

STATE OF ALASKA (AYAKULIK)

IBLA 97-389

Decided July 28, 1998

Appeal from a Decision of the Alaska State Office, Bureau of Land Management, approving village selection AA-8482-A.

Affirmed.

1. Alaska National Interest Lands Conservation Act: Generally—Alaska Native Claims Settlement Act: Appeals: Standing—Native Land Selections: Generally—Village Selections: Generally

When BLM used an approved survey to describe land conveyed in a village selection without reference to the status of a stream which was not conveyed to the village, no State interest was shown to be affected thereby so as to allow the State to maintain an appeal from the conveyance.

APPEARANCES: Charles A. Winegarden, Esq., Kenai, Alaska, for Ayakulik, Inc.; John T. Baker, Esq., Office of the Attorney General, Anchorage, Alaska, for the State of Alaska; Carlene Faithful, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The State of Alaska has appealed from a March 20, 1997, Decision of the Alaska State Office, Bureau of Land Management (BLM), approving a land conveyance to Ayakulik, Inc.; the Decision, as amended on April 25, 1997, was issued in response to an order of remand issued by this Board in an appeal (docketed as IBLA 94-567) that dismissed the State's appeal to permit BLM to implement a settlement agreement concerning the conveyance which had been entered into by BLM, the State, and Ayakulik, Inc. Following issuance of BLM's amended Decision on April 25, 1997, the State again appealed. A stay of the amended BLM Decision was issued on July 2, 1997, to permit the parties to this appeal to brief issues raised by the State's appeal. That briefing now is complete and this appeal is ripe for decision; based upon the record presented on appeal, we find the BLM Decision should be affirmed and the stay vacated.

The BLM Decision was issued pursuant to section 1427 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and directs conveyance of 147 acres of land, subject to terms and conditions of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1611 and 1613 (1994). The land conveyed by BLM is described in the March 20, 1997, Decision as "[t]hose portions of Lots 2, 3, 4, and 5, U.S. Survey No. 4655, Alaska, not included in Interim Conveyance No. 805." The amendment of April 25, 1997, removed from the Decision a reference to the Ayakulik River and a comment concerning the navigability of that stream.

The State alleges that BLM exceeded the scope of the order of remand issued by this Board and improperly modified the settlement agreement entered into between the State, BLM, and Ayakulik, Inc., on January 31, 1997, when BLM, at the request of Ayakulik, Inc., deleted language from the March Decision that described the Ayakulik River as "navigable." The State alleges that, as a party to the prior appeal and the January agreement, a State interest in protecting access to the river is threatened by BLM's Decision, which now makes no reference to the navigability of the river. It is the State's position that both BLM and Ayakulik, Inc., have recognized that the stream was navigable in the past and may not now repudiate that admitted fact; it is contended, further that the purpose of the settlement agreement made by the parties was to protect access to "the navigable Ayakulik River." (Statement of Reasons (SOR) at 5; and see Reply at 5 through 7.) The State argues that the "understanding of all of the parties at the time of the Settlement Agreement was that the Ayakulik River is navigable, and that protecting public access to its waters would be among the fundamental goals furthered by the settlement." (SOR at 6.)

It is conceded by BLM that, as early as 1983, the Ayakulik River was determined to be navigable where it runs through the area granted to the village of Ayakulik. Before survey of the lands conveyed to Ayakulik, Inc., BLM explains, reference to the navigability of the stream was necessary to define the limits of the village selection; BLM points out that the determination that the stream was navigable was not made in the amended Decision here under review. According to BLM, following a protest by the State against any conveyance that failed to exclude State-owned land beneath the river, BLM resurveyed the village selection in U.S. Survey No. 4655 so as to exclude and define the stream. Thereafter, Ayakulik, Inc., objected to access easements designed to protect public access to "the navigable Ayakulik River," whereupon, following negotiations concerning the conveyance Decision, the State and the village entered into a settlement agreement with BLM providing for issuance of an amendment to the conveyance Decision. The description of the lands conveyed by lot number to the village is from U.S. Survey No. 4655, the accuracy of which is not challenged. Ayakulik, Inc., has, however, asked BLM to reconsider whether the Ayakulik River is navigable, and now contends that BLM should find the river to be unnavigable where it runs through the village selection. See Ayakulik, Inc., Answer at 16.

The BLM Decision before us on appeal was issued under authority of ANILCA section 1427, which provides that all conveyances will be subject to terms and conditions of ANCSA. Compare ANILCA Title XIV Part A and Part B. As a consequence, BLM's amended Decision was not made under authority of ANCSA and standing to appeal must be considered under provision of 43 C.F.R. § 4.410(a) (pertaining to appeals generally, rather than under § 4.410(b), dealing with ANCSA appeals). The State must, therefore, show that it was adversely affected by BLM's amended Decision; that is, it must allege a colorable adverse affect based on specific facts that is more than hypothetical. See Laser, Inc., 136 IBLA 271, 274 (1996) and authorities cited therein.

The State has not identified specific facts from which it can be concluded that the amended Decision poses a threat of injury to any interest of the State. The State speculates that BLM might reconsider a navigability determination in effect since 1983, but offers no evidence to show that such an action is contemplated by BLM or likely to take place; no such decision was made by the amended Decision here under review. While the State argues that removal of all references to navigability of the Ayakulik River from the amended Decision is contrary to the terms of the agreement between the parties, this conclusion is not supported on the record before us. It is apparent that references to the river have now been removed from BLM's Decision, but the State has not shown how the method of description employed by BLM in conveying the village selection has in any way affected a State interest. The settlement agreement does not require retention of references to the Ayakulik River in the conveyance.

It is therefore concluded that when BLM used U.S. Survey No. 4655 to describe lands to be conveyed to Ayakulik, Inc., in village selection AA-8482-A, no State interest was affected thereby so as to enable the State to bring an appeal from the conveyance Decision, as amended.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's Decision is affirmed and the stay previously issued is vacated.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski C. Randall Grant, Jr.
Administrative Judge

Administrative Judge

