Shade v. U.S. Dept. of the Interior, 2023 WL 4197463 (D. Alaska, June 27, 2023).

- **Holding**: BIA had a trust obligation to protect Alaska Native's property interest across allotment of another Alaska Native who was issued a patent erroneously omitting any express reference to the right-of-way.
- **Summary**: "Plaintiff, who is an Alaska Native, was a devisee of a portion of a restricted Native allotment ('Shade allotment') from his father, Henry Shade, who died testate on March 28, 2009. Plaintiff alleged that his father had built and maintained an access road over land that was later conveyed to Chaney as a restricted Native allotment, and the BLM, in issuing the patent, failed to include an express reservation of right-of-way for the road. Plaintiff asserted to the BIA Regional Director that "[t]he BIA has a trust duty to the Shades to prevent Ms. Cheney [sic] from any future trespass on the right-of-way to the Shade allotment." After receiving no response the Plaintiff filed a notice of administrative appeal to the Interior Board of Indian Appeals (IBIA). Before the IBIA, the Regional Director asserted that " [t]he BIA does not have legal authority to determine or 'confirm' Mr. Shade's implied easement on Ms. Chaney's Native allotment." The BIA Solicitor's Office likewise asserted that one "[t]he lands at issue have been conveyed out of Federal ownership and the BLM, the Bureau of Indian Affairs, and the Office of Hearings and Appeals now lack jurisdiction to place a right of way on that parcel." The IBIA agreed, and dismissed the action, finding that because "BIA lacks authority to grant the relief requested" the IBIA "cannot order BIA to issue a decision on the merits."

  The district court concluded that the BIA had a trust obligation to protect Shade's property interest in the right-of-way, and "could have employed Henry Shade's BIA probate proceedings as the forum to resolve the Shade access road issue," causing the IBIA's decision declining Plaintiff's appeal as a matter of law to be arbitrary and capricious.

  The court additionally addressed the matter of whether the BIA Director had authority to correct the patents pursuant to FLPMA § 316 (43 U.S.C. § 1746). which provides authority to "correct patents … where necessary to eliminate errors." The federal defendants argued that such a request would have to be made to BLM because it is BLM, not the BIA, that is authorized to correct allotment certificates pursuant to Section 1746. The court did not resolve the issue because the Plaintiff had not exhausted the administrative remedies available to him because he had failed to make the required application to correct the error under 43 CFR § 1865.1-3.
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