



INTERIOR BOARD OF INDIAN APPEALS

Emma Lu Reeves v. Great Plains Regional Director, Bureau of Indian Affairs

54 IBIA 207 (01/18/2012)

Related Board cases:

52 IBIA 327

49 IBIA 126



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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EMMA LU REEVES,)	Order Dismissing Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 09-091
GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	January 18, 2012

Emma Lu Reeves (Appellant), beneficial owner of at least one trust allotment included in a 2008-2013 grazing permit for Range Unit (RU) #48 on the Cheyenne River Reservation in South Dakota, seeks review from the Board of Indian Appeals (Board) of an April 20, 2009, letter (April 20 letter) from the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). In his letter, the Regional Director declined to review the decision of the Cheyenne River Sioux Tribe’s (Tribe) Tribal Council to allocate grazing privileges for RU #48 to Jess Keckler (Keckler) instead of to Appellant’s grandson, Chris Reeves (Reeves). The Regional Director held that Appellant’s dispute involved interpretations of tribal law, the Tribe had the authority to interpret its own laws, BIA would not substitute its judgment for a decision by the Tribal Council, and the Cheyenne River Sioux Tribal Court was the proper venue to resolve Appellant’s concerns.

We dismiss Appellant’s appeal for lack of standing. To the extent that the Regional Director’s decision is construed to affirm BIA’s issuance of a grazing permit to Keckler and Appellant challenges that decision, we conclude that Appellant lacks standing to pursue this claim as well. In short, Appellant cannot satisfy the criteria for standing. She has not shown how any alleged injury to her legally protected interests as a landowner was caused by an act or omission by BIA, or described how the alleged injury would be redressed by a favorable decision from the Board. As the Regional Director correctly concluded, the disputed issue — whether the Tribal Council properly considered and applied the Tribe’s Grazing Ordinance — was one for a tribal forum to resolve, not BIA.

Background

I. Regulatory Framework for Grazing Permits on Individually Owned Indian Land

The authority to issue a grazing permit for individually owned Indian trust land — and to select the permittee for such land — depends upon whether or not the land has been consolidated into a range unit. If the land is not part of a range unit, the Indian landowner(s) may select the permittee and grant the permit, subject to approval by BIA. *See* 25 C.F.R. §§ 166.203 (b), (c), 166.216. When individually owned Indian land is included in a range unit, the tribe has the right to establish procedures for allocating grazing privileges, i.e., selecting permittees, for range units on the reservation, *id.* § 166.218(c), and grazing permits are then issued by BIA.

The relevant Federal regulations governing grazing permits for trust and restricted land included in range units were well-explained in a related case, *Anderson v. Great Plains Regional Director*, 52 IBIA 327, 328-29 (2010) (footnote omitted):

Grazing on Indian trust or restricted lands is administered through permits issued or approved by BIA for range units. *See* 25 C.F.R. §§ 166.200, 166.203, 166.206. These “range units” are consolidated tracts of rangelands that BIA creates after consultation with the Indian landowners. *Id.* §§ 166.4, 166.302. With limited exceptions, anyone wishing to graze livestock on Indian trust or restricted land must first obtain a permit to do so. *See id.* § 166.200.

Indian tribes may develop allocation procedures to apportion grazing privileges to tribal members without competition, thereby giving the recipient a preference over other prospective permittees to receive a grazing permit for a particular range unit. *See id.* §§ 166.218(a) & (b) (acquiring a permit through allocation), 166.4 (definition of “allocation”). The permit preference gives the recipient tribal member a right, as against other prospective permittees, to accept (at the offered grazing rate and under the permit conditions), and to be issued, a grazing permit for the range unit to which the member has been granted an allocation. The allocation of grazing privileges on the Cheyenne River Reservation (Reservation) is governed by tribal law. The Tribe has developed allocation procedures and criteria for awarding grazing privileges to tribal members. The allocation procedures and criteria are detailed in the Tribe’s Grazing Ordinance No. 71.

BIA implements a tribe's allocation decisions by issuing (for range units that include allotted lands) or approving (for range units that are entirely tribal or government lands) grazing permits, subject to certain regulatory provisions not relevant to this matter. *See id.* §§ 166.218(c), 166.400(b) & (c); *see also Frank v. Acting Great Plains Regional Director*, 46 IBIA 133, 135 (2007) (BIA implements a tribe's allocation decisions).

After individually owned land has been included in a range unit, the landowners retain the right to ask BIA to remove their land from an existing permit (i.e., from the range unit). 25 C.F.R. § 166.227. Once the land is removed from the range unit, the landowner(s) again have the right to use their land or grant a permit to the permittee of their choice. On the Cheyenne River Reservation, Tribal Grazing Ordinance No. 71 (Grazing Ordinance) provides that when an Indian landowner withdraws his or her land from a range unit, that landowner must then fence the withdrawn land within 180 days from the date of the withdrawal, or the land will revert to the range unit.

II. Factual Background

Appellant is the beneficial owner of several allotments, at least one of which is or was (at the time of the Regional Director's decision) located within RU #48 on the Cheyenne River Reservation in South Dakota. Reeves' father (Appellant's son) held the 2003-2008 permit for RU #48 and Reeves was added in 2004 as a joint permittee. During that time, in 2007, Appellant removed 3 of her allotments from RU #48, but apparently left Allotment No. 7811-A in the range unit.¹ Appellant asserts that before the permit expired in 2008, Reeves applied for reallocation of grazing privileges on RU #48 in his own name.

Instead of granting the allocation to Reeves, the Tribal Council allocated the 2008-2013 grazing privilege for RU #48 to Keckler on October 30, 2008, and the Superintendent of BIA's Cheyenne River Agency (Superintendent) implemented the Tribe's decision by issuing the grazing permit for RU #48 to Keckler on December 5, 2008. Appellant protested the Tribe's allocation decision by letter to the Regional Director dated November 12, 2008 (November 12 Letter), because she believed that proper application of

¹ According to Keckler's grazing permit, which was provided by BIA, RU #48 consists of over 8,400 acres. Apparently the Tribe owns nearly all of the lands included in RU #48 inasmuch as the Tribe is entitled to 93 percent of the grazing fee.

the Grazing Ordinance preference criteria should have resulted in reallocation to Reeves.² She requested that BIA take no action in response to the Tribe's allocation decision and also asked for an investigation into the Tribe's allotment procedures. The Regional Director did not immediately respond.

On April 3, 2009, Appellant again wrote to the Regional Director (April 3 Letter) and demanded a response, pursuant to 25 C.F.R. § 2.8, to her November 12 Letter. She reiterated her demand for a BIA investigation into the Tribe's grazing privilege allocation process.³

The Regional Director's April 20 Letter, which is the subject of Appellant's appeal, responded to the November 12 and April 3 Letters. The Regional Director informed Appellant that the issues raised in her letters involved interpretations of tribal rules and regulations and that such interpretations are the province of the Tribe and not BIA. He stated that tribal forums provide the proper venue for airing such grievances. He also noted that because Appellant had submitted the proper written request to the Cheyenne River Agency to withdraw Allotment No. 7811-A from RU #48, no action was needed from the Regional Director on that issue.

Meanwhile, on March 26, 2009, the Superintendent notified Appellant that, pursuant to the Tribe's Grazing Ordinance, if she did not fence the land she previously had withdrawn from RU #48 within 180 days of the effective date of withdrawal, her unfenced land would revert to the range unit. On April 14, 2009, Appellant appealed the Superintendent's notification to the Regional Director (April 14 Appeal).

² Reeves and one other individual, Mary Jane Anderson, also protested the Tribe's allocation procedures in the same November 12 letter to the Regional Director. Of the two, only Anderson appealed from the Regional Director's April 20 response. *See Anderson*, 52 IBIA 327 (affirming the Regional Director's decision not to investigate the Tribe's allocation practices or otherwise intervene; dismissing for lack of standing appellant's challenge to the issuance of a grazing permit to competitor).

³ The April 3 Letter also was written to BIA on behalf of Reeves and Anderson. When the Regional Director did not respond to the April 3 Letter within 10 days, Reeves appealed to the Board pursuant to 25 C.F.R. § 2.8. *Reeves v. Great Plains Regional Director*, 49 IBIA 126 (2009). We dismissed Reeves' appeal because he demanded relief from the Board that differed from the relief he sought in his § 2.8 demand to the Regional Director. *Id.*

Appellant then filed an appeal with the Board on May 18, 2009, construing the Regional Director's April 20 Letter not only as a response to her November 12 and April 3 Letters but also as a response to her April 14 Appeal.⁴ The arguments in her appeal to the Board and the relief sought are substantially the same as those in her April 14 Appeal. Appellant does not separately object to the fencing obligation, i.e., as a condition to withdrawing her lands from RU #48, but she contends that the Tribe's permit decision forces her to withdraw (and, therefore, fence) her lands: If the permit had been awarded to Reeves, Appellant would be willing to let her lands revert to the range unit and she would be relieved of the obligation to fence her land. She asks that the issuance of Keckler's permit be vacated and that the Tribal Council be directed to allocate the grazing privilege in accordance with the Grazing Ordinance preference requirements. Appellant also requests a stay of the proceedings before the Board pending exhaustion of tribal remedies by Reeves, which he had initiated. *See* Notice of Appeal at 3 n.4.⁵

The Board responded with an order to show cause why the appeal should not be dismissed for lack of standing or, alternatively, why the decision in the Regional Director's April 20 Letter should not be summarily affirmed.⁶ Briefs were received from Appellant and from the Regional Director.

Discussion

Appellant identifies her injury as having to choose between losing "the right for her and her family to use her own land, or [expending] considerable resources to install fencing

⁴ The Regional Director's April 20 Letter was, by its own terms, a response to the November 12 and April 3 Letters and not a response to the April 14 Appeal. Even though it was not an official decision on the April 14 Appeal, the April 20 Letter unequivocally declined to intervene in the dispute over the permit, and the Regional Director has not suggested that Appellant's appeal from the issuance of the permit presents any discrete issues that he wishes to consider separately, or which would not be subsumed within our review of the appeal. We thus construe the April 20 Letter, in substance, as responsive to all of the complaints Appellant raised in her April 14 Appeal.

⁵ Appellant has not identified any claims filed on her own behalf in any tribal forum.

⁶ The Board implicitly denied Appellant's request for a stay. *See* Pre-Docketing Notice, June 3, 2009, at 3 n.3 (Because the Regional Director's decision is based on information and the record available at the time of his decision, "it is not apparent how a stay would be appropriate or serve any useful purpose."). To the extent that Appellant continues to press her request for a stay of these proceedings, we deny the request and issue this decision.

around her property.” Response to OSC at 7. She contends that this injury was caused by BIA’s issuance of the permit for RU #48 to Keckler and its failure to enforce the Grazing Ordinance’s preference requirements against the Tribal Council. *Id.* at 8-9. She claims that the eventual issuance of the permit to Keckler caused her to choose to withdraw Allotment No. 7811-A from RU #48, which in turn caused the Grazing Ordinance’s fencing requirement to apply to her.⁷ Appellant contends that her injury would be redressed if the Regional Director vacated Keckler’s permit and ordered the Tribal Council to allocate the grazing privilege in accordance with the Grazing Ordinance’s preference criteria. *Id.* at 10. In other words, Appellant argues that if BIA refuses to issue any permit based on a permit allocation not made in accordance with the Grazing Ordinance, her grandson will necessarily be allocated RU #48 and issued the permit, in which case she apparently would allow her land to revert to the range unit, and she then would no longer be required to fence her land. But, we conclude that Appellant failed to meet her burden of showing injury to a legally protected interest that was caused by BIA, or that the alleged injury would be redressed by a favorable decision from the Board. We must therefore dismiss this appeal for lack of standing.

An appellant must be able to demonstrate standing for each individual claim in order to bring an appeal before the Board. *See* 25 C.F.R. § 2.2 (definitions of “Appellant” and “Interested Party”); 43 C.F.R. § 4.331 (Who may appeal); *see also Anderson*, 52 IBIA at 331; *DuBray v. Great Plains Regional Director*, 48 IBIA 1, 19 (2008). As we explained in *Anderson*, an appellant must show that she is “adversely affected” or “injured” by the BIA decision that is being appealed. 52 IBIA at 331. To be “adversely affected,” within the meaning of the regulations, the injury must be caused by the challenged decision and the injury must be to a legally protected interest held by the appellant. *Id.*; *see also DuBray*, 48 IBIA at 19 (In order to show standing, an appellant “must show that (1) [s]he has suffered 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,” citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Although redressability, unlike the first two elements of standing, is not separately identified in the regulations, the Board has consistently recognized redressability as an implicit requirement for an appellant to maintain an appeal. *See, e.g., Northern Cheyenne Livestock Association v. Acting Rocky Mountain Regional Director*,

⁷ The parties have not informed the Board whether Appellant fenced the withdrawn land or allowed it to revert to the range unit. It is unclear whether Appellant currently owns any other parcels located inside the boundaries of RU #48 in addition to the 3 that were withdrawn before the permit was issued to Keckler and Allotment No. 7811-A, which was withdrawn after the permit issued.

48 IBIA 131, 136 (2008). If the Board cannot provide an appellant with relief from the injury upon which an appeal is based, or if it is speculative at best that a favorable decision will redress the injury, the Board will dismiss an appeal, rather than issue what may constitute nothing more than an advisory opinion. *See Harris-Noble v. Acting Southern Plains Regional Director*, 45 IBIA 224, 229-30 (2007) (Board does not issue advisory opinions).

The action that Appellant challenges in this appeal is the Regional Director's implicit approval of the Superintendent's issuance of the permit to Keckler or, alternatively, the Regional Director's refusal to intervene in Appellant's dispute with the Tribe over its permit allocation process. Appellant bears the burden of demonstrating her standing to bring this appeal. *See Shelbourn v. Acting Great Plains Regional Director*, 54 IBIA 75, 78 (2011).

I. Injury

In order to show the first element of standing, Appellant must demonstrate injury to a legally-protected interest. *See Biegler v. Acting Great Plains Regional Director*, 54 IBIA 160, 164 (2011); *Anderson*, 52 IBIA at 331. She cannot rest her claim of relief upon the rights and interests of others — the injured interest must be her own. *See Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director*, 41 IBIA 308, 311 (2005). Therefore, even assuming that her grandson had a legally-protected interest in reapplying for grazing privileges on RU #48, Appellant cannot assert his interest. *Cf. Anderson*, 52 IBIA at 332 (appellant lacked a legally protected interest in obtaining a grazing permit and therefore lacked standing to challenge the issuance of the permit to a third party).⁸ To the extent Appellant articulates a personal injury — e.g., having to choose between including her land in a range unit that cannot be used by her family or, alternatively, fencing her land out of the range unit — Appellant arguably has met her burden of showing that this choice adversely affects her legally-protected rights or interests.

Appellant, as a landowner, has legally protected property rights and interests that arise from her ownership of her property or from the BIA grazing regulations. As a landowner, Appellant has the right to request the withdrawal of her lands from a range unit (and thereafter reassume control over the selection of a permittee or use the land as she chooses), but under tribal law, the consequences of that decision are that Appellant must fence her property. And if she fails to fence, the property reverts to the range unit and again becomes subject to the Tribe's right to allocate grazing privileges for which Appellant is

⁸ Certainly, the relief Appellant seeks from the Board is aimed at securing the permit for RU #48 for Reeves.

paid her pro rata share of the grazing rental rate. Thus, this choice — between expending Appellant’s personal resources to construct a fence or, alternatively, allowing her property to revert to the range unit and be subject to use by a permittee of the Tribe’s choosing — arguably is sufficient to establish the “injury” element of standing.

II. Causation

Assuming that Appellant has established an injury to a legally-protected interest, it is evident that the cause of any such injury is not “fairly traceable” to BIA action, but to the Tribe’s grazing ordinance, which requires withdrawn lands to be fenced, and to the Tribe’s decision to award grazing privileges on RU #48 to Keckler. Although Appellant characterizes causation differently — claiming that BIA caused her injuries by failing in its trust responsibility to oversee the Tribe’s allocation process — BIA has no authority to dictate to the Tribe how it must apply its tribal grazing allocation law. As we explained in *Frank*,

Federal law specifically delegates to the tribes the right to determine grazing allocations on tribally-owned or controlled land and on individually-owned Indian land without oversight by BIA, *compare* 25 C.F.R. §§ 166.217-.218 (2005) *with* 25 C.F.R. § 166.10 (2000),¹⁵ while BIA’s role is “essentially a ministerial one” of issuing the grazing permits.

¹⁵ Formerly, BIA was required to approve tribal allocation procedures. *See* 25 C.F.R. § 166.10 (2000). This requirement was removed when the regulation was revised in 2001. *See* 66 Fed. Reg. 7068, 7132 (Jan. 22, 2001) (text of section 166.218). Thus, the change in the regulations supports a decreased role for BIA with respect to tribal allocation procedures and decisions.

46 IBIA at 144 & n.15 (citation omitted).

Keckler’s eventual receipt of the permit resulted from an independent decision by the Tribe, which BIA implemented by issuing the permit to the Tribe’s designated individual. *See Anderson*, 52 IBIA at 334; *Frank*, 46 IBIA at 134-35. Because BIA’s action in this case was, in effect, ministerial, and based on the independent action of the Tribe, the cause of Appellant’s alleged injury was the Tribe, not BIA. BIA does not have authority to review the Tribe’s allocation decision, *Frank*, 46 IBIA 143-44, or to direct the Tribe’s allocation of grazing privileges, *Anderson*, 52 IBIA at 334. BIA has a trust responsibility to the landowners — including Appellant — to ensure that the permittee pays the appropriate grazing rate, and that appropriate measures are in place to prevent overgrazing or other harm to the land from grazing activities. BIA’s trust responsibility does *not*, however,

include the right or authority to enforce a tribe's grazing ordinance against the tribe itself. *Cf. Anderson*, 52 IBIA at 334 (BIA's responsibility under § 166.103(b)(1) is to assist the *tribes* in enforcing tribal law).

III. Redressability

Finally, Appellant fails to demonstrate how a favorable ruling by the Board could redress her alleged injury. Appellant seeks three distinct remedies: (1) an investigation by BIA into the Tribal Council's allocation process; (2) rescission or cancellation of the permit to Keckler; and (3) an order to the Tribal Council to allocate the grazing privilege strictly in accordance with the Grazing Ordinance. The alleged injury will not "likely be redressed" by a grant of either of the first two remedies, and the Board is without the authority to order the third.

For purposes of showing standing, Appellant must show that it is "likely, as opposed to speculative, that the injury will be redressed by a favorable decision [by the Board]." *Ariz. State Land Dept. v. Western Regional Director*, 43 IBIA 158, 163 (2006). A BIA investigation would not be "likely" to redress Appellant's alleged injury because it is pure speculation to suggest that an investigation into the process would yield the outcome that Appellant desires by changing the Tribe's allocation decision from Keckler to Reeves. Similarly, BIA's cancellation or rescission of the permit to Keckler would not result in the issuance of the permit to Reeves absent a change in the Tribe's allocation, a change that BIA cannot compel.⁹ Thus, neither an investigation nor the cancellation of Keckler's permit will "likely" redress Appellant's injury.

And the final relief sought by Appellant — a directive to the Tribal Council to adhere to the requirements of its Grazing Ordinance — is beyond the jurisdiction of this Board and BIA. The regulation of grazing privileges through the allocation process now belongs to the tribes. *See supra* at 214. Neither BIA nor this Board stands in any appellate or review capacity over the Tribe's exercise of its allocation authority. *See Anderson*, 52 IBIA at 334; *Siemion v. Rocky Mountain Regional Director*, 48 IBIA 249, 253-54 (2009). The proper forum in which to seek such a decision rests with that forum designated by the Tribe.¹⁰

⁹ Canceling the permit simply leaves RU #48 without a permittee, which would deprive not just Appellant of income but all of the owners of lands within RU #48.

¹⁰ We note that Appellant's failure to pursue her available tribal remedies would appear to be an additional ground for dismissal or, alternatively, summary affirmance of the Regional Director's decision not to intervene in the dispute over the Tribe's actions.

Conclusion

In summary, Appellant's alleged injury was not caused by BIA and it is not redressable by the Board. Thus, we conclude that Appellant lacks standing.

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.

I concur:

// original signed
Debra G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge