

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting patent applications for millsites. N-38900, N-38901, and N-38902.

Affirmed.

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

Where a millsite claim is located in conjunction with placer mining claims, an applicant for mineral patent must show the millsite claim is located on non-mineral land and is used or occupied for mining operations. 30 U.S.C. | 42(b).

APPEARANCES: Patrick J. Hughes, Secretary, Pine Valley Builders, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Pine Valley Builders, Inc., appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 27, 1985, rejecting mineral patent applications for the Nitty Gritty (N-38900), Obyt (N-38901), and Delta (N-38902) millsite claims. The State Office held that the patent applications must be rejected because the millsites were not among the classes of millsites authorized by 30 U.S.C. | 42 (1982).

In its application for patent for the Nitty Gritty millsite, appellant gave the following information: the claim contains 5 acres and was located on October 21, 1983, in sec. 10, T. 6 N., R. 50 E., Mount Diablo Meridian, Nye County, Nevada; the millsite is located over a portion of the Obyt #12 placer mining claim and that portion of the Obyt #12 placer mining claim is nonmineral in character; title to the Obyt #12 is held by the appellant; and appellant has installed improvements on the millsite including a 40 by 60 foot metal Butler building, a trammel with feed and discharge conveyors, holding reservoirs, and other general improvements. In response to a request from BLM for additional information regarding the location of the millsite because of a possible conflict with the Obyt #12 placer mining claim, appellant specified that the Nitty Gritty millsite is located in S\ SE^ NW^ NW^ sec. 10, T. 6 N., R. 50 E., Mount Diablo Meridian, Nevada.

In its patent application for the Obyt millsite, appellant supplied this information: the claim contains 5 acres and was located on October 21, 1983, in N\NE^ SW^ NW^ sec. 10, T. 6 N., R. 50 E., Mount Diablo Meridian, Nye County, Nevada; the millsite is located over a portion of the Obyt #12 placer mining claim and that portion of the Obyt #12 placer mining claim is nonmineral in character; title to the Obyt #12 placer mining claim is held by appellant; appellant has installed on this millsite underground utility lines consisting of water, sewer, and electric lines, and five trailer space hook-ups; appellant has built a dyke and reservoir for flood control and installed a 261-foot well with a 5,000 gallon storage tank; and a final use water permit was granted by the Nevada Division of Water Resources to Obyt Mining Corporation which is owned by appellant.

BLM requested additional information regarding the location of the Obyt millsite because of a possible conflict with the Obyt #12 placer mining claim. Appellant responded by giving the same land description as in its patent application.

In the application for patent for the Delta millsite, appellant stated that: the claim contains 5 acres and was located on October 21, 1983, in the SW^ SW^ NE^ NW^, NW^ NW^ SE^ NW^ sec. 10, T. 6 N., R. 50 E., Mount Diablo Meridian, Nye County, Nevada; the claim is located over a portion of the Obyt #12 placer mining claim and that this portion of the Obyt #12 placer mining claim is nonmineral in character; title to the Obyt #12 placer mining claim is held by appellant; appellant has installed on this millsite two trailer space hook-ups with underground utility lines consisting of water, sewer, and electric lines, and a septic disposal tank for use from all trailer hook-ups including those on the Obyt millsite; and appellant has made other general improvements in the millsite area.

BLM also requested additional information regarding the location of this millsite because of possible conflict with the Obyt #12 placer mining claim. Appellant again responded by giving the same land description as in its patent application. In a letter to BLM dated October 27, 1983, which accompanied the three millsite applications, appellant stated that the "millsites are all in connection with placer claims."

On February 12, 1985, BLM issued a decision allowing the entries. The decision stated: "Inasmuch as you have submitted the required proofs and paid the purchase price required by law and regulation, we have issued final certificates dated February 12, 1985 covering NITTY GRITTY MILLSITE, OBYT MILLSITE and DELTA MILLSITE claims." This decision was received by appellant on February 19, 1985.

On February 20, 1985, Reb Bennett, BLM geologist, made a reconnaissance inspection of the 3 millsites accompanied by Patrick J. Hughes, Secretary of Pine Valley Builders, Inc. In his memorandum of April 19, 1985, included in the case files, Bennett explained the types of millsites allowed under 30 U.S.C. |42 (1982), and stated that a millsite appurtenant to a mining claim can only be patented simultaneously with the mining claim to which

it is incident, unless the mining claim has already been patented. In the latter case, he added, the millsite could be the subject of an independent patent application, as is also the case with a millsite where either a quartz mill or reduction works is located.

Bennett's report recites that during his inspection he did not see any quartz mill or reduction works on the claims. According to his report, he asked Hughes if appellant owned any patented claims to which the millsites were connected. Hughes responded that appellant owned no patented mining claims and that the millsites were connected with unpatented placer claims.

Bennett concluded as follows:

Based upon my conversation with Mr. Hughes and the documents in the case files, I believe that the Final Certificates for these claims should be cancelled and the patent applications rejected. I would suggest that this be done by a decision holding the Final Certificates for cancellation and patent applications for rejection if they cannot show that the mill sites are connected to a patented claim or that the applications are based upon a quartz mill or reduction works being on the claims. Until the applications have been perfected, I believe it would be premature to conduct further field examinations.

Regarding the quartz mill or reduction works, I suggest the applicants be given a courtesy copy of a decision, for example, Pacific Portland Cement Company 51 L.D. 459, (1926), so that they may ascertain for themselves if they can meet the requirements for an independent mill site. What they now have on the claims clearly in my opinion does not qualify. This is a question of fact, however, that would have to be determined in a hearing.

(Geologist's Report dated April 19, 1985, at 2).

Apparently acting in reliance on Bennett's memorandum, BLM issued its decision on June 27, 1985, rejecting the patent applications for the following reasons:

Three classes of mill sites are authorized by Section 2337 of the Revised Statutes, 30 U.S.C. | 42 (1982): (1) Those used or occupied by the proprietor of a vein or lode for mining or milling purposes; (2) Those that have an independent quartz mill or reduction works thereon; and (3) Those that are used or occupied by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim.

The first and third types of mill sites have an integral relationship to the lode or placer claim to which they are appurtenant. This relationship prevents the patenting of the mill

site prior to patenting of the lode or placer claim. Therefore, an appurtenant millsite can only be patented simultaneously * * * with the claim it is incident to, unless the claim has already been patented (Reference: Union Phosphate Company, 43 L.D. 548 (1915)). Other than these two classes, a millsite cannot be patented separately unless the mill site has an independent quartz mill or reduction works thereon (Reference: Pacific Portland Cement Company, 51 L.D. 459 (1926)). * * *

Your three mineral patent applications do not indicate that an independent quartz mill or reduction works has been erected on each of the mill site claims. It was stated in the three applications that the mill sites were connected with unpatented placer claims Obyt #11, Obyt #12, Obyt #13 and South Shore #1 owned by Pine Valley Builders, Inc. In addition, Obyt #12 placer claim conflicts with the three mill site patent applications.

Appellant bases its appeal from this decision on a letter dated August 1, 1985, which it received from Stanley P. Skiba, an Esmeralda County commissioned abstracter. In this letter Skiba states that appellant has complied with the statutes and regulations pertaining to millsite claims, specifically 43 CFR 3864.1 and 3864.1-1(a) and (c). Skiba dismisses Bennett's memorandum, quoted above, recommending that the patent applications be rejected, as nothing but personal opinion.

On September 5, 1985, appellant submitted additional information in support of its appeal. Appellant stated that in 1974 it fenced and installed a 7-space trailer camp, a 40 by 60 foot Butler building, underground utility lines from a 25 KW generator, classifier and conveyors, concentrating table and the "latest in electrowinning equipment designed to employ the latest technology in recovering gold and silver from placer ores." Appellant asserted that it is also equipped to do "custom processing of other ores" which it has done from time to time. Appellant explains that it sought to patent the millsites to install permanent housing and plant improvements including solar heating for year-round operation. Appellant now says these plans were shelved upon receipt of BLM's decision rejecting the applications. Appellant adds that it holds 7 patented claims under a subsidiary corporation. On behalf of appellant, Skiba (the abstracter), informed BLM by letter of July 16, 1987, that Columbia Gold Mines, Ltd., a wholly owned subsidiary of appellant, purchased 7 patented mining claims, beginning in 1968.

The patenting of non-mineral lands for placer millsites is authorized by 30 U.S.C. § 42 (1982), which provides for 2 classes of millsites. The first class is a dependent millsite which must be used or occupied by the proprietor of a lode or placer mining claim for mining or milling purposes in connection with a specific lode or placer mining claim with which the millsite is associated. The second class is an independent millsite which must have a quartz mill or reduction works on the land. The owner of a

quartz mill or reduction works need not be the owner or proprietor of an associated mining claim. United States v. Osmer, 76 IBLA 59, 63 (1983); United States v. Cuneo, 15 IBLA 304, 321-22, 81 I.D. 262, 270 (1974); United States v. Wedertz, 71 I.D. 368, 370 (1964); Alaska Copper Co., 32 L.D. 128, 129 (1903).

Land embraced by millsite claims must be nonmineral in character. 30 U.S.C. | 42 (1982). If the claims or portions of the claims are nonmineral, they must also meet the other requirements of 30 U.S.C. | 42 (1982). The first class of millsites, dependent millsites, must be used or occupied by the proprietor of a placer mining claim for "mining, milling, processing, beneficiation, or other operations" in connection with a specific placer mining claim with which the millsite is associated. 30 U.S.C. | 42(b) (1982). The statute provides that

[w]here 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.

Id. Although the plain language of this statute indicates that patent application for a millsite must be simultaneous with the application for patent to the claim it is dependent upon, similar language in 30 U.S.C. | 42(a) (1982) has been somewhat differently applied.

In Union Phosphate Co., supra, an application for lode claims was rejected because improvements on the claims were not sufficient to meet requirements of the mining laws. The Assistant Secretary held that an application for a millsite included within the patent application for the lode claims and appurtenant to the lode claims must also be rejected where the millsite is asserted to have been used and occupied only in connection with such invalid lode claims. Cf. Hamburg Mining Co. v. Stephenson, 30 P. 1088 (Nev. 1883).

The Assistant Secretary, citing Eclipse Mill Site, 22 L.D. 496 (1896), made the statement that an appurtenant millsite "shall be patented, if at all, only simultaneously with the lode claim or claims to which it is appurtenant unless * * * the lode claim should have been previously patented." 43 L.D. at 551. In Eclipse Mill Site, the issue was whether the owner of a lode for which patent is issued may, by an independent application, later secure patent for a millsite, or whether the patent for the millsite must be made simultaneously with the application for the lode claim which the millsite serves. The Department found that the applicant for the millsite had in good faith improved the millsite in connection with the mine, and held that "it comes equally within the spirit of the statute if the mill-site be located after the lode claim is patented." 22 L.D. at 499.

Therefore, a dependent millsite, such as the ones at issue here, may only be patented if the mining claim to which it is appurtenant is either already patented or a patent is granted simultaneously with the millsite

patent. Appellant states in its application for patent that the associated mining claims are all unpatented placer claims. On appeal, appellant indicates that its parent corporation owns several patented mining claims in the vicinity of the millsite application. Appellant has not, however, attempted any showing that the millsites were used or occupied in connection with those patented claims. Therefore, BLM properly rejected appellant's dependent millsite patent applications because they were not associated with a patented mining claim or a mining claim for which patent was sought simultaneously.

Furthermore, appellant has also failed to show that the millsites were used or occupied by the proprietor "for mining, milling, beneficiation, or other operations in connection with such [placer] claim." 30 U.S.C. | 42(b) (1982).

[1] Appellant states in its application for patent that the associated "millsites are all in connection with placer claims." This assertion presents the question whether appellant has complied with the law's requirement that the land be used or occupied by the proprietor "for mining, milling, processing, beneficiation, or other operations." 30 U.S.C. | 42(b) (1982). Subsection (b) to 30 U.S.C. | 42 (1982) allowing the patenting of placer claim millsites was added in 1960. P.L. 86-390, 74 Stat. 7. While the language describing the type of activity needed to qualify a placer claim ("mining, milling, processing, beneficiation, or other operations") is different than is used in subsection (a) for millsite claims appurtenant to lodes ("mining or milling"), the language of subsection (b) should undoubtedly be construed similarly. American Law of Mining | 5.34A (1983). The Department has explained the statutory phrase "used or occupied" numerous times. In Charles Lennig, 5 L.D. 190, 192 (1886), the Secretary stated:

The proprietor of a lode undoubtedly "uses" non-contiguous land "for mining or milling purposes" when he has a quartz mill or reduction-works upon it, or when in any other manner he employs it in connection with mining or milling operations. For example, if he uses it for depositing "tailings" or storing ores, or for shops or houses for his workmen, or for collecting water to run his quartz-mill, I think it clear that he would be using it for mining or milling purposes. I am also of opinion that "occupation" for mining or 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. [Emphasis in original.]

And in Alaska Copper Co., 32 L.D. 128, 131 (1903), Acting Secretary Ryan found that:

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 the 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. [Emphasis in original.]

In this case, improvements listed by appellant's applications include a 40 by 60 foot metal Butler building, trammel with feed and discharge conveyors, holding reservoirs, 7 trailer space hook-ups, underground water, sewer, and electric lines, septic disposal tank, and a well with storage tank. Appellant apparently believes that the existence of these improvements is sufficient to establish use or occupancy for the purposes of the statute. However, if none of the associated mining claims are being operated, the appellant cannot be using the millsites for mining purposes. United States v. Skidmore, 10 IBLA 322, 327 (1973); United States v. S.M.P. Mining Co., 67 I.D. 141, 144 (1960).

Indeed, appellant has shown no use on the claims related to any ongoing mining or milling operation. As we have seen, where a millsite is not being currently used for mining or milling purposes, the applicant must show occupation by improvement or other evidence of good faith intention to use the land for mining or milling purposes in order to sustain his claim. United States v. Swanson, 93 IBLA 1, 93 I.D. 288 (1986); United States v. Skidmore, *supra*; United States v. S.M.P. Mining Co., *supra*. However, appellant has offered no evidence to show a good faith intention to occupy these claims for mining or milling purposes. 1/

Moreover, the applicant must also show that the millsites are not mineral in character. 30 U.S.C. | 42(b) (1982); Utah International, Inc., 36 IBLA 219 (1978); United States v. Utah International, Inc., 45 IBLA 73 (1980). In the decision here under review the 3 millsite claims appear to

1/ It is true that, on appeal to this Board, appellant has alleged ownership of patented claims and the presence of some machinery on the mill-sites for processing ore. There has been, however, no showing that the 3 millsites are used in connection with the patented claims. Similarly, with respect to the machinery on the millsites, there has been no proof that it comprises either a "quartz mill or reduction works" as those terms are employed by 30 U.S.C. | 42 (1982). (For a definition of the meaning of those terms, see Pacific Portland Cement Co., *supra* at 461). This is not, therefore, a case such as was seen in Silvita S. Rouseau, 85 IBLA 46 (1985), where an applicant has corrected deficiencies on appeal so as to warrant a remand for further evaluation of an application.

be in conflict with the Obyt #12 placer mining claim, which is presumably mineral in character. In the patent applications, appellant states that the 3 millsites are located over a portion of the Obyt #12 placer mining claim and that the portion of the placer mining claim invaded by the millsites is nonmineral in character. However, in its letter decision of May 22, 1984, requesting appellant to submit additional information in connection with its millsite claims, BLM states that:

[m]aps contained within N MC 84820 indicate Obyt #12 placer claim is located in the SW [sic] of section 10, T. 6 N., R. 50 E., MDM, Nevada, whereas the millsites in your applications are located within the NW^ of section 10, T. 6 N., R. 50 E., MDM, Nevada.

This would seem to indicate that the millsites do not conflict with the Obyt #12 placer claim. It does not establish however, that the millsites are not mineral in character. The case files do not reveal the exact boundaries of the Obyt #12 placer claim, or when it was located. Since lands cannot be simultaneously mineral and nonmineral, the millsite claims must fail to the extent they embrace lands mineral in character. See United States v. Haskins, 59 IBLA 1, 93 (1981). The patent applicant has the burden of showing that the millsites applied for are both nonmineral in character and are occupied for mining and milling purposes. Utah Inter- national, Inc., supra, at 226. Appellant has failed to do either on the record before us. The applications were, therefore, properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Kathryn A. Lynn
Administrative Judge
Alternate Member