

INTERIOR BOARD OF LAND APPEALS

Lehman Perkaquanard and Mikel L. Perkaquanard

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LEHMAN PERKAQUANARD
MIKEL L. PERKAQUANARD

IBLA 93-255

Decided July 29, 1996

Appeal from decisions of the Area Manager, Rio Puerco Resource Area, Bureau of Land Management, Albuquerque, New Mexico, rejecting two Indian allotment applications, NMNM 90324 and NMNM 90325.

Affirmed.

1. Administrative Authority: Generally--Appeals: Jurisdiction--Federal Land Policy and Management Act of 1976: Land-Use Planning--Indians: Lands: Allotments on Public Domain: Classification--Indians: Lands: Allotments on Public Domain: Lands Subject To--Rules of Practice: Appeals: Jurisdiction

A BLM decision rejecting an Indian allotment application is properly affirmed where the land sought to be entered has been classified for retention in public ownership in the resource management plan promulgated pursuant to the land-use planning provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1712 (1994). The Board has no jurisdiction to review such a land-use plan or the classifications contained therein.

APPEARANCES: Lehman Perkaquanard and Mikel L. Perkaquanard, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Lehman Perkaquanard and his son Mikel L. Perkaquanard have appealed from decisions of the Area Manager, Rio Puerco Resource Area, Bureau of Land Management (BLM), Albuquerque, New Mexico, dated February 2, 1993, rejecting their requests for Indian allotments filed under section 4 of the Indian General Allotment Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1994).

In his decisions the Area Manager stated that the Federal lands identified by the Perkaquanards in their Indian allotment applications had been designated for retention by BLM under the Resource Management Plan (RMP) Update (October 1992) for the Rio Puerco Resource Area. The RMP was developed pursuant to section 202 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA). 43 U.S.C. § 1712 (1994). Accordingly, the

lands applied for were unavailable for allotment under the Indian General Allotment Act. The Perkaquanards' applications for Indian allotments were rejected, therefore, because BLM was required by the management plan to retain in Federal ownership the lands the Perkaquanards had requested.

On December 31, 1992, Lehman Perkaquanard, for himself and on behalf of his son Mikel L. Perkaquanard, aged 20, signed and submitted to BLM's New Mexico State Office in Santa Fe, New Mexico, applications for Indian allotments and petitions for Classification (Department of the Interior Form 4-1677, (May 1963)), asking that the Secretary of the Interior "have the [Federal public domain] lands described in the attached application[s] classified or otherwise made available for entry." The land identified by Lehman Perkaquanard in application NMNM 90325 comprised 160 acres in lots 11, 12, 13, and S $\frac{1}{2}$ SW $\frac{1}{4}$, sec. 10, T. 14 N., R. 6 E., New Mexico Prime Meridian, Sandoval County, New Mexico. The land identified in Mikel L. Perkaquanard's application NMNM 90324 also comprised 160 acres and was located in lots 9 and 10, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$, sec. 9, and lot 10, sec. 10, T. 14 N., R. 6 E., New Mexico Prime Meridian, Sandoval County, New Mexico.

In addition to their Petitions for Classification and Applications for Indian Allotments, the Perkaquanards supplied certifications dated December 14, 1992, and signed by the Acting Superintendent, Anadarko Agency, Bureau of Indian Affairs, Anadarko, Oklahoma, certifying that they were members of the Comanche tribe and as such were entitled to a public domain allotment under the provisions of the Indian General Allotment Act. See 43 CFR 2531.1.

In their statement of reasons (SOR) for appeal, appellants generally contend that the BLM decisions were contrary to the provisions of the Indian General Allotment Act, fail to recognize the applicants' right of appeal, 1/ and that other laws and regulations regarding use and disposition of the public lands do not modify the entitlement to allotment recognized under the Indian General Allotment Act. 2/

1/ The BLM decisions in this case did not advise the applicants of their right to appeal the decisions to this Board. By order dated Apr. 29, 1993, we held that the Board has jurisdiction of this appeal:

"Subject to certain enumerated exceptions, the relevant regulation provides that 'any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management * * * shall have a right to appeal to the Board [of Land Appeals].' 43 CFR 4.410(a). An appeal from a decision rejecting an Indian allotment application filed under Section 4 of the General Allotment Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1988), and regulations promulgated thereunder found at 43 CFR Part 2530 does not fall within any of the enumerated exceptions. Consequently, we find that this Board is vested with jurisdiction to decide this appeal."

2/ Appellants' SOR's include repeated unsubstantiated allegations that BLM's decision to reject appellants' allotment applications was motivated by longstanding "white racism" within BLM and the Department of

Section 4 of the Indian General Allotment Act provides in pertinent part that:

Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her * * *.

25 U.S.C. § 334 (1994); see 43 CFR 2530.0-3(a). Congress passed the Indian General Allotment Act in 1887 in order to encourage the assimilation of Indians into the prevailing agrarian culture and to ensure them a stake in their economic future through property ownership. See Hopkins v. United States, 414 F.2d 464, 466-67 (9th Cir. 1969).

However, the statutory framework of public land management has changed substantially since 1887. In 1934 all vacant, unreserved, and unappropriated public lands in several western states including New Mexico were withdrawn for classification "pending determination of the most useful purpose to which such land may be put." Exec. Order No. 6910, 54 I.D. 539 (1934). Section 7 of the Taylor Grazing Act authorized the Secretary of the Interior, in his discretion, to examine and classify any lands withdrawn by Exec. Order No. 6910 and subsequent Executive orders which were more valuable or suitable for uses other than grazing and to open such lands to entry and disposal under the public land laws in accordance with such classification. 43 U.S.C. § 315f (1994). Section 7 further provided that the "lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and opened to entry." 43 U.S.C. § 315f (1994); see 43 CFR 2400.0-3(a).
3/

fn. 2 (continued)

the Interior. These allegations raise matters outside the scope of the jurisdiction of this Board, and, hence, we will not address these allegations in this opinion except to point out that the rejection of an application for an Indian allotment on certain public domain lands not classified for settlement or allotment is not a rejection of an Indian's right to an allotment. That entitlement is unaffected by the rejection of the application for specific lands. See Finch v. United States, 387 F.2d 13 (10th Cir. 1967), cert. denied, 390 U.S. 1012; John E. Balmer, 71 I.D. 66, 68 (1964).

3/ This provision was the reason for the petition for classification of the lands filed by appellants. Section 7 of the Taylor Grazing Act contains a proviso giving a qualified applicant a preference right to file an application if the land is classified to allow such entry: "[U]pon the application of any applicant qualified to make entry, selection, or location, under the public-land laws, filed in the land office of the proper district, the Secretary of the Interior shall cause any tract to be classified, and such application, if allowed by the

The land classification provisions of the Taylor Grazing Act have been further modified by the land management mandates articulated by Congress in Title I and II of FLPMA. 43 U.S.C. §§ 1701-1722 (1994). In section 102(a)(1) of FLPMA, Congress declared that it is the policy of the United States that "the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest." 43 U.S.C. § 1701(a)(1) (1994). Section 202(a) of FLPMA declares that "[l]and use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses." 43 U.S.C. § 1712(a) (1994). The Rio Puerco RMP was developed and promulgated pursuant to this statutory provision and the implementing regulations at 43 CFR Subpart 1610.

The Rio Puerco RMP provides the comprehensive framework for managing the Federal public lands and for allocating resources in the Rio Puerco Resource Area, located in central and north-central New Mexico. In its February 1993 decision, BLM stated that it could not accept the Perkaquanards' applications because the land they had selected had been designated for retention in Federal ownership pursuant to the Rio Puerco RMP. The record confirms that the lands subject to the Perkaquanards' Indian allotment applications are designated as Management Class B in the RMP.^{4/} The RMP provides that: "The public lands in Management Class B have * * * been identified for retention [by the Federal government] through the RMP process" (RMP at 170). Further, the BLM decision explained that the identification of the subject lands for retention in the RMP could only be changed by amendment of the RMP which the BLM declined to undertake solely on the basis of appellants' applications.

[1] Courts have held 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 (1994), before the public lands can be allotted to an Indian under section 4 of the Indian General Allotment Act. 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); Robert Dale Marston, 51 IBLA 115, 120 (1980). This has been settled on judicial review of administrative decisions rejecting Indian allotment applications for land withdrawn by Exec. Order No. 6910 and declining to classify the land for settlement for Indian allotment. Thus, the court in Finch rejected the argument that the withdrawal of the public lands subject to the Secretary's discretionary

fn. 3 (continued)

Secretary of the Interior, shall entitle the applicant to a preference right to enter, select, or locate such lands if opened to entry as herein provided." 43 U.S.C. § 315f (1994); 43 CFR 2450.8; see Richard S. Gregory, 96 IBLA 256, 258 n.1 (1987).
^{4/} See Rio Puerco RMP (October 1992), Pocket Map Overlay.

authority to classify them for entry under the Taylor Grazing Act improperly violated the rights of Indian allotment applicants in the absence of a showing that the Departmental decision was inconsistent with the statutory mandate of the Taylor Grazing Act. Finch v. United States, *supra* at 14. ^{5/} Similarly, the Hopkins court held that Congress intended to "change existing law by conditioning entry and settlement upon the Secretary's prior classification of the land as suitable." Hopkins v. United States, *supra* at 472 (footnote omitted). A similar analysis applies to decisions rejecting applications based on a classification of the land for retention in public ownership in an RMP promulgated pursuant to the land-use planning provisions of section 202 of FLPMA. 43 U.S.C. § 1712 (1994). In this case, the lands at issue have been classified for retention in Federal ownership under the Rio Puerco RMP and, hence, appellants' applications are properly rejected. See David R. Hinkson, 131 IBLA 251 (1994); Hutchings v. BLM, 116 IBLA 55, 61-62 (1990). ^{6/}

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.

C. Randall Grant, Jr.
Administrative Judge

I concur.

James L. Byrnes
Chief Administrative Judge

^{5/} Distinguishing the entitlement to an allotment from the right to a particular tract of land, the court rejected the contention that Congress intended to place the public domain beyond discretionary control and vest an absolute right to the land of the applicant's choice. 387 F.2d at 15.

^{6/} Challenges to the classification of public lands in the land-use planning process culminating in the RMP are decided by the Director, BLM, whose decision is final for the Department. 43 CFR 1610.5-2(b). Hence, review of such planning determinations is outside the scope of this Board's jurisdiction. See Joe Trow, 119 IBLA 388, 393 (1991); Hutchings v. BLM, 116 IBLA at 61; 43 CFR 1610.5-2.