

BERNARD J. EBERHARDT

IBLA 85-542

Decided January 14, 1987

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting in part homestead entry application AA 4544.

Affirmed.

1. Alaska: Statehood Act -- Applications and Entries: Filing -- Segregation -- State Selections

A selection application filed under the Alaska Statehood Act for land properly described in the appropriate Bureau of Land Management office segregates the land from all appropriation based upon subsequent application or settlement and location.

2. Alaska: Homesteads -- Homesteads (Ordinary): Lands Subject to -- Withdrawals and Reservations: Effect of -- Withdrawals and Reservations: State Selections

An application to make homestead entry on land subject to a properly filed state selection application under the Alaska Statehood Act is properly rejected.

APPEARANCES: Bernard J. Eberhardt, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bernard J. Eberhardt has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 12, 1985, which rejected in part his homestead application AA 4544.

Appellant filed his original notice of location for the W 1/2 W 1/2 of sec. 31, T. 16 N., R. 4 E., Seward Meridian, with BLM on December 3, 1968, pursuant to the homestead laws. ^{1/} His stated date of settlement or occupancy

^{1/} Section 702 of the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2787, repealed the homestead laws effective Oct. 21, 1976, except with respect to Alaska, where such repeal became effective on Oct. 21, 1986.

was December 1, 1968. On August 18, 1972, appellant filed with BLM a handwritten document entitled "Correction of Description for Homestead Entry," which altered the land described in sec. 31, T. 16 N., R. 4 E., Seward Meridian, to embrace the W 1/2 SW 1/4 NW 1/4, N 1/2 NW 1/4 SW 1/4, NE 1/4 SW 1/4, SE 1/4 SW 1/4 and the W 1/2 W 1/2 SE 1/4.

On September 5, 1972, appellant filed his formal homestead entry application, along with accompanying final proof documents executed by himself and two witnesses, embracing the land described in the August 18, 1972, correction.

BLM notified appellant on June 12, 1973, that the survey plat covering the land described in his final proof had been officially filed in December 1972 and that appellant must conform the description of his homestead claim to the survey plat within 30 days from receipt of the notice. On July 12 and August 22, 1973, appellant filed adjusted descriptions of the "land actually occupied and settled," in conformity with the plats of survey. The adjusted description embraces certain land situated in sec. 36, T. 16 N., R. 3 E., Seward Meridian, as well as land in sec. 31, T. 16 N., R. 4 E.

On January 10, 1975, appellant was notified by BLM that the August 22, 1973, adjustment was unacceptable on the basis it described a "portion of a lot" in contravention of 43 CFR 2567.1(c)(1).^{2/} Appellant obtained an extension of time for the preparation of this further adjustment. On July 16, 1975, appellant requested a supplemental plat for purposes of dividing two lots in section 31. As explained by appellant, the requirement that he accept entire lots would result in his claiming an area containing a steep canyon and much unusable land. BLM informed appellant on October 31, 1975, that the supplemental plat would be prepared free of cost.

Subsequently, appellant submitted another adjustment to his homestead description dated January 14, 1976. This description again specifies land in both sec. 31, T. 16 N., R. 4 E., and sec. 36, T. 16 N., R. 3 E., Seward Meridian. He renewed his request that two lots in section 31 be replatted so he could claim 160 acres excluding the canyon area. Thereafter, BLM prepared a supplemental survey plat for sec. 31, approved February 3, 1981, to facilitate conforming appellant's amended land description to the boundaries of the public land survey.

On March 12, 1985, BLM rendered a decision which rejected appellant's application insofar as it involved acreage situated in sec. 36, T. 16 N., R. 3 E., Seward Meridian. BLM explained that on March 10, 1966, the State of Alaska filed general purposes grant selection application A-067452, for all available lands in T. 16 N., R. 3 E., Seward Meridian, under section 6(b) of the Alaska Statehood Act of July 7, 1958, P.L. 85-508, 72 Stat. 339, as amended, 48 U.S.C. ch. 2 (note) (1982). Accordingly, sec. 36, T. 16 N., R. 3 E., Seward Meridian, was not "unappropriated land as required by 43 CFR

^{2/} That regulation provides in relevant part that "[a] homestead application must describe the lands desired, if surveyed, according to legal subdivisions as shown by the plat of survey * * *."

2567.0-8," ^{3/} and BLM rejected appellant's application as to that acreage, totalling 57.50 acres. However, the BLM decision stated that the remaining portion of appellant's homestead application was legislatively approved under section 1328 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3215 (1982). The approved portion of appellant's application, embracing the lands situated in sec. 31, T. 16 N., R. 4 E., Seward Meridian, amounted to 98.23 acres. ^{4/}

Appellant brought this appeal from BLM's decision to the extent that it rejected his application for lands in sec. 36, T. 16 N., R. 3 E., Seward Meridian. His reasons for appeal are briefly stated and are set forth below:

I filed AA 4544 and located corners in 1968. I located [improvements] within this area during the next several years. I did this in good faith, believing that the area within my staking to be open to occupancy. Subsequent to this the survey of the area was completed and showed that AA 4544 and AA 2515 (John Nystrom Homestead) had land on both sides of the Range 4 East line. Also at this time it was noted that there was [not] enough land East of the Range line to [accommodate] the total number of homesteads who had actually proved up, without allowing AA 4544 and AA 2515 to keep the area of their original staking west of the 4 E line. Mr. Nystrom and myself felt that we had a good faith understanding to this effect with every field examiner and chief adjudicator * * *.

We note it has not been asserted the land described in sec. 36, T. 16 N., R. 3 E., was not actually occupied by appellant. The only issue here is the legal status of that land at the time he commenced occupancy.

[1] Under the Alaska Statehood Act of July 7, 1958, P.L. 85-508, 72 Stat. 339, as amended, 48 U.S.C. ch. 2 (note) (1982), Alaska may select public land that is vacant, unappropriated, and unreserved at the time of

^{3/} 43 CFR 2567.0-8 provides as follows:

"All unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement, and, when surveyed, to homestead entry, if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city."

^{4/} BLM's decision rejected three other selection applications to the extent they conflicted with appellant's homestead application for lands located in sec. 31, T. 16 N., R. 4 E., Seward Meridian. Appellant's application established valid existing rights to that land which pre-dated the following selection applications: (1) Alaska's general purposes grant selection application AA-6789, as amended, dated Jan. 21, 1972; (2) regional selection application AA-11153-20, as amended, filed by the Cook Inlet Region, Inc., on Dec. 17, 1975, pursuant to sec. 12(c) of the Alaska Native Claims Settlement Act of Dec. 18, 1971 (ANCSA), 43 U.S.C. § 1611 (1982); and (3) village selection application AA-6661-A2, as amended, filed by Eklutna, Inc., on Dec. 16, 1975, under the provisions of sec. 12(b) of ANCSA.

the selection. 43 CFR 2627.3(a). A selection application under the Alaska Statehood Act, filed in the appropriate BLM office, for properly described land, segregates the land from all subsequent appropriation based upon application or settlement and location, including mining location. 43 CFR 2627.4(b). ^{5/} See, e.g., John W. Eastland, 24 IBLA 240 (1976). Alaska filed general purposes grant selection application A-067452 under section 6(b) of the Alaska Statehood Act on March 10, 1966, for all available lands in T. 16 N., R. 3 E., Seward Meridian. The segregative effect of a state selection application filed by the State of Alaska was discussed by the Board in Andrew Petla, 43 IBLA 186, 194 (1979):

The purpose of 43 CFR 2627.4(b), which provides for the segregation of lands upon the filing of the State's application to select, is to preserve the status quo, and to prevent the initiation of any new rights or claims pending disposition of the State's application. The regulation has the force and effect of law. See United States v. New Orleans Public Service, 553 F.2d 459 (5th Cir. 1977). Under the regulation, the segregative effect is operative from the filing of the selection application. Unless terminated automatically by reason of the State's failure to publish, the segregation remains in effect until there is a final disposition of the selection application either by rejection of the application or the granting of the land to the State. Of course, any application by the State to select land is subject to the prior rights of others, and is defeasible by them, or by the United States, if the prior right is superior to that of the State, or if the land is otherwise unavailable for selection. That is why the State must file an "application" to select the land and why that application must be adjudicated. But whether the State's application is ultimately held to be "good" or "bad" has absolutely nothing whatever to do with the segregative effect imposed on the land by its filing, as the segregation only precludes the attachment of subsequent claims while the application is pending. If in this case the State's selection applications must be finally rejected for any reason, this would not "negate" their segregative effect on the land during the time that they were pending, nor would such rejection serve to validate nunc pro tunc any claims initiated while the land was so segregated. [Emphasis in original].

[2] The filing of the state selection application, more than 2 years prior to the date appellant initially began use and occupancy of lands

^{5/} The text of 43 CFR 2627.4(b) is as follows:

"Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the state files its application for selection in the proper office properly describing the lands as provided in § 2627.3(c)(1)(iii), (iv), and (v). Such segregation will automatically terminate unless the State publishes first notice as provided by paragraph (c) of this section with 60 days of service of such notice by the appropriate officer of the Bureau of Land Management."

located in sec. 36, T. 16 N., R. 3 E., resulted in the segregation of the land in sec. 36 from all appropriations based upon subsequent application, settlement, or location. 43 CFR 2627.4(b); Andrew Petla, supra; Dennis G. Quinn, 29 IBLA 307 (1977). Since appellant's application embraced lands covered by Alaska's selection application, it was properly rejected as to those lands.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge

