

NORTH COAST DEVELOPMENT CO.

IBLA 89-331

Decided August 6, 1990

Appeal from a decision of the Alaska State Office, Bureau of Land Management, approving lands for interim conveyance to Eyak Corporation. AA-8447-B, AA-8447-A2, AA-8447-D.

Affirmed.

1. Alaska: Irrigation and Power--Alaska Native Claims Settlement Act: Conveyances: Interim Conveyance--Alaska Native Claims Settlement Act: Native Land Selections: Village Selections--Alaska Native Claims Settlement Act: Withdrawals and Reservations: With-drawals for Native Selection: Generally--Powersite Lands--Withdrawals and Reservations: Powersites

Where Congress has provided in 16 U.S.C. § 818 (1982), that lands sought for a proposed power project shall from the date of the filing of an application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Federal Power Commission or by Congress, and thereafter has further withdrawn these same lands for selection pursuant to 43 U.S.C. § 1610 (1982), BLM may properly convey such lands to a Native corporation selecting same, all else being regular.

APPEARANCES: Howard T. Harstad, President, for North Coast Development Company, Inc.; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The North Coast Development Company, Inc. (North Coast), has appealed a February 1, 1989, decision by the Alaska State Office, Bureau of Land Management (BLM), approving certain lands for interim conveyance to the Eyak Corporation 1/ pursuant to section 14(a) of the Alaska Native Claims

1/ The Eyak Corporation filed a motion for expedited consideration of this matter on Oct. 16, 1989. Given our decision herein, we find it unnecessary to either grant or deny that motion.

Settlement Act (ANCSA), 43 U.S.C. § 1613(a) (1982). ^{2/} The approved lands are described as secs. 3 through 6 and secs. 8 and 9, T. 15 S., R. 2 W. (Partially surveyed), Copper River Meridian, Alaska, containing approximately 3,820 acres.

North Coast contends that certain of the lands described in the BLM decision should not be approved for interim conveyance but rather should be held by the Government due to appellant's permit to develop a hydroelectric project. Appellant states that its application was filed with the Federal Energy Regulatory Commission (FERC) on December 10, 1987, and that a permit was issued on November 29, 1988. Appellant contends that its proposed project is economically feasible; that it has already invested a considerable sum of money on the project; that with mitigation measures the project will not cause substantial environmental damage, and that the project will save more than 1,000,000 gallons of diesel fuel per year. In its answer to North Coast's statement of reasons (SOR), BLM contends that pursuant to section 11(a)(1) of ANCSA, 43 U.S.C. § 1610(a)(1) (1982), it is precluded from excluding appellant's project land from the interim conveyance, and cites Ketchikan Public Utilities, 79 IBLA 286 (1984) in support of its argument.

On August 27, 1973, the village of Eyak filed an application for determination of its eligibility as a village pursuant to section 11(b)(3) of ANCSA, 43 U.S.C. § 1610(b)(3) (1982). A decision declaring Eyak an eligible village was published at 39 FR 7469 (Feb. 26, 1974) and was finally approved by the Secretary on December 17, 1974. 43 FR 27609 (June 26, 1978). Public Land Order 5353, dated July 17, 1973, withdrew and reserved all public lands, as defined in ANCSA, in T. 15 S., R. 2 W. (Protracted Description), Copper River Meridian, Alaska. 38 FR 19825 (July 24, 1973). Eyak Corporation selected the subject lands pursuant to section 12 of ANCSA, 43 U.S.C. § 1611 (1982), by way of applications filed December 16, 1974, and December 17, 1975.

[1] Lands included in an application for power site development pursuant to section 24 of the Federal Power Act (FPA), 16 U.S.C. § 818 (1982), are reserved from entry, location, or other disposal until otherwise directed by FERC ^{3/} or Congress, id. at 288; Charles L. John, 42 IBLA 260, 264 (1979). In Ketchikan Public Utilities, supra, we held that, by enacting section 16 of ANCSA, 43 U.S.C. § 1615 (1982), Congress authorized selection by a qualified Native village of lands withdrawn thereby and that a reservation pursuant to 16 U.S.C. § 818 (1982), is not an impediment

^{2/} The BLM decision was modified in part by a decision dated Mar. 9, 1989; however, the modifications are not relevant to the matter before us. The notices of the original and modified decisions were published at 54 FR 5280 (Feb. 2, 1989) and 54 FR 10053 (Mar. 9, 1989), respectively.

^{3/} The text of FPA utilizes the word 'Commission' to refer to the Federal Power Commission (FPC). However, pursuant to section 402 of the Department of Energy Organization Act, 42 U.S.C. § 7172 (1982), the relevant authority was transferred from FPC to FERC.

to an interim Native village conveyance subject to valid existing rights. ^{4/} Since both sections 11(a)(1) and 16(a)(1) of ANCSA provide for withdrawals of "public lands," our decision in Ketchikan Public Utilities, supra, guides our decision herein.

Consequently, we find no legal basis for appellant's suggestion that the land described in its powersite permit should be retained by the Government. We therefore conclude that the powersite reservation effected by 16 U.S.C. § 818 (1982), is not an impediment to the interim conveyance to the Eyak Corporation pursuant to section 14(a) of ANCSA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is affirmed.

John H. Kelly
Administrative Judge

I concur:

James L. Burski
Administrative Judge

^{4/} Appellant does not contend it holds valid existing rights which are denied by the subject interim conveyance. Consequently, we make no finding pertaining to valid existing rights, and simply note that conveyances pursuant to ANCSA are subject thereto. 43 U.S.C. § 1613(g) (1982); Ketchikan Public Utilities, supra.