



WILLIAM M. TENNYSON, SR.

178 IBLA 138

Decided September 22, 2009



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

WILLIAM M. TENNYSON, SR.

IBLA 2009-177

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Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying a request to add acreage to a Native allotment for which a certificate had been issued. AA-7656A and 7656B.

Affirmed.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments

BLM properly denies a request by the applicant to amend a Native allotment application to add acreage to a Native allotment for which a certificate has been issued, where BLM previously afforded the applicant an opportunity to amend the application pursuant to sec. 905(c) of ANILCA, but no request was submitted during the prescribed time period, and where a final plan of survey was adopted after Dec. 2, 1980, and before the request to amend was made.

APPEARANCES: Carol Yeatman, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant; Steven Scordino, Esq., Office of the Regional Solicitor, Alaska Region, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

William M. Tennyson, Sr., has appealed two separate March 2, 2009, decisions of the Alaska State Office, Bureau of Land Management (BLM), denying his request to add 14.34 acres to Parcels A and B comprising his Native allotment, for which certificates for 130.61 acres have been issued.<sup>1</sup>

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<sup>1</sup> The decision regarding Parcel A was styled "Reinstatement of Additional Acres Denied." The decision regarding Parcel B was styled "Amendment for Approximately (continued...)"

*Background*

There is no dispute regarding the facts of Tennyson's Native allotment application. On April 14, 1972, BLM received Tennyson's typewritten application for a Native allotment pursuant to the Native Allotment Act of May 17, 1906, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed with a savings provision by section 18(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617(a) (2006), from the Bureau of Indian Affairs (BIA). The application sought two parcels, described as follows:

Parcel A:      $S\frac{1}{2}S\frac{1}{2}NW\frac{1}{4}$ ,  $N\frac{1}{2}N\frac{1}{2}SW\frac{1}{4}$  sec. 4, T. 12 S.,  
R. 55 W., SM [Seward Meridian].  
Dillingham A-7

Parcel B:      $SW\frac{1}{4}SW\frac{1}{4}$ , fractional  $SE\frac{1}{4}SW\frac{1}{4}$  southwest  
of river, Fractional  $W\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$  west of  
river, sec. 7, T. 7 S., R. 54 W., SM  
Dillingham C-7

As shown on the attached portion of a copy of USGS quadrangle map as indicated above which becomes a part of this application.

Two USGS maps were attached to the application. One map, Dillingham A-7, showed Parcel A as square 20, on the Wood River. The other map, Dillingham C-7, depicted Parcel B as square 13, on the Agulukpak River. In block 8b of the application, Tennyson indicated that he had marked and posted the corners of the parcels as required by applicable regulations.

Tennyson asserted seasonal use and occupancy initiated in May 1944 that continued as of the date of his application. That use consisted of "[i]ntermittent residence during summer and winter months[,] hunting, camping[,] cutting wood, berry picking and fishing." He kept sled dogs, and identified as improvements a fish camp on the Agulukpak River, and a tent frame on the Wood River. No acreage figure was stated in the application.

In an undated, handwritten letter received by BLM on July 25, 1975, Tennyson advised that Parcel A "is about 2 miles NE of where I really am. I can show it to the field examiner when they take me out. But I want it changed on my records. I should be on the S.W. corners of Sec. 8 instead." A field examination of Parcel A, at which Tennyson was present, was conducted on September 11, 1975. The location of the land was described as sec. 8, T. 12 S., R. 55 W., SM consisting of "80+" acres,

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<sup>1</sup> (...continued)

15 Acres Denied, Native Allotment Application, Parcel B, in Part, Deemed Not Timely Filed."

with the notation that “Section 8 has been surveyed, although not officially filed. W $\frac{1}{2}$ SW $\frac{1}{4}$ .” The examiner recorded that Tennyson showed him the land he was to examine. He noted that the land Tennyson identified on the ground was on a small, unnamed lake approximately 2 miles from Wood River. The field examiner concluded that the location he was shown “is an obvious amendment to the original application. One of the applicant’s posts was found on the other side of the small lake in a completely different place than either his original application or his new application.” Sept. 11, 1975, Field Report at 2. A fire pit and recently constructed but never used tent frame or fishrack were noted on land to the north of the land Tennyson identified, but there was no evidence of use or occupancy associated with the activities he claimed on the land he identified during the field examination. The field examiner therefore concluded that the application did not satisfy the requirements of the Native Allotment Act.

The field examination of Parcel B occurred on July 7, 1975. Tennyson was not present, although it appears that his interests were represented by Joe Chaney, as arranged by Gusty Knutson of Choggiung Ltd., a Native village corporation. The field examiner later talked to Tennyson by telephone. July 7, 1975, Field Report at 1. The parcel was reported to be in sec. 7, T. 7 S., R. 56 W., SM, when in fact it was in R. 54 W., as shown in Tennyson’s allotment application and confirmed by the handwritten correction and initials “J.A.M.” on the map included in the field report. The fractional parcel was shown to consist of “ $\pm$ 65 acres,” with a metes and bounds description. The west boundary of the parcel coincided with the west section line.

The field examiner acknowledged that the resources supporting Tennyson’s claimed use of the land were present, and that Tennyson claimed a fish camp as his improvements on the parcel. A campsite was noted, but it was approximately 1,000 feet (or approximately 15.15 chains) south of the land described in the application. The field examiner concluded that he was unable to determine that Tennyson “has had substantial actual possession and use of the land. Should the description be amended to include the point of land where the fish camp is, the use the applicant claims would not be potentially exclusive of others.” Field Report at 2. His conclusion was based on the fact that the area was “easily accessible to guides with float planes,” specifically noting that Robert E. Curtis, a commercial guide, used “the mouth of this river . . . as a fishing site in his guiding operation . . . and owns the cabin across the river from where the applicant’s fishing camp was found.” *Id.*

By letter dated February 28, 1978, BLM advised Tennyson of the results of the field examinations. In that letter, BLM described the application as seeking “approximately 145 acres of unsurveyed lands in Parcel A, T. 12 S., R. 55 W., [SM] and Parcel B, T. 7 S., R. 54 W., [SM].” Feb. 28, 1978, Letter to Tennyson at 1. The letter referred to “existing discrepancies between locations for Parcel A,” which suggested an amended application, and though BLM acknowledged that Tennyson

claimed a fish camp, the letter noted a lack of physical evidence of use and occupancy of Parcel B. BLM concluded that Tennyson had failed to meet the requirements of the Native Allotment Act and allowed him 60 days from receipt of the letter to submit additional information in support of his application. Tennyson received the letter on March 1, 1978. That deadline was extended more than once at BIA's request.

On March 23, 1981, three witness statements supporting Tennyson's application were submitted by Mike Hoseth, Fred W. Mulkeit, and Herman Schroeder, Sr. The witnesses generally corroborated Tennyson's use of two parcels, one on the Wood River Lake, the other on Agulukpak River. They did not state the acreage claimed.

#### *Parcel A*

On July 14, 1986, BLM requested a survey of Parcel A for purposes of excluding it from other claims or conveyances. The parcel was described in sec. 8, T. 12 S., R. 55 W., SM, with the notation that the parcel "should not exceed 80 acres." By 1987, application AA-7656A was among a number of allotment survey requests "subject to conformance under the rectangular survey system." Mar. 26, 1987, Memorandum at 2.

Notice of Final Date of Amendment for Parcel A dated February 28, 1991, was received by Tennyson March 5, 1991. The parcel was described as lying within sec. 8, T. 12 S., R. 55 W., SM, and containing approximately 80 acres. Bristol Bay Native Association (BBNA) responded to that Notice of Final Date of Amendment for Parcel A on Tennyson's behalf by letter dated March 21, 1991. Stating that Tennyson accepted the location and description of the parcel, the letter enclosed the standard form statement completed and signed by Tennyson on March 11, 1991, in which he placed an "X" in the box that stated that the location described in the Notice of Final Date of Amendment for Parcel A was correct. No acreage figure was stated, and Tennyson did not add one.

By decision dated June 12, 1992, BLM approved Tennyson's Native allotment application for Parcel A and rejected in part State and Native Village selections to the extent they conflicted with Tennyson's application for the parcel. That decision was

received by Tennyson on or about June 18, 1992.<sup>2</sup> The Certificate of Allotment for Parcel A, No. 50-94-0200 was issued on June 14, 1994.

*Parcel B*

By memorandum dated December 15, 1980, BLM requested a survey of Parcel B for the purpose of excluding it from the recently created Wood Tikchik State Park. That memorandum noted that the metes and description placed the land in sec. 7, T. 7 S., R. 54 W., SM, and that it contained approximately 65 acres.

On November 30, 1990, a Notice of Final Date of Amendment of the description of Parcel B was sent to Tennyson, who received it on December 10, 1990. That Notice explained that Section 905(a) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(c) (2006), authorized applicants “to amend the description of land in his/her application to correctly describe the land which he/she originally intended to claim.” Notice at 1. The Notice stated that Parcel B was scheduled for survey in 1993, and was then described as being in sec. 7, T. 7 S., R. 54 W., SM, and containing approximately 65 acres. In addition, the Notice advised:

If the land, as described above and as shown on the enclosures, is not located where you intended to apply for your allotment, you must notify this office within 60-days after you receive this notice. Just indicate on the enclosed form that the land description is incorrect, provide the proper land description and a map or sketch showing the correct (amended) location, sign the form and return it to this office.

*Id.*

BBNA responded to the Notice of Final Date of Amendment for Parcel B on Tennyson’s behalf, asserting that his “original intended allotment claim for his Parcel B included the point at the West bank at the mou[th] of Akulukpak River. The field exam notes and photographs further acknowledge this fact.” The enclosed corrected description was “Section 7. fractional, S<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub>, Section 18. fractional, NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> T. 7 S., R. 54 W., S.M.” BBNA Letter to BLM dated Jan. 2, 1991. In addition, BBNA enclosed a BLM standard form evidently completed and signed by

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<sup>2</sup> By decision dated July 1, 1992, BLM modified its June 12, 1992, decision in part, solely to reflect that Choggiung Limited was the real party in interest in the partly rejected Village selection as the result of merger with the Ohgsenakale Corporation. On Mar. 2, 1994, BLM issued a second decision modifying in part the June 12, 1992, decision to conform the allotment for Parcel A to the survey as it related to certain reservations to the United States.

Tennyson on December 31, 1990, in which he placed an “X” in the box that stated that the location described in the Notice of Final Date of Amendment for Parcel B was incorrect, and that the correct location was depicted on attached maps. Those attachments show Parcel B highlighted in yellow, and shows the claimed land is on the Agulukpak River and includes the tip of land where the river enters Lake Nerka, but do not indicate the acreage contained within the parcel. A BBNA letter to BLM dated February 6, 1991, transmitted witness statements from Edward B. Brandon, Joe Chaney, and Mike Hoseth, attesting to Tennyson’s use of Parcel B and its location at the mouth of the Agulukpak River on Lake Nerka. They also did not state the acreage claimed.

On February 3, 1993, the BBNA submitted maps and a corrected legal description for Parcel B “to correct the acreage to original field examination report,” asserting that “the original intent of this application included the point on the West bank of the mouth of Agulukpak River. Both the metes and bounds description and aliquot parts description are submitted with this letter. Jeff Nelson requested this information.” A BLM Section Diagram Standard Form 5400-1 shows a sketch of the parcel and identifies the five corners of the metes and bounds description. This Section Diagram contains the handwritten notation: “This parcel not to exceed 65± acres. Line 3-4 [the line between angle points 3 and 4 forming the west boundary of the parcel] may be adjusted to achieve this acreage.” The same typed corrected description that had been submitted on January 2, 1991, was enclosed, except that it included several handwritten changes in the metes and bounds description, and the approximate total acreage was crossed out and “65±” was written below the original figure of “80 acres,” apparently indicating the adjustment to be made noted on the Section Diagram sketch. A copy of USGS quadrangle map Dillingham C-7 and a sketch on BLM Standard Form 2060-2 depicting Parcel B in secs. 7 and 18, and a portion of a BLM map of the area also were submitted, and these similarly show an eastward repositioning of the west boundary of the parcel, reducing its size.

On May 7, 1993, BLM notified Tennyson and the State that Parcel B embraced approximately 65 acres in sec. 7, T. 7 S., R. 54 W., SM, that had been conveyed to the State on September 3, 1963. Noting that Tennyson’s claimed use and occupancy pre-dated the segregative effect of the State’s selection, BLM referred to its obligation to recover title in appropriate circumstances pursuant to the stipulated procedures implementing the court’s order in *Aguilar v. United States*, 474 F. Supp. 840 (D. Alaska 1979). The parties were given 90 days from receipt of the letter to submit additional evidence bearing upon Tennyson’s claim. Marie Tennyson received the notice on May 13, 1993. By Notice dated June 29, 1993, BLM corrected the location provided in the May 7, 1993, *Aguilar* Notice, stating that Parcel B is in secs. 7 and 18, T. 7 S., R. 54 W., SM, and allowed 90 days from receipt of the letter to provide additional evidence.

In a handwritten letter to BLM dated September 3, 1993, transmitted by a September 3, 1993, covering letter from BBNA, Tennyson resubmitted his witness statements, restated that he had used and occupied Parcel B, and stated that his effort to build a cabin on the land in 1988-89 had been halted by the District Attorney and a Park Ranger on the theory that he was trespassing on State land. Tennyson further stated that “[a] corrected description of Native Allotment AA-7656 on the map is the correct location that I have applied for.” If a map was attached, it is no longer with the letter in the record.

By letter dated March 20, 1995, BBNA transmitted Tennyson’s signed statement requesting a “relocation” of his allotment.<sup>3</sup> BBNA stated:

William has currently a pending Native Allotment located within the boundaries of the Wood/Tikchik State Park, located at T. 7 S., R. 54 W.[,] S.M., section 7 and 18. His parcel B is for 65 acres. William’s intended relocation is de This parcel is located on the right bank of the Nushagak River’s east channel at the fractional NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> E<sup>1</sup>/<sub>2</sub>, and fractional NE<sup>1</sup>/<sub>4</sub> of section 22. The attached map further describes this parcel.

The BBNA again wrote BLM on Tennyson’s behalf on September 5, 1995, enclosing a corrected legal description for the relocated allotment signed by Tennyson and dated September 5, 1995. The enclosed correction, styled “Relocation letter,” stated the following:

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<sup>c</sup> This request was initiated pursuant to Section 3 of Pub. L. No. 102-415 (Oct. 14, 1992), the Alaska Land Status Technical Corrections Act of 1992 (Corrections Act), 43 U.S.C. § 1601 note (2006), which amended Section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (2006). Among other things, Section 3 of the Corrections Act provides that applicants whose applications were pending on Dec. 18, 1971, and remained pending as of the enactment of that Act, could amend their land description to claim land other than that the applicant originally intended to claim if the lands originally sought described lands selected by, or tentatively approved to, or patented to the State of Alaska, and authorized the Secretary to accept the State’s reconveyance or relinquishment of such lands, with appropriate adjustment in the computation of the acreage to be charged against the State’s land entitlement. 43 U.S.C. § 1617(c)(1)(A), (c)(2)(A), (B) (2006). A Sept. 8, 1995, letter from the Bristol Bay Native Corporation (BBNC) to BLM explains that the BBNC, working with the State, had offered the opportunity for applicants to relocate their allotments in the Wood/Tikchik State Park to lands that had been “dually-selected” by BBNC and the State.

I, William Tennyson, Sr., wish to relocate parcel B of my Native Allotment AA-7656 from the following location: T. 7 S., R. 54 W., Seward Meridian, sections 7 and 18, to the following new location: S2S2 NE4 NW4, fractional NE4 SE4 NW4, N2 SW4 NE4, S2S2 NW4 NE4, S2S2 NE4 NE4, fractional NW4 SE4 NE4, fractional NE4 SE4 NE4, located on the north bank of east channel of Nushagak River at T. 12 S., R. 50 W., Seward Meridian, section 22. This parcel is to contain 65 acres. The attached map further describes the parcel. The location of this parcel is also known as "Olaf's Slough".

In a letter dated September 8, 1995, BLM memorialized a meeting on August 29, 1995, among representatives from BLM, BIA, and BBNA. That meeting was convened to discuss the steps to be taken to adjudicate relocated allotments, including Tennyson's application for Parcel B. On January 22, 1996, BLM concurred in the substitution of the lands described therein in lieu of those lands described in the original Native Allotment applications. Tennyson's substituted land was described as sec. 22, T. 12 S., R. 50 W., SM, containing approximately 65 acres. The State relinquished the lands thus identified by BLM and listed in Exhibit A to its letter dated January 25, 1996. BLM accepted the relinquishment on February 5, 1996. Survey of the new Parcel B was requested on February 14, 1996. BLM advised Tennyson that it had concurred in the amended description relocating Parcel B in sec. 22, T. 12 S., R. 50 W., SM, containing approximately 65 acres, and planned to conduct the survey in 1997.

On November 5, 1996, BLM issued Notice of Final Date of Amendment for relocated Parcel B, described as located in sec. 22, T. 12 S., R. 50 W., SM, containing approximately 65 acres. Maps depicting the new location were enclosed. Tennyson received that Notice on November 12, 1996. By letter dated January 6, 1997, BLM advised that the enclosures in the November 5, 1996, letter depicted the wrong location and, accordingly, enclosed a Master Title Plat (MTP) that correctly showed the relocated parcel, with the request that Tennyson inform BLM if the MTP did not accurately place the parcel. Although no description or acreage figure was stated in these documents, the enclosed Section Diagram for sec. 22, T. 12 S., R. 50 W., SM, was the same Section Diagram submitted by BBNA on August 30, 1995, on Tennyson's behalf. The signed green return receipt shows the letter was delivered on January 10, 1997.

On February 3, 1997, BBNA transmitted Tennyson's statement responding to the Notice of Final Date of Amendment for relocated Parcel B. Tennyson completed and signed the statement on February 3, 1997, placing an "X" in the box that stated that the location described in the Notice of Final Date of Amendment for relocated Parcel B was correct.

The field survey was completed on September 10, 1997, showing the parcel contained 64.95 acres. U.S. Survey No. 11982 was approved on May 27, 1998. The plat was officially filed on June 11, 1998, and noted on the MTP on June 17, 1998. On July 1, 1998, BLM provided Notice of Conformance to Plat of Survey to Tennyson, informing him that U.S. Survey No. 11982 contained 64.95 acres. Tennyson was given 30 days from receipt of the Notice to advise BLM "if the survey does not include the lands shown in the final date to amend notice." Marie Tennyson received this Notice of Conformance on July 7, 1998. On August 5, 1998, BBNA transmitted Tennyson's survey acceptance averring that he had carefully reviewed the survey and that it correctly represented his parcel: "The location is correct, the configuration (shape) of the parcel(s) is correct, and the acreage is what I applied for. I accept this survey as being correct." He signed and dated the acceptance on July 28, 1998.

BLM issued a decision declaring the parcel subject to a mineral reservation in the United States, but allowed 30 days for Tennyson to offer evidence showing the land was not valuable for oil and gas. He received the decision on September 28, 1998. On January 12, 1999, Certificate of Allotment No. 50-99-0114 for 64.95 acres in sec. 22, T. 12 S., R. 50 W., SM, was issued to Tennyson.

On Tennyson's behalf, on September 10, 2007, BBNA requested that 14.34 acres be added to Parcel A and that 15.05 acres be added to Parcel B, because he had originally applied for two 80-acre parcels. That request was supported by two affidavits from Tennyson. With respect to Parcel A, Tennyson avers that he applied for 80 acres, as shown in his handwritten application, and that until recently, he had never seen the typewritten application BIA filed with BLM. Regarding Parcel B, Tennyson makes the same statements and, noting that the field examiner failed to include his fishing camp, surmises that if the campsite had been included, the acreage in Parcel B would have been 80 acres, which is the acreage he should have received when a new parcel was substituted for the original parcel that had been located in Wood/Tikchik State Park. Tennyson concludes that the acreage was "deducted" from his allotment in error.

BLM's decision denying the Parcel A request stated:

The actual acres indicated on the application (approximately 80) exceeds the amount of land actually available for Parcel A as depicted on the amendment and the map submitted in the field examination of Parcel A. The rectangular net survey description of Parcel A containing 65.66 acres includes the description of all lands identified by the applicant at the time of the field examination.

Parcel A Decision at 1. BLM concluded that its decision was administratively final and that Tennyson sought an amendment that is barred by the provisions of 43 U.S.C. § 1634(c) (2006).

The decision denying the Parcel B request noted Tennyson's failure to avail himself of opportunities to amend or challenge the land description, stated that acreage cannot be reinstated because BBNC relinquished 525 acres that included Parcel B. Parcel B Decision at 4.

### *The Parties' Arguments*

On appeal, Tennyson argues that it is error to raise administrative finality as a bar to his requests when a portion of his allotment is still pending, since BLM has not provided adequate notice of its rejection of the application to the extent of 29.39 acres or offered him a hearing before taking such action, and Tennyson has not relinquished that portion of the land he sought. Statement of Reasons (SOR) at 17-18. Tennyson further argues that he did not waive his right to object to the action now because he did not do so before. *Id.* at 20-22. He contends Board precedent requires BLM to adjudicate a pending allotment. *Id.* at 22-27. He concludes that he has a preference right to 29.39 acres, and that BLM cannot ignore the "substantial evidence" of record that confirms his intent to apply for 160 acres. *Id.* at 27-30.

BLM counters Tennyson's arguments with the analysis and conclusions stated in its decisions.

### *Analysis*

As in other cases involving Native allotments recently decided by the Board, this appeal begins with recently disclosed handwritten and blank versions of the allotment application filed with BLM by BIA. The description of Parcel A in the handwritten application is identical to the Parcel A description in the typed application filed with BLM. The description of Parcel B in the handwritten application is not the same description in the typed application filed with BLM, although both purport to claim use of lands in sec. 7, T. 7 S., R. 54 W., SM.<sup>4</sup> To acknowledge that circumstance, however, is not an acknowledgment that Tennyson is entitled to "reinstatement" of 29.39 acres that BLM improperly "took" from the allotment. SOR at 1. As we have previously observed, the disclosure of incomplete versions of a Native allotment application, without more, does not *per se* demonstrate

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<sup>4</sup> The handwritten application identified the land sought as "unsurveyed land in Dillingham (A-7) Alaska consisting of 80 acres S<sup>1</sup>/<sub>2</sub> S<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub> & N<sup>1</sup>/<sub>2</sub> N<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub> sec. 4, T 12 S, R 55 W., SM. and unsurveyed land in Dillingham (C-8) Alaska E<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub> and W<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub> sec. 7, T 7 S, R 54 W, S.M. bounded on the west by Agulukpak River."

the applicant's intentions with respect to the application actually submitted to BLM for processing. *Heir of Ann A. Carney*, 176 IBLA 130, 141 (2008).

Here, Tennyson informed BLM that Parcel A was not correctly described in 1975; ultimately, the description was corrected, and Tennyson formally agreed that the size, configuration and location of Parcel A was correct. BLM did not improperly reduce the acreage contained in Parcel A. To the contrary, the actual size of the parcel was less than a regular, 80-acre quarter-section because section 8 is a fractional section due to the presence of the small unnamed lake. *See Okalena Wassillie*, 175 IBLA 355, 358 n.4 (2008). Survey confirmed that the presence of the lake in the parcel described in Tennyson's application accounts for a smaller, irregular parcel of less than 80 acres.

Parcel B presents a different situation. BLM corrected the original description to include the point of land at the mouth of the Agulukpak River on which Tennyson's fishing camp was located. On appeal, Tennyson maintains that he intended to apply for an 80-acre parcel. He contends that in the course of correcting the original Parcel B description to include his fish camp at the mouth of the Agulukpak River, BBNA changed the acreage he sought from 80 acres to approximately 65 acres without his knowledge or consent, and did so at BLM's behest. Tennyson has submitted the affidavit of Sheila Neketa, a BBNA Realty Specialist, who avers, based on a BBNA "record of telephone call/office visit" dated March 15, 1989, Ex. A-1 to SOR, that Tennyson intended to seek 160 acres. The handwritten office record submitted as Ex. A-1 states the following:

Mr. Tennyson stated that his original native Allotment application AA 7656 included the point at the left bank of the mouth of the Agulukpak River at Lake Nerka. But he didn't include the section 18 which cover[s] the portion of land he mentioned. The only problem this would create is, he would go over 160 acres limit and he[d] have to give up some land somewhere. He already ha[s] 160 with parcel A and B each 80 acres. It's already on file. But his casefile abstract shows total acreage 145. [Original emphasis.]

The handwritten initials "G.R.C." (perhaps for Realty Specialist Gusty R. Chythlook) or "C.R.C." appear at the end of this record. From this evidence, Neketa asserts that "it was BBNA's belief at this time that Mr. Tennyson's allotment was for a total of 160 acres and the belief that expanding parcel B to include the point at the left bank of the mouth of the Agulukpak River would put the allotment over the 160-acre limit. Neketa Affidavit ¶ 3.

Tennyson has submitted a second BBNA record, an outgoing “BBNA Realty Hotsheet” dated February 1, 1993, prepared by Realty Specialist Chythlook, describing a “Problem/situation” as follows:

The amended description for parcel B has slightly increased the acreage by 15 acres, which is prohibited by Section 905c of A.N.I.L.C.A. so BLM want[s] the acreage to be maintained at 65 acres. I told Jeff Nelson, BLM adjudicator, that we can adjust the West boundary to reduce the acreage down to 65. The corrected acreage will be re-submitted to BLM.

Ex. A-2 to SOR. This evidence is ambiguous in that it is impossible to determine whether and to what extent Chythlook may have informed Tennyson of the perceived problem or his discussions with Nelson about that problem.

We found nothing in the administrative record that either directly explains or provides a context for the adjustment of Parcel B’s west boundary eastward 10 chains. As stated above, a fractional parcel consisting of approximately 65 acres was field examined. The camp site Tennyson claimed was approximately 1,000 feet (or 15.15 chains) south of the parcel. BLM eventually corrected the description of Parcel B to include the camp, which seemingly should have resulted in a parcel that was only slightly larger than 80 acres, assuming there was no question regarding Tennyson’s use and occupancy of the parcel. Nor does BLM’s Answer shed any light on the question. BLM merely states that the corrected description “recommended moving the west boundary in 6 chains to the east and including the mouth of Agulupak River,” acknowledging without comment or explanation that the corrected description also stated that the amended parcel contained approximately 80 acres. Answer at 7. We need not go any further, however, because it is clear that Tennyson’s requests for 29.39 acres cannot be sustained.

Tennyson eventually agreed that the correct acreage for Parcel B was 65 acres. He opted for a parcel outside of secs. 7 and 18, T. 7 S., R. 54 W., SM, in Wood/Tikchik State Park, and requested a location in sec. 22, T. 12 S., R. 50 W., SM, on the north bank of the east channel of Nushagak River, expressly stating that the parcel was to contain 65 acres. The initial description of the relocated parcel contained an error, and on September 5, 1995, Tennyson submitted a corrected description for relocated Parcel B, containing approximately 65 acres.

As set forth above, on November 5, 1996, BLM issued Notice of Final Date of Amendment for the relocated Parcel B, in sec. 22, T. 12 S., R. 50 W., SM. Maps depicting the new location were enclosed. Those maps also reflected an error, requiring BLM to provide a corrected MTP to Tennyson, with the request that he inform BLM if the MTP did not accurately place the parcel. On February 3, 1997,

Tennyson responded to the Notice of Final Amendment for relocated Parcel B by indicating that the location described in the Notice of Final Date of Amendment for relocated Parcel B was correct.

The field survey was completed on September 10, 1997, showing the parcel contained 64.95 acres. The U.S. Survey No. 11982 was approved and officially filed in 1998, and was noted on the MTP on June 17, 1998. BLM provided Notice of Conformance to Plat of Survey to Tennyson, informing him that U.S. Survey No. 11982 contained 64.95 acres, and afforded him 30 days to notify BLM if the survey did not include the lands shown in the final date to amend notice. Tennyson accepted the survey on July 28, 1998. In these circumstances, Tennyson has no further right or opportunity to correct or amend the descriptions of his parcels. In *Heirs of Alice Byayuk*, 136 IBLA 132, 137-38 (1996), the Board explained at length:

Prior to December 18, 1971, an Alaskan Native was entitled, pursuant to the Act of May 17, 1906, *as amended*, to apply for an allotment of up to 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska, and to satisfy the requirement of 5 years' qualifying use and occupancy either before or after application. 43 U.S.C. §§ 270-1, 270-3 (1970); 43 C.F.R. 2212.9-4(a) (1970) (formerly codified at 43 C.F.R. 67.7 (1959)); *United States v. Flynn*, 53 IBLA 208, 225-26, 234, 88 I.D. 373, 382-83, 387 (1981). If, after filing an application, an applicant subsequently desired to obtain an allotment of additional land up to the statutory 160-acre maximum, he could amend his application to encompass it and then fulfill the requirement of 5 years' use and occupancy as to the additional land. See *Hermann T. Kroener*, 124 IBLA 57, 65 (1992); *Stephen Northway*, 96 IBLA 301, 307 (1987).

An amendment of this nature was permitted because the placement of a claim on a protraction diagram might not conform to the land that the applicant actually intended to claim on the ground, since the land sought was often unsurveyed at the time of application, and reliance had to be placed on the projection of survey lines in such diagrams. Further, applications were often prepared on behalf of the applicant, so that the description might not conform to what he in fact intended to claim. As a result, after the repeal of the Act of May 17, 1906, and prior to ANILCA's enactment on December 2, 1980, applicants were permitted to amend their applications to ensure that they encompassed the land the applicants originally intended to claim.

Section 905(c) of ANILCA provided similar amendment authority, stating that an applicant "may amend the land description

contained in his or her application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed.” 43 U.S.C. § 1634(c) (1994). The legislative history of ANILCA establishes that errors that are “subject to correction under [the] authority of Section 905(c)” include “[t]echnical errors in land description, made either by the applicant or by the Department in computing a . . . survey description from diagrams” (S. Rep. No. 413, 96th Cong., 2d Sess. 286, *reprinted in* 1980 U.S. Code Cong. & Admin. News 5070, 5230).

It is now well established that section 905(c) of ANILCA was intended to permit only the amendment of an allotment application so that it would accurately reflect the land that the applicant originally intended to claim, but that was misdescribed through some error in the application. Amendment to permit the substitution of new or additional land which the applicant had not originally intended to claim was not authorized. *See Hermann T. Kroener*, 124 IBLA at 64-65; *State of Alaska (Helen M. Austerman)*, 119 IBLA 260, 266 (1991), and cases cited.

Moreover, although the statute did not place any limitation on the time for seeking amendment of an application, it authorized the Department to do so:

[T]he Secretary [of the Interior] may require that all allotment applications designating land in a specified area be amended, if at all, *prior to a date certain*, which date shall be calculated to allow for orderly adoption of a plan of survey for the specified area, and the Secretary shall mail notification of the final date for amendment to each affected allotment applicant, and shall provide such other notice as the Secretary deems appropriate, at least sixty days prior to said date. [Emphasis added.]

43 U.S.C. § 1634(c) (1994); *see also* S. Rep. No. 413, 96th Cong., 2d Sess. 286, *reprinted in* 1980 U.S. Code Cong. & Admin. News 5070, 5230; *Angeline Galbraith*, 97 IBLA 132, 144-45, 146, 94 I.D. 151, 157-58, 158 (1987). The effect is to grant the Secretary authority “to set a deadline for amending all allotment applications in a designated area by notice mailed to them at least 60 days prior to the deadline.” *Id.* at 144, 94 I.D. at 157. An applicant’s failure to respond to such notice

terminates the right to amend. *Silas Solomon*, 133 IBLA 41, 47-48 (1995).

The statute also provides that, in any event, “no allotment application may be amended for location following adoption of a final plan of survey which includes the location of the allotment as described in the application or its location as desired by amendment.” 43 U.S.C. § 1634(c) (1994); *see also* S. Rep. No. 413, 96th Cong., 2d Sess. 286, *reprinted in* 1980 U.S. Code Cong. & Admin. News 5070, 5230; *Angeline Galbraith*, 97 IBLA at 146, 94 I.D. at 159. Thus, where a plan of survey is adopted subsequent to the enactment of ANILCA, the adoption of such plan of survey cuts off any opportunity to amend the application. *Id.* at 146, 94 I.D. at 159.

It is clear from the above that, whatever the circumstances surrounding Byayuk’s application, the governing statute and regulations dictate that the Heirs’ request to amend the application must be rejected as untimely.

In this case as well, the final plans of survey for the two parcels have long since been accepted, and they were accepted after Tennyson formally acknowledged that the surveys accurately depicted the size, shape and location of his parcels. Under section 905(c) of ANILCA, no application may now be amended. Tennyson’s requests to amend his Native allotment application are untimely and must be rejected. 43 U.S.C. § 1634(c) (2006); *Heirs of Harlan L. Mahle*, 171 IBLA 330, 390-91 (2007).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

\_\_\_\_\_/s/  
T. Britt Price  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
James F. Roberts  
Administrative Judge