

JOHN D. KETSCHER
ALFRED L. DeCICCO

IBLA 77-357
77-358

Decided September 21, 1977

Consolidated appeals from separate decisions by the Fairbanks District Office, Bureau of Land Management, refusing to record or recognize the Ketscher headquarters site claim F-21007 and the DeCicco homesite claim F-21008.

Affirmed as modified.

1. Alaska: Headquarters Sites--Alaska: Homesites--Withdrawals and Reservations: Generally

The filing of a notice of location for a headquarters site or a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

2. Administrative Procedure: Adjudication--Administrative Procedure: Decisions--Alaska: Headquarters Sites--Alaska: Homesites--Alaska: Homesteads--Alaska: Trade and Manufacturing Sites

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open

to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

APPEARANCES: John D. Ketscher and Alfred L. DeCicco, each pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On March 14, 1974, John D. Ketscher filed in the Fairbanks District Office of the Bureau of Land Management a "Notice of Location of Settlement or Occupancy Claim" (Form 2560-1; hereinafter "location notice") to initiate his claim to approximately 5 acres of land therein described as a headquarters site for his trapping and guiding business.

On March 15, 1974, Alfred L. DeCicco filed a similar document in the same office to initiate his claim to approximately 5 acres near the Ketscher claim for use as a homesite.

On March 28, 1974, all public lands in Alaska were withdrawn from appropriation under the public land laws by Public Land Order No. 5418, the withdrawal being imposed subject to valid existing rights.

On August 5, 1976, BLM personnel made an examination of the site claimed by DeCicco, and on August 15, 1976, a similar examination was made of the site claimed by Ketscher. The examiners reported in each instance that aside from some boundary markers, and a location notice in a glass bottle on DeCicco's claim, there was no indication of any use or occupancy of either site.

In April 1977, the Fairbanks District Office, by separate decisions, informed both Ketscher and DeCicco that their respective notices of location were "unacceptable for recordation" because they had not performed the requisite acts of use and occupancy to exclude the lands from the effect of the withdrawal. The decisions were, in effect, declarations that the Bureau refused to recognize the validity of these claims. Both Ketscher and DeCicco have appealed.

Their appeals have been consolidated because they involve virtually identical circumstances and issues.

[1] The primary question is whether, by the filing of their location notices and marking the boundaries of their claims, the appellants established valid existing rights in the land which survived the imposition of the withdrawal. We have held repeatedly that these acts alone are insufficient. George T. Beck, 31 IBLA 363 (1977); Sandra Lough, 25 IBLA 96, 104 (1976); Alan D. Hodge, 22 IBLA 150 (1975); Edward P. Dooley, 22 IBLA 338 (1975); Donald Richard Glittenberg, 15 IBLA 165 (1974); Kennecott Cooper Corp., 8 IBLA 21, 33, 79 I.D. 636, 641 (1972); Vernard E. Jones, 76 I.D. 133, 137 (1969); cf. Donald J. Thomas, 22 IBLA 210 (1975). The filing of a notice of location not supported by actual settlement and occupancy as authorized by 43 U.S.C. § 687a (1970) does not change the status of the public lands; John W. Eastland, 24 IBLA 240 (1976); nor does it establish any rights in the locator as against the United States. Henry E. Reeves, 31 IBLA 242, 255 (1977), and cases therein cited. Rather, it is the acts of improvement and occupancy in compliance with the law which may establish a right to the land. Mary C. Rolen, 24 IBLA 100, 102 (1976). The occupancy and improvement must be such as to demonstrate a substantial, good faith devotion of the land to the intended lawful purpose before the effective date of a withdrawal in order to establish a valid existing right which will survive. Stephen R. Sorenson, 22 IBLA 258 (1975). The 5-year period prescribed by 43 CFR 2563.1(c) is the maximum period for demonstrating full compliance with the law and regulations and for filing application to purchase. The provision may not be construed to mean that a claimant can reserve the land to himself for 5 years merely by filing a notice of location and marking boundaries, and nothing more. George T. Beck, *supra*; Elden L. Reese, 21 IBLA 251 (1975). Thus the argument of appellant DeCicco that, as a veteran, he still has enough time to begin and complete his required use and occupancy is of no avail.

Appellant Ketscher argues that "a little over 2 years from filing date" (on June 14, 1976) he submitted an application to cut logs for building a cabin and a cache on his claim, but BLM never acted on this application prior to the rejection of the claim itself. He therefore blames BLM for the delay. However, we note that at the time he applied for permission to cut logs, the withdrawal had also been in effect for more than 2 years and had precluded the initiation of occupancy thereafter. Therefore, the failure or refusal of BLM to act promptly with reference to his request to cut logs did not prejudice his claim to the land, which had long since been negated by the withdrawal.

There are no disputed facts regarding occupancy and improvement of the land prior to withdrawal. Therefore, both claims are invalid as a matter of law, and we so hold.

[2] The decisions by the Fairbanks District Office declared that the claimant's respective location notices were "unacceptable for recordation." We have construed such language in this and other cases to mean that the claims were being declared invalid. See, e.g., Stephen R. Sorenson, *supra* at 22 IBLA 260. We have held in some cases that it was proper for the BLM to refuse to record the location notices, and in other cases, such as these, that it was improper to do so. See James Milton Cann, 16 IBLA 374, 377 (1974); Eldan L. Reese, *supra*, 21 IBLA at 252; Alan D. Hodge, *supra*, 22 IBLA at 151; Ray W. Ferguson, 22 IBLA 160, 163 (1975); William G. Fairbanks, 22 IBLA 255, 257 (1975); Edward P. Dooley, *supra*, 22 IBLA at 240; Stephen P. Remme, 24 IBLA 23, 25 (1976); George T. Beck, *supra*, 31 IBLA at 365. But regardless of whether the BLM, properly or improperly, chooses to record or not to record the notice of location is of absolutely no consequence to the issue of the validity of the claim. The matter of recordation by the BLM is totally immaterial to a consideration of the merits of any claim. Only the proper filing of the notice by the applicant is germane in that context. The persistence of the BLM's Alaska offices in dealing with settlement claims on the basis of the recordability of the location notices, contrary to our many decisions on this point, is a continuing waste of this Board's time, and the practice should be discontinued forthwith. 1/

Accordingly, 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 as modified.

Edward W. Stuebing
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

1/ The concern of the Bureau with recordation is not only pointless, in many instances it is self-contradicting and confusing. In each of the subject appeals, the Fairbanks District Office issued decisions to the claimants in 1974 advising that their respective claims had been recorded. Three years later the same office advised the same claimants that the same claim notices are "unacceptable for recordation." See George T. Beck, 31 IBLA 363, 365, n. 1 (1977).

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN RESULT:

Appellants in these cases have asserted that their claims were excepted from the withdrawal covering the lands. However, neither appellant has alleged facts showing adequate use and occupancy of the land sufficient to prevent the withdrawal from attaching to the land. I agree that the mere filing of a notice of location for a headquarters site or a homesite does not alone establish a "valid existing right" protected from the withdrawal. I suggest that the proper procedure for the Bureau office in a case of this type is to issue a show cause notice to a claimant to afford him an opportunity to come forward with proof of any occupancy of the claim prior to a withdrawal. Were there sufficient facts alleged by a claimant showing occupancy prior to a withdrawal, then a Government contest would be necessary to determine the validity of the claim. Here the Bureau decision has, in effect, informed the claimants of the basis for determining their claims are not valid. Appellants have not asserted facts showing adequate use and occupancy of the claims prior to the withdrawal sufficient to constitute a "valid existing right".

Therefore, in the absence of such assertions, further notice does not appear necessary, and I agree that the claims may be declared invalid.

Joan B. Thompson
Administrative Judge

