



## INTERIOR BOARD OF INDIAN APPEALS

Dan Van Mechelen v. Northwest Regional Director, Bureau of Indian Affairs

61 IBIA 125 (07/21/2015)

Related Board case:  
56 IBIA 111



# 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

DAN VAN MECHELEN,	)	Order Affirming Decision
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 13-090
NORTHWEST REGIONAL	)	
DIRECTOR, BUREAU OF INDIAN	)	
AFFAIRS	)	
Appellee.	)	July 21, 2015

Dan Van Mechelen (Appellant), appealed to the Board of Indian Appeals (Board) from a March 29, 2013, decision (Decision) of the Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), affirming the BIA Taholah Agency Superintendent's (Superintendent) February 5, 2013, decision denying Appellant's request to convey, as a gift, his interest in Allotment 117-1583 (Allotment) on the Quinault Indian Reservation (Reservation) to the Confederated Tribes of the Chehalis Reservation (Chehalis Tribe).

Appellant contends that it is his intent to honor his late Great-Grandmother, who was the original owner of the Allotment, by conveying his undivided 1/27 trust interest to her aboriginal Chehalis Tribe. The Superintendent denied Appellant's application on the ground that BIA lacked the authority to approve a gift conveyance to a tribe that did not exercise jurisdiction over the land to be gifted. The Regional Director affirmed the Superintendent's decision on appeal, but modified and expanded BIA's reasoning, explaining that the Quinault Indian Nation (QIN) owned an undivided interest in the Allotment and that co-ownership of undivided interests by two tribes in an allotment on one tribe's reservation could lead to conflict. The Regional Director provided a reasoned explanation for his discretionary decision to deny Appellant's application. Appellant has therefore failed to meet his burden of proving error in the challenged decision, which we now affirm.

## Background

Appellant submitted a request to BIA to process his pending application to convey an undivided interest in the Allotment to the Chehalis Tribe on January 18, 2013.<sup>1</sup> Letter from Appellant to Superintendent, Jan. 18, 2013 (Gift Deed Application) (Administrative Record (AR) Tab 9). In his letter, Appellant explained that the Allotment originally belonged to his Great-Grandmother, whom he had known, and whose memory he continued to honor each Memorial Day. *Id.*

The Superintendent denied Appellant's request on the ground that Federal regulations did not authorize the proposed conveyance. Letter from Superintendent to Appellant, Feb. 5, 2013 (Superintendent's Decision) (AR Tab 8). He also quoted selected parts of 25 U.S.C. § 2216(a),<sup>2</sup> emphasizing that it was United States policy to encourage

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<sup>1</sup> This proposed conveyance was before the Board previously in the context of an appeal of the Regional Director's decision denying Appellant's attempt to convey his interest in the Allotment to the Tribe by gift deed without undergoing and appraisal of the value of the interest to be conveyed. *See Van Mechelen v. Northwest Regional Director*, 56 IBIA 111 (2013). The Regional Director found that Appellant's waiver of the estimate of value required by statute, *see* 25 U.S.C. § 2216(b)(1), did not satisfy the limited exceptions to the waiver requirement, and he was therefore precluded from acting upon the gift deed. *Id.* at 111-12. After filing his appeal with the Board, Appellant withdrew his waiver of the estimated value requirement, which the Board understood as removing the sole ground for the Regional Director's decision and the unique issue on appeal to the Board. *Id.* at 112. After soliciting briefing on mootness, the Board issued its decision on January 9, 2013, dismissing the appeal as moot. *Id.* at 114. Appellant's underlying claim, that BIA acted improperly in declining to process his gift deed conveying his interest in the Allotment on the Quinault Reservation to the Confederated Tribes of the Chehalis Reservation, was not addressed in that decision and is now before us.

<sup>2</sup> The subsection cited here provides in pertinent part:

§ 2216. Trust and restricted land transactions

(a) Policy

It is the policy of the United States to encourage and assist the consolidation of land ownership through transactions—

- (1) involving individual Indians;
- (2) between Indians and the tribal government that exercises jurisdiction over the land; or
- (3) between individuals who own an interest in trust and restricted land who wish to convey that interest to an Indian or the tribal government that exercises jurisdiction over the parcel of land involved;

(continued...)

land consolidation through transactions from individuals to the tribe which exercised jurisdiction over the land at issue. *Id.* The Superintendent denied the application “[b]ecause the Chehalis tribe does not exercise any authority over the Quinault Reservation and [§ 2216(a)] gives no other authority for your requested transaction . . . .” *Id.*

Appellant appealed the Superintendent’s decision to the Regional Director, arguing that § 2216(a) was not a mandate but an expression of Congressional policy, and that it did not establish a requirement that “otherwise eligible Indian tribes” had to have jurisdiction over the reservation to acquire land within. Notice of Appeal, Feb. 13, 2013 at 2 (emphasis omitted) (AR Tab 4). Appellant acknowledged that the Chehalis Tribe did not have jurisdiction over the Allotment, *see id.*, but contended that other provisions of the Indian Land Consolidation Act (ILCA), 25 U.S.C. § 2201 *et seq.*, authorized the gift conveyance, *see id.* at 3 (citing 25 U.S.C. §§ 2201, 2204, and 2216).

The Regional Director affirmed the Superintendent’s decision, explaining that while § 2216(a) was not an explicit requirement, it expressed the policy of the United States and the Superintendent correctly determined whether the “proposed conveyance would be consistent with this policy.” Letter from Regional Director to Appellant, Mar. 29, 2013 at 2 (unnumbered) (Decision) (AR Tab 2). He further explained that § 2204 of ILCA<sup>3</sup> did not authorize the type of conveyance sought by Appellant, *see id.* at 1-2 (unnumbered), and that the policy expressed in § 2216 sought to “enhance[] tribal sovereignty by encouraging tribes to acquire an ownership interest in land over which they already exercise[d] governmental power,” *id.* at 2. He observed that the Chehalis Tribe owned no interest in

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(...continued)

in a manner consistent with the policy of maintaining the trust status of allotted lands. . . .

25 U.S.C. § 2216(a).

<sup>3</sup> Section 2204 (Purchase of trust or restricted or controlled lands at no less than fair market value; requisite conditions) provides, in pertinent part:

(a) Purchase of land

(1) In general

Subject to subsection (b) of this section, any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interests in—

(A) any tract of trust or restricted land within the boundaries of the reservation of the tribe; or

(B) land that is otherwise subject to the jurisdiction of the tribe.

25 U.S.C. § 2204(a).

the Allotment and did not exercise jurisdiction over the Allotment, whereas the QIN was both an owner of an undivided interest in the Allotment and exercised jurisdiction over the Allotment and the Reservation. *Id.* The Regional Director also explained that co-tenancy of two tribes, each with an undivided interest in the same Allotment, could create conflict and would not further Federal policy objectives. *Id.*

Appellant filed a notice of appeal and statement of reasons and an opening brief. The Regional Director and the Quinault Indian Nation filed answer briefs, and Appellant filed a reply to the Regional Director's answer.

### Standard of Review

It is well established that conveyances of Indian trust land require Secretarial approval for the conveyance to be valid and enforceable. *See Cloud v. Alaska Regional Director*, 50 IBIA 262, 271 (2009). The authority of the Secretary of the Interior to approve or deny trust conveyances has been delegated to BIA, and "BIA has promulgated regulations governing such conveyances, including gift conveyances." *Kent v. Acting Northwest Regional Director*, 45 IBIA 168, 174 (2007) (citing 25 C.F.R. §§ 152.17, 152.22(a), 152.23, 152.25(d)). BIA's authority to approve conveyances of trust land is discretionary. *Cloud*, 50 IBIA at 269. We review BIA's exercise of discretion to determine whether BIA's decision comports with the law, is supported by the record, and is adequately explained. *Kent*, 45 IBIA at 174. In the course of our review of discretionary decisions by BIA, we will not substitute our judgment for BIA's. *Id.* Appellant bears the burden of demonstrating that BIA abused its discretion by identifying errors of fact or law. *Cloud*, 50 IBIA at 269.

### Discussion

#### I. ILCA and Secretarial Discretion in Approving Conveyances of Trust Land

Appellant argues that 25 U.S.C. § 2216(a) is purely a statement of Congressional policy and does not "bind" Federal officials when making decisions concerning trust land conveyances. *See* Notice of Appeal, Apr. 10, 2013 at 1 (unnumbered) (NOA) (AR Tab 1) (contending that "[t]his 'policy to encourage and assist' . . . is not binding on anyone"); *see also* Opening Brief (Br.), June 10, 2013, at 2 ("To encourage and assist' does not equate to 'require.' There can be no doubt that Congress did not intend for this policy to be a requirement."). We agree with Appellant, inasmuch as § 2216(a) neither mandates approval of the types of conveyances identified therein, nor proscribes those that do not clearly fall within its scope. Rather, that provision is a statement of policy which clearly identifies specific types of land conveyances favored by Congress in furthering the objective of Indian land consolidation, and commits the United States, through BIA, "to encourage

and assist the consolidation of land ownership through [such] transactions.” 25 U.S.C. § 2216(a). BIA retains full authority to consider proposed conveyances that comply with the applicable regulations, regardless of whether they mirror those favored by the policy, and to exercise discretion in denying or approving each proposed conveyance.<sup>4</sup>

Appellant disagrees with the Regional Director’s conclusion that the Superintendent properly exercised his discretion in denying the application on the ground that the proposed gift conveyance was not consistent with Congressional policy. NOA at 2 (unnumbered). Appellant argues that “[t]he Superintendent has no authority to make decisions that are contrary to Federal law based on a policy that is not binding” on him. *Id.* Yet Appellant fails to identify what Federal law was controverted or violated by the Superintendent’s denial of this specific gift application. Instead, Appellant proposes that a “ladder of statutes” formed of various provisions of ILCA and “[o]ther sections of 25 USC” establish the right of the Chehalis Tribe “to obtain and own” an interest in land on the Reservation, and the “statutory right” of Appellant to convey by gift his interest in the Allotment to the Chehalis Tribe. Appellant’s Reply to Regional Director’s Answer (Reply Br.), July 15, 2013, at 4.

We are not convinced that Appellant’s ladder leads to the vesting of a “statutory right” in Appellant to convey trust or restricted interests in land without Secretarial approval, or that would strip the Secretary of all discretion in approving the conveyance. *See* 25 C.F.R. § 152.22(a) (“Individual lands. Trust or restricted lands, . . . or any interest therein, may not be conveyed without the approval of the Secretary.”). Nor do we agree that the general authority the Chehalis Tribe may have pursuant to 25 U.S.C. § 2204 to *buy* trust or restricted land deprives BIA of the discretion to deny Appellant’s gift application. Opening Br. at 7 (“The Chehalis [T]ribe has a statutory right to purchase at not less than fair market value and with the consent of Appellant his interest in [the Allotment] . . . .”) (emphasis omitted). Appellant acknowledges that none of the statutes he cites, taken individually, support his legal argument. Reply Br. at 5. He contends, however, that when read in order they create a statutory mandate which requires BIA to approve his proposed conveyance, or BIA will be “clearly in violation of . . . Federal law.” *Id.* The Regional Director could find no such right, *see* Decision at 3 (unnumbered); Answer Br. at 7, and nor can we.

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<sup>4</sup> *See, e.g.*, 25 C.F.R. §§ 152.17 (Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner), 152.22 (Secretarial approval necessary to convey individually-owned trust or restricted lands or land owned by a tribe), 152.23 (Applications for sale, exchange or gift), 152.25 (Negotiated sales, gifts and exchanges of trust or restricted lands), 152.29 (Rejection of bids; disapproval of sale).

## II. Appellant Fails to Show a Special Relationship or Circumstances Justifying Approval

The statutes on which Appellant relies, *see, e.g.*, Opening Br. at 3-4 (referring to and quoting 25 U.S.C. §§ 2201, 2202, 2204 & 2216), generally address the authority of the Secretary to acquire land for Indians and to approve conveyances of trust and restricted Indian land. They are of limited relevance to our review of BIA's exercise of discretion in denying the proposed gift conveyance. Section 2201 provides definitions of terms used in chapter 24 (Indian Land Consolidation) of title 25, while § 2202 references other statutes located elsewhere in the United States Code that are applicable to that chapter. Section 2204 regulates the purchase of trust or restricted lands by "any Indian tribe" at no less than fair market value and with the consent of other owners of undivided interests in the land, *see* § 2204(a), while also imposing conditions that, *inter alia*, allow an individual Indian co-owner occupying the land to match the tribe's price and buy the tract at issue, *see* § 2204(b). This statute has no bearing on the proposed conveyance, since the Chehalis Tribe is not seeking to buy Appellant's interest in the Allotment. Nor is § 2216 more availing in providing the "mandating" authority Appellant seeks for his proposed conveyance. *See* Opening Br. at 7 ("Appellant has a statutory right to gift convey his interest in [the Allotment] to the Chehalis Tribe . . .") (emphasis omitted).

As noted *supra*, § 2216(a) is an expression of Congressional policy on the types of conveyances which are to be encouraged and assisted due to their importance to Indian land consolidation. Section 2216(b) authorizes the sale, exchange and conveyance by gift deed of interests in land between Indians and between Indians and Indian tribes, and requires that an Indian who wishes to convey his land for no or nominal compensation can only do so after having been provided with an estimate of value of the land or interest in land to be conveyed. 25 U.S.C. § 2216(b)(1)(A). Limited waiver of this exception is available for close relatives and, if the interest to be conveyed is 5% or less of the parcel, to co-owners and the tribe with jurisdiction over the land. *See id.* § 2216(b)(1)(B). Section 2216(b) is a prudential measure that seeks to insure that the individual Indian considering conveyance of an interest in land is aware of the value of the interest to be conveyed; its satisfaction does not deprive BIA of its responsibility to exercise discretion in denying or approving a particular sale, exchange or conveyance by gift deed.

The regulations that govern the gift conveyance sought by Appellant are found in 25 C.F.R. Part 152. For example, 25 C.F.R. § 152.22 (Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe) requires that all conveyances of trust or restricted land or interest in land must be approved by BIA. § 152.22(a). Of particular salience to Appellant's proposed gift conveyance, the regulations strictly limit who may benefit from such a transfer.

With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendent, or when some other special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

25 C.F.R. § 152.25(d). Tribes are not among the named potential grantees of a gift conveyance of individually-owned trust or restricted land, nor, as the Regional Director noted in the Decision, does the record indicate that the Chehalis Tribe has any special relationship to the Allotment or to Appellant, who is a member of the Cowlitz Tribe. Decision at 2 (unnumbered). Appellant has not included in his various filings any evidence that the Chehalis Tribe has acknowledged a special relationship with Appellant. For that matter, the record is silent in regard to the willingness of the Chehalis Tribe to accept the proposed gift conveyance of Appellant's fractional interest in the Allotment on the Quinault Reservation, were it to be approved. *Id.*

The regulation governing conveyances at less than fair market value also authorizes conveyances where "special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance." 25 C.F.R. § 152.25(d). It is clear from the plain language of the regulation that the weight to be accorded to "special circumstances" is a matter left to the discretion of BIA. Although Appellant does not expressly state that special circumstances justify the conveyance, he indicated in his letter requesting that BIA process his gift application that the conveyance held some personal significance to him. *See* Gift Deed Application (explaining that Appellant desired to give his undivided 1/27 interest "in my Great-Grandmother's original allotment on the Quinault Reservation to her aboriginal Tribe, the Confederated Tribes of the Chehalis Indian Reservation") (emphasis omitted). In determining whether special circumstances justify approval of a conveyance of trust or restricted land to a person or entity other than those enumerated in the regulation, BIA may weigh any personal justification advanced for a given conveyance against practical and policy-based considerations.

The Regional Director provided a reasoned explanation of his decision to affirm the Superintendent's decision and deny Appellant's application to gift deed his interest in the Allotment to the Chehalis Tribe. He explained that § 2204 addresses purchases by a tribe at fair market value or above, rather than gift conveyances by an individual Indian owner of an undivided interest in land. Decision at 2 (unnumbered). He also explained that the purpose of § 2216, which authorizes conveyances at less than fair market value under certain circumstances, was to prevent fractionation of trust allotments and to consolidate interests in trust land in a manner that "enhances tribal sovereignty by encouraging tribes to

acquire an ownership interest in land over which they already exercise governmental power.” *Id.* The Regional Director acknowledged that the policy expressed in § 2216(a) is not an “explicit requirement” and determined that Appellant’s proposed conveyance “would be inconsistent with this policy.” *Id.* Finally, he explained that the proposed conveyance “would result in one tribe (Chehalis) owning an interest [in] land on a reservation that is subject to the governmental jurisdiction of another tribe (Quinault).” *Id.* Because the QIN also owns an undivided interest in the Allotment, he concluded that the proposed conveyance “could easily result in a conflict between the tribes.” *Id.*

In his Reply to the Regional Director’s Answer Brief, Appellant appears to give support to this assessment by stating that, based on Appellant’s experience, “these tribes could not work together and chaos would reign.” Reply Br. at 1. While this statement specifically addressed Appellant’s avowed opposition to “co-government of all the fish-eating tribes on the Quinault Reservation,” it seems equally relevant to co-management by tribal owners of undivided interests in one allotment on the Reservation.

The acquisition, conveyance, and disposition of Indian trust and restricted land is subject to approval of the Secretary; the Regional Director’s decision to deny the gift conveyance of a fractional interest of an allotment on one tribe’s reservation to another tribe was an appropriate exercise of Secretarial discretion. We conclude that the Regional Director provided a reasoned explanation for his discretionary decision to deny Appellant’s application. Appellant has therefore failed to meet his burden of proving error in the challenged decision.

### 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 decision.

I concur:

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// original signed  
Robert E. Hall  
Administrative Judge

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//original signed  
Steven K. Linscheid  
Chief Administrative Judge