



## INTERIOR BOARD OF INDIAN APPEALS

Andrew D. Smith v. Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs

60 IBIA 21 (02/06/2015)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

ANDREW D. SMITH,	)	Order Dismissing Appeal Without
Appellant,	)	Prejudice
	)	
v.	)	
	)	Docket No. IBIA 15-049
ACTING EASTERN OKLAHOMA	)	
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS,	)	
Appellee.	)	February 6, 2015

Andrew D. Smith (Appellant), a lessee for Osage oil and gas lease No. G06-20655 (Lease),<sup>1</sup> appealed to the Board of Indian Appeals (Board) from a November 6, 2014, decision (Decision) of the Acting Eastern Oklahoma Regional Director (Regional Director), Bureau of Indian Affairs (BIA). Appellant had appealed to the Regional Director from a September 8, 2014, decision by BIA’s Osage Agency Superintendent (Superintendent) to assess fines against him, in the amount of \$47,100, for failure to file monthly production reports for the Lease as required by 25 C.F.R. § 226.13(b). The Regional Director “remanded” the Superintendent’s “assessment of fines in the amount of \$47,100,” for further proceedings, because the Superintendent had failed to give notice to all of the lessees of record. We conclude that the appeal is not ripe for Board review, and therefore we dismiss it without prejudice.

In his notice of appeal, Appellant asserted that the Decision is “totally ambiguous,” with respect to the scope of the remand. Notice of Appeal, Dec. 4, 2014, at 1 (unnumbered). The Board agreed that the Decision is ambiguous: The Decision appears to make certain findings adverse to Appellant, but then remands the Superintendent’s “assessment of fines in the amount of \$47,100.” Order for Briefing on Standing or Ripeness, Dec. 15, 2014, at 1; Decision at 2 (unnumbered). The Decision does not expressly, however, vacate the Superintendent’s decision (nor does it expressly affirm in part, even though it appears to agree with portions). Decision at 2 (unnumbered). In order to determine whether the Decision “adversely affected” Appellant, for purposes of determining his standing to appeal, *see Preservation of Los Olivos and Preservation of Santa*

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<sup>1</sup> The Lease covers the NW1/4 of Section 22, Township 23 North, Range 11 East, Osage County, Oklahoma.

*Ynez v. Pacific Regional Director*, 58 IBIA 278, 296 (2014), and whether the matter is ripe for Board review, the Board ordered briefing from the Regional Director, Appellant, and other interested parties on the issues of standing and ripeness. No party responded to the Board's order, nor has the Regional Director otherwise sought to clarify the intent and scope of the Decision and the remand.

Assuming that the Decision was intended to affirm a finding of Appellant's liability, and to remand only to permit other lessees of record, after receiving proper notice, to contest their own joint and several liability, Appellant undoubtedly would be adversely affected and would have standing to appeal. On the other hand, if the Decision was not intended to determine with finality Appellant's liability, it would appear that Appellant would lack standing to appeal from the Decision. But in that case, if or when a final liability decision is issued by BIA, he could again appeal to the Board.

Aside from the issue of standing, the Board has applied the separate, though closely related, judicial doctrine of ripeness. Even if an appellant may be able to make a threshold showing of standing, it is possible that the matter may not be ripe for Board review. *Wind River Resources Corp. v. Acting Western Regional Director*, 43 IBIA 1, 3 (2006). Three considerations are relevant to the ripeness issue: will a delay cause hardship, will Board intervention interfere with further administrative action, and is further factual development of the issues required? *Id.* If a matter is not ripe for Board review, the Board may dismiss the appeal without prejudice. *Id.* at 4.

We conclude that this appeal is not ripe for review. The Decision, though ambiguous in several respects, does not preclude the Superintendent, on remand, from considering arguments raised by Appellant for why he should not be held liable in the amount assessed.<sup>2</sup> Instead, the Decision broadly remands "the assessment of fines in the amount of \$47,100." Decision at 2 (unnumbered). Although none of the parties responded to the Board's order for briefing on standing and ripeness, it does not appear that a delay will cause hardship. It does appear, however, that Board review of this appeal might very well interfere with further review, consideration, and administrative action by the Superintendent. It is possible that further factual development of the issues is not required, at least if BIA reaffirms its conclusion with respect to the amount of Appellant's liability, but it is required with respect to other potentially liable parties, regardless of the ultimate amount of liability assessed by BIA. And, of course, if the matter is resolved by the parties in the proceedings below, review by the Board may be unnecessary. After

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<sup>2</sup> Appellant does not contend that he is not liable for any fine, but argues that the amount should be reduced for a variety of reasons. Notice of Appeal at 3 (unnumbered).

considering the factors relevant to the issue of ripeness, the Board concludes that the appeal is not ripe for review.

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 without prejudice for lack of ripeness.

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