



INTERIOR BOARD OF INDIAN APPEALS

Grady Claymore and Robin Claymore v. Great Plains Regional Director,
Bureau of Indian Affairs

56 IBIA 246 (03/18/2013)



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

GRADY CLAYMORE AND ROBIN)	Order Vacating and Remanding
CLAYMORE,)	Decision
Appellants,)	
)	
v.)	
)	Docket No. IBIA 11-054
GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	March 18, 2013

Grady Claymore and Robin Claymore¹ appealed to the Board of Indian Appeals (Board) from a December 15, 2010, decision (Decision) of the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). In that Decision, the Regional Director affirmed the Cheyenne River Agency Superintendent’s (Superintendent) July 27, 2010, decision to cancel Appellant’s 2008-2013 grazing permit for Range Unit (RU) #250 on the Cheyenne River Reservation. The Regional Director cancelled Appellant’s grazing permit on the ground that Appellant falsified ownership of livestock in his application to the Cheyenne River Sioux Tribe (Tribe) for a noncompetitive allocation of grazing privileges pursuant to the Tribe’s Grazing Ordinance No. 71 (Ordinance).²

¹ This appeal was filed by Grady Claymore and his wife, Robin Claymore. The appeal involves a grazing permit that was requested by and granted to Mr. Claymore, and most of the correspondence relating to the permit was between BIA and him. We refer to Mr. Claymore, either alone or in conjunction with Mrs. Claymore, as “Appellant.”

² On the same day that the Superintendent cancelled Appellant’s grazing permit, he also cancelled Appellant’s pasturing authorization and hay permit for RU #250 on the ground that the grazing permit had been cancelled. *See* Administrative Record (AR) Tab B, Ex. AJ & AK. The Regional Director’s Decision does not specifically refer to the pasturing authorization, which apparently expired according to its own terms on October 31, 2010, *see* Pasturing Authorization (AR Tab B, Ex. AG), or the hay permit, and the hay permit is not contained in the record. Thus, we cannot determine the status of the hay permit or how, if at all, it is related to the grazing permit. Our decision is applicable to all of

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We vacate the Regional Director's Decision and remand this matter to him for further consideration. Allocation of grazing privileges is an intra-tribal issue: Grazing allocations are tribal decisions made under tribal law and BIA's role is ministerial in granting or approving grazing permits pursuant to a tribe's decisions. After a permit is issued, BIA's role with respect to eligibility for preferential allocation remains ministerial. BIA lacks authority to cancel a grazing permit based solely on its determination that the permit holder was ineligible under tribal law for the tribe's allocation award. Nothing in the regulations or Tribal law authorizes BIA to countermand the Tribe's decision to grant a preferential allocation to Appellant. There is no evidence in the administrative record that the Tribe itself revoked Appellant's allocation or requested BIA to cancel his grazing permit based on any falsification of his eligibility. Therefore, we vacate the Regional Director's Decision to cancel Appellant's grazing permit (and any related permit or authorization), and we remand this matter to the Regional Director to refer, in his discretion, the question of Appellant's eligibility for a preferential grazing allocation to the Tribe for decision.

Background

I. Regulatory Framework for Tribally Allocated Grazing Permit Preferences

An Indian tribe may develop an allocation procedure that apportions grazing privileges to tribal members without competition, thereby giving the recipient a preference to receive a grazing permit over other prospective permittees. *See* 25 C.F.R. §§ 166.4 (definition of Allocation), 166.218(a) & (b). BIA implements a tribe's allocation decisions by granting or approving permits. *See id.* § 166.218(c); *Frank v. Acting Great Plains Regional Director*, 46 IBIA 133, 135 (2007). In doing so, BIA does not second-guess a tribe's decisions, but processes the decisions in a ministerial capacity. *See Frank*, 46 IBIA at 144.

Grazing permits are issued for "range units," which are consolidated tracts of rangelands that BIA creates after consultation with the Indian landowners. *See* 25 C.F.R. §§ 166.4 (definition of Range Unit), 166.302. BIA grants permits for grazing on RUs that contain individual Indian land and BIA approves tribally granted permits for grazing on RUs that consist entirely of tribal lands. *See id.* § 166.217(a) & (c). With limited

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Appellant's permits and authorizations that were issued based on Appellant's eligibility for preferential allocation or, more generally, on his application for preferential allocation.

exceptions, anyone wishing to graze livestock on Indian trust or restricted land must obtain a permit. *See id.* § 166.200.³

The allocation of grazing privileges on the Cheyenne River Reservation is governed by Tribal law. The Tribe developed an allocation procedure and eligibility criteria for awarding grazing privileges. *See* Ordinance (AR Tab D). Applicable to this appeal, the Ordinance establishes the following allocation preference for tribal members who owned at least a certain amount of livestock on the RU before the start of the 2008-2013 grazing period: “Permittee(s) owning 50% of the stock of the carrying capacity of the range unit they currently hold will be re-allocated that range unit.” Ordinance § II(2); *see also id.* § II(3) (permittees not owning 50% during the 2003-2008 grazing period must apply with other applicants).

For the purpose of this allocation preference, the classification of livestock as either member owned or non-member owned is determined by brand: “*Tribal member owned* livestock are livestock bearing the brand of a Tribal member. . . . *Non-member owned* livestock are livestock bearing the brand of a non-member.” *Id.* § X(1)(a) & (b); *see also id.* § X(2) (“Tribal member owned livestock must be branded with [a] registered South Dakota brand in the name of the Tribal member(s) and their spouse.”). If “[a]ny questions” arise regarding livestock ownership, “the Tribe reserves the right” to summon records from the livestock owner that might substantiate ownership, including bank/mortgage/loan documents, Uniform Commercial Code (UCC) financing statements, Federal income tax returns, and livestock purchase and sales documents. *Id.* § X(4).

In addition, the Tribal Council reserves both “the authority to review the application(s) of all participants in the grazing permit system” and “the authority to disallow the award of any grazing or haying privileges pursuant to this ordinance if, acting in its sole discretion, the Council concludes that such an allocation would impede the fulfillment of this grazing ordinance.” *Id.* § VI; *see also id.* at Preamble. The Ordinance warns that “[f]alsification of ownership shall be grounds for cancellation of the permit . . . and will be reported to [BIA].” *Id.* § X(3); *see also id.* § XII(1)(e).

³ The RU involved in this appeal, RU #250 on the Cheyenne River Reservation, comprises both allotted land (i.e., individual Indian land) and tribal land, and therefore Appellant’s permit was granted by BIA. Grazing Permit for RU #250 for 2008-2013 (Permit) (Regional Director’s Answer Brief (Br.), Attach.).

II. Factual Background

Appellant is an enrolled member of the Tribe and he conducted grazing on RU #250 during the 2003-2008 grazing period under a permit. According to Appellant, in approximately 2005 he entered into an oral agreement with Paul Oberlitner (Oberlitner), a non-member rancher, to purchase 50 cows (excluding calves) on a multi-year plan so that Appellant would be able to meet the Ordinance's new ownership requirements⁴ for noncompetitive reallocation of RU#250 for the 2008-2013 grazing period. *See* Appellant's Affidavit and Statement of Reasons (SOR), Aug. 27, 2010, at 1-2, 4 (unnumbered) & Ex. A (AR Tab C).⁵

On October 17, 2008, Appellant applied to the Tribe for noncompetitive reallocation of RU #250. Application for Allocation of Grazing Privileges, Oct. 17, 2008 (Application) (AR Tab B, Ex. AO). Appellant certified that he owned 56 cows, or 56 animal units (AU), branded with his brand. *See id.*

The Tribe apparently awarded Appellant the allocation preference for RU #250 that he requested.⁶ BIA granted Appellant's grazing permit, which covered the period of November 1, 2008, to October 31, 2013, and listed a carrying capacity of 92 AU. *See* Permit at 1; Ordinance § XIX(3) (permit period).⁷ Based on the Ordinance's requirement that a permittee own at least 50% of the carrying capacity, Appellant apparently needed to own at least 46 AU prior to the start of the grazing period to be eligible for noncompetitive reallocation of RU #250.

⁴ The Ordinance became effective with the allocation of grazing permits in the year 2008. *See* Ordinance § XIX(17).

⁵ Appellant submitted an affidavit and statement of reasons to the Regional Director in his appeal of the Superintendent's decision, referred to as the "SOR," and he submitted a similar affidavit and statement of reasons to the Board in his appeal of the Regional Director's Decision, referred to as the "SOR to the Board."

⁶ The record contains Appellant's application but it does not contain documentation of Appellant's selection for noncompetitive grazing privileges. However, it appears to be undisputed that the Tribe awarded Appellant a preferential allocation based on Ordinance § II(2) (permittee owning 50% of the stock of the carrying capacity of the RU that he/she currently holds).

⁷ The permit appears to have been signed by the Superintendent in December 2008 and recorded with BIA's Land Titles and Records Office in January 2009. *See* Permit.

After the 2008-2013 grazing period commenced, BIA conducted the first of two permit compliance inspections on RU #250. *See* First Compliance Count, July 9, 2009 (AR Tab B, Ex. I). During the first inspection, two BIA employees counted 7 bulls and 169 cattle bearing Oberlitner's brand, and 7 horses bearing Appellant's brand. *See id.* During the second inspection, which was conducted four days after the first inspection, two BIA employees counted 148 cattle bearing Oberlitner's brand, 12 cattle bearing the brands of both Oberlitner and Appellant, and 9 cattle and 7 horses bearing Appellant's brand. *See* Second Compliance Count, July 13, 2009 (AR Tab B, Ex. J). The BIA employees also noted that all of the calves bore Oberlitner's brand. *See id.*

Based on these compliance counts, on July 15, 2009, the Superintendent sent Appellant a letter requesting his 2008 Federal income tax records and any other documents that demonstrated Appellant's ownership of the 56 cows claimed in his application for allocation. *See* AR Tab B, Ex. K. The Tribe received a copy of this letter and nearly all of the other written correspondence in the record among BIA, Appellant, and Oberlitner regarding Appellant's livestock ownership.

On September 2, 2009, the Tribe sent Appellant a letter expressing "concerns" about his ownership of the livestock on RU #250. Letter from the Tribe to Appellant, Sept. 2, 2009, at 1 (SOR, Ex. E). The letter required Appellant to produce his 2008 Federal income tax Form 1040 Schedule F and a UCC financing statement by September 11, 2009, and warned that if he failed to provide this information to the Tribe by the deadline "your Range Unit will be cancelled for falsification of ownership of livestock, in accordance with the [Ordinance]." *Id.* at 1-2. According to Appellant, he and his wife met with the Tribe's Land and Natural Resource Office on September 11, 2009, and the Tribe expressed satisfaction with the documentation that they provided, which included a notarized statement by Oberlitner and a bill of sale signed by Oberlitner, both dated August 11, 2009, confirming Appellant's purchase of 46 head of cattle and including "45 2009 calves." *See* SOR at 3 (unnumbered) & Ex. D, E, F & G. In a letter to BIA dated April 26, 2010, Appellant informed the Superintendent about this meeting and asserted that the Tribe's concerns were satisfied. *See* AR Tab B, Ex. S.

The record does not contain evidence that the Tribe revoked Appellant's allocation or requested that BIA cancel his grazing permit. The only correspondence in the record from the Tribe relating to Appellant's permit is the Tribe's September 2, 2009, letter to Appellant.

Following the Tribe's September 2 letter, the Superintendent made several additional requests to Appellant and Oberlitner for ownership documentation. *See* AR Tab B, Ex. N, O, R, U, W & AA. Ultimately, on June 24, 2010, the Superintendent requested, *inter alia*, a notarized contract for Appellant's purchase of cattle from Oberlitner

and a UCC financing statement. *See* AR Tab B, Ex. AF. On July 20, 2010, Appellant and Oberlitner entered into a written contract purporting to memorialize “a previous oral Contract” for Appellant’s purchase of “46 bred calf/cow pairs.” *See* Contract for Bill of Sale, July 20, 2010 (SOR, Ex. P). Neither the contract nor any of the other information furnished by Appellant and Oberlitner satisfied BIA that Appellant owned the cattle in question at the time Appellant applied for noncompetitive reallocation of RU #250 in October 2008.

On July 27, 2010, the Superintendent cancelled Appellant’s grazing permit (and hay permit and pasturing authorization) for falsification of ownership. *See* AR Tab B, Ex. AI, AJ & AK. The specific ground for the Superintendent’s decision was: “In October of 2008, you certified ownership of these cows in question when you made application for your grazing permit. By falsifying ownership of these cattle, you were able to obtain a non-competitive allocation of this grazing permit, which is in direct violation with [the] Ordinance.” AR Tab B, Ex. AI at 1-2 (unnumbered).

Appellant appealed the Superintendent’s decision to the Regional Director and in doing so submitted additional information and documentation purporting to establish ownership. Essentially, Appellant argued that the Superintendent misunderstood Appellant’s agreements with Oberlitner and did not properly consider other evidence. *See* SOR at 2-4 (unnumbered).

On December 15, 2010, the Regional Director issued his Decision affirming the Superintendent’s decision to cancel Appellant’s grazing permit. *See* AR Tab A. The Regional Director specifically concluded that Appellant “seems to have falsified his claim of ownership of 56 cows, when he submitted his Application for Allocation,” and that “[i]t does not seem Mr. Claymore could have been considered as an owner until the July 20, 2010, Contract for Sale for 46 head of livestock was developed.” *Id.* at 2. The Decision does not indicate whether the Tribe had already reached this conclusion or had requested cancellation of Appellant’s permit.

This appeal followed. Appellant filed a notice of appeal. Prior to the Board’s notice of docketing and order setting briefing schedule, Appellant also filed an affidavit and statement of reasons with the Board. Appellant did not submit an opening brief. The Regional Director submitted an answer brief. The Board did not receive a reply from Appellant.

Discussion

I. Standard of Review

The standard of review that the Board applies to a Regional Director's decision to cancel a grazing permit was described in *Gorneau v. Acting Rocky Mountain Regional Director*, 50 IBIA 33, 43 (2009), as follows:

A BIA decision to cancel a permit involves an exercise of discretion. 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. 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. Simple disagreement with BIA's reasoning or a general allegation of error is not enough to sustain an appellant's burden.

(citations omitted); *see also Frank*, 46 IBIA at 140 (the Board reviews the Regional Director's decision to determine whether it comports with the law, whether it is supported by substantial evidence, and whether it is arbitrary and capricious, and the Board reviews questions of law *de novo*).

II. Analysis

The Regional Director argues that his Decision reflects reasonable action "to enforce the CRST grazing ordinance and protect tribal resources." Answer Br. at 10, 13 (unnumbered). He asserts that he was required to make a credibility determination regarding Appellant's livestock ownership information and that his determination is entitled to deference. *See id.* at 2, 13.

Appellant argues, *inter alia*, that he was not afforded a hearing before the Tribal Council prior to cancellation of the grazing permit, which he asserts is a violation of Ordinance §§ VI & XIX(13). *See* SOR to the Board, Feb. 1, 2011, at 6 (unnumbered).⁸

⁸ Appellant also reasserted all of the statements in his prior SOR and made the following additional arguments: (1) The Regional Director did not consider all of the documents purporting to demonstrate Appellant's ownership that were appended to his SOR; (2) the Regional Director did not consider that livestock counts commonly vary due to several factors; (3) the Regional Director did not consider for purposes of AU totals that Appellant
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Before we approach the subject of Appellant's rights under Tribal law, we express our fundamental agreement with Appellant that cancellation of his permit on *allocation* grounds is an intra-tribal matter. BIA's determination to cancel Appellant's grazing permit is expressly predicated on a finding, by BIA only, that Appellant was ineligible for noncompetitive reallocation of RU #250. *See* Decision at 2 (the Regional Director found that Appellant falsified ownership "when he submitted his Application for Allocation"); *see also* AR Tab B, Ex. AI at 1-2 (the Superintendent found that Appellant "falsified ownership of livestock from 2006-2008" and thereby was "able to obtain a non-competitive allocation" for 2008-2013). We hold that where BIA determines to cancel a grazing permit based on a finding that the permittee was ineligible, as a matter of tribal law, for the grazing allocation awarded by the tribe, the finding of ineligibility (and support for BIA's decision to cancel the permit) must be made in the first instance by the tribe, not by BIA. BIA may not usurp a tribe's sovereign right to apply its own laws and to determine what relief, if any, is appropriate where tribal law has been violated.

The Board's precedent is clear that BIA's act of issuing of permits in accordance with allocation decisions made by the tribe is a ministerial one. *E.g., Anderson v. Great Plains Regional Director*, 52 IBIA 327, 334 (2010); *Frank*, 46 IBIA at 144. Grazing allocations are made under tribal law, and BIA issues permits in accordance with decisions made by the tribe. *See Frank*, 46 IBIA at 144 (citing *Ewing v. Rocky Mountain Regional Director*, 40 IBIA 176, 183 (2005)). Therefore, as a general rule, "[n]either the Board nor BIA has authority to order [an] allocation of grazing privileges in a manner inconsistent with the expressed wishes of" an Indian tribe. *See, e.g., Anderson*, 52 IBIA at 334; *Frank*, 46 IBIA at 144; *Hunt v. Aberdeen Area Director*, 27 IBIA 173, 179-180 (1995); *see also Rosebud Indian Land and Grazing Association v. Acting Great Plains Regional Director*, 42 IBIA 47, 52 (2005) ("The Board is not a court of general jurisdiction and does not have authority to review action by tribes.").

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owned seven horses; and (4) the administrative record was not timely or completely submitted by the Superintendent, and the Regional Director did not forward Appellant a copy to review. *See* SOR to the Board at 5-6 (unnumbered). We do not need to reach the first three arguments, however, the Regional Director may consider them on remand. We consider Appellant's fourth argument to be stale because the Board issued a notice of docketing and order setting briefing schedule on February 23, 2011, to which the Board attached a table of contents of the administrative record and instructed Appellant to make arrangements with the Regional Director to obtain desired copies of documents in the record. The Board received no indication after February 23, 2011, from Appellant that the Regional Director failed to make copying arrangements, if Appellant requested any.

BIA's role in canceling a permit on *allocation* grounds is no less ministerial than BIA's role in granting or approving a permit based on the tribe's allocation decision. As the Board explained in *Anderson*, "BIA's commitment is to assist tribes in enforcing their laws" and is not to "enforce' a tribe's permit preference allocation law . . . in contravention of the tribe's own interpretation and decision about which tribal member is entitled to the permit preference under tribal law." *Anderson*, 52 IBIA at 334 (construing 25 C.F.R. § 166.103(b), which provides that "the tribe is primarily responsible for enforcing tribal laws" and BIA will "[a]ssist in the enforcement of tribal laws"); *see generally O'Bryan v. Acting Great Plains Regional Director*, 41 IBIA 119, 131 n.16 (2005) ("nothing in Part 166 sets out procedures for such BIA assistance").

Anderson involved a prospective permittee who requested BIA to intervene on her behalf after the tribe decided not to give her an allocation preference—which she contended was contrary to tribal law. *Frank* involved a prospective permittee who claimed that the tribe improperly revoked his allocation award, resulting in the permit being issued to another applicant. In both of those cases, BIA abstained from taking action contrary to tribe's allocation decision and the Board affirmed BIA's decisions. *Anderson*, 52 IBIA at 335-36; *Frank*, 46 IBIA at 147. In this appeal, BIA would have us, in essence, undo the Tribe's allocation award to Appellant because BIA determined that Appellant was ineligible for it. We find no basis for such an exception to the general rule of abstention on allocation matters. *See Jacobs v. Great Plains Regional Director*, 43 IBIA 249, 257 n.10 (2006) ("[T]o the extent Appellants seek to challenge the original allocation to [the permittee or his] eligibility, the Board is not the proper forum in which to pursue such claims.").

Although not essential to our holding, we also note that the Ordinance contains clear assertions of the Tribe's authority regarding falsification of ownership for the purpose of obtaining an allocation. *See, e.g.*, Ordinance § VI(1) ("The Tribal Council shall have the authority to review the applications(s) of all participants in the grazing permit system, and further shall have the authority to disallow the award of any grazing or haying privileges pursuant to this ordinance if, acting in its sole discretion, the Council concludes that such an allocation would impede the fulfillment of this grazing ordinance."); § X(4) (If "[a]ny questions [arise] regarding the Livestock Ownership Classification, the Tribe reserves the right to summon[] any one or all of the following records"); §§ X(3), XII(1)(e) ("Falsification of ownership . . . will be reported to [BIA]."). In sum, the Board and BIA generally do not have authority to order allocation—or revocation of allocation—of grazing privileges in a manner inconsistent with a tribe's decisions, and this appeal is no exception to the general rule.⁹

⁹ We might have decided this appeal differently if the record indicated that the Tribe had revoked Appellant's allocation for falsification of ownership, or if the Tribe had expressly
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BIA's error appears to stem from a misconception regarding the Federal trust responsibilities for Indian rangelands. The Regional Director correctly asserted that "Tribal rangelands are a trust resource to be protected." Answer Br. at 10 (unnumbered); *see, e.g., Buffington v. Acting Great Plains Regional Director*, 37 IBIA 12, 16 (2001) ("[U]nder its authority and responsibility to protect Indian trust resources, BIA necessarily has authority to enforce provisions of a grazing permit relating to conservation of those resources."). But the Regional Director incorrectly suggested that the trust responsibilities extend beyond protecting the trust resource from deterioration—which the Regional Director did not find Appellant to have caused—to include "ensur[ing] that the significant benefits of tribal resources and non-competitive allocation are primarily flowing to tribal members." Answer Br. at 10 (unnumbered). The allocation of tribal resources among members and non-members is a purely tribal decision, for which BIA bears no responsibility. If there is evidence that trust resources are being transferred by a permittee to a non-Indian party contrary to the expressed wishes of the tribe, BIA may, of course, "assist" the tribe in enforcing its laws. 25 C.F.R. § 166.103(b); *Anderson*, 52 IBIA at 334. Thus, on remand, the Regional Director may, in his discretion, refer the question of Appellant's eligibility for preferential allocation to the Tribe for decision.¹⁰

As to whether Appellant may be entitled to a hearing with the Tribal Council prior to any revocation of his allocation, the Board has held that a tribe's authority to reconsider its allocation of grazing privileges, and to determine whether eligibility for tribal allocations may be challenged within the tribe, are questions of tribal law appropriately resolved in a tribal forum. *See Frank*, 46 IBIA at 141 n.9 (citing *Peltier v. Great Plains Regional Director*,

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requested BIA to cancel the grazing permit on allocation grounds. *See generally Gorneau*, 50 IBIA at 44 n.14 (appellant challenged the regional director's reliance on the views of the tribes' natural resources office and the competency of that office in BIA's determination to cancel the appellant's grazing permit for permit violations based on ownership, which the Board vacated on procedural grounds). But the record indicates neither of those things, and, to the contrary, Appellant contended that the Tribe was satisfied with the documentation of ownership that he provided to the Tribe.

¹⁰ Alternatively, consistent with our decision and the regulations at 25 C.F.R. Part 166, Subpart H (Permit Violations), BIA may determine whether Appellant is in violation of the provisions of his permit, which incorporates applicable Tribal law, as an issue separate from Appellant's eligibility for preferential allocation. *See Permit* at 2 (unnumbered) ("Permittee is subject to all provisions listed in Cheyenne River Sioux Tribal Ordinance 71"); *see also* 25 C.F.R. § 166.102 ("Tribal laws will apply to permits of Indian land under the jurisdiction of the tribe enacting such laws, unless those tribal laws are inconsistent with applicable federal law.").

46 IBIA 16, 21 (2007), and *Ewing*, 40 IBIA at 183). Therefore, we do not reach the question of whether Appellant is entitled to a hearing before the Tribal Council.¹¹

Conclusion

We vacate the Regional Director's December 15, 2010, Decision to cancel Appellant's grazing permit because the Decision was based solely on BIA's determination that Appellant was ineligible as a matter of Tribal law to receive a preferential grazing allocation, and there is no evidence that the Tribe revoked Appellant's allocation or requested BIA to cancel the permit on allocation ineligibility grounds.

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 the Regional Director's Decision and remands the matter for further consideration.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Debora G. Luther
Administrative Judge

¹¹ The Board in *Frank* reserved for future decision whether its holding that BIA need not examine the process by which a tribe determines eligibility, including any process it may have for revoking allocations, might be different where—potentially as here—BIA had issued the appellant's grazing permit and the tribe subsequently revoked the appellant's allocation. *See Frank*, 46 IBIA at 143 & n.14. But as the Board in *Frank* noted, this question would not arise if the tribe reviewed the appellant's eligibility for allocation and concluded that the appropriate remedy is a remedy other than revocation of the allocation award, in accordance with tribal law. *See id.* at 148 n.21.