

UNITED STATES

v.

RAY PADEN

IBLA 79-512

Decided December 19, 1979

Appeal from a Supplemental Decision of Administrative Law Judge Dean F. Ratzman declaring null and void the Confidence Custom Mill Site Claim No. 3 and the adjoining unnamed millsite.

Affirmed.

1. Millsites: Determination of Validity -- Millsites: Independent --  
Mining Claims: Millsites

Three classes of millsites are authorized by 30 U.S.C. § 42 (1976): (1) those occupied by the proprietor of a vein or lode for mining and milling purposes; (2) those that have thereon quartz mills or reduction works; and (3) those that are used by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim.

The validity of an independent millsite claim, *i.e.*, one not located ancillary to a valid mining claim, depends upon three factors: (1) the claim must be used in good faith for a mining or milling purpose; (2) it must contain a quartz mill or reduction works on the premises for processing mineral material from a vein or lode; and (3) it must be operated in an on-going and more or less continuous manner for custom work. Where a quartz mill or reduction works is operated sporadically only as a "spare time" enterprise, the millsite is properly declared invalid.

APPEARANCES: Stephen P. Shadle, Esq., Westover, Choules, Shadle & Bowen, P.C., Yuma, Arizona, for appellant; Fritz L. Goreham, Esq., Office of the Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for appellee.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This Board in United States v. Ray Paden, 33 IBLA 380 (1978), affirmed a decision dated January 29, 1976, by Administrative Law Judge Dean F. Ratzman insofar as it declared certain millsite claims of Paden, known variously as Confidence Custom Nos. 1 and 2 and Coronado Custom Nos. 1 and 2, to be invalid. <sup>1/</sup> As the Judge deferred his final decision of the validity of the remaining 7-1/2 acres of millsite claims, the Board remanded the case for his further consideration of any supplemental evidence concerning operations on the millsites, such evidence to be submitted by March 1, 1978.

By order of March 12, 1979, Judge Ratzman directed Paden to submit any evidence, including records and receipts, that would confirm the economic viability of the 7-1/2 acres embraced in the Confidence Custom No. 3 millsite and the adjoining unnamed millsite. The claimant was admonished of his obligation to bring the mill up to true and demonstrable economic feasibility. In a letter dated March 26, 1979, responsive to the order, Paden stated:

We built large vats and relocated our leach ponds on higher ground to prevent flash flood damage.

We had to discontinue operations thru the winter. The winter was very cold and more rain than usual. The temperature for good recovery has to be between 60 degrees and 70 degrees in the solution. We could not keep that temperature without being in a building.

I'm 65 years of age and can't see my way clear financially to put more money into this venture till some type of decision is made.

I am still foreman for Desert Materials at their gravel pit and hot plant operation. I can't retire for quite a while. I don't have enough bonus built up in the union pension bank.

I intend to do more processing as finances permit if I remain on the mill site.

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<sup>1/</sup> These claims comprise 15 acres in sec. 19, T. 4 N., R. 21 W., Gila and Salt River meridian, Arizona.

Thereafter, by supplemental decision dated June 25, 1979, Judge Ratzman stated:

Pursuant to my Order dated March 12, 1979, directing the parties in this contest to submit additional evidence relating to the validity, or lack thereof, of the Confidence Custom Mill Site Claim No. 3 (relocated) and the adjacent 2 1/2 acre millsite, this matter now stands ready for final determination. Neither party has submitted any additional business records or receipts concerning the millsite claims. By my decision in this contest, dated January 29, 1976 [affirmed by the Board of Land Appeals in United States v. Ray Paden, 33 IBLA 380 (1978)], I deferred ruling on the remaining millsite claims and stated that the contestee has the "obligation to bring the mill up to true and demonstrable economic feasibility." The time allowed to the contestee has passed and he has failed to present any meaningful evidence to demonstrate economic viability of the remaining millsites. The submission which he has made contains a renewed avowal of good faith, and a description of changes in equipment which he has installed.

The contestee has failed to overcome the Government's prima facie case that the mill sites have not been used for millsite purposes, that there is no demand for a mill at the site selected by the contestee and that the milling equipment installed is of an impractical design.

The contestee has submitted several letters and documents discussing the potential efficacy of the milling operation. However, these documents do not set forth information to demonstrate that the contestee has been processing ore at a profit. The documents address themselves to events that may occur in the future, or describe attempts by the contestee to bring the mill up to the point where it could operate as a commercial plant. Only inconsequential amounts of ore have been allegedly processed. There is no indication that any money was received for such processing. There simply is no evidence that would support a determination in favor of the validity of these millsites.

Accordingly, the Confidence Custom Mill Site Claim No. 3 and the adjacent 2 1/2 acre millsite are declared null and void.

On appeal, it is argued that the Judge overlooked the tests for millsites set out in United States v. Swanson, 14 IBLA 158, 81 I.D. 14 (1974). Appellant further charges that the Judge is inventing new law in his finding that there is no demand for a mill at the site of these claims and that the milling equipment installed at the site is of impractical design. He argues that profitability of a millsite operation is not required by law and suggests that the motive behind the contest arises from the fact that he has lived on the millsite claims for many years.

We feel that appellant has misconstrued United States v. Swanson, supra. In Swanson, the record disclosed the presence of an operating mill and ancillary facilities on the seven millsite claims at issue. The Board held that Swanson had demonstrated good faith in use and occupancy of the millsites for mining and milling purposes, but it was not shown that all of the land included within the millsites was necessary to the operation. The Government had charged that the millsites were not laid out in as regular a form as reasonably practical. The Board held that efficient usage of land is clearly evidenced in Departmental precedents, so that only a minimum amount of land to satisfy the actual need for millsites may be taken. The Board called upon both Swanson and the Forest Service to recommend how the millsites should be amended to comply with this statutory requirement.

Subsequently, the Forest Service submitted a recommendation, but Swanson made no reply. Thereafter, in a supplemental decision, United States v. Swanson, 34 IBLA 25 (1978), this Board declared four of the original seven millsites to be invalid in their entirety and the remaining three millsites to be invalid as to the south 620 feet of each. A later motion by Swanson to amend the supplemental decision was denied.

We do not recognize that the Administrative Law Judge has ignored any part of Swanson.

Appellant has questioned the Judge's holding that a millsite operation must be profitable. The provisions of the mining laws as they relate to millsites were discussed at length in United States v. Paden, supra. Therein we said at 383:

There are three classes of millsites that may be located: (1) those occupied by the proprietor of a vein or lode for mining and milling purposes; (2) those that have thereon quartz mills or reduction works; and (3) those that are used by the proprietor of a placer claim for mining, milling, processing, beneficiation or other operations in connection with such claim. 30 U.S.C. § 42.

We held that Paden had not demonstrated that he was the owner of any valid mining claims, either lode or placer, so the viability of the millsite claims for which the Judge deferred his ruling depends solely upon the presence of a functional quartz mill or reduction works suitable for custom milling of ores produced from lode claims. Id. at 383.

Case law relating to independent millsite claims not located ancillary to a valid mining claim is almost nonexistent. Accordingly, we treat the present appeal as a case of first impression.

It is apparently undisputed that appellant has installed some equipment on the 7-1/2 acres in issue and that he has processed occasional lots of ore from undisclosed locations. The question to be decided is whether sporadic use of the milling equipment satisfies the intent of the mining law. How much and what kind of use entitles a claimant to the Government's gratuity of a millsite on public land? It appears to be well settled that use in good faith for any mining or milling purpose is necessary. Further, there must be a quartz mill or reduction works on the premises for processing mineral material from a vein or lode. Paden, supra. Coupled with good faith and the existence of an operable mill or reduction works, we think there must also be evidence of an on-going and more or less continuous operation for custom work. We think the record is clear that appellant has not demonstrated more than sporadic or occasional days of operation of his mill. This meager use does not satisfy the requirement of law. Indeed, operations on the millsite are, at best, a "spare time" enterprise of appellant, apart from his gainful, full-time employment as foreman at the Desert Materials gravel pit and hot plant.

It is our opinion that Congress did not intend its grant of public land for millsite purposes to be utilized other than by ongoing operations ancillary to valid mining claims or in connection with a custom mill in continuous operation to satisfy a present demand for milling services. As appellant has not shown that he has valid claims for which the millsite is ancillary or that there is a present continuing demand for a custom mill, we must hold that appellant is not entitled to retain possession of the public lands under the guise of a millsite.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Administrative Law Judge is affirmed, and the millsites are declared to be invalid.

Douglas E. Henriques  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

James L. Burski  
Administrative Judge

