

TOMMY CHAVEZ

IBLA 91-148

Decided November 2, 1993

Appeal from decision of the Albuquerque, New Mexico, District Office, Bureau of Land Management, rejecting lieu stock-raising homestead entry application SF-079606.

Affirmed.

1. Act of Mar. 13, 1921--Act of Aug. 5, 1955--Lieu Selections--Stock-Raising Homesteads

A right to select lieu lands under the authority of sec. 13 of the Act of Mar. 13, 1921, 41 Stat. 1239, was a claim required to be recorded with the Department within 2 years from the effective date of the Act of Aug. 5, 1955, 69 Stat. 534. Failure to present the claim within the time established by the 1955 Recordation Act barred acquisition of the land. Filing a selection application in 1946 did not constitute compliance with the 1955 recordation requirement.

APPEARANCES: Liz Thomas, Esq., DNA-People's Legal Services, Inc., Mexican Hat, Utah, for appellant Tommy Chavez; Arthur Arguedas, Esq., Office of the Field Solicitor, Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Tommy Chavez, as an heir of Arthur Chavez, appeals from the December 27, 1990, decision of the Albuquerque, New Mexico, District Office, Bureau of Land Management (BLM), rejecting lieu stock-raising homestead entry application SF-079606. BLM previously had rejected this application by decision dated July 8, 1986. This Board reversed that decision and remanded the matter to BLM for further adjudication. Heirs of George Martinez, Heirs of Arthur Chavez (Martinez), 103 IBLA 375 (1988). The December 1990 decision was the result of that further adjudication. While a more detailed discussion regarding the history of this case may be found in Martinez, supra at 375-77, we will provide a brief review herein.

Arthur Chavez filed an application for a stock-raising homestead entry on May 22, 1931, for 640 acres described as sec. 32, T. 18 N.,

R. 6 W., New Mexico Principal Meridian. On November 27, 1932, he relinquished his entry application subject to the condition that he be allowed to file a lieu selection. On August 22, 1946, he filed a lieu selection application (SF-079606) for 640 acres of land described as sec. 17, T. 18 N., R. 7 W., New Mexico Principal Meridian, McKinley County, New Mexico. By decision dated October 18, 1960, BLM rejected the application without prejudice to any further selection of other vacant, qualifying lands. Chavez died on May 1, 1961. There is no evidence in the record that he appealed the 1960 decision or selected other lands. He left a wife and nine children, one of whom, Tommy, is the appellant herein.

On January 2, 1986, counsel for the heirs of Chavez notified BLM that they wanted the lieu selection to encompass the N½ sec. 14 and the W½ and SE¼ sec. 35, T. 17 N., R. 6 W., New Mexico Principal Meridian. On July 8, 1986, BLM again rejected SF-079606, this time on the ground that Arthur Chavez was not entitled to a stock-raising homestead entry because he had already received a patent for an Indian allotment. On appeal, the Board concluded that Chavez's 160-acre Indian allotment patent did not preclude entitlement to a stock-raising homestead, but merely exhausted that entitlement to the extent of the Indian allotment, thereby limiting any lieu selection to 480 acres. Martinez, 103 IBLA at 381. As noted above, the Board remanded the matter of the lieu application to BLM for further consideration.

In its December 27, 1990, decision, BLM listed a number of reasons for rejection. First, it found that Arthur Chavez had failed to comply with the Stock Raising Homestead Act (SRHA), 43 U.S.C. §§ 291-298 (1976) 1/ because (1) the lands described in his 1931 entry application (sec. 32, T. 18 N., R. 6 W., New Mexico Principal Meridian) were appropriated and unavailable; (2) the lands were not contiguous to Chavez's allotted lands; and (3) the lands sought were inadequate to support stock-raising in a qualifying manner.

Next, BLM noted that it was not aware of any application being filed by Tommy Chavez or any other Chavez heir and, therefore, it assumed that Tommy Chavez was asserting some personal right to pursue SF-079606 and acquire the land described therein (sec. 17, T. 18 N., R. 7 W., New Mexico Principal Meridian). 2/ BLM then ruled that the lieu application did not comply with the regulations in effect in 1946 which provided that "no application will be considered involving lieu lands in any township where the selector owns

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1/ While the SRHA was expressly repealed by section 702 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2787, the Department had long held that it was impliedly repealed by the Taylor Grazing Act, 43 U.S.C. § 315 (1988). See George J. Propp, 56 I.D. 347 (1938).

2/ BLM apparently overlooked the letter filed by counsel for the heirs on Jan. 2, 1986, which had stated: "Please consider this, therefore, a letter of application for that lieu selection. The lands they are requesting are as follows: T. 17 N., R. 6 W., N½ of Section 14 and W½ and SE¼ of Section 35."

no land and where the approval of such application will not effect a consolidation of the holdings of the applicant in such township or townships." 43 CFR 149.40 (1940). BLM concluded that Chavez owned no land in T. 18 N., R. 7 W. and that approval of the application would have the effect of scattering land holdings rather than consolidating them. BLM also rejected the application for the same reasons stated in its October 18, 1960, decision; two landowners had protested the lieu application; Chavez had no grazing permit for the selected lands; and approval of the application would substantially reduce the group grazing allotment.

BLM further concluded that approval of the lieu selection was barred by the doctrine of laches because Chavez's heirs had waited over 25 years to pursue the application. Finally, BLM determined that there was nothing to be inherited, citing two grounds. First, BLM stated that Chavez never perfected his stock-raising homestead entry or his lieu selection and therefore his right to make a lieu selection did not transfer to his heirs. Second, BLM ruled that the lieu right ceased when Chavez did not comply with the Recordation Act of 1955, 69 Stat. 534.

In his statement of reasons, Tommy Chavez contends that BLM's decision is in error in every aspect and the only equitable solution in this situation is to approve the lieu selection application. <sup>3/</sup> He argues that neglect and gross misconduct by officers and agents of the United States cannot prevent Chavez's heirs from acquiring rights to the selected lands. He asserts that the Department repeatedly breached a trust obligation to Arthur Chavez as an Indian because the assistance rendered by government agents resulted in Arthur Chavez making the original selection and the lieu selection which BLM alleges did not meet the requirements of the SRHA. Appellant also maintains that the lieu selection had no relationship to Arthur Chavez's Indian allotment, and, therefore, BLM wrongfully ruled that it must be contiguous with that allotment. Appellant argues that if the lands were required to be contiguous, then the Department breached its duty to Chavez when it allowed him to make the entry and lieu selection.

Further, appellant charges that BLM, rather than the heirs, is guilty of laches, because, while Arthur Chavez pursued his rights, BLM delayed processing the selection. Appellant further contends that, given the length of time involved and the Department's trust responsibility, it is BLM who must prove that Chavez did not comply with the requirements for a valid stock-raising homestead entry.

With respect to the inheritability of the selection right, appellant contends that, by accepting the offer to make the lieu selection and relinquishing his entry, Arthur Chavez obtained a vested contract right.

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<sup>3/</sup> In response to an order from the Board granting a request by BLM for a more definite statement concerning the precise land sought as lieu, counsel for Chavez responded that Tommy Chavez sought the N<sup>1</sup>/<sub>2</sub> of sec. 14 and the SW<sup>1</sup>/<sub>4</sub> of sec. 11, T. 17 N., R. 6 W., New Mexico Principal Meridian.

Appellant argues that Arthur Chavez had a perfected claim to a selection of lands, which right is inheritable. As for the Recordation Act of 1955, appellant asserts that this legislation was not enacted for the purpose of foreclosing claimants from asserting rights of which the Department already had specific notice. Appellant argues that Arthur Chavez substantially complied with the recordation requirement by filing his lieu selection application in 1946.

[1] We will first address the question whether Arthur Chavez was required to comply with the Recordation Act of 1955, 69 Stat. 534. Section 1 of that Act provides:

That any owner of, and any person claiming rights to, Valentine scrip, issued under the Act of April 5, 1872 (17 Stat. 649); Sioux Half-Breed scrip, issued under the Act of July 17, 1854 (10 Stat. 304); Supreme Court scrip, issued under the Acts of June 22, 1860 (12 Stat. 85), March 2, 1867 (14 Stat. 544), and June 10, 1872 (17 Stat. 378); Surveyor-General scrip, issued under the Act of June 2, 1858 (11 Stat. 294); a soldier's additional homestead right, granted by sections 2306 and 2307 of the Revised Statutes; a forest lieu selection right, assertable under the Act of March 3, 1905 (33 Stat. 1264); a lieu selection right conferred by the Act of July 1, 1898 (30 Stat. 597); a bounty land warrant issued under the Act of March 3, 1855 (10 Stat. 701); or any lieu selection or scrip right or bounty land warrant, or right in the nature of scrip issued under any Act of Congress not enumerated herein (except the indemnity selection rights of any State, or the Territory of Alaska), shall, within two years from the effective date of this Act, present his holdings or claim for recordation by the Department of the Interior.

Section 4 of the Act provided that if claims were not presented within the time established by the Act, they would "not thereafter be accepted by the Secretary of the Interior for recordation or as the basis for the acquisition of lands." See also 43 CFR Part 130 (1963) (regulations implementing the 1955 Recordation Act).

Section 1 of the 1955 Recordation Act applies in part to "any lieu selection or scrip right \* \* \* under any Act of Congress not enumerated herein." (Emphasis added.) Chavez applied for his lieu selection under the authority of section 13 of the Act of March 13, 1921, 41 Stat. 1239, which provides, in part:

The Secretary of the Interior is hereby authorized in his discretion, under rules and regulations to be prescribed by him, to accept reconveyances to the Government of privately owned and State school lands, and relinquishments of valid homestead entries or other filings, including Indian allotment selections, within any township of the public domain in San Juan, McKinley, and

Valencia Counties, New Mexico, and to permit lieu selections by those surrendering their rights so that the holdings of any claimant within any township wherein such reconveyances or relinquishments are made be consolidated and held in solid areas.

See also 43 CFR 149.35 to 149.43 (1940) (regulations promulgated to implement section 13 of the Act of Mar. 13, 1921).

In Santa Fe Pacific Railroad Co., 72 IBLA 197 (1983), the Board applied the Recordation Act to a railroad indemnity selection. Although the district court in Santa Fe Pacific R.R. v. Secretary of the Interior, 587 F.Supp 748 (D.D.C. 1984), upheld that determination, the circuit court reversed. Santa Fe Pacific R.R. v. Secretary of the Interior, 830 F.2d 1168 (D.C. Cir. 1987). That court focused on whether the selection right in question was among those contemplated in the "catchall" phrase of section 1 of the Recordation Act and concluded that none of the "types of scrip" listed was related to the railroad construction acts. Id. at 1177.

Without exception, the statutes specifically referenced in the Recordation Act related to scrip, warrants, lieu selections and other claims to lands issued as compensation to individuals for a variety of reasons, in many instances to indemnify parties surrendering lands or rights to land to the United States. See, e.g., 17 Stat. 650 (Valentine claim relinquishment); 10 Stat. 304 (Indian land relinquishment); 12 Stat. 85 (claim replacement); 11 Stat. 294 (property claim settlement); 33 Stat. 1264 (forest land relinquishment); 30 Stat. 597 (railroad land replacement). In each case, the rights were not attached to land in any particular location; rather they were entitlements to select from the public lands in general. 830 F.2d at 1175.

Thus, consistent with the circuit court's discussion in Santa Fe, we must conclude that Arthur Chavez's lieu selection right was one of those governed by the "catchall" phrase in the 1955 Recordation Act.

Appellant does not argue that the Recordation Act is inapplicable. Nor does he argue that he recorded his claim within the 2-year period established by that Act. Rather, he asserts that by filing his application in 1946 he complied with the Act. We reject that argument.

Undisturbed by the circuit court's reversal of Santa Fe was the Board's rationale that a pre-Recordation Act filing did not affect the Recordation Act requirement of registering claims with the Department within 2 years of enactment of the Act. In Santa Fe, the appellant had argued that a filing made in 1940 constituted compliance with the Recordation Act. The Board rejected that contention, stating:

[S]ection 1 of the Recordation Act required recordation "within two years from the effective date of this Act." The purpose of the Act was to determine which claims were outstanding

at that time. A filing in 1940, even if held to be sufficient as to form \* \* \*, would not comply with the 1955 Act.

72 IBLA at 208. 4/

Contrary to appellant's argument, documents filed before 1955 did not constitute compliance with the Act as section 1 required recordation "within two years from the effective date." Thus, the fact that Chavez had filed an application in 1946 exercising his lieu selection right did not excuse him from recording that right under the 1955 Recordation Act. The failure to record timely results, by the terms of section 4 of the Act, in the claimant being barred from acquiring land pursuant to his lieu right. See, e.g., Warren A. Taylor, A-27702 (Nov. 5, 1958). 5/

In addition, section 2 of the 1955 Recordation Act provides:

In the case of a transfer after the effective date of this Act, by assignment, inheritance, operation of law, or otherwise of a holding or claim of any right recorded under this Act, the holding or claim of right so transferred shall be presented to the Department of the Interior within six months after such transfer, or recordation by it; except that where such transfer occurs within the period of two years from the effective date of this Act and the prior owner has not complied with the provisions of this Act, the owner or claimant by transfer shall have the remainder of such period or a period of six months, whichever is longer, within which to present his claim or holdings for recordation.

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4/ In support of such a conclusion, the Board pointed out in Santa Fe the analogy with the recordation requirement of section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1988), for unpatented mining claims on Federal lands. The Board noted that recordation was required for all mining claims regardless of whether the Department had independent knowledge of their existence. The Board then stated with regard to the Recordation Act:

"Recordation was a reasonable requirement which was meant to identify rights which remained unsettled. The Recordation Act placed the burden on the person asserting the right to come forward and identify it for the Department so that final resolution of those claims could take place. The failure to record timely results, by the terms of section 4 of the Recordation Act of 1955, in the claimant being barred from acquisition of the land."  
72 IBLA at 208.

5/ As this Board stated in our 1988 remand decision:

"The present record does not reflect whether appellants' predecessors-in-interest complied with the Recordation Act of 1955, 69 Stat. 534. \* \* \* If there was no compliance with that statute, appellants would have no surviving lieu rights."

Martinez, 103 IBLA at 383, n.16.

According to the case record, disposition of Chavez's estate was effected by a Bureau of Indian Affairs' probate decision rendered in 1963. Thus, even assuming that we were to accept appellant's argument that the filing of the 1946 lieu selection application constituted compliance with the 1955 Recordation Act, there is no evidence that appellant or any of the other Chavez heirs timely complied with section 2 of the Recordation Act by recording with the Department of the Interior any lieu selection right within 6 months of the inheritance thereof. Under the express language of the Act, the Department is denied any authority to accept the transferred right as a basis for acquisition of lands, absent timely recordation. Patricia R. Williams, A-28160 (Feb. 2, 1960).

In light of our disposition, we do not reach the other allegations of error raised by appellant.

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.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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James L. Burski  
Administrative Judge