



INTERIOR BOARD OF INDIAN APPEALS

Dale Young v. Great Plains Regional Director, Bureau of Indian Affairs

40 IBIA 261 (03/07/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

DALE YOUNG, : Order Dismissing Appeal
Appellant, :
v. :
 : Docket No. IBIA 03-44-A
GREAT PLAINS REGIONAL DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee. : March 7, 2005

This is an appeal from a November 1, 2002, decision of the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), affirming the approval of an exchange of trust land between the Oglala Sioux Tribe (Tribe) and Robert Means, a member of the Tribe. Appellant Dale Young, also a member of the Tribe, holds a grazing permit for Oglala Sioux Range Unit 173, which originally included the tribal tract conveyed to Means in the exchange. For the reasons discussed below, the Board dismisses this appeal for lack of standing.

On May 30, 2001, the Superintendent, Pine Ridge Agency, BIA, approved the deed by which the Tribe conveyed tract 4370 to Means and the deeds by which Means conveyed tract 10236 and a one-half interest in tract 10099 to the Tribe. On July 2, 2001, the Superintendent notified Appellant that, at the request of Means, the tract Means received in the exchange would be removed from Range Unit 173 on December 29, 2001.

As far as the record shows, Appellant did not attempt to appeal the removal. However, on July 1, 2002, he filed a notice of appeal from the Superintendent's approval of the exchange deeds executed by the Tribe and Means. On November 1, 2002, the Regional Director affirmed the Superintendent's approval of the exchange deeds. Appellant then filed a combined notice of appeal and statement of reasons with the Board. He did not file an opening brief or a reply brief. The Regional Director filed an answer brief.

In his notice of appeal, Appellant asserts that the removal of tract 4370 from Range Unit 173 adversely affected him in several respects. In his statement of reasons, he makes twelve arguments against the land exchange, nine of which concern the appraisal conducted prior to the land exchange. In his remaining three arguments, he contends: (1) BIA was required to, but did not, give him notice of the exchange; (2) BIA failed to comply with the

National Environmental Policy Act, 42 U.S.C. §§ 4321-4370f; and (3) the land exchange violated Tribal Ordinance 85-17.

In her answer brief, the Regional Director argues that Appellant lacks standing to challenge the land exchange. As noted above, Appellant did not file a reply brief. Thus, he has not responded to the Regional Director's argument.

The Regional Director argues that Appellant fails to satisfy the first of the three elements of standing described by the Supreme Court in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). She correctly notes that the Board has employed the Lujan analysis in determining whether appellants have standing before the Board to challenge certain BIA decisions. See, e.g., Citizens for Safety and Environment v. Acting Northwest Regional Director, 40 IBIA 87, 92-93 (2004); Shawano County Concerned Property Taxpayers Association v. Midwest Regional Director, 38 IBIA 156, 157-58 (2002); Evitt v. Acting Pacific Regional Director, 38 IBIA 77, 79-80 (2002).

In order to establish standing under the Lujan analysis, a person must satisfy all three of the elements constituting “the irreducible constitutional minimum of standing.” 504 U.S. at 560. To satisfy the first of these elements, “the plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and particularized, * * * and (b) ‘actual or imminent, not “conjectural” or “hypothetical.”’ Id. 1/

The Regional Director argues that Appellant fails to satisfy this element because he has not suffered an injury to a legally protected interest. Specifically, she contends that the injuries he allege all resulted from the removal of tract 4370 from Range Unit 173 and that he had no legally protected interest in having the tract remain in the range unit.

As the Regional Director points out, both BIA's grazing regulations and Appellant's grazing permit explicitly allow the removal of land without Appellant's consent. In this case, removal was authorized by 25 C.F.R. § 166.227(a), which provides: “We will remove Indian land from the permit if: * * * (2) The Indian landowners request removal of their interest, * * * and we determine that the removal is beneficial to such interests.” Under 25 C.F.R. § 166.228(b), Appellant was entitled to 180 days written notice of the removal, which he was given and which is not at issue in this appeal.

1/ The second and third elements were described by the Supreme Court thus:

“Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be ‘fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.’ * * * Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’”

Id. at 560-61.

Appellant's permit provides on page 2:

Termination and Modification.—It is understood and agreed that this permit is revocable in whole or in part pursuant to 25 C.F.R. 166.15. [2/] It is also understood and agreed that any part of the area covered by this permit may be excluded from this range unit by the Superintendent in the exercise of his discretion, or by the transfer of title through sale of allotted land, or by the extinguishment of the Indian right of occupancy of the lands; and thereupon this permit shall cease and determine as to the parts of the range unit thus eliminated.

As noted above, Appellant did not attempt to appeal the removal of tract 4370 from Range Unit 173. Further, even though he asserts in this appeal that the removal adversely affected him, he does not attempt to challenge BIA's authority to effect the removal. Thus, he appears to recognize that he has no legal right to have the tract remain in his range unit. In any event, he fails to show that he has any legally protected interest that was affected by the land exchange, which is what he seeks to challenge in this appeal.

The Board concludes that Appellant has failed to show that he satisfies the first element of standing described in Lujan and that this appeal must therefore be dismissed for lack of standing. In light of these conclusions, the Board does not address the Regional Director's remaining arguments or any of Appellant's arguments.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed for lack of standing.

// original signed
Anita Vogt
Senior Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

^{2/} This provision, which was in effect prior to Mar. 23, 2001, is the predecessor to the present 25 C.F.R. §§ 166.227 and 166.228.