INTERIOR BOARD OF INDIAN APPEALS

Darren Rose v. Acting Pacific Regional Director, Bureau of Indian Affairs

62 IBIA 330 (03/25/2016)

Related Board case:
59 IBIA 257

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

DARREN ROSE, Appellant,	)	Order Affirming Decision in Part, Vacating in Part, and Remanding
v.	)	
	)	Docket No. IBIA 14-114
ACTING PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	March 25, 2016

Darren Rose (Appellant) appealed to the Board of Indian Appeals (Board) from a May 22, 2014, decision (Decision) of the Acting Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), regarding Appellant's use of the Public Domain Allotment known as the Jim Benter Allotment RED-549 (Allotment).[1] Appellant owns fractional trust and fee undivided interests in the Allotment. The Decision, which is styled as an Administrative Cease and Desist Order, determined that Appellant's operation on the Allotment was unlawful because it was in violation of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, and because Appellant was operating a business on Federal trust land without obtaining a permit or lease approved by BIA for the use of the Allotment.

For the reasons discussed below, the Board affirms the portions of the Regional Director's decision finding that Appellant is in trespass and ordering him to cease and desist his operation, and to remove all structures, stockpiles, and debris from the Allotment that are or have been in his possession or control or are otherwise attributable to his trespass. The Board vacates the portion of the Decision ordering Appellant to "restore" the Allotment to its condition before the trespass, and remands that issue for further consideration. The Board concludes that the remaining errors alleged by Appellant amount to no more than harmless error.

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[1] The Decision describes the Allotment as the N½SW¼, S½NW¼ of Section 2, T. 44 N., R. 7 W., Mount Diablo Meridian, located in Siskiyou County, California, containing 160 acres, more or less (Siskiyou County Assessor's Parcel No. 014-300-350).

Statutory and Regulatory Background

With limited exception, a lease is required before taking possession of Indian land. 25 C.F.R. § 162.005 (2014).[2] An Indian landowner who owns 100% of the trust or restricted interests in a tract may take possession of the tract without a lease. *Id.* § 162.005(b)(1). However, "[a]n Indian landowner of a fractional interest in the land . . . must obtain a lease . . . from the owners of other trust and restricted interests in the land, unless all of the owners have given [the landowner] permission to take or continue in possession without a lease." *Id.* § 162.005(a)(2). Absent such permission, a lease is required to ensure that sufficient landowner consent has been obtained.[3] *Goodwin v. Pacific Regional Director*, 60 IBIA 46, 59-60 (2015).

If a lease is required, and an individual or entity takes possession of, or uses, Indian land without a lease, the unauthorized possession or use is a "trespass,"[4] and BIA "may take action to recover possession, including eviction, on behalf of the Indian landowners and pursue any additional remedies available under applicable law." 25 C.F.R. § 162.023.

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[2] We cite to the regulations in effect at the time of the Regional Director's May 22, 2014, decision. In 2012, the Department of the Interior (Department) revised its regulations addressing non-agricultural surface leasing of Indian land, adding new regulations to address, *inter alia*, business leases, effective January 4, 2013. 77 Fed. Reg. 72440, 72440 (Dec. 5, 2012). Under the revised regulations, the "general provisions" in Subpart A (§§ 162.001 to 162.029) apply to business leases, and additional provisions applicable to business leases are included in Subpart D (§§ 162.401 to 162.474). 25 C.F.R. § 162.002. Agricultural leases, in contrast, are covered in Subpart B (§§ 162.101 to 162.256). *Id.* To the extent that Appellant relies on regulations governing agricultural leases, *see*, *e.g.*, Opening Brief (Br.), Oct. 6, 2014, at 10-11 (citing 25 C.F.R. § 162.106), we summarily reject such reliance.

[3] In this case, it is undisputed that there are at least 20 owners of the undivided trust or restricted interest in the Allotment. Based on the number of owners, under amendments enacted in 2000 to the Indian Land Consolidation Act, 25 U.S.C. § 2201 *et seq.*, and the regulations applicable to business leases, the consent of landowners holding more than 50% of the undivided trust or restricted interest in the Allotment is required to obtain a lease and bind any non-consenting owners to the lease. 25 U.S.C. § 2218(b); 25 C.F.R. § 162.012(a).

[4] "Trespass" is defined as "any unauthorized occupancy, use of, or action on any Indian land or Government land." 25 C.F.R. § 162.003.

Factual and Procedural Background

For over a decade, Appellant, who states that he is a member of the Alturas Indian Rancheria, has engaged in various uses of the Allotment and during that time added several structures.[5] Opening Br. at 3 (citing Rose Declaration, Oct. 6, 2014, ¶ 7). Appellant asserts, and the Board assumes for purposes of this decision, that the Allotment is comprised of an 82.19% undivided trust interest and a 17.81% undivided fee interest. The Board also assumes that Appellant is correct that he owns a majority of the undivided trust interest, and an undivided fee interest, in the Allotment.[6]

Since 2012, BIA has conducted three site inspections to determine the nature and extent of Appellant's use of the Allotment, which BIA found to include, *inter alia*, an asphalt/concrete stockpiling and processing operation. *See* Decision, May 22, 2014, at 2 (AR 3); Report of Second Investigation Conducted Aug. 29-30, 2013 (AR 6); Report of First Investigation Conducted May 21, 2012 (AR 27). BIA issued notices to businesses that appear to be, or have been, involved in Appellant's operation, with copies to Appellant, warning that the operation was not authorized by a permit or lease approved by BIA. *See, e.g.*, Letter from Regional Director to Road & Highway Builders of California, Inc., Sept. 4, 2013 (AR 7); Letter from Regional Director to Eagle Peak Rock & Paving, Mar. 12, 2013 (AR 18).[7]

On June 21, 2013, Appellant submitted to BIA a proposed business lease between "Darren Rose, et al., (the Allottees) and Yreka Transit Mix Concrete, Inc." Letter from

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[5] Appellant does not argue, nor does the record show, that he had permission from all of the owners of trust and restricted interests in the Allotment, or a lease, for his possession and use of the Allotment during that time.

[6] The record contains two different title status reports for the Allotment. *Compare* Title Status Report, Apr. 15, 2014 (2014 TSR) (Administrative Record (AR) 4) *with* Title Status Report, Oct. 23, 2012 (2012 TSR) (AR 18). Appellant relies on the 2012 TSR, while BIA relies on the 2014 TSR—which indicates that the total undivided fee interest in the Allotment is 1.51%, not 17.81%—but BIA also states that it is in the process of reviewing the chain of title to determine Appellant's percentages of trust and fee ownership. Because we assume that Appellant is correct, and conclude that the difference would not affect the outcome in any event, we need not wait for BIA to complete its review.

[7] Eagle Peak Rock & Paving responded that it is leasing an asphalt hot plant and lime marination plant to Road & Highway Builders. Letter from Eagle Rock & Paving to Regional Director, Mar. 15, 2013, Enclosure (Purchase Order, Feb. 27, 2012) (AR 17).

Peebles to BIA, June 21, 2013 (Exhibit (Ex.) 2 to Opening Br.).[8] On September 3, 2013, the Regional Director returned the lease to Appellant, identifying specific concerns for Appellant to address, including questions about Yreka Transit Mix Concrete's intended use of the Allotment; a lack of any environmental documentation necessary for compliance with NEPA; and the need for a determination of fair rental payments, to be supported by an appraisal, and a provision for rental adjustments. Letter from Regional Director to Peebles, Sept. 3, 2013, at 1-4 (Ex. 4 to Opening Br.).

Most recently, BIA's third inspection, conducted on May 6, 2014, confirmed that the Allotment was still being used for stockpiling and processing of asphalt and/or other materials, and found that the operation had grown in size. Report of Third Investigation Conducted May 6, 2014 (AR 5). Photographs of the Allotment at that time depict structures, stockpiles, and heavy equipment on the Allotment. *See id.*, Attachment 3 (photos); *see also* Letter from Bettis and Chrisman to Green, Aug. 27, 2013, Enclosure (photo of "Yreka Transit Mix" cement truck) (AR 10).

On May 22, 2014, the Regional Director issued the Decision from which Appellant appeals. The Regional Director found that Appellant's use of the Allotment was unlawful because the foregoing operation was in violation of NEPA, and because Appellant was operating a business on Federal trust land without obtaining a "permit or lease" approved by BIA, citing 25 U.S.C. § 415[9] and 25 C.F.R. Part 162. Decision at 1-2. The Regional Director ordered Appellant, within 15 days of receipt of the Decision, to "cease and desist" his operation on the land, to "remove all surface and subsurface structures, including all stockpiles and debris" from the site, and to "restore the land to its original state prior to the unauthorized use." *Id.* The Decision also advised Appellant that he would be "legally responsible for all damages to the land and all consequential damages resulting from [his] unauthorized activity on the land." *Id.*

Appellant appealed to the Board and filed opening and reply briefs. The Regional Director filed an answer brief. After the appeal was filed, Appellant submitted another proposed business lease for his use of the Allotment to the Regional Director. The Regional Director returned the proposed lease to Appellant on the grounds that it failed to include a properly reviewed and approved appraisal, a performance bond, or required

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[8] On appeal, BIA submitted a declaration that exhibits 2 through 5 of Appellant's opening brief were inadvertently omitted from the record. Yearyean Declaration, Oct. 31, 2014, ¶ 2 (Ex. 1 to Answer Br., Nov. 5, 2014).

[9] Section 415 provides that "[a]ny restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior . . . ." 25 U.S.C. § 415.

NEPA documentation. Letter from Regional Director to Peebles, Aug. 20, 2015, at 2. Appellant notified the Regional Director and the Board of his intent to resubmit a business lease for the Allotment.[10]

Standard of Review

The Board exercises *de novo* review over questions of law and the sufficiency of evidence to support a BIA decision. *Goodwin*, 60 IBIA at 54; *Smartlowit v. Northwest Regional Director*, 50 IBIA 98, 104 (2009). In contrast, the Board reviews a BIA discretionary decision to determine whether the decision is in accordance with applicable law, is supported by the administrative record, and is not arbitrary and capricious. *Goodwin*, 60 IBIA at 54. The Board does not substitute its judgment for that of BIA. *Alturas Indian Rancheria v. Acting Pacific Regional Director*, 54 IBIA 1, 9 (2011). An appellant bears the burden of proving that BIA's decision was in error or not supported by substantial evidence. *Goodwin*, 60 IBIA at 54; *Smartlowit*, 50 IBIA at 104.

Discussion

On appeal, Appellant argues that the Regional Director erred in finding that Appellant failed to obtain a "permit" for his operation on the Allotment, Decision at 1, "because BIA has no jurisdiction over permits," Opening Br. at 6-7. We summarily reject

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[10] Before taking the appeal under consideration, the Board ordered a joint status report from Appellant and the Regional Director on any proposed lease package that had been or was anticipated to be resubmitted by Appellant. In response, Appellant stated that he anticipates submitting a new version of the proposed business lease to the Regional Director at a future date, which would then trigger a review period for BIA. Appellant stated that he is working with the Office of the Special Trustee for American Indians, Office of Appraisal Services, regarding approval of a previously submitted appraisal or preparation of a new appraisal, and that he has not yet made contact with BIA regarding required NEPA documents. The Board concludes that this case is ripe for a decision, and notes that nothing in its decision is intended to hinder Appellant from obtaining a business lease for the Allotment, if at any time he submits a complete lease package to BIA and obtains BIA's approval.

this argument, as noted *infra*.[11] Appellant next argues that, even if a lease is required, BIA lacks authority to disrupt his possession or use of the Allotment, because he owns a *fee* interest in the Allotment, and owns the structures in *fee*. Reply Br., Nov. 20, 2014, at 1-2; Opening Br. at 7-10. At the same time, Appellant argues that BIA lacks such authority because he owns a *trust* interest in the Allotment, or the Regional Director's cease and desist order is at least an abuse of discretion. Reply Br. at 3-5; Opening Br. at 12-13. In addition, Appellant argues that BIA lacks authority to order him to "restore" the Allotment, and that the restoration order is vague. Reply Br. at 4; Opening Br. at 12. Appellant further argues that the Regional Director erred in finding that Appellant violated NEPA, on the ground that it is *BIA's* obligation to comply with NEPA prior to approving a lease of Indian land. Reply Br. at 9 n.5; Opening Br. at 13-14. Finally, in his reply brief, Appellant argues that BIA violated trust obligations to assist him to make productive use of the Allotment, and requests a limited remand and a stay of the appeal. Reply Br. at 6-10. We address these arguments in turn.

I. Appellant's Ownership of the Allotment Neither Avoids the Requirement for a Lease, Nor Prevents BIA from Taking Action on Appellant's Trespass

On one hand, Appellant argues that no lease is required for Appellant's operation or, even if he is required to have a lease based on the trust interests in the Allotment, BIA cannot disrupt his possession or use of the Allotment, and cannot order him to remove the structures, because he owns a fee interest in the Allotment, and owns the structures in fee. Opening Br. at 7-10. According to Appellant, as an owner of a fee interest in the Allotment, he can possess and use the whole Allotment. *Id.* at 8. On the other hand, Appellant argues that BIA lacks authority to disrupt his possession or use of the Allotment, or that the Decision was an abuse of discretion, because Appellant is the owner of a majority of the undivided trust interests in the Allotment, and the Decision was not in

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[11] Any error in the Decision's reference to permits was harmless. There is no dispute—given the Regional Director's position on appeal that Appellant's operation requires a lease, *see* Answer Br. at 9, and Appellant's submission of a proposed business *lease* during this appeal—that the nature of Appellant's operation on the Allotment fits a lease rather than a permit. We agree with BIA that a lease is required. *See* 25 C.F.R. § 162.007(b) (distinguishing a permit from a lease, which, e.g., grants a legal interest in Indian land, is for a longer term, is for a broader use associated with infrastructure, gives the lessee the right of possession and the ability to limit or prohibit access by others, and limits the circumstances under which the Indian landowner may terminate the interest). Moreover, on appeal, Appellant responds to the finding in the Decision that he was required, but failed, to obtain a "lease." Appellant does not argue, much less demonstrate, that he was prejudiced by the alleged error.

Appellant's best interest. *Id.* at 12-13. In support of these arguments, Appellant claims that he "does not possess or use the Allotment to the exclusion" of any co-owners, and that the record does not show that any co-owners have suffered any "harm" or have "objected" to his operation. *Id.* at 8, 12-13.

Appellant is correct that Part 162 distinguishes, with respect to BIA's authority to approve leases, and collect rent, between fee and trust interests in Indian land. Under the regulations, BIA "will not take any action on a lease of fee interests or collect rent on behalf of fee interest owners." 25 C.F.R. § 162.004(a)(1). BIA also "will not condition [its] approval of a lease of the trust and restricted interests on [the existence of] a lease from the owners of any fee interests."[12] *Id.* But, on the facts of this case, we disagree with Appellant that the foregoing distinction allows him to continue his operation on the Allotment without a lease approved by BIA.

One clear problem with Appellant's argument is that the nature of Appellant's possession and use of the Allotment prevents the possession and use of other Indian landowners of the portions of the Allotment on which Appellant's operation is conducted or situated. At a minimum, Appellant's operation has included the addition of structures and the stockpiling of materials on the trust lands, which occupy this portion of the Allotment to the exclusion of co-owners.[13] And, when ownership is held in undivided interests, there is no separate "trust" and "non-trust" acreage. "Indian land" means "any *tract* in which *any interest* in the surface estate is owned by a tribe or individual Indian in trust or restricted status and includes both individually owned land and tribal land." 25 C.F.R. § 162.003 (definition of "Indian land") (emphases added). Thus, a "tract" of land, with respect to the surface estate, that is owned in both trust and fee undivided interests is "Indian land," within the meaning of the definition. For these reasons, we agree with the Regional Director that the leasing regulations "apply to the [A]llotment as a whole," and that Appellant's fee interest in the Allotment is "not relevant" to, i.e., does not avoid, his need for a lease approved by BIA for the trust interests in the Allotment. Answer Br. at 9.

Appellant relies on the regional director's decision in *Goodwin*, *supra*, for the proposition that BIA "lacks authority to evict an Indian trust owner even where a lease is

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[12] Accordingly, when BIA calculates the applicable percentage of interests required for consent to a lease of the trust and restricted interests, it will not include the fee interests. 25 C.F.R. § 162.004(a)(2).

[13] In his answer brief, the Regional Director states that it is unclear whether Appellant's operation involves any extractive uses, for which a lease may be required under 25 C.F.R. § 212. Answer Br. at 7 n.6.

required." Opening Br. at 10 & n.8. After briefing in the present case, however, the Board vacated the regional director's decision in *Goodwin*, holding that BIA had discretionary authority to evict the Indian co-owner. *Goodwin*, 60 IBIA at 58-60. Moreover, when the Department approved the rule revisions in 2012, it specifically rejected comments, similar to what Appellant argues on appeal, that owners of a fractional interest should be exempt from the requirement to obtain a lease. The Department explained that "one co-owner does not have the right to exclude the others without their consent," and it rejected the suggestion that "requiring a lease is diminishing the property rights of each co-owner by requiring him or her to pay rent for use of his or her own property." 77 Fed. Reg. at 72444. Thus, as we explained in *Goodwin*, we find "no support in law . . . for the proposition that one (or any number of co-owners) may take possession or make whatever use he wishes of land held jointly, without the consent of other co-owners, as long as he leaves some degree of access to some other part of the property." 60 IBIA at 60; *cf. Ramirez v. Acting Great Plains Regional Director*, 62 IBIA 271, 282 (2016) (holding that BIA non-exclusive permits for livestock grazing, in proportion to trust ownership, did not infringe on the possessory rights of fee co-owners). We therefore reject Appellant's arguments that no lease was required, or that the Regional Director lacked authority to issue the cease and desist order.[14]

We also agree with the Regional Director that he has authority to order the removal of Appellant's fee-owned structures from the Allotment. Answer Br. at 10-11. Under the regulations, BIA "may take action to recover possession, including eviction, on behalf of the Indian landowners and pursue any additional remedies available under applicable law." 25 C.F.R. § 162.023. In *Thomson v. Acting Pacific Regional Director*, the Board affirmed a regional director's decision to order the appellant to cease and desist his trespass by removing, *inter alia*, his structures from the trust land.[15] 40 IBIA 36, 39-40 (2004).[16]

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[14] On appeal, the Regional Director asserts that the Decision does not "evict" Appellant from the Allotment. Answer Br. at 12. To the extent that the Regional Director is clarifying that Appellant retains the ability to possess and use the Allotment as may any other co-owner without a lease, we find no error. But of course, the cease and desist order, which requires Appellant to cease his operation and to remove the structures and materials, does "evict" Appellant, to the extent of his unlawful possession and use of the land.

[15] The applicable regulation in that case was 25 C.F.R. § 162.106(a), which similarly authorized BIA to take action to "recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law."

[16] Appellant seeks to distinguish *Thomson* on the grounds that the appellant there was not a co-owner of the allotment. But the regulations do not exclude Indian owners from the

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Appellant relies on *Smartlowit*, in which the Board held that BIA erred in requiring a lease for a house located on trust land, and in seeking the rental value for the past use of the house, when BIA had apparently assumed or impliedly found, without supporting evidence, that the house was trust realty, to which the leasing regulations apply. 50 IBIA at 106-09. But, in the present case, the Regional Director did not assume or make any finding that Appellant's structures are trust property, or demand the rental value for the past use of the structures. Rather, the Regional Director found that the addition of Appellant's structures to the Allotment constituted a trespass *on trust land*, and required removal of the structures. *See* Decision at 2 ("your operation is . . . unlawfully *located on real property held in trust*") (emphasis added); *see also* Answer Br. at 10-11 ("BIA may require the removal of any structures erected in trespass on trust land, regardless of fee status [of the structures]"). Thus, under the regulations, and consistent with Board precedent, we conclude that the Regional Director's order to remove the structures was authorized.

Appellant also argues that, as the owner of a majority of the trust interest in the Allotment, he can provide the necessary landowner consent to a lease of the Allotment pursuant to 25 U.S.C. § 2218 and 25 C.F.R. § 162.012. Opening Br. at 12. Even assuming that Appellant is the majority owner, his having majority consent—and the alleged absence of "harm" to the land or "objections" by co-owners[17]—is not a substitute for the requirement to obtain an approved lease for the Allotment. *See* 25 U.S.C. § 415 (requiring that leases of Indian land be approved by the Secretary); *Thomson*, 40 IBIA at 38-39 (rejecting appellant's argument that he could not be considered in trespass when he had received consent from one or more individual Indian landowners to occupy and use the property, because the United States as trustee had not consented). Under the regulations, it was the responsibility of Appellant, as a landowner owning less than 100% of the trust or restricted interests in the Allotment, to secure a lease before taking possession, 25 C.F.R. § 162.005(b)(1); the failure to do so was a trespass, *id.* § 162.023; and BIA had discretionary authority to recover possession on behalf of all of the Indian landowners, *id.*[18]

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definition of trespass, nor do they divest BIA of authority to take action against such trespass.

[17] The record does contain complaints about Appellant's operation, however, Appellant asserts that the record does not show that any of the complainants were Indian co-owners.

[18] Appellant seeks to rely on a provision in BIA's regulations for agricultural leases, arguing that he is engaged in negotiations for a lease and thus BIA is *precluded* from taking action. As we noted, *supra* note 2, that regulation does not apply. But even if it did, the regulation only provides that BIA "will" take action against trespass unless BIA has reason to believe the parties are engaged in negotiations. That language does not *prohibit* BIA from taking
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Nor are we convinced that the Regional Director abused his discretion in issuing the cease and desist order. Contrary to Appellant's position, nothing in the regulations authorizing BIA to take action to recover possession based on a trespass requires a finding by BIA of any "harm or exigent circumstances that might justify evicting Appellant from the Allotment." Opening Br. at 13; *see* 25 C.F.R. § 162.023.[19] And, as the Regional Director argues, the point of requiring a lease is to determine *whether* the proposed activities would be in the best interest of the Indian landowners, including fair rental value and potential environmental impacts, prior to taking possession. Answer Br. at 6-7. The Regional Director's cease and desist order is rational and supported by the record, including evidence of Appellant's years-long possession and use of the Allotment without a lease—which Appellant does not dispute as a factual matter.

II. Restoration Order

Appellant argues that, under the Board's decision in *Thomson*, the Regional Director has failed to articulate a legal basis for ordering Appellant to "restore" the land to its original state prior to the unauthorized use, and that the restoration order is too vague to allow compliance with the order. Reply Br. at 4; Opening Br. at 12. The Regional Director has not responded to Appellant's argument.

In *Thomson*, the Board affmed BIA's order to remove materials from the property, but vacated the portion of the regional director's decision that ordered the appellant to conduct restoration, "[b]ecause 25 C.F.R. Part 162 does not authorize BIA to order a trespasser to conduct restoration, and because the [r]egional [d]irector did not invoke any other legal authority as the basis for the restoration order." 40 IBIA at 40. Based on *Thompson*, and the Regional Director's failure to respond to Appellant's argument, the Board vacates the restoration order and remands the issue to the Regional Director for further consideration. On remand, if the Regional Director believes that he has a legal basis for ordering Appellant to conduct restoration, he may reissue the order, explain the legal basis, and address Appellant's argument that greater specificity is required as to what constitutes restoration.[20]

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action against trespass in any circumstance; it merely leaves such action to the discretion of BIA if BIA concludes that negotiations are underway.

[19] The Regional Director did not invoke 25 C.F.R. § 162.024, which authorizes BIA to take "appropriate *emergency action* if . . . an individual or entity causes or threatens to cause immediate and significant *harm* to Indian land." Emphases added.

[20] The Board notes that the Regional Director's decision also advised that Appellant would be responsible "for all damages to the land and consequential damages resulting from [his]
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III. NEPA

Appellant also argues that the Regional Director erred in finding that "you are violating [NEPA]," Decision at 2, because, according to Appellant, "such responsibility is on the BIA and the BIA alone." Reply Br. at 9 n.5; *see also* Opening Br. at 13-14. We agree with Appellant that the Decision did not accurately describe BIA's responsibility to ensure compliance with NEPA prior to approving a lease of Indian land. *See* 25 C.F.R. § 162.440(a)(2). Appellant, however, overlooks his own responsibility to provide information and documents as needed to facilitate compliance with NEPA. *See id.* §§ 162.027, 162.438(g). We conclude that the alleged error was harmless, because Appellant does not argue, much less show, that he was prejudiced by the error.

IV. Alleged Violation of Trust Obligations and Request for Limited Remand and Stay

Finally, in his reply brief, Appellant argues that BIA violated its trust obligations to Appellant by allegedly obstructing his attempts to commercially develop the Allotment. Reply Br. at 6-10; *see id.* at 10 ("The primary obstacle to the BIA making any determinations regarding the commercial use of the Allotment . . . is the BIA itself, which has repeatedly refused to review and approve Appellant's lease of the Benter Allotment."). As relief, Appellant requests that the Board "remand jurisdiction to the BIA for the limited purpose of reviewing and approving a Business Lease and stay these proceedings to allow the parties to fully participate in the [Alternate Dispute Resolution] process." *Id.* at 9. Generally, the Board will decline to consider arguments raised by an appellant for the first time in a reply brief. *See, e.g., Dobbins v. Acting Eastern Oklahoma Regional Director*, 59 IBIA 79, 91 n.13 (2014); *Citation Oil & Gas Corp. v. Acting Navajo Regional Director*, 57 IBIA 234, 245 n.13 (2013). We are not persuaded to consider Appellant's argument in this case. Even were we to consider Appellant's argument, we would reject it as unsupported, and we would deny the requested relief. Appellant does not show that BIA should bear any responsibility for his failure to obtain a lease, or that BIA has breached any trust obligation to Appellant. As Appellant's status report to the Board confirms, Appellant has not yet submitted a complete business lease package for the Allotment to BIA for approval. *See supra* note 10.

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unauthorized activity on the land." Decision at 2. To the extent, if any, that the Regional Director intended to give Appellant a *choice* between conducting necessary restoration action himself under BIA supervision (and thus mitigate damages), and paying for the cost of restoration by BIA, he should so clarify. *See Thomson*, 40 IBIA at 40 n.5.

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 affirms the Regional Director's May 22, 2014, decision in part and vacates the decision in remaining part, and remands the matter for further consideration.

I concur:

// original signed	//original signed
Thomas A. Blaser	Steven K. Linscheid
Administrative Judge	Chief Administrative Judge