

REGINA ANNE JONES
CLAUDIE LEE JONES

IBLA 83-458

Decided September 6, 1983

Appeal from decisions of Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications. N-36110 and N-36111.
Affirmed.

1. Act of Feb. 8, 1887 -- Applications and Entries: Generally -- Indian Allotments on Public Domain: Lands Subject to -- Public Records -- Segregation

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of March 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of BLM.

APPEARANCES: James Oscar Jones, for Regina Anne Jones and Claudie Lee Jones.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

James Oscar Jones has appealed from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated February 17 and 18, 1983, rejecting Indian allotment applications, N-36110 and N-36111, filed on behalf of his minor children, respectively, Regina Anne Jones and Claudie Lee Jones.

On April 5, 1982, Jones filed two Indian allotment applications for 160 acres of land situated in the NW 1/4 sec. 4 (N-36110) and 160 acres of land situated in the NE 1/4 sec. 4 (N-36111), all in T. 25 S., R. 63 E., Mount Diablo meridian, Clark County, Nevada, pursuant to section 4 of the General Allotment Act of February 8, 1887, as amended, 25 U.S.C. §§ 334, 336 (1976). In its February 1982 decisions, BLM rejected the applications because the land is "not subject to entry under the agricultural land laws." BLM explained that the applications lie within the Eldorado Valley, of which 126,775 acres were "reserve[d]" by the Act of March 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), as amended by, the Act of October 10, 1962, P.L. 87-784, 76 Stat. 804 (1962), for acquisition by the Colorado River Commission of the State of Nevada (Commission).

In his statement of reasons for appeal, Jones contends that rejection of the Indian allotment applications does not comport with the rights of Indians under the "statutes at large" and the "Fifth Amendment to the U.S. Constitution."

[1] Section 2 of the Act of March 6, 1958, as amended, directed the Secretary of the Interior to "segregate from all forms of entry under the public lands laws of the United States" (72 Stat. 31 (1958)), for a period of 10 years, certain land in Eldorado Valley, including "[a]11 of township 25 south, range 63 east" (72 Stat. 32 (1958)). 1/ In addition, section 3 of the Act of March 6, 1958, as amended, provided that during that 10-year period the Commission could submit an application for conveyance of any of the segregated lands, which "shall have the effect of extending the period of segregation of such lands from all forms of entry under the public land laws until such application is finally disposed of by the Secretary." 72 Stat. 32 (1958). The record, as supplemented by BLM upon the request of the Board, indicates that the Commission filed an application with the Secretary, dated March 1, 1968, for conveyance of certain land, including the west half of sec. 4, T. 25 S., R. 63 E., Mount Diablo meridian, Clark County, Nevada. Furthermore, the copy of the master title plat in the file for T. 25 S., R. 63 E., Mount Diablo meridian, Clark County, Nevada, indicates that the township remains subject to the segregation imposed under the Act of March 6, 1958, as amended, supra.

Section 4 of the General Allotment Act, supra, authorizes the Secretary to issue allotments to Indians, in certain instances, where the Indians have made settlement upon public lands "not otherwise appropriated." Dorothy L. Standridge, 55 IBLA 131 (1981). In the present case, the lands included in N-36110 were "appropriated." The lands included in N-36111 were not subject to the application filed by the Commission. However, the segregation remains noted on the master title plat. It is well established under the "notation rule" that no rights can be obtained in the public domain which has been segregated by reason of a preexisting appropriation which has been noted on the official records of BLM, until the records have been changed to reflect that the land is no longer segregated. Paiute Oil and Mining Corp., 67 IBLA 17 (1982). The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired. Accordingly, even where the segregation imposed by the Act of March 6, 1958, as amended, supra, expired on March 6, 1968, the land included in N-36111 remains segregated until the notation is deleted from the land records.

In addition to the segregation imposed under the Act of March 6, 1958, as amended, supra, the lands involved herein were withdrawn, subject to valid existing rights, 2/ by Exec. Order No. 6910 of November 26, 1934, "from settlement, location, sale or entry" and reserved for classification in accordance

1/ The township was also segregated from entry by BLM order dated Apr. 7, 1958, until Mar. 7, 1963. On Oct. 10, 1963, Public Land Order No. 3246 extended the segregative effect to Mar. 6, 1968. 28 FR 11070 (Oct. 10, 1963).

2/ In the allotment applications, Jones claims a "bona fide settlement." In the case of minor children, the requirement of settlement is satisfied by "actual settlement of the parent * * * on his own public-land allotment."

with the provision of the Act of June 28, 1934, as amended (Taylor Grazing Act), 43 U.S.C. § 315 (1976). Furthermore, on September 5, 1969, the Department published notice of classification in part of the land in Clark County, Nevada (N-1575), expressly segregating the land from appropriation under the agricultural land laws including section 4 of the General Allotment Act, supra. Accordingly, we conclude that BLM properly rejected the Indian allotment applications because the land was segregated from appropriation under section 4 of the General Allotment Act. William Milton, Jr., 59 IBLA 182 (1981); Dorothy L. Standridge, supra. It is well recognized that no Indian rights are violated where an Indian allotment application is rejected because the land is withdrawn subject to classification and is subsequently not classified as suitable for allotment. Dorothy L. Standridge, supra, and cases cited therein. Likewise, we conclude that no such rights are violated where an application is rejected for the reason cited by BLM. Ellis Eugene Hardcastle, 74 IBLA 20 (1983); William Milton Jr., supra.

Moreover, 43 CFR 2531.2(a) requires applicants for Indian allotments to file with an application, both a certificate of eligibility and a petition for classification of the land. Failure to submit either document properly results in rejection of the application. Phyllis Inez Maston Bartlett, 71 IBLA 1 (1983); Litha Muriel Bryant Smith, 66 IBLA 150 (1982); Mary Francis Stiles, 64 IBLA 361 (1982).

In the present case, there is no evidence that the applications were accompanied by either a certificate of eligibility or a petition for classification. For these reasons alone, BLM could properly have rejected the Indian allotment applications. James O. Jones, supra.

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.

Gail M. Frazier
Administrative Judge

We concur:

Douglas F. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

43 CFR 2531.1(d). However, there is nothing in the record to indicate that Jones physically settled upon the land included in his own application (N-36109) prior to its withdrawal under Exec. Order No. 6910, so as to give rise to a valid existing right. See James O. Jones, 75 IBLA 192 (1983).

