



SILVERADO NEVADA, INC.

184 IBLA 147

Decided August 30, 2013



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

SILVERADO NEVADA, INC.

IBLA 2012-218

Decided August 30, 2013

Appeal from a decision issued by the Division of Lands, Las Vegas (Nevada) Field Office, Southern Nevada District, Bureau of Land Management, rejecting an amended color-of-title application for 160 acres of public land in southern Nevada. NVN-58145.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications

A color of title applicant seeking a patent of up to 160 acres of public land under the Color of Title Act, must establish that he and his predecessors-in-interest held the land continuously in good faith and in peaceful, adverse possession under claim or color of title for more than twenty years. The applicant has the burden to establish that *all* of the requisite elements to a valid claim under the Color of Title Act have been satisfied. Absent such showing, BLM properly denies a color of title application.

2. Color or Claim of Title: Adverse Possession--Color or Claim of Title: Applications

Mere possession and improvement of public land by a color-of-title applicant (or his predecessor) in the mistaken belief that he owns it does not give rise to a proper claim of title under the Color of Title Act. In order to hold “under claim or color-of-title,” an applicant’s possession must be based on an instrument from a source other than the United States, which on its face purports to convey the claimed land.

3. Color or Claim of Title: Adverse Possession--Color or Claim of Title: Applications

The conveyance document initiating a color of title applicant's chain of title must describe the land conveyed with such certainty that its boundaries may reasonably be ascertained and must include the land now sought under the application. The requirement of certainty of description applies only to the initial document in a color of title applicant's chain of title. Once that is accomplished, the applicant need show only that subsequent instruments provide in some legally recognized manner for conveyance of the land.

4. Color or Claim of Title: Adverse Possession--Color or Claim of Title: Applications

A color of title applicant must demonstrate a good faith belief that he held title for a period of 20 years, *i.e.*, that neither he, at the time of acquisition, nor any predecessor-in-interest in the colorable chain of title was aware or had reason to be aware, during the 20-year period, that he had not actually acquired title by virtue of the deed or other instrument of conveyance, which purportedly conveyed title to the land.

APPEARANCES: Thomas R. Zeigler, President/Chief Executive Officer, Silverado Nevada, Inc., Frenchtown, Montana, for appellant; Amy L. Aufdemberge, Esq., Office of the Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Silverado Nevada, Inc. has appealed from an April 30, 2012, decision of the Assistant Field Manager, Division of Lands, Las Vegas (Nevada) Field Office (LVFO), Southern Nevada District, Bureau of Land Management (BLM), rejecting its amended color of title application, NVN-58145, for 160 acres of public land in southern Nevada, because Silverado had failed to establish that the lands at issue had been held by it and its predecessors-in-interest in good faith, peaceful adverse possession, under claim or color of title, for the requisite 20 years.

Because we conclude that Silverado has failed to establish any error of fact or law, we affirm BLM's decision.<sup>1</sup>

<sup>1</sup> Silverado informs us that it has requested Alternative Dispute Resolution (ADR),  
(continued...)

*Applicable Law*

In this case, the arguments raised by appellants have taken wide range and depart greatly from well-settled rules governing adjudication of color of title applications. Those arguments and the complex factual background of this case cannot be properly appreciated by a reader unfamiliar with the pertinent legal principles. So no party to this proceeding (or other reader) misapprehends the law governing adjudication of such applications, we set forth those principles at the outset of this opinion.

[1] The Color of Title Act, 43 U.S.C. § 1068 (2006), provides, in pertinent part:

The Secretary of the Interior (a) 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.

The color of title applicant has the burden to establish that *all* of the requisite elements to a valid claim under the Color of Title Act have been satisfied. Absent such showing, BLM properly denies a color of title application. *See, e.g., Mike Hook*, 174 IBLA 73, 75 (2008); *Kim C. Evans*, 82 IBLA 319, 323 (1984).

[2] Thus, “mere possession and improvement of public land by a color-of-title applicant (or his predecessor) in the mistaken belief that he owns it” does not give rise to a proper claim of title under the Color of Title Act. *Beulah Alder*, 161 IBLA 181, 186 (2004) (quoting *Frank W. Sharp*, 35 IBLA 257, 260 (1978)). In order to hold “under claim or color of title,” an applicant’s possession must be based on an

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<sup>1</sup> (...continued)

that it was notified by the Office of Collaborative Action and Dispute Resolution (CADR) that ADR may go forward only with the agreement of BLM, and that BLM refused to participate. It asks the Board to consider ordering BLM to participate in direct negotiation or other form of ADR. We deny Silverado’s request to order BLM to participate in ADR, and also deny its July 18, 2012, request to suspend the proceedings before the Board while CADR “works out the details of [ADR].” The ADR process does not empower an agency to agree to an action that would be outside the scope of its statutory authority. If Silverado does not meet the statutory qualifications for a conveyance under the Color of Title Act, the limitation on BLM’s authority established in that Act cannot be circumvented through ADR.

instrument from a source other than the United States, which on its face purports to convey the claimed land. *Filadelfia Sanchez*, 147 IBLA 217, 220 (1999); *Heirs of Herculano Montoya*, 137 IBLA 142, 148 (1996); *Mabel M. Sherwood*, 130 IBLA 249, 250 (1994); *William Benton*, A-23258 (Jan. 11, 1943). An applicant cannot assert that his color of title is based on a conveyance from the Government because, “if this were true, the applicant would possess actual title not color of title.” *Ramona Lawson*, 94 IBLA 220, 225-26 (1986). “[A] color of title claim cannot be based solely on a belief, however justified, that the land sought was part of the parcel patented.” *Wisconsin Michigan Power Co.*, A-31037 (Dec. 18, 1969), at 4-5. This principle is no less applicable when the Government conveys less than its full interest. Otherwise, the Government’s retention of any interest would be futile if a successor-in-interest to the Government’s grantee could claim an entitlement to the retained interest under the Color of Title Act because he mistakenly construed the conveyance from the Government.

[3] The conveyance document initiating the chain of title must describe the land conveyed with such certainty that its boundaries may reasonably be ascertained and must include the land now sought under the color-of-title application. *Filadelfia Sanchez*, 147 IBLA at 220; *Mabel M. Sherwood*, 130 IBLA at 250; *Charles M. Schwab*, 55 IBLA 8, 11 (1981). “The requirement of certainty of description applies only to the initial document in a color-of-title claimant’s chain of title. Once that is accomplished, she need show only that subsequent instruments ‘provide in some legally recognized manner for conveyance of the land.’” *Beulah Alder*, 161 IBLA at 185 n.5 (citing *Benton C. Cavin*, 41 IBLA 268, 271 (1979)). For example, a residuary clause in a will may provide a link in an applicant’s chain of title, but because it lacks a specific description of a particular tract of land, it does not qualify as an instrument that can initiate a chain of title because it does not, on its face, purport to convey title to a particular parcel. *Alvin E. Leukuma*, 103 IBLA 302, 305 (1988).

[4] In addition to a colorable chain of title, an applicant must demonstrate a good faith belief that he held title. To do so, he must show that neither he, at the time of acquisition, nor any predecessor-in-interest in the colorable chain of title, was aware or had reason to be aware, during the 20-year period, that he had not actually acquired title by virtue of the deed or other instrument of conveyance, which purportedly conveyed title to the land. Good faith will only exist where the applicant and all predecessors-in-interest neither knew nor had any reason to know that they were not possessed of title to the lands. Once it is shown that a predecessor-in-interest knew or had reason to know that he had not actually acquired title, the absence of a good faith belief that he held title would, at that point, break the chain of title. See, e.g., *Kim C. Evans*, 82 IBLA at 321-23; *Cripple Creek Gold Prod. Corp.*, 53 IBLA 188, 189-91 (1981). The chain of colorable title must then begin anew with the next predecessor-in-interest, and continue for the requisite 20 years.

Thus, in considering the history of this case, the reader must bear the following matters in mind: (1) the document that initiates Silverado's color of title must come from a source other than the United States, (2) that document must describe the land conveyed with such certainty that its boundaries may reasonably be ascertained and must include the land now sought under the color-of-title application, and (3) that document only begins the running of the 20-year period during which an applicant or his predecessors-in-interest had a good faith belief that they held title.<sup>2</sup>

### *Procedural Background*

Silverado's color of title application has previously been before the Board in *Silverado Nevada, Inc.*, IBLA 99-23 through 99-31. In our June 22, 2000, decision (152 IBLA 313), we affirmed in part, and set aside and remanded in part nine August 26, 1998, decisions by the Nevada State Office, BLM, which had rejected Silverado's original color of title application, NVN-58145, and eight other color of title applications, NVN-58146 through NVN-58153. The Board found that because all nine of Silverado's were based upon a single deed, it could receive title to a maximum of 160 acres. 152 IBLA at 334. Until that acreage was identified, the Board could not establish whether Silverado had satisfied the requirements of the Act, so the case was remanded to BLM. *Id.*

On remand, Silverado withdrew eight color of title applications, and submitted an amended color of title application NVN-58145 and additional documentation. However, because Silverado produced no deed or other instrument of conveyance by which one of its predecessors purportedly acquired title to the lands, the Assistant Field Manager rejected Silverado's amended color of title application.

### *History*

The land subject to Silverado's color of title application has had a complicated history, leading to quiet title litigation that culminated in a finding that the United

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<sup>2</sup> As stated above, we set forth the governing legal principles at the outset of this opinion to prevent the reader from making any mistake with respect to those requirements. Unfortunately, we also find it necessary to point to several misleading statements in the dissenting opinion. For example, the dissenting opinion accuses the majority of "wholeheartedly agree[ing] and repeat[ing] the mantra first articulated by BLM that Howmet's color of title must be based on 'a deed or instrument of conveyance.'" 184 IBLA at 178. This "mantra" was not "first articulated by BLM." The requirement that a claim or color of title be based on a written conveyance describing the land from a source other than the government was firmly established before BLM was created in 1946, as the 1943 *Benton* case cited above demonstrates.

States had retained title to the fee interest underlying mining claims that had been conveyed in 1955. *Lancaster v. United States*, No. 95-15490, 1998 WL 205783 (9th Cir. April 14, 1998), *aff'g* CV-S-93-0263-HDM (LRL) (D. Nev. Oct. 14, 1994); *Roy v. Lancaster*, 814 P.2d 75 (Nev. 1991).

From 1939 to 1942, various private parties located mining claims for manganese ore pursuant to the Mining Laws of the United States, 30 U.S.C. §§ 21-54 (2006). These claims, 32 unpatented and 13 patented, were situated on public lands in secs. 26, 27, 34, and 35, T. 21 S., R. 63 E., Mount Diablo Meridian, Clark County, Nevada, encompassing the “Three Kids Mine” (Mine) and surrounding lands. Thereafter, all of the claims were acquired by the Defense Plant Corporation (DPC) and Metals Reserve Company (MRC), which had been created by the Reconstruction Finance Corporation (RFC), a Federal corporation,<sup>3</sup> in the early 1940s. In 1945, Congress transferred all of the claims to RFC, which had succeeded to the assets of DPC and MRC, upon the dissolution of those corporations.

RFC, together with the United States, both acting through the General Services Administration (GSA), entered into a mining lease with Manganese, Inc. (Manganese) in 1949, which authorized the mining and removal of manganese ore, and also afforded Manganese an option to purchase the mining claims. Manganese thereafter engaged in mining operations. See “The Three Kids Mine Company Town: The Archaeology and History of a Short-Lived Residential Complex,” Archaeological Research of Southern Nevada, dated April 1992 (ARSN Report 4-3-6) (attached to Reply to BLM Answer), at 13.

Later, having exercised its option to purchase, RFC and the United States, acting through the GSA, executed a May 13, 1955, Quitclaim Deed, and thereby “remised, released and forever quitclaimed . . . all of Grantor’s interest” in certain described premises, consisting of the patented and unpatented mining claims, to Manganese.<sup>4</sup> Quitclaim Deed, dated May 13, 1955, at 1. At issue here are the

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<sup>3</sup> Congress created RFC in 1932. See 15 U.S.C. §§ 601-619 (1952); *Defense Supplies Corp. v. Lawrence Warehouse Co.*, 336 U.S. 631, 632-33 (1949) (calling RFC an “arm[] of the United States Government”); *Cont’l Ill. Nat’l Bank & Trust Co. of Chicago v. Chicago, Rock Island & Pac. Ry. Co.*, 294 U.S. 648, 684 (1935).

<sup>4</sup> Silverado has provided a copy of a Corrected Title Guarantee (CTG), dated Apr. 15, 1951, issued by the Pioneer Title Insurance and Trust Company, which attested, *inter alia*, to the fact that, prior to the 1955 deed, “record title to . . . certain [named] unpatented mining claims,” thereafter conveyed to Manganese, was vested in RFC. CTG at 1. The guarantee was said to be based on certain assumptions, including that each of the claims was properly located and recorded under the laws of the State of

(continued...)

unpatented mining claims. It is undisputed that none of these claims has ever been patented by the United States.

Following acquisition of the claims, Manganese and BLM both acted in a manner that recognized Federal ownership of the underlying fee. BLM issued leases, rights-of-way and withdrawals affecting the land at issue. *See Lancaster v. United States*, 1998 WL 205783 at \*1. Manganese sought to maintain the unpatented claims under the Mining Laws of the United States from 1955 to 1961, by filing either evidence of annual assessment work or notices of intent to hold the claims.<sup>5</sup> It ceased mining operations in July 1961. *See id.*; ARSN Report 4-3-6 at 16.

During this period, from 1951 to 1959, the government purchased domestic manganese for stockpiling under a program to help obtain a domestic reserve and to help the domestic mining industry. *See United States v. Denison*, 76 I.D. 233, 240-41 (1969). As the Board observed in *United States v. Johnson*, 16 IBLA 234, 239 (1974):

During this program the Government created an artificial market by buying lower grade manganese ore than was acceptable on the general open market, and paying a premium price for it as a subsidy. This federal program was ended in 1959 and virtually all domestic mining of manganese stopped. Today there apparently is no domestic production at all, and there has been none of any consequence for many years, all requirements being satisfied by the importation of higher grade ore from foreign sources at a price below that which suppliers could hope to meet from any known domestic source.

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

Nevada and United States, and supported by the prior discovery of a valuable mineral deposit, and to be subject, *inter alia*, to “reservations, exceptions, easements, restrictions, regulations, and rights, to which said mining claims are subject under the terms and provisions of the mining laws of the United States[.]” *Id.* at 2; *see id.* at 11.

<sup>5</sup> Although no one seems to have produced evidence that Manganese had any reason to believe it owned the fee, the dissent nevertheless refers to the 9th Circuit’s speculation that “[o]ne can imagine a conclusion to the contrary, that it would be cheaper [for Manganese] to perform the assessment work than to litigate the fee . . . .” 184 IBLA at 174 (citing *Lancaster*, 1998 WL 205783 at \*2). The dissent fails to add, however, that the court also referred to actions taken by BLM after its conveyance to Manganese that could only be done if the land remained public land, such as issuing oil and gas leases, rights-of-way, and withdrawals. The acquiescence of Manganese in these actions by BLM during the period of Manganese’s ownership of the claims should defeat any argument that Manganese had a reasonable belief that it owned the fee.

This loss of market rendered many manganese claims invalid for lack of discovery of a valuable mineral deposit. *See id.* at 239-40, and cases cited therein. Nevertheless, nothing in the record shows that the unpatented claims conveyed to Manganese were ever challenged.

On November 16, 1961, Manganese issued a quitclaim deed to the claims to the Milton J. Wershow Company (Wershow), which quitclaimed them to Clark County Land & Water Company in 1963, which quitclaimed them to J.C. and Fern Lancaster in 1976. Although it was later determined that Manganese had transferred all of its interest to Wershow, this interest did not include the underlying fee, which remained in Federal ownership. *See Lancaster v. United States*, 1998 WL 205783; *Roy v. Lancaster*, 814 P.2d 75.

On March 1, 1962, Manganese merged into Howe, known later as Howmet.<sup>6</sup> Although Manganese had acted as if the fee underlying the claims conveyed to Wershow remained in Federal ownership, it appears that Howmet at some point developed the belief that it had acquired the fee underlying the claims conveyed to Wershow because it graded, fenced, trenched (for underground utilities), and maintained a dike to protect the land encumbered by Wershow's claims. *See ARSN Report 4-3-6*. On January 30, 1980, Howmet issued a quitclaim deed to Leonard A. Roy, Sr., for land that included the unpatented mining claims that had previously been quitclaimed to Wershow and then to the Lancasters.<sup>7</sup>

At this point, it is important to observe that this 1980 deed is the first instrument in Silverado's chain of title, other than the 1955 deed from the United States, which describes land that includes the parcel for which Silverado now applies, so the 20-year period for showing good faith can start no earlier. Although Silverado seeks to extend this period back to the 1962 merger, this effort fails for two distinct reasons. First, Howmet acquired no colorable interest whatsoever in the subject land as a result of the merger because Manganese had conveyed all of its interest to Wershow the year before. Second, even if Manganese had not conveyed its interest to Wershow, the only prior document describing the land at issue is the 1955 deed from the Government. Although the merger would have provided a "legally recognized manner for conveyance of the land," *see Benton C. Cavin*, 41 IBLA at 271,

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<sup>6</sup> Silverado has provided copies of corporate documents documenting the merger of Manganese with Howe and the later corporate name change from Howe to Howmet. Hereinafter, references to Howmet may encompass both Howe and Howmet as successor-in-interest to Manganese, and initiator of Silverado's colorable chain of title, upon which Silverado's color of title application must rest.

<sup>7</sup> The 1980 conveyance was to Nevada Disposal, Inc. However, it is undisputed that the real party in interest was Roy.

that would only be a link in Silverado's chain of title from the Government deed. A new chain of title, and 20-year period for holding in good faith, could only arise from a document describing the land to be conveyed. An instrument of merger that "lacks a specific description of a particular tract of land . . . does not qualify as an instrument that can initiate a chain of title because it does not, on its face, purport to convey title to a particular parcel." *Alvin E. Leukuma*, 103 IBLA at 305.<sup>8</sup>

After Howmet quitclaimed the land to Roy, he evidently used the lands for landfill operations and other purposes from 1980 to 1993. The Lancasters sued Roy in State court in 1989, seeking to quiet title to the lands at issue.<sup>9</sup> Both the Lancasters and Roy asserted title to the lands dating back to the 1955 deed from the United States to Manganese. The Lancasters traced their title from Manganese through Wershow, and Roy traced his title from Manganese through Howe and Howmet. The State court ruled in favor of the Lancasters in 1990, concluding that the Lancasters held title to the lands.

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<sup>8</sup> Although we agree with the dissent that "Manganese is logically the analog to an ancestor-decedent and that Howmet is analogous to an heir at law or a beneficiary under the residuary clause of a will," 184 IBLA at 177 n.10, an heir can continue to hold under "claim or color of title" only if there is a prior instrument from a source other than the United States that describes the parcel of land. Although the dissent refers to our "slavishly requiring a deed or other separate conveyancing document," 184 IBLA at 178, the dissent ignores the fact that without such a document, there is mere "adverse possession" and no "claim or color of title" that the statute requires.

And, although the dissent begins by agreeing that "under the [Color of Title Act], an applicant's 20-year uninterrupted chain of title cannot begin with a deed or other conveyance from the United States," 184 IBLA at 170, it later ignores this requirement that the prior instrument come from a source other than the United States: "[U]nlike the majority, I find Howmet was vested with title under the terms of the 1955 Deed and grant from the United States when Manganese merged into it by operation of Nevada law. . . . [T]hat deed and its residuary clause [are] more than sufficient to show a claim or color of title [was] held by Howmet in good faith." *Id.* at 178 n.13. The dissent overlooks the fact that the courts of that State recognized that Manganese had conveyed all of its interest to Wershow the year before so that Howmet acquired no interest whatsoever in the subject land as a result of the merger.

<sup>9</sup> Shirley H. Roy, the wife of Leonard A. Roy, Sr., was joined in the lawsuit, since Nevada is a community property state. She later predeceased her husband, and the lands at issue were ultimately conveyed by his estate to Silverado.

The state supreme court, in *Roy v. Lancaster*, 814 P.2d 75 (Nev. 1991), reversed the ruling by the lower court in 1991, holding that neither the Lancasters nor Roy, each of whom traced their ownership back to the 1955 deed to Manganese, held fee simple title to the lands, since the United States, which retained fee simple title to the lands at all times, had conveyed only the unpatented mining claims to Manganese in its 1955 deed. *See* 814 P.2d at 77 (“It is undisputed that the deeds in question conveyed unpatented [mining] claims. An unpatented mining claim represents only a possessory interest. It does not confer fee simple title. . . . Therefore, in the absence of proof that the . . . claims at issue were ever patented, *fee simple title to them remains vested in the United States.*” (Emphasis added)).

Since the state supreme court ruled that the United States was a necessary party to the proceeding, the United States was joined as a party, and the case was removed to the Federal district court. Like the State court, the Federal district court held that the 1955 deed had clearly and unambiguously conveyed from the United States the unpatented mining claims, but not the underlying title. In 1998, the Court of Appeals for the Ninth Circuit affirmed the district court, holding that, although it could not determine whether the 1955 deed was clear and unambiguous, this did not matter to disposition of the case. If the deed was not ambiguous, opined the Ninth Circuit, the deed, by its terms, clearly conveyed only the claims; and, if the deed was ambiguous, the district court’s finding that the parties to the deed intended that it convey only the claims was not clearly erroneous. *See* 1998 WL 205783, at \*2, \*3. The appeals court confirmed title to the lands in the United States, since, whether looking inside or outside its “four corners,” the deed had not conveyed title to Manganese. *Id.* at \*1, \*3.

On June 4, 1993 (during the pendency of the Federal litigation, but after the 1991 ruling by the State Supreme Court), Silverado entered into an agreement with the Estate of Leonard A. Roy, Sr. (Roy). The agreement, which acknowledged the State Supreme Court ruling and the pending Federal litigation, invested title to the lands at issue in Silverado, subject to a promissory note payable to Roy, secured by a Deed of Trust in favor of Roy.<sup>10</sup> Both the promissory note and the Deed of Trust were dependent on favorable resolution of the Federal litigation, which Silverado would pursue on behalf of Roy. It is undisputed that final transfer of the lands to Silverado was entirely contingent on a final determination, by judicial decree or

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<sup>10</sup> We note that the 1980 and 1993 conveyances describe the tracts of land conveyed by courses and distances. We are not able to determine the location of these tracts on the ground. However, for the purpose of resolving the present appeal, we will accept Silverado’s representations that the conveyances encompassed the 160-acre parcel of land now at issue. Whether Silverado has otherwise satisfied the Color of Title Act is the matter at hand.

settlement, that Silverado, as successor-in-interest to Roy, held title, free and clear, to the lands: “[T]he transaction would only be consummated if Silverado ultimately prevailed in securing fee title to the land.” BLM Decision at unpaginated (unp.) 3.<sup>11</sup> Silverado filed its original color of title applications on December 21, 1993.<sup>12</sup> Shortly after the Court of Appeals issued its decision in 1998, BLM rejected Silverado’s applications in a decision that we set aside and remanded in *Silverado Nevada, Inc.*, 152 IBLA 313 (2000).

*The Board’s 2000 Decision*

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<sup>11</sup> Given the fact that the transfer to Silverado under the terms of its agreement has yet to occur, it is difficult to grasp how Silverado can qualify as a “claimant” inasmuch as Roy’s estate has yet to become a “grantor,” even if it “held” land “under claim or color of title” as required by 43 U.S.C. § 1068 (2006). Moreover, after the Nevada Supreme Court issued its decision on Aug. 28, 1991, the United States was joined and the matter removed to a federal court, at which point the land at issue became the subject of a quiet title claim against the Government. Silverado did not acquire its interest until 1993 when that action was pending. The Anti-Assignment Act, 31 U.S.C. § 3727 (2006), is interpreted as “prohibit[ing] transfers of contracts involving the United States or interests therein, and assignment of claims against the United States.” *Webster v. United States*, 90 Fed. Cl. 107, 116 (2009). “[T]he plain language of the anti-assignment laws comprehends claims to public property . . . as well as claims to money.” *Naartex Consulting Corp. v. Watt*, 542 F. Supp. 1196 (D.D.C. 1982), *aff’d* 722 F.2d 779 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984). A purchase of an interest in property in a quiet title proceeding is a voluntary assignment, rather than an assignment taking effect by operation of law, and falls within the Anti-Assignment Act’s prohibition on voluntary assignments of claims against the government. *Webster*, 90 Fed. Cl. at 116-17.

Even where the Anti-Assignment Act would not bar a claim, courts have recognized that the rationale of that statute is analogous to longstanding Departmental interpretations of statutory requirements that may be affected by efforts to transfer claims to Federal property from one party to another. *See, e.g., Udall v. Battle Mountain Co.*, 385 F.2d 90, 94 (9th Cir. 1967).

<sup>12</sup> “We have noted on numerous occasions that a color-of-title applicant may not contest Government ownership of the land sought.” *Loyla C. Waskul*, 102 IBLA 241, 244 (1988) (citing *Jerome L. Kolstad*, 93 IBLA 119, 122 (1986)); *Benton C. Cavin*, 83 IBLA 107, 109 n.2 (1984). Thus, BLM could have properly rejected Silverado’s application at any time during the pendency of the quiet title litigation. Had BLM done so, this whole matter could have been avoided. Because of the contingencies under the terms of Silverado’s agreement with Roy’s estate, there would be no effective transfer of that interest that would qualify Silverado as a “claimant” under the Color of Title Act. *See supra* note 11.

In our June 2000 decision, we affirmed BLM's August 1998 decisions to the extent they held that Silverado was entitled to no more than 160 acres of land pursuant to its "single" color of title claim, arising from the 1955 deed to Manganese, under the Color of Title Act, and otherwise set aside the decisions to the extent they rejected the original color of title applications, since the record did not conclusively establish whether Silverado had satisfied the requirements of the Act. *Silverado Nevada, Inc.*, 152 IBLA at 334.

BLM initially adjudicated whether Silverado's chain of title was supported by documentation of the various deeds or other instruments of conveyance following the 1955 deed from RFC and the United States to Manganese and culminating in the July 1993 conveyance from Roy to Silverado. However, we generally concluded that, since Silverado had not been required to submit such documents with its original color of title applications and had never been required by BLM to separately submit such documents, the record did not support BLM's factual determination that Silverado had failed to document its colorable chain of title, and thus rejected the original color of title applications. *See Silverado Nevada, Inc.*, 152 IBLA at 323-24. Since we could not independently assess the adequacy of Silverado's chain of title, we set aside BLM's August 1998 decisions, and remanded the case to BLM, for further adjudication. *See id.* at 324-25, 335.

We agreed with BLM that Silverado could not rely on the 1955 deed from RFC and the United States to Manganese to initiate its colorable chain of title, since the Federal district court, as affirmed by the Ninth Circuit, had held that the deed had not vested title to the lands at issue in Manganese, *and, therefore, title remained in the United States:*

Because the U.S. District Court, affirmed by the Ninth Circuit, determined that Manganese intended to receive and understood that it held unpatented mining claims and not fee title to the lands at issue, *no question can arise as to whether Manganese held the land in good faith under color of title.*

. . . .

. . . [A] deed that conveys an *unpatented* mining claim cannot as a matter of law serve as the basis for a claim of color of title to the land described, just as a deed conveying a right-of-way or grazing lease could not. *See Joe Stewart*, 33 IBLA 225, 229 (1977); *Carmen M. Warren*, 69 IBLA 347, 349 (1982). [Emphasis added.]

*Silverado Nevada, Inc.*, 152 IBLA at 328-29; *see id.* at 317-18, 330 ("Neither the U.S. District Court nor the Ninth Circuit ruled that the deed did not convey fee title as

a matter of law”). We added: “Correspondingly, Silverado cannot claim credit for the period that Manganese knew it held unpatented mining claims.” *Id.* at 329; *see id.* at 332-33 (“[D]ue to the U.S. District Court’s decision, Silverado cannot claim credit for the period . . . when Manganese held the mining claims”). We held that Silverado was precluded from relying on the 1955 deed to initiate its colorable chain of title because of the Federal circuit court’s 1998 ruling that Manganese had known that it had acquired from the United States only the unpatented mining claims, and not fee title to the land under the 1955 deed.

Our holding meant that Silverado was required to establish a colorable chain of title dating back before the 1980 deed from Howmet to Roy, in order to establish that it and its predecessors-in-interest had held the lands in good faith, peaceful adverse possession, under claim or color of title, for the requisite 20 years: “Silverado must establish its claim based upon 20 years of possession of the land under color of title and in good faith *by parties subsequent to Manganese.*”<sup>13</sup> *Silverado Nevada, Inc.*, 152 IBLA at 329 (emphasis added). Silverado was effectively required to establish that Howmet, by virtue of a deed or other instrument of conveyance, had reason to believe that it had acquired title to the lands, and thereafter that it, and its successors-in-interest, held the lands in good faith, peaceful adverse possession, under claim or color of title.<sup>14</sup> *See Silverado Nevada, Inc.*, 152 IBLA at 333 (“[T]he record before the Board does not provide any basis for concluding that Howmet believed that it held any kind of title or interest in the lands . . . prior to its 1980 quitclaim deed to the Roys. Absent such evidence, whether by conveyance or

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<sup>13</sup> We did not determine whether Silverado became aware that title resided in the United States in 1993, when Silverado submitted its original color of title applications, in 1994, when the Federal district court ruled, or in 1998, when the Federal circuit court finally ruled, since adoption of any of these years required Silverado to establish a 20-year chain of title dating back before the 1980 deed from Howmet to Roy. *See Silverado Nevada, Inc.*, 152 IBLA at 332 (“Whether 1993, 1994, or 1998 is considered the determinative date, the 20-year period reaches back to Howmet as Silverado’s predecessor-in-interest”).

<sup>14</sup> We also indicated that Silverado should be afforded an opportunity to demonstrate that Howmet’s successors-in-interest, Roy and Silverado, had, following the succeeding 1980 and 1993 conveyances, held the lands at issue in good faith, peaceful adverse possession, under claim or color of title, because, contrary to BLM’s conclusion, the mere pendency of the state and federal lawsuits, and thus the outstanding claim of title by the United States, was not, by itself, sufficient to dispel their good faith. *See Silverado Nevada, Inc.*, 152 IBLA at 329-32, 335. We do not now adjudicate these questions of good faith, since, absent a showing of a deed or other instrument of conveyance *to Howmet*, Silverado has failed to establish a 20-year colorable chain of title.

corporate documents, there is no basis to find that Silverado through its predecessors-in-interest has *held the land for 20 years under color of title.*” (Emphasis added)). Finding that the record did not permit the Board to resolve these questions, we remanded the case to BLM. *See id.* at 333, 335. Remand would permit Silverado to select the 160 acres of land that it sought, to document the chain of title, starting with Howmet, supporting its color of title claim, and to allow BLM to finally adjudicate the question of Silverado’s color of title claim to the selected lands, under the Act.<sup>15</sup>

#### *Action on Remand*

Following our June 2000 remand, BLM issued an August 11, 2000, decision, affording Silverado an opportunity to select the 160 acres of land that it sought to pursue under the Color of Title Act, from among the lands described in its original color of title applications. Silverado appealed the August 2000 decision to the Board.

By order dated March 28, 2001, the Board, in *Silverado Nevada, Inc.*, IBLA 2001-2, affirmed BLM’s August 11, 2000, decision, providing Silverado 90 days from receipt of the order to amend its color of title applications to select 160 acres of land, as well as to submit evidence in support of its color of title claim. The Board stated that, absent the selection, BLM was authorized to select the 160 acres of land in satisfaction of the color of title claim, were Silverado found to be entitled under the Color of Title Act.

On December 31, 2001 (as supplemented June 3, 2002), Silverado notified BLM of the selection of the 160 acres of land that it sought under the Color of Title Act. Such lands, which were described by courses and distances, are situated in secs. 27, 34, and 35, T. 21 S., R. 63 E., Mount Diablo Meridian, Clark County, Nevada. Silverado specifically sought to amend color of title application NVN-58145, and relinquish the remaining eight color of title applications, without prejudice. BLM took no immediate action regarding the filing.

Meanwhile, BLM patented all of the lands subject to Silverado’s color of title claim but rendered each of the two patents expressly subject to the claim, retaining

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<sup>15</sup> In its Aug. 26, 1998, decisions, BLM determined that Silverado had failed to establish that it and/or its predecessors-in-interest had either placed valuable improvements on the lands or reduced some part of the lands to cultivation. In setting aside and remanding the decisions, the Board afforded Silverado the opportunity to present such evidence. However, since we here decide that Silverado’s color of title claim properly fails due to lack of evidence of good faith, peaceful adverse possession, under claim or color of title, we need not address the question of valuable improvements or cultivation.

authority to subsequently convey the lands to Silverado under the Color of Title Act, should Silverado be found so entitled. First, on January 5, 2001, the United States issued Patent No. 27-2001-0030, pursuant to the land exchange authority of section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (2006), conveying 354.34 acres of public land situated in secs. 27 and 34, T. 21 S., R. 63 E., Mount Diablo Meridian, Clark County, Nevada, to the Lake at Las Vegas Joint Venture (LLV). The conveyance was expressly “subject to disposition of [Silverado’s] color-of-title applications N-58145 through N-58153,” which then encumbered certain of the patented lands, and “any and all rights” that Silverado “may have, pursuant to the laws of the United States.” Patent at 4.

Second, on February 27, 2004, the United States issued Patent No. 27-2004-0046, pursuant to the land disposal authority of sections 203 and 209 of FLPMA, 43 U.S.C. §§ 1713 and 1719 (2006), and section 4(a) of the Southern Nevada Public Land Management Act of 1998, Pub. L. No. 105-263, 112 Stat. 2343, 2344, conveying 982.44 acres of public land situated in secs. 26, 27, 34, and 35, T. 21 S., R. 63 E., Mount Diablo Meridian, Clark County, Nevada, to LLV-1, LLC (LLV-1). The conveyance was expressly “subject to disposition of [Silverado’s] color-of-title applications N-58145 to N-58148, inclusive, and N-58151,” which then encumbered certain of the patented lands, and “any and all rights” that Silverado “may have, pursuant to the laws of the United States.” Patent at 4.<sup>16</sup>

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<sup>16</sup> In its May 30, 2012, notice of appeal (NOA), Silverado refers to the fact that the Board had granted its request for a stay, with respect to a “prior appeal,” but that BLM nevertheless patented the lands at issue, which were then developed. NOA at 1. Silverado does not request a stay of the effect of BLM’s Apr. 30, 2012, decision, but asks the Board to take official notice of these facts, stating that, while it is likely to prevail on appeal, “no further harm” can befall it. *Id.* at 1-2. To clarify, the Board did not grant Silverado’s request to stay the effect of BLM’s Aug. 26, 1998, decisions, rejecting its original color of title applications in the cases docketed as IBLA 99-23 through 99-31.

Silverado further asserts that, in patenting the lands at issue, BLM acted contrary to the Board’s June 2000 decision in IBLA 99-23 through 99-31, which set aside BLM’s August 1998 decisions, rejected Silverado’s original color of title applications, and remanded the case to BLM, to further adjudicate the applications. *See* SOR at 5 (citing *Lipscomb v. United States*, 906 F.2d 545, 549 (11th Cir. 1990) (“[u]pon the filing of an application under the Color of Title Act, a right to have an application processed under the Act in preference to others vests in the claimant”). SNL overlooks the fact that BLM patented the lands at issue in a manner that preserved its right and obligation to finally adjudicate Silverado’s amended color of title application. The patents reserved to BLM the authority to determine whether Silverado was entitled to a conveyance of the affected lands under the Color of Title

(continued...)

In a February 8, 2011, decision, BLM finally deemed eight of the nine original color of title applications, NVN-58146 through NVN-58153, to have been withdrawn, noting that application NVN-58145 would remain pending, and subject to adjudication by BLM.

By letter dated February 11, 2011, BLM asked Silverado to submit a new amended color of title application NVN-58145, clearly identifying the lands claimed under the Color of Title Act, along with all documentation supporting its amended color of title claim, within 30 days of receipt of the letter.

On March 17, 2011, Silverado filed an amended application, seeking 160 acres of public land, described by courses and distances, situated in secs. 27, 34, and 35, T. 21 S., R. 63 E., Mount Diablo Meridian, Clark County, Nevada, pursuant to the Color of Title Act.<sup>17</sup> It noted that it had acquired the lands, for a total purchase price of \$1,280,000, from Roy on July 14, 1993, the culmination of a colorable chain of title dating back to the May 13, 1955, deed from RFC and the United States to Manganese.

In a September 16, 2011, letter to Silverado, BLM concluded that, after it acquired the lands at issue in 1993, Silverado was deemed to have learned that the United States, in fact, held title to the lands, by virtue of the April 14, 1998, opinion by the Federal circuit court in *Lancaster v. United States*, No. 95-15490 (9th Cir.), which finally held that title was in the United States. BLM noted that, when Silverado appealed BLM's August 1998 decisions, this was the date it acknowledged as the date when it first became aware that title was in the United States.

BLM made clear that the Ninth Circuit's ruling in *Lancaster v. United States* (No. 95-15490 Apr. 14, 1998), holding that Manganese had not acquired title to the lands under the 1955 deed from the United States, but only a possessory interest in the lands under the Mining Laws of the United States, 30 U.S.C. §§ 21-54 (2006), by

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<sup>16</sup> (...continued)

Act, and, if so, to convey the lands to Silverado, pursuant to the Act.

<sup>17</sup> Silverado corrected the legal description in its amended application on July 6, 2011. The description still encompassed 160 acres of public land, described by courses and distances, situated in secs. 27, 34, and 35. Attached to Silverado's June 29, 2011, letter to BLM was an "Amended Legal Description," including a May 15, 2011, map, entitled "Record Boundary Map Sections 26, 27, 34 & 35, T21S, R63E, MDM," depicting the location of the 160-acre parcel of land. Silverado also submitted, on Aug. 5, 2011, a map entitled "Manganese, Inc. Claim Map," dated Jan. 1, 1961, which depicts, *inter alia*, all of the unpatented mining claims in secs. 27, 34, and 35, including those within the 160-acre parcel of land.

virtue of the transfer of unpatented mining claims covering the lands, had precluded Silverado from asserting that Manganese held the lands at issue in good faith, peaceful adverse possession, under claim or color of title. See Letter to Silverado, dated Sept. 6, 2011, at unpag. 2. BLM also noted that the Board had, in our June 2000 decision, “rejected the 1955 deed as a basis for Howmet’s good faith belief” that it held the lands in peaceful adverse possession, under claim or color of title. *Id.*

In order to demonstrate its entitlement to a Class I claim, BLM required Silverado to demonstrate a “relevant” chain of title dating back to April 14, 1978. Letter to Silverado, dated Sept. 16, 2011, at unpag. 2. Silverado “must show that each party in your chain of title, going back to 1978, had good faith, peaceful, adverse possession under claim or color of title,” starting with Howmet, and continuing through Roy. *Id.* BLM explained that the colorable chain of title must originate with a deed or other instrument of conveyance that purports, “on its face,” to convey fee simple title to the lands at issue, which are described “with such certainty that the boundaries and identity of the land may be ascertained.” *Id.* (quoting *Loyla C. Waskul*, 102 IBLA at 243). BLM concluded that Howmet, as “Manganese’s corporate successor in interest by merger,” must identify another deed or other instrument of conveyance, by which it acquired title, leaving it with a good faith belief that it held the lands in peaceful adverse possession, under claim or color of title. *Id.*

BLM afforded Silverado 45 days from the date of the letter to submit appropriate documentation in support of its amended color of title application, whereupon BLM might proceed to finally adjudicate the application; Silverado submitted such additional documents.

#### *BLM’s Decision*

In her April 2012 decision, the Assistant Field Manager rejected Silverado’s amended color of title application NVN-58145 principally because Silverado, which continued to rely solely on the 1955 deed, had failed to submit another deed or other instrument of conveyance by which Howmet purported to acquire fee simple title which would have afforded Howmet reason to believe that it had acquired title to the lands at issue, thus initiating Silverado’s colorable chain of title to the lands at issue in secs. 27, 34, and 35, covered by the application:

Silverado must present an instrument other than the 1955 deed which purports on its face to convey the parcel in question in fee simple to Howmet. *Silverado has presented no such instrument.* This fact alone is

sufficiently fatal to Silverado's [amended color of title] application.<sup>[18]</sup>  
[Emphasis added.]

Decision at unp. 9. She explained that Silverado had failed to produce another deed, despite explanations by both the Board, in its June 2000 decision, and BLM, in its September 2011 letter, that Silverado could not use the 1955 deed to Manganese to demonstrate Howmet's good faith belief that it had acquired title, because Federal courts determined that the deed had conveyed only unpatented mining claims, not fee title to the lands.

Acknowledging Silverado's submissions, the Assistant Field Manager stated:

The BLM finds that none of the information submitted establishes that Howmet had a good faith belief that it owned the fee interest to the lands in question. All of the information goes to *Howmet's understanding of, or characterization of, the 1955 deed from the General Services Administration to Manganese*. However, that deed has been found to have only conveyed the unpatented mining claims, not the fee interest. [Emphasis added.]

Decision at unp. 2. Because Silverado failed to produce a deed or other instrument of conveyance by which Howmet purported to acquire title to the lands, the Assistant

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<sup>18</sup> The Assistant Field Manager also held that Silverado had failed to establish that it and its predecessors-in-interest had been in "actual, exclusive, continuous, open and notorious" possession of the lands at issue for 20 years. Decision at unp. 5 (quoting *Beaver v. United States*, 350 F.2d 4, 10 (9th Cir. 1965), *cert. denied*, 383 U.S. 937 (1966)); *see id.* at unp. 11 ("Silverado has presented no evidence that Howmet actually physically possessed the property in question at any time in the nearly 20 years from the time it merged with Manganese to the time it issued a quitclaim deed to Roy"), 11-12 (Roy). Silverado seeks to counter this conclusion. *See Reply to BLM Answer* at 5-6. Since we conclude that Silverado clearly failed to demonstrate that it and its predecessors-in-interest had held the lands under claim or color of title for 20 years, we need not adjudicate whether Silverado satisfied the requirement of peaceful adverse possession.

Field Manager rejected Silverado's amended color of title application.<sup>19</sup> *See id.* at unpag. 9, 11-12.

*Silverado's Appeal*

Silverado appealed timely from the Assistant Field Manager's April 2012 decision. Silverado argues it demonstrated entitlement to the 160-acre parcel of land at issue, under the Color of Title Act, having shown that it and its predecessors-in-interest held the lands in good faith, peaceful adverse possession, under claim or color of title, for 20 years.<sup>20</sup> Silverado specifically asserts that, although it has been hampered in obtaining further documentation concerning the chain of title from Manganese/Howmet to Roy, because "none of the individuals

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<sup>19</sup> The Assistant Field Manager also noted that the evidence submitted by Silverado indicated, but did not establish, that, unlike Howmet, Roy had held the lands at issue in good faith, peaceful adverse possession following the 1980 deed from Howmet. *See* Decision at unpag. 11-12. However, she did not finally resolve the question of whether Roy had held the lands in good faith, peaceful adverse possession, or even whether Roy had held the lands under claim or color of title, after 1980, since she concluded that Silverado's color of title application failed because, absent submission of a deed or other instrument of conveyance to Howmet, Silverado had not established that the lands had been held under claim or color of title for 20 years, starting with Howmet. *See id.* at unpag. 12.

We note that the 1980 deed purported, on its face, to convey "land" to Roy, which was then "d[e]scribed" solely as various named mining claims, but reserving to Howmet "any and all minerals, mining rights and royalties, in, under and upon such real property." We are not persuaded that the deed sought to convey the lands at issue to Roy, or do anything more than transfer the claims, which had been conveyed in 1955 to Manganese, and presumably Howmet, but we need not adjudicate the matter.

<sup>20</sup> In transmitting the administrative record to the Board, it seems clear that BLM has, for the most part, transmitted only the relevant documents issued by and received by BLM *since the Board's June 2000 decision*. For purposes of this appeal, we discern no need to require BLM to transmit the remaining portion of the administrative record, which was provided to the Board in connection with the earlier appeal (IBLA 99-23 through 99-31), as well as the judicial record provided to BLM in connection with the proceeding before the Federal courts, all of which, at one time, appears to have numbered over 16 boxes. *See Silverado Nevada, Inc.*, 152 IBLA at 321-22. Regarding the critical question of whether Silverado has provided evidence of a deed or other instrument of conveyance of the lands at issue to Howmet to establish proof of a colorable chain of title, we look to the documents Silverado provides to determine whether it has carried its burden of proof.

involved at Howm[e]t at the time are alive,” it “believe[s]” it has shown that Howmet “was the successor to Manganese,” and that “*both believed and acted as though they owned a fee simple absolute interest in the property in question and deeded the same to Leonard Roy[.]*” Statement of Reasons for Appeal (SOR) at 6, emphasis added. Silverado asks the Board to “order the BLM to reverse its prior order and approve our Color of Title application.” *Id.* at 3.

In presenting its case to BLM and to the Board, Silverado has consistently pointed to the 1955 deed as originating its putative chain of title,<sup>21</sup> ignoring the requirement that an applicant’s possession must be based on an instrument from a source other than the United States. Silverado nevertheless points to evidence allegedly indicating that the United States has long believed it conveyed the lands at issue to Manganese in 1955, and that those lands were acquired by Howe in the course of a corporate merger in 1962, and by Roy, Silverado’s immediate predecessor-in-interest, in 1980. *See* Letter to BLM, dated Nov. 3, 2011 (“We believe that [two letters from the GSA to Roy, dated Feb. 14, 1980, and July 14, 1988,] . . . along with other materials already supplied demonstrate that even the Government itself believed that the deeds to Manganese, Howmet and ultimately us, conveyed all the interest in the real property”); SOR at 6 (“Exhibit 10 contains two letters from the GSA to our predecessor, Leonard Roy, indicating the Government’s opinion that they had conveyed all their interest in the property.”<sup>22</sup>) This buttresses our chain’s good

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<sup>21</sup> *See, e.g.,* Reply to BLM Answer at 3 (“[The 1955 deed is] relevan[t] in showing our good faith belief that our predecessors in interest . . . believed that it conveyed title to them (and . . . to us)”; Narrative at 26 (“Neither Manganese, Inc., Howmet, the Roys, nor Silverado Nevada, Inc., ever made a request for patent from the United States. They, at least until the U.S. District Court ruled in 1994 that title was in the United States, had no reason to request a patent for land they believed they owned.”); Letter to BLM, dated Oct. 26, 2011, at 1 (“[A]ll [of the documents submitted] go[] to the good faith belief by us that we were getting valid title from Mr. Roy”), 2 (“[W]e have decades of public information all pointing to the ownership, open, notorious, good faith, clearly adverse to all others”); Reply Brief, IBLA 99-23 through 99-31 (part of Exhibit 3 attached to SOR) at 57 (“[E]ven though it has now been construed in a final decision as not transferring the U.S.’ title to Silverado’s predecessor in interest, the 1955 Deed is sufficient for ‘claim or color of title’”), 60.

<sup>22</sup> Even though evidence that some Government employees mistakenly believed that title had been conveyed to a third party does not establish color of title, we nevertheless note our disagreement with Silverado’s characterization of its proffered evidence. We see no statement by the GSA, in either cited letter, attesting to the fact that Manganese had acquired fee simple title to the lands at issue by virtue of the

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faith belief in our fee interest[.]”); Reply to BLM Answer at 2. Silverado addresses the wrong issue. It does not matter whether the United States has ever believed that title to the lands has been held by any third parties, or even whether any third parties believed that they held title to the lands. Silverado’s submission is no substitute for a deed or other instrument of conveyance from a source other than the United States that describes the land.<sup>23</sup>

Silverado attributes its failure to submit a deed or other instrument of conveyance, at least in part, to its wayward view that it has no legal obligation to document its chain of title: “[T]he Color of Title Act makes no mention of the requirement of a ‘document’ to substantiate the good faith belief in fee title ownership.” Reply to BLM Answer at 3. Silverado overlooks the fact the existence of such a document is what makes mere possession into possession “under claim or color of title” as required by 43 U.S.C. § 1068 (2006). “The *sine qua non* of a color of title claim is an instrument which on its face purports to convey the tract in

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<sup>22</sup> (...continued)

1955 deed. The GSA stated only that it “appear[ed]” that Manganese had acquired “the Government’s title to all property listed in the Quitclaim Deed including the 32 located claims[.]” Letter to Roy, dated Feb. 14, 1980. Nowhere did the GSA state that “property” encompassed fee simple title. Further, in its July 14, 1988, letter, the GSA expressly disclaimed any representation regarding any title that Roy might have received as the successor-in-interest to Manganese, since the United States had not been “a party to the transaction” between Manganese and its successor-in-interest.

<sup>23</sup> In support of its amended color of title application, Silverado submitted, most notably, (1) a copy of the 1980 deed whereby Howmet conveyed the lands at issue to Roy and subsequent correspondence between Howmet and Roy; (2) copies of Preliminary Title Reports, dated Dec. 11, 1980 (Stewart Title of Nevada), Apr. 5, 1988 (Chicago Title Insurance Co.), and Jan. 23, 1989 (Title Insurance Company of Minnesota), confirming title to the lands at issue in Roy; (3) an Apr. 8, 2002, “Estimation of Improvement Costs,” estimating costs incurred by Roy and others to develop the 160-acre parcel of lands, principally from 1979 through 1986; (4) aerial photographs covering the period from 1950 to 2010 of the lands at issue; (5) analysis of aerial photographs, dated July 13, 2001, covering the period from 1943 to 1995; and (5) receipts for taxes paid by Roy from 1980 through 1989. See Letter to BLM, dated May 30, 2002, and attachments; Letter to BLM, dated Oct. 26, 2011, and attachments; Letter to BLM, dated Aug. 5, 2011, and attachments; Letter to BLM, dated June 29, 2011, and attachments.

BLM concluded in its April 2012 decision, in effect, that none of these documents constituted the required deed or other instrument of conveyance that originated Silverado’s putative chain of title to Howmet, and thus to Roy and Silverado.

question.” *Mary C. Pemberton*, 38 IBLA 118, 121 (1978), *aff’d*, No. 80-95-BLG (D. Mont. May 15, 1981), *aff’d*, No. 81-3314 (9th Cir. Aug. 4, 1982).

BLM did not decide the issues concerning the good faith belief held by Howmet, Roy, and Silverado, nor do we, due to Silverado’s failure to provide any deed or other instrument of conveyance to Howmet which might have initiated Silverado’s colorable chain of title. It is the absence of such a document that dooms Silverado’s amended color of title application in this instance.

### *Conclusion*

At the beginning of this opinion, we identified three items for the reader to bear in mind: (1) the document that initiates Silverado’s color of title must come from a source other than the United States,<sup>24</sup> (2) that document must describe the land conveyed with such certainty that its boundaries may reasonably be ascertained and must include the land now sought under the color-of-title application, and (3) that document only begins the running of the 20-year period during which an applicant or his predecessors-in-interest had a good faith belief that they held title. Silverado has submitted no document in its chain of title meeting the first two criteria that predates the 1980 conveyance from Howmet, so Silverado could only qualify by holding the land in good faith and in peaceful, adverse possession until 2000. Assuming, *arguendo*, that the Roys and Silverado held this land without knowledge that title was in the United States until the court of appeals issued its decision in 1998, Silverado fell short of this 20-year period when the circuit court of appeals issued its decision in 1998, at the latest. Thus, BLM properly rejected Silverado’s application.

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<sup>24</sup> We have consistently held that one cannot claim good faith for a period after an application (including a color of title application) has been filed because the filing of an application is an acknowledgment that the United States holds title. See *Louis Mark Mannatt*, 109 IBLA 100 (1989) (appellant sought lease for the land); *Felix F. Vigil*, 84 IBLA 142 (1984) (applicant held grazing lease); *Earl Hummel*, 44 IBLA 110 (1979) (applicant had previously filed a homestead application); *Nora Beatrice Kelley Howerton*, 71 I.D. 429 (1964) (applicant’s predecessor had filed a color of title application).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's April 2012 decision, rejecting Silverado's amended color of title application, NVN-58145, is affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
Christina S. Kalavritinos  
Administrative Judge

I concur:

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

## ADMINISTRATIVE JUDGE JACKSON DISSENTING

Silverado Nevada, Inc. (Silverado) has appealed from an April 30, 2012, decision by the Assistant Field Manager, Division of Lands, Las Vegas (Nevada) Field Office, Bureau of Land Management (BLM), which rejected its application for patent under the Color of Title Act (CTA), 43 U.S.C. § 1068 (2006), on remand from our setting aside its earlier rejections of Silverado CTA applications to these lands in *Silverado Nevada, Inc. (Silverado)*, 152 IBLA 313, 333 (2000). I agree with the majority that under the CTA, an applicant's 20-year uninterrupted chain of title cannot begin with a deed or other conveyance from the United States and that each link in that chain must show that the lands conveyed were conveyed with such certainty that its boundaries may reasonably be ascertained, based on their synthesis of Board precedent. 184 IBLA at 151; *see* 184 IBLA at 149-51.<sup>1</sup> However, I most strongly disagree with their view that title to lands conveyed by operation of law is not a sufficient conveyance under the CTA because there is no separate deed or other conveyancing document between predecessors-in-interest to the lands applied for under an application for color of title (COT).

Where they perceive appellant's arguments as greatly departing "from well-settled rules governing adjudication of color of title applications," 184 IBLA at 149, I see them as simply applying those rules to circumstances different from those presented in Board decisions where those "well settled rules" were first articulated. My research has uncovered only one Board decision wherein it addressed a claim or color of title in the context of merger, wherein we ruled that documentation of a merger and what was conveyed by merger can suffice under the CTA and that a deed or separate conveyancing document was not the only basis upon which a color of title may rest. *Silverado*, 152 IBLA at 333. Rather than address that ruling, the majority characterizes it as "effectively" requiring Silverado "to establish that Howmet, by virtue of a deed or other instrument of conveyance, had reason to believe that it had acquired title to the lands [at issue]." 184 IBLA at 159. I disagree with that characterization and their implicit overruling of *Silverado*, as is further discussed and explained below. But before doing so, I first outline necessary background to provide proper context and then provide a more complete description of how (and why) the Board handled the issue of merger under the CTA in *Silverado*.

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<sup>1</sup> However, I disagree with what I perceive to be their mischaracterization of the Board's ruling in *Alvin E. Leukuma*, 103 IBLA 302, 305 (1988). They characterize it as our ruling that a residuary clause in a will is insufficient under the CTA because it "does not, on its face, purport to convey title to a particular parcel." 184 IBLA at 150. I read our decision quite differently. It was not the residuary clause that was insufficient, it was the fact that the title held by decedent simply did not include the lands at issue, so there could be no claim or color of title to those lands. *See Alvin Leukuma*, 103 IBLA at 305 ("The critical question is whether the [decedent] owned Tracts 37 and 38, so that they were subject to disposition under his will. Appellants have submitted no documents to establish his ownership of those tracts.").

*Factual and Legal Background*

The Reconstruction Finance Corporation (RFC), an instrumentality of the United States, acquired nearly 1,000 acres of patented, located, and leased mining claims and the use of their underlying public lands, which had been withdrawn by the Department on December 11, 1941, for a manganese mining and processing project to support the war effort, which was identified as Plancor 402. Implementation of Plancor 402 included the construction of 60 homes, two dormitories, a mess hall, roads, and related infrastructure for miners and ore processing workers on withdrawn lands encumbered by RTC's Hydro A mining claims, which are the lands here sought by Silverado under the CTA, 43 U.S.C. §§ 1068-1068b (2006). After the war and repeated attempts to sell its property under the Surplus Property Act,<sup>2</sup> 58 Stat. 765 (1944), RTC leased Plancor 402 to Manganese, Inc. (Manganese), on October 10, 1949, after which it began maintaining its leased mining claims.

The General Services Administration (GSA) became the principle agent for disposing of surplus Government property pursuant to the Federal Property and Administrative Services Act of 1949 (FPASA), 63 Stat. 377. FPASA specified that GSA would determine what Government property is "surplus" and that if it transferred such property by a deed purporting to transfer title in any surplus property, such deed "shall be conclusive evidence of compliance with [FPASA] insofar as concerns title or other interest of any bona fide grantee or transferee for value." 63 Stat. at 379, 385-86. GSA could return withdrawn lands to the public domain if the Secretary of the Interior concurred, but since no concurrence was sought from or given by the Secretary, the Assistant General Counsel, GSA Real Property Division, advised that title to Plancor 402 lands could be transferred by FPASA deed. *See* 66 Stat. 593 (1952) (amending FPASA); Gov't. Memo. dated Nov. 23, 1953 ("no necessity for the issuance of a patent covering any such lands"); *but see Roy v. Lancaster*, 814 P.2d 75, 77 (Nev. 1991) ("in the absence of proof that the Hydro-A [mining] claims were ever patented, fee simple title to them remains vested in the United States").

Manganese exercised the purchase option granted in its 1949 lease with RFC, purchased all Plancor 402 lands and property, and received a quitclaim deed that identified RFC and the United States as "Grantor," which was executed on their behalf by GSA on May 13, 1955 (1955 Deed). This deed states:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that [RFC and the United States] remises, releases and forever quitclaims unto

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<sup>2</sup> RFC declared Plancor 402 to be "surplus property" and sought to sell it in 1945; the War Assets Administration was equally unsuccessful in its efforts to sell this property during 1947 and 1948.

[Manganese] and its heirs and assigns, all of [RFC and the United States'] interest in and to the following described premises situate in the Las Vegas Manganese Mining District in the County of Clark, State of Nevada, consisting of thirteen (13) patented mining claims and thirty-two (32) located claims . . . .

TOGETHER WITH . . . all the estate, right, title, interest, property possession, claim and demand whatsoever, in law as well as in equity, of [RFC and the United States] of, in or to the foregoing described premises and every part and parcel thereof, with the appurtenances.

1955 Deed at 1, 6 (residuary clause).<sup>3</sup> Rather than pursue an action to quiet its title for withdrawn lands encumbered by the Hydro A mining claims under the 1955 Deed, Manganese elected to continue maintaining those claims until it stopped mining them in 1960. *See Lancaster v. U.S.*, 1998 WL 205783, at \*2 (“it would be cheaper [for Manganese] to perform the assessment than to litigate the fee, but the district court was entitled to try the case and reach its own conclusions”); *supra* note 3.

After closing down its mining operations, Manganese had a map prepared that identified all lands it acquired under the 1955 Deed, including those encumbered by the Hydro A mining claims, which was apparently intended to facilitate the sale of those lands or its merger with a third-party. Manganese thereafter conveyed the Hydro A mining claims to the Milton J. Wershow Company (Wershow) on November 16, 1961, and merged with Howe Sound Company of Ohio (Howe) 4 months later.<sup>4</sup>

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<sup>3</sup> When the United States acquires private mining claims that encumber public lands, it would appear that its interests merge and, if so, that the United States conveyed its merged interests in these lands to Manganese under the 1955 Deed, as was contended by Silverado in Federal court. *See Silverado* corresp. dated Oct. 26, 2011; *see also* GSA corresp. dated July 14, 1988 (“the United States Government transfers title to property by means of quitclaim deeds which do not provide for any warranties of title. Those interests which the Government possessed were quitclaimed to Manganese”). Regardless of what could have been transferred by the United States in 1955, the Court of Appeals affirmed quieting title in the United States based on the Federal District Court’s finding and conclusion that Manganese had intended to acquire “only the claims, not the fee.” *Lancaster v. United States*, 142 F.3d 444 (9th Cir. 1998) (unpublished table decision), 1998 WL 205783 (*Lancaster v. U.S.*), at \*2, *aff’g Lancaster v. Roy*, CV-93-00263-HDM(LRL) (D. Nev. Sept. 16, 1994).

<sup>4</sup> The following facts and law regarding Howe’s merger with Manganese were not  
(continued...)

By operation of Nevada law, the merger of Manganese into Howmet on March 4, 1962, resulted in Manganese ceasing to exist and Howmet being vested with all title, rights, interests, claims and liabilities that were then held or incurred by Manganese. See NEV. REV. STAT. ANN. 92A.250.1 (2001); *Lamb v. Leroy Corp.*, 454 P.2d 24 (Nev. 1969). Unlike its predecessor-in-interest, Howmet did not maintain any of the mining claims granted by RFC under the 1955 Deed after their merger, and it thereafter graded, fenced, trenched (for underground utilities), and maintained a dike to protect the lands encumbered by the Hydro A claims then owned by Wershow. See “The Three Kids Mine Company Town: The Archaeology and History of a Short-Lived Residential Complex,” Archaeological Research of Southern Nevada Report No. 4-3-6 (April 1992); SOR, Exhibit 3, “Preliminary Draft from Photo Analysis,” Environmental Technical Assistance Company (July 2001), at 5-6. By quitclaim deed dated January 30, 1980,<sup>5</sup> Howmet conveyed to the Roys its interest under the residuary clause of the 1955 deed from the United States to Manganese that had been conveyed to Howmet when they merged and Manganese ceased to exist under Nevada law. It did not, however, convey their minerals to the Roys, no doubt because Manganese had earlier quitclaimed its mining claims to Wershow in 1961, who reconveyed them to J.C. and Fern Lancaster on March 15, 1976.<sup>6</sup>

The Roys started a waste disposal business on the lands at issue and were thereafter sued by the Lancasters to quiet title to those lands in Nevada state court. The Lancasters claimed title from Wershow, who they contended acquired the fee from Manganese in 1961; the Roys countered that Manganese had transferred only mining claims to Wershow, whereas they received title by quitclaim deed from Howmet in 1980. The State court quieted title in the Lancasters, holding that they acquired the fee from Weshow and that its lands had not been adversely possessed by

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

before the Board in *Silverado*, 152 IBLA at 333. Rather, they are based on this record, which Silverado presented on our remand of that case. For ease of discussion, Howe is here referred to as “Howmet” because it has since changed its name to Howmet Corporation of Ohio.

<sup>5</sup> Although this conveyance was actually to Nevada Disposal, Inc., it is undisputed that the real parties in interest to that deed were the Roys.

<sup>6</sup> Despite the transfer of mining claims to Wershow by Manganese in 1961 and Howmet’s broad, clear reservation of the mineral estate in its 1980 deed to the Roys, the majority is not persuaded that the 1980 deed did “anything more than transfer the claims, which had been conveyed in 1955 to Manganese.” 184 IBLA at 165 n.19. But if they are correct, Howmet defrauded the Roys into purchasing mining claims it did not then own.

the Roys, but its judgment was reversed on appeal. Without acknowledging FPASA, which was authority exercised by the United States when it conveyed its property to Manganese under the 1955 Deed, the Nevada Supreme Court summarily opined that the United States could convey its fee interest only by patent and, therefore, ruled that it must be joined as a party in interest to the lands described in the 1955 Deed. *See Roy v. Lancaster*, 814 P.2d at 77; *but see* 63 Stat. at 379, 385-86; GSA Corresp. dated July 14, 1988 (“the United States Government transfers title to property by means of quitclaim deeds which do not provide for any warranties of title. Those interests which the Government possessed were quitclaimed to Manganese”).

The United States was joined as a party in the State court quiet title proceeding, which it removed to Federal court.<sup>7</sup> The Federal District Court of Nevada quieted title in the United States because “[t]he clear and unambiguous language of the 1955 deed reflects the conveyance of only unpatented mining claims” and because the evidence presented was sufficient to quiet title in the United States because it showed Manganese intended to acquire only unpatented mining claims under that deed. *Lancaster v. Roy*, CV-93-00-263, slip op. 15. While the court of appeals disagreed on whether the 1955 Deed was “clear and unambiguous,” it affirmed quieting title in the United States because the district court finding of fact as to Manganese’s intent, based on its maintaining the Hydro A mining claims by performing annual assessment work and filing notices of intent to hold these claims from 1950 through 1960, was supported by the record and not “clearly erroneous.” *Lancaster v. U.S.*, 1998 WL 205783, at \*2 (quoting Federal District Court Finding of Fact 19 and Conclusion of Law 12); *see id.* (“One can imagine a conclusion to the contrary, that it would be cheaper to perform the assessment work than to litigate the fee, but the district court was entitled to try the case and reach its own conclusions.”).

*The Prior Board Decision in Silverado Nevada, Inc.*

The day after it was informed by the U.S. Attorney that the Court of Appeals decision was final, BLM denied nine COT applications that had been filed by Silverado in December of 1993.<sup>8</sup> These denials were based on the above-described State court, Federal District Court, and Court of Appeals decisions, from which Silverado appealed and that were decided by the Board in *Silverado*. BLM claimed

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<sup>7</sup> While this litigation was pending, Silverado acquired the Roys’ interest in the lands acquired from Howmet for \$5,120,000 by agreement dated June 4, 1993, provided they obtained title to those lands.

<sup>8</sup> These applications stated that while it was seeking the fee through then pending quiet title litigation, Silverado was also applying under the CTA as an alternative basis upon which to obtain the fee to these lands. *See Silverado*, 152 IBLA at 318.

Silverado was collaterally estopped by those judicial decisions from showing that it and its predecessors-in-interest acquired a good faith color of title. *Silverado*, 152 IBLA at 325-26. The Board largely rejected BLM's estoppel claim but held that the Department and Silverado were bound by the Federal court finding that Manganese intended to acquire only unpatented mining claims in 1955. *Id.* at 326-31. We then stated "no question can arise as to whether Manganese held the land in good faith under color of title," held "Silverado cannot claim credit for the period prior to 1961 when Manganese held the mining claims," and ruled that it "must establish its claim based upon 20 years of possession of the land under color of title and in good faith by parties subsequent to Manganese." *Id.* at 328-29.

The Board then considered whether Silverado, the Roys, and Howmet "acquired an interest in the land" and, if so, whether they each held that interest "without any knowledge that title to the land properly resides in the United States." 152 IBLA at 331 (quoting *Daniel J. Boles, Jr.*, 137 IBLA 35, 37 (1996)). We rejected BLM's claim that "Silverado and the Roys lacked good faith because they could not have reasonably believed that the 1955 quitclaim deed conferred fee title." 152 IBLA at 329. We so ruled because they acquired their interest in these lands prior to the Federal court decisions, which did not hold the 1955 Deed could not "convey title as a matter of law," only that Manganese had not intended to acquire fee title under that deed as a matter of fact, as found by the district court in 1994 and affirmed by the court of appeals in 1998. *Id.* at 330-31.

We reviewed the record, were unable to conclude that it showed the Roys and Silverado lacked a good faith color of title, but noted that BLM did not address the period after the merger of Manganese and Howmet in 1961 and before Howmet conveyed its interest in these lands to the Roys under the residuary clause under the terms of the 1955 Deed that it had acquired from Manganese. As to their merger, we found it had been asserted but not demonstrated in the record. 152 IBLA at 333 (quoting BLM Decisions at 7). The Board then added:

Nor has Silverado offered documentation of the relationship between Manganese and Howmet or evidence that the mining claims were identified as property of a merger or other transaction. Consequently, the record before the Board does not provide any basis for concluding that Howmet believed that it held any kind of title or interest in the lands after 1961 and prior to its 1980 quitclaim deed to the Roys. Absent such evidence, whether by conveyance or corporate documents, there is no basis to find that Silverado through its predecessors-in-interest has held the land for 20 years under color of title. Nor can any determination be made as to Howmet's good faith or that it exercised peaceful adverse possession of the lands.

*Id.* The Board concluded by remanding that matter for further proceedings, and it is BLM's decision to again reject Silverado's application under the CTA that was appealed and is here affirmed by the majority.

#### *Discussion*

Silverado responded to our requiring it to document the relationship between Manganese and Howmet by submitting the Nevada Secretary of State's Certification that Manganese merged into Howmet by filing an Agreement of Merger with the Secretary of State on March 5, 1962. Silverado also submitted extensive materials to show that it, the Roys, and Howmet each held a "good faith" color of title and had peaceably possessed the lands at issue (e.g., title insurance policies, deeds, tax records, maps, aerial photos, an expert report analyzing historic maps and photos, and a 28-page narrative detailing how they qualified for patent under the CTA). BLM was unpersuaded and rejected its CTA application because:

All of the information goes to Howmet's understanding of, or characterization of, the 1955 deed from the General Services Administration to Manganese. However, that deed has been found to have only conveyed the unpatented mining claims, not the fee interest.<sup>9</sup> You did not produce any other document on which Howmet could have based a good faith belief that it owned the fee interest in the lands when it acquired the interests of Manganese.

Decision at 2. BLM concluded that Silverado did not carry its burden on remand because it failed to "present an instrument other than the 1955 deed which purports on its face to convey the parcel in question in fee simple to Howmet." *Id.* The majority agrees, but I most certainly do not because I find Silverado met its burden on remand by providing documentation of the merger of Manganese into Howmet, which by operation of Nevada law, transferred all Manganese's rights, title, and interests to Howmet when they merged and it ceased to exist.

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<sup>9</sup> The U.S. District Court made that finding, but since it was not affirmed by the Court of Appeals, it was not binding on the Department, this Board, or Silverado. *See Silverado*, 152 IBLA at 326-29. Nor did we or the Court of Appeals rule that the 1955 Deed could not convey the fee, only that Manganese had not intended to acquire the fee in 1955 based on the Federal District Court's findings of fact. *Id.* at 330-31. Moreover, we there rejected a nearly identical claim, *Id.* at 329-30, but BLM conveniently ignores our rejection by stating: "Silverado must present an instrument *other than the 1955 deed* which purports on its face to convey the parcel in question in fee simple to Howmet." Decision at 9 (emphasis added).

A color of title is usually found in a deed or other conveyance document from a grantor, but the Board established the law of this case when it remanded Silverado's COT applications back to BLM.<sup>10</sup> We ruled that if Howmet's color of title was based on a merger, Silverado must either offer "documentation of the relationship between Manganese and Howmet [a corporate document] or evidence that the mining claims were identified as property of a merger [a deed or other separate conveyance document]." *Silverado*, 152 IBLA at 333.<sup>11</sup>

The record and pleadings show Silverado met the burden the Board laid out for it in *Silverado*, 152 IBLA at 333. The Secretary of State certification documents the relationship between Howmet and Manganese (*i.e.*, Manganese merged into Howmet under Nevada law when they filed their Agreement of Merger with the Secretary of State on March 5, 1962). Moreover, BLM affirmatively represents to the Board that when Manganese merged into Howmet, it acquired the property interests granted to Manganese under its 1955 Deed from the United States, including its residuary clause (unless such interests were expressly excluded by their Agreement of Merger, but there is no suggestion these lands were excluded from their merger). Answer at 3 ("Howmet obtained its interests in the 1955 deed by merger with Manganese, Inc.") (citing the Nevada Secretary of State certification of merger). BLM disregarded the legal effect of this merger under Nevada law and rejected

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<sup>10</sup> The CTA specifies that patent shall issue if it is satisfactorily shown "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." 43 U.S.C. § 1068 (2006) (emphasis added). In the typical case, a claimant's 20-year chain of title is shown through deeds or other conveyance from "grantors," but this is an atypical case as Howmet did not acquire its title by a grant from Manganese, but by operation of Nevada law when it merged into Howmet and ceased to exist. A separate deed from an ancestor would certainly not be required of an heir for him/her to have a claim or color of title. *C.f. Alvin Leukuma*, 103 IBLA at 305 (an heir under an unprobated may assert color of title to what was held by his/her deceased ancestor). I find Manganese is logically the analog to an ancestor-decedent and that Howmet is analogous to an heir at law or a beneficiary under the residuary clause of a will and would not therefore require a separate deed from Manganese to Howmet unless we are prepared also to impose a similar requirement on those asserting a claim or color of title from an ancestor.

<sup>11</sup> But if Howmet acquired its color of title by some "other transaction," the general rule would apply and require Silverado to document that conveyance (*e.g.*, by deed or other instrument of conveyance). *Silverado*, 152 IBLA at 333.

Silverado's COT application because it failed to produce a separate deed or other conveyance document from Manganese to Howmet.<sup>12</sup>

The majority wholeheartedly agrees and repeats the mantra first articulated by BLM that Howmet's color of title must be based on "a deed or other instrument of conveyance." 184 IBLA at 154, 159, 163, 164, 167, 168.<sup>13</sup> According to the majority, the State law of merger is irrelevant because even if title passes by operation of that law for every purpose and against every other party, it is of no moment under the CTA because there must also be a deed or other instrument of conveyance in order to assert a claim or color of title. 184 IBLA at 167. In so holding in this case, I believe the majority has effectively overruled *Silverado*.

More fundamentally, however, I find neither logic nor law to support the majority view of slavishly requiring a deed or other separate conveyancing document regardless of State law. It is undisputed that Howmet acquired all Manganese's rights, title, and interest under the its 1955 Deed and grant from the United States, including its residuary clause, under and by operation of Nevada law. Nor is there any question but that Howmet paid property taxes on its real property interests and could take action against any trespasser on its interest. Moreover, GSA, the Federal agency that crafted the 1955 Deed and was the lead agency for implementing FPASA, apparently viewed the law similarly. See GSA Corresp. dated July 14, 1988 ("[T]he United States Government transfers title to property by means of quitclaim deeds which do not provide for any warranties of title. Those interests which the Government possessed were quitclaimed to Manganese"). Why a different result should attach under the CTA is unexplained by the majority, other than by its use of the mantra, each link in the chain of title for color of title must have its own deed or other separate conveyancing document.

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<sup>12</sup> Since Howmet became vested with all right, title, and interest granted and conveyed to Manganese under the 1955 Deed by operation of Nevada law, their merger was the same as and no different in law than a separate conveyance from Manganese to Howmet under precisely the same terms, conditions, and provisions as under the 1955 Deed. BLM does not contend otherwise or that Nevada law is inapplicable under the CTA. See Answer at 4.

<sup>13</sup> I agree with the majority in their stating that Silverado was required to establish that Howmet, by virtue of a deed or other instrument of conveyance, had reason to believe it had acquired title to the lands," 184 IBLA at 159. But unlike the majority, I find Howmet was vested with title under the terms of the 1955 Deed and grant from the United States when Manganese merged into it by operation of Nevada law. As such, I find that deed and its residuary clause more than sufficient to show a claim or color of title having been held by Howmet in good faith. See NEV. REV. STAT. ANN. 92A.250.1 (2001); 1955 Deed at 6; *Silverado*, 152 IBLA at 330-31; *supra* note 10.

In sum, I find BLM erred in rejecting Silverado's COT application simply because it had not also submitted a separate "deed or other conveyance document" from Manganese to Howmet. State law vested all Manganese's rights, title, and interests under the 1955 Deed and grant from the United States, including its residuary clause, in Howmet when Manganese merged into it on March 5, 1962. Silverado documented that merger by submitting the Nevada Secretary of State's Certification of Merger, which met its burden under *Silverado*. Moreover, Nevada law makes it clear that whatever interests Manganese received from the United States, were transferred by Manganese to Howmet by merger. Howmet did not acquire its title from the United States under the 1955 Deed, Manganese did; Manganese then effectively conveyed all of its rights, title, and interests to the lands at issue to Howmet (unless excluded by their Agreement of Merger, for which there is no suggestion in the record or by the parties) by operation of Nevada law, which requires no separate document for that conveyance to be effective for any and all purposes.

Unlike the majority, I would neither ignore nor disregard the effect of Nevada law on title. I must respectfully dissent from my colleagues' approach to addressing and resolving this appeal.

\_\_\_\_\_/s/  
James K. Jackson  
Administrative Judge