INTERIOR BOARD OF INDIAN APPEALS

High Sierra Fellowship v. Western Regional Director, Bureau of Indian Affairs

45 IBIA 197 (08/24/2007)
High Sierra Fellowship (Appellant) appealed to the Board of Indian Appeals (Board) from a February 2, 2007, decision (Decision) of the Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director determined that Lease No. B-187 between Wayne Snooks as lessor and Appellant as lessee was invalid because the Superintendent, Western Nevada Agency (Superintendent; Agency), had failed to comply with the National Environmental Policy Act (NEPA), 43 U.S.C. §§ 4321 et seq., prior to approving the lease. We conclude that Appellant has not met its burden of showing that the Regional Director’s decision was in error, and therefore we affirm the Regional Director’s decision.

Background

The Superintendent approved Lease No. B-187 between Snooks and Appellant on November 22, 1991. Lease No. B-187 covered a 30-acre parcel of land located on Public Domain Allotment CC-730. The lease had a term of 25 years, beginning on June 7, 1991, with the option to renew for another 25 years. It provided that the leased premises were to be used for religious and educational purposes, and required Appellant to “construct improvements to be placed on the leased premises.” Lease No. B-187, § 15. Rent was set at $1.00 per year.

1 Allotment CC-730 is located on the SW¼ of Section 32, Township 12 North, Range 21 East, M.D.M., Douglas County, Nevada.
In a decision dated October 10, 2006, the Superintendent cancelled the lease for 1) failure to use the leased premises for educational and religious purposes as specified by the lease and 2) failure to compensate Snooks for use of the parcel of land. The Superintendent noted that the “property is sitting idle and is currently of no benefit to [Appellant] or Mr. Snooks.” Superintendent’s Decision at 2.²

Appellant appealed the Superintendent’s decision to the Regional Director. Appellant argued that it had not violated the lease terms and stated that it “desires that the Lease continue in full force and effect.” Statement of Reasons at 2.

On January 12, 2007, an Agency realty officer notified the Regional Director that BIA had not completed any NEPA documentation for Lease No. B-187. The realty officer stated that he had a conversation with Snooks, who informed him “that no NEPA document[ation] was completed due to the fact that [Appellant] was to provide [Snooks] with the plans and designs for the construction and at that time the NEPA document[ation] was to be prepared.” Internal BIA correspondence, Jan. 12, 2007.

On February 2, 2007, the Regional Director issued the decision that is the subject of the present appeal. The Regional Director determined that, when the lease was approved in 1991, the Superintendent failed to ensure compliance with NEPA. The Regional Director stated that “[a]pproval of a lease is a major federal action, and requires NEPA compliance.” Decision at 3. Relying on Scott v. Acting Albuquerque Area Director, 29 IBIA 61 (1996), and Sangre de Cristo Development Co. v. United States, 932 F.2d 891, 894-95 (10th Cir. 1991), the Regional Director concluded that the Superintendent’s approval of Lease No. B-187 was invalid for failure to comply with NEPA. The Regional Director declared the lease invalid, and therefore found it unnecessary to address whether the Superintendent’s decision to “cancel” the lease would otherwise have been proper.

Appellant appealed to the Board. Appellant and the Regional Director filed briefs.

² The lease apparently was signed in 1991 by an official of Appellant, who shortly thereafter resigned. In a letter dated October 21, 2003, the Superintendent contacted Appellant regarding Appellant’s failure to use the property, which is when Appellant contends that its current officials first learned about the lease. At the time, Appellant responded promptly and requested that the lease be continued. Though not material to our decision, it appears that the lessor and the Superintendent considered Appellant’s obligation under the lease to “construct improvements” as part of the compensation that would eventually accrue to the benefit of the lessor. Appellant, in contrast, seems to have focused only on the nominal rental amount that was due, and took the position that it had no affirmative obligation to use the land.
We conclude that Appellant has not met its burden of showing that the Regional Director’s decision was in error.

On appeal, Appellant does not dispute the Regional Director’s conclusion that the approval of the lease required compliance with NEPA and that this requirement was not met prior to the Superintendent’s approval of the lease. Nor does Appellant address Board and judicial precedent, relied on in the Regional Director’s decision and brief on appeal, concluding that BIA’s approval of a lease is invalid when BIA has failed to conduct the requisite environmental study under NEPA. See, e.g., Scott, 29 IBIA at 70-71 (citing Sangre de Cristo Development Co., 932 F.2d at 894-95; Davis v. Morton, 469 F.2d 593 (10th Cir. 1972)).

Instead, Appellant’s sole argument on appeal is that it acted in good faith in entering into the lease, and that it should not be penalized for BIA’s failure to comply with NEPA. Appellant cites no legal authority for the proposition that its “good faith” provides a basis for the Board to reverse the Regional Director’s decision, notwithstanding BIA’s admitted lack of compliance with NEPA.

We conclude that Appellant has failed to carry its burden of showing error in the Regional Director’s decision.

3 Although not material to this appeal, we note as incorrect the Regional Director’s unqualified statement that approval of a lease is a “major Federal action” within the meaning of NEPA. BIA’s approval of a lease is Federal action but whether it rises to the level of a “major” Federal action, i.e., one that requires an Environmental Impact Statement (EIS), see 43 U.S.C. § 4332(2)(c), 40 C.F.R. § 1508.11, depends on the circumstances of each case. In the present appeal, the lease expressly required the construction of improvements on the property, see Lease B-187, § 15, thus triggering, at a minimum, the need for an Environmental Assessment. Appellant does not dispute the Regional Director’s finding that some NEPA compliance was required and that no NEPA compliance took place.

4 Appellant asserts that, if the lease is “invalid due to NEPA environmental reasons, it is the fault of [BIA]” and it is entitled to a new lease or damages. Opening Brief at 2. The Board lacks authority to award damages or to order Snooks to enter into a new lease. See Oswalt v. Northwest Regional Director, 42 IBIA 90 (2005); Brown v. Navajo Regional Director, 41 IBIA 314, 317-18 (2005).
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 February 2, 2007, decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge