

UNITED STATES

v.

J. S. DEVENNY

IBLA 70-139

Decided September 3, 1971

Mining Claims: Surface Uses--Surface Resources Act: Verified Statement

Where after a mineral claimant has filed a verified statement pursuant to section 5 of the Surface Resources Act, the mining claim is declared null and void in a separate contest proceeding, the right of the claimant to the surface resources is extinguished, and there is no necessity for a separate proceeding under section 5 of the act.

Res Judicata--Rules of Practice: Appeals: Generally

Where an appeal has been taken and a final Departmental decision has been rendered thereon, the principle of res judicata will operate to bar consideration of a new appeal arising from a later collateral proceeding involving the same party, the same land, the same claim, and the same issues.

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IBLA 70-139	:	Washington 03967-E
UNITED STATES,	:	Verified statement
Contestant	:	rejected
v.		
J. S. DEVENNY,	:	Affirmed
Contestee		

DECISION

J. S. Devenny, mining claimant-appellant, appeals from the decision of the Office of Appeals and Hearings, Bureau of Land Management, dated March 30, 1970, which affirmed the decision of the Bureau's Oregon land office rejecting his verified statement Washington 03967-E, thereby denying appellant use of surface resources on the Helen May lode mining claim. These decisions were based on the fact that the Helen May claim had been declared null and void for lack of discovery of a valuable mineral deposit.

Although this case concerns surface rights, such rights depend entirely upon the validity of the mining claim with which they are associated. It would, therefore, be useful to briefly review the history of the Helen May claim.

Pursuant to section 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1964), J. S. Devenny filed a verified statement asserting rights to the vegetative and other surface resources within the Helen May lode mining claim (as well as some sixteen other claims) on October 2, 1956, within 150 days of the first publication of a notice by the Department of Interior. Subsequently, this verified statement was given serial identification Washington 03967-E.

A mineral patent application for the Helen May lode was filed by Devenny on April 10, 1958. After mineral examination of the claim, the Regional Forester, U.S. Department of Agriculture, requested the land office to initiate a contest (Wash. 4423) against this claim, alleging no discovery of a valuable mineral deposit. After hearings, which started March 16, 1961, and were continued until December 12, 1961, in order to permit Devenny to obtain further information on the mineral deposits allegedly on the claim,

the hearing examiner rendered a decision declaring the Helen May lode mining claim null and void for lack of discovery of a valuable mineral deposit. On successive appeals the hearing examiner's decision was affirmed both by the Director, Bureau of Land Management, and by the Assistant Solicitor for Land Appeals on behalf of the Secretary of the Interior. United States v. J. S. Devenny, A-30031 (June 19, 1964).

The appellant contends that no "independent determination" has been made of the lack of mineralization on the Helen May claim by the person who signed the decision appealed from and that, contrary to the holdings in previous decisions, there is sufficient mineralization to constitute a discovery. Appellant further contends the mineralization existed prior to the 1961 hearing of the contest of the validity of the claim, and therefore, the decision rejecting his verified statement is erroneous. Moreover, he asserts that in violation of its own regulations, the Department failed to give sufficient notice regarding rejection of the verified statement.

Since the mining claim is null and void, the claim for surface rights must fall of its own weight. When discovery rights for a mining claim fail, the claim for surface resources cannot survive. See United States v. Baranof Exploration and Development Co., 72 I.D. 212 (1965). The claim to vegetation and other surface rights, as reflected in the verified statement, was thus extinguished. The verified statement was apparently rejected as a mere ministerial function solely for the purpose of closing the record. The fact that this was done formally by decision does not enhance claimant's position, but merely makes it regrettable that the matter was unnecessarily reopened. However, this action could not revive the invalidated claim. A proceeding under section 5 of the Surface Resources Act is unnecessary in order to subject a claim to the limitations of section 4 of the act where the United States has already contested the validity of the claim and found that a valid discovery has not been made. Arthur L. Rankin, 73 I.D. 305, 310 (1966); United States v. Carlile, 67 I.D. 417, 427.

Claimant thus has exhausted administrative review on the issue of the validity of the claim. It is null and void. Final action having been taken by the Departmental decision, supra, the matter is res judicata. The doctrine of res judicata has long been accepted and applied by the Department. Cf. Southern Pacific Co., Lewis G. Wedekind, 77 I.D. 177 (1970). The decision from which this appeal is taken merely implements the final Departmental decision already rendered. The principle of res judicata is

operative to bar a reconsideration of that determination in a later collateral proceeding. John G. and Zilpha L. Wenzel et al., A-30616 (December 1, 1966).

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:

Joan B. Thompson, Member

Martin Ritvo, Member

