

UNITED STATES  
v.  
LEONARD ALMGREN ET AL.

IBLA 73-417

Decided September 30, 1974

Appeal from decision of Administrative Law Judge Dent D. Dalby, declaring placer mining claims and millsites null and void (Colorado 446).

Affirmed.

1. Mining Claims: Determination of Validity--Administrative Procedure--Burden of Proof

In a contest against a mining claim, the Government need only present a prima facie case that there has been no discovery; after such a presentation the burden devolves upon the mineral claimant to prove by a preponderance of evidence that there has been such a discovery.

2. Millsites: Generally--Mining Claims: Discovery: Generally--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

Where a millsite or mining claim is situated on land that is subsequently withdrawn, the validity of the claim must be tested as of the date of the withdrawal as well as at the date of determination.

## 3. Mining Claims: Discovery: Generally

To constitute a valid discovery upon a placer mining claim, it must be shown that minerals have been found within the limits of the claim in such quantity and of such quality 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.

## 4. Mining Claims: Millsites

Where a millsite has not been used for mining or milling purposes in connection with a mine owned by the owner of the millsite claim, and at time of contest there is no quartz mill or reduction works on the site, the millsite must be declared invalid under 30 U.S.C. § 30 (1970) because a vague intention to use or occupy the land for mining or milling purposes at some time in the future is not sufficient.

APPEARANCES: Stephan A. Tisdell, John H. Tippit and Thomas W. Whittington, Esqs., Denver, Colorado, for appellants. Richard L. Fowler, Esq., Office of the General Counsel, Department of Agriculture, Denver, Colorado, for the Government.

## OPINION BY ADMINISTRATIVE JUDGE GOSS

Leonard Almgren, John G. Freeman and Walter Judd <sup>1/</sup> have appealed from a decision by Administrative Law Judge Dent D. Dalby, dated May 21, 1973, declaring five placer claims and four millsites null and void.

The mining claims and the millsites in question are located within the Pike National Forest in sec. 36, T. 9 S., R. 78 W., 6th

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<sup>1/</sup> Appellant Judd has stated that appellants Almgren and Freeman quitclaimed their claims to him. (Tr. 6.) However, counsel for Judd states that all three appeal.

P.M., Park County, Colorado. The P.C.A. Nos. 1 through 4 claims were located in January 1961. The P-M-S Nos. 5 through 8 millsites were located in October 1961. The A.J.F. No. 1 claim was located on top of the north quarter of P.C.A. No. 1 claim in February 1966.

The record shows that in 1963 the mining and millsite claims were "withdrawn from prospecting, location, entry and purchase under the mining laws of the United States in aid of programs of the Forest Service" by Public Land Order 3149, 28 F.R. 7981.

The contest was initiated upon request of the United States Forest Service, Department of Agriculture, with the filing of a complaint by the Colorado Land Office, Bureau of Land Management, dated March 27, 1970. The complaint alleged in part:

- a. No valuable mineral deposits have been discovered within the limits of the mining claims.
- b. The lands within the limits of the mining claims are nonmineral in character.
- c. The mill sites are not being used for mining or milling purposes.
- d. No valuable mineral deposits were discovered within the limits of the mining claims prior to 3:45 P.M., December 12, 1962 [2/] when the lands were withdrawn from further appropriation under the mining laws and were reserved for the establishment of the Sacramento Gulch Recreation Area.

A hearing was held November 29, 1972, at Denver, Colorado.

#### Mining Claims

The Administrative Law Judge invalidated the mining claims finding that the claimants had failed to introduce sufficient evidence to show that gold or other minerals occurred in such quantities that would induce a prudent man to expend his labor and means in a mining operation.

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2/ The complaint asserts that the land was withdrawn on December 12, 1962. The withdrawal order, F.R. Doc. 63-8289, is dated July 30, 1963. (Gov't. Exh. 8.)

During the hearing, Warren C. Roberts, a geologist employed by the Forest Service, testified that he conducted examinations of the claims in December 1966, and June and September 1967. Assays of samples showed no significant gold values (Tr. 29; Gov't. Exh. 2, 3). Roberts concluded that:

\* \* \* [N]o one has a possibility of developing a paying mine out of this property because of the manner in which the material was laid down. Certainly, there is no indication that mineral values or metallic values, particularly gold, exists in a quantity that anyone would realize a profit from it. \* \* \*

\* \* \* None of these placer properties have the conditions to satisfy a placer value ground. The gold values are practically nonexistent. (Tr. 34, 35.)

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.

[1] 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. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). 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. Gray, 8 IBLA 96 (1972).

The claimants did not meet their burden of showing, by a preponderance of the evidence, that a discovery had been made. The principal witness for the contestees was Walter Judd, formerly an operator of a restaurant and presently a mill worker. He testified that in August 1969 he took samples of material for assay from the claims, one from P.C.A. No. 2 and the other from P.C.A. No. 4. The assay showed .04 ounces of gold and .4 ounces of silver per ton for one sample and .06 ounces of gold and .4 ounces of silver per ton for the other. Judd estimated that samples indicated values of \$ 2.26 per cubic yard and \$ 3.16 per cubic yard, respectively, at August 1969 prices. This testimony, together with the other evidence presented by contestees, did not preponderate against the Government's prima facie case.

[2] The most crucial element lacking in appellants' case is evidence as to the mineral values prior to the date of the Forest Service withdrawal. Where a mining claim occupies land that is subsequently withdrawn from mining location, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal as well as at the date of determination. If the claim was not supported by a qualifying discovery of a valuable mineral deposit at the time of withdrawal, the land was not excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market value of the mineral. Cameron v. United States, 252 U.S. 450 (1920); United States v. Henry, 10 IBLA 195, 200 (1973).

Appellants herein devote almost the whole of their argument to the rejection of the millsites. Discovery is barely mentioned. The discussion of annual assessment work, coupled with assay reports of 1969 samples, falls far short of establishing the fact of a discovery prior to the 1963 withdrawal.

[3] To constitute a discovery upon a placer mining claim, it must be shown that minerals have been found within the limits of the claim in such quantity and of such quality 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. Oxford, 4 IBLA 236 (1972).

We concur with the Judge's holding. There is nothing in the record to establish that the low value minerals on the claims could be beneficiated profitably either prior to the Forest Service withdrawal in 1963, or subsequently at the initiation of the contest in 1970.

#### Millsites

[4] As to the validity of the millsites, compliance with the mining laws must precede withdrawal, for the United States may at any time withdraw its consent to occupancy of public land under the mining laws, subject to valid existing rights. United States v. Werry, 14 IBLA 242, 81 I.D. 44 (1974); United States v. Cuneo, 15 IBLA 304, 81 I.D. 262 (1974). Moreover, although a claimant is able to show compliance with the law as of the date of withdrawal, he must also show that he has continued in compliance without substantial interruption from that date to the date that validity is determined. See United States v. Winegar, 16 IBLA 112, 81 I.D. 370 (1974).

With respect to the facts herein, 3/ Judge Dalby's decision states:

The statute provides for two classes of mill sites. The validity of the first class, a claim related mill site, is dependent upon use [or occupation] of the land for mining and milling purposes. This class may relate to either a lode or placer claim. The contemplated use or occupancy required by statute was discussed in Alaska Copper Company, 32 I.D. 128 (1903). There the Department said (p. 131):

\* \* \* A mill site is required to be used or occupied distinctly and explicitly for mining or milling purposes in connection with the

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3/ Although the millsites have various improvements which are designed to accommodate the installation of a mill (e.g., water wells, foundation slab and ore dump sites) the claimants have never owned or operated a mill on these claims. A mill was installed in 1962 and processed a few hundred tons of ore over a period of about three months in late 1962, after which it ceased operation. That mill was sold and removed in 1965. In 1969 a second, smaller mill was installed by a man who leased the claims for that purpose. After three and one-half months this mill ceased operation, and it was removed in November 1969. At the time of the hearing there was evidence of an intention of a third party to bring a mill from California for installation on the claims under a lease agreement with the appellant.

There is a question as to whether the presence of a closed-down mill constituted compliance with the law as of the date of withdrawal. However, we need not decide the question on that basis. The subsequent removal of that mill, and the four years of subsequent non-occupancy of the millsite claims by any mill, must be regarded as a substantial interruption of compliance with the law. The brief occupancy of the millsite claims by the second mill only interrupted this period of non-compliance. From November 1969 until the hearing there was another substantial period when the millsite claims were not used or occupied for milling purposes. A millsite is not occupied for milling purposes where a mill structure is not used for milling for more than a reasonable time and becomes inoperable. United States v. Cuneo, supra at 15 IBLA 328. Therefore, even if the millsite claims were valid on the date of the withdrawal of the land, the subsequent sustained periods of non-use resulted in the loss of the validity. The withdrawal precludes any subsequent validation of the millsite claims.

lode claim with which it is associated. This express requirement plainly contemplates a function or utility intimately associated with the removal, handling, or treatment of the ore from vein or lode. Some step in or directly connected with the process of mining or some feature of milling must be performed upon, or some recognized agency of operative mining or milling must occupy, the mill site at the time patent thereto is applied for to come within the purview of the statute \* \* \*. (Emphasis in text)

The validity of the second class, an independent mill site, is dependent solely upon the existence on the land of a "quartz mill or reduction works."

The contestees presented no evidence showing that the mill sites had ever been used for mining or milling purposes in connection with their placer mining claims or with patented lode claims which Contestee Judd owns. Consequently, it does not appear that the mill sites are associated with any particular mining claim or claims.

The mill sites have been used to process material from independently-owned mines. The validity of the mill sites would, therefore, depend upon whether the mill sites qualified under the second class. To qualify there must be a quartz mill or reduction works upon the mill sites. The evidence is undisputed that there has not been milling equipment upon the property since 1969.

Contemplated future use will not serve to validate a mill site. This was made clear in United States v. S. M. P. Mining Company, 67 I.D. 141 (1960) \* \* \*.

We concur that the mill sites are invalid.

While it is true that the complaint herein should have included a charge regarding the absence of a quartz mill or reduction works, the admission of appellants that no such improvements exist on the site is part of the evidence herein. An admission of contestee is a proper basis for a finding that the improvements are not extant and that therefore the millsites are invalid. See United States v. Cuneo, supra, 15 IBLA 304 at 331 (concurring opinion).

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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Joseph W. Goss  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

