

ARTHUR R. WALLACE

IBLA 77-159

Decided May 31, 1977

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting appellant's homestead petition! application. OR 14722.

Affirmed.

1. Act of October 21, 1976

H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 1 (1976), shows that the purpose of the Act of October 21, 1976 (the Federal Land Policy and Management Act), which repealed the homestead laws, except as to certain lands in Alaska, was to repeal obsolete statutes relating to public lands that were incongruent with today's national goals.

2. Homesteads (Ordinary): Applications! ! Homesteads (Ordinary): Classification! ! Public Lands: Classification

The statement by the BLM State Office that appellant's petition! application is regular on its face is merely a preliminary determination the application will be considered and the process will be set in motion to classify the land. The decision to classify land for a certain purpose is discretionary with the Secretary of the Interior.

3. Applications and Entries: Filing! ! Applications and Entries: Valid Existing Rights! ! Homesteads (Ordinary): Generally! ! Homesteads (Ordinary): Applications! ! Homesteads (Ordinary): Classification

The filing of a petition! application is treated as a petition for classification

of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

APPEARANCES: Arthur R. Wallace, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Arthur R. Wallace appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 13, 1977, rejecting his homestead petition! application OR 14722.

On August 1, 1975, appellant filed his homestead petition! application pursuant to 43 U.S.C. § 161 et seq. (1970), and a petition for classification.

In the BLM decision of January 13, 1977, appellant's homestead petition! application was denied because the homestead entry laws, 43 U.S.C. § 161 et seq., were repealed, except for certain lands in Alaska, by sec. 702 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 2787 (Public Law 94-579), dated October 21, 1976.

In his Statement of Reasons, appellant asserts his homestead petition! application should be approved because it was filed in July 1975, before the repeal of the homestead law. He also asserts the Department of the Interior sent him a letter stating his claim was valid.

[1] As previously indicated, the Federal Land Policy and Management Act of 1976 (FLPMA) was enacted into law on October 21, 1976.

The purpose of FLPMA was to look at the existing laws pertaining to the public lands and to update them so the law would be congruent with present day policy. H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 1 (1976) states:

From the beginning of the Republic, the public lands have played a key role in the development of the economy and institutions of the United States. In directing the role that the public lands have played, the Congress has enacted thousands of public land laws. More than 3,000 remain on the books today. These laws represented and effectuated Congressional policies needed when they were passed. Many of them are still viable and applicable today under present conditions. However, in many instances they are obsolete and, in total, do not add

up to a coherent expression of Congressional policies adequate for today's national goals.

Because Congress thought the homestead laws were vestigial in their application to the lower 48 states, it enacted FLPMA which repealed the homestead laws, 43 U.S.C. § 161 et seq. Congress has the power to repeal earlier statutes by passage of a later law. State of Arizona ex rel. Arizona State Board of Public Welfare v. Hobby, 221 F.2d 498 (D.C. Cir. 1954).

[2] In his Statement of Reasons appellant stated the Department of the Interior sent him a letter stating his claim was valid. The letter of October 30, 1975, stated "a preliminary review of your petition! application has been made, and it is determined that the petition! application is regular upon its face." What this means in its simplest language is the application is complete and is accepted for further processing. This is discussed at 43 CFR 2450.2 "Preliminary Determination" which states:

Upon the filing of a petition! application, the authorized officer shall make a preliminary determination as to whether it is regular upon its face and, where there is no apparent defect, shall proceed to investigate and classify the land for which it has been filed. No further consideration will be given to the merits of an application or the qualifications of an applicant unless or until the land has been classified for the purpose for which the petition! application has been filed.

[Emphasis supplied.]

Therefore, appellant's application was merely accepted for consideration, and it began the process of classification of the land. Classification of the land for homestead entry is discretionary with the Secretary of the Interior. In this instance four different reports were required before the land could be classified. <sup>1/</sup> The preparation of these reports is presumably responsible for the length of time it took to process the application.

[3] Appellant urges his application should be approved because the homestead laws were still in effect at the time the application was filed. The filing of a petition! application gives no right to occupy or settle upon the land. A person is entitled to the possession and use of land only after his entry, selection, or location

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<sup>1/</sup> The reports which had to be completed were:

1. Environmental Analysis Report
2. A Mineral Report
3. Cultural Resources Report
4. Land Report

has been allowed, or a lease has been issued. 43 CFR 2450.7. This process of filing an application and having the land classified is summarized succinctly in Fern Hill Hunter, A-27756 (January 13, 1959):

She has filed an application which must first be treated as a petition for classification of the land \* \* \*. But the filing of the application did not vest in the applicant an interest in the land which precludes the United States from making some other disposition of the land in the public interest.

The appellant had no valid existing right at the time the homestead laws were repealed. See Everett H. Adkins, A-28245 (May 23, 1960). He had only a mere application. In contradistinction, the repeal of the Pittman Act of October 22, 1919, 43 U.S.C. §§ 351-355 (1964), by the Act of August 11, 1964, 78 Stat. 389, specifically provided: "Any valid application for permit under this Act on file with the Secretary of the Interior on the effective date of this Act may be processed in the same manner as if this Act had not been enacted." Cf. Solicitor's Opinion, 55 I.D. 205, 210 (1935). When the homestead laws were repealed, appellant's effort under the homestead laws evanesced. See Ferguson v. Weinberger, 389 F. Supp. 759 (D. Montana 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.

Frederick Fishman  
Administrative Judge

We concur:

Newton Frishberg  
Chief Administrative Judge

Martin Ritvo  
Administrative Judge

