

ANNE LYNN PURDY

HEIRS OF ARTHUR PURDY, SR.

IBLA 89-615, 89-618

Decided January 13, 1994

Petitions for reconsideration of the Board decision cited as Anne Lynn Purdy, 122 IBLA 209 (1992).

Petitions for reconsideration granted. Decision reaffirmed as modified.

1. Alaska: Native Allotments--Mineral Lands: Determination of Character of

The critical date for determination of the mineral character of public land within a nonmineral land application is the date when equitable title to the land passes to the applicant. This is the point when the applicant has done all that is required to obtain title to the land under the authorizing statute. In the case of a Native allotment application, this ordinarily occurs when the application has been filed, the required period of use and occupancy has been completed, and acceptable proof of use and occupancy has been filed.

Anne Lynn Purdy, 122 IBLA 209 (1992), modified in part.

APPEARANCES: Andy Harrington, Esq., Alaska Legal Services Corporation, Fairbanks, Alaska, for appellants; James R. Mothershead, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Petitions for reconsideration of our decision in the above-captioned case, cited as Anne Lynn Purdy, 122 IBLA 209 (1992), have been filed by the Bureau of Land Management (BLM) and by appellants. The principal issue in this case is whether the lands within the Native allotment applications were properly determined by BLM to be mineral in character, thus requiring rejection of the applications. In our decision we remanded this case to BLM for a contest hearing to resolve the issue. Petitioners do not dispute the need for a hearing regarding the mineral-in-character question, but take issue with the Board's decision regarding the critical time for which this determination must be made. We grant the petitions for reconsideration because we think they raise an important question not adequately explored in our initial decision.

Potentially important to resolution of the mineral-in-character issue is the question of when this determination is to be made. In resolving this question the Board held:

The plain language of the Act of May 17, 1906, [Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970), (repealed Dec. 18, 1971, by section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1988), subject to applications pending on that date)], establishes that a Native allotment may not be granted for mineral lands. Land is mineral in character when known conditions at the relevant time are such as to reasonably engender the belief that the land contains mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end. United States v. Southern Pacific Co., 251 U.S. 1, 13 (1919); Diamond Coal Co. v. United States, 233 U.S. 236, 240 (1913). Where an applicant has done all that is required of him under a particular statute and earned equitable title to a tract of public land, the Department has held that patent can be denied on the ground that the land is mineral in character and, thus, not eligible for disposal under the statute, only on a finding that facts in existence at the time equitable title vested required a finding that the land was mineral in character. State of Wisconsin, 65 I.D. 265, 272 (1958); followed, Wilfred S. Wood, 20 IBLA 284, 287-88 (1975). 12/

12/ With respect to Native allotments, preference rights have been held to vest when applicants have filed their Native allotment applications and completed the required period of qualifying use and occupancy. See United States v. Flynn, 53 IBLA 208, 234, 88 I.D. 373, 387 (1981). Both appellants and BLM have argued that this is the time at which the mineral-in-character determination must be made. However, a preference right against conflicting claimants does not equate to establishment of equitable title as against the United States and we are unable to accept this contention.

122 IBLA at 213-14.

Although the Board noted that final certificates are no longer issued prior to patent when BLM adjudicates Native allotments, we found that equitable title is vested when BLM indicates the acceptance of a Native allotment application by written decision. 122 IBLA at 214. With regard to Native allotment applications such as those at issue in this case which BLM has not found to be acceptable, we held that the mineral-in-character determination was properly made as of the time of enactment of section 905(a)(1) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(a)(1) (1988), in 1980. Id. 1/

1/ These allotment tracts were not subject to legislative approval under section 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a)(1) (1988), because BLM

In its petition for reconsideration, BLM asserts that equitable title is earned by those things which the Board has held necessary to establish a preference right, i.e., completion by applicant of qualifying use and occupancy and the filing of an application for Native allotment with BLM. It is contended that this is consistent with judicial precedent holding that a claimant of the public lands that has done all that is required to obtain title becomes vested with equitable title. Appellants contend in their petition for reconsideration that equitable title is earned on the date when proof of use and occupancy is filed with BLM. Appellants assert this is necessary to be fair to Native allotment applicants in view of the lengthy delays which frequently occur between filing of applications and issuance of patents. In this case, appellants state in their petition that their evidence of use and occupancy was filed with their allotment applications. Appellants urge that a BLM decision approving an allotment is properly perceived to be mere evidence of passage of equitable title, rather than a conveyance of equitable title.

[1] In dealing with a state lieu selection of public lands, the Supreme Court has held that where a state has filed with the Department a formal relinquishment of certain lands to which it was entitled accompanied by a selection of lieu lands from public lands pursuant to an act of Congress, full compliance with the statutory requirements for relinquishment and making a lieu selection confers vested rights in the state, which is properly regarded as the equitable owner of the selected tract. Wyoming v. United States, 255 U.S. 489, 496-97 (1921). 2/ The courts have followed a similar approach to Native allotment applications--where use and occupancy preceded the filing of an application rights have been held to vest on the filing of a timely allotment application. State of Alaska v. 13.90 Acres of Land, 625 F. Supp. 1315, 1319-20 (D. Alaska 1985). It seems clear that in order to vest equitable rights the application must include proof acceptable to the Secretary of qualifying use and occupancy of the land as required by section 3 of the Native Allotment Act of 1906. 3/ Indeed, as noted in our

fn. 1 (continued)

determined on May 29, 1981, that the allotment lands may be valuable for minerals. 43 U.S.C. § 1634(a)(3) (1988).

2/ The Court in Wyoming declined to accept the argument on behalf of the United States that the rule that equitable title passes where one has done everything required to secure a tract of public land applies only where qualifying actions have been performed upon the land, e.g., location of a mining claim, as opposed to situations where approval of a Departmental official is required. 255 U.S. at 491.

3/ The petition for reconsideration filed on behalf of appellants concedes that section 3 of the Act provided that: "No allotment shall be made to any person under this Act until said person has made proof satisfactory to the Secretary of the Interior of substantially continuous use and occupancy of the land for a period of five years." Section 3 of the Act of May 17, 1906, as added by, Act of Aug. 2, 1956, ch. 891, § 1(e), 70 Stat. 954 (quoted in appellants' Petition at 5). Thus, an allotment applicant could not establish compliance with the statutory requirements necessary to vest equitable title until such proof has been filed.

prior decision in this case, under the 1958 edition of the BLM manual it was the filing of acceptable proof of use and occupancy which prompted issuance of an allotment certificate. 122 IBLA at 214.

Although the process of adjudicating Native allotment applications apparently no longer includes issuance of a final certificate prior to conveyance of a Native allotment, we think that the point is well taken that adjudication of such applications (including the sufficiency of use and occupancy where statutory approval under section 905 of ANILCA does not apply) can involve substantial delays through no fault of the applicant. Accordingly, we find that the decision approving the allotment application is properly regarded as evidence of the vesting of equitable title and, hence, the mineral-in-character determination is properly made as of the time the applicant complied with all of the statutory requirements for an allotment. In this case, where use and occupancy for the required time preceded the filing of the application, that occurred when the application together with acceptable proof of qualifying use and occupancy was filed with the Department. The fact that the adequacy of the proof of use and occupancy was not adjudicated until some later date does not alter the relevant date for the mineral-in-character determination. ^{4/}

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petitions for reconsideration are granted and the decision appealed from is reaffirmed as modified.

C. Randall Grant, Jr.
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

^{4/} In our prior decision, we held that the critical date was the time of passage of ANILCA in view of the fact BLM had found the allotment applications unacceptable because of the mineral character of the lands. Under our present decision, that date is not germane in the absence of a BLM finding that the appellants' proof of use and occupancy was unacceptable.