

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Office of the Secretary  
Washington 25, D. C.

185

A-26212

December 19, 1951

Lawrence D. Keeler : Anchorage 014450.  
: Homestead entry rejected  
: in part.  
: Remanded.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Lawrence Delbert Keeler, a veteran of World War I, has appealed to the head of the Department from the decision of the Assistant Director of the Bureau of Land Management dated January 19, 1951, affirming the decision of the manager of the land office at Anchorage, Alaska, dated October 3, 1950. The manager's decision amended the notice, dated April 20, 1950, which had allowed Mr. Keeler's entry of two lots described as follows:

T. 4 S., R. 15 W., Seward M.  
Sec. 11, Lot 4  
Sec. 14, Lot 1

Total 91.05 acres

The manager's amendment excluded from the entry all land therein lying to the east of the Sterling Highway, which traversed both lots, but continued the allowance of the entry as to all lands therein lying west of the Sterling Highway, subject to adjustment upon a supplemental plat of survey properly designating the lands so segregated.

The reasons assigned for this action were that the allowance on April 20, 1950, of all the land sought by Mr. Keeler was inadvertent and improper; that on July 20, 1949, when Mr. Keeler filed his application, the lots were not subject to entry, being in a shore-space reserve from which they were not restored until February 24, 1950; that immediately upon that restoration the lots became subject to Public Land Order No. 601<sup>1/</sup> of August 10, 1949, which withdrew and segregated from appropriation the public lands on each side of the center line of the roads and highways of Alaska, for distances ranging from 50 to 150 feet on each side of such line; that the withdrawal of 200 feet in the case of the Sterling Highway cut the land desired by Mr. Keeler

<sup>1/</sup> 43 CFR 74.28, 74.29, 74.30, 74.31, 74.32, 74.33;  
14 F. R. 5048 (1949).

into two incontiguous tracts, which therefore did not meet the requirements of the homestead law that the land entered "be located in a body in conformity to the legal subdivisions of the public lands \* \* \*".<sup>2/</sup>

Mr. Keeler states in his appeal that, before filing his application on July 20, 1949, he was informed by the manager that the land sought was subject to entry; that his entry was officially allowed on April 20, 1950, before issuance of the withdrawal order of August 10, 1949; that he had no reason to believe that his entry was affected by the order; that he proceeded to build a house for his family of five on the land west of the Sterling Highway<sup>2/</sup> and that this parcel is entirely inadequate for his needs. Mr. Keeler contends that he should not be penalized as a result of the misinformation given him by the land office at the time of his filing.

Mr. Keeler's arguments are now moot, the rules governing the lots he desires having been changed in a manner favorable to the allowance of his entry as originally made. On October 16, 1951, Public Land Order No. 757<sup>4/</sup> so amended Public Land Order No. 601 of August 10, 1949, as to eliminate therefrom the provisions affecting feeder roads and local roads, and to release from withdrawal those public lands which the withdrawal had segregated on both sides of the center line of feeder and local roads.

On the same day, October 16, 1951, another order, Departmental Order No. 2665,<sup>5/</sup> fixed the width of reservations and easements for all public highways in Alaska maintained under the jurisdiction of the Secretary of the Interior, and prescribed a uniform procedure for the establishment of rights-of-way over or across the public lands for such highways. Thereby, lands located on both sides of feeder roads, of which Sterling Highway is one, and lying within 100 feet of the center line thereof, are reserved by easement instead of by withdrawal. Since, unlike a withdrawal, an easement does not segregate the land in which it is enjoyed, and, therefore, does not cut the land into incontiguous tracts,

<sup>2/</sup> 43 U. S. C., 1946 ed., sec. 161; see Hugh Miller, 5 L. D. 683 (1887).

<sup>3/</sup> By the exclusion of the east parcel, Mr. Keeler lost more than three-quarters of the entry, including all the land suitable for pasture, hay, and timber.

<sup>4/</sup> F. R. Doc. 51-12674, filed October 19, 1951; 16 F. R. 10749.

<sup>5/</sup> F. R. Doc. 51-12586, filed October 19, 1951; 16 F. R. 10752.

the requirement of the homestead law that land to be entered be in a body, not in incontiguous tracts, can be met by Mr. Keeler and his entry may stand as originally allowed for both lots, subject, however, to the easement described in Order No. 2665.6/

Accordingly, in pursuance of the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509; 14 F. R. 307), the Assistant Director's decision is set aside and the case is remanded to the Bureau of Land Management for disposition in accordance with the views expressed above.

(Sgd) Mastin G. White  
Solicitor

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<sup>6/</sup> See Circ. 1806, December 3, 1951, substituting a new text for 43 CFR 74.28 to 74.33, inclusive. F. R. Doc. 51-14684; Filed December 7, 1951. 16 F. R. 12397 (1951).

## LAWRENCE D. KEELER

A-26212

Decided December 19, 1951

Homestead Entry--Withdrawal for Highway--Segregation--Incontiguous Tracts--Easements--Rights-of-Way.

Public land, to be subject to homestead entry, must be located in a body in conformity to the legal subdivisions of the public lands, not in noncontiguous tracts.

Where a strip of public land on both sides of the center line of a public highway traversing the land is withdrawn for the protection of the highway, the withdrawal segregates the strip from the adjoining public land, cutting it into noncontiguous tracts unavailable for homestead entry by the same person.

Where the land constituting such a strip is released from the withdrawal and is made subject to a right-of-way, or easement, the land in the strip is restored to the public domain, the segregation and the noncontiguity cease, and the land traversed by the highway becomes available for a homestead entry, subject to the prescribed right-of-way, or easement.

HKA  
HT