

EDWARD F. NAUGHTON

IBLA 76-31

Decided December 23, 1975

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting Native allotment application AA-6449.

Affirmed.

1. Act of March 4, 1927--Alaska: Native Allotments--Grazing Leases: Cancellation or Reduction--Withdrawals and Reservations: Effect of

Under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), issuance of a grazing lease appropriates the lands and segregates them from public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from lease.

APPEARANCES: Edward F. Naughton, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Edward F. Naughton appeals from a May 5, 1975, decision of the Alaska State Office, Bureau of Land Management, rejecting his Native allotment application AA-6449, filed pursuant to the Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. § 270-1 et seq. (1970), 1/ and the governing regulations, 43 CFR Subpart 2561.

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1/ Repealed by the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1617 (Supp. III, 1973), subject to applications pending before the Department as of December 18, 1971.

The lands applied for are located within grazing lease A-07916, which was issued on December 22, 1932, and which has been renewed and is in effect until December 31, 1997. Appellant submitted his Native allotment application on May 16, 1970, claiming use and occupancy of the lands year-round since 1946, except that his occupancy in 1954-58 was during the summers only.

[1] The State Office acted properly in rejecting appellant's application. It is well established that under the Alaska Grazing Act of March 4, 1927, as amended, 43 U.S.C. § 316 et seq. (1970), issuance of a grazing lease appropriates the leased lands and segregates them from the public domain, barring them from settlement, location and acquisition under the nonmineral public land laws applicable to Alaska, including use and occupancy for Native allotment purposes, until the Department takes action to exclude the lands from the lease. Harold J. Naughton, 3 IBLA 237, 242-43, 78 I.D. 300, 302-03 (1971); Helena M. Schwiete, 14 IBLA 305 (1974); 43 CFR 4131.3-1. Thus, appellant has gained no rights by his past use and occupancy. Because of the existence of the grazing lease, it is unnecessary to discuss the effect of subsequent withdrawals.

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.

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Joseph W. Goss  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Martin Ritvo  
Administrative Judge

