

Editor's note: 81 I.D. 111; Appealed -- dismissed, Civ. No. 70-2328 (N.D.Cal. Feb. 6, 1975)

DONALD E. MILLER

IBLA 74-126

Decided March 11, 1974

Appeal from decision of Bureau of Land Management rejecting application S 2456 for Indian allotment for national forest land.

Affirmed.

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

With respect to an Indian allotment application on national forest land, this Department is constrained by the Act of June 25, 1910, 25 U.S.C. § 337 (1970), to accept the finding of the Department of Agriculture that the lands applied for are not more valuable for agricultural or grazing purposes than for the timber found thereon. Such a finding dictates rejection of the application by this Department.

APPEARANCES: George Forman, Esq., California Indian Legal Services, Berkeley, California, for appellant; David K. Grayson, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D. C., for appellee Bureau.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Donald E. Miller has appealed from a decision of the Bureau of Land Management of September 27, 1973, which rejected his application, S 2456, for an Indian allotment in the Six Rivers National Forest, Humboldt County, California. Appellant's application was filed February 17, 1969, and included that part of the NE 1/4 NE 1/4 sec. 9, T. 11 N., R. 6 E., H.M., California, lying west of the Klamath River. His application was filed pursuant to section 4 of the General Allotment Act, 25 U.S.C. § 334 (1970), and section 31 of the Act of June 25, 1910, 25 U.S.C. § 337 (1970), and in it he sought a parcel of some 25 acres.

By a decision entitled Donald E. Miller, 2 IBLA 309 (1971), this Board affirmed, with modification, a decision of the Bureau of Land Management which affirmed the rejection of appellant's Indian allotment application. In that decision, rendered while a suit was pending, Miller v. United States, Civil No. 70-2328 (N.D. Cal., 1973),

we found that this land was not subject to settlement and disposal due to withdrawals for powersite purposes. Subsequently, the District Court ruled that the issue of the effect of these powersite withdrawals on the subject lands should not be settled until the Department of Agriculture had made a recommendation based on the correct statutory standards for disposal of these lands. Id. at 5.

Section 31 of the Act, supra, provides for the discretionary allotment by the Secretary of the Interior of those lands within the national forests which the Secretary of Agriculture has determined "are more valuable for agriculture or grazing purposes than for timber found thereon * * *." The District Court found that the Department of Agriculture erroneously determined the land to be more valuable for "national forest purposes" than for "agricultural settlement or grazing." The Court emphasized that section 1 of the Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. § 528 (1970), under the rubric of "national forest purposes," includes considerations that go beyond the scope of the test required under 25 U.S.C. § 337.^{1/} This being so, appellant's application was remanded to the Department of the Interior for referral to the Department of Agriculture for application of the correct test.

^{1/} "As set forth in 16 U.S.C. § 528, * * * national forest purposes include, not only timber purposes, but also outdoor recreation, range, watershed, wildlife and fish purposes--considerations that go beyond the scope of the test required under 25 U.S.C. § 337, i.e., the timber." Miller v. United States, supra at 4.

The decision appealed from at present notes that upon referral, the Forest Service, U.S. Department of Agriculture, reported that the land applied for "is not more valuable for agriculture or grazing purposes than for timber found thereon." The Bureau's decision states that

* * * this finding is supported in the report, and in the earlier Forest Service report of July 30, 1969, and must be accepted by the Department of the Interior. [25] U.S.C. § 337 (1970). This alone is sufficient reason for rejecting the application.

In appealing from the Bureau's decision, appellant argues that the Bureau did not use proper criteria in denying his application and that the evidence presented in the Forest Service report does not support the Bureau's decision when the proper criterion of "substantial evidence" is used. In answer, the Bureau maintains that it properly relied on the report by the Forest Service, and that the conclusions arrived at therein were based on substantial evidence.

The District Court's decision directed the Department of the Interior to "* * * make a new determination whether plaintiffs' application should or should not be granted * * *." Miller v. United States, supra at 6. The Secretary of Agriculture thereafter "determined that the land is not more valuable for agriculture or grazing purposes than for the timber found thereon." The Act of

June 25, 1910, 25 U.S.C. § 337 (1970), clearly vests the determinations as to comparative values in the Secretary of Agriculture.

As we stated in Junior Walter Daugherty, 7 IBLA 291, 294-95 (1972), we are bound by the determination of the Secretary of Agriculture and are accordingly constrained to follow it. ^{2/} Even if we had the authority to find that this parcel was "more valuable for agricultural or grazing purposes than for the timber found thereon," we advert to our earlier decision, Donald E. Miller, 2 IBLA 309 (1971). This indicates that an Indian allotment is not allowable because an applicant is required to occupy the land when it is open to occupancy. Here the record indicates such occupancy commenced while the land was withdrawn for powersite purposes.

In any event, even where occupancy is properly initiated, and the Secretary of Agriculture makes a favorable determination, the Secretary of the Interior may reject the allotment on any rational basis including, without limitation, considerations of public policy. Curtis D. Peters, 13 IBLA 4, 80 I.D. 595 (1973). We find that disposal of the land in issue would have negative

^{2/} This is not to suggest that the Board could not ask the Department of Agriculture to reconsider a conclusory finding unsupported by data. However, in the case at bar, because of the unlawful occupancy, no useful purpose would appear to be served thereby. Of course, appellant is at liberty to endeavor to have the Forest Service of the Department of Agriculture reconsider its finding.

environmental consequences and no apparent countervailing favorable aspects. We find that such land has high recreational potential and that the public interest would be promoted by retention of the land in federal ownership. For that reason also we affirm the rejection of the application.

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
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge

