

RENE P. LAMOUREUX  
d/b/a FRENCHY LAMOUREUX

IBLA 78-297

Decided January 15, 1979

Appeal from the decision of the Alaska State Office, Bureau of Land Management, denying petition for reinstatement, rejecting application to purchase and denying request for equitable adjudication of headquarters site AA-8783.

Affirmed in part, set aside and remanded in part.

1. Alaska: Generally--Alaska: Headquarters Sites--Applications and Entries: Valid Existing Rights--Withdrawals and Reservations: Generally

Without adequate proof of a tender of a notice of location or application to purchase a headquarters site which was wrongfully denied by Bureau of Land Management personnel prior to a withdrawal of the land, the mere occupancy of land prior to the withdrawal did not create a "valid existing right" excepted from the effect of the withdrawal, and an application to purchase a headquarters site filed after the withdrawal is properly rejected.

2. Alaska: Generally--Alaska: Headquarters Sites--Equitable Adjudication: Generally--Equitable Adjudication: Substantial Compliance

Equitable adjudication of an application to purchase a headquarters site claim filed at least 8 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the

withdrawal nor after the withdrawal could validly be considered under the law.

3. Alaska: Headquarters Sites--Public Lands: Leases and Permits--Public Lands:  
Special Use Permits

That part of a decision rejecting a headquarters site purchase application which requires the applicant to remove his improvements from the site within 90 days may be set aside and the case remanded to the Alaska State Office to determine whether a temporary use permit can be granted authorizing continued use of the improvements.

APPEARANCES: Gary C. Tucker, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This headquarters site of Mr. Lamoureux was the subject of a prior Board decision, Rene P. Lamoureux, 20 IBLA 243 (1975), which held that a notice of location of settlement filed on February 5, 1974, but alleging occupancy since August 1962, could not be accepted for recordation. The decision pointed out that the notice did not have an adequate description. However, the primary thrust of the decision was that in 1974 when the notice was filed the land had been withdrawn from application and appropriation under the public land laws by PLO No. 5181, dated March 9, 1972, as amended by PLO No. 5388, dated September 14, 1973. We held appellant's claim was not a "valid existing right" excepted from the withdrawal because the notice was not filed within 90 days from initiation of his occupancy, and credit for his occupancy prior to the withdrawal could not be given as a notice of land location or purchase application had not been filed prior to the withdrawal. This conclusion was based upon the Act of April 29, 1950, 64 Stat. 94-95, as amended, 43 U.S.C. § 687a-1 (1970), which provides that credit for occupancy on a settlement claim (including headquarters site claims) cannot be given for occupancy prior to the filing of either a notice of the claim or an application to purchase, whichever is earlier. Such notice or application must be filed within 90 days from the date of the initiation of the claim.

Appellant also requested that his notice of location be accepted under the equitable adjudication authority and that he be allowed to purchase his claim. We ruled that such authority is not appropriate to permit the filing of a notice of location after the land has been withdrawn. As to appellant's request to purchase the claim, we said that any ruling is premature without an application to purchase. However, we noted in a footnote that:

[G]enerally there is no basis for equitable adjudication relief to permit purchase after a purchase application has been filed if neither the application nor notice of settlement was filed or deemed to have been filed properly prior to the withdrawal. Cf., James Milton Cam, 16 IBLA 374 (1974).

Following this Board's decision, on January 13, 1976, appellant filed an application to purchase the claim with evidence of his use of the land as a headquarters site since 1962, asserting, inter alia, in effect, that BLM employees had prevented him from filing his notice and application earlier. By a show cause notice of June 11, 1976, the Alaska State Office allowed appellant 60 days within which to demonstrate, by affidavit and other evidence, that he attempted to file a notice of location prior to PLO 5181 and that there were extenuating circumstances preventing the timely filing of his application to purchase. Appellant filed his own affidavit on September 11, 1976, stating that he filed an application to purchase a headquarters site near Uganhik Lake on June 16, 1965, and attempted to make another application to purchase the subject land in November of that year, but was informed the land was dedicated to the University and that an application would not be accepted, but it could be purchased at a later date. On December 28, 1976, a statement from a Mr. Andy Runyon was filed indicating he had accompanied appellant in November 1965 to the BLM office to check about filing on property on the Alaska peninsula. Mr. Runyon stated that they were erroneously informed by BLM personnel that the lands in question were dedicated to the University of Alaska and not open to application.

The Alaska State Office in its decision of January 24, 1978, denied appellant's request for equitable adjudication, and rejected the application to purchase for the reason, inter alia, that the information submitted by appellant and Mr. Runyon did not establish the fact that appellant actually tendered a notice of location or application to purchase which was refused by BLM personnel. The State Office treated appellant's submissions as a "petition to reinstate headquarters site claim AA 8783" and denied the petition. The decision also required him to remove his improvements from the land within 90 days, or they would become property of the United States and be "dealt with accordingly."

Thereafter, appellant filed his appeal to this Board. In his statement of reasons he asserts that this case is a proper one for equitable adjudication in that appellant's failure to file a Notice of Location was due to a mistake in the records of BLM and events beyond his control. Appellant requests that he be afforded a hearing. He also states that there have been policy changes expressed by the Secretary of the Interior to the effect that persons in his situation may receive at least a life estate in the land they presently hold. He requests this appeal be stayed until the "D-2 land issue is

resolved and policies clarified with respect to his rights to the site."

The reasons offered by appellant for a stay of this appeal do not go to the most essential determination made in the decision being appealed, namely, the rejection of his purchase application. Because of our resolution, *infra*, of other aspects of the decision, particularly, the requirement that appellant remove his improvements within 90 days, we see no reason to postpone consideration of the denial of the purchase application.

The purchase application was filed by appellant on January 13, 1976, when the land was withdrawn. It was, therefore, subject to rejection for that reason unless there is some way that appellant's alleged occupancy of the site since 1962 and other reasons afford a basis for acceptance of the application. In our prior decision, as we have indicated, we held that a notice of location filed in 1974 by appellant could not be accepted for recordation because the land was then withdrawn and that equitable adjudication could not excuse the late filing of the notice.

In its show cause notice the State Office, in effect, afforded appellant an opportunity to show evidence that he had made tender of a notice of location or application to purchase the site prior to withdrawal of the land which tender or tenders had been improperly refused by BLM personnel. In commenting on the affidavits appellant submitted in response to this notice, the State Office said:

In the third paragraph of Mr. Lamoureux's affidavit, he said that he filed an application to purchase a headquarters site on June 13, 1965. We have no record of this application nor did Mr. Lamoureux send us a copy or in any way verify that he did, in fact, file such an application. We do have on record that he filed for headquarters site A-024285 on June 16, 1953; headquarters site A-047175 on January 20, 1959; trade and manufacturing site A-056166 in August 1960; and, Lorraine Lamoureux with the same mailing address filed for headquarters site A-056165 on November 15, 1961. Headquarters site A-024285 was shown as "relinquished" under item 8 on his location notice. The other filings were not mentioned.

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The information submitted by Mr. Lamoureux and Mr. Runyan does indicate that they were in the BLM office and were trying to locate available lands through identifying locations on maps, but it does not establish the fact that Mr. Lamoureux actually did complete a notice of location or application to purchase and did have notice or application form refused by BLM personnel.

Appellant offers nothing in his statement of reasons which would tend to show error in the State Office's conclusion. He gives no explanation of the existence of his other headquarters site claim at a time when he allegedly was attempting to establish this headquarters site. <sup>1/</sup> Appellant does not refute the State Office's analysis of the affidavits he submitted to support his prior allegation that there had been a tender of a notice of location or application to purchase prior to the withdrawal. Indeed, he states on appeal: "Mr. Lamoureux, did not make a Notice of Location because of a mistake in the records of the BLM and because of events beyond his control." This tends to support the BLM decision, rather than show error. Without any allegations refuting BLM's conclusion or offer of further evidence to show that a tender had been made which was improperly refused by BLM, there is no basis for any further consideration of his prior assertions concerning a possible tender of a notice or purchase application prior to the withdrawal of the land from entry. Cf. James Milton Cann, 16 IBLA 374 (1974). We deny his request for a hearing as there is no indication anything would be presented which could compel a result different from that reached by the State Office.

[1] Without adequate proof of a tender of a notice of location or application to purchase wrongfully denied prior to the withdrawal, we must adhere to the conclusion reached in our prior decision that there was not a "valid existing right" excepted from the effect of the withdrawal. Mere occupancy of land without a claimant's taking the steps required by law to protect his occupancy cannot establish a valid existing right protected from the withdrawal. William G. Fairbanks, 22 IBLA 255 (1975); Knute P. Lind, 21 IBLA 81 (1975); Kennecott Copper Corp., 8 IBLA 21, 79 I.D. 636 (1972). As there was no valid existing right at the time of the withdrawal, the withdrawal attached to the land and an application to purchase filed after the withdrawal was properly rejected for that reason. Id., Eugene M. Will, 15 IBLA 378 (1974).

[2] Despite the fact the application to purchase was filed in 1976 long after the lands had been withdrawn, appellant urges acceptance of the application under principles of equitable adjudication. The equitable adjudication authority is set forth in 43 CFR Part 1870. Although initial determinations on whether the authority may be invoked in a particular case should be made by the Director, BLM, after recommendations from the State Office, we see no reason to prolong adjudication, and will decide whether equitable adjudication

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<sup>1/</sup> Under the law, 43 U.S.C. § 687a, no person is permitted to purchase more than one tract except upon a showing of good faith and necessity satisfactory to the Secretary of the Interior. Under 43 CFR 2563.2-1(a)(7), an applicant must show in his purchase application that he has not previously applied for a site or, if so, the former purchase and the need for a second application.

could properly be allowed here. From our review of the authority and the cases on equitable adjudication, we must conclude that it cannot.

Cases where equitable adjudication has been applied to permit the acceptance of a purchase application filed after the 5-year period required by the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), have crucial factual differences from the instant case. E.g., Elizabeth Hickethier, 6 IBLA 306 (1972); Richard Lee Ferrens, 7 IBLA 133 (1972); Alvin R. Aspelund, 7 IBLA 165 (1972); Carla D. Botner, 7 IBLA 335 (1972). In those cases a notice of location was filed prior to a withdrawal of the land. Therefore, the occupancy prior to the withdrawal could be considered as excepting the land from the withdrawal and there was substantial compliance with the law prior to the withdrawal. Furthermore, the withdrawal in those cases had been revoked at the time equitable consideration of the purchase applications was made. Neither of those pertinent considerations are applicable here. I am unaware of any case where there have not been recognized rights of occupancy established prior to a withdrawal for the Department to apply equitable adjudication in order to accept the late filing of a purchase application. Here the purchase application was filed at least 8 years after the land had been withdrawn. Occupancy prior to the withdrawal and occupancy after the withdrawal cannot be validly considered under the law. Therefore, there could not be substantial compliance with the law.<sup>2/</sup> To rule otherwise would completely negate the effect of the Act of April 29, 1950, and of a withdrawal. Cf. Eugene M. Will, 15 IBLA 378 (1974). The alleged mistakes by BLM personnel here, even if true, do not warrant a different conclusion. Reliance on erroneous information of BLM personnel does not create a right not authorized by law. 43 CFR 1810.3(c); Eugene M. Will, *supra*.

[3] We turn now to the requirement in the decision below that appellant remove his improvements from the site within 90 days of the decision. Although the withdrawal orders here, PLO No. 5181 of March 9, 1972, as amended by PLO No. 5388, dated September 14, 1973, precluded settlement entries and disposition of the land pending determination of whether the land is to become part of the National Wildlife Refuge System, they did not prohibit the granting of temporary use permits. In view of appellant's considerable improvements on the site, we set aside that part of the decision below requiring appellant to remove the improvements, and remand the case for the

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<sup>2/</sup> In this case, even if appellant's notice of location were deemed to have been tendered at the time appellant once asserted he attempted to file, namely June 13, 1965, his application to purchase was not filed until 11 years after that time. This is 6 years more than the 5-year period for filing a purchase application required by the Act of April 29, 1950. This delay goes to the equitable considerations and also tends to negate allegations of substantial compliance with the law.

Alaska State Office to determine the current status of the land and policy considerations to ascertain whether a temporary use permit could be granted to appellant authorizing continued use of the improvements. If not, the State Office should issue an appropriate decision giving the reasons therefor, with substantiation in the record. Appellant may also be called upon to submit any required forms or fees as determined by the State Office, if necessary.

Accordingly, 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 in part and set aside in part and remanded for action consistent with the opinions expressed herein.

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Joan B. Thompson  
Administrative Judge

We concur.

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Anne Poindexter Lewis  
Administrative Judge

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James L. Burski  
Administrative Judge

