INTERIOR BOARD OF INDIAN APPEALS

Heirs and Successors in Interest to Mose Daniels v. Eastern Oklahoma Regional Director, Bureau of Indian Affairs

55 IBIA 214 (08/03/2012)

Denying reconsideration of:
55 IBIA 139

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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HEIRS AND SUCCESSORS IN INTEREST TO MOSE DANIELS, Appellants,	)	Order Denying Reconsideration and Notice of Errata
v.	)	Docket No. IBIA 10-029-1
EASTERN OKLAHOMA REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	August 3, 2012

On June 25, 2012, the Board of Indian Appeals (Board) affirmed in part, vacated in part, and remanded an October 22, 2009, decision of the Eastern Oklahoma Regional Director (Regional Director) concerning a trespass by the Muscogee (Creek) Nation (Nation) on land held in trust for 25 heirs and successors in interest to Mose Daniels (Appellants). *See* 55 IBIA 139.

On July 9, 2012, the Board received a request for reconsideration from the Regional Director. The Regional Director identified what she believes to be one typographical error and one mathematical error in the Board's June 25 decision and seeks reconsideration to correct the alleged errors. On July 20, 2012, the Board received a response from Appellants stating that they do not object to correction of the typographical error, but do object to reconsideration because Appellants do not agree that the Board's decision contains a mathematical error.

Reconsideration of a Board decision will only be granted in extraordinary circumstances. 43 C.F.R. § 4.315(a). The appropriate means for correcting typographical errors is through the Board's issuance of Notices of Errata, which do not require reconsideration of the decision. And, as we discuss below, we disagree with the Regional Director that our decision contains a mathematical error. Because there are no extraordinary circumstances that warrant reconsideration, we deny the Regional Director's request.

The typographical error identified by the Regional Director was indeed an error: The figure "15,774" in the first full paragraph of page 155 should be "15,744," as it is

elsewhere in the decision. We will therefore correct that error by amending page 155 accordingly, but will not grant reconsideration on that ground.

The Regional Director contends that the Board made a mathematical error in computing the amount of fill material taken during the trespass. We disagree. The Regional Director argues that the Nation is only liable for the removal of 36,332 compacted cubic yards (CY),[1] which she calculated in her request for reconsideration by subtracting "15,744 compacted [sic] CY" (the Oklahoma Department of Transportation's (OK DOT) estimate of the amount of material it removed from the site prior to the trespass) from 52,076 compacted CY (Axton's estimate of the total amount of material removed by both OK DOT and the Nation). But the 15,744 figure is an *uncompacted* volume, not a compacted volume. 55 IBIA at 155. The OK DOT's *uncompacted* estimate (15,744 uncompacted CY) must be subtracted from Axton's *uncompacted* estimate[2] (67,698 uncompacted CY), which yields 51,954 uncompacted CY of fill material that were removed by the Nation in trespass. Thus, there is no mathematical error in the Board's decision, for which reason we deny the Regional Director's request for reconsideration.

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 denies reconsideration of 55 IBIA 139 as corrected at 55 IBIA 155.

I concur:

// original signed	//original signed
Steven K. Linscheid	Debora G. Luther
Chief Administrative Judge	Administrative Judge

[1] One compacted CY of fill material is equal to 1.3 uncompacted CY. *See* 55 IBIA at 151 n.14. Fill material is measured for sale and transport in uncompacted units. *Id.* The Regional Director's 36,332 compacted CY figure, converted to *uncompacted* units, would equal 47,232 uncompacted CY. *See* Request for Reconsideration at 2 (unnumbered).

[2] Axton presented his estimate in both compacted and uncompacted volumes.