



INTERIOR BOARD OF INDIAN APPEALS

Larry Caldwell v. Northwest Regional Director, Bureau of Indian Affairs

37 IBIA 178 (03/26/2002)

Related Board case:
37 IBIA 180



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

LARRY CALDWELL,
Appellant

v.

NORTHWEST REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing Appeal, Vacating
: Decision, and Remanding Case
:
:
: Docket No. IBIA 02-70-A
:
:
: March 26, 2002

Appellant Larry Caldwell seeks review of a February 22, 2002, decision of the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the cancellation of non-member grazing permits by the Shoshone-Bannock Tribes of the Fort Hall Reservation (Tribe). For the reasons discussed below, the Board summarily vacates the Regional Director's decision and remands this matter to him for further proceedings.

Appellant is a non-member of the Tribe and holds a grazing permit for Fort Hall Range Unit No. 3, which contains 49,184 acres of tribal land and 62,582 acres of allotted land. His permit has a five-year term which began on January 1, 2001, and ends "not later than December 31, 2005." The Tribe's cancellation action was taken in Resolution No. LAND-01-1762, enacted by the Tribe's Business Council on December 26, 2001.

The Regional Director's decision was contained in a February 22, 2002, letter addressed to "Range Unit Permittee and Interested Parties." The letter states: "The cancellation of range permits was an action by the Fort Hall Business Council and not an action originated by a federal official of [BIA]. Therefore, your appeal cannot be processed through [BIA]."

It is apparent from the materials submitted by Appellant that the action he attempted to appeal to the Regional Director was not the action taken by the Tribe but, rather, a January 25, 2002, notice issued by the Superintendent, Fort Hall Agency, BIA, in which he purported to implement the Tribe's cancellation decision. The Superintendent's notice was appealable under 25 C.F.R. Part 2. Thus, as it concerns Appellant's appeal to him, the Regional Director's February 22, 2002, decision is plainly in error. Under the circumstances here, the Board finds

that the Regional Director's February 22, 2002, decision must be vacated and this matter remanded to him for further proceedings and a decision on the merits. 1/

The Superintendent undertook to implement a tribal decision in a matter which falls within BIA's area of responsibility under the regulations in 25 C.F.R. Part 166. Prior to issuing his January 25, 2002, notice, the Superintendent should have satisfied himself that the action taken by the Tribe in Resolution No. LAND-01-1762 was taken in accordance with applicable law. There is no indication that he did so. Nor is there any indication that the regulations in Part 166 have been waived under 25 C.F.R. § 166.2.

Therefore, upon remand, the Regional Director shall determine (1) whether the Tribe has the authority to cancel Appellant's permit and (2) if the Tribe has such authority, whether its action complied with 25 C.F.R. Part 166, other applicable law, and the terms of Appellant's permit. The Regional Director shall notify all persons to whom his February 22, 2002, letter or the Superintendent's January 25, 2002, notice was sent, advise them that the matter is on appeal to him, and offer them the opportunity to participate in the appeal.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, the Regional Director's February 22, 2002, decision is vacated as to all affected persons, and this matter is remanded to him for further proceedings. 2/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ Given its general salutation, the Regional Director's Feb. 22, 2002, letter was presumably sent to others as well as Appellant. It is conceivable that some of those others may have attempted to appeal directly from the Tribe's decision rather from the Superintendent's Jan. 25, 2002, notice. To avoid confusion, the Board vacates the Regional Director's decision as to all affected persons.

2/ Among the materials submitted by Appellant is a Mar. 5, 2002, letter from the Tribe to range permittees concerning, among other things, changes in grazing rental rates. On this subject, the parties are referred to 25 C.F.R. § 166.408 and the Board's decision in Long Turkey v. Great Plains Regional Director, 35 IBIA 259 (2000).