



INTERIOR BOARD OF INDIAN APPEALS

City of Eagle Butte, South Dakota v. Aberdeen Area Director,  
Bureau of Indian Affairs

17 IBIA 192 (07/24/1989)

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On reconsideration:  
18 IBIA 21



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

CITY OF EAGLE BUTTE, SOUTH DAKOTA

v.

ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-56-A

Decided July 25, 1989

Appeal from a decision of the Aberdeen Area Director, Bureau of Indian Affairs to take certain land within the city limits of Eagle Butte, South Dakota, into trust for the Cheyenne River Sioux Tribe.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Lands: Trust Acquisitions

The decision whether to acquire land in trust status for an Indian tribe or individual is committed to the discretion of the Bureau of Indian Affairs. In reviewing such a decision, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

2. Indians: Lands: Trust Acquisitions

When the Bureau of Indian Affairs reviews a request to acquire land in trust status for an Indian tribe or individual, it is required to consider the factors listed in 25 CFR 151.10. Proof that each of these factors was considered must appear in the administrative record when the Bureau approves a trust acquisition.

APPEARANCES: Priscilla A. Wilfahrt, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Twin Cities, Minnesota, for appellee.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant City of Eagle Butte, South Dakota, seeks review of an October 24, 1984, decision of the Aberdeen Area Director, Bureau of Indian Affairs (BIA; appellee), concerning taking certain land within appellant's city limits into trust for the Cheyenne River Sioux Tribe (tribe). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

By resolution 367-83-CR, December 7, 1983, the Cheyenne River Sioux Tribal Council requested the United States to take into trust status for the tribe lot 14 of block 7; lots 1, 2, 3, and 4 of block 11; lots 2, 3, and 4 of block 16; and lots 1, 2, 11, and 12 of block 17, all within appellant's city limits. The lots were apparently owned by the tribe in fee status.

Because the trust acquisition would remove land from appellant's tax base, appellant was advised of the tribe's request. By letter dated May 15, 1984, appellant raised objections to the conveyance based upon the loss of its tax base, the allegation that lots 1, 2, 3, and 4 of block 11 were owned

by the Cheyenne River Development Corporation rather than by the tribe, and the fact that lots 1, 2, 3, and 4 of block 11, and lot 14 of block 7 were leased to non-Indian corporations that were not members of the tribe.

After considering appellant's objections and the requirements of 25 CFR Part 151, by memorandum dated May 31, 1984, the Superintendent, Cheyenne River Agency, BIA (Superintendent), recommended to appellee that the conveyance to trust status be approved.

By memorandum dated October 24, 1984, appellee advised the Superintendent that the request was approved. Appellant appealed this decision to the Washington, D.C., BIA office, which, by memorandum dated July 22, 1988, requested additional supporting information from appellee. The requested information was received on November 15, 1988.

The appeal was still pending before the Washington, D.C., BIA office on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. <sup>1/</sup> The appeal was transferred to the Board on May 16, 1989, for consideration under the new appeals procedures.

By notice of docketing dated May 18, 1989, the Board gave the parties an opportunity to file any additional statements with it. Appellee filed a motion to dismiss; no other party filed an additional statement.

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<sup>1/</sup> See 54 FR 6478 and 6483 (Feb. 10, 1989).

Discussion and Conclusions

On appeal, appellant continues to argue that the conveyance into trust status will cause significant problems based upon its loss of tax base; lots 1, 2, 3, and 4 of block 11 are not owned by the tribe, but rather by the Cheyenne River Development Corporation; and lots 1, 2, 3, and 4 of block 11 and lot 14 of block 7 are leased to non-Indians.

[1] The Board has previously held that approval of conveyances of Indian trust or restricted land is committed to the discretion of BIA. White v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 15 IBIA 142 (1987). Similarly, approval of requests under 25 U.S.C. § 465 (1982) for the acquisition of land in trust status is committed to BIA's discretion. 2/ See State of Florida v. United States Department of the Interior, 768 F.2d 1248 (11th Cir. 1985), cert. denied, 475 U.S. 1011 (1986); City of Tacoma v. Andrus, 457 F. Supp. 342 (D.D.C. 1978). The Board does not have jurisdiction to substitute its judgment for that of BIA in a decision based solely upon an exercise of discretion. Sinmons v. Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 243 (1986).

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2/ Section 465 provides in pertinent part:

"The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

\* \* \* \* \*

"Title to any lands or rights acquired pursuant to [the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-479 (1982)] shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation."

It does, however, have authority to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretionary authority, including any limitations on its discretion established in regulations. White, supra; Nambe Pueblo v. Deputy Assistant Secretary-Indian Affairs (Operations), 13 IBIA 53, 55 (1984), and cases cited therein.

[2] When BIA reviews a request to acquire land in trust status for an Indian tribe or individual, it must follow the regulations in 25 CFR Part 151, including the requirement that it consider the factors listed in section 151.10. As relevant to the present appeal, section 151.10 states:

In evaluating requests for the acquisition of land in trust status, the Secretary shall consider the following factors:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (b) The need of \* \* \* the tribe for additional land;
- (c) The purposes for which the land will be used;
- \* \* \* \* \*
- (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
- (f) Jurisdictional problems and potential conflicts of land use which may arise; and
- (g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

Proof that these factors were considered must appear in the administrative record. Because the final decision on whether or not to acquire land in trust status is committed to BIA's discretion, there is no requirement that

BIA reach a particular conclusion as to each factor. See also State of Florida, 768 F.2d at 1256:

"The regulation does not purport to state how the agency should balance these factors in a particular case, or what weight to assign to each factor." In order to avoid any allegation of abuse of discretion, however, BIA's final decision should be reasonable in view of its overall analysis of the factors listed in section 151.10. 3/

In the present case, the record as supplemented demonstrates that BIA thoroughly considered each of the relevant factors in 25 CFR 151.10 and the objections raised by appellant.

4/ The conclusion reached after such consideration is reasonable.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the interior, 43 CFR 4.1, the October 24, 1984, decision of the Aberdeen Area Director is affirmed. 5/

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge

3/ A decision to approve a trust acquisition must show that all of the factors were considered. A decision to disapprove a trust acquisition may be based on a more limited analysis of only some of the factors, if BIA's analysis shows that those factors weigh heavily against the trust acquisition.

4/ The Board notes that the record before supplementation would not be adequate to support BIA's decision because it does not demonstrate that the factors listed in 25 CFR 151.10 were considered.

5/ Because of the Board's disposition of this matter, appellee's motion to dismiss is denied.