



## **CONTACT INFORMATION**

Mining Records Curator  
Arizona Geological Survey  
1520 West Adams St.  
Phoenix, AZ 85007  
602-771-1601  
<http://www.azgs.az.gov>  
[inquiries@azgs.az.gov](mailto:inquiries@azgs.az.gov)

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PRINTED: 12/18/2002

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES AZMILS DATA

PRIMARY NAME: CHERYL ANN

ALTERNATE NAMES:

PINAL COUNTY MILS NUMBER: 27

LOCATION: TOWNSHIP 1 N RANGE 10 E SECTION 14 QUARTER NE  
LATITUDE: N 33DEG 26MIN 08SEC LONGITUDE: W 111DEG 17MIN 30SEC  
TOPO MAP NAME: WEAVERS NEEDLE - 7.5 MIN

CURRENT STATUS: EXP PROSPECT

COMMODITY:  
UNKNOWN

BIBLIOGRAPHY:  
ADMMR CHERYL ANN FILE  
BLM AMC FILE 41265

08/18/86

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES FILE DATA

PRIMARY NAME: CHERYL ANN

ALTERNATE NAMES:

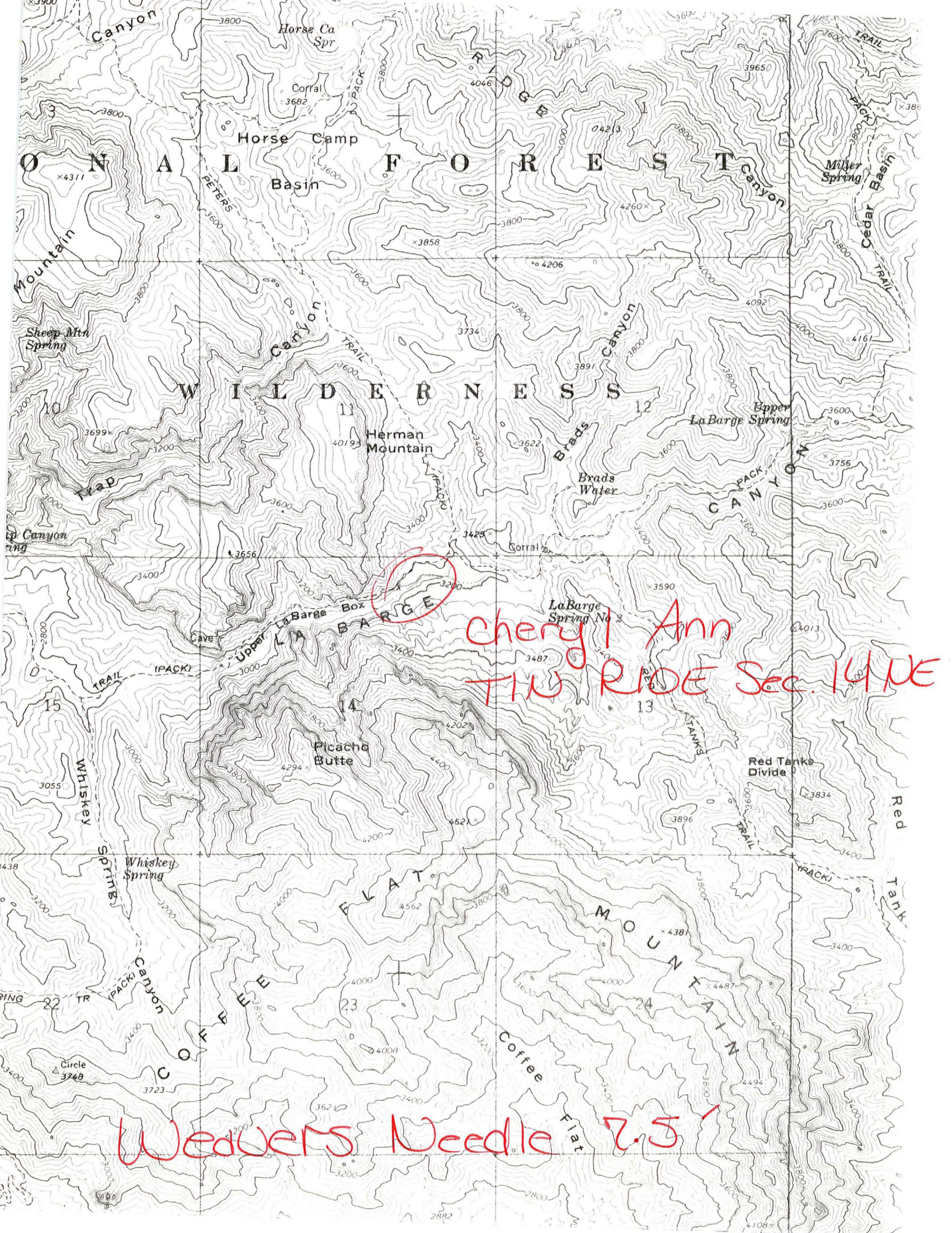
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BLM UNPAT. MINING CLAIMS LEAD FILE 41265



O W L C R E K N A T I O N A L F O R E S T

W I L D E R N E S S

Horse Camp Basin

Herman Mountain

Upper La Barge Box

Picacho Butte

La Barge Spring No. 2

Red Tanks Divide

ELK AT MOUNTAIN

Coffee Flat

Cheryl Ann  
TIN RIDE Sec. 14 NE

Wedders Needle 7.5



Myrd. Summit.  
Hilton Cass - Forest Service  
Phoenix.

address

'84 P.O. 1540 -  
11/20/80 Apache Summit, 85220

B.M. Annals:  
TIN RIDE 14  
① Cheryl Ann, 28x24  
1 NR 10  
② Ed Maria del Espinal 24  
T 2 NR 9  
3. Canyon Press 162

MEMORANDUM  
OF CALL

Previous conditions usable

TO: L. name

YOU WERE CALLED BY -  YOU WERE VISITED BY -

John Blossom

OF (Organization) Washington

PLEASE PHONE ▶  FTS  AUTOVON  
602-931-5852

WILL CALL AGAIN  IS WAITING TO SEE YOU

RETURNED YOUR CALL  WISHES AN APPOINTMENT

MESSAGE  
Charles Crawford

Glendale, AZ  
Give this guy a call. He  
needs some design work done.  
Guess he has a few problems.

RECEIVED BY	DATE	TIME
<u>Pat</u>	<u>12-5</u>	<u>9:00</u>

Chas. Crawford. 12/5/84

Pike Pt. Au - Phenix

In Superstition Mts.

Forest Service -

- Hematite ore →  
2 foot. 33 oz Pt/T.

609 rpt. VSGS 1959 -

VSGS - FS - USBM -  
\*glac. not done -

could not core drill.

.08 Au -

Jim Junkes (Su 28 27)

\$340,000 own money

175,000 borrowed money -

sent to Reno.

.4 oz Au -  
28.9 milligrams  
melted out -  
x 4.25.  
100 melted out  
by using sodium  
dichlorate &  
borate.

Channed 12 T Pt.  
Bullmills: .05 oz T Pt.  
slag - 45 oz T. Pt.

Forest S - mineralized - Project.

Shut down 8 months since Jan 25.

North Sec 14, T1 N, R10 E. 1 mile +  
Measures.

Sec 28, Junkes

Nyal Summit

Hilton Lass - Trust Service: Phoenix - 261, 4372

Use as registered assayer -

taken to. Previous Metal Refining - from electronics industry.

no discovery? - no economic discovery -

Crawford: To Larry Billman -

7841 North <sup>59</sup> Lane # A24 -  
Glendale AZ 85301.

John Blossom - Strategic Stockpile  
money never allotted by Congress.  
Copper in outcrops → → →

Lying → 1476 jumps N. SW 28 - right  
2000 g Au / Ton - wants results  
of assays.

later verified Au.  
outcrop on trail:

West Star Processing - Great Western  
Mining Co.

Communists in government.  
Need U.S. Bu Mines to investigate.

Screaming for help -

Going to media.

Pt being bought outside country -  
He has commercial quantity of Pt  
for time of war & of

Bring to Reagan's attention.

McKane's office -



SAVE

CHEMICAL APP (LITH) (NEW)  
IN 10 14 NE PLM 119 27



# United States Department of the Interior

## OFFICE OF HEARINGS AND APPEALS

Hearings Division  
6432 Federal Building  
Salt Lake City, Utah 84138-1194  
(Phone: 801-524-5344)

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file*

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MINERAL RESOURCES

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JUN 2 80

U.S. DEPT. OF THE INTERIOR  
ALBUQUERQUE, NEW MEXICO 87102

June 10, 1986

UNITED STATES OF AMERICA,

Contestant

v.

CHARLES M. CRAWFORD, d.b.a.  
CASI MINING AND MINERAL  
EXPLORATION COMPANY

Contestees

ARIZONA 19371

Involving the Cheryl  
Anne lode mining claim  
situated in the NE 1/4,  
Section 14, T. 1 N., R.  
10 E., GSR Meridian,  
Arizona.

AZ  
ZONE

LANDS

MIN

SEC

FILE

### DECISION

Appearances: T. Adrian Pedron, Esq., Office of the General  
Counsel, U.S. Department of Agriculture,  
Albuquerque, New Mexico, for the contestant;

Charles M. Crawford, d.b.a. Casi Mining and  
Exploration Company, Peoria, Arizona, pro se.

Before: Administrative Law Judge Rampton.

RECEIVED

JUN 20 1986

FOREST SERVICE  
ARIZONA ZONE

### Statement of the Case

This is a contest proceeding to determine the validity of  
the Cheryl Anne Lode Mining Claim, located under the Mining  
Law of 1872, as amended, 30 U.S.C. §§ 22, et seq. The legal  
authority and jurisdiction for the contest are found in  
43 U.S.C. §§ 2, and 1201, and 43 CFR Part 4, Subpart E. The  
action was initiated by the Arizona State Office, Bureau of  
Land Management, pursuant to 43 CFR 4.451, at the request  
and on behalf of the Forest Service, Department of  
Agriculture.

The claim was located by C. M. Crawford, d.b.a. Casi Mining and Mineral Exploration Company, on April 15, 1979, and amended June 2, 1982. It includes slightly more than 20 acres of public domain lands, situated in the N 1/2 NE 1/4 of Section 14, Township 1 North, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona.

These lands are administered as a part of the Mesa Ranger District, Tonto National Forest, and have been included in the Superstition Wilderness since its creation on April 17, 1940, under Regulation U-1 of the Secretary of Agriculture, then published at 36 CFR § 251.20. The Superstition Wilderness was included in the National Wilderness Preservation System pursuant to Section 3(a) of the Wilderness Act of 1964, P.L. 88-577, 16 U.S.C. § 1132(a), as implemented by the Regional Foresters' certification of June 17, 1965, (Contestants' Ex. 15) and reflected by the certification of the Secretary of Agriculture dated January 11, 1985 (Contestants' Ex. No. 16). Effective January 1, 1984, the lands on which the claim is situated were withdrawn from further location and entry under the mining law by Section 4(d)(3) of the Wilderness Act of 1964, 16 U.S.C. 31133(d)(3).

Since the land on which the Cheryl Anne lode claim is situated is subject to the Wilderness Act of 1964, supra, activities by the mining claimant have been either regulated, restricted, or prohibited outright, particularly those that require the use of motorized equipment or transport in Wilderness areas, or those that would lead to the appropriation of such lands under the mining laws after the withdrawal date.

The Complaint filed on September 7, 1984, alleged that the Cheryl Anne lode mining claim was invalid because a valuable mineral deposit had not been discovered within the boundaries of the claim as of December 31, 1983, and that the lands included within the claim were nonmineral in character. Mr. Crawford filed a timely answer denying the allegations, and hearings were held in Phoenix, Arizona, on January 18 and 19, 1985, and on March 11 through March 15, 1985.

Mr. Crawford appeared pro se. He did, however, state that he consulted with an attorney free of charge in the evenings as the proceedings went forward (Tr. 1358). On March 13, 1985, the fifth day of the proceedings, the contestant moved that he be allowed a continuance of 120 days to hire an attorney to fully represent him in the hearing (Tr. 1039). Because I was convinced from my observations of Mr. Crawford

during the hearing that his failure to obtain an attorney to represent at the hearing was not dictated by lack of means but was his own choice because of his conviction that he did not need an attorney, the motion was denied (Tr. 1111). At the conclusion of the hearing, the parties filed posthearing briefs. This decision is based upon a review of the record made, the exhibits offered, and an evaluation of the proposed facts and law as set forth in the briefs filed. Where the facts and statements of law as expressed in the briefs are correct, they may be incorporated into this decision without further acknowledgment.

### Findings of Fact and Conclusions of Law

#### a. Contestant's Evidence

Subsequent to the withdrawal date of January 1, 1984, the Forest Service conducted a mineral examination of the Cheryl Anne lode mining claim. The examination included two site visits by Hilton Cass, a Forest Service mineral examiner, and several other Forest Service employees. The first occurred on January 25, 1984, and the site was revisited on November 27, 1984. On each occasion, Mr. Cass met with Larry Billman, the designated representative of Mr. Crawford, who assisted in locating the boundaries of the claim and pointed out the workings and the claimed mineralization. The discovery shaft, located at the approximate center of the claim measures about 10 by 13 feet at the collar narrowing to 6 by 6 feet at the bottom and discloses small pods of hematitic material along a sheer zone. Mr. Cass estimated that about 35 cubic yards or 70 tons of material could have been removed from the shaft (Ex. 10). Two channel samples were taken across the pods of mineralization exposed with the discovery shaft on January 25, 1984, and five channel samples were taken on November 27, 1984, three from the shaft and two from outcrops on a rhyolite ridge northwest of the shaft.

Pulp splits from the two samples Mr. Cass took on January 25, 1984, were subjected to a fire assay for gold, silver and platinum by a registered assayer with Skyline Laboratories in Tucson (Tr. 35). The assay reports dated February 24, 1984, introduced into evidence as Exhibits 6 and 7, disclosed only negligible or trace mineralization.

Mr. Cass sent pulp splits from the same samples to Kenneth G. Broadhead, Research Supervisor in charge of the analytical group at the U.S. Bureau of Mines in Reno,

Nevada, with a letter dated March 9, 1984, and asked that they be assayed for gold, platinum and palladium. He also sent Mr. Broadhead a copy of the "pyro-chemical" technique that had been received in the mail from Mr. Crawford and asked that it be critiqued and employed if possible (Tr. 38, 40, Ex. 8).

Following a number of telephone calls from Mr. Crawford complaining about the first site visit, Mr. Cass made a further site visit to the claim on November 27, 1984 (Tr. 56). On that occasion he took two more samples from the discovery shaft, one coming from a pod of hematitic material that was "purported high grade material" (Tr. 62). Mr. Cass also took a sample from the rock wall on the southwest face of the shaft about 6 feet above the floor in pink stained rock that contained some disseminated hematite (Tr. 63). He took two additional samples from red stained rock that outcropped on an igneous ridge northwest of the shaft since it showed signs of having been previously sampled (Tr. 63).

Mr. Cass delivered the four samples taken on November 27, 1984, to Jim Roy Weatherby, a registered assayer in Phoenix, with instructions to prepare the samples, to fire assay them for gold and silver, and to fire assay one sample for platinum (Tr. 64). Neither assay report, both dated December 6, 1984, revealed detectable values (Tr. 65, Ex. 11 and 12).

A split of the pulps of the four samples taken on November 27, 1984, were delivered to Arizona Testing Labs in Phoenix for an atomic absorption assay for gold and silver (Tr. 67). The assay report is dated January 15, 1983, and was done by Claude E. McClean Jr., a registered assayer. It shows nil values for four samples and trace values on one sample (Tr. 68, Ex. 13).

Mr. Cass also asked Mr. Weatherby to do a test run on splits of the samples taken from the Cheryl Anne claim on January 25, 1984, using the "pyro-chemical" technique proposed by Mr. Crawford (Tr. 82-83). Mr. Weatherby, by letter dated July 25, 1984, reported the results of his use of this technique and attached an assay report dated July 23, 1984, showing nil values for gold and platinum (Ex. 17). Mr. Cass also considered, and partially relied upon, a report prepared by David E. Wahl, Jr., a consulting geologist employed by Mr. Crawford (Tr. 84, 86, Ex. 18). The report, which had been mailed to the Government by Mr. Crawford (Tr. 84), recommends drill holes and concludes:

The remote nature and restrictions to mechanized operation will make the Casi claims expensive to develop \* \* \* the presence of alteration does not in any way guarantee economic mineralization. To make production \* \* \* profitable, significant tonnages of high grade ore would have to be proven.

In Mr. Cass's opinion, as of the withdrawal date and the date of the hearing, there had been no discovery on the claim and the lands were nonmineral in character (Tr. 71-74).

Kenneth G. Broadhead, who has an AA Degree in Chemistry and a BA degree in Chemistry-Physics, testified in some detail on the standard industry accepted and assay process used by the Bureau of Mines to assay the sample that Mr. Cass had sent him. In his opinion, the method would reliably detect gold, platinum and silver (Tr. 224). He stated that the assay of samples from Mr. Crawford's claim by this assay procedure disclosed "nothing of economic value" (Tr. 225). He identified Exhibit 21 as a 1982 publication authored by W. L. Barry, U.S. Bureau of Mines, entitled Bureau of Mines Practices in Fire Assaying as describing the standard fire assay procedures used in the Reno Research Center.

Mr. Broadhead also assayed a sample Mr. Crawford had sent him on November 15, 1983, using the "pyro-chemical" technique as described by Mr. Crawford, as well as by standard assay. Neither assay method revealed mineralization of economic value including gold, platinum or palladium.

He testified in some detail how Mr. Crawford's assaying technique differs from standard fire assays. It uses the same amount of silver chloride (30 grams) as the sample itself. The silver chloride is used as a collector for precious metals rather than the customary litharge. The "pyro-chemical" technique omits the customary silver inquart procedure and starts with a cold furnace which is raised to a temperature of no more than 2000° F. Mr. Crawford's instructions did not describe the cupellation procedure that should be used (Page 2 of Ex. 8).

After testing and evaluating Mr. Crawford's assay method, Mr. Broadhead was of the opinion that it was no more efficient than standard methods, was more time consuming, expensive, and if incorrectly applied would yield erroneous results. It uses silver as a collecting agent instead of lead oxide which acts both as a collecting agent and as a

litharge or fluxing agent for the gangue materials in the sample. The purpose of the litharge is to purge the material that might otherwise drop into the button obtained. If when the button was parted, i.e., the silver is dissolved by the use of nitric acid, the material left might be presumed erroneously to be gold or platinum group materials. Mr. Crawford's procedure also used niter as an oxidizing agent and flour as a reducing agent. Mr. Broadhead stated that these materials counteract each other so that using them together really makes no sense. In his expert opinion, other aspects of Mr. Crawford's assay methods were incomprehensible (Tr. 228-231).

Mr. Broadhead testified that the established methods of assay were reliable and the only type accepted in the trade by reputable outfits buying and selling mining properties. In his opinion, nonstandard methods either did not work at all or, at best, yielded no better results than accepted methods (Tr. 232).

Mr. Broadhead's office assays some 1,200 platinum ore samples per year, both hard rock and placer. He would only regard .3 or .4 ounces of platinum per ton as commercially interesting in a lode deposit (Tr. 233).

Under cross-examination, Mr. Broadhead stated that the use of aqua regia was not the best method for putting metals into solution, and that a fire assay is better (Tr. 236). When large amounts of silver (30 grams) are introduced as a collector in the "pyro-chemical" technique, rather than the usual 2 milligrams of silver added as an inquart in standard assay method (Tr. 262), sufficient impurities could be introduced to incorrectly reflect high values when sample values found are projected back against an assay ton (Tr. 293, 296). For the same reason, litharge is a better flux. Mr. Broadhead thought impurities could be introduced even though a reagent grade silver of four nines plus five purity was used (Tr. 292).

Mr. Broadhead was questioned by Mr. Crawford about an article published in the California Mining Journal written by Dr. Alvin C. Johnson describing the difficulty of assaying for the platinum group minerals using the standard fire assay techniques. His response was that the journal was not reputable but more of an informational publication for small miners and, because there was a lack of peer review for the articles it contained, not a scientific journal. He criticized the article written by Dr. Johnson (Ex. E) in that it was unbelievable, inconsistent on its face, and did not describe the type of spectographic

technique allegedly used and relied upon by the author (Tr. 279-82).

Mr. Broadhead also gave his opinion of a technique described in an excerpt from an article written by Mr. Ginsberg (Ex. F). He believed the excerpt was too brief for a proper analysis; that it dealt with concentrates, not ores; and that the 1 gram sample used was not large enough to be representative. He believed that at least half an assay ton or at least 15 grams should have been sampled, and a 1 ton sample is preferable (Tr. 290, 291).

In his professional career with the Bureau of Mines he has never found platinum group metals to be associated with a hematite type of ore (Tr. 296). Further, no chemical extraction process is as effective as a fire assay.

Jim Roy Weatherby testified in depth as to the method he used to do the fire assays on the samples submitted showing nil values for gold, silver and platinum. He also tried the "pyro-chemical" technique on splits of the samples taken January 25, 1984, and the results were the same. In his opinion, the "pyro-chemical" technique of assaying was prohibitively expensive in that it uses too much silver chloride and he wouldn't trust it too far in any event (Tr. 453, 454).

On cross-examination, he admitted he had never used the Ginsberg method. He had tried one method described by Dr. Johnson and it didn't work. Questioned as to the loss of gold, platinum and silver through volatilization in a fire assay, he said it was minimal amounting to less than 1 percent (Tr. 450).

He was certain the samples he assayed contained no iridium, rhenium, or rhodium because the standard assay methods will show their presence (Tr. 507).

b. Sufficiency of Contestant's Prima Facie Case

The law well settled that the Government completes a prima facie case when a qualified mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery. U.S. v. Andy Synbad, 42 IBLA 313, 319 (1979). A sufficient prima facie case does not require "positive proof" that there has been no discovery or that the claim is nonmineral in character. Synbad, supra at 322. For that matter, the Government need only establish that one essential criterion of discovery has not been met to make out a prima facie

case. U.S. v. Dresselhaus, et al., 81 IBLA 252, 259 (1984). In doing this, the mineral examiner is not obliged to go through a shopping list of all possible minerals and show that none of them, or any possible combination, constitutes a discovery. U.S. v. Johnson, 16 IBLA 234 (1974).

Once the Government concludes its prima facie case, the contestee can move for dismissal and rest, if he really believes the prima facie case is inadequate. If, however, the contestee chooses to go forward and presents evidence, such evidence can be considered against the contestee in deciding whether the claim is valid. Synbad, supra, at 321; U.S. v. Clare Williamson and Laprine Pumice Co., 45 IBLA 264, 278-279; U.S. v. Perry L. Jones and Chet L. Smith, 67 IBLA 225, 236 (1982).

The contestee, in his brief, argues that the contestant "failed to prove its prima facie case for lack of a proper chain of custody." He contends that since Mr. Cass delivered the samples taken on January 25, 1984 (CA-1-25-1 and CA-1-25-2), to Arizona Testing Laboratories in Phoenix with instructions to prepare them for assay and picked up the pulps later and placed them under lock and key until they were sent to others for assay, there is a break in the chain of custody. A similar argument is advanced in connection with the samples taken on November 27, 1984 (CA-11-27-4, CA-11-27-5, CA-11-27-6 and CA-11-27-7), which were prepared for assay by Jim Roy Weatherby of Silver Systems, Inc., in Phoenix.

The argument is missapplied in the context in which it is offered. The "chain of custody" rule is ordinarily usually applied only in a criminal proceeding. It is defined in Blacks Law Dictionary, page 208, Fifth Edition, as follows:

In evidence, the one who offers real evidence, such as the narcotics in the trial of a drug case, must account for the custody of the evidence from the moment in which it reaches his custody until the moment in which it is offered in evidence, and such evidence goes to the weight and not the admissibility of the evidence.

However, the contestant did not offer ore samples into evidence. It offered assay reports and opinions from experts based, in part, on the results of such assays. More importantly, in the samples taken, there was no evidence of a break in the chain of custody. The contestees' expressed suspicions, without evidence to



warrant those suspicious other than in distrust of the Government agents, offer no basis for any proposed findings that the samples taken by Mr. Cass were tampered with or that the samples, after delivery to the reputable registered assayers, were mixed with other samples.

Under the "chain of custody" rule, a party need only show, taking all of the circumstances into account, it is "reasonably certain" that there was no alteration in the proposed evidence. Each link in the chain must be accounted for, but there is certainly no requirement that every person in that link appear and testify. Moreover, when there is only "the barest speculation" that there was tampering, it is proper to admit the evidence and let what doubt remains go to its weight. People v. Riser, 47 Cal. 2d. 566, 305 P2d. 1, 10 (1956) cert. denied 353 U.S. 930, Appeal Dismissed 358 U.S. 646.

Contestee also objected to the admission of contestant's Exhibit 18 under the chain of custody rule. That report prepared by David E. Wahl, Jr., one of the experts consulted by the contestee, was sent to the Government by him as part of his effort to convince the Forest Service that his claim was valid. Mr. Cass, as asked by Mr. Crawford, considered the report in evaluating the claim. The report was certainly admissible as a partial basis for Mr. Cass' opinion that there had been no discovery on the claim and the claim was nonmineral in character. The contestee introduced Dr. Wahl's resume into evidence as his own Exhibit Z. The various speculations now raised by the contestee as to how the Wahl examination could possibly have been done better were matters that Mr. Crawford should have taken up with Dr. Wahl before sending the report to the Government. In any event, his argument that the samples taken were from the surface only and the report was not complete do not render the report inadmissible but go only to the weight which can be given it.

The contestee further argues that the sampling procedure followed by Mr. Cass did not result in representative samples. This argument is totally irrelevant to his chain of custody objection to the Government's prima facie case. Mr. Crawford asserts that the samples were not taken from a mineable width, which is true only as to the November 27 sampling. On that date, Mr. Cass varied from his customary practice in taking a mineable width because Mr. Crawford had complained that he had not taken enough of the high grade material. He sampled only across the pods of hematite exposed out of academic curiosity to see if there really were values found in this so called high grade material that

may have been appreciably diluted by his previous sampling across a mining width (Tr. 60). The assay of these samples showed values higher than the mineable width samples.

The contestant's initial evidence is fully sufficient to constitute a very strong prima facie case. The contestant not only presented the testimony of the results of an examination and testing of the material exposed on the claim in issue by a capable and qualified mineral geologist, but testimony and opinions by qualified registered assayers who found no significant values in the material submitted for testing. Both assayers used and evaluated the contestant's submitted "pyro-chemical" technique of assaying and expressed their considered opinion that it had no scientific basis and was therefore valueless.

The governing case law states that in a Government contest against a mining claim, once a prima facie case has been established, the burden of proof then shifts to the contestee who must establish the validity of the claim by a preponderance of the evidence. U.S. v. Ramsey, et al., 84 IBLA 66, 70 (1984); U.S. v. Anderson, et al., 57 IBLA 256, 260 (1981); U.S. v. Zweiffel, 508 F.2d 1150, 1157, (10th Cir. 1975); U.S. v. Springer, (9th Cir. 1974) 491 F.2d 259, cert. denied, 419 U.S. 834 (1974); Foster v. Seaton, 271 F.2d 836, 838 (D.C. D.C. 1858).

In order to meet this burden, the contestee must satisfy the "prudent man" test first enunciated in Castle v. Womble, 19 L.D. 455, 457 (1894), and approved by the Supreme Court in Chrisman v. Miller, 197 U.S. 313, 322 (1905). It requires that the contestee prove, by preponderating evidence, that "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 the reasonable prospect of success in developing a valuable mine." Implicit in this definition is the requirement that the mineral may be mined, removed, and marketed at a profit. U.S. v. Coleman, 390 U.S. 599 (1968); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied 393 U.S. 1038 (1969), U.S. v. Pierce, 75 ID 270, 278-279 (1968); Thomas v. Morton, 408 F.Supp. 1361 (D.C. Ariz. 1976) aff'd. 552 F.2d 871 (9th Cir. 1977).

In order to demonstrate the likelihood of profitability, the claimant must show the anticipated mining or extraction method and the beneficiation, metallurgical or other process to be used. Discovery is usually established by a mineral deposit that can be mined by conventional means. The alleged success of unconventional means should be

demonstrated by actual experiments. U.S. v. New Jersey Zinc Co., 74 ID 191 (1967), dismissed with prejudice Civil No. 67-C-404 (D. Col. Jan. 5, 1970); U.S. v. Ramsey, 14 IBLA 152 (1974). The prudent man must act on the basis of actual facts at the time, not mere hope or conjecture. U.S. v. Heldman, 14 IBLA 1 (1973); U.S. v. Jenkins, 75 ID 312 (1968).

#### Contestees' Evidence

Larry Billman, an investor in Casi Mining and Mineral Exploration with no previous mining experience, testified that he was hired as a supervisor to oversee the removal of the material from the Cheryl Anne claim for sale. In November of 1983, he took samples from the claim for the purpose of having them processed by a Dr. Brown. Unable to locate Dr. Brown, he stopped by mere chance at West Star Processing, a company in joint venture with Ramstar Corporation, and talked to Dan Galde. He seemed interested and told Mr. Billman that his company assays and refines precious metals. Mr. Billman gave Mr. Galde the samples and approximately 5 days later returned and was provided with a letter dated December 1, 1983, addressed to Mr. Charles M. Crawford stating that the assay of the ore samples delivered resulted in a recovery of more than 33 ounces per ton of head ore. Accompanying the letter was a proposal for a joint venture for the mining and recovery of the values contained in the Cheryl Anne claim (Ex. B-3).

The proposal was for Ramstar Corporation to purchase 2,000 pounds of high grade vein ore from the Cheryl Anne lode claim for the sum of \$5,775 based on the Ramstar proprietary assay process of the samples delivered showing 33 ounces plus of gold and platinum group metals per ton having a value of \$350 per ounce equaling \$11,550. Fifty percent or 5.775 was to be tendered as the total purchase price. Ramstar Corporation was to refine the ore purchased, and if values are consistent with assays, continue to purchase the same grade of ore at a minimum of 50 percent of assayed value. Ramstar Corporation was to pay all refining and mining costs directly associated with the mining and removing of the ore from the Cheryl Anne lode claim.

The proposal was accepted by Mr. Crawford, and Mr. Galde's employees then excavated 2,000 pounds of material, placed it in 50 millimeter cans, and hauled it out on horseback. Mr. Billman was present at all times and was paid a salary of \$2,000 by Ramstar to assist in the removal. After

delivery of the material, a check was given to Mr. Crawford for \$5,775.

No further work was done as he was told by the Forest Service to cease operations because the land had been withdrawn from mining location.

On cross-examination, he admitted that he had invested between \$5,000 and \$7,000 of his own money and around 6 months of his personal time in working with Mr. Crawford on the Cheryl Anne claim. The only return received on his investment was the salary paid him by Ramstar. The ore has never been processed because a special furnace necessary to refine the ore was never built. Ramstar is no longer in business because of the litigation between Ramstar and its parent company, Great Western. Ramstar has been evicted from its former address and has been unable to continue the joint venture.

The ton of material removed was selected from the higher grade ore, partly from the stock pile and partly from the shaft. It is now in his custody pending the resolution of the litigation.

Daniel Erwin Galde testified as to being approached by Mr. Billman when he was looking for a Dr. Brown. He had a Mr. Dunn, the company's part time assayer, test Mr. Billman's sample provided. Mr. Galde who has no experience as an assayer, chemist, or metallurgist, considered Mr. Dunn to be a qualified assayer, although he was not licensed or registered. The assay report was not signed by Mr. Dunn but by Mr. Galde and stated: "Lead Cupellation method was used to obtain values" (Tr. 628).

At the time of purchase, Mr. Galde was aware of a report prepared by David E. Wahl which concluded that a mining venture on the Cheryl Anne claim would have to be large in scope (Ex. 18), It was never, he stated, Ramstar's intent to enter into a venture that would require a large amount of money or funding. Ramstar also employed Mr. Crawford to head up their chemical laboratory paying him \$1,000 for the period December 23, 1983, through January 6, 1984, on Mr. Crawford's assurance that he had developed a process of extracting values from samples better than Mr. Dunn's proprietary process. In this, he relied upon the recommendation of Mr. Dunn (Tr. 723-4).

No further purchases were made because Ramstar was put out of business on February 22 through a corporate dispute (Tr. 649). Further, it became evident to him that it would

be too risky to try to develop a property in an area where the Forest Service was attempting to remove all prospectors (Tr 659).

On cross-examination, he stated that the role of Great Western in the joint venture with Ramstar and West Star was to generate investment capital to build, develop, and operate a refinery (Tr. 697). On February 22, 1984, Ramstar employees were evicted from the building owned by Great Western and have not regained possession of the premises (Tr. 698-69). No calculations or estimates have ever been made of the costs of refining the minerals from the Cheryl Anne claim (Tr. 703). He admitted he knew nothing of the technical aspects of the recovery process, and his willingness to enter into a joint venture with Mr. Crawford was based on seeing the results of the assays by Mr. Dunn (Tr 728).

John H. Quay, a registered engineer in the State of Arizona, examined the Cheryl Anne claim on January 8, 1984. He noted darkish vein material in the shaft from 2 to 6 inches wide. The rock was composed of rhyolite and he found dark material about 10 inches wide at the bottom. Spots of the black material occurred above the shaft on the face of the over hanging rock. He took one sample which was never assayed; however, Mr. Crawford gave him a sample reportedly taken from the same area which he sent to Mr. Charlie Walter, an assayer in New Mexico. The assay report received showed no platinum but about 56 ounces of silver and .05 ounces of gold per ton. He had entertained the idea of leasing the claim but had never done so (Tr 759). He recommended that Mr. Crawford hire a contractor to open up the shaft and put it in shape for mining at a cost of between \$1,200 and \$1,500 per day. He could not determine whether an operation would be profitable because he did not know how much high value ore was present, the cost of concentration, and the ratio of concentrates to waste (Tr. 771-777). In his report to Mr. Crawford, he recommended that core drilling and further exploratory work be done (Tr. 793).

He stated that Mr. Walter was not a registered assayer because New Mexico has no registration requirement. The report he received was not a quantitative but a qualitative assay. More sampling and assaying would have to be done were he to attempt any development of the claim (Tr. 798).

Reginald L. Barnes, who has a bachelors degree in geology, testified that he worked with Mr. Quay examining the Cheryl Anne Lode Claim on January 8 and 9, 1984. He observed a rhyolite outcrop with a pit exposing mineralized stringers

in the face of the shaft. The face of the outcrop above the shaft was too weathered for him to determine whether there was any mineralization showing in the rhyolite. He took samples, gave them to Mr. Quay for assay, and had no opinion as to gold or silver values which might be in the material. In his report, he recommended more surface sampling and a diamond drilling program to yield information regarding depth, thickness extent, and vein grade at depth (Ex. N). He has had no experience with platinum deposits and was unable to express an opinion as to whether or not the geological climate or environment he saw would be associated with platinum mineralization.

Zahid Tufail, who has a degree in metalurgy and a masters degree in mechanical engineering, testified as to working with Gold Dome Company on unsuccessful attempts to find platinum metal groups in Arizona ores. On request, he ran an assay for gold and platinum group metals on samples brought to him by his employer, Mr. Gene Stowe, using silver as a collector (Tr. 848). No written report was available of the results of the assay, but he recalled that it was probably 5 - 6 ounces of gold and platinum groups. A spectrographic analysis was made of a sample of rock provided by Mr. Stowe which showed the presence, but not the amounts, of platinum, iridium, osmium, palladium, rhodium, iridium, selenium, gold, and silver (Tr. 853, Ex. T).

He watched Mr. Crawford run a testing process but could not state whether it was a sound procedure to reveal the presence of platinum group metals. Using lead as a collector, he performed fire assays on samples provided by Mr. Crawford but didn't get as good a result as he did using silver (Tr. 855). He also performed a spectrographic analysis on pretreated ore supplied and found 8.5 ounces of gold and platinum metal in one sample, 147.92 ounces per ton in a second sample, and 1.7 ounces per ton gold and platinum metal in a third sample (Ex. O).

On cross-examination, he admitted he did not know whether or not the samples assayed by him represented concentrated material. He also admitted that a spectrographic analysis is only semiquantitative and only reveals the presence of minerals, not the precise amounts.

Mr. Crawford called as witness Mr. Farid Malik, who has a bachelors and a masters degree in metallurgical engineering with a specialty in nonferrous metals. He had read the article by Alvin C. Johnson published in the California Mining Journal on the treatment of platinum group minerals by the use of silver as a collector and is in agreement with

the method described. He had also read and agrees with the works of Ginsburg who also uses silver as a collector in assays for platinum group metals.

On cross-examination, he stated that he had, in a general way, applied the assay method used by Ginsburg. He feels that in the assay process silver is better as a collector than lead because significant amounts of platinum in the sample would not be detected with lead. He agreed that lead is used industry wide as a universal collector but was of the opinion that the method used would depend on the type of ore being processed (Tr. 910). In any event, he feels that any new untried method used to extract ore should be tested at a pilot plant level prior to processing at a production level (Tr. 916).

Asked about a process of recovery and flow sheet prepared by Mr. Crawford, d.b.a. Platinum Group Minerals of America, it was his opinion that it could be used to recover about 60 percent of the ore. He could give no details as to Mr. Crawford's procedure because it was proprietary in nature (Tr. 927).

Alvin C. Johnson, Jr., who has a Ph.D. in economic geology and is presently practicing as a geochemist, ran a partial test of a sample given to him by Mr. Crawford on or about November 29, 1984. It was represented to him as taken from a high grade platinate vein in the Superstition Mountain area. He used a standard fire assay method using litharge as a collector, but stated that he did not cupell the lead button obtained because, in his studies where the presence of platinum group metals are suspected, the lead button cannot be depended on to show what can be recovered. Instead, it was submitted to A.S.T. Laboratories for analysis (Tr. 942, Ex. V).

Dr. Johnson's report of January 17, 1985, is clearly in conflict with his testimony (Ex. W). It states:

The resulting button was cupelled. The precious metal bead was then dissolved in 50 percent HNO<sub>3</sub> and taken to evaporation at a temperature of approximately 280°C. The Ag and remaining base metals were extracted with distilled H<sub>2</sub>O leaving a residue of Ag and Au and platinum group elements. This procedure is a partial extraction procedure and the resulting analysis does not include any silver that may be present. The above precious metal residue (dried) weighed 38.3 mg. This material was presented to A.S.T. Laboratories,

Inc. for high temperature emission spectographic analysis. The resulting analysis #5447 is included in this report.

The procedure described followed none of the procedures outlined in his article in the California Mining Journal. Moreover, on the basis of the record, it is impossible to say whether he sent A.S.T. Laboratories an uncupelled lead button, a precious metal button, or something else for spectrographic analysis for the Certified Test Report 5547 (Ex. V) shows the test was actually done on a powder.

Dr. Johnson believes that in the State of Arizona there are a number of occurrences of platinum group elements not in the metal state. In his opinion, the platinates occur as a refractory compound. No one knows exactly what it is, but it is perhaps an oxide or something of this nature. When an attempt is made to collect the precious metals, platinum elements are obtained instead. When it is analyzed under normal circumstances, and when it is presumed that one is dealing with metals or the low valence forms, nothing is obtained. But if the analytical problem is attacked from the standpoint that you are dealing with refractory compounds, one can increase the capabilities of high temperature analysis through varying equipment mechanics, buffers, and things of this nature. He stated that the refractory compounds are resistant to chemicals, temperature, and break down (Tr. 946). If one can collect the platinates from a platinum bearing sample in some fashion and reduce the platinate refractory compounds to metal, then by addition of certain acids, it will dissolve (Tr. 947). When, he stated, you are dealing with compounds in solution which are not what everyone thinks they are, they do not precipitate the way they are supposed, and fire assayers have a very difficult time in working with them (Tr. 948).

The report he received from Mr. Bremmer showed gold 3.35, palladium 0.45, platinum 0.38, iridium 1.45, osmium 6.03, rhodium 0.07, ruthenium 1.67 troy ounces per ton of element, not metal (Tr. 953). Without knowing the exact prices of the worth of the metal, he stated the value would be \$8,000 or \$9,000 a ton (Ex. MC-E). The method used is very expensive, for the cost of the analysis was \$350 as compared to the ordinary \$40 charge for an assay by standard methods.

On cross-examination, he admitted that lead litharge is an effective collecting agent for the platinum group metals which will collect everything with the possible exceptions of iridium, osmium, and ruthenium (Tr. 964). His experience in the extraction or refining of platinum from ore has been



limited to a laboratory basis (Tr. 966). The only commercial extraction of the platinum group minerals he knows of is a secondary extraction in the copper refining process.

Sieg Bremmer, who has done emissions spectroscopy for 25 years in many industries and who now has his own laboratory in Scottsdale d.b.a Atomic Spectroscopy and Testing, described the manner in which he conducted the assay for the sample received from Dr. Johnson. He testified that if commonly tested procedures are used to detect platinum metals, the results are very low. He, however, analyzes the test button with a procedure involving special gas mixtures, special made electrodes, and many other things which he could not count. Only then is he able to vaporize those refractory materials which contain the platinum elements. In his spectro chemical analysis it is important that the material be vaporized, for unless vaporization occurs no lines in the spectrum appear (Tr. 993-4). His opinion is that much more research has to be done to even recognize the platinum group elements. Other techniques have to be developed to reduce the elements (Tr. 995).

On cross-examination, he admitted that he is not registered as an assayer in the State of Arizona. He has been admonished by the Arizona Board of Technical Registration for assaying without a license and as a result applied for a license in spectro-chemistry, but his check was returned because his field was not recognized. He testified he has a secret agreement with several professors at Massachusetts Institute of Technology (MIT) for a method to recover high quantities of gold from ores where certified assayers could find none. In one instance, the geologists involved in the project stated in writing that it is impossible that deposits of gold would exist because the fire assayers always came out with nothing. He took the same ore to the MIT and, using his secret technique, found .05 percent gold. In his analysis, he only verifies the amount of the elements contained and cannot verify what can be recovered (Tr. 1001). At present, it would take a year or two more, if funding is obtained, to perfect his technique. Although he demonstrated to the professors at MIT his proprietary secret process, he could not testify as to the details.

Mr. Broadhead, recalled as an adverse witness by Mr. Crawford, testified that all his experience in assaying has been with the U.S. Bureau of Mines or the military, and that all the analysis performed by his office have followed the generally accepted procedures. Shown samples of yellow material ostensibly the result of processing material from the claim by Mr. Crawford, he was of the opinion that they

could not contain platinum minerals because the platinum group minerals are white (Tr. 1193.) He reiterated that the two samples submitted to him for analysis contained nothing of economic value. When asked if there could be platinum group elements locked in the compound which would not register with the machines available to him, his answer was, "Absolutely not." He further stated that whether the platinum group minerals occur as elements or metals is immaterial in that in either state the values are assayable by techniques employed by him (Tr. 1200).

On redirect examination, he stated that he knows of no platinum group elements that become locked in a type of compound that could not be recovered through conventional assaying techniques. All the companies that are currently producing platinum in the world today use standard fire assay procedure. If they are looking for specific procedures for osmium, iridium, and ruthenium, they will use a different procedure and bring it down as a nickel sulfide matte (Tr. 1220). No company producing platinum or gold uses the chemical digestion procedures of extraction used by Mr. Crawford, for it might take \$2,000 worth of reagents to produce gold or platinum worth \$200 (Tr. 1221). Mr. Crawford's technique, as he understood it, was an unexplained chemical procedure and, although there are chemical procedures for processing platinum and palladium values, they can be evaluated only if the procedures are known step by step.

Mr. Broadhead was present during the testimony of Mr. Zahid Tufail, Mr. Malik, Dr. Johnson, and Sieg Bremmer. The methods of analysis used by them, he stated, has never been proven, fully disclosed in publications, or subject to peer review (Tr. 1228). Specifically, he disagreed with Dr. Johnson's method of using large quantities of silver as a collecting agent instead of lead as used universally throughout the industry. He stated that because the silver may contain quantities of impurities, those impurities will report into the button obtained (Tr. 1233).

The final witness was Mr. Crawford who testified he located the Cheryl Anne lode in May 1979. He first prospected using a sophisticated metal detector which could not only detect metals but voids. He started sinking a shaft to intersect a tunnel, revealed as ovoid in shape, by his detector. He believed the tunnel was part of the old Spanish Peralta silver mine but not part of the Lost Dutchman mine because, he said, "white men excavated square tunnels" (Tr. 1327). In the search, he exposed a black rock or vein which he thought would intersect the rich ore beneath.

He was first encouraged to continue exploration when he was showing some of the black rock from his claim to a group of prospective investors at a seminar he was sponsoring at the Holiday Inn in Scottsdale. A stranger from the audience came forward and using an acetylene torch annealed a silver metal bead from his ore. This man, he said, thought that the bead which has never been assayed was high grade silver, but now Mr. Crawford is convinced that the bead is mostly compromised of platinum group metals (Ex. ii).

Mr. Crawford's testimony was long rambling, disjointed, and impossible to summarize in logical time sequence of events. Basically, he testified that he was a self-taught person who had developed his own secret process for assaying platinum and related elements that could not be disclosed by using conventional assay methods. He did this after seeing a movie at the State Fair Grounds in 1979 that showed a process used in Canada (Tr. 1281-1282). His process had been developed in 1982 and "just recently" perfected (Tr. 1079). Although his process is secret, the first step has been shown to potential investors (Tr. 1144). It allegedly shows even higher values than the "pyro-chemical" technique (Tr. 1046). Mr. Crawford was still unwilling, as of the date of the hearing, to disclose the entire process (Tr. 1045), although he represented that partial disclosure had been made during the hearing (Tr. 1048).

The process, as far as it was described, was lengthy and complicated, requiring a total of 27 steps and several days (Tr. 1417). He treated relatively small amounts of the black material from the Cheryl Anne claim using a series of expensive chemicals.

Many of the exhibits offered by Mr. Crawford were meaningless and without proper foundation. His representations as to the results of his efforts were lacking in verification from any reliable source. The only process disclosed was the "pyro-chemical" technique which was tried by Mr. Broadhead and Mr. Weatherby.

Throughout the protracted proceeding, Mr. Crawford repeatedly characterized his efforts as a patriotic attempt to educate the Government and the established mining and refining industry in the presence of and feasibility of extraction of precious, much needed, metals which are undetectable by any known standard assay procedure.

His claimed unique and advanced knowledge of assaying and refining is derived from extensive self studies in the advanced books of chemistry, physics, metallurgy, and many

years of applied technology in these fields. However, his methods and the methods of those people he has allied himself with and who testified on his behalf cannot be verified or duplicated by other experts in the field. There is always some step, proprietary in nature, which cannot be revealed (Tr. 1415). The prospective investor in Mr. Crawford's ventures, and the ventures of Mr. Crawford's witnesses, must accept their representations of the results obtained by faith alone.

Despite Mr. Crawford's characterization of himself as a prudent person who has surrounded himself with intellectuals who are scientifically minded and who are not stagnated with knowledge, the contestee cannot meet his burden of proof by claiming incredible results by use of secret processes not accepted by industry which have not been applied on any proven basis and which are totally lacking in scientific credibility. The facts and testimony are analagous to U.S. v. Ramsey, 14 IBLA 156, wherein the Interior Board of Land Appeals stated:

Finally, we agree with Judge Ratzman's determination that the appellants' expert witness "utilizes unreliable processes, and provides inaccurate information". Appellants' own samples, when tested by the fire assay method, failed to show the presence of gold in significant quantities. In apparent explanation of the disparity of results between their fire assays and their non-standard assays, appellants' expert witness stated that the gold was "clear down in the atoms" of the associated material. While we do not categorically assert that such pre-Agricolian notions of metallurgy are totally invalid, neither do we believe that such evidence is entitled to probative weight without a showing of its scientific basis." (Citations omitted.)

Aside from these obvious deficiencies, the Contestee has totally failed to offer evidence as to the tonnage of the alleged deposit, or to demonstrate how it would be extracted, treated, processed and sold at a profit. There is almost no testimony as to type of the equipment needed, its cost, the size of the crew, their wages, or transportation costs. This sort of information is especially critical here, since the claim is in a Wilderness Area and operations could be subject to special constraints. Lacking this sort of information, there is no way to determine whether the operation would be profitable and thus meet the prudent man

test. This fundamental failure of proof is fatal, in and of itself, to the contestee's case.

Mr. Crawford testified as to his association with Ramstar in the joint venture where Ramstar purchased 1 ton of head ore and characterized his receipt of \$5,075 as clear profit. He stated that the venture fell through only because of corporate difficulties. When he attempted to set up his own processing plant, he was only able to do it on a very limited scale and without the aid of the proper furnaces to melt it into the proper proportion required by Englehart Industries to purchase the silver ores to be produced (Tr. 1474-6).

Nevertheless, he testified that he would still be willing to work with Mr. Galde on a small basis by taking the ore out by helicopter or horse or other means permitted by the Forest Service in the Wilderness Area. He would be willing to demonstrate and produce metals for the U.S. Government stockpile, if requested, at his own expense as a true patriot of this nation (Tr. 1477).

The contestee claims that this one transaction on December 26, 1983, clearly proves that he can sell the ore from the Cheryl Anne claim at a profit. However, the circumstances of this alleged transaction are so peculiar that it deserves a detailed exposition.

Larry Billman testified that he gave a box of samples from the claim to Dan Galde at West Star Processing, Inc. (Tr. 361) who had them assayed. Mr. Billman recalled that Mr. Galde's assay showed 33.2 or 33 point ounces of something (Tr. 362). These results were evidently obtained in the report of a "fire assay" report dated December 1, 1983, by Les Dunn (Ex. D-5).

Mr. Dunn was not a registered assayer, nor was he employed by West Star as a full time assayer (Tr. 709). He used a secret process of assaying known as the "Ramstar proprietary process assay" (Tr. 705, Ex. D-4). The components of the Ramstar secret process were completely unknown to Dan Galde (Tr. 705-706), although he was doing business as Ramstar (Tr. 618) and signed Contestant's Exhibit D-4 as president of that corporation.

On the basis of this single assay by a part time and unregistered assayer, using a proprietary assay process Mr. Galde did not purport to understand performed on a box of samples taken by unspecified means, Ramstar paid Mr. Crawford \$5,775 outright for a ton of similar material to be taken from the

claim at a later date (Ex. D-1). Mr. Billman, although Mr. Crawford's manager, was put on the payroll of Ramstar to assist in gathering the material. Ramstar also hired Mr. Crawford to head up their chemical lab paying him \$1,000 for the the period between December 23, 1983, through January 6, 1984 (Tr. 724). This was done because Mr. Crawford had a secret process of extracting values from ore samples that would yield even higher results than Mr. Dunn's secret process (Tr. 723, 724). In hiring him, Mr. Galde relied on the recommendation of Les Dunn (Tr. 731).

On this basis, Ramstar issued the Statement of Proposal dated December 1, 1983, whereby Ramstar agreed to purchase the 1 ton of material from the Crawford claim and to purchase other ore at the rate of "a minimum of 50 percent of the assayed value," and to pay all refining costs and all costs of removing the material from the claim. All of this activity, allegedly resulting from a single assay report from an unregistered part-time assayer, dated the same day as the letter and proposal to Mr. Crawford. The material was subsequently removed and Ramstar made full payment on December 26, 1983, a date surprisingly near the statutory withdrawal date.

Ramstar planned on processing the ore at a facility owned by West Star at 35 North Perry Lane in Tempe. Moreover, West Star and Ramstar were joint venturers with Great Western which was to provide venture capital, and Sommers and Hammond which was to generate investment capital (Tr. 696, 697, 698). Although Ramstar intended to refine the precious metals through an unexplained proprietary process, refinement could not be carried out with the equipment then at the facility (Tr. 702). Mr. Billman understood they "were in the process of putting together their particular refining process" (Tr. 410) and needed "this special furnace" which had to "go on line before they processed the ore" (Tr. 410-411).

The effort then collapsed in a welter of recriminations and lawsuits. Ramstar was evicted from its place of business during events characterized as "a corporate dispute" by Mr. Galde (Tr. 648) and by Mr. Billman as "some internal affairs problems" (Tr 411). The simple facts are that Ramstar was evicted from its place of business on February 22, 1984, by armed security people carrying out a writ of forcible detainer brought by Great Western (Tr. 698, 699, 700) for alleged nonpayment of rent (Tr. 700). Mr. Galde, Ramstar, and others were subsequently sued for \$600,000 and the Contestee stipulated at the hearing that

Ramstar no longer has any capability of carrying out the joint venture agreement (Tr. 1485). Mr. Galde testified that the joint venture idea had already been dropped and the decision was made on the basis of a number of factors that did not include the lawsuit (Tr. 676, 678).

Apparently, Ramstar also dropped the idea of refining the 1 ton of material it had purchased and thereby recouping at least the price it paid for the material. Mr. Billman appropriated the ton on behalf of Mr. Crawford, who now holds the material, asserting that he "owes" Ramstar for 33 ounces of platinum, and the remaining precious metals in that material belong to him (Tr. 419). Mr. Crawford's concession that he "owes" Ramstar is evidently in lieu of the more direct approach of at least refunding the \$5,775 purchase price to Ramstar before seizing this material. As of the date of the hearing, Mr. Crawford had not refined the alleged precious metals from this material either, despite his representations that he was in need of funds and had an effective, albeit secret, extraction process.

The transaction between the contestee and Ramstar, et al., is, when examined in the light of all of the testimony and evidence offered, on its face nothing more than a promotional gimmick gone awry. Ramstar, et al., might have obviously needed some sort of contracts with alleged gold producers, regardless of their true value, so that their associates could promote stock sales and raise "venture capital" and "investment capital." At most, there was a single sale, based on a single valueless assay, that led to nothing. In no sense can Mr. Crawford's somewhat convoluted dealings with Ramstar be regarded as a regular sale or a normal business transaction with a legitimate refiner of precious metals.

### Conclusion

The burden of proof in these proceedings, once the Government made out its prima facie case, is on the contestee. This burden cannot be met by generalized and unsupported allegations of misconduct on the part of federal employees as has been done by Mr. Crawford. He has made repeated allegations that there is a conspiracy against him by Forest Service personnel to unlawfully deprive him of his property and ruin him. He has been given every opportunity through cross-examination and his own witnesses to substantiate these allegations and has failed totally. There is a presumption of regularity that attends the official acts of public officers. This presumption is applicable to a

Government mineral examiner who collects samples from a mining claim and sends them to an independent laboratory for assay to determine their mineral content. It would also apply to the actions of Mr. Broadhead, who assayed samples from the Cheryl Anne claim. It would apply to actions taken by Mr. Van Driel, who evidently approved Mr. Crawford's operating plans. In the absence of clear evidence to the contrary, courts presume such officers properly discharged their duties. Rebuttal of such a presumption requires substantial countervailing evidence, U.S. v. Marvin C. Ramsey, 84 IBLA 66, 69 (1984). None was forthcoming. Moreover, in meeting its burden of proof, the mining claimant is required to produce a preponderance of credible evidence. The trier of fact is not required to believe or give weight to evidence which is inherently incredible. U.S. v. Marvin C. Ramsey, supra, at 69. The contestee has made the assertions that are inherently incredible and then retreats behind a veil of self serving secrecy when asked to produce objective evidence that would allow independent verification. Although some of these incredible results were allegedly obtained as early as 1982, the Contestee's have been unable to persuade either registered assayers, legitimate purchasers of precious metals, any Government agency, or any responsible individuals actually producing gold or platinum (as contrasted with those producing stock promotion schemes) of the validity of his alleged secret methods. At most, he has attracted a few unwary investors, such as Mr. Billman. Even though his self-developed techniques have evidently been available since 1982, and the claim allegedly consists of mineralization almost rich beyond the imagining, there has been no actual production whatsoever prior to the statutory withdrawal date. The single ton of material that was removed, and ultimately ended up in the contestee's hands, has never been processed, despite the contestee's assertions that it is rich in value and he has a perfected and commercially viable extraction process.

By no stretch of the imagination can it be said that the contestee offered sufficient evidence to meet the prudent man test. The evidence that was offered was wholly incredible and unplausible. Moreover, the contestee did not offer evidence that the claim could be worked profitably, although there were vague references to some sort of a pilot plant operation at an indefinite future date. This is pure speculation only. A few high assays obtained through unverifiable means are certainly no substitute for a discovery. U.S. Clyde L. Weekly, 86 IBLA 1, 6 (1985).



In view of the above findings and conclusions, the Cheryl Anne lode claim must be and is declared to be null and void.

  
John R. Rampton, Jr.  
Administrative Law Judge

**APPEAL INFORMATION**

The Contestee, as the party adversely affected by this decision, has the right of appeal to the Interior Board of Land Appeals. The appeal must be in strict compliance with the regulations in 43 CFR Part 4. (See enclosed information pertaining to appeals procedures.)

Enclosure (Information pertaining to appeals procedure)

Distribution  
By Certified Mail:

Charles M. Crawford  
Platinum Group Metals of America  
9701 W. Peoria Avenue  
Peoria, Arizona 85345

Charles M. Crawford  
dba Casi Mining and Mineral Exploration Co.  
c/o Larry Billman  
7841 N. 59th Lane, Apt. A-24  
Glendale, Arizona 85301

T. Adrian Pedron  
Office of the General Counsel  
Room 4017, Federal Building  
517 Gold Avenue, SW  
Albuquerque, New Mexico 87102

By Regular Mail:

State Director  
Bureau of Land Management  
Siete Square Building  
3707 N. 7th Street  
Phoenix, Arizona 85014

Deputy Regional Forester  
Region 3  
517 Gold Avenue, SW  
Albuquerque, New Mexico 87102