

GEOFFREY J. GARCIA  
CHARLOTTE M. GARCIA

IBLA 87-193

Decided September 29, 1989

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting application for mineral patent because of incomplete evidence of title. OR 38521.

Reversed and remanded.

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

The evidence of title required by regulation at 43 CFR 3862.1-3 in support of a mineral patent application should reflect those documents of record, including notice of location, deeds, and other instruments, purporting to convey or affect title to the claim which the applicant is seeking to patent. The applicant is not required to show his title is superior to all other claims of record, but that he is the successor to possessory title dating back to the original location of the claim which he seeks to patent.

APPEARANCES: Geoffrey J. Garcia, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Geoffrey J. and Charlotte M. Garcia have appealed from an October 20, 1986, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting their application for mineral patent, OR 38521, of the Last Chance Association Placer mining claim, OR MC 81850. The basis for the decision was the failure of appellants to show that they hold "full possessory title to the mining claims/lands identified in [their] application."

The BLM decision referenced a prior letter of July 28, 1986, and a prior interlocutory decision of January 16, 1986, in which the applicants had been requested to provide further evidence of title to certain recorded mining claims embracing the land applied for. Specifically, BLM informed appellants that their claim was the most recent of four mining claim locations on the land filed for recordation with BLM pursuant to section 314 of

the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). The claims were set forth as follows:

ORMC 10354 Last Chance Claim	Located 10/15/14	Locators: Orval Robertson, William Robertson, John Robertson, Jr., and John McEwan
ORMC 10353 First Chance Placer	Located 3/6/53	Locators: Quentin Stone and Norman L. Lewis
ORMC 4039 Bird Association Placer No. 2	Located 9/1/77	Locators: Darryl A. Mayfield, Geoff Garcia, Harper Charles McKee, William T. Hold, Barbara A. Brower, Kathy Montgomery, Ferron Mayfield, and Diane Neal
ORMC 81850 Last Chance Association Placer	Located 3/26/85	Locators: Geoffrey J. Garcia and Charlotte M. Garcia

Based on the evidence of title tendered in the application and in response to the January 1986 decision, the BLM letter of July 28, 1986, advised appellants that:

Your 1985 location of the Last Chance (ORMC 81850) over the three pre-existing claims does not void the interests of the record owners of these claims, but rather only places a cloud on the title. Your notion that failure of senior claimants or co-locators to file an adverse action during publication would cancel their interests, is not an acceptable legal method or proceeding by which title is cleared.

Although appellants submitted an abstract of title to the Last Chance Placer and First Chance Placer mining claims through 1981 and a release by those purporting to be the current owners of the Bird Association Placer No. 2, BLM rejected the patent application on the ground appellants had failed to provide evidence of "full possessory title to the mining claims/lands."

In their statement of reasons for appeal, appellants take issue with the evidence of title required by BLM pursuant to the regulation at 43 CFR 3862.1-3(b). Appellants contend it is not necessary to show evidence of title to "overlapping and adjoining claims" in support of a mineral patent application in the absence of an adverse claim of title which has not been made in this case.

[1] Applications for mineral patent are governed by the regulations at 43 CFR Part 3860. Applicants are required to submit evidence of title to the mining claim in the form of either an abstract of title or a certificate of title. 43 CFR 3862.1-3(a). Further, each certificate or abstract of title must be accompanied by copies of the original location notice of each claim and of amended or supplemental location notices of the claim. 43 CFR 3862.1-3(c). Finally, an abstract of title must be a complete abstract of all location certificates or notices and all amendments thereof, as well as all other deeds or instruments of record purporting to affect title to the claim. 43 CFR 3862.1-3(d). In Kerr-McGee Nuclear Corp. (On Reconsideration), 43 IBLA 348 (1979), we had occasion to apply this regulation on appeal from rejection of a patent application. We expressly rejected the view that the abstract of title must reflect all transactions affecting the land in the mining claim as opposed to those affecting possessory title to the particular claim for which patent is sought, noting that the issue is whether the applicant has the title to the location for which a patent is sought. Id. at 350-52.

Particularly instructive in this regard is the case of John R. Meadows, 43 IBLA 35 (1979), which involved an appeal by an adverse mining claimant from a rejection of his protest to a mineral patent application filed by Mobil Oil Corporation. With respect to appellant's challenge to the abstract of title on the ground that it did not address all instruments of record affecting title to the claims, the Board held that:

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.

John R. Meadows, supra at 38.

Applying these standards to the present case, we find that appellants have filed with BLM in support of their patent application a copy of the notice of location of the Last Chance Association Placer reflecting a date of location of March 26, 1985, bearing the names of appellants as locators of the claims. 1/ The copy, certified by the Josephine County Recorder,

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1/ There is no indication on the notice of location that it is intended to be an amended location, relating back to the earlier locations of the Last Chance Placer and the First Chance Placer, as opposed to a new location. We note, however, the record shows a chain of title to the Last Chance Placer (ORMC 10354) and the First Chance Placer (ORMC 10353). The last two instruments of conveyance in the chain are a quitclaim deed of the claims in 1979 from Harper C. McKee to Karen Turner and a further quitclaim deed in 1981 from Karen Turner to Charlotte Garcia.

reflects that the original was filed for record with the County Recorder on April 2, 1985, and recorded at Vol. 60, page 150 of the records. The application is also supported by a certificate of title executed by the Josephine County Title Company indicating the appellants are the holders of title to the Last Chance Association Placer mining claim comprising lot 3 in sec. 26, T. 34 S., R. 8. W, Willamette Meridian, Josephine County, Oregon. This is the same claim which has been recorded with BLM as ORMC 81850. This evidence appears to establish possessory title to the claim as of the date of the certificate as required by the regulation. 2/

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 reversed and the case is remanded.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge

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2/ Any party asserting an adverse claim during the period of publication required by 30 U.S.C. § 29 (1982) shall have the duty within 30 days to "commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession." 30 U.S.C. § 30 (1982); 43 CFR 3871.3. A suit filed pursuant to this statute is the proper means of determining the right of possession between rival mining claimants. John R. Meadows, supra at 37. During the pendency of any such litigation, proceedings on the application for patent are suspended until the controversy is adjudicated by the court. 30 U.S.C. § 30 (1982). These provisions are the exclusive means for determining priority of possession as between rival mining claimants. See generally In re Pacific Coast Molybdenum, 68 IBLA 325, 328-30 (1982).