

STATE OF ALASKA, DEPARTMENT OF
TRANSPORTATION AND PUBLIC FACILITIES

IBLA 85-620

Decided June 10, 1987

Appeal from a decision of the Anchorage District Office, Alaska, Bureau of Land Management, waiving administration of public airport lease. F-30059.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances: Third Party Interests

Absent a finding by the Secretary that retention is in the interest of the United States, a BLM decision waiving administration of a public airport lease pursuant to sec. 14(g) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613(g) (1982), with respect to land conveyed to a Native village corporation, will be affirmed as required by 43 CFR 2650.4-3.

APPEARANCES: Martha T. Mills, Esq., Office of the Attorney General, State of Alaska, Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The State of Alaska, Department of Transportation and Public Facilities, has appealed from a decision of the Anchorage District Office, Alaska, Bureau of Land Management (BLM), dated April 12, 1985, as amended on May 14, 1985, waiving BLM's administration of a public airport lease, F-30059, pursuant to section 14(g) of the Alaska Native Claims Settlement Act (ANCSA), as amended, 43 U.S.C. § 1613(g) (1982).

On October 13, 1978, BLM issued a 20-year public airport lease to appellant with respect to approximately 72 acres of land situated in sec. 31, T. 20 N., R. 66 W., Seward Meridian, Alaska, along the Yukon River, pursuant to section 1 of the Act of May 24, 1928, as amended, 49 U.S.C. § 211 (1982), and 43 CFR Subpart 2911. That lease superseded another 20-year airport lease issued December 1, 1963. The 1978 lease allowed the State to meet a Federal Aviation Administration (FAA) title requirement for a grant for an airport improvement project.

On November 18, 1974, the Russian Mission Native Corporation (RMNC), a Native village corporation, filed an amended selection application, F-14927-A, on behalf of the Native village of Russian Mission (Yukon), pursuant to section 12(a) of ANCSA, as amended, 43 U.S.C. § 1611(a) (1982). RMNC selected the surface estate of certain lands, including the land covered by appellant's public airport lease. By decision dated July 21, 1983, amended March 19, 1984, BLM approved the land involved herein for interim conveyance to RMNC pursuant to section 14(a) of ANCSA, as amended, 43 U.S.C. § 1613(a) (1982). BLM further provided that the conveyance "shall be subject to: * * * 3. Airport lease F-30059" (July 21, 1983, decision at 7). On June 8, 1984, BLM issued interim conveyance No. 853, conveying the surface estate of the land involved herein to RMNC, subject to the public airport lease. That interim conveyance was for all relevant purposes equivalent to a patent. 43 U.S.C. § 1621(j)(1) (1982).

The interim conveyance to RMNC was made subject to the airport lease in accordance with section 14(g) of ANCSA, *supra*, which provides in relevant part that:

Where, prior to patent of any land * * * under this chapter, a lease * * * has been issued for the surface * * * covered under such patent, the patent shall contain provisions making it subject to the lease * * * and the right of the lessee * * * to the complete enjoyment of all rights, privileges, and benefits thereby granted to him.

See also 43 CFR 2650.4-1. The statute also provides that: "The administration of such lease * * * shall continue to be by * * * the United States, unless the agency responsible for administration waives administration." 43 U.S.C. § 1613(g) (1982) (emphasis added). See also 43 CFR 2650.4-3.

In its April 1985 decision, amended May 14, 1985, BLM waived administration of the public airport lease.^{1/} BLM also stated that: "Any rental or other revenues will no longer be accepted by the BLM; but will be paid directly to the Russian Mission Native Corporation." However, BLM noted that under section 14(g) of ANCSA, supra,

the lessee is entitled to all rights, privileges, and benefits granted by the terms of the lease during the term of the lease until it expires, is relinquished, or is modified by mutual consent of Russian Mission Native Corporation and the State of Alaska, Department of Transportation and Public Facilities.

^{1/} In its April 1985 decision, BLM had only waived administration of the lease "in part," i.e., with respect to leased land subject to the interim conveyance and "not within the Yukon Delta National Wildlife Refuge." With respect to leased land within the refuge, BLM transferred jurisdiction of the lease to the U.S. Fish and Wildlife Service. By letter dated May 6, 1985, appellant informed BLM that the airport lease did not include any land within the refuge and that BLM "should have waived administration of the airport lease in its entirety to the Russian Mission Native Corporation." BLM amended its April 1985 decision accordingly on May 14, 1985.

Appellant has appealed from that decision.

In its statement of reasons challenging BLM's decision, appellant raises essentially the same issues which were presented in State of Alaska, 86 IBLA 268 (1985), and subsequently submitted to the Director of the Office of Hearings and Appeals on a motion for reconsideration.

All of those issues were resolved by the Board in State of Alaska, *supra*, which involved in part BLM's August 1, 1984, waiver of administration of a public airport lease, F-45, with respect to a December 16, 1981, interim conveyance to Nana Regional Corporation. The Board therein affirmed that waiver. Appellant's petition to the Director, Office of Hearings and Appeals, for reconsideration of that decision, was denied by order dated September 10, 1985, because there was no reasonable likelihood that the result would be changed. He stated:

I appreciate the State's preference for having the lease and rights-of-way at issue here administered by the United States. However § 14(g) of the Alaska Native Claims Settlement Act (43 U.S.C. § 1613(g)) does not require that result and 43 CFR 2650.4-3 appears to preclude it in all instances where the conveyance [**6] covers all the land embraced in the lease or right-of-way, absent a finding by the Secretary which has not been made in any of these cases.

Recently, the Board reiterated its position on these same issues, with respect to waiver of administration by BLM pursuant to 43 CFR 2650.4-3. Thus, in State of Alaska, 97 IBLA 229 (1987), we followed our earlier decision in State of Alaska, 86 IBLA 268 (1985), and affirmed two BLM decisions which waived the administration of a material site right-of-way and a highway right-of-way.

Therein we said:

Section 14(g) of ANCSA does not require waiver of administration, but grants discretionary authority to do so. By promulgating 43 CFR 2650.4-3, the Secretary exercised his discretionary authority under section 14(g) of ANCSA. Generally, when a conveyance includes all the land underlying a right-of-way, the Secretary has concluded it to be in the interest of the United States to waive administration. This Board had found this policy determination to be well supported. State of Alaska, 86 IBLA at 274. The exception arises only when the Secretary makes a contrary finding. It is not necessary to make a finding that the interest of [**7] the United States does not require continuation of the administration by the United States whenever a waiver of administration occurs. This finding is necessary only if some interest of the United States requires it to retain administration. 43 CFR 2650.4-3. A finding that no exceptional circumstances exist is implicit in every waiver. The rights-of-way at issue were entirely included in conveyances to Native corporations. There have been no contrary findings. Absent a finding by the

Secretary that retention of administration was in "the interest of the United States" (not the State), BLM was obliged by the regulation to waive.

97 IBLA at 231.

On appeal, appellant raises only one United States' interest which arguably requires continuation of administration, i.e., the "vital public interest in the maintenance of airports." Appellant asserts that this interest would be adversely affected by the discontinuation of BLM's administrative responsibilities. After a careful review, we are not persuaded that the public interest in the continued operation of the Russian Mission Airport would be adversely affected by waiver.

Operation of the airport is pursuant to a 20-year lease issued by BLM under which BLM granted appellant the "exclusive right and privilege of maintaining an airport" subject to the terms and conditions of the lease, the Act of May 24, 1928, as amended, 49 U.S.C. §§ 211-214 (1982), and Departmental regulations, 43 CFR Subpart 2911. Under section 14(g) of ANCSA, supra, the interim conveyance to RMNC is expressly made "subject" to appellant's lease and the "rights, privileges, and benefits" granted to appellant are preserved. Given the statutory protection afforded appellant's lease, we cannot say as a general matter that continued operation of the airport is threatened by BLM's waiver of administration.

We recognize, however, that the lease may be cancelled pursuant to its terms. However, the right to cancel the lease reposes in the "lessor" under section 3(c) of the lease. Section 14(g) of ANCSA, supra, provides that "[u]pon issuance of the patent, the patentee shall succeed and become entitled to any and all interests of * * * the United States as lessor * * * in any such leases * * * covering the estate patented." Thus, regardless of whether BLM waives its administrative responsibilities, RMNC, as lessor, has the right to cancel the lease by virtue of the statute. See State of Alaska, 86 IBLA at 272. This right is circumscribed by section 3(c) of the lease which provides for cancellation only if the lessee fails to "(1) use the premises, or any part, for a purpose consistent with the use contemplated; (2) pay annual rental or any part; (3) comply with provisions of this lease; or, (4) maintain premises in accordance with requirements of the Federal Aviation Agency."

Appellant further argues that BLM's waiver of administration will adversely affect the ability of the State to obtain future grants from the Federal Aviation Administration (FAA), U.S. Department of Transportation, for airport improvement projects and may jeopardize an existing grant, effective June 7, 1979 (Project No. ADAP 6-02-0249-01). Appellant attributes this adverse effect to the fact that FAA regulations, 14 CFR 152.3 and 152.103(a)(4)(ii), require an airport operator, as a condition of a grant, to have appropriate title to the land or a minimum 20-year lease "granted * * * by another public agency, or the United States" (14 CFR 152.3), and the fact that "the effect of a BLM waiver is to make [the Native village corporation, i.e., a 'private corporation,'] the lessor." As noted supra, RMNC does not become the lessor under appellant's lease by virtue of BLM's waiver, but rather by virtue of the express language of section 14(g) of ANCSA, supra. The statute, not any action by BLM, would preclude appellant from obtaining

any future FAA grants. ^{2/} We are, thus, not persuaded that the improvement of airport facilities, which is also arguably in the interest of the United States, would be adversely affected by waiver such that "continuation of administration" should be required under 43 CFR 2650.4-3.

Neither the record nor appellant in its arguments on appeal has identified a Federal interest which would preclude waiver of administration of this right-of-way by the United States. We, therefore, conclude that BLM properly waived its administrative responsibilities for the Russian Mission Airport under public airport lease F-30059. As we said in State of Alaska:

Where the land is no longer owned by the United States and the United States has no residual interest or benefit deriving from the third-party leases, rights-of-way, permits, et cetera, which encumber those lands, it is difficult to justify continuing the Federal administration of those interests at taxpayers' expense, particularly where the new landowner (the corporation) is capable of assuming that function on its own behalf. Except in unusual circumstances, there is little or no reason for the United States to continue to maintain records, perform compliance inspections in the field, engage in correspondence with the interested parties, handle billings, collections, accounts and disbursements, and conduct adjudication. The fact is that these matters are no longer the proper responsibility of the Federal government, and that fact is not altered because the State finds the change inconvenient or otherwise undesirable.

86 IBLA at 274.

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:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge.

^{2/} This will become a moot concern when RMNC conveys title to the surface of the land within the "airport site" to the State, as it is required to do so under section 14(c) of ANSCA, as amended, 43 U.S.C. § 1613(c) (1982).

