

DONALD L. CLARK

IBLA 82-584

Decided May 20, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting application for mineral patent, I 17970.

Affirmed.

1. Applications and Entries: Generally -- Mining Claims: Patent -- Patents of Public Lands: Generally

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

APPEARANCES: Barry Marcus, Esq., Boise, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Donald L. Clark has appealed the March 2, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which rejected application I 17970 for mineral patent of the South Half of Golden Rule Group No. 1 and South Half of Golden Rule Group No. 6 placer mining claims. The application was filed August 11, 1981.

Appellant claims the decision is arbitrary, capricious, and unsupported by fact or law, and was entered prematurely without notice or process. Appellant argues that the decision is arbitrary and contrary to law for BLM to reject the application for failure to submit documents not previously required. A hearing was requested.

The regulations governing mineral patent applications are set forth in 43 CFR Part 3860. Essentially, the application must be filed in duplicate, stating that the applicant is a citizen of the United States and has possessory right to the claims which must be described fully as to the character of the land, mineral deposits, water courses, and vegetation, including timber. There must be a statement as to the work performed on the claims, and as to

the value of the improvements made thereon, as well as a statement as to the amount and type of minerals extracted and disposed of. The statements must be corroborated by affidavits of two disinterested witnesses. There must be furnished a certificate or abstract of title to include the date of filing of the application for patent, accompanied by certified copies of the original location notices and any amendments thereof.

The application I 17970 was filed August 11, 1981, by Donald L. Clark, as owner of the South Half of the Golden Rule Group No. 1 placer mining claim in the S 1/2 W 1/2 W 1/2 (W 1/2 SW 1/4) sec. 3, T. 22 N., R. 5 E., Boise meridian, Idaho, containing 80 acres. The application was not accompanied by the various documents and affidavits required by the regulations in 43 CFR Part 3860. The application adverted to a conflict with claims located by one Floyd Dillon.

By letter received September 24, 1981, Matthew Mullaney, Esq., attorney for the Dillon family, protested the incomplete mineral patent application I 17970 of Clark, and requested BLM to reject the application for noncompliance with the statute and regulations.

BLM's decision of October 16, 1981, required the applicant to submit the following documents required by the regulations before further processing of the application could occur:

1. Notice of intention to apply for patent. See 43 CFR 3861.7-1.
2. Statement of two credible witnesses to posting on claim. See 43 CFR 3861.7-2. The statement submitted was executed by the applicant and did not carry signatures of the witnesses.
3. Certificate of Title (form 3860-2) accompanied by Location Notices certified to by the legal custodian of the records. See 43 CFR 3862.1-3. Land description in Location Notices must be by legal subdivision.
4. Citizenship statement. See 43 CFR 3862.2-2.
5. Statement of newspaper publisher to hold applicant responsible for charges of publication. See 43 CFR 3862.4-1.
6. Proof of improvements accompanied by statements of two disinterested witnesses. See 43 CFR 3863.1-2.

Some of the requested information was furnished within the time prescribed, but the certificate of title was unacceptable and no certified copies of the location notices were submitted. Also, the documents submitted referred to the South Half of Golden Rule Group No. 1 and South Half of Golden Rule Group No. 6 placer mining claims, whereas the original application has described only the South Half of Golden Rule Group No. 1 claim.

The record does not disclose that applicant ever filed an acceptable abstract or certificate of title, nor certified copies of the original location notices or of any amended location notices. See 43 CFR 3862.1-3. Likewise, there is nothing in the record to verify that there indeed had been four locators of the original claim and that there were not less than four claimants who held and worked the claim for a period of time equal to the statute of limitations in Idaho law. See United States v. Haskins, 59 IBLA 1 (1981).

Because of the deficiencies in this application for mineral patent and in the face of the apparent unwillingness of the applicant to comply with the regulations, there has been no demonstration of good faith. The applicable regulation, 43 CFR 3862.6-1, provides that failure to prosecute an application for mineral patent with diligence constitutes a waiver of all rights obtained by the earlier proceedings on the application. See Wilbur G. Hallauer, 52 IBLA 202 (1981). We affirm the decision without prejudice to the right of the applicant to submit a new application which conforms to all of the regulatory requirements set out in 43 CFR 3860.

We cannot see how a hearing would be of any benefit in this case. The request for a hearing is denied.

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:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

