

UNITED STATES
v.
ALASKA LIMESTONE CORP.

IBLA 81-935

Decided August 25, 1982

Appeal from decision by Administrative Law Judge E. Kendall Clarke declaring the Foggy Nos. 1 through 14 lode mining claims null and void. Contest No. AA-22020.

Affirmed.

1. Mining Claims: Common Varieties of Minerals: Generally --Mining Claims: Contests--Mining Claims: Determination of Validity

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

2. Act of September 28, 1976--Mining Claims: Contests-- Mining Claims: Determination of Validity

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

3. Mining Claims: Discovery: Generally--Mining Claims: Discovery: Marketability

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be extracted, removed, and marketed at a profit presently, and could have been as of the date the lands were withdrawn from mineral entry.

4. Administrative Procedure: Burden of Proof--Evidence: Preponderance--Evidence: Prima Facie Case--Mining Claims: Contests--Mining Claims: Determination of Validity

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

5. Administrative Procedure: Burden of Proof--Evidence: Preponderance--Evidence: Prima Facie Case--Mining Claims: Contests--Mining Claims: Determination of Validity

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not

have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

APPEARANCES: Ronald E. Flansburg, Esq., Anchorage, Alaska, for appellant; James E. Turner, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the National Park Service.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Alaska Limestone Corporation has appealed the decision of Administrative Law Judge E. Kendall Clarke, dated July 15, 1981, declaring the Foggy Nos. 1 through 14 lode mining claims null and void. ^{1/} We affirm.

These claims are situated in Mount McKinley National Park, Alaska, near Cantwell, Alaska, within 9 aerial miles of the Alaska Railroad. They were located on November 25, 1958, following the opening of the area to mineral location by Public Land Order (PLO) No. 1646, 23 FR 3853 (May 27, 1958). The procedural history of the contest proceeding is set out in Judge Clarke's decision.

[1] The parties stipulated for the purposes of this proceeding that each claim contains a massive quantity of high grade limestone suitable for use in agriculture and in the manufacture of cement (Tr. 263-65), and this fact is apparent from several independent reports in the record (Govt. Exhs. 1, 2, 3; Cont. Exh. B-II.2). Limestone that is suitable for use in the production of cement is not a "common variety" of mineral. 43 CFR 3711.1(b). Thus, the Act of July 23, 1955, which excluded common varieties of mineral from location after July 23, 1955, did not bar the subsequent location of these claims in November 1958. However, in order for cement-grade limestone claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the requirements for discovery under the general mining laws. United States v. Foresyth, 15 IBLA 43 (1974).

^{1/} The claims are referred to as the "Foggy" claims on the notices of location, but were generally called the "Foggy Pass" claims by the parties.

[2] Section 3(c) of the Act of September 28, 1976 ("the Mining in the Parks Act"), withdrew these lands from further mineral entry by repealing section 2 of the Act of January 26, 1931, 16 U.S.C. § 350a (repealed 1976), which had allowed entry into Mount McKinley National Park for prospecting and mining. In order for these claims to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to September 28, 1976, the date of this withdrawal. Cameron v. United States, 252 U.S. 450, 456 (1919); Clear Gravel Enterprise, Inc. v. Keil, 505 F.2d 180, 181 (9th Cir. 1974); United States v. Montapert, 63 IBLA 35 (1982). Additionally, as in any mining claim contest, the claims must have satisfied the pertinent tests as of the date of the hearing.

[3] A discovery of valuable minerals under Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. United States v. Coleman, 390 U.S. 599 (1968); Chrisman v. Miller, 197 U.S. 313 (1905); Castle v. Womble, 19 L.D. 455, 457 (1894). This "prudent man test" has been refined to require a showing of marketability; that is, a showing that the mineral in question can be presently extracted, removed, and marketed at a profit in order to establish that there has been a discovery of an economically "valuable" mineral deposit within the context of 30 U.S.C. § 22 (1976). United States v. Coleman, *supra*.

[4] When the Government contests the validity of a mining claim for lack of a discovery of a valuable mineral deposit, the ultimate burden of proof is upon the mining claimant. The Government, however, bears the initial burden of going forward with sufficient evidence to establish a prima facie case that no valuable mineral discovery has been made. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Bechthold, 25 IBLA 77 (1976); United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975). Even if the Government merely shows that one essential criterion of the discovery test was not met, it has established a prima facie case as to that criterion. *See* United States v. Hooker, 48 IBLA 22 (1980); United States v. Taylor, *supra* at 28, 75.

Once the Government has established a prima facie case that the claim is not supported by discovery, the burden of going forward then shifts to the contestee to overcome the Government's showing by a preponderance of the evidence. Humboldt Placer Mining Co. v. Secretary of the Interior, 549 F.2d 622 (9th Cir.), *cert. denied*, 434 U.S. 836 (1977); United States v. Springer, 491 F.2d 239 (9th Cir.), *cert. denied*, 419 U.S. 834 (1974); Foster v. Seaton, *supra*; United States v. Harris, 38 IBLA 137 (1978).

The principal expected use of the limestone from these claims would be as the major component in the manufacture of portland cement. This use requires extensive processing of the limestone, involving first crushing it, and then combining it with several other minerals (including, principally, crushed shale rock) under heat to make clinker. The clinker is then finely ground with a small percentage of gypsum to make cement.

The Government presented evidence that there was no portland cement processing plant in Alaska either in September 1976 or as of the date of the

administrative hearing, and that the nearest plants were in southern British Columbia (Govt. Exh. 10). These facts are well corroborated in the record and are not disputed by claimant. The remoteness of the limestone from the nearest cement processing plant raises substantial doubts as to its marketability for this principal use compared to other sources of limestone outside of Alaska, in view of the obvious commercial disadvantage of additional transportation costs from the Alaskan interior. This evidence was adequate to meet the Government's initial burden of showing prima facie that the limestone on the claim could not be marketed at a profit on September 28, 1976. See Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364 (9th Cir. 1976).

[5] In addition, independent of the Government's presentation, the record shows that claimants held these claims from November 25, 1958, to September 28, 1976, without developing the minerals on them. The record reveals that serious efforts were made, both by appellant and Kaiser Permanente, to arrange to develop limestone deposits in the railbelt area, but those efforts did not result in any actual development (Cont. Exh. A-E1; Tr. 638, 660-61, 669-71, 732-36, 739-41, 746). Uncontradicted evidence of absence of production from a mining claim over a period of years is sufficient, without more, to establish a prima facie case of invalidity of the claim. United States v. Hess, 46 IBLA 1 (1980). This rule reflects the principle that, in the varying economic conditions present during a period of many years, a mining claim will usually be developed unless it is not commercially feasible to do so profitably; that is, unless the material is not marketable. Appellant's failure to market any limestone from the claims over 18 years raises the presumption that it was not marketable at a profit during this time, and this presumption is aided by the fact that plans to develop the claims were abandoned.

Claimants who have not developed their claims may nevertheless prevail if they can overcome the presumption of unmarketability by showing that they could have extracted and sold the minerals at a profit prior to the statutory cutoff date. United States v. Gibbs, 13 IBLA 382, 389 (1973). This type of showing is necessarily hypothetical, involving reconstruction of market conditions as of this date, including unit prices, transportation and production costs, etc. However, the success of the showing depends on how thoroughly the evidence establishes these market conditions and how convincingly the hypothesis is proven by these facts. Id. at 390. The hypothesis must be proven with factual evidence of conditions actually prevailing at that time. Speculative evidence showing that if certain conditions had prevailed in 1976, those would have allowed appellant to dispose of its material at a profit, is not adequate. United States v. Taylor, 19 IBLA 9, 50, 82 I.D. 68, 86 (1975) (Stuebing, A. J., concurring).

Appellant concedes that the limestone was not profitably marketable as raw material for the manufacture of cement to producers extant on September 28, 1976. However, it theorizes that it could have established a market for the limestone if it could have constructed a cement processing plant near the claims. It asserts that it has shown that it could have mined the limestone, supplied its envisioned cement processing plant with it and other raw materials from the claims' environs, and sold the cement product to users in the area served by the Alaska Railroad, all at a profit.

Where a claimant actually could have sold minerals on the cutoff date in an ongoing market, it is possible to demonstrate convincingly that the mineral was marketable at a profit on that date, by showing pertinent facts about the condition of the market, such as the prevailing sales price, market demand, and costs of production. See United States v. Gibbs, *supra*. In contrast, where, as here, there was no market on the cutoff date in which the material could have been directly sold at a profit, and the claimant hypothesizes that he could have profitably established its own market for direct sales of the material, the difficulty of proving the hypothesis with convincing factual evidence is compounded. By presuming the existence of its own cement processing plant, appellant places us in a strictly theoretical arena, where estimates and conjecture replace evidence of the circumstances that actually prevailed. The conclusions from this exercise are too uncertain and conjectural to overcome the plain implications of appellant's failure over 18 years to actually accomplish the profitable development of these claims.

Even viewing appellant's evidence in the most favorable light, we see only that there was no certainty of financial success in building a cement plant in Alaska, either in 1976 or at the time of the hearing. To the contrary, the record shows that the proposed venture would have been extremely risky and uncertain.

The testimony of appellant's witness Edward Bracken of the Division of Economic Enterprise, State of Alaska, about Kaiser Permanente's decision not to build a cement processing plant in order to develop limestone claims in the railbelt area in 1976 is pertinent:

Q. Okay, could you, let's go back a little bit, maybe you could explain to me just what the relation -- just what is the relationship with Kaiser to your division was and how this whole thing got started.

A. Well, this was several years after Kaiser had come in with the bad news that they had decided that they couldn't see putting in the small plant in Alaska.

Q. And approximately when was that?

A. Oh, that would have been, oh, about four years ago.

Q. Four years ago, 1976?

A. They had, we more or less called them in and they come back and started showing signs of disenchantment and we called them in to talk to them about what their attitude actually was.

Q. Okay, now --

A. Are your intentions honorable --

Q. All right, now where was it they were intending to put this plant, do you know, or that they were thinking about, let's put it that way.

A. I have no idea, I do know that they had the Kings River limestone tied up at one time.

Q. Do you know whether it was in the railbelt area?

A. It would have been in the railbelt area.

Q. And in 1976 you called them up to find out what their attitude was on it

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A. Well they gave us the story about the large established plant being more economic for their purposes, they wanted the big low scale operation rather than the small modulized plant that would be their base here.

Q. Well did you raise to them the possibility that by the nice low cost of production of an Alaska plant that they could control the whole Alaska market?

A. I don't think anybody ever said that the Alaska production costs were going to be that nice and low. What we can tell them is that here's a possibility of operating with, to a good advantage, and with the reduced transportation costs, they could possibly pick up some of the added costs of operating, which we know that we have weather and plant requirement costs here that are somewhat heavier than anyplace in the U.S. On the other hand, it is technically possible to combat almost any of the weather problems that we have, just get rid of the paper ones.

Q. Okay, so now Kaiser told you that they felt they couldn't put in a local plant that would be as, let's say, as cost efficient as their lower 48 --

A. Well they felt that their return on their investment would be better in bigger plants and, for these reasons, the low per unit cost and higher distribution costs versus the -- (did not complete statement)

(Tr. 669-71).

Appellant relied chiefly on two projections of the feasibility of profitably building and operating a cement plant in the railbelt area in 1978 (Cont. Exhs. "B" and "U"). The report prepared by Vernon Moore (Cont. Exh. "B") lacks the specificity of fact necessary to prove its hypothesis convincingly, as it presumes without analysis that the total cost of constructing the plant would have been \$28 million. It also assumes 175,000 tons of production per year, a figure that the record suggests is not to be expected by demand in the railbelt area. It estimates costs on

the basis of a plant with an annual production capacity of 175,000 tons of cement for 333 days of operation, thus ignoring the likelihood that such a plant could not operate during the Alaskan winter. Finally, Moore's projection appears to understate the interest costs of borrowing the \$28 million needed by appellant to build such a plant.

The feasibility report prepared by Russell Chadwick (Cont. Exh. "U") is much more specific, but still falls short of convincingly establishing appellant's hypothesis. The report, prepared by Chadwick for NPS, notes that it is only preliminary, and that, "in order to 'prove' [its] conclusions to be correct, it would be necessary to properly drill and analyze in detail the assumed raw material reserves, draw up engineered process plans, cast them out, and prepare a detailed feasibility analysis." As we noted in United States v. Gibbs, *supra* at 390, "in any given case evidence of past conditions may well be so vague, uncertain, conjectural and inconclusive as to be fairly described as speculative and of insufficient weight to overcome the presumption of non-marketability." So it is here.

We concur with Judge Clarke's holding:

A developer of a mining claim thinks of extracting and marketing the raw mineral from his claims. To add another economic risk, that of constructing a cement plant and then marketing and distributing the finished cement is beyond what a prudent man would do. When considering the initial capital needed plus the fluctuations in the cement market, I conclude that the prudent man would not attempt this venture. More importantly, the focal question is the development of a valuable mine. What must be examined is what a prudent man would do to develop the limestone claims not what a prudent man would do in developing a cement plant.

When examining the necessary requirements to establish marketability, the record shows that the claimants failed to establish bona fide efforts to develop the claims and the existence of present demand. There are no facts to show that the claimants could have mined, removed and disposed of the limestone at a profit. The issues must be kept clear and simple. Under the mining laws Congress has made public lands available to people for the purpose of mining valuable mineral deposits and not for other purposes. The obvious intent was to reward and encourage the discovery of minerals that are valuable in an economic sense. United States v. Coleman, 390 U.S. 599, 88 S. Ct. 1327 (1968). It is the value of the minerals on the claim that must be examined, not their value when processed into cement. The mineral must be susceptible to extraction and marketing at a profit. Profit over cost must be realized from the material itself and it is that profit which must attract the reasonable man. Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364, 1369 (9th Cir. 1976).

I therefore conclude that there has been no discovery of a valuable mineral deposit within the limits of the subject claims based on the fact that there is no current market for the limestone from the claims.

The evidence that this limestone could have been marketed at a profit for agricultural purposes is unpersuasive and highly conjectural. Robert Drolge testified that in the mid-1960's an abortive effort was made to arrange for the Small Business Administration to fund the installation of a crushing plant at Cantwell, and for the Department of Agriculture to subsidize the purchase of the rock by the farmers, but that the problem of access precluded the plan. No evidence was adduced to establish the cost of such an installation, the cost of extraction and delivery to the proposed plant, the cost of operation, the anticipated sales volume, the unit price, the identity and location of prospective purchasers or the cost of delivery to them. The gist of the testimony was that if financing had been provided for the installation of the crushing plant, and if the Government subsidized the farmers' purchases, they could have sold some crushed stone.

Charles Weiler testified that because no agricultural activity takes place in the vicinity of the claims, and because the cost of transportation of crushed rock is a major component of the sale price, the cost of transporting agricultural minerals from the claims to the place of use would have been prohibitive.

The same evidentiary considerations applied to the suggestion that crushed stone might have been sold for use as concrete aggregate. 2/

Moreover, it is extremely doubtful that we could recognize the validity of mining claim locations for limestone which postdated July 23, 1955, as these do, where the value of the deposit lay in its use for concrete aggregate or as a soil additive. Section 3 of the Multiple Surface Resources Act of that date (popularly known as the "Common Varieties Act"), 30 U.S.C. § 611 (1976), provided, inter alia, that no deposit of common varieties of stone would thereafter be deemed a valuable mineral deposit within the meaning of the mining laws of the United States. A regulatory definition of "common varieties" provides, with respect to limestone, that, "Limestone suitable for use in the manufacture of cement, metallurgical or chemical grade limestone, gypsum, and the like are not 'common varieties.'" 43 CFR 3711.1(b). While the subject limestone does have the physical properties to make it "suitable for use in the manufacture of cement," if it has no value for that purpose because of its location, a "value" attributable only to its use as concrete aggregate or as a soil additive would not be cognizable. United States v. Lease, 6 IBLA 11, 79 I.D. 379 (1972). However, in view of our finding that it had no marketability for those purposes either, the issue is moot.

2/ Appellant also presented some evidence that the limestone could be used in scrubbers in coal-fired power plants to neutralize their sulfur dioxide byproduct (Tr. 701-02). However, appellant failed to show that, either in September 1976 or at the time of the hearing, there was a market that would have supported profitable development of the claims for that use.

As noted above, in order to establish a valid mining claim, there must be a qualifying discovery of a "valuable mineral deposit." 30 U.S.C. § 22 (1976). The deposit must be "valuable" in an economic sense; that is, it must be capable of being extracted, processed and marketed at a profit both at present and at the time of any withdrawal. United States v. Coleman, *supra*; Cameron v. United States, *supra*. If there has been no production prior to the cutoff date, the claimant must demonstrate by factual evidence that it could have been extracted and marketed at a profit prior to the critical date. United States v. Gibbs, *supra*. In the instant case, the limestone on these claims could only have been utilized in the manufacture of cement, and could only have been extracted and disposed at a profit to a cement manufacturing plant in relatively close proximity to the claims. But, there were no cement manufacturing plants anywhere in Alaska then, there are none now, and there never have been. Thus, there is not now, nor has there ever been, a market into which this limestone could have been sold at a profit.

Appellant seeks to overcome the implications of this undisputed fact by showing that it might have built a manufacturing plant and captured a significant portion of the cement market in Alaska, and if it had done so, it could have utilized the limestone from these profitably. A great deal of conflicting evidence has been adduced concerning the economic feasibility of such an undertaking, and we are left unconvinced that had appellant actually constructed the manufacturing plant, it would have been an economically viable operation. However, we are not persuaded that we are required to make a finding concerning whether a hypothetical prudent man would have been justified in constructing a hypothetical cement manufacturing plant in order to resolve the issue of whether the limestone on these claims constituted the discovery of an economically "valuable mineral deposit," as the term has been defined by this Department and by the Supreme Court. The fact is that there was no market into which this material could have been sold at a profit for the manufacture of cement during the critical period. Absent such a market, a prudent man would not have expended his labor and means with a reasonable prospect of success in developing a valuable mine on these claims. Castle v. Womble, *supra*. To speculate that if appellant had built a manufacturing plant the material would have been valuable is little different than speculating that if anybody had built such a plant in the vicinity the material would have been valuable. Nobody did. For us to consider whether appellant could have marketed material from the claims at a profit, we are obliged to consider the circumstances and conditions that actually prevailed, not those which might have prevailed had things been different. Osborne v. Hammitt, 377 F. Supp. 977, 985-986 (D. Nev. 1964).

This Board has previously conducted a thorough analysis of the kind of evidence which can and cannot properly be considered in attempting to ascertain if a mining claimant who did not develop his claims, nonetheless could have marketed material from them at some critical time in the past. United States v. Osborne (Supp. on Judicial Remand), 28 IBLA 13, 30-42, (1976); aff'd sub nom. Bradford Mining Corp. v. Andrus, Civ. No. LV 77-218 (D. Nev. Mar. 15, 1979). Coincidentally, that case also involved testimony to the effect that if, among other things, the claimants had built a sand and gravel plant on or near the claim, or if they could have leased the claim to an operator who would have erected a plant on or near the claim, the material

from the claim could have been disposed at a profit. No plant was ever built. We held that the testimony concerning sales that could have been made if a plant had been built nearby, and if certain other conditions had prevailed, was the kind of evidence which the District Court had rejected as "speculative, hypothetical and theoretical" in the companion case, Osborne v. Hammitt, *supra*.

Appellant suggests that the Department is to blame for its failure to develop these claims. It refers to incidents in 1960 and 1969 where National Park Service (NPS) personnel cited appellant's representative for driving a Caterpillar tractor on a "cat trail" that appellant had constructed near the claims (Tr. 721-25), and alleges that NPS failed to approve its access to them in 1960 (Tr. 735). However, appellant does not deny that it has never had a permit from NPS to construct a road across the park land surrounding its claims. In any event, it apparently never appealed any local NPS action that allegedly illegally inhibited its access to these claims. In the absence of any effort by appellant either to seek prior formal approval to drive vehicles across park lands into the claims, or to seek subsequent redress for NPS' alleged prohibition of access to them, we do not recognize any basis for concluding that NPS improperly prevented appellant from developing its claims. In any event, the fact that appellant was not prevented from doing its annual assessment work, including blasting and constructing airstrips (Tr. 728-31) suggests that appellant's allegations are exaggerated.

Appellant also notes that NPS refused its application of March 10, 1978 (Cont. Exh. T), for a construction permit to build a road to the claims. Section 4 of the Mining in the Parks Act, 16 U.S.C. § 1903 (1976), imposed a 4-year ban on disturbance of the surface of any undisturbed lands in the Mount McKinley National Park, effective September 28, 1976. Thus, denial was mandated by statute.

Appellant argues that section 6 of the Mining in the Parks Act, 16 U.S.C. § 1905 (1976), effectively removed the Department's jurisdiction to consider the validity of these claims. In this section, Congress directed the Secretary to determine within 2 years after September 28, 1976, the validity of unpatented mining claims in Mount McKinley National Park, among others, and to submit to Congress recommendations as to whether any valid claims should be acquired by the United States. Since the present contest complaint was not filed until after this date, appellant maintains, the Department no longer has authority to determine the validity of its claims.

The purpose of this section was to require the Secretary to advise Congress of any valid claims in the park in order to allow it to arrange to provide just compensation to the holders for the loss of their interests. H. R. Rep. No. 94-1428, 94th Cong., 2d Sess., reprinted in [1976] U.S. Code Cong. & Ad. News 2490. Although the Secretary did not report to Congress that appellant's claims were valid, this action could not be regarded as a determination that the claims were invalid, since mining claims may only properly be invalidated following an administrative hearing. Cameron v. United States, 252 U.S. 450, 459-60 (1920). Moreover, "so long as the legal title remains in the Government [the Department] does have power, after proper notice and upon adequate hearing, to determine whether the claim is

valid and, if it is found invalid to declare it null and void." Id. at 460. Thus, in order to provide appellant its due process rights, it was essential to initiate this contest to determine the validity of the claims, and the Department had the authority to do so, since title to the lands on which they are situated is still in the United States. The District Court for the District of Alaska recognized the Department's jurisdiction to determine the validity of appellant's claims by ruling that appellant's request for a declaratory judgment to establish their validity was premature, since the present administrative proceeding was not completed and there was no case or controversy presented. Alaska Limestone Corp. v. Andrus, Civ. No. A79-084 (Nov. 27, 1979). See also Authority to Determine Eligibility of Native Villages after June 18, 1974, 81 I.D. 316 (1974).

Appellant has requested that we convene for oral argument in this matter. Oral arguments are heard by this Board only in extraordinary circumstances. This appeal does not present legal questions of such complexity as would require elucidation by the parties during oral argument. Therefore, appellant's request is denied.

Accordingly, 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 affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

