

LULA LORENE McCracken Slowey

IBLA 80-104

Decided September 29, 1981

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications N 25489, 25490, 25491, and 25492.

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, 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.

2. 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.

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

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

APPEARANCES: Lula Lorene McCracken Slowey, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

These appeals are taken from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications N 25489 through N 25492 for public lands in Clark County, Nevada, filed pursuant to section 4 of the Allotment Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1976).

Lula Lorene McCracken Slowey, appellant, filed four applications, for herself and three minor children, on July 30, 1979. The applications requested the four quarter sections within sec. 6, T. 21 S., R. 59 E., Mount Diablo meridian. 1/ The application indicated that the lands sought had not been occupied by the applicants, nor had improvements been placed thereon. Appellant claimed no bona fide settlement. Each application referred to a posted notice, a copy of which was attached to the application. Each notice showed that it had been recorded in Clark County and listed a reviewing number and book of recordation.

BLM's decisions rejected the applications for either or both of these reasons: (1) Some of the lands requested had been transferred from Federal ownership; (2) some of the lands had been classified for retention in Federal ownership.

1/ N-25489 for minor child, Patrick Orvil Slowey, SW 1/4
N-25490 for herself, SE 1/4
N-25491 for minor child, Penny Ilene Slowey, NW 1/4
N-25492 for minor child, Dorothy Lynn Slowey, NE 1/4

In her statements of reasons appellant contends:

The Agricultural Land Laws cannot supersede the allotment claims of Indians.

See Title 25 U.S.C. 334

See 43 CFR 2212 Part 3

See Choats v. Trapp 224 U.S. 413 (1912) [2]/

See U.S.C.A. Const. Amend. 5

The files contain copies of a "Notice of Classification of Public Lands for Multiple Use Management" dated June 27, 1967, 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, Subparts 2410 and 2411, the public lands described in paragraph 3 below are hereby classified for multiple use management.

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 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, 300 Booth Street, Reno, Nev. The lands involved are described as follows:

2/ We note that the Indian allotment case at 224 U.S. 413 is Heckman v. United States. 43 CFR Part 2212 deals with miscellaneous state exchanges.

Mount Diablo Meridian

* * * * *

T. 21 S., R. 59 E., sec. 6, lot 7,
 S 1/2 SE 1/4 SE 1/4 NW 1/4, N 1/2 NW 1/4 NE 1/4 SW 1/4,
 S 1/2 S 1/2 NE 1/4 SW 1/4, SE 1/4 SW 1/4,
 N 1/2 NW 1/4 SW 1/4 SE 1/4, S 1/2 NE 1/4 SW 1/4 SE 1/4.

[Emphasis supplied.]

[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." Thurman Banks, 22 IBLA 205 (1975). In the present case, certain of the lands were "appropriated" when they were segregated under the notice published in the Federal Register on July 7, 1967 (32 FR 9995-9996). Furthermore, neither appellant nor her minor children have made "settlement" as required by the Act.

[2] 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 155 (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 July 7, 1967, segregated the lands described from disposal under the agricultural land laws, including 25 U.S.C. § 334 (1976).

As indicated previously, BLM rejected the applications for the remainder of the lands in sec. 6 because the lands requested had been transferred from Federal ownership and were not subject to entry under the public land laws. The file contains copies of numerous patents showing that these other lands within sec. 6 have been patented to the Husite Company. 3/

3/ The description of the transferred (patented) lands, all in sec. 6, T 21 S., R 59 E., Mount Diablo meridian, is as follows, with the appropriate application seeking them noted:

N-25489 -- lot 6, NE 1/4 NE 1/4 SW 1/4, S 1/2 NW 1/4 NE 1/4 SW 1/4, N 1/2 S 1/2 NE 1/4 SW 1/4;

N-25490 -- E 1/2 SE 1/4, NW 1/4 SE 1/4, N 1/2 NE 1/4 SW 1/4 SE 1/4, S 1/2 SW 1/4 SE 1/4;

N-25491 -- lots 4, 5, 8, 9, 10, and 12, N 1/2 N 1/2 NE 1/4 NW 1/4, N 1/2 SW 1/4 NE 1/4 NW 1/4, N 1/2 SE 1/4 NW 1/4, N 1/2 S 1/2 SE 1/4 NW 1/4, S 1/2 SW 1/4 SE 1/4 NW 1/4;

N-25492 -- The copy of the patent to the Husite Company No. 1157469 describes the following lands in the NE 1/4 of sec. 6: lots 1 and 2, S 1/2 NE 1/4. The plat map shows the N 1/2 NE 1/4 designated as lots 1 and 2.

[3] In a case in which Federal officers have acted within the scope of their authority, a patent for land, once issued, passes beyond the control of the Executive Branch of the Government. United States v. State of Washington, 233 F.2d 811 (9th Cir. 1956); Sammuel Lee Gifford, 53 IBLA 23 (1981). The effect of the issuance of a land patent is to transfer the legal title from the United States. Robert Dale Marston, *supra*; Federal American Partners, 37 IBLA 330 (1978); State of Alaska, 35 IBLA 140 (1978); Basille Johnson, 21 IBLA 54 (1975). Appellant has not asserted that the patents involved were improperly issued. The Department has held where BLM's records show lands have been patented, the United States does not have title to them, and an Indian allotment application for such lands is properly rejected. Maudra June Underwood Lentell, 49 IBLA 317 (1980); Anquita L. Klunter, A-30483 (Nov. 18, 1965).

Appellant's applications were filed on July 30, 1979 (at which time no settlement had been initiated), years after the segregation of part of the lands sought and years after patents had been issued for the remainder of the lands sought. 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 lands which were either segregated from all forms of entry under the public land laws, or which had been transferred from ownership of the United States at the time appellant filed her applications.

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

