



## INTERIOR BOARD OF INDIAN APPEALS

Lapetco, Inc. v. Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs

64 IBIA 15 (10/31/2016)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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LAPETCO, INC.,	)	Order Vacating Decision and
Appellant,	)	Remanding
	)	
v.	)	
	)	Docket No. IBIA 16-094
ACTING EASTERN OKLAHOMA	)	
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS,	)	
Appellee.	)	October 31, 2016

Lapetco, Inc. (Appellant) appealed to the Board of Indian Appeals (Board) from a June 2, 2016, Expiration Notice issued by the Acting Eastern Oklahoma Regional Director (Regional Director), Bureau of Indian Affairs (BIA), for Oil and Gas Lease Nos. 601-5220 (47544) and 602-1629 (65247) in Creek County, Oklahoma,<sup>1</sup> for failure to produce oil and gas in paying quantities, and for failure to comply with the regulations governing oil and gas leases of restricted lands of members of the Five Civilized Tribes, 25 C.F.R. Part 213.<sup>2</sup> In its notice of appeal, Appellant requested that BIA reconsider the Expiration Notice and also appealed to the Board from the Expiration Notice.

Regarding Appellant’s request for reconsideration, the Board explained in its Pre-Docketing Notice that the Board has long held that once an appeal is filed with it from a decision issued by a BIA official, BIA loses jurisdiction over the matter except to participate in the appeal as a party. *See* Pre-Docketing Notice, Order to Complete Service, and Order for Administrative Record, July 11, 2016, at 2 n.3 (citing *Bullcreek v. Western Regional*

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<sup>1</sup> The Expiration Notice describes the first lease as covering the SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 31, Township 15 North, Range 9 East, and describes the second lease as covering the SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 32, Township 15 North, Range 9 East, each pertaining to the allotment of Una Fife, Creek 9813, and included in Communitization Agreement OKNM 78484X.

<sup>2</sup> The Expiration Notice also states that the liabilities of Bond Nos. 169748 and 169801, issued by Trinity Universal Insurance Company, will not be released until clearance is received from the Bureau of Land Management and the Office of Natural Resources Revenue.

*Director*, 39 IBIA 100, 101-02 (2003) (affirming BIA’s refusal to reconsider, for lack of jurisdiction, a BIA decision while it was on appeal to the Board). The Pre-Docketing Notice further explained that a regional director may, at any time during the course of an appeal to the Board, request that the Board remand a matter to him or her for further consideration. *See id.*

On October 27, 2016, after Appellant filed its opening brief,<sup>3</sup> the Board received a motion from the Regional Director to remand. Entry of Appearance and Motion for Remand, Oct. 24, 2016 (Motion). As a general rule, the Board will grant a BIA regional director’s motion for a voluntary remand. *See Merrifield v. Acting Pacific Regional Director*, 62 IBIA 52, 52 (2015), and cases cited therein. In addition, ordinarily, when the Board grants a voluntary remand, it will vacate the underlying BIA decision that is being appealed. *See Yakama Nation v. Northwest Regional Director*, 52 IBIA 262, 263 n.2 (2010), 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. *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 v. Acting Great Plains Regional Director*, 51 IBIA 173, 173 (2010).

The Board grants the motion, and, consistent with the Board’s practice, vacates the Regional Director’s decision before sending the matter back for further consideration. On remand, the Regional Director shall consider and address, as appropriate, the issues and arguments raised by Appellant in its notice of appeal and opening brief.

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 Regional Director’s June 2, 2016, decision, and remands the case for further consideration and issuance of a new decision.

I concur:

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// original signed  
Thomas A. Blaser  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Robert E. Hall  
Administrative Judge

<sup>3</sup> Neither the Regional Director nor the Tulsa Field Solicitor’s Office received an attachment to the opening brief from Appellant. The Board received the attachment, however, and transmitted a copy to the Regional Director’s office upon request.