

**Editor's note: Reconsideration denied by order dated Jan. 14, 1974**

VERA POTTER

IBLA 73-245

Decided September 25, 1973

Appeal from decision W 37790 of Wyoming State Office, Bureau of Land Management, rejecting an application for reinstatement of an alleged homestead entry, based on a settlement claim.

Affirmed.

Homesteads (Ordinary): Generally! ! Homesteads (Ordinary):  
Settlement! ! Settlements on Public Lands

A settler upon public land who fails to make entry within three months from date of the filing of supplemental plat of survey where the settlement is upon unsurveyed land forfeits his right to a homestead entry thereon where the land subsequently has been withdrawn from all forms of disposition under the public land laws.

Withdrawals and Reservations: Effect of

A Public Land Order which withdrew public lands, subject to valid existing rights, from all forms of disposition under the public land laws foreclosed any disposal of the land unless in furtherance of a valid right existing at the time of the withdrawal.

APPEARANCES: Vera Potter, pro se.

OPINION BY MR. HENRIQUES

This is an appeal by Mrs. Vera Potter from decision W 37790 dated December 11, 1972, whereby Wyoming State Office, Bureau of Land Management, rejected her application for reinstatement of an alleged homestead entry, stemming from a settlement claim initiated

in 1933, made by her deceased husband, William F. Potter, for an island in the North Platte River, lying within sections 23, 24, 25, and 26, T. 23 N., R. 57 W., 6th P.M., Nebraska. The State Office rejected the application for the reason that the office records do not reflect that any homestead entry was ever allowed on the subject land to William F. Potter so there were no rights to the land which could pass to his widow, and as the subject lands had been withdrawn by PLO 1236 of October 14, 1955, from appropriation under any of the public land laws, and reserved under the jurisdiction of the Department of the Interior, for use of the State of Nebraska Game, Forestation and Parks Commission, favorable consideration of the application to reinstate a homestead entry on these lands could not be given in any event.

The original plat of survey of T. 23 N., R. 57 W., 6th P.M., approved January 18, 1882, shows no islands in sections 23, 24, 25, or 26. Applications for survey of existing islands were made by William F. Potter and by Charles W. Sanger in 1935. Potter alleged that he had constructed improvements valued in excess of \$ 300 on the land prior to February 5, 1935. In response to these applications and after determination that they were "omitted lands," the islands were surveyed as lot 3, section 23, lots 5 and 6, section 24, lots 4 and 5, section 25, and lots 6 and 7, section 26, T. 23 N., R. 57 W., 6th P.M. The plat of survey was accepted May 24, 1937. 1/

Executive Order 6964 of February 5, 1935, withdrew all public lands in Nebraska (and several other States), subject to valid existing rights, from settlement, location, sale or entry and reserved them for classification, and pending determination of the most useful purposes to which the lands might be put, for conservation and development of natural resources.

Following closure of the last District Land Office in Nebraska, at Alliance, Nebraska, effective January 31, 1933, the land status records were maintained in the General Land Office, Washington, D.C. Examination of the tract book for T. 23 N., R. 57 W., 6th P.M., does not show any notation indicating William F. Potter ever made homestead entry within sections 23, 24, 25 or 26. The records indicate

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1/ Field notes of the survey of these islands in North Platte River, secs. 23, 24, 25 and 26, T. 23 N., R. 57 W., 6th P.M., Nebraska, show that William F. Potter was occupying the island described as lot 3, sec. 23; lot 5, sec. 24; lot 5, sec. 25; and lot 6, sec. 26, containing 58.98 acres. The second island described as lot 6, sec. 24; lot 4, sec. 25; and lot 7, sec. 26 containing 31.08 acres was occupied by one Charles W. Sanger.

that several applications to make homestead entry on the surveyed islands were submitted between 1939 and 1948, but that each application was rejected because of adverse land classification made pursuant to E.O. 6964. On October 14, 1955, the islands were withdrawn by PLO 1236 for use by the Nebraska Game, Forestation and Parks Commission.

It is uncontroverted that William F. Potter established settlement on an unsurveyed island in the North Platte River within sections 23 and 24, T. 23 N., R. 57 W., 6th P.M., prior to February 5, 1935, the date the second general order of withdrawal was effected by E.O. No. 6964.

At the time Potter settled on the island, it was unsurveyed public land open to such settlement. The homestead laws provided that any settler who had settled on unsurveyed public land with the intention of claiming the same under the homestead laws shall be allowed the same time to file his homestead application and to perfect his original entry in the United States land office as allowed to settlers under the earlier preemption laws. 43 U.S.C. § 166. The pertinent regulation in effect when Potter made his settlement provided that entry in the local land office 2/ should be made within three months after settlement upon surveyed lands or within that time after filing in the local land office of the plat of survey of land unsurveyed when settlement was made; otherwise the preference right of entry may be lost. Par. 4(a), Circ. 541, July 26, 1926. Application for survey of unsurveyed lands could be made to the district cadastral engineer having local jurisdiction by settlers who could show the necessary qualifications. Par. 4(c), Circ. 541.

Such applications for survey were received by the General Land Office from Charles W. Sanger and from William F. Potter, and in response thereto the islands in sections 23, 24, 25 and 26, T. 23 N., R. 57 W., 6th P.M., were surveyed during November 1935. The plat of survey was accepted by the Assistant Commissioner, General Land Office, on May 24, 1937, and was filed in the land office on May 27, 1937. Thus, in order to protect his preference right of entry, Potter should have presented his application to make homestead entry to the General Land Office within three months following May 27, 1937. There is no record in the appropriate tract book that Potter did make such an application within that three! month period or at any time thereafter. In fact, information from the

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2/ During the material times the office of jurisdiction was the General Land Office, Washington, D.C.

appellant indicates that Potter abandoned his settlement on the island in the Fall of 1937.

One who takes possession of a tract of public land with a view of becoming an entryman under the homestead law, except as to the limited statutory time allowed him preceding actual entry at the land office, is a mere "squatter" having no rights in the land as against the government or others. United States v. Bagnell Timber Company, 178 F. 795. The mere occupation of the public land for the purpose of subsequently entering the same as a homestead, but without actually making such entry until after the lands are withdrawn by order of the Secretary of the Interior, gives the occupant no right to obtain the title under the provisions of the homestead laws after such withdrawal. Maddox v. Burnham, 156 U.S. 544 (1895).

Subsequent to the filing of the plat of survey of the two islands, and between 1939 and 1952, the land office received six applications to make homestead entry on the islands. Each of the applications was rejected because of adverse classification of the lands under section 7, Taylor Grazing Act, 43 U.S.C. § 315(f), and not because of an existing settlement claim or pending homestead entry. A 10! year grazing lease under section 15, Taylor Grazing Act, 43 U.S.C. § 315(m), was issued September 14, 1950, for these two islands. Finally, Public Land Order 1236 of October 14, 1955, withdrew the subject islands, subject to valid existing rights, from all forms of disposition under the public land laws, and reserved them under jurisdiction of the Department of the Interior for use by the State of Nebraska Game, Forestation and Parks Commission. This PLO foreclosed any disposal of the land unless in furtherance of a valid right then existing. Settlement, residence and improvement upon a tract of unsurveyed public land confer no such right upon the settler as will prevent withdrawal of the land by the government for a public purpose. Leslie A. Reinkovsky, 41 L.D. 627 (1913).

The appellant contends that the earlier settlement of Potter should prevail against any subsequent actions related to the islands. There is no force in this contention. In the case of a settler the Government assumes no obligation with respect to the ultimate disposition of the land; no promise is extended to him that when the land is brought into the market it will be disposed of under the laws recognizing prior settlement as the basis of a right to acquire title thereto. Lewis G. Norton (On Rehearing), 48 L.D. 507, 510 (1921).

It must be held that a settler upon public land who fails to make entry within three months from date of the filing of supplemental plat of survey where the settlement is upon unsurveyed land

forfeits his right to a homestead entry thereon in light of the subsequent withdrawal of the land from all forms of disposition under the public land laws.

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

Douglas E. Henriques  
Member

We concur:

Joseph V. Goss  
Member

Anne Poindexter Lewis  
Member

