

UNITED STATES  
v.  
LEWIS L. NETHERLIN  
GABRIELE NETHERLIN

IBLA 77-384

Decided December 8, 1977

Appeal from decision of Administrative Law Judge Robert W. Mesch holding 61 lode mining claims invalid (Contest No. A-9623).

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims:  
Discovery: Generally

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or other rock in place, bearing mineral of such quality and quantity 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 paying mine.

2. Mining Claims: Determination of Validity -- Mining Claims:  
Discovery: Generally

Evidence in a mining claim contest showing only that further exploration might be warranted, is insufficient to establish the discovery of a valuable mineral deposit.

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 Mining Claims: Discovery: Generally -- Mining Claims: Withdrawn  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

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as the Organ Pipe Cactus

National Monument on September 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

APPEARANCES: Lewis L. Netherlin, pro se; John McMunn, Esq., Office of the Solicitor, San Francisco, California, for the United States.

#### OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Lewis L. Netherlin appeals from the April 27, 1977, decision of Administrative Law Judge Robert W. Mesch holding 61 lode mining claims invalid as not supported by the discovery of a valuable mineral deposit, Contest No. A-9623. <sup>1/</sup> The claims were located by appellant, either by himself or with Gabriele Netherlin who was also named in the contest complaint, at various times from 1969 to 1976. The claims are all situated within the Organ Pipe Cactus National Monument. The contest complaint charged that minerals had not been found "within the limits of the claims, or any one of them, of sufficient quality and/or in sufficient quantity to constitute a discovery under the mining laws." All land in Organ Pipe Cactus National Monument was withdrawn from location of mining claims, subject to valid existing rights, by section 3 of the Act of September 28, 1976, P.L. 94-429, 90 Stat. 1342-43.

A hearing on the validity of contestees' mining claims was held before Administrative Law Judge Mesch on January 26, 1977. As its only witness, the Government called Robert T. O'Brien, a mining engineer employed by the National Park Service. O'Brien testified that he had visited the claims several times and on one occasion was accompanied by appellant (Tr. 10-11). O'Brien also described the history of the claims, which are located over several old mines, two of which produced minerals prior to 1925 (Tr. 12-16). While on the claims, O'Brien removed seven samples of material from surface workings, although appellant declined to show him where to do so (Tr. 11-12, 16-19, Ex. 2). He testified that he observed no signs of recent activity on the claims (Tr. 19), and that to his knowledge no explorative drilling has been conducted on the claims since contestees located them (Tr. 25-26). He expressed the opinion that, based on his investigations and experience, there has not been found

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<sup>1/</sup> The mining claims listed in contest complaint A-9623 are: Gabriele Nos. 1 and 2; Gabriele III through XXX; Victoria, aka Victoria No. 1; Victoria Nos. 2 through 6; Victoria VII through XX; Silica Nos. 1 through 3; A. Malone I through IV; and Au Drene Nos. 1 through 4 lode mining claims.

on any of the claims a deposit of mineral in sufficient quality or quantity to justify a prudent man in further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine (Tr. 37).

Appellant testified on behalf of the contestees. His testimony consisted of two elements: one, a description of his efforts and the interest of various mining companies in pursuing exploration of the claims; and two, a denunciation of purported harassment by the National Park Service designed to prevent his pursuing mining operations. In describing his efforts, appellant conceded that further exploration is needed to find the mineral deposits which he argues exist under the claims (Tr. 82-88). The mining companies were apparently prepared to conduct further exploration to locate mineral deposits which might exist (Exs. B, C, F, G, N). On cross-examination, O'Brien stated that further exploration might be warranted on some of the claims (Tr. 65).

In his decision, Judge Mesch presents a detailed description of the testimony at the hearing and the law applicable to this mining contest. He held that the Government presented a prima facie case that the mining claims are invalid. He then found that contestees did not rebut the Government's case but showed only that further exploration might be warranted. Regarding the contestees' exhibits relating to the mining companies, Judge Mesch stated that even if those documents were interpreted to mean the companies had found a mineral deposit sufficient to justify their conducting mining operations, "the documents leave too many questions unanswered that are vital to the consideration of a prudent person" (Dec. 11). Judge Mesch then declared the claims invalid because they are not supported by the discovery of a valuable mineral deposit.

In his Statement of Reasons, appellant argues that the actions of the Park Service prevented him from properly exploring his claims prior to the withdrawal. He requests additional time without interference in which to do so. The Government, in its Answer, disputes appellant's interference allegations and argues that appellant has never referred to a purported discovery on the claims but only to the need for further exploration. The Government urges that the decision of Administrative Law Judge Mesch be upheld. For the reasons stated below, we find that appellant has failed to establish the validity of his mining claims and we therefore affirm Judge Mesch's decision.

[1, 2] One of the most basic principles of the mining laws is that in order to establish the existence of a discovery of a valuable mineral deposit on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or

other rock in place, bearing mineral of such quality and quantity 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 paying mine. Barton v. Morton, 498 F.2d 288 (9th Cir.), cert. denied, 419 U.S. 1021 (1974); United States v. The American Fluorspar Group, 25 IBLA 136, 141 (1976). The evidence must show the discovery of an actual mineral deposit; evidence showing only that further exploration might be warranted, is insufficient to establish a discovery. United States v. McClurg, 31 IBLA 8, 11 (1977); United States v. Taylor, 25 IBLA 21, 25 (1976).

[3] Where land is withdrawn from the operation of the mining laws, subject to valid existing rights, the validity of mining claims located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing. United States v. Garner, 30 IBLA 42, 66 (1977); United States v. Arcand, 23 IBLA 226, 228 (1976). Thus, appellant must show the discovery of a valuable mineral deposit as of September 28, 1976, the date the Organ Pipe Cactus National Monument was withdrawn from the location of mining claims by P.L. 94-429, supra.

Appellant has not testified to, or introduced evidence showing, the discovery of a valuable mineral deposit on any of the mining claims. His allegation that Park Service interference and harassment prevented him from entering his claims and performing the necessary exploratory work is not supported in the record. For example, at the hearing he testified that he spend \$ 4,000 on the claims in 1975 (Tr. 86-87) and that a mining company had also done some work on the claims prior to the withdrawal (Tr. 106-107). The alleged harassment appears to consist mainly of the need for work permits from the Park Service and the closing in of a tunnel by placing a heavy concrete slab across it. Unfortunately, proper administration of the National Park System may at times conflict with appellant's opinion regarding his use of his mining claims.

Congress recognized the problems inherent in mining activity in the National Park System when it enacted the Act of September 28, 1976, P.L. 94-429, 16 U.S.C.A. § 1901 et seq. (West Supp. 1977): "the level of technology of mineral exploration and development has changed radically in recent years and continued application of the mining laws of the United States to those areas of the National Park System to which it applies, conflicts with the purposes for which they were established." 16 U.S.C.A. § 1901(a). Among other things in this Act, Congress required the Department to regulate closely mining activity in the National Park System and to determine the validity of all unpatented mining claims in the Organ Pipe Cactus National Monument within 2 years. This mining claim contest resulted from that law and has provided the contestees every opportunity to

prove the validity of their mining claims. They have not done so and we find that Judge Mesch correctly held their mining claims invalid.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Mesch holding the 61 lode mining claims invalid is affirmed.

Joan B. Thompson  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Frederick Fishman  
Administrative Judge

