

**Editor's note: aff'd, Civ.No. A91-076 (D.Alaska Nov. 2, 1994); See also related appeal at No. 92-130L (Cl.Ct., May 30, 1996) 35 Fed. Cl. 761, 36 Fed. Cl. 593; No. 97-5034 (Fed.Cir. May 14, 1998) 144 F.3d 769 (ANCSA § 12 land selection is insufficient to convey compensable property rights)**

SELDOVIA NATIVE ASSOCIATION, INC.

IBLA 87-499

Decided February 27, 1990

Appeal of a decision of the Bureau of Land Management rejecting the Alaska Native Claims Settlement Act subsection 12(b) village selection applications AA-6701-A2 and AA-6701-B2 as to lands approved for conveyance to the State of Alaska under the "Terms and Conditions for Land Consolidation and Management" ratified by Congress.

Affirmed.

1. Estoppel--Stare Decisis

Where a prior final Departmental administrative decision has expressly declined to consider an issue, the doctrine of res judicata or its administrative counterpart, the doctrine of administrative finality, ordinarily will not bar an appellant from raising the issue in a subsequent appeal. Further, the Secretary, acting through the Board, is not estopped by the principles of finality of administrative adjudication from correcting or reversing an erroneous decision by his subordinates or predecessors in interest.

2. Alaska: Alaska Native Claims Settlement Act--Alaska Native Claims Settlement Act: Native Land Selections: Village Selections--Board of Land Appeals

The Department of the Interior is part of the executive branch of Government and is duty-bound to carry out instructions of Congress enacted as law. The Board of Land Appeals has no authority to declare Acts of Congress invalid, unconstitutional, without authority, or otherwise improper. The Board is bound by the provisions of the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area" which have become law by virtue of congressional ratification.

APPEARANCES: R. Collin Middleton, Esq., Anchorage, Alaska, for the Seldovia Native Association, Inc.; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management; Mark Rinder, Esq., Anchorage, Alaska, for Cook Inlet Region, Inc.; Elizabeth J. Barry, Esq., Anchorage, Alaska, for the State of Alaska.

## OPINION BY ADMINISTRATIVE JUDGE GRANT

Seldovia Native Association, Inc. (Seldovia), has appealed a decision of the Bureau of Land Management (BLM) dated April 17, 1987, which, inter alia, rejected its village selection applications AA-6701-A2 and AA-6701-B2 as to lands approved for conveyance to the State of Alaska. <sup>1/</sup> Seldovia's applications had been filed under subsection 12(b) of the Alaska Native Claims Settlement Act of 1971 (ANCSA), P.L. 92-203, 85 Stat. 688, 701 (Dec. 18, 1971), codified at 43 U.S.C. § 1611(b) (1982). The reason for the rejection was that the lands involved were approved by the BLM decision for conveyance to the State from those lands identified for conveyance in Appendix E of the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area" (hereinafter "Terms and Conditions") which was ratified by Congress in section 3 of P.L. 94-456, 90 Stat. 1934, 1935 (Oct. 4, 1976), 43 U.S.C. § 1611 note (1982), amending subsection 12(b) of P.L. 94-204, 89 Stat. 1145, 1150 (Jan. 2, 1976).

Seldovia raises two issues on appeal. First, it contends that "the Terms and Conditions and enacting legislation are not binding on it because Seldovia had previously made a valid § 12(b) [43 U.S.C. § 1611(b) (1982)] selection of the lands in question which vested in it rights that could not subsequently be abrogated." (Memorandum in Support of Supplemental Amended Statement of Reasons at 2 (hereinafter "Memorandum").) In particular, Seldovia maintains that it "had acquired equitable title to the land and Congress had no power to convey that land to the state." Id. at 8. Seldovia's second argument is that, even if the Terms and Conditions control, the relevant provisions are ambiguous as to how the lands to be conveyed to the State are to be selected and BLM has incorrectly construed the provision. Id. at 2.

BLM has filed an answer to Seldovia's arguments. Additional answers adopting BLM's arguments and addressing factual matters have been filed by the State of Alaska and Cook Inlet Region, Inc. (CIRI), as intervenors in the appeal. Seldovia has replied to the answers.

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<sup>1/</sup> The decision also rejected various lands included in village selections by Ninilchik Natives Association, Inc. (AA-6685-A2), Salamatof Native Association, Inc. (AA-6698-B2), The Tyonek Native Corporation (AA-6707-B2), Knikatnu, Inc. (AA-8485-A2), and the Chickaloon-Moose Creek Native Association, Inc. (AA-8489-A2), to the extent of the conflict with lands approved for conveyance to the State. The decision also rejected or suspended parts of several selections by the State of Alaska (AA-21693, AA-38403, AA-38408, AA-38409, AA-38410, and AA-38411). These portions of the decision were not appealed.

In addition, BLM's decision approved for conveyance various lands within State applications AA-38403, AA-38408, AA-38409, AA-38410, AA-38411, and AA-38412. By order dated Oct. 7, 1987, the Board granted a joint motion by Seldovia and BLM to segregate the lands at issue in Seldovia's selection from the remainder of the lands affected by the decision and remand jurisdiction over the lands not involved in this appeal so that they could be conveyed to the State of Alaska.

The supplemental documents filed by the parties, the record on appeal, and the legislative history of P.L. 94-204 show a considerable history lies behind BLM's decision. Congress enacted ANCSA "to provide a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." 43 U.S.C. § 1601(a) (1982). To achieve this purpose, ANCSA extinguished all aboriginal title to land in Alaska, and all claims based on aboriginal right, title, use, or occupancy. In exchange, ANCSA authorized the transfer of approximately 40 million acres of land to Native village and regional corporations along with the payment of almost a billion dollars. See Inupiat Community of the Arctic Slope v. United States, 680 F.2d 122, 125-26 (Ct. Cl. 1982); United States v. Atlantic Richfield Co., 612 F.2d 1132, 1137 (9th Cir. 1980).

A problem developed concerning lands to be conveyed to CIRI, the regional corporation for the Cook Inlet area. The area, which includes Anchorage and a large portion of the Kenai Peninsula, is more populated and developed than other parts of the state. When ANCSA was enacted in 1971, considerable acreage had already been patented to private parties and the State of Alaska had received title to much of the low-lying ground not privately claimed. H.R. Rep. No. 729, 94th Cong., 1st Sess. 30, reprinted in 1975 U.S. Code Cong. & Admin. News 2376, 2397. In addition, in 1972 the Department committed itself to transferring additional acreage to the State. Id. Also unavailable were core township lands which had been withdrawn for transfer to village corporations by section 11 of ANCSA, 43 U.S.C. § 1610 (1982). As a result, much of the land available for transfer to CIRI consisted of mountains and glaciers, areas which were unlikely to be economically productive. Id.

As a consequence of a suit brought by CIRI, the Department of the Interior, the State of Alaska, and CIRI began negotiations which led to the agreement embodied in the Terms and Conditions. Relevant to this case, section III.A of the agreement provides:

The Secretary shall convey to the State of Alaska all right, title and interest of the United States in and to all of the following lands:

\* \* \* \* \*

(ii) Twenty-six townships of lands in the Talkeetna Mountains, Kamishak Bay, and Tutna Lake areas, the identities of which are set forth in Appendix E hereof.

Id. at 42, 1975 U.S. Code Cong. & Admin. News at 2409. Appendix E stated that "[t]he Secretary shall convey to the State the following described lands, subject to valid village selections under section 12(a), but not 12(b), of ANCSA." Id. at 51-52, 1975 U.S. Code Cong. & Admin. News at 2418 (emphasis added). Within the 33 townships and 3 sections listed in Appendix E are the lands selected by Seldovia in its village allotment applications AA-6701-A2 and AA-6701-B2 and rejected by BLM in the decision on appeal.

On January 2, 1976, Congress enacted P.L. 94-204, 89 Stat. 1145, amending various provisions of ANCSA. In subsection 12(b) Congress required the Secretary of the Interior to make a number of conveyances to CIRI in accord with the Terms and Conditions, stating that the document was "hereby ratified as to the duties and obligations of the United States and the Region, as a matter of Federal law." 89 Stat. 1151. Similar to section III.A and Appendix E of the Terms and Conditions, subsection 12(d)(1) of P.L. 94-204 provided:

The Secretary shall convey to the State of Alaska all right, title, and interest of the United States in and to all of the following lands:

\* \* \* \* \*

(ii) 26 townships of lands in the Talkeetna Mountains, Kamishak Bay, and Tutna Lake areas, the identities of which are set forth in the document referred to in subsection (b).

89 Stat. 1152-53.

The Terms and Conditions were subsequently modified. No significant change was made in section III.A, but the initial provision of Appendix E. was changed to state: "The Secretary shall convey to the State the equivalent of 26.0 townships of land (599,040 acres) from the following described lands, subject to valid village selections under Section 12(a), but not 12(b), of ANCSA." 122 Cong. Rec. 28817, 28822 (Sept. 1, 1976). The list of lands was changed only by the addition of sec. 32, T. 7 S., R. 26 W. In section 3 of P.L. 94-456, 90 Stat. 1934, 1935 (Oct. 4, 1976), Congress amended its ratification of the Terms and Conditions to ratify the amended version.

As noted above, Seldovia's first argument is that BLM erred in reject-ing its selections on the ground that the legislatively ratified Terms and Conditions is not binding on Seldovia because it had previously acquired equitable title to its selected lands. In response, BLM argues that Seldovia's subsection 12(b) selections did not vest property rights or equitable title; that Seldovia is collaterally estopped from raising the issue of equitable title because it was previously litigated in the case cited as Seldovia Native Association, 6 ANCAB 369, 89 I.D. 74 (1982); and, further, that conveyance of the land to the State of Alaska is required as a matter of law (BLM Answer at 4-6, 13-14, 14-19). In its reply brief, Seldovia argues that collateral estoppel does not bar it from raising the issue of equitable rights. In support, Seldovia cites Ideal Basic Indus-tries, Inc. v. Morton, 542 F.2d 1364, 1367-68 (9th Cir. 1976), for the principle that this Board is not estopped by the principle of res judicata from correcting or reversing erroneous decisions either by agency officials subject to its appellate jurisdiction or by prior Boards. Thus, Seldovia contends, the "Board is not constrained by the doctrine of collateral estoppel from considering the vested rights issue." (Reply Memorandum at 3.)

[1] We find that the decision in Seldovia Native Association neither collaterally estops Seldovia from raising, nor precludes the Board from considering, the issue of equitable rights in this case. This conclusion results from examination of the doctrine of collateral estoppel in the context of this case.

A judgment rendered by a court having jurisdiction of the parties and subject matter is conclusive and indisputable evidence as to all rights, questions, or facts put in issue in the suit and actually adjudicated therein, when the same come again into con-troversy between the same parties or their privies in proceedings on the same or a different cause of action.

50 C.J.S. Judgments § 712(a)(1) (1947); see Kaspar Wire Works, Inc. v. Leco Engineering & Machine, Inc., 575 F.2d 530, 535-36 (5th Cir. 1978); Turner Brothers Inc. v. Office of Surface Mining Reclamation & Enforcement, 102 IBLA 111, 120-21 (1988). BLM's arguments overlook the fact that, although the issue of equitable title was raised in the proceedings, it was not actually adjudicated by the Alaska Native Claims Appeal Board (ANCAB) in its Seldovia decision. ANCAB stated: "The Board concludes that it cannot consider the issue of equitable title raised by the Seldovia Native Association, Inc." and that "those issues raised in support of Seldovia's claim of title are mooted and no findings are made by the Board." Seldovia Native Association, supra at 372, 388, 89 I.D. at 75, 82. Consequently, Seldovia is not collaterally estopped from raising the issue in this appeal.

We further agree with Seldovia that this Board has authority to consider the issue. It is well established that the Secretary, acting through the Board, his authorized representative, "is not estopped by the principles of res judicata or finality of administrative action from correcting or reversing an erroneous decision by his subordinates or predecessors in interest." Ideal Basic Industries, Inc. v. Morton, supra at 1367-68; see Northwest Alaskan Pipeline Co., 99 IBLA 201, 207 (1987); Peabody Coal Co., 93 IBLA 317, 323, 93 I.D. 394, 397-98 (1986).

[2] Nevertheless, we must agree with BLM that the reasoning of Seldovia Native Association is correct and should be followed in this case. ANCAB concluded that: "Where Congress has mandated conveyance of specifically described un conveyed land, BLM has no adjudicative authority other than to verify that such lands have not been conveyed by IC or patent." Id. at 387-88, 89 I.D. at 82. ANCAB did not address the issue of equitable title because it held:

[W]hen § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed interest in the same un conveyed lands which purports to defeat the conveyance under the mandate of Congress.

Id. at 388, 89 I.D. at 82. Although stated in terms of subsection 12(b)(4) of P.L. 94-204 which contains the legal description of the specific parcels

to be conveyed to CIRI, ANCAB's holding was based on its broader conclusion that: "The Board is bound by any amendment to ANCSA enacted by Congress and also by the Terms and Conditions which have been specifically ratified and given the effect of Federal law." Id. at 385, 89 I.D. at 81.

The Department of the Interior is part of the executive branch of Government and is duty-bound to carry out instructions of Congress enacted as law. The Secretary, and therefore this Board, has no jurisdiction to declare Acts of Congress invalid, unconstitutional, without authority, or otherwise improper. See Andy D. Rutledge, 82 IBLA 89, 91 (1984); B.K. Herndon, 76 IBLA 353 (1983). Like ANCAB, the Interior Board of Land Appeals is bound by the provisions of the Terms and Conditions which have become law by virtue of their congressional ratification. Seldovia asks that we determine whether it held rights to lands and consequently that "Congress had no power to convey that land to the state" (Memorandum at 2). Because we must regard the provisions of the Terms and Conditions as law, we are unable to consider Seldovia's argument that the land was unavailable and cannot be conveyed. Cf. Cook Inlet Region, Inc., 90 IBLA 135, 92 I.D. 620 (1985) (enactment of a statute specifically authorizing conveyance of tract at issue moots the question of lack of prior authority to convey).

As noted by appellant, there is one important difference between Seldovia Native Association and the present case. Subsection 12(b)(4) of P.L. 94-204 describes the specific parcels of land to be conveyed to CIRI, while, as quoted above, neither the Terms and Conditions nor the ratifying legislation lists the specific parcels of land to be conveyed to the State. Instead, the provisions require the Secretary to convey the equivalent of 26 townships (599,040 acres) from among the 33 townships and 4 sections listed in Appendix E. 2/ Seldovia argues that the language of the Terms and Conditions is ambiguous as to how the lands to be conveyed to the State are to be selected from among those listed and that BLM has incorrectly construed the provisions.

Seldovia's argument is somewhat misleading. Although framed in terms of an ambiguity in the Terms and Conditions, Seldovia's argument does not concern wording in the Terms and Conditions which is capable of being read with more than one meaning. Rather, Seldovia's point is much simpler. Appellant points out that, in contrast to other portions of the Terms and Conditions which either describe the specific lands to be conveyed or set forth procedures for their selection, the document "fails to designate how lands listed in Appendix E will be selected for conveyance to the State." (Memorandum at 19.) Seldovia is correct, as BLM acknowledges (BLM Answer at 5, 13). However, this does not mean that there is any ambiguity for this

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2/ Any question whether the original Terms and Conditions was intended to effect the transfer of the land within 26 townships or lands equaling 26 townships was resolved by the revised Terms and Conditions which specifies the conveyance of 26 townships equal to 599,040 acres from the lands described in Appendix E.

Board to resolve. Any issue to be addressed concerns simply the proper procedure for determining the lands to be conveyed to the State in the absence of explicit directions from Congress.

Seldovia further argues that the Secretary has the power "under the Terms and Conditions to designate which twenty-six townships are to be conveyed to the State" and "in exercising this power the Secretary must honor Seldovia's previously filed § 12(b) selections to the greatest extent possible." (Memorandum at 27.)

BLM does not directly respond to Seldovia's argument. Instead, it notes that, although Appendix E seems to list far more land than the 26 townships to be conveyed to the State, in fact it does not because many of the townships include submerged lands under the ocean and inland lakes, patented lands, and areas selected by Native villages under ANCSA subsection 12(a) which are unavailable for conveyance (BLM Answer at 6). BLM states that "Appendix E was pretty much viewed as identifying the tracts of land which would be conveyed to the State of Alaska." (BLM Answer at 7.) In effect, BLM maintains that Appendix E was understood to be a list of lands which would be conveyed to the State. <sup>3/</sup> BLM further asserts that the record does not establish "that there is enough excess acreage in Appendix E to satisfy the conveyance obligation to the State if Seldovia receives the 20,445 acres it seeks in this appeal." Id.

As a threshold matter, we note that the only lands rejected from appellant's applications were those which conflicted with lands selected by the State from the list in Appendix E and approved by the BLM decision for conveyance to the State. <sup>4/</sup> While rejection of appellant's subsection 12(b) village selections as to lands listed in Appendix E but not approved for conveyance might be assailed as premature in view of the possibility that acreage limitations might ultimately preclude conveyance of some of the

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<sup>3/</sup> BLM's decision states:

"If all the lands which are presently available or may at some point become available under Appendix E of the Terms and Conditions were to be conveyed to the State, the State's entitlement under the Terms and Conditions would be exceeded by approximately 12,461 acres. In addition, approximately 30,000 acres needs to be held back in case the acreage of the lands conveyed is determined by survey to be greater than that now estimated."

(Decision at 6). For this reason BLM suspended the State's selection application as to over 42,000 acres (Decision at 7).

<sup>4/</sup> With respect to the lands approved for conveyance to the State, the decision held that:

"The selections meet the criteria for compactness, are unreserved, are not known to be occupied or appropriated under the public land laws, including the mining laws, are not valuable for hot or medicinal springs, and otherwise conform to the requirements of Sec. 6 of the Alaska Statehood Act and of Paragraph III.A and Appendix E of the Terms and Conditions."

(Decision at 7).

listed lands, this has not occurred in the decision under appeal. Thus, appellant's subsection 12(b) village selections were not rejected as to those lands given lowest priority by the State with respect to which the State's selection application was suspended pending determination of the additional acreage required to fulfill the State's entitlement (Decision at 7).

Accordingly, appellant can prevail in this appeal only if, as it contends, BLM is obligated to adjudicate the State's selection in a manner to minimize conflict with the subsection 12(b) village selections. Such a conclusion is simply not consistent with the clear meaning of the Terms and Conditions as ratified by an Act of Congress. Appendix E to the Terms and Conditions, in both the original version and the clarified version, expressly provides that the conveyances to the State shall be "subject to valid village selections under section 12(a), but not 12(b), of ANCSA." (Emphasis added.) The Terms and Conditions, as clarified, were "ratified as to the duties and obligations of the United States \* \* \* as a matter of Federal law." Act of October 4, 1976, P.L. 94-456, § 3, 90 Stat. 1934, 1935. Thus, subsection 12(b) village selections such as those filed by appellant are not to qualify the lands available for selection by the State and there is no basis for BLM to adjudicate the State selection on such grounds. The language of the statute is simple and direct and will allow no other result on this issue.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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James L. Byrnes  
Administrative Judge

