

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

Affirmed.

1. Color or Claim of Title: Generally

A claim under the Color of Title Act, 43 U.S.C. § 1068 (1988), has not been held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

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

OPINION BY ADMINISTRATIVE JUDGE KELLY

James E. Gaylord, Jr., appeals from a February 16, 1990, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting his class 1 application under the Color of Title Act, 43 U.S.C. § 1068 (1988), for lot 10 in sec. 15, T. 62 N., R. 1 E., fourth principal meridian, Minnesota. The land sought is omitted land lying adjacent to Elbow Lake.

Appellant's color-of-title application was previously before the Board in James E. Gaylord, Jr., 94 IBLA 392 (1986). In that case we reversed BLM's rejection of the application as to the above-described land. We found that appellant had met the prerequisites for a class 1 color-of-title application because he had established claim of title of more than 20 years based on an instrument which on its face purported to convey title to the omitted lands sought in the application. We found that appellant's chain of title was based on a June 21, 1958, deed, and that he had clearly held the land 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. Id. at 397-98. Accordingly, we remanded the case to BLM with instructions to issue a patent for lot 10, "[a]ll else being regular." Id. at 399.

BLM's February 19, 1990, decision recites that lot 10 is located within the boundaries of lands withdrawn under the Shipstead-Nolan Act of July 10, 1930, 16 U.S.C. § 577 (1988). <sup>1/</sup> BLM's decision also cites 43 CFR 2540.0- 5(b) which provides that a claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for a Federal purpose.

Appellant contends that the United States was not the owner of the omitted land (lot 10) and therefore no public land was available for withdrawal under the Shipstead-Nolan Act on July 10, 1930. <sup>2/</sup>

Omitted land is land which was excluded from the original plat of survey. Prior to passing title from the United States, the Government has the right to establish or reestablish boundaries on its own land. Sarah & Magic Calvin, 94 IBLA 162 (1986). As we observed in James E. Gaylord, Jr., *supra* at 394 n.1, the time to have challenged the status of the land was prior to the filing of the plat. See Jerome Kolstad, 93 IBLA 119 (1986). <sup>3/</sup> Rejection of appellant's application turns on the fact that the land was in a withdrawn status prior to initiation of appellant's title on June 21, 1958.

[1] In order to support a class 1 claim under the Color of Title Act a claimant must establish that the public land in question has been held in good faith and in peaceful, adverse possession by the claimant, his ancestors, or grantors, under claim or color of title for more than 20 years. 43 CFR 2540.0-5(b). A claim has not been held in peaceful, adverse possession if the land has been withdrawn or reserved for Federal purposes. Grant F. & Jessie Fern Woodward, 87 IBLA 118, 120 (1985); Richard R. Christensen, 85 IBLA 108, 109 (1985); John S. Cluett, 52 IBLA 141, 143 (1981). BLM properly rejects a class 1 color-of-title application where the applicant's chain of title originated at a time when the land has been withdrawn or reserved for Federal purposes.

<sup>1/</sup> 16 U.S.C. § 577 (1988) withdrew, *inter alia*, "[a]ll public lands of the United States situated north of township 60 north in the counties of Cook and Lake, State of Minnesota \* \* \* subject to prior existing legal rights initiated under the public land laws." Purposes of the withdrawal were to promote the better protection and highest possible use of lands and waters in northern Minnesota for the production of forest products, and to conserve the natural beauty of lake and stream shorelines. 46 Stat. 1020, 1021.

<sup>2/</sup> With the exception of the arguments addressed to the withdrawal appellant's statement of reasons is substantially identical to that filed in its appeal of BLM's Apr. 1, 1985, decision. The arguments submitted in the former appeal were considered in our decision in James E. Gaylord, *supra*, and are not relevant to the issue in the present appeal.

<sup>3/</sup> In any event, in the context of a color-of-title application the applicant necessarily admits that title to the land sought is in the United States, since by filing the application, an applicant seeks to have the United States convey actual title to him. Jerome Kolstad, *supra* at 122.

Therefore, 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 affirmed.

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John H. Kelly  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge