

SAMUEL C. GEORGE

IBLA 78-121

Decided May 5, 1978

Appeal from decision of the California State Office, Bureau of Land Management, rejecting application for an Indian allotment, CA 4640.

Set aside and remanded.

1. Indian Allotments on Public Domain: Classification -- Indian Allotments on Public Domain: Lands Subject to

In applying the statutory criteria to an Indian allotment application for land in a national forest under the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior is bound by the determination of the Secretary of Agriculture that the land has no value for agricultural or grazing purposes. An application will be remanded for further report from the Department of Agriculture where there is not a clear determination that the land is or is not more valuable for agriculture or grazing than for its timber.

APPEARANCES: Samuel C. George, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is brought from a decision dated November 14, 1977, by the California State Office, Bureau of Land Management (BLM), rejecting appellant's Indian allotment application CA 4640. The application was for five parcels of land (approximately 12.25 acres) within the Klamath National Forest. It was filed pursuant to Section 4 of the General Allotment Act of 1887, 25 U.S.C. § 334 (1970), and was considered under section 31 of the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), which 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 \* \* \*. 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.

The report from the Forest Service, United States Department of Agriculture, on the basis of which BLM rejected the application, stated in pertinent part:

The applied for parcels cannot be considered as agricultural in nature. The land could be expected to produce a very limited amount of agricultural products. The applied for parcels would be unable physically to grow sufficient agricultural products to make marketing economically feasible in the open market. Locally, since many of the inhabitants in this remote area have their own fruit orchards and vegetable gardens, orchard and vegetable garden produce would have negligible commercial value.

Similarly, the applied for parcels cannot be considered as grazing land. About four cows only could be sustained on the applied for parcels for six months each year. Because of snow conditions, the cows would need to be moved to other pasture for the remaining six months. In general, in the more suitable valleys in the area, it takes a minimum of 100 head of cattle to support a rural family of four at the poverty level. In no way could the parcels be considered an economic unit from the standpoint of grazing.

Therefore, values for agriculture and grazing are nominal and incidental. The land would not support an Indian family. Outside income would be needed. For the purpose of qualifying for an Indian Allotment, the land is considered to have no value for agriculture or grazing. Almost any land will support a certain number of carefully cultivated plants of some sort, but this fact does not suggest that the land is of agricultural quality. Similarly, almost any land will afford some

limited substance to some class of domestic livestock, but this does not warrant a finding that it is grazing land. Leon J. Holdge, et al., Riverside 2087, 2088, 2099 and 2098 (September 12, 1969).

The applied for land supports no significant amount of timber. Therefore, it cannot be said the land has value rendered by either the commercial value of timber or by the amenities that timber adds to the land. However, the land has value for public purposes for watershed management, recreation and scenic backdrop.

It is apparent that the applied for National Forest Lands are not valuable for agricultural or grazing purposes. Accordingly, it becomes unnecessary to determine whether the value of the timber found thereon exceeds the value of the land for agriculture or grazing purposes. [Emphasis in original.]

The report also stated that neither the applicant nor his family lived on or occupied the parcels applied for.

Appellant asserts without elaborating that the land in question is suitable for agriculture, that it is possible to make a living thereon, and that the Forest Service does not need the land.

[1] As the statute (25 U.S.C. § 337) indicates, the determination of whether the lands applied for are more valuable for agricultural or grazing purposes than for timber is made by the Department of Agriculture, not the Department of the Interior. The Department of the Interior is bound by the finding of the Department of Agriculture in that regard and cannot approve an allotment application unless the Department of Agriculture reports that the land is more valuable for agricultural or grazing purposes than for timber. Merlin W. Tripp, Sr., 21 IBLA 85 (1975); Everett E. Wilder, 15 IBLA 336, 339 (1974); Donald E. Miller (On Remand), 15 IBLA 95, 81 I.D. 111 (1974); Junior Walter Daugherty, 7 IBLA 291, 294 (1972). It is true that in those limited circumstances where the basis of a report of the Forest Service which is unfavorable to the applicant is unclear or where it appears from the face of the report that it may not be correct, this Department may request a clarification of the basis of the report from the Forest Service. Miller v. United States, Civil No. 70-2328 (N.D. Cal., 1973); Everett E. Wilder, supra at 339; Donald E. Miller, supra at 99. In the case at bar the report of the Forest Service reached the conclusion, that the "land supports no significant amount of timber." This is tantamount to finding that the land does contain some timber. The value of the land "for public purposes for watershed management, recreation and scenic backdrop" are irrelevant in terms of the statutory criteria for the Forest Service determination. The Forest Service report also finds some

agricultural values. In that context, it cannot be said from the present record that the lands are or are not more valuable for agriculture or grazing than for the timber found thereon.

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 set aside and the case remanded to obtain a definitive report from the Forest Service in terms of the statutory criteria. 1/

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Frederick Fishman  
Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

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1/ Obviously it is desirable for the Forest Service report to contain information which although not relevant to the statutory criteria as to timber, may afford us a basis for determining otherwise the appropriateness of granting the desired allotment. Curtis D. Peters, 13 IBLA 4 (1973).

