



**U.S. Department of the Interior
Office of Inspector General**

AUDIT REPORT

PROCESSING OF MINERAL PATENT APPLICATIONS BY THE BUREAU OF LAND MANAGEMENT AND THE OFFICE OF THE SOLICITOR

**REPORT NO. 01-I-356
MAY 2001**

EXECUTIVE SUMMARY

**Processing of Mineral Patent Applications
by the Bureau of Land Management and
the Office of the Solicitor
Report No. 01-I-356
May 2001**

The General Mining Law of 1872, as amended, opened public lands to the exploration and extraction of valuable minerals, such as gold, silver, and copper. The General Mining Law allows miners to prospect for minerals and file mining claims for the right to use public land for mineral development and extraction. A mining claimant may apply for a mineral patent, which conveys a fee simple title to the claim if the claimant has discovered a valuable mineral deposit and meets all of the patenting requirements of the General Mining Law. The Secretary of the Interior makes the final determination as to whether a patent applicant has met all of the requirements and has discovered a valuable mineral deposit.

The Interior and Related Agencies Appropriations Act of 1995 imposed a moratorium on accepting and processing mineral patent applications, with some exceptions. Section 113 of the Act excepted from the moratorium those patent applications (1) that were filed with the Secretary on or before the date of enactment of the Act and (2) for which all the patenting requirements under the Mining Law were met. These patent applications were considered "grandfathered," and the Interior and Related Agencies Appropriations Act of 1996 required the Department to file a plan that details how the Department will make a final determination on patent entitlement on at least 90 percent, or 352, of 392 grandfathered patent applications by April 26, 2001. The Congress extended the time frame for processing these mineral patent applications to September 30, 2001 in the Interior and Related Agencies Appropriations Act of 1997.

We concluded that the Department of the Interior will not meet the September 30, 2001 date mandated by the Congress for processing the grandfathered mineral patent applications generally because the Bureau of Land Management did not initiate and complete a sufficient number of mineral examinations to enable the Office of the Solicitor to complete its review of mineral patent applications by the due date. According to Bureau figures as of June 30, 2000, 180 patent applications remained that required processing or that were expected to be contested (subject to a hearing on the validity of the mining claim) or withdrawn. We recommended that the Bureau of Land Management and the Office of the Solicitor develop a time frame for completing the processing of all remaining grandfathered mineral patent applications and provide this time frame to the Congress by September 30, 2001.

AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL EVALUATION

The Bureau of Land Management and the Office of the Solicitor concurred with the report's two recommendations and agreed to take the recommended corrective actions. Based on the response, the recommendations were considered resolved but not implemented. In addition, in the Bureau of Land Management's February 14, 2001 response (Appendix 2) to the draft report, Bureau officials provided updated mineral patent figures as of December 29, 2000. The Bureau reported 398 total applications, which was an increase of 6 from June 30, 2000 attributable to judicial and administrative actions. The Bureau also reported total cases of 197 requiring final determination, or 177 cases at the Congressionally required 90 percent completion level. The response from the Office of the Solicitor noted that 10 patent applications had been approved and signed by the Secretary since the issuance of our draft report and that the Office had gained two new attorneys to assist in patent application review.



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

May 23, 2001

AUDIT REPORT

Memorandum

To: Director, Bureau of Land Management
Solicitor

From: Roger La Rouche
Assistant Inspector General for Audits

Subject: Audit Report on Processing of Mineral Patent Applications by the Bureau of
Land Management and the Office of the Solicitor (No. 01-I-356)

INTRODUCTION

This report presents the results of our review of the processing of mineral patent applications by the Bureau of Land Management (BLM) and the Office of the Solicitor (SOL). The objective of the audit was to determine whether BLM and SOL are processing mineral patent applications in accordance with the plan the Secretary of the Interior was required to file under the Interior and Related Agencies Appropriations Act of 1996. We conducted the review based on Congressional inquiries about the timeliness of the Department of the Interior's processing of the mineral patent applications.

BACKGROUND

The General Mining Law of 1872, as amended, opened public lands to the exploration and extraction of valuable minerals, such as gold, silver, and copper. Approximately 400 million acres of public land are open to location of mining claims under the General Mining Law, including BLM, U.S. Forest Service, and National Park Service lands. BLM administers the mineral estate under the General Mining Law on all of these lands. The General Mining Law allows miners to prospect for minerals and file mining claims for the right to use public land for mineral development and extraction. A mining claimant may apply for a mineral patent, which conveys a fee simple title to the claim if the claimant has discovered a valuable mineral deposit and meets all of the patenting requirements of the General Mining Law.

The Secretary of the Interior makes the final determination as to whether a patent applicant has met all of the requirements and has discovered a valuable mineral deposit. If the Secretary determines that a miner could economically extract a mineral deposit and that a mining operation could be potentially profitable, the claimant has a "discovery," which is a critical element for obtaining a patent. Processing a patent application involves two significant procedures: (1) reviewing the patent application to ensure that it is complete and is in compliance with statutory requirements of the General Mining Law and administrative requirements of the Department of the Interior and (2) performing a mineral validity examination to ensure that the geologic and economic evidence verifies the discovery. The initial review of mineral patent applications is accomplished at BLM's state office level with assistance from the Regional Solicitor's Office. The Regional Solicitor ensures that the title is in good order, adverse claims have been addressed, and the application is complete. If the application contains the required documents under the General Mining Law and is sufficient to begin a mineral validity examination, a first half final certificate is signed by the Secretary. After receiving the first half final certificate, BLM schedules a mineral validity examination.

A Certified Mineral Examiner conducts the mineral validity examination and prepares a mineral report, which is then reviewed by the cognizant BLM state office. The report is then sent to BLM headquarters in Washington, D.C., where a technical review is conducted to ensure that technical standards are applied consistently. When a report is cleared by headquarters, BLM forwards the report to SOL for a legal review. If it clears legal review, it is transmitted first to the Assistant Secretary for Land and Minerals Management and then to the Secretary of the Interior for signing the second half of the final certificate and for issuing a patent.

The Interior and Related Agencies Appropriations Act of 1995 imposed a moratorium on accepting and processing mineral patent applications, with some exceptions. Section 113 of the Act excepted from the moratorium those patent applications (1) that were filed with the Secretary on or before the date of enactment of the Act and (2) for which all the patenting requirements under the Mining Law were met. When the moratorium took effect, 383 patent applications were in process and 9 more were added as a result of litigation, for a total of 392 patent applications that were "grandfathered." The Interior and Related Agencies Appropriations Act of 1996 required the Department to file a plan that details how the Department will make a final determination on patent entitlement on at least 90 percent, or 352, of these grandfathered patent applications by April 26, 2001. The Congress extended the time frame for processing these mineral patent applications to September 30, 2001 in the Interior and Related Agencies Appropriations Act of 1997.

SCOPE OF AUDIT

To accomplish our objective, we interviewed officials from and reviewed records maintained by BLM and SOL offices in Washington, D.C. Also, we contacted 37 of the 70 total BLM certified mineral examiners, 1 National Park Service certified mineral examiner, and 5 Forest Service certified mineral examiners who conduct mineral examinations and reviews to obtain estimated completion dates for the applicable mineral reports.

We conducted our review in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. In addition, we reviewed the Departmental Report on Accountability for fiscal year 1999, which includes information required by the Federal Managers' Financial Integrity Act, and the annual assurance statements on management controls for fiscal year 1999 and determined that there were no reported material weaknesses regarding the timeliness of the mineral patent application process.

PRIOR AUDIT COVERAGE

During the past 5 years, the General Accounting Office has not issued any audit reports on the timeliness of the mineral patent application process. In September 1997, the Office of Inspector General issued the report "Issuance of Mineral Patents, Bureau of Land Management and Office of the Solicitor" (No 97-I-1300), which addressed BLM's initial review of patent applications. The report stated that BLM did not generally meet its policy of initially processing patent applications within 10 months. The report contained six recommendations to improve the quality and timeliness of the mineral patent process and one recommendation concerning cost recovery for mineral validity examinations. All of these recommendations were considered resolved and implemented.

RESULTS OF AUDIT

We concluded that the Department of the Interior will not meet the September 30, 2001 date mandated by the Congress for processing at least 90 percent (352) of the grandfathered mineral patent applications. The process will not be completed generally because BLM did not initiate and complete a sufficient number of mineral examinations to enable SOL to complete its review of mineral patent applications by the due date. Based on its initial plan to complete processing by September 30, 1999, BLM estimated that it would complete minerals examinations of 70 applications per year. BLM, however, sent the SOL from 6 to 27 per year, with an average of only 17 per year from September 30, 1994 through September 30, 1999. At the conclusion of our audit (June 30, 2000), 180 patent applications were pending action. This consisted of 138 applications requiring BLM action and 42 applications that were awaiting completion of a legal review.

In July 1996, BLM prepared an initial report and action plan titled "Five Year Plan for Making Final Determination on Ninety Percent of Grandfathered Patent Applications Pursuant to Public Law 104-134 [The Interior and Related Agencies Appropriation Act of 1996]" and submitted it to the Congress. At that time, BLM had 71 applications in process and planned to process the remaining 281 applications at the rate of about 70 per year over 4 years, with completion by April 26, 2001. In its budget justifications for fiscal year 1998, BLM revised its estimated completion date for processing mineral patent applications to September 30, 2000. As of June 30, 2000, however, BLM officials stated that BLM had completed only 214 applications, leaving a balance of 138 requiring BLM action.

The 214 applications processed by BLM consisted of 109 applications forwarded to the SOL for further processing, 61 withdrawn from processing by the applicant, and 44 contested¹ to the Interior Board of Land Appeals. Of the 138 applications still in BLM, 30 are expected to be withdrawn and 30 contested. BLM officials plan to submit the remaining 78 mineral patent applications to the SOL by December 30, 2000. A BLM Mining Law Adjudication Senior Specialist in the Washington office attributed the delays to the fact that some state directors did not make processing mineral patent applications a high priority until fiscal year 1998. Consequently, mineral validity examination assignments were not given to field mineral examiners in time for them to complete the work in accordance with BLM's schedule.

According to BLM officials, as of June 30, 2000 the SOL had processed 67 of the 109 applications forwarded by BLM: 47 were signed for patent, 2 were contested, 1 was withdrawn, and 17 were returned to BLM for further processing. The remaining 42 applications were pending the completion of a legal review. Overall, the SOL will need to process the 78 applications expected from BLM plus the 42 applications already in the office, for a total of 120 applications, with less than 15 months remaining in the Congressionally mandated period.

Processing time for patent applications by the SOL ranged from less than 1 month to 41 months, with an average processing time of about 9 months for each application. The SOL used an estimated equivalent of 5 full-time attorneys to process the 47 completed patent applications over the 6 years, or an average of 7.8 patent applications annually. Officials from the SOL said that they had not developed formal plans for completing the patent application reviews because they could not be certain when they would receive the patent applications from BLM. In a May 2000 meeting with our office, a staff attorney in the SOL's Division of Mineral Resources said that it is unlikely that the SOL would be able to complete the legal reviews of the remaining patent applications by September 30, 2001 because of the large number of applications expected to be submitted to the SOL during the final months of the 5-year time frame. The attorney also said that the SOL would consider hiring new attorneys or reassigning attorneys to help process the increased work load. In any event, BLM and the SOL need to coordinate their efforts to expeditiously process the remaining applications.

¹A contest is a hearing before an Administrative Law Judge to decide the validity of a mining claim. If the Administrative Law Judge upholds the Bureau's decision to contest the mining claim, the claimant can then appeal to the Department of the Interior's Board of Land Appeals, the U.S. District Court, the U.S. Court of Appeals, and the U.S. Supreme Court. If the Administrative Law Judge holds in the claimant's favor, the Bureau may appeal the decision only to the Interior Board of Land Appeals.

Recommendations

We recommend that the Director of BLM and the Solicitor jointly:

1. Develop a time frame for completing the processing of all remaining grandfathered mineral patent applications.
2. Report to the Congress the expected progress on processing grandfathered patent applications by September 30, 2001 and provide the time frame for completing the project.

BLM and SOL Responses and OIG Reply

In the January 19, 2001 response (Appendix 1) to our draft report from the Deputy Associate Solicitor, Division of Mineral Resources, SOL agreed with the report's two recommendations. The response also noted that 10 additional patent applications had been approved and signed by the Secretary since the issuance of our draft report and that the Branch of Onshore Minerals, within the Solicitor's Office, has gained two new attorneys to assist in patent application review.

In its February 14, 2001 response (Appendix 2) to the draft report from the Acting Director, BLM, BLM also agreed with the report's two recommendations. In its response (Attachment 1 to Appendix 2), BLM also included some suggested changes to the report, which we considered and incorporated into the report as appropriate. We did not, as requested by BLM, change the information in our report related to the progress BLM was making in processing applications reported since June 30, 2000, the end of our audit fieldwork. We have included information from BLM (Attachments 2 and 3 to Appendix 3) on the current status of its processing of grandfathered mineral patent applications.

BLM and SOL officials subsequently told us that BLM's Assistant Director, Minerals, Realty, and Resource Protection, and the Solicitor are the officials responsible for implementation of the recommendations in the respective offices. The target date for implementation of both recommendations is September 30, 2001. Based on the responses and subsequent discussions, we consider Recommendations 1 and 2 resolved but not implemented. Accordingly the unimplemented recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation (see Appendix 3).

Since the report's recommendations are considered resolved, no further response to the Office of Inspector General is required.

Section 5(a) of the Inspector General Act (5 U.S.C app. 3) requires the Office of Inspector General to list this report in its semiannual report to the Congress. In addition, the Office of Inspector General provides audit reports to the Congress.



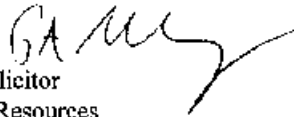
United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

Memorandum

JAN 19 2001

To: Roger La Rouché
Acting Assistant Inspector General for Audits

From: Peter J. Schaumberg 
Deputy Associate Solicitor
Division of Mineral Resources

Subject: Solicitor's Office Response to Draft Audit Report on Processing of Mineral Patent Applications by the Bureau of Land Management and the Office of the Solicitor (Assignment No. C-IN-BLM-001-00-R)

Thank you for the opportunity to respond to the Draft Audit Report on Processing of Mineral Patent Applications by the Bureau of Land Management (BLM) and the Office of the Solicitor dated November 27, 2000. The Office of Inspector General (OIG) based its report on data that were available as of June 30, 2000. The Solicitor's Office concurs in the findings and recommendations of the report based on the data available at that time.

The OIG's first recommendation is for the BLM and the Solicitor's Office to develop a time frame for completing the processing of all remaining grandfathered mineral patent applications. Since June 30, 2000, the Solicitor's Office has completed review of ten additional patent applications, all signed by the Secretary, and the Branch of Onshore Minerals has gained two new attorneys to assist in patent application review. Since June 30, 2000, the BLM has forwarded 33 additional patent applications to the Solicitor's Office for review. As of January 19, 2001, the Solicitor's Office has 67 patent applications. The Solicitor's Office will meet with the BLM to determine how many more patent applications to expect in order to develop a time frame for completing the processing of the remaining grandfathered applications.

The OIG's second recommendation asks the Department to report to the Congress the expected progress on processing grandfathered patent applications by September 30, 2001, and provide the time frame for completing the project. Although the BLM will submit a status report to Congress in February 2001 as part of its annual oversight and budget process, we anticipate working jointly with the BLM in preparing a formal report to Congress by September 30, 2001. We will provide a time frame for completing the project at that time.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>



In Reply Refer To:
3860/1245 (320)

FEB 12 2001

MEMORANDUM

To: Assistant Inspector General for Audits

Through: Piet deWitt *Piet deWitt* FEB 14 2001
Acting Assistant Secretary, Land and Minerals Management

From: Nina Hatfield *Nina Hatfield*
Acting Director, Bureau of Land Management

Subject: Response to Draft Audit Report Entitled, "Processing of Mineral Patent Applications by the Bureau of Land Management and the Office of the Solicitor," Report No. C-IN-BLM-001-00-R; November 2000

Thank you for the opportunity to respond to the subject draft report. We have reviewed the draft report and its recommendations. The text contains some factual and statistical data errors that will require changes in the final document. We have provided this information in detail (Attachment 1). The draft report uses June 30, 2000, as its cut-off point for analysis. We recommend the report data be carried through the end of the first quarter of Fiscal Year (FY) 2001, as many actions occurred between June 30 and December 31, 2000, that improved the Department's position considerably. Attachments 2 and 3 contain the tabulated data for your use in carrying the data through December 31, 2000.

The draft report uses a time line of FY 1994 through FY 1999 for some of its analysis. Since the Congressional mandate and moratorium commence with October 1, 1994 (FY 1995), it is more appropriate to begin the analysis with the beginning of FY 1995 and carry it through the first quarter of FY 2001. Attachments 2 and 3 provide this processing data for your use and incorporation into the final report. The recommendations in the draft report are for a joint Bureau of Land Management (BLM) and the Solicitor response. However, we are advised that the Office of the Solicitor will be providing a separate response to this draft report.

Recommendation 1: Develop a time frame for completing the processing of all remaining grandfathered mineral patent applications.

Concur: The BLM had a time frame for the applications under its control, which was December 30, 2000, for the State Offices to finish and either transmit the application to Headquarters for final review or to bring contest proceedings against the application, as appropriate. This final deadline is now set for March 31, 2001, due to claimant initiated issues with remaining cases and the fact that there are still 28 applications outstanding with the U. S. Forest Service (FS). The FS had advised the BLM that they would finish the mineral examinations by the end of December 2000, but they have now requested more time. Therefore, the BLM anticipates that it will be the end of March 2001, before all BLM and FS actions are completed at the BLM State Offices and the cases either contested directly or forwarded here for final review for patent.

To meet the 90 per cent criteria of the legislation, DOI must review and decide 358 cases by September 30, 2001. A total of 201 cases to date have had final determinations, with 157 remaining. Of these, 99 are in Secretarial Review and 31 are completed in State Offices, leaving 27 cases left in the field to meet the Congressional mandate. The BLM should complete these 27 by the end of March 2001 and have them to the Solicitor for final legal review.

Recommendation 2: Report to the Congress the expected progress on processing grandfathered patent applications by September 30, 2001, and provide the time frame for completing the project.

Concur: We have submitted the required status report required for September 30, 2000, to Congress and the next one is due by September 30, 2001, pursuant to the FY 2001 appropriations act. However, based upon historical precedent, we anticipate having to provide such a report to the House and Senate Appropriations Committees in February 2001 as part of the annual oversight and budget process. The BLM will be prepared to file such a report at that time.

Any questions concerning the data and comments given in the attachments may be directed to Roger Haskins, Senior Specialist for Mining Law Adjudication, at (202) 452-0355; or Rebecca Mack, Audit Liaison Officer, at (202) 452-5047.

Attachments

[OFFICE OF INSPECTOR GENERAL NOTE: ATTACHMENT 1 NOT INCLUDED
BY OFFICE OF INSPECTOR GENERAL.]

ATTACHMENT 2

HQ Review History Under Secretarial Order 3163
(12/29/00)

Item	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99	FY00	FY01
Rec'd									
BLM	11	22	27	10	23	11	17	69	20
DOI	0	16	34	6	20	8	6	46	20
Processed									
BLM	8	12	34	7	24	10	17	46	21
DOI	0	7	14	10	14	2	4	29	8
Pending									
BLM	3	13	6	9	8	9	9	32	31
DOI	0	9	29	25	31	37	39	56	68
Final Action									
Withdrawn	0	0	2	4	6	10	33	20	5
Patent	7	7	12	10	12	2	2	23	7
OIA	9	9	5	8	6	8	1	23	2
Total Final Action	16	16	19	22	24	20	36	66	14

ATTACHMENT 3

Progress Report for Mineral Patent Cases Subject to the Congressional Five Year Plan (12/29/00)

<u>State</u>	<u>Original Case Load</u> ²	<u>Final Determinations</u> ¹		<u>Cases Left</u> ⁵	<u>In Review</u>		<u>In S.O.</u> ⁷	<u>Mineral Exams</u> ⁸
		<u>Cases Closed</u> ³	<u>In OIA</u> ⁴		<u>HHFC</u>	<u>HQ</u> ⁶		
AK	35	13	6	16	0	11	4	1
AZ	29	8	2	19	0	5	6	8
CA	68	24	15	29	0	8	9	12
CO	8	5	1	2	0	1	1	0
ID	32	17	3	12	1	5	2	5
MT	44	9	0	35	0	1	11	23
NM	7	1	1	5	0	1	0	4
NV	89	55	4	30	0	26	1	3
OR	20	9	3	8	0	2	2	4
UT	20	3	9	8	0	8	0	0
WA	5	0	0	5	0	1	2	2
<u>WY</u>	<u>41</u>	<u>9</u>	<u>4</u>	<u>28</u>	<u>0</u>	<u>19</u>	<u>4</u>	<u>5</u>
Total	398	153	48	197	1	99	31	67

[OFFICE OF INSPECTOR GENERAL NOTE: THIS ATTACHMENT REFLECTS 100 PERCENT OF THE MINERAL PATENT APPLICATION WORK LOAD, WHEREAS THE WORK LOAD STATISTICS IN OUR REPORT REFLECT 90 PERCENT OF THE TOTAL WORK LOAD REQUIRING COMPLETION BY SEPTEMBER 30, 2001.]

1. Final delermination means patent issued, application withdrawn, or application under contest or appeal in OHA.
2. Existing on October 1, 1994.
3. Close means patent issued, application withdrawn, or declared invalid by OHA.
4. Applications that are under contest or on appeal to IBLA.
5. This is the difference between original no. of cases and those with final determinations.
6. FIIFC means an application in the Solicitor's Office for final certificate review. HQ means the application is here for final mineral patent review, either in WO 320 or the Solicitor's Office after being forwarded from the BLM Director's Office.
7. In S.O. (State Office) means the mineral report is completed and the case is awaiting final processing either for HQ Review or for contest action.
8. These are the mineral patent applications which must have a mineral examination and mineral report in order to finish processing under the Congressional Five Year Plan.

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/ Recommendation Reference	Status	Action Required
1 and 2	Resolved; not implemented	No further response to the Office of Inspector General is required. The recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

**ILLEGAL OR WASTEFUL ACTIVITIES
SHOULD BE REPORTED TO
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