



INTERIOR BOARD OF INDIAN APPEALS

State of Minnesota v. Acting Midwest Regional Director, Bureau of Indian Affairs

47 IBIA 122 (07/03/2008)

Judicial review of this case:

Affirmed and complaint dismissed, *Mahnomen County v. Bureau of Indian Affairs*,
604 F. Supp. 2d 1252 (D. Minn. 2009)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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| STATE OF MINNESOTA, |) | Order Affirming Decision |
| Appellant, |) | |
| |) | |
| v. |) | |
| |) | Docket No. IBIA 06-65-A |
| ACTING MIDWEST REGIONAL |) | |
| DIRECTOR, BUREAU OF |) | |
| INDIAN AFFAIRS, |) | |
| Appellee. |) | July 3, 2008 |

The State of Minnesota (State) seeks review of a March 23, 2006, decision of the Acting Midwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to accept into trust two tracts of land by the United States for the White Earth Band of Chippewa Indians (Band).¹ The two tracts are known collectively as the “Shooting Star Casino property” (casino property). The Regional Director concluded that the acquisition of these parcels was mandatory under section 18 of the White Earth Reservation Land Settlement Act (WELSA), Pub. L. No. 99-264, 100 Stat. 61.² We agree with the Regional Director that she had a statutory, nondiscretionary duty to accept the casino property into trust because the land was purchased with WELSA Funds and is located within the exterior boundaries of the Band’s reservation. Therefore, we affirm.

Background

Congress enacted WELSA in 1986 to settle pending litigation related to claims by the Band concerning the taking of its lands. Section 12 of WELSA created the White Earth Economic Development and Tribal Government Fund (WELSA Funds). The WELSA Funds contain money received as compensation for loss of an allotment or interest, money forfeited by individuals under WELSA, a \$6,600,000 grant from Congress, and the interest

¹ The tracts, containing approximately 61.73 acres, are both located in the NE¼ of Section 11, Township 144 North, Range 42 West, Fifth Principal Meridian, Mahnomen County, Minnesota.

² WELSA is reprinted at 25 U.S.C. § 331 note.

on these funds. WELSA, § 12. Section 18 of WELSA, upon which the Regional Director based her decision, states that “[a]ny lands acquired by the [Band] within the exterior boundaries of the White Earth Reservation with funds referred to in section 12 . . . shall be held in trust by the United States.”

In 1992, the Band acquired fee title to the casino property on which the Band constructed its Shooting Star Casino. In 1994, the Band submitted an application to BIA to take the casino property into trust pursuant to BIA’s regulations governing discretionary land acquisitions. *See* 25 C.F.R. Part 151. Apparently, BIA had determined that the land could be accepted into trust but issues arose concerning encumbrances on the title to the property that precluded final approval for the trust acquisition under Part 151.

Subsequently, in July 2002, the Band requested instead that BIA accept the casino property into trust as a mandatory acquisition pursuant to section 18 of WELSA. The Band asserted that the casino property “was purchased through the use of interest earnings on the Economic Development [WELSA] Fund.” Letter from Band to Regional Director, July 17, 2002, at 1. AR 1118.

The Band provided documentation in support of its assertion that WELSA Funds were used to purchase the casino property. This documentation included the affidavit of the Band’s Chief Financial Officer, Frank Johnson, in which he explained the Band’s purchase of the casino property and the source of the funds used for the purchase. Attached to his affidavit were financial statements detailing the expenditures and income for the Band’s WELSA Funds. In addition, the Band provided numerous additional supporting documentation, including its Tribal Council Investment Plan; a copy of and a receipt for checks used to purchase the casino property; purchase agreements; indentures for the purchase of the casino property; and the Band’s Annual Financial Report for the year ending September 30, 1991.

The Regional Director furnished the documentation provided by the Band to the Office of Indian Gaming Management (OIGM) for its review and opinion concerning the source of the property purchase funds.³ A senior financial analyst at OIGM reviewed the records and concluded that they established that the Band used WELSA Funds for the purchase of the casino property. On March 23, 2006, the Regional Director issued her decision to accept the casino property into trust as a mandatory land acquisition pursuant to WELSA, § 18.

³ OIGM is established within the Department of the Interior under the Deputy Assistant Secretary – Indian Affairs for Economic Development Policy.

In her March 23 decision, the Regional Director stated that the casino property lay within the boundaries of the Band's reservation. She also concluded that the acquisition was mandatory pursuant to WELSA, § 18, and that because the trust acquisition was nondiscretionary, no discretionary evaluation was required under 25 C.F.R. Part 151. Her decision did not include a statement or finding concerning the source of funds used for the purchase of the casino property.

The State filed its two-page appeal on April 28, 2006. Thereafter, BIA submitted a four-volume administrative record in support of its decision, including a table of contents. The Board notified the parties, including the State, that the record was available to the parties for review and enclosed a copy of the table of contents for the record. *See* Notice of Docketing and Order Setting Briefing Schedule, June 23, 2006, at 1. The State did not file an opening brief.

The Regional Director submitted a brief, in which she explained that BIA investigated the source of the funding for the Band's purchase of the casino property over a 2-year period. She detailed the documents that were obtained and ultimately reviewed by financial experts in OIGM. She notes that the OIGM concluded that "the preponderance of evidence shows that the . . . Band used [WELSA] funds, and/or earnings on the funds, for the purchase of the [casino property]." Answer Brief at 7 (internal citation omitted). The Regional Director then concluded, in reliance on the OIGM's evaluation, that WELSA Funds were used to purchase the casino property.

No other briefs were received nor did the State respond to the Regional Director's Answer Brief.

Discussion

In its notice of appeal, the State makes two arguments in opposition to the trust acquisition, both of which we reject. The State contends that the Regional Director's decision is deficient because it does not contain any factual findings or legal analysis to support its conclusion that WELSA mandates the acquisition of the property in trust. In addition, the State argues that the Regional Director's decision is deficient because it does not evaluate the acquisition pursuant to 25 C.F.R. § 151.10(e) and (g). The State maintains that the Federal government's trust responsibilities include ensuring the availability of traditional government services including law enforcement, fire, ambulance, and sanitation for the benefit of both tribal members and visitors. The State argues that the local county cannot absorb both the costs of these services and the loss of 15% of its tax base, which would occur if the casino property is taken into trust.

We conclude that where, as here, there is a specific statute that requires the trust acquisition of property upon the occurrence of specific events, the specific statute controls in lieu of the more general fee-to-trust acquisition statute and its implementing regulations. We further conclude that the administrative record, which is the focal point for our review, supports the Regional Director's decision. Therefore, we affirm the Regional Director's decision to take the casino property into trust.

I. Standard of Review

We review the Regional Director's decision to determine whether it is in compliance with the law, and is not arbitrary or capricious. *South Dakota v. U.S. Dept. of the Interior*, 401 F. Supp. 2d 1000, 1005-06 (D.S.D. 2005). An agency has acted arbitrarily or capriciously if it

has relied on factors [that] Congress has not intended for it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Id. at 1006. With the exception of issues raising the constitutionality of laws or regulations, over which the Board lacks jurisdiction, the Board reviews legal determinations de novo. *See County of Sauk v. Midwest Regional Director*, 45 IBIA 201, 207 (2007); *Skagit County v. Northwest Regional Director*, 43 IBIA 62, 64 (2006). Thus, we review de novo the Regional Director's determination that this trust acquisition is mandated by WELSA. Where the Regional Director's decision does not adequately explain the basis for the decision, we will nevertheless affirm if "the administrative record and the decision, read together, . . . show how BIA reached its conclusion." *Wolf Point Community Organization v. Acting Rocky Mountain Regional Director*, 40 IBIA 131, 134 (2004); *see also Motor Vehicle Manufacturers Ass'n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (the Court will affirm an administrative decision if the reasoning can be discerned from the record); *Bonanza Fuel, Inc. v. Director, Office of Economic Development*, 33 IBIA 203, 205 n.5 (1999) (where BIA's reasoning is provided in its answer brief and the appellant has had an opportunity to respond, the Board will consider such reasoning together with the decision and the administrative record).

Appellants bear the burden of showing error in BIA's decision. *Miami Tribe of Oklahoma v. Muskogee Area Director*, 27 IBIA 123 (1995). Simple disagreement with or

bare assertions concerning BIA's decision are insufficient to carry this burden of proof. *County of Sauk*, 45 IBIA at 207.

II. Mandatory Trust Acquisitions

Statutory authority is required for the United States to accept real property into trust on behalf of Indian individuals or tribes. *See* 25 C.F.R. § 151.3. This statutory authority may be discretionary, e.g., 25 U.S.C. §§ 465, 1773c, or it may be mandatory, e.g., 25 U.S.C. § 715c(a) (Coquille Restoration Act). *See, e.g., Todd County v. Aberdeen Area Director*, 33 IBIA 110, 116 (1999) (“The Coquille Restoration Act is a textbook example of a statute mandating the trust acquisition of land. It allows for no judgment on the part of the Secretary, but requires him to take certain land in trust, absent some legal impediment.”). If the acquisition is a discretionary one, BIA's discretion is guided by the factors set forth at 25 C.F.R. §§ 151.10 (on reservation acquisitions) or 151.11 (off reservation acquisitions). Mandatory acquisitions, however, are not subject to the discretionary criteria of 25 C.F.R. Part 151. *See id.* §§ 151.10 (these procedures do not apply where “the acquisition is mandated by legislation”), 151.11 (same). Instead, mandatory acquisitions are flatly required by the terms of the statute, *see, e.g.,* Pub. L. No. 106-568, 114 Stat. 2868, § 819 (2000),⁴ or turn on the absence of certain legal impediments, *see* 25 C.F.R. § 715c(a),⁵ or require the occurrence of certain events, *see* Pub. L. No. 88-196, 77 Stat. 349 (1963) (Isolated Tracts Act).

⁴ In its entirety, Pub. L. No. 106-568, 114 Stat. 2868, § 819 (2000), provides: Notwithstanding any other provision of law, the Secretary of the Interior shall accept for the benefit of the Lytton Rancheria . . . the land described in that certain grant deed. . . . The Secretary shall declare that such land is held in trust by the United States for the benefit of the Rancheria and that such land is part of the reservation of such Rancheria

⁵ In the Coquille Restoration Act, the Secretary was required to accept [into trust for the Coquille Indian Tribe] any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: *Provided*, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. 25 U.S.C. § 715c(a). The statute also provided for the discretionary acquisition of additional land in trust for the Tribe. *Id.*

We conclude that Section 18 of WELSA is analogous to the Isolated Tracts Act, which we held to be a mandatory acquisition statute in *Todd County*. See 33 IBIA at 113-18. The Isolated Tracts Act enables the Rosebud Sioux Tribe to sell or exchange certain remote, or isolated, tracts of land that it owns and to acquire new lands to consolidate its land base. Under the Isolated Tracts Act, the Secretary is required to accept new land into trust for the Tribe upon the occurrence of the following events: The Secretary must have certified that it was economically advantageous for the Tribe to sell or exchange the isolated tract, that the value received for the sale/exchange of the isolated tract was not less than the fair market value of the land, and that the new land is located within land consolidation areas approved by the Secretary for the Tribe. In *Todd County*, the County argued that certain acquisitions by the Tribe under the Isolated Tracts Act were acquisitions subject to the discretionary criteria of 25 C.F.R. Part 151. We disagreed and held that, while BIA may have discretion to approve the disposition of isolated tracts and to approve the Tribe's land consolidation areas, the acquisition itself is nondiscretionary once the threshold criteria is satisfied. 33 IBIA at 118. In so holding, the Board found inapplicable the regulatory criteria for evaluating discretionary acquisitions. See *id.* at 114 (If the acquisition is mandatory, "Appellant's arguments concerning the criteria in [25 U.S.C. §] 151.10 are irrelevant.").

We conclude that, like the Isolated Tracts Act, WELSA requires the Secretary to accept certain land into trust upon the occurrence of certain events: The land acquisition must be located within the exterior boundaries of the Band's reservation and its purchase must be made with WELSA Funds. Therefore, if these two events are established, the Secretary has a mandatory, nondiscretionary duty to accept the land into trust for the Band.

The State claims the Regional Director's conclusion — that the acquisition was mandatory — is deficient because the Regional Director's decision does not contain factual findings or analysis to establish both (1) that the casino property is within the exterior boundaries of the Band's reservation, and (2) that the Band purchased the casino property with WELSA Funds. The only express factual finding that the Regional Director made was the determination that the casino property is "located within the boundaries of the Band's [r]eservation." Decision at 3. Notwithstanding the absence of any further findings or explanation, the Regional Director's Answer Brief confirms that BIA determined that WELSA Funds were used. Moreover, the record includes OIGM's analysis of the financial documents and conclusion that WELSA Funds had been used to purchase the property, together with supporting documentation. These documents were before the Regional Director when she made her decision. The State does not dispute the explanation provided by the Regional Director in her Answer Brief nor does the State take issue with the record.

Therefore, we find that the Regional Director has explained her decision and we find that it is supported by the record.⁶

The State also claims that BIA was required to evaluate the acquisition under 25 C.F.R. § 151.10. The State errs. Nothing in WELSA suggests that the Regional Director has any discretion in rendering her decision once the two factors in WELSA are satisfied. As already noted, the discretionary criteria set forth in Part 151 themselves explicitly do not apply when an acquisition is mandated. *See* 25 C.F.R. §§ 151.10, 151.11; *see also Todd County*, 33 IBIA at 114, 118. Therefore, the Regional Director correctly determined that she need not consider the effect of the acquisition on the state and local tax base or on governmental services pursuant to 25 C.F.R. § 151.10. *See South Dakota*, 401 F. Supp. 2d at 1006 (if the agency considers factors that Congress has not intended for it to consider, the decision may well be arbitrary and capricious). To the extent that the State argues that the Regional Director has a “trust obligation [to] provide appropriate resources” for the purpose of providing necessary governmental services on and to the casino property, Appeal at 1, the State fails to cite any authority for this proposition, nor does it explain the relevance of the assertion to the Regional Director’s determination that this trust acquisition is mandatory.

Therefore pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, pursuant to 43 C.F.R. §4.1 the Regional Director’s decision is affirmed.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Maria Lurie
Acting Administrative Judge

⁶ The Regional Director is reminded that her decisions should not only describe the decision being made but should also contain the explanation and analysis that supports her decision.