

WALTER GRANT KREUTER

IBLA 85-475

Decided January 29, 1987

Appeal from a decision of the California State Office, Bureau of Land Management rejecting color-of-title application CA 16649.

Affirmed.

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

An applicant for land under the Color of Title Act, 43 U.S.C. § 1068 (1982), must hold the land in good faith for 20 years, in order to obtain a patent. If an applicant admits that, during the time he claimed the land, he knew the United States owned the land, he does not have "good faith" under that Act and his application is properly rejected.

APPEARANCES: Walter Grant Kreuter, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Walter Grant Kreuter has appealed from a February 19, 1985, decision of the California State Office, Bureau of Land Management (BLM), rejecting his application for 120 acres under the Color of Title Act, 43 U.S.C. § 1068 (1982). BLM rejected the application because Kreuter lacked the requisite "good faith" required by that Act.

On December 3, 1984, Kreuter filed a class I color-of-title application CA 16649. BLM treated the application as one for 120 acres of land described as follows:

T. 22 S., R. 37 E.,  
Sec. 15, SW 1/4 SW 1/4  
Sec. 16, SE 1/4 SE 1/4  
Sec. 21, NE 1/4 NE 1/4  
Mount Diablo Meridian, California. [1]

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1/ This land description is in accord with BLM's description of the land and the depiction of the land on the master title plat. Kreuter, in a letter

In his application, Kreuter stated that he had "held the land in adverse but peaceful occupancy since 1958, planted trees, improved roads, improved water supply by frequently clearing out the rocks and growth in canyon." In addition, he stated he had cultivated 10 acres of 50 acres, the remaining acres consisting of steep rocky slopes. Kreuter also submitted a tax levy and payment record showing tax payments from 1959 through 1984, with the exception of tax year 1960, which tax receipts were apparently misplaced.

Kreuter averred that he first accompanied John A. Howard to the subject land in the fall of 1956. As Kreuter related the discussion, "[Howard] asked me if I would like to go out to a place on the desert as he needed a survey to apply for a homestead" (Statement of Reasons (SR) at 1). On July 29,

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fn. 1 (continued)

of Mar. 1, 1985, to the Regional Solicitor disputes the correctness of BLM's land description, stating that he applied for 160 acres as reflected in a survey recorded in Independence, California, Doc. 5246. Kreuter has not submitted a copy of that survey for the record.

Kreuter has submitted a Geologic Survey map of the Haiwee Reservoir quadrangle on which he has outlined the area of the "proposed patent homestead of 160 acres." The correct description of the land depicted is:

Section 15 SW 1/4 SW 1/4

Section 16 SE 1/4 SE 1/4

Section 21 N 1/2 NE 1/4.

This totals 160 acres. This is not, however, the land description contained on the color-of-title application or other documents of record.

In that no two documents of record identically describe the land sought by Kreuter, it is impossible to state with certainty the location and number of acres described. Kreuter's color-of-title application describes the land as:

"Section 15 SW 1/4 of SW 1/4

Section 16 SE 1/4 of SE 1/4

Section 21 NE 1/2 of NE 1/4." (Emphasis supplied.)

The description of land in section 21 does not adequately describe any parcel. It is likely, however, that appellant intended the description to read: N 1/2 of NE 1/4 thereby embracing 80 acres. BLM interpreted this as NE 1/4 of NE 1/4, thus encompassing 40 acres.

Another document Kreuter apparently filed with the application, the Conveyances Affecting Color or Claim of Title, has a variant description:

"Section 15 SW 1/4 of SW 1/4

16 SE 1/4 of NE 1/4

21 NE 1/2 of NE 1/4." (Emphasis supplied.)

Finally, there is an error in the "correct land description" contained in appellant's Statement of Reasons:

"T. 22 S., R. 37 E.,

Sec. 15, SW 1/4 W 1/4

Sec. 16, SE 1/4 SE 1/4

Sec. 21, NE 1/2 NE 1/4." (Emphasis supplied.)

Inasmuch as it is our view that the color-of-title application was correctly rejected regardless of the exact description of the land sought, these inconsistencies need not detain us.

1958, due to failing health, Howard offered to sell his interest in the land for \$2,000, according to Kreuter. On August 29, 1958, Howard provided him with a quit claim deed, and transferred a State of California water rights permit and the Big Surprise mining claims. Kreuter stated the quit claim deed and a survey of 40 of the 160 acres were recorded in Inyo County, California.

Kreuter contended that in 1958 he submitted this information to the Los Angeles Land Office Manager, BLM, who said he was authorized to grant 5 acres to Kreuter. "This was not enough land to cover the area of improvements, maintenance of present structures and future work to be done," according to Kreuter (SR at 2). The official then suggested Kreuter file a color-of-title application, which he filed on January 10, 1959. Kreuter states his 1959 color-of-title application was rejected due to an existing land withdrawal for the City of Los Angeles, and the "Stock Driveway," and also because of his failure to reside on the land for 20 years.

On December 3, 1984, after 26 years of occupancy, appellant states he made a "third attempt" to file a color-of-title application. This application, CA 16649, was rejected by BLM on the ground that, since he admitted that he knew ownership of the land was in the United States when he commenced occupancy he was unable to show the requisite period of good faith holding under the law. Kreuter then filed this appeal. 2/

[1] The Color of Title Act, 43 U.S.C. § 1068 (1982) 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, [class 1 color-of-title claim] 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 [class 2 color-of-title claim.]

Thus, either a class 1 or a class 2 color-of-title claim requires a period of "good faith" holding. The applicable regulation, 43 CFR 2540.0-5(b),

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2/ Kreuter does not describe a second color-of-title application. It is possible that he means he attempted to acquire the land three times, once by inquiring about a homestead entry and twice by filing color-of-title applications.

provides in pertinent part: "A claim is not held in good faith where held with knowledge that the land is owned by the United States." Thus, the "good faith" which is a prerequisite for both a class 1 and a class 2 color-of-title claim is a term of art. It requires that the applicant or his predecessors in interest believe that he has good title as against the world (including the United States). By definition one does not have good faith under the Act when one admits knowing the United States owns the claimed land.

Appellant contends he has held this land "in good faith, peacefully and adversely, improving the water, buildings and road with hand tools: mattox, axe, shovel, rake hammer etc., in extreme heat cold, rain, snow and hail." He further states "I have been beset by vandals, the wiles of nature and illness with the nearest phone 3 miles away. I have spent approximately \$20,000 not including transportation and taxes." Yet, appellant admits that Howard informed him on August 10, 1958, that he did not have good title to the land. 3/

In support of his assertion of good faith, appellant states:

For the record, I believe all land holdings belong to the domain of the U.S.A. and by deed, trust or grant, one is allowed a limited usage within the laws of the land. Knowing this, in the 27 years I have occupied the land I have and will continue to show my attempt to comply with the prevailing rules and regulations. I have never fenced, built or altered natures ecology. I have improved the buildings and put them in livable condition, relocated the water from Sacatar Canyon to the Portuguese Canyon extending the pipeline to a spring further up the canyon for a more continuous supply in the summer, improved the road with a Rube Goldberg drag and maintained vegetation.

(SR at 3). We do not doubt that appellant truly believed that by continuing his occupancy for 20 years he could acquire rights as against the United States. In this, he was simply wrong. Kreuter apparently misunderstood the meaning of "good faith" under this Act, since he asserts good faith while at

3/ Indeed, in his statement of reasons, appellant expands upon this point:

"Although this land has been occupied many years (including the Indians prior to the Fine family, about 1921) I am the first person who has ever recorded a survey or filed on it. In my research, I can find no record of a homestead, deed or grant to anyone, including American Indians, Portuguese, or any others who have had a residence here, which leaves it totally under the use and direction of the laws of the domain of the U.S.A. (Emphasis supplied.)"

(SR at 2). Appellant also stated that his predecessor in interest, Dr. Howard, "needed a survey to apply for a homestead" (SR at 1). All of these admissions fatally compromise any claim he might have that he held the land for 20 years in ignorance of the fact that the United States held title to the land.

the same time he admits knowing that the United States owned the land. But, it is the justifiable lack of knowledge that the United States owned the land that constitutes "good faith." Thus, appellant's own admissions belie the assertion of good faith as that term is used in the Color of Title Act.

Krueter also argues that others in the same general vicinity received homestead patents after the land was withdrawn and suggests that the withdrawal should not have barred his attempted appropriation. This argument is, of course, irrelevant to his color-of-title application, since that application must be rejected for reasons totally discrete from land status. To the extent, however, that appellant suggests that the failure to permit him to make a homestead entry in 1958 was the result of disparate treatment, we believe that he is in error.

Appellant alleges that one Sam N. Lewis received a homestead patent on March 23, 1922, after five years of occupancy and one Raymond A. Gill received a homestead patent on June 13, 1936, after eight years of occupancy. Both of the patents, appellant argues, were issued after the land had been withdrawn. Thus, appellant argues that he should have been allowed to make a homestead entry in 1958 despite the withdrawals just as his neighbors were allowed to receive patent for their lands.

We do not have either of the referenced case files. However, we can make certain observations. Appellant referenced the Act of December 27, 1916, 39 Stat. 862, 43 U.S.C. §§ 291-301 (1970), and the Act of June 28, 1934, 48 Stat. 1269, 43 U.S.C. § 315-315m (1982), as effecting a withdrawal of the land. This is not correct. The Act of December 27, 1916, was the Stock-Raising Homestead Act. This Act did not withdraw any land, but rather provided a mechanism by which an individual could acquire up to 640 acres of unreserved public land for stock-raising purposes. The Act of June 28, 1934, was the Taylor Grazing Act. While this Act was generally interpreted as implicitly repealing the Stock-Raising Homestead Act it did not, of itself, withdraw land from the operation of other public land laws. Section 7 of the Act, however, granted the Secretary authority to withdraw land and required that the land withdrawn be classified as suitable for homestead entry as a precondition to allowance of such entry.

The master title plat for the subject township shows that the entire township was, indeed, withdrawn on April 8, 1935, and included in California Grazing District No. 1. This withdrawal is still in effect. Even though this withdrawal predated the issuance of the patent to Gill it would not have served as a bar thereto as the entry had apparently been allowed in 1928 and would have been a valid existing right as of the time of the withdrawal. Similarly, while the land was withdrawn on January 26, 1933, for Stock Driveway No. 235, and on July 16, 1933, for the City of Los Angeles, neither of these withdrawals would have barred issuance of a patent pursuant to a prior entry. They would, however, bar the allowance of any future entry until they were terminated. <sup>4/</sup>

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<sup>4/</sup> These two withdrawals, which are apparently no longer outstanding, were referenced in the decision issued by the Office of Appeals and Hearings

It is also probable that the authorized officer's reference to the possibility that appellant might purchase 5 acres was not, in any way, connected with the Homestead Act, but rather was raised in reference to the Small Tract Act, Act of June 1, 1938, 43 U.S.C. § 682(a) (1970), which authorized the sale of not to exceed 5 acres of land for residential, recreational, or business use. Insofar as we are able to determine, appellant was not improperly advised of his rights when he contacted BLM in 1958. 5/ Nor can we find any evidence that he was treated in any way differently from those in a similar situation.

For the foregoing reasons, we must conclude that the California State Office properly rejected appellant's color-of-title application.

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

James L. Burski  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Wm. Philip Horton  
Chief Administrative Judge

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fn. 4 (continued)

affirming rejection of appellant's original color-of-title application. See Walter G. Kreuter, Los Angeles 0165276 (May 31, 1961). This decision was affirmed by the Assistant Solicitor for Land Appeals. See Walter G. Kreuter, A-29065 (Oct. 22, 1962).

5/ It is important to point out, however, that, insofar as appellant's present desire to obtain the subject land is concerned, both the Homestead Act and the Small Tract Act were repealed by section 702 of FLPMA, 90 Stat. 3787.

