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PRINTED: 07-31-2012

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES AZMILS DATA

PRIMARY NAME: RICE CLAIM GROUP

ALTERNATE NAMES:
- UNPATENTED CLAIMS MS 4624
- GOLDEN EARTH MS 4624, UNPAT.
- SILVER EARTH
- GOOD EARTH

PINAL COUNTY MILS NUMBER: 700A

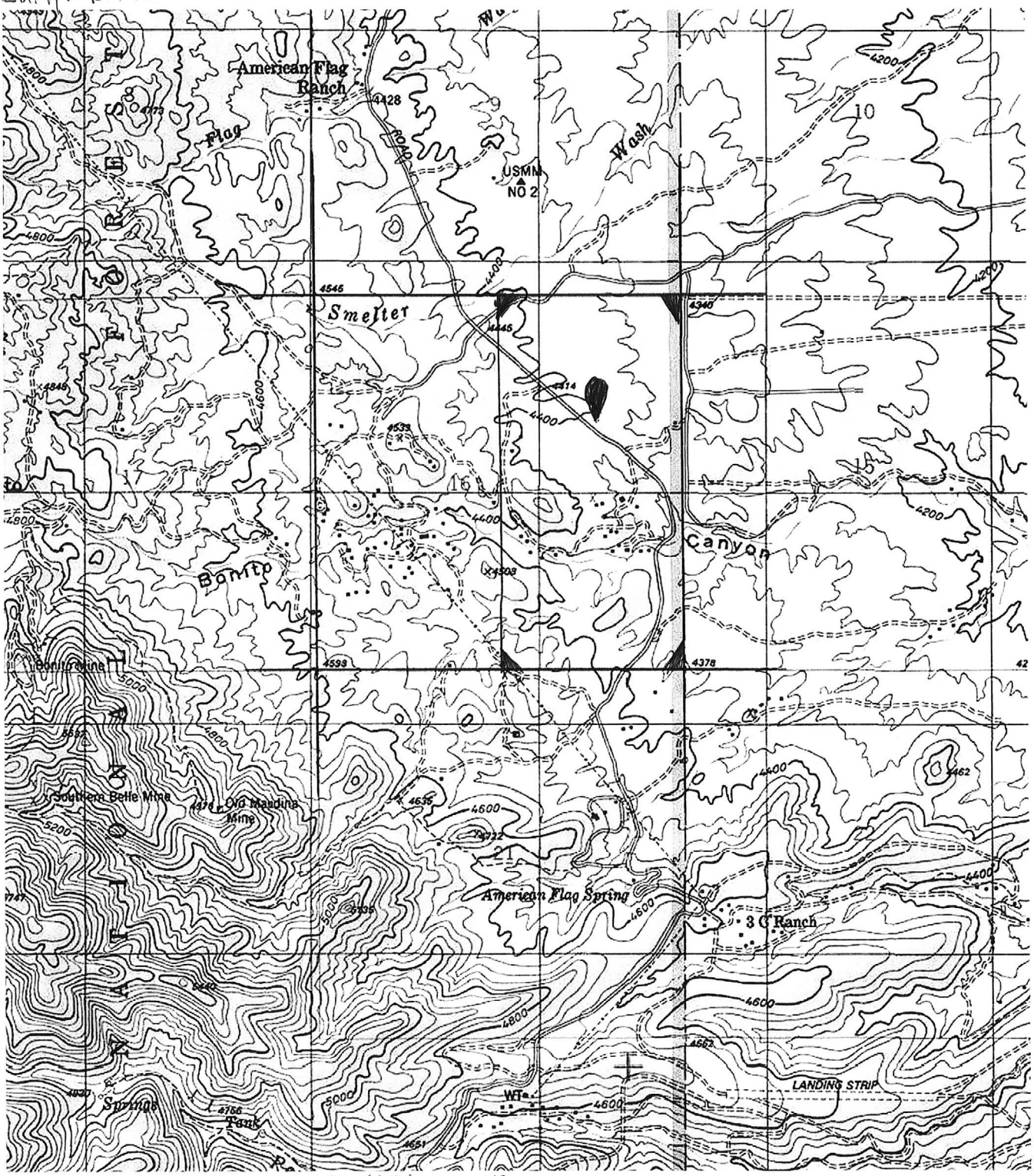
LOCATION: TOWNSHIP 10 S RANGE 16 E SECTION 16 QUARTER E2
LATITUDE: N 32DEG 34MIN 00SEC LONGITUDE: W 110DEG 42MIN 36SEC
TOPO MAP NAME: CAMPO BONITO - 7.5 MIN

CURRENT STATUS: DEVEL DEPOSIT

COMMODITY:
- GOLD
- SILVER

BIBLIOGRAPHY:
- BLM MINING DISTRICT SHEET 709
- ADDITIONAL WORKINGS SEC. 9
- ADMMR RICE CLAIMS GROUP FILE

Campo Bonito -7.5 min



N 32 34' 00" W110 42' 36"

Rice Claim Group

ArcGIS -

RICE CLAIM GROUP REFERENCES PINAL COUNTY

Western Prospector and Miner - 12/75, page 1 (article on Forest Service)

BLM Mining District Sheet 709

AMC #71949-71960 and 76458-76460 15 claims 1982 assessment work done.

MILS Sheet sequence number 0040210402

RICE CLAIM GROUP

PINAL COUNTY
T10S R16E Sec. 16NE

ALJ WR 8/6/60: Rices have claim near Oracle and also claims near Hilltop in the Chiricahuas.

ALJ WR 3/4/63: Mr. and Mrs. Rice say that the Forestry Service (Gil Matthews and Jack Pardee) have been checking their claims for validity since last December

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ALJ WR 4/10/65: Mr. and Mrs. Rice made application to patent 2 claims around their home south of Oracle.

GWI WR 1/2/75: Mr. Rice has the Rider Group of claims in Chiricahua Mountains.

GWI WR 9/2/75: Lee Rice was in and said that he has the Rider Mine near Jhus Canyon, Cochise County. He is looking for lead zinc mill. Asked about a California Smelter "Higgins & Ross" 1527 Rialto Ave., P.O. Box 811, Rialto, CA., Tel. 714-823-9376 or Bill Higgins Tel: 887-3322.

VBD WR 2/6/76: Jim Rivers of the Coronado National Forest State office in Tucson stopped at the office. I told him that this office had been told that the Forest Rangers in the Santa Catalina Mountains were again harassing Lee Rice, relating to claims located there, for some unknown reason, and that diamond drilling had been done or was being done presently. I told him that my boss had given tentative approval for me to represent small mine operators in hearings to determine validity of mining claims if the owner requested. I told him that the Forest Service had assured mining interest that harassment would stop and that Lee Rice was a good operator. Rivers wrote down Rice's name, and will ask questions, I am sure.

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.
LEE H. RICE
GOLDIE E. RICE

IBLA 79-529 Decided May 23, 1983

Appeal from decision of Administrative Law Judge R. M. Steiner declaring lode mining claims null and void in contest Nos. A-463, A-752, A-753, and A-754.

Affirmed.

1. Contests and Protests: Generally--Mining Claims: Generally--Mining Claims: Contests--Mining Claims: Determination of Validity--Rules of Practice: Government Contests

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

2. Mineral Lands: Determination of Character of--Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that

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INDEX CODE: None

land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

3. Mining Claims: Determination of Validity—Mining Claims: Discovery: Generally

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

4. Mining Claims: Contests

When the Government contests the validity of a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

5. Mining Claims: Determination of Validity—Mining Claims: Discovery: Generally

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

6. Mining Claims: Hearings—Rules of Practice: Evidence—Rules of Practice: Hearings

The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

APPEARANCES: John A. Wasley, Esq., Oracle, Arizona, for appellants; T. Adrian Pedron, Esq., Office of the General Counsel, U.S. Department of Agriculture, Albuquerque, New Mexico, for appellee.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

This appeal is taken from a decision dated June 20, 1979, by Administrative Law Judge R. M. Steiner, declaring the Silver Earth, Golden Earth, Good Earth, Calcium Carbonate, Diabase Ridge, Three Sons, New Year No. 1, New Year No. 2, Goldie's Fraction, and Lee's Fraction mining claims null and void for lack of discovery of valuable minerals thereon.

The 10 lode mining claims are located on public lands in the Santa Catalina Ranger District of the Coronado National Forest in Pinal County, Arizona. The contests against these claims were instituted by the Bureau of Land Management (BLM) on behalf of the United States Forest Service, Department of Agriculture.

Following a hearing held in Tucson, Arizona, on December 6, 1967, the claims were declared null and void by decision dated September 3, 1968. That decision was appealed but the appeal was dismissed by the Board, United States v. Rice, 2 IBLA 124 (1971).a By order dated February 1, 1974, the United States District Court, District of Arizona (No. Civ. 72-467), remanded the case for a new hearing which was subsequently held in Phoenix, Arizona, on March 22 to 24, 1978, before Judge Steiner.

In his decision the Judge reviewed the evidence including evidence adduced at the earlier hearing. He concluded that the contestant (appellee herein) established a prima facie case of no discovery on any of the claims. He further concluded that contestees (appellants herein) had failed to sustain their burden of proving discovery of valuable minerals within the limits of the claims. Accordingly, he declared the 10 claims null and void.

The appeal to this Board is limited to 6 of the 10 claims: Silver Earth, Golden Earth, New Year No. 2, Calcium Carbonate, Diabase Ridge, and Three Sons. Appellant Lee H. Rice concedes that there were no discoveries on the New Year No. 1, Good Earth, Lee's Fraction, and Goldie's Fraction claims (Tr. 436). See also Appellants' Statement of Reasons at 37, 38.

Conspiracy

One of appellants' major arguments is that the contests were brought as a result of a conspiracy within the Forest Service. Appellants allege that they were subjected to discriminatory treatment by that agency, that the contest must be viewed in that light, and that the decision fails to address this issue. The decision does, however, address the issue:

> Although the Contestees allege that the USFS has engaged in a conspiracy to violate the laws of the United States, they agree that this case must be resolved on the issue of discovery of a valuable mineral deposit. (Contestee's Answering Brief at 19). The Contestees' arguments concerning the motives of the

a) GFS(MIN) 5 (1971)

> Government in bringing this contest are without merit. It has long been recognized that the Department of the Interior has been granted broad plenary powers in the administration of the public lands, and, until the issuance of a patent, legal title to a mining claim remains in the Government, and the Department has the power, after proper notice and upon adequate hearing, to determine the validity of the claims. Cameron v. United States, supra [252 U.S. 450 (1920)]; Best v. Humboldt Placer Mining Co., 371 U.S. 334, 83 S. Ct. 379 (1963); cited in United States v. American Fluorspar Group, Inc., 25 IBLA 136 (1976). [b]

(Decision at 13).

In their statement of reasons, appellants again concede that even though the Forest Service may have engaged in a conspiracy to violate the laws of the United States, this case will be resolved upon the merits of the issue of valid mineral discovery (Statement of Reasons at 21). However, because appellants have argued at some length that the record demonstrates the existence of a conspiracy, we will address this subject before proceeding to the issue of discovery.

Forest Service mineral examiners Jack Pardee and Gilbert Matthews examined the claims at various times in 1962, 1963, 1964, and 1966. On May 27, 1967, they issued a mineral report which stated that the purpose of the examination was to "determine the validity of the subject mining claims, which are located on lands proposed for base in exchange, and because the occupancy by the claimants interferes with management of National Forest Lands" (Exh. B at 2).

Appellants allege that the Forest Service had entered into a "sub rosa" agreement with a local ranching corporation, the 3 C Ranch, which also had unpatented mining claims in the same area. Appellants suggest that the purpose of the agreement was to disregard the 3 C claims but to proceed vigorously against the Rice claims. In support of this thesis, extensive excerpts from the testimony of Matthews and Pardee are quoted. 1/ A review of this testimony and pertinent exhibits shows that appellants' assertions of conspiracy and harassment are unfounded. The testimony of these witnesses and exhibit B indicate that appellants' claims were examined to determine whether or not a discovery existed. Pardee acknowledged that the claims owned by 3 C Ranch had not been examined, explaining that the Forest Service was not concerned with those claims because 3 C Ranch was going to relinquish the claims as part of the land exchange (Tr. 362). Moreover, a series of letters between the Rices and Forest Service officials (Exhs. 41-50) shows that cordial relations existed between the parties with respect to operations on the claims by appellants and parties who, for a period of time, were leasing the property from appellants. The hearing was postponed a number of times to allow the appellants' expert witness to complete his examination of the claims.

1/ Tr. 136-39, 357-58, 360-62, 515-16, 518-21.

b) GFS(MIN) 33 (1976)

[1] It is not the function of the Board to inquire into the motivation of any Government agency which has recommended the initiation of a contest against mining claims. Even if questionable motives were established, the Board would adjudicate the validity of the claims. The fact that particular claims, but not others in the same general area, are contested does not constitute a denial of due process. United States v. Howard, 15 IBLA 139 (1974),c and cases there cited.

The Wilson Report

Appellants refer to an examination of these claims by Forest Service mining engineer Robert E. Wilson on February 12, 1958. Wilson examined three of the claims, the Good Earth, Golden Earth, and Silver Earth claims. His report (Exh. A) states that the mineralization on the claims "is not generally considered to be the type of mineralization from which any appreciable production of valuable minerals can be expected." Wilson took samples from the three claims and had them assayed for gold, silver, and lead. He stated in his conclusions that "[a] valid discovery of minerals has been made on the Golden Earth and Silver Earth Claims," but that no such discovery existed on the Good Earth claim. In his decision the Judge ruled as follows on the Wilson report:

> The Contestees' reference to a mineral report (Ex. A) prepared in 1958, finding the Golden Earth and Silver Earth claims to be mineral in character is not controlling in this proceeding. That report was prepared for the purpose of determining surface rights on the claims under the Surface Resources Act, 30 U.S.C. 601. A previous determination in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest. United States v. Alex Bechthold, 25 IBLA 77, 91 (1976).d

(Decision at 13).

[2] The Wilson report does not answer the question whether minerals existed in sufficient quantity and were of sufficient quality "that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine." Castle v. Womble, 19 L.D. 455, 457 (1894).e This "prudent man test" has been repeatedly approved by the Supreme Court in Departmental decisions. E.g., Best v. Humboldt, 371 U.S. 334 (1963); Cameron v. United States, 252 U.S. 450 (1920); Chrisman v. Miller, 197 U.S. 313 (1905); United States v. Burns, 38 IBLA 97 (1978);f United States v. Becker, 33 IBLA 301 (1978);g United States v. Arcand, 23 IBLA 226 (1976).h This "prudent man test" is the standard by which the issue of discovery is resolved. While appellants appear to place considerable stock in the Wilson report, they do not demonstrate to what extent, if any, the Judge should have accorded this report more significance in the determination of the existence of discovery on the claim 20 years after the date of the report. We perceive no error in his ruling on this point.

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c) GFS(MIN) 30 (1974)
d) GFS(MIN) 32 (1976)
e) GFS(MIN SUPP) 1
f) GFS(MIN) 122 (1978)
g) GFS(MIN) 13 (1978)
h) GFS(MIN) 7 (1976)

Calcium Carbonate Claim

Raj Daniel, Forest Service mining engineer, testified that he examined the claims in 1976, 1977, and 1978. Daniel took samples from the Diabase, Silver Earth, New Year No. 1, Lee's Fraction, and Golden Earth claims. He examined but did not take samples from the Calcium Carbonate claim. Appellants allege the existence of scheelite (calcium tungstate) on this claim. They assert that Daniel failed to check for tungsten in any part of his examination (Statement of Reasons at 25).

Daniel described the Calcium Carbonate claim as "a shallow pit that did show a quartz lens, but I didn't know it was a lens or vein" (Tr. 108). He stated that his visual examination of the claim and the fact that samples had previously been taken by Matthews and Pardee 2/ persuaded him that it was not worthy of sampling (Tr. 55, 68-69), and that since there was no trenching or exploration work in the pit he did not know what he would have been "taking a sample of" (Tr. 108).

Richard J. Lundin, a mineral exploration consultant and the managing partner of Wallaby Enterprises 3/ examined the 10 claims, took samples, and prepared a mineral report (Exh. F) regarding the claims for the Rices. Exhibit F states as follows with respect to the Calcium Carbonate claim:

> Calcium Carbonate
>
> Two structures outcrop on this claim and they have significant and minable amounts of mineral in place. U.S.F.S. sample No. 6727 has a gross value at current prices of $14.88/tn. The structure that this sample was taken from is poorly exposed and no estimate of minable tonnage in place is possible until further development work is done. Wallaby sample No. LRA-011 was taken over a two foot width across a gently dipping vein that contained significant amounts of wulfenite, galena and pyrite. The gross value of the sample was $42.55/tn. As the vein can be stripped quite easily of it's [sic] overburden and mined via a small open pit operation, it appears that indeed, valuable mineral has been found in place and can return a profit to the Rices if the mineralization is relatively uniform.

Lundin testified that he requested Daniel to take a sample from the Calcium Carbonate claim, but that Daniel declined, opining that the mineralization was insignificant (Tr. 229). Lundin gave his opinion that there was a discovery of valuable minerals on this claim. He based this opinion on the

2/ Mineral examiners Matthews and Pardee had taken samples from all 10 claims in their examinations in 1962, 1963, and 1964. Their report (Exh. B) indicates that the samples were assayed for gold, silver, and lead, all the metals claimed by the Rices at those times.

3/ Lundin explained that his role was not to evaluate mining properties but to advise people how to explore, examine, and evaluate their own mining properties (Tr. 273-74).

Forest Service sample No. 6727 taken by Pardee and Matthews. According to exhibit B (compiled in 1966) this sample assayed 0.075 ounce gold and 0.23 ounce silver per ton, and 0.12 percent lead worth $2.62, $0.29, $0.30, respectively. Lundin stated that the figure in his report ($14.88 per ton) represented the "gross value at [his] calculations at current prices" for sample No. 6727.

Lee H. Rice testified that he sold about $900 worth of tungsten from the claims. He kept no records as to what amounts were taken from which claims nor of his production costs (Tr. 447-48).

The Judge evaluated appellants' evidence concerning tungsten as follows:

> The fact that the Contestees sold nine hundred dollars worth of tungsten from four of the claims is of little evidentiary value without supporting evidence of the exact mining costs incurred in its recovery and the identification of exposures from which tungsten may presently be removed at a profit. In any event, the recovery of nine hundred dollars would not justify the Contestees' labor and monetary expenditures on the claims.

(Decision at 14).

[3] There is no question that the Government mineral examiner who examined the Calcium Carbonate claim took no samples from the claim. In circumstances where the Government fails to make a prima facie case, or where its prima facie case is weak, any evidence presented by the mining claimant which supports the Government's charges may be used against the claimant regardless of the defects in the Government's case. United States v. Beckley, 66 IBLA 357 (1982);[i] United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975).[j] In a mineral contest, the contestee must prevail, if at all, on the strength of his own, not on any weakness of the Government's case. United States v. Noyce, 59 IBLA 268 (1981). In choosing to rebut the Government's case the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails. United States v. Williamson, 45 IBLA 264, 87 I.D. 34 (1980).[k]

The sum of the evidence with respect to tungsten on the Calcium Carbonate claim was the testimony of Lee H. Rice as to the amount sold, and the testimony and report of Lundin. Though that report lists gross dollar values for both samples, it contains significant caveats. One is the judgment that further development work is necessary before an estimate as to minable tonnage in place can be made. The other is that discovery is dependent upon an extent of mineralization which has not yet been ascertained. Lundin estimated that there were 37 tons of ore on this claim and in his professional judgment would not project the ore for more than 1 foot from the exposed face (Tr. 328).

We find that the Judge correctly accorded little weight to Lee H. Rice's vague and unsupported statements concerning amounts of tungsten mined and sold. We conclude further that the evidence of mineralization on the

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i) GFS(MIN) 269 (1982)
j) GFS(MIN) 13 (1975)
k) GFS(MIN) 33 (1980)

Calcium Carbonate claim is such as may warrant further exploration or prospecting in an effort to ascertain whether sufficient mineralization might be found to justify mining or development. A valuable mineral deposit has not been discovered because a search for such deposit might be indicated. Converse v. Udall, 399 F.2d 616 (9th Cir. 1968),l cert. denied, 393 U.S. 1025 (1969); Henault Mining Co. v. Tysk, 419 F.2d 766 (9th Cir. 1969),m cert. denied, 398 U.S. 950 (1970).

Remaining Claims

The remaining claims in issue are the Silver Earth, Golden Earth, Diabase Ridge, Three Sons, and New Year No. 2.

Appellants charge generally that the Judge totally disregarded the testimony advanced by their witnesses, and that the evidence given by Lundin is credible whereas that of Daniel is not. Appellants suggest that it is questionable whether the Government has made a prima facie case on some of the claims, particularly those with scheelite and siliceous flux which were never sampled by the Forest Service. Appellants contend also that the Judge erred in using early 1978 metal prices (gold at $174 per ounce) when on the date of his decision, June 28, 1979, "representative values in the market place were much higher."

The charge that the Judge disregarded appellants' evidence is without foundation. The decision summarizes the crucial testimony of all witnesses. The evaluation of that testimony in light of applicable mining law appears on pages 12 through 15 of the decision. In view of appellants' challenges, we will summarize the pertinent evidence given by the chief witnesses, Daniel and Lundin, as well as the relevant documentary evidence.

The findings and conclusions Daniel drew from his examinations of the claims are documented in his mineral reports (Exhs. 31, 32). 4/ The assay results referred to therein were obtained from the Arizona Testing Laboratories (Exhs. 18-23). Exhibit 28 is a summary sheet showing the assay values of gold, silver, and tungsten, as well as other metals and minerals. The values in exhibit 28 were calculated using the January 1978 average metal prices obtained from the February 1978 Engineering and Mining Journal.

4/ Exhibit 31 discusses the results obtained from four samples taken from the Silver Earth claim. The dollar values for each sample, ranging from $0.84 to $5.58 are tabulated in exhibit 11. Exhibit 32 reports the findings on all 10 claims with reference to the assay certificates. The concluding paragraph of exhibit 32 reads:

"Most of the quartz veins found in these 10 claims are narrow, discontinuous stringers, 5 to 12" wide. Occasionally it is not uncommon to find a high gold and silver assay in oxidized, vuggy pockets with galena. Minor crystals of yellow wulfenite does occur to interest specimen collectors rather than a miner. Based on my field examination and from reviewing the mining history and literature, it is my opinion that mineralization present in each of the 10 claims is insufficient in quality and quantity to support a discovery within the meaning of the mining laws."

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l) GFS(MIN) JD-4 (1968)
m) GFS(MIN) JD-3 (1970)

Exhibit C is a reevaluation by the Forest Service of the sample results which were used at the earlier hearing in 1967. These values were based on the September 1975 metal prices.

Daniel described the claims as having occasional narrow but discontinuous quartz stringers (veins) which would be uneconomical to mine (Tr. 29, 86-92). Daniel described his own sampling in detail and said that he had thoroughly familiarized himself with the literature and the earlier samples. He could not make a definite projection of ore reserves without further exploration and drilling (Tr. 104). He also challenged the sampling technique and the values obtained by Lundin, who didn't weigh his samples. Weighing, according to Daniel, is "a primary criteria in grade control and in making a profit" (Tr. 554). He concluded that the values of gold and silver found would not warrant a prudent man to expend his labor and means in developing any of the claims (Tr. 29).

Silver Earth Claim

Lundin's examination of the claims is tabulated in exhibit F. Although he took his own samples, he relied in his appraisal upon the Forest Service samples whose values he recalculated to update them. On the Silver Earth claim, he took the 4 highest of the 14 Government samples and excluded the rest. He did not weigh the samples, stating that there was no reason to do so (Tr. 293). Although he felt that a discovery existed on the Silver Earth claim, his evaluation of the mineralization on that claim was not conclusive. Of the two structures he observed on the claim, he stated:

> If the mineralization is continuous and relatively uniformly consistent from the exposure in the shaft to the point some 57 ft. away where a similar vein was encountered in a water well, (the vein was intersected at 83.0 ft. and is on strike with the vein outcropping in the shaft) then some indicated reserves could be said to exist in this system. * * *
>
> The other mineralized structure on the claim has a lesser potential but still could be worked selectively. * * * It would appear that the mineralization in this structure is spotty but does have minable values if care was used in the mining process so as to strip off most of the overburden before selective mining of the mineralized structure.
>
> It is readily apparent that mineral discovery has been made on this claim and that further development is definitely warranted so as to block out additional ore reserves. From the ten foot intersept in the water well and the exposure in the shaft an estimate of 1,500 tns. of indicated material with a value of $15.70/tn. is not unreasonable. If this is the case then the potential profit from such an orebody might be in the vicinity of $3,000.00 (assuming a total mining and milling cost to the Rices of around $13-$14/tn.)

Exhibit F (not paginated).

We note one "error" in Judge Steiner's decision. A correction of this "error" does not overturn his decision but, in fact reinforces it. On page 6 of his opinion he noted charges for shipments containing 20 tons or less. This penalty for a small lot is not an important factor to be considered in making a determination of whether a product can be shipped to the ASARCO smelter at Hayden, Arizona, at a profit. In noting this provision Judge Steiner overlooked the most significant provisions of the ASARCO settlement sheet (Exh. 30). The ASARCO silicious fluxing ore settlement sheet, reflecting settlement rates in effect at the time of the hearing, deducts 0.02 ounce gold and 0.5 ounce silver per ton from the assay grade and pays for the remainer at a rate of 92.5 percent of the London Spot Quote for the succeeding week and 95 percent of the Handy and Harman Quote for the succeeding week. In addition, a $3 per ton smelter charge is assessed. Applying the smelter rates to the values used by Lundin in exhibit F the maximum smelter return would be no higher than $11.86 per ton, using silver and gold values on the date of the hearing. 5/ Lundin estimated the cost of mining and milling to be $13 per ton (Tr. 209).

Golden Earth Claim

Lundin testified that a valid discovery existed on the Golden Earth claim (Tr. 235). He used his own samples and samples taken by the Forest Service to draw this conclusion (Tr. 235). As a further basis he used a report filed with the U.S. Bureau of Mines showing that five tons of ore were shipped from the claims in 1934-35. He presented no evidence that these shipments were from the Golden Earth claim and did not demonstrate that this ore was a direct shipment. Based on assays presented we would conclude that these small shipments represented carefully selected hand picked material shipped during the height of the depression. Applying the assays used by Lundin to the ASARCO smelter schedule (Exh. 30), the smelter returns from ASARCO's Hayden Smelter would not pay the shipping costs, let alone the mining and milling costs. 6/

5/ The value is calculated as follows: Because of the deductions of 0.02 ounce gold per ton and 0.50 ounce silver per ton the maximum return would be if all values were either gold or silver. The $15.70 per ton value used by Lundin was equated to 0.09 ounce gold per ton or 3.49 ounce silver per ton using the $175 per ounce gold value and $4.50 per ounce silver used by Lundin (e.g., 15.70/4.50 = 3.4888). The quoted price of gold on Mar. 21, 1978, was $177.65 per ounce. The quoted price for silver on that same date was $5.23 per ounce. ASARCO smelter payments would be as follows:

Product	Market Value/oz.	Grade oz./ton	Settlement Grade oz./ton	Settlement Rate/oz.	Value before Charges	Charges	Net
Au	$177.65	0.09	0.07	$164.33	$11.50	$3.00	$ 8.50
Ag	$ 5.23	3.49	2.99	$ 4.96	$14.86	$3.00	$11.86

6/ Using the values in note 5 above, the net smelter return would be as follows:

Assay No.	Gold Payment	Silver Payment	Smelter Charge	Net Loss
LRA 008	0	$1.31	$3.00	($1.70)
LRA 007	0	$2.46	$3.00	($0.57)

Diabase Ridge Claim

Lundin testified that the Diabase Ridge claim contained two mineralized structures which were 600 and 200 feet long (Tr. 246). He based a conclusion that there was a discovery on a section of these structures 50 feet long (Tr. 249). Lundin referred to his report in making this determination (Tr. 249). He noted in this report that "this structure will have to undergo selective mining of particular ore shoots that are rich in tungsten" (Exh. F.) Exhibit F contains assay reports regarding the assays he took on the Diabase Ridge claims including the two assays used in determining the reserves he quoted. In all seven assays were taken. The highest assay indicated 0.09 percent WO_3. The highest assay presented contained $1.80 in tungsten values, using $7 per pound for tungsten Lundin stated that $7 per pound was the market value at the time of the hearing (Tr. 198).

Three Sons Claim

Lundin concluded that there was valuable mineral on the Three Sons claim but that "not enough work has been done on the claim to block out tonnage or prove one way or another whether there's an ore reserve there that can be mined at a profit at this time" (Tr. 250). He also stated the following with respect to this claim: "Something has been found out there. I ascribe no tonnage to it. I don't know whether it can be mined at a profit" (Tr. 326).

New Year No. 2 Claim

Lundin testified that samples from the New Year No. 2 represented rich ore shoots and a continuous and fairly thick vein (Tr. 254). He later testified that if "you had a good strong structure, intercepting structures its not terribly difficult" to project ore shoots, but that he could not project the ore shoots on the New Year No. 2 claim (Tr. 336-37). He also admitted that the reserves were "very spotty" (Tr. 255). In his report he stated that any reserves represented by the samples he and the Forest Service had taken have to be small and that the most that can be inferred was 900 tons averaging $20.28 per ton.

Profitability

Much of the testimony presented was in an attempt to prove that there was a discovery if the property were mined by appellants. In the statement of reasons presented on behalf of appellants, a lengthy argument was presented that the Judge erred in applying "institutional or large scale operations" to a small mine as it would be operated by the Rices (Statement of Reasons at 35). Evidence was presented that except for diesel fuel, the appellants had all of the equipment and supplies necessary to conduct mining and milling operations on the property. Lundin concluded that mining operations would cost approximately $10 per ton and that milling operations would cost about $3 per ton if appellants' equipment and supplies were used (Tr. 242). Shipping costs were estimated to be $3 per ton (Tr. 403). Lundin testified that $6 per hour was used in calculating labor costs (Tr. 316).

Lundin did not balance maximum life of the Rices' mining equipment against any of the anticipated ore reserves. Nor did he consider depreciation because the Rices owned all their equipment outright (Tr. 315-16). Lundin's approach to evaluating these claims is illustrated by the following testimony:

> A We took into effect and into account two things. First of all, we did not do this analysis — we did this analysis for Lee and Goldie. We wanted to find out whether they could make a go of their own little mine and make a living off of it. Essentially, just not try to sell it, not try to lease it, not try to go through a big company, but just like a family mine.
>
> And I knew they had three things going for them. First of all, they had all the equipment necessary for the mine and supplies. They've got enough equipment supplies for three years of uninterrupted mining except for diesel.
>
> Q Diesel fuel?
>
> A Right.
>
> And number two, they have the experience. Lee has been working for mines, he's worked this mine; one son is a champion driller. And he's a small miner and prospector. And I thought he had the know-how to make it on a shoestring.
>
> And three, the values were there. If one was selective, if one knew what he was doing, one could mine these small pockets. One could mine these structures out and make a profit in my estimation.

(Tr. 199). The final paragraph of his report (Exh. F) states in part:

> I feel that the Rices are prudent people and are well justified in expending time and labor in the development of these claims. As they have the necessary equipment, supplies and know-how of how to operate a small mine on a "shoe-string", I feel that they will make a go of the operation if they stick to the operating plan that I have worked out for them.

Lundin stated that the viability of the property depended on the Rices working the property themselves (Tr. 347). He also testified that two smelters were considered as possible purchasers of siliceous flux material. The first was Phelps Dodge which would purchase material for $6 per ton (Tr. 252). With a $10 per ton mining cost and $3 shipping cost, it is obvious that it would be unprofitable to ship material to Phelps Dodge. The second would be ASARCO. As discussed above, the deductions and smelting charges at the ASARCO smelter would make mining of direct shipping ore unprofitable. In order to recover any tungsten values, appellants would be required to mill their ore. Appellant Lee H. Rice testified that his mill would process 1 ton of ore per 10-hour shift (Tr. 419). At $6 per hour, the rock processed would have to contain more than $60 per ton in recoverable values in order to justify milling.

Therefore, none of the reserves calculated by Lundin would support milling costs.

We do not find it necessary to comment on application of "institutional or large-scale operations" to the appellants' property. Appellants' calculations as to gross value of the mineral in place and costs of production do not support a conclusion that a prudent man would have a reasonable prospect of developing a paying mine.

[4] When the Government contests a mining claim, it is required to produce sufficient evidence to establish a prima facie case against the validity of the claim, and the burden of proof then shifts to the contestees to overcome this showing by a preponderance of the evidence. United States v. Springer, 491 F.2d 239, 242 (9th Cir.), cert. denied, 419 U.S. 834 (1974); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). A prima facie case has been made when a Government mineral examiner testifies that he has examined the claims and found the evidence of mineralization insufficient to support a finding of discovery. United States v. Knecht, 39 IBLA 8 (1979);[n] United States v. Bechthold, 25 IBLA 77 (1976).[o]

We conclude that the Government produced ample evidence to establish a prima facie case against the validity of the five claims. The next question for determination is whether the evidence adduced by appellant preponderated over the showing made by the Government. We find that it did not.

Discovery is not established for a lode claim where there are only isolated mineral values rather than an exposed vein or lode of mineral-bearing rock in place, possessing in and of itself a present or prospective value for mining purposes. United States v. Jones, 67 IBLA 225 (1982);[p] United States v. Melluzzo, 38 IBLA 214, 85 I.D. 441 (1978).[q] The descriptions of the mineralization on the claims in the Lundin report (Exh. F) do not meet this criterion. Where further development or exploration is required, where the extent of mineralization awaits ascertainment, where no definitive conclusions can be reached concerning amounts of minerals in place, a valuable mineral deposit has not been discovered.

[5] Lundin's evaluation of the appellants as prudent people who could make a go of the operation on a "shoestring" if they followed his recommendations cannot avail to establish a discovery, because determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

Appellants urge this Board to consider the fact that appellants are willing to accept a very meager return. From the record we believe that, based upon the evidence presented by appellants, the property would not show a meager return but would show a loss. The fact that appellants may be willing to accept a return which is relatively meager does not satisfy the prudent man test, as a prudent man would not invest his labor and means if his only expectations were meager profits at best. United States v. Becker, 33 IBLA 301 (1978);[r] United States v. Reynders, 26 IBLA 131 (1976);[s] United States v. Heard, 18 IBLA 43 (1974).[t] The prudent man test is objective, and subjective considerations, such as willingness to work for little or no

n) GFS(MIN) 9 (1979)
o) GFS(MIN) 32 (1976)
p) GFS(MIN) 287 (1982)
q) GFS(MIN) 133 (1978)
r) GFS(MIN) 13 (1978)
s) GFS(MIN) 47 (1976)
t) GFS(MIN) 74 (1974)

return, have no place in the calculus of prudence. United States v. Reynders, supra; United States v. Arcand, 23 IBLA 226 (1976).[u] See United States v. Edwards, 9 IBLA 197 (1973),[v] aff'd, Edwards v. Kleppe, 588 F.2d 671 (9th Cir. 1978).

[6] Finally, we see no error in the values for metals used by the Judge in his decision. Those were the values established at the hearing. The record established at a hearing in a mining contest is the sole basis for determining the validity of the claim. Any additional evidence tendered on appeal can be considered only to determine if a further hearing is warranted. United States v. Mattox, 36 IBLA 171 (1978),[w] United States v. Taylor, 25 IBLA 21 (1976).[x] Generally to warrant a further hearing, an appellant must show a sufficient equitable basis for holding a hearing and make an evidentiary tender of proof of discovery to be presented at such a further hearing. Appellants have tendered no new evidence on appeal.

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.

R. W. Mullen
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

u) GFS(MIN) 7 (1976)
v) GFS(MIN) 25 (1973)
w) GFS(MIN) 81 (1978)
x) GFS(MIN) 29 (1976)

STATE OF ARIZONA
DEPARTMENT OF MINERAL RESOURCES
MINERAL BUILDING, FAIRGROUNDS
PHOENIX 7, ARIZONA

Tucson, Ariz.,
April 11, 1962

Mr. Frank P. Knight, Director,
State Dept. of Mineral Resources,
Mineral Bldg., Fairgrounds,
Phoenix, Ariz.

Dear Frank:

Enclosed please find report on Lee H. Rice vs. U. S. Forest Service.

Mr. Rice made a complaint against the activities of the Forest Service in a letter to Charles F. Willis under date of Mar. 28, 1962. Mr. Willis, in a reply to this letter, referred the case to the field engineer for obtaining additional details.

I am enclosing letters to and from C. F. Willis for your iiformation and files.

I am notifying C. F. Willis that the report is now on its way.

If the assay report from Hawley Assay office is not completed by late this afternoon, it will be sent separately tomorrow.

Sincerely,

Axel

Axel L. Johnson, Field engineer,
Box 5047, Tucson, Arizona.

STATE OF ARIZONA
DEPARTMENT OF MINERAL RESOURCES
MINERAL BUILDING, FAIRGROUNDS
PHOENIX 7, ARIZONA

Tucson, Arizona,
April 11, 1962

SPECIAL REPORT

To: Frank P. Knight, Director

From: Axel L. Johnson, Field Engineer

Re: Complaint by Lee H. Rice against the actions of the U. S. Forest Service

Mr. Lee H. Rice made a complaint against the activities of the Forest Service in a letter to Charles F. Willis under date of Mar. 28, 1962. Mr. Willis, in a reply to this letter, on Mar. 30, referred the matter to the Field Engineer for obtaining additional information and more details. The following report is therefore submitted:

Mr. Lee H. Rice holds 8 mining claims located on NE 1/4 - Sec. 16 - T 10 S - R 16 E, Pinal County, in the Coronado National Forest. However, only 3 of these claims were located prior to July 23, 1955. These 3 claims--"Golden Earth", "Silver Earth", and "Good Earth" were purchased by Mr. Rice in 1954 from a party who located them in 1953.

Shortly after the purchase of the claims in 1954, Mr. Rice built a small house (1/2 trailer & 1/2 cabin) on the Silver Earth claim, and used this as a permanent home for himself and family. During this time, Mr. Rice worked at various outside occupations, mostly in the mines, and in his spare time and on week ends, worked on his claims doing exploration and development work. Mr. Rice has now worked, for some time, with the San Manuel Copper Corporation at San Manuel.

Mr. Rice's home was destroyed by fire on or about Feb. 15th. A new home was planned to take the place of the one destroyed by fire. Construction on the new home was started in a very short time on a site some 200 to 300 ft. from the old home site, and still on the Silver Earth claim. This new house will be a 3 bed room adobe, with open beam ceilings and a fire place. The foundation, concrete floor, and rough plumbing has already been completed, and 2 to 3 layers of adobe brick had been layed at the time of my visit on April 7. Enough Mexican adobe bricks and cement had been purchased and hauled to the building site to finish the structure. Mr. Rice informs me that the estimated cost of the house will be about $ 3,000, as most of the work will be done by good neighbors who have volunteered their services in the various phases of the construction.

Regarding the determination of the surface rights on the 3 claims -- Golden Earth, Silver Earth, and Good Earth:

Enclosed find copies of two decisions in regard to these claims. We obtained these copies from the Forest Service at Tucson, as Mr. Rice's copies were destroyed in the fire.

Mr. Rice states that, at one of the hearings in regard to the validity of the claims, he agreed to withdraw the verified statement on the Good Earth claim, in return for a declaration by the Forest Service that the other claims (Golden Earth & Silver Earth) were valid mining claims. He states that this agreement was written in ink on the original of one of the decisions. He also states that he does not recall seeing paragraph (d) in regard to contesting the validity of the claims by subsequent proceedings.

There might be other correspondence from the Forest Service to Mr. Rice, which we do not, as yet, have. For example-- Mr. Rice states that, in April 1959, he recived a letter from the Forest Service to the effect that the claims Silver Earth and Golden

Tucson, Ariz.
April 11, 1962

SPECIAL REPORT (Continued)

Earth were valid, and that he could retain the surface on these two claims.

Enclosed also are copies of a letter received by Mr. Rice from the Forest Service on April 7, confirming conversation on March 28.

In regard to the proposed land exchange mentioned in this letter:

In a telephone conversation with Mr. Richardson, who is in charge of the land exchanges of the Coronado National Forest, the field engineer was advised by Mr. Richardson that a Mr. Vaitses has made an informal offer for exchange of the following described land, with no definite acreage as yet stipulated:

"Mr. Vaitses to receive land in Sections 34, 21, 16, 9, and 5 -- T 10 S - R 16 E in exchange for lands in the Prescott National Forest in T 18 N - R 5 W."

Mr. Rice informs me that this man is Theodore Vaitses, who owns a nearby ranch, which he purchased from Mary West a short time ago (3 C Ranch). He states that Mr. Vaitses is an influential politician from Massachusetts, and also that he has heard that Mr. Vaitses wants the land for a subdivision development.

It is the writers opinion that, in view of the fact that the described land (Secs. 34, 21, 16, 9 and 5) lies on a diagonal line, following both sides of the Oracle-Mt. Lemmon road, a subdivision development seems very logical.

The writer, on his visit to Mr. Rice's claims on April 7, examined a shaft on the Silver Earth claim. This shaft was vertical, about 15 ft. deep, and timbered. A flat dipping quartz vein was exposed in the shaft, about 8 ft. below the collar. This vein was from 3 in. to 6 in. wide, and contained silver and lead minerals, with possibly some gold. Mr. Rice also mentioned that he had some quite high gold values on this claim and also on the adjoing Golden Earth claim, which are found very near the surface.

Mr. Rice also mentioned that these are patented mining claims adjoining his claims on 3 sides. No details reg. these patented claims were obtained.

Reports on two samples taken by Mr. Rice on April 8 and sent to Hawley Assay office on April 9 will be made a part of this report, as soon as the returns are in from the assay office. The writer understands that one of these samples were taken on the quartz vein in the shaft, which was examined by the writer on April 7.

The writer discussed with Mr. Rice the hasards of building a permanent home on an unpatented mining claim. Mr. Rice, however, is fully determined to continue with the construction of his home. He states that he has definitely decided to engage an attorney to represent him in protecting his rights to the surface on his his two mining claims, the "Golden Earth" and "Silver Earth".

Respectfully submitted,

Axel L. Johnson

Axel L. Johnson, Field engineer,
Box 5047, Tucson, Arizona.

P. S. -- I did not contact Clyde W. Doran reg. the above. I was informed that Mr. Doran was out of town, and will be away approximately two weeks.

W. E. HAWLEY, PRES.

TELE: EMPIRE 4-2741

HAWLEY & HAWLEY

ASSAYERS AND CHEMISTS, INC.
537 TWELFTH STREET
DOUGLAS, ARIZONA

BOX 1060
DOUGLAS, ARIZONA
BOX 4
EL PASO, TEXAS

IDENTIFICATION	GOLD OZS	SILVER OZS	LEAD %	COPPER %	ZINC %	INSOL. %	IRON %		
Sample #1, Weight 990 gms*	0.010	23.59							
Sample #2, " 940 "	0.140	1.16	5.8						

CC: Mr. Lee Rice
ADD: Box 245
CITY: Oracle, Arizona
ADD:
CITY:

REMARKS:

*Weight of samples before preparation
6.25 Received
1.50 Preparation
7.50 Analyses

ANALYSIS CERT. BY Richard

ACC: LEE RICE

DATE SPL. RECEIVED 4/9/62

DATE COMPL. 4/11/62

$ 2.75 Due 313906

FORM B

STATE OF ARIZONA
DEPARTMENT OF MINERAL RESOURCES
MINERAL BUILDING, FAIRGROUNDS
PHOENIX 7, ARIZONA

Tucson, Arizona,
April 9, 1962

Mr. Charles F. Willis,
508 Title & Trust Bldg.,
Phoenix 3, Arizona.

Dear Charlie:

COPY

I was over in Oracle last Saturday afternoon to see Lee Rice, and he was also over to see me in my office in Tucson this morning.

We are somewhat handicapped on account of having to get copies of correspondence from the Forest Service to Mr. Rice, to replace the originals burned up by the fire. This is being attended to.

Expect to have a full report to give you and our office in a couple of days.

Mr. Lee Rice expects to go to Phoenix next Friday and talk to you, and then engage Howard A. Twitty as attorney to represent him. I don't know where Mr. Rice will get the money to pay Mr. Twitty, unless he may get some help from San Manuel Copper Corp., for whom he is working. He has had a steady job with that company for some time, and hopes that the company officials will take an interest in the case. I think he expects to see Mr. Goss or one of the officials before going to Phoenix.

Sincerely,

Axel L. Johnson,
Box 5047,
Tucson, Arizona.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
CORONADO NATIONAL FOREST

ADDRESS REPLY TO
FOREST SUPERVISOR
AND REFER TO

2810

TUCSON, ARIZONA
~~P.O. BOX 551~~
April 5, 1962

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Lee Rice
Box 245
Oracle, Arizona

Dear Mr. Rice:

This letter is to confirm our conversation of March 28, 1962, at your claim. I did not learn until that date of your misfortune in losing your house to fire. As we discussed last week, because of the proposed land exchange, your claim will be re-examined for validity in the near future. I would advise that you delay the construction of your new house until such determination is made. In the event that your claim is not found to be valid you would be required to remove all buildings and improvements within a given time, usually sixty to ninty days.

Yours truly,

JOHN W. WATERS
District Ranger
Santa Catalina District

ARIZONA SMALL MINE OPERATORS ASSOCIATION

OFFICE OF STATE SECRETARY
CHARLES F. WILLIS
508 TITLE AND TRUST BLDG.
PHOENIX 13, ARIZONA

COUNCILS

AGUILA
AJO
ALAMO
ARIVACA
BENSON
BISBEE
BOUSE
CASA GRANDE
CAVE CREEK
CHERRY
CHLORIDE
CLEATOR
CLIFTON
CONGRESS
CROWN KING
DOUGLAS
DUNCAN
ELLSWORTH
FLORENCE
GLOBE
HUACHUCA
KINGMAN
KIRKLAND
KLONDYKE
MAYER
MESA
MIAMI
MORENCI
MORRISTOWN
NOGALES
OATMAN
ORACLE
PARKER
PATAGONIA
PAYSON
PEARCE
PHOENIX
PRESCOTT
QUARTZSITE
QUIJOTOA
RAY
SAFFORD
SALOME
SELLS
SUNFLOWER
SUPERIOR
TEMPE
TOMBSTONE
TUCSON
VERDE
WICKENBURG
WILLCOX
WINKELMAN
YARNELL
YUMA

March 30, 1962

Mr. Axel L. Johnson
Box 5047
Tucson, Arizona

Dear Axel:

Here is something that I believe we should follow through. There is evidently more to the situation than is reported by Mr. Rice but of course we want to get the whole story as to what has been done and the Forest Service is doing now, what they propose to do, and their authority for acting as they are. Of course, you should be sure to get the Forest Service's version of the matter.

Thanking you, and with kindest personal regards, I am

Yours sincerely,

Charlie

Charles F. Willis
State Secretary

ARIZONA SMALL MINE OPERATORS ASSOCIATION

OFFICE OF STATE SECRETARY
CHARLES F. WILLIS
508 TITLE AND TRUST BLDG.
PHOENIX 13, ARIZONA

March 30, 1962

COUNCILS 3

AGUILA
AJO
ALAMO
ARIVACA
BENSON
BISBEE
BOUSE
CASA GRANDE
CAVE CREEK
CHERRY
CHLORIDE
CLEATOR
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KIRKLAND
KLONDYKE
MAYER
MESA
MIAMI
MORENCI
MORRISTOWN
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OATMAN
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SUPERIOR
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TOMBSTONE
TUCSON
VERDE
WICKENBURG
WILLCOX
WINKELMAN
YARNELL
YUMA

Mr. Lee H. Rice
Box 245
Oracle, Arizona

Dear Mr. Rice:

I have your letter of March 28th relative to your problems regarding Public Law 167 and the fact that you are being harassed by the Forest Service even though your claims have been checked and validated by them.

We have heard of many problems in connection with the effort of the Forest Service to get residents off of mining claims, but this is the first time we have heard of it being followed up and a case brought up for or against it. It looks to me as though you are going to have to get a lawyer and do some fighting back, because they certainly cannot get away with any invalidation after having once given you their okey as to the validity of your claims.

I must confess that I do not know all of the details connected with your case and therefore I am sending a copy of your letter to Axel L. Johnson, field engineer for the Department of Mineral Resources, and asking him to confer with you and see what he can do to help you out.

We have been watching this administration of Public Law 167 very carefully and realize that it is important to fight back, for the precedent which is set by such fighting back may help a lot of other folks who might similarly have their cases brought up again. In other words, having once got a settlement they are very anxious to see that it stays settled indefinitely.

We have many times called to the attention of Washington authorities the flagrant misuse of Public Law 167 by Forest Service officials and I would suggest that you tell your whole story to Axel Johnson so that he can transmit it to us and give us the ammunition whereby we can make a further protest to the top men in Washington and see if we can get them to take some action to hold down the abuses by their local men.

Your case as I understand it from your letter is one that looks to me as being preposterous and unauthorized and therefore we hope that you will get a lawyer and fight it. With best wishes, I am

Yours very truly,

Charles F. Willis
State Secretary

CFW:fh

C

O

P

Y

Box 245

Oracle, Ariz.

March 28, 1962

Dear Mr. Charles Willis:

I am guessing you have heard enough about Public Law 167. We were checked and rechecked November 1958 to April 1959, and under their stipulation we retained the surface on two claims, one of which we have lived on for 8 years and paid personal property taxes. We have rich silver, gold, and lead exposed in veins.

Our house burned down six weeks ago. We are building an adobe house with help of neighbors to replace the one lost.

Today, U. S. Forest Supervisor, Mr. John Waters, drove up and told me he had orders to tell us to stop any further building and that we were to be contested again to test the validity and marketability of our claims, (our claims join patented claims on 3 sides) as this area is involved in a land trade at present. Does this mean that our previous stipulation was invalid or was their mineral examinations incompetent?

Mr. Vaitses (owner of the 3C Ranch) is the precluded purchaser. So far, no local residents (mining claimants or otherwise) have been notified of an official sale or exchange of this land nor has there been any published notices. Mr. Waters said it was open to bid but Mr. Vaitses was getting it.

They have completely ignored our rights and provileges as legal, but poor, mining claimants. We are treated as trespassers or illegal squatters. Are we trespassers on the forest or not? It seems a shame that one or two wealthy people should own and control and benefit on our government land.

Sincerely,

Lee H. Rice

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Office of the Hearing Examiner
305 Construction Center Building
4700 North Central Avenue
Phoenix, Arizona

May 5, 1959

DECISION

UNITED STATES OF AMERICA, Acting through the FOREST SERVICE	:	CONTEST NO. ARIZONA 017610-VS-11
	:	
	:	Determination of surface rights as to lands embraced by the following unpatented mining claim:
v.	:	
	:	
SAM E. RICE,	:	Good Earth Lode Mining Claim, situated in Sections 9 and 16, T. 10 S., R. 16 E., GSRM, Pinal County, Arizona.
Mining Claimant	:	

LODE MINING CLAIM DECLARED SUBJECT TO SECTION 4 OF THE ACT OF JULY 23, 1955 (69 STAT. 367)

In a proceeding brought pursuant to Section 5 of the Act of July 23, 1955 (69 Stat. 367), by the Forest Service, United States Department of Agriculture, the above-named mining claimant filed a verified statement on June 23, 1977, claiming rights contrary to or in conflict with the limitations or restrictions specified in Section 4 of the said Act, under and by virtue of the above-identified unpatented mining claim. Thereafter there was filed with the undersigned Hearing Examiner a request that a hearing as to such unpatented mining claim be held pursuant to Section 5(c) of the above-cited Act.

At the time and place set for the said hearing, the parties stipulated in writing that the said verified statement be withdrawn and of no force and effect as to the Good Earth Lode Mining Claim.

The withdrawal of the verified statement by the mining claimant is considered analogous to no verified statement having been filed. The Good Earth Lode Mining Claim, and the lands embraced thereby, are hereby made subject to the limitations and restrictions of Section 4 of the above-cited Act.

This determination will be recorded upon the appropriate public land records of the Land Office of the Bureau of Land Management at Phoenix, Arizona.

Rudolph M. Steiner
Hearing Examiner

Distribution:

Mr. Lee H. Rice (Registered Mail)
Box 245
Oracle, Arizona

Mr. Thomas M. Smith
Attorney in Charge
Office of the General Counsel
U. S. Department of Agriculture
U. S. Agriculture Center Office Building
Stillwater, Oklahoma

Standard Distribution List

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Land Office
P. O. Box 148
Phoenix, Arizona

IN REPLY REFER TO:
L&C(W)
AR 017610
VS 11
Oracle Area
3-SR-55

November 26, 1958

DECISION

Lee H. Rice
Box 245
Oracle, Arizona

Termination of proceedings
under section 5
of the Act of July 23, 1955.

In a proceeding brought pursuant to Section 5 of the Act of July 23, 1955 (69 Stat. 367), by the Bureau of Land Management, United States Department of the Interior, at the request of the Forest Service, United States Department of Agriculture, the mining claimant above-named on June 25, 1957 filed in the Land Office at Phoenix, Arizona, a verified statement claiming rights contrary to or in conflict with the limitations or restrictions specified in Section 4 of said Act, under and by virtue of the unpatented mining claims located prior to July 23, 1955, which mining claims are identified and described as follows:

Recorded: Pinal County, Arizona

Name of Claim	Date Located	Docket	Page
Golden Earth	June 1, 1953	79	274
Silver Earth	June 1, 1953	79	275
Good Earth	Jan. 5, 1954	95	371

The above mining claims are located in sec. 16, T. 10 S., R. 16 E., GSR Mer., Arizona.

On September 29, 1956 the Forest Service filed in this office a stipulation as to the Golden Earth and Silver Earth mining claims. In accordance with said stipulation, it is hereby determined as follows:

a. That the representations made by the above-named mining claimant in the verified statement filed by him are accepted as to the mining claims listed in the stipulation;

b. That a hearing will not be held as to said unpatented mining claims;

c. That as to said mining claims, the proceedings brought by the Bureau of Land Management pursuant to Section 5 of the Act of July 23, 1955, are closed; and

d. Nothing herein contained shall be construed as precluding the United States from contesting the validity of these claims by subsequent proceedings.

A copy of this decision will be filed in the Land Office, Bureau of Land Management, Phoenix, Arizona.

Thos. F. Britt
Manager

cc: Regional Forester (3)