



ULYSSES CORPORATION

186 IBLA 101

Decided August 31, 2015



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

ULYSSES CORPORATION

IBLA 2015-123

Decided August 31, 2015

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring an association placer mining claim forfeited for failure to comply with 43 C.F.R. § 3833.33. AMC377441.

Affirmed.

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

Upon transfer of an association placer claim to an individual or an association that is smaller in number than the association that located the claim, the transferor must either “have discovered a valuable mineral deposit before the transfer” or, “[upon] notice from BLM . . . reduce the acreage of the claim” to meet the 20-acre per locator limit. 43 C.F.R. § 3833.33. A claimant has the burden of showing that a valuable mineral discovery was made prior to the transfer to maintain the validity of its claim. An assertion that BLM intends to prevent activities necessary for proving a discovery, such as drilling operations, when those activities would have been conducted after the transfer of the claim, does not meet the claimant’s burden under the regulation.

APPEARANCES: Lou Birbas, St. George, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Lou Birbas, President of the Ulysses Corporation (Appellant), appeals from a December 16, 2014, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the Apex Silicon Hill association placer mining claim (AMC377441) forfeited for failure to file an amended claim notice to comply with the 20-acre per claimant requirement of 43 C.F.R. § 3833.33. For the following reasons, we affirm BLM’s decision.

Background

Eight co-locators located the association placer mining claim at issue in November 2006. Administrative Record (AR) Tab 10. Each of the eight co-locators located 20 acres in the claim, so that the claim comprised 160 acres. These locations met the requirements of the Mining Law, which provides that no placer location may include more than 20 acres for each individual claimant, and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (2012); 43 C.F.R. § 3832.22(b).

Regulations implementing the Mining Law require that upon transfer of an association placer claim to an individual or an association that is smaller in number than the association that located the claim, the transferor must either “have discovered a valuable mineral deposit before the transfer” or, “[u]pon notice from BLM . . . reduce the acreage of the claim” to meet the 20-acre per claimant limit. 43 C.F.R. § 3833.33. In April and May of 2007, the eight original co-locators transferred their interests in the claim to Appellant. AR Tab 9. There is no evidence in the record, however, that the transferors had “discovered a valuable mineral deposit before the transfer” or reduced the acreage of the claim to meet the 20-acre per claimant limit. 43 C.F.R. § 3833.33.¹

On June 20, 2014, BLM sent Appellant a notice requesting that it demonstrate compliance with 43 C.F.R. § 3833.33 by providing either documentation of a discovery of a valuable mineral deposit prior to transfer of the claim to Appellant, or an amendment reducing the size of the claim so that it would meet the 20-acre per locator limit. AR Tab 7, “Notice: Association Placer Mining Claims Documentation or Amendments Required” (First Notice).

Appellant responded to BLM’s First Notice with assay results from three drilled samples and two surface samples taken from the SE $\frac{1}{4}$ of sec. 12, T. 41 N., R. 13, W., Jila & Salt River Meridian, Mojave County, Utah. AR Tab 6. In a Memo to File dated July 23, 2014, BLM’s Mineral Examiner stated that “[t]he subject claim is located in the NW $\frac{1}{4}$ of section 12[,] thus the drilling did not take place on the subject claim and provides no data to show discovery.” *Id.* at unpaginated (unp.) 1. The Mineral Examiner stated that “there was no information provided showing how these samples were related to the subject claim.” *Id.* In particular, he stated that “[t]here was no map showing sample locations, no quantitative information was provided, no reserve estimation was provided, no map showing deposit boundaries was provided, no operating costs, and no development costs were provided.” *Id.* The two surface

¹ Since becoming sole owner of the mining claims, Appellant has filed maintenance fee waiver certifications, affidavits of performance of assessment work, and the required processing fees for the claims for each assessment year. AR Tab 8.

samples “showed indications of locatable grade limestone” but no information was provided to show “how these samples were related to the subject” claim because there was no map showing sample locations. *Id.* He concluded that “[t]he information submitted was insufficient to show that a valuable mineral deposit was discovered prior to transfer [of the claim].” *Id.*

In a second notice, dated August 12, 2014, BLM stated that Appellant’s documentation had been reviewed by BLM’s Mineral Examiner who had determined that it was insufficient to show that a valuable mineral deposit was discovered prior to transfer of the claim. AR Tab 5 (Second Notice) at unpag. 1. BLM informed Appellant that it was required to amend the claim to reduce its acreage to comply with the 20-acre per locator requirement, stating that if Appellant did not file the amendments within 30 days of receipt of the notice, the mining claim would be declared forfeited and void. *Id.*

Appellant responded to the Second Notice by submitting additional information including a map showing the location of five samples taken from the surface of the claim and analytical results from the same, a memorandum from Aggregate Industries regarding an April 2007 visit to the claim, and a June 2007 letter to the Navajo Generating Station outlining a proposal to supply high-calcium-carbonate Scrubber Material.” AR Tab 4 at unpag. 1. BLM’s Mineral Examiner considered this information and again concluded that Appellant had still not shown that a valuable mineral deposit was discovered prior to transfer. *Id.* at unpag. 3.

In a third notice, dated October 28, 2014, BLM stated that Appellant’s additional documentation had been reviewed by BLM’s Mineral Examiner who had determined again that it was insufficient to show that a valuable mineral deposit was discovered prior to transfer of the claim. AR Tab 3 (Third Notice) at unpag. 1. BLM concluded that Appellant was required to amend the claim to reduce its acreage to comply with the 20-acre per claimant requirement, and stated that if Appellant did not file the amendments within 30 days of receipt of the notice, the mining claim would be declared forfeited and void. *Id.*

On December 16, 2014, after Appellant did not timely amend the mining claim to comply with the 20-acre per locator requirement, BLM issued its decision declaring the claim forfeited. AR Tab 2. Appellant timely filed a Notice of Appeal (NOA) of BLM’s decision. AR Tab 1 (NOA). Appellant subsequently filed a Statement of Reasons (SOR) in support of its appeal.

In its SOR, Appellant does not state that it filed an amendment to the claim by the deadline. Appellant also admits that no discovery of a valuable mineral deposit was made prior to the transfer of ownership of the claim. SOR at unpag. 2 (“So, did we

transfer the ownership prior to effectively proving the reserves? Yes.”). Instead, Appellant alleges that BLM prevented Ulysses from proving discovery. *Id.* at unp. 2-3. Specifically, Appellant states that “the knowledge that management intended to refuse mining because of visual aspects eliminated the opportunity to test and prove identified hi-grade outcrops” of limestone. *Id.* at unp. 3.

Analysis

[1] The Mining Law of 1872 and its implementing regulations govern this appeal. The Mining Law provides that no placer claim may include more than 20 acres for each individual claimant, and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (2012); 43 C.F.R. § 3832.22(b). Upon transfer of an association placer claim to an individual or an association that is smaller in number than the association that located the claim, the transferor must either “have discovered a valuable mineral deposit before the transfer” or, “[upon] notice from BLM . . . reduce the acreage of the claim” to meet the 20-acre per locator limit. 43 C.F.R. § 3833.33; *Bruce Curtis*, 185 IBLA 371, 373 (2015).

The sole argument that Appellant raises to challenge BLM’s decision declaring the claim forfeited is that BLM prevented Ulysses from discovering a valuable mineral deposit on the claim. In *U.S. v. E. K. Lehmann & Associates of Montana, Inc.*, 161 IBLA 40, 43 (2004), the Board stated:

The test of whether a mining claim is supported by a discovery is objective and is framed in terms of what a “prudent person” would do knowing all the facts. Assumptions regarding a prudent person are based on objective standards related to the nature of the mineral deposit disclosed on the claim, rather than attributes or circumstances of the claimant. *United States v. Waters (On Reconsideration)*, 159 IBLA 248, 254 n.8 (2003); *United States v. Oneida Perlite*, 57 IBLA 167, 190, 88 I.D. 772, 785 (1981). A discovery has been made when “minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine.” *Castle v. Womble*, 19 L.D. 455, 457 (1894). This test was approved by the Supreme Court in *Chrisman v. Miller*, 197 U.S. 313, 322 (1905). See also *United States v. Clouser*, 144 IBLA [110,] 113 (1998)]. A mining claimant must show, as an objective matter and “as a present fact, considering historic price and cost factors and assuming that they will continue, there is a reasonable likelihood of success that a paying mine can be developed.” *In re Pacific Coast Molybdenum*, 75 IBLA 16, 29, 90 I.D. 352, 360 (1983).

161 IBLA at 42-43. The U.S. Supreme Court later refined the test to include a marketability component, which requires a showing that the deposit is ultimately marketable at a profit. *U.S. v. Coleman*, 390 U.S. 599, 600, 602-03 (1968); *see also U.S. v. E. K. Lehmann & Associates of Montana, Inc.*, 161 IBLA at 43.

This Board has addressed the question of whether a valuable mineral deposit has been discovered in the context of mineral patent applications. In those cases, the Board has held that an applicant has the burden of showing in his application that it has made a valuable mineral discovery. *American Colloid Company*, 162 IBLA 158, 172 (2004); *Dennis J. Kitts*, 84 IBLA 338, 342 (1985) (citing *Brattain Contractors, Inc.*, 37 IBLA 233, 239 (1978)). In *Dennis J. Kitts*, we made clear that an applicant must submit sufficient information to meet this burden:

An applicant has an obligation to support his application for mineral patent with sufficient descriptive information and data to permit the BLM mineral examiner, on review in his office, to conclude that each claim was valid and that all prerequisites for patent had been met, subject only to *confirmation* upon field examination. In short, the patent applicant must make a *prima facie* showing that he is entitled to the patent he seeks. This is a reasonable requirement because, otherwise, BLM would be obligated to waste the valuable time of its mineral examiners to conduct costly field examinations based upon information which did not even show the patent application to be meritorious on its face.

84 IBLA at 343 (emphasis in original).

The facts and the Board's ruling in *Dennis J. Kitts* are instructive in the present case. In that case, BLM rejected a mineral patent application as inadequate because the applicant failed to provide information necessary to prove discovery of a valuable mineral deposit. We noted that the appellant "provided no meaningful description of the geology on the claims or in the general area; no substantial description of the quantity and quality of the ore alleged discovered; no description of the discovery points, no description of the samples taken in terms of their location, size, the sampling technique employed, or the means of their evaluation," in addition to other deficiencies in the patent application. *Id.* at 342-43. In the absence of that information, we upheld BLM's decision summarily rejecting the patent information for lack of necessary information. *Id.* at 343.

In the present case, although Appellant submitted documentation intended to document the discovery of a valuable mineral deposit, BLM determined that the information provided was not sufficient to prove discovery of a valuable mineral deposit. Indeed, Appellant has admitted that there had been no discovery of a

valuable mineral deposit prior to the transfer of the claim. SOR at unp. 2. There is no question that Appellant did not show that it had made a valuable mineral discovery prior to the transfer of the claim, as required under 43 C.F.R. § 3833.33(a). See *American Colloid Company*, 162 IBLA at 172; *Dennis J. Kitts*, 84 IBLA at 343 (citing *Brattain Contractors, Inc.*, 37 IBLA at 239).

Appellant cites *United States v. Arthur Mavros*, 122 IBLA 297 (1992), in support of its argument that BLM precluded it from conducting the operations needed to prove discovery of a valuable mineral. SOR at unp. 3. This argument fails because the regulation applicable in this case, 43 C.F.R. § 3833.33, requires that a discovery of a valuable mineral deposit must be made *prior* to the transfer of a claim. Appellant has not alleged that BLM prevented it from proving a discovery prior to the claim's transfer.

In addition, Appellant does not assert that BLM denied any plan of operations or other proposal to prove a discovery on its claim prior to transfer. Instead, Appellant states that it "became informed [that BLM] management did not want any mining that presented a visual impact to the public" and that its suggestion of drilling and mining a "promising outcrop of limestone" was "rejected" by a BLM field geologist at an on-site meeting on an unspecified date. SOR at unp. 2. In sum, Appellant alleges only that "management intended to refuse mining because of visual aspects" which would have "eliminated the opportunity to test and prove identified high-grade outcrops." SOR at unp. 3.

Appellant's alleged "knowledge that management intended to refuse mining because of visual aspects," SOR at 3, does not establish that it was prevented from entering the claim prior to transfer. In *Arthur Mavros*, cited by Appellant to support its argument, the claimant alleged that the Forest Service "forced [him and his associates] to use [a] smaller drill" than the larger drill they sought to use to take samples. 122 IBLA at 310. The Board found that "[w]ithout some showing that [the larger drill] was required, *claimants' impression that permission would be denied* did not preclude their garnering the information necessary to confirm the existence of a discovery." *Id.* at 313 (emphasis added). Similarly, in this case, Appellant's impression that permission would be denied to drill in certain locations does not demonstrate that BLM precluded it from confirming the existence of a discovery prior to the transfer of the claim.²

² The record does not indicate whether BLM ever reviewed the mining activities of Appellant's predecessors under the criteria of 43 C.F.R. Subparts 3715 and 3809 and whether those activities are casual use as defined by 43 C.F.R. § 3809.5 or require a plan of operations and BLM's approval under 43 C.F.R. § 3809.11. Appellant does not assert that BLM has ever taken any action to deny or limit its activities on the subject mining claim.

In conclusion, there was no discovery of a valuable mineral deposit prior to the transfer of the claim to Appellant, and Appellant did not reduce the size of the claim, upon a series of three notices from BLM, to comply with the 20-acre per locator limit. 43 C.F.R. § 3833.33. Moreover, BLM did not prevent Appellant or others from proving a discovery of a valuable mineral deposit before the transfer of the claim. Appellant was given three notices that it must comply with the 20-acre per locator limit or risk forfeiture of its claim. BLM properly declared the claim void upon noncompliance with its notices.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision is affirmed and Appellant's petition for stay is denied as moot.

_____/s/_____
James F. Roberts
Administrative Judge

I concur:

_____/s/_____
Eileen Jones
Chief Administrative Judge