

UNITED STATES
v.
ROBERT C. BUCH

IBLA 71-287

Decided June 29, 1973

Appeal from decision by Administrative Law Judge Dean F. Ratzman, 1/ holding mill site claims null and void and rejecting patent application (R-539).

Set aside and patent application rejected.

Mining Claims: Mill Sites

A mill site patent application must be rejected where the mill site is described as a portion of an irregular lot or is described by metes and bounds, and is not accompanied by the official survey required by 30 U.S.C. § 29 (1970) and 43 CFR Part 3860.

APPEARANCES: John B. Lonergan, Esq., of Lonergan, Jordan, Gresham and Varner, San Bernardino, California, for appellant; George H. Wheatley, Esq., Office of the Regional Solicitor, United States Department of the Interior, Los Angeles, California, for the Bureau of Land Management.

OPINION BY MR. GOSS

Robert C. Buch has appealed to the Secretary of the Interior from a decision of Administrative Law Judge Dean F. Ratzman, dated April 20, 1971, which rejected his application for patent to the Shamrock No. 1 and Shamrock No. 2 mill site claims, alleged to be used in connection with patented lode claims and located as the W 1/2 and E 1/2, respectively, of lot 47, section 22, T. 10 N., R. 1 E., S.B.M., San Bernardino County, California, and declared the mill site claims null and void.

1/ The change of title of the hearing officer from "Hearing Examiner" to "Administrative Law Judge" was effected pursuant to order of the Civil Service Commission, 37 F.R. 16787 (August 19, 1972).

http://hearingsandappeals.doi.gov/

On November 26, 1969, the Bureau of Land Management, Riverside District and Land Office, filed a contest complaint against the mill site claims, charging that: (a) the Shamrock No. 1 and Shamrock No. 2 mill site claims are not now used or occupied by the proprietor of a vein or a lode for mining or milling purposes; and (b) the Shamrock No. 1 and Shamrock No. 2 mill site claims are not now used or occupied for a quartz mill or reduction works.

A hearing was held on these charges on December 9, 1970, in Los Angeles, California.

Appellant admitted the second charge of the contest complaint indicating that it was not his contention that the mill sites were now being used for a quartz mill or reduction works. The Judge held that the Shamrock No. 1 and 2 mill site claims were null and void and that the patent application should be rejected. Appellant takes exception to the Judge's holding, contending that the evidence required a finding that the land in each of the mill site claims is being used or occupied for mining purposes. In addition, however, appellant filed on June 14, 1971, concurrently with this appeal, a request for a further hearing in which he points out that he has amended the two mill site locations and recorded presumably altered boundaries described by metes and bounds. In item 5 of the request he states:

* * * that on December 11, 1970, he amended the notices of location of Shamrock No. 1 and No. 2 millsites (recorded December 17, 1970, in Book 489 of Mining Records at pages 720 and 722 in the office of the Recorder in San Bernardino County, California) to describe the claims by metes and bounds, this having been done in anticipation of the comment by the hearing examiner in his decision of April 20, 1971, and of the desire and intention of the Appellant, should the Board approve, to withdraw the entire patent application for the time being so that he may apply for and secure a mineral survey of the millsite claims as described by metes and bounds and monumented on the ground in accordance with the amended notices of location.

Apparently appellant did not inform the Judge of the change in locations, nor include any mention of the amendment in his brief and proposed findings of fact, submitted February 2, 1971.

Neither appellant's original application nor the amended locations were accompanied by surveys. In any event, the Board could not take action to approve either the mill sites application (described

as portions of an irregular lot) or the amended locations (described by metes and bounds) for no official survey of each site was furnished. 30 U.S.C. § 29 (1970); 43 CFR Part 3860. Where a mill site application is not accompanied by the required survey, it must be rejected. Cf. Lee S. Smith, 11 IBLA 137 (1973). Though the mill sites application heretofore submitted is rejected for the reasons above stated, such action is without prejudice to the appellant filing a new application or applications, together with the required survey or surveys, at such time as he has complied with the law.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the patent application is rejected.

Joseph W. Goss, Member

We concur:

Frederick Fishman, Member

Douglas E. Henriques, Member.

<http://hearingsandappeals.doi.gov/>