



INTERIOR BOARD OF INDIAN APPEALS

Robert Wellman, Jr. and Joan Wellman v.
Acting Rocky Mountain Regional Director, Bureau of Indian Affairs

63 IBIA 316 (09/08/2016)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ROBERT WELLMAN, JR. and JOAN)	Order Affirming Decision
WELLMAN,)	
Appellants,)	
)	
v.)	
)	Docket No. IBIA 15-106
ACTING ROCKY MOUNTAIN)	
REGIONAL DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS,)	
Appellee.)	September 8, 2016

The regulations governing grazing on Indian trust land provide that “[t]ribes grant permits of tribal land,” which generally are subject to the approval of the Bureau of Indian Affairs (BIA).¹ BIA advertised for grazing permits on Blackfoot Tribal lands known as the Smith and Broesder ranches.² Robert Wellman, Jr., and Joan Wellman (Appellants),³ submitted bids, and the Superintendent of BIA’s Blackfoot Agency (Superintendent) forwarded a list of bidders, which included Appellants, to the Blackfoot Tribe (Tribe).⁴ The Tribe informed the Superintendent that Appellants were ineligible for a grazing permit because, according to the Tribe, they were indebted to the Tribe.⁵ The Superintendent advised Appellants that permits would be awarded to other bidding parties, and on appeal, BIA’s Rocky Mountain Regional Director (Regional Director) affirmed.⁶ Appellants contend that they owe the Tribe nothing, that the Tribe falsely raised the claim of indebtedness as blackmail to collect an unenforceable claim, and that BIA erred in refusing to accept Appellants’ bid and award them a permit.

¹ 25 C.F.R. § 166.203(a); *see id.* § 166.217 (“[a] tribe may grant a permit on tribal land . . . in accordance with § 166.203”).

² Opening Brief (Br.), Nov. 5, 2015, at 2.

³ The bid was submitted by Robert Wellman, Jr., but for purposes of this appeal, we attribute his individual actions to Appellants jointly.

⁴ *See* Letters from Superintendent to Wellman, May 5, 2015 (Administrative Record (AR) 25); Letter from Wellman to Superintendent, May 5, 2015 (AR 26); Letter from Superintendent to Tribal Chairman, May 6, 2015 (AR 27).

⁵ Letter from Tribal Chairman to Superintendent, May 11, 2015 (AR 28).

⁶ Letter from Regional Director to Appellants, July 17, 2015 (AR 3).

We affirm the Regional Director’s decision because he correctly concluded that the Tribe—not BIA—grants permits on tribal lands. BIA had no independent authority to award the permit to Appellants. Nor did BIA, as the Regional Director also correctly concluded, have authority to force the Tribe to grant the permit to Appellants, regardless of whether or not the Tribe’s decision to disqualify Appellants’ bids was improper.

Appellants argue that BIA breached its duties under the regulations by failing to accept their bid based upon the Tribe’s claim that Appellants owed a debt to the Tribe. Opening Br. at 1. Appellants rely on 25 C.F.R. § 166.221, as comprehensively setting forth BIA’s responsibility in the competitive bidding process for a grazing permit, including “determin[ing] and accept[ing] the highest or best responsible bidder(s).” *Id.* at 3; *see* 25 C.F.R. § 166.221(b)(3). According to Appellants, nowhere does the regulation provide that BIA will determine whether prospective bidders have an outstanding debt to the landowner. By its terms, however, § 166.221(b) applies when “*BIA grants and approves a permit on behalf of an individual Indian landowner.*” (Emphases added.) In the present case, Appellants contend that they were improperly denied a grazing permit for *tribal lands*. Opening Br. at 2. Thus, § 166.221 does not aid Appellants in this appeal.

More important, and dispositive in this case, is the fact, as Appellants note, that under the regulations, a *tribe* grants a permit on tribal lands. Opening Br. at 3 (quoting 25 C.F.R. § 166.217 and citing 25 C.F.R. § 166.203). Appellants argue that BIA “must approve all permits of Tribal land in order for the permit to be valid,” Opening Br. at 3, but fail to recognize that BIA’s role in approving or disapproving such permits is only triggered after a tribe has agreed to grant a permit for tribal lands. In the present case, the Superintendent forwarded to the Tribe a list of individuals, including Appellants, stating that the individuals on the list “are or may be eligible” for a grazing permit. AR 27. The Tribe responded that Appellants were ineligible. AR 28. If the Tribe’s refusal to accept Appellants’ bid was improper, Appellants’ remedy was to challenge that action in a tribal forum. The Regional Director correctly concluded that BIA did not have independent authority to “step in” to “oversee Tribal permitting,” *see* Notice of Appeal, Aug. 11, 2015, at 2, and grant Appellants a permit for tribal lands, based on the Tribe’s alleged improper refusal to do so. Similarly, the regulations provide no authority for the Board to “order that [Appellants’] bid be accepted.” Opening Br. at 4.

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 July 17, 2015, decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Robert E. Hall
Administrative Judge