

LUKE F. KAGAK

IBLA 84-906

Decided January 17, 1985

Appeal from decision of Fairbanks District Office, Alaska, Bureau of Land Management, rejecting in part Native allotment application F-16311.

Affirmed in part, vacated in part, and remanded.

1. Alaska: Native Allotments -- Alaska National Interest Lands Conservation Act: Generally -- Rules of Practice: Appeals: Generally

Where, on appeal from rejection by BLM of a Native allotment application pursuant to an adjudication, precipitated only by the filing of a State protest in accordance with sec. 905(a) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a) (1982), the State withdraws its protest in a stipulation agreed to by all parties, the Board will vacate the decision appealed from and remand the case to BLM with instructions to hold the application for approval under the statute.

APPEARANCES: David C. Fleurant, Esq., Anchorage, Alaska, for appellant; Michael G. Hotchkin, Esq., Anchorage, Alaska, for the State of Alaska; F. Christopher Bockmon, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On September 17, 1984, Luke F. Kagak filed an appeal from the August 15, 1984, decision of the Fairbanks District Office, Alaska, Bureau of Land Management (BLM), in part rejecting his Native allotment application, F-16311, as to 80 acres of land in parcel A, situated in secs. 5, 6, 7, and 8, T. 11 N., R. 39 W., Umiat Meridian, Alaska. Appellant's application was filed on March 22, 1972, pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970) (repealed subject to pending applications by section 18(a) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1617(a) (1982)).

On December 2, 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, 94 Stat. 2371 (1980), which provides in relevant part for the legislative approval, subject to valid

existing rights, of certain Native allotment applications <sup>1/</sup> on the 180th day following December 2, 1980, with certain exceptions. 43 U.S.C. § 1634(a) (1982). One exception is where the State of Alaska files a protest within that time period in accordance with section 905(a)(5)(B) of ANILCA, 43 U.S.C. § 1634(a)(5)(B) (1982). In such circumstances, BLM must adjudicate the merits of the Native allotment application. In the present case, the State of Alaska filed a protest on June 1, 1981, challenging the validity of appellant's application.

In its August 1984 decision, BLM rejected appellant's application as to parcel A because appellant's use and occupancy under the Act of May 17, 1906, supra, was initiated after the land had been withdrawn from all forms of appropriation under the public land laws, citing Stanislaus Mike, 56 IBLA 69 (1981). BLM noted that a portion of the land was withdrawn by Public Land Order No. (PLO) 82, dated January 22, 1943 (8 FR 1599 (Feb. 4, 1943)), and continues to be so withdrawn (NPR-A withdrawal). BLM also noted that a portion of the land was withdrawn by PLO 1571, dated December 26, 1957 (23 FR 54 (Jan. 3, 1958)), as amended by PLO 3780, dated August 10, 1965 (30 FR 10194 (Aug. 17, 1965)), for national defense purposes. Appellant's use and occupancy commenced on December 1, 1963. Appellant timely appealed to the Board from the August 1984 BLM decision.

On December 17, 1984, Kagak, the State of Alaska, and BLM jointly filed a stipulation whereby the State withdraws its protest against the approval of parcel A of appellant's Native allotment application. The parties request that the Board dismiss the appeal and remand this case to BLM for further action consistent with the terms of the stipulation. The stipulation provides that BLM would hold parcel A (with the exception of certain acreage) for approval pursuant to section 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a)(1) (1982). The excepted acreage is that land withdrawn by PLO 1571, as amended. The stipulation provides for affirmation of BLM's decision rejecting appellant's application as to the land withdrawn by PLO 1571, as amended.

With the withdrawal of the State's protest by stipulation, we find nothing in the record which would prevent approval of appellant's application as to the balance of parcel A under section 905(a)(1) of ANILCA, supra, and hereby vacate the August 1984 BLM decision rejecting appellant's application as to that portion of parcel A, not withdrawn by PLO 1571, as amended, and remand the case to BLM for further action consistent herewith. With respect to the land subject to PLO 1571, as amended, the August 1984 BLM decision is affirmed.

BLM is instructed to hold appellant's application for approval as to the acreage in parcel A, not withdrawn by PLO 1571, as amended. Such approval is subject, however, to any other action which may have arisen before the end

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<sup>1/</sup> These applications are those "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 [NPR-A]." 43 U.S.C. § 1634(a)(1) (1982). Parcel A is situated within the NPR-A.

of the 180-day period which would preclude approval under subsection 905(a)(1) of ANILCA, supra, and require adjudication pursuant to the provisions of the Native Allotment Act in accordance with Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). United States v. Napouk, 61 IBLA 316, 320 (1982).

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 in part, vacated in part, and the case is remanded to BLM for further action consistent herewith.

R. W. Mullen  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Edward W. Stuebing  
Administrative Judge



