

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

IBLA 88-652

Decided October 29, 1990

Appeal from a decision of the Alaska State Office, Bureau of Land Management, concerning approval of parcel B of Native allotment application F-17165.

Affirmed.

1. Alaska: Native Allotments--Rights-of-Way: Generally

Where subsequent to approval of a Native allotment, but prior to issuance by BLM of the document conveying legal title to the allottee, the allottee, as grantor, grants to the State of Alaska a public highway easement across her allotment, a request by the State to have that easement excluded from or reserved in the document conveying legal title will be denied.

APPEARANCES: E. John Athens, Jr., Esq., Assistant Attorney General, Fairbanks, Alaska, for the State of Alaska; Bruce E. Schultheis, Esq., Office of the Regional Solicitor, Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The State of Alaska, Department of Transportation and Public Facilities (State), has appealed from a decision, dated August 4, 1988, by the Alaska State Office, Bureau of Land Management (BLM), concerning parcel B of the Native allotment application of Ethel Beck (F-17165). 1/

The State does not challenge approval of parcel B. The sole consideration of the State is the failure of BLM in its decision to exclude from parcel B an existing easement for a road through parcel B.

On June 1, 1981, the State filed a protest pursuant to section 905(a)(5)(B) of the Alaska National Interest Lands Conservation

1/ The official survey description of parcel B, as set out at page 3 of BLM's decision, is "Lot 4, U.S. Survey No. 8655, Alaska, situated on the left bank of the Yukon River approximately 10 chains easterly of the vil- lage of Eagle, Alaska (within Sec. 2, T. 2 S., R. 33 E., Fairbanks Meridian). Containing 39.97 acres."

Act (ANILCA), 43 U.S.C. § 1634(a)(5)(B) (1988), claiming a trail access through parcel B. In December 1981, the State filed a right-of-way application (F-79283) with BLM for a road through parcel B, apparently in an attempt to guarantee access across the allotment. On March 24, 1984, BLM rejected the State's right-of-way application stating: "In accordance with the Memorandum of Understanding between the Bureau of Land Management and the Bureau of Indian Affairs [(BIA)] dated February 20, 1979, a right-of-way grant over approved Native Allotments will be granted by the Bureau of Indian Affairs." 2/

In its August 4, 1988, decision, BLM dismissed the State's access protest citing the March 29, 1984, decision rejecting the right-of-way application. 3/ It then stated: "It should be recognized that the State's interest has been protected through issuance of a grant of easement for right-of-way executed by the Bureau of Indian Affairs on October 1, 1986." 4/

The decision listed the reservations which would be noted in the document conveying legal title to Beck. 5/ The October 1, 1986, right-of-way grant was not included therein.

2/ By decision dated Feb. 16, 1983, BLM stated that it had adjudicated parcel B under the requirements of the Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970) (repealed by section 18(a) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1617(a) (1988), on Dec. 18, 1971, subject to applications then pending before the Department) and determined it to be valid. The decision also notified the State that to the extent it claimed an adverse interest in the land it could file a private contest. It appears that the State neither filed a contest nor appealed the decision.

3/ Following the recitation in BLM's decision regarding the State's protest, BLM noted that parcel B had been approved by decision of Feb. 16, 1983, but that parcel B "would otherwise have qualified for legislative approval" pursuant to ANILCA on June 1, 1981. Since the caption of the BLM decision includes the listing "Native Allotment Application Parcel B Legislatively Approved," it appears that BLM intended to recognize legislative approval of parcel B.

4/ The grant was executed by BIA "for, and on behalf of: Ethel Beck, hereinafter referred to as 'Grantor.'" It provided for a public road easement, which in a July 6, 1988, letter to BLM from the Tanana Chiefs Conference, Inc., was described as the Eagle to Dog Island access road. That letter also stated: "[T]he road does provide good quality access to the allotments and corporation land and is of better quality than the old trail ever was. This should eliminate any problems with the trail in regards to the ANILCA provision for alternate access."

5/ BLM described this document in its decision as the "Certificate of Allotment." We have previously indicated in State of Alaska, 45 IBLA 318, 320-21 (1980), that such usage is technically incorrect, and we explained therein the confusion that exists regarding various terms used to describe

On appeal, the State expresses its concern that unless the easement is excluded from the allotment or the "Native Allotment" is specifically made subject to the easement, its title will be clouded and conflicts will develop between the State and the allottee.

BLM contends in its answer that it was correct in not excluding or reserving the easement. It states that legislative approval, which the State does not contest, removes the land from the jurisdiction of the Department to consider conflicting claims. BLM also asserts that the failure to list the easement in the "Native Allotment" does not affect the validity of the easement. BLM claims the interest was created by the allottee and not the United States and, therefore, the interest should not be included in a title document issued by the United States. An exclusion or a reservation of an easement, BLM argues, causes a property interest to remain in the United States and in this case, there is no interest to be retained. BLM concludes that the State's interest has been adequately protected.

In a reply brief, the State argues that BLM has expressly determined allotments to be subject to easements for highway purposes granted to the State by the Secretary of Commerce. 6/ It asserts that an easement signed

fn. 5 (continued)

the documents issued in the allotment approval process. Two separate documents are issued. "[T]he issuance of an 'Allotment Certificate' or 'Final Certificate' does not operate to pass title, whereas the 'Native Allotment' does so." Id. at 321; see also Eugene M. Witt, 90 IBLA 265 (1986). In the present case, both BLM and appellant refer to issuance of the "Certificate of Allotment" as the final step in the allotment process. Those references properly should have been to the document styled "Native Allotment." We will use the term "Native Allotment" in this decision.

6/ See Exhibits A and B appended to the State's Reply which are BLM decisions, Robert W. Rude, Native Allotment F-534, dated June 30, 1988, and Frank Sanford, Native Allotment F-032026, dated June 30, 1988, respectively, modifying the allotments by subjecting them to an easement for the Mentasta Spur Road, which had been transferred to the State by the Secretary of Commerce in 1959. BLM stated in the decisions that the easement would

be reserved in the document conveying legal title in each case. Those decisions, however, are the subject of an appeal before this Board in

which BLM's authority to take such action is being challenged by Ahtna, Inc., Mentasta Village Traditional Council, and Frank Sanford. Ahtna,

Inc., IBLA 88-589. We also note that in Degnan v. Hodel, No. 87-252 Civil (D. Alaska, Feb. 16, 1989), reaffirmed, May 6, 1989, the court reversed our decision in Clarence Lockwood, 95 IBLA 261 (1987), in which we had affirmed BLM's 1985 modification of Native allotments approved in 1975 by reserving rights-of-way for the Iditarod Trail on the basis of a 1978 amendment to the National Trail System Act (NTSA), as amended, 16 U.S.C. § 1246(h)(2) (1988), designating the Iditarod as a National trail. The court found that the allottees had equitable title prior to enactment of the 1978 amendment, and that the allotments could not be modified. Upon remand from the court, we vacated the Lockwood decision by order dated Aug. 23, 1989.

by the Area Director, BIA, is not substantively different and that it makes no sense to distinguish between the two. The State also challenges the implication by BLM that the easement is a conflicting claim. It contends that all parties, including BLM, recognize the easement as a valid existing right and that there is no reason not to recognize it as such in the "Native Allotment."

[1] We agree with the State that this is not a situation involving conflicting claims, because all are in agreement regarding the validity of the State's easement. However, the point made by BLM in its answer that the easement involved in this case was created by the allottee, not the United States, and that it should not be reserved by the United States in the title document, is well taken.

Parcel B of the Beck allotment was approved prior to the creation of the easement in question. Although the Area Director, BIA, signed the "Grant of Easement for Right-of-Way" document, that document itself states that the United States was acting through the Area Director, for and on behalf of Ethel Beck, who was designated as the grantor. The cited authority for that action was 25 U.S.C. §§ 323-328 (1988) and 25 CFR Part 169. The regulations in Part 169 of 25 CFR are entitled "Rights-of-way Over Indian Lands." Under 25 CFR 169.15, the Secretary is authorized to grant such a right-of-way by issuance of a conveyancing instrument. In this case, the Secretary's authorized representative, the Area Director, BIA, issued the easement for a right-of-way on behalf of the equitable owner of parcel B, Ethel Beck.

In this situation, the State's rights are protected because it received its easement directly from the equitable owner of the land. When the United States transfers the bare legal title to Beck through issuance of the "Native Allotment," there is no reason for it to include a reservation for an easement created by the allottee, as grantor, for the benefit of a third party, in this case the State. For these reasons, we deny the State's request that we direct BLM to either exclude its easement from the "Native Allotment" or include a reservation for the easement therein.

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.

Bruce R. Harris  
Administrative Judge

I concur:

C. Randall Grant, Jr.  
Administrative Judge