

UNITED STATES
v.
TED G. AX

IBLA 78-296

Decided September 28, 1979

Appeal from decision by Administrative Law Judge Dean F. Ratzman declaring placer and lode mining claims invalid. Contest N-12172.

Affirmed as modified.

1. Mining Claims: Locatability of Mineral: Generally -- Water and Water Rights: Generally

Water is not a locatable mineral and sales thereof cannot be considered in determining whether there has been a valuable discovery.

2. Mining Claims: Discovery: Generally

A discovery of valuable mineral exists where the claim contains mineralization of sufficient quality and quantity to justify further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

3. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof -- Mining Claims: Contests -- Mining Claims: Discovery: Generally

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

4. Mining Claims: Discovery: Generally

Minute amounts of mineralization may justify further exploration without establishing discovery.

APPEARANCES: Ted G. Ax, pro se; James E. Turner, Esq., Office of the Solicitor, Department of the Interior, Sacramento, California, for appellee.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Ted G. Ax appealed the February 10, 1978, decision of Administrative Law Judge Ratzman declaring the following mining claims null and void for lack of discovery of a valuable mineral deposit: Ax-Hill Placer, Ax-Hill Placer No. 1, Ax-Hill Nos. 2, 3, 4, 6 (placer mining claims), and Ax-Hill No. 1 lode mining claim, secs. 33 and 34, T. 16 N., R. 29 E., Mount Diablo meridian, Churchill County, Nevada. These claims were located between 1956 and 1959.

The Bureau of Land Management (BLM) filed the complaint contesting the validity of these claims, charging lack of discovery and partial withdrawal. At this hearing Harrie W. Mallery, BLM geologist, testified on behalf of the Government. From this testimony and the evidentiary submissions by appellant, the Judge concluded that all claims lacked minerals in sufficient quantities to constitute valid discovery within the meaning of the mining laws. The Ax-Hill Nos. 2 and 6 placer mining claims were found to be nonmineral in character and hence invalid. In addition, all of Ax-Hill No. 1 lode and Ax-Hill Placer, plus portions of the remaining claims were found void from their inception due to the withdrawal of all lands within 1/4 mile of a hot spring pursuant to Exec. Order No. 5389 (1930) (as amended by Public Land Order No. 399 (1947) implemented by 43 CFR 2311.0-3(b)).

On appeal, appellant reiterated his assertions of gold, silver, and uranium on the claims. He argued that activated carbon extraction of these proves the existence of locatable minerals. He added that water produced on the claims was being sold. He admitted that no minerals have been sold from these claims.

[1] Appellant states he sells water as a byproduct. Water is not a locatable mineral and cannot be considered with reference to whether there has been a discovery. Andrus v. Charlestone Stone Products, 436 U.S. 604 (1978).

[2] Discovery, as defined in the context of the mining laws, does not refer simply to the detection of any mineralization. A discovery of a valuable mineral deposit exists where the claim contains mineralization of sufficient quality and quantity to justify "further expenditure of labor and means, with a reasonable prospect of success, in developing a valuable mine" United States v. Coleman, 390 U.S. 599 (1968); Castle v. Womble, 19 L.D. 455, 457 (1894), approved in Chrisman v. Miller, 197 U.S. 313 (1905). This definition requires that it would appear to a prudent man that the material may

be mined, removed, and marketed at a profit. Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969).

[3] When the Government contests a mining claim on a charge of no discovery, the Government must meet the initial burden of making its prima facie case. This burden is met where, as here, a Government mineral examiner samples a claim and gives his expert opinion that no discovery exists on the claim. United States v. Bechtold, 25 IBLA 77 (1976). Once this prima facie case is established, the burden shifts to the mining claimant to show by a preponderance of the evidence that a discovery has been made within the limits of the claim. Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959); United States v. Ross, 40 IBLA 169 (1979).

[4] Appellant submitted chemical assay data analyzing "tabled" samples and water samples that appellant took from his claims in 1976 and 1977. He also presented a letter from the Anaconda Company, dated July 7, 1960, which noted "possible interest" in the property and listing assay data for three samples that appellant evidently had sent to the company. Appellant could not establish how much material was tabled to derive his consolidated samples. Nor could he establish how many gallons of spring water ran through his charcoal extraction equipment nor exactly how long it took to obtain his water samples. The samples sent to Anaconda for uranium assay and the Government's samples were taken from the same spot. (Tr. 64-79).

The Government mineral examiner did not find what he considered any significant mineralization. His radiometric survey of the entire claim did not reveal any significant quantity of uranium (Tr. 46). The Government assays revealed only trace amounts of each claimed mineral.

Minute amounts of mineralization may justify further exploration to demonstrate the feasibility of development, without establishing discovery. Chrisman v. Miller, supra; United States v. Robinson, 21 IBLA 363, 82 I.D. 414 (1975). The samples must be representative of the mineral deposit to be meaningful. United States v. Bechtold, supra. Appellant was unable to establish that here.

Appellant has had ample opportunity to find and present evidence of sufficient mineral deposits to prove discovery. Judge Ratzman carefully analyzed the evidence and, on the basis of the record before us, we must agree that these claims lack sufficient mineralization to warrant a mining operation.

Because of the ruling on discovery, it is not necessary to discuss the effect of Executive Order 5389 (1930), promulgated pursuant to 43 U.S.C. § 142 (1976).

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.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge