

JIMMY LORN GIBSON

IBLA 80-330

Decided October 26, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N-25487.

Affirmed.

1. 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: Jimmy Lorn Gibson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision by the Nevada State Office, Bureau of Land Management (BLM), rejecting Indian allotment application N-25487 on the ground that the land requested therein had been transferred from Federal ownership and was not subject to entry under the public land laws.

The application was filed for the SE 1/4, sec. 30, T. 20 S., R. 59 E., public land 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 with the Nevada State Office, on July 30, 1979. The applicant indicated thereon that he had not occupied or placed improvements upon the land he requested. The application refers to a notice showing that it had been recorded in a Clark County book of recordation.

Appellant's statement of reasons on appeal is as follows:

This claim was not filed under the 4th section of the act of February 8, 1887 only, but also under 43 U.S. Code 190, (act of July 4, 1884 C 180 Sec. 1 Stat. 96) 43 U.S. Code (act of March 3, 1875 C 131 and 15, 18 Stat. 420) section 4 of the act of February 8, 1887 (24 Stat. L 388) as amended by the act of February 28, 1891 (26 Stat. L 794) and the act of June 25, 1910 (36 Stat. L 855 Et. Seq. where applicable and in pari materia with my tribes treaty commitments with the United States of America). Said rights being reserved to me under the Indian Citizenship Act because of my Indian Descent under the act of June 2, 1924 (43 Stat. 253). See 8 U.S.C. 1401 -- 25 U.S.C. -- 332, 334, 345, 346, 190, 337, 43 U.S.C. 190, 189, ect. It seems most of them are being overlooked. They are all recorded on this claim. See -- Choats V. Trapp 224 U.S. 413 (1912) 1/ See -- U.S.C.A. Const. Amend. 5.

These same arguments were presented and answered in Samuel Lee Gifford, 53 IBLA 23 (1981). 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.)"

There is no information or credible evidence to show that the applicant has, in fact, physically settled upon the lands 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 and 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. Also, 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 public land in

1/ The Indian allotment case reported at 224 U.S. 413 is Heckman v. United States.

Clark County, Nevada, was placed in Nevada Grazing District No. 5, by Departmental order of November 3, 1936 (1 FR 1748 (Nov. 7, 1936)).

The file contains copies of patent Nos. 1133536, 1157469, and 1157470 issued for the Husite Company for various lands including those requested by the application.

[1] 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). The effect of the issuance of a land patent is to transfer the legal title from the United States. Samuel Lee Gifford, *supra*; Robert Dale Marston, 51 IBLA 115 (1980); 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 patent involved was 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).

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

