

UNITED STATES
v.
STEVE HICKS

IBLA 2000-108

Decided June 29, 2004

Appeal from a decision of Administrative Law Judge Harvey C. Sweitzer declaring three lode mining claims null and void for lack of a discovery, and cancelling the mineral entries. Contest No. AA-78683.

Affirmed.

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

The Government's prima facie case in a mining claim contest is not defeated by a claimant's assertion that the mineral examiner did not use heavy equipment to expose a valuable mineral deposit because the Government has no obligation to do the discovery work for the mining claimant.

2. Mining Claims: Generally--Withdrawals and Reservations: Effect of--Public Records

When land on which a mining claim is located is withdrawn from mineral entry, the claimant may enter the claims to verify pre-existing discoveries to demonstrate validity of the claims, but may not engage in activity that constitutes further exploration to expose a valuable mineral deposit not exposed prior to withdrawal.

APPEARANCES: Steve Hicks, pro se; Joseph D. Darnell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management and the National Park Service.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Steve Hicks appeals from a December 6, 1999, decision of Administrative Law Judge Harvey C. Sweitzer, declaring the Silver Dollar No. 1 and Grizzly Nos. 1 and 2 lode mining claims, F-59005, F-59034, and F-59035, respectively, null and void for lack of a discovery of a valuable mineral deposit on any of the claims. The decision cancelled the mineral entries.

The three mining claims at issue here were originally located on May 16, 1969 (Silver Dollar No. 1), and May 10, 1970 (Grizzly Nos. 1 and 2), in sec. 7, T. 16 S., R. 17 W., and sec. 12, T. 16 S., R. 18 W. (Silver Dollar No. 1), and secs. 3 and 4, T. 16 S., R. 17 W. (Grizzly Nos. 1 and 2), Fairbanks Meridian, Alaska, currently within the Denali National Park and Preserve. This land was withdrawn, subject to valid existing rights, from mineral entry on March 15, 1972, pursuant to Public Land Order (PLO) No. 5179. 37 FR 5579-80 (Mar. 16, 1972).

The following facts were placed into the record by the Government and are not disputed by Hicks. The mining claims were located by Jim Fuksa. (Notices of Location.) Milan Martinek inherited the claims from Fuksa in 1986, and transferred the claims to Hicks in 1995. The Grizzly No. 1 and No. 2 mining claims are staked over three pre-existing placer mining claims on which Martinek is the claimant of record. The record shows that Martinek had no information as to why Fuksa had located the particular claims, and began himself to conduct placer mining operations, not lode mining, on one of the three placer claims in the early 1980s.

As a result of a Congressional directive in the Mining in the Parks Act, Publ. L. No. 94-429 (Sept. 28, 1976), codified at 16 U.S.C. §§ 1902-1912 (2000), the National Park Service (NPS), U.S. Department of the Interior, undertook a program of conducting validity examinations of mining claims within National Parks to determine if they constituted valid existing rights. NPS initiated a review of the validity of the mining claims in 1993. The Bureau of Land Management (BLM) contacted Martinek and met with him to discuss the mining claims.

NPS geologist and certified mineral examiner Bruce Giffen spent portions of 12 days on the Grizzly No. 1 and No. 2 mining claims, recovering samples and attempting to verify a discovery. Martinek, and his then-assistant Hicks, attended these site visits. Martinek stated that during his placer operations in the early 1980s he had exposed a sulfide lode on the Grizzly No. 2, but could not provide evidence or information regarding such an exposure. According to the mineral examiner, Martinek stated that placer tailings would obscure any potential mineralization.

Giffen spent portions of 4 days examining the Silver Dollar No. 1 lode claim. Neither Martinek nor Hicks chose to participate. Martinek advised Giffen that

mineralization could be found on this claim along 1,500 feet of an “old dozer trail” which traverses the claim. Giffen could find no such evidence along the trail.

At the time of the 1993 field examinations, Martinek asked that Giffen use heavy equipment to re-expose potential discovery sites. After conducting environmental review in an environmental assessment (EA) in 1994, NPS authorized Martinek to himself expose the alleged sulfide vein on the Grizzly No. 2 mining claim with heavy equipment. Martinek chose not to do so. NPS sent additional letters to Martinek in March and June of 1995, identifying methods by which he could attempt further to confirm any pre-existing exposures on the mining claims. Martinek did not respond to the letters, or otherwise make efforts to verify pre-existing discoveries.

On October 24, 1996, BLM issued a contest complaint on behalf of NPS, challenging the validity of the subject mining claims on the grounds that there were not “disclosed within the boundaries of the * * * claims minerals of a variety subject to the mining laws sufficient in quantity and quality to constitute a valid discovery,” as of the date of withdrawal (Mar. 15, 1972) or the present time. Hicks filed an answer on November 7, 1996, asserting that each of the claims was supported by a discovery.

Judge Sweitzer conducted a hearing on November 9, 1998, in Denver, Colorado. Following the conclusion of the hearing and the submission of initial and reply briefs by the parties, Judge Sweitzer issued his decision on December 6, 1999, declaring the subject mining claims null and void for lack of a discovery of a valuable mineral deposit on any of the claims, as of either the date of withdrawal or the time of the hearing. He specifically held that the Government had established a prima facie case of invalidity, which was not rebutted by Hicks by a preponderance of the evidence.

Hicks timely appealed. In his notice of appeal/statement of reasons for appeal (NA/SOR), Hicks repeats the two bases for his challenge to the Government contest complaint. First, he contends that the mineral examination was fatally flawed by the failure of NPS to permit Giffen to investigate the existence of a valuable mineral deposit that predated the withdrawal on each of the claims by the use of heavy equipment. This failure, asserts Hicks, precluded Judge Sweitzer from concluding that the United States established its prima facie case and/or from concluding that Hicks had failed to overcome the Government’s case by a preponderance of the evidence. Second, he contends that NPS has an “anti-mining bias.” He asserts that the “validity examinations of the Grizzly #1 [and] #2 and Silver Dollar #1 claims need to be conducted again in an impartial manner, preferably by a retired BLM mineral examiner that is not worried about his paycheck and[,] most significantly, without Park Service management interference.” (NA/SOR at 3.)

In order to be considered valid under 30 U.S.C. § 22 (2000), a mining claim must be supported by the discovery of a “valuable mineral deposit” within its boundaries. Such a deposit exists where minerals are found on the claim of such quality and in such quantity that a person of ordinary prudence is 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, 322-23 (1905); Castle v. Womble, 19 L.D. 455, 457 (1894). Such justification must demonstrate, as a present fact, that there is a reasonable likelihood that minerals can be extracted, removed, and marketed from the claim at a profit. United States v. Coleman, 390 U.S. 599 (1968).

Where land has been withdrawn from mineral entry, a valuable mineral deposit must be shown to have already been physically exposed within the limits of a mining claim on the date of withdrawal. United States v. Lehmann, 161 IBLA 40, 44 (2004); see also Cameron v. United States, 252 U.S. 450, 456 (1920); United States v. Converse, 72 I.D. 141, 146 (1965), aff'd, 262 F. Supp. 583 (D. Ore. 1966), aff'd, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969). Thus, no further exploration for the purpose of physically exposing a valuable mineral deposit may be permitted after that date. United States v. Mavros, 122 IBLA 297, 301-02 (1992); see Lara v. Secretary of Interior, 820 F.2d 1535, 1542 (9th Cir. 1987); United States v. Gunsight Mining Co., 5 IBLA 62, 64 (1972), aff'd, Gunsight Mining Corp. v. Morton, No. 72-92 Tuc. (JAW) (D. Ariz. Sept. 11, 1973); United States v. Converse, 72 I.D. at 146. In addition, the claim must be supported by a discovery at the time of the hearing. United States v. Lehmann, 161 IBLA at 144; Lara v. Secretary of Interior, 820 F.2d at 1542; United States v. Lee Western, Inc., 50 IBLA 95, 98 (1980).

When the Government contests a mining claim on the basis that the claimant has not discovered a valuable mineral deposit, it bears the initial burden of establishing a prima facie case of invalidity. A prima facie case is to be made solely on the evidence adduced during the Government’s case-in-chief. United States v. Winkley, 160 IBLA 126, 142 (2003); United States v. Knoblock, 131 IBLA 48, 78, 101 I.D. 123, 139 (1994). When a prima facie case is made, the burden shifts to the claimant to overcome the Government’s case by a preponderance of the evidence. Hallenbeck v. Kleppe, 590 F.2d 852, 856 (10th Cir. 1979); United States v. Bechthold, 25 IBLA 77, 82 (1976).

In the present case, we agree with Judge Sweitzer that the Government established, through the testimony of Giffen that none of the three claims at issue here was supported by the discovery of a valuable mineral deposit, at the time of withdrawal or thereafter, including at the time of the hearing. Giffen’s efforts to verify the existence of a valuable mineral deposit on each of the claims were detailed in his January 17, 1996, Mineral Report (Ex. 2), and his testimony at the November 1998 hearing. According to the Report and Giffen’s testimony, Martinek

confirmed the location of the claims on the ground. (Tr. 26, 28-30; Ex. 2 at 21, 24, 28.) Giffen then examined each of the claims over the course of 16 days in the summer of 1993. (Tr. 24, 26-27; Ex. 2 at 3-4, 22-24, 27-28.) He was accompanied, at times, by Hicks and by Martinek, who had been invited to accompany Giffen for the entire period of his field examination. (Tr. 27; Ex. 2 at 3-4, 22-23.)

In the course of his field examination, Giffen examined mineralized outcrops, veins, and/or areas, which had been identified by Martinek as discovery points on the Grizzly Nos. 1 and 2 claims, or as a general area of mineralization along the old “dozer” trail on the Silver Dollar No. 1 claim.^{1/} (Tr. 26, 33-35, 40-43, 46-49; Ex. 2 at 3-4, 20-24, 27-28.) He also examined the only outcrops which might contain mineralization on the Grizzly No. 2 claim and the Silver Dollar No. 1 claim. (Tr. 42-45, 49; Ex. 2 at 4, 13, 23-24, 27-28.) Despite these efforts, Giffen was unable to find any definable body of ore containing substantial mineralization or mineral reserves on any of the claims. He found no evidence of mineralization at the area of mineralization claimed by Martinek to exist on the Silver Dollar No. 1 claim, despite the fact that he traversed the area and dug down to or near bedrock at five points. (Tr. 47-49; Ex. 2 at 4.)

Giffen took several dozen channel and stream samples from and nearby the Grizzly Nos. 1 and 2 claims and the dozer trail on the Silver Dollar No. 1 claim. (Tr. 35-45; Ex. 2 at 13-14, 22-28, Attachment III (sample descriptions).) The samples were assayed for gold, silver, and other likely minerals, disclosing total mineral values ranging from \$0.37 to \$3.03 per ton as of the date of withdrawal in 1972 and from \$0.83 to \$9.42 per ton as of the time of the examination in 1993. (Tr. 46, 50-54; Ex. 2 at 14, 25 (“Table 1”), 28-29, Attachment III (Certificate of Analysis, dated Feb. 4, 1994).) In Giffen’s opinion, these values would yield revenues insufficient to exceed just the operating costs for a small shrinkage stope mine, either on the date of withdrawal (\$19.35/ton) or at the time of the examination (\$66.90/ton). (Tr. 59-60; Ex. 2 at 33-35.)

In the end, Giffen concluded that a person of ordinary prudence would not be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine, as of either the date of the March 16, 1972, withdrawal or the time of the 1993 mineral examination. (Tr. 64; Ex. 2 at 40-41.) Giffen’s expert opinion, based on the results of his thorough field examination and

^{1/} Martinek reported a prior exposure of a vein on the Grizzly No. 2 claim in the early 1980s. (Tr. 138-39; Ex. 2 at 4, 23.) However, Giffen could not find the exposure. Martinek asserted that it was covered up by his placer mine tailings but could not identify a spot from which to dig to find the alleged exposure. (Tr. 68, 84, 135; Ex. 2 at 4, 23.)

sampling of the claims and any and all mineralized exposures or areas identified by the claimant and the examiner, was sufficient to establish a prima facie case of lack of a discovery on each of the claims. United States v. Mavros, 122 IBLA at 307-08; United States v. Gillette, 104 IBLA 269, 274 (1988).

Hicks' refutation of the Government's prima facie case consisted entirely of his assertions that NPS was biased against mining and that NPS' refusal to employ heavy equipment during the field examination in 1993 should defeat the mineral examiner's report. Hicks contended before Judge Sweitzer, and now contends before the Board, that he and Martinek were thereby prevented by NPS from "re-exposing the alleged discovery points" on the claims, and requests that he be afforded an opportunity to do so. (Decision at 5; see Tr. 115, 134-35, 137-39; Appellant's Post-Hearing Brief at 1; Appellant's Post-Hearing Reply Brief at 2 ("[Claimant prevented from] opening up discovery sample sites"); NA/SOR at 3.)

Hicks did not contest or refute the Mineral Report or Giffen's testimony. He did not assert any other error in Giffen's field examination of the claims. He did not contend that Giffen failed to examine any accessible discovery points, outcrops, veins, or other exposures, or even general areas of mineralization, within the boundaries of any of the claims. Nor did he assert that Giffen erred in the manner in which he selected specific sites for sampling or took samples, or that the samples were not properly maintained and assayed. In addition, Hicks did not present any evidence regarding a possible exposure on any of the claims of a definable body of mineralized ore or mineral reserves. See generally Tr. 134 ("[T]o be quite frank, * * * I have no evidence.").

Thus, the sum and substance of Hicks' evidence about the mining claims was that in 1993, Martinek's request that Giffen use heavy equipment to look for exposures was not granted by NPS pending the development of an EA. When the use of a portable "digger 50" was authorized in 1994, Martinek did not use it because he felt a "dozer" would be better equipment. (Tr. 114.) Nonetheless, he testified that NPS had offered use of a "digger 50" for excavation of the Silver Dollar claim, but when asked whether he "[took] them up on that offer," he answered: "No, I guess not." (Tr. 112.) He testified further that if NPS had permitted use of the digger 50 in 1993 "we would have got that done and there would probably have been no, no problems after that." He did not otherwise explain why he did not accept NPS' offer to use such equipment in 1994. (Tr. 115.) "I guess the whole case is on [what] Mr. Giffen was not allowed to do[. He] was restrained from using heavy equipment, and restrained from * * * doing a proper validity exam." (Tr. 135.)

[1] We agree with Judge Sweitzer that such testamentary evidence falls far short of that required to overcome the Government's firmly established and unrefuted prima facie case. Hicks did not overcome the prima facie case with challenges to

Giffen's alleged failure to validate the discovery for Martinek in the manner and at the time he would have chosen. As we recently held in United States v. Winkley, 160 IBLA at 144, "[i]t is incumbent upon [a mining claimant] to submit on rebuttal evidence that her claims are valid. A prima facie case cannot be overcome by arguments that the mineral examiner did not do the sampling and assaying that might have proven the existence of a discovery." Hicks does not assert that the claims are valid, that he had reason to believe an exposure was made by Fuksa on the claim prior to the 1972 withdrawal, that he or Martinek had any information leading to the identification of a pre-existing exposure, or that Martinek had any good reason for refusing NPS' offer to allow him to use the Digger 50 in 1994 for the Grizzly No. 2 or in 1993 for the Silver Dollar No. 1. His sole assertion is that Giffen did not perform the mineral examination with the heavy equipment Martinek would have preferred. The "Government has no obligation to do the discovery work for the mining claimant or to do more than simply examine the claim to verify whether there is a discovery of a valuable mineral deposit located within its limits." United States v. Bechthold, 25 IBLA at 84 (citations omitted). Accordingly, we affirm Judge Sweitzer's conclusion that Hicks did not overcome the Government's prima facie case.

[2] To the extent Hicks' argument is that NPS deprived Martinek of identifying a pre-existing exposure, we find that the facts do not support his alleged sequence of events, and our precedent on this topic supports Judge Sweitzer's conclusion. As to the facts, Martinek was permitted to attempt to verify pre-existing exposures but demurred. Further, Martinek's request at the hearing and now to use heavy equipment is merely a request to explore the mining claims, which Judge Sweitzer properly rejected.

We have long held that an administrative law judge is precluded from declaring a mining claim null and void for lack of a discovery when it is shown that the Government prevented the claimant from entering his mining claim to gather the information necessary to prove the prior existence of a discovery. United States v. Mavros, 122 IBLA at 310. However, following withdrawal of the land from mineral entry, a claimant may enter his claim only for the purpose of demonstrating that a valuable mineral deposit had been physically exposed on the claim, and thus of proving a discovery, on the date of withdrawal, by sampling and testing that exposure. United States v. Mineco, 127 IBLA 181, 190 (1993); United States v. Mavros, 122 IBLA at 310. He may not enter the land for the purpose of engaging in further exploration to disclose a valuable mineral deposit which had not been exposed prior to the date of withdrawal. United States v. Waters, 146 IBLA 172, 182 (1998), reconsideration denied, 159 IBLA 248 (2003); United States v. Conner, 139 IBLA 361, 364 (1997), aff'd, 73 F.Supp.2d 1215 (D. Nev. 1999). Thus, a claimant may, after withdrawal, only undertake efforts designed to obtain evidence of, and thus to confirm or corroborate, a pre-existing discovery.

To the extent Hicks argues that Martinek, as opposed to Giffen, was prevented from using heavy equipment on the claims, the critical question would be whether Martinek or Hicks was, in fact, prevented from proving, at the November 9, 1998, hearing, a pre-existing discovery on any or all of the claims, on the date of the March 16, 1972, withdrawal. We find no evidence to that effect. The only evidence that any vein which might contain minerals of a quality and quantity sufficient to constitute a discovery had been physically exposed on any of the claims concerned the alleged vein on the Grizzly No. 2 claim. Martinek claimed he exposed such a vein in the early 1980s. He also asserted that there was a general area of mineralization along the old dozer trail in the Silver Dollar No. 1 claim. (Tr. 46-47, 84, 115, 134-35, 138-39; Ex. 2 at 3-4, 23, 24, 27.) Nonetheless, Martinek failed to respond to express opportunities to use heavy equipment on the Grizzly No. 2 and Silver Dollar No. 1 claims. See Tr. 112-15; Ex. 2 (Sept. 14, 1994, BLM letter to Martinek, authorizing use of HD-11 bulldozer or Mitsubishi 180 excavator). We find that this failure on the part of Martinek defeats Hicks' assertion that Martinek was denied such use for that mining claim.

Moreover, to the extent Hicks claims that we must reverse and permit him to use heavy equipment now, he is requesting the opportunity to explore the mining claims, not to verify a pre-existing discovery. Even if the record contained actual evidence to support Martinek's assertion of the existence of a vein on the Grizzly No. 2 mining claim, Judge Sweitzer correctly concluded that Martinek's desire in 1993 to use heavy equipment to uncover and sample the vein exposed by placer mining by Martinek in the early 1980s on the Grizzly No. 2 claim could not be justified. Such efforts could not prove the existence of a discovery on the date of the March 16, 1972, withdrawal, since that vein was not exposed until after the withdrawal. (Decision at 7; see Tr. 133-39; Ex. 2 at 4, 23.) In the case of the old dozer trail in the Silver Dollar No. 1 claim, there is no evidence or information supporting the claim of a pre-existing exposure of valuable minerals in surface outcroppings or at depth, which predated the March 16, 1972, withdrawal. (Tr. 46-49; Ex. 2 at 24, 27.) The record contains no evidence of a potential exposure on the Grizzly No. 1 mining claim at all.

Indeed, there is no evidence that Hicks or Martinek had made any effort to uncover any pre-existing exposures in the mineralized area since they acquired the claim in 1986 (Martinek) or 1995 (Hicks). See Ex. 2 at 20 ("[Martinek] mentioned that he was a placer miner, not a lode miner, and * * * had not spent any time on these lode claims since he inherited them * * * in 1986"), 24, 27. The only mining specified in the record is Martinek's mining of his placer claims which pre-dated and were staked over by Fuksa. (Ex. 2 at 7 (Martinek owns Yellow Pup No. 1, No. 2 and No. 4 placer claims).) Part of this inactivity on the subject claims may be explained by a court injunction which seems to have prevented mining and related activities on the claims from 1985 to 1991. (Tr. 89-91, 120; Ex. D (Affidavit of Toni K.

Hinderman, dated May 6, 1993) at 2; Ex. F (Affidavit of Lawrence E. Brown, dated Oct. 16, 1995) at 2-3.) However, there is no evidence of any effort to uncover pre-existing exposures on any of the claims after 1991, despite the fact that Martinek was authorized by NPS, following assessments of potential environmental impacts, on September 21, 1994, and March 21, 1995, to use a bulldozer and excavator on the Grizzly No. 2 claim and hand shovels and a portable backhoe on the Silver Dollar No. 1 claim. (Tr. 81-85, 98-99, 111-14; Ex. 2 at 4, Attachment I (Letters to Martinek from NPS, dated Sept. 21, 1994, and Mar. 21, 1995).) Nor did Hicks assert evidence to support his inference that such work could not have been undertaken, in the case of the Silver Dollar No. 1 claim, with the use of hand shovels or a portable backhoe, or that the use of heavy equipment, which NPS had disallowed, was necessary for the purpose of uncovering any pre-existing exposures of a vein or lode deposit. See Tr. 114-15, 121-23.

Thus, Hicks' desire to use heavy equipment can only be construed as a request to explore the mining claims. What Martinek and Hicks wanted was the use of heavy equipment for the purpose of discovering a valuable mineral deposit. Hicks verified that he sought to examine unexplored ground. "[O]bviously to anybody that's knowledgeable, undisturbed ground[,] * * * virgin ground, has the best values." (Tr. 122.) As Judge Sweitzer properly noted, while he identified the general area of mineralization, Martinek "did not identify specific discovery points," and, indeed, had no knowledge regarding the nature or extent of mineralization which might be disclosed by further drilling or other efforts. (Decision at 2 (citing Tr. 24-27, 44-49); see Decision at 7.) Clearly there had been no disclosure of valuable minerals in the general area of mineralization on the date of the withdrawal, such that Martinek could, by drilling or other means, merely confirm the presence of a pre-existing discovery. United States v. Crowley, 124 IBLA 374, 378-79 (1992) ("At the very least, there must be a showing that there has been an exposure of valuable minerals before permission may be granted to determine the extent thereof.").

Thus, we uphold Judge Sweitzer's determination that Hicks did not rebut the prima facie case by arguing that NPS preventing him from conducting activity designed to explore for a discovery. United States v. Mavros, 122 IBLA at 314-15. We generally agree with Judge Sweitzer to the following effect:

[Appellant] failed to present any evidence of a disclosure of valuable mineral on the claims which could be confirmed by use of heavy equipment. Consequently, it is proper to declare the claims null and void without affording further opportunity to gather information to establish the existence of a discovery.

(Decision at 7.)

Finally, the bulk of Hicks' evidence at the hearing was directed at proving what he claimed to be an "anti-mining bias" on the part of NPS. "There can be * * * no greater anti-mining attitude by the [National] Park Service than prohibiting mining, assessment work, and a fair validity examination." (NA/SOR at 2, 3; see Appellant's Post-Hearing Brief at 2; Appellant's Post-Hearing Reply Brief at 1; Tr. 94-95, 105, 108-09, 136-37.)^{2/} What appellant fails to appreciate is that, following withdrawal of the land from mineral entry on March 16, 1972, any mining and related activity on the three existing claims was restricted to that which was necessary to prove that appellant's predecessor-in-interest had already discovered a valuable mineral deposit on each of the claims. "Where land has been withdrawn the United States has, in effect, withdrawn its permission for prospectors to continue in their efforts to discover a valuable mineral deposit." United States v. Copple, 81 IBLA 109, 128 (1984). NPS was entitled to preclude exploration or any other activity which had the purpose of discovering such a deposit. Whether or not Hicks wishes to define this consequence as reflecting a bias against mining does not answer the critical factual question of whether his mining claims represent a valid existing right.

Regulation of surface use is justified under the mining laws and Board precedent. As we said in United States v. Mineco, 127 IBLA at 191:

Even though a claim may be perfected in all other respects, unless and until a claimant is able to show that the claim is supported by a discovery of valuable locatable mineral within the boundaries of the claim, no rights are acquired. United States v. Multiple Use, Inc., 120 IBLA 63, 79 (1991). * * * [U]ntil patent has issued, the rights of the mining claimant are limited by the statutes and regulations under which those rights are acquired and maintained. The title to the lands subject to unpatented mining claims remains in the United States. See Cameron v. United States, 252 U.S. 450, 460 (1920).

* * * [A]s the title owner, the United States may regulate mining activities on Federal lands to protect the surface resources. See United States v. Grimaud, 220 U.S. 506 (1911).

Thus, it seems clear that what appellant interprets as "bias" on the part of NPS was

^{2/} Hicks submitted affidavits regarding the views and experiences of other miners sharing his opinion of the alleged NPS attitude toward mining. See Exhibits D-G. He also alleged that both Presidents George H. W. Bush and Clinton had attempted to foreclose mining in the National Parks, and submitted testimony of Manuel Lujan, Secretary of the Interior during the first Bush administration, stating his efforts to restrict mining in National Parks. (Exhibit C.)

the reasonable exercise of its legitimate surface management authority over the land, for the purpose of “protect[ing] Park resources.” Id. at 2.

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.

Lisa Hemmer
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge