



INTERIOR BOARD OF INDIAN APPEALS

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

47 IBIA 222 (09/10/2008)

Related Board case:
43 IBIA 229



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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JACKSON COUNTY, KANSAS, and)	Order Affirming Decisions
STATE OF KANSAS,)	
Appellants,)	
)	Docket No. IBIA 06-83-A through
v.)	IBIA 06-104-A
)	IBIA 06-106-A
SOUTHERN PLAINS REGIONAL)	IBIA 06-107-A
DIRECTOR, BUREAU OF)	(consolidated)
INDIAN AFFAIRS,)	
Appellee.)	September 10, 2008

In these consolidated appeals, Jackson County, Kansas (County), seeks review of 22 separate decisions by the Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), issued between June 27, 2006, and June 30, 2006, that affirmed the decisions issued by the Superintendent, Horton Agency (Superintendent; Agency), BIA, to accept 22 tracts of land into trust for the Prairie Band Potawatomi Nation (Nation). The State of Kansas (State)¹ seeks review of two of these decisions, for the Stalker 2001 tract and the Brunner tract.² While we lack jurisdiction to review the constitutional challenges raised by Appellants, we nevertheless affirm each of the Regional Director’s decisions because Appellants have failed to show any error in the Regional Director’s consideration of the regulatory criteria for the proposed trust acquisitions.

Statutory and Regulatory Background

Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465, authorizes the Secretary of the Interior (Secretary) to acquire land for Indians in his discretion. The regulations governing acquisitions of trust land permit such action “[w]hen the Secretary

¹ We will refer collectively to the State and County as “Appellants.”

² The State also sought review of the Regional Director’s decision to accept the ABC Exteriors tract into trust. This appeal was dismissed as untimely on August 10, 2006. *State of Kansas v. Southern Plains Regional Director*, 43 IBIA 229 (2006).

determines that the acquisition . . . is necessary to facilitate tribal self-determination, economic development, or Indian housing.” 25 C.F.R. § 151.3(a)(3). In evaluating requests to acquire land 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; and
- (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.
- (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.

Factual and Procedural Background

Between approximately 1997 and 2001, the Nation separately purchased the 22 tracts of land for farming and buffalo ranching pursuant to its Tribal Land Management Program (LMP).³ The 22 tracts, which will be referred to collectively as “22 tracts,” include 20 tracts that are former trust allotments located within the original boundaries of the Nation’s reservation and 2 tracts that are outside of but contiguous to the exterior boundaries of the reservation. The tracts range in size from 40 acres to 640 acres, for an aggregate total of 2,992 acres, and all are located within Jackson County, Kansas:

³ On one tract, the Parr Tract, Dkt. No. IBIA 06-96-A, the Nation also operates a halfway house for drug and alcohol rehabilitation/recovery.

1. Bailey 1999 tract (June 30, 2006, Decision), Dkt. No. IBIA 06-83-A.
E $\frac{1}{2}$ SW $\frac{1}{2}$, Section 6, Township 9 South, Range 14 East, 6th P.M.
2. Calderwood 2 tract (June 28, 2006, Decision), Dkt. No. IBIA 06-84-A.
S $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$, Section 16, Township 8 South, Range 14 East,
6th P.M.
3. HD Zibell PT-85 tract (June 28, 2006, Decision), Dkt. No. IBIA 06-85-A.⁴
N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 11, Township 8 South, Range 14 East, 6th P.M.
4. Plants PT-95-58 tract (June 28, 2006, Decision), Dkt. No. IBIA 06-86-A.⁵
SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 26, and N $\frac{1}{2}$ NW $\frac{1}{4}$, Section 35, Township 8 South,
Range 14 East, 6th P.M.
5. Crow tract (June 28, 2006, Decision), Dkt. No. IBIA 06-87-A.
NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, Township 8 South, Range 14 East, 6th P.M.
6. ABC Exteriors tract (June 27, 2006, Decision), Dkt. No. IBIA 06-88-A.
NW FR $\frac{1}{4}$, Section 27, Township 8 South, Range 15 East, 6th P.M.
7. Slattery tract (June 28, 2006, Decision), Dkt. No. IBIA 06-89-A.
SE $\frac{1}{4}$ less and except the minerals underlying the S $\frac{1}{2}$ SE $\frac{1}{4}$, Section 34,
Township 8 South, Range 14 East, 6th P.M.
8. Reamer tract (June 28, 2006, Decision), Dkt. No. IBIA 06-90-A.
S $\frac{1}{2}$ NW $\frac{1}{4}$, Section 21, Township 8 South, Range 14 East, 6th P.M.
9. Zibell-Bailey tract (June 28, 2006, Decision), Dkt. No. IBIA 06-91-A.
Tract I: S $\frac{1}{2}$ NW $\frac{1}{4}$, Section 23, Township 8 South, Range 14 East,
6th P.M.

⁴ The date for this decision is taken from the County's notice of appeal. Although several copies of the Regional Director's decision appear in the record, none of these copies shows the date of the decision.

⁵ The County's notice of appeal apparently contains a typographical error in referring to this tract as the "Plants PT-95-98 tract." The Regional Director's decision, and the documents in the record, refer to this tract as the "Plants PT-95-58 tract."

- Tract II: S $\frac{1}{2}$ SW $\frac{1}{4}$, Section 8, Township 8 South, Range 14 East, 6th P.M.
- Tract III: W $\frac{1}{2}$ SE $\frac{1}{4}$, Section 21, Township 8 South, Range 14 East, 6th P.M.
- Tract IV: N $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 29, Township 8 South, Range 14 East, 6th P.M.
- Tract V: E $\frac{1}{2}$ SE $\frac{1}{4}$, Section 32, Township 8 South, Range 14 East, 6th P.M.
- Tract VI: N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 10, Township 9 South, Range 14 East, 6th P.M.

10. Zibell PT-86 tract (June 30, 2006, Decision), Dkt. No. IBIA 06-92-A. W $\frac{1}{2}$ NW $\frac{1}{4}$, Section 10, Township 8 South, Range 14 East, 6th P.M.
11. Stalker 2001 tract (June 30, 2006, Decision), Dkt. Nos. IBIA 06-93-A (County's appeal), IBIA 06-107-A (State's appeal). Section 24, Township 9 South, Range 14 East, 6th P.M.
12. Brunner tract (June 30, 2006, Decision), Dkt. Nos. IBIA 06-94-A (County's appeal), IBIA 06-106-A (State's appeal). A portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$, Section 34, Township 8 South, Range 15 East, 6th P.M.
13. Parr 1999 tract (June 28, 2006, Decision), Dkt. No. IBIA 06-95-A.⁶ E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 36, Township 8 South, Range 13 East, 6th P.M.
14. Parr tract (June 30, 2006, Decision), Dkt. No. IBIA 06-96-A. W $\frac{1}{2}$ SW $\frac{1}{4}$, Section 36, Township 8 South, Range 13 East, 6th P.M., subject to easements and rights of way of record.
15. Walder tract (June 30, 2006, Decision), Dkt. No. IBIA 06-97-A. N $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 1, Township 9 South, Range 14 East, 6th P.M.
16. Ribelin tract (June 30, 2006, Decision), Dkt. No. IBIA 06-98-A. E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 11, Township 9 South, Range 13 East, 6th P.M.

⁶ The County's notice of appeal for this tract labels it as "Parr." The tract's description matches the Regional Director's description for the "Parr 1999" tract.

17. HD Zibell PT-83 tract (June 30, 2006, Decision), Dkt. No. IBIA 06-99-A. E $\frac{1}{2}$ NW $\frac{1}{4}$, Section 22, Township 8 South, Range 14 East, 6th P.M.
18. Zibell PT-87 tract (June 30, 2006, Decision), Dkt. No. IBIA 06-100-A. NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 28, Township 8 South, Range 14 East, 6th P.M.
19. Zibell PT-84 tract (June 30, 2006, Decision), Dkt. No. IBIA 06-101-A. NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 4, Township 8 South, Range 14 East, 6th P.M.
20. Haag tract (June 30, 2006, Decision), Dkt. No. IBIA 06-102-A. NE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, except a 2-acre tract for a school, Section 36, Township 7 South, Range 13 East, 6th P.M.
21. Bernasek 1 tract (June 30, 2006, Decision), Dkt. No. IBIA 06-103-A. N $\frac{1}{2}$ SE $\frac{1}{4}$, Section 11, Township 8 South, Range 14 East, 6th P.M.
22. Beckwith tract (June 30, 2006, Decision), Dkt. No. IBIA 06-104-A. SW $\frac{1}{4}$, Section 21, Township 8 South, Range 14 East, 6th P.M.

According to the tribal resolutions in the record, the Nation approved the purchases to improve the Nation's economy and to increase employment opportunities for tribal members. The Nation submitted applications to the Agency to accept each of the tracts into trust pursuant to 25 U.S.C. § 465 and 25 C.F.R. Part 151. The Agency provided notice of the anticipated acquisitions of the land into trust to Appellants. The Appellants provided comments to the Agency in which they objected to the acquisitions. Following his review of the proposed acquisitions and comments received, the Agency Superintendent issued his decisions to accept each of the tracts into trust. Eighteen of these approvals were appealed to the Regional Director by both the State and the County.⁷ The remaining four were appealed only by the State. The Nation submitted responses to Appellants' appeals to the Regional Director.

Following his review of each of the tracts, the Regional Director affirmed the Superintendent's decisions to accept each of the 22 tracts into trust status. The Regional Director first determined that each proposed acquisition met the threshold criteria of

⁷ In several instances, the State filed a "notice of appeal" with the Regional Director that did not include any argument or basis for the appeal, nor did the State apparently supplement its appeal at any time during the pendency of the appeal before the Regional Director. *See, e.g.*, administrative record for Zibell-Bailey tract, Dkt. No. IBIA 06-91-A.

25 C.F.R. § 151.3 because (1) all of the tracts were located within the exterior boundaries of or were contiguous to the Nation's reservation and (2) tribal self-determination, economic development, or Indian housing would be facilitated by accepting the tracts into trust status. Next, the Regional Director evaluated each of the tracts pursuant to the factors set forth in 25 C.F.R. § 151.10.⁸ The Regional Director found that the Nation needed the land in order to expand its LMP and, therefore, intended to utilize each of the 22 tracts for agricultural (ranching and farming) purposes. Doing so, the Regional Director determined, would enhance employment opportunities for tribal members and generate revenue for the Nation and the local economy. The Regional Director considered the impact that the acquisitions would have on the tax rolls of the state and local governments and concluded that the Nation's contributions to road and bridge construction, local schools, fire protection, and other services offset the loss of tax revenue. He concluded that, from a tax loss perspective, "there is no evidence of [a] severe negative impact" to the local taxing jurisdictions from taking the tracts into trust status. Decision at 3.⁹ The Regional Director also concluded that there were no jurisdictional conflicts and observed that the Nation has an established tribal court system to address most disputes. Finally, the Regional Director determined that BIA would be able to discharge its trust responsibilities for each of the acquisitions and that the record reflected compliance with applicable environmental procedures.

Based upon these determinations, the Regional Director affirmed the Superintendent's decisions to accept each of the 22 tracts into trust. The County appealed all 22 of the Regional Director's decisions to the Board of Indian Appeals (Board), while the State timely appealed two. Appellants rested on their notices of appeals, and no other briefs were filed.

Standard of Review

The standard of review for discretionary trust acquisitions of land for Indians is well established. Since the decision to take land into trust is discretionary, the Board does not substitute its judgment in place of BIA's judgment. *Arizona State Land Dep't v. Western Regional Director*, 43 IBIA 158, 159-60 (2006). Legal arguments, on the other hand, are

⁸ Section 151.10(d) was not applicable in each case as that subsection applies only to trust acquisitions on behalf of individuals.

⁹ The Regional Director's decisions are identical, except for the differing land descriptions. Therefore, for ease of reference, we will simply refer in our decision to the Regional Director's June 30, 2006, decision for the Stalker 2001 tract, Dkt. No. IBIA 06-93-A.

reviewed de novo by the Board (except those challenging the constitutionality of laws or regulations for which the Board lacks authority to adjudicate). *Skagit County v. Northwest Regional Director*, 43 IBIA 62, 64 (2006); *Cass County v. Midwest Regional Director*, 42 IBIA 243, 246 (2006).

Appellants bear the burden of establishing that BIA did not properly exercise its discretion. See 43 C.F.R. § 4.320(b)(1) (Appellants must provide “[a] statement of the errors of fact and law upon which the appeal is based”); *Cass County*, 42 IBIA at 246; *Shawano County v. Midwest Regional Director*, 40 IBIA 241, 244 (2005). Simple disagreement with or bare assertions concerning BIA’s decision are insufficient to carry this burden of proof. *Arizona State Land Dep’t*, 43 IBIA at 160.

Unless manifest error or injustice is evident, the Board is limited in its review to those issues raised before the Regional Director. 43 C.F.R. § 4.318; see *Aitkin County v. Acting Midwest Regional Director*, 47 IBIA 99, 106 n.5 (2008) (the Board ordinarily does not consider arguments raised for the first time on appeal to the Board).

Discussion

I. County’s Appeals

The County filed two-page notices of appeal for each of the 22 trust acquisition decisions. The notices of appeal are virtually identical and relay the County’s broad and conclusory objections to the proposed trust acquisitions in one-sentence “bullet” points. For example, with respect to the Nation’s asserted need for the land (25 C.F.R. § 151.10(b)), the County states only “that the . . . Nation as a [t]ribe is not landless and . . . the Tribe has adequate land and does not need additional real estate to expand upon.” County’s Notice of Appeal.¹⁰ This assertion fails to show how the Regional Director’s consideration of the Nation’s need for the land is erroneous. Such barebones assertions are insufficient to satisfy the County’s burden on appeal. See *Arizona State Land Dep’t*, 43 IBIA at 160.¹¹

¹⁰ Because each of the County’s notices of appeal are identical, except for the differing land descriptions, we will refer to one representative example — the County’s notice of appeal for the Stalker 2001 tract, Docket No. IBIA 06-93-A — for purposes of our decision.

¹¹ Moreover, the County fails to adduce any factual support for its contention that the Nation does not need the additional land.

Similarly, the County argues “that the [Regional] Director’s decision undermines the legislative intent of the statute in question and as the statute was enacted in Section 5 of the Indian Reorganization Act of 1934.” County’s Notice of Appeal at 2. Again, the County adduces no further explanation or discussion of this contention. With respect to jurisdictional and tax roll issues, 25 C.F.R. § 151.10(e) and (f), the County states that taking the land into trust status effectively removes the land from the tax rolls, thus reducing the funds received by the County for various services, and removes the land from the County’s jurisdiction for zoning purposes. Again, the County does not articulate any error in the Regional Director’s consideration of these two factors. Moreover, the County does not address the impact, if any, that the loss of funds will have on its ability to provide services or how the absence of zoning oversight injures the County, especially where, as here, the lands will be used for ranching and farming purposes.

The County takes issue with the Regional Director’s observation that “at the present time there is no prescribed comprehensive analysis available to determine a balance of loss or gain attributable either to the Appellant or [the Nation]” as a result of the removal of lands from the local tax rolls. *Id.* at 2. The County avers that a prescribed analysis “is necessary as the balance has tipped in favor of the [Nation] and against the County.” *Id.* The Regional Director did, however, determine that a comprehensive analysis was not needed “so long as the balance is not extraordinarily in favor of either party.” Decision at 3. The Regional Director acknowledged the loss in tax revenue to the local jurisdictions, but identified a number of contributions made by the Nation to the local community, and concluded that “there is no evidence of [a] severe negative impact” on the environment or the local government as a result of removing the lands from the tax rolls. *Id.* The County does not express any disagreement with this assessment.

As we stated above, Appellants bear the burden of showing how the Regional Director erred in his decisions. *Cass County*, 42 IBIA at 246; *Shawano County*, 40 IBIA at 244. This burden is not met by simply disagreeing with or objecting to the decisions, as the County has done. See *Arizona State Land Dep’t*, 43 IBIA at 160; *State of Kansas v. Acting Southern Plains Regional Director*, 36 IBIA 152, 155 (2001). We have reviewed each of the Regional Director’s decisions, and find that for each tract he addressed each of the required factors set forth under 25 C.F.R. § 151.10. He determined that the Nation needs the land to expand its LMP. The lands will be used for agriculture (ranching and farming) purposes and will provide additional employment opportunities for tribal members. In considering the tax roll consequences, the Regional Director found that the impact would not be significant. The Regional Director determined that there were “no known jurisdictional problems or potential conflicts of land use.” *Id.* The County does not show or argue any error in these findings and conclusions of the Regional Director.

In essence, the County stated its objections to the proposed acquisitions, but failed to provide the Board with any specific arguments or facts that could provide the basis of a reasoned analysis and decision by the Board. Therefore, we reject the County's contentions.

2. State's Appeals

Like the County's notices of appeal, the State's appeals of the Regional Director's decisions to accept the Stalker 2001 and Brunner tracts into trust are cursory and identical, and provide no basis for analysis by the Board. Moreover, the State raises several issues for the first time on appeal that were not first presented either by the State or by the County to the Regional Director for his consideration. Therefore, we reject the State's arguments. We do not consider the constitutional arguments raised by the State for lack of jurisdiction.

a. Constitutional Arguments

The State argues that the IRA violates the Tenth Amendment of the United States Constitution.¹² The State also maintains that the IRA permits an unconstitutional altering of its state boundaries and challenges its sovereignty. This Board does not have authority to determine that a statute is unconstitutional and therefore lacks jurisdiction to address these arguments. See *State of Kansas*, 36 IBIA at 154; *Oklahoma Petroleum Marketers Assoc. v. Acting Muskogee Area Director*, 35 IBIA 285, 287 (2000). We note, however, that the United States Court of Appeals for the Tenth Circuit has upheld section 5 of the IRA as constitutional. *Shirwits Band of Paiute Indians v. Utah*, 428 F.3d 966, 972-74 (10th Cir. 2005); *United States v. Roberts*, 185 F.3d 1125, 1136-37 (10th Cir. 1999); see also *Michigan Gambling Opposition v. Kempthorne*, 525 F.3d 23, 30-33 (D.C. Cir. 2008) (upholding section 5 of the IRA).

b. Discretionary Analysis

i. Arguments Raised for the First Time on Appeal

With respect to the Nation's need for the land, 25 C.F.R. § 151.10(b), the State argues that it was insufficient for the Regional Director to find that the Stalker 2001 and Brunner tracts "satisf[y] a specific need of the Tribe to expand its [LMP] in that the land will be used for [farming] and ranching pursuits." State's Notices of Appeal at 2. The State also argues that the Regional Director failed to explain why the expansion of the Nation's Tribal LMP was more important than the State's sovereignty, why the Stalker 2001 and

¹² The County also argues that the trust acquisitions violate the Tenth Amendment.

Brunner tracts themselves satisfy a specific need of the Nation, and why trust status was necessary for the lands. The State further argues that the record is devoid of evidence showing that the Nation is “an agrarian tribe,” and avers that it is unaware of any evidence showing that the Nation “farms or ranches any appreciable amount of land.” *Id.* Finally, the State observes that the Regional Director’s decision contains no demographics for the Nation and its members.

These arguments were not presented first to the Regional Director for his consideration when the State and County appealed from the Superintendent’s decisions to take the Stalker 2001 and Brunner tracts into trust. The Board ordinarily does not consider arguments raised for the first time on appeal to the Board. *Aitkin County*, 47 IBIA at 106 n.5. We see no reason to depart from that rule here, especially where the State provides no argument or support for what are simply conclusory objections and disagreements with the Regional Director’s decision.

Even if we were to consider the merits of these objections, we would reject them as unsupported. In effect, the State seeks to impose its own criteria on the Regional Director by which to evaluate trust acquisition applications and seeks to impose a higher level of scrutiny than is required. Rather, the Regional Director must consider the Nation’s applications for trust status pursuant to the criteria in 25 C.F.R. Part 151 and to set forth his evaluation of each application in a written decision. His evaluation should address, as we find he has done, the information and comments provided to him by the Nation, the State, and the local government(s). We have repeatedly held that the criteria in section 151.10 need not be weighed or balanced, much less exhaustively analyzed. *Aitkin County*, 47 IBIA at 104; *County of Sauk v. Midwest Regional Director*, 45 IBIA 201, 206-07 (2007). On appeal to the Board, the burden rests with appellants to show that BIA failed to consider one or more criteria, not to demand a particular level or degree of scrutiny. The State has not met its burden.

ii. Remaining Arguments

With respect to the Regional Director’s consideration of those arguments that were before him in Appellants’ appeals from the Superintendent’s decision, the State fails to adduce any argument or proffer any evidence in support of its disagreements with the Regional Director’s findings. More importantly, the State fails to direct our attention to any error in the Regional Director’s consideration.

Like the County, the State argues that the Regional Director has not justified his conclusions. For example, the State argues that “there is no credible explanation as to why the land needs to be put into trust in order for the [Nation] to use the land for farming or

ranching purposes, or why existing trust lands are insufficient to create employment opportunities. . . .” State’s Notices of Appeal at 2. Further, the State maintains that the Nation should be required to “develop” the land that it currently has in trust prior to acquiring additional trust lands. The State provides no support for its contention that BIA must justify the Nation’s need for the lands to the satisfaction of the State or local jurisdiction. Rather, under 25 C.F.R. § 151.10(b) and (c), BIA need only consider and evaluate the Nation’s expressed need and intended purpose for the land, and is not required to justify the narrow need to have the land *in trust*. See *South Dakota v. U.S. Dept. of the Interior*, 423 F.3d 790, 801 (8th Cir. 2005).¹³ The State also fails to direct our attention to any law that requires the Nation to “develop” its existing trust land before it may seek trust status for additional lands or why any such “development” of existing trust land is relevant to the issue of taking new lands into trust. Similarly, the State argues that “there is no showing that the [Nation’s existing] revenues are insufficient to fund services to its members,” State’s Notices of Appeal at 2, but fails to explain the relevance of this observation or offer any legal support for such a requirement. There is simply no basis for the State to argue for a “cap” on the amount of revenue that may be earned by a tribe. Next, the State reiterates in conclusory terms that it will sustain an unspecified toll from the loss of tax revenue,¹⁴ but fails to show how the Regional Director’s consideration of this issue was faulty.

Finally, the State speculates that issues may arise with respect to the State’s civil jurisdiction over matters arising on the Stalker 2001 and Brunner tracts. We reject this argument as purely speculative. The Nation has had trust land in Kansas since the first half of the 1800’s. See, e.g., 25 U.S.C. § 1300j (pursuant to the Treaty of Chicago in 1833, 7 Stat. 431, various Potawatomi bands, including the Nation, were required to move to lands in what are now the states of Iowa and Kansas). If the State had experienced any civil jurisdictional issues with respect to the Nation’s existing trust lands, we would expect the State to discuss these issues in some detail in its appeal and to provide evidence in support of its contentions. The State has not done so.

¹³ Obviously, if, e.g., a tribe were to propose to use the land for illicit purposes, BIA would be compelled to reject the application as contrary to law.

¹⁴ The State represents that property taxes for the Brunner tract were \$181.16 in 2002 and the County reported that property taxes for the Stalker 2001 tract were \$1,788 in 2001. Clearly, these funds will no longer be available to the State and local governments if the Brunner and Stalker 2001 tracts are taken into trust. 25 U.S.C. § 465. However, in its brief before the Board, the State does not explain how the loss of these tax dollars will impact the State.

Ultimately, the State objects to the Regional Director's decision as arbitrary, capricious, and an abuse of discretion. We disagree and conclude that the Regional Director properly and adequately considered the necessary factors set forth in section 151.10. Thus, we affirm his decisions to accept the Stalker 2001 and Brunner tracts into trust. The State has failed to meet its burden of showing any error in the Regional Director's decisions and we find that the State's objections amount to little more than asserted disagreement with the decisions.

Conclusion

We conclude that the Regional Director properly considered the requirements of 25 C.F.R. § 151.10 in determining whether to accept the 22 tracts into trust.

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 decisions to accept all 22 tracts of land into trust.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Lisa Hemmer
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.