

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting O'Konski Act application ES-33206.

Set aside and remanded.

1. Act of August 24, 1954 -- Color or Claim of Title: Generally -- Color or Claim of Title: Applications

An application for a patent under the Act of Aug. 24, 1954, commonly known as the O'Konski Act, 43 U.S.C. § 1221 (1982), must be remanded to BLM where the applicants claim to have fully complied with the 1954 Act, but where their application was rejected for failure to comply with provisions of another statute, the Act of Dec. 22, 1928, the Color of Title Act, 43 U.S.C. § 1068 (1982).

APPEARANCES: Victor A. Markunas, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On March 26, 1984, appellants Victor A. Markunas and Victoria E. Markunas applied for patent to 41.06 acres in sec. 20, T. 33 N., R. 2 E., fourth principal meridian, Wisconsin, pursuant to provision of the Act of August 24, 1954 (O'Konski Act), 43 U.S.C. § 1221 (1982). This tract comprises roughly the eastern half of the S 1/2 NW 1/4 of sec. 20. When appellants purchased the 80-acre tract denominated the S 1/2 NW 1/4 of sec. 20, in 1973, it was believed by them the entire tract was private property, subject to sale. The land was described in their deed as the "(S 1/2 NW 1/4) (also described as Government Lot Six 6 in Section Twenty)."

In 1981, appellants learned that the tract for which they have now applied for patent (lot 9) was Government land. An 1862 survey of sec. 20 shows that most of the NW 1/4 of sec. 20 is covered by Skinner Lake, and the survey of the lake shoreline bisects the S 1/2 NW 1/4 nearly in half. In fact the lake is some distance away. There is nothing to indicate the lakeshore has moved greatly since 1862. As a consequence of the 1862 survey,

however, a sale of the S 1/2 NW 1/4 of sec. 20 could not have conveyed the entire S 1/2 NW 1/4. While early conveyances of Government lot 6 conveyed only 42.20 acres, beginning in the 1940's local land records and a later mesne conveyance recited that Government lot 6 contained 80 acres and comprised the S 1/2 NW 1/4 of sec. 20.

In 1981 appellants sought a resurvey of this tract. In 1982 and 1983, a survey was performed; the plat of dependent resurvey was filed on July 13, 1983. On March 26, 1984, appellants filed their application for patent to the remainder of the S 1/2 NW 1/4 not included in lot 6, which was denominated lot 9 by the 1983 dependent resurvey.

On January 22, 1985, the Eastern States Office, Bureau of Land Management (BLM), issued an interlocutory decision asking for further information concerning what appeared to be two tax sales in the chain of title to lot 6. This decision also recited that it did not appear that provisions of the color of Title Act, 43 U.S.C. § 1068 (1982), could be applied to appellants' benefit and also eliminated the possibility that the Act of February 27, 1925, could be used to grant appellants' application. Appellants had not sought relief under those statutes.

After the BLM decision of January 22, 1985, appellants provided an abstract of title which indicated there were no tax deeds in their chain of title. Following the filing of the title abstract, BLM issued a decision dated March 20, 1986, rejecting appellants' application for the reason that the lands sought have not been cultivated or improved in conformity to requirements of 43 U.S.C. § 1068 (1982). BLM has filed no answer in response to appellants' statement of reasons, and the reason why BLM's March 20 decision ignores appellants' claim for relief under the O'Konski Act is not explained. The O'Konski Act is remedial legislation, applicable only in Wisconsin. It applies only in cases such as this to allow persons claiming lands lying along an original meander line to obtain title to fast lands which are shown as submerged lands on the original survey.

[1] At no time in this proceeding does it appear that appellants have sought relief under 43 U.S.C. § 1068 (1982). Appellants' claim is based entirely upon the O'Konski Act, 43 U.S.C. § 1221 (1982), which, as appellants have repeatedly pointed out, requires only that they be the owners of land lying along a meander line, subsequently resurveyed, who have held lands between the original meander line and the water as shown on the later survey. They must also have made application for the resurveyed tract claimed by them within a year of the resurvey of that land. And they must have held the land on the strength of a patent issued prior to January 21, 1953, in good faith and in peaceful adverse possession. See 43 U.S.C. § 1221 (1982). It appears that appellants have fully complied with all the requirements of the O'Konski Act.

Despite the apparent validity of their application however, it has yet to be adjudicated by BLM. Ordinarily, this Board will not act as the initial decisionmaker on an application for conveyance, but in cases where a situation

is presented to us on appeal where an initial decision on an issue is lacking, we must remand to BLM for action. This is such a case. Although it appears that appellants' application is complete and adequate to entitle them to conveyance of the land applied for under the O'Konski Act, there has been no decision on that question by BLM. On remand, BLM will issue a decision applying the provisions of the O'Konski Act to appellants' application. In the unlikely event the decision should be adverse to appellants, they will again have the right to appeal to this Board.

Accordingly, 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 set aside and the case is remanded for action consistent with this opinion.

Franklin D. Arness
Administrative Judge

We concur:

Anita Vogt
Administrative Judge
Alternate Member

C. Randall Grant, Jr.
Administrative Judge