

UNITED STATES
v.
ALICE W. ROUSE ET AL.

IBLA 80-463

Decided July 8, 1981

Appeal from decision of Administrative Law Judge E. Kendall Clarke, declaring lode mining claims null and void. CA-5092.

Affirmed.

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

There has been no discovery of a valuable mineral deposit within a lode mining claim unless there has been physically exposed within the limits of the claim a vein or lode-bearing mineral of such quality and quantity as to justify the expenditure of money for the development of a mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

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

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

3. Administrative Procedure: Burden of Proof -- Mining Claims:
Discovery: Generally -- Rules of Practice: Appeals: Burden of Proof

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

4. Mining Claims: Contests -- Mining Claims: Determination of Validity
-- Mining Claims: Discovery -- Mining Claims: Lode Claims

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

5. Mining Claims: Discovery: Marketability

Establishing the marketability of a mineral deposit requires more than a showing that the mineral is theoretically marketable or intrinsically valuable. The claimant must demonstrate present continuing demand for the output of his mine.

6. Mining Claims: Determination of Validity -- Mining Claims:
Discovery: Generally -- Mining Claims: Discovery: Geologic
Inference

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization

throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

7. Evidence: Generally -- Hearings -- Mining Claims: Hearings

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

APPEARANCES: Robert C. Coates, Esq., San Diego, California, for appellant; John W. Burke III, Esq., Office of the Solicitor, San Francisco, California, for appellee.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Alice W. Rouse has appealed the February 25, 1980, decision of Administrative Law Judge E. Kendall Clarke declaring the Tar Asbestos 1 through Tar Asbestos 4 lode mining claims located in Inyo County, California, 1/ null and void for lack of discovery of valuable minerals on the claims.

The California State Office, Bureau of Land Management (BLM), initiated contest No. CA-5092 on behalf of the National Park Service. The Government's complaint charged that there were not disclosed within the boundaries of the claims minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery.

Appellant denied the charges, and on June 27, 1979, a hearing was held before Judge Clarke in San Diego, California.

[1-6] We have thoroughly reviewed the record of this case and the arguments advanced by the parties. Judge Clarke's decision sets out a full summary of the testimony, the relevant evidence, and applicable law. We agree with the Judge's findings and conclusions and adopt his decision as the decision of the Board. A copy of the decision is attached as Appendix A.

1/ The claims are located in the Death Valley National Monument which was withdrawn and closed to mineral entry on Sept. 28, 1976 (Tr. 8). Robert E. Wittorff and Ted J. Wittorff were the other contestees named in the contest complaint. Neither appeared at the hearing. Only Alice W. Rouse has appealed Judge Clarke's decision. Therefore, his decision is final as to their interest in the claims.

The appeal to the Board is limited to the Tar Asbestos claims Nos. 1 and 2. 2/

Appellant's first argument is a challenge to the competence of the Government's mineral examiner. The Government examiner graduated from the University of South Dakota with a major in geology. In that field he worked for the Corps of Engineers and the Atomic Energy Commission. His experience in examining mining claims for both BLM and the Department of Agriculture dates from 1957 (Tr. 5-7). Appellant asserts that the examiner's lack of experience with asbestos prevented the establishment of a prima facie case. The Government examiner's testimony is detailed on pages 2-4 of the decision. His answers to technical queries on cross-examination (Tr. 30-36) reveal a considerable knowledge, as well as a diligent preparedness, on the subject of asbestos mining and marketing. Appellant's claim that no prima facie case was established because of the examiner's inexperience is clearly unfounded.

Appellant also asserts that a deposit and its marketability were clearly established by the evidence. A succinct summary of the testimony given by appellant's expert, a field geologist, appears on pages 4-6 of the decision. This summary covers the transcript citations appellant lists to support this argument. A specific challenge is made to the Judge's conclusion that appellant failed to show firm commitments from asbestos producers indicating they would purchase asbestos from the claims. Appellant cites the transcript at page 90 where his expert testified that Calaveras Asbestos, Ltd., of California "indicated they would be willing to buy small lots of material." The Judge felt that this demonstrated at best "an interest" (on the part of Calaveras) in processing asbestos ore (Decision at 9), and he found this testimony insufficient to establish a present and continuing demand for the mining claimant's asbestos. The authorities supporting the Judge's conclusion on this point are listed on page 8 of his decision, second full paragraph. Appellant has made no showing, in light of the applicable authorities, which would warrant disturbing the Judge's conclusion.

Appellant also asserts that pertinent figures relating to quantity and value of the claims were ignored by the Judge. We note, in response to this argument, that the Judge not only evaluated such data, but related it to such crucial factors as cost of extraction, transportation, mining equipment, and labor expenses (Decision at 9-10). These elements are largely ignored in the statement of reasons. We conclude that appellant has shown no error in the Judge's evaluation of the evidence on this point.

2/ At page 3 of appellant's statement of reasons or brief on appeal, it is stated:

"Claimant, however, concedes that since no actual ore has been found on Tars Three and Four, due primarily to claimant's limited resources as an individual miner, the burden of proof has not been met for Tars Three and Four. Such concession, however, is conditional upon whether appellate decisions broaden the scope of permissible inference (p. 120)."

Attached to the statement of reasons is a letter dated April 4, 1980, from Calaveras Asbestos, Ltd., to appellant's counsel. The letter indicated a continuing interest on the part of Calaveras in processing asbestos ore from appellant's claims.

[7] Inasmuch as the letter represents additional evidence tendered on appeal, it may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened. United States v. Rosenkranz, 46 IBLA 109 (1980). In addition, to warrant a further hearing in a mining claim contest, there must be a tender of proof of discovery. United States v. Gray, 50 IBLA 209 (1980). As the Judge observed on page 9 of the decision, Calaveras' interest does not demonstrate a continuing demand or the opportunity for continuing present sales. United States v. Slater, 34 IBLA 31 (1978). There is no basis for reopening the hearing.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

February 25, 1980

United States of America,	:	<u>Contest No. CA-5092</u>
	:	
Contestant	:	Involving the Tar Asbestos
	:	#1 (formerly called Tar
v.	:	#1); Tar Asbestos #2; Tar
	:	Asbestos #3; and Tar
Alice W. Rouse; Robert E.	:	Asbestos #4 Lode Mining
Wittorff; and Ted J. Wittorff,	:	Claims situated in SE-1/4
	:	Sec. 10, SW-1/4 Sec. 11,
Contestees	:	NW-1/4 Sec. 14, and NE-1/4
	:	Sec. 15 of protracted T.
	:	15 S., R. 41 E., M.D.M.,
	:	Inyo County, California

DECISION

Appearances: John McMunn, Esq., United States
Department of the Interior,
for the Contestant.

Robert C. Coates, Esq.,
Professional Law Corporation,
San Diego, California,
for the Contestees.

Before: Administrative Law Judge Clarke

This is a contest brought by the United States Department of the Interior, Bureau of Land Management, on behalf of the National Park Service (NPS) to challenge the validity of the above-named lode mining claims. In accordance with the Hearings and Appeals Procedures, 43 CFR, Part 4, a complaint was filed on June 2, 1978, alleging that, "There are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery."

On June 28, 1978, the mining claimants filed a responsive Answer denying the aforementioned allegations and further asserted a number of affirmative defenses which demanded the dismissal of this contest. Thereafter, a hearing was conducted on June 27, 1979 in San Diego, California. Mr. Robert E. Wittorff and Mr. Ted B. Wittorff made no appearance at the hearing.

The contested claims are situated in the Death Valley National Monument, Inyo County, California. Lands within the Monument were withdrawn from mineral entry on September 28, 1976 [16 U.S.C. Sec. 1901, *et. seq.* (1976)].

Mr. Amos Klein, a geologist with the National Park Service, was called to testify on behalf of the contestant. He has made numerous examinations of mining claims to determine their validity. (Tr. 5). An inspection of the claims was made on March 21 and March 23, 1978, in the company of Ms. Alice Rouse and Mr. Donald L. Fife. (Tr. 8). Jeep trails provide access to the claims which are 25 to 30 miles away from the nearest paved road. The principal outcrop on the claims is a limestone body 600-feet long and 300-feet wide which is completely encircled by intrusive rocks. The claims are on a shallow plateau but there are mountains to the east. No claim corners were found by Mr. Klein. Asbestos is the mineral located by the mining claimants. (Tr. 10).

The main workings were found on the Tar Asbestos No. 1 claim. In addition, there are 4 or 5 shallow prospect pits, none exceeding a 4-foot depth, on the northern portions of the limestone body. Likewise there are a similar number of dozer cuts on the mining claims. (Tr. 11, Ex. 1). Small quantities of asbestos were found in the prospect holes. (Tr. 15). Limestone was exposed in the dozer cuts. A series of thin bedded veins of asbestos associated with a fault were found in a 12-foot deep discovery hole within the large limestone body. (Tr. 15).

The asbestos exposed formed in a cross-fiber along the bedding plane between the limestone and dolomite. The beds were very thin, fluctuating from 1/16 of an inch to 1 inch in thickness. (Tr. 16). Actual quantity of asbestos exposed may total only a ton. An asbestos specimen was taken and sent to the United States Geological Survey Laboratory in Denver, Colorado. The asbestos sample was in a chrysotile form. (Tr. 17).

Mr. Klein conducted a market survey of the asbestos market in California. He visited the Atlas Asbestos Corporation's deposits in Coalinga, California. The deposit there is approximately 14 miles long and 4 miles wide. The chrysotile (short fibered asbestos) there is grade 7. The estimated reserve is in excess of 100 million tons. A mill is adjacent to the ore body and it processes 560 to 600 tons of ore a day which yields 63 to 70 tons of fiber a day. The ore generates 11% fiber. This material is trucked to Los Angeles and then shipped to New York. (Tr. 18). Access from Coalinga to Los Angeles is via interstate freeway. (Tr. 19).

Another deposit inspected is located in Copperopolis, California and operated by the Calaveras-Asbestos Corporation. (Tr. 19). The 15 million ton ore reserve yields 2.5% to 3% fiber. The mill there processes 6,000 tons of ore per day and produces 150 to 180 tons of fiber a day. Mills are necessary to remove waste rock from the fiber. If the mill is located near the asbestos deposit the cost of transporting the ore is reduced. In Mr. Klein's opinion, absent a mill the value of the fiber would be minimal. Capital costs in constructing a mill would be in the millions of dollars. The mill at Copperopolis is a 5-story structure 400 feet by 400 feet in size. The Coalinga mill is smaller. (Tr. 21).

According to Mr. Klein, asbestos is not in short supply. He was of the opinion that there is no deposit of commercial asbestos on any of the Tar Asbestos mining claims. An ore reserve of 15 million tons would be needed before an economic mining operation would be viable since other on-going asbestos operations have such large reserves. A large deposit is necessary to compete in the market. (Tr. 22). The current asbestos companies can supply the demand for asbestos. (Tr. 23).

Mr. Klein found asbestos only on the Tar Asbestos No. 1 claim. The other three claims contained no visible asbestos deposits. (Tr. 23). In conclusion, Mr. Klein believed the Tar Asbestos claims lack a quantity of asbestos that would justify a prudent man in developing the claims. (Tr. 24). There is no exposed ore body on the claims. (Tr. 25).

Upon further questioning, Mr. Klein contended he saw less than a ton of asbestos on the Tar Asbestos No. 1 claim. (Tr. 30). Processed asbestos in 100 pound bags at grade 4 is worth \$591 a ton f.o.b. the mill. Grade 5 is \$388 a ton f.o.b. the mill. The fiber found on the Tar Asbestos No. 1 claim ranged in length from 1/16 to 1 inch and a grade of 1 to 7. (Tr. 31). The shortest length of fiber grade 7 produced at the Copperopolis deposit is priced at \$360 per ton f.o.b. their mill in bagged 100 pound sacks. (Tr. 30). Mr. Klein estimated the Tar Asbestos No. 1 claim could produce asbestos at a grade of 4 to 7 which is valued at \$360 to \$400 a ton. (Tr. 31).

The pit where the discovery hole is located is a shallow remnant of limestone surrounded by intrusive rocks. Asbestos was found in the discovery hole as well as in the prospect holes near a trail within the limestone deposit. (Tr. 35, Ex. 1). The claims are in a moderate thrust fault area dipping 5 degrees to the east. (Tr. 38). The fault parallels the bedding planes. Asbestos is often found along fault surfaces.

Alice Rouse, a mining claimant, stated she believed there had been asbestos produced from the claims but she acknowledges she never sold any asbestos since she has located the claims in 1955. (Tr. 56).

Mr. Donald L. Fife, a certified engineering geologist and senior mining geologist for the geotechnical consulting firm of Converse, Ward, Davis, Dixon, testified on behalf of the mining claimant. Most of his experience has been involved with non-metallic mineral deposits and their relation to the southern California market. (Tr. 59). According to Mr. Fife, the supply of asbestos in the United States is critically short. Foreign sources total 90% of the amount of asbestos used. Most of the imported asbestos comes from Canada. A 22% depletion allowance is given for developing asbestos. The market for long fiber asbestos is very strong while the short fiber asbestos use is beset with environmental problems. (Tr. 62).

The first visit to the claims made by Mr. Fife was on March 21, 1978. The second visit was made on May 12, 1979. (Tr. 65). He talked with Buck Johnson who purportedly drilled several exploratory holes on the claims. Mr. Johnson stated he found asbestos in the area. There are two access routes to the claims. (Tr. 70). A millsite is near the western access route.

a discovery pit that is 12 to 14 feet deep is on the Tar Asbestos No. 1 claim. (Tr. 70). Asbestos occurs along a thrust fault in the pit. Maximum thickness of the mineralized zone is 4 feet. It is difficult to get a representative sample of asbestos since most of the outcrops have been mined by prospectors. An asbestos layer, although irregular and discontinuous, was found on all sides of the pit. There are small inclusions of serpentine along the fault zone that do not contain long fibers. (Tr. 71). Normally the asbestos forms along a zone that is subjected to stress that creates several shear zones. This accounts for the fluctuating thickness of the layers of asbestos. (Tr. 72). Mr. Fife found asbestos at eight different points along the edge of the pit. (Tr. 75, Ex. 1). However, he found no asbestos in the dozer cuts to the east of the discovery pit. (Tr. 76). Unknown amounts of asbestos were extracted from the dozer cuts west of the discovery pit. (Tr. 77).

After examination of the surface of the claims, Mr. Fife estimated the asbestos deposit lies in a circular area 500 feet in diameter. (Tr. 79). This area is on both the Tar Asbestos No. 1 and the Tar Asbestos No. 2 claims. (Ex. C, Drawing No. 8). But it does not extend to the two remaining claims. (Tr. 87). Most of the asbestos fibers found ranged in size from 3/8 of an inch to 3/4 of an inch. Longer fibers were also seen but Mr. Fife believes that other prospectors may have removed all of the longer fibered asbestos from the pit.

Mr. Fife contacted several asbestos companies in southern California, one of the Calaveras Asbestos Corporation and the other Union Carbide. Both were interested in milling the asbestos ore from the Tar Asbestos claims. Calaveras Asbestos Corporation was willing to buy small amounts of ore. (Tr. 90). Mr. Fife acknowledges there are only two large operating asbestos deposits in California although there are several dozen other deposits which had substantial production in the past. (Tr. 91). He agrees with Mr. Klein's estimate that the asbestos could have a value of \$380 to \$400 per ton. (Tr. 93).

In addition, he estimated that a one-foot thick bed of material in a hundred foot square would have 720 tons of material. This amount excluded the waste rock. For long fibered asbestos the 720 tons would generate a gross value of \$72,000 before extraction costs. (Tr. 94). Mr. Fife believes the ore deposit is larger than 100 feet square. On the other hand, he believes the estimated tonnage on the claims does not justify development by a large company or

the construction of a mill on the site. (Tr. 95). The waste rock must be selectively discarded by a hand sorting method utilizing a crusher. This crude ore could then be transported to a nearby mill and processed. Mr. Fife suggested surface mining to remove the overburden and to extract the ore. (Tr. 96). Minimal costs are anticipated for mining and shipping. (Tr. 97). A two-man operation could remove 14 tons of ore a year. In Mr. Fife's opinion, a prudent man would attempt to mine the claims on a small scale.

On cross-examination, Mr. Fife agreed that the fiber zone found varied from 5 to 20 inches in width. (Tr. 99). He has no information concerning the milling costs that would be charged by the Calaveras Asbestos Corporation for processing asbestos ore from the Tar Asbestos claim. (Tr. 103). Significantly, Union Carbide requested an asbestos sample for analysis before they would entertain the idea of purchasing asbestos from the Tar Asbestos claims. (Tr. 103). Atlas Asbestos Corporation and Union Carbide dominate the asbestos market in California. (Tr. 104). Mr. Fife did not thoroughly consider the National Park Services' mining restrictions for the Death Valley Area. (Tr. 105). Nor did he calculate the cost of asbestos as of September 1976, the year that the area was closed to mineral entry. (Tr. 106). Likewise he did not factor in the cost of rehabilitating the access road or the capital cost to begin the mining operation. However, he did factor in the expense of leasing mining equipment. (Tr. 107). The cost of shipping the ore for processing was not calculated. A miner's wages are approximately \$90 a day. (Tr. 109). No asbestos was found on the Tar Asbestos No. 3 or No. 4 claims. (Tr. 110).

A report on the Tar Asbestos mining claims prepared by Mr. Fife on June 25, 1979 (Ex. B) concluded:

Tar #1 and 2 claims contain substantial reserves of commercial chrysotile asbestos. Because the United States is critically deficient in domestic sources of commercial chrysotile and has to depend on foreign imports for more than 90% of our national consumption and the deposit is in one of the largest industrial market areas of the United States all production from this deposit can readily be sold to asbestos mills locally in California.

The report further stated the Tar Asbestos deposit is economic if worked as a small mine. If the small mine can conform to California state reclamation regulations then a prudent person could develop the mine with a reasonable prospect of developing a valuable mine.

Applicable Law

Under the mining laws of the United States [30 U.S.C. Sec. 22, et. seq. (1976)], the discovery of a valuable mineral deposit is essential if a claim is to be held valid. There must be found within the limits of a lode mining claim a vein or lode of quartz, or other rock in place, bearing mineral of such quantity and quality that a prudent person would expend his time and means with a reasonable prospect of success in developing a valuable mine. Converse v. Udall, 399 F.2d 616, 621 (9th Cir. 1968) cert. denied, 393 U.S. 1025 (1969); Barton v. Morton, 498 F. 2d 288 (9th Cir.) cert. denied, 419 U.S. 1021 (1974).

In a mining contest the mining claimant is the proponent of a rule or order that he has complied with the mining laws, and has the ultimate burden of proof. The Government assumes the burden of going forward with sufficient evidence to establish a prima facie case of invalidity. When this has been done the burden shifts to the claimant to show by a preponderance of the evidence that his claim is valid. United States v. Zweifel, 508 F.2d 1150, 1157 (10th Cir. 1975); Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959); United States v. Alex Bechthold, 25 IBLA 77, 82 (1976).

A prima facie case that a discovery of a valuable mineral deposit is lacking is established when a Government mineral examiner gives his expert opinion that he examined a claim and found insufficient values to support a finding of discovery. United States v. Alex Bechthold, supra; United States v. Fisher, 37 IBLA 80 (1978). The function of the Government mineral examiner is to verify, if possible, the existence of a discovery by examining the claim and by extracting mineral samples from accessible areas of exposed mineralization at which the claimant alleges a discovery to have been made. United States v. Arizona Mining and Refining Co., Inc., 27 IBLA 99, 207 (1976). He is under no duty to undertake discovery work or to explore beyond the current workings of a claim. United States v. Timm, 36 IBLA 316 (1978); United States v. Florence J. Mattox, 36 IBLA 171 (1978). A finding of mineralization may suggest the possibility of minerals of sufficient value to justify further exploration, but it does not establish a discovery. Chrisman v. Miller, 197 U.S. 313 (1905); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert denied, 393 U.S. 1025 (1969).

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit increased due to a change in the market. United States v. Ralph Page, et. al., 43 IBLA 390 (1979); United States v. Wichner, 35 IBLA 240 (1978); United States v. Rogers, 32 IBLA 77 (1977).

The prudent man rule has been refined to require a showing that the mineral in question can be extracted, removed and presently marketed at a profit, the so-called marketability test. United States v. Coleman, 390 U.S. 599 (1968); United States v. Harris, 38 IBLA 137 (1978). Establishing the marketability of a mineral deposit requires more than a showing that the mineral is theoretically marketable or intrinsically valuable. The claimant must demonstrate present continuing demand for the output of his mine. It is not sufficient to show that attempts are being made to explore possible markets or to promote the utilization of the mineral. United States v. Michael Slater, 34 IBLA 31 (1978).

Geologic inference cannot be used as a substitute for evidence showing the existence of an ore body necessary to warrant a prudent man in developing a valuable mine. A mineable body of ore may not be inferred merely because some mineralization has been found in a vein. A sufficient delineation of the existence of an ore body must be made to establish the deposit. There must be proof of continuous mineralization along the course of a vein. United States v. George R. Edeline, 39 IBLA 236 (1979).

What men have or have not done over a period of years is proper evidence as to the conduct of a prudent man in the same or nearly same circumstances. Where mining claims had been held for many years and little or no commercial production was achieved on such claims, it may be concluded that no prudent man would have been justified in the belief that the mineral deposit could be developed, extracted, and marketed at a reasonable profit. United States v. Milton Wichner, 35 IBLA 240 (1978).

Determination

Based on the testimony of the Government's expert witness, a prima facie case has been established that reveals there are no mineral deposits exposed on the Tar Asbestos mining claims which would qualify as a discovery. Mr. Klein has inspected the claims and has found an insufficient quantity of asbestos. No signs of recent development work was found whatsoever. The capital expenditures required to develop and process the asbestos would exceed the value of recoverable asbestos. Mr. Klein's research has revealed the California market is amply supplied by the larger asbestos producers. The current asbestos producers have their milling equipment located at the deposit site which curtails production costs. Even at that, only 2.5% to 11% of the ore processed is comprised of asbestos fiber, therefore suggesting that milling costs have a considerable effect on production costs since a large tonnage of ore must be processed to produce a small amount of asbestos.

In contrast, the mining claimant has failed to expose minerals of sufficient quantity to qualify as a discovery. The discovery pit on the Tar Asbestos No. 1 claim contains irregular and discontinuous pieces of asbestos and according to Mr. Fife, most of the larger pieces of asbestos have been removed. Despite Mr. Fife's projections estimating a 500-foot long pit, there has been no core drilling performed to verify that an asbestos deposit is continuous throughout the pit area. Whatever past production from the claims is negligible and unconfirmed. At the present time there are no mining activities in progress at the claims. Mr. Fife was unable to present firm commitments by nearby asbestos producers indicating they would purchase asbestos from the Tar Asbestos claims. Rather, they have only shown an interest in processing asbestos ore. This alone is insufficient to establish a present and continuing demand for the mining claimant's asbestos.

Although Mr. Fife has asserted there are 720 tons of asbestos material on the claim, he has not thoroughly analyzed the costs involved in extracting and processing this material. He has no information concerning milling costs in producing asbestos. By comparison, other asbestos producers have recovered a maximum of 11% of the asbestos ore processed. Even conceding there may be 720 tons of asbestos ore on the claims, at 11% recovery, approximately 79 tons of finished asbestos could be recovered. At \$400 a ton, only a \$36,000 gross value would be generated. This does not take into account the cost of extraction, transportation, mining equipment and labor expenses.

The cost of rehabilitating the access road alone may exceed recoverable revenues. In addition, if a two-man operation could extract only 14 tons a year, only a total of \$5,600 could be recouped if the 14 tons of material was a finished product. Without considering other expenses, a single miner would receive only \$2,800 annually which would be far below what a person would receive at the minimum wage. At such a low salary, no prudent person would be expected to toil for a year in Death Valley. Finally, Mr. Fife did not calculate the value of asbestos as of September 28, 1976, the date the land was withdrawn from mineral entry.

I therefore am unable to find that the contestees have preponderated in showing a discovery of a valuable mineral on each of the claims as required under the United States mining law.

Accordingly, the Tar Asbestos Nos. 1 through 4 lode mining claims are declared null and void.

E. Kendall Clarke
Administrative Law Judge

Appeal Information

An appeal from this decision may be taken to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (revised as of October, 1978). Special rules applicable to public land hearings and appeals are contained in Subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) in order to facilitate transmittal of the case file to the Board. If the procedures set forth in the regulations are not followed, and appeal is subject to dismissal. The adverse party to be served with a copy of the notice of appeal and other documents is the attorney for the United States Department of the Interior whose name and address appear below. Additionally, rules that became effective February 25, 1980 state that, the Associate Solicitor of the Division of Energy and Resources must be served with a copy of the notice of appeal and any statement of reasons, written arguments, or briefs. (Address: Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.)

Enclosure: Additional information concerning appeals.

Distribution attached.

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