

**Editor's note: Reconsideration denied by order dated May 1, 1974**

UNITED STATES,  
CONTESTANT  
V.  
JOHN C. HUGHES,  
CONTESTEE

IBLA 71-68

Decided September 7, 1972

Appeal from hearing examiner decision in Arizona contest 3567 declaring lode mining claim null and void.

Affirmed.

Mining Claims: Discovery: Generally

To constitute a discovery upon a lode mining claim there must be a lode or vein bearing mineral which would justify a prudent man in the expenditure of his time and money, with a reasonable prospect of success of developing a valuable mine; it is not sufficient that there is only a showing which would warrant further prospecting or exploration in an attempt to ascertain whether the property might warrant development.

APPEARANCES: John C. Hughes of Hughes, Hughes, and Conlan, Attorneys at Law, pro se; Richard C. Fowler, Office of General Counsel, United States Department of Agriculture, for the United States.

#### OPINION BY MR. GOSS

John C. Hughes has appealed to the Secretary of the Interior from the hearing examiner's decision of September 17, 1970, which declared the Nancy H. lode mining claim, located within Section 32, T. 13 N., R. 3 W., G.S.R.M., Yavapai County, Arizona, (within the Prescott National Forest), to be null and void.

Contest proceedings were originally initiated upon a recommendation from the Forest Service, United States Department of Agriculture, charging that: (a) a valid discovery as required by the mining laws of the United States had not been made on the Nancy H. lode mining claim; (b) the land included within the said claim is nonmineral in character; and (c) the mining claim is not marked on the ground so that its boundaries can be traced.

After a hearing was held on March 5, 1970, at Phoenix, Arizona, the hearing examiner issued a decision declaring the Nancy H. lode mining claim null and void, ruling that a valuable mineral deposit had not been found within the limits of the subject mining claim. The Government had presented testimony from a registered mining engineer that test samples from the claim showed insignificant values which would not justify further expenditure of time or money on the claim. The examiner then concluded that appellant's attempt to make a showing of facts that would warrant further prospecting or exploration on the claim was insufficient to overcome the Government's prima facie case and establish the validity of the claim.

On appeal to the Secretary, appellant merely reiterates the arguments made below and presents no new evidence or novel questions.

We have reviewed the record, and considered the decision of the hearing examiner, which summarizes the evidence and discusses the points raised by the appellant. We conclude that the discussion and findings are correct. In view of the fact that appellant has not presented any new issues on appeal to the Secretary, there is no need to repeat the discussions and findings. Accordingly, we adopt the examiner's decision as the decision of this Board, a copy of which is attached.

Therefore, pursuant to the authority delegated to the Office of Hearings and Appeals, Board of Land Appeals, by the Secretary of the Interior (211 DM 31.5; 35 F.R. 12081), the decision appealed from is affirmed.

Joseph W. Goss  
Member

We concur:

Frederick Fishman  
Member

Anne Poindexter Lewis  
Member

September 17, 1970

DECISION

UNITED STATES of AMERICA,	:	ARIZONA 3567
	:	
Contestant	:	Involving the validity of the
	:	Nancy H. lode mining claim,
v.	:	situated within Section 32,
	:	T. 13 N., R. 3 W., GSR Meridian
JOHN C. HUGHES,	:	(within the Prescott National
	:	Forest), Yavapai County, Arizona
Contestee	:	

The issue presented for determination in this proceeding is whether a valuable mineral deposit has been found within the limits of the subject mining claim.

The validity of a mining claim cannot be recognized unless there has been a discovery of a valuable mineral deposit within the limits of the claim. A valuable mineral deposit is an occurrence of mineralization of such quality and quantity as to warrant a person of ordinary prudence in the expenditure of time and money in the development of a mine and the extraction of the mineral. The mineral deposit that has been found must have a present value for mining purposes. See United States v. Iron Silver Mining Company, 128 U.S. 673 (1888); Davis v. Wiebbold, 139 U.S. 507 (1891); Iron Silver Mining Company v. Mike & Starr Gold & Silver Mining Company, 143 U.S. 394 (1892); Chrisman v. Miller, 197 U.S. 313 (1905); Cole v. Ralph, 252 U.S. 286 (1920); United States v. Coleman, 390 U.S. 599 (1968); Converse v. Udall, 399 F.2d 616 (9th Cir., 1968), cert. den., 393 U.S. 1025 (1969); White v. Udall, 404 F.2d 334 (9th Cir., 1968); Udall v. Snyder, 405 F.2d 1179 (10th Cir., 1968), cert. den., 396 U.S. 819 (1969).

An occurrence of mineral that simply warrants the further expenditure of labor and means in prospecting or exploration in an effort to ascertain whether the mineralization that has been found is sufficient (or whether other mineralization might be found that might be sufficient) to justify the actual working of the property and the extraction of the mineral does

not constitute a valuable mineral deposit within the purview of the mining laws. The test is whether the facts warrant the development of the property, and not whether the facts warrant prospecting or exploration in an attempt to ascertain whether the property might warrant development. See Chrisman v. Miller, *supra*; Converse v. Udall, *supra*; Henault Mining Company v. Tysk, 419 F.2d 766 (9th Cir. 1969).

At the hearing a registered mining engineer employed by the Forest Service, Department of Agriculture, testified that he examined the contested claim on August 21, 22, and 28, 1968, September 6 and 9, 1968, December 4, 1968, May 27, 1969, and February 17, 1970 (Tr. 9, 20); that he took four samples for assaying from a cut and an adit on the claim (Tr. 12-14, 16); that the assay figures obtained from the samples showed insignificant values (Tr. 36, Ex. 2); that in his opinion a prudent person would not be justified in the further expenditure of time or money on the claim with any hope of developing a valuable mining operation (Tr. 24, 25, 37, Ex. 2); and that in his opinion the claim would not even justify the expenditure of time or money in further prospecting or exploratory work (Tr. 37).

The contestee's evidence consisted of the following statement preceded by an admission from the Forest Service mining engineer that a firm known as Occidental Minerals could be considered prudent:

All I have to offer is as late as last week I was in Globe talking to the personnel of Occidental Minerals and they are sending a geologist over to inspect this property. Now, with that, the witness has said that they would be spending time and money, and they are prudent, we would rest. (Tr. 45)

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case, and the burden then shifts to the mining claimant to show by a preponderance of the evidence that the claim is valid. See Foster v. Seaton, 271 F. 2d 836 (D.C. Cir., 1959).

The contestant presented sufficient evidence to establish a prima facie case that the contested claim is not supported by a discovery of a valuable mineral deposit as required by the mining laws. The contestee's evidence does not show that a valuable mineral deposit has been found within the limits of the claim.

Pursuant to the prayer of the complaint, the Nancy H. lode mining claim is declared null and void.

The right of appeal to the Board of Land Appeals, Office of the Secretary, is allowed in accordance with the regulations in 43 CFR Part 1840. However,

if an appeal is to be taken, the notice of appeal must be filed in this office (not with the Board) so that the case file can be transmitted to the Board. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

Robert W. Mesch  
Hearing Examiner

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