

UNITED STATES

V.

MARY V. CHAMBERLIN

JUL 17 1961

A-28610

Decided

Mining Claims: Discovery--Mining Claims: Contests

In a contest against the validity of a mining claim the United States must present a prima facie case that the claim is invalid, whereupon the claimant must show by a preponderance of the evidence that his claim is valid, and if he does not his claim is properly held invalid.

Mining Claims: Common Varieties of Minerals--Mining Claims: Discovery

To satisfy the requirements of a discovery on a placer mining claim located for sand and gravel, it must be shown that the deposit can be extracted, removed and presently marketed at a profit and when such showing is not made the claim is properly declared null and void.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Secretary
Washington 25, D. C.

A-28610

United States : Contest 6845 (Los Angeles).
v. : Placer mining claims
: declared null and void.
Mary V. Chamberlin : Affirmed.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Mrs. Mary V. Chamberlin has appealed to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management dated July 8, 1960, affirming a decision of a hearing examiner which declared her placer mining claims located for sand and gravel null and void for want of a mineral discovery.

The mining claims in question, designated as the Nancy, Sunrise and Coyote placer claims, were located in Riverside County, California, in January and April of 1948. No extensive workings were undertaken and no removals of sand or gravel were made. The land was later included in classification orders, California No. 80 dated August 27, 1948, and California No. 138 dated April 13, 1949, which made the land available for lease and sale as small tracts for recreational and homesite purposes.^{1/} On August 13, 1958, the Bureau of Land Management brought contest proceedings to determine the validity of the mining claims, charging that the land embraced by the claims is nonmineral and that minerals had not been found therein in sufficient quantities to constitute a valid discovery.

The testimony introduced at the hearing on behalf of the United States shows that the claims are located on the south slope of the Indio Hills, which are part of an uplifted alluvial fan. The claims are traversed by a number of small washes with larger washes about a quarter of a mile to the west and a half mile to the east. There are no outcrops of rock within the claims, but the claims are covered with sand and minor amounts of gravel. The Government witness took channel samples from the banks of small washes on the claims, seeking thus to obtain the most representative exposures of these materials. On one sample, he excavated about 200 pounds of material

^{1/} Several small tract leases appear to have been issued in conflict with the mining claims but the record does not indicate their present status.

from the channel and quartered it to 50 pounds; for the other samples he excavated about 50 pounds (Tr. 27-29). He submitted the samples to a testing laboratory for screen analysis. The reports of such analysis show, among other factors, the ratios of rock particles classified as -4; that is, able to pass through a screen of 4 openings per linear inch, to the particles classified as +4 comprising those not passing such screen, as follows:

Contestant's Exhibit 14 - 80.4 to 19.6

Contestant's Exhibit 14 - 81.4 to 18.6

Contestant's Exhibit 16 - 84.0 to 16.0

The sand and gravel business considers +4 as rock or gravel and -4 as sand (Tr. 36). An ideal combination for commercial purposes is about 50 to 50 of rock and sand (Tr. 38). The consequence of the combination of rock and sand in the deposits on these claims is that a great deal of sand removal or the addition of rock would be required to make them commercially useful. The costs of handling and disposal of waste fine material would increase costs so that it would be difficult or impossible to operate economically (Tr. 38). An examination of the surrounding land disclosed very extensive deposits of sand and gravel with somewhat coarser materials and a greater percentage of rock in the larger washes to the south and southeast (Tr. 40).

Sand and gravel suppliers have four plants in the vicinity, three northwest of the claims and one to the southeast. They own their own sources of supply and are well able to supply the present market and any markets that may develop in the foreseeable future for home construction, small business construction, schools and roads (Contestant's Exhibit 6; Tr. 19, 21, 70-72).

The Government rested its case upon the conclusion that the requirements of the mining law for the discovery of a valuable mineral deposit upon each of the claims had not been met.

The mining claimant, who is the present appellant, conceded that no materials have been removed from the claims and no sales of sand or gravel made.

Her witness, Wicks, suggested, in his cross examination for Mrs. Chamberlin of the Government witness, that, with screening, the finer materials might be used in the manufacture of building blocks, tile pipe, drain tile, toppings for concrete sidewalks and irrigation tile (Tr. 59-63). In his own testimony, Wicks said he felt that the materials on the claims and the detrital materials in the vicinity have certain special characteristics that produce effects in concrete which make them useful for specialty concrete for decorative purposes (Tr. 112) in walls, floors, fountains and around swimming

pools (Tr. 114). He said that the residue could be used for ordinary aggregate, ordinary plaster sand or standard concrete (Tr. 115). He admitted that nothing had been done to promote sales for such purposes. He said "this property has been held more or less in abeyance pending the increase in population" (Tr. 116).

The appellant's witness James testified that the darker pieces of gravel could be screened out and used with light concrete for terrazzo which would provide a beautiful contrast for decorative effects and would not be too difficult to work with (Tr. 86-87). There was no testimony on the costs of screening for size and sorting for color, hauling costs or possible demand beyond the simple statements that terrazzo made of native rock products is being used in new buildings (Tr. 88, 114).

In her appeal to the Director, the appellant indicated her dissatisfaction with the conduct of the hearing, suggesting several times that the examiner was unfair, that he improperly prevented her from presenting some of her evidence, and that he favored the other party and overrated its evidence. I have examined the transcript and find that her charges are unfounded. If she were an attorney or even slightly familiar with legal procedures, she would realize that the hearing examiner made a great effort to indicate to her exactly what evidence was needed to show a discovery of a valuable mineral deposit and to restrain her from encumbering the record with lengthy testimony on matters that were completely irrelevant or were conceded by the contestant.

In her appeal to the Secretary, she contends that the burden of proof was on the Government and that the evidence adduced in support of its charges was insufficient to show that the claims do not contain minerals or that no discovery of valuable deposits has been made.

There is no support for the appellant's initial assumption. In Foster v. Seaton, 271 F. 2d 836, 837-838 (D. C. Cir. 1959), the federal court said of a mining contest brought by the United States against the locators of sand and gravel claims on land sought by others for small tract purposes:

"Appellants' third allegation of error is that the Secretary failed to hold the Government to the standard of proof required by the Administrative Procedure Act, which states that 'the proponent of a rule or order shall have the burden of proof.' 60 Stat. 241 (1946), 5 U. S. C. A. § 1006. The Secretary ruled that, when the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case, and that the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.^{2/} The

^{2/} This is the standard which the Department of Interior has applied for a number of years. See United States v. Strauss, 59 I. D. 129 (1945).

short answer to appellants' objection is that they, and not the Government, are the true proponents of a rule or order; namely, a ruling that they have complied with the applicable mining laws. One who has located a claim upon the public domain has, prior to the discovery of valuable minerals, only 'taken the initial steps in seeking a gratuity from the Government.' *Ickes v. Underwood*, 78 U. S. App. D. C. 396, 399, 141 F. 2d 546, 549, certiorari denied 1944, 323 U. S. 713, 65 S. Ct. 39, 89 L. Ed. 574; Rev. Stat. § 2319 (1875), 30 U. S. C. A. § 23. Until he has fully met the statutory requirements, title to the land remains in the United States. *Teller v. United States*, 8 Cir. 1901, 113 F. 273, 281. Were the rule otherwise, anyone could enter upon the public domain and ultimately obtain title unless the Government undertook the affirmative burden of proving that no valuable deposit existed. We do not think that Congress intended to place this burden on the Secretary."

The issue raised by this appellant's evidence showing that no sales of sand and gravel had been made from her claims was also presented in Foster v. Seaton and disposed of by the court in these words:

"Appellants' principal assignment of error is that the Secretary misinterpreted the statute by requiring a demonstration of present value. They earnestly contend that their claim can also be sustained on the basis of prospective market value.

"The statute says simply that the mineral deposit must be 'valuable'. Rev. Stat. § 2319, 30 U. S. C. A. § 22. Where the mineral in question is of limited occurrence, the Department, with judicial approval, has long adhered to the definition of value laid down in *Castle v. Womble*, 19 I. D. 455, 457 (1894):

" 'Where 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 valuable mine, the requirements of the statute have been met.' "

"With respect to widespread non-metallic minerals such as sand and gravel, however, the Department has stressed the additional requirement of present marketability in order to prevent the misappropriation of lands containing these materials by persons seeking to acquire such lands for purposes other than mining.

Thus, such a 'mineral locator or applicant, to justify his possession, must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit.' Layman v. Ellis, 54 I. D. 294, 296 (1933), emphasis supplied. See also Estate of Victor E. Hanny, 63 I. D. 369, 370-72 (1956). Particularly in view of the circumstances of this case, we find no basis for disturbing the Secretary's ruling. The Government's expert witness testified that Las Vegas valley is almost entirely composed of sand and gravel of similar grade and quality. To allow such land to be removed from the public domain because unforeseeable developments might some day make the deposit commercially feasible can hardly implement the congressional purpose in encouraging mineral development.

"Thus the case really comes down to a question whether the Secretary's finding was supported by substantial evidence on the record as a whole. We think it was." (271 F. 2d 838.)

The Department has uniformly applied the standard cited by the court to the determination of the validity of mining claims located for sand and gravel and other common minerals of widespread occurrence. United States v. E. J. Fife and Eugene M. Fife, A-28346 (September 19, 1960); United States v. Abe Jaramillo, A-28533 (February 6, 1961), and cases cited.

Applying the established rule to the facts in this case, I conclude that the Director correctly held that a discovery of valuable mineral deposits on the three placer mining claims had not been shown and that for that reason they were properly held null and void.^{3/}

^{3/} The hearing was conducted on the theory that the claims were invalid because the requirements as to discovery could not be met at that time. While a sand and gravel claim must contain a valid discovery at the time of hearing, and the case is properly disposed of on this ground, it is well to point out that in view of section 3 of the act of July 23, 1955 (30 U. S. C., 1958 ed., sec. 611), deposits of common varieties of sand and gravel are not deemed to be valuable mineral deposits within the mining laws so as to give effective validity to any mining claims thereafter located under those laws and claims located for sand and gravel prior to July 23, 1955, as Mrs. Chamberlin's were, are valid only if they met the requirements of the mining laws prior thereto. United States v. Jacobo Armenta et al., A-28248 (June 22, 1960).

For a discussion of the effect of the classification of land as suitable for small tracts upon mineral locations see Harry E. Nichols et al., 68 I. D. (1961), A-28463.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 210.2.2A(4)(a), Departmental Manual; 24 F. R. 1348), the decision of the Director of the Bureau of Land Management is affirmed.

(Sgd) Edward W. Fisher
Deputy Solicitor