

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, waiving administration of power transmission line right-of-way describing lands conveyed to a Native corporation. AA-9552.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances: Valid Existing Rights: 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 power transmission line right-of-way 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: Robert M. Goldberg, Esq., Ahtna, Inc., Anchorage, Alaska, for appellant; F. Christopher Bockmon, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Ahtna, Inc., on behalf of Tazlina, Inc., appeals from a decision of the Anchorage District Office, Bureau of Land Management (BLM), dated April 30, 1986, waiving BLM's administration of power transmission line right-of-way AA-9552 pursuant to section 14(g) of the Alaska Native Claims Settlement Act (ANCSA), as amended, 43 U.S.C. | 1613(g) (1982), held by Copper Valley Electric Association, Inc. The right-of-way describes lands that were conveyed to Tazlina, Inc., by patent No. 50-80-0002 issued October 11, 1979. This conveyance was expressly made subject to the right-of-way in accordance with section 14(g) of ANCSA. 43 U.S.C. | 1613(g) (1982).

On June 19, 1975, BLM granted right-of-way AA-9552 for a 24.9kv electric transmission line to Copper Valley Electric Association, Inc., for 50 years under the Act of March 4, 1911, 36 Stat. 1253. The right-of-way contains approximately 5 acres located in secs. 24 and 25, T. 4 N., R. 2 W., and secs. 30 and 31 in T. 4 N., R. 1 W., Copper River Meridian, Alaska. The purpose of the right-of-way is to supply electric power to Pump Station 11 of the Trans-Alaska Pipeline.

On October 11, 1979, patent No. 50-80-0002 was issued to Tazlina, Inc., pursuant to section 14(a) of ANCSA, 43 U.S.C. | 1613(a) (1982). The patent includes the lands on which the right-of-way is located and is expressly made subject to the right-of-way.

In its April 30, 1986, decision, BLM waived administration of the power transmission line right-of-way. BLM stated that "[p]ursuant to law, [section 14(g) of ANCSA, 43 U.S.C. | 1613(g) (1982)] the grantee [Copper Valley Electric Association] is entitled to all rights, privileges, and benefits granted by the terms of the grant during its term until it expires, is relinquished, or is modified by mutual consent of Tazlina, Incorporated and the Copper Valley Electric Association." BLM stated that Tazlina, Inc., is entitled to any and all interests previously held by the United States as grantor in any such grant within the conveyance boundaries. BLM noted that there are no rentals or other revenues associated with this right-of-way. BLM enclosed pertinent documents covering the use authorization for which it was waiving administration. BLM stated that the original case file was closed and would be transferred to the Federal Records Center.

In its statement of reasons appellant asserts that it can receive no revenues associated with management of the right-of-way. Also, appellant objects to the fact that BLM has "unilaterally determined what pertinent documents are to be transmitted without AHTNA, INC., having benefit of any other relevant case file information which instead will be transferred to the Federal Records Center."

In response BLM asserts that waiver of administration of the right-of-way was mandated by section 14(g) of ANCSA and 43 CFR 2650.4-3. BLM notes that neither the statute nor the regulation provides that BLM will waive administration only where the Native corporation will receive rentals or other revenues. As for BLM's decision to transfer the file to the Federal Records Center, BLM contends that it has provided appellant with the necessary documents and that the corporation can make arrangements to review and obtain any additional documents in the case file.

[1] The patent to Tazlina, Inc., was made subject to the right-of-way 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 * * * right-of-way * * * has been issued for the surface * * * covered under such patent, the patent shall contain provisions making it subject to the * * * right-of-way * * * and the right of the * * * grantee 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 * * * right-of-way * * * 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.

Section 14(g) of ANCSA and 43 CFR 2650.4-3 were discussed in State of Alaska (State of Alaska I), 86 IBLA 268 (1985), in connection with BLM's waiver of administration of an airport lease. In State of Alaska (State of Alaska II), 97 IBLA 229 (1987), which concerned BLM decisions to waive administration of a materials site right-of-way and a highway right-of-way, the Board stated:

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 has 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 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. See also Kuitsarak, Inc., 102 IBLA 200 (1988); State of Alaska, Department of Transportation & Public Facilities, 98 IBLA 88 (1987). There has been no Secretarial finding in this case that retention of administration of the right-of-way is in the interest of the United States.

Appellant's argument that it will receive no revenues for management of the right-of-way is irrelevant. Waiver of administration is mandated by 43 CFR 2650.4-3, at least in those cases where the conveyance covers all the land on which the outstanding right-of-way is situated. 43 CFR 2650.4-3 provides that

[w]here the responsible agency [administering the right-of-way] is an agency of the Department of the Interior, administration shall be waived when the conveyance covers all the land embraced within a * * * right-of-way * * * unless there is a finding by the Secretary that the interest of the United States requires continuation of the administration by the United States.

Since the entire right-of-way was on land conveyed to Tazlina, Inc., BLM had no discretion to exercise. Absent a finding by the Secretary that retention of administration was in "the interest of the United States," BLM was obliged by the regulation to waive. Kuitsarak, Inc., *supra* at 205;

State of Alaska I, *supra* at 272-73. Thus, the waiver is mandatory and is in no way conditioned on the fact of whether or not the right-of-way produces revenue.

Appellant has not shown how it would be prejudiced by BLM's transferring the case file to the Federal Records Center. Appellant does not assert that BLM has refused to give it a requested document, or to allow it access to the case files. BLM states that it has provided Tazlina, Inc., with relevant documents; that it will retain the case file until at least 30 days after the Board's decision; and that the file will probably remain at BLM for a year allowing appellant the opportunity to review and obtain any documents appellant believes are relevant.

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.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge