

Editor's note: appealed -- aff'd, Civ. No. 83-182 (E.D.Cal. Aug. 8, 1983)

UNITED STATES
v.
SLATER A. JUDD, JR.

IBLA 81-442

Decided October 29, 1982

Appeal from decision of Administrative Law Judge John R. Rampton, Jr., declaring lode and placer mining claims and millsite claim null and void. CA 8266.

Affirmed.

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

Occasional assays of material from a mining claim showing high values of gold are not conclusive evidence of a qualifying discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

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

A distinction is properly recognized between a "valuable mineral" and a "valuable mineral deposit." To establish the existence of a valuable mineral deposit on a lode claim there must be evidence of continuous mineralization along the course of a vein or lode and the mere showing of disconnected pods of mineral concentration, even of high values, does not suffice by itself.

APPEARANCES: Slater A. Judd, Jr., pro se; Erol R. Benson, Esq., Office of the General Counsel, U.S. Department of Agriculture, Ogden, Utah, for contestant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Slater A. Judd, Jr., has appealed from a decision of Administrative Law Judge John R. Rampton, Jr., dated March 9, 1981, declaring the Judd #1 Gold placer mining claim; "The Wolverine Uranium Mine;" the Judd Gold Lode #1, and the Judd Gold Lode #2 lode mining claims; and the Judd #1 Millsite claim null and void. The claims are situated in the SW 1/4 sec. 21 and the NW 1/4 sec. 28, T. 6 N., R. 22 E., Mount Diablo meridian, Mono County, California.

This case was initiated with the filing of a contest complaint by the Bureau of Land Management (BLM), on behalf of the Forest Service, U.S. Department of Agriculture, on July 17, 1980, charging:

As to the lode and placer claims:

- A. Minerals have not been found within the limits of the claim in sufficient quantity, quality, and value to constitute a valid discovery.
- B. The land embraced within the claims is nonmineral in character.
- C. The land embraced within the claims is not held in good faith for mining purposes.

As to the millsite claim:

- A. The land involved is not being used or occupied by the proprietor of a vein, lode, or placer for purposes of mining, milling, processing, beneficiation, or other operations in connection with a placer mining claim or a lode mining claim.
- B. The land involved does not contain a quartz mill or reduction works.
- C. The land embraced within the claim is not held in good faith for milling purposes.

Appellant filed a timely answer and on October 28, 1980, a hearing was held before Administrative Law Judge Rampton in San Francisco, California. In his decision, the Administrative Law Judge concluded that the Government had established a prima facie case as to the invalidity of appellant's claims and that appellant had failed to overcome such case by a preponderance of the evidence.

In his statement of reasons for appeal, appellant argues that "ample evidence," presented at the October 1980 hearing, established the validity of his claims. Moreover, he reiterates his charge that he has been prevented from developing his claims. Finally, he submits additional evidence as to the validity of his claims, namely, an article from California Geology (March 1981) indicating significant production of uranium from the Juniper

Mine, located west of appellant's claims, photographs of his claims, particularly of "[q]uartz veins" on the Judd Gold Lode #2, correspondence with Utah International Inc. regarding acquisition of his claims, which was declined, and an assay report dated September 24, 1971, on "3 rock samples."

We have carefully reviewed the record in this case, including the testimony and documents presented at the hearing, and must conclude that appellant did not establish the validity of the claims by a preponderance of the evidence.

[1] Appellant's best evidence with regard to mineral values is in regard to the Judd #1 Gold placer mining claim. Two assay reports, submitted by appellant, indicate significant values of gold and silver (Exhs. MC-H and MC-I). Appellant testified to the discovery in 1969 of 90 ounces of loose material on the placer claim which ran about 10 percent gold (Tr. 104). Appellant's testimony regarding the assay report proffered to support this discovery (Exh. MC-H), however, was confused. He was unclear about the weight of the sample assayed -- whether it was 90 ounces, or "12 1/2 ounces of gold dust." Appellant conceded that he had only mined and sold \$ 50 worth of gold since 1969 (Tr. 175). The assay tendered by appellant as Exh. MC-I was clearly an assay of concentrate (Tr. 123, 161-62, 176). In order to be meaningful, samples must be representative of the mineral deposit rather than selective showings of the best mineralization. United States v. Bechtold, 25 IBLA 77 (1976). Further, one of contestee's assay reports indicated only traces of gold and silver (Exh. MC-J).

Appellant has not established such mineral values that a prudent man "would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine." Chrisman v. Miller, 197 U.S. 313, 322 (1905).

Similarly, with respect to the lode mining claims, "The Wolverine Uranium Mine," the Judd Gold Lode #1, and the Judd Gold Lode #2, appellant has done no more than establish isolated occurrences of significant mineral values. He did establish that such values were present in quartz and characterized the deposition of quartz as "veins," which allegedly ran through portions of his lode claims. In one case, there was one vein 12 inches wide and in another case, there were a series of veins (Tr. 17, 96).

The Government mineral examiner, however, disputed appellant's statements that the lode claims contained quartz veins. Based on his geological experience and his examination of the claims, he stated that he saw no veins (Tr. 200). In explaining his conclusion, he stated, under questioning by the Government's counsel:

Q. During Mr. Judd's testimony he introduced a number of smelter returns and assay reports. * * *

Based upon what Mr. Judd testified as to the size of the samples and the manner in which they were taken and reviewing the assay report, are you able to reach any conclusions?

A. Well, I feel that the material that he reported as giving these values -- were insufficient to say represent a deposit of the material. I would think that they probably derive from little spots and blebs of quartz that I found along that same outcrop.

I should go back probably to the geology a little more strongly on that area, in that this is a reef or a positive outcrop of rock that rises above the material on the hillside. And because it is schist, there is a known -- it's an observable condition in schist that under metamorphic pressures and temperatures, you have a tendency of quartz to move to locations in which it congregates; by themselves along that particular rib of schist that sticks up, I did find quartz and I did find spots and blebs of -- indicated potentially mineralized quartz.

To the eye of a geologist or an expert prospector, you will have what is called "lively quartz" or "unlively quartz." And these spots and blebs in that particular outcropping of rock occasionally would display some limonite or iron oxides on the quartz.

I would go back to the formation of that quartz, in that under metamorphic stresses, these quartz blebs are commonly found in schists or phyllitic rocks. They tend to, as they're moving to these locations -- to bring metals with them. In all the observable instances that I've been associated with where this happens, you do get small quantities of quartz that will form with occasionally gold, silver and copper and that being found -- lead, zinc and a few others -- being found with the quartz.

I examined that reef along there looking for some quantity of the quartz. I do not deny that it is there. But I suggest that it is so widespread and so small in the quantity that's available that it does not justify even the title of a prospect. It is something that is known that occurs in schist and it's accepted as normally being found.

What you have to try to discover in this is an overriding feature, such as a susceptible rock or a structure super-imposed by faulting, or an intrusion of a granitic or a volcanic rock -- something to create a situation where you can concentrate mineral. This does not have it.

(Tr. 179-81).

[2] A distinction must be recognized between a valuable mineral and a valuable mineral deposit. See Barton v. Morton, 498 F.2d 288, 291 (9th Cir. 1974), cert. denied, 419 U.S. 1021 (1974). A valuable mineral deposit is an occurrence of mineralization of such quantity and quality as to justify a person of ordinary prudence in the expenditure of time and money in anticipation

of development of a valuable mine. United States v. Clemans, 45 IBLA 65, 71-72 (1980). To establish the existence of a valuable mineral deposit on a lode claim there must be evidence of continuous mineralization along the course of a vein or lode and the mere showing of disconnected pods of mineral concentration, even of high values, does not suffice by itself. United States v. Whitney, 51 IBLA 73, 85 (1980), aff'd sub nom. Hernandez v. Watt, Civ. No. 81-35M (D. Mont., July 22, 1982); see Barton v. Morton, supra. In the absence of such evidence we must conclude, as did the Administrative Law Judge, that appellant has not established the presence of a valuable mineral deposit on his lode claims.

We must affirm the finding that appellant's millsite is void because the mining claims, on which it was dependent, are invalid. United States v. Kuretich, 54 IBLA 124 (1981), and cases cited therein.

With regard to appellant's contention that he has been prevented from developing his claims, we must affirm the judgment of Judge Rampton who had the opportunity to observe the demeanor of the appellant that although he may honestly have believed that his life was threatened, there was no rational basis for such a belief or for a claim of interference in working the contested claims.

Regarding appellant's documentary submissions with his statement of reasons for appeal, evidence offered for the first time on appeal will only be considered with respect to the question of whether an additional hearing should be held. United States v. Rosenkranz, 46 IBLA 109 (1980). A second hearing will not be afforded where nothing has been submitted which suggests that another hearing would produce a different result. United States v. Syndbad, 42 IBLA 313 (1979). This is the situation here.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

