



INTERIOR BOARD OF INDIAN APPEALS

Porcupine Grazing Association v. Acting Billings Area Director,
Bureau of Indian Affairs

24 IBIA 243 (10/13/1993)

Reconsideration denied:
25 IBIA 42



United States Department of the Interior

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

PORCUPINE GRAZING ASSOCIATION,	:	Order Affirming Area Director's
Appellant	:	Decision
	:	
v.	:	
	:	Docket No. IBIA 93-123-A
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 13, 1993

This is an appeal from a July 14, 1993, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning a grazing permit for Range Unit 17 on the Fort Peck Reservation. The Area Director addressed the same matter in a June 3, 1993, letter. His July 14 decision was issued in response to appellant's request for reconsideration of the June 3 letter.

From information submitted by appellant with its notice of appeal, it appeared that appellant previously held a permit for Range Unit 17 and that the permit expired on December 31, 1992, along with all other grazing permits on the reservation. It further appeared that the Assiniboine and Sioux Tribes and BIA had determined, in accordance with 25 CFR 166.10, 1/ that Range Unit 17 would be allocated to tribal members during 1993.

Appellant contended that Range Unit 17 had been renumbered Range Unit 10 and that grazing privileges for the unit were advertised on August 5, 1993, for the period August 13, 1993, through December 31, 1993. The advertisement, appellant contended, was evidence that the range unit was not being used by tribal members.

The Board found itself unable to determine what BIA action appellant was attempting to appeal. Accordingly, it ordered appellant to show cause why the Area Director's decision should not be summarily affirmed and/or

1/ 25 CFR 166.10 provides:

“A tribal governing body may authorize the allocation of grazing privileges without competitive bidding on tribal and tribally controlled Government land to Indian corporations, Indian associations, and adult tribal members of the tribe represented by that governing body. The Superintendent may implement the governing body’s allocation program by authorizing the allocation of grazing privileges on individually owned land.”

Range Unit 17 consisted of 9,410.5 acres of tribal land and 10,222.46 acres of individually owned trust land.

why appellant's appeal was not made moot by an award of grazing privileges pursuant to the August 5, 1993, advertisement. 2/ At the same time, the Board requested certain information from the Area Director. 3/

Appellant's response to the Board's order states that appellant seeks to appeal

the various actions of the Superintendent of the Fort Peck Agency in regard to the renewal/non-renewal of the grazing permits in former Range Unit 17, now renumbered Range Unit 10, which were upheld by the decisions of the Acting Area Director on June 3 and July 14, 1993. The actions and decisions are clearly inconsistent with the objectives governing the leasing of range units found in 25 CFR 166.3 * * *.

Inasmuch as Range Unit 10, formerly Range Unit 17, was not allocated, as demonstrated by the August 5, 1993, advertisement for bid, and inasmuch as it was not leased at that bidding, none of the objectives have been met.

Appellant also suggests that, because its permit was not renewed, damage to the grazing lands will occur. It contends that "the solution is a negotiated permit with [appellant] as authorized by 25 CFR 166.11(b)."

As the Area Director stated in his decision, appellant's permit expired by its own terms, not because BIA took any action against appellant. Appellant contended in its notice of appeal that it had a "certain expectancy of renewal of its permit" because of improvements it had made. It did not, however, in either its notice of appeal or its response to the Board's order, cite any authority for the proposition that it had a right to renewal. The Board is not aware of any such authority.

Appellant also contended in its notice of appeal that it had been discriminated against because other range units were advertised for bids in April 1993, and Range Unit 17/10 was not so advertised. Appellant does

2/ The Board also noted that, given the large amount of individually owned land in the range unit, there were likely to be a substantial number of interested parties to this appeal. The Board's regulations require service of appeal documents on all interested parties. 43 CFR 4.310(b). In the interest of judicial economy, the Board concluded that it was appropriate to require appellant to show that it had some basis for its appeal before embarking upon the task of identifying the interested parties and requiring appellant to serve them.

3/ The Board requested the Area Director to confirm or deny appellant's allegation that the range unit advertised was the former Range Unit 17 and also requested that he inform the Board of the results of the Aug. 5, 1993, advertisement.

The Area Director confirmed that Range Unit 17 had been renumbered Range Unit 10. He stated that appellant was the only bidder who responded to the Aug. 5, 1993, advertisement and that its bid was rejected.

not allege that it was treated unfairly in the bidding process for the advertised units. The Board therefore assumes that appellant was afforded the same opportunity as others to submit bids for those units. Appellant's claim of discrimination appears to be based on a theory that it had a right to have Range Unit 17/10 advertised for bids. This is simply not the case. The Board finds that BIA's decision not to advertise Range Unit 17/10 in April 1993 did not constitute discrimination against appellant.

In its response to the Board's order to show cause, appellant contends that the failure to renew appellant's permit was inconsistent with 25 CFR 166.3. That section provides:

It is the purpose of the regulations of this part to:

- (a) Preserve, through proper grazing management, the land, water, forest, forage, wildlife, and recreational values on the reservations and improve and build up these resources where they have deteriorated.
- (b) Promote use of the range resource by Indians to enable them to earn a living, in whole or in part, through the grazing of their own livestock.
- (c) Provide for the administration of grazing privileges in a manner which will yield the highest return consistent with sustained yield land principles and the fulfillment of the rights and objectives of tribal governing bodies and individual land owners.

The objectives described in this section are clearly intended to benefit Indians and Indian lands, not permittees of Indian lands. Appellant cannot claim a violation of its rights based on a supposed failure to comply with these objectives. Cf. Clausen v. Portland Area Director, 19 IBIA 56 (1990) (A non-Indian lacks standing to raise an alleged violation of the Federal trust responsibility toward Indians).

Appellant states that it seeks a negotiated permit under 25 CFR 166.11(b), which provides: "The Area Director may authorize the issuance of grazing permits by negotiation when in his discretion no useful purpose would be served by advertisement." Clearly, the determination whether or not to authorize negotiation with appellant is a matter for the Indian landowners and BIA to decide. Appellant has no right to a negotiated permit.

Appellant has not shown any basis upon which it may challenge the Area Director's July 14, 1993, decision. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge