

AHTNA, INC.

IBLA 86-1634 Decided November 29, 1988

Appeal from a decision of the Alaska State Office, Bureau of Land Management, approving the conveyance of land to a Native regional corporation subject to the restriction that the right to explore, develop, and remove minerals was subject to the consent of an entity composed of the residents of a Native village.

Affirmed.

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

Sec. 30 of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1627 (1982), authorizes the merger of Native corporations subject to the requirement that the right of a Native village corporation to withhold consent to mineral development activities within the village be conveyed as a part of the merger to a separate entity composed of the Native residents of the village. A decision recognizing such a condition in a conveyance of the subsurface estate to a Native regional corporation will be upheld where it appears the condition is required by statute.

APPEARANCES: Larry S. Lau, Resource Manager, Ahtna, Inc., for appellant; Dennis J. Hopewell, Deputy Regional Solicitor, Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LYNN

On July 9, 1974, and December 12, 1975, Cantwell Yedatene Na Corporation (Cantwell Corporation), an Alaska Native village corporation, filed selection applications F-14844-A, as amended, and F-14844-A2 under sections 12(a) and 12(b) of the Alaska Native Claims Settlement Act (ANCSA),

43 U.S.C. § 1611(a) and (b) (1982), 1/ for the surface estate of certain public lands in the vicinity of the village of Cantwell. As authorized under section 30 of ANCSA, 43 U.S.C. § 1627, on September 30, 1980, Cantwell Corporation and several other Native village corporations merged with the Ahtna Regional Corporation to form the present Ahtna, Inc. (Ahtna).

On July 25, 1985, BLM classified the lands selected by Cantwell Corporation as public lands pursuant to section 3(e) of ANCSA, 43 U.S.C. § 1602(e). BLM approved the conveyance of approximately 618.86 acres to Ahtna under F-14844-A, as amended, subject to certain reservations, on August 14, 1986. 2/ One reservation provided:

Pursuant to Secs. 14(f) and 30(e) of ANCSA, 43 U.S.C. 1601, 1613(f), 1627(e), and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate shall be issued to AHTNA, Incorporated when the surface estate is conveyed and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove minerals from the subsurface estate in lands within the boundaries of the Native village of Cantwell shall be subject to the consent of an entity composed of Native residents of Cantwell. [Emphasis added.]

(Decision at 5).

On appeal Ahtna challenges only the portion of the decision emphasized above, arguing at page 1 of its notice of appeal:

since Ahtna, Inc. has merged with the Cantwell Village Corporation, and therefore we are one corporation holding both the surface and the subsurface estate, and since our merger agreement spells-out the terms internally that control exploration, development, and/or removal of minerals from the subsurface estate, we feel that the BLM has no right to include any stipulation regarding same in a surface conveyance to these lands. How/if Ahtna deals with such questions is a private, internal corporate matter not subject to BLM scrutiny.

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1/ All references to ANCSA are to the Act as amended. All further references to the United States Code are to the 1982 edition.

2/ In its Aug. 14, 1986, decision BLM rejected application F-14844-A2, filed under section 12(b) of ANCSA, 43 U.S.C. § 1611(b), as to those lands Cantwell Corporation previously selected pursuant to section 12(a) of ANCSA, 43 U.S.C. § 1611(a). BLM stated further action on the remaining lands in F-14844-A2 would take place at a later date.

Ahtna also asks BLM to provide it "with a large-scale map that would identify the 'boundaries of the Native village of Cantwell' within which these stipulations would apply, particularly since the area is several miles south of the community of Cantwell." Id.

BLM responds that it was required under sections 14(f) and 30(e) of ANCSA, 43 U.S.C. §§ 1613(f) and 1627(e), and 43 CFR 2652.4 to include the restrictive clause in the conveyance. BLM contends that Native village corporations are entitled to a patent of the surface estate of certain withdrawn lands under section 14(a) of ANCSA, 43 U.S.C. § 1613(a), and Native regional corporations are entitled to a patent of the subsurface estate of those selected lands under section 14(e) of ANCSA, 43 U.S.C. § 1613(e). It argues, however, that because of the merger of the village and regional corporations in this case, section 30(e) of ANCSA, 43 U.S.C. § 1627(e), requires that the right of the Native village to consent to the exploration, development, or removal of minerals from the subsurface estate in the lands within its boundaries, guaranteed by section 14(f) of ANCSA, 43 U.S.C. § 1613(f), must be conveyed as part of the merger plan to a separate entity composed of Native residents of the Native village.

Section 14(f), 43 U.S.C. § 1613(f), states in pertinent part:

When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsections (a) and (b) of this section, he shall issue to the Regional corporation for the region in which the lands are located a patent to the subsurface estate in such lands, \* \* \* Provided, that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.

As to village and regional corporations that have merged, section 30(e) of ANCSA, 43 U.S.C. § 1627(e), provides:

The plan of merger or consolidation shall provide that the right of any affected Village Corporation pursuant to section 1613(f) of this title to withhold consent to mineral exploration, development, or removal within the boundaries of the Native village shall be conveyed, as part of the merger or consolidation, to a separate entity composed of the Native residents of such Native village.

The legislative history of this provision clearly explains its purpose as being the protection of the rights of Native villages:

Section 14(f) of the Settlement Act provides that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village are to

be subject to the consent of the Village Corporation. This provision provides protection to villages from a precipitate decision by Regional Corporations to develop the subsurface estate. This provision seeks to avoid potential conflicts between villages which are holders of the surface estate and which may be concerned with preserving the use of the land in accordance with traditional local life-styles and subsistence economy and Regional Corporations which are holders of the subsurface estate and which may have as their focus the generation of revenues from the land. Without specific provisions to the contrary, once a Village Corporation merges or consolidates with other corporations under this new section 30, it would lose this authority over its immediate land base. Therefore to preserve this authority, subsection (e) has been included. Subsection (e) requires that any plan of merger or consolidation must provide that the 14(f) right of any affected Village Corporation is to be conveyed, as part of the merger or consolidation, to a separate entity composed of the Native residents of that village.

H.R. Rep. No. 729, 94th Cong., 1st Sess. (1975), reprinted in 1975 U.S. Code Cong. & Admin. News 2376, 2393.

In addition, 43 CFR 2652.4 requires that

conveyances issued to regional corporations for the subsurface estate of lands whose surface has been conveyed to village corporations shall provide that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the village corporation.

[1] Section 30(e) of ANCSA, 43 U.S.C. § 1627(e), requires that the plan of merger of Native corporations provide that the right of a Native village corporation to withhold consent to mineral development activities within the village be conveyed as a part of the merger to a separate entity composed of the Native residents of such village. This statutory requirement is consistent with 43 CFR 2652.4. Accordingly, a decision recognizing such a condition in the conveyance of the subsurface estate to a Native regional corporation will be upheld as being a condition required by both statute and regulation. Cf. Ark Land Co., 97 IBLA 241, 244 (1987); Gulf Oil Corp., 91 IBLA 93, 98-99 (1986) (a BLM decision to include terms and conditions in a coal lease will be affirmed when the terms and conditions are mandated by statute or regulation or are in accordance with the proper administration of the public lands).

Appellant has not attempted to show that the consent condition is not in accordance with statutory or regulatory requirements. BLM has clearly acted within its statutory and regulatory authority in including the challenged condition. Furthermore, the matter of Ahtna's compliance with the stipulation is not a "private, internal corporate matter not subject to BLM scrutiny." The corporate structure provides no shield from Federal laws and regulations.

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.

Kathryn A. Lynn  
Administrative Judge  
Alternate Member

I concur:

C. Randall Grant Jr.  
Administrative Judge.

