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08/06/91

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES FILE DATA

PRIMARY NAME: DOUBLE L LODE

ALTERNATE NAMES:

YAVAPAI COUNTY MILS NUMBER: 732A

LOCATION: TOWNSHIP 13 N RANGE 1 W SECTION 5 QUARTER C
LATITUDE: N 34DEG 32MIN 10SEC LONGITUDE: W 112DEG 23MIN 20SEC
TOPO MAP NAME: PRESCOTT - 7.5 MIN

CURRENT STATUS: EXP PROSPECT

COMMODITY:
GOLD
SILVER

BIBLIOGRAPHY:
ADMMR DOUBLE L LODE AND DOUBLE L PLACER FILE

SYLLABUS - (G.E.T.) - Discovery - Relation Back - Proof. Contests and Protests.

Lode Claims.

Where a massive sulphide deposit had been exposed at the surface and, in the opinion of expert witnesses, further mineralization below the surface was probable, a lode claim discovery had been demonstrated and would relate back to perfect an imperfect location.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Office of Hearing Examiners
4209 Federal Building
Salt Lake City, Utah 84111

Decided September 18, 1964

DECISION

United States of America,	:	ARIZONA 10544, Involving the Double
Contestant	:	L Lode and Double L placer mining
v.	:	claims, Situated in Section 5, T. 13
Lucille Lundy,	:	N., R. 1 W., GSR Meridian, Yavapai
Contestee	:	County, Arizona.

DOUBLE L PLACER MINING CLAIM HELD INVALID
ADVERSE CHARGES AGAINST DOUBLE L LODE CLAIM DISMISSED

In the above-entitled matter, a complaint dated February 4, 1963, was filed at the request of the United States Forest Service by the Land Office Manager, Bureau of Land Management, Phoenix, Arizona. As amended by order dated October 2, 1963, the allegations of the complaint made in support of the request that the claims be declared void are as follows:

- a. A valid mineral discovery, as required by the mining laws of the United States, does not exist within the limits of the Double L lode or Double L placer mining claims.
- b. The land embraced within said claims is nonmineral in character.

Pursuant to notice a hearing was held at Prescott, Arizona, with Richard L. Fowler, Office of the General Counsel, United States Department of Agriculture, Albuquerque, New Mexico, representing the contestant, and Eino M. Jacobson, attorney, Prescott, Arizona, representing the contestee. Appearing as a witness for the contestant was Donald J. Alexander, a mining engineer employed by the United States Forest Service. Mrs. Lucille Lundy, the contestee, testified in her own behalf. Also testifying for her were Arthur Still, a consulting mining geologist, and John Steven Phillips, a geologist employed by the Montana Phosphates Products Company.

From the evidence presented at the hearing I hereby make the following:

Findings of Fact and Conclusions of Law

The Double L lode mining claim was located June 29, 1961, in the Walker Mining District in the Prescott National Forest, Arizona. The Double L placer mining claim, located October 28, 1962, covers exactly the same twenty acres of land previously located as the Double L lode mining claim.

Mr. Alexander examined the claims on November 23, 1962, and in September of 1963. He found various pits on the claims, some of which were caved and inaccessible for examination. He sampled those pits which showed evidence of mineralization in lode form and labeled the samples Nos. 5540 through 5544 and No. 5606. Assays of samples Nos. 5540, 5542, and 5543 showed .2 percent silver having a value of 20 cents per ton, and a trace of gold. Sample No. 5541 assayed .2 percent silver and .01 percent gold, with a total value of 55 cents per ton. Sample No. 5544 assayed .5 percent silver and .17 percent gold, with a total value of \$6.45 per ton.

In evaluating the placer deposit on the claims, Mr. Alexander took seven samples which he panned to a black sand concentrate. From the total weight of the alluvial material removed and the total weight of the gold extracted he computed the gold value per yard of the alluvial material on the claims. Five samples showed a trace of gold and silver having no monetary value. One sample contained gold values of 47.6 cents per cubic yard and one sample contained gold values of 39.8 cents per cubic yard.

Taking into consideration the lack of or the low assay values of the material found upon the claims, the quantity of the material, the mining history of the area in which the claims are located, the unavailability of water with respect to possible placer operations, and the cost of mining, for either lode or placer deposits, Mr. Alexander formed the opinion that a person would not be justified in further prospecting or working these claims because in his opinion there was no chance of a successful operation being developed.

Mrs. Lundy, in expressing her intention to work the claims, testified that she had shipped some concentrated placer ore to the Denver Mint. However, the yardage of material from which the concentrate was taken was not recorded. The mint return (exhibit E) was offered solely to show that there is placer gold upon the claims.

Mr. Still visited the claims on four occasions--April 23, May 2, May 7, and October 10, 1963--and prepared a map showing his interpretation of the geology of the claims and the points of sampling (contestee's exhibit G). He described the geologic structure of the claims as entirely pre-Cambrian schists, principally rhyolitic in composition, with one sizable andesite porphyry dike. He described the workings on the claims as a series of shallow surface trenches presumably sunk on small quartz veins. The trenches were badly weathered with no visible veins exposed. On the northeast corner of the claims he found appreciable amounts of altered quartz porphyry and moderate amounts of massive sulphide gossan.

He described the gossan as direct evidence of previous sulphide mineralization and advised Mrs. Lundy to have more excavations made. This was done under his supervision and samples were then taken from the veins exposed and these ranged in value from zero to \$13.56 per ton.

Based upon his examination Mr. Still testified that in his opinion it would be prudent, assuming that another claim can be acquired at the north to give protection, for Mrs. Lundy to explore the mineralization which he described and found upon the claims.

Mr. Phillips, whose primary duty with the Montana Phosphates Company is to explore for metal deposits in Arizona with principal emphasis for massive sulphide deposits in pre-Cambrian schist, visited the Double L lode and placer claims on May 2, 1963, and again on October 10, 1963. His findings as to the geology of the claims was in agreement with the description given by Mr. Still. The mineralization and alterations found on the claims were, he stated, similar to other outcrops associated with massive sulphide ore deposits in other parts of Yavapai County. He was of the opinion that the claims are located in a geologic setting favorable for exploration and that Mrs. Lundy would be prudent in expending further funds for development of the outcroppings upon the claims. He recommended that further development by successive steps be undertaken because the claims are a "favorable geologic target."

At this point it is clear that the prima facie case established by the Government as to the Double L placer claim has not been rebutted. The mint return was offered solely to show that there does exist placer gold upon the claim but this exhibit is valueless without evidence as to the yards of material removed in order to obtain the concentrates shipped. The testimony of Mr. Still and Mr. Phillips was limited to the possibilities of developing a lode deposit. Further, Mr. Still had recommended to Mrs. Lundy that since the placer possibility could not be tested cheaply that it would not be worth while for her to attempt to demonstrate a placer discovery (tr. 98). The Double L placer claim must be and is therefore declared to be null and void for lack of discovery.

With reference to the Double L lode claim there appears to be no conflict between the expert witnesses on the amount of mineral found in the samples taken by them. The conflict in their testimony is in their interpretation of whether or not sufficient mineral has been found to warrant further development, Mr. Alexander testifying that there would be no reasonable possibility of success in developing the claims further, and both Mr. Phillips and Mr. Still testifying that further time and effort could be spent with reasonable expectation of developing a paying mine.

The issue of law, then, is whether or not, in view of the evidence, a discovery has been made upon the Double L lode claim sufficient to satisfy the requirements of the mining law. The test applied by the courts, first set forth in Castle v. Womble, 19 L.D. 455 (1894), upheld by the United States Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905), and recently reaffirmed in Best v. Humboldt Placer Mining Company, 371 U.S. 334 (1963), is as follows:

"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 * * * /a discovery/ have been met."

The Department has held that there is a distinct difference between exploration and discovery under the mining laws. Exploration work is that which is done prior to a discovery in an effort to determine whether the land contains valuable minerals. It is only when the exploratory work shows that minerals exist in such quantities and of such values that there is a reasonable prospect of success in developing a paying mine that it can be said that a prudent man would be justified in going ahead with his development work and that a discovery has been made. United States v. Clyde R. Altman and Charles M. Russell, 68 I.D. 235 (1961).

The conflicting views expressed by the experts can be explained, at least in part, by the possibility that Mr. Alexander did not see, or failed to recognize, the massive sulphide gossan deposit described by Messrs. Still and Phillips. The trenches that Mr. Alexander saw were old and filled with muck, and it is not the duty of the mineral examiner for the Government to clean out debris-filled discovery pits and excavations. Rather, it is incumbent on the contestee to have the claimed exposure of valuable mineralization open for inspection. However, a discovery of valuable mineralization after location will relate back and validate an imperfect location provided there has been no withdrawal of the land from location and provided no other valid claim intervenes. Bakersfield Fuel and Oil Co., 39 L.D. 460 (1911). In the present case the trenching done on the massive sulphide mineralization described by Mr. Still and Mr. Phillips was done after Mr. Alexander's first inspection and sampling. There has been no withdrawal of the land from location and there is no record of other intervening rights which would bar the contestee from introducing evidence of discovery made at any time prior to the hearing.

The qualifications of Mr. Still and Mr. Phillips are impressive. Both men hold Ph.D. degrees in geology and are well qualified to evaluate the possibilities for a successful mining operation in the light of the mineralization exposed in relation to the geologic setting in which the claim is located. The contestee would be imprudent to ignore their recommendations.

Admittedly, the contestee's experts are basing their opinions partly upon geologic inference. While it is true that the courts and the Department of Interior have never accepted geological inference standing alone as a substitute for an actual exposure of mineral sufficient to constitute a discovery, geological inference has been considered as one of the factors which must be weighed by a prudent man in determining whether or not the vein or lode containing valuable mineral warrants further development. Jefferson-Montana Copper Mines Company, 41 L.D. 320 (1912). Where the mineral is on the surface, in readily ascertainable amounts, geologic inference can be ruled out. But, where the mineral occurs in vein form below the surface and can only be exposed after extensive development work, geologic inference, to some degree, must be part and parcel of every expert's opinion as to whether economic ore can be found. To rule otherwise would be to nullify

the "prudent man" rule and to allow locations only after the development of commercial ore.

I conclude that there has been a valid discovery on the Double L lode claim. Ipso facto, if there is a valid discovery of valuable mineralization on this claim, the land upon which the claim is located is also mineral in character. The adverse proceeding against this claim is dismissed.

This decision becomes final 30 days from its receipt unless an appeal to the Director, Bureau of Land Management, is filed with the Office of Hearing Examiners, Salt Lake City, Utah. If an appeal is taken there must be strict compliance with the regulations in 43 CFR Part 1840, copy of which, issued as Circular 2137, is enclosed. Also enclosed is Form 1482-1 which summarizes information on taking appeals to the Director.

If an appeal is taken by the contestant the adverse party to be notified is the attorney for the contestee whose name and address appears below. If an appeal is taken by the contestee, the amount of the filing fee will be \$5 for the one claim involved, and the adverse party to be notified is the Office of the General Counsel at the address shown below.

(Sgd.) John R. Rampton, Jr.
Hearing Examiner