

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting application for headquarters site AA-3235.

Affirmed.

1. Alaska: Generally -- Alaska: Headquarters Sites -- Alaska: Possessory Rights -- Withdrawals and Reservations: Generally

An application to purchase a headquarters site is properly rejected where the applied-for land is not unreserved public land because the land has been segregated from all forms of appropriation under the public land laws under a prior recreation and public purpose classification pursuant to the Act of June 14, 1926, as amended, 43 U.S.C. § 869 (1982).

APPEARANCES: Robert L. Griffin, Esq., of Anchorage, Alaska, for appellant; James R. Mothershead, Esq., Office of the Regional Solicitor, Alaska Region, Anchorage, Alaska, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE ARNESS

Mary S. Brandt has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated October 18, 1983, which rejected her application to purchase a headquarters site for land located in the vicinity of Ugashik, Alaska (AA-3235). The record shows that appellant filed a notice of location on August 30, 1968, for 5 acres of unsurveyed public land located in T. 30 S., R. 46 W., Seward Meridian, adjacent to Ugashik Lake, claiming occupancy from May 20, 1968. Appellant claimed this land as a headquarters site pursuant to 43 U.S.C. § 687a (1982), asserting the tract was used for fishing, hunting, and charter flying. On October 31, 1968, appellant filed an amendment of the description in the notice of location to conform the description to the cardinal directions. 1/ On August 6, 1973, she filed an

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1/ The applied-for land was described as:

"Corner no. 1; starting approximately 1320 feet from mouth of small creek on Upper Ugashik Lake approximate Lat. 57 degrees 34'11" N.; Long. 156 degrees 46'10" W. in a southwesterly direction 660 feet down the shoreline of Upper Ugashik Lake to the northeast edge of recreation withdrawal to corner no. 2; thence east approximately 380 feet to corner no. 3; thence north 660 feet to corner no. 4; thence west approximately 280 feet to corner no. 1; the point of beginning [sic]. Containing approximately 5 acres."

application to purchase the land within the headquarters site location together with sufficient evidence of use and occupancy to warrant field examination. BLM conducted a field examination October 20, 1975, following which the field examiner verified use and occupancy and confirmed the existence of the claimed improvements. The examiner recommended that the application to purchase be approved and the headquarters site be processed to patent. After the field report was approved July 22, 1976, survey of the tract was requested.

The BLM decision of October 18, 1983, succinctly summarizes the following events:

After Mrs. Brandt's headquarters site claim was surveyed under U.S. Survey No. 5283 (USS 5283), approved April 26, 1978, it appeared on the Master Title Plat that the claim partially conflicted with Recreation and Public Purpose Classification Order No. 177 (R&PP Cl. 177) issued pursuant to the Recreation and Public Purposes Act [43 U.S.C. Sec. 869 (1958)]. R&PP Cl. 177 was effective July 5, 1962, and segregated the subject lands from appropriation under the public land laws, including the headquarters site law and was to "remain in effect until such time as (a) application is made and approved for the land by an applicant qualified under the Act of June 14, 1926, or (b) the classification is cancelled by an order issued by an authorized officer." In order to determine the extent of such conflict, R&PP Cl. 177 was surveyed under U.S. Survey No. 6850 (USS 6850), approved May 26, 1981, and it was determined on the basis of such survey that Mrs. Brandt's headquarters site (USS 5283) and her improvements thereon were wholly within R&PP Cl. 177, which as stated above segregated the lands from selection under the headquarters site law. The status of the headquarters site land was further complicated during the survey of the conflict in question when the entire area embracing USS 5283 and USS 6850 became a part of the Alaska Peninsula National Wildlife Refuge (APNWR) created by Section 302(1) of the Alaska National Interest Lands Conservation Act (ANILCA) on December 2, 1980 (94 Stat. 2385) [under the jurisdiction of the Fish and Wildlife Service (FWS)].

On June 30, 1981, Mrs. Brandt was informed of the above conflict and advised that she could move her improvements to an unimproved five-acre tract ("satellite land") just outside and northeasterly of R&PP Cl. 177. As a result of Mrs. Brandt's decision on September 16, 1981, to move her improvements to the satellite land, an amended description covering such land was furnished for her by a Bureau of Land Management (BLM) realty specialist on September 23, 1981. A survey of the land was made which resulted in United States Survey No. 7024 (USS 7024), approved March 5, 1982, depicting the unimproved land as clearly lying outside R&PP Cl. 177. At the direction of BLM, Mrs. Brandt caused publication of a notice of her application to purchase USS 7024. On the basis of its belief that BLM had authority to process such application towards patent, the Fish and Wildlife

Service (FWS) expressed a willingness to enter into an arrangement whereby Mrs. Brandt would ultimately acquire title to USS 5283 in exchange for the title she would ultimately receive to USS 7024 under her published application to purchase.

Upon closer examination by BLM it was determined there was no proper legal basis for the exchange of these two tracts. BLM found that the 1968 notice of location covered only the improved land in USS 5283 and was never amended prior to September of 1981 to cover the unimproved land in USS 7024. BLM also ruled that appellant could not be given credit for occupancy for land in USS 7024 prior to September 16, 1981, "when she amended" the land description in her application to purchase so as to cover the adjacent land eventually surveyed as USS 7024. BLM found that appellant's use and occupancy of the adjacent tract encompassed by USS 7024 prior to the creation of APNWR on December 2, 1980, did not establish a valid existing right since it was not filed within 90 days of the initiation of the claim, pursuant to 43 U.S.C. § 687a-1 (1976) and implementing regulations at 43 CFR 2563.2-1(a) and (c) (Decision at 2).

Appellant filed her appeal with BLM November 15, 1983, represented by Larry Brandt, her son, and later a statement of reasons signed by one Robert L. Griffin, Esq., was filed December 19, 1983, with this Board. Appellant takes issue with the BLM action contending she had acted in good faith after consulting with a BLM engineer, to describe her claim "so as not to conflict with the withdrawal" and "being prudent in her placing the improvements outside the R&PP 177." She asserts that BLM erred in making the determination that her claim conflicted with R&PP Cl. 177, and that she has invested thousands of dollars in improvements, equipment, and spent time and effort in establishing fishing and guiding services. She claims BLM's actions have created a hardship for her even though she made a prudent attempt to develop the land and has substantially complied with relevant

BLM moved to dismiss this appeal on January 3, 1984, for the reason that the persons filing the notice of appeal and statement of reasons on behalf of the appellant are not authorized to practice before the Department of the Interior. Departmental regulation 43 CFR 1.3 defines who may practice before the Department. That regulation provides pertinently:

(a) Only those individuals who are eligible under the provisions of this section may practice before the Department

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(2) Attorneys at law who are admitted to practice before the courts of any State, \* \* \*

(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; \* \* \*.

An appeal brought by a person who does not fall within any of the categories of persons authorized by the regulation to practice before the Department

is subject to dismissal. Robert N. Caldwell, 79 IBLA 141 (1984); Thomas L. Tuttle, 71 IBLA 265 (1983). However, in this case the record shows the notice of appeal was filed by Larry D. Brandt, appellant's son, as her attorney-in-fact. As a member of appellant's family he is qualified to act on her behalf in the filing of a notice of appeal. 43 CFR 1.3(b)(3)(i). BLM also challenges the propriety of the statement of reasons contending that although the statement was signed by Robert L. Griffin, an Anchorage attorney, it was in fact prepared by Gerald L. Yeiter, who has not shown that he is qualified to practice before the Department. Regardless who may have prepared the statement of reasons, Robert L. Griffin, Lawyer, Anchorage, Alaska, timely signed and filed the statement with this Board. We will consider the document to be a statement of reasons filed on behalf of Mary S. Brandt in the matter of headquarters site AA-3235. While it refers to Yeiter, who apparently has sought to obtain an interest in the headquarters site, his claim is not relevant to this appeal and this Board expresses no opinion concerning whether Yeiter has or could obtain any interest in the site claimed by appellant. BLM's motion to dismiss is denied.

Although appellant may have acted in good faith in her attempts to locate and occupy the headquarters site outside the R&PP area, the fact remains that she did occupy and improve land located totally within the reserved area. Consequently, the disposition of her application to purchase is completely dependent on the availability of that land for disposition under the headquarters site law at the time she began her occupancy in May of 1968.

First, appellant takes issue with the BLM determination that the headquarters site is located within R&PP Cl. 177, by challenging the Government's survey of the tract. Appellant argues, essentially, that the surveyors were not given the proper instructions or the proper location of the site. She asserts that she was prejudiced because they were not informed of the possible conflict with the R&PP withdrawal and because there was no mention of the amended description of the site which she filed October 29, 1968.

Where an applicant files a headquarters site application for unsurveyed land, the applicant must also petition for survey of the land. 43 CFR 2563.2-1(e)(9). Public land must be surveyed before a patent may issue. The exact location of the applied-for land used and occupied by appellant as a headquarters for her guide service has been established based on two official Government surveys. These metes and bounds surveys were executed by professional cadastral surveyors in accordance with section 7-16 of the Manual of Surveying Instructions, 1973. U.S. Survey No. 5283, approved April 26, 1978, describes the boundaries of appellant's headquarters site claim. When the surveyed claim was platted, the record showed a partial conflict with the earlier R&PP classification. In order to clarify that conflict, a further survey was conducted, U.S. Survey No. 6850, approved May 26, 1981, which confirmed the fact the land encompassing appellant's improvements was wholly within R&PP Cl. 177. Appellant has presented nothing to show these surveys are incorrect. Accordingly, it is concluded the surveys correctly established the location of the applied-for land within the reserved R&PP area.

Appellant filed her application to purchase this headquarters site pursuant to 43 U.S.C. § 687(a) (1982). This statute only authorizes the acquisition of up to 5 acres of unreserved public lands in Alaska for a homestead or headquarters. 43 CFR 2563.0-3(a). In this instance the record confirms that the lands described in the original application have never been unreserved public land from the time appellant first filed her notice of location through the time the entire area subsequently became part of the Alaska Peninsula National Wildlife Refuge, December 2, 1980.

[1] R&PP Cl. 177 was issued on July 5, 1962, 6 years prior to appellant's application. The lands were classified pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. § 869 (1982). The Act provides in pertinent part:

The Secretary may classify public lands in Alaska for disposition under sections 869 to 869-4 of this title. Lands so classified may not be appropriated under any other public land law unless the Secretary revises such classification or authorizes the disposition of an interest in the lands under other applicable law. If, within eighteen months following such classification, no application has been filed for the purpose for which the lands have been so classified, then the Secretary shall restore such lands to appropriation under the applicable public land laws.

The Department has not considered this provision of the Act to be self-executing. Where no application to acquire the land for R&PP purposes has been filed or no action has been taken to restore the land to the public domain, the land still remains segregated from further appropriation. In the absence of proper authority to restore the land, a recreation and public purpose classification continues to segregate the land from appropriation under the public land laws. See 43 CFR 2232.1-4 (1967); Gloria Ann Sandvik, 73 IBLA 82 (1983); Marjorie N. Underwood, 58 IBLA 21 (1981); Delmer McLean, 40 IBLA 34 (1979); R. C. Buch, 75 I.D. 140 (1968), aff'd, Buch v. Morton, 449 F.2d 600 (9th Cir. 1971). Therefore, the original classification in R&PP Cl. 177 continued to segregate all the lands therein from any appropriation under public land laws, including the headquarters site law, until jurisdiction was transferred to FWS as part of the establishment of APNWR, December 2, 1980. Accordingly, as to the lands described in appellant's original application, i.e., those lands later specifically described and located within U.S. Survey 5283 and U.S. Survey 6580, appellant's application was properly rejected.

As to the land within appellant's amended location filed September 23, 1981, and subsequently surveyed in U.S. Survey No. 7024, approved March 5, 1982, the same result must follow. The application was properly rejected because this land was previously included within APNWR on December 2, 1980, and was not available for entry under the headquarters site law. Appellant admits and the record shows that the 1968 notice of location covered only the improved land in U.S. Survey No. 5283 and was obviously never intended to cover the unimproved land in U.S. Survey No. 7024 prior to the filing of the amended location. It necessarily follows that without a valid notice of location, use and occupancy of this land prior to creation of APNWR on December 2, 1980, did not establish a valid existing right excepted from the

wildlife refuge. Thus, appellant's failure to file an amended location of this claim within 90 days of her commencement of use and occupancy resulted in an invalid entry under section 687a-1, as BLM found. See 443 U.S.C. § 687a-1 (1982) repealed effective Oct. 21, 1986, by section 703(a) act of Oct. 21, 1976, 90 Stat. 2789; Ralph Edmund Marshall, 14 IBLA 233, 235 (1974). See also Stuart Grant Ramstad, 55 IBLA 223 (1981); James Milton Cann, 16 IBLA 374 (1974); Kennecott Copper Corp., 8 IBLA 21, 29 I.D. 636 (1972). The fact that the particular land in question had been withdrawn from appropriation by APNWR on December 2, 1980, precluded appellant's entry for a headquarters site from that date. Accordingly, appellant's application for land within the amended location outside R&PP Cl. 177 was properly rejected.

Appellant has asserted she acted in good faith to locate her headquarters site outside R&PP Cl. 177, but was misinformed as to the proper location by BLM. Appellant acquires no right to either tract of land based upon such circumstances. The regulations in 43 CFR 1810.3(c) provide that reliance upon erroneous or incomplete information or the opinion of any officer, agent, or employee or on records maintained by land offices cannot operate to vest in a claimant any right not authorized by law. E. D. Vongehr, 82 IBLA 162 (1984); Harriet C. Shaftel, 79 IBLA 228 (1984); George Hawkins, 66 IBLA 390 (1982). In this case, the error complained of was apparently made by appellant when she made her original location of the headquarters site on R&PP land. It is by no means clear that the location selected was attributable to any act of or advice from any employee of the Department.

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.

Franklin D. Arness  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Bruce R. Harris  
Administrative Judge

