



WILLIAM F. ALSTROM

182 IBLA 136

Decided April 17, 2012



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

WILLIAM F. ALSTROM

IBLA 2011-142

Decided April 17, 2012

Appeal from a decision of the Alaska State Office, Bureau of Land Management, cancelling Certificate of Allotment 50-2010-0072, which stemmed from Native allotment applications AA-084021-A and AA-084021-B.

Affirmed.

1. Patents of Public Lands: Generally--Patents of Public Lands: Effect of--Patents of Public Lands: Suits to Cancel

A certificate of allotment issued pursuant to the Alaska Native Veterans Allotment Act that describes lands previously designated by statute as wilderness is null and void on its face, and no recourse to a court is necessary to procure its cancellation.

APPEARANCES: William F. Alstrom, St. Marys, Alaska, *pro se*.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

William F. Alstrom, an Alaska Native, a Vietnam veteran, and an Alaska resident, timely appealed from an April 5, 2011, decision of the Alaska State Office, Bureau of Land Management (BLM), cancelling his Certificate of Allotment, 50-2010-0072, which was issued on December 17, 2009, pursuant to the Alaska Native Veterans Allotment Act (ANVAA), 43 U.S.C. § 1629g (2006),¹ and its implementing regulations in 43 C.F.R. Subpart 2568. BLM determined that the patent was void *ab initio* because it mistakenly conveyed to Alstrom lands designated by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487, Title VII, § 702(2), 94 Stat. 2371, 2418 (Dec. 2, 1980), as Andreafsky Wilderness, which is prohibited by 43 U.S.C. § 1629g(a)(3)(D).

¹ Unless otherwise specified, all Federal statute citations are to the 2006 edition of the U.S. Code.

Legal Background

The Act of May 17, 1906, known as the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970) (Native Allotment Act), granted the Secretary of the Interior authority to allot up to 160 acres of vacant, unappropriated, and unreserved non-mineral land in Alaska to any Native Alaskan Indian, Aleut, or Eskimo, upon satisfactory proof of substantially continuous use and occupancy for a 5-year period. In 1971, in the attempt to expeditiously settle all Natives' claims to lands in Alaska, Congress repealed the Native Allotment Act, subject to a savings provision for pending Native allotment applications, by the Alaska Native Claims Settlement Act (ANCSA), Pub. L. No. 92-203, § 18(a), 85 Stat. 710 (Dec. 18, 1971), 43 U.S.C. § 1617(a). Thus, ANCSA extinguished all claims based on use and occupancy except those pending before the Department on December 18, 1971. *See Joan A. (Anagick) Johnson*, 159 IBLA 121, 123-24 (2003).

In 1980, Congress passed ANILCA, portions of which amended both the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136,² and ANCSA, 43 U.S.C. §§ 1601-1629h, to protect and preserve the scenic, natural, cultural and environmental values on the public lands in Alaska for the national interest. Section 702(2) of ANILCA designated approximately 1.3 million acres within the Yukon Delta National Wildlife Refuge as Andreafsky Wilderness. *See ANILCA*, Pub. L. No. 96-487, Title VII, § 702(2), 94 Stat. 2371, 2418 (Dec. 2, 1980); *see also* 16 U.S.C. § 1132 (Note). The Department published in the *Federal Register* on February 24, 1983, the extensive legal description of the Andreafsky Wilderness'

² Congress passed the Wilderness Act to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, . . . [and] to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas," and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness

16 U.S.C. § 1131(a).

external boundaries. 48 Fed. Reg. 7890, 8006-8014; *see* U.S. Geological Survey Kwiguk (B-2) Quadrangle map.

Realizing that many Alaskans who served in the United States armed forces during the Vietnam war could not timely claim a Native allotment under ANCSA, Congress enacted ANVAA in 1998.³ ANVAA amended ANCSA by adding a new section 41, 43 U.S.C. § 1629g, which created an “Open Season for Certain Alaska Native Veterans for Allotments.” During that time, a qualifying person was, in certain circumstances, “eligible for an allotment of . . . [F]ederal land totaling 160 acres or less under the Act of May 17, 1906” *Id.* § 1629(g)(a)(1); *see* 43 C.F.R. § 2568.90(a).

However, ANVAA restricted the alienation of certain public lands. Congress, cognizant of the Wilderness Act, 16 U.S.C. §§ 1131-1136 and ANILCA, 16 U.S.C. §§ 3101-3233, prohibited the Department from approving allotment applications, which claimed, *inter alia*, lands that had been designated as wilderness. 43 U.S.C. § 1629g(a)(3)(D); *see* 43 C.F.R. § 2568.91(d). Thus, even if an Alaska Native veteran applicant qualified for an allotment on lands designated as wilderness by statute, no conveyance of those lands could take place. 43 U.S.C. § 1629g(a)(2); *Bart G. Ahsogeak*, 167 IBLA 148, 154 (2005). Instead, the Native could choose an alternative allotment from certain types of land within the same ANCSA Region as the land for which he or she originally qualified. *See* 43 U.S.C. § 1629g(a)(4); 43 C.F.R. § 2568.110; *Bart G. Ahsogeak*, 167 IBLA at 154.

Factual Background

The facts of this case are not in dispute. Alstrom, a member of the U.S. Air Force during the Vietnam War, filed with BLM a timely Native allotment application under ANVAA, 43 U.S.C. § 1629g, for two 80-acre, non-contiguous parcels, situated in secs. 1 (Parcel A), and 10 and 11 (Parcel B), of T. 27 N., R. 73 W., Seward Meridian, Alaska, about 31 miles northeasterly of St. Marys, Alaska. The record for Parcel A (AA-084021-A) contains a Master Title Plat dated April 26, 2002, which shows that all of the acreage in T. 27 N., R. 73 W. was withdrawn by “PL 96-487” for the “Yukon Delta NWR,” but makes no mention of the Andreafsky Wilderness. The record before us also contains the Historic Index (HI) for the same township and range. The HI specifies that Congress designated the entire area of T. 27 N., R. 73 W. as “YUKON DELTA NWR & ANDREAFSKY WDNS.” The next entry on the HI identifies Alstrom’s Native allotment application.

³ This statutory provision was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1999, Pub. L. No. 105-276, 112 Stat. 2461, 2516-18 (Oct. 21, 1998).

By decision dated March 25, 2008, BLM determined that Alstrom was eligible to receive an allotment, finding that, when he began his qualifying use and occupancy in 1964, the lands were vacant, unappropriated, and unreserved. BLM's decision identifies the selected land as within the Yukon Delta National Wildlife Refuge, a Conservation System Unit (CSU) as defined by section 102(4) of ANILCA, and states that, "[a]pplicants may only receive title to the lands they used and occupied within a CSU *other than a National Wilderness* or any part of a National Forest, if the managing agent of the CSU agrees that conveying the land is not inconsistent with the purposes of the CSU." Decision dated Mar. 25, 2008, at 5 (emphasis added). The record reveals that, before making its determination, BLM conferred with the U.S. Fish and Wildlife Service (FWS). The FWS indicated that the Refuge Manager had been invited to, but did not attend, BLM's field examination held on July 27, 2004, and, after answering a number of questions on the form, determined that Alstrom's use and occupancy was not inconsistent with the purposes of the Yukon Delta National Wildlife Refuge. Alaska Native Veteran Allotment Act Part 1, Application Assessment Part 2, Determination, dated Mar. 9, 2007, at 2-4 (FWS ANVAA Determination).⁴ BLM's decision notes this concurrence, but does not discuss the Andreafsky Wilderness, even though, in 1980, with passage of section 702(2) of ANILCA, Alstrom's selected lands were designated as part of the Andreafsky Wilderness within the Refuge, as discussed above. BLM surveyed Alstrom's allotment and officially filed the plat of survey (U.S. Survey No. 13957) on November 9, 2009. On December 17, 2009, BLM issued Alstrom a certificate of allotment for the selected lands.

By decision dated April 5, 2011, titled "Certificate No. 50-2010-0072 Cancelled[;] Applicant Eligible to Choose Alternative Allotment Locations for Alaska Native Veterans Allotment Act (ANVAA) Applications AA-84021-A and AA-84021-B," BLM notified Alstrom that his certificate completely overlapped lands designated as Andreafsky Wilderness. "Under the ANVAA[,] the Secretary of the Interior cannot convey allotments in 'lands designated as wilderness by statute.' As such, the Secretary lacked the power to make this transfer and the patent (certificate) was void on its face upon issuance." Decision at 1 (quoting 43 U.S.C. § 1629g(a)(3)(D)). Because BLM had already determined that Alstrom was eligible to receive an allotment, the agency instructed Alstrom that he was eligible to choose an alternative allotment location and that he should file a revised application as soon as possible. *See id.* at 6. Alstrom appealed.

⁴ The FWS qualified its determination by stating: "*This consistency determination is of no effect unless and until a written decision by the [BLM] finding this Alaska Native Veteran Allotment application approved in this location becomes effective.*" FWS ANVAA Determination at 4 (emphasis in original).

Alstrom's complete notice of appeal reads as follows:

I am appealing your Decision, dated April 5, 2011, regarding my Native veteran allotment applications AA-84021-A and AA-84021-B, cancelling the Certificate of Allotment No. 50-2010-0072 that was issued to me on December 17, 2009, for Lots 1 and [] 2, U.S. Survey No. 13957.

When BLM received my application on February 1, 2002, it should have been immediately determined that the location I applied for was not eligible for selection under the Alaska Native Veterans Allotment Act (ANVAA) because the land I applied for was designated as wilderness. Instead, BLM continued processing my application and subsequently issued a Certificate of Allotment to me for both parcels.

In good faith, thinking that I actually had ownership of the land I applied for, I constructed a two story cabin on Parcel B, located in Sections 10 and 11, T. 27 N., R. 73 W., SM, after receiving the Certificate of Allotment. It will be impossible to move my cabin to an alternate location without structural damage.

The Board received the administrative record for this case on April 22, 2011. Since then, we have received no additional pleadings from Alstrom and none from BLM.

Discussion

Alstrom does not contest that his allotment is located on lands designated as Andreafsky Wilderness. He does not explicitly challenge the cancellation of his certificate of allotment or BLM's requirement that he select new lands in lieu of the current parcels. He does not attempt to show error in the factual or legal bases for BLM's decision on appeal. Instead, appellant takes issue with BLM's failure to determine the legal status of the lands he had selected in his allotment application at the time BLM rendered its March 25, 2008, decision determining his eligibility to receive the allotment. We construe this argument as one of laches and/or estoppel. In effect, appellant argues that BLM cannot now disclaim its earlier determination by claiming it erred in representing to Alstrom that he was the rightful owner of those lands, because he detrimentally relied upon BLM's misrepresentation by building a home on Parcel B that cannot be moved.

It is very regrettable that the agency did not determine that Alstrom's selected lands overlapped a wilderness preserve until almost 10 years after Alstrom filed his allotment application. Unfortunately, however, we cannot provide the equitable relief appellant requests. "The authority of the United States to enforce a public right

or protect a public interest [such as the Andreafsky Wilderness] is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.” 43 C.F.R. § 1810.3(a). Moreover, estoppel cannot lie if the effect of such action would be to grant a person an interest not authorized by law. See *Dan Adelman*, 169 IBLA 13, 18 (2006), and cases cited. Thus, BLM cannot be estopped from deciding that a certificate of allotment issued contrary to a Federal statute for lands situated in the Andreafsky Wilderness. See 43 U.S.C. § 1629g(a)(3).⁵

This does not end our discussion, however, because it is not clear from the decision on appeal that BLM has the authority to cancel Alstrom’s certificate of allotment. Generally, upon issuance of a certificate of allotment to a tract of land, all unreserved, legal title and control passes from the United States, and the Department has no further jurisdiction over those lands. Thus, in order to cancel a certificate of allotment that was issued improvidently, the United States normally must seek a reconveyance of the land by bringing suit in a court of competent jurisdiction; it typically may not administratively cancel a certificate of allotment because it has no jurisdiction to do so. *Germania Iron Company v. U.S.*, 165 U.S. 379, 383 (1897); *City of North Las Vegas*, 178 IBLA 377, 382 (2010).⁶

However, the record contains a memorandum to BLM from the Department’s Office of the Solicitor, Alaska Region, dated March 8, 2011, that advised BLM that the general jurisdictional rule does not apply where the certificate of allotment is a nullity – BLM may unilaterally cancel such a certificate of allotment without any judicial involvement. Memo at 1 (citing *Sky Pilots of Alaska, Inc.*, 40 IBLA 355, 366, 367 (1979) (*en banc*)). After our own review, we find, based on the particular facts of this case and on Board precedent, that BLM did have the power to cancel Alstrom’s certificate of allotment. Thus we affirm BLM’s decision. See *U.S. v. Heirs of Harry McKinley*, 169 IBLA 184, 197 (2006) (discussing this Board’s *de novo* review authority).

The March 8, 2011, memorandum cites *Sky Pilots of Alaska, Inc.*,

⁵ Also implicit in his appeal is his concern about whether he will receive monetary damages for his good faith reliance on the conveyance document’s validity, *i.e.*, just compensation for the home he built on Parcel B. Awards of compensation in the form of monetary damages for breach of contract or other potentially actionable conduct are beyond the scope of the jurisdiction delegated to the Board. See *Robbins v. BLM*, 170 IBLA 219, 227 (2006), and cases cited.

⁶ While these cases discuss patents, rather than certificates of allotments, distinctions between the two types of documents are immaterial to this case. See 43 C.F.R.

40 IBLA 355. There, the Board majority held that the patent at issue was null and void when issued because the recipient of the patent, Sky Pilots of Alaska, Inc., had never been incorporated or certified to do business in the State of Alaska and, therefore, was a legal nonentity.⁷ Under the circumstances of *Sky Pilots of Alaska, Inc.*, we held that, since the patent was void when issued, the Department never lost jurisdiction over the res because legal title never passed to the patentee, and therefore no judicial proceedings were necessary to be initiated by the United States for the purposes of cancelling the patent.

This Department has held in decisions too numerous to cite, that generally, upon issuance of a patent to a tract of land, all unreserved title and control passes from the United States, and the Department has no further jurisdiction. The general rule is that to cancel a patent which has been issued improvidently, it is necessary for the United States to bring suit in a court of competent jurisdiction. However, this rule is not applicable where the patent is a nullity, and void when issued, as in this case.

Sky Pilots of Alaska, Inc., 40 IBLA at 367. The Board, quoting *Charles H. Moore*, 27 L.D. 481, 491 (1898),⁸ continued:

[I]t must be considered as the settled law that a patent is void on its face not only when fatally defective by its own terms but also,

⁷ There exists an important legal distinction between the terms “void” and “voidable,” as the Department explained in *Rogers v. Southern Pacific R.R. Co.*, 43 L.D. 208, 209 (1914): “A thing is void which is done against the law, at the time of doing it, and where no person is bound by the act. A thing is ‘voidable’ which is done by a person who ought not to have done it, but who nevertheless can not avoid it himself after it is done.” (Citation omitted.) Since a voidable patent may have passed title to the grantee, it can only be cancelled by the judiciary. See *D.L. Weist Enterprises, Inc.*, 178 IBLA 116, 117 (2009), *Alyeska Pipeline Service Co.*, 175 IBLA 1, 2 (2008); *Eddie S. Beroldo*, 123 IBLA 156, 158, 163 (1992); *Rosander Mining Co.*, 84 IBLA 60, 62 (1985); *Henry J. Hudspeth, Sr.*, 78 IBLA 235, 238 (1984).

⁸ *Charles H. Moore* is a departmental case involving a Native American who received a patent to lands in Utah in error; the document (scrip) entitling the patentee to an allotment only included lands in Michigan, Wisconsin, and Minnesota. By the time the Department heard the case, however, the U.S. Supreme Court, in *Fee v. Brown*, 162 U.S. 602 (1896), had already held as a matter of law that patents issued to other Natives pursuant to nearly-identical scrips in states other than Michigan, Wisconsin, and Minnesota, were void. The Department, based on *Fee v. Brown*, found the Utah patent void on its face.

whenever its invalidity appears by reference to any matter of which judicial notice may be taken, such as public statutes or treaties; and that such a patent is entirely null, conveys no title, and has no operative effect requiring resort to a court of equity for its avoidance.

Sky Pilots of Alaska, Inc., 40 IBLA at 368. When explaining what it meant for a patent to be absolutely void, or void on its face, the U.S. Supreme Court elaborated “that the patent is . . . invalid, either when read in the light of existing law, or by reason of what the court must take judicial notice of; as, of course, for instance, that the land is reserved by statute from sale, or otherwise appropriated, or that the patent is for an unauthorized amount, or is executed by officers who are not intrusted by law with the power to issue grants of portions of the public domain.” *St. Louis Smelting & Refining Co. v. Kemp*, 104 U.S. 636, 644 (1881); see *James A. Cobb*, 37 L.D. 181, 184 (1908) (stating that if there was no statute allowing for public land conveyance, any attempted conveyance of the land would be entirely beyond the jurisdiction of the land department and absolutely void, “and no proceedings would be necessary to set aside its abortive action resulting from an attempt to exercise a power it did not possess”).

Thus, a patent must be absolutely void before the Department may cancel it. A patent procured in violation of an act of Congress, which imposed restrictions upon alienation of public lands, is facially void. See *U.S. v. Stone*, 69 U.S. 525, 531-32 (1864) (“[T]he issuing of a patent for public lands is a ministerial act, which must be performed according to law; and that where it has been issued, whether fraudulently or not, without authority of law, it is void.”). Here, BLM issued a patent for lands situated in the Andreafsky Wilderness, in direct violation of 43 U.S.C. § 1629g(a)(3). Because such a conveyance was a prohibited act, it never had the force of a legal document transmitting any title to the lands, and the property remained in the public domain. Consequently, BLM has the jurisdiction to cancel Alstrom’s patent.

Conclusion

The law is clear. Notwithstanding our concerns regarding BLM’s missteps in this case, the Department is authorized to cancel a land patent conveyance that is void on its face. Certificate of Allotment 50-2010-0072 describes lands previously designated by statute as wilderness and therefore was void when issued. A void *ab initio* certificate of allotment does not convey any right, title, or interest in or to the lands described therein, the Department maintains jurisdiction over the res, and no judicial proceedings need be initiated by the United States for the purpose of cancelling the certificate of allotment.

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.

_____/s/_____
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge