



April 22, 2021

Mr. Chad Padgett
State Director
Bureau of Land Management
222 West 7th Ave., #13
Anchorage AK 99513-7504

Subject: Recordable disclaimer of interest application for Silver Fox Mine

Dear Mr. Padgett:

Pursuant to 43 CFR 1864, the University of Alaska (University) files this application for a recordable disclaimer of interest (RDI) for the lands encompassing the former Silver Fox Mine conveyed to UA in 1985. The University of Alaska is an instrumentality of the State of Alaska.¹

I. Legal description: The legal description is as follows:

That portion of Mineral Survey No. 2407, Alaska, situated in Sections 8 and 9, Township 2 North, Range 1 East, Fairbanks Meridian, Alaska. Containing 59.59 acres, as shown on plat of survey accepted March 24, 1983.

(To the extent the BLM may find this legal description does not meet the requirements of 43 CFR 1864.1-2(c)(1), UA would request a waiver under 43 CFR 1864.1-2(d), as not needed to properly adjudicate this application.)

II. Applicant contact information

University of Alaska, c/o Laurie Swarz, Senior Property Manager, UA Land Management, 2025 Yukon Drive, Suite 106, Fairbanks, Alaska 99775-5280, Phone: 907-450-8133.

There are no others known or believed to have or claim an interest in the lands. The State of Alaska had previously selected these lands, but submitted a relinquishment June 8, 1984 (Attachment B).

III. Documents showing title

¹ “Both Alaska state courts and the Ninth Circuit have held that the University itself is an instrumentality of the state.” *Doe I v. Yesner*, No. 3:19-CV-0136-HRH, 2019 WL 4196054, at *4 (D. Alaska Sept. 4, 2019)

See attachment D.

IV. Statement concerning the nature of the cloud and reasons why applicant believes the interest of the United States is invalid.

A. Nature of the cloud

The cloud consists of the following passages in the patent:

- “for mining educational purposes only”
- “provided that, if the patentee attempts to transfer title to or control over the land to another or the land is not used by the University of Alaska, title shall revert to the United States.”

Inclusion of these provisions was apparently based on (although more restrictive than) section 2 of the “Educational Mining Act of 1982” which read: “Conveyance under this Act shall be made only ... (b) upon the condition that the described land shall be held and used by the University of Alaska and shall not be conveyed by the university.”

However, Congress had in the 1984 legislation superseded section 2 of the original Act as explained below, and thus the interest of the United States, both in mandating adherence to these limitations and in maintaining any reversion interest, is invalid.

B. Reasons why applicant believes the interest of the United States is invalid

As factual background, in December 1977, Miner Tury Anderson quitclaimed to the University his interest in four contiguous lode mining claims (Silverstone 1-4), which he had located in April 1956, lying within sections 8, 9 and 16 of Township 2 North, Range 1 East, Fairbanks Meridian.² Shortly afterwards, the University initiated the process to obtain title to the four claims.³ The required survey was assigned as Mineral Survey 2407 in August 1978 and apparently completed in 1978, although not accepted by the BLM until 1983.

With a number of concerns over the timing, cost, and suitability of the administrative process for issuing the patent, the University turned to the Alaska Congressional delegation, which was able to obtain passage of Public Law 97-406, signed into law January 3, 1983 as the “Educational Mining Act of 1982” (1982 Act).⁴ That law authorized and directed the Secretary

² To the extent that the claims lay within section 16, they were later regarded as void *ab initio*, as section 16 was designated as a school section under the Act of March 4, 1915, and so not open to location as of 1956. See attachment E p. 2. The State had selected sections 8 and 9 as part of Statehood Act selection F-024507 on November 30, 1959, but those selections post-dated and were subject to Mr. Anderson’s federal mining claims.

Mr. Anderson also quitclaimed several state law mining claims in the area, not relevant here.

Mr. Anderson in August 1978 filed amended location notices and certificates for the four federal claims. They still lay within sections 8, 9 and 16.

³ The University initiated the patent request as agent for Mr. Anderson, as the quitclaim was being held in escrow while the University made payments to Mr. Anderson under a three-year installment note.

⁴ 96 Stat. 2031 (Attachment A).

to convey approximately 76 acres to the University, and contained, in section (2), the provision that “Conveyance under this Act shall be made only (a) upon the Secretary being satisfied that no valid mining claims exist on the described lands; and (b) upon the condition that the described land shall be held and used by the University of Alaska and shall not be conveyed by the university.”

However, for several reasons, Congress found it necessary to enact further legislation before the conveyance could be completed. This was done in August 1984, in Public Law 98-396 (1984 Act).⁵ The 1984 Act contained three provisions pertaining to the conveyance, two of which are not relevant to the issue here.⁶ The third (pertinent) provision read:

Notwithstanding the provisions of section 2 of the Educational Mining Act of 1982, within thirty days of the date of receipt by the Secretary of the Interior of the State of Alaska’s relinquishment of its selection, under section 6(b) of the Alaska Statehood Act (72 Stat. 340), of the lands described in the Educational Mining Act of 1982, as amended by this Act, or the date of the enactment of this Act, or the date upon which all the requirements of the Educational Mining Act of 1982 are satisfied, whichever occurs last, the Secretary of the Interior is directed to convey to the University of Alaska whatever right, title and interest in the United States has in the approximately 59.59 acres of land described in the Educational Mining Act of 1982.

“[T]he condition that the described land shall be held and used by the University of Alaska and shall not be conveyed by the university” was part of section 2 of the Educational Mining Act of 1982. Under the 1984 legislation, the Secretary was “directed” to convey to the University whatever right, title and interest the United States had in the 59.59 acres “notwithstanding” the section 2 conditions, i.e., notwithstanding the condition that the described land be held and used by the University of Alaska and shall not be conveyed by the university.

⁵ 98 Stat. 1369, 1385-1386 (Attachment C).

⁶ First, the aliquot parts description in the original 1982 Act turned out to be an inaccurate description of actual Mineral Survey 2407, and the “approximately 76 acres” estimated in the original Act was actually just 59.59 acres. So the 1984 law specified “The first section of the Educational Mining Act of 1982 (96 Stat. 2031) is amended by deleting the phrase ‘comprising approximately seventy-six acres’, and by amending the land description to read ‘That portion of Mineral Survey 2407, Alaska, situated in Sections 8 and 9, Township 2 North, Range 1 East, Fairbanks Meridian, Alaska, as depicted on the Supplemental Plat of Section 8 and 9 that was accepted for the Director, Bureau of Land Management, on March 24, 1983, comprising approximately 59.59 acres.’ Attachments C, E.

Second, the federal mining claims had been partially on land selected by the State. The State had signaled its willingness to relinquish those selections to the extent necessary to facilitate conveyance of the land to the University at least as far back as 1979, but there were apparently concerns that the relinquishment might not be consistent with ANILCA. So the 1984 law specified “Notwithstanding the provisions of section 906(f)(2) of the Alaska National Interest Lands Conservation Act (94 Stat. 2440), the State of Alaska may relinquish its selection, under section 6(b) of the Alaska Statehood Act (72 Stat. 340), of the public lands described in the Educational Mining Act of 1982, as amended by this Act.” The actual formal State relinquishment was forthcoming June 8, 1984, shortly before the 1984 Act was signed into law. (Attachments B,C,E.)

The term “notwithstanding” has a clear meaning:

As we have noted previously in construing statutes, the use of such a “notwithstanding” clause clearly signals the drafter's intention that the provisions of the “notwithstanding” section override conflicting provisions of any other section. ... Likewise, the Courts of Appeals generally have “interpreted similar ‘notwithstanding’ language ... to supersede all other laws, stating that ‘ “[a] clearer statement is difficult to imagine.”⁷

That is why applicant believes that the reversionary interest of the United States under the patent, and indeed any interest of the United States in further continuation of the section 2 conditions explicitly superseded by the 1984 legislation, and specifically the “held and used” and “shall not be conveyed” conditions, are not valid and thus are appropriate for disclaimer.

Applicant feels obliged to point out that a 1994 Regional Solicitor’s opinion has taken a position that, at least implicitly, conflicts with applicant’s position here (Attachment E).

The University at that point was considering whether it might lease the property, and requested issuance of a corrected patent to eliminate the highly restrictive terms in the 1985 patent, which went beyond the somewhat less restrictive terms in the 1982 legislation. The opinion turned down the request for a corrected deed (on the basis that BLM authority to issue corrected deeds was limited under 43 CFR 1865.0-1 to deeds correcting factual rather than legal errors), but stated that leasing the property out would be permissible without issuance of a corrected deed. The opinion stated that, to the extent that the restrictions in the patent exceeded the requirements of the Act, they were unenforceable. Under the requirements of the 1982 Act, the prohibition on conveyance was not equivalent to a prohibition on leasing, so a lease would be permissible.⁸

While the opinion recognizes the 1984 legislation, it limits its analysis to only one of the three paragraphs within that legislation, characterizing it as only addressing the need for a more accurate legal description:

To solve the land description problem, it was determined to amend PL 97-406 to remove the land description and substitute MS 2407 (exclusive of that portion within Section 16) as the land area to be conveyed. This change was effected by PL 98-396 dated August 22, 1984. No question was raised about the two conditions contained in PL 97-406 when PL 98-396 was being worked on, and these conditions were unaffected by PL 98-396 when it was adopted.

The final sentence in this passage is undeniably at odds with applicant’s position here; but it is also undeniably incorrect. PL 98-396, in its explicit text, directs the Secretary to issue the patent notwithstanding the provisions in section 2 of PL 97-406. One does have to go back

⁷ *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18, 113 S. Ct. 1898, 1903, 123 L. Ed. 2d 572 (1993) (citation omitted).

⁸ The University did not at that point enter into such a lease. UA does intend to explore the possibility of such a lease currently, and will be communicating with the Regional Solicitor’s Office as to whether or not the conclusion of the 1994 Regional Solicitor opinion on that particular point has been overruled or superseded.

to PL 97-406 and read section 2 to understand that it consists solely of the exact “two conditions” mentioned in the Regional Solicitor Opinion; but once having done so, it is impossible to harmonize the PL 98-396 text “Notwithstanding the provisions of section 2 of the Educational Mining Act of 1982” with the observation “these conditions were unaffected by PL 98-396.” Clearly, Congress did intend to (and did in fact) have PL 98-396 address itself to those conditions, so ignoring that passage in PL 98-396 is contrary to the cardinal principle of statutory construction that each clause and word should have meaning.

The plain text should make resort to the legislative history unnecessary, but what little legislative history there is bears out the premise that the statute was not limited to changing the legal description. “The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides a corrected legal description for lands to be transferred to the University of Alaska under Public Law 97-406 *and otherwise facilitates the transfer.*”⁹

Thus, applicant takes issue with that portion of the 1994 Regional Solicitor Opinion, and feels that the wording of the 1982 and 1984 legislative enactments lays out a clear case that the limitations under section 2 of the 1982 Act, and the more rigid restrictions included in the patent based on those limitations, are invalid, as is the reversionary interest of the United States, and thus appropriate for disclaimer.

V. Any available documents or title evidence, such as historical and current maps, photographs, and water movement data, that support the application.

See attachments:

- A. January 3, 1983 P.L. 97-406, “Education Mining Act of 1982” (2 pgs)
- B. June 8, 1984 Relinquishment from State of Alaska (1 pg)
- C. August 22, 1984 P.L. 98-396 (excerpt), changes to Educational Mining Act of 1982 (2 pgs)
- D. December 27, 1984 Patent (2 pgs)
- E. August 4, 1994 Regional Solicitor Opinion (7 pgs)

VI. The name, mailing address, and telephone number of any known adverse claimant or occupant of the lands included in the application

Applicant knows of no adverse claimant or occupant of these lands. As above, the State of Alaska had selected these lands under the Statehood Act, but relinquished that selection.¹⁰

⁹ H. Report 98-977 (Conference Report to accompany H.R. 6040), August 10, 1984, at p. 25.

¹⁰ The University did field an inquiry from one of Tury Anderson’s heirs as to whether the original transaction between Mr. Anderson and the University had included any reversionary interest in Mr. Anderson or his heirs. The University reviewed the transaction documents and responded in the negative. The University has not received any further communications asserting or alleging any claim following that response.

VII. Requests as to issuance of the disclaimer in a particular form.

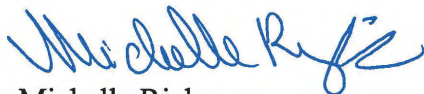
Applicant would suggest that the RDI follow the format used for RDI's granted to the State of Alaska, and perhaps use language along the following lines:

Whereas, the University of Alaska is entitled to a recordable disclaimer of interest pursuant to Section 315(a) of the Federal Land Policy and Management Act of October 21, 1976, 43 USC 1745(a), the United States of America, acting by and through the Bureau of Land Management – Alaska State director, hereby gives notice that the United States claims no real property interest in having the lands limited for mining educational purposes only, or in having any reversion interest in the lands, and therefore disclaims any and all real property interest in the lands more particularly described as:

That portion of Mineral Survey No. 2407, Alaska, situated in Sections 8 and 9, Township 2 North, Range 1 East, Fairbanks Meridian, Alaska. Containing 59.59 acres, as shown on plat of survey accepted March 24, 1983.

It would be greatly appreciated if you could start the application process and provide us with an estimate of any associated administrative costs.

Kind Regards,



Michelle Rizk

Vice President of University Relations/Chief Strategy, Planning and Budget Officer
University of Alaska

Enclosures

Xc: Regional Solicitor's Office

Public Law 97-406
97th Congress

An Act

Entitled the "Educational Mining Act of 1982".

Jan 3 1983
[S. 1501]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the conditions and limitations specified in this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized and directed to convey to the University of Alaska, all right, title, and interest of the United States in the following described land comprising approximately seventy-six acres:

Educational
Mining Act of
1982.

FAIRBANKS MERIDIAN, ALASKA

Township 2 North, Range 1 East

Section 8:

East half southeast quarter southwest quarter northeast quarter southeast quarter,

North half southwest quarter southeast quarter northeast quarter southeast quarter,

South half south half southeast quarter northeast quarter southeast quarter,

East half northeast quarter northwest quarter southeast quarter southeast quarter,

Northeast quarter southeast quarter southeast quarter,

North half southeast quarter southeast quarter southeast quarter,

North half south half southeast quarter southeast quarter southeast quarter,

South half southeast quarter southeast quarter southeast quarter southeast quarter,

Section 9:

West half southwest quarter southwest quarter,

South half southwest quarter northwest quarter northeast quarter southwest quarter southwest quarter,

Southwest quarter northeast quarter southwest quarter southwest quarter, southeast quarter southwest quarter southwest quarter,

West half west half southwest quarter southeast quarter southeast quarter southwest quarter,

Southwest quarter southeast quarter southwest quarter,

South half southwest quarter northwest quarter southeast quarter southwest quarter.

SEC. 2. Conveyance under this Act shall be made only (a) upon the Secretary being satisfied that no valid mining claims exist on the described lands; and (b) upon the condition that the described land shall be held and used by the University of Alaska and shall not be conveyed by the university.

SEC. 3. No conveyance shall be made unless application for conveyance is filed by the university with the Secretary within six months of the date of the approval of this Act.

SEC. 4. The Secretary may at his discretion require that he be provided a perimeter survey of the described lands. All costs of obtaining such survey shall be borne by the university.

Approved January 3, 1983.

LEGISLATIVE HISTORY—S. 1501:

HOUSE REPORT No. 97-952 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 97-370 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 128 (1982):

May 10, considered and passed Senate.

Dec. 14, considered and passed House, amended.

Dec. 19, Senate disagreed to House amendment.

Dec. 20, House receded from its amendment.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

555 CORDOVA STREET
POUCH 7-005
ANCHORAGE, ALASKA 99510-7005
PHONE. (907) 276-2653

June 8, 1984

U. S. Bureau of Land Management
Alaska State Office
701 "C" Street
Anchorage, Alaska 99513

File No.: 810-1
6469G

Subject: General Grant Selection F-024507 (GS-10)

Gentlemen:

Pursuant to Public Law 97-406 (96 Stat. 2031), which was passed on January 3, 1983 to enable the University of Alaska to acquire those lands in Mineral Survey 2407, the State of Alaska hereby relinquishes its selection to the following described land containing approximately 59.59 acres.

T. 2 N., R 1 E., F. M.
That portion of Mineral Survey 2407
which lies within Sections 8 and 9.

Sincerely,



Tom Hawkins
Director

✓ cc: Carol Shobe, DTS

RECEIVED

JUN 13 1984

DIV. OF TECHNICAL
SERVICES

RECEIVED

JUN 13 1984

TITLE ADMINISTRATION

Attachment B, page 1 of 1

GENERAL OPERATING EXPENSES

For an additional amount for "General operating expenses", \$3,588,000.

LOAN GUARANTY REVOLVING FUND

For expenses necessary to carry out loan guaranty and insurance operations, as authorized by law (38 U.S.C. chapter 37, except administrative expenses, as authorized by section 1824 of such title), \$100,000,000, to remain available until expended.

38 USC 1801 et
seq.
38 USC 1824

GENERAL PROVISION

The language "without the approval of the Committees on Appropriations" contained in "Title IV, General Provisions, Section 409" in Public Law 98-371 is hereby repealed.

Ante, p. 1237.

CHAPTER VI

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For an additional amount for "Management of lands and resources", \$44,141,000: *Provided*, That funds available under this head are available to acquire land in the vicinity of Doyle, California, now leased to the Bureau of Land Management by the State of California.

CONSTRUCTION AND ACCESS

For an additional amount for "Construction and access", \$1,370,000, to remain available until expended.

LAND ACQUISITION

For an additional amount for "Land acquisition", \$4,500,000, to remain available until expended, for expenses necessary to carry out the provisions of section 11 of Public Law 93-531, as amended, including administrative expenses and acquisition of lands or waters, or interest therein.

25 USC 640d-10.

ADMINISTRATIVE PROVISION

The first section of the Educational Mining Act of 1982 (96 Stat. 2031), is amended by deleting the phrase "comprising approximately seventy-six acres", and by amending the land description to read "That portion of Mineral Survey 2407, Alaska, situated in Sections 8 and 9, Township 2 North, Range 1 East, Fairbanks Meridian, Alaska, as depicted on the Supplemental Plat of Sections 8 and 9 that was accepted for the Director, Bureau of Land Management, on March 24, 1983, comprising approximately 59.59 acres."

Notwithstanding the provisions of section 906(f)(2) of the Alaska National Interest Lands Conservation Act (94 Stat. 2440), the State of Alaska may relinquish its selection, under section 6(b) of the Alaska Statehood Act (72 Stat. 340), of the public lands described in the Educational Mining Act of 1982, as amended by this Act.

43 USC 1635.

96 Stat. 2031. Notwithstanding the provisions of section 2 of the Educational Mining Act of 1982, within thirty days of the date of receipt by the Secretary of the Interior of the State of Alaska's relinquishment of its selection, under section 6(b) of the Alaska Statehood Act (72 Stat. 340), of the lands described in the Educational Mining Act of 1982, as amended by this Act, or the date of the enactment of this Act or the date upon which all the requirements of the Educational Mining Act of 1982 are satisfied, whichever occurs last, the Secretary of the Interior is directed to convey to the University of Alaska whatever right, title and interest the United States has in the approximately 59.59 acres of land described in the Educational Mining Act of 1982.

Ante, p. 1385.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

For an additional amount for "Resource management", \$1,785,000, of which \$300,000 for pine vole research shall remain available for obligation until September 30, 1985.

CONSTRUCTION AND ANADROMOUS FISH

For an additional amount for "Construction and anadromous fish", \$6,630,000, to remain available until expended.

LAND ACQUISITION

16 USC 742a
note.

For an additional amount for "Land acquisition", \$10,000,000, to be derived from the Land and Water Conservation Fund, to remain available until expended, for the acquisition of land or waters, or interest therein, in the Atchafalaya Basin, Louisiana, in accordance with statutory authority applicable to the United States Fish and Wildlife Service, including the Fish and Wildlife Act of 1956.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

97 Stat. 923.

16 USC 462.
Repeal.

16 USC 461 note.

For an additional amount for "Operation of the national park system", \$6,100,000: *Provided*, That of the funds appropriated under this heading in Public Law 98-146, and unobligated as of September 30, 1984, \$180,000 shall remain available for obligation until September 30, 1985, of which \$30,000 is to be made available for the operation, maintenance and protection of the several archaeological and historic sites at South Point on the Big Island of Hawaii, as authorized by subsection 2(e) of the Act of August 21, 1935 (49 Stat. 666), and of which \$150,000 is to be made available for the operation and maintenance of the New River Gorge National River: *Provided further*, That section 3 of the Act entitled "An Act to improve the administration of the Historic Sites, Buildings and Antiquities Act of 1935 (49 Stat. 666)", approved September 8, 1980 (Public Law 96-344), is repealed.

CONSTRUCTION

For an additional amount for "Construction", \$22,653,000, to remain available until expended.

Form 1860-9
(June 1984)
F-83649

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS

University of Alaska
3356 College Road
Fairbanks AK 99701
is entitled to a Land Patent pursuant to Public
Law 97-406 of January 3, 1983, 96 Stat. 2031, as
amended by Public Law 98-396 of August 22, 1984,
98 Stat. 1385, for the land embraced in:

That portion of Mineral Survey No. 2407, Alaska,
situated in Sections 8 and 9, Township 2 North,
Range 1 East, Fairbanks Meridian, Alaska.

Containing 59.59 acres, as shown on plat of survey
accepted March 24, 1983.

NOW KNOW YE, that the UNITED STATES OF AMERICA, in
consideration of the premises, and in conformity with
said Act of Congress, HAS GIVEN AND GRANTED, and by
these presents DOES GIVE AND GRANT, unto the said
University of Alaska the land above described, for
mining educational purposes only; TO HAVE AND TO HOLD
the same, together with all the rights, privileges,
immunities, and appurtenances, of whatsoever nature,
thereunto belonging, unto the said University of
Alaska forever; subject, however to the following
reservations, conditions, and limitations:

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches or canals
constructed by the authority of the United
States. Act of August 30, 1890,
26 Stat. 391, 43 U.S.C. 945; and
2. A right-of-way for the construction of
railroads, telegraph and telephone lines to
the extent of one hundred (100) feet on
either side of the centerline of any such
road and twenty-five (25) feet on either side
of the centerline of any such telegraph or
telephone lines. Act of March 12, 1914,
38 Stat. 305, 43 U.S.C. 975d.

Patent Number **50-85-0070**

Form 1880-10
(June 1984)
F-83649

Provided, that, if the patentee attempts to transfer title to or control over the land to another or the land is not used by the University of Alaska, title shall revert to the United States.

85-8407

11-

FILED
F. 17 N. SEC.
DISTRICT

APR 15 11 15 AM '85

372840

U of A
3356 College Rd
Fairbanks AK 99701



IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in ANCHORAGE, ALASKA
the 27TH day of DECEMBER in the year
of our Lord one thousand nine hundred and EIGHTY-FOUR
and of the Independence of the United States the two hundred
and NINTH.

By Michael J. Penfold
Michael J. Penfold
State Director

Patent Number 50-85-0070



United States Department of the Interior

OFFICE OF THE SOLICITOR
ALASKA REGION

4230 University Drive
Suite 300
Anchorage, Alaska 99508-4626



When responding please refer to:

BLM.AK.1740

Memorandum

August 4, 1994

RECEIVED B.L.M.
CONVEYANCE MANAGEMENT
94 AUG -9 PM 4:07

For: Tom Allen, State Director
Alaska State Office
Bureau of Land Management
222 West Seventh Avenue, #13
Anchorage, AK 99513-7599

From: J. P. Tangen
Regional Solicitor

Subject: Conveyance to the University of Alaska under the Educational Mining Act of 1982, as amended

On June 29, 1993 you requested this office to address two questions:

1. Do the conditions set forth in [patent 50-85-0070] comply with the provisions of [the Educational Mining Act of 1982, as amended]?
2. If the conditions of the patent are correct, does a lease violate any of the provisions of the act?

You have indicated that if the patent requires correction, you intend to initiate those corrections pursuant to the provisions of 43 CFR 1865.3.

For the reasons hereinafter stated, we answer your questions as follows:

1. The conditions in the patent are not inconsistent with the provisions of the Act, however, they are more restrictive than what the Act requires, and to the extent that the restrictions in the patent exceed the requirements of the Act, they are unenforceable.
2. Inasmuch as the prohibition against a "conveyance" as that term is used in the Act does not apparently include leases, it is our opinion that a lease would not, *ipso facto*, violate the

provisions of the Act; however, the University must continue to "hold and use" the land during the term of the lease.

3. Because there is no "error" in the patent, correction in accordance with the provisions of 43 CFR 1865.3 would be inappropriate.

BACKGROUND

On April 15, 1956, Tury F. Anderson located four contiguous lode mining claims within Township 2 North, Range 1 East, Fairbanks Meridian, Alaska. The claims lie within Sections 8, 9 and 16. On November 30, 1959 the State filed selection number F-024507 for all the lands in Sections 8, 9 and 17 of Township 2 North, Range 1 East under the provisions of the Alaska Statehood Act. Accordingly, the state selections were subject to these claims, assuming their validity. Section 16, on the other hand, was designated as a school section under the provisions of the Act of March 4, 1915, as amended, and was not open to location in 1956; therefore, those portions of the said lode mining claims which lie within Section 16 were void *ab initio*. Mr. Anderson agreed to sell the surviving claims to the University of Alaska. On August 21, 1978, the University, in turn, applied to the Bureau of Land Management for survey of the four claims. Mineral Survey (M.S.) 2407 was completed in 1978.

In an effort to transfer the land to the State for subsequent transfer to the University of Alaska, the Department explored a three-way administrative exchange; however, the University believed that would take too much time. Instead, it was determined to use the vehicle of private legislation to have all right, title and interest of the United States in the land conveyed by the United States directly to the University of Alaska.¹ Public Law 97-406 which purported to do just that was signed into law on January 3, 1983. The law attempted to describe the land covered by the claims by reference to the aliquot parts of Sections 8 and 9.

¹ The first step in this process was to have a validity examination done on the claims to determine whether they were valuable for any minerals contained therein. If the claims were found to be invalid they would be void, and the United States could convey the Mineral Survey without concern about the ownership of the mineral estate.

Unfortunately, the description of the land in the survey had two difficulties. The first resulted from the failure of the enrolled statute to start a new paragraph after the comma in the description of the aliquot parts of Section 9. This was a non-critical clerical error, and there was no problem understanding that the intent of the drafters was not to describe a quarter of a quarter of a quarter of a quarter of a quarter of a quarter of a quarter section constituting a little over 1,700 square feet instead of two different lots one of which was a quarter of a quarter of a quarter section consisting of approximately 435,600 square feet and the other was a quarter of a quarter of a quarter of a quarter section consisting of approximately 108,900 square feet.

The other difficulty with description of the land caused greater concern, however, because taken in its entirety, the description omitted portions of MS 2407.

PL 97-406 also contained two conditions:

- (a) [that the Secretary is] satisfied that no valid mining claims exist on the described lands; and
- (b) . . . that the described land shall be held and used by the University of Alaska and shall not be conveyed by the University.

The first condition was satisfied by a validity examination dated September 22, 1983 which concluded that

[b]ased on the current reports and sample data published by the State of Alaska, Division of Geological and Geophysical Surveys and field examination of the property, the mine cannot be developed at a profit based on the values contained in the ore at present prices.

To solve the land description problem, it was determined to amend PL 97-406 to remove the land description and substitute MS 2407 (exclusive of that portion within Section 16) as the land area to be conveyed.² This change was effected by PL 98-396 dated August 22, 1984. No question was raised about the two conditions contained in PL 97-406 when PL 98-396 was being worked on, and these conditions were unaffected by PL 98-396 when it was adopted.

² At the time PL 97-406 was passed, the BLM had not accepted MS 2407, however, it was subsequently accepted and therefore available for use when PL 98-396 was passed.

In due course, patent number 50-85-0070 was issued by the United States to the University of Alaska which recited as authority PL 97-406 and PL 98-396 for conveying

[t]hat portion of Mineral Survey No. 2407, Alaska, situated in Sections 8 and 9, Township 2 North, Range 1 East, Fairbanks Meridian, Alaska.

The grant further specified that it was *for mining educational purposes only* and that it was subject to the following reservations:

1. A right of way for ditches or canals (43 U.S.C. 945); and
2. A right of way for railroads, telegraph and telephone lines (43 U.S.C. 975d).

In addition, the patent provided that

if the patentee attempts to transfer title to or control over the land, or the land is not used by the University of Alaska title shall revert to the United States. (emphasis added)

On January 19, 1993, the university requested "the patent be amended to better reflect the intent of the law." The justifications for the requested actions are first, that the University "has not had the funding to modernize the facility" and second, "[g]iven the property's mineral potential, the University desires to lease the property to a mining company [subject to a provision] for participation by the University in any exploration and development activities."

ANALYSIS

1. Is this an appropriate situation for correction of a patent under the provisions of 43 CFR 1865.0-1 *et seq.*?

The purpose of 43 CFR 1865 is set out in §1865.0-1

- to implement section 316 of the Federal Land Policy and Management Act of 1976 ... which affords the Secretary authority *to correct errors* in patents and other documents of conveyance pertaining to the disposal of the public lands of the United States under laws administered through the Bureau of Land Management or its predecessors. (emphasis added)

The term "error" in turn is defined as meaning

the inclusion of *erroneous descriptions, terms, conditions, covenants, reservations provisions and names* or the omission of requisite descriptions, terms, conditions, covenants, reservations provisions and names either in their entirety or in part, in a patent or document of conveyance *as a result of a factual error*. The term is limited to mistakes of fact and not of law. (emphasis added)

The focus of the discussion, therefore, is whether

1.) the *proviso* against "attempts to transfer title to or control over the land" or

2.) the *proviso* against non-use of the land by the University of Alaska

will precipitate a reversion to the United States is a **factual error**. In order for either to be factually erroneous it would have to wrongly assert something to be true. Simply stated, neither of these provisions do so. In order to precipitate a reverter it is necessary to look not to the patent but to the statute authorizing the conveyance. Thus, the meaning of the terms "*attempts to transfer title*" and "*used by the University of Alaska*" must be construed as meaning no more nor less than "held and used ... and not conveyed by the University." Given that these provisions mean only what the statute says, it is the opinion of this office that there is no error correctable under the provisions of 43 CFR 1865.

2. Can the University of Alaska proceed "to lease the property to a mining company"?

If correction of the patent is inappropriate under the provisions of 43 CFR 1865, does the statute or patent preclude the University from leasing all or a portion of Patent Number 50-85-0070 to a mining company? The reservations in the statute, and by extension in the patent, are "*held and used .. and not conveyed*." For the purposes of interpreting PL 97-406, it does not appear that the term "not conveyed" was intended to include a prohibition against leases. Although the term is not defined in the statute, it is used elsewhere, *viz.*, in the enacting clause: "the Secretary is directed to convey all right, title, and interest of the United States in the following described land...." **There is no inference that the transfer of anything less than a full fee title was intended in that context, and in the instant context, there is similarly no indication that anything less than a fee transfer is intended to be prohibited. Accordingly, a mining lease is not prohibited by the language of the patent or the statute.**

In the same vein, it would appear that a mining lease which runs to the benefit of the University would be a use by the University, therefore, such a lease would be consistent with the statutory mandate. In fact, given the University's apparent inability to "modernize the facility." it would appear that the options are to lease the property or let it lie fallow (presuming that the parcel is not susceptible to uses other than mining, either for education or for profit). It is the **opinion** of this office that leasing the property would constitute a use of the property within the meaning of the statute and patent.

3. Is leasing the property consistent with the limitation in the grant that it is "for mining educational purposes only"?

As noted, the language in the grant says that the purpose of the grant is *for mining educational purposes only*. Once again, there is no definition available to interpret a critical term, and where, as here, there is no nice nexus between the term to be interpreted and the specific language of the authorizing statute, it is appropriate to interpret the term in a manner which is consistent with the law. It has long been held that

The land-officers, who are merely agents of the law, had no authority to insert in the patent any other terms than those of conveyance, with recitals showing a compliance with the law and the conditions which it prescribed. *Deffeback v. Hawke*, 115 U.S. 392, 406 (1885).

CAUTION! However, "Any doubt as to the extent of the grant must be resolved in the government's favor." *Andrus v. Charleston Stone Products*, 436 U.S. 604, 617 (1978). It seems clear that the University is close to the extreme edge of the grant when it contemplates using this property in the way indicated; however, it is the opinion of this office that leasing the property for the purpose of having it mined under circumstances wherein the University will be participating "in any exploration and development activities" is within the scope of the statutory grant, and that no amendment to the patent is required to permit this activity.

CONCLUSION

While it may be conceded that superficially the language of the patent seems more restrictive than the language of the statute authorizing the conveyance represented by the patent, in fact they must be harmonized. This is possible because there is nothing in the patent which is inconsistent with the language of the statute, and since the patent can do no more nor less than that which is required by law, the language in the patent must be read

State Director
August 4, 1994
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to reflect that meaning of the statutory language. Since the language of the statute and the language of the patent can be harmonized, it follows that a correction in the patent is unwarranted.

Furthermore, the concerns expressed by the University about the implications which flow from the restrictive language in the patent are also unwarranted. Nonetheless, it may be expected that in order for a mining company to be induced to enter into a lease with the University the mining company will want greater assurance of the security of the University's title. Based upon the foregoing, the BLM can with confidence provide the University with appropriate assurance that for so long as the patent is held and used by the University and not conveyed, the patent will not be subject to reversion to the United States.

A handwritten signature in black ink, appearing to read "J. P. Jansen", with a stylized, flowing script.

Matthew Cooper
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April 22, 2021

Seth Deam
Office of the Regional Solicitor
4230 University Dr Ste 300
Anchorage AK 99508

Dear Mr. Deam,

I am writing to inquire about whether a Regional Solicitor Opinion from 1994 (enclosed) has been overruled, superseded or otherwise modified.

As can be told from reading the opinion, the University was contemplating leasing out a 60-acre patented to it in 1985, with the patent containing certain restrictions which seemed to preclude the University leasing it out. The University requested issuance of a corrected patent removing those restrictions that arguably prohibited a lease. The Solicitor concluded that a corrected patent should not be issued, but that the lease was nonetheless permissible, because the terms in the patent which were more restrictive than the terms in the underlying legislation were unenforceable, and a lease would not violate the terms of the underlying legislation.

While the University did not move forward with leasing the property at that point, we do find ourselves likely to need to attempt this currently, for a number of reasons, both financial and practical. The Solicitor's opinion would indicate we can do so, but we also feel obliged to make your office aware that we are proceeding on that premise.

We want to make you aware that, simultaneously with making this inquiry of your office on this leasing question, we are submitting to the BLM a request for a Recordable Disclaimer of Interest regarding this property. A copy of that is enclosed. As you can see, we think that there are persuasive reasons to conclude that the 1984 enactment directed the Secretary to convey the property notwithstanding the conditions contained in the 1983 enactment, and that an RDI is a suitable vehicle to disclaim the Secretary's reversion or other interests in requiring continued adherence to the conditions, both those in the patent itself and in the 1983 legislation.

Recognizing that the request for RDI may take some time for the BLM (and presumably your office) to determine, we would like to move forward in the meantime with exploring the leasing option which the 1994 Regional Solicitor's Opinion allows, unless that opinion has been overridden since its issuance.

Any information you can provide on this would be most appreciated. If there is any more information you would like from us, please let me know, or if someone from your office would like to discuss this telephonically. I can be reached at 907-699-1594, or arharrington2@alaska.edu.

Kind Regards,

A handwritten signature in black ink, appearing to read "Andy Harrington", with a stylized flourish at the end.

Andy Harrington
Associate General Counsel

Enclosures

Xc: Chad Padgett, BLM Alaska Director