



INTERIOR BOARD OF INDIAN APPEALS

Sally Ann Pankratz and Aurelia Spencer v. Fort Belknap Superintendent,
Bureau of Indian Affairs; Billings Area Director, Bureau of Indian Affairs;
Fort Belknap Community Council; and Arnold Allen

4 IBIA 231 (11/26/1975)

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF
SALLY ANN PANKRATZ AND AURELIA SPENCER

v.

SUPERINTENDENT, FORT BELKNAP AGENCY;
AREA DIRECTOR, BILLINGS AREA OFFICE;
FORT BELKNAP COMMUNITY COUNCIL;
AND ARNOLD ALLEN

IBIA 75-53-A

Decided November 26, 1975

Appeal from an administrative decision granting allocation of grazing privileges.

Affirmed.

1. Indian Lands: Leases and Permits: Grazing: Allocation: Generally

A tribal governing body may authorize the allocation of grazing privileges for

tribal and tribally controlled government land to Indian corporations, Indian associations, and adult tribal members.

2. Indian Lands: Leases and Permits: Grazing: Revocation or Cancellation

The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 180 days written notice for allocated Indian use.

APPEARANCES: John P. Moore, Attorney at Law, for appellants, Sally Ann Pankratz and Aurelia Spencer.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before this Board on an appeal filed by Sally Ann Pankratz and Aurelia Spencer, through their counsel, John P. Moore, from a decision of the Area Director, Bureau of Indian Affairs, Billings, Montana, dated January 20, 1975. The Area Director's decision sustained the action of the Superintendent, Fort Belknap Agency, in allocating grazing privileges on tribally controlled lands on or near the Fort Belknap Reservation to Arnold Allen.

The record indicates the following chain of events leading up to the appeal herein.

Range Unit No. 150 was advertised for a 5-year period on April 11, 1974, comprising approximately 9,214 acres with a carrying capacity of 1,842 AUMs or 307 head of livestock. The advertisement was made under the authority of 25 CFR 151 and Fort Belknap Community Council Resolution No. 1-74.

The only bid received for Range Unit No. 150 was submitted by Sally Ann Pankratz. Accordingly, Range Unit No. 150 was awarded to her under H. Eighth preference of the advertisement. Pursuant thereto grazing permit No. 150 (Contract No. 14-20-0255-1657) was issued to Sally Ann Pankratz for a 5-year period beginning January 1, 1974, and terminating not later than December 31, 1978, specifying specifically the grazing season to be from May through November 15 of each year thereunder.

[1] Arnold Allen, prior to the deadline of November 15, 1974, subsequently postponed to November 18, 1974, at the request of the tribal council, requested allocation on Range Unit No. 150. Allocation was allowed thereon November 19, 1974, by Resolution No. 121-74 pursuant to Section II, Fort Belknap Community Council Resolution No. 1-74 and 25 CFR 151.10. The Fort Belknap Community Council,

by virtue of its Charter, Constitution and By-Laws approved by the Secretary of the Interior, is vested with full power and authority to make and perform contracts and agreements of every description including the authorization of allocating grazing privileges.

On December 19, 1974, Sally Ann Pankratz was notified by certified mail, receipt No. 151681, that Arnold Allen's allocation into Range Unit No. 150 had been approved. Mrs. Pankratz thereafter on December 24, 1974, submitted a request to the Superintendent, Fort Belknap Agency, to assign grazing permit No. 150 to Aurelia Spencer. The Superintendent, by certified mail dated January 7, 1975, advised Mrs. Pankratz that her request for assignment of Range Unit No. 150 to Aurelia Spencer could not be approved since the unit in question had already been allocated to Arnold Allen. By the same letter the Superintendent advised Sally Ann Pankratz that Range Unit No. 150 had been awarded to her under H. Eighth preference of the grazing resolution, therefore making her permit subject to allocation.

Under date of January 9, 1975, Sally Ann Pankratz, by letter, advised the Superintendent, Fort Belknap Agency, that she was appealing his decision of January 7, 1975. Her letter of January 9, 1975, gave the following reasons for the appeal:

I am appealing the allocation of range unit 150 of Ft. Belknap Indian Reservation to Arnold Allen. Cattle belonging to Aurelia Spencer, who is an enrolled member of Ft. Belknap, has been using (sic) this unit. Mrs. Spencer's cattle are run with ours as a ranch unit. This range unit is very important to the whole ranch operation. There is deeded land scattered through range unit 150. This range unit is off the reservation and consists mostly of submarginal land. The grazing permit for range unit 150 was awarded to me for five years in 1974.

Mrs. Spencer now has 300 head of cattle to almost fill the capacity of this range unit. Mrs. Spencer's brand is on the grazing permit as well as my brand. These cattle are Mrs. Spencer's main source of income for herself and family.

I feel this allocation would push off Indian owned cattle with no available grazing for them.

Aurelia Spencer on January 13, 1975, by letter advised the Superintendent Fort Belknap Agency, that she also was appealing his decision of January 7, 1975, regarding the allocation of Range Unit No. 150 to Arnold Allen. In her letter of January 13, 1975, to the Superintendent she stated:

I am appealing to allocation of range unit 150 of Fort Belknap Indian Reservation to Arnold Allen Cattle belonging to me, which I am enrolled as a member of Fort Belknap, and have been using this unit. My cattle will be on this unit along with Sally Pankratz, this range unit is very important to the whole ranch operation. There is deeded land scattered through range unit 150. This range unit is off the reservation and consists mostly of submarginal land. The grazing permit for range unit 150 was awarded me for five (5) years in 1974.

I have 300 head of cattle to almost fill the capacity of this range unit, and have had for five

(5) years. My brand is on the grazing permit and these cattle are my main source of income for myself & family.

I believe the above is self-explanatory and would like some action on this as soon as possible.

James A. Canan, Area Director, Billings Area Office, Billings, Montana, in denying Sally Ann Pankratz' appeal stated as follows:

This is in further reply to your letter dated January 9, 1975 appealing the decision of the Superintendent to allocate Range Unit No. 150, on the Fort Belknap Reservation, to Mr. Arnold Allen.

Your written petition, supporting documents, and the Superintendent's evaluation have been received and reviewed by this office.

Under the terms of Fort Belknap Community Council Resolution No. 1-74, dated February 1, 1974, and the Code of Federal Regulations, Title 25 Indians, Chapter I, Part 151.15(c) the Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification for allocated Indian use. Resolution No. 121-74, dated November 19, 1974 allocated Range Unit No. 150 to Mr. Arnold Allen for 307 head of cattle. You were notified of this decision by Certified Mail dated December 19, 1974. Regulations requiring 180 days written notice be given have been complied with and will expire May 17, 1975.

By Certified Mail dated January 7, 1975 the Superintendent advised you that your request for assignment of Range Unit No. 150 to Mrs. Aurelia Spencer had been disapproved. The established deadline for approval of allocations, as mutually agreed upon by the Superintendent and Chairman, Fort Belknap Community Council, was set for November 19, 1974. Your request for assignment was submitted December 24, 1974 - after the range unit was allocated to Mr. Allen.

Tribal Resolution No. 1-74 and the Code of Federal Regulations provide for the acquisition of rangeland when it is needed for a bona fide Indian livestock operation. We suggest Mrs. Spencer contact the Agency Superintendent and Community Council to request an allocation of grazing privileges. She should be prepared to provide adequate proof of her ownership of the livestock to be grazed and a "share livestock contract" approved by the Fort Belknap Community Council. Allocations will be approved by joint action and approval of the Fort Belknap Community Council and the Agency Superintendent.

Following our review of all documents relative to your appeal we find the Superintendent has complied with the provisions of the Grazing Resolution and the Code of Federal Regulations. The Superintendent's decision is therefore sustained and your appeal denied.

* * * * *

It is from the foregoing decision that the appeal has been taken to this Board. Sally Ann Pankratz and Aurelia Spencer in their appeal of January 29, 1975, stated:

The basis for this appeal is the fact that the undersigned are properly qualified to have and hold the grazing permit on the above Range Unit No. 150, and they have been wrongfully deprived thereof.

Before addressing the basis for the appeal, we find it necessary to determine what interest, if any, Aurelia Spencer has in this appeal. An examination of the bid for grazing privileges dated April 18, 1974, clearly shows that Aurelia Spencer was not a co-bidder with Sally Ann Pankratz. Moreover, the grazing permit issued on Range Unit No. 150 pursuant to the advertisement contains

only the name of Sally Ann Pankratz and no mention is made therein of Aurelia Spencer as a co-permittee. Aurelia Spencer is first mentioned in Sally Ann Pankratz's letter of December 24, 1974, to the Superintendent, Fort Belknap Agency, wherein she makes mention that she was assigning the lease [sic] to her because her cattle use this lease. [sic] Further mention is made of Aurelia Spencer in Sally Ann Pankratz's appeal to the Area Director on January 9, 1975, to the effect that cattle belonging to Aurelia Spencer, who is an enrolled member of Fort Belknap, have been using this unit. The record indicates that some sort of an oral agreement existed between Sally Ann Pankratz and her sister, Aurelia Spencer, on Range Unit No. 150. However, the record clearly indicates that the purported agreement was never approved by the Superintendent or the Fort Belknap Community Council. Regarding Aurelia Spencer's interest in this appeal, the Acting Area Director, in his letter of April 15, 1975, to this Board advised:

* * * As a technical matter, we do not object to Mrs. Spencer entering an appeal in her own right as an "interested party". We do object to her joining Mrs. Pankratz as an appellant herein because she was, as stated, a stranger to the case until after the decision complained of was made and the parties notified. That date was December 19, 1974, and the attempted assignment was not made until December 24, 1974. Had Mrs. Spencer's bid on the unit as a tribal member and had she stipulated the share/lease contract with her sister the outcome could have been different. The fact is she did not.

* * * * *

Concerning the foregoing factors, the Board concludes that Aurelia Spencer is not a party in interest in the appeal herein notwithstanding the fact her name appears in the case. Having disposed of Aurelia Spencer's interest in the matter, we may now turn to the merits of Sally Ann Pankratz's appeal.

Notwithstanding the numerous contentions set forth in appellants' brief of April 30, 1975, of which the Board takes note, the only issue to be determined and resolved in this appeal is as follows:

Was Range Unit No. 150 as awarded to Sally Ann Pankratz subject to allocation and, if so, was the allocation properly made?

The record clearly indicates Sally Ann Pankratz was awarded Range Unit No. 150 for grazing livestock under H.Eighth preference, which is the preference for running non-Indian livestock. Under the terms of Fort Belknap Community Council Resolution No. 1-74, Range Unit No. 150 was eligible for allocation. Accordingly, the Board finds that Sally Ann Pankratz's Range Unit No. 150 was eligible for allocation for Indian use.

[2] Arnold Allen's request for allocation in Range Unit No. 150 was made prior to the deadline established for allocations.

On November 19, 1974, Arnold Allen was allowed to allocate into this unit in accordance with Fort Belknap Community Council Resolution No. 121-74. Pursuant to said resolution, the Superintendent under authority of 151.15(c) withdrew and allocated to Arnold Allen Range Unit No. 150 for 307 head of cattle upon 180 days written notice as required by the regulations.

The Board having found that the range unit in question was eligible or subject to allocation and was properly carried out, we find it unnecessary to consider at this time the other contentions set forth in the brief filed in support of the appeal.

In view of the findings hereinabove set forth, the Area Director's decision of January 20, 1975, sustaining the Superintendent's decision of January 7, 1975, allocating Range Unit No. 150 to Arnold Allen should be affirmed and the appeal dismissed.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the decision of the Area Director, Billings, Montana, sustaining the decision of the Superintendent, Fort Belknap Agency, dated January 7, 1975, be and the same is hereby AFFIRMED and the appeal DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge