

LITHA MURIEL BRYANT SMITH, ET AL.

IBLA 82-276, etc. 1/

Decided August 10, 1982

Consolidated appeals from decisions of Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications.

Affirmed in part; vacated in part and remanded.

1. Applications and Entries: Generally--Indian Allotments on Public Domain: Classification

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

2. Applications and Entries: Generally--Indian Allotments on Public Domain: Classification

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

3. Applications and Entries: Generally--Indian Allotments on Public Domain: Generally

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications must be rejected.

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1/ See Appendix.

4. Act of February 8, 1887--Act of September 19, 1964-- Applications and Entries: Generally--Classification and Multiple Use Act of 1964--Indian Allotments on Public Domain: Land Subject to--Public Records--Segregation

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 only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

APPEARANCES: The appellants, pro sese. (See Appendix.)

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

These appeals are taken from various decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting Indian allotment applications for lands in Clark County, Nevada (see Appendix), pursuant to section 4 of the Act of February 8, 1887 (the General Allotment Act), as amended, 25 U.S.C. §§ 334, 336 (1976).

These applications were filed with BLM between 1979 and 1981. Some of the applications were accompanied by petitions for classification of the lands as suitable for disposition under the General Allotment Act; the others were not (see Appendix). Similarly, some of the applications were accompanied by certificates of eligibility of the applicants as Indians entitled to apply for an allotment (see Appendix).

BLM rejected all of these applications because the lands applied for are within areas that have been classified for retention in Federal ownership, holding that the classification segregated the lands from appropriation under the agricultural land laws, including the General Allotment Act. These appeals followed.

[1] In cases where petitions for classification were filed along with allotment applications (see Appendix), it was incorrect for BLM to rule on the applications without first ruling on the petitions. After reviewing each petition-application to determine if it is regular on its face, BLM must first consider whether to classify the lands before it can properly evaluate the

merits of the accompanying application. 43 CFR 2450.2. Accordingly, BLM's decisions rejecting applications for allotment in these circumstances are vacated, and the cases remanded for consideration of the petitions for classification. The Board of Land Appeals has no jurisdiction to hear appeals from BLM decisions denying petitions for classification. See 43 CFR 2450.4 and 2450.5.

[2] Applications that are not accompanied by petitions for classification must be rejected, since filing such petitions is an essential prerequisite to the approval of all Indian allotment applications unless the land has already been classified as suitable for allotment. 43 CFR 2400.0-3(a), 2450.1, and 2531.2(a). Thus, the failure to file those petitions was itself grounds to deny the remaining applications (see Appendix).

[3] Applications not accompanied by a certificate of eligibility must be rejected. 43 CFR 2531.1(b). Thus, the failure to file the certificates of eligibility was itself grounds for rejection of the applications.

[4] The reasons cited by BLM in its decisions were also adequate grounds to reject the applications that were not accompanied by petitions for classification or certificates of eligibility. In the absence of a change of classification, which is customarily brought about by the filing of such petition, all of the lands in question were closed to entry for Indian allotments at the time of the applications, because they were classified for retention in Federal multiple-use management.

In section 1 of the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), Congress gave the Secretary of the Interior broad power to classify public lands as suitable for retention in Federal multiple-use management. Strickland v. Morton, 519 F.2d 467 (9th Cir. 1975). All of the lands applied for were classified by the Secretary, through his designated agent, for retention in Federal multiple-use management in the Notices of Classification published in the Federal Register on September 5, 1969 (34 FR 14084), and December 15, 1970 (35 FR 18986). Since retention of lands in Federal management necessarily requires that the United States retain ownership of the lands, the Secretary, in his classification decisions, segregates the classified lands from certain types of appropriation, specifically including appropriation under section 4 of the General Allotment Act. By so doing, he protected the lands from being taken from Federal ownership in this manner, so that it was more likely that they would be retained in Federal multiple-use management.

In Strickland v. Morton, supra at 472, the Ninth Circuit held that "the classification of lands by the Secretary as lands more suitable for retention than disposal has the effect of withdrawing those lands from homestead entry." Similarly, publication in the Federal Register of a notice of classification pursuant to the Classification and Multiple Use Act of 1964, supra, and the regulations in 43 CFR Subpart 2410, segregates the affected land from other forms of disposal to the extent indicated in the notice, unless the classification provides specifically that they will remain open for certain forms of disposal. Lula Lorene McCracken Slowey, 58 IBLA 202 (1981); Robert Dale Marston, 51 IBLA 115 (1980), and cases cited. Since the published notices

expressly segregated the lands described from disposal under section 4 of the General Allotment Act, BLM properly rejected those applications not accompanied by petitions seeking to reclassify the lands as suitable for disposition under the General Allotment Act. See also Saulque v. United States, 663 F.2d 968 (9th Cir. 1981).

In their statements of reasons, the appellants state:

The classification, rejection, and scope and effect of the decision is based upon powers derived from the Statutes, in particular 43 USC 415f, (Section 7, of the Taylor Grazing Act.) n2 43 USC 415f, is used as a facade by the Department of Interior to sterilize claims to allotments and in particular is used as a facade to sterilize the provisions of 25 US Code Sections 332, 334, and 415. Indian allotment claims taken on the public domain are taken with the same restrictions and in the same manner as for Indians residing upon reservations. (25 US Code 334) and the use Indian allotments can be used for is contained in 25 US Code Section 415. 25 US Code 415 should be read in light of U.S. Constitutional Amendment Five and the doctrine in Choate v. Trapp 224 U.S. 665, 32 S. Ct. 565, 56 L. Ed. 941.

Appellants' arguments are not persuasive. Congress has power to dispose of and make all needful rules and regulations respecting the territory belonging to the United States (U.S. Const. art. IV, § 3, cl. 2), and it has delegated to the Secretary of the Interior broad discretion to determine whether public lands should be retained in Federal ownership. At the time these applications were filed, he had already determined that the lands sought by appellants should be retained 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 decisions appealed from are affirmed in part, vacated in part and remanded.

Douglas E. Henriques  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

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2/ Section 7 of the Taylor Grazing Act is properly cited as 43 U.S.C. § 315(f) (1976).

**Editor's note: The appendix is printed sideways in the original document**  
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APPENDIX

<u>IBLA No.</u>	<u>Allotment Applicant</u>	<u>Serial No.</u>	<u>Land Description (all MDM)</u>	<u>Classification</u>	<u>Eligibility</u>	Peti- tion for Classi-	Certif- icate of Eligi-
82-276	Litha Muriel Bryant Smith	N 32477	NW1/4 sec.7, T.18S., R.63E.	yes	no		
82-336	Clarence Leon Glenn for Stephanie Ranae Glenn	N 27235	NW1/4 sec.5, T.23S., R.60E.	no	yes		
	Clarence Leon Glenn for Aaron Leon Glenn	N 27236	SW1/4 sec.5, T.23S., R.60E.	no	yes		
	Clarence Leon Glenn	N 27237	SE1/4 sec.5, T.23S., R.60E.	no	yes		
82-597	Carole E. Reed Whitaker	N 35281	SE1/4 sec.8, T.17S., R.58E.	yes	yes		
82-599	Ella Mae Jones for William Wesley Jones	N 32837	SE1/4 sec.26, T.23S., R.60E.	yes	no		
82-600	Roger Nolan Jones for Dianna Lynn Jones	N 35279	NE1/4 sec.22, T.26S., R.59E.	yes	no		
82-601	Betty Jean Harper Anderson	N 32456	SW1/4 sec.16, T.26S., R.59E.	no	no		
82-602	Drannon Wayne Moss	N 27251	NW1/4 sec.12, T.23S., R.60E.	yes	no		
82-603	James Lynn Kimball for Keplin Dawn Kimball	N 35278	SE1/4 sec.20, T.21S., R.55E.	no	no		

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82-604	Roger Nolan Jones for Lucinda Ann Jones	N 35280	SW1/4 sec.22, T.26S., R.59E.	yes	no		
82-605	James Lynn Kimball	N 32899	NW1/4 sec.14, T.24S., R.60E.	yes	no		
82-607	Delbert Lee Anderson	N 35277	NW1/4 sec.16, T.26S., R.59E.	no	no		
82-608	Rose Ellen Secondi Catron for Krystal Ann Catron	N 27776	SW1/4 sec.20, T.18S., R.59E.	no	yes		
	Rose Ellen Secondi Catron for Kristina Dawn Catron	N 27777	NW1/4 sec.20, T.18S., R.59E.	no	yes		
	Rose Ellen Secondi Catron for Timothy Wayne Catron	N 27778	SE1/4 sec.20, T.18S., R.59E.	no	yes		
	Rose Ellen Secondi Catron	N 27779	SE1/4 sec.16, T.18S., R.59E.	no	yes		

