



AHTNA INC.

174 IBLA 303

Decided May 14, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

AHTNA INC.

IBLA 2007-127

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Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Native Corporation land selection application AA-8104-3.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances

Section 12(c)(3) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611(c)(3) (2000), unambiguously mandates that a Native Corporation shall select the acreage allocated to it from the lands withdrawn pursuant to section 11(a)(1) of the Act, 43 U.S.C. § 1610(a)(1) (2000). Only when those lands are not sufficient to satisfy its allocation, can it then select acreage from the lands withdrawn pursuant to section 11(a)(3), 43 U.S.C. § 1610(a)(3) (2000). An application that selects acreage from section 11(a)(3) lands when a Native Corporation's outstanding entitlement can be satisfied by section 11(a)(1) lands is properly rejected.

APPEARANCES: J. Michael Robbins, Esq., Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Ahtna Inc., a Native Regional Corporation under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1606 (2000), appeals from the January 22, 2007, decision of the Alaska State Office, Bureau of Land Management (BLM), which rejected in part and closed the case on Ahtna's application AA-8104-3 selecting certain lands. Because Ahtna's selection is contrary to ANCSA and its implementing regulations, we affirm BLM's decision.

Background

Ahtna is one of the 12 original Regional Corporations authorized by section 7 of ANCSA. 43 U.S.C. § 1606 (2000). Prior to BLM's decision, Ahtna merged with seven of the eight Village Corporations within its boundaries, assuming those Corporations' rights and obligations as a result of the merger.¹ Statement of Reasons (SOR) at 1. After the passage of ANCSA, the Department withdrew land on behalf of Regional and Village Corporations to satisfy acreage entitlements under the statute. Land was withdrawn pursuant to section 11(a)(1), 43 U.S.C. § 1610(a)(1) (2000), which instructed the Secretary to withdraw lands in two concentric rings of townships surrounding the core township of each Village, and section 11(a)(3), 43 U.S.C. § 1610(a)(3) (2000), which authorized the Secretary to withdraw three times the amount of any perceived deficiency in the section 11(a)(1) acreage from similar unreserved, vacant, unappropriated lands. It was from these withdrawn lands that the Native Corporations would select the acreage they were entitled to under section 12 of the statute, 43 U.S.C. § 1611 (2000). In 1975, Ahtna submitted application AA-8104-3, which selected only section 11(a)(3) acreage, or so-called "deficiency" lands for conveyance.

On January 22, 2007, BLM issued its decision rejecting the application in part² and closing the case.³ BLM stated that Ahtna's remaining entitlement under section

¹ Regional Corporations were established under State law in accordance with ANCSA's provisions. 43 U.S.C. § 1602(g) (2000). They represent 12 geographic Regions in Alaska composed of Natives of a common heritage who share common interests. 43 U.S.C. § 1606 (2000). Village Corporations are entities located within one of the Regional areas that are organized under State law as a business for profit or as a nonprofit corporation to "hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village." 43 U.S.C. § 1602(j) (2000). Native Villages were required to incorporate as a prerequisite to receiving patent to lands or benefits. 43 U.S.C. § 1607(a) (2000). Regional Corporations were required to approve the initial articles of incorporation for Village Corporations, as well as amendments to articles and annual budgets for a period of 5 years. 43 U.S.C. § 1607(b) (2000).

² The decision rejects the application "in part" because "[a] small portion of that selection has been previously relinquished or rejected." Decision at 2.

³ The record indicates that the impetus for BLM's action was a proposed gas pipeline right-of-way through the lands identified for selection in application AA-8104-3. Before it issued the decision, BLM attempted, apparently unsuccessfully, to secure a relinquishment of the land from Ahtna. Letter dated Apr. 13, 2005, from Mark Fuller, BLM Resolution Specialist, to Kathryn Martin,

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12(c), 43 U.S.C. § 1611(c) (2000), which establishes how a Native Regional Corporation's entitlement is calculated, is approximately 87,400 acres and that more than 400,000 acres remain available for selection from the section 11(a)(1) lands. Decision at 2. Even when combined with Village selections Ahtna has yet to make as the merged corporation, a matter not addressed in the decision, "the total of all remaining village and regional entitlements within the Ahtna Region is still less than 225,000 acres." *Id.*

BLM stated that ANCSA and its implementing regulations prohibit the conveyance of any section 11(a)(3) lands before all available section 11(a)(1) lands are exhausted. *Id.* It concluded that because the acreage available for selection from the section 11(a)(1) withdrawal area is almost twice Ahtna's outstanding entitlement (including both Regional and Village entitlements), its entitlement will be fully satisfied from section 11(a)(1) lands, and thus none of the section 11(a)(3) lands will ever be conveyed. BLM therefore rejected application AA-8104-3 as described. *Id.* Ahtna timely appealed.

Arguments on Appeal

Ahtna makes four points on appeal. First, it argues that the rejection of Native land selections prior to the completion of the conveyance process, as BLM did here, is unlawful. Second, Ahtna argues that it has not completed the section 14(c), 43 U.S.C. § 1613(c) (2000), conveyance process through which Village Corporations are required to convey specific portions of their Village selections to interest-holders enumerated in the statute. Ahtna argues that, as a merged Regional/Village Corporation, it is entitled to replace the land that has been conveyed pursuant to its Village selections under section 14(c) of ANCSA, and it further contends that such losses are currently unquantified and could require more land than is available in section 11(a)(1) lands. Third, Ahtna asserts that it has the right to negotiate land exchanges under section 22(f) of ANCSA, 43 U.S.C. § 1621(f) (2000), an opportunity it believes is nullified by BLM's decision. Finally, Ahtna argues that BLM's decision denies it the opportunity to do business with the 13th Region under pending legislation that may allow the 13th Region to select land from within the excess selections of the other 12 regions.

Analysis

[1] We proceed directly to the pivotal legal issue in this case: whether BLM properly rejects an application selecting section 11(a)(3) lands when sufficient section 11(a)(1) lands are available to satisfy a Native Corporation's entitlement, a

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Ahtna Land & Resource Group Manager.

question of first impression. *But see* Mar. 24, 2006, Order in *Chickaloon-Moose Creek Native Association, Inc.*, IBLA 2005-233, *et al.* (BLM rejected selections made under a settlement agreement that established a two-category structure similar to ANCSA's sections 11(a)(1) and 11(a)(3)).

Section 12 of ANCSA, 43 U.S.C. § 1611 (2000), governs the method by which Native lands are to be selected. Under section 12(c)(3), 43 U.S.C. § 1611(c)(3) (2000),

each Regional Corporation shall select the acreage allocated to it from the lands within the region withdrawn pursuant to section 1610(a)(1) [section 11(a)(1) of ANCSA] of this title, and from the lands within the region withdrawn pursuant to section 1610(a)(3) [section 11(a)(3)] of this title *to the extent lands withdrawn pursuant to section 1610(a)(1) of this title are not sufficient to satisfy its allocation* [.]. [Emphasis added.]

The implementing regulation is consistent: “To the extent necessary to obtain its entitlement, each regional corporation must select all available lands withdrawn pursuant to sections 11(a)(1)(B) and (C) of the Act, *before selecting lands withdrawn pursuant to section 11(a)(3) of the Act.* . . .” 43 C.F.R. § 2652.3(a) (emphasis added).

The language of the statute and regulation clearly establishes that lands withdrawn pursuant to section 11(a)(3) of the statute are not available for selection until the lands available under section 11(a)(1) are insufficient. “[W]here the language of the statute is clear and unambiguous it must be held to mean what it states . . .” *Dallas C. Qualman*, 36 IBLA 119, 123 (1978); *see also Hiko Bell Mining & Oil Co.*, 100 IBLA 371, 377 (1988). Because sufficient acreage is available under section 11(a)(1), there is no basis for attempting a selection from section 11(a)(3) lands. Ahtna’s claim that BLM’s decision is unlawful is therefore without merit.

Ahtna contends that BLM’s action was improper because section 22(h)(1) of ANCSA, 43 U.S.C. § 1621(h)(1) (2000), provides a “clear statutory statement that land withdrawals made under ANCSA for the benefit of Ahtna and other Native corporations would remain withdrawn until conveyances were completed.” SOR at 4. Section 22(h)(1) states that “[a]ll withdrawals made under this chapter, except as otherwise provided in this subsection, shall terminate within four years of December 18, 1971: *Provided*, That any lands selected by Village or Regional Corporations . . . under section 1611 of this title shall remain withdrawn until conveyed pursuant to section 1613 [section 14] of this title.” 43 U.S.C. § 1621(h)(1) (2000).

Ahtna’s reliance on section 22 of ANCSA is misplaced. Section 22 exclusively addresses the withdrawal of land, not selections or the treatment of selection

applications. BLM's decision did not terminate the withdrawal, it merely rejected the application. Where the application identifies lands that are not eligible for selection under the terms of ANCSA, the application must be rejected.

Ahtna's primary argument to support its claim that the section 11(a)(3) selection application should not be rejected is that Ahtna is subject to numerous, currently unquantified, claims under section 14(c) of ANCSA, 43 U.S.C. § 1613(c) (2000), which will be satisfied out of its section 11(a)(1) lands. As a merged Regional/Village Corporation, Ahtna has assumed the Village Corporation's responsibility under section 14(c) to convey land within the Village selections to the third parties enumerated in the Act who occupy property within the Village selections, such as land used as a primary residence or primary place of business, land occupied by non-profit organizations, and land to be used by Municipal Corporations for expansion, public rights-of-way, and airports. See 43 U.S.C. § 1613(c)(1)-(5) (2000). Ahtna argues that it is entitled to replace the lands to be conveyed to such third parties. BLM's decision did not purport to adjudicate Ahtna's claim that it is entitled to substitute acreage for section 14(c) conveyances that may or may not be drawn from section 11(a)(3) selections. Ahtna's argument on this issue is thus premature, and we appropriately decline to address it.

Ahtna argues that rejecting application AA-8104-3 will negate its opportunity to exchange inholdings for lands withdrawn pursuant to section 11(a)(3). SOR at 9-10. Ahtna argues that if its "excess selections are rejected, the State of Alaska, which has top-filed on much of the Ahtna excess selections[,] will attain vested status and gain priority over any subsequent land exchange for acreage within the excess withdrawal area." *Id.* at 10. This assertion assumes a deficiency in available acreage under section 11(a)(1) that does not exist according to BLM's calculations, which Ahtna does not dispute. In the absence of the requisite deficiency triggering access to the lands withdrawn by section 11(a)(3), however, there is simply no basis for Ahtna's expectation that it can use such lands for exchanges. In any event, the decision plainly did not address or adjudicate any land exchange.

Finally, Ahtna claims that the decision "penalizes" the 13th Region (a Regional Corporation envisioned by section 7(c) of ANCSA, 43 U.S.C. § 1606(c) (2000), composed of Native Alaskans who reside outside of the State and therefore have no Regional land base within the State), which is working at developing legislation that would grant selection rights that would be satisfied out of "excess withdrawal areas." SOR at 11. Ahtna reasons that the decision precludes selection from Ahtna's excess withdrawal area, thereby compromising Ahtna's and the 13th Region's subsistence and cultural and economic interests and opportunities. *Id.* at 11. Until such legislation is enacted, however, Ahtna's apprehensions are speculative and premature. See *Robert C. Lewis v. BLM*, 173 IBLA 284, 294 (2008).

Ahtna has requested a hearing, alleging that factual issues remain disputed, but it disputes neither BLM's calculation that more than 400,000 acres remain for selection under section 11(a)(1) lands, nor its calculation that Ahtna's outstanding Regional entitlement is just 87,400 acres. Those un rebutted facts are all that are necessary to establish the correctness of BLM's decision. The request for a hearing therefore is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed and the request for a hearing is denied.

_____/s/_____
T. Britt Price
Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge