

ROBERT P. STARRITT (ON RECONSIDERATION)

IBLA 73-98

Decided August 16, 1976

Petition for reconsideration of Robert P. Starritt, 14 IBLA 270 (1974), which affirmed the California State Office, Bureau of Land Management, decision rejecting Indian allotment application (S 4384) and granting Mining Claims Occupancy Act application (S 1184).

Petition granted; decision set aside in part and case remanded.

1. Mining Occupancy Act: Acreage to be Conveyed -- Rules of Practice:  
Appeals: Reconsideration

Where an offer of land under the Mining Claims Occupancy Act may include land within a right-of-way being condemned for a state highway, and where such evidence was not before the Board when it considered the appeal, a petition for reconsideration may be granted.

APPEARANCES: Abby Abinanti, Esq., California Indian Legal Services, Eureka, California, for petitioners.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Robert P. and Ramona M. Starritt have petitioned the Board for reconsideration of its decision dated January 30, 1974, entitled Robert P. Starritt, 14 IBLA 270 (1974). The Board's decision affirmed the decision of the California State Office, Bureau of Land Management (BLM), dated August 4, 1972, which rejected appellant's Indian allotment application and granted his application to purchase under the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970). Ramona Starritt was not a party to the proceedings prior to the Board decision.

The Board's decision specified appellant be allowed 30 days after notice from the State Office in which to forward \$ 25 to the

State Office as payment for the lands offered under the Mining Claims Occupancy Act. Because of illness, extensions of time were granted. Appellant then submitted payment conditional upon his right to appeal. By a letter dated November 15, 1974, the Bureau informed appellant that a patent would not be issued until he accepted the offer of the lands as described. The Bureau allowed appellant 15 days from receipt of the letter to accept the offer, without which the case would be closed.

On December 2, 1974, the California Legal Services, on behalf of petitioners, filed a document in which it attempted to appeal the August 4, 1972, decision of the State Office. The State Office properly construed the new appeal as referring to the Board's 1974 decision, and on December 18, 1974, the State Office dismissed the new appeal. The decision noted the regulations provide that reconsideration of a decision may be granted by the Board if sufficient reason therefor appears. <sup>1/</sup> The State Office allowed petitioner 30 days from the date of receipt of this decision to file a motion for reconsideration.

On January 22, 1975, the petition for reconsideration now before us was filed. The following grounds for the petition were listed:

- (1) It is not certain that all of the lands granted are located within the mining claim.
- (2) It is not certain that all of the lands granted are owned by the United States.
- (3) The physical size of the lands granted are too little in light of the facts and amount to an abuse of administrative discretion, and an arbitrary and capricious administrative selection decision.
- (4) The granted lands were located in such a way as to allow no natural access to said lands and no right-of-way has been otherwise provided.
- (5) The granted lands were located in such a way that they do not include the former water supply system to the original mining claim and no such access to water has been otherwise provided.

Petitioners' arguments in the earlier appeal were directed against the denial of the allotment application and not against the grant of relief under the Mining Occupancy Act. The Board's decision affirmed both actions of the State Office.

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<sup>1/</sup> The decision cited 43 CFR 4.125, which pertains to Contract Appeals, rather than section 4.21(c) which governs this Board

[1] The petition for reconsideration is directed against the extent of relief granted under the Mining Claims Occupancy Act, and most of petitioner's arguments should have been raised on appeal. While the failure to raise arguments on appeal does not fall within the category of extraordinary circumstances which provide sufficient reason for granting a petition for reconsideration under 43 CFR 4.21(c), we note that in a letter to the State Office dated October 3, 1974, appellant's attorney expressed concern as to whether the property proposed to be deeded would in fact be a portion of the right-of-way being condemned by the State of California. The Bureau responded on October 21 that the Branch of Cadastral Surveys reports "portions of the lands we are proposing to convey \* \* \* will fall within the State's highway right-of-way. However, [personnel of the Branch of Cadastral Surveys] cannot be sure without a survey tie." Reconsideration is appropriate under these unusual circumstances. Upon consideration of all facts alleged, the Bureau may decide that it is feasible to modify its offer after obtaining the consent of the Forest Service and Federal Power Commission, or to convey other lands, pursuant to 30 U.S.C. § 704 (1970).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted; the decision of the Board is reaffirmed as to rejection of the Indian allotment application, and set aside with respect to the application under the Mining Claims Occupancy Act, and the case is remanded for appropriate action.

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Joseph W. Goss  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Martin Ritvo  
Administrative Judge

