



INTERIOR BOARD OF INDIAN APPEALS

Norman Spang v. Acting Rocky Mountain Regional Director, Bureau of Indian Affairs

52 IBIA 143 (10/07/2010)



United States Department of the Interior

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

NORMAN SPANG,)
Appellant,)
)
v.) Docket No. IBIA 09-04-A
)
ACTING ROCKY MOUNTAIN)
REGIONAL DIRECTOR, BUREAU)
OF INDIAN AFFAIRS,)
Appellee.) October 7, 2010

Norman Spang (Appellant) has appealed the August 14, 2008, decision of the Acting Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA), affirming the January 28, 2008, decision of the Northern Cheyenne Agency Acting Superintendent (Superintendent), BIA, that granted an agricultural lease covering Allotment No. 207-A00616 (Allotment 616) on the Northern Cheyenne Reservation to Leon Sioux (Leon). The Regional Director determined that Leon, who owned an undivided one-third interest in Allotment 616, had exercised his “owner’s use” rights under 25 C.F.R. § 162.104 and that Appellant’s failure to receive 90 days notice of BIA’s intent to grant the lease to Leon stemmed from the insufficiency of Appellant’s address in Office of the Special Trustee (OST) records and Appellant’s failure to provide OST with an updated address. On December 31, 2008, in response to Appellant’s request for reconsideration of the August 14 decision, the Regional Director reaffirmed his decision, concluding that BIA had properly granted the lease pursuant to 25 C.F.R. § 162.104(b) and 25 U.S.C. § 3715(c), neither of which specifically requires notice of the lease to be given to co-owners.

Appellant contends that the Regional Director improperly affirmed the granting of the lease because (1) the lease was an agricultural lease subject to the 90-day notice requirement set out in 25 C.F.R. § 162.209(b), as well as the requirement found in 25 C.F.R. § 162.212(a)(2) that BIA advertise the Allotment for leasing before granting a lease under § 162.209(b); (2) that the owner’s use provisions of § 162.104(b) do not provide independent authority to grant a lease nor do they provide a previous lessee with a preference right to lease renewal; (3) that, regardless of the authority for granting the lease,

BIA was obligated to consider the majority interest landowners' wishes before deciding whether to grant the lease; and (4) that BIA's determination that Appellant's address was insufficient was erroneous because he has lived at the same address for 19 years and has received other communications from BIA at that address.

We conclude that the Regional Director erred in upholding the issuance of the lease to Leon. First, 25 C.F.R. § 162.104(b) does not provide an independent authority to grant or approve a lease to an Indian landowner of a fractional interest in a tract; to the contrary, it requires a landowner to obtain a lease of the other trust and restricted interests in the tract *under the regulations* — which include 25 C.F.R. §§ 162.207(c) and 162.209(b) — unless the Indian co-owners have given the landowner permission to take or continue possession without a lease. Given the lack of evidence that the owners of a majority interest in the Allotment granted the lease to Leon subject to BIA's approval in accordance with 25 C.F.R. § 162.207(c), the only authority for BIA's issuance of the lease is 25 C.F.R. § 162.209(b) which requires BIA to provide notice to the individual Indian landowners of fractionated Allotment 616 of its intent to grant an agricultural lease on their behalf and to afford them 3 months to negotiate a lease themselves. Therefore, the Regional Director's conclusion that no such notice was required must be vacated. Second, although the Regional Director asserts that 90-day notices were electronically generated and sent to the landowners, he concedes that no such notice was sent to Appellant, because Appellant's "whereabouts [were] unknown," according to OST. But, nothing in the record explains what efforts BIA took to ensure that the notices were, in fact, sent and whether BIA had addresses for certain landowners, such as Appellant, for whom OST did not. And considering Appellant's uncontroverted statement that he has lived at the same address for 19 years and the documents showing that he has consistently received other mail from BIA and OST at his long-standing address, we conclude that the record fails to support BIA's finding that Appellant's address was insufficient and thus we do not excuse BIA's failure to provide him with the required 90 days notice. We therefore vacate the Regional Director's decision and remand the matter for further proceedings.

Legal Background

With limited exceptions, a lease¹ is required before taking possession of Indian land. 25 C.F.R. § 162.104; *Emm v. Western Regional Director*, 50 IBIA 311, 312 (2009); *Smartlowit v. Northwest Regional Director*, 50 IBIA 98, 99 (2009); *Goodwin v. Pacific*

¹ The regulations define a lease as "a written agreement between Indian landowners and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of Indian land, for a specified purpose and duration." 25 C.F.R. § 162.101.

Regional Director, 44 IBIA 25, 29 (2006). Unlike an Indian landowner who owns 100% of the trust or restricted interests in a tract and may take possession of the tract without a lease, 25 C.F.R. § 162.104(a), “[a]n Indian landowner of a fractional interest in a tract must obtain a lease of the other trust and restricted interests in the tract, under these regulations, unless the Indian co-owners have given [their] permission to take or continue in possession without a lease,” *id.* § 162.104(b); *Smartlowit*, 50 IBIA at 99-100.

While § 162.104 governs who is required to *obtain* a lease for Indian land, the regulations in 25 C.F.R. Part 162, Subpart B, are specific to agricultural leases, *see* 25 C.F.R. § 162.100(b), and govern who has the authority to *grant* an agricultural lease.² *See also* 25 U.S.C. §§ 380, 415, 3715. Specifically, § 162.207 authorizes Indian tribes (subsection (a)), adult Indian landowners (subsection (b)), and the owners of a majority interest in a fractionated tract (subsection (c)) to grant agricultural leases of their land, subject to BIA approval, while § 162.209 defines the circumstances under which the Secretary (i.e., BIA) may grant leases of agricultural land on behalf of Indian landowners. Under § 162.209(b), BIA

may grant an agricultural lease on behalf of all of the individual Indian owners of a fractionated tract, where:

(1) We have provided the Indian landowners with written notice of our intent to grant a lease on their behalf, but the Indian landowners are unable to agree upon a lease during a three-month negotiation period immediately following such notice . . . ; and

(2) The land is not being used by an Indian landowner under § 162.104(b) of this part.

The regulations further provide that BIA will generally advertise Indian land for agricultural leasing before it grants a lease under § 162.209(b). *See* 25 C.F.R. § 162.212(a)(2).

Factual and Procedural Background

Allotment 616 consists of approximately 199.96 acres in secs. 18 and 19, T. 3 S., R. 42 E, Principal Meridian, Rosebud County, Montana, within the Northern Cheyenne

² An agricultural lease is “a lease of agricultural land for farming and/or grazing purposes.” 25 C.F.R. § 162.101.

Reservation. *See* Administrative Record (AR), Tab 12. As of April 2007, 18 individual Indian landowners held undivided interests in the fractionated Allotment; Appellant holds an undivided one-third interest in the Allotment, Leon holds another undivided one-third interest in the Allotment, and the remaining 16 Indian landowners hold interests that collectively constitute the final undivided one-third interest in the Allotment. *Id.* By letter dated December 21, 2007, Leon, who apparently was the lessee of a soon-to-expire lease for the Allotment, requested that BIA grant him a “lease renewal utilizing owners use policy for allotment 616.” AR, Tab 11.

On January 24, 2008, BIA approved the issuance of a 5-year agricultural lease to Leon, commencing on January 1, 2008, and ending on December 31, 2012. The lease covers approximately 140.74 acres in Allotment 616, described as “Sec. 18, that portion South of Hwy 212 in Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) [and] Sec. 19, Lot 1 (NW $\frac{1}{2}$ NW $\frac{1}{4}$) & Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$),] T. 3 S., R. 42 E., [Principal Meridian Montana], Rosebud County, Montana.” AR, Tab 10. According to the lease, the authority for the lease is 25 C.F.R. §§ 162.104(b) and 162.207(c).

By letters dated January 28, 2008, the Acting Superintendent notified the Indian landowners of Allotment 616 that he had approved the farm/pasture lease to Leon because “1) The lessee has exercised his owner’s use rights; and 2) The lessee is a landowner in the allotted tract stated above.” AR, Tab 8. Although this letter does not identify any addresses and the record does not contain any documents identifying the recipients, Appellant received a copy of the letter from BIA addressed to his Idaho Falls address.

Appellant appealed the Superintendent’s decision to the Regional Director, arguing that he and the remaining landowners had not received the process due them under BIA regulations because BIA did not provide them with the notice required under 25 C.F.R. § 162.209(b) or advertise the land for agricultural leasing in accordance with 25 C.F.R. § 162.212(a) prior to granting the lease to Leon. He further contended that, contrary to the directives of 25 C.F.R. § 162.207, BIA had failed to consider the interests of the majority of the Indian landowners of Allotment 616, who, he asserted, preferred leasing the Allotment to him, as evidenced by the current lease negotiations between Appellant and the owners of the remaining one-third interest in the Allotment. Appellant asked the Regional Director to reverse the approval of the lease to Leon and to stay the issuance of a lease to any other individual pending completion of the ongoing negotiations between himself and the other landowners.

In his August 14, 2008, decision, the Regional Director affirmed the Superintendent’s granting of the lease to Leon, finding that Leon, as the owner of a one-third interest in the Allotment “can claim ‘Owner’s Use’ pursuant to the law at

[25 C.F.R. § 162.104] and he exercised his right on December 21, 2007, prior to the expiration of his lease.” Regional Director’s Decision at 1 (AR, Tab 2). The Regional Director rejected Appellant’s claim that BIA had erred by not providing the requisite 90-day notice, finding that the Agency had requested 90-day notices for the Allotment on October 10, 2007; however “[u]nfortunately, a notice cannot be generated for a landowner (account holder) whose account has been restricted by OST due to an insufficient address. [Appellant] did not receive a notice due to an insufficient address and his account will continue to be restricted until he updates his address.” *Id.* The Regional Director also cited 25 C.F.R. § 2.14(c) as precluding Appellant from objecting to the lack of notice attributable to his failure to indicate his new address. *Id.*

On September 3, 2008, Appellant sought reconsideration of the Regional Director’s decision.³ Appellant denied that his address was insufficient, pointing out that his address in Idaho Falls had not changed in 19 years, and that BIA had sent communications and OST had sent lease payments to his long-time address. He asked what evidence BIA had that showed that it had sent a 90-day Notice to his Idaho Falls address that had been returned or that it had sent the Notice to any of the other landowners. Appellant also disputed that 25 C.F.R. § 2.14(a), which requires an appellant or interested party in an administrative appeal to provide a current address, applied to this proceeding, but reiterated that, in any event, his address had not changed during the course of the proceeding. Appellant further objected to the Regional Director’s failure to respond to the argument concerning the interests of the majority of the landowners.

In a decision dated December 24, 2008, the Regional Director reaffirmed his August 14, 2008, decision and denied Appellant’s reconsideration request. The Regional Director did not dispute or counter Appellant’s claim that his address had not changed in 19 years; rather, the Regional Director stated:

[W]e have explained to you that when an individual refuses mail generated from the [Trust Asset Accounting Management System (TAAMS)] and sent out by [OST] and that mail is returned to OST as undeliverable the system marks the individual[’]s account as, Whereabouts Unknown. The 90-Day Notices are generated out of the TAAMS system based on the information in

³ On September 15, 2008, Appellant filed a notice of appeal of the Regional Director’s decision with the Board. In a September 19, 2008, Pre-Docketing Notice, the Board authorized the Regional Director, who had lost jurisdiction over the matter when the appeal was filed, *see Winters v. Acting Northwest Regional Director*, 43 IBIA 219 (2006), to consider the reconsideration request.

the TFAS system OST obtains. When an individual does not have an adequate address, 90-Day Notices will not be generated for that individual. It is up to that individual to change the status of [his] address with [OST]. Letters and other mailings not generated by the TAAMS system are mailed manually.

Reconsideration Decision at 1.

The Regional Director determined that, in any event, BIA was not required to send out 90-day notices, thus rendering irrelevant the question of whether Appellant had received such a notice, because BIA had not *granted* Leon a lease pursuant to 25 C.F.R. § 162.209(b)(1), but rather had simply *approved* Leon's request for an owner's use lease in accordance with 25 C.F.R. § 162.104, which provides that an Indian landowner of a fractional interest in a tract must obtain a lease, and 25 U.S.C. § 3715(c)(1),⁴ which specifies that the Secretary's authority to approve Indian agricultural leases does not limit or alter an individual Indian allottee's authority or right to the legal or beneficial use of his or her land or to enter into an agricultural lease under any other provision of law. The Regional Director further concluded that the majority interest issue was similarly irrelevant because BIA had not granted Leon a lease on behalf of the other landowners.

Appellant's appeal submissions address both the Regional Director's August 14, 2008, decision and the December 24, 2008, reconsideration decision. The Regional Director did not file an answer brief and the matter is now ready for review.

Discussion

Standard of Review

A BIA decision to approve a lease of Indian land involves an exercise of discretion. *Wallowing Bull-C'Hair v. Rocky Mountain Regional Director*, 49 IBIA 120, 123 (2009); *Kearney Street Real Estate Co. v. Sacramento Area Director*, 28 IBIA 4, 17 (1995); see *Anderson v. Acting Southwest Regional Director*, 44 IBIA 218, 225 (2007). The Board does not substitute its judgment for BIA's judgment in discretionary decisions. *Wallowing Bull-C'Hair*, 49 IBIA at 123; *Arizona State Land Department v. Western Regional Director*, 43 IBIA 158, 159-60 (2006); *Cass County v. Midwest Regional Director*, 42 IBIA 243, 246 (2006). Rather, in reviewing appeals from discretionary decisions, the Board's role is

⁴ This statutory provision is part of the American Indian Agricultural Resource Management Act (AIARMA), 25 U.S.C. §§ 3701, *et seq.*

limited to determining whether an appellant has demonstrated that BIA's decision is not in accordance with law, is not supported by the record, or is not adequately explained. *Wallowing Bull-C'Hair*, 49 IBIA at 124; *Anderson*, 44 IBIA at 225. An appellant bears the burden of proving that BIA did not properly exercise its discretion. *Wallowing Bull-C'Hair*, 49 IBIA at 124; *Anderson*, 44 IBIA at 225; *Arizona State Land Department*, 43 IBIA at 160; *Cass County*, 42 IBIA at 246.

The Board exercises de novo review over questions of law. *Emm*, 50 IBIA at 316; *Smartlowit*, 50 IBIA at 104; *State of South Dakota and County of Charles Mix v. Acting Great Plains Regional Director*, 49 IBIA 129, 141 (2009). In addition, we review de novo the sufficiency of evidence to support a BIA decision. *Emm*, 50 IBIA at 316; *Smartlowit*, 50 IBIA at 104. An appellant bears the burden of proving that BIA's decision was in error or not supported by substantial evidence. *Emm*, 50 IBIA at 316; *Smartlowit*, 50 IBIA at 104; *State of South Dakota and County of Charles Mix*, 49 IBIA at 141.

Analysis

Appellant contends that the Regional Director erroneously affirmed the issuance of the lease because (1) the lease was an agricultural lease subject to the 90-day notice requirement set out in 25 C.F.R. § 162.209(b), as well as the requirement found in 25 C.F.R. § 162.212(a)(2) that BIA advertise the Allotment for leasing before granting a lease under § 162.209(b); (2) that the landowner's use provisions of § 162.104(b) do not provide independent authority to grant a lease nor do they provide a previous lessee with a preference right to lease renewal; (3) that, regardless of the authority for granting the lease, BIA was obligated to consider the majority interest landowners' wishes before deciding whether to grant the lease; and (4) that BIA's determination that his address was insufficient was wrong because he has lived at the same address for 19 years and has received other communications from BIA and OST at his address. We find that the Regional Director erred both legally and factually in affirming the Superintendent's issuance of the lease to Leon. Accordingly, we vacate the Regional Director's decision and remand the matter to him for further proceedings.

Although the Regional Director cites 25 C.F.R. § 162.104(b) and 25 U.S.C. § 3715(c) as authority for BIA's issuance of an owner's use lease to Leon without first providing the Indian co-owners with notice of its intent to issue the lease and a 90-day period to negotiate a lease themselves, those regulatory and statutory provisions provide no such authority. Section 162.104(b) of 25 C.F.R. does not set out an independent authority to grant or approve a lease to an Indian landowner of a fractional interest in a tract; rather, it requires a landowner to obtain a lease of the other trust and restricted interests in the tract

under the regulations — which include 25 C.F.R. §§ 162.207(c) and 162.209(b) — unless the Indian co-owners have given the landowner permission to take or continue possession without a lease.⁵ Section 3715(c)(1) recognizes a landowner’s right to use his land, *see Emm v. Phoenix Area Director*, 30 IBIA 72, 80 (1996), but the statute is silent as to the procedures BIA should follow in recognizing a landowner’s right.

“Approval” of an agricultural lease by BIA is required where a lease of trust land has been granted by the Indian landowner(s). *See* 25 U.S.C. §§ 415(a), 3715(a)(1); 25 C.F.R. § 162.207(c) (“[a]n agricultural lease of a fractionated tract [of Indian land] may be granted by the owners of a majority interest in the tract, subject to BIA’s approval.”). Notice of the lease need not be given to non-consenting owners so long as the lease provides for the payment of fair annual rental to the non-consenting owner(s); however, any owners currently using the land must be given a right of first refusal. *Id.*⁶ Therefore, prior to “approving” a lease granted by fewer than all of the Indian landowners, BIA is required by § 162.207(c) to determine whether (1) the owners of a majority interest in the land have granted a lease, (2) the lease provides for the payment of fair annual rental to any non-consenting owner(s), and (3) any owner currently is using the land and, if so, ensure that all such owners are provided a right of first refusal.⁷

BIA also is authorized to “grant” agricultural leases on behalf of the owners of trust lands that have multiple (fractionated) ownership. 25 U.S.C. §§ 380(2), 3715(a)(2); 25 C.F.R. § 162.209(a)(6), (b); *cf.* 25 U.S.C. § 3715(c)(1). However, prior to acting on behalf of multiple owners of a tract, BIA must determine, *inter alia*, that its action is “necessary to protect the interests of the individual Indian landowners,” 25 C.F.R. § 162.209(a)(6), provide a minimum of three-months’ notice to the landowners of BIA’s

⁵ If the co-owners have authorized a landowner to take or continue possession without a lease, there would be no lease for BIA to approve.

⁶ Presumably, the regulations do not require advance notice of the lease to non-consenting owner(s) because their consent to the lease is not necessary: Where the owner(s) of greater than 50% of the undivided interests in the tract have agreed to a lease, that decision is binding on the owner(s) of the remaining, minority interest(s). 25 U.S.C. § 3715(c)(2). Notwithstanding the absence of any requirement of notice to non-consenting owners, it may be prudent to provide notice in many circumstances to promote communication and goodwill among owners.

⁷ Additional requirements for BIA’s approval of leases are set forth, e.g., at 25 C.F.R. §§ 162.214, 162.234.

intent to grant a lease on their behalf, *id.* § 162.209(b)(1), and determine that the Indian landowners have not already negotiated a lease of their land, *id.*, or otherwise consented to the use of the land by any co-owner(s), *id.* § 162.209(b)(2); *see also id.* § 162.104(b). In the absence of special circumstances, “[a]n agricultural lease must provide for the payment of a fair annual rental.” 25 C.F.R. § 162.222.

The record provided to us in this appeal fails to demonstrate that BIA has complied with either procedure for the issuance of the lease to Leon. If, as the lease states and the Regional Director maintains, BIA “approved” the lease, the record provided to the Board is void of any suggestion that the owners were contacted about Leon’s continued use of their mutually-owned land, let alone that a majority of the interestholders consented to his continued use of the Allotment.⁸ In requesting that his lease be renewed, Leon does not represent that he consulted any of his co-owners about renewing his lease nor does he represent that he obtained their consent.⁹ Therefore, because BIA failed to comply with the regulations governing the approval of agricultural leases, we cannot uphold the Regional Director’s decision to affirm the Superintendent’s approval of the lease.

The Regional Director also asserts that 90-day notices were sent by OST to the landowners, which suggests that BIA, rather than the landowners, intended to “grant” Leon a lease. However, the record fails to support the Regional Director’s assertion that 90-day notices were sent. The only such evidence in the record consists of a memorandum from the Superintendent stating, “We generated . . . 90-day notices. We *assumed* all the notices had been generated by TAAMS.” AR, Tab 5 (emphasis added). In a subsequent memorandum, the Superintendent refers to a “list of the 90-day letters” and states “for the

⁸ We observe that the lease does not appear to have been executed properly. The only signatures on the lease are Leon’s, as the lessee, and the Superintendent’s, as the “approving official.” Each of the three signature blocks for the lessors is blank and no owner consent forms appear in the record. It may be that the Superintendent’s signature as the “approving official” may instead be construed as his signature on behalf of the landowners to grant Leon a lease. Alternatively and because BIA insists that it “approved” the lease, rather than “granted” the lease, the lease arguably is void for lack of consent by the owners. We need not resolve this issue because even if we assume that the Superintendent’s signature in effect granted the lease on behalf of the owners, we still find that BIA failed to comply with the requirements of § 162.209.

⁹ Leon has been served throughout this appeal with Appellant’s pleadings and the Board’s orders. He has not appeared in this appeal to contest Appellant’s assertions or to provide any argument in support of the validity of his lease.

record there was no list of the 90-day letters report printed for all the landowners of allotment #616.” AR, Tab 4.¹⁰ The Superintendent’s assumption that the 90-day notices were issued is hardly convincing that the notices were, in fact, sent. Therefore, we conclude that the record fails to support the Regional Director’s assertion that 90-day notices were sent to the owners of the Allotment.

Even if we were to assume that the 90-day notices were sent to the Allotment’s owners (but not to Appellant), that assumption would not aid BIA. The record does not reflect that any effort was made by BIA to confirm that the 90-day notices were sent to any owner prior to issuing the lease to Leon, much less any effort to determine whether any owner, like Appellant, was not sent a notice. Although BIA may request OST or another agency to send out 90-day notices, BIA remains responsible for ensuring that the notices are sent. Had BIA done so in this case, it would have learned that Appellant, who with Leon owns the largest share of the Allotment, had not been sent a 90-day notice. BIA then has the responsibility for determining whether it may have an address for Appellant that OST does not have. In this regard, we note that Appellant has shown that BIA was able to confirm an address for Appellant and send him notice of BIA’s decision to approve Leon’s lease.¹¹

On remand, BIA must determine whether both Leon and Appellant still desire to use the Allotment and, if so, whether an agreement may be reached to accommodate their respective interests. BIA should then determine whether it is approving leases negotiated with the owners of at least 16.67% of the Allotment¹² or whether BIA is granting the leases on behalf of the owners, and follow the appropriate steps to do so.

¹⁰ The Superintendent’s memorandum also suggests that the 90-day notices were either requested by the agency or were sent on October 10, 2007. The record does not explain the significance of this date or how it was determined that some action occurred on this date.

¹¹ Of course, if BIA does not have and cannot obtain a current address for an owner, BIA is authorized to act on that owner’s behalf. *See* 25 C.F.R. § 162.209(a)(5) (BIA may grant agricultural leases on behalf of “[i]ndividuals whose whereabouts are unknown to [BIA] after reasonable attempts are made to locate such individuals.” Emphasis added.).

¹² Because Leon and Appellant both own a third of the Allotment (33.34%), their consent combined with the consent of the owners of another 16.67% interest in the Allotment would give them the requisite majority consent to their respective leases.

One last item bears addressing. Citing 25 C.F.R. § 162.212, Appellant argues that BIA is required to advertise the land for leasing before it may issue a lease to Leon. We disagree. Section 162.212(a) provides that BIA *generally* will advertise Indian land for agricultural leasing prior to granting a lease under § 162.209(b). Because the regulation stops short of requiring BIA to advertise the land, *cf.* 25 C.F.R. § 162.7 (2000),¹³ we conclude that where, as here, an owner is the intended lessee, BIA need not necessarily advertise the land for agricultural leasing. As we stated previously, owners are entitled to use and possess their lands. *See* 25 U.S.C. § 3715(c)(1); 25 C.F.R. § 162.107(a) (“Indian landowners [have the right] to use their own land, so long as their Indian co-owners are in agreement and the value of the land is preserved”). So long as the owner-lessee agrees to pay fair annual rental to his co-owners, we see no need for BIA to advertise the lease. *See* 25 C.F.R. § 162.211(b) (identifying the methods for determining fair annual rental); *but see id.* § 162.222 (BIA may approve leases for less than fair annual rental in certain circumstances).

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 decision and remands the matter for further proceedings consistent with this decision.

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.

¹³ BIA’s leasing regulations were significantly revised in 2001 in response to the enactment of AIARMA. *See* 66 Fed. Reg. 7109 *et seq.* (Jan. 22, 2001). Previously, BIA was *required* to advertise lands for lease prior to granting leases. *See* 25 C.F.R. § 162.7 (2000) (“Except as otherwise provided in this part, . . . [BIA] *shall* advertise the land for lease.” Emphasis added.). The mandatory language no longer appears in the regulation.