Indian Affairs - Office of Public Affairs

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Ada E. Deer, Assistant Secretary for Indian Affairs announced that the United States Supreme Court granted the federal government's petition for writ of certiorari on October 15, 1996 (95-1956) to review a decision of the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit's decision entered on November 7, 1995 (69 F. 3d 878) concluded that Section 5 of the Indian Reorganization Act is an unconstitutional delegation of legislative power.

Section 5 of the IRA (25 U.S.C. 461 et seq.) is the general statutory authority used by the Department of the Interior to take fee land into trust status for Indian tribes. "This statutory authority has been used as a basis for the federal government to assist Indian tribal governments in acquiring land to promote economic development and tribal self-sufficiency," Ms. Deer said. "The Supreme Court's ruling yesterday is a significant victory for all Indian tribal governments."

In granting this petition, the U.S. Supreme Court ruled that the decision of the Eighth Circuit is vacated. The Court further instructed the Circuit Court to vacate the judgment of the United States District Court in this case and remand the matter to the Secretary of the Interior for reconsideration of his administrative decision. The court case in the Eighth Circuit involved 91 acres of land placed in trust for the benefit of the Lower Brule Sioux Reservation under the authority of Section 5 of the IRA. Since this litigation was instituted there has been an administrative procedure added to the regulation (25 CFR 151.12) guiding the Department in taking land into trust for Indian tribes. This final rule, published in the April 1996 Federal Register (61 FR 18082) establishes a 30-day waiting period after final administrative decisions to acquire land into trust and provides an opportunity for the decision to be reviewed in the appropriate federal district court.