

JOHNNY S. BUSTOS
MARGARET BUSTOS

IBLA 2004-127

Decided August 16, 2006

Appeal from a decision of the Field Office Manager, Taos, New Mexico, Field Office, Bureau of Land Management, rejecting Class 1 color-of-title application NMNM 107544.

Affirmed.

1. Color or Claim of Title: Applications--Color or Claim of Title: Cultivation--Color or Claim of Title: Improvements

BLM properly rejects a Class 1 color-of-title application pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (2000), when a claimant fails to present any evidence that the land sought had valuable improvements or that some part of it had been reduced to cultivation at the time of application.

APPEARANCES: Johnny S. Bustos and Margaret Bustos, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Johnny S. Bustos and Margaret Bustos appeal from a January 30, 2004, decision of the Manager, Taos, New Mexico, Field Office, Bureau of Land Management (BLM), rejecting their Class 1 color-of-title application NMNM 107544. BLM concluded that the Bustoses failed to demonstrate that there were valuable improvements on the land or that some part of the land had been reduced to cultivation.

This appeal is the second appeal submitted by the Bustoses. On September 14, 2000, Johnny S. Bustos filed Class 1 color-of-title application NMNM 102592, seeking a 2.18-acre parcel of public land described as Lot 36, sec. 8, T. 20 N., R. 9 E., New Mexico Principal Meridian, Santa Fe County, New Mexico, pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (2000). BLM rejected this color-

of-title application for failure to show valuable improvements on the land or that any part of the land was under cultivation. The Board affirmed BLM's decision in Johnny S. Bustos, 157 IBLA 178 (2002).

In the first Board decision, we set forth the information of record regarding the history of the parcel. This information is unchanged and we repeat it here:

The chain of title to this tract originated with an October 5, 1956, Deed (No. 6487) from the State Tax Commission of New Mexico to Juan D. Bustos, Bustos' father. This deed describes the land as "Tract #973, Map #9 [of the Santa Cruz Irrigation District (SCID)]," and this description was carried through in the 1962 deed, the next conveyance in the chain of title. An SCID map depicting SCID's Tract #973, Map #9 shows that Tract 973 covers Parcel No. 241-287, which contains 2.18 acres. That tract is also clearly shown on a copy of a portion of Santa Fe County tax assessor's map attributing ownership on Bustos and his wife. That parcel coincides with Lot 36, sec. 8, T. 20 N., R. 9 E., New Mexico Principal Meridian, Santa Fe County, New Mexico. Bustos' color-of-title application expressly lists Lot 36, sec. 8 as the land being sought.

Juan D. Bustos conveyed the tract to Bustos' mother, Margaret V. Bustos, by Quitclaim Deed dated January 17, 1962. * * * The tract was inherited by Bustos on the death of his mother in 1976. Bustos stated, in his application, that he had first learned from BLM that he did not have clear title to the land in "November of 1984." 4/

In his July 2001 decision, the Field Office Manager rejected Bustos' Class 1 color-of-title application. After stating that the land had been held in good faith adverse possession, under color or claim of title for 20 years beginning with the 1956 deed, he concluded that Bustos had failed to demonstrate that valuable improvements had been placed on the land or that any part of the land had been reduced to cultivation. The Field Office Manager stated "[t]herefore, the claimant fails to meet the requirements under the Act. * * * A claimant's failure to carry the burden of proof on one of the elements is fatal to the application."

4/ In his application Bustos also states that at the time of his mother's death in 1976, he learned that "the U.S. Government claimed they owned [the land]." This indicates that Bustos first learned that the United States held title to the land some time in 1976, rather than in 1984. This statement raises a question regarding the satisfaction of the 20-year requirement. Failure to do so would result in rejection of his later

color-of-title application. Daniel J. Boles, Jr., 137 IBLA 35, 37 (1996); Louis C. Scalise, [129 IBLA 334,] 336-37 [(1994)]; Kim C. Evans, [82 IBLA 319,] 321-22 [(1984)].

157 IBLA at 179-80 (footnotes 1-3 omitted).

In affirming BLM's decision, the Board noted that, in his application, Bustos answered "No" to the question whether the land was currently under cultivation and, when asked to specify the years the land was cultivated, he said: "No specific year, but the Bustos family has had water rights for over 75 years." 157 IBLA at 180-81. In addressing improvements made to the property, he stated:

Improvements could not be made because the U.S. Government claimed they owned [the land]. I have been trying to resolve this issue since my mother Margaret V. Bustos passed away in 1976. When a clear color-of-title is obtained improvements will be made legally.

Id. at 181, quoting 2000 application (emphasis added). Bustos also noted that the estimated value of "structural and cultural improvements" on the land on the date of purchase and added to the land since that date was "zero." 157 IBLA at 181.

On January 24, 2003, Johnny S. and Margaret Bustos filed a second color-of-title application with BLM. That this application was filed in response to this Board's decision is revealed in an attached letter stating that the Bustoses were "again appealing the decision because of newly discovered information," revealing past cultivation of the parcel by another party. BLM properly treated the filing as a new application, given that the 2001 BLM decision had been appealed and affirmed and the Bustoses had no further right of appeal from it. (Feb. 5, 2003, letter from BLM to the Bustoses.)

The alleged new evidence consists of a letter dated September 3, 2002, from Joe T. Maestas, in which Maestas states that he remembers that the parcel at issue used to be cultivated prior to "the last three or four years." According to Maestas, his now deceased brother-in-law, Feliciano Quintana, used to plant chili, corn, tomatoes and various vegetables on the land.

A BLM inspection of the parcel conducted in October 2003 did not reveal any new evidence of cultivation, or other information which would change BLM's assessment based on its July 2000 inspection. Based upon this investigation, BLM issued the 2003 decision under appeal. BLM stated:

It was found after a field visit on July 11, 2000, that there were not valuable improvements on the land, nor evidence of cultivation that

support this claim. Therefore, the claimant fails to meet the requirements under the Act.

The Bustoses appeal this decision. They claim that the information provided by Maestas's letter regarding past cultivation prior to approximately 1998 is relevant to their application and, if confirmed, would now support a valid color-of-title claim. In the Notice of Appeal dated February 15, 2004, the Bustoses assert that Maestas' relatives "are the ones that were given permission to cultivate years ago." The Bustoses also state that years ago Bustos cultivated a small garden on the parcel, though they concede that no visible remnants remain.

[1] Section 1 of the Color of Title Act provides, in relevant part:

The Secretary of the Interior * * * 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, * * * 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 * * * .

43 U.S.C. § 1068 (2000) (emphasis added). The requirement to place valuable improvements on land, or to reduce some part of it to cultivation is also set out in the Department's regulations. See 43 CFR 2540.0-5(b).

A party seeking title under the Color-of-Title Act must therefore show that valuable improvements were placed on the land, or that some part of it was reduced to cultivation, by tillage or other efforts to produce a crop. Louis C. Scalise, 129 IBLA at 338. Moreover, it is well-settled that the cultivation requirement mandates that cultivation be contemporaneous with the filing of the application. Where land was once cultivated, but is no longer so at the time the application is filed, the cultivation requirement of the Color of Title Act is not satisfied. In Mable M. Farlow (On Reconsideration), 39 IBLA 15, 22, 86 I.D. 22, 25-26 (1979), we stated:

Thus, even if we found that land had once been cultivated by appellant's tenants and that would have sufficed under the Color of Title Act to be cultivation at the time crops were being produced, it cannot suffice now. * * * [I]t is necessary to meet the improvement requirement at the time an application is filed, it is also clear that the Act envisages that the land "has been reduced to cultivation" at that time also.

See also Bobby Carlton, 74 I.D. 214, 215 (1967), and cases cited (cultivation must be

taking place at the time of application). This requirement derives from the legislative history of the Act which explains that cultivation must be current with the time of the application and that abandoned fields would not be sufficient to meet the cultivation requirement. Gladys Lomax, 75 IBLA 89, 90 and nn.3 and 4 (1983), citing, S. Rep. No. 588, 83rd Cong., 1st Sess., reprinted in 1953 U.S.C.C.A.N. 2016; Land Report of Aug. 29, 1979, at III.D and F.

The burden of demonstrating that the requirements of the Color of Title Act are satisfied rests with the color-of-title claimant. Beulah Alder, 161 IBLA 181, 183 (2004); Hi-Country Estates Phase II, 155 IBLA 129, 131 (2001). If an applicant fails to show that there are valuable improvements on land or that part of it is cultivated at the time of application, a color-of-title application is properly rejected. Louis C. Scalise, 129 IBLA at 336; Estate of Edna Turney, 123 IBLA 354, 358 (1992).

Maestas' letter does not provide information sufficient to alter the conclusion we reached with regard to the Bustoses' 2000 application. We noted in that appeal that there was no evidence of improvements or cultivation as a result of the field investigation report, that Bustos had indicated that he was aware the land belonged to the United States as far back as 1976, and that Bustos had explicitly acknowledged a lack of cultivation or improvements in direct answers to questions on the application form. These facts remain unchanged. All that Maestas has added by way of information is his assertion that he is aware that, in the past, the fields were cultivated by members of his own family prior to "the last three or four years." Maestas' allegation appears to undermine the Bustoses' (and perhaps their grantors') claim of possession. More importantly, Maestas' allegations confirm that the land was not in cultivation when the Bustoses filed their application.

The Bustoses attempt to evade this impediment by asserting that Maestas' "relatives were the ones that were given permission to cultivate years ago." (Notice of Appeal at 1.) The Bustoses submit no evidence to support this assertion and Maestas' letter plainly does not suggest the existence of a tenancy. To the contrary, Maestas attached to his letter what purports to be a statement of water rights which are attributed to the Maestas and Quintana families and the United States, among others. The Bustos name does not appear on the list.

For the foregoing reasons, we must affirm BLM's decision. The Bustoses have not met their burden of showing that they were cultivating the land at the time of the application, without which their color-of-title application must fail.

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

Lisa Hemmer
Administrative Judge

I concur:

T. Britt Price
Administrative Judge