

BEULAH ALDER

IBLA 2003-261

Decided April 13, 2004

Appeal from a decision of the Arizona State Office, Bureau of Land Management, rejecting a color-of-title application. AZA-32133.

Affirmed, as Modified.

1. Color or Claim of Title: Adverse Possession

Land sought pursuant to an application under the Color of Title Act, as amended, 43 U.S.C. §§ 1068-1068b (2000), is not required to have been “public land” for any 20-year period preceding the filing of the application, during which it was held under claim or color of title by the applicant and her predecessors, but only to be “public land” at the time of application.

2. Color or Claim of Title: Applications--Color or Claim of Title:  
Description of Land

BLM properly rejects an application under the Color of Title Act, as amended, 43 U.S.C. §§ 1068-1068b (2000), when the claim or color of title of the applicant and her predecessors cannot be shown to have been initiated with a written document of transfer, from a source other than the United States, which, on its face, purported to convey the land sought. Nor will mere possession and improvement of the land by the applicant and her predecessors, in the mistaken belief that they own the land, give rise to a proper claim or color of title under the Act.

APPEARANCES: Beulah Alder, Henderson, Nevada, pro se.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Beulah Alder has appealed from a May 7, 2003, decision of the Arizona State Office, Bureau of Land Management (BLM), rejecting her color-of-title application, AZA-32133, for 160 acres of public land in southeastern Arizona (Decision).

On July 16, 2002, Alder filed her color-of-title application, seeking 160 acres of public land described as the S $\frac{1}{2}$  NE $\frac{1}{4}$  and NE $\frac{1}{4}$  SE $\frac{1}{4}$  sec. 20 and the SW $\frac{1}{4}$  NW $\frac{1}{4}$  sec. 21, T. 6 S., R. 22 E., Gila and Salt River Meridian, Graham County, Arizona (Subject Lands), under the Color of Title Act, as amended, 43 U.S.C. §§ 1068-1068b (2000).<sup>1/</sup> Her “class 1 claim” asserted that she and her predecessors-in-interest had held those lands in good faith, and in peaceful, adverse possession, under claim or color of title, for more than 20 years. See 43 CFR 2540.0-5(b). Alder traces her claim of title to the Subject Lands to an October 1936 patent, from the United States to Arthur McKuen.<sup>2/</sup> She also stated that she first learned that she did not have

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<sup>1/</sup> BLM reports that Alder owns close to 640 acres of private land in secs. 19, 20, and 29, T. 6 S., R. 22 E., Gila and Salt River Meridian, Graham County, Arizona, specifically the S $\frac{1}{2}$  NE $\frac{1}{4}$  and N $\frac{1}{2}$  SE $\frac{1}{4}$  sec. 19, W $\frac{1}{2}$  SE $\frac{1}{4}$ , S $\frac{1}{2}$  NW $\frac{1}{4}$ , and SW $\frac{1}{4}$  sec. 20, and NW $\frac{1}{4}$  sec. 29. This is confirmed by Alder, who provided a copy of a preliminary “Record of Survey” of her property, prepared by GPS Surveying and Mapping and dated Mar. 8, 2002, along with her color-of-title application. Alder also stated, at the time she submitted her application, that, when she and her late husband (Elbert Alder) originally purchased the unsurveyed private land in 1954, they were led to believe that it encompassed the Subject Lands (including the ranch headquarters and associated structures), and that the omission was later discovered when the private land was finally surveyed in March 2002. (Letter to BLM, dated July 1, 2002, at 1-2.) We note that the private survey plat places Alder’s improvements in the SW $\frac{1}{4}$  NW $\frac{1}{4}$  sec. 21, and thus almost 2,000 feet away from her parcel of private land.

<sup>2/</sup> The 1936 patent was set forth on a handwritten attachment to a Form 2540-2 (February 1991) (“Conveyances Affecting Color or Claim of Title”), which was itself attached to Alder’s color-of-title application. Alder has since provided a typewritten version of Form 2540-2, which includes much of the handwritten notations on the original attachment. Both forms are signed by a “Chief Title Examiner,” who Alder elsewhere identifies as being associated with “the Title Company,” and are dated July 12, 2002. (FAX to BLM from Marden Alder, dated Apr. 14, 2003, at 1.) The 1936 patent is said to encompass the following described lands: S $\frac{1}{2}$  NE $\frac{1}{4}$  and N $\frac{1}{2}$  SE $\frac{1}{4}$  sec. 19, W $\frac{1}{2}$  SE $\frac{1}{4}$ , S $\frac{1}{2}$  NW $\frac{1}{4}$ , and SW $\frac{1}{4}$  sec. 20, and NW $\frac{1}{4}$  sec. 29, T. 6 S., R. 22 E., Gila and Salt River Meridian, Graham County, Arizona. Both submissions  
(continued...)

“clear title” to the lands in May 2002, after her private landholding was surveyed. Finally, Alder noted that the lands were improved with a one-bedroom house, water well and windmill, water storage tanks and trough, shed, corrals, and fences.

Section 1 of the Color of Title Act provides, in relevant part:

The Secretary of the Interior \* \* \* shall, whenever it shall be shown to his satisfaction that a tract of public land [<sup>3/</sup>] has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, \* \* \* issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than \$1.25 per acre[.] [Emphasis added.]

43 U.S.C. § 1068 (2000); see 43 CFR 2540.0-5(b). A color-of-title claimant bears the burden of proving that the public land sought was held under claim or color of title by the claimant and/or her predecessors-in-interest for the requisite 20-year period, and that the other requirements of the Color of Title Act have been satisfied. Hi-Country Estates Phase II, 155 IBLA 129, 131 (2001).

In its May 2003 decision, BLM rejected Alder’s color-of-title application because she and her predecessors-in-interest had failed to hold the Subject Lands, in adverse possession under claim or color of title, for more than 20 years, since the lands had not been owned by the United States for that period of time since the initiation of Alder’s claim of title in 1936. In fact, the State of Arizona had owned the

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<sup>2/</sup> (...continued)

also set forth the entire chain of title to the Subject Lands, beginning with the 1936 patent, and then continuing up through a 1954 conveyance to Elbert and Beulah Alder and Darell and Kathryn Cluff, which is followed by a 1955 conveyance from Darell and Kathryn Cluff to Elbert and Beulah Alder.

<sup>3/</sup> The term “public land” under the Color of Title Act is not defined by either the Act or its implementing regulations, 43 CFR Subparts 2540 and 2541. However, it is now generally considered to be “vacant, unappropriated, unreserved Federal real property subject to the public[-]land laws.” Marlyn Haugen, 63 IBLA 12, 15 (1982) (quoting from Palo Verde Valley Color of Title Claims, 72 I.D. 409, 411 (1965)); see Beaver v. United States, 350 F.2d 4, 10 (9<sup>th</sup> Cir. 1965), cert. denied, 383 U.S. 937 (1966).

Subject Lands from December 11, 1931, to July 28, 1988, when they were reconveyed to the United States. (Decision at 2.)

Alder appealed timely from the State Office's May 2003 decision. In her statement of reasons (SOR) for appeal, Alder contends that BLM erred in rejecting her color-of-title application because BLM was wrong to conclude that the "United States had no interest in the[] [subject] lands for the period from 1931 to 1988 when they were conveyed to the State of Arizona." (SOR at 1.) She points to the fact that: 1) the United States patented part of the Subject Lands in sec. 20 to Arthur McEuen in 1936;<sup>4/</sup> 2) the United States accepted an easement for a trail over part of the Subject Lands from Willard Pace in 1939;<sup>5/</sup> 3) a 1965 BLM map fails to mention that any of the Subject Lands is State land;<sup>6/</sup> and 4) BLM has administered the Subject Lands, under a grazing permit issued to Alder and her husband, since 1954. *Id.* at 2. Alder thus concludes that "[i]t is inconsistent with the[se] [facts] \* \* \* to consider this land to be anything other than Federal land." *Id.* at 3, emphasis added.

[1] BLM rejected Alder's application because the Subject Lands had not been public lands for the 20-year period of possession by Alder and her predecessors. (Decision at 2). However, the Department of the Interior has consistently construed the Color of Title Act to require only that the lands sought be public land at the time of the application, not throughout the required 20-year period. *Asa V. Perkes*, 9 IBLA

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<sup>4/</sup> This patent includes Alder's private lands, not the Subject Lands. See note 2, *supra*. Had the patent included the Subject Lands, Alder would now have actual title to the Subject Lands, and, for that reason, her color-of-title application would properly have been rejected. *Loyla C. Waskul*, 102 IBLA 241, 244 (1988).

<sup>5/</sup> Alder's Form 2540-2 lists the 1939 acceptance by the United States of a trail easement from Mr. Pace, (SOR at 2), in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  sec. 9 and the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and S $\frac{1}{2}$  NW $\frac{1}{4}$  sec. 20, T. 6 S., R. 22 E., Gila and Salt River Meridian, Graham County, Arizona, across portions of Alder's private lands, not the Subject Lands.

<sup>6/</sup> The copy of the 1965 map, attached to Alder's SOR, appears to have been prepared by BLM and depicts "Allotment #13," allegedly permitted to Alder's husband, in "B.L.M. Grazing District #4." However, the map, which shows all of the land in secs. 20 and 21 within the Allotment, does not identify any land ownership in the Allotment, neither State nor Federal.

363, 367, 80 I.D. 209, 211 (1973).<sup>7/</sup> We thus cannot affirm BLM's May 2003 decision as written. Our conclusion, however, provides little comfort to Alder.

[2] The fundamental test for a successful color-of-title application is that the claimant or predecessor must have received from a source, other than the United States, what was believed to be title to the lands sought, pursuant to a specific written document of transfer, such as a deed or other conveyance, which, on its face, purported to convey the lands. Mabel M. Sherwood, 130 IBLA 249, 250 (1994); Marcus Rudnick, 8 IBLA 65, 66 (1972). The original document in the chain of title must be shown to encompass the specific land now sought under the statute, describing the land with such certainty that its boundaries may reasonably be ascertained.<sup>8/</sup>

Alder has failed this test. The chain of title on which Alder relies begins with an October 1936 patent from the United States to McEuen, a patent that does not include the Subject Lands. The chain continues with subsequent transfers between private parties, finally culminating with Alder. None of the transfers encompasses the Subject Lands. As a result, Alder cannot prevail. “[A] claim of color of title cannot run to land outside the area described in the deed on which the claim or color of title is based, even though the claimant and his predecessors in title believed in good faith that it was covered by the description in the conveyance.” Storm Brothers, A-29023 (Oct. 8, 1962); see Cloyd Mitchell, 22 IBLA 299, 302 (1975) (appellants unsuccessfully applied for public lands adjacent to their 120-acre tract of private land, relying on the mistaken belief that their chain of title to the private lands covered the public lands). In such circumstances, a color-of-title application is properly rejected.

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<sup>7/</sup> In Perkes, we held that the fact that the land sought was not public land at the time of the 1937 initiation of the appellant's claim of title, was “not a bar to the inception of the color of title claim[.]” 9 IBLA at 367, 80 I.D. at 211. We further held that the appellant had satisfied the requirement of the Color of Title Act to hold a tract of public land in adverse possession for a 20-year period, where he had held the land under claim or color of title beginning when the land was State land and continuing through its reacquisition by the United States, and thus for more than 20 years. Id. at 368, 80 I.D. at 212.

<sup>8/</sup> The requirement of certainty of description applies only to the initial document in a color-of-title claimant's chain of title. Once that is accomplished, she need show only that subsequent instruments “provide in some legally recognized manner for conveyance of the land.” Benton C. Cavin, 41 IBLA 268, 271 (1979).

Alder presents two additional arguments to bolster her color-of-title claim. First, she asserts that, by issuing to her and administering a grazing permit that covers the Subject Lands, BLM held out those lands to be owned by the United States.<sup>9/</sup> However, by raising that argument, Alder acknowledges that she believed for many years that the Subject Lands were public lands. “Possession of a Federal grazing lease by a [color-of-title] claimant constitutes acknowledgment of ownership of the land by the United States.” Joe T. Maestas, 149 IBLA 330, 334 (1999). The “good faith” requirement under the Color of Title Act demands that the claimant be unaware that the land was actually owned by the United States. “Knowledge of Federal ownership of the land in question negates the requisite good faith.” Kim C. Evans, 82 IBLA 319, 321 (1984); see 43 CFR 2540.0-5(b). Alder also suggests that her possession and improvement of the Subject Lands bolsters her case. But, the “mere possession and improvement of public land by a color-of-title applicant (or his predecessor) in the mistaken belief that he owns it” does not give rise to a proper claim of title under the Color of Title Act. Frank W. Sharp, 35 IBLA 257, 260 (1978) (citing Cloyd Mitchell, 22 IBLA at 302).

Even accepting that Alder and her husband honestly believed, when they acquired their private land in 1954, that it encompassed the Subject Lands, we simply can find no deed or other conveyance, from a source other than the United States, that specifically encompassed the Subject Lands, and thus properly initiated Alder’s claim of title, under the Color of Title Act. For this reason alone, Alder’s color-of-title application is properly rejected. Delfino J. Borrego, 113 IBLA 209, 213 (1990).

Thus, we conclude that the State Office, in its May 2003 decision, properly rejected Alder’s color-of-title application for 160 acres of public land in secs. 20 and 21, T. 6 S., R. 22 E., Gila and Salt River Meridian, Graham County, Arizona. The decision is modified, however, to provide a suitable basis for rejection.

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<sup>9/</sup> We accept Alder’s assertion that she and her husband have long held a grazing permit issued by BLM. But, we find no evidence that the Alders’ permit actually included any of the Subject Lands, or that BLM ever acted in such a way as to lead Alder or her husband reasonably to believe that any of the Subject Lands were covered by the permit. BLM’s permit for the grazing allotment would not have covered State lands, and such lands could have only become subject to the permit once they were reacquired by the United States in 1988.

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, as modified.

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H. Barry Holt  
Chief Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge