

EDWIN WILLIAM SELLER
(On Reconsideration)

IBLA 74-144 (Supp.)

Decided May 9, 1975

Petition for reconsideration of decision of the Board of Land Appeals, 16 IBLA 352 (1974), affirming decision of Alaska State Office, Bureau of Land Management, rejecting application to purchase trade and manufacturing site AA-9301.

Decision set aside and case remanded.

1. Alaska: Trade and Manufacturing Sites -- Applications and Entries:
Filing -- Withdrawals and Reservations: Effect of

Under the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), a notice of location of a trade and manufacturing site filed after withdrawal of the land is acceptable if it is filed within 90 days of settlement and the settlement occurs prior to a withdrawal of the land. An application to purchase based on such an asserted settlement and filing will be rejected when it is not filed within the statutory life of the asserted claim, but the applicant may be afforded an opportunity to submit a justification for his late filing under the principles of equitable adjudication.

APPEARANCES: Eugene F. Wiles, Esq., of Delaney, Wiles, Moore, Hayes & Reitman, Inc., Anchorage, Alaska, for appellant-petitioner.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On January 11, 1973, Edwin William Seiler (appellant) filed a notice of location of a trade and manufacturing site pursuant to the Act of May 14, 1898, as amended, 43 U.S.C. § 687a et seq. (1970). On February 13, 1973, he filed an application to purchase the claim, alleging occupation and the operation of a business on the site

since May 1965. The Alaska State Office, Bureau of Land Management (BLM), rejected the application and canceled the notice of location by decision of October 19, 1973, on the grounds that the land applied for was withdrawn from location and disposition under the public land laws by Multiple Use Classification AA-818 in March 1967, ^{1/} and again withdrawn by Public Land Order No. 5179 in March 1972. 37 F.R. 5579 (1972).

On appeal to this Board Mr. Seiler argued that the BLM was in error in not regarding his occupancy of the site as the initiation of a valid existing claim protected against the subsequent withdrawals of the land. This Board held that because appellant failed to file an acceptable notice of location of his claim, as required by the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), he could not be given any credit for his occupancy of the land prior to the withdrawal. Edwin W. Seiler, 16 IBLA 352 (1974), citing Kennecott Copper Corp., 8 IBLA 21, 79 I.D. 636 (1972).

On September 16, 1974, appellant filed a motion for reconsideration by this Board. ^{2/} Because of new material contained in the motion for reconsideration, the motion is granted to the extent necessary to respond to this contention.

[1] Appellant makes one new argument in support of his renewed request for a hearing, viz., the record indicates that at or near the time the BLM issued Multiple Use Classification AA-818 withdrawing the land, appellant "attempted to file" a notice of location of his claim with the BLM, which brings him within the rule in James Milton Cann, 16 IBLA 374 (1974). In Cann the claimant asserted he attempted to file a notice of location of a trade and manufacturing site, which the BLM State Office rejected, less than 90 days after a withdrawal. This Board held that appellant was to be given credit for occupancy within 90 days of filing as provided by the

^{1/} In his motion for reconsideration, appellant asserts that the land was withdrawn on October 27, 1967. Multiple Use Classification AA 818, published on October 28, 1967, 32 FR 14971, was preceded by a notice of proposed classification, 32 FR 3838 (March 8, 1967), which served to segregate the land from disposal under the public land laws.

^{2/} Appellant also filed a petition for equitable adjudication with the Director of the Bureau of Land Management in Washington. By letter dated September 20, 1974, the BLM informed appellant that the decision of the Board of Land Appeals is the final administrative determination of the Department of the Interior, binding on the BLM, and that the BLM was thus constrained not to act on the petition.

Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), and that he might thus have established a valid existing right protected against the withdrawal. We remanded that case for appellant to submit documentation of his assertion that he attempted but was not allowed to file his notice of location within 90 days of the withdrawal.

We shall remand for satisfactory documentation of the attempted filing, as in James Milton Cann, supra. We assume, arguendo, that appellant did tender a notice that the State Office refused to accept. Although appellant lost any rights to the site initiated by any tendering of a notice of location when he failed to file a purchase application until 11 months after the 5-year statutory life of the claim expired, 43 CFR 2562.3(c), in extraordinary circumstances the Board has remanded such a delayed filing for equitable adjudication, Elizabeth Hickethier, 6 IBLA 306 (1972). Appellant as yet has shown no such extenuating circumstances in this case, but is to be afforded an opportunity by the State Office to make the showing as in Cann and to endeavor to demonstrate any extenuating circumstances for his failure to file his purchase application timely. These showings, if made, will be considered under the principles of equitable adjudication. If such showings are found to be acceptable by the State Office, the case will be adjudicated on its merits. If such showings are not found to be acceptable, the rejection of the purchase application will stand.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the motion for reconsideration, in light of the new assertion of fact, is granted, and the prior decision of this Board is set aside and the case remanded.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

