

JOHN R. MEADOWS

IBLA 79-165, 79-220

Decided September 12, 1979

Consolidated appeals from decisions of the New Mexico State Office, Bureau of Land Management, dismissing protest against mineral patent application NM 35643 and requiring adverse claimant to commence court proceedings.

Affirmed.

1. Mining Claims: Patent -- Mining Claims: Possessory Right

A party filing notice of alleged adverse mining claims with BLM is properly advised that he is required within 30 days of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession to the claims as between him and his rival claimant. During the pendency of this action, patent proceedings will be stayed.

2. Mining Claims: Patent

BLM's dismissal of a protest against the issuance of a mineral patent will be affirmed where the defects in the application alleged by the protestant do not exist or are curable. An application is not defective because it refers to a previously-filed application containing necessary information in lieu of including the information itself, or because the notice of application did not mention adjoining claim holders, or because the abstract of title submitted with it does not recognize the existence of adverse claims. Where the patent applicant has contracted with another

party to give it a 25 percent interest in the claims, but has not transferred this interest to it by deed or other instrument of record, it is not improper for the applicant to apply as the sole applicant. If the interest is subsequently legally transferred, and the transfer is recorded, the application may be amended to reflect this fact.

3. Federal Land Policy and Management Act of 1976: Generally --
Mining Claims: Generally

Pursuant to 43 U.S.C. § 1712(e)(3) (1976), a wholly owned Government corporation may acquire and hold rights as a citizen under the Mining Law of 1872.

APPEARANCES: Thomas F. McKenna, Esq., Albuquerque, New Mexico, for appellant; Sunny J. Nixon, Esq., Santa Fe, New Mexico, for appellee; Herbert S. Sanger, Jr., Esq., Knoxville, Tennessee, for amicus curiae, Tennessee Valley Authority.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On November 21, 1978, Mobil Oil Corporation (Mobil) filed an application for mineral patent with the New Mexico State Office, Bureau of Land Management (BLM). This application, designated as NM 35643, concerned the Holiday Nos. 1 and 2 (amended) and Holiday Nos. 3 and 5 lode mining claims, described in mineral survey 2302, alleges that a valuable deposit of uranium exists there. On December 6, 1978, Mobil commenced publication of notice of this application.

On January 3, 1979, John R. Meadows filed a protest against the issuance of this patent to Mobil, alleging four grounds for the rejection of the application by BLM. On January 11, 1979, BLM issued a decision rejecting Meadows' protest, from which decision Meadows filed a timely notice of appeal, which was docketed by this Board as IBLA 79-165.

On January 30, 1979, Meadows filed with BLM his sworn statement that he held an adverse claim to the lands to which Mobil sought patent. On January 31, 1979, BLM issued a decision which required Meadows, as an adverse claimant, to commence proceedings in a court of competent jurisdiction to determine the question of right of possession of the claims. Meadows filed a timely notice of appeal from this decision as well, which was docketed by this Board as IBLA 79-220.

As these two appeals, IBLA 79-165 and 79-220, concern the same parties, the same lands, and the same claims, this Board consolidated them on March 8, 1979.

[1] We consider first the appeal from BLM's decision of January 31, 1979, requiring Meadows (appellant) to commence proceedings in court concerning his alleged adverse claims to the lands patent to which Mobil applied for in November 1978. Revised Statute 2326, as amended, 30 U.S.C. § 30 (1976), and the implementing Departmental regulation, 43 CFR 3871.3, expressly require that BLM notify a party who files an adverse claim that he is required within 30 days of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession to the claims as between rival claimants. A suit filed pursuant to this section is the proper means for determining possessory rights between the conflicting claimants. See John W. Pope, 17 IBLA 73, 76 (1974); Essex International, Inc., 15 IBLA 232, 241-3, 81 I.D. 187, 191-2 (1974); Chemi-cote Perlite Corp. v. Bowen, 72 I.D. 403, 407 (1965); Gray v. Milner Corp., 64 I.D. 337, 340 (1957); Powell v. Ferguson, 23 L.D. 173, 174 (1896). During the pendency of the court action, all proceedings on any application for patent will be stayed, except for completion of procedural details, until the controversy is finally adjudicated in court or the adverse claim is either waived or withdrawn. 30 U.S.C. § 30 (1976); 43 CFR 3871.4; Brown Land Co., 17 IBLA 368, 378 (1974); Thomas v. Elling, 25 L.D. 495, 498 (1897).

Thus, by statute, the Department is without authority to decide appellant's adverse claim, and BLM properly advised him in its decision of January 31 that he was required to commence court proceedings to resolve the question of the right of possession of these claims. ^{1/} BLM's decision not to consider his adverse claim will not prejudice appellant, as he suggests in his statement of reasons, as it will take no action to dispose of the land until after the final adjudication of the ownership dispute in court.

[2] Secondly, we affirm BLM's decision of January 11, 1979, dismissing appellant's protest against the issuance of a mineral patent to Mobil on its merits. In this protest, appellant alleged that Mobil's application should be rejected because: (1) it had failed to furnish a certified copy of its corporate charter, as required by 43 CFR 3862.2-1; (2) its notice of application did not mention appellant as an owner of adjacent claims; (3) its abstract of title is inadequate under 43 CFR 3862.1-2 in that it did not address all deeds, instruments, or actions of record affecting title to the claims; and (4) there was an undisclosed, unqualified co-applicant for patent to the claims. We find no merit in these allegations.

Mobil's application contains a reference to a Departmental record concerning another application in which it had previously filed its corporate qualification, presumably including a copy of its charter.

^{1/} Appellant did commence a civil action in the United States District Court for New Mexico (Action No. 79-191M).

Incorporation of material in applications by reference to earlier applications containing the same information is recognized by the Department as appropriate in most instances. See 43 CFR 3102.4-1. Thus, Mobil's application should not be rejected for this reason. BLM has initiated an inquiry into whether the referenced application contains the information required by 43 CFR 3862.2-1 and should follow through to insure that Mobil has, or ultimately will, supply this information. We conclude that if Mobil's application is defective in this regard, the defect is curable, not fatal, and does not compel immediate rejection of the application.

There is nothing in the regulations requiring that a mineral patent application identify owners of adjacent mining claims, and appellant has cited no authority so requiring. Thus, this objection is unfounded.

By suggesting that Mobil has failed to meet the requirements of 43 CFR 3862.1-3 by not addressing the existence of his conflicting claims in the abstract of title filed with its application, appellant misperceives what is required by this section. It does not require that an applicant demonstrate that his title is legally superior to all other existing claims, but merely that he is the successor to possessory title dating back to the original location of the claim which he seeks to patent, and that he presently has full legal possessory title of record. Mobil's submissions appear to satisfy the requirements of 43 CFR 3862.1-3 concerning the nature of the evidence of its title to the claims which must be presented in support of a patent application. Our finding in this regard relates only to the kind of title evidence submitted, and does not constitute a finding that it establishes that Mobil has good title or suggest that Mobil's title has been finally approved.

Finally, appellant asserts that the Tennessee Valley Authority (TVA) has an undisclosed interest in these claims, and that Mobil's failure to disclose this requires rejection of its application. In support of this assertion, appellant has submitted an excerpted portion of an agreement between Mobil and TVA which suggests that TVA has a right to acquire a 25 percent interest in these mining claims. TVA, appearing as amicus curiae, admits that it has a contractual right to receive a 25 percent mineral interest therein, but notes that Mobil has not legally conveyed this interest by deed or other instrument of record, so that it holds no present share in the legal title of record and full legal title is presently in Mobil.

Under 43 CFR 3862.1-3(a), a mineral patent applicant must support his application with a certificate or abstract of title. Under 43 CFR 3862.1-3(d), this abstract must be certified as being a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to

each claim, for which patent is being sought. Here, Mobil has not deeded these claims to TVA; nor has it by other instrument or action which has been recorded purported to convey any legal title to the claims to TVA. Thus, its application is not defective on account of its failure to declare the contractual relationship with TVA.

Indeed, where the abstract of title filed by an applicant does not show that a coapplicant has a portion of legal title of record, its application is properly rejected. Golden Crown Lode, 32 L.D. 217, 219 (1903); John C. Teller, 26 L.D. 484, 488 (1898); J. C. Baker Fractional Placer, 23 L.D. 112 (1896). Thus, unless and until some recorded interest in these claims passes from Mobil to TVA, it would be improper for Mobil to name TVA as a coapplicant. TVA asserts that at present its contractual rights at most amount to an unrecorded equitable title, while full legal title remains in Mobil.

In any event, even if Mobil does proceed to transfer 25 percent of legal title to these claims to TVA and the transfer is recorded prior to patenting, we see no reason why the application may not simply be amended to reflect this change. The requirements of the regulations are met if the applicant correctly states the present state of legal title as it appears of record when the application is filed. Mobil has done so here. If circumstances change the state of legal title of record, Mobil may amend its application to so show. While Mobil has cited support for the conclusion that it may apply for and receive patent by itself even if there is another joint owner of record, it is unnecessary to address this question.

[3] In conjunction with this last argument, appellant maintains that TVA may not legally hold mining claims, citing 43 CFR 3832.1, the regulation setting out the qualifications for making mining locations, and that Mobil's application must be rejected because ineligibility of a coapplicant is an uncurable defect. Under 43 CFR 3832.1, "corporations organized under the laws of any State may make mining locations." Appellant points out that TVA is a corporation created by Federal law and argues that it is therefore unqualified to hold these claims or acquire patent to them.

It is clear that TVA is qualified to hold mining claims and seek patent to them. Under section 202(e)(3) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712(e)(3) (1976), it is expressly recognized that a wholly-owned Government corporation is not prevented from acquiring and holding rights as a citizen under the mining laws. Thus, even if TVA does participate in the application for mineral patent, its doing so would not require rejection of Mobil's application. Although appellant argues that section 302(b) of FLPMA 2/ disclaims any intent to amend the mining law, the mining law

2/ 43 U.S.C. § 1732(b).

contains no prohibition against the ownership of mining claims by Government corporations. Therefore, this provision cannot be construed as an amendment.

We find no reason to convene a fact-finding hearing in this matter, as appellant requests, as Mobil and TVA have acknowledged that the nature of their agreement is substantially as alleged by appellant. No other facts appear to be in controversy.

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

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques, Administrative Judge.

