

UNITED STATES  
v.  
LONG BEACH SALT COMPANY

IBLA 75-368

Decided December 12, 1975

Appeal from decision by Administrative Law Judge R. M. Steiner declaring the Long Beach Nos. 1-36 placer mining claims null and void ab initio (R-4367).

Affirmed as modified.

1. Mining Claims: Discovery: Generally

Under proper circumstances the Government may establish a prima facie case of lack of discovery of a valuable mineral deposit on a mining claim, even though the Government mineral examiner was not physically present on such claim. Where there is no evidence to rebut the prima facie case, a mining claim may properly be declared null and void.

2. Mineral Lands: Determination of Character of--Mineral Leasing Act: Generally--Mining Claims: Hearings--Mining Claims: Lands Subject to

A determination that land was known to be valuable for minerals leasable under the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 181 et seq. (1970), at the time mining claims for such land were located, will be upheld where there has been a hearing on the question and the mining claimant has failed to produce evidence to overcome such a classification.

3. Mineral Leasing Act: Generally--Mining Claims: Lands Subject to--Multiple Mineral Development Act: Generally

Mining claims located in 1933 under the general mining laws, 30 U.S.C. § 21 et seq. (1970), on lands known to be valuable for minerals subject to leasing under the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 181 et seq. (1970), are null and void ab initio because in 1933 such lands were not open to location and disposition under the mining laws; however, since the passage of the Act of August 12, 1953, 30 U.S.C. § 501 (1970), and the Multiple Mineral Development Act of August 13, 1954, 30 U.S.C. § 521 et seq. (1970), it is possible to locate a mining claim on lands covered by a mineral permit or lease, or application therefor, or which are known to be valuable for leasable minerals, but the leasable minerals are reserved to the United States.

APPEARANCES: H. Bryon Mock, Esq., Mock, Shearer and Carling, Salt Lake City, Utah, for appellant; Burton J. Stanley, Esq., Office of the Solicitor, United States Department of the Interior, Sacramento, California, for the Government.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Long Beach Salt Company has appealed from a decision of Administrative Law Judge R. M. Steiner dated February 5, 1975, declaring the Long Beach Nos. 1-36 placer mining claims which were the subject of Contest No. R-4367 null and void ab initio. Judge Steiner concluded that the claims were null and void for lack of a discovery of a valuable mineral deposit and that the lands embraced by the Long Beach claims were not open to location for minerals locatable under the general mining laws at the time such claims were located, and therefore, the claims were null and void ab initio.

The claims herein, which are situated in and adjacent to Koehn Dry Lake in Kern County, California, were located in 1933 for gold and other minerals and metals. On July 8, 1971, the Riverside, California, Office, Bureau of Land Management, issued a decision declaring all 36 Long Beach claims null and void ab initio. The BLM stated that the subject lands had been considered valuable for sodium and potassium since the passage of the Mineral Leasing Act

of February 25, 1920, 30 U.S.C. § 181 et seq. (1970), and, therefore, the Department would not recognize any attempted location of the same lands under the general mining laws. Long Beach Salt Company appealed and on May 17, 1972, this Board vacated the BLM decision and remanded the case to BLM, stating:

The appellant disputes the classification of the land as valuable for Leasing Act minerals at the time of location and indicates that it has substantial evidence to substantiate its position.

\* \* \* \* \*

Therefore, in order to afford the appellant proper notice and an opportunity for a hearing, it is incumbent upon BLM to initiate contest proceedings.

Long Beach Salt Company, 6 IBLA 50, 51 (1972). 1/

---

1/ Prior to the Board's decision, Long Beach Salt Company was notified by letter from the California State Director, BLM, dated March 14, 1972, that it was holding deeds and leaseholds in 171 unpatented saline placer claims in violation of the proviso to the Saline Placer Act of 1901, 30 U.S.C. § 162 (1970). BLM concluded that Long Beach was committing a willful trespass by extracting salt from such claims and determined the money damages to be \$2,705,723. Long Beach was also advised that failure to arrange payment of the debt would result in a court suit being instituted by the Justice Department.

Long Beach appealed such notice. However, by letter dated April 20, 1972, Long Beach was informed by the California State Director, BLM, that:

"Our letter of March 14, 1972, making demand on you for trespass damages does not constitute a decision in any sense of the word. Consequently, there is no decision to appeal from."

The Government filed suit against Long Beach for trespass. United States v. Long Beach Salt Company, Civil No. F-686, U.S.D.C., E.D. Calif. On July 9, 1974, defendant was awarded a partial summary judgment, the court finding as a matter of law that defendant had not violated the terms of the Saline Placer Act of 1901, supra. The remainder of the suit is still pending awaiting the outcome of the administrative proceeding.

As the trespass matter is now in Court, it is unnecessary to comment on the BLM's letter of April 20, 1972, since the question of administrative appeal on the trespass damages demand has been mooted by the Court proceeding.

BLM filed a complaint on July 23, 1973, charging no discovery of valuable minerals locatable under the mining law and that the claims were null and void for having been located on lands known to be valuable for minerals which could only be leased pursuant to the Mineral Leasing Act of 1920, supra. Following the hearing Judge Steiner issued his decision.

Judge Steiner has adequately set forth the facts herein. His decision is attached as an Appendix. No further discussion of the facts will be made except to respond to certain points raised by appellant on appeal.

Appellant has referred to the pending federal case, United States v. Long Beach Salt Company, Civil No. F-686, U.S.D.C., E.D. Calif. (see n.1), contests of the pre-1920 saline placer claims (Contest Nos. CA 2941-2943), and certain pending sodium prospecting permit and preference lease applications. Appellant now requests that this case be suspended or remanded for consolidation with the other matters regarding the same land and parties. The Government in its brief states, however, that the federal court in the above-mentioned case has specifically yielded jurisdiction to the Board to decide the issues presented herein and has stayed further proceedings pending disposition by the Board.

The validity determination as to the Long Beach Nos. 1-36 claims is an important, although independent, step in the resolution of all the pending disputes involving Long Beach Salt Company and the Government. In the particular posture of this case, we see no reason to delay further the resolution of this question of the validity of the claims located in 1933. The request is denied.

On appeal appellant argues as to discovery that the Government mineral examiners failed to sample five claims (Nos. 27, 28, 29, 30 and 33) and that they did not examine subsurface material that was in view. The short answer to such argument is that the Government mineral examiner is under no duty to examine every portion of every claim or explore or sample beyond those areas which have been exposed by the claimant. United States v. Grigg, 8 IBLA 331, 79 I.D. 682 (1973). Appellant has not asserted that it has ever mined or intended to mine anything but the salt from this area, therefore, its contention that the Government failed to sample five claims for other minerals appears ludicrous.

[1] Under proper circumstances the Government may establish a prima facie case even though its witnesses are not physically present on the mining claim. United States v. Fischer Contracting Co., John T. Katsenes, Intervenor, A-28779 (August 21, 1962). Herein, the Government mineral examiners examined 31 of the 36 claims. The only

reason the other claims were not sampled was that they were inaccessible because they either contained water or a layer of slimy mud which made vehicular access impossible and footing treacherous (Tr. 29). The examiners could see the areas of such inaccessible claims but did not see anything that could be associated with gold or other locatable mineral extraction processes (Tr. 29-30). These circumstances coupled with the results from the sampling which took place on the accessible claims makes it clear that the Government did, in fact, present a prima facie case of lack of discovery of a valuable mineral deposit subject to location under the general mining laws on each and every one of the 36 claims. Appellant has failed to produce evidence to overcome such prima facie case, therefore, the Judge's conclusion that the claims must be declared null and void for lack of discovery of a valuable mineral deposit is affirmed.

[2] Appellant also questions the determination by the United States Geological Survey (U.S.G.S.) that the lands embraced by the Long Beach claims were known to be valuable for a leasable mineral, salt, at the time the claims were located. There was a sufficient prima facie case presented by the Government on that point. Appellant produced no evidence to overcome the U.S.G.S. determination. Therefore, the U.S.G.S. determination must stand. It is clear that the lands embraced by the Long Beach claims were known to be valuable for leasable minerals at the time of location in 1933. We point out, however, that this finding relates only to the propriety of the mineral classification of the land as of the time the Long Beach claims were located in 1933. It does not go to any issue of discovery of such minerals by any claimant pursuant to claims located prior to the Mineral Leasing Act, supra.

[3] The only matter which needs clarification here concerns the consequences relating to mining claims flowing from a determination by this Department that lands are known to be valuable for leasable minerals. Prior to the Act of August 12, 1953, 67 Stat. 539, 30 U.S.C. § 501 (1970), and the Multiple Mineral Development Act of August 13, 1954, 30 U.S.C. § 521 et seq. (1970), mining claims located after the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 181 et seq. (1970), for lands which were known to be valuable for such minerals were regarded as void ab initio. This conclusion was based on the rationale that a tract of public land could not simultaneously be subject to leasing under the Mineral Leasing Act and be subject to a valid mining claim, which would embrace all minerals, because there was no authority to reserve the leasable minerals withdrawn from mining location by the Leasing Act. Arthur L. Rankin, 73 I.D. 305, 309 (1966); United States v. U.S. Borax Co., 58 I.D. 426, 432 (1943); Secretary's Letter, 50 L.D. 650 (1924); Joseph E. McClory, et al., 50 L.D. 623 (1924). The

Multiple Mineral Development Act, *inter alia*, authorizes the location of future mining claims on lands covered by a mineral permit or lease, or application therefor, or which are known to be valuable for leasable minerals, but the leasable minerals are reserved to the United States. 30 U.S.C. §§ 502, 524 (1970).

To the extent the Judge's decision gives the impression that lands known to be valuable for leasable minerals may not now be located under the mining laws, the decision is clarified and modified. Mining claims for non-leasable locatable minerals may be located subject to the provisions of the Multiple Mineral Development Act. Of course, leasable minerals may only be disposed of under the Mineral Leasing Act. Mining claims located for leasable minerals are invalid.

The finding of a lack of discovery of any minerals locatable under the mining laws precludes any possibility of considering that the claims herein were relocated after the Multiple Mineral Development Act by a holding of the lands for the requisite number of years pursuant to 30 U.S.C. § 38 (1970). Meritt N. Barton, 6 IBLA 293, 79 I.D. 431 (1972). Furthermore, as indicated, any location or relocation of a previously invalid mining claim, after the Multiple Mineral Development Act, would be subject to the terms and conditions of that Act, including the reservation of the leasable minerals to the United States.

For the reasons stated above, the Long Beach Nos. 1-36 mining claims are declared null and void *ab initio* because they were located in 1933 on lands known to be valuable for leasable minerals and, therefore, not locatable at that time under the general mining laws. The claims are also null and void for another independent reason and that is, even assuming the claims were locatable, there has been no discovery of a valuable locatable mineral deposit on any of the Long Beach 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 as modified herein.

---

Joan B. Thompson  
Administrative Judge

We concur:

---

Douglas E. Henriques  
Administrative Judge

---

Martin Ritvo  
Administrative Judge

APPENDIX

February 5, 1975

UNITED STATES OF AMERICA	:	Contest No. R-4367
	:	
Contestant	:	Involving the LONG BEACH Nos. 1
	:	through 36 placer mining claims,
v. :	:	situated in Secs. 1 through 3,
	:	9 through 16, T. 30 S., R. 38 E.,
LONG BEACH SALT COMPANY,	:	Sec. 34, T. 29 S., R. 38 E.,
	:	M.D.M., Kern County, California
Contestee	:	

DECISION

Appearances: Burton J. Stanley, Esq.  
 Department of the Interior  
 Sacramento, California  
 for the Contestant

H. Byron Mock, Esq.  
 Salt Lake City, Utah  
 for the Contestee

Before: Administrative Law Judge Steiner

This is an action brought by the United States Bureau of Land Management pursuant to the Hearings and Appeals Procedures of the Department of the Interior, 43 C.F.R. Part 4, to determine the validity of the above-named placer mining claims.

The Contestant filed a Complaint herein on July 23, 1973, alleging inter alia, as follows:

1. There is no discovery of valuable minerals which are locatable under the mining law.
2. Said mining claims and each of them were null and void since they were located upon lands known to be valuable for minerals which could only be leased pursuant to the Mineral Leasing Act, 30 U.S.C. Sec. 181 et seq., (1970).

The Contestee filed a timely Answer generally denying the foregoing allegations of the Complaint.

A hearing was held in Los Angeles, California, on July 31, 1974. David Eugene Sinclair, after having been duly qualified as a geologist, testified that the subject claims were located in 1933. Some of the claims are situated on the upland periphery of Koehn Lake, some on a playa of the lake. Koehn Lake is a remnant playa that was formed when Cantel Valley was dropped down with respect to the Rand Mountains and the El Paso Mountains along the Garlock Fault and a parallel fault in front of the Rand Mountains. It was filled with alluvium and had water at one time to the two thousand foot level. Subsequent drying of the water, sparse rainfall, and the input into the valley caused the lake to dry up and form the existing playa.

In 1914, Consolidated Salt began producing salt from the lake. Some development work was done in 1911 and 1912 by the Diamond Salt Company. Fremont Salt Company set up an operation on the eastern end of the lake in 1919. The companies were bought out by Long Beach Salt in 1928.

He examined the claims in March, 1973. Five of the claims, No. 27, 28, 29, 30, and 33, were inaccessible. He observed thereon water at some depth on a layer of slimy mud which made vehicular access impossible and footing treacherous. The improvements on the inaccessible claims consisted solely of salt evaporating ponds, remnants of the Fremont salt extraction operations.

In the absence of any noticeable discovery work or features on the thirty-one accessible claims, representative sampling sites were sampled by augering a hole of not less than twelve inches in depth, and up to fifteen inches in depth. Samples were thus collected from claims numbered 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 25, 26, 31, 32, and 36. Samples from the claims numbered 4, 7, 8, 9, 10, 19, 22, 25, 31, 32, 35, and 36 were panned for gold and other valuable minerals.

In the samples that he panned, there was no visible gold in the concentrates. There were no visible metallic minerals of any sort. Subsequent spectrographic analysis of a composite of the samples revealed no valuable quantity of any metal.

It was his opinion that a reasonable man would not be justified in expending his time and means with a reasonable prospect of developing a paying mine on those twelve claims which he had sampled and conducted the panning of the samples.

On cross examination, he stated that, " \* \* \* there wasn't sufficient sodium evidenced that would warrant the investment of my money in a salt process." "There was sufficient evidence that there were saline deposits in the area. I wouldn't say that there was sufficient evidence to show that they were valid." (Tr. 36).

It was his opinion that the overall area was "known valuable" for sodium chloride, within the meaning of the term "known valuable deposits" under the Mineral Leasing Act.

In the 1890s and 1930s, placer gold deposits were worked in Goler Wash, one of the principal drainages of the El Paso Mountains. Saline deposits were removed commercially from Koehn Dry Lake prior to 1920.

George Scarfe, after having been duly qualified as a mining engineer, testified that he visited the area of the claims four or five times over a period of several years before he examined and sampled the claims with David Sinclair in March, 1973. Further examinations were made in May and June, 1973. He panned the samples taken from the claims numbered 1, 2, 3, 5, 6, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24 and 34. A spectrographic analysis was run on the slimes, Exhibit 8A. The fire assay report on a sample of slimes and a sample of concentrates shows only traces of gold, Exhibit 8B. The assay report of a sample taken from the No. 26 claim shows two thousandths of an ounce of gold per ton, a wet screen analysis indicating that the material comprising the sample was very fine, 87.6% minus 200 mesh. (Exhibit 9).

He stated that, " \* \* \* if there was gold there, so-called real fine gold, you couldn't recover it by placer operation." A metallurgical gold recovery operation, such as cyanidation, would cost over two dollars per ton depending upon the magnitude of the operation.

He identified two letters, Exhibits 11A and 11B, dated February 28, 1956, written by the President of the Long Beach Salt Company to the Bureau of Land Management, referring to the instant area as follows:

"It has recently been brought to our attention that Sodium Prospecting Permit Applications have been filed in your office on lands in Townships 29 and 30, S. Range 38 E, MDM, Kern County, California and more specifically set out on the attached map.

"The Long Beach Salt Company has for many years maintained and operated a salt production plant on the subject lands and lands immediately adjacent to the East. We acquired the interests in these lands from the original saline placer holders who located these

deposits prior to 1920. Throughout this period, work has continued and proofs of labor have been filed as required.

"The Long Beach Salt Company has been in possession of most of this land and has produced and marketed sodium chloride during this period. Therefore, since we have been in possession and since deposits of salt do exist, we request that any applications for prospecting permits be disallowed and rejected. Please consider this a formal protest to the allowing of any sodium prospecting permits."

It was his opinion that a prudent person would not be justified in spending his time and effort in developing a paying mine on these claims.

On cross examination, he stated that the brines coming of the drill holes are valuable. "That is the only thing I have seen them mine there, the salines coming out of the wells." (Tr. 64).

Henry Long Cullins, Jr., a duly qualified geologist employed by the United States Geological Survey, testified that his predecessor received a request from the Bureau of Land Management for classification of the subject lands dated October 9, 1969 (Exhibit 13). The request was for information "as to whether the lands were known to be valuable for salt (NaCl) prior to 1920 and/or for leasable minerals after February 25, 1920."

The Regional Geologist for Geological Survey, by letter dated October 28, 1969 (Exhibit 14) responded as follows:

"Geological Survey information indicates that sodium borates were discovered within the subject area in 1873. Sporadic production continued until 1929. Sodium chloride has been produced by solar evaporation of surface brine since 1914. The subject lands have been considered valuable for sodium and potassium since the passage of the Mineral Leasing Act. They are also considered valuable for oil and gas. They have no value for geothermal resource development nor for coal, oil shale or phosphate."

The witness had reviewed the classification made by his predecessor, consulting all the available geological literature that was existent for the area dating back to 1902. It was his opinion that, as of 1933, all of the lands embraced by the subject claims were known to be valuable for sodium leasable minerals.

The Contestee did not call any witnesses at the hearing, however, on September 3, 1974, it did submit a number of documents relevant to this proceeding. Among those documents is an affidavit of W. M. Bolling dated September 9, 1933. The affidavit recites that samples were taken from each of those subject claims numbered one through ten; that representative portions of each sample were delivered to an assayer, E. J. May,; and "that in the opinion of affiant, the samples so taken and the values thereof as disclosed by the said E. J. May constitute the discovery of commercial gold values within the gold placer claims \* \* \*." The attached affidavit of the assayer, dated September 9, 1933, describes the samples as "lake muds" and shows gold values ranging from .06 ounces (\$1.24) to .20 ounces (\$4.13) per ton.

Under the mining laws of the United States (30 U.S.C. sec. 22 et. seq. (1970)) the discovery of a valuable mineral deposit is essential to a valid claim. The United States Supreme Court, in Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963), set forth the test of a valuable mineral deposit as follows:

"Where 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." (Citing Castle v. Womble, 19 L.D. 454 (1894); Chrisman v. Miller, 197 U.S. 313, 322 (1905)).

The Government has the burden of establishing a prima facie case that no valid discovery has been made. However, once a prima facie case is established by the Government, the burden is then upon the claimant to prove a valid discovery. Foster v. Seaton, 271 F. 2d 836.

The Contestant has established, prima facie, by the testimony of its expert witnesses, that there has been no discovery of gold, or other valuable minerals subject to location under the general mining laws, within the limits of any of the claims. The evidence submitted by the Contestee is insufficient to prove such a discovery on any of the subject claims. The claims must be declared null and void for lack of discovery of a valuable mineral deposit.

The second issue in this case was raised initially by Decision of the Manager of the Riverside District and Land Office, R. 4367, dated July 8, 1971, declaring the subject claims null and void ab initio for the reason that they were located on lands known to be valuable for leasable minerals.

On appeal, the Interior Board of Land Appeals, by decision dated May 17, 1972 (61 IBLA 50), vacated the decision and remanded the matter for the initiation of contest proceedings, stating that the "Appellant disputes the classification of the land as valuable for Leasing Act minerals at the time of location and indicates that it has substantial evidence to substantiate its position."

Lands which are known to be valuable for a mineral which is subject to leasing under the Mineral Leasing Act of February 25, 1920 (supra) are not open to location and disposition under the mining laws. If, at the time of any attempted mining location, the land is known to be valuable for any of the leasable minerals, the attempted location is of no validity and the lands may only be leased under the leasing act. Wilbur v. Krushnic, 280 U.S. 306, 314; Joseph E. McClory, et al., 50 L.D. 623 (1924); 50 L.D. 650, 651-652; United States v. U.S. Borax Co., 58 L.D. 426; Arthur L. Rankin, 73 I.D. 305, 309 (1966); Merritt N. Barton, 79 I.D. 431 (1972).

The existence of mineral on adjacent lands, geological and other surrounding and external conditions, are competent proof that lands are known to be valuable for a mineral subject to leasing under the Mineral Leasing Act. All that is required is that such competent evidence show that the lands were known to be valuable for sodium when the attempted location under the mining laws was made, that is, that the known conditions at that time were such as reasonably to engender the belief that the lands contained sodium in such quantity and of such quality as would render its extraction profitable and justify expenditures to that end. United States v. Southern Pacific, 251 U.S. 1, 13, 14; Diamond Coal and Coke Co. v. United States 233 U.S. 236, 249; United States v. Standard Oil Co., 21 F. Supp. 645, 650, 651, aff'd Standard Oil Co. v. United States, 107 F. (2d) 402, 411, 414, 415, cert. den. 309 U.S. 654; United States v. California, 55 I.D. 121, 130.

The Contestant has established prima facie, by the testimony of its expert witness, that the lands embraced by the claims were known to be valuable for sodium leasable minerals at the time the claims were located. The Contestee has failed to offer any probative evidence to show that the claims, or any portion thereof, were not known to be valuable for leasable minerals.

It is concluded therefor, that the lands embraced by the subject claims were not open to location for minerals locatable under the general mining laws when those claims were located.

Accordingly, the Long Beach No. 1 through No. 36 placer mining claims are hereby declared null and void ab initio.

---

R. M. Steiner  
Administrative Law Judge

Distribution:

Burton J. Stanley, Attorney, Office of the Solicitor, U.S. Dept. of the Interior, Room E-2753, 2800 Cottage Way, Sacramento, California 95825 (Cert.)

H. Byron Mock, Attorney, 1000 Continental Bank Building, Salt Lake City, Utah 84101 (Cert.)

Standard Distribution

