



INTERIOR BOARD OF INDIAN APPEALS

Elk Valley, Inc., and Rosebud Indian Grazing Association v. Great Plains Regional  
Director, Bureau of Indian Affairs

55 IBIA 16 (05/09/2012)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
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ELK VALLEY, INC., AND	)	Order Affirming Decision
ROSEBUD INDIAN LAND AND	)	
GRAZING ASSOCIATION,	)	
Appellants,	)	
	)	
v.	)	Docket Nos. IBIA 10-004
	)	10-005
GREAT PLAINS REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	May 9, 2012

Elk Valley, Inc. (Elk Valley), and the Rosebud Indian Land and Grazing Association (Association) on behalf of 37 members, appealed to the Board of Indian Appeals (Board) from an August 25, 2009, decision (Decision) by the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Decision left unchanged a grazing rental rate of \$18.40/Animal Unit Month (AUM)<sup>1</sup> for individually owned Indian lands on the Rosebud Reservation (Reservation) for the 2010 grazing season.<sup>2</sup>

Appellants hold grazing permits for range units on the Reservation. The grazing rate applies to individually owned Indian lands within those range units. Appellants contend that the rate is too high and that a market study prepared for and considered by the Regional Director was flawed, and therefore the Decision is arbitrary and unreasonable.

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<sup>1</sup> An AUM is “the amount of forage required to sustain one cow or one cow with one calf for one month.” 25 C.F.R. § 166.4.

<sup>2</sup> A total of 93 permittees were affected by the Decision. The Association does not assert any claims on its own behalf as an organization, and thus the Board’s references to “Appellants,” unless otherwise indicated, refer collectively to Elk Valley and the 37 individuals who are members of the Association on whose behalf the Association’s appeal was filed. The Board granted a motion by the Regional Director to limit the scope of this appeal to the permits held by Appellants. *See* Order Limiting Scope of Appeal, Dec. 3, 2009, at 5. As provided in the Board’s order, the Decision became final and effective with respect to the remaining permittees who did not challenge the Decision.

We affirm the Decision because Appellants have not met their burden to show that it was unreasonable for the Regional Director to leave the grazing rate unchanged for the 2010 season.

## Background

### I. Regulatory Framework

In previous cases, the Board has described the regulatory framework for grazing permits and grazing rental rates for Indian trust or restricted lands. *See Hall v. Great Plains Regional Director*, 43 IBIA 39, 39-41 (2006); *Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director*, 41 IBIA 308, 308-09 (2005). With limited exceptions, anyone wishing to graze livestock on Indian trust or restricted land must first obtain a permit to do so. *See* 25 C.F.R. § 166.200. BIA may consolidate various tracts of Indian rangeland into range units in order to manage grazing under permits. *See id.* §§ 166.4 (definition of “range unit”) and 166.302; *DuBray v. Great Plains Regional Director*, 48 IBIA 1, 4-5 (2008).

BIA establishes the grazing rental rate for parcels of individually owned Indian lands included in range units by determining the fair annual rental value. *See* 25 C.F.R. §§ 166.400(b)(1), 166.401. “Fair annual rental means the amount of rental income that a permitted parcel of Indian land would most probably command in an open and competitive market.” *Id.* § 166.4 (definition of “fair annual rental”) (emphasis removed).

After BIA issues grazing permits for individually owned Indian lands, BIA is required to review the grazing rental rate annually. *Id.* § 166.408. The purpose of the annual review is to ensure that the Indian landowners are receiving the fair annual return. *See id.*<sup>3</sup> If an adjustment is made to the rental rate, the adjustment must be based upon an appropriate valuation method that takes into account the value of improvements made under the permit, unless the permit provides otherwise, and that follows the Uniform Standards of Professional Appraisal Practice (USPAP). *See id.* §§ 166.408.

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<sup>3</sup> Section 166.408 refers to “fair annual return,” instead of “fair annual rental,” *cf.* 25 C.F.R. § 166.400(b), but no party to this appeal has suggested that there is a distinction between the two terms, and “fair annual return” is not included in the terms that are defined for the grazing regulations, *see id.* § 166.4.

## II. Factual Background

BIA apparently issued most of the current grazing permits for the Rosebud Reservation for a 10-year period beginning December 1, 2006. *See Rosebud Indian Land and Grazing Ass'n and its Members v. Acting Great Plains Regional Director*, 50 IBIA 46, 49 (2009). In offering and issuing the permits, BIA set the grazing rental rate at \$14.61/AUM. *Id.* The \$14.61/AUM rate remained in place until the 2009 grazing season, when the Regional Director adjusted the rate to \$18.40/AUM. *See Linabery v. Acting Great Plains Regional Director*, 53 IBIA 42, 42 (2011). The rate increase for the 2009 season was appealed to the Board by the Association and separately by Ruth Morgan Linabery.<sup>4</sup> The Association subsequently withdrew its appeal, *see Rosebud Indian Land and Grazing Ass'n and its Members v. Acting Great Plains Regional Director*, 51 IBIA 57 (2010), and the Board affirmed the \$18.40/AUM rate decision in Linabery's separate appeal, *see Linabery*, 53 IBIA at 50.

In preparation for the annual rental rate review prior to the 2010 grazing season, the Regional Director asked the Office of the Special Trustee (OST) to conduct a reservation-specific market study to provide BIA with information on the fair annual rental value of the permitted lands. *See* Memorandum from Regional Director to OST, Feb. 3, 2009 (Administrative Record (AR) Tab 12). The Regional Director identified various factors for the appraiser to consider that might affect rental value. *See id.* at 1 (BIA's prepayment requirement; 3% annual preparation fee; tribal taxes), 2 (costs for fencing development and maintenance; weed control; water development and maintenance; etc.).

David M. Baker, a private appraiser, prepared a Grazing Rate Analysis of the Rosebud Reservation for the 2010 Grazing Season (Grazing Rate Analysis) for OST. *See* AR Tab 11.<sup>5</sup> The appraiser calculated a year-long rental rate and then, after deducting for

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<sup>4</sup> The 2009 grazing season rate decision affected a total of 93 permittees. *See supra* note 2. As we did for the present appeals, the Board granted a motion by the Regional Director to limit the scope of the appeals from the 2009 rate decision to the permits held by the appellants. *See Linabery and Rosebud Indian Land and Grazing Ass'n v. Acting Great Plains Regional Director*, Docket Nos. IBIA 09-09-A and 09-10-A (consol.), Apr. 8, 2009 (order limiting scope of appeal).

<sup>5</sup> AR Tab 11 contains two documents, Baker's Grazing Rate Analysis and OST's review of it.

preparation costs and prepayment costs, but not tribal taxes,<sup>6</sup> concluded that the “grass only” rental rate on the Reservation was \$22.15/AUM. *Id.* at 32. The appraiser also provided estimates for certain other permittee-borne costs that might be deducted to adjust the “grass only” rate, such as costs for fence maintenance (\$0.93/AUM) and for weed and pest control labor (\$3.67/AUM). *Id.* at 20. For some cost factors (e.g., fence material costs), the appraiser concluded that it was not possible to ascertain the impact of the factor on rental value, in which case he assigned a “\$0” value to that factor. *Id.* at 17, 32. The appraiser certified that the study conformed to the USPAP. *Id.* at 34. OST’s Regional Appraiser for the Great Plains Region reviewed and approved the appraisal. Great Plains Regional Appraisal Office Review at 1 (AR Tab 11).

After reviewing the Grazing Rate Analysis, BIA’s Rosebud Agency Superintendent (Superintendent) raised several concerns about errors contained in it, and offered his own calculation for an adjusted year-long rate and possible additional deductions. *See* Memorandum from Superintendent to Regional Director, Aug. 19, 2009 (AR Tab 9).<sup>7</sup> The Regional Natural Resources Officer also critiqued the Grazing Rate Analysis, and suggested that certain permittee costs that had been quantified by the appraiser as possible deductions from the “grass only” rate, such as costs for weed and pest management, were not suitable for an across-the-board deduction. *See* Memorandum from Natural Resources Officer to Regional Director, Aug. 25, 2009 (AR Tab 5). Both the Superintendent and the Natural Resources Officer recommended that no adjustment be made to the grazing rate for the 2010 season. AR Tabs 5, 9.

In his August 25, 2009, Decision, the Regional Director advised the permittees and landowners that he had “reviewed the Grazing Rate [Analysis] for the Rosebud Reservation for the 2010 Grazing Season, and decided not to adjust the current grazing rental rate of \$18.40[AUM].” AR Tab 3. Accordingly, the Decision left in place for the 2010 season the \$18.40/AUM rate for allotted lands that had been set for the previous season. *Id.*

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<sup>6</sup> The appraiser stated that tribal members are exempt from tribal use taxes that apply to grazing lands on the Reservation. *See* Grazing Rate Analysis at 32 (AR Tab 11). The Regional Director concedes that this statement was wrong. The Association states that the Tribe imposes use taxes on grazing lessees at a rate of \$0.25 per acre.

<sup>7</sup> The Superintendent stated that the adjusted year-long rental rate, as he believed it should be calculated, would be \$22.89/AUM, and he suggested that the following deductions from that rate would be appropriate: an across-the-board deduction of \$0.93/AUM for fence maintenance; a \$2.00/AUM deduction for operators who do weed/pest control; and a \$1.08/AUM deduction for lands not in Tripp or Gregory Counties. *See* Memorandum from Superintendent to Regional Director, Aug. 19, 2009 (AR Tab 9).

Appellants appealed the Decision to the Board. Elk Valley included its arguments in its notice of appeal; the Association filed an opening brief. The Regional Director filed an answer brief, and the Association filed a reply brief.

### III. Issues on Appeal to the Board

The Association argues that the Grazing Rate Analysis is flawed, and that unless and until it is corrected, the decision to leave the \$18.40/AUM rate in place cannot be sustained. In criticizing the Grazing Rate Analysis, the Association contends, for example, that the appraiser's practice of assigning a "\$0" value to certain cost factors, simply because the analysis that he used did not show a correlation to rental rates, produces absurd and insupportable results. The Association does not identify a specific AUM value or values that it contends would correspond to market-based rent(s) for 2010 for the parcels for which its members hold permits. But the Association does suggest that several across-the-board deductions from the year-long rate calculated by the appraiser are appropriate: \$0.60/AUM for tribal taxes; \$8.23/AUM for water maintenance (based on a recommendation contained in a 2007 market study by OST); and \$0.93/AUM for fence maintenance. Assoc. Opening Br. at 1-4.

Elk Valley identifies four grounds for why the Decision should be set aside: (1) the economic downturn and high gas prices have had a detrimental effect on all markets; (2) the grazing rate is applied to entire tracts within range units covered by Elk Valley's permits, even though the percentage of allotted land within the tract may be less than 100 percent; (3) the Decision results in a rent increase for Elk Valley's range units; and (4) Elk Valley has two loans, and a reduction in carrying capacity on its permitted lands will result in a monetary loss to Elk Valley. Elk Valley states that its goal is "not to have to bring in foreign cattle." Elk Valley Notice of Appeal at 1 (unnumbered).

#### Standard of Review

Setting a rental rate for grazing permits, like setting any other lease rate, involves an exercise of discretion and may involve an exercise of expertise. *See Fort Berthold Land & Livestock Assoc. v. Great Plains Regional Director*, 35 IBIA 266, 270 (2000). As we noted in *DuBray*, the Board's role in reviewing a discretionary decision by BIA is to determine whether the decision "is reasonable; that is, whether it is supported by law and by substantial evidence." 48 IBIA at 18 (quoting *Rosebud Indian Land and Grazing Ass'n and its Members v. Acting Great Plains Regional Director*, 41 IBIA 298, 301 (2005)). If so, the Board will not set aside the decision, and the Board will not substitute its judgment for that of BIA. *Id.*

In the present case, the exercise of discretion that we review is the Regional Director's determination, after conducting an annual review, to leave the grazing rate unchanged from the rate set the previous year. The burden is on Appellants to show that BIA's decision is unreasonable. To the extent the appeal raises any questions of law, we review those *de novo*. *Id.* at 18; *see also Frank v. Acting Great Plains Regional Director*, 46 IBIA 133, 140 (2007).

## Discussion

### I. The Association's Arguments

We first address the Association's arguments, which we conclude do not satisfy its burden of proof to demonstrate that the Decision to leave the grazing rate unchanged for the 2010 season is unreasonable.

Both the Association and the Regional Director agree that the Grazing Rate Analysis has flaws, although they do not necessarily agree on which portions are flawed. The Association argues that because the Grazing Rate Analysis contains errors, it was unreasonable for the Regional Director to "rely" on it for the Decision.

Context, however, is important, and in this case the Regional Director did not begin with a clean slate, and neither does the Board. The Decision was issued in the context of an annual review of the grazing rate, which was then \$18.40/AUM. In accordance with 25 C.F.R. § 166.408(a)(1), BIA must "[r]eview the grazing rental rate prior to each anniversary date or when specified by the permit." If BIA determines that the annual grazing rental should be *adjusted*, its decision must be supported by an analysis that comports with USPAP requirements. *Id.* § 166.408. In that context, a flawed market study may be fatal. *See, e.g., DuBray*, 48 IBIA at 21-22. But there is no similar requirement for a USPAP-conforming study with respect to leaving the established grazing rental rate unchanged.

Thus, whatever protectable interest permittees may have in BIA's annual review of the grazing rate, the regulation does not require BIA to re-justify an existing rate to the same extent it would need to justify a new rate, at least as applied to permittees. Rather, BIA may consider the current grazing rate and then determine whether the evidence before it demonstrates that the prevailing market rate is higher or lower, or whether parcel-specific variables require parcel-specific adjustments. If, as a result of its review, BIA determines that the evidence is insufficient to justify a change in the existing rate, in whole or in part, BIA has no further obligation to the permittees. If a permittee appeals, the burden is on the appellant to show that BIA's decision to leave the existing rate in place is unreasonable. We conclude that the Association has not met its burden.

In the present case, the Appellants have not shown, nor does the record demonstrate, that the value of forage (i.e., the AUM value) on Appellants' permitted lands decreased from the prior year, or that the Regional Director otherwise erred or acted unreasonably by leaving the existing rate in place. The Regional Director exercised his discretion to leave the rate unchanged. His reasons for doing so include the unreliability of the flawed Grazing Rate Analysis and the absence of evidence to support either an upward or downward adjustment in rental value. In challenging that decision, then, Appellants' burden is to identify evidence that would indicate a decrease in rental value for parcels covered by Appellants' permits and which, at a minimum, warranted consideration and an explanation from the Regional Director before he left the rate unchanged.

Appellants do not identify any evidence in the record to show a decrease in rental value for one or more permitted parcels from 2009 to 2010. Instead, Appellants challenge the Decision on the grounds that the Regional Director failed to consider certain deductions that might have been taken from the "grass only" rate estimated by the Grazing Rate Analysis. We have considered the Association's arguments, but we are not persuaded that they have met their burden to demonstrate that the Decision is unreasonable.

The Association argues that an across-the-board deduction of \$8.23/AUM should have been made for water maintenance and development costs. But the same argument, relying on the same data, was made and rejected in a challenge to the rental rate decision for the 2008 grazing season. *See Rosebud Indian Land and Grazing Ass'n*, 50 IBIA at 56-57 (explaining why an across-the-board deduction of \$8.23/AUM was not appropriate). Appellants have not shown how such an across-the-board deduction would be appropriate for the 2010 season. The Association has provided some details about water improvements undertaken by one permittee, but this limited information does not allow us to infer that an \$8.23/AUM deduction is appropriate or required, either for this permittee or for all permittees.<sup>8</sup> And the Association does not suggest that reservation-wide water maintenance costs were expected to *increase* by \$8.23/AUM in 2010, so that the existing rate should have been modified for 2010 to incorporate, as a deduction, an additional cost to all of the Association's permittee-members.

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<sup>8</sup> In its opening brief, the Association summarizes the improvements made by a permittee over an 18-year-period. Association's Opening Br. at 3. The Association also submits an August 2007 invoice for well drilling as an example of water development costs. *Id.*, Attachment (Invoice for Reimers Well Drilling). The Association does not explain how information for a single permittee necessarily applies to other permittees and other parcels. Even with respect to the parcel(s) that are specific to the individual permittee, the Association does not explain how the invoice demonstrates error in the Decision to leave the existing rate unchanged for the 2010 season.

The Association also argues that deductions should be made for tribal use taxes and for fence maintenance costs. But the context in which they propose the deductions — the “grass only” estimate in the flawed Grazing Rate Analysis — mistakenly assumes that the Regional Director had an obligation to re-justify anew the \$18.40/AUM rate. He did not. Appellants do not argue that tribal use taxes were newly imposed for the 2010 season, or that fence maintenance costs increased in 2010. Nor do Appellants otherwise articulate how these two factors made it unreasonable for the Regional Director to leave the rate unchanged for 2010. Thus, we conclude that Appellants’ arguments regarding these two proposed deductions do not provide a basis for us to set aside the Decision.<sup>9</sup>

Finally, the Association criticizes the Grazing Rate Analysis as improperly suggesting that an upward adjustment for the Tripp/Gregory County area might be appropriate based on “lessee controlled hunting access.” Assoc. Opening Br. at 4 (citing Grazing Rate Analysis at 16 (AR Tab 11)). The Association argues that “the fact remains that the lessee does not control hunting access.” *Id.* But, again, the Association has failed to show how this alleged error in the admittedly flawed Grazing Rate Analysis, or its specific analysis and conclusion regarding this factor, made it unreasonable for the Regional Director to leave the existing \$18.40/AUM rate unchanged.

We agree with the Association that the Decision fails to consider parcel-specific variables that may be relevant to the value of an AUM on any given parcel, and which arguably could support a reduction (or an increase) in the AUM value or rent for one or more of the parcels covered by permits held by the Association’s member-permittees. In the context of a challenge to a rate *increase*, the Association’s criticism might have merit. See *Standing Rock Grazing Ass’n and its Members v. Acting Great Plains Regional Director*, 48 IBIA 75 (2008) (vacating 2008 grazing rate decision for Standing Rock Reservation); *Longbrake v. Acting Great Plains Regional Director*, 48 IBIA 70 (2008) (vacating 2008 grazing rate decision for Cheyenne River Reservation); *Cadotte v. Great Plains Regional Director*, 48 IBIA 44 (2008) (vacating 2007 grazing rate decision for Standing Rock Reservation); *DuBray*, 48 IBIA 1 (vacating 2007 grazing rate decision for Cheyenne River Reservation). But that is not the context for this appeal. Nor does the Association provide any parcel-specific information relevant to the 2010 fair annual rental that demands separate consideration.

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<sup>9</sup> To the extent that tribal use taxes affect the rental value of individually owned land on the Reservation, it is not apparent that a tax assessed on a *per-acre* basis would necessarily lend itself to an across-the-board deduction for an *AUM* rate. Assuming, solely for purposes of argument, a direct correlation between the tribal tax and market rental value of a range unit, a larger range unit with the same number of AUMs as a smaller range unit would have a lower rental value because of the higher total tribal taxes.

In the context of the Regional Director's decision to leave the \$18.40/AUM rate unchanged, we conclude that the Association has not shown that rental values decreased from the previous year with respect to Appellants' permitted parcels, or that it was otherwise arbitrary and unreasonable for the Regional Director to leave the rate unchanged.<sup>10</sup>

## II. Elk Valley's Arguments

None of the four grounds set forth in Elk Valley's notice of appeal demonstrates that it was unreasonable for the Regional Director to leave the 2009 grazing rate in place for the 2010 season as the fair annual rental value of the parcels to which Elk Valley holds permits. Elk Valley's argument that the economic downturn and high gas prices had a detrimental effect on all markets is too general and conclusory to serve as a basis to find that it was unreasonable for the Regional Director to leave the grazing rate unchanged. *See Bird v. Acting Rocky Mountain Regional Director*, 48 IBIA 94, 104 (2008) (appellant cannot rely on

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<sup>10</sup> The Regional Director acknowledges that improvements must be taken into account in adjusting the rental rate, and also apparently concedes that water maintenance costs and weed and pest control expenses vary widely among parcels, and therefore are not the types of costs that are suitable for reservation-wide adjustments. *See* Appellee's Answer Br. at 9-10; *see also* Memorandum from Natural Resources Officer to Regional Director, Aug. 25, 2009 (AR Tab 5) ("Some costs related to weed and pest management might be incurred by the permittees . . . but it is not reasonable to recommend a universal deduction on all grazing permits."); Memorandum from Superintendent to Regional Director, Aug. 19, 2009 (AR Tab 9) (recommending credit for weed/pest control labor and chemicals for operators who do weed/pest control).

As noted earlier, "fair annual rental" is defined in relation to the probable market-based value of a *permitted parcel*. *See* 25 C.F.R. § 166.4 (definition of "fair annual rental"). And as we explained in *DuBray*, BIA's grazing regulations no longer allow BIA to use a reservation-wide AUM rate unless that rate satisfies the definition of fair annual rental — i.e., it must be supported and justified on a parcel-specific basis. *See DuBray*, 48 IBIA at 42-43. The Regional Director contends that the permittees have the responsibility to provide information to the Regional Director regarding improvements and costs that should be considered to make permit-specific adjustments. It is unclear what procedures BIA has in place for providing permittees with an opportunity to provide such range unit-specific or parcel-specific information during BIA's annual review. Appellants have not challenged the Decision on the procedural ground that BIA did not afford them an opportunity to submit either reservation-wide or parcel-specific information for consideration in determining the appropriate grazing rental rate to be applied to each parcel for the 2010 grazing season.

bare assertions to show that a BIA decision is unreasonable). Elk Valley's next argument, that the Decision improperly sets a rate for entire tracts within its range unit even though the percentage of allotted land within the tract may be less than 100 percent, appears to be the same argument that was considered and rejected in *Rosebud Indian Land and Grazing Ass'n*, 50 IBIA at 59.<sup>11</sup> Elk Valley's third argument mischaracterizes the Decision as an "increase" to its grazing rental fee,<sup>12</sup> and provides no basis to set aside the Decision. Elk Valley's final argument is that it lost income because the carrying capacity for the land to which it holds permits was reduced, resulting in a loss of 60 or more AUMs and associated potential profits, which Elk Valley suggests has created a difficulty in making payments on its loans. A reduction in carrying capacity, however, is outside the scope of the Decision and thus outside the scope of this appeal.<sup>13</sup> None of the arguments or grounds for appeal raised by Elk Valley provide a basis to set aside the Decision.

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<sup>11</sup> Moreover, by its terms, the Decision sets a rate for "individually owned Indian lands" on the Reservation, without purporting to invoice particular range units. To the extent Elk Valley believes that an invoice from BIA contains an error in applying the rate, the matter is outside the scope of this appeal.

<sup>12</sup> It is true that while the 2009 grazing rate was on appeal, the \$18.40/AUM rate was not effective with respect to permits held by the appellants in those appeals, and it appears that BIA understood Elk Valley's permit to be subject to the stay as subsumed by the Association's appeal from the 2009 rate. But when the Association withdrew its appeal, the 2009 rate became final and effective with respect to its members; only Linabery's permit then remained subject to the automatic stay, leaving the previous rate in effect, until her appeal was decided and the \$18.40/AUM rate was affirmed.

<sup>13</sup> A reduction in carrying capacity (i.e., AUMs) for a range unit, with no change to the rental rate per AUM, would reduce the total amount of rent that is due from a permittee because the total rent is the product of the grazing rental rate multiplied by the number of AUMs (subject to any parcel-specific adjustments). But the reduction in carrying capacity could also, as Elk Valley argues, reduce gross revenue for the permittee. In calculating the estimated economic cost of the reduced carrying capacity, Elk Valley refers to a "fee of \$30.00/AUM," and it contends that "[m]ost operators are receiving approximately \$35.00 per AUM," which would result in an even higher calculated economic cost to Elk Valley. Elk Valley Notice of Appeal at 1. The source of the \$30.00/AUM and \$35.00/AUM figures is unclear, as is what they represent or how they relate to Elk Valley's argument that the \$18.40/AUM grazing rental rate is too high.

It is also unclear how Elk Valley's statement that its goal is "to not have to bring in foreign cattle" would weigh in favor of its contention that the \$18.40/AUM rate is too high.

## Conclusion

We conclude that neither the Association nor Elk Valley has sustained its burden to demonstrate that the Regional Director's decision to leave the 2009 grazing rate unchanged for the 2010 grazing season is unreasonable. 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 affirms the Regional Director's August 25, 2009, Decision.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge