

SILVER PEAK TOWNSITE, TRUSTEE

IBLA 77-96

Decided June 10, 1977

Appeal from decision of Nevada State Office rejecting townsite application as to unpatented parcel. N-370.

Dismissed.

1. Federal Land Policy and Management Act -- Townsites -- Rules of Practice: Appeals: Dismissal

An appeal to the Board of Land Appeals will be dismissed where the enactment of the Federal Land Policy and Management Act renders moot the questions on appeal.

APPEARANCES: Peter L. Knight, Esq., Knight and Demetras, Tonopah, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This is an appeal from a decision dated November 23, 1976, of the Nevada State Office, Bureau of Land Management (BLM), rejecting a portion of a 1966 townsite application.

On June 25, 1969, Patent No. 27-69-0178 issued to Judge Kenneth R. Mann as trustee for the townsite of Silver Peak, Nevada. This patent included all of the lands requested except 5 acres described as the NE 1/4 NE 1/4 SW 1/4 NE 1/4 and SE 1/4 SE 1/4 NW 1/4 NE 1/4, sec. 22, T. 2 S., R. 39 E., MD Mer., Nevada.

The unpatented parcel was withdrawn from entry, location or other disposal pursuant to an application filed by Nevada-California Electric Corporation on August 30, 1937. The parcel is subject to transmission line rights-of-way granted to Southern California Edison Company and its successors or assigns by the Federal Power Commission (FPC) (Project No. 1395).

In its decision rejecting the application as to the parcel in question, the BLM pointed out that the FPC had not consented to the disposal of the property, that the Federal Land Policy and Management Act of 1976 (FLPMA) 1/ repealed the townsite laws (Revised Statutes 2387, 2388 and 2389, inter alia), and that therefore the BLM was without authority to convey property thereunder.

In its statement of reasons, appellant asserts that the property has long been occupied, that the occupants intend to seek the consent of the FPC, and that the sale authority in FLPMA might be applied to the case.

[1] The enactment of FLPMA, which repealed the townsite laws, renders moot the question of disposition of the property at issue. Gibbonsville Townsite, 30 IBLA 74 (1977). Accordingly, the appeal should be dismissed without prejudice to consideration of a new application filed pursuant to the appropriate provisions of FLPMA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Martin Ritvo
Administrative Judge

1/ Enacted October 21, 1976.

