



INTERIOR BOARD OF INDIAN APPEALS

Standing Rock Grazing Association and its Members v.
Acting Great Plains Regional Director, Bureau of Indian Affairs

48 IBIA 75 (10/16/2008)

Related Board cases:

48 IBIA 1
48 IBIA 44
48 IBIA 70



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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STANDING ROCK GRAZING)	Order Vacating Decision and
ASSOCIATION AND ITS)	Remanding
MEMBERS,)	
Appellants,)	
)	
v.)	Docket No. IBIA 07-131-A
)	
ACTING GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	October 16, 2008

The Standing Rock Grazing Association and its members (Appellants) have appealed to the Board of Indian Appeals (Board) from a July 24, 2007, decision by the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which adjusted the grazing rental rate to \$14.63 an Animal Unit Month (AUM)¹ for individually-owned Indian trust lands on the Standing Rock Reservation (Reservation) for the 2008 grazing season, pursuant to 25 C.F.R. § 166.408. Appellant members of the Standing Rock Grazing Association are Indian ranchers who hold BIA grazing permits, and whose rent would increase under the Regional Director's decision.

In establishing the grazing rental rate for the 2008 grazing season, the Regional Director relied on a market study titled "Reservation Grazing Rate Analysis of the Standing Rock Reservation for the 2008 Grazing Season" (Market Study), prepared by David M. Baker, a certified appraiser, and reviewed by Geoff Oliver, the Great Plains Regional Appraiser, Office of the Special Trustee for American Indians. The Market Study recommended \$14.63 as the Reservation-wide value of an AUM, and employed the same approach used by Baker in other market studies that were relied upon by the Regional Director to make grazing rental rate decisions that are the subject of three other Board decisions being issued today. See *Longbrake v. Acting Great Plains Regional Director*, 48 IBIA 70 (2008) (vacating grazing rate decision for Cheyenne River Reservation for 2008 grazing season and remanding); *Cadotte v. Great Plains Regional Director*, 48 IBIA 44

¹ An AUM is defined as "the amount of forage required to sustain one cow or one cow with one calf for one month." 25 C.F.R. § 166.4.

(2008) (vacating grazing rate decision for Standing Rock Reservation for 2007 grazing season and remanding); *DuBray v. Great Plains Regional Director*, 48 IBIA 1 (2008) (vacating grazing rate decision for Cheyenne River Reservation for 2007 grazing season and remanding).

In the present case, Appellants are represented by the same counsel who represents the appellants in *Longbrake*, and Appellants' briefs and arguments in this case mirror those in *Longbrake*, altered only in minor respects to reflect the different grazing rates established by the Regional Director for the Cheyenne River and the Standing Rock Reservations for the 2008 grazing season. As was the case in *Longbrake*, in which we vacated the Regional Director's decision based on our decisions in *Cadotte* and *DuBray*, we have reviewed the Market Study relied upon by the Regional Director in this case, and have compared it with the market studies found deficient in our other decisions. We conclude that for the reasons given in *Longbrake*, *Cadotte*, and *DuBray*, the Regional Director's grazing rate decision for the Reservation for the 2008 grazing season must also be vacated, and the matter remanded for further consideration in light of those decisions.²

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 vacates the Regional Director's July 24, 2007, decision, and remands the matter for further consideration.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Lisa Hemmer
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.

² The Regional Director submitted a declaration, in which she states that not all grazing permits on the Reservation were allocated to tribal members for the 2008 grazing season, and thus those permits were offered through competitive bidding. Declaration of Alice Harwood ¶ 9; *see* 25 C.F.R. § 166.221. The declaration indicates that many of these permits were sold at the \$14.63/AUM rate, some were sold above that rate (e.g., \$24.11/AUM), and some were sold below that rate (e.g., \$14.49/AUM). Evidence of competitive sales of permits on the Reservation would appear to be relevant for consideration on remand, but it is not sufficient for us to uphold a reservation-wide rate of \$14.63/AUM, in light of our decisions in *Cadotte* and *DuBray*.