



United States Department of the Interior

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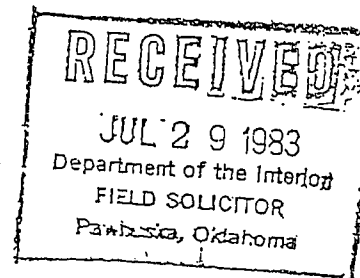
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JUL 21 1983

Memorandum

To : Assistant Secretary—Indian Affairs
From : Acting Associate Solicitor
Division of Indian Affairs

*Route to
all Branch
heads.*



Subject: United States v. Mitchell, No. 81-1748,
United States Supreme Court, decided June 27, 1983

Attached is a copy of the Supreme Court's decision in this case. As you are aware, the Court held that the United States may be liable in money damages for alleged breaches of trust in connection with the management of timber resources on allotted lands on the Quinault Reservation.

The Court reasoned that the timber management statutes, 25 U.S.C. §§406, 407, 466, and the regulations promulgated thereunder, 25 CFR Part 163, established the comprehensive responsibility of the Federal Government to manage the harvesting of Indian timber and therefore established a fiduciary relationship and defined the contours of the United States' fiduciary responsibilities. The Court also stated that the right-of-way statutes, 25 U.S.C. §§323-325, 318a, and regulations, 25 CFR Part 169, and a statute relating to Indian funds, 25 U.S.C. §162a, which were also at issue in the case, established the same kind of comprehensive federal control as did the timber management statutes. The Court did not discuss the right-of-way and Indian funds statutes to any degree.

Having found a fiduciary duty to manage, the Court went on to state that it is well established that a trustee is accountable in damages for breaches of trust and so held that the statutes and regulations at issue could fairly be interpreted as mandating compensation by the Federal Government for violations of its fiduciary responsibilities in the management of Indian property.

While it is not possible at this point to identify all BIA functions which might be subject to the Mitchell decision, the analysis used by the Court indicates that the decision may apply not only to BIA's timber management responsibilities and the right-of-way and funds responsibilities specifically mentioned in the opinion, but also to other BIA duties where the Bureau exercises significant control over Indian property or money. These duties may include mineral leasing, range management and general leasing.

The Mitchell case has been remanded to the Claims Court. The plaintiffs must now prove that the BIA's actions were in fact breaches of trust. The standards for determining what constitutes a breach of trust were not addressed by the Supreme Court but must be developed by the Claims Court in future proceedings. In its Mitchell decision, which was affirmed by the Supreme Court, the Court of Claims gave a very general indication of the standard it would apply:

It should be added that the standard by which Interior's actions are to be judicially tested is, not the court's or plaintiffs' own view of the preferable conduct, but the normal standard for government fiduciaries--were their actions in good faith and within the realm of their acceptable discretion, or were they arbitrary, capricious, in abuse of discretion, or contrary to law? We repeat, too, the caution that all the rules governing the relationship between private fiduciaries and their beneficiaries do not necessarily apply in full vigor to Indian claims against the United States. "In each situation, the precise scope of the fiduciary obligation of the United States and any liability for breach of that obligation must be determined in light of the relationships between the Government" and the Indians. [Citation omitted]

Mitchell v. United States, 664 F.2d 265, 274 (Ct. Cl. 1981).

Consequences for the Bureau of Indian Affairs

It is difficult to tell how these general standards may translate into specific findings in the Mitchell case. However, although neither the Supreme Court nor the Court of Claims decision offers specific guidance for the future conduct of BIA trust-related functions, they do underscore the importance of BIA employees performing their duties in strict accord with the laws and regulations governing those duties. Further, it has become increasingly important that BIA staff keep records of important decisions made in connection with their property and funds management functions. These records should be adequate to show the basis on which decisions were made. Such records may be critical should a lawsuit be filed at a later date.

It is also important that BIA decision-makers exercise independent judgment, and keep records demonstrating they have done so, rather than base a decision solely on the wishes of a tribe or individual Indian. 1/ This is not to say, of course, that Indians' wishes should not continue to play an important role in BIA decisions relating to their property. However, we should be able to demonstrate through the record that all relevant factors were considered and that a decision was reasonably based on those factors. We are available to assist you in the preparation of any necessary instruction memorandums on the impact of the Mitchell decision to aid BIA field officials avoid possible federal monetary liability in the conduct of their operations.

Finally, you may want to consider a review of existing regulations relating to property and funds management to determine whether it is possible to indicate more precisely in some of the regulations the factors to be considered and the standards to be followed in decision-making and management.


Tim Vollmann

cc: Solicitor

1/ The Court of Claims has held that the government is liable even where the tribe may have consented to or participated in acts later found to be breaches of trust. Menominee Tribe v. United States, 101 Ct. Cl. 22, 40-41 (1944); Cheyenne-Arapaho Tribes v. United States, 512 F.2d 1390, 1396 (Ct. Cl. 1975). In the Cheyenne-Arapaho case, in which the court held that the government was required to make maximum productive investment of trust funds, the court also held that even if a tribe requested that the government not make such investment, the government would be required to make an independent judgment that the tribe's request was in its own best interests.