

DOYON, LIMITED
MTNT, LIMITED
(ON RECONSIDERATION)

IBLA 82-1120
ANCAB VLS 79-27

Decided January 24, 1984

Petition for reconsideration of Doyon, Limited, 75 IBLA 65 (1983). F-14889-A, F-14906-A, F-14942-A, F-14945-A.

Petition granted; Board decision affirmed as modified and State Office decisions affirmed.

1. Alaska: Mining Claims -- Alaska Native Claims Settlement Act:
Conveyances: Regional Conveyances -- Alaska Native Claims
Settlement Act: Conveyances: Village Conveyances

Under 43 CFR 2650.3-2(c), mineral patent applications may continue to be filed after Dec. 18, 1976, on land selected by village or regional corporations until such land is actually conveyed. Sec. 22(c) of Alaska Native Claims Settlement Act, 43 U.S.C. § 1621(c) (1976), prohibits the filing of such an application after Dec. 18, 1976, only if the land had been conveyed before the patent application was filed.

APPEARANCES: James Q. Mery, Esq., Fairbanks, Alaska, for Doyon, Limited.
OPINION BY ADMINISTRATIVE JUDGE ARNESS

Doyon, Limited (Doyon) has petitioned for reconsideration of Doyon, Limited, 75 IBLA 65 (1983). Therein the Board citing Alaska Miners v. Andrus, 662 F.2d 577 (9th Cir. 1981), concluded that where land selected for conveyance to a Native corporation includes unpatented mining claims, the Bureau of Land Management (BLM) is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed, or to search State records to ascertain the existence of unpatented mining claims.

Petitioner had raised one issue, however, which we did not decide. It contended that Departmental regulation 43 CFR 2650.3-2(c) unlawfully permits the holder of a mining claim to apply for a patent after December 18, 1976, on lands selected by a Native corporation. We declined to rule on this issue because petitioner had not shown that any patent application had been filed for land involved in the appeal. In its request for reconsideration, petitioner states that a review of relevant BLM records clearly shows that a

mineral patent application was filed after December 18, 1976, by Michael J. and Ellen M. O'Carroll, BLM AA 013705, M 2393, for mining claims located in T 28 S., R 13 E., secs. 5 and 6, Kateel River meridian. Petitioner asserts that these claims are located within Doyon selection F-14942. Because petitioner has now asserted the relevance of this issue, we grant reconsideration of the appeal.

Petitioner had contended that 43 CFR 2650.3-2(c) unlawfully extends the period within which a miner may apply for patent, contrary to the provisions of section 22(c) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1621(c) (1976). The regulation states:

Any mineral patent application filed after December 18, 1976, on land conveyed to any village or regional corporation pursuant to this act, will be rejected for lack of departmental jurisdiction. After that date, patent applications may continue to be filed on land not conveyed to village or regional corporations until such land is conveyed. [Emphasis supplied.]

Section 22(c) of ANCSA, 43 U.S.C. § 1621(c) (1976), provides:

On any lands conveyed to Village and Regional Corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location under the general mining laws and recorded notice of said location with the appropriate State or local office shall be protected in his possessory rights, if all requirements of the general mining laws are complied with, for a period of five years and may, if all requirements of the general mining laws are complied with, proceed to patent. [Emphasis supplied.]

The 5-year period ended on December 18, 1976. Doyon perceived a conflict between the emphasized portions of the statute and the Department's regulation, and contended that this question was not decided by the court in Alaska Miners v. Andrus, supra. Petitioner avers the clear intent of Congress was to establish a 5-year statute of limitations which had the effect of terminating, on December 18, 1976, the right of miners to apply for mineral patent on public lands selected by Native corporations.

[1] There is no conflict between the regulatory provision and the statute. Petitioner has simply misread the statutory provision which, by its own terms, does not apply to land selected by a village or regional corporation, but only to land conveyed to them. The statute would have barred the O'Carrolls from filing a patent application after December 18, 1976, only if the land had already been conveyed at the time their application was filed. Thus, the regulation is consistent with the statute.

A brief explanation of public land conveyancing is helpful in understanding the purpose of the statutory provision. The effect of conveyance of land without a mineral reservation is to transfer legal title from the United States and to remove from the jurisdiction of the Department the resolution of conflicting claims to the land. See Germania Iron Co. v. United States,

165 U.S. 379 (1897). If section 22(c) had not been enacted and if land had already been conveyed to a village or regional corporation before December 18, 1976, the Department would have had no jurisdiction to consider a mineral patent application filed after conveyance. The effect of the statutory provision, therefore, was to extend the Department's jurisdiction to consider mineral patent applications filed prior to December 18, 1976, notwithstanding the fact that the lands may have been conveyed previously. Thus, the statutory provision establishing the 5-year limit is properly construed as affecting only conveyed lands, not lands which have merely been selected but not yet conveyed. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, petition for reconsideration is granted and the decision of the Board is affirmed as modified and the Alaska State Office decisions are affirmed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

1/ We note that even if there were an apparent conflict between the regulation and the statute, the Board is bound by duly promulgated Departmental regulations. See McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955). And while petitioner has asked for a decision by the Board on the "validity of the questioned regulation," the Board has no authority to declare invalid a duly promulgated Departmental regulation. Garland Coal Co., 52 IBLA 60, 88 I.D. 24 (1981).

