

UNITED STATES
v.
DEWEY DOTSON AND C. L. WILKEY

IBLA 72-422

Decided March 26, 1973

Appeal from decision (California Contest No. S-4081) of Administrative Law Judge Graydon E. Holt declaring certain mining claims null and void for lack of discovery.

Affirmed.

Mining Claims: Determination of Validity -- Mining Claims: Discovery: Generally

To constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Mining Claims: Contests -- Mining Claims: Determination of Validity -- Rules of Practice:
Government Contests

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

APPEARANCES: Weis & Huckins, Yuba City, California, by Donald E. Huckins, Esq., for appellants; Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for the United States.

OPINION BY MR. HENRIQUES

Dewey Dotson and C. L. Wilkey have appealed from a decision dated April 24, 1972, of Administrative Law Judge Graydon E. Holt 1/

1/ By order of the Civil Service Commission, the title "Administrative Law Judge" has replaced that of "Hearing Examiner" 37 F.R. 16787.

which held the Gold Flat Placer and Climax Quartz (aka Gold Flat Quartz) mining claims and the Gold Flat Mill Site null and void.

This proceeding arose in response to a contest complaint issued by the Department of the Interior on behalf of the Forest Service, United States Department of Agriculture, on April 13, 1971, charging that there is not disclosed within the boundaries of the mining claims mineral materials of a variety subject to the mining laws, sufficient in quantity, quality and value to constitute a valid discovery; that the land embraced within the claims is nonmineral in character; and that the millsite is not used or occupied by the proprietor of a vein, lode or placer for mining, milling, processing and beneficiation purposes or other operations in connection with such mines. The mining claimants denied the charges. Thereupon the matter came on for a hearing on July 20, 1971, in Sacramento, California.

A copy of the Judge's decision is appended hereto. His summary is in accord with the testimony in the record. His statement of the law is precise and accurate.

The appellants contend that the facts do not support the findings and the decision is contrary to law. They argue that the Government has failed to prove a prima facie case and that the gold within the claims can be economically recovered.

When the Government contests a mining claim, it has only the burden of going forward with sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. The Government is not obligated to prove affirmatively either that the land claimed is nonmineral in character or that no discovery of a valuable mineral deposit within the limits of a mining claim has been made, and the government's mineral examiners are under no obligation either to rehabilitate discovery points or to explore beyond the current workings of a mining claimant in order to verify a claimed discovery. Where a government mineral examiner testifies that he has sampled the exposed workings on a claim without finding sufficient mineral values and that he observed no other mineralization to sample, a prima facie case of no discovery has been made, and the burden is thereafter upon the mining claimant to show by a preponderance of the evidence that a discovery has been made. United States v. F. E. Gray and Mrs. F. E. Gray, 8 IBLA 96 (1972).

The government's mineral engineer testified that he had examined the claims and sampled the workings of the claimants. Based on the lean mineral values reflected by assays of the samples showing values less than the cost of mining and milling the mineral

material, the engineer further testified that he had formulated the opinion that a prudent man would not be justified in expending more time and money with a reasonable expectation of developing a paying mine. This testimony and supporting exhibits of assay certificates constituted a prima facie case by the Government of no discovery of a valuable mineral deposit within the claims.

Did the claimants meet their burden of showing by a preponderance of the evidence that a discovery had been made? The principal witness for the contestee was Claude Phillips, one of the persons from whom the contestees had obtained title to the mining claims. Essentially, Phillips testified that he and his brother conducted prospecting operations on the claims, taking many samples. The average value of samples was about \$ 3 per ton. They recognized that gold and silver mineralization exist in the area but they did not find any concentration of recoverable gold or silver on either claim. As a consequence they disposed of the claims because the value of the minerals did not afford enough margin for them to work on; selling to the present contestees for no more than the value of their improvements. This testimony, together with the other evidence presented by contestees, did not preponderate against the Government's prima facie case.

To constitute a discovery upon a mining claim there must be exposed within the limits of the claim mineral of such quality and in such quantity as to warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is exposed mineralization which merely gives rise to a hope or expectation that a valuable mineral deposit may be found upon further exploration. United States v. Frank W. Whitenack, 1 IBLA 156 (1970).

It is not enough that the mineral values exposed might justify further prospecting or exploration to determine whether actual mining operations would be warranted. United States v. Henault Mining Company, 73 I.D. 184 (1966); aff'd sub nom., Henault Mining Company, v. Tysk, 419 F.2d 766 (9th Cir. 1969); cert. denied sub nom., Henault Mining Company v. Zaidlicz, 398 U.S. 950 (1970).

There is nothing in the record to support the second contention of the appellants that the low value minerals on the claims could be beneficiated profitably.

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

Douglas E. Henriques, Member

We concur:

Martin Ritvo, Member

Joan B. Thompson, Member.

April 24, 1972

DECISION

United States of America, Contestant
v.
Dewey Dotson, C. L.
Wilkey, Contestees

Contest No. S-4081

Involving Gold Flat Placer and Climax Quartz Claim (aka Gold Flat Quartz), and Gold Flat Millsite, located in Secs. 3 and 4, T. 19 N., R. 6 E., M.D.M., Butte County, California

Claims Declared Null and Void

This proceeding was initiated by the Bureau of Land Management at the request of the Forest Service through the filing of a complaint in the Sacramento Land Office on April 13, 1971. In the complaint the contestant charged as follows:

- a. There is not disclosed within the boundaries of the mining claims mineral materials of a variety subject to the mining laws, sufficient in quantity, quality and value to constitute a valid discovery.
- b. The land embraced within the claims is nonmineral in character.
- c. The mill site is not used or occupied by the proprietor of a vein, lode, or placer for mining, milling, processing or beneficiation purposes or other operations in connection with such mines.

The contestees filed a timely answer in which these allegations were denied. They affirmatively alleged that during the period when Claude Phillips owned an interest in the claims, assays of samples showed the claims to be mineral in character and capable of being profitably worked. Copies of the assay reports with values of approximately \$3 a ton in gold and silver were attached to the answer.

Thereafter, a hearing was held in Sacramento, California on July 20, 1971. The contestant was represented by Charles F. Lawrence, Esq.,

Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California. The contestees were represented by Donald E. Huckins, Esq., Yuba City, California. The witnesses were Henry Jones, a mining engineer employed by the Forest Service, Claude Phillips, one of the locators of the claims, Thor Paulsen, a miner, and Dewey Dotson, one of the contestees.

The two mining claims were located for gold and silver in 1963 and purchased by the contestees in 1965. They are in the Feather River drainage east of Oroville. A creek traverses the length of the claims and this creek was mined many years ago. There is a bench along the placer claim and debris from the mountain at a higher elevation has eroded down to the claim. Mr. Jones referred to this material as slough which he described as material which has moved down from a slope (Tr. 22). Mr. Phillips stated that the loose material on the claim consisted of tailings from the Maple Leaf mine located directly above the claim (Tr. 43).

Mr. Jones visited the claims on several occasions while accompanied by Mr. Dotson and secured various samples. He first sampled a cut on the placer claim which Mr. Dotson suggested would be a good place to sample and he recovered two small colors. The second sample was from a trench approximately 75 feet long, 8 feet wide and 6 feet deep. There were no colors in this sample. The third was a four pan sample from a bulldozed trench and again he found no colors. On the lode claim Mr. Jones found a small quartz vein exposed in a cut which he sampled and it assayed \$ 4.50 per ton in gold and silver. He estimated that the cost of removing the material from the vein would be approximately \$ 10 a ton. He then expressed the opinion that there was not sufficient mineralization on either the placer or lode claim to justify the expenditure of further time and money in an attempt to develop a paying mine (Tr. 12-17).

Mr. Jones also testified that the improvements include a house and two ponds on the placer claim, and a ditch and pipeline on the mill site. Although there is a trommel and other equipment on the mill site, he saw no indication that the site has been used for the processing of ore.

Mr. Phillips testified that he located the placer claim in an area which contains tailings from the Maple Leaf mine at a higher elevation. He believes that there is a deposit of tailings 320 feet long, 125 feet wide, and at least 13 feet deep on the placer claim. Both he and his brother sampled the material and had the samples fire assayed. The average result was approximately \$3 a ton (Exs. D and E). On one occasion he took a 1500 pound sample, concentrated it down to 60 pounds, and had this material fire assayed. The concentrates assayed \$80 a ton which is approximately \$3.25 per ton for the original material.

After Mr. Phillips and his brother had the claims for several years, they concluded that "we didn't want to put too much money into it, and we just decided that we'd better stop where we were" (Tr. 52). He does believe

that with the proper equipment the placer material could be successfully operated. This is based on the \$ 3 values shown on the assay certificates.

On the Climax Quartz claim they found a small quartz vein with cubes of pyrite which usually carry gold. Although they never had the vein material assayed, they often panned it and estimated the values to be similar to the values referred to by Mr. Jones (Tr. 54). Mr. Phillips agreed that the cost of smelting was from \$8 to \$12 a ton (Tr. 59).

Thor Paulsen is a miner who has been familiar with the claims since the depression days. At that time the area was known as Squaw Flat. He testified that he washed 4 or 5 yards of material from the placer claim through a sluice box and recovered approximately 15 pounds of black sand which assayed \$ 96.40 a ton. Although he was not certain he did not think the assays were fire assays (Tr. 63-66).

Mr. Dotson testified that he and Mr. Wilkey purchased the claims from the Phillips brothers in 1965 and since that time they have made a number of improvements, including the construction of an access road, a trench, and two reservoirs. They have also acquired a four-wheel drive loader, a backhoe, a concentrating table, and are now building a sluice box. They intend to wash the placer gravel at the old mill site. Although they have not yet uncovered commercial quantities of gold, Mr. Dotson believes that with their equipment and two or three men they can run 20 tons an hour through the plant economically. Mr. Dotson is presently employed as a sales representative for a ready-mix plant (Tr. 67-77).

The definitions of various mining terms used at the hearing are: 1/

- PLACER DEPOSIT. A mass of gravel, sand, or similar material resulting from the crumbling and erosion of solid rocks and containing particles or nuggets of gold, platinum, tin, or other valuable minerals, that have been derived from the rocks or veins (Fay).

FREE GOLD. Gold uncombined with other substances (Fay).

FREE GOLD ASSAY. A procedure carried out to determine the free gold content of an ore. In the case of placer material; a procedure to determine the amount of gold recoverable by gravity concentration and amalgamation.

1/ U. S. Department of the Interior Bulletin No. 4 by John H. Wells, Mining Engineer, dated July 1969.

FIRE ASSAY. The assaying of metallic ores, usually gold and silver, by methods requiring furnace heat. (Fay) Fire assaying, in essence, is a miniature smelting process which recovers and reports the total gold content of the assay sample, including gold combined with other elements, or mechanically locked in the ore particles. Consequently, the gold value indicated by fire assay is not necessarily recoverable by placer methods. For this and other reasons, the gold content of placer material is not normally determined by fire assay.

At page 65 of the Bulletin, Mr. Wells stated:

Fire assaying, in essence, is a miniature smelting process which recovers and reports the total gold content of the assay sample, including gold combined with other elements or locked in the ore particles. Because of this, a fire assay may report values that cannot be recovered by placer methods and it cannot be too strongly stressed that when dealing with gold placers, the sample values should not be determined by fire assay. Furthermore, no credence should be placed in placer valuations or reports that are based on the results of fire assays. Although this should be common knowledge among mineral examiners, a surprising number seem unaware that fire assaying although accurate per se yields misleading results when applied to placers.

An indispensable requirement for a valid mining claim is the discovery of a valuable mineral deposit. Although the mining laws do not define such a deposit, the Department and the Courts have long used the prudent man rule originally announced in Castle v. Womble, 19 L.D. 455 (1894) in making the determination of whether a particular deposit is valuable. This rule is that:

Where 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.

Also see Chrisman v. Miller, 197 U.S. 313 (1905); Best v. Humboldt Placer Mining Company, 371 U.S. 334 (1963); and U. S. v. Coleman, 390 U.S. 599 (1968).

After quoting this rule in United States v. Ford M. Converse, 72 I.D. 141 (1965) the Assistant Solicitor made the following comment:

The Department, however, recognizes a distinct difference between exploration and 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. United States v. Clyde R. Altman and Charles M. Russell, 68 I.D. 235 (1961); United States v. Edgecumbe Exploration Company, Inc., A-29908 (May 25, 1964), and cases cited therein.

In a mining contest the Government must first present a prima facie case that there has not been a discovery of a valuable deposit. It then becomes the burden of the mining claimant to affirmatively show that there has been a valid discovery. Foster v. Seaton, 271 F. 2d 836 (1959).

In a marginal placer operation a prudent miner is interested primarily in the amount of gold that can be recovered by placer mining methods. These methods are by gravity concentration and amalgamation not by smelting. This latter process is expensive and usually used only when gold and silver values are combined with quartz or other minerals. In such deposits the values must be proportionately higher.

In the present case the contestant made a prima facie case through the testimony of a mining engineer. He was on the placer claim, took samples of the material at sites suggested by the contestees, but found insufficient values to be recoverable in a placer mining operation. Also he was on the lode claim and found a quartz vein, but again the values were well below the cost of extraction.

The refute this evidence the contestees offered the testimony of Mr. Phillips and Mr. Paulsen. Mr. Phillips and his brother located the claims and retained them for several years. During this period they took many samples and had them fire assayed. The average results were \$ 3 a ton. While this is evidence that there is gold and silver mineralization on the claims and generally in the area, it has no meaning or relationship to the amount of recoverable gold and silver. They then sold the claims for nothing more than the value of the improvements. Apparently they did not believe the minerals on the claims had any value.

Mr. Paulsen concentrated 4 or 5 yards of placer material down to 15 pounds, and the concentrates assayed \$96.40 a ton. He was not certain whether this was the result of a fire assay or not. Without knowing there is no way of evaluating this testimony. If it was an assay by amalgamation it represents a value of 10 cents a ton for the original material at 100% recovery. 2/ Since the recovery in an actual operation is less than 100% the value of the material would be less.

This evidence falls far short of establishing that a prudent person would invest his time and money on either claim with a reasonable prospect of success in developing a valuable mine. Accordingly, the Gold Flat Placer and Climax Quartz Claim (aka Gold Flat Quartz) mining claims are declared null and void for the lack of a valid discovery.

The law applicable to mill sites, 43 U.S.C. § 42 (1964), authorizes the owner of a valid mining claim to locate a mill site for mining purposes or for use as a site for a quartz mill or reduction works. Since the contestees do not have a valid claim, quartz mill, or reduction works, the Gold Flat Mill Site is declared null and void.

An appeal from this decision may be taken to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR, Part 4, (Revised as of January 1, 1972). The adverse party to be served with the notice of appeal and other documents is The Regional Attorney, whose address appears below.

Graydon E. Holt
Hearing Examiner

