

LLOYD SCHADE

IBLA 75-258

Decided March 31, 1975

Appeal from decision of Alaska State Office, Bureau of Land Management, holding notice of location AA-8549 for a trade and manufacturing site unacceptable for recordation.

Affirmed as modified.

1. Alaska: Land Grants and Selections: Generally -- Alaska: Trade and Manufacturing Sites -- State Selections

Under 43 CFR 2091.6-4 and 2562.1(d) a notice of location for a trade and manufacturing site is unacceptable for recordation where the land is not subject to that form of disposition because it has been segregated by state selection applications.

APPEARANCES: Lloyd Schade, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Lloyd Schade appeals from an October 21, 1974, decision of the Alaska State Office, Bureau of Land Management, holding unacceptable for recordation his October 30, 1973, notice of location AA-8549 for a trade or manufacturing site. The decision cites section 10 of the Act of May 14, 1898, 30 Stat. 413, as amended, 43 U.S.C. § 687a (1970), which provides in part:

Any citizen of the United States * * * in the possession of and occupying public lands in Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding 80 acres of such land * * *. (Emphasis added.)

The decision recited that appellant had exhausted his rights because he had a prior application for a trade and manufacturing site, A-050136, for which patent was pending. In Lloyd Schade, 12 IBLA 316 (1973), the Board affirmed denial of 22 1/2 acres of the land originally applied for. In that case Schade was authorized a patent to 30 acres in connection with his slaughterhouse, but it was held inter alia, there was no occupancy of the remainder of the land for which application was made.

On appeal to this Board, Schade states that he requires the additional land, 1/ which "is a primary source of water and is located in the middle of our operation." In his application, appellant states the claim is for a "farm store."

The case file indicates that at the time of filing of notice of location AA-8549, the land was subject to state selection applications.

[1] Departmental regulation 43 CFR 2562.1(d) provides:

(d) Recording fee. The notice of the claim must be accompanied by a remittance of \$10.00, which will be earned and applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the proper office for recording, because the land is not subject to the form of disposition specified in the notice. (Emphasis added.)

Because the land herein applied for is segregated by the state selection applications under 43 CFR 2091.6-4, the land is not "subject to the form of disposition specified in the notice," hence the notice was not acceptable for recording.

It is correct that under 43 U.S.C. § 687a (1970) appellant is entitled to one claim only. Patent for his earlier application being imminent, the notice of location for a second claim would in any event be subject to rejection.

1/ The description in appellant's second application in itself contains a duplication as to the land for which application is made.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed as modified.

Joseph W. Goss
Administrative Judge

I concur:

Joan B. Thompson
Administrative Judge

ADMINISTRATIVE JUDGE LEWIS CONCURRING SPECIALLY:

In Lloyd Schade, 12 IBLA 316 (1973), the Board of Land Appeals by a majority of four members granted 30 acres for a trade and manufacturing site for a slaughterhouse business but refused to grant 22 1/2 acres of watershed. The latter land supplied clean water to a spring, which water is absolutely necessary for the operation of the slaughterhouse. I dissented on the ground that I thought the appropriate acreage for the requested trade and manufacturing site for the operation of a slaughterhouse was 52 1/2 acres, and that the land approved for that purpose should include the watershed necessary to protect the spring used in the business.

In the present case, Schade is trying to obtain the watershed land previously refused him by this Board. The applicable statute, as set forth in the majority opinion herein, provides that an individual "may each purchase one claim only not exceeding 80 acres of such land." As to the first claim, the decision below states that appellant's purchase application was approved in part and has been published, and that final certificate is awaiting an affidavit from the Cheechako News showing proof of publication. On these facts, it seems the present application constitutes a second claim, which is barred under the statute.

Appellant in his statement of reasons says:

We were led to believe again that we could go ahead and refile and it would be more reasonable than taking it to court. Now this has happened.

It appears to me that the only remedy which appellant has is to take the matter to court.

Anne Poindexter Lewis
Administrative Judge

