

INTERIOR BOARD OF LAND APPEALS

Jack K. Carter

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JACK K. CARTER

IBLA 94-659

Decided December 10, 1997

Appeal from a Decision of the Nevada State Office, Bureau of Land Management, rejecting patent application for independent millsite claim. N-57174.

Affirmed.

1. Millsites: Patents--Mining Claims: Millsites--Mining Claims: Patent

The BLM properly rejects a patent application for an independent millsite claim where the applicant failed to submit with his application, as required by 30 U.S.C. § 29 (1994) and 43 C.F.R. § 3861.1-1, a mineral survey of the claim where it covered only a portion of a surveyed lot, and thus did not conform to any legal subdivision of the U.S. rectangular public land survey system.

APPEARANCES: Jack K. Carter, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Jack K. Carter has appealed from a Decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 8, 1994, rejecting his patent application, N-57174, for the Gold City Millsite independent millsite claim, NMC-676799, for failure to file a mineral survey therewith, because the land description of his claim "does not conform to the official government rectangular survey." (Decision at 1.) The BLM explained:

Your mill site, as described in the Certificate of Location, is located as follows:
N¹/₂SW¹/₄NW¹/₄SE¹/₄ * * * of Section 14, Township 23 South, Range 63 East, Mount Diablo Meridian, Nevada. According to the official government rectangular survey, this places your mill site within Lot 6.

Pursuant to law (30 U.S.C. § 29 [(1994)]) and regulation contained in 43 CFR 3861.1-1, before you apply for a patent, the

mining claim must be surveyed, unless it conforms with the legal subdivisions of the rectangular public land survey. As evidenced in your patent application, your mill site is not accurately described by legal subdivision. Therefore, a mineral survey plat and field notes of survey of the claim should have been included in your mineral patent application. This mineral survey must have been done after recording the Certificate of Location of your mill site and before filing your mineral patent application.

Id. (emphasis added).

[1] Section 15 of the Act of May 10, 1872, as amended, 30 U.S.C. § 42 (1994), authorizes millsite claims, both dependent and independent, to be patented "subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes." Such "requirements" are set forth in section 6 of the Act of May 10, 1872, as amended, 30 U.S.C. § 29 (1994), which provides in relevant part that, in seeking patent to a claim, a claimant may file a patent application

together with a plat and field notes of the claim * * *, made by or under the direction of the Director of the Bureau of Land Management, showing accurately the boundaries of the claim * * *, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, * * * and shall file a copy of the notice in [the proper] land office[.]

Upon receipt of a patent application and the other filings, BLM is required to publish and post a notice of the filing of the application for a period of 60 days, thereby affording those holding adverse claims to the land sought an opportunity to challenge the applicant's entitlement to a patent. See 30 U.S.C. § 30 (1994); 43 C.F.R. Subpart 3871; Scott Burnham, 100 IBLA 94, 115-16, 94 Interior Dec. 429, 440 (1987). The plat and field notes, which are filed with BLM and available for review by members of the public, thus serve to notify them of the precise location of the claim so that they may determine whether they have an adverse claim and should challenge the applicant's entitlement.

Implementing Departmental regulations likewise provide that the owner of an independent millsite claim is permitted to "make application therefor in the same manner prescribed for mining claims." 43 C.F.R. § 3864.1-3. That "manner," to the extent it concerns surveys and plats of mining claims, is specified in 43 C.F.R. Subpart 3861. Regulation 43 C.F.R. § 3861.1-1 provides that a "correct survey" performed by BLM, showing the exterior surface boundaries of a mining claim, as distinctly marked by monuments on the ground, is required "where patent is applied for" and other circumstances pertain. These circumstances include cases where the claim "covers lands not surveyed in accordance with the U.S. system

of rectangular surveys * * * or * * * fails to conform with the legal subdivisions of the federal surveys." Id. Finally, 43 C.F.R. § 3861.1-2 recognizes these instances where the "survey and plat * * * [are] required to be filed in the proper [BLM] office with [the] application for patent," and requires a claimant to make the survey and plat subsequent to recording the location of his claim (if state law requires recordation).

The BLM concluded, in the present instance, that the Gold City Millsite independent millsite claim covers a portion of lot 6, and thus does not "conform with the legal subdivisions of the federal surveys." 43 C.F.R. § 3861.1-1. It therefore rejected Appellant's patent application because he failed to submit a survey plat and field notes with that application.

In his statement of reasons (SOR) for appeal, Appellant does not challenge BLM's representation regarding the reported location of his independent millsite claim. In his March 18, 1993, patent application, filed with BLM on April 2, 1993, Appellant stated that his claim was located in the "North 1/2 * * * of SW 1/[4] of NW 1/4 of SE 1/4 Sec.[.] 14[.] T[ownshi]p 23 South[,] R[ange] 63 E[ast]." ^{1/} Also, attached to Appellant's application was a copy of his Certificate of Location, filed for recordation with BLM on March 15, 1993, which described the land covered by his claim, which had been located February 19, 1993. It stated that the claim was a rectangular parcel of land exactly 330- by 660-feet, containing 5 acres, specifically situated in the N¹/₂SW¹/₄NW¹/₄SE¹/₄ sec. 14, T. 23 S., R. 63 E., Mount Diablo Meridian, Clark County, Nevada. This location was confirmed by a hand-drawn map of the claim originally submitted with the location certificate and likewise filed with the patent application. ^{2/}

Further, Appellant does not challenge the fact that his location of the claim places it in lot 6 of sec. 14. The record contains a master title plat, dated April 20, 1993, for the subject township, which identifies the entire W¹/₂NW¹/₄SE¹/₄, including the SW¹/₄NW¹/₄SE¹/₄, as lot 6 of sec. 14.

Finally, Appellant also does not object to the fact that his description of the location of his claim as the N¹/₂SW¹/₄NW¹/₄SE¹/₄ sec. 14 did not describe the location by legal subdivision. It is well established

^{1/} The patent application actually referred to the N¹/₂SW¹/₂NW¹/₄SE¹/₄. However, Appellant clearly meant the SW¹/₄ and not the SW¹/₂.

^{2/} The map gave the dimensions of the claim, which was located on an east-west axis, as 333.35 feet (west), 333.36 feet (east), 659.49 feet (north), and 659.50 feet (south). In addition, the northwestern corner of the claim was tied to the center quarter corner of sec. 14 by 666.65 feet on a bearing of N. 00° 15' 40" E., along the north-south center line of the section.

that a "[l]egal subdivision," under the U.S. rectangular public land survey system, is generally an aliquot part of a township or section, i.e., a "section, quarter section, * * * etc." Gary E. Strong, 57 IBLA 306, 307 (1981) (quoting from Glossary of Public Land Terms (1949 ed.) at 27 (emphasis deleted)); see Jacob N. Wasserman, 74 Interior Dec. 392, 394-95 (1967). However, in certain cases, it is simply not possible to designate a particular aliquot part of a section, either because of the irregular nature of that part of the section or other reasons, and, in this case, the affected land is divided into lots. See, e.g., Manual of Instructions for the Survey of the Public Lands of the United States (1973), § 3-79 and Figure 47, at 81, 83.

The NW¹/₄SE¹/₄ sec. 14 is divided into lot 5 in the east half and lot 6 in the west half. These two "lot[s]" represent the "[l]egal subdivision[s]" in that area of the public lands. Gary E. Strong, 57 IBLA at 307 (quoting from Glossary of Public Land Terms (1949 ed.) at 27 (emphasis deleted)). However, Appellant cannot describe the location of his claim according to these or any other legal subdivisions because he seeks patent to a portion of the surveyed lot 6 for which there is no legal description under the U.S. rectangular survey system. See Jacob N. Wasserman, 74 Interior Dec. at 394-95. Thus, he was required to have a mineral survey of the claim performed and to file the plat and field notes of the survey along with his patent application, in order that BLM and members of the public would know exactly what land was being sought and the existence and extent of any conflicts with other surveyed and unsurveyed claims. Dennis J. Kitts, 84 IBLA 338, 341 (1985) (placer mining claim); Walter Bartol, 19 IBLA 82, 84 (1975) (lode mining claim); United States v. Buch, 11 IBLA 307, 309 (1973) (millsite claim); Lee S. Smith, 11 IBLA 137 (1973) (lode mining claim). ^{3/}

Appellant, however, objects to BLM's rejection of his patent application principally on the basis that "[i]n 1985 a survey was done." (SOR at 1.) He also asserts that he filed a plan of operations for the independent millsite claim in February 1993. Appellant thus concludes by asserting that he "ha[s] filed all * * * papers that w[ere] required by [BLM]." Id. at 2.

In support of his contention regarding performance of a survey, Appellant submits only a copy of a one-page letter, dated September 23, 1985, from Elmer G. Radig, a registered land surveyor. The letter is addressed to Don Shipley, Double-O-Resources, under which is handwritten

^{3/} Buch is similar to the instant case since the land encompassed by the two millsite claims at issue there constituted portions of a particular surveyed lot, and were described as such. See 11 IBLA at 307 ("W 1/2 and E 1/2"). The only difference here is that Appellant either overlooked or ignored the fact that the land encompassed by his claim constitutes part of a surveyed lot and thus did not attempt to describe it as such.

"Gold-City Prop." It concerns the rendering of "survey services" by Radig and/or his associates, which work consisted of surveying control corners, setting various lot corners, establishing "elevations on Mill Site lot for future construction," and preparing and recording a "Record of Survey Map," all of which occurred in August and September 1985. (Letter from Radig, dated Sept. 23, 1985.) Further, it is clear from the letter that all of the work concerned "survey services completed for a portion of [the] E½ of Section 14, Township 23 S[outh], Range 64 E[ast], Mount Diablo Meridian, Nevada." *Id.* (emphasis added). Thus, the letter does not reflect a survey performed with respect to sec. 14, T. 23 S., R. 63 E., Mount Diablo Meridian, Nevada. We also note that, because the survey was performed almost 8 years before the location and recordation of Appellant's independent millsite claim in 1993, it would not be acceptable, and this would be so even had it related to a prior location of the claim. Walter Bartol, 19 IBLA at 84.

Appellant does not present any other evidence that the Gold City Millsite independent millsite claim has ever been surveyed. Moreover, even if we assume that one was performed, he has failed to submit a copy of the mineral survey, including the plat and field notes, as specifically required by 30 U.S.C. § 29 (1994) and 43 C.F.R. § 3861.1-1.

It is well settled that, when a mining or millsite claim cannot be described by legal subdivision (either because the land is unsurveyed or the claim will not conform to a legal subdivision), BLM properly rejects a patent application when the applicant fails to survey the claim and submit the mineral survey along with his application. Dennis J. Kitts, 84 IBLA at 339, 343; Morrill A. Nielson, 48 IBLA 398, 399 (1980); Walter Bartol, 19 IBLA at 83, 85; United States v. Buch, 11 IBLA at 309; Lee S. Smith, 11 IBLA at 137. Indeed, as we said in the syllabus of our June 29, 1973, Decision in Buch, which is directly applicable here: "A mill site patent application must be rejected where the mill site is described as a portion of an irregular lot * * *, and is not accompanied by the official survey required by 30 U.S.C. § 29 (1970) and 43 CFR Part 3860." 11 IBLA at 307.

Appellant's assertions that Buch has "no bearing" on the case, since it "does not have any thing to do with the 18[7]2 [U.S.] mining law," (SOR at 1, 2), is without merit. The Buch Decision represents the Board's interpretation of the effect of the requirements of the mining law and its implementing regulations. It represents, as to the question presented, the final determination of the Department and legal precedent that is binding on all bureaus and agencies of the Department and all affected mining and millsite claimants. 43 C.F.R. §§ 4.21(d) and 4.403; United States Fish & Wildlife Service, 72 IBLA 218, 220-21 (1983); Cheyenne Resources, Inc., 46 IBLA 277, 283-84, 87 Interior Dec. 110, 113 (1980).

We, therefore, conclude that BLM, in its June 1994 Decision, properly rejected Appellant's patent application, N-57174, for the Gold City Millsite independent millsite claim for failing to submit a mineral survey along with the application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur.

T. Britt Price
Administrative Judge