

UNITED STATES  
v.  
LYLE E. AND DIANE CAMPBELL

IBLA 81-731

Decided October 29, 1981

Appeal from decision of Administrative Law Judge E. Kendall Clarke declaring millsite claim invalid. N-24286E.

Affirmed.

1. Millsites: Determination of Validity

Where a millsite is located in conjunction with certain mining claims which are not producing, and the millsite has never been used or improved for any purpose associated with mining, the mere presence of water on the millsite which could be used for mining or milling in the event such activities should transpire is not sufficient to support a finding that the millsite claim is valid.

2. 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.

APPEARANCES: Richard A. Wagner, Esq., Lovelock, Nevada, for contestees; Burton Stanley, Sacramento, California, for contestant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lyle E. and Diane Campbell have appealed the May 11, 1981, decision of Administrative Law Judge E. Kendall Clarke declaring the L and

D millsite (N-2426E), which is located in Pershing County, Nevada, null and void because the millsite claimants did not present sufficient evidence of a material nature to show that they have more than a vague intention of using the millsite in the future and because an application for water rights on the mining claim is not a sufficient indicium of a good faith intention to use the mining site claim for mining or milling purposes.

The Nevada State Office, Bureau of Land Management (BLM), instituted contest No. N-24286E through the filing of a complaint dated March 24, 1980. The complaint alleged that the land involved was not being used or occupied for mining or milling purposes and that it does not contain a quartz mill or reduction works.

Contestees denied the charges and on April 28, 1981, a hearing was held before Judge Clarke in Reno, Nevada.

[1, 2] We have thoroughly reviewed the record of this case and the arguments advanced by the parties. Judge Clarke's decision, issued on May 11, 1981, set out a full summary of the testimony, the relevant evidence, and applicable law. We agree with the Judge's findings and conclusions and adopt his decision as the decision of the Board. A copy of the Judge's decision is attached as Appendix A.

In their statement of reasons on appeal to this Board contestees contend that BLM, itself, has prevented them from properly establishing a millsite, by protesting the contestee's application for water rights before the Office of the Nevada State Engineer; that the contestees were, indeed, in the process of seeking to purchase certain mill equipment, but that it is totally unreasonable for BLM to expect that anyone would go to the expenses of establishing a mill without first having obtained the water rights; and that the contestees have complied with Chapter 517 of the Nevada Revised Statutes as well as the rules and regulations of the United States Department of the Interior for the proper filing of the millsite claim, and the issue of intention to hold the millsite is not a question of whether an actual mill is built upon the property. Finally, contestees contend that contestant lacks jurisdiction over the subject property under the United States Constitution, Article I, Section 8 and Amendments IX and X to the Constitution.

These arguments are the same as those presented to Judge Clarke prior to his May 11 decision and reveal no error therein. We find that the decision fully responds to these arguments and further discussion is therefore unnecessary. However, we deem it noteworthy that the millsite was located by the claimants some 13 years prior to the hearing and no use or improvement had ever been made for any purpose associated with mining.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we affirm the decision of the Administrative Law Judge and adopt it as our own.

Edward W. Stuebing  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

James L. Burski  
Administrative Judge  
ATTACHMENTS:

May 11, 1981

United States of America, : Contest No. N-24286E  
:  
Contestant : Involving  
:  
v. : L and D Millsite :  
Lyle E. Campbell and Diane Campbell, :  
:  
Contestees :

DECISION

Appearances: Richard A. Wagner, Attorney Lovelock, Nevada for the Contestees

Burton Stanley, Attorney Office of the Regional Solicitor  
U.S. Department of the Interior Sacramento, California for the  
Contestant

Before: Administrative Law Judge Clarke

This contest was initiated by the Bureau of Land Management through the filing of a Complaint dated March 24, 1980. The Complaint alleged in paragraph 5 that (1) the land involved is not being used or occupied for mining or milling purposes and (2) the land involved does not contain a quartz mill or reduction works.

A timely Answer was filed on behalf of the millsite claimants. The Answer sets forth several affirmative defenses which generally relate to the jurisdiction of the Department of the Interior over the land here in question. None of these defenses have any merit. The public records of the Bureau of Land Management, as demonstrated by Exhibit 4, a status plat, shows the land upon which the millsite is located to be public land of the United States of America. It has been held repeatedly that the United States Department of the Interior has plenary authority over the public lands and so long as legal title remains in the

Government, it has power, after proper notice and upon adequate hearing, to determine whether a mining claim (or a millsite) is valid. Best v. Humboldt Placer Mining Co., 371 U.S. 334, 83 S.Ct. 379 (1973); Cameron v. United States, 252 U.S. 450, 40 S.Ct. 410 (1920).

A locator of a mining claim (or millsite) on the public domain has taken only the initial step in seeking to secure a gratuity from the Government and obtains no rights against the United States until there has been a discovery of a valuable mineral deposit within the limits of the claim, or in the case of a millsite or other entry under the public lands of the United States, there has been compliance with the statutory requirements. United States v. Rodgers, 32 IBLA 77, 87 (1977); Multiple Use, Inc. v. Morton 353 F. Supp. 184, 189 (1972) aff'd 504 F.2d 448 (9th Cir. 1974). Affirmative defenses one through four are dismissed.

Testimony was presented by Reb Bennett, a geologist employed by the Bureau of Land Management and by the claimants, Lyle E. Campbell and Diane Campbell. The facts of this case are clear and there was no substantial or material disagreement in the testimony of the three witnesses. The testimony shows that the L and D Millsite is located on public land 30 miles west of Lovelock, Nevada in the northeast quarter of section 12, T. 30 N., R. 29 E., of the Mt. Diablo Meridian, Nevada. The land encompassed by this millsite location is totally without improvement except for a well, a windmill and trough which are improvements placed on the land by the Bureau of Land Management for stock watering purposes prior to the location of the millsite. The L and D millsite was located in May of 1978, by the present claimants, Lyle E. Campbell and Diane Campbell. The testimony by the mining claimants showed that this millsite was located to be used in connection with the Little Dude lode mining claim group which claims are located approximately seven miles from the L and D Millsite. The mining claimants both testified that it is their intention to place a mill on the millsite to process tungsten ore from the Little Dude group of claims and that the reason for the location of the millsite was because water was available at that spot. Water is necessary for their purposed mining and milling operation. They also expressed their desire to have water for domestic purposes since they contemplated living on the millsite in order to protect their milling operation once it is placed on the claim.

Where a millsite claim is not being used for mining or milling in connection with mining claims owned by the owner of the millsite and at the time of the contest if there is no quartz mill or reduction works on the site the millsite

must be declared null and void. United States v. Dietemann, 26 IBLA 356 (1976); United States v. Almgren, 17 IBLA 295 (1974); United States v. Wayne E. Highley, 30 IBLA 21 (1977).

With respect to the subject millsite, the owners have declared it to be their intention to use the site to mill ore from a group of mining claims located for tungsten that are within seven miles of the millsite location. These claims also located in 1978 had previously been explored in the 1950s. Since the mining claimants have relocated the claims they have conducted some exploratory work by trenching with a bulldozer. They asserted that they have uncovered mineralization. As yet there has been no indication of mining having taken place. No material has been stockpiled. There was no testimony to indicate that a contract had been entered into for purchase of a mill and no evidence was offered to show the extent of mineralization on the lode claims. In other words ore apparently has not been blocked out which could be shown as sufficient to justify the expenditures for a mill. The only thing which can be said to show some possible intention of future use was the application for water rights to the State of Nevada. This application was opposed by the Bureau of Land Management. In the case of Charles Lennig 5 LD 190 (1886), the Secretary of the Department of the Interior stated: "I am also of opinion that "occupation" for mining and milling purposes, so far as it may be distinguished from "use," is something more than mere naked possession, and that it must be evidenced by outward and visible signs of the applicant's good faith. The manifest purpose of Congress was to grant an additional tract to a person who required or expected to require it for use in connection with his lode; that is, to one who needed more land for working his lode or reducing the ores than custom or law gave him with it. Therefore, when an applicant is not actually using the land, he must show such an occupation, by improvements or otherwise, as evidences an intended use of the tract in good faith for mining or milling purposes."

In the recent case of United States v. Emmett Harden, 42 IBLA 206, 209 (1979) the Interior Board of Land Appeals has said: ". . . the mere presence of water on the millsite which could be used for mining or milling in the event such activities should transpire is not sufficient to support a finding that the millsite claim is valid." United States v. Highley, 30 IBLA 21 (1977). It is well established that after the Government has made a prima facie case such as they have done here of invalidity in a contest under the mining law the claimant must assume the burden of going

forward with sufficient evidence to show by a preponderance of the evidence that his location is valid. United States v. Dietemann, 26 IBLA 356 (1976) and United States v. Rav Paden, 33 IBLA 380.

It cannot be said here that the millsite claimants have presented sufficient evidence of a material nature to show that they have more than a vague intention of using the millsite in the future. I do not find that an application for water rights on the mining claim to be sufficient indicia of a good faith intention to use the mining site claim for mining or milling purposes and therefore I hereby declare the L and D Millsite to be null and void.

E. Kendall Clarke  
Administrative Law Judge

### **Appeal Information**

An appeal from this decision may be taken to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (revised as of October, 1978). Special rules applicable to public land hearings and appeals are contained in Subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) in order to facilitate transmittal of the case file to the Board. If the procedures set forth in the regulations are not followed, an appeal is subject to dismissal. The adverse party to be served with a copy of the notice of appeal and other documents is the attorney for the Contestant whose name and address appear below.

Enclosure: Additional information concerning appeals.

Distribution:

Richard A. Wagner, Esq., P.O. Box 299, Lovelock, Nevada 89419 (Cert.)  
Regional Solicitor, U.S. Dept. of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825 (Cert.)  
Lyle E. & Diane Campbell, P.O. Box 598, Lovelock, Nevada 89411

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