

Editor's Note: Reconsideration granted; decision vacated and decision appealed from affirmed by 159 IBLA 142 (May 27, 2003)

ULF T. TEIGEN
MONA A. TEIGEN

IBLA 98-235

Decided September 21, 2000

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting mill site patent application and cancelling first half mineral entry final certificate. CACA-28542.

Vacated and remanded.

1. Mill Sites: Dependent--Mill Sites: Patents--Mining Claims: Mill Sites

A statutory moratorium on the processing of applications for patent for a mill site claim imposed by section 314 of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-83, 111 Stat. 1543, 1591 (1997), precludes BLM from adjudicating a mineral patent application for a dependent mill site claim for the duration of the moratorium. Accordingly, a decision rejecting a mill site patent application will be vacated and the case remanded to BLM pending lifting of the moratorium.

APPEARANCES: Jean S. Klotz, Esq., Placerville, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ulf T. and Mona A. Teigen have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated March 3, 1998, rejecting their mineral patent application, CACA-28542, for the Pine View No. 1 Quartz Lode Mill Site claim, CAMC-242999. The BLM decision also cancelled the First Half Mineral Entry Final Certificate, which had been issued by the Secretary of the Interior on January 5, 1995.

The BLM decision was based on a finding that the Teigens had not complied with the applicable provision of the General Mining Law of 1872 for mill site claims:

The patenting of nonmineral lands for * * * millsites is authorized by 30 U.S.C. § 42(a) (19[94]), which provides for two classes of millsites. The first class is a dependent millsite which must be used or occupied by the proprietor of a lode mining claim for mining or milling purposes. Therefore,

a dependent millsite, such as the one at issue here, may only be patented if the mining claim to which it is appurtenant is either already patented or a patent is granted simultaneously with the millsite patent. The second class is an independent millsite which must have a quartz mill or reduction works on the land.

(Decision at 1.) The BLM decision noted that, at a meeting between Ulf Teigen and a BLM mining engineer on November 18, 1997, "it was affirmed" that the subject mill site claim was not supported by a quartz mill or reduction works and was not dependent on any lode mining claim which had been patented or filed for patent in conjunction with the mill site claim. Id. Further, BLM identified two lode mining claims, Pine View Nos. 1 and 2 Quartz Lode claims, CAMC-37464 and CAMC-37467, as claims which the appellants had indicated would be the source of ore which would be processed at the proposed mill on the mill site claim, but noted that both claims were "unpatented." Id. In these circumstances, BLM rejected the Teigens' mill site patent application and cancelled their First Half Mineral Entry Final Certificate.

In their statement of reasons (SOR) for appeal, the Teigens initially contend that BLM erred in identifying the lode mining claims on which the mill site is dependent. Appellants note that BLM has been informed that the Columbus Extension and Shamrock (CAMC-37465 and CAMC-38405), not the Pine View Nos. 1 and 2 Quartz Lode, claims are the lode mining claims on which the mill site claim is dependent. (SOR at 2-4.) Recognizing that a Congressional moratorium precludes the patenting of their mill site claim, appellants seek to have their mill site patent application held in a pending status. They represent that they had attempted to submit mineral patent applications for the two lode mining claims on October 3, 1994, and again on November 14, 1995, but had been precluded from doing so due to a moratorium on such filings, and that they intend to resubmit the applications "as soon as possible" after the moratorium is lifted. (SOR at 5-6.) Appellants assert that, but for the moratorium, it is "highly likely" that the patents for the lode mining claims would have already been issued by the time BLM adjudicated their mill site patent application in its March 1998 decision. Id. at 5. Since the filing of the mining claim patent applications had been precluded by the moratorium, appellants assert that, rather than rejecting the mill site patent application in March 1998, BLM should have delayed processing it "until such time as it can be processed simultaneously with the [mining claim] patent applications." Id. at 6.

Statutory authority governing mill site location provides that, where "nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith." 30 U.S.C. § 42(a) (1994). This is commonly referred to as a dependent or associated mill site, and requires that a patent for the associated lode mining claim, which contains the vein or lode that supports use or occupancy of the mill site, has already been issued or will be issued simultaneously with the patent for the mill site. 43 C.F.R.

§§ 3844.1, 3864.1-1(b); Pine Valley Builders, Inc., 103 IBLA 384, 387-89 (1988); Union Phosphate Co., 43 L.D. 548, 550-51 (1915); Eclipse Mill Site, 22 L.D. 496, 499 (1896).

On July 31, 1991, appellants filed their mineral patent application seeking title to 5 acres of public land, encompassed by the Pine View No. 1 Quartz Lode Mill Site claim. While it appears that appellants hold several mining claims in the immediate vicinity which would be served by the mill site, the record supports appellants' assertion on appeal that the mill site claim is dependent upon, or associated with, the Columbus Extension lode mining claim. In their October 10, 1992, letter responding to an inquiry by BLM, appellants specifically stated, referring to the mill site claim: "The Mining Claim that [we] have designated for the support of the millsite is: CAMC 37465, Columbus Extension." (Attachment No. 2 to SOR at 1.) Regardless, appellants concede that patent has not issued for the associated mining claim because of the moratorium. While the lack of patent for the mining claim would ordinarily justify BLM rejection of the mill site patent application as noted above, this case involving the moratorium raises a unique situation.

Appellants have provided evidence that they had sought to obtain a patent for the Columbus Extension lode mining claim in conjunction with their mill site claim. We note that BLM does not dispute their assertion that they prepared a 1993 mineral survey (No. 7002, which was accepted by BLM on June 23, 1994) and a certificate of title, dated September 20, 1994, for the claim, and that appellants later submitted a mineral patent application for the claim to the BLM State Office on October 3, 1994. (SOR at 5.) Nor does BLM challenge appellants' further assertion that the application was "not accepted [for filing] due to the [one-year] moratorium on processing mineral patent applications effective October 1, 1994," or that, "[b]ecause the moratorium was to end on September 30, 1995, appellants attempted to re-file their application[] on November 14, 1995," but were precluded from doing so because the moratorium had been continued. Id.

[1] The moratorium to which appellants refer was first enacted by Congress with passage, on September 30, 1994, of section 112 of the Department of the Interior and Related Agencies Appropriations Act of 1995, Pub. L. No. 103-332, 108 Stat. 2499, 2519 (1994), which precluded the expenditure of funds to accept or process applications for patent for mining or mill site claims. It was in effect for the 1995 fiscal year, from October 1, 1994, to September 30, 1995. Subsequent legislation has extended the moratorium through every succeeding fiscal year, including fiscal 1998, in which the BLM decision issued, and subsequent fiscal years. See Pub. L. No. 105-83, § 314, 111 Stat. 1591 (fiscal 1998); Pub. L. No. 105-277, § 312, 112 Stat. 2681-287 (fiscal 1999); Pub. L. No. 106-113, § 312, 113 Stat. 1501A-191 (fiscal 2000); Jesse R. Collins, 146 IBLA 56, 58 n.5 (1998). Appellants acknowledge that the consequence of the moratorium was to preclude the patenting of their "true supporting [lode mining] claim[] * * * so long as the moratorium exists," especially since BLM was not entitled to even accept, for filing purposes, their

patent application for the Columbus Extension lode mining claim during the period of the moratorium. (SOR at 6; see G. Donald Massey, 142 IBLA 243, 245-46 (1998).)

Appellants request us to remand the mineral patent application to BLM for adjudication at such time as BLM's authority to adjudicate the patent application for the associated mining claim is restored. They assert that until that occurs, adjudication of the associated mill site patent application is premature. There is a more compelling reason, however, for vacating the BLM decision in this case. The moratorium, which was in effect at the time of BLM's March 1998 decision, by virtue of enactment of section 314(a) of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-83, 111 Stat. 1543, 1591 (1997), also precluded BLM from "process[ing]" patent applications for any mill site claim. Thus the statutory moratorium extends to the adjudication of mill site patent applications as well as mining claim patent applications. Due to the statutory restrictions imposed in the relevant appropriations statute, BLM was precluded from adjudicating the mill site patent application at issue. Jesse R. Collins, 146 IBLA at 61. 1/ Accordingly, the decision appealed from is vacated and the case is remanded pending lifting of the statutory moratorium.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is vacated and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

1/ We recognize that excepted from the moratorium were mill site patent applications filed on or before Sept. 30, 1994, where the Secretary determines that "all requirements" of 30 U.S.C. § 42 (1994) were fully satisfied by that date. 111 Stat. 1591 (1997). The patent application at issue here did not fall within the exception, since BLM determined, as noted above, that appellants had, as of March 1998, failed to satisfy all of the requirements of 30 U.S.C. § 42 (1994), specifically the requirement that it be patented with an associated lode mining claim, and there is no evidence that there was compliance by Sept. 30, 1994, or at any time prior to BLM's March 1998 adjudication.