

Editor's note: Appealed -- aff'd, Civ. No. 74-3062-WMB (C.D. Calif. Feb. 11, 1975), aff'd, No. 75-1926 (9th Cir. Oct. 15, 1976) 544 F.2d 526

UNITED STATES

v.

RAMSHER MINING AND ENGINEERING COMPANY, INC.

IBLA 73-282

Decided October 24, 1973

Appeal from a decision by Administrative Law Judge Graydon Holt dated January 16, 1973, declaring mining claims in Contest Nos. R-4171 through R-4177 null and void.

Affirmed.

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

In a contest by the United States to determine the validity of a mining claim, although by practice the United States has assumed the burden of presenting a prima facie case of invalidity, the claimant has the burden of showing, with a preponderance of the evidence, that the claim is valid.

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

Testimony by a government mineral examiner that he has examined a mining claim but has found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the Government of lack of discovery of valuable minerals.

Mining Claims: Contests! ! Mining Claims: Determination of Validity! ! Mining Claims: Discovery: Generally! ! Rules of Practice: Evidence

A few assay reports indicating some high mineral values are not substantial evidence of a discovery where there is not adequate evaluation and other corroborative and probative evidence of a continuity of mineralization in sufficient quantity and quality to meet the prudent man test of discovery of a valuable mineral deposit.

Mining Claims: Generally! ! Mining Claims: Determination of Validity! ! Mining Claims: Discovery: Generally! ! Rules of Practice: Government Contests

Where the evidence in a contest proceeding shows, at most, that further exploration on a claim is necessary to determine its value, no discovery is shown.

APPEARANCES: Monta W. Shirley, Esq., Los Angeles, California, for Appellants. Charles F. Lawrence, Esq., Office of the General Counsel, United States Department of Agriculture, San Francisco, California, for the United States.

OPINION BY MRS. THOMPSON

Ramsher Mining and Engineering Company, Inc., appeals from a decision dated January 16, 1973, by Administrative Law Judge Holt declaring null and void 41 lode mining claims in San Bernardino County, California, for a lack of proof of discovery of valuable mineral deposits. See Appendix A for the names and descriptions of the claims in the combined contests involved in this appeal.

The contests were initiated by the Bureau of Land Management at the request of the United States Forest Service, the claims being within the San Bernardino National Forest. The contest complaints each listed four charges. The issues raised by the appeal pertain to only one of the charges; namely, the charge that there were not minerals subject to the mining laws "sufficient in quantity, quality, and value to constitute a discovery." The Judge found that

there was not such a discovery on any of the claims involved in the contests.

The primary minerals asserted by appellant to be within the claims include gold, silver, platinum, and also some rare earths. The dispositive question pertains to whether the evidence supports the finding of the Judge that there was not a discovery of a valuable mineral deposit within the meaning of the mining laws on any of the claims. We conclude that it does. Appellant's contentions regarding this dispositive question are without merit. For example, Ramsher asserts that the Administrative Law Judge erred in finding that the United States met its burden of making a prima facie showing that the claims were invalid for lack of discovery of valuable minerals, and in finding that Ramsher did not rebut the prima facie case by a preponderance of the evidence.

In a mining contest the Government, by practice, has assumed the burden of going forward with evidence to make a prima facie showing that the claim is invalid. The claimant, however, must then show the validity of the claim by a preponderance of the evidence. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Taylor, 8 IBLA 264, 266 (1972). At the hearing, a government mineral examiner, who had examined all the claim locations, testified that he did not find any visual evidence of mining or mineralization. Nor did the results of assay samples he took from the claims area show the presence of valuable minerals. His opinion was that the claims area is worthless for mining purposes. Testimony by a Government mineral examiner that he has examined a mining claim, but has found no evidence of a valuable mineral deposit, is sufficient to establish a prima facie case by the Government of lack of discovery of valuable minerals. United States v. Bunkowski, 79 I.D. 43, 51 (1972); United States v. Taylor, supra at 266. The duty of the Government examiner is not to drill or explore but to verify what discovery, if any, has been made by the claimant. United States v. Grigg, 8 IBLA 331, 343 (1972); United States v. Guthrie, 5 IBLA 303, 309 (1972); United States v. Oxford, 4 IBLA 236, 240 (1972). The Contestant also elicited testimony from other witnesses which demonstrated that there had been nothing done on the claims which would establish the existence of a known valuable mineral deposit. This testimony and that of the Government's mineral examiner established a prima facie case of no discovery and shifted the burden of proof to the claimant.

The Administrative Law Judge was also correct in holding that Ramsher did not meet its burden of rebutting the Government's prima facie case and proving the discovery of valuable mineral deposits by a preponderance of the evidence.

In order for a mining claim to be valid, a discovery of valuable minerals must be shown on each claim. United States v. Bunkowski, *supra* at 51-52; United States v. Melluzzo, 76 I.D. 181, 189 (1969). A discovery exists:

* * * [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).

Although actual operation at a profit is not required, a discovery of valuable mineral deposits requires a showing that the mineral can be extracted, removed and marketed at a profit. United States v. Coleman, 390 U.S. 596, 600, 602 (1968); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), *cert. denied*, 393 U.S. 1025 (1969).

Omar MacDonald, Ramsher's exploration geologist, testified that with the aid of a magnetometer and an atomic precision ionization instrument, he had found and defined "mineralization habits that could be drilled into and proven up by the company." Transcript (Tr.) at 321. Maps showing these subsurface "mineralization habits" on twelve claims were accepted into evidence. ^{1/} No such maps for the other twenty! nine claims were introduced or accepted into evidence. MacDonald said he used this method because,

It produces information in a rather special fashion, speedy fashion, compared to many other methods which can then be correlated and interpreted so that you can plot it on a piece of paper quickly, and from there you start your further work to confirm or deny the original findings. (Tr. 457.)

The method did not involve any drilling or other physical work upon the claims, but involved taking readings from the instruments at various times to make a magnetic field study of anomalies. He would not fully describe his method. As he stated:

^{1/} The claims shown thereon are: Summit Eta 901, Summit Eta 902, Summit Eta 903, Summit Eta 904, Summit Beta 404, Summit Theta 1107, Summit Theta 1109, Summit Epsilon 1101, Summit Epsilon 1103, Summit Gamma 505, Summit Gamma 502 and Summit Delta 803.

It involves this ionization electronic instrument, and it involves a scaling device. I haven't patented this * * *. I don't intend to so I am not going on record and give this information. (Tr. 407.)

Opinions whether minerals existed within the claims based on this method of exploration were the primary evidence of mineralization produced at the trial by Ramsher for thirty! nine of its forty! one claims. Such opinions, unsubstantiated by proof of the actual existence of minerals, are preliminary and tentative. As such, they are insufficient to prove the existence of valuable mineral deposits. It is unnecessary to determine whether they would be a basis for a prudent man to engage in further exploration to discover whether commercially valuable mineral deposits exist. Discovery and exploration are two different stages. Where evidence shows further exploration on a claim is necessary before any development would be warranted no discovery is shown. United States v. Gunn, 79 I.D. 588, 595 (1972); United States v. Converse, 72 I.D. 141, 149 (1965), aff'd sub nom., Converse v. Udall, 262 F. Supp. 583 (D. Ore. 1966), aff'd, 399 F.2d 616 (9th Cir. 1968), cert. denied, 395 U.S. 1025 (1969). "A reasonable prediction that valuable minerals exist at a depth will not suffice as a discovery where the existence of these minerals has not been physically established." Henault Mining Company v. Tysk, 419 F.2d 766, 768 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970). This is clearly the situation as to thirty! nine claims. Those claims for which only such evidence was presented, without any physical exposures of minerals, were properly declared void for lack of a discovery of valuable mineral deposits.

On two of the claims, Summit Eta 901 and Summit Eta 902, samples were taken from an area excavated for a power substation by Southern California Edison under a permit from the Forest Service. No excavations or other physical work exposing minerals had been done on those claims before. Ramsher's expert testified from Exhibit C-2 that assays of ore samples taken from the claims indicated gold and silver values with a high of approximately \$ 180 per ton. (Tr. 283.) An expert witness testifying for the Government assayed similar samples but found mainly nominal values and only a maximum value of \$ 11.40 per ton. Testimony of that witness suggested the assays by Ramsher did not meet acceptable standards of measurement. (Tr. 509-14.) Even if full weight is given to the samples and assays submitted by Ramsher as to the two claims, they are not sufficient to establish a discovery as to those claims. The evidence failed to establish there was sufficient mineralization to warrant a

mining operation, with the expectation of making a profit on the mining operation, apart from the values of the land, as required under the prudent man test. See United States v. Mt. Pinos Development Corp., 75 I.D. 320 (1968). At most, the evidence shows the beginning of an exploration program to discover ore bodies within those claims. A few assay reports indicating some high values are not substantial evidence of a discovery where there is not adequate evaluation and other corroborative and probative evidence of a continuity of mineralization in sufficient quantity to meet the prudent man test. Henault Mining Company v. Tysk, supra; United States v. Adams, 318 F.2d 861 (9th Cir. 1963); United States v. Harper, 8 IBLA 357 (1972).

When MacDonald, Ramsher's expert, was asked whether based on the assays made on samples taken from Summit Eta 901 and Summit Eta 902 a prudent man would expend money on mining he replied:

At the present time I would say that the core drilling that had been done has shown evidence of good quantities of ore to reasonable depths.

I would have to add that I would feel that additional core drilling to show the continuity to these ore bodies should be done and upon completion of that where you had reasonably ascertained a quantity of ore of known value and we will say completed the necessary test work that would say that the best method of recovery is A, B, or C, flotation or gravity concentration or what have you, at that point then you can decide whether you have a completely economic situation. (Tr. 352.)

As we have held, a discovery does not exist if further exploration is needed on a claim to determine whether to undertake development of a mine. United States v. Gunn, supra; United States v. Converse, supra. Ramsher's expert conceded that more work was needed to determine the quantity and quality of mineral deposits on Summit Eta 901 and 902 before their economic value could be determined and this evaluation was concurred in by witnesses for the Government. These claims were properly declared void.

Our conclusion that the evidence does not establish a discovery of a valuable mineral deposit on any of the claims makes it unnecessary to discuss other issues involved in this case or the appellant's contentions further. Nothing presented warrants any change in the Judge's finding of lack of discovery.

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:

Edward W. Stuebing
Member

Frederick Fishman
Member

APPENDIX A

<u>Contest Numbers</u>	<u>Mining Claims</u>
R-4171	Summit Alpha Nos. 79, 80, 81, 82, and 83 lode claims, located in Sec. 20, T. 2 N., R. 4 W., S.B.M.
R-4172	Summit Theta Nos. 1101, 1102, 1103, 1104, 1105, 1106, and 1107 lode claims located in Sec. 10, T. 1 N., R. 4 W., S.B.M. <u>2/</u>
R-4173	Summit Gamma Nos. 501, 502, 503, 504, 505, and 506 lode claims, located in Sec. 20, T. 2 N., R. 4 W., S.B.M.
R-4174	Summit Eta Nos. 901, 902, 903, 904, and 905 lode claims, located in Sec. 5, T. 2 N., R. 3 W., S.B.M.
R-4175	Summit Epsilon Nos. 1101, 1102, and 1103, lode claims, located in Sec. 14, T. 2 N., R. 3 W., S.B.M.
R-4176	Summit Delta Nos. 801, 802, and 803 lode claims, located in Sec. 7, T. 2 N., R. 3 W., S.B.M.
R-4177	Summit Beta Nos. 402, 403, 404, 405, 408, 409, 412, 413, 416, 417, 418, and 419 lode claims, located in Sec. 21, T. 2 N., R. 4 W., S.B.M.

2/ We note that Contest No. R-4172 also originally included two other claims: Summit Theta Nos. 1108 and 1109. Those two claims and a portion of Summit Theta No. 1107 were declared null and void by a decision dated September 13, 1971, of the Riverside, California, District Land Office, as being located on lands not subject to mineral location. That decision was affirmed by this Board. Ramsher Mining and Engineering Co., Inc., 7 IBLA 172 (1972).

