Indian allottee mineral owners on the Fort Berthold Reservation, after excluding parcels that had been withdrawn from the sale based on negotiated leases between the Indian owners and a lessee. EOG appealed to the Regional Director, challenging the withdrawal of certain parcels from the sale, including several for which Peak had negotiated leases with the Indian owners. Peak’s request for action asked the Regional Director to “dismiss” from EOG’s appeal those parcels for which Peak had negotiated leases.

the matter, authorized the Regional Director to continue to consider Peak's April 15, 2008, request and to take action or to make a decision on that request.

On July 25, 2008, the Board received a joint motion from Peak and the Regional Director to dismiss this appeal "without prejudice." The motion states that the Regional Director issued a decision on June 25, 2008, which Peak agrees rendered moot the claims it raised in this section 2.8 appeal.

The Board agrees that the Regional Director's June 25, 2008, decision renders this appeal moot, and construes the joint motion as a request for dismissal of this appeal without prejudice to Peak's rights with respect to the merits of the underlying matter, including its right to appeal from or participate in any appeal from the June 25, 2008, decision.<sup>3</sup>

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 grants the joint motion and dismisses this appeal without prejudice to Peak's rights with respect to the merits of the underlying matter.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
// original signed  
Debora G. Luther  
Administrative Judge

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<sup>3</sup> The Board's scope of review in a section 2.8 appeal is limited to determining whether BIA must take action or issue a decision, and does not extend to deciding how BIA must act or decide a matter in the first instance. *Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258, 264 n.7 (2006). Thus, when BIA issues a decision on the merits, the section 2.8 appeal is rendered moot, and an interested party that is adversely affected by the decision may separately appeal that decision. *See Wind River Resources Corp. v. Western Regional Director*, 42 IBIA 72 (2005); *El Paso Field Services Co. v. Navajo Regional Director*, 40 IBIA 165 (2004).