

UNITED STATES

V.

D. G. LIGIER ET AL. 1962

OCT 8

A-29011 Decided

Mining Claims: Common Varieties of Minerals

Building stone suitable for construction purposes which is found in an extensive range of pleasing colors, has high compressive strength and light weight, but can be used only for the same purposes as other widely available but probably less desirable deposits of the same material, is a common variety of building stone and not locatable under the mining laws since its special characteristics do not give it a special, distinct value.

Mining Claims: Discovery

To satisfy the requirement for discovery on a mining claim located for a deposit of building stone which is locatable under the act of July 23, 1955, it must be shown that the stone within the claim could have been extracted, removed and marketed at a profit and when such showing is not made the mining claim is properly declared null and void for want of a discovery.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

A-29011

United States

v.

D. G. Ligier et al.

: Arizona Contest No. 10376

: Mining claims held null

: and void

: Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

D. G. Ligier and 7 others have appealed to the Secretary of the Interior from a decision dated May 1, 1961, by which the Appeals Officer affirmed a decision of a hearing examiner holding their 7 mining claims in Cochise County, Arizona, within the Coronado National Forest null and void because the mineral for which they were located is a common variety of building stone not subject to mineral location pursuant to the act of July 23, 1955 (30 U.S.C., 1958 ed., sec. 601), and because, in any event, no discovery of a valuable mineral deposit on each claim had been demonstrated.

The evidence in this case shows clearly that the mining claims were located for tuff after July 23, 1955. Millions of tons are estimated to exist on the claims and tuff is also found in a 20-mile area surrounding the claims. Except for one carload, none has been removed from the claims but because of the colors, ranging from white through cream, pink, lavender and brown, its high compressive strength and light weight, the locators have high hopes of developing a market for an ornamental building stone.

The appellants dispute the conclusion of the Appeals Officer that the building stone is a common variety because it can be used only for the same purposes as other deposits of similar stone and deny that marketability has ever been required by any court as an element of a discovery which validates a mining claim.

The first point was fully considered and decided adversely to these appellants in United States v. J. R. Henderson, 68 I.D. 26 (1961). In that case, the Department found expressly that sand and gravel suitable for construction purposes, although admittedly superior in quality to other deposits of the same minerals, are common varieties so long as they are used only for the same purposes

as other deposits which are widely and readily available. There, too, the claimant alleged that unusual hardness and sharpness, freedom from impurities and unusual colors, and the fact that a concrete aggregate using the material could be made into an attractive terrazzo substitute, for which a limited local market existed, took the mineral there considered out of the common variety category.

So here, the hearing examiner and the Appeals Officer found that the tuff on the claims was a common variety without a distinct, special economic value over and above the general run of such deposits. Thus, it was properly held to be a common variety of building stone.

The second point was disposed of by the Court of Appeals for the District of Columbia in Foster v. Seaton, 271 F. 2d 836, 838 (1959), 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 market-ability 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."

See also United States v. Jacobo Armenta et al., A-28248 (June 22, 1960); United States v. Nick Chournos et al., A-28577 (July 14, 1961).

The hearing examiner and the Appeals Officer correctly concluded that tuff, a stone that can be used for construction purposes, is not a locatable mineral under section 3 of the act of July 23, 1955 (30 U.S.C., 1958 ed., sec. 601), and that, even if it were a mineral subject to location, a discovery on the claims in question was not shown.

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 appealed from is affirmed.

Ernest F. Hom

Ernest F. Hom
Assistant Solicitor
Land Appeals