

Appeal from decision of Alaska State Office, Bureau of Land Management, designating land for conveyance to Native village corporation. F-14870-A.

Affirmed.

1. Alaska National Interest Lands Conservation Act: Generally

A conveyance of land to a Native village corporation under an exchange pursuant to sec. 1431(g)(2) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2539 (1980), may proceed despite the objection of a member of an Indian tribe organized pursuant to sec. 16 of the Indian Reorganization Act, 25 U.S.C. § 476 (1976), where the appellant does not establish that the conveyance is subject to the consent of the tribe and that consent has been withdrawn or that the tribe has an interest in the land, amounting to a valid existing right, which would preclude the conveyance.

APPEARANCES: Charles Edwardsen, Jr., pro se; Robert Charles Babson, Esq., Office of the Regional Solicitor, United States Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Charles Edwardsen, Jr., has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated December 27, 1982, designating certain land for conveyance to the Kaktovik Inupiat Corporation (Kaktovik), a Native village corporation organized pursuant to section 8 of the Alaska Native Claims Settlement Act (ANCSA), as amended, 43 U.S.C.A. § 1607 (West Supp. 1983).

On January 27, 1976, Kaktovik filed a selection application pursuant to section 12(a) of ANCSA, as amended, 43 U.S.C.A. § 1611(a) (West Supp. 1983). The selection application was filed after the statutory deadline, December 18, 1974. However, on June 29, 1979, the Arctic Slope Regional Corporation (ASRC),

which includes Kaktovik and seven other Native village corporations, entered into an agreement with the Department whereby Kaktovik would obtain title to the lands that it had not properly selected by conveying other land to the United States. The agreement was "ratified" by section 1431(a) of the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2533 (1980). In its December 1982 decision, BLM designated the surface estate of 2,854 acres of land situated on Kaktovik Island, Barter Island Group, Alaska, for conveyance to Kaktovik, pursuant to section 1431(g)(2) of ANILCA, 94 Stat. 2539 (1980). ^{1/} 47 FR 58379 (Dec. 30, 1982).

On February 2, 1983, appellant filed a notice of appeal and statement of reasons with respect to the December 1982 BLM decision. Appellant states that he is a shareholder of ASRC and a tribal member of the Inupiat Community of the Arctic Slope (ICAS), an Indian tribe organized pursuant to section 16 of the Indian Reorganization Act (IRA), 25 U.S.C. § 476 (1976). Appellant contends that BLM is not entitled to convey the subject land to Kaktovik because ICAS has "withdrawn its consent to any further land selection by Arctic Slope Regional Corporation and the said Village Corporations within boundary of Inupiat Community of the Arctic Slope." Appellant argues that the Department, in implementing section 16 of IRA, *supra*, is governed by "strict fiduciary standards," citing Carlo V. Gustafson, 512 F. Supp. 833 (D. Alaska 1981). Moreover, appellant states that the Articles of Incorporation of ASRC provide that ICAS has a right of "prior approval" with respect to ANCSA land selections. Appellant cites the following language in "Article XVI:"

Until such time as the Secretary of the Interior has completed the enrollment of Natives to the Arctic Slope Region as specified in the Act, and until the first election of Directors thereafter, the corporation may not make any land selections under the Act without prior approval from the governing body of the Inupiat Community of the Arctic Slope, a recognized tribal government formed under the Indian Reorganization Act of 1936 (25 U.S.C. 476) and (25 U.S.C. 450).

Appellant states that the constitution and bylaws of ICAS were approved by the Department on June 2, 1971.

Appellant further contends that ICAS has rights in the land selected by Kaktovik, which amount to "valid existing rights" under ANCSA, *i.e.*, they preceded withdrawal of the land under section 11(a)(1) and selection by Kaktovik under section 12(a). These rights are purportedly derived from various stat-

^{1/} BLM also noted in its December 1982 decision that because the surface estate of the land selected by Kaktovik is within the National Wildlife Refuge System, ASRC may select the subsurface estate, in equal acreage, from other lands withdrawn pursuant to section 11(a) of ANCSA, 43 U.S.C.A. § 1610 (a) (West Supp. 1983). The subject land was withdrawn pursuant to Public Land Order No. 2214 (25 FR 12598 (Dec. 6, 1960)), as part of the Arctic National Wildlife Refuge.

utes, viz., section 2 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 (1976), section 16 of IRA, supra, and the Act of May 25, 1926, 44 Stat. 629 (1926). Appellant states that ICAS wished to have the land selection of Kaktovik vacated and the land conveyed to ICAS. 2/ In addition, appellant states that ICAS is entitled to \$750 million in trespass damages which should be paid in accordance with section 1411 of ANILCA, 94 Stat. 2497 (1980). Finally, appellant states that Kaktovik will be entitled to select additional land pursuant to section 22(j)(2) of ANCSA, as amended, 43 U.S.C.A. § 1621(j)(2) (West Supp. 1983), or to opt for a future land exchange initiated by ASRC pursuant to section 1431(o) of ANILCA, 94 Stat. 2542 (1980).

[1] The first question is whether withdrawal of consent to conveyance of the subject land to Kaktovik by ICAS precludes BLM from effecting the conveyance. We do not believe so. There is no evidence in the record that ICAS has formally withdrawn its consent, except the statement of a tribal member. Even assuming that ICAS does not consent to the conveyance, there is no evidence that ICAS has authority to veto the conveyance. The provision in the articles of incorporation, cited by appellant, relates to a land selection by a Native regional corporation organized pursuant to section 7 of ANCSA, as amended, 43 U.S.C.A. § 1606 (West Supp. 1983). Kaktovik is a Native village corporation. Moreover, the conveyance involved herein, while it is based on an original land selection pursuant to section 12(a) of ANCSA, supra, is made pursuant to section 1431(g)(2) of ANILCA, supra. There is then the question of whether even a similar provision in the Articles of Incorporation of Kaktovik would preclude conveyance upon ICAS' withdrawal of its consent. We conclude that it would not.

The next question is whether ICAS has a "valid existing right" which would preclude the conveyance to Kaktovik. The December 1982 BLM decision expressly provided that the grant of the subject land "shall be subject to: * * * 2. Valid existing rights therein" (Decision at 4). However, appellant has presented no evidence that ICAS has an interest in the land involved herein, which would amount to a valid existing right. ICAS is essentially the governmental body for an Indian tribe, organized pursuant to section 16 of IRA, supra. See Parker Drilling Co. v. Metlakatla Indian Community, 451 F. Supp. 1127, 1131 (1978). That section provides for the adoption of a constitution and bylaws by an Indian tribe at a special election, which documents are to be approved by the Secretary. The constitution shall confer certain rights and powers on the tribe or tribal council, including "to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe." Id. Section 16 of

2/ Appellant also argues that the United States wrongfully issued interim conveyances or patents to all of the eight Native village corporations included in ASRC and that these should also be vacated. These actions, however, have become final and are not subject to appeal because the time for filing an appeal has passed. See 43 CFR 4.411. The board no longer has jurisdiction to hear the appeals. Harold H. Ruppert, 69 IBLA 82 (1982).

IRA, supra, does not itself grant any interest in land to the tribe or tribal council. The same is true of section 2 of the Indian Self-Determination and Education Assistance Act, supra. Finally, the Act of May 25, 1926, supra (repealed by section 703(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), effective October 21, 1976, subject to valid existing rights), provides for the conveyance of land to the trustee of a Native townsite in Alaska and to the resident Natives. The Act itself is not a grant of land. Moreover, there is no evidence that ICAS (or even appellant) has been granted an interest in the subject land under this Act or any other provision of the law. Accordingly, we conclude that appellant has not established such an interest in the land that the conveyance to Kaktovik would be subject to it or that would preclude the conveyance. The proposed conveyance to Kaktovik may proceed, in the absence of any other legal impediment. In such circumstances, appellant is not entitled to any payments under the provisions of section 1411 of ANILCA, 94 Stat. 2497 (1980).

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 affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

