

DENNIS J. KITTS

IBLA 84-655

Decided January 15, 1985

Appeal from decision of Bureau of Land Management, Wyoming State Office, rejecting a mineral patent application, W-80912.

Affirmed as modified.

1. Administrative Procedure: Generally -- Mining Claims: Patent -- Regulations: Generally

Written statements concerning public lands, e.g., proof of improvements of mining claims and proof of posting of notices, need not be sworn statements unless the Secretary in his discretion shall so require.

2. Mining Claims: Patent -- Surveys of Public Lands: Generally -- Words and Phrases

"Protraction survey" or "protraction diagram." A "protraction survey" or "protraction diagram," which consists of lines drawn on a map that follow the public land survey system, but which is not based upon a field survey with monumentation, is not an official survey and therefore the requirement that a placer mineral patent application be accompanied by a mineral survey of the unsurveyed land is not waived when the unsurveyed land is covered by a protraction survey.

3. Mining Claims: Discovery: Generally -- Mining Claims: Patent

A mineral patent applicant bears the burden of showing that he has made a valuable mineral discovery and therefore the patent application must contain sufficient economic and geologic information, such as the description of the discovery points, the workings and the improvements on the claim, and the sampling techniques, to show entitlement and to justify a field examination of the mining claim for the purpose of verifying the information provided.

APPEARANCES: Dennis J. Kitts, pro se.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

Dennis J. Kitts has appealed the April 4, 1984, Wyoming State Office, Bureau of Land Management (BLM), decision rejecting his mineral patent application W-80912, covering placer mining claims W-MC 221587 through W-MC 221592, referred to as the #1-1 through #1-6, respectively. As amended, Kitts' June 28, 1982, application covers the following land:

#1-1 E 1/2 NW 1/4 NW 1/4 sec. 5, T. 37 N., R. 116 W.  
 #1-2 W 1/2 NW 1/4 NW 1/4 sec. 5, T. 37 N., R. 116 W.  
 #1-3 E 1/2 NE 1/4 NE 1/4 sec. 6, T. 37 N., R. 116 W.  
 #1-4 W 1/2 NE 1/4 NE 1/4 sec. 6, T. 37 N., R. 116 W.  
 #1-5 E 1/2 NW 1/4 NE 1/4 sec. 6, T. 37 N., R. 116 W.  
 #1-6 W 1/2 NW 1/4 NE 1/4 sec. 6, T. 37 N., R. 116 W.

sixth principal meridian, Lincoln County, Wyoming.

BLM, in its April 4, 1984, decision, rejected the mineral patent application without prejudice, partly on the ground that the applicant failed to submit a mineral survey of the unsurveyed land encompassed by his claims, prior to filing his application, citing 30 U.S.C. § 35 (1982), 43 CFR 3861.1-1, and 43 CFR 3863.1(a). In addition, BLM rejected the application because it was considered technically inadequate in terms of economic and geologic information. BLM said the information "was not sufficient in detail to allow a Mineral Specialist to determine, in the office, whether a valuable mineral deposit had been found." (Emphasis in original.) The areas of information noted as extremely weak or nonexistent were:

1. Description of (a) general or economic geology and mineralization; (b) discovery points and sampling techniques; and (c) all workings, improvements, etc., on the claims.
2. Economic analysis of the actual mineralization present.  
 Bureau of Land Management Manual, Section 3863, Appendix 1 (copy enclosed) sets out a possible format for the valuable mineral discussion portion of a mineral patent application, rather than a hypothetical mining operation you discussed, wherein flour gold is recovered using unproven techniques. 1/

Finally, BLM noted that Kitt's application had several curable deficiencies e.g., appellant's failure to obtain sworn affidavits for proof of improvements and posting of notices on the claims.

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1/ BLM's reference to "hypothetical mining operation \* \* \* wherein flour gold is recovered using unproven techniques," is apparently a reference to appellant's unconventional sluice box which is wider and longer than the standard sluice box, which may contain no riffles, and which has a unique matting that, according to Kitts, recovers "25-50% of ore content, versus 10-20% using conventional riffle or matting material."

Appellant, in his July 13, 1984 statement of reasons for appeal, argues that,

Placer mining claims which can be legally described by legal subdivisions of the U.S. system of public land surveys (which mine are) do not require a special survey and plat. Since there are Forest Service and range & township maps which show this land laid out by standard rectangular survey, the land can be legally described in such manner, whether or not it has been physically surveyed. These claims have been located using the standard 20 acre subdivisions of federal survey and therefore legal title can [be] passed without the necessity of any further special survey. [Emphasis in original.]

(Statement of Reasons at 2).

In addition, Kitts challenges BLM's conclusion that the economic and geologic information in the application is inadequate. He asserts that his application conforms to the suggested outline in 43 CFR 3863.1-3 (Statement of Reasons at 3). He also states that requiring a complete description of the general geology of the area is relevant only to lode claims, and not to placer claims since placer deposits have "[l]ittle or nothing to do with the surrounding geology."

Finally, Kitts contends that under the regulations, proof of posting of notices and proof of improvements need not be sworn statements (Statement of Reasons at 2).

[1] We affirm BLM on all points except its determination that proof of improvements and proof of posting of notices on the claims must be sworn affidavits. Written statements in public land matters under the jurisdiction of the Department of the Interior need not be made under oath unless the Secretary in his discretion shall so require. 43 U.S.C. § 1211 (1982); 43 CFR 1821.3-1. The applicable regulations, 43 CFR 3861.7-2 and 3863.1-2, do not require sworn statements. First, 43 CFR 3861.7-2, provides:

After posting the said plat and notice upon the premises the claimant will file with the proper manager two copies of such plat and the field notes of survey of the claim, accompanied by two copies of the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, and two copies of the notice so posted to be attached to and form a part of said statement. [Emphasis added.]

Second, 43 CFR 3863.1-2, regulating proof of improvements for patent of mining claims, merely requires, "the statement of two or more disinterested witnesses." (Emphasis added.) There is no requirement that the statement be sworn. 2/

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2/ By contrast, 43 CFR 3862.4-5, requires a "sworn statement" with regard to an applicant's proof of publication and posting.

[2] Appellant refers to the "forest service and range and township maps" which show his land laid out by standard rectangular survey. Because his claims can be "legally described," he concludes, a physical survey of the land is unnecessary.

To the contrary, BLM properly held that a placer mining claim patent application must be accompanied by a plat and survey when the land embraced by the mining claims is unsurveyed. The relevant statute and regulation expressly require such a survey. The mining law provides that "where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, \* \* \* but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands \* \* \*." 30 U.S.C. § 35 (1982) (emphasis added). With regard to mineral patent applications, the regulation governing applications for surveys, 43 CFR 3861.1-1, provides:

The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. He is required to have a correct survey where patent is applied for and where the mining claim \* \* \* covers lands not surveyed in accordance with the U.S. system of rectangular surveys, or where the mining claim fails to conform with the legal subdivisions of the federal surveys. [Emphasis added.]

Therefore, under statute and regulation, where the land embraced by the claim is unsurveyed, the claimant must submit a mineral survey with his mineral patent application.

Furthermore, the "maps" to which Kitts refers do not represent official surveys of the public lands, but rather, are "protraction diagrams," or "protraction surveys" which are "prepared for the purpose of describing unsurveyed land areas" (Glossary of BLM Surveying and Mapping Terms, U.S. Department of the Interior, BLM (1978), at 43). (Emphasis added.) "Protracted surveys" have been described as a system

to augment the public land survey system. Protracted surveys consist of lines drawn on maps that follow the public land survey system but are not based on a field survey with monumentation. The purpose of the protracted surveys is to provide a means for recording actions concerning the public lands and also provide a basis for land management. Although eventually lands under protracted surveys will be given an official survey, the Federal Government, in the meantime, will be able to issue mineral leases for the vast unsurveyed areas in such states as Alaska. [Emphasis added.]

T. Maley, Handbook of Mineral Law (1977).

Unlike a protraction survey, "A[n official] survey of the public lands creates, and does not merely identify, the boundaries of sections of land,

and public land cannot be described or conveyed as sections or subdivisions of sections unless the land has been officially surveyed." United States v. Heyser, 75 I.D. 14, 17 (1968) (emphasis added). We have held that,

Subdivision of acquired lands of the United States by the Forest Service or by other agency, either Federal or State, and designation of such subdivisions by identities similar to those which might be attached to the lands if the rectangular system of public land surveys had been extended over them, does not make the lands "surveyed" within the context of the oil and gas regulations. The surveying of the public lands is an administrative act confided to the Director, Bureau of Land Management, under the direction of the Secretary of the Interior. 43 U.S.C. § 2 (1970). It follows then that only those plats of survey approved by the Director, Bureau of Land Management, are entitled to be included within the rectangular system of public land surveys. [Emphasis added.]

Arthur E. Meinhart, 6 IBLA 39, 41, 42 (1972).

This rule applies to the instant case. A protraction survey is not, and is not intended to be, a substitute for an official survey of the public lands. Therefore, such protraction surveys do not obviate the mineral patent application requirement that unsurveyed lands be officially surveyed.

[3] BLM states that Kitts' mineral patent application has inadequate geologic and economic information. This information goes to proving that the claimant has discovered valuable mineral deposits. We agree with BLM. While Kitts' application satisfies several requirements of the regulation governing mining claim patent applications, 43 CFR 3863.1-3, his application is nevertheless deficient in certain other requirements. The regulation states "the placer application should contain in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation \* \* \*." 43 CFR 3863.1-3. (Emphasis added.) Because Kitts is applying for a patent to these lands, he bears the burden of showing in his application that he has made valuable mineral discoveries. Brattain Contractors, Inc., 37 IBLA 233 (1978). Kitts has not met that burden.

Specifically, appellant has provided no meaningful description of the geology on the claims or in the general area; no substantiated description of the quantity and quality of the ore alleged discovered; no description of the discovery points; no description of the samples taken in terms of their location, size, the sampling technique employed, or the means of their evaluation; no description of the workings presently existing on the respective claims, if any; and no description of the \$500 in improvements which allegedly have been installed or constructed for the benefit of each of the claims.

Moreover, appellant's economic analysis is wanting in a number of particulars. Among these are his failure to ascribe any cost to labor, his use of \$500 per troy ounce as the average price for gold when gold has not averaged that much over a sustained period for several years (as this is written it is \$296 p/tr/oz.). His production estimates are based upon a nontypical

sluice box containing a special matting of his own design, which he says will increase his recovery by up to two and a half times over conventional riffle or matting material (see n. 1/). He has failed to submit any evidence which would substantiate his claim that he can, in fact, recover gold in the manner or to the extent described.

An applicant has an obligation to support his application for mineral patent with sufficient descriptive information and data to permit the BLM mineral examiner, on review in his office, to conclude that each claim was valid and that all prerequisites for patent had been met, subject only to confirmation upon field examination. In short, the patent applicant must make a prima facie showing that he is entitled to the patent he seeks. This is a reasonable requirement because, otherwise, BLM would be obliged to waste the valuable time of its mineral examiners to conduct costly field examinations based upon information which did not even show the patent application to be meritorious on its face.

We note that some of the omitted data will be included in the mineral surveyor's report when, and if, the survey is accomplished, and may be incorporated thereby in the mineral patent application as re-submitted. 43 CFR 3863.1-3(c).

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 as modified hereby.

Edward W. Stuebing  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

R. W. Mullen  
Administrative Judge

