

UNITED STATES
v.
FEDERAL MATERIALS, INC.

IBLA 70-142

Decided April 12, 1971

Mining Claims: Discovery: Generally

To constitute a discovery upon a gold placer claim there must be shown within the limits of the claim a mineral deposit sufficient to warrant a prudent man in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

Mining Claims: Discovery: Generally

Evidence of a mineral deposit which is sufficient only to warrant further exploration is not enough to establish a discovery under the mining laws.

IBLA 70-142 UNITED STATES v. FEDERAL MATERIALS, INC.	: : : : : : :	Colorado Contest No. 455 Placer mining claims held null and void Affirmed
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DECISION

Federal Materials, Inc., has appealed to the Secretary of the Interior from a decision dated April 10, 1970, of the Office of Appeals and Hearings, Bureau of Land Management, which affirmed a September 22, 1969, decision of a hearing examiner declaring Gold Placer Nos. 1 through 4 mining claims null and void for lack of discovery of valuable mineral deposits.

A complaint was filed January 8, 1969, by the Manager of the Colorado Land Office, Bureau of Land Management, requesting that the four mining claims of Federal Materials be declared null and void. Several charges were alleged in support of the complaint, but the contest was decided on a finding that there was no discovery of valuable mineral deposits. There is also a question as to whether the claims are on public lands. However, the parties stipulated at the hearing that they would not seek an administrative determination as to which claims were on public lands. Because of this stipulation, we will not attempt to resolve the question.

The claims are situated in Mesa County, Colorado, covering portions of the bed of the Colorado River in two areas about five and ten miles downstream from Grand Junction, Colorado. The source of the gold is various mineralized areas in the mountains some 100 miles to the east of the claims. The gold is carried from these areas by various tributaries of the Colorado River.

Eleven samples were taken. Assays of the four taken by the Government's mineral examiners showed only a trace of gold – less than one cent per cubic yard. Seven samples taken by or for the Contestee assayed from 2.28 to 5.17 cents in gold per cubic yard.

The Government presented two witnesses, both of whom are employees of the Bureau of Land Management. Mr. James McIntosh, a geologist and mining engineer, stated that the claims were in the prospect or exploratory stage. He also stated that there was a very poor chance of finding gold on the claims and that a prudent man would not be justified in expenditure of time and money with a reasonable expectation of developing a valuable or paying mine. Mr. Jimmy Jinks, a geologist, concurred with Mr. McIntosh. He also stated that the assay results showed gold values ranging from less than one cent per cubic yard to five cents per cubic yard and that, based on studies done by others in the area, it would cost from 25 cents to 30 cents a cubic yard to exploit the gold.

The contestee called two witnesses, both geologists and officers of Federal Materials, to testify to the gold discovery. Mr. Norman Ebbly stated that the gold was very fine and almost impossible to detect under a strong glass. He stated he would drill down to bedrock before he would start mining to determine the value of the gold at bedrock. He stated it would be prudent to do more exploration work. Mr. Walter Verner also testified that the claims are no more than prospects and that further drilling is needed before exploitation would be considered. He stated that there was no information to indicate that gold values would be found at bedrock and that no significant gold values have been found at bedrock along the Colorado River.

The Government's experts and the appellant's experts are in general agreement that further exploration is needed before the gold can be developed. Although the appellant's witnesses indicated that a prudent man would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine, it appears that the men were confused as to the distinction between the terms "exploration" and "development".

These terms were discussed in United States v. Henault Mining Co., 73 I.D. 184, 190-92 (1966), aff'd, Henault Mining Co. v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970):

[T]he Department recognizes a distinct difference between "exploration" and "development" as they relate to "discovery" under the mining laws. Exploration work is that which is done prior to discovery in an effort to determine whether the land contains valuable minerals. Where minerals are found, it is often necessary to do further exploratory work to determine whether those minerals have value

and, where the minerals are of low value, there must be more exploration work to determine whether those low-value minerals exist in such quantities that there is a reasonable prospect of success in developing a paying mine. It is only when the exploratory work shows this that it can be said that a prudent man would be justified in going ahead with his development work and that a discovery has been made. . . .

. . . .

. . . The substance of . . . decisions is that the second stage of a mining venture, the exploration, must have satisfactorily progressed to the point at which the further expenditure of money and effort for the third phase [development] may be favorably contemplated.

The distinctive meanings of "exploration," "discovery," and "development" were explained in Converse v. Udall, 399 F.2d 616, 620 (9th Cir. 1968), wherein the court also drew a distinction between "exploration" prior to discovery and the exploratory efforts which follow a discovery and which might be equated with development of a mine.

In this case further exploration by drilling is not "development," but is a search for values not yet discovered, the discovery of which would justify development. The appellant may be a "prudent prospector," but it is not a "prudent mine developer." Henault Mining Co. v. Tysk, supra. Thus, the appellant does not meet the prudent man test as first stated in Castle v. Womble, 19 L.D. 455, 457 (1894):

[W]here minerals have been found and the evidence is of such a 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, the requirements of the statute have been met

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 of the Bureau of Land Management is affirmed.

Edward W. Stuebing, Member

We concur:

Francis E. Mayhue, Member

Newton Frishberg, Chairman.

