

UNITED STATES
v.
HINES GILBERT GOLD MINES COMPANY

IBLA 70-115

Decided February 25, 1971

Mining Claims: Discovery: Geologic Inference

Geologic inferences may support a classification of land as mineral in character; however, alone they cannot support a determination under the mining laws that a valid discovery of a valuable mineral deposit has been made within a claim as such a determination must be based upon an actual physical exposure of a mineral deposit within the claim.

Mining Claims: Determination of Validity -- Mining Claims: Discovery: Generally

In determining whether a mining claim has been validated by a discovery of a valuable mineral deposit, each case must be examined on its own facts by applying the prudent man test, which includes a consideration of economic factors upon which a prudent man's expectation of developing a valuable mine would be based.

Mining Claims: Contests -- Mining Claims: Discovery: Generally

In a mining claim validity proceeding, a Government mineral examiner only has the duty to examine the workings on a mining claim to verify whether an alleged discovery of a valuable mineral deposit has been made; he does not need to sample beyond the claimant's discovery points or do work to establish a discovery for the claimant.

IBLA 70-115 : Sacramento Contest 1254-B
UNITED STATES : Lode mining claims
v. : declared null and void
HINES GILBERT GOLD MINES :
COMPANY : Affirmed

DECISION

This appeal by the Hines Gilbert Gold Mines Company is from a decision by the Chief, Branch of Mineral Appeals, Office of Appeals and Hearings, Bureau of Land Management, dated December 9, 1969, affirming a hearing examiner's decision of January 13, 1969, declaring the following lode mining claims to be null and void for lack of discovery of a valuable mineral deposit within the claims: Middle Fork Quartz (also known as Middle Fork Lode), Buckeye Quartz, Rocky Chucky Quartz, and Gilbert Quartz.

The claims are situated in the W 1/2 sec. 24, and the E 1/2 SE 1/4 sec. 23, T. 13 N., R. 9 E., M.D.M., in Placer and El Dorado Counties, California, within the Bureau of Reclamation's Auburn Dam Project. The Government contested the claims charging: (1) that the land within them was nonmineral in character; and (2) that the existence of a deposit of valuable minerals of sufficient quantity to constitute a valid discovery had not been disclosed within the claims. At the hearing the Government withdrew the first charge. The second charge was sustained by the hearing examiner and the Office of Appeals and Hearings, Bureau of Land Management.

The decisions below adequately discussed in some detail the evidence presented at the hearing and the governing law here. We find no error in the discussions. We shall emphasize only certain points in response to appellant's contentions.

Appellant attempts to draw some significance from the fact the Government withdrew the charge of nonmineral character of the land. It contends this was a "stipulation" by the Government that there are minerals within the claims, especially because a Government witness testified that the principal rock formation within the claims, Mariposa slate, is the prime gold carrier in the Mother Lode country of California. This, appellant contends, rebuts that witness's testimony that there is no significant mineralization within the claims.

The conclusions appellant makes do not follow if the law here is properly understood. Although a valid discovery of a valuable mineral deposit establishes the mineral character of land, land may be considered mineral in character in classifications under the public land laws without establishing that a valid discovery within the meaning of the mining laws has been made. The mineral character of the land, as that term is used in public land laws, may be established by geologic inference in the absence of an exposure of minerals on the land. State of California v. E. O. Rodeffer, 75 I.D. 176 (1968). However, inference of the presence of valuable minerals, drawn from the proved existence of mineral deposits outside the limits of the claim or from the geology of the area, is not sufficient and cannot be substituted for the actual exposure of the mineral deposit within these limits under the mining laws. Id. To validate a mining claim, the claimant must actually expose a valuable mineral deposit physically within the claim. Henault Mining Company v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied 398 U.S. 950 (1970). Therefore, if the claimant has failed to expose sufficient mineralization within the claims to constitute a discovery of a valuable mineral deposit, it is irrelevant that the land may be considered mineral in character on the basis of geologic inferences drawn from the geologic indicia on the claims themselves and on other nearby lands.

Appellant contends the Government has failed "to delineate what constitutes a valuable mine and/or quality and quantity of the ore necessary to constitute a discovery." Appellant also seems to contend that a showing of any mineralization within the claims is sufficient. This Department has never set any arbitrary conditions as to quantity and quality of mineralization applicable to all mining cases. Instead, each mining contest case must be examined on its own

facts under the long-recognized standard of the prudent man test of Castle v. Womble, 19 L.D. 455, 457 (1894), that the mineral deposit must be of such character that "a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine." Of course, in ascertaining whether a prudent man would be justified in making such an investment with a reasonable expectation of success, the quantity and quality of the ore are important in estimating the value of the mineral deposit. Whether a valuable mine can be expected to be developed would also depend upon a weighing of the possible expected price brought by sale of the minerals against possible expected costs of the mining operations, including transportation of the ore. See Adams v. United States, 318 F.2d 861 (9th Cir. 1963).

Appellant further contends that the decision below is vague, arbitrary, capricious, and contrary to the law because it states "profitability is an important consideration in applying the prudent man test." It asserts that mines may be unprofitable at times because of changes in economic conditions. The concept of "profitability" is important, as the Supreme Court pointed out, in ascertaining whether a mine may be considered valuable. United States v. Coleman, 390 U.S. 599 (1968). Normal economic fluctuation is a factor which a prudent man would consider in determining whether he would invest in the development of a given mineral property. But significant adverse economic changes of a more enduring nature might preclude a prudent man from expecting to develop a valuable mine. See, e.g., Mulkern v. Hammitt, 326 F.2d 896 (9th Cir. 1964); United States v. Estate of Alvis F. Denison, 76 I.D. 233 (1969).

The Government's evidence in this case showed that the appellant had failed to expose a valuable mineral deposit within these claims. Only slight mineral values were found in a few of the samples taken and there was no indication that veins bearing significant mineral values existed within the claims. Appellant's evidence did not adequately refute the Government's case as to the lack of an exposure of a valuable mineral deposit within the claims. The weakness of appellant's case is reflected in its contention that during his examinations of the claims the Government's mineral examiner, a qualified expert, failed to exercise his expertise in examining the claims because he took samples only from sites pointed out by Mr. Carlson, president of appellant company, who is not an expert. The mineral examiner indicated he saw nothing worth sampling on the claims and took the samples where Mr. Carlson indicated. It was not the duty of the mineral examiner to sample beyond the claimant's alleged discovery points or to do work to establish a

discovery for the claimant. This the mining claimant must do himself to establish his rights under the mining law. The mineral examiner has only the duty to examine the workings on a claim to verify whether an alleged discovery of a valuable mineral deposit has been made. United States v. Thomas C. Wells, A-30805 (January 8, 1968); United States v. Lawrence W. Stevens et al., 76 I.D. 56 (1969). Moreover, the assay reports of the seven samples taken by a consulting geologist employed by appellant only tend to confirm the low value of the mineral reported by the Government's mineral examiner.

We conclude that appellant has shown no error in the decision below and that the decision is supported by substantial evidence that there have not been exposed within these claims veins bearing sufficient minerals to constitute a valid mineral deposit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Martin Ritvo, Member

Joan B. Thompson, Alternate Member

