



INTERIOR BOARD OF INDIAN APPEALS

Calvin C. Hackford v. Western Regional Director, Bureau of Indian Affairs

37 IBIA 196 (04/01/2002)

Reconsideration denied:

37 IBIA 254



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SUITE 300
ARLINGTON, VA 22203

CALVIN C. HACKFORD,
Appellant

v.

WESTERN REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
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:
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: Docket No. IBIA 01-80-A
:
:
: April 1, 2002

Appellant Calvin C. Hackford seeks review of a January 11, 2001, decision issued by the Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning a bill for past due irrigation operation and maintenance (O&M) assessment fees payable to the Uintah and Ouray Indian Irrigation Project (Project). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision. 1/

On July 20, 2000, BIA notified Appellant of outstanding past due Project O&M assessments. The notice informed Appellant of his rights and options.

Appellant appealed the notice to the Regional Director on August 9, 2000. The Regional Director affirmed the issuance of the notice in the January 11, 2001, decision presently under review.

Appellant appealed to the Board, and filed a statement of reasons in support of his appeal. The Regional Director did not file an answer brief.

Appellant argues that he does not owe any O&M assessments for 1995 through 2000. 2/ Appellant contends that he has receipts from BIA showing payment for these years for water used to irrigate his lands. In support of this argument, Appellant provides copies of BIA receipts.

1/ This is not Appellant's first appearance before the Board in regard to his belief that he is not responsible for paying Project O&M assessments. See Hackford v. Acting Phoenix Area Director, 33 IBIA 144, recon. denied, 33 IBIA 274 (1999). A more comprehensive background of this ongoing dispute can be found in 33 IBIA 144 and in Hackford v. Babbitt, 14 F.3d 1457 (10th Cir. 1994).

2/ The bill which was sent to Appellant covers 1990 through 1998.

Assuming for purposes of this discussion that the receipts which Appellant has provided actually relate to O&M assessments, the Board has compared those receipts with BIA's July 20, 2000, notice of past due assessments. None of the parcels for which Appellant has provided receipts are the same parcels for the same year as those listed in the notice. The Board finds that Appellant has not shown that he has paid the O&M assessments included on BIA's July 20, 2000, notice.

Appellant argues that the Regional Director's interpretation of Hackford v. Babbitt, is "barred by Res Judicata." Statement of Reasons at 2. Appellant obviously disagrees with the Regional Director over the proper interpretation of Hackford v. Babbitt. However, he does not show any way in which the doctrine of res judicata--which prevents the relitigation of the same cause of action between the same parties--prevents the Regional Director from applying his understanding of the court's holding in that case. Neither does he present a convincing argument as to how the Regional Director's interpretation is incorrect.

In fact, it appears more likely that it is Appellant, rather than the Regional Director, who must overcome the impediment of res judicata here. Although he seems to present a somewhat different theory here than he evidently did in Hackford v. Babbitt, the doctrine of res judicata bars relitigation of, not only arguments that were actually raised in the previous case, but also arguments that could have been raised but were not. See Racine v. Rocky Mountain Regional Director, 36 IBIA 274, 277 (2001), and cases cited there.

In Hackford v. Babbitt, Appellant argued that he had the right to take Project water through a private ditch to irrigate his lands without paying O&M assessments. After finding that Appellant "owns seven parcels of land within the Uintah and Ouray Reservation," some of which are irrigable and fall within the Project's service area, 14 F.3d at 1459, the court rejected Appellant's argument. 14 F.3d at 1469.

In this appeal, Appellant argues that he has the right "to take water through his private irrigation ditch, without paying assessments to the Project, to irrigate his tribal lands." Emphasis added; Statement of Reasons at 3. Appellant further contends that tribal lands do not fall within the boundaries of the Project. Appellant does not present any evidence showing a change in ownership of these parcels from privately owned to tribally owned. Instead, he cites footnote 3 in Hackford v. Babbitt, 14 F.3d at 1461. Footnote 3 explains the reserved water rights doctrine established in Winters v. United States, 207 U.S. 564 (1908). Even if the footnote would otherwise have some application to Appellant's underlying argument--a question which the Board finds it unnecessary to reach--it does Appellant no good here because of the basic lack of evidence that the lands at issue are tribally owned. The Board finds no reason to conclude that the lands which Appellant has steadfastly claimed as his own are actually tribal lands.

Appellant contends that BIA has allowed non-Indians to use Project water without paying assessments. The Regional Director found that Appellant failed to present evidence in support of this allegation. Appellant still has not presented any such evidence. However, even if he had, Appellant would not prevail in this argument. The possibility that BIA may have erred in regard to billings for other Project users does not excuse Appellant's failure to comply with the Project statutes and regulations, or give him the right to have those statutes and regulations violated on his behalf. Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214, 222, 90 I.D. 283 (1983).

Appellant asserts that BIA has filed unauthorized liens against his property. In support of this argument, he refers to a report concerning the Project provided to BIA by a contractor in September 1981 (report). At pages 7-8, the report discusses the "reasons that may have contributed to the lack of construction repayments on the Uintah Project." Items 4 and 5 concern liens. It is not clear whether the discussion in regard to liens represents the report's author's legal analysis or an analysis that was presented to him by someone else. ^{3/} The report seems to reach the legal conclusion that liens cannot be levied against lands within the Project area.

Appellant presumably means to argue that BIA's placement of liens on his property somehow excuses his failure to pay O&M assessments. However, he entirely fails to support such an argument. Further, to the extent he intends to challenge the placement of liens, he makes no attempt, other than citing the report, to show that any liens placed on his property are unauthorized. In any event, the Board need not reach the question of whether BIA has the authority to place liens on Appellant's land because that is not the matter at issue in this appeal. The issue here is whether Appellant owes the amounts assessed by BIA in its July 20, 2000, bill.

Appellant notes that the Regional Director did not discuss his status as a member of the Affiliated Ute Citizens and his "claim of interest in and to \$41,134.27 identified in tribal resolution Number 58-253." Statement of Reasons at 4. Appellant provides a copy of a "Record of Tribal Legislation" in support of this argument. The copy states that, on December 17, 1958, the Affiliated Ute Citizens resolved

that an amount of approximately \$41,134.27 be appropriated which represents amt. charged against lands described in Div. of Assets & since AUC owns land & owes the construction charges & since any payment from AUC funds would merely be redeposited to the AUC account that if at all possible this be accomplished by journal entry.

^{3/} The report also does not show the author's educational background.

Appellant provides no information concerning what, if anything, happened in response to this resolution.

Appellant does not attempt to show why he believes he has a claim against the amount appropriated by the Affiliated Ute Citizens. Furthermore, he has given no reason why any such claim should be heard by BIA, rather than by the Affiliated Ute Citizens, the entity whose funds are at issue. The Board finds that Appellant has not shown entitlement to any relief from his O&M assessments based on this argument.

Appellant appears to argue that BIA owes him for construction costs which he overpaid. In response to this argument, the Regional Director stated:

When you sold some land to Mr. Loren McKee in 1971, some payment for post-1956 construction costs for your lands were delinquent. You claimed that Mr. McKee withheld this amount in the land sale transaction but Agency records do not verify that any payment was made to the BIA as a result of this land sale. If you did not receive full payment from Mr. McKee, your claim is against Mr. McKee, not the BIA. You have not furnished the Agency with any documentation showing payment to the BIA of construction charges in connection with the 1971 sale.

Jan. 11, 2001, Decision at 3.

Appellant does not present any evidence which shows that either he or the purchaser paid the construction assessments against this land. The Board finds that Appellant has not shown that he is entitled to any relief from his O&M assessments based on this argument.

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 January 11, 2001, decision is affirmed. 4/

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

4/ Other arguments not specifically discussed were considered and rejected.