



INTERIOR BOARD OF INDIAN APPEALS

Edson G. Gardner v. Acting Western Regional Director, Bureau of Indian Affairs

46 IBIA 79 (11/07/2007)

Reconsideration denied:

46 IBIA 105



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

EDSON G. GARDNER,)	Order Affirming Decision
Appellant,)	
)	
v.)	
)	Docket No. IBIA 05-90-A
ACTING WESTERN REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	November 7, 2007

Appellant Edson G. Gardner, *pro se*, appealed to the Board of Indian Appeals (Board) from a July 13, 2005, decision (Decision) of the Acting Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director affirmed a January 26, 2005, decision of the Uintah and Ouray Agency Superintendent (Agency; Superintendent), in which the Superintendent (1) determined that he had no authority to issue a hunting and fishing license or identification (ID) card to Appellant, (2) dismissed Appellant’s challenge to BIA approval of a Gang Activity Ordinance enacted by the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe), and (3) declined to comment on a memorandum on water rights submitted by Appellant. We conclude that Appellant has not met his burden of showing error in the Regional Director’s decision and therefore we affirm.

Background

Appellant is not and does not claim to be a member of the Tribe. Instead, Appellant is a descendant — the son — of an individual who is listed on the final roll of “Mixed-Blood Utes,” pursuant to the Ute Partition and Termination Act of 1954 (UPA), 25 U.S.C. §§ 677 *et seq.*¹ The purpose of the UPA was to divide and distribute the assets of the Tribe

¹ In his notice of appeal to the Board, Appellant identifies himself as a “Uintah Mix[ed]-blood Descendant.” In subsequent pleadings, Appellant refers to himself as a “Mix[ed]-blood Indian,” and in an affidavit included with his opening brief he avers that he is considered to be a Native American Indian. Regardless of his cultural or racial identity,

(continued...)

between the Mixed-Blood and Full-Blood members, to terminate Federal supervision over the Mixed-Blood members, and to prepare the Full-Blood members for termination of Federal supervision over them. 25 C.F.R. § 677. A final roll of Mixed-Bloods was published on April 5, 1956, at 21 Fed. Reg. 2208. Appellant's mother, but not Appellant, is listed on the final roll. 21 Fed. Reg. at 2209. The United States ended its supervision over the affairs of the Mixed-Bloods effective August 24, 1961. *See* Ute Termination Proclamation, 26 Fed. Reg. 8042 (Aug. 26, 1961).

The termination of Federal supervision over Mixed-Blood Utes necessarily terminated supervision over their descendants, including Appellant, as specifically decided against Appellant in *Gardner v. United States*, No. 93-4100, 1994 U.S. App. Lexis 10090, *13-14 (10th Cir. May 5, 1994). Several court rulings have concluded that the Mixed-Blood Utes — i.e., those listed on the final roll — retained certain rights in tribal assets that were not susceptible to equitable and practicable distribution under the UPA, including the right to hunt and fish on the reservation. *United States v. Felter*, 752 F.2d 1505, 1512 (10th Cir. 1985); *see also Hackford v. Babbitt*, 14 F.3d 1457 (10th Cir. 1994) (Mixed-Blood Utes retained certain water rights). However, the descendants of Mixed-Blood Utes enjoy no similar rights. *See United States v. Murdock*, 132 F.3d 534 (10th Cir. 1997).

On September 15, 2004, Appellant submitted four documents to the Superintendent in which a range of issues were raised. In his January 26, 2005, response to Appellant, the Superintendent construed Appellant's submission as consisting of (1) a request by Appellant for a hunting and fishing license for the Uintah Valley Reservation and/or an ID card that would entitle him to hunting and fishing rights, (2) a challenge to a Gang Activity Ordinance adopted by the Tribe in 2004 and approved by BIA, which Appellant construed as allowing "criminal sanctions [to be] applied to and against nonmember Indians for fish and game violation[s] on Uintah and Ouray Reservation and by the State of Utah," Tribal Ordinance Memorandum from Appellant to Superintendent, Sept. 15, 2004, at 1, and (3) a memorandum discussing Appellant's position on the rights of Ute allottees to "succeed to [the] Ute [T]ribe's *Winters* rights for Ute lands," Water (*Winters*) Rights Memorandum from Appellant and Lynda Kozlowicz to Superintendent, Sept. 15, 2004, at 1.²

¹(...continued)

which is not relevant to our disposition of this appeal, it is undisputed that Appellant is not listed on the final roll of Mixed-Blood Utes, and that his legal status is that of a *descendant* of a Mixed-Blood Ute.

² The Supreme Court's decision in *Winters v. United States*, 207 U.S. 564 (1908) is one of the landmark decisions recognizing and defining the scope of Federally-reserved Indian water rights.

The Superintendent concluded that he “has no authority to issue hunting and fishing licenses for the Uintah Valley Reservation, or the Uintah & Ouray Reservation.” Superintendent’s Decision at 1. As to the apparent challenge to the Tribal Gang Activity Ordinance, the Superintendent concluded that Appellant lacked standing to challenge BIA’s approval of the ordinance. With respect to the memorandum on water rights, the Superintendent determined that there was no reason to comment on the memorandum because there was “no request [for] action, or complaint about inaction, by the Superintendent.” *Id.*

Appellant appealed to the Regional Director. Appellant argued that the Superintendent violated the equal protection and due process provisions of the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302, by his “non-actions” and failure to “assert jurisdiction over Indians.” Notice of Appeal and Statement of Reasons filed with the Regional Director at 5, 7. Appellant interpreted the Superintendent’s decision as “subject[ing him] to [the] jurisdiction of State of Utah,” *id.* at 1, and asserted that he is under the “exclusive jurisdiction of Uintah and Ouray Indian Reservation,” *id.* at 7. Appellant also asserted that the Superintendent violated “treaties between [the] United States and Pe[.]titioners,” but did not identify the treaties. Appellant did not allege or identify any specific error in the Superintendent’s decision itself.

On July 13, 2005, the Regional Director issued the decision that is the subject of the present appeal. The Regional Director described Appellant’s documents on appeal as “unintelligible,” Decision at 1, and therefore he did not address those submissions. Instead, the Regional Director separately considered in detail both the Appellant’s September 15, 2004, submissions to the Superintendent and the Superintendent’s determination with respect to each submission.³ The Regional Director first noted that, although Appellant described himself as a “Mixed-Blood Uintah,” Appellant is not on the list of Mixed-Bloods created pursuant to the UPA, 25 U.S.C. § 677g, and therefore is not a Mixed-Blood under the UPA. The Regional Director found that Appellant was a *descendant* of Mixed-Bloods terminated under the UPA, and that Appellant was not a member of the Tribe.

As to Appellant’s submissions concerning hunting and fishing licenses, the Regional Director concluded that the Superintendent correctly determined that he had no authority

³ We think that Appellant’s arguments to the Regional Director were susceptible to some response, and the Regional Director should have attempted to construe and address, at a minimum, Appellant’s argument under ICRA. On appeal to the Board, Appellant does not raise — and has therefore abandoned — his ICRA claim. Thus, we need not consider it or the effect of the Regional Director’s failure to do so.

to manage the right to hunt, fish, or perform related activities on or off the Uintah and Ouray Reservation, and had no authority to issue an ID card to Appellant to enable him to hunt and fish on or off reservation. The Regional Director rejected Appellant's reliance on 25 C.F.R. Part 249,⁴ which he found inapplicable because the Tribe does not have off-reservation fishing rights.

With respect to Appellant's challenge to the Tribal Gang Activity Ordinance, the Regional Director affirmed the Superintendent's decision that Appellant did not have standing because he had not shown an injury to him from BIA's approval of the Ordinance. The Regional Director noted that there was no evidence that Appellant was being prosecuted in tribal court, or that Appellant had been threatened by tribal authorities for violation of the ordinance. The Regional Director also noted that, although Appellant appeared to challenge the Gang Activity Ordinance on the ground that it might permit criminal sanctions by the Tribe against non-Indians for fish and game violations, the Ordinance did not address fish and game violations. The Regional Director also concluded that Appellant's appeal of BIA's approval of the ordinance should be rejected on the grounds that he is a nonmember of the Tribe and had not alleged that tribal remedies had been exhausted.

With respect to Appellant's water rights memorandum, the Regional Director concluded that there was no reason to comment on the opinions expressed therein, and that the Superintendent acted properly in not taking any action.

Appellant appealed to the Board, and submitted a statement of reasons with his notice of appeal. The Regional Director and the Tribe filed answer briefs.

Discussion

A. Introduction

Appellant has submitted numerous briefs, motions, and memoranda to support his appeal to the Board. Appellant's various filings can be distilled into nine main arguments: (1) BIA should issue him a hunting and fishing license or ID card to allow him to exercise hunting and fishing rights guaranteed to him by treaty; (2) the Regional Director's

⁴ Part 249 of 25 U.S.C. is entitled "Off-reservation treaty fishing." Section 249.3 limits BIA's issuance of ID cards to individuals listed "on the official membership roll of the tribe [with off-reservation treaty fishing rights] which has been approved by the Secretary of the Interior." 25 C.F.R. § 249.3(b).

dismissal of his challenge to the Tribal Gang Activity Ordinance for lack of standing is a blatant violation of Federal statute and regulation; (3) the Regional Director issued a “premature” decision, Memorandum on Appeal, at 2; (4) the Tribe has interfered with his hunting and fishing rights; (5) BIA should take land into trust for him and/or grant him leasing rights; (6) the Board should invalidate the UPA because it is racially discriminatory; (7) he should prevail on a breach of contract claim under the UPA; (8) he has certain property rights to Uintah Valley lands, including a leasehold tenancy, hunting and fishing rights, and inherited interests, that BIA may not take away without providing him compensation; and (9) BIA should remove a Ute tribal court judge from the bench.⁵ Only the first three of Appellant’s arguments are properly before the Board. With respect to these three issues, we conclude that Appellant has not established error in the Regional Director’s decision. In addition, we conclude that the Regional Director’s decision comports with the law and is supported by substantial evidence. Therefore, we affirm.

The remaining arguments are raised by Appellant for the first time on appeal, either in his notice of appeal, his opening brief, or his reply brief. As a general rule, the Board need not consider arguments raised for the first time on appeal, *see Arizona State Land Dep’t v. Western Regional Director*, 43 IBIA 158, 165 (2006), and we see no reason to do so in this appeal. Therefore, we decline to address issues four through nine and dismiss as to them.

⁵ Many of Appellant’s submissions to the Board include discussions of various areas of Indian law without any argument or discussion of how the statutes and cases cited or quoted by Appellant relate to the issues on appeal. *See, e.g.*, Notice of Appeal and Statement of Reasons (discussing the American Indian Probate Reform Act of 2004, Pub. L. No. 108-374 (Oct. 27, 2004), and BIA’s role in approving conveyances of trust land); Motion for Additional Joinder of Interested Party (discussing eagle feathers and the Tribe’s civil and criminal jurisdiction generally); Opening Brief and Summary Judgment (discussing legislative history of 25 U.S.C. § 71); Motion to Serve Supplemental Pleading and Citation to Supplemental Authority (referring to the Act of September 18, 1970, Pub. L. No. 91-403, 84 Stat. 843, concerning the Uintah Indian irrigation project); and Reply Brief (discussing criminal law and burden on prosecution and alleging civil rights claims under 42 U.S.C. § 1983). We conclude that these discussions, even if they could be construed as arguments, are outside of the scope of the present appeal and are not ripe for our review. *Rosebud Indian Land Grazing Ass’n v. Great Plains Regional Director*, 44 IBIA 36, 41 (2006). To the extent Appellant seeks monetary relief for any of his claims, the Board has no jurisdiction to award any such relief. *See High Sierra Fellowship v. Western Regional Director*, 45 IBIA 197, 199 n.4 (2007).

B. Motions Filed by the Parties

1. Regional Director's Motion to Disqualify Appellant

As part of his answer brief, the Regional Director submitted a lengthy motion to disqualify Appellant from practicing before the Department of the Interior. The Regional Director argues that, in bringing his appeal, Appellant has violated numerous regulations and provisions of the American Bar Association Model Rules of Professional Conduct and lacks grounds on which to bring this appeal. The Regional Director asserts that Appellant presumes to represent the Aboriginal Uintah Nation [AUN], but that Appellant lacks authority to do so. Appellant did not respond to the Regional Director's motion.

The regulations specifically authorize parties to represent themselves, and Appellant is therefore entitled to represent himself before the Board. *See* 43 C.F.R. §§ 1.3(b)(3); 4.3(a). Any lack of clarity in Appellant's arguments, standing alone, does not constitute grounds to disqualify him from representing himself in this appeal, let alone from appearing before the Department. Appellant's notice of appeal does not purport to be filed on behalf of the AUN and therefore the Regional Director's objection to Appellant's representation of AUN's interests is without merit. Therefore, we deny the Regional Director's motion.

2. Appellant's Motions

Appellant has raised several motions, which we address in turn. As part of his amended opening brief, Appellant requests the Board to restrain counsel for the Regional Director from giving opinions on hunting and fishing rights. Appellant cites no authority for the proposition that a legal representative may be restrained from opining on the merits of a case on behalf of a client or construing the meaning and applicability of cases.

Appellant brought two separate motions for partial summary judgment, one seeking judgment that BIA has authority to issue him a hunting and fishing license and the other seeking judgment that BIA has authority to issue him an ID card. Both "motions" are addressed and effectively denied by this decision. Appellant also sought to join the Tribe as an "indispensable party," which we denied by order dated December 12, 2005, and brought a motion to submit additional ("supplemental") authority, which is granted.

Finally, Appellant moves for a temporary restraining order against the Tribe to enjoin the Tribe from refusing to comply with a preliminary injunction entered in 1990 in *Affiliated Ute Citizens of Utah v. Ute Indian Tribe*, Civ. No. 85-C-569J (D.Utah). The preliminary injunction enjoined the Tribe from interfering with the hunting and fishing rights of Mixed-Blood Utes named on the final roll and from interfering with the family of

Mixed-Bloods who accompany the Mixed-Bloods when fishing or hunting on tribal lands. Even assuming Appellant had standing to enforce the preliminary injunction, which he does not, and assuming that the preliminary injunction had matured into a permanent injunction, of which we have not been informed, this Board is not a court of general jurisdiction and has no authority to enter injunctions or to enter enforcement orders. *See Anderson v. Acting Southwest Regional Director*, 44 IBIA 218, 228 (2007). Therefore, this motion is denied.

C. Appellant's Appeal to the Board

1. Standard of Review

Appellant bears the burden of proving error in the Regional Director's decision. *Birdtail v. Rocky Mountain Regional Director*, 45 IBIA 1, 5 (2007). Unsupported allegations are insufficient to sustain this burden of proof. *See All Materials of Montana, Inc. v. Billings Area Director*, 21 IBIA 202, 213-14 (1992). We review the Regional Director's decision for compliance with the law and, with respect to any factual findings, to determine whether it is supported by substantial evidence. *See Birdtail*, 45 IBIA at 5.

2. Standing

While the Board, as an Executive Branch forum, is not limited by the same constitutional and prudential constraints that apply to the exercise of Federal judicial authority, the Board nevertheless adheres to those jurisdictional constraints as a matter of prudence in the interest of administrative economy. *Washoe Tribe of Nevada and California v. Western Regional Director*, 45 IBIA 180, 182 (2007). These constraints include the requirement that an appellant demonstrate that he has standing. *Id.* The Board follows the three elements of standing described in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). *Arizona State Land Dep't*, 43 IBIA at 163. Under *Lujan*, an appellant must show that (1) he has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally-protected interest; (2) the injury is fairly traceable to the challenged action; and (3) the injury will likely be redressed by a favorable decision. 504 U.S. at 560-61.

Appellant relies on *Shawano County Concerned Property Taxpayers Ass'n v. Midwest Regional Director*, 38 IBIA 156 (2002), to support his assertion that he has standing. In that case, the Board noted that it adhered to the three elements of standing described in *Lujan*. *Shawano County Concerned Property Taxpayers Ass'n*, 38 IBIA at 157-58. We conclude that Appellant fails to meet his burden and that he lacks standing as to his claim of

entitlement to a hunting and fishing license or an ID card as well as to his challenge to the Tribal Gang Activity Ordinance.

a. Hunting and Fishing License/ID Card

With respect to Appellant's argument that his treaty rights to hunt and fish have been violated by the Superintendent's refusal to issue him a license or ID card, Appellant fails to demonstrate any possible standing to assert any treaty rights belonging to the Utes. As a *descendant* of a Mixed-Blood Ute, Appellant cannot lay claim to any Ute tribal treaty rights — assuming any such rights still remain viable⁶ — because, as a matter of Federal law, Appellant is not recognized as a Ute Indian, Mixed-Blood or otherwise. *See Gardner*, 1994 U.S. App. Lexis 10090, at *14-15 (Gardner does not have status as a Federally-recognized Mixed-Blood Ute). Put another way, Appellant does not fall into any class of individuals to whom any tribal treaty rights may attach and, therefore, lacks standing to assert any tribal treaty rights as a descendant of a Mixed-Blood Ute.

To the extent that Appellant believes the UPA or the Ninth Circuit's decisions in *Kimball v. Callahan*, 493 F.2d 564 (9th Cir. 1974) (*Kimball I*), and *Kimball v. Callahan*, 590 F.2d 768 (9th Cir. 1979) (*Kimball II*), support his entitlement, he is mistaken. Nothing in these decisions or in the UPA address BIA's authority to issue hunting and fishing licenses or ID cards to the descendants of Mixed-Blood Utes. Indeed, these arguments were raised by another descendant of Mixed-Blood Utes, and were rejected by the court. *Murdock*, 132 F.3d at 539-40.

Appellant also claims he is entitled to an ID card pursuant to 25 C.F.R. Part 249, which governs off-reservation treaty fishing. Pursuant to 25 C.F.R. § 249.3(a), “[t]he Commissioner of Indian Affairs shall arrange for the issuance of an appropriate identification card to any Indian entitled thereto as prima facie evidence that the authorized holder thereof is entitled to exercise the [off reservation] fishing rights secured by the treaty designated thereon.” However, BIA is prohibited from issuing an ID card “to any Indian who is not on the official membership roll of [a] tribe which has been approved by the

⁶ We observe that the Regional Director stated that “the Ute Tribe has no treaty . . . for any purpose with the Federal Government.” Decision at 3. As Appellant correctly points out, the United States did enter into one or more treaties with various bands of Ute Indians, including the Uintah Band. *See, e.g.*, Treaty of March 2, 1868, 15 Stat. 619. Whether or not the Tribe, as currently constituted, is the successor in interest to any rights that may remain from that treaty or any other is an issue we need not reach, given our disposition of this argument.

Secretary of the Interior.” 25 C.F.R. § 249.3(b); *see also Tarabochia v. Deputy Assistant Secretary – Indian Affairs (Operations)*, 12 IBIA 269, 271 (1984).

Appellant has not demonstrated any eligibility for an off-reservation ID card because he is not entitled to treaty fishing rights belonging to the Mixed-Blood Utes and he cannot show that he is listed “on the official membership roll of [a] tribe which has been approved by the Secretary.” 25 C.F.R. § 249.3(b).⁷ To the extent that he claims to be a member of the Uintah Band, this band is no longer Federally-recognized except to the extent that it merged with the Uncompahgre and Whiteriver Ute Bands to form the present-day Ute Tribe from which the Mixed-Blood Utes were terminated. *See Murdock*, 132 F.3d at 540.

For Appellant, standing to claim the right to a hunting and fishing license or ID card merges with the merits. Because he has no legally-protected interest, Appellant lacks standing *and* he is ineligible for a hunting and fishing license or ID card from BIA. We therefore conclude that he has failed his burden of showing error in the Regional Director’s decision on this issue. Moreover, we conclude that the Regional Director’s decision is supported by substantial evidence and is in accordance with the law.

b. Tribal Gang Activity Ordinance

Appellant contends that the Regional Director’s dismissal of his challenge to the Tribal Gang Activity Ordinance for lack of standing is a blatant violation of Federal statute and regulation. Relying on 5 U.S.C. § 702, Appellant suggests that the Regional Director’s decision to deny him the relief he requested from the Superintendent is, on its own, sufficient to grant him standing. He does not address the Federal and Board cases relied on by the Regional Director.

⁷ Appellant produces a copy of an identification card for his mother signed by the Superintendent. At the top, the card explains “[f]or purposes of hunting and fishing only” and identifies his mother as “Ute Mixed Blood.” Because his mother is listed on the final roll of Mixed-Blood Utes, *see* 21 Fed. Reg. at 2209 (listing Carma Colleen Reed Gardner), she is entitled to hunting and fishing rights. *See Felter*, 752 F.2d at 1512. However, the eligibility of Appellant’s mother for an ID card does not entitle Appellant to a card. As explained by the Tenth Circuit in *Murdock*, the rights enjoyed by Appellant’s mother are not alienable, descendible, inheritable, or transferable. 132 F.3d at 539 (“As each of the mixed-blood Utes [listed on the final roll] passes away, his or her personal right of user [to hunt and fish on the reservation] is extinguished, it being neither inheritable or transferable,” quoting *United States v. Felter*, 546 F.Supp. 1002, 1025 (D.Utah 1982)).

Appellant appears to be concerned that if he were to hunt or fish on the reservation without a license or other authorization, the ordinance might be applied to him. However, Appellant fails to articulate any basis for his concern and thus it is too speculative. *See Peltier v. Great Plains Regional Director*, 46 IBIA 16, 23 (2007) (appellant’s argument — *if* a BIA-approved tribal constitutional amendment were enforced against him, his civil rights *will* be violated — was too speculative to support standing to challenge BIA’s approval of the amendment). A fair reading of the ordinance does not give rise to a concern that it will be applied to persons who fish or hunt illegally on tribal lands and Appellant does not put forth any evidence to show that the Tribe intends to apply its gang activity ordinance to him personally or to persons who hunt or fish illegally. Nothing in the ordinance specifically addresses fishing or hunting and Appellant does not explain how the ordinance would be construed to reach any such conduct.

Appellant’s reliance on 5 U.S.C. § 702 is misplaced. That statutory provision, which is part of the Administrative Procedures Act (APA), grants a right of judicial review to persons suffering a “legal wrong because of agency action.” *Skagit County v. Northwest Regional Director*, 43 IBIA 62, 79 (2006). Even if we were to consider section 702 by analogy to these administrative proceedings, it would not help Appellant because he has not shown any injury resulting from the agency action, i.e., BIA’s approval of the gang activity ordinance. Thus, we do not even reach the issue of whether any such alleged injury constitutes a “legal wrong” within the meaning of section 702. Finally, we note that the APA does not grant standing where it does not otherwise exist. With respect to Appellant and his challenge to the gang activity ordinance, the Superintendent and the Regional Director determined that Appellant has not been affected — and is not reasonably likely to be affected in the near future, if ever — by BIA’s approval of the ordinance and, thus, Appellant lacks standing. As we explained above, we agree.

Therefore, we conclude that Appellant has not met his burden of showing that any injury is likely or imminent, and therefore lacks standing to challenge BIA’s approval of this ordinance.

3. Whether the Regional Director’s Decision was Premature

Appellant appears to suggest that the Regional Director issued a premature decision, and therefore interested parties were deprived of their rights to due process. In support, Appellant cites to *Stockbridge-Munsee Community v. Acting Minnesota Area Director*, 30 IBIA 285 (1997) (vacating a decision of an Area Director declining to reissue a Deputy Special Officer Commission to a Tribal Conservation Officer as not supported by law and

substantial evidence). *Stockbridge-Munsee* does not address “premature decisions” by Regional Directors, and we conclude that the Decision was not premature.

The Superintendent’s decision issued on January 26, 2005, and Appellant filed a notice of appeal and statement of reasons on February 1, 2005. The Regional Director issued his decision more than five months later on July 13, 2005. Appellant does not explain how the Decision could be considered “premature,” nor do we find it to be premature.⁸

Conclusion

We affirm the Regional Director’s July 13, 2005, decision because Appellant has not carried his burden of showing error in that decision.⁹

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 13, 2005, decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

⁸ To the extent Appellant believes he was entitled to a hearing before the Regional Director prior to the decision, Appellant is mistaken. Nothing in the regulations requires a hearing before the Regional Director when the Regional Director is reviewing a decision rendered by a superintendent with respect to hunting and fishing licenses, ID cards, or approval of a tribal ordinance.

⁹ With the exception of his reply brief to the Board, Appellant did not otherwise challenge that portion of the Decision that declined to address Appellant’s discourse on the *Winters* doctrine. The Board does not consider issues raised for the first time before the Board in reply briefs and Appellant provides no explanation for his failure to address the issue in his earlier pleadings to the Board. See *Anderson v. Acting Southwest Regional Director*, 44 IBIA 218, 226 n.8 (2007). Therefore, we decline to consider this belated argument.