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07/31/95

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES FILE DATA

PRIMARY NAME: RED MOUNTAIN SILVER MINE

ALTERNATE NAMES:

MARICOPA COUNTY MILS NUMBER: 699

LOCATION: TOWNSHIP 2 N RANGE 6 E SECTION 24 QUARTER --
LATITUDE: N 33DEG 30MIN 02SEC LONGITUDE: W 111DEG 41MIN 06SEC
TOPO MAP NAME: GRANITE REEF DAM - 7.5 MIN

CURRENT STATUS: UNKNOWN

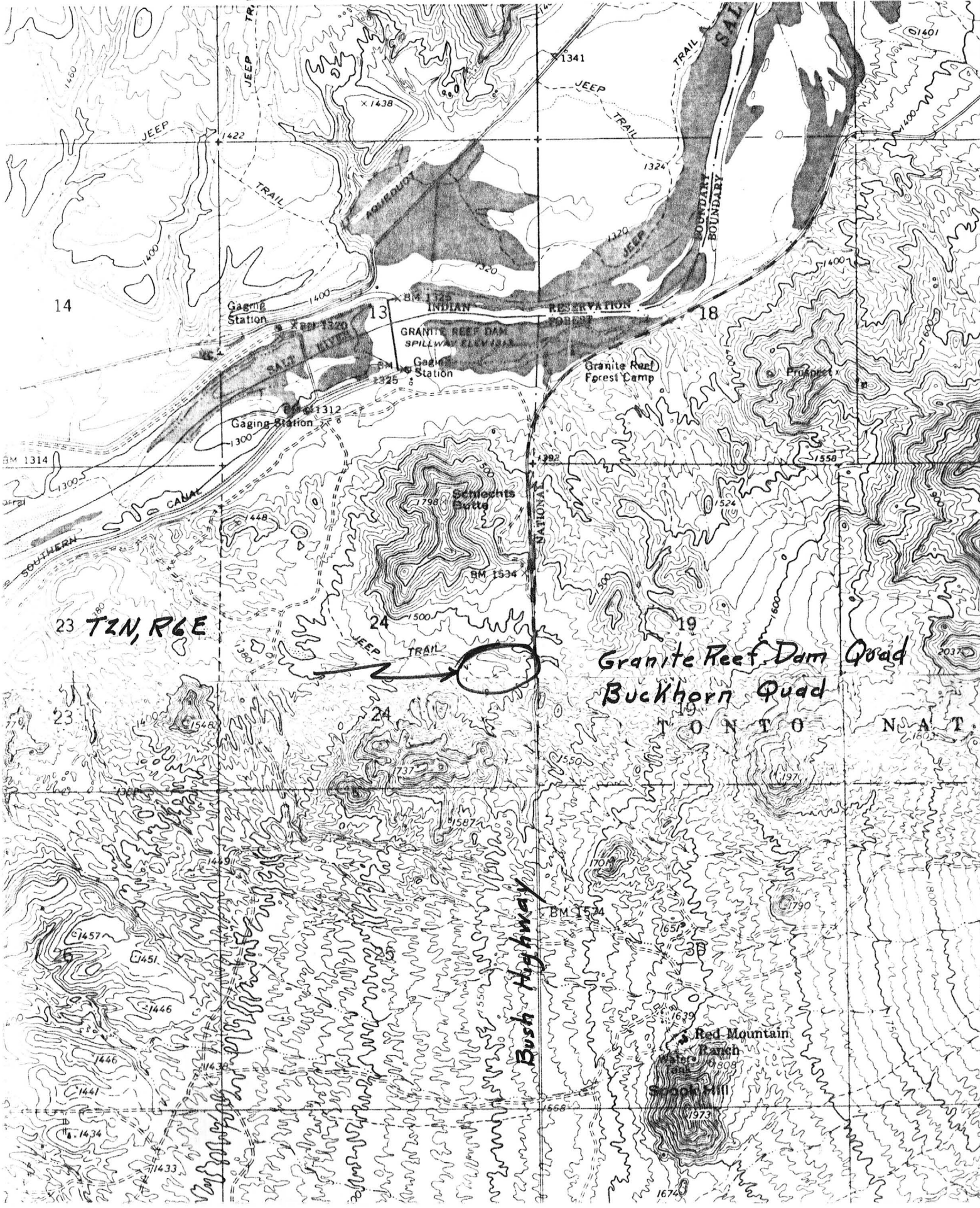
COMMODITY:

STN GRANITE CRSH
AG

BIBLIOGRAPHY:

ADMMR RED MOUNTAIN SILVER MINE FILE

Red Mountain Silver Mine



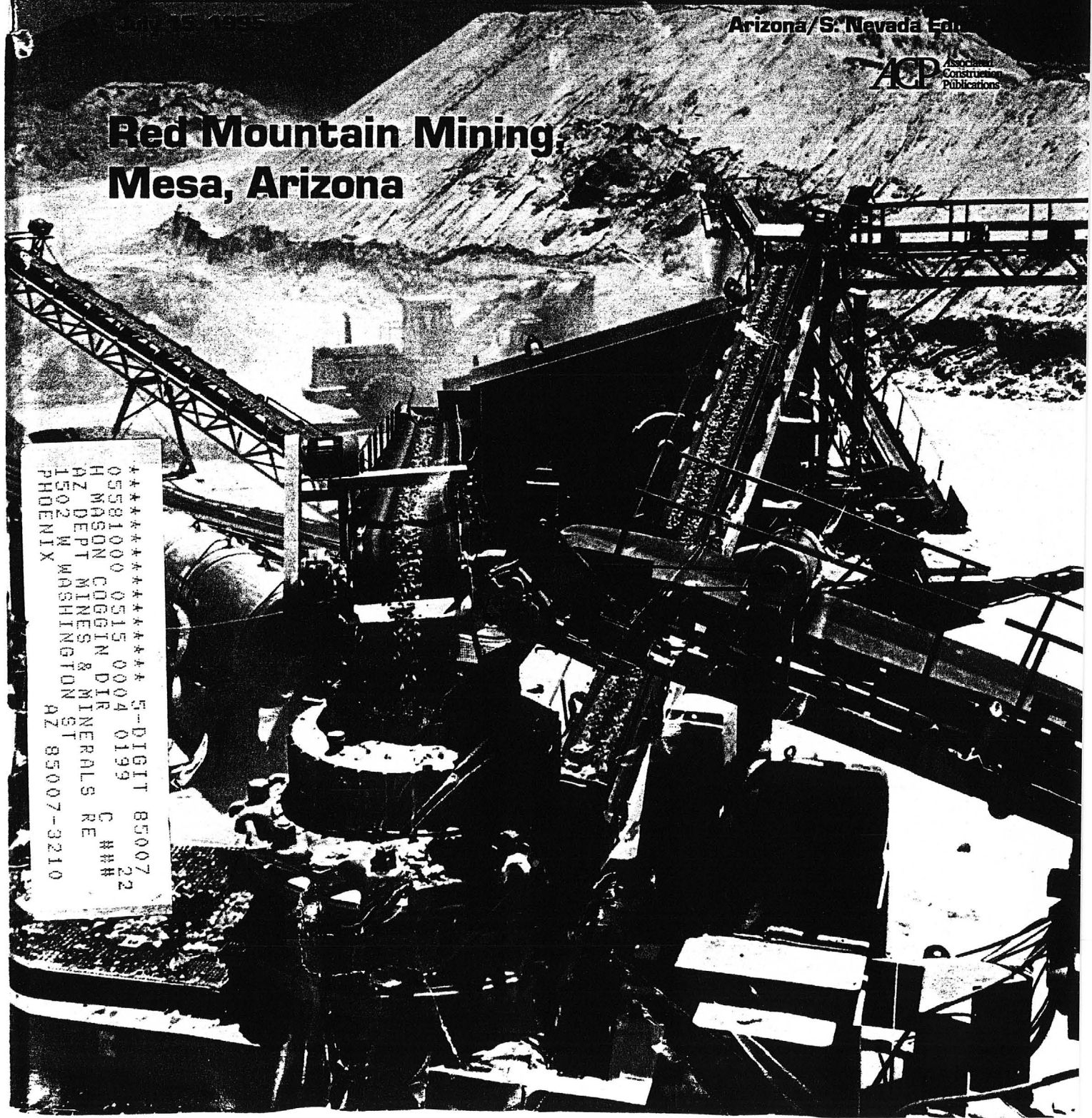
MOUNTAIN CONSTRUCTION

Arizona/S. Nevada Edition

ACP
Associated
Construction
Publications

Red Mountain Mining Mesa, Arizona

05581000 0515 0004 5-DIGIT 85007
H MASON COGGIN DIR C #HH
AZ DEPT MINES & MINERALS RE
1502 W WASHINGTON ST
PHOENIX AZ 85007-3210



RED MOUNTAIN SILVER MINE

MARICOPA COUNTY
T2N R6E Sec 24

NJN WR 8/12/83: Ted W. Dyke of Red Mountain Mining, 4250 N. Bush Highway, Mesa, Arizona 85205, Ph: 832-3390 and 985-6851 reported that the company has the Red Mountain Silver Mine located in T2N R6E Sec 24, Maricopa County. They have been involved there since 1973. Current operations there include mining from an open pit and stockpiling of silver ore. This material is reported not to be economic until silver reaches \$18.00/oz. Some of the overburden is an altered blue-green granite which is sold for decorative landscaping purposes.

RED Mtn SILVER (F)

IN REPLY REFER TO:



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

T2N R6E S224

RED MOUNTAIN MINING CO. ET AL.

IBLA 84-410

Decided January 30, 1985

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring mining claims A MC 208235 through A MC 208237 null and void ab initio.

Affirmed as modified.

1. Mining Claims: Lode Claims--Mining Claims: Placer Claims--Mining Claims: Special Acts

BLM may properly declare a placer mining claim null and void ab initio if the location was not perfected by performance of a condition precedent set forth in the order opening the land in a reclamation withdrawal to mineral entry pursuant to sec. 1 of the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1982), i.e., execution and recordation of a required stipulation. The mining claimant cannot take advantage of the execution and recordation of the required stipulation in conjunction with a prior lode mining claim allegedly covering the same land when the locator is not the successor in interest with respect to the lode claim.

APPEARANCES: Hale C. Tognoni, Esq., Phoenix, Arizona, for appellants; Fritz L. Goreham, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Red Mountain Mining Company (Red Mountain), Theodore W. Dyke (Dyke), Gloria Cathleen Blackburn (Blackburn), Margaret French Adams (M. F. Adams), and Delmar Lavoy Adams (D. L. Adams) have appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated February 28, 1984, declaring the Red Mountain Nos. 1 through 3 association placer mining claims, A MC 208235 through A MC 208237, null and void ab initio. 1/

1/ Delmar Lavoy Adams, Margaret French Adams, and Theodore W. Dyke are owners of Red Mountain. All four individuals are the co-locators of the Red Mountain Nos. 1 through 3 association placer mining claims.

INDEX CODE:
43 CFR 3833.1-1

Mann, 54 IBLA 8 (1981).^a BLM also states that it has no record that lode mining claims located by V. V. Burd in 1956 were filed for recordation with BLM on or before October 22, 1979, as required by section 314(b) of FLPMA, and, therefore, the placer mining claims are considered "original locations" and not amended locations which could relate back to the date of location of the lode locations.

In their statement of reasons for appeal, appellants contend that the placer mining claims are valid locations which have been held and worked pursuant to 30 U.S.C. § 38 (1982) "since February 27, 1956." Appellants allege that the land was originally included in various lode mining claims, the B.G.G.B. Nos. 1 through 10 claims located on February 27, 1956, by V. V. Burd. 2/ Appellants advance the argument that the required stipulation for the V. V. Burd claims had been filed with the county recorder and the land office. 3/ In addition, appellants state that the lode claims were duly "filed with the B.L.M. before October 22, 1979, in accordance with Section 314 of FLPMA," and that the placer claims, located October 13, 1983, constitute amended locations which relate back to the date of location of the lode claims, taking advantage of the stipulations filed in conjunction with the lode claims. Appellants state that the fact that the claims were amended from lode to placer does not affect the relation back where the claims were held and worked for the requisite period of time under 30 U.S.C. § 38 (1982), citing United States v. Guzman, 18 IBLA 109, 81 I.D. 685 (1974)^b and Springer v. Southern Pacific Co., 248 P. 819 (Utah 1926). Appellants conclude that declaring the placer mining claims null and void ab initio constitutes a taking of property without due process of law.

In a response to appellants' statement of reasons, BLM states that the the "BLM records" contain no reference to the "V. V. Burd 1956 mining claims" but that at the time of the February 1984 BLM decision, BLM had a record of the B.G.G.B. Nos. 1 through 16 lode mining claims, located December 11, 1961. BLM submits copies of notices of location of these mining claims (serial numbers A MC 77199 through A MC 77214) recorded with it by C. A. Hudson on October 18, 1979. 4/ BLM argues that the February 1984 BLM decision should be affirmed.

2/ Appellants further state that C. A. Hudson, "Burd's successor," located the B.G.G.B. Nos. 11 through 16 lode mining claims on Dec. 11, 1961.

3/ Appellants submit copies of the stipulations dated Feb. 24, 1956, and Jan. 5, 1962, which applied, respectively, to the B.G.G.B. Nos. 1 through 10 lode mining claims and the B.G.G.B. Nos. 11 through 16 lode mining claims. The former stipulation is signed by V. V. Burd and the latter by C. A. Hudson. Attached to a reply to BLM's answer, appellants submitted a copy of a letter dated Jan. 10, 1962, from the Manager, Land Office, Phoenix, Arizona, stating that the two stipulations were received, respectively, on Feb. 24, 1956, and Jan. 8, 1962. The record indicates that the two stipulations were also filed with the county recorder.

4/ BLM also submits a map of the area included in appellants' placer mining claims, which was filed with the lode location notices and indicates that the land was formerly included in the B.G.G.B. Nos. 1 through 16 lode mining claims. In a reply to BLM's answer, appellants state that C. A. Hudson, Burd's successor in interest with respect to the B.G.G.B. Nos. 1 through 10

a) GFS(MIN) 104(1981)

b) GFS(MIN) 2(1975)

lode mining claims is in Red Mountain. This fact was recognized by the association placer locators on the face of the location notice.

A mining claim will be treated as an amended location, rather than a relocation, only where the locator can establish a chain of title from the prior claimant to him and ownership at the time of amendment. Ronald R. Graham, 77 IBLA 174 (1983).^e As we said in Tibbetts v. BLM, 62 IBLA 124, 130 (1982): "Intrinsic to the right to amend a claim is the prerequisite that the amender have present title to the claim, for if such title is lacking, an individual is not claiming through a prior location, but rather is initiating a claim of right adverse to the original location." In such circumstances, the "amended location" will be treated as a relocation. The four individual co-locators of the Red Mountain Nos. 1 through 3 association placer mining claims did not have the "right" to amend the lode claims in their own name by virtue of any privity of title. ^{5/} Thus, the placer claims must be treated as new locations, which cannot take advantage of the stipulations executed and recorded in conjunction with the B.G.G.B. Nos. 1 through 16 lode mining claims. ^{6/} See R. Gail Tibbetts, supra at 220, 86 I.D. at 543.

The record indicates that Dyke, Blackburn, M. F. Adams, and D. L. Adams recorded new association placer mining claims, A MC 219799 through A MC 219801, subsequent to the BLM decision on appeal, and filed the required stipulation with BLM on April 12, 1984. The location notices state the date of posting location notice as March 20, 1984, and that the claims involve the same land. These notices of location also purport to "relate back" to the original V. V. Burd 1956 locations, stating that they will be considered "original" locations only if the Burd entry is deemed to be "void for any reason." Accordingly, where there is no indication in the record that the land has been withdrawn or otherwise appropriated by adverse claims, appellant locators lose nothing by asserting rights in the land with priority from that date. We must, however, instruct BLM to determine whether the land was open to mineral entry on the date appellants located their latest placer mining claims and that they have otherwise complied with all requirements under the mining laws. ^{7/}

^{5/} If these individual co-locators were to argue that they located the association placer mining claims on behalf of Red Mountain, such that Red Mountain was the locator-in-fact, the claims would fail as a violation of public policy. United States v. Brookshire Oil Co., 242 F. 718 (S.D. Cal. 1917); United States v. Toole, 224 F. Supp. 440 (D. Mont. 1963). It would be considered a subterfuge for the purpose of enabling a single individual (Red Mountain) to acquire more land than is permitted under 30 U.S.C. § 35 (1982), which limits nonassociation placer mining claims to 20 acres.

^{6/} We do not reach the question of what rights Red Mountain may have, if any, to any placer deposit by virtue of holding and working the land encompassed by the lode claims in accordance with 30 U.S.C. § 38 (1982). This case focuses only on the validity of the three association placer mining claims located in October 1983 by Dyke, Blackburn, M. F. Adams, and D. L. Adams.

^{7/} The statement on the face of the Mar. 20, 1984, location notices again raises the question of good faith location of an association placer mining claim. See note 5. However, the validity of these claims is not in issue in this case.

e) GFS(MIN) 14(1984)

f) GFS(MIN) 106(1982)

ENGINEERS REPORT

FROM: Richard R. Beard

February 16, 1984

Red Mountain Silver Mine
4250 N. Bush Highway
Mesa, Arizona 85205

Visited the operation of Red Mountain Mining. Mr. D. Lavoy Adams took me on a tour of the property and introduced me to Mr. Ted Dyke.

They are currently working an area of reddish granite that contains gold in small pockets but is uneconomic to segregate ore from waste and the pockets are not high enough grade to carry the waste. They are now crushing, screening and marketing as decorative rock for landscaping.

West of the operating pit is a pit in a greenish-blueish rotten granite that assays about $1\frac{1}{2}$ ounces of silver which is uneconomic at current prices. This too is sometimes mined as decorative rock. When the price of silver increases this material can be concentrated by gravity to produce silver. He did not know what the silver mineral was or what it was associated with.

Their mill, currently idle, consists of a jaw crusher, ball mill (to minus 40 mesh) shaking tables and knudsen bowls.