

Editor's note: Appealed -- reversed, Civ.No. 83-1125 (D.Idaho Dec. 17, 1987), amended judgment (Mar. 10, 1988)

DONALD L. CLARK

IBLA 82-397

Decided March 10, 1983

Appeal from decisions of the Idaho State Office, Bureau of Land Management, rejecting mineral patent applications I-4419, I-4421, I-6399, I-6494, and I-7051.

Affirmed.

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

BLM decisions rejecting mineral patent applications for numerous deficiencies, uncertainties, and inconsistencies therein, will be affirmed where appellant fails to point out how the decisions are in error, subject to the applicant's right to submit proper and correct applications in the future.

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

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from decisions dated December 15, 1981, by the Idaho State Office, Bureau of Land Management (BLM), rejecting mineral patent applications for each of five groups of placer mining claims.

Each of the decisions appealed from states that the application under consideration therein was deficient from its inception. The decision in I-4419, dealing with the applications for the Golden Rule Nos. 1 through 6 claims, lists the following defects with the application:

1. Application, amendments thereto and all documents supporting the application must be executed (signed) by the Mining claimant (owner), except for nonresident or a resident claimant not within land district (Idaho), who may have a duly authorized agent within the State. See 30 U.S.C. Sec. 29.
2. Amended Placer Location Notices appear to be relocations which would require a new application.

3. Amended Location Notices make reference to destruction by fire of original location records. See 43 CFR 3862.1-4.

4. From Location Notices, Deeds, Sale and Purchase Agreements and Partnership Agreements, it appears there could possibly be eighteen people with an interest in subject claims. There also appear to be breaks in the chain of title. Certificate of Title by Inland Abstract Company, Grangeville, Idaho, dated July 29, 1981, shows title vested in Donald L. Clark without sufficient title documents to substantiate their findings. See 43 CFR 3862.1-3. (The mineral Patent Application was made by Donald L. Clark as Attorney-in-Fact for owners Charles Winkler, Marie C. McClure, and Ruth Winkler.)

The decision in I-4421 addresses the application filed for the Echo Group No. 2 Placer Mining Claim. The decision recites that an inadequate location notice was filed; that locator names on subsequently filed amendments were not consistent with the original location notice. The decision further indicates a discrepancy with respect to title and number of parties with an interest in the claim.

The decision in I-6399 addresses the L & B Claim Placer Mining Claim and lists discrepancies between location notices and amended location notices as to persons with an interest in the claim. It further states that legal description of the original location notice cannot be reconciled with the amended location notices and sketch plat.

The decision in I-6494 considering the application for the Lybot Claim No. 1 Placer Mining Claim lists discrepancies between the original location notices and the amendments. These discrepancies involve claim names, names and number of locators, discrepancy dates, and legal descriptions.

The decision in I-7051, addressing the Clark Group No. 1 Placer Mining Claim states that the legal descriptions on the application, the notice posted on the claim and the location notices do not conform to the map submitted, and that in some instances noncontiguous lands are listed. Again, the decision states that there are variances in the legal descriptions as between the original location notices and subsequent amendments.

Appellant has submitted an identical statement of reasons in connection with each of the five decisions appealed. It is contended that each decision is arbitrary, capricious, unsupported by facts or law and served without due process. Appellant states that the deficiencies claimed are either without substance or have been corrected and/or have been misfiled by BLM. Appellant also requests a hearing.

The decisions herein state concisely the respects in which BLM considered each application deficient. Appellant's statement of reasons is not responsive to the decisions and does not attempt to point out affirmatively how or why the deficiencies listed by BLM are in error. The record suggests that appellant has failed to prosecute his applications for mineral patent with diligence and has been unwilling to comply with the 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 rejecting these applications for mineral patent. Donald L. Clark, 64 IBLA 132 (1982); Donald L. Clark, 64 IBLA 129 (1982). We affirm the decision without prejudice to the applicant to submit new applications wherein the deficiencies listed in the decisions have been corrected.

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 decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge

