

COOK INLET REGION, INC.

IBLA 95-339

Decided July 15, 1999

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting various land selections filed by an Alaskan Native regional corporation.

Reversed and remanded.

1. Alaska: Alaska Native Claims Settlement Act—Alaska Native Claims Settlement Act: Native Land Selections: Regional Selections: Generally

Where, in response to a BLM request that it relinquish certain selections, a Native regional corporation submits a document purporting to relinquish those selections subject to express conditions, which conditions BLM finds unacceptable, the submission from the regional corporation is properly construed as a refusal to relinquish the selections rather than as an unconditional relinquishment of those selections.

2. Alaska: Alaska Native Claims Settlement Act—Alaska Native Claims Settlement Act: Native Land Selections: Regional Selections: Generally

While the provisions of section 12 of Pub. L. No. 94-204, as construed in a Memorandum of Understanding between BLM and a Native regional corporation, require that all conveyances of lands and interests to the regional corporation be made under the auspices of Pub. L. No. 94-204, this does not mean that regional selection applications filed prior to Jan. 1, 1976, must be refiled under Pub. L. No. 94-204 before BLM may make conveyances under that Act.

APPEARANCES: Mark Rindner, Esq., Anchorage, Alaska, for Cook Inlet Region, Inc.; Dennis J. Hopewell, Esq., Deputy Regional Solicitor, Alaska Region, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Cook Inlet Region, Inc. (CIRI), has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 1, 1995, acknowledging the "relinquishment" of various regional selection applications, and rejecting, either in whole or in part, both those "relinquished" applications and other regional selection applications. All told, a total of 50 regional selections were rejected. Subsequently, by Orders dated October 5, 1998, November 4, 1998, and April 26, 1999, issued pursuant to requests of the parties hereto, this Board vacated the subject decision with respect to two specific selection applications (AA-11153-13 and AA-11153-23, respectively). For the reasons provided below, BLM's March 1, 1995, decision is now reversed as to all but one of the remaining regional selection applications 1/ and affirmed as to that regional selection application (AA-11153-10).

The applications involved herein were all filed by CIRI in December 1975 under the provisions of section 12(c) of the Alaska Native Claims Settlement Act (ANCSA), as amended, 43 U.S.C. § 1611(c) (1994), which had authorized the various Alaskan Native Regional Corporations established under section 7 of ANCSA, as amended, 43 U.S.C. § 1606 (1994), to select lands as part of the overall resolution of Native land claims in Alaska. 2/ The amount of land selection rights allocated to each regional corporation was based on the relative percentage of lands within each region.

Soon after the adoption of ANCSA, however, it became apparent that, owing to the fact that the CIRI region embraced both the city of Anchorage and the Kenai peninsula, fulfillment of its complete entitlement from lands within the region was problematic. Following the filing of a suit by CIRI and others (see *Cook Inlet Region v. Kleppe*, No. 75-2232 (9th Cir.)), negotiations between CIRI, the State of Alaska, and BLM resulted in a document styled "Terms and Conditions for Land Consolidation in the Cook Inlet Area" (T&C). The T&C established various mechanisms for resolving CIRI's land selection problems.

1/ Those applications are: AA-8098-05, AA-8098-07, AA-8098-08, AA-8098-10, AA-8098-13, AA-8098-14, AA-8098-19, AA-8098-22, AA-8098-25, AA-8098-28, AA-8098-34, AA-8098-35, AA-8098-40, AA-8098-43, AA-8098-50, AA-8098-53, AA-8098-56, AA-8098-59, AA-8098-60, AA-8098-61, AA-8098-63, AA-8098-68, AA-8098-69, AA-8098-72, AA-8098-74, AA-8098-75, AA-8098-76, AA-8098-77, AA-8098-79, AA-8098-81, AA-8098-86, AA-8098-88, AA-8098-89, AA-8098-92, AA-8098-94, AA-8098-99, AA-11153-02, AA-11153-03, AA-11153-04, AA-11153-05, AA-11153-06, AA-11153-07, AA-11153-16, AA-11153-18, AA-11153-20, AA-11153-22, AA-11153-25.

2/ Actually, one of the selections, AA-11153-25, was an in-lieu selection made under the provisions of section 12(a)(1) of ANCSA, 43 U.S.C. § 1611(a)(1) (1994). This is a distinction of no particular moment so far as this decision is concerned.

Subsequently, Congress expressly ratified the provisions of the T&C in section 12 of the Act of January 2, 1976, 89 Stat. 1150, as amended, 43 U.S.C. § 1611 note (1994) (hereinafter Pub. L. No. 94-204). As Congress noted, the intent of the legislation and the T&C was "to resolve harmful jurisdictional conflicts and arbitrary ownership patterns within Cook Inlet region" by, inter alia, permitting CIRI to shift more than half of its statutory entitlement from the populated Cook Inlet area to other adjacent regions. See H. Rep. No. 94-729 at 30, reprinted in 1975 U.S.C.C.A.N. at 2397. In addition to providing new areas from which CIRI could make its selections, the T&C and Pub. L. No. 94-204 also established mechanisms for processing selections within the Cook Inlet region. Section 12(c) of the Act further provided that:

The lands and interests conveyed to the Region under the foregoing subsections of this section and the lands provided by the State exchange under subsection (a)(1) of this section, shall be considered and treated as conveyances under the Settlement Act unless otherwise provided, and shall constitute the Region's full entitlement under sections 12(c) and 14(h)(8) of the Settlement Act.

43 U.S.C. § 1611 note (1994).

Notwithstanding the provisions of the T&C and Pub. L. No. 94-204, as amended, ^{3/} conveyance of land to CIRI in fulfillment of its statutory entitlement was subject to continuing difficulties. On April 11, 1986, CIRI and the Department entered into a Memorandum of Understanding (MOU) aimed at resolving various disagreements over implementation of the provisions of the T&C and Pub. L. No. 94-204. Of particular relevance herein, section 8 of the MOU established a mechanism by which BLM could request CIRI to relinquish selections filed prior to January 1, 1976.

Pursuant to the foregoing provision, BLM, by letter dated November 15, 1994, requested that CIRI relinquish a total of 50 regional selection applications to allow BLM to "clean-up of records." As BLM explained:

Section 12(c) of the Act of January 2, 1976, provides that CIRI's entitlement under Sec. 12(c) of ANCSA will be met through conveyance of selections made pursuant to the Act of January 2, 1976. Because the selection applications noted on page 1 of this letter were not filed pursuant to that Act, the applications cannot be processed toward conveyance. Our adjudication procedures require CIRI to file a new application when selecting a parcel to be conveyed pursuant to the various mechanisms created by the T&C (Bender Mountain and Lake Tustumena, for

^{3/} It should be noted that Pub. L. No. 94-204 was subsequently amended a number of times, including, inter alia, by section 1435 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2545-46, and section 606(d) of the Alaska Railroad Transfer Act of 1982, 96 Stat. 2566-71.

example). Such applications are made pursuant to the Act of January 2, 1976, as amended.

(Letter of November 15, 1994, at 2 (emphasis supplied).)

CIRI responded by letter dated December 21, 1994. ^{4/} While CIRI submitted a list of 30 selection applications ^{5/} which it "hereby relinquishes * * * subject to the conditions set out in this letter," it declined to relinquish the remaining 20 selection applications. Moreover, CIRI expressly advised BLM that "CIRI's relinquishments are conditioned on BLM taking no further action to reject those selections not relinquished at this time." (Letter of December 21, 1994, at 2.) After noting its fear that insufficient acreage was available to fulfill CIRI's entitlement, CIRI argued that "until BLM can assure CIRI its full ANCSA entitlement, asking for a relinquishment of any kind is premature." Id. CIRI continued, however, and noted that "in a spirit of cooperation, we are willing to partially address your request and relinquish certain selections, provided the remaining selections are left in place until CIRI's 12(c) entitlement is fulfilled." Id.

A little more than 2 months later, BLM issued the decision which is the subject of this appeal. While BLM recognized that CIRI had provided a conditional relinquishment of 30 selection applications, BLM asserted that it "cannot agree to and is not bound by the conditions set forth in CIRI's relinquishment," pointing out that paragraph 8 of the MOU did not provide for conditional relinquishments. (Decision at 3.) While refusing to accept the conditions which CIRI had applied to its relinquishments, BLM nevertheless declared that the relinquishment of 29 of the selections which CIRI had purported to conditionally relinquish ^{6/} "is hereby acknowledged to have taken effect December 21, 1994." Id.

Notwithstanding the fact that BLM had deemed 29 of the 50 selection applications relinquished, it then proceeded to reject all of the applications, with the exception of AA-11153-10 (see note 6, supra), on the

^{4/} Inasmuch as the BLM request had been received by CIRI on Nov. 22, 1994, this response would have been untimely under the amended section 8 of the MOU. See note 8, infra. However, BLM had advised CIRI in its Nov. 15 request that, in view of the number of applications involved, CIRI would be allowed 30 days in which to respond.

^{5/} Those applications were: AA-8098-05, AA-8098-07, AA-8098-13, AA-8098-14, AA-8098-22, AA-8098-25, AA-8098-28, AA-8098-34, AA-8098-43, AA-8098-50, AA-8098-53, AA-8098-63, AA-8098-68, AA-8098-69, AA-8098-72, AA-8098-74, AA-8098-75, AA-8098-79, AA-8098-81, AA-8098-86, AA-8098-88, AA-8098-89, AA-8098-94, AA-8098-99, AA-11153-03, AA-11153-04, AA-11153-05, AA-11153-07, AA-11153-10, AA-11153-16.

^{6/} Selection application AA-11153-10, which was among the applications conditionally relinquished by CIRI, was not included among the applications which BLM deemed relinquished as of Dec. 21, 1994. As noted in the text, this application was independently rejected in the Mar. 1, 1995, decision on the ground that it had been previously rejected in its entirety.

ground that, since the applications had not been filed pursuant to Pub. L. No. 94-204, none of the applications were allowable. ^{7/} Insofar as selection application AA-11153-10 was concerned, this application was rejected on the ground that it had been previously rejected in its entirety by decision dated June 25, 1986, which action had been affirmed by this Board in an opinion styled State of Alaska, 127 IBLA 317 (1993). Thus, all 50 of CIRI's selection applications were rejected, some on multiple grounds. CIRI duly filed a notice of appeal challenging both BLM's treatment of its relinquishment as unconditional as well as BLM's rejection of all of the applications involved.

While CIRI does challenge BLM's "acceptance" of its conditional relinquishment as an unconditional relinquishment in its statement of reasons in support of its appeal (SOR), the bulk of its argument is directed towards refuting BLM's assertion that all of its selections filed prior to January 2, 1976, are subject to rejection because they were filed prior to that date. Thus, it points out that there is nothing in either the T&C or the provisions of section 12 of Pub. L. No. 94-204 which purported to invalidate selections previously made by CIRI under the provisions of section 12(c) of ANCSA, supra, or which affirmatively required CIRI to refile those selections. CIRI argues that, fairly read, all that these provisions require is that any conveyance of land to CIRI after January 2, 1976, based on ANCSA selection applications filed prior to that date must be made pursuant to Pub. L. No. 94-204 and meet the requirements of that Act, and that receipt by CIRI of the land and interests as delineated in Pub. L. No. 94-204, constitutes a complete fulfillment of its entitlement under sections 12(a) and 14(h)(8) of ANCSA. See generally SOR at 6-9.

CIRI finds support for its interpretation in the provisions of paragraph 8 of the MOU. CIRI notes that, if BLM's interpretation of the T&C and Pub. L. No. 94-204, were correct, paragraph 8 of the MOU would make no sense because it provides a procedure under which BLM can seek to have CIRI voluntarily relinquish selections which BLM now contends can never be allowed under any circumstances. See SOR at 9-12.

In response, BLM asserts that it properly treated CIRI's "conditional relinquishment" as unconditional and reaffirms its position that the T&C and Pub. L. No. 94-204, require that CIRI's selection applications previously submitted under the provisions of sections 12(c) and 14(h)(8) of ANCSA must be refiled under the provisions of Pub. L. No. 94-204. With respect to CIRI's "conditional relinquishment," BLM notes that nothing in paragraph 8 of the MOU authorizes the placing of conditions on relinquishments which BLM requests thereunder. BLM argues that CIRI knew that BLM

^{7/} While all of CIRI's selection applications (with the exception of AA-11153-10) were rejected on this basis, it should be noted that, with respect to eight applications which had already been partially rejected, the rejection was only as to the lands remaining within the selection as of Mar. 1, 1995.

would not accept conditional relinquishments based on BLM's stated position in litigation in Seldovia Native Association, Inc. v. United States, A91-076 CIV (D. Alaska) to which CIRI was a party. Given CIRI's understanding of its position, BLM asserts that it was justified in treating the CIRI submission as an unconditional relinquishment as to the 30 selections involved. See Answer at 8-9.

Insofar as appellant challenges the rejection of 49 of the selections because they were not filed under the provisions of Pub. L. No. 94-204, BLM relies on its "long-standing practice of requiring CIRI to file a new selection application for land it is to be conveyed pursuant to section 12 of Pub. L. No. 94-204." (Answer at 5.) BLM notes that this procedural requirement has been invoked in the past with respect to other CIRI selections and argues that it is consistent with the statutory mandate (Pub. L. No. 94-204) under which it must process CIRI's entitlement. Id. at 5-7.

Finally, BLM contends that, quite apart from the theory upon which it relied for rejecting all of the selection applications, a number of the selection applications are subject to rejection on varied grounds, including the fact that some involve non-Federal lands, or embrace lands within a national defense withdrawal, or have been under continuous use by a Federal agency, or were never withdrawn for selection by CIRI under ANCSA. See generally Answer at 9-15.

CIRI has responded to BLM's claim that rejection of these selection applications is in accord with long-standing practice by noting that, while it has in the past "as a matter of accommodation to BLM" acceded to BLM's request that it file new selection applications for parcels which were being conveyed to it, its action in accommodating BLM did not serve to establish the correctness of BLM's interpretation of the relevant statutes. (Reply at 3.) CIRI reiterates its assertion that BLM's interpretation of Pub. L. No. 94-204 would render paragraph 8 of the MOU meaningless. See (Reply at 4-5.)

CIRI takes particular exception to BLM's reliance on the Seldovia litigation as justification for ignoring the conditions which CIRI had attached to its relinquishment. Thus, CIRI notes that not only was there no ruling on this issue in the Seldovia litigation but that the underlying facts involved therein were vastly dissimilar to the situation involved in the instant appeal. (Reply at 6-8.) CIRI asserts that if BLM was dissatisfied with CIRI's conditional relinquishment, the proper recourse was for BLM to decline to accept it and not to attempt to recast it as an unconditional relinquishment. (Reply at 9-10.)

There are thus two discrete issues before the Board. First of all, was BLM's treatment of CIRI's conditional relinquishment of 30 selection applications proper? Second, is BLM correct in its assertion that, under the provisions of section 12 of Pub. L. No. 94-204, all selections filed by CIRI under section 12 of ANCSA must be refiled under Pub. L. No. 94-204 before the conveyance of land may be approved? We will examine these two questions seriatim.

[1] Initially, however, we will set out paragraph 8 of the MOU in full since it has a direct bearing on both issues. Paragraph 8 provides:

Upon receipt of a written request from the BLM Alaska to relinquish selections upon specific lands identified by legal description, CIRI shall, within fifteen (15) days, [8] review said request, determine those selections which were made prior to January 1, 1976, which it agrees to relinquish, and respond to BLM Alaska in that regard in writing. CIRI expressly agrees that this agreement will constitute a relinquishment if CIRI does not respond to the BLM Alaska request within the prescribed time period. BLM Alaska reserves the right to adjudicate and reject, under applicable law, any selections not relinquished under this procedure.

Noting that nothing in the foregoing language authorizes a conditional relinquishment, BLM asserts that it was justified in ignoring the conditions which CIRI sought to place on its relinquishment and treating it as unconditional. We cannot agree.

A fair reading of paragraph 8 shows that CIRI was under no obligation, whatsoever, to agree to any relinquishment requested by BLM. Indeed, it was not required to even justify its refusal to relinquish any parcel as requested by BLM. All that it was required to do was to timely respond, in writing, to any BLM request. It is true, of course, that nothing in the language of paragraph 8 expressly authorized the filing of a conditional relinquishment with respect to any parcel. But, given the fact that CIRI's right to refuse a relinquishment under this paragraph was essentially unconstrained, it is difficult to give credence to BLM's suggestion that a conditional relinquishment should properly be construed as a relinquishment without conditions. Rather, it seems to us, the correct approach, given the unacceptability of the condition CIRI sought to attach, would have been to treat CIRI's response as a refusal to relinquish the 30 parcels in question.

Little, if any, support for BLM's position can be gleaned from the litigation involved in Seldovia Native Association, Inc. v. United States, *supra*. Not only does CIRI correctly point out that there was no decision by the Court on the issue in controversy, but the fact situation involved in Seldovia is so dramatically different from that involved herein as to render any comparisons virtually meaningless. Thus, in Seldovia, the issue involved was whether or not Seldovia had relinquished certain land selections in Lake Clark. Such relinquishment was required under section 12(a)(3) of Pub. L. No. 94-204 as a precondition of the provisions of that law going into effect. On its face, the document which Seldovia

^{8/} This 15-day period was originally a 30-day period for response. It was shortened to 15 days in a Settlement Agreement between BLM and CIRI dated Jan. 12, 1990.

filed declared that those selections "are hereby irrevocably withdrawn, relinquished and waived." However, appended to the bottom of the relinquishment form was a typed statement that "All other 12(b) selections made by Seldovia Native Association, Inc. shall remain valid." See Answer, Ex. A at 2. It should be noted that a number of Seldovia's remaining selections embraced lands which, under the T&C, were to be conveyed to the State of Alaska or were otherwise not available for section 12(b) selections by Seldovia. See Reply at 7-8.

BLM treated Seldovia's submission as constituting a complete relinquishment of the land selections involved. As CIRI notes, for the next 15 years Seldovia accepted benefits under Pub. L. No. 94-204 and the T&C. It was only after a decade and a half of implementation of Pub. L. No. 94-204 that Seldovia attempted, in effect, to rewrite provisions of the T&C by arguing that its relinquishment of lands in the vicinity of Lake Clark was conditional upon the conveyance to it of lands otherwise not available to it under the T&C.

In contrast to Seldovia's statement that its selections "are hereby irrevocably withdrawn, relinquished and waived," the document CIRI filed expressly advised that CIRI was relinquishing various selections "subject to the conditions set out therein." And, while Seldovia's submission never expressly connected its relinquishment to the "condition" that its other section 12(b) selections remain valid, CIRI explicitly stated that "CIRI's relinquishments are conditioned on BLM taking no further action to reject those selections not relinquished at this time."

Insofar as Seldovia was concerned, its submission manifested a present intent to relinquish its claims, though possibly under a misapprehension as to the status of its remaining selections. The fact that a relinquishment might have consequences unforeseen or unintended is irrelevant so long as the relinquishment is, itself, not expressly conditioned or qualified. Treatment of Seldovia's relinquishment as binding was fully in accord with the Board and Departmental precedents relied upon by BLM. See Answer, Ex. B at 2-6.

In contrast, CIRI's "relinquishment" was expressly conditioned on BLM's forbearance in acting on other selections. There was thus, on the face of the document, only a conditional intent to relinquish its claims. As we indicated above, BLM was perfectly free to reject any conditions CIRI sought to apply to its relinquishment. BLM did so. BLM's action, however, did not metamorphose a conditional relinquishment into one without conditions. Rather, it rendered any relinquishment a nullity, turning CIRI's submission not into an unconditional relinquishment but rather into a refusal to relinquish. BLM's purported acceptance of CIRI's December 21, 1994, submission as an unconditional relinquishment must be reversed.

[2] Because CIRI's conditional relinquishment is properly construed in the instant case as a refusal to relinquish, BLM was, under the terms

of paragraph 8 of the MOU, free to take such future actions with respect to these selections as it deemed appropriate. In essence, BLM did precisely that in its March 1, 1995, decision since, notwithstanding its assertion that CIRI had relinquished 30 of its selection applications, BLM included all of these applications in its list of applications which were being rejected because they had not been filed under the provisions of Pub. L. No. 94-204. We turn now to the question as to the correctness of that determination.

BLM argues that its rejection of 49 of the selection applications on the ground that, having been filed prior to January 3, 1976, they could not be considered to have been filed under the provisions of Pub. L. No. 94-204, was merely the implementation of a long-standing practice and fully in accord with the provisions both of the T&C and Pub. L. No. 94-204. For its part, CIRI argues that, while it had, in the past, complied with BLM requests that it refile certain pre-1976 applications in order to obtain conveyances under Pub. L. No. 94-204, it had done so simply as an accommodation to BLM in order to expedite receipt of the conveyances and had never acceded to BLM's interpretation of the statute. In any event, CIRI argues that BLM's position is not consistent with the proper interpretation of Pub. L. No. 94-204 and is completely at odds with paragraph 8 of the MOU.

An examination of the statute fails to provide a definitive resolution to this question of interpretation. While it is clear that conveyances must be made pursuant to Pub. L. No. 94-204, section 12(c) of the statute also provides that the lands and interests conveyed "shall be considered and treated as conveyances under the Settlement Act." See Robert A. Perkins, 119 IBLA 375, 379 (1991). The Act is simply silent as to the treatment of CIRI selection applications already filed under the provisions of ANCSA. In our view, looking solely at the language of the Act, the statutory provisions could be interpreted either as merely requiring that any prior ANCSA selections be processed and the lands conveyed under Pub. L. No. 94-204 or as requiring CIRI to refile those selection applications which are in consonance with the substantive provisions of Pub. L. No. 94-204 as new selection applications under that Act.

The legislative history of Pub. L. No. 94-204 fails to expressly clarify this question, though we note that the following language appears in the House report:

The Committee feels that the Cook Inlet Region was under some constraints in the negotiations resulting in this agreement. It is expected that ambiguities and uncertainties in the complex, delicately balanced settlement will be resolved favorably, where appropriate, to the Cook Inlet Region.

H. Rep. No. 94-729 at 32-33, reprinted in 1975 U.S.C.C.A.N. at 2399. While we believe this language may lend some support to CIRI's position (since

a requirement that CIRI refile all of its selection applications might be deemed a resolution unfavorable to CIRI, we do not think it conclusive or dispositive.

The same, however, cannot be said of paragraph 8 of the MOU. An examination of the language of paragraph 8 clearly shows that adoption of BLM's interpretation of the statute would render that provision of the MOU meaningless. Paragraph 8 of the MOU, by its terms, applies only to selection applications filed before January 1, 1976. If, however, BLM is correct that none of the selection applications filed prior to January 1, 1976, can be allowed, the entire process of obtaining relinquishments becomes irrelevant since all of CIRI's pre-1976 applications are void awaiting only BLM's declaration to that effect. Why would any party go to the considerable trouble of establishing procedures to obtain relinquishments of applications if it were within that party's authority to unilaterally nullify those same applications without the other party's concurrence? BLM simply has no explanation which would plausibly answer this question.

The MOU can only be seen as adopting an interpretation of Pub. L. No. 94-204 at odds with that now advanced by BLM, *viz.*, that lands covered by pre-1976 selection applications may be conveyed under the auspices of Pub. L. No. 94-204 without the need to file new applications. Since there is nothing in the statute or regulations which can fairly be said to contradict such an interpretation, we hold that BLM is bound to it. Therefore, BLM's determination that 49 of the selection applications were properly rejected because the applications had not been filed pursuant to Pub. L. No. 94-204 must be, and hereby is, reversed.

We noted above that, before the Board, BLM has suggested that numerous applications involved herein are also subject to rejection for a variety of deficiencies. We have no doubt that, at a minimum, a number of these selection applications are fatally flawed. But, be that as it may, BLM did not purport to reject any of the selection applications involved herein, with the exception of AA-11153-10, for specific deficiencies relating to the particular selection. BLM is, of course, free to do so in the future. ^{9/} However, we do not deem it a proper exercise of our *de novo* review authority to attempt to adjudicate these issues as a matter of first impression, particularly considering the number of selections involved herein, and we decline to do so. ^{10/}

^{9/} Since, as noted above, CIRI's Dec. 21, 1994, response is properly construed as a refusal to relinquish, any BLM obligation of consultation with CIRI which might be deemed to exist under paragraph 8 of the MOU has been discharged, at least as to these selection applications.

^{10/} We note that many of the grounds raised by BLM would, if proven, clearly justify rejection of some of the selections. Hopefully, the parties will be able to reach an amicable settlement with respect to these and the other selection applications. The parties may also wish to consider the advisability of recourse to alternative dispute resolution if a complete settlement proves unattainable.

There remains only the issue of whether or not selection application AA-11153-10 was properly rejected. The March 1, 1995, decision had based rejection of this application on the ground that it had previously been rejected in its entirety by decision dated June 25, 1986. It was further noted that this determination had been appealed by the State of Alaska and that this Board, in a decision styled State of Alaska, supra, had affirmed BLM's decision and that the case file had been closed. Not only has CIRI failed to affirmatively challenge BLM's action on this selection, but we note that BLM is clearly correct in its assertion that this selection had previously been rejected. See State of Alaska, supra at 318 n.1. Accordingly, we affirm rejection of this selection application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as to the rejection of regional selection application AA-11153-10 but reversed as to all other regional selection applications involved herein and the case files are remanded for further action as deemed appropriate in accordance with the foregoing.

James L. Burski
Administrative Judge

I concur.

James L. Byrnes
Chief Administrative Judge

