



HEIR OF ANN A. CARNEY

176 IBLA 130

Decided September 29, 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

HEIR OF ANN A. CARNEY

IBLA 2008-106

Decided September 29, 2008

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying a request to add acreage to a Native allotment for which a certificate had been issued. AA-7794.

Affirmed.

1. Alaska: Native Allotments--Applications and Entries

Where a Native allotment applicant amended her application to describe four parcels in fractional sections aggregating approximately 137.5 acres (before adjustment for the fractional portion of the sections), and in the 36 years since the application was first amended neither the applicant nor anyone on her behalf ever questioned the allotment application, the amendments, the fractional sections described in the amended application, the surveys, or the sizes of the parcels allotted to her, the decisions culminating in issuance of patents for the four parcels are administratively final for the Department.

APPEARANCES: Carol Yeatman, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant; Steven Scordino, Esq., Office of the Regional Solicitor, Alaska Region, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Joseph Carney, heir of Ann A. Carney (the Heir), has appealed the January 31, 2008, decision of the Alaska State Office, Bureau of Land Management (BLM), denying a "Request for Reinstatement of 19.54 Acres Previously Deducted From

Allotment in Error” (Request) filed by the Bristol Bay Native Association (BBNA) on behalf of Carney’s heirs.¹

Background

Ann A. Carney applied for a Native allotment pursuant to the Native Allotment Act of May 17, 1906, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed with a savings provision by section 18(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617(a) (2000). The typewritten application described the land sought as two parcels “west of the river”: Parcel A, in the protracted fractional NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 19, T. 14 S., R. 50 W., Seward Meridian (SM); and Parcel B, the fractional NE $\frac{1}{4}$ and fractional W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 26, T. 2 S., R. 42 W., SM, as shown on a copy of U.S. Geological Survey (USGS) Quadrangle (Quad) Maps Naknek D-6 and Dillingham D-2, which were incorporated as part of the application. No acreage figure was stated. Carney signed her application, which was certified by the Bureau of Indian Affairs (BIA) Realty Specialist, on June 23, 1971, and received by BLM on April 17, 1972.

A corrected legal description was received by BLM from the BIA on October 5, 1972.² The corrected description identified four parcels: Parcel A, as described above; Parcel B, fractional W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 26, T. 2 S., R. 42 W., SM, as shown on USGS Quad Map Dillingham D-2; Parcel C, fractional NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 20, T. 15 S., R. 55 W., SM, as shown on USGS Quad Map Nushagak Bay D-2; and Parcel D, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 20, T. 15 S., R. 55 W., SM, as shown on USGS Quad Map Nushagak Bay D-2. Those Quad Maps were incorporated into and became part of the allotment application. By decision dated February 23, 1973, Carney was notified that Parcels C and D were to be impressed with a reservation of the oil and gas to the United States, and that she had 30 days in which to object and petition for reclassification of the lands as nonmineral in character.

By letter dated December 15, 1973, Carney wrote to “Arthur R. Kennedy, Chief, Public Affairs” from Dillingham, Alaska. The letter, which was received by BLM on December 20, 1973, stated in full:

¹ BLM styled its decision “Request for Additional Acreage Denied.”

² An Oct. 3, 1972, memorandum from the BIA’s Anchorage Office Realty Officer to the BLM Land Office Manager explained that “[t]his correction is necessary to describe Parcels C and D[,] which were not included in the application filed because of insufficient information as to location.”

I am writing in concern of my residency[.] I thought that I owned this land under my home in this village. But I found out I don't own the land I'm living on and that I build on. Where I'm located now is my perm[a]nent residence inside the village of Portage Creek.

I would like to get this land that my home is on.

If I have to give up some of my land I will.

Enclosed is the maps of land that I will give up and transfer to my location that I am living on.

No. 1 map is land that, one section I want transfer[red] to here. No[.] 2 is the location of where I'm living right now and build on. My native allotment serial number is AA 7794.

Also No[.] 2 shows Mary Tilden's land. I will be using her north west corner stake as the corner for my starting point for my land in the village. I would like to transfer 2½ acres of No[.] 1 map land to No[.] 2 location.

Please notify Bureau of Indian Affairs Realty of my change of land. That is who I filed through.

Thank you and please reply soon.

The handwritten letter enclosed two separate sketches of the land discussed in Carney's letter. The first sketch depicts two 2½-acre parcels on opposite sides of an unidentified river or stream, but not directly opposite of each other. The lower parcel on the left bank is shown to contain three buildings. An arrow pointing to that parcel is part of a handwritten notation "fish camp that I use all the time." The sketch shows the second parcel on the right bank, just north of the other parcel, with the notation "This land here to be transfer[red] to no[.] 2 map." In the lower right corner of the paper, a third notation indicates the direction in which Clark's Point, Alaska lies.

The second sketch shows what appears to be an unnamed stream or river body that runs generally north and south and is fed by a southwesterly running, unnamed creek. South of that unnamed creek, Portage Creek is shown, running generally east and west. Mary Tilden's land lies on the north side of the unnamed creek. The sketch shows a parcel that adjoins Tilden's land on the south bank of the unnamed creek with frontage on the unnamed river or stream body, that is roughly 198 feet

wide and 495 feet long. A home and another structure are depicted within this parcel. The handwritten notation identifies this second parcel as “Ann Armella Carney’s location right now. Serial # with BLM. AA 7794.”

A field investigation of Parcel A followed on September 16, 1973. Carney was not present, but a Native guide, Nick Dancer, who knew Carney and substantiated her use and occupancy, accompanied the Realty Specialist, Jon A. Johnson. Photographs were taken, and two illustrations were prepared for inclusion in the Realty Specialist’s report (Field Report) dated December 17, 1973. Illustration I, a copy of USGS Quad Map Naknek D-6, depicts the land identified by the amended description as immediately north of the parcel described in Carney’s application. Illustration II is a detail of the area identified in Illustration I and, with the photographs, confirms the placement of the original and amended locations of Carney’s land. A typed Land Report Title Page prepared by Johnson and dated December 17, 1973, provides the revised legal description for Parcel A: “W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, That portion of E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Contiguous to W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,” protracted T. 14 S., R. 50 W., SM, totaling “8 \pm ” acres. The Realty Specialist concluded that Carney had used and continued to use and occupy the land identified by the revised legal description, as demonstrated by the structures and improvements on the land, the presence of domestic dogs, and the obvious present use. The Area Manager concurred in the Realty Specialist’s finding.

The field investigation for Parcel B occurred on July 5, 1975. Carney did not attend, but she designated Peter Heyano, Sr., to accompany Realty Specialist William K. Stowers during his examination of the land, described as “ ± 125 ” acres. The Field Report noted that Carney had claimed improvements consisting of “a tent frame, cabin, steam bath house, smoke house, and fish rack,” but that they had not been “broken down by parcel.” Field Report at 2. Although 84 miles away from the three parcels in the Clark’s Point area identified by Carney, a cabin was found on Parcel B. No other evidence of use and occupancy was observed. The Field Report stated that the land “had been described correctly on the application.” *Id.* A Hjalmar Olsen, Jr., agreed to show Stowers the land as he was returning from his father’s land. Olsen confirmed that the land was Carney’s, but he did not assert any personal knowledge of her use and occupancy of the land. *Id.* The sketch and photographs show land on the west bank of the Mulchatna River. Stowers could not conclude that Carney had demonstrated the requisite use and occupancy of the land in Parcel B.

The field investigation for Parcel C (2.5 \pm acres) and Parcel D (5 \pm acres) took place on September 10, 1975. Carney was present during the investigation. Photographs, Quad Maps, and a sketch placed the parcels near the Clark Slough off of Nushagak Bay. Land Law Examiner Arvilla Bartlett’s Field Report dated April 5,

1976, determined that Carney's extensive use of the entire parcel and her improvements met the Act's requirements. However, her March 2, 1976, Field Report on Parcel D concluded that there was no physical evidence or substantial information to support Carney's application.

On June 3, 1977, BLM determined to re-examine Parcel B because neither Carney nor her designated representative had been able to accompany the investigator and a question regarding the ownership of the cabin on the land had arisen. Carney designated her husband to attend, but in three attempts BLM was unable to reach him.³ Rather than postpone the investigation, Realty Specialist Carl E. Neufelder proceeded on June 16, 1979, accompanied by a Mike Kasterin and the helicopter pilot, Dick Franzel. Searching the entire area (125± acres) aerially, Neufelder found that "a huge portion of the northeast segment of the parcel was recently eroded," and that "the northeast corner and a cabin not claimed by applicant appear[ed] to have been swept away." Field Report at 2. The Report further observed that the "applicant does not specifically claim any improvements on parcel B. All improvements mentioned in the application appear to be located on parcel A. No improvements were found." *Id.* Acknowledging that the land contained subsistence resources, Neufelder found "[n]o physical evidence of use or occupancy commonly associated with the claimed activities" of fishing, berry picking, hunting, trapping, and woodcutting. *Id.*

A May 14, 1981, letter from BLM's Chief, Branch of Lands and Mineral Operations, noted that Parcel A was to be legislatively approved in accordance with section 905(a)(1)(A) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(a)(1)(A) (2000). That letter is followed by a pink sheet, captioned "Mini-Team #3 Adjudicator Checklist" and dated July 17, 1981, that suggested that all four parcels might be legislatively approved.

On May 30, 1981, Saguyak Inc. (Saguyak), the Native Village Corporation at Clark's Point, protested the conveyance of three allotments, including Carney's, on the basis of lack of evidence of use and occupancy and that the lands had been withdrawn for, and selected by Saguyak. By decision dated January 14, 1982, the protest was summarily dismissed. Generally describing each of the three allotments, the decision recites that Carney filed application AA-7794 for "approximately 160 acres consisting of Parcels A through D." Jan. 14, 1982, Decision at 2. The land descriptions provided were the same as those provided to correct the descriptions in the application, except that Parcels C and D were described as located within two

³ Apparently this was because it was the height of the commercial fishing season, and Homer Carney worked in the industry.

sections instead of one. Declaring that Parcels A, B, and C were legislatively approved effective June 1, 1981,⁴ and that Parcel D would be adjudicated under the Native Allotment Act, Saguyak's protest was dismissed.⁵

Carney was notified of the field investigation findings regarding Parcel D by letter dated March 14, 1983.⁶ That letter informed Carney that Parcel D was not legislatively approved because of Saguyak's protest, that the September 10, 1975, field investigation had revealed no physical evidence of her use and occupancy and no "substantial information" to support her claim, and allowed Carney 60 days in which to submit information to support her claim to Parcel D, failing which she would be afforded a hearing. By letter dated July 15, 1983, Carney submitted five witness statements from neighbors Clifford and Mary Roundtree, relatives Tatiana Ruth McCormick, Olga Prince (daughter), Merlin Prince (brother), and friend Martha E. Maines. None of those statements asserted an acreage figure; each identified the same improvements (three houses, a tent, a tent frame, a cleared half-acre, boat landing, fish drying rack, a smoke house, a bathhouse, an outhouse, a power house, and well); each acknowledged use of the land by others, with Carney's knowledge and permission; and each, except Maines, who referred to "Creek Cannery Slough (also known as Queen Slough)," placed the parcel on the left side of Clark's Slough.

By letter dated January 23, 1984, and addressed to her in care of Queen Fisheries, Inc., BLM responded to Carney's submission. Noting the absence of physical evidence when the field investigation was conducted on September 10, 1975, and the extensive improvements to which the witnesses attested, BLM offered two explanations for this discrepancy: either the wrong land was examined or the witnesses were describing the improvements actually found on Parcel C. Carney was

⁴ By memorandum dated Feb. 3, 1983, a survey was requested for the three parcels, described as Parcel A containing approximately 8 acres, Parcel B containing approximately 125 acres, and Parcel C containing approximately 2.5 acres.

⁵ The decision attributed the protest of Parcel D to Choggiung Limited, a misstatement that was corrected by a subsequent decision dated Feb. 26, 1982.

⁶ A white receipt shows that the notice was sent to Carney by certified mail (P 221 054 907) on Mar. 14, 1983. There is no green return receipt card showing when she actually received the letter. However, Carney obviously received it, because she timely responded by submitting additional information.

given 60 days to amend the description or provide additional affidavits attesting to her use of Parcel D.⁷

A handwritten page with two photographs stapled to it contains two separate notes by Brewster. The first, dated February 13, 1984, states that he spoke with Carney by telephone that day, who informed him that the improvements on Parcel D were constructed in 1980, apparently as shown in the attached photographs, and that “[t]he affidavits confirm the use of Parcel D for berrypicking as claimed on the application. The parcel will therefore be approved.” The second note, dated and initialed by Brewster on February 16, 1984, states: “Cannot approve -- portion in sec. 29 is I.C.’d - Aguilar situation.”⁸ On March 3, 1986, an Exclusion Survey was requested for Parcel D in secs. 20 and 29, T. 15 S., R. 55 W., SM, “partially in IC’d lands,” not to exceed 5 acres.

On May 8, 1989, the plat of survey (U.S. Survey No. 7737) for Parcel A (8 acres) was officially filed. The plat of survey (U.S. Survey No. 9318) for Parcels C

⁷ A Short Note Transmittal form from Kenneth Brewster to the file dated Jan. 31, 1984, states the letter was returned to BLM, marked addressee unknown. BLM called BIA, which provided an Ohio address. BLM sent the letter to the Ohio address, and Carney’s husband, Homer, received it on Feb. 6, 1984. Carney apparently received the notice, because she responded to explain that the improvements on the land postdated the field examination. The Heir does not contest receipt.

⁸ This is an abbreviated reference to an Interim Conveyance (IC) and the decision in *Aguilar v. United States*, 474 F. Supp. 840 (D. Alaska 1979). Among other things, the Alaska Native Claims Settlement Act, 43 U.S.C. § 1621(j) (2000), provides that where lands to be conveyed to a Native, Native Corporation, Native Village, or Native group have not been surveyed, they may be conveyed by an interim conveyance. Upon survey of the lands thus conveyed, patent is issued, and, if necessary, the boundaries of the land may be re-described in accordance with the plat of survey. When an Alaska Native seeks land under the Native Allotment Act that has been conveyed out of Federal ownership, the Stipulated Procedures for Implementation of Order issued in *Aguilar* apply. If the allotment application is timely, its validity is investigated under those procedures so that the Department can determine whether to seek reconveyance of the land. *Fred T. Angasan*, 166 IBLA 239, 245 n.7 (2005); *Lillian Pitka*, 164 IBLA 50, 52-53 (2004).

and D (7.49 acres),⁹ consisting of lots 1, 2, and 3, was officially filed on July 26, 1989.

By decision dated August 23, 1990, BLM approved Carney's application for Parcel D; established a mineral reservation to the United States for Parcels A and B; rejected in part State Selections; rejected in part Village selections; conformed Parcels A, C, and D to the official plats of survey; and established a final date to amend Parcel B. A copy of the decision was served on Carney, whose husband signed the green return receipt card on August 28, 1990. Carney was given 60 days from receipt of the decision to notify BLM "if the lands as surveyed for Parcels A, C and D do not contain all the improvements originally intended to be on these parcels." Aug. 23, 1990, Decision at 5. BLM advised that "[a]ny claim that the surveyed locations are different from the intended locations must be supported by clear and substantial evidence of errors. Unless so notified, Parcels A, C, and D of the allotment application will be considered correctly surveyed."¹⁰ *Id.* She was also given the opportunity to inform BLM within 60 days "[i]f the land described for Parcel B in this decision is not what the applicant intended to apply for," and cautioned that an amendment must be supported "by clear and substantial evidence that the amended description describes the land she intended to claim at the time of application. Different land cannot be substituted or applied for." *Id.* The decision stated, moreover, that in the absence of notification from Carney, BLM would proceed with the survey of the land as shown on an enclosed map, further warning that "[t]he location of the allotment cannot be changed after expiration of the 60 days allowed for amendment." *Id.*

On October 15, 1990, BLM received BBNA's letter transmitting three typed documents, signed by Carney on October 5, 1990. Each document identifies the allottee, the application serial number, and Parcel; the acreage; and the location by Section, Township, and Range. The first document, styled "Location Acceptance," identifies Parcel B as "±125 acres." Carney signed that portion of the document that states "I ACCEPT the location of Parcel B of my Native allotment as it is currently depicted in the Bureau of Land Management's files." (Underlining in the original.)

⁹ Survey No. 9318 stated that Parcels C and D embraced 7.48 acres, but the survey returned 7.49 acres: Lot 1 surveyed at 0.84 acres, Lot 2 was 5.00 acres, and Lot 3 was 1.65 acres. *See* Aug. 23, 1990, Decision at 2.

¹⁰ Noting that it was necessary to survey Parcel B, Carney was given the choice of having BLM do the survey at its expense in the regular course of its business, which might take years because of the large number of allotment surveys to be scheduled, or engaging a private surveyor at her expense.

To object, Carney could have signed the lower part of the document stating “I DO NOT ACCEPT the location of Parcel B of my Native allotment as it is currently depicted in the Bureau of Land Management’s files. The location of my allotment should be in (Section, Township, Range).”

The other two documents are styled “Survey Acceptance,” the first of which identifying Parcel A as 8 acres, Carney signed, averring

I have carefully reviewed the survey plat for Parcel A [and Parcels C and D in the second document] of my Native allotment. I have determined that the acreage, location, and configuration (shape) of Parcel A are correctly represented by the survey plat. I have also determined that the survey includes all my improvements.

I ACCEPT THIS SURVEY as being correct. [Italics in the original.]

The second document is identical, but refers to Parcels C and D, described as 7.49 acres. Had Carney objected to either, she would have signed the lower half of the document to indicate “*I DO NOT ACCEPT THIS SURVEY* for the following reasons,” which she could enumerate by selecting “wrong location, wrong shape, does not include all my improvements, improper acreage.”

The Certificate of Allotment for Parcels A and C (No. 50-91-0078) was issued on November 30, 1990. A Supplemental Native Allotment Certificate (No. 50-91-0143) was issued for Parcel D on February 5, 1991.¹¹

In a Short Note Transmittal form dated April 12, 1996, BLM requested a check of the “status plat’s plot for Par B. It[’]s in T. 2 S.[,] R. 42 W[.,] sec 26[,] but the status plat shows it in (approx.) sec 25. It looks to have been misplotted since the beginning.” Accordingly, in a memorandum dated April 16, 1996, BLM initiated action to “replot Parcel B per field report dated 7/5/95, should be on the west side of the Mulchatna River.” By notice dated October 28, 1996, styled a “Final Date for Amendment,” Carney was informed that the survey of Parcel B was scheduled for survey in 1997. A map was enclosed, which showed a fractional parcel and a metes and bounds description, and she was instructed to contact BLM within 60 days of receipt of the notice. The green card shows the notice was received at Carney’s address of record. BBNA also received a copy of the notice.

¹¹ On Jan. 9, 1991, Saguyak executed a Title Affirmation on Survey Inholdings, by which Carney’s 5-acre Parcel D was excluded from the Interim Conveyance to Saguyak.

The plat of survey (U.S. Survey No. 7663) showing 124.97 acres was officially filed on June 20, 2000. By notice dated August 15, 2000, after stating that she had not responded to the Final Date for Amendment Notice, Carney was given 30 days from receipt to notify BLM if the survey did not include the land shown in the October 1996 “FDA [Final Date for Amendment] Notice.” Homer Carney received this notice on August 24, 2000.

In response, BBNA transmitted a document styled “Survey Acceptance” signed by Carney to BLM on November 4, 2000. In addition to identifying the application serial number and Parcel B, the U.S. Survey number, and acreage of 124.97 acres, Carney averred: “I have carefully reviewed the survey of my Native Allotment (AA-7794) parcel B. This survey correctly represents my Native Allotment parcel. The location is correct, the configuration (shape) of the parcel is correct, and the acreage is what I applied for. I accept this survey as being correct.” Supplemental Native Allotment Certificate (No. 50-2001-0053) for Parcel B was issued on December 4, 2000.

Following Carney’s death in 2006, on May 16, 2007, BBNA submitted a “Request for Reinstatement of 19.54 Acres Previously Deducted From Allotment in Error” on behalf of her heirs, based on handwritten application forms signed by Carney that described different acreage figures for the parcels that purportedly sought a total of 160 acres.

By decision dated January 31, 2008, BLM denied that request, stating that Carney had filed an application that described less than 140 acres (aggregating approximately 137.5 acres). This appeal followed.

Arguments of the Parties

Relying on the three handwritten allotment application forms that had been in the BBNA’s files, the Heir argues that Carney intended to apply for 160 acres and that the Department arbitrarily reduced the acreage sought by Carney in her application. The Heir argues that there is no evidence that BLM ever notified Carney of the “elimination” of 19.54 acres, “no evidence that explains how BLM assigned 140 acres,” no evidence of BLM communications with BIA regarding the acreage Carney sought, and no evidence that Carney “relinquished any portion of the 160 acres she applied for or in any manner waived her right to an allotment totaling 160.” SOR at 6. The Heir further contends that this appeal is identical to the situation presented in *Matilda S. Johnson*, 129 IBLA 82 (1994), and *George Hoffman, Sr.*, 134 IBLA 361 (1996).

In its Answer, BLM responds that Carney received the land she intended to apply for, and never objected to the acreage. BLM therefore characterizes BBNA's Request as a request to amend the application, which is barred by section 905(c) of ANILCA, 43 U.S.C. § 1634(c) (2000). BLM further argues that the request to add acreage is barred by the doctrine of administrative finality. It disputes the Heir's assertion that the facts of this appeal are identical to those of *Matilda S. Johnson* or *George Hoffman, Sr.*, and asserts that no hearing was required to deny BBNA's Request.

Analysis

In support of its Request, BBNA submitted four exhibits. Page 1 of Exhibit A is the signed two-sided handwritten application form for Parcels A and B, described as 1 acre each, dated June 23, 1971, with the notation to see an unidentified enclosed map. Page 2 is a copy of USGS Quad Map Naknek D-6, on which a number of applicants' parcels were shown, Carney being number 12 on the list. The triangular and fractional parcel is shown on the east bank of a stream or river body called Keefer Slough, which is east of the Nushagak River. The third page of Exhibit A shows an unidentified map showing a fractional Parcel B on the left bank of the Mulchatna River.

Page 1 of Exhibit B is a signed, undated two-sided handwritten application form, partially completed, for Parcel C, 5 acres, with the notation "map attached." Page 2 is a copy of USGS Quad Map Naknek D-6, which shows a fractional rectangular parcel on the east bank of Keefer Slough, that appears to fully embrace Parcels A and B as depicted on the same Quad map included as part of BBNA's Exhibit A.

Page 1 of Exhibit C is a signed and undated two-sided handwritten application form, partially completed, for Parcel D, consisting of 153 acres, with the notation "map attached." Page 2 is a copy of USGS Quad Map Dillingham D-2 that shows the various lands claimed by six different applicants, including Carney's fractional Parcel D on the west bank of the Mulchatna River, with the handwritten notation "153 acres."

Pages 1 and 2 of Exhibit D are a copy of the two sides of the allotment application form filed with BLM. A comparison of BLM's application of record and BBNA's Exhibit D confirms that, except for the size of the font of the application serial number in the upper right corner (it is considerably larger on the application of record), Exhibit D is a copy of the original filed with BLM, and it identifies a fractional parcel in sec. 19 as Parcel A, USGS Quad map Naknek D-6, and a fractional

parcel in sec. 26 as Parcel B, USGS Quad map Dillingham D-2, with no acreage stated, as more fully described above.

The Heir labors to build the case that BLM simply “eliminated” 19.54 acres from Carney’s intended application for 160 acres, without notice or her consent, assuming that the applications described above constitute “Carney’s original hand-written applications and maps.” SOR at 6. We cannot agree.

As an initial matter, we do not agree that the disclosure of incomplete versions of a Native allotment application, without more, *per se* demonstrates the applicant’s intentions with respect to the application actually submitted to BLM for processing; it is equally possible that those versions were merely preliminary to, or drafts of, the application actually submitted.

[1] As set forth above, the application submitted to BLM identified two parcels in fractional sections. Although no acreage was stated, they encompass roughly 170 acres, before adjustment for the fractional sections.¹² Carney amended her application to describe four parcels instead of two. BLM makes a compelling point regarding that amended application that the Heir ignores. The amendment did not affect the initial description of Parcel A, which contained approximately 10 acres. The change in the description for Parcel B *decreased* the acreage from roughly 160 acres (before adjustment for the fractional section) to approximately 120 acres (before adjustment for the fractional section). Parcels C and D were added to the application and, as described in the amendment, contained 2.5 acres and 5 acres, respectively, for a total of approximately 137.50 acres. Since Parcels A, B, and C were fractional in size due to the river or water bodies, it was a certainty that the actual acreage of the lands she applied for would be less than 137.50 acres when surveyed.¹³

¹² See 1973 Manual of Surveying Instructions, sections 3-81, 3-82, 3-88, 3-90, and 3-97 to 3-99 regarding fractional subdivisions.

¹³ This is thus not the case addressed in *Matilda S. Johnson*, 129 IBLA 82, and *George Hoffman, Sr.*, 134 IBLA 361. As we stated in *Heir of Okalena Wassillie*, 175 IBLA 355, 361 (2008),

[i]n those cases, BLM took action that reduced the acreage described in the allotment applications for which the appellants had intended to apply. In each case, the applicants had agreed to an adjustment of boundaries, but neither had intended to reduce the total acreage sought or to relinquish any part of their respective allotments. *Matilda S.*

(continued...)

Moreover, Carney had a number of opportunities to amend, challenge, or buttress her application. She did so on at least three other occasions after the first amendment was submitted: on December 15, 1973, when she wrote regarding land she occupied in the village of Portage Creek; on July 15, 1983, when she submitted her witness statements; and on February 13, 1984, when she explained that her improvements had post-dated the field investigation of Parcel D. Nothing in those specific communications or the record states or suggests that Carney ever objected to the size of each parcel or the aggregate acreage. To the contrary, her concern was ensuring that the land she claimed related to and embraced her improvements. That she never objected is consistent with and fully explains her acceptance and submission of the location and survey documents. While the Heir contends Carney intended to apply for more land than 137.50 acres, he notably makes no representations regarding Carey's use and occupancy of any additional acreage or the location of the 19.54 acres, nor has he offered any declarations or affidavits concerning Carey's intentions when she amended her application in 1972 to establish a basis for his contention.

In the 36 years since Carney first amended her application, neither Carney nor anyone on her behalf ever questioned it, the surveys, the investigations, the sizes and locations of the parcels allotted to her, or the total acreage. The decisions culminating in issuance of the patents are thus administratively final for the Department. See *Heir of Okalena Wassillie*, 175 IBLA at 362; *Heir of Jack Moore*, 174 IBLA 45, 53 (2008); *Peter Blair*, 166 IBLA 120, 125 n.3 (2005), and cases cited. The handwritten application forms are not sufficient to overcome the greater weight and consistency of the record as a whole, nor do they present a compelling legal or equitable reason that would lead us to reconsider or suspend the administrative finality that otherwise attends the Department's decisions. *Peter Blair, Id.* We conclude that the amended application for approximately 137.50 acres was the

¹³ (...continued)

Johnson, 129 IBLA at 84; *George Hoffman, Sr.*, 134 IBLA at 364. In both cases, BLM argued that the applicants' failure to respond to notices regarding the changed acreage resulted in a waiver of the right to timely request an amendment of the allotment applications. *Id.* at 85; *id.* at 365. As the Board's analysis makes clear, those cases stand for the basic proposition that BLM is required to adjudicate the application the applicant intended to submit.

application Carney intended to submit, and that BLM properly rejected the Heir's request to add acreage to the application.

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 decision appealed from is affirmed.

_____/s/_____
T. Britt Price
Administrative Judge

I concur:

_____/s/_____
James K. Jackson
Administrative Judge