

DONALD L. CLARK

IBLA 82-585

Decided May 20, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting application for mineral patent I 4420.

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 after 10 years, the Bureau of Land Management 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 February 16, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which rejected application I 4420 for mineral patent of the Midwinter Group Nos. 1, 2, and 3 placer mining claims. The application was filed July 9, 1971, and after ten extensions of time to submit information required by the regulations, the application was not yet acceptable so BLM took the action to reject the application.

Appellant generally claims the decision is arbitrary, capricious, and unsupported by fact or law, and was entered prematurely without notice or process. Appellant argues that it 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 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 two disinterested witnesses. There must be furnished a certificate or abstract of title brought down so to include the date of filing of the application, accompanied by a certified copy of the original location notices and any amendments thereof.

The application for mineral patent, I 4420, was filed July 9, 1971, by Donald L. Clark, attorney-in-fact for Charles Winkler, Marie C. McClure, and Ruth Winkler, the alleged owners of the Midwinter Group Nos. 1, 2, and 3 placer mining claims in secs. 33 and 34, T. 22 N., R. 5 E., Boise meridian, Idaho County, Idaho. 1/ Each placer claim embraced 160 acres. The application stated the claims had been located July 21, 1919, by one J. L. Rich "for and in behalf of F. T. Mathias, William Winkler, L. E. Winkler and A. L. Freehafer." 2/

BLM's decision of October 12, 1971, required the applicant to submit the following information and instruments before further action could be taken on the application:

The following items must now be submitted before further action can be taken on these cases.

1. An abstract or certificate of title with certified copies of all location notices and amendments thereto.
2. Statements of two or more disinterested witnesses regarding improvements on the claims. If there are no known lodes, statements of two or more witnesses to this fact.
3. A power-of-attorney from each of the owners to their attorney-in-fact. This authority must have existed on the date the applications were filed.

1/ The application was corrected June 30, 1975, to show the legal description of the claims to be: Midwinter Group No. 1 -- SE 1/4 sec. 33, T. 23 N., R. 5 E.; Midwinter Group No. 2 -- NE 1/4 sec. 33, T. 23 N., R. 5 E.; and Midwinter Group No. 3 -- NW 1/4 sec. 34, T. 23 N., R. 5 E.

2/ Under the mining law, a placer claim may embrace 20 acres of open land. Where eight or more locators associate together, a placer claim of 160 acres may be taken by location.

4. Citizenship statement of each of the owners of the claims showing whether he is a native or naturalized citizen, when and where born and his residence.

5. An agreement of the publisher of the Idaho County Free Press, Grangeville, Idaho.

Some of the requested information was furnished to BLM over the next 2 years.

On September 7, 1979, a copy of a quitclaim deed dated March 21, 1969, from Charles Winkler, Ruth Winkler, and Marie C. McClure to Donald L. Clark was filed with BLM. The deed conveyed all interest of the grantors in and to the Midwinter Group Nos. 1, 2, and 3 placer mining claims. The deed antedates the filing of the subject application for mineral patent by Clark as attorney-in-fact for the grantors.

Copies of location notices for the Midwinter Group Nos. 1, 2, and 3 claims were submitted to BLM October 18, 1979. Each shows the date of location of the claim as March 15, 1915, and each has eight illegible names of locators. Amended location notices by Donald L. Clark, agent for Charles Winkler, Ruth Winkler, and Marie C. McClure were made June 20, 1969, each adverting to an original location date of August 4, 1919. None of the copies of the location notices were certified by the recorder of the instrument. Nor does the record before us show that any abstract or certificate of title had been furnished to BLM.

BLM decision of February 17, 1981, called for additional information to complete the mineral patent application:

Following are problems to be resolved before this case can be further processed:

1. Location Notices and deeds filed do not show possessory title is vested in the applicants. See Title 43 CFR 3862.1-3.

2. Paragraph 2 of your application states that claimants own and are in the actual, quiet, and undisputed possession of the claims, but does not set forth the manner in which this was accomplished.

3. Paragraph 9 of your application states the claims were located by J. N. Rice on or about July 21, 1919, for and in behalf of F. T. Mathias, William Winkler, L. E. Winkler, and A. L. Freehafer. The original Location Notices show the claims as located March 15, 1915. The locators appear to be J. A. Whiteley, S. J. Whiteley, L. E. Winkler, Wm. Winkler, A. L. Freehafer, Wm. Freehafer, H. T. Matheas, and Don Mathias. (The copies furnished are not very clear.)

4. Neither the original Location Notices nor the Amended Location Notices were certified by the legal custodian of the records. The amended Location Notices show the original location date as 8/4/1919 while the location date is shown as 3/15/1915 on the original Location Notices.

5. Federal regulations require the Location Notices be amended describing the claims by legal subdivision rather than by metes and bounds.

Your latest documented effort to prosecute this application to completion was made on October 18, 1979. Therefore, in conformance with Title 43 CFR 3862.6-1 and IBLA decision 81-57, decided January 26, 1981, you have until April 20, 1981, to properly file your application for patent of the Midwinter Group Nos. 1, 2, and 3 placer mining claims. Failure to comply with this decision will result in rejection of your application.

After several extensions of time, on November 23, 1981, appellant submitted a statement of ownership wherein Clark asserts ownership of the claims by virtue of the deed dated March 21, 1969, from Charles Winkler, Ruth Winkler, and Marie C. McClure, that he had been in sole possession of the claims since 1969, performing some exploration work but that no actual mining operations had been conducted. Also submitted was a certificate from the clerk of the Second Judicial District Court of Idaho that no suit or action of any character involving the right of possession to any portion of the Midwinter Group Nos. 1, 2, and 3 placer claims is now pending or has been litigated during the past 5 years.

The record does not disclose that applicant ever filed the required abstract or certificate of title, nor certified copies of the original location notices or any of the amended location notices. No chain of title from the original locators to appellant's predecessors in interest has been shown. Likewise, there is nothing in the record to verify that there were indeed eight locators of the original claims and that there were not less than eight claimants who held and worked the claims for a period of time equal to the statute of limitations in Idaho law required to establish rights in a 160-acre claim under 30 U.S.C. § 38 (1976). See United States v. Haskins, 59 IBLA 1 (1981).

Because of the deficiencies in this application for mineral patent which have persisted for more than 10 years, 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. BLM did not act arbitrarily or capriciously in its decision to reject this application for mineral patent. See Wilbur G. Hallauer, 52 IBLA 202 (1981). We affirm the decision without prejudice to a new application which conforms to all of the regulatory requirements, set out in 43 CFR Part 3860.

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

