

**Editor's note: Reconsideration granted, BLM decision vacated by order dated Oct. 26, 1982 -- See 65 IBLA 309A below.**

RAJNEESH INVESTMENT CORP.

IBLA 82-454

Decided July 13, 1982

Appeal from the decision of the Oregon State Office, Bureau of Land Management, rejecting color-of-title application OR 23790.

Affirmed.

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

The failure of applicants to submit tax and title data in support of their class 2 color-of-title application, as required by 43 CFR 2541.2, is an adequate basis for rejection of the application.

APPEARANCES: James H. Phelps, Esq., and John J. Shelfer, Vice President, Rajneesh Investment Corporation, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On April 16, 1980, Reuben W. Evans and Sargie Jones Evans submitted to the Oregon State Office, Bureau of Land Management (BLM), a class 2 color-of-title application, OR 23790, for approximately 40 acres of public land in Oregon described as that portion of the NW 1/4 NE 1/4 sec. 26, T. 8 S., R. 19 E., Willamette meridian, lying west of the John Day River. A list of conveyances affecting the land, beginning in 1893, and an itemization of annual taxes paid on the land, beginning with the 1943-44 tax year, accompanied the application.

By decision dated September 4, 1980, BLM held the application for rejection because it was not complete and the evidence supporting the claim was insufficient. <sup>1/</sup> The Evans were given until November 4, 1980, to supplement their application or alternatively provide information to support a

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<sup>1/</sup> The decision identified the deficiencies of the application as follows:

"Applicants failed to respond to question 3 on Form 2540-1, Color of Title Application, which asks whether the claim is of Class 1 or Class 2. However, applicants responded to question 5, regarding the basis of their claim, by inserting Classification 2.

"Applicants failed to obtain the certification of the authorized county official, or an abstractor, on Form 2540-3, Color-of-Title Tax Levy and

class 1 claim of title. BLM received no additional information from the Evans and rejected the application by decision dated January 13, 1981. Rajneesh Investment Corporation timely appealed that decision stating that the corporation is the present owner of the land identified in the Evans' application.

In its statement of reasons, appellant asserts:

1. A patent to the herein described property was granted to a predecessor in interest.
2. Taxes for the period in question were paid in full.
3. The existence of Deeds from the Sheriff of Wasco County and Wasco County to Prineville Land and Livestock Company do not recite on their face non-payment of taxes and cannot be evidenced of a failure to pay taxes.
4. That the evidence shows that the applicants qualify under Class "1" claim with the information provided at this time.

[1] The Color of Title Act, 43 U.S.C. § 1068 (1976), requires for a class 2 color of title claim that the applicants and their predecessors in interest have held the land in question "under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied by State and local governmental units." See Ray Wheeler, 55 IBLA 370 (1981); 43 CFR 2540.0-5(b). The failure of an applicant to submit relevant tax and title data in support of his application as required by 43 CFR 2541.2 is an adequate basis for rejection of the application. Ivie G. Berry, 25 IBLA 213, 216 (1976). Since

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fn. 1 (continued)

Payment Report. However the form, signed by Mr. Evans, indicates that no tax records are available for the years prior to 1943.

"Applicants failed to obtain the certification of the authorized county official, or an abstractor, on Form 2540-2, Conveyances Affecting Color or Claim of Title. However, the form, signed by Mr. Evans, discloses the existence of a deed from Levi Chrisman, Sheriff, to Wasco County, dated 2/19/27. A subsequent deed is listed, from Wasco County to Prineville Land and Livestock Co., dated 9/8/38.

\* \* \* \* \*

"By failing to provide evidence that taxes have been paid each year since January 1, 1901, applicants have failed to establish a prima facie case for a Class 2 claim or color of title. A reasonable inference to be drawn from the existence of the deeds from the Sheriff to the County, and from the County to applicant's predecessor, is that the taxes were not paid, and the county thereafter foreclosed against the property. \* \* \* Applicants may avoid rejection at that time by presenting reasonable evidence that all taxes have indeed been paid since January 1, 1901. This evidence should be accompanied by the information requested in paragraphs numbered 2 and 3 below, and a complete, properly certified Form 2540-3."

neither the applicants nor appellant has sufficiently provided the information required by the regulations and BLM's decision, in order to support class 2 application OR 23790, BLM's rejection of the application must be affirmed.

A class 1 claim of title to public land requires that the claimant show that the land has been held in good faith and in peaceful adverse possession by the claimant, his ancestors, or grantors, under claim or color of title for more than 20 years, and that valuable improvements have been placed on the land, or that some part of the land has been cultivated. 43 U.S.C. § 1068 (1976); 43 CFR 2540.0-5. Contrary to appellant's assertion, there is not sufficient evidence in the record to support a class 1 claim of title to the land at issue. Moreover, neither the former applicants nor this appellant have previously asserted a claim or filed an application under class 1. This Board's jurisdiction is exclusively appellate, and it does not entertain claims not initially adjudicated by BLM.

Finally, if the land has previously been patented, it would no longer be public land and thus would not be subject to a color-of-title application. Paul H. Sleeper, 22 IBLA 318 (1975).

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

Bernard V. Parrette  
Chief Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

OCT 26 1982

IBLA 82-454 : OR 23790

65 IBLA 307 :

RAJNEESH INVESTMENT CORP. : Color-of-Title Application

:  
: BLM Decision Set Aside, Case  
: Remanded to BLM

ORDER

On August 23, 1982, Rajneesh Investment Corporation filed a petition for reconsideration of our July 13, 1982, decision affirming BLM's rejection of its color-of-title application, 65 IBLA 307 (1982). On October 22, 1982, counsel for Rajneesh and for BLM filed a joint motion requesting us to suspend our consideration of the petition for up to a year while they negotiated the issues involved.

Rather than keep the case on our docket and the files in our possession for an indefinite time, we will set aside the BLM decision of January 13, 1981, and remand the matter to the Oregon State BLM office. If the parties are unable to resolve their differences, Rajneesh may seek administrative review upon BLM's subsequent disposition of the matter.

Will A. Irwin  
Administrative Judge

We concur:

Edward W. Stuebing     Douglas E. Henriques  
Administrative Judge     Administrative Judge

APPEARANCES:

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65 IBLA 309A

