



INTERIOR BOARD OF INDIAN APPEALS

Edward S. Danks, Jr. v. Acting Great Plains Regional Director, Bureau of Indian Affairs

44 IBIA 138 (02/26/2007)



United States Department of the Interior

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

EDWARD S. DANKS, JR.,	:	Order Dismissing Appeal
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 07-32-A
ACTING GREAT PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	February 26, 2007

Appellant Edward S. Danks, Jr. filed an appeal with the Board of Indian Appeals (Board) from a September 12, 2006 decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director upheld the decision of the Fort Berthold Agency Superintendent, BIA (Superintendent) to issue five grazing permits to Appellant for Range Units 3, 18, 93, 903, and 911, located on the Fort Berthold Reservation. The Superintendent signed the permits on May 25, 2006 for the period from December 1, 2005 through November 30, 2010. Because Appellant has failed to identify any injury resulting from the Regional Director’s decision, we dismiss this appeal for lack of standing.

Appellant’s appeal to the Regional Director from the Superintendent stated that Appellant was appealing a decision by the Superintendent concerning the issuance of grazing permits and rental rates assessed for the permits, but Appellant did not file a statement of reasons explaining why he believed the Superintendent’s decision was in error. The Regional Director construed Appellant’s appeal as an appeal from the Superintendent’s issuance of five grazing permits to Appellant on May 25, 2006. ^{1/} The Regional Director

^{1/} Appellant’s appeal to the Regional Director referred to a “May 11, 2006” decision by the Superintendent, but apparently there is no decision of that date. No such decision is included in the administrative record, and Appellant did not respond to a November 29, 2006 order from the Board requesting that he produce a copy of the purported May 11, 2006 decision or, in the alternative, explain why he was unable to produce a copy and describe his understanding of the decision. In the absence of a response from Appellant, the Board presumes that the Regional Director correctly understood the subject of Appellant’s appeal to be the grazing permits issued to him by the Superintendent.

upheld the Superintendent's decision to issue grazing permits to Appellant, finding that Appellant had signed each permit, signifying his agreement to the permit terms, including the grazing rental rate.

In his notice of appeal to the Board, Appellant characterized the Regional Director's decision as "denying" his appeal from the decision by Superintendent and described his appeal as involving "grazing permits, rental rates, and other issues." Because it was unclear what injury Appellant claimed to have suffered as a result of the Regional Director's decision, the Board ordered Appellant, in an opening brief, to demonstrate that he has standing to bring this appeal. 2/ See Nov. 29, 2006 Notice of Docketing, Order Setting Briefing Schedule, and Order to Brief Standing. The Board advised Appellant that if he failed to file an opening brief, his appeal would be dismissed for failure to demonstrate standing.

Appellant did not file an opening brief, which was due January 12, 2007. On February 13, 2007, the Board received a motion to dismiss for lack of standing from the Regional Director.

Appellant has not identified any injury that he has suffered from the Regional Director's decision, and 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 this appeal for lack of standing.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

2/ As a matter of prudence, the Board limits its jurisdiction to cases in which the appellant can show the judicial requirements of standing, which include a showing of injury to a legally-protected interest. See Arizona State Land Dep't v. Western Regional Director, 43 IBIA 158, 163 (2006); Hall v. Great Plains Regional Director, 43 IBIA 39, 44 (2006); Brown v. Navajo Regional Director, 41 IBIA 314, 317 (2005); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).