

HI-COUNTRY ESTATES PHASE II

IBLA 99-290

Decided May 24, 2001

Appeal from a decision of the Acting Field Manager, Salt Lake Field Office, Bureau of Land Management, rejecting color-of-title application U-75592.

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 for more than 20 years, under claim or color of title based on a document from a party other than the United States which on its face purports to convey the claimed land to the applicant or the applicant's predecessors, and that valuable improvements have been placed on the land or some part of the land has been reduced to cultivation. 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 requirements for purchase under the Act have been met, and a failure to carry the burden of proof with respect to one of the requirements is fatal to the application.

2. Color or Claim of Title: Generally

A claim under the Color of Title Act, 43 U.S.C. § 1068 (1994), has not been held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

APPEARANCES: A. Howard Lundgren, Esq., Salt Lake City, Utah, for appellant; David K. Grayson, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

## OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Hi-Country Estates Phase II (Hi-Country) has appealed from a March 11, 1999, decision by the Acting Field Manager, Salt Lake Field Office, Bureau of Land Management (BLM), Utah, rejecting its class 1 color-of-title application, U-75592, for 40 acres of land described as the NW1/4 NE1/4 of sec. 8, T. 4 S., R. 2 W., Salt Lake Meridian.

Hi-Country filed the application on June 16, 1997, following BLM's July 10, 1995, notice to Hi-Country and others that title to the property appeared to be in the United States. At that time, BLM invited the property owners to provide evidence that BLM's records were incorrect. The land in question is within a real estate development owned by Hi-Country. A water tank is partially constructed on the property and the property also contains roads and waterlines built by Hi-Country.

In its color-of-title application, Hi-Country stated that it had obtained title in 1989. Its application lists a chain of title dating back to March 1913, when it asserts that the property was conveyed to the State of Utah from the United States. The application did not contain a copy of that conveyance.

In an October 15, 1997, letter to BLM, counsel for Hi-Country referred to "a copy of a conveyance document which we have obtained from the Salt Lake County Recorder's Office reflecting the conveyance of property which occurred in March 1913 between the United States of America as grantor and the State of Utah as grantee." The document apparently was prepared by the then Secretary of State of the State of Utah and purports to list lands located in Salt Lake County selected by the State of Utah for school indemnity purposes and approved by the First Assistant Secretary of the Interior on May 31, 1910. Counsel states: "As I read this document, the State of Utah was granted an interest by the Department of Interior/United States Government in that property which is the subject of the current pending Color of Title Application." Counsel concluded by stating that, based on the March 1913 conveyance from the United States, it appeared that Hi-Country and its predecessors-in-interest had good title and, "therefore, the Color of Title Application which we submitted to you in June of 1997 may not be necessary."

BLM's decision made no mention of the March 1913 "conveyance." Instead, it found that the lands at issue were withdrawn under Executive Order 1922 of April 24, 1914, as part of the Camp W.G. Williams military base and remained withdrawn until November 28, 1990, when the Camp W.G. Williams Land Exchange Act of 1989 (Pub. L. 101-628; 104 Stat. 4499-4501) became effective. On that date the withdrawal was revoked and the lands were returned to the public domain. BLM's decision acknowledges that Hi-Country's application demonstrates that "a chain of title does exist," but points out that, under 43 C.F.R. § 2540.0-5(b), a color-of-title claim is not held in peaceful adverse possession where it was initiated while the land was withdrawn or reserved for federal purposes. BLM ruled that since

the land at issue was withdrawn for a military reservation from April 24, 1914, until November 28, 1990, Hi-Country failed to meet the requirements of the Act and regulations.

In its statement of reasons, Hi-Country argues that a compelling "legal or equitable" reason exists for reversing BLM's determination. Hi-Country notes that the chain-of-title for these lands dates back to 1913, that the property was purchased at a tax sale by Hi-Country's predecessors in 1932 and that no signs or other notice indicating Federal interest have ever been posted on the property. Hi-Country notes that the land at issue is situated in the middle of its subdivision which was created in approximately 1972. It asserts that title searches, which are customarily performed for the preceding 25 years, did not reveal the interest of the United States. Hi-Country contends that there was no way it could have discovered that it did not have ownership of the land.

Hi-Country lists the improvements which have been made on the development surrounding the land at issue and contends that rejection of its application is tantamount to a "taking" of private property and a violation of its basic rights. Hi-Country further argues that BLM should exercise discretion and grant the application. BLM contends that Hi-Country's color-of-title application must fail because the claimed lands were withdrawn from operation of the public land laws when Hi-Country's chain of title originated.

[1] Under the Color-of-Title Act, 43 U.S.C. § 1068(a) (1994), 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 for more than 20 years, under claim or color of title based on a document from a party other than the United States which on its face purports to convey the claimed land to the applicant or the applicant's predecessors, and that valuable improvements have been placed on the land or some part of the land has been reduced to cultivation. A claim of title supporting a color-of-title application must be based on an instrument from a source other than the United States, which on its face purports to convey the claimed land. 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 requirements for purchase under the Act have been met, and a failure to carry the burden of proof with respect to one of the requirements is fatal to the application. Shirley and Pearl Warner, 125 IBLA 143, 147 (1993).

First, we note that to the extent Hi-Country might be relying on some conveyance from the United States in its chain of title, its color-of-title application must be denied. By filing a color-of-title application, the applicant necessarily concedes that title to the land is in the United States and seeks to have the United States convey actual title to him. The applicant thus cannot assert that color of title derives from a patent issued by the Government because, if true, the applicant would possess actual title, not color of title. Shirley and Pearl Warner, *supra* at 148. Moreover, the 1913 "conveyance" relied on by Hi-Country is not a conveyance of title from the United States. Instead, it is a document prepared by the

State of Utah listing the indemnity school lands selected by the State and approved by the Department of the Interior in 1910. Despite Hi-Country's representation that the lands in question were included on that list, we do not find the NW1/4 NE1/4 of sec. 8, T.4 S., R. 2 W., Salt Lake Meridian, included thereon. The only lands listed in that section, township, and range are the SW1/4NE1/4, SW1/4SW1/4. That fact is confirmed by a copy of a document in the case record entitled "School Indemnity Lands." No document in the record shows the NW1/4 NE1/4 sec. 8 as being school indemnity lands.

[2] Second, it is well-settled that a claim has not been held in peaceful, adverse possession if the land has been withdrawn or reserved for Federal purposes. 43 C.F.R. § 2540.0-5(b); James E. Gaylord, Jr., 125 IBLA 247, 248 (1993); 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.

The next conveyance in Hi-Country's chain-of-title listed in its application, following the 1913 "conveyance," is in 1917, after the date of the withdrawal. Because the land was withdrawn for Federal purposes from 1914 to 1990, there can be no peaceful, adverse possession in this case. See 43 C.F.R. § 2540.0-5(b).

The Color-of-Title Act is a sale statute and the Secretary is not obligated to sell public land to an applicant in the absence of compliance with the conditions of sale. The denial by the Department of a color-of-title application is not a taking of an applicant's property because an application does nothing more than give the applicant a preference right over other claimants. Lipscomb v. United States, 906 F.2d 545, 549 (11<sup>th</sup> Cir. 1990).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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T. Britt Price  
Administrative Judge

