



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL

Central Region


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September 22, 2006

Memorandum

To: Director, Bureau of Land Management
Assistant Secretary for Policy, Management and Budget
(Attention: Associate Director for Finance, Policy and Operations)

From: Jack Rouch 
Regional Audit Manager

Subject: Verification Review of Six Recommendations From Our Audit, "Issuance of Mineral Patents, Bureau of Land Management, and Office of the Solicitor" (C-VS-BLM-0007-2006)

We completed a verification review of six recommendations from the subject audit report. The objective of this review was to determine whether the six recommendations were implemented as reported by the Bureau of Land Management (BLM).

We determined that five of the six recommendations had been implemented. We concluded that Recommendation A2 was not implemented as reported. However, we agree with BLM that the current status of the Mineral Patents Program no longer warrants implementation of the recommendation and we concluded that Recommendation A2 should now be considered "closed, not implemented." The status of the recommendations is summarized in Appendix 1. The results of the verification review are summarized in Appendix 2.

Background

Our September 1997 audit report "Issuance of Mineral Patents, Bureau of Land Management and Office of the Solicitor" (No. 97-I-1300) made seven recommendations to correct deficiencies related to BLM's mineral patents process. The report disclosed recent reviews conducted by the Office of the Solicitor (SOL) and BLM that had identified deficiencies in the mineral validity examination process that needed to be corrected to ensure that mineral patents were not granted improperly. The report also noted that BLM was not recovering the costs of conducting mineral validity examinations, which BLM estimated to average about \$80,000 per application.

Based on BLM's responses to the draft and final audit reports, we considered Recommendations A3 and A5 "resolved and implemented." We considered

Recommendations A4, A6, and B1 “resolved but not implemented” and referred them to PFM for tracking of implementation. We considered Recommendations A1 and A2 “unresolved” and referred them to PFM for resolution. These two recommendations were subsequently considered resolved by Assistant Secretary, Policy, Management and Budget (PMB) in August 1999. At that time, we agreed with PMB that implementation of Recommendation A1 was not warranted and the recommendation was closed without implementation. Therefore, we did not follow up on Recommendation A1 during this review. In April 2006, we received a memorandum from PFM stating that the five recommendations (A1, A2, A4, A6 and B1) referred to PFM were closed.

Scope and Methodology

The scope of our review was limited to determining whether BLM implemented the recommendations as reported. To accomplish our objective, we reviewed the supporting documentation that BLM submitted to close the recommendations. We also interviewed and requested information from BLM personnel. We did not perform site visits or conduct detailed fieldwork to determine whether the underlying deficiencies identified in the original audit report have been corrected.

This review was not conducted in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States.

Conclusion

At the exit conference on June 21, 2006, we informed BLM officials that we concluded that Recommendations A3, A4, A5, A6, and B1 were implemented and that Recommendation A2 was not implemented as reported.

Recommendation A2 stated that BLM should identify the mineral patent process as a discrete process with a material risk factor and subject it to the requirements of Circular A-123. We found no evidence that BLM either established the mineral patent process as a discrete process or subjected it to the requirements of Circular A-123. BLM subsequently provided additional documentation to support that it had implemented the recommendation and that the recommendation was no longer necessary due to the current status of the program.

After reviewing the additional documentation, we continue to conclude that the recommendation was not implemented. However, we agree with BLM that the recommendation is no longer warranted because 1) a moratorium on new mineral patents enacted by Congress in FY1995 is still in effect, 2) BLM reported that the number of mineral patent applications pending approval had been significantly reduced, and 3) PMB reported that applications had not been remanded for mineral issues for a 2 year period. Based on these facts, we consider Recommendation A2 to be “closed, not implemented.”

Responding to the Report

Because we consider all the recommendations to be closed, a response to this report is not necessary.

If you have any questions regarding this report, please call me at 303-236-9243.

cc: Audit Liaison Officer, Department of the Interior
 Audit Liaison Officer, Assistant Secretary for Land and Minerals Management
 Audit Liaison Officer, Bureau of Land Management
 Focus Leader for Management Control and Audit Follow-up
 Deputy Division Chief, Solid Minerals

STATUS OF PRIOR AUDIT REPORT RECOMMENDATIONS

<u>Recommendation</u>	<u>Status</u>	<u>Action Required</u>
A3, A4, A5, A6, and B1	Implemented	No further action is required.
A2	Closed but Not Implemented	No further action is required.

RESULTS OF VERIFICATION REVIEW

Recommendation A2: “Identify the mineral patent process as a discrete process with a material risk factor and subject it to the requirements of Circular A-123.”

In its response to the final audit report, BLM disagreed with this recommendation. On June 18, 1998, we referred this recommendation to PFM for resolution. In August 1999, the Assistant Secretary, PMB issued a memorandum stating that BLM should identify the mineral patent process as a separate and distinct assessable unit in its Management Control Program and should establish the priority, time frame and scope for reviewing and assessing the management controls in accordance with Circular A-123. In the memorandum, the Assistant Secretary considered Recommendation A2 resolved and implemented.

PFM and BLM could not provide us with documentation to verify that BLM either implemented Recommendation A2 or addressed the actions identified in the Assistant Secretary’s memorandum. We held an exit conference in June 2006 to discuss our preliminary results and conclusions with BLM and PFM. Subsequently, BLM provided additional information to support its claims that 1) BLM had implemented the recommendation and 2) the recommendation was no longer warranted due to the status of the program.

BLM provided its FY 2004 Circular A-123 assessment of the Mining Law Administration, Surface Management Program. This assessment focused on the implementation of surface management regulations (43 CFR 3809) and use and occupancy mining law regulations (43 CFR 3715) and not the mineral patent regulations covered in 43 CFR 3860. BLM also provided documentation on a work load analysis of the Mining Law Administration Program; a use authorization review of solid minerals which included the mineral patent program; and an assessment of Mining Law Administration in Alaska. None of this documentation supported that BLM had set up the mineral patent process as a discrete assessable unit or had established a priority, time frame and scope for reviewing and assessing the management controls of the mineral patent process in accordance with Circular A-123. We continue to conclude that BLM did not implement the recommendation.

Congress passed legislation requiring a moratorium on processing mineral patents in Fiscal Year 1995. As of September 2006, this moratorium has been in effect for 11 years. BLM reported that the number of patents to be processed had decreased from 405 to 43. PMB reported that no applications had been remanded for mineral report issues for a 2 year period. Based on these factors, we agree with BLM that Recommendation A2 is no longer warranted and conclude that the recommendation should be considered “closed – not implemented.”

Recommendation A3: “Issue the new Bureau handbook in draft for comment and identify and develop improvements needed for final issuance of the handbook.”

On October 8, 2003, BLM issued its final updated Handbook H-3890-3 "Validity Mineral Reports." We consider Recommendation A3 implemented.

Recommendation A4: “Develop standardized procedures for documenting reviews of mineral examinations which allow for independent review and verification of the sufficiency of the mineral validity examination and the mineral report.”

On October 8, 2003, BLM issued its final updated Handbook H-3890-3 “Validity Mineral Reports.” The Handbook includes detailed steps for documenting reviews of mineral examinations, reviews of the work completed, and the resulting report. We consider Recommendation A4 implemented.

Recommendation A5: “Develop pass/fail testing procedures for Mineral Examiner training to provide greater assurance that Mineral Examiners are sufficiently qualified to conduct mineral validity examinations.”

BLM, through its National Training Center, instituted a binding pass-fail system for its certification courses. We consider Recommendation A5 implemented.

Recommendation A6: “Develop continuing education requirements for Certified Mineral Examiners and a compliance monitoring system for continuing education for both Certified Mineral Examiners and Certified Review Mineral Examiners.”

BLM updated its Manual Section 3895 "Certification of Mineral Examiners" to include continuing education requirements for Certified Mineral Examiners and Certified Review Mineral Examiners. These certifications are monitored by the Certification Panel and the Panel’s Executive Secretary. We consider Recommendation A6 implemented.

Recommendation B1: “Obtain a Solicitor’s opinion to determine whether the Bureau has authority to recover its costs of conducting mineral examinations from applicants for patents. If it is determined that the Bureau can recover such costs, the costs of conducting mineral examinations should be recovered in accordance with Office of Management and Budget Circular A-25.”

BLM obtained a Solicitor’s opinion, “BLM’s Authority to Recover Costs of Minerals Document Processing" (M-36987, December 5, 1998). The opinion stated that mineral patent applications are subject to full cost recovery procedures under the authority of the Federal Land Policy and Management Act of 1976, as amended. As a result of the Solicitor’s opinion, BLM issued a final cost recovery rule (70 FR 58854) effective November 7, 2005 imposing fees to cover BLM’s costs. Accordingly, we considered Recommendation B1 implemented.