

**Editor's note: Clarification issued by order dated July 3, 1979 – See 40 IBLA 377A through D below;
Reconsideration denied en banc by order dated Feb. 14, 1984 – See 40 IBLA 377E through J below.**

SKY PILOTS OF ALASKA, INC.

IBLA 79-124

Decided May 14, 1979

Appeal from decision of the Alaska State Office, Bureau of Land Management, divesting title to lands patented under the Recreation and Public Purposes Act and revesting it in the United States. Application No. A-031333; Patent No. 50-65-0359.

Vacated and decided de novo.

1. Patents of Public Lands: Generally—Recreation and Public Purposes Act

Mere nonuse of land patented under the Recreation and Public Purposes Act is not equivalent to a devotion of the land to an unauthorized use and, of itself, will not cause the title to revert to the United States.

2. Patents of Public Lands: Generally—Patents of Public Lands: Effect of—Patents of Public Lands: Suits to Cancel

A patent which names as the grantee a fictional, nonexistent person or corporation is a nullity and ineffective for all purposes, and where the invalidity appears by reference to any matter of which judicial notice may be taken, the patent is null and void on its face, and no recourse to a court is necessary to procure its cancellation.

3. Patents of Public Lands: Generally—Recreation and Public Purposes Act

Where the grantee of land under the Recreation and Public Purposes Act enters into an executory contract to convey an interest in a portion of the land to another, who then undertakes to perform his obligation to enter

the land and improve it without prior Departmental approval, this constitutes an attempt on the part of the patentee to make an unauthorized transfer of title or control, and title to the entire tract reverts to the United States.

APPEARANCES: Elmer B. Sachs, "President," Sky Pilots of Alaska, Inc. ^{1/}

OVERRULED: The following Departmental decisions are hereby overruled: Clark County, Nevada, 28 IBLA 210 (1976); City of Monte Vista, Colo., 22 IBLA 107 (1975); Clark County School District, 18 IBLA 289, 82 I.D. 1 (1975).

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 6, 1955, "Sky Pilots of America and International, Inc.," filed an application pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (R&PP Act), 43 U.S.C. § 869 et seq. (1976), to purchase 78.26 acres of lake-front land on the Kenai Peninsula, Alaska.

"Sky Pilots of America, Inc.," is a group incorporated in California as a nonprofit corporation. It seems to have been intended as a para-military religious organization with uniformed members dedicated to the Christian indoctrination of boys and young men through fostering and developing their interest in aviation and related activities. ^{2/} "Sky Pilots of America and International Inc.," is apparently the same group under an embellished name, although it does not appear that this embellishment was ever legally sanctioned.

The head of all of the "Sky Pilot" organizations was and is, Elmer B. Sachs, listed on Sky Pilot literature variously as "Reverend" Sachs and "General" Sachs, ^{3/} and as "Director," "Founding Director," and "President and Treasurer."

^{1/} Since "Sky Pilots of Alaska, Inc.," does not, and never has existed de jure, Sachs is not qualified under 43 CFR 1.3(b)(3) to represent it in practice before the Department as its "president." 43 CFR 1.3. However, he may be qualified in some other capacity. Rather than inquire, we will address the appeal on its merits.

^{2/} Sky Pilots' literature describes a plan to involve girls and young women in the program at some future time through the formation of some sort of auxiliary to be known as "Co-Pilots," but it is not evident that this was ever done.

^{3/} The sources of Sachs' ordination and military rank are unknown, but presumably the military rank derives from his Sky Pilots organization. A photograph depicts him in a military uniform with Sky Pilots insignia, wearing the four stars of a full general officer of the American armed forces on the epaulets of his tunic. Sachs states that he was formerly a metropolitan police officer.

The Director of Finance, Territory of Alaska, certified that "Sky Pilots of America," a California corporation, qualified to do business in the Territory as a nonprofit corporation effective April 17, 1958. The application was filed in the Anchorage, Alaska, office of the Bureau of Land Management (BLM), and was given serial number A-031333. Initially, the application was deficient in a number of respects, and it was necessary for BLM personnel to enter into an extensive correspondence with Sachs over a long term of time to get the necessary documents (corporate qualifications, plan of development, etc.) to perfect the application. Sachs requested and was granted numerous extensions of time for making these submissions. During these exchanges Sachs was expressly informed that any patent issued under the R&PP Act would reserve all minerals to the United States and contain the standard contingent reverter clause required by law. In the interim, BLM classified the land as suitable for disposition under the R&PP Act. It also agreed to allow Sachs to pay the purchase price in installments, and extended the time for payment.

On May 18, 1959, Sachs requested yet another extension of time of 6 months to 1 year to make his initial payment. BLM responded on June 9, 1959, that Sachs was required by 43 CFR 254.7 (1954) to have filed his development plan along with his application, but that he had failed to do so. It advised him that the application was incomplete and that it would take no further action whatever on it until he supplied this plan.

On June 25, 1959, Sachs filed plans for establishing a "Sky Pilot Camp and Lodge," which provided that Sky Pilots would build a lodge with dormitory, toilet, and kitchen facilities to house 50 to 100 men and boys, with any revenue to be reinvested into Sky Pilots' work. He stated that Sky Pilots planned to develop a Christian conference grounds there. He also requested "until at least September 14, 1960," over a year later, to begin to make payments. On July 7, 1959, BLM granted an extension until July 1, 1960, but advised that it would not grant any further extensions.

On December 28, 1959, prior to the deadline, Sachs submitted the first payment for this land and requested that he be issued a "Trust Deed" immediately, effective as of the date of the payment check. He advised that Sky Pilots would "more or less be cleaning the land and laying it out for our proposed lodge and camp site with docks, boats, etc.," within 1 year. On January 14, 1960, BLM advised Sachs that no trust deed would be issued, but that instead, after the final payment was received, a final certificate would be sent to BLM in Washington, D.C., which would then issue a patent to the land, effective as of its date of issuance.

Over the next 4 years, Sky Pilots paid the amount required by BLM for patent to the land under the R&PP Act, negotiating several extensions for making payments. In this period, on September 8, 1961, Sachs renewed his previous request that the patent include mineral

rights to the land, and BLM again informed him that mineral rights to lands patented under the R&PP Act were required to be retained by the United States.

On January 3, 1963, BLM issued a decision approving the application of Sky Pilots, subject to its making final payment and to its publishing notice of its application. In this decision, BLM expressly advised Sky Pilots that, upon completion of publication, filing by Sky Pilots of proof thereof, and making by it of final payment, a final certificate would be issued requiring any patent which might be issued to contain a clause providing that ownership of the land would revert to the United States if Sky Pilots attempted to transfer title to or control over the lands to another or if the land were devoted to a use other than as described in Sky Pilots' proposed development plan. Sky Pilots was also advised that the decision became final after 30 days unless an appeal was made to the Director, BLM. The record indicates that no such appeal was taken.

By his letter dated July 5, 1964, Sachs advised BLM as follows:

We have just formed the new corporation of Sky Pilots of Alaska, and it is our desire that this new work and the people of Alaska should benefit most from [sic] this property purchased there in Alaska, which is now fully paid for and ready to be issued title and patent rights . . . namely the land known as Lots 7 and 9 Section 20, T. [sic] 5 N., R. 9 W., S. M. in the Moose River area on the shores of Longmare Lake.

We have just met with our Board of Directors, and I am authorized to instruct you in this letter, to please make out the title and patent rights, of full ownership to the new Corporation which papers are now being filed in the State of Alaska, by our representative and member of the Sky Pilots of Alaska Board, Mr. Robert Dow.

Make out Title, and Patent rights, and/or guaranteed deeds on the property known as described above, some 78.26 acres on the Longmare Lakefront, to SKY PILOTS OF ALASKA to own and to have for the purposes of their choosing [sic], according to their articles of incorporation, which we are now mailing to Mr. Robert Dow, acting Secretary of Sky Pilots of Alaska, to file copies with the State of Alaska, and if you will be wishing a copy, after his signature is affixed thereto, [w]e are asking Robert Dow to furnish you with a photostat [sic] copy for your files.

Sachs also made an oral declaration to this effect in a telephone call to BLM on August 4, 1964.

On August 21, 1964, an original, typed copy of what purported to be the articles of incorporation of "Sky Pilots of Alaska, Inc.,"

apparently duly executed by the signatures of Sachs as "President and Treasurer," Harry K. Dillon as "Vice President," and Robert Dow as "Acting Secretary," was submitted to BLM. The document was embossed with a typical corporate seal with the legend "Sky Pilots of Alaska, Inc. - Corporate Seal - State of Alaska." Subsequently, other "official" documents of "Sky Pilots of Alaska, Inc." (minutes of board meetings, etc.), were filed with BLM bearing a slightly different seal, i.e., in place of the words "Corporate Seal" are the words "Incorporated July 19, 1964." Letters from Sachs were headed "Sky Pilots of Alaska, Inc."

BLM accepted this evidence at face value and on December 18, 1964, it issued Patent No. 50-65-0359 in the name of "Sky Pilots of Alaska, Inc.," conveying title to the land to that supposed corporate entity. It was not until September 1978 that someone from BLM checked by telephone with the Department of Commerce of the State of Alaska and was informed that "Sky Pilots of Alaska, Inc.," has never been incorporated or certified to do business in the State. This was subsequently verified by the certificate of the State's Commissioner of Commerce and Economic Development. Incidentally, BLM then also was informed by the Commissioner that "Sky Pilots of America" was involuntarily dissolved on December 15, 1976, for failure to file annual reports.

Thus, BLM issued its patent conveying this land to a legal non-entity. The effect of this action will be considered and discussed infra.

As noted, however, the lack of legal status of the patentee was unknown to BLM until late 1978. The patent provided that the land was to be used "for training and recreation purposes," and provided that "if the patentee or its successor attempts to transfer title or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed without the consent of the Secretary of the Interior or his delegate * * *, [4/] title shall revert to the United States."

The imposition of this proviso is clearly required by the statute, 43 U.S.C. § 869-2, and is reiterated in the regulations of this Department. 43 CFR 2741.8.

The patent also contained standard language reserving, inter alia, all minerals to the United States. This reservation is also mandated by the statute and the regulations.

Following the issuance of the patent, no effort was made to improve the land in the manner definitely proposed in the plan of development, or in any manner. Instead, Sachs embarked on what was to become a

^{4/} The omitted portion provides for reversion of title for certain violations of civil rights.

long campaign to have the limitation of purpose and the reverter clause deleted from the patent so that the land could be sold on the open market at its appreciated fair market value. (The property was purchased, at 50 percent discount, for \$3,520. Sachs estimates its present value at \$150,000.)

In a letter to Secretary Hickel, dated June 10, 1969, Sachs wrote:

During these past fifteen years [5/] since we obtained ownership of this property, changes have come about to where our plans for this property and its use has changed and we would now like to sell part or all of this land on the open real estate market, in order to finance and continue our work with youth throughout the United States.

* * * * *

We are beseeching you to do one of the two things listed below for us, please:

(1) We prefer you would delete this "for training and recreational purposes only" line completely from our patent certificate and also clearly state that we shall be allowed to sell any part or all of this property on the open real estate market as we find necessary to do.

(2) Reword your definition of this confusing limitation of the use of this property to where we can have such a broad explanation that we can still sell any part or all of this property to people who wish to build homes, trailer camps, lodges, etc. for their own recreational purposes.

For your information, our original plans called for a Christian Conference grounds, with youth camps and homesites either to be sold or leased, plus a lodge and a trailer court. Because of our situation to day [sic], however, and the need of money to keep our youth work going in the 48 states, we now see it will be impossible to bring the camp at the Alaska site into being. It is with this thought in mind that we wish to be able to sell this property to raise money for our current work.

On August 4, 1969, Assistant Secretary Harrison Loesch, responding on behalf of Secretary Hickel, informed Sachs that, "In the circumstances we could not give favorable consideration to a request to sell the land on the open market." He also advised Sachs that if this

5/ Sachs insists that Sky Pilots purchased the land and became the owner upon the filing of the application and the payment of the filing fee in 1955, because "money changed hands."

organization desired to transfer the land to a qualified transferee, an application could be filed with BLM's Anchorage office.

Notwithstanding this advice, Sachs continued to request, and eventually to demand, that the limited purpose provision and the reverter clause be expunged from the patent. To this end he solicited assistance from various senators and representatives, and repeated his requests to successive Secretaries of the Interior, various officials of the Department, and BLM. The answers were always essentially the same – that the provisions were required by law, that there was no authority to delete them, and the property could only be conveyed to another organization which was qualified under the law and regulations with the approval of the Secretary or his delegate.

Meanwhile Sachs continued to attempt to sell the land, telling prospective buyers that they would have to use the land "for recreation." However, he apparently drew no distinction between personal or private recreational use and recreational use which would be generally available to participating members of the public. This is illustrated by his letters. For example, on February 28, 1975, ignoring what he had been told by Assistant Secretary Loesch, he again applied to BLM, as follows:

Application No. 2

Application to change, alter our original purpose of use of this land to include [s]ubdividing property for the building, sale, and/or lease of RECREATIONAL HOMES, HOMESITES, TRAILER COURT, AND OTHER RECREATIONAL BUILDINGS, with all of the needed sewers, water and utilities supplies, including roads, piers for sale, lease or rent, which will require complete freedom from the present "non-Transfer" of title clause which is CLOUDING OUR OWNERSHIP TITLE, and those to whom we wish to sell, lease or rent to.

Excerpts from letters Sachs wrote in 1973-74 to the owner of adjacent land are somewhat illuminating:

Should you ever hear of any buyers who would want a portion or all of our property on the basis we must sell it (for [r]ecreation purposes) please have them write me.

Sincerely yours
/S/ Elmer Sachs

P.S. Do you still live in the same house I saw you in along the lake? How many pieces have you sold off of yours? What did you get per acre? What do you think is a fair price for our land?
(December 11, 1973.)

Now, on the other hand. May I suggest to you, or any of the people who seem interested in buying our property, that you know of, I would indeed be willing to give you first opportunity to buy at a fair, proper price, should your plans for the use of this property not differ from the clause which must be obeyed in our title. This comes first. The purchase must meet the approval of these people. May I suggest to you, to go see the people at the tax bureau, to see if any of your buyers, have plans for recreational purposes only, building upon this property that conforms with what the Alaskan people demand..If this is so, we shall be happy to talk a cash sale for all or part of of [sic] our land.

One of our Corporate members of Sky Pilots of Alaska, is Mr. Robert Dow, of the Dow Real Estate Company in Anchorage...503 E. Northern Lights Blvd., Anchorage, Alaska 99503. He is authorized to close a deal for us as soon as we all agree on the terms. Phone him if you wish.

(November 20, 1973.)

I was angry at you and your friend's offer of \$100.00 per acre when this is what the price was on our property over 20 years ago, in 1955 when we bought it from the Territory of Alaska..which I felt you should have known for you were already on your parcel.

(November 28, 1973.)

Another reason I'm writing you is that I sent a letter out to a number of Real Estate men in Anchorage, asking them to try to sell, our property, or get someone with money to go in with us to build what we need to build on that property to make it a paying proposition as well as satisfy the "Recreational" clause on our Deed.

So I expect there will be a number of Anchorage Real Estate men wanting to drive in through our property to show it, and I writing [sic] you to ask you to please help them, and see they have no trouble getting through any locked gate.

(February 12, 1974.)

On October 2, 1974, BLM wrote Sachs in response to a letter from him to then Secretary Morton, in which he renewed his request that the provisions in the patent barring unrestricted sale of the land be

removed. Sachs had apparently been approached by an individual with an offer of \$70,000 for the land. BLM again explained to Sachs the limited circumstances under which Sky Pilots could legally transfer the property and how Sachs could go about applying to do so.

On June 2, 1975, BLM again informed Sachs that it had no power to do as he had requested, explaining that the R&PP Act allowed sale of property to nonprofit associations only on condition that the land be used for a public purpose, and that any successor to the land would also have to use it for a public purpose and could do so only if consent were expressly given. BLM advised Sachs that his proposed sale of the property to private persons for use as recreational homesites, homes, or trailer courts, was not the kind of public recreational purpose contemplated by the R&PP Act, and that, on the Secretary's behalf, it did not consent to his changing the use of the land in this manner. Once again, BLM advised Sachs that he could re-apply to transfer title to a qualifying organization, and gave him the appropriate form to do so.

It appears that Sachs had authorized the Kenai Grace Brethren Church to use the land as early as 1972, and that the Church did make some use of it, without developing or improving it in any way. BLM, by periodic field examinations, was aware that no improvements had been placed on the property, and on January 26, 1977, wrote to Sachs offering him the following options:

1. Complete substantial improvements for compliance with the development plan within the next building season.
2. Transfer the property to another qualifying nonprofit corporation under a new plan of development for similar purposes. All of which must be approved prior to the transfer/or change of use by BLM.
3. Voluntarily relinquish the subject lands back to the United States.
4. Do nothing and let the United States initiate action to cancel the patent for noncompliance.

Sachs negotiated an agreement with Reverend Edward Jackson, pastor of the Grace Brethren Church, whereby the Church would undertake certain improvement of the land in exchange for what Sachs called a "Gift Deed or Lease" to the Church of 3 to 5 acres of the land. On May 18, 1977, Pastor Jackson wrote Sachs, saying:

Have discussed with the trustees the property at Longmeir [sic], and they are agreeable to doing something out there this year, if no more than punching a road in along the one side of the property. As of this date the

weather has been such that we have not been able to get back to the property. When we can get back to it then we will let you know about the size of the property as to length and width.

As to telephone that will be many years off for they cannot even keep up with the in town phones.

As to water we can drive a sand point this summer and might get a small trailer of some sorts on it but that will be just about it. We are still very much involved in the building of our new building and will have to spend some time with it this summer also.

Will keep you posted as to the progress.

As to finding a couple who might move out on the property this we will have to pray about.

On May 23, 1977, Sachs wrote a long letter to BLM, to which he appended a thick file of correspondence, some of which related to the plan to convey a portion of the land to Grace Brethren Church. In this letter Sachs continued to request deletion of the reverter clause, and he offered to pay BLM \$1,412 for its surrender of Federal reverter rights, so that Sachs could, as he put it, be "able to negotiate our Title, in any Bank or sale or lease we desire to do, on our own, as any other legal land owner, on the Open Market."

In its reply dated July 12, 1977, BLM again, as it had on innumerable past occasions, informed Sachs that the reverter clause was required by law and BLM had no authority to waive it, adding:

As to the gift deed or lease to the Grace Brethern [sic] Church, it will not suffice unless approved in advance pursuant to the regulations contained in 43 CFR 2741.4 (copy enclosed). This regulation, in effect, requires you or the Grace Brethren Church to apply for a change of title and submit a new development plan pursuant to 2741.3. The enclosed brochure has several examples of an acceptable development plan.

Apparently Sachs did not communicate this information to the Grace Brethren Church, and the Church, pursuant to its agreement with Sachs and without filing an application, proceeded to build a road into the property, clear and stake a building site on the land, measure boundaries, and it acquired – but did not install – a sand point for a water supply.

On November 4, 1977, Sachs wrote BLM on "Sky Pilots" stationery and, without any mention of the Grace Brethren Church, made the following declaration:

This is to inform you that we have done the following improvements on our property on the Longmare Lake property which we purchased from Bureau of Land Management, and hold patent on during the summer of 1977.

We have punched, two small roadways, and placed a Sand pump for water on the property, with plans now to build our first building starting building season of 1978.

We are, as always using this property for the Recreational purposes we purchased this property for, each and every year.

In the context of this letter the pronoun "we" would indicate a reference to Sky Pilots, rather than to the Kenai Grace Brethren Church.

BLM's investigation, which included an interview with Reverend Jackson, disclosed that all work done on the property was done by the Church because Sachs had promised the Church a portion of the land in consideration of such work. Moreover, all use of the land for camping, picnics, and religious activities had been by the Church, and no group known as "Sky Pilots" had ever used the land for any purpose. Finally, Reverend Jackson stated that the Kenai Grace Brethren Church had no affiliation with the Sky Pilots organizations, and that insofar as he knew, Sky Pilots exists only on paper.

On May 12, 1978, BLM issued notice requiring Sky Pilots to show cause why a decision of divestiture of title should not be issued pursuant to the reverter clause of the patent. It was alleged therein that Sky Pilots abrogated the terms of this reverter 1) by attempting to transfer title or control over the land to another without the consent of the Secretary, and 2) because the lands were not being used for the purposes for which the lands were conveyed. Sachs filed a several-part response to this notice, which BLM considered unsatisfactory.

On November 8, 1978, BLM issued a decision divesting Sky Pilots' title in the land and revesting it in the United States. BLM cited the failure of Sky Pilots to develop the land as stated in its proposed development plan over the 13 years since the patenting of the land to it and concluded that:

[t]he failure of the Sky Pilots of Alaska, Inc. to make either of the uses specified in the patent of the land for over 13 years is deemed to be a violation of the reversionary provision of the patent and to effect a divestiture of Sky Pilots of Alaska, Inc., title to the land and the revestiture thereof in the United States.

BLM also cited instances where Sachs had attempted to sell the land to others and concluded that, "Sky Pilots' attempts to transfer title to

or control over the lands without proper, prior consent are a violation of the Recreation and Public Purposes Act, supra, as well as the reversion clause in the patent and title must revert to the United States on this basis also." On behalf of Sky Pilots of Alaska, Sachs filed a timely appeal of this decision to this Board.

[1] We must observe that the decision appealed from was in error in one particular.

BLM held that Sky Pilots had violated the terms of the reverter by failing to develop the land during the 14 years following issuance of the patent. This holding comports with several decisions by this Board that failure to develop a site patented under the R&PP Act was the equivalent of devoting it to another purpose, so that the terms of the reverter divested the patentee of ownership of the land. Clark County, Nevada, 28 IBLA 210 (1976); City of Monte Vista, Colorado, 22 IBLA 107 (1975); Clark County School District, 18 IBLA 289, 82 I.D. 1 (1975). However, Clark County, Nevada, supra, has been reversed recently. County of Clark v. Kleppe, No. CIV LV 77-13, RDF (D. Nev. Jan. 20, 1978). The Nevada District Court held in that 43 CFR 2741.2(b) "does not require an applicant to develop the property within a reasonable time." (Emphasis added.) Rather, its applicability is restricted to assisting BLM determine whether the applicant is qualified to acquire the land. In order for the reverter clause to come into effect, the land must be devoted to some unauthorized purpose other than that specified in the patent, or the patentee must transfer, or attempt to transfer, title or control of the land without the requisite approval. Therefore, we expressly overrule our previous decisions in Clark County, Nevada, supra; City of Monte Vista, Colo., supra; and Clark County School District, supra.

[2] We will now analyze the effect of the conveyance by patent to the legal nonentity, "Sky Pilots of Alaska, Inc." A patent, for all purposes of this discussion, is equivalent to a deed. The topic "Deeds" is exhaustively treated in Volume 23, American Jurisprudence, Second Edition (1965). Some quotations follow. "In order that an instrument may be operative as a deed conveying title to, or interest or estate in, land, the grantee named in the deed must be a person, natural or artificial, in existence at the time of conveyance and capable of taking title. A deed granting an immediate estate to a person not in esse is inoperative to transfer the legal estate. * * * Under the rule of law that a grantee capable of taking title is necessary to the validity of a deed, it has uniformly been held that a deed to a fictitious grantee, or which names as grantee a person who has no existence, is inoperative and void." (Citations omitted.) 23 AM. JUR. 2d Deeds § 43.

"A valid deed of conveyance requires a grantee in esse who is legally capable of accepting the deed and of taking and holding title to the property at the time of the conveyance." (Citations omitted.) 23 AM. JUR. 2d Deeds § 47.

"The rule that a deed which names as grantee a fictitious person is void applies only when the named grantee does not in fact exist, and not to the situation where a person in existence is described by a fictitious or assumed name." (Citations omitted.) 23 AM. JUR. Deeds § 52.

"Where a conveyance was made to a corporation which was not in existence, title did not pass on that date on the basis of scrivener's error to a subsequently formed corporation with a slightly different name, because there was no such grantee in existence capable of receiving and holding title at the time of conveyance." Allmon v. Gatschet, 437 S.W.2d 70 (Sup. Ct. Mo. 1969).

Where the grantee was a defunct and dissolved corporation, the court said, "A grantee being necessary to a conveyance, a conveyance to a non-existing corporation may, like conveyance to a fictitious person, be of no effect, and the grantor is not estopped from avoiding his deed by showing that the supposed corporation did not exist." James v. Unknown Trustees, Etc., 220 P.2d 831, 835 (Sup. Ct. Okla. 1950).

"A land patent issued to a fictitious person conveys no title which can be transferred to a person subsequently purchasing in good faith from a supposed owner." Moffat v. United States, 112 U.S. 24 (1884) (syllabus). "A deed to a fictitious person is void and leaves the title in the grantor." Wiehl v. Robertson, 37 S.W. 274 (syllabus) (Sup. Ct. Tenn. 1896). Because it is universally recognized that a corporation is an artificial person, "invisible intangible, and existing only in contemplation of the law" (Dartmouth College v. Woodward, 4 U.S. 463, 489, 4 Wheat. 518, 636 (1819)), a fortiori, a conveyance to a fictitious corporation is equally as void as a conveyance to a fictitious person.

This Department has held in decisions too numerous to cite, that generally, upon issuance of a patent to a tract of land, all unreserved title and control passes from the United States, and the Department has no further jurisdiction. The general rule is that to cancel a patent which has been issued improvidently, it is necessary for the United States to bring suit in a court of competent jurisdiction. However, this rule is not applicable where the patent is a nullity, and void when issued, as in this case.

One Departmental case, Charles H. Moore, 27 L.D. 481 (1898), involved individuals who presented Chippewa Half-Breed scrip and received patents to lands in Utah. However, the scrip was only valid, by treaty and statute, for the acquisition of certain lands in Michigan, Wisconsin, and Minnesota. Various courts had already held as a matter of law that patents issued against such scrip for lands in California and Colorado were void. The Acting Secretary held that the Utah patents were similarly void, stating:

From this conclusion it seems necessarily to follow that no title passed by the patents, that the legal title is still in the United States, and that the lands are still a part of the public domain within the jurisdiction of the Land Department.

There is no necessity for resort to the courts, as suggested in the decision appealed from, for the purpose of setting aside and annulling the patents. A patent void on its face is an absolute nullity—a thing without force or effect for any purpose whatsoever. It furnishes no ground for a direct proceeding in the courts, to avoid it, but may be successfully assailed collaterally, whenever and wherever relied upon as evidence of title.

The principle appears to be well settled that the interference of a court of equity is not necessary in cases where the validity of a deed or other instrument of conveyance is apparent on its face. There is a clear distinction between this class of cases and those where such invalidity has to be shown by extrinsic evidence. [Citations omitted.]

At 487.

* * * * *

From these authorities and many others that might be cited, it must be considered as the settled law, that a patent is void on its face not only when fatally defective by its own terms, but also, whenever its invalidity appears by reference to any matter of which judicial notice may be taken, such as public statutes or treaties; and that such a patent is entirely null, conveys no title, and has no operative effect requiring resort to a court of equity for its avoidance. Nothing can be founded upon an act or transaction that is absolutely void, but from such as are merely voidable, good titles may ultimately spring. The patents here in question come clearly within the rule as to patents void upon their face. [Emphasis added.]

At 491.

The formal certificate of the Commissioner of Commerce and Economic Development, State of Alaska, given under his official seal, that no corporate records of Sky Pilots of Alaska, Inc. are on file in his office, as they are required to be by Title 10 of the Alaska statutes, is a matter of which judicial notice may be taken, and which we may officially notice pursuant to 43 CFR 4.24(b). Thus, there is no need to look beyond the administrative record of this case for extrinsic evidence to establish that the patent is an absolutely void instrument.

Accordingly, we hold that Patent No. 50-65-0359 was void when issued, that it was ineffective to convey any right, title, or interest in or to the lands described therein, and that no judicial proceedings need be initiated by the United States for the purpose of canceling the patent.

[3] Even assuming, arguendo, that the patent was not a nullity, we would find that Sachs' efforts to transfer title and/or control without prior approval of the Secretary or his delegate operated to trigger the reverter.

An effort by Sachs to find a qualified organization to convey the land to, and the negotiation of the details of such a transfer, prior to receipt of Departmental approval, would not have caused the reverter to operate, as it would have been necessary to have some definite proposal to submit for approval. But Sachs' efforts to dispose of the property, or some portion of it, went far beyond that. He was actively endeavoring to sell the land to anyone for private recreational use. He negotiated with the owner of adjacent land; he attempted to sell it through local real estate agents; and he finally entered into a contractual arrangement with the Kenai Grace Brethren Church.

The Church may, or may not, be regarded by BLM as a qualified organization. But when Sachs informed BLM of his intention to grant the Church a "Gift Deed or Lease," he was expressly admonished by BLM that the prior approval of this Department would be required. Disregarding this admonition, he made a commitment to convey to the Church an interest in a portion of the land in exchange for the Church's making certain improvements, which he could use to demonstrate his "good faith" devotion of the land to the recreation and training purposes proposed by him in 1955. He did not seek the prior approval of BLM before entering into this contract, nor, apparently, did he advise the Church of the necessity for so doing. Instead, he allowed the Church to proceed to implement its part of the bargain by opening a road, clearing and staking a building site, surveying or measuring boundaries, and procuring a sand point. In doing so as consideration for a promise of an interest in the land, the Church acquired what otherwise would have been an equitable interest in the land.

We hold that this agreement, coupled with the performance by the Church with Sachs' full knowledge and approval, was an unauthorized attempt to transfer part of the land sufficient to cause the operation of the reverter clause.

Sachs' alternative suggestions that (1) Sky Pilots of Alaska, Inc., be permitted "to purchase the reverter Clause [sic] for \$15,000 to \$20,000 cash," or (2) "that our Title [sic] * * * corrected as we deem it should be corrected [be transferred] over to the Brethem [sic] Church," raise no justiciable issues, and merit no consideration.

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 vacated, and we hold instead that Patent No. 50-65-0359 is null and void, and was not effective to convey any right, title or interest, or, alternatively, that title to the entire tract has reverted in the United States.

Edward W. Stuebing
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING IN PART AND DISSENTING IN PART:

I concur completely in those parts of the majority decision which hold: (1) that a patent issued to a fictional or nonexistent individual or corporation is a nullity, and such a patent may be cancelled without recourse to a court; and (2) that the executory contract entered into in the instant case constituted a violation of the terms of the patent and effectuated a reversion of title for the entire tract to the United States. I must respectfully dissent, however, from the holding of the majority that failure to commit the land to the use for which the patent was issued is not the equivalent to a devotion of the land to an unauthorized use, and thus does not cause the title to revert to the United States.

Before discussing the substantive reasons for my disagreement, I wish to underline the fact that the conclusion of the majority on this question is not occasioned by a belief that it is required to reach such a result because of the District Court decision in County of Clark v. Kleppe, No. CIV LV 77-13, RDF (D. Nev. January 20, 1978). In a recent decision involving an oil and gas lease, Gretchen Capital, Ltd., 37 IBLA 392 (1978), the Board declined to follow a decision entered by a district court, Hiko Bell Mining and Oil Co., Inc. v. Andrus, C-76-138 (D. Utah, April 4, 1978), reversing a prior Board decision. The Gretchen decision noted that "the [Federal court] decision does not constitute binding precedent for other Federal judges" and declared that "we decline to follow it because it conflicts with principles of construction applied in other cases cited above which have been judicially sustained." 37 IBLA at 395.

The majority decision is, in effect, an independent renunciation of the rationale which led to prior Board decisions such as Clark County School District, 18 IBLA 289, 82 ID. 1 (1975); Clark County, Nevada, 28 IBLA 210 (1976); and City of Monte Vista, Colorado, 22 IBLA 107 (1975). This renunciation is not aided by the court's decision in County of Clark v. Kleppe, supra, since that decision was premised on considerations raised by the dissenting judges in the original Board decision in Clark County School District, supra, which were rejected by the majority at that time. Thus, the conundrum of this case: there is no necessity nor new considerations which compel the reversing of our past precedents; yet those precedents are overruled nonetheless.

I believe the considerations which led the Board in Clark County School District, supra, to hold that nonuse of land over an unreasonable period of time after issuance of patent violates the provision of the Recreation and Public Purposes Act requiring that patented lands not be devoted to a use other than that for which the lands were conveyed are as relevant and cogent today as they were when the Board issued that decision.

The relevant statutory provision is section 3 of the Act of June 4, 1954, as amended, 43 U.S.C. §§ 869-2 (1976), which provides in relevant part that:

If at any time after the lands are conveyed by the Government, the grantee or its successor attempts to transfer title to or control over these lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without the consent of the Secretary, title to the lands shall revert to the United States.

The thrust of both the majority and the court decision in Clark County, supra, is that nonuse of the land does not constitute a devotion of the land to a "use other than that for which the lands were conveyed." I must respectfully disagree.

The essential predicate of the majority's decision is that nonuse is not "use." Both the majority and the district court apparently interpret the word "use" as implying action. While such a definition is a proper one, it is not the exclusive meaning of the word. Moreover, the statutory provision does not refer to "using" the land; rather it prohibits devotion of the land to a use. The word "devote" is the active verb; "use" is employed as a noun. The district court's recourse to and reliance upon the dictionary definition of "use" as a verb is simply misplaced.

By way of example, a farmer may be employing a crop rotation system which envisages that one-third of his acreage will lie fallow every year. In any year one might argue that the farmer is not using one-third of his land. That one-third, however, is being devoted to a use. There is no contextual reason to read "use" as not applying to nonuse.

When one considers the policy considerations which led to the enactment of the Recreation and Public Purposes Act, Act of June 14, 1926, as amended 43 U.S.C. § 869 et seq. (1976), with particular reference to the statutory provisions relating to lease termination, the conclusion is inescapable that nonuse was intended to work a reversion of a patent issued under the Act.

Congress did not intend the R & PP Act to authorize unencumbered grants to governmental entities and nonprofit organizations. On the contrary, the whole purpose of the legislative scheme was to aid such entities and groups in the fulfillment of public purposes. The statutory scheme provides that for either a lease or sale the Secretary compute a price "after taking into consideration the purpose for which the lands are to be used." 43 U.S.C. § 869-1 (1976). Thus, the lands are disposed of by the Government at a discount, which discount is based on the use to which the lands are to be put.

There can be no argument that nonuse of leased lands could result in a termination of the lease by the Secretary. The applicable statute, 43 U.S.C. § 869-1 (1976), expressly provides: "Each lease shall contain a provision for its termination upon a finding by the Secretary that the land has not been used by the lessee for the purpose specified in the lease for such period, not over five years, as may be specified in the lease, or that such land or part thereof is being devoted to another use." ^{1/} The majority decision necessarily ascribes to Congress an intent to protect land from nonuse when it is leased for a fixed term of years, but to provide no similar protection when it is patented. Such a result would, I submit, turn logic on its head.

The original Recreational Purposes Act, Act of June 14, 1926, 44 Stat. 741, permitted the exchange of Federal lands deemed suitable for recreational or park purposes for other lands granted to the States by Congress as well as the sale or lease of such lands to the States. By its terms, the Act expressly provided: "any patent so issued shall contain * * * a provision for reversion of title to the United States upon a finding by the Secretary of the Interior that for a period of five consecutive years such land has not been used by the State for park or recreational purposes, or that such land or any part thereof is being devoted to other use." No part of the Act, however, required the insertion of a similar provision into a lease.

In 1954, Congress made major revisions of the 1926 Act, primarily for the purpose of permitting land disposal for public purposes other than parks or recreation. See Act of June 4, 1954, 68 Stat. 173. That Act specifically required the insertion in a lease of a provision that nonuse of the lease land for the period stated in the lease "not over five years" would justify a termination of the lease. Thus, while the original Act provided for the insertion of a reverter clause in patents concerning nonuse for a period of 5 years, and was silent as to leasing provisions, the 1954 Act used the 5-year period as a maximum amount of time that a lease could continue without being used for the purposes it was granted.

The majority, while recognizing this change, nevertheless then proceeds to conclude that for some unarticulated, and indeed inexplicable, reason Congress at the same time decided to remove nonuse from the category of actions which would cause a reverter when a patent was

^{1/} While this section appears to treat nonuse as discrete from "devotion to another use," I believe, for reasons provided subsequently in the text of this dissent, that nonuse was singled out by Congress in order to limit the Secretary's discretion concerning how long a period of nonuse would be permitted before terminating a lease. It is thus correctly interpreted not as establishing two separate criteria for termination of a lease, but rather as providing differing mechanisms by which the same criterion would result in termination.

issued. Such an intent is totally inconsistent with another provision added in 1954 which provided for the abrogation of the reverter restrictions "twenty five years after the issuance of patent for such lands." ^{2/} Section 3 of the Act of June 14, 1954, 68 Stat. 173.

The majority and the district court posit a legislative scheme in which a lease terminates after a maximum of 5 years nonuse, but a restricted patent for land would continue, without committing the land to the use for which the patent issued, for a period of 25 years, after which time all restrictions on use would terminate. This interpretation, I believe, is so totally at odds with the purposes and intent of the Act as to be rejected out of hand.

I think that the 1954 amendments are properly interpreted as resting upon a realization by Congress that the flat 5-year reverter clause, which applied when the act was only applicable to park and recreation land, might be too restrictive when the public use contemplated was of a different nature. Thus, it intended to permit the Secretary to apply a rule of reason, based on the purposes for which the land was disposed. It did not intend, however, to remove nonuse from the category of actions which could serve to revert the land to the United States.

Because I believe the majority decision does great injury both to the purpose and intent of the R & PP Act, as well as to the language used therein, I respectfully dissent.

James L. Burski
Administrative Judge

I concur.

Newton Frishberg
Chief Administrative Judge

^{2/} This provision was repealed by section 2 of the Act of September 21, 1959, 73 Stat. 571.

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the result, and agree the Board should be bound by the court decision in County of Clark v. Kleppe, supra. I do not believe, however, that the Board has authority to hold that the offer to purchase the reverter merits no consideration. In effect, the Bureau of Land Management has denied an offer to purchase the fee title. No disposition of the land, except under 43 U.S.C. § 869 et seq. (1970), has been authorized by appropriate authority; therefore the Board has no jurisdiction as to the merit of the offer to purchase. 43 CFR 4.410 and 2400.0-4.

The BLM decision also denies the request that title patented to Sky Pilots of Alaska be transferred to the Brethren Church. On January 26, 1977, BLM wrote that this type of transfer could be an option, as quoted supra. I would hold that appeal from the denial is justiciable. Under 43 U.S.C. § 869 (1976), a patent could properly have been issued to a nonprofit association. Because Sky Pilots of Alaska would seem to qualify as a nonprofit association, and because in any event the patent could be amended under 43 U.S.C.A. § 1746 (Supp. 1978) to name Sky Pilots of America, Inc., the original applicant, I would not hold the patent void. However, under the circumstances it is well within BLM discretion to deny the request for a transfer of the Sky Pilots' patent to the church. I would hold that it is proper to invoke the reverter.

Joseph W. Goss
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN PART AND DISSENTING IN PART:

I concur only in that part of the majority's opinion which finds that the reverter clause in the patent issued under the Recreation and Public Purposes Act has been triggered by the attempt to transfer the land. I concur with Judge Burski insofar as he dissents from the majority's conclusion that nonuse of land is not a sufficient basis for causing the reverter to operate and the majority's overruling of prior Departmental decisions. I agree with Judge Burski that the statutory purpose of the Recreation and Public Purposes Act has been completely thwarted by the court's decision in County of Clark v. Kleppe, CIV LV 77-13, RDF (D. Nev., January 20, 1978), and by the majority's unnecessary action here in ruling on a matter which is not essential for the decision. I disagree with some other aspects of the majority's decision also.

In the prior Board decisions concerning the reverter under the recreation and Public Purposes Act, we did not specifically advise the Bureau of Land Management (BLM), on the procedures for removing the cloud from the Government's title by the fact of the existence of the patents on local non-Federal Governmental records. An argument was raised concerning BLM's lack of authority to cancel a patent administratively. In Clark County, Nevada, 28 IBLA 210, 212 (1976), we found such an argument was not relevant. Specifically, we stated:

Appellant erroneously confuses case authority for the proposition that patents may not be canceled administratively with this declaration of divestiture and reversion of title in the United States, and with judicial enforcement of rights. The cases referred to by appellant involve cancellation of patents for fraud or other error in issuance. Those cases in no way limit the authority, and indeed the duty, of this Department to determine administratively whether the conditions of the Recreation and Public Purposes Act and the patent for reverter of title have occurred, and to give notice to the patentee of this determination so it may exercise the opportunity afforded for administrative appellate review. Therefore, the case is returned to BLM to undertake appropriate action to remove the cloud on the title of the United States to these lands.

Clearly, this Board appropriately may declare that the conditions for a reverter have occurred. Likewise, in some circumstances it may be appropriate to declare that a patent was erroneously issued and is void. My objection here is with the Board's advising BLM that it need not take one type of action (court action) to remove the cloud from the Government's title generally when it is determined a patent is void. This advice is neither necessary nor wise. The one decision

cited by the majority for so advising BLM that judicial proceedings are unnecessary is Charles H. Moore, 27 L.D. 481 (1898). The concern in that case was whether the Department could reassert its jurisdiction and authority over land which had been patented. There prior court decisions had ruled that similar patents were void. Thus, there had been final judicial rulings on the specific matter of law raised on the validity of the patent. The decision concluded that the Department could reassert its jurisdiction over the land without recourse to court action to cancel the patent.

I agree that if there is a Departmental determination that a patent is void, it may not be necessary for BLM to await court action before administering the land covered by the patent. My point is, that the Department can declare its position, give notice to the patentee and take appropriate steps to remove the cloud from its title from non-Federal records. In some circumstances it may be highly desirable to avoid future possible litigation for the Department to initiate judicial proceedings, as well as other steps. The appropriate action, however, is best made on a case by case method with full knowledge of all facts and where potential problems are ascertained. Thus, even though the Department can declare its position, it may also find it advantageous to have that position confirmed by a court in direct court proceedings. When it should do so is a matter of administrative and litigative strategy more appropriately delegated to others to make than this quasi-judicial Board. There have been too many statutes passed since the Moore decision was issued in 1898 and other developments in the law for us to rigidly adhere to its procedural advice in the general fashion enunciated here.

Joan B. Thompson
Administrative Judge

July 3, 1979

IBLA 79-124	:	40 IBLA 355
	:	
Sky Pilots of Alaska, Inc.	:	R&PP Act Reverter
	:	
Petition for Clarification	:	Granted

ORDER

Pursuant to a petition filed by the Office of the Solicitor for clarification of this Board's decision in the appeal in caption, the following declarations are made:

1. The undersigned regard the decision of the court in County of Clark v. Kleppe, No. CIV LV 77-13 RDF (D. Nev. Jan. 20, 1978), the sole judicial pronouncement on the issue, as significant and authoritative, and a correct construction of the statute, although not legally binding on this Board in case arising in other jurisdictions. See Gretchen Capital, Ltd., 37 IBLA 392, 394 (n.1), 395 (1978).

2. In the second full paragraph on 40 IBLA 366, in the sentence beginning, "The Nevada District Court held in that * * *," (emphasis added), the word "in" is extraneous, and should be deleted. In the following sentence the words "its applicability" of course, refer to the applicability of the regulation cited in the preceding sentence.

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

40 IBLA 377A

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur that the petition for clarification should be granted and submit the following comments as to stare decisis.

The courts of the United States are, of course, the final authority on interpretation of Federal statutes, regulations, and Departmental actions. That other courts will follow a sound interpretation by a district court is well established. For example, in Coming v. Busey, 127 F. Supp. 958 (S.D. Ohio 1954), the court stated:

In arriving at this conclusion, the Court follows the decision in MacColl v. United States, D.C. 91 F. Supp. 721. The Court is fully cognizant that this is a district court opinion and not binding upon this Court. The Government, however, did not appeal the case and since the conclusion is sound and logical, this Court will follow it.

As to state law, a broad rule is asserted in 2 Cooper, State Administrative Law 534 (1965):

Of course, after judicial review of an administrative decision, the agency is bound to follow the law as laid down by the court, irrespective of its own precedents to the contrary. 82/

82/ In Re Dresher's Claim, 286 App. Div. 591, 146 NYS 2d 428 (1955).

The cited Dresher decision, however, contains language in 146 N.Y.S. 2d at 431-32 which indicates that, as to stare decisis, an administrative body may have somewhat more latitude than a common law court:

The [Unemployment Insurance Appeal] Board probably also has somewhat greater freedom than a common-law court might have in its views on land and legal policy; but we are bound by stare decisis where decision involves a question of law and when a legal principal stems from the cases that have been decided we are under a need to follow it. The risk of imposition of some measure of legal consistency by the court upon administrative agencies is part of the tariff that must be paid for whatever advantage can be claimed for review by a law court of the work of an administrator.

The decisions of the Board are replete with citations to final district court decisions. Assuming that some latitude exists, one of the functions of the Board is to determine the law by attempting to

anticipate how the courts would decide an issue. Where a logical interpretation has been made by a district court, where there is no conflicting judicial interpretation, where the Department was itself a party to the district court action, and where the Department has not appealed from its decision and that decision has become final, there is every likelihood that the other Federal courts would decide the issues in the same manner. In this situation, and pending initiation of proceedings for further judicial review, I feel the Board should consider itself obligated to follow such a final judicial interpretation.

Additional reasons for the Board to follow County of Clark v. Kleppe, supra, are set forth in City of Monte Vista, Colorado, 22 IBLA 107, 119-20 (1975) and Clark County School District, 18 IBLA 289-309-19, 82 I.D. 1, 10-14 (1975) (dissents).

Joseph W. Goss
Administrative Judge

40 IBLA 377C

CHIEF ADMINISTRATIVE JUDGE NEWTON FRISHBERG, ADMINISTRATIVE JUDGE JAMES L. BURSKI, AND ADMINISTRATIVE JUDGE JOAN B. THOMPSON CONCURRING IN THE RESULT:

Though we disagree with the result reached by the majority regarding the effect of nonuse on a patent issued under the Recreation and Public Purposes Act, we agree with its view that, while the district court's decision in County of Clark v. Kleppe, No. Civ. LV 77-13 RDF (D. Nev., January 20, 1978), is properly cited as authority for the positions adopted by the majority, it is nevertheless not binding on this Board in cases arising in other jurisdiction. That is particularly true where, as here, varied factual circumstances might impel a different court to a contrary conclusion. Cf. Standard Oil of California, 5 IBLA 26, 89 I.D. 23 (1972).

The views of Judge Goss are his own.

Newton Frishberg
Chief Administrative Judge

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

February 14, 1984

IBLA 79-124	:	40 IBLA 355
	:	
SKY PILOTS OF ALASKA, INC.	:	R&PP Act Patent
	:	
	:	Petition for Reconsideration
	:	Denied

ORDER

The case in caption was decided by the Board en banc on May 14, 1979. Sky Pilots of Alaska, Inc., 40 IBLA 355 (1979). A majority of the administrative judges who considered the case held, inter alia, that Patent No. 50-65-0359 issued to Sky Pilots of Alaska, Inc., was null and void when issued, and conveyed no title or interest because the grantee corporation did not exist, so that title remained in the United States.

The Board was unanimous in holding that even if title was conveyed by the patent, it had reverted to the United States by reason of the unauthorized efforts of the patentee to transfer title, leasehold interest, or control of the lands, or part of them, without the prior approval of the Secretary or his delegate, in violation of the Recreation and Public Purposes Act, the implementing regulations, and the written provisions of the patent itself, and that Sky Pilots of Alaska, Inc., if it existed, was thereby divested of all right, title, claim or interest in the subject lands.

A minority of the Board (comprised of three of its administrative judges) expressed their opinion that the land had reverted to the United States for the additional reason that Sky Pilots of Alaska, Inc., had failed to devote the land to the use for which the patent had issued.

On January 10, 1984, Elmer B. Sachs, purportedly president and treasurer of Sky Pilots of Alaska, Inc., filed with this Board what he terms an "appeal" from our decision of May 14, 1979. We will treat this document as a petition for reconsideration, as our decision was final for the Department and no further appeal will lie in the Department. 43 CFR 4.21(c).

However, that regulation also provides that "requests for reconsideration must be filed promptly," and "may be granted only in extraordinary circumstances where, in the judgment of * * * an Appeals Board, sufficient reason appears therefor." The filing by Sachs fails on both counts. Nearly

40 IBLA 377E

5 years elapsed between the issuance of the decision and the filing of this request for review, which by no means can be considered as filed "promptly."

Moreover, although Sachs insists that "Sky Pilots of Alaska, Inc.," was a lawfully created and subsisting corporation, the material which he supplied in support of that contention does not establish that "Sky Pilots of Alaska, Inc.," existed de jure when the patent issued, or even that it exists today. These include a letter from the Office of the Attorney General of the State of Alaska explaining why the State Department of Commerce returned the first "Annual Report" filed on behalf of "Sky Pilots of Alaska, Inc.," along with a \$2.50 remittance. However, the letter goes on to say, "Based upon the above, Sky Pilots of Alaska, Inc. never appeared in the Alaska corporation files." It was suggested that if the articles of incorporation were filed with the clerk of the Superior Court of Alaska and certified by him prior to 1968, this would suffice, and Sachs was encouraged "to investigate the court records in Kenai and Anchorage" to see if such could be discovered. There is no evidence that this has been done. The letter also discussed the future possibility that the State might consider granting retroactive corporate status to "Sky Pilots of Alaska, Inc." effective to December 10, 1965. That date would still be almost a year after the patent was issued in the name of the "corporation" on December 18, 1964. In any event, we question whether the State's unilateral retroactive recognition of corporate status could have the effect of validating a patent that was null and void when issued.

Even if it could be established that the corporation was lawfully in existence when the patent issued, this Board unanimously held that the title had reverted to the United States because of the efforts of Sachs to convey the property, or an interest therein, without prior Departmental approval. Sachs does not even mention our holding in this regard, although, strangely, he emphatically agrees with the separate opinion by Judge Burski, who opined that the land should have reverted for the additional reason that the failure to devote of the land to the use for which it was patented was equivalent to a devotion of the land to an unauthorized use; an opinion shared by Judges Frishberg and Thompson.

The filing by Sachs includes statements that Sky Pilots is "using our property annually for recreational purposes * * *." Also included are copies of the minutes of "Sky Pilots of Alaska Board Meeting" dated May 19, 1983, excerpts from which are appended hereto, emphasizing an intention to continue possession of the land and to resist any order by BLM to vacate. The Board cannot ignore such declarations in contravention of its decision, which is final for the Department. Elmer B. Sachs and other members of the "Sky Pilots" organizations are hereby admonished that the subject property is Federal land in which they have no right, title, claim or interest, and that the management and control of said property is the lawful responsibility and obligation of the Bureau of Land Management. They are further admonished that efforts such as those described by Sky Pilots in the appendix hereto may subject the offenders to civil and/or criminal liability.

For all of the foregoing reasons, and pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is hereby denied.

Edward W. Stuebing
Administrative Judge

We concur:

Wm. Philip Horton Gail M. Frazier
Chief Administrative Judge

Administrative Judge

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

James L. Burski R. W. Mullen
Administrative Judge

Administrative Judge

Bruce R. Harris
Administrative Judge

Appearances:

Elmer B. Sachs
President and Treasurer
Sky Pilots
P.O. Box 107, Del. Kem Sta.
Bakersfield, Calif. 93307

cc: Alaska S.O. BLM
Anchorage, Alaska

Charles Crapuchettes
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ADMINISTRATIVE JUDGE IRWIN CONCURRING:

43 CFR 4.21(c) states that requests for reconsideration must be filed promptly. We have held that a petition received more than 6 months after a Board decision is issued will not be accepted absent an explanation of why it should be regarded as prompt. Pathfinder Mines Corp. (On Reconsideration), 76 IBLA 276 (1983). In that case we explained: "Both the public at large and the agencies which administer Federal lands have a right to rely on, and act upon, decisions of this Board, which are final for the Department. To reconsider such decisions long after they are rendered could severely prejudice those who have taken actions in the interim based on such reliance." Id. at 278.

Where a petition is received nearly 5 years afterwards I see no reason to consider its merits, and I have not done so in this case. It is enough for me that it is too late.

Will A. Irwin
Administrative Judge

40 IBLA 377H

APPENDIX

Excerpts from minutes of Sky Pilots board meeting - May 19, 1983

Purpose of this meeting, Section "A" is to accept the resignation of Mr. Steve Jackson as a Board member of Sky Pilots of Alaska, Corporation, and replacing his name, with that of Mr. Charles, (Chuck) Crapuchettes, Principal and Administrator of Cook Inlet Academy, Soldatna, Alaska. A former Sky Pilot.

Secondly: To appoint Mr. Charles (Chuck) Crapuchettes, as our Alaskan representative, having been a former Sky Pilot in Alaska, with authority to take charge of our Longmare Lake lands, deeded to Sky Pilots of Alaska, from our Government, under our purchased patent rights, No. 50-65-0359. To take charge as our Caretaker and administrator, allowing Christian groups as Cook Inlet Academy to use Lot 9 of our property for recreational purposes.

Thirdly: To deposit a check we have sent, for the purpose of opening to Sky Pilots of Alaska Bank-Checking account, with which money, and other monies he will be receiving, for the exclusive purpose of bringing in utilities, as water, Light, and or building of toilets, etc., upon this property for the use of recreational purposes.

Fourthly: Mr. Crapuchettes, will be officially operating as a V. President of Sky Pilots of Alaska, as well as Asst Secretary and Asst Treasurer of the corporation of Sky Pilots of Alaska.

Fifthly: If possible, Mr. Charles (Chuck) Crapuchettes, will try to get some local "appointed - Honorary Sky Pilot" to live in a trailer on our property, during each summer, or all year if he wishes to, (rent free) to operate as our Caretaker of our grounds. Reporting any violator- trespassing on our property.

* * * * *

(g) From 1979 until now, or until through 1984, before the first five years of non-use will be in effect... We must ask you to possess our land for recreational purposes, without allowing B.L.M. to order you off our land without a local court order and assisted by local sheriff's. Which if they do this they would be in violation, and we could sue them for damages. So, our advice is to never leave those grounds on just their "say-so." Make them use the force of law to put you off. Then we have a case. To call us by phone right away, and our attorney will do the rest.

* * * * *

(g). [sic] Mr. Charles (Chuck) Crapuchettes:

1. We are asking you to conduct yourself as our Caretaker and Administrative of our patented land 50-65-0359 on Longmare Lake, making sure that should any B.L.M. Investigators come around to inspect our use of the land,

(WHICH THEY SURELY WILL) that we give them NO EXCUSE, to order you or those you are allowing the grounds for recreational purposes, to get off the land. Namely building for or by any other except Sky Pilots of Alaska sponsored buildings.

2. We are asking you to sign these minutes on the bottom where it call for your signature.

[Mr. Crapachettes' signature appears.]

