PUBLIC LAND/WATER ACCESS ASSOCIATION, INC.

193 IBLA 23 Decided May 31, 2018
IBLA 2015-137

Decided May 31, 2018

Appeal from a Decision of the Montana State Office, Bureau of Land Management, dismissing a protest of a decision approving a Class 1 color-of-title application. MTM 95481.

Decision affirmed.

1. Color of Claim or Title: Adverse Possession

Under section 1 of the Color of Title Act, the Secretary must issue a patent for a tract of public land, up to 160 acres, when a claimant shows that the claimant or his or her ancestors or grantors have held the tract in good faith and in peaceful, adverse, possession under claim or color of title for more than twenty years and placed valuable improvements on the land or reduced some part of it to cultivation. The claimant bears the burden of establishing all of the requirements for a valid color-of-title claim. Upon meeting that burden and payment of fair market value for the land, the claimant is entitled to the patent.

2. Color of Claim or Title: Valuable Improvements

For an improvement to be deemed "valuable" under the Color of Title Act, it must have existed at the time the color-of-title application was filed and must enhance the value of the land. Land can be improved and its value enhanced by removing things that impair the land’s value and interfere with its use, or by placing things on the land.
in order to improve it. The activity claimed to be a valuable improvement must promote the use of the land.

3. Color of Claim or Title: Good Faith

A color-of-title claimant holds land in good faith when the claimant does not know that the land is owned by the United States. In determining whether a claimant honestly believes that he or she has title, the Board considers whether the claimant’s belief is unreasonable in light of the facts available.


OPINION BY ADMINISTRATIVE JUDGE IDZIOREK

Public Land/Water Access Association, Inc. (PLWA) appeals a March 3, 2015, decision of the Montana State Office, Bureau of Land Management (BLM). In the decision, BLM dismissed PLWA’s protest of the agency’s decision approving Emmet J. McCauley’s Class 1 color-of-title (COT) application because BLM found that approval of the application was not subject to protest. In a June 2015 Order, the Board ruled that BLM erred by dismissing the protest because BLM’s approval was a proposed action subject to protest under the Department’s regulations. This decision addresses the merits of PLWA’s challenge to BLM’s approval of Mr. McCauley’s COT application.

SUMMARY

Under section 1 of the Color of Title Act, the Secretary must issue a patent for a tract of public land, up to 160 acres, when a COT claimant shows that the claimant or his or her ancestors or grantors have held the tract in good faith and in peaceful, adverse possession under claim or color of title for more than 20 years and placed valuable improvements on the land. PLWA has not shown error in BLM’s finding that Mr. McCauley met these requirements for a COT claim. Rather, the record establishes that Mr. McCauley met his burden by showing that he and his predecessors in interest have possessed the tract of public land in good-faith, adverse possession since 1942, and that they placed improvements on the land that enhanced its value by promoting its use for grazing. We therefore affirm BLM’s decision to approve Mr. McCauley’s COT application.
BACKGROUND

A. Mr. McCauley’s COT Application for Lot 3

On February 23, 2006, Mr. McCauley filed both a Class 1 and a Class 2 COT application pursuant to the Color of Title Act. A claimant makes a Class 1 COT claim when the claimant or his or her ancestors or grantors have held a tract of public land in good faith and in peaceful, adverse possession under claim or color of title for more than 20 years and placed valuable improvements on the land or reduced it to cultivation. A claimant makes a Class 2 COT claim when he or she or his ancestors or grantors have held the tract of land in good faith and in peaceful, adverse possession under claim or color of title since 1901 or earlier and, during that time, paid taxes levied on the land by State and local governmental units.

Mr. McCauley claimed 38 acres of public land situated in lot 3, sec. 13, T. 5 N., R. 4 W., Principal Meridian, Jefferson County, Montana. Mr. McCauley’s claim of title originates with a July 7, 1942, quit claim deed to one of his ancestors for all of sec. 13. Lot 3 of sec. 13 was mistakenly included in the chain of title starting with a warranty deed from the Northern Pacific Railroad in 1888. Mr. McCauley owns the remainder of sec. 13.

Mr. McCauley uses lot 3, and other portions of sec. 13, for grazing. State Highway 69 runs through the lot’s northeast corner, and Mr. McCauley rebuilt and maintains a fence along the south side of the highway to prevent cattle from entering the roadway. Mr. McCauley also treats the land to control weeds and maintains an irrigation ditch on the lot.

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2 43 C.F.R. § 2540.0-5(b) (Definition).
3 Id.
4 Color-of-Title (COT) Application (Feb. 23, 2006).
5 Field Investigation for McCauley Color-of-Title MTM95481 at 1 (Apr. 3, 2007) [hereinafter Field Investigation]; Montana Quit Claim Deed (July 7, 1942).
6 Field Investigation at 1 and attached Title History at 1.
7 Field Investigation at 1 and attached Title History at 1-2; Conveyances Affecting Color or Claim of Title and attached Memorandum of Title (Feb. 23, 2006).
8 See Field Investigation at 2 (describing grazing use).
9 Id. at 1, 2; COT Application at 1.
10 Field Investigation at 2.
In 2004, Mr. McCauley attended a BLM travel management plan scoping meeting, at which he learned that lot 3 was owned by the United States.\textsuperscript{11} He submitted a COT application in 2006, asserting both Class 1 and Class 2 COT claims to the land.\textsuperscript{12} On August 21, 2014, BLM approved Mr. McCauley’s Class 1 COT application. BLM found that Mr. McCauley and his ancestors held lot 3 in good faith and peaceful adverse possession, under claim or color of title, for more than 20 years and made valuable improvements on the land.\textsuperscript{13} BLM rejected Mr. McCauley’s Class 2 COT application because Mr. McCauley and his predecessors in interest had not paid taxes on lot 3 since 1983.\textsuperscript{14} As required by BLM regulations, Mr. McCauley published his application in a newspaper once per week for four consecutive weeks, beginning on September 3, 2014.\textsuperscript{15}

B. PLWA’s Protest of Mr. McCauley’s COT Application

After viewing the published notice of Mr. McCauley’s COT application, PLWA filed a protest of BLM’s decision under the Department’s protest regulation at 43 C.F.R. § 4.450-2. BLM dismissed PLWA’s protest “because PLWA is not a proper party to a protest under the Color-of-Title Act, and a protest under 43 C.F.R. § 4.450-2 is not applicable to this situation.”\textsuperscript{16} BLM found that PLWA lacked standing to object to the issuance of a patent to Mr. McCauley under the Color of Title Act because PLWA did not claim title adversely to Mr. McCauley.\textsuperscript{17} BLM also held that 43 C.F.R. § 4.450-2 did not apply to the approval of Mr. McCauley’s COT application because “there is no further action that is proposed to be taken by BLM.”\textsuperscript{18} BLM reasoned that once Mr. McCauley had met the requirements for a Class 1 COT claim, the agency’s issuance of the patent became “a non-discretionary, ministerial task.”\textsuperscript{19} Because BLM found that it had no discretion to disapprove the application, BLM

\begin{footnotes}
\item[12] \textit{Id.}
\item[13] Decision on Color-of-Title Application MRM 95481 at 1 (Aug. 21, 2014) [hereinafter Decision].
\item[14] \textit{Id.} at 3.
\item[15] Affidavit of Publication by Editor & Publisher of the Boulder \textit{Monitor} (Sept. 24, 2014), and newspaper clipping of Notice for Publication (Sept. 3, 10, 17, and 24, 2014); see 43 C.F.R. § 2541.5 (publication requirements).
\item[16] Decision: Protest Dismissed at 1 (Mar. 3, 2015).
\item[17] \textit{Id.} at 2.
\item[18] \textit{Id.}
\item[19] \textit{Id.} (citing, e.g., \textit{Swanson v. Babbitt}, 3 F.3d 1348, 1353 (9th Cir. 1993) (“[C]ourts have recognized the Department’s approval of a valid patent application is non-discretionary and is purely a ‘ministerial act.’”)).
\end{footnotes}
concluded that there was no action “proposed to be taken” that would be subject to protest under 43 C.F.R. § 4.450-2.20

C. PLWA’s Appeal

PLWA appealed and petitioned for a stay of BLM’s decision dismissing its protest. On appeal, PLWA argued that BLM erred in dismissing its protest because the decision was not yet final at the time that the protest was filed and was therefore an action “proposed to be taken.”21 PLWA also challenged the sufficiency of BLM’s factual findings on Mr. McCauley’s COT application. Specifically, PLWA argued that BLM erred in determining that Mr. McCauley made valuable improvements to lot 3, and erred in analyzing whether Mr. McCauley’s possession and improvements were made in good faith.22

BLM filed a response to PLWA’s petition for stay and a motion to dismiss for lack of standing. BLM argued that PLWA had not justified a stay and, furthermore, that PLWA had no standing to protest the COT application.23

The Board denied BLM’s motion to dismiss and found that “BLM erred in determining that PLWA could not protest BLM’s decision to accept Mr. McCauley’s COT Class 1 application under 43 C.F.R. § 4.450-2.”24 The Board held that the protest regulation does not require a protestant to allege a conflicting adverse claim, and because BLM had not yet issued Mr. McCauley a patent at the time PLWA filed its protest, BLM’s action approving the COT application was an action “proposed to be taken” and therefore subject to protest.25

Although the Board found that BLM’s decision dismissing PLWA’s protest was in error, the Board reviewed PLWA’s likelihood of success on the merits of its objections to Mr. McCauley’s COT application to determine whether PLWA was entitled to a stay.26 The Board concluded that PLWA had not shown a likelihood of success on the merits and denied its petition for a stay.27

20 Id.
21 Notice of Appeal and Appellant’s Statement of Standing and Reasons at 16-21 [hereinafter SOR].
22 Id. at 12-16.
23 BLM’s Response to Appellant’s Petition for Stay and Motion to Dismiss for Lack of Standing at 3-6.
24 Order: Motion to Dismiss Denied; Petition for Stay Denied at 4, 5 (Jun. 3, 2015).
25 Id.
26 Id. at 5-6.
27 Id. at 6.
The only issue before the Board now is whether PLWA has shown that BLM erred by granting Mr. McCauley’s COT application.  

ANALYSIS

A. Requirements for a Class 1 COT Claim

[1] Under section 1 of the Color of Title Act, the Secretary must issue a patent for a tract of public land, up to 160 acres, when a COT claimant shows that the claimant or his or her ancestors or grantors have held the tract "in good faith and in peaceful, adverse, possession ... under claim or color of title for more than twenty years" and placed "valuable improvements" on the land or reduced some part of it to cultivation.  

This showing satisfies the requirements for a Class 1 COT claim.  

The claimant bears the burden of establishing all of the requirements for a valid COT claim.  

Upon meeting that burden and paying fair market value for the land, the claimant is entitled to a patent.  

B. BLM Did Not Err in Granting Mr. McCauley’s Class 1 COT Claim

PLWA argues that BLM erred in applying the requirements of the Color of Title Act to Mr. McCauley’s application in three respects.  

First, PLWA argues that BLM erred in finding that Mr. McCauley made valuable improvements to the land.  

Second, PLWA argues that BLM erred by failing to consider the implications of the history of property tax payments on the question of Mr. McCauley’s "good faith" possession of the land.  

Third, PLWA argues that BLM erred by not making factual findings articulating the reasons for its decision.  

We will examine each argument in turn.

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28 See BLM’s Answer to Appellant’s Statement of Reasons for Appeal at 1 ("The Board has previously determined that ... Appellant had filed a proper protest under 43 C.F.R. § 4.450-2. Therefore, BLM’s Answer addresses the merits of its underlying August 21, 2014, Color-of-Title Act Decision").
30 43 C.F.R. § 2540.0-5(b).
31 Sheldon Jackson College, 189 IBLA 350, 361 (2017); Sally Siegel, 177 IBLA 68, 79 (2009); Middle Rio Grande Conservancy District, 86 IBLA 41, 42 (1985).
32 43 U.S.C. § 1068 (2012); 43 C.F.R. §§ 2541.3(a), 2541.4; Sheldon Jackson College, 189 IBLA at 361.
33 SOR at 12.14.
34 Id. at 15.16.
35 Id. at 15.
1. Mr. McCauley Made Valuable Improvements to Lot 3

[2] For an improvement to be deemed “valuable” under the Color of Title Act, it must have existed at the time the COT application was filed and must enhance the value of the land.36 Land can be improved and its value enhanced by removing things that impair the land’s value and interfere with its use, or by placing things on the land in order to improve it.37 Whether by removal or placement, the activity claimed to be a valuable improvement must promote the use of the land.38

The record shows that Mr. McCauley and his predecessors made valuable improvements to lot 3 to promote its use for grazing. Mr. McCauley informed BLM that he rebuilt and maintains fencing on the lot to keep his cattle off the State highway, treated the lot for noxious weeds in 2003, and conducts “spot treatments” for weeds “[f]rom time to time.”39 BLM confirmed the existence of these improvements at the time of the application and their continued use for grazing. For example, BLM included photographs in the administrative record showing a bull on lot 3 and evidence of recent livestock use, including the trampling of vegetation by cows, and evidence of the McCauleys’ long-term maintenance of fence posts.40

The Board has previously found that fencing that precludes cattle from straying from a grazing area may constitute a valuable improvement for the purposes of determining a COT claim.41 This has been true even in cases where the fencing did not completely segregate the parcel at issue from surrounding property.42 Similarly, the Board has also recognized that noxious weed control

37 Math Warmsbecker, 127 IBLA at 49 (citing Ben S. Miller, 55 I.D. 73, 75 (1934)).
38 Id. (citing Homer Wheeler Mannix, 63 I.D. 249, 252 (1956)).
39 COT Application at 1; Memorandum from Emmett J. McCauley to Susan Williams, BLM (Nov. 27, 2006).
40 Photographs attached to e-mails among BLM staff (Dec. 8, 2014); Photo Identification – McCauley Site Visit, Photo Nos. 134133 and 134528 (Jan. 22, 2015); see also Field Investigation (describing use of the fence to keep cattle off the road, use of the ditch for stock water, and weed treatments); Terra Western Associates, Appraisal Report for BLM/McCauley Color-of-Title Property at 26 (Jul. 11, 2014) [hereinafter Appraisal Report] (the lot “is bordered along both sides of the highway by a barbed wire and ‘T’-post fence to keep livestock off of the highway.”).
41 Joe T. Maestas, 149 IBLA at 334-35.
42 Math Warmsbecker, 127 IBLA at 49.
programs qualify as valuable improvements when they promote the use of the parcel for grazing and therefore enhance the value of the land for that purpose.\textsuperscript{43}

In accordance with the facts in the record and Board precedent, we conclude that PLWA has not shown error in BLM’s determination that the fencing and weed control treatments improve the value of the land for grazing. PLWA’s assertion that the land is “unsuitable for grazing”\textsuperscript{44} ignores the documented evidence that the land is, in fact, used for grazing, as it was at the time of the COT application.\textsuperscript{45} Further, we are unpersuaded by PLWA’s argument that the fence does not enhance the land’s utility for grazing given the evidence and explanation provided by Mr. McCauley and confirmed by BLM regarding the actual use of the fence for grazing.\textsuperscript{46} Finally, PLWA has provided no evidence to support its assertion that the fencing “serves only to close off Applicant’s land from the BLM parcel, and obstruct public access to public land.”\textsuperscript{47}

2. Mr. McCauley Held Lot 3 in Good Faith

\textsuperscript{3} A COT claimant holds land in good faith when the claimant does not know that the land is owned by the United States.\textsuperscript{48} The claimant must “honestly believe the land is owned by him.”\textsuperscript{49} In determining whether a claimant honestly believes that he or she has title, the Board considers whether the claimant’s belief is unreasonable in light of the facts available.\textsuperscript{50}

\textsuperscript{43} Id.
\textsuperscript{44} SOR at 14.
\textsuperscript{45} See, e.g., Appraisal Report at 26 (“The property is currently being used as a grazing tract in conjunction with the adjoining private ownership.”); Categorical Exclusion Review and Approval at unpaginated (unp.) 4 (Aug. 14, 2014) (“the use of the parcel is known to have always been grazing”); Memorandum from Carolyn S. Kiely to Mike Wyatt (BLM employees) (Aug. 14, 2014) (same).
\textsuperscript{46} Field Investigation at 2: Appraisal Report at 26.
\textsuperscript{47} SOR at 14.
\textsuperscript{48} 43 C.F.R. § 2540.0-5(b); Sally Siegel, 177 IBLA at 79.
\textsuperscript{49} Lawrence E. Willmorth, 32 IBLA 378, 381 (1977).
\textsuperscript{50} Joe T. Maestas, 149 IBLA at 334; Lawrence E. Willmorth, 32 IBLA at 381; see Sheldon Jackson College, 189 IBLA at 367 (“[W]hen a COT applicant or any of its predecessors-in-interest knew or had reason to know, at the time of acquisition or during their holding, that title was held by the United States, their good faith possession would cease at that time.”).
Mr. McCauley stated that he first discovered that lot 3 was Federal land when he attended a BLM travel management plan scoping meeting in 2004.\textsuperscript{51} PLWA has submitted no evidence to establish that Mr. McCauley knew, or should have known, of the defect in title before that date. In fact, the record indicates that lot 3 was identified as private land in deeds filed with the county as late as 2007.\textsuperscript{52} BLM observed in 2014, “The subject parcel was thought to be private land by the applicant and noted in the Jefferson County records as such since 1888, when the Northern Pacific Railroad Company issued a deed even though the land had never been conveyed to the railroad.”\textsuperscript{53} When BLM consulted staff at the Montana Department of Revenue, they found no record (possibly apart from the tax records) earlier than 2003 noting a change in property description.\textsuperscript{54} Also, lot 3 was absent from BLM’s grazing records as late as 2007, suggesting that BLM was not aware that it was subject to BLM’s management jurisdiction before the scoping meeting in 2004.\textsuperscript{55} These facts support a finding that Mr. McCauley could reasonably and in good faith believe that his title to the lot was free from any defect.

As noted above, Mr. McCauley and his predecessors in interest only paid taxes on the lot until 1983, at which time the County stopped assessing taxes for the lot.\textsuperscript{56} PLWA argues that the cessation of property tax payments in 1983 creates a “strong inference” that Mr. McCauley discovered at that time that he did not, in fact, have ownership of lot 3.\textsuperscript{57} Although an applicant’s \textit{knowing} cessation of property tax payments properly could be considered as evidence that the applicant did not possess the property in good faith, the evidence in the record supports a

\begin{itemize}
  \item \textsuperscript{51} COT Application at 1.
  \item \textsuperscript{52} Deed of Distribution (Dec. 28, 2007) (transferring “[a]ll of Section 13” to Emmett J. McCauley).
  \item \textsuperscript{53} Categorical Exclusion Review and Approval at unp. 1 (Aug. 14, 2014); \textit{see} Field Investigation at 1 (after 1864, “[t]he chain of title . . . seems to be in order, and it appears reasonable that subsequent owners in that chain believed they had good title.”); \textit{see also} E-mail from Michael Wyatt, BLM Realty Specialist, to other BLM staff (Dec. 10, 2014) (describing conversations with Jefferson County staff).
  \item \textsuperscript{54} E-mail from Michael Wyatt, BLM Realty Specialist, to other BLM staff (Dec. 10, 2014) (noting that “a couple of generated computer cards (a recent and a 2003),” on file with the Montana Department of Revenue, showed “the change in legal description that had obviously occurred by then in their records”).
  \item \textsuperscript{55} Field Investigation at 2 (BLM “examined present and historical grazing files and concluded that this parcel has never been included in the McCauley or any other grazing lease/permit.”).
  \item \textsuperscript{56} Color-of-Title Tax Levy and Payment Record: Categorical Exclusion Review and Approval at 1.
  \item \textsuperscript{57} SOR at 15.
\end{itemize}
finding of good faith despite the tax assessment error. BLM found that, “[u]ntil [the McCauleys] put the information together for this application, they were unaware that Jefferson County had quit billing them for this parcel in 1983.”

Mr. McCauley’s son told BLM that the county did not notify them that it had dropped the parcel from the tax rolls, and because they continued to pay taxes for the rest of the property they owned, they did not realize that they were not paying taxes for lot 3. Further, County officials indicated that in 1983, property owners would not have received any notice that there had been a change in property valuation. We therefore agree with BLM that it was reasonable for the McCauleys not to notice the change in their tax bill. We conclude that PLWA has not shown error in BLM’s conclusion that Mr. McCauley possessed lot 3 in good faith.

3. The Record Supports BLM’s Decision

As we have explained, when a COT claimant shows that he or she has held a tract of public land in good faith, peaceful, adverse possession under claim of title for more than 20 years and placed valuable improvements on that land, and the claimant satisfies certain other pre-conditions, BLM must approve issuance of a patent. While the Color of Title Act does not grant BLM discretion in this regard, it requires BLM to determine if the factual requirements are met. In this case, BLM had to determine whether Mr. McCauley held the land in good faith for more than 20 years and whether he had placed valuable improvements on the land.

PLWA argues that BLM failed to develop a satisfactory administrative record and to articulate the reasons for its decision approving Mr. McCauley’s COT claims. PLWA asserts that, because BLM did not develop the record or articulate its rationale, the Board “should not defer to” BLM’s decision.

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58 Field Investigation at 1.
59 Id.
60 See E-mail from Stacie St. Clair, Montana Department of Revenue, Property Valuation Specialist, to BLM (Dec. 11, 2014) (indicating that the County started sending assessment notices to landowners about changes in their tax assessment based on changes to acreage in the 1990s): E-mail from Michael Wyatt, BLM Realty Specialist, to other BLM staff (Dec. 10, 2014) (“the McCauley base property record [in the Montana Department of Revenue] apparently had nothing helpful to indicate the McCauley’s had been contacted in 1983 about the change in property tax base.”).
62 SOR at 15.
63 Id.
BLM's decision approving Mr. McCauley's claim specifically finds that he held lot 3 "in good faith and in peaceful adverse possession . . . under claim or color-of-title for more than 20 years, on which valuable improvements have been placed . . . ."\textsuperscript{64} BLM's administrative record contains ample support and explanation for these findings, and PLWA does not explain why it believes this record is deficient. As we have referenced in this decision, BLM included photographs, e-mails, memoranda, and reports describing and analyzing the evidence of valuable improvements and Mr. McCauley's good faith possession of lot 3. We conclude that PLWA has not shown error in BLM's findings or any deficiency in the record on appeal.

CONCLUSION

PLWA has not shown error in BLM's decision to approve Mr. McCauley's COT application. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,\textsuperscript{65} we affirm BLM's decision to approve the application.

Silvia Riechel Idziorek
Acting Deputy Chief Administrative Judge

I concur:

James F. Roberts
Acting Chief Administrative Judge

\textsuperscript{64} Decision at 1.
\textsuperscript{65} 43 C.F.R. § 4.1.