

INTERIOR BOARD OF LAND APPEALS

G. Donald Massey

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**Editor's note: Reconsideration denied by Order dated March 23, 1998**

G. DONALD MASSEY

IBLA 95-191

Decided January 23, 1998

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting an adverse claim of ownership of Federal lands. ORMC 34459 through ORMC 34468.

Affirmed.

1. Administrative Procedure: Hearings—Constitutional Law: Due Process—Rules of Practice: Appeals: Effect of— Rules of Practice: Hearings

Due process does not require notice and a prior right to be heard in all cases in which there is an alleged impairment of property rights so long as the person is given notice and an opportunity to be heard before the alleged impairment becomes final. Appeal to the Board of Land Appeals satisfies the due process requirements.

2. Mining Claims: Patent

Rejection of a mineral patent application does not invalidate the mining claims. It merely places the applicant in the same position he would be in had he not attempted to apply for a patent.

APPEARANCES: G. Donald Massey, Cave Junction, Oregon, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

This is an appeal from a November 24, 1994, Decision issued by the Oregon State Office, Bureau of Land Management (BLM), denying G. Donald Massey's claim of adverse ownership of Federal lands administered by BLM. The Decision was prompted by a document entitled "Affidavit of Possession" filed by Massey on February 14, 1994, stating that Massey had held actual, open, notorious, hostile, exclusive, and uninterrupted possession of lands described by him as U.S. Mineral Survey No. 696, for a period exceeding 10 years and was therefore entitled to a patent to those lands.

In 1980 Massey located mining claims in secs. 26 and 35, T. 40 S., R. 8 W., and sec. 2, T. 41 S., R. 8 W., Willamette Meridian, Oregon. Location notices for the claims were filed with BLM, and the claims were assigned serial numbers ORMC 34459 through ORMC 34468. On September 24, 1980, Massey filed a document styled as "Notice of Verification of Mining

Claims." In this document Massey stated that the notice was "for the purpose of establishing notice of the discovery of valuable minerals \* \* \*" and that the notice was "given to the proper authorities that these lands \* \* \* are removed from the public domain pursuant to the GENERAL MINING LAWS of the UNITED STATES \* \* \*." <sup>1/</sup>

On October 9, 1990, BLM responded, seeking clarification regarding the intent of Massey's September 24 Notice, advising Massey that the claims remained subject to the rights of the United States to manage the surface resources, and inquiring as to the identity of certain of the claims, because the serial numbers did not correspond with the listed claims.

On May 3, 1993, Massey wrote to BLM stating that in July 1980, he had submitted an affidavit for recordation verifying the discovery of a valuable deposit of mineral on the public domain with intent to validate his mining title, stating that

[s]ince the U.S. Department of the Interior has not challenged [his] affidavit claiming title to said mining claims, [he] then presume[s] that said mining titles are valid claims and that such instrument validating [his] minerals discovery on public domain is recorded as a claim against the title of the United States.

On June 1, 1993, BLM responded to Massey's May 2 letter, stating that mining claim recordation is required to comply with the Federal Land Policy and Management Act of October 21, 1976, that recordation is not for the purpose of establishing title against the United States and that Massey's affidavit did not establish the validity of his claims.

On February 14, 1994, Massey submitted the "Affidavit of Possession" which triggered the November 24, 1994, Decision now on appeal. Following his appeal Massey filed a Statement of Reasons and several supplements to his Statement of Reasons. Massey alleges that the BLM Decision has deprived him of his property rights without due process. He states that he had submitted the "Affidavit of Possession" as a legal right of occupancy, that he did not apply for land held under color of title, (43 U.S.C. § 1068 (1994)), or institute adverse use of public lands other than under the 1872 Mining Law and that BLM's Decision deprives him of the right to apply for a patent under that law.

[1] Massey argues that the action has deprived him of property rights without due process of law. Due process does not require notice and a right to a prior hearing in all cases in which there is an alleged impairment of property rights, so long as the person is given notice and an opportunity to be heard before the alleged impairment becomes final.

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<sup>1/</sup> On June 4, 1994, Massey again submitted a document purporting to establish the discovery of valuable minerals and to remove the lands subject to the claims from the public domain pursuant to the Mining Law of 1872. The Mining Act of May 10, 1872, as amended, 30 U.S.C. §§ 21-54 (1994), is customarily referred to as the 1872 Mining Law, Mining Law of 1872, or general mining law.

Appeal to the Board of Land Appeals satisfies that requirement. Alfred G. Hoyle v. Babbitt, \_\_\_ F.3d \_\_\_ (10th Cir. 1997); Santa Fe Pacific Railroad Co., 90 IBLA 200, 220 (1986); Robert J. King, 72 IBLA 75, 78 (1983). Due process mandates the opportunity to be heard, and Massey has been given that opportunity.

[2] Under the 1872 Mining Law, a patent may be obtained by, inter alia, filing an application in the proper land office. The relevant part of 30 U.S.C. § 29 (1994), as amended, reads:

A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim \* \* \* may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common made by or under the direction of the Director of the Bureau of Land Management, showing accurately the boundaries of the claim or claims \* \* \*.

The process of applying for and meeting the requirements for a mineral patent are best described as lengthy and complicated. <sup>2/</sup>

Massey filed a document he believed to be sufficient to permit him to obtain a mineral patent. In doing so, he followed his interpretation of the language in 43 C.F.R. § 3862.3-1. When he drafted the document entitled "Affidavit of Possession," he believed that it qualified as a patent application. It did not. For example, it appears that he attempted to conform his claims to Mineral Survey No. 596 to satisfy the requirement that the claims must be surveyed. However, Mineral Survey No. 596 was conducted in 1902, and it was not a survey of his claims, but was a survey of now invalid claims which had been abandoned prior to patent. That survey cannot be used as the survey of Massey's claims. A new mineral survey by a qualified mineral surveyor is required.

When attempting to understand the intended purpose of the "Affidavit of Possession," BLM concluded that Massey was attempting to claim ownership of Federal lands pursuant to the doctrine commonly known as adverse possession. However, in his Statement of Reasons, Massey has made it clear that it was not his intent to either claim adverse possession or proceed under the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994). We fully accept this as true. However the "Affidavit of Possession" does not meet the requirements of 30 U.S.C. § 29 (1994) and cannot be considered to be a patent application.

A further impediment now exists to Massey's attempt to obtain patent to his mining claims. Since 1994, there has been a Congressionally imposed

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<sup>2/</sup> This procedure is well outlined in section H3860-1 of the BLM Manual. In practice, the preparation of the technical and legal documents contained in a mineral patent application require professional engineering and legal assistance.

moratorium on acceptance of mineral patent applications. The latest extension of that moratorium can be found at section 314 of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-83, 111 Stat. 1543 (1997). That section provides, in pertinent part:

Sec. 314.(a) Limitation of Funds. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to accept or process applications for a patent for any mining or mill site claim located under the general mining laws.

(b) Exceptions.—The provisions of subsection (a) shall not apply if the Secretary of the Interior determines that, for the claim concerned: (1) a patent application was filed with the Secretary on or before September 30, 1994 \* \* \*.

Massey did not file a valid patent application prior to October 1, 1994, and, as a result of the moratorium on accepting or processing patent applications imposed by Congress, the Department is not able to accept a proper patent application filed by Massey at this time. Massey has expressed concern that the rejection of his "Affidavit of Possession" jeopardizes the validity of his unpatented mining claims. It is clear, however, that a rejection of a patent application does not invalidate the mining claims. It merely places the claimant in the same position he would be in had he not attempted to file for patent. Beals v. Cone, 62 P. 948 (Colo. 1900).

In its Decision, the Department correctly stated that Massey gained nothing by adverse possession and that it could not accept a patent application if Massey were to file one. We find nothing incorrect in that Decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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R.W. Mullen  
Administrative Judge

I concur.

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David L. Hughes  
Administrative Judge