

GLADYS LEE CARDWELL GIFFORD  
BETTY ANN GIFFORD JARMAN

IBLA 81-230  
81-231

Decided June 26, 1981

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting applications for Indian allotments. N-26374 and N-26377.

Affirmed.

1. Act of Feb. 8, 1887 -- Classification and Multiple Use Act of 1964 -- Indian Allotments on Public Domain: Lands Subject to -- Public Records -- Segregation

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

APPEARANCES: Gladys Lee Cardwell Gifford and Betty Ann Gifford Jarman, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Gladys Lee Cardwell Gifford and Betty Ann Gifford Jarman have appealed from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated December 19, 1980, rejecting their applications for Indian allotments on public lands in Clark County, Nevada, N-26374 and N-26377, pursuant to section 4 of the Act of February 8, 1887, as

amended (General Allotment Act), 25 U.S.C. § 334 (1976). 1/ The rationale for the decisions was that the land was not available for appropriation under the agricultural land laws, including the General Allotment Act, supra, because the land was classified for retention in Federal ownership.

In their statements of reasons for appeal, appellants contend that rejection of their applications does not comport with "the statutes at large, the Fifth Amendment to the U.S. Constitution, and does not meet the criteria set by the U.S. Supreme Court" in Choate v. Trapp "224 U.S. 413" (1912). 2/ Before proceeding further, we note that these lands have been the subject of various actions affecting their suitability for allotment pursuant to section 4 of the General Allotment Act, supra. Item 10 of the application form states: "Public land withdrawn by Executive Orders 6910 \* \* \* of November 26, 1934, \* \* \* is not subject subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended, until classified as suitable."

Exec. Order No. 6910 (Nov. 26, 1934) ordered, subject to valid existing rights, that

[a]ll of the vacant, unreserved and unappropriated public land in the \* \* \* [State of] Nevada \* \* \* be, and it hereby is, temporarily withdrawn from settlement, location, sale, or entry and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of the Act of June 28, 1934 [as amended (Taylor Grazing Act), 43 U.S.C. § 315 (1976)] \* \* \* and for conservation and development of natural resources.

Furthermore, on November 3, 1936, all public land in Clark County, Nevada, was placed in Nevada Grazing District No. 5 pursuant to the Taylor Grazing Act, supra. 1 FR 1748 (Nov. 7, 1936).

The applicable regulation, 43 CFR 2530.0-3(c), provides that public land withdrawn by Exec. Order No. 6910 and public land within a grazing district established under the Taylor Grazing Act, supra, are not subject to settlement under section 4 of the General Allotment Act, supra, until such settlement has been authorized by classification.

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1/ On September 27, 1979, Gladys Lee Cardwell Gifford filed application N-26377 for the NE 1/4, and Betty Ann Gifford Jarman filed application N-26374 for the SE 1/4 sec. 35, T. 23 S., R. 59 E., Mount Diablo meridian, Nevada.

2/ We note that the Indian allotment case at 224 U.S. 413 (1912) is Heckman v. United States; Choate v. Trapp appears at 224 U.S. 665.

Finally, all of the public lands described in the two applications were classified for multiple use management, and the nature of the classification was published at 34 FR 14084 (Sept. 5, 1969). The notice states in relevant part:

Pursuant to the Act of September 19, 1964, \* \* \* [(Classification and Multiple Use Act of 1964), 43 U.S.C. § 1411 (1976)] \* \* \* and to the regulations in 43 CFR Parts 2410 and 2411, the public lands within the area described below are hereby classified for multiple-use management. Publication of this notice has the effect of segregating the described lands from appropriation only under the agricultural land laws (43 U.S.C. Pts. 7 and 9; 25 U.S.C. sec. 334) \* \* \* and the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws \* \* \*. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

[1] Section 4 of the General Allotment Act, 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). In the present case, the lands were "appropriated."

Publication in the Federal Register of a notice of classification pursuant to the Classification and Multiple Use Act of 1964, supra, and the regulations in 43 CFR Part 2410 (1969) (now 43 CFR Group 2400), will segregate the affected land to the extent indicated in the notice. Dorothy L. Standridge, 55 IBLA 131 (1981); Wanda Lois Lee McKinney, 53 IBLA 279 (1981); Samuel Lee Gifford, 53 IBLA 23 (1981); Robert Dale Marston, 51 IBLA 115 (1980), appeal pending, Jarman v. United States, No. CV-LV 80-426 RDF (D.Nev. filed Dec. 23, 1980). The notice published September 5, 1969, segregated the lands described from appropriation under the agricultural land laws, including section 4 of the General Allotment Act, supra.

Accordingly, BLM properly rejected the two applications which identified land classified for multiple use management. There is no violation of the rights of Indians where an allotment application is rejected because the land is not classified as suitable for allotment. Finch v. United States, 387 F.2d 13 (10th Cir. 1967), cert. denied, 390 U.S. 1012 (1968); see also Pallin v. United States, 496 F.2d 27 (9th Cir. 1974); Hopkins v. United States, 414 F.2d 464 (9th Cir. 1969).

There is no information or credible evidence to show that either of the two applicants had physically settled upon the lands applied for, and particularly, that any alleged settlement was initiated prior to the time the lands were no longer available for entry. Appellants have no rights predating either the order of withdrawal, the designation of the grazing district, or the notice of classification.

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.

Bruce R. Harris  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

