

UNITED STATES  
v.  
BLUE BELL GOLD MINING COMPANY, ET AL.

IBLA 74-194

Decided September 16, 1974

Appeal from decision (Oregon 2093 (Wash.)), by Administrative Law Judge Graydon E. Holt, declaring mining claims null and void.

Affirmed.

1. 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.

2. Mining Claims: Discovery: Generally

Evidence of mineralization, which is only sufficient to warrant further exploration, does not establish a discovery of a valuable mineral deposit within the ambit of the United States mining laws.

3. 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: Jennings P. Felix and Associates, Seattle, Washington by Nicholas F. Corning, Esq., for appellants. Arno Reifenberg, Esq., Office of the General Counsel, U.S. Department of Agriculture, Portland, Oregon, for the United States.

## OPINION BY ADMINISTRATIVE JUDGE RITVO

Blue Bell Gold Mining Company, et al., 1/ have appealed from a decision dated January 8, 1974, of Administrative Law Judge Graydon E. Holt, which declared the Metal Lode and Ore Strike mining claims null and void.

The claims are located approximately 75 miles south of Seattle within the Snoqualmie National Forest in unsurveyed sec. 30, T. 17 N., R. 11 E., W.M., Pierce County, Washington. The claims were located for gold and silver in August of 1945, as relocations of earlier claims (Tr. 73, 82, 84). The improvements in the Metal Lode claim were made under the earlier locations (Ex. F). There was no evidence of workings or mineralization on the Ore Strike (Tr. 14). Public lands including the area of the mining claims were withdrawn from mineral entry in connection with the Crystal Mountain Recreation Area on April 7, 1961, by P.L.O. No. 2321, F.R. Doc. 61-3129.

The contest was initiated by a complaint issued by the Department of the Interior on behalf of the Forest Service, United States Department of Agriculture on October 28, 1968. The complaint charged that minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery; and that the land embraced within the claims is nonmineral in character. After a timely answer was made by the contestees, two hearings were held in Seattle, Washington, on March 16, 1971, and June 15, 1973. The first hearing was adjourned so that an old mineshaft that was blocked off could be cleared for the taking of additional samples.

After reviewing the complete record, the Judge concluded that the contestees are still in the process of searching for a concentration of minerals or a deposit of sufficient value to be successfully exploited. The Judge held that such activity is "exploration" which does not constitute a discovery of a valuable mineral deposit.

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1/ Other parties participating in the appeal include Max E. Hoff, Mrs. Nad Jones, John M. Allen, Donald J. Piper, George P. Piper, Eunice Holmes, Charles O. Kvernvik, Roland C. Draughan, Leonard Rogers, Edmund J. Cowan, John J. Piper, Thomas A. Piper, and Madlyn A. Kaplin.

[1] On appeal contestees argue that the Judge's decision is unsupported by the facts or the law of this case. They contend the Judge failed to distinguish "exploration" leading to discovery and exploration activities incident to actual production of the minerals commonly identified as "development." We find no merit in the argument. The Judge correctly weighed the evidence in concluding that no discovery had been shown. Further, he correctly applied the test which has been accepted by the Courts and the Department. A discovery sufficient to validate a mining claim has been made:

\* \* \* [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 \* \* \*. Castle v. Womble, 19 L.D. 455, 457 (1894).

This standard and its application has been approved many times. United States v. Coleman, 390 U.S. 599, 602 (1968); Best v. Humbolt Placer Mining Co., 371 U.S. 334 (1963); Chrisman v. Miller, 197 U.S. 313, 322 (1905); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969).

[2] It is clear that a mining claim only worthy of further exploration to determine the extent of the ore body is not a claim on which a discovery has been made. Evidence of mineralization which may justify further exploration in hope of finding a valuable mineral deposit is not synonymous with evidence of mineralization which will justify the expenditure of labor and money with a reasonable prospect of success in developing a valuable mine. Only the latter constitutes discovery. Henault Mining Company v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970); Converse v. Udall, supra; United States v. Kohl, 5 IBLA 298 (1972).

In the instant case appellants have shown no more than a willingness to invest more time and money to verify whether further mining activity is feasible. Apparently no mining activity had been conducted on these claims since 1945 (Tr. 71). Appellants' expert, Elwin A. Magill, an independent mining geologist, testified that the property warrants further exploration work (Tr. 101-102). Mr. Magill was the contestees' witness-in-chief. He was on the Metal Lode claim and conducted an extensive examination and prepared a report of his examination (Ex. R). His testimony was based on his report which stated:

Workings on the Metal Lode Claim expose a series of mineralized faults in andesite, containing sulfide minerals along with varying amounts of gold and silver. Gold Assays varied between 0.01 ounces and 1.54 ounces per ton; silver assays varied between 0.42 and 1.48 ounces per ton. Disseminated sulfide mineralization also occurs in the country rock between the mineralized faults. It is very possible that the country rock contains one-half ounce or more silver per ton along with measurable amounts of gold.

The Metal Lode Claim has been explored by a series of short drifts, small open cuts and a 25 foot shaft. A 556 foot crosscut has been driven to explore the showings at several hundred feet of depth. Unfortunately, it was not possible to map this crosscut because of bad air.

Extensive alteration of the country rock, along with disseminated sulfide mineralization, would appear to indicate a much larger mineralized area than is indicated by the present workings along the fault zones.

He recommended a two-step program of (1) reconnaissance and geologic mapping to determine the extent of the mineralized area and (2) drilling of two diamond drill holes from the tunnel in an attempt to find the vein to see whether the mineralization has been exposed in the workings (Tr. 109).

The obvious need for further exploration was confirmed by the Government's expert, Charles R. Garrett, mining engineer for the U.S. Forest Service. Mr. Garrett was on the two claims during September and October 1964, and again on September 22, 1972. On the Metal Lode he found several pits, an adit some 800 feet long, and a shaft 40 to 50 feet deep which was excavated to meet the adit. He found no improvements on the Ore Strike. In one of the pits he found a seam one foot wide which showed some hydrothermal alteration and iron oxide. In the adit he found two small fault fissures approximately 150 feet and 200 feet from the portal and at the face of the adit he found a shear zone six to seven inches wide which contained iron oxide and some gouge. He took samples of the mineralized areas and had the samples assayed. The assays showed values in gold but in Mr. Garrett's opinion the values were insufficient to develop a mine. He recommended further exploration on the surface of the Metal Lode to determine the extent of the mineralized zone (Tr. 123). He found nothing of interest on the Ore Strike.

Garrett testified that he would agree that geologic mapping should be carried out to get a better idea how the structures tie in with the workings on the surface (Tr. 120121). However, he qualified whether further drilling would be necessary depending on what structures are found, if any, and where.

The Department has long recognized a definite distinction between "exploration" and "development." 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. See U.S. v. Henault Mining Co., 73 I.D. 184, 191 (1966) and cases cited therein, affirmed Henault Mining Co. v. Tysk, *supra*.

The distinction holds true as applied to the facts of this case. Although appellants refer to their program as exploration incident to development, it appears considerably less than a blocking out of the ore body as they would suggest. In reality they do not know with any certainty what further testing will show. From the testimony of both experts it is evident no prudent man would begin development in these circumstances without ascertaining whether sufficient mineral values exist at depth. At most, the evidence shows the beginning of an exploration program to discover ore bodies within the 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. Ramsher Mining and Engineering Co., Inc., 13 IBLA 268 (1973); United States v. Harper, 8 IBLA 357 (1972).

Further test drilling as recommended in this case would only be a continuation of the search for a discovery. Such activity is no longer possible since the lands embracing the claims were withdrawn from mineral location in 1961 for recreation development and the claims had to be validated as of the date of withdrawal. United States v. Foresyth, 15 IBLA 43, 47-48 (1974).

The appellant relies heavily upon high gold values found in the drift running off the shaft. The existence of this area of high value had been known since before 1945 (Ex. F, Tr. 46, 47, 83). Of the other samples taken in the shaft, only two showed values of over \$ 10 at 1961 prices. Other samples in the cross-cut tunnel, shaft, and other drifts and workings on the claim showed no significant values (Ex. 8).

No development work was done on the claims from 1945 until 1968, the year the contest was initiated (Tr. 71). Since the land covered by the claims was withdrawn from mineral entry in 1961, the claims to be valid at all must have been valid then, as well as now.

For well over twenty years, the claimants had available to them all the knowledge of mineralization that they now have. Yet in all that time they did nothing to develop the claims (Tr. 71).

As the Department said in commenting on a 38-39 year delay in developing an allegedly valuable mineral deposit:

How long were they going to wait before commencing a mining operation, and more importantly why were they waiting? The answer seems plain -- that they have not yet found any values sufficient to warrant development.

United States v. White, 72 I.D. 522, 526 (1965)

[3] There is no basis for appellants' allegation that the Government has failed to make a prima facie case warranting the forfeiture of their claims. 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. 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, 5 IBLA 102, 118-19, 79 I.D. 43, 51 (1972); United States v. Taylor, 8 IBLA 264, 266 (1972). In a mining contest the Government has only the burden of going forward with evidence to make a prima facie showing that the claim is invalid. The claimant then must 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, *supra*.

The Government introduced sufficient evidence through the testimony of Charles R. Garrett to establish a prima facie showing that there is not a valuable mineral deposit on either of the claims. The testimony on behalf of the appellants went no further than to suggest that further exploration work is warranted. This showing did not rebut the Government's case.

Accordingly, nothing presented in this appeal warrants any change in the Judge's decision. Therefore, 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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Martin Ritvo  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

