



INTERIOR BOARD OF INDIAN APPEALS

Jackson County, Kansas v. Acting Southern Plains Regional Director,
Bureau of Indian Affairs

38 IBIA 6 (07/03/2002)

Related Board cases:

36 IBIA 152

37 IBIA 61

Reconsideration denied, 37 IBIA 67

37 IBIA 68



United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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|---------------------------------|---|--------------------------|
| JACKSON COUNTY, KANSAS, | : | Order Affirming Decision |
| Appellant | : | |
| | : | |
| v. | : | |
| | : | Docket No. IBIA 02-17-A |
| ACTING SOUTHERN PLAINS REGIONAL | : | |
| DIRECTOR, BUREAU OF INDIAN | : | |
| AFFAIRS, | : | |
| Appellee | : | July 3, 2002 |

This is an appeal from a September 20, 2001, decision of the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to take a tract of land in Jackson County, Kansas, into trust for the Prairie Band of Potawatomi Indians (Tribe). 1/ The Regional Director's decision was issued following the Board's remand in Kansas v. Acting Southern Plains Regional Director, 36 IBIA 152 (2001). It concerns

[a] tract of land in the Northwest Quarter of Section 22, Township 8 South, Range 15 East of the 6th P.M., described as follows: Beginning at a point 691 feet North of the Southwest Corner of the Northwest Quarter of Section 22, Township 8 South, Range 15 East, thence East 608.0 feet, thence North 321.14 feet; thence West 608.0 feet to the West line of the Northwest Quarter, thence South along the West line 321.14 feet to the point of beginning, Jackson County, Kansas.

Regional Director's Sept. 20, 2001, Decision at 1. For the reasons discussed below, the Board affirms the Regional Director's decision.

1/ Appellant Jackson County, Kansas, filed a second notice of appeal which sought review of the Sept. 20, 2001, decision at issue here, as well as a different Sept. 20, 2001, decision concerning another tract of land. Appellant's second appeal was dismissed as untimely. Jackson County, Kansas v. Acting Southern Plains Regional Director, 37 IBIA 68 (2001).

The State of Kansas appealed both of the Sept. 20, 2001, decisions. Its appeals were dismissed as untimely. Kansas v. Acting Southern Plains Regional Director, 37 IBIA 61, recon. denied, 37 IBIA 67 (2001).

In Kansas, the Board rejected all but one of the arguments made by the State of Kansas. With respect to that one argument, the Board found that the Regional Director erred in his original decision, issued on May 1, 2000, to the extent that he relied upon a proposed revision of 25 C.F.R. Part 151. ^{2/} The Board remanded the matter to him, stating:

Upon remand, the Regional Director shall re-analyze this trust acquisition under the criteria in the present 25 C.F.R. § 151.10 without taking into consideration any provisions in the proposed revision of Part 151 or any provisions in the final, but not yet effective, revision of Part 151. He may confirm and adopt the analysis in his May 1, 2000, decision to the extent that he finds that the analysis was not influenced by the proposed regulations or finds that he would reach the same conclusion without consideration of the proposed regulations. He is not required to solicit further comments from any party although he may do so if he believes it would assist him in his re-analysis. If he solicits further comments from any party, he shall allow responses by other parties. He shall issue a new decision incorporating his re-analysis.

36 IBIA at 159.

In accordance with the Board's instructions, the Regional Director re-analyzed the trust acquisition. His September 20, 2001, decision states in part:

[T]his correspondence is our re-analyzation of the subject trust acquisition under the criteria in the present 25 C.F.R. § 151.10 without taking into consideration any provision in the proposed revision of Part 151 or any provisions in the final, but not yet effective, revision of Part 151. In addition, we hereby confirm and adopt the analysis in our May 1, 2000, decision to the extent that we state that our analysis was not influenced by the proposed regulations, and that we reached the same conclusions without consideration of the proposed regulations.

Regional Director's Sept. 20, 2001, Decision at 1.

Appellant appealed this decision to the Board, listing several objections to the trust acquisition. The Board docketed the appeal on February 6, 2002, stating in the notice of docketing:

^{2/} The proposed revision was published on Apr. 12, 1999, 64 Fed. Reg. 17574. At the time the Board's decision in Kansas was issued in May 2001, a final revision of 25 C.F.R. Part 151 had been published, although its effective date had been delayed. 66 Fed. Reg. 3452 (Jan. 16, 2001); 66 Fed. Reg. 19403 (Apr. 16, 2001). In November 2001, the final rule published in January 2001 was withdrawn. 66 Fed. Reg. 56608 (Nov. 9, 2001).

[T]he parties are reminded that, because the Regional Director's September 20, 2001, decision was issued following remand by the Board in Kansas, and because present Appellant had a full opportunity to participate in the earlier appeal, the Board will not revisit issues decided in the earlier appeal. *The issue to be addressed in this appeal is whether the Regional Director properly carried out the Board's order of remand in Kansas.*

Appellant did not file an opening brief. The Tribe filed a motion to dismiss and an answer brief. Appellant responded to the Tribe's motion and filed a reply brief.

As to the merits of this dispute, Appellant's only arguments appear in its reply brief and its simultaneously filed reply to the Tribe's motion to dismiss. 3/ In its reply brief, Appellant contends:

[T]he September 20, 2001 letter from the Regional Director * * * did not properly carry out the [Board's] Order of remand. There was no mention of proposed regulations and this notice was improper and the Appellant should be entitled to answer and has properly answered and given notice of the appropriate appeal of this matter to the Board.

Reply Brief at 1.

In its April 12, 2002, reply to the Tribe's motion to dismiss, Appellant contends:

[Appellant] does not feel that the Regional Director * * * properly carried out the Board's Order of remand in Kansas. This, we feel, as outlined in the letter of February 6, 2002, is one of the main issues. [4/]

[Appellant] further does not agree that this Board will not revisit issues decided in the earlier appeal as we feel this appeal should encompass such issues.

Apr. 12, 2002, Reply to Motion to Dismiss at 2.

Appellant contends that the Regional Director did not properly carry out the Board's order of remand. However, contrary to Appellant's allegation that "[t]here was no mention of proposed regulations," the Regional Director specifically stated in his September 20, 2001,

3/ Both of these documents are dated Apr. 12, 2002. Appellant filed two earlier responses to the Tribe's motion to dismiss. Both of those responses are dated Mar. 14, 2002.

4/ The only document in the record dated Feb. 6, 2002, is the Board's notice of docketing.

