

RALPH EDMUND MARSHALL

IBLA 74-10

Decided January 24, 1974

Appeal from decision (F-19488) of Fairbanks District Office, Bureau of Land Management, rejecting application to purchase headquarters site.

Affirmed as modified.

Alaska: Generally--Alaska: Possessory Rights--Alaska: Headquarters Sites--Statutory Construction: Generally

The Act of April 29, 1950, as amended, 43 U.S.C. § 687a-1 (1970), requiring the filing of a notice of location or a purchase application before an occupant of a headquarters site can be given credit for his occupancy, does not work an unlawful forfeiture of an occupancy right.

Alaska: Generally--Alaska: Possessory Rights--Alaska: Headquarters Sites--Withdrawals and Reservations: Generally

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of April 29, 1950, because the claimant did not file a notice of location or purchase application prior to the withdrawal.

APPEARANCES: H. Bixler Whiting, Esq., Fairbanks, Alaska, for appellant.

OPINION BY MR. FISHMAN

Ralph Edmund Marshall has appealed from a decision of the Fairbanks District Office, Bureau of Land Management, dated June 5,

1973, rejecting his application to purchase a headquarters site. The decision of the District Office rejected appellant's application for two reasons: (1) he applied for the purchase of ten acres rather than the maximum of five acres allowed by the Act of March 3, 1927, 44 Stat. 1364, as amended, 43 U.S.C. § 687a (1970); and (2) he failed to file a notice within 90 days of settlement, as required by the Act of April 29, 1950, 64 Stat. 95, as amended, 43 U.S.C. § 687a-1 (1970), and before he filed his application to purchase [on May 25, 1973], the land was withdrawn by Public Land Order 5169 [on March 9, 1972], for selection under section 12 of the Alaska Native Claims Settlement Act, 85 Stat. 701, 43 U.S.C. § 1611 (Supp. II, 1972). The District Office decision consequently rejected appellant's application on the basis of Kennecott Copper Corp., 8 IBLA 21, 79 I.D. 636 (1972).

In his appeal, Marshall contends simply that:

- 1) The ruling indicates that an area of ten acres is claimed. That is a mistake. Only five acres are being claimed as a headquarters site.
- 2) The occupation of the headquarters site was commenced at a time when the land was open for purchase. The ruling has misconstrued the applicable sections, as well as the case of Kennicott [sic] Copper Corporation cited therein.

Appellant's application to purchase indicated the description of the site as the SE 1/4 NE 1/4 SE 1/4 of section 13, T. 9 S., R. 15 E., U.M., Alaska. On an attached sketch, showing the location of improvements, he indicates a roughly rectangular plot with an area of 24,200 square yards, or five acres. Thus, although appellant indicated a legal description of his claim which had an area of ten acres, his attached sketch is sufficiently clear to sustain his first contention on appeal, i.e., that, contrary to the decision appealed from, he is only claiming an area of five acres as a headquarters site.

Thus we come to appellant's second contention. The decision of the Fairbanks District Office, in construing the Act of April 29, 1950, as amended, 43 U.S.C. § 687a-1 (1970), stated:

"A claimant's occupancy of a headquarters site prior to withdrawal does not establish a valid existing right under the Act of April 29, 1950, because the claimant did not file a Notice of Location prior to the withdrawal" Kennecott Copper Corporation, 8 IBLA 21, dated October 6, 1972. (Quotation marks in the original.)

Although Kennecott dealt with a trade and manufacturing site application rather than a headquarters site application, the principle stated in the District Office decision does logically follow from our recent holding.

Both the trade and manufacturing site, at issue in Kennecott, and the headquarters site, at issue in the case at bar, are based upon section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970). Both classes of cases are affected by the Act of April 29, 1950, as amended, 43 U.S.C. § 687a-1 (1970), which interdicts credit for occupancy "* * * prior to the filing of (1) a notice of the claim in the proper district land office, or (2) an application to purchase, whichever is earlier. * * *"

In Kennecott, supra, we found that occupancy by a claimant of a trade and manufacturing site without the filing of a notice of location or an application to purchase prior to a withdrawal does not establish a "valid existing right," as that term is used in excepting certain pre-existing rights from the effect of a withdrawal. The text of Public Land Order No. 5169, 37 F.R. 5572, expressly states that "* * * [s]ubject to valid existing rights * * *, the following described lands are withdrawn from all forms of appropriation under the public land laws, * * *" As we noted in Kennecott, the meaning of "valid existing right," which is excepted from withdrawals generally, does not include occupancy undertaken without the filing of a notice of location prior to a withdrawal. Although Kennecott, supra, involved Public Land Order No. 4582, 34 F.R. 1025, the Public Land Order involved here speaks in the same terms regarding "valid existing rights."

Therefore, contrary to appellant's second contention, he failed to initiate a right which can be considered a valid existing right at the time of the withdrawal. As demonstrated in Kennecott, the Act of April 29, 1950, supra, does not result in an unlawful forfeiture of any right based on occupancy prior to the requisite notice. As was stated in Kennecott, in reference to trade and manufacturing sites,

* * * The provisions of the Act [of April 29, 1950, supra] in amending the Trade and Manufacturing Site Act established certain conditions and requirements whereby the United States would recognize occupancy for trade and manufacturing site purposes. * * * Id. at 29, 640.

As was said 69 years ago by the United States Supreme Court in Russian-American Packing Co. v. United States, 199 U.S. 570, 575 (1905), "* * * the mere settlement upon public lands without taking some steps required by law to initiate the settler's right thereto, is wholly inoperative as against the United States."

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 from is affirmed as modified.

Frederick Fishman, Member

We concur:

Anne Poindexter Lewis, Member

Edward W. Stuebing, Member

