

DECISIONS OF THE DEPARTMENT OF THE INTERIOR

UNITED STATES v. EVERETT FOSTER ET AL.

A-27421

Decided January 8, 1958

Mining Claims: Discovery

To satisfy the requirement of discovery on a placer mining claim located for sand and gravel prior to July 23, 1955, it must be shown that the deposit can be extracted, removed, and marketed at a profit.

Mining Claims: Discovery—Mining Claims: Contests

When the Government charges that no discovery has been made within a mining claim on land open to the operation of the mining laws, the contestee may show that discovery occurred after the contest was initiated, in the absence of a withdrawal of the land from the operation of the mining laws in the interim.

Mining Claims: Determination of Validity—Rules of Practice: Evidence

In determining whether a mining claim is a valid claim, evidence detrimental to the contestee produced at the hearing through the examination and cross-examination of the contestee's witnesses may be considered.

Mining Claims: Discovery—Mining Claims: Contests

Where evidence introduced by the Government in a contest brought against the validity of a mining claim tends to show that no discovery has been made and where that evidence is supported by evidence of the contestee's witnesses and where the contestee has not been able to produce convincing evidence that a discovery has been made, the Government will prevail and the claim will be declared null and void.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

This is an appeal to the Secretary of the Interior by mining claimant Everett Foster and others from a decision dated September 19, 1956, by the Director of the Bureau of Land Management, wherein the Director reversed the decision of a hearing officer in holding two sand and gravel placer mining claims, Crocus No. 1 and Crocus No. 2, located on October 29, 1951, on the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 29, T. 22 S., R. 61 E., M. D. M., Nevada, to be valid claims under the mining laws (30 U. S. C., 1952 ed., sec. 21 *et seq.*).

On July 10, 1953, adverse proceedings were initiated against the claims by the United States. On October 4, 1954, the United States amended its charges against the claims. As amended, the charges, as to each claim, were—

1. That minerals have not been found within the limits of the claim in sufficient quantities or quality to constitute a valid discovery.
2. That the land is more valuable for residential and/or business site purposes than for mining.
3. That there has been no actual production and sale of a valuable mineral from the claim and it has not been shown that a marketable product exists within the limits of the claim.
4. That the land was not located in good faith for mining purposes, but to control land valuable for homesites, and/or other non-mining purposes.
5. That there has been insufficient work done upon the claim to conform with the statutory requirements.

A hearing was held on the amended charges against both claims from December 6 through December 10, 1954, at which the proceedings were consolidated. The Southern Nevada Home-Siters, Inc., acting on behalf of certain individual members of the corporation, whose applications under the Small Tract Act (43 U. S. C., 1952 ed., Supp. IV, secs. 682a-e) conflicted with the mining claims, was permitted to intervene at the hearing.

On March 30, 1955, the hearing officer rendered his decision, holding, among other things, that of the five charges brought against the claims only the first charge was material. He held that the question to be determined, under this charge, was whether the sand and gravel found on the claims could be extracted, removed and marketed at a profit. He found that the Government had not sustained its charge and that the claims are valid.

Upon review the Director held that the hearing officer had been in error in holding the third charge to be immaterial and that, while the second and fourth charges were not proper charges, evidence submitted in support thereof may be considered as bearing on the good faith of the locators in making the locations. He also held that since no evidence was introduced relating to the fifth charge it must be considered to have been abandoned at the time of the hearing. The Director held that, the Government having brought the charges against the validity of the claims, it had the burden of proving the charges with sufficient evidence to make a prima facie case, whereupon it was incumbent on the contestees to refute those charges by a preponderance of the evidence.

He found nothing in the testimony to show that the claimants had had the sand and gravel tested for its quality, its depth, or its extent or that they had done anything toward marketing the deposits until after the land had been classified for lease and sale under the Small Tract Act on October 2, 1953 (Nevada Small Tract Classification No. 95, 18 F. R. 6413). He also found that the contestees had not successfully refuted the testimony of a Government witness that no market existed for these deposits and that even on the assumption

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that there was such a market at the time of the hearing, there had been no market for the sand and gravel on these claims when the land was classified for small tract purposes. He held that a prospective market is not sufficient to validate sand and gravel claims, that there must be a present actual market value. He held that the classification of the land for small tract purposes in and of itself withdrew the land from the operation of the mining laws, and that since it had not been shown that the sand and gravel deposits found within the limits of the claims, could, prior to October 2, 1953, be removed and marketed at a profit the classification attached to the land and that after the classification the contestees could not perfect their claims. He held further that the classification must be held to relate back to the filing of applications for small tract leases on these lands in order that the incipient rights of the applicants might be protected. He found that these applications had been filed a few months after the location of the claims and that since the contestees had not shown that the sand and gravel from their claims was marketable at the time of those filings any showing of marketability at the time of the hearing could avail the contestees nothing. He therefore held the claims to be invalid.

The appellants contend that the Director failed to give proper weight to the findings of fact by the hearing officer; that he erred in his evaluation of the evidence; that he committed certain procedural errors; and that the Director erred in holding that a prospective market is not sufficient to validate the claims. They contend that they discovered valuable mineral deposits on the claims in October 1951; that at that time there was a present demand for the sand and gravel as well as such a prospective market as would justify a prudent man in expending time and money in the reasonable hope of developing a paying mine; that the demand existed at the time of the hearing, and still exists. They state that if no discovery had ever been made on the claims the classification order of October 2, 1953, would have withdrawn the land from subsequent location and discovery. They contend, however, that since they made discovery prior to that date and prior to the filing of the small tract applications, it is unnecessary to consider the Director's decision with respect to the segregative effect of the small tract applications.

Under the mining laws all valuable mineral deposits in the public lands of the United States are open to exploration and purchase and the lands in which they are found are open to occupation and purchase except as they may have been withdrawn or reserved for other purposes and except as other provision may have been made for their disposition (30 U. S. C., 1952 ed., sec. 22). While the lands remain open and until other rights have attached thereto, the discovery

of a valuable mineral deposit within the limits of a claim will validate the claim (30 U. S. C., 1952 ed., secs. 23, 35) if other requirements of the law have been met. In order to satisfy the requirement of discovery on a placer mining claim located for sand and gravel,¹ it must be shown that the deposit can be extracted, removed, and marketed at a profit. This includes a favorable showing as to the accessibility of the deposit, *bona fides* in development, proximity to market, and the existence of a present demand for the sand and gravel. Associate Solicitor's opinion M-36295 (August 1, 1955); Solicitor's opinion, 54 I. D. 294 (1933); *Layman et al. v. Ellis*, 52 I. D. 714 (1929).

It should be pointed out at this time that the mere fact that sand and gravel may be sold does not in and of itself establish that a discovery of a valuable deposit of minerals has been made under the mining laws. This is clearly evidenced by the Materials Act of July 31, 1947, as originally enacted (43 U. S. C., 1952 ed., secs. 1185-1187). Section 1 of the act authorizes the Secretary of the Interior to dispose of, among other materials, sand and gravel if the disposal of such materials is not otherwise expressly authorized by law, including the mining laws. Section 1 further requires disposals to be made upon the basis of adequate compensation, with certain exceptions. Section 1, therefore, clearly reflects a congressional understanding that there are sand and gravel deposits on public lands which can be sold but which do not meet the requirements of the mining laws.²

Turning first to the issue of whether a discovery sufficient to validate these sand and gravel claims has been made, we find the contestee contending that the discovery was made prior to the time the location notices were filed. The only evidence in the record of the hearing on this point is that of Everett Foster, the only one of the locators to testify at the hearing (Tr. 401-422). Mr. Foster stated that he and his associates became interested in searching for deposits of sand and gravel in the Las Vegas area several months before these claims were located; that the interest was generated by talk he heard that there was a demand for sand and gravel; that he and his associates confined their search to the area south and east of the city because gravel pits were being operated north of the city and they were looking for another place. Mr. Foster testified that while he knows nothing about sand and gravel or operating a sand and gravel plant he talked with certain men who knew sand and gravel and that they told him that the land on which the claims were subsequently located

¹ Section 3 of the act of July 23, 1955 (30 U. S. C., 1952 ed., Supp. IV, sec. 611), provides that deposits of common varieties of sand and gravel shall not be deemed to be valuable mineral deposits within the meaning of the mining laws so as to give effective validity to any mining claim thereafter located under such laws.

² Section 1 was recently amended by the act of July 23, 1955 (*supra*, fn. 1), without pertinent change so far as the point under consideration is concerned.

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should contain good sand and gravel. He testified further that at that time there was talk of building a road near the claims but that there were no residential or business construction activities in the area of the claims. He discussed the possible sale of the gravel with several parties, one of whom had the contract to build the proposed road. That party told him he already had his own plants and "the 13 mile haul would probably be a little too far" (Tr. 415). Other parties also told him they thought the haul of 13 miles to market was a little too far at that time (Tr. 407).

On the basis of this testimony, certainly it cannot be said that a discovery of valuable mineral deposits had been made prior to the date when the claims were located. No evidence was introduced that the deposits had been tested as to either their quality or their quantity. Except for talk that there was a demand for sand and gravel, the locators had no reason to believe that the deposits on these claims could be sold at a profit in a market which may have existed at some distance from the claims.

The appellants appear to be under the impression that all that is necessary to validate sand and gravel claims is to see the sand and gravel on public domain and to file a claim thereon. Such is not the case. Before such a claim has any validity it must be shown that the sand and gravel are of a quality acceptable for the type of work being done in the market area, that the extent of the deposit is such that it would be profitable to extract it and process it if that is necessary, and that there is a present demand for the sand and gravel. The appellants having failed to make this showing, their contention that the discovery was made before October 29, 1951, must fail.

However, under the charges made by the Government, it was not necessary for the appellants to show discovery prior to the date of the location of the claims. Under the mining laws, one may take possession of vacant public land open to location under those laws and, after filing notice of location, retain that possession against all except the Government while he is in diligent prosecution of his efforts to discover valuable minerals therein. While he is in possession of the land, he is not regarded as a trespasser because he is on the land with the tacit consent of the Government. However, when the Government withdraws that consent, either by withdrawing the land from the operation of the mining laws or by the institution of adverse proceedings against the claims, the locator must show that he has made a discovery of valuable mineral deposits within the limits of the claim in order to retain his possession. When the Government withdraws the land, a discovery after the withdrawal will not serve to validate the claim. However, when adverse proceedings are instituted against a claim involving land which remains open to the operation of the min-

ing laws, discovery may be proved, even though that discovery may have been made after adverse proceedings have been started and such a discovery will permit the locator to retain possession of the land, all else being regular, and in the absence of a withdrawal of the land in the interim.

The lands involved in this proceeding were open to the operation of the mining laws when the Government challenged the validity of the claims on July 10, 1953. As that was before the land was classified for small tract purposes, a consideration of the effect of that classification will be deferred until a determination is made as to whether, on the basis of the present record, the locators met the prescribed test to give validity to sand and gravel claims, which must include a showing that the deposits can be marketed at a profit.

The evidence shows generally that sand and gravel exist in the Las Vegas area in unlimited quantities, that all of this sand and gravel is not fit for commercial use, that most of it is of poor quality, but that sand and gravel of the same quality as is found on these claims are being used commercially in the area. While the market appears to be adequately supplied at the present time, the operators of plants for the processing of sand and gravel to be used in light construction work and those using the material as it comes from the pits are always on the lookout for additional deposits to meet their needs when the deposits presently in use are exhausted. The tests they use in determining the desirability of a deposit are its quality, its depth and its distance from its ultimate place of use.

Several of the witnesses for the contestee testified that given the quality and depth assigned to these deposits by the contestees they would be good deposits, that they are not at present obtaining sand and gravel so far from the city, but that when the present supplies nearer to the city are exhausted they will have to haul from a greater distance to get suitable sand and gravel.

There is much evidence in the record with respect to whether it would be economically feasible to install a plant on the claims for the processing of sand and gravel. While William L. Shafer, the principal witness for the Government, testified that the cost of installing such a plant would be prohibitive, particularly in view of the distance of the claims from the present market, some witnesses for the contestees expressed their opinion that one might make a profit out of such an operation. They based their opinion, however, on estimates made by the contestees as to the amount of sand and gravel present on the claims. As will be shown later, there is no conclusive or even substantial proof in the record that the deposits are as extensive as the contestees claim.

No sale of the sand and gravel had occurred at the time of the hearing but testimony was given by Verne Cornell Mendenhall that

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he had made a verbal contract to buy the sand and gravel for 15 cents a yard (Tr. 504-505). The contestees have subsequently submitted a copy of a lease they have entered into with Ideal Asphalt Paving Co., Inc. (Mr. Mendenhall's firm), which authorizes the lessee to take gravel from the claims on a royalty basis of 5 cents a yard. The agreement does not, however, bind the lessee to take any specified amount of gravel. In fact, it does not bind the lessee to take any gravel and it is only slight evidence that the material on the claims is saleable. Moreover, the lease is dated August 8, 1956, a year and 8 months after Mr. Mendenhall testified to a verbal contract, and it includes the Olinda claim, which is an adjoining claim not involved here.

There is evidence, not without conflict, that the deposits on these claims are suitable for the base course in road work, without any processing, and that road building is proposed in the immediate area of the claim. Some processing (crushing, screening, etc.) is required for other road work. However, there is also evidence that wherever possible sand and gravel for road building are obtained free of charge or through arrangements whereby the sand and gravel are obtained in exchange for services. The county does not buy the sand and gravel which it uses in the construction of its roads and when it was discovered that the sand and gravel on these claims could not be obtained free of charge, the county lost interest in the claims as a source of supply (Tr. 357-358). There is also testimony to the effect that when roads are built the builders attempt to obtain the sand and gravel as close to the road as possible and that they prefer not to haul sand and gravel more than 2 miles for use on the roads. When the distance becomes greater than that, the road builder looks for another source of supply. Thus even if the sand and gravel from these claims were to be used on the proposed roads, apparently a very limited amount would be used and there is no persuasive evidence that the claimants would realize a profit from the disposition of the material.

Although the contestees had held these claims for over 3 years at the time of the hearing, they had not been able to dispose of any material from the claims, even in what they urged was an expanding market. While the fact that no sale had been made at the time of the hearing is not controlling in itself, yet it is persuasive that certain factors must have been involved which prevented the sale. If the deposits were of acceptable quality and existed in such a quantity as to make the extraction worthwhile, then if the demand were there the contestees should have been able to dispose of the material at a profit. On the other hand, if the market was such that it would not pay to extract the material and haul it to that market, then it cannot be said

that the deposits from these claims meet the test of discovery for sand and gravel claims under the mining laws.

We have on the one hand a witness for the Government testifying that the market is adequately supplied with sand and gravel from deposits nearer the market than those on the contestees' claims and that the sand and gravel on these claims are not marketable at a profit because the deposits could not compete in that market in view of the high cost of hauling the material to the present market. On the other hand, there is some evidence that the contestees could successfully compete in the present market. The strongest evidence for the contestees is that they will be able to compete in the future when the market moves closer to the claims. However, a prospective market, using that term in the sense of a market to be developed in the future, is not sufficient to establish the validity of a claim under attack at the present time.

In their appeal the contestees vigorously attack the testimony of Shafer, the principal Government witness and a mining engineer in the employ of the Bureau of Land Management. Briefly, Shafer testified that the material in the claims is of poor quality, that it is the same as material found all over the Las Vegas Valley, that the market is being adequately supplied, and that in view of the expense of mining, processing, and transporting the material he did not believe a profitable mining operation could be conducted on the claims.³ The contestees question Shafer's competence as an engineer by saying that although he examined the claims for several days, he made only a visual examination. He did not sample the gravel for testing purposes. He did not bore test holes to ascertain depth. The contestees then ridicule Shafer's competence to testify as a marketing, production, and transportation expert, but do not point out wherein his testimony was deficient or wrong on its face.

The contestees called, in addition to Foster, several witnesses whose composite testimony has been summarized. But when the testimony of each witness is examined, many weaknesses and inconsistencies are revealed. A. F. Carper, a mining engineer, was employed by the contestees to examine the claims. He testified that the gravel was of a good quality and gave estimates as to the quantity of gravel upon the basis of 6- and 8-foot depths (Tr. 276, 282). However, he did not bore any test holes to ascertain depth or to obtain samples throughout the claims. He testified only to examining development work which is confined to a 300-foot circle from a point common to the two claims and a third adjoining claim. He stated that in the center there was a bulldozed pit some 6 feet deep from which gravel had been

³ The only other Government witness was Phillip E. Mudgett, also a mining engineer of the Bureau of Land Management, who corroborated Shafer's testimony as to the poor quality of the sand and gravel on the claims but said the material was the same as that used commercially in the Las Vegas area.

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piled up and that around it were 16 trenches 2 to 3 feet deep (Tr. 275, 277). He took samples from the pit, which is 50 by 30 feet, and made a screen analysis (Tr. 298-299). Carper prepared a report of his examination (Contestees' Exhibit L).

It appears that Carper did little more than Shafer, except possibly as to the sampling and screen test. But Shafer testified that on his first examination of the claims in 1952 he obtained a sample and made a rough sieve analysis, although he did not testify directly as to the results (Tr. 65). Shafer testified the bulldozed pit had a maximum depth of 4 feet and lies only partly within the Crocus No. 1 and not within the Crocus No. 2, the latter having only a trench cut on it (Tr. 21-22), but admitted later the workings might all be on the claims (Tr. 89-90). He also spent a total of 5 days examining the claims whereas Carper spent one day (Tr. 67-68, 298). It is interesting to note with respect to the contestees' assumption from Carper's report that gravel exists throughout the claims at a minimum depth of 6 feet that in their cross-examination of Shafer they secured his admission that there is no standard test for gravel which comprehends determining the depth of a deposit from cuts and pits as much as a quarter of mile away (Tr. 132-133).

Press Lamb, superintendent for the Clark County Road Department, testified on direct examination for the contestees that he had put test holes on the claims with a bulldozer to test depth and quality and found good road gravel and lots of it (Tr. 199). On cross-examination, he said three holes were put down but that he really did not know whether he was on the claims in question and really made no tests of the sand and gravel (Tr. 200, 203). He did not say what depth of gravel was found. He testified that although the county was hauling gravel 8 miles for road work, it was "awfully costly to do it" and 2 miles or less was ideal (Tr. 202-203). Mary Dianne Claney, wife of one of the contestees named with respect to Crocus No. 2, testified that she was on the claims when Lamb began his work (Tr. 494), although Lamb had stated no one was with him but his men (Tr. 203).

Mendenhall was the only other witness to testify to the depth of the gravel. He said it was 6 feet on the bank of the gravel exposed in the excavations (Tr. 504).

From this testimony, it is evident that the depth of the gravel on the claims has been revealed in only one pit on the claims. The evidence is conflicting whether the depth exposed is 4 feet or 6 feet and there is no evidence that the depth, whatever it may be, extends throughout the claims. Thus there is no credible evidence of a discovery of gravel in commercial quantities.

Now as to quality. Shafer's testimony conflicts with Carper's.

Lamb's testimony is general but must be sharply discounted in view of the uncertainty as to whether he was on the claims and his admission that he really did not test the sand and gravel. Mendenhall testified unequivocally that the gravel is good, but by the contestees' own showing with respect to the lease his company has entered into with the contestees, as contrasted with his testimony as to a verbal contract to buy the sand and gravel, his testimony is also open to question.

In addition to these witnesses, the contestees called others. John M. Murphy, who was engaged in general contracting, testified on cross-examination that he could make no specific statement as to either the quality or quantity of sand and gravel on the Crocus claims (Tr. 376). He did not say that he had been on the claims so it must be assumed that he never examined the claims. C. D. Stewart, also engaged in construction, testified that a gravel pit 6 feet deep with the screen analysis shown in the Carper report would be very valuable and that he certainly would be interested in 80 acres of such gravel (Tr. 449). But he said he did not himself know of any sand and gravel in the Las Vegas area having the gradation shown in the Carper report (Tr. 455), and he too did not testify that he had seen or been on the claims. Elvin Hitchcock, engaged in the sand and gravel business, testified that a gravel of the Carper gradation was good gravel worth having (Tr. 472), and that he guessed, but did not know without testing, that there was gravel of that gradation in the Las Vegas area (Tr. 475). On cross-examination he testified that the gravel would have to be processed before it could be used for road gravel or for concrete (Tr. 477). He also testified that he would not go 11 miles out at the time of the hearing and get sand and gravel of the gradation shown in the Carper report and haul it to his plant for concrete aggregate purposes, that it would be very close whether he could make a profit or not (Tr. 478-479). He also did not testify that he had seen or been on the claims.

The three witnesses just mentioned, Messrs. Murphy, Stewart, and Hitchcock, obviously were not familiar with the claims, not having been on them. Murphy specifically said that he could not testify as to the quantity or quality of material on the claims. Hitchcock and Stewart testified only as to a hypothetical gravel deposit covering 80 acres with a depth of 6 feet. Even then Hitchcock said he would not go 11 miles for it, that being approximately the distance of the Crocus claims from the center of town.

One remaining witness called by the contestees was George C. Monohan, county engineer for Clark County. He testified that he had made a visual examination of the claims and that he was sure it would meet the State specifications for road work because all the gravel in the general area had been tested and met those specifications (Tr. 350). He said the gravel on the claims "is good, that is, the gravel in the

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area has always proved to be very good" for road purposes (Tr. 353). He said on cross-examination that the general area that he was talking about covered 6 to 8 miles north and south in the west side of the Las Vegas Valley (Tr. 360). He made it plain that the county was interested only in gravel that it could obtain free of charge, except for such work as the county might perform in return, like graveling a haul road for the owner of the gravel (Tr. 357-358, 364).

It may be noted at this point that of the contestees' witnesses only three definitely examined the claims. Of the three, Monohan and Mendenhall made only a visual examination, the type of examination that the contestees assail as being unscientific in regard to Shafer. Carper's examination was visual too, with respect to ascertaining the existence of chert and other deleterious substances. His only additional examination was to screen the material for size.

After a careful review of all of the testimony introduced at the hearing, the conclusion is inescapable that while the Government may not have proved conclusively by its own witnesses that the deposits on these claims could not be disposed of at a profit, the contestees' own witnesses gave testimony on direct examination and cross-examination which materially strengthens the Government's position. It is axiomatic that evidence given by a defendant's witnesses may be considered against the defendant. Taking the testimony as a whole, it must be held that the weight of the evidence is that there is no present demand for the deposits on these claims and that such deposits could not be disposed of in the present market at a profit. This being so, the Government must prevail and the claims must be held to be null and void.

It having been shown by a preponderance of the evidence that the claims are not valid claims, we do not reach the Director's holdings that the classification of the lands for small tract purposes on October 2, 1953, withdrew the lands from the operation of the mining laws and that applications for small tract leases on those lands filed prior to that date are entitled to protection.

With respect to the procedural issues raised by the contestees, nothing in the record indicates that the contestees were prejudiced in any way by any rulings which may have been made either by the hearing officer or by the Director. Under the charges brought against the claims, the contestees had the burden of showing that they had made a valid discovery within the limits of the claims. Although the Government initiated the charges and had the initial burden of sustaining at least the first charge—that there had been no discovery—if it were to prevail in the contests, once the Government had produced evidence to show that no discovery had been made, it was up to the contestees to overcome that evidence. This they failed to do.

The fact that representation was had on behalf of certain small tract applicants for the lands did not prevent the contestees from making that showing. It was their own inability to show a present market for the deposits plus the Government's showing that no such market exists which defeated them.

That one of the Government witnesses may have been permitted to read from a report which was not admitted into evidence is also immaterial. Whatever the witness may have read from a report which was not placed in evidence, the contestees were free to cross-examine him on that part of the report from which he read. Whatever else may have been contained in that report is not a part of the present record and it was not considered in reaching a determination as to the validity of the claims. It must be remembered that the technical exclusionary rules of evidence are not binding in administrative proceedings. *Opp Cotton Mills v. Administrator*, 312 U. S. 126 (1941); *Willapoint Oysters v. Ewing*, 174 F. 2d 676, 690 (9th Cir. 1949), *cert. denied*, 388 U. S. 860.

Accordingly, and for the reasons discussed above, it must be held that the mining claims designated as Crocus No. 1 and Crocus No. 2 are without validity.

As the decision in this case turns upon the evidence adduced at the hearing and the contestees have fully set forth their analysis of the evidence, no point would be served by hearing oral argument in the case. Accordingly, the contestees' motion for oral argument is denied.

Pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509, as revised; 17 F. R. 6794), the Director's decision, insofar as it held the Crocus No. 1 and Crocus No. 2 to be invalid for lack of a valid discovery is affirmed.

EDMUND T. FRITZ,
Deputy Solicitor.

EARL C. HARTLEY ET AL.

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Decided January 13, 1958

Oil and Gas Leases: Extensions—Agency

Where an oil and gas lessee applies for an extension of his entire lease despite the fact that he had previously assigned a portion of his lease to another and the assignment has been approved, he will not be considered to be an apparent or ostensible agent for the assignee in applying for the extension where there is no evidence that the lessee has ever been held out to be an agent of the assignee.