

Appeal from a decision of the Assistant Secretary for Land and Minerals Management approving a determination of the Solicitor that the Department of the Interior is without authority to convey certain lands to Alaska villages pursuant to the Alaska Native Claims Settlement Act.

Appeal dismissed.

1. Administrative Authority: Generally--Administrative Procedure: Administrative Review--Appeals--Alaska Native Claims Settlement Act: Conveyances: Regional Conveyances--Rules of Practice: Appeals: Generally

Where the Solicitor determines that the Department is without authority to convey certain lands to Alaska villages, and that determination is adopted by the Assistant Secretary for Land and Minerals Management and declared to be the final action of the Department, under Blue Star, Inc., 41 IBLA 333 (1979), the Board of Land Appeals is without jurisdiction to review the matter.

APPEARANCES: Guy R. Martin, Esq., Washington, D.C., for appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Department.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

In December 1993, counsel for Cook Inlet Region, Inc. (CIRI), filed a request with the Assistant Secretary for Land and Minerals Management, Robert L. Armstrong, asking him to issue a final decision conveying certain lands selections to six Native villages ^{1/} pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1629(a) (1988), and Appendix C to the Deficiency Conveyance Agreement of August 31, 1976.

Assistant Secretary Armstrong referred that request to the Solicitor, and in a letter to counsel for CIRI, dated December 2, 1994, Solicitor

^{1/} The six villages are Chickaloon, Knik, Ninilchik, Salamatof, Seldovia, and Tyonek.

John D. Leshy concluded that the Department was without authority to make such a conveyance. ^{2/}

By letter dated December 19, 1994, counsel for CIRI advised the Solicitor: "We do not regard your letter to me as a final action of the Department on this matter, but rather as a report to me of the views you are communicating to Assistant Secretary Armstrong for his consideration in reaching a final determination." By letter dated December 22, 1994, signed by both the Solicitor and the Assistant Secretary, CIRI was informed as follows: "In response to your letter of December 19, the December 2 letter from the Solicitor concluded that the Department did not have the legal authority to act upon CIRI's request. Accordingly, it does represent the final action of the Department on this matter." (Emphasis added.) In addition, by letter dated December 23, 1994, the Assistant Secretary informed counsel for CIRI that he had studied the Solicitor's December 2 letter, and agreed with it.

By letter dated January 23, 1995, CIRI filed an appeal from the Assistant Secretary's determination. CIRI also filed with this Board a motion to dismiss its appeal, stating that "a decision by the Assistant Secretary deprives the Board of jurisdiction over the matter involved. See e.g., 43 C.F.R. § 4.410(a)(3); Blue Star, Inc., 41 IBLA 333 (1979)" (Motion for Dismissal of Appeal and to Delay Deadline for Filing Statement of Reasons (Motion for Dismissal) at 3). CIRI asserts that the following holding by the Board in Blue Star, Inc. applies to the Assistant Secretary's decision in this case: "[W]here an Assistant Secretary has made a decision or, prior to the filing of an appeal, has approved a decision made by a subordinate, that decision may not be reviewed in the Office of Hearings and Appeals since the full authority of the Secretary would have been exercised." 41 IBLA at 335-36. ^{3/} CIRI contends that "[t]his "doctrine is directly applicable to the facts of this appeal," and that "[b]ecause the exclusive and final decision on this conveyance request was rendered at the Assistant Secretary level, the Board lacks jurisdiction to hear this appeal and must dismiss it for lack of jurisdiction" (Motion for Dismissal at 4).

CIRI requested that the Board defer the deadline for filing a statement of reasons in this appeal to allow for a ruling by the Board on the motion to dismiss.

^{2/} The background and relevant terms of the Deficiency Agreement are described therein.

^{3/} See also Marathon Oil Co., 108 IBLA 177, 180 (1989) ("[A]t the point in time in which the Assistant Secretary subscribed his assent to the decision, the decision and all subsidiary matters relating thereto passed beyond the Board's jurisdiction.")

On February 6, 1995, the Acting Regional Solicitor, Alaska Region, filed a request for extension of time to March 15, 1995, to file a response to CIRI's motion to dismiss for lack of jurisdiction.

By order dated February 16, 1995, the Board took under advisement CIRI's motion to dismiss this matter for lack of jurisdiction, and granted the Acting Regional Solicitor's request for extension of time to and including March 15, 1995, in which to respond to CIRI's motion to dismiss.

On March 20, 1995, the Acting Regional Solicitor filed a response to CIRI's motion for dismissal of this appeal, stating that the Assistant Secretary and BLM "agree that the policy decision of the Assistant Secretary cannot be reviewed by the Board. Blue Star, Inc., 41 IBLA 333 (1979); The Wildemess Society, 122 IBLA 162 (1992)" (Response at 1). However, the Acting Regional Solicitor requests that this appeal "either be dismissed simply on the grounds that the appellant sought voluntary dismissal or on the grounds that the appeal is not ripe" (Response at 2). In connection with the argument that the appeal is not ripe, the Acting Regional Solicitor asserts:

The matter is not ripe for review by the Board because Appellant's property interests have not been affected by a decision of the BLM as required by 43 C.F.R. § 4.410(b). The heart of this controversy is whether Appellant will receive conveyance to land it wants from Appendix C of a certain agreement as part of its land entitlement under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 et. seq. The legal opinion of the Solicitor, adopted as a final position by the Assistant Secretary, does not conclude that Appellant will never get Appendix C land. * * * Rather, the opinion concludes that the Appellant cannot have such land at this time and must wait to see if other land conveyances are insufficient to satisfy applicable ANCSA land entitlement. [Footnote omitted].

(Response at 2). At some point, according to the Acting Regional Solicitor, BLM "will issue a decision either approving or rejecting pending selections for Appendix C land." Id.

Also, on March 20, 1995, CIRI filed a "Motion for Leave to File a Reply to the Department's Response to CIRI's Motion for Dismissal of Appeal" (Motion to File Reply), objecting to the Acting Regional Solicitor's request that this appeal be dismissed on ripeness grounds, arguing that "the Department is, in effect, asking the Board to reach a decision on the merits of the land conveyance dispute, even though the Department admits that the Board has no jurisdiction to review the Assistant Secretary's decision" (Motion to File Reply at 2).

CIRI's objection is well taken by the Board. As noted, by their letter dated December 22, 1994, the Assistant Secretary and the Solicitor

informed CIRC in emphatic terms that the December 2, 1994, letter to CIRC, concluding that the Department does not have the authority to convey Appendix C lands to CIRC, "does represent the final action of the Department on this matter." We agree with CIRC that the Assistant Secretary's adoption of the December 2 letter as the final action of the Department places the case squarely within the Blue Star doctrine. The Acting Regional Solicitor concedes this point in his response in citing Blue Star, Inc., supra. Accordingly, this Board is without jurisdiction to review the matter.

We hereby grant CIRC's motion to dismiss this appeal on the basis that the Board lacks jurisdiction under Blue Star to review it. The Acting Regional Solicitor's request that the Board dismiss the appeal on the basis that CIRC sought voluntary dismissal or that the appeal is not ripe for review by the Board is denied. ^{4/}

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we dismiss this appeal for lack of jurisdiction.

James L. Bymes
Chief Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

^{4/} Given the briefs already filed by the parties herein, and given our disposition of this appeal, we deem it unnecessary to delay our ruling until CIRC has filed a reply to the Acting Regional Solicitor's response to CIRC's motion for dismissal.

