

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting color-of-title application ES-32854.

Affirmed in part; reversed and remanded in part.

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

The Department of the Interior cannot grant a color-of-title application for land that was patented and is no longer public land.

2. Color or Claim of Title: Generally--Color or Claim of Title:
Applications--Color or Claim of Title: Description of Land--Surveys
of the Public Lands: Omitted Land

A class 1 color-of-title claim requires good faith and peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. 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. Where the land sought is omitted land lying adjacent to a lake and the document relied upon describes the land in accordance with a Government survey which shows the land as lakeshore property, such a document on its face purports to convey the claimed land.

APPEARANCES: Kathleen A. Gaylord, Esq., St. Paul, Minnesota, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

James E. Gaylord, Jr., appeals from an April 1, 1985, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting appellant's class 1 application under the Color of Title Act, 43 U.S.C. § 1068 (1982), for lot 4 and lands east of lot 4 to Elbow Lake, sec. 15, T. 62 N., R. 1 E., fourth principal meridian, Minnesota.

The original survey of the boundaries of T. 62 N., R. 1 E., was approved by the Surveyor General on January 29, 1880. That survey shows lot 4, sec. 15, T. 62 N., R. 1 E., bordering Elbow Lake on the east. In 1981, BLM conducted a dependent resurvey of certain portions of that township, including sec. 15. The plat for that resurvey depicts the record meander lines for Elbow Lake and the actual shoreline. In a 1982 omitted lands survey, 34.02 acres between lot 4 and Elbow Lake were identified as omitted lands and designated as lot 10.

On April 21, 1983, BLM published a Notice of Filing of Plat of Survey in the Federal Register, at 48 FR 17150, indicating the plat of the omitted land survey had been accepted, and would be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on June 6, 1983. The notice provided, inter alia, that newly designated lot 10 was found to be over 50 percent upland within the purview of the Swamp Lands Act of September 28, 1850, 9 Stat. 519, and, therefore, was public land. The notice further provided that all inquiries relating to the lands subject to the resurvey should be sent to BLM on or before June 6, 1983. By letter dated April 21, 1983, appellant sought information concerning the survey, to which BLM responded by letter dated May 6, 1983, enclosing a color-of-title application.

On September 23, 1983, appellant submitted his color-of-title application supported by documents establishing chain of title to lot 4, dating back to August 25, 1957. A cover letter explained that appellant and his grantors believed, based upon the original Government survey, that lot 4 extended eastward to the shore of Elbow Lake. Moreover, appellant stated that he had maintained two recreational cabins on the lakeshore and had planted seedlings provided by the U.S. Forest Service along the western shore of Elbow Lake. The color-of-title application provides the following legal description of the lands claimed: "Lot 4, Section 15, Township 62 North, Range 1 East of the Fourth Principal Meridian, Cook County, Minnesota * * * and lands east of Lot 4 to Elbow Lake."

By letter dated September 14, 1984, BLM informed appellant that his application was being processed, but that he had failed to provide a "clear picture of what was conveyed," and requested copies of all conveyance documents beginning with the August 24, 1957, deed and following the chain of title to the present. On January 14, 1984, appellant submitted the deeds upon which his color-of-title application is based.

BLM's April 1, 1985, decision rejecting the application provided the following analysis:

The records on file at the Eastern States Office of the Bureau of Land Management show that Lot 4, of the above legal description, was transferred to the State of Minnesota as a swamp selection on August 25, 1880, approved July 21, 1883. Minnesota Patent No. 14 issued to the State of Minnesota on October 6, 1883. Because Lot 4 was disposed of in accordance with the provisions of the Swamp Land Act of September 28, 1850, 9 Stat. 519, as amended by the Swamp Lands Act of March 12, 1860, 12 Stat. 3, the land is no longer in public domain status.

Mr. Gaylord's application also included lands east of Lot 4 to Elbow Lake, now identified as Lot 10, according to the official government survey plat approved October 12, 1982. Mr. Gaylord bases his claim of ownership upon the 1880 plat of survey showing Lot 4 abutting Elbow Lake. The 1982 survey plat places Lot 4 in the same location as the 1880 plat, however, lands omitted from the 1880 plat are shown and lotted on the 1982 plat. The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands and to extend or correct the surveys of public lands as necessary, to include lands omitted from earlier surveys. Utah Power and Light Company, 6 IBLA 79 (1972).

The applicant submitted evidence of conveyancing instruments dating back to 1957 which govern Lot 4, but these instruments failed to include those lands east of Lot 4 to Elbow Lake, now identified as Lot 10. A claim of color of title must be based on a document or documents, from a source other than the United States, which on their face purport to convey title to the land applied for, but which is not good title. The mere mistaken belief that the land applied for was included in the description set forth in the claimant's deed is insufficient to establish a claim or color of title. Mable M. Farlow, 30 IBLA 320 (1977).

Therefore, because Lot 4 is no longer in public domain status and a conveyance document purporting to convey Lot 10 was not submitted, this application is rejected.

Appellant argues, in his statement of reasons for appeal, that there is a "latent ambiguity in the chain of title as to the property intended to be conveyed under the description of Lot 4." He states that he purchased the property in 1958 as "lakeshore property when there was no possible indication that any 'Lot 10' existed," and that the "prior owner reserved one acre of land out of Lot 4 which was described in the deed by reference to the lakeshore." Moreover, he claims "[a]ll existing plat maps on file with the State of Minnesota and all county assessment maps at the time showed Lot 4 as lakeshore," and "Cook County continues to assess Lot 4 by the number of feet of lakeshore frontage." He asserts that he has held lot 10 in good faith and in peaceful, adverse possession under color of title for more than 20 years in accordance with the Color of Title Act. BLM's decision, according to appellant, improperly applies the rule in Mabel M. Farlow, 30 IBLA 320, 84 I.D. 276 (1976), that an unsupported mistaken belief cannot give color of title to land beyond the actual boundaries created by the United States survey. He concludes that his belief was not unsupported, and that in accordance with the 1880 survey, the boundary of lot 4 extended to the lake. ^{1/}

^{1/} Appellant also argues on appeal that newly designated lot 10 is not omitted land. The time to have challenged the status of those lands was prior to the filing of the plat. See Jerome L. Kolstad, 93 IBLA 119 (1986). Therefore, we must consider lot 10 as omitted land.

[1] Section 1 of the Act, 43 U.S.C. § 1068 (1982), sets forth the requirements which must be met by a claimant in order to receive a patent under the Color of Title Act:

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: * * *.

A claim under part (a) of this section is defined by the Department as a claim of class 1; a claim under part (b) is defined as a claim of class 2. 43 CFR 2540.0-5(b). Thus, since appellant's application was under a claim of class 1, he must show, inter alia, that the land described in the application "has been held in good faith and in peaceful, adverse, possession by [him], his ancestors or grantors, under claim or color of title for more than twenty years."

In order to satisfy this statutory requirement, appellant must establish a claim of title of more than 20 years based on an instrument which, on its face, purports to convey title to the land described in the application. See Carmen M. Warren, 69 IBLA 347, 349 (1982); Anthony T. Ash, 52 IBLA 210 (1981); Marie Lombardo, 37 IBLA 247 (1978). The burden of establishing that the requirements of the Act have been met is clearly upon appellant. As we stated in Corrine M. Vigil, 74 IBLA 111, 112 (1983):

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1975); Homer W. Mannix, 63 I.D. 249 (1956). The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application. Lester Stephens, 58 IBLA 14 (1981).

In the instant appeal, appellant applied under the Color of Title Act for "Lot 4 and lands east of Lot 4 to Elbow Lake." BLM denied the application for lot 4 because it was transferred to the State of Minnesota under the Swamp Lands Act on October 6, 1883. However, appellant's chain of title shows the State had, in turn, patented this land to the Duluth and Iron Range Railroad Company on April 30, 1902, and, after changing ownership twice, the

land was forfeited to the State of Minnesota and purchased by Carl S. Olson pursuant to a tax sale on June 19, 1952. Olson conveyed lot 4 to Michael B. Quinn in 1957. In 1958 appellant and two others purchased lot 4, except for one acre, from Quinn. Thus, appellant traces his title to lot 4 directly to Olson. In a similar situation, the Board ruled that since "the land [applied for under the Color of Title Act] was patented by the United States to appellants' original predecessor in interest, it appears that this land is not public land subject to the Act because appellants themselves own it." Paul H. & Fay L. Sleeper, 22 IBLA 318, 320 (1975) (emphasis in original). Thus, we affirm BLM's decision insofar as it rejects appellant's application for lot 4, as that lot is depicted on the 1982 plat, since appellant appears already to own the land.

[2] As to the tract designated as lot 10 on the 1982 plat, BLM rejected appellant's color-of-title application because his documents of conveyance "failed to include those lands east of Lot 4 to Elbow Lake, now identified as Lot 10." Our resolution of this ruling turns upon whether BLM properly evaluated appellant's conveyancing documents. The critical question is whether appellant's claim of title, of more than 20 years, is based upon a document which "on its face purports to convey the claimed land." Paul Marshall, 82 IBLA 298, 301 (1984), and cases cited therein. As we said in Benton C. Cavin, 83 IBLA 107, 131 (1984): "A color-of-title claimant is necessarily limited to the land described in the documents on which his color of title is based, regardless of what land he actually occupies, since his rights are based only on occupancy under color of title." (Emphasis in original.) Thus, we concluded in that case that Cavin was entitled to land "actually described" in the original conveyance, with reference to an 1874 survey, *i.e.*, "the only official survey of record." *Id.* (emphasis in original).

This Board has considered the merits of color-of-title applications for lands declared upon resurvey to be "omitted" by BLM, and those cases provide the criteria by which to evaluate conveyancing documents in terms of whether they, on their face, purport to convey the subject land.

Important to our consideration of the instant appeal is Mabel M. Farlow, *supra*, which concerned the propriety of a BLM decision rejecting the appellant's color-of-title application for certain land west of the Deschutes River. Her chain of title began in 1904 with a patent by the United States for land described as "Lots numbered three, four and five" in sec. 12, T. 6 S., R. 13 E., Willamette Meridian, Wasco County, Oregon, "according to the 'Official Plat of the Survey.'" *Id.* at 322, 84 I.D. at 277. That official survey, approved in 1883, placed the lots between the east township boundary and the Deschutes River. BLM determined, based upon a 1972-73 dependent resurvey, that the 1882 survey, upon which the official 1883 survey plat was based, erroneously meandered the Deschutes River. The dependent resurvey placed a newly designated lot 8 east of the 1883 meander line of the Dechutes River, but actually west of the river. The appellant applied for the land shown in the resurvey as within lot 8. BLM rejected her application, stating that no conveyance in her chain of title described land west of the river; rather, "lot 5" described only land east of the river.

The Board defined the critical issue in Farlow as whether the conveyances in the appellant's chain of title could be deemed to give color of title to land west of the river within the meaning of the Color of Title Act. The Board concluded that "conveyance of a lot described according to the official survey plat and shown on that plat as bounded by a river does not give actual title to land on the other side of the river." 30 IBLA at 326, 84 I.D. at 279. ^{2/}

Similarly, Jerome L. Kolstad, 93 IBLA 119 (1986), involved a color-of-title application for omitted lands. Therein, the appellant filed an application for tract 51 which was identified by the Cadastral Survey as omitted from the original plat of survey dated June 28, 1882. The appellant's application stated that tract 51 was actually a part of lot 2 for which appellant asserted unbroken chain-of-title from a patent dated October 13, 1891. BLM rejected appellant's application because the first deed or other writing purporting to convey tract 51 was dated October 13, 1967. That deed actually described a "lot 10," and referred to a private survey approved by the Plat Commission, St. Louis County, Minnesota. The Board affirmed BLM's decision, stating that prior to the 1967 deed, the tract was simply identified as "Lot 10, North Addition to Everett Point," a description which did not, on its face, purport to convey title to the omitted lands. Id. at 122. See also Dale F. Fattig, 90 IBLA 323 (1986) (color-of-title claim limited to land which documents of title purport to convey); Paul H. & Fay L. Sleeper, 22 IBLA at 321 n.2 (chain of title under Color of Title Act did not provide descriptions purporting to convey omitted land).

Farlow and Kolstad demonstrate that the instrument of conveyance must, on its face, purport to convey title to the omitted lands subject to the color-of-title application. In the instant case, unlike Farlow and Kolstad, the documents of conveyance meet the requirements of the Color of Title Act. The August 24, 1957, quitclaim deed from Olson to Quinn describes the property conveyed as "Lot Four (4), Section Fifteen (15), Township Sixty-two (62) North, Range One (1) East, Except minerals." Both the June 21, 1958, quitclaim deed from Quinn to James E. Gaylord, Sr., Violet A. Gaylord, and James E. Gaylord, Jr., and the June 28, 1973, quitclaim deed through V. L. Van Horn transferring title from Violet A. Gaylord, James E. Gaylord, Jr., and Donna M. Gaylord, to James E. Gaylord, Jr., and Donna M. Gaylord, describe the property conveyed as follows:

All of Government Lot Four (4), Section Fifteen (15) Township Sixty-Two (62) North, Range One (1) East of the 4th P.M. except as described as follows:

^{2/} However, because the description in the deed submitted by appellant in Farlow contained a latent ambiguity, the Board ruled that extrinsic evidence could be submitted with the "color of title application to make definite the description by establishing what the parties to a conveyance meant by the language set forth in the conveyancing documents." 30 IBLA at 329, 84 I.D. at 280-81. Thus, the Board referred the case to the Hearings Division "to determine whether the deeds were based upon such other plats and records which should be read together with the deeds as creating a color of title to land west of the river." 30 IBLA at 329, 84 I.D. at 281.

Commencing at a point where the north line of said Lot 4 intersects the shore of Elbow Lake, as the place of beginning of the land to be herein conveyed, thence west on the north line of said Lot 4 a distance of 300.0 feet to a point; thence south on a line parallel with the west line of said Lot 4 a distance of 208.0 feet to a point, thence east on a line parallel with the north line of said Lot 4, to the shore of Elbow Lake; thence in a northerly direction meandering the shore of Elbow Lake to the point of beginning, containing 1.0 acre, more or less.

We find that appellant has established claim of title of more than 20 years based on an instrument which, on its face, purports to convey title to, inter alia, the land now described as lot 10. ^{3/} The June 21, 1958, and June 28, 1973, deeds clearly situate lot 4 adjacent to Elbow Lake. ^{4/} As appellant points out, the only official United States survey map, dated January 29, 1880, shows lot 4 as lakeshore property. The 1958 and 1973 deeds refer to "Government Lot 4" and the descriptions of conveyance are based upon the 1880 survey plat, the only official survey of record at those times. See Benton C. Cavin, supra at 131. In addition, appellant submitted with his statement of reasons a letter, dated May 29, 1985, from the tax assessor for Cook County, Minnesota, which refers to the "old plat map that indicates that Government Lot 4 does have lakeshore." The assessor sent appellant copies of field cards indicating lot 4 had been assessed on the basis of 1,112 feet of lake frontage.

Appellant states he did not know at the time he acquired the land in 1958 that title was in the United States, and in his color-of-title application, he asserts he did not learn that he did not have clear title to the land until April 1983. The official Government survey, indicating lot 4 was not shoreline property, was approved on October 12, 1982. Appellant inquired about the status of his property by letter of April 21, 1983, in response to the "Notice of Filing of Plat of Survey." Thus, if we treat the June 21, 1958, deed as beginning appellant's chain of title, he clearly meets the requirement of having held lot 10 in good faith and in peaceful, adverse possession under color of title for more than 20 years, as specified by the Color of Title Act. Therefore, we will reverse that part of the BLM decision

^{3/} For convenience we refer to lot 10 as being subject for the color of title claim. We recognize, however, that appellant's claim is to lot 10, less the one acre reserved. A separate color of title claim would be required for the one acre tract, as appellant is not claiming ownership at that parcel.

^{4/} The Aug. 24, 1957, quitclaim deed does not, on its face, purport to convey lot 10 within the rules applied in *Farlow and Kolstad*, and arguably would not begin appellant's 20-year chain of title. We note, however, that the description in the 1957 deed creates a latent ambiguity which could be resolved with reference to extrinsic evidence, such as other plats and records which could be read together with the deeds. Because we rule that the 1958 deed does, on its face, purport to convey the claimed land, we need not address the extrinsic evidence issue, which could be critical in the absence of the 1958 deed.

rejecting the color-of-title claim as it relates to lot 10 and remand the case to BLM. All else being regular, BLM should issue a patent for lot 10 to appellant. 5/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision is affirmed in part and reversed and remanded in part for action consistent with this opinion.

Bruce R. Harris
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

R. W. Mullen
Administrative Judge

5/ On remand appellant must provide information concerning the interest of James E. Gaylord, Sr., in the property in question. In 1958 James E. Gaylord, Sr., Violet A. Gaylord, and James E. Gaylord, Jr., took title to lot 4 as joint tenants. The next conveyance in 1973 identified Violet A. Gaylord, a single woman, and James E. Gaylord, Jr., and Donna M. Gaylord, "husband and wife" as grantors. It may be that James E. Gaylord, Sr., died and his interest passed to the other two under the joint tenancy; however, there is no evidence of that in the record.

