



INTERIOR BOARD OF INDIAN APPEALS

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

37 IBIA 252 (05/29/2002)



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

MARK GATRELL,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 01-177-A
ROCKY MOUNTAIN REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	May 29, 2002

This is an appeal from a July 19, 2001, decision of the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), denying Appellant Mark Gatrell's appeal from a bill for 2001 irrigation operation and maintenance (O&M) charges for Crow Allotment 1042. ^{1/} For the reasons discussed below, the Board affirms the Regional Director's decision.

In his appeal to the Regional Director, Appellant contended: (1) water has not been furnished to the tract in 10 years, (2) water cannot be furnished to the tract, (3) the headgate was damaged and needs to be repaired or replaced, and (4) the supply ditch was lower than the ground to be irrigated.

The Regional Director responded to each of Appellant's contentions. He explained that, under 25 C.F.R. § 171.19, O&M charges are levied against land to which water can be delivered, regardless of whether water has been requested. He stated that a test of BIA's ability to deliver water to Appellant's tract had been conducted on May 25, 2001, in Appellant's presence, and that water had been successfully run through the ditch serving Appellant's tract. The Regional Director further stated that the headgate functioned adequately during the demonstration and that Crow Irrigation Project personnel had determined that it was not in need of repair or replacement. Finally, he stated that "[t]he major factor that determines whether water can be delivered to [Appellant's] tract is the elevation of the water surface in the supply ditch" and that "even if the supply ditch were lower than the ground to be irrigated,

^{1/} Appellant earlier appealed an O&M bill for 2000. In Gatrell v. Rocky Mountain Regional Director, 36 IBIA 259 (2001), the Board affirmed the Regional Director's decision concerning that bill.

water could still be delivered to [Appellant's] tract by maintaining the water in the supply ditch to an elevation higher than [Appellant's] tract of land." Regional Director's Decision at 2. The Regional Director noted that this had been demonstrated on May 25, 2001, when water was successfully delivered to Appellant's tract. 2/

On appeal to the Board, Appellant appears to be contending that his concern is with a tract other than Allotment 1042, although that is not entirely clear. His appeal to the Regional Director concerned his bill for Allotment 1042. That was the only matter addressed by the Regional Director and thus the only matter at issue in this appeal.

Appellant's notice of appeal consists primarily of complaints about BIA employees. He did not file a brief. He does not dispute the statements made or the conclusions reached in the Regional Director's decision.

Appellant was advised in the notice of docketing for this appeal that he bore the burden of proving error in the Regional Director's decision. An appellant who fails to make any allegation of error in the decision being appealed, let alone any argument in support of such an allegation, has failed to carry his burden of proof. E.g., Cervantes v. Southern Plains Regional Director, 37 IBIA 224 (2002), and cases cited therein.

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 July 19, 2001, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

2/ According to a BIA document in the record, Appellant used some of the water that was delivered to his tract during the demonstration.