

UNITED STATES  
v.  
CECIL R. BLOMQUIST, ADMINISTRATOR OF THE  
ESTATE OF FRANK BLOMQUIST, ET AL.

IBLA 71-213

Decided September 28, 1972

Appeal from a decision by Departmental Hearing Examiner, Rudolph M. Steiner, declaring appellants' mining claims null and void.

Affirmed

Mining Claims: Contests -- Mining Claims: Discovery -- Rules of Practice: Evidence

The Government is not obligated to affirmatively prove that the land in a mining claim is nonmineral or that no discovery exists; if the Government's mineral examiner testifies that he examined a mining claim and found no evidence of a valuable mineral deposit, the Government has established a prima facie case of lack of discovery.

Mining Claims: Contests -- Rules of Practice: Appeals: Burden of Proof

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the burden of proof then shifts to the mining claimants to show by a preponderance of the evidence that a discovery has been made.

APPEARANCES: Jack McSherry, Esq., for the appellants. Jim Kauble, Esq., Office of the General Counsel, United States Department of Agriculture, for the United States.

OPINION BY MR. GOSS

Cecil R. Blomquist, individually and as administrator of the estate of Frank Blomquist, deceased, et al. 1/ have appealed from

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1/ The other appellants are Teresa O'Hiser and John A. Mortenson.

the hearing examiner's decision issued January 29, 1971, declaring appellants' mining claims 2/ null and void for lack of discovery. All of appellants' claims are located in the Wenatchee National Forest, Kittitas County, Washington.

On February 12, 1968, three contest proceedings were initiated alleging the following:

1. Minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery.
2. The land within the boundaries of the claims is nonmineral in character.

Contest No. OR-2798 involved the Coco Bolo lode claim and the Nineteen Forty placer claim. Contest No. OR-2799 concerned the Fountain Head placer claim and OR-2800 the Village placer claim. The contests were consolidated for a hearing held May 13, 1970. At the hearing the appellants, appearing pro se, stipulated that the Coco Bolo lode claim had been abandoned and was no longer in existence.

The hearing examiner declared the claims null and void for lack of discovery and on appeal appellants contend that:

1. A discovery once made is sufficient to validate the claim for all times.
2. The Government's mineral examiner made a cursory examination of the claims and his conclusion of lack of discovery was refuted by appellants' witnesses.
3. Appellants were unconstitutionally deprived of private property for public purposes without due process and without just compensation.
4. The United States Forest Service has unlawfully discriminated against appellants by

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2/ The mining claims involved in the contest proceedings were the Coco Bolo lode claim, the Nineteen Forty placer claim, the Village placer claim, and the Fountain Head placer claim. In a letter dated March 1, 1968, Cecil R. Blomquist described the Nineteen Forty, the Fountain Head, and the Village as placer claims. However, at the hearing testimony was recorded about shafts, an incline and a tunnel on the claims.

having a contest proceeding initiated against them while other mining claimants in the same area were proceeded against under section 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1970).

As to appellants' first contention, the fact that a claim may have at one time produced valuable minerals is not dispositive of whether the claim at present contains sufficient mineral deposits to constitute a discovery. See Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); United States v. Paul M. Thomas et al., 78 I.D. 5,9 (1971). The mining claimant must show by a preponderance of the evidence that there is embraced within the boundaries of the claim a valuable mineral deposit. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959).

Appellants also contend that the Government's mineral examiner did not conduct a thorough investigation of the mining claims and that his testimony of lack of discovery cannot stand in the face of appellants' testimony of valuable mineral deposits. The standard for determining a discovery of a valid mineral deposit was laid down 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, in developing a valuable mine, the requirements of the statute have been met. \* \* \*

The standard and its application have been approved numerous times by the Supreme Court. Chrisman v. Miller, 197 U.S. 313, 322 (1905); Cameron v. United States, 252 U.S. 450, 459 (1920); Best v. Humboldt Placer Mining Co., *supra*, at 335-336; United States v. Coleman, 390 U.S. 599, 602 (1968).

At the hearing the following facts were disclosed:

Milvoy Suchy, mining engineer for the United States Forest Service, examined the Nineteen Forty, the Fountain Head, and the Village mining claims. He testified as to the geological history of the area generally known as the Swauk mining district. He stated that approximately three million dollars worth of gold was removed from the placers of Williams Creek and Swauk Creek by 1930, the greatest portion being removed between 1892 and 1905. He also noted that some recent production had taken place along Williams Creek.

He examined the Fountain Head claim in 1962, accompanied by Mr. Frank Blomquist. Panning a few samples of gravel revealed very meager amounts of gold in some instances and none in others. Several samples were panned from the exposed gravel deposit on the claim, but no colors were found.

He also examined the Village and the Nineteen Forty while accompanied by Frank Blomquist but he took no samples. Frank Blomquist related that several shafts had been sunk and that he was removing gold from the pillars in one of the shafts until the whole area of the shaft caved in. The witness testified that at the time the claims were examined, Frank Blomquist was prospecting, had objectives, and was looking for valuable mineral deposits.

In his opinion there was not discovered on any of the three claims a valuable mineral deposit that would justify the further expenditure of time and effort by a reasonable and prudent person to develop a paying mine.

Mrs. Bertha Benson testified that Frank Blomquist had told her that he had taken a pocket of gold, 24 inches long and 18 inches wide, from the Nelson Tunnel on the Fountain Head claim in 1959 or 1960.

Thane Ohler testified that he saw an "apple box and a half" of gold nuggets in Frank Blomquist's cabin. He didn't know whether it was all placer gold. He didn't know the value and he didn't ask. Frank Blomquist told him he got the gold from the Nelson Tunnel.

Cecil R. Blomquist identified a nugget as having been taken from the Nelson Tunnel by Frank Blomquist. The specimen was described by Milvoy Suchy as a nugget that had a gold content between half and three-quarters of an ounce. The witness testified that he intended to begin mining the Nelson Tunnel and also that he was sinking an incline on the Village.

The Government is not required to provide positive proof that there has been no discovery made or that the mining claim is nonmineral in character. The Government mineral examiner merely investigates the claims for the purpose of verifying, if possible, a discovery within the boundaries of the claim. United States v. Brian Gould, A-30990 (May 7, 1969). It is not the duty of the mineral examiner to do discovery work or to explore beyond the current workings and it is incumbent upon the mining claimant to keep discovery points available for inspection by mineral examiners. United States v. Lem A. and Elizabeth D. Houston, 66 I.D. 161, 167 (1959); United States v. Calla Mortenson, et al., 7 IBLA 123 (1972).

The testimony of Mr. Suchy that a valuable mineral deposit had not been discovered on any of the three claims established for the Government a prima facie case of lack of discovery. United States v. Lawrence W. Stevens et al., 76 I.D. 56, 59 (1969). The burden then shifted to appellants to show by a preponderance of the evidence that their claims were valid. Foster v. Seaton, supra. Appellants produced no evidence to indicate amounts or values of gold taken from the claims involved in this appeal and did not meet their burden of proof.

Appellants' third contention, that the contest proceedings violated the Fifth Amendment to the Constitution in that appellants were deprived of private property for public use without due process and without just compensation, lacks merit. In a contest proceeding the requirements of due process are satisfied when notice and opportunity to be heard are afforded according to the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. (1970). United States v. Raymond Bass, Betty Yeck et al., 6 IBLA 113, 117 (1972).

With regard to appellants' final assertion, they have not proved discrimination by the Forest Service. The mining claims are located in the Wenatchee National Forest. The Forest Service, United States Department of Agriculture, as overseer of the national forests, has the right to request the Bureau of Land Management, Department of the Interior, to initiate contest proceedings under 43 CFR 4.451 (1972) formerly 43 CFR 1852 (1968) or to initiate a proceeding under section 5 of the Surface Resources Act, 30 U.S.C. §§ 611-615 (1970). Which proceeding is initiated is within the discretion of the Forest Service and is dependent upon a consideration of all relevant circumstances. No discrimination or abuse of discretion appears from the record.

Appellants have failed to show by a preponderance of the evidence that valuable mineral deposits were discovered on the Fountain Head, the Village or the Nineteen Forty. Since the appellants stipulated that the Coco Bolo lode claim had been abandoned, the hearing examiner was also correct in declaring the Coco Bolo claim null and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss  
Member

We concur:

Douglas E. Henriques  
Member

Martin Ritvo  
Member

