



INTERIOR BOARD OF INDIAN APPEALS

Roger Birdbear v. Great Plains Regional Director, Bureau of Indian Affairs

58 IBIA 236 (04/04/2014)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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|----------------------------|---|-----------------------------|
| ROGER BIRDBEAR, |) | Order Vacating Decision and |
| Appellant, |) | Remanding |
| |) | |
| v. |) | |
| |) | Docket No. IBIA 14-044 |
| GREAT PLAINS REGIONAL |) | |
| DIRECTOR, BUREAU OF INDIAN |) | |
| AFFAIRS, |) | |
| Appellee. |) | April 4, 2014 |

Roger Birdbear (Appellant) appealed to the Board of Indian Appeals (Board) from a November 19, 2013, decision (Decision) of the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), affirming a March 5, 2013, decision of the Acting Superintendent (Superintendent), Fort Berthold Agency, BIA, to approve an assignment of oil and gas lease no. 7420A41797, for Fort Berthold Allotment M774A, from Kodiak Oil & Gas (USA) Inc. to XTO Energy Inc.¹

In accordance with the Board's notice of docketing and order setting briefing schedule, dated February 3, 2014, Appellant filed his opening brief. During the time period for filing answer briefs, on March 27, 2014, the Board received an entry of appearance and a motion from the Regional Director to have the Decision vacated and the matter remanded for further consideration and issuance of a new decision.

As a general rule, the Board will grant a BIA regional director's motion for a voluntary remand. *See, e.g., Froelich v. Acting Great Plains Regional Director*, 51 IBIA 173,

¹ Apparently, Appellant appealed to the Regional Director on January 17, 2013, after receiving a December 17, 2012, letter from the Superintendent giving notice to the Indian landowners of Fort Berthold Allotment M774A of BIA's *intent* to approve a lease assignment. Decision at 1. The Superintendent's letter did not contain appeal instructions. *Id.* at 1 n.3. While Appellant's appeal to the Regional Director was pending, the Superintendent issued the March 5, 2013, decision to approve the lease assignment. *Id.* at 1. The Regional Director found that Appellant's appeal was technically premature, but for purposes of the Decision, the Regional Director considered Appellant as having appealed from the Superintendent's March 5 decision. *Id.* at 1-2.

173 (2010); *Birdbear v. Acting Great Plains Regional Director*, 51 IBIA 273, 273 (2010). 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. *Protect the Peninsula's Future v. Northwest Regional Director*, 57 IBIA 225, 226 (2013), and cases cited therein. We have held that BIA need not justify a request for a voluntary remand. *Froelich*, 51 IBIA at 173. Thus, the Board summarily grants the Regional Director's motion.²

On remand, the Regional Director shall address, as necessary and appropriate to support a new decision, the arguments that were raised by Appellant in his opening brief on appeal to the Board.

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 and remands the matter to the Regional Director for further consideration and issuance of a new decision.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

² As “context” for the requested remand, the Regional Director explains that the sequence of events in the proceedings below, *see supra* note 1, conceivably could give rise to a question concerning the Superintendent's jurisdiction over the matter when he approved the assignment. Motion for Voluntary Remand at 1-2. While not conceding the issue, the Regional Director suggests that the best course of action is a request for remand and vacatur of the Decision, and issuance of a new decision. *Id.* at 2. In granting the Regional Director's motion, we express no opinion on the issue raised by the Regional Director, or on whether it would have affected our review of the Regional Director's decision.