

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 10-1109

Donald Kakaygeesick,

Appellant,

v.

Ken Salazar, Secretary, United
States Department of Interior;
George Skibine, Secretary of the
Bureau of Indian Affairs,

Appellees.

*
*
*
*
*
*
*
*
*
*
*

Appeal from the United States
District Court for the
District of Minnesota.

[UNPUBLISHED]

Submitted: August 5, 2010
Filed: August 12, 2010

Before WOLLMAN, MELLOY, and GRUENDER, Circuit Judges.

PER CURIAM.

Donald Kakaygeesick appeals the district court's¹ adverse grant of summary judgment in his action under the Administrative Procedures Act (APA). Having carefully reviewed the record, we conclude that the November 2007 order of the Interior Board of Indian Appeals (IBIA) concluding that Kakaygeesick failed to

¹The Honorable James M. Rosenbaum, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Raymond L. Erickson, United States Magistrate Judge for the District of Minnesota.

exercise due diligence in pursuing a land claim, was not arbitrary, capricious, an abuse of discretion, or otherwise inconsistent with the law. See South Dakota v. U.S. Dept. of Interior, 487 F.3d 548, 551 (8th Cir. 2007) (appellate standard of review and applicable legal standard under APA). Accordingly, the judgment of the district court is affirmed. See 8th Cir. R. 47B.²

²A July 2005 order from an administrative law judge (ALJ) “Determining Heirs and Decree of Distribution” is not properly before us because Kakaygeesick failed to appeal it to the IBIA. See 5 U.S.C. § 704 (judicial review of final agency action); 43 C.F.R. § 4.314(a) (no decision of ALJ will be considered final so as to constitute agency action subject to judicial review under § 704 unless it is has made effective by appeal to and decision by IBIA); Darby v. Cisneros, 509 U.S. 137, 153-54 (1993) (discussing prerequisite to judicial review under APA).