

BERING STRAITS NATIVE CORP.

IBLA 94-27      Decided December 24, 1996

Appeal from a decision of the Alaska State Office, Bureau of Land Management, approving for interim conveyance certain lands selected by Bering Straits Native Corporation. F-40301, et al.

Affirmed.

1. Alaska: Trespass--Alaska Native Claims Settlement Act: Conveyances: Regional Conveyances

BLM is not required to identify trespassers on lands selected by a Native regional corporation under sec. 14(h)(8) of the Alaska Native Claims Settlement Act of Dec. 18, 1971, as amended, 43 U.S.C. §§ 1613(h)(8) (1994), and bring actions to clear title to those lands prior to approving the lands for interim conveyance.

APPEARANCES: Stephen M. Ellis, Esq., Marc D. Bond, Esq., Anchorage, Alaska, for appellant; Joseph D. Darnell, Esq., Office of the Regional Solicitor, Alaska Region, Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Bering Straits Native Corporation (Bering Straits) has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated September 9, 1993, approving for interim conveyance the surface and subsurface estates in certain lands, totalling approximately 41,007 acres, selected by Bering Straits pursuant to section 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), as amended, 43 U.S.C. § 1613(h)(8) (1994). 1/

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1/ By order dated July 10, 1995, in response to a motion filed by BLM, to which counsel for Bering Straits had no objection, the Board segregated the lands in dispute from those not in dispute and remanded the case in part in order to allow BLM to complete the conveyance of lands not at issue. In that order the Board set out a description of approximately 16,176.25 acres of lands over which jurisdiction was being retained. That order erroneously referred to Lot 2, U.S. Survey No. 4384, Alaska, containing approximately 5 acres, as being located 50 miles "northwest" of Nome, Alaska. That lot lies northeast of Nome, Alaska.

In its statement of reasons for appeal (SOR), Bering Straits acknowledges that BLM approved the lands for interim conveyance because the lands did not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title. Its complaint is that there are a number of trespassers on the land and that, by electing to convey these lands with knowledge of the trespass situation, "BLM has failed to discharge its obligations under ANCSA" (SOR at 2). As an example, Bering Straits cites various occupancy trespasses occurring on lands in Lot 2, U.S. Survey No. 4384, Alaska. It contends that all the lands in question may be transferred subject only to "those incumbrances specifically authorized by statute" (SOR at 6).

In response BLM argues that it has no duty to identify trespassers on lands approved for interim conveyance and clear them from the land prior to completion of the conveyance. In support of that argument, BLM cites Instruction Memorandum (IM) No. AK 88-296, dated September 21, 1988, a directive to BLM employees from the Alaska State Director, BLM, on the subject of BLM's realty trespass policy (Answer, Exh. 3).<sup>2/</sup> Therein, the State Director established categories of lands and the appropriate management policy for resolving land use, occupancy, and development trespasses on those lands, ranked in order of importance. Category A lands, identified for long term BLM management, are divided into two subcategories. Category A.1 lands include "Wild and Scenic River Corridors, National Conservation Areas, and National Recreation Areas" and category A.2 includes "[a]ll other BLM administered land not selected for conveyance to another owner or management agency." Category B is identified as "[l]ands selected for conveyance to another owner or management agency," and is also separated into two subcategories. Category B.1 is "[s]elected lands where resources (*i.e.*, timber, gravel, minerals, etc.) are being removed without authorization or irreversible damage is occurring."<sup>3/</sup> Category B.2, the category of least priority under the policy guidance conveyed in the IM, comprises "[s]elected lands where unauthorized occupancy or use is brought to the attention of BLM." *Id.* at 4. The announced policy for this last category of lands is: "Unauthorized use will be handled on an as needed basis with primary emphasis given to expediting the conveyance process."

The IM further states regarding the policy for category B.2 lands: "Resolution will take into account, whenever possible, the wishes of the receiving owner/management agency." On appeal, BLM has submitted a copy of a memorandum dated September 9, 1981, indicating that Bering Straits was aware of "several unauthorized cabins on Bering Straits selected

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<sup>2/</sup> The IM establishes its expiration date as Sept. 30, 1989. Nevertheless, counsel for BLM represented in BLM's Answer that the IM continued to be the policy at the time of the issuance of the decision in question (Answer at 10).

<sup>3/</sup> With its reply to BLM's answer, Bering Straits filed a number of documents which it asserts establishes that BLM had knowledge of a mineral trespass on selected lands.

lands," and that, after discussions with a Bering Straits employee, "we [BLM] agreed not to do anything except look at the cabins and talk to the unauthorized users if we happened to encounter them" (Answer, Exh. A). The record shows that Bering Strait subsequently sought to have BLM take action against occupancy trespassers on selected lands. See Answer, Exh. B.

[1] While this Board has not previously addressed the precise question of whether BLM has a duty under ANCSA to identify trespassers on selected lands and clear title to those lands as a condition precedent to interim conveyance approval, we have considered whether the Department is required to adjudicate title to unpatented mining claims prior to such a conveyance.

In various cases we have concluded, based on the court decision in Alaska Miners v. Andrus, 662 F.2d 577 (9th Cir. 1981), that where land selected for conveyance by a Native regional corporation includes unpatented mining claims located prior August 31, 1971, BLM is not required to identify or to adjudicate those claims on the lands to be conveyed, or to search State records to ascertain the existence of unpatented mining claims. John B. Stone, 129 IBLA 179, 180 (1994), Doyon, Ltd. (On Reconsideration), 77 IBLA 219, 221-22 (1983), and Doyon, Ltd., 74 IBLA 139, 148-49, 90 I.D. 289, 294-95 (1983). <sup>4/</sup>

If ANCSA does not require BLM to identify and adjudicate unpatented mining claims on selected lands, there is little doubt that it has no duty to identify unauthorized users of selected lands and pursue actions against those users prior to interim conveyance approval. Although Bering Straits argues otherwise, it cites no specific authority in support of its position, and we can find none.

BLM's trespass policy as articulated in the State Director's IM appears to be well-grounded in the law and in practicality. BLM's rationale for not acting against alleged trespassers prior to its approval of the subject lands for interim conveyance in this case was articulated in a September 28, 1993, letter to Bering Straits from the Kobuk Acting District Manager, BLM, in which BLM stated that "[r]esolution of occupancy trespass can be a long, time consuming and expensive process driven by regulations and policies that the BLM is required to follow." Citing severe budget shortfalls in the lands program and its commitment to process conveyance actions as expeditiously as possible, the Acting District Manager stated that BLM believed conveyance without resolution of any trespass situations was "in the best interest of all concerned." We agree.

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<sup>4/</sup> The holder of a valid mining claim, who did not wish to have the land patented to a regional corporation, was required to file a patent application within the time limits set forth in section 22(c) of ANCSA, 43 U.S.C. § 1621(c) (1994).

Therefore, 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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I concur.

Bruce R. Harris  
Deputy Chief Administrative Judge

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T. Britt Price  
Administrative Judge

