



## INTERIOR BOARD OF INDIAN APPEALS

Rosebud Indian Land and Grazing Association v. Acting Great Plains Regional Director,  
Bureau of Indian Affairs

42 IBIA 47 (11/21/2005)



# United States Department of the Interior

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

ROSEBUD INDIAN LAND AND	:	Order Affirming Decision
GRAZING ASSOCIATION,	:	
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 04-14-A
ACTING GREAT PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	November 21, 2005

Rosebud Indian Land and Grazing Association (Appellant) appeals from an October 27, 2003 decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director, BIA). The Regional Director’s decision determined to refund permittees on the Rosebud Reservation a portion of the grazing rental rate paid for allotted lands, based on the Board’s decision in Long Turkey v. Great Plains Regional Director, 35 IBIA 259 (2000). Appellant argues that the refund erroneously excluded rental fees paid for tribal lands within the range units. For the reasons discussed below, the Board affirms the Regional Director’s decision.

### Background

With limited exceptions not relevant here, federal regulations require an individual wishing to use Indian trust or restricted land for grazing purposes to obtain a permit. 25 C.F.R. § 166.7 (2000); 25 C.F.R. § 166.200 (2005). <sup>1/</sup> BIA issues grazing permits for range units that contain trust or restricted land which is entirely individually owned or is in combination with tribal land. 25 C.F.R. § 166.7 (2000); 25 C.F.R. § 166.217(c) (2005). Tribes may issue permits for grazing on land that is entirely tribally owned. 25 C.F.R.

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<sup>1/</sup> The grazing regulations in effect at times relevant to this appeal were codified at 25 C.F.R. Part 166 (2000). The grazing regulations were revised in 2001. See 66 Fed. Reg. 7126 (Jan. 22, 2001), codified at 25 C.F.R. Part 166 (2005). With respect to the issue in this appeal, however, the current regulations are not materially different from the previous version.

§ 166.7 (2000); 25 C.F.R. § 166.217(a) (2005). Tribal governing bodies have authority to determine the rental rate charged for grazing on all tribal lands, including those over which BIA has permitting authority. 25 C.F.R. § 166.13(a) (2000); 25 C.F.R.

§ 166.400(a) (2005). 2/ Before a tribe makes such a determination, BIA is to provide it with available information, including appraisal data, concerning the value of grazing on tribal lands. Id. A tribe's authority to set rental rates for tribal lands, however, is not constrained by the information provided by BIA.

In 1998, the Rosebud Sioux Tribe (Tribe) passed Resolution 98-210, governing grazing permit contracts. Part I of the Resolution provided in relevant part:

B. The minimum annual grazing rental rate for all range units shall be \$7.50 per animal unit month (AUM) on all tribal land and lands managed by the Tribal Land Enterprise (TLE) unless otherwise stipulated. \* \* \* \*

C. The rental rate and carrying capacities of range units will be reviewed annually by the Area Director. Should changes in conditions occur such as marked changes in cattle prices and drought conditions occur in any period, the rental rate may be adjusted accordingly. Any adjustment will be concurred by the Tribal Council on tribal lands.

Resolution 98-210, ¶ I.B. & C. (1998).

Part IV (R) of Resolution 98-210 provided that “[a]ll permittees on the Rosebud Indian Reservation, including non-members, by acceptance of a grazing permit contract, give their consent to submit to the jurisdiction of the Rosebud Sioux Tribal Court in order to resolve any and all disputes arising under the provisions of this resolution.”

On September 22, 1999, the Regional Director issued a decision increasing the minimum grazing rental rate to \$9.14 per AUM for yearlong grazing for the 2000 grazing season on allotted lands on reservations located wholly within the State of South Dakota. 3/ The Regional Director acted pursuant to a clause in the grazing permits that purported to authorize such adjustments on allotted lands during the term of the five-year grazing

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2/ BIA may set the grazing rental rate for tribal lands if the tribe does not do so. 25 C.F.R. § 166.13(b) (2000); 25 C.F.R. § 166.400(b)(2).

3/ Under former subsection 166.13(b) (2000), BIA established a “reservation minimum acceptable grazing rental rate” that applied to individually owned Indian lands and also applied to tribal lands if the tribe had not established a rate.

permits. The Regional Director's decision resulted in several appeals to the Board, discussed below.

On September 30, 1999, apparently following the lead of the Regional Director, the Tribe amended Resolution 98-210 to increase the minimum annual grazing rental rate for range units on all tribal land and lands managed by TLE from \$7.50 per AUM to \$9.14 per AUM for the permit period extending through October 31, 2000.

On October 6, 2000, the Tribe again amended Resolution 98-210, extending the permit period to October 13, 2001, for range units due to expire on October 31, 2000, and retaining the \$9.14 per AUM rental rate for the 2001 grazing season.

On December 20, 2000, the Board reversed the Regional Director's September 22, 1999 decision in an appeal involving the Lower Brule Reservation. Long Turkey v. Great Plains Regional Director, 35 IBIA 259 (2000). In Long Turkey, the Board held that 25 C.F.R. Part 166 (2000) did not authorize the Regional Director to change the grazing rental rate on individually-owned land during the term of a grazing permit with a term of five years or less, even where a permit clause expressly allowed mid-term rate adjustments, because the regulations did not authorize BIA to insert such a clause in the permit. 35 IBIA at 264. <sup>4/</sup>

On the same day that the Board decided Long Turkey, the Board in related appeals similarly vacated the Regional Director's decisions adjusting the rental rate for allotted lands on the Rosebud Reservation. The Board remanded the Rosebud appeals for further proceedings after finding that the administrative record was insufficient to determine whether or not the grazing permits at issue on the Rosebud Reservation were controlled by Long Turkey or by Fort Berthold Land and Livestock Ass'n v. Great Plains Regional Director, 35 IBIA 266 (2000). <sup>5/</sup> See Lange v. Great Plains Regional Director, 35 IBIA 279, 280 (2000) (vacating and remanding grazing rate decision for 2000 season); Waln v. Great Plains Regional Director, 35 IBIA 283, 284 (2000) (vacating and remanding grazing rate decision for 2001 season).

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<sup>4/</sup> The regulations were subsequently amended to allow for adjustment of the grazing rental rate annually or as specified by the permit. See 25 C.F.R. § 166.408 (2005).

<sup>5/</sup> Fort Berthold addressed a challenge to the Regional Director's determination of a new rental rate at the start of a new grazing term, which was clearly authorized by the regulations. See 25 C.F.R. § 166.13(b) (2000). In that case, however, the Board held that the Regional Director's determination was not supported by substantial evidence.

Following the Board's decisions in Long Turkey, Lange, and Waln, the Tribe apparently took no action to repeal the \$9.14 per AUM rate for tribal lands, or at least there is no indication of any such action in the appeal record before the Board.

On October 24, 2003, the Board received from Appellant a copy of a letter dated October 1, 2003, and addressed to the Regional Director "appealing the decision not to payback the interest on the Long Turkey Decision." Upon receipt of Appellant's letter, the Board contacted the Great Plains Regional Office to identify what decision Appellant sought to appeal and to whom. On October 28, 2003, the Board received by facsimile from the Regional Office a copy of the Regional Director's October 27, 2003 decision. In that decision, the Regional Director announced that BIA would refund the additional grazing fees that permittees had improperly been charged for allotted lands on the Rosebud Reservation for the 2000 and 2001 grazing seasons. The decision was silent with respect to grazing fees paid for tribal lands pursuant to the rental rates set by the Tribe.

The Board then sought clarification from Appellant whether the Regional Director's decision addressed the issues Appellant sought to raise. The Board also requested clarification from the Regional Director whether a decision had been made concerning interest on refunds.

On November 19, 2003, the Board received a letter from Appellant stating that it was appealing the Regional Director's decision not to issue refunds for grazing fees that had been paid on tribal lands for the 2000 and 2001 grazing seasons. On December 2, 2003, the Regional Director submitted additional information and confirmed that he had decided not to refund the grazing rental increase for tribal and TLE lands because the increased rate had been authorized by the Tribe. The Regional Director also asserted that, because the grazing permits did not expressly include language regarding the payment of interest, BIA did not have to pay interest on the refunded overcharges.

The Board scheduled briefing on the appeal and specifically requested that briefing address whether this appeal was governed by the doctrine requiring exhaustion of tribal remedies because it appeared that Appellant's dispute might be with the Tribe rather than with BIA. Both Appellant and the Regional Director submitted briefs.

### Discussion

Appellant contends that the Board's holding in Long Turkey should apply to the adjustment of grazing rental rates for tribal lands as well as to allotted lands. Appellant argues that "[t]he same prohibition on reevaluating rental rates under the applicable regulations in 2000 must also apply to tribal governing bodies establishing rental rates for

grazing permits. 25 C.F.R. 166.13(a) (2000).” Nov. 19, 2003 Letter from Appellant to Board, at 2. In response to the Board’s suggestion that Appellant’s dispute may be with the Tribe, Appellant asserts that although it was the Tribe that actually raised the grazing rental rates, “the action of the Tribe and TLE to raise the grazing rental rate was a *direct result* of the BIA’s unauthorized action.” March 18, 2004 Letter from Appellant to Board, at 2 (emphasis in original).

The Regional Director argues that the Board lacks jurisdiction to hear the appeal because it was the Tribe, not BIA, that decided to raise the rental rates on tribal land. The Regional Director asserts that Tribal Resolution 98-210 provided that all permittees agreed to submit to the jurisdiction of Tribal Court to resolve any and all disputes arising under Resolution 98-210. <sup>6/</sup> The Regional Director also contends that if the Board has jurisdiction over this appeal, our decision in Long Turkey is not controlling because it only concerned BIA’s authority to adjust rates for allotted lands, and not the Tribe’s authority over grazing rental rates.

As discussed below, the Board agrees with the Regional Director that it lacks jurisdiction over the underlying dispute regarding the validity of the Tribe’s grazing fees. On the more limited, albeit related, issue whether BIA should “refund” a portion of the Tribe’s grazing fees, however, the Board concludes that it has jurisdiction because that narrower issue was decided by the Regional Director, and we can review it without having to address the merits of the underlying dispute.

On this narrower issue of the refund, the Board readily concludes that the Regional Director’s decision may be affirmed. The “refund” issue would arise only if a forum of competent jurisdiction had decided that the Tribe’s grazing fees were invalid. Appellant has identified no forum in which the tribal action increasing the grazing fees has ever been reviewed and reversed. Absent a decision by a proper forum regarding the tribal fee increase, there is no basis for BIA to even consider “refunding” a portion of such fees. Whether or not the Board’s decision in Long Turkey might be relevant to a review of the tribal fees, that case specifically involved the rate adjustments made by BIA on individually-owned lands, and neither addressed nor adjudicated the tribally-imposed rate for tribal

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<sup>6/</sup> Although Resolution 98-210 was amended several times to adjust the grazing rental rate for tribal lands, no amendments were made to the provision concerning consent of permittees to submit to the jurisdiction of the tribal court to resolve disputes arising under the resolution.

lands. 7/ Therefore, the Board affirms the Regional Director's decision not to refund a portion of the grazing fees paid for tribal lands because Appellant has identified no decision invalidating the Tribe's action setting the rate for tribal lands at \$9.14 per AUM for the 2000 and 2001 grazing seasons.

To the extent that Appellant seeks to have the Board review the Tribe's action on the merits, the Board is without jurisdiction to do so. The Board is not a court of general jurisdiction and does not have authority to review action by tribes. See, e.g., Schmitges v. Skull Valley Band of Goshute Indians of Utah, 41 IBIA 138 (2005); Evitt v. Acting Pacific Regional Director, 38 IBIA 77, 81 n.5 (2002). Appellant's allegation that the Tribe's action was prohibited by the Federal grazing regulations does not change our conclusion. The Tribe's action to increase grazing fees did not require BIA approval. And even if the Tribe was influenced by BIA's decision to raise rates for individually-owned lands, it was not legally required to conform its rates to those set by BIA for individually-owned lands. 8/ Appellant has identified no reviewable BIA action with respect to the rate set by the Tribe, and the Board lacks jurisdiction to review the Tribe's action directly.

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 decision not to refund a portion of the tribal grazing fees. To the extent Appellant seeks the Board's review of the validity of the tribal grazing fees, the Board is without jurisdiction.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Katherine J. Barton  
Acting Administrative Judge

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7/ In the present case, it appears that Resolution 98-210 would require that Appellant seek review of the tribal fees in a tribal forum.

8/ Appellant's suggestion that the Tribe blindly follows BIA's lead, and that BIA therefore should be held accountable for the Tribe's action, is undermined by the fact that, after the Long Turkey decision invalidated BIA's rate adjustment for individually-owned lands, the Tribe apparently took no action to reduce or rescind the \$9.14 per AUM rate for tribal lands.