



INTERIOR BOARD OF INDIAN APPEALS

Okanogan County, Washington v. Acting Portland Area Director,
Bureau of Indian Affairs

30 IBIA 42 (10/08/1996)



United States Department of the Interior

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

OKANOGAN COUNTY, WASHINGTON, : Order Docketing Appeal, Vacating
Appellant : Decision, and Remanding Matter
 : to Area Director
v. :
 : Docket No. IBIA 96-114-A
ACTING PORTLAND AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : October 8, 1996

This is an appeal from a June 21, 1996, decision announcing an intent to take certain tracts, or interests therein, into trust for various individuals. ^{1/} Although the decision listed a number of tracts in Okanogan County, appellant states that it appeals the decision only insofar as it concerns two fractional interests in lot 10, sec. 25, T. 40 N., R. 31 E., Willamette Meridian, Okanogan County, Washington, containing 79.53 acres. ^{2/} The decision stated that these two interests were to be taken into trust for Addie Hargrove, a member of the Confederated Tribes of the Colville Reservation. ^{3/}

The Board has now received the administrative record in this matter. Upon review of the record, the Board concludes that the Area Director's decision must be vacated and this matter remanded to him for further consideration.

^{1/} The decision was signed by the Superintendent, Colville Agency, Bureau of Indian Affairs, and stated that it could be appealed to the Portland Area Director. Appellant filed its appeal with the Area Director as instructed. The appeal was transmitted to the Board by the Acting Area Director, who stated that the June 21, 1996, decision had actually been made by him, rather than the Superintendent. The Board therefore accepted the appeal.

Under 25 CFR 2.7(a), it is the responsibility of the BIA official making a decision to give notice of the decision to the interested parties. Therefore, the June 21, 1996, decision should have been issued by the Acting Area Director, not the Superintendent. Had this been done, the procedural confusion that occurred in this case would have been avoided. See, e.g., Parisian v. Acting Billings Area Director, 19 IBIA 109 (1990).

^{2/} The fractional interests are a 7/36 interest and a 1/180 interest, both presently in fee status. It is not clear whether the remaining interests in this tract are in fee or trust status.

For purposes of this order, the Board assumes that the tract at issue here is within the boundaries of the Colville Indian Reservation, as "Indian reservation" is defined in 25 CFR 151.2(f).

^{3/} In addition to the interests at issue here, the decision listed seven other fractional interests in other tracts which were to be taken into trust for Hargrove.

The June 21, 1996, decision does not discuss BIA's consideration of the factors in 25 CFR 151.10. The record indicates that the Superintendent, and probably the Area Director, gave some consideration to these factors in 1991. As far as the record shows, the factors were not revisited at the time of the June 21, 1996, decision. Further, there is a substantial chronological gap in the record. The document next preceding the June 21, 1996, decision is a May 13, 1992, letter to Hargrove. 4/ No explanation is given for this four-year hiatus.

By memorandum of October 23 or 24, 1991, the Superintendent recommended trust acquisition of certain interests for Hargrove, apparently including at least the 1/180 interest at issue here. 5/ The memorandum states in part:

[Hargrove] wishes to continue the present use of the land for the purpose of Pasture. [Hargrove] does own trust interests within Colville Allotment Nos. 101-565, 101-M677, 151-C18, 151-MH12 and 151-MH14 and needs assistance in handling her affairs as she does not have the full knowledge of land uses, potentials and rights.

Okanogan County, when informed of the application for conversion, offered no comments or objections. It is assumed that no adverse impacts to local governments will result from this conversion and no land use conflicts or jurisdictional problems are anticipated as a result of this conversion. The Colville Agency is equipped to discharge the additional responsibilities resulting from acquisition of land in trust.

It appears from the record that appellant was given an opportunity to make comments about several proposed trust acquisitions, probably including the interests at issue here, prior to October 24, 1991, and that, although it submitted information about tax status, it made no objections to the acquisitions.

The record includes a November 20, 1991, memorandum from the Assistant Area Director to the Superintendent, stating that Hargrove's application for trust acquisition had been approved subject to compliance with certain regulatory requirements. It is not entirely clear that this memorandum concerns the interests at issue here, because it states that the land is to be used for "mineral interest" rather than pasture, as was stated in the Superin-

4/ This letter, captioned "Second Notice," states that Hargrove's application had been submitted to the Portland Area Office, which had notified the Agency that it could proceed with the trust acquisition. The letter also informed Hargrove that she must obtain title insurance.

A Dec. 1991 letter to Hargrove contains the same information.

5/ The memorandum itself does not describe any of the interests for which Hargrove sought trust status. However, attached to the memorandum is a copy of Hargrove's application for trust acquisition of the 1/180 interest at issue here.

Two copies of the memorandum are included in the record. One copy is dated Oct. 23, 1991, and the other is dated Oct. 24, 1991.

tendent's memorandum. 6/ For purposes of this order, however, the Board assumes that the Area Director's memorandum covered at least the 1/180 interest at issue here.

Although the Assistant Area Director's November 20, 1991, memorandum constituted a preliminary approval, the interests were not taken into trust as a result of the memorandum, because further steps needed to be taken. Further, no copy of the memorandum was sent to appellant, and no appeal instructions were included. Thus, even assuming the November 20, 1991, memorandum was an appealable decision, appellant's time to appeal did not begin to run until it received the June 21, 1996, decision. 25 CFR 2.7(b).

Given the amount of time that has passed since the 1991 analysis under 25 CFR 151.10, it cannot be assumed that an evaluation made today would result in the same conclusion. For instance, it may well be that Hargrove no longer has the same need for assistance in handling her affairs that she had in 1991. 7/ Further, as evident from this appeal, the views of the affected county government have apparently changed. Where such a long period of time has passed since the initial analysis under section 151.10, it is incumbent upon BIA to update its analysis before proceeding with a trust acquisition.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's June 21, 1996, decision is vacated insofar as it concerns the two fractional interests at issue here, and this matter is remanded to the Area Director for further consideration. The Area Director should again analyze the proposed acquisition under the factors in 25 CFR 151.10, taking into consideration the comments made by appellant in its notice of appeal and allowing submission of further comments from state and local governments, in accordance with section 151.10. Proof of BIA's consideration of these factors should appear in the record for the Area Director's new decision. City of Eagle Butte, South Dakota v. Aberdeen Area Director, 17 IBIA 198, 96 I.D. 328 (1989).

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

6/ The Assistant Area Director Nov. 20, 1991, memorandum, like the Superintendent's memorandum, does not describe the specific interests it covers.

7/ It appears possible that the Superintendent's 1991 statement concerning Hargrove's need for assistance was based only on Hargrove's statement in her application that she could not properly manage her property without BIA assistance. There is nothing showing that BIA made any independent analysis of her capabilities.