

UNITED STATES
v.
WILLIAM ROBINSON & WILLIAM McCASKILL
PHELPS DODGE CORPORATION

IBLA 76-603

Decided August 2, 1976

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring mining claims (Contest 539) null and void.

Appeal dismissed.

1. Mining Claims: Contests -- Rules of Practice: Appeals: Standing to Appeal

A person who admits he has no interest in a mining claim which has been held invalid for failure of the named contestee to file an answer other than he disputes a charge that the land in the contested claim is not mineral in character or that the date of a withdrawal is incorrect is not adversely affected by the decision and has no standing to appeal.

APPEARANCES: Jerry L. Haggard, Esq., Evans, Kitchell and Jenckes, P.C., Phoenix, Arizona, for Phelps Dodge Corporation.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Phelps Dodge Corporation has appealed from a decision dated January 26, 1976, of the Colorado State Office, in United States v. William Robinson and William McCaskill, holding null and void eight mining claims. 1/

1/ The claims are the Rover, Fairview, Starr, Evening Starr, Morning Starr, Forrest City and Badger lode mining claims located approximately in Sections 10, 11, 12, 13 and 14, T. 9 S., R. 81 W., 6th P.M., and in Sections 7, 8, 17 and 18, T. 9 S., R. 80 W., 6th P.M., Independence Mining District, Lake County, Colorado.

On February 22, 1974, the United States, through the Colorado State Office, Bureau of Land Management, instituted contest No. 539 against the eight claims, all of which had been located on December 5, 1887. The complaint charged the claims were not valid because:

a. No valuable mineral deposits have been discovered within the boundaries of the claims.

b. The lands within the boundaries of the claims are nonmineral in character.

c. The claims are located wholly or partly on lands that have been reserved from appropriation under the public land laws since June 24, 1956, and no valuable mineral deposits were discovered within the boundaries of the claims before the lands were so reserved.

d. The claims have not been maintained by the annual expenditure of \$ 100 per claim in labor or improvements upon, or for the benefit of, each claim for the purpose of developing valuable mines.

Service was made by publication against Robinson and McCaskill, their heirs, devisees or assignees and all other persons who claim any interest in the subject matter of the contest. Neither of the named contestees or anyone asserting an interest through them filed an answer within the 30-day period allowed. 43 CFR 4.450-3, 450-6, 450-7.

Phelps Dodge Corporation, however, filed a document designated "Answer and Petition for Revocation of Withdrawals" in which it asserted that the lands are mineral in character and that "the lands withdrawn by the Act of July 2, 1910, for Power Site 92 did not continue to be withdrawn subsequent to August 11, 1955, by virtue of 30 U.S.C. §§ 621 *et seq.* It then petitioned for a revocation of several reclamation withdrawals pursuant to 43 U.S.C. § 164 (1970), and 43 CFR Subpart 3816.

In its decision the State Office held the failure of McCaskill and Robinson or their unknown heirs, devisees, or assignees to file an answer to the complaint is an admission to the charges alleged and declared their interest null and void.

It also found that Phelps Dodge's answer was an assertion of some interest in the claim, but was insufficient because it did not deny every charge alleged in that complaint. It then declared Phelps Dodge's interest in the claim null and void.

No appeal has been filed by McCaskill or Robinson or anyone claiming through them. Therefore, the decision is final as to them.

In its appeal, Phelps Dodge asserts that the regulation, 43 CFR 4.450-6, does not require an answer to deny each and every charge in the complaint. ^{2/} It then continues:

Because Phelps Dodge has no knowledge of, and no interest in, the validity of the unpatented mining claims which are the subject of the contest, Phelps Dodge did not respond to, and therefore for the purposes of this contest concedes that it has admitted the following charges in the contest complaint.

- a. (supra)
- c. (supra)
- d. (supra)

It then asserts that it has an interest in mineral exploration in the area of the claims and denies the only charge that could affect its interest in the proceeding, i.e., charge (b) - "The lands are nonmineral." It also points out that the published notice of the contest stated that the lands had been withdrawn as of June 24, 1946 whereas the correct date is June 24, 1956. It asks for a correction of the date of reservation and for a hearing before an Administrative Law Judge on the issue of the mineral character of the lands. The record shows the complaint was amended on April 28, 1975, to read June 4, 1946, instead of June 4, 1956.

The Regional Solicitor filed an answer stating (1) the appeal is moot as the proper parties in interest failed to deny the charge that the land is nonmineral in character and (2) Phelps Dodge has no standing to appeal because, having no interest in the claims, it has not been adversely affected by the decision.

Both these points are well taken. Since Phelps Dodge has admitted it has no interest in the claims, the contest proceedings against them could not adversely affect Phelps Dodge. Therefore,

^{2/} While this point is moot in view of the disposition of the case, we point out that the regulation requires an answer to specifically meet and respond to the allegations of a complaint. 43 CFR 450-6. Further an admission of any one charge fatal to a mining claim would require the claim to be found invalid.

it has no standing to appeal. 43 CFR 4.410. It is not clear why Phelps Dodge inserted itself into this proceeding. Perhaps its actions stem from a misconception of the nature of a contest proceeding. A contest attacks only the claims described and only the interest of those listed as contestees. The contest does not affect one asserting an interest in a mining claim who is not listed in the complaint or one asserting an interest in the land through a mining claim not set out in the complaint. The finding in a contest against one claim that the lands were not open to mineral location or that the lands are not mineral in character does not foreclose a mining claimant who bases his rights to the same land on another claim from refuting such charges, if levied in another contest brought against his claim. Therefore, Phelps Dodge, if it has other mining claims to this land extant or merely intends to locate some, is not affected by the holding in this case that the charge that land is not mineral in character is taken as admitted or that the date given for the withdrawal may be incorrect.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal from the decision of the Colorado State Office is dismissed.

Martin Ritvo
Administrative Law Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge

