



INTERIOR BOARD OF INDIAN APPEALS

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

57 IBIA 146 (06/24/2013)



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

KICKAPOO TRIBE OF INDIANS OF)	Order Dismissing Appeal
THE KICKAPOO RESERVATION IN)	
KANSAS,)	
Appellant,)	
)	
v.)	Docket No. IBIA 11-121
)	
SOUTHERN PLAINS REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	June 24, 2013

We dismiss this appeal from the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas (Tribe) for lack of standing. The Tribe appeals to the Board of Indian Appeals (Board) from an April 18, 2011, decision (Decision) of the Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), that affirmed the decision of BIA’s Horton Agency (Agency) to accept into trust a parcel of land (Johnson property) for the Sac and Fox Nation of Missouri in Kansas and Nebraska (Nation).¹ Despite both the Regional Director and the Nation arguing that the Tribe had failed to articulate any injury that would result from the proposed acquisition, the Tribe did not respond to this charge and, instead, argued only in vague terms that the acquisition would somehow constitute a breach of a “general” trust responsibility to the Tribe and that the United States should have considered certain unspecified “interests of and impacts on the

¹ The Johnson property, consisting of approximately 9.40 acres, is described as the S/2 of Lot 1 in Section 15, Township 4 South, Range 15 East of Sixth (6th) Principal Meridian, less highway rights-of-way, and less a strip of land 30 feet wide along the North boundary and less a tract of land in the S/2 of Lot 1 of said Section 15 described as follows: Beginning at a point on the Westerly right-of-way of existing highway 633.4 feet North of the South line of Lot 1, as measured along said right-of-way, the South line of said Lot 1 having an assumed bearing of North 88 degrees, 48 minutes East; thence north 00 degrees, 46 minutes West 105.00 feet along said right-of-way line; thence South 22 degrees, 26 minutes West 38.1 feet; thence South 00 degrees, 46 minutes East 30.0 feet; thence South 21 degrees, 19 minutes East 42.7 feet to the place of beginning, containing 0.02 acres, more or less, all in Brown County, Kansas.

[Tribe].” Tribe’s Opening Brief (Br.) at 2. We conclude that in the absence of any articulated injury or adverse impact, the Tribe has failed to establish standing to prosecute this appeal.

As we explained in the Tribe’s last appeal to the Board from another trust acquisition for the Nation,

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*, 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).

Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Acting Southern Plains Regional Director, 56 IBIA 267, 267-68 (2013).

Here, the Nation squarely challenged the Tribe’s standing when the Tribe appealed the Agency’s decision to the Regional Director. *See* Nation’s Answer Br., Sept. 2, 2010, at 2 (unnumbered) (Administrative Record Tab 57) (“The . . . Tribe . . . has no legal standing to object to the . . . decision [and] fails to substantiate how [it is] ‘adversely affected’”). Subsequently on appeal to the Board (and due to a procedural mix-up), the Regional Director filed his answer brief before the Tribe’s opening brief.² The Regional Director argued that the Tribe “does not . . . identify what adverse [e]ffects it may suffer from this [proposed trust] acquisition.” Answer Br. at 7. Consequently, the Tribe’s standing squarely was put at issue, the Tribe bears the burden of establishing its standing, and the Tribe should have addressed its standing in its opening brief. The Tribe did not.³

² After receiving the Regional Director’s brief, the Tribe immediately moved to file its brief out of time, asserting that it did not receive the Board’s scheduling order. The motion was granted, and the Tribe filed its opening brief six weeks later.

³ Before the Regional Director, the Tribe had maintained that the Johnson property fell within its reservation boundaries and that BIA had failed to obtain the Tribe’s consent to
(continued...)

Instead, the Tribe argued that the United States failed in its trust responsibility towards the Tribe and failed to consider “the relevant interests of and impacts on the . . . Tribe and its members, including without limitation their self-government, self-sufficiency and economic development.” Opening Br. at 2. These general and overbroad statements do not fall among the criteria that BIA is required to consider under 25 C.F.R. Part 151 when evaluating a tribal application to take land into trust, and, as framed, simply do not inform BIA how this particular proposed acquisition is expected to impact the Tribe or how the acquisition breaches a statutory or trust responsibility. The Tribe itself is in the best position to articulate a concrete and particularized injury that could accrue to it from taking the Johnson property into trust. It did not do so.

For these reasons, we conclude that the Tribe failed to meet its burden of showing that it has standing to challenge the acquisition in trust of the Johnson property and fails to show that BIA neglected to discharge its trust responsibility to the Tribe in its consideration of the proposed acquisition.

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
Debora G. Luther
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

(...continued)

the acquisition as required by 25 C.F.R. § 151.8. This argument sufficed to give the Tribe standing before the Regional Director. However, on appeal to the Board the Tribe withdrew that argument, *see* Opening Br. at 1 n.1, and now argues that the Johnson property is “near” the Tribe’s reservation. Again, the Tribe simply does not advise how this “nearness” adversely impacts the Tribe and fails, without more, to establish its standing to challenge BIA’s decision. BIA cannot simply examine the proximity of the proposed acquisition in a vacuum. The Tribe is in the best position to know how the proposed acquisition may impact it and to convey that impact to BIA for its consideration.