

UNITED STATES  
v.  
JOHN W. HOWARD ET AL.

IBLA 74-28

Decided March 20, 1974

Appeal from decision of Chief Administrative Law Judge L. K. Luoma, declaring certain mining claims null and void. Contests A-7233 to A-7241, inclusive.

Affirmed.

Administrative Procedure: Adjudication--Contests and Protests: Generally--  
Hearings--Mining Claims: Contests--Mining Claims: Hearings--Notice: Generally--  
Rules of Practice: Government Contests--Rules of Practice: Hearings

Where a party specially appears at a contest hearing for the purpose of challenging the jurisdiction of the hearing officer and otherwise declines to participate in the contest hearing, the requirements of proper notice and an adequate opportunity for a hearing have been met.

Contests and Protests: Generally--Mining Claims: Generally--Mining Claims:  
Contests--Mining Claims: Determination of Validity--Rules of Practice:  
Government Contests

The motivation of any government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void

upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

APPEARANCES: John W. Howard, Esq., Arcadia, California, pro se and for appellants; Fritz L. Goreham, Esq., Office of the Solicitor, Department of the Interior, Phoenix, Arizona, for appellee.

#### OPINION BY ADMINISTRATIVE JUDGE FISHMAN

John W. Howard, Winifred B. Howard, John S. Cavanaugh, and Maxine Cavanaugh have appealed from a June 5, 1973, decision of Chief Administrative Law Judge L. K. Luoma. 1/ That decision declared null and void several mining claims in Yuma County, Arizona, 2/ after a hearing in government contest proceedings where counsel for the Bureau of Land Management (BLM) presented a prima facie case of invalidity. Appellants, though present at the hearing through their attorney, declined to participate.

Nine government contests, which were consolidated by the challenged decision, were initiated pursuant to a regulation which provides for the bringing of contest proceedings "\* \* \* for any cause affecting the legality or validity of any entry or settlement or mining claim." 43 CFR 4.451-1.

After due service of the complaints issued in these contests, appellants answered, alleging that minerals had been found within the limits of the claims in sufficient quantity and quality to constitute a valid discovery. However, at the hearing, appellant Howard, appearing on his own behalf and that of the other appellants, declined to participate other than to object to the jurisdiction of the Administrative Law Judge to determine the validity of these claims at the hearing. Appellant Howard seemed to feel that the primary purpose of the hearing was to condemn the properties, and that such a role was more properly within the jurisdiction of the state courts than that of the Bureau of Land Management. After questioning him on his understanding of Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963), the Judge invited his participation. Appellant Howard declined.

The hearing proceeded and the Bureau of Land Management presented a case which tended to show that a prudent man would not be

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1/ At present his title is Chief Administrative Law Judge, although at the time of the appealed decision it was Administrative Law Judge.

2/ These claims are the Little Jessie, Little Jessie Extension Nos. 1, 2, 3, 4, Minnie Bell, Dutchman, Dutchman Extension No. 1, El Paso, El Paso Extension No. 1, El Paso Nos. 1, 2, 3, 10, 11, 12, 13, in T. 7 N., R. 16 W., G.&S. R.M., Yuma County, Arizona.

justified in spending the time and funds with a view to developing a valuable mine on these claims. The BLM presented two witnesses, both mining engineers. The Judge questioned the BLM's primary witness as to the basis of his opinion that a prudent man would not be justified in attempting to develop a paying mine on these claims. This witness stated that he had examined the entire area of the claims "\* \* \* and everything that might have a bearing on the validity of these mining claims" (Tr. 48) and found nothing in the way of significant mineral values.

The Judge's decision rested on the Department's authority to challenge the validity of unpatented mining claims. Cameron v. United States, 252 U.S. 450, 456 (1919); Best v. Humboldt Placer Mining Co., *supra*, at 335-36 (1963); United States v. Woolsey, 13 IBLA 120 (1973); United States v. Bradlaner Enterprises, Inc., 13 IBLA 184 (1973); United States v. Northwest Mine and Milling Inc., 11 IBLA 271 (1973); United States v. Dummer, 9 IBLA 308 (1973); see United States v. Humboldt Placer Mining Co., 8 IBLA 407, 79 I.D. 709 (1972). His finding of invalidity of the claims was based on the rule that once a prima facie case of no discovery of a valuable mineral deposit is presented by the Government at a hearing, the burden of proof as to the validity of the mining claims shifts to the contestee, the claimants. 5 U.S.C. § 1006 (1970); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); Converse v. Udall, 262 F. Supp. 583, 593 (D. Ore. 1966), *aff'd*, 399 F.2d 616, 620 (9th Cir. 1968), *cert. denied*, 393 U.S. 1025 (1969).

Appellants assert that the error in the described proceedings stems from the fact that it amounted to uncompensated condemnation of their mining claims. In support of their allegation of error they cite three propositions.

a. A locator and occupier of mining claims has an interest which is accorded the same protection as other classes of real estate. Calhoun Gold Mining Co. v. Ajax Gold Mining Co., 27 Colo. 1, 59 P. 607 (1899), *aff'd*, 182 U.S. 499 (1900) (hereinafter cited as Calhoun).

b. The Government cannot dispose of valid and existing mining claims without making due compensation. United States v. Barrows, 404 F.2d 749 (9th Cir. 1968), *cert. denied*, 394 U.S. 974 (1969); United States v. North American Transp. & Trading Co., 253 U.S. 330 (1920). (Emphasis added.)

c. Mining statutes should be liberally interpreted as regards a forfeiture, and it is always necessary to substantially comply with the rules, regulations, and statutes pertaining to the mining laws. Inman v. Olson, 213 Ore. 56, 321 P.2d 1043 (1958).

Appellants also assert that the contest was a "sham" and "was instituted for the purpose of securing a right of way for use of a canal and appurtenances involved in the Central Arizona Irrigation Project." They also suggest that the action was discriminatory, since numerous other claims in the area, some of which are owned by appellants, were not contested.

We shall discuss appellants' allegations of error in the order shown. As for the assertion that their interest in these unpatented mining claims is some form of real property, it must be remembered that:

A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws. If valid, it gives to the claimant certain exclusive possessory rights \* \* \*. But no right arises from an invalid claim of any kind. All must conform to the law under which they are initiated; otherwise they work an unlawful private appropriation in derogation of the rights of the public.

Cameron v. United States, *supra* at 459.

It would seem that appellants' conception of their interest in these unpatented claims has been derived from a discussion in Calhoun, *supra*, regarding the nature of mining rights. However, that discussion is conched in terms of "[s]uch rights as are conferred by a valid prior location \* \* \* are as fully protected under the rules of the common law as any other classes of real estate." Calhoun, *supra*, 59 P. 617-18. (Emphasis added.) Additionally, as was explained by the Supreme Court later in discussing Calhoun,

[a]n entry, sustained by a patent, is conclusive evidence that at the time of the entry there had been a valid location and such valid location implies as one of its conditions a discovery, and the decision [of the Supreme Court in Calhoun] only went to the extent that this could not be challenged by one who at the time of the entry had made no location and therefore had acquired n tunnel right. Crede & Cripple Creek Mining & Milling Co. v. Unita Tunnel Mining & Transp. Co., 196 U.S. 337, 353-54 (1905).

Here there were no muniments of title such as a patent, for these were merely unpatented mining claims located upon the public domain, based upon alleged discoveries. The hearing, at which

appellants appeared but declined to participate, was held to determine the issue, among others, whether a discovery had been made. If patents had issued on these claims, the issue of discovery would have been conclusively settled, as against collateral attack. Calhoun, supra, 59 P. 618.

Thus appellants' second allegation of error is also without merit. If an unpatented mining claim is invalid, compensation is not required, for there is nothing taken from the claimant. Cameron v. United States, supra. It is true that in some instances, such as where a placer mining claim on the public domain is included in certain lands taken by the Government for an army post, compensation is required on the basis of an implied contract entered into by the Government. United States v. North American Transp. & Trading Co., supra. However, the contest which resulted in the decision appealed here was directed to the validity of appellants' entry upon the public domain. If appellants had shown these claims to be valid, then quite possibly condemnation proceedings would be required. Cf. United States v. Barrows, supra.

It must be remembered that the federal government has the authority to initiate a contest, pursuant to the Administrative Procedure Act, 5 U.S.C. § 551 et seq. (1970), to determine the validity of any unpatented mining claim located on the public domain. United States v. Dummar, supra at 309 (1973). It has been argued before that such contests of validity are uncompensated administrative takings or condemnations of private property. But the courts have recognized the Department of the Interior's plenary power in administering the public lands, and as part of that power, the authority to determine validity of mining claims "after proper notice and upon adequate hearing." United States v. Northwest Mine & Milling Inc., supra at 272-73 (1973).

Appellants' third allegation of error cites a state court case which involved an ejectment suit brought by one private party against another. The text from which appellants' third allegation is drawn states:

It is well to notice \* \* \* that it is an established rule that mining statutes are to be liberally construed, especially when it is sought to forfeit a claim. This liberality is indulged to protect prospectors who have made discoveries under them, and as a general proposition, a substantial compliance therewith is all that is required. (Citations omitted, emphasis supplied.)

Inman v. Olson, supra, 321 P.2d 1046.

Therefore, it is apparent that the first three allegations of error which appellants assert exist in the Judge's decision have been predicated on the assumption that these mining claims were valid and that the Department of the Interior did not have the jurisdiction to question that assumption. Here the Judge's determination of invalidity rests upon a hearing for which there was adequate notice. Appellants, following questioning pointed towards the mistake in their assumption, declined to participate in the hearing but now seek to renew their assertion of a real property interest in these invalid claims. As has been already stated, "\* \* \* no right arises from an invalid claim of the kind." Cameron v. United States, supra.

As noted earlier, appellants assert that the contest was a "sham" and was instituted for the purpose of securing a right-of-way for use of a canal and related appurtenances in the Central Arizona Irrigation Project. Appellants also suggest that the initiation of a contest against the claims in issue was discriminatory and a denial of due process since numerous other claims in the same general area, some of which are owned by appellants, were not contested.

Appellants' assert, in essence, that this Board has the duty to ascertain the reasons or the justification for the initiation of the contest; it is not the function of this Board to make any such inquiry. United States v. Zuber, 13 IBLA 193 (1973). Indeed, such an inquiry would be fruitless, since even if questionable motives were established, that would not under Zuber, "afford a sufficient basis for this Board to abnegate its responsibility to determine the validity of mining claims." Moreover, the motivation of any government agency in initiating such a contest is not a basis for dismissal of the contest.

As to appellants' contention that the initiation of the contest was discriminatory and a denial of due process, the Board stated in United States v. Gunn, 7 IBLA 237, 245, 79 I.D. 588, 591 (1972), as follows:

Appellants allege further they were denied due process because the contest was filed for the benefit of private persons and because of certain publicity concerning the contest proceeding before the matter was decided by the hearing examiner. They imply that because of this the examiner's determination could not be fair. We first point out that the United States may institute contest proceedings against mining claims simply to clear its title to the land without establishing any need or public project use for the land. Davis et al. v. Nelson, 329 F.2d 840, 846 (9th Cir. 1964). Cf. Palmer v. Dredge

Corporation, 398 F.2d 791 (9th Cir. 1968), cert. denied, 393 U.S. 1066 (1969); and Dredge Corporation v. Penny, 362 F.2d 889 (9th Cir. 1966), where the land within mining claims contested by the Government was valuable for homesites and being sought for such by individuals. Therefore, it was proper for the Government to institute this contest proceeding, in any event, regardless of the interest of the local governmental agency interested in performing archaeological work within the claims. The fact a permit has been granted to the museum does not constitute a denial of due process to claimants. They were granted a hearing and full opportunity to present their case.

That appellants did not see fit to produce evidence at the hearing does not vitiate the due process afforded them.

United States v. Zuber, supra at 197, treats both the issue of motivation in bringing the contest and asserted discriminatory 3/ action as follows:

Appellants finally assert that the Forest Service maintains a policy whereby it challenges mining claims upon which claimants construct improvements, such as cabins, while claims without such improvements are not challenged. Appellants contend that this policy constitutes a denial of due process, in the form of unequal and discriminatory enforcement of the mining laws. The essence of appellants' position, as they state in their brief, "is that valid laws and regulations are being enforced in invalid and discriminatory ways."

The only case relied on by appellants is Yick Wo v. Hopkins, 118 U.S. 356 (1886). Yick Wo, however, is distinguishable. In Yick Wo, a San Francisco ordinance vested discretion in a board of supervisors to grant or withhold their assent to the use of wooden buildings as laundries to protect the public from the dangers of fire. The supervisors withheld their assent from Yick Wo and 200 others of Chinese ancestry, but permitted non-Chinese to carry on the same business under similar conditions. The Supreme Court concluded that the ordinance was constitutional on its face, but unconstitutional in its application since it was applied on the basis of racial

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3/ See United States v. Zweifel, 11 IBLA 53, 99, 80 I.D. 323, 344 (1973); United States v. Zerwekh, 9 IBLA 172, 174 (1973).

discrimination. The Supreme Court pointed out that the petitioners in Yick Wo, "have complied with every requisite, deemed by the law or the public officers charged with its administration, necessary to the protection of neighboring property from fire \* \* \*."

In the case at bar, no such discrimination exists. Under the mining laws, a mining claim is invalid if not supported by a discovery of a valuable mineral deposit. In the absence of a discovery, upon challenge by the United States by contest, no mining claimant is entitled to a determination that his claim is valid. Unlike the petitioners in Yick Wo, appellants have failed to comply with the requisites of the law.

We find in the case at bar that appellants have failed to show that they have complied with the requisite of the law, i.e., a discovery of a valuable mineral deposit upon their mining claims.

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.

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Frederick Fishman  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

