

ARTHUR G. LANE, JR.

IBLA 78-406

Decided December 14, 1978

Appeal from decision of the California State Office, Bureau of Land Management, dismissing a protest against expiration of small tract lease S 4090.

1. Federal Land Policy and Management Act of 1976: Generally—Federal Land Policy and Management Act of 1976: Repealers—Small Tract Act: Generally—Small Tract Act: Classification

The Small Tract Act, 43 U.S.C. § 682 a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

APPEARANCES: Arthur G. Lane, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Arthur G. Lane appeals from a decision of the California State Office, Bureau of Land Management (BLM), dismissing a protest against expiration of small tract lease S 4090.

The land in question, totaling approximately 0.60 acre in sec. 21, T. 4 S., R. 18 E., Mount Diablo meridian, Mariposa County, California, was classified as suitable for lease only for residential purposes under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a et seq. (1970). Appellant filed an application for the small tract in November 1970 and the lease was issued effective December 1, 1970, for a 6-year period.

On January 11, 1978, BLM notified appellant that his lease had terminated by operation of law in November 1976 and that in accordance with the terms of the lease contract, he had 90 days from the termination date within which to remove his improvements.

Appellant filed a letter protesting the termination in which he asked for a 60-day extension of time in which to remove the improvements.

On April 18, 1978, BLM issued a decision amending its notice of January 11, 1978, to allow appellant to and including June 29, 1978, to remove his improvements from the premises. The decision noted that the record fails to disclose that an application for renewal of said lease was filed or that advance rental was paid for the use of the land from December 1976 through November 1977. Consequently the lease automatically terminated by operation of law at the expiration of its term. BLM explained that the subject land is within a large block of public land which was classified in 1970 for retention in Federal ownership for multiple use management. BLM stated that the land has been identified as valuable for wildlife habitat and management purposes, particularly that of the endangered limestone salamander. For these reasons, BLM concluded that a renewal application would not be considered and dismissed the protest.

In his statement of reasons filed May 5, 1978, appellant explains that each year he has received a notice that payment was due. He says that in 1976 he never received notice concerning renewal of the lease or notice that rental payment was due. As for the wildlife habitat, appellant points out that as long as he has been on the property, he has not hunted any wild animals or permitted others to do so. He contends that the area will not be a wildlife habitat for long because the entire area is "fringed by land development." Also, he says that he has not damaged the property and has, in fact, purchased and planted trees in the area. Appellant states that mineral rights were held by either himself or his family since 1946. Therefore, he alleges that either the mining claim rights or the small tract lease should be in effect.

[1] The Small Tract Act, supra, was repealed by section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, effective October 21, 1976. Use or occupancy of public land granted subsequent to the effective date of FLPMA must be issued under authority of that Act. 43 U.S.C.A. § 1732(b) (Supp. 1978).

When the Small Tract Act, supra, was in effect, the issuance of such a lease was within the discretion of the Secretary of the Interior, Alva F. Muse, 30 IBLA 36 (1977). The classification of land as suitable for disposition under this Act did not preclude a subsequent cancellation of that classification when a different

classification was found to be in the public interest. Estate of Lyle K. Gross, 1 IBLA 79, 77 I.D. 174 (1970).

The land in issue is within a large block of public land classified in 1970 for retention in Federal ownership for multiple use management. BLM reports that the land has been identified as valuable for wildlife habitat and management purposes, particularly that of the endangered limestone salamander. BLM's refusal to renew the lease was predicated upon the finding that the public interest required such action in order to protect and preserve the endangered species of salamander living within the boundaries of this tract of land.

In these circumstances we find that, even if the Small Tract Act were still in effect, the refusal to renew the lease herein would have been within the delegated authority of the deciding official of BLM. Estate of Lyle K. Gross, *supra*. But, in view of the repeal of the Small Tract Act by FLPMA, BLM is not authorized to renew the lease. The lease itself provided that any renewal would be discretionary. Therefore, appellant has no valid existing right to a renewal lease which would survive FLPMA, 43 U.S.C.A. § 1701(h) (Supp. 1978). We note that on November 5, 1970, appellant signed a relinquishment of any right, title, or interest in the mining claim. Accordingly, there is no merit to his assertion that any of his rights to the mining claim are still outstanding.

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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Anne Poindexter Lewis  
Administrative Judge

We concur.

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Douglas E. Henriques  
Administrative Judge

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James L. Burski  
Administrative Judge

