Editor's note: Reversed – Reeves v. Andrus, 465 F.Supp 1065 (D. Alaska, 1979).

HENRY E. REEVES

IBLA 76-612 Decided July 18, 1977

Appeal from decision of Administrative Law Judge Dean F. Ratzman holding that applicant has no right to homestead entry A-062807.

Affirmed.

1. Alaska: Homesteads--Homesteads (Ordinary): Settlement --Settlements on Public Land

   Where a notice of location of settlement claim is filed covering land which is not available for entry, the notice must be rejected and cannot be suspended to await the possible restoration of the land to entry.

2. Withdrawals and Reservations: Generally--Withdrawals and Reservations: Power Sites

   A description of lands withdrawn by a power site classification must be interpreted according to its plain meaning when this meaning is consistent with descriptive maps attached to it, with the interpretation of its promulgator, and with the purpose of the classification.

3. Alaska: Homesteads--Homesteads (Ordinary): Lands Subject to--Homesteads (Ordinary): Settlement-- Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Power Sites

   A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the **Federal Register**, even if the extent of the land

withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under section 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

4. Secretary of the Interior--Withdrawals and Reservations: Revocation and Restoration

Where, in the public interest, the Secretary decides not to reopen land to settlement, a would-be settler on this land is denied no rights by this decision.

5. Equitable Adjudication: Generally--Equitable Adjudication: Substantial Compliance

A factual error by the Government is not a basis for imposing the extraordinary relief of equitable estoppel where the person seeking the estoppel became aware of the true facts shortly thereafter, had not substantially complied with the public land laws, and continued knowingly and repeatedly trespassing on lands not open to settlement, where the Government makes prompt, reasonable, and consistent efforts to correct any misunderstanding caused by this error, and where the Government's actions did not result in the foreclosure of an opportunity to assert a legal right.

6. Alaska Native Claims Settlement Act: Generally

Provision in section 4(b) of the Alaska Native Claims Settlement Act requiring the Secretary to issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, prior to August 31, 1971, does not apply to an invalid settlement claim on withdrawn land.

7. Alaska: Homesteads--Homesteads: Ordinary: Generally-- Homesteads: Ordinary: Final Proof

By regulation, final proof of compliance with the homestead laws must be filed within 5 years, failing which the homestead is subject to cancellation, although, in proper cases the time for filing final proof may be extended. However, the statutory life of a homestead claim or entry cannot be extended beyond 5 years, during which time all other requirements must be performed. An extension of the time for filing final proof is not an extension of the time for performing acts of compliance.

8. Homesteads: Ordinary: Generally--Equitable Adjudication: Substantial Compliance

Where during the 5-year term of a homestead there is a failure to comply with the residence and cultivation requirements and the requirement of a habitable house, and where subsequent efforts meet only the requirement for a habitable house, there can be no equitable adjudication based on substantial compliance with the homestead law.

9. Homesteads: Ordinary: Cultivation--Equitable Adjudication: Substantial Compliance

Wherein one year the homestead land is leveled and seed is hand broadcast on the ground in late October after the first frost in Alaska, and the following year seed is simply scattered on the snow by a claimant who asserts he is "not a farmer at all" and does not know whether this is accepted practice, the cultivation requirements of the law have not been substantially met.

10. Homesteads: Alaska--Homesteads: Ordinary: Cultivation --Equitable Adjudication: Generally

A homestead claimant who contracts for the planting of "enough acreage to satisfy the homestead law" in an essentially worthless hay crop in an area of Alaska where there

> are no livestock, and with no intention to harvest or utilize it even though it successfully matured, has performed only a token compliance which is, prima facie, demonstative of bad faith. A good faith devotion of the land to productive and profitable agricultual use is essential to satisfy the purpose and intent of the agricultural land entry laws.

APPEARANCES: Bernard J. Dougherty, Esq., and J. Michael Robbins, Esq., Anchorage, Alaska, for appellant; James R. Mothershead, Esq., Assistant Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for appellee.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Procedural Background

On July 2, 1965, Henry E. Reeves filed with the Bureau of Land Management (BLM), his "Notice of Location of Settlement or Occupancy Claim in Alaska" (Exh. 5). This notice described approximately 160 acres of unsurveyed land which, if surveyed, would lie within section 4, T. 29 S., R. 58 E., C.R.M., Alaska. The notice indicated that Reeves was asserting his claim pursuant to the applicable homestead laws and regulations and that he had initiated his occupancy of the land on the previous day.

At the time Reeves filed his notice of location, BLM's status maps indicated that the land was open and available to appropriation under the public land laws. These maps showed that Power Site Classification (PSC) 439 extended no more than approximately one mile upstream (northwest) of Chilkoot Lake and stopped approximately three-fourths mile from the nearest boundary of the parcel on which Reeves had filed. However, on about July 20, 1965, BLM revised its status maps to indicate that 120 acres of the land for which Reeves had filed was actually situated within the withdrawn area, in that PSC 439 extended some 4-1/2 miles upstream from Chilkoot Lake to the point where the 200-foot contour line crosses the Chilkoot River.

On October 1, 1965, BLM sent Reeves notification that the area he was claiming was in conflict with PSC 439 and thus not available for homesteading. This letter also informed Reeves that his case was closed on the records of the Bureau, that his filing fee was being refunded, and that further occupancy by him would be considered a trespass (Exh. 17). Reeves testified at the subsquent hearing that he did not know whether he had received this notification, although elsewhere he indicates that he did. On October 20, 1965, BLM again officially notified Reeves to the same effect, this time by certified mail, and he received this notification together with a copy of the October 1 letter (Exhs. 23, 24; Tr. 124).

On November 24, 1965, Reeves filed a letter protesting the closure of his case (Exh. 25; Tr. 125), wherein he argued that the status maps had indicated that the land was available when he filed his notice on July 2, 1965; that BLM had failed to inform him of the error between July 2 and October 25, 1965; and that in the interim he had expended a large sum in building an access road and cabin in good faith. However, as will be discussed, infra, Reeves had conducted other, earlier, correspondence which strongly suggests that he did not proceed with these activities in good faith reliance on the erroneous status maps.

In June and July 1966 Reeves and BLM corresponded concerning how he might obtain restoration of the land to availability for settlement. On July 15, 1966, BLM informed him that he could petition for restoration of the land, and directed his attention to section 24 of the Federal Power Act, 16 U.S.C. § 818 (1970). (Reeves had previously been so advised by the Geological Survey's letter of September 10, 1965 (Exh. 16).) On August 8, 1966, Reeves applied directly to the Federal Power Commission (FPC) to vacate PSC 439 to the extent that it conflicted with the area he claimed, and to restore such area to settlement (Exhs. 46, 48).

Pursuant to Reeves' petition, on August 29, 1967, the FPC issued a document entitled Finding and Determination under section 24 of the Federal Power Act (Exh. 83). In this the FPC stated that the lands on which appellant had settled are withdrawn in PSC 439, approved July 10, 1957, and that those portions of the land lying below the 200-foot contour have power value since they would be affected by flowage from the enlargement of Chilkoot Lake for a multiple-purpose project. The FPC stated also that any such development was considered remote and that other use of the land subject to section 24 of the Federal Power Act in the interim, in its opinion, appeared desirable. Section 24 of the Federal Power Act contemplates opening land to location, entry, or selection with the provision that any patent issued for this land shall reserve the right of the United States to enter and use any part of the land necessary to the production of power. The FPC stated its conclusions as follows:

> The Commission finds:
>
> In as much as portions of the subject lands are valuable for power site development, outright cancellation of Power Site Classification No. 439 would not be appropriate.
>
> The Commission determines:
>
> The power value of the subject lands will not be injured or destroyed by the use thereof as applied for, subject to the provisions of Section 24 of the Federal Power Act.

This determination expressly noted additionally as follows:

> The above-described lands are not restored to entry, location or selection under the conditions of this determination until the Secretary of the Interior issues a formal order of restoration, and no preference right to the lands is acquired by the filing of the application for restoration or by this action taken by the Commission with respect to the lands. [Emphasis added.]

On September 6, 1967, Reeves' attorney addressed a letter to then Secretary of the Interior Stewart L. Udall, asking him to issue a formal order of restoration to entry of the lands in question (Exh. 85). This letter was acknowledged by Robert O. Buffington, on Secretary Udall's behalf on September 25, 1967, and appellant's attorney was advised at that time that the Secretary had referred the matter to the attention of BLM's Alaska State Director to assemble information necessary for use in a restoration order (Exh. 87). BLM requested both a field report (Exh. 89) and a report as to the mineral and water resources of the lands in question (Exh. 90), which reports were submitted to the State Director (Exhs. 91, 92). On February 2, 1968, the State Director sent a letter to the State of Alaska's Division of Lands, inquiring whether the State of Alaska desired to use or waive its preference right to select the land addressed in the proposed revocation (Exh. 93). On February 6, 1968, the State of Alaska Division of Lands notified the State Director as follows:

> Since Mr. Reeves' entry filed July 2, 1965, pre-dates the State's application filed August 10, 1965, and he initiated the proposed revocation of the power withdrawal affecting the 120 acres of his original 160-acre homestead entry, the State by this letter hereby waives the preference right provisions it would ordinarily be entitled to in the opening revocation order.

(Exh. 94).

On February 19, 1968, the State Director prepared a proposed order describing the lands on which appellant settled, setting out the history of the FPC determination, and opening the land to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, the requirements of applicable laws, and the provisions of section 24 of the Federal Power Act. This proposed order also noted that all valid applications received at or prior to the date and time of opening of the land would be considered as simultaneously filed at that time (Exh. 96). On February 19, 1968, the State Director notified then Governor Hickel that although the Alaska State Division of Lands

had waived its preference right to select the land in question, BLM, in compliance with the law, would not declare this land open to location or entry for at least 90 days (Exh. 95).

The State Director had originally planned to forward this proposed restoration order to the Director of BLM on May 29, 1968, after the expiration of this 90-day period (Exhs. 101, 102, 107), but instead he apparently contacted the Office of the Solicitor in Anchorage to request its assistance in identifying the lands that the Court of Claims on January 19, 1968, had held were still under Indian title in Tlingit and Haida Indians of Alaska v. U.S., 389 F.2d 778, 182 Ct. Cl. 130 (Ct. Cl. 1968) (Exh. 108). After considering information supplied by the Solicitor as to the extent of the land affected by this decision, on June 27, 1968, the State Director forwarded a modified version of the proposed restoration action to the Director of BLM. This modified proposed restoration order provides in part as follows:

> 2. The United States Court of Claims, in a decision of January 19, 1968, Tlingit and Haida Indians of Alaska v. U.S., [supra], finding 262(a), determined that lands in Area 6 in the Haines-Chilkoot Valley, within which the subject land lies, are lands held under Indian title which apparently exists to the present time.
>
> 3. The land [in question] shall not become subject to location, entry, or selection under the public land laws until such time as Indian title to the lands has been extinguished and an opening order is issued by an authorized officer of the Bureau of Land Management.

(Exh. 114).

The memorandum which accompanied this proposed order noted additionally as follows:

> In addition to being within an area embraced in Native Protest AA-431, Parcel C, the land is in an area involved in a Court of Claims decision of January 19, 1968, Tlingit and Haida Indians of Alaska v. United States, No. 47900, finding 282(a). The decision held that Area 6 in the Haines-Chilkoot Valley area, with the exception of 71 tracts that were patented prior to June 19, 1935, are lands held under Indian title which appears to exist today. This decision was not appealed and has become final.
>
> At the time Power Site Classification No. 439 was issued on July 10, 1957, possible Indian claim to the

> land was recognized, since the order states that the land is classified "subject to valid existing rights, including the rights of the natives of Alaska, if any." The proposed land order, therefore, constitutes a record clearing action resulting from the FPC determination.
>
> Your approval of the proposed order is recommended.

Some time prior to July 26, 1968, the matter was forwarded to the Secretary of the Interior for consideration (Exh. 118).

On July 31, 1968, the Office of the Secretary of the Interior wrote a letter notifying Reeves' attorney that the Secretary had determined that it would not be proper to issue an order opening the lands to disposition. This letter provides in part as follows:

> On August 29, 1967, the Federal Power Commission issued a finding and determination that the power value of the land would not be injured or destroyed by its use as a homestead, provided that allowance of such use was made subject to the provisions of section 24 of the Federal Power Act. Further, the Commission determined that the lands were "not restored to entry, location or selection under the conditions of this determination until the Secretary of the Interior issues a formal order of restoration * * *."
>
> The case record reveals that the lands are within an area embraced by a Native Protest AA-431. The Tlingit-Haida Indians of Alaska have protested disposal of the land or resources in this area, claiming title to the property. Congress, by law, has provided that the Alaska Natives "* * * shall not be disturbed in possession of any lands actually in their use and occupancy or now claimed by them, but the terms under which such persons may claim title to such lands is reserved for future consideration by Congress." Bills are now pending in Congress to settle the question of native claims.
>
> Under the circumstances, it would not be proper for this Department to issue an order opening the lands to disposition.

When the native claim has been settled and Congress has had an opportunity to consider the matter, we shall determine whether action by this Department is needed, and the nature thereof.

(Exh. 119).

On January 5, 1968, the State of Alaska filed a selection application for lands located at the downstream or outlet (southeast) side of Chilkoot Lake for use as a recreation site. This land was located within PSC 439. However, on April 19, 1968, Alaska petitioned to restore the lands affected by PSC 439 to entry. Action on the petition for restoration was suspended because the land was in Area 6 and, as such, was subject to the Court of Claims decision in Tlingit and Haida Indians of Alaska v. U.S., supra (Exh. 123). This demonstrates that the State of Alaska's petition was treated by the Department exactly as was Reeves' petition.

On April 28, 1969, the Alaska State Director of BLM sent a memorandum to the Administrator of the Alaska Power Administration, seeking his recommendation regarding the power value of six sites in Alaska classified as power sites, including PSC 439. In this memo, the State Director noted that BLM felt that PSC 439 should be canceled in order to develop the land for a variety of uses including settlement and enlarged state selection. BLM also noted that PSC 439 conflicted with the processing of outstanding claims and applications (presumably including appellant's claim) which were subject to the resolution of Native land claims (Exh. 123).

The record indicates that Reeves contacted the office of Senator Gruening in August 1968 after the Secretary declined to reopen these lands to settlement (Exhs. 120, 121). In May 1969, at the suggestion of Senator Ted Stevens, the Solicitor met with Reeves and his attorney to review his "problem" (Exh. 124). Apparently, Reeves proposed at this meeting to take title to the land in question without compensation for subsequent flooding, and subject to any Native land claims (Exh. 125).

In July 1969, Reeves' attorney wrote to the Solicitor's Office requesting a "letter allowing Mr. Reeves to re-enter" the land so that he might proceed to fulfill the requirements of the homestead law, "subject to any native claims settlement that might affect his [sic] land and subject to no compensation should all or part of his land be flooded by a possible future power site" (Exh. 128). There is no evidence that such a letter was issued, nor has a copy of the Solicitor's reply to this request for permission to re-enter been made part of the record. Nevertheless, shortly after, Reeves did reoccupy and commence work.

On January 15, 1970, the Alaska State Director of BLM wrote to Reeves and advised him as follows:

> As you were advised earlier, the lands were not to be restored now because of the claims by the Tlingit and Haida Indians. An additional complication is that P.S.C. 439 is described in relation to the 200-foot contour. Since the land has never been surveyed, it is necessary

> to establish the location of this contour before a revocation could be made. We will request survey so that an on-the-ground identification should be available by the time the claims issue is settled.
>
> Because the land is still withdrawn and therefore not open to settlement, you are advised that any additional work done on your homestead or additional expenditures on your part are entirely at your own risk and that there is a possibility of trespass action being taken against you.

(Exh. S).

Nevertheless, shortly after, in June 1970, Reeves returned to the land and expended a large sum doing additional work there.

On January 20, 1972, Reeves contacted the Office of the Secretary urging that, since all Native claims had been settled, action should be taken concerning the land on which he had filed, and that the nature of this action should be to issue a patent immediately to appellant for this land (Exh. 130). On May 15, 1972, the Secretary's Office informed Reeves that his occupancy of the land in question was a trespass, that, as such, this occupancy gave him no credit under the homestead laws, and that he would receive credit commencing only from the date of a new valid settlement (Exh. 132).

On December 16, 1972, Reeves' attorney again contacted Senator Stevens' office to seek his assistance in getting signed the revocation of PSC 439 (Exh. 133). On January 6, 1973, Senator Stevens contacted the Director of BLM to inquire why an order "revoking PSC 439" had not been issued and what requirements must be fulfilled to permit appellant's homestead claim (Exh. 135). On February 13, 1973, BLM notified Senator Stevens that the proposed order to restore and open the land to entry was not approved because of the ruling in the Tlingit/Haida case, supra, and moreover that all unreserved lands in Alaska had been continuously withdrawn since January 17, 1969, by Public Land Order 4582, the Alaska Native Claims Settlement Act of 1971, and other Secretarial withdrawals pursuant thereto. BLM informed the Senator that Reeves had been advised that "[t]he land has not been open to entry since the establishment of [PSC 439] on July 7, 1957" (Exh. 136). On March 21, 1973, Reeves' attorney wrote to BLM to express his displeasure with this determination (Exh. 138).

On October 11, 1973, Reeves filed an action in the United States District Court for the District of Alaska seeking to have his claim declared valid ab initio and his right to maintain an interest in and occupancy of the premises confirmed by the Court. Reeves v. Morton, Civ. No. A-158-73. District Judge James A. von der Heydt, in denying the Government's motion to dismiss based

on appellant's failure to exhaust his administrative remedies, directed that appellant should exhaust his administrative remedies, while the District Court retained jurisdiction over the matter. In this order, the Court found that BLM was estopped to assert that appellant had waived any rights by not making a timely appeal in 1965 from the BLM decision canceling the claim. In a supplemental order on February 11, 1975, the Court further directed that the Department of the Interior establish a factual record and allow appeal to the Interior Board of Land Appeals, if necessary. Concerning the estoppel, the Court stated in this order that appellant "is to be given the opportunity to prove his claim notwithstanding the fact that more than five years may have elapsed since initial entry."

An administrative hearing was held in Anchorage, Alaska, on March 17 and 18, 1976, before Administrative Law Judge Ratzman. On April 16, 1976, Judge Ratzman issued his decision, which holds that appellant has no right to occupy or maintain any type of interest in the subject lands, that he has never made a lawful settlement, occupancy or entry upon those lands, and that he can acquire no rights on account of his violations of Public Land Order No. 4582 in 1970 and 1971. Appellant made timely appeal of this decision to this Board.

History of Appellant's Occupancy of the Land in Question

Appellant, who lived in Haines, Alaska, near the land in question (Tr. 122), allegedly selected this land for settlement because it was some of the only remaining flat land left in the area (Tr. 121). In June 1965, prior to filing his claim to this land, he referred to the land status map in the BLM office in Juneau, Alaska (Tr. 90). On July 2, 1965, he filed with BLM in Juneau a Notice of Settlement and Occupancy Claim (Exh. 186; Tr. 88-90) concerning this land. At this time the status map indicated that it was located outside the land withdrawn by PSC 439 (Tr. 90-91, 123). Appellant testified that he also then discussed the availability of the land with a BLM employee (Tr. 91). On July 2, 1965, after filing this notice, he purchased a Caterpillar tractor (Tr. 91-92), which he subsequently transported to the southeast shore of Chilkoot Lake and then floated on logs across the lake to the northwest shore (Tr. 92), arriving there around July 20, 1965 (Tr. 93). He then began to construct a road towards his own claim (Tr. 94) and those of other would-be homesteaders to the northwest of his (Tr. 95). The record does not indicate whether appellant was reimbursed by the other settlers for this effort, but does indicate that he was the spokesman for a group of persons in the area who were interested in the area partially included in PSC 439 (Exh. 11). The road was completed as far as appellant's claim by the end of August 1965 (Tr. 95). In the middle of August, he began work on a cabin (Exh. 187; Tr. 95-96, 135).

Appellant testified that on October 25, 1965, he received notice from BLM that the land on which he had filed was located within the lands withdrawn from entry by PSC 439, and that his continued occupancy of the area would constitute a trespass (Tr. 133-134). Despite this notice, he continued to occupy the land in question (Tr. 134) and to work on his cabin, which was completed around December 1965 (Tr. 97). This cabin was, bu appellant's own testimony, "barely" habitable in 1965, having a plywood floor and a sheetmetal roof (Tr. 97). 1/ As of the time he received the BLM decision that the land was not open for settlement and his claim canceled, appellant had finished only the walls and purlings of this cabin (Tr. 134). In the fall of 1965 he cut timber from approximately 10 acres (Tr. 97-98, 136) and cleared stumps from not over 3 acres (Tr. 98), mostly from where the road went through (Tr. 136). Other than a small garden, no cultivation was attempted in the fall of 1965 (Tr. 137).

Nowithstanding the advice of the BLM as to the status of the land, the closure of his case and the advice that further occupancy would be considered trespass, Reeves returned to the land in the following years and made substantial improvements. In 1966, although he returned to the site several times (Tr. 102-103), he stated he did little work on the site because he had been informed that he was in trespass and told not to cut more trees, and his attorney had advised him not to continue the work (Tr. 102-104, 137-139). Reeves explained at the hearing that he returned because he believed that he had a vested interest of some kind in the property which might sometime be opened again, but that he did not want to get in real trouble (Tr. 138). Reeves lived in his apartment in Haines, Alaska, during the winter of 1966-67 (Tr. 139). In 1967, he did no work because of the ongoing endeavor to get the site reopened and restored to entry under the law so that he could reenter (Tr. 104-105). In 1968, he did work on a road around Chilkoot Lake, but did not work on his would-be homestead site (Tr. 105).

In June 1969, on the advice of a new attorney (Tr. 139), Reeves reentered the land in question (Tr. 105, 147). He did not stay on the claim all of 1969, just "off and on in summer" (Tr. 146-147).

1/ A BLM inspector who visited the site on May 17, 1966, indicated that this old cabin was only "partially completed" (Exh. 91). On February 29 and March 1, 1976, another BLM inspector observed that it was "poorly constructed of unpeeled logs and [that] only corrugated aluminum [was] used for a roof," and that it was suitable only "for a temporary home during warm weather" (Exh. 194; Tr. 217). Reeves testified that he lived in "what there was finished of it" only during the winter (Tr. 97).

He did not stay there during the fall of 1969. Around January 1, 1970, he went to Juneau, Alaska, where he served in the Alaska State Legislature (Tr. 148-150). Between this time and June 1970, he returned to Haines on weekends, "whenever I could" and in June 1970 returned to the land to build a new cabin and clear the land (Tr. 151). His family occasionally joined him at the site but still resided in a rental unit in Haines (Tr. 151-152). Appellant set up a trailer on the land, where he lived while the new cabin was being built for him by a contractor in the summer of 1970 (Tr. 149). Appellant testified that this new cabin was made habitable in 1970 (Tr. 167). He also felled timber on between 50 and 60 acres, of which 25 to 30 acres were cleared of stumps and roots (Tr. 107-108, 110). In 1970 he made an effort to cultivate part of the area, having cleared it and leveled it with a log float (Tr. 159). He sowed 15 acres with brome grass and timothy (Tr. 110-111, 158), but did not seed the area before the first frost (Tr. 162). This seeding was not very successful (Tr. 111), and the results were not adequate to make harvesting worthwhile (Tr. 160).

Appellant stayed on the area through most of the winter of 1970 and 1971 (Tr. 112, 153-154) and on into 1972 (Tr. 154). In spring 1971 he broadcast seed on the snow in an effort to raise crops after the spring melt (Tr. 112-113). This effort failed (Tr. 162). In the summer of 1971 he cleaned up the stumps and roots removed in 1970, and had installed a bathroom and septic system in the new cabin (Tr. 118). In the fall of 1971 he lived in Haines, but stayed at the site better than half the time (Tr. 168-169). In May 1972 he paid one A1 Butts to reseed at least 25 acres of the area with brome, timothy and alfalfa using a seed broadcaster (Exh. 175; Tr. 115-117). Appellant's estimate of the acreage seeded was based on paced measurements done by him (Tr. 155). This seeding, he said, was "quite successful" (Tr. 117), but was not harvested by appellant, or by Butts (Tr. 160, 176). All of these improvements made in 1970 and 1971 are on land which is within PSC 439 and are in an area that would be flooded by a reservoir (Tr. 131).

In spring 1972, around the end of March, appellant left the site and went to Hoquiam, Washington, where he purchased a boat, which he operated all summer, returning to the Haines area in the fall (Tr. 170-171). Appellant was visiting the area when Butts seeded it (Tr. 171-172). He testified that from this time on, although he did spend some time at the site (Tr. 174), he did not maintain much of a residence on the land in question (Tr. 171) because he was attempting to earn his living with the boat (Tr. 173).

Issues

The basic issues presented by this case may be stated as follows:

1. Was appellant's homestead claim valid from its inception, or was it void because the land was not subject to location, claim, settlement or entry under the the homestead law?

2. If the claim was void from its inception, did the Secretary violate the law and the rights of the appellant by refusing to restore the land to entry after the Federal Power Commission determined that it could be made available to homestead settlement subject to section 24 of the Federal Power Act?

3. If appellant's claim, entry, occupation and improvement of the land were unlawful, is he nevertheless entitled to equitable relief?

4. Regardless of whether there was legal or equitable justification for appellant's occupation and improvement of the land, did those acts otherwise constitute substantial compliance with the requirements of the homestead law and regulations?

The Effect of the Filing of the Notice of Location

[1] Regardless of whether any tract of federal land in Alaska is open, unappropriated and available, or withdrawn from the operation of the public land laws, the mere filing of a Notice of Location of Settlement Claim creates no rights in the claimant as against the United States, nor does it validate his claim in any respect, as this Department has consistently held. Stephen P. Sorenson, 22 IBLA 258 (1975); Donald E. White, 15 IBLA 382, 385 (1975); Vernard E. Jones, 76 I.D. 133 (1969); William R. C. Croley, A-30673 (May 11, 1967); Charles G. Forck, A-29108 (October 8, 1962); Albert L. Scepurek, A-28798 (March 27, 1962); Loran John Whittington, A-28823 (August 18, 1961); Anne V. Hestnes, A-27096 (June 27, 1955).

Even the acceptance by the BLM of a claimant's notice of location for recordation creates no rights in the claimant as against the United States, nor does it preclude a subsequent finding that the land claimed was not open to entry and that no rights were established either by the filing and recordation of the notice or by the claimant's settlement and improvement of the land. Vernard E. Jones, supra; Charles G. Forck, supra; Loran John Whittington, supra. In the instant case, Reeves' notice of location was not even accepted for recordation, but was rejected for the reason that the land was not available for entry.

Moreover, the Department has held that where a notice of location of a homestead was declared null and void because the land claimed had been classified as a power site, the notice of location must be rejected and cannot be suspended to await the possible restoration of the land to entry. Bessie G. Stevens, A-28039 (August 25,

1959). Therefore, the Bureau's rejection of Reeves' notice of location and its refusal thereafter to treat his continued occupation of the land as a suspended entry was wholly in accord with Departmental precedent and regulations. 43 CFR 2091.1 provides in part:

> Rejection of applications.
>
> Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:
>
> (a) Withdrawal or reservation of lands; . . .
>
> * * * * * * *
>
> (d) Classification under appropriate law;
>
> (e) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws. [Emphasis added.]

The fact that appellant filed a notice of location on July 2, 1965, amounted to nothing more than a declaration that he was asserting a claim to the land. It did not serve to invest him with any right, title or interest in the land, was wholly without legal significance as between appellant and the United States, and was not subject to suspension pending efforts to have the land opened to entry.

The Issue and Effect of the Status of the Land

[2] By memorandum dated July 29, 1957, the Director of BLM notified the operations supervisor at Anchorage, Alaska, that Power Site Classification No. 439, dated July 10, 1957, had classified certain lands in the Chilkoot Lake and River area in Alaska as a powersite (Exh. 3). PSC 439, prepared by the Geological Survey (GS), described the area classified as a power site as follows:

> All lands adjacent to Chilkoot Lake below the 200-foot contour and to a point on the Chilkoot River one-fourth mile downstream from the outlet of Chilkoot Lake. See Skagway Quadrangle (Reconnaissance Series).
>
> The area of the lands described aggregates about 4,300 acres.

(Exhs. 1, 3). This Classification was published in the Federal Register on July 17, 1957 (22 Fed. Reg. 5647). The downstream or outlet area is to the southeast of Chilkoot Lake, and the upstream or intake area is to the northwest of the Lake. There are attached to the memo dated July 29, 1957, two maps prepared by GS depicting PSC 439. These maps indicate that the boundary of PSC 439 extends to lands adjacent on the upstream side of Chilkoot Lake at least 1-1/2 miles beyond the shore line of this lake. They also show where the downstream boundary cuts across the 200-foot contour approximately one-quarter mile downstream from the outlet of Chilkoot Lake, as expressly provided in this description. However, they do not indicate exactly where PSC 439 ends on the upstream side of the lake. It must be borne in mind that these lands have not been surveyed.

Since GS made no attempt in PSC 439 to designate specifically the location of the upstream boundary, it must have intended the general description in PSC 439 to control. This general description indicates that all lands which are both below the 200-foot contour and adjacent to Chilkoot Lake are included in the power site, except those located more than one-quarter mile downstream, which are expressly excluded. GS, in a memorandum dated December 16, 1965, stated that the area intended to be classified extended upstream to the 200-foot contour crossing on the Chilkoot River (Exh. 29). This interpretation by GS, which promulgated PSC 439, is entitled to deference. In any event, we concur with GS and the finding in the decision below, and conclude that PSC 439 includes land below the 200-foot contour extending upstream approximately 4-1/2 miles to the point where the 200-foot contour crosses the Chilkoot River, as the BLM status map of the area has indicated from July 20, 1965 (when the status map was corrected) until the present (Exh. J).

It is apparent that GS intended to reserve the land in PSC 439 for use as a damsite on the Chilkoot River (Exh. 29). Damming the Chilkoot River would cause Chilkoot Lake to enlarge, flooding all land upstream below the 200-foot elevation contour (with a reasonable margin). The conclusion that GS classified as a powersite all lands upstream which are within the 200-foot contour is mandated not only by the description in PSC 439, but also by the realization that any other conclusion would ignore that GS anticipated the flooding of these upstream lands by enlarging Chilkoot Lake and raising it approximately to the 200-foot contour (Exh. 29). This construction of the description of land included in PSC 439 is essential to the Government's purpose in classifying the land as a powersite, which is to avoid having to condemn private land interests when the power facility is needed in the future.

Appellant has contended that to include the 4-1/2 mile long parcel of land within the area classified by PSC 439 between the 200-foot contour and the lake strains the descriptive requirement stated in PSC 439 that the land must be "adjacent to Chilkoot Lake."

This argument is without merit. Although comparatively narrow, this upstream section of land is nevertheless "adjacent" to the lake. Appellant suggests that PSC 439's adjacency requirement refers only to those lands "contiguous to and abutting on Chilkoot Lake," without suggesting what those words mean or why they do not include this upstream land. Any alternative determination that the upstream boundary of PSC 439 was other than at the crossing of the 200-foot contour over Chilkoot River would be unreasonably at variance with the interpretation of the general description in PSC 439, which sensibly takes into account the intent of GS in promulgating PSC 439. Any other interpretation of the withdrawal would have to assume that the GS expected that, when dammed, the water level would rise at the lower end of the lake but not at the upper end, a pure absurdity.

Appellant also maintains that since its description of the land withdrawn was unclear, PSC 439's segregative effect ought to be regarded as extending only to those lands actually indicated as depicted by BLM's original land status map. We conclude that there was no defect in the description in PSC 439 of withdrawn land which limited its segregative effect. The description in PSC 439 of withdrawn land was not unclear, but, to the contrary, was adequate topographically to identify the unsurveyed lands classified by it. The description, considered along with the maps attached to PSC 439 and in connection with the purposes of classifying the land, clearly indicates that GS intended in PSC 439 to classify as a powersite an area including land extending 4-1/2 miles upstream from Chilkoot Lake to the point where the 200-foot contour crosses the Chilkoot River. Moreover, the PSC expressly specifies the reservation of "about 4,300 acres," whereas the area depicted on the original BLM status map encompassed only about 2,500 acres, an obvious error.

[3] Section 24 of the Federal Power Act, as amended (16 U.S.C. § 818 (1970)), provides that lands of the United States included in any proposed power project are reserved from entry, location, or other disposal under the laws of the United States. Lands classified for powersite purposes by GS are considered as withdrawn for the purposes of this section. 16 U.S.C. § 818 (1970); 43 CFR 2344.1. PSC 439, on July 10, 1957, classified as a powersite the lands described therein, including an essential part of the land for which appellant filed, and provided that this classification would have full force and effect to withdraw the land under the provisions of this section. Notice of this classification and its segregative effect was published in the Federal Register (22 Fed. Reg. 5647) and copies of it were filed with BLM's offices in Juneau (Exh. 3) and Anchorage (Exh. 1). The classification was noted on land office records, but the extent of the land

withdrawn by it was not accurately depicted. However, this erroneous 2/ indication does not limit the extent of the segregative effect of the powersite classification. Publishing in the Federal Register of notice of a proposed power project withdraws lands under section 24 even where land office records contain no notation thereof whatever. Foster Mining and Engineering Company, 7 IBLA 299, 307; 79 I.D. 599, 603 (1972). Similarly, in the instant case, the withdrawal was effected to the full extent described in PSC 439 upon the issuing and publishing thereof, notwithstanding the error in the land-office records. 3/ The incorrect notation of a withdrawal on a status map does not render the withdrawal inoperative. Rod Knight, 30 IBLA 224 (1977); Robert L. Miller, 68 I.D. 81 (1961); Linville v. Clearwaters, 11 L.D. 356 (1890).

We conclude that this part of the land in question was withdrawn from settlement when appellant filed on it, and at all times since, and expressly reject appellant's contention that the administrative law judge erred in so finding.

43 CFR 2567.0-8 provides that unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement only if they have not been embraced within the limits of any withdrawal. This Department, with the approval of the courts, has consistently held that homesteads located upon lands withdrawn from entry are null and void. Francis I. Hunt, 8 IBLA 390 (1972). A notice of location or settlement filed on unsurveyed public land is void and unacceptable for recordation, and final proof on such a claim is properly rejected to the extent that land was included in a withdrawal for a power project prior to the time of settlement. William Henry Weaver, 8 IBLA 313 (1972); Francis I. Hunt, supra; Richard L. Oelschlaeger, 67 I.D. 237, aff'd, 389 F.2d 974 (D.C. Cir. 1968), cert. den., 392 U.S. 909 (1968); Bessie G. Stevens, A-28039 (August 25, 1959); Eugene T. Meyer, A-27729 (December 17, 1958); see Leo J. Kottas, 73 I.D. 123, 127-28 (1966), aff'd sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970). PSC 439 has never been terminated, and its effect has been continuous from its promulgation in

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2/ As PSC 439 has, since its adoption on July 10, 1957, classified as a powersite the area extending 4-1/2 miles upstream from Chilkoot Lake, it follows that the administrative law judge's finding is correct that the different indication placed on the land-office tract books was the result of a clerical or administrative error.

3/ 43 CFR 2091.2-5(a), cited by appellant, is not to the contrary. This section provides that the noting in official land-office records of the receipt of an application for withdrawal segregates the land to the extent that the withdrawal, if effected, would prevent disposal, rather than just to the extent actually indicated on the land-office records.

July 1957 until the present. Lands withdrawn for power development remain reserved from entry, location or other disposal under the public land law until the withdrawal is vacated, Francis I. Hunt, supra, or until the land is restored to entry by the Secretary of the Interior subject to section 24 of the Federal Power Act, infra.

Thus, no lawful homestead claim of this land could have been established after July 17, 1957.

The Propriety of the Secretary's Refusal to Restore the Land to Homestead Settlement Subject to Section 24 of the Federal Power Act

[4] Appellant has argued that the Secretary of the Interior has a mandatory duty under section 24 of the Federal Power Act to comply with the FPC's determination dated August 29, 1967, that the land in question should be restored to entry. This section provides as follows:

> Whenever the commission shall determine that the value of any lands of the United States * * * heretofore * * * classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public-land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry or selection * * *.

The Secretary is given discretionary power by the laws of the United States to restore land to entry only when so doing is consistent with his responsibilities as the administrator of the public domain, and the Secretary's decision not to revoke PSC 439 is consistent with this discretionary power.

While the FPC is the exclusive administrator of the Federal Power Act, there is an overlap of responsibility between the FPC and the Department when power projects require the use of public lands. The Federal Power Act recognizes the necessity of insuring that the Department will be able to review decisions by the FPC which affect the public land by referring these decisions to the Department for action. Under other laws of the United States, the Department has been delegated the exclusive responsibility of insuring that public land is distributed in such a manner that no conflicts of ownership or use arise, and that all interests in the public lands are protected as provided by Congress in the public land laws. It is impossible to reconcile this role with a strict interpretation of section 24. The FPC has no way of determining whether there are circumstances attending public lands, other than those relating to power value, which would mean that reopening would result in damage to other valid rights in the property. The FPC has accepted

the Department's right to review its determinations concerning reopening by not challenging a refusal by the Department to reopen, both in the instant case and heretofore. Weston A. Hillman, A-28158 (February 2, 1960).

It is only sensible for the Department to review a proposed reopening of a parcel of public land to see if other rights exist which are worthy of protection. Doing so avoids the creation of irrevocable conflict by the unconsidered reopening of land to public entry which would result from appellant's suggested interpretation of section 24. In essence, the determination by the FPC is an analysis of its own need of the land and, as such, it is advisory only. It is not a command which the Secretary must obey without regard for other valid concerns which are his exclusive responsibility.

The record demonstrates that there were circumstances which made it imperative for the Department to refrain from reopening the land to public entry in 1968. On January 31, 1968, the Court of Claims made final a holding that the Tlingit and Haida Indians had held and continued to hold aboriginal Indian title to an area including the land in question. Tlingit and Haida Indians v. U.S., supra. Even apart from the Department's obligation to honor this decision, it is also the duty of the Department to see that Indian rights in public lands are preserved. The decision by the Secretary not to reopen the land was based on his desire to preserve these rights, and he informed appellant of this basis in his letter of July 31, 1968. This decision was consistent with Secretarial policy as expressed both on August 10, 1967 (Exh. 179) and subsequently (Exh. B). While the Secretary might have employed another vehicle for preserving the status quo, such as a public land order specifically addressing the land in question, this was unnecessary, as the same result was accomplished by simply refraining from action to open the land. Nor may the Secretary be faulted for continuing to decline to restore the land to settlement, in view of recent Department policy to maintain the status quo generally in Alaska in order to prevent the establishment of conflicts with Native rights there.

Analysis of Equitable Considerations

[5] There can be no gainsaying the observation that if the BLM status map had correctly depicted the withdrawn status of the land on July 1, 1965, appellant would have no conceivable justification for his subsequent actions. Therefore, the single thread which supports the entire weight of his claim is the effect of the error in the map which indicated that the land was available, and the question becomes whether it is sufficiently strong to sustain that weight.

As discussed in more detail below, appellant, allegedly relying on this error prior to the rejection by BLM of his notice of location, began work on the site and on a road to it and to other claims on the northwest side of Chilkoot Lake. During the period between his filing claim to the land in question on July 2, 1965, and October 25, 1965, appellant allegedly began to construct a crude log cabin 4/ and to clear parts of the site. The record indicates definitively that appellant had actual notice that his settlement was located within PSC 439 not later than October 25, 1965. After receiving official notification that the land in question was withdrawn from settlement, appellant continued to expend money to develop the property even though, as discussed below, he had full knowledge that he was in trespass on this land. This development of the land after October 25, 1965, therefore, was not in reliance on the mistaken indication on the status map that PSC 439 did not include the land in question. Moreover, as will be shown, he was personally in doubt about the accuracy of the map and the status of the land by August 12, 1965.

Even assuming, without finding, that up until October 25, 1965, appellant had relied in good faith on this erroneous status map, it is nevertheless well established that reliance on misinformation contained in records maintained by land offices cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c) (formerly, 43 CFR 2211.9-1(d) (1965)); Utah Power and Light Co. v. United States, 243 U.S. 389, 409 (1917); Rod Knight, 30 IBLA 224 (1977); Ralph W. Griffen, 10 IBLA 289, 290-291 (1973); William Henry Weaver, supra at 314; Mark Systems, Inc., 5 IBLA 257, 262 (1972); Southwest Salt Company, 2 IBLA 81, 84-85, 78 I.D. 82, 84-85; Harold E. and Alice L. Trowbridge, A-30954 (January 17, 1969); U.S. v Richard Dean Lance, 73 I.D. 218, 227 (1966), aff'd, Lance v. Udall, Civ. No. 1864 (D. Nev. filed January 23, 1968); Robert L. Miller, 68 I.D. 81 (1961); Linville v. Clearwaters, 11 L.D. 356 (1890). Erroneous information given by employees through incorrect notation of public land status records of BLM cannot serve to give a party rights in law he could not otherwise have. Hiko Bell Mining and Oil Company, 6 IBLA 8, 9 (1972); Robert L. Miller, supra. Reliance on erroneous information or land status maps cannot serve to validate a homestead claim initiated by notice of location while the land was withdrawn from appropriation. William Henry Weaver, supra at 314; Robert L. Miller, supra at 83.

The fact that a status map incorrectly indicates that land covered by a settlement notice was open to settlement cannot render inoperative a withdrawal to which the land was actually subject. Rod Knight, supra; Robert L. Miller, supra at 83.

4/ See note 1, supra.

However, nothwithstanding the correctness of these holdings, the instant dispute is not resolved without considering whether there are grounds to estop the Government from refusing to recognize appellant's claim to the land in question. A definitive analysis of the operation of estoppel against the Government is contained in the two judicial opinions delivered recently in the case of United States v. Lazy FC Ranch, 324 F. Supp. 698 (D. Idaho 1971), aff'd, 481 F.2d 985 (9th Cir. 1973). The opinion in the case of United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970), also contains a definitive treatment of the application of estoppel against the United States, together with an extensive collection of authorities. It reiterates the test applied in Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104 (9th Cir. 1960), which must be satisfied in order to invoke equitable estoppel. Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury. California State Board of Equalization v. Coast Radio Products, 228 F.2d 520, 525 (9th Cir. 1955); United States v. Georgia-Pacific Co., supra at 96.

In United States v. Wharton, 514 F.2d 406 (9th Cir. 1975), the Ninth Circuit found the "affirmative misconduct" on the part of government officials who gave claimants and their Congressman incorrect information concerning the availability of public lands for settlement, to be a basis for estopping the Government from denying the timeliness of plaintiff's application for certain land. In the instant case, the alleged affirmative misconduct of which appellant complains consists of the error on the BLM status maps and by a BLM employee on July 1, 1965, concerning the availability of the land in question for settlement or entry. Appellant failed to demonstrate, and the record does not otherwise indicate, to what extent the employee at BLM misled him, and accordingly we do not accept this as a basis for equitable relief. It is clear that the status maps were in error at this time, being incorrectly platted. While we seriously question whether an inadvertent error of this type can be regarded as "affirmative misconduct," as in Wharton, it is unnecessary to resolve this question since we have concluded that appellant has not met the other elements required for equitable estoppel.

Using the test of estoppel as outlined in Georgia-Pacific, supra, it is clear that the Government, the party to be estopped in the instant appeal, had knowledge of the fact that PSC 439 extended along the 200-foot contour upstream nearly 4-1/2 miles rather than cutting across Chilkoot River just upstream from the lake, as erroneously indicated on the land status maps. Appellant had a right to believe that BLM intended the general public to rely on the status

map by acting on it to enter available areas. However, BLM properly reviewed the notice of location in regular course of processing without undue delay, ascertained the true boundary of the withdrawn area, and acted promptly to inform appellant of the error and its consequences (Tr. 259-60, 309-12). Appellant, by his own admission, became aware of the fact that his property was within the area classified by PSC 439 as withdrawn no later than October 25, 1965. Occupancy and improvements made after this date were not in reliance on any mistake by BLM, as appellant was fully informed and aware of the true facts. Appellant may not be allowed to seize upon an error by BLM and use it as justification for acts undertaken long after he knew of the error and after BLM had made every possible effort to correct it.

It remains to determine whether the improvements made before he was officially informed were made in good faith reliance on this error; that is, whether appellant, prior to receiving actual notice from BLM, was truly ignorant of the fact that PSC 439 included in substantial part the land on which he had settled. Appellant testified as follows concerning the occupation of the land in question in the fall of 1965:

> Q. So you were on the homestead in 1965 from approximately July to a couple -- after you came back from Juneau to December 21, 1965? Is that correct?
>
> A. Yes, even though I was -- I realized I was taking a trespass -- or trespassed at the time. I was there approximately -- to January 21st, yes.
>
> Q. You mean December 21st?
>
> A. Yes, December 21st.

(Tr. 102).

In light of the following, there is a strong indication that during the period prior to October 25, 1965, appellant was not ignorant of the true fact that PSC 439 included a substantial part of the land on which he settled at the time he improved the land in question. Gene L. Brown, appellant's neighbor and associate in the development of the area northwest of Chilkoot Lake, apparently knew of the error in the land status maps in the summer of 1965. Appellant, himself, had grown concerned about the extent of PSC 439 as early as August 12, 1965 (Exhs. 11, 12), and had made inquiries to GS and others concerning its exact extent. The evidentiary significance of these letters is so compelling that they are recited below in their respective entirety.

The letter which is Appellant's Exhibit 11 follows:

Haines, Alaska
12 August 1965

The Director of the U.S. Geological Survey
Washington 25, D.C.

RE: Power Site Classification No. 439

Dear Sir:

Status is requested on referenced P.S.C. No. 439, Chilkoot, Lake and River, Alaska.

It can't be determined from local Federal and State agencies whether this area is still under your control, or if it has been relinquished, and if it has been relinquished, to which Federal or State agency?

This area doesn't seem to be included in the total Federal acreage listed in the State of Alaska, as of June 30, 1963, nor, does it seem to be under state or private ownership.

It would be appreciated if your office would advise us, concerning its interest in this withdrawal, as there has been no apparent development or interest in the power site since its withdrawal in July 1957. There is considerable interest in this area by private developers and homesteaders, in fact, individuals have expressed a desire to petition for its return to the public domain, as locally, we understand the power site project has been abandoned for some years.

Truly yours,
Conservation Contracting Co.

Henry E. Reeves
Manager

cc: U.S. Senator Gruening

Appellant's Exhibit 12 states:

Haines, Alaska
12 August 1965

Honorable Senator Gruening

United States Senate
Washington 25, D.C.

Dear Senator Gruening:

Enclosed, is a copy of correspondence concerning a power site classification of approximately 4,300 acres, in the Haines area, in which I and several others are interested in entering.

Any assistance you can give in determining status of this particular undeveloped withdrawal should be very much appreciated.

Strangely, your "Weekly Newsletter", 1965, No. 29, page 4, subject Federalization Plus, listing land owned and withdrawn by the Federal government and its agencies in Alaska, doesn't appear to include this particular Acreage. Does this mean there is even more "Federalization" than is apparent in your report?"

Respectfully,

Henry E. Reeves

Encl.

Thus, it is clear that on August 12, 1965, only about six weeks after Reeves filed his notice of location, and before any improvement work had begun on the claim itself, he had strong cause to believe that the land was not open to homesteading. He was fully on inquiry, and he was not relying on the accuracy of the BLM status map or upon anything he may have been told by a BLM employee, else he would have had no reason to be concerned. (The status map had been corrected on or prior to July 20, 1965, although there is no direct evidence that Reeves knew this.) Despite his expressed recognition of the fact that the land might not be open to acquisition, and presumably without waiting for an answer to his requests for clarification of the status of the land, he then proceeded to occupy the land and initiate work on the improvements. This apparent willingness of the appellant to take a chance on the possible availability of the land is wholly consistent with his cavalier behavior after he had formal notice of its true status and he admittedly knew that his occupation was unlawful.

These activities, as will be seen, were premised upon his mistaken belief that he could somehow gain a preference, priority, or legal recognition of his claim, and preclude the acquisition of rights therein by others if he remained in possession of the land and constructed improvements thereon.

Further evidence of the fact that appellant was put on early inquiry concerning the true status of the land is found in the letter written to him by the Geological Survey on September 10, 1965 (Exh. 16). In this letter, which was in response to Reeves' request for clarification of the land's status, he was advised on behalf of the Director, GS, that (1) the purpose of a power site classification is to prevent disposition or encumbrance of the land which would be adverse to future power development; (2) that PSC 439, Chilkoot Lake and River, was deemed worthy of remaining in force; and (3) that the procedure for making lands within a power site classification available for other uses was to file an application with the Bureau of Land Management under the provisions of section 24 of the Federal Power Act.

Following the hearing, Judge Ratzman took official notice of certain material contained in the official case record of homestead claim A062537, of Gene L. Brown (Exhs. ALJ-1, 2, 3 and 4). These materials indicate that it was Brown who first identified the discrepancy between the land depicted as withdrawn by the Geological Survey Map #2 Skagway (B-2), which was attached to PSC 439 order as it was transmitted in 1957, and the depiction of the same withdrawal as shown by the BLM status map in early July 1965. See also Gene L. Brown, 7 IBLA 71 (1972). In consequence of Brown's pointing out this error to BLM personnel, the status map was corrected to reflect the fact that land in both Brown's and Reeves' claims were included in PSC 439. Brown was advised to amend the location of his homestead claim, which he felt obliged to do, notwithstanding that he had already built a cabin on land he now understood to be withdrawn. This transpired, Judge Ratzman found, during the first three weeks in July. Brown's homestead claim was above Reeves' (upstream). Brown and Reeves were cooperating in building the road from the head of Chilkoot Lake to their respective claims. After discovering the error and seeing the status map corrected and learning that he would be obliged to give up the affected land within his claim, amend his location, abandon his cabin and build a new one, Brown went back to the Chilkoot Lake area and assisted Reeves in the first three-fourths mile of road construction during the latter part of July and during August 1965. It would be incredible if Brown had not told Reeves of what had occured, particularly in light of the fact that they were building an access road together which would serve the homesteads which Brown had learned must be relocated. Based upon this evidence Judge Ratzman drew the inference that Reeves did indeed learn of the correction, and that

this knowledge prompted him to write his letters of August 12, 1965, to the Geological Survey and to Senator Gruening. We agree. Certainly something was known to him which inspired his concern about the continuing efficacy of PSC 439 and its effect on his claim and others within the influence of the withdrawal.

Appellant has contended on appeal that it was error for Judge Ratzman to take official notice of this material from Brown's case record without prior notice to appellant and an opportunity to be heard, citing Rule 201(e) of the Federal Rules of Evidence. The case file in question is a public record of this Department. Cf. Southwestern Petroleum Corp., et al., 71 I.D. 206 (1964), aff'd, 361 F.2d 650 (10th Cir. 1966). The Administrative Law Judge was justified in determining that he could take official notice of the contents of such case file pursuant to 43 CFR 4.24(b). This rule of practice does not require the same procedure for taking official notice as Rule 201(e), Federal Rules of Evidence, does for judicial notice. The Federal Rules of Evidence are not strictly applicable to administrative proceedings before Federal agencies. Rules 101 and 1101, Federal Rules of Evidence.

We conclude that even if Reeves did file his notice of location on July 2, 1965, in absolute reliance on the erroneous status map, such innocent, good faith reliance did not endure for more than a very few weeks. He was certainly on inquiry prior to the initiation of any work on the claim itself and before any substantial work had been accomplished on the access road.

Knowledge of the possibility, if not the certainty, of a serious conflict between a settlement and a withdrawal, prior to doing more than staking the land desired, is enough to place the good faith of the settler in question. Robert L. Miller, supra at 83-84.

On October 1, 1965, BLM wrote appellant advising him of the effect of the land classification and the rejection of his notice and the closure of his case, and informing him that occupancy would be considered a trespass. Although Reeves testified at the hearing that he "didn't know" whether he had received this letter, on page 4 of his Memorandum In Opposition To Government's Motion To Dismiss (Exh. 156), filed in the District Court, it is stated:

> In any event, on October 1, 1965, by letter, Mr. REEVES was informed that his homestead entry was located within the Power Site classification denominated number 439 issued July 10, 1957. (See Exhibit number 1 to this memorandum.)
>
> It was at that point in time that Mr. REEVES contacted the Bureau of Land Management concerning the "apparent" conflict and was advised by letter dated

> September 10, 1965, (Exhibit number 2 to this memorandum) that the proper procedure for Mr. REEVES to pursue in his attempt to gain validation of his homestead entry was to apply to the Bureau of Land Management for revocation of the power site withdrawal under the provisions of Section 24 of the Federal Power Act.

The foregoing not only indicates that Reeves did receive the BLM letter of October 1, but it also raises the question as to how the letter of September 10 could possibly have been in response to an inquiry initiated several weeks later. In fact, the GS letter of September 10, 1975 (Exh. 16), with a copy to Senator Gruening, was in reply to Reeves' inquiry of August 12, 1965, supra.

Appellant has admitted that he subsequently occupied and improved the land in question with full knowledge that he had no legal right to do so. Appellant understood in 1965 that by occupying the land in question he "was taking a trespass -- or trespassed at the time" (Tr. 102). He knew his claim had been cancelled. He remained and completed the "old" cabin after October 1965, although he admits he regarded this as somewhat of a perilous undertaking in view of the BLM's notice (Tr. 134). His visits to the homestead claim during the winter of 1966 were despite the fact that he knew about the trespass (Tr. 102). The reason he did no work in 1966 was that he had "been informed that [he] was in trespass" (Tr. 103). In 1969-1971, appellant occupied the land, removed timber from it which he sold or exchanged, made costly improvements on it, and used and enjoyed it thereafter. When he temporarily left the property during this time, he did not notify BLM, as required under the homestead laws, "because I knew that I was technically trespassing" (Tr. 155-156). He proceeded at this time with his homestead effort with full knowledge that the land had not been restored to entry (Tr. 142), and that he was taking a "calculated risk" in that the land was subject to the claims of the Tlingit and Haida Indians (Tr. 141-142). On June 29, 1966, appellant, through his attorney, sent an inquiry to BLM seeking to have patent to the land issued to him provisionally, with a reservation to the government for use of the land at a later date whenever necessary for water storage adjacent to a hydro-electric generating facility (Exh. 42), although he had not even attempted compliance with the residence and cultivation requirements of the homestead law at that time. On July 22, 1966, BLM informed appellant and his attorney that the Department was powerless to dispose of the land in this manner until otherwise authorized by FPC or Congress, thus insuring that appellant would not expand his investment in the land under the misconception that he might receive from BLM a provisional patent to it (Exhs. 44 and 45).

On June 3, 1966, BLM instituted a proceeding against appellant to collect damages for this trespass, by notifying him that he was

responsible for payment of the stumpage value of the timber which he removed while in trespass on the land in question in 1965 (Exhs. 38-40). The Office of the Solicitor, in a letter dated December 13, 1966, to appellant's attorney, set out in detail the legal basis for the action for damages. This explanation naturally included the legal basis for the conclusion that appellant could not initiate a valid claim on the land in question because it had been withdrawn from entry, despite any reliance by respondent on the error in the land status map. This letter advised that since appellant had no right, title or interest in the power site land covered by his rejected location notice, he therefore had no right to cut timber on his cancelled claim, and would, accordingly, be liable for trespass damages (Exh. 53). On March 14, 1967, while noting that a technical trespass had occurred, the United States Attorney decided not to proceed against appellant on basis of the fact that the costs of collection would exceed the amount in controversy (Exh. 75). The action of BLM and the Department in pursuing this trespass claim thus were entirely consistent with the determination that appellant had gained no rights to the land in question, and served to continue to put appellant on notice of this fact.

Thus, it is clear that the Government did not sit on its rights in this matter. Although original inadvertency in the status map may have led to a misunderstanding on which appellant may have briefly relied, the Government, far from perpetuating or increasing appellant's reliance thereon, took every reasonable step possible to prevent his acting to his own detriment. The information given to appellant by the Government was consistent and accurate, and served to inform him in no uncertain terms that he had no claim to the land and that his actions were unlawful.

The Government did nothing to limit appellant's efforts to obtain legal title to the land in question by attempting to have the land restored to entry. In fact, it was GS, and later BLM, which advised appellant that he could seek to have the FPC declare that the power value of the subject lands would not be injured or destroyed by appellant's use, thus pointing the way to possible reopening under the restrictions of section 24 of the Federal Power Act (Exhs. 1, 45). Appellant's failure to gain the restoration of the land to entry was a proper result of the well-considered analysis of the merits of his application at the highest levels of the Bureau and the Department.

On July 22, 1969, Reeves' lawyer wrote to the Solicitor of this Department, stating that, "Mr. Reeves is willing to proceed with fulfilling his homestead requirements * * *," and asking that the Department grant permission for him to do so, saying:

> All we need essentially is a letter allowing Mr. Reeves to reenter with the reservation that should he file for a patent after having satisfied the requirements of residence and clearing, his title may be clouded by an Indian claim and definitely will be subject to non-payment for value of lands flooded should a power site be erected.

(Exh. 128).

The Solicitor's reply to this request, if any, was not offered in evidence, nor is there any evidence to suggest that the requested permission was granted. Indeed, it would have been beyond the legal authority of the Solicitor to grant permission to enter withdrawn land to homestead.

Nevertheless, appellant testified that he re-occupied the land in 1969 and made improvements on it in 1970 and 1971 on the advice of counsel (Tr. 139, 145). He explained that he did so because he believed that his improvements guaranteed that he would prevail over other settlers should the land be restored to entry, "since no one else can file on lands that have improvements on them" (Tr. 143). 5/

Appellant also testified that his attorney had assumed that he would receive this right as against other settlers (Tr. 144-145). The record does not show that either the FPC or BLM ever indicated to appellant that he would receive a preference right if the land was restored to the public domain. To the contrary, he was expressly warned by the FPC that he had acquired no preference right to the lands either by having filed an application for restoration or by the FPC's action in issuing a finding and determination under section 24 of the Federal Power Act (Exh. 83; Tr. 142-143). He testified that he had disregarded the statement because, "* * * I consider that boiler plating as far as I'm concerned * * *" (Tr. 143). He

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5/ Appellant testified as follows concerning his decision to make improvements on the land in question in 1970 and 1971:

> "I was waiting patiently for the restoration order so that I could -- even after the restoration order I figured it wouldn't hurt if I had my improvements already about than finished. Like many homesteaders in the old West did many years ago, it was common practice."

(Tr. 156). Presumably this has reference to the "Sooners" in Oklahoma and elsewhere who entered and occupied federal lands before they were officially opened and made legally available to homestead enty. We find no justification for such conduct in these historical incidents.

did not explain why he also disregarded similar advice in BLM's letter of July 15, 1966 (Exh. 44), BLM's letter of July 22, 1966 (Exh. 45), the Regional Solicitor's letter of December 20, 1966 (Exh. 56), the letter of the Assistant Secretary of the Interior, dated May 15, 1972 (Exh. 132), and the letter by the Acting Director, BLM, dated February 13, 1973 (Exh. 136). Moreover, he apparently also disregarded the pertinent regulation on the point, then 43 CFR 2022.3(b) (1965), to which he was referred by the Regional Solicitor's letter of 1966, supra, and which provides: "(b) Favorable action upon a petition for restoration will not give the petitioner any preference right or right to preferential treatment if or when the lands are finally restored."

Thus, appellant has no one to blame but himself for operating under the mistaken premise that by improving the land while in trespass on it he could prevent other would-be settlers from entering the land when and if it was opened to settlement and secure a right thereto to himself. It is well established that a citizen can accrue no rights in federal land against the Government by adverse possession. Mere occupancy of public lands and making improvements thereon give no vested right therein against the United States or any subsequent purchaser therefrom, Sparks v. Pierce, 115 U.S. 408, 413 (1885), and an occupant must show that he occupies under some proceeding or law that at least gives him the right of possession. Southern Pacific Trans. Co., 23 IBLA 232, 244; 83 I.D. 1, 5 (1976).

Furthermore, appellant was expressly and repeatedly warned by both the Department (as early as December 15, 1965 (Exh. 53 p. 2)) and the FPC (in its Finding and Determination on August 29, 1967 (Exh. 83; Tr. 142-143)) that the issuance of this finding and determination would not by itself restore the land in question to entry, location or settlement unless and until the Secretary issued an order of restoration. 6/ Although no order of restoration had been issued, appellant reentered the land in 1969. He testified that he did so because he and his attorney "had a good idea that we would be allowed to re-enter soon" (Tr. 139), and that he was expecting BLM to restore the land "at any time" (Tr. 143). He stated that he so believed on account of the FPC ruling (Tr. 139), that he had come to the conclusion that BLM "wasn't pursuing or sending the papers forward," and that he doubted that "they were * * * in any hurry to do so" (Tr. 140).

6/ It is impossible to accept or to believe appellant's asserted explanation that he regarded this warning as mere "boiler plating" (Tr. 143), inasmuch as he recognized at the time that a restoration order was necessary, as indicated by the fact that his next procedural step was to request that the Secretary of the Interior issue such an order.

He acknowledged that he knew that re-entering was a "calculated risk" in view of the Native Claims problem in the area (Tr. 141-142). In July 1968 appellant had been notified by the Deputy Assistant Secretary of the Interior that the Secretary would not restore the land in question to entry for an indefinite period of time, at least until after Congress had had an opportunity to consider the matter of these Native claims (Exh. 119). In January 1970 BLM once again told appellant that the land in question had not been restored on account of the Tlingit and Haida claims and because no survey of the exact location of the 200-foot contour had been made. In this letter, he was advised as follows:

> Because the land is still withdrawn and therefore not open to settlement, you are advised that any additional work done on your homestead or additional expenditures on your part are entirely at your own risk and that there is a possibility of trespass action being taken against you.

(Exh. S).

Appellant's decision to illegally re-enter and improve the property was thus entirely his own, a self-styled "calculated risk," with full knowledge of the circumstances, and against official advice.

We conclude that the Government committed no wrongful conduct which led to appellant's extensive development of the land in question. Indeed, it is difficult to imagine (short of instigating judicial proceedings against him) what more the Government could have done to inform him that the land was not available, that he had no claim or interest which could be recognized, and that his use and occupancy constituted a trespass. He was so informed repeatedly by the BLM, GS, the Solicitor's office, and by the Secretariat. There was a demand for payment for damages for timber cut in trespass on this land. There was no failure on his part to understand what he was being told; he simply refused to accept it. He deliberately proceeded, against all advice and warnings by the Government, to entrench himself on the land by occupying, developing and improving it in a manner that he calculated would create his own equity. The error on the land office plat in early July 1965 was not the cause of his subsequent conduct, but he apparently believed that he could capitalize on the fact that the error had existed, and thereby justify everything he subsequently did on the land.

Appellant knew that he was trespassing and taking a "calculated risk," and it is not an injustice to require him to accept the loss resulting from his own illegal conduct. To the contrary, it would work an injustice to the rights of others to allow a trespasser to benefit by his own wrong-doing and to set a precedent allowing others to gain rights to property in the public domain simply by squatting

on it. The principles of justice and fair play, far from demanding in this case that appellant be afforded the extraordinary relief of equitable estoppel, dictate that he be prevented from circumventing the public land laws by such blatantly illegal action.

Appellant's Invocation of ANCSA.

[6] Appellant has argued that he falls within the protection of section 22(b) of the Alaska Native Claims Settlement Act (43 U.S.C. § 1621(b)), which provides as follows:

> The Secretary is directed to promptly issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites (43 U.S.C. 682), and who have fulfilled all requirements of the law prerequisite to obtaining a patent. Any person who has made a lawful entry prior to August 31, 1971, for any of the foregoing purposes shall be protected in his right of use and occupancy until all the requirements of law for patent have been met even though the lands involved have been reserved or withdrawn in accordance with public land order number 4582, as amended, or the withdrawal provisions of this act. Provided, that occupancy must have been maintained in accordance with the appropriate public land law: Provided further, that any person who entered on public lands in violation of public land order 4582, as amended, shall gain no rights. [Emphasis added.]

Appellant argues that he had made a lawful entry on public lands for the purpose of gaining title to a homestead. However, as discussed above, his occupancy of the land was not "in accordance with the appropriate public land law" in that the land in question was withdrawn from settlement under the public land laws at all times during this occupancy. Furthermore, appellant's occupation and improvement of the land in question in 1970 and 1971 was "in violation of public land order 4582," which had withdrawn this land. Thus, appellant's argument that he is entitled to receive patent to the land in question pursuant to this section is without merit.

Analysis of the Extent of Appellant's Compliance With the Requirements of the Homestead Law and Regulations.

Having concluded that appellant has never had any legal right, title or interest in the land, and further, that there is no basis for equitable relief, it would not appear necessary to consider whether his activities were otherwise in substantial compliance with the other obligations which a legitimate homesteader must satisfy in order to

qualify to receive a patent. However, as this case is before us pursuant to a remand from the District Court, which has retained jurisdiction, it behooves us to address all of the issues now which may be raised in the course of any subsequent litigation, as directed in paragraph 4 of the order.

[7] In paragraph 5 of the Court's order it was directed that Reeves be given the opportunity to prove his claim notwithstanding that more than 5 years may have elapsed since initial entry. The Board interprets this instruction as a reference to the fact that Reeves did not file his final proof within 5 years, a ground for cancellation under 43 CFR 2511.3-4, but which may be extended (Tr. 156, 157). We cannot construe the order (as appellant does) as meaning that the Court intended to waive or extend the statutory period for compliance with the requirements of the law. The statutory life of a claim initiated by settlement in Alaska begins from the date of settlement. Thomas Foster, A-30083 (June 15, 1964). The 5-year life of a homestead is statutory and may not be extended in order to allow more time for compliance. Flonie Thomas, 18 IBLA 7 (1974); Arnold H. Echola, A-30831 (November 16, 1967); James F. Rapp, 60 I.D. 217 (1948). Acts performed thereafter in purported compliance with the homestead laws avail the entryman nothing. Boyd W. Haynes, 16 IBLA 6 (1974). The granting of an extension of the time for filing proof of compliance is not an extension of the time for performing acts of compliance. Flonie Thomas, supra; Jack H. Carlisle, 13 IBLA 95 (1975). Where one has filed a location notice of settlement and failed to perfect title he must, in connection with another application to make homestead entry, demonstrate his eligibility for a second entry under the Act of September 5, 1914, 38 Stat. 712, 43 U.S.C. 182 (1970), or he gains no rights by his second settlement. Harold N. Aldrich, 73 I.D. 70, 74 (1966).

In his statement of reasons for appeal to this Board, at page 48 et seq., appellant argues forcefully that there were not two entries that only a single homestead claim is involved in this contest, and that is the one initiated in 1965. On page 51 of his statement of reasons for appeal, appellant correctly states:

> A homesteader on the other hand, must file a notice of location, pay a fee, build a cabin, clear and cultivate an eighth of his claim, and live on the property for seven months a year. He will lose his right to the homestead if he does not accomplish this within a five year period.
>
> If Reeves insists that his 1965 location was valid and was performing his activities in reliance thereon, then in order to demonstrate substantial compliance, he would have been obliged, as he says, to accomplish them within a 5-year period. He did not do so.

Although he was warned repeatedly by the numerous government offices involved that his claim was not valid, that his occupancy would be regarded as trespass, and that further work "will be at your own risk," the government did not evict him. Reeves chose to take what he, himslef, characterized as "a calculated risk." His numerous departures from, returns to, and projects on the land were purely at his own will, and without the sanction or approval of the Government. He set his own time frame for his purported compliance, and it had nothing whatever to do with the strictures of the homestead law, nor was it controlled by the Government, which would have preferred that he do no work at all, but which did not prevent him from completing his purported qualifying activities within 5 years.

[8] The 5-year statutory term of his homestead, had it been valid, would have expired on July 2, 1970. At that time he had not complied in any respect with the regular requirements.

There was no habitable house on the land at that time. Although Reeves had built a crude cabin in 1965, it could hardly have been described as adequate human habitation even then, and it deteriorated greatly. The cabin was built of unpeeled logs, had a corrugated aluminum roof which later caved in, and a plywood floor which had disappeared (Tr. 97, 217). Appellant testified that he slept outside and only used the cabin in the winter (Tr. 97). He described it as "barely" habitable when it was newly constructed in 1965 (Tr. 97). The "new cabin" was not begun until the summer of 1970, and was not completed until sometime later that year, which would have been after the statutory life of the homestead would have expired (Tr. 107-09). As noted above, there is no authority to extend the statutory life of a homestead to permit an entryman to construct a habitable house on it after the expiration of the 5-year period. Gene L. Brown, 7 IBLA 71 (1972); Mrs. Harril Berry, A-31108 (April 1, 1970). The failure to have a habitable house on the entry is fatal to a claim of substantial compliance. See Great Northern Ry. Co. v. Hower, 236 U.S. 702 (1915).

Appellant also failed to meet the residence requirements. Although entitled to credit for active military service, 43 CFR 2096.1-3, he did not maintain residence on the land for 7 months of any year of the homestead term. The Department has no authority to relieve homesteaders of the residence requirements of the statute. Edwin P. Knapp, 70 I.D. 441 (1963). An entry must be canceled where it is shown that the entryman has failed to establish residence within the time prescribed by the homestead laws. Arnold H. Echola, A-30831 (November 6, 1967).

Even after the "new cabin" was completed, after the 5-year period had expired, Reeves did not satisfy the requirement that he remain in

residence for seven months of one calendar year. It appears that he occupied the land briefly in the summer then (Tr. 145-146). He lived with his family in a rented apartment in Haines in 1969 (Tr. 147). He seriously began residency in June of 1970 (Tr. 150), which would have permitted a maximum of less than 7 months in that calendar year. 7/ In the summer of 1970, he lived at the site in a trailer while the new cabin was being built, but also maintained a rental unit in Haines (Tr. 150-152). Appellant testified that he "stayed there substantially to the next winter * * * until about [19]72" (Tr. 153-154), and that he occupied the land throughout 1971 (Tr. 112, 165-166). However, it appears that this occupancy was sporadic, since he also stated concerning his occupancy in fall 1971 that he thought it would be correct to say that he lived basically in Haines, spending only between 50 and 75 percent of his time at the land in question (Tr. 169). This occupancy was sporadic and would have violated the requirement that he not absent himself from his claim for more than two periods. In March or April 1972, appellant left the land and the Haines area to go to Washington, where he purchased and operated a boat (Tr. 170). In the summer of 1970, he spent only 50 percent of his time in Haines, coming "back and forth a lot" (Tr. 172), and apparently only visited the homestead site to seed it (Tr. 173-174). He admitted that he did not maintain much of a residence at the homestead site from then on (Tr. 171).

[9] Reeves did not meet the cultivation requirement. With his veteran's credit he would have been obliged only to cultivate one-eighth of the claim during the second entry year. 43 CFR 2096.1-4. This was not done. Nor would his subsequent efforts at cultivation have qualified. Such cultivation "must consist of breaking the soil, planting or seeding, and tillage for a crop other than native grasses, must include such acts and be done in such manner as to be reasonably calculated to produce profitable results." 43 CFR 2567.5(d).

All he did to prepare the soil was run a brush rake over the cleared area. This was followed by dragging a "log float" over it with a D-7 caterpillar tractor to make the land level to the extent that, "you could ride a bicycle over it," or so "a good Super Cub pilot could land on it" (Tr. 160, 161). It was not until after the 5-year term had elapsed that his first seeding was done. This was in October of 1970, "pretty much into October" (Tr. 161), after the first frost (Tr. 162), and consisted of hand-broadcasting "thinly"

7/ The legislative session which appellant attended began on January 9, 1970, and lasted 144 days. Allowing only 2 days from the close of the legislative session to arrival at the land, appellant could not have begun residence prior to June 4.

(Tr. 158) a mix of brome and timothy "in the smoother areas" (Tr. 111, 157-60). He first testified that this covered approximately 15 acres (Tr. 111), but later, in response to a leading question, he indicated that it covered 25 to 30 acres (Tr. 158). This seeding "wasn't very successful" (Tr. 111).

In the early spring of 1971 he seeded "some" on the snow. When asked if this is an accepted practice he replied, "I'm not a farmer at all, and I don't know * * *" (Tr. 112). The result "wasn't too good" (Tr. 162).

Neither of these seedings were done in a "manner reasonably calculated to produce profitable results." We have held that:

> A homestead entry is properly canceled for failure of the entrywoman to meet the cultivation requirements where the evidence shows that she merely cleared the land and then broadcasted seed on the surface, which was covered with litter, without further preparation by way of plowing, disking, or otherwise tilling the ground and without covering the seed after it was sown.

United States v. Wilmer L. Oldaker, A-30378 (Aug. 26, 1965).

[10] In 1972 Reeves hired a Mr. Butts, a farmer, to broadcast 300 pounds of seed over an area large "enough to more than qualify for the Homestead Act" (Tr. 117). This seeding he described as "quite successful" Id. However, he further testified as follows:

> Q. Was the crop from the 1972 season ever mowed or hayed?
>
> A. No.
>
> Q. Or any cattle ever – any horses ever raised on it?
>
> A. Not to my knowledge. There's no horses or cattle in the Haines area, let alone near the homestead.
>
> Q. Well, than what purpose would this kind of a crop serve?
>
> A. Well, would serve as a cover crop right now beings [sic] it wasn't cut, but if it was cut with hay worth $250 a ton in Haines, I'm – you might even possibly make some money on it if you want to be serious about it.

(Tr. 176). It thus appears that appellant was not cultivating this land in good faith for production of profit, but merely to make a pro forma demonstration of compliance. He obviously did not "want to be serious about it." Cultivation of a homestead must consist of acts and be done in such a manner as to be reasonably calculated to produce profitable results, and a mere pretense of cultivation will not satisfy the requirements of the law. United States v. Garrett, A-31064 (May 28, 1970). In Reed v. Udall, 416 F.2d 377 (9th Cir. 1969), cert. denied, 397 U.S. 924 (1970), the Court affirmed the Department's finding that cultivation of an oat crop on arid or semi-arid lands without the application of water evinced a lack of bona fide intent to produce a profitable result and supported the conclusion that the entry was not made or maintained in good faith, and must therefore be canceled.

In another case, involving an Alaska homestead, the Department stated:

> Finally, it may be supposed that the land office may have advised the entryman that he was not required to demonstrate his good faith by clearing timbered land for cultivation when there was an area of land devoid of trees within his entry. But this was not a license for him to suppose that he could meet the cultivation requirements of the homestead law by merely sprinkling seed on this area without clearing the brush, breaking the soil, planting seed in an approved manner, and performing such weeding and stirring of the soil as good husbandry required for the particular crop which he sought to produce.

Gilbert v. Oliphant, 70 I.D. 128, 133 (1963).

In United States v. Richard Dean Lance, 73 I.D. 218 (1966), aff'd, Lance v. Udall, Civ. No. 1864 (D. Nev., filed January 23, 1968), the opinion stated:

> In truth appellant's sowing of seed on the entry, at least for the years subsequent to 1958, was not done with any serious thought that a crop would be successful. It was little more than a token gesture, appellant being more concerned with not harming the native grasses than he was with raising a crop. He admittedly did not plant the seed deep enough for fear he would damage the native grass. He knew that he was not planting in a manner most calculated to produce a successful crop, and he admitted frankly that he was not planting in a way to comply with the

> requirements of the homestead law. That such purposeless effort should be termed cultivation seems inconceivable. [Emphasis added.] [Footnote omitted.]

Id., at 225.

* * * * * * *

> I am unable to find in the record in this case a rational basis for construing the appellant's efforts as substantial compliance with the cultivation requirements of the homestead law. The failure to develop a water supply was not failure to meet a technical requirement of the law. It was, in effect, complete failure to achieve the primary purpose for which the entry was allowed, the agricultural development of the land, and, on the basis alone of failure to comply substantially with the cultivation requirements of the law, the appellant's request for equitable adjudication was properly denied, regardless of the reasons for the noncompliance. * * * In the face of these facts, substantial compliance with the cultivation requirements could by no means be found. [Emphasis added.]

Id., at 227.

In the administration of the agricultural land entry laws it has long been held that good faith intent and bona fide effort are controlling elements in determining the question of compliance with the cultivation requirements of the law. See e.g., Charles Edmund Bemis, 48 L.D. 605 (1922), which held, "Good faith is a controlling element * * * [at 607]. While successful or remunerative cultivation is not absolutely necessary, yet the degree of good faith displayed by a claimant must necessarily be measured by the extent to which he tried to produce a productive and profitable crop." [At 608.]

We find, therefore, that during the statutory 5-year term of a legal homestead, which in Reeve's situation would have expired July 2, 1970, Reeves had not satisfied the requirements for a habitable house, residence or cultivation, or even approached compliance. If we then projected the term beyond the life of a legitimate claim, we would find that the house which Reeves constructed during the sixth year would satisfy that particular requirement. The cultivation done in the sixth and seventh entry years, when the seed was scattered on the ground after the first frost, and then on the snow, cannot be considered as meeting the regulatory standard, supra. The seeding in 1972 by Mr. Butts probably would have been of the type which would be regarded as qualifying, but Reeves did not manifest the bona fide intent to devote the land to profitable agricultural use within the

purpose and intent of the agricultural land laws. The growing of a worthless crop, with no intention to harvest or utilize it even if it successfully matured, was nothing more than a token performance which is, prima facie, demonstrative of bad faith. Reeves was simply going through the motion.

Conclusion

The land at issue was never subject to claim by Reeves, being withdrawn from the operation of the public land laws at all times germane to this inquiry. The mere filing of the Notice of Location of Settlement Claim by Reeves created no right in Reeves as against the United States. The BLM correctly refused to accept the notice and properly advised Reeves of the status of the land and of the fact that his continued occupancy would constitute a trespass. Although an error in the BLM status map did show that the land was open on July 1, 1965, when Reeves first inspected it, that error was corrected on or about July 20, 1965. An error in the land office records could neither create nor serve as the basis of any right not authorized by law.

Although Reeves may have filed his notice of claim in reliance on the platted error, by late July or early August 1965, before he had done any work on the claim, he was fully alert to the fact that PSC 439 might bar his claim, and thereafter he was not proceeding in good faith reliance on the map error.

Reeves understood full well the status of the land and the position of the Government with respect thereto. He was told repeatedly that he had no claim, that his continued occupancy was regarded as trespass. The information came to him from the Alaska Office of BLM, from the Director, BLM, from the Office of the Department's Solicitor in Washington, from the Regional Solicitor in Anchorage, from the Office of the Secretary of the Interior, from the Director of the Geological Survey, and from the Federal Power Commission. This information never varied, the position of the Government never changed. Reeves had no claim, no priority, and no right to be on the land.

Nevertheless, he persisted. Although discretion and advice of counsel caused him to suspend work on the claim during 1966, 1967 and 1968, he returned and resumed his activities in 1969 through 1972 without any authority whatever, and despite the fact that his request to the Solicitor for permission to do so had not been granted.

Reeves' occupancy, possession and use of the land can only be regarded as a willful and deliberate trespass undertaken without any basis whatever in law or equity.

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.

_____
Edward W. Stuebing
Administrative Judge

We concur:

_____
Newton Frishberg
Chief Administrative Judge

_____
Douglas E. Henriques
Administrative Judge