

UNITED STATES

v.

CONNOR ET AL.

IBLA 82-41

Decided April 27, 1983

Appeal from decision by Administrative Law Judge Robert W. Mesch declaring lode mining claims invalid. Arizona 14907.

Affirmed.

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

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

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

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case on the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

3. Administrative Procedure: Burden of Proof--Appeals--Evidence: Burden of Proof--Evidence: Sufficiency--Rules of Practice: Appeals: Burden of Proof--Rules of Practice: Appeals: Statement of Reasons--Rules of Practice: Evidence

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

APPEARANCES: Adalbert Connor, Jr., San Diego, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Adalbert Connor, et al., 1/ have appealed the August 19, 1981, decision of Administrative Law Judge Robert W. Mesch declaring the Ronnoc Nos. 1, 2, 3, and 4 lode mining claims in Yuma County, Arizona, invalid for lack of discovery of valuable minerals on the claim. The claims were located for perlite.

The Arizona State Office, Bureau of Land Management (BLM), instituted Contest A 14907, charging in its complaint that no discovery of minerals existed on the claims within the mining laws either on December 16, 1980 (the date of the complaint), or as of July 1, 1952, when the lands embracing the claims were withdrawn under PLO 848, for use by the Department of the Army.

A hearing on the matter was held on April 2, 1981, before Judge Mesch, in Yuma, Arizona.

[1, 2] We have reviewed the record of this case and the arguments advanced by appellants. Judge Mesch's decision sets out a summary of the relevant evidence and the 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 Judge's decision is attached as Appendix A.

In the statement of reasons, appellants agree that the Judge correctly declared the Ronnoc Nos. 1, 3, and 4 claims to be invalid. However, they request that they be allowed to test or retest the perlite found on Ronnoc No. 2 claim and submit the evidence as proof of discovery. Appellants stated that subsequent to the hearing, they had contacted the professor of geology who tested samples from the claims and testified as an expert witness on behalf of the Government at the hearing. According to appellants' appeal to this Board, the professor had subsequently visited the claims, stated that the mineral examiner had given him the sample from the claims and that in his onsite examination he was not sure from which site on the Ronnoc No. 2 claim the sample had been taken.

1/ The other appellants are Herbert Connor, Jr., and Clarence Long.

The record reveals that the Ronnoc No. 2 claim was sampled by the mineral examiner (Tr. 16). These samples were delivered to Fred W. Croxen III, professor of geology, Western Arizona College, for testing. The mineral examiner testified as to his belief that these samples were representative (Tr. 50). Professor Croxen testified with respect to the tests he conducted and the results therefrom (Tr. 26-41). Based upon his research he concluded that the samples would not be recommended for industrial use (BLM Exh. E). Professor Croxen was not employed to make a field examination but was employed to conduct laboratory testing of materials selected by the mineral examiner (Tr. 19). Appellants have presented no evidence that could allow us to conclude that the samples taken and tested were not representative nor have they presented any evidence which would overcome the determination that the perlite on the claim was not of sufficient quality to support a discovery.

[3] Appellant further urges this Board to remand the case on the basis of a statement made to him that "in any test there is always a chance for an error."

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reason for appeal and support the allegation with evidence showing error, the appeal cannot be afforded favorable consideration. Rocky Mountain Natural Gas Co., 55 IBLA 3 (1981), and cases cited.

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 and adopted.

R. W. Mullen

Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.
ATTACHMENTS:

APPENDIX A

August 19, 1981

UNITED STATES OF AMERICA,	:	ARIZONA 14907
Contestant	:	
v.	:	Involving the Ronnoc Nos. 1,
:	:	2, 3, and 4 lode mining claims HERBERT
CONNOR, Jr.,	:	situated in unsurveyed Sec. 14, ADALBERT
CONNOR	:	T. 5 S., R. 20 W., GSR Mer, Yuma CLARENCE
LONG	:	County, Arizona.

DECISION

Appearances: Fritz L. Goreham, Office of the Solicitor, Department of the Interior, Phoenix, Arizona, for contestant; Adalbert Connor, San Diego, California, for contestees.

Before: Administrative Law Judge Mesch.

This is a proceeding involving the validity of four lode mining claims located under the Mining Law of 1872, as amended, 30 U.S.C. § 22, et seq. The proceeding was initiated by the Arizona State Office, Bureau of Land Management, at the request, and on behalf, of the Corps of Engineers, Department of the Army.

Pursuant to 43 CFR 4.451, the Bureau of Land Management issued a complaint on December 16, 1980, charging, among other things, that the subject mining claims are invalid because they have not been perfected by the discovery of a valuable mineral deposit. The contestees filed a timely answer and denied the charges in the complaint. A hearing was held on April 2, 1981, at Yuma, Arizona. The parties have submitted posthearing briefs.

The claims are the subject of a condemnation action brought by the United States in the United States District Court for the District of Arizona. The contest proceeding was initiated in order to determine the validity of the claims and whether the mining claimants are entitled to any compensation in the condemnation proceeding. The case of Best v. Humboldt Placer Mining Company, 371 U.S. 334 (1963), recognizes such dual proceedings.

The Department of the Interior and the Courts have held that (1) a mining claim does not create any rights against the United States and cannot be recognized as valid unless a valuable mineral deposit has been discovered within the limits of the claim; and (2) a valuable mineral deposit is an occurrence of mineralization of such quality and quantity as to warrant a person of ordinary prudence in the expenditure of time and money in the development of a mine and the extraction of the mineral, i.e., the mineral deposit that has been found must have a present value for mining purposes. Chrisman v. Miller, 197 U.S. 313 (1905); United States v. Coleman, 390 U.S. 599 (1968); Hallenbeck v. Kleppe, 590 F.2d 852 (10th Cir. 1979); United States v. Porter, 37 IBLA 313 (1978); United States v. Marion, 37 IBLA 68 (1978).

When the government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of showing by a preponderance of the evidence that the claim is valid, i.e., that he has actually found a mineral deposit of sufficient quantity and quality to justify the development of a mine. Hallenbeck v. Kleppe, *supra*; Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Porter, *supra*.

The contested claims were located for perlite. Perlite is a volcanic rock which, when crushed and heated, expands, like popcorn, to a mass of glass bubbles. In the expanded state, perlite has various uses in the construction, oil, chemical, and other industries. There is no evidence of any production from the claims prior to the withdrawal of the lands for the use of the Department of the Army in 1952.

The contestant presented the testimony of a Professor of Geology at Arizona Western College who conducted tests on two samples of representative material from the claims and a sample of a known, expandable perlite from an operating mine. In a report of his investigation, he concluded:

The results from the expansion tests and the petrographic observations indicate that samples #2 and #3 [those from the contested claims] would not be recommended for

industrial use. Perlites need an expansion ratio of at least 200 percent to be attractive for economic considerations and neither sample approaches this minimum requirement. In light of the evidence, it would be impractical to compete with the proven and developed perlite deposits of Arizona unless a low-cost method of extracting the non-expandable minerals from the expandable glass is developed (Ex. No. E).

The testimony of this witness constituted a prima facie case in support of the allegation that the mining claims are invalid because a valuable mineral deposit has not been found within the limits of the claims. In view of the testimony of this witness, a person of ordinary prudence would not be justified in the expenditure of time and money in developing a mine on the property.

The contestees did not present any evidence of any significance other than a letter dated April 28, 1950, from a Mineralogist at the University of Arizona reporting that a sample from the claims "was checked for popping characteristics in an oven and is a good grade of perlite". (Ex. No. 5)

I cannot accept the contestees' letter, which is some 31 years old and not subject to testing or explanation by cross-examination, over the live testimony of the contestant's witness. Accordingly, it must be concluded that the contestees did not meet their burden of proof by showing that a valuable mineral deposit has been found within the contested claims.

For the reasons stated, the Ronnoc Nos. 1 through 4 lode mining claims are found to be invalid.

Robert W. Mesch

Administrative Law Judge

APPEAL INFORMATION

The contestees, as the parties adversely affected by this decision, have the right of appeal to the Interior Board of Land Appeals. The appeal must be in strict compliance with the

regulations in 43 CFR Part 4. (See enclosed information pertaining to appeals procedures.)

If an appeal is taken the adverse party, the Bureau of Land Management, can be served by service upon its attorney at the address listed below.

The Regional Solicitor can be served at the following address:

Regional Solicitor Pacific Southwest Region U.S. Department of the Interior 2800 Cottage Way, Room E-2753 Sacramento, CA 95825

Enclosure: Information Pertaining to Appeals Procedures

Distribution: By Certified Mail

Fritz L. Goreham, Office of the Field Solicitor U.S. Department of the Interior Valley Bank Center, Suite 2080 201 North Central Phoenix, AZ 85073

Adalbert Connor, 2231 Camino Del Rio South Suite 301

San Diego, CA 92108

Standard Distribution

72 IBLA 260

