



IRVING AND JEANETTE STEVENS

172 IBLA 157

Decided August 20, 2007



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

IRVING AND JEANETTE STEVENS

IBLA 2005-188

Decided August 20, 2007

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting a color-of-title application. OR 61080.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title:  
Applications--Surveys of Public Lands: Generally--Surveys of  
Public Lands: Omitted Lands

When the Government conveys title to a parcel of land fronting navigable water, the intention, in all ordinary cases, is that the parcel's edge extends to the water's edge. When a homestead patent contains nothing to indicate that the United States intended to retain title to the Federal land between the meander line and the mean high water line, BLM properly concluded that there is no Federal interest it could convey under a color-of-title application.

APPEARANCES: Richard M. Stephens, Esq., Bellevue, Washington, for appellant; Robert D. DeViney, Jr., Chief, Branch of Lands and Mineral Resources, Oregon State Office, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Irving and Jeanette Stevens have appealed the March 14, 2005, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting their application under the Color of Title Act, 43 U.S.C. § 1068 (2000), for dry beach land between their land in sec. 30, T. 5 N., R. 10 W., Willamette Meridian, extending west to the mean high tide (MHT) line. For the following reasons, we affirm BLM's decision.

As a threshold matter, we must first address BLM's motion to dismiss for failure to timely file a statement of reasons (SOR) and failure to serve the SOR on an adverse party. This Board granted appellants an extension to file their SOR by July 11, 2005. BLM argues that appellants failed to file by the deadline. However, appellants faxed a courtesy copy of their SOR to the Board on July 11, 2005. The original was received by the Board on July 12, 2005. It was followed by an amended SOR filed on August 10, 2005. These documents were served on the Solicitor's Office as provided by 43 C.F.R. § 4.413(c)(2)(x). A copy of the amended SOR was forwarded to BLM, which filed an answer in response. We see no basis for granting BLM's motion to dismiss. *See, e.g., Sierra Club Uncompahgre Group*, 152 IBLA 371, 375 (2000). We now take up the primary issue in this appeal, *i.e.*, whether BLM correctly rejected appellants' color-of-title application.

Appellants own the Ecola Inn, a hotel that straddles the meander line of sec. 30, T. 5 N., R. 10 W., Willamette Meridian, in an area known as Cannon Beach, Oregon. The western half of this section is the Pacific Ocean. Appellants argue on appeal that the land located west of the meander line and east of the MHT line where the hotel sits was omitted from the original survey due to gross error. Amended SOR at 12-13. As omitted land, appellants claim that it is public land. *Id.* at 4-8. Appellants allege that the State of Oregon claimed ownership of the lands between the meander line and the low tide line all along its coast as tidelands conveyed at the time of statehood and has previously sold portions of its tidelands to private parties.<sup>1</sup> *Id.* at 8-9. In appellants' view, the State does not have any authority over these supposed tidelands in sec. 30 because it is a Federal interest. *Id.* at 13. Additionally, appellants argue that even though the land is Federally owned, appellants have peacefully and adversely possessed the land west of the meander land for more than 20 years and otherwise fulfill all of the requirements of the Color of Title Act and 43 C.F.R. § 2540.0-5. Therefore, according to appellants, this Board should reverse BLM's rejection of their color-of-title application. Amended SOR at 14-15.

Section 30 was originally surveyed in 1856 by Joseph and John Trutch. Pursuant to the *Manual of Surveying Instructions of 1855*, Surveyors Trutch would have coursed the shoreline and created a meander line following the coast line, in order to calculate the amount of land available in the section. Answer at 4. Thirty-six years later, the Federal government granted John Boysen a homestead patent for lots 1, 2, 3, and 4 in secs. 29 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of sec. 30 consisting of 158.90 acres. Amended SOR, Ex. 28. Appellants' predecessors built a hotel on the lots in 1917, which appellants rebuilt in 1966. Amended SOR, Ex. 32. A seawall was

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<sup>1</sup> To demonstrate the terms of Oregon's tideland sales, appellants attached Exhibits 30 and 31 to their amended SOR. Neither of these deeds of sale involves land within sec. 30 or even within the township. There is no evidence in the record of Oregon selling the tidelands in Cannon Beach.

constructed in 1917 to protect the hotel and it was reinforced in 1939. *Id.* In their color-of-title application appellants stated that in 1985 they discovered that their deed did not convey the lands west of the meander line. *Id.* They believed this land belonged to their predecessors' heirs and purchased their interest in said land. *Id.* At some point prior to filing the application, appellants discovered or concluded that their belief was wrong and that the land between the meander line and the MHT line was unsurveyed public land owned by the Federal Government.<sup>2</sup>

In the March 14, 2005, decision and in its response, BLM argues that there is no omitted land between the meander line and the MHT line and that any Federal interest in the land was conveyed either by patent to a private person or at the time of statehood to Oregon. Decision at 1; Answer at 2. BLM contends that it was therefore justified in rejecting appellants' application because it does not have the authority to convey private or State-owned land. Answer at 2-3. BLM asserts that on appeal appellants have not proven that the land was omitted, and have not shown that the meander line should have been placed west of its current location. According to BLM, appellants cannot prove that the land is omitted and, therefore, the Board should affirm its rejection of their color-of-title application.

[1] A surveyor creates a meander line around a body of water to "define the sinuosities of the bank or shoreline and ascertain the quantity of land attributed to that tract." *E.g., James R. Biersack*, 117 IBLA 339, 342 (1991); *Lawyers Title Insurance Corp. v. BLM*, 117 IBLA 63, 71 (1990); *see Manual of Instructions for the Survey of the Public Lands of the United States (Manual)* 93-94 (ed. 1973). It is well established that the meander line does not mark the boundary of patented land but rather the boundary is the actual shoreline. *James R. Biersack*, 117 IBLA at 342; *Lawyers Title Insurance Corp.*, 117 IBLA at 71; *Hardin v. Jordan*, 140 U.S. 371, 380 (1891); *Railroad Co. v. Schurmeir*, 74 U.S. 272, 286-87 (1868); *Greene v. United States*, 274 F. 145, 149 (5th Cir. 1921).

In its decision, BLM determined that the United States has no interest in the land "lying between the . . . original meander line and a line representing the line of [MHT]." Decision at 1. Noting that the "grantee of land bounded by a body of navigable water acquires a right to any natural and gradual accretion that has gradually formed along the shore," BLM also determined that "the Federal government did not intend to retain any strip of land between the meander line and the line of [MHT]." *Id.* at 2.

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<sup>2</sup> Appellants do not explain what it is they discovered that led them to conclude that they do not own the land or that it was omitted land. Nothing in the record shows whether the State or a private party claims ownership of the land.

The decision also contains some commentary that would be relevant to an omitted lands case, an issue the parties pursue on appeal. However, as the record shows and the decision acknowledges, the general rule is that “[a] meander line is not a surveyed boundary. When the Government conveys title to a fractional lot fronting on a navigable body of water, the intention, in all ordinary cases, is that the lot extends to the water’s edge.” *Manual* § 7-64. Accordingly, “the stream, or other body of water, and not the meander line as actually run on the ground, is the boundary.” *Manual* § 3-115. Another principle is relevant:

The traverse of the margin of a permanent natural body of water is termed a meander line. All navigable bodies of water and other important rivers and lakes *are segregated from the public lands at mean high water elevation*. In original surveys, meander lines are run for the purposes of ascertaining the quantity of land remaining after segregation of the water area.

*Manual* § 3-115 (emphasis added).<sup>3</sup>

We find nothing in the Boysen homestead patent that evinces or suggests an intent to retain title to that portion of the public lands that lies between the meander line and MHT line, absent which, the general rule that title to a fractional lot fronting on a navigable body of water extends to the water’s edge governs. As the decision correctly noted, any accreted land to the MHT line belongs to the upland landowner. BLM properly concluded that there is no Federal interest it could convey under a color-of-title application. The application therefore was properly rejected.

Appellants’ argument that the strip of land between the MHT line and the meander line constitutes omitted land as a result of gross error in the survey is simply misplaced and contrary to the interest they seek to validate. Gross error in the conduct of the survey is one of three exceptions to the general rule that when the Government conveys title to a fractional lot fronting on a navigable body of water, it conveys title to the water’s edge or the MHT line.<sup>4</sup> *James R. Biersack*, 117 IBLA

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<sup>3</sup> Consistent with the rule that the public lands fronting navigable bodies of water are segregated at the MHT line, title to tidelands, the lands above mean low tide and below MHT that are regularly subjected to the ebb and flow of water, vested in the States upon entry into the Union. *Pollard’s Lessee v. Hagan*, 44 U.S. 212 (1844); *Borax, Ltd. v. Los Angeles*, 296 U.S. 10, 26-27 (1935); *Manual* §§ 7-47, 7-96.

<sup>4</sup> In *Utah Power and Light Company*, 6 IBLA 79, 87 (1972), the Board stated that there are “three situations in which meander lines will serve as the boundary of a conveyance or grant, rather than a water body: namely, where there is (1) fraud, or  
(continued...) ”

at 342; *Lawyers Title Insurance Corp.*, 117 IBLA at 71; *Jeems Bayou Fishing & Hunting Club v. United States*, 260 U.S. 561 (1923); *Lee Wilson & Co. v. United States*, 245 U.S. 24 (1917); *Producers Oil Co. v. Hanzen*, 238 U.S. 325 (1915); *Mitchell v. Smale*, 140 U.S. 406 (1891). When an exception is shown, the consequence is that the meander line becomes the property boundary. *Lawyers Title Insurance Corp.*, 117 IBLA at 71-72; *Utah Power & Light*, 6 IBLA at 87. If appellants' argument were sustained, the effect would be that their hotel would straddle what would then be the designated property boundary, creating legally the very circumstance they believe necessitated their color-of-title application in the first place.

To the extent not expressly addressed herein, this Board has considered and rejected any other arguments advanced by the parties.

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.

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Roberts  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
T. Britt Price  
Administrative Judge

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<sup>4</sup> (...continued)

(2) gross error shown in the survey, or (3) where the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.”