

UNITED STATES
v.
BRADLANER ENTERPRISES, INC., D/B/A BRADLANER CORPORATION

IBLA 73-271

Decided September 27, 1973,

Appeal from a decision by Administrative Law Judge L. K. Luoma declaring placer mining claims Glade Gold #1 through 36 and 7137 through 7146 invalid.

Affirmed.

Administrative Procedure: Generally! ! Administrative Procedure:
Hearings! ! Mining Claims: Contests! ! Mining Claims:
Determination of Validity

The Department of the Interior has the power, after proper notice and upon adequate hearing, to determine whether a mining claim is valid, and, if it be found invalid, to declare it void.

Mining Claims: Generally! ! Mining Claims: Contests! ! Mining
Claims: Determination of Validity! ! Mining Claims: Lode
Claims! ! Mining Claims: Placer Claims

The basis of a valid mining location for both placer and lode claims is discovery of a valuable mineral deposit within the claim area.

Administrative Procedure: Burden of Proof! ! Mining Claims:
Contests! ! Mining Claims: Determination of Validity

Although the United States has assumed the burden of presenting a prima facie case of invalidity in a mining contest, the claimant must then show his claim is valid by a preponderance of the evidence.

Administrative Procedure: Burden of Proof! ! Mining Claims:
Contests! ! Mining Claims: Discovery: Generally! ! Mining Claims:
Discovery: Marketability

Where the claimant shows the presence of some gold within mining claims, but does not prove by a preponderance of the evidence 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, his claim is invalid for lack of discovery.

Mining Claims: Contests! ! Mining Claims: Determination of
Validity! ! Rules of Practice: Evidence! ! Rules of Practice:
Witnesses

It is proper for a Government mineral expert to give his opinion as to whether mineralization on a mining claim warrants a prudent man to invest money and time with the expectation of developing a valuable mine.

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

Neither mere findings of some mineral on a claim consisting of minute gold flakes nor plans for future exploration are substitutes for a discovery under the mining laws.

APPEARANCES: Mary Adams, Esq., Idaho Falls, Idaho, and Gary Gowen, Esq., Jackson, Wyoming, for appellant. Erol R. Benson, Esq., Office of the General Counsel, Department of Agriculture, Ogden, Utah, Richard J. Dauber, Esq., and John Scott McMunn, Esq., Office of the Solicitor, San Francisco, California, Department of the Interior, for the United States.

OPINION BY MRS. THOMPSON

Hearings on this contest instituted by the United States were held before Administrative Law Judge L. K. Luoma, who, by decision dated January 4, 1973, held invalid placer gold mining claims Glade Gold #1 through 36 and 7137 through 7146 owned by Bradlaner Enterprises, Inc. (hereinafter referred to as Bradlaner), for the reason that there had not been sufficient showing of a discovery of a valuable mineral deposit. One of the charges in the Government's complaint, was:

* * * * *

- 2. Minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery.

* * * * *

Three other charges were also made, but need not be considered here, because full disposition of the case was made by the Judge under charge two.

After discussing applicable law and the evidence in the case, the Judge made the following "Final Findings and Conclusions":

There is no significant disagreement between the parties as to what gold has actually been found on the area of the claims. The claims contain at least some quantities of fine flour or float gold. The disagreement obviously lies in the interpretation of the prudent test and what is required to establish a valid discovery. The evidence presented by Contestant clearly establishes that minerals have not been found or exposed on the claims which would justify expenditures toward active mining operations. Therefore, Contestant met its burden of establishing a prima facie case of invalidity. The evidence presented by Contestee, likewise, falls far short of showing that minerals have been found or exposed which would justify such expenditures. The gist of Contestee's testimony is that it has barely begun its exploratory work and that the mineralization thus far found may justify expenditures for further exploration but certainly not for development of a mining operation. This * * * does not meet the prudent man test of discovery.

Bradlaner contends generally the Administrative Law Judge's decision was incorrect in the following respects: (1) in holding that its claims do not contain valuable mineral deposits sufficient to meet the requirements of discovery under the mining laws; (2) in applying the prudent man test to the facts of the case, particularly in applying standards for discovery of minerals in lode claims to placer claims; (3) in concluding, in effect, that the evidence did not warrant development of a mining operation but only further exploration; (4) in giving undue weight to the testimony of the Government's witnesses as they were not practical miners but Government employees; (5) in hearing the contest as it was arbitrarily brought to pre-empt appellant's rights; and (6) in conducting the hearing as if it were a patent application rather than a mining claim. These contentions are all without merit. In addition, appellant asserts that a discovery has been made under the prudent man test. The evidence clearly shows that the prudent man test of discovery as applied to placer claims has not been met as to any of the claims involved in the contest.

Robert Ruud, president of Bradlaner, spent the summers of 1968 and 1969 exploring the area between Yellowstone National Park and Grand Teton National Park, known as the "Corridor," for gold. Panning was the only method he used in his exploration. He claimed to find "colors," or evidence of gold, on each of the above claims during this exploration period, but did not have any samples from the claims area assayed. On February 12, 1970, and May 15, 1970, Ruud formally located the above-mentioned claims on behalf of Bradlaner.

Several government employees who testified at this hearing, all mining experts, separately examined the claims for evidence of mineralization. Although they found some gold in the claims area, it was "float" or "flour" gold, in extremely small flakes, requiring several thousand flakes to equal one cent of gold. Six surface samples, four subsurface samples taken by a churn drill, several dredge and suction samples, and over 48 pan samples were taken by these men. All of these samples were assayed or otherwise examined to determine the value of gold in the sample. The values were generally negligible. All three experts testified that there was not sufficient gold on the claim areas to justify the further expenditure of labor and money with a reasonable prospect of success in developing a valuable mine. As one of them stated:

There's no possibility whatever in my opinion for a successful mining operation for gold or silver

or platinum or mercury or other minerals. * * * I'm saying I can't conceivably imagine how it could be [mined] because the grade of gold and other minerals is so low its inconceivable that they could be found in sufficient quantity to justify the expenditure of any money. Tr. 209, 226.

The opinion of these experts was reached, in part, by comparing the values obtained in the assayed samples and the estimated costs of removing and marketing the gold, by studying the mineralization in the Corridor area, and by considering various extraction and processing methods.

Bradlaner, in rebuttal, presented testimony of Ruud and of a geophysical mining engineer. Ruud testified that after his initial exploration he concluded it would be reasonable to proceed to spend money for additional exploration of the claim area. At one point, in reference to his next expenditures for the claims, he said,

* * * I'm speaking of a pattern of drilling or a pattern of exploration which would lead to a logical conclusion to make a judgment on a business basis to proceed with a mining operation. Tr. 293.

Bradlaner's expert visited the claims area several times over a period of four years. His examination of the property was limited to observation and panning. The only material he had assayed was the concentrate from a panning operation which he valued at twenty cents per cubic yard. However, he had neglected to weigh the sample from which the concentrate was taken, and therefore, did not know the percentage relationship of the weight of the sample to the weight of the concentrate. Because of this omission, conversion of the assay results to corresponding placer gold deposits is not very probative of the actual mineral values in the area. Although Bradlaner's expert testified he would advise the expenditure of further funds for exploration purposes, he also stated he had, "[n]o definite idea as to the commercial feasibility of the deposits." Tr. 353.

Bradlaner's contention that the Administrative Law Judge erred in conducting the hearing has no merit whatsoever. The Department of the Interior has the power, "after proper notice and upon adequate hearing, to determine whether the [mining] claim is valid and, if it be found invalid, to declare it null and void." Cameron v. United States, 252 U.S. 450, 459-60 (1920); see Best v. Humboldt, 371 U.S. 334, 338-40 (1963); Davis v. Nelson, 329 F.2d 840, 846 (9th Cir. 1964); United

States v. Baranoff Exploration and Development Company, 72 I.D. 212, 216 (1965). The desire of the Secretary of the Interior to establish clear title to public lands is sufficient justification for bringing the contest. Davis v. Nelson, *supra*.

The basis of a valid mining location is a discovery of a valuable mineral deposit within the claim area. 30 U.S.C. § 23 (1970); *see also* Adams v. United States, 318 F.2d 861 (9th Cir. 1963); Grant v. Pilgrim, 95 F.2d 562 (9th Cir. 1938). Although the Government, by practice, in contesting a mining claim has assumed the burden of making a prima facie showing that a claim is invalid, once it has done so the claimant must show the validity of its claim by a preponderance of the evidence. *See* Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Taylor, 8 IBLA 264, 266 (1972); United States v. McGuire, 4 IBLA 307, 309 (1972).

The long accepted test for a discovery is:

* * * [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, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met. Castle v. Womble, 19 L.D. 455, 457 (1894).

The prudent man test requires a showing that there is sufficient quantity of mineral on the claim that the mineral can be removed, extracted and marketed at a profit. United States v. Coleman, 390 U.S. 599, 600, 602 (1968). This concept of profitability to establish the existence of a discovery pertains to rare metallics, such as gold and silver, as well as to common varieties of stone. *Compare* United States v. Coleman, *supra*, with Converse v. Udall, 399 F.2d 616, 621 (9th Cir. 1968), *cert. denied*, 393 U.S. 1025 (1969). Contrary to Bradlaner's assertion, this rule applies equally to both placer and lode claims, 30 U.S.C. § 35; *see* Fresh v. Udall, 228 F. Supp. 738, 740 (D. Colo. 1964); United States v. Silverton Mining and Milling Company, 1 IBLA 15, 19 (1970), and to contests challenging the validity of mining claims where no patent application has been filed as well as patent application cases. United States v. Carlile, 67 I.D. 417, 423-426 (1960). Moreover, it is proper for a Government mineral expert to give his opinion whether the mineralization on a claim warrants a prudent man to invest money and time with the expectation of developing a valuable mine. *See* Udall v. Snyder, 405 F.2d 1179, 1180 (10th Cir.), *cert. denied*, 396 U.S. 819 (1969).

Here, there was testimony that there was some float gold in the claims area. The evidence, however, does not establish that the quantity of gold present could support a profitable mining operation, or that there is an economically feasible method of recovering the minute particles of gold within this particular area. Although future and continued exploration of the area might be justified, not only the Government witnesses but also Bradlaner's expert, who testified as to his inability to evaluate the commercial feasibility of the deposits, concur that there is no finding of gold at the present time which would justify a prudent man in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine; or which would indicate the minerals could be extracted, processed and sold at a profit. Neither mere findings of some mineral on a claim, see Converse v. Udall, supra at 619, nor plans for future exploration are substitutes for a discovery. Ranchers Exploration and Development Company v. Anaconda Company, 248 F. Supp. 708, 717 (D. Utah 1965).

We agree with the Administrative Law Judge that a discovery of a valuable mineral deposit has not been shown by a preponderance of the evidence.

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

Joan B. Thompson
Member

We concur:

Martin Ritvo
Member

Anne Poindexter Lewis
Member

