



LEO HARDY

172 IBLA 296

Decided September 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

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IBLA 2007-247

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Appeal from a notice of trespass issued by the Field Manager, Price (Utah) Field Office, Bureau of Land Management, relating to a fence and gate constructed across an existing road without authorization. UTU-83342

Affirmed; petition for stay denied as moot.

1. Administrative Authority: Laches--Trespass

The Board properly rejects an appellant's assertion in defense of a trespass notice that he owns the affected public land pursuant to the State law doctrine of boundary by acquiescence. It is well established that prescriptive rights cannot be obtained against the Federal government; mere occupancy and improvements of public lands without color of title create no prescriptive or vested rights as against the United States; and adverse possession of Government property cannot affect the title of the United States, except as provided by Federal statute. Moreover, the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by the acquiescence of its officers or their laches, neglect of duty, failure to act, or delays in the performance of their duties.

APPEARANCES: Christian B. Bryner, Esq., Price, Utah, for appellant; Grant L. Vaughn, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Leo Hardy has appealed and petitioned for a stay of the June 12, 2007, notice of trespass issued by the Field Manager, Price (Utah) Field Office, Bureau of Land Management (BLM), finding that Hardy had blocked access to public land by constructing a fence and gate across an existing road without authorization.

Although Hardy asserts that he owns the affected land pursuant to the Utah State law doctrine of boundary by acquiescence, that doctrine does not apply to lands owned by the United States. We therefore affirm BLM's notice of trespass and deny Hardy's petition for stay as moot.

Background

The land to which Hardy blocked access consists of a portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 25, T. 14 S., R. 10 E., Salt Lake Meridian, Carbon County, Utah, near the Wellington Canal. That canal enters and exits the S $\frac{1}{2}$ NE $\frac{1}{4}$ along the quarter section line between the NE $\frac{1}{4}$ (public land) and the SE $\frac{1}{4}$ (private land) sec. 25. Hardy owns adjacent land to the south in the SE $\frac{1}{4}$. The road in question runs west from Route 5582 at the quarter-section corner where Route 5582 intersects the section line between sec. 25, T. 14 S., R. 10 E., and sec. 30, T. 14 S., R. 11 E. At that same point, Route 5582 turns directly south following the section line. The road at issue continues west into sec. 25, on or just north of the quarter section line and parallels the Wellington Canal in the S $\frac{1}{2}$ NE $\frac{1}{4}$. The gate and fence in question block the road less than .10 miles west of the quarter-section corner.

In February 2007, Hardy reported to BLM a possible trespass on the public lands in the S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 25 by Wellington Irrigation Company (Wellington). Hardy informed BLM that, during a recent heavy rain, the Wellington Canal breached its bank, and that Wellington, using heavy equipment, removed all the topsoil and vegetation in order to repair the bank. Hardy was upset about the disturbance and possible loss of riparian vegetation. He asked whether BLM had authorized those repairs. Upon confirming that it had not authorized Wellington's activities, BLM issued a notice of suspected trespass to Wellington and took additional actions to ensure rehabilitation of the site. *See* May 31, 2007, memorandum to file by David S. Watson, BLM Realty Specialist (Watson memorandum), at 1.

Hardy continued to have concerns about ongoing trespass on his lands by Wellington, by other land owners in the area, and by off-road and all-terrain vehicle users of the area. On May 14, 2007, Hardy advised BLM that he had consulted an attorney about his property rights and had hired a surveyor to survey his property. *See* Watson memorandum, at 1-2. By electronic mail dated May 18, 2007, Hardy notified BLM that, on May 16, 2007, he had completed the installation of a fence and gate across the road in question.

In response to a complaint by adjacent landowners that the gate and fence across the road had denied them access to their property, BLM, along with one of the landowners and a licensed surveyor, examined the land on May 18, 2007. After using a line of sight between existing survey markers, BLM, in consultation with the surveyor, concluded that the property line between public land and Hardy's private

land ran down the middle of the existing road and through the center of the gate. Hardy, who had joined the group, told BLM that he had a survey indicating that the road was on his private land. Although BLM requested a copy of that survey, and Hardy said he would provide it, BLM did not receive a copy of the survey. See Watson memorandum, at 2.

In the June 12, 2007, notice of trespass, the Field Manager determined that blocking access to public land by constructing the fence and gate across the existing road constituted an unauthorized use of public land in violation of 43 C.F.R. Part 2920. He granted Hardy 30 days to remove the gate and any portion of the fence on public land or to provide evidence or information showing that he was not in trespass. Hardy timely appealed the Field Manager's decision.

Discussion

[1] On appeal, Hardy apparently abandons his claim that the road in question is located on his private property, because he has not offered the survey that purportedly supports that position. Instead, he now claims that he has acquired, through application of the Utah State law doctrine of boundary by acquiescence, all the land south of a barbed wire fence that is located north of the road. According to that doctrine, when adjoining landowners have occupied their respective parcels of land up to a visible line marked by monuments, fences, or buildings and have mutually acquiesced in the line as a boundary for a period of 20 years or more, the line becomes the boundary between the properties. See, e.g., *RHN Corp. v. Veibell*, 96 P.3d 935, 941, 943 (Utah 2004). Hardy asserts that he (and his predecessors) and BLM have treated BLM's barbed wire fence north of the disputed area as the boundary between their respective properties; that the land south of the fence and north of the road has been used as a flood break to control run-off; that BLM has never asserted ownership of the land south of the fence; and that he has maintained the road and the flood break ever since he purchased the property. According to Hardy, these facts, coupled with BLM's apparent failure to object to Hardy's or his predecessors' use of the land, support his claim of ownership of the area south of the BLM fence pursuant to the doctrine of boundary by acquiescence.

As BLM correctly points out in its opposition to the petition for stay, 43 C.F.R. § 2920.1-2 provides that any unauthorized use, occupancy, or development of public lands, other than casual use, is considered a trespass. See *Stanley DiMeglio*, 163 IBLA 365, 373 (2004); *Michael & Karen Rodgers*, 137 IBLA 131, 134 (1996). In this case, Hardy does not deny that he constructed the fence and gate without BLM's authorization; he asserts, however, that he is not in trespass because he, not the United States, owns the land on which he constructed the fence and gate pursuant to the doctrine of boundary by acquiescence.

We disagree. It is well established that prescriptive rights cannot be obtained against the Federal government; mere occupancy and improvements of public lands without color of title create no prescriptive or vested rights as against the United States; and adverse possession of Government property cannot affect the title of the United States, except as provided by Federal statute. See *Lee & Jody Sprout*, 160 IBLA 9, 13 (2003), and cases cited; *Joseph E. Martell*, 143 IBLA 58, 65 (1998); *Delfino J. & Clara M. Borrego*, 113 IBLA 209, 212 (1990); *Loyla C. Waskul*, 102 IBLA 241, 243 (1988); *Elsie V. Farington*, 9 IBLA 191, 194 (1973) (requirements of Federal law are different from State law of prescriptive rights between private parties).

Nor would any purported acquiescence by BLM to the barbed wire fence as the boundary support Hardy's claim of ownership of the land because "[t]he authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by the acquiescence of its officers or their laches, neglect of duty, failure to act, or delays in the performance of their duties." 43 C.F.R. § 1810.3(a); see *Bookcliff Rattlers Motorcycle Club*, 171 IBLA 6, 26 (2006), and cases cited. Accordingly, we reject Hardy's assertion of ownership of the affected lands based on the State law doctrine of boundary by acquiescence. Thus, Hardy has failed to show any error in BLM's decision.

Since Hardy admits that he constructed the fence and gate without authorization, BLM properly found him to be in trespass and he must, as directed in BLM's decision, "remove the gate and any portion of [his] fence which crosses Public Land."

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 notice of trespass is affirmed and Hardy's petition for stay is denied as moot.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge