

DANIEL A. ANDERSON

IBLA 77-99

Decided July 1, 1977

Appeal from decisions of the Oregon State Office, Bureau of Land Management, rejecting applications under the homestead and stock-raising homestead laws. (OR 15439.)

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Generally--Stock-raising Homesteads--Taylor Grazing Act: Generally

An application filed in 1976 to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-raising Homestead Act were impliedly repealed by the Taylor Grazing Act and were expressly repealed by the Federal Land Policy and Management Act.

2. Applications and Entries: Generally--Applications and Entries: Valid Existing Rights--Federal Land Policy and Management Act of 1976: Generally--Homesteads (Ordinary): Applications--Homesteads (Ordinary): Classification--Public Lands: Classification

A petition application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

APPEARANCES: Wayne C. Annala, Esq., Annala, Lockwood, Carey & Hull, Hood River, Oregon, and John A. Feinauer, Esq., Hood River, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Daniel A. Anderson has appealed from separate decisions of the Oregon State Office, Bureau of Land Management (BLM), rejecting his applications under the Homestead and Stock-raising Homestead Acts, 43 U.S.C. § 161 et seq.; U.S.C. § 291 et seq. (1970). On February 2, 1976, appellant filed a homestead entry application and petition for classification, OR 15439, and pursuant to 43 CFR 2450 the case was referred for investigation to determine whether the land should be classified for homestead entry. This investigation had not been completed by October 22, 1976, when the homestead laws were repealed by section 702 of the Federal Land Policy and Management Act (FLPMA), 90 Stat. 2787, effective on the date of that Act as to lands outside Alaska, and 10 years thereafter as to Alaska. Appellant filed an amended application on November 15, 1976, changing his original application to an application for a stock-raising homestead and including additional land in his application. This application was rejected by a decision dated December 3, 1976, which noted the repeal of the homestead laws and further stated that the Stock-raising Homestead Act had been implicitly repealed by section 7 of the Taylor Grazing Act, 43 U.S.C. § 315f (1970).

On December 15, 1976, appellant filed an amended stock-raising homestead application for land other than that which had been included in the application rejected on December 3. This later application was rejected by decision dated December 17, 1976, which noted that the land had been classified for multiple use management and was thus segregated from appropriation under the agricultural land laws. The decision also noted that the Stock-raising Homestead Act had been expressly repealed by Section 702 of FLPMA.

Appellant contends that he was prejudiced by the failure of the Oregon State Office to inform him that the land was available for stock-raising homestead entry when he filed his original homestead application. However, as we shall explain below, the land has not been open to entry under the Stock-raising Homestead Act since 1934. Appellant further contends that he was prejudiced by the State Office's failure to inform him of the pendency of FLPMA and by the undue delay in processing his application. Appellant, through his attorney, had made similar charges in a letter to Senator Packwood. At the Senator's request, the State Office responded to appellant's charges by letter dated December 6, 1976. This letter explained the general work performed by the State Office during the pendency of appellant's application and made particular reference to the work involved in processing appellant's application. We find no basis for appellant's charge that his civil rights have been violated because of the time spent in processing his application, by any failure on the part of BLM officials to mention the pending proposed legislation, or for any other reason.

[1] Prior to the Taylor Grazing Act, land became subject to disposal under the Stock-raising Homestead Act when it was designated as stock-raising land. Lands which could have been designated stock-raising lands are those

[T]he surface of which is, in the opinion [of the Secretary of the Interior], chiefly valuable for grazing and raising forage crops, do not contain merchantable timber, are not susceptible of irrigation from any known source of water supply, and are of such character that six hundred and forty acres are reasonably required to support a family. 43 U.S.C. § 292 (1970).

However, on June 28, 1934, the Taylor Grazing Act authorized the Secretary to establish grazing districts on land which was "chiefly valuable for grazing and raising forage crops." 48 Stat. 1269. Executive Order 6910 of November 26, 1934, (quoted at 54 I.D. 539 (1934), although not identified by number) withdrew all vacant, unreserved, and unappropriated public land in Oregon, inter alia, from settlement, location, sale, or entry, and reserved such land for classification.

Appellant contends that the land included in the November 15 application remained subject to disposal under the Stock-raising Homestead Act, but this contention is without merit. Section 7 of the Taylor Grazing Act, as amended. 43 U.S.C. § 315f (1970), required classification of lands before such lands could be opened to entry under the homestead laws. This requirement applied to lands within grazing districts as well as all land withdrawn by E.O. 6910. Although appellant has correctly pointed out that the land has not been in a grazing district, he is incorrect in his belief that the land was not withdrawn by E.O. 6910 and thus not subject to section 7. Appellant apparently bases his contention that the land was not affected by the withdrawal on the fact that the land had once been designated as stock-raising land and that a stock-raising entry had been allowed in 1928. However, appellant fails to note that the 1928 entry was canceled in 1934, one month before the enactment of the Taylor Grazing Act and several months prior to the withdrawal. The rights of an applicant survived a withdrawal only if the land had been designated and the application had been filed before the withdrawal. Instructions, 51 L.D. 138 (1925); Condas v. Heaston, 49 L.D. 374 (1922). Because there was no outstanding application on November 26, 1934, nothing prevented the withdrawal from attaching at that time. Thus, upon cancellation of the prior entry, the land was affected by the withdrawal, notwithstanding the prior designation of the land. See generally, Solicitor's Opinion, 55 I.D. 205 (1935). See also James C. Forsling, 56 I.D. 281 (1938). However, the important fact is that appellant did not

have an application filed for the land before the land was withdrawn. Thereafter, applications under the Stock-raising Homestead Act were not allowed.

The Department's holding that the Stock-raising Homestead Act was impliedly repealed by the Taylor Grazing Act is based on the inconsistency in the requirements for a stock-raising homestead with the limitations on homesteads contained in the Taylor Grazing Act. Compare 43 U.S.C. § 292 (1970) with 43 U.S.C. § 315f (1970); see Les, 24 IBLA 308 (1976); Samuel Joyner, A-28558 (November 15, 1960); George J. Propp, 56 I.D. 347 (1938). As noted above, stock-raising land was "chiefly valuable for grazing and raising forage crops," but the Taylor Grazing Act limited homesteading to land which was "more valuable for the production of agricultural crops than for the production of native grasses and forage plants." Although stock-raising lands were "of such character that six hundred and forty acres are reasonably required to support a family," the Taylor Grazing Act limited homesteads to 320 acres. Thus, the land was not subject to entry under the Stock-raising Homestead Act when appellant filed his original homestead application. We further note that the Stock-raising Homestead Act was expressly repealed by section 702 of FLPMA, which became effective prior to appellant's amendment of his ordinary homestead application to a stock-raising homestead application.

[2] Even if appellant had not amended his ordinary homestead application to a stock-raising homestead application, the application would have to be rejected. As to lands outside Alaska, FLPMA repealed the homestead laws, effective October 22, 1976. Therefore, appellant's application could receive no further consideration unless it fell within the scope of the valid existing rights preserved by section 701 of the Act. However, the law is clear that the mere filing of a homestead application outside Alaska, confers no rights upon the applicant. Arthur R. Wallace, 30 IBLA 239 (1977); Fern Hill Hunter, A-27756 (January 13, 1959). As we have indicated, under section 7 of the Taylor Grazing Act, 43 U.S.C. § 315f (1970), the Department could allow a homestead entry only after the land had been classified as available for that purpose. See 43 CFR 2511.0-8(c). Section 7 commits classification decisions to the discretion of the Secretary, and 43 CFR Part 2410 sets forth the criteria which influence classification decisions. There had not been a classification of the land pursuant to appellant's petition prior to the repeal of the homestead laws by FLPMA. Because appellant's application was not allowed and could not be allowed at the time of the repeal there were no "valid existing rights" which could survive the repeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Martin Ritvo
Administrative Judge