



INTERIOR BOARD OF INDIAN APPEALS

Chippewa Cree Tribe of the Rocky Boy's Reservation;
and Logan LaSalle and the LaSalle Ranch v.
Acting Billings Area Director, Bureau of Indian Affairs

32 IBIA 251 (06/29/1998)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

CHIPPEWA CREE TRIBE OF THE ROCKY BOYS RESERVATION
and
LOGAN LaSALLE and THE LaSALLE RANCH

v.

ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 96-109-A, 96-110-A

Decided June 29, 1998

Appeals from a decision concerning the collection of trespass damages and impoundment costs and the cancellation of grazing permits.

Affirmed in part, affirmed as modified in part.

1. Indians: Indian Self-Determination and Education Assistance Act: Self-Governance--Indians: Leases and Permits: Cancellation or Revocation--Indians: Tribal Self-Governance Act of 1994--Indians: Trust Responsibility

As the trustee, the Bureau of Indian Affairs retains the ultimate responsibility to decide whether or not to cancel grazing permits of trust or restricted lands, even when a tribe has compacted under the Tribal Self-Governance Act of 1994, 25 U.S.C. §§ 458aa-458hh (1994), to perform Federal functions on its reservation, including the management of grazing permits of trust or restricted lands.

2. Administrative Appeals: Generally--Administrative Procedure: Administrative Review--Bureau of Indian Affairs: Administrative Appeals: Generally--Indians: Generally

The Board of Indian Appeals will follow its normal standards of review in reviewing decisions issued by the Bureau of Indian Affairs that are based upon information provided by a tribe which has compacted to perform Federal functions under the Tribal Self-Governance Act of 1994, 25 U.S.C. §§ 458aa-458hh (1994).

APPEARANCES: Daniel D. Belcourt, Esq., Box Elder, Montana, for the Chippewa Cree Tribe; Melody K. Brown, Esq., Black Eagle, Montana, for Logan LaSalle and the LaSalle Ranch; John C. Chaffin, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Billings, Montana,

for the Area Director; William Sinclair, Director, Office of Self-Governance, U.S. Department of the Interior, Washington, D.C., for the Assistant Secretary - Indian Affairs.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

The Chippewa Cree Tribe of the Rocky Boy's Reservation (Tribe) (Docket No. IBIA 96-109-A) and Logan LaSalle and the LaSalle Ranch (Docket No. IBIA 96-110-A) each seek review of a June 27, 1996, decision issued by the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning Bill for Collection No. 12825761 (Bill) and the cancellation of Jenny LaSalle's grazing permits for Range Unit (RU) Nos. 3 and 24 on the Rocky Boy's Reservation. ^{1/} For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision in part and affirms it as modified in part.

Background

The Tribe has compacted BIA functions under the Tribal Self-Governance Act of 1994, 25 U.S.C. §§ 458aa-458hh (1994). Although no copy of the Tribe's self-governance compact was included in the administrative record initially submitted to the Board, the Board received three copies in response to an order it issued for further briefing. The Tribe and the Area Director each submitted a copy of the 1994 compact, and the Director, Office of Self-Governance (Director, OSG), submitted a copy of the Tribe's 1995 compact. As relevant to the issues raised in these appeals, the 1994 and 1995 compacts are identical.

In February 1994, Logan applied for a grazing allocation. No range units were available at that time. From the materials before the Board, it appears that Logan contends he reached an informal agreement with the permittees of RU 1, under which the permittees allowed him to share that range unit.

By letter dated June 28, 1994, the Tribe notified Logan that 70 head of cattle bearing his brand had been observed in trespass on RU 1. The letter noted that the trespass might have been unintentional and gave Logan 5 days from his receipt of the letter to remove the cattle without penalty. Thereafter, the Tribe stated, it would impose the penalties provided in 25 C.F.R. § 166.24 and would take any other actions necessary to protect the land and prevent further trespass.

On July 7, 1994, the Tribe wrote to Logan again, noting that he had not removed his cattle and stating that, if the cattle were not removed,

^{1/} In this decision the Board will use Logan LaSalle and Jenny LaSalle's given names when it is necessary to distinguish between them. It will use the term "LaSalle" when it is referring to the Appellants in Docket No. IBIA 96-110-A.

it would remove them on July 11, 1994, and would bill all costs incurred to Logan. When the cattle were not removed, they were rounded up and impounded by the Tribe on July 11, 1994.

Pursuant to a request previously filed by Logan, on July 12, 1994, the day after Logan's cattle were impounded, the Chief Judge of the Tribal Court issued an injunction prohibiting the impoundment of the cattle until the matter was reheard by the Tribal Council and the Land Resources Committee.

On July 21, 1994, the Tribal Chief Judge issued a temporary restraining order (TRO) that had been requested by the Tribe. The TRO restrained Logan and other named members of the LaSalle family from threatening or intimidating tribal employees while performing their duties or otherwise interfering with tribal employees while on duty. The Chief Judge set a hearing on the TRO for July 25, 1994. Nothing in the materials before the Board indicates whether that hearing took place, or whether there were any further proceedings in tribal court.

On August 5, 1994, Logan and the Tribe entered into a settlement agreement which stated:

This is a settlement agreement between the [Tribe] and Mr. Logan LaSalle, registered owner of 108 cows * * * which were found to be in trespass on the Rocky Boy's Indian Reservation.

Tribe Agrees:

- 1) to drop all criminal and civil charges pending in tribal Court as a result of this trespass action, provided all terms of this agreement are fulfilled.
- 2) to lift the restraining order against members of the LaSalle Family.
- 3) to accept \$3,000 as a good faith payment on the cost incurred as a result of Mr. LaSalle's trespass and to allow Mr. LaSalle 120 days, beginning August 4, 1994, to pay the remaining balance of \$5,813.44.
- 4) to release all cattle presently impounded by the [Tribe], once the tribe's lien is placed on cattle and perfected.

Logan LaSalle Agrees:

- 5) that 108 head of his cattle were in trespass on the Rocky Boy's Indian Reservation.
- 6) to accept and pay all costs incurred in the impoundment, trespass penalties and care of said cattle, as identified

in the attached cost statement, including any and all veterinarian bills for said cattle.

7) to accept all released cattle and move them out of trespass.

8) to allow the tribe to place a lien in the amount of \$8,000.00. This lien is to be perfected to include foreclosure on or off the Rocky Boy's Indian Reservation.

It appears that Logan paid \$3,000 to the Tribe, but made no payments against the outstanding balance of \$5,813.44. On December 5, 1994, the Tribe issued the Bill at issue here, seeking the unpaid balance.

On July 14, 1995, Jenny, Logan's mother, signed a note which stated:

RE: Bill for Collection No. 12825761 (total amount = \$5,813.44)

I, Jenny LaSalle, hereby agree to pay the grazing bill owed by Logan LaSalle for grazing trespass. The \$2,500.00 is to be paid now and the balance remaining (including interest and penalty fees) to be paid by September 30, 1995.

Jenny's note was witnessed by Robert Belcourt (Belcourt), a Natural Resource Specialist with the Tribe, and Leon Sutherland, the Chairman of the Tribe's Natural Resources Committee.

The minutes of the July 14, 1995, Tribal Council meeting state that Jenny appeared at that meeting and offered to pay \$2,500 on the Bill, and to pay the remainder through payroll deduction from her job, apparently at a BIA school. In an April 14, 1996, memorandum to the Field Representative, Belcourt stated that Jenny had admitted that she did not tender the \$2,500. In the materials before the Board, neither Jenny nor LaSalle has addressed Belcourt's statement.

On July 26, 1995, Jenny wrote to the Natural Resources Committee concerning the Bill, stating in part:

This memorandum will serve to notify the [Tribe] that I am not responsible for the above mentioned bill. Attached you will respectfully find the Settlement Agreement, no where on the Agreement do I see my name. I have paid my range fees and I should be allowed to have my cattle utilize the AUM's that I paid for. I have attempted to work with Tribal employees in good faith to resolve this issue. However, I believe that the Council is being unreasonable. Therefore, it is my intention to dispute this bill in full.

By letter dated January 26, 1996, the Tribe notified Jenny that, unless she submitted payment on the Bill by February 2, 1996, it would cancel

all her grazing/agriculture permits under section V(4) of Chippewa Cree Tribal Grazing Resolution No. 129-92 (Grazing Resolution). 2/

On February 7, 1996, the Tribe notified Jenny that "[c]ancellation procedures are issued for Contract No.(s) 14-20-0259-1420 (Range Unit No. 3), 14-20-0259-1397 (Range Unit No. 24)." The letter informed Jenny that she could appeal to the Area Director.

BIA subsequently determined that the Tribe lacked authority to cancel grazing permits. On February 20, 1996, the BIA Field Representative for the Rocky Boy's Reservation (Field Representative) wrote Jenny, stating that he had cancelled her permits "effective immediately," and telling her that she could appeal to the Area Director.

Jenny filed a timely Notice of Appeal with the Area Director, who issued his decision on June 27, 1996. The decision states at pages 7-8:

For this appeal, the BIA's support of the tribal decision to request cancellation of an allocated grazing permit because of the trespass actions of a third party is moot.

With the [Tribe's] authorities in 25 CFR [Part] 166 implemented through its [Grazing Resolution], the above Applicable Regulations were also embodied in the cited [Grazing Resolution], specifically in Section XIX. "Individuals grazing livestock without an approved grazing permit shall be charged with trespass by the BIA as identified in Title 25 CFR Part 166.24. It shall be the responsibility of the BIA to proceed with the appropriate action in a timely manner." In this appeal, the [Tribe] is the BIA for trespass case administration using 25 CFR 166.24.

The Settlement Agreement between the [Tribe] and Logan LaSalle, livestock owner of the impounded trespass livestock is the bona fide decision document in this case * * *.

* * * * *

When Mr. LaSalle had not paid the \$5,813.44 by December 5, 1994, (per the Settlement Agreement,) [the Bill] was issued. This was not a contravention of the Settlement Agreement.

For delinquencies, 42 BIAM [Bureau of Indian Affairs Manual] Supplement 3, Bulletin 1 provides debt collection procedures. Foreclosing the lien and 42 BIAM's debt collection procedures are the required procedures. The [Tribe]

2/ The Tribe's letter cites sec. V(4) of the Grazing Resolution. It appears that the citation should be to sec. V(A)(4).

(through the Field Representative) must use them to collect the livestock trespass delinquent debt.

* * * * *

Therefore, the decision of the Field Representative * * * to cancel [Jenny's] grazing permits of RU 3 and 24 for failure to pay [the Bill] is reversed and remanded. This means your RU grazing permits are not canceled; however, this also means the subject Bill for Collection is to be paid. The above cited 42 BIAM debt collection procedures are to be implemented by the Rocky Boy's Field Representative and the [Tribe].

Both the Tribe and LaSalle appealed from this decision. Only the Tribe filed a brief.

When the Board initially began consideration of these appeals, it determined that additional briefing was necessary. Responses to the Board's order were filed by the Tribe; LaSalle; the Area Director; and the Director, OSG.

Discussion and Conclusions

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LaSalle appealed from that part of the Area Director's decision which held that the Bill for livestock trespass was enforceable. LaSalle suggests that the Bill should be held invalid for several reasons: (1) the notice of trespass was deficient under 25 C.F.R. § 166.24(c); (2) the cattle were not in trespass; (3) the impoundment of the cattle and the trespass charges were motivated by animosity against the LaSalle family on the part of the Tribal enforcement official; (4) the cattle were impounded illegally and were mistreated during the roundup by other individuals with personal animosity against the family; and (5) Logan was coerced into signing the Settlement Agreement. ^{3/}

LaSalle's first four arguments challenge the trespass determination and circumstances of the roundup and impoundment. The fifth argument challenges the validity of the settlement agreement which Logan signed on August 5, 1994.

In the absence of a self-governance compact, the determination of trespass would have been made by BIA. The Area Director's decision stated that the Tribe is responsible for enforcing section XIX of the Grazing Resolution, which implements 25 C.F.R. § 166.24. LaSalle has not challenged

^{3/} In addition to this administrative appeal, LaSalle also filed a tort claim with the Department. That claim was initially denied by the Office of the Solicitor on Mar. 26, 1996, and was denied on reconsideration on Nov. 6, 1996.

this statement. After reviewing the Tribe's self-governance compact, the Board sees no reason to question the Area Director's statement. Therefore, it concludes that the Tribe was the entity with authority to determine whether Logan's cattle were in trespass and to take appropriate action if it determined that there was a trespass.

If the trespass determination had been made by BIA, Logan would have had the right to challenge BIA's determination under 25 C.F.R. Part 2 and 43 C.F.R. Part 4, Subpart D. In reviewing the administrative record, the Board found nothing that indicated what rights Logan had to challenge the Tribe's determination of trespass. The Board's order for additional briefing was based partly on this lack of information.

In their responses to the Board's order, the Tribe and the Director, OSG, both referred to section 14 of the Tribe's self-governance compact. Section 14 provides:

Tribal Administrative Procedures. Tribal law and tribal forums shall provide administrative due process rights pursuant to the Indian Civil Rights Act of 1968, 25 U.S.C. 1301, et seq., that persons, or groups of persons, may have with respect to services, activities, programs, and functions that are provided by the Tribe pursuant to this Compact.

The Director, OSG, further stated:

As a practical matter, the decisions of self-governance tribes are not actions or inactions of BIA officials and, therefore, do not appear to be appealable to the entities enumerated in 25 CFR § 2.4. For this reason, the general practice has been to have self-governance tribes include in their compacts a provision which relates to tribal administrative procedures and clarifies that appeals from tribal decisions in the administration of programs assumed under a self-governance [compact] are to tribal, not federal, forums.

* * * * *

The practice of including provisions in compacts relating to tribal administrative procedures is also reflected in part in Appendix A to the proposed Self-Governance negotiated rules. See 63 Fed. Reg. 7202, 7250-7251 (February 12, 1998). Appendix A contains a proposed Model Compact. Article II, section 5 of the proposed Model Compact provides as follows:

Section 5--Tribal Administrative Procedure

The tribe shall provide administrative due process rights pursuant to the Indian Civil Rights Act of 1968, 25 U.S.C. 1301, et seq., to protect all rights and interests that Indians or groups

of Indians, may have with respect to services, activities, programs, and functions that are provided pursuant to the compact.

63 Fed. Reg. at 7250. This provision is proposed only at this point in time, and is not controlling. The controlling provision is that found in the Tribe's Compact.

Apr. 7, 1998, Response from Director, OSG, at 1-2.

In its response to the Board's order, LaSalle stated that it had no "knowledge of the appeal process provided by the terms of the compact. [LaSalle] did not receive timely information as to the existence of any appeal rights. [LaSalle was] coerced into believing that the Tribe and the BIA had an untethered right to pursue all actions against [LaSalle]." Mar. 31, 1998, Response from LaSalle at 1.

The Area Director responded that "the administrative record did not show that either Logan or Jenny LaSalle was given notice of a right to appeal the Tribe's initial trespass determination." Mar. 30, 1998, Response from the Area Director at 1.

The Tribe argued that appeal rights were irrelevant once Logan signed the settlement agreement.

By signing the settlement agreement, Logan took an action which had legal consequences, generally including giving up the right to contest the underlying controversy. If Logan was unaware of the legal consequences of signing the settlement agreement, it was his responsibility to obtain advice from a qualified legal representative. Alternatively, if he believed that the settlement agreement was unenforceable because he had been coerced into signing it, it was his responsibility to take appropriate action to seek to have the agreement declared void. Having done so earlier in this controversy, Logan knew how to file suit in tribal court. However, other than paying the initial \$3,000 set forth in the settlement agreement, Logan's only action was to ignore the agreement--to all appearances conducting his affairs as if the agreement did not exist. Both the Tribe and BIA were entitled to rely upon the fact that Logan signed the settlement agreement unless and until that agreement was declared void by a court of competent jurisdiction or other appropriate dispute resolution forum.

The Board finds that LaSalle has presented no argument which convinces it that the Area Director erred in recognizing the settlement agreement as enforceable. 4/

4/ Because of the existence of the settlement agreement, the Board finds it unnecessary in this case to address the question of whether BIA would err in enforcing a decision made by a compact tribe in carrying out its compacted responsibilities if that tribe failed to advise persons subject to its enforcement authority of the right to challenge its decision. The

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The Tribe appealed from that part of the Area Director's decision which held that Jenny's grazing permits should not have been cancelled because the Bill should have been collected either through foreclosure or under 42 BIAM Supplement 3, Bulletin 1. It contends that Jenny assumed responsibility for Logan's debt in her July 14, 1995, note, and that, when she failed to make payment, she lost her status as a "qualified livestock operator" under the Grazing Resolution because she owed a delinquent debt to the Tribe. The Tribe argues that Jenny's permits were therefore subject to cancellation, and that the Area Director's failure to cancel the permits violates the Grazing Resolution.

LaSalle does not address the Tribe's contention. ^{5/}

fn. 4 (continued)

Board notes, however, that BIA is specifically required to give such notice by 25 C.F.R. § 2.7(c), and that notification of appeal rights may be considered an element of due process.

The Board comments on two matters raised by the proposed self-governance regulations which relate to the issues in these appeals. First, Art. II, sec. 5, of the proposed Model Compact, which was quoted by the Director, OSG, guarantees administrative due process rights (a phrase which is apparently not defined in the proposed regulations) to "Indians, or groups of Indians." This language is more limited than either the language in sec. 14 of the Tribe's compact, which guarantees such rights to "persons, or groups of persons," or in 25 C.F.R. § 2.2, which grants a right of administrative review to "any person * * * adversely affected." The language of Art. II, sec. 5, of the proposed Model Compact may raise questions concerning whether due process has been adequately guaranteed to non-Indian individuals and both Indian and non-Indian businesses and other entities subject to a compact tribe's enforcement authority.

Second, the Director, OSG, stated that decisions made by tribes under self-governance compacts are tribal, rather than Federal, decisions and that, consequently, appeals are to tribal forums rather than "to the entities enumerated in 25 CFR § 2.4." Apr. 7, 1998, Response from Director, OSG, at 1. This position appears to be not fully consistent with proposed 25 C.F.R. § 1000.363(a), 63 Fed. Reg. at 7249. The proposed section, which the Director, OSG, did not reference, deals with the right to contest actions taken by a tribe under a self-governance compact. It provides:

"(a) BIA programs. A person or group who is aggrieved by an action of a tribe/consortium with respect to programs that are provided by the tribe/consortium pursuant to [a self-governance compact] must first exhaust tribal administrative due process rights. After that, the person or group may bring an appeal under 25 CFR part 2."

^{5/} Before the Area Director, Jenny contended that she was not responsible for Logan's debt. The Board construes LaSalle's failure to raise this argument on appeal as an abandonment of the argument.

[1, 2] Even when a tribe has compacted Federal functions, including the management of grazing permits for trust or restricted lands on its reservation, as the trustee, BIA retains the ultimate responsibility to decide whether or not to cancel such permits. Therefore, the Board reviews the Field Representative's and Area Director's decisions under its normal standards, including, but not limited to, 43 C.F.R. § 4.318, which provides in pertinent part that "except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate."

The Board first addresses the Area Director's conclusion that the Bill was to be collected under 42 BIAM Supplement 3, Bulletin 1. The Area Director did not discuss how he reached this conclusion. The referenced Supplement implements Federal statutes requiring Federal agencies to attempt to collect debts owed to the United States. *See, e.g.*, 31 U.S.C. § 3711 (Supp. II, 1996). In response to the Board's order for additional briefing, the Tribe stated that it was the sole owner of the lands in RU 1. Therefore, the total trespass debt was owed to the Tribe. *See* 25 C.F.R. § 166.24. The Board knows of no Federal statute which makes a debt owed to a tribe--even a debt owed to a compact tribe--the equivalent of a debt owed to the United States.

Furthermore, nothing in the materials before the Board shows that the Tribe has adopted the procedures set out in the Supplement as a mechanism for collecting tribal debts. Although the Board finds two references to 42 BIAM in the Grazing Resolution, these references appear to incorporate specific sections of the Supplement dealing with the manner in which interest and/or penalties are to be calculated. The Board finds nothing in the Grazing Resolution, or any other document in the record, which states that the Tribe has adopted the Supplement in total.

In the absence of explanation, the Board finds no basis for the Area Director's conclusion that this debt had to be collected under 42 BIAM Supplement 3, Bulletin 1. It therefore also finds no basis for the Area Director's conclusion that Jenny's permits should not have been cancelled because the debt was to be collected under the procedures set out in the Supplement.

With respect to the Tribe's argument, the Board agrees that the Grazing Resolution makes a grazing permit subject to cancellation if the permittee owes a delinquent debt to the Tribe. This conclusion is based on several sections of the Grazing Resolution. Section II(II)(4) defines "qualified livestock owner" to mean an otherwise qualified individual "who is not delinquent in the payment of grazing fees, preparation fees, and tribal bills at the time of the application." Section V(A)(4) provides: "Any applicant [for allocation of grazing privileges] who has any delinquent bills to the Tribe for any farm and pasture leases and/or grazing fees, penalties or settlements, shall not be eligible to receive an allocation unless satisfactory arrangements have been made with the Tribe." Finally, section V(C) states in pertinent part: "Eligibility requirements become a part of the permit obligations and must be maintained for the

period covered by the permit." The Board's conclusion is not altered by the fact that the Tribe might ultimately be entitled to recovery on the debt through means such as foreclosure. Until the Tribe receives payment, it is still owed a delinquent debt.

However, section V(C) of the Grazing Resolution continues: "If eligibility requirements are not maintained, the permittee will be notified in writing of non-compliance and will be given 30 days to comply. If the permittee is not in compliance within the given time period, the permit will be cancelled by the BIA." Section V(C) appears to be based on 25 C.F.R. § 166.15(b), which provides in relevant part: "The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 30 days' written notice for violation of the permit."

Jenny's first official notification that her grazing permits might be cancelled because of her failure to pay Logan's debt was contained in the Tribe's January 26, 1996, letter to her. Even if the Tribe's letter can be construed as proper notice of BIA's intent to cancel Jenny's grazing permits upon continued noncompliance, the Field Representative's February 20, 1996, cancellation, which he stated was "effective immediately," was invalid because it was issued less than thirty days from the date of the Tribe's January 26, 1996, letter. Of course, if BIA was required to issue the 30-day notice of its intent to cancel the permits, Jenny received no proper notice at all, and the Field Representative's cancellation was equally invalid. Because the cancellation was invalid in either case, the Board does not decide here whether BIA may cancel a grazing permit in a case where the Tribe, rather than BIA, gives the 30 days' notice required by section V(C) of the Grazing Resolution and/or 25 C.F.R. § 166.15(b). Therefore, the Board affirms that part of the Area Director's decision which held that Jenny's grazing permits were improperly cancelled. It modifies the Area Director's holding, however, by substituting as the basis for the decision the fact that BIA failed to follow the provisions of section V(C) of the Grazing Resolution and/or 25 C.F.R. § 166.15(b).

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 that part of the Acting Billings Area Director's June 27, 1996, decision holding that Bill for Collection No. 12825761 was enforceable, and affirms as modified in this decision that part of the decision reversing the cancellation of Jenny LaSalle's grazing permits for RUs 3 and 24.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge