

UNITED STATES  
v.  
GEORGE R. EDELINE ET AL.

IBLA 74-262

Decided February 17, 1976

Appeal from a decision by Administrative Law Judge Robert W. Mesch finding four mining claims valid.

Remanded.

1. Mining Claims: Discovery: Generally

To constitute a discovery of a valuable mineral deposit under the mining laws, there must be sufficient mineralization shown to warrant a prudent man to invest his time and money with the reasonable expectation of developing a valuable mine.

2. Administrative Procedure: Hearings -- Mining Claims: Hearings  
-- Rules of Practice: Evidence -- Rules of Practice: Hearings

Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

3. Administrative Procedure: Hearings -- Mining Claims: Hearings  
-- Rules of Practice: Hearings

A further hearing may be ordered in a mining contest where the record is

unsatisfactorily confusing and conflicting on the issue of quantity of minerals to satisfy the discovery test, a request for the rehearing has been made with an offer of proof which tends to show a new hearing might result in a different finding, and there has been no objection to the request.

APPEARANCES: W. T. Elsing, Esq., Phoenix, Arizona, for George R. Edeline and Mabel Steinegger; Robert J. Welliever, Esq., Phoenix, Arizona, for Tonto Mining and Milling Company; Dan M. Durant, Esq., Streich, Lang, Weeks, Cardon & French, Phoenix, Arizona, for Carefree Ranches; Richard L. Fowler, Esq., and Demetrie L. Augustinos, Esq., Office of the General Counsel, U.S. Department of Agriculture, for the United States.

#### OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The Forest Service, United States Department of Agriculture, appeals from that part of the decision by Administrative Law Judge Robert W. Mesch, dated March 5, 1974, which found the Cerro de Oro No. 1 and the Rackensack Nos. 1-3 lode mining claims to be valid because there was a discovery of a valuable mineral deposit.

Two contest proceedings were initiated in 1970 at the request of the Forest Service challenging the validity of the Cerro de Oro Nos. 1-4 lode mining claims (Contest No. A-5320-7) and the Rackensack Nos. 1-3 lode mining claims (Contest No. A-5320-15), charging, as pertinent to this appeal, that the claims were invalid by reason of a lack of discovery of a valuable mineral deposit. The contests were consolidated for hearing and decision. Mable Steinegger and George R. Edeline are the claim holders of record of the Rackensack claims, and Edeline is the holder of record of the Cerro de Oro claims. Both of their interests are subject to a lease which has an option to purchase agreement with Tonto Mining and Milling Company. All three parties were considered contestees in the hearing proceedings. Judge Mesch permitted Carefree Ranches, a limited partnership, to intervene in the proceedings to protect its interest in a proposed land exchange with the Forest Service (A-5320) involving land within the boundaries of all the claims.

Following a hearing held in 1971, Judge Mesch ordered a further hearing in 1973 to develop the facts. In his decision, issued after the second hearing, the Judge found a lack of discovery of a valuable mineral deposit within the Cerro de Oro Nos. 2-4 claims and declared them invalid. The contestees did not appeal from his decision pertaining to those claims. Therefore, the Judge's decision has become final as to the Cerro de Oro Nos. 2-4 claims. The

contestees, however, have answered the Forest Service's appeal pertaining to the Cerro de Oro No. 1 and the Rackensack Nos. 1-3 claims. During the pendency of the appeal, on October 24, 1975, the Forest Service filed a "Motion to Remand for Further Hearing," dated October 21, 1975. Proof of service of the motion on the attorneys of record for the contestees and intervenor has been shown, but no objection or other response has been made to the motion.

Allegedly, the four claims involved in this appeal are valuable principally for gold and also for other minerals including copper and silver. The Judge found that the Forest Service had made a prima facie case of lack of discovery on the Cerro de Oro No. 1 claim, but that the contestees overcame that case. He relied primarily on the testimony and other evidence presented by a geologist for the contestees. The Judge found the evidence on the Rackensack claims "not only conflicting but also confusing." Basically, the confusion and conflict go to the issue of the quantity of mineral which a prudent man could expect to mine from the claims. The Judge relied heavily upon the opinion of the contestees' geologist that there might be sufficient tonnage of ore of a minable quality to return a profit in excess of \$ 1,000,000 and accepted his opinion over that of the mining engineers who testified. <sup>1/</sup> He concluded that there was nothing developed on cross-examination that in any way casts any doubt on the validity of the geologist's findings, opinions and conclusions.

It is evident, even from the geologist's testimony and report upon which the Judge relies, that the mineral occurrences are spotty and irregular. The witnesses differ in their opinions of whether the mineral occurrences would be sufficiently continuous to warrant a prudent man to expect to develop a valuable mine.

In its motion for a further hearing the appellant indicates that new information has become available since the date of the last hearing. It has offered a report by its principal witness to

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<sup>1/</sup> The mining engineers whose testimony was discredited by the judge included mining engineer testifying in behalf of the contestees as well as one testifying for the Forest Service. The contestees' mining engineer considered the claims to be a "very unique and very promising prospect" with the "potential to become a very profitable producer" (Ex. M, pp. 5-6), but recommended that before any expenditure for milling equipment is made 15,000 to 20,000 tons should be blocked out. He stated that the cost of this work would be about \$ 20,000 and that it "would be foolish to spend \$ 30,000 for a mill, only to find that there was not enough ore to amortize its cost" (Ex. M, p. 8).

support its request. It contends that the Judge relied exclusively on the testimony of the contestees' geologist and was apparently impressed by the stated intention of the Tonto Mining and Milling Company to be in production on the Rackensack claims in a few months. Appellant asserts that subsequent to the hearing Tonto, presumably pursuant to the advice of the geologist, had engaged in blasting operations on one of the claims, but all operations on the claims have since been abandoned. It contends that if the optimistic opinion of the geologist, as to the value and extent of the deposit, had been borne out, the operations would not have ceased.

[1] There is no doubt in this case that there are some minerals within the claims. The problem is whether there is satisfactory evidence of sufficient minerals to constitute a discovery of a "valuable mineral deposit" under the mining laws, 30 U.S.C. § 21 *et seq.* (1970). It is basic that a finding of some minerals is not enough for a discovery; to meet the discovery test there must be sufficient mineralization to warrant a prudent man to invest his time and money with a reasonable expectation of developing a valuable mine. United States v. Coleman, 390 U.S. 599 (1968); Chrisman v. Miller, 197 U.S. 313, 322 (1905), approving Castle v. Womble, 19 L.D. 455, 457 (1894). A further hearing might be productive of new evidence which could clarify some of the "conflict and confusion" in the record on this vital issue of probable quantity of mineral.

[2] We have considered appellant's offer of proof solely to determine whether a further hearing should be ordered. Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing. United States v. McKenzie, 20 IBLA 38, 44 (1975); United States v. Gunn, 7 IBLA 237, 79 I.D. 588 (1972). If, as appellant proposes, further evidence could establish that mining operations ceased upon the claims because the estimate of contestees' geologist on the quantity of minerals was not borne out, this would discredit his opinion and the primary basis for the Judge's finding of discovery within the claims.

[3] We are mindful of the added costs in ordering yet a third hearing in this case. However, this Department has ordered additional hearings where it has been deemed necessary to make a more informed determination. *E.g.*, United States v. McKenzie, *supra*; United States v. Kosanke Sand Corp. (On Reconsideration), 12 IBLA 282, 80 I.D. 538 (1973); United States v. Wells, 11 IBLA 253 (1973). See also the discussion in United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975). We conclude a further hearing is warranted in this case

because: (1) the record is unsatisfactorily confusing and conflicting on the most vital issue of quantity of minerals to satisfy the discovery test; (2) appellant's offer of proof tends to show there is a likelihood that a new hearing might result in a finding different from the Judge's decision; and (3) there has been no objection to granting the hearing.

In view of this conclusion, we deem it inappropriate to discuss or decide any of the issues raised in appellant's appeal at this time or to comment further on the Judge's decision.

During the rehearing, relevant evidence may be presented by the parties on the material issues pertaining to the claims' validity.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case is remanded to the Administrative Law Judge for a further hearing and decision.

Joan B. Thompson  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

