

KERR-McGEE NUCLEAR CORP. ET AL. (ON RECONSIDERATION)

IBLA 79-44

Decided October 29, 1979

Petition for reconsideration of Board decision, 41 IBLA 197, affirming as modified, determination by the Wyoming State Office, Bureau of Land Management, suspending the processing of mineral patent applications W-65341-3, inclusive and W-61910.

Petition granted; decision of June 22, 1979, reversed; publication to proceed.

1. Mining Claims: Patent -- Mining Claims: Title -- Regulations:
Generally

The evidence of title, required by 43 CFR 3862.1-3 to be submitted in support of a mineral patent application need reflect only documents such as deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each location. It is not necessary that the title data reflect in addition those deeds, instruments, or actions otherwise relating to the land in the mining claim.

APPEARANCES: R. Lauren Moran, Esq., Lohf and Barnhill, P.C., Denver, Colorado, for petitioners; Harold H. Baer, Jr., Esq., Regional Solicitor's Office, Department of the Interior, Denver, Colorado, for respondent, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Kerr-McGee Nuclear Corp. (Kerr-McGee), Getty Oil Co. (Getty) (W-65341, W-65342, and W-65343), and The Cleveland-Cliffs Iron Co. (Cleveland) (W-61910) had appealed from letter decisions dated October 2 and 3, 1978, of the Wyoming State Office, Bureau of Land Management (BLM). The Kerr-McGee and Getty decision appealed from denied appellants' request for advance publication in connection with the above enumerated mineral patent applications on the ground that appellants had not submitted "full, true, and complete" abstracts of title as required by 43 CFR 3862.1-3, and because BLM was not satisfied that persons other than the appellants had no interest in the

applied for mineral estate. 1/ The Cleveland-Cliffs decision was far less onerous in its requirements. 2/

43 CFR 3862.1-3, the regulation concerning the submittal of evidence of title provides as follows:

(a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to a form approved by the Director.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified by the legal custodian of the record of mining locations.

1/ The abstracts for Cleveland-Cliffs Iron Co. (W-61910) were not considered in the decision appealed from. They were returned to appellants on June 5, 1978, for expansion and completion.

2/ The Cleveland decision read in pertinent part as follows:

"Your protest makes objection to five specific categories of information. To the extent that we do or do not require the abstract to provide information in these five categories, we provide the following point-by-point discussion:

"PROTEST: 1. Where surface patent has issued to the subject lands, documents reflecting the chain of title to the surface estate other than and subsequent to the patent issued.

"RESPONSE: The abstract should indicate whether the surface estate has been patented and remains in private fee ownership, and, if so, the statute under authority of which the surface estate may have been patented. We also need to know if any subsequent document purports to convey any interest [sic] in the mineral estate.

"PROTEST: 2. Documents reflecting existence of rights to, action concerning or the chain of title to oil, gas, coal and other Leasing Act minerals.

"RESPONSE: We do not need to receive documents pertaining to federal mineral leases which would already be of record in this office. However, any document concerning what purports to be a privately granted lease for oil, gas, coal or other leasable mineral should be discussed in the abstract.

(d) A certificate to an abstract of title must state that the abstract is 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.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

[1] The essential holding of our earlier decision was that an abstract of title, submitted in connection with a mineral patent application, must reflect, with few exceptions, all transactions affecting the land in the mining claims in issue rather than merely the possessory title to the particular mining claims for which patent

(fn. 2 continued)

"Protest: 3. Documents pertaining to royalty interests and the ownership and the chain of title to them.

"RESPONSE: We do not need to receive documents pertaining to royalty interests in federal mineral leases. As mentioned in point number 2, we do need to know about any conflicting mineral ownership claims derived from a privately granted lease, to include any royalty interests and their chains of title.

"PROTEST: 4. Documents reflecting existence of mortgages or other financing arrangements or transactions.

"RESPONSE: We do not need to know about mortgages or other documents having to do with financing arrangements or transactions except in so far as the documents purport to create a security interest in the mineral estate.

"PROTEST: 5. Documents evidencing conflicting, overlapping or adverse claims or adverse rights which may exist by reason of any encroachment of other mining claims onto the concerned claims or of any overlapping of the boundaries of said claims unto other claims.

"RESPONSE: This category of information is precisely the type of information which the abstract should discuss completely and illustrate in detail. This office must be informed of all rival or conflicting possessory claims to the mineral estate described in the application for mineral patent.

"Our processing of mineral patent application W-61910 is hereby suspended until this office receives a complete abstract of all claims to and interest in the mineral estate described in the application as required by 43 CFR 3862.1-3."

is being sought. ^{3/} Upon careful reflection, we are persuaded of the correctness of the views enunciated by Judge Henriques in his earlier dissent.

Our earlier holding that an abstract must reflect virtually all documents affecting the lands in issue is discordant with the adjudication of applications under any of the other public land laws. Under no other public land law, other than the Color of Title Act, 43 U.S.C. § 1068 (1976), and the implementing regulations, 43 CFR Part 2540, is an applicant under an obligation to demonstrate to the Bureau of Land Management that the land is free from claims of record. There is no cogent reason to impose a greater burden upon a mineral patent applicant than upon any other category of applicants seeking title to public land.

Lindley on Mines, Vol. II (1897), § 687, supports this conclusion and shows that even before the turn of the century, the abstract of title needed to be directed solely to the mining claim, and not to the land therein.

§ 687. The abstract of title -- Certified copies of location notices. -- Where the applicant is an original locator, the regulations simply require him to file a full, true, and correct copy of his location notices or certificates, original and amended, if any, as they appear upon the mining records, such copies to be attested by the seal of the recorder, if he has a seal, otherwise by the oath of the custodian of the records; but where the applicant claims by mesne conveyances from the original locator, he is required to present, in addition to the authenticated copies of the notices or certificates, an abstract of title from the proper recorder, under seal, or oath if the officer has no seal, brought down as near as practicable to the date of filing the application, tracing the right of possession by a continuous chain of conveyances from the original locators to the applicant, also certifying that no conveyances affecting the title to the claim in question appear of record in his office, other than those set forth in the accompanying abstract. The purpose of this abstract is to assure the government that the applicant is lawfully entitled to the possession of the claim.

^{3/} We stated at 41 IBLA 203 that:

"We reiterate that unless the United States still retains the legal title to the surface of a mining claim the abstract must reflect all transactions affecting the land in any way. This requirement, admittedly onerous, can be avoided by the furnishing of a certificate of title discussed infra."

It is customary to present an abstract of title in all cases, whether the applicant is the original locator or not. In the case of an original locator, it furnishes evidence that he has not transferred the claim, a negative fact, of which the department is entitled to information from the records.

Where the records are lost or destroyed, secondary evidence of their contents may be shown, the proper foundation being laid therefor, and the claimant may make proof of possessory title. This proof may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, and improvements. [Footnotes omitted.]

In Henrietta C. Steele, 53 L.D. 26, 30 (1930), Assistant Secretary Edwards essentially concurred in this conclusion stating: "The question for determination in this case is not, who are heirs of the person who is seeking the title from the United States under the application, but whether the applicant has shown sufficiently that she has a mining title to the location for which the patent is sought." [Emphasis supplied.]

Recently, the Board considered whether an "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 * * *." John R. Meadows, 43 IBLA 35 (1979). We held at 43 IBLA 38 as follows:

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. [Emphasis in original.]

Our review of the matter impels us to the conclusion that the submittal of "limited abstracts," 4/ satisfied the regulatory requirements. Upon reconsideration we find no differentiation in the positions.

Respondent's argument that to accept petitioners' thesis that only limited abstracts are required is merely to repeat under 43 CFR 3862.1-3(d) what is sought under 43 CFR 3862.1-3(c), is fallacious. This conclusion is impelled by the recognition that (c) and (d), 5/ no matter how read, are at least partially duplicatory, e.g., as to notices of location. 6/

We need not pass upon the acceptability of certificates of title for mining claims located in the State of Wyoming, since none was proffered in the cases at bar. If petitioners disagree with the Regional Solicitor at Denver on that subject, they are at liberty to request his superior, the Solicitor, to review the former's opinion of January 7, 1974, negating the use of such instruments.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, the decision of June 22, 1979, of

4/ The "limited abstracts" omitted therefrom the following categories of documents:

1. Where patent to the surface estate has issued, with reservation of minerals to the United States, any documents reflecting transactions with respect to or reflecting the chain of title to the surface estate subsequent to issuance of such patent.
2. Documents reflecting existence of, rights to, action concerning or the chain of title to oil, gas, coal and other Leasing Act minerals.
3. Documents reflecting royalty interests or the ownership thereof or the chain of title to royalty interests.
4. Documents reflecting existence of mortgages, deeds of trust or other financing arrangements, or transactions or actions taken with respect to any such security interests not resulting in change of ownership.
5. Documents evidencing conflicting, overlapping or adverse claims, or adverse rights which may exist by reason of any encroachment of other mining claims onto the concerned claims or of any overlapping of the boundaries of said claims onto other claims.

5/ 43 CFR 3862.1-3 appears supra.

6/ An informal check of the Regional Solicitors' practices of the offices in Anchorage, Sacramento, Salt Lake City, Tulsa, and Portland, reveals that only possessory title to the location need be shown to satisfy 43 CFR 3862.1-3. Apparently only the Regional Office at Denver seeks to impose more stringent requirements.

this Board is reversed, petitioners' showing of possessory title, insofar as the limited abstracts have been furnished, is deemed adequate, and BLM is directed to order publication and otherwise process the mineral patent applications, all else being regular.

Frederick Fishman
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

I adhere to a more intermediate interpretation of 43 CFR 3862.1-3; see the previous decision at 43 IBLA 205. While BLM has the authority to rule there has been substantial compliance with the regulation, and to avoid burdening its personnel and file system with irrelevant materials, 1/ neither BLM nor the Board of Land Appeals has authority to read relevant, reasonable requirements entirely out of a regulation.

The provisions of 43 CFR 3862.1-3 describe substantive documents which must be furnished before BLM is authorized to issue a patent. The regulation requires in part:

(a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. * * *

* * * * *

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract [2/] 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. [Emphasis added.]

The question herein is whether the items required by BLM, purport to "affect the title" to the claim. Certainly, the items required in the Cleveland-Cliffs decision do affect title. As argued in the brief for the Solicitor, "[F]or an abstract to comply with the provisions of 43 CFR 3862.1-3 it must include all documents of record which evidence an interest, or purport to claim an interest in the estate for which patent is sought." This approach is in accord with the accepted definition "abstract of title" in Black's Law Dictionary 24 (4th ed. 1968):

ABSTRACT OF TITLE. A condensed history of the title to land, consisting of a synopsis or summary of the material or operative portion of all the conveyances, of whatever kind or nature, which in any manner affect said land, or any estate or interest therein, together with a statement

1/ See BLM decision in Cleveland-Cliffs Iron Company, W-61910, quoted n.2, supra.

2/ As stated in the Board's decision herein being reversed, "The regulation is clear and straightforward * * *," 41 IBLA 203 (1979).

all liens, charges, or liabilities to which the same may be subject, and of which it is in any way material for purchasers to be apprised. Warv. Abst. § 2. Stevenson v. Polk, 71 Iowa 278, 32 N.W. 340.

* * * An epitome of the conveyances, transfers, and other facts relied on as evidence of title, together with all such facts appearing of record as may impair the title. State ex rel. Freeman v. Abstracters Board of Examiners, 99 Mont. 564, 45 P.2d 668, 670. Vangness v. Bovill, 58 S.D. 228, 235 N.W. 601, 604. Memorandum or concise statement in orderly form of the substance of documents or facts appearing on public records which affect title to real property. State ex rel. Doria v. Ferguson, 145 Ohio St. 12, 60 N.E.2d 476, 478. [Emphasis added.]

In effect, the majority rules that section 3862.1-3 does not require an "abstract of title" at all, but rather merely a showing of "chain of title." 3/

The purpose of the regulation is to assist BLM in verifying, prior to its issuance of patent, whether the patent should be withheld or issued to someone else. In effect, petitioner asks the Board to disregard this reason for requiring the abstract.

As to the possibility of appellant submitting a certificate of title under section 3862.1-3(a) in lieu of an abstract, appellant has not offered such a certificate nor pointed out any error in previous Solicitor's opinions 4/ regarding restrictions on the use of such certificates. I concur that the Board should not rule upon use of certificates until there is an appeal from a BLM ruling thereon.

Joseph W. Goss
Administrative Judge

3/ See Black's Law Dictionary, supra at 290.

4/ E.g., Memorandum, Regional Solicitor, Denver, to State Director, Wyoming, "Certificates of Title in Support of Mineral Patent Applications", January 7, 1974.

