

DON W. HILL, SR.
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IBLA 80-110

80-127 Decided September 24, 1981

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications. N-25783, N-25784, N-25932, N-25495, N-25499, and N-25500.

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 when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they were segregated from appropriation under the agricultural land laws on July 7, 1967, and Sept. 5, 1969, when the "Notice[s] of Classification of Public Lands for Multiple Use Management" were published in the Federal Register.

APPEARANCES: Don W. Hill, Sr., and Lois Sallee Kelso Shrode, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

These appeals are taken from decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting the applications N-25783, N-25784, N-25932, N-25495, N-25499, and N-25500 filed for Indian allotments on public lands in Clark County, Nevada, pursuant to section 4,

Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1976). 1/ Because of the similarity of the issues, the Board, sua sponte, has consolidated the appeals for consideration.

The applications in question were filed with the Nevada State Office in July, August, and September of 1979. On each application form the applicants checked "no" in response to the question whether the land was occupied by the applicant or the minor child and whether there were improvements on the land. In response to the question "Do you or the minor child claim a valid bona fide settlement" five applications are checked "no," and on the remaining application the question is unanswered. Each application referred to a posted notice, a copy of which was attached to the application. The notices showed that they had been recorded in Clark County and listed a receiving number and book of recordation.

BLM rejected all applications because the lands were within an area that had been classified for retention in Federal ownership. BLM explained that the classification segregates the lands from appropriation under the agricultural land laws.

In their statements of reasons appellants contend that Departmental regulations and the agricultural land laws cannot supersede the allotment claims of Indians. They cite title 25 U.S.C. § 334; 43 CFR 2212, Part 3; 2/ Choats v. Trapp, 224 U.S. 413 (1912); 3/ and U.S.C.A. Const. Amend. 5.

The lands described in two applications (N-25783 and N-25932) were classified for multiple use management in a notice of classification, dated June 27, 1967, which was published in the Federal Register on July 7, 1967. 32 FR 9995-96. The pertinent part of this notice 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, Subparts 2410 and 2411, the public lands described in paragraph 3 below are hereby classified for multiple use management.

1/ The lands are described as follows:

N-25783 SE 1/4 sec. 28, T. 19 S., R. 59 E., Mount Diablo meridian
 N-25784 NW 1/4 sec. 29, T. 24 S., R. 61 E., Mount Diablo meridian
 N-25932 SW 1/4 sec. 28, T. 19 S., R. 59 E., Mount Diablo meridian
 N-25495 NW 1/4 sec. 34, T. 20 S., R. 63 E., Mount Diablo meridian
 N-25499 NE 1/4 sec. 34, T. 20 S., R. 63 E., Mount Diablo meridian
 N-25500 SW 1/4 sec. 34, T. 20 S., R. 63 E., Mount Diablo meridian

2/ 43 CFR Subpart 2212 deals with miscellaneous state exchanges.

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

2. Publication of this notice segregates (a) the public lands described in paragraph 3 from appropriation under the agricultural land laws. (43 U.S.C., Chs. 7 and 9; 25 U.S.C., sec. 334), and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171) and the Public Land Sale Act of September 19, 1964 (43 U.S.C. 1421-27), and (b) further segregates the public land described in paragraph 4 of this notice from operation of the general mining laws (30 U.S.C. 20). Except as provided in (a) and (b) above, the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing or material sale 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 a Federal use or purpose.

3. The classified public lands are located within the Spring Mountain Planning Unit and are shown on maps, designated as N-257, which are on file in the Las Vegas District Office, Bureau of Land Management, 1859 North Decatur Boulevard, Las Vegas, Nev., and the Land Office, Bureau of Land Management, Federal Building [sic.], 300 Booth Street, Reno, Nev. The lands involved are described as follows:

* * * * *

T. 19 S., R. 59 E., Secs. 16, 17 19 to 22 inclusive; Secs. 27 to 35, inclusive.

This order specifically covers the lands sought by appellants in N-25783 and N-25932.

The lands described in the other four applications were also classified for multiple use management and the notice of classification was published in 34 FR 14084-85 (Sept. 5, 1969). The notice states:

Notice of Classification of Public Lands for Multiple-Use Management

August 14, 1969

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 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.

The description of the segregated lands includes the lands sought by appellants. The lands are depicted as part of the multiple-use classification on Clark County, Las Vegas District Classification Map No. N.1575, pertinent portions of which are included in the files.

[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 notices segregated the lands described from disposal under the agricultural land laws, including 25 U.S.C. § 334 (1976).

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 order published in the Federal Register. Furthermore, there is no evidence that appellants or the minors they filed for have made improvements on, or have occupied the lands 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.

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:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge.

