

Editor's note: Reconsideration denied by order dated June 28, 1974

BEVERLY SHARON LETCHWORTH

IBLA 73-229

Decided August 15, 1973

Appeal from decision of California State Office, Bureau of Land Management, rejecting application (S 3779) for Indian allotment.

Affirmed.

Indian Allotments on Public Domain: Generally

An application for an Indian allotment within a national forest made pursuant to the Act of June 25, 1910, 36 Stat. 863, 25 U.S.C. § 337 (1970), is properly rejected where the Secretary of Agriculture has determined that the land is more valuable for the timber found thereon than for agricultural or grazing purposes.

APPEARANCES: Beverly Sharon Letchworth, pro se.

OPINION BY MR. FISHMAN

Beverly Sharon Letchworth has appealed from a decision of the California State Office, Bureau of Land Management, dated December 5, 1972, rejecting her application (S 3779) for an Indian allotment embracing lands within the Klamath National Forest. 1/

Appellant's application was originally rejected by the Bureau of Land Management on September 27, 1971. On appeal the case was remanded by Order because no determination had been made by the Secretary of Agriculture, as required by section 31 of the Act of June 25, 1910, 36 Stat. 863, 25 U.S.C. § 337 (1970), whether the

1/ The record indicates the land in issue, described by metes and bounds, includes portions of sec. 2 and 3, T. 11 N., R. 6 E., H.M., California.

lands in issue were more valuable for the timber found thereon or for agricultural or grazing purposes.

On remand, a determination was made by the Forest Service, acting on behalf of the Secretary of Agriculture, "that the subject land is not more valuable for agriculture or grazing than for the timber found thereon." The State Office rejected appellant's application based upon the report of the Forest Service, and appellant filed the present appeal.

The gist of appellant's argument is addressed to the facts and criteria upon which the Forest Service made its determination. The Forest Service report states that, "the land is more valuable for the timber found thereon because of the amenities the timber adds to the lands." The report further states:

The land applied for is uncleared. There are only two small spots that are fairly level; the remainder of the land is steep with a rocky and thin soil and a madrone and oak cover. There is an understory of Douglas fir reproduction with a small amount of sawtimber size. These two small spots do not have evidence of early habitation such as fruit trees, old gardens and fences.

The only possible agricultural (agriculture includes grazing) use of land would be a small garden for personal use. Since most habitants in this remote area have their own fruit and vegetable gardens, garden produce has negligible commercial value; and produce could not be marketed at a profit. There is no commercial gardening in the area. Therefore, values for agriculture are nominal and incidental; and in no event would the land support an Indian settlement.

Although the timber found on the area has no commercial value, it does add amenities to the land in terms of aesthetics, scenic backdrop, and erosion control. It is considered that the value given the land by these amenities is superior to the incidental agricultural value. [See Curtis D. Peters, 6 IBLA 5 (1972).]

Thus we conclude that the subject land is not more valuable for agriculture or grazing than for the timber found thereon.

Section 31 of the Act of June 25, 1910 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. (Emphasis supplied.)

The applicable regulation, 43 CFR 2533.2, provides:

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

Where, as in the case at bar, the Secretary of Agriculture has determined that lands situated in a national forest are more valuable for the timber found thereon than for agricultural or grazing purposes, an application for an Indian allotment for such lands is properly rejected. See Junior Walter Daugherty, 7 IBLA 291 (1972).

As stated in Junior Walter Daugherty, *supra* at 296:

[T]he determination of the relative values of the land is to be made by the Secretary of Agriculture, not by the Secretary of the Interior. Interior can act only on the basis of Agriculture's report. The regulation plainly states that if the Secretary of Agriculture finds the land ineligible for allotment he will inform the Secretary of [the] Interior of his decision and the Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture. As the cases cited above point out, if Daugherty disagrees with Agriculture's conclusion, he must seek a remedy there, not in the Department of the Interior. (footnote omitted)

Therefore, 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.

Frederick Fishman, Member

We concur:

Douglas E. Henriques, Member

Martin Ritvo, Member

