



INTERIOR BOARD OF INDIAN APPEALS

Imperial County, California v. Acting Phoenix Area Director, Bureau of Indian Affairs

17 IBIA 271 (09/05/1989)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

IMPERIAL COUNTY, CALIFORNIA

v.

ACTING PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-35-A

Decided September 5, 1989

Appeal from a decision of the Acting Phoenix Area Director, Bureau of Indian Affairs, revoking two contracts allowing removal of sand and gravel from the Fort Yuma Indian Reservation.

Affirmed.

1. Indians: Leases and Permits: Cancellation or Revocation

A decision by the Bureau of Indian Affairs to revoke a contract made revocable by its express provisions will be upheld when the decision is in accordance with all requirements of the revocation clause.

APPEARANCES: Nancy J. Glover, Esq., Deputy County Counsel, Imperial County, El Centro, California, for appellant.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Imperial County, California, seeks review of an August 16, 1988, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (BIA; appellee), concerning the revocation of two contracts allowing appellant to remove sand and gravel from the California portion of the Fort Yuma Indian Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

### Background

On October 17, 1949, the District Manager, Lower Colorado River District, Bureau of Reclamation (District Manager), entered into Contract No. I24r-635 with appellant which granted appellant "a revocable permit to remove sand and gravel and other road construction materials" from certain described lands. Similarly, on June 4, 1951, the District Manager entered into Contract No. I24r-678 with appellant, granting appellant a revocable permit to remove the same types of materials from additional described lands. Both of the contracts provided in sec. 3 that the permits would "continue so long as in the opinion of the duly authorized representative

of the United States it is considered expedient and not detrimental to the public interest and shall be revocable by said representative upon fifteen (15) days' written notice." Although the permits required any materials removed to be used for road construction and maintenance in the immediate vicinity of the Fort Yuma Project, there was no provision for compensation for materials removed or accounting for the amount of materials removed. The permits would run in perpetuity unless the revocation clause was invoked.

There is no dispute between the parties that the lands covered by these two contracts are now part of the Fort Yuma Indian Reservation, that the lands are held in trust by the United States for the benefit of the Quechan Tribe (tribe), or that the "authorized representative of the United States," referenced in sec. 3 of the contracts, is the Superintendent of the Fort Yuma Agency, BIA (Superintendent).

By Resolution R-18-88, dated March 24, 1988, the tribe requested BIA to revoke the two contracts. By letter dated April 11, 1988, the Superintendent gave appellant notice that the contracts would be revoked pursuant to sec. 3 of each contract. The Superintendent's letter states at page 1:

The Quechan Tribe has requested that the permits be revoked. The tribe is looking into the possibility of starting a sand and gravel enterprise. A resource assessment and marketing study are now underway. It is a historical fact that sand and gravel materials from the Fort Yuma Indian Reservation have been used locally for many years without compensation to the tribe. There is no limit set on the amount of materials which can be removed. As a result, I have determined that the permits will be revoked for the following reasons:

1. The permits are not fair to the tribe in as much as they constitute a taking of resources without compensation or limits as to time or amount.
2. The permits are not expedient in the eyes of the government with respect to the tribe and the federal trust responsibilities.
3. The permits are viewed as highly unusual and questionable, even for the times in which they were granted, in the light of their unlimited, open-ended, no-compensation term.
4. It is detrimental to the public interest to allow these permits to continue in force because it deprives the tribe of a potential source of revenue and allows its resources to be taken without limits or compensation.

Appellant appealed this decision to appellee, who, by letter dated August 16, 1988, affirmed the Superintendent's revocation of the contracts. Appellee stated at pages 1-2 of that letter:

The Superintendent, being the duly authorized representative of the United States, has full authority to administer the terms of the permits. He has found that, in his opinion, the permits are detrimental to the public interest and are not expedient in terms of the Tribe's interest and the Federal government's trust responsibilities toward the Tribe.

As the responsible Federal authority, the Superintendent has met all requirements for revocation of the permits, as follows:

1. He has established an opinion concerning the character of the permits.
2. In his opinion, he does not consider the permits expedient, and considers them detrimental to the public interest all within the context of benefits to the beneficial owner of the land.

Appellant timely appealed this decision to the Washington, D.C., BIA office, where the appeal was still pending on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. <sup>1/</sup> The appeal was transferred to the Board on May 1, 1989, for consideration under the new procedures. Pursuant to the Board's May 3, 1989, notice of docketing, appellant stated that it would rely on the information already submitted. No other party filed a brief with either BIA or the Board.

#### Discussion and Conclusions

Appellant argues that the contracts were improperly revoked because they were in the public interest in that both the general public and the tribe benefit from the maintenance and upkeep of the roads; the tribe is compensated for the materials used because the provision of well-maintained roads can be considered a form of compensation; under the trust responsibility the tribe benefits from the removal of the materials because appellant uses the materials to maintain the roads; and the permits do not deprive the tribe of a potential source of income because the permits are not exclusive and the tribe can still allow other persons to remove sand and gravel for compensation.

[1] These contracts are revocable by their express terms. Although in order to revoke the contracts, the Superintendent must determine that they are no longer expedient and are detrimental to the public interest, there are no standards provided for limiting his discretion in reaching this determination. Here, the Superintendent considered both the general public interest and the more particularized public interest of the tribe. He also considered the Federal government's responsibilities to the tribe. Even though appellant clearly disagrees with the Superintendent's ultimate decision, such disagreement is not sufficient to overcome the Superintendent's reasonable exercise of his discretionary authority. Appellee's affirmance of the Superintendent's decision was proper.

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<sup>1/</sup> See 54 FR 6478 and 6483 (Feb. 10, 1989).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the August 16, 1988, decision of the Acting Phoenix Area Director is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge