

UNITED STATES v. LOREN E. BURNS ET AL.

IBLA 78-596 Decided November 20, 1978

Appeal from the decision of Administrative Law Judge R. M. Steiner declaring placer mining claims null and void. CA-2837 and CA-4249.

Affirmed.

1. Mining Claims: Discovery: Generally

A discovery of a valuable mineral deposit has been made where minerals have been found in sufficient quantity and quality 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.

2. Administrative Procedure: Burden of Proof--Mining Claims: Contests

When the Government contests a mining claim on a charge of no discovery it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. The burden then shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

3. Administrative Procedure: Hearings--Mining Claims: Contests

Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants.

4. Mining Claims: Determination of Validity—Mining Claims: Discovery: Generally

Testimony that a mining claim could not presently be mined economically but may have economic potential and warrants further exploration work is insufficient to satisfy the prudent man test and meet the claimants' burden.

APPEARANCES: Lloyd H. Riley, Esq., of Riley and Peterson, Sacramento, California, for contestees; Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for contestant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Loren E. Burns, E. H. Burns, M. S. Burns, Fred Spiva, and Joyce Spiva (contestees) appeal from the July 20, 1978, decision of Administrative Law Judge R. M. Steiner declaring their New Flat Rock Placer Mining Claim null and void. The claim is located in a portion of the SW 1/4 sec. 33, T. 15 N., R. 13 E., Mount Diablo meridian, Placer County, California.

The contestant filed a complaint (CA-2837) on August 6, 1975, alleging a lack of discovery on the claim and that the land is nonmineral in character. A hearing was held in Sacramento, California, on April 14, 1976, concluding with a stipulation that the record remain open for further mineral examination of the claim.

A similar complaint (CA-4249) involving the same mining claim was filed by contestant on May 27, 1977. A second hearing was held on January 31, 1978, at which both contestant and contestees presented evidence. Administrative Law Judge Steiner declared the claim null and void because the Government established a prima facie case of no discovery and contestees failed to prove that the claim is valid. Experts for both sides agreed that based upon the assay reports, the claim could not be mined economically. In 39 years only about 10 ounces of gold have been recovered from the claim.

The Government mineral examiner, Mr. Jones, first examined the claim on June 6, 1974, with Loren Burns and found a very small amount of gold. Mr. Burns agreed that the samples revealed little gold but testified to finding much more in the same location (Tr. 55), but because of the condition of the tunnel, he was only able to remove about 7 pennyweights of gold (Tr. 57, 58). Mr. Burns testified that he believed there was gold on the claim such as to justify spending more money to work the mine (Tr. 58).

Before the second hearing Mr. Jones inspected the claim on four more occasions and again found the gold values to be very low. Based on these samples Mr. Jones testified that a reasonably prudent man would not be justified in a further expenditure of his labor and means in working this claim (Tr. 112).

Contestees' expert, a geologist, Mr. Wheeldon, also took samples on the claim and found little gold. He agreed that based on the assay reports the claim could not be mined economically (Tr. 153). However, based on geologic inference from the types of gravel in the area and the existence of profitable mines adjacent to this claim, he was of the opinion that there may be great economic potential on the claim and that a prudent person would continue investing labor and money on the claim (Tr. 156).

In their statement of reasons, contestees assert in general terms that this record shows there are sufficient minerals in the claim to constitute a discovery. They further claim that the decision is contrary to the law and facts of the case, that discovery was clearly shown, and the mineral values warrant development.

[1] For a mining claim to be valid there must be discovery of a valuable mineral deposit within the limits of the claim. 30 U.S.C. § 22 *et seq.* (1976). A discovery of a valuable mineral deposit has been made where minerals have been found in sufficient quantity and quality "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," *Castle v. Womble*, 19 L.D. 455, 457 (1894). This definition, known as the "prudent man test," has been repeatedly approved by the Supreme Court and in Department of the Interior decisions. *E.g.*, *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334 (1963); *Cameron v. United States*, 252 U.S. 450 (1920); *Chrisman v. Miller*, 197 U.S. 313 (1905); *United States v. James Becker*, 33 IBLA 301 (1978); *United States v. Ruth Arcand*, 23 IBLA 226 (1976).

[2, 3] At both hearings the Government mineral examiner testified that he found very low gold values. At the second hearing, contestees' expert agreed that little gold had been found. When the Government contests a mining claim on a charge of no discovery, it has assumed the burden of going forward with sufficient evidence to establish a *prima facie*. The burden then shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. *United States v. Springer*, 491 F.2d 239, 242 (9th Cir.) *cert. denied*, 419 U.S. 834 (1974); *United States v. David L. King*, 34 IBLA 15 (1978); *United States v. James Becker*, *supra*; *United States v. Taylor*, 19 IBLA 9, 82 I.D. 68 (1975). Where a Governmental mineral

examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants. Andrew J. Van Derpoel, et al., 33 IBLA 248 (1978). The testimony of the Government mineral examiner established a prima facie case of invalidity and shifted the burden to the contestees.

[4] As pointed out by Judge Steiner, "[t]he ultimate burden of proving discovery is always upon the mining claimant. United States v. Springer, supra"; United States v. Taylor, supra. Testimony that a mining claim could not presently be mined economically but may have economic potential is insufficient to satisfy the prudent man test and meet the claimant's burden. We agree with the following statement at page 7 of Judge Steiner's decision:

Evidence of mineralization which might warrant further exploration work within a claim rather than development of a mine is not sufficient to constitute discovery of a valuable mineral deposit. Converse v. Udall, 399 F.2d 616 (9th Cir. 1965), cert. denied, 393 U.S. 1025 (1969); Henault Mining Company v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970).

There is no evidence in the record to support a finding of discovery.

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.

Joan B. Thompson
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Newton Frishberg
Chief Administrative Judge

