

Appeal from a decision of the Alaska State Office, Bureau of Land Management, dismissing protest against Native allotment AA-7770.

Affirmed.

1. Alaska: Native Allotments—Alaska National Interest Lands Conservation Act: Generally

Where lands covered by a Native allotment application are not the situs of improvements claimed by a party, that party's protest under ANILCA, 43 U.S.C. § 1634(a)(5)(C) (1988), did not prevent legislative approval of the allotment.

APPEARANCES: Erma M. Webster, Anchorage, Alaska, *pro se*; Mark Butterfield, Esq., Anchorage, Alaska, for Irene Johnson; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Erma M. Webster (appellant) has appealed the October 31, 1990, decision of the Alaska State Office, Bureau of Land Management (BLM), to the extent it dismissed a protest filed on May 28, 1981, by Leon Webster, appellant's deceased husband. The protest was filed against Parcel B of Irene Johnson's Native allotment application (AA-7770). ^{1/} BLM's decision confirmed approval of that allotment application.

Leon Webster, who had a homesite claim on the land prior to the filing of Johnson's allotment application, stated in his protest that he had built improvements on Parcel B in 1969. The record confirms that a cabin and outbuildings have been constructed, apparently by appellant and her late husband, just to the south of the Tok Cutoff Road, near Parcel B of Johnson's allotment.

^{1/} Johnson's Native allotment is comprised of two noncontiguous parcels, Parcels A and B, both located within secs. 10 and 11, T. 10 N., R. 5 E., Copper River Meridian. Only Parcel B is involved in this appeal.

BLM's October 31, 1990, decision states that a 1974 field examination revealed no improvements on Parcel B of the allotment. BLM's decision states further that Native allotment application AA-7770 was pending before the Department on December 18, 1971, and that both parcels of the allotment were adjudicated and approved on April 5, 1976, and legislatively approved pursuant to section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634 (1988), effective June 1, 1981.

Appealing the dismissal of the protest, appellant alleges that BLM has lost evidence which would have conclusively established that she and her husband built a cabin and other improvements on the land in 1969. With her statement of reasons appellant has submitted aerial photographs taken on July 21, 1971, purportedly showing the Webster cabin on Parcel B of Native allotment AA-7770. Appellant has submitted statements by two witnesses attesting to the existence of a cabin built in 1969 and in use today. Appellant states, however: "It may be that the Webster cabin is actually slightly off of Parcel B * * * [h]owever, the Johnsons have stated to me that the Webster cabin is on their property (Parcel B), so I assume that it is on Parcel B" (Statement of Reasons at 4). However, appellant also includes a map plainly showing that those improvements are not situated on Parcel B (Statement of Reasons at Exh. 4).

In its answer, BLM cites both appellant's admission and its own 1974 field report which disclosed no improvements on Parcel B. BLM asserts that the protest does not establish that there are, in fact, improvements on Parcel B, and that, for this reason, the protest did not meet the criteria of section 905(a)(5)(C) of ANILCA. Irene Johnson has filed an answer endorsing the arguments of BLM and contending that the appeal is barred by laches and administrative finality.

We note that, on December 14, 1967, BLM issued a decision formally closing Leon Webster's homesite file (AA-1034). On March 14, 1972, BLM denied Webster's petition for reinstatement of his homesite claim and rejected his application to purchase the homesite. On September 26, 1972, this Board affirmed BLM's March 1972 decision. Leon A. Webster, 7 IBLA 333 (1972). Specifically, the Board affirmed BLM's holding that the lands sought had been placed "in withdrawn status" by Public Land Order 4582, dated January 17, 1969, and were not subject to appropriation under the public land laws on May 26, 1969, the date Webster commenced "occupation" of the lands. Id. at 333-34. 2/

2/ Appellant did not appeal final Departmental action invalidating her husband's homesite claim in 1972. Although the validity of that claim is not directly at issue here, we note that appellant has failed to establish in her present appeal that the homesite was improperly closed. As noted in our earlier decision, the subject lands were withdrawn from all forms of entry, including homesites, on Jan. 17, 1969. Appellant has not shown that occupancy predated that withdrawal. To the contrary, the material filed by appellant is consistent with the Board's finding in Leon A. Webster, supra

[1] Although section 905(a)(5)(C) of ANILCA, 43 U.S.C. § 1634(a)(5)(C) (1988), presents an exception to automatic legislative approval of an allotment application pursuant to section 905(a)(1), three prerequisites must be met to prevent legislative approval. First, a protest must be filed; second, that protest must have been filed within the 180-day deadline established by section 905(a)(1); and third, the party filing the protest must allege and, if necessary, demonstrate that the land applied for by the Native is the situs of "improvements" claimed by the protestant. William B. Torgramsen, 96 IBLA 209, 214 (1987). Since the purpose of section 905 was to speed the processing of Native allotment applications when there were no conflicting claims to the land, the requirement that a protestant demonstrate "improvements" works as a limitation to the right of any third party to protest approval of an allotment. See Eugene M. Witt, 90 IBLA at 334.

Although appellant alleges on appeal that a cabin and outbuildings were built, she has failed to demonstrate that they are located within Parcel B of Native allotment AA-7770. Further, she has failed to show that Parcel B is the situs of any other activity that could be construed as "improvements" under ANILCA. See Eugene M. Witt, 90 IBLA at 334-35. The totality of the evidence, including both appellant's own map and BLM's 1974 field examination, indicates that no improvements existed on Parcel B. In this regard, we believe it highly probative that counsel for Johnson supports BLM's contention that the cabin is not located within Parcel B. As a result, no valid protest barring legislative approval was filed. No other cognizable protest having been filed, legislative approval therefore occurred.

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.

David L. Hughes
Administrative Judge

I concur.

James L. Burski
Administrative Judge

fn. 2 (continued)

at 334, that legally cognizable occupation of the land did not commence until May 26, 1969, after the withdrawal took effect.

Appellant enjoys standing to appeal from BLM's "procedural rejection" of her husband's protest because improvements were found not to be present on the ground. See Eugene M. Witt, 90 IBLA 330, 336 (1986).