

STATE OF ALASKA

IBLA 86-1222 and 86-1229

Decided December 20, 1988

Consolidated appeals from Instruction Memorandum AK 86-212 (Apr. 25, 1986), and from the decision of the Alaska State Office, Bureau of Land Management, placing certain land in a pool of properties available for selection by Cook Inlet Region, Inc. AA-58369, F-532.

Dismissed in part; affirmed in part; vacated in part and remanded.

1. Administrative Procedure: Adjudication--Rules of Practice: Appeals:
Dismissal

An instruction memorandum is merely a document for internal use by BLM employees and has no legal force or effect. It is not directed to outside parties and neither initiates or disposes of an individual case, so it is not a "decision" subject to appeal under 43 CFR 4.410.

2. Alaska Native Claims Settlement Act: Native Land Selections: Regional Selections: Generally--Alaska Native Claims Settlement Act: Native Land Selections: State Selected Lands

Under sec. I.C.(2)(b) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet area, the Secretary is authorized to place lands into a pool for selection by Cook Inlet Region,

Inc., if the State of Alaska concurs. In sec. 606(d)(5) of the

Alaska Railroad Transportation Act of 1982, Congress provided that the concurrence required of the State as to the inclusion of any property in the pool shall be deemed obtained unless the State advises the Secretary in writing that it requires the property for a public purpose. By providing that transfer to the pool would occur unless notice were given that the State requires the property "for a public purpose," Congress opened to inquiry the State's basis for objecting to the transfer. As a result, BLM may properly require the State to demonstrate that it requires an out-of-region parcel for a public purpose in order for the State to block inclusion of the parcel in the CIRI selection pool.

APPEARANCES: Elizabeth J. Barry, Esq., Assistant Attorney General, for the State of Alaska; Mark Rindner, Esq., Anchorage, Alaska, for Cook Inlet Region, Inc.; Dennis Hopewell, Esq., Office of the Regional Solicitor, for the Bureau of Land Management; and Robert Perkins, Fairbanks, Alaska, for amicus curiae Skyline Ridge Park Committee.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

These are consolidated appeals by the State of Alaska (the State) from actions taken by the Alaska State Office, Bureau of Land Management (BLM), involving the availability of land for selection by Cook Inlet Region, Inc. (CIRI). The central issue in this appeal involves statutory construction, so that it is necessary to set out the history of the provision to be construed.

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. || 1601-1638 (1982), with the goal of providing a fair and just settlement of aboriginal land claims by Natives in Alaska.

43 U.S.C. | 1601(a) (1982). ANCSA established 12 regional Native corporations, including CIRI, which were given the right to select land and to share in revenues derived from the sale of minerals. However, in the Cook Inlet Region (which includes the Anchorage metropolitan area and a large portion of the Kenai Peninsula), existing Federal withdrawals, State land selections, and other previous non-Native settlements greatly limited CIRI's selection options. CIRI, finding its selection rights unfulfilled, instituted litigation.

An effort to settle this litigation resulted in an agreement called "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area" (Terms and Conditions). A version of the Terms and Conditions document was submitted to the House Committee on Interior and Insular Affairs in December 1975 and was expressly ratified as a matter of Federal law by Congress in section 12(b) of the Act of January 2, 1976, P.L. 94-204, 89 Stat. 1151 (1976). See Cook Inlet Region, Inc., 90 IBLA 135, 140, 92 I.D. 620, 622-23 (1985). ^{1/}

Under paragraph I.C.(2)(a) of the Terms and Conditions, the Department, in conjunction with the General Services Administration (GSA), was to attempt to place certain categories of surplus Federal land located

^{1/} The version of the Terms and Conditions that was ratified by P.L. 94-204 may be found in 1975 U.S. Code Cong. and Admin. News 2402-19. It has subsequently been amended several times. See, e.g., section 3, P.L. 94-456, 90 Stat. 1935 (1976). The case record sent to the Board by BLM following receipt of the notice of appeal did not contain a copy of the Terms and Conditions. However, in response to a request from the Board, BLM supplied the version that resulted from the negotiations in conjunction with the consideration of the Alaska Railroad Transfer Act that is quoted below.

inside the Cook Inlet Region into a pool to facilitate CIRI's selection. The selection pool was to be comprised of lands within the following categories: (1) abandoned or unperfected public land entries; (2) Federal surplus property; (3) revoked Federal reserves; (4) canceled or revoked power site reserves (5) public lands created by the reduction of certain Federal installations; and (6) other lands as agreed by the parties.

Additionally, under paragraph I.C.(2)(b) of the Terms and Conditions, in some circumstances, land in the same categories located outside the Cook Inlet Region could also be placed in the pool: "With the concurrence of CIRI [and] the State * * * the Secretary may, in his discretion, contribute to [the CIRI selection] pool properties * * * from without the boundaries of the Cook Inlet Region."

On January 14, 1983, Congress enacted the Alaska Railroad Transfer Act of 1982 (ARTA), P.L. 97-468, 96 Stat. 2556 (1983), the primary purpose of which was to transfer the Alaska Railroad from Federal to State ownership. Before enactment, CIRI and its villages had asserted competing claims to certain railroad lands which conflicted with the proposed transfer. As discussed more fully below, CIRI and the State negotiated amendments to the Terms and Conditions which resulted in extinguishing most of these CIRI claims. Congress, in section 606(d)(5) of ARTA, enacted the following provision concerning the State's concurrence right for out-of-region selections under paragraph I.C.(2)(b) of the Terms and Conditions:

Section 12(b)(8) * * * is amended to read as follows:

* * * * *

(iii) The concurrence required of the State as to the inclusion of any property in the pool under subparagraph I(C)(2)(b) [of the Terms and Conditions] shall be deemed obtained unless the State advises the Secretary in writing, within 90 days of receipt of a formal notice from the Secretary that the Secretary is considering placing property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question requires the property for a public purpose of the State or the municipality. [2/]

These appeals concern the interpretation of this provision.

[1] The State has appealed from BLM's Instruction Memorandum (IM) No. AK 86-212 (Apr. 15, 1986), which established BLM's internal procedures for adjudication of the State's public purpose assertions under section 12(b)(8) of the Act of January 2, 1976, as amended. The IM provides that BLM will give notice to the State that property is being considered for the out-of-region pool. If the State timely responds to such notice and asserts that a parcel is required for a public purpose, and CIRI also desires the lands, this assertion would not be considered to be conclusive, but would be subject to a "limited review" by BLM to determine whether the asserted requirement was "actual" and the asserted public

2/ The ARTA amendment, *i.e.*, section 606(d)(5) of P.L. 97-468, 96 Stat. 2569 (1983), was not the first provision enacted by Congress that amended section 12(b) of the Act of Jan. 2, 1976, *supra*. Section 12(b)(8) was enacted by Congress in 1980 in section 1435 of P.L. 96-487, 94 Stat. 2545-46 (1980). However, it is the language of section 12(b)(8)(iii), as ARTA amended it, which is at issue here. Similar language concerning the State's right to advise the Department that it "requires the property for a public purpose" also appears in section 12(b)(8)(i)(C) and (D) of the Act of Jan. 2, 1976, as amended. The current text of section 12 of this Act, including the ARTA amendments, is set out as a note to 43 U.S.C. | 1611 (1982).

purpose "identified." Thus, under the IM, a "bare allegation [by the State] that the land is required for a public purpose will be insufficient to automatically foreclose consideration of" placement in the CIRI selection pool. The IM sets forth four bases for "limiting or rejecting a State public purpose assertion." The State's appeal from the IM was docketed as IBLA 86-1222.

This appeal is not justiciable. Under 43 CFR 4.410(a) and (b), one must be a party who is adversely affected by a BLM decision to have a right to appeal to this Board. A BLM instruction memorandum is merely a document for internal use by BLM employees and has no binding legal force or effect. The Joyce Foundation, 102 IBLA 342, 345 (1988); United States v. Kaycee Bentonite Corp., 64 IBLA 183, 214, 89 I.D. 262, 279 (1982). It is not directed to outside parties, and it neither initiates or disposes of an individual case, so it is not a "decision" subject to appeal under 43 CFR 4.410. Thus, the State's appeal from the IM must be dismissed.

However, even before the State filed its appeal from the IM, it had already received an adverse decision applying the provisions of the memorandum. That decision is subject to appeal.

Specifically, on April 16, 1986, BLM issued a decision placing 600 acres on Bender Mountain near Fairbanks in the pool of properties available for selection by CIRI, overruling the State's objection to such action. The area of the Bender Mountain parcel originally in dispute consisted of 810 acres located approximately 4 miles northwest of downtown

Fairbanks. On October 22, 1985, the State was formally notified that the Secretary was considering placing the Bender Mountain property in the pool of properties available for selection by CIRI under the Terms and Conditions.^{3/} On January 17, 1986, the State notified BLM of its objection to the placement of any of the 810 acres comprising the Bender Mountain property into the selection pool because the State required the land for a public park. The State specified that "the entire property is required for a public park proposed by the Fairbanks North Star Borough," adding that the proposed park enjoyed widespread public support in the Fairbanks area, as demonstrated by documents attached to the State's objection. BLM provided CIRI 90 days in which to respond to the State's objection and to provide additional information.

^{3/} BLM's letter of Oct. 22, 1985, to the State is missing from the case file forwarded to us by BLM. Of course, BLM was required to include this document, as it must file the complete case file surrounding any appeal made to the Board, including all official correspondence received or sent by BLM. See Mobil Oil Exploration & Producing Southeast, Inc., 90 IBLA 173, 177 (1986). The Oct. 22, 1985, letter provided notice to the State of the proposed inclusion of this land in the CIRI selection pool and started the protest period. As such, it is a critical document and should not have been omitted from the case file.

We find this omission troubling, because it appears from other documentation in the record that BLM adopted in this letter a different (and evidently contrary) position regarding the effect of the State's protest than that later taken in BLM's Apr. 16, 1986, decision. CIRI's letter of Oct. 28, 1985, to BLM states: "I have reviewed [BLM's] letter to [the State], dated October 22, 1985, and am disturbed by the apparent characterization of the objection rights of [the State]. Specifically, it appears that [BLM] may be granting to the State conclusive objection rights rather than the 'public purpose requirement' objection rights defined by Congress by Section 606(d)(5)(ii) [sic] of [ARTA]." Further, on Nov. 5, 1985, BLM wrote a letter to the State "to clarify the objection rights allowed the State," in which it set forth a policy similar to that later followed in the decision on appeal.

Failure to include the Oct. 25, 1985, letter in the case file in these circumstances may have been inadvertent, but it creates the unfortunate impression that BLM may have been attempting to obscure the fact that it altered its position on the point at issue in this appeal.

In its April 16, 1986, decision, BLM denied the State's objection as to 600 acres of the 810 acre parcel, finding that the State had not demonstrated that it required those 600 acres for a public purpose. BLM granted the State's objection against placing 200 acres of the Bender Mountain parcel in that pool. ^{4/} BLM's decision concluded that a "passive park" was consistent with BLM's "public purpose standards", i.e., "the purpose must serve a State or municipal objective related to the promotion of the health, safety, general welfare, security, contentment, recreation, or enjoyment of all or some portion of the public within the affected political subdivision" (Decision at 5). The decision recited the information in the record, including that provided by the State and by CIRI, concerning the uses of the parcel, and concluded:

While the documentation submitted by the State does not support a requirement of the entire 810 acres for a park, it does demonstrate a requirement for a portion of the parcel, including the ridgetop and the south slope above the access road, as excerpted above. In accordance with the supporting documentation in the case file and the public purpose standards, the State's objection will stand as to the following described lands, which will not be placed in the selection pool of properties for Cook Inlet Region, Inc. * * * There was insufficient documentation to support the State's assertion that the remaining land on Bender Mountain is required for a public purpose. Therefore, pursuant to Sec. 12(b)(6) of the Act of January 2, 1976, 43 U.S.C. 1611, and Par. I.C.(2) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, the following described lands are hereby placed in the pool of properties and are available for selection by Cook Inlet Region, Inc., subject to valid existing rights.

(Decision at 6).

^{4/} The remaining 10 acres out of the 810-acre Bender Mountain parcel contain physical improvements and were reported as excess to GSA on Mar. 20, 1986. BLM withheld action on these 10 acres because it had not received a letter of concurrence from GSA.

The State and CIRI both filed notices of appeal from this decision which were docketed as IBLA 86-1229. By order dated September 16, 1986, pursuant to a stipulation filed by BLM, CIRI, and the State, the Board dismissed the appeal of the State except for 2.5 acres of the 600 acres that had been placed in the pool. In addition, we dismissed CIRI's appeal and granted the Skyline Ridge Park Committee status as amicus curiae. ^{5/} Thus, only 2.5 acres remains in dispute.

[2] The issue in this appeal is whether BLM had authority to overrule the State's objection under the amended statutory provision quoted above. To assist our analysis of this provision, it is helpful to isolate its operative language: "The concurrence required of the State [under sec. I.C.(2)(b) of the Terms and Conditions] * * * shall be deemed obtained unless the State advises the Secretary * * * that the State * * * requires the property for a public purpose."

The parties concur that, prior to the ARTA amendments, the State held an "absolute" or "unqualified" veto over CIRI's ability to obtain out-of-region surplus properties under section I.C.(2)(b) of the Terms and Conditions (State's Reasons at 4; BLM Answer at 7; CIRI Answer at 6, 10). ^{6/}

^{5/} Perkins has filed information supporting his contention that the entire 810-acre Bender Mountain parcel was in fact "required for a public purpose." To the extent that the matter has been settled as to all but 2.5 acres of this parcel, Perkins' comments are no longer relevant. Insofar as Perkins' comments relate to the 2.5 acres that remain in dispute, BLM should address them on remand.

^{6/} This view is apparently based on the parties' reading of the pre-ARTA Terms and Conditions. The parties have stated that this absolute veto power under section 12(b)(8)(i)(C) would remain in effect until July 15, 1987, at the latest, after which time the State's objection must be based on a public purpose.

They also concur that, as a result of "lengthy negotiations" between CIRI, the State, and the Department prior to the ARTA amendments, the State agreed to refine the nature of its veto, in exchange for CIRI's giving up its claims to Alaska Railroad lands.

The State asserts that the effect of the ARTA amendments was limited to changing the meaning of silence by the State from a veto to concurrence. But, it maintains, the amendment "did not alter the fact that the state has a veto" and "did not give CIRI or BLM any right to second-guess the wisdom of the state's decision that property is required for a state or municipal public purpose" (Statement of Reasons at 5). Thus, it maintains that the language at hand provides that, if the State submits a written objection within 90 days setting forth a public purpose, BLM has no authority to require the State to demonstrate its public purpose needs to BLM's satisfaction (Statement of Reasons at 13).

CIRI and BLM assert that the ARTA amendments changed the State's absolute veto to a conditional veto whereby the State could only block placement of properties in the surplus property pool if the State required the land for a demonstrable public purpose. BLM's position is fully set out in IM No. AK 86-212 (Apr. 15, 1986):

If * * * the State responds that a parcel is required for a public purpose, and the lands are still desired by CIRI, BLM is obliged to subject the State's assertion to a limited review to satisfy the Secretary's statutory responsibility to both parties. The overall objective of the review will be to assess the sufficiency of the public purpose assertion in light of the information of record and any additional evidence provided by the State and CIRI.

On appeal, BLM notes that, "[u]nder the State's view, its filing [of an objection] could be completely whimsical and even false, but as long as it was filed within ninety days CIRI's interests would be conclusively terminated" (BLM Answer at 8). BLM argues that this interpretation fails to give meaning and effect to section 606(b)(5) of ARTA, which amendment (it asserts) redefined the terms of the State's objection right under section I.C.(2)(b) of the Terms and Conditions.

CIRI supports the policy adopted by BLM in this IM, arguing that it will assure that

the dual legislative objectives of fulfilling CIRI's land entitlement and protecting the State's legitimate public needs will be accomplished. If, as objectively determined by BLM, the State actually requires the land for a public purpose, then the State can properly veto any selection by CIRI. If the State does not actually require the land for a legitimate public purpose or if, as happened in this case, the State objectively does not need all the land at issue for its asserted purpose, then CIRI's land entitlement will be fulfilled. The legitimate interests of both CIRI and the State are fully protected. Moreover, because the claims of both parties are subject to review by BLM, amicable settlement of conflicting claims is encouraged.

(CIRI Answer at 12). CIRI states that the "required for a public purpose" standard imposed by the ARTA amendments must have definite boundaries of substance and procedure which serve the underlying purpose of ARTA. Id. at 14.

Both sides to this dispute point to the legislative history in support of their differing interpretations. However, the legislative history refers to the State's protest right to object in many situations, of which only one

is at issue in this case. Further, the history is subject to conflicting interpretation. For example, CIRI notes that Senate Report 97-478, June 22, 1982, 7/ refers to the State being able to block placement of lands in the pool only where it needs the lands for a "demonstrable" public purpose. However, the word "demonstrable" does not appear in the language of the Act. Opposite conclusions may be drawn. On the one hand, the fact that the parties used the term during negotiations may reflect that they intended the State to have to demonstrate its public purpose need in order for its objection to be honored. On the other hand, as the State maintains, the fact that the word is not in the final amendment suggests that the parties and Congress intended that no obligation to demonstrate need be included.

By the same token, the State notes that the word "veto" was used by the parties to describe the State's objection rights throughout the negotiations leading up to the ARTA amendment, emphasizing that this word suggests that it enjoyed a right of "authoritative prohibition." Although the word "veto" does appear in the legislative history, it does not appear in the final amendment as passed in 1983. As above, this fact cuts both ways. It may show that the parties intended the State to retain an authoritative right to prohibit placement of lands in the selection pool, but the fact that the term is not in the final amendment suggests that the final agreement, as ratified by Congress, was not intended to include such prohibition. Further, as BLM points out, references to the State's "veto" right may be read as entailing nothing more than a recognition of the

7/ Although the State, BLM, and CIRI refer to this report, they have neither cited us to a published version nor enclosed a copy of it.

State's ability to keep land reasonably required for a public purpose out of the selection pool.

The only language directly explaining the effect of the ARTA amendments on section I.C.(2)(b) of the Terms and Conditions appears in a Senate Report set out at 128 Cong. Rec. 33586 (Dec. 23, 1982):

Sec. 12(b)(8)(iii). Sec. I(C)(2)(b) of the "Terms and Conditions" authorizes the Secretary to place lands into the in-region pool from outside the region which are in the same categories as lands listed at I(C)(2)(a) (e.g. abandoned or unperfected public land entries, surplus property, revoked Federal reserves, cancelled or revoked power sites, ANCSA 3(e) lands) if the State concurs. Under this amendment the State will not withhold its concurrence unless the State or one of its municipalities needs the land for a public purpose. [Emphasis supplied.]

The State argues that the ARTA amendments, in effect, refer to its right of approval as a "required concurrence," and it also points to the preceding language from the legislative history as recognizing that the State may "withhold its concurrence." It concludes from this that the State's concurrence is a "necessary prerequisite," and argues that, since the State can still withhold such concurrence, the State retains "a conclusive right of objection to prevent property from being placed in the pool" (Statement of Reasons at 7-8).

There is no dispute that the State can withhold its concurrence. The issue is whether failure to grant concurrence may be disregarded where the State does not objectively need the land for a public purpose, or, in other

words, whether the State may block land transfer to CIRI by arbitrarily withholding its concurrence. Use of the mandatory words "will not withhold" in the legislative history set out above suggests that the amendment was intended to provide that concurrence could not arbitrarily be withheld, but could be withheld only if it (or one of its municipalities) actually needs the land for a public purpose.

The State and BLM both point to the discussion of the amendment of section 12(b)(8)(i)(C) in the legislative history of ARTA. 128 Cong.

Rec. 33585 (Dec. 23, 1982). The amendment of this section affects section I.C.(2)(a) and (c) of the Terms and Conditions; it is thus not

directly involved in this dispute, which concerns only section I.C.(2)(b) thereof. However, amended section 12(b)(8)(i)(C) and 12(b)(8)(iii) contain identical language concerning the State's opportunity to advise the Department that the State or a municipality of the State "requires the property for a public purpose." Thus, study of the legislative history of the amendment of section 12(b)(8)(i)(C) is illuminating.

The discussion of the amendment of section 12(b)(8)(i)(C) in the legislative history suggests that the ARTA amendments were intended to change the State's right to object from an absolute veto to a nonabsolute "public purpose" veto. That discussion states:

Section 12(b)(8)(i)(C). Under this provision the State of Alaska may prevent the Secretary from making land available to CIRI from the in-region pool if the State or a municipality requires the land for a public purpose. The State's "public

purpose" veto takes [effect] on military land on January 1, 1985 and on all other land when the Secretary's obligation under I(C)(2)(a) of the "Terms and Conditions" is fulfilled or on July 16, 1987, whichever occurs first. Until the State's public purpose veto takes effect, the State retains the authority it has under existing law to prevent the Secretary from making land available for selection by CIRI under I(C)(2)(a)(vi) and (c) of the Terms and Conditions.

Under IC(2)(a)(vi) of the "Terms and Conditions", the Secretary may identify "other Federal lands" for CIRI's in-region pool only with the State and CIRI's concurrence. The State's concurrence will be required until the State's public purpose veto takes effect. [Emphasis added.]

I.C.(2)(a)(vi) of the Terms and Conditions, like I.C.(2)(b), speaks in terms of the State's agreement or concurrence with an action of the Secretary.

The parties concur that, before the ARTA amendments, the State enjoyed an absolute veto power over CIRI selections under the Terms and Conditions. The legislative history of this provision clearly distinguishes between this pre-ARTA absolute "authority * * * to prevent the Secretary from making land available for selection by CIRI" and the new, post-ARTA "public purpose" veto. If, as the State maintains, it was intended that the State's authority to object after ARTA would remain absolute and insulated from any independent inquiry by BLM, there would have been no distinction to draw between before and after the public purpose veto took effect, and there would have been no need to take action to amend the veto power. We are unwilling to interpret action of Congress as a nullity: some purpose must be imputed to the decision to amend.

We deem that the implication of this distinction is that the ARTA amendments were intended to restrict the State's previously unrestrained veto power to circumstances where the State in fact required the land for a public purpose. Otherwise, there would have been no need to amend this authority.

Turning to the language of the controlling statute itself, under section 12(b)(8)(iii) of the Act of January 2, 1976, as amended by ARTA, property shall be placed in the CIRI pool as provided by section I.C.(2)(b) of the Terms and Conditions, unless a specific condition occurs, that is, unless notice is given that the "State requires the property for a public purpose." The State would have us interpret this provision as though the operative conditional language were merely that "the State requires the property." If Congress had intended the State to retain an absolute veto power without needing the land for a public purpose, it could easily have done so simply by providing "the State desires the property." It did not do so. Instead, it provided that the State give notice that it "requires the property for a public purpose" (emphasis supplied). We hold that, by so doing, Congress opened to inquiry the State's basis for objecting to the transfer. Accordingly, we affirm BLM's decision insofar as it holds that the ARTA amendments require the State to demonstrate to the Department that it requires an out-of-region parcel for a public purpose in order to block inclusion of the parcel in the CIRI selection pool.

Section 12(b) of the Act of January 2, 1976, as amended, expressly delegates to the Secretary of the Interior the duty to make conveyances to

CIRI "in accordance with the specific terms, conditions, procedures, covenants, reservations, and other restrictions set forth in the * * * Terms and Conditions," as amended elsewhere by ARTA. 43 U.S.C. | 1611 (note) (1982). This authority has been redelegated to the Bureau of Land Management. Having determined that section I.C.(2)(b) of the Terms and Conditions provides that the State must demonstrate to the Department an actual public purpose need for an out-of-region parcel in order to block its inclusion in the CIRI selection pool, it follows that BLM must be able to review the assertion of public purpose need in order to ensure that the conveyances are being made in accordance with the terms set forth in the Terms and Conditions, as dictated by Congress. Accordingly, we also affirm BLM's decision insofar as it holds that the State's assertion of public purpose need is subject to review by BLM to assess the sufficiency of the public purpose assertion in light of the information of record and any additional evidence provided.

We disagree with the State's assertion that BLM is not competent to make this assessment. The Department has considered Recreation and Public Purpose Act applications under 43 U.S.C. | 869 (1982) since 1927. There will doubtless be areas of disagreement between the State and CIRI on such questions as the limits of the area whose residents would actually be served by a public purpose. But we are confident that BLM is fully capable of resolving such land-use questions on behalf of the Department. If either the State or CIRI disagrees with a BLM decision, it may seek administrative review.

Although we affirm BLM's authority to review the State's assertions of public purpose, we cannot affirm its decision to place the 2.5 acres that remain in dispute into the pool. The decision simply concludes that the State did not submit sufficient documentation to support the assertion that it was needed for a public purpose. That conclusion indicates neither what further documentation might be adequate nor which, if any, of the four reasons offered in the decision and the IM as "sufficient cause for limiting or rejecting a State public purpose assertion" serves as the basis for the conclusion and why it does so. ^{8/} Accordingly, it is necessary to vacate BLM's decision insofar as it places this parcel into the CIRC selection pool and remand the case to BLM for adjudication of the merits of the State's assertion.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the State's appeal from IM No. AK 86-212 (Apr. 15, 1986) docketed as IBLA 86-1222 is dismissed;

^{8/} BLM's IM No. AK 86-212 states as follows:

"Any of the following shall be a sufficient cause for limiting or rejecting a State public purpose assertion: 1. The lands that the State alleges are required for public purpose are unavailable for conveyance to the State or a municipality of the State under existing Federal or State authority. 2. The State fails to identify the required public purpose upon which the assertion is based. 3. Evaluation of the record, as supplemented by the State and CIRC, indicates that the public purpose can be reasonably accomplished through some other means, or through acquisition of less than the entire area. 4. The primary objective of the assertion is to benefit private and/or proprietary interests, either through promotion of material gain or extension of exclusive license or privilege (for example, avoidance of future taxes, or leasing land for commercial development)."

We note that, in view of the absence of an adequate factual basis in the record concerning the 2.5 acres still in dispute, we do not reach the question of whether these specific standards are proper.

BLM's decision of April 16, 1986, is affirmed in part, vacated in part, and remanded for further consideration, as discussed above.

David L. Hughes
Administrative Judge

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I concur:

Will A. Irwin
Administrative Judge