STEVE DEFENDER,	:	Order Reversing Imposition of an Appeal
Appellant	:	Bond
	:	
v.	:	
	:	Docket No. IBIA 99-67-A
ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	November 23, 1999

Appellant Steve Defender seeks review of a March 30, 1999, decision of the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), requiring that he post an appeal bond in the amount of $13,509.20. For the reasons discussed below, the Board of Indian Appeals (Board) reverses that decision.

Appellant was an unsuccessful bidder for Range Unit (RU) 726 on the Standing Rock Sioux Reservation in 1998. The Superintendent, Standing Rock Agency, BIA (Superintendent), notified Appellant that his bid was not accepted by letter dated January 21, 1999. Appellant appealed the decision to the Area Director.

By letter dated February 24, 1999, Kurt Netterville, the successful bidder for RU 726, requested that BIA require Appellant to post an appeal bond. Netterville contended that, as a result of the delay caused by the appeal, he stood to lose a total of $57,449.20. Netterville provided an itemized breakdown of his alleged potential losses.

On March 30, 1999, the Area Director ordered Appellant to post an appeal bond in the amount of $13,509.20. The Area Director's letter did not provide information as to how she calculated this amount. However, Netterville's itemized list included $409.20 in interest on the $13,100 which he paid for the lease on RU 726. Netterville requested that a bond cover the $409.20 in interest, but not the $13,100 in lease payments. The sum of $13,100 and $409.20 is $13,509.20. No other figures in Netterville's request for an appeal bond add to $13,509.20. Therefore, for purposes of this decision, the Board assumes that the bond was intended to cover the lease payment and interest.

The Area Director did not include appeal information in her March 30, 1999, letter, but stated that Appellant's failure to post an appeal bond would be grounds for the summary dismissal of his appeal under 25 C.F.R. § 2.17(b).

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By letter dated March 31, 1999, Appellant objected to the imposition of an appeal bond.

On April 15, 1999, the Area Director responded to Appellant. She repeated that failure to post the appeal bond was grounds for summary dismissal of Appellant's appeal. Again, the Area Director did not provide appeal information.

On April 30, 1999, the Area Director forwarded Appellant's March 31, 1999, letter to the Board as a notice of appeal. Also on April 30, 1999, she placed the Superintendent's January 21, 1999, decision into immediate effect, stating that she was doing so "in order to protect the trust resource against waste by assuring full utilization of the range consistent with sustained yield management." The Area Director explained that Netterville would be issued a revocable permit which would be revoked if Appellant's appeal were to succeed. Although advised of his right to appeal this decision to the Board, Appellant did not appeal.

While the April 30, 1999, action was taken to protect the trust resource, it had the additional effect of protecting Netterville against loss. The Board finds that, once Netterville received a permit, even though for a restricted term until the appeal pending before the Area Director was concluded, he no longer faced the particular potential financial losses for which the appeal bond was imposed. In essence, the Area Director mooted the reason for an appeal bond by issuing Netterville a permit.

The Board finds that the imposition of an appeal bond in this case must be reversed.

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 Area Director's March 30, 1999, imposition of an appeal bond is reversed. The Area Director should proceed to consider the merits of Appellant's appeal from the award of the lease for Range Unit 726.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

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