



INTERIOR BOARD OF INDIAN APPEALS

Yakama Nation v. Northwest Regional Director, Bureau of Indian Affairs

43 IBIA 190 (07/12/2006)

Related Federal case:

Confederated Tribes and Bands of Yakama Nation v. United States, 2006 WL 3750294 (E.D. Wash. 2006) (granting defendant's motion to dismiss), *recon. denied*, 2007 WL 626364 (2007), *aff'd*, 296 Fed. Appx. 566 (9th Cir. 2008).



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

YAKAMA NATION,	:	Order Vacating Decision and
Appellant,	:	Remanding
	:	
v.	:	
	:	Docket No. IBIA 01-116-A
NORTHWEST REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	July 12, 2006

This is an appeal by the Yakama Nation (Nation) from a March 12, 2001, decision of the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning operation and maintenance bills (O&M bills) issued to the Nation and to individual Indian landowners within the Wapato Irrigation Project (WIP). On June 19, 2006, the Regional Director filed a request that the Board vacate his March 12, 2001 decision and remand the matter for a new decision. For the reasons discussed below, the Board grants the Regional Director’s request.

Background

The Regional Director’s decision addressed two sets of O&M bills issued by the Yakama Agency Superintendent (Superintendent) and WIP — one set for the Year 2000 and the other for pre-2000 assessments. 1/ In his decision, the Regional Director rejected various legal arguments made by the Nation regarding the O&M bills. However, the Regional Director found both individual and systemic errors in the bills and decided that WIP must withdraw all of the year 2000 and pre-2000 O&M bills until it can identify which bills are correct and which ones are in error. Decision at 4. In addition, even in

1/ The O&M bills involve numerous landowners and numerous tracts of land within WIP. In order to facilitate review, the Regional Director accepted certain “test cases” offered by the Nation to represent various factual or legal circumstances common among the Nation and other landowners within WIP, and agreed to apply his decision accordingly, based on his authority to separately review and insure the accuracy of WIP billings. Decision at 2.

those instances in which the Regional Director rejected the Nation's arguments to invalidate certain bills as a matter of law, the Regional Director suggested that some relief from collection might be warranted upon further development of the evidence.

Shortly after the Nation filed its appeal, and before any briefs were filed, the Board stayed these proceedings at the request of the parties to allow for settlement negotiations. The stay was repeatedly extended at the parties' request until it was lifted on October 18, 2005, after the parties reported that settlement negotiations had been unsuccessful.

On March 14, 2006, the Nation filed its opening brief.^{2/}

On June 19, 2006, in lieu of filing an answer brief, the Regional Director filed a request for a remand. The request states: "Upon further reflection and consideration, the Regional Director has determined that he needs to revise his decision. Consequently, he requests that the Board vacate his March 12, 2001, decision, and remand the matter to him for a new decision."

The Regional Director's request did not indicate whether he had discussed it with the Nation and therefore the Board allowed the Nation to respond. On June 28, 2006, the Nation filed a response opposing "complete vacation of the Regional Director's Decision * * * except to the extent that the Regional Director wishes to reconsider those parts of the [Decision] which the * * * Nation appealed to [the] Board." Nation's Response at 1. The Nation notes that certain portions of the Regional Director's decision were not appealed and asserts that the non-appealed portions "have been specifically relied upon by the Yakama Nation and its tribal members." *Id.* at 3. The Nation further notes that the Regional Director does not indicate which parts of his decision he may wish to reconsider

^{2/} In its opening brief, the Nation suggested that this appeal may not be ripe for Board review because the Regional Director decided to withdraw the O&M bills. Opening Brief at 7. In light of the Regional Director's subsequent request to vacate his decision and remand the matter, we need not decide whether this appeal would otherwise be ripe for review, although we note certain similarities between this case and a recent case decided by the Board. See Wind River Resources Corp. v. Acting Western Regional Director, 43 IBIA 1 (2006) (dismissing appeal without prejudice when the decision appealed had reached a legal conclusion adverse to appellant but had also concluded that an underlying decision by a Superintendent was not adequately explained or supported by the factual record).

or revise, or what the effect would be of having the decision vacated. The Nation argues that the Regional Director should not be allowed to change the non-appealed portions of his decision on remand, and also argues that vacation of the Regional Director's decision "should not mean that the bills [set aside by the Regional Director] are reinstated retroactively as of 2001 nor that interest and penalties are reinstated again as of 2001." Id. at 5.

Discussion

We first address the Nation's concern that an order vacating the Regional Director's decision might have the effect of automatically "reinstating" the bills issued by the Superintendent and WIP. Because the Nation appealed the bills issued by the Superintendent and WIP, those bills did not become effective, see 25 C.F.R. § 2.6 (automatic stay). An order vacating the Regional Director's decision would not reinstate the assessments in the sense of making them effective. Instead, it would return the matter to the status quo as it existed when the Nation's initial appeal from the bills was pending before the Regional Director. Any issue regarding retroactivity is dependent on a future decision by the Regional Director, subject to appeal to the Board.

We turn next to the Nation's argument that we should limit the scope of the remand. We are not convinced that the Board should tailor its order to vacate only some, but not other, portions of the Regional Director's decision (which itself did not become effective pending this appeal), or to impose conditions on the Regional Director on remand. First, in the absence of any indication from the Regional Director that he wishes to revisit the non-appealed portions of his decision, the Nation's arguments that he cannot or should not be allowed to do so would appear premature and not ripe for the Board to consider. Second, even assuming that the Regional Director may intend to revisit certain portions of his decision that were not appealed, i.e., those favorable to the Nation, we still face a ripeness issue. We have no way of predicting which non-appealed portions of the decision the Regional Director might revisit, or more importantly, what conclusions he might reach. We are not convinced that the Board would be justified in summarily limiting the scope of the Regional Director's authority on remand, particularly in light of the fact that any changes that are adverse to the Nation or other landowners will be appealable to

and reviewable by the Board in the future, with the benefit of a full and updated administrative record. 3/

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 vacates the Regional Director's March 12, 2001 decision and remands the matter to him for further consideration and issuance of a new decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge

3/ Of course, we express no opinion on whether reopening the non-appealed portions of the decision is justified, either factually or legally, including whether a decision to reinstate some or all of the bills would violate due process or the Federal trust responsibility, as the Nation argues. If any of those issues actually arises on remand, we leave it for the Regional Director to address, in the first instance, the Nation's arguments that he is estopped or otherwise legally precluded from changing the portions of his March 12, 2001 decision that were favorable to the Nation.