

RICHARD P. MONTOYA
GARRETT R. QUINTANA
VERNON O. NIELSON
JOHN G. ROMERO
MARY ANN ROMERO

IBLA 84-556, IBLA 84-557
IBLA 84-641

Decided November 29, 1984

Consolidated appeals from decisions of Albuquerque District Office, Bureau of Land Management, rejecting appellants' color-of-title applications NM 55369, NM 55433, and NM 41001.

Affirmed.

1. Color or Claim of Title: Generally -- Color or Claim of Title:
Applications

A class 1 color-of-title claim requires proof that the land 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 class 2 color-of-title claim requires proof that the land 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 Jan. 1, 1901, to the date of application, during which time the claimant has paid taxes on the land.

2. Color or Claim of Title: Improvements

In order to establish a class 1 color-of-title claim, the claimed improvements to the land must have existed on the land at the time the application was filed, and must enhance the value of the land. The lack of valuable improvements will not be fatal to the application if the applicant can prove sufficient cultivation of the land.

3. Color or Claim of Title: Cultivation

In order to establish a class 1 color-of-title claim, the land must be reduced to cultivation at the time of

application. Where there has been no effort at tillage of the land or other efforts made to produce a crop for at least 10 years, the cultivation requirement is not satisfied.

4. Color or Claim of Title: Generally -- Color or Claim of Title: Applications

An applicant under the Color of Title Act has the burden of proof to establish to the satisfaction of the Secretary of the Interior that each of the statutory conditions for purchase under the Act has been met. A failure to carry the burden of proof with respect to any one of the elements is fatal to the application.

APPEARANCES: Richard P. Montoya, Garrett R. Quintana, and Vernon O. Nielson, pro sese; Lourdes A. Martinez, Esq., Santa Fe, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

In IBLA 84-641, John G. Romero and Mary Ann Romero, have appealed a decision of the Albuquerque District Office, Bureau of Land Management (BLM), dated May 10, 1984, rejecting their color-of-title application NM 41001. In IBLA 84-557, Garrett R. Quintana, Richard P. Montoya, and Vernon O. Nielson, have appealed a decision of the Albuquerque District Office, BLM, dated April 2, 1984, rejecting their color-of-title application NM 55433. In IBLA 84-556, Richard P. Montoya, has appealed a decision of the Albuquerque District Office, BLM, dated April 2, 1984, rejecting his color-of-title application NM 55369.

By order of this Board, dated July 10, 1984, the above-referenced appeals were consolidated because it would be inappropriate to separately adjudicate appeals of diverse claimants to the same land.

Appellants have filed color-of-title applications to acquire portions of lot 24, sec. 33, T. 17 N., R. 9 E., New Mexico Principal Meridian. Lot 24 was recently resurveyed and redesignated lot 29. The Romeros filed their color-of-title application on June 12, 1980, seeking 5.90 acres contained in lot 24. The application of Quintana, Nielson, and Montoya was filed on February 2, 1983, claiming 4.01 acres contained in lot 24. Montoya's application was filed on January 12, 1983, seeking approximately 1.5 acres contained in lots 24 and 31. 1/

In its decision dated April 2, 1984, BLM rejected the application of Quintana, Nielson, and Montoya because "[n]o valuable improvements on the land are present nor has the land been reduced to cultivation in the past 10 years as required by Title 43 CFR 2540.0-5(b) for a Class 1 Claim." BLM _____

1/ In his statement of reasons, Montoya states that the subject land is only part of the 1.5-acre tract. He states that his claim only contains 16,988 square feet, rather than the full 1.5 acres listed on the color-of-title application.

also found that there were several discrepancies in the chain of title. In its decision dated April 2, 1984, BLM rejected Montoya's application due to the lack of valuable improvements to the land, and the lack of cultivation of the land. In its decision dated May 10, 1984, BLM rejected the Romeros' application under class 1 of the Color of Title Act due to the lack of valuable improvements or cultivation. The Romeros' class 2 claim was rejected because the chain of title does not reflect ownership to 1901, and because taxes were not paid on the land for the requisite period. We shall address each of appellants' claims separately.

[1] The Romeros filed their class 2 claim pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1982), which provides in part:

The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land 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, or (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land 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, 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: * * * And provided further, That no patent shall issue under the provisions of this chapter for any tract to which there is a conflicting claim adverse to that of the applicant, unless and until such claim shall have been finally adjudicated in favor of such applicant. [Emphasis in original.]

Color-of-title claims are classified as class 1 and class 2 claims. They are described in 43 CFR 2540.0-5(b) as follows:

The claims recognized by the act will be referred to in this part as claims of class 1, and claims 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.

Mary Ann Romero received the subject property from the Executrix of the Estate of Maclovia H. Romero by quitclaim deed on May 22, 1980. The abstract of title reflects a chain of title dating back to 1929. The property was

acquired by Mary Ann Romero's father, Eustaquio Romero, in 1941 from Joe McCabe by quitclaim deed. Mary Ann Romero's family paid taxes on the subject land from 1942 to 1954. The Romeros have not paid taxes on the land since 1955.

Pursuant to 43 U.S.C. § 1068 (1982) and 43 CFR 2540.0-5(b), in order to establish a class 2 color-of-title claim, an applicant must, among other requirements, initiate the claim no later than January 1, 1901, and must have paid taxes on the land during this period. Hal H. Memmott, 77 IBLA 399, 402 (1983); Estate of John C. Brinton, 71 IBLA 160, 163 (1983). In the instant case, the Romeros failed to claim or establish a chain of title to 1901, and they also failed to pay taxes throughout the requisite period. Thus, the Romeros clearly have not established a valid class 2 color-of-title claim. The Romeros argue on appeal that strict compliance with 43 CFR 2540.0-5(b) is impossible and therefore "denies the Romeros their property without due process of law or adequate compensation." The short answer to this contention is that the land is not their property, as they have acknowledged by the filing of their application to purchase it. Thus, there is no conceivable deprivation of property without due process or adequate compensation. This Board must give effect to express statutory provisions. See Jerald A. Waters, 78 IBLA 387, 388 (1984). If the statutory language is unambiguous, in the absence of a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive. See, e.g., United States v. Turkette, 452 U.S. 576, 580 (1981); Consumer Product Safety Commission v. GTE Sylvania, 447 U.S. 102, 108 (1980). The Romeros have failed to establish the unambiguous statutory and regulatory requirements, therefore, their class 2 color-of-title claim must be rejected.

Although the Romeros' color-of-title application was filed as a class 2 claim, BLM agreed to consider their claim as a class 1 claim also. In order to establish a class 1 claim, an applicant must prove that the land in question has been held in good faith and in peaceful adverse possession by the applicant, his ancestors, or grantors, under 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. E.g., 43 U.S.C. § 1068 (1982); 43 CFR 2540.0-5(b); Kim C. Evans, 82 IBLA 319 (1984); Paul Marshall, 82 IBLA 298 (1984).

[2] For improvements to qualify as valuable improvements, they must have existed on the land at the time the application was filed, and must enhance the value of the land. E.g., Malcolm C. & Helena M. Huston, 80 IBLA 53, 57 (1984); Pedro A. Suazo, 75 IBLA 212, 214 (1983); Lester & Betty Stephens, 58 IBLA 14, 19 (1981). In the instant case, the Romeros acknowledge on their application that they have made no improvements to the land. Upon field examination, BLM found that valuable improvements are not present on the land. Thus, the Romeros have failed to meet the valuable improvements requirement.

[3] The lack of a valuable improvement will not be fatal to a color-of-title application if the applicant can establish sufficient cultivation of the land. Malcolm C. & Helena M. Huston, *supra* at 58. Where the land is not cultivated at the time the application was filed, and has not been cultivated for the previous 10 years, the cultivation requirement has not been

met. Lester & Betty Stephens, *supra* at 19; Mable M. Farlow (On Reconsideration), 39 IBLA 15, 22, 86 I.D. 22, 25-26 (1979). "It cannot be said that land 'has been reduced to cultivation' where there has been no effort at tillage of the land or other efforts made to produce a crop for at least 10 years." *Id.* See Bernard R. Snyder, 70 IBLA 207 (1983).

Throughout the public land law, cultivation has been viewed as a continuing activity with necessary efforts leading to the production of crops. Malcolm C. & Helena M. Huston, *supra* at 58. In applying the cultivation requirement under the homestead laws, this Board has consistently held that there must be a breaking, planting, or seeding and tillage for a crop, to be done in such a manner as to be reasonably calculated to produce profitable results. *Id.*; Clarence Ray Mathis, 29 IBLA 150 (1977). The same standard has been applied to color-of-title cases. Malcolm C. & Helena M. Huston, *supra* at 58; Bernard R. Snyder, *supra*; Mable M. Farlow (On Reconsideration), *supra*.

In the instant case, the Romeros have offered no evidence supporting compliance with the cultivation requirement. Absent such evidence, the cultivation requirement has not been satisfied. Gladys Lomax, 75 IBLA 89, 90-91 (1983).

[4] It is well settled that applicants under the Color of Title Act have the burden of proof to establish to the Secretary of the Interior's satisfaction that each of the statutory conditions under the Act has been met. *E.g.*, Paul Marshall, *supra* at 301; Lawrence T. Abraham, 82 IBLA 285, 287 (1984). A claimant's failure to carry the burden of proof with respect to any one of the elements of proof is fatal to the application. *E.g.*, Paul Marshall, *supra* at 301; Kim C. Evans, *supra* at 323. We therefore conclude that BLM properly rejected the Romeros' application because they failed to establish the presence of either valuable improvements or cultivation on the land.

BLM rejected Montoya's class 1 application because there were no valuable improvements to the land, nor was there any cultivation of the land.

In his statement of reasons, Montoya asserts that he made improvements to the land in 1974. Montoya claims that he bladed the surface; erected a fence, a storage shed, and corrals; and kept animals on the land. 2/ Montoya states that "[a] few years later said structures were torn down because part of them posed a safety problem. * * * Since that date I have not made any further improvements."

It is well established that the valuable improvements must exist on the land at the time the application is filed and must enhance the value of the land. Malcolm C. & Helena M. Huston, *supra* at 57; Gladys Lomax, *supra* at 91; Pedro A. Suazo, *supra* at 214. Here, Montoya has admitted that the improvements did not exist at the time of application. He has made no claim that he cultivated the land. We therefore conclude that BLM properly rejected Montoya's application for lack of valuable improvements or cultivation on the land at the time of application.

2/ Montoya's assertions are supported by eight affidavits.

In IBLA 84-557, appellants Quintana, Montoya, and Nielson have appealed BLM's rejection of their class 1 claim. BLM rejected their application because no valuable improvements to the land are present, nor has the land been reduced to cultivation within the past 10 years. In their statement of reasons, appellants assert that there were improvements on the property in September 1971 when they contracted to purchase the land. Appellants state that "[w]e razed the improvements in late 1977 due to the fact that the building was unsafe. We planned to rebuild the structure, but have been delayed due to our efforts in trying to clear the title." Thus, appellants have admitted that the improvements to the property did not exist at the time of application. Appellants failed to offer any evidence of cultivation of the land. We therefore conclude that BLM properly rejected the application of Quintana, Montoya, and Nielson for lack of improvement or cultivation of the land at the time of application.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

