

UNITED STATES
v.
NEW MEXICO MINES, INC.

IBLA 70-146

Decided August 18, 1971

Mining Claims: Discovery: Generally

Evidence of mineralization which is only sufficient to warrant further exploration is not enough to establish a discovery under the mining law.

Mining Claims: Discovery: Generally--Words and Phrases

"Exploration" is the process of searching for a valuable mineral deposit. The finding of mineralization of sufficient value to encourage further exploration does not successfully conclude the exploratory process or constitute a discovery.

"Discovery" occurs upon the finding of a mineral deposit revealed to be of sufficient qualitative and quantitative value to warrant the expenditure of effort to develop a mine in the reasonable anticipation that a profitable mining operation will result.

"Development" refers to the physical work incident to the excavation of a mine for the extraction of the mineral values discovered. After discovery, certain exploratory activities incident to the actual production of the minerals are regarded as "development" rather than as "exploration". These would include the blocking out of the ore body, testing for engineering feasibility, determining the strike and dip of the vein beyond the extent of the qualifying knowledge, and related activities.

IBLA 70-146 :

New Mexico 228

UNITED STATES OF AMERICA,
Contestant

: Mining claim held null and void

v.

: Affirmed

NEW MEXICO MINES, INC.,
Contestee

DECISION

New Mexico Mines, Inc., has appealed from the decision of April 24, 1970, by the Office of Appeals and Hearings, Bureau of Land Management, affirming the hearing examiner's decision of September 10, 1968, by which the Pardner lode mining claim was held null and void because a valuable mineral deposit had not been discovered within the limits of the claim. The claim is within the Carson National Forest and the contest was initiated upon the recommendation of the Forest Service.

The record of the contest hearing discloses that the contestant's mineral examiner took from workings on the claim nine samples which were assayed for gold and silver. Six showed no value for gold and three showed traces. Four showed no value for silver, four showed traces, and one assayed at 0.08 oz. per ton.

In rebuttal, the president of the contestee corporation and four other qualified witnesses testified to the results of each of their examinations of the claim. These results are described in detail in the decision appealed from, but for our purposes a brief summary will suffice.

The contestee's president, Mr. Rufus C. Little, had 29 samples taken between 1939 and 1967. Five of these showed no value or a trace, 17 samples assayed at values from 35 cents to \$2.10 per ton, six contained values ranging from \$3.66 to \$14.18 per ton, and one sample, taken in 1960, indicated a value of \$53.25 in gold and silver per ton.

Ross Martinez, a geologist, took two samples which indicated values of \$14.35 and 35 cents per ton respectively.

John M. Haberl, an experienced mining supervisor, took a composite sample which he cleaned, mixed, combed, and quartered several times, each time rejecting two quarters until he had two samples weighing one pound each. One of these was sent for fire assay, and the assay report indicated a yield of 0.04 oz. gold per ton and 0.1 oz. silver; no money value was stated.

Eugene Carter Anderson, a consultant mining engineer, took two samples, which were mixed, rolled, combed and quartered, and he sent half of the material for assay. The assay certificate indicates a value of 16 cents combined gold and silver per ton.

Vern Byrne, an experienced miner, testified that two samples, which he identified as Pardner # 1 and Pardner # 2, resulted in assays indicating \$3.85 per ton and \$1.05 per ton respectively.

The hearing examiner held that these showings did not demonstrate a discovery of a valuable mineral deposit as defined in a long line of administrative and judicial precedent. He further noted that each of the contestee's witnesses had testified that the claims should be further explored, and that there is a clear distinction between "exploration" and "development" as those terms relate to discovery under the mining laws.

In affirming the decision of the hearing examiner, the Bureau's Office of Appeals and Hearings stated:

Mr. Little's list of 29 samples disclosed only one high-value sample, taken in 1960, of \$53.25 per ton. He failed to equal or approach that value in any of his remaining samples. He did show two \$14.00 samples, but his remaining 26 samples disclosed either no value, or a trace or very minimal values. With the exception of one \$14.35 sample taken by Mr. Ross Martinez, the samples taken by contestee's four expert witnesses indicated only insignificant values. The few isolated high-value samples do not establish a discovery, in view of the many insignificant low-value samples that were taken.

The Bureau decision also noted the repetitive testimony concerning the need for further exploration and undertook to distinguish the terms "exploration," "discovery," and "development" as they apply to the facts of this and other cases.

While we are somewhat more impressed by certain of Mr. Little's middle range samples than was the Bureau, we concur in its conclusion that inclusion of a few relatively high-value samples among numerous low and no-value samples is inadequate to demonstrate that "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. . . ." That is the test of discovery which was first articulated in Castle v. Womble, 19 L.D. 455, 457 (1894), and which has been repeatedly re-stated by the courts, including the Supreme Court. Chrisman v. Miller, 197 U.S. 313 (1905); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); United States v. Coleman, 390 U.S. 599 (1968).

The mere indication or presence of gold or silver is not sufficient to establish the existence of a lode. The mineral must exist in such quantities as to justify expenditure of money for the development of the mine and the extraction of the mineral. Chrisman v. Miller, *supra* at 322.

Although in some of their testimony the word "development" was employed in conjunction with "exploration," none of the contestee's well-qualified witnesses stated that they were of the opinion that the mineralization disclosed by the evidence was such as to warrant development of a mine for the extraction of the mineral. Each stated that further exploration was required. The gist of their testimony is reflected by the following excerpts:

Byrne: Well, may I answer it this way: it would take a lot more sampling to prove one way or the other, but what samples we have, I think, shows that it would pay to do a heavy exploration program there. (Tr. 97)

. . . .
I think any mineralization warrants extra looking-into, and I would hesitate to recommend a method of exploration until such time as I spent more time on the property. But I would like to see chip samples all the way down the side of the canyon to see if there aren't numerous small veinlets of mineralized material that would bring up the total body into a large deposit. (Tr. 98)

Anderson: . . . There is mineral value there. No question about that in my mind, whatever. There is mineral value. They are

not of economic value, the ore is not of economic value at this present time, but they certainly would justify exploration. (Tr. 108)

....
I wouldn't positively say that [that most mines came from outcropping showing mineralization as minor as this], but I certainly would consider that showing as justifying further exploration. I wouldn't say this is economic ore. (Tr. 110)

Martinez: Based on the fact that many of our big recent mineral discoveries, I say recent--within the last two or three years, and I know of one particular instance, have been based on surface mineralization that was for less values than was sent in in this one assay--I would definitely recommend further exploration work, further tests, a complete geological reconnaissance of that area, and I would certainly recommend it, yes, sir. (Tr. 121)

Haberl: . . . My policy has been for many years to take a modest amount of money to be spent on exploration, and if I were to be asked by anybody taking over this property if it justified exploration, I would say it certainly does. (Tr. 128)

....
I do not agree that [a valid discovery of minerals] doesn't exist, because I certainly think that having found the basis of mineralization, the only answer is further exploration to determine the total value. (Tr. 130)

Little: . . . It is true that a number of samples which I have assayed does not result in high-grade as the proper type of development had not been done as yet, to make this claim either good or bad. (Tr. 160)

The decision below contained an accurate explanation of the law of discovery, pointing out that the distinction between exploration and discovery has been considered by the courts and by this Department on numerous occasions, citing Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); Henault Mining Co. v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970); United States v. Emerald Empire Mining Company, A-30445 (December 3, 1965); United States v. Adam J. Flurry, A-30887 (March 5, 1968).

This Board has since dealt with the question in United States v. Silverton Mining and Milling Co., 1 IBLA 15 (1970); United States v. H. B. Webb, 1 IBLA 67 (1970); United States v. Fred W. Whitenack, 1 IBLA 156 (1970); United States v. Herbert H. Mullin et al., 2 IBLA 133 (1971); United States v. Maurice E. Jones, 2 IBLA 237 (1971); and United States v. Wayne Winters, 2 IBLA 329 (1971). In each of these decisions this Board has held, in essence, that evidence of mineralization which is only sufficient to warrant further exploration is not enough to establish a discovery under the mining law.

There is an inescapable paradox inherent in appellant's implied assertion that a valuable mineral deposit has been discovered because there is sufficient evidence that it may exist to warrant continued exploration for it.

In yet another effort to afford mutual understanding of the terms employed, we offer the following definitions:

"Exploration," within this context, is the process of searching for a valuable mineral deposit. The finding of mineralization of sufficient value to encourage further exploration does not successfully conclude the exploratory process or constitute a discovery.

"Discovery," to paraphrase the definition in Castle v. Womble, *supra*, occurs upon the finding of a mineral deposit revealed to be of sufficient qualitative and quantitative value to warrant the expenditure of effort to develop a mine in the reasonable anticipation that a profitable mining operation will result.

"Development" refers to the physical work incident to the excavation of a mine for the extraction of the mineral values discovered. After discovery, certain exploratory activities incident to the actual production of the minerals are regarded as "development" rather than as "exploration." These would include the blocking out of the ore body, testing for engineering feasibility, determining the strike and dip of the vein beyond the extent of the qualifying knowledge, and related activities.

In conclusion, we agree with the observations and recommendations made by the witnesses for the contestee that the mineralization indicated by their sampling would seem to indicate a need for further exploration. However, this by no means constitutes a discovery.

Accordingly, 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:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member

