



## INTERIOR BOARD OF INDIAN APPEALS

Cass County, Minnesota and City of Cass Lake, Minnesota v. Midwest Regional Director,  
Bureau of Indian Affairs

42 IBIA 243 (03/21/2006)

### Judicial review:

Appeal dismissed, Cass County, Minnesota and City of Cass Lake, Minnesota v.  
United States Department of the Interior, No. 06-2076 JRT/RLE  
(D. Minn. 2007)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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CASS COUNTY, MINNESOTA and  
CITY OF CASS LAKE, MINNESOTA,  
Appellants,  
  
v.  
  
MIDWEST REGIONAL DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee.

: Order Affirming Decisions  
:  
: Docket No. IBIA 04-121-A  
: (former "Chase" property)  
:  
: Docket Nos. IBIA 04-122-A  
: 04-125-A  
: (former "Baird" property)  
:  
: Docket Nos. IBIA 04-120-A  
: 04-128-A  
: (former "Budreau" property)  
:  
: March 21, 2006

Cass County, Minnesota and the City of Cass Lake, Minnesota (Appellants) appeal three separate decisions of the Midwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA). In decisions dated June 9, 2004, June 16, 2004, and June 23, 2004, the Regional Director affirmed decisions of the Superintendent of the Minnesota Agency (Superintendent) approving proposed trust acquisitions for the Leech Lake Band of Ojibwe (Chippewa) Indians (Band). For the reasons discussed below, the Board of Indian Appeals (Board) affirms the decisions of the Regional Director. 1/

## Background

By one resolution dated September 19, 1997 and two resolutions dated March 3, 1999, the Band requested that BIA acquire three tracts of land in trust for the benefit of the Band. These properties are referred to as the "former Budreau" or "Budreau," the "former

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1/ In this decision, the Board consolidates and resolves five separate appeals filed by Appellants challenging these three decisions. Consolidation is appropriate because although Appellants challenge decisions related to three different parcels of land, Appellants raise the exact same issues in each appeal.

Chase” or “Chase,” and the “former Baird” or “Baird” properties and are more precisely described as:

- Budreau property      Lots 3 and 4, Block 1, West Cass Lake, Village of Cass Lake, according to the map or plat thereof on file and of record in the office of the Register of Deeds for Cass County, Minnesota, containing 0.16 acres more or less.
  
- Chase property        North 200 Feet of Lot 5, Auditor’s Plat of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , and part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 9, Township 145 North, Range 31 West, 5<sup>th</sup> P.M., LESS the West 90.45 feet, Cass County, Minnesota, containing approximately .96 acres more or less.
  
- Baird property        Lots 4 and 5, Block 10, Original Plat of Cass Lake, Village of Cass Lake, together with all the hereditaments and appurtenances thereunto belonging, inclusive of all party wall rights in the East wall of said building located thereon and located on part of Lot 6, Block 10, Original Plat, Cass Lake as now constructed and maintained, in Section 15, Township 145 North, Range 31 West, 5<sup>th</sup> P.M., Cass County, Minnesota, containing 0.16 acres more or less.

The Band intends to use each property to provide specific tribal services. The Budreau property will provide residential housing; the Chase property houses the Band’s women’s services program; and the Baird property houses the Band’s tribal health office.

In accordance with the regulations governing on-reservation acquisitions, 25 C.F.R. § 151.10, the Superintendent issued letters dated March 7, 1999 notifying state and local governments of the Band’s three requests and providing 30 days for comments regarding the potential impacts of each acquisition on real property taxes, special assessments,

governmental services, and zoning. The County submitted comments dated April 5, 1999 regarding each property. 2/ By letters dated December 7, 2001, the Superintendent notified these same parties and others of BIA's intent to acquire each of the properties in trust for the benefit of the Band. Appellants appealed each of the Superintendent's decisions. The Band responded to all appeals in a letter to the Regional Director dated September 9, 2002. The Regional Director subsequently affirmed each of the Superintendent's decisions. 3/

Cass County filed timely appeals of all three of the Regional Director's decisions. The City of Cass Lake filed timely appeals of the Regional Director's decisions for the Baird and Budreau properties. 4/ Appellants and BIA filed briefs. The Band filed statements formally supporting BIA's arguments and urging the Board to affirm the Regional Director's decisions. 5/

### Discussion

Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465, authorizes the Secretary of the Interior to acquire land for Indians in her discretion. The regulations governing acquisitions of trust land require that in evaluating requests to acquire land

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2/ The County's comments apparently were erroneously omitted from the administrative record submitted to the Board, and in its briefs on appeal, BIA asserts that none of the notified state or local governments provided comments in response to BIA's March 7, 1999 letters. This assertion appears to be in error. While disputing BIA's assertion, however, neither Appellant objected to the administrative record as submitted to the Board and the County's submissions to the Regional Director are in the record. Because the Regional Director clearly considered the County's arguments during its appeal from the Superintendent's decision, the omission of these initial comments from the administrative record is not material.

3/ The Regional Director's June 9, 2004 decision relates to the Chase property; the June 16, 2004 decision relates to the Baird property; and the June 23, 2004 decision relates to the Budreau property.

4/ The City of Cass Lake did not file an appeal of the Regional Director's decision for the Chase property. In a letter to the Board dated September 23, 2004, the City stated that it was "joining in" the County's arguments.

5/ The Band's statements were filed out of time, but contained no separate substantive arguments.

located within or contiguous to an Indian reservation, BIA must consider the criteria set forth in 25 C.F.R. § 151.10(a) - (h). These criteria are:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (b) The need of the individual Indian or the tribe for additional land;
- (c) The purposes for which the land will be used;
- (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;
- (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;
- (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; and
- (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

The standard of review in trust acquisition cases is well established:

Decisions of BIA officials whether to take land into trust are discretionary. The Board does not substitute its judgment in place of BIA's judgment in decisions which are based upon the exercise of BIA's discretion. Rather, the Board reviews such discretionary decisions 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.'

Shawano County, Wisconsin, Board of Supervisors and Town of Red Springs, Wisconsin v. Midwest Regional Director, 40 IBIA 241, 244 (2005) (quoting City of Eagle Butte, South Dakota v. Aberdeen Area Director, 17 IBIA 192, 196 (1989)) and cases cited therein. Appellant bears the burden of proving that BIA did not properly exercise its discretion. Shawano County, 40 IBIA at 244; State of South Dakota and Moody County, South Dakota v. Acting Great Plains Regional Director, 39 IBIA 283, 291 (2004). Simple disagreement with or bare assertions concerning BIA's decision are insufficient to carry this

burden of proof. *Id.* In contrast to the Board's limited review of BIA discretionary decisions, the Board has full authority to review any legal challenges raised in a trust acquisition case. *Shawano County*, 40 IBIA at 245. Appellant, however, bears the burden of proving that BIA's decision was in error or not supported by substantial evidence. *Id.*

In this case, Appellants challenge the Regional Director's analysis for each of the proposed trust acquisitions under three of the criteria — §§ 151.10(b), 151.10(c), and 151.10(e). Because Appellants challenge the Regional Director's exercise of discretion, Appellants bear the burden of showing that the Regional Director did not properly exercise his discretion, and the Board's role is to ensure that BIA took into consideration all facts which were, or should have been known to it and which were critical to the analysis under 25 C.F.R. § 151.10. *Rio Arriba, New Mexico, Board of County Commissioners v. Acting Southwest Regional Director*, 36 IBIA 14, 20 (2001). Appellants also complain that the Regional Director may have improperly analyzed each proposed trust acquisition under 25 C.F.R. § 151.10 because each of the properties "may or may not be within the exterior boundaries" of the reservation. Appellants' Statements of Reasons at 2.

We will address first Appellants' challenges to the Regional Director's analysis under 25 C.F.R. §§ 151.10(b), 151.10(c), and 151.10(e).

§ 151.10(b) - Need for additional land. In all three decisions, the Regional Director determined that the Band had demonstrated a need for additional land to promote the health, welfare, and social needs of the members of the Band. The Regional Director explained that the Band relies on federal grants to assist it in managing its lands and programs and that eligibility for such grants requires that land be held in trust status. The Regional Director also stated that the Band wishes to restore its trust land base and believes its right of self-determination would be hampered if it must seek permission from another government to use lands for tribal government purposes. Additionally, as explained by the Band, when counties, townships, the state, the National Forest Service, and other public entities acquire land within the reservation boundaries, the land is tax exempt, but when the Band purchases land for government or other purposes, it is taxed at commercial rates. Sept. 9, 2002 Letter from the Band to the Regional Director at 2-3. Appellants argue, however, that the Regional Director's decision was in error because the Band did not show that it needed additional trust land or that its right of self-determination or decision making authority would be harmed if the land is not taken into trust. In support of their argument, Appellants state, in part, that "the property has been, and continues to be, used for the Band's intended purposes." Appellants' Opening Briefs at 2.

Appellants do not understand what is required under 25 C.F.R. § 151.10(b). First, Appellants improperly insert the word "trust" into the language of 151.10(b). The

regulation states that BIA must consider the “need . . . for additional land.” Appellants, however, interpret the regulation as requiring that BIA must consider the need for additional trust land and not simply the need for additional land. This is not the case and the Board has rejected this argument in previous decisions. For example, as the Board explained in State of South Dakota, 39 IBIA at 293, “[t]he Board has not construed subsection (b) as requiring BIA to do more than consider the Tribe’s need for the land. \* \* \* Had BIA intended the language now in subsection 151.10(b) to require distinct consideration of the applicant’s need for the land in trust status, it could easily have drafted the regulatory language to clearly say so.” (Internal citations omitted.) The Eighth Circuit Court of Appeals has affirmed this view. South Dakota v. United States Department of the Interior, 423 F.3d 790, 801 (8<sup>th</sup> Cir. 2005) (“it would be an unreasonable interpretation of 25 C.F.R. § 151.10(b) to require the Secretary to detail specifically why trust status is more beneficial than fee status in the particular circumstance”).

Moreover, Appellants seem to believe that the Band must affirmatively demonstrate how it will be harmed if the land is not taken into trust on its behalf. This, too, is incorrect. The Band has no such burden. Rather, Appellants have the burden of showing that the Regional Director did not properly exercise his discretion — i.e., did not consider all of the criteria in 25 C.F.R. § 151.10. Appellants have failed to meet their burden. The Board therefore concludes that the Regional Director did not abuse his discretion in assessing the Band’s need for additional land.

§ 151.10(c) - Purposes for which the land will be used. Each of the properties proposed to be taken into trust would be used for a different purpose. The Chase property is being used to house the Reservation Women’s Services program; the Baird property is being used to house the Band’s Health Administration office; and the Budreau property is being used for housing. <sup>6/</sup> In each of his decisions, the Regional Director determined that the use of the property would benefit the welfare and social needs of the Band members and others living in the area. The Regional Director further concluded that the Band is seeking jurisdictional control over land it uses for governmental services and that these acquisitions of trust land for such services is consistent with the land acquisition policy set forth at 25 C.F.R. § 151.3(a)(3), which provides that land can be acquired in trust for a tribe “[w]hen the Secretary determines that the acquisition of land is necessary to facilitate tribal self-determination, economic development, or Indian housing.”

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<sup>6/</sup> In his decision for the Budreau property, the Regional Director noted that the Leech Lake Housing Authority manages 512 housing sites and currently has a waiting list of 242 individuals seeking homes on the reservation.

Appellants do not make any substantive argument regarding each property's proposed use. Instead, Appellants state simply that the Band's status as a governmental entity is an insufficient basis for granting trust status to the lands at issue. Appellants also appear to take issue with the Regional Director's statement in each of his decisions that "[b]y obtaining trust status for the subject land, the Band will be permanently assured that their investment will not be lost like other losses have occurred when vast areas of land were taken from the Band." Regional Director's Decisions at 2. Appellants state: "The Band's reference to 'vast areas of land' having been taken from it can only refer to actions taken by Congress in the Nineteenth Century." Appellants' Opening Briefs at 2.

Appellants, again, attempt to shift the burden of proof to the Band and BIA to affirmatively demonstrate that trust status is necessary for using the land for the purposes proposed by the Band. But, as noted above, the burden falls to Appellants to show that the Regional Director abused his discretion by failing to consider the purpose of the acquisition. Here, Appellants' disagreement with the Regional Director's conclusions is not enough to sustain this burden of proof. Shawano, 40 IBIA at 248; State of South Dakota, 39 IBIA at 291; Rio Arriba, 36 IBIA at 21. The Board therefore concludes that Appellants have failed to demonstrate that the Regional Director failed to give proper consideration to the purposes for which the properties are to be used.

§ 151.10(e) - Impact resulting from removal of the land from the tax rolls. In each of his decisions, the Regional Director concluded that the loss of tax revenue to local governments as a result of acquiring each property in trust would not be significant. The Regional Director considered, but rejected, Appellants' contention that the trust acquisition should be denied because placing the lands into trust status would erode the tax base without any reduction in the demand for services and would place an unfair burden on the remaining taxpayers. First, the Regional Director noted that the taxes assessed on each property in 2004 were relatively low. <sup>7/</sup> Next, the Regional Director described how the Band provides numerous and various services for the entire community, including non-Indians residing on the reservation. The Regional Director reasoned that providing services to the whole community reduces the overall demand for such services, which in turn reduces the financial burden on local governments. Finally, the Regional Director noted the fact that the Cass Lake School District receives significant assistance from the federal government for Indian children residing on the reservation. Considered as a whole, the Regional Director concluded that "the loss of tax revenue to the local governments from the subject property is not significant." Regional Director Decisions at 3.

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<sup>7/</sup> Taxes on each of the properties in 2004 were as follows: Budreau - \$802.00; Chase- \$1,930.00; and Baird - \$2,412.00.

In response, Appellants claim that the administrative record in this case is flawed in two respects. First, Appellants claim that the Regional Director improperly considered the 2004 tax assessments for the properties because the Superintendent relied on the earlier tax assessments and the record did not contain the tax assessments for 2004. Appellants further claim that the administrative record did not provide any information about the funding sources for the various services provided by the Band to the community. These claims have no merit, however. As pointed out by BIA in its briefs, the differences between the tax assessments for 2004 and earlier years are negligible <sup>8/</sup> and Appellants make no argument as to how BIA's use of the updated, 2004 tax figures was an abuse of discretion. As the Regional Director points out on appeal, use of the 2004 figures meant that the Regional Director considered a greater tax impact than that considered by the Superintendent. If anything, use of the updated figures was to Appellants' benefit. Appellee's Briefs at 8 (Chase, Baird) and 9 (Budreau). Further, 25 C.F.R § 151.10(e) does not require that the Band or the Regional Director identify the sources of funding for the services provided by the Band for the community. 25 C.F.R. § 151.10(e) requires only that the Regional Director consider the impact of removing land from the tax rolls. And Appellants do not dispute the Regional Director's statements that the Band provides numerous services that would otherwise be funded out of Appellants' tax revenue.

Moreover, Appellants once again improperly attempt to place the burden of proof on the Band and BIA. Appellants state that in 2001, there were approximately 16,000 acres of Indian trust lands within the County, which accounted for \$250,000,000 in lost tax revenue. Appellants assert for each property that "[t]he Band has provided no compelling reason for compounding this revenue loss by granting trust status for this parcel." Appellants' Opening Briefs at 3. The burden is not, however, on the Band to demonstrate a "compelling reason" why BIA should acquire lands in trust. The Band must, of course, provide a justification for its request, sufficient to allow BIA to analyze it under 25 C.F.R. Part 151. But once the Regional Director makes his decision, the burden is on Appellants to show that the Regional Director abused his discretion by failing to properly consider the regulatory criteria. Appellants provide no evidence to demonstrate that the information relied upon by the Regional Director was erroneous, or that he failed to consider relevant information. Therefore, the Board concludes that the Regional Director considered the tax implications of taking the properties into trust and that Appellants have failed to

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<sup>8/</sup> Taxes on each of the properties relied on by the Superintendent were as follows: Budreau - \$464.00 in 1998; Chase - \$1,292.00 in 2002; and Baird - 1266.00 in 2000. (The Band supplied tax information reflecting slightly different amounts for each of the properties.)

demonstrate that the Regional Director abused his discretion in concluding that the impacts would be insignificant.

Finally, we turn to Appellants' claim that because the Band's reservation boundaries "have not yet been legally determined," the Regional Director "may" have improperly analyzed each of the proposed trust acquisitions under 25 C.F.R. § 151.10, the regulations governing on-reservation acquisitions. Appellants' entire claim, as set forth in their statement of reasons in each appeal, is as follows: "It is Cass County's position that the above-described land may or may not be within the exterior boundaries of the Leech Lake Reservation, as these boundaries have not been legally determined. For this reason, 25 CFR § 151.10, governing on reservation applications for trust may not be applicable." As explained in their Reply Briefs, Appellants believe that "[t]he decision to place land in trust should not be based on a mere assumption of reservation boundaries that have never been legally determined by Federal case law or legislation." Appellants' Reply Briefs at 2. 9/

The Regional Director acknowledged Appellants' assertion that the properties "may or may not" be within the Band's reservation boundaries, but stated BIA's position that this was an on-reservation acquisition. Considering the nature of Appellants' assertion, we conclude that the Regional Director's response was sufficient. There is no requirement for a reservation boundary to be legally adjudicated before BIA is entitled to make its own determination that the on-reservation acquisition regulations, 25 C.F.R. § 151.10, apply. Appellants provided no evidence or legal arguments for the Regional Director to consider in determining whether the subject lands fall within the on-reservation regulatory provisions. Nor do Appellants offer any such evidence or legal arguments to the Board. Appellants have therefore not met their burden to show that the Regional Director's application of the regulations under 25 C.F.R. § 151.10 for each of the proposed trust acquisitions was in error.

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9/ Appellants imply, but do not assert, that BIA should have analyzed the proposed trust acquisitions under the regulations governing off-reservation acquisitions, found at 25 C.F.R. § 151.11. These regulations incorporate the criteria set forth in 25 C.F.R. § 151.10 (with the exception of § 151.10(d)) and require, among other things, that the Secretary also consider the location of the land relative to state boundaries and its distance from the reservation boundaries.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the Regional Director's June 9, 2004, June 16, 2004, and June 23, 2004 decisions.

I concur:

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// original signed  
Amy B. Sosin  
Acting Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge