

MARVIN COY GIFFORD ET AL.

IBLA 80-329, IBLA 80-332  
80-333, IBLA 80-337  
80-340 Decided September 24, 1981

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian Allotment Applications N-26458, N-26381, N-26316, N-26345, N-26346, N-26311, and N-26315.

Affirmed.

1. 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 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

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

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), 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 segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

APPEARANCES: Marvin Coy Gifford, George Leon Lee, Deborah Carol Gregg, Millard G. Lee, and Carolyn June Sullivan Geyer, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Marvin Coy Gifford, George Leon Lee, Deborah Carol Gregg, Millard G. Lee, and Carolyn June Sullivan Geyer appeal from separate decisions all dated January 9, 1980, of the Nevada State Office, Bureau of Land Management (BLM), rejecting their Indian allotment applications on the ground that the lands requested in the applications were within an area classified for retention in Federal ownership and therefore, segregated from appropriation under the agricultural land laws, including the Act of February 8, 1887, 25 U.S.C. § 334 (1976). 1/ Section 4 of this Act 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].

All of the applications were filed in 1969 and each requested 160 acres in Clark County, Nevada. The applications claim neither occupation nor improvement of the lands. The pertinent data for each application is given in the Appendix attached hereto.

In their statements of reasons appellants contend:

The Agricultural Land Laws Can Not Supersede the Allotment Claim of Indians.

SEE Title 25 U.S.C.- 334 SEE 43 C.F.R. 2212 Part 3 SEE Choats V. Trapp 224 U.S. 413 (1912) 2/ SEE U.S.C.A. Const. Amend. 5

Each file contains a copy of a "Notice of Classification of Public Lands for Multiple Use Management" dated August 14, 1969, which, in pertinent part, reads as follows:

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) 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

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1/ Because of the similarity of issues, we have consolidated the appeals for consideration.

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

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 from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171) and the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws, with the exception contained in paragraph 3. 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.

2. The record showing the comments received following publication of a notice of proposed classification (34 F.R. 16, 24), or at the public hearing at the North Las Vegas City Hall, North Las Vegas, Nev., which was held on March 5, 1969, and other information is on file and can be examined at the Nevada Land Office. The public lands affected by this classification are located within the following described area and are shown on maps designated N-1575 in the Las Vegas District Office, Bureau of Land Management, 1859 North Decatur Boulevard, Las Vegas, Nev. 89108, and the Nevada Land Office, Bureau of Land Management Room 3104, Federal Building, 300 Booth Street, Reno, Nev. 89502.

The overall description of the area is as follows:

CLARK COUNTY

MOUNT DIABLO MERIDIAN, NEVADA

The public lands classified are wholly located within Clark County, Nev.

The area described aggregates approximately 2,074,900 acres.

[Emphasis supplied.]

Each file contains a copy of map 1575. The map shows that the lands sought in the allotment applications are within areas segregated by the multiple use classification.

[1] Publication in the Federal Register of a notice of classification pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-1413 (1976), and the regulations in 43 CFR Subparts 2410 and 2411, will segregate the affected land to the extent indicated in the notice. Robert Dale Marston, 51 IBLA 115 (1980); United States v. Rodgers, 32 IBLA 77 (1977). Publication in the Federal Register of a notice of a classification under the Classification and Multiple Use Act will segregate the lands described from other

forms of disposal unless the classification provides specifically that the lands shall remain open for certain forms of disposal. Robert Dale Marston, supra; H. E. Baldwin, 3 IBLA 71 (1971). The notice, published September 5, 1969, segregated the lands described from disposal under the agricultural land laws, including 25 U.S.C. § 334 (1976).

[2] 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). In the present case, the lands were "appropriated" when they were segregated under the notice published in the Federal Register on September 5, 1969. Furthermore, there is no evidence that either appellants or the children represented by three of the appellants have made "settlement" as required by the Act.

Appellants' applications were filed in 1979, years after the segregation of the land in issue. An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act at the time the application is filed. Thurman Banks, supra.

The authority cited by appellants is not in point because the instant cases involve land which was segregated from entry under the public land laws at the time appellants' applications were filed. The regulation cited, 43 CFR 2212 (1978), concerns miscellaneous state exchanges.

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

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Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Gail M. Fraizer  
Administrative Judge.

APPENDIX  
Mount Diablo Meridian

IBLA 80-329 N-26458 Marvin Coy Gifford NE 1/4 sec. 35,  
T. 23 S., R. 60 E.

IBLA 80-332 N-26318 George Leon Lee SW 1/4 sec. 32  
T. 20 S., R. 63 E.

IBLA 80-333 N-26316 Deborah Carol Gregg SW 1/4 sec. 28  
T. 20 S., R. 63 E.

IBLA 80-337 N-26345 Millard Glen Lee for SE 1/4 sec. 31  
daughter Donna Marie Lee O'Callahagn T. 23 S., R. 62 E.

N-26346 Millard Glen Lee for NE 1/4 sec. 31  
minor son Terry G. Lee T. 23 S., R. 62 E.

IBLA 80-340 N-26311 Carolyn June Sullivan Geyer NW 1/4 sec. 29 for minor daughter Donna  
Gayle Geyer T. 20 S., R. 63 E.

N-26315 Carolyn June Sullivan Geyer SW 1/4 sec. 29  
for herself T. 20 S., R. 63 E.

