



INTERIOR BOARD OF INDIAN APPEALS

Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Acting Southern Plains
Regional Director, Bureau of Indian Affairs

56 IBIA 267 (03/29/2013)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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KICKAPOO TRIBE OF INDIANS OF)	Order Dismissing Appeal
THE KICKAPOO RESERVATION IN)	
KANSAS,)	
Appellant,)	
)	
v.)	Docket No. IBIA 11-046
)	
ACTING SOUTHERN PLAINS)	
REGIONAL DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS,)	
Appellee.)	March 29, 2013

The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas (Appellant) appealed to the Board of Indian Appeals (Board) from a November 22, 2010, decision of the Acting Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs, to approve the acceptance into trust of a parcel of land (Brant property) by the United States for the Sac and Fox Nation of Missouri in Kansas and Nebraska.¹ After reviewing the merits briefs, the Board issued an order for Appellant to show cause (OSC) why the appeal should not be dismissed for lack of standing. Appellant failed to respond to the OSC, and therefore we dismiss the appeal based on Appellant's failure to show standing.

The Board's regulations limit the right of appeal to "interested part[ies]." 43 C.F.R. § 4.331; *see also* 25 C.F.R. § 2.2 (definitions of "Appeal" and "Appellant"), *incorporated in* 43 C.F.R. § 4.330(a). An interested party is one "whose interests could be adversely affected by a decision in an appeal." 25 C.F.R. § 2.2 (definition of "Interested Party"), *incorporated in* 43 C.F.R. § 4.330(a). To be "adversely affected" within the meaning of the regulations, as construed by the Board, a party must have "suffered an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest." *DuBray v. Great Plains Regional Director*, 48 IBIA 1, 19 (2008) (citing *Lujan v. Defenders of Wildlife*,

¹ The Brant property is described as the W/2 NW/4 and the SE/4 NW/4 of Section 16, Township 4 South, Range 15 East, Sixth Principal Meridian, Brown County, Kansas, containing 120 acres, more or less.

504 U.S. 555, 560-61 (1992)). An appellant bears the burden of establishing its standing to appeal. *Biegler v. Great Plains Regional Director*, 54 IBIA 160, 163 (2011).

In the proceedings before the Regional Director, it appears that standing was not an issue: Appellant contended that the Brant property was within its reservation boundaries and that its consent for the trust acquisition was thus required under 25 C.F.R. § 151.8. But Appellant dropped that assertion during the course of this appeal. *See* Opening Brief at 1 n.1 (conceding that the Brant property is 1 mile from Appellant’s reservation). Although Appellant nevertheless argued, without elaboration, that the Regional Director “failed to consider the relevant interests of and impacts on [Appellant] and its members,” *id.* at 2, it was no longer apparent what adverse effect the trust acquisition would have on any legally protected right or interest of Appellant.

The Board issued the OSC on January 31, 2013, giving Appellant until February 22 to show that it has standing to maintain this appeal. According to the U.S. Postal Service’s Track-and-Confirm service on its website, Appellant received the OSC on February 6. The Board has received no response from Appellant. Appellant has thus failed to carry its burden of establishing standing.

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 this appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge