



INTERIOR BOARD OF INDIAN APPEALS

David A. Miller, d.b.a. Many Creeks Ranch v. Rocky Mountain Regional Director,
Bureau of Indian Affairs

36 IBIA 305 (09/19/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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DAVID A. MILLER, d.b.a. MANY CREEKS RANCH, Appellant v. ROCKY MOUNTAIN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	: Order Reversing Decision : : : : Docket No. IBIA 01-48-A : : : : : September 19, 2001
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David A. Miller, d.b.a. Many Creeks Ranch (Appellant) appeals from an October 3, 2000, decision of the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which required the nullification of grazing leases for Crow Allotments 1224 and 1226, under which Many Creeks Ranch is lessee. ^{1/} For the reasons discussed below, the Board reverses the Regional Director's decision.

At all times relevant to this appeal, the ownership of Allotments 1224 and 1226 was divided among 12 landowners (the same 12 for both allotments), two of whom were deceased. In July 1999, Appellant informed BIA that he wished to negotiate with the landowners for 10-year grazing leases to begin November 1, 2000. He obtained written consents to his lease proposal from nine of the landowners, apparently during November 1999. In December 1999, five landowners contacted the Crow Agency, BIA, requesting immediate approval of the leases, even though the lease terms would not begin until November 1, 2000.

Acting upon the request of these landowners, the Superintendent approved the leases on December 16, 1999. As approved, both leases have 10-year terms, beginning November 1, 2000, and ending October 31, 2010.

In January 2000, Genevieve Old Bull, a landowner who had consented to the leases and had sought their immediate approval in December 1999, wrote to the Superintendent requesting cancellation of the leases on the grounds that 10-year leases were not authorized. The

^{1/} These are Lease Contract 0-13727 for Allotment 1224 and Lease Contract 0-13725 for Allotment 1226.

Superintendent referred the request to the Regional Director, who treated it as an appeal from the Superintendent's approval of the leases.

On October 3, 2000, the Regional Director issued a decision directing the Superintendent to nullify the leases. He stated:

In reviewing the Administrative Record submitted by the agency, it is apparent that the leases do not contain Farm Management Plans. The Farm Management Plan is utilized to show substantial development or improvement of the land to justify ten-year leases in accordance with 25 CFR 162[.8](d) [(1999) 2/], which states, "Grazing leases which require substantial development or improvement of the land shall not exceed ten years."

The agency did not have the authority to approve the ten-year lease on Allotment Nos. 1224 and 1226 because the lease was not prepared in accordance with provisions of 25 CFR 162[.8](d) [(1999)].

Regional Director's Oct. 3, 2000, Decision at 2.

Appellant appealed the Regional Director's decision to the Board, making a number of arguments. 3/ The Board discusses those it finds most relevant.

Appellant contends that his leases, which were prepared on standard BIA lease forms, do not require farm management plans for grazing leases. He states, however, that, if BIA requires a grazing management plan, he is willing to execute a reasonable management plan for the leases. He continues:

Many Creeks Ranch has in fact expended many thousands of dollars on a comprehensive range land improvement [sic] consisting of fencing improvement, and has, in addition, produced a number of water wells the purpose of which is to provide water for livestock operations. These are very substantial improvements to the whole operation, these leases being an integral part of the livestock production operation.

Notice of Appeal at 2.

2/ The regulations in 25 C.F.R. Part 162 (1999) were in effect at all times relevant to this appeal. A revision of 25 C.F.R. Part 162 was published on Jan. 22, 2001, and went into effect on Mar. 23, 2001. 66 Fed. Reg. 7068.

3/ None of the landowners have participated in this appeal although they have been advised of their right to do so.

25 C.F.R. § 162.11 (1999) provided: “Farming and grazing operations conducted under leases granted or approved under this part shall be conducted in accordance with recognized principles of good practice and prudent management. Land use stipulations or conservation plans necessary to define such use shall be incorporated in and made a part of the lease.” This regulatory provision is implemented in Paragraph 17 of Appellant's leases, Land Use Provisions, which states:

The Lessee will develop or cause to be developed a conservation plan for the tract of land under this lease agreement. [BIA] agrees to work cooperatively and in consultation with the Lessee to develop and assist in the formulation of a conservation plan by providing technical assistance upon request. The Lessee agrees that a conservation plan may be developed by [BIA] in the event that the Lessee does not timely submit a plan and that the plan will become a binding part of this lease.

There are no conservation plans included with the record copies of Appellant's leases. It appears possible that these are the plans the Regional Director had in mind when he referred to a “Farm Management Plan.” If that is the case, however, Appellant's failure to submit a plan would not justify nullification of his leases. The remedy for failure to submit a conservation plan is clearly stated in the leases)) BIA would prepare the plan for Appellant and make it a part of his leases.

There are three references in Appellant's leases to “management plans.” Paragraph 17.A, concerning farm lands, requires a management plan where the lands are determined to have been managed improperly. Paragraph 17.B, concerning pasture and range lands, requires a management plan where overuse is determined to have occurred. Paragraph 17.Q requires a management plan for all irrigated land.

Of these three, only Paragraph 17.Q calls for cancellation of a lease for failure to submit a plan. However, that paragraph clearly applies only to farming and not to grazing. Paragraphs 17.A and 17.B both call for BIA to prepare a plan where a lessee who is required to submit a plan fails to do so. As with the conservation plan discussed above, nullification of a lease is not the stated remedy for failure to submit a management plan under these paragraphs. Further, there is no indication in the record that either of these paragraphs would apply to Appellant's leases.

The Board finds no requirement for a “management plan” that would justify nullification of Appellant's leases for failure to submit a plan.

Appellant also contends that 10-year leases were properly approved under 25 U.S.C. § 3715(a), which provides:

The Secretary is authorized to -

(1) approve any agricultural lease or permit with (A) a tenure of up to 10 years, or (B) a tenure longer than 10 years but not to exceed 25 years unless authorized by other Federal law, when such longer tenure is determined by the Secretary to be in the best interest of the Indian landowners and when such lease or permit requires substantial investment in the development of the lands or crops by the lessee.

This provision clearly authorizes 10-year agricultural leases, even where a lease does not require substantial investment. The term “agricultural lease” is not defined in the American Indian Agricultural Resource Management Act (AIARMA), 4/ the statute from which 25 U.S.C. § 3715 is derived. However, the term “Indian agricultural lands” is defined to include “farmland and rangeland * * * that is used for the production of agricultural products,” and the term “agricultural products” is defined to include “domestic livestock * * * specifically raised and utilized for food or fiber or as beast of burden.” 25 U.S.C. § 3703(1), (2)(B). Thus it is apparent that the statutory term “agricultural lease” includes grazing leases. 5/

The Board finds that 25 U.S.C. § 3715(a)(1) authorizes the Secretary to approve a 10-year grazing lease, regardless of whether the lease requires substantial investment.

Appellant further contends that 25 C.F.R. § 162.8(d) (1999), upon which the Regional Director relied in his decision, did not preclude 10-year grazing leases.

It appears likely that, although he did not cite it, the Regional Director relied in part upon the first sentence of 25 C.F.R. § 162.8 (1999), which stated:

Leases granted or approved under this part shall be limited to the minimum duration, commensurate with the purpose of the lease, that will allow the highest economic return to the owner consistent with prudent management and conservation practices, and except as otherwise provided in this part shall not exceed the number of years provided for in this section.

This sentence indicates that shorter term leases were to be favored over longer term leases. However, there was nothing in 25 C.F.R. § 162.8 (1999) which explicitly limited

4/ Act of Dec. 3, 1993, Pub. L. No. 103-177, as amended, 25 U.S.C. §§ 3701-3746.

5/ This conclusion is bolstered by the definition of “agricultural lease” in the recent revision of 25 C.F.R. Part 162, which implements the AIARMA. 25 C.F.R. § 162.101 defines “agricultural lease” to mean “a lease of agricultural land for farming and/or grazing purposes.”

any grazing lease to a term of less than 10 years. 6/ 25 C.F.R. § 162.8(d) (1999) stated only that a grazing lease which required substantial investment could not be approved for a term longer than 10 years.

BIA's preference for short-term leases was criticized in the legislative history of the AIARMA. 7/ It clearly appears, both from the statutory language and the legislative history, that Congress intended in the AIARMA to authorize)) indeed encourage)) longer leases than were then favored by BIA.

At the time Appellant's leases were approved in 1999, the AIARMA had been in existence for six years, although implementing regulations had yet to be promulgated. 8/ 25 C.F.R. § 162.8, as it existed in 1999, predated the AIARMA by many years. (Originally promulgated in 1961, the regulation was last amended in 1969.) The Board has held that, where there are discrepancies between a BIA regulation and a later-enacted statute, the statute

6/ Some farming leases were, however, limited to 5 years. 25 C.F.R. § 162.8(c) (1999) provided: "Farming leases not granted for the purpose of growing specialized crops shall not exceed five years for dry-farming land or ten years for irrigable land."

7/ See H. R. Rep. No. 367, 103rd Cong., 1st Sess. 15-16 (1993):

"The Committee Amendment includes language which allows the Secretary to approve agricultural leases or permits for a tenure of up to 10 years, or longer than 10 years, not to exceed 25 years, when it is in the best interest of the landowner and when the lessee agrees to make a substantial investment in the lands. The Committee intends this provision to authorize the negotiation of longer term agricultural leases which will increase access to agricultural credit programs. The current practice of the BIA limiting the term of agricultural leases to 5 years severely limits the ability of lessees to access credit which in turn prevents them from investing in improvements in the land. Historically, few improvements have been made on Indian agricultural lands because lessees could not pledge more than 5 years of revenue. The failure of the BIA to authorize leases of longer duration left most Indian agricultural lands without improvements. This concern was voiced by many of the tribal witnesses appearing before the Committee. The Committee intends these provisions to provide a greater degree of flexibility to the Secretary in the leasing of Indian agricultural lands."

Accord S. Rep. No. 186, 103rd Cong., 1st Sess. 11-12 (1993).

8/ As indicated above (see footnotes 2 and 5), regulations implementing the AIARMA were published on Jan. 22, 2001, and became effective on Mar. 23, 2001.

The new regulations address lease terms in 25 C.F.R. § 162.229, which provides in part:

"(b) The lease term must be reasonable, given the purpose of the lease and the level of investment required. Unless otherwise provided by statute, the maximum term may not exceed ten years, unless a substantial investment in the improvement of the land is required. If such a substantial investment is required, the maximum term may be up to 25 years."

controls. Collins v. Acting Billings Area Director, 30 IBIA 165, 172 (1997). 9/ With respect to the matter at issue here, the legislative history of the AIARMA reflects a specific intent to supersede inconsistent regulations: “The provisions of this section [sec. 105 of the AIARMA, 25 U.S.C. § 3715] are intended to supersede the provisions of those statutes and regulations limiting the tenure of leases of Indian lands for agricultural purposes to less than 10 years.” S. Rep. No. 186 at 11.

To the extent that 25 C.F.R. § 162.8 (1999) may be read to preclude 10-year terms for grazing leases, the regulation was superseded by the AIARMA, which clearly authorizes leases of such duration.

The Board finds that the Superintendent had authority in 1999 to approve 10-year grazing leases and, in particular, the two leases at issue here. It therefore finds that the Regional Director erred in holding otherwise.

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 October 3, 2000, decision is reversed, and Appellant’s leases are determined to have been validly approved. 10/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

9/ This is true except with respect to statutory provisions which require the promulgation of implementing regulations before they can be enforced. See Papse v. Acting Portland Area Director, 33 IBIA 175 (1999). That is not the case here.

10/ The Superintendent should, however, ensure that the conservation plan required by Appellant’s leases is completed and made a part of the leases.