

STATE OF ALASKA

IBLA 75-106

Decided January 15, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting State of Alaska selection application F-18884.

Affirmed.

1. Alaska: Land Grants and Selections: Generally -- State Selections -- Withdrawals and Reservations: Generally

A selection application by the State of Alaska must be rejected where all of the applied for land is withdrawn from State selection.

APPEARANCES: F. J. Keenan, Director, State of Alaska, Department of Natural Resources, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On May 25, 1972, the State of Alaska filed selection application F-18884 for approximately 4760 acres in T. 12 S., R. 10 E., Fairbanks Meridian. On June 16, 1972, Alaska amended the application to include the entire township, excluding patented land. ^{1/} The Alaska State Office, Bureau of Land Management (BLM), rejected the application because the land applied for was not available for selection at the time the application was filed and has not subsequently been available for selection. Alaska contends that some of the land in the township became open to State selection on March 17, 1972.

[1] Section 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, as amended, 48 U.S.C. Prec. § 21 (1970), authorizes the State of Alaska to select up to 1,250,000 acres of public lands that are "vacant, unappropriated and unreserved at the time of their

^{1/} A second amendment of the application was filed on December 3, 1973, purporting to correct land descriptions in the original application.

selection." The quoted requirement is repeated in 43 CFR 2627.3(a). The entire township is and has been segregated from state selection during the time application F-18884 has been pending before the Department. Therefore, the application must be rejected.

Appellant's basic contention is that Public Land Order (P.L.O.) 5190, 37 F.R. 6088 (1972), removed the segregation that P.L.O. 5150, 36 F.R. 25410 (1971), imposed on portions of T. 12 S., R. 10 E. 2/ It asserts that the land affected by P.L.O. 5190 is open to State selection. However, all of the land allegedly affected by P.L.O. 5190 was also previously segregated by P.L.O. 5180. P.L.O. 5180, 37 F.R. 5583, 5584 (1972), withdrew from all forms of appropriation, including State selection:

* * * all lands listed in Public Land Order No. 5150 of December 28, 1971, 36 F.R. 25410-13, as amended by Public Land Order No. 5151 of December 29, 1971, 37 F.R. 142-3, and by Public Land Order No. 5182 of March 9, 1972, published in this issue.

P.L.O. 5180 has not been relevantly changed or modified by P.L.O. 5190 or any other public land order. P.L.O. 5190 specifically provides that "[a]ll of the lands deleted or not included in the descriptions as changed by this order have been and continue to

2/ P.L.O. 5150 withdrew:

"T. 12 S., R. 10 E.,
 Sec. 3;
 Sec. 4, E 1/2;
 Sec. 9, E 1/2;
 Secs. 10, 14, and 15;
 Sec. 22, E 1/2;
 Sec. 23;
 Sec. 26, W 1/2;
 Sec. 27, E 1/2;
 Sec. 34, E 1/2;
 Sec. 35, that portion west of the land described in Public Law 87-334." [75 Stat. 749].

P.L.O. 5190

"[c]hange[d] the descriptions of lands in T. 12 S., R. 10 E. (surveyed), to read sec. 4, lots 1, 2, 3, 6, 7, 8, 9, 10, 15, 16, 17, 18, 21, 22, 23, 24, and 42 through 47, NE 1/4 NE 1/4 NE 1/4, N 1/2 SE 1/4 NE 1/4 NE 1/4, W 1/2 NW 1/4 NE 1/4, SW 1/4 NE 1/4, SE 1/4 SE 1/4 NE 1/4, NE 1/4, E 1/2 NE 1/4 SE 1/4 NE 1/4, NE 1/4 SE 1/4 SE 1/4 NE 1/4, W 1/2 SE 1/4; sec. 9 W 1/2 NE 1/4, W 1/2 SE 1/4, SE 1/4 SE 1/4."

be withdrawn for study and review of the proper classification of the lands, and for the protection of the public interest in the lands * * *." P.L.O. 5180 withdraws for study and classification land changed or deleted by P.L.O. 5190. The quoted language from P.L.O. 5190 explicitly continues this earlier withdrawal. Because P.L.O. 5180 separately withdrew all the land withdrawn by P.L.O. 5150 from State selection, we do not have to consider what effect P.L.O. 5190 had on P.L.O. 5150. The remainder of the township not withdrawn by P.L.O. 5180 is segregated from location by one of several withdrawals for military purposes, namely: P.L.O. 5739, 37 F.R. 14573 (1973); P.L.O. 5239, 37 F.R. 14573 (1973); and P.L.O. 5187, 37 F.R. 5591 (1972). Since the entire township is closed to State selection, the BLM's decision was correct.

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.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

