



INTERIOR BOARD OF INDIAN APPEALS

Blue Lake Mobile Home Park Tenants Association v. Pacific Regional Director,
Bureau of Indian Affairs

52 IBIA 19 (07/26/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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BLUE LAKE MOBILE HOME PARK)	Order Dismissing Appeal
TENANTS ASSOCIATION,)	
Appellant,)	
)	
v.)	Docket No. IBIA 08-84-A
)	
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	July 26, 2010

Blue Lake Mobile Home Park Tenants Association (Appellant) has appealed the September 15, 2006, notice of decision (decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), stating his intent to approve the United States' acceptance of two parcels of land containing a total of approximately 40.13 acres located in the City of Blue Lake (City) in Humboldt County, California, into trust on behalf of the Blue Lake Rancheria (Tribe).¹ On April 12, 2007, after publishing notice of the final trust acquisition decision in a Humboldt County newspaper on January 22, 2007, and receiving the Tribe's April 9, 2007, grant deeds conveying the land to the United States in trust, the United States accepted the land into trust. The trust deeds were recorded in the Office of the Recorder, Humboldt County, on April 26, 2007. Appellant, an unincorporated association of individuals residing in mobile homes located on part of the land within APN: 312-111-026, objects to the acceptance of the land into trust, alleging that BIA failed (1) to adequately consider the jurisdictional problems and potential land use conflicts that might arise from the acquisition, including the effect that placing the land into trust would have on their rights under California law as residents of a California-licensed mobile home park, and (2) to formally notify the City of the Tribe's trust application for APN: 312-111-026.

¹ The two parcels are identified as Assessor's Parcel Number (APN): 025-121-014, consisting of 0.13 acres, and APN: 312-111-026, comprising 40 acres. Appellant challenges only the acceptance into trust of APN: 312-111-026.

On April 25, 2008, the Board of Indian Appeals (Board) issued an order to show cause directing Appellant to show why the appeal should not be dismissed for lack of standing or for failure to state a claim upon which relief may be granted. As grounds for requiring this information, the Board cited, *inter alia*, *Arizona State Land Dep't v. Western Regional Director*, 43 IBIA 158 (2006), which held that an individual lacked standing to challenge a trust acquisition based on an alleged injury resulting from the removal of parcels from the town's regulatory jurisdiction, and *Big Lagoon Park Co. v. Acting Sacramento Area Director*, 32 IBIA 309 (1998), which held that the Board lacks the authority to order divestiture of title to land held in trust for an Indian tribe, i.e., to undo a completed trust acquisition by the Department.

Appellant responded to the Board's order, asserting that its situation was significantly different from that in *Arizona State Land Dep't*, and that it had both Constitutional and prudential standing to bring the appeal. Appellant also maintained that the cases cited as the bases for the Board's determination in *Big Lagoon* that the Board lacked authority to undo a completed trust acquisition were distinguishable from the facts here, and that the holding in *Big Lagoon* should be reconsidered.

None of the cases cited by Appellant undermines the Board's analysis and holding in *Big Lagoon*. Accordingly we conclude that we have no authority to afford Appellant the relief it requests, i.e., to divest the United States of title to the land held in trust for the Tribe and return fee simple title to the Tribe. Since we have no jurisdiction to entertain this appeal, we do not address Appellant's standing to bring the appeal. We therefore dismiss the appeal for lack of jurisdiction.

Factual and Procedural Background²

On May 16, 2005, the Tribe approved Resolution 05-26 requesting that BIA place the 40-acre parcel of tribally-owned land identified as APN: 312-111-26 into trust for the benefit of the Tribe. *See* Appendix to Notice of Appeal (AA) at 9. The Tribe noted that the parcel currently housed a licensed mobile home park and non-tribal rental housing and stated that it intended to continue to use the parcel for these purposes and for possible future tribal housing, an RV park, a mini storage facility, and a non-hazardous recycling storage facility. In October and November 2005 and January 2006, the Tribe advised the mobile home park

² Because we did not ask the Regional Director to prepare or transmit the administrative record, our recitation of the factual and procedural background is based on the documents currently in the record, including the Regional Director's decision, the parties' pleadings, and the attachments and exhibits included with those pleadings.

tenants of its request to have the parcel placed into trust and obtained disclaimers of interest from at least 14 of the 16 tenants, in which they stated that they claimed no right, title, lien, or interest in the parcel based on their tenancy and agreed to vacate the land upon demand by the United States. *See* Tribe's Reply to Response by Appellant to IBIA Order to Show Cause (Tribe's Reply), Declaration of Arla Ramsey (Ramsey Declaration), Ex. 4; *see also* Ramsey Declaration ¶ 6.

On April 7, 2006, in accordance with 25 C.F.R. § 150.10, BIA issued a Notice of (Non-Gaming) Land Acquisition Application for APN: 312-111-026 (AA at 12) and requested comments from various state and local governmental entities about the potential impacts that taking the parcel into trust would have on them, as well as information about the amount of annual taxes and special assessments currently assessed on the parcel, the governmental services provided to the parcel, and the consistency of the Tribe's intended use of the parcel with current zoning. This notice was sent to the California State Clearinghouse and to Humboldt County, but not to the City. AA at 15-16.³

The Regional Director issued his decision on September 15, 2006. After reviewing the comments on the proposed fee-to-trust acquisitions and the Tribe's response thereto, the Regional Director addressed the factors set out in 25 C.F.R. § 151.10, concluding that the Tribe had established a need for additional trust land to facilitate tribal housing and self-determination; that the proposed use of APN: 312-111-026 included its current uses and possible future use for additional tribal housing, an RV park, and mini-storage units; that social and community needs of the Tribe far outweighed the minimal impact of the removal of the land from the tax base; that there would be no jurisdictional problems or land use conflicts arising from the transfer of the land to trust status; that BIA would be equipped to handle the minimal additional responsibilities created by the trust acquisition; and that the Tribe had provided sufficient information for BIA to render a hazardous substances determination and to comply with National Environmental Policy Act requirements. He therefore stated his intent to accept the land into trust for the Tribe. The City received a copy of the Regional Director's decision but did not appeal that decision, nor, apparently, did any other interested party appeal the decision at that time.

BIA published notice of its final trust acquisition decision in both the Sacramento Bee and the Humboldt County Times-Standard on January 22, 2007. The notice announced a 30-day waiting period before consummation of the title transfer, to allow interested parties

³ The November 28, 2005, notice regarding the Tribe's fee-to-trust application for the 0.13 acre parcel denominated APN: 025-121-014 was sent to the City, and the City responded with comments objecting to the acquisition.

an opportunity to seek judicial relief. No judicial challenges were filed. The Tribe executed a grant deed conveying parcel APN: 312-111-026 to the United States in trust for the Tribe on April 9, 2007. *See* Ramsey Declaration, Ex. 7. BIA accepted the conveyance on April 12, 2007, *id.*, Ex. 8, and the trust deed for the parcel was recorded in the Office of the Recorder, Humboldt County, on April 26, 2007.

On December 11, 2007, the Tribe notified the tenants of the mobile home park of its decision to discontinue the use of the property for a mobile home park effective August 1, 2008, and of the necessity for them to vacate their spaces and remove their mobile homes before that date. The Tribe offered any tenant who voluntarily vacated the premises and removed the mobile home by May 1, 2008, a payment of \$5,000 to assist the tenant in moving to a new location. *See* Ramsey Declaration, Ex. 2; *see also* Ramsey Declaration ¶ 5. Eleven of the sixteen tenants signed agreements accepting the offer of assistance although the nature and amount of the assistance varied depending on the needs of the individual tenant. *Id.*; *see id.*, Ex. 3.⁴

Appellant submitted its notice of appeal of the Regional Director's decision on April 9, 2008.⁵ Appellant asserted that it was aggrieved by the Regional Director's decision because the status of the parcel as trust land, and therefore no longer subject to the City's jurisdiction, deprived the evicted tenants of the rights provided them by California law, including the possibility that the landlord would be required to pay them the reasonable costs of relocation. As to the merits of the appeal, Appellant alleged that BIA had failed (1) to adequately consider the jurisdictional problems and potential land use conflicts that might arise from the acquisition, specifically the effect that placing the land into trust would have on their rights under California law as residents of a California-licensed mobile home park, and (2) to formally notify the City of the Tribe's trust application for APN: 312-111-026.

By order dated April 25, 2008, the Board directed Appellant to show cause why the appeal should not be dismissed for lack of standing or for failure to state a claim upon which

⁴ The Tribe served formal notices of termination on eight tenants on May 30, 2008, five of whom have worked out satisfactory arrangements with the Tribe. Only three tenants refused relocation assistance. Ramsey Declaration ¶ 8.

⁵ Appellant asserts that its appeal is timely because neither it, nor any of the individual tenants, all of whom it claims are interested parties entitled to notice of the decision, received notice from BIA of the official decision to place the land into trust. Since we conclude that we have no jurisdiction to consider this appeal, we do not address whether this appeal was timely filed.

relief may be granted. Specifically, the Board asked Appellant to address (1) whether this case was controlled by the Board's decision in *Arizona State Land Dep't*, in which the Board held that an individual lacked standing to challenge a trust acquisition based on an alleged injury resulting from the removal of parcels from the town's regulatory authority; (2) whether Appellant's injury was fairly traceable to the challenged action rather than to subsequent and independent tribal action; and (3) whether the interest sought to be protected fell within the zone of interests protected or regulated by the statute or regulation in question. The Board also requested that Appellant discuss whether, in light of the fact that the deed conveying the parcel to the United States in trust for the Tribe had already been executed and recorded, the relief Appellant wanted — the Board's reversal of the Regional Director's decision and the removal of the land from trust status — was precluded by *Big Lagoon*'s holding that the Board lacks authority to order divestiture of title held by the United States in trust for an Indian tribe, i.e., to undo a completed trust acquisition.

Appellant timely responded to the Board's order. The Tribe replied to Appellant's response, and Appellant submitted a reply to the Tribe's submission. The issues have been fully briefed and are ready for our review.

Discussion

The parties briefed two issues, each of which is dispositive: (1) whether Appellant has standing, and (2) whether the Board's decision in *Big Lagoon* is controlling and requires dismissal, regardless of whether Appellant has standing. Because we conclude that *Big Lagoon* is controlling, we need not address whether Appellant would otherwise have standing.

The lynchpin of the Board's decision in *Big Lagoon* is the Quiet Title Act (QTA), 28 U.S.C. § 2409a, including the Supreme Court and lower Federal court interpretations of the Government's waiver of sovereign immunity embodied in that statute, the Indian lands exception to that waiver, and the Federal policy underlying the Indian lands exception to the waiver. Under the QTA,

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. *This section does not apply to trust or restricted Indian lands*

28 U.S.C. § 2409a (emphasis added).

In *Big Lagoon*, the Board found it unnecessary to decide whether the QTA applies, *per se*, to administrative proceedings, determining that the intent underlying the QTA, and corresponding Federal policy, compelled the conclusion that the Board lacks authority to set aside completed trust acquisitions. The Board began its analysis by discussing *Block v. North Dakota*, 461 U.S. 273 (1983), in which the Court held that the QTA provides the exclusive means by which an adverse claimant may challenge the United States' title to real property. In so doing, the Court also rejected the notion that the Administrative Procedure Act (APA), 5 U.S.C. § 702, provided an alternative remedy. Although *Block* did not involve Indian lands, the Court discussed the Indian lands exception, noting that the Executive Branch had proposed the exclusion of Indian lands from the scope of the waiver of sovereign immunity in the QTA because waiver of immunity in that area would be inconsistent with the specific commitments the Executive Branch had made to the Indians through treaties and other agreements. 461 U.S.C. at 283; *see Big Lagoon*, 32 IBIA at 314. The Board noted that, in *United States v. Mottaz*, 476 U.S. 834, 843 (1986), the Court had reconfirmed that the QTA did not waive the Government's immunity when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, again referring to the position taken by the Executive Branch in the legislative proceedings leading to the enactment of the QTA. *Big Lagoon*, 32 IBIA at 314-15. The Board further observed that subsequent Federal court of appeals decisions in which the Indian lands exception to the QTA had been directly at issue had construed the QTA to mean that the APA does not waive immunity as to any claims that are otherwise precluded by the QTA, including claims precluded by the Indian lands exception. *Id.* at 315, citing *Alaska v. Babbitt*, 75 F.3d 449, 453 (9th Cir.), *cert. denied*, 519 U.S. 818 (1996), and the cases discussed therein. Despite the general sense of these cases, the Board pointed out that there was no definite answer as to whether Federal courts were barred by the QTA from reviewing a completed trust acquisition where the Secretary was alleged to have acted unconstitutionally or in violation of Federal law. *Big Lagoon*, 32 IBIA at 316-17.

The Board similarly found that, while there was case law supporting the proposition that if the QTA would bar litigation of an issue in Federal court, it would also bar an administrative appeal concerning the same issue, the law was not clear enough to conclude that the QTA *per se* was a direct bar to the Board's authority. The Board, nevertheless, determined that, to the extent the principles enunciated in *Block* and its progeny interpreted Federal policy with respect to Indian lands and applied it in comparable contexts, they were relevant to the question of the Board's jurisdiction. *Big Lagoon*, 32 IBIA at 317.

In addition, the Board noted that a trust acquisition involves a two-step process. The first step, in this case the Regional Director's September 15, 2006, decision, is a decision announcing BIA's prospective intent to accept land into trust. Following the completion of

the Title Examination and exhaustion of any administrative remedies, BIA publishes a notice of the final agency determination, which announces that the land will be taken into trust no sooner than 30 days from the date of publication. 25 C.F.R. § 151.12(b). After that publication and 30-day waiting period, BIA formally accepts the land into trust, thereby effectuating the second step through the actual transfer of title. *Id.* § 151.14. At that point, BIA's decision approving a trust acquisition request is, in effect, superseded by BIA's action formally accepting title in the name of the United States in trust. *See Big Lagoon*, 32 IBIA at 318-19.

In light of the Federal policy discussed in the Supreme Court and lower Federal court decisions, the Federal Government's responsibility for trust lands in general, and the limitation of the Board's jurisdiction to only those authorities delegated to it by the Secretary, the Board concluded that it lacked the authority to order divestiture of title to land held by the United States in trust for an Indian tribe. *Id.* at 322-23.⁶

Appellant argues that *Big Lagoon* does not preclude adjudication of its appeal because the cases relied upon in that decision are distinguishable from the situation here. Essentially, Appellant asserts that, unlike the plaintiffs in those cases, it does not claim an adverse title interest in the subject land but, instead, asks that the land be put back into tribal ownership in fee simple; that it is not challenging the Government's title to the land but simply objects to the administrative process by which the Government obtained title; and that, because it claims administrative wrongdoing, the APA provides an alternate basis for Federal jurisdiction under the analysis in *Donnelly v. United States*, 850 F.2d 1313 (9th Cir. 1988). Appellant further maintains that *Donnelly* seriously undermines the Board's rationale in *Big Lagoon* and that the Board, therefore, should reconsider its decision.⁷ None of Appellant's

⁶ In reaching its conclusion, the Board also rejected the argument that the Department's admitted authority to reconsider trust acquisition decisions after the decision to take the land into trust had been made, but before the trust acquisition had been completed by the formal acceptance of the land into trust with the concomitant transfer of legal title to the United States and the establishment of the trust relationship between the United States and the Indian beneficiary, authorized it to reconsider completed trust acquisitions. *See id.* at 318-19.

⁷ Although Appellant also appears to be contending that the QTA's Indian lands exception was intended to apply only to trust titles existing at the time of the statute's 1972 enactment (*see* Response to Order to Show Cause at 10 (unpaginated)), that contention is belied by Federal court decisions addressing trust acquisitions occurring after 1972, including decisions discussed *infra*.

arguments convinces us that *Big Lagoon* does not control here or that *Big Lagoon* should be reconsidered. Accordingly, we dismiss the appeal for lack of jurisdiction.

Although Appellant does not assert an adverse title to the land, that fact undercuts rather than aids Appellant's claim that *Big Lagoon* does not control or should be reconsidered. In *Big Lagoon*, the Board relied in part on *State of Florida, Dep't of Business Regulation v. U.S. Dep't of the Interior*, 768 F.2d 1248 (11th Cir. 1985), which succinctly stated

By forbidding actions to quiet title when the land in question is reserved or trust Indian lands, Congress sought to prohibit third parties from interfering with the responsibility of the United States to hold lands in trust for Indian tribes. Here, the appellants seek an order divesting the United States of its title to land held for the benefit of an Indian tribe. That appellants do not assert an adverse claim of title to the land, however, does not lessen the interference with the trust relationship a divestiture would cause. Moreover, Congress chose to preclude an adverse claimant from divesting the United States' title to Indian lands held in trust. It would be anomalous to allow others, whose interest might be less than that of an adverse claimant, to divest the sovereign of title to Indian trust lands.

768 F.2d at 1254-55 (footnotes omitted). See *Neighbors for Rational Development, Inc. v. Norton*, 379 F.3d 956, 962 (10th Cir. 2004) (“[i]f Congress was unwilling to allow a plaintiff claiming title to land to challenge the United States' title to trust land, we think it highly unlikely Congress intended to allow a plaintiff with no claimed property rights to challenge the United States' title to trust land.”); see also *Shirwits Band of Paiute Indians v. State of Utah*, 428 F.3d 966, 975 (10th Cir. 2005); *Big Lagoon*, 32 IBIA at 316 n.6. Thus the fact that Appellant does not claim adverse title to the parcel is insufficient to establish that *Big Lagoon* does not control here.

Nor does Appellant's assertion that it is not challenging the Government's title to the land but simply objecting to the administrative process by which the Government obtained title undermine the applicability of the Board's holding in *Big Lagoon*. The key focus in determining whether jurisdiction is precluded is not on the party's characterization of the claim but on the relief requested. See, e.g., *Iowa Tribe of Kansas and Nebraska v. Salazar*, 607 F.3d 1225, 1230-31 (10th Cir. 2010); *Shirwits Band of Paiute Indians*, 428 F.3d at 974-75; *Neighbors*, 379 F.3d at 961; see also *Mottaz*, 476 U.S. at 842 (opining that suit was properly characterized as a quiet title action based on the relief plaintiff sought). In this case, Appellant seeks “the remedy of removing the land from trust status and putting it back in fee

simple in the name of the [Tribe].” Response to Order to Show Cause at 2 (unpaginated); *see also id.* at 9-10 (unpaginated). This requested relief clearly seeks an order from the Board for BIA to divest the United States of title to the land. Granting that relief would require not only the setting aside the Regional Director’s September 15, 2006, decision, but also the setting aside of the subsequent formal acceptance of title in the name of the United States, which, under the regulations, occurs *after* “any” administrative remedies have been exhausted. *See* 25 C.F.R. §§ 151.12(b), 151.14. Since Appellant seeks the termination of the United States’ title to the land, its appeal falls within the category of appeals over which the Board has no jurisdiction under *Big Lagoon*.

Appellant’s contention that, because it claims administrative wrongdoing, the APA provides an alternative basis for Federal jurisdiction under the analysis in *Donnelly*, is similarly unpersuasive. *Donnelly* did not involve the exclusion for trust and restricted Indian lands included in 28 U.S.C. § 2409a(a) of the QTA; rather, it addressed 28 U.S.C. § 2409a(e), which provides:

If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1326(f) of this title.[⁸]

This fact alone undercuts Appellant’s reliance on *Donnelly* as a ground for asserting the Board’s jurisdiction in this appeal.

Additional facts in *Donnelly* make it further distinguishable from the case here. In *Donnelly*, the United States disclaimed all interest in a disputed homestead property, which it had previously conveyed to an Alaska Native corporation. Since the United States no longer claimed title to the land, the Ninth Circuit concluded that the district court was without jurisdiction over the Donnellys’ claim that the United States had wrongfully deprived them of title to the land by failing to obey section 24 of the Federal Power Act, unless there was an alternate ground for jurisdiction independent of the QTA. *See Donnelly*, 850 F.2d at 1317. While explicitly acknowledging that the QTA provided the exclusive remedy for title disputes against the Government, the court concluded that the APA was available as a jurisdictional ground, as opposed to a remedy, where the claim would not divest the United

⁸ “Section 1346(f) is the jurisdiction-vesting counterpart to § 2409a’s waiver of sovereign immunity.” *Donnelly*, 850 F.2d at 1317.

States of title to the land, holding that § 2409a(e) allowed jurisdiction over a title dispute when the title claim was founded on alleged administrative wrongdoing, beyond the Government's simple assertion of title. *Id.* at 1317-18. In so doing, the court noted that “if the government deprives someone of title by administrative wrongdoing, it cannot evade review by selling or otherwise disposing of the property.” *Id.* at 1318.

Unlike the situation in *Donnelly*, not only does the United States here claim title to the disputed parcel, but Appellant also does not argue that the United States has wrongly deprived *it* of title; instead, it asserts that title should be returned to the Tribe, the very entity that sought the transfer of title to the United States in the first place. Appellant claims that administrative wrongdoing in the process by which the land was taken into trust⁹ places this case within the parameters of *Donnelly*'s holding that the APA provides the requisite basis for Federal jurisdiction. The fact that Appellant seeks to divest the United States' title to the parcel, however, removes this case from those parameters since, as the court in *Donnelly* itself acknowledged, the QTA provides the exclusive remedy for title disputes against the Government and assertions that the APA provides an independent means for pressing such claims have been expressly rejected. 850 F.2d at 317.¹⁰ Other courts squarely facing the question of whether a BIA decision to take land into trust is reviewable under the APA have determined that, while APA review is available if the United States has not yet acquired title to the property, once title has been transferred, such review is no longer possible because the APA's waiver of sovereign immunity does not survive the QTA's explicit preclusion of suits to extent they seek to nullify a completed trust acquisition. *See, e.g., Shivwits Band of Paiute Indians*, 428 F.3d at 975; *Neighbors*, 379 F.3d at 965. Accordingly, we reject Appellant's argument that the decision in *Donnelly*, which was decided 10 years before *Big Lagoon*, mandates that we reconsider our decision in that case.

Since the core of Appellant's appeal is its request that the Board essentially undo the completed trust acquisition and divest the United States of title to that land, we conclude

⁹ Appellant's claim of administrative wrongdoing apparently rests on BIA's failure to notify *the City* of the proposed trust acquisition. We note that the City, which received notice of the Regional Director's decision to accept the land into trust, did not appeal that decision or otherwise raise the lack of notice in a challenge to the trust acquisition.

¹⁰ Appellant also cites *Comanche Nation, Oklahoma v. United States*, 393 F. Supp.2d 1196 (W.D. Okla 2005), as support for its contention that the APA provides an alternate ground for jurisdiction. That case is readily distinguishable because the dispute there was between two tribes and, regardless of which tribe prevailed, legal title would remain in the United States.

that *Big Lagoon* controls here, deny Appellant's request that we reconsider that decision, and dismiss the appeal for lack of jurisdiction.

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 dismisses the appeal.

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Steven K. Linscheid
Chief Administrative Judge

*Interior Board of Land Appeals, sitting by designation.