

DAVID E. STEVENS

IBLA 75-353

Decided May 10, 1982

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment application F-13413.

Petition for reconsideration granted; prior Board decision, David E. Stevens, 23 IBLA 221 (1976), and decision appealed from vacated; case remanded.

1. Alaska: Native Allotments

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve -- Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected without finality, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

2. Alaska: Native Allotments

In sec. 905(d) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that where the land

described in an allotment application pending before the Department of the Interior on or before Dec. 18, 1971 (or such an application as adjusted or amended pursuant to subsection (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power project purposes, notwithstanding such withdrawal, reservation, or classification, the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, as amended, and, as such, shall be subject to adjudication or approval pursuant to the terms of this section, provided, however, that if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, as amended.

APPEARANCES: Carmen L. Massey, Esq., Fairbanks, Alaska, for appellant;
James N. Reeves, Esq., Assistant Attorney General, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE GRANT

David E. Stevens has petitioned the Board for reconsideration of our decision styled David E. Stevens, 23 IBLA 221 (1976), in which we affirmed the decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting his Native allotment application, F-13413, because he failed to present adequate evidence of substantially continuous use and occupancy of the land for a period of 5 years. Stevens had not been given an opportunity for hearing. In Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), the Court held that Native allotment applicants were entitled to notice and an opportunity for hearing where there was an issue of fact with respect to an applicant's qualifications. Counsel for appellant has filed a petition for reconsideration of our decision in light of the holding in Pence.

[1] We must first consider, however, the effect of the following provision of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, 94 Stat. 2371, 2435, enacted on December 2, 1980:

Sec. 905. (a)(1) Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18,

1971, and which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve -- Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

The named paragraphs describe circumstances under which the application would remain subject to adjudication under the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). 1/

An application for withdrawal of land, which includes the lands sought by appellant, for the Rampart Canyon Power Project was filed on January 9, 1963. Public Land Order No. 3520 of January 5, 1965, formally classified those lands as "power site classification No. 445." Appellant states in his application that he began his use and occupancy in November 1958.

[2] Another provision of ANILCA, however, specifically provides for lands withdrawn for powersite or power project purposes:

(d) Where the land described in an allotment application pending before the Department of the Interior on or before December 18, 1971 (or such an application as adjusted or amended pursuant to subsection (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power-project purposes, notwithstanding such withdrawal, reservation, or classification the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, as amended, and, as such, shall be subject to adjudication or approval pursuant to the terms of this section: Provided, however, That if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, as amended * * *.

(ANILCA, section 905(d), 94 Stat. 2437).

1/ In addition to the filing of a protest, such circumstances include a determination that the land is valuable for certain minerals, or a determination that the application describes land in a previously established unit of the national park system or in a state selection but where the allotment is not within the core township of a Native village.

The record shows no reason, therefore, why appellant's allotment application should not be approved under section 905. There appear to be no valid existing rights in conflict with the application, since there is no allegation that the described land is included as part of a project licensed under the Federal Power Act of 1920. Appellant's application was pending before the Department on December 18, 1971. Where a Native allotment applicant meets the requirements of subsection 905, failure to provide adequate evidence of use and occupancy does not bar approval of the allotment application. The State Office, therefore, should hold appellant's application for approval, subject to any protest which may have arisen before the end of the 180-day period which would preclude approval under subsection 905 and require adjudication pursuant to the provisions of the Native Allotment Act. Wayne C. Williams (On Reconsideration), 61 IBLA 181 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our decision in David E. Stevens, supra, and the decision appealed from are vacated, and the case remanded for further action consistent with this opinion.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

