United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

IN REPLY REFER TO:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

IBLA 88-652 Decided October 29, 1990

Appeal from a decision of the Alaska State Office, Bureau of Land Management, concerning approval of parcel B of Native allotment application F-17165.

Affirmed.

1. Alaska: Native Allotments--Rights-of-Way: Generally

Where subsequent to approval of a Native allotment, but prior to issuance by BLM of the document conveying legal title to the allottee, the allottee, as grantor, grants to the State of Alaska a public highway easement across her allotment, a request by the State to have that easement excluded from or reserved in the document conveying legal title will be denied.

APPEARANCES: E. John Athens, Jr., Esq., Assistant Attorney General, Fairbanks, Alaska, for the State of Alaska; Bruce E. Schultheis, Esq., Office of the Regional Solicitor, Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The State of Alaska, Department of Transportation and Public Facilities (State), has appealed from a decision, dated August 4, 1988, by the Alaska State Office, Bureau of Land Management (BLM), concerning parcel B of the Native allotment application of Ethel Beck (F-17165). 1/

The State does not challenge approval of parcel B. The sole consideration of the State is the failure of BLM in its decision to exclude from parcel B an existing easement for a road through parcel B.

On June 1, 1981, the State filed a protest pursuant to section 905(a)(5)(B) of the Alaska National Interest Lands Conservation

1/ The official survey description of parcel B, as set out at page 3 of BLM's decision, is "Lot 4, U.S. Survey No. 8655, Alaska, situated on the left bank of the Yukon River approximately 10 chains easterly of the village of Eagle, Alaska (within Sec. 2, T. 2 S., R. 33 E., Fairbanks Meridian). Containing 39.97 acres."

On appeal, the State expresses its concern that unless the easement is excluded from the allotment or the "Native Allotment" is specifically made subject to the easement, its title will be clouded and conflicts will develop between the State and the allottee.

BLM contends in its answer that it was correct in not excluding or reserving the easement. It states that legislative approval, which the State does not contest, removes the land from the jurisdiction of the Department to consider conflicting claims. BLM also asserts that the failure to list the easement in the "Native Allotment" does not affect the validity of the easement. BLM claims the interest was created by the allottee and not the United States and, therefore, the interest should not be included in a title document issued by the United States. An exclusion or a reservation of an easement, BLM argues, causes a property interest to remain in the United States and in this case, there is no interest to be retained. BLM concludes that the State's interest has been adequately protected.

In a reply brief, the State argues that BLM has expressly determined allotments to be subject to easements for highway purposes granted to the State by the Secretary of Commerce. 6/ It asserts that an easement signed

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fn. 5 (continued)
the documents issued in the allotment approval process. Two separate documents are issued. "[T]he issuance of an 'Allotment Certificate' or 'Final Certificate' does not operate to pass title, whereas the 'Native Allotment' does so." Id. at 321; see also Eugene M. Witt, 90 IBLA 265 (1986). In the present case, both BLM and appellant refer to issuance of the "Certificate of Allotment" as the final step in the allotment process. Those references properly should have been to the document styled "Native Allotment." We will use the term "Native Allotment" in this decision.

6/ See Exhibits A and B appended to the State's Reply which are BLM decisions, Robert W. Rude, Native Allotment F-534, dated June 30, 1988, and Frank Sanford, Native Allotment F-032026, dated June 30, 1988, respectively, modifying the allotments by subjecting them to an easement for the Mentasta Spur Road, which had been transferred to the State by the Secretary of Commerce in 1959. BLM stated in the decisions that the easement would be reserved in the document conveying legal title in each case. Those decisions, however, are the subject of an appeal before this Board in which BLM's authority to take such action is being challenged by Ahtna, Inc., Mentasta Village Traditional Council, and Frank Sanford. Ahtna, Inc., IBLA 88-589. We also note that in Degnan v. Hodel, No. 87-252 Civil (D. Alaska, Feb. 16, 1989), reaffirmed, May 6, 1989, the court reversed our decision in Clarence Lockwood, 95 IBLA 261 (1987), in which we had affirmed BLM's 1985 modification of Native allotments approved in 1975 by reserving rights-of-way for the Iditarod Trail on the basis of a 1978 amendment to the National Trail System Act (NTSA), as amended, 16 U.S.C. § 1246(h)(2) (1988), designating the Iditarod as a National trail. The court found that the allottees had equitable title prior to enactment of the 1978 amendment, and that the allotments could not be modified. Upon remand from the court, we vacated the Lockwood decision by order dated Aug. 23, 1989.

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IN REPLY REFER TO:

IBLA 88-656	:	F-12769
	:	
STATE OF ALASKA	:	Native Allotment Right-of-Way
DEPARTMENT OF TRANSPORTATION	:	
AND PUBLIC FACILITIES	:	Decision Affirmed

ORDER

The State of Alaska, Department of Transportation and Public Facilities (State), has appealed from a decision dated July 28, 1988, by the Alaska State Office, Bureau of Land Management (BLM), concerning approval of the Native allotment application of the heirs of Arthur Stevens (F-12769).

On June 1, 1981, the State filed a protest pursuant to section 905(a)(5)(B) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(a)(5)(B) (1988), claiming that the land in the application was a trail or highway, and that there was no reasonable alternative access. On December 14, 1981, the State filed a right-of-way application (F-79283), apparently to guarantee access across the allotment. On March 29, 1984, BLM rejected the right-of-way application stating: "In accordance with the Memorandum of Understanding between the Bureau of Land Management and the Bureau of Indian Affairs [(BIA)] dated February 20, 1979, a right-of-way grant over approved Native allotments will be granted by the Bureau of Indian Affairs."

In its July 28, 1988, decision, BLM dismissed the State's access protest citing the March 29, 1984, decision rejecting the right-of-way application. It then stated: "It should be noted that the State's interest has been protected through issuance of a grant of easement for right-of-way executed by the Bureau of Indian Affairs on October 1, 1986."

The decision listed the reservations which would be noted in the document conveying legal title to the heirs of Arthur Stevens. The October 1, 1986, right-of-way was not included therein.

The facts, arguments, and issue in this case are substantially identical to State of Alaska, 116 IBLA 317 (1990), wherein we denied the State's request to have its easement excluded from or reserved in the document conveying legal title. Because our findings and reasons for our denial in that case are equally applicable here, they are set forth below.

We agree with the State that this is not a situation involving conflicting claims, because all are in agreement regarding the validity of the State's easement in question. However, the point made by BLM in its answer that the easement involved in this case was created by the allottee, not the United States, and that it should not be reserved by the United States in the title document, is well taken.

Parcel B of the Beck allotment was approved prior to the creation of the easement in question. Although the Area Director, BIA, signed the "Grant of Easement for Right-of-Way" document, that document itself states that the United States was acting through the Area Director, for and on behalf of Ethel Beck, who was designated as the grantor. The cited authority for that action was 25 U.S.C. §§ 323-328 (1988) and 25 CFR Part 169. The regulations in Part 169 of 25 CFR are entitled "Rights-of-Way Over Indian Lands." Under 25 CFR 169.15, the Secretary is authorized to grant such a right-of-way by issuance of a conveyancing instrument. In this case, the Secretary's authorized representative, the Area Director, BIA, issued the easement for a right-of-way on behalf of the equitable owner of parcel B, Ethel Beck.

In this situation, the State's rights are protected because it received its easement directly from the equitable owner of the land. When the United States transfers the bare legal title to Beck through issuance of the "Native Allotment," there is no reason for it to include a reservation for an easement created by the allottee, as grantor, for the benefit of a third party, in this case, the State.

State of Alaska, supra at 320.

For the reasons set forth above, we deny the State's request that its easement be excluded from or reserved in the document conveying legal title to Native allotment F-12769.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge