

LEAH DRUCK

IBLA 76-20

Decided October 22, 1975

Appeal from decision of Fairbanks District Office, Bureau of Land Management, rejecting Native allotment application F-14774.

Affirmed.

1. Alaska: Native Allotments -- Withdrawals and Reservations: Power Sites

An Alaska Native allotment application is properly rejected where applicant fails to show 5 years' substantially continuous use and occupancy prior to the closing of the land to Native allotments. An allotment application is properly rejected when the land applied for is within a power site withdrawal and initiation of use and occupancy was less than 5 years prior to the time the lands were closed.

APPEARANCES: E. John Athens, Jr., Esq., Alaska Legal Services Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Leah Druck appeals from a decision dated May 23, 1975, of the Fairbanks District Office, Bureau of Land Management, rejecting her Native allotment application F-14774 because she did not show 5 years' use and occupancy prior to the withdrawal of the land.

The application was filed November 9, 1971, asserting that the appellant had commenced occupancy on October 1, 1961, and indicated continuous use on a seasonal basis from the initiation of occupancy until the filing of the application. The withdrawal of the land was effected by an application for withdrawal for power site purposes filed by the Geological Survey on January 9, 1963. The withdrawal application was made final by Public Land Order 3520 of January 5, 1965, announcing the Power Site Classification No. 445 for the Rampart Power Project.

Appellant was given an opportunity to show use and occupancy prior to January 9, 1958, the latest date on which qualifying occupancy could have been commenced prior to the withdrawal. The only showings made by the appellant were statements by herself and witnesses asserting her use of the land but not indicating that her use had commenced prior to January 9, 1958. 1/

[1] Appellant's arguments on appeal do not persuade us to abandon our holding in Herman Joseph, 21 IBLA 199 (1975), which disposed of a number of cases involving virtually the same facts as those in this appeal. In that case, the Board held that an applicant has failed to demonstrate 5 years' continuous use and occupancy where use and occupancy were initiated within the 5-year period immediately preceding the date that the Geological Survey filed its application for withdrawal for power site purposes, 43 CFR 2351.3, and where the application was made final on January 5, 1965, by a final order of withdrawal.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

1/ The field reports conclude that the appellant has used the land involved continuously since 1968, but that she had never used the land prior to 1968.

