



INTERIOR BOARD OF INDIAN APPEALS

One Hundred and Ninety-One Navajo Landowners v. Navajo Regional Director,
Bureau of Indian Affairs

57 IBIA 271 (08/15/2013)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ONE HUNDRED AND NINETY-)	Order Dismissing Appeal in Docket
ONE NAVAJO LANDOWNERS,)	No. IBIA 11-107 and Affirming
Appellants,)	Decision in Docket No. IBIA 11-120
)	
v.)	Docket Nos. IBIA 11-107
)	11-120
NAVAJO REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	August 15, 2013

These two appeals to the Board of Indian Appeals (Board), by 191 Navajo landowners (Appellants),¹ involve an effort by Appellants to “appeal” or otherwise challenge and have set aside a total of 31 right-of-way (ROW) renewals that Appellants contend BIA granted for various 20-year periods, some apparently granted as early as 1989, across one or more allotments in which one or more Appellants have, or claim to have, an ownership interest. Appellants contend that BIA granted each ROW renewal without obtaining the informed consent of the Appellant landowners affected by the respective ROW, and without ensuring that they were paid fair market value for the ROW. As brought to the Board, the appeals raise procedural issues arising from the Regional Director’s insistence, ultimately embodied in a decision dated April 22, 2011 (Decision), that he could not consider the appeals as properly filed because Appellants had not adequately identified which 31 ROW renewal decisions they sought to challenge.

Appellants filed their first appeal with the Board (Docket No. IBIA 11-107) following a demand they made to the Regional Director, under 25 C.F.R. § 2.8 (appeal

¹ Throughout the course of these proceedings, the Board has identified Appellants as “One Hundred and Ninety-Two Navajo Landowners,” and captioned its orders accordingly, based on the count reflected in statements by the parties in the proceedings below and on appeal, including statements by Appellants’ counsel. *See, e.g.*, Letter from Thomas R. Meites, Esq. to Navajo Regional Director (Regional Director), Bureau of Indian Affairs (BIA), Dec. 14, 2010 (Administrative Record (AR) Tab 11); Notice of Appeal (Docket No. IBIA 11-120) (caption of notice of appeal). A review of the list of Appellants provided by counsel indicates that the number of individual Appellants is 191, not 192, and the Board has recaptioned the case accordingly for this decision.

from inaction of official), to take prompt action on 987 appeals they had filed with him from 31 ROW decisions.² Without allowing the Regional Director the permissible time (10 days) to respond (and, as it turned out, after he had issued the Decision), Appellants sought to bring their ROW appeals to the Board. Appellants have moved for dismissal of their appeal in Docket No. 11-107, without prejudice, on the grounds that the appeal was premature and “never properly before the Board,” and that the matters at issue are “fully covered” by Appellants’ second appeal (Docket No. IBIA 11-120), in which they challenge the Decision. Appellants’ Motion to Dismiss Docket No. 11-107, Apr. 13, 2012, at 2.

We agree that the appeal in Docket No. IBIA 11-107 should be dismissed. Having chosen to present their 987 appeals to the Regional Director for consideration, and having filed a § 2.8 demand for action without allowing the Regional Director the permissible amount of time to respond, Appellants had no right of appeal to the Board as a means to force BIA action on those appeals. Thus, as an action-forcing mechanism, the appeal was premature, and was also rendered moot by the Regional Director’s issuance of the Decision. We also agree with Appellants that the dismissal should be without prejudice.

In Docket No. IBIA 11-120, we affirm the Decision. When presented with Appellants’ all-or-nothing demand for prompt action on their 987 appeals, which Appellants themselves had not even divided into 31 separate appeals or groups of appeals to correspond to each ROW decision being appealed, the Regional Director did not abuse his discretion by dismissing the appeals based on Appellants’ failure to provide sufficient information to permit BIA to identify the specific 31 ROW decisions that purportedly were at issue. The Regional Director contends—and Appellants do not dispute—that the information and criteria Appellants provided to BIA yielded a larger universe of potential ROW decisions than 31. Although some Appellants have shown on appeal, using information belatedly requested and obtained from BIA through a Freedom of Information Act (FOIA) request, that BIA’s review of Title Status Reports (TSR) for some of the appeals apparently would have allowed BIA to identify 7 of the 31 ROW decisions, it does not follow that the Regional Director abused his discretion in dismissing Appellants’ appeals. Faced with Appellants’ collective demand that he promptly process all 987 of their appeals within the time period provided by § 2.8, we conclude that the Regional Director’s dismissal of the appeals was a permissible option under the circumstances of this case.

² The actual number appears to be 988, *see infra* note 8, but because the Board does not have a complete set of the appeals, for purposes of this decision the Board will use the number repeatedly used by Appellants, which is 987.

Background

On May 10, 2010, Appellants, each represented by the same counsel, filed a single notice of appeal with the Regional Director from

the decisions of BIA to (a) approve fair market values and (b) grant right[s]-of-way[] ('ROWs') on their allotments for the following ROWs:

[No.]	ROW Owner	Expiration Date
[1]	Cortez Pipeline Co. (Kinder Morgan)	12/29/2021
[2]	El Paso	6/17/2013
[3]	El Paso	8/17/2014
[4]	El Paso	1/26/2023
[5]	El Paso	3/10/2023
[6]	El Paso	7/13/2023
[7]	El Paso	3/15/2029
[8]	Gas Co. of New Mexico (Continental Energy)	4/30/2013
[9]	Giant Industries Arizona Inc. (Western Refining)	3/31/2010
[10]	Mid America Pipeline Co. (Enterprise)	9/4/2015
[11]	Mid America Pipeline Co. (Enterprise)	9/14/2015
[12]	Mid America Pipeline Co. (Enterprise)	8/5/2024
[13]	Mid America Pipeline Co. (Enterprise)	12/7/2026
[14]	PNM Gas Services (New Mexico Gas Co.)	7/12/2020
[15]	PNM Gas Services (New Mexico Gas Co.)	9/16/2021
[16]	PNM Gas Services (New Mexico Gas Co.)	4/16/2023
[17]	PNM Gas Services (New Mexico Gas Co.)	8/5/2024
[18]	PNM Gas Services (New Mexico Gas Co.)	9/16/2024
[19]	Public Service Co. of New Mexico	3/7/2010
[20]	Public Service Co. of New Mexico	5/14/2011
[21]	Public Service Co. of New Mexico	6/26/2018
[22]	Public Service Co. of New Mexico	6/8/2022
[23]	Public Service Co. of New Mexico	7/10/2025
[24]	Public Service Co. of New Mexico	1/6/2029
[25]	Public Service Co. of New Mexico	5/26/2031
[26]	Transwestern Pipeline Company	4/14/2009
[27]	Transwestern Pipeline Company	11/18/2009
[28]	Transwestern Pipeline Company	12/21/2023
[29]	Transwestern Pipeline Company	8/5/2024
[30]	Transwestern Pipeline Company	10/24/2024
[31]	Tucson Electric	3/22/2024

Notice of Appeal, May 10, 2010 (AR Tab 16).³

An exhibit attached to the notice of appeal listed a total of 191 individuals as the appellants (identified by name, census number, and address). Appellants did not identify any allotments burdened by the 31 ROWs, did not identify the duration of any of the ROW grants such that the date of each ROW decision necessarily could be determined, and did not identify the purpose(s) of the ROWs. *See id.* Ex. A.⁴ Nor did they identify which specific Appellants were appealing from which of the specific ROW decision(s) identified in the table.

The Regional Director returned Appellants' documents, advising them that the documents "do not satisfy the minimum requirements for an appeal" under BIA's appeal regulations. Letter from Regional Director to Thomas R. Meites, Esq., June 4, 2010, at 1 (AR Tab 15). The Regional Director stated that a notice of appeal "must clearly identify the decision being appealed," and that the list of 31 ROWs, identified only by ROW owner and expiration date, was "insufficient to permit identification of the individual decisions being appealed." *Id.* The Regional Director advised Appellants that each appeal of an administrative decision should be filed separately, identifying the specific decision being appealed and the appellant(s).

Along with a single Statement of Reasons for the appeal, Appellants enclosed a few examples of documents associated with ROW renewals, although none of the documents was identified as corresponding to any of the 31 ROW decisions that were the subject of the notice of appeal, nor is it apparent that any were. *See* Statement of Reasons, June 8,

³ The numbered column on the left-hand side of the table has been added by the Board for reference purposes, and does not correspond to any numbers assigned by BIA to the ROWs. Appellants' table only included two columns, one for the ROW Owner and another for the Expiration Date. During the appeal to the Board Appellants have referred to specific ROWs based on the order in which they appear on the original table, thus corresponding to the numbering added by the Board in the left-hand column.

⁴ Exhibit A appears to be the source of the parties' misunderstanding that there were 192 Appellants, rather than 191. Exhibit A consists of a table listing all of the Appellants, with numbering in the left-hand column to correspond to each Appellant. However, the row containing headings for each column is numbered "1," and the first Appellant is numbered "2," so the numbering of the appellants is off by one.

2010 (SOR1), Exs. D-F (AR Tab 4, Att. 2, Att. E).⁵ Appellants, through their counsel, represented that any and all consents signed by the Appellants with respect to any 1 of the 31 ROWs “have been, are, and continue to be revoked.” SOR1 at 5. Appellants asked that BIA’s grants of the ROWs be “reversed and/or voided,” and that they be remanded for reconsideration. *Id.* Appellants also asked that trespass damages be assessed against the ROW grantees. *Id.*

After the Regional Director rejected their initial appeal documents as deficient, Appellants filed with the Regional Director, on September 24, 2010, a multitude of individual notices of appeal, identified as totaling 987, each intended to relate back to the May 10, 2010, collective notice of appeal.⁶ The notices of appeal apparently are identical in substance, except that each appeal identified, for that particular appeal, (1) the individual appellant; (2) the allotment in which the appellant holds an ownership interest; and (3) the grantee (owner) of the ROW that burdens the allotment and which is the subject of the appeal.⁷

Appellants enclosed with their new notices of appeal a 27-page spreadsheet listing each Appellant (by name and census number), the allotment(s) in which he or she claims an

⁵ The documents appear to have been offered primarily to illustrate Appellants’ assertions that the process for obtaining owner consent to ROWs is flawed and that individual landowners did not receive, and are not receiving, fair market value for ROWs.

⁶ Each new notice of appeal stated that “some letters purporting to notify allottees of their right to appeal were recently distributed by the BIA, [but] this appellant did not receive the prescribed notices for either the BIA’s decision to approve fair market value or grant the ROW(s) on his or her properties at any time prior to the original Notice of Appeal filed on May 10, 2010.” *See, e.g.*, Notice of Appeal, Sept. 24, 2010 (NOA2), at 2 (Tommy Nelson, Sr.) (AR Tab 14). No party has provided the Board with copies of any such letters.

⁷ The administrative record submitted by the Regional Director did not include a complete set of the individual notices of appeal, but instead included only a representative sample, *see* AR Tab 14, although the sample was for an individual (Tommy Nelson, Sr.) who had died on December 29, 2009, nine months before the initial appeal was filed with the Regional Director, and who apparently did not have an ownership interest in any of the affected allotments. *See* Letter from Regional Director to Board, July 1, 2011, Ex. A. Appellants also submitted two representative samples of the notices of appeal, and offered to submit a complete set if requested by the Board. No party has asserted that there are any substantive differences among the individual notices of appeal, except for the name and identifying information for the appellant, the allotment number, and the ROW owner, and thus the Board assumes for purposes of this decision that they are otherwise identical.

ownership interest, and the identity of the grantee(s) whose ROW the Appellant was appealing for that allotment. Each entry apparently corresponds to each of the individual notices of appeal filed with the Regional Director.⁸ Neither the notices of appeal nor the spreadsheet cross-reference Appellants' original table of 31 ROWs, *see supra* at 273, to identify which specific ROW decision (by expiration date) corresponds to which allotment.

Thus, in addition to the information previously provided to BIA, the 987 appeals identified specific Appellants as holding ownership interests in specific allotments, and connected those specific allotments to ROWs held by certain ROW owners, but did not link the appeals to the table of 31 ROWs provided earlier to BIA.

In new and substantively identical Statements of Reasons accompanying each of the individual notices of appeal, each Appellant, through counsel, made the assertion that he or she “was forced to make decisions regarding the ROWs while lacking reliable information on which to give informed consents.” *See, e.g.*, Statement of Reasons, Sept. 24, 2010 (SOR2), at 1 (AR Tab 14). Each Appellant also represented that to the extent BIA had obtained an appraisal for the ROW, the purported fair market value was incorrect “because other landowners, including the Navajo Nation, were receiving ROW payments that were many times higher than the values the BIA communicated to the appellants.” *Id.* at 2. In each statement of reasons, Appellants again asserted that “[a]ny and all consents signed by the appellant with respect to the ROW decision(s) being appealed have been, are, and continue to be revoked.” *Id.*

Although the NOA2s and SOR2s were addressed to both BIA's Navajo Region and the Board, Appellants only filed them with the Navajo Region. In subsequent correspondence, Appellants stated that during a call with the Solicitor's office, they “were advised that we needed to clarify the office we wish to review our appeals.” Letter from Jamie S. Franklin, Esq. to Navajo Region, Board, and Gregory C. Mehojah, Esq., Nov. 29, 2010 (AR Tab 12). Appellants gave notice that they “intend[ed] to appeal the ROW decisions to the Regional Director of the Navajo Region.” *Id.*

On December 14, 2010, Appellants wrote to the Regional Director regarding the notices of appeal they had filed with regard to the “renewal” of “some 31 [ROWs].” Letter from Thomas R. Meites, Esq. to Regional Director, Dec. 14, 2010, at 1 (AR Tab 11).⁹ The letter asserted that under BIA's appeal regulations, 25 C.F.R. § 2.19, the Regional

⁸ The entries on the spreadsheet number 988, not 987, as represented in each notice of appeal. *See* NOA2 at 2. The difference is not material to our decision.

⁹ In this letter, Appellants refer to “978” notices of appeal, but this appears to be a typographical error.

Director was “obligated to assemble the records on appeal and undertake to render written decisions” within 60 days after all time for pleadings had expired. *Id.*¹⁰ Appellants complained that BIA had not acknowledged receipt of their appeals, and that they had “not received the records on appeal.” *Id.* Appellants proposed that the Regional Director consolidate each of the appeals for each ROW renewal at issue, which would result in 31 appeals, each with its own record. *Id.* at 2. The record does not indicate, nor do Appellants contend, that they had divided their appeals into 31 groups, one for each of the 31 ROW decisions. Appellants also asked the Regional Director to recuse himself from considering their appeals because he was a Deputy Regional Director from 2000-2006, and Appellants understood that he had responsibility for the ROW decisions made during that time period. *Id.*

On December 22, 2010, the Regional Director requested “additional information to clarify the decision[s] that [Appellants] are appealing.” Letter from Regional Director to Thomas R. Meites, Esq., Dec. 22, 2010, at 1 (unnumbered) (AR Tab 9). The Regional Director acknowledged receipt of the individual notices of appeal, the 27-page spreadsheet, and the table for the 31 ROWs at issue, but stated that “[n]one of the notices of appeal identified the specific decision(s) being appealed by each appellant, nor did [Appellants] provide sufficient information to permit [BIA] to identify the individual who made the decision or the decisions at issue.” *Id.* at 2 (unnumbered). The Regional Director asked Appellants to (1) identify the BIA official who issued each ROW decision being appealed; (2) the date of the ROW decision; (3) the ROW number, if available; (4) the expiration date of the ROW; and (5) the original grantee of the ROW and/or current assignee. The Regional Director stated that “as soon as I receive the [requested] information, I will consider your appeals properly before me for a decision,” and asked Appellants to provide him with the information within 30 days from receipt of the letter. *Id.* at 3 (unnumbered).

Appellants responded to the Regional Director on January 18, 2011, asserting that they had not received notice of the ROW decisions they were appealing, “so of course we do not have the” date of the ROW decision(s) being appealed, and could not identify the BIA official who issued each decision. Letter from Thomas R. Meites, Esq. to Regional

¹⁰ Section 2.19 provides that a regional director shall render [a] written decision[] in all cases appealed to [the regional director] within 60 days after all time for pleadings (including all extensions granted) has expired. The decision shall include a statement that the decision may be appealed pursuant to [25 C.F.R. Part 2], identify the official to whom it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal.

Director, Jan. 18, 2011, at 1 (AR Tab 8).¹¹ Appellants stated that they had provided the expiration dates for the 31 ROWs at issue, and “[s]ince the [ROW] renewals are issued for a twenty year period, the approximate date of the issuance has already been provided.” *Id.* Appellants asserted that the identity of the BIA approving official for “the 31 renewals at issue” was readily available to BIA. *Id.* Appellants expressed increasing frustration that BIA had not “docketed or otherwise officially filed” the appeals and that preparation of the records by BIA apparently had not yet begun. *Id.* at 2.

On January 28, 2011, six Appellants (Mary W. Victor, Ann Begay, Janice Y. Yazzie, Elouise Baker, Della McCrea, and Esther B. Largo), through counsel, submitted FOIA requests to BIA for documents relevant to their appeals. *See* Appellants’ Motion to Supplement Record, Apr. 13, 2012, Tab A1. The six requested copies of TSRs and documents relating to ROWs on 21 allotments in which one or more of the six Appellants claimed an ownership interest. The record indicates that these six Appellants had, between January and June 2009, authorized their counsel to obtain this information from BIA.¹²

In a letter dated March 3, 2011, Appellants again expressed frustration to the Regional Director that their ROW appeals had not been “docketed, let alone processed” by BIA. Letter from Thomas R. Meites, Esq. to Regional Director, Mar. 3, 2011, at 1 (AR

¹¹ Appellants contend, and it is not disputed in this appeal, that none of them received written notice from BIA of the ROW decisions at the time they were issued, and thus Appellants did not have written notices of the decisions to use in identifying which 31 ROW decisions they were appealing.

¹² The 27-page spreadsheet submitted by Appellants to the Regional Director contains a column titled “Date,” in which the dates entered next to the six Appellants who filed a FOIA request correspond to the dates in 2009 on which these six Appellants signed authorizations for counsel to obtain the ROW information for them. If this column indicates the dates on which Appellants signed such authorization forms for their counsel, then it appears that each of the additional 185 Appellants also authorized counsel to request this information in 2009. The authorizations in the record for the six Appellants who submitted FOIA requests covered

[a]ny and all Title Status Reports, . . . appraisals, . . . Allottee Consent Forms, . . . Applications for Right-of-Way, . . . and any and all documents related to consideration for right-of-way grants, . . . any and all documentation related to right-of-ways, . . . and any and all computerized reports, records, or other data regarding any allotment in which I hold an interest.”

See Authorization and Release of Protected Information, signed by Janice Y. Yazzie, Mar. 23, 2009 (Motion to Supplement Record, Tab A1).

Tab 7). On April 13, 2011, Appellants submitted a demand to the Regional Director, pursuant to 25 C.F.R. § 2.8, for him to take action or issue decisions on the following matters: (1) accepting, filing, and processing Appellants' appeals; (2) deciding Appellants' motion to consolidate their appeals; and (3) deciding Appellants' motion for the Regional Director to disqualify himself from deciding the appeals. AR Tab 6. Appellants again asserted that the 60-day period provided in 25 C.F.R. § 2.19(a) had expired. *Id.*; *see supra* note 10.

Section 2.8 is an action-prompting mechanism that allows parties to seek action or a decision by a BIA official, and if the official fails to respond within the time period allowed, to appeal the official's inaction to the next level of review. *Ramirez v. Great Plains Regional Director*, 57 IBIA 218, 219 (2013). Under § 2.8, a BIA official must, within 10 days of receipt of a proper § 2.8 demand, either issue an appealable decision in response to the demand or set a timetable for issuing such a decision, not to exceed 60 days. 25 C.F.R. § 2.8(b).¹³ Appellants' § 2.8 demand was received by the Regional Director on April 18, 2011, and thus his response was due no later than April 28, 2011.

On April 22, 2011, within the time period allowed, the Regional Director issued the Decision, in which he responded to Appellants' § 2.8 demand and concluded that he was unable to grant Appellants' request. AR Tab 5. The Regional Director found that the appeals had not identified the specific decision or decisions being challenged, and that Appellants had failed to provide sufficient information to allow BIA to identify the 31 ROW decisions that Appellants intended to challenge (e.g., no ROW numbers or dates of issuance). The Regional Director concluded that Appellants had not filed legally sufficient appeals and thus he did not consider the appeals to have been properly filed. In effect, the Regional Director dismissed Appellants' appeals, *see* Appellee's Brief (Br.), Sept. 23, 2011, at 2 n.1, and did so on procedural grounds without considering the appeals on the merits.

On April 25, 2011, unaware that the Regional Director had issued the Decision, Appellants filed a notice of appeal with the Board, apparently based on his failure to

¹³ Although § 2.8 requires the BIA official to make a decision "on the merits," that does not necessarily require BIA to address the underlying merits of a claim if, for example, a dispositive decision on a demand for action may be made without reaching the underlying merits. *See, e.g., Castillo v. Pacific Regional Director*, 46 IBIA 209, 213 (2008) (§ 2.8 did not require BIA to issue a merits decision when the request for action simply repeated a prior request that had been denied and the denial was not timely appealed). The purpose of § 2.8 is to prompt BIA to issue an appealable decision that resolves, on whatever ground BIA decides is appropriate, the request of the party who submitted the demand for action.

respond. Appellants asked the Board to docket “*nunc pro tunc*” the 987 appeals that Appellants had filed with the Regional Director, and represented to the Board that the appeals had also been filed with the Board at the same time they were filed with the Regional Director, i.e., in September 2010.¹⁴ The Board denied Appellants’ request to docket the 987 appeals “*nunc pro tunc*” because the appeals had not, in fact, previously been filed with the Board. And because it appeared that the Regional Director was still considering those appeals, the Board requested a status report from the Regional Director. *See* Pre-Docketing Notice and Order, May 5, 2011 (Docket No. IBIA 11-107).

In response to the Board’s request for a status report, the Regional Director advised the Board of the Decision and further explained his reasoning for the Decision to dismiss the appeals. Among the reasons given for concluding that he was unable to identify the specific 31 ROW decisions being appealed, the Regional Director asserted that some allotments identified as owned by Appellants have multiple ROWs by various companies, some companies have multiple ROWs on the same allotment, and some of the ROWs have the same expiration date. Letter from Regional Director to Board, July 1, 2011, at 2 (unnumbered). The Regional Director reported that by using the information provided by Appellants, BIA had identified approximately 53 ROWs. *Id.* at 3 n.4 (unnumbered).

Appellants appealed the Decision to the Board (Docket No. IBIA 11-120). After the Regional Director submitted the record for the Decision, Appellants advised the Board that they believed the record is not complete, that the matter is not ready for Board review, and that by working with the Regional Director, additional necessary information might be produced that could lead to further identification of the ROW decisions at issue. Based on Appellants’ representations, and in light of the procedural ground upon which the Regional Director dismissed the appeals, the Board solicited briefing on whether the Decision should be summarily vacated and the matter remanded for further proceedings.

Appellants supported a remand, and in their response reported that “[w]ith the TSRs produced in the FOIA responses, [A]ppellants *have now identified* 10 of the 31 rights of way.” Appellants’ Submission on Status of Appeals, Sept. 22, 2011, at 3 (emphasis added). Appellants enclosed (1) a list of 10 ROWs corresponding to entries on the table, *see supra* at 273; and (2) TSRs for 10 allotments, each of which identifies, for the respective allotment, recorded ROWs (by owner, expiration date, and description), and the owners of the allotment. One or more of the owners for each allotment are among the Appellants in this case. Appellants asserted that “once the Regional Director produces as least one TSR

¹⁴ “*Nunc pro tunc*” is Latin for “now for then,” and generally refers to an order having retroactive legal effect to accomplish something that should have been done on the earlier specified date. *See* Black’s Law Dictionary 1174 (9th Ed. 2009).

for an allotment on each of the remaining 21 rights of way, [A]ppellants will be able to provide sufficient detail so that the Regional Director will have no difficulty identifying them.” *Id.* (emphasis added).

The Regional Director and ROW owners who are interested parties to the appeal opposed summarily vacating the Decision and remanding, on the grounds that Appellants had been afforded more than a sufficient opportunity to perfect their appeals, and the Board should simply affirm the Decision and dismiss Docket No. IBIA 11-107 with prejudice. The Board subsequently ordered briefing on the merits of Appellants’ appeal from the Decision.

In preparation for filing their opening brief, Appellants moved to supplement the appeal record with additional documents they had obtained from BIA in response to the FOIA requests by six Appellants. Appellants offered the supplemental information in order to demonstrate what information is available to BIA to permit identification of the ROW decisions at issue. The Board granted the motion to supplement, while reserving judgment on the extent to which consideration of the supplemental record would be appropriate in deciding the appeal. *See* Order Granting Motion to Supplement, Apr. 23, 2012.

While these appeals have been pending, some of the Appellants have filed new notices of appeal with the Regional Director, 10 of which apparently correspond to ROWs that Appellants contend are among the 31 ROW decisions subject to the Decision. To avoid any jurisdictional confusion, the Board stayed any ROW proceedings initiated by Appellants before the Regional Director, pending resolution of these appeals. *See* Order Staying Proceedings Before the Regional Director, June 22, 2012.

BIA’s Appeal Regulations

For an appeal within BIA, i.e., seeking review by a BIA official of a subordinate BIA official’s decision, a notice of appeal must “[c]ontain a statement of the decision being appealed that is *sufficient to permit identification of the decision.*” 25 C.F.R. § 2.9(c)(4) (emphasis added).¹⁵ “If possible,” an appellant must attach “a copy of the notice of the

¹⁵ BIA’s appeal procedures in 25 C.F.R. § 2.9 do not apply to appeals to the Board, which are governed by separate regulations that contain different procedures and requirements for properly filing an appeal. *Compare* 25 C.F.R. § 2.9 (procedures for appeals within BIA) *with* 43 C.F.R. § 4.332(a) (procedures for filing an appeal with the Board). The present case is limited to determining whether the Regional Director erred in dismissing Appellants’ appeals under BIA’s appeal regulations.

administrative decision received under § 2.7.” *Id.* § 2.9(c)(5); *see id.* § 2.7 (Notice of administrative decision or action).

Under BIA’s appeal regulations, an appellant’s filing of a notice of appeal triggers a 30-day period in which the appellant must file a statement of reasons (unless an extension for the statement of reasons is granted), and the statement of reasons “shall be accompanied by or otherwise incorporate all supporting documents.” *Id.* § 2.10(a), (c);¹⁶ *see id.* § 2.16 (extensions). Thus, the statement of reasons in an appeal to a BIA official constitutes the appellant’s opening brief on the merits, in which the appellant must present all of his or her arguments and evidence in support of the appeal.

Arguments on Appeal

I. Appellants’ Arguments

Appellants argue that 25 C.F.R. § 2.9(c)(4) does not require an appellant to identify the decision being appealed. Opening Br. at 15. Instead, they argue, the regulation “only requires that [an appellant] provide ‘sufficient’ information to permit the Regional Director to identify [the decision being appealed].” Appellants’ Reply Br. at 1.

Appellants argue that the information that they presented to the Regional Director, combined with information available to BIA, was “indisputably . . . sufficient” to permit BIA to identify the ROW decisions at issue. Opening Br. at 8-9. According to Appellants, “the Regional Director could have—and in some instances has—identified the [ROW] grants at issue.” *Id.* at 1. Appellants contend that the information they provided “leads directly to the grants at issue, as identified and maintained on the BIA’s computerized database which contains records on right of way grants.” *Id.* Appellants argue that all BIA needed to do was to “input the information” they provided into BIA’s database in order to identify the ROW decisions at issue. *Id.* Appellants contend that any additional information necessary for BIA to identify the specific decisions at issue was “easily accessible.” Reply Br. at 3.

To illustrate their point, Appellants contend that through their FOIA request they obtained copies of 7 actual ROW grants that are among the 31 ROWs at issue. Opening

¹⁶ The wording in § 2.10(a) was changed from “should be accompanied,” in the proposed rule, to “shall be accompanied,” in the final rule. *Compare* 52 Fed. Reg. 43006, 43007 (Nov. 6, 1987), *with* 54 Fed. Reg. 6478, 6481 (Feb. 10, 1989).

Br. at 9.¹⁷ Appellants argue that there is “no doubt that the Regional Director could have found most or all of the other 24 right of way decisions.” *Id.* at 11. Appellants criticize the Regional Director for dismissing their appeals while BIA was conducting a search of documents in response to the FOIA requests submitted by six Appellants. Reply Br. at 8.

As Appellants see this case, because the Regional Director “admits” that he “was able to identify 53 rights of way with expiration dates corresponding to the rights of way identified by Appellants,” the Regional Director “could have linked the 53 rights of way to a specific renewal or grant decision.” Opening Br. at 11. Any possible confusion, they argue, which may have been caused by the fact that 53—not 31—ROW decisions matched Appellants’ criteria, “is exactly the kind of purported confusion that could easily have been resolved if the Regional Director had told appellants—before dismissing the appeals—that he had located 53 relevant rights of way.” *Id.* at 12 n.8. In fact, according to Appellants, if the Regional Director had informed Appellants that there were 53 ROW decisions fitting their criteria, Appellants “would have pointed out that *all* rights of way held by the same company with the same expiration date identified by appellants were covered in the Notice of Appeal.” Reply Br. at 5 (emphasis added).

In response to criticism from the Regional Director and the ROW owners that Appellants had the burden to investigate their claims *before* filing an appeal, and that Appellants’ counsel waited almost 2 years to submit a FOIA request to BIA (and then from only six Appellants), Appellants argue that “the question is not what [A]ppellants did not do, but whether what they did was enough.” Reply Br. at 1. Appellants propose that “the matter should be remanded for a co-operative effort to gather the relevant documents and set out a procedure for briefing and arguing the merits.” *Id.* at 9.

II. Regional Director’s Arguments

The Regional Director argues that while he “is certainly willing to provide the Appellants with information necessary to properly perfect their appeal, the burden of developing the appeal record for each of the Appellants lies with the Appellants.” Appellee’s Br. at 11. The Regional Director contends that the distinction between FOIA and BIA’s appeal regulations is significant. FOIA requires BIA to produce documents responsive to a request, which the requester can then analyze and pursue as the requester deems appropriate. In contrast, the Regional Director argues, when an appeal is filed within BIA, BIA’s appeal regulations do not require the Regional Director, as relevant to this case, “to sift through 4,600 pages of paper produced to [six] Appellants through the

¹⁷ Appellants characterize these as “renewal” decisions, Opening Br. at 19, although it appears that some may be original grants of ROWs, *see id.* at 9-10 n.6.

FOIA and identify the decisions that should have been specifically described by Appellants” in their appeals. Regional Director’s Answer Br., June 29, 2012, at 10.

In response to Appellants’ argument that the Regional Director “could have linked” the 53 ROWs to the specific renewals or grants encompassed by the appeals, the Regional Director argues that Appellants ignore the fact that even if the Regional Director had done so, he may very likely have identified decisions that Appellants did not challenge, thus implicating the rights of third parties and non-represented Indian landowners. *Id.*

The Regional Director argues that Appellants failed to properly investigate their claims before filing their appeals:

In moving to supplement the record [on appeal to the Board], the Appellants admit that they failed to properly present their appeals [to the Regional Director, and] did not begin their research until long after they failed to properly present their appeals Rather than create the procedural chaos from which this case now suffers, the Appellants could have simply withdrawn their appeals and provided the information that the Regional Director repeatedly requested from the Appellants in a new notice of appeal.

Id. at 7.

III. ROW Owners’ Arguments

Several interested parties that hold or may hold ROWs that are or may be implicated by one or more of Appellants’ challenges filed briefs in support of affirming the Decision.¹⁸ The ROW owners generally make the same or similar arguments in opposition to Appellants.

¹⁸ Cortez Pipeline Co. filed briefs, and joint briefs were filed by Enterprise Products Partners L.P. on behalf of itself and Mid-America Pipeline Co.; LLC; Transwestern Pipeline Co., LLC; Western Refining, Inc.; Public Service Co. of New Mexico; New Mexico Gas Co., Inc.; and Tucson Electric Power Co. (collectively, Enterprise Prods., et al.). In response to the Board’s initial request for briefing on whether it might be appropriate to summarily vacate the Decision and remand for further proceedings without deciding the merits of this appeal, *see supra* at 280, El Paso Natural Gas Co. submitted a brief in opposition to vacatur, as did the other ROW owners, on the grounds that the Decision should instead be affirmed. On May 30, 2012, El Paso notified the Board that it had been acquired by Kinder Morgan, Inc.

Enterprise Products, et al. argue that the “record reflects a total failure of Appellants and their counsel to investigate the factual basis for their complaints.” Joint Br. of Enterprise Prods., et al., Sept. 23, 2011, at 2. “It was Appellants’ duty to obtain and assess the records to the degree necessary to perfect an appeal.” Joint Answer of Enterprise Prods., et al., Oct. 17, 2011, at 3. Cortez Pipeline adds that BIA was not required to assist Appellants with “discovery” for developing their appeals, Cortez Br., Sept. 23, 2011, at 5, and that “the Regional Director is *not* required ‘to locate and produce’ documents required for Appellants to identify and perfect their appeal,” Cortez Response Br., Oct. 14, 2011, at 3 n.3.

Similarly, El Paso argues that counsel for Appellants “refused to research or support Appellants’ claims over a period of several years,” and “[i]ndeed, . . . seem to have no idea what interests attach to their clients’ lands.” Verified Response of El Paso, Sept. 23, 2011, at 2, 11. To illustrate the point, El Paso asserts that for 54 out of 82 notices of appeal served on El Paso in September 2010, “El Paso has no record of any interest or ROW on the listed allotments or of the listed allottees having any interest in allotments with respect to which El Paso does hold ROWs.” *Id.* at 11. El Paso contends that the TSRs submitted by Appellants during this appeal to identify 10 ROWs “only highlights Appellants’ continuing inability to identify 21 of the decisions they [wish] to challenge. Appellants’ counsel is unable to connect 171 of their clients to any of the 31 decisions.” El Paso Response Br., Oct. 17, 2011, at 4. Enterprise Prods, et al. argue that the TSRs provided by Appellants are not significant and still fail to provide the minimal information required under § 2.9(c)(4). Joint Answer of Enterprise Prods. et al., Oct. 17, 2011, at 2.

The ROW owners also argue that Appellants’ appeals should be dismissed because Appellants failed to serve their notices of appeal on all interested parties (i.e., all landowners), that Appellants who hold a minority interest in allotments subject to a ROW lack standing to challenge a ROW decision, and that in addition to affirming the Decision, the Board should dismiss the appeal in Docket No. IBIA 11-107 with prejudice because Appellants should not be allowed to start the entire process over again and should not be allowed to take “multiple bites at the same apple.” El Paso Response, Oct. 17, 2011, at 5-6.

Discussion

I. Burden of Proof in an Appeal to the Board

The Board reviews questions of law *de novo*. *Birdbear v. Acting Great Plains Regional Director*, 56 IBIA 87, 89 (2012); *Seminole Tribe of Florida v. Eastern Regional Director*, 53 IBIA 195, 210 (2011). We apply the same *de novo* standard of review to evaluating the sufficiency of evidence. *Poler v. Midwest Regional Director*, 56 IBIA 6, 11 (2012). When a

BIA decision involves an exercise of discretion, we do not substitute our judgment for that of BIA, but we do review the decision for consistency with applicable law and to determine whether the discretion exercised by BIA is supported by the record and adequately explained. *Id.* at 10-11.

Appellants have the burden to demonstrate error in a regional director's decision. *Taylor Drilling Corp. v. Eastern Oklahoma Regional Director*, 53 IBIA 15, 18 (2011).

II. Appeal from the Regional Director's Failure to Act (Docket No. IBIA 11-107)

We dismiss the appeal in Docket No. IBIA 11-107. Appellants elected to present 987 appeals to the Regional Director, demanded his action on the appeals pursuant to § 2.8, and then filed an appeal with the Board to force action on the appeals. But as a means to force BIA to act, or to circumvent the BIA official to whom the matter had been presented, the appeal to the Board was premature, and was also rendered moot by the Regional Director's issuance of the Decision.

We agree with Appellants that Docket No. IBIA 11-107 should be dismissed without prejudice. We find no basis to dismiss the appeal "with prejudice," as argued by several of the ROW owners, so as to preclude Appellants from re-filing their appeals. First, it is well-established that a § 2.8 appeal does not encompass the underlying merits of a claim, and thus dismissal of a § 2.8 appeal presumptively must be without prejudice to the merits. Second, in light of our affirmance of the Decision, in which the Regional Director concluded that he was unable to identify the ROW decisions that were the subjects of the appeals, and dismissed them for failure to comply with § 2.9(c)(4), it is unclear how it would even be possible to apply a dismissal "with prejudice" and be consistent with the Regional Director's own finding. Thus, we dismiss the appeal in Docket No. IBIA 11-107 without prejudice to any party, including Appellants, BIA, and interested parties.

III. Did the Regional Director Err in Dismissing Appellants' Appeals? (Docket No. IBIA 11-120)

Appellants argue that the Regional Director erred in dismissing their appeals because, they contend, they had provided sufficient information to permit BIA to identify the ROW decisions that were the subjects of their individual appeals. Opening Br. at 15; Reply Br. at 1. But it is apparent that Appellants were not entirely sure themselves which specific 31 ROW decisions they wished to appeal, or even, possibly, whether the number was limited to 31. And on appeal, Appellants have failed to demonstrate that the information they provided to the Regional Director did, in fact, "lead[] directly" to a set of 31 specific ROW decisions. Opening Br. at 1.

Appellants consistently represented to BIA that they were appealing 31 ROW decisions, and each of the individual notices of appeal purported to be from “the ROW”—singular—that burdened a particular allotment, which purportedly corresponded to 1 of 31 ROW decisions identified on Appellants’ initial table by ROW owner and expiration date. Yet the information that Appellants provided yielded, according to the Regional Director (and not disputed by Appellants), a universe of 53 potential ROWs. After finally submitting a FOIA request to BIA for a few Appellants—only 6 of 191—Appellants announced to the Board that they have “now identified” 10 of the 31 ROW decisions, and provided the Board with 10 TSRs to prove that information “easily accessible” to BIA would have, when combined with the information provided by Appellants, led directly to the ROW decisions at issue. Appellants’ Submission on Status of Appeals at 3; Reply Br. at 3; Opening Br. at 1.

But the 10 TSRs proffered by Appellants on appeal illustrate the difficulty we would find in holding that the Regional Director abused his discretion in dismissing their appeals. Appellants assert that with the 10 TSRs, they have *now identified* 10 ROW decisions they contend are among the 31. But even those 10 TSRs do not unambiguously identify only 10 ROW decisions that fit the descriptions in Appellants’ table.

For example, the TSR for Allotment 211447, which Appellants contend identifies the challenged ROW grant to Mid-America Pipeline (Enterprise), expiring on September 4, 2015, includes two recorded entries for encumbrances for Mid-America with the same expiration date. In the copy of the TSR provided to the Board, Appellants have identified, with red arrows, *both* of the ROW entries. Each entry appears to describe a different ROW.¹⁹ Appellants’ table of the ROWs included only *one* ROW entry for Mid-America with that expiration date, and Appellants expressly represented to the Regional Director that they were appealing 31 ROW “renewals.” If nothing else, the Regional Director could

¹⁹ One ROW is described as follows:

20 YR TERM APPT 09/27/95 12” LIQUID NAT GAS PIPELINE 50’
WIDE VARS SECS ACROSS ALLTD/TRBL LANDS T18, 20-25N, R3 5-
10W NMPM 25.785 MI, 156.273 AC+/- INCL AMND#1 TO CRT 2
TO 4 MAPS/SHEETS REF# E-NM-94-18A. APP 1-15-97.

The other ROW recorded is described as follows:

RENEWAL OF R/W UN-NUM 35.29 MI LEN 50” WD APP 11-27-95
RENEW TWO EXSTG PIPELINES 8-5/8” 10-3/4” TO 12-3/4” TO
TRANSPORT LIQUIFIED HYDROCARBONS ACROSS TRBL/ALTD
LAND VARSEC T20-25N R5-10W SEC 17& 20 T18N R3W NM 213.88
AC+/- REF 791-7835---

Appellants’ Submission on Status of Appeals, Att. 3(c).

reasonably interpret the appeals as limited to 31 specific ROW decisions. Appellants argue, on appeal, that if the Regional Director had only told them that 53 ROWs fit within their criteria, they “would have pointed out that all rights of way held by the same company with the same expiration date identified by appellants were covered” by their notices of appeal. Reply Br. at 5. That assertion flatly contradicts their representations to the Regional Director that 31 renewals were at issue.

Similarly, a TSR submitted by Appellants for Allotment 211445 to identify the ROW grant to Public Service Co. of New Mexico (PSCNM), expiring on June 26, 2018, records two encumbrances for that company that expire on that date, one for a fiber optic telecom line within an existing 345 KV transmission line ROW, and the other apparently for the 345 KV transmission line itself. The mileages and acreage descriptions for each ROW differ. For this allotment, however, on the copy of the TSR submitted to the Board, Appellants have added a red arrow next to one entry—the fiber optic ROW—but not next to the other one—the transmission line ROW. Appellants do not explain, nor is it apparent, how BIA was to determine that of the two ROWs that fit the description on Appellants’ original table, it was the fiber optic ROW grant that they wished to appeal, but not the transmission line ROW. Nor is it even clear that the fiber optic ROW decision was a “renewal,” as Appellants, on several occasions, characterized the ROW decisions they sought to challenge. *See, e.g.*, Appellants’ Submission on Status of Appeals at 3, 4 (“the 31 renewals at issue”); Notice of Appeal at 1 (Docket No. IBIA 11-120) (“the 31 right of way renewals;” the “list of the 31 *renewals* challenged” (emphasis added) (referring to the table of ROW owners and expiration dates)); Letter from Thomas R. Meites, Esq. to Regional Director, Jan. 18, 2011, at 1 (AR Tab 8); Letter from Thomas R. Meites, Esq. to Regional Director, Dec. 14, 2010, at 1 (AR Tab 11).

A third TSR produced by Appellants, for Allotment 216292, also may contain an ambiguity with respect to a ROW to Transwestern Pipeline Co. The TSR has two recorded ROW entries for Transwestern, both with the same expiration date—November 18, 2009.²⁰ Whether both entries are attributable to a single BIA ROW decision is not entirely clear.

Thus, notwithstanding Appellants’ assertion that they have now identified 10 of the 31 ROW decisions with sufficient specificity, we conclude that Appellant-owners of the above three allotments have not demonstrated on appeal that the information they provided

²⁰ Neither the Regional Director nor Appellants have addressed the fact that 4 of the 31 ROWs identified in Appellants’ table, *supra* at 273 (Nos. [9], [19], [26], [27]), had already expired before Appellants filed their original notice of appeal with the Regional Director in May 2010. A total of 7 have now expired.

to the Regional Director “leads directly” to the 3 specific ROW decisions included in the 31 ROW decisions challenged.

The Board’s review of the TSRs provided for 7 other allotments, however, does indicate that if BIA had reviewed those TSRs, it would have been able to identify 7 specific ROW decisions that corresponded to the information in Appellants’ table, and would have been able to connect those ROW decisions to appeals by Appellant-owners of the allotments. For example, the TSR provided for Allotment 1671 identifies only one ROW recorded for PNM Gas Services that expires on September 16, 2021. *See* TSR for Allotment 1671; ROW No. [15], Table, *supra* at 273.²¹ Thus, if the Regional Director had reviewed the TSRs for these 7 allotments, which were among the hundreds of allotments identified in Appellants’ 987 notices of appeal, it appears that he could have identified 7 of the 31 specific ROW decisions being appealed by Appellants.

Viewed in isolation, the appeals of Appellant-owners of these 7 allotments apparently provided sufficient information to the Regional Director to permit him to identify the ROW decision being appealed for each of those 7 allotments. Thus, we disagree with the ROW owners’ argument that even the TSRs fail to provide the minimal information required by § 2.9(c)(4). The TSRs, combined with other information that had been provided by Appellants for these 7 allotments, apparently was “sufficient to permit identification of the decision.” 25 C.F.R. § 2.9(c)(4). In that respect, we also disagree with the ROW owners and the Regional Director to the extent they suggest that Appellants’ failure to identify the BIA official who made the decision was fatal to compliance with § 2.9(c)(4).²² We are not convinced that with the ROW information provided in a TSR, BIA would be unable to identify and locate the ROW decision documents that would identify the BIA official who made the decision.

Although the record on appeal, as supplemented by Appellants, indicates that the TSRs for 7 allotments would have led directly to 7 of the 31 ROW decisions that Appellants sought to challenge, it does not follow that the Regional Director necessarily

²¹ On the other hand, of the seven that could be identified with certainty based on the seven TSRs, one had already expired before Appellants filed their initial notice of appeal. *See* TSR for Allotment 1159; ROW No. [9], Table, *supra* at 273 (ROW to Giant Industries Arizona Inc. (Western Refining)).

²² Nor would we agree that all of the other information requested by the Regional Director necessarily was required for Appellants to comply with § 2.9(c)(4), which focuses solely on sufficient identification of the decision being appealed, and does not address, e.g., the sufficiency of a statement of reasons or whether an appellant has satisfied its ultimate burden of proof on the merits.

abused his discretion by dismissing all of Appellants' appeals when he did. It was Appellants who, collectively, demanded prompt action from the Regional Director pursuant to § 2.8, which ordinarily would require BIA to issue a merits decision.²³ And by then Appellants had filed their statements of reasons, in which they were required to present their arguments and evidence to support their appeals. *See* 25 C.F.R. § 2.10(a). While it may well have been permissible for the Regional Director to respond by staying the appeals indefinitely until Appellants had clarified which decisions they were appealing, or to respond by informing Appellants that with the limited information they provided BIA, it might take a significant amount of time for BIA to identify the specific 31 ROW decisions, or at least some of them, we are not convinced that it was an abuse of discretion for the Regional Director to simply dismiss all the appeals.

Appellants argue—but also effectively concede—that additional information in BIA's possession, which would have permitted Appellants to provide BIA with sufficient information to identify the specific 31 ROW decisions at issue, was “easily accessible.” Reply Br. at 3. And as BIA and the ROW owners correctly argue, filing an appeal within BIA does not trigger some open-ended “discovery” process that imposes an obligation on BIA to assist an appellant in identifying the very subject matter of the appeal. Once an appeal is filed that satisfies § 2.9(c)(4), BIA may need to prepare the record, but only after it is certain of the subject matter of the appeal.

In a case such as the present one, FOIA—not § 2.9—serves the purpose for a potential appellant to identify the source of a potential complaint. BIA's appeal regulations are not a FOIA-substitute that imposes an obligation on BIA, after an appeal is filed, to assist an appellant to identify the very source of injury complained of, particularly when the process might well involve evaluating and narrowing down, or even expanding, a list of potential decisions that an appellant might ultimately choose to challenge. Imposing on BIA an obligation, as part of the appeal process, to assist an appellant to do so could well raise ethical issues—placing the decision maker in the role of legal adviser to an appellant. We agree with the Regional Director that the distinction between BIA's obligations under FOIA and its obligations under BIA's appeal regulations in 25 C.F.R. Part 2 is significant.

²³ It remains unclear to the Board why all 191 Appellants proceeded collectively in this case, particularly to the point of demanding action under § 2.8 without having sorted out their appeals in some manner. Nothing prevented respective groups of individual Appellants from dividing their appeals into 31 separate appeals, each from a specific ROW decision, which is what we understand the Regional Director to have suggested. Even on appeal to the Board, Appellants have argued their case as though the Decision must be evaluated in relation to all of their appeals, collectively, and either affirmed or reversed in whole.

Of course, when BIA issues a decision that is sent to all interested parties, and which includes appeal rights, identification of the decision for purposes of filing an appeal should not be an issue. But when a would-be appellant believes that BIA has made a decision without providing such notice, he or she may submit a FOIA request to BIA to obtain a copy. In the present case, Appellants, acting collectively, chose to provide BIA with a limited amount of collective information, and declined to exercise their individual rights under FOIA to obtain relevant information that would have helped each appellant identify which ROW decision or decisions he or she wished to challenge, before filing his or her appeal. Meanwhile, Appellants proceeded to brief their appeals by submitting identical and essentially generic statements of reasons, and then demanded prompt BIA action on their appeals.

All of the necessary information in the present case presumably could have been obtained by Appellants through FOIA requests in order to prepare their appeals and properly identify the specific decisions being appealed, without placing BIA in the position of sifting through 987 appeals and possibly—or possibly not—identifying which specific 31 ROW decisions were at issue. In fact, an appellant who files an appeal without having taken the time, through FOIA or other information gathering activities, to collect all information and evidence upon which the appellant wishes to rely, runs the risk that BIA may summarily reject the appeal on the merits, rather than dismiss it on procedural grounds. *See* 25 C.F.R. § 2.19(a) (60-day period, after the time for all pleadings have expired, for a BIA decision maker to issue a final decision, with appeal rights).²⁴

In reviewing a discretionary decision by BIA, we do not substitute our judgment for that of BIA, and thus we do not determine whether another course of action might have been preferable to the one chosen. In the present case, we hold that the Regional Director did not abuse his discretion by dismissing Appellants' 987 appeals as a group, and thus we affirm the Decision. Because the Regional Director dismissed the appeals on the ground that Appellants had not provided sufficient information to permit BIA to identify which

²⁴ It is at least conceivable, and possibly likely, that by dismissing the appeals, the Regional Director chose a course of action that was least prejudicial to Appellants, even (or maybe especially) for those Appellants connected to the seven ROW decisions that apparently could have been identified by BIA, considering the procedural position in which they had placed themselves. Although our decision is limited to determining whether the Regional Director abused his discretion in dismissing all 987 appeals, as a group, on procedural grounds, the argument by the ROW owners that Appellants' counsel failed to conduct the necessary legal research and factual investigation, with respect to each of their 191 clients, before filing the appeals with the Regional Director, is not without some force.

ROW decisions were being appealed, our affirmance of the Decision does not preclude Appellants from filing new appeals or challenges.²⁵

Conclusion

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 dismisses the appeal in Docket No. IBIA 11-107 without prejudice, and affirms the Decision in Docket No. IBIA 11-120.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

²⁵ In this appeal, the parties have raised, directly or indirectly, a variety of issues that may be relevant to new appeals that have been or may be filed by Appellants, including issues relating to timeliness, subject matter jurisdiction, standing, and notice to other interested parties. We need not address those issues to resolve the present appeal, and thus do not consider the arguments raised in this appeal concerning those issues or any others raised but not expressly addressed in this decision.