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3862 - LODE MINING CLAIM 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 on January 3, 1989.
2. Reports Required: None.
3. Materials Superseded: The material superseded by this release is listed under "Remove" below. No other directives are superseded.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 3862 (Rel. 3-38)

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## 3862 - LODE MINING CLAIM PATENT APPLICATIONS

.01 Purpose. This Manual Section provides the Bureau's policies and procedures for processing mineral patent applications for lode mining claims under the 1872 Mining Law. The manual contains the legal and policy overview. The adjudication process is covered in Handbook 3860-1 - Mineral Patent Application Processing.

.02 Objectives. The Bureau's objective is to ensure that all statutory and regulatory requirements of the mining laws have been met prior to issuing a mineral patent for a lode mining claim.

.03 Authority.

A. General Statutes. The 1872 Mining Law (The Act of May 10, 1872, 17 Stat. 92, R.S. 2325, 30 U.S.C. 29); P.L. 83-250 (Act of August 12, 1953, 67 Stat. 539, 30 U.S.C. 501); P.L. 83-585 (Act of August 13, 1954, 68 Stat. 708, 30 U.S.C. 521 et seq.); P.L. 84-167 (Act of July 23, 1955, 69 Stat. 372, 30 U.S.C. 615).

B. Regulations. 43 CFR 3862.

.04 Responsibility. See Manual Section 3860.04.

.05 References.

A. Handbook 3860-1 - Mineral Patent Application Processing.

B. Maley, T. S. (1985); Mining Law from Location to Patent; Mineral Land Publications, P.O. Box 1186, Boise, ID, 83701; p. 597.

C. Maley, T. S. (1984); Mineral Title Examination; Mineral Land Publications, P.O. Box 1186, Boise, ID, 83701; p. 396.

D. Rocky Mountain Mineral Law Foundation (1984, 2nd ed.); American Law of Mining; Matthew Bender & Co., 1275 Broadway, Albany, NY, 12201; 6 vols.

E. Lindley, C. H.; (1914, 3rd ed.); A Treatise on the American Law Relating to Mines and Mineral Lands within the Public Land States and Territories and Governing the Acquisition and Enjoyment of Mining Rights in Lands of the Public Domain; reprinted 1988, Fred B. Rothman & Co., Littleton, CO, 80127, 3 vols, p. 2813. (Also referred to as Lindley On Mines).

F. Copp, H.N.; (1881, 1890); United States Mineral Lands; Laws Governing their Occupancy and Disposal; Henry N. Copp, Washington D.C., 2 vols.

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G. Copp, H.N.; (1874); Decisions of the Commissioner of the General Land Office and the Secretary of the Interior under the United States Mining Statutes of July 26, 1866, July 9, 1870, and May 10, 1872; Henry N. Copp, Washington, D.C., p. 351.

.06 Policy. See Manual Section 3860.06.

.07 File and Records Maintenance. See Manual Section 3860.07.

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.1 Lode Mining Claim Patent Application. A mineral patent application for a lode mining claim must be filed in the State Office having jurisdiction over the land where the lode claim is located. (See 43 CFR 1821 for a list of State Offices and the areas that they administer.)

.11 Application for a Mineral Patent. The Bureau does not have a specific form for filing a mineral patent application. The application must be filed in duplicate and contain the information, statements, and proofs listed below.

A. Contents of a Mineral Patent Application.

1. Mineral Survey Plat and Field Notes. Two copies of the mineral survey plat and field notes must be included with the application. (See 43 CFR 3861.7-2.) The certificate of expenditures, issued by the State Office Cadastral Surveyor, should be included.

2. Proof of Posting on the Claim. The statements of at least two credible witnesses confirming that the notice of intention to apply for patent and survey plat were posted upon the lode claim.

3. Right of Possession. This is in the form of a narrative statement wherein the applicant presents the facts relative to his entitlement to a patent. This information includes survey data, geologic and assay data, expenditures for the required improvements to the claim, and other information showing compliance with the Mining Law of 1872.

4. Possessory Title. The applicant must submit proper and complete evidence of his chain-of-title to the mining claim, including certified copies of all location certificates, certified copies of all amendments, and copies of all transfers and conveyances.

5. Notice for Publication. The applicant may submit a draft copy of the notice for publication which must contain the information included in the notice of intention to apply for patent posted on the mining claim.

6. Agreement of the Publisher. The applicant's agreement with the newspaper publisher for publishing the legal notice must be submitted. The agreement must state that the publisher will hold the applicant accountable for the cost of publication.

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7. Proof of Citizenship. Proof of an individual's United States citizenship must be submitted. If the applicant is a company, the company's charter or certificate of incorporation papers are required, along with evidence of the company's authority to conduct business within the state where the mineral patent application is filed. (See Chapter I.H. of H-1860-1.)

8. Authorized Agent. If an agent is appointed to act on behalf of the applicant, the necessary legal papers appointing the agent must be submitted. The use of an agent is authorized only if the applicant resides outside of the Bureau administrative state.

9. Atomic Bomb Statement. If the claim was located after August 1, 1946, the applicant must state whether he had any direct or indirect interest in the development of the atomic energy program.

B. Land Districts. The application must be signed in the administrative State where the claim is located, either by the applicant directly, or if the applicant is a nonresident, by the duly authorized agent. If the application straddles a State boundary, an application must be filed in each administrative State. However, one State Office must take the lead and process the application. Only one set of title documents and proof of expenditures needs to be filed. It is not necessary to publish in both States. However, proof of publication must be filed in both State Offices. Final proceedings are assigned to the lead State Office as required by 43 CFR 1823.4.

C. Contiguous Claims. The claims contained within a mineral patent application must be contiguous, unless they are part of a group of claims patented earlier and owned by the applicant, or a claim is removed from the application by adverse action of the Bureau or the courts. If a contiguous block of mill sites and a contiguous block of lode claims are included in a patent application, the two blocks do not have to be contiguous to each other.

D. Land Status. Status must be checked to determine if the land was available for mineral entry at the time of location. Also, land status is checked to determine if the land is affected by legislation requiring a reservation of certain minerals or other rights to the United States.

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.12 Evidence of Title. All patent applications must contain acceptable evidence that possessory title is vested in the applicant. This may be done by an abstract of title or a certificate of title. For pre-FLPMA mining claims, an assertion of possessory right by adverse possession under 30 U.S.C. 38 is allowed.

A. Abstract of Title. An abstract must be certified by an abstractor authorized to do title abstracts under State law or by the legal custodian responsible (the county clerk or recorder) for the official records of mining claims in the county. The abstract must be accompanied by certified copies of each location certificate and amendments. (See 43 CFR 3862.1-3(e).) The date of the abstract must be reasonably close to the filing date of the patent application. A certified supplemental abstract must be submitted after the application is filed to prove the applicant had title to the claim on the date of patent application.

B. Certificate of Title. Bureau form 3860-2, Certificate of Title on Mining Claims, can be used by the abstractor. Complete documentation of possessory title is required, as the Bureau must ensure that the applicant is entitled to receive the patent. (See Scott Burnham, 100 IBLA 94, 94 ID 429 (1987); aff'd, Scott Burnham (On Reconsideration), 102 IBLA 363 (1988).)

C. Solicitor's Title Opinions. If the adjudicator is satisfied that the title documents show possessory title in the applicant, referral to the Solicitor is not necessary. Only those title problems that the adjudicator is unable to resolve, after reviewing all available documents from the applicant and those documents contained in the Bureau's mining claim recordation records, are to be referred to the Solicitor for a title opinion.

.13 Destroyed or Lost Records. If the official mining claim records have been lost or destroyed, the applicant must submit a statement evidencing the loss of the records and detailing mining claim location, occupation, and improvements. This statement must be supported by the statements of other parties who are cognizant of the facts given in the applicant's statement.

.14 Alaska Lands. For Alaska lands, additional statements are required and must be attested to by at least two other disinterested witnesses. These are:

A. Open to Entry. That no portion of the land is occupied or reserved by the United States that prevents mineral entry.



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B. Native Occupation. That the land is not occupied or claimed by any Natives of Alaska.

C. Other Occupation. That the land is unoccupied, unimproved, and unappropriated by any person claiming the land other than the occupant.

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.2 Citizenship.

.21 Corporations and Associations.

A. Corporations. All corporations, organized under the laws of the United States, or any State therein, are considered as "citizens" under the mining laws. Therefore, a corporation must be incorporated under the laws of the United States or of any single State. A certified copy of the charter or certificate of incorporation must be submitted, along with evidence of the company's authority to conduct business within the state where the mineral patent application is filed. (See Chapter I.H. of H-1860.1.) The president or vice president of a corporation may execute an application for patent without a corporate resolution provided that the corporation's charter grants them such authority.

B. Agents. Written authorization from the corporation or association is required before agents can act on their behalf.

C. Associations. Incorporated associations require the same documents as corporations. Unincorporated associations require evidence of citizenship of each member of the association.

.22 Individuals. Native born citizens must file a statement giving the date and place of birth and present residence. Aliens who have declared their intent must file a statement giving date, place, location of the court of declaration, and present residence. Naturalized citizens must submit copies of their naturalization papers and certificates.

.23 Trustees. All trustees must fully disclose the nature of the trust and the name of the cestui que trust. The trustee must furnish proof of citizenship for the trustee and each of the beneficiaries. The mineral entry final certificate must contain the names of the trustee and all beneficiaries.

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.3 Possessory Rights.

.31 Right by Occupancy. For pre-FLPMA mining claims, possessory title can be established by peaceful adverse possession under R.S. 2332, 30 U.S.C. 38, if the official records have been lost or destroyed. The claimant must hold and work the ground for a time equal to the State's statute of limitations concerning mining claims and realty matters. The land must also be open to mineral entry during the time of initiation of the claim and remain open to mineral entry during the time of occupancy under the statute of limitations. This does not apply to post-FLPMA mining claims, as they must be recorded within 90 days of location or they are void. It is also unlikely that the official records would be lost due to the dual recording requirements of FLPMA.

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.4 Publication of Notice of Patent Application. Once title is determined to be vested in the applicant, legal notice of the application for patent must be given, so that adverse claimants have an opportunity to assert a title interest in the same land. (See 30 U.S.C. 29 and 43 CFR 3862.4.) The authorized officer will direct when and in what newspaper publication is to be made. (See 43 CFR 1824 concerning qualifications of the newspaper and discretionary authority of the authorized officer.) The newspaper must be of local circulation in the area of the land encompassed in the patent application. Publication is for 60 days (9 consecutive weeks). The first day of publication shall be excluded in counting the period of 60 days. The applicant is responsible for the costs of publication. The publisher must furnish the applicant with an affidavit of publication at the end of the publication period. The applicant, when requested, must file the affidavit with the authorized officer.

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.5 Adverse Claims. Rival claimants must file an adverse claim within the 60-day publication period. Failure to file within the 60-day period forever waives any right, title, and interest in the land for which the application is filed. An adverse claim is filed with the Bureau.

.51 Adverse Proceedings. The authorized officer shall immediately acknowledge an adverse claim by decision to the adverse party. The decision will also notify the adverse party that a suit to settle the possessory title to the land adversely claimed must be filed in a court of competent jurisdiction within 30 days of filing the adverse claim, and that the suit must be diligently prosecuted to final judgment. Failure to do so results in the adverse party waiving all rights in the contested ground.

.52 Effect of Adverse Claim. The authorized officer, upon receipt of the adverse claim, stops processing the application, with the exception of completion of publication and receipt of the publisher's affidavit. The applicant is advised of this action by the authorized officer. The judgment of the court upon the right of possession is implemented by the authorized officer.

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.6 Final Proofs. After publication has ended, the authorized officer, by decision, calls for the remaining proofs, statements, and the purchase price for the land embraced by the mineral patent application.

.61 Proofs. These are the publisher's affidavit of publication, the applicant's proof of posting the notice of intention to apply for patent and survey plat upon the claim, and the statement of charges and fees. (See 30 U.S.C. 29 and 30, and 43 CFR 3862.4.)

.62 Purchase Price. The authorized officer requests the purchase price for the land when the publication period has ended and no adverse claims have been filed. Purchase price monies paid to the Bureau prior to this point must be returned to the applicant. (See U. A. Small, 108 IBLA 102 (1989).)

A. Effect of Purchase Price. The acceptance of the purchase price vests equitable title in the land to the applicant on the day the BLM accepts it. This is very important. The date BLM accepts the purchase price is the date of entry shown on the first half of the mineral entry final certificate. (See U. A. Small, supra; United States v. Norman A. Whittaker (On Reconsideration), 102 IBLA 162 (1988).) After this date, the final certificate cannot be administratively canceled. Cancellation can only be effected by withdrawal of the application by the applicant, or by a mineral contest action in which an administrative law judge rules against the application.

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.7 Entry and Transfers.

.71 Allowance of the Mineral Entry. If the applicant has successfully passed the hurdles of title, publication, adverse claims, and final proofs, and has paid the required purchase price, the authorized officer shall cause the first half of the mineral entry final certificate to be filled in, dated, and signed. The date of entry of the final certificate must be the same as the date of acceptance of the purchase price, as that is the date that equitable title vests in the applicant. (See .62A above.)

A. Preparation of Final Certificate. The final certificate is filled in as an original document and placed in the patent application case file. A copy is not sent to the applicant, but the applicant is notified that the first half of the final certificate has issued and the effective date of issuance. At this point, the applicant is relieved of his requirement to perform assessment work as of the date of the final certificate.

B. Notification. The applicant is notified of the issuance of the final certificate. The District Manager is notified by copy of the notice to the applicant so that other users of the affected lands (grazing lessees, right-of-way holders, or other permittees) can be notified that their rights to the land may soon be terminated. If the surface is administered by another agency, the appropriate agency office is also notified for the same reason. The titles and records group in the State Office are notified so that the master title plat and historical index can be noted as to the segregative effect of the final certificate on the land in the application. The mining claim recordation section is notified so that the affected mining claim records can be noted.

C. Request for Mineral Examination. The District Manager or Regional Forester is sent a copy of the file with a request for a mineral examination of the claim. The request should be sent within 10 days of the issuance of the final certificate. Mineral examinations are covered in Manual Sections 3060 - Mineral Reports, 3891 - Validity Examinations, and Handbook 3890-1 - Handbook for Mineral Examiners.

.72 Transfers. Patent is issued in the name of the party or parties contained in the original application regardless of any post-application transfers, conveyances, or assignments. If a transferee insists upon changing the named applicant in the application, the application must be withdrawn and a new application filed. Post-application title actions become effective under State law only when the Federal patent issues and is recorded under State law. (See 43 C.F.R. 3862.5.)

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A. Deceased Applicants. If the applicant should die after filing a mineral patent application, the final certificate and the patent shall be issued in his name or in the name of the decedent's estate. The exact language to be used should be the wording that is usual and customary in the State where the patented lands in the application lie.



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.8 Diligence. All applications are to be prosecuted by the applicant in a timely and expeditious manner or they shall be rejected by the Bureau for lack of diligence. (See 43 CFR 3862.6.) Applications should be reasonably complete when filed. The authorized officer promptly requests missing information by letter or decision. Failure of the applicant to timely respond shall result in rejection of the application.

.81 Mineral Information. The applicant applying for patent to a lode claim should file enough information for the State Office mineral examiner to feel that the claim contains sufficient quantity and quality of valuable minerals to constitute a discovery under the mining law. If sufficient information is not submitted, it should be requested from the applicant. Failure to provide the information is grounds for rejecting the application as deficient. (See Dennis J. Kitts, 84 IBLA 338 (1985) and 43 CFR 3862.6-1.) However, the field examination may proceed, at the discretion of the mineral examiner, without the additional data. The mineral report will be written by the mineral examiner on the basis of the applicant's information in the application and the field examination on the ground. The applicant bears the risk that a discovery may not be verified by the mineral examiner because of insufficient minerals information. A lack of discovery could lead to issuance of a contest complaint asking that the claims in the application be declared null and void by an administrative law judge.