

3870 - ADVERSE CLAIMS, PROTESTS, CONTESTS, AND APPEALS

1. Explanation of Material Transmitted: This release consolidates, updates, revises, and replaces the existing Manual Sections 3871 - Adverse Claims and 3872 - Protests, Contests, and Conflicts. The new Manual Section consists of a short consolidated Manual and a detailed Handbook, updated as to Departmental procedures and case law in these subject areas. These subject areas were last revised in 1976.

2. Reports Required: None.

3. Material Superseded: None.

4. Filing Instructions: File as directed below.

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None 3870

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Energy and Mineral Resources

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.01 Purpose. This Manual Section provides the policies, procedures, and references for processing and adjudicating adverse claims and protests to mineral patent applications; mining claim contests; and conflicts between mineral and nonmineral entries.

.02 Objectives. To assure that all contests, adverse claims, protests, and conflicts are adjudicated and processed in accordance with due process of law and within prescribed Departmental procedures and judicial case law on the matter.

.03 Authority.

A. Statutes. Sections 441 and 2478 of the Revised Statutes, 43 U.S.C. 1201 and 1457 [1988]; The Administrative Procedures Act of 1946, as amended, 5 U.S.C. 554 et seq. [1988]; Sections 2325 and 2326 of the Revised Statutes, 30 U.S.C. 29 and 30 [1982]; and Section 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1740.

B. Regulations. 43 CFR Part 4, Subparts B and E; 43 CFR Subpart 3870 et seq.(1988).

C. Case Law. Cameron vs. United States, 252 U.S. 450 (1920), and United States vs. Keith O'Leary et al, 63 ID 341 (1956).

.04 Responsibility. See Manual Sections 3800.04 and 3860.04.

.05 References. See Manual Section 3862.05 and Handbook H-3870-1.

.06 Policy. The Department's policy for determining rights pertaining to land and mineral title actions is given in Cameron vs. United States, 252 U. S. 450 (1920) which is recited in H-3870-1 Adverse Claims, Protests, Contests, and Appeals, Chapter I B.

.07 File and Record Maintenance. Mining claim validity contests and conflicts not involving a mineral patent application are serialized as separate actions. See Manual Section 1272.07. Adverse claims, contest actions and protests that are part of a mineral patent application record remain in the mineral patent application case file.

Glossary Of Terms

- A -

ab initio: a legal term meaning "from the beginning." If a mining claim is declared null and void ab initio, it means that the mining claim never really existed as a matter of law.

adverse claim: a legal challenge under 30 U.S.C. 29 and 30 where a rival mining claimant comes forward and asserts that he has mining claims covering part or all of the land applied for in the mineral patent application.

administrative law judge: an individual appointed by the Secretary of the Interior who is empowered to hold hearings and try issues of fact and law. From those hearings, the Administrative Law Judge issues decisions on behalf of the Secretary which settle questions of rights and privileges on the public lands.

appeals: appeals from a BLM administrative decision or the decision of an Administrative Law Judge in the Hearings Division may be filed by parties with proper standing. To have standing, a party must have been a party to the case and adversely affected by the decision. The administrative procedures for filing of appeals from the decision of the Authorized Officer, and for processing of appeals, is given at 43 CFR Part 4, Subparts B and E. The Interior Board of Land Appeals (IBLA) hears the appeals concerning public land and mineral actions.

attorney-in-fact: an individual appointed through an affidavit of a patent applicant or claimant to act on his/her behalf and to receive legal service of documents on all matters concerning the application or claims.

authorized agent: an individual appointed by a group of co-locators to act for them and to receive official correspondence on their behalf. An authorized agent is not an attorney-in-fact unless appointed as such by the group through an affidavit. An authorized agent cannot receive service of documents unless appointed as an

attorney-in-fact.

authorized officer: the State Office individual delegated the authority, in writing, to act on behalf of the State Director on matters concerning the processing of contests, protests, and patent applications.

- C -

conflicts: in the mineral patent process, these are overlapping mining claims or sites. In general, conflicts can be any proceeding by the Bureau that requires the determination of the validity of a claim or site so as to firmly establish the rights of the claimant and the United States as to a particular piece of land.

contest: a mineral contest is an administrative challenge to the validity of a mining claim or site, for any factual matter not of record with the BLM. The contest may be filed by the Government, through BLM; or under certain conditions (see 43 CFR 4.450) by private parties. The claim or site validity can be challenged on several grounds. These include, but are not limited to the following:

1. Lack of a discovery of a valuable mineral deposit.
2. Non-mineral-in-character (lode & placer claims).
3. Mineral-in-character (millsites).
4. Lack of marketability of the mineral claimed.
5. The mineral is common variety and not locatable.
6. The claim or site is not being used or occupied for valid purposes under the mining laws.
7. Others (highly specialized).

contestant: the party bringing the contest action. The administrative equivalent of a plaintiff in a civil action at law.

contestee: the party being contested. The administrative equivalent of a defendant in a civil action at law.

- D -

diligent search: a comprehensive search to locate all owners of a mining claim for purposes of serving them with a contest complaint. The records searched must include, but are not limited to, BLM mining claim recordation files, the local recording office, U. S. Postal Service records, and other State, County, or local official records.

- E -

entry: under the public land and mineral laws, an entry is an application, that if perfected, would result in the issuance of a patent to the land applied for. Under the mining law, entry is made when the first half of the mineral entry final certificate is issued by the authorized officer. The date of entry is the date the purchase monies required by 30 USC 29 are accepted by the authorized officer. Under FLPMA, entry is made when the Notice of Realty Action is published, segregating the land from all other entries and appropriation for the applicant. Entry occurs under the Desert Land Entry and similar laws when the purchase monies are accepted by the authorized officer.

- F -

final certificate: bureau form 1860-1, Mineral Entry Final Certificate (FC). This document has four parts - First Half (1860-1), Second Half (1860-1a), Continuation Sheet (1860-1b), and Supplemental Patent - Second Half

(1860-1c). At the conclusion of the publication process, after receipt of the publisher's affidavit, acceptance of the purchase price, and final proofs, the authorized officer causes the first half of the FC to be filled in. The information includes the authority for the type of claims being patented, the names and serial numbers of the claims applied for, the legal description of the land applied for, and any exceptions of land or claims from the application.

1. The issuance of the first half of the FC certifies that the applicant has proven title to the claims/sites applied for, and has paid the required purchase price for the land applied for in the application. The issuance of the 1st half FC grants equitable title to the applicant, relieves him of the requirement to perform assessment work or payment of maintenance fees, establishes the date of marketability for satisfying the discovery requirement under the mining law, and segregates the land from all forms of entry and appropriation under the public land and mineral laws.

2. The second half of the FC is filled in after the mineral examination is completed and the application clearlisted for patent. The second half becomes the source document 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.

- H -

hearings division: the unit of the Office of Hearings and Appeals that holds fact finding hearings and trials of fact and law. The Division is located in Salt Lake City and where Administrative Law Judges assigned to the Division hold hearings and issue decisions on all forms of contests and controversies that affect the management of the public lands.

- 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 all appeals of all 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.

- L -

land district: the geographic or administrative State where the mining claim or site resides. Alaska is divided into two "land districts," Fairbanks and Anchorage.

- M -

mineral examiner: a geologist or mining engineer who is certified by the Director pursuant to Manual Section 3895 - Certification of Mineral Examiners, to perform validity examinations and who can testify at a hearing as an expert witness for the Government.

mineral patent: a patent to land issued under the authority of the General Mining Law of 1872. To obtain a mineral patent, the mining claimant must show that he has clear possessory title to the claim, pay the purchase price for the land, and prove that he has a mineral deposit that can be mined, removed, and marketed at a profit. For a mill site, the discovery requirement is replaced by proof that the mill site is non-mineral-in-character and is being used or occupied for uses reasonably incident to exploration, mining, and milling of a mineral property.

- O -

Office of Hearings and Appeals (OHA): the office established in 1970 to exercise the Secretary's authority for holding hearings, and considering and determining all matters within the jurisdiction of the Department involving hearings, appeals, and other review functions of the Secretary. The office is under the Assistant Secretary of the Interior for Policy, Budget, and Administration. The Director of the OHA oversees a Hearings Division and two boards of appeals (The Interior Board of Land Appeals and the Interior Board of Contract Appeals). The Hearings

Division consists of several Administrative Law Judges authorized to conduct hearings and issue decisions for the Secretary in cases concerning the public lands, including mining claim contests. The appeals boards consist of Administrative Law Judges exercising the Secretary's review function for appeals coming from the Hearings Division, or Interior agencies.

- P -

prayer for relief: the part of the contest complaint where you state the relief requested from the Administrative Law Judge. In a mining claim contest, we pray that the claim(s) be declared null and void. If a mineral patent application is involved, we add the request that the mineral entry final certificate be cancelled.

private contest: a contest proceeding pursuant to 43 CFR 4.450 brought before the Hearings Division, through BLM, by adverse claimants, land or mineral, seeking to have their conflicting title status to the public land resolved before the Department. Only parties who have conflicting entries to the public land in question may bring contest proceedings against each other before the Department. Arguments over the right of possession (possessory rights) must be taken to the courts for direct resolution. Examples of conflicting entries are Desert Land Entry vs a mining claim; FLPMA land sale or exchange proponent vs a mining claim or site; mill site vs lode or placer claim; Stock Raising Homestead patentee vs a mining claim; placer claim vs lode claim.

protest: an allegation that the patent applicant or the Federal 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.