

UNITED STATES
v.
JOHN R. PARSONS

IBLA 76-679

Decided January 16, 1978

Appeal from decision of Administrative Law Judge E. Kendall Clarke dismissing a contest (No. A-7605) to decide the validity of a millsite.

Affirmed.

1. Mining Claims: Contests -- Mining Claims: Millsites -- Rules of Practice: Government Contests

Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, a millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining or milling purposes, independent of the issue of the validity of the mining claim.

2. Mining Claims: Contests -- Mining Claims: Millsites

A millsite is used for mining or milling purposes if the use is a function or utility intimately associated with the removal, handling or treatment of the ore from the vein or lodes. Some step in or directly connected with the process of mining or some feature of milling must be performed on the millsite.

3. Mining Claims: Contests -- Mining Claims: Millsites

Where the evidence presented at a hearing demonstrates a lode claim to be valid, a contest against a millsite held by the owner of the lode claim will be dismissed if the millsite is being used or occupied for mining or milling purposes.

APPEARANCES: Demetrie L. Augustinos, Esq., Office of the General Counsel, U.S. Department of Agriculture, Albuquerque, New Mexico, for the United States, appellant; Albert H. Mackenzie, Esq., Phoenix, Arizona, for appellee.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Forest Service, United States Department of Agriculture, appeals from a decision by Administrative Law Judge E. Kendall Clarke dated May 28, 1976, dismissing a contest (No. A-7605) to determine the validity of the John R. Parsons' Mill millsite claim situated in sec. 33, T. 7 N., R. 5 E., Gila and Salt River meridian, Maricopa County, Arizona, within the Tonto National Forest.

On June 25, 1973, the Bureau of Land Management (BLM), at the request of the Forest Service, filed a contest against the claim charging that: "(a) The Parsons' Mill mill site claim is not being used or occupied for mining or milling purposes; (b) The claim is not distinctly marked on the ground so that its boundaries can be readily traced." In his answer, Parsons denied these charges. A motion to amend the complaint, filed on March 3, 1975, stated: "The mill or reduction works on Contestee's millsite has not been used or occupied in the past, nor is it being presently used or occupied, in good faith to process material from independently owned mines."

A hearing was ordered and held on May 6, 1975, in Phoenix, Arizona. The following information was given as testimony at the hearing: Parsons located his millsite claim on November 5, 1969, and filed an amended notice of location on December 26, 1974. The claim measures 700 feet east to west and 300 feet north to south. The Moonlight lode mining claim, which supplies some of the ore for the millsite operations, was located by Parsons in May 1971, and is situated about 13-1/2 miles from the millsite.

Gilbert Matthews, mineral examiner for the Forest Service, Department of Agriculture, testified for the Government as follows: He had been assigned to Parsons' millsite in October 1972. From October 12, 1972, to January 20, 1975, Matthews visited the millsite

claim about 11 times. He visited the Moonlight claim 5 times and Charles Bearup's Cramm Mountain claim twice, which claim was another source of ore for Parsons. Samples were obtained from both claims. Matthews said that the Moonlight claim was still in the exploratory stage. He said that he recognized from the samples which he took that there was no substantial amount of ore reserves on the claim on the openings that had been made (Tr. 85). It was his opinion that there was no continuity in the vein on the Moonlight claim (Tr. 139). He also said that Bearup's claim is in an exploratory stage, at best (Tr. 88). When asked his opinion of the millsite operation, Matthews responded that he recognized it as nothing more than an open-air research lab (Tr. 89). He characterized the ball mill as "makeshift" (Tr. 90) and said the equipment on the millsite was inoperable on his many visits. However, on cross examination he admitted that the ball mill was operable as of January 4, 1974 (Tr. 106). He acknowledged that in 1972 Parsons was making a good grade precipitate using the cupric chloride solution discussed, infra, and was marketing it (Tr. 112).

Parsons testified that prior to his work on the millsite, he was involved in a pilot project on laboratory level, so once he located the claim he commenced his operation almost immediately on the millsite (Tr. 151-152). His first process was a sodium chloride leach solution as a parent carrier, utilizing the electrolysis of sodium chloride by direct current to produce free magnesium chlorine which has a good solubility in sodium chloride. This solution was used to dissolve carbonaceous copper, silver, and gold ores (Tr. 151). He worked on this process in December 1970, and January 1971. This process was abandoned when he discovered that on a large scale it was uneconomic from the power generation requirement standpoint (Tr. 153). He next resorted to an ammoniacal leach program in which he treated a quartzite-base copper ore oxide and recovered the copper. However, he had difficulties with the reduction of the cuprous ammoniacal solution to a metallic or other proper form which he could market as a concentrate (Tr. 153-154). He used about 6 or 7 tons of ore from the Redd-Parsons No. 1 mining claim in connection with this process (Tr. 156).

In November and December of 1971 he began the formulation of a nitrate reduction process or oxidation process for the beneficiation of copper ores. This process was piloted and scheduled to go into operation at the millsite in 1972. However, in February 1972, Honeywell contacted Parsons and asked him to consider a problem it was having with a cupric chloride solution, a by-product of its manufacturing. Parsons analyzed this solution as being a sodium chloride, hydrogen chloride, cupric chloride solution. The reduction process was accomplished with aluminum as a method of economically reducing that type of a leach solution, this cupric chloride being the same

type of cupric chloride that was produced by the processor that he originally manufactured, built and used at his millsite in 1969, 1970, and 1971. At that time he found that the hydrogen chloride content was sufficiently high to warrant the use of that solution as a leach solution on carbonaceous oxide copper ores. He utilized the leach solution by passing it over crushed ores which were received from the Redd-Parsons No. 1 mining claim and from Bearup's Cramm Mountain mining claim. Ten tons of handpicked selected ore came from the Redd-Parsons No. 1 claim, and 20 tons were supplied by Bearup's claim (Tr. 157-160).

The solutions he received from Honeywell were in the form of CuCl_2 , cupric chloride. By leaching and adding greater amounts of copper to that solution and by salting with a very small amount of red powder copper product, he was able to change the cupric chloride to a form known as cuprous chloride, CuCl . When he used cupric chloride and reduced it with metallic aluminum, the aluminum forms the complex AlCl_3 releasing 3 copper ions in the form CuCl to the metallic form of Cu. The result is that for essentially 1 pound of expended aluminum metal, he received 3 pounds of returned metallic copper. The cost of the selected scrap aluminum was \$.20 a pound, and the cost factor to reduce the copper was roughly \$.07 a pound. He estimated that the average cost for reduction for a larger mill would be about \$.26 as compared with his \$.07. He paid \$1 a barrel for the reagent from Honeywell which he hauled himself. Parsons sold 20,000 to 25,000 pounds of copper which resulted from his reduction process to National Metals, from which he received about \$7,200 during approximately a 1-year period. On February 1, 1973, Parsons allowed his agreement with Honeywell to expire because the company was supplying him with more cupric chloride solution than he could possibly accommodate (Tr. 161-165).

Next, Parsons went back to ammoniacal leaching. Ammonia and copper form a highly soluble solution complex. When this solution is subject to violent boiling at about 212 degrees the ammonia solution or gas is disassociated from the cuprous ammonium solution coming off and being recovered and immediately resolvable in water. The copper drops out as the compound CuO . When the wet CuO compound, which is a black metallic product, is divided and dried, it resembles the common mineral of copper called cuprite, Cu_2O . Parsons found that anhydrous copper sulfate could be produced directly without the customary additional $5\text{H}_2\text{O}$ hooked to it. He felt he had a product which would lend itself to immediate use as a salable end product in anhydrous copper sulfate which is used commercially for plating tank addition. Parsons set up his ball mill again. Parsons believed the ammoniacal solution leach had great merit because he ran the leaching reagent directly in the ball mill with the ore as it was being commuted by the ball mill. Parsons explained that this was not possible to do

with any acid solutions because they destroy the steel ball mill. The ammoniacal solutions do not in fact attack the ball mill. The next step was to separate the finished ground or pulp from the soluted copper solution and then render the solution through the ammoniacal boiler, recycling the ammonia back to the ball mill into which new water and new ore were flowing. This completed a closed circuit. Parsons abandoned the project in the summer of 1974 because it used too much energy. Parsons estimated that he processed about 12 tons of ore in the ammoniacal testing program. He recovered about 800 pounds of copper. The price of copper was \$.32 a pound in 1973 and early 1974. He paid 3.7 cents a pound for about 700 pounds of the ammonia solution. In effect, he ran this process for a return that would be represented by a factor of 10 to 1 (Tr. 171-176).

His final process involved combining the sulfuric acid leaching system with the chlorine leaching system by adding concentrated sulfuric acid to either a concentrated solution of sodium chloride or hot water and sulfuric acid and sodium chloride for a leach solution, thus producing in situ with the ore in a leach tank HCl gas, or Cl⁻ gas, as a reactant, yielding cupric chloride solution. Since the sulfuric acid is present in the leach solution, it prevents the solubility of any silver chloride which might be present, because silver chloride is not soluble even in saltwater in the presence of sulfuric acid. Therefore, there is a clean cupric chloride solution with a minor component of copper sulfate which, upon the addition of metallic aluminum, produces a "tradeoff" in economy of about 3 to 1. The "tradeoff" is the weight of the metal (aluminum) utilized as a reactant reducing agent versus the recovery of the metal from the ores. His costs were \$6.60 for a \$90 return in copper. Parsons said he knew of one company that piloted a chlorine reduction process, but knew of no company that gets the same dollar potential (Tr. 180-185).

Parsons has used the Moonlight claim in conjunction with his processes. He ran a pilot quantity mined from Moonlight with the ammonia leaching process in which he did the precipitation for the cuprite. He is currently processing ores mined from the Moonlight claim via the new process utilizing the hot sulfuric acid sodium chloride leach. This process was piloted against ores mined at Bearup's properties and Dripping Springs near Globe. He testified he has been able to remove the copper component clearly and concentrate the silver and lead component in that ore very satisfactorily (Tr. 187-188). According to Parsons, the process, almost without question, guarantees a 10 to 1 ratio of concentration of a given ore. Parsons has brought about 7 or 8 tons of ore altogether from the Moonlight claim to his mill. Five tons were being run through the mill at the time of hearing (Tr. 189). Material from the Moonlight claim has a copper value of about 4 percent average; a lead value of 12 percent average in the form of lead sulfite; a silver average of about

5 ounces; and gold trace to three one-hundredths of an ounce. A ton of the ore is valued, on the average, at \$114 (Tr. 190). The cost to beneficiate that ore at the mill using the current process is \$10.10 per ton. That process recovers the copper values in excess of 97 percent recovery as red metallic copper powder and the lead-silver-gold component as a concentrate with a recovery exceeding 95 percent of that which is in the rock (Tr. 190-191).

Parsons testified that the following improvements were on the millsite: leach tanks; ball mill with a steel liner which has the capacity to handle 40 tons of material a day; F-8 Ford haulage truck; water tank with a capacity of about 8,000 gallons; 220 volt single-phase 5-kilowatt generator plant which is sufficiently strong enough to pull his 4-KW welder; English Austin Ford engine, 4 cylinder, about 60 horsepower, which runs the generator; "Kue-Ken" crusher operated by a 95 horsepower Chrysler engine (Tr. 199); a 1,200-gallon circular plastic-lined tank used as an amalgamator for the solutions from Honeywell; mill shed building. Parsons assembled the equipment, built the ramp and set up the crusher himself. Parsons estimates the cost of the millsite equipment at approximately \$ 20,000 (Tr. 196-211).

On the Moonlight claim there is the ore hoisting mechanism which Parsons installed and an ore car which dumps the ore into a wheelbarrow (Tr. 203).

To profitably operate his mill, Parsons figures it would be necessary to mine approximately 20 tons of ore per month. He estimates he can mine a ton of ore a day for 20 days and process the 20 tons in 10 days. His cost to mine the ore would be \$2 to \$3 per ton. This includes gasoline to run the compressor, wear and tear on the drills, amortization of the \$50 air compressor, and dynamite, caps and fuses. One gallon of gasoline will run the F-8 Ford from Moonlight claim to the millsite. Amortization of the tires and the rest of the vehicle might come to \$2.50. The cost of processing the ore on the millsite would be \$10.10 (Tr. 213-215).

Mr. Bearup, a self-employed miner, testified that if he owned the Moonlight claim he would consider it reasonable and prudent to extend his time and money in the development of that property into a successful mine (Tr. 251).

Henry P. McNeil, who has been in mining for about 40 years, has several mines under lease in the area. He has a verbal agreement with Parsons that Parsons will process his ore (Tr. 256). McNeil said that it was cheaper for him to send ore to Parsons than to a smelter. Parsons would leach out the copper and make a concentrate out of the silver (Tr. 260-261).

On May 22, 1975, Parsons filed a motion to dismiss the complaint and amended complaint in which he stated that the proof adduced on the part of the contestee at the hearing conclusively demonstrated that the "mill or reduction works" on his millsite has been used and occupied extensively since November 1969. The Forest Service responded that the motion to dismiss was untimely.

In its posthearing brief filed August 6, 1975, the Government argued that: It had presented a prima facie case that the millsite is invalid; contestee's millsite is not being used or occupied for mining or milling purposes within the meaning of 30 U.S.C. § 42(a); and contestee's millsite does not qualify as a custom/independent mill within the meaning of 30 U.S.C. § 42(a). The second sentence of 30 U.S.C. § 42(a) states that the owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his millsite. The Government contends that Parsons cannot qualify under this provision because he does, in fact, own lode claims connected with his millsite.

In his amended brief filed October 14, 1975, Parsons urges that the Government attorney is unaware of the facts in this case in that counsel has never seen the millsite or the improvements on the Moonlight claim or the other claims which provide ore for Parsons' operation. Parsons contends that the cases cited by the Government in support of its arguments are factually unlike the case in issue and therefore are inapplicable. In general, Parsons alleges that the millsites in those cases lack substantial improvements or use as distinguished from his claim, which has improvements and which is in use.

As for charge (b) regarding the marking of the boundaries, contestee explained that testimony showed that the monuments marking the millsite were up. ^{1/} Also, the contestee says that the Government itself refuted this charge by giving the position of the millsite in detail in the complaint.

Parsons contends that the amended charge should be dismissed for two reasons: First, because the term "independently-owned" mines is ambiguous and implies that he has never occupied the millsite in good faith to process ore from claims other than his own; second, Parsons says that the implication of lack of good faith was flatly controverted by Mr. Matthews who said, "He certainly was devoted to his task."

^{1/} The Government has not pursued this charge. The Government's request for a mineral examination included a statement that the claim is marked on the ground by monuments and posts (Tr. 95-96).

In his decision dismissing the contest, the Administrative Law Judge noted, regarding possible sources for Parsons' reduction works, that the Government had not contested the Moonlight lode claim held by Parsons in association with his millsite. The Judge speculated that had a contest been brought against the Moonlight claim, the evidence presented by the Government at the hearing would have fallen short of that necessary to declare the claim invalid. He found that the preponderance of evidence showed that there was a strong quartz vein carrying reasonably high values of copper, silver, and lead. Also, the Judge found Parsons has other sources of material.

The Judge concluded that Parsons' millsite was being used and occupied in good faith. He said that Parsons had diligently prosecuted work on his reduction process and had invested all his savings in a period of experimentation over the last 5 years. The Judge was satisfied that the claimant now has a process which is capable of being operated at a profit, and that a one-man operation mining part of the time from his Moonlight claim and processing the ore part-time on his millsite reduction works will return sufficient profit to provide his living.

In its statement of reasons of July 29, 1976, appellant incorporates the arguments presented in its posthearing brief and submits that the Judge erred in holding the millsite claim valid for the following reasons:

1. The conclusion that appellee's lode claims constitute a reliable source of ore for appellee's mill is not supported by the evidence of record in this case.
2. The conclusion that appellee has other sources of ore from claims owned by third persons to process in his mill is also unsupported by the evidence of record.
3. The conclusion that appellant's evidence on the reliability of appellee's Moonlight lode claim as a source of ore "would have fallen far short of that necessary to declare the Moonlight claim invalid" (decision, pg. 6) is not supported by the evidence of record.
4. The conclusion that the millsite is presently being used or occupied in good faith for mining or milling purposes and can be operated profitably is not supported by the evidence of record.
5. The Judge erred as a matter of law in holding the millsite valid as both a dependent and an independent millsite.

In appellee's answering brief, he incorporates by reference his motion to dismiss the complaint and the amended complaint dated May 21, 1975. He reiterates the fact that he has shown good faith in his

millsite operation and contends that the decision of the Administrative Law Judge should be affirmed on the good faith charge alone.

Appellee attempts to refute the Government's charge that he is nothing more than a prospector by itemizing the difficulties which beset a small operator in the extraction and handling of ore. He asserts that the samples taken by Bearup, a disinterested party, without the knowledge of appellee are credible as evidence.

Appellee refers to the second sentence of 30 U.S.C. § 42(a), which states that the owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his millsite. The Government contends that appellee is not entitled to have his millsite declared valid as a custom or independent mill because he owns lode claims connected with his millsite and, therefore, his millsite must be declared valid under the first part of 30 U.S.C. § 42(a). The Government contends that the two methods of validating a millsite appear to be mutually exclusive. Appellee urges that the right to own a valid millsite because he might treat "custom" ore furnished by others to his millsite in no way precludes the right to such millsite because he treats ore at the millsite from his own claim, and vice versa.

Also, appellee contends that an essential charge has been omitted from the Government's case because it has not contested the Moonlight claim, the main source of ore for appellee's reduction works. Appellee believes that such omission is fatal to the Government's case and any adverse testimony taken in absence of such charge should not be considered by the Board.

[1] At the outset of our discussion we will dispose of appellee's contention that the Government's failure to contest the Moonlight claim is fatal to the Government's case. Appellee believes that in the absence of such charge, any adverse testimony should not be considered without contesting the validity of the unpatented mining claim with which it is connected. Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, United States v. Mellos, 10 IBLA 261, 268 (1973); United States v. Coston, A-30835 at 3 (February 23, 1968), a [**20] millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining and milling purposes independent of the issue of validity of the mining claim. United States v. Dean, 14 IBLA 107, 109 (1973); United States v. Polk, A-30859 (April 17, 1968).

The law regarding millsites is set forth in 30 U.S.C. § 42 (1970). The pertinent parts read as follows:

Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres * * *. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his millsite, as provided by this section.

[2] Where the use or occupation is related to a lode claim, the showing must be of "a function or utility intimately associated [**21] 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 * * *." Alaska Copper Co., 32 L.D. 128, 131 (1903). (Emphasis in original.)

In order for the land to be "used" for mining or milling purposes within the meaning of the statute, the applicant must show that the claim is being operated. United States v. Skidmore, 10 IBLA 322, at 327 (1973); United States v. S.M.P. Mining Co., 67 I.D. 141, 144 (1960). Parsons testified that he had conducted mining operations on the Moonlight claim and had removed about 7 or 8 tons of ore and that improvements had been made on the claim. Cf. United States v. Wedertz, 71 I.D. 368 (1964). In explaining his latest method of reducing ore, he said that the ore from the Moonlight claim was his primary source. Although he had not removed a great amount of ore from the Moonlight claim at the time of the hearing, the evidence shows that he is now using ore from the Moonlight and will continue to do so in the future. At the time of the hearing, his new method was operational, the experimental stage having been completed.

"Occupation," as distinguished from "use" is something more than mere naked possession and must be evidenced by outward and visible signs of the applicant's good faith. Charles Lennig, 5 L.D. 190, 192 (1886). Parsons' good faith manifests itself in several respects. Photographs attest to the fact that the millsite has improvements. Also, he is serious about his operation and has worked diligently toward achieving his goal. Even before he moved to the millsite he was working on pilot projects related to the operation, so when he occupied the millsite he commenced work almost immediately. In this respect Parsons' situation differs from those cases in which a planned future use of the site has been held to be insufficient to meet the requirements of the statute. See United States v. Almgren, 17 IBLA 295 (1974); United States v. Cuneo, 15 IBLA 304, 81 I.D. 262 (1974); United States v. Wedertz, *supra*.

Since November 5, 1969, Parsons and his family have lived continuously on the millsite where he has engaged in full time work perfecting his reduction process.

With the exception of his living quarters, the millsite is used strictly for Parson's reduction works as envisioned by the law. There is no other activity on the claim which would indicate that Parsons is not occupying it in good faith. Cf. United States v. Swanson, 14 IBLA 158 (1974).

He has invested approximately \$20,000 in his venture and has considered its economic possibilities carefully. He has reached the point at which he can derive a profit from his operation. By dividing his time between mining and processing 20 tons of ore per month, Parsons estimates that he can make a monthly profit of \$1,200. We find, therefore, that the millsite is being used or occupied in good faith for mining or milling purposes and that the millsite can be operated at a profit.

[3] The conclusion of whether the activity is actually mining and milling in connection with the lode claims cannot be determined without determining the nature of the activity on the associated claims and their validity. United States v. Dean, supra. The Board, presented with a similar situation in United States v. Dean, supra, stated at 110:

Where contestees present proof of use and occupancy of a millsite which appears related to mining or milling in connection with lode claims, then the issues raised are whether there are mining activities conducted on the associated claims and whether they are valid claims. This requires evidence in addition to proof of the activities on the millsite. The Government made no prima facie showing regarding five of the seven associated mining claims. The contestees presented general testimony of use of the site with the claims. We cannot conclude that the activity is not actually mining or milling in connection with the lode claims without further proof of their invalidity.

With reference to the Moonlight claim, the Administrative Law Judge found that the preponderance of the evidence shows a strong quartz vein carrying reasonably high values of copper, silver, and lead, so he would not have found the claim invalid.

Under the second section of 30 U.S.C. § 42 (1970), the presence of a mill, if operable and used as a quartz mill or reduction works, may be sufficient to maintain the site as an independent millsite.

Appellant's theory that the proprietor of a lode claim cannot qualify for a millsite under the second section of 30 U.S.C. § 42 is incorrect. In United States v. Dean, *supra*, the appellant had unpatented mining claims. There was also a mill present on the millsite. The Board affirmed the Judge's dismissal of the Government's contest because there was an inadequate prima facie showing that the millsite was invalid either as a dependent or independent claim. The possibility of maintaining a millsite under the second part of 30 U.S.C. § 42 was not ruled out because Dean was the proprietor of a lode as described in the first part of 30 U.S.C. § 42.

The evidence submitted definitely shows that appellant does have a mill on his site and that such mill is in operation. Although Mr. Matthews testified that the mill was inoperable on his numerous visits to the site, on cross-examination he stated that Parsons had given him a demonstration on January 4, 1974, and the ball mill was operable (Tr. 106). Parsons submitted bills of sale representing about \$7,200 received from National Metals Company as evidence that his product had been marketed. As for sources of ore for this mill, we disagree with appellant that the evidence does not show that the Parsons' claims and the Bearup claim are reliable sources of ore. We find that the testimony offered at the hearing shows that these claims do provide a sufficient supply of ore.

Our determination is based on the evidence presented at the hearing in May 1975. At that time appellee had just placed his final procedure into operation. It has thus not been subjected to the test of time to establish its own technical feasibility or the availability of ore. Therefore, we hold only that the United States has not prevailed on the record made at the hearing. If the Forest Service believes that the experience of the last 2-1/2 years is material to the validity of the millsite, it may initiate a new proceeding.

Having reviewed all the evidence, we agree that the Administrative Law Judge properly held that Parsons' millsite claim is valid under the statute and dismissed the Government's complaint.

Accordingly, 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.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Martin Ritvo
Administrative Judge

33 IBLA 338

