



INTERIOR BOARD OF INDIAN APPEALS

San Juan County, Washington v. Portland Area Director,  
Bureau of Indian Affairs

18 IBIA 12 (10/05/1989)



# United States Department of the Interior

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

SAN JUAN COUNTY, WASHINGTON

v.

PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-44-A

Decided October 5, 1989

Appeal from a decision concerning the conversion of fee lands at Barlow Bay, Lopez Island, Washington, to trust status for the Tulalip Tribes of Washington.

Affirmed and remanded.

1. Administrative Procedure: Generally--Appeals: Generally--Indians:  
Generally--Indians: Lands: Trust Acquisitions--Intervention

A person with no legal status in an appeal will not be heard to object to a settlement agreement reached between the parties.

APPEARANCES: William N. Appel, Esq., Seattle, Washington, for appellant; Colleen Kelley, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for appellee; Douglas L. Bell, Esq., Everett, Washington, for the Tulalip Tribes of Washington; Margaret Greene, Anacortes, Washington, pro se.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant San Juan County, Washington, sought review of a July 13, 1988, decision of the Portland Area Director, Bureau of Indian Affairs (BIA; appellee), approving the request of the Tulalip Tribes of Washington (tribes) to take into trust status certain lands owned by the tribes in fee which are located at Barlow Bay, Lopez Island, Washington. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision and remands this case to appellee for further action.

### Background

The tribes have historically exercised treaty fishing rights in Barlow Bay, which is on the southwestern portion of Lopez Island, in the San Juan Islands of northwestern Washington State. Lopez Island is located close

to the tribes' treaty fishing areas, but is some distance from their reservation near Marysville, Washington. The distance from the reservation requires tribal fishermen to camp in the islands while fishing. These fishermen had camped at an existing camping and fish processing facility on Lopez Island.

Because of numerous problems resulting from the use of the existing facility, in 1986 the tribes purchased a tideland lease from the State of Washington Department of Natural Resources and approximately 3.74 acres of land adjacent to the existing facility. However, regulation of uses of the property imposed by appellant effectively eliminated the possibility of using it for camping facilities for tribal fishermen. In addition, a local property owners' group opposed to the tribes' proposed use of the property threatened litigation if the tribes applied to appellant for the permits necessary to use the property.

By Tribal Resolution No. 86-0342, October 8, 1986, the tribes requested BIA to take their purchased property into trust status. This request was approved by appellee on July 13, 1988, subject to a preliminary title investigation by the Department's Office of the Solicitor.

By letter dated July 27, 1988, appellant appealed appellee's decision to the Washington, D.C., BIA office. However, subsequent to the filing of this notice of appeal, on August 4, 1988, appellant and the tribes entered into a Memorandum of Understanding which was intended to resolve appellant's concerns regarding the trust acquisition. Because of the parties' attempts to resolve this matter, no further action was taken on the appeal. By letter dated February 14, 1989, appellant informed the Washington, D.C., BIA office that an agreement satisfactory to representatives of each party had been reached. The letter stated that the recommendation would be presented to the respective legislative bodies for approval. On February 15, 1989, appellant requested an additional stay of Departmental processing of the appeal until the agreement had been considered.

The appeal was still pending on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. See 54 FR 6478 and 6483 (Feb. 10, 1989). The appeal was transferred to the Board for consideration under the new procedures on May 16, 1989. In its May 22, 1989, notice of docketing, the Board noted appellant's request for a stay pending completion of consideration of the proposed agreement and requested appellant and the tribes to provide it with a statement as to the current status of such consideration.

On June 13, 1989, the Board received a joint status report from the tribes and appellant, indicating that each party had executed an agreement and a deed between them that required only the approval of the Secretary of the Interior to be effective. The tribes and appellant indicated that upon approval of this agreement and deed, the present case should be dismissed.

On June 19, 1989, the Board received a "status report" from Margaret Greene (Greene) "as a Samish Indian and as Chairman of the Samish Indian Tribe and President of the Board of Directors of the Samish Community Preservation Fund" (Statement at 1). Greene stated that she opposed the trust acquisition on the grounds that the "area or tract in dispute is part of the aboriginal Samish Tribal area as claimed and determined favorably for the Samish by the Indian Claims Commission Docket 261" (Statement at 2). Greene stated that she and her Samish relatives had a higher claim to the land at issue than did the tribes.

### Discussion and Conclusions

It is clear that the controversy between the original parties to this litigation has been resolved, subject to approval by the Secretary. The only issue, therefore, is whether that resolution may be upset by the claim raised on behalf of the Samish Indian Tribe.

The Board reviewed the status of the "Samish Indian Tribe" in Estate of Mary Ann Snohomish Cladoosby, 15 IBIA 203, 94 I.D. 199 (1987). In accordance with regulations in 25 CFR Part 83, the Samish Indian Tribe presented a petition for Federal acknowledgement to the Department of the Interior. By notice published in 52 FR 3709 (Feb. 5, 1987), BIA determined that the "Samish Indian Tribe" does not exist as an Indian tribe within the meaning of Federal law. On May 7, 1987, the Secretary of the Interior declined to ask BIA to reconsider its decision. Accordingly, the "Samish Indian Tribe" continues to be a non-Federally recognized Indian group to which the Federal Government owes no trust responsibilities.

In addition, although the administrative record indicates that Greene wrote to BIA officials as well as to the Board opposing this trust acquisition, neither she nor the Samish Indian Tribe was ever granted intervenor or amicus curiae status in this proceeding. Accordingly, although Greene indicates her interest in the outcome of this appeal, she has no legal status in this proceeding.

[1] The Board has previously discussed the right of an intervenor to object to a settlement agreement reached between the real parties in interest to an appeal. It has held that although intervention may be granted in order to allow a third party to present its concerns to the Departmental decisionmaker, unless the intervenor is actually a party to the dispute, its concurrence is not a prerequisite to the conclusion of administrative litigation between the real parties in interest. Jackman v. Billings Area Director, 15 IBIA 22 (1986); ITT Rayonier, Inc. v. Deputy Assistant Secretary--Indian Affairs (Operations), 13 IBIA 90 (1985). If an intervenor normally does not have the right to continue litigation beyond a settlement reached by the real parties in interest, clearly a person with no legal status in the litigation does not have such a right.

