



## INTERIOR BOARD OF INDIAN APPEALS

Enapay Alliance LLC v. Acting Eastern Oklahoma Regional Director,  
Bureau of Indian Affairs

58 IBIA 107 (11/14/2013)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ENAPAY ALLIANCE LLC,	)	Order Docketing Appeal, Vacating
Appellant,	)	Decision, and Remanding
	)	
v.	)	
	)	
ACTING EASTERN OKLAHOMA	)	Docket No. IBIA 14-027
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS	)	
Appellee.	)	November 14, 2013

On October 17, 2013, the Board of Indian Appeals (Board) received a notice of appeal from Enapay Alliance LLC (Appellant), from a September 9, 2013, decision (Decision) of the Acting Eastern Oklahoma Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Regional Director affirmed a “Notice of Invalidity of Deed,” recorded on May 31, 2012, by BIA’s Miami Agency Superintendent (Superintendent), regarding an April 25, 2011, quit claim deed from Benjamin Leat McNeeley to Appellant for chat material.<sup>1</sup>

On October 31, 2013, the Board received a motion from the Regional Director to have the matter remanded for additional consideration and issuance of a new decision. On November 8, 2013, the Board received a response from Appellant in opposition to the Regional Director’s motion. Appellant contends that the motion for a remand should be denied because the Board should first determine whether BIA has authority over chat sales

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<sup>1</sup> “Chat” refers to the waste material generated from milling operations to recover lead and zinc from metal-bearing ore in the Tri-State Mining District of Southwest Missouri, Southeast Kansas, and Northeast Oklahoma. *See* 40 C.F.R. § 278.1(b); Final Rule, 72 Fed. Reg. 39331, 39334 (July 18, 2007) (Criteria for the Safe and Environmentally Protective Use of Granular Mine Tailings Known as “Chat”).

The Regional Director concluded that McNeeley’s attempt to convey his interest in the Western Co-Mingled Chat Pile was invalid because it is subject to a restriction against alienation. The Regional Director amended the Decision on September 17, 2013, to correct a paragraph that identified the source of the chat material as the Woodchuck Chat Pile rather than the Western Chat Pile.

and because the Regional Director is seeking the remand only to supplement, but not correct, the Decision.<sup>2</sup>

A party opposing a motion from a BIA regional director for a voluntary remand must demonstrate that compelling reasons exist that warrant denial of the motion. *Protect the Peninsula's Future v. Northwest Regional Director*, 57 IBIA 225, 226 (2013), and cases cited therein. The Board has recognized that a BIA official has a broad right to seek a remand to permit further consideration of a matter and issuance of a new decision. *Id.*; see *Birdbear v. Acting Great Plains Regional Director*, 51 IBIA 273, 273 (2010) (“As a general rule, the Board will grant a Regional Director’s motion for a voluntary remand.”).

In the present case, Appellant argues that the Regional Director’s motion for a remand is premature because the Board should first determine, as a matter of law, whether BIA has any authority over chat sales. Appellant also contends that the Regional Director’s motion should be denied because it is made in bad faith, as evidenced by the Regional Director’s alleged intent to merely supplement the Decision, see *supra* note 2, without addressing Appellant’s substantive arguments and concerns. Finally, Appellant contends that delaying resolution of this dispute violates his due process rights.

We are not convinced that Appellant has provided compelling reasons to deny the Regional Director’s motion for a remand to permit BIA to give additional consideration to the matter and to issue a new decision. The fact that the case ultimately may rest on an issue of law is not, at least standing alone, a compelling reason because a remand will provide BIA not only an opportunity, but also the obligation, to consider further and to address the legal issues raised by Appellant. The remand does not merely return the matter to the Regional Director as it existed prior to the appeal. Whatever the reasons behind the Regional Director’s request for a remand—the motion does not say—the Regional Director must, in the new decision, address the arguments raised by Appellant in its notice of appeal, statement of reasons, and response in opposition to the remand. Thus, the Regional Director must at least consider whether the legal underpinnings of the Decision were sound, whether a different result is warranted, and—even if a new decision reaches the same result—whether the rationale should be modified.

Finally, with respect to Appellant’s concern that delay of this matter violates his due process rights, we note that BIA’s appeal regulations protect Appellant’s rights by automatically staying the effect of BIA action that would otherwise affect those rights. See

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<sup>2</sup> Appellant contends that after receiving the motion for a remand, he contacted the Regional Director’s office and was informed that the Regional Director intended to add a paragraph to the Decision, but not change the outcome.

25 C.F.R. § 2.6. Neither the Superintendent's action, nor the Decision, has ever become legally effective. *See Spicer v. Eastern Oklahoma Regional Director*, 50 IBIA 328, 329, 331 (2009) (unless and until a BIA decision is made effective, it has no legal effect, and no legal consequences may flow from it).<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 docketed the appeal, vacated the Decision, and remands the matter to the Regional Director for further consideration of the matter, including the arguments and issues raised in this appeal, and issuance of a new decision.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Thomas A. Blaser  
Administrative Judge

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<sup>3</sup> On remand, if Appellant believes that the Regional Director will not issue a new decision in a timely manner, Appellant may invoke the provisions of 25 C.F.R. § 2.8, which allow a party who follows the procedures in that section to demand a timely decision from a BIA official and, if no response or decision is forthcoming within the prescribed time period, appeal the official's inaction.