



INTERIOR BOARD OF INDIAN APPEALS

Darrell Doney and Fort Belknap Community Council v. Rocky Mountain Regional
Director, Bureau of Indian Affairs

43 IBIA 231 (08/18/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

DARRELL DONEY and FORT : Order Dismissing Appeals
BELKNAP COMMUNITY COUNCIL, :
Appellants, :
v. : Docket Nos. IBIA 04-159-A
: 04-160-A
ROCKY MOUNTAIN REGIONAL :
DIRECTOR, BUREAU OF INDIAN :
AFFAIRS, :
Appellee. : August 18, 2006

In these consolidated appeals, Darrell Doney, pro se (Docket No. 04-159-A), and the Fort Belknap Community Council (Tribe) (Docket No. 04-160-A) seek review of an August 4, 2004 decision of the Regional Director, Rocky Mountain Region, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director's decision affirmed the Fort Belknap Agency Superintendent's decision establishing a grazing rental rate for allotted lands in range units on the Fort Belknap Reservation (Reservation), Montana, at \$16.00 per animal unit month (AUM) 1/ for a new five-year permit period beginning January 1, 2004. For the reasons stated below, the Interior Board of Indian Appeals (Board) dismisses these appeals for lack of jurisdiction.

Background

In several recent 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 (2006); Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director, 41 IBIA 308 (2005). With limited exceptions, anyone wishing to graze livestock on Indian trust or restricted land must first obtain a permit to do so. See

1/ One AUM is "the amount of forage required to sustain one cow or one cow with one calf for a month." 25 C.F.R. § 166.4.

25 C.F.R. § 166.200. BIA establishes the grazing rental rate for individually-owned Indian lands, based on the fair annual rental value. See id. §§ 166.400(b)(1), 166.401. Acceptable methods for determining the fair annual rental value are set forth in 25 C.F.R. § 166.401 and include the use of an appraisal developed in accordance with the Uniform Standards of Professional Appraisal Practices. Once the grazing rental rate for a permit period has been established, BIA may adjust the rate, annually or on a periodic basis as specified in the grazing permit. See id. § 166.408.

On March 18, 2004, the Superintendent issued a decision establishing a grazing rental rate of \$16.00 per AUM for a new five-year permit period, from January 1, 2004 through December 31, 2008. The new rate replaced the rental rate of \$10.57 per AUM that had been in place for the previous five-year permit period (1999-2003). The new grazing rental rate was based on an appraisal conducted by the Office of Appraisal Services, Office of the Special Trustee (OAS-OST). ^{2/} The appraisal, dated December 30, 2003, recommended a market rental rate range of \$15.00 to \$16.00 per AUM. On January 30, 2004, the Rocky Mountain Regional Appraiser reviewed the appraisal and concluded that it met the requirements for BIA and OAS-OST.

Through Resolution No. 51-2004, dated April 8, 2004, the Tribe appealed the Superintendent's decision. The resolution stated that appeal of the new rate was necessary because "drought disaster," "snow disasters," "[d]isease threats," and non-adjustable loan packages had already caused financial hardship to individual ranchers due to increased expenses and loss of livestock and income. The Tribe's resolution also asked the Superintendent to consider keeping the current grazing rental rate of \$10.57 per AUM through the 2003-2004 grazing season.

Doney, who held a grazing permit for the previous five-year period (1999-2003), also appealed the Superintendent's decision, similarly citing financial hardship as the primary basis for his appeal.

On August 4, 2004, the Regional Director issued the decision that is now on appeal, affirming the Superintendent's establishment of \$16.00 per AUM as the new grazing rental rate for permits covering the 2004-2008 grazing seasons. In his decision, the Regional Director rejected arguments made by the Tribe and Doney that the OAS-OST appraisal was

^{2/} Apparently, OAS-OST conducted the appraisal at BIA's request after BIA put the Tribe on notice that it was going to reassume the Tribe's "638" contract under the Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, due to the Tribe's failure to comply with the contract's terms.

flawed in a variety of ways, including the argument that the appraisal failed to take into account drought, other severe weather conditions, and livestock price fluctuations. In response to the Tribe's argument that it should be allowed time to complete an additional market analysis, and Doney's argument that the timing of the appraisal meant that he had insufficient time to prepare loan requests that would account for the increased rate, the Regional Director stated that the Tribe had had an opportunity to conduct a market analysis and request an appraisal in 2003 through the Tribe's 638 contract, but failed to do so. The Regional Director further stated that if the Tribe had contracted for the appraisal in a timely manner, Doney would have had sufficient time to plan his budget for the new grazing rental rate.

The Tribe and Doney appealed the Regional Director's decision to the Board. Doney included a statement of reasons with his notice of appeal. ^{3/} No briefs were filed.

Discussion

Although the Board is not bound by the case or controversy requirement of Article III of the U.S. Constitution, as a matter of prudence, the Board generally limits its jurisdiction to cases in which the appellant can show standing. *See, e.g., Hall*, 43 IBIA at 44; *Cheyenne River Sioux Tribe*, 41 IBIA at 310. The Board relies on the analysis provided in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), to evaluate standing. The burden is on the appellant to show: (1) an injury to a legally protected interest that is concrete and particularized, as well as actual or imminent and not conjectural or hypothetical; (2) that the injury is causally connected with or fairly traceable to the actions of the appellee and not caused by the independent action of a third party; and (3) that it is likely, as opposed to speculative, that the injury will be redressed by a favorable decision. *See Lujan*, 504 U.S. at 560-61.

In the present case, and for the same reasons discussed at length in *Hall* and *Cheyenne River Sioux Tribe*, we conclude that neither Doney nor the Tribe has standing to challenge the Regional Director's decision.

^{3/} The Tribe's notice of appeal stated that the Tribe would file a statement of reasons by October 1, 2004, but no statement of reasons was filed.

Doney's grazing permit covering the five-year period from 1999 to 2003 expired on November 15, 2003. ^{4/} At that time, any legally protected interest that Doney had with respect to this permit also expired. ^{5/} Doney's status as a past or prospective permittee is insufficient to establish standing to challenge a new grazing rate for a new permit period initiated after expiration of his prior permit. Hall, 43 IBIA at 44. Doney is in the same position as any other prospective permittee: he does not have a legal right to obtain a new grazing permit at any rate other than the rate set by the Indian landowners or the BIA on the landowners' behalf.

Thus, Doney cannot show that he has suffered a legal wrong or that the Regional Director's decision to establish a new grazing rental rate adversely affected a legally-protected interest. See id. at 48; see also Evitt v. Acting Pacific Regional Director, 38 IBIA 77, 79 (2002). Accordingly, we conclude that Doney is unable to demonstrate any injury to a legally-protected interest and we dismiss his appeal for lack of jurisdiction.

Although the Tribe has made no arguments on appeal, our review of the record suggests that the Tribe lacks standing to raise the arguments it made to the Regional Director. In the proceedings below, the Tribe sought to assert the interests of its member ranchers. But as we explained in Cheyenne River Sioux Tribe, the Tribe cannot assert the legal rights or interests of others, and cannot assert parens patriae standing when it does not represent the collective interests of all its members. 41 IBIA at 311-12, and cases cited therein. The record indicates that the Tribe considers its responsibility as running to both its member ranchers and its member landowners, who do not share a common interest with respect to grazing rental rates. See June 10, 2004 Fort Belknap Statement of Reasons to Regional Director at 2. Thus, the Tribe cannot represent the collective interests of all of its

^{4/} Although the new permit period began on January 1, 2004, apparently the previous permits were scheduled to expire on November 15, 2003. See May 27, 2003 Letter from the Superintendent and Awarding Official, Fort Belknap Agency, to the Tribal Chairman, Attachment A.

^{5/} We note that Doney makes no claim that his previous permit somehow provided him with a right of renewal. Nor is there any evidence that his permit conveyed such a right.

members through this appeal. See Cheyenne River Sioux Tribe, 41 IBIA at 312. We therefore conclude that the Tribe does not have standing to bring its appeal. 6/

Conclusion

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 dismisses these appeals for lack of jurisdiction.

I concur:

// original signed
Amy B. Sosin
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

6/ Because the Tribe failed to submit any arguments on appeal, we evaluate its standing based on the claims it made to the Regional Director. Even if the Tribe did have standing, however, we would conclude that the Tribe failed to satisfy its burden of proof to demonstrate error in the Regional Director's decision. See Mandan v. Acting Great Plains Regional Director, 40 IBIA 206, 207 (2005) (an appellant who makes no allegation of error in a BIA official's decision has failed to carry its burden of proof); Gullikson v. Great Plains Regional Director, 38 IBIA 90, 93 (2002) (same).