



INTERIOR BOARD OF INDIAN APPEALS

Elaine I. Long and Valerie Spencer v. Navajo Regional Director, Bureau of Indian Affairs

58 IBIA 133 (12/11/2013)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ELAINE I. LONG and VALERIE)	Order Vacating Decision and
SPENCER,)	Remanding
Appellants,)	
)	
v.)	Docket Nos. IBIA 13-111
)	13-125
NAVAJO REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	December 11, 2013

Landowners Elaine I. Long and Valerie Spencer appealed to the Board of Indian Appeals (Board) from an April 5, 2013, decision of the Navajo Regional Director (Regional Director), Bureau of Indian Affairs (BIA).¹ The Regional Director granted a right-of-way (ROW) to the Navajo Tribal Utility Authority (NTUA) across Allotment No. 311457 for a period of 20 years, to “[c]onstruct, operate, and maintain the three phase electric line with attachment of aerial fiber optic cable and upgrade existing transmission line from 69kv to 115kv.” Administrative Record Tab 30.²

On November 25, 2013, the Board received a Motion for Remand from the Regional Director. In the motion, the Regional Director states that the appraisal relied upon by BIA for determining fair market value for the ROW, *see* 25 C.F.R. § 169.12, only appraised a portion of the allotment covered by the ROW. The Regional Director concedes that the amount of consideration provided by NTUA did not comply with § 169.12, and seeks a remand to satisfy the legal requirements for granting a ROW.³

¹ Long’s appeal was assigned Docket No. IBIA 13-111, and Spencer’s appeal was assigned Docket No. IBIA 13-125.

² The Regional Director signed the grant of easement on April 5 and gave notice of the decision to interested parties in a letter dated April 24, 2013. The Board refers to the April 5 grant of easement and the April 24 letter, collectively, as the Decision.

³ Section 169.12 requires, in the absence of a waiver, that Indian landowners receive not less than fair market value for a ROW, and that BIA “shall obtain and advise the landowners of the appraisal information to assist them . . . in negotiations for a right-of-way or renewal.”

The Board grants the Regional Director's motion, vacates the Decision, and remands the matter for further consideration. On remand, the Regional Director must issue a new decision and advise interested parties of their appeal rights as required by 25 C.F.R. § 2.7.

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 vacates the Decision granting the ROW and remands the matter to the Regional Director for further consideration.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge