



INTERIOR BOARD OF INDIAN APPEALS

Kenneth Gullickson v. Aberdeen Area Director, Bureau of Indian Affairs

26 IBIA 62 (06/20/1994)



United States Department of the Interior

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

KENNETH GULLICKSON,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 93-56-A
ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 20, 1994

This is an appeal from a February 3, 1993, decision of the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA) , concerning the inclusion of Allotment 2089 in Range Unit 130 on the Standing Rock Indian Reservation. For the reasons discussed below, the Board affirms the Area Director's decision.

On October 23, 1992, Darlene White Twin conveyed to appellant and his wife, Debbie Gullickson, an undivided 2/6 interest in Allotment 2089. 1/ The deed was approved by the Superintendent, Standing Rock Agency, BIA, on the same date. At the time of the conveyance, Allotment 2089 was included in Range Unit 130 and was subject to a grazing permit to Luella Walker which was due to expire on October 31, 1992. 2/

On October 30, 1992, appellant wrote to the Superintendent, stating: "I am a 2/6 undivided interest owner in * * * Allotment number 2089. Please be informed that we do not give our permission for any lease of this described property; and intend to use our own 2/6 interest." The Superin-

1/ The allotment covers the S½ of sec. 7, T. 132 N., R. 79 W., Fifth Principal Meridian, North Dakota, and, contains 320 acres, more or less.

Debbie Gullickson was omitted from a corrected deed approved on Aug. 2, 1993, see footnote 5 below, apparently because she is not a member of the Standing Rock Sioux Tribe (Tribe).

The other owners of Allotment 2089 are: Betty Stretches DeWitt - 1/4, Martin Walker - 1/6, Eugene/Leo Red Beans/Stretches, Jr. - 1/24, Ramona Red Beans/Stretches - 1/24, Beverly Ann Red Beans/Stretches - 1/24, Allen Red Beans/Stretches - 1/24, Luann Red Beans/Stretches - 1/24, and Judith Stretches - 1/24.

2/ Sometime prior to July 1, 1992, BIA sent documents entitled "Authority to Grant Grazing Privileges on Allotted Land" to the owners of Allotment 2089 as well as to the owners of other allotments included in the range unit. These were sent in anticipation of granting a new grazing permit for a period beginning Nov. 1, 1992.

Of the owners of Allotment 2089, only Betty Stretches DeWitt signed and returned the authorization. She signed on July 1, 1992.

tendent responded on November 4, 1992, stating that the allotment must remain in the range unit until appellant could show compliance with the Agency's policy for withdrawal of land from range units.

On November 30, 1992, appellant again wrote to the Superintendent, stating that he wished to appeal the November 4, 1992, letter. Appellant contended that the allotment was not in a range unit because he had notified the Superintendent prior to expiration of the then-existing grazing permit that he intended to use the land himself. He cited as authority for his position, inter alia, 25 CFR 166.8 and 166.9(a)(5). ^{3/}

The Superintendent treated appellant's letter as a request for reconsideration and confirmed his November 4, 1992, letter. He advised appellant that his decision could be appealed to the Area Director. Appellant appealed to the Area Director.

On February 3, 1993, the Area Director affirmed the Superintendent's decision, stating:

The Superintendent, as authorized in 25 CFR 166.5, is required to develop management units by combining individual and tribal ownership tracts of land. [^{4/}] The Superintendent made the decision to include allotment 2089 in range unit 130 and sent Authorities to Grant Grazing Privileges to all owners of undivided interests prior to the current permit period. Since the undivided interest owners of allotment 2089 are not in agreement as to the permitting of the allotment, the Superintendent, as authorized in 25 CFR 166.9(a)(5), decided to leave allotment 2089 in range unit 130.

Therefore, until the allotment is partitioned and each interest owner has title to individual acres or all owners of allotment 2089 are in agreement as to permitting, the allotment should remain in range unit 130 as determined by the Superintendent.

(Area Director's Feb. 3, 1993, Decision). On February 4, 1993, the Superintendent issued a grazing permit for Range Unit 130 to Arnold and

^{3/} 25 CFR 166.8 provides: "Adult tribal members of any tribe may, without approval of the Superintendent, graze livestock on their own individually owned grazing land."

25 CFR 166.9(a) provides: "The Superintendent may include individually owned land in grazing permits on behalf of: * * * (5) heirs or devisees, none of whom are using the land and who have not been able to agree upon the permitting of their land during a 3-month period."

^{4/} 25 CFR 166.5 provides:

"The conservation, development, and effective utilization of the range resource requires consolidation of small individual and tribal ownerships and the organization of the total range area into management units. This shall be done under the direction of the Superintendent, after consultation with the Indians, in a manner which will best meet the requirements of Indian needs, land ownership status, and proper land use."

Luella Walker. The permit was for a five-year period beginning November 1, 1992, and ending October 31, 1997.

Appellant appealed the Area Director's decision to the Board. The appeal was docketed on March 31, 1993. Both appellant and the Area Director filed briefs. ^{5/}

Before the Board, appellant again contends that Allotment 2089 should not have been included in Range Unit 130 for the new permit period because he had notified the Superintendent prior to expiration of the earlier permit that he intended to use the land himself. Further, he contends, he should not be compelled to comply with the Agency policy concerning withdrawal of land from a range unit because it is absurd and violates a landowner's rights.

During the course of this appeal, appellant has responded to some of the Area Director's arguments by agreeing to take certain actions in support of his original request to the Superintendent. For instance, although he initially made no offer to compensate his co-owners, he now says that he is willing to pay them "a Farm Pasture Lease rate which is a higher rate than a Range Unit" (Appellant's Reply Brief at 2). He also states that he is willing to provide fencing if Allotment 2089 is removed from the range unit. (Appellant's July 14, 1993, Supplemental Filing at 2).

The dialogue between appellant and the Area Director in these extended proceedings would perhaps have been more productive in the context of discussions among the parties while this matter was still pending before the Superintendent. Conceivably, if appellant had made his request to the Superintendent earlier, there would have been time for such discussions

^{5/} In reviewing the record preparatory to deciding this appeal, the Board discovered that the Oct. 23, 1992, deed to appellant had been rescinded on Apr. 12, 1993, and a new deed approved on Aug. 2, 1993. The grounds for rescission were not shown in the record. The Board ordered BIA to submit further information concerning the rescission, sufficient to determine whether the rescission rendered the Superintendent's approval of the original deed void ab initio. If such were the case, the Board indicated, appellant might not have standing in this matter because he would not have owned an interest in Allotment 2089 at the time of the events giving rise to this appeal.

The Area Director's reply indicated, inter alia, that the rescission of the Oct. 23, 1992, deed was made for technical reasons. He stated that he did not challenge appellant's standing in this matter.

The Board also discovered that appellant had failed to identify the co-owners of Allotment 2089 as interested parties and had also failed to serve them with copies of his appeal documents. Simultaneously with its request to the Area Director, discussed above, the Board ordered appellant to furnish the names and addresses of his co-owners.

Upon receipt of replies from the Area Director and appellant, the Board ordered that the co-owners be served with all pleadings and briefs filed in this appeal by appellant and the Area Director. Although all co-owners were given an opportunity to reply to the documents, none have done so.

to take place. However, appellant did not submit his request until the day before the existing grazing permit was due to expire, and he failed at that time to provide any details concerning how he proposed to implement his use of the allotment. Under these circumstances, the Superintendent was not required to exclude Allotment 2089 from the grazing permit scheduled to commence two days later. The Board finds that Allotment 2089 was properly included in Range unit 130 and in the grazing permit issued to Arnold and Luella Walker.

Because Allotment 2089 was properly included in the range unit, permit modification procedures must now be followed in order to withdraw the allotment from the unit. These procedures are governed by 25 CFR 166.15(c). 6/

As noted above, the filings in this matter suggest that this matter could best be resolved through discussion or negotiation. The Area Director recommends three possible courses of action for appellant--that he apply for partition of Allotment 2089, that he attempt to reach agreement with his co-owners, or that he seek the Tribe's recommendation for a grazing allocation of the allotment. Z/ In fact, it appears from the record that appellant has already submitted an application for partition. Although the Board affirms the Area Director's decision here, appellant is not precluded from pursuing one or more of the avenues suggested by the Area Director.

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 February 3, 1993, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

6/ 25 CFR 166.15(c) provides:

"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 or for grazing exempt from permit pursuant to § 166.8. Unless otherwise mutually agreed upon by the interested parties, such actions shall be effected on the annual anniversary date of the grazing permit following the date of notice except when such timeliness of notice is not possible, in which case deferment of the intended action shall not be required to extend beyond 180 days from the date of the notice. Rental fees for grazing privileges taken for allocation shall not be less than those paid by the preceding permittee."

The Oct. 21, 1991, Agency policy for withdrawal of land from range units, to which appellant objects, is based on this regulation.

Z/ 25 CFR 166.10 authorizes BIA Superintendents to implement tribal allocation programs on individually owned land. See, e.g., Conroy v. Billings Area Director, 20 IBIA 29 (1991).