

CARL E. MALUTIN ET AL.

IBLA 75-618 etc.

Decided July 16, 1975

Appeals from a decision of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment applications AA 7309 etc.

Set aside and remanded.

1. Alaska: Grazing -- Alaska: Native Allotments

The policy manifest in regulations pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows, in the exercise of the Secretary's discretion, consideration of a Native allotment applicant's use and occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of March 4, 1927.

APPEARANCES: Matthew D. Jamin, Esq., Alaska Legal Services Corporation, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

These are appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting appellants' 1/ Native allotment applications filed pursuant to the Alaska Native Allotment Act of May 17, 1906, 34 Stat. 197, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970) (repealed by 43 U.S.C. § 1617 (Supp. III,

1/ This Board's docket numbers, BLM serial numbers, and appellants' names, are: IBLA 75-618, AA-7309, Carl E. Malutin; IBLA 75-619, AA-7474, Eli B. Malutin; IBLA 75-620, AA-7314, David W. Waselie; IBLA 75-621, AA-7588, Ralph L. Eluska, Sr.; IBLA 75-622, AA-7476, Mary M. Reft; IBLA 75-637, AA-7162, Mary Simeonoff; IBLA 75-638, AA-7431, George Phillips, Sr.

1973)). The decision was issued May 13, 1975, without the benefit of our decision in Kristeen J. Burke, 20 IBLA 162 (1975). Burke removes the primary basis for the State Office decision, but we believe further consideration should be given to the applications by the BLM State Office before final Departmental action is taken on the applications. We have, therefore, expedited these appeals to allow the State Office to issue a new decision or decisions on these applications.

From 1933 the lands covered by appellants' applications were within a 20-year grazing lease A-07356 issued to the Alitak Reindeer Company under the Alaska Grazing Act of March 4, 1927, 44 Stat. 1452, 43 U.S.C. § 316b (1970). A 10-year renewal of the lease was made subject to the Reindeer Grazing Act of 1937, 50 Stat. 900. The lease terminated July 1, 1963. The State Office, in its decision, stated:

[s]ettlement on land in Alaska which is subject to a grazing lease issued under the Alaska Grazing Act of March 4, 1927, * * * does not create any rights, by virtue of such settlement, under the Alaska Native Allotment Act * * * since such land is segregated from adverse appropriation at least until the Department takes action to cancel the grazing lease. (See Harold J. Naughton, 3 IBLA [237] (1971).)

[1] In Burke, supra, we decided a similar case involving the same grazing lease. In that decision we distinguished Naughton, supra, and held that a grazing lease for reindeer issued under the 1927 Act became subject to rules, regulations and interpretations regarding the effect of grazing rights granted under the Reindeer Grazing Act of 1937 upon Native occupancy claims, if they are not to the detriment of the lessee. 43 CFR 4132.1-5(a) specifically provides that lands within a grazing permit issued under the 1937 Act "are subject to settlement, location and acquisition under the non-mineral public land laws applicable to the State of Alaska." The policy manifest in this and other regulations pertaining to grazing permits under the 1937 Act allows, in the exercise of the Secretary's discretion, the consideration of a Native applicant's use and occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the 1927 Act.

However, the lands covered by appellants' applications are also within those lands withdrawn by Public Land Order 1634, 23 F.R. 3350 (May 17, 1958), from all forms of appropriation under the public land laws. Appellants must, therefore, show the necessary use and occupancy for five years prior to the date of the withdrawal.

Christian G. Anderson, 16 IBLA 56 (1974). 2/ Therefore, we remand these applications to the State Office for appropriate consideration and decision. Appellants should submit any further information to support their applications to the BLM State Office.

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 set aside and the case records are remanded to the Alaska State Office, BLM, for further consideration.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

2/ If the lands in any of the applications are not within the one-mile strip along the shoreline that was excluded from the lands withdrawn by Executive Order 8857 (August 19, 1941), the five-year period must be completed prior to February 10, 1940, the date of Executive Order 8344 temporarily withdrawing all of Kodiak Island "from settlement, location, sale, or entry."

