



INTERIOR BOARD OF INDIAN APPEALS

Mark Gatrell v. Rocky Mountain Regional Director, Bureau of Indian Affairs

36 IBIA 259 (08/13/2001)



United States Department of the Interior

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

MARK GATRELL,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 01-21-A
ROCKY MOUNTAIN REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	August 13, 2001

This is an appeal from an undated decision 1/ issued by the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which denied Appellant Mark Gatrell's appeal from a bill for irrigation operation and maintenance (O&M) charges for land within the Crow Irrigation Project. For the reasons discussed below, the Board affirms the Regional Director's decision.

After receiving a bill for 2000 O&M charges, Appellant filed a notice of appeal which stated: "LETTER OF APPEAL O&M CHARGES. PLEASE REFER TO LETTER SENT TO SUPERINTENDENT CROW AGENCY SENT OCT 25TH 1999 IN REGARDS TO THIS MATTER." Appellant did not file a statement of reasons. Construing Appellant's October 25, 1999, letter as his statement of reasons, the Regional Director reviewed that letter, as well as information received from the Irrigation Project, before denying Appellant's appeal.

Appellant appealed the Regional Director's decision to the Board. In his notice of appeal, he contended that "irrigation water isn't & can't be provided to [his] lands."

With his opening brief, Appellant submitted a copy of the bill he is appealing. 2/ For the first time, he contended that one of the three parcels included on his bill (Serial 2157, covering Allotment 175) was not leased by him. As to the other two parcels, he made various

1/ The decision was received by Appellant on October 13, 2000.

2/ Appellant did not include a copy of the bill with his appeal to the Regional Director and made no specific arguments concerning the bill in that appeal. Appellant's Oct. 25, 1999, letter consisted primarily of complaints about conditions on the land he was leasing) conditions which he evidently considered to be the fault of the Irrigation Project.

complaints and requested that the land be “placed in T.A.” or that his assessment be deferred pending certain improvements.

In his answer brief, the Regional Director concedes that Serial 2157 should not have been included on Appellant's bill. He states that BIA records have been corrected.

As to the other two parcels, the Regional Director contends that the complaints made by Appellant in his October 25, 1999, letter and in his appeal to the Board concern the condition of the land, not the condition of the irrigation system. He continues:

[T]he Project manager determined that the system could deliver water to the Appellant and that the problems listed by the Appellant were of his own creation and not a fault in the Project system. * * *

* * * The Project manager is not responsible for the condition of Project lands. Such responsibility is with each water user.

Regional Director's Brief at 2-3. The Regional Director also contends that none of the criteria for placing land in a “temporary non assessable” status were present in this case because water was available for delivery, a drain on the property had been fixed at Project expense, and there was no need for further construction work.

Appellant did not file a reply brief and so has not refuted any of the Regional Director's arguments.

Nothing in Appellant's filings or in the administrative record shows any reason why Appellant should be relieved of his responsibility for paying O&M charges. The Board finds that he has failed to carry his burden of proving error in the Regional Director's decision.

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 Regional Director's decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge