



INTERIOR BOARD OF INDIAN APPEALS

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

49 IBIA 214 (05/27/2009)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

JACKSON COUNTY, KANSAS,)	Order Summarily Affirming Decisions
Appellant,)	
)	
v.)	Docket Nos. IBIA 08-138-A through
)	IBIA 08-143-A and Nos. IBIA 08-
ACTING SOUTHERN PLAINS)	145-A through IBIA 08-148-A
REGIONAL DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS,)	
Appellee.)	May 27, 2009

Jackson County, Kansas (County), appeals from ten separate decisions, each dated August 6, 2008, by the Acting Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), in which the Regional Director affirmed the decisions of the Superintendent, Horton Agency, BIA, accepting ten tracts of land into trust for the Prairie Band of Potawatomi Nation, Kansas (the Nation). We summarily affirm the Regional Director's decision for the reasons asserted in *Jackson County, Kansas v. Southern Plains Regional Director*, 47 IBIA 222 (2008) (*Jackson County I*).¹

The properties at issue in these appeals are the following:

Docket No. IBIA 08-138-A

Bailey 2000 PT-75 tract (134 acres) (formerly, part of Potawatomi allotment nos. 188, 150, 231 & 121)

Tract I: W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$, Section 7, Township 9 South, Range 14 East, 6th Principal Meridian, lying East of the center line of Soldier Creek

Tract II: NW $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$, Section 12, Township 9 South, Range 13 East, 6th Principal Meridian

¹ At the same time that the County appealed from the decisions at issue here, the County also appealed the Regional Director's decision to accept an eleventh property into trust, the Preston PT-115 tract. However, the Regional Director subsequently sought a remand of his decision to take this property into trust, which the Board granted. *Jackson County, Kansas v. Acting Southern Plains Regional Director*, 49 IBIA 199 (2009).

Docket No. IBIA 08-139-A

Bailey 2001 PT-75 tract (56 acres) (formerly, part of Potawatomi allotment nos. 184 and 498)

SW¹/₄SW¹/₄, Section 6, Township 9 South, Range 14 East and E¹/₂SE¹/₄, Section 1, Township 9 South, Range 13 East, 6th Principal Meridian, lying East of the Centerline of Soldier Creek

Docket No. IBIA 08-140-A

Bausch 2001 PT-112 tract (74 acres) (formerly, part of Potawatomi allotment no. 9)

S¹/₂SE¹/₄, Section 7, Township 9 South, Range 15 East, 6th Principal Meridian, less 6 acres beginning at a point 360.00 feet West of the Southeast Corner of Section 7, Township 9 South, Range 15 East of the 6th Principal Meridian, thence North 35°33'35" West 1081.14 feet, thence South 83°48'12" West 709.00 feet, thence South 01°39'00" East 100.76 feet, thence South 73°01'12" East 953.50 feet, thence South 36°12'35" East 516.00 feet, thence South 85°05'47" East 111.55 feet to the point of beginning

Docket No. IBIA 08-141-A

Ramage tract (40 acres) (formerly, part of Potawatomi allotment No. 682)

SE¹/₄SW¹/₄, Section 12, Township 8 South, Range 14 East, 6th Principal Meridian, less a tract beginning at the Southwest corner of Section 12, Township 8 south, Range 14 East of the 6th Principal Meridian, thence Easterly on an assumed bearing of South 89°59'59" East, along the South line of said Section 12, 1314.95 feet to the point of beginning; thence North 00°07'09" East, a distance of 40 feet; thence South 89°59'59" East, a distance of 494.97 feet along a line parallel with the South line of said Section 12; thence South 00°00'01" West, a distance of 40 feet; thence Westerly, a distance of 494.97 feet, along the South line of said Section 12, to the point of beginning, less any and all road rights of way

Docket No. IBIA 08-142-A

Swan PT-105 tract (80 acres) (originally, Potawatomi allotment no. 281)

N¹/₂NW¹/₄, Section 14, Township 9 South, Range 14 East, 6th Principal Meridian

Docket No. IBIA 08-143-A

Kaul PT-69 tract (16 acres) (formerly, part of Potawatomi allotment no. 214)

Beginning at a point South 89°13'59" West 1579.14 feet of the Southeast Corner of the Southeast Quarter of Section 33, Township 7 South, Range 15 East of the 6th Principal Meridian, thence South 89°13'59" West 1064.68 feet, thence North

01°32'26" West 329.00 feet, thence North 89°13'59" East 1064.68 feet, thence South 01°32'26" East 329.00 feet to the point of beginning,
and

Beginning at a point on the West Right of Way of U.S. Highway 75, 436.54 feet West of the Southeast Corner of the Southeast Quarter of Section 33, Township 7 South, Range 15 East of the 6th Principal Meridian, thence South 89°13'59" West, 1142.80 feet, thence North 329.00 feet, East 1010.35 feet, thence South 21°43'16" East 361.00 feet to the point of beginning, Jackson County, Kansas, less the following tract: A in the Southeast Quarter of said Section 33, Township 7 South, Range 15 East of the 6th Principal Meridian: Beginning at the intersection of the Westerly right of way line of the existing highway and the South line of said Quarter Section, said South line having an assumed bearing of South 88°14' West; First Course, thence on a curve to the left of 5639.58 feet radius, along said right of way line, an arc distance of 352.0 feet with a chord which bears North 22°02' West, 351.9 feet; Second Course, thence South 83°14' West, 89.1 feet; Third Course, thence South 23°01' East 158.5 feet; Fourth Course, thence South 10°53' East, 158.5 feet; Fifth Course, thence South 24°36' East to a point on said South line, 117.3 feet West of the place of beginning; Sixth Course, thence North 88°14' East along said South line to the place of beginning

Docket No. IBIA 08-145-A

Shouse tract (98 acres) (originally, Potawatomi allotment nos. 575 and 381) East 58 acres of S¹/₂SW¹/₄, Section 26, Township 8 South, Range 14 East, 6th Principal Meridian, and SW¹/₄SE¹/₄, Section 26, Township 8 South, Range 14 East, 6th Principal Meridian

Docket No. IBIA 08-146-A

Calderwood PT-59 tract (80 acres) (originally, Potawatomi allotment no. 239) S¹/₂SW¹/₄, Section 8, Township 9 South, Range 15 East, 6th Principal Meridian

Docket No. IBIA 08-147-A

Hall PT-78 tract (520 acres) (formerly, part of Potawatomi allotment nos. 441, 452-456, 458, & 459)

Tract I: S¹/₂SW¹/₄ and N¹/₂SW¹/₄, Section 5, Township 8 South, Range 14 East, 6th Principal Meridian

Tract II: N¹/₂SE¹/₄ and SE¹/₄SE¹/₄, Section 5, Township 8 South, Range 14 East, 6th Principal Meridian

Tract III: NE¹/₄NW¹/₄ and S¹/₂NW¹/₄, Section 5, Township 8 South, Range 14 East, 6th Principal Meridian

- Tract IV: NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, Township 8 South, Range 14 East, 6th Principal Meridian
- Tract V: S $\frac{1}{2}$ SE $\frac{1}{4}$, Section 6, Township 8 South, Range 14 East, 6th Principal Meridian

Docket No. IBIA 08-148-A

Harding PT-103 tract (53.50 acres) (formerly, part of Potawatomi allotments nos. 159 and 160)

SW FR $\frac{1}{4}$, Section 18, Township 8 South, Range 15 East, 6th Principal Meridian, beginning at the Southwest corner of said Section 18, thence North 00°00'00" East coincident with the West line of the Southwest Fractional Quarter 732.06 feet to the true point of beginning; thence North 00°00'00" East coincident with the West line of the Southwest Fractional quarter 1471.49 feet to a point 438.21 feet South of the Northwest corner of the Southwest Fractional Quarter, thence south 98°58'09" East parallel to the North line of the southwest Fractional quarter 987.21 feet, thence South 00°51'09" West 888.78 feet to a point 1320.00 feet North of the South line of the Southwest Fractional Quarter, thence South 89°40'02" East parallel to said South line 346.00 feet to a point 1320.00 feet East of the West line of the Southwest Quarter, thence South 00°00'00" West parallel to said West line 1320.00 feet to the South line of the Southwest Fractional Quarter, thence North 89°40'02" [sic] West coincident with the South line of the Southwest Fractional Quarter 928.17 feet to a point 391.83 feet East of the Southwest corner of said Section 18, thence North 00°00'00" East parallel to the West line of the Southwest Fractional Quarter 711.92 feet, thence North 86°43'37" West 392.47 feet to the point of beginning

Each of the above tracts is located within the exterior boundaries of the Nation's reservation. BIA evaluated each of the ten proposed fee-to-trust acquisitions pursuant to the criteria set out at 25 C.F.R. § 152.10. In his August 6 Decisions, the Regional Director considered and responded to each of the County's arguments on appeal.

In each of its ten appeals to the Board, the County makes the following, identical arguments:

1. The Indian Reorganization Act, on which the Regional Director relied for authority to take the properties into trust, "violates the Tenth Amendment to the Constitution."
2. The Nation is not landless, has adequate land, and does not require additional land.

3. The decisions will remove the properties from the County's tax rolls, and will reduce taxes used "for the support of County roads, infrastructure and services for [County] citizens."

4. The taking of the properties into trust "denies [the County] jurisdiction over the lands for zoning purposes."

5. A prescribed comprehensive analysis to determine a balance of loss or gain either to the Nation or to the County is necessary because the balance has tipped in favor of the Nation and against the County.

6. The Regional Director's decisions to take the properties into trust "undermine the intent of the statute in question."

Notice of Appeal at 1-2. No further argument is provided by the County in its notice of appeal. The County did not file an opening brief, which was due by January 12, 2009.

On March 24, 2009, the Board ordered the County to show cause why the Regional Director's decisions should not be summarily affirmed for the reasons set forth in *Jackson County I*, our recent affirmance of the Regional Director's decision to take 22 parcels into trust for the Nation. In response, the County asserts generally that taking the ten parcels into trust "would have an adverse impact upon the County due to loss of revenue and loss of zoning jurisdiction," Brief of Jackson County, Kansas, Apr. 17, 2009, at 1, but does not argue, or even suggest, that the Regional Director did not consider this issue or the County's argument, nor does the County articulate any basis to distinguish this case from *Jackson County I*, and the Board's reasoning therein. The County also refers to a declaration submitted by the Nation in which the Nation sets forth "significant tribal government expenditures on and near the Nation's reservation." *Id.* The County then states that the "expenditures are 2003 figures" without explaining the significance of either assertion. The County also avers, without more, that the Nation's declaration "does not quite tell the whole picture," and states that the County is responsible for maintaining roads, culverts, and bridges "on the [Nation's] road system." *Id.* at 2. Again, we are left to guess at the significance of the County's assertions.

Ultimately and critically, the County concedes that "the reasons for objecti[ng] to the taking of the [ten parcels] into trust status are basically the same [as the reasons for its objections in *Jackson County I*]." *Id.* Therefore, for the reasons set forth in our decision in *Jackson County I*, we summarily affirm the Regional Director's August 6, 2008, decisions to take the above-described ten parcels 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 summarily affirms the Regional Director's August 6, 2008, decisions to accept the above-described ten tracts of land into trust.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge