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Subject

3860 - MINERAL PATENT APPLICATIONS

1. Explanation of Material Transmitted: This release updates the previous manual to conform to recent administrative and judicial decisions and the revised rules that became effective January 3, 1989.

2. Reports Required: None.

3. Material Superseded: The material superseded by this release is listed under "Remove" below. No other directives are superseded.

4. Filing Instructions: File as directed below.

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All of 3860 (Rel. 3-33)	3860
(Total: 2 Sheets)	(Total: 9 Sheets)

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3860 - MINERAL PATENT APPLICATIONS

Table of Contents

3860 - MINERAL PATENT APPLICATIONS

.01 Purpose. This Manual Section provides the general authorities and an overview of the procedures involved in processing a mineral patent application and issuing a mineral patent. See Handbook 3860-1 for information on detailed adjudication procedures.

.02 Objectives. The objective is to ensure that all statutory and regulatory requirements of the mining law are met in processing mineral patent applications and issuing patents for lode and placer claims and mill sites.

.03 Authority.

A. General Statutes.

1. The Mining Law of May 10, 1872, as amended and supplemented, 17 Stat. 92 et seq., Sections 2318-2352 of the Revised Statutes, 30 U.S.C. 21-54 (1982).

2. Multiple Mineral Development Act, Public Law 83-250 (Act of August 12, 1953, 67 Stat. 539, 30 U.S.C. 501 and 502); and Public Law 83-585 (Act of August 13, 1954, 68 Stat. 708, 30 U.S.C. 521 et seq.).

3. Surface Resources Act, Public Law 84-167 (Act of July 23, 1955, 69 Stat. 372, 30 U.S.C. 615).

4. Sections 453 and 2478 of the Revised Statutes, 43 U.S.C. 2 and 1201.

B. Regulations. 43 CFR 3860, 3861, 3862, 3863, and 3864.

C. Judicial Decisions. Cameron v. United States, 252 U.S. 450 (1920).

.04 Responsibility.

A. Director and Deputy Director. The Director and Deputy Director are responsible for exercising the Director's delegated responsibility concerning all mineral matters. This oversight responsibility for all actions under the Mining Law of 1872 is exercised through the Assistant Director and the Deputy Assistant Director by the Chief, Division of Mining Law and Salable Minerals.

B. State Director. The State Director is delegated the authority to process all actions under the Mining Law. This delegated authority is exercised by the Deputy State Director for Mineral Resources and/or the Deputy State Director for Operations, depending on individual State Office Delegation of Authority pursuant to Manual Section 1203.

.05 References. Manual Sections 1860, 1862, and 3860 and the Handbooks therein.

.06 Policy. The Bureau's intent is for the applicant to be given reasonable time frames for responding to information requests. However, all applications must have a projected completion date, which means patent issuance, application rejection, or contest issuance. In processing the application, each step should have a specific deadline for completion. This involves the creation of a State Office "tickler file," preferably in an automated format, for case tracking purposes. An alternative to the automated tickler file system is the use of Form 1274-7, Future Action Suspense Card.

A. Timeframes. All mineral patent applications received on or before September 30 are to be adjudicated to the issuance of the first half of the final certificate or to rejection of the application on or before the following September 30.

B. Diligence. Until the first half of the mineral entry final certificate is issued, diligence in prosecuting the mineral patent application by the applicant is to be strictly enforced at all times. Applicants failing to submit additional information or failing to prosecute the required procedural steps within reasonable timeframes shall have their applications rejected. The authorities for this type of diligence requirement are found in the following cases: Owyhee Calcium Products, 72 IBLA 235 (1983); Donald L. Clark, 64 IBLA 129 (1982); Donald L. Clark, 64 IBLA 132 (1982); Donald L. Clark, 71 IBLA 169 (1983); and Dennis J. Kitts, 84 IBLA 338 (1985).

C. Serialization. All patent applications filed with the Bureau are to be serialized (see Manual Section 1274).

D. Curable Defects. Mineral patent applicants submitting applications which do not contain the essential title documents, proofs, and affidavits are to be issued a decision within 30 days after the adjudicator receives the application. The decision should ask the applicant to cure the defects in 30 to 60 days. Failure to cure within the allowed timeframe will cause the application to be rejected without prejudice to the refiling of the application at a later date.

E. Title. In conformance with 43 CFR 3862.1-3(c) and (d), the chain-of-title must contain the required certified documents (location certificate, amendments, and conveyances) necessary to show complete chain-of-title to the mining claim or mill site. Certification must be performed by the legal custodian of the records, as provided by State law. This will normally be the county clerk or recorder. See Scott Burnham, 100 IBLA 94, 94 ID 429 (1988), and the cases cited therein, especially subsequent to 94 ID 445; and Scott Burnham (ON RECONSIDERATION), 102 IBLA 363 (1988), especially pages 369-371. The title documents must be compared to the material in the Bureau's mining claim recordation files to ensure that nothing is overlooked or omitted by the applicant.

F. Title Opinion. If the chain-of-title is complete to the satisfaction of the adjudicator, referral to the Solicitor for a title opinion is not necessary.

G. Tracking Requests for Information. All letters and interlocutory decisions requesting or requiring information must have due dates to be met by the applicant. Tickler files or similar means must be used to alert the adjudicator of due dates that have been missed. Within 10 working days after the due date, initiation of the next action step is to be taken.

H. Final Proofs and Statements. The final proofs and statements should be requested within 15 working days of the receipt of the proof of publication from the applicant. The purchase price cannot be accepted before receipt of the required final proofs and statements.

I. First Half of the Mineral Entry Final Certificate. The first half of the mineral entry final certificate is to be drafted during the publication process so that it can be issued immediately after all of the final statements and proofs are in and the purchase price is accepted. Issuance of the first half of the final certificate segregates the land and prevents new rival locations from being established upon the land claimed. See Scott Burnham, supra. The records are to be noted immediately.

J. Date of Issuance. The date of the issuance (date of entry) of the first half of the final certificate must be the date of the acceptance of the purchase price. This is because the date of acceptance of the purchase price (when called for by the authorized officer) is the legal date of vesting of equitable title (a protected property right) in the applicant, and the final certificate is actually effective on that date. The land is segregated from all further entry under the public land and mineral laws on the date of entry. See United States v. Norman A. Whittaker (On Reconsideration), 102 IBLA 162 (1988), and the cases cited therein, especially 102 IBLA 165-166. The master title plat and historical index must be promptly noted as to the segregative effect as soon as the first half of the mineral entry final certificate is issued.

K. Request for Mineral Examination. The mineral examination shall be requested within 10 working days of the issuance of the first half of the final certificate. BLM District and/or Area Offices and other surface management agency offices must be kept aware of the case processing schedule, so they can schedule their work for the mineral examination and mineral report.

L. Leasable Mineral Report. If the mining claim was located after August 13, 1954 (30 U.S.C. 524), a leasable mineral report is required before patent issuance to determine whether to reserve the leasable mineral estate.

M. Schedule for Mineral Examination. Mineral examinations are to be scheduled as far in advance as possible to take advantage of field seasons and personnel availability. This should be accomplished through coordination and communication between the State Office, District and/or Area Offices, and other surface management agencies in projecting the date when a request will be forwarded for the mineral report.

N. If the applicant does not supply the mineral examiner with the necessary information concerning the character, quality, quantity, and marketing of the mineral or minerals claimed for discovery, the examination shall proceed. The mineral report shall be based upon the information available to the mineral examiner. (See Manual Section 3891 for a discussion of discovery requirements).

O. Timeframe for Mineral Reports. Mineral reports are due to the State Office mineral review examiner within 6 months of the receipt of all assays and necessary laboratory work by the mineral examiner.

P. Mineral Report Review. The State Office review mineral examiner shall review the mineral examiner's report, and either approve it and send it to adjudication or return it to the examiner for revisions within 30 days of receipt of the report. The mineral examiner shall complete the necessary revisions to a returned mineral report within 30 days of its receipt from the review mineral examiner.

Q. Patent or Contest Complaint Issuance. With the exception of Alaska, the mineral patent shall be issued or a contest action initiated within 30 working days of the adjudicator's receipt of the approved mineral report from the State Office mineral report reviewer. In Alaska, 60 working days shall be the allowed time frame when a conflicting State or Native selection must be rejected.

R. Exceptions. Exceptions to the above policy shall be made when necessary in case of adverse claims, administrative and judicial appeals, unseasonable weather, and where other agencies are doing the mineral examinations under a memorandum of understanding with the Bureau.

S. Pre-Application Conferences. This process will work more effectively if the prospective applicants are counseled before applying for patent by the adjudication staff.

3860 - MINERAL PATENT APPLICATIONS

.07 File and Records Maintenance. Mineral patent application files are serialized and maintained in accordance with the existing Bureau file system. (See Manual Section 1274.) The mining claim recordation files are to be updated continuously as the mineral patent application progresses.

.08 Service Charges. The nonrefundable service charge for a mineral patent application is $250 for the application and the first mining claim or mill site. An additional fee of $50 is charged for each additional mining claim or mill site in the application. The fees are receipted and placed into the nonyear, reimbursable Treasury account 14x1109, Bureau code 45-4990.

3860 - MINERAL PATENT APPLICATIONS

Glossary of Terms

-A-

adjoining claim: mining claim or site that lies alongside of and abuts another mining claim or site. The claims are in physical contact with each other. Claims which join one another at a corner only are not considered adjoining.

adverse claim: legal challenge under 30 U.S.C. 29 and 30 where a rival mining claimant comes forward and asserts that they have mining claims covering part or all of the land applied for in the mineral patent application. Adverse claims may only be filed with the Bureau's authorized officer during the required 60-day publication period. Failure to file an adverse claim within the required 60-day period forever bars the rival mining claimant from challenging the applicant's right to the land in the application on the grounds of conflicting locations (30 U.S.C. 29). The adverse claimant must commence a lawsuit in the proper court within 30 days of filing the adverse claim, or forever waives the rights to the conflicting location. Adverse claims may not be filed on questions of mineral character or ownership, only on rights of possession. (See 43 CFR 3871.)

amendment: technical correction to a certificate or notice of location. Corrections may be made to the legal description, claim name, or other information necessary to accurately portray mining claim status. The amendment's changes relate back to the original date of location and all rights to the claim caused by the amendment relate back to the original location date. Even though an amendment may be used to change ownership, a formal transfer of interest document under State law is preferable. (See 43 CFR 3833.05(p).)

-C-

clearlist: term which means that the applicant appears to have met the requirements of the law and regulations for patent, and that patent should issue, barring any last minute complications concerning the application.

conflicting claim: mining claim or site that overlaps another on the ground, creating a dispute as to the right of possession of the land overlapped. See "adverse claim" above.

contest hearing: a formal proceeding held by an administrative law judge (ALJ) of the Office of Hearings and Appeals. The purpose of the hearing is to determine the validity of the allegations of an answered contest complaint issued by the Bureau against the validity of unpatented mining claims. Both parties to the complaint are provided an opportunity to provide evidence to assist the ALJ in rendering a decision. The ALJ's decision is appealable to the Interior Board of Land Appeals by either party involved in the contest complaint.

contiguous claims and corners: Mining claims and sites are contiguous if they are directly adjoining or abutting each other. Claims which merely join each other at a corner, or which do not touch at any point, are not contiguous. Claim corners are contiguous if they are common to two or more mining claims or sites that adjoin one another.

If an applicant owns a block of land, and applies for mineral patent for the claims lying on either side of the private land, the claims are considered to be contiguous.

Before the first half mineral entry final certificate issues, claims withdrawn from the application by the applicant may affect the "contiguous" definition. After the first half mineral entry final certificate issues, claims withdrawn from the application by the applicant, or claims rejected by BLM, do not affect the contiguous definition, as the applicant had title to the claims and they were contiguous at the time of application. The remainder of the claims in the application are still deemed to be contiguous.

credible witness: witness who is shown to be knowledgeable of the facts and circumstances concerning a particular situation. A person who is personally familiar with the land in question and of the acts of the applicant, who has no financial interest in the claims in the application.

curable defect: an omission that has satisfied the requirements of the law but not the requirements of the regulations. Such omissions are not fatal defects but are curable by issuing the applicant a decision itemizing the defects or omissions, stating the required information needed, and giving the applicant 30 days to provide the requested material. Failure of the applicant to comply causes the omission or defect to become fatal, and the application can be held for rejection.

-D-

disinterested witness: a credible witness who is not a family member of the applicant, who has no legal interest in the land claimed, and who will receive no remuneration or gratuity from the applicant.

-E-

entry: under the public land and mineral laws, the act of taking physical possession of the ground so as to establish possessory rights under applicable statute. An "entry" is also an application that, if perfected under the applicable statute, will result in a patent to the applicant.

equitable: what is right or fair. At common law, the application of the doctrines of fairness and common sense to the situation at hand.

equitable adjudication: the process of applying common sense and fairness to a defective patent application, taking into account the good faith of the applicant, the cost and extent of their physical improvements, the nature of their irregularity in the patent proceedings, the interest of the United States; and determining how much, if any, of the land entered should be patented. Equitable adjudication is the last step in the patenting process. Equitable adjudication is exercised only after the entry has been allowed (the first half of the final certificate has issued), and there are no lawful adverse claims to the same land. (See Manual Section 1870 for additional details.)

3860 - MINERAL PATENT APPLICATIONS

-F-

fact-finding hearing: a formal Bureau proceeding to acquire evidence and testimony on disputed facts and issues concerning a particular action or application. A hearing requires a hearing officer (administrative law judge) and a court reporter (or equivalent person) to record a verbatim transcript of all things said for the official record. The record of the hearing becomes the Bureau's basis for its adjudication of the facts and issues which were the subject of the hearing.

final certificate: Bureau form 1860-1, Mineral Entry Final Certificate (FC). The final certificate has two halves, each of which serves a purpose in the patent process. At the conclusion of the publication process, after receipt of the publisher's affidavit, receipt of the final proofs, and acceptance of the purchase price, the authorized officer causes the first half of the final certificate to be completed. The information includes the authority for the type of claims being patented, the names and numbers of the claims in the application, the legal description of the land, and any exceptions of land or claims from the application.

Issuance of the first half of the final certificate grants equitable title to the applicant, relieves the applicant of the requirement to perform assessment work, and segregates the land from all forms of entry and appropriation under the public land and mineral laws.

The second half of the final certificate is completed after the mineral examination report is written and approved and the mining claims are clearlisted for patent. The second half becomes the master plat for the patent itself. It contains the names and descriptions of the claims cleared for patent and any reservations required by law to be included in the patent.

final proofs: the final documents and statements that an applicant must submit to the authorized officer in order to have equitable title to the land vested in the applicant via the issuance of the first half of the final certificate. These are submitted after the publication period has ended, the publisher's affidavit has been filed, and no adverse claims have been filed. They are as follows (see 43 CFR 3862.4-6):

1. A statement of all charges and fees paid by the applicant for publication and surveys.

2. A statement of all fees and monies paid to the authorized officer.

3. A sworn statement by the applicant as to proof of posting of the notice of intent to patent during the 60-day publication period. (See 43 CFR 3862-5 and Dennis J. Kitts, 84 IBLA 338, 340 (1985).)

-I-

Interior Board of Land Appeals: The Department of the Interior's review authority, established by Secretarial direction and the Administrative Procedures Act, is the Interior Board of Land Appeals. The Board reviews appeals of final Interior agency actions and rules on behalf of the Secretary. The decisions of the Board are binding upon all employees of the Department and the public under the Administrative Procedures Act and 43 CFR Part 4. The Board, when reviewing a case, will issue a decision which disposes of a matter in one of four ways, as follows:

1. Affirmed. The decision of the Bureau is upheld and it becomes the final decision of the Department. The claimant may then sue in Federal Court for judicial review of the Secretary's decision under the Administrative Procedures Act (5 U.S.C. 554 et seq.).

2. Affirmed as Modified. The Bureau's decision is upheld, but is modified because of the Board's interpretation of finer points of law or regulation.

3. Reversed and Remanded. The Bureau's decision is found to be in error and is overruled.

4. Set Aside and Remanded. The Bureau's decision is suspended and returned to the authorized officer for additional fact finding and/or adjudication. This happens when the case file is not properly documented, and the Board cannot reach a decision because of missing information. If the required procedures were not followed in adjudicating the case, the Board will also set the decision aside and return the case to the authorized officer for the necessary procedural steps to be completed.

-L-

land district: the geographic State where the mining claim or site is located. In Alaska, the State is divided into two "land districts," one at Fairbanks and the other in Anchorage. In the days of the General Land Office, a land district was the area administered by the office of the local Registrar and Receiver of the General Land Office.

lode claim: a mining claim located under 30 U.S.C. 23 (1982) for "...veins or lodes of quartz or other rock in place..." Lode claims are located by metes and bounds and are limited by statute to a maximum length of 1500 feet and to a maximum width of 300 feet on either side of the vein or lode.

-M-

mill site: a mineral appropriation under 30 U.S.C. 42 (1982) to use or occupy nonmineral land in support of a mining, milling, extraction, or development activity, or other uses reasonably incident thereto. Mill sites are limited to 5 acres in size and may be located by metes and bounds or by legal subdivision. Two classes of mill sites exist under the law:

1. Dependent mill sites. These are located in support of a lode or placer claim and depend on the validity of the associated lode or placer claim for their existence.

2. Independent or custom mill sites. These are located to provide custom milling and processing of ores from various lode claims, which may or may not be owned by the mill site owner. They are not located in support of a particular lode claim and stand on their own use or occupancy for validation and patent.

mineral examiner: a geologist or mining engineer who is certified by the Director pursuant to Manual Section 3896, to perform validity examinations and who can testify at a hearing as an expert witness for the Government.

mineral survey: a special survey of a lode claim, or a placer claim or mill site that lies on unsurveyed land, or lies on surveyed land but does not conform to the rectangular survey system. Mineral surveys are performed by U.S. Deputy Mineral Surveyors who are appointed by the Director, acting through the Chief, Division of Cadastral Survey. Mineral surveys, if required, must be completed and approved before a patent application can be filed.

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Office of Hearings and Appeals (OHA): an authorized representative of the Secretary of the Interior for hearing, considering, and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department involving hearings, appeals, and other review functions of the Secretary. The Director of OHA oversees a Hearings Division and the Appeals Boards. The Hearings Division consists of administrative law judges authorized to conduct hearings in cases concerning the public lands, including mining claim contests. The Appeals Boards consists of administrative judges.

-P-

placer mining claim: a mining claim located under 30 U.S.C. 35 and 36 (1982) for all "placer" (detrital mineral) deposits and for any deposit that cannot be located as a lode claim. Placer claims are normally located by legal subdivision, but may be located by metes and bounds in unsurveyed lands or to conform to river bottoms on surveyed lands. Placer claims are 20 acres in size. Association placers may be located with 20 acres per locator, up to the statutory maximum of 160 acres with at least 8 locators.

protest: an allegation that the patent applicant or the agency has not complied with the Mining Laws or the regulations in some respect and, therefore, patent should not issue. Protests can be filed at any time during the patenting process by anyone, including the applicant. The Bureau must always adjudicate the protest and issue a decision. The decision will either accept the protest, thereby stopping the patenting process until the irregularity is resolved; or deny the protest, giving the reasons why the protest cannot be accepted. Decisions are appealable to the Interior Board of Land Appeals under 43 CFR Part 4. Protests cannot be used by rival claimants with conflicting mining claims to settle adverse claims. Instead, rival claimants must file adverse claims during the 60-day publication period as required by 30 U.S.C. 29 and 30.

purchase price: the statutory price per acre to be paid for the land contained in the patent application. The purchase price can only be accepted by the authorized officer after the publication period has expired, the publisher's affidavit has been received, and no adverse claims or protests have been filed.

The courts have ruled that when the purchase price is accepted, the date of acceptance is the date that equitable title passes to the applicant and a property right is created that cannot be taken away without due process (a mineral contest action). Therefore, the effective date (date of entry) of the first half of the final certificate is the date of acceptance of the purchase price.

The receipt of the purchase price by the accounts section does not mean that the Bureau has accepted the purchase price. The money can only be earned ("accepted") when the required affidavit of publication and final proofs and statements have been received, and no adverse claims have been filed. Purchase monies received prematurely are not "accepted" and remain in the unearned account until the legally required documents are received. Then the purchase price can be "accepted" and earned.

Lode claims with dependent mill sites or independent mill sites are purchased for $5 per acre or fraction thereof (30 U.S.C. 30 and 42(a)). Placer claims and dependent mill sites are purchased for $2.50 per acre or fraction thereof (30 U.S.C. 37 and 42(b)).

-R-

relocation: staking of a new mining claim or site over ground previously located, but now abandoned and open to location. (See 43 CFR 3833.05(q).)

review mineral examiner: a mineral examiner who has been certified by the Director pursuant to Manual Section 3896 - Certification of Mineral Examiners, to review and technically approve mineral reports prepared by a mineral examiner concerning validity, mineral in character, and surface use determinations. A mineral examination report for a patent application may not be acted upon by the adjudicator until it has been approved and signed by the designated State Office review mineral examiner.

-S-

supplemental patent: a patent issued for part of the land contained within an application after the primary patent has issued. Examples of when supplemental patents may be required are when the land applied for may be too large to cover in one field season for the mineral examination, or portions of the land may have been contested and the Department ruled in favor of the applicant.

supplemental plat: a plat prepared entirely from office records designed to show a revised subdivision of one or more sections without change in the section boundaries and without other modification of the record. Supplemental plats are required where the plat fails to provide units suitable for administration or disposal, or where a modification of its showing is necessary. They are also required to show the segregation of alienated lands from public lands, where the former are included in irregular surveys of patented mineral or other private claims made subsequent to the plat of the subsisting survey, or where the segregation of the claims was overlooked at the time of its approval.

-W-

withdrawn lands: lands that are removed or closed from entry, sale, or disposition under land and/or mineral laws. Lands are withdrawn by publication of a public land order (PLO), executive order (EO), or Federal Register publication under the authority of FLPMA. When adjudicating a mineral patent application, the adjudicator must review the historical indices to determine if a withdrawal affects mining claims in the application. The entire historical index must be reviewed. If a withdrawal occurred or is in existence, the order or Federal Register publication creating the withdrawal must be examined to determine its effect on the patent application.