

ALASKA DEPARTMENT OF FISH AND GAME

IBLA 75-235

Decided April 23, 1975

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting Recreation and Public Purposes application A-058552.

Affirmed as modified.

1. Alaska Native Claims Settlement Act: Generally -- Alaska: Generally -- Recreation and Public Purposes Act -- Withdrawals and Reservations: Generally -- Withdrawals and Reservations: Effect of

Lands withdrawn under section 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III, 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

APPEARANCES: Rodger W. Pegues, Esq., Assistant Attorney General, State of Alaska, Juneau, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

The State of Alaska Department of Fish and Game has appealed from a decision dated October 25, 1974, rendered by the Alaska State Office, Bureau of Land Management (BLM), rejecting its application filed for approximately 2 acres riparian to the Chignik River.

The application was filed January 7, 1963, pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869

to 869-3 (1970). The decision below rejecting the application recited in part as follows:

On December 18, 1971, Public Law 92-203 (85 Stat. 688) withdrew T. 45 S., R. 60 W., Seward Meridian for selection by the Native villages of Chignik Lake, Chignik Lagoon and Chignik. On March 22, 1974, the Native village of Chignik Lagoon filed selection application under sec. 11(a) of P.L. 92-203 for T. 45 S., R. 60 W., Seward Meridian, which was amended on May 24, 1974, to include the lands described under subject recreation and public purposes application.

Departmental regulation 43 CFR 2740.0-8(a) states:

The act is applicable to any public domain lands except . . . (2) Indian lands and lands set aside or held for use by or the benefit of Indians. . . .

The Department has held that the mere filing of a petition-application in compliance with the regulations of the Department does not vest in an applicant any legal rights or interest in the land described in the petition-application. (See Miles W. Payne, A-28030 (August 17, 1959); Joseph E. Hatch, 55 I.D. 580 (1936).) The filing of an application to purchase or lease gives the applicant nothing more than the rights to have the application considered (Burton C. Corwin et. al., A-28048 (October 30, 1959)).

Since the land sought by the Alaska Department of Fish and Game is set aside for the benefit of Natives of Alaska, the Bureau of Land Management cannot now take action on the petition for classification or the application to purchase the subject lands. Therefore, the petition for classification must be and is hereby denied and the application to purchase is rejected. The case file will be closed of record when this decision becomes final.

Appellant's posture is simply that the lands are not within the categories of "Indian lands * * * [or] lands set aside or held for use by or the benefit of Indians * * *."

[1] We need not decide that issue because, as indicated below, there is another factor preclusive of allowance of appellant's application.

Section 11(a)(1) of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. § 1610(a)(1) (Supp. III, 1973), provides in pertinent part as follows:

(a) (1) The following public lands are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended:

(A) The lands in each township that encloses all or part of any Native village identified pursuant to subsection (b) of this section;

(B) The lands in each township that is contiguous to or corners on the township that encloses all or part of such Native village; and

(C) The lands in each township that is contiguous to or corners on a township containing lands withdrawn by paragraph (B) of this subsection. (Emphasis supplied.)

Among the Native villages identified in section 11(b)(1) of ANCSA are Chignik, Chignik Lagoon, and Chignik Lake, all in the Kodiak region.

In considering the efficacy of a Recreation and Public Purposes Act application for land withdrawn by section 11 of ANCSA, the Board stated in Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153, 155 (1972), as follows:

* * * The Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, must now be considered. By section 11 of the Act, 85 Stat. 696, public lands within certain listed native villages, including St. Paul village, were withdrawn from all forms of appropriation under the public land laws. The withdrawal included the lands in each township that enclosed all or part of the native village, and certain other lands. It is apparent that the lots in question here are within this Congressional withdrawal. As the withdrawal expressly pertained to all "forms of appropriation under the public land laws", there can be no appropriation under the Recreation and Public Purposes Act, and the lands are not within any of the categories of withdrawn lands subject to the Recreation and Public Purposes Act. For this reason

appellant's application must be rejected, and our affirmance of the decision rejecting the application is on this ground.

While it is true that the Recreation and Public Purposes Act ^{1/} may operate on withdrawn lands, with exceptions not pertinent here, and even if it were assumed that such Act could operate on lands withdrawn by section 11 of ANCSA, favorable consideration of a petition for classification under the Recreation and Public Purposes Act is discretionary. See *Hunting & Fishing Improvement Club of Stanislaus County*, A-28776 (April 12, 1962). Thus, even if there were no legal bar to favorable consideration of appellant's application, its denial would have been proper as a discretionary matter. *Mountaineering Club of Alaska*, 19 IBLA 198 (1975).

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 as modified.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

^{1/} The provisions of ANCSA, enacted into law on December 18, 1971, must be deemed to modify pro tanto the provisions of section 2 of the Recreation and Public Purposes Act, enacted June 14, 1926, and amended June 4, 1954, 43 U.S.C. § 869-1 (1970), authorizing the conveyance of withdrawn lands in certain circumstances.

