

TERRY W. OLSON

IBLA 73-424

Decided November 5, 1973

Appeal from the decision of the Fairbanks District Office, Bureau of Land Management, which rejected appellant's application to make homestead entry F-19071.

Affirmed and adopted.

Homesteads (Ordinary): Applications! ! Homesteads (Ordinary):
Lands Subject To! ! State Selections! ! Withdrawals and
Reservations: Effect of

Where a public land order creates a temporary preference in the State of Alaska to select any vacant, unreserved and unappropriated public land in the state, and where the State timely selects a particular tract of land, that land is segregated from appropriations based upon application or settlement and location as a requirement of regulation, and a later! filed, conflicting application for homestead entry must be rejected.

APPEARANCES: Terry W. Olson, pro se.

OPINION BY MR. STUEBING

Terry W. Olson appeals from the May 7, 1973, decision of the Fairbanks District Office, by which his application to make homestead entry was rejected. The appeal is premised upon appellant's desire to undertake the homesteading enterprise and upon his apparent belief that, in the circumstances of this case, the Department of the Interior can decide to reject the State of Alaska's application in favor of the appellant's application, and should do so. The short answer is simply that no such authority exists under the law or the regulations.

The filing by the State of its selection application during the period when it enjoyed an exclusive preference right operated to segregate the land, so as to bring appellant's later filed application within the purview of 43 CFR 2091.1, which provides:

Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

- (a) Withdrawal or reservation of the lands;
- (b) An allowed entry or selection of record;
- (c) An irrevocable lease which grants the lessee exclusive use of the land;
- (d) Classification under appropriate law;
- (e) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws.

The decision appealed from is a concise and accurate statement of the case and its proper disposition.

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 (attached) is hereby adopted by this Board and affirmed.

Edward W. Stuebing
Member

We concur:

Martin Ritvo
Member

Anne Poindexter Lewis
Member

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Fairbanks District Office
P.O. Box 1150
Fairbanks, Alaska 99707

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 7, 1973

DECISION

Terry W. Olson :
555 Loftus Road #13
College, Alaska 99702

Serial No. F-19071
:
: Homestead Application

Application for Homestead Entry Rejected

Terry W. Olson has filed the above identified application for Homestead Entry for the following described land.

T. 1 N., R. 2 W., Fairbanks Meridian
Section 24: NE 1/4
Containing 160 acres.

The application was considered to be filed as of 10:00 a.m. on June 19, 1972. The land was not subject to the filing of applications prior to that date due to Public Land Order No. 5185 which states, in part:

"All public lands in Alaska which, on March 17, 1972, are vacant and unappropriated and are not withdrawn, reserved, or segregated shall be available to the State of Alaska for selection under the Alaska Statehood Act, 72 Stat. 330. By virtue of the preference right of selection provided to the State of Alaska under Section 6(9) of the Alaska Statehood Act, supra, said vacant, unappropriated and unreserved lands in the State will not be available for application, location, or entry until 10:00 a.m. on June 19, 1972' . . ."

The official records of this office show that the State of Alaska asserted its preference right and the land was selected by the State at 4:00 p.m. on June 16, 1972.

43 CFR 2627.4(b) states, in part: "Lands desired by the State . . . will be segregated from all appropriations based upon application or settlement and location . . . when the State files its application for selection in the appropriate land office properly describing the lands as provided in Part 2627.3(c)(iii), (iv) and (v) . . ." This the State has done.

Therefore, the land involved was not available for Homestead Entry at the time the application was filed.

Due to the foregoing, this application for Homestead Entry is hereby rejected and the case will be closed of record when this decision becomes final.

The right of appeal to the Board of Land Appeals, Office of Hearings and Appeals is allowed in accordance with the regulations in 43 CFR 4.400. See enclosed form. However, if an appeal is to be taken, the notice of appeal must be filed in the Fairbanks District Office, P.O. Box 1150, Fairbanks, Alaska 99707, within thirty (30) days from receipt hereof. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

(SGD) RICHARD H. LeDOSQUET
Richard H. LeDosquet
District Manager

2 Enclosures
Encl. 1 ! Form 1842-1
Encl. 2 ! Appeal Regulations

PMSHAW: vh 5/7/73

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