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United States Department of the Interior

TAKE PRIDE IN AMERICA

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

ATTORNEY GENERAL
TRANSPORTATION SECTION

4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

MAY 10 1991

IN REPLY REFER TO:

FOURTH JUDICIAL DISTRICT
STATE OF ALASKA

FRANK SANFORD ET AL.

IBLA 88-589

Decided April 29, 1991

Appeals from decisions of the Alaska State Office, Bureau of Land Management, modifying Native allotments by making them subject to a reservation of a 100-foot wide easement for a road. F-032026, F-534.

Affirmed as to F-032026; appeals of Ahtna, Inc. and Mentasta Lake Village Traditional Council dismissed.

1. Alaska: Native Allotments

A decision recognizing that a Native allotment is subject to an easement for highway purposes extending 50 feet on each side of the centerline of a road conveyed to the State of Alaska by a quitclaim deed issued pursuant to the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141, will be affirmed where an easement of that width had been established under the Act of June 30, 1932, 47 Stat. 446.

APPEARANCES: Frank Sanford, pro se; Joeneal R. Hicks, Assistant Resource Manager, for Ahtna, Inc., Eva A. John, First Chief, for the Mentasta Lake Village Traditional Council; E. John Athens, Jr., Esq., Fairbanks, Alaska, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE GRANT

By decision dated August 14, 1987, the Alaska State Office, Bureau of Land Management (BLM), affirmed the approval of Robert W. Rude's Native Allotment F-534 and rejected Native Village Selection AA-6716-A as to the land within Rude's allotment. This decision was issued to Rude and to Ahtna, Inc., successor in interest to Mentasta, Inc., the village which had filed the selection application. Similarly, on September 1, 1987, BLM issued a decision to Ahtna and Frank Sanford which affirmed approval of Sanford's Native Allotment F-032026 and rejected Native Village Selection AA-6716-A as to the land within Sanford's allotment.

On June 30, 1988, BLM issued separate decisions modifying these prior allotment approvals by subjecting the allotments to

[a]n easement for highway purposes extending 50 feet on each side of the centerline of the Mentasta Spur Road, FAS

Route 8921, and transferred to the State of Alaska pursuant to quitclaim deed dated June 30, 1959, and executed by the Secretary of Commerce pursuant to the authority of the Alaska Omnibus Act, Pub. L. 86-70; 73 Stat. 141.

Rude's appeal from the 1988 decision was dismissed as untimely by order of this Board dated October 28, 1988. That same order, however, noted the timeliness of Sanford's appeal, as well as appeals filed by Ahtna and the Mentasta Lake Village Traditional Council.

Before we consider the merits of these appeals, we must first address certain procedural issues. First, BIM erred by failing to identify the State of Alaska as an adverse party in its 1988 decisions. The Board's October 28, 1988, order corrected this error by completing service of documents filed by appellants and joining the State as a party to the appeal.

Second, Ahtna has no standing to appeal because it is not adversely affected by the 1988 decisions. Ahtna contends it has standing to appeal these decisions because it "has both land selections, and conveyed lands, within this particular area as accessed by the Mentasta Spur Road" for which the easements in the allotments were reserved. However, the easement operates only within the boundaries of the allotment, and Ahtna does not explain how any interest it holds is adversely affected by BIM's decision. Although Ahtna may disagree with the position of the State of Alaska, the proper vehicle for raising that concern would be an appeal involving lands in which it can assert an interest, not a Native allotment in which Ahtna no longer has any discernable interest. Under the appeal regulations at 43 CFR 4.410(a), an appeal may be brought only by a "party to a case who is adversely affected by a decision." Because Ahtna has no standing to directly appeal BIM's decision, its appeal is properly dismissed.

Third, we find no basis for considering the appeal of Mentasta. Mentasta is not a "party to a case" and thus has no right of appeal under 43 CFR 4.410. See Edwin H. Marston, 103 IBLA 40 (1988).

Of course, Ahtna and Mentasta may be allowed to appear as amici curiae. See generally, United States v. United States Pumice Co., 37 IBLA 153 (1978); United States v. Kosanke Sand Corp., 12 IBLA 282, 80 I.D. 538 (1973). However, we have no jurisdiction to consider their submissions unless valid appeals were filed by parties to BIM's decisions who were adversely affected. In this case Rude's appeal was previously dismissed as untimely. However, Sanford's appeal was timely filed and he has submitted a statement of reasons. ^{1/} Ahtna and Mentasta are recognized as amici and we have considered their submissions. Having sorted out the procedural issues and status of the participants in this appeal, we now consider the merits.

^{1/} The statement of reasons filed in support of Mentasta's appeal was filed by Eva A. John, 1st Chief of Mentasta, Frank Sanford, and Robert Rude. We consider this document to be Sanford's statement of reasons.

The quitclaim deed cited in BIM's decision refers to Schedule A which is a list of highways. FAS Route No. 8921 is listed as a secondary class "B" highway named the Mentasta Spur with 7.0 miles constructed and described as follows: "From a point on FAS Route 46 approximately 10 miles west of Little Tok River, west to Mentasta Lake." Although this describes the road crossing Sanford's parcel, ^{2/} the conveyance does not indicate its width. The State contends that a 100-foot right-of-way is proper; other parties contend either that the road was abandoned or, alternatively, that only a 60-foot right-of-way is appropriate.

In a recent decision, Lloyd Schade, 116 IBLA 203 (1990), we provided a brief outline of the history of the administration of roads in Alaska:

Pursuant to the Act of January 27, 1905, 33 Stat. 616, as amended by the Act of May 14, 1906, 34 Stat. 192, Congress authorized the Secretary of War to administer the roads and trails in Alaska. In 1932, Congress transferred administration over those roads and trails to the Secretary of the Interior pursuant to the Act of June 30, 1932, 47 Stat. 446.

116 IBLA at 204.

The State's response to the Sanford appeal included an affidavit by John Bennett, a registered professional land surveyor employed as Engineering Supervisor in the right-of-way division of the State's Department of Transportation and Public Facilities. Bennett states that he has examined records in an attempt to learn when the Mentasta Spur Road was established. Excerpts from a 1960 document by the Division of Highways of the Alaska Department of Public Works entitled Fifty Years of Highways is attached to Bennett's affidavit as Exhibit A. The document refers to a "Tok Cutoff Glenn Highway" as "constructed during World War II." A copy of Alaska Road Commission Order No. 40, Supplement No. 1 (August 1, 1952) includes an attachment which refers to a "Mentasta Loop." Exhibit B consists of a quadrangle map and a list of monument descriptions indicating that the road through Sanford's allotment existed in the 1940's. The map bears a handwritten notation indicating that the present location of the Tok Cutoff of the Glenn Highway which does not cross Sanford's parcel was a "1951 Reroute."

Public Land Order No. (PLO) 601 of August 10, 1949, 14 FR 5048 (August 16, 1949), revoked a prior PLO and divided all roads under the Secretary's jurisdiction in Alaska into three classes: through roads, feeder roads, or local roads. That order withdrew from all forms of appropriation under the public land laws public lands within 150 feet of each

^{2/} We note that if this conveyance were construed as extending only to Mentasta Village which is also referred to as Mentasta Lake, the portion crossing Sanford's parcel would not have been conveyed because the road reaches the village before it reaches Sanford's parcel, and continues to the lake. The maps and field reports indicate that the village is only 6 miles from the main road and that the lake is 7 miles as stated in the conveyance.

side of the center line of all through roads, 100 feet of each side of the center line of all feeder roads, and 50 feet of each side of the center line of all local roads and reserved the lands for highway purposes.

On October 19, 1951, PLO 757 amended PLO 601 by revoking the general withdrawal for local and feeder roads (16 FR 10749, 10750 (Oct. 19, 1951)). Simultaneously, the Secretary issued Secretarial Order (SO) 2665 establishing easements for, rather than withdrawals of, 50 feet on each side of the center of each local road and 100 feet on each side of the center line of each feeder road. 16 FR 10752 (Oct. 19, 1951). Because the Mentasta Spur was not listed as a through road or feeder road, the size of the easement established was 50 feet on each side of the center, or 100 feet in total width. 3/

As authority for the establishment of these easements, the PLO cited the Act of June 30, 1932, identified earlier as the statute by which Congress transferred administration over roads and trails from the Secretary of War to the Secretary of the Interior. Section 5 of that statute required the Secretary to reserve in patents a right-of-way for roads "constructed or to be constructed by or under the authority of the United States." Act of June 30, 1932, ch. 320, § 5, as added, Act of July 24, 1947, ch. 313, 61 Stat. 418. Reference to the more recent history of the administration of Alaskan roads discloses:

The Secretary of the Interior's jurisdiction over the Alaskan road system ended in 1956 when Congress enacted section 107(b) of the Federal-Aid Highway Act of 1956, 70 Stat. 377, which transferred the administration of the Alaskan roads to the Secretary of Commerce. This change in authority was reiterated on August 27, 1958, when Congress revised, codified, and reenacted the laws relating to highways as Title 23 of the United States Code. See 23 U.S.C. § 119 (1958). The Commerce Department's Bureau of Public Roads reclassified and renumbered the Alaskan roads under its jurisdiction as primary, secondary "A," and secondary "B" routes, but did not specify the widths of those classes of roads.

Section 21(a) of the Alaska Omnibus Act, 73 Stat. 145 (1959), enacted on June 25, 1959, directed the Secretary of Commerce to

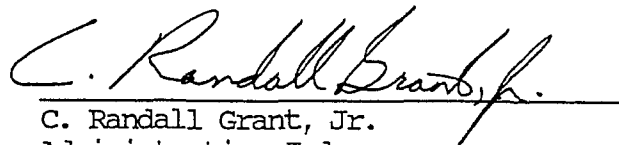
3/ If the State's map is correct in noting that the principal road was a "1951 reroute," it suggests that prior to 1951, the road through Sanford's allotment was the principal route from Gulkana through Slana to Tok for which a 600-foot wide strip was withdrawn by PLO 386 of July 31, 1947, 12 FR 5387 (Aug. 8, 1947). PLO 601 of Aug. 10, 1949, 14 FR 5048 (Aug. 16, 1949), revoked PLO 386 and withdrew a 300-foot wide strip for this road. Although the State asserts that PLO 757 of Oct. 16, 1951, 16 FR 10749 (Oct. 20, 1951), "changed the classification to a 'Local Road' with a right-of-way width of 50 feet on each side of the centerline," (Answer at 1) it appears that this result is more properly attributed to the rerouting of the principal road.

convey to the State of Alaska all lands or interests in lands "owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska." Section 21(d) (3) and (7) of that Act repealed 23 U.S.C. § 119 (1958), and the Act of June 30, 1932, 47 Stat. 446, effective July 1, 1959. 73 Stat. 145-46 (1959).


Lloyd Schade, supra at 204-205. On June 30, 1959, pursuant to section 21(a) of the Alaska Omnibus Act, the Secretary of Commerce issued the quitclaim deed which included the road in question.

[1] Accordingly, we conclude that BIM properly recognized that Sanford's Native allotment is subject to an easement for highway purposes extending 50 feet on each side of the centerline of a road transferred to the State of Alaska by a quitclaim deed issued pursuant to the Alaska Omnibus Act, P.L. 86-70; 73 Stat. 141, when an easement of that width had been established under the Act of June 30, 1932, 47 Stat. 446. Any issue concerning the abandonment of such a right-of-way is properly within the jurisdiction of the state courts. See Leo Titus, Sr., 89 IBLA 323, 335-40, 92 I.D. 578, 586-88 (1985), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals of Mentasta and Ahtna are dismissed, Mentasta and Ahtna are recognized as amici in Sanford's appeal, and the decision appealed from is affirmed in that case.


C. Randall Grant, Jr.
Administrative Judge

I concur:


Bruce R. Harris
Administrative Judge