

665-D

UNITED STATES

v.

WILLIAM M. HINDE ET AL.

A-30634

Decided JUL 9 - 1966

Mining Claims: Discovery

To satisfy the requirements of discovery on placer mining claims located for sand and gravel before July 23, 1955, it must be shown that the deposit could, prior to that date, have been extracted, removed and marketed at a profit, and where the evidence shows that up to that date substantial amounts of material had been sold only as pit run for fill or other such purposes and only a minute amount had been sold for a few dollars as concrete aggregates and that, at the most, there was only a potential future market for qualifying uses on that date, the claims are properly declared null and void.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

A-30634

United States

v.

William M. Hinde et al. ^{1/}

: Nevada Contest Nos.

: 3327, 3328 and 3329

: Placer mining claims

: declared null and void

: Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

William M. Hinde and others ^{1/} have appealed to the Secretary of the Interior from a decision dated April 5, 1966, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed a decision of a hearing examiner declaring the Superior Gravel Nos. 1, 2 and 3 placer mining claims in Ts. 19 and 20 S., R. 59 E., and T. 19 S., R. 60 E., M.D.M., Nevada, to be null and void for lack of discovery.

Pursuant to three separate contest complaints filed on February 21, 1963, a hearing was held at Las Vegas, Nevada, on August 7, 1963, for the purpose of receiving testimony bearing upon charges that:

- (1) The $W\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$ sec. 1, T. 20 S., R. 59 E., is nonmineral in character and therefore should be excluded from the Superior Gravel No. 1 placer claim;
- (2) The $S\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$ sec. 36, T. 19 S., R. 59 E., is nonmineral in character and therefore should be excluded from the Superior Gravel No. 2 placer claim;
- (3) Minerals have not been found within the limits of any of the claims in sufficient quantities to constitute a valid discovery; and

^{1/} The other appellants are Darrell F. Hinde, William R. Hinde, Clarence N. Hinde, Duane C. Potter, Howard E. Curtis, E. B. Curtis, W. T. Wedding, Gary J. Jensen and Rodney S. Jensen.

- (4) No discovery of a valuable mineral has been made within the limits of the claims because the mineral materials present do not constitute valuable minerals within the meaning of the mining laws.

The testimony given at the hearing has been summarized at some length by the hearing examiner, and, inasmuch as his factual findings are not challenged, it is unnecessary to review the basis for those findings. It is sufficient to note that all three of the mining claims at issue were located on April 20, 1953, for sand and gravel. From the date of location of the claims in 1953 until the date of the hearing substantial quantities of material were removed from the claims, most of which were removed after 1955 and most of which consisted of unprocessed "pit run" which was used for fill material and for road base. 2/ At the time of the hearing material

2/ Appellants did not purport to have maintained complete records of all of the material removed from the claims. William Berlin Purdom, assistant professor of geology at the University of Oregon and a former employee of the Bureau of Land Management, testified on behalf of the contestant that, from the date of location of the claims in 1953 until 1961, approximately 30,000 yards of material were extracted from the claims of which about 325 yards found a market for other than fill purposes and that, between the date of location and July 23, 1955, approximately 3,800 yards of material were removed of which 134 yards were marketed for other than fill purposes. Assigning a market value of 25¢ a yard to the material marketed for other than fill purposes, the witness estimated the value of such materials removed between 1953 and 1961 to be about \$10.00 per year. (Tr. 28.)

A tabulation showing the quantities of material removed from the claims during each of the years from 1953 through 1961, submitted as a part of appellant's application for patent to the mining claims (Ex. 12), showed the removal of 9,385 yards of material including 9,060 yards of "pit run". (See Tr. 20-21, 86-87.) The tabulation did not purport to be a complete record of all material disposed of during the reported years, and appellant William M. Hinde stated that actual sales were "approximately half again as much as was shown in that tabulation." (Tr. 85.)

The basis for Purdom's estimate of the removal of 30,000 yards of material between 1953 and 1961 (or 44,000 yards if 1962 operations are included) is not clear, since the annual production figures upon which he relied do not add up to such a total. (See Tr. 20-21.) Moreover, a discrepancy appears in Purdom's testimony and in the findings of the hearing examiner with respect to the quantity of non-fill material sold prior to July 23, 1955, which can be explained by a comparison of Purdom's statement that 11 yards of leach rock were sold in 1954 (Tr. 20) with Exhibit 12, the source of his statistics, which shows that 71 yards of leach rock were sold in that year. These discrepancies are not, however, of meaningful consequence.

was being removed from the claims by the Clark County Road Department and processed into type 2 gravel ^{3/} under an agreement whereby the County left the appellants one-sixth of the gravel that was processed. (See Tr. 64-66, 92-93.)

In a decision dated September 9, 1964, the hearing examiner found that the material found on the claims is a common variety of mineral, that, although witnesses for the mining claimants stated that the material on the claims is better than most deposits of sand and gravel used in the County because of the absence of big boulders, the sales of material showed that it was used for the normal uses of sand and gravel in the area, that it was necessary to show a discovery prior to July 23, 1955, in order to establish the validity of the claims, and that, in order to show a discovery, it was necessary to show that the mineral deposit claimed could be extracted, removed and marketed at a profit. He found that the only sales of material from the claims other than pit run material shown between 1953 and 1955 were 63 cubic yards for concrete aggregate. Giving the mining claimants the benefit of half again as many yards sold, he calculated the total sales for those years to be about 98 cubic yards at \$2.00 per cubic yard, a total of \$196.00 or about \$65.00 per year. This small amount of sales, the hearing examiner held, could not be considered as establishing a market, and without a market there could be no discovery on the claims.

In appealing to the Director, Bureau of Land Management, from the hearing examiner's decision, the appellants challenged the theory of law upon which the hearing examiner's decision was based, asserting that the hearing examiner should have considered the potential of the claims as well as actual operations in determining whether or not there was a discovery in 1955 and that the concept of discovery relied upon by the hearing examiner penalized the small operator who lacks the capital for a large scale operation.

The Office of Appeals and Hearings concurred in the hearing examiner's findings, noting that most of the material removed from the claims had been used for fill purposes or for road base and that such uses had never been sufficient to make a commonplace material subject to location under the mining laws, citing Holman et al. v. State of Utah, 41 L.D. 314 (1912); Gray Trust Co. (on rehearing), 47 L.D. 18 (1919); United States v. George W. Black, 64 I.D. 93 (1957); and Associate Solicitor's Opinion M-36295 (August 1, 1955). ^{4/} The Office of Appeals and Hearings rejected appellants' concept of a discovery based upon the

^{3/} Type 2 gravel is material that has been crushed to three-fourths of an inch minus and is suitable for making bituminous mix for roads. (Tr. 22-23, 92.)

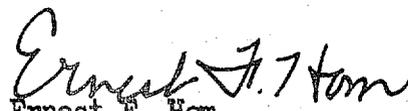
^{4/} See also United States v. Quenton L. Brewer, A-27908 (December 29, 1959), and United States v. Robert M. Willey, A-30420 (October 29, 1965).

potentiality of the claims in 1955, stating that, even if the County's operations in 1963 were sufficient to establish marketability of the deposit at that time, the most that could be said for the claims in 1955 was that there was a potential market for the materials found thereon and that a prospective market, using that term in the sense of a market to be developed in the future, was not sufficient to establish the validity of the claims as of the date when a discovery was required to be shown.

In their appeal to the Secretary appellants have relied solely upon the arguments advanced in their appeal to the Director without any discussion of the Bureau's treatment of those arguments.

The requirement imposed by the hearing examiner and by the Office of Appeals and Hearings, *i.e.*, that the discovery of a valuable mineral deposit must be demonstrated by a showing that the particular deposit claimed could have been extracted, removed and marketed at a profit prior to July 23, 1955, in order to establish the validity of a mining claim located for sand and gravel is in accord with the decisions of this Department and with that of the Supreme Court in United States v. Coleman, 399 U.S. 599 (1968). Upon careful review of the record, we find no error in the conclusion reached upon application of the accepted test of discovery to the facts of this case. The record is clear that up to July 23, 1955, only a miniscule amount of sand and gravel had been sold for other than fill or other purposes for which pit run material can be used ^{5/} and the sales had been for only a few dollars (see footnote 2, Tr. 88-89). The scanty returns would have discouraged, rather than justified, any prudent man in spending his labor and money in attempting to develop a paying mine. Appellants, in fact, do not appear to argue that any other conclusion could have been reached under the criteria that were employed.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (210 IM 2.2A(4)(a); 24 F.R. 1348), the decision appealed from is affirmed.


Ernest F. Horn
Assistant Solicitor
Land Appeals

^{5/} The pit run material is that which is simply taken from the claims and used elsewhere as it is without any processing, crushing, or washing (Tr. 78). For "surfacing", for example, it is simply spread directly on the ground (Tr. 79-81).