

Appeal from decision, (A-062106) by Alaska state office, Bureau of Land Management, rejecting application to purchase and canceling trade and manufacturing site claim.

Reversed and Remanded.

Withdrawals and Reservations: Effect of--Alaska: Trade and Manufacturing Sites

Public Land Order 4582, as modified, did not bar the granting of an application to purchase a trade or manufacturing site where the record shows the claim was initiated prior to December 14, 1968. 43 U.S.C. § 687a (1970).

Withdrawals and Reservations: Effect of

The withdrawal imposed by Public Land Order 4582, as modified, terminated with the enactment of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688.

Applications and Entries: Filing--Alaska: Trade and Manufacturing Sites

The grace period for filing set forth in 43 CFR § 1840.0-6(b) (1970) applies only to documents filed in connection with an appeal, and does not apply to applications to purchase a trade and manufacturing site under 43 U.S.C. § 687a et seq. (1970).

Applications and Entries: Filing--Alaska: Trade and Manufacturing Sites

The authorization in 43 CFR § 1821.2-2(g) (1970) to consider a document as timely filed under certain circumstances does not permit waiver of deadlines imposed by statute. 43 U.S.C. § 687a-1 (1970).

Equitable Adjudication: Substantial Compliance-- Secretary of the Interior--Alaska: Trade and Manufacturing Sites

Under the general principles of equitable adjudication an applicant for purchase of a trade and manufacturing site claim

who filed his application 2 days after the expiration of the 5 year statutory period allowed for such filing may have his claim adjudicated on its merits. 43 U.S.C. § 687a-1 (1970).

APPEARANCES: C. Rick Houston, pro se.

OPINION BY MR. FISHMAN

C. Rick Houston has appealed from a decision of the Chief, Branch of Lands, Alaska state office, Bureau of Land Management, dated April 16, 1970, which rejected his application to purchase a trade and manufacturing site under the Act of May 14, 1898, as amended, U.S.C. § 687a et seq. (1970). The application was rejected for the reason that the application was not filed within the five year period provided under 43 U.S.C. § 687a-1 [43 CFR § 2213.1-2(c) (1970) now 43 CFR § 2562.3(c) (1971)], but was filed two days late, and the land within the claim was withdrawn by Public Land Order 4582 of January 17, 1969, 34 F.R. 1025 (January 23, 1969).

Appellant states that he was mistaken in his recollection of the deadline date for filing his application, thinking it was near the end of February 1970 rather than early February. He contacted the Glennallen office of the Bureau of Land Management and states he was incorrectly advised there was a short grace period if the application was mailed by the regular deadline date. 1/ Appellant asserts that if he had not been so advised and had not incorrectly interpreted the regulations he would have delivered the application in person to the Anchorage office, some 150 miles away. In a supplemental statement of reasons appellant asserts that Public Land Order 4582 (section 1) provides for recognition of valid existing rights and that his claim must be considered a valid existing right. He also requests that his late filing be processed under the principles of equitable adjudication.

A review of the record shows that appellant's notice of location was accepted as of February 3, 1965, the date of filing. Appellant's application to purchase the claim was dated and postmarked February 2, 1970, and was received by the Anchorage land office February 4, 1970. Assertedly, appellant had occupied the claim site for almost 4 years prior to January 17, 1969, the date of Public Land Order 4582.

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1/ Appellant apparently refers to 43 CFR § 1821.2-2(g) (1970) or § 1840.0-6(b) (1970).

Public Land Order 4582 withdrew ". . . all the public lands in Alaska from all forms of appropriation and disposition under the public land laws . . . for the determination and protection of the rights of the native Aleuts, Eskimos, and Indians of Alaska." The order further provided:

2. Unless otherwise required by law, all applications for leases, licenses, permits, or land title transfers which were pending before the Department of the Interior on the effective date of this order, will be given the same status and consideration beginning at 12 (noon) A.s.t., on April 2, 1971, as though there had been no intervening period, unless previously recalled by the applicant.

The effect of that provision was to suspend trade and manufacturing site transfers, inter alia, until April 2, 1971. Public Land Order 5081 of June 17, 1971, 36 F.R. 12017 (June 24, 1971) extended the withdrawal until enactment of native rights legislation or the termination of the first session of the 92nd Congress, whichever shall occur first. The Alaska Native Claims Settlement Act was enacted into law on December 18, 1971 (85 Stat. 688).

Appellant's contention that the withdrawal imposed by PLO 4582 excepts his claim as a "valid existing right" need not be decided. Subsequent to the decision below, on December 8, 1970, Public Land Order 4582 was amended by Public Land Order 4962, 35 F.R. 18874 (December 11, 1970), to provide in part:

6. Other provisions of this order to the contrary notwithstanding, applications for patents and allotments may be processed to conclusion in the following cases where the conditions herein stated are met and there has been compliance with all other applicable provisions of law:

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c. Trade or manufacturing sites, homesites or headquarters sites, pursuant to the Act of May 14, 1898 (30 Stat. 431; 2/ 48 U.S.C. 461, et seq.), as amended, where the claim was initiated prior to December 14, 1968.

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2/ This is the citation given in Public Land Order 4962. However, the correct citation is 30 Stat. 413, as amended, 43 U.S.C. §§ 687a-687a-5 (1970).

Since appellant's claim was initiated prior to December 14, 1968, the withdrawal does not bar consideration of his claim on its merits. <sup>3/</sup> Enactment of the Alaska Native Claims Settlement Act terminated the withdrawal imposed by PLO 4582, as modified.

Appellant's asserted use and occupancy of his claim for five years does not automatically pass title to the land at the termination of the statutory period. An application to purchase a trade and manufacturing claim, along with the required proof or showing of compliance with the law must be received in the land office within five years after the filing of the notice of the claim. 43 U.S.C. § 687a-1 (1970); 43 CFR § 1821.2-2 and § 2213.1-2(c) (1970) nw § 2562.3(c) (1971). Appellant was required to file his application to purchase his claim on or before February 2, 1970, the last day of the statutory period.

Appellant has explained why his application was not received until February 4, 1970, and he apparently relies on either 43 CFR § 1821.2-2(g) (1970) or § 1840.0-6(b) (1970). Section 1821.2-2(g), however, applies only to requirements imposed by regulation and not to deadlines imposed by statute. Section 1840.0-6(b) applies only to documents filed in connection with an appeal and does not apply to filings of applications.

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<sup>3/</sup> On the contrary, the Department is under a positive mandate to proceed expeditiously in cases of this kind. Section 22(b) of the Alaska Native Claims Settlement Act, 85 Stat. 714, states as follows:

"(b) The Secretary is directed to promptly issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites (43 U.S.C. sec. 682), and who have fulfilled all requirements of the law prerequisite to obtaining a patent. Any person who has made a lawful entry prior to August 31, 1971, for any of the foregoing purposes shall be protected in his right of use and occupancy until all the requirements of law for a patent have been met even though the lands involved have been reserved or withdrawn in accordance with Public Land Order 4582, as amended, or the withdrawal provisions of this Act. Provided, That occupancy must have been maintained in accordance with the appropriate public land law: Provided further, That any person who entered on public lands in violation of Public Land Order 4582, as amended, shall gain no rights."

Appellant nevertheless has demonstrated his attempt to comply with the law in his efforts to find out the proper procedures for filing his application and in his mailing the application prior to expiration of the deadline. Appellant also asserts that he has constructed substantial improvements on the claim, and that he has substantially complied with the requirements of Trade and Manufacturing Site Act, supra. We believe that cancellation of the claim would be an unwarrantably harsh consequence for the two day delay involved in the filing.

The equitable adjudication authority contained in 43 CFR § 1871.1 (1971) authorizes relief in cases of this kind.

Appellant's failure to file his purchase application promptly is a deficiency which ought not to preclude consideration of that application on its merits. John Howard Bayless, Fairbanks 09405 (March 25, 1959). Cf. Juanita J. Anderson, 4 IBLA 170 (1971) (final proof of homestead); cf. Everett J. Wilde, Fairbanks 012045 (December 9, 1960) (Small Tract Act).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision cancelling the claim is reversed, and the case is remanded to the Bureau of Land Management for appropriate consideration of the merits of the application to purchase.

Frederick Fishman, Member

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We concur:

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Anne Poindexter Lewis, Member

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Edward W. Stuebing, Member

