



INTERIOR BOARD OF INDIAN APPEALS

Naknek Native Village v. Acting Alaska Regional Director, Bureau of Indian Affairs

60 IBIA 32 (02/26/2015)



United States Department of the Interior

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

NAKNEK NATIVE VILLAGE,)	Order Affirming Decision
Appellant,)	
)	
v.)	
)	Docket No. IBIA 10-035
ACTING ALASKA REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	February 26, 2015

Naknek Native Village (Naknek) appealed to the Board of Indian Appeals (Board) from a November 3, 2009, Decision Determining Realty Service Area Boundaries (Decision) by the Acting Alaska Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Decision determined the service area boundaries for BIA realty programs serving individual Native restricted land owners in the vicinity of Naknek, the Native Village of South Naknek (South Naknek), and the Native Village of King Salmon (King Salmon) (collectively, Tribes).¹

We affirm the Decision. BIA made its determination after the Tribes were unable to propose mutually acceptable realty service area boundaries following multiple attempts at negotiation. BIA consulted with the Tribes and considered their respective proposals, and appropriate factors, including historical use patterns, tribal memberships, and geographical features. If anything, Naknek’s service area was increased—not reduced—when compared to the purported service area “boundaries” that Naknek contends BIA had previously designated. The Decision was an exercise of discretion and we conclude that Naknek has not met its burden to show that the Regional Director erred or abused his discretion.

Background

Naknek, South Naknek, and King Salmon are located along the Naknek River, in the Bristol Bay Region of Alaska. The Naknek River flows west from Naknek Lake to

¹ South Naknek and King Salmon intervened in this appeal in support of the Decision.

In our decision we sometimes refer to “Naknek,” “South Naknek,” and “King Salmon” as tribal entities, and at other times as the location of tribal communities.

Kvichak Bay. King Salmon is located to the east near the river's source, on the north bank, while Naknek and South Naknek lie roughly 20 miles downriver to the west at the mouth, on the north and south banks, respectively. Decision, Nov. 3, 2009, at 2-3 (Administrative Record (AR) Tab 33). Between King Salmon and Naknek lies Paul's Creek, a tributary to the Naknek River. *Id.* at 4. Initially, pursuant to resolutions submitted to BIA by the governing bodies of Naknek and South Naknek, the Bristol Bay Native Association (BBNA)² operated BIA realty programs for all the individual Native restricted land owners in the area now comprising Naknek, South Naknek, and King Salmon. *Id.* at 2. As a practical matter, it was therefore unnecessary to the BBNA's provision of realty services for BIA to establish individual service areas for each tribe, and BIA says that it indeed paid "little attention" to the issue of which parcels were being served under authority of which tribal resolution. *Id.* "For internal purposes," however, BIA designated service areas for Naknek and South Naknek based on township lines. *Id.*

I. BIA's Internally Designated Service Areas

As designated for those purposes, South Naknek's service area consisted of an east-west band of territory four townships "high" (north-to-south), and Naknek's service area consisted of a similar east-west band of territory three townships "high" (north-to-south). *Id.* The southern boundary of Naknek's service area was a township line north of the Naknek River. *Id.* Consequently, Naknek itself, though north of the river, was within the "South Naknek" service area. *See* BIA, Land Titles and Records Office, Map, Aug. 27, 2004 (2004 Map) (AR Tabs 64, 70). It is unclear whether Naknek and South Naknek had any input into the design of these initial realty service areas, or were aware of their existence. Decision at 2.³

After a 2000 decision of the Assistant Secretary – Indian Affairs to add King Salmon to the list of Federally recognized Indian tribes, Letter from Assistant Secretary – Indian Affairs to President, King Salmon, Dec. 29, 2000 (AR Tab 59, Doc. 14), the BBNA continued to provide realty services for the entire area. In 2004, however, the governing

² The BBNA is a tribal consortium with an Indian Self-Determination and Education Assistance Act (ISDA), Pub. L. No. 93-638, 25 U.S.C. § 450 *et seq.*, compact under Title IV of the ISDA.

³ According to Naknek, when it elected to participate in BIA's compact with the BBNA for realty services, Naknek "understood its service area to include all those lands in the Bristol Bay Borough north of the Naknek River and Naknek Lake." Notice of Appeal, Nov. 23, 2004, at 2 (2004 Notice of Appeal) (AR Tab 59, Doc. 8). But that "understanding" does not conform to the record of what Naknek contends was BIA's "existing" service area boundary between Naknek and South Naknek.

bodies of South Naknek and King Salmon retroceded⁴ to BIA the ISDA realty programs that had been operated for them by the BBNA, while Naknek remained with the BBNA. Decision at 3. Thus, for the first time, it became necessary, for purposes of dividing responsibilities and Federal funding among realty service providers based on the acreages served, for BIA to designate the realty service areas that would be separately served by BIA (for South Naknek and King Salmon) and the BBNA (for Naknek).

II. The Tribes' Service Area Proposals and the Regional Director's 2004 Decision

The BBNA attempted to facilitate an agreement among the Tribes, but the Tribes were unable to identify mutually acceptable service area boundaries. Letter from BBNA to Tribes and BIA, Aug. 25, 2004 (AR Tab 59, Doc. 4). King Salmon proposed Paul's Creek, located approximately five miles downriver, as the western border for its service area. Decision at 4; Letter from King Salmon to BIA, Aug. 10, 2004, at 1-2 (unnumbered) (AR Tab 59, Doc. 1). The BBNA's general counsel reported that "[t]he initial boundary area that has been proposed . . . will infringe on the Naknek Constitutional boundary," without describing the Constitutional boundary or explaining how it was relevant to the creation of a realty service area boundary along Paul's Creek. AR Tab 59, Doc. 4. On September 2, 2004, BIA met with the Tribes and the BBNA, and the Tribes apparently agreed that South Naknek's realty service area should include all the restricted lands south of the Naknek River. Decision at 4-5. Naknek and King Salmon remained unable to agree, however, on a boundary for their respective realty service areas north of the Naknek River.

Apart from the BBNA's objection on behalf of Naknek based on its Constitutional boundaries, Naknek submitted three letters to BIA expressing opposition to King Salmon's proposal. First, Naknek stated that it "wishe[d] to keep [its] existing boundaries . . . the same." Letter from Naknek to BIA, BBNA, South Naknek, and King Salmon, Aug. 9, 2004 (AR Tab 59, Doc. 1). Next, Naknek disputed King Salmon's assertion that all the Native allotment parcels located within the proposed King Salmon service area were owned by members of King Salmon. Letter from Naknek to BIA, Aug. 12, 2004 (AR Tab 59, Doc. 2). Naknek contended that 16 of the 27 allotments within the proposed King Salmon service area were held by Naknek enrolled members. *Id.* Naknek then asserted that it "ha[s] always disagreed with the service unit area. . . . [I]t was [the BBNA] and [BIA] who have imposed the boundaries." *Id.* In its third letter, Naknek proposed that King Salmon's service area be located some distance east of Paul's Creek and be limited to four Sections, i.e., four square miles, an area much smaller than that proposed by King Salmon. Letter

⁴ "Retrocession," under the ISDA, is the "voluntary return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract." 25 C.F.R. § 900.6 (definition of "retrocession").

from Naknek to BIA, Sept. 17, 2004 (AR Tab 59, Doc. 5). Naknek did not supply a written rationale for the boundaries it proposed.

Due to Naknek's and King Salmon's inability to agree on a service area boundary between them, on October 27, 2004, the Regional Director issued his first decision establishing the service area boundaries for all the Tribes (2004 Decision). 2004 Decision at 1 (unnumbered) (AR Tab 59, Doc. 7). The 2004 Decision designated South Naknek's realty service area as comprising a band of territory on the south bank of the Naknek River, as the Tribes had apparently agreed. *Id.* at 1-2. The Regional Director's determination of the Naknek and King Salmon realty service areas represented a compromise between the boundary proposed by Naknek and that proposed by King Salmon. The 2004 Decision adopted a "modified version" of King Salmon's proposal, omitting from King Salmon's proposed realty service area, and adding to Naknek's, two Sections (i.e., two square miles) that partly extended east of Paul's Creek. Decision at 5 (emphasis omitted); *see also* 2004 Decision at 1-2. According to the 2004 Decision, Naknek was "gain[ing]" these Sections and other lands north of the Naknek River and west of Paul's Creek—all of which lands were previously included in BIA's internally designated "South Naknek" service area. 2004 Decision at 2; *see supra* at 33. Under the 2004 Decision, the newly created King Salmon service area lay entirely within a strip of the prior "South Naknek" realty service area that was north of the Naknek River and east of Paul's Creek. *See* 2004 Decision at 1; *supra* at 33. Thus, under the 2004 Decision, Naknek's service area included all of the townships included in BIA's prior internally designated "Naknek" service area, plus a portion of the previous "South Naknek" service area—including the portion that contained Naknek itself. *See* 2004 Decision at 1; *supra* at 33.

Naknek appealed from the 2004 Decision and filed a notice of appeal and a statement of reasons, each containing a list of alleged errors by BIA.⁵ 2004 Notice of Appeal, Nov. 26, 2004 (AR Tab 59, Doc. 8); Statement of Reasons, Dec. 30, 2004 (AR Tab 59, Doc. 10). South Naknek and King Salmon intervened, and, after further negotiations and a stipulated agreement among the parties, the 2004 Decision was vacated

⁵ In sum, the list was: (1) failure to consider tribal memberships; (2) failure to conduct meaningful consultation; (3) failure to follow regulations and policies for designating or modifying a service area; (4) violation of the ISDA by "reducing" Naknek's service area, tantamount to a "partial declination" or "reassumption" of Naknek's contract; (5) violation of the trust responsibility to Naknek; (6) use of arbitrary criteria for modifying Naknek's service area and failure to consider historical boundaries in its Tribal Constitution; (7) acceptance of King Salmon's unsupported factual representations and disregard of Naknek's contrary factual showings; (8) failure to consider Naknek's proposal for the King Salmon service area; and (9) failure to explain the reasons for the decision.

and the matter remanded to BIA for further consideration and issuance of a new decision. *See* Stipulated Joint Request for Remand, Feb. 18, 2005 (AR Tab 59, Doc. 16).

III. The Remand Proceedings and the Regional Director's 2009 Decision

During the remand proceedings, BIA invited the Tribes to submit additional materials for consideration. *See* Letter from BIA to Naknek, May 12, 2005 (AR Tab 54). King Salmon and South Naknek submitted a brief supporting the 2004 Decision and contending in particular that Paul's Creek was an appropriate boundary between Naknek's and King Salmon's realty service areas based, in part, on historical use evidence that King Salmon had submitted in support of its petition for Federal recognition as an Indian tribe. Interested Parties Brief (Br.), June 7, 2005, at 5-10 (AR Tab 53). Naknek requested an in-person meeting, which BIA declined while noting that Naknek could still submit written materials. AR Tab 54. Naknek submitted no further materials.

In 2006, Naknek designated BIA as its realty service provider. Regional Director's Reply to Naknek's Additional Statement, Feb. 12, 2010, Attach. (Naknek Resolution 06-06, May 4, 2006). Then, in 2008, Naknek authorized the BBNA to negotiate and contract on Naknek's behalf to provide realty services once again. Naknek 2010 Award & Annual Funding Agreement, Attach. 1 (Naknek Resolution 08-10, June 24, 2008) (AR Tab 31). However, because the BBNA did not (or could not) identify the tribal funding shares associated with the service area boundaries, pending resolution of the boundary issue, BIA continued to provide realty services to all the Tribes. Regional Director's Reply to Naknek's Additional Statement at 3.

On November 3, 2009, the Regional Director issued his Decision. After recounting the prior unsuccessful efforts among the parties at negotiation, the Regional Director determined that BIA had no option but to make its own decision regarding the Tribes' respective service areas. Decision at 6. The Regional Director found that there was "no clear line of demarcation" between the communities of Naknek and King Salmon. *Id.* He stated that he considered "[a]ll of the relevant dialogue, letters, affidavits, and [Board d]ecisions." *Id.* He expressly acknowledged Naknek's objection to King Salmon's proposal on the grounds that a large proportion of the Native allotment parcels within the King Salmon service area were owned by enrolled members of Naknek, and he found that tribal membership was not the only relevant factor that merited consideration. *Id.* (citing *Kwethluk IRA Council v. Juneau Area Director*, 26 IBIA 262 (1994)). He stated that, in addition to tribal memberships, he considered historical use patterns and geographical features. *Id.* at 6-7. As an example, he stated that he considered the distance between Naknek and King Salmon, and that he found Paul's Creek to be a logical location to divide their respective service areas. *Id.* at 7. The Regional Director ultimately determined that all of the Tribes' realty service areas should be as they were defined in the 2004 Decision, with

a boundary between Naknek and King Salmon somewhat to the east of Paul's Creek. *See* Decision at 6-7; 2004 Decision at 1-2.

Naknek filed a notice of appeal with the Board, which essentially repeated its prior list of alleged errors by BIA.⁶ *See* Notice of Appeal, Dec. 21, 2009; *supra* note 5. Naknek also filed an opening brief, South Naknek and King Salmon jointly filed an answer brief, the Regional Director filed an answer brief, and Naknek filed a reply brief. According to Naknek's briefs on appeal, Naknek is currently seeking to contract to provide realty services directly. Opening Br., May 10, 2013, at 3, 16; Reply Br., Aug. 23, 2013, at 3.

Discussion

I. Standard of Review

The Board has consistently held that a regional director has discretion to determine realty service areas and service populations. *Douglas Indian Association v. Juneau Area Director*, 30 IBIA 48, 53 (1996) (*Douglas II*); *Douglas Indian Association v. Juneau Area Director*, 27 IBIA 292, 297 (1995) (*Douglas I*) (citing *Kwethluk*, 26 IBIA 262). We review a regional director's discretionary decision under the abuse of discretion standard, which we described in *Douglas II* as follows:

[T]he Board does not substitute its judgment for BIA's. If the BIA deciding official has explained the reasons for his/her decision, and the decision is reasonable, the Board will affirm the BIA decision. Further, an appellant . . . bears the burden of showing that the BIA deciding official did not properly exercise discretion.

30 IBIA at 53 (citations omitted). Bare assertions are insufficient to satisfy an appellant's burden to show that a regional director's decision is unreasonable. *Hadley v. Northwest Regional Director*, 59 IBIA 150, 156 (2014). Further, the scope of the Board's review ordinarily is "limited to those issues that were before the . . . BIA official on review."

⁶ Upon receipt of the appeal, the Board ordered and received statements from the parties as to whether the appeal fell under 25 C.F.R. Part 2, Part 900, or Part 1000, and regarding issues of standing and ripeness. The Board then granted a request by Naknek to stay the appeal for the parties to pursue alternative dispute resolution. In the Board's August 6, 2012, order lifting the stay, the Board determined that the appeal is governed by 25 C.F.R. Part 2 and also determined, pending review of the record and the merits briefs, that Naknek has standing to bring the appeal and that the matter is ripe for a Board decision. Nothing in the record or the merits briefs leads us to reconsider our prior determinations.

43 C.F.R. § 4.318. Thus, the Board ordinarily will decline to consider for the first time on appeal matters that were not, but could have been, raised to the Regional Director. *See id.*; *Drew v. Acting Northwest Regional Director*, 56 IBIA 132, 144 (2013).

II. Arguments on Appeal

Naknek frames the issues on appeal in two broad categories of alleged error or abuse of discretion by the Regional Director: (1) “BIA failed to follow proper procedures and, in fact, acted outside of its legal authority when it reduced Naknek’s service area in order to accommodate King Salmon”; and (2) BIA failed to consider the correct criteria and disregarded critical facts in determining Naknek’s service area. Opening Br. at 15. Within this framework, in its appeal briefs, Naknek now provides arguments for its previous lists of alleged errors by BIA.⁷

Naknek claims that, as compared to the service areas originally drawn by BIA for Naknek and South Naknek, the Decision constituted a “reduction” in its realty service area and that BIA lacked legal authority to do so without Naknek’s consent. *Id.* at 15-17, 28. Naknek argues that the reduction in its service area is tantamount to a partial declination⁸ or reassumption⁹ of Naknek’s self-determination contract done outside of BIA’s authority and procedures in 25 C.F.R. Part 900. *Id.* at 21. Naknek also argues, for the first time on appeal, that any reduction of Naknek’s realty service area will adversely affect its tribal jurisdiction and sovereignty, and could result in a reduction of its Indian Reservation Roads funding.¹⁰ *Id.* at 14-15. Regarding its second point, Naknek argues that the Decision only

⁷ To the extent we do not specifically address them *infra*, we have considered and hereby reject each of Naknek’s arguments on appeal.

⁸ “Declination” is the process by which “the Secretary may decline a proposal to contract, to amend an existing contract, to renew an existing contract, to redesign a program, or to waive any provisions of these regulations.” 25 C.F.R. § 900.20.

⁹ “Reassumption” is defined under the ISDA as a “rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization.” 25 C.F.R. § 900.6 (definition of “reassumption”).

¹⁰ We decline to consider these additional issues for the reason that they were first raised on appeal. *See* 43 C.F.R. § 4.318. Even were we to consider the newly raised issues, we would reject them on the basis that the Regional Director disputes that any relationship exists between these issues and his determination of the Tribes’ realty service areas. Regional Director’s Answer Br., July 16, 2013, at 7; *see also Kwethluk*, 26 IBIA at 267 (finding no requirement that service areas be coextensive with governmental jurisdiction).

(continued...)

expressly considered geographic distances between Naknek and King Salmon, and the location of Paul's Creek, and failed to consider historical use patterns and tribal memberships. *Id.* at 23-27.

We conclude that Naknek does not meet its burden to show that, after Naknek and King Salmon were unable to agree upon realty service area boundaries following multiple attempts at negotiation, the Regional Director erred or abused his discretion in determining the realty service areas for the Tribes.

III. The Decision Did Not Reduce Naknek's Realty Service Area

Naknek's understanding that the Decision reduced its realty service area is incorrect, and therefore its appeal is based, in large part, on a false premise. Naknek contends that it once had a realty service area encompassing all of the land now designated as King Salmon's realty service area under the Decision, *see* Opening Br. at 23-24, but it has presented no evidence that such a service area was ever established for Naknek. The record shows that the realty service areas that BIA initially designated for Naknek and South Naknek were for internal Departmental purposes and had no demonstrated effect on the services provided to individual Native restricted land owners while Naknek, South Naknek, and King Salmon all received realty services through the BBNA's compact with BIA. More recently, since 2006, all the Tribes have received realty services from BIA. Thus, the Decision will arguably create Naknek's first realty service area for all intents and purposes.

Second, but perhaps even more relevant, even were we to accept Naknek's premise that BIA's internal designation of Naknek's and South Naknek's service areas instilled rights in Naknek to "its" service area for purposes of ISDA contracting, the Decision actually expanded Naknek's service area to include land that was formerly within South Naknek's realty service area. To the extent, if any, that a tribe's realty service area was "reduced" by the Decision creating King Salmon's service area, it was South Naknek's, as King Salmon's realty service area lies entirely within the area internally identified as a service area for South Naknek. Therefore, regardless of whether one frames the Decision as creating new realty service area boundaries where previously none had existed, or modifying existing realty

(...continued)

BIA's position is that the Decision does not determine these issues, and Naknek's speculation to the contrary is not convincing. Nothing in our decision, which concerns the boundaries of the Tribes' respective realty service areas only, shall be construed as expressing any opinion by the Board regarding the extent of a tribe's sovereignty or jurisdiction.

service area boundaries—a question we ultimately need not decide—the Decision did not reduce Naknek’s realty service area.

Further, at the time of the Decision, the Tribes had all designated BIA as their realty service provider, except to the extent that Naknek had authorized the BBNA to “apply for a contract [and] negotiate” for real estate services on its behalf. Naknek Resolution 08-10. The BBNA had not submitted a funding proposal, *see supra* at 36, so the Decision could not have constituted a partial declination under Part 900. On appeal, Naknek avers that it is in the process of contracting directly for restricted real property related programs, Opening Br. at 3, 16, but the Regional Director responds that Naknek did not at the time of the Decision, and does not now, have an ISDA contract to provide realty services to land owners within the service area that Naknek wishes to claim, Regional Director’s Answer Br. at 3-4, 6. Thus, the Decision also could not have constituted a reassumption of any existing self-determination contract under Part 900.

Ultimately, Naknek relies on procedures in Part 900 that do not apply the facts of this case. We therefore consider whether the Decision was a reasonable exercise of discretion under 25 C.F.R. Part 2, and conclude that it was.

IV. Naknek Fails to Show That the Decision is Unreasonable

As we explain further below, Contrary to Naknek’s contentions, the Regional Director considered relevant factors and adequately explained the reasons for the Decision, at least commensurate with the degree to which Naknek fairly raised issues to BIA. To the extent that, on appeal, Naknek more fully presents its arguments, the Regional Director’s responses are adequate to demonstrate that the issues were considered, as appropriate, in reaching the Decision. Naknek does not meet its burden on appeal to show that the Regional Director failed to consider something he was required to consider, or considered something he should not have considered.

For reasons we explained in *Douglas I*, *Douglas II*, and *Kwethluk*, when making a service area or service population determination in Alaska, where often there is no clear boundary between tribes, “BIA must have leeway to balance the factors present in each situation in order to arrive at the best solution for that particular situation.” *Douglas I*, 27 IBIA at 297 (quoting *Kaw Nation v. Anadarko Area Director*, 24 IBIA 21, 30 (1993)). In *Kwethluk*, we upheld BIA’s determination of realty service area boundaries based on geography, over the appellant’s objection that tribal membership should have been determinative. 26 IBIA at 271. In *Douglas II*, we found that BIA reasonably departed from what it referred to as the “normal geographically based” methodology for determining a service population, to base its determination on tribal membership instead, where BIA provided an explanation for its departure from the norm. 30 IBIA at 53. Thus, while

geographical factors are often important in Alaska, there is no fixed methodology for a regional director to arrive at his or her determination. And the Board will not substitute its judgment for BIA's if the decision is a reasonable exercise of discretion. *Id.*

Naknek contends that the only factor the Regional Director "explicitly considered" in his Decision was the geographic distance between Naknek and King Salmon, and the location of Paul's Creek. Opening Br. at 23. According to Naknek, the Regional Director did not consider historical use patterns and tribal memberships, and did not sufficiently explain the rationale for his Decision. *Id.* at 23-27. Naknek contends that the "record is replete with information regarding Naknek's historical use and control over the land" within King Salmon's service area, *id.* at 23, and also shows that 16 of 27 (i.e., approximately 60%) of the allotments in King Salmon's service area are held by Naknek enrolled members, *id.* at 25.

At the outset, the Regional Director found no clear boundary between Naknek and King Salmon, Decision at 7, and Naknek does not appear to dispute that finding.¹¹ The Regional Director stated in his Decision that he considered geographical features as well as historical use patterns and tribal memberships. *Id.* As the party challenging the Decision, Naknek bears the burden to show that the Regional Director failed to consider relevant evidence. *Douglas II*, 30 IBIA at 53.

As evidence of Naknek's historical use of lands within King Salmon's service area that the Regional Director purportedly failed to consider, Naknek refers us to what it contends was its "existing" service area and to its Tribal Constitution. Opening Br. at 23-24. In describing its "existing" service area, Naknek incompletely quotes the Decision, omitting the portion that states certain lands north of the Naknek River were internally designated as South Naknek's service area, and disregarding that King Salmon's service area lies entirely within those lands. *See id.* at 23 (quoting Decision at 2). Naknek also suggests that BIA made the initial service area designations for Naknek and South Naknek after specifically considering the lands under Naknek's "traditional use and historical control," *id.*, when there is no evidence to support that assertion and the record shows instead that the designations were merely for internal Departmental purposes and arbitrarily based on township lines. *See* 2004 Map (dividing Naknek's and South Naknek's service areas along a township line, apparently without particular regard for the inclusion of Naknek itself within South Naknek's service area).

¹¹ Naknek does dispute Federal recognition of King Salmon as an Indian tribe, Opening Br. at 2, which the Board lacks jurisdiction to review.

We also find unavailing Naknek's contention that the Regional Director's failure to give weight to "historical boundaries" in its Constitution renders the Decision arbitrary. Prior to this appeal, Naknek submitted little if any information to BIA regarding its Constitution. On appeal, Naknek asserts that its Constitution identifies its territory as all lands on the north shore of the Naknek River, within the voting district of the Bristol Bay Borough. Opening Br. at 24. In his answer brief, the Regional Director responds that the voting district has scant historical value and that "the broad territorial claims which may have been asserted in a tribal constitution, not subject to federal approval, are . . . entitled to no weight at all for ISDA contracting purposes." Regional Director's Answer Br. at 8, 13. While we do not question Naknek's reply that its Constitutional boundary is meaningful to the Naknek people, Reply Br. at 12, Naknek does not persuade us that the Regional Director abused his discretion by not giving Naknek's Constitution weight in determining the service area boundaries.

With respect to Naknek's contention that the Regional Director "largely ignore[d]" that most of the allotment parcels in the King Salmon service area are held by Naknek enrolled members, and instead arbitrarily assigned service area boundaries that were "geographically convenient," Opening Br. at 24-25, the Decision shows otherwise. The Regional Director expressly acknowledged Naknek's information that most of the Native allotments within King Salmon's service area belonged to Naknek enrolled members. Decision at 6. And he found that tribal membership should not be determinative "since such memberships have been shown to be 'fluid.'" *Id.* (quoting *Kwethluk*, 26 IBIA at 268). Naknek concedes that "[s]trictly basing service area boundaries on membership ignores the fact that tribal membership and land ownership will change over time." Opening Br. at 25. In his answer brief, the Regional Director notes that the boundary selected is actually east of Paul's Creek, and explains that this is reflective of BIA's effort to provide for members to be served by their own tribe where feasible, and that Naknek's service area includes most of the Native allotment parcels owned by Naknek members. Regional Director's Answer Br. at 9-10, 16-17. Naknek does not show that the Regional Director failed to give adequate consideration to the location and distribution of Native allotment parcels in his Decision. Nor did Naknek, despite multiple opportunities to do so since 2004, offer and advocate for a reasonable alternative to the Decision.

In sum, while, as the Regional Director acknowledges, the basis for his Decision was not explained as fully as it might have been, *id.* at 16, we conclude that it was supported by the record and sufficient in light of the bare assertions of BIA error alleged by Naknek since 2004 and the Regional Director's cogent responses to Naknek's arguments on appeal.

Conclusion

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 November 3, 2009, Decision.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge