



## INTERIOR BOARD OF INDIAN APPEALS

Gwendolyn R. Gourneau v. Acting Rocky Mountain Regional Director,  
Bureau of Indian Affairs

50 IBIA 33 (07/07/2009)



# 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

GWENDOLYN R. GOURNEAU,	)	Order Vacating Decision and Remanding
Appellant,	)	
	)	
v.	)	Docket No. IBIA 07-38-A
	)	
ACTING ROCKY MOUNTAIN	)	
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS,	)	
Appellee.	)	July 7, 2009

Gwendolyn R. Gourneau (Appellant or Gwen) has appealed the September 22, 2006, decision of the Acting Regional Director (Regional Director), Bureau of Indian Affairs (BIA), affirming the April 26, 2006, decision of the Fort Peck Agency Superintendent (Superintendent), BIA, cancelling allocated grazing permit No. 4-20-0256-9607 for Range Unit 2 on the Fort Peck Reservation. The Regional Director concluded that Appellant had failed to comply with the terms and conditions of the allocated grazing permit by not providing sufficient proof that she owned 75% of the cattle grazed on Range Unit 2; by allowing livestock to graze on the range unit before the designated grazing season set out in the approved grazing permit and without obtaining a waiver approved by the Superintendent; and by letting livestock owned by another person graze on the range unit without prior authorization. The Regional Director also found that Appellant had not remedied those violations despite being given the opportunity to do so.

Appellant contends that she did remedy the alleged violations. She also asserts that until she received the Superintendent's decision, she had not been notified that her documentation to prove ownership of the cattle was insufficient. Moreover, Appellant avers that the bills of sale she provided are sufficient to establish her ownership of the cattle grazing on the range unit; that the early release of livestock on the range unit was caused by a misunderstanding and was promptly cured by the removal of the cattle; and that she, not another person, was the legal owner of the livestock grazing on the range unit so she did not need prior authorization to graze those cattle.

We vacate the Regional Director's decision. There is no evidence in the record that either the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation (Tribes) or

BIA complied with the regulatory requirement to give notice to the permittee of the changes in tribal law eliminating bills of sale as acceptable proof of ownership. In addition, the Superintendent violated Appellant's procedural due process rights under the regulations by failing to issue proper notice of the violations prior to cancelling the permit. Because the Regional Director did not consider these violations of Appellant's procedural rights before affirming the permit cancellation decision, we conclude that BIA abused its discretion in cancelling the permit. The Regional Director's decision, therefore, must be vacated and the matter remanded for compliance with the procedural requirements of the regulations, if BIA believes cancellation is still warranted.

### Regulatory Framework

With limited exceptions, anyone wishing to graze livestock on Indian trust or restricted land must first obtain a permit to do so. 25 C.F.R. § 166.200. Permits may be issued by the Indian landowner, whether a tribe or an individual Indian, subject generally to BIA approval. 25 C.F.R. § 166.203. Permits may also be issued by BIA under certain circumstances, including when the Indian landowner requests BIA to do so. 25 C.F.R. § 166.205(a). Amendments, assignments, subpermits, or mortgages related to permits issued or approved by BIA must also be approved by BIA. 25 C.F.R. § 166.229.

After consultation with the Indian landowners, BIA may consolidate various tracts of Indian rangeland into range units for the management and administration of grazing under a permit. *See* 25 C.F.R. §§ 166.4 and 166.302. A range unit may include a combination of tribal, individually-owned, and/or government land. 25 C.F.R. §§ 166.4.

Indian tribes have the authority to develop allocation procedures to apportion grazing privileges on tribally-owned lands among tribal members without competition. 25 C.F.R. §§ 166.4, 166.218; *Frank v. Acting Great Plains Regional Director*, 46 IBIA 133, 134 (2007). BIA implements the tribe's allocation procedures, which may include eligibility requirements for allocations, by authorizing the allocated grazing privileges through granting or approving grazing permits. 25 C.F.R. § 166.218(c).

On July 23, 2003, the Fort Peck Tribal Executive Board (Executive Board) promulgated Resolution #1802-2003-7 (Grazing Resolution), which set out general policies and procedures governing grazing for the tribal 10-year grazing permits issued for 2003 - 2012, and established the allocation process for those permits.<sup>1</sup> The allocation

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<sup>1</sup> The general policies and procedures included, *inter alia*: (1) the establishment of a 5.5.-month grazing season either beginning May 1 and ending October 15 or beginning  
(continued...)

procedures specified the ownership requirements necessary to qualify for an allocation, including the requirements that the permittee own at least 75% of the livestock allowed under allocation, unless the Tribes or Agency had approved an exception, and that outside cattle had to be approved in writing via a Pasturing Agreement. *Id.*, sec. 5(c). The allocation procedures also addressed the requisite proof of ownership, stating that

Applicants for allocation must certify that they own or will own cattle sufficient to fill their allocations. Proof of ownership may consist of, but is not limited to, bills of sale accompanied by receipts demonstrating actual transactions, promissory notes, mortgages or other evidence of a loan from a recognized lending institutions . . . , financial statements, and income tax returns.

*Id.*, sec. 5(f). The procedures further mandated that the cattle had to be branded with the applicant's registered Montana brand before they would be permitted on the range unit, and that each individual granted an allocation had to have his or her own brand. *Id.*

On March 13, 2006, the Executive Board issued Resolution #393-2006-03, which amended the proof of ownership provisions of section 5 of the Grazing Resolution (2006 Amendment). The amendment provided that "all permittees of a range unit(s) must submit proof of ownership of their livestock, which may consist of IRS Form 1040 accompanied by Schedule F, [or] bank statements, along with any other proof of ownership required by the [Tribal] Natural Resources Department." The amendment explicitly repudiated the use of bills of sale, stating that "a 'Bill of Sale' will not constitute proof of ownership due to the ease with which a 'Bill of Sale' can be used to defraud the Fort Peck Tribes."

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<sup>1</sup>(...continued)

May 15 and ending October 31 and the requirement for written authorization for grazing prior to the general turnout date of either May 1 or May 15 and for adjustments in seasonal grazing or stocking rates (Grazing Resolution, sec. 3); (2) the specification that modifications of the permit, including transfer, assignment, or subleasing, would be allowed only by written agreement, subject to the approval of the Tribes and the Superintendent (*id.*, sec. 7); (3) the requirement that an entry permit had to be filed before turnout (*id.*, sec. 9(a)); and (4) the identification of the grounds for permit cancellation, including failure to obtain an entry permit prior to turnout, subleasing without proper authorization, and violations of BIA regulations (*id.*, sec. 12).

Under 25 C.F.R. § 166.104(a), a tribe must notify BIA of the content and effective date of new tribal laws that apply to permits on Indian agricultural land. Upon receipt of that notification, BIA must notify affected Indian landowners and others undertaking activities on Indian agricultural lands of the superseding or modifying effect of the new tribal laws by either providing individual written notice or by posting public notice. 25 C.F.R. § 166.104(b).

The recipient of a grazing allocation and permit based thereon must comply with the terms and stipulations of the permit. If the permittee fails to do so, BIA must provide written notice of the violation to the permittee. 25 C.F.R. § 166.703. The written notice of permit violation must provide the permittee with 10 days from receipt of the notice to “(a) Cure the permit violation and notify [BIA] that the violation is cured[;] (b) Explain why [BIA] should not cancel the permit; or (c) Request in writing additional time to complete corrective actions. . . .” 25 C.F.R. § 166.704. Failure to cure the violation within the required time subjects the permit to cancellation under 25 C.F.R. § 166.705(a)(1). If BIA decides to cancel the permit, it must send the permittee written notice of the cancellation explaining the grounds for cancellation; notifying the permittee of any unpaid rent, interest charges, or late payment penalties due; advising the permittee of the right to appeal; and ordering the permittee to vacate the property within 30 days of receipt of the notice of cancellation if an appeal has not been filed. 25 C.F.R. § 166.705(c). A cancellation decision is not effective for 30 days after the receipt of the written notice of cancellation and during the pendency of any appeal from that decision; the permittee is required to continue to pay the rent and comply with the other terms of the permit while the cancellation decision is ineffective. 25 C.F.R. § 166.707.

### **Factual and Procedural Background**

The Executive Board approved Appellant’s brother, Greg Gourneau (Greg), for allocated grazing privileges for Range Unit 2 by Resolution #1509-2003-4, dated April 14, 2003 (*see* Administrative Record (AR), Tab IV 24), and on April 16, 2003, the Superintendent granted a grazing permit for Range Unit 2 to Greg based on that allocation. AR, Tab IV 23.<sup>2</sup> The permit is for the 10-year period from January 1, 2003, through December 31, 2012, and authorizes the grazing of 442 head of cattle, bearing the brand “J hanging H” on the right and left rib, each year between May 15 and October 31.<sup>3</sup> On

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<sup>2</sup> This permit was issued before the Executive Board amended the Grazing Resolution.

<sup>3</sup> The permit also states that it is subject to the additional terms and conditions on the reverse side. The copy of the permit in the administrative record, however, does not

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February 28, 2005, the Executive Board issued Resolution #1510-2005-2, which amended its April 14, 2003, resolution approving Greg's allocated grazing privileges for Range Unit 2 for the 2003 - 2012 permit period in order to modify the permit by adding Appellant as an additional permittee for Range Unit 2. AR, Tab IV 24. This resolution was not submitted to BIA for approval, nor was an amended permit adding Gwen's name to Greg's permit ever approved by the Superintendent.

Since Greg apparently did not own sufficient cattle to fully stock the range unit, he requested and received a Pasturing Authorization allowing him to pasture 467 head of cattle owned by non-Indians Dixon and Zane Murnion during the 2004 grazing season.<sup>4</sup> AR, Tab II A. Although his cattle ownership had increased to 150 head by the 2005 grazing season, it was still well short of the 442 head needed to fill his allocation, and Greg requested and was granted a Pasturing Authorization for that season allowing him to pasture 292 head of cattle owned by the Murnions. AR, Tab II B. The 2005 Pasturing Authorization also changed the grazing season by permitting grazing from April 8 through September 26, 2005.

As noted earlier, on March 13, 2006, the Executive Board amended its Grazing Regulation and, of particular relevance to this case, explicitly excluded bills of sale as sufficient evidence proving ownership of livestock. The record contains no evidence that the Tribes notified BIA of the change, as required by 25 C.F.R. § 166.104(a), nor is there

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<sup>3</sup>(...continued)

contain the reverse side. The 2004 and 2005 "On-and-Off" permits for Range Unit 2 do contain both sides, and we assume that the reverse sides on all the permits are the same since they have the same form number. We note that the forms are outdated and that the terms and conditions refer to outdated regulations, e.g., 25 C.F.R. § 166.15 (1999) (providing that permits could be revoked or cancelled for violations of the permit or termination of the trust status of the lands), which were superceded by the current regulations promulgated in 2001, before the permit for Range Unit 2 was issued to Greg.

<sup>4</sup> The brands on these cattle were "H running a 6" on the left rib of Dixon Murnion's cattle and "L standing an M" on the left hip of the cattle owned by Zane Murnion. We note that the total number of cattle allowed under the Pasturing Authorization (50 cattle owned by Greg plus 467 cattle owned by the Murnions for a total of 517 cattle) exceeded the 442 cattle authorized in the grazing permit.

any documentation to establish that BIA gave notice of the change to permittees, as required by section 166.104(b).<sup>5</sup>

On March 28, 2006, the Murnions executed conditional bills of sale transferring a total of 300 head of cattle to Appellant. These bills of sale post-dated the changes to the proof of ownership requirements promulgated on March 13, 2006, in the 2006 Amendment, but pre-dated any evidence of notice to permittees of the change in tribal law. AR, Tab IV 4. On April 4, 2006, Greg submitted the bills of sale along with a written request that his name be removed as a permittee on the grazing permit for Range Unit 2. *See* AR, Tabs IV 2, II F.<sup>6</sup> Neither the Tribes nor BIA acted on Greg's request, and he continued to attend meetings and interact with the Tribes and BIA in matters concerning the permit. *See, e.g.*, AR, Tabs IV 1, IV 14 at 2-8; IV 15.

On April 6, 2006, the Tribes' Natural Resources Office (Natural Resources) received a report that cattle were being transported to Range Unit 2, and an inspection of the range unit conducted on April 10, 2006, revealed that over 400 cows with the Murnions' brands had been turned out on the range unit.<sup>7</sup> *See* AR, Tabs IV 1 and IV 3. By letter dated April 11, 2006, the Superintendent notified Appellant and Greg that over 400 cattle bearing the Murnions' brands had been discovered on Range Unit 2, and that they therefore were in violation of the terms of the grazing permit by (1) allowing unauthorized non-Indian livestock grazing on Range Unit 2; (2) grazing outside of their grazing season; and (3) failing to provide proof of ownership before the turn-out of the livestock. AR,

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<sup>5</sup> The Board expressly allowed the Regional Director to supplement the record with this evidence, if it existed. The only document the Regional Director submitted in response is an April 21, 2006, letter from the Tribes' Natural Resources Officer "reminding" permittees of the requirements of the new resolution. But there is no evidence of any notice to them prior to this purported "reminder," which was dated the 10<sup>th</sup> day *after* the Superintendent issued a 10-day show cause letter to Appellant.

<sup>6</sup> In her statement of reasons (SOR) to the Regional Director, Appellant claims that the bills of sale were submitted on March 29, 2006. *See* AR, Tab II. Since the actual date of the submission of those bills of sale is not determinative of any of the issues raised in this appeal, we need not resolve this discrepancy.

<sup>7</sup> In his decision, the Regional Director states that the Tribes' Executive Board has entered into a contract with the BIA Natural Resources Department pursuant to which the Tribes' Natural Resources Office performs all technical and administrative functions for the range unit system. *See* Decision at 1 n.1.

Tab IV 5. The Superintendent advised them that they had “10 days to show cause why [the] permit should not be cancelled.” This show-cause letter did not provide Appellant and Greg with 10 days to cure the permit violation, to explain why the permit should not be cancelled, or to request additional time to complete the corrective actions. *See* 25 C.F.R. § 166.704. The Superintendent also sent trespass notices to the Murnions on April 11, 2006, advising them that the presence of their cattle on Range Unit 2 constituted grazing trespass and granting them 3 days to remove the cattle or be subject to the assessment of penalties and other actions. AR, Tabs IV 6 and IV 7.

Appellant and Greg met with Natural Resources on April 12 to discuss the early turnout and Appellant’s purchase of the Murnions’ cattle. AR, Tabs IV 1, and IV 2. In a follow-up meeting on April 13, 2006, which the Murnions also attended, Natural Resources explained that the conditional bills of sale were not sufficient to document the sale of the cattle and requested additional proof of ownership, including a contract of sale and a payment schedule.<sup>8</sup> AR, Tabs IV 1, and IV 2. The documentation of this meeting is the first evidence in the record of actual notice to Appellant of the amended tribal law concerning the documentation required for proof of ownership. As to the other violations identified in the show-cause letter, Natural Resources explained that Appellant and Greg were required to provide a written justification for the requested early turn-out.<sup>9</sup>

In response, on April 13, 2006, Appellant submitted a Notice of Stock Turnout listing both her brand, “D Wyoming Slash H” on the right hip, and the Murnions’ brands (with the notation “included in Bill of Sale”), and stating that 440 head of cattle had been turned out on April 7 and April 10. AR, Tab IV 9. She also supplied a handwritten request for early turnout, citing the water situation on Range Unit 2 as the reason for the request. AR, Tab IV 13.

In an attempt to satisfy the request for additional proof of ownership, the Murnions executed Montana Department of Livestock Bills of Sale on April 13, 2006. AR, Tab IV 13. Each was for the sale of 150 cattle for the sum of \$1.00, subject to payment

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<sup>8</sup> In the interim between the two meetings, Natural Resources personnel contacted the Montana state brand inspector and learned that the conditional bills of sale had not been submitted to the State within the requisite 5 days of sale and thus were not valid. AR, Tabs IV 1 and IV 2.

<sup>9</sup> It appears that the Murnions removed most of their cattle shortly after the April 13, 2006, meeting. AR, Tab IV 1. The remainder were removed by May 2, 2006. *See* AR, Tab IV 20.

clearing the purchaser's bank. Greg submitted those bills of sale on April 19, 2006. On April 21, 2006, Greg responded to the show-cause letter, explaining that there was a misunderstanding with the Murnions regarding the turnout date engendered by the April 8 turnout approved in previous years to compensate for the consistent lack of water in September; that the cows would be branded with Gwen's brand after they calved; and that they had a 5-year payment plan to pay for the cows. AR, Tab IV 15. He also reiterated his request that his name be removed from the grazing permit.

On April 24, 2006, Natural Resources inspected Range Unit 2 and found more than 30 head of cattle bearing the Murnions' brand remaining on the range. AR, Tab IV 17. On April 25, 2006, Greg submitted a bank statement indicating that, as of July 2005, he owned 150 head of cattle. AR, Tabs IV 1 and IV 18.

The Superintendent issued the cancellation decision on April 26, 2006, finding that the proof of ownership presented by Appellant and Greg was insufficient to establish ownership of the cattle turned out on Range Unit 2. While the Superintendent identified all three violations listed in the show-cause letter — grazing outside the grazing season; unauthorized non-Indian livestock grazing; and failing to provide sufficient proof of ownership — he relied solely on the failure to provide sufficient proof of ownership as the basis for the cancellation decision. The proof of ownership issue also implicates the unauthorized non-Indian livestock grazing issue; it does not, however, relate to the grazing outside the grazing season violation.<sup>10</sup> AR, Tab IV 19. The Superintendent determined that neither the conditional bills of sale nor the Montana Department of Livestock bills of sale were acceptable, and that, despite being requested to provide additional information about the arrangement between the Murnions and Appellant, Gwen and Greg had failed to provide any additional proof. The Superintendent did not explain why the bills of sale were insufficient, either under the terms of the permit or under tribal law, neither of which he mentioned. Citing both the unacceptable bills of sale and the lack of additional proof of ownership as the bases for the cancellation decision, the Superintendent advised Appellant and Greg that they had 30 days to appeal the decision, and that if no appeal was filed, the cancellation would become effective.

Appellant, with Greg identified as an interested party, appealed the Superintendent's decision to the Regional Director. AR, Tab II. In her SOR, Appellant alleged that she had not received the April 11, 2006, show-cause letter, nor had she been told that her cattle

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<sup>10</sup> The Superintendent's letter quoted the procedural requirements of 25 C.F.R. § 166.704 for the contents of a show-cause letter, without acknowledging that his own show-cause letter did not comply with those requirements.

could remain on the range unit while her appeal was pending. She addressed the grazing outside the grazing season violation by asserting that she and Greg had routinely turned cows out early due to water conditions and had received permission to do so as documented by previous pasture authorizations and early turnout requests. She denied that any unauthorized non-Indian livestock grazing had occurred, insisting that the bills of sale were more than adequate proof that she, an Indian, and not the Murnions, was the legal owner of the cattle. She similarly disputed the allegation that she had failed to provide sufficient proof of ownership, reiterating again her belief that the bills of sale were sufficient proof of ownership and questioning the competency of the Natural Resources personnel whose advice she had sought to ensure that she did everything correctly.

In his September 22, 2006, decision, the Regional Director affirmed the Superintendent's cancellation of the grazing permit on the ground that Appellant and Greg had failed to comply with the terms and conditions of the allocated permit.<sup>11</sup> He found that ownership of livestock was one of the conditions of the allocated grazing permit, citing the requirement in section 5(c) of the Grazing Resolution that a permittee with an allocated grazing permit own 75% of the livestock allowed under the allocation. He determined that the change in tribal law announced in the 2006 Amendment to the Grazing Resolution not only required all permittees to provide Natural Resources with proof of ownership before turning out their livestock, but also specified the types of information sufficient to constitute proof of ownership, including IRS tax and/or bank information, and explicitly rejected bills of sale as proof of ownership because of the ease with which a bill of sale could be used to defraud the Tribes. The Regional Director found that the bank financial statement submitted by Greg was insufficient to meet those requirements because it did not reflect the purchase of any livestock from the Murnions, and that Appellant had not provided any financial or tax information showing that she owned or intended to purchase any of the livestock needed to meet the Tribes' livestock ownership requirement.

The Regional Director rejected Appellant's explanation for the unauthorized early turn-out, noting that Greg had requested and received the required approvals and waivers before the cattle were turned out in April 2005. According to the Regional Director, since Greg clearly had been well aware of the need for a waiver request and Superintendent approval for early turnout, Gwen, as the co-permittee for the 2006 grazing season, also should have known of these requirements. As to Appellant's claim that she was not notified

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<sup>11</sup> The Regional Director listed all three violations identified in the show-cause letter as forming the bases for the Superintendent's cancellation decision. However, as noted above, the Superintendent relied solely on the lack of sufficient proof of ownership as the ground for cancelling the permit.

of the show-cause letter, the Regional Director pointed out that no official tribal or BIA action had been taken on Greg's request to remove his name from the permit prior to its cancellation, and that he therefore remained a permittee of record; that he, in fact, continued to actively participate in matters relating to the permit; and that service of permit-related notices on him thus satisfied BIA's notice obligations. The Regional Director did not, however, refer to any specific notices provided to Greg concerning the change in tribal law.

The Regional Director concluded (1) that Appellant had violated the terms and conditions of the approved allocated grazing permit by failing to comply with tribal law by providing acceptable evidence that she owned 75% of the livestock grazing on Range Unit 2, i.e., 330 head of the 440 authorized, and had failed to remedy the violation within 10 days after notification of the violation; (2) that the lack of either her or Greg's brand on any of the livestock grazing on the range unit and the Murnions' voiding of the bills of sale after they removed the livestock from the range unit<sup>12</sup> clearly indicated that the Murnions owned the cattle, and that she therefore had violated the terms and conditions of the permit by allowing the Murnions' livestock to graze on the range unit without applying for and receiving an approved pasturing authorization from the Superintendent, a violation she had failed to remedy within 10 days after notification; and (3) that she had violated the terms and conditions of the grazing permit by allowing grazing on the range unit prior to the authorized grazing season without applying for and receiving an approved waiver before the cattle entered the range unit, despite being aware of that requirement, and had failed to remedy the violation by applying for and receiving an approved waiver to modify the grazing season. On these grounds, the Regional Director affirmed the Superintendent's decision to cancel the permit for Range Unit 2. The Regional Director did not address Appellant's argument that she had not received timely notice of the change in tribal law regarding proof of ownership. Nor, although he concluded that Appellant had not remedied the violations within 10 days, did the Regional Director acknowledge that the Superintendent had never advised her that she had 10 days to cure the alleged violations, or that she had a right to seek an extension of time to cure.

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<sup>12</sup> By letter dated June 2, 2006, the Montana Department of Livestock district investigator had advised the Tribes that, at the request of the Murnions, he had placed the Montana Department of Livestock bills of sale on hold pending completion of the requisite change of ownership inspection, which had been scheduled to be performed in early June 2006 when the cattle were branded, but that, after removing their cattle from Range Unit 2 on May 2, 2006, the Murnions had told him that the inspection was no longer necessary and that the bills of sale to Gwen should be destroyed. AR, Tab IV 20.

This appeal followed.

### Standard of Review

A BIA decision to cancel a permit involves an exercise of discretion. *Cheyenne River Sioux Tribe v. Aberdeen Area Director*, 23 IBIA 103, 110 (1992); *see also Shirley Delgado v. Acting Anadarko Area Director*, 27 IBIA 65, 74-75 (1994) (BIA is not required to cancel a lease whenever the lease terms or regulations are violated; rather it retains discretion to review the circumstances surrounding a violation(s) and determine whether cancellation is warranted). When a BIA decision is based on the exercise of discretion, the appellant challenging the decision bears the burden of proving that the BIA official issuing the decision failed to properly exercise that discretion. *Curtis Laducer v. Acting Great Plains Regional Director*, 48 IBIA 294, 299-300 (2009); *Blackfeet National Bank v. Director, Office of Economic Development*, 34 IBIA 240, 241 (2000); *Evans v. Sacramento Area Director*, 28 IBIA 124, 127 (1995). In reviewing BIA discretionary decisions, the Board does not substitute its judgment for that of BIA; rather its responsibility is to ensure that BIA gave proper consideration to all legal prerequisites to the exercise of that discretion. *Laducer*, 48 IBIA at 300. Simple disagreement with BIA's reasoning or a general allegation of error is not enough to sustain an appellant's burden. *Id.*; *see Shawano County, Wisconsin, Board of Supervisors and Town of Red Springs, Wisconsin v. Midwest Regional Director*, 40 IBIA 241, 248 (2005).

### Discussion

In her notice of appeal, which was also signed by Greg as an interested party and which includes a copy of her appeal and SOR to the Regional Director, Appellant raises two primary issues. First, she maintains that she was the legitimate owner of the 300 cows through the conditional bills of sale. She contends that the Tribes changed their policy and disapproved bills of sale only after she had made her purchase, and that she did not receive timely notice of the change.<sup>13</sup> Second, she asserts that the out-of-season grazing citation was caused by her reliance on erroneous advice from Natural Resources personnel who, she claims, orally agreed to the early turnout but failed to follow through with the necessary

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<sup>13</sup> Although she claims that the change in law occurred after her purchase of the Murnions' cattle, the March 13, 2006, promulgation of the 2006 Amendment actually preceded the March 28, 2006, conditional bills of sale.

paperwork, and that, in any event, she had the cows removed immediately and thus cured the violation within the 10-day period set out in the show-cause letter.<sup>14</sup>

We reject Appellant's argument that her conditional bills of sale constitute adequate proof of ownership under tribal law, as amended. But we agree that the record is devoid of evidence that either the Tribes or BIA complied with the regulatory requirements to give permittees notice of changes in tribal law, or that the Regional Director considered this omission in deciding to cancel Appellant's permit. We also conclude that the Superintendent failed to issue a proper show-cause letter, and that the Regional Director failed to consider this fact as well in affirming the permit cancellation. The Regional Director found that Appellant had not cured the violations within 10 days, but he ignored the fact that the Superintendent's show-cause letter failed to advise Appellant of her right to cure or to seek an extension of time to cure.

Appellant's bills of sale do not satisfy the proof of ownership requirements of the 2006 Amendment, to which Appellant is subject. In addition, it appears that they also do not fulfill the requirements set out in section 5(f) of the original 2003 Grazing Resolution, which accepted bills of sale as proof of ownership but only if they were "*accompanied by receipts demonstrating actual transactions.*" (Emphasis added.) Appellant did not submit any receipts demonstrating that the bills of sale documented actual transactions and therefore did not meet the requirements of the pre-amendment Grazing Resolution. Thus, the Regional Director's conclusion that Appellant violated the 75% ownership requirement in her permit is supported by the record. But a permit violation, while it may provide grounds for cancellation, does not require cancellation, *Cheyenne River Sioux Tribe*, 23 IBIA at 110, and BIA may not rely on a permittee's permit violation while turning a blind eye to its own violations of the regulations.

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<sup>14</sup> Appellant has also filed an opening brief in which she avers that she paid the non-Indian rate for the cattle grazed in the 2005 grazing season; questions the competency of Natural Resources and the Regional Director's reliance on Natural Resource's views on tribal laws; reiterates that neither she nor Greg ever received the 10-day show-cause letter; and complains about extraneous and irrelevant information in the administrative record, specifically communications from Greg's ex-wife. Because we are vacating the Regional Director's decision on procedural grounds, Appellant's claim that she did not receive the Superintendent's show-cause letter is moot. We leave it for the Regional Director on remand to determine whether any of Appellant's additional allegations has merit or is otherwise relevant.

Failure to consider BIA's violations in this case is especially egregious because those violations denied Appellant her procedural due process rights. Specifically, although Appellant asserts that she did not receive timely notice of the change in tribal law as required by 25 C.F.R. § 166.104, and no evidence exists that she did, in fact, receive that notice, the Regional Director did not even mention, much less consider, that fact in reaching his decision to affirm the permit cancellation.<sup>15</sup> And, even though the Superintendent failed to provide the requisite contents for a written notice of violation — show-cause letter — set out in 25 C.F.R. § 166.704, the Regional Director nevertheless upheld the permit cancellation because Appellant had not cured the violations within 10 days. He did so despite the fact that the Superintendent had not advised her of her right to cure the violations (or to seek an extension of time in which to cure them). *See Delgado*, 27 IBIA at 80. In light of BIA's violations of Appellant's procedural due process rights, we conclude that the Regional Director's cancellation decision must be vacated and the matter remanded to BIA for further action consistent with this decision.

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 vacates and remands the Regional Director's decision.

I concur:

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// original signed  
Sara B. Greenberg  
Administrative Judge\*

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\*Interior Board of Land Appeals, sitting by designation.

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<sup>15</sup> We emphasize that to the extent Appellant may be suggesting that lack of actual notice of the change in tribal law precludes its applicability, Appellant is wrong. The notice requirement is relevant to BIA's decision whether to cancel a permit for violations of tribal law, but the regulations do not make the effectiveness of tribal law contingent on notice being provided pursuant to BIA's regulations.