

INTERIOR BOARD OF LAND APPEALS

Karen Lynne Smith Harper

126 IBLA 301 (June 14, 1993)

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KAREN LYNNE SMITH HARPER

IBLA 90-184

Decided June 14, 1993

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting mineral patent application. ARES 41077.

Affirmed.

1. Mining Claims: Patent

Where BLM determines that an application for mineral patent is deficient in information required by 43 CFR 3862.1, and notifies the applicant that the information must be submitted or the application will be rejected, BLM may properly reject the mineral patent application where the applicant fails to file the requested information within the time provided.

APPEARANCES: Karen Lynne Smith Harper, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Karen Lynne Smith Harper appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated November 2, 1989, rejecting her mineral patent application ARES 41077 for lands located in Montgomery County, Arkansas.

On October 21, 1988, Harper filed a copy of the notice of location for the White Tara (formerly Black King) quartz lode mining claim, ES-MC 10973, with BLM. Her mineral patent application ARES 41077, which is based on this claim was filed with BLM on June 6, 1989. By letter dated July 20, 1989, BLM informed Harper that her application was deficient because she had failed to file several items required by Departmental regulation 43 CFR 3862.1. BLM advised that in accordance with 43 CFR 3862.1, the application was deficient in the following 12 items:

1. Duplicate of Application.
2. Statement of mineral character and Atomic Bomb Project.
3. Service charge of \$250 (balance of \$225 is due).
4. Evidence of a valuable mineral deposit discovery within the claim.

5. Evidence of citizenship.
6. Abstract or certificate of title.
7. Mineral survey number and date approved.
8. Certified notice of location with amendments.
9. Adverse mining claims.
10. Type and name claim.
11. Proof of notice of intention to apply for Patent (two affidavits).
12. Proof of \$500 or more expenditures and improvements.

BLM further advised appellant that if the information was not received within 30 days of receipt of the letter, action would be taken to reject her application. None of the requested information was submitted in the time provided. On November 2, 1989, BLM issued its decision rejecting the mineral patent application because the additional information had not been received.

In her statement of reasons, Harper explains that when P.L. 100-446, 102 Stat. 1774-1828 (the Department of the Interior and Related Agencies Appropriations Act, 1989, approved Sept. 27, 1988), was enacted she asked to be "grandfathered" in as an existing mining operation. According to Harper, the Forest Service denied her request. <sup>1/</sup> Harper's assertion that her claim should be "grandfathered" is based on section 323 of P.L. 100-446, 102 Stat. 1827 which provides that:

Subject to valid existing rights, on the date of enactment of this section deposits of quartz mineral within the Ouachita National Forest in the State of Arkansas shall no longer be subject to location and entry under the General Mining Law of 1872 (17 Stat. 91), as amended, and all such deposits shall hereafter be disposed of under the same conditions as are applicable to common varieties of mineral materials on such lands under the Materials Act of 1947 (61 Stat. 681), as amended."

The record does not show that BLM has made a determination relative to her rights under P.L. 100-466 and consideration of this legislation is not necessary for resolution of Harper's appeal herein.

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<sup>1/</sup> The file contains a copy of complaint No. 89-6074 filed Dec. 7, 1989, in the United States District Court for the Western District of Arkansas, Hot Springs Division. In this action Harper alleges that the Forest Service has deprived her of her right "to own and to keep properties anywhere in these United States."

Harper alleges that there was a discovery on this claim in 1986 and another "substantial" discovery in August 1988; that she has been developing the discovery since that time; that her possessory rights are at stake; and that she filed everything in accordance with the Department's guidelines for patent application.

Harper's patent application contains a land description of her claim and the statement "Discovery made August 27, 1988. ESMC #10973." There is no other information in the case file relating to her mineral patent application.

[1] BLM has a duty to exercise its authority over mining claims "to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved." Cameron v. United States, 252 U.S. 450, 460 (1920). BLM may not issue a mineral patent until it has assured itself that the applicant holds a valid mining claim by virtue of compliance with all aspects of the mining laws. Scott Burnham (On Reconsideration), 102 IBLA 363 (1988). In G. Donald Massey, 114 IBLA 209, 214 (1990), we restated the Board's position regarding the authority and responsibility of BLM to secure adequate information for mineral patent applications, quoting Dennis J. Kitts, 84 IBLA 338, 343 (1985), we said:

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. [Emphasis in original.]

BLM properly rejected Harper's mining claim patent application because she failed to submit the supporting information requested by BLM.

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.

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Gail M. Frazier  
Administrative Judge

I concur:

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Will A. Irwin  
Administrative Judge