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07/19/88

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES FILE DATA

PRIMARY NAME: PICO ACE GROUP

ALTERNATE NAMES:

GEORGE FREEMAN PIT
SOFPA CLAIMS
ESTA BALES CLAIMS

PINAL COUNTY MILS NUMBER: 670

LOCATION: TOWNSHIP 9 S RANGE 4 E SECTION 24 QUARTER W2
LATITUDE: N 32DEG 37MIN 40SEC LONGITUDE: W 111DEG 55MIN 00SEC
TOPO MAP NAME: NORTH KOMELIK - 7.5 MIN

CURRENT STATUS: PAST PRODUCER

COMMODITY:

SILICON SMELTER FLUX
SILVER
LEAD
GOLD

BIBLIOGRAPHY:

ADMMR PICO ACE GROUP FILE
ALSO USGS VAIVA VO 7.5 MIN QUAD



Riser
1493
E ST CLAIR

14

13

North Komelik 7.5

23

24

x 1633

x Prospect
x 1637

BM 1533

23

24

Prospect

Rice Group
Sec. 24 W2

LAKE

ST CLAIR

26

25

Wash

Wash

Tat

35

36

Jack's Mine

Turning Point Mine

Desert

Rosa

North Komelik 7.5

4WD

1571

1571

1571

1571

1571

1571

1571

1571

Active Mine List April 1967 - 2 men

Conference with Nate Coxon (Casa Grande) and Robarts at Orizaba

These men reported that American Exploration & Mining Company, 23rd floor, Russ Bldg., San Francisco, California, drilled a test hole just west of the Orizaba mine (between April 19 and May 16) R. G. Garwood, was field engineer, on the drilling. William Yust, who is chief field engineer was observing the operation. Metler Brothers Drilling Co. of Tucson, 4001 E. Illinois St., Tucson (327-4268), drilled one hole and were moved off by the 17th of May. Results were considered unsatisfactory. Drilling conditions were described as difficult due to broken ground. Memo LAS 5-17-67

Orizaba and Pico Ace 1-3 Mines in Tat Momoli Mountains - Robart Dozer Co. during the first half of the year operated a silica pit on the Pico Ace Claims and then shifted to the Orizaba Mine when Freeman moved out. They mined and delivered 1000 tons per month to the New Cornelia Smelter at Ajo. This averaged 91% SiO₂ and \$0.75 to \$1.00 per ton in silver. The silver saves the operation, much of the value is used by a 90-mile truck haul to Ajo. The Robarts are good operators and have improved the pit considerably. The L. A. Drilling Co. of Casa Grande optioned the adjoining Pico Ace Claims and two other claims and drilled some shallow holes (which most observers felt were too shallow) and David Osborn reported very weak results. He kept watch on this drilling since Newmont was possibly interested if results were good. Later American Exploration & Mining Co., 23rd Floor, Russ Bldg., San Francisco, drilled a hole on the Pico 1-3 Group, under R. G. Garwood, Engr. and Wm. Yust, general supervisor. Results were not good. This was preceded by geophysical work. They were in the area from mid-April to mid-May, but the geophysical work was done earlier in 1967. The Robarts report small lenses of lead-silver ore that carry up to 40 oz. Ag are occasionally encountered. The L.A. Drilling Co. is composed of Lester Cox and Art Wilson of Casa Grande. Both are gone now.
LAS Annual Report 6-1967

Active Mine List April 1967 - 2 men

KAP WR 4/22/83: Lance Vanderzal, BLM Mining Engineer, Yuma District reported the Pico #1 and the Pico #2 on the Papago Indian Reservation have been the subject of a validity examination and are currently considered valid. The property was supplying silica flux to the New Cornelia Smelter (Phelps Dodge - Ajo) when the smelter was operating. Apparently the Pico #1 and Pico #2 are considered part of the Orizaba Mine, Pinal County. The Orizaba was itself "dumped" years ago. The Pico #1 and #2, according to Mr. Vanderzal have a large reserve of +90% SiO₂ silica flux for use at Ajo. The BLM microfiche shows the Pico #1 and #2 to be in Section 24, T9S R4E. They are AMC 80062 and 80063 and shown as owned by Richard G. Clemons, Box 962, Casa Grande, AZ 85222 and Ira Wagon, P.O. Box 382, Casa Grande, AZ 85222. A claim, AMC #78228 known as the Old Orizaba is shown as located across the boundary of Sections 25 and 26, T9S R4E. This claim is shown to be held by A. W. Robart, 4916 W. Softwind Dr., Glendale, AZ 85310. Arizona DMR mine files known as "Orizaba Mine, Pinal County" and "Pico Ace, Pinal County" both discuss silica flux production from the Orizaba and the Pico claims. It is likely these are nearly but different locations. The claims which were the subject of the BLM examination were the Pico #1 and Pico #2 (AMC 80062 and 80063).

Conference with Art Robart and Lester Cox and visit

The mining equipment has been moved onto the east crest of the present open-cut. This was necessary because the present pit has a very steep and rough access ramp. This cut should eventually widen the present pit and give the operators a better access situation. They are still shipping at the same rate. Wilson & Cox who drilled several test holes on the Pico Ace are moving their drills to the Christmas Gift to test the ore zone. According to Cox there are two granite porphyry dikes that cross the limestone in a general NE-SW direction. Along the north side of one of these is a replacement vein that dips steeply NE. A hundred feet east of this is a flat replacement zone that borders the same dike and pitches 15-20 degrees SW. It is their intention to explore the intersection if any, of the two ore zones. Some NW-SE premineral faulting helps to isolate or control the two ore zones. Memo LAS 6-7-66

Conference with Nate Coxon and visit

No one was at Pico Ace or the Orizaba but Nate Coxon said that Robart Dozing had both the Orizaba and the Pico 1-3. They have now moved their equipment up to the Orizaba near where George Freeman was working. This will be checked next week on the way to Ajo. Memo LAS 9-21-66

No one was at the mines, but Robart Dozing Company is shipping 40 to 50 tpd to the Ajo Smelter. They now have the Orizaba, formerly worked for silica flux ore, by George Freeman, Casa Grande. The equipment was moved from Pico Ace 1-3 to Orizaba, which adjoins the Pico Group, both being owned by Ira Wagnon, et al, of Casa Grande. The option, briefly held by L. A. Drilling Company of Casa Grande, was dropped after a few reportedly disappointing holes were drilled. Memo LAS 10-4-66

Mr. Robart said they were shipping at the usual rate of 40 tons, or more, per day and they were getting enough silver credits to make the deal go. The Robarts have reshaped the Orizaba pit by developing a broad bench on the northwest side of the old George Freeman pit. This bench can be carried with much additional height for several hundred feet to the NW. The present working face is over 100 feet long and up to 30 feet high. The overall working set-up is much improved over the pit conditions at the Pico 1-3 although the average silver content is not expected, over the long haul, to be good. This new location eliminates $\frac{1}{4}$ mile of fairly steep and not too good road. The present bench is only a few tens of feet above the flat surrounding the Orizaba. Memo LAS 12-6-66

American Exploration and Mining Company, 23rd Floor, Russ Building, San Francisco, Calif., is doing a geophysical survey of an area in the south half of the Tat Momoli Mountains, particularly around the Orizaba and Pico Ace Groups. Part of this ground could be affected by backup water from the proposed Santa Rosa Wash Dam. They are employing resistivity, I.P. and other electrical methods. Two objectives were raised to further or more extensively work in this area and both are probably valid at present (1) The proximity of the area to the Santa Rosa Dam Reservoir. (2) The uncertainty of what the Indians would do if discoveries are made. The first objection might be in part overcome but Wm. Yust, Field Engineer, said the Indian problem is entirely unpredictable. The experiences that Newmont et al, in the Vekol has had with their lease has sort of put a damper on the enthusiasm of prospectors in the Papago Reservation.

American Exploration maintains an Arizona office at 2901 N. Baxter, Tucson, Robert Garwood, Project Engineer. LAS Memo 12-6-66

SiO₂ and \$1.00 to \$1.25 in silver. Emphasis has been toward the east side of the quarry because the silver content is best on that side. The pit is now 100 feet long (in a NE direction), and 18-30 feet wide, and averages 40-45 feet deep. The emphasis on the silver is necessary as this silver content is the source of the little profit, if any, that is made. The long haul of 90 miles, or more, is tough to overcome against \$4.50 to \$5.00 per ton for the silica. LAS Memo 4-5-66

Al Wilson visited office and said he had optioned the 6 Pico Ace Claims, and drilled 5 holes in the last month up to 313 feet deep. (address P.O. Box 535, Casa Grande)
Note LAS 5-6-66

Conference with Al Wilson and Lester Cox

According to these men, they leased these claims about 6 weeks ago, along with the adjoining Sofpa 1-2 owned by Ira Wagon of Casa Grande. They since have drilled 5 holes from 120 to 313 feet deep. They showed some bands of fair silver mineralization which is associated with lead. They plan further exploratory work later on. They will furnish more detailed data later on. They previously had been hired by Newmont at the Republic drill sites.
Memo LAS 5-10-66

Visit and conference with A. W. Robart, Cox and Wilson

According to Lester Cox and Al Wilson of Casa Grande, they had optioned the Pico Ace 1-6 and 2 Sofpa claims adjacent to the Pico Ace Group on the north. They so far have drilled 7 test holes 120 to 313 feet deep and had encountered vein material that carried some silver and lead, but generally results were spotty. The two drills are now located 1 mile NE to the Pico Ace No. 1 and Orizaba where further drilling is being done. The Sofpa claims were owned by Ira Wagon, of Casa Grande who still retains the northernmost Sofpa claims. According to Robart, this transaction did not effect their silica lease. He also reported that his silver values were between 0,75 oz. and 1.50 ounces but averaged about \$1.00 per ton. Local stringers and lenses run more. The silica is assaying about 88 percent.

Robart and Wagon had also received our letter relative to Santa Rosa Wash Dam, etc. They all (including Wilson and Cox) will attend the Tucson meeting, meanwhile are going to go to Sells and see if the Indians might have larger maps of the area. They all expressed gratitude that we had notified them since the Indians could not be bothered, or would not, let them know. Robart said the Indians have devious ways of doing things, or do not know what Washington is up to. LAS Memo 5-18-66

Mine visit and Conference with Ralph Smith

The silica pit has been widened at the north face and deepened about 5 feet from its position in April. The approach ramp was cut down some, but this ramp is still quite steep. Smith was stripping 8 inches to 1 foot of caliche off of the west crest of the pit over a width of about 15-20 feet and a length of 30 feet. The remaining 70 feet is practically clear. The silica beneath this west segment is good grade (about 89-93 percent silica) but it is lower in silver content as compared to the north and east faces. The east face is split, in the middle, by a narrow vein that trends NE and dips SE, and which assays up to 3 ounces silver and carries bunches of oxidized lead minerals, (mostly anglesite and mimetite). A flat fault has been uncovered in the west face and this trends NW and dips about 45-50 degrees NE. Under this fault the same type of mineralization as that seen in the vein on the east face appears to be coming in. The drillings, from the holes, that cut through the fault are brown or reddish-brown.

The present production rate is about 45-50 tpd. The last few truckloads ran 91.5 percent silica and only 0.5 oz. silver to the ton. Memo LAS 5-19-65

Visit and conference with Ralph J. Smith

Robart, et al, are still shipping 2 trucks (45 tons) per day of siliceous flux that assays 89-91 percent silica and 45 to 60 cents per ton in silver. LAS Memo 6-1-65

The mine is delivering 2 trucks (50 tons) per day of 91 percent silica flux to New Cornelia. They are blending 1 part of high silver ore with 2 parts of low silver ore so as to hold the silver at about \$1.00 in silver per ton. The high silver ore runs 87 percent SiO₂ whereas the low silver ore runs 93 percent SiO₂. A 2 yard front loader is used to haul the flux from the pit and mix it in a stockpile, where truck loading is done. As long as the silver content is \$1.00 or more, some money can be made.

Visit and conference with Art Robart and Ralph Smith - 9-22-65 LAS

At present they are hauling 50 tons a day of flux to New Cornelia that averages 89 to 90 percent silica and about 0.75 to 1.25 oz. silver to the ton. Recent work has advanced the pit some 20-25 feet further west and a narrow tongue for 15-20 feet to the NE from the previous NE corner of the pit. The silver appears to largely occur in the NE extension and is affiliated with anglesite and some galena. Ambolite (?) appears to be the silver mineral while the anglesite and argentite are probably the silver minerals in the galena. Narrow stringers in the quartzsite appear to be carrying the silver-lead minerals. These are 1/8 to 1½ inches wide and are sporadic and discontinuous (pinching and swelling locally.) The present silica contract calls for 1000 tons per month. The approach ramp has been flattened somewhat. LAS 12-7-65 Visit and conference with Ralph Smith & the two Robarts

* The Pico according to Smith, was again ready to ship after having had road troubles for a week after a 4-inch rain in an hour. LAS WR 1-22-66

Slate Mountains District - Pinal County (Tat Momoli Mountains)
 Mine visit and conference with Art Robart.

The Pico 1-3 is operating steadily at 40-45 tons per day of silica that assays 88 percent

PICO CLAIMS

PINAL COUNTY
SLATE MOUNTAIN DISTRICT

MEMO - Visit and Conference with Ralph Smith 2/2/65

Ralph Smith stated that they were shipping about 25 tons per day to Ajo. This material has averaged 90 percent silica and 3/4 to 1 oz. silver to the ton. They now have a silica pit established. It is 30-35 feet long, 15-16 feet deep at the face and 15 feet wide. It ramps to the south. Several iron-oxide stained veinlets carry the silver. Lime in most of the pit area is below 2 percent. This is largely present as caliche in the upper three feet of the quartzite bed. The bottom is very good. Stripping has been completed on the west side of the pit and the new area is clear for flux mining. The additional 15-20 feet will make the pit more workable.

LAS 2/2/65

Mine Visit and Conference with Ralph Smith, 4/8/65.

The pit has now been enlarged to 70 feet in diameter and up to 20 feet deep and is approached from the south by a steep ramp. The ramp had been drilled and was ready to blast, and according to Smith, is composed of silica and stringers containing lead and silver. The lead-silver vein has widened from a few inches in the W face to more than 2 feet in the E face. The crest of the open cut around the pit is capped by 0 to 2½ feet of caliche. It is planned to roof this caliche, which is fairly soft and remove it with a dozer. The bottom of the pit is said, by Smith, to be averaging 91-93 percent silica and 0.75 to 1.10 oz silver to the ton. During March 1000 tons of silica flux were delivered to Ajo and this averaged plus 91 percent silica and about \$0.85 in silver, but the material from the pit bottom averaged more silica. An old 40-foot shaft on the vein immediately east of the pit was sampled and its lower half ran 5 ounces silver to the ton. The lead-silver vein contains galena, anglesite and massicot (brown-orange PbO) and some embolite and cerargyrite. Manganese and iron oxides also are associated. The limonite is brown (seal color) and is mainly the type derived from cerussite.

*
MEMO LAS 4/8/65

* GENERAL REFERENCES

REFERENCE 1 F1 < ADMR FILE DATA >
 REFERENCE 2 F2 < ABGMT - USBM FILE DATA >
 REFERENCE 3 F3 < USGS MF-934 >
 REFERENCE 4 F4 < >

U.S. CRIB-SITE FORM

RECORD IDENTIFICATION

RECORD NUMBER B10 < >
 REPORT DATE G1 < 8, 2, 0, 3 >
 RECORD TYPE B20 < X, 1 M >
 INFORMATION SOURCE B30 < 1, 2 >
 DEPOSIT NUMBER B40 < >
 FILE LINK IDENT. B50 < USBM 004 021 0965 >
 REPORTER(SUPERVISOR) G2 < ROTH, FRANCES A. > (last, first, middle initial)
 (GERT, DON) (last, first, middle initial)
 REPORTER AFFILIATION G5 < ABGMT >
 SYNONYMS A11 < PICO ACE GROUP >
 SITE NAME A10 < PICO MINE >

LOCATION

MINING DISTRICT/AREA A30 < PLATE DISTRICT >
 COUNTY A60 < PINAL >
 PHYSIOGRAPHIC PROV A63 < 1, 2, 4 >
 DRAINAGE AREA A62 < 1, 5, 0, 5, 0, 3, 0, 5, 4 >
 QUADRANGLE NAME A90 < SILVER REEF MOUNTAINS > (1, 1, 9, 4, 2)
 SECOND QUAD NAME A92 < >
 ELEVATION A107 < 1, 1, 5, 0, 0, 0, FT >
 STATE A50 < A, Z >
 COUNTRY A40 < U, S >
 LAND STATUS A64 < 4, 7, 4, 4 >
 QUADRANGLE SCALE A100 < 6, 2, 5, 0, 0 >
 SECOND QUAD SCALE A91 < >

UTM
 NORTHING A120 < 3, 6, 0, 9, 7, 5, 0 >
 EASTING A130 < 4, 1, 4, 2, 5, 0 >
 ZONE NUMBER A110 < 1, 1, 2 >

* ACCURACY
 ACCURATE ACC (circle)
 ESTIMATED (EST) < POSITION ESTIMATED TO HILLSIDE >
 IN SE OF SECTION 23, NEAR ORIZABA MINE >

GEODETIC
 LATITUDE A70 < > N
 LONGITUDE A80 < > W

CADASTRAL
 TOWNSHIP(S) A77 < 0, 0, 9, S >
 SECTION(S) A79 < 23 >
 SECTION FRACTION(S) A76 < SE >
 MERIDIAN(S) A81 < GILA AND SALT RIVER >
 RANGE(S) A78 < 0, 0, 4, E >

POSITION FROM NEAREST PROMINENT LOCALITY A82 < ABOUT 5.5 MILES NORTH NORTHWEST OF PRIBTA PEAK >
 LOCATION COMMENTS A83 < LOCATED NEAR THE ORIZABA MINE >

COMMODITY INFORMATION

*COMMODITIES PRESENT C10 <A.G., B, S.I.L., M.O., >
 ORE MINERALS C30 <GALENA, ANGLESITE, WULFENITE, MASSICOT, EMBOLITE, CERARGYRITE, CERUSSITE, ARGENTITE>
 COMMODITY SUBTYPES C41 <>
 GEN. ANALYTICAL DATA C43 <>
 COM. INFO. COMMENTS C50 <>

* SIGNIFICANCE

	PRODUCER	NON-PRODUCER
MAJOR PRODUCTS	MAJOR <A.G., >	MAIN COMMODITIES PRESENT C11 <>
MINOR PRODUCTS	MINOR <P.B., S.I.L., >	MINOR COMMODITIES PRESENT C12 <>
POTENTIAL PRODUCTS	POTEN <M.O., >	
OCCURRENCES	OCCUR <>	OCCUR <>

*PRODUCTION

	PRODUCER	NON-PRODUCER
PRODUCTION <input checked="" type="radio"/> (circle)	PRODUCTION SIZE <input checked="" type="radio"/> MED <input type="radio"/> LGE (circle one)	PRODUCTION UND NO. (circle one)

*STATUS

EXPLORATION OR DEVELOPMENT

	PRODUCER	NON-PRODUCER
	STATUS AND ACTIVITY A20 <4>	STATUS AND ACTIVITY A20 <1>

DISCOVERER L20 <>
 YEAR OF DISCOVERY L10 <> NATURE OF DISCOVERY L30 <> YEAR OF FIRST PRODUCTION L40 <1955> YEAR OF LAST PRODUCTION L48 <1966>
 PRESENT/LAST OWNER A12 <LOW PURIGRASKI AND D.H. JACKSON (1960)>
 PRESENT/LAST OPERATOR A13 <A.W. ROBERT (1967)>
 EXPL./DEV.COMMENTS L110 <>

DESCRIPTION OF DEPOSIT

DEPOSIT TYPE(S) C40 <VEIN>
 DEPOSIT FORM/SHAPE M10 <LENSES>
 DEPTH TO TOP M20 <> UNITS M21 <> MAXIMUM LENGTH M40 <> UNITS M41 <>
 DEPTH TO BOTTOM M30 <> UNITS M31 <> MAXIMUM WIDTH M50 <> UNITS M51 <>
 DEPOSIT SIZE M15 <SMALL> M15 <MEDIUM> M15 <LARGE> (circle one) MAXIMUM THICKNESS M60 <2> UNITS M61 <FT>
 STRIKE M70 <NE> DIP M80 <>
 DIRECTION OF PLUNGE M100 <> PLUNGE M90 <>
 DEP. DESC. COMMENTS M110 <VEIN OF SILVER LEAD ORE IN LAYER OF QUARTZITE 4 FT THICK, VEIN VARIES IN THICKNESS FROM A FEW INCHES TO TWO FEET>

DESCRIPTION OF WORKINGS

Workings are: SURFACE UNDERGROUND M130 BOTH (circle one)
 DEPTH BELOW SURFACE M160 <> UNITS M161 <> OVERALL LENGTH M190 <70> UNITS M191 <FT>
 LENGTH OF WORKINGS M170 <> UNITS M171 <> OVERALL WIDTH M200 <70> UNITS M201 <FT>
 DEC. OF WORK. COM. M220 <SMALL PIT 70 FT IN DIAMETER, 20 FT DEEP; OLD SHAFT 40 FT DEEP>
 OVERALL AREA M210 <4900> UNITS M211 <SQ.FT.>

GEOLOGY

*AGE OF HOST ROCK(S) K1 <C.A.M.B., >
 *HOST ROCK TYPE(S) K1A <QUARTZITE>
 *AGE OF IGNEOUS ROCK(S) K2 <>
 *IGNEOUS ROCK TYPE(S) K2A <>
 *AGE OF MINERALIZATION K3 <>
 *PERT. MINERALS (NOT ORE) K4 <QUARTZ>
 *ORE CONTROL/LOCUS K5 <NE STRIKING FAULTS>
 *MAJ. REG. TRENDS/STRUCT. N5 <BEQ TRENDS NW DIPS SW, OVERLAIN BY PALEZOIC LIMESTONE OF UNDETERMINED AGE>
 *TECTONIC SETTING N15 <>
 *SIGNIFICANT LOCAL STRUCT. N70 <NW STRIKING FAULT, MINOR NE STRIKING FAULTS>
 *SIGNIFICANT ALTERATION N75 <>
 *PROCESS OF CONC./ENRICH. N80 <>
 *FORMATION AGE N30 <C.A.M.B., >
 *FORMATION NAME N30A <BOLSA QUARTZITE>
 SECOND FM AGE N35 <>
 SECOND FM NAME N35A <>
 *IGNEOUS UNIT AGE N50 <>
 *IGNEOUS UNIT NAME N50A <>
 SECOND IG. UNIT AGE N55 <>
 SECOND IG. UNIT NAME N55A <>
 GEOLOGY COMMENTS N85 <DEPOSIT LOCATED IN EITHER ABRIGO FORMATION OR BOLSA QUARTZITE>

GENERAL COMMENTS

GENERAL COMMENTS GEN <>



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

UNITED STATES

v.

RICHARD G. CLEMANS ET AL.

*Rec 8/10/748,
Rec acc
Sofpa No 1-4
Pope county
Papago Reservation*

IBLA 78-574

Decided January 17, 1980

Appeal from a decision of Robert W. Mesch, Administrative Law Judge, holding six lode mining claims null and void. (Arizona Contest 9845).

Affirmed.

1. Mining Claims: LOCATABLE PUBLIC LANDS--Withdrawn Lands--effect of withdrawals--establishing valid claim--prior claims.

When land is withdrawn from all forms of entry, location, and exploration subsequent to location of a mining claim, the validity of such claim cannot be recognized unless (1) it was perfected by a discovery at the time of withdrawal, and (2) it has been continuously supported by the same discovery to the present; that is, at the time of the hearing.

2. Mining Claims: PATENTS; PRACTICE AND PROCEDURE--Contests--determination of validity--Res Judicata; REGULATIONS--Applicability.

A decision in 1959 withdrawing charges of lack of discovery is not res judicata as to subsequent inquiry. The earlier decision merely established that claimants' possessory interest in claims had not been extinguished by Act of May 27, 1955, 69 Stat. 67, withdrawing lands from all forms of mining activity. Unless and until patent issues, title to the claims in controversy remains in the United States, and it may inquire into the extent and validity of rights claimed against it.

3. Mining Claims: DISCOVERY--Nature of Requirement--burden of proof--determination of validity--extent of deposit--Proof--

INDEX CODE:

43 CFR 4.451
43 CFR 1810.3

45 IBLA 64

GFS (MIN) 24 (1980)

determination of validity; PRACTICE AND PROCEDURE---Contests--burden of proof--determination of validity--evidence--prima facie case.

When the Government contests the validity of a mining claim, it has only the burden of establishing a prima facie case; the burden then shifts to the contestee, who is proponent of a claim or right against the United States, to adduce evidence which by a preponderance affirmatively demonstrates the validity of the claim and thus that the charges are untrue.

4. Mining Claim: PRACTICE AND PROCEDURE---Contests--determination of validity--evidence--Hearings--evidence--witnesses.

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

5. Mining Claims: DISCOVERY---Nature of Requirement--determination of validity--duty of mineral examiner--Proof--maintenance of discovery points; PRACTICE AND PROCEDURE--Contests--determination of validity.

Where an alleged point of discovery is inaccessible by reason of caving, responsibility for restoring accessibility for purpose of mineral examination lies with contestees. In no case will the Government's mineral examiner be required to perform discovery work for the claimant, to explore beyond the claimant's exposed workings, or to rehabilitate discovery points for the claimant.

6. Mining Claims: DISCOVERY---Nature of Requirement--determination of validity--extent of deposit--prudent man test.

Where previous BLM mineral reports recited only that a valuable mineral had been discovered, but failed to include a mineral examiner's assessment of the quantity and

quality of the mineral, marketability, or costs of extraction and transportation, the decision below holding the claims invalid because of lack of discovery was correct. "Valuable mineral" is not synonymous with "valuable mineral deposit." A valuable mineral deposit is an occurrence of mineralization of such quantity and quality that a person of ordinary prudence would be justified in the expenditure of time and money in the development of a mine and the extraction of the mineral.

7. Mining Claims: PRACTICE AND PROCEDURE--Contests--determination of validity--evidence.

Where mineral reports submitted in connection with a previous contest recited only that a valuable mineral had been discovered, but failed to include a mineral examiner's assessment of the quantity and quality of the valuable mineral, marketability, or costs of extraction and transportation, and where the uncontradicted opinion of the Government's witness was that the sampling method was improper, the Administrative Law Judge was correct in according little weight to the reports.

APPEARANCES: Richard G. Clemans, Esq., pro se and for appellants, Casa Grande, Arizona; Fritz L. Goreham, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard G. Clemans, Mrs. Richard G. Clemans, Ira W. Wagon, Ralph Smith, and Leroy Achey appeal the decision of Administrative Law Judge Robert Mesch, dated July 13, 1978, holding six unpatented lode mining claims null and void. 1/

The proceeding was initiated by the Arizona State Office, Bureau of Land Management (BLM), at the request and on behalf of the Bureau of Indian Affairs. Pursuant to 43 CFR 4.451, BLM issued a contest complaint

1/ The contest involves the Pico Nos. 5, 7, and 8, the Pico Ace, and Sofpa Nos. 1 and 2, all located in part of the W 2 sec. 24, and extending slightly into sec. 25, T. 9 S., R. 4 E., Gila and Salt River meridian (within the Papago Indian Reservation), Pinal County, Arizona.

on September 28, 1978, charging that the instant mining claims are invalid because (1) valuable minerals have not been found so as to constitute a discovery under the general mining laws, and (2) the land within the claims is nonmineral in character. Contestees timely answered, denying the charges, and on February 28, 1978, the matter was heard by Judge Mesch as Casa Grande, Arizona.

Appellants located the subject mining claims (and others to be discussed, *infra*), on April 5, 1955, under the General Mining Laws of 1872, as amended, 30 U.S.C. § 22 (1976). By Act of May 27, 1955, 69 Stat. 67, 25 U.S.C. § 463 (1976), land within the Papago Indian Reservation was withdrawn from all forms of exploration, location, and entry under the mining laws.

In 1958 two BLM geologists and a mining engineer investigated the Pico Nos. 1 through 8, Pico Ace, and Sofpa Nos. 1 through 4, as well as other claims, in connection with a dam project on the Papago Indian Reservation. By mineral report dated October 14, 1958, the mineral examiners determined that Pico Nos. 1, 2, 5, 7, and 8, Pico Ace, and Sofpa No. 2 were valid mining claims. Pico Nos. 3, 4, and 6, and Sofpa Nos. 1, 3, and 4 were determined by the mineral examiners to be invalid. The report recited only that a detailed field examination had been conducted and that seven claims were sufficiently mineralized so as to constitute discoveries. The report did not, however, contain information concerning the quality or quantity of the mineralization found within the claims.

Subsequently, separate reports recommending institution of contest proceedings against the invalid claims were prepared, on the ground that there was insufficient mineralization to constitute mining discoveries. On March 9, 1959, a contest complaint issued challenging the validity of Pico Nos. 3, 4, and 6, and Sofpa Nos. 1, 3, and 4. In its decision of May 19, 1959, the Arizona State Office held the claims invalid, with the exception of Sofpa No. 1, by reason of the owners' failure to answer the contest complaint.

With respect to Sofpa No. 1, it appears that the alleged point of discovery was inaccessible to the mineral examiners at the time of the initial examination in 1958. A further examination of Sofpa No. 1 was performed on June 3, 1959, at which time the Bureau geologists took two samples from points designated by one claimant as containing valuable mineralization. Based upon the assay results of these two samples, the geologists concluded in their June 30, 1959, mineral report that discovery had been made, and recommended withdrawal of the contest charges against Sofpa No. 1. By decision of July 16, 1959, the Arizona State Office withdrew the charges and closed the case.

On September 28, 1977, BLM, at the request of BIA, issued a contest complaint against the six unpatented mining claims of appellants.

Following denial of the charges, a hearing was held before Judge Mesch, and based on the record there established, he declared all six mining claims invalid because no valuable mineral deposit was shown to exist within the limits of any of the claims.

On appeal, appellants contend that the decision of the Administrative Law Judge is in error for several reasons, but principally on the theory that the 1958 proceeding is res judicata as to the validity of the subject mining claims, and that appellants are thus "entitled to repose." Alternatively appellants argue that the doctrine of laches precludes "a reconsideration" of the 1958 and 1959 decision. Thirdly, it is argued that the Government failed to establish a prima facie case against the instant claims. In this connection, appellants challenge the handling of the samples, the Government's failure to resample the Sofpa No. 1 ore body which was tested in 1959, and the weight accorded the testimony relating thereto.

Appellants' contention that the prior administrative proceedings are res judicata as to any subsequent inquiry into the validity of the subject claims is without merit for several reasons. Appellants cite United States v. Utah Construction Co., 384 U.S. 394 (1966), and the following language therefrom as authority for their position:

Occasionally courts have used language to the effect that res judicata principles do not apply to administrative proceedings, but such language is certainly too broad. When an administrative agency is acting in a judicial capacity, and resolves disputed issues of fact properly before it which the parties have had adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose. [Citations omitted.]

384 U.S. 394, 421-22.

Appellants' reliance on the above-quoted passage is, we think, misplaced. Utah Construction Co. is clearly distinguishable on its facts. That case involved a construction contract between the United States and a private contractor, the terms of which provided that concerning questions of fact arising under the contract, a decision of the Board of Contract Appeals would be final and conclusive upon the parties thereto. In the event the parties were dissatisfied with the Board's decision and thereafter brought a Tucker Act suit (28 U.S.C. § 1491 (1976), as amended, 86 Stat. 652) for breach of contract before the Court of Claims, the finality accorded administrative fact-finding by the contract disputes clause would be limited by the Wunderlich Act of 1954, 41 U.S.C. § 321 (1976), which provides

that the administrative decision remains final and conclusive in the absence of certain specified circumstances. Utah Construction Co. is hardly applicable to the case now before us.

Secondly we again state the rule that in the circumstances here presented, the actions and decisions of the Secretary of the Interior in fulfillment of his duty to protect, manage, and dispose of the public domain are not controlled by the doctrine of res judicata. Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364, 1367-68 (9th Cir. 1976); United States v. Williamson, 75 I.D. 338, 342 (1968);^a United States v. United States Borax Co., 58 I.D. 426, 430 (1943).

The third reason is but an elaboration of the second. Of crucial significance is the fact that these claims are situated within the Papago Indian Reservation on land withdrawn from all forms of entry, location and exploration, 69 Stat. 67 supra, except those claims "validly initiated before the date of this Act and thereafter maintained under the mining laws."

[1] When land is withdrawn subsequent to location of a mining claim, the validity of such claim can not be recognized unless (1) it was perfected by a discovery at the time of withdrawal, 2/ and (2) it has been continuously supported by the same discovery to the present; that is, at the time of the hearing. United States v. Gunsight Mining Co., 5 IBLA 62 (1972);^b United States v. Pulliam, 1 IBLA 143 (1970);^c United States v. Houston, 66 I.D. 161 (1959). In other words, there are two events with which a claimant in such circumstances must be concerned: the first being the effect, if any, of withdrawal of the land; the other being any subsequent inquiry into the validity of unpatented claims as required by the general mining laws.

[2] The 1958-59 proceeding merely established that appellants' possessory interests in the mining claims had not been extinguished by the Act of May 27, 1955, supra. Appellants did not then seek patents. Unless and until a patent issues, title to the claims in controversy remains in the United States, and it may inquire into the extent and validity of rights claimed against it. Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Cameron v. United States, 252 U.S. 430 (1920); Ideal Basic Industries, Inc., supra.

We hold also that the doctrine of laches is inapplicable.
43 CFR 1810.3.

2/ This requirement of perfection at the time of withdrawal is unaffected by discoveries made at times prior thereto. Gunsight Mining Co., supra.

a) GFS(MIN) SO-50(1968)

b) GFS(MIN) 12(1972)

c) GFS(MIN) 11(1970)

[3] We turn finally to appellants' argument that the Government failed to establish a prima facie case against the claims. We reiterate the standard to be applied in determining the sufficiency of the Government's case: the mining claimant bears the burden of proof or risk of nonpersuasion as to the validity of the claim, and when the Government contests the validity of a mining claim, it has only the burden of establishing a prima facie case. The burden of going forward then shifts to the contestee, who is the proponent of a claim or right against the United States, to adduce evidence which by a preponderance affirmatively demonstrates the validity of the claim and thus that the charges are untrue. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975).^d The evidence is summarized as follows.

The Government called two independent consulting geologists and a BLM mining engineer, each of whom was qualified as an expert witness. The subject mining claims were examined on four occasions: August 24, 25, and 30, 1976, and on February 3, 1977. Six samples were obtained in August 1976, and three samples were taken in February 1977. In addition, 20 assay results obtained and supplied by one of the claimants were reviewed and considered by the Government's chief witness. Based upon the aforesaid mineral examinations and the assay results for gold, silver, and lead, that witness concluded that the claims were not such as would justify a person of ordinary prudence in further expenditure of time and money in the reasonable prospect of success in developing a paying mine on any of the six claims in issue. The record herein indicates that this conclusion was based upon the witness' opinion that the value of the small tonnages available from small sinuous pockets of mineralization would be insufficient to cover the base cost of smelting alone, without consideration of the costs of mining and transportation.

Regarding the evidence and testimony above summarized, appellants objected to receipt in evidence of the assay certificates of eight of the nine samples obtained by the geologists, on the ground that the assayer was not present at the hearing and subject to cross-examination. Appellants also objected to the assay results of five of those eight samples on the ground that the person who actually delivered the samples to the assayer on behalf of the geologists was not present for cross-examination. The objections were overruled and the certificates admitted in evidence. No error was committed in so ruling.

The objection pertaining to actual delivery of the samples, raised by appellants for the first time in their posthearing brief, lacks significance. Based upon all the evidence, Judge Mesch concluded that no serious question exists as to whether the samples assayed were in fact those obtained from the mining claims in controversy. While the mineral examiners did not personally deliver

d) GFS(MIN) 13(1975)

the samples, one Mr. Robb prepared the receipt for the samples to be assayed at their direction and pursuant to established office procedure. He was actually seen leaving the office with the samples by at least one of the Government's witnesses. The assayer's offices are located across the alley from the geologists' offices, approximately 100 feet away.

[4] Judge Mesch also found that there was sufficient evidence of the reliability of the assay certificates which justified the chief expert witness' acceptance and consideration of the documents in forming his opinion according to the recognized custom among geologists and mining engineers. Brown v. United States, 375 F.2d 310 (D.C. Cir. 1967); see also Federal Rules of Evidence, R. 703. Material, relevant hearsay evidence is admissible in administrative proceedings. 5 U.S.C. § 556(d) (1976); Casey Ranches, 14 IBLA 48, 80 I.D. 777 (1973).^e We note also that the witness' opinion was based in part on the assay results obtained and furnished by one of the claimants.

[5] One last contention can be dealt with summarily. Appellants complain of the Government's failure to resample the ore body within Sofpa No. 1 which in 1959 resulted in withdrawal of contest charges. "In no case will the Government's mineral examiner be required to perform discovery work for the claimant, to explore beyond the claimant's exposed workings, or to rehabilitate discovery points for the claimant." United States v. Woolsey, 13 IBLA 120, 123 (1973);^f United States v. Kelty, 11 IBLA 38 (1973);^g United States v. Lease, 6 IBLA 11 (1972).^h The point of alleged discovery within Sofpa No. 1, examined in 1959, was in a tunnel which has caved, making it dangerous to enter. Appellants made no effort to restore this working so that it was accessible for examination and sampling. It is thus quite apparent, and we so hold, that the Government established a prima facie case of lack of discovery.

As previously noted, appellants' case consisted of the 1958 and 1959 mineral reports submitted in the earlier contest. The 1958 report concluded that all the claims, except Sofpa No. 1, were valid because the mineral examiners found "sufficient mineralization to constitute valid mineral discoveries." The supplemental 1959 report covering Sofpa No. 1 concluded, based upon the high assay results of the two samples obtained, that a "discovery of valuable mineral * * * has been made."

[6] We agree with the Judge below that "a valuable mineral" is not synonymous with "valuable mineral deposit." Barton v. Morton, 498 F.2d 288 (9th Cir. 1974); Henault Mining Co. v. Tysk, 419 F.2d 766 (9th Cir. 1969);ⁱ Converse v. Udall, 399 F.2d 616 (9th Cir. 1968).^j A valuable mineral deposit is an occurrence of mineralization of

e) GFS(MISC) 3(1974)

f) GFS(MIN) 89(1973)

g) GFS(MIN) 57(1973)

h) GFS(MIN) 26(1972)

i) GFS(MIN) JD-3(1970)

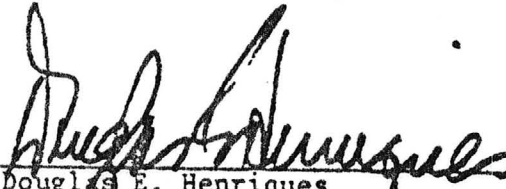
j) GFS(MIN) JD-4(1968)

such quantity and quality that a person of ordinary prudence would be justified in the expenditure of time and money in anticipation of the development of a valuable mine. United States v. Coleman, 390 U.S. 599, 602 (1968); Chrisman v. Miller, 197 U.S. 313, 322 (1905); Castle v. Womble, 19 L.D. 455, 457 (1894).

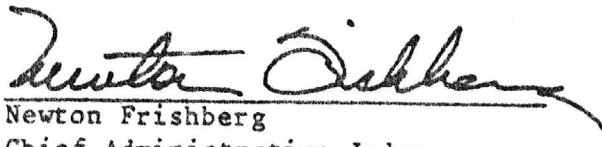
[7] We find no error in the weight apparently accorded these documents. Neither report contains an assessment of the quantity and quality of the "valuable mineral," nor do they include information regarding the costs of extraction and marketing. We note, moreover, that one expert seriously questioned the propriety of the method utilized in 1959 to obtain samples of Sofpa No. 1, as well as the accuracy of the high assay results. His opinion that such assay results were not representative if the sampling method described in the report was actually employed, was uncontradicted. However, assuming arguendo that the sampling method was in fact proper and that the assay results were also accurate, in our view such assumption only raises the question of why appellants have not in the intervening years developed and mined the deposit.

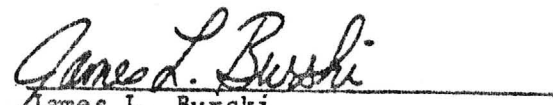
The evidence of the contestees viewed in its best light cannot be considered to have preponderated over that presented by the Government. Accordingly, we find that the decision below was correct in determining that the claims in controversy are null and void, there being no discovery within the purview of the general mining laws.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.


 Douglas E. Henriques
 Administrative Judge

We concur:


 Newton Frishberg
 Chief Administrative Judge


 James L. Burski
 Administrative Judge

1-22-65

DEPARTMENT OF MINERAL RESOURCES

STATE OF ARIZONA
FIELD ENGINEERS REPORT

Mine SOFPA GROUP

Date 1/20/65

District SLATE Mountain District Pinal Co.

Engineer Lewis A. Smith

Subject: Mine Visit and Conference with Ira Wagnon

AGENT: IRA W. WAGNON, p. O. Box 382, Gasa Grande, Arizona - lives on property.

PROPERTY: 4 Claims (part of Esta Bales property).

WORK: One shaft said to be 60, or more, feet deep and some shallower pits.
No recent work other than assessment work.

Al Wilson optioned the 6 Pico Ace Claims and 2 Sofpa Claims of Ira Wagnon.
Al Wilson's address is P.O. Box 535, Casa Grande, Arizona.

Visit to office IAS Note 5/1966

DEPARTMENT OF MINERAL RESOURCES

STATE OF ARIZONA
FIELD ENGINEERS REPORT

Mine Pico Mine (1, 2, 3 claims) Date January 20, 1965
District Slate Mountain District - Pinal County Engineer Lewis A. Smith
Subject: Mine visit and conference with Ralph J. Smith (foreman) and Ira W. Wagon

Since last visit a ramp cut has been sunk with a bulldozer into the quartzsite bed. This cut is now 10-15 feet wide, about 40 feet long, and about 15 feet deep at the north face. The bottom 10-12 feet is good silica. In the center of the cut a generally east-west trending transverse fracture zone crosses the pit which, in general trends northeast. This fracture zone is variable in width from a 1 foot up to 3 feet and is easily traced by themanganese dioxide and limonite staining on the fracture planes. This zone reportedly carries silver-lead in varying amounts. The claim side lines trend $7\frac{1}{2}$ degrees east of north. So far about 2000 tons of silica flux have been shipped to New Cornelia. This averaged about 90-91 percent SiO_2 and a little more than $\frac{1}{2}$ oz. of silver. Some of the bulldozer work around the periphery of the pit has uncovered additional quartzsite. During the last visit it was suggested that the broken material be screened to remove caliche fines and thus decrease the CaO content. This is being done and the silica grade was increased and lime was materially reduced. The screen clears minus $\frac{1}{2}$ inch material. In the lower part of the pit the caliche has almost disappeared.

Several pockets of relatively high-grade ore have been mined in the past from fracture or vein intersections. These contain galena, anglesite, wulfenite, and embolite (Ag (Cl-Br)). According to Ira Wagon some small pockets also occur on the adjoining Sofpa Claims, but that generally they are somewhat sporadic in distribution. According to J. B. Tenny this was true in the Orizaba mine, nearby. (Larry Claim main one).

Ira W. Wagon gets his mail at P.O. Box 382, Casa Grande, but lives on the Sofpa Group. Wagon, along with Art Robart, Ralph Smith are leasing the Pico Group. Mrs. Esta Bales, previously of Sacaton, was the owner according to Robart, but she died a short while ago. The heirs are not yet known to him since they live back east.

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DEPARTMENT OF MINERAL RESOURCES

STATE OF ARIZONA
FIELD ENGINEERS REPORT

Mine **ESTA BALES CLAIMS**

Date **12/1/64**

District **SLATE MTN. DIST. PINAL COUNTY**

Engineer **Lewis A. Smith**

Subject:

LOCATION: $\frac{1}{4}$ mile west of the Orizaba Silica Pit.

OWNER: Esta Bales, Sacaton.

LESSEES: Art. Robart, Robart Dozing Co., 3249 W. Dunlap Ave. (937-8859).
Ira Wagner, Box 328, Casa Grande.
332

FOREMAN: Ralph Smith.

MINERALS: Silica (quartzite), Pb and Ag.

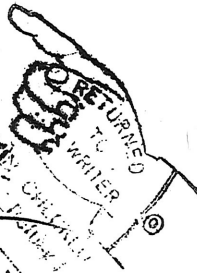
WORK: The claim has 35 and 75-foot shafts on a narrow lead-silver vein. So far an area, at least 250 feet long by 125 feet wide has been partially bulldozed to clear 3-4 feet of caliche and dirt overburden from the quartzite bed. There are still some scattered areas to be further cleaned. According to Ralph Smith the quartzite ranges from 4 feet thickness up to an unknown amount. Drilling on the west portion shows about an average thickness of 4 feet and it underlies a reddish shale that to the NE is overlain by cherty, ironstained limestone. The 1300 tons shipped to Ajo ran 88 to 91 percent SiO₂ averaging approximately 88 $\frac{1}{2}$ percent. The principal impurity appears to be lime as caliche veinlets that form a network in the gray to red-gray shattered quartzite. By using a shaking screen (3/4 inch mesh) it is believed that the grade could be maintained at over 91 percent SiO₂. It also, as in the Orizaba to the E, contains 0.5 to 1.5 oz of silver to the ton.

A narrow vein crosses the quartzite, in a NE direction, and shows lenses and stringers of lead-silver-bearing material, some of which is good ore. The lead minerals include cerussite, anglesite and galena, while the silver apparently occurs as embolite and argentite. A little manganese dioxide and considerable dark red, or maroon limonite occurs along with the lead and silver and the limonite appears to be fairly indicative of the more mineralized areas. The indicated shoots appear to be where shear planes cross the vein. The shears have some mineralization as tongues out from the vein. The lead-silver ore is being stockpiled for future shipment to El Paso.

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DEPARTMENT OF MINERAL RESOURCES
State of Arizona
Mineral Building, Fairgrounds
PHOENIX 7, ARIZONA




RETURNED TO WRITER
UNDELIVERED
Unclaimed
Unknown
Insufficient address
No post office in state
Do not return to this office

~~Esta Bales~~

~~Sacaton, Arizona~~

*mailed out again to
bx
Ira Wagner - 328
Casa Grande -*

12/17/64

DEPARTMENT OF MINERAL RESOURCES

STATE OF ARIZONA
FIELD ENGINEERS REPORT

Mine Pico Ace Group

Date November 15, 1960

District Slate Mtns. Dist., Pinal Co.

Engineer Lewis A. Smith

Subject:

Location: Adjoins Orizaba Group to NW

Owners: Lou Purigraski, 2937 W. Bethany Rd., Phoenix
D. H. Jackson, 850 W. Osborne, Phoenix

Mineral: Silica (95-96%) gold, lead, silver (sporadic copper)

Work: Several pits and cuts.

Geology: A quartzite bed at the base of the Palezoic section, trends northwest-southeast and dips southwest. It is overlain by limestone of probable late Palezoic Age (Mississippian or Pennsylvanian). An erratic shale bed intervenes between the quartzite and limestone. This area is separated from the Orizaba claims by a strong northwest trending fault. The minerals include galena, anglesite, cerussite, wulfenite, argentite, cerargyrite, gold, and sparse copper oxidized minerals. The ore is localized in lenses by minor faults which trend northeast, or transverse to the major fault, similar to the Orizaba. Some lenses are small but relatively high grade.

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