



## INTERIOR BOARD OF INDIAN APPEALS

Lower Brule Sioux Tribal Council v. Great Plains Regional Director,  
Bureau of Indian Affairs

40 IBIA 211 (01/12/2005)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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LOWER BRULE SIOUX TRIBAL COUNCIL, : Order Affirming Decision  
Appellant, :  
 :  
v. : Docket No. IBIA 03-20-A  
 :  
GREAT PLAINS REGIONAL DIRECTOR, :  
BUREAU OF INDIAN AFFAIRS, :  
Appellee. : January 12, 2005

The Lower Brule Sioux Tribal Council (Tribal Council) appeals from an August 26, 2002, decision of the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which established a minimum grazing rental rate for the Lower Brule Sioux Reservation for the 2003 grazing permit period. <sup>1/</sup> For the reasons discussed below, the Board affirms the Regional Director's decision.

On August 14, 2002, an independent appraiser prepared a grazing rate appraisal for the Lower Brule Sioux Reservation for the 2003 grazing season. He submitted the appraisal to the Regional Director on August 19, 2002, stating in his cover letter: "**The estimated grazing rate per animal unit month on a year long basis on the Lower Brule Reservation is estimated at: \$11.00 to \$12.00/AUM.**" <sup>2/</sup> The Great Plains Regional Appraiser (Regional Appraiser) reviewed the independent appraiser's data, concluded that the rate should be \$11.00 per AUM, and so advised the Regional Director in a memorandum dated August 19, 2002. On August 26, 2002, the Regional Director informed the Superintendent, Lower

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<sup>1/</sup> It is arguable that this appeal is moot. Although the Board does not normally address moot appeals, it will consider the merits of an arguably moot appeal when the matter concerns a potentially recurring question raised by a short-term order capable of repetition, yet evading review. See, e.g., Rush v. Acting Navajo Area Director, 25 IBIA 198, 199 n. 1 (1994), and cases cited therein. The Board considers the present appeal under this exception to the mootness doctrine.

<sup>2/</sup> "Animal Unit Month (AUM)" means "the amount of forage required to sustain one cow or one cow with one calf for one month." 25 C.F.R. § 166.4.

Brule Agency, BIA (Superintendent) that she had established the reservation yearlong grazing rental rate at \$11.00 per AUM. Also on August 26, 2002, she prepared a notice letter with the same information, as well as appeal instructions, and directed the Superintendent to post it at appropriate places on the reservation and to send it to the permittees and the Tribal Council. She also directed the Superintendent to share the grazing rate appraisal with the Tribe. On September 16, 2002, the Superintendent advised the Regional Director that he had completed the required actions.

On September 27, 2002, the Tribal Council enacted Resolution 02-314, stating its intent “to appeal the grazing rate increase from \$8.50 to \$11.00 because of the drought in South Dakota.” It then filed a notice of appeal with the Board, attaching a copy of Resolution 02-314 and stating that the resolution “appeal[ed] the grazing rate increase because of the summer drought.”

The Tribal Council did not file an opening brief. After the time for filing an opening brief expired, the Regional Director filed an answer brief. The Tribal Council did not file a reply brief.

In her answer brief, the Regional Director contends that she followed the applicable regulations in establishing the minimum grazing rate for 2003 and that her decision is supported by substantial evidence. Noting that the only reason the Tribal Council gave for its appeal was the drought on the reservation, she argues that the drought conditions were taken into consideration by both the independent appraiser and the Regional Appraiser. She points out that the independent appraiser stated that “the dry spring in South Dakota [had] increased the prices paid for pasture in the region.” Aug. 14, 2002, Appraisal at 1.

The Regional Director also contends that the conclusions of the independent appraiser and the Regional Appraiser were confirmed by the Senior Review Appraiser in BIA’s Central Office on October 10, 2002. She attaches to her brief a memorandum of that date in which the Senior Review Appraiser stated that he “concur[red] completely with the conclusions of the Great Plains Regional Appraiser and the [independent] appraiser,” Senior Review Appraiser’s Oct. 10, 2002, Memorandum at 1, and in which he discussed the drought conditions:

The subject area has been subject to extremely dry conditions, which has resulted in an overall lack of range grass or pasture. This overall lack of pasture has increased demand for available grassland or pasture. To the dismay of the cattlemen the limited supply of forage has resulted in the market bidding up the prices on all available grassland and pasture. If the drought continues, overall market forces will stabilize these prices and they will reach market equilibrium. Presently, however, they are what they are. It is clear that the [independent

appraiser] and the Regional Appraiser were cognizant of the drought and its effects on the market.

Id.

Although this memorandum was not before the Regional Director when she issued her decision, it supports the conclusions of the independent appraiser and the Regional Appraiser, upon which the Regional Director relied. Therefore, it lends support to the Regional Director's decision.

Under 25 C.F.R. § 166.400(b), the Regional Director was required to "establish the grazing rental rate by determining the fair annual rental for: (1) Individually-owned Indian lands; and (2) Tribes that have not established a rate under paragraph (a) of this section." <sup>3/</sup> "Fair annual rental" is defined in 25 C.F.R. § 166.4 as "the amount of rental income that a permitted parcel of Indian land would most probably command in an open and competitive market."

Although the Tribal Council considers the drought to be a factor weighing against an increase in the grazing rental rate, it has not supported its opinion with any analysis. It has not shown error in the conclusion of the appraisers that the drought had caused an increase in the fair annual rental for the 2003 grazing season. Nor has it shown that the Regional Director failed to base her decision upon the fair annual rental. Consequently, the Tribal Council 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 August 26, 2002, decision is affirmed.

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Anita Vogt  
Senior Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>3/</sup> 25 C.F.R. § 166.400(a) provides: "For tribal lands, a tribe may establish a grazing rental rate that is less or more than the grazing rental rate established by [BIA]."

Under this provision, the Tribal Council has the ability to mitigate the impact of BIA's grazing rental rate increase upon cattle operators by adopting a lower rate for grazing on tribal lands.