UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUEBLO OF SANDIA,

Plaintiff,

v.

BRUCE H. BABBITT, et al.,

Defendants.

Civ. No. 94-2624
(HHG)

OPINION

This matter is presently before the Court on the parties' cross-motions for summary judgment. Plaintiff sued defendants, challenging that defendants' refusal to correct an allegedly erroneous land survey constituted a violation of the Administrative Procedure Act, 5 U.S.C. § 551 et seq. ("APA"). Plaintiff asked this Court to order a corrected survey and to declare that the corrected boundary is the true boundary. Upon consideration of the parties' motions, oppositions, replies and the entire record in this case, the Court concludes that plaintiff's motion will be granted and that defendants' motion will be denied.

I

Background

The disputed claim area consists of about 10,000 acres of rugged wilderness on the western slope of Sandia Peak near Albuquerque, New Mexico. The vast majority of the

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disputed parcel is owned by the United States government and is currently managed by the United States Forest Service of the Department of Agriculture. A small percentage of the government-owned parcel has been developed for recreational use, in the form of hiking trails, picnic areas, and through a U.S. Forest Service special use permit issued to Sandia Peak Ski Company and Sandia Peak Tram Company. About 600 acres of the disputed claim have been transferred by the government to private owners and developed for single-family homes. The Pueblo has specifically disclaimed any interest in or claim to these private lands and interests.

The Pueblo of Sandia has occupied its present location since about 1300 A.D. In 1748, the King of Spain issued a royal grant to the Pueblo of Sandia in the Spanish language. The official English translation of this grant includes a description of the physical act of conveying the land and the directions given to the people as to how to mark their boundaries. That translation, called the "Whiting translation" after the translator, reports:

> [I]n order to perpetuate their boundaries, I directed them to establish landmarks, . . . the boundaries being on the north an old tower opposite the point of a canon commonly called "De la agua," and on the south the Maygua hill opposite the spring of the Carrisito, and on the east the main ridge called Sandia.

Administrative Record at 1804. The plaintiff alleges that this language set the Pueblo's eastern boundary at Sandia

Peak. Pursuant to the Treaty of Guadalupe Hidalgo (which ratified all land grants made by the Spanish), in 1858 Congress officially confirmed the 1748 Spanish grant to the Pueblo and ordered a survey to be made of the Pueblo's boundary.

The Surveyor-General, an official of the Department of the Interior (hereinafter sometimes "Department"), ordered one Reuben Clements to survey the Pueblo lands according to the boundaries specified in the royal grant confirmed by Congress. Clements did not survey the eastern boundary at the crest of Sandia Peak, but at the foothills to the west of the mountain, a difference of about 10,000 acres--the land at issue. For over a hundred years after Clements' survey, the people of Sandia have continued to worship at the shrines and sacred areas within the claim area. The Sandia religious tradition requires that this worship be both secret and private, but recently, as a result of activity by the Forest Service in this area, it became more difficult for the Sandia to worship in privacy.

To address these interferences with its religious practices, the Pueblo of Sandia presented a formal claim to the Secretary of the Interior in 1983 for a clarification of the eastern boundary of their grant. A number of Interior Department officials were involved in evaluating the Pueblo's claim. The Interior Department considered several

studies and analyses conducted by academics, historians and other professionals in related fields, with the goal of determining what was actually given by the original Spanish grant, and how if it all, that differed from the land included in the survey of the Pueblo's land. The majority sentiment, reflected in an unofficial draft opinion authorized by Associate Solicitor for Indian Affairs Timothy Vollman, was that the Pueblo's claim was meritorious. This opinion was then sent to the General Counsel at the Department of Agriculture for comment (the disputed area was at that time under the control of the Department of Agriculture).

Officials at the Agriculture Department improperly released the draft to the public, resulting in a significant delay in resolution of the Pueblo's claim as well as an even more significant change of opinion. During the year and a half in between the Agriculture Department received the draft and the time it was issued to the public in final form, the Department of the Interior received dozens of comments from the public and government officials on this issue. The result was that the Department of the Interior issued a final opinion ("Tarr Opinion") rejecting the Pueblo's claim that was endorsed by Secretary of the Interior Donald Hodel in December, 1988. The Pueblo then filed this action December 7, 1994.

II

Standard of Review

Summary judgment may be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 321-23 (1986). The parties, and the Court, agree that there is no genuine factual dispute that is material to the question of whether the Interior Department acted arbitrarily or capriciously. Concerning the issue of whether the Department's decision making process was tainted by improper political influence, however, the parties diverge. Defendants, believing no genuine dispute of material fact exists relevant to this question, have moved for summary judgment. Plaintiff believes that a material question of fact exists, and therefore argues that summary judgment is inappropriate on that question.

The role of a court in reviewing final agency actions is limited. Section 706 of the APA provides that a court may set aside an agency action only where it finds the action "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Under this standard, there is a presumption in favor of the validity of administrative action, and a court may not substitute its judgment for that of the agency.

Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971). Essentially, this is an inquiry into "whether the decision was based on a consideration of relevant factors and whether there has been a clear error of judgment." Overton Park, 401 U.S. at 416. The court must also find that the relevant factors on which the decision is based are supported by some evidence. Ritter Transportation Inc. v. ICC, 684 F.2d 86, 88 (D.C. Cir. 1982). The Court now applies these principles to the parties' motion for summary judgment.

III

Analysis

Plaintiff's complaint alleges two violations of the APA. First, it argues that the Secretary of the Interior acted arbitrarily in his adoption of Solicitor Tarr's opinion against the Pueblo. Second, plaintiff argues that the Secretary abused his discretion when he made the decision to adopt Solicitor Tarr's decision based on improper political pressure. These arguments will be addressed in turn.

A. Allegation of Arbitrariness, Capriciousness or Action Not in Accordance with Law

This Court has already concluded that the Secretary of the Interior has the authority to issue a corrected survey. December 10, 1996 Opinion at 21. Finding now that the government owes a fiduciary duty to the Pueblo, the Court concludes that the Department breached this duty by failing to correct the Pueblo's boundary to reflect the inclusion of the Sandia mountains up to their crest.

Given "the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people," the question of whether the government has a duty to issue a corrected survey to restore the Pueblo the rights to their land is hardly a difficult one for the Court, and merits little discussion. United States v. Mitchell, 463 U.S. 206, 225 (1983) (quoting Seminole Nation v. United States, 316 U.S. 286, 296 (1942). This trust relationship, akin to a common law fiduciary duty, see Littlewolf v. Lujan, 877 F.2d 1058, 1064 (D.C. Cir. 1989), has "long dominated the Government's dealings with Indians." Jicarilla Apache Tribe v. Supron Energy Corp., 728 F.2d 1555, 1563 (10th Cir. 1984) (Seymour, J. dissenting). The more difficult question for the Court is whether the government breached this duty and acted arbitrarily or capriciously by failing to issue a corrected survey.

The Department began its analysis of this issue "with the usual presumption that surveys of the United States are correct and in compliance with statutory requirements." Tarr Opinion at 12 (quoting 11 C.J.S. § 104). The government placed the burden on the claimant to establish by a preponderance of the evidence that "the survey was fraudulent or grossly erroneous." Id. (citation omitted). Sixteen pages later in its legal analysis, the Department mentions that it is "mindful of the general canon of construction that legal ambiguities in treaties and statutes passed for the benefit of Indians should be resolved to the Indians' benefit." Id. at 28 (citation omitted). Because the congressional intent of the statute that confirmed the Spanish land grant to the Pueblo is clear and because the Pueblo failed to show "sufficient ambiguity" to trigger the Indian-favoring canon of construction, the Department concluded that the Pueblo's claim should fail.

Upon review of the Tarr Opinion and the governing legal principles, the Court finds that the Department's conclusion cannot stand as a matter of law. Principally, the Tarr Opinion unjustifiably denigrates the Indian-favoring policy and elevates the presumption of survey regularity. The case law articulating the Indian-favoring policy is longstanding and absolute. The Department failed to respect this policy, and instead wrongfully relied upon the presumption that

surveys are correct, forcing the Pueblo to satisfy an unnecessarily high burden to vindicate their claim. The Pueblo presented an eminently reasonable interpretation of the circumstances surrounding the grant of their land, and therefore--had the Department properly considered the Indian-favoring policy--the Pueblo should have prevailed. See Jicarilla Apache Tribe v. Supron Energy Corp., 782 F.2d 855 (10th Cir. 1984) (en banc), modified on other grounds, 793 F.2d 1171 (10th cir. 1986) (because tribe's alternative interpretation was reasonable and best promoted their interest, Interior Department should have accepted it).[1]

Rather, the Department here avoided true application of the Indian-favoring policy by proclaiming that the Pueblo had failed to identify the requisite ambiguity for triggering that canon. The Court is perplexed that the Department dared claim lack of ambiguity in the present case. While the congressional intent to confirm the land

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[1]The reasonableness of the Pueblo's interpretation becomes even more apparent in light of the fact that numerous other Department officials agreed with the Pueblo. Those who would have corrected the survey to include the land up to the crest of the Sierra Madre include the Director of the Office of Trust Responsibilities, Bureau of Indian Affairs (1983) and the Associate Solicitor for Indian Affairs (1987). Even Solicitor Tarr originally found the Pueblo's claim compelling (1987). While these opinions may not represent official agency position, they do persuade the Court that this case presented a very close call and that therefore the Indian-favoring policy mandated a result in favor of the Pueblo.

that the Pueblo already owned may be quite clear, the question of exactly what land the Pueblo already owned at the time of the 1858 statute is not clear at all. Although the Department found evidence of intent to create a formal pueblo, the Court finds equally compelling evidence that the custom of granting a formal pueblo was often abandoned. For example, the Pueblo show that the Spanish authorities granted the Acoma Pueblo more than five times the area of a formal pueblo, and the Santo Domingo Pueblo more than four times the area of a formal pueblo. Thus, the custom of granting a formal pueblo--so strongly relied upon by the government to support its denial of the plaintiff's claim--was certainly not an immutable rule that should override the language of the Spanish land grant or evidence of the specific surrounding circumstances.

Indeed, a brief perusal of the administrative record convinces the Court that the circumstances surrounding the Pueblo land grant are ambiguous. Experts with much more knowledge and familiarity with the Pueblo's circumstances hold vastly differing opinions as to the proper interpretation of the Spanish land grant. The Tarr Opinion discusses the various interpretations, and yet myopically fails to find ambiguity. The Court finds that this error led to another error, the failure to apply the Indian-favoring policy. Simply put, the Department failed to

follow "that eminently sound and vital canon . . . that statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians." Bryan v. Itasca County, 426 U.S. 373, 392 (1976). Therefore, the decision of the Department of the Interior cannot stand.

B. Allegation of Improper Political Pressure

Plaintiff also claims that the Interior Department's decision-making process was tainted by improper political influence. However, because the Court finds that the Department otherwise violated the APA, see Part III.A, there is no need to discuss plaintiff's other claims.

IV

For the above reasons, the Court finds that the Department of the Interior violated the APA when it issued an opinion denying the Pueblo of Sandia's claim for a corrected land survey. Therefore, the Department's decision to deny the Pueblo's claim shall be vacated. The case shall be remanded to the Interior Department for agency action consistent with this Opinion. An Order in accordance with this Opinion is being issued contemporaneously herewith.

Harold H. Greene
United States District Judge

Date: July 18, 1988

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ORDER

Upon consideration of the parties' cross-motions for summary judgment, the entire record in this case, and the Opinion issued this day, it is this 15th day of July, 1998,

ORDERED that plaintiff's motion for summary judgment be and it is hereby GRANTED; and it is further

ORDERED that defendants' motion for summary judgment be and it is hereby DENIED; and it is further

ORDERED that the Department of Interior Memorandum written by Solicitor Ralph Tarr and accepted by Secretary Donald Hodel on December 13, 1988 be and it is hereby VACATED; and it is further

ORDERED that the above-captioned case be and it is hereby remanded to the Department of the Interior for action consistent with the attached Opinion and this Order.

H. H. Greene

HAROLD H. GREENE
United States District Judge

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