

Appeals from decisions of the Colorado State Office, Bureau of Land Management, rejecting Indian allotment applications.

Appeals dismissed in part; decisions affirmed.

1. Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Statement of Reasons

An appeal to the Board of Land Appeals will be subject to dismissal in the exercise of the Board's discretion when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

2. Applications and Entries: Generally -- Indian Allotments on Public Domain: Lands Subject to

Where land has been withdrawn from lease or disposal under the public land laws pursuant to an Executive order, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

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

Applications for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), that are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1 are properly rejected.

4. 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 jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

APPEARANCES: Joseph Henry Edwards for applicants identified by asterisk in Appendix; remaining applicants, pro sese.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

In a consolidated decision dated May 14, 1982, the Colorado State Office, Bureau of Land Management (BLM), rejected 186 separate petition applications for Indian allotments on public lands in Rio Blanco County, Colorado, filed pursuant to section 4, General Allotment Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1976). Thereafter in three separate decisions each dated June 1, 1982, BLM rejected three additional Indian allotment applications for other public lands in the same vicinity. One hundred and eighty one applicants have filed timely notices of appeal of the decision. One appeal has since been withdrawn. 1/

[1] Before turning to the substance of the BLM decision, we find that no statement of reasons has been filed for 137 of the appeals before us. The applicable regulation states that "[i]f the notice of appeal did not include a statement of reasons for the appeal, the appellant shall file such a statement with the Board * * * within 30 days after the notice of appeal was filed." 43 CFR 4.412 (47 FR 26392 (June 18, 1982)). Failure to file a statement of reasons subjects the appeal to summary dismissal at the discretion of the Board. 43 CFR 4.402; Tagala v. Gorsuch, 411 F.2d 589 (9th Cir. 1968). A joint notice of appeal was filed with BLM by one of the applicants on behalf of himself and others on June 16, 1982. The statements of reasons were due therefore on July 16, 1982. No explanation has been given for the

1/ See Appendix for a listing of appellants and allotment application numbers. Katharine Gail (Cotton) Brune withdrew her appeal of the rejection of application C-35698. No appeals were filed by the following applicants:

Joseph Henry Edwards for minor Billie Jo Edwards (C-35489)	
Joseph Henry Edwards for minor Elizabeth Jean Edwards (C-35490)	Joseph
Henry Edwards for minor Alexis Ann Hickmann (C-35492)	
Ernest Linwood Wilson (C-35606)	
Patricia Ellen Cummings Eyler for minor Carrie Michelle Eyler	(C-35719)
Jessie Levena (Forehand) Lawson for minor Thomas Barton Lawson	
(C-35732)	
Susan Galene Post Perkins (C-35827)	
Dale Post for Randy Dale Post (C-35834)	

Therefore, the BLM decision is final as to these applications.

failure to file such statements. Accordingly, these appeals are dismissed. 2/ Thurman Banks, 22 IBLA 205 (1975).

The remaining appellants each filed a similar statement of reasons that states in relevant part:

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.) 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 of Choate vs. Trapp 224 U.S. 665, 32 S. Ct. 565, 56 L. Ed. 941.

I intend to pursue my claim under 25 years Claim No. 345-346. This decision contravenes U.S. Constitutional Amendment Five and the doctrine set forth in Choate vs. Trapp, decided in 1912 which provides rights of Indians under U.S.C.A. Constitutional Amendment Five.

[2] Section 4 of the General Allotment Act authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." In Mary Frances Stiles, 64 IBLA 361 (1982), the Board held that where an Indian allotment application is accompanied by a petition for classification of the land as suitable for disposition under the General Allotment Act, as here, it is incorrect for BLM to reject the allotment application without first ruling on the petition for classification. However, where the land sought for allotment has been segregated from all forms of disposal under the public land laws, action on the petition for classification would be a futile exercise.

With respect to all of the allotment applications appealed, BLM held that the public lands described therein were previously appropriated, and thus not available for allotment, by the oil shale withdrawal of Executive Order No. 5327 of April 15, 1930. The decision also found that no information or credible evidence had been furnished to show that any of the applicants have, in fact, physically settled upon the claimed lands or that an alleged settlement had occurred prior to the April 15, 1930, withdrawal.

Executive Order No. 5327 states that "subject to valid existing rights the deposits of oil shale, and lands containing such deposits owned by the

2/ Appeals dismissed for failure to file a statement of reasons are indicated by an asterisk (*) in the Appendix.

United States * * * are hereby, temporarily withdrawn from lease or other disposal and reserved for the purposes of investigation, examination, and classification." Departmental records show that the lands identified by the applicants were encompassed by Executive Order No. 5327 which has never been revoked. ^{3/}

An application for Indian allotment is properly rejected when filed for land not available for settlement and disposition under the General Allotment Act when the application is filed. Lewis Quentin Garver, 67 IBLA 140 (1982); Lula Lorene McCracken Slowey, 58 IBLA 202 (1981); Thurman Banks, *supra*. Accordingly, BLM properly rejected these applications because the lands have not been restored or opened to application.

[3] BLM also found that none of the applications was accompanied by a certificate from the Commissioner of Indian Affairs showing that the applicant is an Indian entitled to an allotment on his or her own behalf or on behalf of minor children as required by 43 CFR 2531.1(b). Instead, in the space provided on the application specifically requesting the number of the certificate issued by the Bureau of Indian Affairs (BIA), each applicant except one (C-35723) had entered, in whole or in part, "8 U.S.C. 1401, USCA Const. Amend. 5." As we have held before this response does not comport with the regulatory requirement. Neither the cited statute, which refers to United States citizenship, nor the United States Constitution is in issue here. The applications are also properly rejected for failure to submit the required certification from BIA. Robert Dale Marston, 51 IBLA 115 (1980); Tammy Lou Ricker Smith, 49 IBLA 251 (1980).

[4] In addition BLM records show that a portion of the lands described in application C-35770 were patented to William Hayden by patent No. 89 dated June 6, 1890. The effect of the issuance of a patent is to transfer legal title from the United States. Patented lands are therefore not subject to allotment under the General Allotment Act. Jimmy Lorn Gibson, 59 IBLA 170 (1981).

Finally, BLM has found that three of the Indian allotment applications conflict with unpatented oil shale placer mining claims. The lands identified in application C-35793 are included in the Cedar No. 1 oil shale claim which was located on October 15, 1919, and for which mineral patent application C-33452 was filed on August 8, 1981. Portions of the lands in applications C-35789 and C-35790 are included in the Portland No. 1 claim located on April 5, 1918, and recorded with BLM under serial Nos. C MC-8719 and C MC-107982. The remainder of the lands in application C-35790 fall within the Portland No. 2 claim recorded with BLM under serial Nos. C MC-8720 and C MC 107983. A valid mining claim location, as long as it is kept up in accordance with the mining law, segregates the land therein from the public domain and confers exclusive possessory rights upon the locator. Wilbur v. Krushnic, 280 U.S. 306 (1930); Harry Yukon, A-30762 (Aug. 23, 1967). Thus,

^{3/} In addition, Oil Shale Land Classification Order Colorado No. 10 classified the land as prospectively valuable oil shale lands. 47 FR 35357 (July 8, 1981).

if the identified mining claims are valid, the lands they encompass are not subject to settlement under the General Allotment Act because they are "otherwise appropriated." See Layman v. Ellis, 52 L.D. 714 (1929). If the claims were found to be abandoned or invalid, the land is still subject to the withdrawal made by Executive Order No. 5327.

The statement of reasons presented by some of the appellants is similar to those submitted to the Board by numerous other Indian allotment applicants. Appellants argue, in effect, that the Department of the Interior cannot use the agricultural land laws and Departmental regulations to take away their rights to allotments on the public domain. They suggest that their entitlement to an allotment should be read in light of the due process protection afforded Indians by the Fifth Amendment to the U.S. Constitution and the doctrine set out in Choate v. Trapp, 224 U.S. 665 (1912). Contrary to appellants' beliefs, the mere filing of an application or receipt of certificate showing an Indian to be eligible to receive an allotment under the General Allotment Act does not create a present right to have the application considered favorably. Moreover, the Act permits allotments only on unappropriated public domain lands outside of Indian reservations, and does not confer upon an Indian a vested right to an allotment. Lewis Quentin Garver, *supra* at 142, and cases cited.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Colorado State Office are affirmed.

Will A. Irwin
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

APPENDIX

Serial numbers and applicant names are displayed in landscape form in two columns in IBLA decision (82-973).

C-35474 - George L. Clay Lee
for minor Joseph Gary Lee

C-35475 - Ozella Zellene Fletcher Mears
for Brenda Gail Farley Cox

C-35476 - Travis Ector Sullivan

C-35477 - Ruby Fine Bettes Sullivan

C-35478 - James Leonard Lee

C-35479 - Carolyn J. Sullivan Lee
for Julie B. Geyer

C-35480 - Carolyn June Sullivan Lee
for minor Amber Dawn Geyer

C-35481 - George Leon Clay Lee
for minor Laren Michele Lee

C-35482 - Ozella Zellene Fletcher Mears
for Donna Cheryl Farley Edwards

C-35483 - Ozella Zellene Fletcher Mears
for Steven Dwaine Farley

C-35484 - Ozella Zellene Fletcher Mears
for Jana Darlene Farley Edwards

C-35485 - Ozella Zellene Fletcher Mears
for Roger Darrell Farley

C-35486 - Aruim Gobel Fletcher

C-35487 - Ozella Zellene Fletcher Mears

C-35488 - Delta Maye Fletcher Vasquez

C-35491 - Wanda May (Forehand) Edwards *

C-35493 - Joseph Henry Edwards *
for minor Felicia Darlene Edwards

C-35494 - Joseph Henry Edwards *
for minor Lora Jo Lea Edwards

C-35495 - Joseph Henry Edwards *
for minor Alicia Norene Edwards

C-35496 - Jason Thomas Duke *

C-35497 - Frances Jean (Edwards) Murphy *

C-35498 - George Greer Murphy *

C-35499 - Frances Jean Edwards Murphy *
for Patrick George Murphy *

C-35500 - Frances Jean Edwards Murphy *
for Michael Greer Murphy

C-35501 - Francis Jean Edwards Murphy *
for minor James Patrick Greer Murphy

C-35502 - Joseph Henry Edwards *

C-35607 - Mary John Clary Lovett
for minor Holly K. Bagwill

C-35608 - Mary John Clary Lovett
for minor Valorie J. Bagwill

- C-35609 - Mary John Clary Lovett
for minor Tammy L. Blagg
- C-35610 - James E. Lovett
- C-35611 - Mary John Clary Lovett
for minor James Chancelor C. Blagg
- C-35612 - Ruth Lavern Puckett Post
for minor Andrew James Post
- C-35613 - Ruth Lavern Puckett Post
for minor William Gordon Knestrick, Jr.
- C-35614 - Ruth Lavern Puckett Post
for minor Francis Damion Post
- C-35615 - Ruth Lavern Puckett Post
for Steven James Post
- C-35616 - Ruth Lavern Puckett Post
for minor Amy Lynn Knestrick
- C-35617 - Billy Paul Forehand *
- C-35618 - Thomas Maxwell McCurdy II *
for minor Candice Lee McCurdy
- C-35619 - Thomas Maxwell McCurdy II *
- C-35620 - Thomas Maxwell McCurdy II *
for minor John Clark McCurdy II
- C-35621 - Thomas Maxwell McCurdy II *
for minor Thomas Maxwell McCurdy III
- C-35622 - Ruth Lavern Puckett Post
for Mark Lynne Post
- C-35623 - Ellen Marie Jackson Armstrong *
- C-35624 - John Elmer Armstrong *
- C-35625 - Rhonda Gayle Mills Barnett *
- C-35626 - Mamie Clara (Shirey) Aber *
- C-35627 - Shirley Faye (Mills) Bryce
for minor Jaime Michelle Bryce *
- C-35628 - Shirley Faye (Mills) Bryce *
- C-35629 - Thomas Maxwell McCurdy II *
for Tami Lynn McCurdy
- C-35630 - Wanda Yvonne Stephens Roberson *
- C-35631 - Walter Gene Roberson *
- C-35632 - Lois Jean Roberson *
- C-35633 - Walter Gene Roberson
for minor Jerry Lynn Roberson
- C-35634 - Walter Gene Roberson
for minor Joyce Elaine Roberson *
- C-35635 - Walter Gene Roberson
- C-35636 - Edna Ruth Woodward Giza *
- C-35637 - Zygmund Orgie Giza *
- C-35638 - Zygmund Orgie Giza *
for minor Yalonda Xylvia Giza
- C-35639 - Zygmund Orgie Giza *
for minor Zygmund Wladyslaw Giza
- C-35640 - Lucille Lula (Nobles) Rogers *
- C-35641 - Hubert Clayton Rogers *
- C-35642 - Hubert Clayton Rogers *
for minor Cleamon Hubert Rogers
- C-35643 - Hubert Clayton Rogers *
for minor Waylon La Voy Rogers

C-35644 - Dorinda Jean Simpson Phillips *
 for minor Eric Eugene Phillips
 C-35645 - Dorothy Ann Windel Simpson *
 C-35646 - Bill Simpson *
 C-35647 - Mary Elizabeth Simpson Gilmore *
 for minor Melanie Elaine Holland
 C-35648 - Mary Elizabeth (Simpson) Gilmore *
 C-35649 - Gregory Scott Simpson *
 for minor Christopher Aaron Simpson
 C-35650 - Gregory Scott Simpson *
 C-35651 - Paul William Simpson *
 C-35652 - Elizabeth Dorothy Kroeling Simpson *
 C-35653 - Paul William Simpson *
 for minor Matthew Clay Simpson
 C-35654 - Ruth Ann Fowler Simpson *
 C-35655 - Dorinda Jean (Simpson) Phillips *
 C-35656 - Paul William Simpson *
 for Minor Marcie Renee Simpson
 C-35657 - James Thomas Bryant, Sr.
 C-35658 - E. R. Reece *
 for Donna Gayle (Reece) Murphy
 C-35659 - Alice Josephine (Edwards) Gruver *
 for minor Kimberly Kaye Gruver
 C-35660 - Gorgie Marie (Janeway) Hicks *
 C-35661 - Alice Josephine (Edwards) Gruver *
 for minor Crysta Lee Gruver
 C-35662 - Alice Josephine (Edwards) Gruver *
 C-35663 - Reba Carol (Keeling) Green *
 C-35664 - Reba Carol (Keeling) Green *
 for minor Michael Vaughn McGregor
 C-35665 - Lora Lavon (Keeling) Finley *
 C-35666 - Roberta Chyril (Keeling) Stone *
 C-35667 - Alice Josephine (Edwards) Gruver *
 for minor Jimmie Joe Gruver
 C-35668 - Alice Josephine (Edwards) Gruver *
 for Alice Marie (Gruver) Pool
 C-35669 - Alice Josephine (Edwards) Gruver *
 for Stanley David Gruver
 C-35670 - Alice Josephine (Edwards) Gruver *
 for minor Jopseh Benjamin Gruver
 C-35671 - Sharon Lea (Potter) Johnson *
 for minor Jennifer Lynn Johnson
 C-35672 - Sharon Lea (Potter) Johnson *
 for minor Juleigh Nicole Johnson
 C-35673 - Kim Music McCord *
 C-35674 - Sheryl Jean (Potter) McCord *
 C-35675 - Alice Laura (Trent) Edwards *
 C-35676 - Dorothy Lee (Thompson) Potter *
 C-35677 - Jerry Kenneth Potter *
 C-35678 - Drucilla Fern Hedrick Thompson *
 C-35679 - Richard Lee Thompson *

C-35680 - Richard Kenneth Potter *
for minor Kristi D'Nell Potter

C-35681 - Richard Kenneth Potter *

C-35682 - Sharon Lea (Potter) Johnson *

C-35683 - Jerry Kenneth Potter *
for minor Mitzie Gayle Potter

C-35684 - Cora Elaine Lambright Kropff *

C-35685 - Phillip Bradley Pitts *
for minor Darron Bradley Pitts

C-35686 - Phillip Bradley Pitts *
for minor Melinda Gay Pitts

C-35687 - Betty Jo Kropff Thompson *

C-35688 - Bill J. Thompson *

C-35689 - Betty Jo (Kropff) Thompson *
for Helen Elaine (Thompson) Ross

C-35690 - Betty Jo (Kropff) Thompson *
for minor Jimmy Jay Thompson

C-35691 - Betty Jo Kropff Thompson *
for minor Jason Jay Thompson

C-35692 - Betty Jo Kropff Thompson *
for minor Scott Jay Thompson

C-35693 - Betty Jo Kropff Thompson *
for minor Leslie Jo Ross

C-35694 - Maxie R. Hawk *

C-35695 - William K. Hawk *
for Cynthia Ann Hawk

C-35696 - William K. Hawk *

C-35697 - Thomas Jefferson Smith *

C-35699 - Lloyd Thomas Rogers *
for minor Mason Miles Rogers

C-35700 - Ver Geanne (Wright) Rogers *

C-35701 - Lloyd Thomas Rogers *
for minor Shannon Diree Rogers

C-35702 - Lloyd Thomas Rogers *
for minor Megan Marie Rogers

C-35703 - Lloyd Thomas Rogers *

C-35704 - Ver Geanne (Wright) Rogers *
for minor Mark Clifton Gillespie

C-35705 - Lloyd Thomas Rogers *
for Keith Allen Rogers

C-35706 - Lloyd Thomas Rogers *
for Gary Lloyd Rogers

C-35707 - Lloyd Thomas Rogers *
for minor Jon Matthew Rogers

C-35708 - Letah Kathalyn (Myers) Green *

C-35709 - E. R. Reece *

C-35710 - Phillip Bradley Pitts *

C-35711 - Patricia Ellen Cummings Eyer *

C-35712 - Ferne Revern (Paul) Cummings *

C-35713 - William Jackson Cummings *

C-35714 - William Jackson Cummings, Jr. *

C-35715 - William Jackson Cummings, Jr. *
for minor William Jackson Cummings II

C-35716 - Carolyn Janett Cummings *

C-35717 - Patricia Ellen Cummings Eyer *

C-35718 - Joseph Augustis Reece *
for minor Christfer Augustis Tietsart

C-35720 - Joseph Augustis Reece *
for minor Samuel Reece Laird

C-35721 - Joseph Augustis Reece *
for Kathryn Irene (Reece) Laird

C-35722 - Joseph Augustis Reece *
for minor Robert Wayne Byers

C-35723 - B. F. Reece *
for minor Jason Reece Agee

C-35724 - Joseph Augustis Reece *
for Joella (Reece) Byers

C-35725 - Joseph Augustis Reece *
for Janet Louise (Reece) Schulman

C-35726 - Joseph Augustis Reece *

C-35727 - Joseph Augustis Reece *
for Cindy Yvette (Reece) Tietsart

C-35728 - Jessie Lavene (Forehand) Lawson *
for Terry Lewis Lawson

C-35729 - Jessie Lavene (Forehand) Lawson *

C-35730 - Joseph Augustis Reece *
for minor Lindsey Kathryn Laird

C-35731 - Ione Josephine (Forehand) Titsworth *
for Curtis Franklin Forehand

C-35733 - Jessie Lavena (Forehand) Lawson *
for Randall Lee Lawson

C-35734 - Ione Josephine (Forehand) Titsworth *

C-35735 - Ione Josephine (Forehand) Titsworth *
for Mark Alan Titsworth

C-35736 - Ione Josephine (Forehand) Titsworth *
for minor Kelly Ann Titsworth

C-35737 - B. F. Reece *
for minor Brennon Reece Harding

C-35738 - B. F. Reece *
for minor Charles Francis Harding III

C-35739 - B. F. Reece *
for minor Laura Lynn Agee

C-35740 - B. F. Reece *
for Sherry Lynn (Reece) Harding

C-35741 - B. F. Reece *

C-35742 - B. F. Reece *
for Linda Rose (Reece) Agee

C-35743 - Phillip Bradley Pitts *
for Jennifer Marie Pitts Holt

C-35744 - Phillip Bradley Pitts *
for Deanna Lyn (Pits) Skelly

C-35745 - Phillip Bradley Pitts *
for minor Shane Bradley Pitts

C-35746 - Michael Dean DeGraff *

C-35747 - Michael Dean DeGraff *
for minor Nathaniel Greg DeGraff

C-35748 - Esther Ann (Smith) DeGraff *

C-35770 - Timothy James Bryant

C-35772 - Donald Gene Ross
for minor Donald Scott Ross
C-35773 - Donald Gene Ross
for minor Bradley Gene Ross
C-35781 - James Thomas Bryant, Jr.
C-35787 - John A. Bryant
C-35788 - Noble Chrisco
C-35789 - Wilma Jewel Pierce Goldstein
for minor Amanda Elinor Goldstein
C-35790 - Wilma Jewel Pierce Goldstein
C-35791 - Wilma Jewel Pierce Goldstein
for minor Roberta K. Goldstein
C-35792 - Wilma Jewel Pierce Goldstein
for minor Griffin K. Goldstein
C-35793 - Wilma Jewel Pierce Goldstein
for minor Sandra Kay Goldstein
C-35864 - Spencer Quinn Wilson **
C-35865 - Barbara Ann Platt Wilson **
C-35866 - Clyde Raymond Wilson **

* Appeal dismissed for failure to file statement of reasons.

** Separate BLM decisions issued June 1, 1982.

