



INTERIOR BOARD OF INDIAN APPEALS

Todd Hall, Edwin A. Hall, and Fort Berthold Land and Livestock Association v. Great Plains Regional Director, Bureau of Indian Affairs

43 IBIA 39 (04/26/2006)



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

TODD HALL, EDWIN A. HALL, and	:	Order Dismissing Appeals
FORT BERTHOLD LAND AND	:	
LIVESTOCK ASSOCIATION,	:	
Appellants,	:	
	:	
v.	:	Docket Nos. IBIA 06-16-A
	:	06-18-A
GREAT PLAINS REGIONAL DIRECTOR,	:	06-19-A
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	April 26, 2006

These consolidated appeals seek review of a September 30, 2005 decision of the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), establishing a grazing rental rate for individually-owned Indian lands on the Fort Berthold Reservation (Reservation) in North Dakota for a new five-year permit period beginning December 1, 2005. Appellants are two ranchers who are members of the Three Affiliated Tribes of the Fort Berthold Reservation (Tribe), and an association representing similarly-situated ranchers, who held grazing permits for range units on the Reservation during the previous five-year permit period, and who have received tribal allocations for obtaining permits for range units for the new permit period. For the reasons discussed below, the Board dismisses these appeals for lack of standing.

Regulatory Framework

In several recent cases, the Board has described the regulatory framework for grazing permits for Indian trust or restricted lands. See, e.g., Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director, 41 IBIA 308 (2005); Rosebud Indian Land and Grazing Ass'n v. Acting Great Plains Regional Director, 41 IBIA 298 (2005). With limited exceptions, anyone wishing to graze livestock on Indian trust or restricted land must first obtain a permit to do so. Cheyenne River Sioux Tribe, 41 IBIA at 308, citing 25 C.F.R. § 166.200. BIA establishes the grazing rental rate for individually-owned Indian lands, based on the fair annual rental value. See 25 C.F.R. §§ 166.400(b)(1), 166.401. The purpose of BIA's determination of the fair annual rental value of Indian land is to assist the

Indian landowner in negotiating a permit with a potential permittee and to enable BIA to determine whether a permit is in the best interest of the Indian landowner. Id. § 166.402. Indian landowners may charge a higher rate or, in certain circumstances, a lower rate for a permit. Id. § 166.400(c). BIA is authorized to grant permits with rental rates at less than fair annual rental if, after competitive bidding, BIA determines that it is in the best interest of the individual Indian landowner. Id. § 166.403(a).

Various tracts of Indian rangelands may be consolidated into range units for managing and administering grazing. 25 C.F.R. § 166.4 (definition of “range unit”). BIA creates such range units, after consultation with the Indian landowners. Id. § 166.302.

Indian tribes may develop allocation procedures to apportion grazing privileges to tribal members without competition. See id. §§ 166.218(a) & (b) (acquiring a permit through allocation), 166.4 (definition of “allocation”). For range units that are entirely tribally-owned or tribally-controlled, tribes have broad authority to allocate grazing privileges to their members, id. § 166.218(a) & (b), and to set the grazing rental rate, id. § 166.400(a).

In general, for range units consisting, in whole or in part, of individually-owned Indian land, the regulations provide that BIA is responsible for granting grazing permits through negotiation or advertisement. 25 C.F.R. § 166.217(c). However, if a tribe has adopted grazing allocation procedures, BIA will implement those procedures “subject to” the regulatory provisions giving BIA and Indian landowners authority to set rental rates for individually-owned lands. Id. §§ 166.218(c), 166.400(b) & (c). In effect, the tribal allocation procedure gives tribal member recipients a preference to obtain grazing permits without having to engage in competition against other ranchers. If the recipient of a grazing privilege allocation is willing to agree to the price established by BIA, BIA will issue the permit to the individual for the range unit. Any range units left over after the allocation permitting process are subject to advertisement, bidding, or negotiation to find a permittee.

The Tribe has adopted regulations for the allocation of grazing privileges on the Reservation for the 2005-2010 permit period. The enacting resolution provides in relevant part that the Tribe “hereby adopts procedures and conditions for the permitting, enforcement, and cancellation of grazing privileges on Tribal, federal, trust and all lands subject to its jurisdiction as stated below, and hereby makes such procedures a part of each grazing permit from the date of this resolution forward.” Resolution No. 05-170-NH

(Dec. 2, 2005). 1/ The adopted Tribal Grazing Regulations set forth various conditions for awarding allocations of grazing privileges and for choosing between two or more eligible applicants for the same range unit. Among the conditions included in the grazing regulations is a provision stating that “Permittees receiving allocations shall be required to pay the minimum grazing rates as established for allotted land by the BIA and for Tribal land by the Tribal Business Committee.” Tribal Grazing Regulations Part II, sec. 9.

If improvements are to be placed on Indian land, the grazing permit must provide that the improvements will either remain upon termination of the permit and become the property of the landowner, or be removed and the land restored within a time period established in the permit. See 25 C.F.R. § 166.317(a).

Factual Background

Appellants 2/ held grazing permits for range units on the Reservation for the five-year period ending November 30, 2005, when their permits expired. Appellants state that all of them have received allocations from the Tribe for range units for the upcoming permit period. Opening Brief at 3, see Declaration of Edward S. Danks, Jr. ¶ 4. BIA has issued no new permits for the upcoming grazing season or the new permit period. See Supplemental Declaration of Christopher Manydeeds ¶ 4. During their use of the range units under previous permits, Appellants placed improvements such as fencing, corrals, cattle chutes, water sources, and pipelines on the land. Appellants’ Response Brief at 4 (citing various Declarations). According to Appellants, under the terms of their previous permits, any improvements made by the permittees are their own property, which they are

1/ An earlier grazing resolution, which Resolution No. 05-170-NH rescinded and replaced, stated that the Business Council was adopting “procedures and conditions for the permitting and continuation of grazing privileges on Tribal and federal lands subject to its jurisdiction * * *.” Resolution No. 00-02-DSB (Jan. 4, 2000).

2/ Appellant Fort Berthold Land and Livestock Association (FBLLA) is an association of members of the Tribe who are ranchers on the Reservation, many of whom also own interests in grazing lands on the Reservation. FBLLA Notice of Appeal at 2. FBLLA “was organized to represent and be an advocate for ranchers on the Fort Berthold Reservation,” and claims to represent all grazing permittees who are members of the Tribe. Opening Brief at 5.

Unless otherwise indicated, the Board will use the term “Appellants” to refer collectively to the two individual appellant ranchers and the ranchers who are members of FBLLA.

entitled to remove, but they also state that as a practical matter it would be expensive or impracticable to remove some improvements. Id. at 8.

On September 30, 2005, the Regional Director issued his decision setting the grazing rental rate at \$8.50 per Animal Unit Month (AUM) for individually-owned Indian lands on the Reservation for the new five-year permit period beginning December 1, 2005. ^{3/} The rental rate was based on a grazing rate analysis for the Reservation prepared by a real estate appraiser and approved by the Regional Appraiser of the Office of Appraisal Services, Great Plains Region, Office of the Special Trustee. The Regional Director's decision was sent to Appellants and was addressed to "Permittee[s], Landowners, Tribes and Other Interested Parties," and included appeal rights language as required by 25 C.F.R. § 2.7(c).

Appellants appealed the Regional Director's rental rate decision to the Board, contending that it is arbitrary and capricious, and contrary to the BIA grazing regulations. They also make two procedural challenges which they contend renders the rate decision invalid — that the Regional Director failed to provide them with at least 60 days advance notice before issuing the decision, and that the Regional Director had a duty to consult with interested parties, and failed to do so, before establishing the grazing rate.

The Regional Director requested that the Board place his decision into immediate effect, in order to allow BIA to grant permits for the upcoming grazing season. The Board expedited briefing, and also ordered the parties to address whether Appellants, as

^{3/} The rental rate for the permits that expired November 30, 2005 was \$4.30/AUM, a rate that has been in effect since before 1999. See Fort Berthold Land & Livestock Ass'n v. Great Plains Regional Director, 35 IBIA 266, 268 (2000). In Fort Berthold Land & Livestock Ass'n, the Board vacated and remanded a June 25, 1999 BIA decision to establish a higher rate for the 1999-2004 permit period. The final rate for the 1999-2004 period, which was extended through 2005, is still the subject of consideration by BIA. See Guimont v. Acting Great Plains Regional Director, 40 IBIA 47 (2004) (vacating and remanding a Dec. 16, 2003 decision for further consideration, at the request of the Regional Director); see also Fort Berthold Land and Livestock Ass'n v. Anderson, 361 F. Supp. 2d 1045 (D.N.D. 2005) (dismissing challenge to Guimont, for failure to exhaust administrative remedies).

prospective permittees, have standing to challenge a rental rate decision for a new permit period. 4/

Appellants jointly filed an opening brief and a reply (“Response”) brief. The Regional Director and the Fort Berthold Landowners Association (Landowners Association) filed answer briefs in opposition. 5/

Discussion

In light of the large number of individuals affected by the Regional Director’s decision and need for BIA to issue new permits before the affected lands may be used, the Board has expedited its consideration of this appeal. 6/

Appellants contend that they have standing to challenge the substance of the grazing rate decision because (1) they were permittees at the time the Regional Director issued his decision, (2) the Regional Director’s decision recognized them as “interested parties” and gave them appeal rights, (3) they have received grazing privilege allocations from the Tribe, which give each appellant rancher a preference for receiving a permit to and a right to continue to graze livestock on a particular range unit, and (4) the increased rate will cause concrete harm to their economic interests and livelihoods. Appellants do not expressly address their standing with respect to their procedural 60-day notice argument, but if they

4/ In its order requesting briefing on standing, the Board noted that Fort Berthold Land & Livestock Ass’n, 35 IBIA 266, also involved a rental rate decision for new permits, but that neither the Board nor the parties raised the standing issue. Because the issue is jurisdictional, however, the Board raised it on its own.

5/ The Landowners Association identifies itself as an organization of Indian landowners of property held in trust by the United States.

6/ According to the Regional Director, there were 61 permittees whose permits expired on November 30, 2005. The Superintendent states that “2482 individual Indian allotted trust land owners own * * * 123,750.6 acres in the Range Units” on the Reservation. Supplemental Declaration of Christopher Manydeeds ¶ 3. With limited exceptions, a permit must be obtained before an entity may take possession of Indian land for grazing purposes, 25 C.F.R. § 166.200, and a permittee who holds over after expiration of a permit is considered in trespass, although BIA may refrain from pursuing trespass remedies if the holdover permittee is engaged in negotiations with the Indian landowner to obtain a new permit, id. § 166.709.

are legally-entitled to such notice, they would have standing to raise that issue. See Warth v. Seldin, 422 U.S. 490, 500 (1975) (injury may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing). Appellants argue that they have standing to raise BIA's obligation to consult with the Tribe because the Tribe appointed four FBLLA members to an official BIA/Tribal consultation task force charged with studying grazing rental rates and making recommendations to BIA.

The Regional Director and the Landowners Association argue that Appellants lack standing to bring this appeal. ^{7/}

As an Executive Branch adjudicatory body, the Board is not bound by the case or controversy requirement of Article III of the U.S. Constitution. As a matter of prudence, however the Board limits its jurisdiction to cases in which the appellant can show standing. See Brown v. Navajo Regional Director, 41 IBIA 314, 317 (2005), citing Cheyenne River Sioux Tribe, 41 IBIA at 310. The Board follows the three elements of standing described in Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). ^{8/} Among those elements is the requirement that a person must show that he has suffered an injury to a legally-protected interest.

We conclude that the requirement for an injury to a legally-protected interest is dispositive of this appeal, and that Appellants lack standing to challenge the Regional Director's decision.

First, the fact that Appellants held permits that were still in effect when the Regional Director issued his decision is simply not relevant to their standing to challenge a new grazing rate for a new permit period initiated after their permits have expired. Appellants do not contend that their permits included a right of renewal (or that they exercised any such right). The Regional Director's decision did not affect any rights under the then-existing permits. Nor have Appellants cited any statutory or regulatory provision that creates any right in existing permittees to challenge a grazing rate set for a new permit

^{7/} On the merits, the Landowners Association contends that the \$8.50/AUM rate set by the Regional Director is actually too low, but the Association did not pursue its own appeal and therefore we do not consider that contention.

^{8/} Summarized, the three elements are: (1) an actual or imminent, concrete and particularized injury to or invasion of a legally-protected interest; (2) the injury is fairly traceable to the challenged action; and (3) the injury will likely be redressed by a favorable decision. See Lujan, 504 U.S. at 560-61.

period. BIA's duty in setting grazing rental rates is to the Indian landowners, and not to permittees or prospective permittees. See Cheyenne River Sioux Tribe, 41 IBIA at 310; Porcupine Grazing Ass'n v. Acting Billings Area Director, 25 IBIA 42, denying reconsideration of 24 IBIA 243 (1993). Appellants have not shown that their previous permits were the source of any legally-protected interest that could be adversely affected by a new grazing rate for new permits.

Similarly, Appellants have not shown that the improvements they placed on the land, or permit terms related to improvements, give them a legally protected interest that could be adversely affected by a new grazing rate established on behalf of the landowners for a new permit period. A permittee's legal rights and obligations with respect to improvements constructed on Indian land are set out in the permit itself. See 25 C.F.R. § 166.317. Appellants cite a Tribal grazing regulation provision, which apparently was incorporated into their permits, which allowed the Superintendent, with the approval of the Tribe's Natural Resources Committee, to "extend the contract period of the applicable permit to facilitate the placement of improvements required by" a conservation program in which the permittee has participated. See, e.g., Declaration of Morgan J. Fettig ¶ 4. The declaration characterizes this provision as "granting a preference on future permits," *id.*, but that is not what the language says. Rather, it allows for an extension of an existing permit on a case-specific basis. But Appellants do not contend that the duration of any of their previous permits was extended pursuant to this provision. ^{9/} The Regional Director's decision established a grazing rate for new permits for a new permit period, and therefore did not affect this provision in the previous permits, even assuming it created a legally-protected interest. The fact that permittees may have made certain improvements that are impossible or impracticable to remove does not, either through the terms of prior permits or through the regulations, give them a legally-protected interest that is adversely affected by a rate decision for a new permit period.

Second, the salutation in the Regional Director's decision — to "Permittee[s], Landowners, Tribes, and Other Interested Parties" — combined with the notice of appeal rights did not create standing where it did not otherwise exist, even assuming it should be read as implying a legal conclusion by the Regional Director that existing permittees were

^{9/} No party has suggested that there are any permits that did not expire on November 30, 2005.

“interested parties” for purposes of standing. ^{10/} There are undoubtedly any number of reasons for BIA to give broad notice to affected and potentially affected individuals, including existing permittees, of a rate decision for a new grazing period. But whether or not BIA refers to them as “interested parties” for purposes of notice does not affect whether they in fact have legal standing to challenge that decision. And the inclusion of standard language giving appeal rights is not a determination that any particular recipient of a decision has legal standing to appeal the decision, and certainly does not create a substantive underlying legally-protected interest where none existed previously. ^{11/}

Third, the grazing privilege allocations that Appellants have received from the Tribe, which in effect grant preferences against other potential permittees for obtaining new permits for certain range units, do not give them an unqualified right to obtain a permit or create a legally-protected interest that is affected by the grazing rate decision. The regulatory provision stating that BIA will implement a tribe’s allocation procedure for individually-owned Indian lands, 25 C.F.R. § 166.218(c), may allow a tribe to create a protectable interest in the recipient with respect to an opportunity to obtain a grazing permit without competition — in effect a right of first refusal for a permit for a particular range unit. But that right or interest is distinct from a right to obtain a permit at a price other than the rate set by BIA on behalf of the Indian landowners, and therefore creates no legally-protected interest that is adversely affected by BIA’s rate decision.

The Regional Director’s decision establishing the rate for the new permit period in no way affects or disregards the Tribe’s allocation procedure, nor do Appellants contend that the Regional Director has violated 25 C.F.R. § 166.218(c), under which BIA is required to implement such tribal allocations “subject to” the rental rate provisions in the regulations. Appellants’ declarations recite the injury that will result if they are denied their allocation preference, *see, e.g.*, Declaration of Tom Breuer ¶¶ 5-6, but the Regional Director’s decision did not deny any preferences. Similarly, Appellants contend that they would be permittees, “but for the [Regional] Director’s refusal to issue the permits.”

^{10/} We note, however, that the boilerplate salutation, even if legally relevant, is itself ambiguous. Although the use of “other interested parties” could be read to imply that the three specifically-identified categories of recipients are all interested parties, only one of the named categories would need to be composed of interested parties (e.g., the landowners) in order to make grammatical sense of the Regional Director’s use of the phrase “other interested parties.”

^{11/} Any individual or entity, of course, has a procedural right to file an appeal to the Board and is entitled at a minimum to a jurisdictional determination by the Board.

Appellants' Response Brief at 7. The Regional Director's decision did not refuse to issue any permits; the only thing it did was to set the rental rate on behalf of the individual Indian landowners for the non-competitive awarding of permits for their lands. BIA apparently is ready and willing to offer permits to Appellants once this appeal is resolved. 12/

Appellants also rely in part on Tribal Resolution No. 00-02-DSB as the source of their alleged rights. That resolution referred to the "permitting and continuation of grazing privileges" on the Reservation. See supra note 1 (emphasis added). As we noted earlier, Resolution No. 00-02-DSB was rescinded and replaced by Resolution 05-170-NH, which omitted such language. But even if the new resolution had included the same language, it would not affect our conclusion. As already noted, the allocated grazing privileges give tribal member ranchers a preferential right relating to particular range units, but only through an exemption from competitive bidding and only in relation to other potential permittees. The Tribe's grazing regulations make very clear that "[p]ermittees receiving allocations shall be required to pay the minimum grazing rates as established for allotted land by the BIA and for Tribal land by the Tribal Business Council." Tribal Grazing Regulations Part II, sec. 9 (adopted in Tribal Res. No. 05-170-NH to govern the 2005-2010 permit period). Therefore, consistent with 25 C.F.R. § 166.218(c)'s subject-to-the-rental-rate language, the Tribe's own regulations make payment of the BIA rate a condition to obtaining a permit, and confer no legal right to challenge that rate, even assuming the Tribe could confer such a right with respect to individually-owned lands.

Appellants concede that BIA has a duty to the landowners, which they characterize as a duty "to rent the land out for the highest possible amount [and] also to consider sound conservation practices so that the land reaches its highest production potential." Appellant's Response Brief at 25. Appellants also contend, however, that BIA has a duty "to incorporate community goals as expressed in tribal ordinances so that the agricultural economy of Fort Berthold can become self-sufficient." Id. We disagree that BIA has any statutory or regulatory duty to incorporate community goals in setting the price for grazing on individually-owned Indian lands, even if it may permissibly do so under certain circumstances. See Cheyenne River Sioux Tribe, 41 IBIA at 310 ("BIA has no legal duty to ensure that the grazing rental rate does not negatively affect the Tribe's economy"). Unlike public lands, the beneficial title to individually-owned Indian lands is a privately-held

12/ During the pendency of this appeal, of course, BIA does not have jurisdiction over this matter and therefore would be precluded from issuing permits without authorization from the Board. See, e.g., Wind River Resources Corp. v. Acting Western Regional Director, 43 IBIA 1, 4 (2006) (while an appeal is pending, BIA loses jurisdiction over the matters).

property right residing in the Indian owners. The Department's fiduciary duty as owner of the legal title is to the owners, modified only by statutes or regulations with respect to any rights, such as the qualified allocation privileges, granted to users or potential users. ^{13/} Clearly, it is not in the landowners' interest for BIA to establish a fair annual rental rate which turns out to be above what the market will bear. However, if that were to be the case, BIA is specifically authorized to grant permits at less than fair annual rental, but only after competitive bidding. See 25 C.F.R. § 166.403(a).

Fourth, accepting as true Appellants' assertion that having to accept the rental rate established by the Regional Director in order to obtain a permit would cause economic injury to Appellants' ranching livelihoods, that still does not mean that the injury is to a legally-protected interest. ^{14/} Because Appellants, as past or prospective permittees, have no legal right — contractual or regulatory — to obtain a new grazing permit at any rate other than the rate set by the Indian landowners or the BIA on the landowners' behalf, they have not shown that they have suffered a legal wrong or that the decision adversely affected a legally protected interest. See Evitt v. Acting Pacific Regional Director, 38 IBIA 77, 79 (2002) (appellants lack standing where they fail to show they have suffered a legal wrong or that the decision adversely affected their legally protected interest).

Appellants also contend that the Regional Director failed to give them 60 days advance notice of his decision and that his failure to do so means that the rate cannot be imposed until the next "anniversary date." Appellants contend that the source of their right to such notice is the grazing regulations, although as discussed below, they concede the regulations do not expressly grant such a right.

Section 166.408 of 25 C.F.R. requires BIA to give written notice of any adjustment of a grazing rental rate 60 days prior to each anniversary date. As the Board has recently noted, however, section 166.408 applies to the adjustment of grazing rental rates pertaining to existing permits, and not to the establishment of a rate for new permits. See Rosebud Indian Land and Grazing Ass'n, 41 IBIA at 305.

^{13/} Although individual Appellants Hall and Hall, and some or all members of FBLLA, also own interests in trust land on the Reservation, Appellants make no allegations of injury to them as landowners resulting from the Regional Director's decision, nor do they purport to bring their appeal as landowners. FBLLA's standing as an organization is clearly grounded in its purpose to protect the interests of ranchers, and not individual landowners.

^{14/} For purposes of deciding Appellants' standing, we accept as true all material allegations made by Appellants. See Warth v. Seldin, 422 U.S. at 501.

Appellants concede that there is “[n]o explicit deadline for the announcement of a new grazing rate for a new grazing period” provided in 25 C.F.R. § 166.401 — the provision applicable to establishing a rate for a new permit period. Opening Brief at 13. Appellants contend, however, that the termination date of a permit is also an “anniversary date,” and that 60-day notice requirement in section 166.408 applies to any “adjustment” made in relation to an “anniversary date,” and therefore should be applied to rates established for new permit periods. Appellant’s Response Brief at 14-15.

We disagree. The “anniversary date” as used in section 166.408 means the anniversary date of a permit, not the expiration date of an existing permit or initiation date of a new permit. Even if, as Appellants contend, the termination date of a permit may also be characterized as an “anniversary date,” it does not follow that section 166.408 applies, because the “adjustments” referred to in section 166.408 clearly refer to rate adjustments in existing permits. Once a permit has terminated, even on an “anniversary date,” there is no rate to “adjust” within the meaning of section 166.408, even if rate changes between permits periods can loosely be referred to as rate adjustments.

Had BIA intended to give existing permittees or prospective permittees a right to advance notice of a rate decision under section 166.401 for a new permit period, it could specifically have so provided. It did not do so. Cf. 25 C.F.R. § 166.218(e) (120-day advance notice to the tribe prior to expiration of permits). The regulations clearly create a notice obligation toward existing permittees whose rates will be affected during the term of their permit, but just as clearly omit any such notice requirement for rates set for a new permit period. Cf. Rosebud Indian Land and Grazing Ass’n, 41 IBIA at 306. We decline Appellants’ invitation to read the notice provisions of section 166.408 into section 166.401. 15/

15/ Appellants also rely on a July 25, 2005 memorandum from the Regional Director regarding grazing rates on the Standing Rock Sioux Reservation for the period beginning November 1, 2005. In the memo, the Regional Director says he must provide 60 days advance notice to permittees, and Appellants contend this was for a new permit period. Although the Regional Director’s response brief contends that the letter related to an adjustment for existing permits, Appellants appear to be correct on the factual context. See Bickel v. Acting Great Plains Regional Director, 42 IBIA 73 (2005) (dismissing, for failure to prosecute, an appeal from a \$10.50/AUM grazing rate decision for the new permit period on Standing Rock Reservation). Even assuming the Regional Director understood at the time that the rate was for a new permit period, the Board is not bound by a Regional Director’s interpretation of the regulations, which we review de novo.

Because the regulations create no legal right for Appellants to receive advance notice of a decision setting the grazing rate for a new permit period, the alleged failure by the Regional Director to provide at least 60 days advance notice could not constitute injury to any legally protected interest of Appellants, and Appellants lack standing to challenge the decision based on a notice violation.

Appellants final allegation, also a procedural one, is that BIA failed to fulfill a duty to consult with interested parties before issuing the decision. Appellants concede, as they must, that the Board recently held that permittees lack standing to appeal on the question of consultation regarding a rate adjustment to existing permits, because directives regarding consultation pertain to the government-to-government consultation with tribes, and not to consultation with permittees. Rosebud Indian Land and Grazing Ass'n, 41 IBIA at 306-07. The same principle applies to the question of consultation regarding grazing rates for a new permit period.

Appellants contend, however, that the Tribe appointed four members of FBBLA to a Fort Berthold Grazing Task Force, and that the appointed members of FBBLA “were delegated duties on this Task Force and played an integral role for the Tribe.” Opening Brief at 15. Appellants seek to distinguish Rosebud by arguing that they “are not asserting the type of general Secretarial or Presidential consultative duties” discussed in that case. Appellants’ Response Brief at 18. Rather, Appellants contend, the task force was an “official BIA/Tribal Consultation,” id. (emphasis in original), and therefore they have standing to challenge the Regional Director’s “failure to consider the recommendations of the Task Force and to participate in good faith in the consultative process,” Opening Brief at 16.

Appellants’ argument is without merit. The Tribe’s appointment of members of stakeholder groups to a consultation task force does not vest in such individuals any individual right to consultation or a right to enforce any consultation owed to the Tribe. As Appellants’ brief notes, members of the Task Force appointed by the Tribe included, among others, members of FBBLA, members of the Landowners Association, and two “at-large” members. Tribal Resolution No. 04-41-NH, which appointed members to the Task Force, noted that the Task Force had “authority to discuss the grazing rate” for the Reservation and to “make a recommendation on the grazing rate to the Tribal Business Council.” The Task Force was to “work toward obtaining a new appraisal and come back to the Tribal Council with a recommendation that will allow the Tribal Business Council to make a recommendation to the BIA concerning the grazing rates for 2006, 07, 08, and 09.” Id. Nowhere does the Tribal Resolution suggest that the appointed members were entitled to enforce any duty of consultation on behalf of the Tribe or that consultation was owed to them in their status as members of stakeholder groups.

Furthermore, whether the Task Force was “official” or not, it was still created for the purposes of consultation between BIA and the Tribe. Any duty that BIA arguably had would have been owed to the Tribe, and not to appointed members of the Task Force or the groups they represent. Curiously, Appellants disassociate the duty of consultation from the Secretarial or Presidential directives at issue in Rosebud, but cite no other authority as the source of any consultation duties allegedly owed to either them or the Tribe by BIA.

The appointment of four members of FBBLA to a BIA-Tribal consultation task force, whether “official” or not, did not create a legally protected interest in Appellants on the question of consultation, and therefore that appointment provides no basis for their standing to raise that issue.

Conclusion

In summary, we conclude that Appellants have not established that they have any legally-protected interest that has been adversely affected by the Regional Director’s decision setting a grazing rate for the new permit period beginning December 1, 2005, and therefore lack standing to appeal that 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 Board dismisses these appeals for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge