



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Land Acquisition by the Yurok Indian Tribe

File: B-279338

Date: January 4, 1999

DIGEST

Use of funds available to the Yurok Indian Tribe pursuant to a "Compact of Self-Governance" between the Tribe and the Department of the Interior for land acquisition by the Tribe was consistent with law. Section 450h of Title 25, United States Code, authorizes Interior to fund land acquisition by Indian tribes. Interior's decision not to request specific funding for grants under section 450h does not preclude Interior's use of "Operation of Indian Program" funds to "contract" with Indian tribes for authorized grant purposes. Agencies may reprogram funds within appropriation accounts, as long as expenditures are within the general purpose of the appropriation and are not in violation of any other specific limitation or otherwise prohibited.

DECISION

By letter dated February 20, 1998, the Director, Office of Audit and Evaluation, Office of the Secretary, Department of the Interior, requested our advice concerning the propriety of the expenditure of \$1,106,618 by the Yurok Indian Tribe in fiscal year 1996 for land acquisition. The Department of the Interior had made these funds available to the Tribe pursuant to a "Compact of Self-Governance" between the Tribe and Interior. As explained below, the use of these funds for land acquisition by the Tribe was consistent with law.

Background

During fiscal year 1996, the Yurok Indian Tribe purchased 5,835 acres of land on the Yurok reservation in California. The Tribe made a down payment of \$1,106,618, from funds available to it under a "Compact of Self-Governance" (Compact) and fiscal year 1996 "Annual Funding Agreement" (AFA) between the Tribe and Interior. The Compact between the Tribe and Interior provided, among other things, for Tribal implementation of functions and services that Interior is otherwise authorized to provide the Tribe. The AFA provided Federal funds to the Tribe to implement the Compact during fiscal year 1996.

The Self-Governance Program

The Yurok Tribe and Interior entered into the Compact of Self-Governance applicable during fiscal year 1996 pursuant to Title IV of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 458aa-458hh (1994).¹ The Tribal Self-Governance Act of 1994, Pub. L. No. 103-413, 108 Stat. 4250, Title II, § 204, October 25, 1994, added title IV to the Indian Self-Determination and Education Assistance Act. See B-261111, April 12, 1996. The 1994 Tribal Self-Governance Act made permanent the Tribal Self-Governance Project authorized by Congress in Title III of the Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. No. 100-472, 102 Stat. 2285, October 5, 1988. Under the Self-Governance Program, Indian tribes enter into annual funding agreements with the Secretary of the Interior. These agreements authorize tribes to plan, consolidate, and administer programs, services, and functions administered by the Bureau of Indian Affairs. Tribes may redesign programs, functions, and services and reallocate funds to carry out these activities. The program is designed to provide Indian tribes with the flexibility to develop programs and to establish funding priorities to meet their specific needs. See 140 Cong. Rec. H11140-41 (daily ed. October 6, 1994).

The Tribal Self-Governance Act provides extraordinary flexibility in implementation of the Tribal Self-Governance Program. By explicit Congressional design, there are few restrictions on what activities Interior may "contract" to Indian tribes and great flexibility for the tribes to implement programs. See, e.g., S. Rep. No. 374, 103d Cong., 2d Sess. 1-3 (1994). Pursuant to 25 U.S.C. § 458cc(a)(1) (1994), the annual funding agreement is to "authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of Interior through the Bureau of Indian Affairs." Similar authority exists in paragraph (2) for tribes to implement Interior programs, other than those of the Bureau of Indian Affairs. 25 U.S.C. § 458cc(a)(2) (1994).

The Compact and the AFA governing the land acquisition here in question are broadly drafted to provide maximum scope to the self-governance program, and in general permit Tribal use of the funds for any purpose authorized under the statute. Thus, the Tribe is authorized to implement both Bureau of Indian Affairs (BIA) and other Interior Department, Indian-related programs, with only a few specific exceptions.

¹Although the Compact cites Title IV as its underlying authority, other parts of the Indian Self-Determination and Education Assistance Act govern certain aspects of implementation of the agreement. See 140 Cong. Rec. H11141 (daily ed. October 6, 1994).

Availability of Appropriations

The Tribal Self-Governance Act, however, does not authorize or provide additional funding for any Department of the Interior programs. Rather, it permits Interior to contract² with Indian tribes only to implement otherwise authorized and funded programs. Under the Compact and applicable statutes, the Yurok tribe could only expend funds for purposes for which the Interior Department itself could expend funds in its implementation of programs to benefit Indians. In this respect, the Act is consistent with the longstanding principle, cited by the Office of Audit and Evaluation, that an agency cannot do indirectly what it is not permitted to do directly. 18 Comp. Gen. 285 (1938). There is no indication in the legislative history of the Indian Self-Determination and Education Assistance Act that Congress intended to abrogate this principle with regard to Indian self-governance programs. See, e.g., S. Rep. No. 205, 103d Cong., 1st Sess. 2 (1993) ("Under the Self-Governance Demonstration Project, tribes can only use Federal funds to operate those programs which the Congress has previously authorized."). Proposed regulations governing the Self-Governance Program, recently published by Interior, recognize that the "amount of funding [in an AFA] must be subject to the availability and level of Congressional appropriations to the bureau for that program or activity." 63 Fed. Reg. 7202, 7238 (proposed 25 C.F.R. § 1000.124(c)), February 12, 1998.

²"Contracts" under the Indian Self-Determination and Education Assistance Act are atypical of Federal procurement contracts. Pursuant to 25 U.S.C. § 450e-1 (1994), agreements under the Act are not subject to requirements of the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. §§ 6301-6308 (1994). See B-222665, July 2, 1986. Further, with certain limited exceptions applicable only to construction contracts, self-determination contracts under the Act are not subject to "Federal contracting or cooperative agreements laws (including any regulations) except to the extent that such laws expressly apply to Indian tribes." 25 U.S.C. § 450j(a)(1) (1994). Congressional intent is clear:

"The Committee wishes to underscore that Congress does not intend for the Departments to treat any Self-Determination Act contracts as ordinary Federal contracts. They are not. Rather, Self-Determination Act contracts should be guided by the principle that Indian tribes are sovereign nations, contracts entered into with Indian tribes are done so on a government-to-government basis, and should be free of all unnecessary administrative oversight."

140 Cong. Rec. H11143 (daily ed. October 6, 1994).

Discussion

It is a longstanding principle that statutes for the benefit of Indians should be liberally construed. 56 Comp. Gen. 123, 129 (1976). Congress codified this principle in the Tribal Self-Governance Act of 1994, Pub. L. No. 103-413, Title II, October 25, 1994, 25 U.S.C. §§ 458aa-458hh (1994), which governs the agreements here in question. That Act explicitly directed the Secretary of the Interior to,

"interpret each Federal law and regulation in a manner that will facilitate--

"(A) the inclusion of programs, services, functions, and activities in the agreements entered into under this section and

"(B) the implementation of agreements entered into under this section."

25 U.S.C. § 458cc(i)(1) (1994). We presume that Congress intended the General Accounting Office do likewise. See also 25 U.S.C. 450l(c) (1994) (Model agreement at section 1(a)(2)).

The key question in the case at hand is whether Interior itself had the necessary authorization and funding to acquire the land in question (or to provide a grant for that purpose), and if so whether it contracted with the Tribe to exercise such authority. We conclude that it does and it did.

As authority for the acquisition, Interior relies on section 450h of Title 25, United States Code, which provides for Self-Determination grants to Indian tribes:

"The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to section 13 of this title, and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for --

"(1) the strengthening or improvement of tribal government
. . . ;

"(2) the planning, training, evaluation of other activities
designed to improve the capacity of a tribal organization . . . ;
or

"(3) the acquisition of land in connection with items (1) and
(2) above"

25 U.S.C. § 450h(a) (1994). (These grants are commonly known as "Section 103" grants, after the section of the Indian Self-Determination and Education Assistance Act that authorizes them.)

In our view, section 450h authorizes Interior to fund land acquisition by Indian tribes, using any funds appropriated pursuant to section 13 of title 25 [the Snyder Act³], "and any Act subsequent thereto that are generally available for Indian programs." In other words, to finance grants under section 450h, Interior may use any funds appropriated by Congress pursuant to the Snyder Act or any Act subsequent thereto that are generally available for Indian programs. Grants pursuant to section 450h historically have been funded from the "Operation of Indian Programs" (OIP) appropriation, made annually to the Department of the Interior. See, e.g., Department of Interior and Related Agencies Appropriations Act, 1986, Pub. L. No. 99-190, December 19, 1985, § 101(d), 99 Stat. 1185, 1234.

The Office of Audit and Evaluation questions whether Interior may appropriately use its section 450h authority, since Congress for several years has not provided specific funding for grants under section 450h. Until fiscal year 1987, Interior budget justifications included a specific line item for "self determination grants" authorized by section 450h. In the late 1980's, however, at Interior's request, Congress stopped providing specific funds for the program. See Department of the Interior and Related Agencies Appropriations for 1988, Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, 100th Cong., 1st Sess. (1987) 408 (Interior budget justification for FY 88); Department of the Interior and Related Agencies Appropriations for 1990, Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, 101st Cong., 1st Sess. 386, 391-93 (1989) (Interior budget justification for FY 90).

In our view, however, Interior's decision not to request specific funding for grants under section 450h does not preclude Interior's use of funding authorized under other statutes for the benefit of Indians to provide grants under section 450h or to contract with Indian tribes for authorized grant purposes, including land acquisition. Grants under section 450h, including grants specifically for land acquisition, historically were not funded pursuant to a specific "line item" in the appropriation act, but rather were subsumed in the general lump-sum OIP appropriation. See, e.g., Department of the Interior and Related Agencies Appropriations for 1986, Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, 99th Cong., 1st Sess. (1985) 416-18 (Interior budget justification for FY 86). As a general matter, agencies are free to reprogram funds within

³Section 13 of title 25, United States Code, is commonly referred to as the Snyder Act, and authorizes a wide range of programs for the benefit of Indians.

appropriation accounts, as long as the expenditures are within the general purpose of the appropriation and are not in violation of any other specific limitation or otherwise prohibited. 20 Comp. Gen. 631 (1941). Additionally, both Interior and Indian tribes have extraordinary flexibility to reprogram and reallocate funds in the implementation of self-governance programs. Section 458cc(b)(3) of Title 25, which governs funding agreements under the Self-Governance Program, provides that each funding agreement shall--

"subject to the terms of the agreement, authorize the tribe to redesign or consolidate programs, services, functions, and activities, or portions thereof, and reallocate funds for such programs, services, functions, and activities, or portions thereof"

25 U.S.C. § 458cc(b)(3) (1994). Paragraph 458cc(b)(6) further provides that each funding agreement shall,

"authorize the tribe and the Secretary to reallocate funds or modify budget allocations within any year, and specify the procedures to be used"

25 U.S.C. § 458cc(b)(6) (1994). Since Interior has specific authority in section 450h to provide grants to Indian tribes for land acquisition and identified available funding in its annual OIP appropriation, it is not determinative that Interior did not budget for specific funding for grants under section 450h.

In the case at hand, Interior advises that it funded the land acquisition in question with "New Tribes" funds transferred to the Yurok Tribe prior to fiscal year 1996. The New Tribes program provides the initial source of funding for newly acknowledged tribes and enables them to begin federally-funded operations. Congress annually has included New Tribes funding in the OIP appropriation. See, e.g., Department of the Interior and Related Agencies Appropriations for 1994; Hearings Before and Subcommittee of the Committee on Appropriations, House of Representatives, 103d Cong., 1st Sess. 938 (1993) (Interior budget justification for FY 94). The Yurok tribe participated in the New Tribes program in fiscal years 1993 through 1995. Interior informs us that, pursuant to the Compact, the Yurok Tribe carried-over New Tribes funds into fiscal year 1996 and that such Funds were available to the Tribe under the Compact and fiscal year 1996 AFA.⁴ These funds

⁴The Compact provides, "To the extent a program, activity, function, or service included within [the AFA] was included within a contract or grant entered into pursuant to P.L. 93-638 [The Indian Self-Determination and Education Assistance Act], as amended or subject to any obligation arising from such contract or grant, (continued...)"

were subject to the flexible reprogramming and reallocation authorities discussed above, and were available for activities authorized under the Compact and AFA, including, as discussed above, land acquisition.

Accordingly, we have no objection in the case at hand to of the expenditure of \$1,106,618 by the Yurok Indian Tribe in fiscal year 1996 for land acquisition.

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⁴(...continued)

that contract or grant is terminated and the parties' obligations shall be governed by this Compact." Art. III, § 1.