

MARVIN LEE STOKES

IBLA 80-166

Decided September 29, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N-25776.

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 have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958, and selected by the State of Nevada pursuant to that Act.

APPEARANCES: Marvin Lee Stokes, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated October 22, 1979, rejecting appellant's application for an Indian allotment on public lands in Clark County, Nevada, pursuant to section 4, Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1976). The application was filed on August 20, 1979, and requested lands described as the SW 1/4, sec. 36, T. 25 S., R. 62 E., Mount Diablo meridian.

BLM's decision rejected the application for the following reason:

Your Indian allotment application encompassed land within the Eldorado Valley, Nevada, which is affected by Public Law 85-339 and amendments thereto. The act, passed on March 6, 1958, reserves approximately 126,775 acres in Eldorado Valley for acquisition by the State of Nevada, Colorado River Resources Commission. Consequently, the land is not subject to entry under the settlement laws and the application cannot be processed.

In accordance with applicable regulations, the application is returned herewith.

In his statement of reasons appellant contends that the agricultural laws cannot supersede the allotment claims of the Indians. He cites Choats v. Trapp, 224 U.S. 413 (1912). 1/

The Act of March 6, 1958, 72 Stat. 31, authorized and directed the Secretary to segregate, from all forms of entry under the public land laws during a period of 5 years from and after the effective date of the Act, 126,775 acres of land in the State of Nevada including the lands sought by appellant herein. 2/ The State of Nevada, acting by and through the Colorado River Commission, was allowed to select lands from those segregated. The period of time for selecting the lands was extended to 10 years by the Act of October 10, 1962, 76 Stat. 804. In an application to the Secretary of the Interior dated March 1, 1968, the Colorado River Commission requested the transfer and conveyance of certain lands. These lands include the lands covered by N-25776. The filing of this application by the Colorado River Commission segregated these lands in accordance with section 3 of the Act of March 6, 1958. The lands remain segregated because apparently there has been no final disposition of the application.

[1] Section 4 of the Act of February 8, 1887, supra, authorized the Secretary of the Interior to issue allotments to Indians, in certain instances, where the Indians have made settlement upon public

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

2/ Section 3 of the Act of Mar. 6, 1958, as amended, provides:

"Sec. 3 The Commission, acting on behalf of the State, is hereby given the option, after compliance with all of the provisions of this Act and any regulations promulgated hereunder, of having patented to the State by the Secretary all or portions of the lands within the transfer area. Such option may be exercised at any time during the ten-year period of segregation established in section 2, but the filing of any application for the conveyance of title to any lands within the transfer area, if received by the Secretary from the commission prior to the expiration of such period, shall have the effect of extending the period of segregation of such lands from all forms of entry under the public land laws until such application is finally disposed of by the Secretary." (Emphasis added.)

lands "not otherwise appropriated." Thurman Banks, 22 IBLA 205 (1975). In the present case, the lands were "appropriated" when they were segregated under the Act of March 6, 1958, supra, and selected by the application of the Colorado River Commission. Furthermore, appellant has not made "settlement" as required by the Act. His application shows that he had neither occupied the land nor placed improvements on it.

The application was filed in 1979 (at which time no settlement had been initiated), 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 appellant is not in point because the instant case involves land which was segregated from all forms of entry under the public land laws at the time appellant's application was filed.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge