



INTERIOR BOARD OF INDIAN APPEALS

Kukowski Ranch v. Rocky Mountain Regional Director, Bureau of Indian Affairs

38 IBIA 211 (11/13/2002)

Related Board case:
37 IBIA 113



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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KUKOWSKI RANCH,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 02-96-A
ROCKY MOUNTAIN REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	November 13, 2002

The Kukowski Ranch (Appellant) seeks review of a March 18, 2002, decision of the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), affirming the cancellation of Appellant's lease for Crow Allotment 2118. For the reasons discussed below, the Board affirms the Regional Director's decision.

Appellant and William Daum separately negotiated with the owners of Allotment 2118 for a pasture lease of the allotment for a term beginning November 1, 1998. Both submitted their proposed leases to the Crow Agency, BIA, for approval. Daum's proposed lease also covered Allotment 3071 and was for a term of five years with an annual rental of \$3.50 per acre. Appellant's proposed lease covered only Allotment 2118 and was for a term of ten years with an annual rental of \$3.25 per acre. Daum's lease was approved by an Acting Superintendent on March 16, 1998. Appellant's lease was approved by a different Acting Superintendent on March 21, 1998.

On April 9, 2001, an Acting Superintendent wrote to Appellant, stating:

This is in reference to your lease on Allotment No. 2118 * * *.

In reviewing our records, there is an existing lease on this same tract of land for William Daum. The lease issued to you was done in error. Therefore, this office is cancelling your lease. Enclosed [is] a lease cancellation form which you need to sign and return to this office.

You will be refunded 3 years rental of \$1,560 under separate cover and the filing fee of \$27.00, for a total of \$1,587.00.

Appellant appealed the Superintendent's decision to the Regional Director. In a September 19, 2001, decision, the Regional Director reversed the Acting Superintendent's decision and directed the Superintendent to reinstate Appellant's lease and modify Daum's lease to exclude Allotment 2118. Daum appealed the Regional Director's September 19, 2001, decision to the Board.

Before any briefs were filed in Daum's appeal, the Regional Director asked the Board to remand the case to him so that he could reconsider his decision. On January 25, 2002, the Board vacated the Regional Director's September 19, 2001, decision and remanded the matter to him. Daum v. Rocky Mountain Regional Director, 37 IBIA 113 (2002).

The Regional Director issued a new decision on March 18, 2002, stating in part:

When the Superintendent granted the lease to William Daum on March 16, 1998, he granted him the possession and right to use the property. After that approval, the Superintendent did not have the authority to grant the use of the property and possession of the lease premises without the consent of all parties including Mr. Daum.

Regional Director's Mar. 18, 2002, Decision at 2.

On appeal to the Board, Appellant argues that BIA erred by approving Daum's lease on a "first-come, first-served" basis. It also argues that granting a lease to Daum would cause problems because all the land surrounding Allotment 2118 is owned or leased by Appellant, thus depriving Daum of access.

Daum supports the Regional Director's conclusion, arguing that, once the lease to him had been approved, the Superintendent lost authority to approve another lease for the same property. He disputes Appellant's "access" contention, arguing that he had leased Allotment 2118 for a number of years prior to March 16, 1998, and that access to the leased land had never been a problem. Finally, he contends that his lease is in the best interests of the Indian landowners.

Nothing in the record shows that BIA approved Daum's lease because it was received first. In fact, according to the Regional Director's September 19, 2001, decision, Appellant's lease was received first. ^{1/} Appellant fails to show that BIA violated any regulation, or any right of Appellant, in approving a lease to Daum. Thus, he also fails to show that the Acting

^{1/} The Regional Director reached this conclusion on the basis of a stamp showing the Agency's receipt of Appellant's lease on Dec. 5, 1997, and payment of a filing fee by Daum on Jan. 15, 1998.

Superintendent erred in approving Daum's lease. If there was no error in the approval of Daum's lease, then the Regional Director was correct in concluding that the Superintendent had no authority to approve the lease to Appellant.

Appellant has not shown 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 March 18, 2002, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge