

THELMA M. ECKERT

IBLA 87-500

Decided

June 12, 1990

Appeal from a decision of the Alaska State Office, Bureau of Land Management, summarily dismissing a protest against approval of Native Allotment application AA-4142.

Affirmed.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Generally--Contests and Protests: Generally

Sec. 905(a)(5) of ANILCA, 43 U.S.C. § 1634(a)(5) (1982), established a specific time limitation for raising objections to the approval of designated Native allotment applications; therefore, a protest filed more than 180 days after the enactment of ANILCA must be dismissed and such a protest does not relate back to objections made prior to ANILCA, which were considered by the Bureau of Land Management.

APPEARANCES: Bobby Dean Smith, Esq., Anchorage, Alaska, for appellant Thelma M. Eckert; Mark Butterfield, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for Native allotment applicant, John A. Savo.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Thelma M. Eckert has appealed from an April 14, 1987, decision of the Alaska State Office, Bureau of Land Management (BLM), summarily dismissing her protest against Native Allotment application AA-4142 of John A. Savo, because it was not timely filed. ^{1/}

^{1/} There is some confusion over exactly which part of the Savo allotment is presently under challenge by Eckert. As explained below, Savo filed two applications, one designated AA-4142 A, the other AA-4142 B. Eckert's protest cited AA-4142, without further description. BLM's decision was styled as a decision concerning "Native Allotment AA-4142, Parcel B." In her statement of reasons for appeal (SOR), Eckert appears to be limiting her appeal to Parcel B. However, our resolution of this case precludes the necessity for sorting out the confusion.

Background

Savo filed two Native Allotment applications under the Alaska Native Allotment Act of 1906. The first application, filed with the assistance of the Bureau of Indian Affairs (BIA), was received by BLM on October 30, 1968, and encompassed 5 acres in sec. 26, T. 16 S., R. 47 W., Seward Meridian. In the application, Savo claimed occupancy during the summer fishing months beginning in 1957 and also reported that the land was not occupied or improved by any person other than himself. The application was assigned serial number AA-4142 and subsequently was further identified by BLM as AA-4142 A, when a separate application for 65 acres of adjoining land was filed by Savo.

In letters to BIA, dated June 17, June 25, September 23, 1969, and July 31, 1972, Eckert explained that she bought a cabin, located on the 5-acre allotment, from Savo in 1965 to utilize during the fishing season, and she made it clear that she would object to any decision to grant Savo the 5-acre allotment. Following correspondence with Eckert and a field visit by two BIA realty officials, BIA informed Eckert on August 4, 1972, that the matter would be forwarded to the Anchorage Office, BIA, for its review. The present case file contains no evidence of the results of that review; nor is there any indication that BLM, at that time, was aware of Eckert's objections.

In addition to the 5-acre tract discussed above, an application from Savo for 65 acres in the SE $\frac{1}{4}$ of sec. 26 and SW $\frac{1}{4}$ of sec. 25, T. 16 S., R. 47 W., Seward Meridian, was received by BLM on March 30, 1971, and designated as Parcel B, AA-4142. Savo reported summer occupancy beginning in 1957 exclusive of use by others.

Field examinations of Parcels A and B were conducted by BLM on June 20, 1973. In a field report for Parcel A, dated March 22, 1974, the examiners related that, in addition to the improvements cited by Savo, a 14 by 14 foot cabin belonging to Thelma Eckert was found on Parcel A. The BLM examiners reported that Eckert "had indicated on the previous day that she thought this cabin should be excluded from the Savo claim." They also stated that several people interviewed during the examination stated that the cabin had been built by Savo, but sold to Eckert with the condition that she move it.

In the field report for Parcel B, also dated March 22, 1974, the examiners stated that their visit revealed that a 10 by 12 foot yellow cabin, an outhouse, and some net racks all belonging to Eckert were located on this parcel. BLM also noted a lack of evidence of use by Savo.

By decision dated March 28, 1975, BLM approved Savo's application for Parcel A, but denied the application for Parcel B, noting that substantial improvements belonging to Eckert appeared on Parcel B. However, because Savo was not provided with an opportunity for a hearing at which he could dispute the factual grounds for rejecting the application for Parcel B, see Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), BLM reinstated the application for Parcel B and resumed its review in July 1979.

By decision dated March 21, 1983, BLM determined that Parcel B was legislatively approved, effective June 1, 1981, in accordance with section 905(a) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(a) (1982). A copy of the decision was purportedly sent by regular mail to Eckert.

Over 3 years later, on September 17, 1986, Eckert filed with BLM a protest of Savo's "Native allotment application AA-4142." Eckert objected to BLM's characterization in its March 21, 1983, decision that allotment application AA-4142 had been legislatively approved because "no protest was filed within the allotted 180 days." Eckert asserted that as early as June 1969 she had informed the Department of her conflict with the application. She argued that through her letters in 1969 and 1972, she "made it abundantly clear that she was protesting any decision which would convey to Mr. Savo lands upon which her cabins were located." Eckert also related that in September 1981 and February 1982 she visited BLM to express her objections to Savo's application.

By decision dated April 14, 1987, BLM dismissed the above protest because it was not timely filed. BLM explained that section 905(a)(2) of ANILCA, 43 U.S.C. § 1634 (1982), provides that a pending allotment application must be adjudicated pursuant to the Native Allotment Act only if a protest is filed within 180 days after the effective date of ANILCA, December 2, 1980. BLM concluded that objections received in June 1969, and September 1986, do not constitute timely filed protests.

In her SOR in support of this appeal, Eckert argues that her letters in 1969 and 1972 constituted notification to the Department prior to the 180th day following enactment of ANILCA and that she was protesting any decision which would convey property to Savo upon which she had improvements. She asserts that BLM's 1974 field report for Parcel B clearly indicates that BLM was aware of the conflict between the application and her improvements on Parcel B. She concludes that she "protested the approval of Native allotment AA-4142, Parcel B, by letters to the Department of Interior in 1969 and 1972," and, therefore, her protest was filed prior to June 1, 1981. BLM's decision should be reversed, she argues, and "BLM ordered to adjudicate Native allotment application AA-4142, Parcel B, pursuant to the requirements of the Act of May 17, 1906.

Savo asserts, *inter alia*, that BLM cannot reconsider the approval of either Parcel A or Parcel B, AA-4142, because of the legislative approval provided for by ANILCA.

Findings and Conclusions

The Alaska Native Allotment Act of 1906 granted the Secretary of the Interior authority to allot "in his discretion and under such rules as he may prescribe" up to 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska to any Indian, Aleut, or Eskimo of full or mixed blood who resides in Alaska and is the head of a family or 21 years of age. 43 U.S.C. § 270-1 (1970). Entitlement to an allotment under that Act is

dependent upon satisfactory proof of substantially continuous use and occupancy of the land for a 5-year period. 43 U.S.C. § 270-3 (1970); 43 CFR 2561.0-5(a); see also United States v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981).

However, the Native Allotment Act was repealed on December 18, 1971, by section 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1982), but applications pending before the Department as of the date of repeal were allowed to be processed. Subsequently, section 905(a)(1) of ANILCA provided that, with stated exceptions and exclusions, pending Native allotment applications for land that was "unreserved on December 13, 1968, or land within the National Petroleum Reserve--Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following December 2, 1980." 43 U.S.C. § 1634(a)(1) (1982). One of the exceptions, section 905(a)(5)(C), provides that the approval does not apply if, within the specified period: "A person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and that said land is the situs of improvements claimed by the person or entity." 43 U.S.C. § 1634(a)(5)(C) (1982). Legislative approval had the effect of removing the Department's general authority to re-examine the question of entitlement or further condition the scope of the grant. State of Alaska, 110 IBLA 224, 228 (1989).

The application for Parcel A was approved in 1975. While BIA was provided with a copy of that decision, there is no indication that Eckert was notified at the time of approval. It is evident, however, based on BLM's field report, that BLM's adjudication of Parcel A occurred with full knowledge of Eckert's interest in the cabin on that site.

Prior to the adoption of ANILCA, the mere approval of a Native allotment application did not remove the Department's jurisdiction to re-examine entitlement to an allotment at any time prior to the date the "Native Allotment" was actually issued. Ramona Field, 110 IBLA 367, 372 (1989); Leo Titus, Sr., 89 IBLA 323, 92 I.D. 578 (1985); State of Alaska, 43 IBLA 318 (1980). However, the legislative approval provisions of section 905 of ANILCA apply to Native allotment applications which were approved by BLM prior to the passage of ANILCA if the Native Allotment Certificate had not yet issued. See Eugene M. Witt, 90 IBLA 265, 270 (1986); see also State of Alaska, 110 IBLA at 228. ^{2/} Therefore, Parcel A, as well as Parcel B, was legislatively approved on the 180th day following December 2, 1980, unless there was a protest properly filed in accordance with section 905(a)(5)(C) of ANILCA, 43 U.S.C. § 1634(a)(5)(C) (1982).

^{2/} As the Board observed in Eugene M. Witt, 90 IBLA at 270:

"[O]ur reading of section 905 leads to the conclusion that Congress intended to make its legislative approval as final as actual issuance of the "Native Allotment," removing the Department's general authority to reexamine the question of entitlement in all cases where the allotment was subject to legislative approval, and leaving the Department with the purely ministerial task of surveying the allotment."

Section 905(a) of ANILCA was intended to promote allotment finality and thereby promote conveyance finality. S. Rep. No. 413, 96th Cong., 2d Sess. 237, reprinted in 1980 U.S. Code Cong. & Ad. News 5181. Under the provisions of section 905, individuals, like Eckert, who claimed improvements on the land described in a Native allotment application, were allowed to file a protest of such application within 180 days of enactment of ANILCA. The intent of Congress to promote allotment finality would be frustrated by allowing parties to come forward after the statutorily imposed time limit and attempt to defeat allotments which have otherwise qualified for legislative approval under ANILCA. Thus, where a party failed to timely protest, he or she is barred from challenging the validity of the Native allotment application in question. William B. Torgramsen v. Heirs of Carl G. Carlson, 96 IBLA 209 (1987). Here, the record is clear that Eckert did not file a protest in accordance with ANILCA until after the statutorily imposed time limit.

[1] The thrust of Eckert's appeal is that her protest of "allotment application AA-4142" was lodged with the Department prior to passage of ANILCA and, thus, it was, in fact, filed "within 180 days" of the Act's enactment and that the protest remained a standing objection following passage of the Act (SOR at 2).

In State of Alaska v. Heirs of Dinah Albert, 90 IBLA 14 (1985), similar arguments were advocated by the State of Alaska, where "[t]he State filed no ANILCA protest relating to its rights-of-way, presumably because it assumed they would be protected." 90 IBLA at 20. The Board held in Albert that section 905(a) of ANILCA constituted notice to the world that specified allotment applications would be approved after the passage of 180 days in the absence of a protest specifically made during the time limitation established for raising such objections. Id. In William B. Torgramsen v. Heirs of Carl G. Carlson, 96 IBLA at 214, the Board held that the following three prerequisites set forth in the statute must be met to preclude legislative approval: First, a protest must be filed; second, the protest must have been filed within the 180-day deadline established by section 905(a)(1); and third, the party filing the protest must allege and, if necessary, demonstrate that improvements exist on the land. Thus, a protest filed more than 180 days following enactment of ANILCA must be dismissed. Eckert's general protest filed September 17, 1986, is in that category.

Further, an alleged "standing protest" will not satisfy the requirement delineated in ANILCA that objecting parties, within 180 days following the effective date of the Act, identify any conflict with an allotment application. In this case, we find that while Eckert may have voiced objections to Savo's application for Parcel A prior to ANILCA, those objections were considered by BLM in its adjudication of Parcel A, and her failure to pro-test timely either Parcel A or Parcel B pursuant to the express provisions of ANILCA means that both of those parcels were legislatively approved on the 180th day following the passage of ANILCA.

Any argument that she did not know of the above requirement to file within the 180-day period must fail. It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Thus, a failure to comply with the requirements of ANILCA under these circumstances cannot be excused.

While the 1974 field examination of Parcel B identified Eckert's improvements, section 905(e) of ANILCA, cannot be invoked to save her protest from dismissal. This section provides in pertinent part:

Prior to issuing a certificate for an allotment subject to this section, the Secretary shall identify and adjudicate any record entry or application for title * * * which entry or application claims land also described in the allotment application, and shall determine whether such entry or application shall represent a valid existing right to which the allotment application is subject.

43 U.S.C. § 1634(e) (1982). This section relates specifically to identification and adjudication of "any record entry or application for title." See William B. Torgramsen v. Heirs of Carl G. Carlson, 96 IBLA at 215; see also Ramona Field, 110 IBLA at 370-71 (valid existing claim). There is no evidence of Eckert having filed an application or completed a record entry for the subject land described in either allotment application.

We find that when Eckert did not protest during the statutory time period, she was barred from challenging the validity of either of Savo's applications identified as AA-4142.

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 is affirmed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge