

WALTER BARTOL

IBLA 75-88

Decided March 3, 1975

Appeal from the decision of the Arizona State Office, Bureau of Land Management, rejecting appellant's mineral patent application A-7946.

Affirmed.

1. Mining Claims: Patent

Where a regulation requires that a mineral patent application be accompanied by a plat and field notes of a mineral survey executed subsequent to the date of location of the mining claim and a surveyor's report of expenditures and improvements, an application for mineral patent not accompanied by these documents is properly rejected without prejudice to applicant's right to file a proper application.

APPEARANCES: Hale C. Tognoni, Esq., Phoenix, Arizona, for appellant; Fritz L. Goreham, Esq., Office of the Field Solicitor, Phoenix, Arizona, for the government.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Walter Bartol appeals the decision of the Arizona State Office which rejected his mineral patent application, A-7946, on the grounds that the Ford lode had not been surveyed as required by the regulations. 43 CFR 3861.1-2. The application was accompanied by a copy of MS 4421, approved May 29, 1957, of the Ford Lode. The patent application is based on the Ford lode mining claim located December 17, 1969.

The original Ford lode mining claim was located on July 26, 1926. Appellant Walter Bartol subsequently acquired the claim and filed an amended location in 1956. The claim was then surveyed under Mineral Survey No. 4421, approved on May 29, 1957.

Subsequently, adverse proceedings were brought against that Ford claim. After due process including notice and an opportunity for a hearing, a hearing examiner (now Administrative Law Judge) declared the Ford lode mining claim null and void by decision dated May 1, 1967. Bartol did not appeal.

On February 19, 1974, Walter Bartol filed application A-7946 for mineral patent to the Ford lode mining claim, relocated December 17, 1969. Bartol, in his application, described the claim by metes and bounds, as " * * * more particularly described on the plat and field notes of Mineral Survey No. 4421 * * * ."

The State Office decision rejected the patent application on the basis that a mineral survey had not been made. The decision held that the relocated Ford mining claim required a new mineral survey, citing 43 CFR 3861.1-2, which provides:

The survey and plat of mineral claims required to be filed in the proper office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or the regulations of the mining district require the notice of location to be recorded) and when the original location is made by survey of a mineral surveyor such location survey cannot be substituted for that required by the statute as above indicated * * * ." (Emphasis added.)

The decision went on to point out:

This action is without prejudice to the applicant's right to file a new patent application for the claim in the future, accompanied by the requisite survey plats and field notes of a new mineral survey of the claim, together with Certificate of Expenditures showing at least \$500 in improvements since location of the claim on December 17, 1969.

Appellant argues that the Secretary of the Interior exceeded his authority in promulgating 43 CFR 3861.1-2 (above), and that the section is unjustified on a rational basis or need and is arbitrary and capricious. Appellant particularly objects to the requirement that a new mineral survey be made contingent upon state law or local mining law.

Appellant's claim that the Secretary does not have authority to promulgate the regulation is without merit. Congress has entrusted the Department of the Interior with management of the public domain and prescribed the process by which claims against

the public domain may be perfected. The United States, which holds legal title to the lands, plainly can prescribe the procedure which claimant must follow to acquire rights in public lands. Best v. Humboldt Placer Mining Co., 371 U.S. 334, 339 (1963).

The requirement that a survey of the claim be submitted with an application for patent is statutory. 30 U.S.C. § 29 (1970). The language of 43 CFR 3861.1-2 with respect to this requirement is clear and unequivocal. A survey and plat of mineral claims must be made subsequent to the recording of the location of the claim. Moreover, when the original location is made by survey of a mineral surveyor, such earlier survey cannot be substituted for the mineral survey required by the regulation. The official survey of a mining claim must be in accordance with the recorded notice of location as of record at the time of the order authorizing the survey. Rose No. 1 and Rose No. 2 Lode Claims, 22 L.D. 83 (1896).

The Ford lode mining claim for which MS 4421 was executed, was contested and declared null and void. MS 4421 is subject to cancellation as it refers to a non-existent mining claim.

[1] Nor are the regulations arbitrary or capricious. In patent proceedings, it is necessary to determine the precise boundaries of the claim, the intersection of the lines of the survey with lines of conflicting prior surveys, conflicts with unsurveyed claims, and total area of claimed ground. 43 CFR 3861.2-1. Additionally, the mineral surveyor's report of the value of improvements must be based upon actual expenditures and mining improvements made by the claimant after locating the claim. 43 CFR 3861.2-3(c). A mineral survey made prior to the date of location obviously cannot satisfy these requirements. State laws may increase the location requirements of mining claims, but they may not diminish the most liberal terms on which the United States would part with its right in such mining claims. 30 U.S.C. § 28 (1970). A location is not made by taking possession alone, but by working the ground, recording and doing whatever else is required for that purpose by the Acts of Congress and the local laws and regulations. Belk v. Meager, 104 U.S. 279, 284 (1881).

We find frivolous appellant's argument that he is being deprived, without due process, of alleged right accruing pursuant to 30 U.S.C. § 38. 43 CFR 3862.3. The State Office decision held only that the patent application submitted by appellant was defective in the matter of a proper mineral survey and rejected the patent application without prejudice to appellant's right to file

a new application accompanied by the required survey plat and field notes of a new mineral survey together with the certificate of expenditures of at least \$500 in improvements since location of the claim on December 17, 1969.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

