

PATRICK J. AMUKON

IBLA 95-641

Decided December 30, 1997

Appeal of a Decision by the Alaska State Office, Bureau of Land Management, confirming legislative approval of Native allotment application F-13190.

Affirmed.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments

A request by a Native allotment applicant to enlarge his allotment was properly rejected after he missed a deadline allowed by BLM for amendment under ANILCA section 905(c), 43 U.S.C. § 1634(c) (1994).

APPEARANCES: Patrick J. Amukon, Shelton, Washington, pro se; Carlene Faithful, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Patrick J. Amukon has appealed from a June 19, 1995, Decision by the Alaska State Office, Bureau of Land Management (BLM), confirming legislative approval of his Native allotment application, F-13190, and rejecting Calista Corporation's regional selection application, AA-9995, for a cemetery-historical site to the extent that it conflicts with Amukon's lands. Amukon has appealed, claiming that the boundaries of his allotted land are incorrect and requesting a new survey "on the basis of the original claim."

On November 5, 1970, Amukon filed a Native allotment application for "approximately 80 acres of unsurveyed land on Black River" as indicated by a description of a rectangular tract 1,320 feet wide and 2,640 feet long, bounded at the southeast end by the left bank of the Kipniyagok River, about "1 1/2 miles upstream from Bering Sea." The application includes a map that shows the lands applied for as a rectangular tract with one of the long boundaries formed on the northeast by the Black River and with the Kipniyagok River at the short southeastern end of the rectangle.

On October 10, 1984, Monna Lee Tuey, a BLM realty specialist, accompanied by Angie Amukon, the applicant's mother, conducted a field examination to locate the parcel on the ground, to determine conflicts, and to prepare survey instructions. She found the parcel in secs. 13, 14, 23, and 24, T. 26 N., R. 87 W., Seward Meridian. Tuey's report describes the acreage involved as "80 +/-." Both the map in Amukon's application and the map drawn by Tuey depict a rectangular parcel of land with mutually perpendicular axes, bordered on the northeast by the Black River and on the southeast by the Kipniyagok River.

Amukon filed the application pursuant to the Alaska Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed with a savings provision for allotments filed before December 18, 1971, by 43 U.S.C. § 1617(a) (1994). On December 2, 1980, section 905(a) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(a) (1994), legislatively approved Native allotment applications pending before the Department on December 18, 1971, for land unreserved on December 13, 1968, subject to valid existing rights and certain exceptions.

That the allotment was legislatively approved is not in dispute; Amukon, however, claims that BLM's survey of it is not accurate. In his Statement of Reasons on appeal (SOR), he states that "[t]he boundaries of the allotted land in this case, as supplied by the Decision * * * are incorrect and a new survey should be done on the basis of the original claim." He maintains that his original application included lands not found in BLM's final survey description and provides a map.

That map shows an additional triangular wedge of land extending southwesterly from the northwest corner of a rectangle depicting BLM's survey to a point on the left bank of the Kipniyagok River southwest of the BLM survey. This "pie-shaped" wedge, according to BLM, adds between 40 and 80 acres to the original survey. (BLM Answer at 4, 5.) Amukon does not dispute BLM's conclusion about the additional area described.

The June 1995 Decision here under review is the second Decision Amukon has received affecting his allotment. On May 18, 1987, BLM notified Amukon that his application was legislatively approved pursuant to ANILCA, "pending confirmation of location." The 1987 Decision contained the following land description: "Seward Meridian, Secs. 13, 14, and 24, T. 26 N., R. 7 W., approximately 80 acres" and referred to an enclosed map. Therein, BLM informed Amukon:

If the land described in this decision is not what the applicant intended to apply for, he has 60 days from receipt of this decision to notify this office.

If notification is not received, steps will be taken to order survey of the land as noted above and as shown on the attached map. The location of the allotment cannot be changed after survey instructions have been written.

The 1995 Decision confirmed that Amukon's claim to a Native allotment was legislatively approved pursuant to section 905 of ANILCA, 43 U.S.C. § 1634 (1994), and conformed his allotment to the official survey, which describes his lands as follows:

Lot 3, U.S. Survey No. 10495, Alaska, situated on the left bank of the Black River at the confluence with the Kipniyagok River approximately 21 miles southwesterly of the village of Sheldon Point, Alaska, within unsurveyed Township 26 North, Range 87 West, Seward Meridian, Alaska.

Containing 79.99 acres, as shown on the plat of survey officially filed on July 15, 1993.

In Answer to Amukon's appeal, BLM avers that it is, "in effect, an untimely attempt to amend his application to add lands." It is BLM's position that Amukon received notice of the 1987 Decision through certified mailings sent to Alaska Legal Services Corporation, his attorneys of record and to his Scammon Bay address. It is argued that Amukon cannot now appeal the accuracy of the survey, which was approved by the 1987 Decision.

[1] Amukon does not dispute BLM's assertion that he intends to claim lands additional to those he applied for in 1970. While neither the sketch attached to Amukon's original application nor the sketch he now provides on appeal are drawn to scale, the geometric design of the diagram attached to the SOR changes the shape of the allotment from a rectangle to a trapezoid, revealing a triangular enlargement along the southwestern boundary.

Section 905(c) of ANILCA provides that an applicant "may amend the land description contained in his or her application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed." 43 U.S.C. § 1634(c) (1994). The legislative history of ANILCA establishes that errors "subject to correction under [the] authority of Section 905(c)" include "[t]echnical errors in land description, made either by the applicant or by the Department in computing a * * * survey description from diagrams," (S. Rep. No. 413, 96th Cong., 2d Sess. 286, reprinted in 1980 U.S.C.C.A.N. 5070, 5230). Section 905(c) permits amendment of an allotment application to include land omitted by misdescription; an amendment to permit the substitution of new or additional land not originally intended to be claimed is not authorized. See Heirs of Alice Byayuk, 136 IBLA 132, 137 (1996), and cases cited therein.

Although ANILCA did not place a time limitation on amendment, it authorized the Department to do so. See 43 U.S.C. § 1634(c) (1994); see also S. Rep. No. 413, supra (granting the Secretary authority "to set a

deadline for amending all allotment applications in a designated area by notice mailed to them at least 60 days prior to the deadline"). Angeline Galbraith, 97 IBLA 132, 146 (1987). An applicant's failure to respond to such notice terminates the right to amend. Silas Solomon, 133 IBLA 41, 48 (1995).

Amukon says he did not receive the May 1987 Decision notifying him of his 60-day opportunity to notify BLM of errors in the description of the allotment, because it was sent to Alaska Legal Services Corporation, who failed to inform him of its contents. (Letter of Patrick Amukon to the Office of the Alaska Regional Solicitor, received Feb. 22, 1996.) The case file, however, shows that BLM not only mailed the 1987 Decision to Amukon's lawyers, but also sent it to his home address at General Delivery, Scammon Bay, Alaska 99662. A certified mail return receipt card in the case file and attached to BLM's copy of the 1987 Decision shows that Amukon signed a receipt for it on June 12, 1997. That receipt was returned to BLM date-stamped June 16, 1987. From this evidence, we conclude that Amukon received the May 1987 Decision, and, therefore, may no longer amend his application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Franklin D. Amess
Administrative Judge

I concur.

Bruce R. Harris
Acting Chief Administrative Judge

