



United States Department of the Interior



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In Reply Refer To:
1864 (AK941)

Memorandum

To: File FF-97727

From: Kamberly G. Ellorin
Realty Specialist

Subject: Summary Report for University of Alaska (UA) Recordable Disclaimer of Interest (RDI) for Silver Fox Mine (FF-97727)

Introduction

UA, an instrumentality of the State of Alaska, filed an RDI application with the Bureau of Land Management (BLM) on April 26, 2021, pursuant 43 C.F.R. § 1864. The application pertains to the land described in Mineral Survey No. 2407, officially filed on May 6, 1983, and patented to UA on December 27, 1984, with a reversionary interest to the United States. UA now seeks to remove this reversionary interest.

The legal land 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.

The area contains 59.59 acres.

UA contends there is a cloud on title due to discrepancies between stipulations in the [Educational Mining Act of 1982](#)¹, patent number 50-85-0070, and [subsequent statutes](#)². The discrepancies resulted in restrictions to UA's use of the described lands which they claim are not in accordance with the Educational Mining Act of 1982, as amended.

¹ 96 Stat. 2031, 2031-2032 (Jan. 3, 1983).

² 98 Stat. 1369, 1385-1386 (Aug. 22, 1984).

The Educational Mining Act of 1982 conveyed to UA all right, title, and interest of the United States to the land described, subject to certain conditions. Sec. 2, in pertinent part, states:

“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.**” (emphasis added).

Subsequent to the passage of the Educational Mining Act of 1982, PL 98-396 (98 Stat. 1369) amended certain portions of the Educational Mining Act. The last paragraph of Chapter VI, Department of the Interior, Bureau of Land Management, Administrative Provision, states:

“Notwithstanding the provisions of section 2 of the Educational Mining Act of 1982, within 30 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](#)³, of the lands described in the Educational Mining Act of 1982, as amended by 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.” (emphasis added).

The Supreme Court has analyzed the correct statutory interpretation of the term “notwithstanding.” In *NLRB v. SW Gen., Inc.*, the Court stated “The ordinary meaning of ‘notwithstanding’ is ‘in spite of,’ or ‘without prevention or obstruction from or by.’ . . . In statutes, the word ‘shows which provision prevails in the event of a clash.’”⁴

Here, the limitations found in the Educational Mining Act (that the land be held and used by UA and not further conveyed) “clash” with the provisions of the subsequent amendment directing the conveyance to UA of all “right, title, and interest” the United States has in this land. The restrictions in the Educational Mining Act of 1982 direct a less than complete conveyance of all interests due to the limitations imposed on the use of the land; the subsequent statute acts so as to remove these limitations.

Despite the passage of the amendments to the Educational Mining Act of 1982, the patent to the described land, issued after the passage of the amendments, has the following pertinent condition:

“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.”

³ Alaska Statehood Act, 72 Stat. 339 (Jul. 7, 1958).

⁴ *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 301 (2017) (internal citations omitted).

The language creates a reversionary interest for the United States and operates to convey less than all “right, title, and interest” to UA. This language in the patent disregards the express direction of Congress convey all right, title, and interest in the land to UA and limits UA’s use of the land.

The RDI application submitted by UA complies with the provisions of 43 C.F.R. § 1864.1-2. While these regulations prohibit the approval of applications filed more than twelve years after the applicant knew or should have known of the United States’ claim, there is an exception to this filing timeline limitation for states. As defined in 43 C.F.R. § 1864.0-5, “state” includes any governmental instrumentality within a state, and UA is an instrumentality of the State of Alaska. Therefore, this filing timeline limitation does not apply to this application.

Recommendation

I recommend approval of the application. I further recommend that the exceptions and reservations in the patent continue to be preserved and that the RDI be made subject to valid existing rights, if any. BLM land status records do not show conflicts to issuing a disclaimer.