

Editor's note: Appealed -- dismissed, Civ.No. 1-74-41 (D.Idaho Feb. 24, 1976)

UNITED STATES
v.
NATIONAL MOTOR SERVICE CO.

IBLA 74-46

Decided February 28, 1974

Appeal from the June 25, 1973, decision of Administrative Law Judge John R. Rampton, Jr., declaring three millsite claims null and void.

Affirmed.

Mining Claims: Millsites

A vague intention to use or occupy land embraced in a millsite claim for mining or milling purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

Mining Claims: Millsites

The fact that a millsite claimant is the owner of a patented or patentable mining claim does not automatically entitle him to a millsite, and, notwithstanding the fact that the millsite may once have been patentable, where the millsite claimant does not show that the millsite is being occupied or used for mining or milling purposes at the time the claim is contested the claim is properly declared invalid.

APPEARANCES: Sylvan A. Jeppesen, Esq., Boise, Idaho, for appellant; Erol Benson, Esq., Office of the General Counsel, Department of Agriculture, for appellee.

OPINION BY MR. STUEBING

The National Motor Service Co. has appealed from the June 25, 1973, decision of Administrative Law Judge John R. Rampton, Jr., which held that the West Tahoma, Tahoma, and Nettie millsite claims were invalid since they were neither being used for mining or

milling purposes, nor was there an operable quartz mill or reduction works on any of the claims as required by the pertinent statute, 30 U.S.C. § 42 (1970).

The appellant argues that millsite claims were probably patentable at some time in the distant past, circa 1906-1908. Since the claims have not been abandoned and have been held in good faith, appellant urges that it has a "vested right" which "will ripen into patentability upon resumption of use of the millsites", and, therefore, the claims should be considered valid.

We have held many times that the requirements for a valid mining claim or millsite must be met either at the time a patent application is submitted or when the validity of the claims is contested in proceeding before this Department. See, e.g., United States v. Logomarcini, 60 I.D. 371, 373 (1949); and United States v. Houston, 66 I.D. 161, 165 (1959), both cases cited with approval in Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963); United States v. Estate of Alvis F. Denison, 76 I.D. 368 (1964); United States v. Polk, A-30859 (April 17, 1968); United States v. Wedertz, 71 I.D. 368, 373 (1964); and United States v. Werry, 14 IBLA 242, 81 I.D. (1974).

The decision appealed from is a concise and accurate statement of the case and its proper disposition. In sum, past use of millsites is not sufficient to sustain their validity for many years after the use has ceased, nor is an intention to resume activity on the sites at some time in the future. The mere presence of dilapidated physical improvements on the sites does not constitute present occupancy for "mining and milling purposes" within the context of the statute.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge John R. Rampton, Jr., (attached) is hereby adopted by this Board and affirmed.

Edward W. Stuebing, Member

We concur:

Joseph W. Goss, Member

Joan B. Thompson, Member

June 25, 1973

DECISION

UNITED STATES OF AMERICA,	:	IDAHO 4708
	:	
Contestant	:	Involving the West Tahoma,
	:	Tahoma and Nettie Mill Site
v.	:	Claims, situated in Elmore
	:	County, Idaho
NATIONAL MOTOR SERVICE CO.,	:	
Successor to	:	
GARY K. LOYD,	:	
	:	
Contestee	:	

Statement of the Case

The Bureau of Land Management, Department of the Interior, issued a complaint on behalf of the Forest Service, Department of Agriculture, pursuant to 43 CFR, Part 4, attacking the validity of the subject mill sites. The complaint, in paragraph 5, charged that:

1. The mill sites are not being used or occupied by the proprietor of a vein lode or placer for mining, milling, processing or beneficiation purposes or other operations in connection with such mines.

2. The mill sites have no operable quartz reduction mill or reduction works thereon.
3. The claims are not held in good faith for bona fide milling purposes.

A hearing on the complaint was held at Boise, Idaho, on October 3, 1972. The contestant was represented by Mr. Erol R. Benson, Office of the General Counsel, Department of Agriculture, Ogden, Utah. Mr. John Tompany, the President of National Motor Service Company, appeared on its behalf without representation.

Findings of Fact

The essential facts are not in dispute. The mill sites were located on August 20, 1904. They are situated in the Atlanta Ranger District, Boise National Forest, Idaho, near the community of Atlanta and the Middle Fork Boise River. The mill sites were located in conjunction with the Nettie, Tahoma and West Tahoma patented lode mining claims. In some years past, possibly around 1906 through 1908, ore was removed from the mining claims and processed at the subject mill sites. Through these dates there were an operating ten stamp mill and two cabins on the mill sites. However, at the time of the hearing, the only improvements found were the rotting, unusable and unrepairable remains of the stamp mill and two cabins. Testimony is unavailable as to when production from the patented claims ceased and when the mill on the mill sites no longer became operable.

Two witnesses, residents of Atlanta, Idaho, since 1931, testified that there has been no activity on the mill sites since they first moved into the area. One of these, Mr. Earl Moosman, took a lease on the Tahoma mine in 1949 and attempted to operate it but was unable to make it pay. Several thousand tons of ore were removed from the Tahoma mine by Mr. Moosman, but the ore was milled at the Telache mill about a mile above Atlanta.

The contestee is the present owner of the three patented lode mining claims and the mill sites now being challenged.

Mr. Tompany, the President of National Motor Service Co., testified that it is the intention of the company to reopen the mine on the lode claims but that nothing can be done until the question of the validity of the mill sites is settled. The mill sites have never been abandoned, but due to the price of gold for the past fifteen or twenty years it has not been economically feasible to remove ore from the patented claims. However, because of new methods in mining and the increased price of gold, it is now the company's intention to begin operations on the mining claims again. No work is presently being done on the lode claims and the two main tunnels from which ore has been removed in the past are caved. The value and extent of ore on the lode claims are unknown.

The contestee offered no evidence as to immediate or future plans for mining on the lode claims or as to what use would be made of the mill sites. In the absence of formulated plans and procedures for mining and milling of known ore from the patented claims, the intent of the contestant is then merely hopeful speculation.

The Law

Section 42, Title 30, United States Code, provides:

- (a) Where nonmineral lands 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, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; . . .
- (b) Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a

patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers

. . . .

Two classes of mill sites are set forth in the statute. The validity of the first class, a claim-related mill site, is dependent upon use of the land for mining and milling purposes. The contemplated use or occupancy required by the statute was discussed in Alaska Copper Company, 32 I.D. 128 (1903). There the Department stated (page 131):

. . . A mill site is required to be used or occupied distinctly and explicitly for mining or milling purposes in connection with the lode claim with which it is associated. This express requirement plainly contemplates a function or utility intimately associated with the removal, handling, or treatment of the ore from vein or lode. Some step in or directly connected with the process of mining or some feature of milling must be performed upon, or some recognized agency of operative mining or milling must occupy the mill site at the time patent thereto is applied for to come within the purview of the statute

It has been held that anticipated speculative future need does not serve to validate a mill site. In United States v. Langmade and Mistler, 52 L.D. 700 (1929), it was held that ". . . mere intention or purpose on a certain contingency of performing acts of use or occupation" thereon will not satisfy the law. In United States v. S.M.P. Mining Company, 67 I.D. 141 (1960), the Department stated (pages 143, 144):

The only evidence offered by the appellant to substantiate the validity of its claim

or statements made at the hearing to the effect that the millsite claim will be used in connection with a mill to be erected on the Independence Mill Site for storage of tailings and residue from the mill when ore is removed from nearby claims. Thus, all of the testimony refers solely to prospective use of the tract. But the facts are that the plan to which the appellant refers has never been acted upon, and . . . [t]his is not enough to satisfy the statute.

Conclusions of Law

Allegation No. 3 in paragraph 5 of the complaint is dismissed. The attorney for the contestant stated (Tr. 46) "I am going to stipulate at this time that we failed to prove that charge, and I don't think we have proved it, and I really don't have any doubt as to the good faith of these gentlemen at this time."

Although the mill sites may once have been patentable because they were being used for mining and milling purposes, they have not been used for many years. Mere possession with the stated intention of performing acts of use on the contingency of certain happenings is not sufficient to satisfy the statute. Allegations 1 and 2 of paragraph 5 of the complaint have been sustained and, therefore, the West Tahoma, Tahoma and Nettie Mill Site claims are null and void.

John R. Rampton, Jr.
Administrative Law Judge

