

BETSY ROMAINE BEVILL

IBLA 81-545

Decided October 6, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N-26349.

Affirmed.

1. Classification and Multiple Use Act of 1964--Indian 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: Betsy Romaine Bevill, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Betsy Romaine Bevill has appealed from a January 21, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting an application filed for 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 in question was filed with the Nevada State Office on September 18, 1979. On the application form the applicant checked "no" in response to the question whether the land was occupied by the applicant and whether there were improvements on the land. In response to the question "Do you claim a valid bona fide settlement," the applicant checked "no." The application referred to a posted notice, a copy of which was attached to the application. The notice showed that it had been recorded in Clark County and listed a receiving number and book of recordation. The attached document asserted rights based upon various statutes relating to Indians and to their citizenship rights. The applicant asserted that she is of Indian descent from the Chickasaw Tribe.

BLM rejected application N-26349 for the following reason:

The land requested in your Indian allotment application N-26349 lies within an area that has been classified for retention in federal ownership. The Notice of Classification was published in the Federal Register on September 5, 1969, thereby segregating the land from appropriation under the agricultural land laws, including the Act of February 8, 1887. Said classification is duly noted on the official Land Office records. Therefore, the application is hereby rejected.

In the notice of appeal, appellant presents the following argument: "The Agricultural Land Laws cannot supersede the Allotment claims of Indians. See Title 25 U.S.C.--334. See 43 C.F.R. 2212 part 3.[1]/ See Choats v. Trapp 224 U.S. 413 (1912) [2]/ See U.S.C.A. Const. Amend. 5." In addition, appellant argues, "Departmental regulations, classification, public laws, agricultural laws, etc., do not mean appropriated as Federal laws state. Therefore they cannot supersede the allotment claims of Indians." Appellant understands these laws to mean that any surveyed or unsurveyed lands of the United States,

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 1/ 43 CFR Subpart 2212 deals with miscellaneous state exchanges.

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

not otherwise appropriated, can be used for and filed on for the sole benefit of the Indian.

[1, 2] We shall first consider the issue which concerns BLM's rejection of the application because the requested lands lie within an area that has been classified for retention in Federal ownership. Item 10 of the application form, after asking the applicant to indicate whether there was a claim of bona fide settlement, states: "Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended until classified as suitable." 3/

There is no information or credible evidence to show that the applicant has, in fact, physically settled upon the land applied for and, particularly, that any alleged settlement was initiated prior to the first general order of withdrawal, Exec. Order No. 6910, November 26, 1934, supra. It is well established that no rights of Indians are violated by the withdrawal of public lands from settlement or by the requirement that such lands be classified pursuant to section 7, Taylor Grazing Act, 43 U.S.C. § 315f (1976), before the public lands can be allotted to an Indian under section 4 of the General allotment Act, supra. Pallin v. United States, 496 F.2d 27 (9th Cir. 1974); Hopkins v. United States, 414 F.2d 464 (9th Cir. 1969); Finch v. United States, 387 F.2d 13 (10th Cir. 1967), cert. denied, 390 U.S. 1012 (1968). Nor is there a violation of any rights of the Indian if an allotment application is denied where the land is not classified for allotment. Finch v. United States, supra.

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3/ Exec. Order No. 6910, Nov. 26, 1934, reads as follows:

"First general order of withdrawal. Subject to the conditions expressed in the Act of June 25, 1910, (36 Stat. 847), as amended by the Act of August 24, 1912 (37 Stat. 497; 43 U.S.C. 141-143, 16 U.S.C. 471), it is ordered that all of the vacant, unreserved and unappropriated public land in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, and Wyoming 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 (48 Stat. 1269; 43 U.S.C. 315-315n, 1171), and for conservation and development of natural resources. "The withdrawal hereby effected is subject to existing valid rights. "This order shall continue in full force and effect unless and until revoked by the President or by act of Congress."

Regulation 43 CFR 2530.0-3(c) provides that public land withdrawn by Exec. Order No. 6910, supra, and within a grazing district established under section 1 of the Taylor Grazing Act, 43 U.S.C. § 315 (1976), is not subject to settlement under section 4 of the General Allotment Act, supra, until such settlement has been authorized by classification.

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

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 requested by appellant.

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." 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, 43 U.S.C. §§ 1411-1413 (1976), and the regulations in 43 CFR 2461.2 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). The notice published September 5, 1969, segregated the lands described from disposal under the agricultural land laws, including 25 U.S.C. § 334 (1976).

Appellant has not shown that she occupies the land or placed improvements on it. Accordingly, there was no "settlement" as required by the Act prior to the time the lands were no longer available for entry. BLM also rejected the application because the land in question lies within an area that has been classified for retention in Federal ownership.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appeal from is affirmed.

Edward W. Stuebing

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

