

**Editor's note: Reconsideration denied by order dated Jan. 20, 1983**

CARMEN M. WARREN

IBLA 83-37

Decided December 29, 1982

Appeal from a decision of the Albuquerque, New Mexico, District Office, Bureau of Land Management, rejecting color of title application NM-42377.

Affirmed.

1. Color or Claim of Title: Applications

A color-of-title claim requires peaceful adverse possession in good faith by a claimant or her predecessors in interest under claim or color of title for the prescribed period of time. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors and when the applicant fails to produce such a document, the application must be rejected.

2. Color or Claim of Title: Good Faith

Good faith under the Color of Title Act requires that the claimants and their predecessors in interest honestly believe themselves seised of the title, and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimants or a predecessor.

APPEARANCES: Carmen M. Warren, pro se; John H. Harrington, Office of the Solicitor, Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Carmen M. Warren appeals from a decision dated September 23, 1982, by the Albuquerque, New Mexico, District Office, Bureau of Land Management (BLM), rejecting color-of-title application NM-42377 because the applicants did not

submit any documents relating to title conveyances or tax payments. 1/ The decision also held that the applicants "knew the lands applied for were public lands and would not qualify under the Color of Title Act."

Edward N. and Carmen M. Warren (claimants) filed a class 1 application on September 15, 1980, pursuant to the Color of Title Act, 43 U.S.C. §§ 1068-1068(b) (1976), for 200 acres described as SW 1/4 NW 1/4, SW 1/4, sec. 25, T. 15 N., R. 22 E., New Mexico principal meridian, San Miguel County, New Mexico. The lands requested adjoin private lands owned by claimants. Although the application is designated as a class 1 claim, claimants also assert a right to the lands under a class 2 claim and the portion of the application relating to class 2 claims was completed accordingly. 2/

Appellant asserts a right to receive by patent the lands requested based on (1) a grazing permit, #1068, Taos Resource Area, New Mexico, held by her and her relatives for over 26 years; (2) a claim that the land has been used by her immediate family for over 100 years; and (3) an alleged right as a New Mexico native with Spanish heritage. Claimants first possessed the grazing permit in 1977. They have since sought the transfer of ownership from the United States through the Color of Title Act, offers to purchase, and a purported "Sagebrush Rebellion Act." 3/ That they "presently lease same for grazing" is the stated basis for their claim in Item 5 on their color-of-title

---

1/ In her statement of reasons, appellant asserts that she did not receive a copy of 43 CFR Part 4, Subpart E, allegedly enclosed with the decision. Failure to receive that copy of the Departmental regulations concerning the appeal process has not prejudiced her position. This appeal was timely filed and does not appear procedurally defective.

2/ Class 1 and class 2 color-of-title claims are described in 43 CFR 2540.0-5(b) as:

"(b) The claims recognized by the act will be referred to in this part as claims of class 1, and claim of class 2. A claim of class 1 is one which 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 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which 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 the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units."

3/ Claimants continually refer to a claim based on appellant's heritage under the authority of a "Sagebrush Rebellion Act." No statutory or regulatory authority governing Federal lands exists that would fit that description and purpose. Furthermore, an application under a color-of-title claim is not the place to tuck in an omnibus claim based on unrelated authority. Day v. Hickel, 481 F.2d 473, 477 (9th Cir. 1973).

application. Form 2540-1 (December 1971). They further declare in the application that they should receive a land patent or be given the opportunity to purchase the lands if possible, arguing that these lands are unwanted, worthless to others, and inefficiently managed by BLM.

[1] To be entitled to a patent under the Color of Title Act, a claimant must establish that each of the statutory requirements have been met. The statute directs the Secretary of the Interior, to issue a patent for up to 160 acres of land to a person who has in good faith peacefully and adversely possessed public lands under color of title for more than 20 years, placing valuable improvements on the land or cultivating some part thereof, or for a period commencing not later than January 1, 1901, during which they have paid taxes on the land. 43 U.S.C. § 1068 (1976).

The only color-of-title document indicated in the application is the grazing permit. Land claimed under color-of-title and occupied by one who does not establish that the land in issue was conveyed to her by an instrument which, on its face, purported to convey it, is not subject to disposal to that applicant under the Color of Title Act. Anthony T. Ash, 52 IBLA 210 (1981); Marie Lombardo, 37 IBLA 247 (1978). More specifically, a color-of-title application must be rejected where there is not shown an instrument which purports to convey the land in issue. As we said in Minnie E. Wharton, 4/ 4 IBLA 287, 294-95, 79 I.D. 6, 9-10 (1972):

It is well established that a claim or color of title must be established, if at all, by a deed or other writing which purports to pass title and which appears to be title to the land, but which is not good title. Peterson v. Weber County. 99 Ut. 281, 103 P. 2d 652, 655 (1939); \* \* \*.

As was pointed out in Pacific Coast Co. v. James, 5 Alaska 180, aff'd, 234 F. 595 (1916), "[o]ne cannot make his own title."

The purpose and intent of the Color of Title Act was to provide a legal method whereby citizens relying in good faith upon title or claim derived from some source other than the federal government, who had continued in peaceful, adverse possession of public land for the prescribed period and had made valuable improvements, or had reduced some part of the land to cultivation might acquire title thereto. Ralph Findlay, A-23522 (February 23, 1943). However, the statute was not intended to provide a means for obtaining a patent by the mere occupation of public land under a mere pretense of title or claim, or a title or claim which the claimant had knowledge or good reason to believe was not a good title. William Benton, A-23258 (November 14, 1942). See Jacob Dykstra, 2 IBLA 177 (April 22, 1971); Cf. Hugh Manning, A-28383 (August 18, 1960).

---

4/ Aff'd, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975).

Claimants have not produced an instrument or deed which purports to vest them with any ownership of these lands. The grazing permit, Form 4130-2 (January 1979), states that it "conveys no right, title or interest held by the United States in any lands or resources." All that claimants have shown, at most, is that they, and their predecessors, have used the lands under a Federal grazing permit for a period of years.

[2] Another defect revealed in the application is claimants' lack of good faith. Good faith under the Color of Title Act requires that a claimant and her predecessors honestly believe that they were invested with title. In determining whether the claimant honestly believed that she was seised with title, the Department may consider whether such belief was unreasonable in the light of the facts then actually known to her. Lawrence E. Willmorth, 64 IBLA 159 (1982). Knowledge of Federal ownership of the land in question negates the requisite good faith. 43 CFR 2540.0-5(b); United States v. Wharton, *supra*; Day v. Hickel, *supra*. It would seem unreasonable to assume good faith where claimants possess a Taylor Grazing Act lease that acknowledges ownership by the United States. See Joe I. Sanchez, 32 IBLA 228 (1977). As stated by the Court of Appeals for the Ninth Circuit:

The Board's denial of a patent was based primarily on the finding that the Whartons had knowledge of federal ownership of the land and thus were precluded from asserting a good faith color of title claim.

\* \* \* \* \*

[1] In denying the Whartons a patent the Board followed its prior rulings and practices, and conformed to the Color of Title Act as interpreted by the Secretary of the Interior and by this court in Day v. Hickel, *supra*. The Board's action was therefore neither arbitrary, capricious, nor an abuse of discretion, and was in accordance with the law.

United States v. Wharton, 514 F.2d at 408.

The application indicates that neither has the land been cultivated nor have improvements been placed thereon, and evidence has not been presented showing payment of taxes on these lands. Claimants have not established compliance with either of those requirements, alternatively necessary for the issuance of a color-of-title patent.

The obligation for proving a valid color-or-title claim is upon the claimant. 43 U.S.C. § 1068 (1976); Mable M. Farlow, 30 IBLA 320 (1977). Appellant has not shown any rational basis for her stated belief that she owns the lands in issue and is entitled under the Act to a patent thereof.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

---

Edward W. Stuebing  
Administrative Judge

We concur:

---

Douglas E. Henriques  
Administrative Judge

---

Anne Poindexter Lewis  
Administrative Judge