



INTERIOR BOARD OF INDIAN APPEALS

John Santana and Virginia Buck v. Sacramento Area Director,
Bureau of Indian Affairs

33 IBIA 135 (01/28/1999)



United States Department of the Interior

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

JOHN SANTANA and VIRGINIA BUCK

v.

SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 97-127-A

Decided January 28, 1999

Appeal from a decision that requests for restoration of trust status to lands subject to the stipulated judgment in Hardwick v. United States, No. C-79-1710-SW (N.D. Calif. Dec. 22, 1983), must be processed under the regulations in 25 C.F.R. Part 151.

Vacated and remanded.

1. Indians: Lands: Trust Acquisitions

In entering into the stipulated judgment in Hardwick v. United States, No. C-79-1710-SW (N.D. Calif. Dec. 22, 1983), the Bureau of Indian Affairs exercised its discretionary authority under 25 C.F.R. Part 151 by agreeing to restore to trust status lands distributed under the Act of Aug. 18, 1958, 72 Stat. 619, as amended by the Act of Aug. 11, 1964, 78 Stat. 390, if restoration was requested in accordance with the terms of the stipulated judgment. Rights under the stipulated judgment vested, at the latest, when the court accepted the parties' agreement.

2. Indians: Lands: Trust Acquisitions

In considering trust acquisition requests, the Department of the Interior is required to comply with the provisions of any Federal law, including but not limited to, the National Environmental Policy Act, 42 U.S.C. §§ 4321-4335 (1994), which is applicable at the time the Department is considering the request.

APPEARANCES: David J. Rapport, Esq., Ukiah, California, for Appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellants John Santana and Virginia Buck seek review of an April 7, 1997, decision of the Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning their

requests that BIA take three parcels of land into trust status on their behalf. For the reasons discussed below, the Board of Indian Appeals (Board) vacates the Area Director's decision and remands this matter for further consideration.

Background

The three parcels at issue here are Sonoma County Assessor's Parcels No. 116-310-019, 116-310-028, and 116-310-015. All three parcels are presently owned in fee. Santana owns the first two parcels and is using them for residential purposes. Appellants jointly own the third parcel, which is being used as a cemetery.

Each of these parcels had previously been held in trust by the United States as part of the Cloverdale Rancheria. The parcels passed out of trust when the Cloverdale Rancheria was terminated under the Act of August 18, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390 (Rancheria Act). Cloverdale and sixteen other rancherias were restored to Federal recognition under a stipulated judgment entered in Hardwick v. United States, No. C-79-1710-SW (N.D. Calif. Dec. 22, 1983). See Alan-Wilson v. Sacramento Area Director, 30 IBIA 241 (1997).

The Superintendent, Central California Agency, BIA (Superintendent), addressed Appellants' trust acquisition requests under the procedures in 25 C.F.R. Part 151. In accordance with section 151.10, he notified state and local governments of the requests and gave them an opportunity to comment. Comments opposing trust acquisition were received from the Attorney General of the State of California; the City of Cloverdale, California; the County of Sonoma, California; and Jefferey Alan-Wilson, Sr., who identified himself as the Executive Chief of the Cloverdale Rancheria.

In an October 21, 1996, letter to the Superintendent, Appellants objected to notice of their trust acquisition requests being given to state and local governments, and to being required to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4335 (1994). They argued that these procedures were inapplicable because the Hardwick stipulated judgment mandated that BIA restore their lands to trust status.

The Superintendent transmitted Appellants' October 21, 1996, letter to the Area Director, who issued the decision under review here on April 7, 1997. That decision states:

In 1984, due to the anticipated volume of land acquisition requests (there were an estimated 186 Indian-owned small tracts totalling an estimated 2,068 acres), procedures for restoring Hardwick lands were minimized to the extent possible, and those procedures were set forth in notices to the plaintiff

class (see enclosed Central and Northern California Agency Superintendents' letters dated May 9 and May 11, 1984). With passage of time and the completion of processing of the early trust restoration requests, the limited procedures were soon superseded by applicable regulations and procedures.

During the time period when the Hardwick stipulation was being negotiated and shortly after issuance of the court order, BIA staff here in California, and apparently within other areas, were not consistent in assuring compliance, if at all, with [NEPA] when processing fee-to-trust acquisitions. However, as a result of litigation against the U.S. filed in early 1985 (Fresno County v. Hodel, [No. CV- F-85-018 REC (E.D. Calif.),] re the Table Mountain Rancheria's land acquisition proposal), on February 14, 1985, the Deputy Assistant Secretary - Indian Affairs issued a directive to all Area Directors that the NEPA process was to be completed before land could be transferred into trust * * *. The Sacramento Area Director issued a directive on July 23, 1985, * * * to the Superintendents clarifying that they were to comply with NEPA on all trust land acquisitions.

Since 1985, there have been additional requirements placed on BIA with regard to processing land acquisitions, e.g., hazardous substance determinations and the recent amendments to 25 CFR [Part] 151. [1/] As you know, the States and local governments have challenged, and continue to challenge, the Secretary's authority to accept lands into trust, and the amendments to the land acquisition regulations were promulgated to assure that there is a mechanism to seek administrative and judicial review of BIA's actions.

Accordingly, we will continue our processing of the subject land acquisitions in accordance with current regulations. It is unfortunate should you perceive that we have assumed a role adverse to the interests of your clients, however, it is our conclusion that it would not at this time be in the long-range best interests of other tribes or individual Indians to fail to adhere to existing procedures and regulations, thereby subjecting the Secretary's authority to further challenge.

Apr. 7, 1997, Decision at 2-3.

Appellants appealed this decision to the Board. Only Appellants filed a brief.

^{1/} Part 151 was amended at 60 Fed. Reg. 32878 (June 23, 1995) and 61 Fed. Reg. 18083 (Apr. 24, 1996).

Discussion and Conclusions

Appellants argue that the purpose of the Hardwick stipulated judgment was to restore the distributees and rancherias, to the greatest extent possible, to the same status that they had prior to termination. They contend that the only logical interpretation of paragraph 8 of the stipulated judgment is that the Secretary was obligated to take distributed lands back into trust at the election of any class member. They continue that, because the restoration of their lands to trust status was mandatory under paragraph 8, BIA erred in considering their requests under 25 C.F.R. Part 151. They argue that their interpretation of paragraph 8 is further supported by the fact that paragraph 9 required BIA to inform class members of the right to elect to restore their lands to trust status and to assist them in doing so under the terms of the stipulated judgment, not under the terms of Part 151.

The Area Director held that the requests to restore Appellants' lands to trust status must be reviewed under the statutory and regulatory procedures presently applicable to trust acquisition requests. This holding was based on advice received in a December 9, 1996, memorandum from the Deputy Regional Solicitor, Pacific Southwest Region, which concluded that nothing in the stipulated judgment waived the regulations in Part 151. 2/

The portions of the stipulated judgment relevant to this appeal are Paragraphs 7-9:

7. Within two years of date of notice of this judgment, as provided in paragraph 9, the Indian Tribes, Bands, Communities or groups of the seventeen rancherias listed in paragraph 1 that are recognized by the Secretary of the Interior pursuant to paragraph 4 herein may arrange to convey to the United States all community-owned lands within their respective rancherias to which the United States issued fee title in connection with or as the result of the distribution of the assets of said rancherias, to be held in trust by the United States for the benefit of said Tribes, Bands, Communities or groups, authority for the acceptance of said conveyances being vested in the Secretary of [the] Interior under section 5 of the Act of June 18, 1934, "The Indian Reorganization Act," 48 Stat. 985, 25 U.S.C. §465 as amended by section 203 of the Indian Land Consolidation Act, Pub. L. 97-459, Title II, 96 Stat. 2515 and/or the equitable powers of this court.

8. Any named plaintiff or other class member herein may elect to convey to the United States any land for which the United States issued fee title

2/ The Area Director's decision indicates at page 2 that counsel for Appellants and the Deputy Regional Solicitor who signed the Dec. 6, 1996, memorandum were both personally involved in the Hardwick litigation.

in connection with or as the result of the distribution of assets of said rancherias to be held in trust for his/her individual benefit or the benefit of any other member or members of the rancheria, authority for the acceptance of said conveyances being vested in the Secretary of [the] Interior under section 5 of the Act of June 18, 1934, "The Indian Reorganization Act," 48 Stat. 985, 25 U.S.C. §465 as amended by section 203 of the Indian Land Consolidation Act, Pub. L. 97-459, Title II, 96 Stat. [2515] and/or the equitable powers of this court.

9. Upon entry of judgment herein the United States shall give personal mail notice to each individual plaintiff and other class members (to the extent such persons can be identified and located through the exercise of reasonable efforts) that said individuals may elect to return their lands to trust pursuant to the judgment entered pursuant to this stipulation. Said notice shall advise that the [BIA] will assist those individuals desiring to convey lands to the United States, including providing forms and instructions. In addition, the United States shall aid and assist class members in perfecting said conveyances by obtaining any necessary policies of title insurance or taking any other actions administratively required to complete such conveyances. * * *

The Board first considers the question of whether BIA properly addressed Appellant Santana's request for trust restoration of Assessor's Parcels No. 116-310-019 and 116-310-028 under the procedures in the present version of 25 C.F.R. Part 151. The following discussion is based upon the assumption that both of these parcels were individually owned when the Hardwick stipulated judgment was entered, although the materials before the Board do not conclusively show this.

Based both on the arguments raised by Appellants in this appeal and on prior cases which it has heard involving the Hardwick stipulated judgment, the Board agrees with Appellants that a primary purpose of the stipulated judgment was to return the rancherias and their members, to the extent possible, to the same status they had prior to termination.

Prior to termination, the United States held the lands of the Cloverdale Rancheria in trust for homeless Indians in the Cloverdale, California, area. Alan-Wilson, 30 IBIA at 242. The Rancheria was divided into 12 lots, which were managed by the Federal government through assignment to various homeless Indians. Id., at 242-43. Upon termination, most of the Rancheria's lands were distributed to five individuals--including Appellant Santana--who were living on the Rancheria at the time the distribution plan mandated by the Rancheria Act was prepared. Title to the Rancheria's water system and certain other real property, including a cemetery, was transferred to the Dusho Corporation, which was created under the Rancheria Act to hold and administer this common property. Id., at 245.

Because the parcels for which Appellant Santana seeks restoration of trust status were distributed under the Rancheria Act, his requests must, at least initially, be considered under the Hardwick stipulated judgment. The Area Director's decision to review this request under 25 C.F.R. Part 151 demonstrates his belief that trust restoration requests under the stipulated judgment were, and are, subject to Part 151.

The Board finds no reference to 25 C.F.R. Part 151 in paragraphs 7-9 of the stipulated judgment. Neither does it find any such reference elsewhere in the stipulated judgment, or in any other document contemporaneous with the stipulated judgment which has been submitted to it during the course of this appeal. See, e.g., Notice of Hearing on Approval of Proposed Class Action Settlement, incorporating a stipulation approved by the court on or about Oct. 21, 1983; Dec. 15, 1983, Findings and Recommendation issued by the United States Magistrate in Hardwick; and Legal Notice of Order Approving Entry of Final Judgment.

The Area Director states that "minimized" procedures were developed for handling the large number of trust restoration requests which BIA anticipated would be filed immediately following the entry of the stipulated judgment. He does not identify the source of the "minimized" procedures, but states that the procedures were contained in letters from the Northern and Central California Agency Superintendents, dated May 9 and 11, 1984. Neither of these letters state that the procedures they contain were based on 25 C.F.R. Part 151.

The Board has nevertheless compared the procedures in the 1984 letters with the procedures in the 1983/84 version of 25 C.F.R. Part 151. The Board finds that it is possible to construe the procedures in the May 1984 letters as a minimization of the procedures in the 1983/84 version of Part 151, although that version of Part 151 was itself not much more detailed than the procedures in the May 1984 letters. ^{3/} Some of the procedures in the May 1984 letters deal with possible problems involving title, the legal descriptions of the lands for which trust restoration was sought, or easements or encumbrances. However, nothing in the procedures suggests that BIA had retained any discretion to refuse to restore trust status to distributed lands for which restoration was properly requested under the terms of the stipulated judgment. Discretion not to accept land into trust is a major component of Part 151.

^{3/} The present version of Part 151 contains several specific requirements not found in the 1983/84 version. For example, present sec. 151.10(h) (added at 60 Fed. Reg. 32879 (June 23, 1995)) requires that BIA comply with NEPA before accepting land into trust; present secs. 151.10 (first paragraph) and 151.11(d) (both added Id.) require that state and local governments be notified of the filing of a trust acquisition request; and present sec. 151.12(b) (added at 61 Fed. Reg. 18083 (Apr. 24, 1996)) requires that the Department publish notice of a decision to accept land into trust in the Federal Register with a statement that "the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published."

[1] The Board concludes that in entering into the stipulated judgment, BIA exercised its discretionary authority under Part 151 by agreeing to restore distributed lands to trust status if restoration was requested in accordance with the terms of the stipulated judgment; and that Appellants' rights to trust restoration vested, at the latest, as of the date the court accepted the parties' agreement.

Thus, the question which BIA should have addressed was whether Appellant Santana's trust restoration request complied with any and all requirements set out in the stipulated judgment. In order to expedite final resolution of this case, the Board considers this question.

After carefully reviewing paragraph 8 of the stipulated judgment, the Board concludes that the only restrictions placed on requests to restore individually owned distributed lands to trust status are that the class member/owner must elect to convey the distributed lands to the United States to be held in trust. Appellant Santana is the class member/owner of the two parcels at issue and has made this election.

There are suggestions in the materials before the Board that BIA informed class members that there was a two-year limitation on requests to restore individually owned distributed lands to trust status. See, e.g., the introductory paragraphs of the May 1984 letters; Minutes of May 16, 1984, meeting between BIA and members of the Elk Valley Rancheria at 3; Minutes of May 24, 1985, meeting between BIA and members of the Quartz Valley Rancheria at 2.

The Board finds nothing in the stipulated judgment which places a time limitation on requests to restore individually owned lands to trust status. Although paragraph 7 of the stipulated judgment places a limitation on requests to restore community-owned lands, there is no such limitation in paragraph 8. Clearly, the parties knew how to impose a deadline on trust restoration requests. See also Oct. 27, 1995, memorandum to the Area Tribal Operations Officer from the Area Realty Officer at 2: "There was no deadline specified in the [Hardwick] order for individuals to exercise [the option to restore land to trust status], however, there was a two-year deadline imposed for giving notice to have 'community-owned' lands restored to trust."

The Board is not aware of any circumstances under which a deadline for the filing of requests to restore individually owned distributed lands to trust status could have been imposed without court approval. (Cf., e.g., Jan. 23, 1986, order in Hardwick accepting a one-year extension of time agreed to by the parties for the filing of requests to restore community-owned lands to trust status.) The Area Director has not submitted anything showing that the court approved the imposition of such a deadline. For purposes of this decision, the Board concludes that there was no such deadline. Appellant Santana's request for trust restoration of his individually owned parcels was therefore timely.

The Board finds that Appellant Santana has complied with all of the requirements contained in the stipulated judgment for restoring his individually owned distributed lands to trust

status. It concludes that Appellant Santana's requests for trust restoration fall squarely under the stipulated judgment, and that BIA therefore erred in subjecting his requests to a second scrutiny under 25 C.F.R. Part 151. ^{4/} However, the Board vacates the Area Director's decision rather than reversing it because of the remote possibility that these two parcels might not have been individually owned when the Hardwick stipulated judgment was entered, and that a deadline for trust restoration requests for individually owned lands may have been approved by the court, although such approval is not reflected in the record for this appeal. On remand, the Area Director shall restore either or both of Santana's two parcels to trust status if the Area Director verifies that the parcel(s) was individually owned when the stipulated judgment was entered, that no deadline for requesting trust restoration of individually owned lands was approved by the court, that all Federal statutory requirements have been met (see discussion below), and that title to the parcels is acceptable under 25 C.F.R. § 151.13.

The Board now turns to Appellants' request to restore the trust status of Assessor's Parcel No. 116-310-028, which is being used as a cemetery. The ownership of this parcel was discussed in a July 24, 1996, memorandum from the Area Director to the Regional Solicitor. The Area Director stated that, upon termination of the Cloverdale Rancheria, the parcel was deeded to the Dusho Association, and that "[t]he [Appellants], as remaining members of the Dusho Association, deeded the subject tract to themselves as individuals and as tenants in common in 1993." See also Alan-Wilson, 30 IBIA at 245.

Appellants concede that they acquired individual ownership of this parcel after the entry of the stipulated judgment. See Opening Brief at 21, n.3. They argue, however, that "[t]hey are both class members under paragraph 3 of the Stipulation which entitles them under paragraph 8 to restore to trust for their individual benefit 'any lands for which the United States issued fee title in connection with or as a result of the distribution of assets of said rancheria...'" Id.

The Board rejects this argument. It has already held that rights under the stipulated judgment vested as of the date the judgment was entered. Paragraph 7 of the stipulated judgment deals with lands which were community-owned when the judgment was entered, and paragraph 8 deals with lands which were individually owned at that time. If community-owned lands could be transferred into individual ownership at any time, with BIA being required to treat those lands

^{4/} The Board is aware that, in considering these requests under the present version of 25 C.F.R. Part 151, the Area Director was, at least in part, concerned about the numerous challenges being made to the Secretary's authority to acquire lands in trust. Non-Indian opposition to trust acquisitions has increased dramatically since 1983, spurred in large part in recent years by the increase in Indian gaming. Although the Board can understand and sympathize with BIA's concern, that concern does not negate the agreements which the Department entered into in the Hardwick stipulated judgment, or otherwise alter the terms of that judgment.

