

AVO B. HART HEDRICK

IBLA 80-809

Decided June 4, 1981

Appeal from the decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N-26766.

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: Avo B. Hart Hedrick, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Avo B. Hart Hedrick has appealed the decision of the Nevada State Office, Bureau of Land Management (BLM), dated July 11, 1980, rejecting her Indian allotment application N-26766 because the lands identified in the application have been transferred from Federal ownership and are not subject to entry under the public land laws.

Appellant filed her allotment application pursuant to section 4 of the General Allotment Act of February 8, 1887, 25 U.S.C. § 334 (1976). Section 4 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].

In her statement of reasons, appellant claims that the land records in Reno show the lands identified in her application to be in the public domain. In addition, she contends that P.L. 85-339 cannot supersede an Indian allotment claim and cites "Choate v. Trapp, 224 U.S. 413 (1912)," ^{1/} and the Fifth Amendment of the United States Constitution.

[1] 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." Pamela June Wood Finch, 49 IBLA 325 (1980); Thurman Banks, 22 IBLA 205 (1975). Appellant's application covers the NW 1/4 sec. 8, T. 21 S., R. 59 E., Mount Diablo meridian. BLM's records show that these lands were transferred from Federal ownership by patents Nos. 1133536 and 1157469. Thus the United States does not have title to them and an Indian allotment application for such lands is properly rejected. Samuel Lee Gifford, 53 IBLA 23 (1981); Robert Dale Marston, 51 IBLA 115 (1980); Maudra June Underwood Lentell, 49 IBLA 317 (1980); Anquita L. Klunter, A-30483 (Nov. 18, 1965).

The authorities cited by appellant are not on point because the land involved was transferred from Federal ownership before appellant filed her 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.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

^{1/} We note that the Indian allotment case reported at 224 U.S. 413 is Heckman v. United States. Choate v. Trapp appears at 224 U.S. 665 (1912).

