

CURTIS D. PETERS

IBLA 71-35

Decided May 9, 1972

Appeal from decision (S 3830) by Sacramento land office rejecting application for Indian allotment for national forest land.

Reversed and remanded.

Act of June 25, 1910 -- Indian Allotments on Public Domain: Generally -- Indian Allotments on Public Domain: Lands Subject to

Where an application is filed for an Indian allotment for lands within a national forest, as provided by the Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior, before passing upon the entitlement of the applicant to the lands applied for, must first have received a determination by the Secretary of Agriculture that the lands are more valuable for agricultural and grazing purposes than for the timber found thereon.

APPEARANCES: William H. Cozad, California Indian Legal Services, for appellant.

OPINION BY MR. FISHMAN

Curtis D. Peters has appealed from a decision of the Sacramento land office, Bureau of Land Management, dated August 3, 1970, which rejected his Indian allotment application, embracing approximately 80 acres of land in the S 1/2 sec. 1, T. 46 N., R. 8 W., M.D.M., within the Klamath National Forest, California. Basing its findings on information supplied by the Forest Service in a letter of June 11, 1970, the land office decision concluded:

Inasmuch as neither you nor any of your ancestors occupied the land in accordance with the provisions or the intent of the Act of February 8, 1887, as amended, the application is hereby rejected.

Appellant's application, although purportedly filed solely pursuant to the Act of February 8, 1887, 25 U.S.C. §§ 334, 336 (1970)

which contains a general authorization for allotments of public lands to Indians not living on reservations, actually falls within the purview of the Act of June 25, 1910, § 31, 25 U.S.C. § 337 (1970), a statute governing allotments to nonreservation Indians of lands within national forests. The 1910 Act provides:

The Secretary of the Interior is authorized, in his discretion, to make allotments within the national forests in conformity with the general allotment laws to any Indian occupying, living on, or having improvements on land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture who shall determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of the Interior shall cause allotment to be made as herein provided.

It is clear from the language quoted above that before reaching the question of the entitlement of the Indian applicant to an allotment of the lands desired, the Secretary of the Interior must first have received a determination from the Secretary of Agriculture that the lands "are more valuable for agricultural or grazing purposes than for the timber found thereon." [Emphasis supplied.] This requirement is specifically set forth in the regulations prescribing the procedure for Indian allotments within national forests (43 CFR, Subpart 2533 (1972)). 1/ There is no indication in the record

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1/ §§ 2533.1 and 2533.2 provide:

"§ 2533.1 Application.

An Indian who desires to apply for an allotment within a national forest under this act must submit the application to the supervisor of the particular forest affected, by whom it will be forwarded with appropriate report, through the district forester and Chief, Forest Service, to the Secretary of Agriculture, in order that he may determine whether the land applied for is more valuable for agriculture or grazing than for the timber found thereon.

"§ 2533.2 Approval.

(a) Should the Secretary of Agriculture decide that the land applied for, or any part of it, is chiefly valuable for the timber

that such a determination has been obtained. Obviously, if the Secretary of Agriculture should determine the lands to be more valuable for their timber 2/ than for agriculture or grazing, the application must be rejected on that ground alone, and there is no need to consider the question of occupancy.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is reversed and the case is remanded to the supervisor of the Klamath National Forest for a determination by the Secretary of Agriculture whether the lands involved are more valuable for agricultural or grazing purposes than for the timber found thereon.

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Frederick Fishman, Member

We concur:

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Douglas E. Henriques, Member

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Joseph W. Goss, Member

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fn.1 (cont.)

found thereon, he will transmit the application to the Secretary of the Interior and inform him of his decision in the matter. The Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture.

(b) In case the land is found to be chiefly valuable for agriculture or grazing, the Secretary of Agriculture will note that fact on the application and forward it to the Commissioner of Indian Affairs.

(c) The application must be filed with the manager of the land office for the district in which the land applied for is located. He will then forward the case to the Bureau of Indian Affairs for consideration. If the Commissioner of Indian Affairs approves the application, he will transmit it to the Bureau of Land Management for issuance of a trust patent.

2/ This standard is also set forth in 43 CFR 2533.1 (1972). The value of the timber need not necessarily be limited to its potential for lumber, but may encompass the amenities the timber adds to the land. But cf. Ross A. Neugin, A-31086 (February 2, 1970); Robert Minkey et al., A-30706 (March 28, 1967); John D. Ratterree, A-31094 (April 23, 1969).

