



INTERIOR BOARD OF INDIAN APPEALS

La Jolla Band of Mission Indians v. Acting Sacramento Area Director,  
Bureau of Indian Affairs

18 IBIA 263 (04/26/1990)



# United States Department of the Interior

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

LA JOLLA BAND OF MISSION INDIANS

v.

ACTING SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-13-A

Decided April 26, 1990

Appeal from a denial of a Core Management grant application.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Financial Matters: Financial Assistance

Decisions concerning whether a tribe's application for a Core Management grant should be funded are committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, 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: Financial Matters: Financial Assistance--Indians: Indian Self-Determination and Education Assistance Act: Generally

The Core Management grant program is administered under authority of the Snyder Act, 25 U.S.C. § 13 (1982), rather than the Indian Self-Determination Act, 25 U.S.C. §§ 450-450n (1982 and Supps.).

APPEARANCES: Doris J. Magante, Tribal Chairperson, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant La Jolla Band of Mission Indians seeks review of an August 28, 1989, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), denying its application for a FY 1989 Core Management grant. For the reasons discussed below, the Board affirms the Area Director's decision.

### Background

The Sacramento Area Office was allocated \$368,000 in funding for the FY 1989 Core Management grant program. Twenty-seven tribes submitted FY 1989 grant applications to the Area Office, requesting a total of

\$1,450,000. Of 11 tribes which applied for renewal grants, 6 were funded. Of 16 tribes which applied for new grants, 3 were funded.

In May 1989, appellant applied for a new grant under the FY 1989 program. Its application was reviewed by a Core Management review panel established to rate applications under the program. The application received a score of 61.375, which placed it fifth among applications for new grants.

By letter dated August 18, 1989, the Superintendent, Southern California Agency, BIA, informed appellant that the review panel intended to recommend disapproval of its application. By memorandum of the same date, he transmitted the rating forms for appellant to the Area Director and recommended disapproval. On August 28, 1989, the Area Director disapproved the application. He stated in part:

[Your] application did not demonstrate the fact that the tribe either lacks sufficient financial resources or is a tribe with limited resources. Therefore we were unable to make an evaluation as to the reasonableness of the costs proposed and make a determination for funding.

In reviewing the needs and problem statement, the application states the tribe has been experiencing administrative management problems for several years in the form of inability to develop acceptable grant/contract applications and failure to close out contracts and grants. However, the work statement did not describe in detail a plan to meet the needs or overcome the problems described with a schedule for the start and projected completion dates for actions or efforts to be taken to resolve problems as required by 25 CFR 278.24(b)(2) and (3). Instead, the objectives and timeframes discussed everyday routines.

In addition, the qualifications of proposed personnel were not commensurate with the salaries requested in the application. The application did not state how core management funds would be used to supplement or complement present activities or functions as required by [25 CFR] 278.24(b)(5). In addition, the application did not indicate how the Band would monitor the program progress and financial reporting requirements. Consequently, in weighing the relative need of this project in relation to other projects, based on the information provided in the application, the application is disapproved.

The Board received appellant's notice of appeal from this disapproval on October 11, 1989. <sup>1/</sup>

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<sup>1/</sup> Although the notice of appeal was untimely under 43 CFR 4.332(a), the Board accepted the appeal because of incorrect appeal information given in the Area Director's decision.

Discussion and Conclusions

[1] In Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50, 51 (1989), the Board discussed its role in reviewing BIA decisions concerning whether a particular Core Management grant application should be funded. These decisions, the Board held, are committed to the discretion of BIA. The Board stated: "In reviewing such decisions it is not the Board's function to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion." <sup>2/</sup> The Board has also held that a discretionary decision by a BIA official should be reasonable. E.g., Absentee Shawnee Tribe v. Anadarko Area Director, 18 IBIA 156 (1990). The Board's jurisdiction over this appeal is therefore limited as described in Lower Elwha Tribe and Absentee Shawnee Tribe.

[2] Appellant argues that its Core Management grant application is subject to the time requirements in section 102 of the Indian Self-Determination Act, as amended, 25 U.S.C. § 450f. <sup>3/</sup> Appellant contends that, under that statute, the Area Director was required to disapprove its application within 60 days of receipt. <sup>4/</sup> The Core Management grant program, however, is not an Indian Self-Determination Act program but, rather, is administered under authority of the Snyder Act, 25 U.S.C. § 13, as

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<sup>2/</sup> The Board also noted that the amount of money available for the Core Management program is limited by the amount Congress appropriates for the program. The Board stated:

"Because the funds available for the program were less than the total amount requested by the tribes eligible for the program, some form of competitive allocation of the available funds was necessitated. The system established by BIA, in which each application is reviewed and ranked and funds are awarded based upon positions within that ranking, is a reasonable and objective method of allocating those funds."

18 IBIA at 52. See also Caddo Indian Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63 (1989).

<sup>3/</sup> All citations to the United States Code are to the 1982 edition or a supplement thereto.

<sup>4/</sup> 25 U.S.C. § 450f(a) provides in part:

"(2) If so authorized by an Indian tribe \* \* \*, a tribal organization may submit an application for a self-determination contract to the Secretary for review. The Secretary shall, within ninety days of receipt of the proposal, approve the proposal unless, within sixty days of receipt of the proposal, a specific finding is made that--

"(A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

"(B) adequate protection of trust resources is not assured; or

"(C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract."

Appellant also argues that its application should be treated as an application for a contract rather than a grant.

indicated in the regulations governing the program at 25 CFR Part 278. 5/ Accordingly, the time requirement in 25 U.S.C. § 450f does not apply to appellant's Core Management application.

Appellant also argues that BIA violated the time requirements in 25 CFR 278.25(a)(3) and (b)(2). 6/ Appellant's application is dated May 22, 1989. The administrative record does not show the date the Superintendent transmitted the application to the Area Office for review, but the Area Office review committee (consisting of Area Office and Agency staff) met during the week of June 5, 1989, and the rating forms for appellant's application bear dates of June 5, 6, 7, and 8, 1989. It appears, therefore, that the Superintendent transmitted the application to the Area Office in a timely manner. 7/

It also appears that the Area Director acted on appellant's application within 15 working days of his receipt of the results of the review. The Superintendent's memorandum transmitting the ratings for appellant and recommending disapproval is dated August 18, 1989, and the Area Director's decision is dated August 28, 1989. Although the review itself appears to have taken a rather long time, section 278.25 does not establish a deadline for completion of the review process. See Washoe Tribe v. Phoenix Area

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5/ The statutory authority for the two grant programs under Part 278 is given as 25 U.S.C. § 13. The preamble to the Federal Register publication of Part 278 states:

"Both the Economic Development and the Core Management Grants for Small Tribes are new initiatives for which appropriations have been made by Congress without its enacting specific substantive law. As both kinds of grants are for purposes similar to those provided for in the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, 25 U.S.C. 450 et seq., that Act as well as the Snyder Act, 25 U.S.C. 13, which is the basic authority under which the Secretary of the Interior provides services to Federally recognized tribes, were cited in the appropriation justifications of the Bureau of Indian Affairs for the then proposed grant program. However, these grant programs are technically Snyder Act programs and these regulations spell out the bases on which Congress has provided, through the appropriation process, that the grants are to administered."

48 FR 32007 (July 13, 1983).

6/ 25 CFR 278.25(a) provides that "the Superintendent shall upon receipt of an application:  
\* \* \* (3) If the application is sufficiently complete, forward it to the Area Director with comments and recommendations to approve or disapprove within 15 working days of its receipt."

Subsection 278.25(b)(2) provides that "Upon completion of the application review process the Area Director shall initiate, within 15 working days, one of the following actions:  
\* \* \*."

7/ Evidently, however, the Superintendent made no recommendation concerning approval or disapproval until Aug. 18, 1989, following the Area Office review. The regulations contemplate that the Superintendent will make his recommendation prior to review in the Area Office. The Board assumes that, since the Area Office review committee consisted of both Area and Agency staff, the Area Director had determined to consolidate the Agency and Area procedures.

Director, 18 IBIA 192 (1990). The Board finds that BIA did not violate the timeframes in section 278.25.

Appellant also objects to the low score given to it by one of the four reviewers and asks that that reviewer be disqualified and appellant's score determined by averaging the three remaining scores. Appellant believes that the unidentified reviewer is an individual with personal opinions and prejudices against it. In Delaware Tribe v. Acting Anadarko Area Director, 18 IBIA 98, 100 (1990), the Board noted:

It is undeniable that a certain amount of personal judgment enters into the evaluation of any application. This is because the evaluation is done by human beings. The objective in evaluating such applications is, therefore, to minimize the number of things left to personal judgment, through, for example, providing guidance as to what factors should be present in the application, requiring a specified evaluation if certain conditions are present or not present, and having the application evaluated by a number of people so that personal judgments can be averaged out of the final evaluation.

In this case, the Area Office provided specific instructions to reviewers concerning each of the areas in which they were to evaluate the applications. Four reviewers reviewed appellant's application. The Board finds that the element of personal judgment was appropriately minimized in evaluating appellant's application.

Finally, appellant challenges the reasons given in the Area Director's letter for disapproval of its application. Appellant contends that it demonstrated in its application that it lacked sufficient resources; that its work statement contained the plan required by 25 CFR 278.24 (b)(2) and (3); and that it had valid reasons for setting the salaries of proposed staff as it did.

Upon reviewing appellant's application, the Board finds that the Area Director committed no legal error and acted within his discretionary authority in disapproving appellant's Core Management grant application.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Sacramento Area Director's August 28, 1989, decision is affirmed.

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//original signed  
Anita Vogt  
Administrative Judge

I concur:

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge