



ALYESKA PIPELINE SERVICE COMPANY

175 IBLA 1

Decided June 23, 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

ALYESKA PIPELINE SERVICE COMPANY

IBLA 2006-282

Decided June 23, 2008

Appeal from a decision of the Alaska State Office, Bureau of Land Management, determining valid a Native allotment application, F-15051.

Motion to Dismiss granted.

1. Alaska: Native Allotments--Alaska: Land Grants and Selections: Generally

The Board has no role with respect to the Aguilar Stipulations, either in enforcing their procedures or in reviewing BLM's conclusions reached under them, so a motion to dismiss an appeal requesting enforcement of procedures under the Aguilar Stipulations is properly granted.

APPEARANCES: Thomas E. Meacham, Esq., Anchorage, Alaska, for appellant; Regina L. Sleater, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Alyeska Pipeline Service Company (Alyeska) has appealed a July 24, 2006, decision (Decision) of the Alaska State Office, Bureau of Land Management (BLM), determining Native allotment application F-15051 to be valid. Alyeska states in its notice of appeal that the land at issue in the application affects a segment of the Trans Alaska Pipeline System, of which Alyeska is the owner.

Counsel for BLM has moved to dismiss this appeal on the ground that the Board lacks jurisdiction to hear it pursuant to the Stipulated Procedures for Implementation of Order (Aguilar Stipulations) which resulted from the decision in *Aguilar v. United States*, 474 F. Supp. 840 (D. Alaska 1979). BLM states that the land at issue in this appeal was patented to the State of Alaska on August 21, 1964, and that its adjudication of the Native allotment application is subject to the Aguilar Stipulations. Motion to Dismiss at 1. BLM then contends that all of its decisions

pursuant to the Aguilar Stipulations involving the validity of Native allotment applications are final for the Department and not subject to administrative review. *Id.* at 2 (citing Aguilar Stipulations at paras. 1 and 6). In support of this argument, BLM references two orders and one decision by the Board: *Fred C. Roehl*, IBLA 2002-222 (Sept. 17, 2002), *Henry Deacon*, IBLA 89-626 (Feb. 12, 1991), and *Wassillie Roberts*, 153 IBLA 1 (2000). BLM also cites *Lillian Pitka*, 164 IBLA 50 (2004), arguing that it holds that “whether the BLM was correct or incorrect in its Stipulation No. 1 decision under the *Aguilar* stipulations the Board is powerless to consider an appeal.” Motion to Dismiss at 3.

Alyeska argues that the Board has jurisdiction to hear this appeal because it is appealing only BLM’s failure to implement the Aguilar Stipulations properly. Alyeska’s Opposition to Motion to Dismiss (Opposition) at 3-4. Alyeska claims that, as a third party, it had a right to notice from BLM that it might determine the application to be valid, but that BLM failed to provide such notice. Opposition at 5-6.

Background

It has been a long-standing and firmly-held policy of the Department of the Interior that, upon the conveyance of public land out of Federal ownership, the Department loses jurisdiction to determine the rights of parties to that land. *See generally Germania Iron Co. v. United States*, 165 U.S. 379, 383 (1897). Although the Department loses jurisdiction, it retains some authority in circumstances when there is an allegation that the public land was wrongly conveyed.

While the land department by issue of patent loses jurisdiction to adjudicate the rights of the parties to the land, yet there remains a duty to be performed by the Department when its aid is sought by a request to bring suit for cancellation of a patent.

. . . .

It is the duty of this Department before asking aid of the Department of Justice for correction of its errors, to ascertain whether the interests of the United States, or of some party to whom it is under obligation, have suffered by its own misprison.

. . . .

It is, moreover, one of the established powers of the land department to order hearings in such cases for obtaining information necessary for its action, as well after patent has gone out to determine the advisability or

necessity of bringing suit for cancellation, as to determining questions arising as to rights in public lands not patented.

Mary E. Coffin, 34 L.D. 298, 300-01 (1905) (citations omitted).

The Department later clarified the nature of the informational hearings that it had the authority to hold.

After patent has issued, the purpose of inquiry and investigation is for information of the Department, whether proper ground exists to seek cancellation of the patent by suit. Such proceeding is not an adversary one, but is an administrative proceeding for information of the Department and may be conducted in such manner as suits its own convenience, and as is, in its own judgment, best calculated to attain its object. It determines no right of parties adversely claiming land no longer public, or property of the United States.

Heirs of C.H. Creciat, 40 L.D. 623, 624-25 (1912). Once such an investigation has concluded and the Department has determined whether or not it has an obligation to act, “[p]etitioners are not thereby concluded from . . . seeking in the courts to maintain their rights . . . against holder of the legal title. The United States merely determines that it . . . [may be] inadvisable to bring suit for cancellation of the patent.” *Id.* at 625.

The Board consistently rejected efforts to become involved in BLM decision making regarding Native allotment applications, and in other circumstances, with respect to lands that had passed out of Federal ownership. *See, e.g., Berthlyn Jane Baker*, 41 IBLA 239, 240 (1979) (and cases cited). Instead, the Board typically would affirm BLM’s rejection of the allotment application and, for lack of jurisdiction, refuse “to delve further into the merits of applicant’s claims,” instead recommending that the applicant seek guidance from the Department’s Office of the Solicitor regarding possible reconveyance litigation. *Id.*; *see also State of Alaska*, 45 IBLA 318, 323-24 (1980); *Albert A. Cushing, Jr.*, 41 IBLA 41, 42 (1979); *Ethel Aguilar*, 15 IBLA 30, 31 (1974), *reconsideration denied* by Order dated June 18, 1974, *rev’d*, 474 F. Supp. 840 (D. Alaska 1979); *Clarence March*, 3 IBLA 261, 264 (1971). Such consistency, however, was not without disagreement regarding the extent of the role the Department should play. *See State of Alaska*, 45 IBLA at 331-34 (Burski, A.J., concurring in the result); *Berthlyn Jane Baker*, 41 IBLA at 243-44 (Burski, A.J., dissenting). Even the Board’s majority opinions at times acknowledged that the Department could do more to investigate the applicant’s entitlement to an allotment and the circumstances surrounding the conveyance out of Federal ownership. *See, e.g., State of Alaska*, 45 IBLA at 325 (“However, this is not to say that the Department

may not investigate or review the matter internally in its administrative or managerial mode in order to determine whether suit to cancel the patent should be recommended.”).

The Aguilar Stipulations

The Federal District Court for the District of Alaska soon provided a mandate for such Departmental action. The appellants in *Aguilar* appealed the Board’s decision to that court following the Board’s affirmance of BLM’s rejection of their allotment applications because the involved lands had previously been patented to the State of Alaska. The resulting litigation eventually led to the Aguilar Stipulations. Briefly,¹ the court in *Aguilar v. United States*, 474 F. Supp. 840 (D. Alaska 1979), granted summary judgment against the United States, indicated that BLM’s rejection of the allotment applications without a fact-finding hearing was a violation of the applicants’ due process rights, and stated that if the involved lands had been wrongfully conveyed out of Federal ownership, then “it is the responsibility of the defendant [United States] to recover the land.” 474 F. Supp. at 847. In later settling that litigation, the United States agreed to certain stipulated procedures (Aguilar Stipulations) that would be followed to investigate the interests in and circumstances surrounding lands conveyed out of Federal ownership. These procedures consist of fourteen separate paragraphs with specific steps to be followed, usually by BLM, to investigate the validity of allotment applications and to determine whether to initiate actions (either negotiations or litigation) to recover the involved lands. See *Aguilar and Title Recovery Handbook for Native Allotments* (Aguilar Handbook) (1992).

All of the background leading to the Aguilar Stipulations makes it clear that the prescribed procedures are to facilitate an internal administrative fact-finding investigation of allotment applications when the involved lands have already been conveyed out of Federal ownership. Some of these procedures describe the nature of BLM’s review of an application, others state how and under what circumstances BLM should provide notice to and seek additional information from the applicant, the State of Alaska, and interested third parties, and still other procedures indicate the final steps to be taken by BLM at the conclusion of the investigation. These procedures are, however, investigatory in nature and do not constitute an

¹ A more complete history of the circumstances surrounding the Aguilar Stipulations can be found in our decision in *Lillian Pitka*, 164 IBLA at 51-53.

adjudication of the rights of third parties in the involved lands.² For example, Stipulation 3 states:

Where the merits of the application turn on whether the applicant's use and occupancy predate the commencement of the rights of the State, the BLM will examine the file. The examination, and all further proceedings until a federal court action to cancel the State's patent is initiated, shall be for investigatory purposes only and shall not constitute an administrative agency adjudication of the rights of third parties.

Aguilar Handbook at 7.

The investigatory nature of the activities prescribed under the Aguilar Stipulations is confirmed by the fact that nowhere in the stipulations are there provisions for appeal of BLM's actions or conclusions to this Board. Even if BLM's rejection of an application for an allotment can be viewed as an adjudication of sorts with respect to the Native allotment applicant's entitlement to further Federal government action to recover the involved lands, the stipulations are explicit that if BLM either rejects an application because it is legally defective and incapable of correction (Stipulation 1), or rejects or accepts an application after a hearing (Stipulation 6), those determinations "shall be final for the Department." Aguilar Handbook at 5-6, 10. The Board has no role in that process. *Lillian Pitka*, 164 IBLA at 55.

Analysis

In this case, Alyeska argues that it is not directly appealing BLM's Decision as to the validity of the Native allotment application. Instead, it asserts that BLM violated Aguilar Stipulation 14³ by failing to give Alyeska notice of the Native

² Some confusion could arise as the result of the inartful language of both the *Aguilar* court and the stipulations themselves, which often use the term "adjudication" rather than "investigation" when referring to BLM's actions, regardless of the circumstances.

³ Stipulation 14 states: "If at any point the BLM becomes aware of the identity of a third party claiming an interest in the land, whether independently or through purported conveyance by the State, it shall afford the third party the same notice and procedural rights as those afforded the State under this stipulation." Aguilar Handbook at 5. Stipulation 4 provides that if it appears that the applicant's use and occupancy began before the State's rights to the land arose, BLM will notify the State
(continued...)

allotment application and an opportunity to comment prior to the Decision. Opposition at 7. Alyeska asks the Board to deny BLM's Motion to Dismiss, vacate the Decision, and order BLM to implement Stipulation 14. *Id.*

Alyeska concludes that “upon appeal – as in the present instance – IBLA may properly consider whether BLM has in fact applied all procedural requirements of the Stipulations before reaching its decision.” Opposition at 3. Alyeska fails to provide any authority for this conclusion and ignores the inconsistency of its argument with the nature of the Aguilar Stipulations.

[1] The Board has no role with respect to the Aguilar Stipulations. The stipulations are a set of administrative procedures to assist BLM in its investigation of Native allotment applications for lands that have been conveyed out of Federal ownership. Those procedures adjudicate no rights to the land and, in fact, adjudicate no rights at all, except perhaps for the limited right of the Native allotment applicant to a hearing to determine whether the United States should pursue reconveyance of the land. The Department has made it quite clear in the language of the stipulations that BLM's actions under the stipulations are not subject to appeal and BLM's decisions are final for the Department. It would be clearly inconsistent for the Department to intend that the Board enforce the procedures described in the stipulations but then have no authority to consider the results of BLM's implementation of those procedures.

The Board considered procedural deficiencies by BLM under the Aguilar Stipulations in *Lillian Pitka*. Even then, when the interests of the heir of the Native allotment applicant were at stake, the Board concluded that “[n]otwithstanding our concerns over BLM's actions in this matter, this Board is powerless to consider Pitka's appeal.” 164 IBLA at 55. And, in addressing a third-party appeal of BLM's acceptance of an amended Native allotment application involving lands no longer in Federal ownership, the Board concluded that “there is no final BLM decision in this matter since BLM is not adjudicating title to the land at this stage. Hence, this matter is not yet ripe for review by the Board,” and the appeal was dismissed as premature. *Bay View Inc.*, 126 IBLA 281, 288 (1993). The same is true in this case, as Alyeska's asserted interests have not yet been adjudicated.⁴

³ (...continued)

and invite the State, within 90 days, to submit any evidence or comments the State may have to dispute the applicant's claim. *Id.* at 7-8.

⁴ If litigation is initiated to reconvey the land at issue in this case, Alyeska will have a forum for considering its interests.

The Board has no role with respect to BLM's actions under the Aguilar Stipulations, either in enforcing the procedures under the stipulations or in reviewing BLM's conclusions. Accordingly, BLM's Motion to Dismiss is properly granted.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Motion to Dismiss is granted.

_____/s/_____
H. Barry Holt
Chief Administrative Judge

I concur:

_____/s/_____
Bruce R. Harris
Deputy Chief Administrative Judge