

MAUDRA JUNE UNDERWOOD LENTELL
MARVIN CURTIS SWANNER

IBLA 80-99, 80-108 1/

Decided August 20, 1980

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications N-25394, N-25497.

Affirmed.

1. Act of February 8, 1887--Indian Allotments on Public Domain: Lands Subject to

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been transferred from Federal ownership.

APPEARANCES: Maudra June Underwood Lentell, Marvin Curtis Swanner, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Maudra June Underwood Lentell and Marvin Curtis Swanner appeal from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated October 18 and 26, 1979, respectively, rejecting their

1/ IBLA 80-99 and IBLA 80-108 are hereby consolidated for purposes of decision.

Indian allotment applications filed pursuant to section 4 of the General Allotment Act of February 8, 1887, 25 U.S.C. § 334 (1976). This section provides in pertinent part:

Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in * * * [other sections of the Act].

On July 19, 1979, Maudra June Underwood Lentell filed her application for 160 acres of land located in the SW 1/4 sec. 5, T. 21 S., R. 59 E., Mount Diablo meridian, under the above-cited Act. On July 23, 1979, Marvin Curtis Swanner filed his application for 160 acres of land located in the NE 1/4 sec. 14, T. 20 S., R. 62 E., Mount Diablo meridian, under the above-cited Act. In each respective application the appellant states he/she does not occupy the land sought and he/she has placed no improvements on it.

On October 18 and 26, 1979, respectively, BLM returned each appellant's application with the following explanation: "The lands requested in said application have been transferred from federal ownership and are not subject to entry under the agricultural land laws. Therefore, the application is hereby rejected."

In the statement of reasons, each appellant contends that P.L. 85 339 cannot supersede the allotment claim of the Indians. Each cites "Choats v. Trapp, 224 U.S. 413 (1912)," ^{2/} and the Fifth Amendment to the United States Constitution.

[1] The file in IBLA 80-99 contains a patent dated December 28, 1951, issued by the United States pursuant to section 3 of the Act of June 26, 1936 (49 Stat. 1976), to the Husite Company for certain lands including those sought by appellant Maudra June Underwood Lentell, and a quitclaim deed dated February 23, 1956, by the United States to such lands. The file in IBLA 80-108 contains a patent dated November 12, 1974, from the United States to Dorothy Irene Smith under the general mining laws, R.S. 2329, 2331, as amended, 30 U.S.C. § 35 (1970), covering the land sought by appellant Marvin Curtis Swanner. Therefore, the title to these lands is not in the United States.

^{2/} We note that the Indian allotment case reported at 224 U.S. 413 is Heckman v. United States.

Section 4 of the Act of February 8, 1887, supra, authorizes the Secretary of the Interior to issue allotments to Indians, in certain instances, where the Indians have made settlement upon public lands "not otherwise appropriated." Thurman Banks, 22 IBLA 205 (1975). Appellants' applications were filed on July 19 and 23, 1979, respectively, years after the transfer of the lands in issue from Federal ownership. The Department has held where BLM's records show lands have been patented, the United States does not have title to them, and an Indian allotment application for such lands is properly rejected. Anquita L. Kluenter, A-30483 (Nov. 18, 1965).

The authority cited by appellants is not in point because the instant cases involve land which had been transferred from Federal ownership at the time appellants' applications were filed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Edward W. Stuebing
Administrative Judge

