

Citizens' Advisory Commission on Federal Areas (CACFA)
Public Comments for CACFA Meeting October 9, 2026
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CACFA chair and board,

Thank you for the opportunity to provide public comments to support my request that the DOI Secretary should finally issue the patent for Banjo and Pass lode mining claims (M.S. 2510). BLM approved the patent to be issued as of May 29, 1996, but the owners suffered a 30-year delay due to federal government overreach and attempts to block the BLM approved patent.

I, Paul Gregory Shearer (“Shearer”), am the current owner of the Banjo and Pass lode mining claims, and will reference myself below as “Shearer” and will reference the combined set of owners and predecessor owners of the mining claims as “owner(s)”.

All of the dates and documents that I will reference in my comments today are in the federal court record, so my comments will summarize those proceedings and the court record can be referenced to review the actual documents if needed.

Cases referenced below include (but may not be limited to):

2008 OHA Decision, United States v. Michael R. Mark Anthony, OHA AA-71472 (2008)

2011 IBLA Decision, 180 IBLA 308 (government appeal of *United States v. Michael R. Mark Anthony*, OHA AA-71472 (2008) (“*2008 OHA Decision*”))

Federal District Court of Alaska Case 3:18-cv-00035-HRH *Shearer v. DOI*

Ninth Circuit Case 20-36089 (government appeal of *Shearer v. DOI*, District Court Case 3:18-cv-00035-HRH)

Patent for Banjo and Pass mining claims was approved by BLM to be issued May 29, 1996:

On July 14, 1989, patent application AA-71472 was submitted to BLM to patent Banjo and Pass lode mining claims (M.S. 2510).

On March 3, 1993, the Fairbanks Superior Court granted patent applicant Anthony’s motion for partial summary judgment in the 1991 quiet title action (Case No. 2148) and ordered that “judgment be entered vesting in [him] the title to” the Banjo and Pass claims. The summary judgment was filed with BLM on March 29, 1993.

On March 31, 1993, the patent application was supplemented with updated Abstract of Title showing the owner had 100% title.

DOI Secretary signed the First Half of Mineral Entry-Final Certificate (FHFC) based on the completed patent application with updated abstract of title and the title confirmed by the Alaska State Superior Court. The date of entry of the FHFC is listed as April 20, 1993. (Later in 2011 the IBLA ruled that “the Secretary’s issuance of the FHFC necessarily constituted the Secretary’s acceptance of the applicant’s chain of title.” IBLA stated that only the Secretary could revisit the issue of Anthony’s title to the claims, and therefore IBLA denied government official’s request for a remand for the purpose of reviewing the title.)

On October 18, 1994, BLM confirmed the AA-71472 patent application could continue to be processed since it was exempt from the moratorium on processing patents, and was included on the List of Mineral Patent Applications Grandfathered Under Section 113 of the Interior and Related Agencies Appropriations Act of 1994. Therefore this allowed BLM to complete the processing of the patent application and issue the patent for Banjo and Pass lode mining claims.

On March of 1993 government issued the first mineral report confirming that the Banjo and Pass mining claims are valid as of the date of patent application and therefore qualify for issuance of mineral patent.

On August of 1995 a supplemental mineral report was completed which “concluded that the subject claims are supported by mineral discovery at the time of withdrawal of lands from mineral entry [1972] and thereafter.” The supplemental report also recommended that “the Pass and Banjo claims are valid and qualify for issuance of mineral patent.”

On August 25, 1995, the BLM State Director Alaska certified that the patent should issue.

“I hereby certify that Michael Mark Anthony and this office of the Bureau of Land Management have fully complied with the mining law 30 USC paragraphs 22-54 and implementing Departmental regulations 43 CFR paragraphs 3862 3864 in reaching the point of issuing mineral patent for the land applied for in MPA AA-71472.”

On May 22, 1996, Roger A. Haskins, Certified Review Mineral Examiner, advised BLM’s assistant director of Resource Use and Protection, that

“[b]ased upon my review of the mineral reports and accompanying patent documents, I concur with the mineral examiner’s findings that a discovery of a valuable mineral deposit has been made upon each of the two lode mining claims, are in conformance with the applicable statute and case law, and qualify for a mineral patent.”

On May 23, 1996, the BLM Assistant Director recommended the patent should issue.

“My staff have reviewed the mineral patent documents and the accompanying mineral reports. They have found that all is in order all established policies and

procedures have been complied with and there are no issues needing Bureau or Departmental resolution.”

On **May 29, 1996**, the BLM Acting Director approved the patent to issue.

Therefore later in the Federal District Court of Alaska, Case 3:18-cv-00035-HRH, Judge Holland confirmed that the patent should have been issued on that date and ordered the Secretary to issue the patent effective as of **May 29, 1996**.

30-Year Delay by local NPS and DOI employee unsuccessful attempts to block the patent.

The now 30-year delay in issuing the patent approved by BLM in 1996 has resulted from two unsuccessful attempts from local NPS and DOI employees to block the patent and void the mining claims. Those two unsuccessful attempts, each a 15-year delay, are summarized below.

Delay by an unnecessary NPS third mineral report attempting to void the mining claims.

1) First a 15 year delay (1996-2011) was suffered when NPS employees attempted to ignore the 1993 and 1995 mineral reports that confirmed the claims had valid mineral that justified the patent, and instead conduct an entirely new third mineral exam and report (1999-2002) for the purpose of attempting to void the mining claims.

On July 21, 2003, a complaint was filed in OHA on behalf of NPS contesting the validity of the Banjo and Pass claims.” *United States v. Michael R. Mark Anthony*, 180 IBLA 308, 318 (Jan. 12, 2011). “The complaint allege[d] that sufficient minerals had not been exposed within the boundaries of the claims to constitute a valid discovery on the date [1972] the land was withdrawn from mineral entry under PLO No. 5179.”

Later it was proved in the OHA hearing that the third NPS mineral exam and report (1999-2002) had erroneously reduced the dimensions of the mineral deposit and reserves (OHA Decision p. 49-58) and had overestimated costs (OHA Decision p. 84) in an obvious attempt to void the mining claims which the previous mineral reports had found to be valid.

Shearer prevailed against the government attempts to use the additional unnecessary third NPS mineral exam and report to void the mining claims. See the court decisions below:

2008 OHA Decision, United States v. Michael R. Mark Anthony, OHA AA-71472 (2008)

2011 IBLA Decision, 180 IBLA 308 (appeal of *United States v. Michael R. Mark Anthony*, OHA AA-71472 (2008) (“*2008 OHA Decision*”))

Note when the government later appealed the most recent district court 2020 Judgment (case 3:18-cv-00035-HRH Docket 64) that ordered the DOI Secretary to issue the patent, the government appeal brief argued that a remand was necessary to allow it to conduct yet a forth mineral report in an attempt to invalidate the mining claims. The government appeal brief and

oral argument was the first time the government had raised this argument since it had never presented the argument in the lower district court. The Ninth Circuit rejected the government's request for a remand to conduct a fourth mineral report stating in its final Ninth Circuit Order:

“the government argued it may need time to conduct another mineral report. We reject that rationale, as there is plainly no justification for another mineral report.” (Ninth Circuit Case 20-36089 Docket 68 at 5, also refiled in the District Court Case 3:18-cv-00035-HRH as Docket 105 at 5.)

The district court therefore confirmed that the government could not attempt additional mineral reports in the final Order for Remand:

“Inasmuch as the circuit court has ruled that ‘there is plainly no justification for another mineral report[,]’ on remand the Secretary shall not reconsider the matter of a discovery on Banjo and Pass.” (District Court Case 3:18-cv-00035-HRH as Docket 122 at 6.)

Delay by 2012 DOI Decisions issued without due process that incorrectly protested title.

2) Second 15-year delay; After the first attempt by the government above to void the mining claims using the 1999-2002 NPS mineral report with false data failed when OHA (2008) and IBLA (2011) decisions confirmed that the mining claims were valid, then an additional 15-year delay (2011-2026) was suffered when NPS and DOI employees conspired to issue 2012 DOI Decisions to void the mining claims by protesting title, without providing the owner a hearing or due process and without giving deference to (or even mentioning) the Alaska State Superior Court decisions and judgments that confirmed the owners title.

As early as May 25, 2006, prior to these 2012 DOI Decisions, the government sought to amend its complaint in the OHA contest action that it had initiated on behalf of NPS in 2003 in order to challenge Anthony's possessory title to the Banjo and Pass claims. The ALJ denied the government's motion as “untimely” and “without merit.”

And later in 2009, when the government appealed the OHA contest decision, the government asked the IBLA to remand the contest action so that the title issue could be adjudicated. On April 15, 2009 the IBLA declined to remand because “the Secretary's issuance of the FHFC necessarily constituted the Secretary's acceptance of the applicant's chain of title.” The IBLA stated that only the Secretary could revisit the issue of Anthony's title to the claims.

The NPS and BLM employees had all of the relevant Alaska State Superior Court decisions and judgments in their possession which proved the owner's title, and predecessor Red Top Mining Company (“RTMC”) title, were both valid, but never mentioned those court documents in their 2012 DOI Decisions and thus likely never disclosed them to the DOI Secretary or Assistant Secretary when asking them to sign the inaccurate and misleading 2012 DOI Decisions.

Shearer was forced to file a Complaint for APA Review in Federal District Court of Alaska Case 3:18-cv-00035-HRH to have the inaccurate 2012 DOI Decisions set aside and restore the valid mining claims and application for patent.

On June 19 and 23, 2020, after over two years of extensive briefing on the case, Judge Holland issued an Order and Final Judgment which ruled that the government's previous 2012 DOI Decisions to cancel the First Half of Mineral Entry Certificate (FHFC) and reject the applicant's patent application were "arbitrary and capricious and are set aside", and ordered the DOI Secretary to issue the patent to the mining claims. Judge Holland stated in the Order:

“In sum, none of the bases for the 2012 DOI decisions were reasonable, thereby making the 2012 DOI decisions cancelling the FHFC and denying Anthony’s patent application were unreasonable, arbitrary, and capricious. Thus, the 2012 DOI decisions must be set aside. ...

“In the final analysis,” the court “weigh[s] all the relevant factors and determine whether they point in favor of court intervention.” *Id.* at 512. Here, having weighed all the relevant factors, the court finds that the delay in this case has been unreasonable. Thus, plaintiff is entitled to relief pursuant to Section 706(1) of the APA. ...

The clerk of court shall enter judgment ... ordering the Secretary of the Interior to issue a patent for the Banjo and Pass claims under application AA-71472, effective as of May 29, 1996”

On October 10, 2020, Judge Holland issued a subsequent order denying a government motion for reconsideration of the above final order and stated:

“Section 706(1) of the APA provides that a court ‘shall compel agency action unlawfully withheld or unreasonably delayed.’” Vietnam Veterans of America v. Central Intelligence Agency, 811 F.3d 1068, 1075 (9th Cir. 2016) (quoting 5 U.S.C. § 706(1)). “A court can compel agency action under this section only if there is ‘a specific, unequivocal command’ placed on the agency to take a ‘discrete agency action,’ and the agency has failed to take that action.” *Id.* (quoting Norton v. S. Utah Wilderness Alliance (SUWA)), 542 U.S. 55, 63-64 (2004)). Defendants are arguing that the agency is required to act on an application for a patent and that the Secretary has done so here, so there is no action to compel. Nonsense. If, as we hold, the Secretary erred, the Administrative Procedure Act provides a remedy. In addition to timely acting on a patent application, the Secretary is required to issue a patent if all the requirements for a patent were met. Here, all the requirements were met years ago and the Secretary did not issue the patent. Instead, the agency kept coming up with reasons to not issue the patent, thereby unreasonably delaying the issuance of the patent. ...

But even if the court's finding of unreasonable delay was appropriate, which it was, defendants argue that the court erred in ordering the Secretary to issue the patent because the decision to issue a patent involves an exercise of the Secretary's discretion. Defendants contend that the Ninth Circuit "has consistently recognized the limits of a court's power to dictate the outcome of the agency's review of mineral patent applications" and cites a number of cases in support of this contention. ... [cases listed]

Defendants argue that the foregoing cases make it clear that in this circuit, the court can tell the agency when to act, but it cannot tell the agency how to act, i.e., issue the patent. Because the court has told the Secretary to issue the patent for the Banjo and Pass claims, defendants insist that the court has told the Secretary how to act, which was error.

But the difference between the cases cited by defendants and the situation in this case is that here, all the requirements for the issuance of a patent have been met. Contested actions have been filed and have been decided. Mineral reports and supplements have been prepared and accepted. And, a patent for the Banjo and Pass claims was prepared back in the 1990s. This case is at the point where all that is left is the purely ministerial act of issuing the patent. There is no discretion for the Secretary to exercise here and the court did not err in ordering him to issue the patent.

On September 8, 2022, after briefing and oral argument of the government appeal, Ninth Circuit appeals court ruled: "district court correctly ruled that the Secretary's 2012 decisions were arbitrary and capricious". Ninth Circuit also ruled that the question of Red Top's ownership in 1979 was the only "remaining title issue" and that if Shearer can demonstrate that Red Top had title in 1979 (which he did after remand) then Shearer would "establish entitlement to a patent for the Banjo and Pass claims." Therefore Ninth Circuit remanded to district and state court for only a single issue, to have the state court confirm the 1979 title of Red Top Mining Company:

On March 3, 2023 the district court order confirmed that only the state court, and not the DOI, could adjudicate title of mining claims in Alaska:

"The court rejects [Government] defendants' proposal for further proceedings because ownership of unpatented mining claims is a matter for the state court to decide, not the defendants."

On May 17, 2023 the Alaska State Superior Court order confirmed the 1979 title of Red Top Mining Company by granting a joint Rule 60 motion for relief from the order in the state-2045 case. By this order, the Alaska Superior Court at Fairbanks ordered that Judge Hodges' September 13, 1996, memorandum decision in the -2045 case is reinstated; clarified that the

2005 order upon which the Secretary relied in rendering the decisions under review before this court “does not impact the Banjo and Pass claims”, and further clarified that:

[t]he purpose of this Order is to give effect to the parties’ settlement agreements and provide confirmation that Red Top Mining Company obtained title to the claims referenced in the 1937 Option Agreement, including the Banjo and Pass Claims, no later than 1977.

On June 6, 2023 the district court filed its final Order on Remand and Amended Judgment, providing a list of title documents that confirmed the owners’ title for both the FLPMA filings and patent application were sufficient to issue the patent. The district court order concluded:

“The Secretary will please render a prompt decision on Mark Anthony’s application for patents to the Banjo and Pass claims.”

Settlement Negotiations at the end of Case 3:18-cv-00035-HRH added a 3-year delay.

Settlement negotiations were requested by the government after Shearer prevailed at both the district court and ninth circuit appeal (2023). Government requested to settle with Shearer by purchasing the Banjo and Pass mining claims for appraised “patented value” and promised to conduct an appraisal to use for the purpose of settlement. Government then promised to send an appraiser on site in summer of 2024 and then again in 2025. Shearer therefore remained in Kantishna Alaska both summers available to accompany the appraiser to the mining claims, however the government did not keep those promises and no appraiser was ever sent on site, and no appraisal was ever completed for settlement. Government expressed concerns about potential hazardous waste remaining from mining conducted in 1938-1942 on these claims and adjacent claims owned by the government since 1988. However the government has never conducted any mitigation for hazardous waste on the adjacent claims the government has owned for over 38 years. And the government refused to provide any written evidence or reports of hazardous waste on the Banjo and Pass claims when Shearer requested any such existing documentation during the settlement process. Shearer in good faith provided four (4) written settlement offers, and sent extensive answers to the government’s one reply with questions on Shearer’s settlement offers. However the government never replied to formally accept or reject Shearer’s four written settlement offers, the government never sent any counter-offers, and the government never sent a single written settlement offer to Shearer during the 3-year delay (2023-2026).

On July 2, 2026 the parties concluded the final briefing on Shearer’s Second Amended Motion for Attorney Fees and Costs.

On September 14, 2026, Judge Holland granted Shearer’s motion and ordered the government to pay Shearer \$201,328 in attorney fees and \$1,040 in costs.

Summary

Summary of timeline showing that the patent for Banjo and Pass should now be issued:

By 1993 patent application and title were complete so that DOI Secretary could approve FHFC.

By 1993 Alaska State Superior Court confirmed title of applicant owner Mark-Anthony.

By 1996 (and again in 2023) Alaska State Superior Court confirmed the 1979 title of RTMC.

By 1993 and 1995 BLM mineral reports confirmed that the mining claims were valid.

By 1996 BLM approved the patent to be issued for Banjo and Pass mining claims on 5/29/1996.

By 2008 and 2011 the OHA and IBLA decisions confirmed again that mining claims were valid.

By 2020 Federal District Court in Alaska ordered Secretary to issue patent effective 5/29/1996.

By 2022 Ninth Circuit Court of Appeals affirmed district court decisions and remanded only a single issue: patent could issue when Alaska State Superior Court reaffirms 1979 title of RTMC.

By 2023 Alaska State Superior Court again confirmed the 1979 title of RTMC.

By 2023 Federal District Court in Alaska order listed the documents confirming title and ordered the Secretary to “render a prompt decision on Mark Anthony’s application for patents to the Banjo and Pass claims.”

Shearer suffered a considerable legal expense to defend Banjo and Pass mining claims against the first government OHA contest and IBLA appeal and related expenses of \$87,602 and then to have the district court conduct the APA Review of the 2012 DOI actions and defend against the government appeal to the Ninth Circuit at a cost of \$310,807. The combined total spent was \$398,409. After Shearer prevailed in both the federal case and ninth circuit appeal, on September 14, 2026, Judge Holland awarded Shearer \$201,328 which was the maximum allowed attorney fees the judge could award under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412.. However given Shearer’s actual total legal costs shown above were \$398,409, Shearer therefore suffered a net loss of \$197,081 in legal fees due to the unjust NPS and DOI actions that had to be set aside over 30 years and the limited recovery provided by the EAJA.

The now 30-year delay (1996-2026) was a misuse of DOI employee time, an unreasonable waste of tax payer money, and a considerable hardship and legal expense to the owners of the mining claims that have had to defend against the government overreach shown by its inaccurate and mendacious attempts to void the mining claims and block the issuance of the patent.

Shearer requests CACFA advice and assistance in requesting that DOI Secretary Burgum now issue the patent for the Banjo and Pass lode mining claims (approved for patent by BLM on May 29, 1996) without any further delay.

Big Picture for all Owners of Alaska Mining Claims (estimated at 50,000 claims in Alaska)

Shearer's initial request to CACFA is for assistance to correct this specific injustice and request the DOI Secretary to finally issue the patent to the Banjo and Pass mining claims after the 30-year delay. However an even bigger issue for CACFA is how to avoid these government delays and costs and the harm it would cause to the owners of the remaining 50,000 mining claims in Alaska. Note: The Alaska Division of Mining Land and Water estimates the number to be 50,000 mining claims in Alaska. (See: <https://dnr.alaska.gov/mlw/mining/mpm/>)

The scale of this problem is a real concern when multiplied by the remaining 50,000 claims.

The waste of tax payer money on unjust actions (here estimated at \$1,000,000+ per claim) over the 30-year delay of productivity and unjust expense to the owners cannot be sustained by DOI or taxpayers or owners for the remaining 50,000 mining claims.

Even if DOI only took similar actions on 1% of the mining claims, that estimated cost to taxpayers (\$500 Million+) would still be unacceptable.

Even if DOI delayed routine processing by only 1-year for each mining claim (and not 30-years) that combined delay of 50,000 years of productivity would still be unacceptable.

DOI must therefore stop the unjust actions and unreasonable delays shown by the numbers above to help reduce the cost to tax-payers, improve the use and efficiency of DOI employees, and reduce the costs and delays suffered by the owners of the 50,000 mining claims in Alaska.

Comments respectfully submitted,

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